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9 *Wholesale Grocers, Inc.*

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 ASSOCIATED WHOLESALE
13 GROCERS, INC.,

14 Plaintiff,

15 v.

16 Case No. 15-md-2670-JLS-MDD
17 Case No. 2:18-cv-02212 (D. Kan.)

18 BUMBLE BEE FOODS LLC, LION
19 CAPITAL LLP, LION CAPITAL
20 (AMERICAS) INC., BIG CATCH
21 CAYMAN L.P., CHRISTOPHER D.
22 LISCHEWSKI, STARKIST
23 COMPANY, DONGWON
24 INDUSTRIES CO. LTD., DEL
25 MONTE CORPORATION, TRI-
26 UNION SEAFOODS LLC d/b/a
27 CHICKEN OF THE SEA
28 INTERNATIONAL, INC., AND
29 THAI UNION GROUP PCL,

30 Defendants.

THIRD AMENDED COMPLAINT

TABLE OF CONTENTS

1

2 NATURE OF ACTION 1

3 BACKGROUND 3

4 JURISDICTION AND VENUE 11

5 PLAINTIFF..... 16

6 DEFENDANTS 16

7 The Bumble Bee Defendants 17

8 Lion Entities..... 17

9 Defendant Christopher Lischewski..... 25

10 The Tri-Union Defendants 42

11 Del Monte 59

12 Co-Conspirators and Agents 60

13 TRADE AND COMMERCE..... 60

14 THE PRODUCTION OF CANNED TUNA 61

15 TUNA SUPPLY, DEMAND, AND PRICING 63

16 The Supply of Canning-Grade Tuna Increased Substantially..... 63

17 The Demand for Canned Tuna in the United States Decreased Substantially..... 65

18 Prices Paid for Canned Tuna Increased Substantially as a Result of Defendants’

19 Conspiracy 66

20 Defendants’ Pricing of Canned Tuna to Plaintiff and Others Was Against Defendants’

21 Self-Interest But For Their Collusion 69

22 THE MARKET FOR THE PRODUCTION AND SALE OF CANNED TUNA WAS

23 CONDUCTIVE TO CARTELIZATION 70

24 There Are No Close Substitutes for Canned Tuna..... 70

25 The Market for the Processing and Sale of Canned Tuna Is/Was Concentrated 70

26 Barriers to Entry 71

27 Prevailing Supply and Demand Factors Incentivized Collusion 72

28 The Transfer of Executives Between Defendants Facilitated Collusion 73

29 Select Trade Associations Facilitated Collusion..... 74

30 Common Vendors and Co-Packing Arrangements Facilitated Collusions and

31 Enforcement of the Cartel..... 75

32 ADDITIONAL OVERT ACTS IN DEFENDANTS’ CANNED TUNA CONSPIRACY 76

33 Defendants’ Collusive Price Increases Between 2004-2006 76

1 Defendants’ Collusive Can Size Reduction and Price Increases in 2007-2008.....85

2 Defendants Collude on Net Prices in 201092

3 Defendants Colluded to Increase Canned Tuna Prices in 201194

4 Defendants Colluded on a Canned Tuna Price Increase in 2012.....97

5 Defendants’ Collusion Not to Sell “FAD-Free” Branded Tuna Products in 2011 and

6 Thereafter98

7 Defendants Colluded on Promotional Activity and Pricing Terms in at Least 2011-

8 2013.....100

9 Defendants’ Communications in Furtherance of the Conspiracy After 2013.....100

10 Defendants’ Conspiracy Was Effective101

11 DISCOVERY IS NECESSARY TO DETERMINE THE FULL SCOPE OF THE

12 CONSPIRACY109

13 TOLLING OF THE STATUTE OF LIMITATIONS.....109

14 LION ENTITIES122

15 Lion Entities Directly Participated in the Conspiracy122

16 Lischewski is Liable for his Role in the Conspiracy140

17 EFFECTS OF THE DEFENDANTS’ ILLEGAL COURSE OF CONDUCT141

18 CAUSES OF ACTION142

19 COUNT I142

20 COUNT II.....144

21 PRAYER FOR RELIEF146

22 JURY DEMAND146

23

24

25

26

27

28

1 Plaintiff Associated Wholesale Grocers, Inc., (“Plaintiff”) sues Bumble
2 Bee Foods LLC (“Bumble Bee”), StarKist Company (“StarKist”), Dongwon
3 Industries Co. Ltd. (“Dongwon”), Del Monte Corporation (“Del Monte”), Tri-Union
4 Seafoods LLC d/b/a Chicken of the Sea International, Inc. (“COSI”), Thai Union
5 Group PCL (f/k/a Thai Union Frozen Products PCL) (“Thai Union” or “TUG”), Lion
