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ATTORNEYS FOR PLAINTIFF

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT IN ANCHORAGE

STATE OF ALASKA, Plaintiff, vs. AGRI STATS, INC., AMICK FARMS, LLC, CASE FOODS, INC., CASE FARMS, LLC, CASE FARMS PROCESSING, INC., NORMAN W. FRIES, INC. d/b/a CLAXTON POULTRY FARMS, INC., FIELDALE FARMS CORP., FOSTER FARMS LLC, FOSTER POULTRY FARMS, GEORGE'S INC., GEORGE'S FARMS, INC., HARRISON POULTRY, INC., HOUSE OF RAEFORD FARMS, INC., KEYSTONE FOODS, LLC, KOCH FOODS, INC., JCG FOODS OF ALABAMA, LLC, JCG FOODS OF GEORGIA, LLC, KOCH MEAT CO. INC., MAR-JAC POULTRY, INC., MAR-JAC POULTRY MS, LLC, MAR-JAC POULTRY AL, LLC, MAR-JAC AL/MS, INC., MAR-JAC POULTRY, LLC, MAR-JAC HOLDINGS, INC., MOUNTAIRE FARMS, INC., MOUNTAIRE FARMS, LLC, MOUNTAIRE FARMS OF DELAWARE, INC., O.K. FOODS, INC., O.K. FARMS, INC., O.K. INDUSTRIES, INC., PECO FOODS, INC., PERDUE FARMS, INC., PERDUE FOODS, LLC, PILGRIM'S PRIDE CORPORATION, SANDERSON FARMS, INC., SANDERSON FARMS, INC. (FOODS DIVISION), SANDERSON FARMS, INC. (PRODUCTION DIVISION), SANDERSON FARMS, INC. (PROCESSING DIVISION), SIMMONS FOODS, INC., SIMMONS PREPARED FOODS, INC., TYSON	)	Case No. 3AN-21-04632 CI

FOODS, INC., TYSON CHICKEN,)
INC., TYSON BREEDERS, INC.,)
TYSON POULTRY, INC., and)
WAYNE FARMS, LLC)
)
Defendants.)

COMPLAINT

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I. PRELIMINARY STATEMENT

1. A cartel of corporate chicken supplier conglomerates has secretly engaged in a vast, illegal conspiracy to restrain production, manipulate pricing, and rig bids in order to artificially inflate the price of broiler chicken (hereinafter "Broiler(s)")[1] throughout the United States, including in the State of Alaska. This cartel collectively controlled in excess of 90% of Broiler production and the market for Broilers in the United States at all relevant times. Each member of the cartel individually took overt actions designed to further and effectuate the common design, purpose and plan of this conspiracy: manipulating, artificially inflating and fixing prices of Broilers to enable cartel members to reap unlawful, anticompetitive prices and profits. Although this syndicate successfully concealed its scheme from law enforcement and regulators for years, its illicit conduct has recently become the subject of criminal investigations, indictments, and plea agreements with the U.S. Department of Justice. And this conduct has injured the State of Alaska and persons doing business or residing in the State by causing them to pay artificially inflated prices for Broilers. This cartel must be stopped and forced to pay for the harm it has caused.

2. The members of this cartel (Defendants defined herein) used three principal means to perpetrate, effectuate and sustain this conspiracy.

3. *First*, Defendants curtailed the supply and output of Broilers in the market on the front end *via* coordinated and unprecedented cuts at the top of the supply chain. Among others, this included Defendants' collusive reduction of Broiler production capacity and synchronized elimination of "breeder flocks" that produce chickens ultimately slaughtered for consumption.

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[1] "Broilers" are chickens raised for consumption to be slaughtered before the age of 13 weeks, and which may be sold in a variety of forms, including fresh or frozen, raw or cooked, whole or in parts, or as a meat ingredient in a value-added product, but excluding chicken that is grown, processed, and sold according to halal, kosher, free range or organic standards.

4. Defendants facilitated, monitored, verified and policed their anticompetitive output restriction scheme by, among other things, communicating through third parties, including Urner Barry, a private commodity price reporting service, and Agri Stats, a former subsidiary of global pharmaceutical company Eli Lilly & Co. that catered to and conspired with this cartel. Through these and many other mediums, Defendants exchanged detailed, competitively sensitive, nonpublic information about current and future Broiler prices, capacity, sales volume and demand. Defendants' organized efforts reflected their expectation and intent that their coordinated production cuts would yield higher profit margins for the members of their cartel and also enable them to more quickly capitalize on those inflated non-competitive prices. Defendants' expectations were met, and in fact exceeded, as a result of this conduct.

5. *Second*, Defendants manipulated and artificially inflated prices on the "Georgia Dock," a widely used weekly benchmark price index for chicken compiled and published by the Poultry Market News division (the "PMN") of the Georgia Department of Agriculture (the "GDA"). Unlike other chicken price indices, the Georgia Dock benchmark price was a self-reported number from a group of industry-leading chicken producers, including Defendants Pilgrim's Pride, Tyson, Sanderson Farms, Koch Foods, Claxton Poultry, Harrison Poultry, Mar-Jac, Wayne Farms and Fieldale Farms (collectively, the "Georgia Dock Defendants"). All Producer Defendants (defined herein) took advantage of the inflated, non-competitive prices reported on the Georgia Dock index. They did so by using these inflated prices to extract higher prices from purchasers that based the prices they were willing to pay for Broilers on purportedly "fair" price indices, like the Georgia Dock. Defendants also used these inflated prices to justify the higher prices they charged to their contract purchasers.

6. Additionally, to capture these anticompetitive profits from their Broiler sales, the

Georgia Dock Defendants fraudulently misrepresented, omitted and failed to disclose critical, non-public information about the Georgia Dock prices they heralded. For example, these Defendants claimed the index indicated the "market" price for Broilers, despite knowing they were not submitting actual offering prices to the PMN. They also failed to disclose their ability to control the PMN through an Advisory Committee exclusively comprised of executives of Georgia Dock Defendants, and further misleadingly omitted the fact that the weekly Georgia Dock price was based solely on Defendants' bald self-reporting with no verification. Through these and other acts and omissions, Defendants manipulated and capitalized on the Georgia Dock price for years.

7. *Third*, Defendants engaged in "bid-rigging" targeted at large volume purchasers. That is, Defendants specifically conspired to fix prices and submit artificially high bids to restaurants and other purchasers in an effort to drive up prices, and in turn, Defendants' profits.

8. All three aspects of Defendants' conspiracy occurred in a market with numerous characteristics that rendered it highly susceptible to collusion. In particular, Defendants knew and exploited the economic characteristics of the Broiler market to carry out their scheme, including that the Broiler market/industry: (a) is highly-concentrated and dominated by vertically integrated producers; (b) poses excessively high barriers to entry; (c) is a commodity market in which the product (Broilers) is a standardized and fungible commodity, so firm competition for market sales is based principally on price and demand is largely inelastic due to the essential nature of the uniform product (Broilers); (d) presents numerous opportunities for members to conspire through a number of regularly scheduled trade association meetings; (e) is marked by extensive sharing about Broiler breeder stock supply and slaughter levels, forecasting data, pricing inventory and exports through common sources; and (f) provides unusually extensive opportunities for access to competitors' data.

9. Defendants' cartel conduct has been the subject of multiple class actions and the target of criminal investigations, indictments, and plea agreements with the U.S Department of Justice ("DOJ"). Specifically, Tyson Foods and Pilgrim's Pride have agreed to pay more than $300 million to settle class action claims substantially similar to Alaska's claims. Other Defendants, including Fieldale Farms and Amick, have entered into confidential settlement agreements with various individual purchasers in other litigation.

10. Moreover, in the summer of 2020, a federal ground jury found sufficient evidence to bring criminal charges against many of Defendants' executives regarding the same anticompetitive conduct alleged herein. Indeed, senior executives from at least seven Defendants have been indicted by the DOJ in connection with their roles in this conspiracy. DOJ's probe initially resulted in the indictment of four poultry executives in June 2020, including the sitting president and CEO of Defendant Pilgrim's Pride and the president of Defendant Claxton Poultry, over allegations they participated in a scheme to rig bids and fix prices for Broilers. Tyson Foods then disclosed its cooperation with the investigation in order to apply for leniency.

11. Just a few months later, DOJ indicted six additional individuals associated with this conspiracy, including current or former executives of Defendants Tyson Foods, Koch Foods, George's, and Pilgrim's Pride. On October 14, 2020, Pilgrim's Pride announced that it had entered into a criminal plea agreement with the DOJ's Antitrust Division, where Pilgrim's Pride agreed to pay a fine of $110,524,140 for "restraint of competition" in the Broilers industry.

12. The fact that the conduct alleged herein is also the subject of multiple federal criminal matters is telling. And DOJ has made it clear that its investigation is ongoing.

13. Defendants' practices have substantially affected the State of Alaska and persons doing business or residing in the State, resulting in three causes of action under Alaska law.

14. *First*, Defendants' conduct violates the Alaska Restraint of Trade Act, AS 45.50.562, *et seq*. Specifically, among other things, Defendants conspired to allocate market share and to fix and raise prices of Broilers, resulting in a unlawful and unreasonable restraints of trade or commerce. The State is entitled to relief for these violations under AS 45.50.576-.580.

15. *Second*, Defendants' conduct violates the Alaska Unfair Trade Practices and Consumer Protection Act, AS 45.50.471(b)(11) and (b)(12). Specifically, among other things, Defendants' conduct in allocating market share and in fixing and raising prices have deceived and damaged the State and persons doing business or residing in the State by causing them to pay artificially inflated prices for Broilers. Furthermore, Defendants deceived and defrauded the State and persons doing business or residing in the State by misrepresenting and/or omitting material facts when selling their product to wholesalers and retailers, including for example, by failing to fully disclose Defendants' anti-competitive conduct and that it would and did artificially increase Broiler prices for all purchasers. The State is entitled to relief for these violations under AS 45.50.471, AS 45.50.501, AS 45.50.537, and AS 45.50.55.

16. *Third*, Defendants' conduct unjustly enriched Defendants, entitling the State and persons doing business or residing in the State to equitable relief.

II. PARTIES

A. PLAINTIFF

17. The State of Alaska (the "State" and/or "Plaintiff") brings this action, by and through its Attorney General, Treg Taylor, in its sovereign and *parens patriae* capacity in order to protect the interests of the State and its citizens. The Attorney General brings this action pursuant to his constitutional, statutory, and common law authority, including the authority granted to him by AS 44.23.020, the Alaska Restraint of Trade Act, AS 45.50.562, *et seq.* (specifically including,

but not limited to, AS 45.50.577 through 45.50.580), and the Alaska Unfair Trade Practices and Consumer Protection Act, AS 45.50.471, *et seq*. (specifically including, but not limited to, AS 45.50.501, 45.50.537 and 45.50.551).

B. DEFENDANTS

18. Any secret, anticompetitive price-fixing conspiracy naturally and necessarily is intended to be kept secret and carried out in the dark, requiring the concealment of its parameters and leaving little (if any) publicly available evidence of its existence. This is particularly true here based on the magnitude, scope and extent of the secret, anticompetitive price-fixing conspiracy designed and executed by Defendants and alleged herein.

19. Accordingly, the terms "Defendant" or "Defendants" herein include, in addition to those individual entities named specifically below under the umbrella of their corporate family, all of the named Defendants' predecessors, including companies that merged with or were acquired by the named Defendants, and each named Defendant's wholly owned or otherwise controlled subsidiaries, divisions, shareholders, parent-entities and/or other affiliates that sold or otherwise participated in distributing Broilers (directly or indirectly) to purchasers in the U.S., including the State of Alaska, during the relevant period. To the extent that subsidiaries, divisions, shareholders, parent-entities and/or other affiliated entities within each Defendant's corporate family sold or distributed Broilers in the U.S., including Alaska, these entities played a material role in the conspiracy because Defendants wished to ensure that the prices paid for such Broilers would not undercut the artificially raised and inflated pricing that was the aim and intended result of Defendants' coordinated and collusive behavior. Thus, all such entities within the corporate family were active, knowing participants in the conspiracy alleged herein, and their conduct in selling, pricing, distributing, and collecting monies (directly and indirectly) for Broilers was known to and

approved by their respective corporate parent named as a Defendant herein.

20. Because only full and fair discovery will confirm the full parameters and details surrounding Defendants' conspiracy, including each Defendant's role and the legal or technical name of each corporate family's affiliated entities used to perpetrate this scheme and the identity of each and every co-conspirator, the State expressly alleges and provides notice that the State intends to seek recovery from each Defendant and corporate family of entities specifically named herein based on the conduct alleged herein (and to be further discovered through discovery) for the actions of any misnamed and/or yet-to-be-identified subsidiaries, divisions, shareholders, parent-entities and/or other affiliates that sold or otherwise participated in distributing Broilers (directly or indirectly) to purchasers in the U.S., including the State of Alaska. On information and belief, the State alleges that Defendants and parent companies of the corporate families alleged herein did exercise or retained the right to exercise control over and acted as the principal of any such affiliated entity, which acted as the agent and/or alter ego of the Defendant named herein, and therefore is and should be found responsible for the liabilities of each such affiliated entity for the actionable and culpable conduct alleged herein.

21. The State specifically alleges that each Defendant acted as the agent of and/or joint venture partner for the other Defendants with respect to the acts, violations and common course of conduct alleged herein.

22. Finally, for purposes of clarity, the following terms occasionally used herein shall have the following meanings: (i) "Producer Defendants" refers to all Defendants other than Agri Stats; and (ii) "Georgia Dock Defendants" refers to Defendants Pilgrim's Pride, Tyson, Sanderson Farms, Koch Foods, Claxton Poultry, Harrison Poultry, Mar-Jac, Wayne Farms, and Fieldale. While the Georgia Dock Defendants are known to have directly exercised control over the Georgia

Dock price index, *all* Defendants collectively and unlawfully benefitted from and took advantage of artificial and manipulated Georgia Dock index prices as alleged herein.

1. Agri Stats

23. Defendant Agri Stats, Inc. ("Agri Stats") is an Indiana corporation headquartered in Fort Wayne, Indiana. Agri Stats is a former subsidiary of Eli Lilly & Co., which is a publicly held Indiana corporation headquartered in Indianapolis, Indiana.

24. As further alleged herein, Agri Stats knowingly played a critically important and significantly active role in Defendants' collusive scheme at all relevant times. All of Agri Stats' wrongful actions described herein are part of, and in furtherance of, the unlawful conduct alleged herein, and were authorized, ordered, or engaged in by Agri Stats' various officers, agents, employers or other representatives while actively engaged in the management and operation of Agri Stats' business affairs within the course and scope of their duties and employment, or with Agri Stats' actual, apparent and/or ostensible authority. On information and belief, Agri Stats used the instrumentalities of interstate commerce to facilitate the conspiracy, and its conduct was within the flow of, was intended to, and did have, a substantial effect on the interstate commerce of the United States, including in the State of Alaska.

25. The facts alleged herein demonstrate and establish the unique and symbiotic relationship between Agri Stats and the Producer Defendants, as well as Agri Stats' overt actions and the Producer Defendants' overt use of Agri Stats to execute the conspiracy and perpetrate the scheme alleged herein. Throughout the relevant time period, the Producer Defendants used Agri Stats as a primary means of communicating their conspiracy to restrain production and inflate prices of Broilers, confirming their unlawful agreement to the common purpose and design of the conspiracy, and monitoring co-conspirators' actions and conduct, including by verifying pricing

and production actions, in order to enforce and ensure compliance with the terms of the cartel's conspiracy. Other non-exhaustive examples of Agri Stats' critical role in the conspiracy further alleged herein include, but are not limited to, the facts that: (a) in two critical years of the conspiracy, a representative from Agri Stats was elected to the board of the National Chicken Council, one of the industry's most important trade associations that Defendants and their executives used to facilitate and further the conspiracy; (b) several Defendants, including at least Wayne Farms and Pilgrim's, hired former Agri Stats' executives to work in senior sales positions at these Defendants' companies; and (c) Agri Stats employs or has employed several former executives of Defendants over the course of Defendants' conspiracy.

2. Amick Farms

26. Defendant Amick Farms, LLC ("Amick Farms") is a limited liability company organized in Delaware. Amick Farms' corporate headquarters are located in Batesburg-Leesville, South Carolina. Amick Farms is a producer of fresh and frozen chicken products and operates facilities across the United States.

27. Amick Farms is a wholly owned subsidiary of OSI Group, LLC, which is a privately held Delaware corporation with its headquarters located in Aurora, Illinois.

28. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Amick Farms and/or its predecessors, wholly owned or controlled subsidiaries, or affiliates sold and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska.

29. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Amick Farms reported a wide variety of proprietary data to Agri

Stats, including, without limitation, highly detailed, confidential information regarding Amick Farms' production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Amick Farms' co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

3. Case Foods

30. Defendant Case Foods, Inc. is a privately held Delaware corporation that operates its corporate headquarters out of Troutman, North Carolina.

31. Defendant Case Farms, LLC is a privately held Delaware limited liability company. Its corporate headquarters also are located in Troutman, North Carolina. Case Farms, LLC is a wholly owned subsidiary of Case Foods, Inc.

32. Defendant Case Farms Processing, Inc. is a privately held North Carolina corporation. Its corporate headquarters also are located in Troutman, North Carolina. Case Farms Processing, Inc. is a wholly owned subsidiary of Case Foods, Inc.

33. Defendants Case Foods, Inc., Case Farms, LLC and Case Farms Processing, Inc. are collectively referred to herein as "Case Foods."

34. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Case Foods and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates sold and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska.

35. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Case Foods reported a wide variety of proprietary data to Agri Stats,

including, without limitation, highly detailed, confidential information regarding Case Foods' production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Case Foods' co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

4. Claxton (Norman W. Fries, Inc.) – Georgia Dock Defendant

36. Defendant Norman W. Fries, Inc. d/b/a Claxton Poultry Farms, Inc. is a Georgia corporation that is headquartered in Claxton, Georgia.

37. Defendant Norman W. Fries, Inc. d/b/a Claxton Poultry Farms, Inc. is referred to herein as "Claxton."

38. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Claxton and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates sold and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska.

39. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Claxton reported a wide variety of proprietary data to Agri Stats, including but not limited to, highly detailed and confidential information about its breeder flocks and hatchery capacity and its Claxton, Georgia complex, as well as Claxton's production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Claxton's co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

40. Claxton also is a Georgia Dock Defendant. Claxton's CEO served on the Georgia

Dock Advisory Committee. And Claxton submitted false and artificially inflated price quotes to the GDA, which had the intended effect of manipulating Broiler prices across the U.S., including in the State of Alaska, as alleged further herein.

5. **Fieldale – Georgia Dock Defendant**

41. Defendant Fieldale Farms Corporation ("Fieldale") is a privately held Georgia corporation headquartered in Baldwin, Georgia.

42. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Fieldale and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates sold and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska

43. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Fieldale reported a wide variety of data to Agri Stats, including information about its breeder flocks and hatchery capacity, and its Gainesville, Georgia complex, as well as Fieldale's production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Fieldale's co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

44. Fieldale also is a Georgia Dock Defendant. Its owner and CEO also served on the Georgia Dock Advisory Committee. And Fieldale submitted false and artificially inflated price quotes to the GDA, which had the intended effect of manipulating Broiler prices across the U.S., including in the State of Alaska, as alleged further herein.

6. **Foster Farms**

45. Defendant Foster Farms, LLC is a privately held California corporation headquartered in Modesto, California.

46. Defendant Foster Poultry Farms is a privately held California corporation headquartered in Livingston, California. Foster Poultry Farms is a related entity of Foster Farms, LLC that, on information and belief, is directly controlled and operated by Foster Farms, LLC.

47. Defendants Foster Farms, LLC and Foster Poultry Farms are collectively referred to as "Foster" or "Foster Farms" herein.

48. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Foster reported a wide variety of proprietary data to Agri Stats, including information about its breeder flocks and hatchery capacity, and data for its complexes in Fresno, California, Livingston, California, and the Pacific Northwest, as well as Foster's production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Foster's co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

49. During the relevant period and giving rise to the State's claims alleged herein, Foster and/or its predecessors, wholly owned or controlled subsidiaries, or affiliates engaged in the processing, distribution, sale, pricing, and/or marketing of Broilers, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska. Specifically, Foster sold Broilers in the State of Alaska at, for example, various Walmart and Costco stores located in the State, as well as through Sysco Alaska, and Quality Sales Food Service.

7. George's

50. Defendant George's Inc. is a privately held Arkansas corporation headquartered in Springdale, Arkansas.

51. Defendant George's Farms, Inc., is a privately held Arkansas corporation headquartered in Springdale, Arkansas. It is a wholly owned subsidiary of George's, Inc.

52. Defendants George's Inc. and George's Farms, Inc. are together referred to as "George's" herein.

53. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, George's reported a wide variety of proprietary data to Agri Stats, including information about its breeder flocks and hatchery capacity, and data for its complexes in Harrisonburg, Virginia and Springdale, Arkansas, as well as George's production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of George's co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

54. During the relevant time period and giving rise to the State's claims alleged herein, George's and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates sold and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska, including through, for example, Quality Sales Food Service, an Alaska distributor based in Fairbanks.

8. Harrison – Georgia Dock Defendant

55. Defendant Harrison Poultry, Inc. ("Harrison") is a Georgia corporation headquartered in Bethlehem, Georgia.

56. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Harrison reported a wide variety of proprietary data to Agri Stats, including information about its breeder flocks and hatchery capacity, and data for its Bethlehem, Georgia complex, as well as Harrison's production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Harrison's co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

57. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Harrison and/or its predecessors, wholly owned or controlled subsidiaries, or affiliates engaged in the processing, distribution, sale, pricing, and/or marketing of Broilers, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska.

58. Harrison also is a Georgia Dock Defendant. Harrison's owner and CEO served on the Georgia Dock Advisory Committee. And Harrison submitted false and artificially inflated price quotes to the GDA, which had the intended effect of manipulating Broiler prices across the U.S., including in the State of Alaska, as alleged further herein.

9. <u>House of Raeford</u>

59. Defendant House of Raeford Farms, Inc. ("House of Raeford" or "Raeford") is a privately held North Carolina corporation headquartered in Rose Hill, North Carolina.

60. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Raeford reported a wide variety of proprietary data to Agri Stats, including information about its breeder flocks and hatchery capacity, and data for its North Carolina and Louisiana complexes, as well as Raeford's production and sales of Broilers, and paid

to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Raeford's co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

61. During the relevant time period and giving rise to the State's claims alleged herein, Raeford and/or its predecessors, wholly owned or controlled subsidiaries, or affiliates engaged in the processing, distribution, sale, pricing and/or marketing of Broilers directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska, including through, for example, Quality Sales Food Service, an Alaska distributor based in Fairbanks.

10. Keystone Foods

62. Defendant Keystone Foods LLC ("Keystone Foods") was formerly a subsidiary of Marfrig Alimentos, S.A., a Brazilian company ("Marfrig"). On November 30, 2018, Defendant Tyson Foods, Inc. announced it had completed its acquisition of Keystone Foods from Marfrig. Tyson Foods, Inc. characterized the acquisition of Keystone Foods as Tyson Foods, Inc.'s latest investment in furtherance of its growth strategy and expansion of its value-added protein capabilities. Tyson Foods, Inc.'s acquisition of Keystone Foods (and the affiliated Equity Group entities listed below) was structured as a stock acquisition, which resulted in Tyson Foods, Inc.'s acquisition of all of Keystone Foods' assets and liabilities, although Keystone Foods continued to exist as an operating entity subsequent to the acquisition.

63. During the relevant time period and giving rise to the State's claims alleged herein, Keystone Foods and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates sold and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in

the State of Alaska. Specifically, for example, Keystone Foods sold Broilers in the State of Alaska at various Walmart stores located in the State of Alaska.

64. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Keystone Foods reported a wide variety of proprietary data to Agri Stats, including information about its breeder flocks and hatchery capacity, and data for its complexes in Alabama, Georgia, and Kentucky, as well as Keystone Foods' production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Keystone Foods' co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

11. Koch – Georgia Dock Defendant

65. Defendant Koch Foods, Inc. is a privately held Delaware corporation headquartered in Park Ridge, Illinois.

66. Defendant JCG Foods of Alabama, LLC is an Alabama limited liability company headquartered in Park Ridge, Illinois. It also is a wholly owned subsidiary of Defendant Koch Foods, Inc.

67. Defendant JCG Foods of Georgia, LLC is a Georgia limited liability company headquartered in Park Ridge, Illinois. It also is a wholly owned subsidiary of Defendant Koch Foods, Inc.

68. Defendant Koch Meat Co., Inc. is an Illinois corporation headquartered in Chicago. It also is a wholly owned subsidiary of Defendant Koch Foods, Inc.

69. Defendants Koch Foods, Inc., JCG Foods of Alabama, LLC, JCG Foods of Georgia, LLC and Koch Meat Co., Inc. are collectively referred to as "Koch" and/or "Koch Foods" herein.

70. During the relevant time period and giving rise to the State's claims alleged herein, Koch and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates sold and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska, including through, for example, Sysco Alaska, Country Foods (*e.g.,* to the Alaska Department of Corrections), and Quality Sales Food Service.

71. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Koch reported a wide variety of proprietary data to Agri Stats, including confidential information about its breeder flocks and hatchery capacity, and data for its complexes in Georgia, Tennessee, and Alabama, as well as Koch's production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Koch's co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

72. Koch also is a Georgia Dock Defendant. At least one of Koch's vice presidents of sales served on the Georgia Dock Advisory Committee. And Koch submitted false and artificially inflated price quotes to the GDA, which had the intended effect of manipulating Broiler prices across the U.S., including in the State of Alaska, as alleged further herein.

12. <u>Mar-Jac – Georgia Dock Defendant</u>

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

74. Defendant Mar-Jac Poultry AL, LLC is an Alabama limited liability company headquartered in Gainesville, Georgia.

75. Defendant Mar-Jac AL/MS, Inc. is a Delaware corporation headquartered in

Gainesville, Georgia.

76. Defendant Mar-Jac Poultry MS, LLC is a Mississippi limited liability company headquartered in Hattiesburg, Mississippi.

77. Defendant Mar-Jac Poultry, LLC is a Delaware limited liability company headquartered in Gainesville, Georgia.

78. Defendant Mar-Jac Holdings, Inc. is a Delaware limited liability company headquartered in Gainesville, Georgia and the parent company of Mar-Jac Poultry, Inc., Mar-Jac Poultry MS LLC, Mar-Jac AL, LLC, Mar-Jac AL/MS, Inc., and Mar-Jac Poultry, LLC.

79. Defendants Mar-Jac Poultry, Inc., Mar-Jac Poultry MS, LLC, Mar-Jac Poultry AL, LLC, Mar-Jac AL/MS, Inc., Mar-Jac Poultry, LLC and Mar-Jac Holdings, LLC are collectively referred to as "Mar-Jac Poultry" or "Mar-Jac."

80. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Mar-Jac reported a wide variety of proprietary data to Agri Stats, including information about its breeder flocks and hatchery capacity, and data for its Gainesville, Georgia complex, as well as Mar-Jac's production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Mar-Jac's co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

81. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Mar-Jac sold and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska.

82. Mar-Jac also is a Georgia Dock Defendant. Its vice president of operations served

on the Georgia Dock Advisory Committee. And Mar-Jac submitted false and artificially inflated price quotes to the GDA, which had the intended effect of manipulating Broiler prices across the U.S., including in the State of Alaska, as further alleged herein.

13. Mountaire

83. Defendant Mountaire Farms, Inc. is a privately held Delaware corporation headquartered in Millsboro, Delaware.

84. Defendant Mountaire Farms, LLC is a privately held Arkansas limited liability company headquartered in Little Rock, Arkansas. It also is a wholly owned subsidiary of Defendant Mountaire Farms, Inc.

85. Defendant Mountaire Farms of Delaware, Inc. is a privately held Delaware corporation headquartered in Millsboro, Delaware. It also is a wholly owned subsidiary of Defendant Mountaire Farms, Inc.

86. Defendants Mountaire Farms, Inc., Mountaire Farms, LLC and Mountaire Farms of Delaware, Inc. are collectively referred to as "Mountaire" and/or "Mountaire Farms" herein.

87. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Mountaire reported a wide variety of proprietary data to Agri Stats, including confidential information about its breeder flocks and hatchery capacity, and data for its complexes in Delaware and North Carolina, as well as Mountaire's production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Mountaire's co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

88. During the relevant time period and giving rise to the State's claims alleged herein, Mountaire and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates sold

and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska, including through, for example, Sysco Alaska, and Quality Sales Food Service.

14. O.K. Foods

89. Defendant O.K. Foods, Inc. is a privately held Arkansas corporation headquartered in Fort Smith, Arkansas.

90. Defendant O.K. Farms, Inc. is an Arkansas corporation headquartered in Fort Smith, Arkansas. It also is a wholly owned subsidiary of Defendant O.K. Foods, Inc.

91. Defendant O.K. Industries, Inc. is an Arkansas corporation headquartered in Fort Smith, Arkansas. It also is a wholly owned subsidiary of Defendant O.K. Foods, Inc.

92. Defendants O.K. Foods, Inc., O.K. Farms, Inc., and O.K. Industries, Inc. also are subsidiaries of the Mexican poultry conglomerate Industrias Bachoco.

93. Defendants O.K. Foods, Inc., O.K. Farms, Inc., O.K. Industries, Inc., and their predecessors, subsidiaries, and affiliates, including Albertville Quality Foods and Industrias Bachoco, are collectively referred to as "O.K. Foods" herein.

94. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, O.K. Foods and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates sold and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or through wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska.

95. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, O.K. Foods and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates reported a wide variety of proprietary data to Agri Stats, including

confidential information about its breeder flocks and hatchery capacity, and data for its Fort Smith, Arkansas complex, as well as O.K. Foods' production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of O.K. Foods' co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

15. Peco Foods

96. Defendant Peco Foods, Inc. ("Peco Foods") is a privately held Alabama corporation headquartered in Tuscaloosa, Alabama.

97. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Peco Foods and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates (including, e.g., Peco Farms of Mississippi, LLC) sold and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska.

98. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Peco Foods reported a wide variety of proprietary data to Agri Stats, including confidential information about its breeder flocks and hatchery capacity, and data for its complexes in Gordo, Alabama and Sebastopol, Louisiana, as well as Peco Foods' production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Peco Foods' co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

16. Perdue

99. Defendant Perdue Farms, Inc. is a privately held Maryland corporation headquartered in Salisbury, Maryland.

100. Defendant Perdue Foods, LLC, a privately held Maryland limited liability company headquartered in Salisbury, Maryland. It also is a subsidiary of Defendant Perdue Farms, Inc.

101. Defendants Perdue Farms, Inc. and Perdue Foods, LLC are together referred to as "Perdue" herein.

102. During the relevant time period and giving rise to the State's claims alleged herein, Perdue and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates sold and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska. Specifically, for example, Perdue sold Broilers in the State of Alaska at various Walmart stores located in the State.

103. On information and belief, during relevant the time period and giving rise to the State's claims alleged herein, Perdue reported a wide variety of proprietary data to Agri Stats, including information about its breeder flocks and hatchery capacity, and data for its complexes in Delaware, Maryland, North Carolina, South Carolina, Florida, and Kentucky, as well as Perdue's production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Perdue's co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

17. <u>Pilgrim's Pride – Georgia Dock Defendant</u>

104. Defendant Pilgrim's Pride Corporation ("Pilgrim's" and/or "Pilgrim's Pride") is a publicly held Delaware corporation headquartered in Greeley, Colorado.

105. During the time relevant period and giving rise to the State's claims alleged herein, Pilgrim's Pride and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates sold and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or

through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska. Specifically, for example, Pilgrim's Pride sold Broilers in the State of Alaska at various Walmart stores located in the State.

106. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Pilgrim's Pride reported a wide variety of proprietary data to Agri Stats, including information about its breeder flocks and hatchery capacity, and data for its complexes in Virginia, West Virginia, North Carolina, Georgia, Tennessee, Florida, South Carolina, Alabama, Texas, Arkansas, and Kentucky, as well as Pilgrim's Pride's production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Pilgrim's Pride's co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

107. Pilgrim's Pride also is a Georgia Dock Defendant. Its executive vice president of sales and operations served on the Georgia Dock Advisory Committee. And Pilgrim's Pride submitted false and artificially inflated price quotes to the GDA, which had the intended effect of manipulating Broiler prices across the U.S., including in the State of Alaska, as further alleged herein.

108. Pilgrim's Pride is liable for all of the conspiratorial acts undertaken while it was in bankruptcy proceedings during 2009, in addition to the numerous other overt acts that Pilgrim's Pride took to rejoin, reenter, reaffirm its commitment to, and further the unlawful conspiracy following its discharge from bankruptcy in 2009.

18. <u>Sanderson Farms – Georgia Dock Defendant</u>

109. Defendant Sanderson Farms, Inc. is a publicly held Mississippi corporation headquartered in Laurel, Mississippi.

110. Defendant Sanderson Farms, Inc. (Foods Division), a Mississippi corporation headquartered in Laurel, Mississippi, is a wholly owned subsidiary of Sanderson Farms, Inc.

111. Defendant Sanderson Farms, Inc. (Production Division), a Mississippi corporation headquartered in Laurel, Mississippi, also is a wholly owned subsidiary of Sanderson Farms, Inc.

112. Defendant Sanderson Farms, Inc. (Processing Division), a Mississippi corporation headquartered in Laurel, Mississippi, also is a wholly owned subsidiary of Sanderson Farms, Inc.

113. Defendants Sanderson Farms, Inc., Sanderson Farms, Inc. (Foods Division), Sanderson Farms, Inc. (Production Division) and Sanderson Farms, Inc. (Processing Division) are collectively referred to as "Sanderson" and/or "Sanderson Farms" herein.

114. During the relevant time period and giving rise to the State's claims alleged herein, Sanderson Farms and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates sold and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska. Specifically, for example, Sanderson sold Broilers in the State of Alaska at various Walmart stores located in the State, and through Sysco Alaska.

115. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Sanderson Farms reported a wide variety of proprietary data to Agri Stats, including information about its breeder flocks and hatchery capacity, and data for its complexes in Georgia, Mississippi, and Texas, as well as Sanderson Farms' production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Sanderson Farms' co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

116. Sanderson Farms also is a Georgia Dock Defendant. Sanderson Farms specifically

submitted false and artificially inflated price quotes to the GDA, which had the intended effect of manipulating Broiler prices across the U.S., including in the State of Alaska, as further alleged herein.

19. Simmons

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

118. Defendant Simmons Prepared Foods, Inc. is a privately held Arkansas company headquartered in Siloam Springs, Arkansas. Simmons Prepared Foods, Inc. is a wholly owned subsidiary of Simmons Foods, Inc. During the relevant time period, Simmons Foods, Inc. exclusively sold the chicken it produced to Simmons Prepared Foods, Inc., which in turn resold the chicken in various forms to its customers.

119. Defendants Simmons Foods, Inc. and Simmons Prepared Foods, Inc. are collectively referred to as "Simmons" and/or "Simmons Foods" herein.

120. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Simmons and/or its predecessors, wholly owned or controlled subsidiaries, or affiliates engaged in the processing, distribution, sale, pricing, and/or marketing of broilers, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska.

121. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Simmons and/or its predecessors, wholly owned or controlled subsidiaries, or affiliates reported a wide variety of proprietary data to Agri Stats, including information about its breeder flocks and hatchery capacity, and data for its two Siloam Springs, Arkansas complexes, as well as Simmons' production and sales of Broilers, and paid to receive

and did receive from Agri Stats similar confidential information regarding the business plans and operations of Simmons' co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

20. Tyson – Georgia Dock Defendant

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

123. Defendant Tyson Chicken, Inc., a Delaware corporation headquartered in Springdale, Arkansas, is a wholly owned subsidiary of Defendant Tyson Foods, Inc.

124. Defendant Tyson Breeders, Inc., a Delaware corporation headquartered in Springdale, Arkansas, is a wholly owned subsidiary of Defendant Tyson Foods, Inc.

125. Defendant Tyson Poultry, Inc., a Delaware corporation headquartered in Springdale, Arkansas, is a wholly owned subsidiary of Defendant Tyson Foods, Inc.

126. Defendants Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Breeders, Inc. and Tyson Poultry, Inc. are collectively referred to as "Tyson" herein.

127. During the relevant time period and giving rise to the State's claims alleged herein, Tyson and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates sold and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska. Specifically, for example, Tyson sold Broilers in the State of Alaska at various Walmart stores located in the State, and through Sysco Alaska and Country Foods (*e.g.*, to the Alaska Department of Corrections).

128. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Tyson reported a wide variety of proprietary data to Agri Stats,

including information about its breeder flocks and hatchery capacity, and data for its complexes in Virginia, Pennsylvania, North Carolina, Georgia, Alabama, Mississippi, Texas, Arkansas, Missouri, Indiana, Tennessee, and Kentucky, as well as Tyson's production and sales of Broilers, and paid to receive and did receive from Agri Stats similar confidential information regarding the business plans and operations of Tyson's co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

129. Tyson also is a Georgia Dock Defendant. At least one of its plant managers served on the Georgia Dock Advisory Committee. And Tyson submitted false and artificially inflated price quotes to the GDA, which had the intended effect of manipulating Broiler prices across the U.S., including in the State of Alaska, as further alleged herein.

21. <u>Wayne Farms – Georgia Dock Defendant</u>

130. Defendant Wayne Farms, LLC ("Wayne Farms") is a privately held Delaware limited liability corporation headquartered in Oakwood, Georgia.

131. During the relevant time period and giving rise to the State's claims alleged herein, Wayne Farms and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates sold and/or otherwise distributed Broilers in interstate commerce, directly, indirectly and/or through its wholly owned or controlled affiliates, to purchasers in the United States, including in the State of Alaska, including through, for example, Sysco Alaska, and Quality Sales Food Service.

132. On information and belief, during the relevant time period and giving rise to the State's claims alleged herein, Wayne Farms reported a wide variety of proprietary data to Agri Stats, including information about its breeder flocks and hatchery capacity, and data for its complexes in North Carolina, Georgia, Alabama, Mississippi, and Arkansas, as well as Wayne Farms' production and sales of Broilers, and paid to receive and did receive from Agri Stats similar

confidential information regarding the business plans and operations of Wayne Farms' co-conspirators that all Defendants knowingly used to communicate and execute the conspiracy alleged herein.

133. Wayne Farms also is a Georgia Dock Defendant. At least one of its vice presidents of sales served on the Georgia Dock Advisory Committee. And Wayne Farms submitted false and artificially inflated price quotes to the GDA, which had the intended effect of manipulating Broiler prices across the U.S., including in the State of Alaska, as further alleged herein.

III. JURISDICTION AND VENUE

134. The State of Alaska brings this action by and through its Attorney General, Treg Taylor, in its sovereign and *parens patriae* capacity in order to protect the interests of the State and its citizens. The Attorney General brings this action pursuant to his constitutional, statutory, and common law authority, specifically including the statutory authority granted to him by AS 44.23.20, the Alaska Restraint of Trade Act, AS 45.50.562, *et seq.* (specifically including, but not limited to, AS 45.50.577 through 45.50.580), and the Alaska Unfair Trade Practices and Consumer Protection Act, AS 45.50.471, *et seq.* (specifically including, but not limited to, AS 45.50.501, 45.50.537 and 45.50.551).

135. Jurisdiction over the subject matter of this cause of action is proper, including based upon AS 22.10.020, AS 45.50.577, and AS 45.50.501. The State seeks damages and other monetary relief far in excess of $100,000.

136. This Court has personal jurisdiction over Defendants because they regularly conduct business in Alaska and/or have the requisite minimum contacts with Alaska necessary to constitutionally permit the Court to exercise such jurisdiction over them. This Court's exercise of personal jurisdiction over each Defendant is proper under Alaska's Long-Arm Statute, as codified

in AS 09.05.015, including at least AS 09.05.015(a)(4)(A) and (B), (a)(5)(E), and/or (a)(6)(B).

137. Defendants and/or their agents manufactured, sold, shipped and/or otherwise delivered substantial quantities of Broilers throughout the State of Alaska.

138. During the relevant period, Defendants produced, sold, shipped and/or otherwise delivered chicken in a continuous and uninterrupted flow of interstate commerce. The conduct of Defendants as alleged herein, including the conspiracy in which Defendants knowingly participated, was intended to have and had a direct, substantial, and reasonably foreseeable effect on interstate commerce and commerce in the State of Alaska, including in this judicial district.

139. During the relevant period, each Defendant and/or one or more of its affiliates used the instrumentalities of interstate commerce to join or effectuate their conspiracy.

140. During the relevant time period, the State and persons doing business or residing in the State purchased Broilers in Alaska directly and indirectly from one or more Defendants and/or Defendants' co-conspirators, affiliates, and/or agents, and sustained injury and damage as a proximate result of the antitrust violations and other causes of action alleged herein.

141. Defendants engaged in unfair or deceptive acts or practices in the conduct of trade or commerce in the State of Alaska, and specifically in this judicial district. Among other things, Defendants engaged in an antitrust conspiracy that was directed at and had a direct, foreseeable, and intended effect of causing injury to the business or property of persons residing in, located in, or doing business in the State of Alaska and specifically in this judicial district.

142. As such, this Court has personal jurisdiction over each Defendant because each Defendant has transacted business, maintained substantial contacts, and/or committed overt acts in furtherance of its illegal scheme and conspiracy throughout the United States, including in the State of Alaska and this judicial district. Defendants' scheme and conspiracy have been directed

at, and had the intended effect of, causing injury to persons and entities residing in, located in, or doing business in this judicial district.

143. This Court also has personal jurisdiction over Defendants because each knew, or should have known, that the Georgia Dock index price was used to price chicken sold in Alaska and nationwide, and their participation in the collusive manipulation of that index would affect the price of chicken purchased in the State of Alaska. Defendants' scheme and conspiracy have been directed at, and had the intended effect of, causing injury to persons and entities residing in, located in, or doing business in the State of Alaska, including in this judicial district.

144. Defendants and their co-conspirators' activities, as described herein, were within the flow of, were intended to, and did have direct, substantial and reasonably foreseeable effects on interstate commerce and commerce in the State of Alaska, and specifically this judicial district.

145. Defendants' individual and collectively coordinated acts and omissions in furtherance of their unlawful conspiracy caused injury to persons and property in the State of Alaska at the time of which: (A) solicitation or service activities were carried on in this State by or on behalf of Defendants; and/or (B) products, materials, or things processed, serviced, or manufactured by Defendants—specifically Broilers—were used or consumed in the State of Alaska in the ordinary course of trade. *See* AS 09.05.015(a)(4)(A) & (B).

146. This action also arises out of and relates to goods—Broilers—actually received and purchased, both directly and indirectly from Defendants, by the State of Alaska, entities and agencies of the State of Alaska, and individuals and businesses doing business or residing in the State of Alaska. *See* AS 09.05.015(a)(5)(E).

147. This action also arises out of a claim to recover a benefit derived by Defendants through the use, ownership, control or possession by Defendants of tangible property situated in

the State of Alaska either at the time of the first use, ownership, control or possession or at the time the action was commenced. *See* AS 09.05.015(a)(6)(B).

148. Venue is proper in this judicial district pursuant to AS 40.50.501 and Rule 3 of the Alaska Rules of Civil Procedure because, among other things, many of the unlawful acts committed by Defendants in Alaska were committed in this judicial district.

149. Because the State of Alaska is not a citizen for purposes of diversity jurisdiction, there is no federal court diversity jurisdiction, nor federal question jurisdiction.

150. The Attorney General has determined that pursuit of this action is in the public interest. AS 45.50.501(a).

IV. FACTUAL ALLEGATIONS

151. Defendants' unlawful conspiracy to restrain trade in the Broiler chicken market was multi-faceted and involved many overt acts perpetrated over several years, all of which were designed to achieve Defendants' common purpose and objective of secretly realizing anticompetitive profits from the sale of Broilers.

152. Defendants unlawfully combined, conspired and agreed to execute their conspiracy through a variety of often-overlapping strategies and practices over this time period.

153. *First*, Defendants collectively utilized their industry knowledge to exploit the economic factors that made the Broiler industry—a commodity market—particularly susceptible to price manipulation through anticompetitive agreements.

154. *Second*, Defendants collectively took overt actions designed to reduce output, production or supply—and thus artificially inflate the price—of Broilers in the market.

155. *Third*, Defendants colluded to manipulate both individual customer price matrixes, as well as industry price indices—specifically, the Georgia Dock price index—with respect to the

prices of Broilers they sold to purchasers.

156. *Fourth*, Defendants unlawfully conspired to, and did, rig bids on Broilers sales.

157. *Fifth*, at every step and through each aspect and element of their scheme, Defendants used Agri Stats to facilitate and effectuate the conspiracy by exchanging confidential and proprietary business strategies and data with one another to communicate their conspiracy and verify and monitor their co-conspirators' compliance with the agreed terms of the scheme.

158. Defendants carried out each of these and the other phases, aspects, elements and/or strategies involved in their conspiracy, as alleged herein and to be further revealed from discovery, with the shared objective of disrupting free market competition to harm purchasers by overcharging anticompetitive prices for Broilers.

A. The U.S. Broiler Industry and Market

159. Several aspects of the market for Broilers in the United States, including in the State of Alaska, render it particularly vulnerable to anticompetitive conduct and manipulation. As the longstanding leaders of the U.S. Broiler industry, Defendants knew and exploited these characteristics of the Broiler market to successfully execute (and conceal) their vast conspiracy over many years.

160. Broilers constitute approximately 98% of all chicken sold in the U.S.

161. The Producer Defendants (all Defendants, with the exception of Agri Stats) are and have been for decades the leading industrial Broiler producers and suppliers in the U.S.

162. While annual market-share numbers have fluctuated to some immaterial degree, the Producer Defendants have collectively controlled approximately 90% of Broiler production in the U.S. over the past two decades, with Defendants Tyson and Pilgrim's Pride leading the industry and having maintained an approximately 20% share of the Broiler market over this period.

163. Broilers are a commodity—or uniform—product.

164. Competition in a market for a product characterized as a commodity is based principally on price, as opposed to other attributes, such as product quality or customer service. When a product is uniform (*i.e.*, in a commodity market), competition should prevent any one seller from successfully raising market prices in the absence of widespread reductions in supply by the rest of the market participants. That is, economic theory dictates that one producer of a commodity cannot, absent coordination, simply cut production, fail to meet demand, and expect to maintain market share. Because of the lack of product differentiation, normal supply and demand in a competitive commodity market would—absent collusion—result in another producer simply stepping in to meet demand at the lower price with its own uniform product, thereby capturing the prior market share of the producer that cut its production.

165. The Broiler industry, including Defendants, recognize and have acknowledged the commodity nature of Broilers and the Broiler market. For example, a 2012 industry report described chicken as "a commodity product with little or no product differentiation based on the processors," and in public comments, the CEO of Pilgrim's Pride has unequivocally explained that "the chicken business *per se* is a commodity business."

166. Chicken producers pay USDA graders to examine their chickens, and Defendants all sell USDA Grade A chicken. This means there is very little, if any, differentiation in the Broilers sold by different market participants, including Defendants.

167. Thus, due to the lack of product differentiation, absent collusion, Defendants compete on price such that the supply decisions of each chicken producer impact the market price for chickens. While an individual producer often has the incentive to increase production to maximize profits, any increased production will ultimately reduce the profitability of the industry

as a whole. Thus, the commodity nature of the product in the chicken industry makes it attractive to implement a price-fixing scheme and provides industry players, like Defendants here, with significant incentives to agree to unlawfully combine to reduce overall supply in order to manipulate and artificially inflate Broiler prices in the market.

168. Another unique characteristic of the Broiler market is that Defendants own and/or tightly control all aspects of Broiler production, including the laying of eggs; hatching of chicks; raising of chicks; slaughtering of chickens; and processing and distributing the meat.

169. In other words, the Broiler industry is almost entirely vertically integrated, with producers (sometimes known as "integrators") owning, or tightly controlling, each of the six stages of the supply chain: breeding, hatching, chick-rearing/feeding, slaughtering mature birds, processing, and selling. Defendants used and exploited their tight control of the Broiler production and supply chain to carry out and ensure the success of their price-fixing conspiracy.

170. Defendants' "breeder flocks" (the chickens that lay the eggs Defendants raise into the Broilers they slaughter and sell) represent the top of the supply chain in the Broiler industry. Defendants purchase their breeder flocks from three global genetics conglomerates that historically have accounted for approximately 98% of Broilers raised in the U.S. and approximately 80% of Broilers raised globally. Indeed, Defendants' breeder flocks are created from an intensely limited pool of so-called "grandparent" chickens that come from one of only three genetics companies (Aviagen, Hubbard, and Tyson's Cobb-Vantress). These companies own a biological lock on their unique Broiler lines, meaning they tightly control the purebred genetic strain they develop. These genetic strains have special hybrid characteristics, such as the tendency to produce a large chicken breast. And these hybrid characteristics must be present in USDA Grade A chicken sold in the Broiler market, thereby requiring Defendants to use breeder flocks spawned from these limited

genetic pools for industrial Broiler production and further removing any differentiation amongst Broiler products.

171. The commodity nature of Broilers is further evidenced by the facts that, as described in more detail below: (i) numerous Defendants purchased Broilers from each other (to likely then resell) during the period of the conspiracy in order to carry out their common purpose by preventing excess supply from reaching the market; and (ii) prices for Broilers in the United States, including in Alaska, are based at least in part on prices published by three indices for the spot market[2] for chicken, and the existence of such a spot market necessarily depends on uniformity in the grade or quality of the product.

172. The technology and process of industrial-scale Broiler production is well-known to and among Defendants. All Defendants use and have used the same types of equipment and processes to produce and sell Broilers throughout their conspiracy. Defendants' common use of methods of production of Broilers that are nearly identical in all aspects is another reason that Broilers are substantially uniform across all Defendants' brands.

173. Defendants' businesses also all have very similar, if not identical, cost structures. The primary costs of production of Broilers are labor and feed for the chickens. And all Defendants feed their chickens corn and soybean meal purchased on the open market.

174. Exceptionally high barriers to entry exist in the Broilers market and effectively eliminate the threat of any new competition to Defendants. For example, entry into the Broiler market would minimally cost a firm more than $100 million in initial capital expenditures to simply acquire the necessary infrastructure, equipment, stock and wherewithal to produce and sell

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[2] A spot market purchase is a non-recurring purchase for immediate delivery of a product (generally, if not exclusively, a commodity).

Broilers on an industrial level at all. As such, no company has created a new poultry company from scratch in decades, enabling Defendants to operate their cartel without any realistic threat of new competition.

175. Against this backdrop of a market that was highly vulnerable to collusion and exploitation, Defendants used their intimate knowledge of these and other unique economic aspects and characteristics of the Broiler market to devise and execute a sweeping anticompetitive conspiracy that has continued through at least 2019, the exact date remaining concealed from and being unknown to the State absent discovery.

B. Defendants Conspired to Reduce Broiler Supply and, thus, Inflate Prices

176. Prior to Defendants' conspiracy, the Broiler industry had historically demonstrated a common pattern of annual increases in Broiler production, typically to the tune of an approximate 3% increase year-over-year in Broilers produced. By the 2000s, this historic pattern of annual increases in Broiler production had become so entrenched over decades of experience that the Broiler industry widely recognized an oft-repeated quip—that three things are certain in life: "Death, taxes and 3% more Broilers." Through their conspiracy, however, Defendants combined to use collective actions to buck this historical trend.

177. Prior to the conspiracy, the two industry leaders of the Broiler industry—Defendants Pilgrim's and Tyson—learned a lesson in 2007 that informed and laid the groundwork for Defendants' conspiracy. In that year, a glut of Broilers had again flooded the market and prices cratered. In reaction and with the goal of increasing market prices, Pilgrim's and Tyson each cut their Broiler production. But even with these two industry leaders' combined 40% share in the Broiler market, their production cuts could not and did not overcome the natural operation of a competitive commodity market. Instead, other Broiler companies simply increased their

productions to meet the demand and fill the supply void created by Pilgrim's and Tyson's output reductions. In other words, production cuts by close to half of the Broiler market were not significant and expansive enough to have the desired effect of increasing market prices across-the-board for Broilers. Simply stated, the lesson Pilgrim's and Tyson learned in 2007 was that, to accomplish this goal, far greater involvement, participation, coordination and collective action among the industry and market participants—*i.e.*, competitors—would be necessary.

