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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

(Medford Division)

**JEFF BOARDMAN, DENNIS RANKIN, ROBERT SEITZ, TODD L. WHALEY, LLOYD D. WHALEY, SOUTH BAY WILD, INC., MISS SARAH, LLC,** and **MY FISHERIES, INC.,**

Plaintiffs,

v.

**PACIFIC SEAFOOD GROUP, OCEAN GOLD HOLDING CO., INC., DULCICH, INC., FRANK DULCICH, PACIFIC SEAFOOD GROUP ACQUISITION COMPANY, INC., PACIFIC SEAFOOD WASHINGTON ACQUISITION CO., INC., BANDON PACIFIC, INC., BIO-OREGON PROTEIN, INC., PACIFIC CHOICE SEAFOOD COMPANY, PACIFIC COAST SEAFOODS COMPANY, PACIFIC GARIBALDI, INC., PACIFIC GOLD SEAFOOD COMPANY, PACIFIC PRIDE SEA FOOD COMPANY, PACIFIC SEA FOOD CO., PACIFIC SURIMI CO., INC., PACIFIC TUNA**

Case No.: 1:15-cv-00108-CL

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**



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**COMPANY, LLC, WASHINGTON CRAB PRODUCERS, INC., PACIFIC ALASKA SHELLFISH, INC., SEA LEVEL SEAFOODS, LLC, ISLAND FISH CO., LLC, PACIFIC RESURRECTION BAY, PACIFIC CONQUEST, INC., CALAMARI, LLC, JO MARIE LLC, LESLIE LEE, LLC, MISS PACIFIC, LLC, PACIFIC FUTURE, LLC, PACIFIC GRUMPY J, LLC, PACIFIC HOOKER, LLC, PACIFIC HORIZON, LLC, PACIFIC KNIGHT, LLC, PRIVATEER LLC, SEA PRINCESS, LLC, TRIPLE STAR, LLC, PACIFIC FISHING, LLC, PACIFIC SEA FOOD OF ARIZONA, INC., STARFISH INVESTMENTS, INC., DULCICH SURIMI, LLC, BIO-OREGON PROPERTIES, LLC, PACIFIC GROUP TRANSPORT CO., PACIFIC MARKETING GROUP, INC., PACIFIC RUSSIA, INC., PACIFIC RUSSIA VENTURES, LLC, PACIFIC TUNA HOLDING COMPANY, INC., POWELL STREET MARKET LLC, PACIFIC FRESH SEA FOOD COMPANY, SEACLIFF SEAFOODS, INC., COPPER RIVER RESOURCE HOLDING CO., INC., PACIFIC COPPER RIVER ACQUISITION CO., INC., SEA LEVEL SEAFOODS ACQUISITION, INC., ISLAND COHO, LLC, S & S SEAFOOD CO., INC., PACIFIC SEAFOOD DISC, INC., DULCICH REALTY, LLC, DULCICH REALTY ACQUISITION, LLC,** and **DULCICH JET, LLC**

Defendants.

## I. INTRODUCTION.

This is a simple case involving a single issue left unresolved in a prior antitrust case: whether a monopolist that abandoned the acquisition of a competitor in 2010 in the face of a legal challenge by some of the same plaintiffs in this action should now be allowed to proceed



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with the same acquisition at some point of its choosing in 2015, despite the fact that there has been no material change in its monopoly power positions in the three largest commercial fisheries on the West Coast.

*Whaley et al. v. Pacific Seafood Group et al.* was filed in mid-2010 on behalf of a proposed class action of West Coast fishermen alleging Sherman Act claims for monopolization and attempted monopolization by Frank Dulcich and the more than 50 entities he controls that make up his Pacific Seafood Group empire. Just four months after that case was filed, plaintiffs learned that Pacific Seafood Group was about to close on a transaction to acquire Ocean Gold Seafoods, Inc. ("Ocean Gold" or "Ocean Gold Seafoods") and its affiliated companies.

Immediately after the filing of plaintiffs' motion for a temporary restraining order in October 2010, Pacific Seafood Group advised this Court that the deal was off and would not be rekindled without notice to plaintiffs and the Oregon Attorney General. The case then proceeded through the balance of intensive discovery that included access to the federally managed database documenting every seafood delivery by pounds and species to West Coast processors. Relying in part on that data, which showed that Pacific Seafood Group held a 71% market share in Pacific cold water shrimp, 65% in Pacific whiting and 53% in groundfish, this Court certified the case as a class action in an Opinion and Order dated January 31, 2012.

