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11 *Interim Class Counsel*

12  
 13 **UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15  
 16 *In re Trader Joe's Tuna Litigation*

Case No. 2:16-cv-01371-ODW-AJW

17  
 18 **SECOND AMENDED CLASS  
 ACTION COMPLAINT**

19  
 20 **JURY TRIAL DEMANDED**

21 Hon. Otis D. Wright II  
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1 Plaintiffs Sarah Magier and Atzimba Reyes (“Plaintiffs”) bring this action on  
2 behalf of themselves and all others similarly situated against Defendants Trader Joe’s  
3 Company and Trader Joe’s East Inc. (collectively, “Trader Joe’s” or “Defendants”).  
4 Plaintiffs make the following allegations pursuant to the investigation of their  
5 counsel and based upon information and belief, except as to the allegations  
6 specifically pertaining to themselves, which are based on personal knowledge.

7 **NATURE OF THE ACTION**

8 1. This is a class action lawsuit against Trader Joe’s for cheating  
9 customers by underfilling 5-ounce cans of Trader Joe’s store-brand tuna.<sup>1</sup> Tests by a  
10 U.S. government lab confirm that Trader Joe’s 5-ounce cans actually contain less  
11 than 3 ounces of tuna in most instances, and that every lot tested, and nearly every  
12 single can, was underfilled in violation of the federally mandated minimum standard  
13 of fill.

14 2. Independent testing by the U.S. National Oceanic and Atmospheric  
15 Administration (“NOAA”) determined that, over a sample of 24 cans, 5-ounce cans  
16 of Trader Joe’s Albacore Tuna in Water Salt Added contain an average of only 2.61  
17 ounces of pressed cake tuna when measured precisely according to the methods  
18 specified by 21 C.F.R. § 161.190(c). This is 19.2% below the federally mandated  
19 minimum standard of fill of 3.23 ounces for these cans. *See* 21 C.F.R.  
20 § 161.190(c)(2)(i)-(xii). In this sample, 24 of 24 cans were below the minimum  
21 standard of fill.

22 3. Another test by NOAA determined that, over a sample of 24 cans,  
23 5-ounce cans of Trader Joe’s Albacore Tuna in Water Half Salt contain an average of  
24

25 <sup>1</sup> As used herein, the term “Trader Joe’s Tuna” refers to (i) 5-ounce canned Trader  
26 Joe’s Albacore Tuna in Water Salt Added, (ii) 5-ounce canned Trader Joe’s Albacore  
27 Tuna in Water Half Salt, (iii) 5-ounce canned Trader Joe’s Albacore Tuna in Water  
28 No Salt Added, (iv) 5-ounce canned Trader Joe’s Albacore Tuna in Olive Oil Salt  
Added, (v) 5-ounce canned Trader Joe’s Skipjack Tuna in Water With Sea Salt, and  
(vi) 5-ounce canned Trader Joe’s Yellowfin Tuna in Olive Oil Solid Light.

1 only 2.43 ounces of pressed cake tuna, which is 24.8% below the federally mandated  
2 minimum standard of fill of 3.23 ounces for these cans. In this sample, 24 of 24 cans  
3 were below the minimum standard of fill.

4 4. Another test by NOAA determined that, over a sample of 24 cans,  
5 5-ounce cans of Trader Joe’s Albacore Tuna in Water No Salt Added contain an  
6 average of only 2.43 ounces of pressed cake tuna, which is 24.8% below the  
7 federally mandated minimum standard of fill of 3.23 ounces for these cans. In this  
8 sample, 24 of 24 cans were below the minimum standard of fill.

9 5. Another test by NOAA determined that, over a sample of 24 cans,  
10 5-ounce cans of Trader Joe’s Albacore Tuna in Olive Oil Salt Added contain an  
11 average of only 2.87 ounces of pressed cake tuna, which is 11.1% below the  
12 federally mandated minimum standard of fill of 3.23 ounces for these cans. In this  
13 sample, 23 of 24 cans were below the minimum standard of fill.

14 6. Another test by NOAA determined that, over a sample of 24 cans,  
15 5-ounce cans of Trader Joe’s Skipjack Tuna in Water With Sea Salt contain an  
16 average of only 2.56 ounces of pressed cake tuna, which is 9.9% below the federally  
17 mandated minimum standard of fill of 2.84 ounces for these cans. In this sample, 23  
18 of 24 cans were below the minimum standard of fill.

19 7. Another test by NOAA determined that, over a sample of 24 cans,  
20 5-ounce cans of Trader Joe’s Yellowfin Tuna in Olive Oil Solid Light contain an  
21 average of only 2.78 ounces of pressed cake tuna, which is 13.9% below the  
22 federally mandated minimum standard of fill of 3.23 ounces for these cans. In this  
23 sample, 24 of 24 cans were below the minimum standard of fill.

