

1 Alan R. Plutzik (State Bar No. 77785)
2 Michael S. Strimling (State Bar No. 96135)
3 BRAMSON, PLUTZIK, MAHLER
& BIRKHAUSER LLP
4 2125 Oak Grove Road
Walnut Creek, CA 94598
5 Telephone: (925) 945-0200
6 Facsimile: (925) 945-8792
aplutzik@bramsonplutzik.com
mstrimling@bramsonplutzik.com

7 *Interim Liaison Counsel*

8
9 Mark P. Kindall (State Bar No. 138703)
Robert A. Izard (admitted *pro hac vice*)
10 Jeffrey S. Nobel (admitted *pro hac vice*)
Nicole A. Veno (admitted *pro hac vice*)
11 IZARD NOBEL LLP
29 South Main Street, Suite 305
12 West Hartford, CT 06107
Telephone: (860) 493-6292
13 Facsimile: (860) 493-6290
14 mkindall@izardnobel.com
rizard@izardnobel.com
15 jnobel@izardnobel.com
nveno@izardnobel.com

16 *Interim Lead Counsel*

17 UNITED STATES DISTRICT COURT
18
19 NORTHERN DISTRICT OF CALIFORNIA
20
21 SAN FRANCISCO DIVISION

22 IN RE KOREAN RAMEN ANTITRUST
LITIGATION

No. 13-cv-04115-WHO

**CONSOLIDATED INDIRECT
PURCHASER CLASS ACTION
COMPLAINT**

23
24 _____
25 THIS DOCUMENT RELATES TO:

26 All Indirect Purchaser Actions

27 DEMAND FOR JURY TRIAL

1 Plaintiffs, by their attorneys, on behalf of themselves and all others similarly situated,
2 make the following allegations pursuant to the investigation of their counsel and based on
3 information and belief, except as to allegations pertaining to themselves and their own activities
4 which are on personal knowledge. Plaintiffs believe that substantial additional evidentiary
5 support exists for the allegations set forth herein and will be available after a reasonable
6 opportunity for discovery.

7
8 **INTRODUCTION**

9 1. This is a class action against Defendants Nong Shim Company, Ltd., Nong Shim
10 America, Inc., Ottogi Company, Ltd., Ottogi America, Inc., Samyang Foods Company, Ltd.,
11 Sam Yang (U.S.A.) Inc., Korea Yakult Co., Ltd., and Paldo Company, Ltd. (collectively,
12 “Defendants”) concerning their agreements to raise, fix, maintain and/or stabilize prices in the
13 worldwide market for Korean Ramen Noodle Products from May 2001 to the Present (the “Class
14 Period”).

15 2. At an initial meeting at the Renaissance Seoul Hotel in December 2000 or January
16 2001, the Korean Defendants conspired and agreed to a specific protocol to implement factory-
17 level price increases. As a direct result of this conspiracy, Defendants inflated the prices for
18 Korean Ramen Noodle Products by agreeing to raise prices at least six times between 2001 and
19 2008. Upon information and belief, the effects of those illegal price increases have continued to
20 the present in the retail market for Korean Ramen Noodle Products.

21 3. The Korean Ramen Noodle Products conspiracy was hidden from the public until
22 July 12, 2012, when the Korean Fair Trade Commission (“KFTC”) publicly issued an order and
23 findings (the “KFTC Order”) revealing that the Korean Defendants had colluded to increase
24 prices of Korean Noodles and keep such prices inflated. The KFTC Order, written in Korean,
25 revealed that collusion manifested itself in at least two formal in-person meetings between the
26 Korean Defendants (in 2001 and 2008), and included excerpts of hundreds of email
27 communications among the Korean Defendants regarding details of future Korean Noodle price
28 increases, including the timing and amounts of such price increases.

1 8. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) and 15 U.S.C. §§ 15 and 22,
2 because one or more Defendants is a resident of this District under 28 U.S.C. §1391(d) and
3 because one or more of the Defendants are doing business in, have agents in, or are found and
4 transact business in this District.

5 9. Defendants' conduct involves the import of Korean Ramen Noodle Products from
6 the Republic of Korea ("Korea" or "South Korea") to the United States and constitutes import
7 commerce. In addition, Defendants' unlawful activities have had a direct, substantial and
8 reasonably foreseeable effect on U.S. trade or commerce. The anticompetitive conduct, and its
9 effect on U.S. commerce, proximately caused antitrust injury to Plaintiffs and the members of
10 the classes described herein.

11 **PARTIES**

12 10. Plaintiff Stephen Fenerjian ("Fenerjian") is a resident of Sharon, Massachusetts
13 and an individual consumer. Fenerjian has purchased Shin Ramyun Noodle Soup (in packet
14 form) manufactured by Defendant Nong Shim America, Inc. at Shaw's in Sharon, MA
15 approximately 75 times per year between 2008 and the Present for personal or household use and
16 not for resale.

17 11. Plaintiff Joyce Beamer ("Beamer") is a resident of Ann Arbor, Michigan and an
18 individual consumer. Beamer purchased Shin Ramyun Noodle Soup manufactured by Defendant
19 Nong Shim America, Inc. at Busch's Fresh Food Market in Ann Arbor, Michigan in 2014.
20 Additionally, Beamer has purchased Shin Ramyun Noodle Soup manufactured by Defendant
21 Nong Shim America, Inc. approximately six times per year over the past ten years. Beamer's
22 purchases were for personal or household use and not for resale.

23 12. Plaintiff Kendal Martin ("Martin") is a resident of Beverly Hills, Florida and an
24 individual consumer. Martin has purchased Shin Ramyun Noodle Soup manufactured by
25 Defendant Nong Shim America, Inc. and Shin Cup Noodle Soup manufactured by Defendant
26 Nong Shim Company, Ltd. approximately fifty times per year from 2009 to the present at
27 Walmart in Lecanto, Florida, Walmart Supercenter in Inverness, Florida, and Sweetbay
28 Supermarket in Crystal River, Florida for personal or household use and not for resale.

1 13. Plaintiff Nicholas Halloran (“Halloran”) is a resident of Albany, New York and
2 an individual consumer. Halloran has purchased Nongshim Shin Ramyun Noodle Soup (in
3 packet form), Nong Shim Bowl Noodle Soup Hot & Spicy flavor manufactured by Defendant
4 Nongshim America, Inc and Nongshim Shin Ramyun (in cup form) manufactured by Defendant
5 Nong Shim Co., Ltd. a total of approximately twenty times per year over the past two and a half
6 years at Asian Food Market and Asian Supermarket in Albany, NY and Costco in Alhambra,
7 California for personal, family or household use and not for resale.

8 14. Plaintiff Anthony An (“An”) is a resident of Los Angeles, California and an
9 individual consumer. An purchased Shin Ramyun, Neoguri, Chapagetti, Potato Ramen and
10 Kimchee Ramen manufactured by Defendant Nongshim America, Inc. and Ansungtangmyun
11 manufactured by Defendant Nong Shim Co., Ltd. at HK Market in Glendale, California in 2013
12 for personal, family or household use and not for resale. An also purchased Korean Ramen
13 Noodle Products, such as Shin Ramen, Chapagetti and Neoguri manufactured, by Nong Shim
14 Co., Ltd. and/or Nongshim America, Inc., approximately two to three times per year between
15 2001 and 2010 at Asian food markets in southern California for personal, family or household
16 use and not for resale. Additionally, An has purchased Korean Ramen Noodle Products
17 manufactured by Defendant Ottogi Co., Ltd. approximately once per year and Korean Ramen
18 Noodle Products manufactured by Samyang Foods Co., Ltd. approximately twice per year, at
19 Asian food markets in southern California from 2001 to the Present for personal, family or
20 household use and not for resale.

21 15. Plaintiff Eleanor Pelobello (“Pelobello”) is a resident Vallejo, California and an
22 individual consumer. Pelobello purchased Nongshim Shin Ramyun Noodle Soup in packet form,
23 manufactured by Defendant Nongshim America, Inc., or in cup form, manufactured by Nong
24 Shim Co., Ltd., once per month over the past two years primarily at Island Pacific Supermarket
25 and on occasion at Asian Market in Vallejo, California, and other Asian supermarkets in Vallejo,
26 California, for personal, family or household use and not for resale.

27 16. Plaintiff Jill Bonnington (“Bonnington”) is a resident of Mission Viejo, California
28 and an individual consumer. Plaintiff has purchased Nongshim Spicy Kimchi Noodle Bowl and

1 Nongshim Shin Ramyun Noodle Soup (in packet form) manufactured by Nongshim America,
2 Inc. multiple times over the past five years at Trader Joe's, Costco, and Mother's Market in
3 Laguna Niguel, California for personal, family or household use and not for resale. During this
4 time period, she has purchased these products on average about once per month from Costco and
5 about once every other month from either Trader Joe's or Mother's Market.

6 17. Plaintiff Kenny Kang ("Kang") is a resident of Los Angeles, California and an
7 individual consumer. Kang has purchased Ansungtang Myun, Neoguri and Shin Ramen in
8 packet or bowl form manufactured by Defendant Nongshim America, Inc. approximately two to
9 three times per month from 2007 to the Present, Bibim Myun manufactured by Defendant Korea
10 Yakult Co., Ltd. approximately two to three times per year and Samyang Ramen manufactured
11 by Defendant Samyang Foods Company, Ltd. approximately one to two times per year from
12 2006 or 2007 to the Present at Assi Market, Gaju Market or Galleria Market in Los Angeles,
13 California for personal, family and household use and not for resale.

14 18. Plaintiff Christina Nguyen ("C. Nguyen") is a resident of Aliso Viejo, California
15 and an individual consumer. Nguyen has purchased Spicy Kimchi Bowl Noodle Soup
16 manufactured by Nongshim America, Inc. multiple times over the past six years at Costco in
17 Laguna Niguel, California, ABC Supermarket, Westminster, California and Saigon City
18 Supermarket in Westminster, California for personal, family or household use and not for resale.
19 C. Nguyen typically purchased packages of six bowls about every three to four months during
20 this time period.

21 19. Plaintiff Thu-Thuy Nguyen ("T. Nguyen") is a resident of San Clemente,
22 California and an individual consumer. Nguyen has purchased Nongshim Neoguri Spicy
23 Seafood Udon Noodles in packet form (sold 20 per box), Nong Shim Savory Chicken Noodle
24 Bowl and Nongshim Spicy Kimchi Bowl Noodle Soup manufactured by Nongshim America,
25 Inc. She has purchased 12 bowls or one box of 20 packets once every one to three months from
26 2004 to the Present. Nguyen's purchases were for personal, family or household use and not for
27 resale.

28

1 *The Korean Defendants*

2 20. Defendant Nong Shim Company, Ltd. (“Nong Shim”) is headquartered in
3 Dongjak-gu, Seoul, South Korea. Nong Shim Co. Ltd has had a high market share in the Korean
4 Ramen Noodles Market in Korea since the 1990s and, since 2010, accounts for approximately
5 70% of the Korean Ramen Noodles business in Korea. During the Class Period, Nong Shim
6 participated in the price-fixing scheme alleged herein and exported Korean Ramen Noodle
7 Products into the United States through its importing subsidiary, Nongshim America, Inc. During
8 the Class Period, Nong Shim manufactured Korean Ramen Noodle Products in South Korea,
9 imported the Korean Ramen Noodle Products to the United States, and sold them to members of
10 the Class in the United States. Accordingly, Nong Shim’s conduct had a direct effect on
11 commerce in the United States. United States sales of Nong Shim’s Korean Ramen Noodle
12 Products account for 15% of the company’s consolidated sales and 7% of the total operating
13 profit in 2010. As of 2006, United States sales accounted for 34.1% of Nong Shim’s non-Korean
14 sales.

15 21. Defendant Ottogi Company., Ltd. (“Ottogi”) is headquartered in Daechi-dong
16 Gangnam-gu, Seoul, South Korea. During the Class Period, Ottogi participated in the price-
17 fixing scheme alleged herein and manufactured Korean Ramen Noodle Products in South Korea,
18 imported the Korean Ramen Noodle Products to the United States, and sold them to members of
19 the Class in the United States. Accordingly, Ottogi’s conduct had a direct effect on commerce in
20 the United States.

21 22. Defendant Samyang Foods Company., Ltd. (“SAMYANG”) is headquartered in
22 Seongbuk-gu, Seoul, South Korea. During the Class Period, Samyang participated in the price-
23 fixing scheme alleged herein and manufactured Korean Ramen Noodle Products in South Korea,
24 imported the Korean Ramen Noodle Products to the United States, and sold them to members of
25 the Class in the United States. Accordingly, Samyang’s conduct had a direct effect on commerce
26 in the United States.

