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KING COUNTY
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CASE #: 21-2-14174-5 SEA

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

THE STATE OF WASHINGTON,

Plaintiff,

v.

TYSON FOODS, INC., TYSON CHICKEN, INC., TYSON BREEDERS, INC., TYSON POULTRY, INC.; PILGRIM'S PRIDE CORP.; SANDERSON FARMS, INC., SANDERSON FARMS, INC. (FOODS DIVISION), SANDERSON FARMS, INC. (PRODUCTION DIVISION), SANDERSON FARMS, INC. (PROCESSING DIVISION); PERDUE FARMS, INC., PERDUE FOODS LLC; KOCH FOODS INC., JCG FOODS OF ALABAMA LLC, JCG FOODS OF GEORGIA LLC, KOCH MEAT CO., INC.; FOSTER FARMS, LLC, FOSTER POULTRY FARMS; MOUNTAIRE FARMS, INC., MOUNTAIRE FARMS, L.L.C., MOUNTAIRE FARMS OF DELAWARE, INC.; WAYNE FARMS, LLC; AMICK FARMS, LLC, THE AMICK COMPANY, INC., AMICK-OSI BROILERS, LLC, AMICK-OSI PROCESSING, LLC; GEORGE'S, INC., GEORGE'S FARMS, INC.; PECO FOODS, INC.; HOUSE OF RAEFORD FARMS, INC.; FIELDALE FARMS CORP.; CASE FOODS, INC., CASE FARMS, L.L.C., CASE FARMS PROCESSING, INC.; MAR-JAC POULTRY INC., MAR-JAC POULTRY AL, LLC, MAR-JAC AL/MS, INC., MAR-JAC POULTRY MS, LLC, MAR-JAC POULTRY, LLC, MAR-JAC HOLDINGS, LLC; NORMAN W. FRIES,

NO.

COMPLAINT FOR RESTITUTION, INJUNCTION, CIVIL PENALTIES, AND OTHER RELIEF UNDER THE WASHINGTON STATE CONSUMER PROTECTION ACT, RCW 19.86

CLERK'S ACTION REQUIRED

1 INC., D/B/A CLAXTON POULTRY
2 FARMS, INC.; SIMMONS FOODS, INC.,
3 SIMMONS PREPARED FOODS, INC.;
4 O.K. FOODS, INC., O.K. FARMS, INC.,
5 O.K. INDUSTRIES, INC.; HARRISON
6 POULTRY, INC.; AND AGRI STATS,
7 INC.

8 Defendants.

9 Plaintiff, State of Washington, through its Attorney General, brings this action in its law
10 enforcement capacity and as *parens patriae* on behalf of persons residing in the State against
11 Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Breeders, Inc., Tyson Poultry, Inc.,
12 Pilgrim's Pride Corp., Sanderson Farms, Inc., Sanderson Farms, Inc. (Foods Division),
13 Sanderson Farms, Inc. (Production Division), Sanderson Farms, Inc. (Processing Division),
14 Perdue Farms, Inc., Perdue Foods LLC, Koch Foods Inc., JCG Foods of Alabama LLC,
15 JCG Foods of Georgia LLC, Koch Meat Co., Inc., Foster Farms, LLC, Foster Poultry Farms,
16 Mountaire Farms, Inc., Mountaire Farms, L.L.C., Mountaire Farms of Delaware, Inc.,
17 Wayne Farms, LLC, Amick Farms, LLC, The Amick Company, Inc., Amick-OSI Broilers, LLC,
18 Amick-OSI Processing, LLC, George's, Inc., George's Farms, Inc., Peco Foods, Inc., House of
19 Raeford Farms, Inc., Fieldale Farms Corp., Case Foods, Inc., Case Farms, L.L.C., Case Farms
20 Processing, Inc., Mar-Jac Poultry, Inc., Mar-Jac Poultry AL, LLC, Mar-Jac AL/MS, Inc.,
21 Mar-Jac Poultry MS, LLC, Mar-Jac Poultry, LLC, Mar-Jac Holdings, LLC, Norman W. Fries,
22 Inc., d/b/a Claxton Poultry Farms, Inc., Simmons Foods, Inc., Simmons Prepared Foods, Inc.,
23 O.K. Foods, Inc., O.K. Farms, Inc., O.K. Industries, Inc., Harrison Poultry, Inc., and Agri Stats,
24 Inc. seeking restitution, civil penalties, costs and fees, and injunctive relief.

25 I. NATURE OF THE CASE

26 The Washington Attorney General, as the primary enforcer of the Washington Consumer
Protection Act (CPA), brings this suit in response to a wide-ranging conspiracy and series of
anticompetitive practices involving America's major broiler chicken producers.

1 Beginning at least as early as 2008 and continuing to the present (generally referred to as
2 the “relevant period”), Defendants and their co-conspirators conspired to restrain production,
3 manipulate price indices, rig bids, and exchange highly sensitive competitive information with
4 one another, in violation of the Washington Consumer Protection Act. Through both unlawful
5 agreements and unfair methods of competition, Defendants fixed, raised, stabilized, and
6 maintained prices of broiler chicken meat throughout the United States, including in
7 Washington.

8 1. Americans buy more broiler chicken than any other food at the center of the plate.
9 Americans per capita consume approximately 96 pounds of chicken per year, and chicken
10 consumption per capita has increased nearly every year since the mid-1960s.

11 2. Defendants and their co-conspirators are the largest producers of broiler chicken
12 products in the United States, as well as a third-party data reporting service called Agri Stats.
13 Together, Defendants produced approximately 90–95% of all broiler chicken sold in the
14 United States during the relevant period. The conspiracy between Defendants and their
15 co-conspirators impacted billions of dollars in United States commerce.

16 3. Defendants’ restraints of trade and unfair methods of competition were
17 implemented primarily through four mechanisms. The first focused on coordinating their output
18 and reducing the supply of broiler chickens into the market. To further their conspiracy,
19 Defendants, through a coordinated effort, repeatedly limited their production of broilers by,
20 among other things, eliminating breeder hen flocks responsible for supplying eggs that are raised
21 into broilers. By destroying broiler breeder hens and flocks, Defendants intentionally cut their
22 ability to ramp up production for 18 months or more with each wave of coordinated production
23 cuts. In doing so, they intended to stabilize and increase the price of broilers, and then maintain
24 artificially high broiler prices, and did so.

25 4. The second mechanism was through their collective participation in Agri Stats, a
26 company that collects data from participants, standardizes it, and distributes the data to the

1 participants in purportedly anonymous reports. However, Agri Stats reports were easily
2 deanonymized by the Producer Defendants. This allowed them to share detailed and sensitive
3 information with each other about, among other things, their business operations, pricing,
4 production, profitability, and costs. The type of data that Defendants exchanged through
5 Agri Stats is not the type of information normally shared by competitors in a competitive market.
6 This information exchange distorted competition and resulted in anticompetitive effects.

7 5. The third mechanism focused on manipulating price indices with respect to
8 wholesale chicken prices, including the Georgia Dock and Urner Barry indices. The
9 Georgia Dock was a widely used weekly benchmark price compiled and published by the
10 Georgia Department of Agriculture (GDA). The Urner Barry index is another widely used
11 benchmark price reported by a commodity price reporting service. Defendants would sign
12 contracts with buyers setting yearly prices based on a market rate plus or minus some set amount.
13 The purported market rate was determined by these two indices, but the producers would
14 intentionally work together in order to inflate these indices, and thus inflate prices to buyers. The
15 buyers ultimately passed on these costs to consumers.

16 6. The fourth mechanism involved bid rigging agreements between producers'
17 executives and managers, who coordinated bids to major chicken purchasers such as
18 Kentucky Fried Chicken (KFC), Popeye's Chicken, and Church's Chicken. Certain Defendants,
19 including Pilgrim's Pride, Tyson, Claxton, George's, Case, Koch, Perdue, and Mar-Jac,
20 conspired with one another on the bid process, including engaging in phone calls and text
21 messages in which they discussed pricing, future bids, and competitor bids. This collusion
22 resulted in increased and stabilized price levels for broiler chicken sold to major chicken
23 purchasers, which were passed on to consumers and businesses.

24 7. The impact of Defendants' unlawful and anticompetitive conduct is ongoing and
25 continues to this day.
26

1 advertising, or selling broiler chicken throughout the United States, including in
2 Washington State. They each belonged to the conspiracy alleged in this Complaint and one or
3 more of them performed unlawful acts on their own or as each other's agent to further the
4 conspiracy in Washington State, including selling broiler chicken in Washington at artificially
5 inflated prices. Defendants also received Agri Stats reports that provided highly sensitive
6 information on chicken production involving facilities located in Washington.

7 15. Venue is proper in King County because Defendants' broiler chicken products
8 were sold in King County and a significant portion of the harm giving rise to this action occurred
9 in King County.

10 III. THE PARTIES

11 A. Plaintiff

12 16. The Plaintiff is the State of Washington in its enforcement capacity and as
13 *parens patriae* for the benefit of persons, including consumers and businesses, in the State of
14 Washington during the relevant period, by and through its Attorney General.

15 17. The State of Washington has an interest in maintaining the integrity of markets
16 operating within its boundaries, protecting its citizens from anticompetitive and unlawful
17 practices, and supporting the general welfare of consumers and businesses in Washington and
18 its economy.

19 B. Defendants

20 18. "Defendant" or "Defendants" includes, as well as those named below, all of the
21 named Defendants' predecessors, including broilers companies that merged with or were
22 acquired by the named Defendants and each named Defendant's wholly-owned or controlled
23 subsidiaries or affiliates that sold broilers, directly or indirectly through its wholly-owned or
24 controlled affiliates, to purchasers in the United States and in Washington during the relevant
25 period. "Producer Defendants" refers to all Defendants other than Agri Stats.
26

1 19. Subsidiaries and divisions within each Defendant’s corporate family that sold or
2 distributed broilers to direct purchasers played a material role in the conspiracy alleged in this
3 Complaint because Defendants wished to ensure that the prices paid for such broilers would not
4 undercut the artificially raised and inflated pricing that was the aim and intended result of
5 Defendants’ coordinated and collusive behavior as alleged in this Complaint. Thus, all such
6 entities within the corporate family were active, knowing participants in the alleged conspiracy,
7 and their conduct in selling, pricing, distributing, and collecting monies from Washington
8 consumers and businesses paid for broilers was known to and approved by their respective
9 corporate parent named as a Defendant in this Complaint, and acted as a means of furthering the
10 conspiracy for their respective corporate parents.

11 **1. Agri Stats**

12 20. Defendant Agri Stats, Inc. (“Agri Stats”), is an Indiana corporation headquartered
13 in Fort Wayne, Indiana, and a former subsidiary of Eli Lilly & Co., a publicly-held Indiana
14 corporation headquartered in Indianapolis.

15 21. Agri Stats has knowingly played an important and active role in Defendants’
16 illegal restraint of trade and unfair methods of competition as detailed in this Complaint by
17 gathering and disseminating competitively sensitive information about chicken facilities in
18 Washington (and throughout the United States) during the relevant period. All of Agri Stats’
19 wrongful actions described in this Complaint are part of, and in furtherance of, the unlawful
20 conduct alleged in this Complaint, and were authorized, ordered, or engaged in by Agri Stats’
21 various officers, agents, employers or other representatives while actively engaged in the
22 management and operation of Agri Stats’ business affairs within the course and scope of their
23 duties and employment, or with Agri Stats’ actual apparent or ostensible authority.

24 22. Several Defendants, including Wayne Farms, Pilgrim’s, and Perdue have hired
25 former Agri Stats executives to work in senior sales positions, and Agri Stats employs or has
26 employed former employees of the Defendants, including from Tyson, Raeford, and Case Farms.

1 Agri Stats employees regularly presented at trade association meetings and conferences where
2 they discussed supply and pricing in their presentations. Defendants would use this information
3 to make production decisions. In 2008 and 2010, an Agri Stats representative was elected to the
4 board of the National Chicken Council, one of the industry's most important trade associations.
5 Those were key years in the conspiracy alleged in this Complaint. These facts highlight the
6 unique and symbiotic relationship between Agri Stats and the other Defendants.

7 **2. Amick**

8 23. Defendant Amick Farms, LLC is a limited-liability company organized in
9 Delaware with its headquarters located in Batesburg-Leesville, South Carolina. Amick Farms is
10 a producer of fresh and frozen chicken products and operates facilities in South Carolina,
11 Maryland, and Delaware. Amick Farms is a wholly-owned subsidiary of OSI Group, LLC.
12 OSI Group, LLC is a privately held Delaware corporation with its headquarters in
13 Aurora, Illinois. During the relevant time period, Amick Farms, LLC, and/or its predecessors,
14 wholly-owned or controlled subsidiaries, or affiliates sold broilers, directly or indirectly through
15 its wholly-owned or controlled affiliates, to purchasers in the United States and in Washington.

16 24. The Amick Company, Inc. is a privately held South Carolina corporation with its
17 corporate headquarters in Batesburg-Leesville, South Carolina and is a wholly-owned subsidiary
18 of OSI Group, LLC. During the relevant time period, the Amick Company, Inc., and/or its
19 predecessors, wholly-owned or controlled subsidiaries, or affiliates sold broilers, directly or
20 indirectly through its wholly-owned or controlled affiliates, to purchasers in the United States
21 and in Washington.

22 25. Amick-OSI Broilers, LLC is a privately held Delaware limited liability company
23 with its corporate headquarters in Batesburg-Leesville, South Carolina and is a wholly-owned
24 subsidiary of OSI Group, LLC. During the relevant time period, Amick-OSI Broilers, LLC,
25 and/or its predecessors, wholly-owned or controlled subsidiaries, or affiliates sold broilers,
26

1 directly or indirectly through its wholly-owned or controlled affiliates, to purchasers in the
2 United States and in Washington.

3 26. Amick-OSI Processing, LLC is a privately held Delaware limited liability
4 company with its corporate headquarters in Batesburg-Leesville, South Carolina and is a
5 wholly-owned subsidiary of OSI Group, LLC. During the relevant time period, Amick-OSI
6 Processing, LLC and/or its predecessors, wholly-owned or controlled subsidiaries, or affiliates
7 sold broilers, directly or indirectly through its wholly-owned or controlled affiliates, to
8 purchasers in the United States and in Washington.

9 27. Defendants Amick Farms, LLC, The Amick Company, Inc., Amick-OSI Broilers,
10 LLC, and Amick-OSI Processing, LLC are collectively referred to as “Amick.”

11 28. Amick reports a wide variety of data to Agri Stats, including, without limitation,
12 highly detailed, competitively sensitive information regarding its production and sales of
13 broilers.

14 **3. Case Foods**

15 29. Case Foods, Inc., is a privately held Delaware corporation with its corporate
16 headquarters in Troutman, North Carolina. During the time period relevant to Plaintiffs’ claims,
17 Case Foods, Inc. and/or its predecessors, wholly-owned or controlled subsidiaries, or affiliates
18 sold broilers, directly or indirectly through its wholly-owned or controlled affiliates, to
19 purchasers in the United States and in Washington.

20 30. Case Farms, L.L.C., is a privately held Delaware limited liability company with
21 its corporate headquarters in Troutman, North Carolina, and with facilities and operations in
22 Ohio and North Carolina. Case Farms, L.L.C., is a wholly-owned subsidiary of Case Foods, Inc.
23 During the time period relevant to Plaintiffs’ claims, Case Farms, L.L.C., and/or its predecessors,
24 wholly-owned or controlled subsidiaries, or affiliates sold broilers, directly or indirectly through
25 its wholly-owned or controlled affiliates, to purchasers in the United States and in Washington.
26

1 31. Case Farms Processing, Inc., is a privately held North Carolina corporation with
2 its corporate headquarters in Troutman, North Carolina, and with facilities and operations in
3 North Carolina. Case Farms Processing, Inc., is a wholly-owned subsidiary of Case Foods, Inc.
4 During the time period relevant to Plaintiffs' claims, Case Farms Processing, Inc., and/or its
5 predecessors, wholly-owned or controlled subsidiaries, or affiliates sold broilers, directly or
6 indirectly through its wholly-owned or controlled affiliates, to purchasers in the United States
7 and in Washington.

8 32. Defendants Case Foods, Inc., Case Farms, L.L.C., and Case Farms Processing,
9 Inc., are collectively referred to as "Case Foods."

10 33. Case Foods reports a wide variety of data to Agri Stats, including, without
11 limitation, highly detailed, competitively sensitive information regarding its production and sales
12 of broilers.

13 **4. Claxton**

14 34. Defendant Norman W. Fries, Inc., d/b/a Claxton Poultry Farms, Inc. ("Claxton"),
15 is a Georgia corporation located in Claxton, Georgia. During the relevant time period,
16 Norman W. Fries, Inc., and/or its predecessors, wholly-owned or controlled subsidiaries, or
17 affiliates sold broilers, directly or indirectly through its wholly-owned or controlled affiliates, in
18 the United States and in Washington.

19 35. Claxton reports a wide variety of data to Agri Stats, including information about
20 its breeder flocks and hatchery capacity and its Claxton, Georgia complex.

21 36. Until the Georgia Department Agriculture (GDA) ceased publication of the
22 Georgia Dock benchmark price GDA in late November 2016, Claxton was one of the Defendants
23 that submitted false and artificially inflated price quotes to the GDA. Its CEO also served on the
24 Georgia Dock Advisory Committee.

1 **5. Fieldale**

2 37. Fieldale Farms Corp. (“Fieldale”) is a privately held Georgia corporation
3 headquartered in Baldwin, Georgia. During the relevant period, Fieldale Farms Corporation sold
4 broilers, directly or indirectly through its wholly-owned or controlled affiliates, to purchasers in
5 the United States and in Washington.

6 38. Fieldale reports a wide variety of data to Agri Stats, including information about
7 its breeder flocks and hatchery capacity, and its Gainesville, Georgia complex.

8 39. Until the Georgia Department of Agriculture (GDA) ceased publication of the
9 Georgia Dock benchmark price in late November 2016, Fieldale submitted false and artificially
10 inflated price quotes to the GDA. Its owner and CEO also served on the Georgia Dock Advisory
11 Committee.

12 **6. Foster Farms**

13 40. Defendant Foster Farms, LLC, is a privately held California corporation
14 headquartered in Livingston, California.

15 41. Defendant Foster Poultry Farms is a privately held California corporation
16 headquartered in Livingston, California. Foster Poultry Farms is a related entity of Foster Farms,
17 LLC. During the relevant period, Foster Poultry Farms and/or its predecessors, wholly-owned
18 or controlled subsidiaries, or affiliates was engaged in the processing, distribution, sale, pricing,
19 and/or marketing of broilers, directly or indirectly through its wholly-owned or controlled
20 affiliates, to purchasers in the United States and in Washington.

21 42. Defendants Foster Farms, LLC and Foster Poultry Farms are collectively referred
22 to as “Foster Farms.”

23 43. Foster Farms reports a wide variety of data to Agri Stats, including information
24 about its breeder flocks and hatchery capacity, and data for its complexes in California and the
25 Pacific Northwest, including its complex in Kelso, Washington.

1 **7. George’s**

2 44. Defendant George’s Inc., is a privately held Arkansas corporation headquartered
3 in Springdale, Arkansas.

4 45. Defendant George’s Farms, Inc., is a privately held Arkansas corporation
5 headquartered in Springdale, Arkansas. It is a wholly-owned subsidiary of George’s, Inc.

6 46. Defendants George’s Inc., and George’s Farms, Inc., are together referred to as
7 “George’s” in this Complaint.

8 47. During the relevant period, George’s sold broilers, directly or indirectly through
9 its wholly-owned or controlled affiliates, to purchasers in the United States and in Washington.

10 48. George’s reports a wide variety of data to Agri Stats, including information about
11 its breeder flocks and hatchery capacity, and data for its complexes in Harrisonburg, Virginia
12 and Springdale, Arkansas.

13 **8. Harrison Poultry**

14 49. Defendant Harrison Poultry, Inc. (“Harrison Poultry”), is a Georgia corporation
15 headquartered in Bethlehem, Georgia.

16 50. During the relevant period, Harrison Poultry sold broilers, directly or indirectly
17 through its wholly-owned or controlled affiliates, to purchasers in the United States and in
18 Washington.

19 51. Harrison Poultry reports a wide variety of data to Agri Stats, including
20 information about its breeder flocks and hatchery capacity, and data for its Bethlehem, Georgia
21 complex.

22 52. Until the Georgia Department of Agriculture (GDA) ceased publication of the
23 Georgia Dock benchmark price in late November 2016, Harrison Poultry was one of the
24 Defendants that submitted false and artificially inflated price quotes to the GDA. Its owner and
25 CEO served on the Georgia Dock Advisory Committee.

1 **9. House of Raeford**

2 53. Defendant House of Raeford Farms, Inc. (“Raeford”) is a privately held
3 North Carolina corporation headquartered in Raleigh, North Carolina.

4 54. During the relevant period, Raeford sold broilers, directly or indirectly through
5 its wholly-owned or controlled affiliates, to purchasers in the United States and in Washington.

6 55. Raeford reports a wide variety of data to Agri Stats, including information about
7 its breeder flocks and hatchery capacity, and data for its North Carolina and Louisiana
8 complexes.

9 **10. Koch**

10 56. Defendant Koch Foods Incorporated is a privately held Delaware corporation
11 headquartered in Park Ridge, Illinois.

12 57. Defendant JCG Foods of Alabama LLC, an Alabama limited liability company
13 headquartered in Park Ridge, Illinois, is a wholly-owned subsidiary of Defendant Koch Foods,
14 Incorporated.

15 58. Defendant JCG Foods of Georgia LLC, a Georgia limited liability company
16 headquartered in Park Ridge, Illinois, is a wholly-owned subsidiary of Defendant Koch Foods,
17 Incorporated.

18 59. Defendant Koch Meat Co., Inc., an Illinois corporation headquartered in
19 Park Ridge, Illinois, is a wholly-owned subsidiary of Defendant Koch Foods, Incorporated.

20 60. Defendants Koch Foods Incorporated, JCG Foods of Alabama LLC, JCG Foods
21 of Georgia LLC, and Koch Meat Co., Inc., are collectively referred to as “Koch” in this
22 Complaint.

23 61. During the relevant period, Koch sold broilers, directly or indirectly through its
24 wholly-owned or controlled affiliates, to purchasers in the United States and in Washington.
25
26

1 62. Koch reports a wide variety of data to Agri Stats, including information about its
2 breeder flocks and hatchery capacity, and data for its complexes in Georgia, Tennessee, and
3 Alabama.

4 63. Until the Georgia Department of Agriculture (GDA) ceased publication of the
5 Georgia Dock benchmark price in late November 2016, Koch, through JCG Foods of Georgia,
6 LLC, was one of the Defendants that submitted false and artificially inflated price quotes to the
7 GDA. Its Vice-President of Sales served on the Georgia Dock Advisory Committee.