24 8. Given that Trader Joe’s Tuna is underfilled, the cans are required to  
25 include the statement “‘Below Standard in Fill’ printed in Cheltenham bold  
26 condensed caps” on the container “in 12-point type” surrounded by “lines, not less  
27 than 6 points in width, forming a rectangle” that are “so placed as to be easily seen  
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1 when the name of the food or any pictorial representation thereof is viewed,  
2 wherever such name or representation appears so conspicuously as to be easily seen  
3 under customary conditions of purchase.” See 21 C.F.R. § 161.190(c)(4); 21 C.F.R.  
4 § 130.14(b). However, none of the Trader Joe’s Tuna products at issue included this  
5 statement on the label.

6 9. In addition to the requirements of 21 C.F.R. § 161.190 and 21 C.F.R.  
7 § 130.14(b), Defendants’ conduct also violates California’s Sherman Food, Drug and  
8 Cosmetic Law, which prescribes labeling requirements that are similar, if not  
9 identical to, the requirements under the federal Food, Drug, and Cosmetic Act, and  
10 its regulations thereunder. Accordingly, Trader Joe’s Tuna is not *only* underfilled  
11 pursuant to federal law. It is also underfilled pursuant to California state law  
12 regarding food and drug labeling. Additionally, Plaintiffs’ purchases of Trader Joe’s  
13 Tuna give rise to warranty and consumer protection claims under California and  
14 New York state law. See *infra*.

15 10. Defendants’ conduct also runs contrary to the standard practices and  
16 procedures of other tuna manufacturers.

17 11. Plaintiffs assert claims on behalf of themselves and a nationwide class  
18 of purchasers of Trader Joe’s Tuna for breach of express warranty, breach of the  
19 implied warranty of merchantability, unjust enrichment, negligent misrepresentation,  
20 and fraud. Plaintiff Magier also brings claims on behalf of herself and a New York  
21 subclass for violation of New York Gen. Bus. Law § 349 and violation of New York  
22 Gen. Bus. Law § 350. Plaintiff Reyes brings claims on behalf of herself and a  
23 California subclass for violation of California’s Consumers Legal Remedies Act  
24 (“CLRA”), violation of California’s Unfair Competition Law (“UCL”), and violation  
25 of California’s False Advertising Law (“FAL”).  
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**THE PARTIES**

1  
2           12. Plaintiff Sarah Magier is a citizen of New York who resides in New  
3 York, New York. Through the end of 2013, Plaintiff Magier purchased 5-ounce  
4 canned Trader Joe’s Albacore Tuna in Water No Salt Added, which were underfilled  
5 and thus substantially underweight, at a Trader Joe’s retail store located in Chelsea,  
6 New York City. Plaintiff Magier purchased her Trader Joe’s Tuna for her household  
7 and personal use. Moreover, she purchased her Trader Joe’s Tuna after reading the  
8 label on the can that said it contained an adequate amount of tuna for a 5-ounce can.  
9 The representations on the label were substantial factors influencing her decision to  
10 purchase Trader Joe’s Tuna. She would not have purchased Trader Joe’s Tuna if she  
11 had known that the cans were underfilled and underweight pursuant to state law and  
12 her expectations based on the standard practices and procedures of other tuna  
13 manufacturers. She also would not have purchased Trader Joe’s Tuna if the labels  
14 had properly contained the statement “‘Below Standard in Fill’ printed in  
15 Cheltenham bold condensed caps ... in 12-point type” surrounded by “lines, not less  
16 than 6 points in width, forming a rectangle” that are “so placed as to be easily seen  
17 when the name of the food or any pictorial representation thereof is viewed,  
18 wherever such name or representation appears so conspicuously as to be easily seen  
19 under customary conditions of purchase.” *See* 21 C.F.R. § 161.190(c)(4); 21 C.F.R.  
20 § 130.14(b).

