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11 *Counsel for Plaintiff Vivian Lejbman*  
 12 *and the Proposed Class*

13 **IN THE UNITED STATES DISTRICT COURT**  
 14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 **VIVIAN LEJBMAN** individually and on  
 16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 **TRANSNATIONAL FOODS, INC.**, a  
 Florida corporation, and **CONSERVAS**  
 20 **CERQUEIRA, S.A.**, a foreign corporation,

21 Defendants.

CASE NO.: **'17CV1317 CAB MDD**

JUDGE:

**COMPLAINT FOR EQUITABLE RELIEF**  
**AND DAMAGES**

**CLASS ACTION**

*JURY TRIAL DEMANDED*

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1 Plaintiff, VIVIAN LEJBMAN (“Plaintiff”), individually, and on behalf of all others  
2 similarly situated, by and through the undersigned counsel, and pursuant to all applicable *Federal*  
3 *Rules of Civil Procedure*, hereby files this Class Action Complaint for Equitable Relief and  
4 Damages against Defendants, TRANSNATIONAL FOODS, INC. (“Transnational” or  
5 “Defendant”), and CONSERVAS CERQUEIRA, S.A. (“Cerqueira” or “Defendant”)  
6 (collectively, “Defendants”), and alleges the following:

7 **I. INTRODUCTION**

8 1. This is a consumer protection class action based on Defendants’ co-dependent  
9 scheme in marketing, advertising, labeling, packaging, distributing, and selling its Pampa  
10 Octopus, available in the following flavor varieties: (1) Pampa Octopus in Garlic Sauce; (2)  
11 Pampa Giant Spiced Octopus in Marinara Sauce; and (3) Pampa Fancy Octopus in Vegetable Oil  
12 (collectively the “Product”), based on false, deceptive, unfair, and/or misleading affirmative  
13 representations and omissions that are likely to mislead reasonable consumers who purchased the  
14 Product, like Plaintiff and members of the proposed Class, because the Product is not Octopus,  
15 but is actually Squid (also known as Calamari), which is an inferior form of seafood that is  
16 cheaper than Octopus.

17 2. The Product’s representations and omissions deceive and mislead reasonable  
18 consumers to believe that the Product is Octopus, when in reality, it is Squid, which is cheaper,  
19 lower quality and more abundant than actual Octopus, which is a rarer and highly sought after  
20 food delicacy than Squid.

21 3. As the supplier of the Squid, Cerqueira knows or should know that it is not  
22 Octopus. However, despite this, Cerqueira caused the Product to be called Octopus because the  
23 Defendants both profit far more by selling cheap Squid as Octopus, to the detriment of reasonable  
24 consumers, like Plaintiff and members of the Class.

25 4. Plaintiff and members of the putative Class have suffered injury in fact, lost  
26 money or property, and suffered economic damages as a result of Defendants’ wrongful conduct  
27 in calling the Product Octopus, when it is really Squid.  
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1            5. Plaintiff brings this class action individually, and on behalf of all other similarly  
 2 situated purchasers of the Product, throughout the United States—or alternatively throughout the  
 3 State of California (“Class”)—during the Class Period (defined as the period extending four-years  
 4 prior to the date of filing this Complaint, up to and including the date that Notice has been  
 5 provided to the Class), seeking actual damages, statutory damages, punitive damages, restitution,  
 6 disgorgement, injunctive relief, and all other available remedies and relief against Defendants, for  
 7 their unlawful distribution, sales, marketing, and advertising of the Product as being Octopus  
 8 when it is really Squid.

9            6. Plaintiff expressly does not seek to impose or enforce any obligations, laws, rules,  
 10 or regulations on the Defendants above or beyond those required by federal law.

11                                **II. JURISDICTION AND VENUE**

12            7. This Court has jurisdiction over the subject matter presented by this Complaint  
 13 because it is a class action arising under the Class Action Fairness Act of 2005 (“CAFA”), Pub.  
 14 L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original jurisdiction of the  
 15 Federal Courts of any class action in which any member of the plaintiff class is a citizen of a state  
 16 different from any defendant, and in which the matter in controversy exceeds in the aggregate the  
 17 sum of \$5,000,000.00, exclusive of interest and costs.

18            8. Pursuant to 28 U.S.C. § 1332(d)(2)(A), Plaintiff alleges that the total claims of the  
 19 individual members of the Plaintiff Class in this action are in excess of \$5,000,000.00, in the  
 20 aggregate, exclusive of interest and costs, and as set forth below, diversity of citizenship exists  
 21 under CAFA because Plaintiff is a citizen of the State of California, and Defendants can be  
 22 considered citizens of States other than California. This Court has personal jurisdiction over  
 23 Defendants because, *inter alia*, Plaintiff’s claims against Defendants accrued within this  
 24 jurisdiction and judicial District.

25            9. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), because Defendants  
 26 conduct business in, and may be found in, this judicial District, and a substantial part of the  
 27 events or omissions giving rise to Plaintiff’s claims occurred in this judicial District. The  
 28 Declaration of Benjamin M. Lopatin, pursuant to Civil Code § 1780(c) of the Consumers Legal

1 Remedies Act, Civil Code §§ 1750, *et seq.* (“CLRA”), regarding venue, is submitted concurrently  
2 with this Complaint and is fully incorporated herein by reference.

3 **III. PARTIES**

4 10. Plaintiff, Vivian Lejbman, is an individual, over the age of 18, and is a citizen of  
5 the State of California, and resident of San Diego County.

6 11. Plaintiff believes the allegations contained herein to be true. All allegations herein  
7 are based on information and belief, and are likely to have evidentiary support after a reasonable  
8 opportunity to conduct discovery.

9 12. Transnational Foods, Inc., is a for profit corporation organized under the laws of  
10 the State of Florida, with its principal place of business located at 1110 Brickell Ave., Suite 808,  
11 Miami, FL 33131. Transnational lists with the California Secretary of State, a Registered Agent  
12 designated as Corporate Creations Network Inc., located at 1430 Truxtun Avenue, 5th  
13 Floor, Bakersfield, California 93301. Transnational can be considered a “citizen” of the State of  
14 Florida for diversity purposes.

15 13. At all times material hereto, Cerqueira was and is a foreign for profit  
16 corporation, located in Spain at Calle de Tomas Alonso, 80, 36208 Vigo, Pontevedra, Galicia.  
17 Cerqueira has substantial business relationships in the United States, by virtue of its  
18 partnerships, joint ventures, and/or contractual relationships with United States based entities  
19 it does business with and/or that sell its food products throughout the Country, including  
20 Transnational. Cerqueira has also engaged in substantial activity within the State of  
21 California, by, *inter alia*, having conspired to have Cerqueira’s Squid sold as being Octopus, and  
22 has, therefore, subjected itself to the jurisdiction of the Courts of this State, pursuant to  
23 Cal. Civ. Proc. Code § 410.10 (California’s Long-Arm Statute).

24 14. Plaintiff is informed and believes, and thereon alleges, that Defendants and its  
25 employees, subsidiaries, affiliates and other related entities, were, agents, servants and employees  
26 of each other, and, each was acting within the purpose and scope of said agency and employment.

27 15. Whenever referring to any acts or transactions of Defendants, such allegations  
28 shall be deemed to mean that the principals, officers, directors, employees, agents, and/or

1 representatives of Defendants committed, knew of, performed, authorized, ratified and/or directed  
2 such act or transaction for Defendants while engaged in the scope of their duties.

3 **IV. FACTUAL ALLEGATIONS**

4 16. Throughout the Class Period, Transnational Foods, Inc. (“Transnational”) has  
5 represented, advertised, marketed, labeled, distributed, and sold Squid (also known as Calamari)  
6 as being Octopus in its Pampa Octopus, available in the following flavor varieties: (1) Pampa  
7 Octopus in Garlic Sauce; (2) Pampa Giant Spiced Octopus in Marinara Sauce; and (3) Pampa  
8 Fancy Octopus in Vegetable Oil (collectively the “Product”).

9 17. Throughout the Class Period, Conservas Cerqueira, S.A. (“Cerqueira”), has  
10 supplied, distributed, represented and sold the Squid in the Product as being Octopus, and  
11 otherwise conspired and acted in concert with Transnational in the unlawful scheme.

12 18. Transnational is a food product brand with an array of grains, condiments, rice,  
13 seafood, pastas, olive oils, marinades and such other foods, which appear to cater to  
14 predominantly Hispanic communities. Its food products are sold at small and large retailers,  
15 including supermarkets, pharmacy chains, big box stores, and online throughout the United  
16 States.

17 19. Cerqueira is a large seafood supplier and cannery that supplies various seafood  
18 products to United States based brands. At all times relevant, and during the relevant class  
19 period, it supplied and supplies the Product to Transnational.

20 20. Transnational has labeled and sold its Octopus Products as Octopus (or pulpo in  
21 Spanish).

22 21. The word “Octopus” or “Pulpo” is prominently displayed on the label of the  
23 Product. Nowhere on the box does it state that the Octopus Products contain Squid instead of  
24 Octopus. This bait and switch is occurring, and has occurred throughout the Class Period,  
25 causing harm and economic damages to purchasers of the Product.

26 **The Product is Not Octopus**

27 22. Octopus and Squid are both cephalopods, but are otherwise completely  
28 different species.