8 **11. Mar-Jac**

9 64. Defendant Mar-Jac Poultry Inc., is a Delaware corporation headquartered in
10 Gainesville, Georgia.

11 65. Defendant Mar-Jac Poultry AL, LLC, is an Alabama limited liability company
12 located in Alabama.

13 66. Defendant Mar-Jac AL/MS, Inc., is a Delaware corporation located in
14 Gainesville, Georgia.

15 67. Defendant Mar-Jac Poultry MS, LLC, is a Mississippi limited liability company
16 located in Mississippi.

17 68. Defendant Mar-Jac Poultry, LLC, is a Delaware corporation located in Alabama.

18 69. Defendant Mar-Jac Holdings, LLC, is a Delaware corporation located in
19 Gainesville, Georgia and is the parent company of Mar-Jac Poultry Inc., Mar-Jac Poultry MS,
20 LLC, Mar-Jac AL, LLC, Mar-Jac AL/MS, Inc., and Mar-Jac Poultry, LLC.

21 70. Defendants Mar-Jac Poultry Inc., Mar-Jac Poultry MS, LLC, Mar-Jac Poultry
22 AL, LLC, Mar-Jac AL/MS, Inc., Mar-Jac Poultry, LLC, and Mar-Jac Holdings, LLC, are
23 collectively referred to as “Mar-Jac Poultry“ or “Mar-Jac.”

24 71. During the relevant period, Mar-Jac sold broilers, directly or indirectly through
25 its wholly-owned or controlled affiliates, to purchasers in the United States and in Washington.
26

1 72. Mar-Jac reports a wide variety of data to Agri Stats, including information about
2 its breeder flocks and hatchery capacity, and data for its Gainesville, Georgia complex.

3 73. Until the Georgia Department of Agriculture (GDA) ceased publication of the
4 Georgia Dock benchmark price in late November 2016, Mar-Jac was one of the Defendants that
5 submitted false and artificially inflated price quotes to the GDA. Its Vice President of Operations
6 served on the Georgia Dock Advisory Committee.

7 **12. Mountaire**

8 74. Defendant Mountaire Farms, Inc., is a privately held Delaware corporation
9 headquartered in Millsboro, Delaware.

10 75. Defendant Mountaire Farms, L.L.C., a privately held Arkansas limited liability
11 company headquartered in Little Rock, Arkansas, is a wholly-owned subsidiary of Defendant
12 Mountaire Farms, Inc.

13 76. Defendant Mountaire Farms of Delaware, Inc., a privately held Delaware
14 corporation headquartered in Millsboro, Delaware, is a wholly-owned subsidiary of Defendant
15 Mountaire Farms, Inc.

16 77. Defendants Mountaire Farms, Inc., Mountaire Farms, L.L.C., and
17 Mountaire Farms of Delaware, Inc. are collectively referred to as “Mountaire” in this Complaint.

18 78. During the relevant period, Mountaire sold broilers, directly or indirectly through
19 its wholly-owned or controlled affiliates, to purchasers in the United States and in Washington.

20 79. Mountaire reports a wide variety of data to Agri Stats, including information
21 about its breeder flocks and hatchery capacity, and data for its complexes in Delaware and
22 North Carolina.

23 **13. O.K. Foods**

24 80. Defendant O.K. Foods, Inc., is an Arkansas corporation headquartered in
25 Fort Smith, Arkansas.

26

1 81. O.K. Farms, Inc., is an Arkansas corporation headquartered in Fort Smith,
2 Arkansas, and is a wholly-owned subsidiary of Defendant O.K. Foods, Inc.

3 82. O.K. Industries, Inc., an Arkansas corporation headquartered in Fort Smith,
4 Arkansas, is a wholly-owned subsidiary of Defendant O.K. Foods, Inc.

5 83. Defendants O.K. Foods, Inc., O.K. Farms, Inc., O.K. Industries, Inc., and their
6 predecessors, subsidiaries, and affiliates, including Albertville Quality Foods, are collectively
7 referred to as “O.K. Foods.”

8 84. During the relevant period, O.K. Foods sold broilers, directly or indirectly
9 through its wholly-owned or controlled affiliates, to purchasers in the United States and in
10 Washington.

11 85. O.K. Foods are subsidiaries of the Mexican poultry conglomerate
12 Industrias Bachoco, which reports a wide variety of data to Agri Stats, including information
13 about its breeder flocks and hatchery capacity, and data for its Fort Smith, Arkansas complex.

14 **14. Peco**

15 86. Defendant Peco Foods, Inc. (“Peco”), is a privately held Alabama corporation
16 headquartered in Tuscaloosa, Alabama.

17 87. During the relevant period, Peco sold broilers, directly or indirectly through its
18 wholly-owned or controlled affiliates, to purchasers in the United States and in Washington.

19 88. Peco reports a wide variety of data to Agri Stats, including information about its
20 breeder flocks and hatchery capacity, and data for its complexes in Gordo, Alabama and
21 Sebastopol, Louisiana.

22 **15. Perdue**

23 89. Defendant Perdue Farms, Inc., is a privately held Maryland corporation
24 headquartered in Salisbury, Maryland.

25 90. Defendant Perdue Foods LLC, a privately held Maryland limited liability
26 company headquartered in Salisbury, Maryland, is a subsidiary of Defendant Perdue Farms, Inc.

1 91. Defendants Perdue Farms, Inc., and Perdue Foods LLC, are together referred to
2 as “Perdue” in this Complaint.

3 92. During the relevant period, Perdue sold broilers, directly or indirectly through its
4 wholly-owned or controlled affiliates, to purchasers in the United States and in Washington.

5 93. Perdue reports a wide variety of data to Agri Stats, including information about
6 its breeder flocks and hatchery capacity, and data for its complexes in Delaware, Maryland,
7 North Carolina, South Carolina, Florida, and Kentucky.

8 **16. Pilgrim’s Pride**

9 94. Defendant Pilgrim’s Pride Corp. (“Pilgrim’s” or “Pilgrim’s Pride”) is a publicly
10 held Delaware corporation headquartered in Greeley, Colorado.

11 95. During the relevant period, Pilgrim’s Pride sold broilers, directly or indirectly
12 through its wholly-owned or controlled affiliates, to purchasers in the United States and in
13 Washington.

14 96. Pilgrim’s Pride reports a wide variety of data to Agri Stats, including information
15 about its breeder flocks and hatchery capacity, and data for its complexes in Virginia,
16 West Virginia, North Carolina, Georgia, Tennessee, Florida, South Carolina, Alabama, Texas,
17 Arkansas, and Kentucky.

18 97. Until the Georgia Department of Agriculture (GDA) ceased publication of the
19 Georgia Dock benchmark price in late November 2016, Pilgrim’s Pride was one of the
20 Defendants that submitted false and artificially inflated price quotes to the GDA. Its executive
21 Vice President of Sales and Operations served on the Georgia Dock Advisory Committee.

22 98. Defendant Pilgrim’s Pride is liable for all conspiratorial acts undertaken while it
23 was in bankruptcy proceedings during 2009, and reentered, and reaffirmed its commitment to,
24 the conspiracy following its discharge from bankruptcy on December 29, 2009.

1 **17. Sanderson Farms**

2 99. Defendant Sanderson Farms, Inc., is a publicly held Mississippi corporation
3 headquartered in Laurel, Mississippi.

4 100. Defendant Sanderson Farms, Inc. (Foods Division), is a Mississippi corporation
5 headquartered in Laurel, Mississippi, and a wholly-owned subsidiary of Defendant
6 Sanderson Farms, Inc.

7 101. Defendant Sanderson Farms, Inc. (Production Division), is a Mississippi
8 corporation headquartered in Laurel, Mississippi, and a wholly-owned subsidiary of Defendant
9 Sanderson Farms, Inc.

10 102. Defendant Sanderson Farms, Inc. (Processing Division), is a Mississippi
11 corporation headquartered in Laurel, Mississippi, and a wholly-owned subsidiary of Defendant
12 Sanderson Farms, Inc.

13 103. Defendants Sanderson Farms, Inc., Sanderson Farms, Inc. (Foods Division),
14 Sanderson Farms, Inc. (Production Division), and Sanderson Farms, Inc. (Processing Division),
15 are collectively referred to as “Sanderson Farms” in this Complaint.

16 104. During the relevant period, Sanderson Farms sold broilers, directly or indirectly
17 through its wholly-owned or controlled affiliates, to purchasers in the United States and in
18 Washington.

19 105. Sanderson Farms reports a wide variety of data to Agri Stats, including
20 information about its breeder flocks and hatchery capacity, and data for its complexes in Georgia,
21 Mississippi, and Texas.

22 106. Until the Georgia Department of Agriculture (GDA) ceased publication of the
23 Georgia Dock benchmark price in late November 2016, Sanderson Farms was one of the
24 Defendants that submitted false and artificially inflated price quotes to the GDA.

1 **18. Simmons**

2 107. Defendant Simmons Foods, Inc., is a privately held Arkansas corporation
3 headquartered in Siloam Springs, Arkansas.

4 108. Simmons Prepared Foods, Inc., is a privately held Arkansas company
5 headquartered in Siloam Springs, Arkansas. Simmons Prepared Foods, Inc., is a wholly-owned
6 subsidiary of Simmons Foods, Inc.

7 109. During the relevant time period, Simmons Foods, Inc., exclusively sold the
8 chicken it produced to Simmons Prepared Foods, Inc., which in turn resold the chicken in various
9 forms to its customers.

10 110. Simmons Prepared Foods, Inc., and/or its predecessors, wholly-owned or
11 controlled subsidiaries, or affiliates was engaged in the processing, distribution, sale, pricing,
12 and/or marketing of broilers, directly or indirectly through its wholly-owned or controlled
13 affiliates, to purchasers in the United States and in Washington.

14 111. Defendants Simmons Foods, Inc., and Simmons Prepared Foods, Inc., are
15 collectively referred to as “Simmons” or “Simmons Foods.”

16 112. Simmons reports a wide variety of data to Agri Stats, including information about
17 its breeder flocks and hatchery capacity, and data for its two Siloam Springs, Arkansas
18 complexes.

19 **19. Tyson**

20 113. Defendant Tyson Foods, Inc., is a publicly held Delaware corporation
21 headquartered in Springdale, Arkansas.

22 114. Defendant Tyson Chicken, Inc., is a Delaware corporation headquartered in
23 Springdale, Arkansas, and a wholly-owned subsidiary of Defendant Tyson Foods, Inc.

24 115. Defendant Tyson Breeders, Inc., is a Delaware corporation headquartered in
25 Springdale, Arkansas, and a wholly-owned subsidiary of Defendant Tyson Foods, Inc.
26

1 116. Defendant Tyson Poultry, Inc., is a Delaware corporation headquartered in
2 Springdale, Arkansas, and a wholly-owned subsidiary of Defendant Tyson Foods, Inc.

3 117. Defendants Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Breeders, Inc., and
4 Tyson Poultry, Inc. are collectively referred to as “Tyson” in this Complaint.

5 118. During the relevant period, Tyson sold broilers, directly or indirectly through its
6 wholly-owned or controlled affiliates, to purchasers in the United States and in Washington.

7 119. Tyson reports a wide variety of data to Agri Stats, including information about
8 its breeder flocks and hatchery capacity, and data for its complexes in Virginia, Pennsylvania,
9 North Carolina, Georgia, Alabama, Mississippi, Texas, Arkansas, Missouri, Indiana, Tennessee,
10 and Kentucky.

11 120. Until the Georgia Department of Agriculture (GDA) ceased publication of the
12 Georgia Dock benchmark price in late November 2016, Tyson was one of the Defendants that
13 submitted false and artificially inflated price quotes to the GDA. One of its plant managers served
14 on the Georgia Dock Advisory Committee.

15 **20. Wayne Farms**

16 121. Defendant Wayne Farms, LLC, (“Wayne Farms”), is a Delaware limited liability
17 company headquartered in Oakwood, Georgia.

18 122. During the relevant period, Wayne Farms sold broilers, directly or indirectly
19 through its wholly-owned or controlled affiliates, to purchasers in the United States and in
20 Washington.

21 123. Wayne Farms reports a wide variety of data to Agri Stats, including information
22 about its breeder flocks and hatchery capacity, and data for its complexes in North Carolina,
23 Georgia, Alabama, Mississippi, and Arkansas.

24 124. Until the Georgia Department of Agriculture (GDA) ceased publication of the
25 Georgia Dock benchmark price in late November 2016, Wayne Farms was one of the Defendants
26

1 that submitted false and artificially inflated price quotes to the GDA. Its Vice President of
2 Fresh Sales served on the Georgia Dock Advisory Committee.

3 **IV. CO-CONSPIRATORS AND AGENTS**

4 125. The conspiracy alleged in this Complaint included various co-conspirators, some
5 of whom are unknown. Plaintiff State of Washington may bring claims against known and
6 unknown co-conspirators at a later date. Currently known co-conspirators include:

7 **1. Allen Harim**

8 126. Harim USA, Ltd., is a privately held Delaware corporation with its corporate
9 headquarters in Seaford, Delaware.

10 127. Allen Harim Foods, LLC, is a privately held Delaware limited-liability company
11 with its corporate headquarters in Seaford, Delaware, and with facilities and operations in
12 Delaware, Maryland and North Carolina. Allen Harim Foods, LLC, is a wholly-owned
13 subsidiary of Harim USA, Ltd.

14 128. Allen Harim Farms, LLC, is a privately held Delaware limited-liability company
15 with its corporate headquarters in Seaford, Delaware, and with facilities and operations in
16 Delaware, Maryland and North Carolina. Allen Harim Farms, LLC is a wholly-owned subsidiary
17 of Harim USA, Ltd.

18 129. Producer co-conspirators Harim USA, Ltd., Allen Harim Foods, LLC, and
19 Allen Harim Farms, LLC, are collectively referred to as “Allen Harim” in this Complaint.

20 130. During the relevant period, Allen Harim sold broilers, directly or indirectly
21 through its wholly-owned or controlled affiliates, to purchasers in the United States.

22 **2. Keystone Foods LLC**

23 131. Keystone Foods LLC, was formerly a subsidiary of Marfrig Alimentos, S.A., a
24 Brazilian company (“Marfrig”). On November 30, 2018, Defendant Tyson Foods, Inc.
25 announced it had completed its acquisition of Keystone Foods LLC, from Marfrig. Tyson Foods’
26 acquisition of Keystone Foods LLC, (and the three affiliated Equity Group entities listed below)

1 was structured as a stock acquisition, which resulted in Tyson Foods’ acquisition of all
2 Keystone Foods LLC’s assets and liabilities, and Keystone Foods continued to exist as an
3 operating entity subsequent to the acquisition.

4 132. Equity Group Eufaula Division, LLC, is a Delaware limited-liability company
5 with its headquarters in Eufaula, Alabama and is a wholly-owned subsidiary of Keystone Foods
6 LLC.

7 133. Equity Group Kentucky Division, LLC, formerly known as
8 Cagle’s-Keystone Foods LLC, is a Delaware limited liability company with its headquarters in
9 Franklin, Kentucky, and is a wholly-owned subsidiary of Grow-Out Holdings, LLC.

10 134. Equity Group – Georgia Division LLC, is a Delaware limited liability company
11 with its headquarters in Camilla, Georgia, and is a wholly-owned subsidiary of Keystone Foods
12 LLC.

13 135. As a result of Tyson Foods’ acquisition of Keystone Foods LLC, Tyson also
14 acquired all of the assets and liabilities of Equity Group Eufaula Division, LLC, Equity Group
15 Kentucky Division, LLC, and Equity Group – Georgia Division LLC.

16 136. Keystone Foods LLC, Equity Group Eufaula Division, LLC, Equity Group
17 Kentucky Division, LLC, and Equity Group – Georgia Division LLC, are collectively referred
18 to as “Keystone Foods” in this Complaint.

19 137. During the relevant period, Keystone Foods sold broilers, directly or indirectly
20 through its wholly owned or controlled affiliates, to purchasers in the United States and in
21 Washington.

22 138. Keystone Foods reports a wide variety of data to Agri Stats, including information
23 about its breeder flocks and hatchery capacity, and data for its complexes in Alabama, Georgia,
24 and Kentucky.

1 **3. Marshall Durbin**

2 139. Marshall Durbin Food Corporation (“Marshall Durbin”) was a poultry company
3 headquartered in Birmingham, Alabama. Its assets included poultry processing plants in
4 Hattiesburg, Mississippi, and Jasper, Alabama; feed mills in Haleyville, Alabama, and
5 Waynesboro, Mississippi; hatcheries in Moulton, Alabama, and Waynesboro, Mississippi; a
6 laboratory in Jackson, Mississippi; and a distribution center in Tarrant, Alabama.

7 140. On January 24, 2014, Defendant Mar-Jac Poultry Inc. (“Mar-Jac”) announced
8 that it had acquired the assets of Marshall-Durbin. Mar-Jac stated that its management team
9 “expects a smooth transition with no disruption of operations.”

10 141. During the relevant period, Marshall Durbin, its predecessors, subsidiaries, or
11 affiliates sold broilers, directly or indirectly through its owned or controlled subsidiaries and
12 affiliates, to purchasers in the United States.

13 **4. Southern Hens**

14 142. Southern Hens, Inc. (“Southern Hens”) is a Mississippi corporation
15 headquartered in Moselle, Mississippi.

16 143. Southern Hens was a joint venture formed by various Defendants that facilitated
17 the sharing of confidential information. Southern Hens’ Board has included representatives from
18 Defendants Sanderson Farms, Koch, Foster Farms, O.K. Foods, Pilgrim’s Pride, Mar-Jac, Peco,
19 and George’s.

20 144. As alleged below, Southern Hens played an active and important role in
21 facilitating and implementing the production-restriction mechanism of the conspiracy detailed
22 in this Complaint.

23 **5. Tip Top Poultry**

24 145. Tip Top Poultry, Inc., (“Tip Top”) is a Georgia corporation headquartered in
25 Marietta, Georgia, and with facilities in other states, including Oklahoma.

26

1 146. The Tip Top Alliance was formed by Defendants Amick, Case Foods, Fieldale,
2 Raeford, Keystone, Mar-Jac, Mountaire, Perdue, Harrison, and Wayne Farms, who were later
3 joined by Pilgrim's and Simmons.

4 147. As alleged below, Tip Top played an active and important role in facilitating and
5 implementing the production-restriction mechanism of the conspiracy detailed in this Complaint.

6 V. THE INDUSTRY

7 A. Background on the Broiler Chicken Market.

8 148. Broiler chicken is an important agricultural commodity for Washington
9 consumers and businesses. Broiler chicken (referred to either as "broilers" or "chicken" in this
10 Complaint) refers to chicken raised for consumption that are slaughtered before the age of
11 13 weeks. Broiler chicken can be sold fresh or frozen, raw or cooked, or whole or in parts, but as
12 used in this Complaint, the term excludes chicken grown, processed and sold according to halal,
13 kosher, free-range, or organic standards.

14 149. According to a 2012 report by Focus Management Group, chicken "is a
15 commodity product with little or no product differentiation based on the processors[.]" In 2014,
16 Defendant Pilgrim's CEO commented that "the chicken business *per se* is a commodity
17 business."

18 150. The commodity nature of chicken is evidenced by the fact that, as detailed
19 below, numerous Defendants have during the relevant period purchased chicken from each other
20 (in many cases for resale).

21 151. Generally, when a product is characterized as a commodity, competition is based
22 principally on price as opposed to other attributes, such as product quality or customer service.
23 Chicken producers pay USDA graders to examine their chickens, and almost all producers sell
24 USDA Grade A chicken, meaning that there is very little differentiation among sellers.

25 152. Due to the lack of product differentiation, chicken producers primarily compete
26 on price (absent collusion). The supply decisions of each chicken producer have a significant

1 impact on the market price for chickens. While an individual producer has an incentive to
2 increase production to maximize profits, any increased production will ultimately reduce the
3 profitability of the industry as a whole. Thus, producers have an incentive to agree to reduce
4 supply.

5 **B. The United States Broiler Market Is a National Market Comprising Tens of Billions**
6 **of Dollars' Worth of Annual Sales.**

7 153. According to the USDA, the value of wholesale U.S. broilers produced in 2018
8 was \$31.7 billion, up five percent from 2017. The market value varied between \$21.8 and
9 \$32.7 billion from 2008–2017.

10 154. There is a single national market for broilers in the United States. Prices for
11 broilers sold in the United States are quoted in whole bird or disassembled parts, with
12 adjustments for transportation, product form (*i.e.*, degree of processing or added value), and
13 packaging at the time of sale.

14 155. Chicken is sold directly to large chicken purchasers, including food distributors,
15 supermarkets, and restaurant chains. All other chicken sales are made indirectly, as institutional
16 purchasers such as schools, colleges, hospitals, and nursing homes, and individual consumers
17 purchase from those food distributors, supermarkets, and restaurants.

18 156. About 50–70% of broilers are sold under contract with a customer, about
19 10–20% are sold on the spot market¹ (sold as a non-recurring purchase for immediate delivery),
20 and roughly 17–20% are exported.

21 157. Exports of broilers from the United States have increased since 2007 both in
22 quantity and value. In 2006 exports constituted only 14.8% of U.S. production and increased to
23 16.5% by 2007. But between 2008–2014 export levels were never lower than 18.5% of
24

25 _____
26 ¹ According to expert testimony in July 2011 in *Adams v. Pilgrim's Pride*, No. 2:09-cv-00397 (W.D. Tex.),
spot market broilers are “anything left over [that is] sold fresh” within three days.

1 U.S. production levels, dropping down to 16% in 2015 due to export bans by countries due to
2 Avian Flu concerns. Export levels have remained around 16% since 2015.

