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Attorneys for Named Plaintiffs KAREN DHANOWA and NILIMA AMIN and Proposed Class

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Case No: 4:21-CV-00498-JST

KAREN DHANOWA and NILIMA AMIN,
on behalf of themselves and all others
similarly situated;

**PLAINTIFFS' SECOND AMENDED
CLASS ACTION COMPLAINT**

Plaintiff,

- 1. COMMON LAW FRAUD
- 2. INTENTIONAL MISREPRESENTATION
- 3. NEGLIGENT MISREPRESENTATION
- 4. UNJUST ENRICHMENT

v.

SUBWAY RESTAURANTS, INC., a
Delaware Corporation; FRANCHISE
WORLD HEADQUARTERS, LLC., a
Connecticut Limited Liability Corporation;
SUBWAY FRANCHISEE ADVERTISING
TRUST FUND LTD., a Connecticut

1 Corporation; and DOES 1 through 50,
2 Inclusive,

3 Defendants.

5. CONSUMERS LEGAL REMEDIES
ACT, CAL. CIV. CODE §§ 1750, *et seq.*

6. VIOLATION OF THE FALSE
ADVERTISING LAW (“FAL”),
CALIFORNIA BUSINESS AND
PROFESSIONS CODE § 17500, *et seq.*

7. VIOLATION OF THE UNFAIR
COMPETITION LAW (“UCL”),
CALIFORNIA BUSINESS AND
PROFESSIONS CODE §17200 *et seq.*

DEMAND FOR JURY TRIAL

8 Plaintiffs Karen Dhanowa and Nilima Amin, by and through their attorneys, bring this action
9 on behalf of themselves and all other similarly situated against Subway Restaurants. Inc., Franchise
10 World Headquarters, LLC., Subway Franchisee Advertising Trust Fund Ltd. Corporation
11 (collectively hereinafter referred to as “Defendants”), and Does 1 through 50. Plaintiffs hereby
12 allege, on information and belief, except as those allegations which pertain to the named Plaintiffs,
13 which allegations are based on personal knowledge, as follows:

14 **NATURE OF THE ACTION**

15 1. This action arises out of Defendants’ intentionally false and misleading
16 representations in its marketing and selling about tuna being used as an ingredient in some of their
17 food items, including salads, sandwiches, and wraps (the “Tuna Products”). Aware that consumers
18 place a heightened value on tuna as an ingredient, Defendants deliberately make false and
19 misleading claims about the composition of its Tuna Products to increase profits at the expense of
20 unsuspecting buyers.

21 2. Defendants have consistently advertised the Tuna Products as being “tuna” and
22 “100% tuna.” It is self-evidence that a food item labeled as being “tuna” should be just that: only
23 tuna. Such food item should contain no other fish species, animal species, or miscellaneous products
24 not otherwise identified or marketed as being included in the “tuna” food item.

25 3. However, the Tuna Products’ labeling, marketing, and advertising is false, deceptive,
26 and misleading. The statements that are false, deceptive, and misleading are that (1) the Tuna
27 Products are “tuna” and (2) the Tuna Products are comprised of “100% tuna.”
28

1 4. In reality, the Tuna Products do not contain 100% tuna; instead, they contain other
2 fish species, animal products, or miscellaneous products aside from tuna. When ordering “tuna” at
3 a restaurant, a reasonable consumer believes that the product they are paying for contains *only* tuna
4 and no other fish species, animal products, or miscellaneous products. Accordingly, the Tuna
5 Products are misbranded under Federal and California State law. Defendants’ deceptive marketing
6 scheme of the Tuna Products includes tactics such as falsely labeling the Tuna Products as being
7 “tuna” on menus throughout Defendants’ “Subway” eatery locations, as well as on Defendants’
8 website.

9 5. Reasonable consumers rely on product labeling and marketing in making their
10 purchasing decisions. When a reasonable consumer sees a salad, sandwich, or wrap labeled,
11 marketed, or advertised as being “tuna,” he or she reasonably expects that the food product will be
12 comprised *only* of tuna (as opposed to being comprised of tuna and some other fish species, animal
13 products, and/or miscellaneous or mysterious substances not otherwise expected to be in the
14 product).

15 6. In reliance on Defendants’ misleading marketing and deceptive advertising practices,
16 Plaintiffs and other consumers purchased the Tuna Products because they reasonably believed,
17 based on Defendants’ marketing and advertising, that the Tuna Products contained 100% tuna and
18 no other fish species, animal products, or miscellaneous products. Had Plaintiffs and other
19 consumers known that the Tuna Products partially or wholly lacked tuna as an ingredient, or that
20 the Tuna Products contained other fish species, animal products, or miscellaneous ingredients, they
21 would not have purchased the Tuna Products or would have paid significantly less for them. As a
22 result, Plaintiffs and other similarly situated class members have been deceived and suffered
23 economic injury.

24 7. Defendants’ labeling, marketing, and advertising uniformly involves false and/or
25 misleading statements, as well as material omissions of fact, concerning the Tuna Products, which
26 have injured Plaintiffs and the Class, and duped them into buying premium priced food dishes based
27 on the representation that the Tuna Products contained only tuna and no other fish species, animal
28

1 products, or miscellaneous ingredients. These deceptive business practices and representations have
2 misled the general public into believing that the Tuna Products contain 100% tuna and *only* tuna.