178. By the time the Great Recession hit the American economy in 2008, the historical annual increases in Broiler production and oversupply and low prices of chickens put Defendants – individually and collectively – in dire financial straits. As a result, and drawing from the Pilgrim's and Tyson case study in 2007, Defendants hatched a plan to disregard their historical competition in order to combine together as a unified force across the industry in order to accomplish what Pilgrim's and Tyson had failed to accomplish on their own in 2007: take coordinated and collective actions to reduce Broiler production at a grand and industry-wide level in order to fix, manipulate and artificially inflate the price of Broilers.

179. Through press releases, earnings and investor calls, at investment bank conferences, at events hosted by Agri Stats, through communications both direct and facilitated by third parties, and at the myriad trade association meetings attended by many of their senior-most executives, Defendants began implementing the conspiracy, preaching to one another that oversupply was crippling the industry and that action was needed to halt the downward trajectory of prices.

180. Defendants collectively agreed to the reduction or relative stabilization of industry capacity, particularly at the breeder flock level, where such efforts would be most effective as a mechanism to increase Defendants' profits.

181. Defendants' efforts were supported by their executives' public statements, which involved many of Defendants' executives' calls for a new era of "discipline," included explicit statements that signaled deeper production cuts were an industry-wide imperative that would pay dividends for "the industry" as a whole.

182. While the effort was spearheaded primarily by larger Defendants like Tyson and Pilgrim's, other Defendants participated. For example, Harrison CEO, Mike Welch was (along with Sanderson COO, Lamkin Butts) a panelist at a symposium hosted by industry journal WATT PoultryUSA, where discussion topics included industry consolidation and Broiler size, with information gleaned from Agri Stats, whose vice-president, Mike Donohoe, also attended.

183. A significant component of the early phase of the conspiracy involved production cutting. Defendants conspired, combined and agreed to depart from their historical practices by collectively reducing Broiler breeder flocks in unprecedented amounts. Their agreement to do so is demonstrated by each Defendant's parallel and historically unprecedented cuts in production, plus, among other things, their decisions to act contrary to their individual firms' economic interest and their public and private communications to one another demonstrating their obedience to the terms of the conspiracy.

184. Throughout the conspiracy period, these vertically integrated Defendants had the ability to manipulate supply in the Broiler market at one or more stages of the supply chain.

185. Defendants knew they could effectively manipulate supply by reducing the size of breeder flocks and retiring or killing breeders at earlier ages. By design, reducing breeder flocks had significant, and long-lasting, effects on the supply of Broilers in the market, even more so than reducing supply further down the supply chain.

186. Nevertheless, Defendants perpetrated their scheme further down the supply chain

as well. Indeed, Defendants also employed their supply-reduction scheme at the middle and end of the supply chain, by reducing egg placements, killing newly hatched Broilers and idling processing plants. But their conspiracy was most effectively cemented by the long-term effects of reducing Broiler breeder flocks—a collective effort by the controllers of approximately 90% of the Broiler market to reduce supply and production in a manner that could not be easily reversed.

187. Defendants' calculated decisions to create long-term reductions are clear indicators of a collusive agreement because it would not be in an individual Defendant's economic self-interest to undertake the significant risk of reducing its own long-term production capacity unless it was known that competitors would undertake similar dramatic and long-term cuts.

188. Defendants' collective output-restriction caused a significant, not-easily-reversed, slowing in overall chicken production during the conspiracy, and bucked the historic trend of annual production increases of approximately 3% year-over-year.

189. The overall effect of Defendants' conspiracy is shown in USDA data. While Broiler production grew a total of 21% from 2000 to 2008 (an average of 2.3% per year), it then slowed to a total of roughly 10% from 2008 through 2016 (an average of slightly more than 1% per year) – a significant decrease in the pace, timing and manner of Broiler production over this period.

190. Industry publications identified 2008 as the first time in decades that total Broiler production remained virtually unchanged from the prior year, stating "[b]roiler production in the U.S. used to be just like government spending, it never went down and cutbacks only resulted in slowing the rate of growth, but not anymore" because "[f]or the first time in decades, total broiler production in 2008 remained virtually unchanged from the year before. *WATT PoultryUSA* 2008 rankings data showed the industry's total weekly ready-to-cook ("RTC") production at 724.05 million pounds, just slightly more than the 723.71 million RTC pounds per week reported at the

end of 2007."

191. At the same time, Defendants' executives were publicly denouncing the effect of oversupply on "our industry," telling each other that unified action was necessary. The timing, extent and unprecedented nature of these calls for unified action among supposed competitors evidences Defendants' unlawful agreement to conspire.

192. From January 23 through 25, 2008, numerous executives and employees of Defendants attended the International Poultry Expo conference in Atlanta, Georgia. According to the trade association that organized this annual conference, attendees represented companies responsible for over 99.4% of U.S. production of chicken. Shortly after the event, executives for Defendants began signaling to one another how to comply with the terms of the conspiracy.

193. For example, on a January 28, 2008 earnings call, Tyson CEO Richard Bond—who on the same call disclosed the company had re-joined Agri Stats, from which Tyson had "just recently ... got our first series of data"—stated "we have no choice [but] to raise prices substantially."

194. The use of the word "we" was significant. The commodity nature of Broilers would not allow one Defendant, regardless of size, to successfully raise market prices in the absence of widespread reductions in supply. Tyson's comments would therefore make no economic sense absent intent or knowledge on its part that Defendants would coordinate reductions in supply. As such, it was more a directive than a "comment."

195. Shortly after Tyson's public directive, executives for the other Defendants began communicating how they would fall in line. These and the other exemplary public statements by Defendants' executives regarding their intent to cut production, as well as the discipline of Defendants to resist filling the announced supply gap left by production cuts from the largest

producers, cannot logically or economically be explained *__unless__* these speakers made their comments with pre-existing knowledge that their competitors would act against their individual economic self-interest by coordinating a reduction in supply across the Broiler industry.

196. Indeed, the day after Tyson's directive, Pilgrim's expressly directed its competitors to reduce their production to allow prices to recover. On a January 29, 2008, earnings call, Pilgrim's CFO Rick Cogdill communicated that the industry's oversupply of chickens was hurting market prices. Mr. Cogdill explained that Pilgrim's had done its part in 2007 by reducing production 5%, so "the rest [] of the market is going to have to pick-up a fair share in order for the production to come out of the system."

197. Mr. Cogdill explained that Pilgrim's alone could not reduce supply enough to help market prices recover, and that its past efforts to reduce supply had merely led to smaller players increasing their market share at Pilgrim's expense. He noted that "we have walked away from sales in certain cases, where the pricing just did not make any sense. So we are trying to hold the line. We are losing at times the competitive bids . . . So we are trying to take a leadership position from a pricing perspective."

198. Mr. Cogdill then explicitly directed other Defendants to do their part to reduce Broiler supply: "[A]ctions are going to have to be taken one way or the other through the industry to pass along these costs. We were the leader in cutting production last year to help drive that … [W]e've got to make sure that we get the supply in line with demand at an acceptable price, not just in line with what the customer wants to buy at a cheap price."

199. When asked by an analyst whether Pilgrim's had "an estimate internally of what the state of oversupply in the industry might be? What you would hope to see cut from others that would make you feel like the industry was more rational?" Cogdill replied: "It's really hard to say

that the faster we get to production adjustment the quicker the recovery could happen.... And if the industry doesn't react soon enough it will have to react stronger in the end."

200. Mr. Cogdill also responded to an analyst's question about the industry's failure to follow Tyson's 2007 cuts by stating: "I think you kind of hit on it there.... It's not like we had 5% of surplus capacity that we could just reduce our operations and not feel that.... I mean we cannot be the ones that are out there continually reducing production, and let the other producers capitalize on that. I mean if it's 5% last year, 5% this year, 5% next year, you can see that that's a spiral to the demise of our company, which we are not willing to accept."

201. Sanderson Farms followed suit immediately. On a January 31, 2008 earnings call, Sanderson Farms CEO Joe Sanderson explained that he also anticipated the industry would act in concert to cut production, calling such cuts "probable" and stating, "if it's bad and ugly and deep in February, March, April, you'll see the production cuts take place during that time period." He added "[t]here's still 25% of the industry making money but I would expect to see those reductions come over the next 90 to 120 days."

202. On information and belief, Defendants communicated these directives to one another privately in far more detail. And in order to achieve their goals, Defendants began to cut their production in concert.

203. For example, on or about March 4, 2008, senior executives from Defendants, including Pilgrim's CEO, Clint Rivers, Tyson Senior VP, Donnie Smith, Case Foods CEO, Tom Shelton, Amick President and CEO, Ben Harrison, and Fieldale Farms President, Thomas Hensley, met in Washington, D.C., at an Executive Committee meeting of the National Chicken Council's Board of Directors.

204. Shortly after that trade association meeting, Pilgrim's again sounded the call to cut

overall industry supply and proceeded with production cuts.

205. On March 12, 2008, Pilgrim's CEO Rivers publicly announced the closure of seven chicken facilities to reduce industry oversupply, stating "we believe [these] actions . . . are absolutely necessary to help bring supply and demand into better balance . . . That portion of the demand for our products that exists solely at pricing levels below the cost of production is no longer a demand that *this industry* can continue to supply" (emphasis added).

206. Under competitive conditions, other chicken producers would typically respond to Pilgrim's substantial supply cuts by increasing their production. Yet just the opposite occurred. Defendants instead acted against their individual firms' economic interests, evidencing the existence of their conspiracy agreement.

207. Following the Pilgrim's announcement, a series of production cuts were publicly announced by other Defendants between April 3 and April 11, 2008.

208. For example, on April 3, 2008, Fieldale Farms announced a 5% production cut, stating "[w]e're hoping this cut puts supply and demand back into better balance."

209. On April 9, 2008, Simmons issued a press release announcing a 6% reduction in production throughout its processing plants, a move that was heralded by Wall Street analysts, who noted that production cuts like these by smaller companies in the industry would increase prices.

210. The next day, on April 10, 2008, Cagle's, Inc. (later acquired by Defendant Koch) issued a press release, announcing it would reduce processing Broilers by 4% and stating the cut "will reduce product being sold through less profitable commodity outlets."

211. Within 24 hours, Wayne Farms, O.K. Foods and Koch each announced their own production cuts that ranged from 2% to 8%.

212. Notably, *none* of these companies were publicly traded. Wayne Farms, O.K. Foods and Koch were all privately held. As privately held companies, *none* of them were *required* to publicly disclose their production plans. The critical fact that they made such public disclosures is demonstrative of the conspiracy—to signal to their fellow producers that they were following through on the conspiratorial agreement. There is no other plausible or rational explanation for why these private companies would make such historically-unprecedented public statements.

213. Other Defendants cut production between April 1 and May 15, 2008 but did not publicly announce those cuts. However, as demonstrated below, because Defendant Agri Stats enabled the members of this cartel to communicate these confidential business data and strategies to one another, public disclosure was not required to further the conspiracy.

214. For example, at the BMO Capital Markets Agriculture & Protein Conference presentation on May 15, 2008 at the Millennium Broadway Hotel in New York City, Sanderson Farms CEO, Joe Sanderson stated—in the presence of several competitors, including Pilgrim's CEO, Clint Rivers and CFO, Richard Cogdill and Tyson CEO, Richard Bond—that "we have seen for the last 6 or 7 weeks . . . some companies in our industry announce cutbacks. There have been I think six companies have announced cutbacks. *I know some companies have cut back and have not announced.*" (emphasis added).

215. Knowledge of non-public production cuts by competitors is highly suggestive of communication among chicken companies, either secret direct communications between and among Defendants, using Defendant Agri Stats as a facilitator, or both. Absent such secret communications, there would have been no way for Sanderson Farms' CEO to "know" that certain of his supposed competitors had fallen in line to "cut back" their production, even though they had not announced such proprietary business plans and strategies to the public.

216. After seeing many of its competitors abide by capacity reductions between April 3-11, Pilgrim's decided to take further steps to reduce supply. On April 11, 2008, Pilgrim's suggested it might close its large El Dorado, Arkansas processing plant, which employed 1,620 workers. And on April 14, 2008, it announced a further production cut of 5% of egg sets (egg sets are fertile eggs placed in incubators).

217. On April 29, 2008, Tyson CEO Dick Bond told a Wall Street analyst, "I think the industry has changed . . . I don't think the industry will be up [in production] that much anymore, we have seen some sizable declines here lately in egg sets and placements. So, we're going to be up a little bit but probably not a significant amount, not as much as we might have once anticipated."

218. Despite the large number of coordinated production cuts announced by producers in April 2008, Pilgrim's CEO Rivers encouraged further supply curtailing action by other chicken producers. At a May 15, 2008, speech at the BMO Capital Markets conference, Rivers announced that he hoped to see the chicken industry continue to cut production to help the industry return to profitability, stating "he would like *the industry* to trim total production by 3%-4%, calling it a prudent move in light of recent price volatility in the grain markets." (emphasis added). He added that "[t]he cuts need to be fairly deep."

219. This conference was attended by Tyson CEO, Richard Bond and Pilgrim's CFO, Richard Cogdill, and it is the same conference where Sanderson Farms CEO, Joe Sanderson disclosed his knowledge of non-public, unannounced production cuts by competitors.

220. A June 2008 Agri-Stats report disseminated to Defendants stated: "Beginning in April [2008], the weekly hatchery data started to show declines in egg sets and chick placements relative to year-earlier, which confirms the announced intentions to reduce Broilers production and

will result in slaughter falling below year-ago by mid-June." The same report noted "[i]t is unclear how long the slaughter declines will continue, and if other companies will choose to cut production as well making them deeper than initially thought. Those who have announced cutbacks indicate they will continue until margins normalize. At this time we expect to see the declines continue until at least late 2009, and cuts could be deeper than now projected."

221. A *Wall Street Journal* article noted that industry conditions were starting to change in this period: "Three things are making analysts more optimistic: Companies are cutting production, weekly egg-set numbers are declining . . ., and prices are responding positively to the thinning supply lines." The article noted "[i]t is unusual for egg sets to decline at this time of year."

222. During a May 22, 2008 earnings call, Sanderson Farms CEO, Joe Sanderson was asked whether industry cuts were sufficient to keep the industry profitable in the autumn. Sanderson responded: "[w]e don't know yet. We will make a cut as we always do after Labor Day. We will make a 4-5% cut following Labor Day as we always do going into Thanksgiving, Christmas, and January [and] we reduce our egg sets and around Thanksgiving, Christmas, New Years and Martin Luther King. That is a period of slow demand for us, and we don't announce that, but we always do it. It is just a period when we take downdays and we will do that. But if we think more is needed, we will evaluate that sometime in August, and if need be will do it. We cut back in 2006, we cut back in '97-98. I don't know if we announced it or not, but we will do what we need to do."

223. Mr. Sanderson provided no explanation why Sanderson Farms chose to publicly disclose its "regular" production cut if it had never done so in the past. The reason was obvious—to signal the other Defendants to follow suit.

224. In early June 2008, Pilgrim's CEO, Clint Rivers noted in a June 4, 2008,

presentation that "[o]ur supply in chicken, we are oversupply . . . we need to see some balance in the supply . . . Simply put, at this time there is still too much breast meat available to drive market pricing significantly higher."

225. Other Defendants soon picked up on this call for further action.

226. On June 19, 2008, industry executives participated in a media conference call intended to lobby the federal government to limit the ethanol mandate, a federal program requiring the production of corn-based ethanol, which Defendants claimed drove up their corn costs by reducing the supply of corn they could buy to feed their chickens. According to one report, Mark Hickman, Chairman of the National Chicken Council and CEO of Peco Foods, told participants, "the poultry industry is entering a second phase of production cutbacks, following a 1 percent to 2 percent cutback in production earlier this year" and that "we are hearing talk that this was not nearly enough, so liquidation is in round two." This statement referred to the need for Defendants to reduce chicken breeder flocks to affect longer-term supply restraint in the industry, rather than the short-term production cuts like breaking eggs or slaughtering chickens earlier to reduce weight.

227. On June 23, 2008, shortly after Hickman's public suggestion that further production cuts were needed, Wayne Farms announced a 6% production cut. Wayne Farms President & CEO, Elton Maddox said in a statement that "[s]oaring feed ingredient costs aggravated by the government's food for fuel mandate has created the need for us to rationalize our business."

228. Wayne Farms' announcement came only three days after Agri Stats suggested further cuts were needed, and four days after Hickman suggested further cuts were needed.

229. On June 23-25, 2008, the industry organization USPOULTRY held its annual Financial Management Seminar. Defendants' senior executives attended the seminar.

230. Shortly thereafter, on July 2, 2008, Foster Farms announced it was abandoning

plans to build a new chicken plant in northeastern Colorado (the proposed plant was announced in April 2008 and would have employed about 1,000 people). Foster Farms CEO, Don Jackson, noted "[i]n these difficult conditions with costs escalating primarily due to grain and fuel prices and chicken prices lagging it does not make economic sense to go forward with expansion at this time." Mr. Jackson's purported justifications for decreasing production capabilities were pretextual.

231. Five days later, on July 7, 2008, O.K. Foods announced a 7.5% reduction in egg sets, citing "record high prices for corn and soybean meal, which it attributes to the U.S. government's mandated ethanol policies along with recent flooding in the Midwest 'Corn Belt' region." O.K. Foods' purported justifications for decreasing production were also pretextual.

232. Indeed, it has been reported that between 2008 and 2016, corn prices declined roughly 21% and soybean prices declined approximately 13%. Yet, during that same period, Broiler prices increased in historically unprecedented measures.

233. On July 20-22, 2008, the National Chicken Council held a three-day "Chicken Marketing Seminar" attended by Defendants' senior executives.

