

Michael E. Haglund OSB No. 772030
email: mhaglund@hk-law.com
Michael K. Kelley OSB No. 853782
email: mkelley@hk-law.com
Shay S. Scott OSB No. 934214
email: sscott@hk-law.com
**HAGLUND KELLEY HORNGREN JONES
& WILDER LLP**
200 SW Market Street, Suite 1777
Portland, Oregon 97201
Phone: (503) 225-0777
Facsimile: (503) 225-1257

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

**LLOYD D. WHALEY, TODD L.
WHALEY,**

Plaintiffs,

v.

**PACIFIC SEAFOOD GROUP, DULCICH,
INC., FRANK DULCICH, PACIFIC
SEAFOOD GROUP ACQUISITION
COMPANY, INC., PACIFIC SEAFOOD
WASHINGTON ACQUISITION CO.,
INC., BANDON PACIFIC, INC., BIO-
OREGON PROTEIN, INC., NORTH
BEND OYSTER COMPANY, INC.,
PACIFIC CHOICE SEAFOOD
COMPANY, PACIFIC COAST
SEAFOODS COMPANY, PACIFIC
GARIBALDI, INC., PACIFIC GOLD
SEAFOOD COMPANY, PACIFIC
OYSTER CO., PACIFIC PRIDE SEA
FOOD COMPANY, PACIFIC SEA FOOD
CO., PACIFIC SURIMI CO., INC.,
PACIFIC TUNA COMPANY, LLC,
WASHINGTON CRAB PRODUCERS,
INC., PACIFIC AQUACULTURE, INC.,
PACIFIC ALASKA SHELLFISH, INC.,
SEA LEVEL SEAFOODS, LLC, ISLAND**

Case No.:

CLASS ACTION ALLEGATION

COMPLAINT
(15 U.S.C. §§ 1 and 2)

(Jury Trial Demanded)

FISH CO., LLC, PACIFIC
RESURRECTION BAY, PACIFIC
CONQUEST, INC., CALAMARI, LLC,
JO MARIE LLC, LESLIE LEE, LLC,
MISS PACIFIC, LLC, PACIFIC FUTURE,
LLC, PACIFIC GRUMPY J, LLC,
PACIFIC HOOKER, LLC, PACIFIC
HORIZON, LLC, PACIFIC KNIGHT,
LLC, PRIVATEER LLC, SEA PRINCESS,
LLC, TRIPLE STAR, LLC, PACIFIC
FISHING, LLC, PACIFIC SEA FOOD OF
ARIZONA, INC., STARFISH
INVESTMENTS, INC., DULCICH
SURIMI, LLC, BIO-OREGON
PROPERTIES, LLC, PACIFIC GROUP
TRANSPORT CO., PACIFIC
MARKETING GROUP, INC., PACIFIC
RUSSIA, INC., PACIFIC RUSSIA
VENTURES, LLC, PACIFIC TUNA
HOLDING COMPANY, INC., POWELL
STREET MARKET LLC, PACIFIC
FRESH SEA FOOD COMPANY,
SEACLIFF SEAFOODS, INC., COPPER
RIVER RESOURCE HOLDING CO.,
INC., PACIFIC COPPER RIVER
ACQUISITION CO., INC., SEA LEVEL
SEAFOODS ACQUISITION, INC.,
ISLAND COHO, LLC, S & S SEAFOOD
CO., INC., PACIFIC SEAFOOD DISC,
INC., and JOHN DOES 1-25,

Defendants.

Plaintiffs, on behalf of themselves and all others similarly situated, allege as follows:

INTRODUCTION

1. This is an action under the federal antitrust laws, specifically Sections 1 and 2 of the Sherman Act, which prohibits conspiracies to restrain trade and monopolization in any segment of U.S. commerce. Over the last two decades, defendant Frank Dulcich and the 54 defendant entities that he controls doing business as the Pacific Seafood Group have

employed an integrated combination of anticompetitive strategies to achieve and maintain monopoly power over four West Coast seafood input markets: Dungeness crab; groundfish; Pacific whiting processed onshore and Pacific coldwater shrimp. Plaintiffs, on behalf of themselves and similarly situated fishermen and fishing vessel owners, seek reform of these four competitively crippled markets through a broad package of injunctive relief including a break-up of Pacific Seafood Group through court-ordered divestiture. Plaintiffs also seek recovery of the substantial damages which Pacific Seafood Group has inflicted upon fishermen and fishing vessel owners through substantial price compression in these four markets over the last four years.

JURISDICTION AND VENUE

2. Pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, this action is for damages and injunctive relief for violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2. This Court has jurisdiction pursuant to 15 U.S.C. § 15 and 28 U.S.C. §§ 1331 and 1337(a). Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. §§ 1391(b), (c). Frank Dulcich, Pacific Seafood Group and most of its 54-entity network of commercial enterprises maintain offices, regularly transact business or are otherwise found within this District.

3. Frank Dulcich, Pacific Seafood Group and its 54-entity network of commercial enterprises have significant contacts with the State of Oregon and this District, and defendants' conduct occurred in part in this District, has affected commerce in this District and caused injury in this District.

PARTIES

4. Plaintiffs Lloyd D. Whaley and Todd L. Whaley are father and son and the owners and operators of the F/V Miss Sarah, F/V B.J. Thomas, F/V Cape Sebastian and F/V Dynamic, fishing vessels which have regularly participated in multiple West Coast fisheries over the last 10 years. Plaintiffs are residents of Brookings, in Curry County, Oregon and all four of their fishing vessels have their home ports in Brookings, Oregon. Combined, the Whaleys have over 75 years of experience fishing West Coast waters.

5. Defendant Pacific Seafood Group is the assumed business name under which the 54 defendant entities owned by defendant Dulcich, Inc., an Oregon corporation, engage in a multi-state seafood processing, sales and distribution business with gross sales in excess of \$1 billion. Pacific Seafood Group is the single largest seafood company in terms of gross revenue in the United States.

6. Defendant Frank Dulcich is the sole owner of Dulcich, Inc. Defendant Dulcich serves as president or lead executive of all 54 of the named entity defendants in this action.

7. Throughout this complaint the term “Pacific Seafood Group” is used to refer collectively to all 54 of the entities which are named defendants in this action and their sole owner, Frank Dulcich.