3 8. Based on the fact that Defendants' advertising misled Plaintiffs and all others
4 similarly situated, Plaintiffs bring this class against Defendants to seek reimbursement of the
5 premium they and the Class Members paid due to Defendants' false and deceptive representations
6 about the composition and ingredients of the Tuna Products.

7 9. Plaintiffs seek relief in this action individually and on behalf of all purchasers of the
8 Tuna Products statewide in California for common law fraud, intentional misrepresentation,
9 negligent misrepresentation, and unjust enrichment. Additionally, Plaintiffs seek relief in this action
10 individually and on behalf of all purchasers of the Tuna Products in California for violation of the
11 California Bus. & Prof. Code §§17500, *et seq.*, California's False Advertising Law ("FAL"), Bus.
12 & Prof. Code §§17200, *et seq.*, as well as California's Unfair Competition Law ("UCL").

13 **JURISDICTION AND VENUE**

14 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d), the Class
15 Action Fairness Act, because the aggregate amount in controversy exceeds \$5,000,000.00,
16 exclusive of interests and costs, and at least one class member is a citizen of a state different from
17 Defendant Subway Restaurants, Defendant Franchise World Headquarters, as well as Defendant
18 Subway Franchisee Advertising Trust Fund Ltd. Additionally, this is a class action involving more
19 than 1,000 (one thousand) class members.

20 11. The Court has personal jurisdiction over Defendants pursuant to Cal. Code Civ.
21 P. § 410.10, as a result of Defendants' substantial, continuous, and systematic contacts with the
22 State, and because Defendants have purposely availed themselves to the benefits and privileges of
23 conducting business activities within the State.

24 12. Pursuant to 28 U.S.C. §1391, this Court is the proper venue for this action because a
25 substantial part of the events, omissions and acts giving rise to the claims herein occurred in this
26 District. Moreover, Defendants distributed, advertised and sold the Tuna Products, which are the
27 subject of the present Complaint, in this District.

PARTIES

1
2 13. At all times relevant hereto, Plaintiff Dhanowa is and was a citizen and resident of the
3 State of California, Alameda County.

4 14. At all times relevant hereto, Plaintiff Amin is and was a citizen and resident of State
5 of California, Alameda County.

6 15. Defendant Subway Restaurants is a Delaware corporation headquartered in the State
7 of Connecticut, with its principal place of business at 325 Sub Way, Milford, CT 06461. Therefore,
8 Defendant Subway Restaurants is a citizen of the states of Delaware and Connecticut. At all times
9 relevant hereto, Defendant Subway Restaurants manufactured, mass marketed, sold, produced, and
10 distributed the Tuna Products throughout the United States, including the State of California.

11 16. Defendant Franchise World Headquarters, LLC is a Connecticut limited liability
12 corporation and is headquartered in the State of Connecticut, with its principal place of business at
13 325 Sub Way, Milford, CT 06461. Hence, Defendant Franchise World Headquarters is a citizen of
14 the State of Connecticut. At all times relevant hereto, Defendant Franchise World Headquarters
15 manufactured, mass marketed, sold, produced, and distributed the Tuna Products throughout the
16 United States, including the State of California.

17 17. Defendant Subway Franchisee Advertising Trust Fund Ltd. is a Connecticut
18 corporation headquartered in the State of Connecticut, with its principal place of business at 325
19 Sub Way, Milford, CT 06461. Thus, Defendant Subway Franchisee Advertising Trust Fund is a
20 citizen of the State of Connecticut. At all times relevant hereto, Defendant Subway Franchisee
21 Advertising Trust Fund Ltd. manufactured, mass marketed, sold, produced, and distributed the Tuna
22 Products throughout the United States, including the State of California.

23 18. Plaintiffs are informed and believes, and based thereon allege, that at all times relevant
24 hereto each of these individuals and/or entities was the agent, servant, employee, subsidiary,
25 affiliate, partner, assignee, successor-in-interest, alter ego, or other representative of each of the
26 remaining Defendants and was acting in such capacity in doing the things herein complained of and
27 alleged. Plaintiffs reserve their right to amend this Complaint to add different or additional
28 defendants, including without limitation any officer, director, employee, supplier, or distributor of

1 Defendant Subway Restaurants, Defendant Franchise World Headquarters, and Defendant Subway
2 Franchisee Advertising Trust Fund Ltd. who has knowingly and willfully aided, abetted, or
3 conspired in the false and deceptive conduct alleged herein.

4 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

5 **A. Subway Falsely Advertises the Tuna Products as Being “Tuna” and “100% Tuna”**

6 19. Consumers, including Plaintiffs, often purchase a particular type of salad, sandwich,
7 or wrap due to the main ingredient alleged to be present in the food item. Indeed, the contents of a
8 salad, sandwich, or wrap is usually the most important attribute to buyers when they are deciding
9 which food dish to purchase. Moreover, consumers, including Plaintiffs, typically associate tuna as
10 a superior ingredient and are typically willing to pay a premium for it. Furthermore, buyers are often
11 willing to pay more for tuna as the filling in salads, wraps, and sandwiches because they associate
12 the ingredient as having a higher nutritional value, including greater protein levels.

13 20. Defendants have consistently advertised the Tuna Products as being “tuna” and
14 “100% tuna.” However, the Tuna Products’ labeling, marketing, and advertising is false and
15 misleading. Defendants know or have reason to know that consumers, including Plaintiffs, would
16 find the challenged attribute important in their decision to purchase the Tuna Products, as indicated
17 by the fact that Defendants repeatedly emphasized the advertising claim prominently on
18 Defendants’ menus and website.

