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

15 TARA DUGGAN, LORI MYERS,
ANGELA COSGROVE, ROBERT
16 MCQUADE, COLLEEN
MCQUADE, JAMES BORRUSO,
17 ROBERT NUGENT, ANTHONY
LUCIANO, LORI LUCIANO, FIDEL
18 JAMELO, JOCELYN JAMELO,
19 ROBERT LANTOS, AMAR MODY,
20 HEENA MODY, AVRAHAM ISAC
ZELIG, DENESE DEPEZA, and
21 KATHLEEN MILLER, On Behalf of
22 Themselves and All Others Similarly
23 Situated,

24 Plaintiffs,

25 v.

26 BUMBLE BEE FOODS LLC, a
27 Delaware company,
28

Case No.: 19-cv-02564-DMR-JSW

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT. 18 U.S.C. §§1962(c)-(d);
2. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §17200 *et seq.*;
3. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, Civil Code §1750 *et seq.*;
4. VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT – Fla. Stat. § 501.201, *et seq.*;
5. VIOLATION OF THE NEW YORK

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Defendant.

6. GENERAL BUSINESS LAW § 349;
VIOLATION OF THE NEW
JERSEY CONSUMER FRAUD
ACT, § 56:8-2.10;
7. VIOLATION OF THE MARYLAND
CONSUMER PROTECTION ACT –
Maryland Code §§13-101, *et seq.*;
8. VIOLATION OF THE ARIZONA
CONSUMER FRAUD ACT, A.R.S.
§§44-1521, *et seq.*; and
9. UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

1 Plaintiffs Tara Duggan, Lori Myers, Angela Cosgrove, Robert McQuade,
2 Colleen McQuade, James Borruso, Robert Nugent, Anthony Luciano, Lori Luciano,
3 Fidel Jamelo, Jocelyn Jamelo, Robert Lantos, Amar Mody, Heena Mody, Avraham
4 Isac Zelig, Denese Depeza, and Kathleen Miller bring this action on behalf of
5 themselves and all others similarly situated against Defendant Bumble Bee Foods
6 LLC (“Defendant” or “Bumble Bee”), and for their First Amended Class Action
7 Complaint, state:

8 **FACTUAL ALLEGATIONS**

9 1. Bumble Bee was founded in 1899 and has been marketing, selling, and
10 distributing tuna throughout the United States since 1920. Today, Bumble Bee is
11 North America’s largest branded shelf-stable seafood company, offering a full line
12 of canned, pouched, and tuna on-the-run kits under its flagship Bumble Bee® brand
13 as well as its premium Wild Selections® and Brunswick® brands.

14 2. Since 1990, Bumble Bee has engaged in a pervasive advertising
15 campaign that expressly promises consumers that “[a]ll of our tuna products are
16 ‘Dolphin Safe’”. All of Bumble Bee’s canned tuna products display a dolphin safe
17 logo immediately to the left of the calories, saturated fat, sodium, and sugar
18 disclosures. The logo is featured prominently, directly underneath the nutrition facts
19 panel on the very bottom right corner of Defendant’s tuna pouches. The logo also
20 appears below the Bumble Bee website URL and on the very bottom right corner of
21 Defendant’s tuna on-the-run kits. Since the introduction of the dolphin safe policy
22 in 1990, including the last 4 years (the “Class Period”), however, Bumble Bee’s tuna
23 products have not been “Dolphin Safe”.

24 3. Plaintiffs herein allege unjust enrichment and violations of: (1) the
25 Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §1962; (2)
26 California's Unfair Competition Law, Cal. Bus. & Prof. Code §17200, *et seq.*; (3)
27 California's Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*; (4) the
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1 Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201, *et seq.*; (5) the
2 New York General Business Law §349; (6) the New Jersey Consumer Fraud Act,
3 §56:8-2.10; (7) the Maryland Consumer Protection Act, Md. Code §13-101, *et seq.*;
4 and (8) the Arizona Consumer Fraud Act, A.R.S. §44-1521, *et seq.*

5 4. Plaintiffs seek, on behalf of themselves and all Class members,
6 nationwide monetary damages, restitution, injunctive relief, and all relief deemed
7 appropriate, arising out of Defendant's illegal scheme and conspiracy alleged herein.

8 **Origin of “Dolphin Safe” Tuna**

9 5. Prior to the development of modern purse seine fishing techniques,
10 tropical tuna were caught one at a time using traditional pole-and-line methods.
11 NOAA, The Tuna-Dolphin Issue, NOAA Fisheries Southwest Fisheries Science
12 Center (Sept. 2, 2016), *available at* [https://swfsc.noaa.gov/textblock.aspx?Division=](https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408)
13 [PRD&ParentMenuId=228&id=1408](https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408) (last visited May 3, 2019) (“NOAA 2016”).

14 6. But by the 1950s, the development of synthetic netting (that would not
15 rot in tropical waters) and hydraulically driven power-blocks (needed to haul very
16 large nets) made it possible to deploy massive purse-seines (vertical net curtains
17 closed by pulling on a chain located along the bottom to enclose the fish, much like
18 tightening the cords of a drawstring purse) around entire schools of tuna.

19 7. Recognizing that tuna schools (swimming deeper in the water) often
20 congregate with dolphin schools (swimming at observable depths), fishermen began
21 routinely encircling tuna *and* dolphin schools with purse seine nets and hauling the
22 entire catch aboard.

23 8. This practice led to millions of dolphins being killed as unintended
24 bycatch.

25 9. In the late 1980s, the world learned of the large numbers of dolphins
26 indiscriminately killed by tuna fishermen. In 1988, a worldwide telecast showed
27 video images of dolphins being killed in tuna fishing nets. That video was captured
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1 by an undercover environmental activist posing as a ship's cook. Public outcry was
2 immediate and intense.

3 10. Heightened public awareness of these mass dolphin deaths led to the
4 development and enhancement of fishing regulations around the world, including a
5 strengthening of the Marine Mammal Protection Act ("MMPA") and the enactment
6 of the Dolphin Protection Consumer Information Act ("DPCIA") of 1990.

7 11. Recognizing these indiscriminate fishing methods were also deflating
8 consumers' enthusiasm for tuna products, the major sellers of shelf-stable tuna fish
9 products – including Bumble Bee, Chicken of the Sea, and StarKist – started
10 promising consumers that the tuna they sold would only be procured through dolphin
11 safe fishing practices.

12 12. In the ensuing 25 years, U.S. tuna sellers, including Bumble Bee,
13 initiated and implemented a widespread and long-term marketing campaign that
14 continues to this day – representing to consumers that no dolphins were killed or
15 harmed in capturing their tuna, as well as expressing their commitment to sustainably
16 sourcing tuna.

17 13. For at least the last 4 years, reasonable consumers expected that all
18 Bumble Bee canned, pouched, and on-the-go kit tuna (collectively, "tuna products")
19 are dolphin safe because they have been indoctrinated to believe precisely that by
20 Defendant's and the other tuna companies' highly effective dolphin safety and
21 sustainable fishing practices marketing campaigns. In fact, 98% of the prepacked
22 tuna sold today in the United States is labeled with some "dolphin safe"
23 representation. Forbes, K. William Watson, 'Dolphin Safe' Labels on Canned Tuna
24 Are A Fraud (Apr. 29, 2015), *available at* [https://www.forbes.com/sites/realspin/](https://www.forbes.com/sites/realspin/2015/04/29/dolphin-safe-labels-on-canned-tuna-are-a-fraud/#51db16b8295e)
25 [2015/04/29/dolphin-safe-labels-on-canned-tuna-are-a-fraud/#51db16b8295e](https://www.forbes.com/sites/realspin/2015/04/29/dolphin-safe-labels-on-canned-tuna-are-a-fraud/#51db16b8295e) (last
26 visited May 3, 2019).

1 14. Bumble Bee tuna, however, is not dolphin safe. Nor is it sustainably
2 sourced. Defendant's dolphin safe representations are false, misleading, and/or
3 deceptive.

4 **Bumble Bee's Dolphin Safe Representations**

5 15. In 1990, Bumble Bee was one of the first major tuna companies to adopt
6 a "dolphin safe" policy.

7 16. On every can, pouch, and kit, Defendant states that the tuna products are
8 "Dolphin Safe" with a prominent dolphin logo. The tuna products also include
9 Bumble Bee's website which sets forth Defendant's dolphin safe policy.

10 17. Bumble Bee's website explains what Defendant means by "Dolphin
11 Safe," and the meaning attributed to "Dolphin Safe" by Defendant reflects its
12 importance to consumers. Defendant promises in pertinent part:

- 13 • Bumble Bee remains "fully committed to" and "strictly adhere[s]" to the
14 dolphin safe policy implemented in April 1990.
- 15 • Bumble Bee "will not purchase tuna from vessels that net fish associated
16 with dolphins".
- 17 • All of Bumble Bee's tuna products "are Dolphin Safe meeting both the
18 standards of United States 1990 Dolphin Protection Consumer
19 Information Act (Dolphin Safe Labeling Law) and of the Earth Island
20 Institute. All of our products carry a Dolphin Safe logo to indicate that."

21 Bumble Bee, FAQ, available at <http://www.bumblebee.com/faqs/> (last visited May
22 7, 2019).

23 18. As noted by the Ninth Circuit in a recent decision, "[g]iven the choice
24 of whether to purchase dolphin-safe tuna or to purchase tuna not labeled dolphin-
25 safe, American consumers overwhelmingly chose to purchase tuna that was labeled
26 dolphin-safe. As a result, foreign tuna sellers who did not adjust their fishing methods
27 were quickly forced out of the market." *Earth Island Institute v. Hogarth*, 494 F.3d

1 757, 761 (9th Cir. 2007) (rejecting Government efforts to lessen restrictions on tuna
2 fisheries in the Eastern Tropical Pacific and upholding previous finding that best
3 evidence available indicates that tuna fishing was having significant adverse impact
4 on dolphin stocks).

5 19. The importance to consumers of dolphin safety has not lessened in the
6 ensuing 12 years since the Court’s finding, as evidenced by Defendant’s continued
7 labeling of its tuna products with a dolphin safe logo and commitment to sustainable
8 fishing practices.

9 20. If anything, dolphin safety and the sustainable sourcing of seafood has
10 grown in importance to consumers as evidenced by many retailers’ refusal to sell
11 tuna that is not caught using dolphin safe pole-and-line, trolling¹, or handline catch
12 methods. *See, e.g.*, Whole Foods Market, Sustainable Canned Tuna, *available at*
13 <https://www.wholefoodsmarket.com/sustainable-canned-tuna> (last visited Apr. 17,
14 2019) (“Our sourcing policy requires all fisheries supplying canned tuna to use pole-
15 and-line, troll or handline catch methods” unlike “[m]uch of conventional canned
16 tuna [which] is caught by vessels using purse seine nets with Fish Aggregating
17 Devices (known as FADs), that attract tuna but also result in high bycatch of ... other
18 marine life.”); Whole Foods Market, Canned Tuna Sourcing Policy (Aug. 15, 2018),
19 *available at* [http://assets.wholefoodsmarket.com/www/departments/seafood/
20 Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf) (last visited
21 Apr. 17, 2019) (“Requirements for Source Fisheries” include “1. All canned tuna
22 must be sourced from pole and line, troll, and handline fisheries. Tuna from longline
23 or purse seine fisheries is prohibited.”); PR Newswire, Safeway Announces New
24 Sustainable Sourcing Practice for Tuna (Feb. 10, 2012), *available at* <https://www>.

25 _____
26 ¹ Method of fishing whereby one or more fishing lines with baits are drawn through
27 the water. Monterey Bay Aquarium Seafood Watch, Fishing & Farming Methods,
28 *available at* [https://www.seafoodwatch.org/ocean-issues/fishing-and-farming-
methods](https://www.seafoodwatch.org/ocean-issues/fishing-and-farming-methods) (last visited May 3, 2019).

1 prnewswire.com/news-releases/safeway-announces-new-sustainable-sourcing-prac
2 tice-for-tuna-139096714.html (last visited Apr. 17, 2019); Albertsons/Safeway,
3 Supplier Sustainability Guidelines and Expectations (August 2015), at 21, *available*
4 *at* https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf
5 (last visited Apr. 29, 2019) (“Suppliers are encouraged to “Not use Purse-seine nets
6 deployed on Fish Aggregation Devices (FADs) and employ alternatives such as pole
7 and line trolling in an effort to reduce or eliminate by-catch”); H-E-B, H-E-B seafood
8 policy, *available at* [https://www.heb.com/static-page/article-template/H-E-B-](https://www.heb.com/static-page/article-template/H-E-B-Seafood-Policy)
9 [Seafood-Policy](https://www.heb.com/static-page/article-template/H-E-B-Seafood-Policy) (last visited Apr. 17, 2019) (for wild-caught seafood, H-E-B
10 preferentially sources from fisheries that reduce bycatch, and H-E-B “will never
11 knowingly buy or sell any illegal, unreported, or unregulated (IUU) fish”); Giant
12 Eagle, Tuna Policy, *available at* [https://www.gianteagle.com/about-us/sustainable-](https://www.gianteagle.com/about-us/sustainable-seafood/tuna-policy)
13 [seafood/tuna-policy](https://www.gianteagle.com/about-us/sustainable-seafood/tuna-policy) (last visited Apr. 29, 2019) (encourages suppliers to “eliminate
14 harvest with the use of non-entangling FADs”); Wegmans, Seafood Sustainability,
15 *available at* [https://www.wegmans.com/about-us/making-a-difference/sustainability](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html)
16 [-at-wegmans/seafood-sustainability.html](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html) (last visited Apr. 29, 2019) (“Our wild-
17 caught seafood suppliers must meet Wegmans’ high standards to source seafood that
18 is caught responsibly” including having “[g]ear chosen to reduce bycatch.”).

