

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

IN RE: POTASH ANTITRUST LITIGATION
(II)

THIS DOCUMENT APPLIES TO:

ALL DIRECT PURCHASERS' ACTIONS

MDL Docket No. 1996

Civil No. 1:08-cv-6910

Judge Castillo

Magistrate Judge Keys

JURY TRIAL DEMANDED

DIRECT PURCHASER AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

I. INTRODUCTION

1. Plaintiffs bring this action on behalf of themselves individually and on behalf of a plaintiff class (the "Class") consisting of all persons and entities who purchased potash in the United States directly from one or more named defendants between July 1, 2003 and the present (the "Class Period"). This complaint consolidates in this judicial district separate nationwide class actions brought by direct purchasers of potash, and seeks treble damages and injunctive relief, as well as attorneys' fees and costs, pursuant to the antitrust laws of the United States.

2. Potash is a key agricultural fertilizer which farmers throughout the world use to help crops fight disease and to enhance crop yields. Defendants are the leading suppliers of potash in the world and collectively generated well over \$2 billion in gross revenue in 2007. The potash industry is highly concentrated, with a handful of large manufacturers in the former Soviet Union and Canada controlling more than two-thirds of the world's potash supply. The extraordinary cost of starting a potash mine, which defendants acknowledge is more than \$2 billion, makes it virtually impossible for new competitors to enter the market.

3. During the 1990s, potash producers, particularly those located in the former Soviet Union, increased the supply of potash in world markets, resulting in substantial price declines and limiting the profits of producers around the world. Plaintiffs are informed and believe, and thereon allege, that in order to maintain price stability and increase profitability, defendants sold millions of tons of potash in the United States and conspired and combined to fix, raise, maintain, and stabilize the price at which that potash was sold. As part of and in furtherance of their conspiracy, defendants exchanged sensitive, non-public information about prices, capacity, sales volumes, and demand; allocated market shares, customers, and volumes to be sold; and coordinated on output, including the limitation of production. Plaintiffs are informed and believe that defendants fraudulently concealed their anticompetitive conduct from plaintiffs and the Class in furtherance of the conspiracy.

4. As a result of defendants' unlawful conduct, plaintiffs and the other members of the Class paid artificially inflated prices for potash during the Class Period. Such prices exceeded the amount they would have paid if the price for potash had been determined by a competitive market.

5. Plaintiffs and members of the Class bring this action to recover for the injury caused by defendants' conduct and seek injunctive relief, treble damages, costs of suit and reasonable attorneys' fees arising from defendants' violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337(a) and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26.

7. Venue is proper in this District, pursuant to 15 U.S.C. §§ 15 and 22, and 28 U.S.C. § 1391(b) and (c), because at least one of the defendants resides in this District, is licensed to do business or is doing business in this District, and because a substantial portion of the affected interstate trade and commerce described below has been carried out in this District.

8. This Court has personal jurisdiction over each defendant because, *inter alia*, each defendant: (a) transacted business throughout the United States, including in this District; (b) manufactured, sold, shipped, and/or delivered substantial quantities of potash throughout the United States, including this District; (c) had substantial contacts with the United States, including this District; and/or (d) engaged in an antitrust conspiracy that was directed at and had a direct, foreseeable and intended effect of causing injury to the business or property of persons residing in, located in, or doing business throughout the United States, including this District.

III. PARTIES

A. Plaintiffs

9. Plaintiff Gage's Fertilizer & Grain, Inc. is a Missouri corporation with its headquarters in Stanberry, Missouri. It purchased potash directly from one or more defendants during the Class Period and suffered antitrust injury as a result of the violations alleged in this Complaint.

10. Plaintiff Kraft Chemical Company is an Illinois corporation with its principal place of business in Melrose Park, Illinois. It purchased potash directly from one or more of the defendants during the Class Period and suffered antitrust injury as a result of the violations alleged in this Complaint.

11. Plaintiff Minn-Chem, Inc. is a Minnesota corporation with its principal place of business in Sanborn, Minnesota. It purchased potash directly from one or more of the defendants

during the Class Period and suffered antitrust injury as a result of the violations alleged in this Complaint.

12. Plaintiff Shannon D. Flinn is a resident of Milton, Florida. Flinn purchased potash directly from one or more of the defendants during the Class Period and suffered antitrust injury as a result of the violations alleged in this Complaint.

13. Plaintiff Westside Forestry Services, Inc. d/b/a Signature Lawn Care is a Michigan corporation with its principal place of business in Novi, Michigan. It purchased potash directly from one or more of the defendants during the Class Period and suffered antitrust injury as a result of the violations alleged in this Complaint.

14. Plaintiff Thomasville Feed & Seed, Inc. is an Alabama corporation with its principal place of business in Thomasville, Alabama. It purchased potash directly from one or more of the defendants during the Class Period and suffered antitrust injury as a result of the violations alleged in this Complaint.

B. Defendants

Agrium

15. Defendant Agrium Inc. is a Canadian corporation with its headquarters in Calgary, Alberta, Canada. In 2007, Agrium was the third largest Canadian potash producer with 2.1 million tons capacity and 1.7 million tons of production. During the Class Period, Agrium Inc. sold and distributed potash in the United States, directly or through its affiliates.

16. Agrium U.S. Inc., a Colorado corporation, is a wholly owned subsidiary of Agrium Inc. with its headquarters in Denver, Colorado. During the Class Period, Agrium U.S. Inc. sold and distributed potash in the United States, directly or through its affiliates.

17. Defendants Agrium Inc. and Agrium U.S. Inc. are collectively referred to herein as “Agrium.”

Mosaic

18. Defendant Mosaic Company is a Delaware corporation with its headquarters in Plymouth, Minnesota. Mosaic Company was formed in January 2004 when Cargill, Incorporated purchased IMC Global Inc. and merged the business with its subsidiary, Cargill Crop Nutrition. Mosaic is the world’s second largest potash producer by capacity and sells approximately one-half its potash in North America, where it holds the leading market share in the potash industry. During the Class Period, Mosaic Company sold and distributed potash in the United States, directly or through its affiliates.

19. Defendant Mosaic Crop Nutrition L.L.C. is a Minnesota limited liability company with its headquarters in Riverview, Florida. Mosaic Crop Nutrition L.L.C. is a wholly-owned operating subsidiary of Mosaic Company. During the Class Period, Mosaic Crop Nutrition L.L.C. sold and distributed potash in the United States, directly or through its affiliates.

20. Defendants Mosaic Company and Mosaic Crop Nutrition L.L.C. are collectively referred to herein as “Mosaic.”

PCS

21. Defendant Potash Corporation of Saskatchewan, Inc. (“Potash Corp.”) is a Canadian corporation with its principal place of business in Saskatchewan, Canada. Potash Corp. is the world’s largest potash producer by capacity, with revenues from sales worldwide of \$3.858 billion in 2008. During the Class Period, Potash Corp. sold and distributed potash in the United States, directly or through its affiliates.

22. Defendant PCS Sales (USA), Inc. (“PCS Sales”) is a Delaware corporation with its headquarters in Northbrook, Illinois. PCS Sales is a wholly owned subsidiary of defendant Potash Corp. During the Class Period, PCS Sales sold and distributed potash in the United States, directly or through its affiliates.