234. Less than one month later, on August 11, 2008, Pilgrim's announced the closure of its Clinton, Arkansas, processing plant and a facility in Bossier City, Louisiana. Pilgrim's press 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." The closure of the Clinton processing plant represented an additional 1.25% incremental increase of the company's previously announced production cuts.

235. Pilgrim's stated it would keep both plants idle until "industry margins can be sustained at more normalized levels of profitability." Pilgrim's further stated that "[w]ith Labor Day approaching and no indication that the actions taken to date by Pilgrims' Pride or other

industry members are having a positive effect on selling prices for our products, it is now clear that more significant decisive action is necessary."

236. Also in August 2008, Raeford (a non-public company) announced publicly, as reported by the *The Charlotte Observer*, that it would begin reducing its chicken production by 5 percent. The company said in a statement to industry publication WATT PoultryUSA that "[t]he current obstacles that face our industry require that supply be brought in line with demand."

237. A production cutback was remarkable for Raeford, which had pursued a strategy of aggressive production growth that resulted in the company doubling its chicken production from 2001 to 2007.

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

239. When asked whether the industry already had made enough production cuts, Sanderson noted "we kind of thought we were going to see reductions in July . . . [based on] 213/214 [million] egg sets back in April and that really did not materialize. When you look at USDA slaughter numbers in July, they were 100% and 101% and now we're looking at egg sets of 206 and 207 million that are going to show up sometime in October or November. We'll see when we get there. Those are barely impressive cuts. My suspicion is, as I've told you in May, the industry typically make the cut [sic] and it's tentative. We'll have to see if it works . . . I'm very skeptical that those cuts are going to be enough to return us margins to cover these grain costs."

240. By September 2008, chicken industry publication WATT PoultryUSA reported that "[m]ost U.S. chicken integrators ha[d] announced plans to close small operations, consolidate complexes and further processing plants and to reduce output by 3 percent to 5 percent to

'maximize efficiency.'"

241. On October 3, 2008, Defendants' senior executives attended the National Chicken Council's Annual Meeting in Washington, D.C. Agri Stats CEO, Blair Snyder – elected the day before as a "director-at-large" to the National Chicken Council's board – moderated a CEO panel that included the CEOs of Pilgrim's, Tyson, Perdue and Sanderson Farms. Explaining Pilgrim's desire to push through an industry-wide price increase, Pilgrim's CEO Clint Rivers told panel members and the audience "[w]e need to get those [input] costs pushed through, but we've yet to see that happen."

242. On October 10, 2008, in response to a USDA report of falling egg sets in the chicken industry, Pilgrim's told the Associated Press that "[t]his is very positive news for the industry and may signal that the industry is taking a more rationalized approach to production heading into the fall." Indeed, an industry analyst noted that at the time "the industry has cut about 10 to 12 percent of its production."

243. During Fall 2008, Sanderson Farms also implemented its previously announced "fall cuts" a month early and delayed the opening of a new deboning facility.

244. On October 18, 2008, Wayne Farms President and CEO Elton Maddox released a statement (even though Wayne Farms was not a publicly traded company) announcing the closure of the company's College Park, Georgia plant, resulting in the layoff of over 600 employees. He cited the need to "maximize efficiencies" as justification for the plant closure.

245. On a November 10, 2008 earnings call, Tyson CEO, Richard Bond claimed Tyson would not be making additional production cuts because it had already done its part to reduce industry supply with prior production cuts, citing the company's focus on "supply and demand." But this statement was not true. In fact, Tyson substantially reduced production in December 2008.

246. First, on December 18, 2008, Tyson announced the canceling of a deboning contract with Petit Jean Poultry at Petit's Little Rock, Arkansas processing plant that resulted in the layoff of 700 Petit employees. Second, by December 23, 2008, it was reported that Tyson had cut its production by 5%.

247. When a reporter asked about these production cuts, Tyson spokesman Gary Mickelson stated that "[w]hile we would rather not share details of our current poultry production levels, we can tell you we continue to closely evaluate market conditions in an effort to match customer demand with our supply." Tyson also noted that it had reduced production "in recent years through the closing or sale of poultry plants and by running the company's remaining operations at reduced capacity utilization."

248. During this same time period, Defendants also utilized price index publisher Urner Barry as a conduit for the sharing of information and ensuring compliance with the production cutting scheme (in addition to Defendant Agri Stats, as described in detail below). There were numerous collusive communications between Urner Barry and Defendants that furthered the conspiracy to limit output, resulting in higher prices than would have existed in the absence of this conduct. Prices reflected in the indexes published by Urner Barry were inflated as a result of the conspiracy. Defendants and Urner Barry knew these inflated prices were the logical and intended result of their efforts to further the conspiracy to limit output.

249. Overall, in 2008, at least 11 companies reported reductions in weekly ready-to-cook product, including Defendants Tyson, Pilgrim's, Perdue, Simmons, Raeford, Cagle's (later bought by Koch), George's, O.K. Foods, Harrison, and GNP Company (now owned by Pilgrim's).

250. On January 28-30, 2009, Defendants' senior executives attended the International Poultry Expo in Atlanta, Georgia.

251. In a February 18, 2009, interview, Tyson Senior Group Vice President, Donnie Smith noted that "[a]cross our industry, we're down about six percent versus where we were a year ago. We're seeing an impact from that on market prices . . . the industry fundamentals are improving." Defendants also exchanged and agreed upon specific prices to charge common customers during 2009.

252. In late February 2009, a report noted that Pilgrim's had cut another 9-10% of its production.

253. That same month, Tyson told the audience at an investors' conference that it did not intend to reduce its production further because "[u]sing WATT PoultryUSA data on ready-to-cook (RTC) pounds, our numbers have declined 5-7% from 2000 to 2008 on RTC pounds while at the same time the industry has grown 31%. Over time, we have done plenty of cutting back." Tyson felt it had already taken its fair share of needed production cuts, so competitors needed to step up to take their own further actions. This was mere posturing, as Tyson reduced production through at least 2015.

254. By February 25, 2009, Sanderson Farms had told *The Morning News* of Northwest Arkansas that it had made cuts to its supply of chickens by processing smaller chickens and running its plants at lower capacity utilization rates. Sanderson Farms also told a group of investors around this time that "[b]ecause we don't expect much help from the demand side, chicken market improvement will have to come from supply cuts."

255. Similarly, the CEO of Simmons Foods (a private company whose statements can only be viewed as signaling co-conspirators) noted in a February 25, 2009, interview that "[w]e are seeing lower demand in the food-service customer base. We have made adjustments in bird weights to ensure our production meets with our customer's needs."

256. Seeing further cuts from smaller producers in the industry led Pilgrim's to announce historically large cuts to its production on February 27, 2009. In a press release announcing the closure of three processing plants located in Douglas, Georgia; El Dorado, Arkansas; and Farmerville, Louisiana, Pilgrim's stated the plants were "underperforming" and said the closures would "improve the company's product mix by reducing commodity production and to significantly reduce its costs in the midst of an industry-wide oversupply of chicken and weak consumer demand resulting from a national recession." Pilgrim's also stated the idling of these three plants would reduce its total pounds of chickens produced by 9-10%.

257. In addition to ending the decades-long annual increase in production, the cuts in 2008 and 2009 were remarkable because Defendants did not simply reduce the pounds of Broilers produced, they also went further up their supply chains than ever before in order to restrict their ability to ramp up production for years down the road, reducing breeder flocks in ways not easily reversed. This had the intended effect of committing Defendants to longer-term reductions and demonstrates the expansive scope of Defendants' conspiracy.

258. The effect of the supply cuts on chicken pricing in 2008 and the first months of 2009 was apparent.

259. Broiler prices rose through mid to late 2008—during the midst of a major recession—and staying at or near all-time highs until late 2009.

260. For instance, by May 28, 2009, Sanderson Farms reported strong profits twice the estimates of Wall Street analysts, which, according to one industry publication, was "aided by production cuts and lower feed costs that offset still-weak demand."

261. Similarly, at a May 14, 2009, BMO Capital Markets conference in New York City,

interim Tyson CEO, Leland Tollett, noted that "poultry market fundamentals had improved. Pullet[3] placements, an [] indication of future Broilers supplies, have been down the past five months compared to the same period last year. Egg sets continue to run six percent or more below year ago levels and cold storage inventories of poultry have declined about 20 percent since peaking in November 2008."

262. Throughout this time period, Agri Stats collected data from Defendants and their co-conspirators and sent Defendants monthly reports, which they used to monitor and control future supply.

263. During 2009 and 2010, Defendants' senior executives continued to meet with one another at trade association meetings and industry events. For example, at the October 2009 Annual Conference for the International Poultry Expo and the National Chicken Council, one industry analyst wrote that participants emphasized "production discipline," which, by now was clearly a euphemism for limiting production. Defendants also continued to utilize Urner Barry to communicate the plan to limit production.

264. However, as prices continued to rise during late 2009 and early 2010, it became clear the conspiracy was having its intended effect and the time had come for Defendants to cash in and take advantage of the inflated prices they had manipulated. Thus, in order to realize the fruits of their unlawful bounty and maximize their anticompetitive profits, producers started increasing production in response to the higher prices. Because of 2008 and 2009's unprecedentedly deep and early breeder flock culls, this temporary spike in production took months to effectuate, rather than the few weeks it would have taken had producers killed off their breeder flocks at the rates and times at which they had done so in the past.

[3] A "pullet" is a young hen, specifically a chicken less than a year old.

265. But the temporary rising production by producers in early 2010 was short-lived, as it led to another reported oversupply of chickens that began to again depress prices by late 2010. Now, Defendants faced an incentive to revamp their conspiracy to make it more effective. They had learned the value of coordinated supply reductions in 2008, and so were quick to react with a new round of production cuts in the first half of 2011. Those cuts caused prices to recover as their conspiracy intended.

266. This 2011 reduction was Defendants' second substantial Broilers breed flock cull. As with the first, Defendants left a trail of public statements through which they communicated their compliance with the terms of the conspiracy to one another.

267. On January 24-26, 2011, Defendants' senior executives attended the International Poultry Expo in Atlanta, Georgia, including Tyson CEO, Donnie Smith. The IPE featured an annual market intelligence panel with Mike Donohue from Agri Stats and industry-insider Paul Aho. According to one report, Donohue noted that "'2008 was the worst year financially for the (U.S.) broiler industry that most people have ever seen' . . . The industry's response in 2008 was a 5-6% reduction in pounds produced. He said that the Broiler industry is currently at record high weekly slaughter volumes." Aho noted "[t]his could be a very difficult year with cutbacks, rationalization, and consolidation . . . The market is calling for around a 5% reduction in chicken production."

268. On a February 4, 2011, Tyson earnings call, COO James Lochner noted that "until industry supply more closely aligns with demand" Tyson's broiler business would "be challenged." Tyson CFO, Dennis Leatherby also referred to an industrywide supply-demand imbalance.

269. On a February 16, 2011, Cagle's (acquired by Koch) earnings call, Cagle's

reportedly said it had begun a 20% reduction in production at a deboning operation in an effort to balance supply and demand. Cagle's told one publication it was "optimistic that *the industry* will exhibit the production restraint necessary to support higher pricing for Cagle's products allowing for a return to profitable margins." (emphasis added).

270. On or around February 25, 2011, Sanderson Farms CEO, Joe Sanderson, announced on an earnings call that Sanderson would be delaying the development and construction of a second North Carolina Broilers complex.

271. On March 7, 2011, Raeford announced a 10% reduction in egg sets that had begun in early February. Its CEO noted in a press release that "we decided that acting now was a responsible action for our company in light of continuing unstable economic conditions . . . Hopefully the chicken prices will begin to increase later this year. In addition, if Congress will take action to cut unreasonable government support for the ethanol industry, then grain prices should decrease to a more manageable pricing level."

272. On March 15, 2011, Simmons announced it was laying off 180 workers at its Siloam Springs, Arkansas processing plant, stating, "[d]ue to economics specific to our industry, resulting from high grain prices predominantly caused by corn being used in ethanol, we have decided to realign some of our production resulting in the elimination of 180 positions as of April 15."

273. On April 13-15, 2011, the Georgia Poultry Federation held its annual meeting where, among other positions to which Defendants' employees were elected, Harrison Poultry's Donnie Wilburn was elected Vice Chairman of the Board and Mar-Jac's Phillip Turner was elected to the Board.

274. On April 15, 2011, Defendant Mountaire disclosed in a press report its

abandonment of a planned capacity increase, with its President Paul Downes explaining "the only way to higher prices is less supply. The only way to less supply is chicken companies will shut down or cut back . . . I think that's what we're going to see."

275. Downes' view of the state of the chicken industry was echoed and amplified by Joe Sanderson, CEO of Defendant Sanderson Farms, who stated on a May 24, 2011 earnings call that "the deal is that the industry – forget Sanderson – the industry cannot sustain losses like they are sustaining for a long period of time. They will – they can't do it and you have been observing this for years and years and the industry has been losing money since Novemberish and balance sheets deteriorate and losses have to stop. The only way to stop losses with $7 corn is to reduce production and get prices up. That is the rule and the law of the jungle." Sanderson continued, "*my judgment is that there will be some others that are going to have to make some adjustments that I believe cuts will be forthcoming in our industry based on the losses we see in Agri Stats.*" (emphasis added).

276. Sanderson's comments came roughly one week after he and other Sanderson executives attended the BMO Farm to Market Conference in New York, along with the CEOs of Pilgrim's and Tyson. The conference included a presentation by Pilgrim's noting its new focus on adjusting Broilers breeder flocks in a way to better balance supply to demand.

277. On a June 6, 2011 earnings call announcing no increase in capacity for the foreseeable future, Cagle's (subsequently bought by Koch) said "the industry must lower supply in order to offset reduced demand and to support higher marker prices."

278. Other Defendants, including Fieldale Farms and Mar-Jac, also began reducing supply by cutting Broilers breeder flocks in mid-2011. By June, Tyson had pulled eggs from its incubators for the same purpose.

279. On July 29, 2011, Pilgrim's announced the closure of its Dallas, Texas processing plant and the layoff of 1,000 employees. Pilgrim's President & CEO Bill Lovette explained, "[w]hile the decision to close a plant and eliminate jobs is always painful, we must make better use of our assets given the challenges facing our industry from record-high feed costs and an oversupply of chicken . . . A key component of that effort is improving our capacity utilization through production consolidation and other operational changes. By closing the Dallas facility, we can consolidate that production volume at three other plants and help those sites run closer to full capacity."

280. On an August 1, 2011 earnings call, Sanderson Farms CEO, Joe Sanderson, informed analysts that the company's normal fall production cut of 4% beginning in November would remain in place beyond January 2012 or until such time as demand improved. Sanderson also stated that it "wouldn't surprise me if the industry makes further, deeper reductions in egg sets in October or November . . . Nobody knows what cuts might be needed until we get to October, *but I think that the cutbacks may need to be more than the 6% in head that the industry has in place."* (emphasis added).

281. On August 8, 2011, Tyson's CEO stated on an earnings call that "domestic availability must be in balance with demand before *industry economics can improve*. Tyson continuously strives to match our supply to demand and as a result we made a production adjustment in the third quarter . . . Our goal is to match supply to demand and as a result we made a production adjustment in the third quarter . . . Our goal is to match supply to demand. And following over-production the industry experienced, we cut production in the third quarter, but those cuts have not yet impacted the market." (emphasis added).

282. On August 18, 2011, Cagle's, now owned by Koch, announced a 20% reduction in

production at its large Pine Mountain Valley, Georgia plant.

283. In early October 2011, Defendants' senior executives attended the National Chicken Council's annual conference. Panelists included senior executives from Defendants Koch, Perdue and Keystone. Panelists said all companies would need to adjust in the face of the present cycle. One specific suggestion was the standard euphemism of supply-side "discipline," while another suggestion was getting better prices for Broilers from retailers.

284. In November 2011, Wayne Farms closed its Decatur, Alabama plant, laying off 360 employees. Four days later, on an earnings call, Sanderson Farms CEO, Joe Sanderson responded to a question about production decreases by saying "when we talk about the 4% number, that is what we project the industry to be. Obviously, we are going to be a part of that."

285. Throughout 2012, Defendants continued to meet at trade association meetings and industry events, giving them the opportunity to discuss the impact of their collective production cuts and otherwise monitor their conspiracy.

286. For example, in the first quarter of 2012 Defendants' top executives attended the National Chicken Council's board of directors meeting in Atlanta, which was held in conjunction with the January 25-26, 2012 International Poultry and Processing Expo. Then, on March 20-21, 2012, the National Chicken Council's Board of Directors, which included many of Defendants' senior executives, met again in Washington, D.C.

287. Around this same time, Sanderson Farms cut its production by 4%, which included a reduction in its Broiler breeder flocks.

288. At USPOULTRY's Hatchery-Breeder Clinic in the first quarter of 2012, Agri Stats' Vice President noted the importance of reducing these breeder flocks, stating that "if the industry chose to do so, it could ramp up production within a 10-week period of time. The industry could

blow apart any recover[y] in the short term by filing up incubators again." But he also noted that the Agri Stats data indicated the industry was slaughtering breeder flocks at 59 to 60 weeks, instead of the typical 65 weeks. The kind of early slaughter of breeder flocks meant that Defendants subsequently were unable to increase production for at least eighteen months, as they would have been able to do had they not made cuts at the top of the supply chain. That decision was not made by accident.

289. The shift in the way the industry supplied chicken was summarized in a March 2012 report published by agricultural lender, CoBank. Entitled "The U.S. Chicken Industry: Re-invented and Revitalized" with sections captioned "'Same-Old, Same-Old' – No More" and "It's a New Ballgame," the report noted the: "U.S. chicken industry has gone through the proverbial wringer, but last year appears to have been the low point. In recent years, the chicken companies have all lost money, some more than others. And five U.S. companies have exited the industry since 2008. As the losses mounted, the industry realized that its standard business practices sorely needed to be reformed. The surviving chicken companies found it to be not just prudent, but absolutely essential to revise those practices. The poultry industry today operates much differently than it did just a few years ago."