8. On information and belief, Pacific Seafood Group Acquisition Company, Inc., an Oregon corporation, and Pacific Seafood Washington Acquisition Co., Inc., a Washington corporation, are entities utilized by Pacific Seafood Group to acquire multiple seafood industry assets.

9. Defendants Bandon Pacific, Inc., Bio-Oregon Protein, Inc., North Bend Oyster Company, Inc., Pacific Choice Seafood Company, Pacific Coast Seafoods Company, Pacific

Garibaldi, Inc., Pacific Gold Seafood Company, Pacific Oyster Co., Pacific Pride Sea Food Company, Pacific Sea Food Co., Pacific Surimi Co. Inc. and Pacific Tuna Company, LLC are all Oregon corporations engaged in seafood processing in Oregon, Washington or California.

10. Defendants Washington Crab Producers, Inc. and Pacific Aquaculture, Inc. are Washington corporations engaged in the business of seafood processing in the State of Washington.

11. Defendants Pacific Alaska Shellfish, Inc., Sea Level Seafoods, LLC, Island Fish Co., LLC and Pacific Resurrection Bay are corporations or limited liability companies registered in Alaska that are engaged in the processing of seafood products in the State of Alaska.

12. Defendant Pacific Conquest, Inc., is an Oregon corporation that owns and operates a fishing vessel bearing that name. Defendants Calamari, LLC, Jo Marie LLC, Leslie Lee, LLC, Miss Pacific, LLC, Pacific Future, LLC, Pacific Grumpy J, LLC, Pacific Hooker, LLC, Pacific Horizon, LLC, Pacific Knight, LLC, Privateer LLC, Sea Princess, LLC and Triple Star, LLC are all Oregon limited liability companies that own and operate fishing vessels bearing the entities' names. Upon information and belief, defendant Pacific Fishing, LLC plays a role in the management of the 13 entities listed in this paragraph which own and operate fishing vessels on the West Coast.

13. Defendants Pacific Sea Food of Arizona, Inc., Starfish Investments, Inc., Dulcich Surimi, LLC, Bio-Oregon Properties, LLC, Pacific Group Transport Co., Pacific Marketing Group, Inc., Pacific Tuna Holding Company, Inc. and Powell Street Market LLC are all corporations or limited liability companies registered in Oregon that are engaged in the sales and distribution of seafood products throughout the western United States.

14. Upon information and belief, defendants Pacific Russia, Inc. and Pacific Russia Ventures, LLC own a significant share of the fishing fleet in Russian waters in the western Pacific Ocean that harvests brown king crab.

15. Defendants Pacific Fresh Sea Food Company and Seacliff Seafoods, Inc. are California corporations engaged in the sales and distribution of seafood products in the State of California.

16. Defendants Copper River Resource Holding Co., Inc., Pacific Copper River Acquisition Co., Inc., Sea Level Seafoods Acquisition, Inc. and Island Coho, LLC are corporations or limited liability companies registered in Alaska and engaged in the seafood business.

17. Defendant S & S Seafood Co., Inc. is a Delaware corporation engaged in the sale and distribution of seafood products. Defendant Pacific Seafood Disc, Inc. is a Nevada corporation engaged in the seafood distribution business.

18. John Doe defendants 1-25 are individuals or entities who have conspired or are currently conspiring with Pacific Seafood Group to restrain trade in and to monopolize the West Coast seafood input markets for Dungeness Crab, groundfish, Pacific onshore whiting and Pacific coldwater shrimp.

CLASS ACTION ALLEGATIONS

Class of West Coast Fishermen and Fishing Vessel Owners

19. Plaintiffs Lloyd D. Whaley and Todd L. Whaley are representatives of a class of persons (“Class of West Coast Fishermen and Fishing Vessel Owners” or “Class”) who delivered Dungeness crab, groundfish, Pacific whiting and/or Pacific coldwater shrimp to seafood processors in Oregon, Washington or California any time between June 21, 2006 and three

months before the date of trial in this case. The Class includes primarily commercial fishermen and commercial fishing vessel owners who delivered these four seafood commodities to West Coast seafood processors during that period. It does not include persons affiliated with Pacific Seafood Group.

Rule 23(a) Prerequisites

20. Prosecution of the claims of the Class as a class action is appropriate because the prerequisites of Rule 23(a) of the Federal Rules of Civil Procedure are met:

- (a) **Numerosity.** The number of persons in the Class exceeds 3,000 persons and is therefore so numerous that joinder of all members of the Class is impracticable. Joinder is also impracticable because of the geographic diversity of the members of the Class, the need to expedite judicial relief, and the Class Representatives' lack of knowledge of the identity and addresses of all members of the Class.
- (b) **Common Questions.** There are numerous questions of law or fact arising from the pattern of Pacific Seafood Group's conspiracy and anticompetitive conduct which are common to the members of the Class. These include, but are not limited to, common issues as to:
 - The existence of relevant input markets for Dungeness crab, groundfish, Pacific onshore whiting and Pacific coldwater shrimp and Pacific Seafood Group's monopoly power in these markets;
 - Whether Pacific Seafood Group has unlawfully maintained a monopoly in these relevant seafood markets from at least 2005 through the present;

- Whether Pacific Seafood Group's maintenance of its monopoly power over these four West Coast seafood markets has harmed competition;
- Whether Pacific Seafood Group's maintenance of monopoly power caused antitrust injury and damages to members of the proposed Class due to Pacific Seafood Group's suppression of pricing to members of the Class from June 21, 2006 through the present; and
- The nature and extent of the injunctive and actual damage relief available to members of the Class.

(c) **Adequacy of Representation.** The claims of the Class Representatives are typical of the claims of the members of the Class and fairly encompass the claims of the members of the Class. The Class Representatives and the members of the Class are similarly or identically harmed by the same systematic and pervasive monopolistic conduct.

21. The Class Representatives and their counsel will fairly and adequately protect the interests of the Class. There are no material conflicts between the claims of the Class Representatives and the members of the Class making class certification inappropriate. Counsel for the Class will vigorously assert the Class Representatives' claims and those of the members of the Class.