Shortly thereafter, settlement discussions began that led to a lengthy mediation coordinated by former U.S. District Court Judge Michael R. Hogan. That effort concluded with a comprehensive Class Action Settlement Agreement, which imposed multiple restrictions on co-defendants Pacific Seafood Group and Ocean Gold Seafoods, but no payment of damages. That settlement agreement, which this Court approved on May 21, 2012 in an Order of Judgment and



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Dismissal, did not directly address the issue of Pacific Seafood Group acquiring Ocean Gold Seafoods and its affiliates.

That settlement agreement did, however, expressly prohibit Pacific Seafood Group and Ocean Gold Seafoods from renewing a 10-year exclusive marketing agreement when it expired in early 2016. That agreement granted to Pacific Seafood Group exclusive control over the marketing of all of Ocean Gold's production except bait. In plaintiffs' view, this proposed (but now suspended) acquisition is a bold effort by defendants to subvert the terms of the settlement agreement, but plaintiffs acknowledge that this dispute—whether the acquisition would violate the settlement agreement—must be resolved under the dispute resolution provisions of the settlement agreement. This provision requires any filing before Judge John Jelderks, who was designated as the replacement for Judge Hogan if he was no longer on the federal bench.

Plaintiffs' complaint in this action originally included a third claim seeking a declaratory judgment that Pacific Seafood Group's acquisition of Ocean Gold would violate the settlement agreement, but plaintiffs dropped that claim in a first amended complaint filed on January 23, 2015. Nonetheless, any dispute over the terms of the settlement agreement is a separate and distinct controversy with no impact on plaintiffs' right to pursue their two claims in this action that a monopolist's acquisition of a competitor in three highly concentrated markets violates the Sherman Act and must be enjoined.

Defendants' sudden decision to terminate a transaction that was apparently months in the making is nothing more than an instant replay of its strategy of just over two years ago. When caught in an obviously illegal deal, disavow it and wait for another day outside the scrutiny and transparency of the federal court. Defendants are refusing to comply with this Court's order that all documents related to the transaction be produced on the grounds that the case is now moot.



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But without a stipulated permanent injunction that Pacific Seafood Group will not acquire Ocean Gold Seafoods or any of its affiliated companies, plaintiffs need access to all of these documents to develop the record in support of the permanent injunction to which plaintiffs and their West Coast seafood input markets are entitled.

As the declaration of economist Hans Radtke filed herewith demonstrates, plaintiffs have assembled in a matter of just a few weeks a record revealing that Pacific Seafood Group, despite one previous experience with antitrust litigation, has learned no lessons and continues to pursue a pattern of anticompetitive tactics designed to strengthen its monopolistic grip on three seafood input markets – shrimp, whiting and groundfish. In the two and one-half years since the *Whaley* case was concluded on May 21, 2012, Pacific Seafood Group, while holding monopoly power in these three markets has nonetheless engaged in the following clearly anticompetitive tactics:

- In his capacity as a minority shareholder and member of the board of directors, defendant Frank Dulcich repeatedly attempted to prevent Ocean Gold Seafoods from entering the shrimp market in 2013.

- At the world's two largest annual seafood tradeshows in Boston and Brussels, Pacific Seafood Group sales personnel regularly emphasize that their companies "control" the West Coast shrimp, whiting and groundfish markets, "make those markets" and that large buyers are much better off doing business with Pacific Seafood Group than one of its smaller competitors.

- Pacific Seafood Group has substantially increased its market power positions in British Columbia groundfish and whiting, acquiring full ownership of the largest seafood processing plant in the province and two additional facilities, thus becoming one of the three largest seafood processors in British Columbia with enhanced power to influence seafood input prices on the U.S. West Coast.

- Negotiating the now suspended transaction with Ocean Gold Seafoods that would eliminate a major competitor and consolidate the most modern, highest production seafood processing and fishmeal production facilities on the West Coast along with significant fishing vessel assets and groundfish and whiting quota shares in the hands of the industry's dominant player.