290. The CoBank report highlighted one of the reasons for this sea-change: Defendants' reduction of breeder flocks that began in mid-2011. The report noted that "the recent cuts in the hatchery flock will prevent a quick response," with "U.S. chicken production [...] on track to fall to its lowest level in 5 years by mid-2012."

291. Again, this was not by coincidence, chance or uncoordinated action.

292. The sentiment of CoBank's March 2012 report was echoed by Pilgrim's CEO on an April 27, 2012 earnings call, when he reported that "the die is cast for 2012," and that "we're

comfortable that the industry is going to remain constrained."

293. Trade association meetings and industry events in mid-2012 gave Defendants additional opportunities to meet and discuss their collusive efforts to reduce Broiler production. These included the National Chicken Council Board of Directors meeting in Washington D.C. on March 20-21; Urner Barry's annual marketing seminar on April 29-May 1; a second National Chicken Council Directors' meeting on June 21, 2012 in Lake Tahoe; and the July 15, 2012 meeting of the National Chicken Council's marketing committee in Stowe, Vermont. Later that summer, Sanderson Farms announced a further 2% production cut.

294. By September 2012, Defendants' 2011 production cuts, particularly their reduction of Broilers breeder flocks, had resulted in increased prices for purchasers. The higher chicken prices seen in the market by September 2012 were not justified by the costs of Defendants' primary inputs, corn and soybean meal, which by the fourth quarter of 2012 had dropped significantly in price following near-record highs in the summer of 2012.

295. On October 10-11, 2012, the National Chicken Council held its annual meeting in Washington, D.C. Among Defendants' senior executives in attendance were the President of Fieldale Farms and CEO of O.K. Foods, both of whom participated in an "Industry Outlook Panel" where participants discussed the question of what the industry "learn[ed] from 2011 and how will the industry apply those lessons in 2012 and 2013."

296. For most of the remainder of 2012 through at least 2019 (according to the federal Superseding Indictment handed down October 6, 2020), Defendants reaped the benefits of their coordinated supply restraints, as prices rose and profits soared to record levels.

297. These anti-competitive supply reductions affected prices negotiated with restaurants and other Alaska contract purchasers. For example, as part of their collective goal to

increase the price of Broilers, Defendants coordinated and inflated prices to these entities beginning at least in 2012 through at least 2019. One way they did so was by pointing to the actual 2011-2012 reductions alleged above. But production of the smaller-type Broilers sold to restaurants and contract purchasers actually *increased* during this time and remained elevated. Through such coordinated misrepresentations, Defendants convinced these purchasers to pay higher prices for Broilers.

298. Throughout the conspiracy, Defendants' executives have repeatedly heralded the industry's newly found supply "discipline."

299. For example, on a May 3, 2013 investor call, Pilgrim's CEO touted the chicken industry's collective discipline: "Obviously, revenue is going to be a function of price, in part, and in this case a big part; and obviously, price is going to strengthen as supply continues to be disciplined and constrained . . . So I think *the industry is doing an admirable job being disciplined on the supply side* and I think we've got a combination where we combine that discipline with strong demand for product and that's why you've seen the pricing environment that we're now enjoying . . . I believe *the industry has learned over the past three to five years that chicken economics is going to be driven by the supply and demand of chicken* and not necessarily what corn or soybean meal costs. I think I'm confident to say, *we've figured that out and we're doing a good job* of balancing supply and demand." (emphasis added).

300. Pilgrim's CEO further specifically referenced the continued importance of restraining the industry's breeder flocks: "I only know what we've seen happen in the past. Now, certainly, this summer if the industry chooses to grow the breeder supply significantly, that's definitely going to impact 2014. What I'm saying is, so far, we've seen no indication that the industry plans to grow the breeder supply and as a matter of fact, it's actually shrunk . . . I'll

reiterate that I think the industry has learned that the economics of our business is tied very closely to the supply of chickens and we've done a good job so far of maintaining discipline such that even paying nearly $8.50 for corn, we've been able to be profitable as an industry."

301. At the October 2013 annual meeting of the National Chicken Council in Washington D.C., it was reported that a panel that included executives from Tyson and Simmons was "chipper about the prospects for their industry in the next few years." Defendants had reason to be positive. For example, on a February 21, 2014 earnings call, Pilgrim's CEO, reflecting on his company's record earnings, said "I know that one thing that creates...has created the stability is *the discipline of the industry to not allow profitability in the past to drive supplies in the future* . . . And I think that discipline really . . . is the one ingredient that has made for the stable earnings we have seen." (emphasis added).

302. Defendants' 2013 and 2014 strategy of targeting Broilers breeder flocks was noted in an October 2014 CoBank analysis, noting "Broilers meat production is on track to grow just 1.5 percent in 2014 from a year ago, with similarly modest gain expected for 2015." The CoBank analysis also recognized the pricing effect of these production cuts, stating wholesale Broilers prices "have risen to unusually high levels." On information and belief, Defendants continued to directly communicate confidential pricing and production information to one another in the years that followed.

303. As another example, on October 29, 2014, Simmons announced the closure of its Jay, Oklahoma spent hen[4] processing plant. The Simmons facility processed spent hens on behalf of many Defendants, providing Simmons with opportunities to monitor changes in other Defendants' Broilers breeder supplies. The closure of Simmons' Jay, Oklahoma facility is

[4] Spent hens are Broilers breeders that have reached the end of their productive life cycle.

indicative of the reduced Broilers breeder capacity resulting from Defendants' conspiratorial initiatives to cut capacity across the industry.

304. During a February 12, 2015, earnings call, Pilgrim's CEO summed up the restriction of supply Defendants had implemented since 2008: "I looked at some numbers supplied by Agri Stats earlier in the week and found some interesting facts. If you go back to 2008, the industry slaughtered 8.35 billion head. And by 2011, that slaughtered head had declined by approximately 8% to 7.7 billion. And it's actually remained about that same level through 2014 at about 7.7 billion. If you look at live weight pounds produced, it was 47.1 billion in 2008. It declined to 45.06 billion in 2011. And in 2014, for the first time since 2008, it reached 47.3 billion, so only 200 million more pounds above 2008 levels. And then on the average weight side, the average weight in 2008 was 5.64, and it's averaged just above 6 from 2011 through 2014. So with all of that data in mind, what it tells me is the industry remains fairly disciplined on the supply side and demand has been increasing for chicken against the backdrop of increasing beef and pork supplies."

305. The year 2015, much like 2014, proved to be another banner year for Defendants' profits as a result of their conspiracy.

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

307. However, the actual explanation for the 2015 performance of Tyson and its competitors was their conspiracy.

308. This trend continued into 2016. With the notable exception of the Georgia Dock, chicken prices declined in 2016, but significantly less than input costs. Defendants proactively maintained artificially high chicken prices and high profitability during 2016 by exercising "discipline" on the supply-restriction.

309. For instance, during an April 2016 earnings call, an analyst noted that Pilgrim's CEO "mentioned that you think the industry domestically has been much more disciplined than they have been in the past," and asked whether he "could just elaborate a little bit more on what sort of drives that view and then maybe what gives you confidence that this discipline will hold." Pilgrim's CEO responded, "[w]hat drives the view is the actual numbers that we see, ready to cook pounds are up about 3.1% year to date. If you look at placements year to date they're up 1%, egg sets up 0.7%, hatchery utilization actually declined in Q1 to 91%. So in the phase of coming off two of the most profitable years in the industry, we're not seeing, not realizing large amount of production increases." Tellingly, Pilgrim's CFO added immediately after the CEO's comments that "what drove that I believe it is that *[the] industry is more geared towards profitability rather than just market share* or field growth." (emphasis added).

310. In sum, Defendants were no longer competing with one another to gain market share by growing their companies as one would expect in a competitive market. Instead, Defendants worked collectively to increase profitability by taking, designed, planned and uniform actions to be "disciplined" in terms of supply growth.

311. Defendants also continued the regular use of signaling to perpetuate their collusion during 2016 by continuing to use the code word "discipline" to note their continued adherence to the supply-restriction dimension of their conspiracy by keeping breeder flocks low.

312. For instance, during a February 2016 earnings call, Pilgrim's CEO noted: "*[T]he*

industry continues to be disciplined in terms of U.S. supply. Although monthly pullet data tend to be volatile and have occasionally been at the high end of our expectations, we see modest growth of the breeder flock, and more importantly, little to no increase in egg sits [sic] and chick placements as a positive. We believe that at least part of the reason is because *chicken producers are being disciplined* and are much quicker to react than in the past and in adjusting supply growth to the actual market conditions." (emphasis added).

313. Likewise, during a February 2016 Sanderson Farms earnings call, BMO Capital Markets analyst Ken Zaslow noted the industry's history of volatility in pricing and profitability for chicken companies, questioning if there was "any changing of the industry dynamic" that had occurred. Sanderson Farms CEO Joe Sanderson replied, "we might be at a capacity wall, you know? . . . Since back in 2007 . . . there are three or four plants shuttered. . . . It does feel different."

314. On a May 26, 2016 analyst call, Mr. Sanderson echoed his earlier statements about how much the industry had changed since 2007, noting that "when you go back and look and see how many eggs are being set right now and you go back and look at what the industry will [sic] set in 2007 . . . egg sets in 2007 were 220 million eggs a week, and we're setting 208 million, 209 million, 210 million eggs a week."

315. Sanderson's comments about egg sets were amplified by Pilgrim's CEO later that summer, stating on a July 28, 2016 analyst call that "I think what we have seen with egg sets is absolutely a testament to the discipline of our industry that we've seen in the last really two to three years." He also commented on Defendants' continued restraint of breeder flock population, noting "the breeder flock in total is only up about 0.5%" over the same time period, and ended the analyst call describing the "positive notion [we] have about the *discipline* that we continue to see exhibited by the entire industry," which "*gives us more confidence that we're doing the right thing*

with respect to maintaining that discipline . . . and . . . gives us confidence that we're going to continue to be *disciplined as an industry.*" (emphasis added).

316. The year 2017 brought more of the same. For example, in January of 2017 employees of Defendants Claxton and Pilgrim's spoke multiple times to coordinate the conspiracy, and multiple Defendants, including Tyson and George, coordinated about 2018 and 2019 pricing for certain Broilers types.

317. An email included in the Superseding Indictment copying various Defendants is clear evidence of bid-rigging: "I am aware of what went on with Brand X and in fact the change took place during the current agreement year. I would also like you to keep that in mind while submitting your bid. Instead of a big cut next year I would entertain a two year price adjustment. Let me see what you can come up with."

318. Furthermore, on or about September 7, 2017, Tyson sent an email with a proposal to reduce the 2018 price of a certain Broilers type by $.01/lb., and the 2019 price by an additional $.01/lb. In sum, for more than a decade and extending at least through late 2019 (if not continuing to present, as the full scope of Defendants' conspiracy remains concealed), Defendants combined, conspired and took overt, collective actions that were both historically-unprecedented and against the individual economic self-interest of each Defendant (absent a conspiracy) to fix and manipulate Broiler prices by reducing Broiler output, production and supply.

C. Defendants Manipulated Broiler Prices Through the Georgia Dock Price Index

319. Defendants buttressed their successful efforts to artificially boost Broilers prices through coordinated supply reductions by collusively and fraudulently manipulating the Georgia Dock benchmark price index.

320. The Georgia Dock is a chicken-industry pricing benchmark that Defendants used

in a significant proportion of their contracts with purchasers for bulk sales of Broilers.

321. The Georgia Dock was such an important index that even when contracts were not explicitly indexed to the Georgia Dock, the prices purchasers paid to Defendants for Broilers were materially affected by the Georgia Dock price.

322. As such, the manipulation of the Georgia Dock had an anticompetitive effect on the price for sales of Broilers that were quoted based directly and expressly on the Georgia Dock and also contaminated and artificially raised prices for Broilers that were not expressly tied to the Georgia Dock.

323. This contamination occurred because Defendants often used the Georgia Dock as a crosscheck or baseline for transactions even when the Georgia Dock was not the primary benchmark that suppliers used to provide quotes to customers.

324. For example, Defendant Keystone Foods utilized the Georgia Dock as a reference point across the board for pricing even when their agreements with, or quotes to, customers did not call for the price to be based on the Georgia Dock.

325. During the relevant period, Broilers prices were reported primarily by three entities: (i) Urner Barry (a commodity price reporting service); (ii) the GDA through the Georgia Dock; and (iii) the USDA. Additionally, as discussed below, Agri Stats collected detailed pricing information through its subsidiary Express Markets, Inc. ("EMI").

326. Urner Barry collects and publishes daily price information for Broilers. Urner Barry's price information is subscription-based, so all producers and many purchasers subscribe for a fee. The USDA and Urner Barry's Broiler price indices are based on a system of double verification, which includes telephonic and written surveys of all or nearly all chicken producers, but also verification of reported prices from purchasers such as brokers and customers. The

Georgia Dock price survey methodology, which contrasts materially with those of the USDA and Urner Barry, is discussed below.

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

328. Published prices for Broilers from Urner Barry, Georgia Dock and USDA relate to the market for Broilers. Prices for Broilers, whether sold under contract or on the spot market, generally move with spot market prices as reported by the Georgia Dock or Urner Barry.

329. Multiple statements by chicken company executives, including those of Defendants, and industry experts confirm that Broilers sales, whether by contract or on the spot market, are tied to spot market pricing.

330. For instance, Sanderson Farms CEO Joe Sanderson explained in a May 2008 speech that Sanderson Farms' contract sales to retail customers have prices tied to the Georgia Dock price survey and Sanderson Farms' contract sales to food distributors are "based on formulas tied to the Urner Barry."

331. Similarly, expert economist Dr. Colin A. Carter from the University of California (Davis) has testified that "internal Pilgrim's documents show that virtually all chicken products, even if they're not sold spot, are tied to the spot prices.... 83 percent of Pilgrim's chicken sales are reflecting the spot price within a given year. So there's only about 16 percent of their sales that are not tied to the spot market over a relatively short period of time." Further, because half of "fixed contracts" actually had terms tied to Broilers spot market prices, Dr. Carter concluded that 92% of

Pilgrim's Broilers sales were tied to Broilers spot market prices such as Georgia Dock. Similarly, many purchases of Broilers from Defendants were tied to the Georgia Dock price even when those purchases were not spot transactions.

332. As a consequence of the inelasticity of supply and demand in the Broilers industry and the availability of the spot market price indices, public price increase announcements by Defendants were unnecessary. Such announcements are, however, plausibly and reasonably explained by Defendants' conspiracy.

333. Defendants knew and intended that decreasing Broiler supply pursuant to their collusive agreement would increase Broilers spot market prices and that, as a result, all Broiler prices would increase.

334. The Georgia Dock, USDA Composite and Urner Barry all measure the same (or very similar) size and grade of chicken. The Georgia Dock benchmark price index, like the other two indices, sets prices for both the "whole bird" and various parts of the chicken (wings, tenders, leg quarters, thighs, drumsticks, and breasts) using the same pricing methodology. The "whole bird" price is the baseline for pricing all parts of a chicken.

335. Purchasers reasonably relied on the Georgia Dock benchmark price index because they believed it accurately reflected the market price for the Broilers they bought, especially since the Georgia Dock was an industry-accepted benchmark price index for wholesale chicken prices that was meant to reflect the market price of chicken.

336. Many purchasers bought from Defendants at prices that used the Georgia Dock as a component throughout the relevant period. And in many instances, Defendants insisted on using the Georgia Dock in their pricing.

337. Much like when the world's largest banks came together to manipulate numerous

financial benchmarks (such as LIBOR), the Georgia Dock Defendants came together to manipulate the Georgia Dock benchmark price index. In effect, due to the Georgia Dock's centrality and critical importance to Broiler spot market prices, Defendants knew that with respect to the price of Broilers, the Georgia Dock was the "rising tide" that would lift all boats.

338. Compared to the other two indices available to chicken buyers, there were significant differences in how the Georgia Dock benchmark price index was compiled that made it highly susceptible to manipulation by the Georgia Dock Defendants.

339. The Georgia Dock Defendants are the nine producers that submitted price quotes that went into the Georgia Dock price index, namely (ranked by their market share in Georgia, which dictated how much weighting each producer's quote was given in compiling the Georgia Dock benchmark price): (1) Pilgrim's Pride (approximately 35% of Georgia market share in 2016); (2) Tyson (15%); (3) Fieldale (15%); (4) Mar-Jac (10%); (5) Claxton (10%); (6) Sanderson Farms (7%); (7) Harrison (5%); (8) Koch (less than 2%); and (9) Wayne Farms (less than 2%). Importantly, however, while the Georgia Dock Defendants provided the direct line of manipulation of the Georgia Dock index, all Defendants and their co-conspirators directly benefitted from these actions that represented a key element of the overarching conspiracy alleged herein.

340. The significant difference between the Georgia Dock price index and other Broiler price indices in recent years cannot be explained by only one or two outlier companies reporting artificially high Broiler prices to the GDA. That is because of the GDA's "one cent rule." According to internal GDA documents, this rule was meant "to shield [] one company having the ability to greatly influence the price up or down."

341. Under this rule, prices that deviate by more than one cent from the average price as initially calculated are excluded from the final Georgia Dock price. Because of the GDA's one-

cent rule, it was not possible for only one or two Broilers companies to report a Broilers price that was significantly higher than the actual market price to the GDA without being disregarded as outliers by the GDA. Accordingly, certain Georgia Dock Defendants began reporting prices to the GDA that fell within a very narrow range, but were also significantly above the actual market rate.