19 21. In reality, the Tuna Products do not contain 100% tuna; instead, they contain other
20 fish, animal species, or miscellaneous ingredients aside from tuna. Accordingly, the Tuna Products
21 are misbranded under Federal and California State law. Defendants’ deceptive marketing scheme
22 of the Tuna Products includes tactics such as falsely labeling the Tuna Products as being “tuna” on
23 menus throughout Defendants’ “Subway” eatery locations, as well as on Defendants’ website.

24 22. Defendants’ in-store menus identify its Tuna Products as being “tuna.” Additionally,
25 Defendants’ website identifies its Tuna Products as being “100% wild caught tuna blended with
26 creamy mayo.”

1 23. Marine biologist Paul Barber, Ph.D. of Integrative Biology, performed testing on
2 twenty (20) samples of Tuna Products from twenty different Subway restaurants in the greater
3 Southern California region. This testing was performed by researchers at the Barber Lab, located at
4 UCLA's Department of Ecology and Evolutionary Biology. Specifically, Dr. Barber performed
5 DNA barcoding testing on twenty samples of Defendants' Tuna Products. DNA barcoding is a
6 method for identifying an unknown sample to a particular specie(s) based on a diagnostic DNA
7 sequence. Much like how barcodes can differentiate the broad diversity of products in a grocery
8 store, DNA barcoding can accurately identify organisms to species based on the uniqueness of their
9 DNA sequence at a predefined region of the genome. DNA barcoding is widely applied as a forensic
10 tool to identify wildlife products, including marine wildlife, and is increasingly used to detect
11 seafood fraud both in commercial and consumer markets.

12 24. At each of the twenty Subway restaurant establishments, 50 grams of Tuna Products
13 were collected. Custom sequencing was used to try and identify the kind of genetic information that
14 was present in each of the twenty samples of Tuna Products. The samples were tested against four
15 different primers: vertebrate primers, tuna primers, COI (cytochrome c oxidase I) primers, and plant
16 primers.

17 25. Of the twenty samples tested, nineteen of them had *no detectable tuna DNA*
18 *sequences whatsoever*. Additionally, the test results indicate that all twenty of the samples contained
19 detectable sequences of chicken DNA; a majority of the samples (eleven out of twenty) contained
20 detectable sequences of pork DNA; and some of the samples (seven out of twenty) contained
21 detectable sequences of cattle DNA.

22 26. As such, the Tuna Products are not being sold as advertised; that is, the Tuna Products
23 are not "tuna" or "100% tuna" but are contaminated or otherwise adulterated such that consumers
24 are not receiving the product they reasonably expect to be purchasing. Defendants do not take
25 sufficient measures to control or prevent the known risks of adulteration to its Tuna Products. On
26 the contrary, they actively perpetuate actions and steps that encourage mixing or allowing non-tuna
27 ingredients to make their way into the Tuna Products.
28

1 27. Plaintiffs are informed and believe, and based thereon allege, that all California-based
2 Subway restaurants receive their Tuna Products from the same supply chain. Further, Plaintiff are
3 informed and believe, and based thereon allege, that Defendants fail to take sufficient measures to
4 control or prevent the known risks of adulteration to its Tuna Products on a statewide basis.

5 28. Consequently, because the Tuna Products were not being sold as advertised,
6 consumers are not receiving the benefit of their bargain. Defendants' marketing and labeling of the
7 Tuna Products are designed to, and do in fact, deceive, mislead, and defraud consumers.

8 29. Defendants have no reasonable basis for labeling, advertising, and marketing the Tuna
9 Products as being tuna or containing 100% tuna. As a result, consumers are consistently misled into
10 purchasing the Tuna Products for the commonly known and/or advertised benefits and
11 characteristics as set forth in the marketing and advertising of Defendants.

12 30. 21 U.S.C. § 343 states that a food product is misbranded if "its labeling is false or
13 misleading in any manner, if it is offered for sale under the name of another food," or if it is an
14 imitation of another food," with labeling defined as "all labels and other written printed, or graphic
15 matter (1) upon any article or any of its containers or wrappers or (2) accompanying such article."
16 Similarly, under California's Sherman Food, Drug and Cosmetic Law ("Sherman Law"), Article
17 6, § 110660, "Any food is misbranded if its labeling is false or misleading in any particular."

18 31. Defendants further disseminated their false labeling and misrepresentations through
19 their in-store display menus and takeaway menus that accompanied the Tuna Products and identified
20 the food items as being or containing solely tuna, even though none of the Tuna Products tested
21 contained *only* tuna.

22 32. Additionally, § 402(b) of the Food, Drug and Cosmetic Act ("FDCA") affirms that a
23 food product is adulterated "if any valuable constituent has been in whole or in part omitted or
24 abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if
25 damage or inferiority has been concealed in any manner; or if any substance has been added thereto
26 or mixed or packed therewith so as to increase its bulk or weight or reduce its quality or strength or
27 make it appear better or of greater value than it is."
28

1 37. Between 2013 and 2019, Plaintiff Amin ordered Tuna Products at Subway
2 restaurants based on the representations and/or omissions of material fact(s) identified on
3 Subway’s in-restaurant menus, which are typically located behind the sandwich bar on the back
4 wall of the restaurant. Specifically, each time Plaintiff Amin visited a Subway restaurant to order a
5 sandwich, she looked at the menu, acknowledged the food option identified as being “tuna,”
6 ordered a sandwich or wrap because it was identified as being “tuna,” and consumed the Tuna
7 Products, all with the understanding and belief that what she was eating was, in fact, *only* tuna.