27 23. Defendant Korea Yakult Company, Ltd. (“Korea Yakult”) is headquartered in
28 Seochu-gu, Seoul, South Korea. Korea Yakult manufactures beverages (the word “yakult” refers

1 to a Korean yogurt drink), Korean Ramen Noodle Products, and other dairy products. During the
2 Class Period, Korea Yakult participated in the price-fixing scheme alleged herein, manufactured
3 Korean Ramen Noodle Products in South Korea, and imported Korean Ramen Noodles into the
4 United States. Until 2012, Korea Yakult was registered to do business in California as “Paldo
5 America” and distributed Korea Yakult’s Korean Ramen Noodle Products throughout the United
6 States. Since December 2012, Korea Yakult’s Ramen Noodle Products have been imported and
7 distributed in the United States through Defendant Paldo Company, Ltd. (“Paldo”).
8 Accordingly, Korea Yakult’s conduct had a direct effect on commerce in the United States.

9 24. The foregoing Defendants shall be referred to collectively as “The Korean
10 Defendants.”

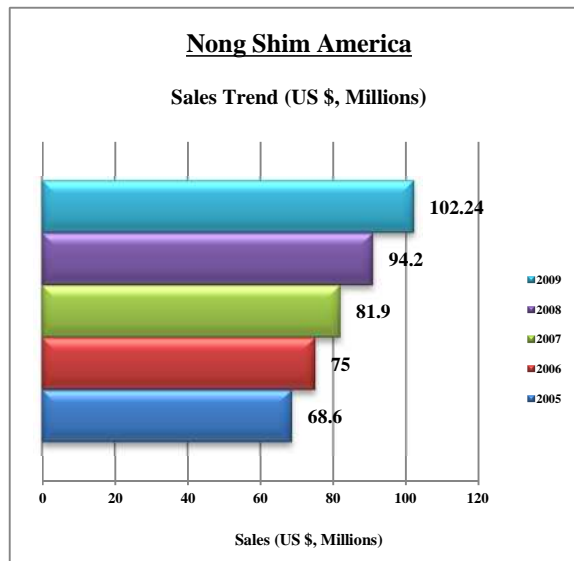
11 *The Subsidiary/Affiliate Defendants*

12 25. Defendant Nongshim America, Inc. (“Nongshim America”) is a California
13 corporation headquartered in Rancho Cucamonga, California. Nongshim America has additional
14 offices in the following towns: Emeryville, California; Houston, Texas; Cranbury, New Jersey;
15 Niles, Illinois; Duluth, Georgia and Columbia, Maryland. Nongshim Co., Ltd. owns Nongshim
16 USA Holding, Inc., which in turn owns Nongshim America. Thus, Nong Shim America is a
17 wholly owned and controlled subsidiary of Nong Shim Co., Ltd.¹ Mr. Dong Wong Shin, Co-
18 CEO and Vice Chairman of the Board of Nong Shim Company, Ltd., has served on the Board of
19 Directors of Nongshim America since 1994. Additionally, Mr. Jun Park, President and Co-CEO
20 of Nong Shim Co., Ltd. has served on the Board of Directors of Nong Shim America, Inc. since
21 1994. Park was named as a conspirator in the KFTC Order. Thus, the activities of the Korean
22 corporation would also be known to, and involve Directors of, Nongshim America. Plaintiffs are
23 informed and believe that such interlocking control, knowledge and activities of such entities has
24 existed throughout the Class Period. During the Class Period, Nongshim America manufactured
25 and distributed Korean Ramen Noodles in the United States and imported and distributed Korean
26 Ramen Noodle Products manufactured by Defendant Nong Shim. Upon information and belief,

27 _____
28 ¹ Nong Shim is the only defendant to have a factory in the United States, which opened in 2005. Nong Shim’s 2008
Factbook stated that this his factory produces approximately 200 million packs of instant noodles per year, including
several of Nong Shim’s key products, such as Shin Ramyun and Yukgaejung Bowl Noodle Soup.

1 Korean Ramen Noodle Products manufactured and/or imported by Nongshim America have a
2 dominant share of the U.S. Korean Ramen Noodles market.

3 26. According to 2008 and 2009 annual report of Nong Shim, sales revenues in the
4 United States during 2005-09 were as follows:



14 27. Defendant Ottogi America, Inc. (“Ottogi America”) is a California corporation
15 headquartered in Gardena, California. Ottogi America is a wholly owned and controlled
16 subsidiary of Ottogi Co., Ltd. (as Ottogi Co. Ltd. owns 100% of Ottogi America’s stock) and is
17 under the direction and control of Ottogi Co. Ltd.² Ottogi Co. Ltd.’s website explains,

18 We provide variety of products manufactured from our mother company, Ottogi
19 Corporation founded in 1969... ..Ottogi America distributes our products all over the
20 United States and Canada. Ottogi America, as a wide-ranging food distributor, has
21 acquired top food technology and brand name from Ottogi Corporation to bring
22 competitive products that will lead North and South America’s Korean Food Industry.
23 We will rise as the leading Asian food company in the continent of America and become
24 the cornerstone in globalizing our Ottogi Corporation to expand as a worldwide
25 company.³

26 During the Class Period, Ottogi America imported into the United States and distributed Korean
27 Ramen Noodle Products manufactured by Defendant Ottogi.

28 ² Ottogi America functions and presents itself to the public and to the business world as simply an extension of
Ottogi Co. Ltd. In fact, the website for the American subsidiary, <http://ottogiamerica.com/>, presents history and
information pertaining to the Korean company, not the American subsidiary and touts a history and capabilities long
predating and not applicable to the formation of Ottogi America.

³ <https://www.ottogi.co.kr/otgr/english/NewsView.jsp?newseqno=10587&newspare=noticeE>

1 28. Defendant Paldo Company, Ltd. (“Paldo”) is a Korean corporation registered to
2 do business in California with offices in Los Angeles, California. Paldo is a wholly owned and
3 controlled subsidiary of Korea Yakult. Since 2012, Paldo has imported into the United States
4 and distributed Korean Ramen Noodle Products manufactured by Defendant Korea Yakult. Its
5 website states, “Paldo was established in January, 2012 but for the past four decades was part of
6 Korea Yakult Corporation, a leader in the food industry.”⁴

7 29. Defendant Sam Yang (U.S.A.), Inc. (“Sam Yang USA”) is a California
8 Corporation headquartered in Santa Fe Springs, California. During the Class Period, Sam Yang
9 USA imported and distributed Samyang’s Korean Ramen Noodle Products in the United States.
10 Upon information and belief, Sam Yang USA has a long-term exclusive dealership agreement, as
11 well as agreements concerning trademarks, service marks, and intellectual property with
12 Samyang Foods Co. Ltd. An entry on yellowpages.com explains that Sam Yang (U.S.A.) is “a
13 part of Sam Yang Foods Co., LTD who manufactures soy sauce products, ice cream and fresh
14 milk.”⁵ Accordingly, Sam Yang USA is under the direction and control of Samyang Foods Co.,
15 Ltd.

16 30. The foregoing Defendants shall be referred to collectively as the
17 “Subsidiary/Affiliate Defendants.”

18 **INTERSTATE TRADE AND COMMERCE**

19 31. The violations of federal antitrust laws alleged herein had impact on a substantial
20 amount of interstate trade and commerce.

21 32. During the Class Period, Defendants and their co-conspirators sold substantial
22 quantities of Korean Noodles in a continuous and uninterrupted flow of interstate commerce,
23 including through and into this District.

24 **CO-CONSPIRATORS**

25 33. Various entities not named as defendants have participated in the violations
26 alleged herein and have performed actions and made statements in furtherance thereof. Plaintiffs
27

28 ⁴ <http://www.paldofood.com/User/PaldoIs/History.aspx>

⁵ <http://www.yellowpages.com/santa-fe-springs-ca/mip/sam-yang-usa-inc-2533993>

1 reserve the right to name some or all of these entities at a later date. The acts alleged herein were
2 done by each of the co-conspirators, or ordered, or done by duly authorized officers, agents,
3 employees, or representatives of each co-conspirator while actively engaged in the management,
4 direction, or control of its affairs.

5 **CLASS ACTION ALLEGATIONS**

6 34. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil
7 Procedure 23 on behalf of themselves and the following Class and Subclasses (the “Classes”)
8 defined as follows:

- 9 a. All persons and entities that purchased Korean Ramen Noodle Products
10 indirectly from one or more Defendants in the United States for their own
11 use and not for resale from May 2001 to the present. Specifically
12 excluded from this Class are any Defendant; the officers, directors or
13 employees of any Defendant; any entity in which any Defendant has a
14 controlling interest; and any affiliate, legal representative, heir or assign of
15 any Defendant. Also excluded are the judge to whom this case is assigned
16 and any member of the judge’s immediate family (the “Class”).⁶

17 35. In the alternative,

- 18 a. Plaintiffs An, Bonnington, Kang, C. Nguyen, T. Nguyen, Pelobello,
19 Beamer, and Halloran seek to represent the following subclass:

20 All persons and entities that purchased Korean Ramen Noodle Products
21 indirectly from one or more Defendants in the States of Arizona,
22 California, Illinois, Kansas, Maine, Michigan, Minnesota, Mississippi,
23 Nebraska, Nevada, New Mexico, New York, North Carolina, North
24 Dakota, Oregon, Tennessee, Vermont, West Virginia, Wisconsin, the
25 District of Columbia for their own use and not for resale from May 2001
26 to the present. Specifically excluded from this Class are any Defendant;
27 the officers, directors or employees of any Defendant; any entity in which
28 any Defendant has a controlling interest; and any affiliate, legal
representative, heir or assign of any Defendant. Also excluded are the
judge to whom this case is assigned and any member of the judge’s
immediate family (the “Count III Subclass”);⁷ and

- b. Plaintiffs An, Bonnington, Kang, C. Nguyen, T. Nguyen, Pelobello,
Fenerjian, Martin, and Halloran seek to represent the following subclass:

All persons and entities that purchased Korean Ramen Noodle Products

⁶ For violations of the Sherman Act, 15 U.S.C. § 1 and the Cartwright Act, Cal Bus. & Prof. Code §§ 16700, et seq.

⁷ For violations of State Antitrust and Restraint of Trade Laws.

1 indirectly from one or more Defendants in the States of Arkansas,
 2 California, Florida, Massachusetts, Nebraska, New Hampshire, New York,
 3 and Vermont for their own use and not for resale from May 2001 to the
 4 present. Specifically excluded from this Class are any Defendant; the
 5 officers, directors or employees of any Defendant; any entity in which any
 6 Defendant has a controlling interest; and any affiliate, legal representative,
 7 heir or assign of any Defendant. Also excluded are the judge to whom this
 8 case is assigned and any member of the judge's immediate family (the
 9 "Count IV Subclass");⁸ and

- 10 c. In the alternative, Plaintiffs Fenerjian, Beamer and Halloran seek to
 11 represent the following subclass:

12 All persons and entities that purchased Korean Ramen Noodle Products
 13 indirectly from one or more Defendants in the States of Arizona, District
 14 of Columbia, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan,
 15 Minnesota, Mississippi, Missouri, Nevada, New Mexico, New York,
 16 North Carolina, Rhode Island, South Dakota, Tennessee, Vermont, West
 17 Virginia, and Wisconsin for their own use and not for resale from May
 18 2001 to the present. Specifically excluded from this Class are any
 19 Defendant; the officers, directors or employees of any Defendant; any
 20 entity in which any Defendant has a controlling interest; and any affiliate,
 21 legal representative, heir or assign of any Defendant. Also excluded are
 22 the judge to whom this case is assigned and any member of the judge's
 23 immediate family (the "Count V Subclass").⁹

- 24 36. In the alternative,

- 25 a. Plaintiffs An, Bonnington, Kang, C. Nguyen, T. Nguyen and Pelobello
 26 seek to represent the following subclass:

27 All persons and entities that purchased Korean Ramen Noodle Products
 28 indirectly from one or more Defendants in the State of California for their
 own use and not for resale from May 2001 to the present. Specifically
 excluded from this Class are any Defendant; the officers, directors or
 employees of any Defendant; any entity in which any Defendant has a
 controlling interest; and any affiliate, legal representative, heir or assign of
 any Defendant. Also excluded are the judge to whom this case is assigned
 and any member of the judge's immediate family (the "California
 Subclass");

- b. Plaintiff Martin seeks to represent the following subclass:

All persons and entities that purchased Korean Ramen Noodle Products
 indirectly from one or more Defendants in the State of Florida for their
 own use and not for resale from May 2001 to the present. Specifically

⁸ For violations of State Consumer Protection Laws.

⁹ For Unjust Enrichment and Disgorgement of Profits.

