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15 *Counsel for Plaintiff Bruce Foods Corporation*
16 *and the proposed Class*

17 **UNITED STATES DISTRICT COURT**

18 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

19
20 BRUCE FOODS CORPORATION, on
behalf of itself and all others similarly
21 situated,

22 Plaintiff,

23 v.

24 SK FOODS, LP; INGOMAR PACKING
COMPANY, LLC, LOS GATOS
25 TOMATO PRODUCTS, INTRAMARK
USA, INC. and RANDALL LEE RAHAL,

26 Defendants.
27

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

28 ///

1 **INTRODUCTION**

2 1. Plaintiff Bruce Foods Corporation brings this action both individually and on
3 behalf of a Class of plaintiffs consisting of all persons and entities in the United States, who
4 purchased directly from defendants processed tomato products, including but not limited to tomato
5 paste, diced tomatoes, and tomato sauces (“Processed Tomato Products”) starting at least as early
6 as February of 2006 through the present (the “Class Period”).

7 2. Defendants are processors of tomato products including tomato sauces, tomato
8 paste and diced tomatoes. Defendants collectively sell millions of dollars worth of Processed
9 Tomato Products every year.

10 3. Plaintiff alleges that during the Class Period, defendants conspired, combined and
11 contracted to fix, raise, maintain and stabilize prices at which Processed Tomato Products would
12 be sold. As a result of defendants’ unlawful conduct, plaintiff and the other members of the
13 proposed Class paid artificially inflated prices that exceeded the amount they would have paid if a
14 competitive market had determined prices for Processed Tomato Products.

15 **JURISDICTION AND VENUE**

16 4. Plaintiff brings this action under Sections 4 and 16 of the Clayton Act, (15 U.S.C.
17 §§ 15 and 26), to recover treble damages and costs of suit, including reasonable attorneys’ fees,
18 against defendants for the injuries sustained by plaintiff and the members of the Class by reason of
19 the violations of Section 1 of the Sherman Act (15 U.S.C. § 1).

20 5. This action is also instituted to secure injunctive relief against defendants to
21 prevent them from further violations of Section 1 of the Sherman Act, as hereinafter alleged.

22 6. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1337 and by
23 Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15(a) and 26).

24 7. Venue is proper in this Judicial District pursuant to 15 U.S.C. §§ 15(a) and 22 and
25 28 U.S.C § 1391(b), (c) and (d) because during the Class Period, defendants resided, transacted
26 business, were found, or had agents in this District, and a substantial portion of the affected
27 interstate trade and commerce described below has been carried out in this District.

1 products include cold break tomato paste, hot break tomato paste, and concentrated crushed hot
2 break tomato paste. These products are sold in 300 gallon aseptic bags in bins, 55 gallon drums,
3 and in 55 gallon aseptic bags in drums. Ingomar also sells diced tomatoes in juice containers and
4 in aseptic bags (in bins or drums.) During the Class Period, Ingomar sold Processed Tomato
5 Products to customers in this district and other locations in the United States.

6 12. Defendant Los Gatos Tomato Products (“Los Gatos”) is a grower-owned tomato
7 paste processing facility with its principal place of business in Huron, California. Los Gatos is a
8 partnership of four family farming operations. Processed tomato products produced by Los Gatos
9 include various grades of hot break tomato paste, crushed tomatoes products, and various grades of
10 cold break tomato paste. During the Class Period, Los Gatos sold Processed Tomato Products to
11 customers in this district and other locations in the United States.

12 13. Defendant Intramark USA, Inc. (“Intramark”) is a New-Jersey-based company
13 holding itself out as a wholesaler of food ingredients, including Processed Tomato Products.
14 Intramark operates as a sales broker of Processed Tomato Products from SK Foods and other
15 companies.

16 14. Defendant Randall Lee Rahal (“Rahal”) is the owner and operator of Intramark.
17 Rahal is a resident of New Jersey and has served as President of Intramark since 1990. From at
18 least 1993 until April 2008, Rahal was an agent of, a partner of, or was associated with SK Foods.
19 Rahal acted as an advisor or supervisor of SK Foods, giving direction to and receiving periodic
20 reports regarding various aspects of SK Foods’ business from SK Foods employees. From at least
21 2004 until April 2008, Rahal served on the board of directors of SK Foods. Through Intramark,
22 Rahal served as a broker for SK Foods and in that capacity he oversaw, among other things, the
23 negotiation of contracts involving the sale of Processed Tomato Products between SK Foods and
24 many of its customers.