19 21. Almost all retailers have implemented sustainable seafood sourcing
20 policies and goals in response to customer feedback. Kroger, for example, which
21 operates 2,782 retail supermarkets in 35 states and the District of Columbia and
22 serves over 9 million customers a day, has adopted a comprehensive sustainable
23 sourcing program in response to customer feedback received at “in-store service
24 counters, online surveys, telephone surveys, focus groups, websites and social
25 media” as well as its live call “Kroger Customer Connect” center. The Kroger Family
26 of Companies 2018 Sustainability Report (“Kroger Sustainability Report”), *available*
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1 at http://sustainability.kroger.com/Kroger_CSR2018.pdf (last visited May 3, 2019),
2 at 12.

3 22. The special “Dolphin Safe” logo Defendant includes on each Bumble
4 Bee tuna product as shown below is intended by Defendant to convey the message
5 “All of our tuna products are Dolphin Safe”:



13
14 23. However, unbeknownst to consumers, substantial numbers of dolphins
15 and other marine life are killed and harmed by the fishermen and fishing methods
16 used to catch Defendant’s tuna. Thus, Defendant’s dolphin safe label representations
17 are false, misleading, and/or deceptive.

18 **Dolphin Safety Legislation**

19 24. Since the 1980s, Congress has passed a series of laws to protect dolphins
20 and other marine life from indiscriminate fishing methods. Beginning with the
21 MMPA, which Congress repeatedly strengthened in 1984, 1988, and 1992, Congress
22 “ban[ned] importation of tuna that failed to meet certain conditions regarding dolphin
23 mortality.” *Earth Island Institute v. Evans*, No. C 03-0007-THE, ECF No. 293 at 3
24 (N.D. Cal.).

25 25. Then, in 1990, Congress passed the DPCIA, which created the dolphin
26 safe mark. 16 U.S.C. §1385. The Act provided that tuna could only be labeled with
27 the official “dolphin safe” mark codified at 50 CFR §216.95 if, *inter alia*, the tuna

1 was not caught in the Eastern Tropical Pacific (“ETP”) using nets intentionally
2 deployed on or to encircle dolphins, was certified as dolphin safe by an independent
3 observer on the tuna boat, and can be traced from the fishery, to the cannery, to the
4 shelf. *Id.*

5 26. The DPCIA imposes heightened dolphin safety requirements which are
6 not limited to ETP fisheries on manufacturers, like Defendant, who label their
7 products with an alternative dolphin safe logo. 16 U.S.C. §1385(d)(3).

8 27. The DPCIA-established official dolphin safe mark is codified at 50 CFR
9 §216.95. That official mark contains the words “U.S. Department of Commerce”,
10 along with the words “Dolphin Safe” in red next to a blue-colored dolphin profile
11 facing the upper left, and a tricolor (light blue, blue, and dark blue) banner along the
12 bottom of the mark that overlaps with the dolphin’s fluke:



22 28. Defendant elected not to utilize the DPCIA official dolphin safe logo.
23 By placing an alternative “Dolphin Safe” logo on Bumble Bee tuna products, rather
24 than the official mark, Defendant voluntarily assumed the heightened dolphin safety
25 requirements under the DPCIA applicable to all locations where Defendant captures
26 its tuna and to all fishing methods used, whether nets or other gear. Pursuant to the
27 regulations, Defendant *must* ensure that (1) “*no* dolphins were killed or seriously
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1 injured in the sets or other gear deployments in which the tuna were caught”
2 (emphasis added); and (2) the label must be “supported by a tracking and verification
3 program” throughout the fishing, transshipment and canning process; “periodic
4 audits and spot checks” must be conducted, and Bumble Bee must provide “timely
5 access to data required”. 16 U.S.C. §§1385(d)(3)(C) and (f).

6 29. To be clear, the Act and implementing regulations specify that “no”
7 dolphins must be “killed or seriously injured” and if “a” dolphin “was killed or
8 seriously injured [defined as ‘any injury that will likely result in mortality’ (50 CFR
9 §216.3)]” the tuna is *not dolphin safe* and must be *stored physically separate* from
10 tuna that is dolphin safe and *must be supported by sufficient documentation* to enable
11 the National Marine Fisheries Service to trace the non-dolphin safe tuna back to the
12 fishing trip. 50 CFR §216.91.

13 30. Plaintiffs allege that Defendant falsely represents that Bumble Bee tuna
14 products are “Dolphin Safe” – meaning “no” dolphins were killed or seriously injured
15 – when Defendant’s tuna fishing practices kill or harm substantial numbers of
16 dolphins each year and even though there are alternative fishing practices that are
17 dolphin safe which Bumble uses to catch the tuna in its premium Wild Selections
18 brand and which other tuna companies use. And because Defendant does not
19 adequately trace or otherwise identify the tuna that is not dolphin safe and physically
20 segregate and store it separately from any tuna that may be dolphin safe (if any),
21 Defendant may not label any of its tuna products as dolphin safe.

22 **World Trade Organization Dispute Regarding “Dolphin Safe” Labels**

23 31. In 2008, a trade dispute erupted between Mexico and the United States
24 over the use of a dolphin safe representation on labels of prepacked tuna products
25 sold in the United States pursuant to the DPCIA and the Ninth Circuit’s holding in
26 *Earth Island Institute v. Hogarth, supra*.

27 32. Mexico, which fishes for tuna primarily in the ETP using purse seine
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1 nets, alleged that the DPCIA discriminated against Mexican tuna because it imposed
2 stricter regulations and required more exacting documentary evidence of compliance
3 with the Act for tuna caught in the ETP than in other fisheries.

4 33. On September 15, 2011, the WTO Panel hearing the dispute issued its
5 first Report. The Panel disagreed that the DPCIA discriminates against Mexico, but
6 also found the Act was more trade-restrictive than necessary to fulfill its legitimate
7 objectives of ensuring (i) consumers are not deceived by dolphin safe representations,
8 and (ii) United States markets are not used to encourage tuna fishing practices that
9 harm dolphins. Both Mexico and the United States appealed.

10 34. On May 16, 2012, the WTO Appellate Body issued its Report. Among
11 other findings, the Appellate Body found the DPCIA and the ruling in *Hogarth*
12 together:

13 set out a single and legally mandated definition of a “dolphin-
14 safe” tuna product and disallows the use of other labels on tuna
15 products that use the terms “dolphin-safe” [or make other
16 promises about] dolphins, porpoises and marine mammals [that
17 do not satisfy this definition. In doing so, the US measure
prescribes in a broad and exhaustive manner the conditions that
apply for making any assertion on a tuna product as to its
“dolphin-safety”, regardless of the manner in which that
statement is made.

18 See Official Summary, WTO DS381, current through Jan. 31, 2019, *available at*
19 https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm (last visited
20 May 10, 2019).

21 35. However, the Appellate Body also found the DPCIA discriminated
22 against Mexico. In doing so, the Appellate Body:

23 examined whether the different conditions for access to a
24 “dolphin-safe” label are “calibrated” to the risks to dolphins
25 arising from different fishing methods in different areas of the
26 ocean, as the United States had claimed. The Appellate Body
27 noted the Panel’s finding that the fishing technique of setting on
28 dolphins is particularly harmful to dolphins and that this fishing
method has the capacity of resulting in observed and unobserved
adverse effects on dolphins. ***At the same time, the Panel was
not persuaded that the risks to dolphins from other fishing***

1 *techniques are insignificant and do not under some*
2 *circumstances rise to the same level as the risks from setting on*
3 *dolphins.* The Appellate Body further noted the Panel’s finding
4 that, while the US measure fully addresses the adverse effects on
5 dolphins resulting (including observed and unobserved effects)
6 from setting on dolphins in the ETP, it does not address mortality
7 arising from fishing methods other than setting on dolphins in
8 other areas of the ocean. In these circumstances, the Appellate
9 Body found that the measure at issue is not even-handed in the
10 manner in which it addresses the risks to dolphins arising from
11 different fishing techniques in different areas of the ocean.

12 *Id.* (emphasis added).

13 36. In other words, the WTO Appellate Body found that fishing methods
14 being employed in and out of the ETP were likely harming dolphin populations and
15 the U.S. regulatory regime designed to protect dolphins was perhaps not strong
16 enough in its regulation of fisheries outside the ETP.

17 37. Following this Report, on May 31, 2012 Defendant, along with StarKist
18 and Chicken of the Sea, issued the following press release through the National
19 Fisheries Institute (“NFI”):

20 **STATEMENT ON WTO DOLPHIN SAFE TUNA RULING**

21 NFI is the leading seafood trade association in the United States
22 and represents Bumble Bee, Chicken of the Sea and StarKist.

23 Household tuna brands Bumble Bee, Chicken of the Sea and
24 StarKist are disappointed in the World Trade Organization's
25 (WTO) appeals court ruling because it is likely to create
26 consumer confusion about whether or not their products continue
27 to be dolphin safe. *The three U.S. brands want to reassure*
28 *consumers they have no reason to be concerned that their*
 companies are wavering in their commitment to providing
 dolphin safe tuna as a result of this ruling. These companies
 do not and will not utilize tuna caught in a manner that harms
 dolphins. Providing consumers with sustainable and dolphin
 safe tuna remains a top priority.

 See States News Service Press Release, May 31, 2012 (emphasis added).

 38. Following the Appellate Body’s Report and recommendations to
strengthen the DPCIA, the United States amended the Act to impose more exacting
requirements on tuna caught outside the ETP. These amendments required that:

1 all tuna sought to be entered into the United States as
 2 “dolphin-safe”, regardless of where it was caught or the
 3 nationality of the fishing vessel, must be accompanied by a
 4 certification that (a) no nets were intentionally set on
 dolphins in the set in which the tuna was caught; and (b) no
 dolphins were killed or seriously injured in the sets in which
 the tuna was caught.

5 See Official Summary, WTO DS381, current through Jan. 31, 2019 (emphasis
 6 added), available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm (last visited May 10, 2019).

8
 9 **Bumble Bee’s Fishing Practices and Violation of its**
 10 **Dolphin Safe Representations**

11 39. Several tuna companies use traditional pole-and-line and trolling
 12 methods of catching tuna. These products include Safe Catch, Ocean Naturals (for
 13 its Albacore tuna), and Wild Planet, which are caught using pole-and-line and
 14 trolling, and American Tuna, Whole Foods 365 Everyday Value brand (for its
 15 skipjack and albacore tuna), and Trader Joe’s (for its yellowfin tuna), which are
 16 caught using exclusively pole-and-line.²

17 40. While more costly, these traditional methods ensure that dolphins (and
 18 other bycatch) are not harmed in the fishing process because fish are caught using
 19 barbless hooks and poles one at a time near the sea’s surface and unintended captured

20 ² See Safe Catch, The Safe Catch Way, available at <https://safecatch.com/> (last
 21 visited May 3, 2019); Ocean Naturals, Albacore, Responsibly Caught, available at
 22 <https://oceannaturals.com/responsibly-caught/albacore-tuna/> (last visited May 3,
 23 2019); Wild Planet, Good to the Core, Products-Tuna, available at
 24 <https://www.wildplanetfoods.com/products/tuna/> (last visited May 3, 2019);
 25 American Tuna, American Tuna, Home, available at <https://americantuna.com/> (last
 26 visited May 3, 2019); Whole Foods Market, Wild, Salt Added Tuna, 5 oz,
 27 Products>365 Everyday Value, available at [https://products.wholefoodsmarket.com/
 product/365-everyday-value-wild-salt-added-tuna-10e1c0](https://products.wholefoodsmarket.com/product/365-everyday-value-wild-salt-added-tuna-10e1c0) (last visited May 3, 2019);
 Whole Foods Market, Albacore Wild Tuna, 5 oz, Products>365 Everyday Value,
 available at [https://products.wholefoodsmarket.com/product/365-everyday-value-
 albacore-wild-tuna-5-oz-b83f86](https://products.wholefoodsmarket.com/product/365-everyday-value-albacore-wild-tuna-5-oz-b83f86) (last visited May 3, 2019); Trader Joe’s, About
 Trader Joe’s Seafood, Announcements>Customer Updates (July 17, 2013), available
 at [https://www.traderjoes.com/announcement/a-note-to-our-customers-about-trader-
 joes-seafood](https://www.traderjoes.com/announcement/a-note-to-our-customers-about-trader-joes-seafood) (last visited May 3, 2019).