8 38. When reading a menu item identified as being “tuna,” reasonable consumers,
9 including Plaintiff Amin, reasonably believe that the product they are ordering and purchasing will
10 contain *only* tuna and no other fish species, animal species, or miscellaneous products not
11 otherwise identified in the menu item.

12 39. In fact, Plaintiff Amin and other reasonable consumers did not receive the Tuna
13 Products as they are advertised. Instead, Plaintiff Amin and other reasonable consumers received
14 Tuna Products that were adulterated and contained chicken, pork, and/or cattle DNA or Tuna
15 Products that otherwise contained some material that was not in fact tuna.

16 40. During the time when Plaintiff Amin was purchasing and consuming the Tuna
17 Products, Plaintiff did not take steps to verify the Tuna Products’ components, or to verify whether
18 the Tuna Products contained tuna as the sole ingredient. Reasonable consumers such as Plaintiff
19 would not have considered it necessary to verify the clear message conveyed by Defendants’
20 labeling, advertising, and marketing of the Tuna Products.

21 41. The malicious actions taken by Defendants caused significant harm to Plaintiff Amin
22 and similarly situated class members who purchased the Tuna Products because they reasonably
23 believed, based on Defendants’ marketing, packaging, labeling, and advertising schemes, that the
24 Tuna Products were being sold as advertised when they were not. Had Plaintiff Amin and other
25 class members known the Tuna Products actually contained ingredients other than tuna, they would
26 not have bought the Tuna Products or would have paid substantially less money for them. As a
27 result, Plaintiffs and similar situated class members have been deceived and suffered economic
28 injury. Plaintiffs were economically harmed by Defendants’ false labeling, deceptive marketing and

1 misleading packaging conveying the message that the Tuna Products were made with tuna as they
2 had represented. The value of the Tuna Products that Plaintiffs actually purchased and consumed
3 was materially less than their value as misrepresented by Defendants.

4 42. Pursuant to Federal Rule of Civil Procedure 9(b), Plaintiff Amin further alleges as
5 follows:

6 a. Who: Defendants made material misrepresentations and/or omissions of fact in the
7 marketing of its Tuna Products;

8 b. What: Defendants made material misrepresentations and/or omissions of fact by
9 marketing, labeling, and advertising its Tuna Products as being “tuna” and “100% tuna.”

10 Defendants made these claims with respect to the Tuna Products even though the Tuna Products
11 contain no detectable tuna DNA sequences. Additionally, Defendants’ Tuna Products contain
12 detectable sequences of chicken DNA, pork DNA, and cattle DNA;

13 c. When: Each year between 2013 and 2019;

14 d. Where: Defendants’ misrepresentations and/or omissions of material fact(s) were
15 made on the in-store menus at Defendants’ restaurants. Subway’s in-restaurant menus are
16 typically located behind the sandwich bar on the back wall of the restaurant. The menus in
17 Defendants’ in-store restaurants clearly identify the Tuna Products as being “tuna.” Further,
18 Defendants’ online menus identify the Tuna Products as being “100% tuna”;

19 e. How: Defendants made written misrepresentations and failed to disclose material
20 facts in the labeling, marketing, and advertising of the Tuna Products and on their website and in-
21 store menus.

22 f. Why: Defendants engaged in the material misrepresentations and/or omissions
23 detailed herein for the express purpose of inducing reasonable consumers, including Plaintiffs, to
24 purchase and/or a pay a premium for the Tuna Products based on the representation that they are
25 “tuna” and contain “100% tuna.” Reasonable consumers, including Plaintiffs, reasonably believe
26 that when they order a product identified as “tuna,” that product does not contain any other fish
27 species, animal species, or miscellaneous products. Defendants profited by selling the Tuna
28 Products to millions of unsuspecting consumers in California, as well as nationwide.

C. Class Action Allegations

1
2 43. Plaintiffs bring this class action on behalf of themselves individually and all others
3 similarly situated, pursuant to Fed. R. Civ. P. 23(a) and (b)(2) and/or (b)(3). Pursuant to Fed. R. Civ.
4 P. 23, Plaintiffs bring this class action on behalf of themselves individually and all others similarly
5 situated statewide in California. Plaintiff seeks to represent a class comprised of all persons in
6 California who, on or after January 21, 2017 (the “Class Period”) purchased the Tuna Products
7 personal use and not for resale distribution.

8 44. The proposed class consists of all consumers who purchased the Tuna Products in the
9 State of California for personal use and not for resale, during the time period January 21, 2017,
10 through the present. Excluded from the Class are Defendants, their affiliates, employees, officers
11 and directors, any individual who received remuneration from Defendants in connection with that
12 individual’s use or endorsement of the Tuna Products, the Judge(s) assigned to this case, and the
13 attorneys of record in this case. Plaintiffs reserve the right to amend the Class definitions if discovery
14 and further investigation reveal that the Class should be expanded or otherwise modified.

