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11  
12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14 CV08-03650 GHK (UWk)  
Case No.

15 TASTE OF NATURE, INC.,  
16 individually and on behalf of all  
others similarly situated,

17 Plaintiff,

18 vs.

19 MATSON NAVIGATION CO., INC.;

20 THE CARLYLE GROUP;

21 CASTLE HARLAN, INC.;

22 HORIZON LINES HOLDING CO.;

23 HORIZON LINES, INC.;

24 HORIZON LINES, LLC;

25 and ALEXANDER & BALDWIN,  
INC.,

26 Defendants.

**CLASS ACTION COMPLAINT**

**FOR VIOLATION OF  
SHERMAN ACT, 15 USC § 1**

**JURY TRIAL DEMANDED**

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28 #205962v1

1 Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Plaintiff, on  
2 behalf of itself and all others similarly situated, hereby bring this action for treble  
3 damages and injunctive relief under the federal antitrust laws of the United States,  
4 Section 1 of the Sherman Antitrust Act of 1890, 15 U.S.C. § 1 (“Sherman Act”)  
5 and Sections 4 and 26 of the Clayton Antitrust Act of 1914, 15 U.S.C. §§ 15, 26  
6 (“Clayton Act”) against Defendants. Plaintiff complains and alleges upon  
7 information and belief except as to those paragraphs applicable to the named  
8 Plaintiff, which are based on personal knowledge, as follows:

9 **I. NATURE AND OVERVIEW OF THIS ACTION**

10 1. The State of Hawaii is geographically isolated from the rest of the  
11 United States, and depends heavily on shipments of goods by sea from and to the  
12 West Coast of the United States. The cost of shipping everything from food to  
13 medical supplies to building materials to all the other necessities and amenities of  
14 modern life is high, and contributes to the unusually high cost of living in Hawaii.  
15 This case involves actions by the two primarily domestic ocean shippers to  
16 collusively set and stabilize artificially high rates for shipment of goods between  
17 Hawaii and the West Coast of the United States, eliminate competition in the  
18 market, and thus to artificially inflate the already high cost of living in Hawaii.

19 2. Specifically, this action arises from a conspiracy to fix, raise,  
20 maintain and/or stabilize prices for domestic, noncontiguous ocean shipping  
21 between the United States West Coast and the State of Hawaii. This conspiracy  
22 has four aspects: a conspiracy to fix fuel surcharges on domestic shipping rates,  
23 which at the present time amount to almost 20 percent of the shipping lines’  
24 revenue; a conspiracy to decrease and stabilize shipping capacity (and therefore  
25 fix and stabilize prices) in the West Coast-Hawaii domestic shipping routes; a  
26 conspiracy to fix domestic intermodal non-through rates to shippers and  
27 intermodal companies alike, including union drivers at domestic ports; and a  
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1 concerted and coordinated refusal to deal with freight forwarders on volume  
2 pricing terms offered to other shipper with the purpose and effect of eliminating  
3 competition from freight forwarders in the market for Full Container Load  
4 (“FCL”) services along the West Coast-Hawaii routes.

5 3. Two ocean liner companies, Matson Navigation Company, Inc. (a  
6 wholly-owned subsidiary of Alexander & Baldwin, Inc.)(hereafter “Matson”) and  
7 Horizon Lines, Inc., (hereafter “Horizon”) control 96 percent of the carriage of  
8 liner cargoes on the West Coast-Hawaii routes, with the remaining 4 percent of  
9 cargoes carried by small specialized barge and auto carrier lines.

10 4. Since at least 1999, Matson and Horizon have imposed a “fuel  
11 surcharge” on all cargoes. This surcharge has been calculated as a *percentage of*  
12 *revenue*. It started as 1.75 percent of revenue and, following 16 consecutive  
13 changes (15 increases and 1 decrease), stood at 21.25 percent of revenue as of  
14 June 2006. In late 2006, the two companies changed their fuel surcharges for a  
15 17<sup>th</sup> time, to its current 19.75 percent of revenue.

16 5. In each case, Matson publicly initiated the fuel surcharges, and in  
17 each case, Horizon matched them, exactly, within a few days. In addition,  
18 Horizon has publicly followed Matson in changing the timing of fuel surcharge  
19 changes, from once per quarter to any time it wanted to change them.

20 6. These fuel surcharges make no economic sense. Matson and Horizon  
21 have very different cost and revenue structures, and their different inventory of  
22 ships with different fuel consumption uses different quantities of fuel with  
23 different economic consequences. It is impossible for fuel surcharges calculated  
24 as a percentage of revenue to be exactly the same for both companies, particularly  
25 at every moment through 18 changes over 7 years. In reality, the fuel surcharges  
26 are not based on true cost and revenue factors, but are set by collusion between  
27 Matson and Horizon.

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1           7.     The second aspect of the conspiracy is a conspiracy to limit the  
2 shipping capacity on the West Coast-Hawaii shipping route. Matson and Horizon  
3 accomplish this by agreeing to carry each other's cargoes, and to do so at  
4 substantially lower rates than either charges to other shippers. This has been  
5 going on regularly and for years. The ostensible reason for capacity sharing is to  
6 speed shipments, e.g. when one carrier does not have enough space on one of its  
7 ships for a particular cargo it will ship that cargo on its competitor's next ship at a  
8 much lower cost, and get the cargo to its destination before it would arrive if it  
9 waited for the first carrier's next ship. The true purpose and effect of this capacity  
10 sharing, however, is to restrict the output of shipping services on the West Coast-  
11 Hawaii routes because without the agreement (1) Matson and Horizon might each  
12 have to add additional ships to this route to handle excess capacity, or (2) another  
13 ocean carrier would enter that route and compete with both Matson and Horizon.  
14 Under either scenario, additional capacity would inevitably lead to more  
15 competition and lower prices, an outcome that the defendants abhor.

16           8.     The third aspect of the conspiracy involves collusively setting  
17 domestic intermodal non-through rates charged to shippers and paid to  
18 independent intermodal companies, including union drivers at domestic ports.

