

**FEDERAL COURT**

**PROPOSED CLASS PROCEEDING**

B E T W E E N:

(Court Seal)

IRENE BRECKON and GREGORY SILLS

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F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
	26-APR-2021	
	Abigail Grimes	
Toronto, ONT		33

Plaintiffs

and

ALSAKER AS, ALSAKER FJORDBRUK AS, BREMNES  
SEASHORE AS, CERMAQ CANADA LTD., CERMAQ GROUP AS,  
CERMAQ NORWAY AS, CERMAQ US LLC, GRIEG SEAFOOD  
ASA, GRIEG SEAFOOD BC LTD., LERØY SEAFOOD AS, LERØY  
SEAFOOD USA INC., MARINE HARVEST ATLANTIC CANADA  
INC., MOWI ASA, MOWI CANADA WEST INC., MOWI  
DUCKTRAP, LLC, MOWI USA, LLC, NORDLAKS HOLDING AS,  
NORDLAKS OPPDRETT AS, NOVA SEA AS, OCEAN QUALITY  
AS, OCEAN QUALITY NORTH AMERICA INCORPORATED,  
OCEAN QUALITY PREMIUM BRANDS, INC., OCEAN QUALITY  
USA INC., SALMAR ASA, and SCOTTISH SEA FARMS LTD.

Defendants

**CONSOLIDATED STATEMENT OF CLAIM**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules* serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the

United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

<b>Original</b>	<b>Originally</b>
Date <u>11-OCT-2019</u>	Issued by <u>Alice Prodan Gil</u>
	(Registry Officer)
<b>Leave to file Consolidated Claim</b>	Address of 180 Queen Street West, Suite 200
<b>Order dated 26-JAN-2021</b>	local office: Toronto, Ontario
	M5V 3L6

TO: Alsaker AS  
Flakkacågsvegen 12, Onarheim, 5694, Vestland, Norway

AND TO: Alsaker Fjordbruk AS  
Flakkacågsvegen 12, Onarheim, 5694, Vestland, Norway

AND TO: Bremnes Seashore AS  
Oklandsvegen 90, Bremnes, N-5430, Norway

AND TO: Cermaq Canada Ltd.  
2900-550 Burrard Street, Vancouver, BC V6C 0A3, Canada

AND TO: Cermaq Group AS  
Grev Wedels Plass 5, PO Box 144, Sentrum Oslo 0102, Norway

AND TO: Cermaq Norway AS  
Gjaerbakknes, Nordfold, 8286, Norway

AND TO: Cermaq US LLC  
5835 Blue Lagoon Drive, Miami, Florida 33126

AND TO: Grieg Seafood ASA  
C. Sundtsgate 17/19, 5004 Bergen Norway

AND TO: Grieg Seafood BC Ltd.  
1180 Ironwood St., #106 Campbell River, BC V9W 5P7 Canada

AND TO: Lerøy Seafood AS  
Thormohlens Gate 51 B, 5006 Bergen Norway

AND TO: Lerøy Seafood USA, Inc.  
1289 Fordham Blvd., Suite 406 Chapel Hill, NC 27514

AND TO: Marine Harvest Atlantic Canada Inc.  
204 Limekiln Rd, Letang, NB, E5C 2A8

AND TO: Mowi ASA (F/K/A Marine Harvest ASA)  
Sandviksboder 77 AB, 5035 Bergen Norway

AND TO: Mowi Canada West Inc.  
1334 Island Highway, # 124 Campbell River, BC V9W 8C9, Canada

AND TO: Mowi Ducktrap, LLC  
57 Little River Dr. Belfast, ME 04915

AND TO: Mowi USA, LLC  
8550 N.W. 17th St., Suite 105 Miami, FL 33126

AND TO: Nordlaks Holding AS  
Industriveien 14, Stokmarknes, 8450, Norway

AND TO: Nordlaks Oppdrett AS  
Industriveien 14, Stokmarknes, 8450, Norway

AND TO: Nova Sea AS  
Aksjeselskap, Postboks, 34 Lovund, 8764, Norway

AND TO: Ocean Quality AS  
Grieg-Gaarden C. Sundtsgate 17/19, N-5004 Bergen, Norway