25 15. Whenever in this Complaint reference is made to any act, deed or transaction of
26 any corporation, the allegation means that the corporation engaged in the act, deed or transaction
27 by or through its officers, directors, agents, employees or representatives while they were actively
28 engaged in the management, direction, control or transaction of the corporation’s business or
affairs.

1 The majority of fresh tomatoes are handpicked and sold on the open market, while all processed
2 tomatoes are mechanically harvested and sold under contract between growers and processing
3 firms. Processing tomato products are most often classified as one of four major subcategories:
4 tomato paste, tomato sauces, ketchup, and other products which mainly consist of puree, whole
5 canned tomatoes, and juices. More than 70 percent of processed tomatoes are used in tomato
6 paste. Tomato paste is manufactured and packaged into large bags, placed into boxes and barrels,
7 and stored for use up to 18 months later.

8 22. The U.S. processed tomato products market was a \$1.88 billion dollar industry in
9 2007. The U.S. processed tomato industry has moved westward over the past several decades to
10 California, which grows and processes 95 percent of the U.S. crop. By itself, California is the
11 world leader in the production of processed tomatoes. Over time, U.S. per acre yields for
12 processing tomatoes have continued to trend higher, moving from 14.5 short tons per acre in 1961
13 to more than 40 short tons in 2004. Improved production and harvest technology plus the shift of
14 production from low-yielding states to California accounted for much of the gain in yields.

15 23. The processed tomato products market can be divided into two distinct sectors:
16 marketers and remanufacturers. Marketers are firms that produce processed tomato products
17 primarily for the purpose of selling to another party. Remanufacturers utilize the processed tomato
18 products internally to make retail and foodservice packs of soups, sauces, ketchup and paste.
19 Leading marketers include defendants Ingomar, Los Gatos, and SK Foods.

20 24. Processing tomatoes are harvested from the field by tomato harvesters which drive
21 directly over a row, or bed, of tomatoes, separating the main plant from its roots by an oscillating
22 clipper. It is equipped with opto-electronic sorters that enable the harvesters to remove dirt and
23 sub-ripe tomatoes and keep only the operator-specified level of ripe tomatoes. The tomatoes are
24 brought by truck to the processing facilities where they are graded by third party technicians who
25 take a sample from each incoming trailer and perform various tests including tests for mold, green
26 tomatoes, color and sugar content. After grading, the tomatoes are separated according to product
27 use to manufacture: tomato paste, diced tomatoes, or tomato sauce.

28 25. The bulk of the paste goes through either a “hot” or “cold” break. Each produces a
different type of paste. Cold break is used in products where a thin consistency is desired, such as

1 beverages and soups. Hot break is used where a thick consistency is desired, such as ketchup and
2 sauces. The paste is next passed through different finisher screens to eliminate seeds and residue.
3 It is then passed through evaporators to remove excess water, and flash coolers to bring the product
4 to a reasonable temperature for packaging. Finally, fillers put the product into bulk drums and
5 boxes where it is shipped to its destinations if the firm is a marketer, or turned into a retail product
6 if the firm is a remanufacturer.

7 26. According to a 2008 Westcon Foods Estimated Processors Breakdown and
8 statistics from the United States Department of Agriculture's ("USDA") National Agricultural
9 Statistics Service, the processed tomato market is largely dominated by the marketers. Marketers
10 have a 74 percent market share, with the remaining 26 percent going to the remanufacturers.

11 **FACTORS INCREASING THE MARKET'S SUSCEPTIBILITY TO CONSPIRACY**

12 27. Publicly available data on the Processed Tomato Products industry supports the
13 existence of a price-fixing cartel. Factors which support the existence of a cartel include: 1) a high
14 degree of industry concentration; 2) significant barriers to entry; 3) inelastic demand; 4) the lack of
15 available substitutes for the goods involved; 5) a standardized product with a high degree of
16 interchangeability between the goods of cartel participants; 5) similar cost structures and
17 production processes; 7) absence of a competitive fringe of sellers; 8) declining demand; and 9)
18 recent rapid price increases.