1 species are easily released. Tuna caught by these methods are actually “dolphin
2 safe.”

3 41. Bumble Bee, in fact, uses pole-and-line fishing methods to capture the
4 tuna in its Wild Selections premium brand tuna products and prominently identifies
5 “line caught” as the catch method used on the front and center of the product labels.
6 Bumble Bee does not, however, use only dolphin safe pole-and-line or trolling
7 techniques to capture the tuna in its flagship Bumble Bee branded tuna products that
8 are the subject of this lawsuit. Nor does Bumble Bee identify the dolphin harming
9 fishing methods it does use on the tuna product labels even though Defendant
10 acknowledges it is capable of tracing the fishing gear employed to capture the tuna.
11 Bumble Bee, Trace My Catch, available at <http://www.bumblebee.com/tracemy>
12 [catch/](http://www.bumblebee.com/tracemy) (last visited May 7, 2019).

13 42. While not disclosed on the product labels, Defendant’s website
14 identifies purse seine nets and longlines as the methods used to capture the tuna in its
15 Bumble Bee branded products. Bumble Bee, Tuna 101, About Us, available at
16 <http://www.bumblebee.com/about-us/seafood-school/tuna-101/> (last visited May 7,
17 2019). Both of these fishing methods kill and harm substantial numbers of dolphins.

18 43. Longlines consist of a 40-80 mile long main line to which many smaller
19 branch lines with baited hooks are attached to catch tuna. Longlines are highly
20 indiscriminate fishing gear as they attract large numbers of target and non-target fish,
21 as well as dolphins, that get snagged on the hooks by their mouth or other body parts
22 when they go after the bait and then remain on the line for extended periods of time
23 as the lines are drawn in to the vessel and the catch is obtained. The hooked fish are
24 retrieved by mechanically pulling the main line back onto the fishing vessel, which
25 can take 10 hours. As dolphins are oxygen breathers, most do not survive the 10-
26 hour retrieval process.

1 44. Even when dolphins are mistakenly caught by these longlines, they are
2 often not released. Rather, the fishermen that catch these dolphins often kill them
3 onboard and have been photographed posing with their catch, mutilating the dolphins
4 and removing their teeth, which can be used as currency. Because of the harm caused
5 to non-target fish, longlines have been condemned by environmental groups like the
6 World Wildlife Foundation (“WWF”) as an unsustainable fishing practice WWF,
7 Bycatch, Threats, available at www.worldwildlife.org/threats/bycatch (last visited
8 May 3, 2019).

9 45. Purse seine nets also trap, kill, and harm substantial numbers of
10 dolphins. Because purse seine nets can reach more than 6,500 feet in length and 650
11 feet deep – the equivalent of 18 football fields by 2 football fields³ – they often entrap
12 dolphins when drawn closed, particularly because many of the purse seine fishing
13 vessels use free floating rafts of flotsam known as fish aggregating devices, or FADs,
14 to capture tuna. Bumble Bee, Sustaining Fisheries, Sustainability, available at
15 <http://www.bumblebee.com/sustainability/fisheries/> (last visited May 8, 2019) (“we
16 source skipjack and yellowfin from purse seiners who utilize non-entangling Fish
17 Aggregating Devices (FAD) designs.”).

18 46. FADs are known as floating death traps because dolphins and other
19 marine life get entangled in the devices. Even though Defendant states it recently
20 began sourcing some of its tuna from purse seiners utilizing “non-entangling” FADs
21 (*id.*), their sheer numbers estimated at 30,000 to 50,000 per year disrupt behavior and
22 movement patterns of dolphins and other ocean species crucial to their survival. And,
23 as most FADs are not removed after use, they pollute the oceans in direct conflict
24

25 _____
26 ³ Elizabeth Brown, Fishing Gear 101: Purse Seines – The Encirclers (June 6, 2016),
27 available at <http://safinacenter.org/2015/12/fishing-gear-101-purse-seines-the-encirclers/> (last visited May 3, 2019) (“Brown 2016”).

1 with Defendant’s proclaimed goal of “ensuring safer, cleaner oceans” as part of its
2 commitment to sustainable fishing practices. *Id.*

3 47. While FADs are extremely effective at luring tuna, they also attract
4 dolphins – particularly in the ETP where Defendant sources some of its tuna⁴ as
5 schools of tuna routinely gather beneath schools of dolphins to reduce the risk of
6 predation. So, even if the particular FAD is net-free, the tuna, dolphins, and other
7 marine life are all then caught in the gigantic mile circumference purse seine nets that
8 are deployed around the FAD to catch the tuna.

9 48. Since the 1980s, changes in the design of nets and fishing practices that
10 allow dolphins to escape the net have significantly reduced dolphin mortality. Brown
11 2016. Nonetheless, significant numbers of dolphins (over a thousand a year
12 according to NOAA⁵) are still harmed by this method, as unintended bycatch can
13 account for more than 30% of a ship’s haul. And, even though unintended bycatch
14 may still be alive when dumped out of the nets onto the boat, by the time they are
15 thrown back into the ocean, most are dead or near dead.

16 49. Even when dolphins escape the purse seine nets or are released alive
17 from the longlines and nets, dolphins are harmed by these fishing practices.

18 50. Several studies have observed a number of indirect ways these fishing
19 practices cause additional unobserved dolphin deaths, including: dolphin mother-calf
20 separation as calves are dependent upon their mothers until weaned 1.5 years
21 postpartum, and, even then, the calves do not reach full muscle maturation until age
22 3; acute cardiac and muscle damages caused by the exertion of avoiding or detangling
23 from the FADs and purse seine nets; cumulative organ damage in released dolphins
24 due to overheating from escape efforts; failed or impaired reproduction;

25
26 ⁴ Bumble Bee, Tuna 101, About Us, *available at* <http://www.bumblebee.com/about-us/seafood-school/tuna-101/> (last visited May 8, 2019).

27 ⁵ NOAA 2016.

1 compromised immune function; and unreported mortalities due to under-counting by
2 purse-seine fishing vessels. *See, e.g.,* Department of Commerce, Reilly, *et al.*, Report
3 of the Scientific Research Program Under the International Dolphin Conservation
4 Program Act, NOAA Technical Memorandum NMFS (Mar. 2005), at 67-71, 76
5 *available at* [https://swfsc.noaa.gov/publications/TM/SWFSC/NOAA-TM-NMFS-](https://swfsc.noaa.gov/publications/TM/SWFSC/NOAA-TM-NMFS-SWFSC-372.PDF)
6 [SWFSC-372.PDF](https://swfsc.noaa.gov/publications/TM/SWFSC/NOAA-TM-NMFS-SWFSC-372.PDF) (last visited May 3, 2019). *See also* Wade, *et al.*, *Depletion of*
7 *spotted and spinner dolphins in the eastern tropical Pacific: modeling hypotheses for*
8 *their lack of recovery*, Mar Ecol Prog Ser 343:1-14, 2007, at 11 (noting “[a] summary
9 of recent research ... clearly illustrates that the purse seine fishery has the capacity
10 to affect dolphins beyond the direct mortality observed as bycatches”); Kellar, *et al.*,
11 *Pregnancy patterns of pantropical spotted dolphins (Stenella attenuata) in the*
12 *eastern tropical Pacific determined from hormonal analysis of blubber biopsies and*
13 *correlations with the purse-seine tuna fishery*, Mar Biol (2013) 160:3113-3124, at
14 3120 (tuna fishery reduces likelihood of female becoming pregnant or maintaining
15 pregnancy).

16 51. Additional indirect harm to dolphins and the marine environment result
17 from discarded and abandoned fishing gear, including FADs, which is estimated to
18 make up to 70% by weight of microplastics in the ocean and, among other harms,
19 ensnares marine life.

20 52. As the indirect harmful effects of Defendant’s fishing practices also
21 “likely result in [dolphin] mortality” (50 CFR §216.3), Defendant’s tuna is not
22 dolphin safe. It is conservatively estimated that total reported dolphin mortality is
23 underestimated by 10-15% for spotted dolphins and 6-10% for spinner dolphins
24 given these indirect harmful effects and unobserved and underreported kills. Reilly,
25 *et al.*, 2005, at 7.

26 53. Because the use of FADs, purse seine nets, and longlines are
27 unsustainable fishing practices, several companies that supply the U.S. tuna market

1 will not source their tuna from boats that use these indiscriminate fishing methods.
2 But Bumble Bee is not among these companies. While Defendant emphasizes on its
3 website that post January 1, 2016 it began “increasing sourcing of tuna caught by
4 vessels on the International Seafood Sustainability Foundation (ISSF) Proactive
5 Vessel Register (PVR)” as an “effective, credible, and verifiable way to identify those
6 purse seine vessels that are taking meaningful sustainability efforts to improve
7 responsible practices in tuna fishing and that are in compliance with ISSF Multi-
8 Annual Commitments”⁶; as stated on the PVR website under the “FAQ” header, all
9 vessels are eligible for the registry *regardless of the fishing method used*⁷, such that
10 a vessel’s PVR designation does not indicate it uses sustainable fishing methods. In
11 fact, compliance with the ISSF Conservation Measures of relevance here is
12 determined by “remote” audits once every three years wherein vessel owners *self-*
13 *attest* either directly or electronically that no driftnets are used, FADs are non-
14 entangling, no shark finning is occurring, and they are not on the RFMD Illegal,
15 Unreported and Unregulated vessel list. ISSF, Audits, ProActive Vessel Register,
16 available at [https://iss-foundation.org/knowledge-tools/databases/proactive-vessel-](https://iss-foundation.org/knowledge-tools/databases/proactive-vessel-register/)
17 [register/](https://iss-foundation.org/knowledge-tools/databases/proactive-vessel-register/) (last visited May 8, 2019); MRAG Americas, ISSF ProActive Vessel
18 Register: Audit Policy Document & Standard Operating Procedures For Purse Seine
19 Vessels (March 2018, updated Sept. 2018), *available at* [https://iss-](https://iss-foundation.org/download-monitor-demo/download-info/issf-proactive-vessel-register-pvr-audit-policy-document-standard-operating-procedures-for-purse-seine-vessels-september-2018/)
20 [foundation.org/download-monitor-demo/download-info/issf-proactive-vessel-](https://iss-foundation.org/download-monitor-demo/download-info/issf-proactive-vessel-register-pvr-audit-policy-document-standard-operating-procedures-for-purse-seine-vessels-september-2018/)
21 [register-pvr-audit-policy-document-standard-operating-procedures-for-purse-seine-](https://iss-foundation.org/download-monitor-demo/download-info/issf-proactive-vessel-register-pvr-audit-policy-document-standard-operating-procedures-for-purse-seine-vessels-september-2018/)
22 [vessels-september-2018/](https://iss-foundation.org/download-monitor-demo/download-info/issf-proactive-vessel-register-pvr-audit-policy-document-standard-operating-procedures-for-purse-seine-vessels-september-2018/) (last visited May 8, 2018); MRAG Americas, ISSF
23 ProActive Vessel Register: Audit Policy Document & Standard Operating
24

25 ⁶ Bumble Bee, Sustaining Fisheries, Sustainability, *available at*
26 <http://www.bumblebee.com/sustainability/fisheries/> (last visited May 7, 2019).

27 ⁷ ISSF, About the PVR, ProActive Vessel Register, *available at* [https://iss-](https://iss-foundation.org/knowledge-tools/databases/proactive-vessel-register/)
28 [https://iss-](https://iss-foundation.org/knowledge-tools/databases/proactive-vessel-register/)
29 [foundation.org/knowledge-tools/databases/proactive-vessel-register/](https://iss-foundation.org/knowledge-tools/databases/proactive-vessel-register/) (last visited
30 May 7, 2019).

1 Procedures For Longline Vessels (Mar. 2018, updated Sept. 2018), *available at*
2 [https://iss-foundation.org/download-monitor-demo/download-info/issf-proactive-](https://iss-foundation.org/download-monitor-demo/download-info/issf-proactive-vessel-register-pvr-audit-policy-document-standard-operating-procedures-for-longline-vessels-september-2018/)
3 [vessel-register-pvr-audit-policy-document-standard-operating-procedures-for-](https://iss-foundation.org/download-monitor-demo/download-info/issf-proactive-vessel-register-pvr-audit-policy-document-standard-operating-procedures-for-longline-vessels-september-2018/)
4 [longline-vessels-september-2018/](https://iss-foundation.org/download-monitor-demo/download-info/issf-proactive-vessel-register-pvr-audit-policy-document-standard-operating-procedures-for-longline-vessels-september-2018/) (last visited May 8, 2018). “Dolphin” and
5 “bycatch” are not mentioned at all in the Audit Protocols. And the use of non-
6 entangling FADs, longlines, and purse seine nets are all permissible practices not
7 subject to audit. *See id.*

8 54. Further belying its supposed commitment to sustainable fishing
9 practices is that, to avoid competition from its primary market rivals over the sale of
10 FAD-free tuna (which would be more expensive), in or about February 2012, Bumble
11 Bee allegedly entered into a written agreement with Chicken of the Sea and StarKist
12 Co., who together with Defendant control 70-80% of the U.S. canned tuna market,
13 whereby none of them would sell a branded FAD-free tuna product in the U.S. *See*
14 Tom Seaman, Lawsuits: US brands colluded on not selling FAD-free tuna,
15 [undercurrentnews>analysis>US Investigates Tuna Brands>Companies](https://www.undercurrentnews.com/2016/07/18/lawsuits-us-brands-colluded-on-not-selling-fad-free-tuna/) (July 18,
16 2016), *available at* [https://www.undercurrentnews.com/2016/07/18/lawsuits-us-](https://www.undercurrentnews.com/2016/07/18/lawsuits-us-brands-colluded-on-not-selling-fad-free-tuna/)
17 [brands-colluded-on-not-selling-fad-free-tuna/](https://www.undercurrentnews.com/2016/07/18/lawsuits-us-brands-colluded-on-not-selling-fad-free-tuna/) (last visited May 3, 2019).