AND TO: Ocean Quality North America Incorporated  
4445 Lougheed Highway, 500 Burnaby, BC V5C0E4, Canada

AND TO: Ocean Quality Premium Brands, Inc.  
4445 Lougheed Highway, 500 Burnaby, BC V5C0E4, Canada

AND TO: Ocean Quality USA, Inc.  
1914 Skillman St., #110-309 Dallas, TX 75206-8559

AND TO: SalMar ASA  
Industriveien 51, N-7266 Kverva Norway

AND TO: Scottish Sea Farms, Ltd.  
Laurel House Laurelhill Business Park Stirling, FK7 9JQ United  
Kingdom 01786 44552

## CLAIM

### I. RELIEF SOUGHT

1. The plaintiffs claim on their own behalf and on behalf of other members of the Class (as defined in paragraph 13 below):

(a) an order certifying this action as a class proceeding and appointing the plaintiffs as representative plaintiffs for the Class;

(b) a declaration that the defendants directly or indirectly conspired, agreed, or arranged with each other to fix, maintain, increase or control the price of farmed Atlantic salmon and products containing or derived from farmed Atlantic salmon (collectively, “**Salmon**”) during the Class Period (as defined in paragraph 13 below);

(c) damages or compensation in an amount not exceeding \$1 billion for loss and damage suffered as a result of conduct contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 (“***Competition Act***”) or such other sum as this Court finds appropriate at the trial of the common issues;

(d) punitive damages and/or aggravated damages in the amount of \$100 million or such other sum as this Court finds appropriate at the trial of the common issues;

(e) a reference to decide any issues not decided at the trial of the common issues;

- (f) prejudgment and judgment interest pursuant to sections 36 and 37 of the *Federal Courts Act*, RSC 1985, c F-7;
- (g) investigative costs and costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act*;
- (h) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to Rule 334.38 of the *Federal Court Rules*, SOR/98-106; and
- (i) such further and other relief as this Honourable Court deems just.

## **II. NATURE OF THE ACTION**

2. This action arises from a conspiracy by the defendants and their unnamed co-conspirators to fix, maintain, increase or control prices and allocate the market and customers for Salmon in North America and elsewhere.

3. Norway is the world's largest producer of Salmon. The defendants and their subsidiaries—including those in Canada and elsewhere in North America—control the global Salmon market. This control stems from their significant global market share and their influence on the Salmon spot price in Oslo, Norway.

4. Canada is the fourth-largest producer of farmed Salmon in the world. Despite the use of the word “Atlantic” to describe Salmon, this species is farmed in both the Pacific and the Atlantic Oceans in Canada.

5. The defendants and their unnamed co-conspirators control the global and Canadian Salmon market through their market share.
6. The defendants and their unnamed co-conspirators colluded to manipulate global and North American prices of Salmon.
7. As a result of their actions, the defendants and their unnamed co-conspirators successfully raised the global (including North American) prices of Salmon during the Class Period. These price increases not only impacted Salmon sold by the defendants, but also all Salmon sold in North America.
8. As a result, the plaintiffs and the Class suffered loss and damage caused by the conspiracy.
9. Regulators in Europe and North America are investigating this conspiracy.

### **III. THE PARTIES**

#### **A. Plaintiffs**

10. The plaintiff, Irene Breckon, is an individual who resides in Elliot Lake, Ontario. She purchased Salmon during the Class Period as a consumer or end-user.
11. The plaintiff, Gregory Sills, lives in Toronto, Ontario. He purchased Salmon during the Class Period as a consumer or end-user.
12. Throughout the Class Period, the plaintiffs and other members of the Class paid inflated prices for Salmon, thereby suffering a pecuniary loss. The defendants' anti-competitive practices and conduct pleaded herein caused this loss.