15 45. This action is properly brought as a class action for the following reasons:

16 a. The members in the proposed class, which contains no less than one thousand
17 members and based on good information and belief is comprised of several thousands of individuals,
18 are so numerous that individual joinder of all members is impracticable and disposition of the class
19 members’ claims in a single class action will provide substantial benefits to the parties and Court,
20 and is in the best interests of the parties and judicial economy;

21 b. Plaintiffs stand on equal footing with and can fairly and adequately protect the
22 interests of all members of the proposed class. All marketing and packaging of units of the Tuna
23 Products bear the misleading tuna labeling and are falsely advertised as being “tuna” and “100%
24 tuna” when, in fact, the Tuna Products contain no detectable sequences of tuna DNA and contain
25 detectable sequences of chicken DNA, pork DNA, and cattle DNA. Defendants’ false statements,
26 labeling, and marketing occur on the in-store menus at Defendants’ restaurants as well as
27 Defendants’ website, and thus every individual consumer who purchases the Tuna Products (either
28 online or in store) are exposed to the false advertising.

1 c. Defendants have, or have access to, address information for the Class Members,
2 which may be used for the purpose of providing notice of the pendency of this class action. Further,
3 the class definition itself describes a set of common characteristics sufficient to allow a prospective
4 plaintiff or class member to identify herself or himself as having a right to recover based on the
5 description;

6 d. Plaintiffs will fairly and adequately represent and protect the interests of the class,
7 have no interest incompatible with the interests of the class, and have retained counsel competent
8 and experienced in class actions, consumer protection, and false advertising litigation, including
9 within the context of food and the food industry. Plaintiffs' attorneys have the experience,
10 knowledge, and resources to adequately and properly represent the interests of the proposed class.
11 Plaintiffs have no interests antagonistic to those of other proposed class members, and they have
12 retained attorneys experienced in consumer class actions and complex litigation as counsel;

13 e. Class treatment is superior to other options for resolution of the controversy because
14 the relief sought for each class member is so small, that, absent representative litigation, it would be
15 infeasible for class members to redress the wrongs done to them. Prosecution of separate actions by
16 individual members of the proposed class would create a risk of inconsistent or varying
17 adjudications with respect to individual members of the class and thus establish incompatible
18 standards of conduct for the party or parties opposing the class. Further, individual cases would be
19 so numerous as to inefficiently exhaust judicial resources. Plaintiffs seek damages and equitable
20 relief on behalf of the proposed class on grounds generally applicable to the entire proposed class;

21 f. Questions of law and fact common to the class predominate over any questions
22 affecting only individual class members. There are questions of law and fact common to the
23 proposed class which predominate over any questions that may affect particular class members.
24 Such questions of law and fact common to Plaintiffs and the class include, without limitation:

25 i. Whether Defendants were unjustly enriched by their conduct;

26 ii. Whether Class Members suffered an ascertainable loss as a result of Defendants'
27 misrepresentations;

28

- 1 iii. Whether, as a result of Defendants’ misconduct as alleged herein, Plaintiffs and the
2 Class Members are entitled to restitution, injunctive relieve and/or monetary relief,
3 and if so, the amount and natural of such relief;
- 4 iv. Whether Defendants made any statement they knew or should have known were
5 false or misleading;
- 6 v. Whether Defendants maintained a longstanding marketing policy, practice and
7 strategy of labeling, advertising, and selling the Tuna Products as being “tuna” and
8 “100% tuna” when, in fact, the Tuna Products contain no detectable sequences of tuna
9 DNA and contain detectable sequences of chicken DNA, pork DNA, and cattle DNA;
- 10 vi. Whether the utility of Defendants’ practices, if any, outweighed the gravity of the
11 harm to their victims;
- 12 vii. Whether Defendants’ conduct violated public policy, included as declared by
13 specific constitutional, statutory, or regulatory provisions;
- 14 viii. Whether Defendants’ conduct or any of their practices violated the California False
15 Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*, the California
16 Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*, The Federal Food,
17 Drug and Cosmetics Act, 28 U.S.C. §§ 301 *et seq.* and its implementing regulations,
18 21 C.F.R. §§ 101 *et seq.*, the Cal. Health & Safety Code §§ 109875 *et seq.*, or any
19 other regulation, statute or law;
- 20 ix. Whether Defendants passed off the Tuna Products as that of another, within the meaning
21 of Cal. Civ. Code § 1770(a)(1);
- 22 x. Whether Defendants misrepresented the source, sponsorship, approval or certification
23 of the Tuna Products, within the meaning of Cal. Civ. Code § 1770(a)(2);
- 24 xi. Whether Defendants misrepresented the Tuna Products’ affiliation, connection or
25 association with, or certification by another, within the meaning of Cal. Civ. Code §
26 1770(a)(3);
- 27 xii. Whether Defendants represented that the Tuna Products have characteristics, uses, or
28 benefits which they does not have, within the meaning of Cal. Civ. Code § 1770(a)(5);

1 including but not limited to the fact that they were not comprised of only tuna. These
2 misrepresentations and omissions were made with knowledge of their falsehood.

3 49. The misrepresentations and omissions made by Defendants, upon which Plaintiffs the
4 Class Members reasonably and justifiably relied, were intended to induce, and actually induced
5 Plaintiffs and Class Members to purchase the Tuna Products.

6 50. The fraudulent actions of Defendants caused damage to Plaintiffs and Class Members,
7 who are entitled to damages and other legal and equitable relief as a result.