19           9.     The fourth aspect of the conspiracy involves a coordinated refusal by  
20 Matson and Horizon to offer freight forwarders volume pricing discounts offered  
21 to other large volume shippers. The purpose and effect of this coordinated refusal  
22 to deal boycott conspiracy is the elimination of competition in the market for FCL  
23 services between Hawaii and the West Coast of the United States.

24           10.    This case involves exclusively domestic, noncontiguous shipping  
25 between the West Coast of the United States and the State of Hawaii. It  
26 specifically does not involve international ocean shipping between the United  
27 States and foreign countries.  
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1 11. Plaintiff, on behalf of all persons and entities that purchased cargo  
2 shipping services from any of the Defendants and their co-conspirators or any  
3 predecessor, subsidiary, or affiliate of each, on the West-Coast Hawaii shipping  
4 routes, at any time during the period four years from the filing of this Complaint to  
5 the present (the "Class"), brings this action to recover treble damages and  
6 injunctive relief for violations of the United States antitrust laws. At all relevant  
7 times herein, Defendants were domestic ocean carriers on the West Coast-Hawaii  
8 shipping routes, and charged identical fuel surcharges and agreed to share  
9 shipping capacity with each other on those routes. As further alleged in this  
10 Complaint, during four years preceding the filing of this Complaint to the present  
11 (the "Class Period"), Defendants agreed, combined, and/or conspired with each  
12 other to fix, raise, maintain, and/or stabilize the prices and output of ocean cargo  
13 shipping on the West-Coast Hawaii routes, and well as the rates charged to  
14 shippers and paid to intermodal carriers for nonthrough intermodal traffic. During  
15 the same period, Defendants successfully sought to reduce competition by freight  
16 forwarders in the market for FCL shipping between Hawaii and the West Coast of  
17 the United States. As a result of Defendants' unlawful conduct and conspiracy,  
18 Plaintiff and the other members of the Class paid artificially high prices for  
19 domestic ocean shipping on those routes, including artificially high fuel  
20 surcharges, and have been damaged thereby.

## 21 **II. JURISDICTION AND VENUE**

22 12. This Complaint is brought under Sections 4 and 16 of the Clayton  
23 Act, 15 U.S.C. §§ 15 and 26, to obtain injunctive relief and to recover treble  
24 damages and the costs of this suit, including reasonable attorneys' fees, against  
25 Defendants for the injuries sustained by Plaintiff and the members of the Class by  
26 reason of Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.  
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1 13. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§  
2 1331 and 1337, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

3 14. This Court has *in personam* jurisdiction over each of the Defendants  
4 because each was engaged in an illegal price-fixing and boycott scheme and  
5 conspiracy that was directed at and/or caused injury to persons and entities  
6 residing in, located in, or doing business in the Central District of California and  
7 throughout the United States.

8 15. Venue is proper in this judicial district pursuant to 15 U.S.C. § 22 and  
9 28 U.S.C. § 1391(b), (c), and (d) because during the Class Period one or more of  
10 the Defendants resided, transacted business, was found, or had agents in this  
11 district, and because a substantial part of the events giving rise to Plaintiff's claims  
12 occurred, and a substantial portion of the affected interstate trade and commerce  
13 described below has been carried out, in this district.

14 16. No other forum would be more convenient for the parties and  
15 witnesses to litigate this case.

### 16 **III. PARTIES**

17 17. Plaintiff Taste of Nature, Inc. ("Plaintiff") is a candy and snack  
18 manufacturing company with its principal place of business in Los Angeles,  
19 California. During the Class Period, Plaintiff purchased domestic ocean cargo  
20 shipping services on Defendants' West Coast-Hawaii routes, and paid fuel  
21 surcharges thereon, and suffered direct pecuniary injury and damages as a result of  
22 the antitrust violations alleged herein.

23 18. Defendant Matson Navigation Company, Inc. is a Hawaii corporation  
24 with its principal place of business in Oakland, California. It has participated in  
25 substantial business dealings in this district including the sale of domestic cargo  
26 shipping services on the West Coast-Hawaii routes. Matson is a wholly-owned  
27 subsidiary of Alexander & Baldwin, Inc.

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1 19. Defendant The Carlyle Group is a private equity firm partnership with  
2 its principal place of business in Washington, D.C. It has participated in  
3 substantial business dealings in this district including the sale of domestic cargo  
4 shipping services on the West Coast-Hawaii routes. The Carlye Group owned  
5 Horizon Lines (previously called CSX Lines LLC) from 2003 to 2004.

6 20. Defendant Castle Harlan, Inc. is a private equity investment firm with  
7 its principal place of business in New York, New York. It has participated in  
8 substantial business dealings in this district including the sale of domestic cargo  
9 shipping services on the West Coast-Hawaii routes. Castle Harlan purchased  
10 Horizon Lines from The Carlyle Group in 2004.

11 21. Defendant Horizon Lines Holding Co. is a Delaware corporation with  
12 its principal place of business in Charlotte, North Carolina. It has participated in  
13 substantial business dealings in this district including the sale of domestic cargo  
14 shipping services on the West Coast-Hawaii routes. Horizon Lines Holding Co. Is  
15 the holding company for Horizon Lines LLC.

16 22. Defendant Horizon Lines, Inc., is a Delaware corporation with its  
17 principal place of business in Charlotte, North Carolina. It has participated in  
18 substantial business  
19 dealings in this district including the sale of domestic cargo shipping services on  
20 the West Coast-Hawaii routes.

21 23. Defendant Horizon Lines, LLC, is a Delaware corporation with its  
22 principal place of business in Charlotte, North Carolina and a Sales And Terminal  
23 office in Oakland, California. At times relevant to this Complaint, Defendant  
24 Horizon Lines, LLC has been known as CSX Lines from 2001 to 2003. It has  
25 participated in substantial business dealings in this district including the sale of  
26 domestic cargo shipping services on the West Coast-Hawaii routes.  
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1 24. Defendant Alexander & Baldwin, Inc., is a Hawaii corporation with  
2 its principal place of business in Honolulu, Hawaii. It has participated in  
3 substantial business dealings in this district including the sale of domestic cargo  
4 shipping services on the West Coast-Hawaii routes.