19 **Highly Concentrated Industry**

20 28. A high degree of concentration facilitates the operation of a cartel because it
21 makes it easier to coordinate behavior among possible co-conspirators and makes it more difficult
22 for customers to avoid the effects of collusive behavior. The market for processed tomato products
23 is highly concentrated, and defendants control a significant percentage of the sales of these
24 products in the U. S. by marketers. The Herfindahl-Hirshchman Index ("HHI") is a measure of
25 industry concentration that economists often use to quantify the degree of market concentration.
26 The U.S. Department of Justice ("DOJ") considers an HHI higher than 1800 to be a highly
27 concentrated market. Based on publicly available data for the processed tomatoes market, the HHI
28 based exclusively on this group of marketers is 1888. Therefore, the market for processed tomato
products would have been susceptible to collusion by suppliers.

1 **Significant Barriers to Entry**

2 29. The effect of a collusive arrangement that raises product prices above competitive
3 levels is normally to attract new entrants to the marketplace who want to benefit from the supra-
4 competitive pricing. However, the presence of significant barriers to entry makes this more
5 difficult and helps to facilitate the operation of a cartel. In the processed tomato products market,
6 there are significant barriers to entry. The barriers to entry arise primarily from the need for
7 significant start-up capital expenditures, available fertile farming space with the necessary climate,
8 distribution infrastructure and long-standing customer relationships.

9 30. The majority of U.S. grown processing tomatoes are grown in the California's
10 Central Valley, including Stockton, Modesto, Chico, Bakersfield, and Fresno. California has the
11 required climate and soil, but also has inherently superior soil fertilization and specific weather
12 conditions that limit disease population. It would be difficult for new entrants to expand
13 production significantly outside this region. In addition, the extensive customer networks and
14 name recognition of current suppliers in the market would make it difficult for a new entrant to
15 overcome the advantages enjoyed by existing large firms in the market.

16 31. With such barriers to entry, those few firms who are able to enter the market then
17 benefit from economies of scale. With a high entry cost, a firm reduces its average cost by
18 producing more output. The firms in the market then have the motivation to keep other firms out,
19 to keep their market share up, and to collude in order to keep prices up.

19 **Inelastic Demand**

20 32. Inelastic Demand means that increases in price result in limited declines in
21 quantity sold or consumed in the market. In order for a cartel to profit from raising prices above
22 competitive levels, demand must be inelastic at competitive prices. Otherwise increased prices
23 would result in declining revenues and profits. There is evidence that the demand for processed
24 tomato products is inelastic. The income spent on food constitutes a small portion of the average
25 U.S. household income, and the share of tomatoes is miniscule. It is well established that goods
26 which form a small share of consumer expenditure exhibit inelastic demand. Consumers are less
27 likely to change consumption patterns when the effect of price increases is small. Moreover, the
28 actual value of the price elasticity of demand for all processed tomato products has been calculated

1 and shown to be near zero. This implies processed tomato products are not sensitive to price
2 changes. Inelastic demand means a cartel would be more likely to occur because the product
3 suppliers would be able to raise their prices without losing sales revenues.

4 **Lack of Substitutes**

5 33. The lack of available substitutes means that a potential cartel would have a greater
6 chance of being successful. With no substitutes, producers of the product in question would be
7 able to raise product prices without losing significant sales. Consumers would have little choice
8 but to pay the new, higher price. For the firms who make retail products from processed tomatoes,
9 there are no available substitutes at any price. Their products are simply modified versions of the
10 processed tomatoes that they purchase directly from the marketers. In order to make ketchup,
11 spaghetti sauce, pizza sauce, stewed tomatoes and all the other retail tomato products, there is no
12 substitute for the industrial tomato products that are purchased from the marketers.

13 **Standardized Product with High Degree of Interchangeability**

14 34. A commodity-like product is standardized across suppliers and allows for a high
15 degree of substitutability among different suppliers in the market. When products offered by
16 different suppliers are viewed as interchangeable by purchasers, it is easier to agree on a single
17 price for the good in question and it is easier to effectively monitor those prices. This makes it
18 easier to form and sustain a cartel. Products here may differ slightly in color or taste, but one
19 supplier's product is highly substitutable with another's. The market for processed tomatoes is
20 structured so that there is a high degree of substitutability across products from different suppliers.
21 The calculated elasticity of product substitution is high, reflecting the fact that tomato products are
22 relatively close substitutes for each other. Purchasers demand consistency across products to
23 effectively produce and market their signature sauces, pastes and other products.