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- While pursuing its acquisition of Ocean Gold through negotiations dating back to July 2014, Pacific Seafood has also been pressing the Pacific Fishery Management Council in presentations in September and November of 2014 that the Council delay the requirement that those few entities with quota shares above regulatory accumulation limits divest down to the legal limit by the end of 2015 and then reconsider whether to maintain the limits at all. The 10% quota share accumulation limit in whiting is particularly relevant. Pacific Seafood Group's plants and its owned fish boats already hold approximately 15% of whiting quota share. The addition of the more than 6% share of whiting quota owned by Ocean Gold would push Pacific Seafood Group's share of the annual quota to approximately 21%, over twice the legal limit.

The market facts supporting the issuance of a preliminary injunction are compelling. The declaration of economist Dr. Hans Radtke relies on and updates the work of James E. Wilen, plaintiffs' primary economist in the *Whaley* case. According to Dr. Radtke, there have been no material changes in the highly concentrated character of all three seafood input markets. Pacific Seafood Group has either maintained its 2009 monopoly market power levels of 71% in shrimp, 65% in onshore whiting and 53% in groundfish, or is within 2% of each of those levels at present.

Pacific Seafood Group has already shown a propensity to avoid judicial review in any situation of perceived litigation risk to a transaction by simply claiming that the deal is off and waiting for another day. This hide-the-ball strategy should not be countenanced. Defendants' desired acquisition of Ocean Gold Seafoods is clearly anticompetitive and violates the Sherman Act's prohibitions on monopolization or attempted monopolization of any U.S. market.

On this record, the decision whether to grant a preliminary injunction should not be a close call. Failing to stop defendants' acquisition of Ocean Gold Seafoods and its affiliates, which are the highest production and highest value combination of seafood processing plant, cold storage, fish scrap processing plant and whiting quota on the West Coast will have four far-reaching and extremely anticompetitive consequences.



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First, this monopolist's market power, which would otherwise drop when an exclusive marketing agreement expires in just one year, would become permanent. Second, a new entrant to the shrimp market in 2013 will be extinguished and consolidated into Pacific Seafood. Third, the stage will be set for further consolidation of processing capacity by Pacific Seafood in Astoria, Oregon and Westport, Washington where defendants' existing Washington Crab Producers plant sits right next to the waterfront plant of Ocean Gold Seafoods. Fourth, and most significantly, the opportunity will have been lost for a new entrant or existing small competitor to acquire the seafood-processing infrastructure that will instantly and substantially improve competitive conditions in all three markets.

A preliminary injunction should be granted that stops any acquisition of Ocean Gold Seafoods by Pacific Seafood Group absent a major change in the highly concentrated character of these markets, and imposes appropriate non-circumvention restrictions on defendants that enable the non-Dulcich shareholders of Ocean Gold Seafoods, who hold slightly over two-thirds of the stock, to negotiate the sale of their interests to one of multiple interested parties.

In support of its motion for preliminary injunction, plaintiffs rely on the declarations of Jeff Boardman, Todd Whaley, Lloyd Whaley, Pete Leipzig and Dr. Hans Radtke as well as the substantial volume of record evidence from the *Whaley* case attached as exhibits to the Radtke and Leipzig declarations.

## II. LEGAL STANDARDS.

Under Section 16 of the Clayton Act, private parties are entitled to injunctive relief against threatened loss or damage due to violation of the antitrust laws. 15 U.S.C. § 26. A plaintiff seeking the equitable remedy of a preliminary injunction must demonstrate four elements, including: "that [the plaintiff] is likely to succeed on the merits, that [the plaintiff] is



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likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [the plaintiff's] favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

In addition, the Ninth Circuit has held that its alternative "sliding scale" approach to injunctive relief survived *Winter*, at least as to the "serious questions" element of that approach. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011). Thus, a preliminary injunction may issue if a plaintiff establishes serious questions as to the merits coupled with a balance of hardships that tips sharply in the plaintiff's favor, so long as the other two elements are satisfied, namely a demonstrated likelihood of irreparable harm and a showing that the public interest supports an injunction. *Id.*

Here, either test counsels strongly in favor of an injunction maintaining the status quo by preventing Pacific Seafood Group from acquiring any increased ownership in Ocean Gold Seafoods or any of its affiliated entities.