21           13. Plaintiff Atzimba Reyes is a citizen of California who resides in  
22 Cypress, California. Through 2014, Plaintiff Reyes purchased 5-ounce canned  
23 Trader Joe’s Albacore Tuna in Water Salt Added, which were underfilled and thus  
24 substantially underweight, at a Trader Joe’s retail store located in Davis, California.  
25 Plaintiff Reyes purchased her Trader Joe’s Tuna for her household and personal use.  
26 Moreover, she purchased her Trader Joe’s Tuna after reading the label on the can  
27 that said it contained an adequate amount of tuna for a 5-ounce can. The  
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1 representations on the label were substantial factors influencing her decision to  
2 purchase Trader Joe's Tuna. She would not have purchased Trader Joe's Tuna if she  
3 had known that the cans were underfilled and underweight pursuant to state law and  
4 her expectations based on the standard practices and procedures of other tuna  
5 manufacturers. She also would not have purchased Trader Joe's Tuna if the labels  
6 had properly contained the statement "'Below Standard in Fill' printed in  
7 Cheltenham bold condensed caps ... in 12-point type" surrounded by "lines, not less  
8 than 6 points in width, forming a rectangle" that are "so placed as to be easily seen  
9 when the name of the food or any pictorial representation thereof is viewed,  
10 wherever such name or representation appears so conspicuously as to be easily seen  
11 under customary conditions of purchase." *See* 21 C.F.R. § 161.190(c)(4); 21 C.F.R.  
12 § 130.14(b).

13         14. Defendant Trader Joe's Company is a California corporation with its  
14 principal place of business in Monrovia, California. Trader Joe's Company is an  
15 American privately-held chain of specialty grocery stores with approximately 457  
16 locations in 40 states and Washington, D.C. Trader Joe's Company is a market  
17 leader in organic and fresh food groceries in the United States. Trader Joe's  
18 Company has over 10,000 employees and realized approximately \$9.38 billion in  
19 revenue and \$578 million in net income in 2014. As part of its operations, Trader  
20 Joe's Company is engaged in the processing, packaging, and distribution of Trader  
21 Joe's-brand canned tuna products, which it sells in its retail locations.

22         15. Defendant Trader Joe's East Inc. is a Massachusetts corporation with its  
23 principal place of business in Boston, Massachusetts. Based on information and  
24 belief, Defendant Trader Joe's East Inc. is a subsidiary of Trader Joe's Company.

25         16. Whenever reference is made in this Complaint to any representation,  
26 act, omission, or transaction of Trader Joe's, that allegation shall mean that Trader  
27 Joe's did the act, omission, or transaction through its officers, directors, employees,  
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1 agents, and/or representatives while they were acting within the actual or ostensible  
2 scope of their authority.

3 **JURISDICTION AND VENUE**

4 17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §  
5 1332(d)(2)(A) because this case is a class action where the aggregate claims of all  
6 members of the proposed class are in excess of \$5,000,000.00, exclusive of interest  
7 and costs, and most members of the proposed class are citizens of states different  
8 from Defendants. This Court also has supplemental jurisdiction over state law  
9 claims pursuant to 28 U.S.C. § 1367.

10 18. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this  
11 action because a substantial part of the events, omissions, and acts giving rise to the  
12 claims herein occurred in this District. Defendants distributed, advertised, and sold  
13 Trader Joe’s Tuna, which is the subject of the present complaint, in this District.  
14 Additionally, Defendant Trader Joe’s Company’s principle place of business is in  
15 this District. Moreover, the misrepresentations at issue likely originated in this  
16 District. Furthermore, this matter is a consolidated proceeding, following a petition  
17 to the U.S. Judicial Panel on Multidistrict Litigation (the “JPML”), where the JPML  
18 considered the petition withdrawn in favor of voluntary transfer and coordination in  
19 this District pursuant to 28 U.S.C. § 1404.

20 **CLASS REPRESENTATION ALLEGATIONS**

21 19. Plaintiffs seek to represent a class defined as all persons in the United  
22 States who purchased Trader Joe’s Tuna (the “Class”). Excluded from the Class are  
23 persons who made such purchase for purpose of resale.

24 20. Plaintiff Magier also seeks to represent a subclass of all Class members  
25 who purchased Trader Joe’s Tuna in New York (the “New York Subclass”).

26 21. Plaintiff Reyes seeks to represent a subclass of all Class members who  
27 purchased Trader Joe’s Tuna in California (the “California Subclass”).  
28

1           22. Members of the Class and Subclasses are so numerous that their  
2 individual joinder herein is impracticable. On information and belief, members of  
3 the Class and Subclasses number in the millions. The precise number of Class  
4 members and their identities are unknown to Plaintiffs at this time but may be  
5 determined through discovery. Class members may be notified of the pendency of  
6 this action by mail and/or publication through the distribution records of Defendants  
7 and third party retailers and vendors.

8           23. Common questions of law and fact exist as to all Class members and  
9 predominate over questions affecting only individual Class members. Common legal  
10 and factual questions include, but are not limited to: whether Trader Joe's Tuna is  
11 underfilled and thus substantially underweight; whether Defendants warranted that  
12 Trader Joe's Tuna contained an adequate amount of tuna for a 5-ounce can; whether  
13 Defendants warranted that Trader Joe's Tuna is legal for sale in the United States;  
14 whether Defendants breached these warranties; and whether Defendants committed  
15 statutory and common law fraud by doing so.