8 **SECOND CAUSE OF ACTION**

9 **Intentional Misrepresentation**

10 51. Plaintiffs re-allege and incorporate herein by reference each and every allegation set
11 forth above.

12 52. Defendants represented to Plaintiffs and other class members that important facts were
13 true. More specifically, Defendants represented to Plaintiffs and the other class members through
14 their advertising and labeling scheme for the Tuna Products, including in-store menus, that the Tuna
15 Products were “tuna.”

16 53. Defendants’ representations were false. Defendants made material misrepresentations
17 and/or omissions of fact by marketing, labeling, and advertising its Tuna Products as being “tuna”
18 and “100% tuna.” Defendants made these claims with respect to the Tuna Products even though the
19 Tuna Products contain no detectable tuna DNA sequences. Additionally, Defendants’ Tuna
20 Products contain detectable sequences of chicken DNA, pork DNA, and cattle DNA. Defendants
21 knew that the misrepresentations were false when they made them, or Defendants made the
22 representations recklessly and without regard for their truth. Defendants intended that Plaintiffs and
23 other class members rely on the representations.

24 54. Plaintiffs and the other class members reasonably relied on Defendants’
25 representations. When ordering a menu item identified as being “tuna,” reasonable consumers,
26 including Plaintiffs, reasonably believe that the product they are ordering and purchasing will
27 contain *only* tuna and no other fish species, animal species, or miscellaneous products not otherwise
28 identified in the menu item.

1 unlawful practices, as well as unconscionable commercial practices in connection with the sales of
2 any goods or services to consumers. *See* Cal. Civ. Code §1770.

3 71. The CLRA “shall be liberally construed and applied to promote its underlying
4 purposes, which are to protect consumers against unfair and deceptive business practices and to
5 provide efficient economical procedures to secure such protection.” Cal. Civ. Code § 1760.

6 72. Defendants are each a “person” under the CLRA. Cal. Civ. Code §1761 (c).

7 73. Plaintiffs and the putative Class Members are “consumers” under the CLRA. Cal.
8 Civ. Code §1761 (d).

9 74. The Tuna Products constitute a “good” under the CLRA. Cal. Civ. Code §1761 (a).

10 75. Plaintiffs and the putative Class Members’ purchases of the Tuna Products within the
11 Class Period constitute “transactions” under the CLRA. Cal. Civ. Code §1761 (e).

12 76. Defendants’ actions and conduct described herein reflect transactions that have
13 resulted in the sale of goods to consumers.

14 77. Defendants’ failure to label the Tuna Products in accordance with California labeling
15 requirements constitutes an unfair, deceptive, unlawful, and unconscionable commercial practice.

16 78. Defendants’ actions have violated at least seven provisions of the CLRA, including
17 §§ 1770(a)(1), 1770 (a)(2), 1770 (a)(3), 1770(a)(5), 1770(a)(7), 1770 (a)(9) and 1770(a)(16).

18 79. As a result of Defendants’ violations, Plaintiffs and the Class suffered, and continue
19 to suffer, ascertainable losses in the form of the purchase price they paid for the unlawfully labeled
20 and marketed Tuna Products, which they would not have paid had the Tuna Products been labeled
21 correctly, or in the form of the reduced value of the Tuna Products relative to the Tuna Products as
22 advertised and the retail price they paid.

23 80. Pursuant to § 1782 of the CLRA Plaintiffs notified Defendants in writing of the
24 particular violations of § 1770 of the CLRA, and demanded Defendants rectify the actions described
25 above by providing monetary relief, agreeing to be bound by their legal obligations, and to give
26 notice to all affected consumers of their intent to do so. On or about April 16, 2020, Plaintiffs’
27 counsel sent Defendants a notice and demand letter, notifying Defendants of their violations of the
28 CLRA and demanding that within 30 days, Defendants remedy the unlawful, unfair, false, and/or

1 deceptive practices complained of herein. Plaintiffs' counsel advised Defendants that if they refused
2 the demand, monetary damages would be sought, as well as injunctive relief, restitution, and any
3 other relief the Court may deem just and proper. Defendants have failed to comply with the letter.
4 Consequently, pursuant to California Civil Code §1782, Plaintiffs, on behalf of themselves and all
5 other members of the Class, seeks compensatory damages and restitution of any ill-gotten gains due
6 to Defendants' acts and practices that violate the CLRA.

7 81. Defendants have failed to rectify or agree to rectify at least some of the violations
8 associated with actions detailed above and give notice to all affected consumers within 30 days of
9 receipt of the Cal. Civ. Code § 1782 notice. Thus, Plaintiffs seek actual damages and punitive
10 damages for violations of the Act.

11 82. In addition, pursuant to Cal. Civ. Code §1780(a)(2), Plaintiffs are entitled to, and
12 therefore seek, a Court order enjoining the above-described wrongful acts and practices that violate
13 Cal. Civ. Code §1770.

14 83. Plaintiffs and Class Members are also entitled to recover attorneys' fees, costs,
15 expenses, disbursements, and punitive damages pursuant to Cal. Civ. Code §§ 1780 and 1781.

16 **SIXTH CAUSE OF ACTION**

17 **Violation of California Business & Professions Code §§ 17500, *et seq.***

18 84. Plaintiffs re-allege and incorporate by reference the allegations contained in the
19 paragraphs above as if fully set forth herein.