1           23.    The scientific classification for Jumbo Squid, for example, is as follows:

2           Kingdom	Animalia
3           Phylum	Mollusca
4           Class	Cephalopoda
5           Order	Teuthida
6           Family	Ommastrephidae
7           Genus	Dosidicus
8           Species	Dosidicus gigas

9           24.    The scientific classification of Octopus is as follows:

10          Kingdom	Animalia
11          Phylum	Mollusca
12          Class	Cephalopoda
13          Order	Octopoda
14          Family	Octopodidae
15          Genus	Octopus
16          Species	Octopus vulgaris

17           25.    In recent years, the cost of Octopus has increased rapidly as Octopus  
18   populations have dwindled around the world due to over-fishing. In 2005, the European Union  
19   imposed new restrictions on Octopus fishing because the Octopus might be at risk of dying out  
20   from overfishing. Commission Takes Action to Safeguard Octopus Stocks, Oct. 12, 2005,  
21   European Commission Press Release, *available at* [http://europa.eu/rapid/press-release\\_IP-05-](http://europa.eu/rapid/press-release_IP-05-1262_en.htm)  
22   1262\_en.htm.

23           26.    In July 2014, it was reported that Octopus supplies had fallen, causing a  
24   dramatic increase in the price of Octopus (“[a] 45 percent decline in supply is pushing prices of  
25   octopus in Japan 50 to 60 percent higher than the same time period last year. In May, the volume  
26   of frozen uncooked octopus sold at public wholesale auctions in Tokyo was down 16 percent,  
27   while the price was up 30 percent from the same month in 2013”). Loew, Chris, *Japan Octopus*  
28   *Prices Up On Short West African Supply*, July 17, 2014, SeafoodSource.com, *available at*

1 [https://www.seafoodsource.com/news/supply-trade/japan-octopus-prices-up-on-short-west-](https://www.seafoodsource.com/news/supply-trade/japan-octopus-prices-up-on-short-west-african-supply)  
2 [african-supply.](https://www.seafoodsource.com/news/supply-trade/japan-octopus-prices-up-on-short-west-african-supply)

3 27. At the same time that Octopus populations have been declining, Squid  
4 populations have been thriving. In May 2013, Stanford biologist William Gilly gave a TED talk  
5 in which he explained that the Squid is thriving due to its ability to adapt to changing ocean  
6 conditions caused by global warming. *See TEDxStanford Highlights Breakthroughs in Research*  
7 *and Creativity, Stanford-style*, May 13, 2013, Stanford News, available at  
8 <http://news.stanford.edu/news/2013/may/tedx-at-stanford-051213.html>.

9 28. As a result of these developments, the cost of Octopus has risen dramatically  
10 compared to the cost of Squid. In addition, due to similarities in texture, Squid can easily be  
11 substituted for Octopus particularly when sold in a sauce like garlic sauce or marinara sauce.

12 29. Plaintiff is informed and believes that Transnational and Cerqueira have  
13 intentionally replaced the Octopus in its Octopus Products with Squid as a cheap substitute  
14 to save money because they knew an ordinary consumer would have trouble distinguishing the  
15 difference.

16 30. Defendants have unlawfully profited through their marketing, advertising, labeling,  
17 packaging, distributing, and selling of the Product as being Octopus on the front labeling of the  
18 Product, because the statement is a false, deceptive, and an unfair affirmative representation  
19 likely to mislead reasonable consumers who purchase the Product believing it to be Octopus,  
20 when it is really Squid.

21 31. Accordingly, the advertising, marketing, and labeling for the Product is deceptive  
22 and misleading because reasonable consumers are led to believe that the Product is of a higher  
23 grade and quality than its true value because it is not Octopus, but rather Squid.

24 32. Defendants capitalize on their superior knowledge of the Octopus and Squid  
25 industry, and consumers' inability to discern the truth about the Product from its label.

26 33. Defendants induce consumers to purchase the Product by representing that the  
27 Product is Octopus.  
28

1 34. Defendants, as reputable suppliers and distributors of Octopus, know or should  
2 know that the Product is not Octopus.

3 **Defendants Acted Together in Misrepresenting that the Product is Octopus**

4 35. Upon information and belief, Cerqueira is liable as the supplier because Cerqueira  
5 directly engages in the deceptive misrepresentation that the Product is Octopus when it is really  
6 Squid.

7 36. Upon information and belief, Cerqueira, had or has the right to control the nature  
8 and content of Transnational's labels, and/or did control them, and is thus a participant in the  
9 consumer transactions with Plaintiff and members of the Class.

10 37. Upon information and belief, Defendant, Cerqueira, also misrepresented, omitted,  
11 or falsified information in export documentation in Spain, and/or import documentation in the  
12 United States, likely to commit the unlawful conduct alleged herein.

13 38. Notwithstanding Cerqueira's directives to Transnational, Transnational is required  
14 to abide by, and not circumvent, state consumer protection laws.

15 39. Transnational could and should have resisted Cerqueira's instructions by either  
16 calling the Product Squid, instead of Octopus, or refusing to purchase from Cerqueira.

17 40. Transnational imports and distributes food products, "either under its own brands  
18 or private labels, to supermarkets, convenience stores and other retail outlets throughout the  
19 United States." *See Mann, Jr., Joseph A., Miami-Based Transnational Foods Sells Quality, Low-*  
20 *Cost Foods Nationwide, MiamiHerald.com, Dec. 27, 2016, available at*  
21 *http://www.miamiherald.com/news/business/biz-monday/article123145489.html.*

22 41. Defendants knowingly and intentionally hid the fact that the Product contains  
23 Squid so they could earn additional profit at the consumer's expense, like Plaintiff and members  
24 of the Class, who believed they were purchasing Octopus when they purchased the Product.

25 42. As for a true pricing comparison of Octopus and Squid, as of April 7, 2017, on  
26 Amazon.com, using the search words "Pampa Octopus" and "Pampa Calamari," the Pampa  
27 Octopus in Garlic Sauce costs \$53.94/4oz. tins; 6-count (\$8.99/tin); and Pampa Giant Calamari in  
28 Garlic Sauce costs \$29.49/4oz. tins; 6-count (\$4.91/tin).



1 43. Likewise, Pampa Spiced Octopus in Marinara Sauce, as of April 7, 2017, from  
2 Amazon.com, costs \$23.98/4oz. tins; 3-count (\$7.99/tin), and Pampa Giant Spiced Calamari in  
3 Marinara Sauce, costs \$29.49/4oz. tins; 6-count (\$4.91/tin).

4 44. A cursory look at the pricing comparison in the preceding two paragraphs of the  
5 Pampa Octopus Products and Pampa's Calamari/Squid products, shows that each Octopus  
6 product costs \$8.99 and \$7.99, respectively, while the two Squid products cost \$4.91 each.

7 45. Therefore, Defendants misrepresented that their Squid products were Octopus  
8 during the Class Period, in order to charge more for Squid, by making Plaintiff and Class  
9 Members believe it was Octopus, by labeling it as Octopus, rather than Squid.

10 **Plaintiff's Purchase of the Product**

11 46. Plaintiff has purchased the Product in this judicial District during the Class Period  
12 (defined below), in reliance on the misleading labeling representations that the Product is  
13 Octopus. Based on the Octopus claims on the Product's front label, Plaintiff believed that the  
14 Product was Octopus when she purchased the Product, and this fact was the material reason for  
15 Plaintiff purchasing the Product.

16 47. Had the Product not claimed to be Octopus, Plaintiff would not have purchased it,  
17 or alternatively, would not have purchased it at the premium price she did had she known it was  
18 Squid.

19 48. Plaintiff has purchased the Product, Pampa Spiced Octopus in Marinara Sauce, on  
20 one or more occasions during 2016, from a Wal-Mart located in San Diego County, California.  
21 However, subsequent to purchasing the Product Plaintiff discovered that the Product is not  
22 Octopus, but is rather Squid, which is less expensive and less quality than Octopus, which is what  
23 Plaintiff intended to purchase when she bought the Product.

24 49. Plaintiff would not have purchased the Product at all had Defendants not made the  
25 Octopus claims, which she read on the label in making her purchase decision, and/or Plaintiff  
26 would not have paid as much for the Product or purchased the Product at the price premium she  
27 did. Plaintiff and members of the putative Class relied, to their detriment, on Defendants' material  
28 statements regarding the Product being Octopus in making their decision to purchase the Product.

1           50. Reasonable consumers, like Plaintiff and members of the putative Class, must and  
2 do rely on label representations and information on the Product’s label in making their decision to  
3 purchase the Product. Plaintiff and members of the putative Class were among the intended  
4 recipients of Defendants’ deceptive representations and/or omissions.

5                           **Defendants’ Unlawful Conduct During the Class Period is Ongoing**

6           51. Defendants’ false, misleading, and deceptive misrepresentations and/or omissions  
7 are likely to continue to deceive and mislead reasonable consumers, and the general public,  
8 absent a Court ruling in this class action, as Defendants already deceived and misled Plaintiff and  
9 members of the putative Class, and will continue to mislead consumers until it no longer is legally  
10 able to.

11           52. Defendants made the deceptive representations and/or omissions related to the  
12 Product with the intent to induce Plaintiff’s and other members of the putative Class’ purchase of  
13 the Product.

14           53. Defendants’ deceptive representations and/or omissions are material in that a  
15 reasonable person would attach importance to such information and would be induced to act upon  
16 such information in making purchase decisions.

17           54. Thus, Plaintiff’s and members of the putative Class’ reliance upon Defendants’  
18 misleading and deceptive representations and/or omissions has been met and may be presumed.