5 **IV. UNNAMED CO-CONSPIRATORS AND AGENTS**

6 25. On information and belief, at all relevant times, other shipping lines,  
7 trade groups, affiliates of the defendants, or other entities or individuals, referred  
8 to herein as John Does 1-10, willingly conspired with Defendants in their unlawful  
9 restraint of trade. All averments in this complaint against named Defendants are  
10 also averred against these unnamed co-conspirators as though set forth at length.

11 26. The acts alleged to have been done by Defendants were authorized,  
12 ordered or done by their directors, officers, agents, employees, or representatives  
13 while actively engaged in the management of each of the Defendants' affairs.

14 **V. INTERSTATE TRADE AND COMMERCE**

15 27. Throughout the Class Period, there was a continuous and  
16 uninterrupted flow of domestic cargo shipping in interstate commerce between the  
17 West Coast of the United States and the State of Hawaii.

18 28. Defendants' unlawful activities, as described in this Complaint, took  
19 place within the flow of interstate commerce involving domestic cargo shipping  
20 between the States of Hawaii, California, Oregon, Washington and Alaska, and  
21 had a direct, substantial and reasonably foreseeable effect upon interstate and  
22 international commerce.

23 **VI. CLASS ACTION ALLEGATIONS**

24 29. Plaintiff brings this action on their own behalves and as a class action  
25 pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of the  
26 following Class:  
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1 All individuals or entities (excluding governmental  
2 entities, Defendants, and their parents, predecessors,  
3 subsidiaries, affiliates, and their co-conspirators) who  
4 purchased domestic cargo shipping services between the  
5 West Coast of the United States and Hawaii, directly  
6 from any of the Defendants and their co-conspirators or  
7 any predecessor, subsidiary, or affiliate of each, at any  
8 time during the period from four years before from the  
9 filing of this Complaint to the present.

10 30. Because such information is in the exclusive control of Defendants,  
11 Plaintiff does not know the exact number of Class members. Due to the nature of  
12 the trade and commerce involved, however, Plaintiff believes that Class members  
13 number at least in the thousands and are sufficiently numerous and geographically  
14 dispersed so that joinder of all Class members is impracticable.

15 31. There are questions of law or fact common to the Class, including:

16 a. Whether Defendants engaged in a combination or conspiracy  
17 among themselves to fix, raise, maintain, and/or stabilize domestic shipping fuel  
18 surcharge prices between the West Coast of the United States and the State of  
19 Hawaii;

20 b. Whether Defendants engaged in a combination or conspiracy  
21 among themselves to fix, raise, maintain and/or stabilize domestic shipping prices  
22 between the West Coast of the United States and the State of Hawaii by limiting  
23 shipping capacity on those routes;

24 c. Whether Defendants engaged in a combination or conspiracy  
25 among themselves to fix, raise, maintain and/or stabilize domestic shipping prices  
26 between the West Coast of the United States and the State of Hawaii by  
27 collusively fixing rates for domestic non-through intermodal rates charges to  
28 shippers and to independent intermodal companies, including union drivers at  
domestic ports.

d. Whether Defendants engaged in a combination or conspiracy  
among themselves to eliminate competition from freight forwarders in the market

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1 for FCL services between Hawaii and the West Coast of the United States by  
2 refusing to offer freight forwarders volume discount pricing offered to nonfreight  
3 forwarding shippers.

4 e. The duration of the conspiracy alleged in this Complaint and the  
5 nature and character of the acts performed by Defendants in furtherance of the  
6 conspiracy;

7 f. Whether the alleged conspiracy violated Section 1 of the Sherman  
8 Act;

9 g. Whether the conduct of Defendants, as alleged in this Complaint,  
10 caused injury to the businesses or property of Plaintiff and the other members of  
11 the Class;

12 h. The effect of Defendants' conspiracy on the fuel surcharge and  
13 other prices for domestic noncontiguous shipping between the West Coast of the  
14 United States and the State of Hawaii during the Class Period; and

15 i. The appropriate measure of damages sustained by Plaintiff and  
16 other members of the Class.

17 32. Plaintiff is a member of the Class. Plaintiff's claims are typical of the  
18 claims of the Class members. Plaintiff will fairly and adequately protect the  
19 interests of the Class. Plaintiff sustained direct financial injury in connection with  
20 the domestic noncontiguous cargo shipping services, intermodal transportation  
21 services, and fuel surcharges of one or more Defendants, and his interests are  
22 coincident with and not antagonistic to those of other members of the Class.  
23 Plaintiff is represented by counsel that is highly competent and experienced in the  
24 prosecution of antitrust and class action litigation.

25 33. The questions of law and fact common to the members of the Class  
26 predominate over any questions affecting only individual members.  
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1 34. A class action is superior to other methods for the fair and efficient  
2 adjudication of this controversy. Treatment as a class action will permit a large  
3 number of similarly situated persons to adjudicate their common claims in a single  
4 forum simultaneously, efficiently, and without the duplication of effort and  
5 expense that numerous individual actions would engender. Class treatment will  
6 also permit the adjudication of relatively small claims by many Class members  
7 who otherwise could not afford to litigate an antitrust claim such as is asserted in  
8 this Complaint. This class action presents no difficulties in management that  
9 would preclude maintenance as a class action. Finally, the Class is readily  
10 definable and is one for which records of the names and addresses of the members  
11 of the Class exist in the files of the Defendants.

12 **VII. DEFENDANTS AND THE DOMESTIC**  
13 **NONCONTIGUOUS OCEAN SHIPPING MARKET**

14 35. Defendants Matson and Horizon and their affiliates control  
15 approximately 96 percent of the carriage of domestic liner cargoes on the West  
16 Coast-Hawaii routes, with the remaining 4 percent of cargoes carried by small  
17 specialized barge and auto carrier lines. This gives the Defendants an  
18 overwhelming market share and market power in a classic  
19 oligopolistic—essentially duopolistic—market structure.

20 36. The principal competitors for the Defendants in the domestic  
21 noncontiguous ocean cargo market between the West Coast and Hawaii are  
22 therefore one another.

23 37. Domestic noncontiguous cargo shipping is a service that is fungible  
24 because almost all such shipping today is containerized and any container vessel  
25 can readily substitute for any other in carrying such cargo containers. The same is  
26 true for the much lesser amount of noncontainerized cargo, such as automobiles.  
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1 38. Domestic noncontiguous cargo shipping is a homogenous service  
2 sold by shipping lines, including Defendants, to cargo shipping customers,  
3 including Plaintiff and the members of the Class, primarily based on price.