13. The plaintiffs seek to represent the following class (the “**Class**”):

All persons in Canada who purchased Salmon between April 10, 2013 and the date of certification of this action or such other date as the Court determines appropriate (“**Class Period**”). Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.

**B. Defendants**

**a. Alsaker**

14. The defendants Alsaker AS and Alsaker Fjordbruk AS (collectively referred to herein as “**Alsaker**”) are Norwegian corporations headquartered in Onarheim, Norway.

15. During the Class Period, the Alsaker defendants engaged in the production, processing, and sale of Salmon. The business of each of the Alsaker defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the production, marketing, sale, and/or distribution of Salmon in North America, and for the purposes of the conspiracy described herein.

**b. Bremnes Seashore AS**

16. The defendant Bremnes Seashore AS is a Norwegian corporation with global operations. During the Class Period, Bremnes Seashore AS engaged in the production, processing, and sale of Salmon. Bremnes Seashore AS is headquartered at Bremnes, Norway. Bremnes Seashore AS owns 40% of the defendant Ocean Quality AS and uses that entity to sell and distribute its products around the globe, including in Canada.



**c. Cermaq**

17. The defendant Cermaq Group AS is a Norwegian corporation headquartered in Oslo, Norway. During the Class Period, it was engaged in the production, processing, and sale of Salmon. Cermaq Group AS is a fully owned subsidiary of the Mitsubishi Corporation, and does business in Canada through its subsidiaries, the defendants Cermaq Norway AS, Cermaq US LLC, and Cermaq Canada Ltd.

18. The defendants Cermaq Group AS, Cermaq Norway AS, Cermaq US LLC, and Cermaq Canada Ltd. are collectively referred to herein as “**Cermag**”. Cermaq is the largest producer of Salmon in Canada, and the second largest in the world.

19. The business of each of the Cermaq defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the production, marketing, sale, and/or distribution of Salmon in North America, and for the purposes of the conspiracy described herein.

**d. Grieg**

20. The defendant Grieg Seafood ASA (“**Grieg ASA**”) is a corporation headquartered in Bergen, Norway. It is one of the world’s leading aquaculture companies, specializing in Salmon. Grieg ASA owns farming facilities in several countries, including Canada.

21. The defendant Ocean Quality AS is a corporation headquartered in Bergen, Norway. It is a majority-owned sales agent of Grieg ASA, and targets and sells its Salmon in North America, including Canada, through three of its subsidiaries: the

defendants Ocean Quality North America Incorporated, Ocean Quality USA Inc., and Ocean Quality Premium Brands, Inc.

22. The defendant Ocean Quality North America Incorporated (“**OQNA**”) is a company incorporated under the *Canada Business Corporations Act*, RSC, 1985, c C-44, and is a wholly owned subsidiary of Ocean Quality AS. OQNA is headquartered in Burnaby, British Columbia, and was established with the purpose of distributing and selling Salmon produced by Grieg ASA and its subsidiaries in the North American market.

23. The defendant Ocean Quality USA Inc. is a Delaware corporation and wholly owned subsidiary of Ocean Quality AS. It is headquartered in Dallas, Texas, and distributes Salmon products produced by Grieg ASA and its subsidiaries in the North American market.

24. The defendant Ocean Quality Premium Brands, Inc. is a Delaware corporation and wholly owned and controlled subsidiary of OQNA. It is headquartered in Burnaby, British Columbia, and distributes Salmon products produced by Grieg ASA and its subsidiaries in the North American market.

25. The defendant Grieg Seafood BC Ltd. is a British Columbia company headquartered in Campbell River, British Columbia. It is a wholly owned and controlled subsidiary of Grieg ASA, and farms Salmon in numerous locations throughout British Columbia.