19           55. Furthermore, the materiality of those representations and/or omissions also  
20 establishes causation between Defendants’ conduct and the injuries sustained by Plaintiff and  
21 members of the putative Class because they would not have purchased the Product if it did not  
22 claim to be “Octopus,” or alternatively, they would not have paid as much for it.

23           56. As an immediate, direct, and proximate result of Defendants’ false, misleading,  
24 and deceptive representations and/or omissions, Defendants injured Plaintiff and members of the  
25 putative Class in that Plaintiff and members of the putative Class:

- 26                   a. paid a sum of money for Product that were not as represented;  
27                   b. paid a premium price for Product that were not as represented;

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- 1 c. were deprived the benefit of the bargain because the Product they purchased were
- 2 different from what Defendants warranted;
- 3 d. were deprived the benefit of the bargain because the Product they purchased had
- 4 less value than what Defendants represented;
- 5 e. did not receive the Product that measured up to their expectations as created by
- 6 Defendants;
- 7 f. received a Product that contained Squid, which was not the Octopus that was
- 8 represented by Defendants;
- 9 g. received a Product that was of a different quality than what Defendants promised;
- 10 and
- 11 h. were denied the benefit of truthful labels.

12 57. Had Defendants not made the false, misleading, and deceptive representations  
13 and/or omissions, Plaintiff and members of the putative Class would not have purchased the  
14 Product and thus would not have been injured.

15 58. Plaintiff and members of the putative Class all paid money for the Product.

16 59. However, Plaintiff and members of the putative Class did not obtain the full value  
17 of the advertised Product due to Defendants' misrepresentations and/or omissions.

18 60. Plaintiff and members of the putative Class purchased, purchased more of, or paid  
19 more for the Product than they would have, had they known the truth about the Product.

20 61. Plaintiff and putative Class members suffered economic damages as a result of  
21 purchasing the valueless, worthless, and/or inferior Product in light of what they intended to  
22 purchase.

23 62. Specifically, Plaintiff contends there is no market value for a misbranded Product,  
24 so Plaintiff and members of the Class are entitled to reimbursement of the full purchase price for  
25 each and every purchase of the Product during the Class Period.

26 63. Plaintiff and members of the putative Class are further entitled to declaratory and  
27 equitable relief, including, but not limited to, injunctive relief, restitution, and/or disgorgement.  
28 Plaintiff and members of the putative Class seek injunctive relief in the form of an Order

1 prohibiting Defendants from selling the Product claiming to be Octopus or Squid until it is sorted  
2 out what is really in the Product currently on the local grocery store's shelves.

3 64. Plaintiff also seeks restitution for monies wrongfully obtained by Defendants and  
4 disgorgement of all ill-gotten revenues and/or profits from the sale of the Product.

5 **V. CLASS ACTION ALLEGATIONS**

6 65. Plaintiff re-alleges and incorporates by reference the allegations set forth in each  
7 of the preceding paragraphs of this Complaint.

8 66. This action is maintainable as a class action under Rule 23(a) and (b)(3) of the  
9 *Federal Rules of Civil Procedure*.

10 67. Pursuant to *Federal Rule of Civil Procedure 23* and Cal. Civil Code § 1781,  
11 Plaintiff brings this class action and seeks certification of the claims and certain issues in this  
12 action on behalf of a Class defined as:

13 **all persons in the United States who have purchased the**  
14 **Product for personal use and not for resale, from the period**  
15 **extending four-years prior to the date of filing this Complaint,**  
16 **up to and including the date that Notice has been provided to**  
17 **the Class.**

18 68. In the alternative to a nationwide Class, Plaintiff seeks certification of the claims  
19 and certain issues in this action, pursuant to *Federal Rule of Civil Procedure 23* and Cal. Civil  
20 Code § 1781, on behalf of a Class defined as:

21 **all persons in the State of California who have purchased the**  
22 **Product for personal use and not for resale, from the period**  
23 **extending four-years prior to the date of filing this Complaint,**  
24 **up to and including the date that Notice has been provided to**  
25 **the Class.**

26 69. Excluded from the Class are governmental entities, Defendants, any entity in  
27 which Defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal  
28 representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also, excluded

1 from the Class is any judge, justice, or judicial officer presiding over this matter and the members  
2 of their immediate families and judicial staff.

3 70. Plaintiff reserves the right to amend the Class definition if further information and  
4 discovery indicates that the Class definition should be narrowed, expanded or otherwise modified

5 71. Certification of Plaintiff's claims for class-wide treatment is appropriate because  
6 Plaintiff can prove the elements of Plaintiff's claims on a class-wide basis using the same  
7 evidence as would be used to prove those claims in individual actions alleging the same claims.

8 **Numerosity—Federal Rule of Civil Procedure 23(a)(1)**

9 72. The members of the Class are so numerous that it is impracticable to bring all  
10 members of the Class before the Court, and thus, individual joinder of all class members is  
11 impracticable. *See also* Cal. Civil Code § 1781(b)(1).

12 73. The precise number of members of the Class is unknown to Plaintiff, but it is clear  
13 that the number greatly exceeds the number that would make joinder practicable, particularly  
14 given Defendants' comprehensive distribution and sales network.

15 74. Members of the Class may be notified of the pendency of this action by  
16 recognized, Court-approved notice dissemination methods, which may include U.S. Mail,  
17 electronic mail, Internet postings, and/or published notice.

18 **Commonality and Predominance—Federal Rules of Civil Procedure 23(a)(2) and (b)(3)**

19 75. This action involves substantially similar common questions of law or fact, which  
20 predominate over any questions affecting individual members of the Class. *See also* Cal. Civil  
21 Code § 1781(b)(2).

22 76. All members of the Class were exposed to Defendants' deceptive and misleading  
23 advertising and marketing claims and/or omissions alleged herein.

24 77. Furthermore, common questions of law of fact include:

- 25 a) Whether Defendants engaged in the conduct as alleged herein;  
26 b) Whether Defendants' practices and representations related to the marketing,  
27 labeling and sales of the Product was unfair, deceptive, fraudulent, and/or unlawful  
28 in any respect, thereby violating Cal. Bus. & Prof. C. §§ 17200, *et seq.*;

- 1 c) Whether Defendants' practices and representations related to the marketing,  
2 labeling and sales of the Product was unfair, deceptive and/or unlawful in any  
3 respect, thereby violating Cal. Bus. & Prof. C. §§ 17500, *et seq.*;
- 4 d) Whether Defendants violated Cal. Civ. C. §§ 1750, *et seq.* with their practices and  
5 representations related to the marketing, labeling and sales of the Product;
- 6 e) Whether Plaintiff and the other members of the Class are entitled to actual,  
7 statutory, or other forms of damages, and/or other monetary relief; and
- 8 f) Whether Plaintiff and the other members of the Class are entitled to declaratory  
9 and equitable relief, including but not limited to injunctive relief, restitution, and  
10 disgorgement.

11 78. Defendants engaged in a common course of conduct in contravention of the laws  
12 Plaintiff seeks to enforce, individually and on behalf of the other members of the Class.

13 79. Similar or identical statutory and common law violations, business practices, and  
14 injuries are involved. Individual questions, if any, pale by comparison, in both quality and  
15 quantity, to the numerous common questions that dominate this action. Moreover, the common  
16 questions will yield common answers.

17 **Typicality—Federal Rule of Civil Procedure 23(a)(3)**

18 80. Plaintiff's claims or defenses are typical of the claims or defenses of the members  
19 of the Class. *See also* Cal. Civil Code § 1781(b)(3).

20 81. Plaintiff and members of the Class were comparably injured through Defendants'  
21 uniform misconduct described herein, and there are no defenses available to Defendants that are  
22 unique to Plaintiff.

23 **Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4)**

24 82. Plaintiff will fairly and adequately protect the interests of the Class. *See also* Cal.  
25 Civil Code § 1781(b)(4).

26 83. Plaintiff is an adequate representative of the Class because, Plaintiff's interests  
27 align with, and do not conflict with, the interests of members of the Class that Plaintiff seeks to  
28 represent.

1           84.     The Class’ interests will be fairly and adequately protected by Plaintiff because  
2 Plaintiff has retained counsel competent and experienced in consumer protection and complex  
3 class action litigation, and Plaintiff will prosecute this action diligently and vigorously. Plaintiff’s  
4 counsel has represented consumers in a variety of class actions where they have sought to protect  
5 consumers from fraudulent and deceptive practices.

6           **Declaratory and Injunctive Relief—Federal Rule of Civil Procedure 23(b)(2)**

7           85.     Defendants have acted or refused to act on grounds generally applicable to  
8 Plaintiff and the other members of the Class, thereby making appropriate final injunctive relief  
9 and declaratory relief, as described herein, with respect to the members of the Class as a whole.

10           **Predominance —Federal Rule of Civil Procedure 23(b)(3)**

11           86.     As set forth in detail herein, common issues of fact and law predominate because  
12 all of Plaintiff’s claims are based on a uniform false and misleading advertising message which  
13 all class members were necessarily exposed to.

14           **Superiority—Federal Rule of Civil Procedure 23(b)(3)**

15           87.     A class action is superior to any other available means for the fair and efficient  
16 adjudication of this controversy, and no unusual difficulties are likely to be encountered in the  
17 management of this class action. The damages or other financial detriment suffered by Plaintiff  
18 and the other members of the Class are relatively small compared to the burden and expense that  
19 would be required to individually litigate their claims against Defendants, so it would be  
20 impracticable for members of the Class to individually seek redress for Defendants’ wrongful  
21 conduct.