16           24. The claims of the named Plaintiffs are typical of the claims of the Class  
17 in that the named Plaintiffs purchased Trader Joe's Tuna in reliance on the  
18 representations and warranties described above and suffered a loss as a result of that  
19 purchase.

20           25. Plaintiffs are adequate representatives of the Class and their respective  
21 Subclasses because their interests do not conflict with the interests of the Class  
22 members they seek to represent, they have retained competent counsel experienced  
23 in prosecuting class actions, and they intend to prosecute this action vigorously. The  
24 interests of Class members will be fairly and adequately protected by Plaintiffs and  
25 their counsel.

26           26. The class mechanism is superior to other available means for the fair  
27 and efficient adjudication of the claims of Class members. Each individual Class  
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1 member may lack the resources to undergo the burden and expense of individual  
2 prosecution of the complex and extensive litigation necessary to establish  
3 Defendants' liability. Individualized litigation increases the delay and expense to all  
4 parties and multiplies the burden on the judicial system presented by the complex  
5 legal and factual issues of this case. Individualized litigation also presents a  
6 potential for inconsistent or contradictory judgments. In contrast, the class action  
7 device presents far fewer management difficulties and provides the benefits of single  
8 adjudication, economy of scale, and comprehensive supervision by a single court on  
9 the issue of Defendants' liability. Class treatment of the liability issues will ensure  
10 that all claims and claimants are before this Court for consistent adjudication of the  
11 liability issues.

12 **COUNT I**

13 **Breach Of Express Warranty**

14 27. Plaintiffs hereby incorporate by reference the allegations contained in  
15 all preceding paragraphs of this complaint.

16 28. Plaintiffs bring this claim individually and on behalf of the proposed  
17 Class and Subclasses against Defendants.

18 29. Defendants, as the designers, manufacturers, marketers, distributors,  
19 and/or sellers, expressly warranted that Trader Joe's Tuna contained an adequate  
20 amount of tuna for a 5-ounce can and that Trader Joe's Tuna is legal for sale in the  
21 United States.

22 30. In fact, Trader Joe's Tuna is not fit for such purposes because each of  
23 these express warranties is false. Particularly, Trader Joe's Tuna is underfilled and  
24 thus substantially underweight, does not contain an adequate amount of tuna for a 5-  
25 ounce can, and is illegal for sale in the United States.

26 31. As a direct and proximate cause of Defendants' breach of express  
27 warranty, Plaintiffs and Class members have been injured and harmed because: (a)

1 they would not have purchased Trader Joe's Tuna on the same terms if the true facts  
2 were known concerning its quantity and failure to comply with state law and the  
3 standard practices and procedures of other tuna manufacturers; (b) they paid a price  
4 premium for Trader Joe's Tuna due to Defendants' promises that it contained an  
5 adequate amount of tuna for a 5-ounce can; and (c) Trader Joe's Tuna did not have  
6 the characteristics, ingredients, uses, benefits, or quantities as promised.

7 **COUNT II**

8 **Breach Of Implied Warranty Of Merchantability**

9 32. Plaintiffs hereby incorporate by reference the allegations contained in  
10 all preceding paragraphs of this complaint.

11 33. Plaintiffs bring this claim individually and on behalf of the proposed  
12 Class and Subclasses against Defendants.

13 34. Defendants, as the designers, manufacturers, marketers, distributors,  
14 and/or sellers, impliedly warranted that Trader Joe's Tuna contained an adequate  
15 amount of tuna for a 5-ounce can and that Trader Joe's Tuna is legal for sale in the  
16 United States.

17 35. Defendants breached the warranty implied in the contract for the sale of  
18 Trader Joe's Tuna because it could not pass without objection in the trade under the  
19 contract description, the goods were not of fair average quality within the  
20 description, and the goods were unfit for their intended and ordinary purpose because  
21 Trader Joe's Tuna is underfilled and thus substantially underweight, does not contain  
22 an adequate amount of tuna for a 5-ounce can, and is illegal for sale in the United  
23 States. As a result, Plaintiffs and Class members did not receive the goods as  
24 impliedly warranted by Defendants to be merchantable.

25 36. Plaintiffs and Class members purchased Trader Joe's Tuna in reliance  
26 upon Defendants' skill and judgment and the implied warranties of fitness for the  
27 purpose.  
28

1 37. Trader Joe's Tuna was not altered by Plaintiffs or Class members.

2 38. Trader Joe's Tuna was defective when it left the exclusive control of  
3 Defendants.

4 39. Defendants knew that Trader Joe's Tuna would be purchased and used  
5 without additional testing by Plaintiffs and Class members.

6 40. Trader Joe's Tuna was defectively designed and unfit for its intended  
7 purpose, and Plaintiffs and Class members did not receive the goods as warranted.