24 35. With standardized products, it is easier for conspirators to monitor each other's
25 prices and to reach agreements about collusive prices. One reason that products at issue here are
26 standardized across suppliers is that there is little differentiation in the inputs in the processed
27 tomato products. According to the University of California's "Processing Tomato Production in
28 California" Report, 60 percent of the production comes from five specific varieties of tomatoes: the
AB2, Heinz 9780, Heinz 9557, Halley 3155, and Hypeel 303. These strains are chosen based on

1 yield potential, earliness, and nematode and disease resistance. Defendants do not differentiate the
2 product. It is the retail industry which adds the company-specific flavor to processed tomato
3 products. It is against defendants' interests to differentiate their product in any way, because it
4 makes their product less desirable to their clients. These standardized products make collusion
5 easier.

6 **Similar Cost Structures and Production Processes**

7 36. The more similar firms are in a market with respect to their costs and to their
8 production methods, the easier it will be for them to collude. The method of producing processed
9 tomato products is similar across the industry, from planting to final delivery. The same types of
10 tomatoes are grown in the same way, in the same geographic location. Since 1990, growers have
11 trended from direct seeding to transplanting. Transplanting simplifies seedbed preparation and
12 stand establishment, reduces weed competition, and reduces hand-weeding expenses.

13 **Absence of a Competitive Fringe of Sellers**

14 37. Companies that are not part of the conspiracy can eat away at conspirators' market
15 shares by offering the product at a lower, more competitive price. This reduces revenue and makes
16 sustaining a conspiracy more difficult. In the market for processed tomato products, there exists
17 evidence that no such fringe of competitive sellers exists. The defendants account for a significant
18 percentage of the market, and the remainder of the market is dominated by a handful of other
19 firms.

20 **Declining Demand**

21 38. Static or declining demand is another factor which makes formation of a collusive
22 arrangement more likely. With static demand firms have a greater incentive to collude to avoid
23 price competition. Static demand makes it easier to monitor compliance with the price-fixing
24 agreement. According to data from the USDA's Economic Research Service, the per capita
25 consumption of processed tomatoes has been slowly declining since 1990. Along with declining
26 demand, 2007 had a record high supply of over 40 million pounds of tomatoes for processing. Not
27 only is the overall magnitude of the supply increasing, but the yield per acreage has steadily been
28 increasing for the past three decades and still continues to grow. Basic economic theory teaches
that prices should not continually rise over an extended period of time in the face of declining

1 demand and increasing supply.

2 **CONSPIRATORIAL PRICE INCREASES**

3 39. The alleged conspiracy was successful in raising prices for processed tomato
4 products in recent years, despite the absence of any justifications for such price increases. The U.S.
5 Bureau of Labor Statistics Producer Price Index (“PPI”) shows that tomato products have
6 consistently been increasing since 1990 and have risen sharply over the past six years. Likewise,
7 data from the California Tomato Growers Association shows that the price per ton for processing
8 tomatoes remained fairly stagnant from 2000-04 (ranging from a high of \$58.60 in 2000 to a low
9 of \$56.80 in 2002), but has increased significantly recently from \$57.40 in 2004 to \$72.35 in 2007.
10 Tomato prices rose 16 percent in the year ending in August of 2008, while food prices overall rose
11 only about 6 percent, according to the PPI. In combination with the declining demand and
12 increasing supply mentioned above, such a persistent and unsubstantiated increase in price over
13 time suggest the existence of an anti-competitive price-fixing cartel.