23. Defendants Potash Corp. and PCS Sales are collectively referred to herein as “PCS.”

Uralkali

24. Defendant JSC Uralkali (“Uralkali”) is a Russian joint stock company with its headquarters in Moscow, Russia. Uralkali is the fifth largest potash producer in the world, and in 2007 produced 5.1 million tons of potash, earning \$887 million in sales. As of April 2005, Uralkali owned a one-half interest in Belarusian Potash Company, a joint venture with defendant RUE PA Belaruskali, through which it markets, sells and distributes potash. During the Class Period, Uralkali sold and distributed potash in the United States, directly or through its affiliates.

Belaruskali

25. Defendant RUE PA Belaruskali (“Belaruskali”) is a business entity organized under the laws of Belarus with its headquarters in Soligorsk, Republic of Belarus. Belaruskali accounts for nearly 18% of the global fertilizer market. Since April 2005, Belaruskali has owned a 50% interest in the Belarusian Potash Company, through which it markets, sells and distributes potash. During the Class Period, Belaruskali sold and distributed potash in the United States, directly or through its affiliates.

BPC

26. Defendant JSC Belarusian Potash Company (“Belarusian Potash Company”) is a joint venture between Uralkali and Belaruskali with its headquarters in Minsk, Republic of

Belarus. Established in April 2005, Belarusian Potash Company is the exclusive worldwide distributor of potash produced by Uralkali and Belaruskali. In 2006, BPC accounted for approximately 34% of world potash export volume, and in 2008, sales in the United States accounted for 4% of BPC's total sales. During the Class Period, Belarusian Potash Company sold and distributed potash in the United States, directly or through its affiliates.

27. Defendant BPC Chicago L.L.C. is an Illinois limited liability company with its headquarters in Buffalo Grove, Illinois. Formed around 2007, BPC Chicago L.L.C. is a wholly-owned operating subsidiary of Belarusian Potash Company. During the Class Period, BPC Chicago L.L.C. sold and distributed potash in the United States, directly or through its affiliates.

28. Defendants Belarusian Potash Company and BPC Chicago L.L.C. are collectively referred to herein as "BPC."

Silvinit

29. Defendant JSC Silvinit ("Silvinit") is a Russian joint stock company with its headquarters in Solikamsk, Russia. In 2007, Silvinit controlled 12% of the world's export market and 7% of the world's capacity for potash. In 2008, Silvinit produced approximately 3.05 million tons of potash and exported 2.54 million tons. In 2006, Silvinit reported potash sales of \$672 million. During the Class Period, Silvinit sold and distributed potash in the United States, directly or through its affiliates.

IPC

30. Defendant JSC International Potash Company ("IPC") is a Russian joint stock company with its headquarters in Moscow, Russia. IPC, the exclusive distributor of potash produced by Silvinit, accounts for approximately 14% of world potash export volume. During

the Class Period, IPC sold and distributed potash in the United States, directly or through its affiliates.

IV. AGENTS AND CO-CONSPIRATORS

31. Canpotex Ltd. is a Canadian corporation with its headquarters in Singapore and offices in Hong Kong, Tokyo, Vancouver, and Saskatoon. Canpotex is owned in equal shares by defendants PCS, Agrium and Mosaic, and acts as a unified sales, marketing and distribution company for these companies' potash supplies throughout the world, except in Canada and the United States. During the Class Period, Canpotex participated in the violations alleged herein and has performed acts and made statements in furtherance thereof.

32. Various entities not named as defendants have participated in the violations alleged herein and have performed acts and made statements in furtherance thereof. Plaintiffs reserve the right to name some or all of these entities as defendants at a later date.

33. The acts alleged herein that were done by each of the co-conspirators were fully authorized by each of those co-conspirators, or ordered, or done by duly authorized officers, agents, employees, or representatives of each co-conspirator while actively engaged in the management, direction, or control of its affairs.

34. Defendants are also liable for acts done in furtherance of the alleged conspiracy by companies they acquired through mergers and acquisitions.

V. CLASS ACTION ALLEGATIONS

35. Plaintiffs bring this action on behalf of themselves and as a class action pursuant to Federal Rules of Civil Procedure, Rule 23(a), (b)(2) and (b)(3), on behalf of the following class:

All persons and entities who purchased potash in the United States directly from one or more defendants between July 1, 2003 and the

present. Excluded from the Class are defendants, their parent companies, subsidiaries and affiliates, all governmental entities, and any judges or justices assigned to hear any aspect of this action.

36. Plaintiffs do not know the exact number of class members because such information is in the exclusive control of defendants. Plaintiffs believe that due to the nature of the trade and commerce involved there are most likely thousands of class members geographically dispersed throughout the United States, such that joinder of all class members is impracticable.

37. Plaintiffs are members of the Class. Plaintiffs' claims are typical of the claims of the Class in that plaintiffs are direct purchasers of potash, plaintiffs and all Class members were damaged by the same wrongful conduct of defendants and their co-conspirators as alleged herein, and the relief sought is common to the class.

38. Numerous questions of law or fact common to the class arise from defendants' anticompetitive, including but not limited to:

- a. whether defendants combined or conspired to fix, raise, maintain, or stabilize prices of potash sold in the United States;
- b. whether defendants combined or conspired to restrict output of potash sold in the United States;
- c. whether defendants shared non-public information, allocated markets and customers, restricted output of potash sold in the United States, and committed other conduct in furtherance of the alleged conspiracy;
- d. whether defendants' conduct caused the prices of potash sold in the United States to be at artificially high and noncompetitive levels;

- e. whether plaintiffs and the other members of the Class were injured by defendants' conduct, and, if so, the appropriate class-wide measure of damages for Class members; and
- f. whether plaintiffs and the other members of the Class are entitled to, among other things, injunctive relief and, if so, the nature and extent of such injunctive relief.

39. These and other questions of law and fact are common to the Class, and predominate over any questions affecting only individual Class members, including legal and factual issues relating to liability and damages.

40. Plaintiffs will fairly and adequately represent the interests of the Class in that plaintiffs are direct purchasers of potash and have no conflict with any other members of the Class. Furthermore, plaintiffs have retained competent counsel experienced in antitrust, class action, and other complex litigation.

41. Defendants have acted on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

42. This class action is superior to the alternatives, if any, for the fair and efficient adjudication of this controversy. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, effectively, and without the duplication of effort and expense that numerous individual actions would engender. Prosecution as a class action will eliminate the possibility of repetitive litigation. Class treatment will also permit the adjudication of relatively small claims by class members who otherwise could not afford to litigate an antitrust claim such as is asserted herein. There will be no material difficulty in the management of this action as a class action.

43. The Class is readily definable and is one for which records likely exist in the files of defendants and their co-conspirators.

44. The prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for defendants.

VI. TRADE AND COMMERCE

45. During the Class Period, each defendant, directly or through its subsidiaries or other affiliates, sold potash in the United States in a continuous and uninterrupted flow of interstate commerce and foreign commerce, including through and into this judicial district.

46. During the Class Period, defendants collectively controlled a majority of the market for potash, both globally and in the United States.