18 55. Because “Bumble Bee does not offer any responsibly-caught options”,
19 “has not made a commitment to introduce responsibly caught products under its
20 flagship brand”, and does not indicate on the product labels how the tuna was caught,
21 Greenpeace has consistently ranked Defendant near the bottom of its list of well-
22 known tuna brands when it comes to responsible sourcing of tuna. Greenpeace, 2017
23 Tuna Shopping Guide, *available at* [https://www.greenpeace.org/usa/oceans/tuna-](https://www.greenpeace.org/usa/oceans/tuna-guide/)
24 [guide/](https://www.greenpeace.org/usa/oceans/tuna-guide/) (last visited May 3, 2019) (ranking Bumble Bee 17th out of 20).

1 **Bumble Bee Does Not Track and Report the Numbers of Dolphins**
2 **Killed or Maimed in Capturing Its Tuna**

3 56. Defendant's use of an alternative dolphin safe logo on its tuna products
4 requires it to track, audit, and spot check for accuracy that "no dolphins were killed
5 or seriously injured in the sets or other gear deployments in which the tuna were
6 caught" from capture, to transshipment⁸, to cannery, to shelf. And, in the event that
7 even a single dolphin is "killed or seriously injured" during the catch, Defendant must
8 physically separate and store that catch from any tuna catches in which no dolphins
9 were harmed (if any) and maintain records tracing the catch(es) in which dolphins
10 were harmed back to the fishing vessel and trip. 50 CFR §216.91.

11 57. Defendant sources its tuna globally in all oceans. Bumble Bee, Tuna
12 101, About Us, *available at* [http://www.bumblebee.com/about-us/seafood-](http://www.bumblebee.com/about-us/seafood-school/tuna-101/)
13 [school/tuna-101/](http://www.bumblebee.com/about-us/seafood-school/tuna-101/) (last visited May 8, 2019). Unlike fisheries in the ETP, boats in the
14 other oceanic regions that supply Bumble Bee tuna are not required to have
15 independent observers onboard to track and report the number of dolphins killed or
16 seriously injured. 16 U.S.C. §1385(d)(1). A declaration from the ship's captain
17 suffices. 16 U.S.C. §1385(d)(1)(B). These declarations are limited to certifying that
18 "no purse seine net was intentionally deployed on or used to encircle dolphins during
19 the particular voyage on which the tuna was harvested" and do not require
20 certification that FADs, gillnets, longlines, and other dolphin harming fishing
21 techniques were not used. Nor must the captain quantify the number of dolphins
22 killed or otherwise harmed.

23 58. Instead, Defendant is solely responsible for collecting information

24 ⁸ Transfer of a shipment from one carrier, or more commonly, from one vessel to
25 another whereas in transit. Transshipments are usually made (1) where there is no
26 direct air, land, or sea link between the consignor's and consignee's countries, (2)
27 where the intended port of entry is blocked, or (3) to hide the identity of the port or
28 country of origin. Business Dictionary, transshipment, *available at* <http://www.businessdictionary.com/definition/transshipment.html> (last visited May
3, 2019).

1 about the number of dolphins killed or seriously injured, which Defendant fails to do.
2 Defendant acknowledges “there is currently no existing standard or credible audit
3 process for the challenging and often remote operation of tuna fishing vessels.”
4 Bumble Bee, Social Responsibility, Sustainability, *available at*
5 [http://www.bumblebee.com/
6 sustainability/social-responsibility/](http://www.bumblebee.com/sustainability/social-responsibility/) (last visited May 7, 2019). What Defendant does
7 not mention is that there is a strong financial incentive for a captain to falsely omit
8 any report of dolphin mortality or harm, as any catch that is not “dolphin safe” is
9 essentially worthless. And, it is relatively simple to do this, as the majority of
10 certifications are paper-based and typically filled in by hand – often after the vessel
11 has returned to port – making it virtually impossible to adequately verify these
12 certifications. The potential and incentive for false reporting by its tuna suppliers
13 make it even more incumbent upon Defendant to track, trace, and report the number
14 of dolphins killed or harmed by Defendant’s tuna fishing vessels.

15 59. Further, while Defendant claims that all of its tuna products meet the
16 dolphin safe labeling standards of the Earth Island Institute (“EII”)⁹, including
17 dolphin-friendly sourcing, EII’s tuna monitoring program does not guarantee that no
18 dolphins were killed or seriously injured by Bumble Bee tuna vessels. EII’s list of
19 “verified dolphin-safe companies” is based on supplier “commitments” to not chase
20 and encircle dolphins during their fishing trips. *See* David Phillips, International
21 Marine Mammal Project, Earth Island Institute International Tuna Monitoring
22 Program 2014 Annual Report (Aug. 19, 2015), *available at* [http://savedolphins.
23 eii.org/news/entry/2014-annual-report-international-tuna-monitoring-report](http://savedolphins.eii.org/news/entry/2014-annual-report-international-tuna-monitoring-report) (last
24 visited May 8, 2019). EII does not have the resources to monitor all the vessels
25 supplying Defendant’s tuna, let alone each and every fishing trip made by those

26 _____
27 ⁹ Bumble Bee, Current Topics, FAQ, *available at* <http://www.bumblebee.com/faqs/>
28 (last visited May 8, 2019).

1 vessels. Further, as evidenced by the “commitment” it requires of its suppliers, EII’s
2 focus is on ensuring dolphins are not chased and encircled. *Id.* Suppliers’ use of
3 FADs, longlines, and other destructive fishing methods is not a bar to verification.
4 In fact, EII expressly states that it is not opposed to the use of FADs. *Id.*

5 60. By purchasing its tuna from fishing vessels that use purse seine nets
6 deployed around FADs and/or longlines, Bumble Bee is able to reduce its tuna
7 product costs by using less costly fishing methods that kill or harm dolphins. This
8 enables Bumble Bee to sell its tuna products at a lower price and capture more of the
9 declining tuna market, which has experienced a 40% per capita decline over the last
10 30 years.

11 **Bumble Bee’s Sustainable Fishing Practices Misrepresentations**

12 61. Defendant’s commitment to sustainable fishing practices, including
13 dolphin safe sourcing, is the common message in its widespread and long-term
14 advertising campaign as “the responsible harvesting and management of fisheries
15 from which we source – [] is not only important to the environment and our
16 consumers, but for our business as well.” Bumble Bee, Sustaining Fisheries,
17 Sustainability, available at <http://www.bumblebee.com/sustainability/fisheries/> (last
18 visited May 7, 2019). On its website, Defendant says its “goal” is “to source all of
19 our seafood products sustainably”, which means, in part, “that the fishery is managed
20 using science and data and takes into account any impact of fishing on related species
21 and ecosystems.” *Id.*

22 62. Defendant claims its membership in the International Seafood
23 Sustainability Foundation (“ISSF”) is the “primary channel” for accomplishing its
24 sustainable fishing practices goals. Bumble Bee, Tuna 101, About Us, available at
25 <http://www.bumblebee.com/about-us/seafood-school/tuna-101/> (last visited May 7,
26 2019). Despite its organization name and purported sustainable fishing practice
27 mission, the ISSF does not support the banning or effective control of FADs,
28

1 longlines, or other unsustainable fishing techniques.

2 63. The ISSF also lacks the independence and impartiality to embrace and
3 champion meaningful sustainability practices and industry reform. It was created in
4 2009 by Bumble Bee and several other big tuna companies and its funding comes
5 from corporate fees which are several hundreds of thousands of dollars for large
6 companies like Bumble Bee. As noted by Greenpeace when refusing an invite to join
7 ISSF's Environmental Stakeholder Committee, the "ISSF's role [is] to deflect
8 attention from the real problems, and to delay adoption of real solutions that its
9 corporate members would prefer to avoid" such as banning FADs and other harmful
10 fishing techniques that its corporate members use and simply allows its members "to
11 brandish their ISSF membership as a way to deflect criticism." Greenpeace, How the
12 International Seafood Sustainability Foundation (ISSF) Blocks Environmental
13 Action, available at [https://www.greenpeace.org/usa/oceans/sustainable-](https://www.greenpeace.org/usa/oceans/sustainable-seafood/how-international-seafood-sustainability-foundation-blocks-environmental-action/)
14 [seafood/how-international-seafood-sustainability-foundation-blocks-environmental-](https://www.greenpeace.org/usa/oceans/sustainable-seafood/how-international-seafood-sustainability-foundation-blocks-environmental-action/)
15 [action/](https://www.greenpeace.org/usa/oceans/sustainable-seafood/how-international-seafood-sustainability-foundation-blocks-environmental-action/) (last visited May 3, 2019).

16 64. Because Bumble Bee uses longlines, purse seine nets, FADs, and other
17 well-known dolphin-harming fishing techniques, notwithstanding its ISSF
18 membership, Bumble Bee's sustainability representations are false, misleading,
19 and/or deceptive.

20 **Bumble Bee, Unlike Many Other Tuna Companies, Does Not Use**
21 **Dolphin Safe Tuna Fishing Methods**

22 65. Unlike several other tuna companies who sell to the U.S. market,
23 Defendant has not adopted dolphin safe fishing practices for its flagship Bumble Bee
24 branded tuna products, such as pole-and-line, trolling, and/or handline catch
25 methods, whereby fishermen catch one fish at a time and release unwanted species
26 soon after a fish takes the bait.

27 66. Most U.S. retailers have sustainability guidelines and expectations of
28

1 their seafood suppliers that include: using recognized dolphin safe tuna capture
2 methods, having programs in place to trace the tuna back to the boat and place of
3 capture, and guaranteeing the catch method used. *See, e.g.*, Whole Foods Market,
4 Sustainable Canned Tuna, available at [https://www.wholefoodsmarket.com/
5 sustainable-canned-tuna](https://www.wholefoodsmarket.com/sustainable-canned-tuna) (last visited Apr. 17, 2019); Whole Foods Market, Canned
6 Tuna Sourcing Policy, available at [http://assets.wholefoodsmarket.com/
7 www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy
8 _102017.pdf](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf) (last visited Apr. 17, 2019); PR Newswire, Safeway Announces New
9 Sustainable Sourcing Practice for Tuna (Feb. 10, 2012), available at
10 [https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-
11 sourcing-practice-for-tuna-139096714.html](https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-sourcing-practice-for-tuna-139096714.html) (last visited Apr. 17, 2019);
12 Albertsons/Safeway, Supplier Sustainability Guidelines and Expectations (Aug.
13 2015), at 3, available at [https://suppliers.safeway.com/usa/pdf/supplier_
14 sustainability_expectations.pdf](https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf) (last visited May 3, 2019) (“Safeway-Albertsons will
15 strive to purchase environmentally preferable products”); H-E-B, H-E-B seafood
16 policy, available at [https://www.heb.com/static-page/article-template/H-E-B-
17 Seafood-Policy](https://www.heb.com/static-page/article-template/H-E-B-Seafood-Policy) (last visited May 3, 2019); Sprouts, Sustainable Seafood Policy,
18 available at [https://about.sprouts.com/product-sourcing/sustainable-seafood-policy/
19 \(last visited Apr. 17, 2019\); Giant Eagle, Tuna Policy, available at
20 <https://www.gianteagle.com/about-us/sustainable-seafood/tuna-policy> \(last visited
21 Apr. 17, 2019\) \(“Our goal is to source tuna only from healthy and well-managed
22 stocks, from fisheries using the most current best practice in methods, bycatch
23 reduction and environmentally responsible, socially responsible, Non GMO, BPA
24 free and priced reasonably for our consumers”\); Wegmans, Seafood Sustainability,
25 available at \[https://www.wegmans.com/about-us/making-a-difference/sustainability
26 -at-wegmans/seafood-sustainability.html\]\(https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html\) \(last visited Apr. 17, 2019\); Publix, Publix
27 Sustainability Report 2019, available at \[- 23 -\]\(https://sustainability.publix.com/wp-
28</p></div><div data-bbox=\)](https://about.sprouts.com/product-sourcing/sustainable-seafood-policy/)

1 content/uploads/sustainability-report.pdf (last visited Apr. 17, 2019) (supplier
2 commitment to sustainable fishing “helps us decide whether to sell a product,
3 enhance fisheries through improvement projects or halt the sale of a product until the
4 issue is resolved.”). Tuna companies who do not use dolphin safe catch methods and
5 do not adhere to traceability requirements can expect retailers to refuse to sell their
6 products.