Rule 23(b)(3) Prerequisites

22. In addition, the prosecution of the claims of the Class as a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) is appropriate because:

- (a) The questions of law or fact common to the members of the Class predominate over any questions affecting only its individual members; and
- (b) A class action is superior to the other methods for the fair and efficient resolution of the controversy.

Rule 23(b)(2) Prerequisites

23. In addition, the prosecution of the claims of the Class as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) is appropriate because Pacific Seafood Group has acted, or refused to act, on grounds generally applicable to the Class, thereby making final injunctive relief, or corresponding declaratory relief, appropriate for the Class as a whole.

RELEVANT PRODUCT MARKETS

**West Coast Seafood Markets for
Dungeness Crab, Groundfish,
Pacific Onshore Whiting and
Pacific Coldwater Shrimp.**

24. Dungeness crab is a species of shellfish found only in the eastern North Pacific Ocean. Harvested in baited crab pots, Dungeness crab are most abundant off the coasts of Oregon, Washington and northern California. Dungeness crab is an economically distinct seafood input market that is geographically confined to the West Coast.

25. Groundfish is a well-recognized category of fish species harvested in deep water using multiple methods including longline gear, baited traps and trawling. Trawl fishermen tow a cone-shaped net bag which scoops up groundfish as its trails along, often utilizing heavy doors to keep the net mouth open and chains to hold the net end down. The major species harvested in the West Coast groundfish fishery are multiple species of flounder, sole, rockfish and sablefish. The groundfish fishery is an economically distinct seafood input market that is geographically confined to the West Coast.

26. Pacific whiting is an abundant West Coast fishery harvested throughout the spring and summer when large schools of migrating whiting are found off the coasts of Oregon, Washington and northern California. Pursuant to federal regulation, 42% of the annual Pacific whiting harvest is allocated to the onshore fishery, which is harvested by midwater trawlers and processed by onshore processors in Oregon and Washington. The onshore Pacific whiting fishery is an economically distinct seafood input market that is geographically confined to the West Coast.

27. Pacific coldwater pink shrimp is a species of shrimp that is found in the north Pacific Ocean and harvested primarily off the coasts of Oregon and Washington. The Pacific coldwater shrimp harvested annually are delivered by commercial fishing vessels for processing at plants in coastal communities in Oregon, Washington and California. Pacific coldwater shrimp is an economically distinct seafood input market that is geographically confined to the West Coast.

28. The processing plants specializing in the processing of Dungeness crab, groundfish, onshore whiting and Pacific coldwater shrimp are all located in coastal communities in Oregon, Washington and California. Because of fuel, time constraints and the perishable character of these seafood commodities, West Coast fishermen harvesting these four seafood commodities do not fish more than 60 to 100 miles away from the processor to which the seafood commodity will be delivered.

29. This 60 to 100 mile geographic limit on the area that is tributary to an individual seafood processor or a group of seafood processors is consistent up and down the West Coast and applies equally to all four of these seafood commodity input markets. Therefore, the relevant input markets for Dungeness crab, groundfish, Pacific onshore whiting and Pacific

coldwater shrimp are all geographically confined to U.S. waters off the West Coast and the seafood processors located in coastal communities in Oregon, Washington and California.

PACIFIC SEAFOOD GROUP'S MONOPOLY POWER

30. Since at least 2005, Pacific Seafood Group has possessed monopoly power in the relevant seafood input markets for Dungeness crab, groundfish, Pacific onshore whiting and Pacific coldwater shrimp. From 2005 to the present, Pacific Seafood Group has controlled a market share of approximately 65% in the Dungeness crab market, a market share of approximately 70% in the groundfish market, a market share of over 50% in the Pacific onshore whiting market and a market share of approximately 60% in the Pacific coldwater shrimp market.

31. Since at least 2005, Pacific Seafood Group's monopoly power in each of these four relevant input markets has been protected by substantial barriers to entry and expansion. These barriers include the following: the inelastic character of the supply in each of these four seafood commodity input markets; the uncertain prospects for future supply as a result of intensive regulation; Pacific Seafood Group's reputation for exclusionary conduct as the dominant purchaser of these seafood commodities over the last decade; the substantial capital investment required to enter the seafood processing industry; Pacific Seafood Group's absolute cost advantages over its processor competitors; the economies of scale and vertical integration fostering Pacific Seafood Group's maintenance and expansion of its monopoly power over these four seafood input markets; and the limited number of waterfront locations zoned and suitable for operation of a seafood processing plant.

32. Dungeness crab, groundfish, Pacific onshore whiting and Pacific coldwater shrimp are the four most valuable seafood input markets on the West Coast of the United States.

The aggressive consolidation and monopolization of these markets by Pacific Seafood Group has inflicted significant harm upon West Coast fishermen, fishing vessel owners and coastal communities that depend in significant part on the economics of the fishing industry. For example, Brookings, Oregon has historically been one of the coastal communities most economically dependent upon the health of the fishing industry. A port which once had several seafood processors now has none as a result of the consolidation of processing capacity by Pacific Seafood Group in other locations.

ANTICOMPETITIVE CONDUCT

33. Pacific Seafood Group has used its unlawfully created and maintained monopoly control over four West Coast seafood commodity input markets for the purpose of suppressing the ex vessel prices paid to fishermen in each of these four seafood input markets. As alleged below, this has been accomplished through an aggressive program of vertically integrated acquisitions to acquire competitor processors, fishing vessels and harvest permits, multiple tactics to set and enforce prices, exclusive dealing and tying arrangements, restrictions on output, stealing of seafood commodities through multiple fraudulent schemes, fraudulent representations to a federal agency and miscellaneous dirty tricks.

Vertically Integrated Acquisitions

34. **Processing Capacity.** In 1980, there were 50 substantial seafood processors up and down the West Coast. In 1983, Pacific Seafood Group first entered the West Coast seafood processing market with the acquisition of a plant in Warrenton, Oregon that is presently owned and operated by defendant Pacific Coast Seafoods Company. Over the course of the last 27 years, Pacific Seafood Group has acted aggressively to eliminate West Coast seafood processor competition through multiple acquisitions and other tactics, amassing market shares of 50% to

over 70% in the four highest volume fishery input markets on the West Coast. As of June 2010, Pacific Seafood Group owns and operates 18 seafood processing plants or landing stations in West Coast fishing communities including the only processing plants in seven coastal cities.