22           88.     Even if the members of the Class could afford individual litigation, the court  
23 system could not. Individualized litigation creates a potential for inconsistent or contradictory  
24 judgments, and increases the delay and expense to all parties and the court system. By contrast,  
25 the class action device presents far fewer management difficulties and provides the benefits of  
26 single adjudication, economy of scale, and comprehensive supervision by a single court. Given  
27 the similar nature of the members of the Class’ claims and the absence of material or dispositive  
28

1 differences in laws upon which the claims are based, the Class will be easily managed by the  
2 Court and the parties.

3 **VI. CAUSES OF ACTION**

4 **COUNT I**

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

6 ***(Brought on behalf of Plaintiff and the Proposed Class Against Defendant, Transnational***  
7 ***Foods, Inc. Only)***

8 89. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in  
9 the preceding paragraphs one (1) through eighty-eight (88) of this Complaint as if fully set forth  
10 herein verbatim.

11 90. Throughout the Class Period, Defendant advertised, labeled, packaged, marketed,  
12 distributed, and sold the Product unambiguously claiming it to be Octopus prominently on the  
13 Product's front packaging and labeling. However, the Product is not Octopus because it is made  
14 with Squid, an inferior form of seafood.

15 91. Defendant's advertisements, mislabeling and packaging and marketing  
16 representations are misleading, untrue, and likely to deceive reasonable consumers.

17 92. Defendant engaged in its advertising, mislabeling and packaging and marketing  
18 campaign with intent to directly induce customers to purchase the Product based on false claims.

19 93. In violation of California Business and Professions Code, sections 17500, *et seq.*,  
20 known as California's False Advertising Law ("FAL"), Defendant disseminated, or caused to be  
21 disseminated, the deceptive Product's labeling and advertising representations.

22 94. Defendant's labeling and advertising representations for the Product is by its very  
23 nature unfair, deceptive and/or unlawful within the meaning of Cal. Bus. & Prof. Code §§ 17500  
24 *et seq.*

25 95. According to Cal. Bus. & Prof. Code § 17505: "No person shall state, in an  
26 advertisement of his goods, that he is a producer, manufacturer, processor, wholesaler, or  
27 importer, or that he owns or controls a factory or other source of supply of goods when such is  
28



1 not the fact, and no person shall in any other manner misrepresent the character, extent, volume,  
2 or type of his business.”

3 96. Under the FAL, “person” includes any individual, partnership, firm, association, or  
4 corporation.” Cal. Bus. & Prof. Code § 17506.

5 97. The representations were at all material times hereto likely to deceive reasonable  
6 consumers, including Plaintiff and members of the Class.

7 98. Defendant violated Cal. Bus. & Prof. Code §§ 17500 *et seq.*, in making and  
8 disseminating the deceptive representations alleged herein.

9 99. Defendant knew or should have known that the representations were false,  
10 misleading, and likely to deceive reasonable consumers, such as Plaintiff and members of the  
11 Class.

12 100. As a direct and proximate result of Defendant’s wrongful conduct, Plaintiff and  
13 similarly situated purchasers of the Product have suffered economic damages.

14 101. Plaintiff was injured in fact and lost money as a result of Defendant’s conduct of  
15 improperly advertising the Product as described herein.

16 102. Plaintiff would not have purchased the Product but for Defendant’s misleading  
17 statements about the Product.

18 103. Pursuant to Bus. & Prof. Code § 17535, Plaintiff, individually and on behalf of all  
19 similarly situated purchasers, seeks an order of this Court requiring Defendant to restore to  
20 purchasers of the Product all monies that may have been acquired by Defendant as a result of  
21 such false, unfair, deceptive and/or unlawful acts or practices. Plaintiff and members of the Class  
22 seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten  
23 revenues and/or profits, injunctive relief enjoining Defendant from disseminating its untrue and  
24 misleading statements, and other relief allowable under California Business & Professions Code  
25 Section 17535.

26 104. Furthermore, as a result of Defendant’s violations of the False Advertising Law,  
27 Cal. Bus. & Prof. Code §§ 17500, *et seq.*, Plaintiff and similarly situated purchasers of the  
28 Product are entitled to restitution for out-of-pocket expenses and economic harm.

1           105. Pursuant to Civil Code § 3287(a), Plaintiff and similarly situated purchasers of the  
2 Product are further entitled to pre-judgment interest as a direct and proximate result of  
3 Defendants' wrongful conduct. The amount on which interest is to be calculated is a sum certain  
4 and capable of calculation, and Plaintiff and similarly situated purchasers of the Product are  
5 entitled to interest in an amount according to proof.

6   COUNT II

7           *Violation of the Unfair and Fraudulent Prongs of Cal. Bus. & Prof. Code §§ 17200, et seq.*  
8           *(Brought on behalf of Plaintiff and the Proposed Class Against Defendant, Transnational*  
9   *Foods, Inc. Only)*

10          106. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in  
11 the preceding paragraphs one (1) through eighty-eight (88) of this Complaint as if fully set forth  
12 herein verbatim.

13          107. This cause of action is brought on behalf of Plaintiff and members of the general  
14 public, pursuant to California Business and Professions Code, sections 17200 *et seq.*, known as  
15 California's Unfair Competition Law ("UCL"), which provides that "unfair competition shall  
16 mean and include any unlawful, unfair or deceptive business act or practice and unfair, deceptive,  
17 untrue or misleading advertising and any act prohibited by Chapter I (commencing with Section  
18 17500) as Part 3 of Division 7 of the Business and Professions Code."

19          108. According to Cal. Bus. & Prof. Code § 17500: "It is unlawful for any person, firm,  
20 corporation or association, or any employee thereof with intent directly or indirectly to dispose of  
21 real or personal property or to perform services, professional or otherwise, or anything of any  
22 nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or  
23 disseminate or cause to be made or disseminated before the public in this state, or to make or  
24 disseminate or cause to be made or disseminated from this state before the public in any state, in  
25 any newspaper or other publication, or any advertising device, or by public outcry or  
26 proclamation, or in any other manner or means whatever, including over the Internet, any  
27 statement, concerning that real or personal property or those services, professional or otherwise,  
28 or concerning any circumstance or matter of fact connected with the proposed performance or

1 disposition thereof, which is untrue or misleading, and which is known, or which by the exercise  
2 of reasonable care should be known, to be untrue or misleading, or for any person, firm, or  
3 corporation to so make or disseminate or cause to be so made or disseminated any such statement  
4 as part of a plan or scheme with the intent not to sell that personal property or those services,  
5 professional or otherwise, so advertised at the price stated therein, or as so advertised.”

6 109. In its marketing, advertising, labeling and packaging of the Product, Defendant  
7 makes false and misleading statements regarding the uses and benefits of the Product.

8 110. Throughout the Class Period, Defendant advertised, labeled, packaged, marketed,  
9 distributed, and sold the Product unambiguously claiming it to be Octopus prominently on the  
10 Product’s front packaging and labeling. However, the Product is not Octopus because it is made  
11 with an inferior Squid.

12 111. The misrepresentations Defendant makes about the Product constitutes an unfair  
13 and fraudulent business practice within the meaning of California Business & Professions Code  
14 section 17200, *et seq.*

15 112. Defendant committed “unfair” and/or “fraudulent” business acts or practices by,  
16 among other things: (1) engaging in conduct where the utility of such conduct, if any, is  
17 outweighed by the gravity of the consequences to Plaintiff and members of the Class; (2)  
18 engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or substantially  
19 injurious to Plaintiff and members of the Class; and (3) engaging in conduct that undermines or  
20 violates the spirit or intent of the consumer protection laws alleged herein.

21 113. As detailed above, Defendant’s unfair and/or fraudulent practices include  
22 disseminating false and/or misleading representations regarding the Product.

23 114. Defendant is aware that the claims it made about the Product is false, misleading,  
24 and likely to deceive reasonable consumers.

25 115. Plaintiff would not have purchased the Product but for Defendants’ misleading  
26 statements about the Product.

27 116. Plaintiff was injured in fact and lost money as a result of Defendant’s conduct.  
28

1 117. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact  
2 and has lost money or property as a result of Defendants' actions as set forth herein.

3 118. Defendant's business practices, as alleged herein, are unfair because: (1) the injury  
4 to consumers is substantial; (2) the injury is not outweighed by any countervailing benefits to  
5 consumers or competition; and (3) consumers could not reasonably have avoided the information  
6 because Defendant intentionally misled the consuming public by means of the claims made with  
7 respect to the Product as set forth herein.

8 119. Defendant's business practices as alleged herein are fraudulent because they are  
9 likely to deceive customers into believing the Product has characteristics, uses and benefits they  
10 do not have.

11 120. In addition, Defendant's use of various forms of advertising media to advertise,  
12 including the Product's labeling, call attention to, or give publicity to, the sale of goods or  
13 merchandise which are not as represented in any manner, which constitutes unfair competition,  
14 unfair, deceptive, untrue or misleading advertising, and an unlawful business practice within the  
15 meaning of Business & Professions Code sections 17200, *et seq.*

16 121. Defendant's wrongful business practices constituted a continuing course of  
17 conduct of unfair competition since Defendant is marketing and selling the Product in a manner  
18 likely to deceive the public.

19 122. Defendant has peddled its misrepresentations through advertising, including the  
20 Product's labeling.

21 123. There were reasonably available alternatives to further Defendants' legitimate  
22 business interests, other than the conduct described herein.

