

# Big Food Price-Fixing Update: Court Certifies Three Putative Classes in Packaged Seafood Litigation



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What started out as a proposed merger between two of the largest packaged seafood manufacturers spawned a lengthy criminal investigation into antitrust violations in the tuna industry by the Department of Justice (DOJ) and multiple class and individual civil lawsuits. After four years of litigation, a major development in the class action lawsuits occurred- the Court certified three putative classes.

In 2015, the Department of Justice investigated a proposed merger between Thai Union Group P.C.L. (the parent company of Chicken of the Sea) and Bumble Bee Foods LLC. As the DOJ's civil attorneys reviewed information related to the merger, they discovered materials that appeared to raise criminal concerns.<sup>[1]</sup>

Chicken of the Sea then “blew the whistle” to the DOJ regarding their anticompetitive conduct. This admission helped DOJ reach plea agreements with two other manufacturers, Bumble Bee<sup>[2]</sup> and Starkist,<sup>[3]</sup> as well as three packaged seafood executives—two from Bumble Bee<sup>[4],[5]</sup> and one from Starkist<sup>[6]</sup>. In connection with its guilty plea, Bumble Bee agreed to pay a \$25 million fine, while Starkist's fine is still pending. Bumble Bee's CEO has also been indicted, and faces up to 10 years in a federal penitentiary.<sup>[7]</sup>

Now, the tuna manufacturers face a new challenge in the related civil actions. In 2015, on the heels of the DOJ investigation, three separate class actions were filed in the Southern District of California. Plaintiffs alleged that Defendants took part in various forms of anti-competitive conduct, including agreeing to fix certain net and list prices for packaged tuna. Plaintiffs alleged that the conspiracy began as early as November of 2010 and lasted until at least December 31, 2016.

On July 30, 2019, Judge Janis L. Sammartino granted the respective Motions for Class Certification filed by the Direct Purchaser Plaintiffs, as well as the two indirect classes—the Commercial Food Preparer Plaintiffs, and the End Payer Plaintiffs.<sup>[8]</sup> Judge Sammartino found that each class had satisfied Rule 23's requirements and—contrary to the Defendants arguments—that common issues predominate over individualized issues within each class. For example, Plaintiffs contended that common evidence exists that would be used to prove the existence and scope of Defendants' purported price fixing conspiracy.

The certification orders represent a major victory for each of the classes. They can now proceed to summary judgment and trial without any concern that their claims may be narrowed due to the mechanics of the proposed class. While dispositive motions are scheduled to be submitted later this month, no trial date is currently set. With certification rulings issued and merits briefing on the horizon, renewed settlement discussions are likely to come.

[1] <https://www.justice.gov/atr/division-operations/division-update-spring-2017/civil-investigations-uncover-evidence-criminal-conduct>

[2] <https://www.justice.gov/opa/pr/bumble-bee-agrees-plead-guilty-price-fixing>

[3] <https://www.justice.gov/opa/pr/starkist-co-agrees-plead-guilty-price-fixing>

[4] <https://www.justice.gov/opa/pr/package-d-seafood-executive-agrees-plead-guilty-price-fixing-conspiracy>

[5] <https://www.justice.gov/opa/pr/first-charges-brought-investigation-collusion-packaged-seafood-industry>

[6] <https://www.justice.gov/opa/pr/former-packaged-seafood-executive-pleads-guilty-price-fixing>

[7] <https://www.justice.gov/opa/pr/bumble-bee-ceo-indicted-price-fixing>

[8] [Case No.: 15-MD-2670 JLS \(MDD\) United States Court of Southern District of California](#)

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