47. Defendants' business activities substantially affected interstate trade and commerce in the United States and caused antitrust injury in the United States.

VII. FACTUAL ALLEGATIONS

A. The Potash Industry

48. Potash refers to mineral and chemical salts that contain potassium. Potash is mined from naturally occurring ore deposits that were formed when seas and oceans evaporated, many of which are now covered with several thousand feet of earth. It is principally used as an agricultural fertilizer because it is a source of soluble potassium, which is one of three primary nutrients required for plant growth and maturation. Farmers throughout the world use large amounts of potash to help crops fight disease and to enhance crop yields. Other commercial uses of potash include industrial applications in metal plating, and production of glass, ceramics,

soaps, and animal feed supplements. There is no cost-effective substitute for potash as an agricultural fertilizer.

49. Fertilizers, including potash, are critical inputs in crop production. Restrictions in the supply of potash, like those described herein, may result in lower crop yields and ultimately to higher prices for food commodities, particularly for those crops that require significant quantities of potash.

50. Potash reserves are confined to relatively few areas throughout the world. While over 150 countries consume potash, mostly as fertilizer, there are only 15 countries that produce notable quantities of it. Belarus, Canada, Germany, Israel, Jordan and Russia have about 90% of the global potash supply within their borders. Over half of the world's global capacity is located in just two regions -- Canada and the former Soviet Union (specifically Russia and Belarus). The largest deposits are in Saskatchewan, Canada. More than 50% of Saskatchewan's potash sales are exported to offshore markets.

51. The United States and China are the largest consumers of potash. In 2008, the United States consumed approximately 6.2 million tons of potash, 5.3 million of which was imported from outside the United States. North America accounts for 17.1% of the world's potash consumption. In 2007, 344,000 tons of potash produced in Russia were exported into the United States.

52. Canada is the world's largest producer and exporter of potash, accounting for nearly a third of total production and 40% of world trade. Nearly half of Canada's exports go to the United States, and that accounts for roughly 70% of the yearly consumption of potash in the United States. The vast majority of potash sales in the United States are made by PCS, Mosaic,

Agrium and BPC, at prices that are set according to benchmarks established by defendants based on sales to buyers in China, India, Brazil and elsewhere.

53. Potash is a homogenous commodity product. Potash supplied by one producer is interchangeable with potash supplied by other producers. As a result, buyers make purchase decisions based largely, if not entirely, on price.

54. Because the cost of potash is a relatively small part of total crop production costs, and there are no ready substitutes for the product, demand for potash is inelastic. In the United States, a \$100 per ton increase in the price of potash adds only \$0.03 to the production cost of a bushel of corn. Thus, as potash prices increase, buyers tend to purchase at the higher price, rather than decrease the amount of their purchases, making a supply restriction cartel attractive to producers.

55. The majority of production costs for potash producers are variable. All other factors being equal, when variable costs are a high percentage of production costs, there is less incentive for a producer to operate its facilities at full capacity, and this may allow a cartel to boost prices artificially with greater success than when fixed costs are the largest component of production costs.

56. The potash industry has very high barriers to entry. A single new mine requires approximately \$2.5 billion or more in upfront costs, five to seven years of development time, and additional outlays for associated roads and other infrastructure. Such barriers are conducive to a conspiracy because they protect existing suppliers from competition and perpetuate the high market concentration.

B. High Market Concentration in the Potash Industry

57. The potash industry is dominated by relatively few companies that market, sell and distribute potash throughout the world and within the United States. As of 2008, three producers with mines located in Canada (PCS, Mosaic and Agrium), and three former Soviet Union producers (Uralkali, Belaruskali and Silvinit), accounted for approximately 71% of the potash market. The market share of these entities has not changed in any material way during the Class Period.

58. Indeed, one analyst has observed that “the global trade in potash is even more concentrated than OPEC for oil.” Another industry analyst referred to the small group of producers as the “Organization of Potash Exporting Countries.”

59. Wayne Brownlee, defendant PCS’s CFO, has stated: “The best thing about the potash business is it’s an oligopoly; there are not a lot of producers.... There’s not a lot of competition out there and there’s not a lot of government involvement.”

60. Prior to and during the Class Period, there has been a significant degree of consolidation within the potash industry.

61. Beginning in 2003, PCS began acquiring substantial interests in a variety of smaller potash producers throughout the world. In October 2003, PCS announced that it had acquired a 26% interest in Arab Potash Company (“APC”), which had 2 million tons of potash capacity. As the second largest shareholder in APC, PCS had the right to nominate key financial, production and marketing personnel to APC's management and nominated four key personnel to operate APC, including the general manager of the company.

62. In December 2004, PCS acquired approximately 25% of the total shares of Sociedad Quimica y Minera de Chile (“SQM”), a potash supplier in Chile, which supplies about 1 million tons of potash per year.

63. PCS also held a 9% interest in Israel Chemicals Ltd (“ICL”), a company that during the Class Period accounted for approximately 11% of the world’s potash production.

64. Around February 2004, IMC Global Inc. and Cargill International announced an agreement to combine IMC Global Inc. and Cargill Crop Nutrition to create defendant Mosaic.

65. In March 2004, Mississippi Chemical Company announced the sale of its two potash subsidiaries (Mississippi Potash Inc. and Eddy Potash Inc.) to Intrepid Mining L.L.C., which combined the two companies to create Intrepid Potash Inc., the largest potash producer in the United States. Since 2005, PCS has been the exclusive overseas marketer for Intrepid Potash Inc.

66. This significant level of consolidation facilitated defendants’ ability to implement the conspiracy.

C. High Level of Cooperation in the Potash Industry

67. The potash industry is marked by a high degree of cooperation among supposed competitors. As noted above, the major potash suppliers have joint ventures or overlapping ownership interests that involve competitors in the potash market. In addition to these formal business relationships, defendants have fostered a striking degree of cooperation through reciprocal visits to their production facilities, participation in trade associations and attendance at industry conferences.

68. PCS, Agrium and Mosaic are equal shareholders in Canpotex. Each company has an equal voting interest in Canpotex as a shareholder through its nominees on the board of

directors of Canpotex, and each company has agreed that it will not independently make offshore sales (with the exception of sales into the United States).

69. Canpotex potash sales are allocated among the producers based on the production capacity of each shareholder. If a shareholder cannot satisfy demand for potash by Canpotex, the remaining shareholders are entitled to satisfy that demand pro rata based on their allotted production capacity. In 2007, PCS supplied 55% of Canpotex's requirements, Mosaic supplied 37.5% and Agrium supplied the balance. Through participation in Canpotex, PCS, Agrium and Mosaic have access to each other's sensitive information about production capacity and pricing.

70. Canpotex was initially formed to coordinate sales of potash produced in Canada, but it has entered into cooperative marketing agreements with producers from the former Soviet Union. For example, in January 2000 Canpotex agreed to form a joint marketing agreement with Uralkali. Under that agreement, Canpotex agreed to market Uralkali potash outside North America and Europe beginning in 2001. Similarly, Canpotex and IPC participated at least through 2003 in a joint venture in Malaysia named "Bulk Logistics" for joint marketing purposes to notify its purchasers of price increases.