13 **CONSPIRACY FURTHERED THROUGH TRADE ASSOCIATIONS**

14 40. The defendants participate in trade association activities, fostering the conspiracy
15 alleged herein. In 2006, SK Foods, Ingomar and Los Gatos joined forces to create the California
16 Tomato Export Group (“CTEG”) to jointly export processed tomato products. In its application to
17 the Department of Commerce International Trade Administration (“ITA”), the CTEG sought
18 certification for various activities including establishing export sale prices; to engage in joint
19 bidding or other joint selling arrangements, to make agreements on quantities of processed
20 tomatoes to be exported, and to allocate geographic areas or countries in export markets and/or
21 customers in the export markets among its members. The ITA issued CTEG an Export Trade
22 Certificate of Review providing protection to CTEG from private treble damage antitrust actions
23 and government criminal and civil suits under Federal and state antitrust laws for export conduct
24 specified in the Certificate and carried out in compliance with its terms and conditions. The CTEG
25 provided defendants the opportunity to engage in prohibited conduct related to domestic price-
26 fixing beyond the scope of the ITA immunity. The CTEG was disbanded in May of 2008 shortly
27 after the FBI raided the offices of tomato processors. The CTEG is part of an ongoing federal
28 antitrust investigation.

1 41. Defendants Ingomar, Los Gatos, and SK Foods are members of the Tomato
2 Product Wellness Council (“TPWC”). Created in 2006, the TPWC is an organization of tomato
3 growers, processors and well-known brands working to create awareness of the health benefits of
4 tomato products by providing industry-wide leadership, communications and scientific research.
5 The TPWC funds scientific research investigating the benefits of consuming a diet rich with
6 tomato products.

7 42. Defendants Ingomar, Los Gatos, and SK Foods are also members of the California
8 League of Food Processors (“CLFP”), a not-for profit trade association. Founded in 1905, the
9 CLFP represents fruit and vegetable processors having production facilities in California. The
10 CLFP is “primarily devoted to furthering the interests of the food processing industry before the
11 State Legislature and regulatory agencies, and is also a major representative for the industry at the
12 Federal level.” The CLFP asserts that it “maintains a daily presence in the halls of State
13 government.” The CLFP’s purpose is to foster a favorable environment for the growth and
14 strength of the industry within the state. The CLFP states that “our current membership includes
15 the most powerful brand names in the United States food business, as well as the largest producers
16 of private label and institutional food products.” In addition to active processor members, the
17 CLFP also has affiliate members consisting of industry suppliers. Alan Huey of SK Foods,
18 Gregory R. Pruett of Ingomar, and Stuart Woolf of Los Gatos are all members of CLFP’s Board of
19 Directors. Alan Huey of SK Foods also serves as a Vice Chairman for the organization. Alan
20 Huey of SK Foods also serves on CLFP’s Executive Committee. CLFP’s own marketing brochure
21 that the CLFP “consistently has provided a vehicle for us to meet and work with other industry
22 participants.”

23 43. Defendants Ingomar, Los Gatos, and SK Foods also participate in the World
24 Processing Tomato Council (“WPTC”), an international non-profit organization founded in 1988
25 representing the tomato processing industry. Currently, its members represent more than 90% of
26 the volume of tomatoes processed worldwide. The WPTC’s objectives include create permanent
27 links between professional grower and/or processor organizations, in order to coordinate actions
28 undertaken to safeguard their interests; study and recommend to member organizations any action
intended to better organize the markets and favor fair competition; and to undertake any action, in

1 agreement with its members, in view to increase consumption of tomato products.

2 44. Defendants also have the opportunity to collude through the Processed Tomato
3 Foundation, an organization founded in 1989 as a joint partnership between California tomato
4 growers and processors to address food safety and environmental and sustainability issues.

5 45. Ready access to industry data facilitates the defendants' effectuation and
6 monitoring of the conspiracy. The distribution of this type of information within the industry has
7 allowed defendants to police their conspiracy.

8 **DEFENDANTS' ANTITRUST VIOLATIONS**

9 46. Beginning at least as early as April of 2006, and continuing until at least the date
10 of the filing of this Complaint, the exact dates being unknown to Plaintiff, Defendant and their co-
11 conspirators engaged in a continuing agreement, understanding, and conspiracy in restraint of trade
12 to artificially raise, fix maintain or stabilize the price of Processed Tomato Products in the United
13 States.