These facilities and the dates of acquisition are set out below:

| | | |
|------|---|-----------------------------------------------------|
| 1983 | — | Pacific Coast Seafood, Warrenton, Oregon |
| 1986 | — | Pacific Choice Seafood, Eureka, California |
| 1990 | — | Pacific Choice Seafood, Charleston, Oregon |
| 1990 | — | Pacific Pride Seafood Company, Mukilteo, Washington |
| 1993 | — | Washington Crab Producers, Westport, Washington |
| 1993 | — | Pacific Oyster Co., Bay City, Oregon |
| 1995 | — | Pacific Surimi, Warrenton, Oregon |
| 1996 | — | Pacific Shrimp, Newport, Oregon |
| 1996 | — | Hoy Brothers, Garibaldi, Oregon |
| 1999 | — | S&S Seafood Company, Portland, Oregon |
| 2001 | — | Eureka Fish Company, Eureka, California |
| 2001 | — | Landing Station, Crescent City, California |
| 2003 | — | Starfish, Inc., Seattle, Washington |
| 2003 | — | Landing Station, San Francisco, California |
| 2004 | — | North Bend Oyster Company, Inc., North Bend, Oregon |
| 2006 | — | Bio-Oregon Protein, Inc., Warrenton, Oregon |
| 2007 | — | Pacific Garibaldi, Inc., Garibaldi, Oregon |
| 2007 | — | Brookings Landing Station, Brookings, Oregon |

35. Pacific Seafood Group also owns a substantial share of Ocean Gold Seafoods, Inc. in Westport, Washington and has an exclusive contract to sell all of that company's production.

36. In 2005, Pacific Seafood Group secured a 50% ownership position in Ucluelet Seafood Processors Ltd. in British Columbia, which owns and operates the largest whiting and groundfish processing plant in British Columbia. Pacific Seafood Group is actively utilizing its control of at least half of the whiting and groundfish processed at the Ucluelet Seafood Processors plant to increase its market power over these commodities in U.S. and foreign markets.

37. Pacific Seafood Group has acquired many of the processing plants and landing stations listed above at prices substantially below fair market value. This has been accomplished in part by aggressive use of a fraudulent tactic where Pacific Seafood Group makes a loan to a processor which includes a requirement that the processor deliver all product to Pacific Seafood Group for resale or granting Pacific Seafood Group the exclusive right to sell all seafood products generated by that plant. Then, at a point where Pacific Seafood Group owes the processor a substantial sum, defendants trump up a quality claim, impose severe financial hardship on the processor and then negotiate to acquire it at a discounted price.

38. **Fishing Vessels.** During the last decade, Pacific Seafood Group has been the single largest buyer of fishing vessels on the West Coast. Pacific Seafood Group currently owns 13 fishboats operating in multiple fisheries in West Coast waters and an unknown number of fishing vessels operating in Russian waters in the western Pacific. Upon information and belief, Pacific Seafood Group has recently closed on the sale of a fourteenth fishboat called F/V God's Will.

39. **Harvest Permits.** Pacific Seafood Group has been an aggressive purchaser of seafood harvest permits which are typically then matched with company-owned fishing vessels.

Multiple Tactics to Set and Enforce Ex Vessel Prices

40. The approach of Pacific Seafood Group to the purchase of seafood commodities from fishermen is exemplified by the slogan that has long adorned the top of its management whiteboard in its Pacific Coast Seafood plant offices in Warrenton, Oregon: “CONTROL EX VESSEL PRICES.”

41. Pacific Seafood Group makes no secret of its intention to set the prices that prevail in multiple seafood input markets on the West Coast. Director of Operations Tim Horgan has acknowledged in the press that Pacific Seafood Group “is the price leader.” That price leadership is enforced through aggressive use of the following tactics:

- a. A competitor who deviates from the pricing set by Pacific Seafood Group will become the target of predatory pricing in that Pacific Seafood Group will dump product at below cost prices into the sales channels known to be important to the deviating competitor.
- b. Competitors who have deviated from Pacific Seafood Group pricing have been the recipients of expletive-filled messages from Frank Dulcich protesting the higher prices and threatening retaliation.
- c. Competitor processors who attempt to supply retail stores and other wholesale purchasers of seafood known to be supplied by Pacific Seafood Group are threatened with aggressive retaliation, specifically, that “we will put you out of business in a heartbeat” if that processor competitor

dares to attempt to compete with Pacific Seafood Group in multiple wholesale seafood markets.

- d. During the 2001-02 crab season, apparently before Ocean Gold Seafood was fully under its control, Pacific Seafood Group threatened Ocean Gold that if it did not stop offering higher prices for Dungeness crab, it would jeopardize Ocean Gold's marketing arrangement with Pacific Seafood Group.
- e. In the Dungeness crab fishery, Pacific Seafood Group communicates with competitor processors regarding its proposed pricing in advance of the legally authorized meeting of processors and fishermen under ORS 62.849 to establish a "season starting price" for Oregon seafood commodities, actions which constitute naked price-fixing in clear violation of the limited safe harbor provided by that statute.
- f. Pacific Seafood Group fraudulently uses its captive fishing fleet to hold down ex vessel prices by telling independent fishermen that the company's own boats are delivering at the same prices when in fact Pacific Seafood Group uses a combination of preferential quotas, delivery dates, benefits and a year-end profit sharing contribution to pay higher landed prices per pound to its own crews. Captains who work aboard fishboats owned by Pacific Seafood Group have occasionally complained about the low pricing and are told: "Keep fishing cheap. We'll make it up to you at the end of the year in profit sharing."

g. Pacific Seafood Group imposes arbitrary poundage limits on deliveries at what it establishes as the market price and then pays a much lower price for any excess poundage delivered. Pacific Seafood Group deliberately sets those limits at levels which the company knows are uneconomic for many fishermen and will result in actual deliveries well above the poundage limit on which higher prices will be paid, thus enabling Pacific Seafood Group to acquire the total catch delivered at an overall average price per pound that is below market. Pacific Seafood Group purports to impose the same poundage limits on its own fishing vessels, but in fact advises its captains that the difference between the lower price for the excess poundage and the higher price for a designated limit will be made up at the end of the year.