## III. THE COURT SHOULD ENJOIN PACIFIC SEAFOOD GROUP FROM ACQUIRING ANY INCREASED OWNERSHIP IN OCEAN GOLD SEAFOODS OR ANY OF ITS AFFILLIATED ENTITIES.

### A. Plaintiffs Are Likely to Prevail on the Merits of Their Section 2 Sherman Act Claims.

Plaintiffs' First Amended Complaint alleges violations of Section 2 of the Sherman Act under two theories: monopolization and attempted monopolization. First Am. Compl. ¶¶ 55-60. Plaintiffs are likely to prevail on the merits of both claims.

Section 2 of the Sherman Act makes it unlawful to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations." 15 U.S.C. § 2. To



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establish attempted monopolization, a plaintiff must prove "(1) specific intent to control prices or destroy competition; (2) predatory or anticompetitive conduct to accomplish the monopolization; (3) dangerous probability of success; and (4) causal antitrust injury." *Cost Mgmt. Servs., Inc. v. Washington Natural Gas Co.*, 99 F.3d 937, 950 (9th Cir.1996).

The requirements of a monopolization claim are similar but differ "primarily in the requisite intent and the necessary level of monopoly power." *Image Technical Servs., Inc. v. Eastman Kodak Co.*, 125 F.3d 1195, 1202 (9th Cir. 1997). To establish monopolization, a plaintiff must show "(1) the possession of monopoly power in the relevant market; and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acquisition, or historic accident." *Eastman Kodak Co. v. Image Technical Servs., Inc.*, 504 U.S. 451, 480 (1992). This record clearly satisfies both evidentiary elements of a monopolization claim.

**1. Monopoly power.**

Monopoly power is the power "to control prices or exclude competition." *United States v. Grinnell Corp.*, 384 U.S. 563, 571 (1966). This can be shown through direct or circumstantial evidence. *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1434 (9th Cir. 1995). If a plaintiff puts forth evidence that the defendant controlled prices or excluded competition, that is direct proof of monopoly power. *Id.* Circumstantial evidence, on the other hand, relates to the structure of the market. To demonstrate market power, a plaintiff must: "(1) define the relevant market, (2) show that the defendant owns a dominate share of that market, and (3) show that there are significant barriers to entry and show that existing competitors lack the capacity to increase their output in the short run." *Id.*



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For purposes of determining whether the defendant owned a "dominant share" of the market, courts primarily consider the defendant's market share and the existence of barriers to entry. *Oahu Gas Serv., Inc. v. Pac. Res., Inc.*, 838 F.2d 360, 366 (9th Cir. 1988). Typically, courts have evaluated a market share in excess of 65% to establish a prima facie case of market power. *Image Tech. Svcs., Inc.*, 125 F.3d at 1206; *see also Hunt-Wesson Foods, Inc. v. Ragu Foods, Inc.*, 627 F.2d 919, 924-25 (9th Cir. 1980) (noting that "market shares on the order of 60 percent to 70 percent have supported findings of monopoly power").

The Radtke declaration shows that Pacific Seafood Group maintains monopoly power market shares in the three relevant seafood input markets involved in this case, 71% in shrimp, 65% in onshore whiting and 53% in groundfish. According to Dr. Radtke, those market shares exist today or are within 2% of those levels. Further, Dr. Radtke opines that there are multiple significant barriers to entry in the West Coast seafood industry, a fact that is borne out by the lack of any new entrants of any significant size in the last decade.

**2. Willful acquisition or maintenance of monopoly power.**

The possession of monopoly power is not, in and of itself, an antitrust violation. The plaintiff must also show that the defendant must have acquired or maintained its monopoly power through exclusionary conduct. *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 407 (2004) ("To safeguard the incentive to innovate, the possession of monopoly power will not be found unlawful unless it is accompanied by an element of anticompetitive *conduct.*" (emphasis in original)). Courts have treated control of horizontal competitors through merger or acquisition as anticompetitive, exclusionary conduct. *See Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1, 72-75 (1911). "[A] monopolist's acquisition of the productive assets or stocks of an actual or likely potential competitor is



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properly classified as anticompetitive, for it tends to augment or reinforce the monopoly by means other than competition on the merits." III Areeda & Hovenkamp, Antitrust Law, ¶ 701a at 194. The Radtke declaration enumerates five anticompetitive tactics that Pacific Seafood Group has deployed since the conclusion of the *Whaley* antitrust case in May 2012. Only one of those involves this particular transaction, which would be a classically anticompetitive takeover of an "actual or likely potential competitor."