8 41. As a direct and proximate cause of Defendants' breach of the implied  
9 warranty, Plaintiffs and Class members have been injured and harmed because: (a)  
10 they would not have purchased Trader Joe's Tuna on the same terms if the true facts  
11 were known concerning its quantity and failure to comply with state law and the  
12 standard practices and procedures of other tuna manufacturers; (b) they paid a price  
13 premium for Trader Joe's Tuna due to Defendants' promises that it contained an  
14 adequate amount of tuna for a 5-ounce can; and (c) Trader Joe's Tuna did not have  
15 the characteristics, ingredients, uses, benefits, or quantities as promised.

16 **COUNT III**

17 **Unjust Enrichment**

18 42. Plaintiffs hereby incorporate by reference the allegations contained in  
19 all preceding paragraphs of this complaint.

20 43. Plaintiffs bring this claim individually and on behalf of the proposed  
21 Class and Subclasses against Defendants.

22 44. Plaintiffs and Class members conferred benefits on Defendants by  
23 purchasing Trader Joe's Tuna.

24 45. Defendants have been unjustly enriched in retaining the revenues  
25 derived from Plaintiffs and Class members' purchases of Trader Joe's Tuna.  
26 Retention of those moneys under these circumstances is unjust and inequitable  
27 because Defendants misrepresented that Trader Joe's Tuna contained an adequate  
28

1 amount of tuna for a 5-ounce can and that Trader Joe's Tuna is legal for sale in the  
2 United States. These misrepresentations caused injuries to Plaintiffs and Class  
3 members because they would not have purchased Trader Joe's Tuna if the true facts  
4 were known.

5 46. Because Defendants' retention of the non-gratuitous benefits conferred  
6 on them by Plaintiffs and Class members is unjust and inequitable, Defendants must  
7 pay restitution to Plaintiffs and Class members for their unjust enrichment, as  
8 ordered by the Court.

9 **COUNT IV**

10 **Deceptive Acts Or Practices, New York Gen. Bus. Law § 349**

11 47. Plaintiff Magier hereby incorporates by reference the allegations  
12 contained in all preceding paragraphs of this complaint.

13 48. Plaintiff Magier brings this claim individually and on behalf of the  
14 proposed New York Subclass against Defendants.

15 49. By the acts and conduct alleged herein, Defendants committed unfair or  
16 deceptive acts and practices by misrepresenting that Trader Joe's Tuna contained an  
17 adequate amount of tuna for a 5-ounce can and that Trader Joe's Tuna is legal for  
18 sale in the United States.

19 50. The foregoing deceptive acts and practices were directed at consumers.

20 51. The foregoing deceptive acts and practices are misleading in a material  
21 way because they fundamentally misrepresent the characteristics of Trader Joe's  
22 Tuna products to induce consumers to purchase same.

23 52. Plaintiff Magier and members of the New York Subclass were injured  
24 because: (a) they would not have purchased Trader Joe's Tuna on the same terms if  
25 the true facts were known concerning its quantity and failure to comply with state  
26 law and the standard practices and procedures of other tuna manufacturers; (b) they  
27 paid a price premium for Trader Joe's Tuna due to Defendants' promises that it  
28

1 contained an adequate amount of tuna for a 5-ounce can; and (c) Trader Joe's Tuna  
2 did not have the characteristics, ingredients, uses, benefits, or quantities as promised.

3 53. On behalf of herself and other members of the New York Subclass,  
4 Plaintiff Magier seeks to enjoin the unlawful acts and practices described herein, to  
5 recover her actual damages or fifty dollars, whichever is greater, three times actual  
6 damages, and reasonable attorneys' fees.

7 **COUNT V**

8 **Deceptive Acts Or Practices, New York Gen. Bus. Law § 350**

9 54. Plaintiff Magier hereby incorporates by reference the allegations  
10 contained in all preceding paragraphs of this complaint.

11 55. Plaintiff Magier brings this claim individually and on behalf of the  
12 proposed New York Subclass against Defendants.

13 56. Based on the foregoing, Defendants engaged in consumer-oriented  
14 conduct that is deceptive or misleading in a material way which constitutes false  
15 advertising in violation of Section 350 of the New York General Business Law by  
16 misrepresenting that Trader Joe's Tuna contained an adequate amount of tuna for a  
17 5-ounce can and that Trader Joe's Tuna is legal for sale in the United States.

18 57. The foregoing advertising was directed at consumers and was likely to  
19 mislead a reasonable consumer acting reasonably under the circumstances.

20 58. These misrepresentations have resulted in consumer injury or harm to  
21 the public interest.