Exclusive Dealing and Tying Arrangements

42. Pacific Seafood Group uses multiple tactics to coerce fishermen into long term exclusive dealing arrangements where Pacific Seafood Group essentially dictates seafood commodity pricing to the fishermen on its so-called "A List." In 2002, Pacific Seafood Group held a series of meetings in the Ports of Warrenton, Newport, Charleston, Crescent City and Eureka to discuss the implementation of a new working arrangement between the company and individual fishermen. Pacific Seafood Group representatives explained that the company would begin providing preferential treatment to those fishermen who were willing to be "team players."

43. It was obvious to anyone attending these meetings that Pacific Seafood Group was establishing an "A List" and a "B List" of fishboats. Fishermen who do not cause problems would be on the A List and all others would be on the B List. Boats on the A list would be given

better market limits and greater access to Pacific Seafood Group processing plants through better and more regular delivery dates and higher catch limits. Pacific Seafood Group would buy from fishermen on the B List if the company needed the particular seafood commodity caught by fishermen on that list.

44. Pacific Seafood Group has coerced and continues to coerce independent fishermen into oral multi-year exclusive dealing arrangements through the use of the following tactics:

- a. Illegally tying the willingness of Pacific Seafood Group to make a market for a seafood commodity in which it has substantial market power available to a fisherman to a commitment by that fisherman to deliver other seafood commodities to Pacific Seafood Group.
- b. Retaliating against any fisherman who is on the Pacific Seafood Group “A List” who dares to deliver product to another processor at a higher price by unilaterally refusing to deal in the future with that fisherman.
- c. Making loans or advances to fishermen conditioned on delivery of all seafood commodities harvested by that fisherman to Pacific Seafood Group plants until the loan or advance is fully paid.

45. Pacific Seafood Group uses tying arrangements and retaliatory refusals to deal to prevent new processor competitors from entering the seafood processing industry on the West Coast. For example, in December 2009, a Washington-based processor with operations in Alaska sought to enter the groundfish market in Astoria, Oregon. This processor successfully purchased one catch of groundfish and was scheduled to buy a second load from the same fisherman. Before that second catch was delivered, however, Pacific Seafood Group, through

Ocean Gold Seafoods which it controls, threatened the fisherman that he would no longer have any access to markets for shrimp and whiting if he made another delivery of groundfish to the competitor processor seeking to enter the market in Astoria. In the face of that threat, the fisherman capitulated, deviated from his voyage to Astoria and delivered his catch to Ocean Gold in Westport, Washington.

46. Through deliberate and calculated actions, Pacific Seafood Group in 2006-07 destroyed the market influence of the Fishermen's Marketing Association (FMA) by "breaking the FMA" as Frank Dulcich had predicted. Pacific Seafood Group first provoked a strike of West Coast trawlers with two moves that incited the fishermen: dropping the price that winter on petrale sole without notice and while the fleet was at sea; and refusing to negotiate a fair price on groundfish with the FMA before the start of the season in the spring of 2007.

47. These tactics led to a strike or tie-up of the independent trawlers on the West Coast. Pacific Seafood Group successfully broke the strike by fishing its own boats for a period of six weeks until the economic pressures on the independent trawlers caused the strike to collapse. Later that year, Pacific Seafood Group served notice that it was unilaterally terminating its marketing agreements with the FMA. Given Pacific Seafood Group's dominant market position at that time, the maintenance of marketing agreements with competitor processors was futile and the FMA was forced to completely abandon the use of its marketing agreements.

48. Pacific Seafood Group's synergistic mix of tactics to control ex vessel prices has been so successful that the profitability of the fishing enterprise on the West Coast in these four seafood input markets has been dramatically undermined with a corresponding negative impact on the financial statements and taxable income for fishing vessel owners and fishermen. As a

result, fishing vessel owners and fishermen have become increasingly unable to access traditional sources of funds for capital investment or working capital from financial institutions. Seafood processors like Pacific Seafood Group have become the so-called “lenders of last resort” to fishermen. These loans are used to control and direct a fisherman’s entire catch to Pacific Seafood Group during the life of the loan. Further, Pacific Seafood Group illegally abuses its economic power by illegally demanding the pay-off of loans tied to a particular harvest permit or permits in situations where the fisherman fails to deliver a commodity linked to an entirely different non-collateralized permit to Pacific Seafood Group.

49. Pacific Seafood Group also utilizes its reputation for cheating fishermen on catch weights to coerce fishermen into accepting the below market prices offered by Pacific Seafood Group. When one of the plaintiff Class Representatives complained directly to Frank Dulcich about cheating on the poundage delivered that resulted in a five cent per pound discount, Mr. Dulcich replied: “Listen, I can pay you a nickel less per pound or steal it at the scales.”

50. Pacific Seafood Group’s practice of leveraging its reputation for cheating in negotiations with fishermen continues to the present. Within the last 60 days, Pacific Seafood Group’s Tim Horgan responded as follows to a fishboat owner’s proposal that the whiting price per pound for the upcoming season be eight cents rather than the seven cents per pound offered by Pacific Seafood Group: “You will be better off at the seven cent price. At eight cents, you will have problems with weighbacks.” The obvious implication of this statement was that Pacific Seafood Group would designate portions of the whiting delivered as unusable and achieve its seven cents per pound price through theft.

Restrictions on Output

51. During the last five years, Pacific Seafood Group has implemented strategies designed to reduce the total harvest of groundfish and Pacific coldwater shrimp in West Coast waters for multiple purposes: obtaining supra-competitive prices for these seafood commodities at the wholesale level; driving fishermen on Pacific Seafood Group's so-called "B List" out of these fisheries; and depressing the prices for fishing vessels and federal groundfish trawl permits and state Pacific shrimp permits for the purpose of acquiring both fishboats and permits at depressed prices.

52. The strategy being deployed by Pacific Seafood Group involves granting its own fleet and those fishermen on its "A List" full opportunity to harvest the two-month cumulative trip limits for groundfish allocated to each fishboat with a federal trawl permit. Without an available alternative market in multiple West Coast fishing communities, the refusal of Pacific Seafood Group to deal with "B List" trawl fishermen prevents these fishermen from harvesting the quota allocated to their vessels in these two-month periods, which reduces the total volume of the groundfish harvest.