4 39. The domestic noncontiguous cargo shipping market between the West  
5 Coast of the United States and Hawaii is highly concentrated, and there exist  
6 substantial barriers to entry in this market. Both factors facilitate the  
7 implementation and maintenance of a horizontal price-fixing cartel such as that  
8 perpetrated by Defendants and alleged herein and make effective the  
9 anticompetitive purpose of Defendants' coordinated refusal to offer volume  
10 pricing discounts to freight forwarders.

11 **VIII. DEFENDANTS' CONCERTED FUEL SURCHARGES**

12 40. Beginning at least four years prior to the filing of this Complaint,  
13 Defendants agreed to act in concert with one another in demanding fuel surcharges  
14 from their domestic shipper customers, and agreed to set those rates jointly and at  
15 the same level. Defendants' agreement to charge uniform fuel surcharges is  
16 reflected in their lockstep price changes.

17 41. On January 1, 1999, neither Matson nor Horizon charged its  
18 customers a fuel surcharge.

19 42. On October 11, 1999, Matson imposed a fuel surcharge of 1.75  
20 percent of revenue. Horizon matched this fuel surcharge exactly within days.

21 43. On February 20, 2000, Matson increased its fuel surcharge to 2.25  
22 percent. Horizon matched this fuel surcharge exactly within days.

23 44. On April 2, 2000, Matson increased its fuel surcharge to 3.25 percent.  
24 Horizon matched this fuel surcharge exactly within days.

25 45. On October 15, 2000, Matson increased its fuel surcharge to 4.25  
26 percent. Horizon matched this fuel surcharge exactly within days.

1 46. On November 25, 2001, Matson decreased its fuel surcharge to 3.25  
2 percent. Horizon matched this fuel surcharge exactly within days.

3 47. On May 5, 2002, Matson increased its fuel surcharge to 4.75 percent.  
4 Horizon matched this fuel surcharge exactly within days.

5 48. On October 20, 2002, Matson increased its fuel surcharge to 6.00  
6 percent. Horizon matched this fuel surcharge exactly within days.

7 49. On March 3, 2003, Matson increased its fuel surcharge to 7.50  
8 percent. Horizon matched this fuel surcharge exactly within days.

9 50. On May 4, 2003, Matson increased its fuel surcharge to 8.00 percent.  
10 Horizon matched this fuel surcharge exactly within days.

11 51. On June 21, 2004, Matson increased its fuel surcharge to 8.80  
12 percent. Horizon matched this fuel surcharge exactly within days.

13 52. On October 18, 2004, Matson increased its fuel surcharge to 9.20  
14 percent. Horizon matched this fuel surcharge exactly within days.

15 53. On April 18, 2005, Matson increased its fuel surcharge to 10.50  
16 percent. Horizon matched this fuel surcharge exactly within days.

17 54. On July 3, 2005, Matson increased its fuel surcharge to 11.50 percent.  
18 Horizon matched this fuel surcharge exactly within days.

19 55. On October 2, 2005, Matson increased its fuel surcharge to 13.00  
20 percent. Horizon matched this fuel surcharge exactly within days. According to  
21 the *Honolulu Advertiser*, Horizon had initially wanted a 2.5 percent increase in the  
22 fuel surcharge, but ended up matching Matson's 1.5 percent increase.

23 56. On January 1, 2006, Matson increased its fuel surcharge to 15.00  
24 percent. Horizon matched this fuel surcharge exactly within days.

25 57. On April 2, 2006, Matson increased its fuel surcharge to 18.50  
26 percent. Horizon matched this fuel surcharge exactly within days.  
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1 58. On June 4, 2006, Matson increased its fuel surcharge to 21.25  
2 percent. Horizon matched this fuel surcharge exactly within days.

3 59. On October 1, 2006, Matson decreased its fuel surcharge to 19.75  
4 percent. Horizon matched this fuel surcharge exactly the next day.

5 60. In short, Matson and Horizon have acted in lock step in charging the  
6 exact same fuel surcharges *as a percentage of revenue* for 18 consecutive changes  
7 over a period of seven years, and in doing so have boosted their revenue by  
8 approximately a current 20 percent. These lockstep rate changes by Matson and  
9 Horizon over many years are documented in such publications at the *Pacific*  
10 *Business News* and the *Honolulu Advertiser* newspaper.

11 61. Matson and Horizon acted in lockstep in other ways as well. For  
12 example, fuel surcharges used to be adjusted quarterly. In the spring of 2006,  
13 Matson announced that it would make surcharge changes whenever it deemed it  
14 necessary, a significant change in a policy that had lasted for years. Eleven days  
15 later, Horizon also changed its longstanding policy to make surcharge changes “in  
16 a more timely manner.”

17 62. The history of identical fuel surcharges makes no economic sense, as  
18 they are calculated as a percentage of revenue. Even assuming a rise in the price  
19 of fuel for both carriers, the increase in cost as a percentage of revenue *cannot* be  
20 the same for both carriers. The carriers use different technologies (e.g. different  
21 ships with different types of engines and fuel efficiencies), different routes,  
22 different operations, carry different cargoes, and so on. There may also be  
23 different allocations of fuel expense between the carriers and third parties. Thus,  
24 it is impossible for the cost allocation of fuel cost increases to be exactly the same  
25 percentage of revenues for both carriers in both trades. In other words, the two  
26 shipping lines charged identical fuel surcharge costs for years *regardless of*  
27 *whether it was economically rational or not*. The uniformity of these fuel  
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1 surcharges show that they bear little or no relationship to external costs *as a*  
2 *percentage of revenue*, and instead have been imposed by the Defendants as part  
3 of a contract, combination or conspiracy to raise and maintain prices above  
4 competitive rates.

5 63. The reality is that the lockstep fuel surcharge increases were the result  
6 of an illegal agreement between the two competitors. Defendants implemented  
7 their agreement by secretly exchanging information and secretly agreeing to fix  
8 the fuel surcharge at artificially high and identical levels. Opportunities for  
9 exchanging secret information and reaching illegal agreements abound, including  
10 under the auspices of the Maritime Cabotage Task Force, an industry lobbying  
11 group to which both Horizon and Matson belong.