26. The defendants Grieg ASA, Ocean Quality AS, QQNA, Ocean Quality USA Inc., Ocean Quality Premium Brands, Inc., and Grieg Seafood BC Ltd. are collectively referred to herein as “**Grieg**”. The business of each of the Grieg defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the production, marketing, sale, and/or distribution of Salmon in North America, and for the purposes of the conspiracy described herein.

**e. Lerøy**

27. The defendant Lerøy Seafood AS is a company headquartered in Bergen, Norway. It is the second largest Salmon producing company in the world, present in more than 70 markets worldwide.

28. The defendant Lerøy Seafood USA Inc. is a North Carolina corporation headquartered in Chapel Hill, North Carolina. Lerøy Seafood USA Inc. operates as the North American division of its parent company, selling and marketing Salmon throughout North America.

29. The defendants Lerøy Seafood AS and Lerøy Seafood USA Inc. are collectively referred to herein as “**Lerøy**”. The business of each of the Lerøy defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the production, marketing, sale, and/or distribution of Salmon in North America, and for the purposes of the conspiracy described herein.

**f. Mowi**

30. The defendant Mowi ASA (formerly known as Marine Harvest ASA) is the largest seafood company in the world and the largest producer of Salmon, with a share of between 25% and 30% of the global Salmon market. Mowi ASA is headquartered in Bergen, Norway. Mowi ASA has subsidiaries and divisions operating in the production, processing, and sale of Salmon in some 25 countries, including Norway, Canada, and the United States.

31. The defendant Mowi Canada West Inc. (“**Mowi Canada**”, formerly known as Marine Harvest Canada Inc.) is a British Columbia corporation headquartered in Campbell River, British Columbia. Mowi Canada is a wholly owned and controlled subsidiary of Mowi ASA. Mowi Canada farms and processes Salmon in Canada. Mowi ASA uses its ownership and control over Mowi Canada to sell Salmon in North America.

32. The defendant Marine Harvest Atlantic Canada Inc. is a British Columbia corporation headquartered in New Brunswick, Canada. Also known as “Mowi Canada East”, this company produces and markets Salmon in Canada. Marine Harvest Atlantic Canada Inc. is a wholly owned and controlled subsidiary of Mowi ASA.

33. The defendant Mowi USA, LLC (formerly known as Marine Harvest USA, LLC) is a limited liability company incorporated in Florida with its principal place of business in Miami, Florida. Mowi ASA wholly owns and controls Mowi USA for the purpose of processing and supplying Salmon in the North American market.

34. The defendant Mowi Ducktrap, LLC (formerly known as Ducktrap River of Maine, LLC), is a Maine company and a wholly owned and controlled subsidiary of Mowi ASA. Mowi Ducktrap, LLC sells processed Salmon products throughout North America.

35. The defendants Mowi ASA, Mowi Canada, Marine Harvest Atlantic Canada Inc., Mowi USA, LLC, and Mowi Ducktrap LLC are collectively referred to herein as “**Mowi**”. The business of each of the Mowi defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the production, marketing, sale, and/or distribution of Salmon in North America, and for the purposes of the conspiracy described herein.

**g. Nordlaks**

36. The defendants Nordlaks Holding AS and Nordlaks Oppdrett AS are Norwegian corporations headquartered in Stokmarknes, Norway.

37. Nordlaks Holding AS and Nordlaks Oppdrett AS are collectively referred to herein as “**Nordlaks**”. During the Class Period, the Nordlaks defendants engaged in the production, processing, and sale of Salmon.

38. The business of each of the Nordlaks defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the production, marketing, sale, and/or distribution of Salmon in North America, and for the purposes of the conspiracy described herein.

**h. Nova Sea AS**

39. The defendant Nova Sea AS is a private Norwegian corporation headquartered in Lovund, Norway. During the Class Period, Nova Sea AS engaged in the production, processing, and sale of Salmon.

**i. SalMar ASA**

40. The defendant SalMar ASA (“**SalMar**”) is a company headquartered in Kverva, Norway. It is one of the largest producers of Salmon in the world, and sells and markets Salmon throughout North America.