1 excluded from this Class are any Defendant; the officers, directors or
2 employees of any Defendant; any entity in which any Defendant has a
3 controlling interest; and any affiliate, legal representative, heir or assign of
any Defendant. Also excluded are the judge to whom this case is assigned
and any member of the judge's immediate family (the "Florida Subclass");

4 c. Plaintiff Fenerjian seeks to represent the following subclass:

5 All persons and entities that purchased Korean Ramen Noodle Products
6 indirectly from one or more Defendants in the State of Massachusetts for
7 their own use and not for resale from May 2001 to the present.
Specifically excluded from this Class are any Defendant; the officers,
8 directors or employees of any Defendant; any entity in which any
9 Defendant has a controlling interest; and any affiliate, legal representative,
heir or assign of any Defendant. Also excluded are the judge to whom this
10 case is assigned and any member of the judge's immediate family (the
"Massachusetts Subclass");

11 d. Plaintiff Beamer seeks to represent the following subclass:

12 All persons and entities that purchased Korean Ramen Noodle Products
13 indirectly from one or more Defendants in the State of Michigan for their
14 own use and not for resale from May 2001 to the present. Specifically
15 excluded from this Class are any Defendant; the officers, directors or
16 employees of any Defendant; any entity in which any Defendant has a
controlling interest; and any affiliate, legal representative, heir or assign of
17 any Defendant. Also excluded are the judge to whom this case is assigned
and any member of the judge's immediate family (the "Michigan
Subclass"); and

18 e. Plaintiff Halloran seeks to represent the following subclass:

19 All persons and entities that purchased Korean Ramen Noodle Products
20 indirectly from one or more Defendants in the State of New York for their
21 own use and not for resale from May 2001 to the present. Specifically
22 excluded from this Class are any Defendant; the officers, directors or
23 employees of any Defendant; any entity in which any Defendant has a
controlling interest; and any affiliate, legal representative, heir or assign of
24 any Defendant. Also excluded are the judge to whom this case is assigned
and any member of the judge's immediate family (the "New York
Subclass").

25 37. The Classes are so numerous such that joinder is impracticable, as the Products
26 are sold in thousands of stores and each Class includes thousands of persons who have purchased
27 the Products.
28

1 38. Plaintiffs' claims are typical of the claims of the members of the Classes as all
2 members of the Classes are similarly affected by Defendant's wrongful conduct. Plaintiffs'
3 interests are aligned with, and not antagonistic to, those of the other members of the Class.
4 Accordingly, by proving Plaintiffs' own claims, Plaintiffs will prove other Class members'
5 claims as well.

6 39. There are questions of law or fact common to the Classes, and these questions
7 predominate over any purported questions affecting individual Class members. Common legal
8 and factual questions include, but are not limited to:

- 9 a. whether Defendants engaged in or entered into a contract, combination or
10 conspiracy among themselves to fix, maintain, raise and/or stabilize the prices of
11 Korean Ramen Noodle Products sold in the United States;
- 12 b. whether Defendants' unlawful conduct has enabled them to increase, raise,
13 maintain or stabilize the prices for Korean Ramen Noodle Products sold in the
14 United States above competitive levels;
- 15 c. the duration of the contract, combination, or conspiracy alleged herein;
- 16 d. whether Defendants violated Section 1 of the Sherman Act;
- 17 e. whether Defendants violated the state antitrust and restraint of trade laws
18 referenced herein;
- 19 f. whether Defendants violated the state consumer protection laws referenced
20 herein;
- 21 g. whether the conduct of Defendants caused injury to the business or property of
22 Plaintiffs and Class members;
- 23 h. whether Defendants were unjustly enriched by their anticompetitive conduct;
- 24 i. whether Defendants' conspiracy affected the prices of Korean Noodles sold in the
25 United States;
- 26 j. the measure of damages sustained by Plaintiffs and members of the Class and
27 Subclasses;
- 28 k. whether injunctive relief is appropriate; and

1 1. the appropriate class-wide measure of damages.

2 40. Plaintiffs will fairly and adequately represent the Classes and have retained
3 counsel experienced and competent in the prosecution of class action litigation. Plaintiffs have
4 no interests antagonistic to those of other members of the Class. Plaintiffs are committed to the
5 vigorous prosecution of this action and anticipate no difficulty in the management of this
6 litigation as a class action.

7 41. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) because
8 Defendants have acted or refused to act on grounds that apply generally to the class, so that final
9 injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

10 42. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) because common
11 questions predominate over individual questions and a class action is the superior procedural
12 vehicle for fairly and efficiently adjudicating the claims asserted.

13 43. Because of the amount of each individual Class member's claim relative to the
14 complexity of the litigation and the financial resources of the Defendant, few, if any, members of
15 the Classes would seek legal redress individually for the wrongs complained of here. Absent a
16 class action, Class members will continue to suffer damages and the effects of Defendant's
17 misconduct will proceed without remedy.

18 **SUBSTANTIVE ALLEGATIONS**

19 **I. THE MARKET FOR KOREAN RAMEN NOODLE PRODUCTS IN THE**
20 **UNITED STATES**

21 **A. Korean Noodles Have Unique Characteristics and Constitute a Distinct**
22 **Product Market**

23 44. Korean Ramen Noodle Products are instant noodle soup products made of
24 noodles, seasoning and/or vegetables. Korean Ramen Noodles are typically sold in a package
25 with seasoning and dehydrated vegetables in a packet, cup or bowl. The consumer adds boiling
26 water to the noodles and mixes in any flavor packets to make an instant meal. Many Korean
27 Ramen Noodle Products are eaten warm or in a soup, although some Korean Ramen Noodles are
28 made to be eaten cold. The noodles in Korean Ramen Noodle Products range from thin noodles

1 to thick udon noodles and come in a variety of flavors, including miso, potato and kimchi
2 flavors.

3 45. Korean Ramen Noodle Products constitute a distinct product market. Korean
4 Noodles often have a different, spicier flavor profile than other types of noodles sold in the
5 United States, including Japanese ramen. Korean Noodles have unique spices, which are often
6 hotter than instant noodles from Japan, China, or elsewhere.

7 46. Korean Noodles are marketed in the United States as a premium product
8 compared to other ramen noodles. For example, Nong Shim's 2003 Factbook stated:

- 9
- 10 - "By targeting Korean Americans and locals, exports to the United States increased by 14.2% over the previous year . . ."
 - 11 - "Three Japanese firms, Maruchan, Nissin, and Sanyo... ..are competing on low-priced products, whereas Nong Shim is focused on differentiating itself through high-end products."
 - 12
 - 13 - "Nong Shim's marketing strategy is focused on enhancing its brand image through strengthening its marketing effort through emphasis on 'Korean Taste.'"
 - 14

15 **B. All Defendants Sell Similar, Interchangeable Products**

16 47. Although there are a number of different kinds of Korean Noodles, they all share
17 the same general characteristics: fried or other dried noodles; in a bag, cup, or bowl; in a variety
18 of noodle sizes; with unique seasonings and dehydrated vegetables. The Defendants' Korean
19 Noodle product offerings are similar in many respects, including the flavor profiles, spiciness,
20 packaging, product positioning and distribution systems. Given the nature and characteristics of
21 Korean Noodles, price competition is very important.

22 48. The KFTC Order explained that there is not much variation in quality across
23 Korean Ramen Noodle products and thus, customers are sensitive to its price.

24 49. For example, The KFTC Order explained that a Nongshim Report written in
25 September 2007 concluded that there was "no difference of quality preference among Nongshim
26 Shin Ramyun, Samyang Samyang Ramyun, and Ottogi Jin Ramen."
27
28

1 50. During the Class Period, the Defendants sold hundreds of millions of dollars'
2 worth of Korean Noodles in the United States.

3 51. The Korean Ramen Noodle Products manufactured by each Defendant include,
4 but are not limited to, the following products:

5 a. **Nong Shim**

6 i. *Ramen packet varieties:* Shin Ramyun, Ansungtangmyun, Neoguri,
7 Kimchi Ramyun, Bean Ramyun, Chapaggetti, Squid Champong, Chal
8 Bibimmyun, Jinguok Sarigomtangmyun, Anchovy Kalgusi, Sangsang
9 Udon.

10 ii. *Ramen cup/bowl varieties:* Big Bowl, Shin Ramyun Bowl, Yukgaejang
11 Bowl.

12 b. **Nongshim America**

13 i. *Ramen packet varieties:* Shin Ramyun, Neoguri Spicy Seafood Noodle
14 Ramyun, Chapaggetti, Shin Ramyun Black Noodle Soup.

15 ii. *Ramen cup/bowl varieties:* Big Bowl Hot & Spicy Noodle Bowl, Shin Cup
16 Noodle Soup, Shin Bowl Gourmet Spicy, Bowl Noodle Soup (Spicy
17 Kimchi, Spicy Chicken, Savory Chicken, Tempura Udon, Beef flavors),
18 Tempura Udon Cup Noodle Soup.

19 c. **Samyang**

20 i. *Ramen packet varieties:* Samyang Ramen, Beef Ramen, Pojangmacha
21 Udon, Daeguanryung Kimchi, Doejang Ramen, Potato Ramen,
22 Chacharoni, Seafood Champong, Yulmu Bibimmyun, Rice
23 Sulrungtangmyun, Son Kalgugsu, Sang Udon.

24 ii. *Ramen cup/bowl varieties:* Big Cup Samsyang Ramen, Cup Samyang
25 Ramen, Yukgaejang Bowl.

26 d. **Ottogi**

27 i. *Ramen packet varieties:* Jin Ramen, Snack Myun, Odongtong Myun,
28 Kimchi Ramen, Miso Ramen, Potato Myun, Beijing Restaurant Chajang,
29 Beijing Restaurant Champong, Maemil Bibimmyun, Sagol
30 Gomtangmyun, Sang Udon.

31 ii. *Ramen cup/bowl varieties:* Jin Ramen Big Bowl, Jin Ramen Cup,
32 Yukgaejang.

33 e. **Korea Yakult**

- 1 i. *Ramen packet varieties*: King Ramen, Fried Kimchi Ramen, Jang Ramen,
2 Paldo Chajangmyun, Seafood Ramen, Paldo Bibimmyun, Paldo
3 Sulrungtangmyun, Sang Udon.
- 4 ii. *Ramen cup/bowl varieties*: King Lid, King Lid Cup, Mini King Lid.

5 **C. The Market for Korean Ramen Noodle Products is Concentrated and Has**
6 **High Barriers to Entry**

7 52. There are high barriers to entry in the market for Korean Ramen Noodle Products.
8 The KFTC Order explained that the ramen industry is a “capital-intensive industry which needs
9 large scale investment in plant and equipment such as automation of equipment system and the
10 establishment of production line. Therefore, it is necessary to invest large amount of capital to
11 build large size production line to produce goods.”¹⁰ These challenges to market entry result in
12 limited competition.

13 53. The high barriers to entry into the Korean Ramen Noodle Products market are
14 evidenced by the highly concentrated and stable market structure. Concentrated across four
15 manufacturers (defendants Nong Shim, Samyang, Yakult, and Ottogi), the suppliers of Korean
16 Ramen Noodle Products have remained remarkably stable during the Class Period. Since
17 Binggrae Co. Ltd. exited the Korean Ramen Noodles business in 2003, there have not been any
18 noteworthy changes in the market structure, thereby evidencing significant barriers to entry in
19 the market.

20 **II. DEFENDANTS CONSPIRED TO INCREASE PRICES OF KOREAN RAMEN**
21 **NOODLE PRODUCTS**

22 **A. Formulation of the Price Increase Protocol**

23 54. During the Class Period, the Korean Defendants agreed to fix, maintain, raise
24 and/or stabilize prices of Korean Ramen Noodle Products. The Korean Defendants executed
25 their unlawful conspiracy through a series of meetings and communications where the
26 Defendants shared information about planned price increases, sales results, plans for new product
27 releases and advertising plans. The pattern of price increases occurred initially in Korea,
28

¹⁰ The majority of passages quoted in the Complaint are translations from Korean to English and may contain occasional English language grammatical irregularities due to translation.

1 followed shortly thereafter by price increases in the United States through, and with the
2 assistance and cooperation of, the Subsidiary/Affiliate Defendants.

3 55. In December 2000 or January 2001, the Korean Defendants agreed to a protocol
4 to implement factory-level price increases. Nong Shim, as the market leader, would increase
5 prices first, and the other Defendants would raise the prices shortly thereafter. The Korean
6 Defendants would provide each other non-public pricing information, often through each
7 company's market research teams, to promote this collusion. They continuously exchanged
8 several kinds of sensitive management information, such as sales results, business support
9 strategies, plans for new product releases, sales promotions and advertisement plans. This
10 exchange was to eliminate uncertainty about whether or not the other companies would agree on
11 price increases as well as to exchange price related information. The KFTC Order lists 341
12 emails among the Korean Defendants that detail the exchanges of information, including
13 information relating to plans of price increases and sales results.