12 64. But for Defendants' illegal agreement, they would have been unable  
13 to increase their fuel surcharges to the extent they did. Defendants profited  
14 enormously from their illegal conspiracy to increase fuel surcharges to identical  
15 and unjustified levels.

16 65. In its May 2, 2008 10-Q, Matson's parent company Alexander  
17 Baldwin reported that Matson had been served with a grand jury subpoena "for  
18 documents relating to water carriage in connection with the Department of  
19 Justice's investigation into pricing practices of carriers operating in the domestic  
20 trades." As the report continues, Matson does not operate vessels in any domestic  
21 trades except "the Hawaii and Guam trades."

22 **IX. DEFENDANTS' FIXING OF DOMESTIC NON-THROUGH**  
23 **INTERMODAL RATES**

24 66. "Intermodal" transportation refers to the transfer of goods from  
25 shipping lines to other forms of land transportation, for example trucks and trains.  
26 In some areas, the Defendants have integrated their own intermodal transportation  
27 networks into their shipping systems. In other cases and areas, however, the  
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1 Defendants must rely on contracting with independent intermodal carriers at the  
2 various ports where their goods are loaded and unloaded.

3 67. The setting of intermodal rates charged to shippers in the  
4 international trades are fixed by the shipping lines, and these price fixing  
5 agreements are exempt from the antitrust laws. On information and belief,  
6 however, Defendants conspire to fix rates for domestic nonthrough intermodal  
7 rates as well, and profit by the excessively high intermodal rates so fixed.

8 68. Also on information and belief, Defendants fix the rates they pay to  
9 independent intermodal companies. This specifically includes port drivers as  
10 testified to before Congress:

11 Hidden behind the protection of antitrust immunity, shipping lines  
12 participate in rate setting discussion groups. The coordination,  
13 however, does not stop with rate setting. They then utilize these  
14 groups to enter into secret contracts to set rates exclusively to their  
15 own benefit and to the detriment of, among others, the port drivers.  
16 This is done by collectively setting rates that include the cost of  
17 transporting the containers inland. The shipping lines apparently have  
18 agreed that they will effectively provide inland container  
19 transportation as part of the shipping charge to their customers. Thus,  
20 the highly profitable shipping lines pay low rates to trucking  
21 companies which, after taking their percentage, pay port drivers only  
22 a bare minimum for the transport of containers. The shipping lines  
23 also appear to have agreed, for the most part, not to contract with  
24 trucking companies that hire union drivers.

19 Testimony of George W. Cashman, Director, IBT Port Division, before the United  
20 States House of Representatives Committee on the Judiciary, March 22, 2000.

21 What Mr. Cashman did not realize is that domestic shippers such as the  
22 Defendants in this case do not have the protection of antitrust immunity for such  
23 behavior when it involves domestic nonthrough intermodal rates.

24 69. Thus, Defendants illegally agree to set both domestic nonthrough  
25 intermodal rates charged to shippers, and the rates they pay to independent  
26 intermodal companies, such as trucking companies.

1     **X.     DEFENDANTS' CAPACITY SHARING AGREEMENT TO LIMIT**  
2                     **CAPACITY AND PROP UP SHIPPING RATES**

3             70.     For some time, the Defendants have openly agreed to ship each  
4 other's containers on a regular basis, charging each other much less than they  
5 charge their actual shipper customers. In fact, the charge to the initial carrier is  
6 about \$1,000 per container, while the charge to the shipper is about \$4,000 per  
7 container. The ostensible purpose of this shared capacity is to speed up shipments  
8 when, for example, one shipper's ship is full and they do not want to wait for their  
9 next scheduled ship to depart when a rival's ship may depart sooner.

10            71.     The true reason for the capacity sharing agreement, however, is to  
11 reduce and stabilize capacity on the West Coast-Hawaii routes, thereby preventing  
12 the addition of new capacity by the Defendants and/or other shipping lines, for the  
13 purpose and with the effect of stabilizing and propping up prices. The Defendants  
14 are thus using their considerable market power to restrict output of shipping  
15 services on these domestic routes and thus raise and stabilize prices.

16            72.     An example occurred in about 2000, when Matson was running a  
17 seven vessel fleet that included bi-weekly service from Los Angeles, with sailings  
18 at mid-week. Horizon put in a vessel in the opposite week, which would give it a  
19 competitive niche. Matson countered with a second vessel (for a total of eight),  
20 giving Matson weekly service compared to Horizon's bi-weekly service.  
21 Horizon's vessel utilization was reduced considerably with this new, direct,  
22 competition, and Horizon did not have another ship available to provide  
23 competitive weekly service. Horizon negotiated a highly attractive rate (about  
24 \$1,000) with Matson for their weekly mid-week freight before removing their  
25 vessel from the service, and thus reducing the capacity on that route.

26            73.     The space sharing activity is public knowledge and is done on a  
27 regular, and even advertised, basis. For example, Horizon's website, listing its  
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1 services and sailings, advertises Matson sailings on Matson's vessels (such as the  
2 RJ Feiffer) as Horizon's "MWX Service."

3 74. The upshot of this capacity sharing arrangement is that Matson and  
4 Horizon are collaborating with each other (rather than competing with each other)  
5 in order to reduce the capacity of shipping service on the West Coast-Hawaii  
6 routes and thus maintain higher prices for the shipment of cargo on those routes.

7 **XI. DEFENDANTS' ELIMINATION OF**  
8 **VOLUME PRICING FOR FREIGHT FORWARDERS**

9 75. Freight forwarders are in the business of brokering and organizing the  
10 transport of products, commodities and other goods by various modes of transport  
11 including by ship on behalf of primary shippers. In the market for ocean shipping  
12 along non-contiguous domestic trades, including the West Coast-Hawaii routes, freight  
13 forwarders are legally defined as "Ocean Transport Intermediaries." Commercially, they  
14 are referred to as "third party logistics providers" or "3PLs".