**j. Scottish Sea Farms Ltd.**

41. The defendant Scottish Sea Farms Ltd. (“**SSF**”) is a company headquartered in Stirling, United Kingdom. It is the UK’s second largest producer of Salmon. It sells its products in the UK and internationally, including in North America.

42. SSF is a joint venture of defendants SalMar and Lerøy, where each owns a 50% interest through a third company.

**k. Unnamed Co-Conspirators**

43. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as defendants in this lawsuit, the identities of which are presently not known, may have participated as co-conspirators with the defendants in the unlawful conspiracy alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct. For the purposes of this claim,

the term “co-conspirator” refers to any co-conspirator identified by name above and any unnamed co-conspirator.

**1. Joint and Several Liability**

44. The defendants are jointly and severally liable for the actions of and damages, including umbrella damages, allocable to all co-conspirators.

45. Whenever reference is made herein to any act, deed or transaction of any corporation, the allegation means that the corporation or limited liability entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation’s business or affairs.

**IV. THE SALMON INDUSTRY**

46. Atlantic salmon is the most commonly commercially farmed salmon species. It is easy to handle, grows well in sea cages, commands a high market value, and adapts well to being farmed away from its native habitats. The largest Salmon producing countries are Norway, Chile, Scotland, and Canada.

47. Atlantic salmon is only farmed in a few locations around the world, including Canada. The Salmon industry in Canada and the United States operates as an integrated North American market.

48. Salmon is sold on the spot market and through annual contracts. The spot market for Salmon in Oslo, Norway is the most important benchmark for Salmon

prices around the globe. Only one percent of Norway's Salmon production is sold on the spot market, but those spot prices set the baseline for longer-term contract prices across the globe.

49. Since April 10, 2013, the NASDAQ Salmon Index has been used to provide a weekly listing of the spot price for Norwegian salmon. During the negotiations on the development of NASDAQ Salmon Index, the Defendants insisted on a standard spot price calculation, which has made it much easier for them to manipulate spot prices. As a result, sales between Defendants and their subsidiary companies are now counted in creating the weekly index. The introduction of the NASDAQ Salmon Index thus gave Defendants the direct ability to manipulate the market. They used that power to skew and exploit spot price levels that then served as reference points for their wholesale prices.

50. According to Mowi, comparing Salmon prices in markets in North America and Europe shows that "there are clear indications of a global market as the prices correlate to a high degree".

51. Since the beginning of the Class Period, the defendants have rigged the spot market by, amongst others, purchasing Salmon from each other at artificially high prices in order to raise prices on the spot market. There is no good non-collusive reason for the defendants to make limited Salmon spot market purchases except to drive up the prices on that market.

52. The Salmon industry is highly concentrated. The defendants and their unnamed co-conspirators are the dominant suppliers of Salmon in North America and the world.



The Salmon industry is characterized by high financial and other barriers to entry, which were known to the defendants. These barriers to entry, coupled with the defendants' high market share created an "umbrella" of *supra*-competitive prices causing non-cartel suppliers to raise prices of Salmon during the Class Period.

53. Relying on higher prices set by the defendants, the non-cartel suppliers were able to, and did, maximize their profits by charging higher prices for Salmon than they would have in a competitive market. The non-cartel suppliers' conduct in charging higher prices was a direct response to higher Salmon prices caused by the defendants' collusive conduct and exercise of collective market power. But for the conspiracy, the defendants would have charged lower, competitive prices, and the non-cartel suppliers would have needed to follow those lower prices or risk losing market share.

54. Salmon price increases during the Class Period cannot be explained by an increase in the cost base or demand. The most significant cost input is feed, but those costs decreased over the relevant period. Further, demand decreased around 2014, as a result of the Russian ban on Salmon from several Western countries.