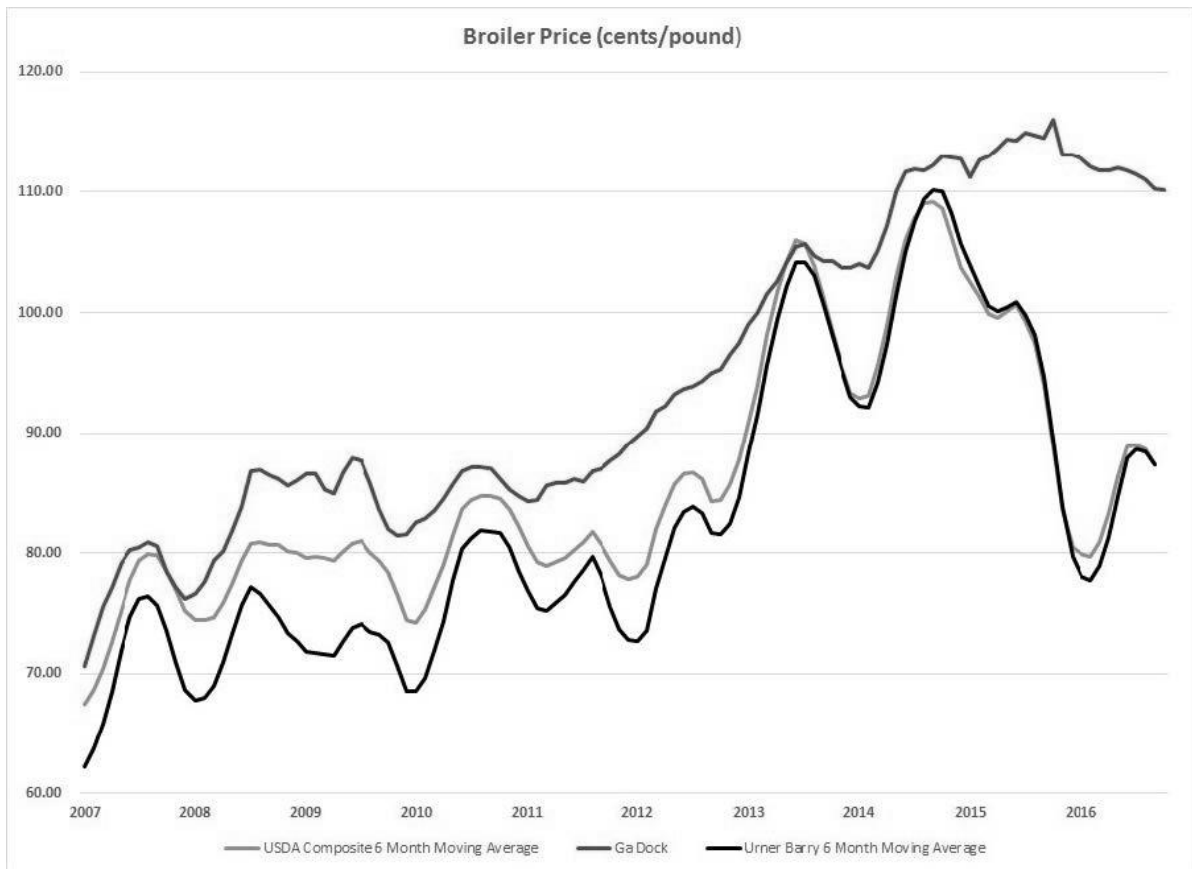
3 158. While this Complaint does not seek restitution for broiler exports, broilers
4 exported from the United States decrease available domestic supply and thus increase
5 broiler prices in the United States. Defendants used exports to effectuate their US-based broiler
6 market conspiracy.

7 159. The prices for certain of Defendants' chicken sales depended in large part on
8 benchmark price indices, including the Georgia Dock whole-bird price, which was one of three
9 benchmark price indices used by chicken buyers as a benchmark until early 2017.

10 160. The Georgia Dock was a widely used weekly benchmark price compiled and
11 published by the Georgia Department of Agriculture (GDA) until November 2016. The
12 Urner Barry is another widely used daily benchmark price reported by a commodity price
13 reporting service. The USDA's Composite price index also published weekly broiler price
14 information. The Producer Defendants frequently tied chicken contracts to index prices such as
15 these.

16 **C. Chicken Prices Rose Steadily Between 2008 and 2016.**

17 161. From 2008 to 2016, wholesale chicken prices increased despite significant drops
18 in feed costs. Broiler feed prices (including primarily soybean meal and corn) account for a
19 significant percentage of the cost of growing broilers, ranging from 50% to 71% from 2007 to
20 2016. Broiler feed costs decreased sharply after hitting record highs in 2012. For instance, prices
21 for soybean meal were down 10% in 2014. From January 1, 2008 to late 2016, corn prices
22 declined roughly 21% and soybean prices declined 13%. Nonetheless, during the same period,
23 broiler prices increased roughly 50%.



162. Despite decreases in input costs from 2014 to 2016, broiler prices did not experience a corresponding decline. Instead, the industry experienced record profits and consumers were left paying higher prices for broiler chicken.

VI. ANTICOMPETITIVE CONDUCT

163. Defendants distorted the market primarily through four mechanisms:

- First, coordinating output and reducing the supply of broiler chickens into the market to fix prices;
- Second, their collective participation in Agri Stats, which allowed the Producer Defendants to share detailed and competitively sensitive information with each other about, among other topics, their business operations, pricing, production, profitability, and costs;
- Third, manipulating price indices for wholesale chicken prices; and

- Fourth, a bid rigging agreement in which producers colluded on pricing and pricing-related terms to major chicken purchasers.

A. Defendants Coordinated Supply to Increase Prices.

1. Background on Chicken Production and Pricing.

164. In the year before the beginning of Defendants’ conspiracy, the U.S. chicken market was floundering. Broiler chicken producers had been flooding the market with overproduction, cratering prices by 2007. The historic pattern of annual increases in broiler production was so entrenched over decades of experience by the 2000s that one widely repeated quip in the industry was that there were now only three things certain in life: “Death, taxes and 3% more broilers.”

165. Worried about their large profit margins, the nation’s two largest chicken producers, Pilgrim’s and Tyson, reduced their production in an attempt to drive up prices. A few other producers—Foster, Peco Farms, and Perdue—followed their lead. But these supply cuts were not enough to increase prices, especially when other producers were increasing their production. In addition, production cuts in 2007 followed the typical pattern of focusing on short-term reductions in production, such as slaughtering chickens early, but not on significant cuts at the top of the supply chain, particularly culling of breeder flocks, which have longer-term effects on supply.

166. Rather than focusing on planning to better compete, broiler producers started colluding. The failure of the 2007 shorter-term production cuts to raise prices made Tyson and Pilgrim’s realize that they could not act alone to raise industry prices. Instead, they would need broader industry supply cuts, including cuts made by most of their competitors. And more, they realized that cuts that did not reduce broiler breeder flocks would leave open the door for near-term increases in supply. Tyson and Pilgrim’s realized that by making cuts that were not followed by their smaller competitors, they were giving away market share to those competitors.

1 167. Instead, in early 2008, through press releases and earnings and investor calls, at
2 investment bank conferences, at events hosted by Agri Stats, and at the myriad trade association
3 meetings attended by many of their senior executives, the Producer Defendants began calling on
4 one another to heed the mistakes of the past, preaching that oversupply was decimating industry
5 profits, and that they needed increased supply-side “discipline” to halt the downward trajectory
6 of chicken prices.

7 168. In late 2007, Tyson also made the decision to start sharing and receiving
8 competitively sensitive information by rejoining Agri Stats, which provided its competitors with
9 a significant increase in their access to competitively sensitive information about the largest
10 company in the industry.

11 169. This production “discipline”—i.e., the reduction or relative stabilization of
12 industry capacity, particularly at the breeder flock level where such efforts would be most
13 effective—was a means to increase chicken prices and Defendants’ profits. Defendants’ efforts
14 were supported by their executives’ public statements, which involved more than an
15 announcement of a Defendant’s own conduct. In fact, as alleged below, many of Defendants’
16 executives’ calls for a new era of “discipline” included explicit statements that deeper production
17 cuts were an industry-wide imperative that would pay dividends for “the industry” as a whole.
18 Defendants, who collectively control over 90% of the U.S. chicken market, jointly engaged in
19 this effort to curtail industrywide production.

20 170. In 2008, Defendants implemented their conspiracy by making significant
21 production cuts, including unprecedented cuts in their breeder flocks. The vertically integrated
22 Producer Defendants have the ability to manipulate supply to the chicken market at one or more
23 stages of the supply chain. At the top of the supply chain, these Defendants can most effectively
24 manipulate supply by reducing the size of breeder flocks, and retiring or killing breeders at an
25 earlier age than what would be optimum. Reducing breeder flocks has the most significant, and
26 longest-lasting, effect on supply of chickens in the market.

1 171. Because breeder flocks are created from a limited pool of “grandparent”
2 chickens from one of only three genetics companies (Aviagen, Hubbard, and Tyson’s
3 Cobb-Vantress), it takes substantial time—anywhere from six to eighteen months, or more—to
4 re-populate a breeder flock that has been culled early. While Defendants continued to use their
5 traditional methods to affect their supply-reduction scheme (at the middle or end of the supply
6 chain, such as by reducing eggs placements, killing newly-hatched chicks, or idling processing
7 plants), their conspiracy was greatly enhanced by the long-term effects of breeder flock
8 reductions.

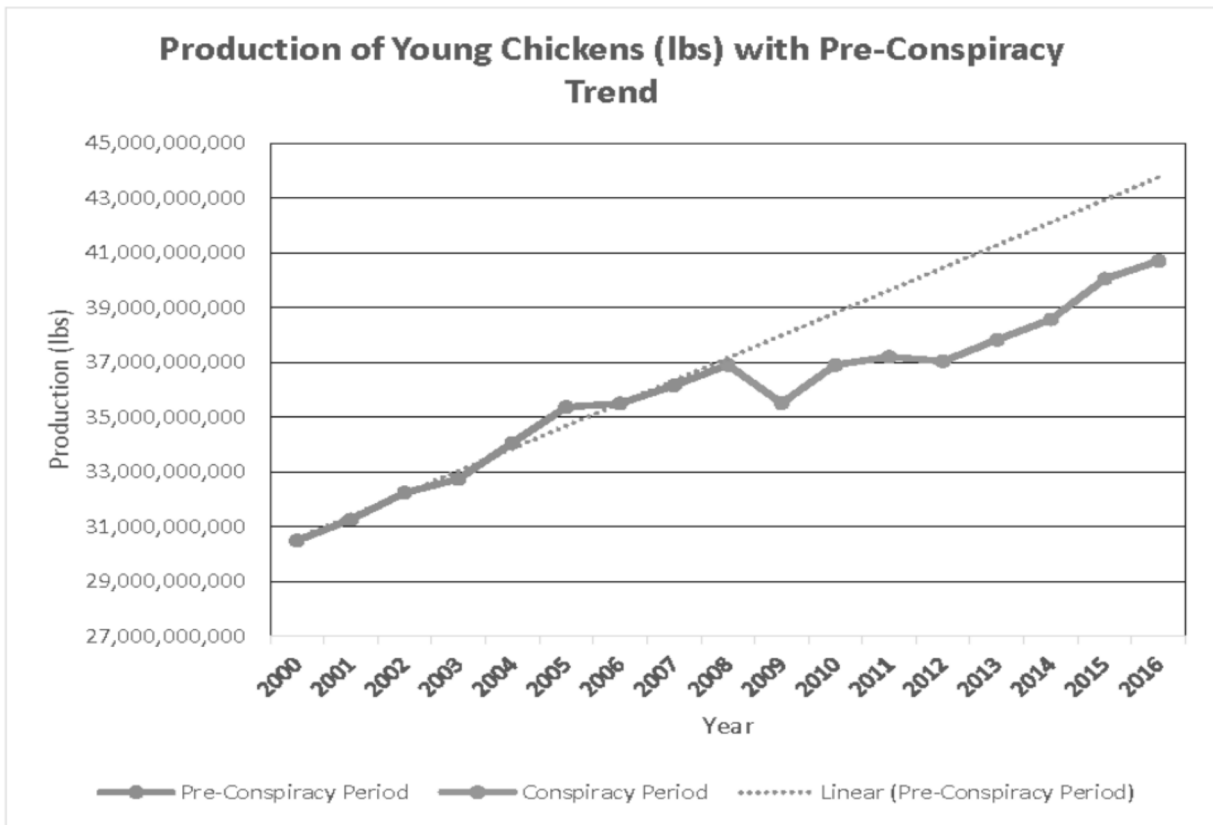
9 172. Beyond the public statements of various executives of the Producer Defendants
10 calling for production “discipline,” Defendants shared competitively sensitive information on
11 their current and future production levels with each other. Defendants shared this information
12 through Agri Stats, which allowed them to monitor their competitors’ production. Moreover,
13 Agri Stats used competitively sensitive data to advise the Producer Defendants on the size of
14 specific production cuts that could help stabilize and raise industry prices.

15 173. Defendants also discussed production levels with one another in industry
16 meetings, as well as bilateral communications including phone calls, emails, and one-on-one
17 meetings. This exchange of competitively sensitive information is anticompetitive and evidence
18 of an agreement among competitors to reduce the supply of chicken.

19 174. Defendants shared competitively sensitive information about industry supply
20 through the slaughtering organizations of Tip Top Poultry and Southern Hens. These
21 organizations allowed the industry to ramp down supply quickly, particularly in 2011–2012
22 when the industry decimated breeder flocks in an effort to reduce chicken supply.

23 175. Defendants’ collective output-restriction caused a significant slowing in overall
24 chicken production during the conspiracy, bucking the historic trend of steady annual production
25 increases. In turn, these substantial cuts helped to stabilize and substantially increase prices in
26 future years. The overall effect is shown in the graph below, drawn from USDA data, showing

1 that chicken production grew a total of 21% from 2000 to 2008 (an average of 2.3% per year),
2 but then slowed to a total of roughly 10% from 2008 through 2016 (an average of slightly more
3 than 1% per year)—a significant decrease in the pace, timing, and manner of chicken production
4 during the conspiracy period.



19 **2. Throughout 2008, Defendants’ Executives Publicly Decried the Effect of**
20 **Oversupply on “Our Industry,” Telling their Competitors that Unified**
21 **Action Was Necessary.**

22 176. In 2008, Defendants engaged in many meetings with one another and made
23 public statements about the need to reduce chicken supply. Defendants knew that these messages
24 would be shared throughout the industry to their competitors.

25 177. From January 23–25, 2008, Defendants attended the International Poultry Expo
26 conference in Atlanta where, according to the trade association organizing the annual multi-day

1 event, attendees representing the major chicken companies participated. Many employees from
2 Defendants attended the conference, including some of Defendants' senior executives.

3 178. On an earnings call three days later, Tyson CEO Richard Bond—who in the
4 same call disclosed that the company had re-joined Agri Stats and had “just recently . . . got our
5 first series of data”—stated that “we have no choice [but] to raise prices substantially.” However,
6 the commodity nature of chickens does not allow one producer to raise market prices without
7 widespread reductions in supply relative to the then-current demand. Bond's comment does not
8 make sense absent an intention (or knowledge) on his part that Defendants would coordinate an
9 industry-wide reduction in supply.

10 179. The day after Tyson confirmed its return to Agri Stats and expressed its plans to
11 increase prices, Pilgrim's Pride, the second largest chicken supplier, told its competitors to
12 reduce their production of chickens to allow prices to recover. On an earnings call, Pilgrim's CFO
13 Rick Cogdill said the industry's oversupply of chickens was hurting market prices. Cogdill
14 explained that Pilgrim's had done its part in 2007 by reducing production 5%, so “the rest [] of
15 the market is going to have to pick-up a *fair share* in order for the production to come out of the
16 system.” (Emphasis added.) Cogdill went on to explain that Pilgrim's alone could not reduce
17 supply enough to help market prices recover, and that its past efforts to reduce supply had merely
18 led to smaller players increasing their market share at Pilgrim's expense. Cogdill noted that “we
19 have walked away from sales in certain cases, where the pricing just did not make any sense. So
20 we are trying to hold the line. We are losing at times the competitive bids. . . . So we are trying
21 to take a leadership position from a pricing perspective.”

22 180. Two days later, on another earnings call, Sanderson Farms CEO Joe Sanderson
23 explained that he, too, anticipated the industry would cut production. Responding to an analyst
24 that asked about production cuts, Sanderson said he thought a production cut was “probable”
25 and “if it's bad and ugly and deep in February, March and April, you'll see the production cuts
26

1 take place during that period of time. There's still 25% of the industry still making money but I
2 would expect to see those reductions come over the next 90 to 120 days.”

3 **3. Defendants Begin to Cut Production in Concert in 2008.**

4 181. Around March 4, 2008, senior executives from Defendants, including Pilgrim's
5 Tyson, Amick, Case Foods, and Fieldale, met in Washington, D.C., at an executive committee
6 meeting of the National Chicken Council's Board of Directors.

7 182. Shortly after that trade association meeting, Pilgrim's again sounded the call to
8 cut overall industry supply to increase profits, and proceeded with production cuts. On March 12,
9 2008, Pilgrim's new CEO Clint Rivers publicly announced the closure of seven chicken facilities
10 in order to reduce industry oversupply.

11 183. Under competitive conditions, other chicken producers would typically respond
12 to Pilgrim's substantial supply cuts by increasing their production to fill the gap in overall
13 supply. Yet just the opposite occurred. Following Pilgrim's announcement, a series of production
14 cuts were publicly announced by other Defendants in an eight day span between April 3 and
15 April 11, 2008:

16 April 3, 2008: Fieldale Farms announced a 5% production cut stating that
17 “We're hoping this cut puts supply and demand back into better balance.”
18 Fieldale Farms is not a publicly-traded company, and there was no reason—other than signaling to its fellow producers that it was following
19 through on its conspiratorial agreement—why it would publicly disclose its production plans.

20 April 9, 2008: Simmons announced in a press release a 6% reduction in
21 production throughout its processing plants. Simmons is not a publicly traded
22 company, and there was no reason—other than signaling to its fellow
23 producers that it was following through on its conspiratorial agreement—
24 why it would publicly disclose its production plans.

25 April 10, 2008: Cagle's Inc. (later acquired by Koch Foods) announced in a
26 press release a 4% reduction in processing of chickens, noting that the cut
“will reduce product being sold through less profitable commodity outlets.”

April 3–11, 2008: Wayne Farms, O.K. Foods, and Koch Foods each
announced 2–8% reductions in production. None of these companies are
publicly-traded, and there was no reason—other than signaling to their fellow

1 producers that they were following through on their conspiratorial
2 agreements—why they would publicly disclose their production plans.

3 184. After seeing many of its competitors abide by capacity reductions between
4 April 3–11, on April 11, 2008, Pilgrim’s suggested it might close its large El Dorado, Arkansas
5 processing plant. Then, on April 14, 2008, it announced a further production cut of 5% of egg
6 sets. Closing the plant created additional capacity limitations for Pilgrim’s.

7 185. At the BMO Capital Markets Agriculture & Protein Conference presentation on
8 May 15, 2008, Joe Sanderson stated—in the presence of several competitors attending the
9 conference—that “we have seen for the last 6 or 7 weeks . . . some companies in our industry
10 announce cutbacks. There have been I think six companies have announced cutbacks. *I know*
11 *some companies have cut back and have not announced.*” (emphasis added). Such knowledge of
12 non-public production cuts by competitors strongly suggests of communication among chicken
13 companies, either secret direct communications, or using Agri Stats as a facilitator, or both.

14 186. At the same conference, Pilgrim’s CEO, Clint Rivers, encouraged more action
15 by the industry. According to an industry publication, Rivers announced that he hoped to see the
16 chicken industry continue to cut production to help the industry return to profitability, stating
17 that “he would like the industry to trim total production by 3%–4%.”

18 187. Several other chicken producers cut their production between April 1, 2008 and
19 May 15, 2008, but did not publicly announce them. But because of Agri Stats, the competitors
20 could monitor their competitors’ production.

21 188. A June 2008 Agri Stats report noted that “[b]eginning in April [2008], the
22 weekly hatchery data started to show declines in egg sets and chick placements relative to
23 year-earlier, and reported placements have remained below year-earlier since that time, which
24 confirms the announced intentions to reduce broiler production and will result in slaughter falling
25 below year-ago by mid-June.”
26

1 189. During an earnings call that spring, Joe Sanderson announced a further cut of
2 4–5% following Labor Day.

3 190. On a Pilgrim's Pride Earnings Conference Call that summer, a Pilgrim's
4 executive stated, "[s]imply put, at this time there is still too much breast meat available to drive
5 market pricing significantly higher."

6 191. Other Defendants' executives soon picked up on Rivers' call for further action.
7 On June 19, 2008, chicken industry executives participated in a media conference call intended to
8 lobby the federal government to limit the ethanol mandate. Mark Hickman, Chairman of the
9 National Chicken Council and CEO of Peco Foods, told participants that "the poultry industry
10 is entering a second phase of production cutbacks, following a 1 percent to 2 percent cutback in
11 production earlier this year "and that "we are hearing talk that this was not nearly enough, so
12 liquidation is in round two."

13 192. What followed in 2008 was another series of announcements from Defendants'
14 executives, including those employed by privately-held companies, about additional production
15 cuts:

16 June 23, 2008: Wayne Farms announced a 6% production cut.

17 July 2, 2008: Foster Farms announced it was abandoning plans to build a
18 new chicken plant.

19 July 7, 2008: O.K. Foods announced a 7.5% reduction in egg sets.

20 August 11, 2008: Pilgrim's announced the closure of its Clinton, Arkansas
21 processing plant and a facility in Bossier City, Louisiana. Pilgrim's press
22 release noted the closures "are part of the company's ongoing effort to
operate more efficiently and return to profitability amid high feed costs and
an oversupply of chicken on the market."

23 August 2008: Raeford announced a 5% production cut. The company said in
24 a statement to industry publication Watt Poultry that "[t]he current obstacles
that face our industry require that supply be brought in line with demand."

25 August 26, 2008: On an earnings call, Sanderson Farms CEO Joe Sanderson
26 stated that "[s]o long as this weakness continues, the poultry industry will
need to cut production further to bring supply in line with demand."

1 193. By September 2008, chicken industry publication Watt PoultryUSA reported
2 that “[m]ost U.S. chicken integrators ha[d] announced plans to close small operations,
3 consolidate complexes and further processing plants and to reduce output by 3 percent to
4 5 percent to ‘maximize efficiency.’” However, the language of maximizing efficiency appeared
5 to be a pretext for cutting supply to increase prices.

6 194. On October 10, 2008, in response to a USDA report of falling egg sets in the
7 chicken industry, Pilgrim’s told the Associated Press that “[t]his is very positive news for the
8 industry.”

9 195. Indeed, an industry analyst noted that at the time “the industry has cut about
10 10 to 12 percent of its production.”

11 196. During fall 2008 and winter 2009, the Producer Defendants made more cuts.

12 197. Sanderson Farms implemented its previously announced “fall cuts” a month
13 early and delayed the opening of a new deboning facility.

14 198. In mid-October 2008, Wayne Farms President & CEO Elton Maddox released
15 a statement (even though Wayne Farms was not a publicly-traded company and thus had no other
16 reason—other than signaling to its fellow producers that it was following through on the
17 conspiratorial agreement—why it would publicly disclose its production plans) announcing the
18 closure of the company’s College Park, Georgia plant, which would reduce their capacity to
19 supply broilers.

20 199. By the end of December 2008, Tyson had cut its production by 5%.

21 200. Overall, at least 11 companies reported reductions in weekly ready-to-cook
22 production in 2008, including Defendants Tyson, Pilgrim’s, Perdue, Simmons, House of
23 Raeford, Cagle’s (later acquired by Koch Foods), George’s, O.K. Foods, Harrison, and GNP
24 Company (now owned by Pilgrim’s). Other companies reduced their planned production levels
25 or delayed the planned opening of new chicken complexes, which reduced their ability to supply
26 broilers.