22 59. Plaintiff Magier and members of the New York Subclass were injured  
23 because: (a) they would not have purchased Trader Joe's Tuna on the same terms if  
24 the true facts were known concerning its quantity and failure to comply with state  
25 law and the standard practices and procedures of other tuna manufacturers; (b) they  
26 paid a price premium for Trader Joe's Tuna due to Defendants' promises that it  
27

1 contained an adequate amount of tuna for a 5-ounce can; and (c) Trader Joe's Tuna  
2 did not have the characteristics, ingredients, uses, benefits, or quantities as promised.

3 60. On behalf of herself and other members of the New York Subclass,  
4 Plaintiff Magier seeks to enjoin the unlawful acts and practices described herein, to  
5 recover her actual damages or five hundred dollars, whichever is greater, three times  
6 actual damages, and reasonable attorneys' fees.

7 **COUNT VI**

8 **Negligent Misrepresentation**

9 61. Plaintiffs hereby incorporate by reference the allegations contained in  
10 all preceding paragraphs of this complaint.

11 62. Plaintiffs bring this claim individually and on behalf of the proposed  
12 Class and Subclasses against Defendants.

13 63. As discussed above, Defendants misrepresented that Trader Joe's Tuna  
14 contained an adequate amount of tuna for a 5-ounce can and that Trader Joe's Tuna  
15 is legal for sale in the United States. Defendants had a duty to disclose this  
16 information.

17 64. At the time Defendants made these representations, Defendants knew or  
18 should have known that these representations were false or made them without  
19 knowledge of their truth or veracity.

20 65. At an absolute minimum, Defendants negligently misrepresented and/or  
21 negligently omitted material facts about Trader Joe's Tuna.

22 66. The negligent misrepresentations and omissions made by Defendants,  
23 upon which Plaintiffs and Class members reasonably and justifiably relied, were  
24 intended to induce and actually induced Plaintiffs and Class members to purchase  
25 Trader Joe's Tuna.

26 67. Plaintiffs and Class members would not have purchased Trader Joe's  
27 Tuna if the true facts had been known.



1           74. Plaintiff Reyes brings this claim individually and on behalf of the  
2 proposed California Subclass against Defendants.

3           75. California’s Consumers Legal Remedies Act, Cal. Civ. Code  
4 § 1770(a)(5), prohibits “[r]epresenting that goods or services have sponsorship,  
5 approval, characteristics, ingredients, uses, benefits, or quantities which they do not  
6 have or that a person has a sponsorship, approval, status, affiliation, or connection  
7 which he or she does not have.”

8           76. California’s Consumers Legal Remedies Act, Cal. Civ. Code  
9 § 1770(a)(9), prohibits “[a]dvertising goods or services with intent not to sell them as  
10 advertised.”

11           77. Defendants violated these provisions by misrepresenting that Trader  
12 Joe’s Tuna contained an adequate amount of tuna for a 5-ounce can and that Trader  
13 Joe’s Tuna is legal for sale in the United States.

14           78. Plaintiff Reyes and the California Subclass suffered injuries caused by  
15 Defendants because: (a) they would not have purchased Trader Joe’s Tuna on the  
16 same terms if the true facts were known concerning its quantity and failure to  
17 comply with state law and the standard practices and procedures of other tuna  
18 manufacturers; (b) they paid a price premium for Trader Joe’s Tuna due to  
19 Defendants’ promises that it contained an adequate amount of tuna for a 5-ounce  
20 can; and (c) Trader Joe’s Tuna did not have the characteristics, ingredients, uses,  
21 benefits, or quantities as promised.

22           79. On or about December 29, 2015, prior to filing this action, a CLRA  
23 notice letter was served on Defendants which complies in all respects with California  
24 Civil Code § 1782(a). Plaintiffs sent Defendants a letter via certified mail, return  
25 receipt requested, advising Defendants that they were in violation of the CLRA and  
26 demanding that they cease and desist from such violations and make full restitution  
27

1 by refunding the monies received therefrom. A true and correct copy of Plaintiffs’  
2 letter is attached hereto as Exhibit A.

3 80. Wherefore, Plaintiff Reyes seeks damages, restitution, and injunctive  
4 relief for this violation of the CLRA.

5 **COUNT IX**

6 **Violation Of California’s Unfair Competition Law,**

7 **California Business & Professions Code §§ 17200, et seq.**

8 81. Plaintiff Reyes hereby incorporates by reference the allegations  
9 contained in all preceding paragraphs of this complaint.

10 82. Plaintiff Reyes brings this claim individually and on behalf of the  
11 proposed California Subclass against Defendants.