71. Producers from the former Soviet Union, like their Canadian counterparts, have consolidated sales and marketing of their potash supplies with a single entity, BPC. Formed in 2005 as a joint venture between Uralkali and Belaruskali, BPC jointly markets and sells these defendants' potash throughout the world, including in the United States. With the combined potash supplies of Uralkali and Belaruskali, BPC supplies 34% of the world's exports of potash.

72. Silvinit, which supplies potash through the International Potash Company, is aligned with the other producers of potash in the former Soviet Union. Silvinit and Uralkali share common ownership by Dmitry Rybolovlev, who owns at least 66% of the stock of Uralkali

and about 20% of the voting shares of Silvinit. Silvinit has been in active negotiations to join BPC, raising the prospect of further consolidation of the potash industry.

73. Rybolovlev has acknowledged the true anticompetitive motive underlying these joint ventures, explaining that, “joint operation allows [potash producers] to avoid needless competition.”

74. According to news reports, representatives of the defendant companies have routinely held meetings during the Class Period as part of an “exchange program of mutual visits.” The exchange of visits, according to defendants’ representatives, “promote[d] the discussion of current issues affecting the potash industry and the sharing of experience.”

75. During one such visit, on October 11, 2005, senior executives of defendants visited Uralkali in the former Soviet Union and discussed, among other things, what could be deemed highly sensitive production plans of at least one of the world’s largest potash suppliers. This meeting was attended by William Doyle, President and CEO of Potash Corp.; Michael Wilson, President and CEO of Canpotex; James T. Thompson, Executive Vice President of the Mosaic Company; Vladislav Baumgertner, General Director, President and CEO of Uralkali; as well as other representatives of Belaruskali and Silvinit.

76. In July 2006, as part of the same “exchange program,” a delegation of Uralkali management visited Mosaic Company in Canada. Mosaic’s Executive Vice President, James Thompson, participated in the visit with the companies from the former Soviet Union. During the visit, the delegation learned about Mosaic’s management structure and toured potash mining operations of the company, including its most up to date mining technologies. The Uralkali visitors noted the “friendly attitude of the hosts” and exclaimed “[w]e were shown everything we wanted to see.”

77. Petr Kondrashev, Director General of Silvinit, acknowledged in a 2005 interview published in The Chemical Journal, which covers the potash industry, that the company has “old and friendly connections with potassium manufacturers from Belarus and [that] we still are pretty good partners.” He added that representatives of Silvinit and Belaruskali often visit each other.

78. Defendants have conducted numerous such visits during the Class Period, and these visits have provided opportunities to conspire and exchange highly sensitive competitive information. In the absence of collusion among these supposed competitors, it would have been contrary to the independent economic interest of each to allow its competitors access to such sensitive competitive information.

79. Defendants’ high level of cooperation and their involvement in long-standing joint ventures has given these supposed competitors continuous opportunities to discuss pricing, capacity utilization, and other important prospective market information. The mutually beneficial nature of the business relations among defendants not only provided the opportunity to conspire, but it also created a financial incentive to do so.

D. Use of Trade Associations and Trade Events To Facilitate the Conspiracy

80. Plaintiffs are informed and believe, and thereon allege, that defendants’ collusive activities have been furthered by trade associations and trade events that provided opportunities to conspire and share information.

81. Defendants are all members of the International Fertilizer Industry Association (“IFIA”), which sponsors annual conferences that are attended by senior officials of the defendants. Defendants regularly used IFIA conferences as a venue to negotiate prices for the sale of potash to their customers around the world.

82. In May 2007, representatives of PCS, Mosaic, Agrium, Belaruskali, Canpotex, BPC and others attended the 75th annual IFIA conference in Istanbul, Turkey. At the IFIA meetings, representatives of the manufacturers conferred about the potash market and “market tendencies.” Significantly, during this May 2007 IFIA conference, the major potash manufacturers announced an additional price increase on their potash products.

83. In addition to the IFIA, defendants are members of the Fertilizer Institute (“TFI”), and have regularly used TFI conferences as a venue to negotiate prices for sales of potash to customers around the world.

84. During a TFI conference in 2003 in Boston, Massachusetts, Canpotex conducted negotiations with its customers for sales of potash during the second half of that year. During a TFI conference in 2004, IPC met with Chinese customers to negotiate prices for potash sales in China.

85. TFI, together with the Fertilizer Industry Round Table, sponsors an annual conference titled the “Fertilizer Outlook and Technology Conference.” The conference is geared towards industry members, financial analysts, business consultants, trade press representatives and government economists.

86. At the Fertilizer Outlook and Technology Conference held in Arlington, Virginia on November 6-8, 2006, Michael R. Rahm, Mosaic Company Vice President, Market & Economic Analysis, presented an analysis of the potash industry. Representatives of at least one other defendant attended the same conference.

E. Defendants' Coordinated Reductions in Manufacturing Capacity

87. Defendants implemented their conspiracy, at least in part, through coordinated restrictions in potash output, which resulted in higher prices in the potash market. In the absence

of an agreement among these supposed competitors, these restrictions would have been contrary to the independent economic interests of the individual producers.

88. For example, as global demand for potash declined in the second half of 2005, defendants jointly restricted output of potash for the purpose of fixing, maintaining and stabilizing the prices at which potash was sold. PCS announced in November 2005 that it would shut down two of its mines from December 11, 2005 to January 7, 2006 for inventory control purposes, removing approximately 250,000 to 300,000 tons of potash from the market. PCS also announced on December 22, 2005 that it was shutting its Rocanville mine in January and early February 2006. These shutdowns resulted in the removal of 1.34 million tons of potash from the market.

89. At the same time, Mosaic announced temporary output cuts at several of its North American locations that were set to occur in November and December 2005. Mosaic's shutdowns resulted in the removal of 200,000 tons of potash from the market.

90. Defendants agreed to joint cutbacks in sales to international customers as well. In Brazil, where demand for potash dropped by 20.9% during 2005, defendants from Canada and from the former Soviet Union agreed to nearly identical pro-rata cuts in their exports to that country. Producers from the former Soviet Union cut their combined exports to Brazil by 20.9%, and the producers from Canada cut their combined exports by almost exactly the same percentage.

91. Defendants' joint reductions continued into 2006. During the first quarter of 2006, PCS took 32 mine shutdown weeks in response to the reduced demand, which cut its production for the quarter to 1.3 million tons compared to 2.4 million tons in the first quarter of the prior year.

92. Around January 2006 the two partners in BPC also announced measures to adjust supply. Uralkali immediately shut down its potash production, removing approximately 200,000 tons of production. Belaruskali immediately cut exports by 50 percent, removing approximately 250,000 tons of potash from the market. Finally, IPC announced that Silvinit would shut down its mines as well, removing approximately 100,000 tons in the second quarter of 2006.

93. As a group, the defendants in the former Soviet Union removed approximately 500,000 tons of potash from the market in April 2006 alone. Other suppliers applauded the “discipline” of the producers from the former Soviet Union, noting that many years earlier when demand for potash declined those same producers had sought to maintain volume over price and flooded the market with excess supply.