23 124. Plaintiff and the putative members of the Class were misled into purchasing the  
24 Product by Defendants' deceptive and fraudulent conduct as alleged herein.

25 125. Defendant had an improper motive (profit before accurate marketing) in its  
26 practices related to the deceptive labeling and advertising of the Product, as set forth above.

27  
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1 126. The use of such unfair and fraudulent business acts and practices was under the  
2 sole control of Defendant, and was deceptively hidden from members of the general public in  
3 Defendants’ marketing, advertising and labeling of the Product.

4 127. As purchasers and consumers of Defendant’s Product, and as members of the  
5 general public who purchased and consumed the Product, Plaintiff and the Class are entitled to  
6 bring this class action seeking all available remedies under the UCL.

7 128. Pursuant to California Bus. & Prof. Code § 17203, Plaintiff, individually, and on  
8 behalf of the Class, seeks an order of this Court for injunctive relief and disgorging and restoring  
9 all monies that have been acquired by Defendant as a result of Defendants’ business acts or  
10 practices described herein. Plaintiff, the Class, and the general public may be irreparably harmed  
11 or denied an effective and complete remedy in the absence of such an order.

12 129. As a result of Defendant’s violations of the UCL, Plaintiff and the Class are  
13 entitled to restitution for out-of-pocket expenses and economic harm.

14 130. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further entitled to pre-  
15 judgment interest as a direct and proximate result of Defendants’ unfair and fraudulent conduct.  
16 The amount on which interest is to be calculated is a sum certain and capable of calculation, and  
17 Plaintiff and the Class are entitled to interest in an amount according to proof.

18 **COUNT III**

19 ***Violation of the Unlawful Prong of Cal. Bus. & Prof. Code §§ 17200, et seq.***

20 ***(Brought on behalf of Plaintiff and the Proposed Class Against Defendant, Transnational***

21 ***Foods, Inc. Only)***

22 131. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in  
23 the preceding paragraphs one (1) through eighty-eight (88) of this Complaint as if fully set forth  
24 herein verbatim.

25 132. This cause of action is brought on behalf of Plaintiff and members of the Class  
26 pursuant to California Business and Professions Code, sections 17200 *et seq.*, known as  
27 California’s Unfair Competition Law (“UCL”), which provides that “unfair competition shall  
28 mean and include any unlawful, unfair or deceptive business act or practice and unfair, deceptive,

1 untrue or misleading advertising and any act prohibited by Chapter I (commencing with Section  
2 17500) as Part 3 of Division 7 of the Business and Professions Code.”

3 133. According to Cal. Bus. & Prof. Code § 17500: “It is unlawful for any person, firm,  
4 corporation or association, or any employee thereof with intent directly or indirectly to dispose of  
5 real or personal property or to perform services, professional or otherwise, or anything of any  
6 nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or  
7 disseminate or cause to be made or disseminated before the public in this state, or to make or  
8 disseminate or cause to be made or disseminated from this state before the public in any state, in  
9 any newspaper or other publication, or any advertising device, or by public outcry or  
10 proclamation, or in any other manner or means whatever, including over the Internet, any  
11 statement, concerning that real or personal property or those services, professional or otherwise,  
12 or concerning any circumstance or matter of fact connected with the proposed performance or  
13 disposition thereof, which is untrue or misleading, and which is known, or which by the exercise  
14 of reasonable care should be known, to be untrue or misleading, or for any person, firm, or  
15 corporation to so make or disseminate or cause to be so made or disseminated any such statement  
16 as part of a plan or scheme with the intent not to sell that personal property or those services,  
17 professional or otherwise, so advertised at the price stated therein, or as so advertised.”

18 134. As detailed above, Defendant’s unlawful practices include disseminating false  
19 and/or misleading representations about the Product.

20 135. Throughout the Class Period, Defendant advertised, labeled, packaged, marketed,  
21 distributed, and sold the Product unambiguously claiming it to be Octopus prominently on the  
22 Product’s front packaging and labeling. However, the Product is not Octopus because it is made  
23 with an inferior Squid.

24 136. Plaintiff would not have purchased the Product, but for Defendant’s misleading  
25 statements about the Product.

26 137. Plaintiff was injured in fact and lost money as a result of Defendant’s conduct.

27 138. Plaintiff paid for the Product, but did not receive what he reasonably expected.  
28

1           139. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact  
2 and has lost money or property as a result of Defendants' actions as set forth herein.

3           140. Defendant's business practices, as alleged herein, are unfair because: (1) the injury  
4 to consumers is substantial; (2) the injury is not outweighed by any countervailing benefits to  
5 consumers or competition; and (3) consumers could not reasonably have avoided the information  
6 because Defendant intentionally misled the consuming public by means of the claims made with  
7 respect to the Product as set forth herein.

8           141. In its marketing and advertising, Defendant makes false and misleading statements  
9 regarding the uses and benefits of the Product.

10           142. Such marketing, advertising and sale of the Product by Defendant is unlawful  
11 because (1) they are violating sections 1770(a)(5), 1770(a)(7) and 1770(a)(9) of the CLRA,  
12 California Civil Code section 1750, *et seq.*; and (2) they are violating the FAL, California  
13 Business & Professions Code section 17500, *et seq.*

14           143. Because Defendant's business conduct in advertising, marketing and selling the  
15 Product using false and misleading statements, in violation of the CLRA, FAL, and/or other  
16 federal and state laws or regulations, it constitutes a per se violation of the "unlawful" prong of  
17 the UCL.

18           144. As purchasers and consumers of Defendant's Product, and as members of the  
19 general public who purchased and used the Product, Plaintiff and the Class are entitled to and  
20 bring this class action seeking all available remedies under the UCL.

21           145. Pursuant to California Bus. & Prof. Code § 17203, Plaintiff, individually and on  
22 behalf of the Class, seeks an order of this Court for injunctive relief and disgorging and restoring  
23 all monies that may have been acquired by Defendant as a result of such unlawful business acts or  
24 practices. Plaintiff, the Class and the general public may be irreparably harmed and/or denied an  
25 effective and complete remedy in the absence of such an order.

26           146. As a result of Defendant's violations of the UCL, Plaintiff and the Class are  
27 entitled to restitution for out-of-pocket expenses and economic harm.

28

1 147. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further entitled to pre-  
2 judgment interest as a direct and proximate result of Defendants’ unlawful business conduct. The  
3 amount on which interest is to be calculated is a sum certain and capable of calculation, and  
4 Plaintiff and the Class are entitled to interest in an amount according to proof.

5 **COUNT IV**

6 ***Violation of the California Consumers Legal Remedies Act – Cal. Civ. Code §§ 1750, et seq.***  
7 ***(Brought on behalf of Plaintiff and the Proposed Class Against Defendant, Transnational***  
8 ***Foods, Inc. Only)***

9 148. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in  
10 the preceding paragraphs one (1) through eighty-eight (88) of this Complaint as if fully set forth  
11 herein verbatim.

12 149. This cause of action is brought pursuant to California’s Consumers Legal  
13 Remedies Act, California Civil Code, sections 1750 *et seq.* (“CLRA”).

14 150. Throughout the Class Period, Defendant advertised, labeled, packaged, marketed,  
15 distributed, and sold the Product unambiguously claiming it to be Octopus prominently on the  
16 Product’s front packaging and labeling. However, the Product is not Octopus because it is made  
17 with an inferior Squid.

18 151. This cause of action seeks monetary damages and injunctive relief pursuant to  
19 California Civil Code § 1782.

20 152. Defendant’s actions, representations, and conduct have violated the CLRA,  
21 because they extend to transactions that are intended to result, or that have resulted, in the sale of  
22 goods to consumers.

23 153. Under the CLRA, “‘Person’ means an individual, partnership, corporation, limited  
24 liability company, association, or other group, however organized.” Cal. Civil Code § 1761(c).

25 154. Plaintiff and all members of the Class are “consumers” as that term is defined by  
26 the CLRA in California Civil Code § 1761(d).

27 155. Defendant sold the Product, which is a “good” within the meaning of California  
28 Civil Code § 1761(a), to Plaintiff and other members of the Class during the Class Period.



1           156. Plaintiff is an individual who purchased the Product for personal use.

2           157. The purchases of the Product by Plaintiff and purchasers of the Product were and  
3 are “transactions” within the meaning of Civil Code §1761(e).

4           158. Defendant’s marketing, labeling and advertising and sales of the Product violated  
5 the CLRA in at least the following respects as set forth in detail above:

6                   a. In violation of Civil Code §1770(a)(5), Defendant represented that the Product  
7 has characteristics, ingredients, uses, and benefits which it does not have;

8                   b. In violation of Civil Code §1770(a)(7), Defendant represented that the Product  
9 is of a particular standard, quality, or grade, which it is not;

10                  c. In violation of Civil Code §1770(a)(9), Defendant advertised the Product with  
11 an intent not to sell the Product as advertised; and

12                  d. In violation of Civil Code §1770(a)(16), Defendant represented that the subject  
13 of the sale of the Product has been supplied in accordance with a prior  
14 representation when it has not.

15           159. Defendant knew or should have known about the Product’s misrepresentation and  
16 omissions.

17           160. Defendant’s actions as described herein were done with conscious disregard of  
18 Plaintiff’s rights, and Defendant was wanton and malicious in its concealment of same.

19           161. Defendant’s wrongful business practices constitute a continuing course of conduct  
20 in violation of the CLRA.