## **V. INVESTIGATIONS INTO INTERNATIONAL CARTEL**

55. The European Commission ("EC") opened an antitrust investigation into the violation of antitrust rules prohibiting cartels in the Salmon sector. On February 19, 2019, the EC released a statement:

**The European Commission can confirm that on 19 February 2019 its officials carried out unannounced inspections in several Member States at the premises of several companies in the sector of farmed Atlantic salmon.**

The Commission has concerns that the inspected companies may have violated EU antitrust rules that prohibit cartels and restrictive business practices (Article 101 of the Treaty on the Functioning of the European Union). The Commission officials were accompanied by their counterparts from the relevant national competition authorities. [emphasis in the original]

56. In a letter sent to Salmon producers, the EC explained that it had received information that the defendants are “participat[ing in] or have participated in anti-competitive agreements and/or concerted practices related to different ways of price coordination in order to sustain and possibly increase the prices for Norwegian salmon.” According to the letter, the defendants engaged in the following conduct:

- (a) Coordinating sales prices and exchanging commercially sensitive information;
- (b) Agreeing to purchase production from other competitors when these other competitors sell at lower prices; and
- (c) Applying a coordinated strategy to increase spot prices of farmed Norwegian Salmon in order to secure higher price levels for long-term contracts.

57. Defendants such as Mowi ASA, Grieg Seafood ASA, Lerøy Seafood AS, and SalMar filed notices with the Oslo Børs (Stock Exchange) disclosing that their offices had been raided.

58. In November 2019, the Antitrust Division of the United States’ Department of Justice (“**DOJ**”) opened a criminal investigation into allegations of collusion between the defendants in the Salmon industry. Defendants such as Mowi ASA, Grieg Seafood

ASA, Lerøy Seafood AS, and SalMar filed notices with the Oslo Børs disclosing that they or their subsidiaries had received, or were advised they would receive, subpoenas from the DOJ.

## **VI. DEFENDANTS CONSPIRED TO FIX PRICES**

### **A. The Defendants Breached Part VI of *Competition Act***

59. From as early as July 1, 2015 until the present time and ongoing, the defendants and their unnamed co-conspirators have engaged in a conspiracy to fix, maintain, increase or control the prices of Salmon in North America and elsewhere.

60. The defendants and their unnamed co-conspirators carried out the conspiracy by:

- (a) participating in meetings, conversations, and communications in Europe, North America, and elsewhere to discuss coordinating prices;
- (b) agreeing, during those meetings, conversations, and communications, on the prices of Salmon;
- (c) agreeing, during those meetings, conversations, and communications, to allocate production, sales, territories, customers or market for the supply of Salmon in North America and elsewhere;
- (d) agreeing, during those meetings, conversations, and communications, to coordinate price adjustments in North America and elsewhere;
- (e) selling Salmon in North America and elsewhere for the agreed upon prices, controlling discounts, and otherwise fixing, increasing, maintaining or stabilizing prices for Salmon in North America and elsewhere;

- (f) accepting payment for Salmon sold in North America and elsewhere at collusive and *supra*-competitive prices;
- (g) engaging in meetings, conversations, and communications in Europe, North America, and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon price-fixing scheme;
- (h) actively and deliberately employing steps to keep their conduct secret and to conceal and hide facts, including but not limited to using code names, following security rules to prevent paper trails, abusing confidences, communicating by telephone, and meeting in locations where they were unlikely to be discovered by other competitors and industry participants;
- (i) exchanging commercially sensitive information; and
- (j) applying a coordinated strategy to increase the spot prices of Salmon in order to secure higher price levels for long-term contracts.

61. The defendants used opportunities such as events organized in part by third parties to communicate with each other on collusive pricing arrangements. One such event is the annual North Atlantic Seafood Forum—described as “[t]he world’s largest seafood business conference” that has taken place in Norway annually for the past 14 years. It is sponsored in part by major players in the Salmon industry, such as the defendants Cermaq, Grieg, Lerøy, and Mowi. The defendants used “networking opportunities” at these industry events and other similar events to collude.

62. As a result of the unlawful conduct alleged herein, the plaintiffs and other members of the Class paid *supra*-competitive prices for Salmon.