94. Throughout 2006, during difficult negotiations over potash prices, Canpotex and BPC (and their members) jointly restricted supply in an effort to compel Chinese buyers (the largest consumers in the world) to accept a price increase that would eliminate their “discount” and set a benchmark for other buyers around the world. The Chairman of Uralkali explained the action as follows: “here the point is not to supply [potash] to them with USD 30-40 discount, as earlier, but to adjust the prices to the level of the neighbor Asian consumers. Therefore we will never ship anything there, until we get a contract reasonable from our point of view.”

95. Consistent with their efforts to eliminate the Chinese discount and increase prices to purchasers in China, the leading suppliers of potash around the world jointly limited the supply of potash to Chinese consumers. Uralkali reduced its utilization rate during the first half of 2006 to 68% and PCS reduced its utilization to less than 60%. Through this limitation of production, Uralkali and PCS reduced their sales of potash by 23% and 20%, respectively, from the prior year, and this behavior served to eliminate the “discount” to China that existed prior to

the negotiations. Defendants' actions led to a price increase for potash sales in China and, shortly thereafter, as defendants intended, for sales throughout the world, including the United States.

96. In a December 2007 report, an industry analyst explained the episode as follows: "The decline in 2006 production (-23% Y/Y) was mostly caused by the voluntary decision of Uralkali to reduce operating rates as price negotiations with China were delayed by several months. This was an industry-wide issue, as evidenced by Potash Corp.'s similar 20% decline in production. This behavior served to limit the decline in prices that China's hard line negotiations would have theoretically caused."

97. Commenting on potash pricing in 2006, a Russian securities brokerage found "no fundamental factors to explain [the] decline of supply by potash producers" and viewed "simultaneous reduction of production capacities by companies in different parts of the world as motivated by their common wish to hold prices at the current high level . . . (or even to push prices higher)." The brokerage added that "consumers have no alternatives to potash or means to store it as a guard against future higher prices."

98. Defendants again jointly restricted supply in 2007 in order to impose price increases in the potash market. Around October 25, 2007, Silvinit announced that it might have to suspend shipments of potash from one of its mines due to the presence of a sinkhole caused by mine flooding.

99. Within a day of Silvinit's announcement, PCS, Uralkali, Agrium and BPC, all purportedly competitors, announced that they too would suspend sales of their own potash because of the suspension of sales by Silvinit. Announcement of PCS's suspension of sales was

made by its supposed competitor, Uralkali, which declared that “these decisions could have an upward impact on potash prices, including in those markets where Uralkali’s potash is sold.”

100. At the International Fertilizer Industry Association in Vancouver, Canada, in late October 2007, in response to a question about the Silvinit mine shutdown’s impact, PCS’s President and CEO Doyle replied, “In terms of guessing where the price could go, I’d just say hold on to your hat because it would have a major impact on pricing.”

101. Approximately 12 days after the initial announcement concerning the shutdown, on November 6, 2007, Silvinit announced that it would resume sales of potash, declaring that the sinkhole was advancing more slowly than had previously been feared. Within a day after Silvinit announced the resumption of its potash sales, Uralkali announced that BPC would also resume sales of Uralkali potash after the 12-day stoppage. Uralkali refused to explain the reason for resuming sales; however, a BPC official told a reporter the decision had been made “after studying the market.” On November 7, 2007, PCS and Agrium announced that they too would resume potash sales.

102. Shortly after these announcements that the major suppliers of potash were resuming sales, potash prices increased to “record highs on fears of a global shortage.”

103. The joint suspension of sales by PCS, Uralkali, Agrium and BPC during the shutdown by Silvinit, a supposed competitor, makes no economic sense absent a cartel. Had the market truly been competitive, defendants would have the incentive to *increase*, not suspend, production to take advantage of their competitor’s reduced output and thus gain market share.

104. Less than a year after the defendants jointly suspended potash sales because of the sinkhole discovered near the Silvinit mine, Silvinit disclosed in May 2008 that another expanding sinkhole threatened its supply of potash and suggested that it might shut down

production for two or three weeks. A spokesman for the company stated that “the situation is keeping us in suspense, but we are sure a crisis can be averted.” Within two weeks, the company announced that the sinkhole had stopped growing and “the situation can in no way get worse.”

105. Nevertheless, shortly after the disclosure of the threatened shutdown, prices for potash increased dramatically. On July 8, 2008, PCS announced that prices of potash to the United States would increase by \$250 per ton, an increase of 48 percent over the previous price.

106. Shortly thereafter, Canpotex announced a spot price of \$1,000 per ton, effective in the fourth quarter of 2008, and BPC contracted to supply 30,000 tons of potash to U.S. buyers at \$1,000 per ton, with shipments starting in August 2008.

107. On November 1, 2008, with prices for potash pushing above \$1,000 per ton, Uralkali announced that it would cut potash production, supposedly due to the current decrease in potash fertilizers purchased in the global market. In December 2008, PCS and Agrium also announced production cutbacks. Specifically, PCS cut its potash production by two million tons for the first quarter of 2009, representing about 15% of projected 2009 capacity. Agrium announced that it would cut production in its North American plants because of what it described as a significant build in its inventories. An analyst noted that PCS and Agrium’s production cutbacks were “an attempt to support pricing and demonstrate discipline.”

108. In December 2008, as potash prices soared over \$1,000 per ton, PCS’s CFO Brownlee complimented the Belarusian defendants on their “tremendous discipline . . . in terms of managing supply in the marketplace.” On another occasion that same month, Brownlee commented on why potash prices had not fallen as other fertilizer prices had: “[A] big part of the story that is here is that you’re just seeing a lot of good discipline by all the producers right now in the marketplace, whether they’re cutting back production or building some inventory.”

F. Defendants' Pricing Behavior

109. In addition to the output and supply restrictions noted above, defendants conspired to coordinate potash prices and price increases so as to fix, raise, maintain, and stabilize the price at which potash was sold in the United States at artificially inflated and anticompetitive levels.