15 76. Freight forwarders are both customers and competitors of carriers. In  
16 their role as customers of carriers, freight forwarders purchase space on the carriers' ships  
17 which they sell to primary shippers. In the market for Less Than Container Load ("LCL")  
18 shipments (i.e. shipments which will not fill an entire shipping container), freight  
19 forwarders operating in the West Coast-Hawaii routes are not in competition with  
20 carriers; the carriers do not sell LCL services directly to primary shippers. However, both  
21 freight forwarders and carriers sell FCL services (i.e. shipping services for loads which  
22 fill an entire shipping container) directly to primary shippers for shipments along the  
23 West Coast-Hawaii routes. Thus, in the market for FCL services along the West Coast-  
24 Hawaii routes, freight forwarders are in competition with the Defendants, who hold a  
25 virtual duopoly over the routes.

26 77. In approximately 1997, Defendants initiated a conspiracy with the  
27 purpose of eliminating competition from freight forwarders in the market for FCL  
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1 services along the West Coast-Hawaii routes. Specifically, Defendants agreed  
2 amongst themselves to deny only to freight forwarders volume pricing discounts  
3 which Defendants had previously offered, generally, to high-volume shippers,  
4 including freight forwarders. Instead, freight forwarders were required to pay  
5 retail rates regardless of the amount of space they purchased. Other non-freight  
6 forwarder customers of Defendants continued to be offered volume pricing  
7 discounts by Defendants.

8 78. As the name suggests, volume pricing refers to a discount which  
9 carriers give to customers who purchase a significant amount of FCL space. The  
10 varieties of volume pricing include but are not limited to: (a) time volume rates;  
11 (b) multiple container rates on a single bill of landing; (c) loyalty contracts  
12 wherein reduced rates are granted by carriers in exchange for commitment of  
13 certain percentage of business; and (d) volume incentive rates. Carriers have an  
14 economic incentive to offer volume pricing to all large volume shippers, including  
15 freight forwarders, because it gives them increased certainty that capacity on their  
16 ships will be filled.

17 79. For freight forwarders, volume pricing was essential to their ability to  
18 compete with carriers in the market for FCL shipments. A freight forwarder was  
19 able to purchase blocks of FCL services at a discount and then sell individual FCL  
20 services at increased price: the difference between the volume pricing paid by  
21 freight forwarders and the retail price charged by freight forwarders to shippers  
22 allowed freight forwarders to cover their overhead and generate a profit while  
23 remaining competitive with the retail prices of FCL services offered directly by  
24 carriers to shippers, thus creating competition in the market for such services.

25 80. Eliminating volume pricing for freight forwarders had exactly the  
26 non-competitive effect that the Defendants intended. Defendants charged freight  
27 forwarders the same retail price for a large volume of FCL services which  
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1 Defendants charged primary shippers for individual FCL services. As a result,  
2 Freight forwarders were no longer able to sell FCL services to primary shippers,  
3 cover their overhead (let alone generate a profit), and remain competitive with  
4 Defendants in the market for FCL services.

5 81. Predictably, as a direct result of Defendants' concerted refusal to deal  
6 with freight forwarders on the same terms which they dealt with other large  
7 volume shippers, competition in the market for FCL services along the West  
8 Coast-Hawaii routes evaporated. Moreover, as a knock-on effect, competition in  
9 the market for freight forwarder services in Hawaii, generally, was dramatically  
10 reduced. The elimination of freight forwarders' ability to compete in the market  
11 for FCL services along the West Coast-Hawaii routes destroyed the economic  
12 viability of a significant portion of the businesses of freight forwarders based in  
13 Hawaii. As a result, the number of freight forwarders based in Hawaii contracted  
14 significantly in recent years; and shippers, including Plaintiff and members of the  
15 Class have been denied the benefits of competition in the market for FCL services  
16 along the West Coast-Hawaii routes and have been forced to pay higher prices for  
17 such services as a result.

## 18 **XII. VIOLATIONS ALLEGED**

### 19 **VIOLATIONS OF 15 U.S.C. § 1**

20 82. Plaintiff incorporates by reference as if fully set forth herein the  
21 allegations contained in the preceding paragraphs of this Complaint.

22 83. During the Class Period, the exact dates being unknown to Plaintiff,  
23 Defendants engaged in a continuing contract, combination, or conspiracy in  
24 unreasonable restraint of trade of commerce among the several states to artificially  
25 raise, fix, maintain, and/or stabilize the prices of domestic cargo shipping services  
26 on the West Coast-Hawaii routes in violation of Section 1 of the Sherman Act, 15  
27 U.S.C. § 1.

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1 84. In formulating and effectuating the alleged contract, combination, or  
2 conspiracy, Defendants engaged in anti-competitive activities, the purpose and  
3 effect of which were to artificially raise, fix, maintain, and/or stabilize the prices  
4 of domestic interstate cargo shipping services on those routes, including but not  
5 limited to fuel surcharges. These activities included the following:

6 (a) Agreeing to charge prices of fuel surcharges at certain levels  
7 and otherwise to fix, raise, maintain, and/or stabilize the prices of fuel surcharges  
8 charged in the United States domestic cargo shipping routes between the West  
9 Coast and Hawaii;

10 (b) Charging such fuel surcharges at the agreed-upon rates;

11 (c) Signaling increases in the price of such fuel surcharges by,  
12 *inter alia*, publicly announcing their increases and moving in lock-step;

13 (d) Announcing new such fuel surcharges prices nearly  
14 simultaneously or within days of each other.

15 85. During the Class Period, the Defendants increased, as a ratio to  
16 external costs – and profits -- the fuel surcharges they charged. These relative  
17 increases in these fuel surcharges were the result of anticompetitive conduct.

18 86. During the Class Period, the exact dates being unknown to Plaintiff,  
19 the Defendants fixed engaged in a continuing contract, combination or conspiracy  
20 in unreasonable restraint of trade or commerce among the several states to  
21 artificially raise, fix, maintain, and/or stabilize the prices of domestic nonthrough  
22 intermodal rates charged to shippers and paid to independent intermodal  
23 companies on the West Coast-Hawaii routes in violation of Section 1 of the  
24 Sherman Act, 15 U.S.C. § 1.