14 56. According to the KFTC Order, Mr. Jun Park, a director of Nongshim America,
15 was on Nongshim Co., Ltd.'s Market Research team and received information about
16 competitors' planned price increases during the Class Period.

17 57. Once a Korean Defendant made an internal decision to increase factory prices, it
18 would then communicate the price increases to various stores. With the exception of Nong Shim
19 in May of 2001, as discussed below, other than through communications to stores, information
20 about price increases was not made publicly available. Defendants, however, often
21 communicated non-public details of price increases to each other at the same time, if not before,
22 stores received such information. Moreover, the KFTC found that factory price increases would
23 not necessarily be discernible from retail prices such that exchange of such information among
24 Defendants was vital to the knowledge of each Defendant of the others' factory prices and
25 planned price increases.

26 58. The Korean Defendants also used the method of "old price support" to enforce
27 compliance with price increases. Under this scheme, a price increase would be decided days or
28 weeks in advance of the increase taking effect. If one Defendant were to announce a price

1 increase and other Defendants failed to do the same, the first Defendant would delay the price
2 increase until the other Defendants relented and announced their own price increases. Old price
3 support would prevent any Defendant from gaining a sales advantage from another Defendant's
4 price increase. In fact, according to a Korea Yakult report, entitled, "The Analysis of Effect of
5 Price Increase," Nong Shim once delayed its own price increase for 82 days because Samyang
6 and Ottogi delayed their own price increases.

7 59. The Korean Defendants agreed to fix and raise prices for Korean Ramen Noodle
8 Products numerous times between 2001 and 2008. Samyang's President, Kim,¹¹ affirmed to the
9 KFTC that "[f]rom price increase in 2001, when I [led] the price increase of [Samyang] for the
10 first time, to price increase in 2008, [the] ramen market [] exercised price information exchange,
11 real price increase work, etc. . . . systematically and repeatedly."

12 60. Kim also stated that the conspiracy would function as follows: "[b]efore the price
13 increase, employees from each company in charge of market research/external business
14 exchanged information. After the price increase, sales team of each company checked on price
15 situation at distribution channels including chain stores. In addition, for the great matters which
16 might jeopardize price system of the business, such as price dumping, the companies
17 maneuvered through" the Ramen Conference, discussed below.

18 61. Similarly, Yui, a member of Samyang's Marketing Team, stated to the KFTC that
19 "[i]n order not to break the bond of sympathy, which is about exchanging information before
20 announcement of price increase, among ramen companies' employees in charge of market
21 research/external business, I informed the competitors with the information when the proposal
22 was completed or approved, even if not completed, if possible."

23 62. According to the KFTC Order, Yui further stated that pricing information was
24 often provided to other Defendants even before it was provided to distribution channels:

25 It was a rule that employees in charge of external business shared confirmed
26 proposal of price increase before information about price was provided to
27 distribution channels. That is, **there was a tacit agreement among
28 employees in charge of market research of external business to share**

¹¹ The KFTC Order identified witnesses by their last names only and did not provide honorific titles.

1 **information about price increase before ramen manufacturing company**
2 **provides the proposal of price increase to each distribution channel.**

3 Therefore, when it was revealed that one provided price increase proposal to
4 distribution channels first by breaking the agreement, others complained to the
5 employees in charge of the company violated the agreement.

6 [Emphasis added].

7 **B. First Price Increase - May 2001**

8 63. In late December of 2000 or early January of 2001, representatives of each
9 Korean Defendant met in the Renaissance Seoul Hotel. At this meeting, the Korean Defendants
10 agreed to collectively raise the prices of Korean Noodles.

11 64. Choi, the Chairman of Samyang's Office of Business, reported to Chon,
12 Samyang's CEO, about the discussions at this meeting. Choi told Chon that "[w]e talked this
13 and that . . . then someone brought up the topic, 'shouldn't we increase ramen price.' And it
14 seemed that **everyone agreed that once Nong Shim increased the price, everyone would**
15 **increase this price as well.**" [Emphasis added]. Choi estimated that the price increases would
16 provide Samyang with 200-300 million Korean won per month.

17 65. Choi also discussed the meeting with Kim, a consultant at Samyang's head
18 business office. Choi told Kim that "we talked that it had been 2-3 years since ramen price was
19 increased. If Nong Shim increase[d] first, others will follow and raise it."

20 66. On March 28, 2001, representatives from Nong Shim, Samyang, Korea Yakult,
21 and Ottogi attended the Regular General Assembly of Ramen Conference, held at the Capital
22 Hotel in Seoul. At this conference, Defendants met and confirmed their agreement to cooperate
23 concerning price increases. According to Ahn, Vice Chair of Samyang's head business office,
24 "[o]ne of the board members of either Ottogi or Paldo asked director [] Yoon of Nong Shim, [if
25 they could] 'increase the price in consecutive order after Nong Shim increase[s] it. How has the
26 price increase project of your company [] proceeded so far?'"

27 67. Ottogi and Korea Yakult representatives responded: "Yes. We wouldn't be
28 released from the pressure of production cost, unless there is a two-digit increase."

68. Yoon replied "[w]ouldn't it be difficult to have a two digit increase? I remember
that there had not been any two-digit increase in the past . . . , anyway, the price increase will be

1 implemented soon.”

2 69. At the March 28, 2001 Ramen Conference meeting, Korean Defendants conspired
3 to have a collective price increase.

4 70. On May 10, 2001, Nong Shim announced to the media that it was increasing the
5 price of its Korean Noodles. Nong Shim provided few details about the price increase, and
6 stated that the amount and timing of the price increase would be determined the following week.

7 71. That same day, the other Korean Defendants also announced that they were
8 contemplating price increases as well.

9 72. On May 14, 2001, Nong Shim decided to increase factory prices effective May
10 21, 2001. The factory price increase averaged 9.9% for 34 products.

11 73. That same day, Nong Shim provided Samyang with specific details about Nong
12 Shim’s price increase.

13 74. An Ottogi internal memorandum, dated May 14, 2001, notes that the price of Jin
14 Ramen would be increased by 11%, which was identical to Nong Shim’s price increase for its
15 competing product, Shin Ramyun.

16 75. On May 17, 2001, Samyang decided to increase factory prices by June 1, 2001.
17 The factory price increase averaged 12% for 17 products. Samyang also decided to increase the
18 price of its Samyang Ramen the same amount as Nong Shim’s competing product, Shin Ramyun.

19 76. Later, Samyang provided additional non-public details of its price increase to the
20 other Korean Defendants. For example, an internal memorandum from Ottogi, May 22, 2001,
21 reveals non-public details about Samyang’s price increase, demonstrating that Ottogi presumably
22 obtained such information from Samyang as well.

23 77. Similarly, “The Report of Examination of Ramen Price Increase Application
24 Period” written by Ottogi’s Marketing Team on May 24, 2001, contained information
25 concerning the other Defendants’ price increases:

26 **From June 1st, Nong Shim expects to apply increased price.** Provided, Nong Shim is
27 looking for an additional support strategy because it worries the decrease of sales due to
28 the competitors’ pushing previous price after normal price increase in June.

1 **Samyang decided increased price per item**, but increase details and application date on
2 an official document have not been confirmed yet. **The expected date of increased**
3 **price application is early June, and the expected date of previous price application is**
4 **expected to be until June 15.**

5 **Yakult decided increase price per item**, but increase details and application date on
6 an official document have not been confirmed yet. **The expected date of increase**
7 **price application is early June, and the expected date of previous price application is**
8 **expected to be until June 15.**

9 [Emphasis added].

10 78. On May 24, 2001, Samyang provided pricing details, by fax, to Korea Yakult.
11 On May 30, 2001, Korea Yakult decided to increase factory prices effective June 1, 2001. The
12 factory price increase averaged 9.7% for 18 products. Korea Yakult also decided to increase the
13 price of its King Ramen the same amount as Nong Shim's competing product, Shin Ramyun.

14 79. According to notes created in 2011 by Choi, a member of Korea Yakult's legal
15 team: "*[d]uring the price increase in 2001, [...] Kang working for Yakult Marketing team*
16 *shared advance information with [...] Lee from Nong Shim, [...] Kim from Samyang, and [...] Hong from Ottogi.*" [Emphasis added]. His notes also stated that, "[b]efore [Korea Yakult's]
17 price increase, Nong Shim confirmed in advance (email) it is assumed that these data were
18 shared with Ottogi and Samyang."

19 80. On May 22, 2001, Ottogi decided to increase factory prices effective June 15,
20 2001. The factory price increase averaged 10.5% for 52 products. Ottogi later pushed the
21 effective date to July 1, 2001, after determining the other Defendants' price support periods.
22 Ottogi increased the price of its Jin Ramen to the same price as Nong Shim's competing product,
23 Shin Ramyun.

24 81. Furthermore, Ottogi prepared a report titled "Our Company's Ramen Item Price
25 Adjustment Proposal (Final)" on May 28, 2001. It sent this report to Korea Yakult soon after it
26 was created.
27
28

1 82. This price increase in Korea was reflected in prices of Korean Noodles exported
2 from Korea for sale in the United States. According to Nong Shim's Business Operations
3 Report,¹² between 2002 and 2003, Shin Ramen's export price¹³ increased from \$5.25 to \$6.30.

4 **C. Second Price Increase - October 2002 to January 2003**

5 83. On October 21, 2002, Nong Shim decided to increase factory prices effective
6 October 25, 2002. The factory price increase averaged 8.5% for 39 products. That same day, it
7 provided details and dates concerning this price increase to Samyang.

8 84. On October 25, 2002, Samyang decided to increase factory prices effective
9 November 1, 2002. The factory price increase averaged 9.5% for 28 products. Samyang also
10 decided to increase the price of its Samyang Ramen to the same amount as Nong Shim's
11 competing product, Shin Ramyun.

12 85. SAMYANG, through employees on its Market Research team, provided the details
13 of these price increases to the other Defendants.

14 86. On November 1, 2002, Korea Yakult decided to increase factory prices effective
15 December 1, 2002. The factory price increase averaged 8.6% for 25 products. Korea Yakult
16 also decided to increase the price of its King Ramen to the same price as Nong Shim's
17 competing product, Shin Ramyun.

18 87. On November 29, 2002 Ottogi decided to increase prices effective January 2,
19 2003. The factory price increased averaged 9.1% across 40 products. Ottogi decided to increase
20 the price of its Jin Ramen to the same price as Nong Shim's competing product, Shin Ramyun.

21 **D. Third Price Increase - December 2003 to April 2004**

22 88. On or around December 15, 2003, Nong Shim decided to increase prices effective
23 December 22, 2003. The price increase averaged 7.7% for 24 products.

24 89. On December 18, 2003, Nong Shim emailed Samyang details of the price increase
25 for each item.

26 _____
27 ¹² These Business Operations Reports were filed with the Korean government, and are available on DART, the
repository for Korea's corporate filings.

28 ¹³ The prices in the DART Business Operations Reports often referred to a unit of a certain number of individual
Korean Ramen Noodle Product packages, although the quantities in the DART reports are not always made clear.

1 90. Samyang then provided the details of the price increase to other Korean
2 Defendants' market research teams, including Nong Shim.

3 91. Prior to February 21, 2004, the Nong Shim Distribution Research Team prepared
4 a report titled, "The Trend of Samyang Ramen Price Increase Products Release" after receiving
5 the information from Samyang described above.

6 92. On January 6, 2004, Korea Yakult decided to increase prices on 19 items
7 averaging 7.7% effective February 1, 2004. Korea Yakult increased the price of its King Ramen
8 to the same amount as Nong Shim's competing product, Shin Ramyun. Korea Yakult sent
9 Samyang details of its price increase, the price increase date, and period of old price support via
10 email on January 27, 2004, February 5, 2004, and March 9, 2004.

11 93. Samyang and Ottogi later delayed the dates of the price increase, and Korea
12 Yakult accordingly adjusted the date of Korea Yakult's price increase from February 1, 2004 to
13 March 1, 2004.

14 94. On February 23, 2004, Ottogi decided to increase factory prices effective April 4,
15 2004. The factory price increase averaged 6.9% for 47 products. Ottogi also decided to increase
16 the price of its Jin Ramen to the same amount as Nong Shim's competing product, Shin Ramyun.

17 95. This price increase in Korea was reflected in prices of Korean Noodles exported
18 from Korea for sale in the United States. According to Nong Shim's Business Operations
19 Report, between 2003 and 2004, Shin Ramen's export price increased from \$6.30 to \$6.45.
20 According to Samyang's business operations report, between 2003 and 2004, Samyang Ramen's
21 export price increased from \$4.57 to \$4.80.