53. Within the Pacific coldwater shrimp fishery, which is regulated by states and not subject to an overall allowable catch limit, Pacific Seafood Group either refuses to deal with multiple fishermen with shrimp permits or discriminates against these fishermen by imposing costly delivery requirements not required of vessels affiliated with Pacific Seafood Group. For example, vessels home ported in Brookings, Oregon, which are either owned by Pacific Seafood Group or on its "A List," are allowed to catch shrimp and deliver the catch to a landing station in Brookings, Oregon where the product is then trucked to Eureka, California or Charleston, Oregon for processing at a Pacific Seafood Group plant. Other shrimp fishermen with vessels

home ported in Brookings, Oregon are allowed to harvest shrimp for Pacific Seafood Group, but only if the vessels will haul their catch directly to the plants in Eureka or Charleston, which substantially increases the costs to those fishermen who are required to make that extra haul.

54. As a result of these tactics, the plaintiff Class Representatives have completely dropped out of the fishery for Pacific coldwater shrimp. Other West Coast fishermen have either suspended participation in the shrimp fishery or are contemplating that step.

55. As a result of these output restrictions, the prices for fishing vessels capable of harvesting groundfish and/or shrimp are declining as are the value of the permits to engage in these fisheries. Meanwhile, Pacific Seafood Group is one of the most active buyers of these permits as part of its continuing consolidation of market power in these two fisheries.

56. It should be noted that it was Pacific Seafood Group's acquisition of Eureka Fish Company in 2001 that created the opportunity to discriminate against southern Oregon and northern California fishermen in the groundfish and shrimp fisheries as alleged above. At the time of that acquisition, Pacific Seafood Group was already operating seafood processing plants in Eureka, California and Charleston, Oregon. Eureka Fish Company was buying and processing shrimp at plants in Eureka, Crescent City, Brookings and Coos Bay. Pacific Seafood Group promptly shut down and dismantled the equipment in all four seafood processing plants. Not one of the Eureka Fish Company processing plants is in active operation today.

Theft of Seafood Commodities from Fishermen

57. Pacific Seafood Group not only aggressively utilizes its market power in these four seafood input markets to control ex vessel prices, but it engages in the theft of seafood commodities from fishermen through the use of the following schemes:

- a. Manipulating the scales at Pacific Seafood Group processing plants or failing to weigh portions of a catch in order to cheat fishermen on the actual weight delivered.
- b. Allowing plant managers to override scale data, arbitrarily increase ice deductions and/or otherwise reduce the poundage shown to have been delivered in order to achieve profit or production goals at that plant.
- c. On seafood commodities such as sablefish where the fisherman is paid based upon the weight of the processed (headed and gutted) product rather than the weight of the delivered whole fish, Pacific Seafood Group regularly cheats on the actual weight of processed product.
- d. Unilaterally designating a portion of a delivered catch as an unusable “weighback” which is deducted from the poundage on which payment is made even though Pacific Seafood Group actually processes and sells that weighback. When fishermen with knowledge about the weights in their vessel holds have complained about the low poundage figures or the extent of the weighbacks, Pacific Seafood Group personnel refuse to address the issue and use their market power to force the fishermen to accept the Pacific Seafood Group figures by threatening: “If you’re not happy with our program, then there are plenty of fishermen who want your market with us.” In other words, the fisherman has no place else to go.
- e. Working with co-conspirator buyers to suppress ex vessel prices, and when necessary to promote its scheme, to falsify the price paid on fish tickets to maintain secrecy over the occasional higher prices paid by

Pacific Seafood Group and to defraud the State of Oregon out of taxes and other fees owing on the amount paid above the falsified price. Pacific Seafood Group makes regular use of this practice to maximize its maintenance of suppressed ex vessel prices and to save the costs of excise taxes and other fees on those occasions on which it pays higher prices.

Fraudulent Representations to Public Agencies

58. During the period of 2006-08, Pacific Seafood Group made false representations to the Pacific Fisheries Management Council in support of a proposal that West Coast seafood processors be allocated a share of the onshore whiting quota. These misrepresentations included the following:

- a. That allocation of 100% of the whiting quota to fishermen would render Pacific Seafood Group processing plants worthless and that the seafood processing industry had an investment in whiting processing plants in excess of \$100 million;
- b. That whiting fishermen had voluntarily agreed to support a 20% allocation of onshore whiting to processors when in fact Pacific Seafood Group coerced the support of a portion of the whiting fleet by threatening to destroy the quota system and to bring in fishing vessels from Alaska to take the onshore whiting fishery away from the West Coast fleet; and
- c. Falsely representing the membership of the Coastal Jobs Coalition, a group purportedly supporting processor quota, in that several of the listed corporate members were no longer in business or, if still in business, had

not authorized the use of their company name as part of that lobbying effort.

59. The above-described false statements to the Pacific Fisheries Management Council (PFMC) were substantial and deliberate and influenced the outcome of PFMC's decision-making. All of this was in violation of the Magnuson Fishery Conservation and Management Act prohibiting the submission of false information to the Pacific Fisheries Management Council, 16 U.S.C. § 1857(1)(H).

60. Upon information and belief, and despite its success before the PFMC in securing a decision to allocate 20% of the onshore whiting quota to processors, Pacific Seafood Group has now concluded that implementation of the transferrable quota system for the groundfish and whiting fisheries will complicate its ability to maintain and expand its monopoly power in the West Coast groundfish and onshore whiting seafood input markets.

61. Pacific Seafood Group is particularly concerned with draft regulations first proposed by the U.S. National Marine Fisheries Service in March 2010 establishing maximum accumulation or poundage limits or maximum aggregate quota shares in the groundfish and onshore whiting fisheries. These maximum accumulation limits range from a low of 2.5% for Lingcod to a high of 17.7% for Cowcod. The poundage limit for shoreside Pacific whiting is 15%.

62. Through the combination of processor, vessel and permit ownership, Pacific Seafood Group will far exceed the allowable accumulation limits for almost all groundfish species and for Pacific onshore whiting. Pacific Seafood Group's control of groundfish and whiting through exclusive dealing and other contractual arrangements with multiple West Coast fishermen and its control of all sales at Ocean Gold Seafoods will add substantially to its

dramatic exceedance of the proposed quota pound limits. In fact, Pacific Seafood Group has made multiple acquisitions of fishing vessels and permits with knowledge of the proposed quota pound limits.