342. The deviation of the Georgia Dock price index from the prices in the other indices—indices that are themselves based on verified sales by Defendants—can be attributed only to all or nearly all participating Broiler producers collectively submitting artificially high and identical or very nearly identical Broiler prices to the GDA. As a result, Georgia Dock prices continued to rise and later stabilized during 2015-2016 at historic highs.

343. In other words, all or most of Defendants' submissions needed to be roughly within two cents of each other in order to inflate the Georgia Dock price and maintain an artificially inflated Georgia Dock price over time—a price which, for extended periods of time, was 20 or 30 cents higher than the comparable (and also inflated, due to the anticompetitive conspiracy alleged herein) Urner Barry price index. Notably, the Georgia Dock was also higher than the USDA and EMI indices.

344. According to an internal GDA document provided to the *New York Times* through an open records request, to compile the Georgia Dock price index, "each participating [Broiler producer] company is called [by the GDA] on Wednesday every week to report the price offered to companies in which they have contracts in place with." A single price is given by each Broiler producer company and it is accepted without any verification of actual invoices or any other form of auditing to verify accuracy. In response to a press inquiry, the GDA explained its failure to audit any self-reported data from Defendants by stating, "We don't see any reason they would submit information that wasn't truthful."

345. But in fact, the Georgia Dock Defendants did not report their true prices to the GDA. Instead, they agreed to, and in fact did, intentionally report false, artificially high (or artificially- stabilized) prices.

346. The reality was that the Georgia Dock price was simply whatever the Georgia Dock Defendants said it was.

347. Hypothetically, if one week the Georgia Dock price was $1.75, and the following week the Georgia Dock Defendants told the GDA that the offering price of their chicken was now $2, the Georgia Dock price would become $2, and the prices paid for Broilers would increase commensurately.

348. Once a week, a representative of the GDA's Poultry Market News division (the PMN) would call or email with representatives of the Georgia Dock Defendants in order to collect price submissions, which were supposed to reflect those Defendants' actual offering prices. The PMN collected Defendants' price submissions and weighted each of them by Defendants' above-referenced relative market share (referred to by the PMN as that company's "voice").

349. In addition, many Defendants submitted price quotes to the PMN via email, and those emails—once produced in discovery—will confirm many of the specific false and inflated quotes to the PMN.

350. All participants in the Georgia Dock knew Defendants were supposed to submit to the PMN their actual offering prices for 2.5 to 3-pound whole chickens, but only a handful of the Georgia Dock Defendants actually processed 2.5 to 3-pound birds in Georgia. As such, according to the PMN, the Georgia Dock Defendants were "supposed to adjust their whole bird quote as if they are producing that sized bird." The Georgia Dock Defendants knew that, if they did not sell 2.5 to 3-pound whole birds, they had to reliably convert their offering price each week for the

whole birds they did sell into a 2.5 to 3-pound bird. Once the final Georgia Dock whole bird price was calculated, the PMN used a formula to calculate prices for different chicken cuts and parts based on the whole bird price the Georgia Dock Defendants provided to the PMN each Wednesday.

351. In compiling the Georgia Dock benchmark price, there was no team of economists or statisticians surveying buyers and sellers in the national chicken market. Unlike the USDA Composite or Urner Barry poultry indices, which use data from numerous producers and buyers on both sides of the market, the Georgia Dock reflected prices sourced solely from a handful of producers.

352. In essence, from the inception of the Georgia Dock, the PMN relied on the "honor system" as to the truthfulness and accuracy of the offering prices submitted by the Georgia Dock Defendants.

353. In addition, submission of prices to the PMN was entirely voluntary. There were no regulations, rules or legislation requiring poultry producers operating in the state of Georgia to submit their prices to the PMN.

354. Moreover, the PMN, the Georgia Dock, and the PMN Advisory Committee were actually created and sustained for the benefit of the Georgia Dock Defendants and benefitted all Defendants.

355. The Georgia Dock has been an industry tool ever since it was first created as part of the Poultry Market News Bulletin in 1965. At that time, the GDA created the first Georgia Dock based on a recommendation from the Georgia Poultry Federation (the "GPF") that the GDA begin reporting a "live quotation" (*i.e.*, the price of a live bird). The GPF was—and continues to be—a trade association comprised of Georgia poultry producers.

356. Defendants—through their roles in creating and contributing to the Georgia Dock

and serving on the Advisory Committee—had intimate knowledge of the procedures by which the PMN collected, calculated and reported on the established prices for dressed F.O.B. dock Broilers and fryers that the Georgia Dock should have been reporting.

357. Defendants stayed apprised of this knowledge through meetings between the poultry producers and the PMN, during which they would discuss and review the reporting policies and procedures for the Georgia Dock. Defendants' knowledge even extended to the calculation forms used internally at the PMN, which were circulated to members of the PMN Advisory Committee following one of their meetings on January 25, 2007.

358. Not only did Defendants have intimate knowledge of what prices should be submitted to the PMN for inclusion in the Georgia Dock, but they also maintained firm control over the Georgia Dock through the Advisory Committee.

359. From its inception, the Advisory Committee was composed of senior executives from the Georgia Dock Defendants, and its mission was to advise the GDA on issues relating to the PMN division's collection of prices from Defendants and setting of the Georgia Dock price.

360. During at least the years of 2012 through 2016, the Advisory Committee included: Gus Arrendale (CEO, Fieldale Farms); Mike Welch (CEO and President, Harrison); Jerry Lane (Former CEO, Claxton Poultry); Jayson Penn (EVP Sales and Operations, Pilgrim's); Pete Martin (VP of Operations, Mar-Jac); Vernon Owenby (Manager of Tyson's facility in Cumming, Georgia); Steve Clever (VP of Fresh Sales, Wayne Farms); and Dale Tolbert (VP of Sales, Koch Foods).

361. The Advisory Committee therefore consisted entirely of representatives of one side of the transaction: the poultry producers.

362. Despite the fact that the Georgia Dock affected both buyers and sellers of chicken

alike, there were no representatives of buyers on the Advisory Committee.

363. There were also no neutral economists or members of academia.

364. The producers, and the producers alone, controlled the PMN, often working hand-in-hand with their current or former lobbyists within the GDA and from the Georgia Poultry Federation, as discussed in more detail below.

365. Defendants were familiar with the process by which the Georgia Dock price was calculated, enabling them to manipulate it. The Advisory Committee met periodically and discussed how the Georgia Dock price was calculated. In addition, because of their familiarity with the underlying guidelines and internal PMN calculations, the Georgia Dock Defendants knew the prices they submitted to the PMN were not subject to verification, and that those submissions would be used to calculate the next Georgia Dock price unless they deviated from the initially calculated weighted average by one cent or more.

366. Even those Defendants who did not plant executives on the Georgia Dock's Advisory Board were aware of these facts through private communications with the Georgia Dock Defendants.

367. The mechanics of manipulating the Georgia Dock price index are, in retrospect, clear. The Georgia Dock Defendants fraudulently submitted false and inflated price quotes to the PMN. These Defendants also concealed the Georgia Dock's many flaws, accruing to their benefit and to the ultimate detriment of the market and purchasers.

368. All Defendants had knowledge of, supported, facilitated, and/or participated in this anticompetitive and fraudulent conduct, and all benefitted from it.

369. For example, when the PMN calculated the Georgia Dock price each week, it rounded the price to the nearest 0.25 cents. For example, the Dock price could increase from 110.25

cents to 110.50 cents, but not any amount in between. Defendants also used increments of 0.25 cents in their submissions. Under the PMN's one-cent rule, any submission that was at least one cent more or less than the initially calculated weighted average would be excluded. As a result, on any given week, only seven submissions could affect the Dock price: the submission that happened to equal the initial calculation of the weighted average, and submissions that were +0.25 cents, +0.50 cents, +0.75 cents, -0.25 cents, -0.50 cents, and -0.75 cents when compared to the initial weighted average. All other submissions were excluded. Thus, in order to rig the Dock price, Defendants had to work in concert to make price submissions that fell within a narrow range of each other, yet far from the market price, week after week, for years.

370. Each of the Georgia Dock Defendant's submissions to the PMN made the implicit statement that those Defendants were submitting their actual offering price for 2.5 to 3-pound whole birds for the next week, while in fact those submissions reflected that Defendants were seeking to inflate the Georgia Dock price to make money at the expense of their customers.

371. Based on information relating to their pricing submissions, at least the following Defendants made false submissions to the Georgia Dock: Pilgrim's; Koch; Mar-Jac; Harrison; Sanderson; Tyson; Claxton; Wayne Farms; and Fieldale Farms. And, again, all Defendants knowingly reaped the benefits and profit from these false submissions through manipulated and artificially inflated Broiler sales prices.

372. Pilgrim's knew that, when submitting its price quotes to the PMN, it was supposed to provide its offering price for 2.5 to 3-pound birds for the next week. But rather than determining its actual offering price for the next week and submitting it to the PMN, Pilgrim's made false and inflated price submissions.

373. Due to its large production capacity, Pilgrim's had a "voice" of 35% for purposes

of the weighted average for the Georgia Dock price. Pilgrim's voice of 35% was by far the weightiest of the Georgia Dock Defendants, and thus its submissions had the greatest influence on setting the Georgia Dock price. Pilgrim's knew its submissions carried the most weight of any Defendant.

374. Pilgrim's submissions were false and inflated. Pilgrim's was supposed to submit its actual offering price for 2.5 to 3-pound whole birds. Because Broilers are a commodity, Pilgrim's actual offering price (absent manipulation of the index) should reflect actual market dynamics and Pilgrim's costs of production, rather than simply an attempt to artificially inflate the index. Yet Pilgrim's did not submit its actual or converted offering price for 2.5 to 3-pound whole birds each week.

375. Artificially high quotes constitute false statements because manipulated quotes are literally false or insincere responses to the PMN's request for submissions of actual offering prices. Pilgrim's knew they were false and inflated. It knew it was supposed to submit its actual or converted prices.

376. Pilgrim's made its submissions with the purpose of artificially inflating the Georgia Dock price index. Pilgrim's purpose was fulfilled—by acting in concert with other Defendants, their conduct resulted in inflation of the Georgia Dock price index and prices.

377. The intended targets of Pilgrim's fraudulent submissions to the PMN were purchasers of chicken, including the State and persons doing business or residing in the State. Pilgrim's sold chicken to its customers based on the Georgia Dock price index. Accordingly, as a result of Pilgrim's fraudulent submissions that artificially inflated the Georgia Dock price index, Pilgrim's and the other Defendants were able to charge purchasers higher prices than they otherwise would have and therefore made more money, harming purchasers, the market, and the

State and persons doing business or residing in the State.

378. The same is true as to Koch; Mar-Jac; Harrison; Sanderson; Tyson; Claxton; Wayne Farms; and Fieldale Farms. They all knew that when submitting their price quotes to the PMN, they were supposed to provide their offering price for 2.5 to 3-pound birds for the next week. But rather than determining their actual offering price for the next week and submitting it to the PMN, they made false and inflated price submissions.

379. Like Pilgrim's, these Defendants made their submissions with the purpose of artificially inflating the Georgia Dock price index, which worked. The intended targets of their fraudulent submissions to the PMN were purchasers of chicken, including the State and persons doing business or residing in the State.

380. These Defendants all sold Broilers based on the Georgia Dock price index. Accordingly, as a result of their fraudulent submissions that artificially inflated the Georgia Dock price index, they and the other Defendants were able to charge purchasers higher prices than they otherwise would have and therefore made more money, harming multiple purchasers, the market, and the State and persons doing business or residing in the State.

381. Through their fraudulent acts and omissions, the Georgia Dock Defendants, and the other Defendants in turn, were successful in inducing a false belief by Broiler purchasers about the reliability of the Georgia Dock price index. Either through contracts directly indexed to the Georgia Dock price, or through pricing negotiations indirectly (but materially) influenced by the Georgia Dock price, all purchasers paid inflated prices due to Defendants' manipulation of the George Dock index. The Georgia Dock Defendants' scheme deprived their victims of valuable economic information and depended for its completion on failure to disclose an essential element of the bargain.

382. In addition to their material omissions, the Georgia Dock Defendants, and the other Defendants in turn, also made false statements and affirmative misrepresentations about material facts over the relevant period. These Defendants knew that the Georgia Dock did not represent the Broiler market because they did not submit their actual prices to the PMN. But they affirmed that the Georgia Dock represented the market price for Broilers, regardless.

383. This practice was widespread: throughout the relevant period, the Georgia Dock Defendants stated, repeated and maintained that the Georgia Dock represented the market for Broilers, and they did so in a deliberate attempt to influence the business decisions made by Broiler purchasers.

384. The manipulation of the Georgia Dock by Defendants served its intended purpose, enabling Defendants to bolster their financial results at their customers' expense. Indeed, in some instances, the manipulation of the Georgia Dock allowed Defendants to recognize a profit instead of a loss.

385. For example, Mike Cockrell, CFO of Sanderson Farms, publicly stated in the New York Times that Sanderson was profitable in the fourth quarter of 2015 "only because we were making money from the chicken we were selling to the retail market."

386. Moreover, according to other published analyses, poultry companies such as Pilgrim's and Sanderson would have realized negative earnings and income in 2016 but for the profits realized from their sales based on the Georgia Dock.

387. Defendants' manipulation and exploitation of the Georgia Dock not only had an anticompetitive effect on the prices of Broilers that were based directly on the Georgia Dock, they also contaminated and artificially raised prices for Broilers that were not expressly tied to the Georgia Dock throughout the United States, including in Alaska.

D. Defendants Used Federally Indicted Bid-Rigging to Further Their Scheme

388. Beginning at least as early as 2012 and continuing into 2019 (if not later and/or to present, as the full scope of Defendants' scheme has been and remains concealed), Defendants engaged in a conspiracy to rig bids submitted for Broilers sold to restaurants and other contract purchasers, with the intent to artificially inflate the prices paid by these customers. As part of their procurement process, many restaurants and other contract purchasers ("Bid Customers") requested proposals or bids from Defendants for the volume of chicken needed. The Bid Customers received bids from Defendants throughout the relevant time period.

389. The Bid Customers expected Defendants to engage in a competitive bidding process, which when complete, would allow the Bid Customers to award its contracts to the most competitive bidder(s). Defendants, however, recognized that the Bid Customers offered an additional opportunity to effectuate their conspiracy.

390. Defendants' and their co-conspirators' bid-rigging conduct took multiple forms. At its most basic level, Defendants and their co-conspirators exchanged confidential information with each other regarding the bids they were submitting, or intended to submit, to specific identified Bid Customers, so that all supposedly competitive bids were aligned.

391. On June 3, 2020, the DOJ issued an Indictment against officers of certain Defendants in the District of Colorado founded on Defendants' and their co-conspirators' bid-rigging conduct (the "June Indictment"). The June Indictment charged Jayson Penn, President and CEO of Pilgrim's Pride; Mikell Fries, President of Claxton; Scott Brady, Vice President of Claxton; and Roger Austin, Vice President of Pilgrim's Pride (the "First Indicted Defendants") with conspiring "to suppress and eliminate competition by rigging bids and fixing prices and other price-related terms for broiler chicken products sold in the United States" in violation of Section

1 of the Sherman Act. That is, in the summer of 2020, a federal ground jury found sufficient evidence to bring criminal charges against many of Defendants' executives regarding the same anticompetitive conduct alleged herein.

392. Specifically, the June Indictment alleged that from at least 2012 through at least 2017, the First Indicted Defendants and at least seven Broilers suppliers conspired to: (i) reach agreements and understandings to submit aligned, though not necessarily identical, bids and to offer aligned, though not necessarily identical, prices and price-related terms, including discount levels and lines of credit, for Broilers products sold in the United States; (ii) participate in conversations and communications relating to nonpublic information such as bids, prices and price-related terms, including discount levels and lines of credit, for Broilers products sold in the United States with the shared understanding that the purpose of the conversations and communications was to rig bids, and to fix, maintain, stabilize and raise prices and other price-related terms, including discount levels, for Broilers sold in the United States; and (iii) monitor bids submitted by, and prices and price-related terms, including discount levels and lines of credit offered by Defendants and co-conspirators for Broilers sold in the United States.

393. The June Indictment expressly identified as victims of the First Indicted Defendants' conspiracy "[r]estaurants, grocery retailers and others who purchased large volumes of broiler chicken" who "received bids from or negotiated prices or other price-related terms, including discount levels, with Suppliers directly."

394. The June Indictment set forth a series of communications between Defendants and the co-conspirators—via phone, email and text messages—sharing and coordinating confidential bidding and pricing information in connection with multiple restaurant and grocer victims' requests for bids. The State, therefore, reasonably has information to believe that the production

of these communications in discovery in this action will likewise confirm the existence and parameters of the conspiracy alleged herein.

395. On October 6, 2020, the DOJ issued a Superseding Indictment in the District of Colorado, again founded on Defendants' bid-rigging conduct (the "Superseding Indictment"). The Superseding Indictment charged six additional executives, including Tim Mulrenin (Tyson/Perdue), Bill Kantola (Koch), Jimmie Little (Pilgrim's Pride), Bill Lovette (Pilgrim's Pride), Brian Roberts (Tyson/Case Foods), and Ric Blake (George's) (together with the First Indicted Defendants, the "Criminal Defendants") with conspiring "to suppress and eliminate competition by rigging bids and fixing prices and other price-related terms for broiler chicken products sold in the United States" in violation of Section 1 of the Sherman Act. Again, this means a federal grand jury has found sufficient evidence to bring criminal charges for the anticompetitive conduct alleged herein against even more executives of certain Defendants.