1 **4. Defendants' Production Cuts Continued into 2009.**

2 201. As noted above, in 2008, Defendants ended a decades-long trend of annual
3 additional chicken production, surprising industry observers. What makes the production cuts in
4 2008 and early 2009 remarkable is that chicken producers did not just reduce the pounds of
5 chickens they produced—they also went further up their supply chains than ever before to restrict
6 their ability to ramp up production for years into the future.

7 202. The Producer Defendants continued to make production cuts well into 2009.

8 203. In late February 2009, Pilgrim's had cut another 9-10% of its production.

9 204. Around the same time, Sanderson Farms told The Morning News of
10 Northwest Arkansas that it had made cuts to its supply of chickens by processing smaller
11 chickens and running its plants at lower capacity utilization rates.

12 205. Similarly, the CEO of Simmons Foods, Todd Simmons, noted in a
13 February 2009 interview that they were also decreasing bird size. By decreasing bird size,
14 Simmons Foods also decreased supply in an attempt to drive up prices.

15 206. Seeing further cuts from smaller producers in the industry led Pilgrim's to
16 announce historically large cuts to its production two days later. In a press release announcing the
17 closure of three processing plants, Pilgrim's stated the idling of these three plants would reduce
18 its total pounds of chickens produced by 9–10%. Pilgrim's stated reasons for closing the plant
19 was a pretext for reducing supply.

20 207. The effect of the supply cuts on chicken pricing in 2008 and the first months of
21 2009 was clear—during the worst recession in generations, chicken prices rose, staying at or
22 near all-time highs until late 2009. For instance, by the mid-2009, Sanderson Farms reported
23 strong profits that were twice Wall Street estimates.

1 208. At a May 14, 2009, BMO Capital Markets conference in New York City, interim
2 Tyson CEO Leland Tollett noted that “Pullet placements², an indication of future broiler supplies,
3 have been down the past five months compared to the same period last year. Egg sets continue
4 to run six percent or more below year ago levels and cold storage inventories of poultry have
5 declined about 20 percent since peaking in November 2008.”

6 209. During 2009 and 2010, Defendants’ senior executives continued to meet with
7 one another at trade association meetings and industry events, such as the National Chicken
8 Council and the International Poultry Expo. For instance, at the National Chicken Council’s
9 October 2009 Annual Conference, which was attended by the Presidents and CEOs of both
10 Amick and Allen Harim, one industry analyst wrote that participants had emphasized continued
11 “production discipline,” Defendants’ euphemism for limiting chicken supply.

12 210. However, as prices continued to rise during late 2009 and early 2010, producers
13 started increasing production in response to the higher prices just as they had done in previous
14 decades—although, because of 2008 and 2009’s unprecedentedly deep and early breeder flock
15 culls, this temporary spike in production took months to effectuate, rather than the few weeks it
16 would have taken had producers killed off their breeder flocks at the rates and times at which
17 they had done so in the past.

18 211. The rising production in early 2010 led to a reported oversupply of chickens that
19 began to depress prices by late 2010. Defendants grew concerned about this oversupply; they
20 had learned the value of coordinated supply reductions in 2008.

21 **5. Defendants’ Conspiracy, Hatched in the Great Recession, Continued into**
22 **2011 with Another Round of Collective Production Cuts.**

23 212. The Producer Defendants made another series of publicly-announced
24 production cuts in the first half of 2011, which quickly caused prices to increase.

25 _____
26 ² A pullet refers to a young hen, usually under one year of age. Once a chick develops feathers rather than
down, it is then called a pullet if it is female.

1 213. On a February 2011 Sanderson Farms earnings call, Joe Sanderson announced
2 that Sanderson Farms would be delaying the development and construction of a second
3 North Carolina broiler complex. By delaying the development of a new broiler complex,
4 Sanderson Farms limited the amount of broilers it was able to supply.

5 214. Shortly after that, Raeford announced a 10% reduction in egg sets that began in
6 early February. CEO Bob Johnson noted in an accompanying press release that “[h]opefully the
7 chicken prices will begin to increase later this year.”

8 215. In mid-March 2011, Simmons announced it was laying off 180 workers at its
9 Siloam Springs, Arkansas processing plant. By reducing the number of workers, Simmons also
10 put a constraint on the amount of broilers it could supply.

11 216. One month later, Mountaire disclosed, in a press report, the abandonment of a
12 planned capacity increase, with Mountaire President Paul Downes explaining that “the only way
13 to higher prices is less supply. The only way to less supply is *chicken companies will shut down*
14 *or cut back.*” (Emphasis added).

15 217. During 2011, Fieldale reduced its production.

16 218. During 2011, Mar-Jac reduced its production 10% and reported that other broiler
17 producers were doing so as well.

18 219. Around June 20, 2011, Tyson began pulling eggs from its incubators to reduce
19 broiler volumes.

20 220. In June and July 2011, Defendants’ senior executives attended industry events,
21 including the 2011 Food Media Seminar, which included a panel made up of the CEOs of
22 Defendants Tyson, Peco Foods, and Perdue, and Defendant Sanderson Farms’ President and
23 COO.

24 221. From June 27-29, 2011, the U.S. Poultry & Egg Association held a Financial
25 Management Seminar at the Ritz Carlton in Amelia Island, Florida. Among other presentations,
26

1 Pilgrim's President & CEO Bill Lovette presented to a group of 150 attendees that included
2 senior executives from Defendants.

3 222. That same week, Simmons announced it was laying off 223 employees by
4 August at its Siloam Springs, Arkansas plant, in another move that decreased their production.

5 223. Likewise, in late July 2011, Pilgrim's announced the closure of its Dallas, Texas
6 processing plant and the layoff of 1,000 employees.

7 224. Then, in late August 2011, Joe Sanderson informed analysts on an earnings call
8 that the company's normal fall production cut of 4% beginning in November would remain in
9 place beyond January 2012. Sanderson also stated that it "*wouldn't surprise me if we don't see*
10 *a further reduction in egg sets* come October, November." (Emphasis added).

11 225. In early October 2011, Defendants' senior executives attended the National
12 Chicken Council's Annual Conference in Washington, D.C. Among the discussion panels at the
13 event was one about the "new paradigm" in the chicken industry. The panel included senior
14 executives from Defendants Perdue and Koch Foods. Panelists said that "the industry is
15 accustomed to cycles, but not one quite like the latest, and companies are going to need to adjust.
16 Discipline on the supply side was one suggestion. Getting better prices from retailers was
17 another."

18 226. The following month, Wayne Farms issued a press release announcing the
19 closure of its Decatur, Alabama plant and layoffs of 360 employees.

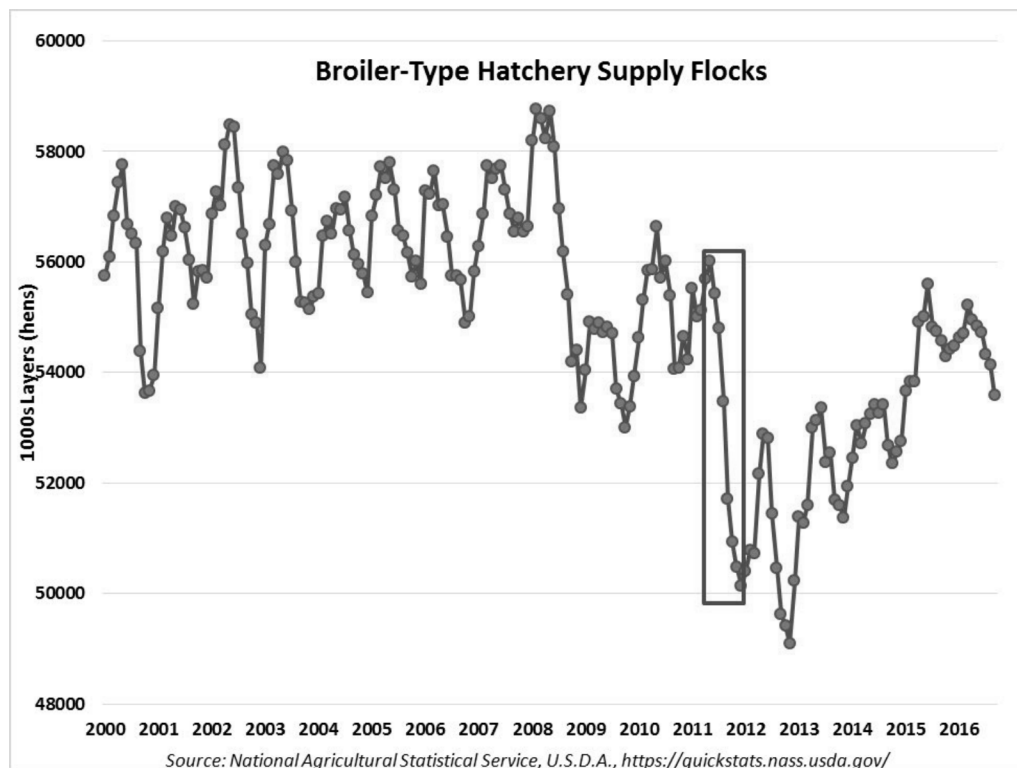
20 227. A few days after that, on an earnings call, Sanderson, responded to a question
21 about a production decrease that "when we talk about the 4% number, that is what we project the
22 industry to be. Obviously, we're going to be a part of that."

23 228. Throughout 2012, Defendants continued to meet at trade association meetings
24 and industry events, giving them the opportunity to discuss the impact of their collective
25 production cuts and otherwise monitor their conspiracy. Several Producers implemented and
26 announced additional cuts.

1 229. By September 2012, Defendants' 2011 and 2012 production cuts, particularly
2 their reduction of breeder flocks, had resulted in increased prices. Cutting those flocks meant
3 that Defendants could not increase broiler supplies in the short or medium term, even if they
4 wanted to. The higher chicken prices seen in the market by September 2012 were not justified
5 by the costs of Defendants' primary inputs, corn and soybean meal, which by the fourth quarter
6 of 2012, had dropped significantly in price following near-record highs in the summer of 2012.

7 **6. Drastically-Reduced Breeder Flocks Boost Chicken Prices and Raise**
8 **Defendants' Profits to Record Levels.**

9 230. Defendants' cuts to the broiler breeder flocks in 2011–2012 sent flock levels
10 down to levels not seen for almost two decades, as shown in the following graph:



23
24 231. For most of the remainder of 2012 through 2014, Defendants reaped the benefits
25 of their coordinated supply restraints as prices rose and profits soared to record levels. During
26 this time, Defendants' executives repeatedly heralded the industry's newly found supply

1 “discipline.” For instance, on a May 2013, earnings call, Pilgrim’s President & CEO Bill Lovette
2 stated that “[w]ell, obviously, revenue is going to be a function of price, in part, and in this case
3 a big part; and obviously, price is going to strengthen as supply continues to be disciplined and
4 constrained So I think the industry is doing an admirable job in being disciplined on the
5 supply side and I think we’ve got a combination where we combine that discipline with strong
6 demand for product and that’s why you’ve seen the pricing environment that we’re now
7 enjoying.”

8 232. Lovette also discussed the importance of continued restraint of the industry’s
9 breeder supply flock, noting “[w]ell, I only know what we’ve seen happen in the past. Now,
10 certainly, this summer if the industry chooses to grow the breeder supply significantly, that’s
11 definitely going to impact 2014. What I’m saying is, so far, we’ve seen no indication that the
12 industry plans to grow the breeder supply and as a matter of fact, it’s actually
13 shrunk [B]ased on the last three to five years, though, again, I’ll reiterate that I think the
14 industry has learned that the economics of our business is tied very closely to the supply of
15 chickens and we’ve done a good job so far of maintaining discipline such that even paying nearly
16 \$8.50 for corn, we’ve been able to be profitable as an industry.”

17 233. In October 2013, CEOs and other senior executives from the Defendants met at
18 the annual National Chicken Council (NCC) meeting in Washington D.C. The meeting featured
19 a panel with CEOs from Gold N’ Plump (a now defunct broiler producer), Tyson, and Simmons
20 Foods. According to one publication’s account of the panel, the CEOs were “chipper about the
21 prospects for their industry in the next few years.” This meeting was also attended by
22 Keystone Foods executive Tim Esslinger.

23 234. The impact of the 2011-2012 breeder flock reductions impacted chicken prices
24 in the forthcoming years, resulting in significant profits for Defendants. As Reuters reported on
25 July 8, 2014, “High chicken prices due to the production constraints have helped push up the
26 stock prices of Tyson and Sanderson this year, by about 17 percent and 38 percent, respectively.

1 Both Tyson and Sanderson reported net income more than doubled in their fiscal second
2 quarters.”

3 235. At a March 2014 industry conference, Tyson CEO Donnie Smith told attendees
4 that a “meaningful change” in chicken production would not occur until the second half of 2015.
5 He could confidently make this statement because Defendants’ unprecedented 2011–2012 cuts
6 in breeder flocks made it difficult to “meaningfully change” chicken production any sooner.

7 236. During 2013 and into 2014, Defendants continued to find ways to actively
8 depress the size of broiler hatchery flocks, such as using the pretext of avian flu in Mexico to
9 justify exporting hatchery flock broilers to Mexico to repopulate flocks there rather than use such
10 broilers to increase domestic production levels.

11 237. An October 2014 CoBank analysis noted that Defendants’ strategy of targeting
12 breeder flocks paid dividends during 2013 and 2014. According to the report: “[P]roduct demand
13 should remain robust through the rest of this year and well into 2015, bolstered by a gradually
14 improving domestic economy, continued strength in export demand, and the towering prices of
15 beef and pork. Broiler production, however, has been slow to respond, with integrators having
16 had problems expanding the number of chicks placed for grow-out. Broiler meat production is
17 on track to grow just 1.5 percent in 2014 from a year ago, with a similarly modest gain expected
18 for 2015. Producers have been somewhat constrained in their attempts to expand the nation’s
19 chicken flock by the limited supply of broiler hatching eggs. When the broiler-producing
20 industry reduced production in 2011 and 2012, the hatchery supply flock was also reduced, and
21 it has not yet been rebuilt to prior levels. Following seven months of [Year-over-Year (“YoY”)]
22 declines, the number of chicks placed for grow-out finally posted a modest 1 percent YoY gain
23 in August. However, it will take another 6–9 months for integrators to rebuild the supply of
24 broiler hatching eggs in preparation for expanding the overall flock, so significant growth in
25 broiler production will not materialize until late 2015 or early 2016.”
26

1 238. The October 2014 CoBank report also noted the effect of these production cuts,
2 stating that wholesale prices for chicken “have risen to unusually high levels.”

3 239. Defendants also kept up the regular use of signaling one another to perpetuate
4 their collusion during these years by using the code word “discipline” to note their continued
5 adherence to the supply-restriction dimension of their conspiracy by keeping breeder flocks low.

6 240. For instance, during a February 2016 earnings call, Pilgrim’s CEO Bill Lovette
7 noted that “[t]his industry continues to be disciplined in terms of U.S. supply. Although monthly
8 pullet data tend to be volatile and have occasionally been at the high end of our expectations, we
9 see modest growth of the breeder flock, and more importantly, little to no increase in egg sits
10 [sic] and chick placements as a positive.” Similarly, in a July 2016 earnings call,
11 Pilgrim’s CEO Lovette noted that “I think what we’ve seen with egg sets is absolutely a
12 testament to the discipline of our industry that we’ve seen the last really two to three years.”

13 241. As described above, broiler prices have been artificially inflated since 2008. As
14 one industry observer noted, “[t]he profit margins of the nation’s biggest meat packers rose
15 dramatically between 2008 and 2010 (the most recent year for which good data is available),
16 even as the national economy cratered. Tyson Foods, the nation’s biggest meat company,
17 reported record profits of \$778 million last year [i.e., 2013] as the company hiked prices for beef,
18 pork, and chicken.”

19 242. During a February 2015, earnings call, Lovette summed up the restriction of
20 supply which Defendants had implemented since 2008: “I looked at some numbers supplied by
21 Agri Stats earlier in the week and found some interesting facts. If you go back to 2008, the
22 industry slaughtered 8.35 billion head. And by 2011, that slaughtered head had declined by
23 approximately 8% to 7.7 billion. And it’s actually remained about that same level through 2014
24 at about 7.7 billion. If you look at live weight pounds produced, it was 47.1 billion in 2008. It
25 declined to 45.06 billion in 2011. And in 2014, for the first time since 2008, it reached
26 47.3 billion, so only 200 million more pounds above 2008 levels. And then on the average weight

1 side, the average weight in 2008 was 5.64, and it's averaged just above 6 from 2011 through
2 2014. So with all of that data in mind, what it tells me is the industry remains fairly disciplined
3 on the supply side and demand has been increasing for chicken against the backdrop of
4 increasing beef and pork supplies.”

5 243. WATT PoultryUSA's March 2016 issue noted that Tyson had achieved “record
6 earnings and sales in fiscal year 2015 . . . posting \$40.6 billion in sales, including ringing up
7 higher chicken sales. Yet, Tyson lowered chicken production in 2015. What's at work here? This
8 paradoxical performance, in part, reflects the fact that Tyson, along with other top U.S. broiler
9 companies, is redefining its business model to achieve profitable growth.”

10 244. The Defendants had thus proactively maintained artificially high chicken prices
11 and high profitability by limiting industry-wide supply of chicken.

12 **B. Defendants Exchanged Competitively Sensitive Information Through Agri Stats**
13 **throughout the Relevant Period as a Vehicle to Restrain Supply and Engage in**
14 **Anticompetitive Information Exchange.**

15 **1. Background on Agri Stats.**

16 245. On top of coordinating supply reductions through meetings at conferences and
17 earnings call statements, the Producer Defendants also entered into illegal agreements and
18 engaged in unfair methods of competition by exchanging nonpublic, competitively sensitive
19 information through Agri Stats, a third-party data service that played a critical role in facilitating
20 the widespread exchange of competitively sensitive information among chicken producers.
21 Exchanging data through Agri Stats allowed the Producer Defendants to collude by, among other
22 things, communicating future business decisions to competitors, enabling competitors to act on
23 this information, and thereby blunting competition in the industry.

24 246. The USDA and various other entities publish aggregated weekly, monthly, and
25 annual supply and pricing information concerning the U.S. chicken industry. The USDA's
26 statistics are publicly available, and are thus available to producers, purchasers, and consumers.

1 247. Despite the availability of such public information, the Producer Defendants
2 each subscribed, at significant cost, to Agri Stats.

3 248. Agri Stats is a “statistical research and analysis firm” that collects data from
4 participants, aggregates it, and distributes the data to the participants in a purportedly anonymous
5 report. It is a self-described “management reporting and benchmarking company” that “provides
6 consultation on data analysis, action plan development and management practices of
7 participating companies.”

8 249. Agri Stats emphasizes its focus on profitability, as its website specifically
9 markets itself as a service that can improve “bottom line profitability” for its participants.

10 250. Agri Stats generates confidential, highly-detailed chicken industry reports based
11 on competitive sensitive information submitted by its members and includes the following data
12 categories:

- 13 • Name of genetics company used for primary breeder stock;
- 14 • Breeder flock size and age, hatchery capacity, and the costs associated with
15 breeder flocks, including feed and housing expense;
- 16 • Data about the production, delivery, and formulation of feed, including corn
17 and soybean meal costs, which are two of Defendants’ most significant
18 inputcosts;
- 19 • Grow-out information for chicken “flocks” provided to contract farmers,
20 including the number of chickens placed, chick mortality by week and
21 overall percentage, chick cost, days between flocks provided to contract
22 farmers (*i.e.*, “down time”), feed conversion rate (pounds of feed per pound
23 of chicken), average daily weight gain by chicks, live pounds produced per
24 square foot of grower house, grower compensation, including average
25 grower payment in cents per pound and cents per square foot, breed
26 composition of flock (breed or cross-breed of flocks), detailed information
on numerous mechanical aspects of chicken housing, and numerous other
detailed cost, mortality, and operational information about disease,
transportation, labor, and other grow-out related information;
- Slaughter, processing, and further processing information, including pay for
processing plant workers, total production volume, market age of chickens
at slaughter, weight of chickens at slaughter, birds per man hour, processing
line speeds, and labor hours per pound;
- Inventory levels of chickens;

- Sales data for finished product form and type, such as type of cut (whole bird, cut-up, deboned), various packaging forms (such as bulk, tray pack, etc.), and data segmented into various categories (such as exports, retail, foodservice, etc.);
- Financial information, such as monthly operating profit per live pound, sales per live pound, and cost per live pound.

251. Agri Stats collects this data from the Producer Defendants, audits and verifies the data, and ultimately creates reports for its members with detailed statistics on nearly every operating metric within the industry.

252. Unlike information provided by the USDA, Agri Stats reports are generally not made available to: (1) producers that are not Agri Stats members; (2) companies that purchase chickens like grocery retailers and distributors; and (3) the general public.

253. While Agri Stats touts its service as “preserving confidentiality of individual companies,” this is not true. The Producer Defendants can (and do) readily determine other Defendants’ information in Agri Stats. Indeed, Defendants know that when they provide internal, confidential information to Agri Stats, the other producers can see the information other Defendants submitted, and identify the Defendant that submitted it. Some Defendants refer to the task of determining the identity of individual competitors’ data as “reverse engineering.”

254. By design, Agri Stats reports are so detailed that any reasonably informed producer can easily discern the identity of its competitors’ individual chicken complexes.

255. Agri Stats reports information in such a way that the reports clearly reveal the identity of certain participants. For example, Region 10 in Agri Stats reports (which includes Washington State) is composed solely of Defendant Foster Farms’ three complexes.³

³ Agri Stats reports include specific data for Defendants’ chicken complexes (listed by producer and location) in: North Carolina (“Sub-Region 22”); Northern Georgia and Tennessee (“Sub-Region 31”); Southern Georgia, Florida and South Carolina (“Sub-Region 32”); Alabama and Mississippi (“Sub-Regions 41 and 42”); lower Arkansas, Louisiana and Texas (“Sub-Region 51”); upper Arkansas and Missouri (“Sub-Regions 52”); Kentucky, Ohio, Minnesota, Indiana, and Wisconsin (“Sub-Region 60”); and California and the Pacific Northwest (“Region 10”).

1 256. Agri Stats thus facilitates the Producers’ access to massive amounts of each
2 other’s competitively sensitive information. Every Defendant and Producer Co-Conspirator
3 included in this Complaint is known to participate (or has participated) in Agri Stats and provides
4 and receives the detailed information described in this Complaint. Additionally, certain entities
5 acquired by Defendants have participated in Agri Stats, including Draper Valley (located in
6 Washington), Keystone, Cagle’s, Inc., BC Natural Chicken, Peterson Farms, and Townsend’s.