63. With full recognition that Pacific Seafood Group is better off with the existing “race to fish” status quo over which it exercises monopoly power, Pacific Seafood Group organized an effort to present testimony at the June 10-17, 2010 204th Session of the Pacific Fishery Management Council to oppose approval of the draft regulations necessary to implement the groundfish trawl and shoreside whiting rationalization programs involving the implementation of transferrable quota shares of the total allowable catch in each fishery. This opposition is being organized for the sole purpose of preventing the adoption of a program which would complicate the maintenance and expansion of the existing monopoly which Pacific Seafood Group enjoys over these two seafood input markets.

64. As part of its effort to delay implementation of the groundfish trawl rationalization program, Pacific Seafood Group executives are repeatedly making false representations to public officials and stakeholders regarding the identity of those against the program and the potential impacts of the program on West Coast fishing communities.

Miscellaneous Dirty Tricks

65. As described below, Pacific Seafood Group has developed a pattern and practice of utilizing illegal outlaw tactics to financially weaken and then acquire competitor processors and to establish and enforce its ex vessel pricing.

66. In 1999-2001, Pacific Seafood Group through its Warrenton, Oregon processing plant leveraged its power over whiting fishermen to condition access to that market on a fisherman’s willingness to target the maximum possible bycatch of rockfish while trawling for

whiting. Under the then applicable regulations, whiting fishermen were allowed to deliver and sell rockfish bycatch up to a designated limit. Any rockfish bycatch above that limit was required to be delivered to a processor, but the processor was required to pay the State for its fair market value and the fisherman was to receive no monetary proceeds.

67. Throughout this period, Pacific Seafood Group illegally tied access to its Warrenton whiting processing plant to a fisherman's commitment to illegally target rockfish bycatch. Pacific Seafood Group also used its whiting market position to force the fisherman to accept 10 cents per pound for the rockfish within the fisherman's allowable bycatch limit when the market price was in fact 40 cents per pound. With this scheme, Pacific Seafood Group was then in a position to underpay the State of Oregon for the substantial quantities of rockfish bycatch which were delivered over and above the limits for which the fishermen could be compensated.

68. With this scheme, Pacific Seafood Group acquired large quantities of rockfish bycatch at 25% of fair market value which Pacific Seafood Group then used to substantially undersell and financially weaken its processor competition. This illegal predatory behavior contributed significantly to the acquisitions of S & S Seafood Co., Inc. in 1999, Eureka Fish Company in 2001 and Starfish, Inc. in 2003.

69. Despite centralized control from its headquarters in Clackamas, Oregon, Pacific Seafood Group purports to give control over price negotiations with fishermen to local processing plant managers. In fact, these managers conspire to stage and manipulate negotiations with subsets of the West Coast fishing fleet as part of their collective scheme to suppress ex vessel prices.

70. Pacific Seafood Group makes fraudulent use of undisclosed special benefits to obtain the commitment of the fishermen in a particular port to pricing in order to set up the rest of the West Coast fishing community for the same pricing. For example, shrimpers in one coastal community have been offered free ice for the season provided they accept the first offer made by Pacific Seafood Group. This undisclosed benefit amounts to a value of \$300-\$500 per voyage. Once this tactic has resulted in a commitment by those receiving the free ice to the pricing proposed by Pacific Seafood Group, that same price is then dictated to the rest of the fleet on the West Coast.

71. Defendant Pacific Surimi, Inc. pled no contest to a charge of first degree theft in 2002, agreed to pay \$800,000 to resolve the matter and was placed on probation for five years. The evidence gathered by the Oregon Department of Justice and the Clatsop County District Attorney's office confirmed the allegations in paragraph 57 above that Pacific Seafood Group was stealing from fishermen in multiple ways: scales were either altered or not turned on during part of the unloading process; portions of the fishermen's catch were not recorded or reduced by various manipulations; or portions of the fishermen's catch were designated as unusable and not paid for as a "weighback."

72. In two instances, at the Port of Bandon and in Crescent City, Pacific Seafood Group has either entered into or acquired leases with public ports for the purported purpose of operating a fish processing plant. After taking possession, Pacific Seafood Group in each case shut down the processing plant and then resisted efforts by each port to take back the property and secure a new tenant that would process seafood and provide significant associated employment. This tactic was utilized by Pacific Seafood Group to prevent the entry of processor competition in these locations.

73. In 2005-06, Pacific Seafood Group manufactured concerns about the maturity of Dungeness crab to force a three-week delay to the start of the commercial crab fishery that historically begins on December 1. Upon information and belief, Pacific Seafood Group utilized this tactic to ensure that there were not substantial volumes of Dungeness crab harvested in the first half of December before Pacific Seafood Group had completed its harvest of brown king crab in Russian waters, a season which was concluding on December 15, 2005. Pacific Seafood Group successfully used false claims about the readiness of the Dungeness crab for harvest that season solely for its own economic advantage and to the disadvantage of its processor competitors and West Coast crab fishermen.

74. Pacific Seafood Group has deliberately violated environmental laws at multiple processing plants for the purpose of maintaining lower operating costs to the disadvantage of those competitor processors who observe state and federal environmental regulations.

HARM TO COMPETITION

75. Over the last 27 years, Pacific Seafood Group's aggressive acquisition of its processor competition and its intentional use of multiple anticompetitive, exclusionary actions as alleged above has caused a substantial loss of competition in the West Coast fishing industry generally and specifically the seafood input markets for Dungeness crab, groundfish, Pacific onshore whiting and Pacific coldwater shrimp.

76. As a result of Pacific Seafood Group's actions, there are many fewer seafood processors in West Coast coastal communities than would be the case in the absence of Pacific Seafood Group's predatory behavior. As a result, innovation in the industry is constrained in terms of the range of seafood products offered to consumers. In addition, consumers are offered

more frozen and less fresh seafood products than would be the case in a more competitive seafood market.

77. Unless checked by court action, additional competitors of Pacific Seafood Group will be forced out of business and the ex vessel prices paid to West Coast fishermen will be further suppressed.