22 **E. Fourth Price Increase - December 2004 to April 2005**

23 96. On or around December 20, 2004, Nong Shim decided to increase prices effective
24 December 24, 2004. The price increase averaged 7.1% for 37 products.

25 97. On December 22, 2004, Nong Shim informed Samyang of the price increase via
26 email.

27 98. On February 24, 2005, Samyang decided to increase prices effective March 1,
28 2005. The price increase, covering 32 items, averaged 7.2%. Samyang also decided to increase

1 the price of its Samyang Ramen to the same price as Nong Shim's competing product, Shin
2 Ramyun.

3 99. Samyang then provided the details of the price increase to other Defendants,
4 including Nong Shim, through their market research teams.

5 100. On January 7, 2005, Korea Yakult decided to increase prices effective February
6 15, 2005. The price increase, covering 24 items, averaged 7.4%. Yakult also decided to increase
7 the price of its King Ramen to the same price as Nong Shim's competing product, Shin Ramyun.
8 Later, because the price increase of Samyang and Ottogi were delayed, Yakult delayed the price
9 increase date from February 15, 2005 to March 15, 2005.

10 101. On January 11, 2005, Korea Yakult emailed the details of the price increase to
11 Samyang.

12 102. Korea Yakult's Management Team created two documents which discuss
13 competitors' price increases: (1) a "Plan of Ramen Price Increase (Proposal)" dated January 5,
14 2005, and (2) "The Request for Adjustment of Noodle Products Price Increase Period" dated
15 February 11, 2005. ***These documents reported proposed price increases for both Samyang and***
16 ***Ottogi.*** The later document noted that the "reason for Price Increase Adjustment" was a
17 "[m]arket response to competitors' price increase date and price support."

18 103. On February 24, 2005, before Ottogi even conclusively decided to increase prices,
19 Ottogi sent Samyang the details of its proposed price increase.

20 104. On February 22, 2005, Nong Shim created a document titled "Meeting for
21 Business Measures" ***that contained the price increase and support plans of Samyang, Ottogi***
22 ***and Korea Yakult.***

23 105. Sometime before March 10, 2005, Kim at Nong Shim created a document titled
24 "Ottogi's Price Increase Proposal per Item." The document seemingly contains non-public
25 information concerning Ottogi's factory price increases, as it includes the exact factory prices of
26 products, which would not be known to the public. For example, the document reveals that for
27 certain products, only the factory price, and not the retail price, would be increased. An almost
28

1 identical document was sent by Ottogi to Samyang on February 25, 2005. Accordingly, it is
2 likely that Ottogi provided both Nong Shim and Samyang with this information.

3 106. The non-public nature of factory prices is demonstrated by the fact that several of
4 Defendants' employees have opined as to the difficulty of determining factory prices based on
5 retail prices. Doh of the Department of Sales Planning at Ottogi stated that "it is difficult to
6 speculate exactly how much the price is. We can guess approximately how much percentage of
7 price is different from one another based on market price. However, we cannot know the exact
8 price." Kim, the Chair of the Head Business Office at Ottogi stated that while the rated increase
9 could be speculated roughly, "increase rate per item could not be speculated." Suh, the Chair of
10 the Marketing Team at Samyang, stated,

11 " [i]t is not possible to know the exact factory price of a competitors' item by
12 knowing the retail price per item only. That is why **ramen companies have**
13 **exchanged not only the details of retail price increase, but also the details of**
14 **factory price (release price) when they share price information of increased**
15 **products** in most cases until now." [Emphasis added].

16 107. This price increase in Korea was reflected in prices of Korean Noodles exported
17 from Korea for sale in the United States. Between 2004 and 2005, Samyang Ramen's export
18 price increased from \$4.80 to \$5.00.

19 **F. Fifth Price Increase - March 2007 to December 2007**

20 108. On February 12, 2007, Nong Shim decided to increase factory prices effective
21 March 1, 2007. The factory price increases, covering 39 items, averaged 6.5%.

22 109. On February 23, 2007, Nong Shim sent a notice of price increase (written for the
23 purpose of sending to stores) to Samyang via fax. On February 26, 2007, Nong Shim sent to
24 Samyang the details of the price increase via email.

25 110. On February 28, 2007, the Ottogi Marketing Team wrote "The Report of Price
26 Increase of Nong Shim Ramen and Snacks." *This report detailed specifics of Nong Shim,*
27 *Samyang, and Yakult's upcoming price increases.*
28

1 111. In early and mid-March 2007, Nong Shim sent the release date and details of
2 price support to Samyang. Samyang included this information in an internal document, dated
3 February 26, 2007, titled “Details of Nong Shim’s Price Increase in March 2007 (No. 1).”

4 112. A March 5, 2007 document, written by the Korea Yakult Noodle Marketing
5 Team, titled “The Ramen Price Increase in 2007,” reports details of the Nong Shim price
6 increase, and the progress of Samyang and Ottogi’s price increase projects.

7 113. On March 7, 2007, Korea Yakult decided to increase factory prices effective April
8 1, 2007. The factory price increases, covering 21 items, averaged 6.6%. Korea Yakult also
9 decided to increase the price of its King Ramen to the same amount as Nong Shim’s competing
10 product, Shin Ramyun. On March 20, 2007, Korea Yakult emailed details of this price increase
11 to Samyang.

12 114. On March 22, 2007, Samyang decided to increase factory prices effective April
13 16, 2007. The factory price increases, covering 28 items, averaged 7.3%. Samyang also decided
14 to increase the price of its Samyang Ramen to the same amount as Nong Shim’s competing
15 product, Shin Ramyun.

16 115. On April 11, 2007, Samyang provided details about its price increase to both
17 Nong Shim and Ottogi via email. The email, from Yui of Samyang to Yoon at Nong Shim and
18 Chung at Ottogi, stated,

19
20 **“the price increase seems to be implemented by the 16th.** [...]. However, I should tell
21 you that there is little bit of possibility that the date would be changed. **Please refer to**
22 **the attached document for the details of price increase.** This document is a final draft,
but had not been confirmed. PM in charge of the price increase said that the increase
would be implemented almost as the document said.”

23 [Emphasis added].

24 116. On April 17, 2007, Yui of Samyang sent Yoon of Nong Shim an email detailing
25 production dates of Samyang’s price increased products.

26 117. On May 4, 2007, Yui of Samyang sent Jung of Ottogi an email about Samyang’s
27 old price support period.

28

1 118. On February 28, 2007, Ottogi's Marketing No. 3 Team created "The Report of
2 Price Increase of Nong Shim Ramen and Snacks." This report accurately tracked the details of
3 what became Korea Yakult's price increase. Specifically, the report noted, as to its competitors:

4 "Although Nong Shim continuously has sent out a rumor of price increase since the end
5 of 2006, sales of that year declined about 1.2%. Therefore, internally the company had
6 much more dispute about price increase. However, **because of the continued decline of
7 ramen market, it is evident to promote the growth of sales amount and of profit
8 through price increase**, rather than through growing the quantity of the sales, and
9 because of its exclusive market share, the company judged that the market dynamics
10 would not change much after the price increase. Therefore, Nong Shim decided to
11 implement the price increase."

12 [Emphasis added].

13 119. Indeed, in a competitive market, Nong Shim could not have raised prices facing a
14 declining market for Korean Ramen Noodle Products.

15 120. On May 18, 2007, the Ottogi Marketing Team No. 3 wrote, "The Examination of
16 Price Increase of Ramen Products." This document recommended increasing prices at the same
17 level of Nong Shim, and detailed the proposal of such a price increase, including the price
18 increase per item and increase dates.

19 121. On June 26, 2007, the Ottogi Marketing Team wrote "the Report of Ramen
20 Products Price Increase." The report recommended raising prices on September 1, 2007 "**after
21 checking with the Samyang Marketing Team.**" [Emphasis added].

22 122. On July 23, 2007, Ottogi decided to increase factory prices effective September 1,
23 2007. The factory price increases, totaling 90 items, averaged 4%. Ottogi also decided to reduce
24 a discount rate by 4%, so the actual average increase totaled 8%. Ottogi also chose to increase
25 the factory price of its Jin Ramen to 417 won, which was still lower than Nong Shim's Shim
26 Ramyun price of 430 won, but came out to the same price after taking into account the reduced
27 discount rate.

28 123. On July 27 and July 31, 2007, Jung of Ottogi emailed Yui of Samyang details of
the Ottogi price increase.

1 124. On August 10, 2007, Choi of Nong Shim emailed Yui of Samyang, stating that
2 “[a]s far as I know, Ottogi has not officially notified so far. . . . Its price increase rate is the same
3 as our company’s and Samyang’s, if we consider the result only.”

4 125. On August 16, 2007, Kim of Korea Yakult emailed Yui of Samyang the details of
5 Ottogi’s price increase.

6 126. This price increase in Korea was reflected in prices of Korean Noodles exported
7 from Korea for sale in the United States. According to Nong Shim’s Business Operations Report,
8 between 2006 and 2007, Shin Ramyun’s export price increased from \$6.65 to \$7.07.

9 **G. Sixth Price Increase - February 2007 to April 2008**

10 127. From February 20, 2007 to March 3, 2008, Nong Shim sent various emails to
11 Samyang detailing their price increases.

12 128. In early 2008, Nong Shim decided to increase factory prices. The factory price
13 increases, covering 42 items, averaged 11.9%.

14 129. On February 18, 2008, Choi of Nong Shim sent Yui of Samyang an email stating
15 that Nong Shim’s price increase “is planned to be officially announced this afternoon, so I will
16 inform you again when the price is announced. :D And this information might be wrong, so
17 please do not have a blind faith in it. And, please pretend to Yakult that you haven’t received
18 this provisional price.” Choi sent Yui additional updates on February 20th, 22nd, 28th, 29th, and
19 March 3rd.

20 130. On February 18, 2008, Samyang decided to increase its prices, effective March 1,
21 2008. According to Suh, Chair of Samyang’s Marketing Team, Samyang then sent the details of
22 this price increase to Nong Shim, Ottogi, and Korea Yakult via wired communication.

23 131. On February 28, 2008, Samyang decided to increase factory prices effective
24 March 1, 2008. The factory price increase, covering 32 items, averaged 11.9%. Samyang also
25 decided to increase the price of its Samyang Ramen to the same amount as Nong Shim’s Shin
26 Ramyun.

27 132. On February 27, 2008, Yui of Samyang emailed the details of its price increase to
28 Choi of Nong Shim. On March 3, 2008, Yui of Samyang sent Choi of Nong Shim, Kim of

1 Korea Yakult, and Jung of Ottogi an email concerning the details of Samyang's old price
2 support.

3 133. On February 26, 2008, Ottogi decided to increase factory prices effective April 1,
4 2008. The factory price increase, covering 72 items, averaged 9.4%. However, Ottogi also
5 decided to reduce a discount rate by 4.1%, so the actual average increase totaled 13.5%. Ottogi
6 also chose to increase the factory price of its Jin Ramen to 455 won, which was still lower than
7 Nong Shim's Shim Ramyun price, but came out to the same price after taking into account the
8 reduced discount rate.

9 134. On February 29, 2008, Jung of Ottogi sent Yui of Samyang an email concerning
10 Ottogi's price increases, stating,

11 [a]s I told you yesterday, whether or not there would be price increase has not been
12 decided yet. However, **I am sending you the details of price increase which has been**
13 **in progress so far, so that you can have it as a reference.** Our company has started
14 production of price increased products of cup ramen, such as Jin Ramen multi packets
and spaghetti cup ramen, on February 27.

15 [Emphasis added].

16 The email included a chart showing price increases for various Ottogi products.

17 135. On March 6, 2008, Jung sent Yui an additional email providing additional details
18 about the dates of the price increases, stating "***I am sending you my company's production***
19 ***details for ramen products with new price.*** Please refer to it." [Emphasis added].

20 136. On March 6, 2008, Kim of Korea Yakult sent an email to Jun Park of Nong Shim
21 (who was also a director of Nongshim America) and Yui, with a list of price increases for
22 various Korea Yakult Korean Noodles.

23 137. According to the KFTC Order, Mr. Park is on two other emails during that time
24 conveying Korea Yakult's sales information.

25 138. On March 10, 2008, Korea Yakult decided to increase factory prices for major
26 products effective April 1, 2008, and various other products effective May 1, 2008. The factory
27 price increase, totaling 23 items, averaged 12.5%. Korea Yakult also decided to increase the
28 price of its King Ramen the same price as Nong Shim's Shin Ramyun.