20 85. Defendants engaged in unfair and deceptive acts and practices, in violation of the
21 California Business and Professions Code § 17500 *et seq.*, by marketing and/or selling the Tuna
22 Products as "tuna" and "100% tuna" without disclosure of the material fact that the Tuna Products
23 contain other fish species, animal species, and/or miscellaneous products not otherwise identified
24 on Defendants' menus. These acts and practices, as described above, have deceived Plaintiffs and
25 other class members, causing them to lose money as herein alleged and have deceived and are likely
26 to deceive the consuming public, in violation of those sections. Accordingly, Defendants' business
27 acts and practices, as alleged herein, have caused injury to Plaintiffs and the other class members.
28

A. “Unfair” Prong

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2 93. Pursuant to California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et*
3 *seq.*, a challenged activity is “unfair” when “any injury it causes outweighs any benefits provided
4 to consumers and the injury is one that the consumers themselves could not reasonably avoid,” *or*
5 “the utility of the defendant’s conduct is outweighed by the gravity of the harm to the alleged victim.

6 94. Defendants’ actions of engaging in false and deceptive advertising, marketing, and
7 labeling of the Tuna Products do not confer any benefit to consumers.

8 95. Defendants’ actions of advertising, marketing, and labeling the Tuna Products in a
9 false, deceptive, and misleading manner cause injuries to consumers because the consumers do not
10 receive a quality of food product commensurate with their reasonable expectation.

11 96. Defendants’ actions of advertising, marketing, and labeling the Tuna Products in a
12 false, deceptive, and misleading manner cause injuries to consumers because the consumers do not
13 receive the benefits that they reasonably expect from the Tuna Products.

14 97. Defendants’ actions of advertising, marketing, and labeling the Tuna Products in a
15 false, deceptive, and misleading manner cause injuries to consumers because the consumers end up
16 consuming a food product that is of a lower quality than what they reasonably were expecting and
17 sought.

18 98. Defendants’ actions of advertising, marketing, and labeling the Tuna Products in a
19 false, deceptive, and misleading manner cause injuries to consumers because the consumers end up
20 overpaying for the Tuna Products and receiving a quality of food item that is less than what they
21 expected to receive.

22 99. Consumers cannot avoid any of the injuries caused by Defendants’ false, misleading,
23 and deceptive labeling, advertising, and marketing of the Tuna Products.

24 100. Accordingly, the injuries caused by Defendants’ activity of advertising, marketing,
25 and labeling, the Tuna Products in a false, deceptive, and misleading manner outweigh any benefits.

26 101. Here, Defendants’ conduct of advertising, labeling and marketing the Tuna Products
27 in a false, deceptive, and misleading manner has no utility and financially harms purchasers. Thus,
28 the utility of Defendants’ conduct is vastly outweighed by the gravity of harm.

1 102. Defendants' labeling, marketing, and advertising of the Tuna Products, as alleged in
2 the preceding paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes unfair
3 conduct.

4 103. Defendants knew or should have known of their unfair conduct.

5 104. As alleged in the preceding paragraphs, the misrepresentations by Defendants detailed
6 above constitute an unfair business practice within the meaning of California Business and
7 Professions Code § 17200.

8 105. There were reasonable available alternatives to further Defendants' legitimate
9 business interests, other than the conduct described herein. Defendants could have marketed,
10 labeled, and advertised the Tuna Products truthfully, without any dishonest claims about the Tuna
11 Products' ingredients, composition, and identity.

12 106. All of the conduct alleged herein occurs and continues to occur in Defendants'
13 business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct
14 repeated on thousands of occasions daily.

15 107. Pursuant to Business and Professions Code §§ 17203 and 17535, Plaintiffs and the
16 Class seek an order of this Court enjoining Defendants from continuing to engage, use, or employ
17 their practice of advertising, labeling, and marketing the Tuna Products in an untruthful manner.
18 Likewise, Plaintiffs and the Class seek an order requiring Defendants to disclose such
19 misrepresentations, and additionally request an order awarding Plaintiffs restitution of the money
20 wrongfully acquired by Defendants by means of responsibility attached to Defendants' failure to
21 disclose the existence and significance of said misrepresentations in an amount to be determined at
22 trial. Plaintiffs and the Class Members also seek full restitution of all monies paid to Defendants as
23 a result of their deceptive practices, interest at the highest rate allowable by law and the payment of
24 Plaintiffs' attorneys' fees and costs pursuant to, *inter alia*, California Civil Code Procedure §1021.5.

25 108. As a direct and proximate result of these acts, consumers have been and continue to
26 be harmed. Plaintiffs and the Class Members have suffered injury and actual out-of-pocket losses
27 as a result of Defendants' violation of the unfair prong of the UCL because Plaintiffs and the Class
28 would not have bought the Tuna Products if they had known the truth regarding the ingredients,

1 composition and identity of the Tuna Products. Plaintiffs and the Class paid an increased price due
2 to the misrepresentations about the Tuna Products and the Tuna Products did not have the promised
3 quality, effective, or value.

4 **B. “Fraudulent” Prong**

5 109. California Business and Professions Code § 17200, *et seq.*, considers conduct
6 fraudulent and therefore prohibits said conduct if it is likely to deceive members of the public.