FIRST CLAIM FOR RELIEF

(Conspiracy to Restrain Trade)

78. Plaintiffs reallege paragraphs 1 through 77.

79. Defendants and their co-conspirators have conspired to restrain trade in the four highest volume West Coast seafood input markets by fixing ex vessel prices for Dungeness crab, groundfish, Pacific onshore whiting and Pacific coldwater shrimp in violation of Section 1 of the Sherman Act.

80. Pacific Seafood Group's conduct has had and continues to have the purpose and effect of eliminating seafood processor competition and disciplining any remaining competition into following Pacific Seafood Group's price leadership in the West Coast seafood input markets for Dungeness crab, groundfish, Pacific onshore whiting and Pacific coldwater shrimp.

81. Pacific Seafood Group's practices have affected a substantial amount of commerce in these four seafood input markets.

82. Pacific Seafood Group's conduct has injured competition in these four seafood input markets and, as a consequence, plaintiffs and other members of the proposed Class have been forced to sell their seafood commodities in these four markets at less than competitive prices since at least June 21, 2006.

83. Plaintiffs estimate that, since June 21, 2006, Pacific Seafood Group has successfully suppressed prices paid to fishermen for Dungeness crab, groundfish and shrimp by 15% to 20% below what should have been the competitive prices for these commodities and by 40% to 50% in the onshore whiting market. Plaintiffs presently estimate the total damages owing to the Class as falling within the range of \$73.4 to \$97.8 million in the Dungeness crab input market, from \$30.7 to \$41.0 million in the groundfish input market, from \$20.5 to \$25.5 million in the Pacific onshore whiting input market and from \$6.9 to \$9.2 million in the Pacific coldwater shrimp input market.

84. On an aggregated basis, the damages to the Class of fishermen and fishing vessel owners damaged by Pacific Seafood Group's monopolistic conduct in these four West Coast Seafood input markets range from \$131.5 to \$173.5 million. Under the federal antitrust laws, all damages awards are trebled. On an aggregated and trebled basis, the total Class damages fall within the range of \$394 to \$520 million.

SECOND CLAIM FOR RELIEF

(Monopolization)

85. Plaintiffs reallege paragraphs 1 through 84.

86. Pacific Seafood Group's monopolization of these four West Coast seafood input markets is so entrenched and pervasive that substantial injunctive relief is necessary to restore a free and competitive market in each of these input markets. To do so, this Court should order the following:

- a. Grant preliminary and permanent injunctions prohibiting Pacific Seafood Group from retaliating against any member of the Class who cooperates

during the discovery process in this case or who testifies honestly at deposition or at trial;

- b. Grant preliminary and permanent injunctions prohibiting Pacific Seafood Group and any entity it controls from accepting an allocation of processor quota in the Pacific onshore whiting fishery;
- c. Require Pacific Seafood Group to divest itself of a sufficient number of processing plants in Oregon, Washington and California to reduce its market share in each of these four seafood input markets below 30%;
- d. Require that Pacific Seafood Group divest itself of all fishing vessels and fishing permits that it owns presently and prohibit the future purchase of such assets;
- e. Require Pacific Seafood Group to divest itself of all unused waterfront properties in Oregon, Washington or California that are zoned for or suitable for the operation of a seafood processing plant;
- f. Require Pacific Seafood Group to divest itself of its ownership interest in Ucluelet Seafood Processors Ltd. and prohibit the future purchase of any processing plants, fishing vessels or permits in British Columbia;
- g. Grant preliminary and permanent injunctions against Pacific Seafood Group's multiple exclusionary anticompetitive tactics as alleged in paragraphs 30 through 74; and
- h. Grant a permanent injunction requiring Pacific Seafood Group to enter into a marketing agreement with the Fishermen's Marketing Association (FMA), which funds FMA or other independent observers to monitor the

offloading and weighing of seafood commodities and requires Pacific Seafood Group to provide regular consistent and verifiable reports to individual fishermen regarding processed recovery by species.

THIRD CLAIM FOR RELIEF

(Attempted Monopolization)

87. Plaintiffs reallege paragraphs 1 through 84.

88. Pacific Seafood Group is attempting to monopolize the West Coast seafood input markets for Dungeness crab, groundfish, Pacific onshore whiting and Pacific coldwater shrimp through the use of the predatory and exclusionary practices alleged in paragraphs 30 through 68 above.

89. If Pacific Seafood Group is allowed to continue the unlawful acts and course of conduct alleged above, there is a dangerous probability that Pacific Seafood Group will successfully secure monopoly power in the West Coast seafood input markets for Dungeness crab, groundfish, Pacific onshore whiting and Pacific coldwater shrimp.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, individually and as representatives of members of the proposed Class, pray that this Court provide trial by jury and award the following relief:

1. Declare that Pacific Seafood Group's conduct constitutes illegal restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;
2. Declare that Pacific Seafood Group's conduct constitutes illegal monopolization and/or attempted monopolization in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2;

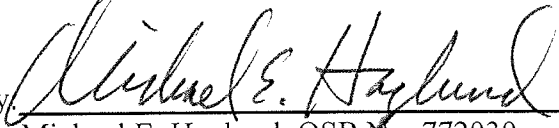
3. Preliminarily and permanently enjoin Pacific Seafood Group and its agents, employees and co-conspirators from continuing the unlawful actions alleged above;
4. Grant the requested mandatory injunctions requiring Pacific Seafood Group to divest itself of processing plants, fishing vessels, harvest permits and unused waterfront properties;
5. Award plaintiffs and the proposed Class judgment for their actual damages, in an amount to be determined at trial, but presently estimated within the range of \$131.5 to \$173.5 million, and threefold those damages as a result of the antitrust violations, which range from \$394 to \$520 million;
6. Award plaintiffs their reasonable attorneys' fees and costs;
7. Award plaintiffs pre-judgment interest on all damages at the highest rate allowed by law; and
8. Grant such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, plaintiffs demand trial by jury in this action on all issues triable by a jury.

DATED this 21st day of June, 2010.

HAGLUND KELLEY HORNGREN JONES &
WILDER LLP

By 
Michael E. Haglund, OSB No. 772030
Attorneys for Plaintiffs