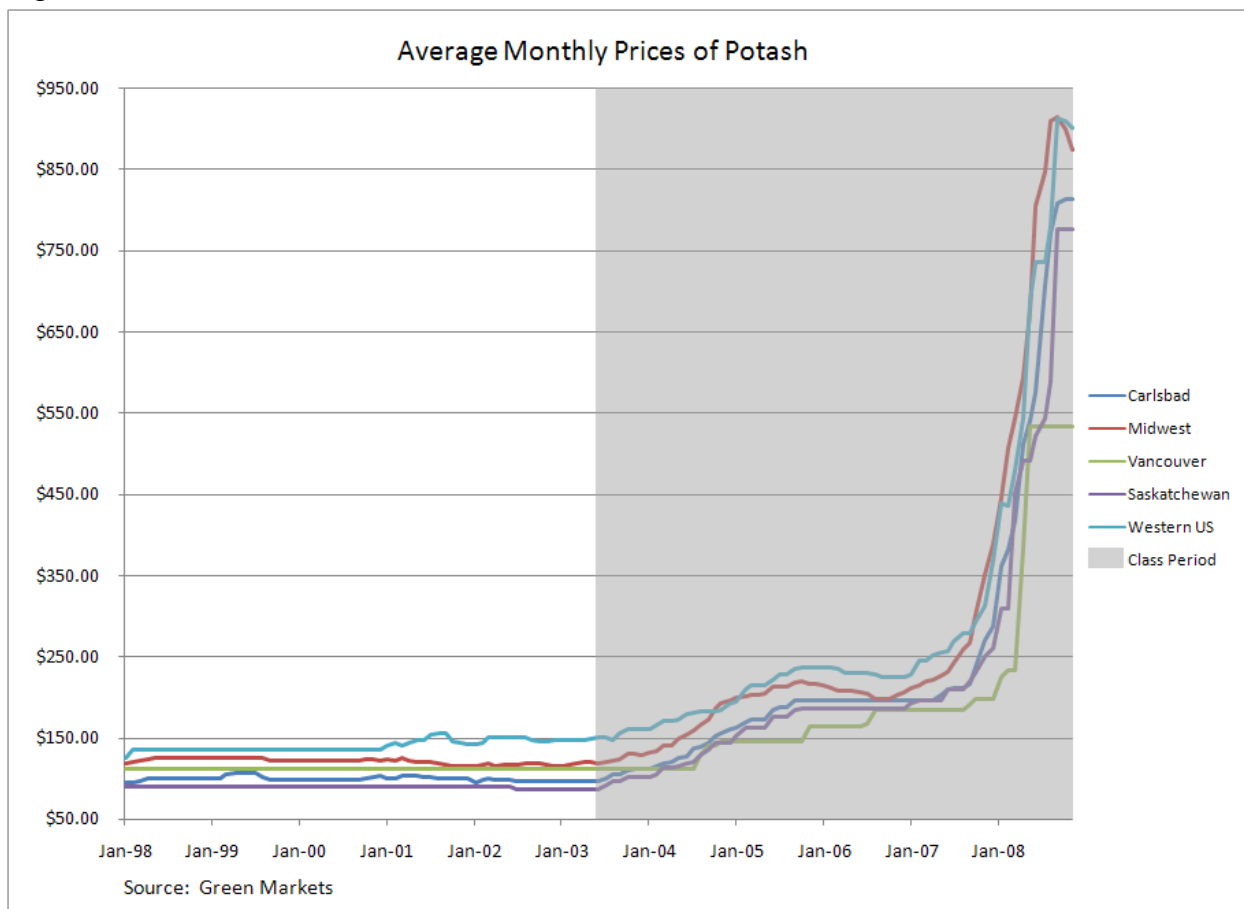
110. Defendants' collusion is evidenced by unusual price movements in the potash market. Throughout the 1990s the potash industry was characterized by stable pricing, but during the Class Period this stability gave way to a remarkable run-up in potash prices to unprecedented levels.

111. Defendants negotiate term contracts for purchases of potash throughout the world. Agreements with buyers in Brazil, India and China typically are made first, and the prices established in those markets directly influence prices in other major markets. Once defendants establish these prices, they use them to determine potash prices in other major markets, including the United States. The prices for cartelized term contracts become benchmarks for spot market sales, which typically are higher than those of term contracts.

112. Defendants knew and intended that their global conspiracy would directly affect prices of potash in the United States, as well as in world markets generally. The prices that defendants established for sales to buyers abroad directly affected the prices that United States potash purchasers had to pay. During the Class Period, defendants have instituted a number of price increases resulting in an unprecedented rise in potash prices.

113. The following chart illustrates how potash prices during the Class Period have dramatically deviated from historical patterns:

Figure 1



114. The potash prices that *Green Markets* charts, as reflected in Figure 1, are considered benchmark prices in the industry: Saskatchewan and Carlsbad because they are producer mines; Vancouver because it is the hub for large volume contract prices to the export market; the Midwest and the Western US because there are ample storage facilities in these regions to support local agriculture.

115. All prices are expressed in dollar per US ton. The Vancouver price is a long-term contract price negotiated periodically between producers and export buyers, often for quantities of 1 million tons or more. The Midwest, Carlsbad and Saskatchewan prices are spot prices and the Western U.S. prices are delivered prices.

116. As the chart above illustrates, after a period of extended stability in the potash market, beginning in 2003 defendants began a series of parallel price increases that dramatically increased the price of potash during the Class Period.

117. In early 2003, IPC announced that it would increase its potash prices by eight dollars per ton. Within a month Canpotex announced that it would seek a nearly identical price increase for its sales in Brazil. By mid-2003 all suppliers to Brazil were announcing that they had achieved an increase of eight dollars per ton.

118. Also in March 2003 IMC Global Inc. (the predecessor to Mosaic) announced a price increase of the same amount for its sales in the United States, thereby increasing the price of its standard red MOP (fob mine Saskatchewan) from \$81 to \$89 per ton and other products by a corresponding amount. PCS also disclosed that it would seek an increase of eight dollars per ton.

119. An industry analyst observed at that time that suppliers were becoming more vocal in their determination to raise prices in most markets and that they were also successful in doing so. Notably, the same analyst observed that production cutbacks had been used by producers, especially those in Canada, to keep supplies “under control.”

120. After successfully imposing a price increase on the market, defendants began another round of increases beginning in January 2004. Canpotex announced the initial price increase to buyers in Brazil, and IPC announced a price increase to buyers in India. Shortly after these announcements, PCS announced two five dollar per ton increases within a five week period. IMC Global Inc. also announced two separate increases of five dollars per ton. By February 2004 both PCS and IMC Global Inc. had set prices for standard and granular MOP at \$108 and \$110 per ton (fob mine Saskatchewan) for their United States customers.

121. By May 2004, defendants again imposed a round of lockstep price increases. Initially, Canpotex announced a \$20 per ton price increase to certain customers. Shortly thereafter, the two major suppliers to the United States – PCS and IMC Global Inc. – announced an increase of five dollars per ton (effective immediately) that was to be followed by another increase of \$15 per ton beginning in July 2004. Thus, by May 2004, PCS and IMC Global Inc. set prices for standard and granular MOP (fob mine Saskatchewan) of \$113 and \$118 per ton, respectively. Defendants' prices were scheduled to increase to \$128 and \$133 per ton for standard and granular MOP (fob mine Saskatchewan) on July 19, 2004.

122. By late 2004, defendants began to impose additional price increases. In September 2004 IMC Global Inc. led with a \$10 per ton price increase and PCS soon followed with its own increase in the same amount.

123. Defendants continued to raise prices to customers around the world. At a TFI conference in September 2004, IPC announced in meetings with its customers from China that it was seeking from them an increase of about \$40 per ton. Canadian suppliers announced that they would seek a similar price increase but that serious talks about the prices would not occur until mid-October at the earliest so that importers from China would have an opportunity to raise prices in their domestic market.

124. On November 5, 2004, IPC confirmed that it had negotiated a price increase of \$40 and \$43 per metric ton for red and white standard MOP, respectively, to certain customers in China. PCS and Mosaic (previously IMC Global Inc.) announced that on the same date Canpotex had entered into an agreement to sell potash to certain Chinese customers at the same price. Within weeks Uralkali announced its own agreement to sell at the same prices, except that it sold its white standard MOP at \$43.50 per metric ton.