7 67. By expressing a commitment to sustainability, labeling its tuna products
8 as dolphin safe, not tracking and reporting the number of dolphins killed and harmed
9 in capturing its tuna, and not separating tuna that is not dolphin safe from tuna caught
10 where no dolphins were harmed (if any), Defendant is able to sell its Bumble Bee
11 tuna products in several major retail stores to which it would otherwise be denied
12 entry.

13 **Bumble Bee’s Dolphin Safe Sustainability Representations are False,**
14 **Misleading, and/or Deceptive and are Systemic Acts of Mail and Wire Fraud**

15 68. Because dolphins are killed and harmed by the fishing methods used to
16 catch the tuna in Defendant’s products; Defendant does not adequately track, verify,
17 audit, and spot check the number of dolphins killed and harmed; and Defendant does
18 not separately store the tuna that is not dolphin safe, Bumble Bee’s use of the
19 alternative dolphin safe logo, its dolphin safe representations, and its sustainability
20 representations are false, misleading, and/or deceptive, as well as systemic acts of
21 mail and wire fraud.

22 69. Reasonable consumers rightly believe that “dolphin safe” means “no”
23 dolphins were harmed in the process of catching the tuna in Defendant’s products.
24 That is precisely the regulatory definition of dolphin safe. 50 CFR §§216.3, 216.91.
25 And it is the message that Bumble Bee has consistently conveyed to the public in its
26 widespread and long-term advertising and marketing campaign.

27 70. Dolphin safety matters to consumers and it materially affects their

1 decision whether to purchase Bumble Bee tuna. So too does the use of sustainable
2 fishing practices that, among other things, minimize the amount of unwanted
3 bycatch. If consumers, including Plaintiffs, knew Bumble Bee's tuna products were
4 not dolphin safe and/or not caught using sustainable fishing methods they would not
5 buy Defendant's products, particularly because there are several competing brands
6 of like tuna products that are dolphin safe and sustainably sourced – including
7 Bumble Bee's own premium Wild Selections branded tuna products. Thus, Plaintiffs
8 and Class members are entitled to a full refund.

9 71. Any nutrient value notwithstanding, because Defendant's false dolphin
10 safe representations and/or unsustainable catch methods taint the entire purchase –
11 from whether Bumble Bee tuna that was not dolphin safe and/or not sustainably
12 caught would even be sold by retailers to whether consumers would purchase Bumble
13 Bee tuna that was not dolphin safe and /or sustainably caught if available for purchase
14 – consumers, like Plaintiffs here, are entitled to a full refund. The importance
15 consumers place upon dolphin safety and their abject distaste for indiscriminate and
16 destructive fishing methods makes tuna fish consumers no different from Hindus
17 attributing zero value to beef products, or vegans attributing zero value to animal
18 products, or vegetarians attributing zero value to meat, fish, and poultry, no matter
19 what nutritive value these products may otherwise have. Further, if the retailers of
20 Defendant's tuna products knew they were not sustainably sourced and dolphin safe,
21 they would refuse to sell Defendant's tuna products. This too entitles Plaintiffs and
22 Class members to a full refund.

23 72. Alternatively, Plaintiffs and Class members are entitled to the premium
24 attributable to the dolphin safe and sustainable fishing practices misrepresentations.

25 73. Plaintiffs bring this action on behalf of themselves and other similarly
26 situated consumers who purchased the tuna products to halt the dissemination of this
27 false, misleading, and deceptive advertising message, correct the misleading
28

1 perception it has created in the minds of consumers, and obtain redress for those who
2 have purchased the tuna products. Based on Defendant's violation of RICO, unjust
3 enrichment, and violations of California, Florida, New York, New Jersey, Maryland,
4 and Arizona unfair competition laws (detailed below), Plaintiffs seek damages,
5 declaratory, injunctive, and restitutionary relief for consumers who purchased the
6 tuna products.

7 **JURISDICTION AND VENUE**

8 74. This Court has original jurisdiction over the subject matter of this action
9 pursuant to 28 U.S.C. §1331, because Plaintiffs' claims arise under RICO, 18 U.S.C.
10 §1962. The Court has supplemental jurisdiction over Plaintiffs' state law claims
11 pursuant to 28 U.S.C. §1367. This Court also has jurisdiction pursuant to 28 U.S.C.
12 §1332, as modified by the Class Action Fairness Act of 2005, because at least one
13 member of the Class is a citizen of a different state than Defendant, there are more
14 than 100 members of the Class, and the aggregate amount in controversy exceeds
15 \$5,000,000, exclusive of interest and costs.

16 75. Venue properly lies in this District pursuant to 28 U.S.C. §1391(a),
17 because Defendant has transacted substantial business within this District within the
18 meaning of 28 U.S.C. §1391(a), as defined in 28 U.S.C. §1391(c), and because a
19 substantial part of the events giving rise to the claims alleged herein occurred in the
20 Northern District of California. Specifically, Defendant marketed and sold its tuna
21 products throughout the State of California, including throughout this District, and
22 California Plaintiffs Duggan and Myers, as well as other members of the Class,
23 purchased Defendant's falsely advertised and labeled tuna products from retail
24 outlets located within this District.

25 76. This Court has personal jurisdiction over Defendant pursuant to 18
26 U.S.C. §1965(b) and (d). Defendant is authorized to conduct and do business in
27 California, including this District. Defendant marketed, promoted, distributed, and
28

1 sold the tuna products in California, and Defendant has sufficient minimum contacts
2 with this State and/or sufficiently availed itself of the markets in this State through
3 its promotion, sales, distribution, and marketing within this State, including this
4 District, to render the exercise of jurisdiction by this Court permissible.

5 **PARTIES**

6 77. Plaintiff Tara Duggan resides in Marin County, California and is a
7 citizen of California. Throughout the relevant period, Plaintiff Duggan routinely was
8 exposed to, saw, and relied upon Defendant's dolphin safe representations by
9 viewing the dolphin safe mark on the Bumble Bee canned tuna in water at stores such
10 as Lucky's and Fairfax Market in her area. Plaintiff Duggan purchased the tuna
11 products for approximately \$3.50. At all relevant times, Plaintiff Duggan was
12 unaware that the tuna was not dolphin safe as represented and was caught using
13 fishing methods that are harmful to dolphins. Had Plaintiff Duggan known the tuna
14 was not dolphin safe and/or had Defendant not represented the tuna was dolphin safe,
15 Plaintiff Duggan would not have purchased the tuna products. As a result, Plaintiff
16 Duggan suffered injury in fact and lost money at the time of purchase. Plaintiff
17 Duggan continues to desire to purchase Bumble Bee products that are dolphin safe,
18 and she would purchase such a product manufactured by Defendant if it were possible
19 to determine prior to purchase whether dolphins by Defendant's operations. Indeed,
20 Plaintiff Duggan regularly visits stores such as Lucky's and Fairfax Market where
21 Defendant's tuna products are sold, but will be unable to rely upon the dolphin safe
22 representations and will not be able to determine if Defendant's products are dolphin
23 safe when deciding whether to purchase the tuna products in the future.

24 78. Plaintiff Lori Myers resides in Moreno Valley, California and is a citizen
25 of California. Throughout the relevant period, Plaintiff Myers routinely was exposed
26 to, saw, and relied upon Defendant's dolphin safe representations by viewing the
27 dolphin safe mark on the Bumble Bee canned and pouched tuna in water through
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1 Instacart, Amazon, and at Ralphs in Canyon Crest Town Center in Riverside,
2 California. Plaintiff Myers purchased the tuna products many times throughout the
3 relevant period. At all relevant times, Plaintiff Myers was unaware that the tuna was
4 not dolphin safe as represented and was caught using fishing methods that are
5 harmful to dolphins. Had Plaintiff Myers known the tuna was not dolphin safe and/or
6 had Defendant not represented that the tuna was dolphin safe, Plaintiff Myers would
7 not have purchased the Bumble Bee tuna products. As a result, Plaintiff Myers
8 suffered injury in fact and lost money at the time of purchase. Plaintiff Myers
9 continues to desire to purchase Bumble Bee tuna products that are dolphin safe, and
10 she would purchase such a product manufactured by Defendant if it were possible to
11 determine prior to purchase whether dolphins were harmed by Defendant's
12 operations. Indeed, Plaintiff Myers regularly purchases online and visits stores such
13 as Ralphs and Stater Brothers, where Defendant's tuna products are sold, but will be
14 unable to rely upon the dolphin safe representations and will not be able to determine
15 if Defendant's products are dolphin safe when deciding whether to purchase the tuna
16 products in the future.

17 79. Plaintiff Angela Cosgrove resides in Pompano Beach, Florida and is a
18 citizen of Florida. Throughout the relevant period, Plaintiff Cosgrove routinely was
19 exposed to, saw, and relied upon Defendant's dolphin safe representations by
20 viewing the dolphin safe mark on the Bumble Bee canned tuna in water and canned
21 yellowfin tuna at various stores in her area, including Publix and Walmart. Plaintiff
22 Cosgrove purchased the canned tuna products many times throughout the relevant
23 period. At all relevant times, Plaintiff Cosgrove believed the tuna products were
24 dolphin safe and was unaware that the tuna was not dolphin safe as represented and
25 was caught using fishing methods that are harmful to dolphins. Had Plaintiff
26 Cosgrove known the tuna was not dolphin safe and/or had Defendant not represented
27 that the tuna was dolphin safe, Plaintiff Cosgrove would not have purchased the

1 Bumble Bee tuna products. As a result, Plaintiff Cosgrove suffered injury in fact and
2 lost money at the time of purchase. Plaintiff Cosgrove continues to desire to purchase
3 Bumble Bee tuna products that are dolphin safe, and she would purchase such a
4 product manufactured by Defendant if it were possible to determine prior to purchase
5 whether dolphins were harmed by Defendant's operations. Indeed, Plaintiff Cosgrove
6 regularly visits stores such as Publix and Walmart, where Defendant's tuna products
7 are sold, but will be unable to rely upon the dolphin safe representations and will not
8 be able to determine if Defendant's products are dolphin safe when deciding whether
9 to purchase the tuna products in the future.

10 80. Plaintiff Robert McQuade resides in Bronxville, New York and is a
11 citizen of New York. Throughout the relevant period, Plaintiff Robert McQuade
12 routinely was exposed to, saw, and relied upon Defendant's dolphin safe
13 representations by viewing the dolphin safe mark on the Bumble Bee tuna products,
14 including tuna in pouches in water, at stores like Shop-Rite in Yonkers, New York,
15 and Eastchester, New York, and ACME in Bronxville, New York. Plaintiff Robert
16 McQuade purchased the tuna products many times throughout the relevant period.
17 At all relevant times, Plaintiff Robert McQuade believed the tuna products were
18 dolphin safe and was unaware that the tuna was not dolphin safe as represented and
19 was caught using fishing methods that are harmful to dolphins. Had Plaintiff Robert
20 McQuade known the tuna was not dolphin safe and/or had Defendant not represented
21 that the tuna was dolphin safe, Plaintiff Robert McQuade would not have purchased
22 the Bumble Bee tuna products. As a result, Plaintiff Robert McQuade suffered injury
23 in fact and lost money at the time of purchase. Plaintiff Robert McQuade continues
24 to desire to purchase Bumble Bee tuna products that are dolphin safe, and he would
25 purchase such a product manufactured by Defendant if it were possible to determine
26 prior to purchase whether dolphins were harmed by Defendant's operations. Indeed,
27 Plaintiff Robert McQuade regularly visits stores such as Shop-Rite, where

1 Defendant's tuna products are sold, but will be unable to rely upon the dolphin safe
2 representations and will not be able to determine if Defendant's products are dolphin
3 safe when deciding whether to purchase the tuna products in the future.

4 81. Plaintiff Colleen McQuade resides in Bronxville, New York and is a
5 citizen of New York. Throughout the relevant period, Plaintiff Colleen McQuade
6 routinely was exposed to, saw, and relied upon Defendant's dolphin safe
7 representations by viewing the dolphin safe mark on the Bumble Bee tuna products,
8 including tuna in pouches in water, at stores like Shop-Rite in Yonkers, New York,
9 and Eastchester, New York, and ACME in Bronxville, New York. Plaintiff Colleen
10 McQuade purchased the tuna products many times throughout the relevant period.
11 At all relevant times, Plaintiff Colleen McQuade believed the tuna products were
12 dolphin safe and was unaware that the tuna was not dolphin safe as represented and
13 was caught using fishing methods that are harmful to dolphins. Had Plaintiff Colleen
14 McQuade known the tuna was not dolphin safe and/or had Defendant not represented
15 that the tuna was dolphin safe, Plaintiff Colleen McQuade would not have purchased
16 the Bumble Bee tuna products. As a result, Plaintiff Colleen McQuade suffered
17 injury in fact and lost money at the time of purchase. Plaintiff Colleen McQuade
18 continues to desire to purchase Bumble Bee tuna products that are dolphin safe, and
19 she would purchase such a product manufactured by Defendant if it were possible to
20 determine prior to purchase whether dolphins were harmed by Defendant's
21 operations. Indeed, Plaintiff Colleen McQuade regularly visits stores such as Shop-
22 Rite, where Defendant's tuna products are sold, but will be unable to rely upon the
23 dolphin safe representations and will not be able to determine if Defendant's products
24 are dolphin safe when deciding whether to purchase the tuna products in the future.