6 Capital LLP (“Lion Capital”), Lion Capital (Americas), Inc. (“Lion Americas”), and
7 Big Catch Cayman LP aka Lion/Big Catch Cayman LP (“Big Catch”), and
8 Christopher D. Lischewski (collectively the “Defendants”), and allege as follows:

9 **NATURE OF ACTION**

10
11 1. This antitrust action arises out of a long-running conspiracy between
12 and among the three largest domestic producers of shelf-stable tuna (*e.g.*, canned or
13 pouched tuna) (“canned tuna” or “shelf-stable tuna”) to fix, raise, and/or maintain
14 the prices of canned tuna in the United States.

15 2. As shown below, Defendants facilitated the conspiracy by, among other
16 things, secretly and collusively exchanging price information and business plans,
17 coordinating price announcements, and collectively reducing quantity and
18 restraining output. These coordinated efforts by Defendants were designed to and
19 did dramatically increase the prices of shelf-stable tuna.

20 3. The conspiracy, which began no later than May of 2004 and continued
21 through at least July of 2015¹ (the “Relevant Period”), directly impacted Plaintiff.
22 The conspiracy’s effect on the price of shelf-stable tuna, on information and belief,
23
24

25
26 ¹ Discovery continues on the full scope of the conspiracy, including the time frame and participants. At least six
27 senior tuna executives for the defendants have asserted their Fifth Amendment rights and refused to answer
28 questions about the scope and timing. Defendant Christopher Lischewski, CEO of Bumble Bee has not yet been
deposed. Mr. Lischewski’s counsel has indicated he will assert his Fifth Amendment rights to all questions.

1 continues to the present. Discovery is required to determine the full nature of the
2 period, participants, and packaged seafood products involved.

3 4. Defendants include the largest domestic producers and sellers of
4 canned tuna – Bumble Bee, StarKist, and COSI – as well as the parent entities of
5 those companies. Together, these Defendants produced upwards of 80% of all
6 canned tuna sold in the United States during the Relevant Period.

7 5. Although it had started at least by 2004, the price-fixing conspiracy
8 remained hidden and was not uncovered until after Defendant Thai Union Group
9 PCL, Tri-Union’s parent entity, announced its intent to acquire Defendant Bumble
10 Bee for \$1.5 billion in late 2014. The acquisition, had it been completed, would
11 have created the largest canned tuna producer in the United States, with
12 approximately 38% of the market share.

13 6. However, in connection with its review of the proposed acquisition, the
14 Antitrust Division of the United States Department of Justice (“DOJ”) determined
15 that the market for canned tuna in the United States was not functioning
16 competitively and, in fact, was subject to a price-fixing conspiracy involving
17 Defendants. This prompted the DOJ to open a criminal investigation into the
18 conspiracy alleged herein.

19 7. In December 2015, and as a direct result of the DOJ’s investigation,
20 Thai Union and Bumble Bee announced that the acquisition was being abandoned.

21 8. The DOJ’s investigation is ongoing. To date, Defendant Bumble Bee,
22 two Bumble Bee senior sales and marketing executives, and a StarKist senior sales
23 executive all have pleaded guilty to charges related to the price-fixing conspiracy
24 alleged herein. An on May 16, 2018, a federal grand jury indicted Bumble Bee’s
25 CEO Chris Lischewski on charges arising from the conspiracy alleged herein. Mr.
26
27
28

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