21           162. Plaintiff and other members of the putative Class have suffered injury in fact and  
22 have lost money as a result of Defendants’ misrepresentations.

23           163. Plaintiff seeks an award of restitution and actual damages in accordance with the  
24 provisions of the CLRA.

25           164. Plaintiff also seeks equitable relief in the form of an order for injunctive relief:

26                   a) Requiring Defendant to make full restitution of all monies wrongfully obtained as  
27 a result of the conduct described above;

28

- b) Requiring Defendant to disgorge all ill-gotten gains flowing from the conduct described above; and
- c) Enjoining Defendant from engaging, using, or employing its advertising and marketing tactics to sell the Product, as described above.

165. Pursuant to the notice requirements under the CLRA, on or about May 12, 2017, Plaintiff sent Defendant a letter via U.S.P.S. Certified Mail, notifying Defendant in writing of the particular violations of the CLRA, and demanding that Defendant take certain corrective actions within the mandated thirty (30) day time period. In the event Defendant fails to adequately respond within the thirty (30) day time-period, Plaintiff intends to amend this Complaint to include a request for punitive damages and statutory damages pursuant to the CLRA.

166. Pursuant to the CLRA, Plaintiff separately seeks, and is entitled to, costs, attorney's fees, and any other applicable relief allowable under the CLRA.

**COUNT V**

***Negligent Misrepresentation***

***(Brought on behalf of Plaintiff and the Proposed Class Against Defendant, Transnational Foods, Inc. Only)***

167. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the preceding paragraphs one (1) through eighty-eight (88) of this Complaint as if fully set forth herein verbatim.

168. Throughout the Class Period, Defendant, Transnational, advertised, labeled, packaged, marketed, distributed, and sold the Product unambiguously claiming it to be Octopus prominently on the Product's front packaging and labeling. However, the Product is not Octopus because it is made with an inferior Squid.

169. Defendant, Transnational, had no reasonable grounds for believing its representations were true.

170. Defendant, Transnational, should have known about the Product's misrepresentations.

1 171. Throughout or during the Class Period, Defendant, Transnational, knew or should  
2 have known that it was representing, stating, advertising, packaging, marketing, distributing,  
3 and/or selling Squid in the Product, and not Octopus, like it had been representing to consumers,  
4 like Plaintiff and members of the Class, during the Class Period.

5 172. In making these representations to Plaintiff and the Class, Defendant,  
6 Transnational, intended to induce Plaintiff and the Class to purchase the Product.

7 173. At all times herein, Plaintiff and the Class were unaware of the falsity of  
8 Defendant, Transnational's statement that the Product is Octopus.

9 174. Plaintiff and the Class reasonably acted in response to the statements made by  
10 Defendant, Transnational, when they purchased the Product.

11 175. As a direct and proximate result of Defendant, Transnational's misrepresentation  
12 regarding the Product, Plaintiff and Class members purchased the Product, to their detriment.

13 176. Accordingly, Plaintiff and the Class have suffered economic damages as a result of  
14 Defendant, Transnational's misrepresentation, in an amount to be determined at trial.

15 **COUNT VI**

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

17 ***(Brought on behalf of Plaintiff and the Proposed Class Against Defendant, Conservas***

18 ***Cerqueira, S.A. Only)***

19 177. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in  
20 the preceding paragraphs one (1) through eighty-eight (88) of this Complaint as if fully set forth  
21 herein verbatim.

22 178. Throughout the Class Period, Defendant, Conservas Cerqueira, S.A. ("Cerqueira")  
23 advertised, labeled, packaged, marketed, distributed, supplied and sold the Product  
24 unambiguously claiming it to be Octopus prominently on the Product's front packaging and  
25 labeling. However, the Product is not Octopus because it is made with Squid, an inferior seafood.

26 179. Defendant's advertisements, mislabeling and packaging and marketing  
27 representations are misleading, untrue, and likely to deceive reasonable consumers.  
28

1 180. Defendant engaged in its advertising, mislabeling and packaging and marketing  
2 campaign with intent to directly induce customers to purchase the Product based on false claims.

3 181. In violation of California Business and Professions Code, sections 17500, *et seq.*,  
4 known as California's False Advertising Law ("FAL"), Defendant disseminated, or caused to be  
5 disseminated, the deceptive Product's labeling and advertising representations.

6 182. Defendant's labeling and advertising representations for the Product is by its very  
7 nature unfair, deceptive and/or unlawful within the meaning of Cal. Bus. & Prof. Code §§ 17500  
8 *et seq.*

9 183. According to Cal. Bus. & Prof. Code § 17505: "No person shall state, in an  
10 advertisement of his goods, that he is a producer, manufacturer, processor, wholesaler, or  
11 importer, or that he owns or controls a factory or other source of supply of goods when such is  
12 not the fact, and no person shall in any other manner misrepresent the character, extent, volume,  
13 or type of his business."

14 184. Under the FAL, "person" includes any individual, partnership, firm, association, or  
15 corporation." Cal. Bus. & Prof. Code § 17506.

16 185. The representations were at all material times hereto likely to deceive reasonable  
17 consumers, including Plaintiff and members of the Class.

18 186. Defendant violated Cal. Bus. & Prof. Code §§ 17500 *et seq.*, in making and  
19 disseminating the deceptive representations alleged herein.

20 187. Defendant knew or should have known that the representations were false,  
21 misleading, and likely to deceive reasonable consumers, such as Plaintiff and members of the  
22 Class.

23 188. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff and  
24 similarly situated purchasers of the Product have suffered economic damages.

25 189. Plaintiff was injured in fact and lost money as a result of Defendants' conduct of  
26 improperly advertising the Product as described herein.

27 190. Plaintiff would not have purchased the Product but for Defendant's misleading  
28 statements about the Product.

1           191. Pursuant to Bus. & Prof. Code § 17535, Plaintiff, individually and on behalf of all  
2 similarly situated purchasers, seeks an order of this Court requiring Defendant to restore to  
3 purchasers of the Product all monies that may have been acquired by Defendant as a result of  
4 such false, unfair, deceptive and/or unlawful acts or practices. Plaintiff and members of the Class  
5 seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten  
6 revenues and/or profits, injunctive relief enjoining Defendant from disseminating its untrue and  
7 misleading statements, and other relief allowable under California Business & Professions Code  
8 Section 17535.

9           192. Furthermore, as a result of Defendant’s violations of the False Advertising Law,  
10 Cal. Bus. & Prof. Code §§ 17500, *et seq.*, Plaintiff and similarly situated purchasers of the  
11 Product are entitled to restitution for out-of-pocket expenses and economic harm.

12           193. Pursuant to Civil Code § 3287(a), Plaintiff and similarly situated purchasers of the  
13 Product are further entitled to pre-judgment interest as a direct and proximate result of  
14 Defendants’ wrongful conduct. The amount on which interest is to be calculated is a sum certain  
15 and capable of calculation, and Plaintiff and similarly situated purchasers of the Product are  
16 entitled to interest in an amount according to proof.

17   **COUNT VII**

18           ***Violation of the Unfair and Fraudulent Prongs of Cal. Bus. & Prof. Code §§ 17200, et seq.***

19           ***(Brought on behalf of Plaintiff and the Proposed Class Against Defendant, Conservas***

20   ***Cerqueira, S.A. Only)***

21           194. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in  
22 the preceding paragraphs one (1) through eighty-eight (88) of this Complaint as if fully set forth  
23 herein verbatim.

24           195. This cause of action is brought on behalf of Plaintiff and members of the putative  
25 Class, against Defendant, Conservas Cerqueira, S.A. (“Cerqueira”), pursuant to California  
26 Business and Professions Code, sections 17200 *et seq.*, known as California’s Unfair Competition  
27 Law (“UCL”), which provides that “unfair competition shall mean and include any unlawful,  
28 unfair or deceptive business act or practice and unfair, deceptive, untrue or misleading advertising

1 and any act prohibited by Chapter I (commencing with Section 17500) as Part 3 of Division 7 of  
2 the Business and Professions Code.”

3 196. According to Cal. Bus. & Prof. Code § 17500: “It is unlawful for any person, firm,  
4 corporation or association, or any employee thereof with intent directly or indirectly to dispose of  
5 real or personal property or to perform services, professional or otherwise, or anything of any  
6 nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or  
7 disseminate or cause to be made or disseminated before the public in this state, or to make or  
8 disseminate or cause to be made or disseminated from this state before the public in any state, in  
9 any newspaper or other publication, or any advertising device, or by public outcry or  
10 proclamation, or in any other manner or means whatever, including over the Internet, any  
11 statement, concerning that real or personal property or those services, professional or otherwise,  
12 or concerning any circumstance or matter of fact connected with the proposed performance or  
13 disposition thereof, which is untrue or misleading, and which is known, or which by the exercise  
14 of reasonable care should be known, to be untrue or misleading, or for any person, firm, or  
15 corporation to so make or disseminate or cause to be so made or disseminated any such statement  
16 as part of a plan or scheme with the intent not to sell that personal property or those services,  
17 professional or otherwise, so advertised at the price stated therein, or as so advertised.”

18 197. In its marketing, advertising, labeling and packaging of the Product, Defendant  
19 makes false and misleading statements regarding the uses and benefits of the Product.

20 198. Throughout the Class Period, Defendant advertised, labeled, packaged, marketed,  
21 distributed, and sold the Product unambiguously claiming it to be Octopus prominently on the  
22 Product’s front packaging and labeling. However, the Product is not Octopus because it is made  
23 with an inferior Squid.