25 82. Plaintiff James Borruso resides in Staten Island, New York and is a
26 citizen of New York. Throughout the relevant period, Plaintiff Borruso routinely
27 was exposed to, saw, and relied upon Defendant's dolphin safe representations by
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1 viewing the dolphin safe mark on the Bumble Bee tuna products, including canned
2 tuna in water or oil, at stores like Stop & Shop in Staten Island, New York. Plaintiff
3 Borruso purchased the tuna products many times throughout the relevant period. At
4 all relevant times, Plaintiff Borruso believed the tuna products were dolphin safe and
5 was unaware that the tuna was not dolphin safe as represented and was caught using
6 fishing methods that are harmful to dolphins. Had Plaintiff Borruso known the tuna
7 was not dolphin safe and/or had Defendant not represented that the tuna was dolphin
8 safe, Plaintiff Borruso would not have purchased the Bumble Bee tuna products. As
9 a result, Plaintiff Borruso suffered injury in fact and lost money at the time of
10 purchase. Plaintiff Borruso continues to desire to purchase Bumble Bee tuna
11 products that are dolphin safe, and he would purchase such a product manufactured
12 by Defendant if it were possible to determine prior to purchase whether dolphins
13 were harmed by Defendant's operations. Indeed, Plaintiff Borruso regularly visits
14 stores such as Stop & Shop where Defendant's tuna products are sold, but will be
15 unable to rely upon the dolphin safe representations and will not be able to determine
16 if Defendant's products are dolphin safe when deciding whether to purchase the tuna
17 products in the future.

18 83. Plaintiff Robert Nugent resides in Staten Island, New York and is a
19 citizen of New York. Throughout the relevant period, Plaintiff Nugent routinely was
20 exposed to, saw, and relied upon Defendant's dolphin safe representations by
21 viewing the dolphin safe mark on the Bumble Bee tuna products, including canned
22 tuna in water, at stores like Stop & Shop in Staten Island, New York. Plaintiff Nugent
23 purchased the tuna products many times throughout the relevant period. At all
24 relevant times, Plaintiff Nugent believed the tuna products were dolphin safe and was
25 unaware that the tuna was not dolphin safe as represented and was caught using
26 fishing methods that are harmful to dolphins. Had Plaintiff Nugent known the tuna
27 was not dolphin safe and/or had Defendant not represented that the tuna was dolphin

1 safe, Plaintiff Nugent would not have purchased the Bumble Bee tuna products. As
2 a result, Plaintiff Nugent suffered injury in fact and lost money at the time of
3 purchase. Plaintiff Nugent continues to desire to purchase Bumble Bee tuna products
4 that are dolphin safe, and he would purchase such a product manufactured by
5 Defendant if it were possible to determine prior to purchase whether dolphins were
6 harmed by Defendant's operations. Indeed, Plaintiff Nugent regularly visits stores
7 such as Stop & Shop, where Defendant's tuna products are sold, but will be unable
8 to rely upon the dolphin safe representations and will not be able to determine if
9 Defendant's products are dolphin safe when deciding whether to purchase the tuna
10 products in the future.

11 84. Plaintiff Anthony Luciano resides in Eastchester, New York and is a
12 citizen of New York. Throughout the relevant period, Plaintiff Anthony Luciano
13 routinely was exposed to, saw, and relied upon Defendant's dolphin safe
14 representations by viewing the dolphin safe mark on the Bumble Bee tuna products,
15 including canned tuna in water and oil, at various stores in Eastchester, Yonkers,
16 Tuckahoe, New Rochelle, and the Bronx, New York, including Stop & Shop, Shop
17 Rite, ACME, Foodtown, and Costco. Plaintiff Anthony Luciano purchased the tuna
18 products many times throughout the relevant period. At all relevant times, Plaintiff
19 Anthony Luciano believed the tuna products were dolphin safe and was unaware that
20 the tuna was not dolphin safe as represented and was caught using fishing methods
21 that are harmful to dolphins. Had Plaintiff Anthony Luciano known the tuna was not
22 dolphin safe and/or had Defendant not represented that the tuna was dolphin safe,
23 Plaintiff Anthony Luciano would not have purchased the Bumble Bee tuna products.
24 As a result, Plaintiff Anthony Luciano suffered injury in fact and lost money at the
25 time of purchase. Plaintiff Anthony Luciano continues to desire to purchase Bumble
26 Bee tuna products that are dolphin safe, and he would purchase such a product
27 manufactured by Defendant if it were possible to determine prior to purchase whether
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1 dolphins were harmed by Defendant's operations. Indeed, Plaintiff Anthony Luciano
2 regularly visits stores such as Stop & Shop, Shop Rite, ACME, Foodtown, and
3 Costco, where Defendant's tuna products are sold, but will be unable to rely upon the
4 dolphin safe representations and will not be able to determine if Defendant's products
5 are dolphin safe when deciding whether to purchase the tuna products in the future.

6 85. Plaintiff Lori Luciano resides in Eastchester, New York and is a citizen
7 of New York. Throughout the relevant period, Plaintiff Lori Luciano routinely was
8 exposed to, saw, and relied upon Defendant's dolphin safe representations by
9 viewing the dolphin safe mark on the Bumble Bee tuna products, including canned
10 tuna in water and oil, at various stores in Eastchester, Yonkers, Tuckahoe, New
11 Rochelle, and the Bronx, New York, including Stop & Shop, Shop Rite, ACME,
12 Foodtown, and Costco. Plaintiff Lori Luciano purchased the tuna products many
13 times throughout the relevant period. At all relevant times, Plaintiff Lori Luciano
14 believed the tuna products were dolphin safe and was unaware that the tuna was not
15 dolphin safe as represented and was caught using fishing methods that are harmful to
16 dolphins. Had Plaintiff Lori Luciano known the tuna was not dolphin safe and/or
17 had Defendant not represented that the tuna was dolphin safe, Plaintiff Lori Luciano
18 would not have purchased the Bumble Bee tuna products. As a result, Plaintiff Lori
19 Luciano suffered injury in fact and lost money at the time of purchase. Plaintiff Lori
20 Luciano continues to desire to purchase Bumble Bee tuna products that are dolphin
21 safe tuna, and she would purchase such a product manufactured by Defendant if it
22 were possible to determine prior to purchase whether dolphins were harmed by
23 Defendant's operations. Indeed, Plaintiff Lori Luciano regularly visits stores such as
24 Stop & Shop, Shop Rite, ACME, Foodtown, and Costco, where Defendant's tuna
25 products are sold, but will be unable to rely upon the dolphin safe representations and
26 will not be able to determine if Defendant's products are dolphin safe when deciding
27 whether to purchase the tuna products in the future.

1 86. Plaintiff Fidel Jamelo resides in Bronx, New York and is a citizen of
2 New York. Throughout the relevant period, Plaintiff Fidel Jamelo routinely was
3 exposed to, saw, and relied upon Defendant's dolphin safe representations by
4 viewing the dolphin safe mark on the Bumble Bee canned tuna products, including
5 canned tuna in water, at stores like Costco in New Rochelle, New York. Plaintiff
6 Fidel Jamelo purchased the tuna products many times throughout the relevant period.
7 At all relevant times, Plaintiff Fidel Jamelo believed the tuna products were dolphin
8 safe and was unaware that the tuna was not dolphin safe as represented and was
9 caught using fishing methods that are harmful to dolphins. Had Plaintiff Fidel Jamelo
10 known the tuna was not dolphin safe and/or had Defendant not represented that the
11 tuna was dolphin safe, Plaintiff Fidel Jamelo would not have purchased the Bumble
12 Bee tuna products. As a result, Plaintiff Fidel Jamelo suffered injury in fact and lost
13 money at the time of purchase. Plaintiff Fidel Jamelo continues to desire to purchase
14 Bumble Bee tuna products that are dolphin safe, and he would purchase such a
15 product manufactured by Defendant if it were possible to determine prior to purchase
16 whether dolphins were harmed by Defendant's operations. Indeed, Plaintiff Fidel
17 Jamelo regularly visits stores such as Costco, where Defendant's tuna products are
18 sold, but will be unable to rely upon the dolphin safe representations and will not be
19 able to determine if Defendant's products are dolphin safe when deciding whether to
20 purchase the tuna products in the future.

21 87. Plaintiff Jocelyn Jamelo resides in Bronx, New York and is a citizen of
22 New York. Throughout the relevant period, Plaintiff Jocelyn Jamelo routinely was
23 exposed to, saw, and relied upon Defendant's dolphin safe representations by
24 viewing the dolphin safe mark on the Bumble Bee canned tuna products, including
25 canned tuna in water, at stores like Costco in New Rochelle, New York. Plaintiff
26 Jocelyn Jamelo purchased the tuna products many times throughout the relevant
27 period. At all relevant times, Plaintiff Jocelyn Jamelo believed the tuna products

1 were dolphin safe and was unaware that the tuna was not dolphin safe as represented
2 and was caught using fishing methods that are harmful to dolphins. Had Plaintiff
3 Jocelyn Jamelo known the tuna was not dolphin safe and/or had Defendant not
4 represented that the tuna was dolphin safe, Plaintiff Jocelyn Jamelo would not have
5 purchased the Bumble Bee tuna products. As a result, Plaintiff Jocelyn Jamelo
6 suffered injury in fact and lost money at the time of purchase. Plaintiff Jocelyn
7 Jamelo continues to desire to purchase Bumble Bee tuna products that are dolphin
8 safe, and she would purchase such a product manufactured by Defendant if it were
9 possible to determine prior to purchase whether dolphins were harmed by
10 Defendant's operations. Indeed, Plaintiff Jocelyn Jamelo regularly visits stores such
11 as Costco, where Defendant's tuna products are sold, but will be unable to rely upon
12 the dolphin safe representations and will not be able to determine if Defendant's
13 products are dolphin safe when deciding whether to purchase the tuna products in the
14 future.

15 88. Plaintiff Robert Lantos resides in Eatontown, New Jersey and is a citizen
16 of New Jersey. Throughout the relevant period, Plaintiff Lantos routinely was
17 exposed to, saw, and relied upon Defendant's dolphin safe representations by
18 viewing the dolphin safe mark on the Bumble Bee tuna products, including canned
19 tuna in water, at stores like Costco in Eatontown, New Jersey, and ACME in
20 Shrewsbury, New Jersey Plaintiff Lantos purchased the tuna products many times
21 throughout the relevant period. At all relevant times, Plaintiff Lantos believed the
22 tuna products were dolphin safe and was unaware that the tuna was not dolphin safe
23 as represented and was caught using fishing methods that are harmful to dolphins.
24 Had Plaintiff Lantos known the tuna was not dolphin safe and/or had Defendant not
25 represented that the tuna was dolphin safe, Plaintiff Lantos would not have purchased
26 the Bumble Bee tuna products. As a result, Plaintiff Lantos suffered injury in fact
27 and lost money at the time of purchase. Plaintiff Lantos continues to desire to

1 90. Plaintiff Heena Mody resides in Jersey City, New Jersey, and is a citizen
2 of New Jersey. Throughout the relevant period, Plaintiff Heena Mody routinely was
3 exposed to, saw, and relied upon Defendant's dolphin safe representations by
4 viewing the dolphin safe mark on the Bumble Bee tuna products, including canned
5 tuna in water, at stores like Shop Rite and ACME in Jersey City, New Jersey.
6 Plaintiff Heena Mody purchased the tuna products many times throughout the
7 relevant period. At all relevant times, Plaintiff Heena Mody believed the tuna
8 products were dolphin safe and was unaware that the tuna was not dolphin safe as
9 represented and was caught using fishing methods that are harmful to dolphins. Had
10 Plaintiff Heena Mody known the tuna was not dolphin safe and/or had Defendant not
11 represented that the tuna was dolphin safe, Plaintiff Heena Mody would not have
12 purchased the Bumble Bee tuna products. As a result, Plaintiff Heena Mody suffered
13 injury in fact and lost money at the time of purchase. Plaintiff Heena Mody continues
14 to desire to purchase Bumble Bee tuna products that are dolphin safe, and she would
15 purchase such a product manufactured by Defendant if it were possible to determine
16 prior to purchase whether dolphins were harmed by Defendant's operations. Indeed,
17 Plaintiff Heena Mody regularly visits stores such as Shop Rite and ACME, where
18 Defendant's tuna products are sold, but will be unable to rely upon the dolphin safe
19 representations and will not be able to determine if Defendant's products are dolphin
20 safe when deciding whether to purchase the tuna products in the future.