7 110. Defendants’ marketing, labeling, and advertising of the Tuna Products, as alleged in
8 the preceding paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes
9 fraudulent conduct. As alleged in the preceding paragraphs, the misrepresentations by Defendants
10 detailed above constitute a fraudulent business practice in violation of California Business &
11 Professions Code § 17200 because they are likely to, and did indeed, deceive members of the public.

12 111. Defendants knew or should have known of their fraudulent conduct.

13 112. There were reasonable available alternatives to further Defendants’ legitimate
14 business interests, other than the conduct described herein. Defendants could have labeled,
15 advertised, and marketed the Tuna Products accurately.

16 113. All of the conduct alleged herein occurs and continues to occur in Defendants’
17 business. Defendants’ wrongful conduct is part of a pattern or generalized course of conduct
18 repeated on thousands of occasions daily.

19 114. Pursuant to Business and Professions Code §§ 17203 and 17535, Plaintiffs and the
20 Class seek an order of this Court requiring Defendants to cease the acts of fraudulent competition
21 alleged herein. Likewise, Plaintiffs and the Class seek an order requiring Defendants to disclose
22 such misrepresentations, and additionally request an order awarding Plaintiffs restitution of the
23 money wrongfully acquired by Defendants by means of responsibility attached to Defendants’
24 failure to disclose the existence and significance of said misrepresentations in an amount to be
25 determined at trial. Plaintiffs and the Class Members also seek full restitution of all monies paid to
26 Defendants as a result of their deceptive practices, interest at the highest rate allowable by law and
27 the payment of Plaintiffs’ attorneys’ fees and costs pursuant to, *inter alia*, California Civil Code
28 Procedure §1021.5.

1 121. As alleged in the preceding paragraphs, the misrepresentations by Defendants detailed
2 above constitute an unlawful business practice within the meaning of California Business and
3 Professions Code § 17200.

4 122. There were reasonable available alternatives to further Defendants' legitimate
5 business interests, other than the conduct described herein. Defendants could have refrained from
6 displaying untruthful claims on its menus and in its advertising that the Tuna Product are "tuna."
7 Similarly, Defendants could have abstained from misrepresenting the Tuna Products' ingredients,
8 composition, and identity.

9 123. All of the conduct alleged herein occurred and continues to occur in Defendants'
10 business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct
11 repeated on thousands of occasions daily.

12 124. As a direct and proximate result of these acts, consumers have been and continue to
13 be harmed. Plaintiffs and the Class Members have suffered injury and actual out-of-pocket losses
14 as a result of Defendants' violation of the unlawful prong of the UCL because Plaintiffs and the
15 Class would not have bought the Tuna Products if they had known the truth regarding the ingredients
16 of the Tuna Products. Plaintiffs and the Class paid an increased price due to the misrepresentations
17 about the Tuna Products and the Tuna Products did not have the promised quality, effectiveness, or
18 value.

19 125. Pursuant to Bus. & Prof. Code §§ 17203 and 17535, Plaintiffs and the Class are
20 therefore entitled to an order requiring Defendants to cease the acts of unfair competition alleged
21 herein, full restitution of all monies paid to Defendants as a result of their deceptive practices,
22 interest at the highest rate allowable by law and the payment of Plaintiffs' attorneys' fees and costs
23 pursuant to, *inter alia*, California Civil Code Procedure §1021.5.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the Class defined herein, prays for judgment and relief on all Causes of Action as follows:

1. This action be certified and maintained as a class action and certify the proposed class as defined, appointing Plaintiffs as representatives of the Class, and appointing the attorneys and law firms representing Plaintiffs as counsel for the Class;

2. For an order declaring the Defendants' conduct violates the statutes referenced herein;

3. That the Court awards compensatory, statutory and/or punitive damages as to all Causes of Action where such relief is permitted;

4. That the Court awards Plaintiffs and proposed class members the costs of this action, including reasonable attorneys' fees and expenses;

5. For an order enjoining Defendants from continuing to engage in the unlawful conduct and practices described herein;

6. That the Court awards equitable monetary relief, including restitution and disgorgement of all ill-gotten gains, and the imposition of a constructive trust upon, or otherwise restricting the proceeds of Defendants' ill-gotten gains, to ensure that Plaintiffs and proposed class members have an effective remedy;

7. That the Court awards pre-judgment and post-judgment interest at the legal rate;

8. That the Court orders appropriate declaratory relief; and

9. That the Court grants such other and further as may be just and proper.

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JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: November 8, 2021

Respectfully Submitted,
McNICHOLAS & McNICHOLAS LLP,

By: /s/ Patrick McNicholas
Patrick McNicholas, Esq.
Jeffrey R. Lamb, Esq.
Emily R. Pincin, Esq.
Attorneys for Plaintiffs

Dated: November 8, 2021

Respectfully Submitted,
THE LANIER LAW FIRM,

By: /s/ Jonathan Wilkerson
Jonathan Wilkerson, Esq.
Attorneys for Plaintiffs

Dated: November 8, 2021

Respectfully Submitted,
DOGRA LAW GROUP, PC

By: /s/ Shalini Dogra, Esq.
Shalini Dogra, Esq.
Attorneys for Plaintiffs

Attestation of Holographic Signatures

“I hereby attest that I have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/S/) within this e-filed document.”

Dated: November 8, 2021

Respectfully Submitted,
DOGRA LAW GROUP, PC

By: /s/ Shalini Dogra, Esq.
Shalini Dogra, Esq.
Attorneys for Plaintiffs