24 199. The misrepresentations Defendant makes about the Product constitutes an unfair  
25 and fraudulent business practice within the meaning of California Business & Professions Code  
26 section 17200, *et seq.*

27 200. Defendant committed “unfair” and/or “fraudulent” business acts or practices by,  
28 among other things: (1) engaging in conduct where the utility of such conduct, if any, is

1 outweighed by the gravity of the consequences to Plaintiff and members of the Class; (2)  
2 engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or substantially  
3 injurious to Plaintiff and members of the Class; and (3) engaging in conduct that undermines or  
4 violates the spirit or intent of the consumer protection laws alleged herein.

5 201. As detailed above, Defendant's unfair and/or fraudulent practices include  
6 disseminating false and/or misleading representations regarding the Product.

7 202. Defendant is aware that the claims it made about the Product is false, misleading,  
8 and likely to deceive reasonable consumers.

9 203. Plaintiff would not have purchased the Product but for Defendant's misleading  
10 statements about the Product.

11 204. Plaintiff was injured in fact and lost money as a result of Defendant's conduct.

12 205. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact  
13 and has lost money or property as a result of Defendant's actions as set forth herein.

14 206. Defendant's business practices, as alleged herein, are unfair because: (1) the injury  
15 to consumers is substantial; (2) the injury is not outweighed by any countervailing benefits to  
16 consumers or competition; and (3) consumers could not reasonably have avoided the information  
17 because Defendant intentionally misled the consuming public by means of the claims made with  
18 respect to the Product as set forth herein.

19 207. Defendant's business practices as alleged herein are fraudulent because they are  
20 likely to deceive customers into believing the Product has characteristics, uses and benefits they  
21 do not have.

22 208. In addition, Defendant's use of various forms of advertising media to advertise,  
23 including the Product's labeling, call attention to, or give publicity to, the sale of goods or  
24 merchandise which are not as represented in any manner, which constitutes unfair competition,  
25 unfair, deceptive, untrue or misleading advertising, and an unlawful business practice within the  
26 meaning of Business & Professions Code sections 17200, *et seq.*

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1           209. Defendant’s wrongful business practices constituted a continuing course of  
2 conduct of unfair competition since Defendant is marketing and selling the Product in a manner  
3 likely to deceive the public.

4           210. Defendant has peddled its misrepresentations through advertising, including the  
5 Product’s labeling.

6           211. There were reasonably available alternatives to further Defendants’ legitimate  
7 business interests, other than the conduct described herein.

8           212. Plaintiff and the putative members of the Class were misled into purchasing the  
9 Product by Defendants’ deceptive and fraudulent conduct as alleged herein.

10           213. Defendant had an improper motive (profit before accurate marketing) in its  
11 practices related to the deceptive labeling and advertising of the Product, as set forth above.

12           214. The use of such unfair and fraudulent business acts and practices was under the  
13 sole control of Defendant, and was deceptively hidden from members of the general public in  
14 Defendants’ marketing, advertising and labeling of the Product.

15           215. As purchasers and consumers of Defendant’s Product, and as members of the  
16 general public who purchased and consumed the Product, Plaintiff and the Class are entitled to  
17 bring this class action seeking all available remedies under the UCL.

18           216. Pursuant to California Bus. & Prof. Code § 17203, Plaintiff, individually, and on  
19 behalf of the Class, seeks an order of this Court for injunctive relief and disgorging and restoring  
20 all monies that have been acquired by Defendant as a result of Defendants’ business acts or  
21 practices described herein. Plaintiff, the Class, and the general public may be irreparably harmed  
22 or denied an effective and complete remedy in the absence of such an order.

23           217. As a result of Defendant’s violations of the UCL, Plaintiff and the Class are  
24 entitled to restitution for out-of-pocket expenses and economic harm.

25           218. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further entitled to pre-  
26 judgment interest as a direct and proximate result of Defendants’ unfair and fraudulent conduct.  
27 The amount on which interest is to be calculated is a sum certain and capable of calculation, and  
28 Plaintiff and the Class are entitled to interest in an amount according to proof.



**COUNT VIII**

***Violation of the Unlawful Prong of Cal. Bus. & Prof. Code §§ 17200, et seq.***

***(Brought on behalf of Plaintiff and the Proposed Class Against Defendant, Conservas Cerqueira, S.A. Only)***

219. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the preceding paragraphs one (1) through eighty-eight (88) of this Complaint as if fully set forth herein verbatim.

220. This cause of action is brought on behalf of Plaintiff and members of the putative Class, against Defendant, Conservas Cerqueira, S.A. (“Cerqueira”), pursuant to California Business and Professions Code, sections 17200 *et seq.*, known as California’s Unfair Competition Law (“UCL”), which provides that “unfair competition shall mean and include any unlawful, unfair or deceptive business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter I (commencing with Section 17500) as Part 3 of Division 7 of the Business and Professions Code.”

221. According to Cal. Bus. & Prof. Code § 17500: “It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement

1 as part of a plan or scheme with the intent not to sell that personal property or those services,  
2 professional or otherwise, so advertised at the price stated therein, or as so advertised.”

3 222. As detailed above, Defendant’s unlawful practices include disseminating false  
4 and/or misleading representations about the Product.

5 223. Throughout the Class Period, Defendant advertised, labeled, packaged, marketed,  
6 distributed, and sold the Product unambiguously claiming it to be Octopus prominently on the  
7 Product’s front packaging and labeling. However, the Product is not Octopus because it is made  
8 with an inferior Squid.

9 224. Plaintiff would not have purchased the Product, but for Defendant’s misleading  
10 statements about the Product.

11 225. Plaintiff was injured in fact and lost money as a result of Defendant’s conduct.

12 226. Plaintiff paid for the Product, but did not receive what he reasonably expected.

13 227. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact  
14 and has lost money or property as a result of Defendant’s actions as set forth herein.

15 228. Defendant’s business practices, as alleged herein, are unfair because: (1) the injury  
16 to consumers is substantial; (2) the injury is not outweighed by any countervailing benefits to  
17 consumers or competition; and (3) consumers could not reasonably have avoided the information  
18 because Defendant intentionally misled the consuming public by means of the claims made with  
19 respect to the Product as set forth herein.

20 229. In its marketing and advertising, Defendant makes false and misleading statements  
21 regarding the uses and benefits of the Product.

22 230. Such marketing, advertising and sale of the Product by Defendant is unlawful  
23 because (1) they are violating sections 1770(a)(5), 1770(a)(7) and 1770(a)(9) of the CLRA,  
24 California Civil Code section 1750, *et seq.*; and (2) they are violating the FAL, California  
25 Business & Professions Code section 17500, *et seq.*

26 231. Because Defendant’s business conduct in advertising, marketing and selling the  
27 Product using false and misleading statements, in violation of the CLRA, FAL, and/or other  
28

1 federal and state laws or regulations, it constitutes a per se violation of the “unlawful” prong of  
2 the UCL.

3 232. As purchasers and consumers of Defendant’s Product, and as members of the  
4 general public who purchased and used the Product, Plaintiff and the Class are entitled to and  
5 bring this class action seeking all available remedies under the UCL.

6 233. Pursuant to California Bus. & Prof. Code § 17203, Plaintiff, individually and on  
7 behalf of the Class, seeks an order of this Court for injunctive relief and disgorging and restoring  
8 all monies that may have been acquired by Defendant as a result of such unlawful business acts or  
9 practices. Plaintiff, the Class and the general public may be irreparably harmed and/or denied an  
10 effective and complete remedy in the absence of such an order.

11 234. As a result of Defendant’s violations of the UCL, Plaintiff and the Class are  
12 entitled to restitution for out-of-pocket expenses and economic harm.

13 235. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further entitled to pre-  
14 judgment interest as a direct and proximate result of Defendant’s unlawful business conduct. The  
15 amount on which interest is to be calculated is a sum certain and capable of calculation, and  
16 Plaintiff and the Class are entitled to interest in an amount according to proof.

### 17 **COUNT IX**

18 ***Violation of the California Consumers Legal Remedies Act – Cal. Civ. Code §§ 1750, et seq.***

19 ***(Brought on behalf of Plaintiff and the Proposed Class Against Defendant, Conservas***

20 ***Cerqueira, S.A. Only)***

21 236. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in  
22 the preceding paragraphs one (1) through eighty-eight (88) of this Complaint as if fully set forth  
23 herein verbatim.

24 237. This cause of action is brought pursuant to California’s Consumers Legal  
25 Remedies Act, California Civil Code, sections 1750 *et seq.* (“CLRA”).

26 238. Throughout the Class Period, upon information and belief, Defendant, Conservas  
27 Cerqueira, S.A. (“Cerqueira”), distributed, supplied, and/or sold the Squid in the Product by  
28 representing, stating, advertising, packaging, and marketing it as being Octopus. However, Squid

1 is an inferior, less-desirable, and cheaper form of seafood, in far-less demand, and much greater  
2 supply than Octopus.

3 239. This cause of action seeks monetary damages and injunctive relief pursuant to  
4 California Civil Code § 1782.

5 240. Defendant’s actions, representations, and conduct have violated the CLRA,  
6 because they extend to transactions that are intended to result, or that have resulted, in the sale of  
7 goods to consumers.

8 241. Under the CLRA, “‘Person’ means an individual, partnership, corporation, limited  
9 liability company, association, or other group, however organized.” Cal. Civil Code § 1761(c).