7 257. Agri Stats consciously committed to a common scheme to restrain and stabilize
8 the price and supply of broilers. Agri Stats operated not just as a central clearinghouse for the
9 Producer Defendants, but also purposefully collected and recirculated the Producer Defendants’
10 competitively-sensitive data in a form easily disaggregated by Producer Defendants and the
11 respective plants.

12 258. The Producer Defendants then used this information to reach agreement on
13 supply constraints to fix or raise prices, and Agri Stats and the Producer Defendants used this
14 information to enforce the agreement among competitors. Agri Stats thus knowingly provided,
15 and Defendants and their co-conspirator producers knowingly used Agri Stats as, both a method
16 to collude and a mechanism by which to enforce the conspiracy.

17 **2. Agri Stats Facilitated the Producer Defendants’ Conspiracy.**

18 259. Agri Stats’ role in the chicken industry extends far beyond the collection and
19 dissemination of competitively sensitive data. It was an active and knowing participant in, and
20 facilitator of, the Producer Defendants’ scheme.

21 260. Even if a Producer cannot individually identify a specific competitor’s data,
22 Agri Stats employees would confirm for the Producer Defendants the data for a particular
23 company at quarterly meetings, or at the many trade association meetings where Agri Stats
24 executives regularly presented. Agri Stats also responded to Defendants’ questions over phone
25 and email.
26

1 261. During the relevant period, Agri Stats offered a service to Producer Defendants
2 whereby each quarter—but often times more regularly than that—Agri Stats personnel would
3 meet with each Defendant’s employees and present both company and industry-wide data. These
4 meetings happened at both the production-plant level, where Agri Stats personnel met with
5 complex managers, and at the executive level, where they met with the leadership of the
6 Producers’ hatchery, breeder, and feed departments.

7 262. Since Agri Stats presented to Defendants regularly, discussing each Defendant’s
8 non-public, proprietary data, Agri Stats was in a position to share information between different
9 Defendants.

10 263. At these meetings, Agri Stats would lead detailed discussions about industry
11 profitability and key contributing factors, including items such as size and average age of broiler
12 breeder flock, average hatchability of eggs, mortality rates, average bird weight, feed cost, and
13 other performance factors based on data Producer Defendants provided. Agri Stats would also
14 lead discussions about the overall profit of the company and industry, including company
15 rankings, overall industry average, and top and bottom third of the industry. Agri Stats would
16 tell company executives how much the industry was over- or undersupplying the market, indicate
17 its estimate of demand, and share other information based on the data Defendants provided.

18 264. In addition, roughly every month, Agri Stats account managers for different
19 accounts would convene regular meetings where they shared information with each other about
20 their various accounts. The client managers would then relay this information to their respective
21 client-accounts.

22 265. Agri Stats’ presentations were based in part on data compilations, known as
23 “books,” specifically tailored for each Producer Defendant based on the data the Defendant has
24 submitted to Agri Stats. Agri Stats maintained at least six books for each Defendant: (1) the
25 “Live” book, with information on the Defendant’s breeders, hatchery feed and grow-out; (2) the
26 “Sales” book, with information on the Defendant’s current and year-to-date sales, which

1 provides competitors with information on the price of their product “mix” of chickens versus the
2 national average prices for the same “mix,” ranking companies from “best” to “poorest” in terms
3 of performance; (3) the “Production” book, with information on the Defendant’s yields; (4) the
4 Profit” book, with information on the Defendant’s profits and losses; (5) the “Rendering” book,
5 with information on the Defendant’s rendering facilities; and (6) the “Bottom Line” book, with
6 information on the totality of the Defendant’s sales, revenues, and costs.

7 266. Anyone at Agri Stats had the ability to pull one or more of Defendant’s books
8 and relay that information to other Defendants. Indeed, Agri Stats employees have at times
9 shipped copies of one Defendant’s books to other Defendants. Despite the impropriety and
10 illegality of this practice, when it was discovered following a routine review of shipping
11 information, no one at Agri Stats was held accountable nor were the books returned to Agri Stats.

12 267. Nearly all of the Agri Stats broiler division account managers during the relevant
13 period were former employees of one or more Producer Defendants and at least one senior
14 account manager left Agri Stats to join one of the Producers.

15 268. Agri Stats employees, including Vice President Michael Donohue and account
16 managers Paul Austin, Paul Bunting, and Dana Weatherford, would also regularly host, or
17 present at, chicken industry events and investor conferences, often citing Agri Stats data in
18 discussing market, production, and demand trends in the chicken industry. For example,
19 Agri Stats holds events known as “poultry outlook conferences.” At one such conference on
20 April 23, 2015 in Atlanta, Donohue made a presentation that included “broiler market situation
21 and outlook” as an agenda item. Agri Stats’ presentation materials are restricted from circulation
22 outside the invited participants and are not publicly available.

23 269. Donohue also helped forecast supply and demand for the chicken industry by
24 using Agri Stats data on breeder placements and inventory. At the U.S. Poultry & Egg
25 Association’s Hatchery-Breeder Clinic in January 2012, for example, he noted that chicken breast
26 prices were at a particularly high level and “[i]t’s not just cutbacks in production that have already

1 occurred but seasonal demand later this year which may set the industry up for an even better first
2 half of 2012. I hope this carries over into the latter half of 2012 based on some of the production
3 forecasts that can be made based on breeder placements and inventories.” Donohue also noted a
4 concern that “if the industry chose to do so, it could ramp up production within a 10-week period
5 of time. The industry could blow apart any recover[y] in the short term by filing up incubators
6 again.”

7 270. Many times, Agri Stats played the role of industry strategist rather than industry
8 benchmarker, with Agri Stats suggesting specifically how much broiler production should be cut
9 based on Agri Stats data. Some examples include:

- 10 • A November 2008 Agri Stats report “made statements to the effect that it
11 thought the industry was 5-percent oversupplied.”
- 12 • Donohue provided comments as part of an annual “market intelligence”
13 forum about various industry performance metrics. Additionally,
14 Donohue’s co-panelist, broiler industry insider Paul Aho, explicitly
15 suggested “[t]he market is calling for around a 5% reduction in chicken
16 production” in order for producers to achieve higher prices in 2011.
- 17 • A May 2013 article by Donohue in a publication circulated to the Producer
18 Defendants analyzes whether broiler producers could continue to achieve
19 high profit levels.

20 271. Agri Stats’ critical importance for a collusive production-restriction scheme in
21 the chicken market lies not only in the fact that it supplies data necessary to coordinate
22 production limitations and manipulate prices, but also in its market-stabilizing power.
23 Agri Stats’ detailed statistics—coupled with its regular, in-person meetings with each
24 Defendant, and routine participation in trade association events widely attended by Defendants’
25 senior executives—serve a monitoring function. Each member of Defendants’ conspiracy can
26 police each other’s production figures (which are trustworthy because they have been audited
and verified by Agri Stats’ team) for any signs of “cheating.”

27 272. A 2017 *Bloomberg News* article titled “Is the Chicken Industry Rigged? Inside
28 Agri Stats, the Poultry Business’s Secretive Info-Sharing Service,” highlighted the role

1 Agri Stats plays in Defendants’ efforts to monitor and police their conspiratorial activity. The
2 article notes that Peter Carstensen, a law professor at the University of Wisconsin and former
3 Justice Department antitrust lawyer who has studied Agri Stats while researching the modern
4 poultry industry, casts the level of plant-by-plant detail in the company’s reports as “unusual.”
5 He explains that “information-sharing services in other industries tend to deal in averaged-out
6 aggregated data—for example, insurance rates in a given state.” Such services run afoul of
7 antitrust law, he says, “when they offer projections or provide data so detailed that no competitor
8 would reasonably share it with another.” Getting detailed information is a particularly useful
9 form of collusion,” Carstensen says, because it allows co-conspirators to make sure they are all
10 following through on the agreement. “This is one of the ways you do it. You make sure that your
11 co-conspirators have the kind of information that gives them confidence—so they can trust you,
12 that you’re not cheating on them. That is what creates stability for a cartel.”

13 273. Thus, while Agri Stats purports to be a benchmarking service, its actions are that
14 of an organization heavily devoted to collectively managing supply to ensure that the industry
15 reaches maximum profitability.

16 274. Defendants rarely mention their exchange of information with one another
17 through Agri Stats. However, on certain public occasions, such as earnings or investor
18 conference calls, executives from Defendants Sanderson Farms and Tyson (two of the three
19 publicly traded Defendants) noted the important role Agri Stats data plays in the industry.

20 275. For example, Sanderson Farms’ CEO, Joe Sanderson, commented on an
21 earnings call that he “*look[s] at Agri Stats and see[s] what people are doing and not doing.*”
22 Asked later on another earnings call Sanderson said that he “*feel[s] confident that we are going*
23 *to see cutbacks*” based on Agri Stats data, Sanderson indicated: “Industry participants expected
24 that [the market would improve in June and July] and I think they wanted to carry their
25 production into June and July and see if the market would reward them for that it appears right
26

1 now . . . and then once you get past July 4 . . . I think then you will start seeing reduced egg sets.
2 Typically in my experience the first cut is not enough.”

3 276. A Tyson executive similarly noted in a December 2014 investor presentation
4 that: “The point being is that when you talk about the chicken cycle, most people will look at the
5 cyclicity. It’s very profitable right now. And we will not hit the top of the top, because within
6 the profitability segmentation right now, the most profitable segments are in fact big bird, and
7 secondly, tray pack. *We can tell that through Agri Stats.* Now at the same time, when there is
8 more poultry available and the industry may not be as profitable, we would not expect to be
9 anywhere close to what the bottom of that cycle would be.” (emphasis added).

10 **3. Information Exchanged via Agri Stats Goes Well Beyond The Scope of**
11 **Permissible Information Sharing Among Competitors.**

12 277. Defendants exchange information through Agri Stats that goes well beyond what
13 would typically take place in a marketplace, and beyond what is allowed under the antitrust laws.

14 278. In recognition of the strong potential for information sharing to harm competition,
15 the Federal Trade Commission and Department of Justice—federal antitrust enforcement
16 agencies—have jointly released guidelines for the permissible scope of information sharing on
17 competitors, including “Guidelines For Collaborations Among Competitors,” released in 2000,
18 and 1996 “Health Care Guidelines,” released in 1996 (“FTC/DOJ Guidelines”).⁴ Several aspects
19 of these Guidelines are relevant:

- 20
- 21 • The FTC/DOJ Guidelines note the high risk of antitrust issues for information sharing programs in industries with a history of collusion.
 - 22 • The more competitively sensitive the information being shared, the higher the antitrust concern for such information sharing. The weekly and monthly Agri Stats reports include dozens of categories of detailed information that in a competitive industry would be considered trade secrets. Therefore, the competitive sensitivity of Agri Stats’ reports suggests a particularly high level of antitrust concern.
- 23
24

25 _____
26 ⁴ While the statement about health care information exchange provides specific guidance for the health care industry, these policy statements and guidelines have been analyzed and extended to a variety of cases and may be used for guidance in other types of cases.

- 1 • The more recent the information being shared, the higher concern the FTC
2 and DOJ have with information collaborations. Generally, the FTC and
3 DOJ will not challenge information exchanges where the information
4 provided by participants is more than three months old. However,
5 Agri Stats reports are issued weekly and/or monthly, and its EMI reports
6 are issued daily, so as to provide nearly current production, sales, and other
7 data to Defendants. Moreover, the nature of broiler breeder flocks is that
8 they predict future broiler supply, so by sharing such information in a way
9 that permits company-by-company identification, Defendants are in fact
10 sharing future anticipated production information with one another, which
11 clearly suggests high antitrust concern under the FTC/DOJ Guidelines.
- 12 • The FTC/DOJ Guidelines also provide a “safety zone” (i.e., presumptively
13 permissible) for collaborations among competitors that account for no
14 more than 20 percent of each relevant market in which competition may
15 be affected, but Defendants accounted for approximately 90–95% of
16 broiler production during the relevant period.

17 279. Based on this language, a program like Agri Stats is far outside the scope of
18 permissible information sharing among competitors.

19 280. Professor Peter Carstensen has noted that “applied to the kind of current,
20 plant-by-plant data provided by AgriStats [sic] the [1996] guidelines would make this exchange
21 clearly unacceptable. It takes only a ‘quick look’ to see that there is no legitimate business
22 justification for the exchange of such detailed, proprietary information. The only possible use is
23 to facilitate coordinated restraint of competition among the participants.”

24 281. Agri Stats has profited by its participation in this conspiracy through payments
25 from Producer Defendants of a share of the revenues earned from supracompetitive prices
26 charged for chicken.

27 282. Defendants’ use of Agri Stats to secretly share detailed and highly confidential
28 and proprietary information about their breeder flock size and age, pricing, capacity, production,
29 and costs constitutes an unreasonable and anticompetitive restraint of trade and an unfair method
30 of competition. In a competitive market, such proprietary, competitively sensitive information
31 should be a closely guarded secret. However, due to the conspiracy, this was not the case in the
32 chicken industry.

1 283. While Agri Stats purports to serve as a “benchmarking” service, its conduct
2 serves as a conduit for sharing information that would never occur in a regular competitive
3 market. This anticompetitive mechanism helped the chicken industry reap record profits by
4 distorting and undermining the competitive process.

5 284. Thus, the Defendants’ use of Agri Stats and related conduct is: (1) evidence in
6 support of the State’s *per se* claim pertaining to the agreement to restrain supply pursuant to
7 RCW 19.86.030, as well as an agreement that (2) violates .030 under the rule of reason; and
8 (3) RCW 19.86.020 because it constitutes an unfair method of competition.

9 **C. Defendants Manipulated Chicken Price Indices by Submitting False and Inflated**
10 **Data and Pressuring Index Administrators.**

11 285. A subset of the Producer Defendants also conspired to illegally increase and
12 maintain chicken prices in violation of the CPA through the manipulation and artificial inflation
13 of prices on broiler chicken price indices such as the “Georgia Dock,” a widely used weekly
14 benchmark price compiled and published by the Georgia Department of Agriculture (GDA) and
15 the Urner Barry index, a commodity price reporting index. The Producer Defendants based their
16 long-term contract prices on these indices and then intentionally inflated those indices to illegally
17 drive up prices that were already under contract.

18 **1. Overview of the Georgia Dock, USDA Composite, Urner Barry, and**
19 **EMI Chicken Price Indices.**

20 286. As of 2016, broiler chicken prices were reported primarily by three entities:
21 Urner Barry (a commodity price reporting service), the Georgia Department of Agriculture (aka
22 “Georgia Dock,”), and the USDA. Additionally, as discussed below, Agri Stats collects detailed
23 pricing information through its subsidiary Express Markets, Inc. (EMI).

24 287. Urner Barry collects and publishes daily price information for broilers, while the
25 USDA collects and publishes broiler price information on a weekly basis in its Composite index.
26 USDA’s Composite price index is publicly available for free. Urner Barry’s chicken price

1 information is subscription-based, so all producers and many purchasers subscribe for a fee. The
2 USDA and Urner Barry's broiler price indices are purportedly based upon a system of double
3 verification, which includes telephonic and written surveys of all or nearly all chicken producers,
4 and also surveys of reported prices from purchasers such as brokers and customers. The
5 Georgia Dock price survey methodology, which contrasted with those of the USDA and
6 Urner Barry, is discussed below.

7 288. The most detailed price report is not publicly available and is produced by
8 Agri Stats and its subsidiary EMI. According to a May 2010 FarmEcon study, EMI's pricing
9 report⁵ includes pricing data on whole birds and chicken parts that is considerably more detailed
10 than the USDA, Urner Barry, or Georgia Dock reports, as it is based on actual sales invoices
11 from broiler companies.

12 289. Published prices for broilers from Urner Barry, Georgia Dock, and USDA relate
13 to the spot market for broilers, which involve one-off purchases not tied to contracts. However,
14 prices for broilers generally move with spot market prices whether they are sold under contract
15 or on the spot market. The Producer Defendants often use the spot market pricing indices in their
16 contracts with purchasers.

17 290. Statements by chicken company executives and industry experts confirm that
18 broiler sales, whether by contract or on the spot market, move with spot market pricing. For
19 instance, Sanderson Farms CEO Joe Sanderson explained in a May 2008 speech that
20 Sanderson Farms' contract sales to retail customers have prices tied to the Georgia Dock price
21 survey and Sanderson Farms' contract sales to food distributors are "based on formulas tied to
22 the Urner Barry."

23 ⁵ Agri Stats subsidiary EMI was formed around 2000 to compete with the price reporting service of
24 Urner Barry. Unlike Agri Stats reports for Defendants, EMI releases daily pricing data to both Defendants and
25 potential purchasers of broilers, though the reporting service is expensive and is not publicly available. EMI reports
26 capture all transactions by broiler producers, who automatically transmit invoice information electronically from
each transaction to EMI. The reports include all sales volume information from the previous day, including the size
of containers, type of cut, whether the product was chilled with ice or CO₂, the price, and numerous other pieces of
information.

1 291. Donnie King, Group Vice President of Refrigerated and Deli for Tyson noted at
2 the Barclays Capital Back-To-School Conference in September 2009, that “[t]he next market
3 indicator is the Georgia Dock Whole Bird Market. The retailer whole bird pricing is derived
4 from this market.”

5 292. Expert economist Dr. Colin A. Carter from the University of California, Davis
6 testified in separate litigation concerning Pilgrim’s bankruptcy in June 2011 that “internal
7 Pilgrim’s documents show that virtually all chicken products, even if they’re not sold spot, are
8 tied to the spot prices . . . 83 percent of Pilgrim’s chicken sales are reflecting the spot price within
9 a given year. So there’s only about 16 percent of their sales that are not tied to the spot market
10 over a relatively short period of time.” Dr. Carter further concluded that 92% of Pilgrim’s broiler
11 sales were tied to broiler spot market prices such as the Georgia Dock.

12 293. These statements correspond with statements made by the Producer Defendants.
13 In 2010, Pilgrim’s Pride’s testifying expert Steven N. Wiggins stated in a declaration in the
14 bankruptcy case that “[t]he chill pack/retail market consists of poultry products that are cut and
15 packaged in individual trays, according to customer specifications. The trays are labeled and
16 priced ready for retail outlets. The pricing of retail product is generally based on a formula using
17 spot prices including boneless skinless breast and leg-quarter spot market prices.”

18 294. Similarly, in its 2013 Annual Report, Sanderson noted the “Company has long
19 term contracts (one to three years) with most of its chill pack customers, and the pricing of this
20 product is based on a formula that uses the Georgia Dock whole bird price as its base.”

21 295. As a consequence of the inelasticity of supply and demand in the broiler industry
22 (discussed below) and the availability of the spot market price indices (discussed above), public
23 price increase announcements by Defendants were unnecessary. Defendants knew and intended
24 that a decrease in supply pursuant to their agreement would increase broiler spot market prices,
25 and therefore that all broiler prices would increase.
26

1 **2. Background on the Georgia Dock Pricing Index.**

2 296. The Georgia Dock Defendants are the nine producers whose price quotes went
3 into the Georgia Dock index, namely (ranked by their market share in Georgia, which dictated
4 how much weight each producer’s quote was given in compiling the Georgia Dock benchmark
5 price): Pilgrim’s Pride (approximately 35% of Georgia market share in 2016); Tyson (15%);
6 Fieldale (15%); Mar-Jac (10%); Claxton (10%); Sanderson Farms (7%); Harrison (5%); and
7 Koch and Wayne Farms (less than 2% each).

8 297. Every Wednesday, a single GDA employee, Arty Schronce, would call the same
9 individuals at the Georgia Dock Defendants to collect price quotes. The protocol required that
10 each broiler Producer provide a single price. That price was accepted without any verification of
11 actual invoices or any other form of auditing to verify accuracy. In response to a press inquiry,
12 the GDA explained its failure to audit any self-reported data from Defendants by stating, “We
13 don’t see any reason they would submit information that wasn’t truthful.”

14 298. Schronce first made a preliminary calculation based on the single price quotation
15 from each company. Then “[a]ny company that provides a whole bird quote that is more than
16 one cent above or below the initial dock price calculation will not be included in the calculation
17 for the whole bird dock price that week. Its voice is taken out of the formula and the dock price
18 is recalculated without it.” This so-called “one-cent rule” is, according to internal GDA
19 documents, meant “to shield [] one company having the ability to greatly influence the price up
20 or down.”

21 299. The price quoted by each Georgia Dock Defendant to the GDA was based on
22 2.5-to-3 pound whole chickens, but only a handful of the Georgia Dock Defendants actually
23 processed 2.5-to-3 pound birds in Georgia, so, according to internal GDA documents, the
24 Georgia Dock Defendants were “supposed to adjust their whole bird quote as if they are
25 producing that sized bird.” Once the final Georgia Dock whole bird price was calculated, the
26

1 GDA then used a formula to calculate prices for different chicken cuts and parts based on the
2 whole bird price the Georgia Dock Defendants provided to the GDA each Wednesday.

3 300. Until late 2016, the Georgia Dock pricing methodology was not publicly
4 available. Chicken buyers mistakenly believed it was based on an algorithm that reflected the
5 actual market price of chicken. Moreover, because, until August 2016, the USDA also published
6 the Georgia Dock benchmark price alongside the USDA Composite, many chicken buyers
7 erroneously believed the Georgia Dock price to be a USDA price.

8 301. In reality, there was no complicated algorithm, nor did the Georgia Dock
9 Defendants report their true prices to the GDA. The Georgia Dock price was simply whatever
10 the Georgia Dock Defendants said it was. Hypothetically, if one week the Georgia Dock price
11 was \$1.75, and the following week the Georgia Dock Defendants told the GDA that the sales
12 price of their chicken was now \$2, the Georgia Dock price was \$2—and the prices that chicken
13 purchasers paid for chicken increased commensurately.

14 302. To facilitate their manipulation of the Georgia Dock benchmark price, the
15 Georgia Dock Defendants convinced the GDA to convene a secret “Advisory Board” composed
16 of senior executives from eight of the Georgia Dock Defendants to advise the GDA on the
17 Georgia Dock price. From at least September 2012 through 2016, the Advisory Board included
18 Gus Arrendale (CEO, Fieldale Farms), Mike Welch (CEO and President, Harrison), Jerry Lane
19 (Former CEO, Claxton Poultry), Jayson Penn (EVP Sales and Operations, Pilgrim’s),
20 Pete Martin (VP of Operations, Mar-Jac), Vernon Owenby (Manager of Tyson’s facility in
21 Cumming, Georgia), Steve Clever (VP of Fresh Sales, Wayne Farms), and Dale Tolbert (VP of
22 Sales, Koch Foods).