12 83. Defendants are subject to California’s Unfair Competition Law, Cal.  
13 Bus. & Prof. Code §§ 17200, et seq. The UCL provides, in pertinent part: “Unfair  
14 competition shall mean and include unlawful, unfair or fraudulent business practices  
15 and unfair, deceptive, untrue or misleading advertising ....”

16 84. Defendants’ misrepresentations and other conduct, described herein,  
17 violated the “unlawful” prong of the UCL by violating the CLRA as described  
18 herein; the FAL as described herein; and Cal. Com. Code § 2607.

19 85. Defendants’ misrepresentations and other conduct, described herein,  
20 violated the “unfair” prong of the UCL in that their conduct is substantially injurious  
21 to consumers, offends public policy, and is immoral, unethical, oppressive, and  
22 unscrupulous, as the gravity of the conduct outweighs any alleged benefits.

23 86. Defendants violated the “fraudulent” prong of the UCL by making  
24 misrepresentations about Trader Joe’s Tuna, as described herein.

25 87. Plaintiff Reyes and the California Subclass lost money or property as a  
26 result of Defendants’ UCL violations because: (a) they would not have purchased  
27 Trader Joe’s Tuna on the same terms if the true facts were known concerning its  
28

1 quantity and failure to comply with state law and the standard practices and  
2 procedures of other tuna manufacturers; (b) they paid a price premium for Trader  
3 Joe's Tuna due to Defendants' promises that it contained an adequate amount of tuna  
4 for a 5-ounce can; and (c) Trader Joe's Tuna did not have the characteristics,  
5 ingredients, uses, benefits, or quantities as promised.

6 **COUNT X**

7 **Violation Of California's False Advertising Law,**  
8 **California Business & Professions Code §§ 17500, et seq.**

9 88. Plaintiff Reyes hereby incorporates by reference the allegations  
10 contained in all preceding paragraphs of this complaint.

11 89. Plaintiff Reyes brings this claim individually and on behalf of the  
12 proposed California Subclass against Defendants.

13 90. California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500,  
14 *et seq.*, makes it "unlawful for any person to make or disseminate or cause to be  
15 made or disseminated before the public in this state, ... in any advertising device ... or  
16 in any other manner or means whatever, including over the Internet, any statement,  
17 concerning ... personal property or services, professional or otherwise, or  
18 performance or disposition thereof, which is untrue or misleading and which is  
19 known, or which by the exercise of reasonable care should be known, to be untrue or  
20 misleading."

21 91. Defendants committed acts of false advertising, as defined by §17500,  
22 by misrepresenting that Trader Joe's Tuna contained an adequate amount of tuna for  
23 a 5-ounce can and that Trader Joe's Tuna is legal for sale in the United States.

24 92. Defendants knew or should have known, through the exercise of  
25 reasonable care that their representations about Trader Joe's Tuna were untrue and  
26 misleading.



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- F. For an order of restitution and all other forms of equitable monetary relief;
- G. For injunctive relief as pleaded or as the Court may deem proper; and
- H. For an order awarding Plaintiffs, the Class, and the Subclasses their reasonable attorneys’ fees and expenses and costs of suit.

**JURY DEMAND**

Plaintiffs demand a trial by jury on all causes of action and issues so triable.

Dated: June 30, 2017

Respectfully submitted,

**BURSOR & FISHER, P.A.**

By:           /s/ L. Timothy Fisher            
L. Timothy Fisher

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*Interim Class Counsel*

**EXHIBIT A**



**BURSOR & FISHER**  
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December 21, 2015

**Via Certified Mail – Return Receipt Requested**

Trader Joe's Company  
800 S. Shamrock Avenue  
Monrovia, CA 91016

Trader Joe's East Inc.  
711 Atlantic Avenue, Floor 3  
Boston, MA 02111

*Re: Notice and Demand Letter Pursuant to California Civil Code § 1782 and U.C.C. § 2-607*

To Whom It May Concern:

This letter serves as a preliminary notice and demand for corrective action by Trader Joe's Company and Trader Joe's East Inc. (collectively, "Trader Joe's") pursuant to the provisions of California Civil Code § 1782, on behalf of our clients, Atzimba Reyes and Sarah Magier, and a class of all similarly situated purchasers (the "Class") of 5-ounce canned Trader Joe's Albacore Tuna in Water Salt Added, 5-ounce canned Trader Joe's Albacore Tuna in Water Half Salt, 5-ounce canned Trader Joe's Albacore Tuna in Water No Salt Added, 5-ounce canned Trader Joe's Skipjack Tuna in Water With Sea Salt, 5-ounce canned Trader Joe's Albacore Tuna in Olive Oil Salt Added, and 5-ounce canned Trader Joe's Yellowfin Tuna in Olive Oil Solid Light (collectively, "Trader Joe's Tuna"). This letter also serves as notice pursuant to U.C.C. § 2-607(3)(a) concerning the breaches of express and implied warranties described herein.