396. The Superseding Indictment expanded the bid-rigging conduct period from at least 2012 through at least early 2019 and stated that the bid-rigging conduct included, but was not limited to, ten different Broilers suppliers.

397. On October 13, 2020, the DOJ filed an Information charging Pilgrim's Pride with similar crimes for anticompetitive conduct. The Information states that "[b]eginning at least as early as 2012 and continuing through at least early 2019 . . . [Pilgrim's Pride] and its co-conspirators entered into and engaged in a continuing combination and conspiracy to suppress and eliminate competition by rigging bids and fixing prices and other price-related terms for broiler chicken products sold in the United States. The combination and conspiracy engaged in by Defendant and its co-conspirators was a *per se* unlawful, and thus unreasonable, restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. §1."

398. These criminal charges confirm the extent and severity of Defendants' anticompetitive conspiracy alleged herein.

E. Defendant Agri Stats Facilitated the Conspiracy

399. One of, if not the, most critical linchpins that facilitated and enabled Defendants' expansive conspiracy alleged herein was Defendants' ability to share and exchange detailed, non-public data and business plans and strategies with one another through Defendant Agri Stats. Defendants used Agri Stats to communicate their conspiracy with one another and monitor compliance with their agreement by other members of the unlawful cartel. Agri Stats, for its part, knowingly and willingly participated in the scheme at every step.

400. The USDA and various other entities publicly published aggregated weekly, monthly and annual supply and pricing information concerning the U.S. chicken industry. But only Agri Stats received from one Defendant(s), and then provided to other Defendants, detailed information to accurately determine producer-specific production, costs, and general efficiency.

401. Agri Stats is a company that generated confidential chicken industry data considerably more detailed than any similar types of available reports, including at least the following data categories:

(a) Broiler breeder flock size and age, hatchery capacity, and the costs associated with breeder flocks, including feed and housing expense;

(b) Data about the production, delivery and formulation of feed, including corn and soybean meal costs, which are two of Defendants' most significant input costs;

(c) Grow-out information for chicken "flocks" provided to contract farmers, including the number of chickens placed, chick mortality by week and overall percentage, chick cost, days between flocks provided to contract farmers (*i.e.*, "down time"), feed conversion rate (pounds of feed per pound of chicken), average daily weight gain by chicks, live pounds produced per square foot of grower house, grower compensation, including average grower payment in cents per pound and cents per square foot, breed 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;

(d) 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;

(e) Inventory levels of chickens; and

(f) Financial information, such as monthly operating profit per live pound, sales per live pound, and cost per live pound.

402. Agri Stats collected data from Defendants, audited and verified the data, and ultimately reported back to Defendants detailed statistics on nearly every operating metric within the industry, including the size and age of Broilers breeder flocks.

403. Agri Stats' survey methodology—from and to Defendants—involved direct electronic data submissions of non-public financial, production, breeder flock size and age, capacity, cost, and numerous other categories of information by each chicken producer on a weekly and monthly basis.

404. At each of Defendants' chicken complexes, certain employees, typically in the accounting department, were responsible for submitting the data to Agri Stats once a week (historically, on Thursdays) using an AS400 data link system. Agri Stats used a detailed audit process to verify the accuracy of data from each complex, often directly contacting Defendants to verify data before issuing reports to Agri Stats subscribers.

405. Importantly, Agri Stats operated as a sort of "members only" club for producers of Broilers, as only Broiler producers—including all Defendants—that supplied data to (and paid) Agri Stats were permitted to receive Agri Stats' reports.

406. Agri Stats described itself as a "benchmarking" service that "allows organizations to develop plans on how to adopt best practice, usually with the aim of increasing some aspect of

performance."

407. Sanderson Farms CEO Joe Sanderson claimed, "[w]e use Agri Stats, which some of you are probably familiar with. Agri Stats is a benchmarking service that we submit data to. Almost everyone in our industry does as well. And we get the data back. It's anonymous – the data is anonymous, so we don't know whose numbers the numbers belong to, but we can see performance indicators all over the industry."

408. However, contrary to these assertions, Defendants were at all material times able to (and did) readily determine "whose numbers . . . belong to [whom]."

409. Indeed, each Defendant knew that when it provided its internal, confidential information to Agri Stats, the other producers would be able to access that information and identify the Defendant that submitted it. This was common knowledge in the industry. And it is precisely why Defendants did it—to communicate their conspiracy with one another and monitor compliance with the tactics necessary to achieve the common goal of the conspiracy by each co-conspirator and other member of the unlawful cartel.

410. There was no legitimate purpose to provide this specific, competitively sensitive information to Agri Stats, nor was there any legitimate purpose for Agri Stats to disseminate the information in the detailed, readily decipherable form in which it is sent to Defendants. Instead, it was provided, compiled and transmitted for anticompetitive purposes.

411. Agri Stats' critical importance for a collusive production-restriction scheme in the chicken market lies not only in the fact that it supplies data necessary to coordinate production limitations and manipulate prices, but also in its market-stabilizing power.

412. Price-fixing or output-restricting cartels, regardless of industry, are subject to inherent instability in the absence of policing mechanisms, as each individual member has the

incentive to "cheat" other members of the cartel—for example, by boosting chicken production to capture higher prices even as other cartelists heed their conspiratorial duty to limit production, which is what happened in the chicken industry for a short period in 2010, when upon information and belief, Defendants were given permission to reap a temporary and time-limited windfall of anticompetitive profits from Broiler sales at the inflated prices Defendants had managed to manufacture.

413. Agri Stats' detailed statistics—coupled with its regular, in-person meetings with each Defendant and routine participation in trade association events widely attended by Defendants' senior executives—serve an indispensable monitoring function, allowing each member of Defendants' cartel to 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."

414. Agri Stats claimed to maintain the confidentiality and anonymity of individual company's data by giving each company a report identifying only that company's specific chicken complexes by name, but not identifying by name other chicken producers' complexes described in the report, but rather, by number.

415. But, by design, Agri Stats' reports were so detailed that any reasonably-informed producer could easily discern the identity of its competitors' individual chicken complexes. It is common knowledge among producers that others could do so, with some Defendants referring to the task of determining the identity of individual competitor's data as "reverse engineering."

416. Agri Stats played a particularly important role in Defendants' signaling practices and policing efforts.

417. The specific type or size of breeder flock housing, breed of chick, average bird size, and production levels listed in Agri Stats' data for Defendants' complexes allowed any given

Defendant to "reverse engineer" and interpret the public statements and other publicly available information about its competitors to determine which complexes were cutting back, and by how much.

418. Defendants thus used Agri Stats throughout their conspiracy to perform price and supply verifications among the members of the conspiracy and in order to communicate their intentions for future prices (*via* Broiler production and supply) to one another.

419. As just one of the many examples specific to the Broiler industry, the nature of Broiler breeder flocks is that they necessarily predict future Broiler supply. Thus, by sharing such information in a way that permitted company-by-company identification, Defendants were in fact sharing future anticipated production information with one another. But in a truly competitive market, such proprietary and competitively sensitive information would be a closely guarded secret. For these Defendants, who conspired for years to collusively manipulate Broiler prices to increase their bottom lines through anticompetitive profits, however, Agri Stats enabled competition to be eradicated through the routine exchange of sensitive internal company information among supposed "competitors."

420. There simply is no plausible, non-conspiratorial justification for such secret communications and sharing of proprietary information.

421. Agri Stats' role in the chicken industry extends far beyond the collection and dissemination of competitively sensitive data. It was an active and knowing participant in, and facilitator of, Defendants' scheme, along with the other co-conspirators.

F. Additional Factual Allegations

422. The acts and effects of Defendants' conspiracy continued at least through and until late 2019 (if not later and/or to present, as the full extent and scope of Defendants' scheme has

been and remains concealed) and continue to be felt by the State, its agencies, and persons doing business or residing in the State at present day. The State and persons doing business or residing in the State have been injured at least through that time period; the actionable conduct continued at least through that time period; and upon information and belief, injuries caused by those acts continue at present.

423. The conduct and violations of law discussed herein were continuing in nature. Claims for continuing violations are considered to accrue at any time during the period of the violation, in this case including in 2019, if not to present, as set forth above. Additionally, the Indictments have tolled any limitations applicable to the claims pled herein, as has *American Pipe* to the extent the State or persons doing business or residing in the State fall within the proposed class definition(s) in the various class actions pending in In re Broiler Chicken Antitrust, 1:16-cv-08637 (N.D. Ill). The statute of limitations otherwise applicable to their claims would be, if the proposed class definitions(s) applied, tolled until the court in the initial action has ruled on the question of class certification.

424. Also, by virtue of Defendants' active and intentional concealment of their conduct, any applicable limitations period has been tolled under the fraudulent concealment doctrine and/or the doctrine of equitable estoppel. Neither the State nor persons doing business or residing in the State discovered, nor should have discovered, the existence of all elements essential to the causes of action below prior to their actual discovery, and the State subsequently acted with due diligence to file this lawsuit.

V. CAUSES OF ACTION

COUNT I
UNLAWFUL RESTRAINT OF TRADE OR COMMERCE

425. The State incorporates the preceding paragraphs as if fully set forth herein.

426. Defendants entered into and engaged in a combination or conspiracy in unreasonable restraint of trade in violation of AS 45.50.562, *et seq.*, which expressly makes such acts unlawful.

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

428. Defendants entered into a continuing agreement, understanding and conspiracy in restraint of trade to (a) fix, raise, stabilize, and maintain prices for and/or restrain supply of Broilers, (b) manipulate and capitalize on the Georgia Dock benchmarking price, and (c) rig bids and allocate markets for Broilers, thereby engaging in restraint of trade or commerce and creating anticompetitive effects.

429. Defendants' anticompetitive acts involved United States domestic commerce and import commerce, and had a direct, substantial, and foreseeable effect on interstate commerce and commerce in the State of Alaska by raising and fixing prices for Broilers throughout the Alaska.

430. The conspiratorial acts and combinations have caused unreasonable restraints in the market for Broilers.

431. As a result of Defendants' unlawful conduct, the State and persons doing business or residing in the State have been harmed by being forced to pay artificially inflated, supra-competitive prices for Broilers.

432. In formulating and carrying out the alleged agreement, understanding and conspiracy, Defendants did those things that they combined and conspired to do, including but not limited to the acts, practices, and course of conduct set forth herein.

433. Defendants' conspiracy had at least the following effects, among others:

- Price competition in the market for broilers has been restrained, suppressed, and/or eliminated in Alaska;

- Prices for Broilers sold by Defendants, their divisions, subsidiaries, and affiliates, and all of their co-conspirators have been fixed, raised, stabilized, and maintained at artificially high, non-competitive levels throughout Alaska; and

- The State of Alaska, its entities and agencies, and individuals residing and/or doing business in Alaska—which directly and/or indirectly purchased Broilers from Defendants, their divisions, subsidiaries, and affiliates, and all of their co-conspirators—have been deprived of the benefits of free and open competition in the purchase of Broilers.

434. Defendants took all of the actions alleged herein with the knowledge and intended effect that their actions would proximately cause the price of Broilers paid by the State and persons doing business or residing in the State to be higher than it would be but for Defendants' conduct.

435. As a direct and proximate result of Defendants' anticompetitive conduct, the State and persons doing business or residing in the State have been injured in their interests, business or property and will continue to be injured by paying more for Broilers than they would have paid in the absence of Defendants' conspiracy and unlawful conduct.

436. Furthermore, Defendants' anticompetitive conduct described herein constitutes a per se violation of AS 45.50.562.

437. The State, by and though its Attorney General, brings this action pursuant to AS 45.50.576-.595, and seeks relief including:

a. Monetary relief on behalf of the State and its agencies injured either directly or indirectly by reason of any violation as set forth above. AS 45.50.577(a);

b. Monetary relief on behalf of persons doing business or residing in the State for injuries directly or indirectly sustained by these persons by reason of any violation as set forth above. AS 45.50.577(b);

c. Three times the total damages sustained and awarded as described in (a) and (b), plus the costs of the action, including reasonable attorney fees. AS 45.50.577(c);

d. Civil penalties against each Defendant up to fifty million ($50,000,000.00) dollars per Defendant. AS 45.50.577(d); and

e. Injunctive relief, including as set forth in AS 45.50.580.

COUNT II
VIOLATIONS OF THE UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT

438. The State incorporates the preceding paragraphs as if fully set forth herein.

439. The aforementioned practices by Defendants are in violation of the Alaska Unfair Trade Practices and Consumer Protection Act ("UTPA"), which prohibits unfair methods of competition and unfair or deceptive practices in the conduct of trade or commerce. AS 45.50.471(a). Defendants' violations had impacts within the State of Alaska and have substantially affected the State and persons doing business or residing in the State.

440. Specifically, Defendants' conduct to (a) fix, raise, stabilize, and maintain prices for and/or restrain supply of Broilers, (b) manipulate and capitalize on the Georgia Dock benchmarking price, and (c) rig bids and allocate markets for Broilers, as described herein, deceived and damaged persons doing business or residing in the State by causing them to pay artificially inflated prices for Broilers.

441. Defendants, directly and/or through the control of third parties and/or by aiding and abetting third parties, violated the UTPA by making or causing to be made, and by disseminating unfair, false, deceptive, and/or misleading statements to the State and persons doing business or residing in the State.

442. Further, Defendants deceived and defrauded persons doing business or residing in the State and omitting a material fact(s), namely their anti-competitive conduct, in the marketing and sale of Broilers.

443. As a direct and proximate result of Defendants' conduct, and the fraudulent concealment of that conduct, the State and persons doing business or residing in the State have been injured in their interests, business or property and will continue to be injured by paying more for Broilers than they would have paid in the absence of Defendants' unfair and deceptive conduct, in an amount of ascertainable damages to be established at trial.

444. While actual injury and intent to deceive are both present in this case, neither is required to recover under the UTPA.

445. Defendants, through their conduct as set forth herein, are in violation of the UTPA, including: (i) AS 45.50.471(b)(11), by engaging in other conduct creating a likelihood of confusion or misunderstanding and which deceived or damaged the State and persons doing business or residing in the State or competitors in connection with the sale or advertisement of goods or services; and (ii) AS 45.50.471(b)(12) by using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression, or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged.

446. The Attorney General may bring an action to enjoin any practice it believes violates AS 45.50.471(a), and courts are authorized to order restoration of money acquired by unlawful means. AS 45.50.501. Also, the State and persons doing business or residing in the State who suffer losses can recover treble damages. AS 45.50.531(a). Such treble damages serve a remedial purpose and, therefore, do not preclude punitive damages or civil penalties.

447. The State also seeks and is entitled to recover civil penalties of not less than $1,000 and not more than $25,000.00 for each violation, per each Defendant. AS 45.50.551(b).

448. Defendants are liable for this conduct under the Alaska Unfair Trade Practices and Consumer Protection Act even if the State and persons doing business or residing in the State were not actually misled, deceived, or specifically damaged. AS 45.50.471.(12) ("Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful" and include "using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression, or omission in connection with the sale or advertisement of goods or services *whether or not a person has in fact been misled, deceived or damaged*") (emphasis added).

449. The State is also entitled to reasonable attorney fees and costs, including the costs of investigation. AS 45.50.537(d).

COUNT III
UNJUST ENRICHMENT

450. The State incorporates the preceding paragraphs as if fully set forth herein.

451. The State and persons doing business or residing in the State conferred a benefit upon Defendants, including in the form of payment of artificially inflated prices for Broilers. Defendants knew of or appreciated this benefit. It would be inequitable for Defendants to retain the benefit without paying for its value.

452. The State and persons doing business or residing in the State are entitled to the establishment of a constructive trust impressed upon the benefits acquired by Defendants as a result of their unjust enrichment from inequitable conduct.

453. Additionally and/or alternatively, Defendants should be ordered to pay restitution, or to disgorge profits to the State and persons doing business or residing in the State, or at least be required to pay some other measure of the reasonable value of the benefits conferred upon them.

PRAYER FOR RELIEF

WHEREFORE, the State of Alaska prays for judgment against Defendants to the fullest extent of Alaska law, as follows:

A. For a Declaration that Defendants entered into and engaged in a combination or conspiracy in unreasonable restraint of trade in violation of AS 45.50.562, *et seq.,* including that Defendants are guilty of a per se violation(s) of AS 45.50.562;

B. For monetary relief on behalf of the State and its agencies injured either directly or indirectly by reason of any violation as set forth above. AS 45.50.577(a);

C. For monetary relief on behalf of persons doing business or residing in the State for injuries directly or indirectly sustained by these persons by reason of any violation as set forth above. AS 45.50.577(b);

D. For three times the total damages sustained and awarded as described in (a) and (b), plus the costs of the action, including reasonable attorney fees. AS 45.50.577(c);

E. For civil penalties against each Defendant up to fifty million ($50,000,000.00) dollars per Defendant. AS 45.50.577(d);

F. For injunctive relief, including as set forth in AS 45.50.580;

G. For a Declaration that Defendants violated the UTPA;

H. For relief under the UTPA including injunctive relief for Defendants' violations of AS 45.50.471(a), and an Order against Defendants for restoration of money acquired by Defendants by unlawful means. AS 45.50.501;

I. For three times the total damages sustained and awarded under the UTPA. AS 45.50.531(a);

J. For civil penalties of not less than $1,000 and not more than $25,000.00 for each violation per each Defendant. AS 45.50.551(b);

K. For restitution or disgorgement of Defendants' unjust enrichment, benefits, and ill-gotten gains, plus interest, acquired as a result of the unlawful or wrongful conduct alleged herein and pursuant to common law;

L. For punitive damages;

M. For costs, interest, and attorneys' fees, including pursuant to AS 45.50.537(d); and

N. For all other relief deemed just by the Court.

DATED: February 19, 2021.

Respectfully submitted,

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