1 139. This price increase in Korea was reflected in prices of Korean Noodles exported
2 from Korea for sale in the United States. According to Nong Shim's Business Operations Report,
3 between 2007 and 2008, Shin Ramen's export price increased from \$7.07 to \$7.50. According to
4 Samyang's business operations report, between 2007 and 2008, Samyang Ramen's export price
5 increased from \$5.00 to \$6.30.

6 **H. March 2008 Ramen Conference**

7 140. On March 26, 2008, the General Assembly of Ramen Conference was held at
8 Capital Hotel in Seoul. At this conference, the Korean Defendants all agreed that they would
9 postpone price increases or lower prices after an increase.

10 141. Lee, Board Director of Samyang's Head Business Office, stated to the KFTC,

11 Since the new administration [of the South Korean government], inaugurated on February
12 25, 2008, played an emphasis of price stabilization, it was difficult decision to make a
13 price increase, and because customers' response was also negative about the increase,
14 ramen manufacturing companies worried much about the increase. Nevertheless, because
15 the price decision had already made based on the exchange of information and date about
16 price increase, each company emphasized (agreed) that any company could not postpone
17 the price increase or that **increased price could not be lowered again**.

16 [Emphasis added].

17 142. Similarly, Kim, Chair of Samyang Business Management Team, noted to the
18 KFTC that due to the change in South Korean government,

19 [South Korea] was experiencing the feeling of renewal. As the new administration
20 suggested price stabilization as a major policy as soon as the president's inauguration,
21 companies including Nong Shim discussed about ramen price which would be increased.
22 While worrying about criticism or implications that would cause by price increase, we
23 discussed the prospect of the process and strategic responses about the criticism.

24 143. Accordingly, the March 2008 Ramen Conference ensured that the raised prices
25 remained inflated in the future.

26 **I. KFTC Findings**

27 144. On July 12, 2012, the KFTC issued an Order finding that Defendants conspired to
28 fix prices of Korean Noodles.¹⁴ The KFTC fined the Defendants \$136 billion won

¹⁴ The KFTC Report also noted that a fifth South Korean company, Binggrae Co., Ltd., also engaged in the conspiracy. In 2003, however, Binggrae left the Korean Ramen Noodle Products business.

1 (approximately US\$120 million) and ordered the Defendants to stop sharing pricing information.

2
3 145. Nongshim, Korea Yakult, Ottogi appealed the KFTC Order, but on November 8,
4 2013, the Seoul High Court affirmed the KTFC Order and its penalties as to Nong Shim and
5 Ottogi, stating that:

6 Ramen manufacturers sequentially implemented price increases within a close
7 time period, deciding upon similar levels of increase. For important products
8 with a lot of market share, the pricing was the same - down to [one Won}
9 Without exchange of pricing information, based solely on the information
10 obtained through the media or independent market study, it would have been
11 difficult to prepare such precise and detailed information regarding
12 competitors' prices. Therefore, it appears that the pricing aligned as a result of
13 the exchange of pricing information.

14 146. On December 4, 2013, the Seoul High Court affirmed the KTFC order and its
15 penalties as to Korea Yakult.

16 147. Samyang revealed that it was excused by the KFTC from paying its fine and
17 Samyang received leniency from the KTFC because it provided information about the conspiracy
18 to the KFTC.

19 **III. THE CONSPIRACY DIRECTLY AFFECTED PRICES OF KOREAN**
20 **NOODLES SOLD IN THE UNITED STATES AND THE**
21 **SUBSIDIARY/AFFILIATE DEFENDANTS PARTICIPATED IN THE**
22 **UNLAWFUL SCHEME**

23 148. During the Class Period, the Subsidiary/Affiliate Defendants, with the exception
24 of Sam Yang (U.S.A.) Inc., were wholly owned and controlled by the Korean Defendants and
25 served as importers and distributors for their parent company's products. The only
26 Subsidiary/Affiliate Defendant to manufacture Korean Ramen Noodle Products in the United
27 States (in addition to importing Korean Ramen Noodle Products from its parent company) was
28 Nongshim America.

149. Upon information and belief, as the U.S. distribution arms of the Korean
Defendants, the Subsidiary/Affiliate Defendants had knowledge of and participated in the
Korean Defendants' unlawful conspiracy to fix, raise, stabilize or maintain the price of Korean
Ramen Noodle Products worldwide.

1 150. The unlawful price increases of factory prices in South Korea affected not only
2 retail prices in Korea, but affected retail prices across the world, including the United States.

3 151. During the Class Period, the Korean Defendants shipped price-fixed Korean
4 Ramen Noodle Products directly to their respective Subsidiary/Affiliate Defendants in the United
5 States for resale in this country.

6 152. Upon information and belief, the Korean Defendants closely oversaw the pricing
7 policies of their respective United States subsidiaries and affiliates.

8 153. Moreover, The KFTC Order establishes that senior executives of the Korean
9 Defendants were aware of and participants in the conspiracy. Upon information and belief, some
10 upper management at the Korean Defendant parents hold similar positions with the respective
11 Subsidiary/Affiliate Defendants. For example, Mr. Dong Wong Shin, Co-CEO and Vice
12 Chairman of the Board of Nong Shim Company, Ltd., has served on the Board of Directors of
13 Nongshim America since 1994. Additionally, Mr. Jun Park, President and Co-CEO of Nong
14 Shim Co., Ltd. served on the Board of Directors of Nong Shim America, Inc. since 1994. Park
15 was named as a conspirator in the KFTC Order. Accordingly, to the extent that persons involved
16 in the conspiracy had positions with both a Korean Defendant and a Subsidiary/Affiliate
17 Defendants, they were acting on behalf of the Subsidiary/Affiliate Defendant as well.

18 154. It was important for the Defendants to maintain the pricing relationships between
19 Korean and U.S. pricing of Korean Noodles in order to prevent arbitrage. This required
20 coordination between the Subsidiary/Affiliate Defendants and the Korean Defendants to ensure
21 that the conspiracy achieved its desired result of increased worldwide prices for consumers of
22 Korean Noodles. Throughout the Class Period the price increases on Korean Ramen Noodle
23 Products were reported by American media outlets. Moreover, certain of the Subsidiary/Affiliate
24 Defendants echoed the false statements made by their Korean counterparts discussed below –
25 falsely blaming the increases in price on increases of costs of raw materials, indicating that the
26 Subsidiary/Affiliate Defendants participated in the unlawful conspiracy:

27 a. **Second Price Increase – October 2002 to January 2003**

- 28 i. On February 21, 2003, Korean-American newspaper Korea Daily reported
in an article entitled, “The Price of Ramen is Likely to Rise” that “[a]s

1 Nong Shim Company Ltd. in Korea announced that it would increase the
2 supply price of Ramen by 9%, a corresponding price increase of Ramen in
3 the U.S. market seems inevitable... .. Since it is known that the other
4 noodle companies such as Ottogi, Binggrae, Samyang Foods Co., and
Korea Yakult will also take similar action in raising prices, the
simultaneous price increase of Ramen is expected across the industry.”

- 5 ii. The same February 21, 2003 article quoted Junback Lee, the manager of
6 Assi Supermarket, who stated, “The price of a box of Ramen will increase
7 by 10% from current price of \$9.99-11.99... ..Usually Ottogi and
8 Binggrae increase their price one or two weeks after Nong Shim does. I
9 think this will result in price changes of Ramen in general.”

10 **b. Third Price Increase- December 2003 to April 2004**

- 11 i. On February 28, 2004, Korea Times reported that Nongshim America
12 announced it would raise prices in conformance with the Korean price
13 increases. At that time, Mr. Yong-Hoon Lee of Nongshim America stated,
14 **“The prices of import products have increased because their product
15 costs went up on average 6.5%. We have decided to raise the prices of
16 ramen products 8-9%, beginning in April.”**

17 **c. Fourth Price Increase- December 2004 to April 2005**

- 18 i. A December 24, 2004 Korea Times news article entitled “The Prices of
19 Ramen and Saewookang Are Rising” reported that Nong Shim Co., Ltd.
20 planned to increase the price of Ramen in Korea beginning on December
21 24th, and that an increase in U.S. ramen prices was likely.
- 22 ii. The article quoted Myong-chul Shin, from Nong Shim America’s New
23 York office, who explained, “When the price rises in Korea, normally the
24 export price rises as well. The price of U.S. market will be set in
25 consideration of local production capacity and increasing cost of market
26 competitiveness.”
- 27 iii. Additionally, a March 17, 2005 Korea Daily article entitled “Korean Food
28 Products Rising In Price One by One” explained that Nongshim America
was increasing ramen products an average of 8% starting in April 2005,
following an 8% increase in December 2004.
- iv. Yong-Hoon Lee, the director of Nongshim America, explained, “the prices
in the Americas were raised based on the prices of the product shipments
in Korea as of April 15th” and that “the raising of the prices could not be
delayed any longer especially due to the fact that the difference in
exchange rate is 20% higher Year-On-Year.”
- v. The article further reported that SamYang U.S.A. raised prices of its Bonji
Ramen product in February 2004, and was planning to raise prices of its
Sabalmyun ramen product in July 2005.

1 d. **Fifth Price Increase – March 2007 to December 2007**

2 i. On June 7, 2007 Korea Times reported in an article entitled “Korean Food
3 Prices Jump Again,” reported that on June 6, 2007, Nongshim America
4 announced that it increased prices of its ramen and snack products,
5 including Shin Ramen, by 6-13%. The article reported that Samyang
6 (U.S.A.), and Paldo Company, Ltd. “will soon follow Nongshim in raising
7 their prices” and noted that “Ottoogi food company has already increased
8 most of its product prices by 5-7%.”

9 ii. The article quoted a Nongshim America representative as stating, “the
10 costs of flour, palm oil, and wheat starch have skyrocketed because of the
11 current high oil prices, and the rise in our product prices is unavoidable”
12 and explained that “Ottoogi Food Company has already increased most of
13 its product prices by 5-7%, such as curry, sesame oil, noodles, and
14 seaweed...”

15 e. **Sixth Price Increase – February 2007 to April 2008**

16 i. A JBC news article dated February 21, 2008 confirmed that price
17 increases in Korea affect U.S. prices. Mr. Yong Hoon Lee, Director of
18 Nong Shim America, explained,

19 For those [ramen products] that are imported, **we will be notified
20 of any price increase from Korean headquarters.** As of now,
21 we haven’t been notified of a such price increase. Also, for those
22 products that are produced domestically in U.S., we haven’t made
23 any decision on when we are going to implement a price increase.

24 ii. The article further explained, “[m]any [U.S.] Ramen wholesale stores
25 raised their prices twice in several months because of the pricing pressure
26 coming from Korea. So, if these price increases from Korea continue,
27 customers are expected to see a steep price increase on Ramen products
28 when the inventory in market stores dries up before the first half year.”

iii. Another February 21, 2008 Korea Times article explained that the price of
ramen increased by as much as 16% in Korea and U.S. prices were
expected to increase as a result. East Region manager of Nong Shim
America, Cheol Shim, explained, **“We are just waiting for word from
our Korean Headquarters.** In Korea, the price increase takes effect
immediately after a decision, but in U.S., the price increase generally takes
a month or so. So, there won’t be a sudden price hike but it will happen
around March or April.”

iv. Further, Yong Hoon Le, who is in charge of distribution for Nongshim
America, stated in the same article,

Right now, there is a total of over 30 products, of which 14
products are produced in U.S., being distributed in America. The
majority of these products are ramen and snacks that use flour, and

a price increase is unavoidable.

The prices of U.S.-produced products will soon be raised because of the rising cost of raw materials. Prices of products that are coming from Korea will have to be raised, but it's not clear when that will be due to several factors besides currency exchange rates.

[All emphasis added].

155. Thus, the Defendants engaged in collusive factory-level price increases for their Korean Ramen Noodle Products that were incorporated into the U.S. sales prices of these products.

156. Accordingly, due to the factors described above, it is highly plausible that the Subsidiary/Affiliate Defendants made a conscious decision to enter the conspiracy.

157. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and the members of the Classes have been injured because they paid a price for Korean Ramen Noodle Products in excess of the price that would have prevailed in a competitive market. This injury is the type of injury the antitrust laws were intend to prevent and flows from Defendants' unlawful conduct.

158. During the Class Period, Defendants' unlawful conspiracy affected commerce in the States where members of the Classes reside. For example, Korean Ramen Noodle Products manufactured by Nongshim America, Inc. are sold at Walmart Stores in all fifty states and the District of Columbia.

159. The price increases effected by Defendants were incorporated into the retail prices paid by Plaintiffs and members of the Classes. Such price increases are traceable through the chain of distribution. Upon information and belief, Korean Ramen Noodle Products remain unchanged as they move through the distribution channel from Defendants to consumers.