14 47. In formulating and effectuating the contract, combination or conspiracy,
15 Defendants and their co-conspirators engaged in anticompetitive activities, the purpose and effect
16 of which were to artificially raise, fix, maintain, and/or stabilize the price of Processed Tomato
17 Products sold in the United States. These activities included the following:

- 18 a. Defendants participated in meetings and/or conversations; including through
19 various trade organizations and conventions, to discuss the price of Processed
20 Tomato Products in the United States;
- 21 b. Defendants agreed during those meetings and conversations to charge prices at
22 specified levels and otherwise to increase and/or maintain prices of Processed
23 Tomato products sold in the United States;
- 24 c. Defendants agreed during those meetings and conversations to fix the price of
25 Processed Tomato Products;
- 26 d. Defendants issued price announcements and price quotations in accordance with
27 their agreements; and
- 28 e. Defendants allocated customers in furtherance of their conspiracy.

1 48. Defendants and their co-conspirators engaged in the activities described above for
2 the purpose of effectuating the unlawful agreements described in the Complaint.

3 49. During and throughout the period of the conspiracy alleged in this Complaint,
4 Plaintiff and members of the Class purchased Processed Tomato Products from Defendants (or
5 their subsidiaries or controlled affiliates) or their co-conspirators at inflated and supracompetitive
6 prices.

7 50. Defendants' contract, combination or conspiracy constitutes and unreasonable
8 restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act.

9 51. As a result of Defendants' unlawful conduct, Plaintiffs and the other members of
10 the class have been injured in their business and property in that they have paid more for Processed
11 Tomato Products than they would have paid in a competitive market.

12 52. The unlawful contract, combination or conspiracy has had the following effects,
13 among others:

- 14 a. price competition in the markets for Processed Tomato Products has been
15 artificially restrained;
- 16 b. prices for Processed Tomato Products sold by the Defendants have been raised,
17 fixed, maintained, or stabilized at artificially high and non-competitive levels; and
- 18 c. purchasers of Processed Tomato products from the Defendants have been deprived
19 of the benefit of free and open competition in the markets for Processed Tomato
20 Products.

GOVERNMENT ANTITRUST INVESTIGATION

21 53. On September 23, 2008, it was disclosed that the Antitrust Division of the DOJ
22 had begun an investigation into possible anti-competitive practices in the tomato processing
23 industry. The criminal investigation involves possible price-fixing by major California tomato
24 processors. A federal grand jury in this district has issued subpoenas to the tomato processors.
25 According to Brian Maschler, an attorney for SK Foods, the government had sought information
26 about price-fixing at the same time Federal Bureau of Investigation ("FBI") and Internal Revenue
27 Service ("IRS") agents served a series of search warrants on tomato processors and seized millions
28 of pages of documents from them.

1 54. The tomato price fixing investigation grew out of a probe into allegations that
2 Rahal, President of Intramark, was working with SK Foods (particularly Scott Salyer, its CEO, and
3 its Vice-Presidents Alan Huey, Tony Manuel, Jeff Beasley and Michael Poretti) to bribe buyers at
4 six major food companies (AGUSA, Kraft Foods, Safeway Stores, Frito-Lay Foods, B&G Foods,
5 and Conagra) to pay inflated prices for tomato paste and chili peppers. Documents filed by the
6 Federal Bureau of Investigation (“FBI”) in a federal forfeiture proceeding (*United States v.*
7 *Approximately \$415,000 In U.S. Currency*, No. 2:08-CV-01899-GEB-GGH (E.D. Cal.)) initiated
8 in this district, including a lengthy declaration filed by Paul S. Artley, an FBI Special Agent, reveal
9 that in wiretaps and raids carried out as part of the bribery probe, the investigators discovered
10 evidence of a wider-price fixing conspiracy.

11 55. On December 10, 2008, the DOJ filed an information against Rahal in this district
12 (*United States v. Rahal*, No. 2:08-CR-0566 LKK (E.D. Cal.)) and announced that he had agreed to
13 plead guilty to money laundering, racketeering and antitrust charges and agreed to forfeit \$600,000
14 in illegally gotten gains. Although not named as a defendant, SK Foods was identified as a
15 racketeering enterprise. The information charged that from at least as early as February of 2006
16 through at least April of 2008, Rahal and his co-conspirators “entered into and engaged in a
17 combination and conspiracy to suppress and restrain competition for processed tomato products
18 sold in the United States” which was accomplished through, *inter alia*: (a) allocation among the
19 co-conspirators of contracts for the sale of such products and (b) fixing the prices of, and rigging
20 bids for, the sale of such products. The charge against Rahal was announced as the first in an
ongoing investigation by the DOJ, the FBI and the United States Attorney’s office in Sacramento.