125. By December PCS announced that it would increase prices to customers in the United States by an additional \$20 per ton beginning in February 2005. Mosaic announced two weeks later that it too would increase prices by a nearly identical amount in February 2005. As a result, prices for standard and granular MOP (fob mine Saskatchewan) were set to increase to \$158 and \$163, respectively, by early 2005.

126. In May 2005, PCS announced two additional price increases to buyers in the United States effective June 1, 2005 and September 1, 2005, raising prices for standard and granular MOP (fob mine Saskatchewan) to \$178 and \$183, respectively. PCS announced these price increases despite estimates that there would be a massive 44% decline in purchases from customers in Brazil, which was one of the largest importers of potash in the world.

127. Through much of 2006, price increases were muted as purchasers awaited the outcome of negotiations over a proposed increase to customers in China. After potash producers reached an agreement on a price increase to customers in China in late July 2006, and Brazil later in 2006, potash prices in the United States increased as well, as defendants knew and intended.

128. On July 8, 2008, PCS announced that prices of potash to the United States would increase by \$250 per ton, an increase of 48 percent over the previous price. Shortly thereafter, BPC contracted to supply 30,000 tons of potash to U.S. buyers at \$1,000 per ton, with shipments starting in August 2008.

129. Prices for potash have risen exponentially during the last five years, with North American prices for potash rising approximately 60% in 2004-2005, and essentially doubling in 2007 and early 2008. These increases have occurred in lockstep throughout the Class Period and are not commensurate with producers' costs of production or other input costs during the Class

Period. Such dramatic and unusual price behavior is inconsistent and at variance with legitimate market forces and economic trends in this market.

130. Defendants' dramatic price increases cannot be explained by demand factors. After 2008, demand for potash (and other fertilizers) began to decline. While prices for other fertilizers began to decline dramatically in late 2008 and early 2009, prices for potash remained stubbornly high and, in fact, continued to increase.

G. Defendants Had Excess Capacity

131. During the Class Period, potash suppliers repeatedly attributed dramatic price increases to a "tight supply/demand balance" when in fact a number of defendants had excess potash capacity. Potash suppliers' statements regarding the supply and demand balance were a pretext to conceal defendants' conspiracy to restrict supply and fix prices of potash.

132. Throughout the Class Period, while potash suppliers repeatedly lamented the lack of supply, PCS had excess potash capacity. In 2004, PCS announced to analysts in Toronto, Canada that it intended to increase the utilization of its Saskatchewan mines from 58% to 65%, partly by moving to a four shift system at its Lanigan and Allan mines. From 2004 to the present, PCS seldom exceeded that utilization rate, though it could have readily done so if it wanted.

133. As the chart below demonstrates, PCS – the world's largest supplier – operated at the following low utilization rates (potash production as a percentage of capacity) between 2003 and 2008:

YEAR	UTILIZATION RATE
2003	58%
2004	65%
2005	68%
2006	54%
2007	69%
2008	66%

134. Likewise, other defendants confirmed excess capacity in the industry. In a December 2007 presentation to investors, Uralkali claimed that it had the “ability to add significant capacity on the cheapest basis vs. global peers.” In a 2007 interview, BPC Director Vladimir Nikolaenko stated that if a potash producer was unable to fill a customer order, “missing volumes can be purchased from other producers.” Finally, the CEO of Mosaic, Jim Prokopanko, describing the potash market in 2008, explained that “the rally [in agriculture] is fundamentally different because it is being driven by demand, *not by supply shortages.*” (emphasis added).

135. In January 2008, Mosaic released a report titled, “Why are Potash Supplies so Tight?” in which it explained that “[a]lthough all of the Canadian producers have expanded capacity, some projects have not started up on time and others have not operated as planned.” The report falsely attributed the problem to “production hiccups” and increasing demand in world markets. In fact, agriculture economists believe that defendants’ references to capacity as the root cause of recent price increases are mistaken because, as one economist noted in a May 2008 Wall Street Journal article, “[t]here’s not really a supply issue at the moment.”

H. Defendants Signaled Their Willingness to Avoid Price Competition

136. Defendants, ostensibly competitors in the potash market, publicly signaled their willingness to avoid price competition. For example, Uralkali admitted in 2006 that it sought to “ensure success of a 'price over volume' strategy” that would “[a]chieve long-term price stability.”

137. An industry analyst confirmed in 2007 that Uralkali “intends to follow a price over volume strategy whereby it will reduce its utilization rate from time to time to match potential declines in demand.”

138. Dmitry Rybolovlev, majority owner of Uralkali, and part owner of Silvinit, publicly acknowledged in an interview in April 2006 that “an acceptable price level is more important than expansion of market share and production.” He added that “[w]e won’t start a universal war in order to reduce prices”

139. Defendants have readily admitted that their joint ventures facilitate price stability in the potash market. In a presentation to investors, representatives of Uralkali extolled BPC’s role as an “effective pricing tool” in the potash industry. A BPC official, noting the company had invited the Russian producer, Silvinit, to join the joint venture, explained that “[w]e would not like to compete with Russian companies in the potash market, that is why we offered Silvinit [an opportunity] to join the BPC on equal terms with everyone.”

140. BPC has acknowledged that the purpose of this proposed consolidation is to enhance its market power. As one of its officials recently admitted, “[w]e will be the strongest and most powerful company that will set to a great degree the rules of the game in the world’s potash market, which means billions of dollars.”

141. BPC's intention to set the "rules of the game" includes cooperation with Canadian producers. According to a presentation made by Uralkali to company analysts, the "[t]wo major export associations [Canpotex and BPC] ensure [a] stable pricing environment" for potash.

142. An outside analyst reached the same conclusion, explaining that "BPC and Canpotex have a dominant role in setting annual prices with large potash customers such as China, India and Brazil."

143. In 2007, after obtaining significant price increases for potash sales, Vladimir Nikolaenko, BPC's Director General, claimed that "the company is not only an efficient pursuer of its shareholders' interests, but is actually *a leader to create an acceptable world market price condition* for all manufacturers of potash fertilizers." (emphasis added).

I. Impact of Defendants' Conduct on United States Prices

144. Defendants knew and intended that their global conspiracy would directly impact prices of potash on world markets and within the United States. Representatives of Uralkali, in a presentation to analysts in December 2007, set forth each step in the chain of events resulting in increased prices throughout the world and in the United States: "[1] contract settlement in the key markets immediately tied up volumes of potash producers . . . [2] causing demand competition on SPOT markets followed by increase in prices . . . [3] conclusion of Indian contract on the back of the SPOT markets' growth -- even less volume is available . . . [4] boom on SPOT market continues stimulating increased Chinese discount and a stronger reason to bring it down in 2008."

145. Because of the global nature of the potash market, defendants' conduct in other countries has had a direct and intended impact on the potash market in the United States. Canada is the world's largest producer and exporter of potash, accounting for nearly one third of total

production and 40 percent of world trade. Nearly one half of Canada's exports go to the United States. The vast majority of potash sales in the United States are made by PCS, Mosaic, Agrium and BPC at prices that are set according to benchmarks established by defendants based on sales in India, China and elsewhere.