63. The conduct described above constitutes offences under Part VI of the *Competition Act*, in particular, section 45(1). Further, contrary to section 46(1), the

defendants that carry on business in Canada implemented foreign directives from the other defendants and their unnamed co-conspirators communicated to them for the purpose of giving effect to the anti-competitive conduct particularized herein. The plaintiffs claim loss and damage under section 36(1) of the *Competition Act* in respect of this unlawful conduct.

### **B. Discoverability**

64. Salmon is not exempt from competition regulation and thus, the plaintiffs reasonably considered the Salmon industry to be a competitive industry. A reasonable person under the circumstances would not have been alerted to investigate the legitimacy of the defendants' prices for Salmon.

65. Accordingly, the plaintiffs and other members of the Class did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy during the Class Period.

### **C. Fraudulent Concealment**

66. The defendants and their unnamed co-conspirators actively, intentionally and fraudulently concealed the existence of the combination and conspiracy from the public, including the plaintiffs and other members of the Class. The defendants and their unnamed co-conspirators represented to customers and others that their pricing activities were unilateral, thereby misleading the plaintiffs. The affirmative acts of the defendants alleged herein, including acts in furtherance of the conspiracy, were fraudulently concealed and carried out in a manner that precluded detection.

67. The defendants' and their unnamed co-conspirators' anti-competitive conspiracy was self-concealing. As detailed herein, the defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

68. Because the defendants' agreements, understanding, and conspiracies were kept secret, the plaintiffs and other members of the Class were unaware of the defendants' unlawful conduct during the Class Period, and they did not know, at the time, that they were paying *supra*-competitive prices for Salmon.

## **VII. DAMAGES**

69. The conspiracy has had the following effects, among others:

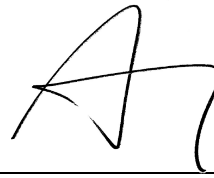
- (a) price competition has been restrained or eliminated with respect to Salmon sold directly or indirectly to the plaintiffs and the Class in Canada;
- (b) the price of Salmon sold to the plaintiffs and other members of the Class have been fixed, maintained, increased or controlled at artificially inflated levels;
- (c) the defendants and their unnamed co-conspirators raised the prices of not only the Salmon that they produced, but also created an umbrella effect on the global and Canadian Salmon market at large, causing loss to anyone in the Class who purchased Salmon in Canada, whether or not supplied by the defendants and/or their unnamed co-conspirators;

- (d) price competition has been restrained or eliminated with respect to the Salmon market as sold directly or indirectly to the plaintiffs and other members of the Class in North America; and
- (e) the plaintiffs and other members of the Class have been deprived of free and open competition for Salmon in North America.

70. Salmon is an identifiable, discrete physical product. As a result, Salmon follows a traceable chain of distribution from the defendants and their unnamed co-conspirators as well as non-defendant/non-conspirator suppliers to consumers or other end-user purchasers. Costs attributable to the unlawful enhancement of the prices of Salmon can be traced through the distribution chain.

71. By reason of the wrongful conduct alleged herein, the plaintiffs and the members of the Class have sustained loss by having paid higher prices for Salmon than they would have paid in the absence of the illegal conduct of the defendants. As a result, the plaintiffs and other members of the Class have suffered loss or damage in an amount not yet known but to be determined. Full particulars of the loss and damage will be provided before trial.

72. The defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful and in contemptuous disregard of the plaintiffs' rights and the rights of other members of the Class, and as such renders the defendants liable to pay aggravated, exemplary, and punitive damages.



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April 26, 2021

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Solicitors for the Plaintiffs



**FEDERAL COURT  
PROPOSED CLASS PROCEEDING**

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Irene Breckon and Gregory Sills

Plaintiff

- and -

Alsaker AS, et al.

Defendants

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**CONSOLIDATED STATEMENT OF CLAIM**

(Filed this \_\_\_\_ of April, 2021)

**SOTOS LLP**

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