21 56. On December 17, 2008, Rahal pled guilty to the charges against him. The guilty
22 plea contains the following facts regarding the antitrust charge:

23 Beginning at least as early as February 2006 and continuing until
24 approximately April 2008, Rahal participated in and aided and
25 abetted a conspiracy to fix prices, allocate contracts, and rig bids
26 for processed tomato products, including tomato paste and diced
27 tomatoes. The primary purpose of this conspiracy was to eliminate
28 competition and fix the price of processed tomato products sold in
the United States. During the relevant time, Rahal was the owner
and president of Intramark USA Inc., a broker selling processed
tomato products for itself and on behalf of others. Rahal and his
co-conspirators reached agreement to fix the prices to be charged
to customers in the United States for processed tomato products in
the Eastern District of California and elsewhere. To carry out their

1 agreements, Rahal and his co-conspirators submitted artificially
2 inflated bids and price quotations. Rahal also acted to assist in
3 enforcing the agreements, by obtaining and distributing
4 information about prices offered by co-conspirators and
5 competitors to the subject customers. In at least one instance, a co-
6 conspirator withdrew a quote that did not comply with agreed-to
7 prices after being confronted with information obtained by Rahal
8 from the customer.

9 57. In a press release announcing the guilty plea, W. McGregor Scott, the U.S.
10 Attorney for the Eastern District of California, said: “[a] large portion of the tomatoes used by
11 food product manufacturers nationwide are harvested and processed here in the Eastern District of
12 California. We must ensure that the tomato processing industry is free of corruption, kickbacks
13 and illegal collusion.”

14 58. In this same press release, Acting Attorney General Deborah A. Garza stated:
15 “[t]his conduct deprived the purchasers of processed tomato products of the benefits of a
16 competitive marketplace, ultimately causing American consumers to pay higher prices for these
17 everyday staples.... The Antitrust Division will continue to prosecute vigorously those who
18 defraud American consumers.”

19 59. Brian Maschler has also revealed that federal investigators were investigating the
20 CTEG partnership formed by Ingomar, Los Gatos and SK Foods. CTEG’s activities were
21 suspended shortly after the federal raids described above.

22 60. As one industry insider has said, “[t]his reads like a Mafia Hollywood story.
23 Having spent the last 20 years in the tomato business I know how corrupt it is. It used to be at the
24 field level and now it is at the CEO level.” Consistent with this insider's description of the tomato
25 business, on June 7, 2007, Scott Salyer, an owner and principal of SK Foods reportedly stated to
26 his newly hired president, Glen McClaran, “You can take this ethics book and shove it up your
27 ass. We have always manipulated inventory and will continue to. We will lie to anyone outside
28 the circle, but not to each other.”

1 represented by counsel who are competent and experienced in the prosecution of antitrust and class
2 action litigation.

3 70. The prosecution of separate actions by individual members of the Class would
4 create a risk of inconsistent or varying adjudications.

5 71. Defendants have acted, and refused to act, on grounds generally applicable to the
6 Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

7 72. The questions of law and fact common to the members of the Class predominate
8 over any questions affecting only individual members, including legal and factual issues relating to
9 liability and damages.

10 73. A class action is superior to other available methods for the fair and efficient
11 adjudication of this controversy. Treatment as a class action will permit a large number of
12 similarly situated persons to adjudicate their common claims in a single forum simultaneously,
13 efficiently and without duplication of effort and expense that numerous individual actions would
14 engender. The Class is readily definable and is one for which records should exist in the files of
15 defendants and their co-conspirators, and prosecution as a class action will eliminate the possibility
16 of repetitious litigation. Class treatment will also permit the adjudication of relatively small claims
17 by many Class members who otherwise could not afford to litigate an antitrust claim such as is
18 asserted in this Complaint. This class action presents no difficulties of management that would
19 preclude its maintenance as a class action.
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23 **EQUITABLE TOLLING AND FRAUDULENT CONCEALMENT**

24 74. Plaintiff had no knowledge of the combination and conspiracy alleged herein, or of
25 any facts that might have led to the discovery thereof in the exercise of reasonable diligence, prior
26 to September 23, 2008, when it was revealed that the DOJ was investigating Processed Tomato
27 Products.
28