10 242. Plaintiff and all members of the Class are “consumers” as that term is defined by  
11 the CLRA in California Civil Code § 1761(d).

12 243. Defendant sold the Product, which is a “good” within the meaning of California  
13 Civil Code § 1761(a), to Plaintiff and other members of the Class during the Class Period.

14 244. Plaintiff is an individual who purchased the Product for personal use.

15 245. The purchases of the Product by Plaintiff and purchasers of the Product were and  
16 are “transactions” within the meaning of Civil Code §1761(e).

17 246. Defendant’s marketing, labeling and advertising and sales of the Product violated  
18 the CLRA in at least the following respects as set forth in detail above:

- 19 e. In violation of Civil Code §1770(a)(5), Defendant represented that the Product  
20 has characteristics, ingredients, uses, and benefits which it does not have;
  - 21 f. In violation of Civil Code §1770(a)(7), Defendant represented that the Product  
22 is of a particular standard, quality, or grade, which it is not;
  - 23 g. In violation of Civil Code §1770(a)(9), Defendant advertised the Product with  
24 an intent not to sell the Product as advertised; and
  - 25 h. In violation of Civil Code §1770(a)(16), Defendant represented that the subject  
26 of the sale of the Product has been supplied in accordance with a prior  
27 representation when it has not.
- 28

1           247. Defendant knew or should have known about the Product’s misrepresentation and  
2 omissions.

3           248. Defendant, Cerqueira, increased its profits by being able to charge more for its  
4 Squid, by representing it as being Octopus because Octopus has more value and is more  
5 expensive than Squid.

6           249. Defendant’s actions as described herein were done with conscious disregard of  
7 Plaintiff’s rights, and Defendant was wanton and malicious in its concealment of same.

8           250. Defendants’ wrongful business practices constitute a continuing course of conduct  
9 in violation of the CLRA.

10           251. Plaintiff and other members of the putative Class have suffered injury in fact and  
11 have lost money as a result of Defendants’ misrepresentations.

12           252. Plaintiff seeks an award of restitution and actual damages in accordance with the  
13 provisions of the CLRA.

14           253. Plaintiff also seeks equitable relief in the form of an order for injunctive relief:

- 15           a) Requiring Defendant to make full restitution of all monies wrongfully obtained as  
16           a result of the conduct described above;
- 17           b) Requiring Defendant to disgorge all ill-gotten gains flowing from the conduct  
18           described above; and
- 19           c) Enjoining Defendant from engaging, using, or employing its advertising and  
20           marketing tactics to sell the Product, as described above.

21           254. Pursuant to the notice requirements under the CLRA, on or about May 12, 2017,  
22 Plaintiff sent Defendant a letter via U.S.P.S. Certified Mail, notifying Defendant in writing of the  
23 particular violations of the CLRA, and demanding that Defendant take certain corrective actions  
24 within the mandated thirty (30) day time period. In the event Defendant fails to adequately  
25 respond within the thirty (30) day time-period, Plaintiff intends to amend this Complaint to  
26 include a request for punitive damages and statutory damages pursuant to the CLRA.

27           255. Pursuant to the CLRA, Plaintiff separately seeks, and is entitled to, costs,  
28 attorney’s fees, and any other applicable relief allowable under the CLRA.

**COUNT X**

***Negligent Misrepresentation***

***(Brought on behalf of Plaintiff and the Proposed Class Against Defendant, Conservas Cerqueira, S.A. Only)***

256. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in the preceding paragraphs one (1) through eighty-eight (88) of this Complaint as if fully set forth herein verbatim.

257. Throughout the Class Period, upon information, investigation, and belief, Defendant, Conservas Cerqueira, S.A. (“Cerqueira”), represented that the Squid in the Product was Octopus. However, Squid is an inferior, less-desirable, and cheaper form of seafood, in far less demand, and much greater supply than Octopus.

258. Defendant, Cerqueira, knew or should have known that the Product is not Octopus, as it claims, because it supplied Squid, and not Octopus, for the Product.

259. Defendant, Cerqueira, had no reasonable grounds for believing the Product’s Octopus representation, statement, and/or claim was true.

260. In misrepresenting that the Product is Octopus, when it is really Squid, to Plaintiff and the Class, Defendant, Cerqueira, induced Plaintiff and the Class to purchase the Product.

261. At all material times herein, Plaintiff and the Class were unaware that the Product contains Squid, and not Octopus, and thus, were unaware of the falsity of the Product’s representation.

262. Plaintiff and the Class reasonably acted in response to the representations made by Defendant, Cerqueira, when they purchased the Product.

263. As a direct and proximate result of Defendant, Cerqueira’s, misrepresentation regarding the Product, Plaintiff and Class members purchased the Product, to their detriment.

264. Accordingly, Plaintiff and the Class have suffered economic damages as a result of Defendant, Cerqueira’s misrepresentation, in an amount to be determined at trial.

**COUNT XI**

***Intentional Misrepresentation***

***(Brought on behalf of Plaintiff and the Proposed Class Against Defendant, Conservas Cerqueira, S.A. Only)***

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3  
4 265. Plaintiff re-alleges and fully incorporates by reference all allegations set forth in  
5 the preceding paragraphs one (1) through eighty-eight (88) of this Complaint as if fully set forth  
6 herein verbatim.

7 266. Throughout the Class Period, upon information, investigation, and belief,  
8 Defendant, Conservas Cerqueira, S.A. (“Cerqueira”), represented that the Squid in the Product  
9 was Octopus. However, Squid is an inferior, less-desirable, and cheaper form of seafood, in far-  
10 less demand, and much greater supply than Octopus.

11 267. Defendant, Cerqueira, knows or knew that the Product is not Octopus, as it claims,  
12 because it supplied Squid, and not Octopus, for the Product.

13 268. Defendant, Cerqueira, had no grounds, reasonable or unreasonable, for believing  
14 the Product’s Octopus representation, statement, and/or claim was true.

15 269. In misrepresenting that the Product is Octopus, when it is really Squid, to Plaintiff  
16 and the Class, Defendant, Cerqueira, intended to induce Plaintiff and the Class to purchase the  
17 Product.

18 270. At all material times herein, Plaintiff and the Class were unaware that the Product  
19 contains Squid, and not Octopus, and thus, were unaware of the falsity of the Product’s  
20 representation.

21 271. Plaintiff and the Class reasonably acted in response to the representations made by  
22 Defendant, Cerqueira, when they purchased the Product.

23 272. As a direct and proximate result of Defendant, Cerqueira’s, intentional  
24 misrepresentation regarding the Product, Plaintiff and Class members purchased the Product, to  
25 their detriment.

26 273. Accordingly, Plaintiff and the Class have suffered economic damages as a result of  
27 Defendant, Cerqueira’s misrepresentation, in an amount to be determined at trial.

28 **VII. PRAYER FOR RELIEF**





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(To be Admitted *Pro Hac Vice*)

*Counsel for Plaintiff Vivian Lejbman  
and the Proposed Class*

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Vivian Lejman, individually and on behalf of all others similarly situated,
(b) County of Residence of First Listed Plaintiff San Diego, CA
(c) Attorneys (Firm Name, Address, and Telephone Number)
Benjamin M. Lopatin, Eggnatz, Lopatin & Pascucci, LLP
1425 Irving Street, San Francisco, CA 94122; (415) 379-4612

DEFENDANTS
TRANSNATIONAL FOODS, INC., a Florida corporation and
CONSERVAS CERQUEIRA, S.A., a foreign corporation,
County of Residence of First Listed Defendant Miami-Dade, FL
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
'17CV1317 CAB MDD

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State X 1 1 Incorporated or Principal Place of Business In This State
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State
Citizen or Subject of a Foreign Country 3 3 Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. sec. 1332(d)(2)(A)
Brief description of cause:
Consumer protection class action for economic damages and equitable relief

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,001.00
CHECK YES only if demanded in complaint: JURY DEMAND: X Yes 0 No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 06/27/2017 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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(To be Admitted *Pro Hac Vice*)

*Counsel for Plaintiff Vivian Lejbman  
and the Proposed Class*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

**VIVIAN LEJBMAN** individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

**TRANSNATIONAL FOODS, INC.**, a  
Florida corporation, and **CONSERVAS  
CERQUEIRA, S.A.**, a foreign corporation,

Defendants.

CASE NO.: '17CV1317 CAB MDD

**CLASS ACTION**

**DECLARATION OF BENJAMIN M.  
LOPATIN RE: VENUE UNDER  
CONSUMER LEGAL REMEDIES ACT OF  
CALIFORNIA, CAL. CIVIL CODE §§ 1750,  
ET SEQ**

*JURY TRIAL DEMANDED*

I, Benjamin M. Lopatin, state:

1. I am an attorney for the Plaintiff in the above-entitled action.

2. This action is being filed in the United States District Court for the Southern District of California, because the transaction wherein the Plaintiff purchased the Defendant's product—and perceived Defendant's material misrepresentations—occurred in this District.

1 **I declare under penalties of perjury that the foregoing is true and correct and that**  
2 **this declaration is executed in San Francisco, California on the 27th day of June, 2017.**

3 **Respectfully Submitted By,**

4 */s/ Benjamin M. Lopatin*\_\_\_\_\_

5 Benjamin M. Lopatin (Cal. Bar No. 281730)

6 **EGGNATZ, LOPATIN & PASCUCCI, LLP**

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12 *Counsel for Plaintiff Vivian Lejbman*  
13 *and the Proposed Class*  
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