**B. The Public Interest Counsels Strongly in Favor of an Injunction.**

In cases like this that involve the public interest, the public interest element "deserves special attention" and should not be subsumed "into the balancing of the hardships" in the preliminary injunction analysis. *Sammartano v. First Judicial District Court*, 303 F.3d 959, 974 (9th Cir. 2002). In *Winter*, the Supreme Court reaffirmed this instruction. 555 U.S. at 24 (stating that "'courts of equity should pay particular regard for the public consequences'" when evaluating a request for injunctive relief) (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982)).

Matters involving antitrust laws implicate important public interests. When private plaintiffs are seeking to enjoin a violation of the antitrust laws, they are acting on behalf of the public to enforce antitrust laws and preserve competition. The Supreme Court explained that:

> the purpose of giving private parties treble-damage and injunctive remedies was not merely to provide private relief, but was to serve as well the high purpose of enforcing the antitrust laws. Section 16 [of the Clayton Act] should be construed and applied with this purpose in mind, and with the knowledge that the remedy it affords, like other equitable remedies, is flexible and capable of nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims. Its availability should be conditioned by the necessities of the public interest which Congress has sought to protect.



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*Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 130-31 (1969) (internal citations and quotation marks omitted). Private enforcement of the Sherman Act "was in no sense an afterthought; it was an integral part of the congressional plan for protecting competition." *California v. Am. Stores Co.*, 495 U.S. 271, 284 (1990). Accordingly, private actions provide a "'necessary supplement'" to actions by the government and "'the possibility of civil damages or injunctive relief serves as a most effective weapon in the enforcement' of laws designed to protect the public interest.'" *Gulf & W. Indus., Inc. v. Great Atl. & Pac. Tea Co.*, 476 F.2d 687, 699 (2d Cir. 1973) (quoting *J. I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)).

As explained in the declaration of Peter Leipzig, the executive director of the Fishermen's Marketing Association ("FMA"), between 1980 and 2010, there was "a 76% drop in the number of seafood processors on the West Coast," with the number of processors dropping from 75 in 1980 to 18 in 2010. Leipzig Decl. ¶ 6 and Ex. A. According to Leipzig, it "would be far better for our industry and the competitiveness that is critical to fair ex vessel pricing if Ocean Gold Seafoods were to become completely independent of Pacific Seafood Group either on its own or through a sale to one of Pacific Seafood Group's existing competitors or a new entrant into the market." *Id.* ¶ 10. Put simply, Pacific Seafood Group's attempt to acquire Ocean Gold Seafoods would decrease the competitiveness of the West Coast's groundfish, whiting, and shrimp markets. For that reason, doubts related to the necessity to safeguard the public interest should be resolved in favor of maintaining the status quo by granting a preliminary injunction. *See United States v. First National City Bank*, 379 U.S. 378, 383 (1965).

Because plaintiffs are acting in the public interest in this case, this factor should weigh heavily in their favor.

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### C. Plaintiffs Will Likely Suffer Irreparable Harm in the Absence of an Injunction.

The Supreme Court teaches that an injury is irreparable where it cannot be "adequately remedied by money damages" (or other legal remedies) and where the injury is "permanent or at least of long duration." *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 545 (1987). Irreparable harm is likely where it is not unduly speculative or remote. *Winter*, *supra*, 555 U.S. at 22. Section 16 of the Clayton Act authorizes injunctive relief in reasonable anticipation of threatened as well as actual injury. 15 U.S.C. § 26; *Zenith Radio Corp.*, 395 U.S. at 130; *see also Am. Passage Media Corp. v. Cass Commc'n, Inc.*, 750 F.2d 1470, 1473 (9th Cir. 1985) ("Reasonable apprehension of threatened injury will suffice."). Plaintiffs' allegations of irreparable harm easily satisfy this prong of the preliminary injunction test.