21 91. Plaintiff Avraham Isac Zelig resides in Manalapan, New Jersey, and is a
22 citizen of New Jersey. Throughout the relevant period, Plaintiff Zelig routinely was
23 exposed to, saw, and relied upon Defendant's dolphin safe representations by
24 viewing the dolphin safe mark on the Bumble Bee canned tuna products, including
25 canned tuna in water, at various stores, including Shop-Rite in Marlboro, New Jersey.
26 Plaintiff Zelig purchased the tuna products many times throughout the relevant
27 period. At all relevant times, Plaintiff Zelig believed the tuna products were dolphin
28

1 safe and was unaware that the tuna was not dolphin safe as represented and was
2 caught using fishing methods that are harmful to dolphins. Had Plaintiff Zelig known
3 the tuna was not dolphin safe and/or had Defendant not represented that the tuna was
4 dolphin safe, Plaintiff Zelig would not have purchased the Bumble Bee tuna products.
5 As a result, Plaintiff Zelig suffered injury in fact and lost money at the time of
6 purchase. Plaintiff Zelig continues to desire to purchase Bumble Bee tuna products
7 that are dolphin safe, and he would purchase such a product manufactured by
8 Defendant if it were possible to determine prior to purchase whether dolphins were
9 harmed by Defendant's operations. Indeed, Plaintiff Zelig regularly visits stores such
10 as Shop-Rite, where Defendant's tuna products are sold, but will be unable to rely
11 upon the dolphin safe representations and will not be able to determine if Defendant's
12 products are dolphin safe when deciding whether to purchase the tuna products in the
13 future.

14 92. Plaintiff Denese Depeza resides in Martinsburg, West Virginia and is a
15 citizen of West Virginia. Throughout the relevant period, Plaintiff Depeza routinely
16 was exposed to, saw, and relied upon Defendant's dolphin safe representations by
17 viewing the dolphin safe mark on the Bumble Bee tuna products, including White
18 Albacore in cans, at stores like Costco in Frederick, Maryland. Plaintiff Depeza
19 purchased the tuna products many times throughout the relevant period. At all
20 relevant times, Plaintiff Depeza believed the tuna products were dolphin safe and was
21 unaware that the tuna was not dolphin safe as represented and was caught using
22 fishing methods that are harmful to dolphins. Had Plaintiff Depeza known the tuna
23 was not dolphin safe and/or had Defendant not represented that the tuna was dolphin
24 safe, Plaintiff Depeza would not have purchased the Bumble Bee tuna products. As
25 a result, Plaintiff Depeza suffered injury in fact and lost money at the time of
26 purchase. Plaintiff Depeza continues to desire to purchase Bumble Bee tuna products
27 that are dolphin safe, and she would purchase such a product manufactured by

1 Defendant if it were possible to determine prior to purchase whether dolphins were
2 harmed by Defendant's operations. Indeed, Plaintiff Depeza regularly visits stores
3 such as Costco where Defendant's tuna products are sold, but will be unable to rely
4 upon the dolphin safe representations and will not be able to determine if Defendant's
5 products are dolphin safe when deciding whether to purchase the tuna products in the
6 future.

7 93. Plaintiff Kathleen Miller resides in Scottsdale, Arizona and is a citizen
8 of Arizona. Throughout the relevant period, Plaintiff Miller routinely was exposed
9 to, saw, and relied upon Defendant's dolphin safe representations by viewing the
10 dolphin safe mark on the Bumble Bee canned tuna in water at Albertson's and Fry's
11 in Phoenix and Scottsdale, Arizona. Plaintiff Miller purchased the canned tuna
12 products many times throughout the relevant period. At all relevant times, Plaintiff
13 Miller believed the tuna products were dolphin safe and was unaware that the tuna
14 was not dolphin safe as represented and was caught using fishing methods that are
15 harmful to dolphins. Had Plaintiff Miller known the tuna was not dolphin safe and/or
16 had Defendant not represented that the tuna was dolphin safe, Plaintiff Miller would
17 not have purchased the Bumble Bee tuna products. As a result, Plaintiff Miller
18 suffered injury in fact and lost money at the time of purchase. Plaintiff Miller
19 continues to desire to purchase Bumble Bee tuna products that are dolphin safe, and
20 she would purchase such a product manufactured by Defendant if it were possible to
21 determine prior to purchase whether dolphins were harmed by Defendant's
22 operations. Indeed, Plaintiff Miller regularly visits stores such as Fry's, where
23 Defendant's tuna products are sold, but will be unable to rely upon the dolphin safe
24 representations and will not be able to determine if Defendant's products are dolphin
25 safe when deciding whether to purchase the tuna products in the future.

26 94. Defendant Bumble Bee Foods LLC is a Delaware limited liability
27 company with its headquarters and principal place of business located at 280 Tenth
28

1 Ave, San Diego, CA, 92101, and is a citizen of Delaware and California. Bumble
2 Bee operates its tuna processing facility in San Diego, California. During the time
3 period relevant to Plaintiffs' claims, Bumble Bee: produced and sold canned tuna and
4 tuna pouches throughout the United States and its territories; sold canned tuna and
5 tuna pouches to Plaintiffs and others in the United States; and engaged in the false,
6 misleading, and deceptive advertising alleged in this Complaint.

7 **CLASS DEFINITION AND ALLEGATIONS**

8 95. Plaintiffs bring this action on behalf of themselves and all other
9 similarly situated consumers pursuant to Rules 23(a), (b)(2), (b)(3), and (c)(4) of the
10 Federal Rules of Civil Procedure and seek certification of the following Class:

11 **Nationwide Class**

12 All consumers who, within the applicable statute of
13 limitations period until the date notice is disseminated,
14 purchased the tuna products in the United States.

15 Excluded from this Class are Defendant and its officers,
16 directors, employees and those who purchased the tuna
17 products for the purpose of resale.

18 96. Alternatively, Plaintiffs Duggan and Myers seek certification of the
19 following California-Only Class:

20 **California-Only Class**

21 All California consumers who within the applicable statute
22 of limitations period until the date notice is disseminated,
23 purchased the tuna products.

24 Excluded from this Class are Defendant and its officers,
25 directors and employees, and those who purchased the tuna
26 products for the purpose of resale.

27 97. In addition, Plaintiff Cosgrove seeks certification of the following
28 Florida-Only Class:

Florida-Only Class Action

All Florida consumers who within the applicable statute of
limitations period until the date notice is disseminated,
purchased the tuna products.

1 Excluded from this Class are Defendant and its officers,
2 directors and employees, and those who purchased the tuna
3 products for the purpose of resale.

4 98. In addition, Plaintiffs Borruso and Nugent, Plaintiffs Anthony and Lori
5 Luciano, Plaintiffs Fidel and Jocelyn Jamelo, and Plaintiffs Robert and Colleen
6 McQuade seek certification of the following New York-Only Class:

7 **New York-Only Class**

8 All New York consumers who within the applicable statute
9 of limitations period until the date notice is disseminated,
10 purchased the tuna products.

11 Excluded from this Class are Defendant and its officers,
12 directors and employees, and those who purchased the tuna
13 products for the purpose of resale.

14 99. In addition, Plaintiffs Lantos and Zelig and Plaintiffs Amar and Heena
15 Mody seek certification of the following New Jersey-Only Class:

16 **New Jersey-Only Class**

17 All New Jersey consumers who within the applicable statute
18 of limitations period until the date notice is disseminated,
19 purchased the tuna products.

20 Excluded from this Class are Defendant and its officers,
21 directors and employees, and those who purchased the tuna
22 products for the purpose of resale.

23 100. In addition, Plaintiff Depeza seeks certification of the following
24 Maryland-Only Class:

25 **Maryland-Only Class**

26 All Maryland consumers who within the applicable statute
27 of limitations period until the date notice is disseminated,
28 purchased the tuna products.

Excluded from this Class are Defendant and its officers,
directors and employees, and those who purchased the tuna
products for the purpose of resale.

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1 101. In addition, Plaintiff Miller seeks certification of the following Arizona-
2 Only Class:

3 **Arizona-Only Class**

4 All Arizona consumers who within the applicable statute of
5 limitations period until the date notice is disseminated,
6 purchased the tuna products.

7 Excluded from this Class are Defendant and its officers,
8 directors and employees, and those who purchased the tuna
9 products for the purpose of resale.

10 102. **Numerosity.** The members of the Classes are so numerous that their
11 joinder is impracticable. Plaintiffs are informed and believe that the proposed
12 Classes contain thousands of purchasers of the tuna products who have been damaged
13 by Defendant's conduct as alleged herein. The precise number of Class members is
14 unknown to Plaintiffs.

15 103. **Existence and Predominance of Common Questions of Law and**
16 **Fact.** This action involves common questions of law and fact, which predominate
17 over any questions affecting individual Class members. These common legal and
18 factual questions include, but are not limited to, the following:

19 (a) whether Defendant's dolphin-safe representations are false, misleading,
20 or objectively reasonably likely to deceive;

21 (b) whether Defendant failed to comply with traceability and verification
22 requirements;

23 (c) whether Defendant engaged in fishing practices that harmed dolphins;

24 (d) whether Defendant's alleged conduct is unlawful;

25 (e) whether the alleged conduct constitutes violations of the laws asserted,
26 including whether Defendant violated RICO, 18 U.S.C. §1962;

27 (f) whether Defendant engaged in false, misleading and/or deceptive
28 advertising;

1 (g) whether the Dolphin-Unsafe RICO Enterprise was an enterprise
2 engaged in, or the activities of which affected, interstate or foreign commerce;

3 (h) whether Defendant and its RICO Co-Conspirators conducted or
4 participated in the conduct of the Dolphin-Unsafe RICO Enterprise's affairs through
5 a pattern of racketeering activities;

6 (i) whether Defendant and its RICO Co-Conspirators knowingly
7 participated in, devised, or intended to devise a scheme or plan to defraud, or a
8 scheme or plan for obtaining money or property by means of false or fraudulent
9 pretenses, representations, promises, or omissions;

10 (j) whether the statements made or facts omitted as part of the scheme were
11 material; that is, whether they had a natural tendency to influence, or were capable
12 of influencing, a person to part with money or property;

13 (k) whether Defendant and its RICO Co-Conspirators used, or caused to be
14 used, the mails or interstate wire transmission to carry out, or attempt to carry out, an
15 essential part of the scheme;

16 (l) what is the measure and amount of damages suffered by Plaintiffs and
17 Class Members, and whether Plaintiffs and the Class are entitled to treble and/or
18 punitive damages; and

19 (m) whether Plaintiffs and Class members are entitled to appropriate
20 equitable remedies, including damages, restitution, corrective advertising, and
21 injunctive relief.

22 104. **Typicality.** Plaintiffs' claims are typical of the claims of the members
23 of the Classes because, *inter alia*, all Class members were injured through the
24 uniform misconduct described above. Plaintiffs are also advancing the same claims
25 and legal theories on behalf of themselves and all Class members.

26 105. **Adequacy of Representation.** Plaintiffs will fairly and adequately
27 protect the interests of Class members. Plaintiffs have retained counsel experienced
28

1 in complex consumer class action litigation, and Plaintiffs intend to prosecute this
2 action vigorously. Plaintiffs have no adverse or antagonistic interests to those of the
3 Classes.

4 106. **Superiority.** A class action is superior to all other available means for
5 the fair and efficient adjudication of this controversy. The damages or other financial
6 detriment suffered by individual Class members is relatively small compared to the
7 burden and expense that would be entailed by individual litigation of their claims
8 against Defendant. It would thus be virtually impossible for members of the Classes,
9 on an individual basis, to obtain effective redress for the wrongs done to them.
10 Furthermore, even if Class members could afford such individualized litigation, the
11 court system could not. Individualized litigation would create the danger of
12 inconsistent or contradictory judgments arising from the same set of facts.
13 Individualized litigation would also increase the delay and expense to all parties and
14 the court system from the issues raised by this action. By contrast, the class action
15 device provides the benefits of adjudication of these issues in a single proceeding,
16 economies of scale, and comprehensive supervision by a single court, and presents
17 no unusual management difficulties under the circumstances here.

18 107. Plaintiffs seek preliminary and permanent injunctive and equitable relief
19 on behalf of the entire Classes, on grounds generally applicable to the entire Classes,
20 to enjoin and prevent Defendant from engaging in the acts described and requiring
21 Defendant to provide full restitution to Plaintiff and Class members.

22 108. Unless a Class is certified, Defendant will retain monies received as a
23 result of its conduct that were taken from Plaintiffs and Class members.

24 109. Unless an injunction is issued, Defendant will continue to commit the
25 violations alleged, and the members of the Classes and the general public will
26 continue to be deceived and not know whether the dolphin safe representations and/or
27 sustainable fishing methods representations are true or if the tuna products continue

1 to contain tuna caught using fishing methods that are harmful to dolphins.