23 303. The existence and conduct of this secret Advisory Board was not known to
24 chicken purchasers until November 2016 when it was first made public following a
25 *Washington Post* report about a September 2016 memorandum, written by Schronce, that was
26 highly critical of the Georgia Dock methodology. He wrote that he had “questions about the

1 ‘Advisory Board’ and its role over an office of a state regulatory agency that is supposed to be
2 independent. I was told I could not make any changes without clearing them with the Advisory
3 Board.” The Advisory Board gave the Georgia Dock Defendants a vehicle to discuss and
4 artificially set price quotes to ensure compliance with their price-fixing agreement to illegally
5 manipulate the pricing index.

6 304. In December 2015, the GDA began an internal review process of the
7 Georgia Dock pricing methodology, in large part, because the agency had “serious concerns”
8 about the way the index was compiled. The GDA’s internal review was not made public at the
9 time it began, and was not revealed until it was described in a series of press reports beginning
10 in November 2016. Schronce, in his September 2016 memorandum, expressed concerns that
11 some companies have a “larger, even outsized role in determining the Georgia Whole Bird Dock
12 Price,” and that “[i]n essence, they can take advantage of a high whole bird price.”

13 305. Schronce also suggested that the Georgia Dock benchmark price be eliminated
14 altogether because it was “a flawed product that is a liability to the Georgia Department of
15 Agriculture.” Schronce’s memorandum concluded by noting that he “was told the poultry
16 companies know what they are doing and all I need to do is gather and consolidate the info I am
17 provided. However, I have come to question the validity of some of the information provided.”

18 306. In 2016, high level officials within the GDA also began to raise antitrust concerns
19 regarding the Georgia Dock. For instance, a July 27, 2016, report from GDA Director of
20 Regulatory Compliance & Budget Alec Asbridge to GDA Commissioner Gary Black concluded
21 that “[t]he top 10 poultry producing companies now control over 80% of the industry output.
22 The combination of vertical integration, limited competition and lowered production periods has
23 led to steady prices that have shown to be fairly resistant to changing market conditions. These
24 factors alone illicit [sic] anti-trust review.”

25 307. That report also noted that over time, the GDA became a vehicle for Defendants
26 to “report[] a weighted average price per pound on broilers [Georgia Dock price] based off of

1 contracts that have been determined at the private level and reported without regulatory
2 oversight. The formulas to calculate weighted average prices have been determined on the
3 private level and have not been standardized since the inception of the [GDA Poultry Market
4 News division] in 1968, which there is no written record of.” Thus, it was Defendants themselves
5 who wrote the rules and formulas that make up the Georgia Dock price, not the GDA.

6 308. Director Asbridge’s July 27, 2016, report also concluded that “[t]he extent of the
7 use of the [Georgia Dock price] in contract negotiations is presently unknown but inquiries made
8 by media and other governmental entities indicate that it is utilized on a more regular basis than
9 previously expected.” In short, the GDA had been publishing the Georgia Dock price for decades,
10 but it apparently did not know the scope of reliance on the Georgia Dock price until 2016.

11 309. Significantly, a revised and highly sanitized version of the July 27, 2016 report
12 from Director Asbridge to GDA Commissioner Black was circulated internally at GDA on
13 August 5, 2016. The revised August 5 report removed references to the existence of factors in
14 the broiler industry eliciting “antitrust review” and to the fact that the Georgia Dock price was
15 reported for decades by GDA “without regulatory oversight.”

16 310. On November 3, 2016, the *New York Times* published the first account of the
17 USDA’s inquiry into the Georgia Dock, based on information received via Freedom of
18 Information Act and open records requests for internal USDA and GDA documents.

19 311. Subsequently, a November 8, 2016, article by the *Washington Post* provided
20 additional detail on the inquiry, including a comment from the USDA that “they discontinued
21 publishing the Georgia Dock price ‘when data from the source report could not be independently
22 verified.’” In the *Washington Post* article, Sanderson Farms CFO Mike Cockrell was quoted as
23 saying “the Georgia Dock has come to be a trusted reflection of the supply and demand for retail
24 stores.” In a press release cited in a *Bloomberg News* article on November 17, 2016, Tyson stated
25 that “[w]hen the Georgia Department of Agriculture asks us for pricing data, we provide accurate
26 information based on actual and recent transactions.” Sanderson Farms and Tyson continued to

1 defend the Georgia Dock price index as one that customers should trust, showing Defendants'
2 continued efforts to conceal their conspiracy.

3 312. Under pressure from the USDA, and realizing that the Georgia Dock pricing
4 methodology raised significant antitrust concerns, the GDA attempted to revise the methodology
5 in autumn 2016. After the Georgia Dock Defendants balked at the GDA's new methodology—
6 which required them to verify and attest to the accuracy of their price quotes—the GDA halted
7 the Georgia Dock benchmark price index altogether because it did not receive sufficient price
8 quotes to compile the index. The last Georgia Dock benchmark price was published by the GDA
9 on November 23, 2016.

10 **3. Georgia Dock Prices Diverged from the USDA Composite and Uner Barry**
11 **Price Indices Beginning in 2013.**

12 313. Beginning in early 2013 and continuing until November 2016, the Georgia Dock
13 Defendants agreed among themselves to submit artificially high and identical, or near-identical,
14 prices to the GDA, which allowed them to continually increase, and successfully stabilize,
15 chicken prices contractually tied to the Georgia Dock benchmark price index.

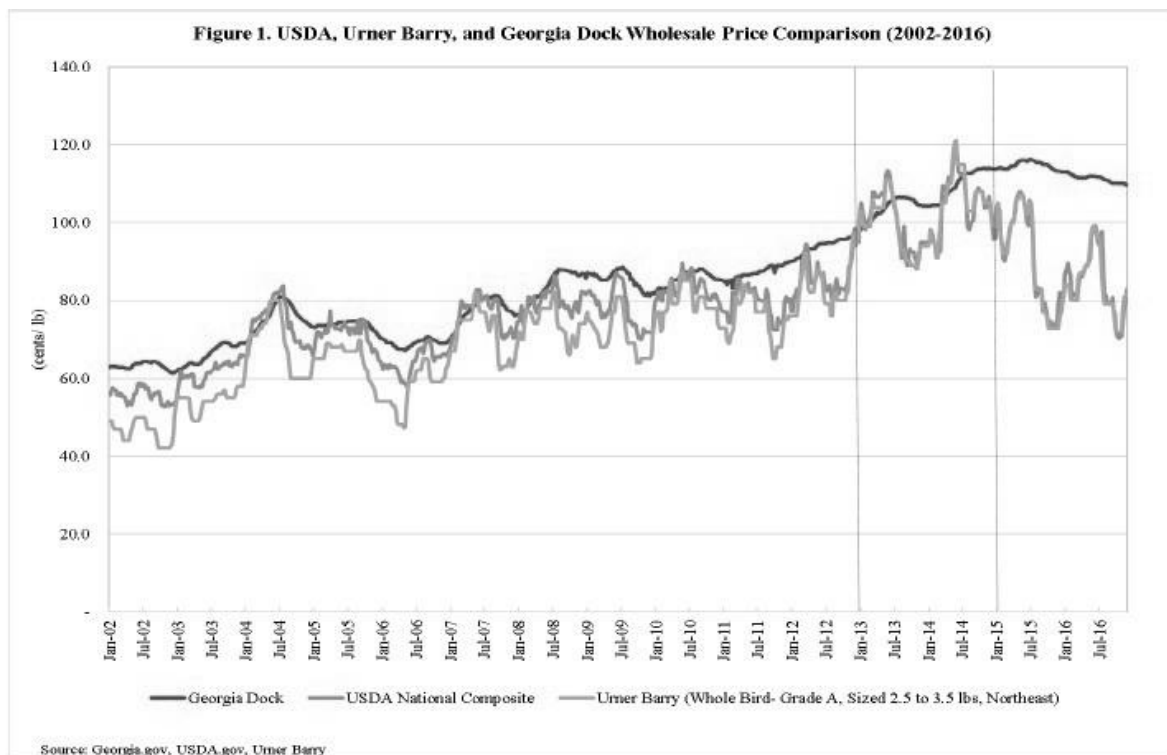
16 314. If the Georgia Dock Defendants believed that the pricing index was inaccurate,
17 they each had the ability to request to re-evaluate the weekly quote. This occurred once in
18 May 2014 when one of the Georgia Dock Defendants asked for a re-evaluation of the weekly
19 Georgia Dock quote.

20 315. For the next 2.5 years, the Georgia Dock Defendants did not request a requote
21 despite the fact that the Dock was significantly elevated over the other indices. The end result
22 was higher prices for chicken purchasers. By refusing to request a requote, the producers were
23 agreeing that their quotes and the index accurately reflected the value of the market for
24 2.5-3 pound broilers.

25 316. Historically, the Georgia Dock benchmark price was highly correlated to the
26 prices in the USDA Composite and Uner Barry indices; the movement (*i.e.*, volatility) of the

1 Georgia Dock price mirrored the patterns of the other two indices (e.g., prices go up or down
2 depending on market forces, such as supply and demand). This changed in 2013, when the price
3 volatility that had marked the Georgia Dock (and which still marks the other two indices) largely
4 disappeared. Georgia Dock prices mostly stabilized, and grew substantially higher, while prices
5 in the other two indices remained volatile.

6 317. Starting in 2013, monthly price volatility in the Georgia Dock markedly
7 decreased, particularly with respect to downward price movements (i.e., when prices dropped,
8 they dropped far less drastically than they had prior to 2013). This near-disappearance of price
9 volatility was unique to the Georgia Dock. Both of the other price indices stayed volatile while
10 the Georgia Dock remained stable, as reflected in the following graph, which compares prices
11 of the various indices both before and during the relevant period:



25 318. The stability and level of Georgia Dock prices from 2013 through November 2016
26 was the direct result of the Georgia Dock participants' conduct. Because many chicken contracts

1 were tied to Georgia Dock prices, this anticompetitive conduct resulted in chicken purchasers
2 paying higher prices.⁶ The purchasers, in turn, passed on these costs to consumers, who
3 ultimately paid inflated prices for broiler chicken.

4 **4. Manipulation of the Urner Barry Pricing Index.**

5 319. Urner Barry prices are intended to be based on a system of double verification,
6 which includes telephonic and written surveys of all or nearly all broiler producers, along with
7 verification of reported prices from broiler purchasers such as brokers and customers.

8 320. However, Defendants understood and took advantage of the Urner Barry's
9 susceptibility to manipulation, with some success in affecting the Urner Barry price index as
10 well.

11 321. Michael ("Mike") O'Shaughnessy, senior vice president of Urner Barry, was the
12 employee in charge of surveying chicken industry prices and updating the Urner Barry pricing
13 index.

14 322. With knowledge of O'Shaughnessy's susceptibility to influence, and his control
15 over Urner Barry's prices, certain Defendants routinely, consistently, and collectively pressured
16 Urner Barry to raise prices.

17 323. O'Shaughnessy actively and openly discussed broiler production with
18 Defendants, and Defendants used Urner Barry to facilitate communications among themselves.

19 324. Defendants improperly kept Urner Barry prices from falling when they should
20 have. And when Urner Barry prices increased, Defendants linked the price increase to their
21 actions.

22 325. While the Producer Defendants were not as successful at eradicating price
23 volatility in the Urner Barry as they were with the Georgia Dock—because they did not have
24

25 ⁶ As discussed below, the Producer Defendants' actions increased prices across all indices. However, they
26 were not as successful at eradicating price volatility in the other indices because they did not have sole control over price inputs.

1 sole control over price inputs with Urner Barry—their collective actions increased prices across
2 all indices.

3 326. Rising prices and price quotes inflated by coordinated pressure benefited each of
4 the Producer Defendants across each index, leading to higher broiler prices for purchasers.

5 **D. Defendants Rigged Bids and Conspired on Other Price-Related Terms for Chicken**
6 **Purchasers.**

7 327. A subset of Defendants—including at least Pilgrim’s Pride, Claxton, Tyson,
8 George’s, Case, Koch, Perdue, and Mar-Jac (including Marshall Durbin)—also violated the CPA
9 by conspiring to rig bids for the sale of chicken to major purchasers. These Defendants are
10 referred as to the Bid Rigging Defendants. The Bid Rigging Defendants communicated with one
11 another on bids, prices, and price-related terms for broiler chicken products sold in the United
12 States and in Washington with the shared understanding that the purpose of the communications
13 was to rig bids, and to fix, maintain, stabilize, and raise prices for broiler chicken products sold
14 in the United States and in Washington; and to monitor bids submitted by suppliers and
15 co-conspirators for broiler chicken products.

16 328. The bid-rigging conspiracy spanned from at least August 2011 to at least
17 early 2019 and involved a number of major chicken purchasers. It was further part of the
18 conspiracy that Defendants, together with their co-conspirators, sold and accepted payment for
19 broiler chicken products that are the subject of this Complaint in the United States through until
20 at least early 2019.

21 329. In an act of fraudulent concealment, the Defendants concealed their conspiracy
22 and acted to protect the purpose and effectiveness of the conspiracy.

23 330. The anticompetitive conduct of Defendants and their co-conspirators had the
24 following effects, among others: (a) price competition has been restrained or eliminated for
25 broiler chicken sold in the United States and Washington; (b) the prices of broiler chicken sold
26 in the United States and Washington have been fixed, raised, maintained, or stabilized at

1 artificially inflated levels; and (c) purchasers of broiler chicken paid artificially inflated prices,
2 all in violation of the CPA.

3 **1. Background on Defendants' Bid-Rigging Conspiracy.**

4 331. During the relevant time period, the Producer Defendants produced broiler
5 chicken products in the United States for sale, either directly or indirectly, such as through a
6 distributor and distribution center to restaurants, grocery retailers, and others.

7 332. Restaurants, grocery retailers, and others who purchased large volumes of broiler
8 chicken products, generally receive bids from or negotiated prices and other price-related terms,
9 including discount levels, with suppliers directly or indirectly, in the case of some fast-food
10 restaurants, through a centralized buying cooperative.

11 333. Some purchasers of broiler chicken products use a "cost-plus" pricing model for
12 8-piece bone-in broiler chicken products that vary month-to-month or period-to-period
13 depending on the price of chicken feed that also provided the suppliers with a per-pound margin
14 and an adjustment that was effectively an additional per-pound margin. An 8-piece
15 chicken-on-the-bone ("COB") consists of two breasts, two wings, two thighs, and
16 two drumsticks.

17 334. The price of an 8-piece COB often served as a base price for other broiler chicken
18 products. Dark meat was often priced at a certain number of cents per pound less than, or "back"
19 from, the price per pound of 8-piece COB.

20 335. Prices for broiler chicken products were sometimes tied to a market index, such
21 as the Urner Barry Index. For example, cases of wings sold in bulk were sometimes priced at the
22 Urner Barry per-pound price and cases of pre-counted wings were sometimes priced at the
23 Urner Barry per-pound price plus a specified number of cents per pound.

24 336. Bidding and negotiations usually occurred annually towards the end of the
25 calendar year and established prices and other price-related terms, including discount levels, for
26 the following calendar year. In some instances, however, bidding and negotiation toward the end

1 of the calendar year established prices and other price-related terms, including discount levels,
2 for multiple calendar years. In yet other instances, bidding and negotiations occurred throughout
3 the year and sometimes established prices and other price-related terms, including promotional
4 discounts, for discrete periods of time.

5 337. Bidding and negotiations often involved weekly volume commitments between
6 suppliers and their respective customers. If, in a given week, a supplier could not meet its volume
7 commitment to a customer, the supplier could often buy broiler chicken products from another
8 supplier to cover the shortfall. Alternatively, the supplier could “short” the customer by not
9 fulfilling its volume commitment that week.

10 338. Distributors and customers who purchased broiler chicken products from the
11 producers often had lines of credit with the producers. Often a negotiable aspect of a line of
12 credit was the term, i.e., the number of days for a distributor/customer to pay a producer for
13 broiler chicken products purchased using a line of credit. A line-of-credit term is related to price.
14 A longer term is generally more favorable to the distributor/customer, whereas a shorter term is
15 generally more favorable to the producer.

16 **2. DOJ’s Criminal Investigation of Defendants’ Bid-Rigging Conspiracy.**

17 339. In or around 2019, the DOJ began a criminal investigation into various Producer
18 Defendants and their executives and managers.

19 340. Between April and September 2019, the DOJ served Defendants Tyson,
20 Pilgrim’s Pride, and Sanderson Farms with subpoenas concerning this criminal investigation.
21 Perdue also acknowledged receiving a grand jury subpoena related to the DOJ’s investigation.
22 Other Producer Defendants also received grand jury subpoenas, but did not acknowledge so
23 publicly.

24 341. In June 2019, the DOJ sought a discovery stay in the private plaintiffs’ chicken
25 price-fixing suit in the Northern District of Illinois to preserve the integrity of its ongoing grand
26 jury investigation.

1 342. In June 2020, a federal grand jury in the District of Colorado returned indictments
2 against Pilgrim’s Pride executives Jayson Penn and Roger Austin and Claxton executives
3 Mikell Fries and Scott Brady.

4 343. About a week after the indictments, Tyson announced that it was cooperating
5 with the Department of Justice as part of its application for leniency under the DOJ’s Corporate
6 Leniency Program.

7 344. Early the following month, in July 2020, the DOJ filed its Initial Statement of
8 Organizational Victims Pursuant to Federal Rule of Criminal Procedure 12.4(a)(2). It identified
9 the following companies as organizational victims of Defendants’ conspiracy: Golden Corral,
10 KFC Corporation, The Kroger Company, Popeyes Louisiana Kitchen, Inc., Restaurant Supply
11 Chain Solutions, Supply Management Services, and Walmart Inc.

12 345. In early October 2020, a grand jury returned a superseding indictment for
13 six additional executives and managers—William Kantola (Koch Foods), Timothy Mulrenin
14 (Tyson Foods and later Perdue), Gregory Little (Pilgrim’s Pride), Ric Blake (George’s), and
15 Gary Brian Roberts (Tyson and later Case Foods).

16 346. One month later, the DOJ filed a First Amended Statement of Organizational
17 Victims Pursuant to Federal Rule of Criminal Procedure 12.4(a)(2). In the filing, the DOJ noted
18 that “[a]ntitrust conspiracies often affect a large number of corporate victims at various levels of
19 the downstream market. The instant case is no exception. Hundreds—if not thousands—of
20 companies directly purchased broiler chicken products from the conspirators in this case during
21 the conspiracy period. Even with the exercise of due diligence, the United States could not
22 inform the Court of the identity and ownership of all these potential corporate victims.” The DOJ
23 also identified four additional organizational victims: Church’s Chicken, Chick-fil-A, Sysco
24 Foods, and J.S. Foods.

1 347. The following winter, in February 2021, Pilgrim’s Pride pleaded guilty to
2 criminal antitrust violations. As a result of its unlawful conduct, Pilgrim’s Pride paid a
3 \$108 million dollar fine.

4 348. Three months later, in May 2021, a grand jury returned an indictment against
5 Claxton Poultry for criminal antitrust violations.

6 349. Then, in July 2021, a grand jury returned an indictment against Koch Foods for
7 participating in a nationwide conspiracy to fix prices and rig bids for broiler chicken products.
8 Separately, a grand jury returned an indictment charging four additional executives from
9 Pilgrim’s Pride for their roles in the same conspiracy: Jason McGuire, Timothy Stiller,
10 Wesley Scott Tucker, and Justin Gay.

11 350. In September 2021, at a hearing on the admissibility of out-of-court
12 co-conspirator statements, an FBI Special Agent testified to the existence and duration of the
13 conspiracy. After the hearing, Judge Philip Brimmer of the District of Colorado ordered that
14 hundreds of co-conspirator statements would be admitted at trial because the Department of
15 Justice had provided sufficient evidence of a conspiracy to rig bids and fix prices for chicken
16 sales. The court identified 31 different employees involved in the conspiracy, including
17 executives and managers from Pilgrim’s Pride, Claxton, Tyson, Koch, George’s, Case, Perdue,
18 and Mar-Jac. The court found by a “preponderance of the evidence . . . the government has
19 shown that a conspiracy to rig bids and fix prices for broiler chicken producers in the United
20 States did exist and that such conspiracy operated between at least August 2011 and early 2019.”

21 351. The DOJ’s filings in the bid-rigging case and the private civil litigation suggest
22 that their investigation is ongoing and that additional individuals or companies may be charged.

23 **3. Conduct at Issue in Defendants’ Bid-Rigging Conspiracy.**

24 352. The Defendants’ bid-rigging conspiracy involved some of the largest chicken
25 purchasers in the United States.

1 353. Certain Defendants, including Pilgrim’s Pride, Claxton, Tyson, George’s, Case,
2 Koch, Perdue, and Mar-Jac (including Marshall Durbin), conspired with one another on the bid
3 process, including engaging in phone calls and text messages in which they discussed pricing,
4 future bids, and competitor bids.

5 354. These Bid Rigging Defendants conspired to raise and/or stabilize the price of
6 broiler chicken sold to purchasers, including, among other companies: Kentucky Fried Chicken
7 (KFC) and its related purchasing cooperative Restaurant Supply Chain Solutions;
8 Popeye’s Chicken and its related purchasing cooperative Supply Management Services;
9 Church’s Chicken; Chick-fil-A; Golden Corral; and Sysco. These large chicken purchasers
10 market products for sale, either directly or indirectly, to consumers in Washington.

11 355. Defendants’ bid-rigging conduct took multiple forms. Defendants used their
12 network of suppliers and co-conspirators in order to:

- 13 a. Reach agreements and understandings to submit aligned—though not
14 necessarily identical—bids and to offer aligned—though not necessarily
15 identical—prices, and price-related terms, including discount levels for
16 broiler chicken products sold in the United States;
- 17 b. Participate in conversations and communications relating to non-public
18 information such as bids, prices, and price-related terms, including discount
19 levels, for broiler chicken products sold in the United States, with the shared
20 understanding that the purpose of the conversations and communications was
21 to rig bids, and to fix, maintain, stabilize, and raise prices and other
22 price-related terms, including discount levels, for broiler chicken products
23 sold in the United States; and
- 24 c. Monitor bids submitted by, and prices and price-related terms, including
25 discount levels, offered by suppliers and co-conspirators for broiler chicken
26 products sold in the United States.

27 356. One email exchange between two Pilgrim’s employees included in the federal
28 criminal indictments offers an example of how the companies coordinated their bids. In an email
29 chain involving Pilgrim’s Executive Vice President (and later CEO) Jayson Penn, a Pilgrim’s
30 employee wrote, “I received a call today from a friendly competitor telling me it’s all over the
31 market that Pilgrim’s is taking contract pricing up. They thanked us for taking the lead and told

1 me that contrary to what we might hear regarding their company, they are following as are others.
2 Courage . . . keep it up guys.”

3 357. “Nice, rising tide and all that good stuff,” another employee responded.

4 358. The original employee went on to name the “friendly competitor” (George’s) and
5 detail the outcome of a “big meeting” among the competitor’s executives, stating that, “They
6 don’t want to lose any opportunity to move their pricing up.”