25 87. During the Class Period, the exact dates being unknown to Plaintiff,  
26 Defendants engaged in a continuing contract, combination or conspiracy in  
27 unreasonable restraint of trade or commerce among the several states to artificially  
28

1 raise, fix, maintain, and/or stabilize the prices of domestic cargo shipping services  
2 on the West Coast-Hawaii routes by sharing capacity for the specific purpose of  
3 restricting shipping capacity on those routes, in violation of Section 1 of the  
4 Sherman Act, 15 U.S.C. § 1.

5 88. During the Class Period, the exact dates unknown to Plaintiff,  
6 Defendants engaged in a continuing contract, combination, or conspiracy in  
7 unreasonable restraint of trade or commerce among the several states to artificially  
8 raise, fix, maintain, stabilize, and/or eliminate the competition regarding the prices  
9 of domestic cargo shipping services on the Hawaii and West Coast of the United  
10 States routes by refusing to offer freight forwarders volume discount pricing  
11 offered to non-freight forwarder customers for the specific purpose of eliminating  
12 competition for FCL services on these routes, in violation of Section 1 of the  
13 Sherman Act, 15 U.S.C. § 1. As a virtual duopoly, the Defendants have  
14 overwhelming market power and control virtually exclusive access to domestic  
15 cargo shipping services on the West Coast-Hawaii routes necessary for freight  
16 forwarders to compete in the market for FCL services. Defendants refusal to offer  
17 freight forwarders volume pricing offered to other high-volume shippers has no  
18 legitimate efficiency based purpose. Rather, it is a per se illegal naked restraint on  
19 competition with the goal of increasing prices for FCL services along the West  
20 Coast-Hawaii routes.

21 89. During the Class Period, Plaintiff and members of the Class  
22 purchased domestic cargo shipping services directly from Defendants, and/or from  
23 their agents, subsidiaries, and/or controlled affiliates.

24 90. The illegal combination and conspiracy alleged herein has had the  
25 following effects, among others:  
26  
27  
28

1 (a) Price competition in the pricing of domestic cargo shipping  
2 services on the West Coast-Hawaii routes has been restrained, suppressed, and/or  
3 eliminated;

4 (b) Price competition in the contracting of domestic cargo shipping  
5 services on the West Coast-Hawaii routes has been restrained, suppressed, and/or  
6 eliminated;

7 (c) Prices for domestic cargo shipping services and the fuel  
8 surcharges thereon on the West Coast-Hawaii routes charged by Defendants have  
9 been fixed, raised, maintained, and/or stabilized at artificially high,  
10 non-competitive levels;

11 (d) Prices for domestic nonthrough intermodal services on the  
12 West Coast-Hawaii routes charged by Defendants have been fixed, raised,  
13 maintained and/or stabilized at artificially high, non-competitive levels; and

14 (e) Members of the Class have been deprived of the benefit of free  
15 and open competition, and have been injured in their business and property in that  
16 they have paid more for domestic cargo shipping services and intermodal services  
17 than they would have paid without the Defendants' and their co-conspirators'  
18 price-fixing and boycott activities.

19 **FRAUDULENT CONCEALMENT**

20 91. Throughout the relevant period, Defendants affirmatively and  
21 fraudulently concealed their unlawful conduct against Plaintiff and the Class.

22 92. and the members of the Class did not discover, and could not  
23 discover through the exercise of reasonable diligence, that Defendants were  
24 violating the antitrust laws as alleged herein until shortly before this litigation was  
25 commenced. Nor could Plaintiff and the members of the Class have discovered the  
26 violations earlier than that time because Defendants conducted their conspiracy in  
27 secret, concealed the nature of their unlawful conduct and acts in furtherance  
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1 thereof, and fraudulently concealed their activities through various other means  
2 and methods designed to avoid detection. The conspiracy was by its nature  
3 self-concealing.

4 93. Defendants engaged in a successful, illegal price-fixing conspiracy  
5 with respect to fuel surcharges and other fees and a successful, illegal conspiracy  
6 to eliminate competition in the market for FCL services along the West Coast-  
7 Hawii routes, which they affirmatively concealed, in at least the following  
8 respects:

9 (a) By agreeing among themselves not to discuss publicly, or  
10 otherwise reveal, the nature and substance of the acts and communications in  
11 furtherance of their illegal schemes;

12 (b) By engaging in secret meetings and telephone calls in order to  
13 further their illicit domestic cargo shipping, capacity discouraging and fuel  
14 surcharges cartel; and/or

15 (c) By giving false and pretextual reasons for their pricing for  
16 domestic cargo shipping and fuel surcharges thereon, and their increases, during  
17 the relevant period and by describing such pricing and increases falsely as being  
18 the result of external costs rather than collusion.

19 94. As a result of Defendants' fraudulent concealment of their conspiracy,  
20 Plaintiff and the Class assert the tolling of any applicable statute of limitations  
21 affecting the rights of action of Plaintiff and the members of the Class.

22 **INJURY TO PLAINTIFF AND THE CLASS**

23 95. During the Class Period, Plaintiff and the members of the Class,  
24 because of Defendants' antitrust violations, paid fuel surcharges and other fees  
25 they would not have paid absent such violations. As a result, Plaintiff and the  
26 members of the Class it seeks to represent have been injured and damaged in their  
27 business and property in an amount to be determined according to proof.

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1 96. As a direct and proximate result of the illegal conspiracy, Plaintiff  
2 and the members of the Class have been injured and financially damaged in their  
3 respective businesses and property, in that they have paid surcharges and other  
4 inflated fees for intermodal transportation and shipping charges, including but not  
5 limited to charges for FCL services, during the Class Period they would not have  
6 paid in the absence of the illegal conspiracy.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff prays that:

9 1. The Court determine that this action may be maintained as a class  
10 action under Rule 23(a) and (b) (3) of the Federal Rules of Civil Procedure;

11 2. The Court adjudge and decree that the contracts, combinations and  
12 conspiracies alleged herein are a per se unreasonable restraint of trade in violation  
13 of section 1 of the Sherman Act;

14 3. Judgment be entered against Defendants, jointly and severally, and in  
15 favor of Plaintiff and the Class for damages as allowed by law as determined to  
16 have been sustained by them;

17 4. Each of the Defendants, successors, assigns, parents, subsidiaries,  
18 affiliates and transferees, and their respective officers, directors, agents and  
19 employees, and all other persons acting or claiming to act on behalf of Defendants  
20 or in concert with them, be permanently enjoined and restrained from, in any  
21 manner, directly or indirectly, continuing, maintaining or renewing the  
22 combinations, conspiracy, agreement, understanding or concert of action, or  
23 adopting any practice, plan, program or design having a similar purpose or effect  
24 in restraining competition;

25 5. The Court award Plaintiff and the Class attorneys' fees and costs, and  
26 pre-judgment and post-judgment interest as permitted by law; and  
27  
28

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6. The Court award Plaintiff and the Class such other and further relief as may be necessary and appropriate.