1 75. Plaintiff could not have discovered the existence of the combination and
2 conspiracy alleged herein at an earlier date by the exercise of reasonable due diligence because of
3 the deceptive practices and techniques of secrecy employed by the defendants and their co-
4 conspirators to avoid detection and affirmatively conceal such violations. For example, Rahal pled
5 guilty to conspiring with defendant SK Foods to “construct[] and transmitt[] to its customers
6 fraudulent financial and business information” during the class period. In one specific
7 instance, “as part of a scheme to defraud ConAgra in June 2007, Rahal arranged for SK Foods to
8 fabricate and backdate an invoice between SK Foods and Hatch Foods (“Hatch”), a ConAgra
9 competitor (without Hatch's knowledge), which reflected a false and inflated price paid by Hatch
10 for tomato product from SK Foods. The fraudulent invoice, which falsely reflected that SK Foods
11 was charging Hatch for canned tomato product at a rate 39% higher than it actually was, was
12 transmitted to ConAgra in an effort to ensure ConAgra signed a three-year contract for tomato
13 paste with SK Foods, at a price of approximately \$74,570,000.”

16 76. Because the contract, combination, or conspiracy was kept secret by the
17 defendants, Plaintiff was unaware of the fact that prices of Processed Tomato Products were
18 secretly raised, fixed, maintained or stabilized as alleged herein.

19 77. As a result of the fraudulent concealment of the conspiracy, plaintiff asserts the
20 tolling of the applicable statute of limitations affecting the causes of action by plaintiff and the
21 members of the Class.
22

23 78. As late as November of 2008, Scott Salyer of SK Foods was giving an interview to
24 *Tomato News* magazine wherein he falsely asserted that SK Foods had not committed any illegal
25 conduct and had not engaged in any price-fixing.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of Section 1 of the Sherman Act – 15 U.S.C. § 1**

3 79. Plaintiff incorporates and re-alleges each allegation set forth in the preceding
4 paragraphs of this Complaint.

5 80. Beginning at least as early as February 1, 2006, and continuing thereafter,
6 defendants and their co-conspirators, by and through their officers, directors, employees, agents, or
7 other representatives, entered into a continuing agreement, understanding, and conspiracy in
8 restraint of trade to artificially raise, fix, maintain, and/or stabilize prices for Processed Tomato
9 Products in the United States, and its territories and possessions, in violation of Section 1 of the
10 Sherman Act (15 U.S.C. § 1).
11

12 81. Defendants' unlawful conduct resulted in artificially high prices charged by
13 defendants and their co-conspirators to plaintiff and the members of the Class for Processed
14 Tomato Products.

15 82. Plaintiff and members of the Class had to pay more for Processed Tomato
16 Products than they would have paid in a competitive marketplace.
17

18 83. Plaintiff seeks to recover for these overcharge damages.

19 84. As a direct and proximate result of defendants' scheme, plaintiff and the members
20 of the Class have been injured and financially damaged in their respective businesses and property,
21 in amounts which are presently undetermined. Plaintiff's injuries consist of paying higher prices to
22 purchase Processed Tomato Products than it would have paid absent defendants' conduct.
23 Plaintiff's injuries are of the type the antitrust laws were designed to prevent and flow from that
24 which makes defendants' conduct unlawful.
25

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

A. That the Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure.

B. That the contract, combination or conspiracy, and the acts done in furtherance thereof by defendants and their co-conspirators, be adjudged to have been in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

C. That judgment be entered for plaintiff and members of the Class against defendants for three times the amount of damages sustained by plaintiff and the Class as allowed by law, together with the costs of this action, including reasonable attorneys' fees.

D. That defendants, their affiliates, successors, transferees, assignees, and the officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf, be permanently enjoined and restrained from, in any manner continuing, maintaining or renewing the contract, combination or conspiracy alleged herein, or from engaging in any other contract, combination or conspiracy having a similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect.

E. That plaintiff and members of the Class have such other, further and different relief as the case may require and the Court may deem just and proper under the circumstances.

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JURY DEMAND

Plaintiff demands a jury trial, pursuant to Federal Rule of Civil Procedure 38(b), of all triable issues.

Dated: January 5, 2009

Respectfully submitted,

/s/ Clinton P. Walker, Esq.
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