Our clients purchased one or more 5-ounce cans of Trader Joe's Tuna, which were underfilled and thus substantially underweight. Independent testing by the U.S. National Oceanic and Atmospheric Administration ("NOAA")<sup>1</sup> determined that 5-ounce cans of Trader Joe's Albacore Tuna in Water Salt Added contain an average of only 2.61 ounces of pressed cake tuna when measured precisely according to the methods specified by 21 C.F.R. § 161.190(c). This is 19.2% below the federally mandated minimum standard of fill for these 5-ounce cans. See 21 C.F.R. § 161.190(c)(2)(i)-(xii). Similarly, NOAA determined that 5-ounce cans of Trader Joe's Skipjack Tuna in Water With Sea Salt contain an average of only 2.56 ounces of pressed cake tuna when measured precisely according to the methods specified by 21 C.F.R. § 161.190(c), which is 9.9% below the federally mandated minimum standard of fill for these 5-ounce cans. These results are further corroborated by additional testing by NOAA. In

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<sup>1</sup> NOAA is an agency of the U.S. Department of Commerce with responsibility for regulating the nation's fisheries.

short, Trader Joe's is cheating purchasers by providing less tuna than they are paying for. *See* U.C.C. §§ 2-313, 2-314.

By systematically underfilling and selling short-weighted cans of Trader Joe's Tuna, Trader Joe's has violated and continues to violate subsections (a)(5) and (a)(9) of the Consumers Legal Remedies Act, Civil Code § 1770, which prohibits representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, and advertising goods or services with intent not to sell them as advertised.

On behalf of our clients and the Class, we hereby demand that Trader Joe's immediately (1) cease and desist from continuing to underfill and sell short-weighted cans of tuna; (2) issue an immediate recall of these underfilled, short-weighted cans; and (3) make full restitution to all purchasers of Trader Joe's Tuna of all purchase money obtained from sales thereof.

We also demand that Trader Joe's preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to, the following:

1. All documents concerning the packaging, canning, and manufacturing process for Trader Joe's Tuna;
2. All documents concerning the measurements of the quantity of tuna in Trader Joe's Tuna;
3. All standard of fill tests conducted on Trader Joe's Tuna;
4. All documents concerning the pricing, advertising, marketing, and/or sale of Trader Joe's Tuna;
5. All communications with customers concerning complaints or comments concerning the underfilling, short-weighting, or otherwise referencing the quantity of tuna in Trader Joe's Tuna.

If Trader Joe's contends that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents immediately upon receipt of this letter.

This letter also serves as a thirty (30) day notice and demand requirement under § 1782 for damages. Accordingly, should Trader Joe's fail to rectify the situation on a class-wide basis within 30 days of receipt of this letter, we will seek actual damages, plus punitive damages, interest, attorneys' fees and costs.

Please contact me right away if you wish to discuss an appropriate way to remedy this matter. If I do not hear from you promptly, I will take that as an indication that you are not interested in doing so.

Very truly yours,



Neal J. Deckant

**BURSOR & FISHER, P.A.**

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Joel D. Smith (State Bar No. 244902)  
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*Interim Class Counsel*

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

*In re Trader Joe's Tuna Litigation*

Case No. 2:16-cv-01371-ODW-AJW

**AFFIDAVIT OF VENUE**

Hon. Otis D. Wright II

I, L. TIMOTHY FISHER, declare as follows:

1. I am an attorney at law licensed to practice in the State of California. I am a member of the bar of this Court, and I am a partner at Bursor & Fisher, P.A., Interim Class Counsel for Plaintiffs. I make this declaration to the best of my knowledge, information, and belief of the facts stated herein.

2. This cause of action has been properly commenced in the proper District for trial because a substantial part of the events, omissions, and acts giving rise to the claims

1 herein occurred in this District. Defendants distributed, advertised, and sold Trader  
2 Joe's Tuna, which is the subject of the present complaint, in this District. Additionally,  
3 Defendant Trader Joe's Company's principle place of business is in this District.  
4 Moreover, the misrepresentations at issue likely originated in this District. Furthermore,  
5 this matter is a consolidated proceeding, following a petition to the U.S. Judicial Panel  
6 on Multidistrict Litigation (the "JPML"), where the JPML considered the petition  
7 withdrawn in favor of voluntary transfer and coordination in this District pursuant to 28  
8 U.S.C. § 1404.

9 I declare under penalty of perjury under the laws of the United States that the  
10 foregoing is true and correct and that this declaration was signed on the 20th day of  
11 January, 2017, at Walnut Creek, California.  
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15 L. TIMOTHY FISHER  
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