DATED: June 24, 2008

**DREIER STEIN KAHAN  
BROWNE WOODS GEORGE LLP**  
Edward A. Woods  
Eric M. George  
Michael A. Bowse

**COTCHETT, PITRE & McCARTHY**  
Joseph W. Cotchett  
Steven N. Williams  
Stuart G. Gross

By: Eric M. George by MS  
Eric M. George

*Attorneys for Plaintiff and the and the Class*

**JURY TRIAL DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all of the claims asserted in this Complaint so triable.

DATED: June 24, 2008

**DREIER STEIN KAHAN  
BROWNE WOODS GEORGE LLP**  
Edward A. Woods  
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Steven N. Williams  
Stuart G. Gross

By: Eric M. George by MS  
Eric M. George

*Attorneys for Plaintiff and the Class*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge George King and the assigned discovery Magistrate Judge is Jeffrey W. Johnson.

The case number on all documents filed with the Court should read as follows:

**CV08- 3650 GHK (JWJx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====  
**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

**Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

**Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

**Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

ORIGINAL

SEE ATTACHED FOR LIST OF ATTORNEYS

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TASTE OF NATURE, INC.,  
PLAINTIFF(S)  
v.  
MATSON NAVIGATION CO., INC.; THE  
CARLYLE GROUP; CASTLE HARLAN,  
INC.; HORIZON LINES HOLDING CO.;  
HORIZON LINES, INC.; HORIZON LINES,  
LLC; and ALEXANDER & BALDWIN, INC.,  
DEFENDANT(S).

CASE NUMBER

CV 08-0365 OGHK (JWJx)

SUMMONS

TO: DEFENDANT(S): MATSON NAVIGATION CO., INC.; THE CARLYLE GROUP; CASTLE HARLAN, INC.; HORIZON LINES HOLDING CO.; HORIZON LINES, INC.; HORIZON LINES, LLC; and ALEXANDER & BALDWIN, INC.,

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached  complaint  \_\_\_\_\_ amended complaint  counterclaim  cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, SEE ATTACHED LIST, whose address is SEE ATTACHED LIST. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JUN - 4 2008

Dated: \_\_\_\_\_

Clerk, U.S. District Court

By: \_\_\_\_\_  
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**Counsel for Plaintiff**

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Telephone: (650) 697-6000 / Fax: (650) 697-0577

*Attorneys for Plaintiff and the Class*

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

**I (a) PLAINTIFFS** (Check box if you are representing yourself )  
TASTE OF NATURE, INC.,

**(b) County of Residence of First Listed Plaintiff** (Except in U.S. Plaintiff Cases):  
LOS ANGELES

**(c) Attorneys** (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  
SEE ATTACHED LIST OF COUNSEL

**DEFENDANTS**  
MATSON NAVIGATION CO., INC.; THE CARLYLE GROUP;  
CASTLE HARLAN, INC.; HORIZON LINES HOLDING CO.;  
HORIZON LINES, INC.; HORIZON LINES, LLC; and  
ALEXANDER & BALDWIN, INC.,  
County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):  
ALAMEDA

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an X in one box only.)

1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** - For Diversity Cases Only  
(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. ORIGIN** (Place an X in one box only.)

1 Original Proceeding  2 Removed from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from another district (specify):  6 Multi District Litigation  7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT:** JURY DEMAND:  Yes  No (Check 'Yes' only if demanded in complaint.)  
CLASS ACTION under F.R.C.P. 23:  Yes  No  MONEY DEMANDED IN COMPLAINT: \$ \_\_\_\_\_

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
15 U.S.C. Section 1. Conspiracy to Fix Prices

**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input checked="" type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General Habeas Corpus	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<b>BANKRUPTCY</b>	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<b>FORFEITURE/ PENALTY</b>	<b>PROPERTY RIGHTS</b>
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities /Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 891 Agricultural Act	<b>REAL PROPERTY</b>		<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation		<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure		<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment				<input type="checkbox"/> 865 RSI(405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				<b>FEDERAL TAX SUITS</b>
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

**VIII(a). IDENTICAL CASES:** Has this action been previously filed and dismissed, remanded or closed?  No  Yes  
If yes, list case number(s): \_\_\_\_\_

**FOR OFFICE USE ONLY:** Case Number: \_\_\_\_\_

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case?  No  Yes

If yes, list case number(s): \_\_\_\_\_

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)  A. Arise from the same or closely related transactions, happenings, or events; or  
 B. Call for determination of the same or substantially related or similar questions of law and fact; or  
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present

IX. VENUE: List the California County, or State if other than California, in which EACH named plaintiff resides (Use an additional sheet if necessary)

Check here if the U.S. government, its agencies or employees is a named plaintiff.

LOS ANGELES COUNTY

List the California County, or State if other than California, in which EACH named defendant resides. (Use an additional sheet if necessary).

Check here if the U.S. government, its agencies or employees is a named defendant.

MATSON NAVIGATION CO., INC. -- Alameda; THE CARLYLE GROUP -- Washington, D.C.; CASTLE HARLAN, INC. -- New York;  
 HORIZON LINES HOLDING CO. -- North Carolina; HORIZON LINES, INC. -- North Carolina; HORIZON LINES LLC -- North Carolina;  
 ALEXANDER & BALDWIN, INC. -- Hawaii.

List the California County, or State if other than California, in which EACH claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

LOS ANGELES COUNTY

X. SIGNATURE OF ATTORNEY (OR PRO PER): \_\_\_\_\_

Date June 4, 2008

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

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