The Ninth Circuit has held that the "lessening of competition" is "precisely the kind of irreparable injury that injunctive relief under section 16 of the Clayton Act was intended to prevent." *State of Cal. v. Am. Stores Co.*, 872 F.2d 837, 844 (9th Cir. 1989), *rev'd on other grounds*, 495 U.S. 271 (1990); *see also United States v. BNS Inc.*, 858 F.2d 456, 464, 466 (9th Cir. 1988) (holding that the threatened harm to competition in the relevant market if the proposed acquisition were consummated was substantial). Granting an injunction before Pacific Seafood Group acquires Ocean Gold is imperative because "'once the tender offer has been consummated it becomes difficult, and sometimes virtually impossible, for a court to unscramble the eggs.'" *Consol. Gold Fields PLC v. Minorco, S.A.*, 871 F.2d 252, 261 (2d Cir. 1989) (quoting *Sonesta Int'l Hotels Corp. v. Wellington Associates*, 483 F.2d 247, 250 (2d Cir.1973)).

Currently, Pacific Seafood Group controls all of Ocean Gold Seafoods' production through a long term exclusive contract that is set to expire in February 2016. After the expiration



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of the exclusive agreement, Ocean Gold Seafoods and its affiliates would be a free and independent competitor for groundfish, whiting, and shrimp. Loss of competition is inevitable in those three markets if Pacific Seafood Group acquires Ocean Gold Seafoods before 2016.

In sum, if Pacific Seafood Group proceeds with the transaction to acquire a controlling interest in the stock of Ocean Gold Seafoods and its affiliates, plaintiffs will suffer irreparable harm from a permanent loss of a highly significant competitor in three important seafood markets.

**D. The Balance of Equities Tips Sharply in Plaintiffs' Favor.**

The balance of equities heavily favors plaintiffs. The discussion above demonstrates that without a preliminary injunction, Pacific Seafood Group is in a position, at the time of its choosing, to acquire Ocean Gold Seafoods and eliminate a new entrant into the groundfish, whiting, and shrimp markets. The result of such action would be that Pacific Seafood Group would enhance its monopoly power positions in all three markets, thereby lessening competition and opportunities for a new entrant or an existing small competitor. *See e.g.*, Boardman Decl. ¶ 9 ("Considering the dominant market position that Pacific Seafood Group holds in the shrimp market, the loss of a new entrant with significant processing capacity would be a significant loss to our industry and very likely result in lower prices paid to shrimp fishermen.").

In contrast, a preliminary injunction would simply maintain the status quo. "Little is lost from enjoining conduct already determined to be anticompetitive . . . ." III Areeda, Antitrust Law, ¶ 653b at145. Because defendants' conduct is a violation of Section 2 of the Sherman Act, any possible harm to defendants in enjoining such conduct is minimal. Furthermore, "there is no unfairness or disincentive to meritorious competition in simply preventing the conduct at the outset or ordering the monopolist to stop." *Id.*



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Accordingly, the balance of equities tips in favor of plaintiffs.

## IV. CONCLUSION.

For the reasons set forth above and in plaintiffs' accompanying submissions, the Court should issue a preliminary injunction preventing Pacific Seafood Group from acquiring any increased ownership in Ocean Gold Seafoods or any of its affiliated entities.

DATED this 28th day of January, 2015.

HAGLUND KELLEY LLP

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## CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of January, 2015, I served the foregoing **PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**, the following by the following indicated method(s):

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☐ by **mailing** a full, true and correct copy thereof in a sealed first-class postage prepaid envelope, addressed to the foregoing attorneys at their last known office address, and deposited with the United States Post Office at Portland, Oregon on the date set forth above.

☐ by **emailing** a full, true and correct copy thereof to the foregoing attorneys at their last known email addresses on the date set forth above.

☐ by causing a full, true and correct copy thereof to be **hand delivered** to the attorneys at their last known address listed above on the date set forth above.

☐ by sending a full, true and correct copy thereof via **overnight mail** in a sealed, prepaid envelope, addressed to the attorneys as shown above on the date set forth above.

☐ by **faxing** a full, true and correct copy thereof to the attorneys at the fax number shown above, which is the last-known fax number for the attorneys' office on the date set forth above.

☒ by transmitting full, true and correct copies thereof to the attorneys through the court's Cm/ECF system on the date set forth above.

/s/Michael E. Haglund