7 359. Penn later forwarded the email exchange to Pilgrim’s Sales Manager
8 Jason McGuire, adding, “FYI. Do not fwd. not exactly a legal conversation.”

9 360. Some of the incidents of bid-rigging that have been discovered include:

10 361. Defendant Pilgrim’s Pride pled guilty to participating in a conspiracy with at least
11 one competitor engaged in the production and sale of broiler chicken products to suppress and
12 eliminate competition by rigging bids and fixing prices, with regard to customer KFC, including:
13 (1) Pilgrim’s contract for the supply to KFC of dark meat and wings in 2013; and (2) Pilgrim’s
14 contract for the supply to KFC of 8-piece chicken on the bone in 2015 through 2017. Pilgrim’s
15 affected sales of broiler chicken products totaled at least \$361 million.

16 362. Based on the evidence that has been unsealed by the grand jury, at least seven
17 companies colluded to rig bids on broiler chicken products sold to KFC during the relevant
18 period, including Pilgrim’s Pride (plead guilty), Tyson (in the DOJ’s leniency program), Claxton
19 (indicted), and Koch (indicted). Additionally, employees of George’s, Mar-Jac, and Case have
20 either been indicted or identified as unindicted co-conspirators by the DOJ.

21 363. The grand jury indictments identify that the various producers conspired to rig
22 bids to KFC, including: (1) The bid that occurred in late 2012 to supply KFC with dark meat,
23 wings, and 8-piece COB supply for calendar year 2013; (2) The bid that occurred in March 2013
24 to supply KFC with a reduced-weight 8-piece COB product; (3) The bid that occurred in late
25 2013 to supply KFC with dark meat for 2014; (4) The bid process that began in summer of 2014
26 to provide 8-piece COB with prices to take effect in approximately 2015; (6) The bid process

1 that began in summer 2014 to sign a cost-plus pricing agreement for calendar year 2015; and
2 (7) The bid process that began in January 2017 to supply broiler chicken to KFC in 2018.

3 364. Defendants also conspired to increase prices and rig bids on a series of other
4 major chicken purchasers.

5 365. In response to new requirements in 2013 from purchaser Church's Chicken that
6 distributors maintain inventories to satisfy demand in the event of a supply disruption,
7 Defendants—including Tyson, Pilgrim's Pride, and Koch Foods—made numerous phone calls
8 with each other and reached an agreement that freezer charges would be imposed on Church's.

9 366. Likewise, in response to new quality assurance requirements in 2013 by
10 Church's Chicken that required suppliers to take additional steps to ensure that broiler chicken
11 products met enhanced standards, Defendants—including Tyson, Koch, and Pilgrim's Pride—
12 exchanged non-public pricing information with one another, and agreed to require Church's to
13 pay a QA-audit related cost.

14 367. In February 2014, purchaser Chick-fil-A announced plans to serve antibiotic-free
15 broiler chicken meat at all of its restaurants within five years. In response to this announcement,
16 Pilgrim's Pride, Tyson, Claxton, and Perdue exchanged a series of communications related to
17 these new requirements, including discussing upcharges that they would impose on Chick-fil-A
18 to meet these new requirements.

19 368. In the fall of 2014, purchaser Golden Corral was negotiating with chicken
20 suppliers for its 2015 purchasers. As part of this process, Claxton and Pilgrim's Pride
21 communicated with competitors, including Tyson and Mar-Jac, regarding pricing and bids for
22 Golden Corral.

23 369. On March 25, 2015, purchaser Popeye's asked if it could receive a discount for a
24 promotion in September 2015. After making this request, Defendants, including Tyson,
25 George's, Claxton, and Pilgrim's Pride made a series of phone calls and text messages related to
26 the discount. Defendants ultimately all offered the same discount for the promotion.

1 370. In May 2016, purchaser Sysco contacted Pilgrim’s Pride and Koch to negotiate
2 longer terms for those Defendants’ respective lines of credit. On May 19, 2016, Pilgrim’s Pride
3 and Koch communicated with one another regarding the credit term and agreed not to provide a
4 65-day line of credit to Sysco. They further agreed that they would let each other know if
5 anything changed.

6 371. These are just some examples of bid-rigging among the Defendants.

7 372. The anticompetitive conduct of these Defendants and their co-conspirators
8 resulted in increased and artificially stabilized price levels for broiler chicken sold to major
9 chicken purchasers. This had the effect of increasing prices to downstream indirect purchasers
10 in Washington.

11 **E. The Broiler Market was Conducive to Cartelization.**

12 373. The broiler chicken has many characteristics that render the industry susceptible
13 to collusion and bolster the plausibility of the conspiracies alleged in this Complaint. These
14 include: (1) industry concentration; (2) inelastic demand at competitive prices; (3) commodity
15 nature of the product; (4) no significant substitutes (5) high barriers to entry; (6) many
16 opportunities to collude; (7) similar cost structures and working collaboratively to share cost
17 information; and (8) a history of government investigations and collusive actions.

18 **1. Concentrated Market with Vertically-Integrated Producers.**

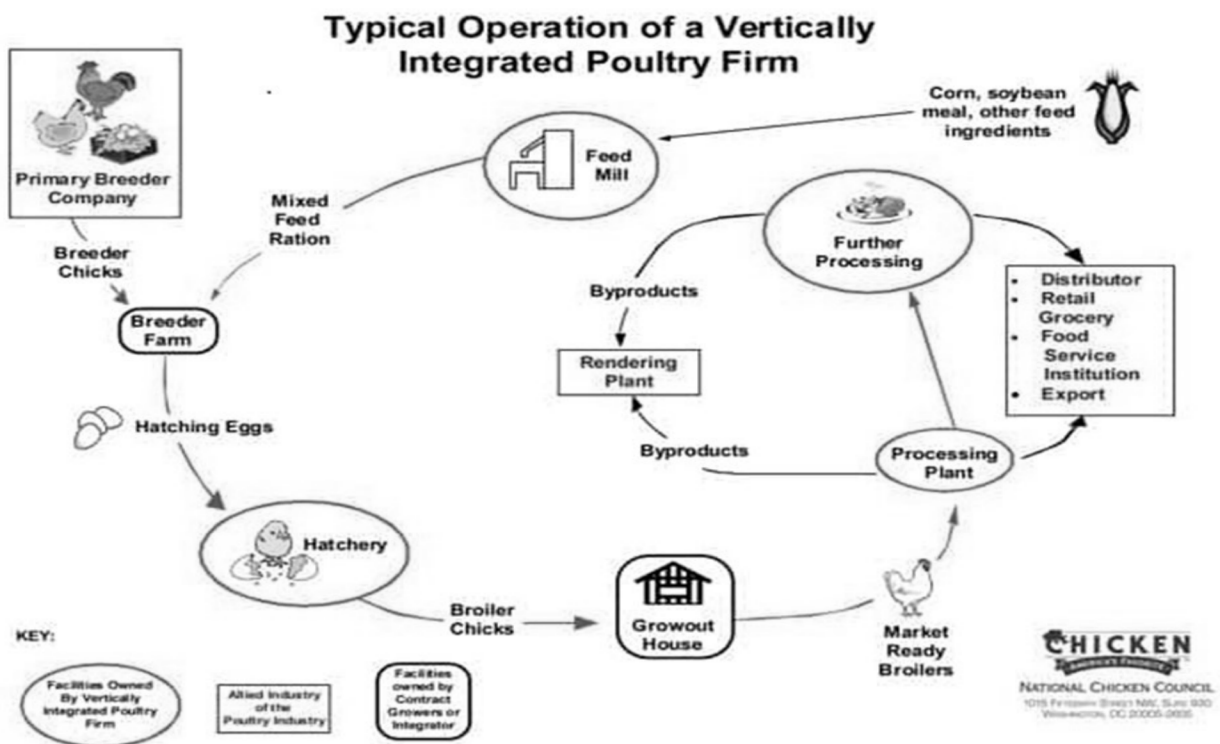
19 374. A concentrated market, such as the U.S. chicken market, facilitates the operation
20 of a conspiracy because it is easier to coordinate behavior among possible co-conspirators and
21 more difficult for customers to avoid the effects of collusive behavior. During the relevant
22 period, Defendants and their co-conspirators collectively controlled about 90–95% of the market
23 for broiler chicken in the United States.

24 375. According to a November 2013 USDA report, “[d]uring the past 16 years, firms
25 in the broiler industry continued to decrease in number and grow in size, thereby gaining further
26 economies of scale and scope in processing and marketing. According to the National Chicken

1 Council, 55 federally inspected broiler companies operated in 1995, compared with
 2 41 companies in 2010.” By 2014, there were only 35 such companies, and by 2019, there were
 3 approximately 30.

4 376. The chicken industry is almost entirely vertically integrated, with producers
 5 (sometimes known as “integrators”) owning, or tightly controlling, each of the six stages of the
 6 supply chain: (1) breeding; (2) hatching; (3) chick-rearing/feeding; (4) slaughtering mature birds;
 7 (5) processing, and (6) selling. At the top of the supply chain are “breeder flocks,” which include
 8 the hens that lay the eggs that, when hatched, become chickens that are slaughtered for meat
 9 consumption.

10 377. The graphic below from the National Chicken Council identifies the various
 11 steps that occur as part of vertical integration in the chicken production process, which highlight
 12 how the Producer Defendants have control throughout this process:



1 **2. Inelastic Demand at Competitive Prices.**

2 378. Inelastic demand means that price increases have limited effect on quantities
3 sold. In order for co-conspirators to profit from raising prices above competitive levels, demand
4 must be inelastic at competitive prices, which allows cartel members to raise prices without
5 seeing a drop in sales revenue.

6 379. Industry studies show that the U.S. chicken market has become increasingly
7 inelastic over the past 40 years.

8 380. Vertical coordination allows integrators to manage excess capacity to manage
9 price. Integrators can minimize the effect on producers by increasing the time between collection
10 and delivery of birds or reducing the number of flocks per year. Because of the inelastic nature
11 of the supply and demand, a reduction in supply will produce an outcome more preferable to the
12 industry than maintaining supply with a lower price.

13 **3. Commodity Nature of the Product.**

14 381. As described above, broiler chicken is a commodity product with little or no
15 product differentiation based on the processors.

16 382. Generally, when a product is characterized as a commodity, competition is based
17 principally on price as opposed to other attributes, such as product quality or customer service.

18 383. Due to the lack of product differentiation, chicken producers primarily compete
19 on price. This makes it easier to implement a price-fixing scheme. Also, the supply decisions of
20 each chicken producer have a significant impact on the market price for chickens. While an
21 individual producer has an incentive to increase production to maximize profits, any increased
22 production will ultimately reduce the profitability of the industry as a whole. Thus, the
23 commodity nature of broiler chicken in the industry provides producers with the incentive to
24 agree to reduce overall supply.
25
26

1 **4. No Significant Substitutes.**

2 384. Broilers are a staple food product and other meat products such as beef or pork
3 are not generally considered to be reasonable substitutes for broiler chicken, either at the
4 wholesale or retail levels.

5 385. Studies have found that the cross elasticity of demand between broilers, beef,
6 and pork is either negative or statistically insignificant, meaning that pork and beef are
7 complements to broilers, not substitutes.

8 386. The historically high spread between the price of pork and beef versus broilers
9 since 2008 has also reduced any possibility of substitution of broilers with pork or beef.

10 **5. High Barriers to Entry.**

11 387. The market for chicken for consumption is characterized by high barriers to entry
12 and a history of interdependent price and supply. The intended effect of a conspiracy to fix prices,
13 either explicitly or through restricting supply, is to generate higher profits for the participants.
14 The normal impact of the artificially higher profits is to draw other profit seeking companies into
15 the market. In industries with substantial barriers to entry, such as the U.S. chicken market,
16 however, companies—such as the Producer Defendants—are able to raise prices above
17 competitive levels and earn above-normal levels of profits.

18 388. The existence of high entry barriers in the U.S. chicken market is demonstrated
19 by the trend of increasing consolidation, with larger vertically integrated companies increasing
20 their control over the industry. There are high fixed costs of establishing a broiler complex and
21 a distribution network capable of delivering broilers to grocery chains or wholesalers for delivery
22 to commercial eateries and end consumers. Beyond the issue of vertical integration, there is a
23 wide range of government food safety, worker safety, and environmental regulations that must
24 be addressed by any new entrant into the chicken market.

25 389. The Producer Defendants themselves acknowledge the substantial costs of
26 entering the market and view it as important that new entrants not be able to purchase closed

1 facilities. For example, when the State of Louisiana pressured Pilgrim's to sell its closed
2 Farmerville broiler complex, Pilgrim's executives expressed concern about any state assistance
3 to the buyer to purchase the complex because such assistance could substantially reduce the
4 buyer's cost basis, which could then permit the buyer to flood the market with low-cost broilers.

5 390. The price of construction of a new integrated broiler processing complex able to
6 compete on price with current integrated producers is relatively high. Even for a current market
7 participant, such as the third-largest producer Sanderson Farms, construction of a new broiler
8 complex in 2010 was estimated to cost \$100–\$125 million. However, these costs fail to account
9 for other hurdles to new market participants, discussed above.

10 391. The barriers to entry in the broiler industry have proved insurmountable for
11 potential new market entrants. No company has created a new poultry company from scratch in
12 decades. When one foreign meat company (a Ukrainian company, Omtron) tried to enter the
13 U.S. market in February 2011 by buying a portion of the assets of bankrupt broiler producer
14 Townsend's, Omtron invested \$35 million to improve the facility's processing operations, but
15 went bankrupt only five months after making the purchase.

16 392. Poultry industry expert C. Robert Taylor wrote, "Bigness of integrators and
17 retail food corporations create barriers to entry for new processors. . . . The barriers may be so
18 high, in fact, that a John Tyson or a Bo Pilgrim, or Arthur and Frank Purdue, or Lloyd Peterson,
19 all of who are pioneers of the vertically integrated industry and who began with backyard sized
20 operations, would likely not be successful if they were to begin today."

21 393. With such barriers to entry, companies that have the available resources and
22 significant start-up capital to enter the market and benefit from economies of scale are able to
23 reduce their average cost by producing more. Companies already in the market—such as the
24 Producer Defendants—are motivated to exclude other companies from the market to maintain
25 their coordinated supply restriction conspiracy, and ultimately keep prices at artificially inflated
26 levels.

1 **6. Opportunities to Collude.**

2 394. The chicken market is replete with opportunities to collude, including through
3 trade associations and investor conferences, strategic alliances and joint ventures, direct
4 purchases from competitors, and other business dealings.

5 **a. Trade Associations and Investor Conferences.**

6 395. Defendants’ executives regularly meet and communicate with each other
7 through numerous trade association events and conferences. The existence of industry trade
8 associations makes a market more susceptible to collusive behavior because they provide an
9 opportunity for co-conspirators to exchange sensitive company information, such as pricing and
10 market allocation. Industry trade associations also provide mechanisms for sharing information,
11 and monitoring, deterring, detecting and punishing cheating.

12 396. Most of the Producers are members of the National Chicken Council (NCC), a
13 trade association whose primary purpose is to lobby for the broiler chicken industry in
14 Washington, D.C. The NCC’s membership includes representatives from the Producers
15 responsible for 95% of broiler production in the United States.

16 397. The NCC has three annual board meetings attended by Defendants’ senior
17 executives, including a January meeting held along with the International Poultry Expo, a
18 mid-year Board of Directors Meeting, and the NCC Annual meeting in October. The NCC also
19 has on occasion held a “Day in Washington” meeting attended by the executive committee.

20 398. Generally, executives from the Producers arrive the night before an NCC
21 meeting and socialize with their colleagues, then have small private dinners with one or more of
22 their competitors’ CEOs or top executives. The next day, formal NCC meetings are held, and
23 executives from Agri Stats and other allied industry organizations make presentations at the
24 meeting. A formal lunch is held during the meeting and provides CEOs and top executives an
25 opportunity to talk casually with their competitors. Following the meeting, Defendants’
26 executives often meet, socialize, and golf, hunt, or fish together.

1 399. Executives from all but one of the Producer Defendants have served as NCC
2 officers and committee members over the years.

3 400. Agri Stats' subsidiary Express Markets, Inc. ("EMI") hosted regular "poultry
4 outlook conferences" for Producers, including an April 21, 2016 conference in Atlanta, Georgia.
5 The conference would typically include a golf outing and evening reception followed by
6 presentations the following day, such as presentations on "Broiler: Market Situation & Outlook"
7 by EMI Vice President Sue Trudell and "Challenges in Chicken Production" by Agri Stats Vice
8 President Mike Donohue.

9 401. Producers also have the opportunity to collude through U.S. Poultry & Egg
10 Export Council ("USAPEEC"), which involves quarterly meetings with executives from all or
11 nearly all Defendants, the U.S. Poultry & Egg Association ("U.S. Poultry"), which holds regular
12 quarterly meetings, the Poultry Federation, which holds regular meetings involving executives
13 from Pilgrim's and Tyson and others, and the International Poultry Council, of which Tyson,
14 Sanderson Farms, and Pilgrim's are individual members alongside the NCC, USAPEEC, and
15 U.S. Poultry as organizational members.

16 402. Defendants' CEOs and senior executives also participate in numerous investor
17 conferences organized by Wall Street analysts, providing further opportunities to meet and
18 communicate with one another. Such conferences are held on an annual and/or ad hoc basis
19 including, but not limited to, the Goldman Sachs Global Staples Forum (held every May), Bank
20 of America Merrill Lynch Global Agriculture Conference (held every February), BMO Capital
21 Markets Annual Ag & Protein Conference (held every May), Urner Barry Annual Executive
22 Conference and Marketing Seminar (held every April or May), and JP Morgan Basic Materials
23 Conference (held every June).

24 403. At these events, Defendants frequently discussed competitively sensitive
25 information about the broiler industry and used these opportunities to facilitate the conspiracy.
26

1 **b. Strategic Alliances and Joint Ventures.**

2 404. The Producer Defendants facilitated the sharing of future plans for the slaughter
3 of “fowl,” including spent hens, through so-called “strategic alliances” and joint ventures, which
4 also gave the Defendants additional opportunities to implement the supply-restriction
5 mechanism of their conspiracy, and achieve additional profits, by sending “spent hens,” which
6 are breeders that can no longer lay eggs, as well as roosters to so-called “hen houses” for
7 slaughter for meat consumption.

8 405. Unlike the broilers produced by the Producer Defendants, hen houses had the
9 capacity and equipment necessary to slaughter larger birds—often called “heavy fowl,” which
10 are spent hens and roosters weighing up to eight pounds. As a result, hen houses became a critical
11 part of the Defendants’ supply-restriction mechanism of their conspiracy by allowing them to
12 send their breeder hens to slaughter at younger and younger ages, further reducing supply at the
13 very top of the supply chain. Sending breeder hens to hen houses for slaughter while they were
14 still capable of laying eggs—that is, before 65 weeks of age—allowed the Defendants to use
15 information provided by both Agri Stats (which tracked average slaughter age, as detailed above)
16 and the hen houses (which tracked and disseminated similar information to their members) to
17 project their own supply and also gain insight into the supply reductions of their ostensible
18 competitors who were also members of such “strategic alliances.”

19 406. The Producer Defendants conspired through at least two such entities,
20 Co-Conspirator Tip Top Poultry and Co-Conspirator Southern Hens.

21 407. The Tip Top Alliance was formed in 2009 by Defendants Amick, Case Foods,
22 Fieldale, Raeford, Keystone, Mar-Jac, Mountaire, Perdue, Harrison, and Wayne Farms, who
23 were later joined by Pilgrim’s and Simmons. Members of the Tip Top Alliance held quarterly
24 conference calls, and met in person at least once a year during the annual International
25 Chickens Conference in Atlanta. Brad Respess, the president of Tip Top, regularly sent emails,
26

1 as well as quarterly performance reports, to all members of the alliance, and Respress also
2 regularly received industry information from Agri Stats' Mike Donahue.

3 408. Rendering hens for non-food use has next to no value compared to slaughtering
4 them for food, which means that the Tip Top alliance members sacrificed valuable birds in order
5 to artificially limit supply by sending breeder hens to slaughter far earlier than they would
6 otherwise have done in a competitive market.

7 409. Communications between Respress and alliance members allowed each alliance
8 member to know that its fellow alliance members were, consistent with the supply restriction
9 mechanism of their conspiracy, cutting broiler production by increasing their shipments of
10 younger and younger breeder hens to Tip Top, thus taking supply out of the market at the very
11 top of the supply chain.

12 410. Southern Hens was a joint venture formed by various Defendants that facilitated
13 the sharing of confidential information. Southern Hens is described in its corporate filings as a
14 poultry processing business. It processes spent breeder hens for chicken producers including its
15 joint owners. Southern Hens' Board has included representatives from Defendants
16 Sanderson Farms, Koch, Foster Farms, OK Industries, Pilgrim's Pride, Mar-Jac, Peco, and
17 George's.

18 411. Southern Hens' Board representatives have included Bob Rosa from Sanderson
19 Farms, Lance Buckert and Mark Kaminsky from Koch, Denny Hickman from Peco, Bob Kenney
20 and Monty Henderson from George's, Bob Hendrix, Walt Shafer, and Randy Stroud from
21 Pilgrim's, Pete Martin from Mar-Jac, and Tim Garber and Terry Thompson from Foster Farms.
22 Southern Hens has also had the same General Manager, John Comino, since 1998. Comino
23 regularly communicated with board members and helped to facilitate Defendants' sharing of
24 information with each other. For example, Comino attended NCC meetings on behalf of
25 Southern Hens, and served on the Board of Directors with representatives from several
26 Defendants, including Pete Martin (Mar-Jac), Gary George (George's), and Trent Goins

1 (OK Foods). Comino also shared plans for production cuts among Defendants who used
2 Southern Hens as a means to coordinate these activities.

3 412. The slaughter and processing entities were thus an important mechanism for
4 Defendants to reduce broiler supply, particularly at the breeder flock level.

5 **c. Direct Purchases from Competitors.**

6 413. Many Defendants also used direct purchases of chickens from one another and
7 from smaller producers to meet each company's own sales needs. In addition to exemplifying
8 the commodity nature of the chicken market, and the homogeneity of the product, these
9 inter-Defendant sales allowed Defendants to soak up excess supply that could potentially depress
10 prices in the market and facilitated the opportunity to expressly discuss prices with competitors.
11 Such purchases also permitted companies to maintain market share despite reducing their
12 production. In many instances large inter-Defendant purchases were negotiated by CEOs or other
13 senior level executives of Defendants, thereby providing additional opportunities to conspire,
14 which the Defendants took advantage of.