160. For example, Kevin Park, Manager of Plaza Market, stated in newspaper article concerning prices of ramen noodles, "if manufacturing and distribution companies raise the price, market *stores have no choice but to jack up the price.*" (Emphasis added).

161. Antitrust scholars have recognized that "in a multiple-level chain of distribution, *passing on monopoly overcharges is not the exception: it is the rule.*" Harris & Sullivan,

1 *Passing on the Monopoly Overcharge: A Comprehensive Policy Analysis*, 128 U. Pa. L. Rev.
2 269, 276 (1979) (emphasis in original).

3 **IV. TOLLING OF THE STATUTE OF LIMITATIONS**

4 162. Plaintiffs had neither actual nor constructive knowledge of the facts constituting
5 its claim for relief. Plaintiffs and members of the Classes did not discover, and could not have
6 discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged
7 herein until shortly before filing their complaint. Defendants engaged in a secret conspiracy that
8 did not reveal facts that would put Plaintiffs or members of the Classes on inquiry notice that
9 there was a conspiracy to fix prices for Korean Ramen Noodle Products.

10 163. Because Defendants' agreement, understanding and conspiracy was kept secret,
11 Plaintiffs and members of the Classes were unaware of Defendants' unlawful conduct alleged
12 herein and did not know that they were paying artificially inflated prices for Korean Noodles.

13 164. For example, in addition to the misleading announcements made by the
14 Subsidiary/Affiliate Defendants in Paragraph 154 that attributed price increases to increases in
15 input costs, the Korean Defendants also issued false and misleading announcements that served
16 as a pretext for their price increases:

- 17 a. On May 10, 2001, Nong Shim explained, "main ingredient cost increases like
18 10% increase of international wheat price with weakening of Korean won pushes
19 manufacturing costs increase 5-10%". A nearly identical misleading statement
20 was made by Nong Shim 6 days later and republished by Bloomberg.
- 21 b. On October 23, 2002, Nong Shim stated, "it [would] increase the price around 8%
22 due to the price increase of ingredient, wheat flour."
- 23 c. On October 24, 2002, Nong Shim stated that "it increase[d] the price due to
24 ingredient price increase[s] like the increases of palm oil, wheat flour and due to
25 management costs increase like freight costs from economic condition changes."
- 26 d. On October 24, 2002, Korea Yakult stated that "it is inevitable to increase the
27 price . . . due to the price increases of palm oil, wheat flour and the price increase
28 of freight costs" and "it is inevitable for the companies to follow to the price
increase range of Nong Shim since Nong Shim is the market leading company."
- e. On December 18, 2003, Nong Shim stated that "[t]his year, the prices of
importing ingredients like palm oil price, starch and domestic produces like red
pepper and green onion are greatly increased" and "specifically, the increased

1 costs of management fees like freight costs, promotion costs” required a price
2 increase on Ramen Instant Noodles.

- 3 f. On February 24, 2004, Samyang stated that “the price is increased due to the price
4 increases of ingredients, palm oil and starch, red pepper, green onion and onion
5 since second half of the last year.”
- 6 g. On December 23, 2004, Nong Shim stated that “For 8~9% price increase of wheat
7 flour and potato starch and 18% increase of vinyl wrapping due to oil price surge
8 makes inevitable to increase the price.”
- 9 h. On February 28, 2005, Samyang stated that “For 9% price increase of wheat flour
10 and 15% increase of packaging costs pressured cost burden and it was inevitable
11 to increase the price.”
- 12 i. On February 27, 2007, Nong Shim stated that “recently sudden price increases of
13 the wheat flour price of 9% and palm oil increases of 42% are the major factors to
14 increase the price” and “Thanks to wellbeing boom, there was cost increases of
15 new material development to replace chemical seasoning and other environment
16 friendly costs.”
- 17 j. On February 18, 2008, Nong Shim stated, “recently, the sudden price increases of
18 international ingredients like the price increase of wheat flour of 50% and palm
19 oil increase of 94% and extreme weather changes, imbalance of supply and
20 demand” caused an increase in Korean Noodle prices.
- 21 k. On March 14, 2008, Samyang stated, “the wheat flour price increased 50%, palm
22 oil price increased 95% and other ingredients prices increased with packaging
23 cost, too” in order to justify a Korean Noodle price increase.

24 165. As determined by the KFTC, the truth is that the price increases on Korean
25 Ramen Noodle Products had little correlation with input costs, and often substantially exceeded
26 increased input costs.

27 166. The affirmative acts of Defendants as alleged herein, including acts in furtherance
28 of the conspiracy, were wrongfully concealed and carried out in a manner that precluded
detection.

167. By its very nature, Defendants’ price-fixing conspiracy was self-concealing.

168. The combination and conspiracy alleged herein was fraudulently concealed by
Defendants by various means and methods, including, but not limited to secret meetings,
surreptitious communications between Defendants by the use of the telephone or in-person
meetings, the use of non-public emails, and concealing the existence and nature of their

1 competitor pricing discussions from non-conspirators (including customers).

2 169. As a result of Defendants' fraudulent concealment of their conspiracy, any
3 relevant statute of limitations has been tolled with respect to any claims that Plaintiffs and
4 members of the Classes have as a result of the anticompetitive conduct alleged in this complaint.

5 **FIRST CAUSE OF ACTION**
6 **(Violation of the Sherman Act, 15 U.S.C. § 1,**
7 **brought by all Plaintiffs on behalf of the Class against**
8 **all Defendants for Injunctive Relief)**

9 170. The foregoing allegations are realleged and incorporated by reference as if fully
10 set forth herein.

11 171. Plaintiffs state this cause of action on behalf of themselves and the Class.

12 172. By virtue of the actions alleged herein, Defendants entered into and engaged in a
13 contract, combination, or conspiracy in restraint of trade in violation of the § 1 of the Sherman
14 Act.

15 173. During the Class Period, Defendants and their co-conspirators entered into a
16 continuing agreement, understanding and conspiracy in restraint of trade to artificially fix, raise,
17 maintain or stabilize prices for Korean Ramen Noodle Products.

18 174. The contract, combination or conspiracy among Defendants consisted of a
19 continuing agreement, understanding, and concerted action among Defendants.

20 175. For purposes of formulating and effectuating their contract, combination, or
21 conspiracy, Defendants did those things they contracted, combined and conspired to do,
22 including:

- 23 a. Participating in meetings and conversations to discuss the prices of Korean
24 Ramen Noodle Products;
- 25 b. Communicating orally and in writing to fix prices of Korean Ramen
26 Noodle Products;
- 27 c. Agreeing to manipulate prices of Korean Ramen Noodle Products sold in
28 the United States in a manner that deprived direct and indirect purchasers
of free and open competition;

- d. Issuing price announcements in accordance with the agreements reached;
- e. Selling Korean Ramen Noodle Products to consumers in the United States at non-competitive prices; and
- f. Providing false statements to the public to explain increased prices of Korean Ramen Noodle Products.

176. Defendants' anticompetitive acts and practices had a substantial and foreseeable effect on interstate commerce as the Korean Defendants imported their Korean Ramen Noodle Products into the United States.

177. As a result of Defendants' unlawful conspiracy, Plaintiffs and Class members paid a price for Korean Ramen Noodle Products in excess of the price that would have prevailed in a competitive market and were deprived of the benefit of free and open competition.

178. The alleged contract, combination or conspiracy is a *per se* violation of the Sherman Act, 15 U.S.C. § 1.

179. The violations are continuing and will continue unless enjoined by this Court.

180. Pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, Plaintiffs and the Class seek an injunction against Defendants to enjoin the anticompetitive conduct alleged herein.

181. Wherefore, Plaintiffs pray for relief as set forth below.

SECOND CAUSE OF ACTION

**(Violation of the Cartwright Act, Cal. Bus. & Prof. Code §§ 16700, et seq.)
(Brought by all Plaintiffs on behalf of the Class against all Defendants for Damages)**

182. The foregoing allegations are realleged and incorporated by reference as if fully set forth herein.

183. Plaintiffs state this cause of action on behalf of themselves and the Class. In the alternative, Plaintiffs An, Bonnington, Kang, C. Nguyen, T. Nguyen and Pelobello state this action on behalf of themselves and the California Subclass.

184. By committing the acts alleged herein, Defendants have violated California Business and Professions Code, §§ 16700, *et seq.*

1 185. Beginning in December 2000 or January 2001, Defendants entered into and
2 engaged in a continuing unlawful conspiracy in restraint of trade and commerce in violation of
3 Cal. Bus. & Prof. Code §§ 16720 to raise, fix, maintain or stabilize prices for Korean Ramen
4 Noodle Products.

5 186. As a result of Defendants' unlawful conspiracy, prices for Korean Ramen Noodle
6 Products were raised, fixed, maintained or stabilized in the United States.

7 187. The contract, combination or conspiracy among Defendants consisted of a
8 continuing agreement, understanding, and concerted action among Defendants.

9 188. For purposes of formulating and effecting their unlawful agreement, Defendants
10 did those things they contracted, combined and conspired to do, including:

- 11 a. Participating in meetings and conversations to discuss the prices of Korean
12 Ramen Noodle Products;
- 13 b. Communicating orally and in writing to fix prices of Korean Ramen
14 Noodle Products;
- 15 c. Agreeing to manipulate prices of Korean Ramen Noodle Products sold in
16 the United States in a manner that deprived direct and indirect purchasers
17 of free and open competition;
- 18 d. Issuing price announcements in accordance with the agreements reached;
- 19 e. Selling Korean Ramen Noodle Products to consumers in the United States
20 at non-competitive prices; and
- 21 f. Providing false statements to the public to explain increased prices of
22 Korean Ramen Noodle Products.

23 189. As a direct and proximate result of Defendants' unlawful conduct, California
24 consumers have been injured in their business or property in that they paid a price for Korean
25 Ramen Noodle Products in excess of the price that would prevail in a competitive market. As a
26 result of Defendants' violation of Section 16720 of the California Business and Professions
27 Code, Plaintiffs seeks treble damages and his cost of suit, including reasonable attorneys' fees,
28 pursuant to Section 16750(a) of the California Business and Professions Code.

1 190. It is appropriate to apply California antitrust law to the Nationwide Class. Each
2 of the Korean Defendants has a United States distribution subsidiary or affiliate headquartered in
3 the State of California. Additionally, Nongshim USA manufactures Korean Ramen Noodle
4 Products in the State of California. The Defendants targeted their price-fixing activities at
5 purchasers of Korean Ramen Noodle Products. California is the most populous state in the
6 country, and has the largest population of persons of Korean descent in the country. Upon
7 information and belief, sales of Korean Ramen Noodle Products in the State of California
8 account for a significant portion of Defendants' United States sales.

9 191. Wherefore, Plaintiffs pray for relief as set forth below.

10 **THIRD CAUSE OF ACTION**
11 **(Violation of State Antitrust and Restraint of Trade Laws)**
12 **(Brought by Plaintiffs An, Bonnington, Kang, C. Nguyen, T. Nguyen, Pelobello,**
13 **Beamer and Halloran on Behalf of the Count III Subclass**
14 **Against All Defendants)**

15 192. The foregoing allegations are realleged and incorporated by reference as if fully
16 set forth herein.

17 193. Should this Court determine that California law does not apply to the Class,
18 Plaintiffs An, Bonnington, Kang, C. Nguyen, T. Nguyen, Pelobello, Beamer and Halloran state
19 this Cause of Action in the alternative on behalf of the Count III Subclass; and, in the alternative,
20 on behalf of the California, Michigan and New York Subclasses for violations of the California,
21 Michigan and New York laws alleged in this Cause of Action. The state statutes cited herein are
22 materially similar to one another and provide relief to indirect purchasers harmed by antitrust
23 violations.

24 194. During the Class Period, Defendants' unlawful conspiracy had the following
25 effects in each of the jurisdictions whose laws Defendants are alleged to have violated in this
26 Cause of Action:

- 27 a. Price competition for Korean Ramen Noodle Products was restrained, suppressed
28 and eliminated;
- b. commerce was substantially affected;

- 1 c. prices for Korean Ramen Noodle Products were raised, fixed, maintained or
2 stabilized at artificially high levels;
- 3 d. as a direct and proximate cause of Defendants' unlawful conduct, members of
4 the Count III Subclass were injured by paying a price for Korean Ramen Noodle
5 Products in excess of the price that would have prevailed in a competitive
6 market; and
- 7 e. consumers were deprived of the benefit of free and open competition.