146. Global prices set a benchmark for domestic potash prices. According to one analyst, "[t]he barriers that we have seen in the past between domestic and international prices have just fallen down. We're now participating in a global fertilizer market."

147. According to data from the United States Department of Agriculture, the increase in potash prices has far exceeded increases in the price of seeds (30%), livestock (27%), and *even fuels* (43%). As one Goldman Sachs analyst recently commented, potash producers are simply able to "raise prices at will."

148. Defendants' combination and conspiracy has been immensely profitable for them. As a result of dramatic price increases, several defendants have posted significantly increased income. For example, PCS posted first quarter 2008 income figures that were triple the year-earlier figure. Mosaic's earnings for the first quarter of 2008 were up more than ten -fold from a year earlier.

VIII. EFFECTS OF DEFENDANTS' ANTITRUST VIOLATIONS

149. Defendants' combination and conspiracy has had the following effects, among others:

- a. price competition in the sale of potash by defendants and their co-conspirators has been restrained, suppressed and eliminated throughout the United States;

- b. prices for potash sold by defendants have been raised, fixed, maintained and stabilized at artificially high and noncompetitive levels throughout the United States; and
- c. direct purchasers of potash from defendants have been deprived of the benefit of free and open competition in the purchase of potash.

150. As a direct and proximate result of defendants' unlawful conduct, plaintiffs and other members of the Class have been injured in their business and property in that they paid more for potash than they otherwise would have paid in the absence of the defendants' unlawful conduct.

IX. FRAUDULENT CONCEALMENT

151. Plaintiffs had neither actual nor constructive knowledge of the facts constituting their claim for relief. Plaintiffs and members of the Class did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until shortly before filing their initial complaints. Defendants engaged in a secret conspiracy that did not reveal facts that would put plaintiffs or the Class on inquiry notice that there was a conspiracy to fix prices for potash.

152. Because defendants' agreement, understanding and conspiracy was kept secret, plaintiffs and Class members were unaware of defendants' unlawful conduct alleged herein and did not know that they were paying artificially high prices for potash.

153. The affirmative acts of the defendants alleged herein, including acts in furtherance of the conspiracy, were wrongfully concealed and carried out in a manner that precluded detection.

154. By its very nature, defendants' price-fixing conspiracy was inherently self-concealing.

155. The combination and conspiracy alleged herein was fraudulently concealed by defendants by various means and methods, including, but not limited to secret meetings, surreptitious communications between defendants by the use of the telephone or in-person meetings at trade association meetings (and elsewhere) in order to prevent the existence of written records, limiting any explicit reference to competitor pricing communications on documents, and concealing the existence and nature of their competitor pricing discussions from non-conspirators (including customers).

156. As alleged above, in 2003, after years of stable and sometimes declining prices, the price of potash began to increase dramatically. Defendants falsely attributed the price increase to increasing global demand and limited supply. This was a pretext used to cover up the conspiracy. In fact, this price rise was the result of collusive conduct among defendants, which was undisclosed at the time.

157. Plaintiffs are informed and believe, and thereon allege, that defendants' purported reasons for the price increases of potash were materially false and misleading and made for the purpose of concealing defendants' anti-competitive scheme as alleged herein.

158. As a result of defendants' fraudulent concealment of their conspiracy, the running of any statute of limitations has been tolled with respect to any claims that plaintiffs and the Class members have as a result of the anticompetitive conduct alleged in this complaint.

X. CLAIM FOR VIOLATIONS OF 15 U.S.C. § 1

159. Beginning at least as early as July 1, 2003, the exact date being unknown to plaintiffs, defendants and their co-conspirators entered into a continuing combination or

conspiracy to unreasonably restrain trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1) by artificially reducing or eliminating competition in the United States.

160. In particular, defendants have combined and conspired to raise, fix, maintain or stabilize the prices of potash sold in the United States.

161. As a result of defendants' unlawful conduct, prices for potash were raised, fixed, maintained and stabilized in the United States.

162. The combination or conspiracy among defendants consisted of a continuing agreement, understanding and concerted action among defendants and their co-conspirators.

163. For purposes of formulating and effectuating their combination or conspiracy, defendants and their co-conspirators did those things they combined or conspired to do, including:

- a. participating in meetings and conversations to discuss the prices and supply of potash;
- b. communicating in writing and orally to fix prices and manipulate the supply of potash;
- c. agreeing to manipulate prices and supply of potash sold throughout the world and in the United States, and to allocate customers of such products, in a manner that deprived direct purchasers of free and open competition;
- d. issuing price announcements and price quotations in accordance with the agreements reached;
- e. selling potash to customers in the United States at non-competitive prices; and,
- f. providing false statements to explain increased prices for potash.

164. As a result of defendants' unlawful conduct, plaintiffs and the other members of the Class have been injured in their businesses and property in that they have paid more for potash than they otherwise would have paid in the absence of defendants' unlawful conduct.

XI. DAMAGES

165. During the Class Period, plaintiffs and the other members of the Class purchased potash directly from defendants, or their subsidiaries, agents, and/or affiliates, and, by reason of the antitrust violations herein alleged, paid more for potash than they would have paid in the absence of such antitrust violations. As a result, plaintiffs and the other members of the Class have sustained damages to their business and property in an amount to be determined at trial.

XII. REQUEST FOR RELIEF

WHEREFORE, plaintiffs request that the Court enter judgment on their behalf and on behalf of the Class herein, adjudging and decreeing that:

A. This action may proceed as a class action, with plaintiffs as the designated Class representatives and their counsel as Class Counsel;

B. Defendants have combined and conspired in a *per se* violation of Section 1 of the Sherman Act (15 U.S.C. § 1), and that plaintiffs and the members of the Class have been injured in their business and property as a result of defendants' violations;

C. Plaintiffs and the members of the Class recover damages sustained by them, as provided by the federal antitrust laws, and that judgment in favor of plaintiffs and the Class be entered against defendants, jointly and severally, in an amount to be trebled in accordance with such laws;

D. Defendants, their subsidiaries, affiliates, successors, transferees, assignees and the respective officers, directors, partners, agents, and employees thereof and all other persons acting

or claiming to act on their behalf be permanently enjoined and restrained from continuing and maintaining the conspiracy or agreement alleged herein, including:

1. continuing, maintaining or renewing the contract, combination or conspiracy alleged herein, or from engaging in any other contract combination or conspiracy having any similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect; and
2. communicating or causing to be communicated to any other person engaged in the manufacture, distribution or sale of potash, information concerning prices, customers, markets or other terms or conditions of sale of any such product except to the extent necessary in connection with *bona fide* sales transaction between the parties to such communications.

E. Plaintiffs and members of the Class be awarded pre-judgment and post-judgment interest, and that such interest be awarded at the highest legal rate from and after the date of service of the initial complaint in this action;

F. Plaintiffs and members of the Class recover their costs of this suit, including reasonable attorneys' fees as provided by law; and,

G. Plaintiffs and members of the Class receive such other or further relief as may be just and proper.

XIII. JURY TRIAL DEMANDED

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

Dated: April 3, 2009

Respectfully submitted,

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