15 414. Along these lines, around early 2011, Tyson, in addition to limiting its own
16 production, embarked on a strategy to soak up excess supply produced by its competitors. Tyson
17 called the strategy "Buy vs. Grow." Tyson's Buy vs. Grow strategy allowed Tyson to buy up
18 excess production from its competitors and avoid the depression of prices that would occur had
19 the excess production been sold on the open market. In return, Tyson could communicate the
20 volumes of broilers it would be willing to purchase from competitors in the current and future
21 months, thus suggesting to each competitor the amount of production it should cut that would
22 not be purchased by Tyson.

23 415. As one investment analyst described it, Tyson's program "involves maintaining
24 or even reducing [Tyson's] own chicken production levels, with buying more chicken on the
25 open market from their rival chicken producers, in an effort to keep the chicken market from
26 being over supplied." Even though it would have been cheaper (with respect to the cost of pounds

1 purchased) for Tyson to grow its own broilers instead of buying them from a competitor, Tyson
2 engaged in its Buy vs. Grow program because it allowed Tyson to better control supply and
3 production in the broiler industry and reap the benefit of higher market prices on all of the rest
4 of its broiler pounds sold.

5 416. Other chicken Producers engaged in similar behavior, although not as
6 prominently as Tyson did.

7 **d. Other Business Dealings.**

8 417. Senior executives from Defendants had numerous opportunities to directly
9 communicate with one another regarding various mergers and acquisitions during the relevant
10 period. These merger and acquisition discussions included both completed agreements as well
11 as proposed transactions that were never consummated. In connection with mergers and
12 acquisition discussions, due diligence materials regarding competitively sensitive information
13 were shared between Defendants.

14 418. The Producer Defendants permitted one another to tour each other's Complexes,
15 which revealed confidential business methods employed by each company. While such tours
16 were often framed as "best practices" information exchanges, these tours offered Producers the
17 opportunity to conspire among senior executives. The Producer Defendants discussed
18 competitively sensitive information at these meetings.

19 419. Outside of conferences, Defendants' executives met for numerous social events,
20 such as hunting and fishing trips planned by vendors, ski trips, wine tasting trips, and basketball
21 games. Defendants discussed competitively sensitive information about the broiler industry at
22 these events.

23 **7. Similar Cost Structures and Working Collaboratively.**

24 420. Similar cost structures among competitors may also facilitate collusion. The
25 majority of production costs for broiler producers are variable, meaning that costs increase as
26 output grows. All other factors being equal, when variable costs are a high percentage of

1 production costs, there is less incentive for a producer to operate its facilities at full capacity,
2 and this may allow a group of producers to boost prices artificially with greater success than
3 when fixed costs are the largest component of production costs.

4 421. The single largest cost component of producing broilers is feed, which primarily
5 consists of soybean meal and corn. Broiler feed prices have varied widely from 2007–2016,
6 reaching 71% of the cost of growing broilers in 2012, but falling to only about 50% by 2014.

7 422. Input costs other than feed include processing plant labor costs (~15%),
8 materials (~11%), and capital equipment (~2.5%). Labor costs have declined significantly over
9 the past two decades for Defendants, while at the same time labor productivity has substantially
10 increased.

11 423. Defendants have relatively similar cost structures. The technology and process
12 of industrial scale growing and processing broilers is well known and Defendants employ the
13 same types of equipment and processes in the production process. Defendants also have only
14 three companies from which they can obtain breeder stock from which to raise broilers, so there
15 are very limited options with respect to purchasing the most cost efficient broiler genetic lines.
16 Similarly, Defendants all purchase corn and soybeans on the open market, so they have limited
17 ability to obtain substantially different pricing on these key variable cost inputs for their broilers.

18 424. Defendants use Agri Stats to share extraordinarily detailed cost information (as
19 discussed above). Agri Stats permits each Defendant to have extremely unusual knowledge of
20 competitor costs and to make adjustments to standardize each company's cost structure across
21 all Agri Stats participants.

22 **8. History of Government Investigations and Collusive Actions.**

23 425. Finally, the chicken market has a history of past antitrust violations and antitrust
24 scrutiny.

25 426. In response to an FTC investigation in 1919 which found oligopoly domination
26 and anticompetitive monopolistic behavior in the meat-packing industry, Congress passed the

1 Packers and Stockyards Act (“PSA”). *See* 7 U.S.C. § 193(a), § 209. Congress amended the law
2 to include the poultry industry in 1935.

3 427. In 1922, the United States Supreme Court upheld the constitutionality of the
4 PSA in *Stafford v. Wallace*, 258 U.S. 495, 514 (1922), finding that “the object to be secured by
5 the [PSA] is the free and unburdened flow of livestock from the ranges and farms of the West
6 and the Southwest through the great stockyards and slaughtering centers on the borders of that
7 region, and thence in the form of meat products to the consuming cities of the country. . . . The
8 chief evil feared is the monopoly of the packers, enabling them to unduly and arbitrarily lower
9 prices to the shipper, who sells, and unduly and arbitrarily to increase the price to the consumer,
10 who buys.”

11 428. During the 1970s, major chicken producers held weekly conference calls to
12 discuss production levels and prices for broiler chicken. Pursuant to an agreement between
13 producers, an organization called the National Broiler Marketing Association collected and
14 analyzed supply and price information furnished by participants. On the basis of this data,
15 “suggested” prices and production levels were formulated and passed on to the cooperating
16 processors every week through a conference call network. After the Department of Justice and
17 civil antitrust plaintiffs sued, that practice was stopped and settled for some \$30 million, only to
18 have Agri Stats later fill the void it left behind.

19 429. Beginning in 2010, the USDA undertook a series of public workshops to explore
20 competition issues in the agriculture industry. A workshop held in Normal, Alabama on May 21,
21 2010 focused on corporate concentration and a lack of competition in the chicken industry. The
22 workshops led to the proposal of new rules aimed at encouraging competition in the meat
23 industry, but extreme political pressure from the industry eventually watered down the rules and
24 led to the resignation of the official charged with imposing tougher regulations.

25 430. In 2011, the DOJ sued to stop George’s, Inc.’s acquisition of a Virginia
26 processing plant owned by Tyson, later settling when George’s made certain concessions.

1 431. A June 2014 USDA report stated, “the broiler industry . . . faces a range of
2 public policy issues, [including] competition Concerns about the exercise of market power
3 by poultry integrators have prompted merger litigation, USDA regulatory initiatives,
4 congressional proposals, and investigations by Federal Agencies.”

5 432. Seven years later, these problems remain unsolved. In July 2021, United States
6 President Joseph Biden, Jr., issued an executive order seeking to address consolidation
7 throughout the economy, with a special focus on consolidation in the meat industry. The Order
8 required the USDA to consider “providing clear rules that identify recurrent practices in the
9 livestock, meat, and poultry industries that are unfair, unjustly discriminatory, or deceptive and
10 therefore violate the Packers and Stockyards Act.” However, it is uncertain how much of an
11 impact the new rules will have on a collusive industry.

12 433. On September 8, 2021, the President’s staff wrote, “The President understands
13 that families have been facing higher prices at the grocery store recently. Half of those recent
14 increases are from meat prices—specifically, beef, pork, and poultry. While factors like
15 increased consumer demand have played a role, the price increases are also driven by a lack of
16 competition at a key bottleneck point in the meat supply chain: meat-processing. Just four large
17 conglomerates control the majority of the market for each of these three products, and the data
18 show that these companies have been raising prices while generating record profits during the
19 pandemic.”

20 **VII. TRADE AND COMMERCE**

21 434. During the relevant period, each of the Producer Defendants marketed broiler
22 chicken that was sold, either directly and/or indirectly, to businesses and consumers in the
23 United States, and in Washington.

24 435. Washington consumers and businesses participated in the market for broiler
25 chicken by virtue of being purchasers during the relevant period of broiler chicken produced by
26 Defendants and their co-conspirators.

1 436. The actions of the Defendants and their co-conspirators proximately caused the
2 injuries alleged in this Complaint, in that businesses, consumers, and other indirect purchasers
3 of broiler chicken paid more than they would have in the absence of the conspiracy. This injury
4 is concrete and quantifiable and is traceable to the Defendants' and co-conspirators' conduct.

5 **VIII. ANTITRUST INJURY**

6 437. The anticompetitive conduct of Defendants and their co-conspirators had the
7 following effects, among others: (a) price competition has been restrained or eliminated for
8 broiler chicken sold in the United States and Washington; (b) the prices of broiler chicken sold
9 in the United States and Washington have been fixed, raised, maintained, or stabilized at
10 artificially inflated levels; and (c) purchasers of broiler chicken paid artificially inflated prices.

11 438. By reason of the violations of the antitrust laws and other laws alleged in this
12 Complaint, consumers and businesses in Washington paid higher prices for broiler chicken than
13 they would have paid in the absence of Defendants' illegal conduct in an amount presently
14 undetermined. This is an antitrust injury of the type Washington's antitrust laws were meant to
15 punish and prevent.

16 **IX. FRAUDULENT CONCEALMENT**

17 439. Throughout the relevant period, Defendants and their co-conspirators repeatedly
18 sought to mask or conceal the conspiracy. The combinations and conspiracies alleged in this
19 Complaint were fraudulently concealed by Defendants by various means and methods,
20 including, but not limited to: (1) secret meetings, (2) surreptitious communications between
21 Defendants via the wires (telephones, emails, text messages and other electronic
22 communications) and in-person meetings at trade association meetings (and elsewhere) in order
23 to prevent the existence of written records, (3) limiting any explicit reference to competitor
24 pricing or supply restraint communications in documents, (4) communicating competitively
25 sensitive data to one another through Agri Stats, a "proprietary, privileged, and confidential"
26 system that kept both the content and participants in the system secret, and (5) concealing the

1 existence and nature of their competitor supply restraint and price discussions from
2 non-conspirators (including customers).

3 440. Between 2008 and June 2020 (prior to the first federal criminal indictments), no
4 conspirator publicly admitted that it had engaged in conduct that violated the antitrust laws.

5 441. By virtue of the fraudulent concealment of their wrongful conduct by
6 Defendants and all of their co-conspirators, the running of any applicable statute of limitations
7 has been tolled and suspended with respect to any claims and rights of action the State has as a
8 result of the unlawful conduct alleged in this Complaint.

9 X. CAUSES OF ACTION

10 Defendants' conduct violates multiple provisions of the Washington Consumer
11 Protection Act, including RCW 19.86.030 (restraints of trade) and RCW 19.86.020 (unfair
12 methods of competition), as set forth below:

13 A. Violation of RCW 19.86.030 (*Per Se* Illegal)—Agreement to Restrain Supply and 14 Fix Prices.

15 442. The preceding factual statements and allegations are incorporated by reference.

16 443. From at least January 1, 2008 and continuing through the present, Defendants
17 and their co-conspirators entered into a continuing agreement, understanding and conspiracy in
18 restraint of trade to restrain the supply of broilers to fix, raise, stabilize, and maintain prices for
19 broilers.

20 444. This conduct included the exchange of confidential information with
21 competitors about pricing, current and future production, and other competitively sensitive
22 information through Agri Stats, as well as direct communications with competitors.

23 445. Defendants' acts in furtherance of their combination or conspiracy were
24 authorized, ordered, or done by their officers, agents, employees, or representatives while
25 actively engaged in the management of Defendants' affairs.

1 446. As a result of Defendants' unlawful conduct, Washington consumers and
2 businesses have been harmed by being forced to pay inflated, supracompetitive prices for
3 broilers.

4 447. Defendants are jointly and severally liable for the conspiracy.

5 448. Defendants' conduct constitutes a *per se* violation of RCW 19.86.030.

6 **B. Violation of RCW 19.86.030 (*Per Se* Illegal)—Manipulation of Pricing Indices.**

7 449. The preceding factual statements and allegations are incorporated by reference.

8 450. From at least as early as 2011 and continuing through at least November 2016,
9 a subset of the Producer Defendants and their co-conspirators⁷ entered into continuing
10 agreements, understandings and conspiracies in restraint of trade to fix, raise, stabilize, and
11 maintain prices for broilers through their manipulation of: (1) the Georgia Dock index; and
12 (2) the Urner Barry index.

13 451. These Defendants' acts in furtherance of their combination or conspiracy were
14 authorized, ordered, or done by their officers, agents, employees, or representatives while
15 actively engaged in the management of the Defendants' affairs.

16 452. As a result of the Defendants' unlawful conduct, Washington consumers and
17 businesses have been harmed by being forced to pay inflated, supracompetitive prices for
18 broilers.

19 453. These Defendants are jointly and severally liable for the conspiracy.

20 454. The Defendants' conduct constitutes a *per se* violation of RCW 19.86.030.

21 **C. Violation of RCW 19.86.030 (*Per Se* Illegal)—Bid Rigging Conspiracy.**

22 455. The preceding factual statements and allegations are incorporated by reference.

23 456. From at least as early as August 2011 and continuing at least through early 2019,
24 the Bid-Rigging Defendants and their co-conspirators entered into a continuing agreement,
25

26 ⁷ The Producer Defendants at issue in this violation currently include at least Tyson, Pilgrim's Pride, Harrison, Fieldale, Koch, Wayne Farms, Sanderson Farms, Mar-Jac, and Claxton.

1 understanding, and conspiracy in restraint of trade to fix, raise, stabilize, and maintain prices for
2 broilers.

3 457. As alleged in this Complaint, the Bid Rigging Defendants violated the CPA by
4 reaching agreements on bids and price-related terms for broiler chicken products sold in the
5 United States, including in Washington, through the exchange of non-public information with
6 competitors with the intent of rigging bids and fixing prices.

7 458. The Bid Rigging Defendants' acts in furtherance of their combination or
8 conspiracy were authorized, ordered, or done by their officers, agents, employees, or
9 representatives while actively engaged in the management of the Bid Rigging Defendants'
10 affairs.

11 459. As a result of the Bid Rigging Defendants' unlawful conduct, Washington
12 consumers and businesses have been harmed by being forced to pay inflated, supracompetitive
13 prices for broilers.

14 460. The Bid Rigging Defendants are jointly and severally liable for the conspiracy.

15 461. The Bid Rigging Defendants' conduct constitutes a *per se* violation of
16 RCW 19.86.030.

17 **D. Violation of RCW 19.86.030 (Rule of Reason).**

18 462. The preceding factual statements and allegations are incorporated by reference.

19 463. The Producer Defendants are horizontal competitors for the sale of broiler
20 chicken to customers.

21 464. Each of the Producer Defendants subscribed to Agri Stats during some or all of
22 the relevant period. The Producer Defendants paid significant sums to Agri Stats as part of their
23 agreement.

24 465. By entering into the agreement with Agri Stats, the Producer Defendants agreed
25 to a reciprocal exchange of competitively sensitive information with their competitors through
26 Agri Stats. The Producer Defendants furnished this competitively sensitive information with the

1 understanding that it would be shared with their competitors and would be reciprocated by them,
2 and it ultimately was. This provided the Producer Defendants with the ability to understand and
3 analyze their competitors' pricing, profits, costs, and inventory levels, and current and future
4 production.

5 466. Defendants engaged in frequent communications with Agri Stats, including
6 emails, in-person meetings, and phone calls to discuss this sensitive information. The
7 information exchange took place in private settings, and such information was not shared with
8 chicken producers that were not Agri Stats subscribers, chicken purchasers, or individual
9 consumers.

10 467. Defendants' acts in furtherance of their combination or conspiracy were
11 authorized, ordered, or done by their officers, agents, employees, or representatives while
12 actively engaged in the management of Defendants' affairs.

13 468. A rule of reason analysis requires an examination of the relevant market. A
14 relevant market has a product dimension ("product market") and a geographic dimension
15 ("geographic market").

16 469. With respect to the product market, there is a single market for the sale of broiler
17 chicken. Prices for broilers sold in the U.S. are quoted in whole bird or disassembled parts, with
18 adjustments for transportation, product form (i.e., degree of processing or added value), and
19 packaging at the time of sale.

20 470. The Producer Defendants that agreed to exchange information through
21 Agri Stats possess market power in the market for raw chicken sold for meat consumption. In
22 2008, at the beginning of the relevant period, the Producer Defendants and their co-conspirators
23 controlled approximately 90% of the market for chicken for meat consumption. By 2018, these
24 entities were responsible for 97% of chicken production in the United States.

25 471. The relevant geographic market is the United States, including Washington.
26

1 472. As outlined in this Complaint, Defendants’ agreement resulted in numerous
2 anticompetitive effects. Competition is harmed when competitors with market power in
3 concentrated markets, such as the broiler chicken market, directly exchange strategic information
4 about current and forward-looking plans for prices and supply. The strategic information
5 exchanged between the Defendants was competitively sensitive and a material factor in
6 negotiations. Price, capacity, supply, and costs are critical terms of competition. When horizontal
7 competitors that are competing for the same customers exchange their strategic plans, certainty
8 replaces uncertainty and reduces incentives to lower price or compete on other aspects of sales
9 of broiler chicken.

10 473. Defendants were able to utilize Agri Stats to monitor their competitors’
11 strategies and analyze all aspects of their business operations, including inventory, current and
12 future production, pricing, and costs. This included, among other things, the profitability of
13 specific lines of business, sensitive information about production via various metrics including
14 breeder flocks and bird weight, and sensitive input costs. Agri Stats reports included sensitive
15 information about broiler chicken production and processing in Washington.

16 474. Agri Stats also provided significant guidance on production cuts at the request
17 of the broiler producers for the benefit of the Producer Defendants based on competitively
18 sensitive information. This information, which was shared with all of the major chicken
19 producers, helped the industry make substantial production cuts during the relevant period. This
20 ultimately resulted in lower production levels for the industry and higher prices.

21 475. The Producer Defendants also utilized Agri Stats’ reports that provided them
22 with detailed, confidential pricing information across the broiler chicken market. These reports
23 allowed the Producer Defendants to compare their pricing to their competitors’ pricing across a
24 large variety of chicken products. This allowed the Producer Defendants to identify possible
25 customers to target for price increases. This detailed exchange of pricing information was
26 anticompetitive.

1 476. Defendants' unlawful exchanges of competitively sensitive information were
2 not reasonably necessary to further any procompetitive purposes. The information directly and
3 privately shared between high-level executives was disaggregated, company specific, forward-
4 looking, confidential, and related to a core characteristic of competition between them. While
5 the reports were supposed to be anonymous, the Producer Defendants easily deciphered them.

6 477. While Defendants may frame their participation in Agri Stats as necessary for
7 benchmarking, legitimate benchmarking does not include the anticompetitive exchange of
8 competitively sensitive information regarding pricing, future production, costs, and inventory.

9 478. Defendants' agreement to exchange this competitively sensitive information
10 resulted in anticompetitive effects, including a reduction in the supply of chicken and increased
11 prices with no or insufficient offsetting pro-competitive justifications.

12 479. As a result of the Defendants' unlawful conduct, Washington consumers and
13 businesses have been harmed by being forced to pay inflated, supracompetitive prices for
14 broilers.

15 480. Defendants are jointly and severally liable for these violations of
16 RCW 19.86.030.

17 481. Defendants' contract, conspiracy, and agreement constitutes an unreasonable
18 restraint of trade in violation of RCW 19.86.030. These ongoing violations will continue unless
19 enjoined.

20 **E. Violation of RCW 19.86.020 (Unfair Methods of Competition).**

21 482. The preceding factual statements and allegations are incorporated by reference.

22 483. Defendants' above-described agreement to exchange competitively sensitive,
23 non-public information through Agri Stats also constitutes an unfair method of competition in
24 the conduct of trade or commerce in violation of the CPA, RCW 19.86.020.

25 484. The CPA is intended to "protect the public and foster fair and honest
26 competition." RCW 19.86.920.

1 485. In addition to prohibiting unlawful restraints of trade (RCW 19.86.030),
2 RCW 19.86.020 of the CPA prohibits unfair methods of competition that constitute “incipient”
3 violations of or violate the spirit of the antitrust laws. This provision prohibits unfair and
4 anticompetitive conduct.

5 486. The Producer Defendants and their producer co-conspirators, who constitute
6 approximately 95% of the U.S. chicken industry, exchanged competitively sensitive, nonpublic
7 information about their broiler chicken business, including but not limited to their pricing,
8 profits, costs, inventory levels, and current and future production.

9 487. Each of the Producer Defendants subscribed to Agri Stats during some or all of
10 the relevant period. The Producer Defendants paid significant sums to Agri Stats as part of their
11 agreement.

12 488. Defendants did not provide this competitively sensitive information to:
13 (1) competitors that did not subscribe to Agri Stats; (2) broiler chicken purchasers; and (3) the
14 general public.

15 489. Agri Stats reports included sensitive information about broiler chicken
16 production and processing in Washington.

17 490. This type of sensitive, confidential information is not normally shared by
18 competitors. While this information was purported to be anonymous, in practice, Agri Stats
19 information is so detailed that the Producer Defendants could easily de-anonymize the
20 information and identify their competitors.

21 491. Defendants’ continuous information exchanges reduced uncertainty about their
22 competitors and facilitated anticompetitive coordination among competing broiler producers.

23 492. Defendants’ information-sharing distorts the competitive process, and placed
24 other competitors that did not engage in this anticompetitive information-exchange at a
25 competitive disadvantage.
26

1 493. By facilitating coordination among competitors, these information exchanges
2 violate RCW 19.86.020.

3 494. The acts and practices of Defendants, as alleged in this Complaint, constitute an
4 unfair method of competition in or affecting commerce in violation of RCW 19.86.020. These
5 ongoing violations will continue unless enjoined.

6 **XI. PRAYER FOR RELIEF**

7 The State of Washington respectfully requests:

- 8 1. The Court determine that the unlawful conduct alleged in this Complaint be
9 adjudged and decreed to be in violation of RCW 19.86.030 and RCW 19.86.020.
- 10 2. The Court enter a judgment in favor of the State of Washington and against
11 Defendants, jointly and severally, as alleged in this Complaint.
- 12 3. The Court award restitution to the State of Washington for consumers and
13 businesses in Washington to the maximum extent allowed under RCW 19.86.080.
- 14 4. The Court award civil penalties for each violation of RCW 19.86.020 and
15 RCW 19.86.030 to the State of Washington to the maximum extent allowed under
16 applicable state law, RCW 19.86.140.
- 17 5. The Court permanently enjoin Defendants, their affiliates, successors, transferees,
18 assignees and other officers, directors, partners, agents and employees thereof,
19 and all other persons acting or claiming to act on their behalf or in concert with
20 them, from in any manner continuing, maintaining or renewing the agreement,
21 conduct, contract, conspiracies, or combinations alleged in this Complaint, or
22 from entering into any other contract, conspiracy, or combination having a similar
23 purpose or effect, and from adopting or following any practice, plan, program, or
24 device having a similar purpose or effect.
- 25 6. The Court award the State's reasonable costs and attorneys' fees, as provided by
26 law.

1 7. The Court award pre-judgment and post-judgment interest, as provided by law.

2 8. The Court award such other relief as it may deem just and proper.

3 DATED this 25th day of October 2021.

4
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