8 195. By committing the acts alleged herein, including entering into a contract,
9 combination or conspiracy to raise, fix, maintain, or stabilize prices of Korean Ramen Noodle
10 Products, Defendants have violated the following statutes:

- 11 a. **Arizona: The Uniform State Antitrust Act**, Ariz. Rev. Stat., § 44-1401, *et seq.*;
- 12 b. **California: The Cartwright Act**, Cal. Bus. & Prof. Code, § 16700, *et seq.*;
- 13 c. **District of Columbia Antitrust Act**, District of Columbia Code Annotated §
14 28-4501, *et seq.*;
- 15 d. **Iowa Competition Law**, Iowa Code Ann. § 553.1, *et seq.*;
- 16 e. **Kansas: Restraint of Trade Act**, Kan. Stat. Ann. § 50-101, *et seq.*;
- 17 f. **Maine**: Me. Rev. Stat. tit. 10, § 1101, *et seq.*;
- 18 g. **Michigan: Antitrust Reform Act**: Mich. Comp. Laws Ann. § 445.773, *et*
19 *seq.*;
- 20 h. **Minnesota: Antitrust Law of 1971**: Minn. Stat. Ann. § 325D.49, *et seq.*;
- 21 i. **Mississippi: Antitrust Act**, Miss. Code. Ann. § 75-21-1, *et seq.*;
- 22 j. **Nebraska: The Junkin Act**, Neb. Rev. Stat. § 59-801, *et seq.*;
- 23 k. **Nevada: Unfair Trade Practice Act**, Nev. Rev. Stat. Ann. § 598A.010, *et*
24 *seq.*;
- 25 l. **New Mexico: Antitrust Act**, N.M. Stat. Ann. § 57-1-1.1, *et seq.*;
- 26 m. **New York: Donnelly Act**, N.Y. Gen. Bus. Law § 340, *et seq.*;
- 27 n. **North Carolina: Unfair Trade Practices Act**, North Carolina General
28 Statutes § 75-1, *et seq.*;

- 1 o. **North Dakota: Uniform State Antitrust Act**, N.D. Cent. Code Ann. § 51-
2 08.1-01, *et seq.*;
- 3 p. **Oregon: Antitrust Law**, Or. Rev. Stat. Ann. § 646.705, *et seq.*;
- 4 q. **South Dakota: S.D. Codified Laws § 37-1-1**, *et seq.*;
- 5 r. **Tennessee: Antitrust Act**, Tenn. Code Ann. § 47-25-101, *et seq.*;
- 6 s. **Vermont: Consumer Fraud Act**, Vt. Stat. Ann. tit. 9, § 2453, *et seq.*;
- 7 t. **West Virginia: Antitrust Act**, W. Va. Code Ann. § 47-18-1, *et seq.*; and
- 8 u. **Wisconsin: Antitrust Act**, Wis. Stat. Ann. § 133.01, *et seq.*

9 196. Plaintiffs and members of the Count III Subclass were damaged as a result of
10 Defendants' unlawful conspiracy because they paid prices for Korean Ramen Noodle
11 Products in excess of the price that would have prevailed in a competitive market.

12 197. Wherefore, Plaintiffs pray for relief as set forth below.

13 **FOURTH CAUSE OF ACTION**
14 **(Violation of State Consumer Protection Laws)**
15 **(Brought by Plaintiffs An, Bonnington, Kang, C. Nguyen, T. Nguyen,**
16 **Pelobello, Fenerjian, Halloran and Martin On Behalf of the**
17 **Count IV Subclass against All Defendants)**

18 198. The foregoing allegations are realleged and incorporated by reference as if fully
19 set forth herein.

20 199. Should this Court determine that California law does not apply to the Class,
21 Plaintiffs An, Bonnington, Kang, C. Nguyen, T. Nguyen, Pelobello, Fenerjian, Halloran and
22 Martin state this Cause of Action in the alternative on behalf of the Count IV Subclass; and, in
23 the alternative, on behalf of the California, Florida, Massachusetts, and New York Subclasses for
24 violations of the California, Florida, Massachusetts and New York laws alleged in this Cause of
25 Action. The state consumer protection statutes cited herein are materially similar to one another
26 and provide relief to indirect purchasers who are victims of unlawful, unfair, and/or deceptive
27 conduct.
28

1 200. Defendants committed unfair and unlawful acts and practices by entering into a
2 contract, combination, or conspiracy to artificially fix, raise, maintain or stabilize prices of
3 Korean Ramen Noodle Products.

4 201. Defendants committed deceptive acts and practices by taking affirmative steps to
5 conceal its price fixing activities. These activities include, but are not limited to, conducting
6 secret meetings and issuing false and misleading statements concerning the reason for their price
7 increases. The existence of Defendant's price fixing conspiracy was material to a reasonable
8 consumer and likely to affect a consumer's conduct or decision with regard to purchasing Korean
9 Ramen Noodle Products.

10 202. As a result of Defendants' unlawful conspiracy, Plaintiffs and members of the
11 Count IV Subclass were injured by paying a price for Korean Ramen Noodle Products in excess
12 of the price that would have prevailed in a competitive market.

13 203. Upon information and belief, a gross disparity existed between the price Plaintiffs
14 and the Count IV class paid for Korean Ramen Noodle Products and the value they received.

15 204. Defendants neither maintain a place of business nor keep assets within the
16 Commonwealth of Massachusetts.

17 205. Defendants are engaged in trade or commerce in Massachusetts and the states
18 where Count IV Class members reside.

19 206. During the Class Period, Defendants' unlawful conspiracy had the following
20 effects in each of the jurisdictions whose laws Defendants are alleged to have violated in this
21 Cause of Action:

- 22 a. Price competition for Korean Ramen Noodle Products was restrained, suppressed
23 and eliminated;
- 24 b. commerce was substantially affected;
- 25 c. prices for Korean Ramen Noodle Products were raised, fixed, maintained or
26 stabilized at artificially high levels;
- 27 d. as a direct and proximate cause of Defendants' unlawful conduct, members of
28 the Count IV Subclass were injured by paying a price for Korean Ramen Noodle

1 Products in excess of the price that would have prevailed in a competitive
2 market;

3 e. consumers were deprived of the benefit of free and open competition.

4 207. Defendants acted in restraint of trade or commerce in the worldwide market for
5 Korean Ramen Noodle Products, which includes each state listed in the paragraph below, by
6 affecting, fixing, controlling and/or maintaining at artificial and noncompetitive levels, the prices
7 at which Korean Ramen Noodle Products are sold, distributed, or obtained and took efforts to
8 conceal their agreements from Plaintiffs and members of the Count IV Subclass.

9 208. By committing the acts alleged herein, Defendants have engaged in unfair,
10 unlawful and deceptive acts and practices in violation of the Federal Trade Commission Act and
11 the following state consumer protection statutes:

- 12 a. **Arkansas: Deceptive Trade Practices Act**, Ark. Code Ann. § 4-88-101, *et seq.*;
- 13 b. **California: Unfair Competition Law**, Cal. Bus. & Prof. Code § 17200 *et seq.*;
- 14 c. **District of Columbia: Consumer Protection Procedures Act**, D.C. Code § 28-
15 3901, *et seq.*;
- 16 d. **Florida: Deceptive and Unfair Trade Practices Act**, Fla. Stat. § 501.201, *et*
17 *seq.*;
- 18 e. **Hawaii: Unfair and Deceptive Trade Practices Act**, Haw. Rev. Stat. § 480-1, *et*
19 *seq.*;
- 20 f. **Massachusetts: Regulation of Business Practices for Consumers' Protection**
21 **Act**, Mass. Gen. Laws Ann. ch. 93A, § 1, *et seq.*;
- 22 g. **Missouri Merchandising Practices Act**, Mo. Rev. Stat. § 407.010, *et seq.*;
- 23 h. **Nebraska Consumer Protection Act**, Neb. Rev. Stat. § 59-1601, *et seq.*;
- 24 i. **New Hampshire Consumer Protection Act**, N.H. Rev. Stat. Ann. § 358-A:1, *et*
25 *seq.*;
- 26 j. **New Mexico: Unfair Trade Practices Act**, N.M. Stat. Ann. § 57-12-1, *et seq.*;
- 27 k. **New York Deceptive Acts and Practices Act**, N.Y. Gen. Bus. Law § 349, *et*
28 *seq.*;

1 constructive trust from which Plaintiffs and members of the Count V Subclass may seek
2 restitution.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray for judgment and relief against Defendant as follows:

5 A. For an Order certifying the Class, and in the alternative, the Count III, Count IV,
6 and Count V Subclasses, appointing Plaintiffs as Class Representatives and their attorneys as
7 Class Counsel;

8 B. For a declaration that Defendants' conduct constituted an unlawful restraint of
9 trade in violation of the federal and state statutes alleged herein;

10 C. that the Court preliminarily and permanently enjoin Defendants from continuing
11 their violations of state and federal antitrust law described in this Complaint;

12 D. for damages to the maximum extent permitted by the state antitrust and restraint
13 of trade laws alleged herein (including actual, double, treble, and/or statutory minimum damages
14 where applicable) in favor of Plaintiffs and the other members of the Class; or, in the alternative,
15 the Count III Subclass; or, in the alternative, the California, Michigan, and New York
16 Subclasses, against Defendant;

17 E. for damages to the maximum extent permitted by the state consumer laws alleged
18 herein (including actual, double, treble, and/or statutory minimum damages where applicable) in
19 favor of Plaintiffs and the other members of the Count IV Subclass, or, in the alternative, the
20 California, Florida, Massachusetts and New York Subclasses, against Defendant;

21 F. for pre- and post-judgment interest on any such monetary relief to the extent
22 permitted by law;

23 G. that the Court grant Plaintiffs their reasonable attorneys' fees and costs of suit;

24 H. that Plaintiffs and members of the Classes be awarded restitution, including
25 disgorgement of profits obtained by Defendants as a result of their anticompetitive acts; and

26 I. that the Court grant such other and further relief as may be just and proper.

27 **JURY DEMAND**

28 Plaintiffs demand a trial by jury on all causes of action so triable.

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DATED: March 24, 2014

/s/ Alan R. Plutzik

Alan R. Plutzik (State Bar No. 77785)
Michael S. Strimling (State Bar No. 96135)
BRAMSON, PLUTZIK, MAHLER
& BIRKHAEUSER LLP
2125 Oak Grove Road
Walnut Creek, CA 94598
Telephone: (925) 945-0200
Facsimile: (925) 945-8792
aplutzik@bramsonplutzik.com
mstrimling@bramsonplutzik.com

Interim Liaison Counsel

Mark P. Kindall (State Bar No. 138703)
Robert A. Izard (*pro hac vice forthcoming*)
Jeffrey S. Nobel (*pro hac vice forthcoming*)
Nicole A. Veno (*pro hac vice forthcoming*)
IZARD NOBEL LLP
29 South Main Street, Suite 305
West Hartford, CT 06107
Telephone: (860) 493-6292
Facsimile: (860) 493-6290
mkindall@izardnobel.com
rizard@izardnobel.com
jnobel@izardnobel.com

Interim Lead Counsel

Marc Gene Reich
REICH RADCLIFFE & KUTTLER
LLP
4675 MacArthur Court, Suite 550
Newport Beach, CA 92660
Telephone: (949) 975-0512
Facsimile: (949) 975-0514
Email: mgr@reichradcliffe.com

Steven M. Sherman
SHERMAN BUSINESS LAW
220 Montgomery Street, Suite 1500
San Francisco, CA 94104
Telephone: (415) 403-1660
Fax: (415) 397-1577
Email:
steven@shermanbusinesslaw.com

Thomas Henry Bienert , Jr.
BIENERT, MILLER AND
KATZMAN, PLC
903 Calle Amanecer
Suite 350
San Clemente, CA 92673
Telephone: (949) 226-6776
Facsimile: (949) 369-3701
Email: tbienert@bmkattorneys.com

Gerald S Ohn
LAW OFFICES OF GERALD S OHN
1875 Century Park East Suite 700
Los Angeles, CA 90067
Telephone: (310) 407-8655
Facsimile: (310) 694-3049
Email: gerald@ohnlaw.com

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Young W Ryu
LAW OFFICES OF YOUNG W RYU
9595 Wilshire Boulevard Suite 900
Beverly Hills, CA 90212
Telephone: (888) 365-8686
Facsimile: (800) 576-1170
Email: young.ryu@youngryulaw.com

Reginald Terrell
THE TERRELL LAW GROUP
P.O. Box 13315, PMB #148
Oakland, CA 94661
Telephone: (510) 237-9700
Facsimile: (510) 237-4616
Email: reggiet2@aol.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

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I hereby certify that on March 24, 2014, I filed the foregoing document through the court's CM/ECF system which served all parties who have consented to accept electronic service.

/s/ Nicole Anne Veno
Nicole Anne Veno