2 110. Likewise, particular issues under Rule 23(c)(4) are appropriate for
3 certification because such claims present only particular, common issues, the
4 resolution of which would advance the disposition of this matter and the parties'
5 interests therein. Such particular issues include, but are not limited to: (a) whether
6 Defendant marketed and sold its tuna products as “Dolphin Safe” when they were
7 not; (b) whether Defendant’s conduct was unlawful, unfair, or fraudulent in violation
8 of state consumer protections law; (c) whether Defendant’s misrepresentations would
9 deceive a reasonable consumer; (d) whether Defendant has been unjustly enriched;
10 (e) whether Defendant failed to comply with federal law in branding its tuna products
11 “Dolphin Safe”; and (f) whether Defendant’s misrepresentations regarding its tuna
12 products would be material to a reasonable consumer.

13 **COUNT I**
14 **Violation of Racketeer Influenced and Corrupt Organizations Act (“RICO”) –**
15 **18 U.S.C. §§1962(c)-(d)**
16 **(On Behalf of the Nationwide Class)**

17 111. Plaintiffs repeat and re-allege the allegations contained in the
18 paragraphs above, as if fully set forth herein.

19 112. Plaintiffs bring this claim against Defendant individually and on behalf
20 of the Nationwide Class.

21 113. Defendant conducts its business—legitimate and illegitimate—in
22 concert with numerous other persons and entities, including, but not limited to, Luen
23 Thai Fishing Venture Ltd. (“Luen”), a wholly-owned subsidiary of Hong Kong-based
24 Luen Thai Holdings Ltd. that sources much of Defendant’s tuna; Sapmer, one of the
25 largest fishing companies in the world; Tunago Pacific Longline Tuna Fishery
26 (“Tunago”), a Taiwanese company whose fishing vessel fleet is flagged to Vanuatu
27 in the South Pacific; FCF Fishery Company, Ltd. (“FCF”), another fishing-vessel
28 company Defendant contracts with; Anova Food LLC (“Anova”), a subsidiary of

1 Defendant based in Tampa, Florida that sources Defendant's tuna; Pacific Fishing
2 Company Ltd. ("PAFCO"), a Government of Fiji-controlled storage and cannery
3 company; R S Cannery Co., Ltd., Western Overseas Corporation, General Tuna
4 Corporation, Century Pacific Food Inc., Unicord Public Co. Ltd. (Sea Value Group),
5 Paxicon, Marine Chartering Co., Inc., Toba Surimi Industries, Gralco S.A.,
6 Almacenistas Importadores Genesa S.A., Pataya Food Industries Ltd., Ningbo Today
7 Food Company, Ltd., and PAFCO, importing companies for Defendant; and various
8 other fishing, import/export, packaging, labeling, and distributing companies
9 (collectively, the "RICO Co-Conspirators").

10 114. At all relevant times, Defendant and its RICO Co-Conspirators have
11 each been a "person" under 18 U.S.C. §1961(3) because each was capable of holding
12 "a legal or beneficial interest in property."

13 115. Section 1962(c) of RICO makes it "unlawful for any person employed
14 by or associated with any enterprise engaged in, or the activities of which affect,
15 interstate or foreign commerce, to conduct or participate, directly or indirectly, in the
16 conduct of such enterprise's affairs through a pattern of racketeering activity." 18
17 U.S.C. §1962(c).

18 116. Section 1962(d) of RICO makes it unlawful for "any person to conspire
19 to violate" section 1962(c), among other provisions. *See* 18 U.S.C. §1962(d).

20 117. As part of a strategy to save millions if not billions of dollars and
21 convince consumers to purchase its tuna products, Defendant and its RICO Co-
22 Conspirators concocted a scheme at or before 2008, and continuing throughout the
23 Class Period, to falsely represent, in various pieces of mail, through wires, and on the
24 Internet, that Defendant's tuna products were dolphin-safe under U.S. law and
25 regulations, including the MMPA as amended, 16 U.S.C. §1361, *et seq.*, the DPCIA,
26 16 U.S.C. §1385, *et seq.*, and 50 CFR §216.95. In making this express representation,
27 Defendant falsely assured the public and regulators that "no" dolphins were killed or

1 seriously injured, that Defendant adequately traces or otherwise identifies its tuna
2 that is not dolphin-safe, and that Defendant physically segregates and stores tuna that
3 is not dolphin-safe separately from any tuna that may be dolphin-safe.

4 118. Defendant and its RICO Co-Conspirators' scheme is similar to that of
5 Volkswagen, General Motors, Fiat Chrysler, and other automobile manufacturers and
6 parts suppliers who brazenly violated federal and state emissions laws and
7 regulations, concomitantly deceiving consumers, car dealers, and regulatory bodies
8 alike, by marketing and labeling their vehicles as "clean" and "eco" friendly when,
9 in fact, the vehicles contained undisclosed emission control devices that served to
10 "defeat" emissions testing under the Clean Air Act, and actually significantly
11 increased NOx emissions when activated. RICO allegations against these companies
12 have repeatedly been upheld by the federal judiciary. *See, e.g., Bledsoe v. FCA US*
13 *LLC*, No. 16-14024, 2019 WL 1379588, at *16 (E.D. Mich. Mar. 27, 2019); *In re*
14 *Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices, & Prod. Liab. Litig.*, 295 F.
15 Supp. 3d 927, 984 (N.D. Cal. 2018); *In re Duramax Diesel Litig.*, 298 F. Supp. 3d
16 1037, 1087 (E.D. Mich. 2018); *In re Volkswagen "Clean Diesel" Mktg., Sales*
17 *Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 4890594, at
18 *18 (N.D. Cal. Oct. 30, 2017).

19 119. As alleged in detail above, once the consuming public became aware in
20 the late 1980s that large numbers of dolphins were being indiscriminately killed by
21 tuna fishermen, public outcry and demand for more responsible fishing practices was
22 intense and continues to this day.

23 120. Along with other canned tuna companies, Defendant began promising
24 consumers that the tuna it sold would *only* be procured through dolphin-safe fishing
25 practices. Defendant thereafter implemented a widespread and long-term marketing
26 campaign that continues to this day – expressly representing to consumers its
27 commitment to sustainably sourcing tuna and that no dolphins are killed or harmed

1 in capturing its tuna and that it is in compliance with federal laws and regulations
2 regarding the use of a special “Dolphin Safe” logo on its tuna products.

3 121. However, Defendant was either unable or unwilling to conduct its tuna
4 fishing activities within the constraints of the law, and so it devised a scheme outside
5 of it. Instead of spending money on more expensive tuna fishing, tracing and
6 segregation operations as the laws required to label tuna as dolphin-safe (or simply
7 coming clean by removing their dolphin-safe logo and retracting their dolphin-safe
8 promises), Defendant and its RICO Co-Conspirators agreed to continue using cost-
9 saving, unsustainable tuna fishing methods that kill and otherwise harm dolphins.

10 122. These methods were concealed from, among other persons and entities:
11 consumers throughout the United States, including California (on Defendant’s tuna
12 product packaging, labeling, and the Internet); port authorities where Defendant’s
13 tuna is off-loaded and processed; the U.S. National Oceanic and Atmospheric
14 Administration (“NOAA”) in, among other things, NOAA’s Form 370¹⁰ and Captain
15 Statements,¹¹ both part of NOAA’s “Fisheries’ Tuna Tracking and Verification
16 Program;” and other tracing and tracking reports.

17 123. To accomplish their scheme or common course of conduct, Defendant
18 and its RICO Co-Conspirators, along with others, had to work together to conceal the
19 truth. Each of them was employed by, hired by, or associated with, and conducted
20 or participated in the affairs of, a RICO enterprise (defined below and referred to as
21 the “Dolphin-Unsafe RICO Enterprise” or the “Enterprise”). The purpose of the
22 Dolphin-Unsafe RICO Enterprise was to deceive regulators, retailers, and consumers
23 into believing that Defendant’s tuna products were sustainably sourced and “Dolphin
24 Safe” as that term is defined by U.S. laws and regulations. The motivation was

25
26 ¹⁰ <https://www.fisheries.noaa.gov/national/marine-mammal-protection/noaa-form-370-fisheries-certificate-origin> (last visited May 2, 2019).

27 ¹¹ <https://www.fisheries.noaa.gov/national/marine-mammal-protection/captains-statement-templates> (last visited May 2, 2019).

1 simple: to increase Defendant's revenue by promising consumers its tuna products
2 were dolphin-safe, while also minimizing its costs by not adopting more expensive
3 tuna fishing, tracing, and segregation operations that would comply with the law. As
4 a direct and proximate result of their fraudulent scheme and common course of
5 conduct, Defendant and its RICO Co-Conspirators were able to extract billions of
6 dollars from consumers. As explained below, their years-long misconduct violated
7 Sections 1962(c) and (d).

8 **A. Description of the Dolphin-Unsafe RICO Enterprise**

9 124. Defendant is one of the largest shelf-stable tuna companies in the U.S.
10 Defendant uses the fishing vessels of Luen, Sapmer, Anova, Tunago, FCF and other
11 companies' currently unknown to Plaintiffs, as well as those companies' fishermen,
12 to catch and procure tuna for use in Defendant's tuna products. Defendant uses,
13 among others, R S Cannery Co., Ltd., Western Overseas Corporation, General Tuna
14 Corporation, Century Pacific Food Inc., Unicord Public Co. Ltd. (Sea Value Group),
15 Paxicon, Marine Chartering Co., Inc., Toba Surimi Industries, Gralco S.A.,
16 Almacenistas Importadores Genesa S.A., Pataya Food Industries Ltd., Ningbo Today
17 Food Company, Ltd., and PAFCO to import its tuna into the United States, including
18 into California. Defendant uses, among others, PAFCO to store and package its tuna
19 products in California, among other places. Defendant also uses a network of
20 distributors to supply its tuna products throughout the United States for sale to
21 consumers. Throughout this process, Defendant and its RICO Co-Conspirators sent
22 through the mails and wires, among other things, consumer tuna products with
23 product labels, Internet website postings, invoices, wire payment records, shipping
24 manifests, bills of lading, NOAA Form 370s, Captain Statements, and tracing and
25 tracking reports which all identified the tuna being sold as dolphin safe, when it was
26 not.

1 125. At all relevant times, Defendant and its RICO Co-Conspirators, along
2 with other individuals and entities, including unknown third parties involved in the
3 procuring, processing, exporting, importing, labeling, packaging, distributing, and
4 sale of Defendant's tuna products, operated an association-in-fact enterprise, which
5 was formed for the purpose of fraudulently marketing, advertising, and labeling
6 Defendant's tuna products as "Dolphin Safe" and sustainably sourced and deceiving
7 consumers and retailers, as well as federal regulators at the Department of Commerce
8 and NOAA, in order to sell Defendant's tuna products throughout the United States
9 (and California), and through which enterprise they conducted a pattern of
10 racketeering activity under 18 U.S.C. §1961(4).

11 126. At all relevant times, the Dolphin-Unsafe RICO Enterprise constituted
12 a single "enterprise" or multiple enterprises within the meaning of 18 U.S.C.
13 §1961(4), as legal entities, as well as individuals and legal entities associated-in-fact
14 for the common purpose of engaging in Defendant's and the RICO Co-Conspirators'
15 unlawful profit-making scheme.

16 127. The association-in-fact Dolphin-Unsafe RICO Enterprise consisted of
17 at least the following entities and individuals, and likely others:

18 **1. Bumble Bee**

19 128. Bumble Bee, the Defendant in this action, is one of the largest sellers of
20 shelf-stable tuna products in the United States. Bumble Bee is wholly owned by
21 British private equity firm Lion Capital. Bumble Bee is a distinct legal entity,
22 controlled and owned by Lion Capital. As more fully detailed herein, Bumble Bee
23 conspired with Luen, Sapmer, Tunago, FCF, Anova, R S Cannery Co., Ltd., Western
24 Overseas Corporation, General Tuna Corporation, Century Pacific Food Inc.,
25 Unicord Public Co. Ltd. (Sea Value Group), Paxicon, Marine Chartering Co., Inc.,
26 Toba Surimi Industries, Gralco S.A., Almacenistas Importadores Genesa S.A.,
27 Pataya Food Industries Ltd., Ningbo Today Food Company, Ltd., PAFCO, and other

1 entities and individuals to procure, process, package, label, and sell tuna products as
2 dolphin-safe and sustainably sourced when they are not, to package and label
3 Defendant's tuna products with false and material misrepresentations, and to gather
4 information for submission to port authorities and regulators in the Form 370s and
5 Captain Statements. Bumble Bee is a participating company with the International
6 Seafood Sustainability Foundation ("ISSF"), and obtains periodic sustainability audit
7 reports. Bumble Bee knew or recklessly disregarded that its tuna products sold to
8 Plaintiffs and the Class did not comply with U.S. laws and regulations for labeling
9 the products dolphin-safe and yet concealed this information from consumers,
10 retailers, and regulators.

11 129. Working with other members of the Dolphin-Unsafe RICO Enterprise,
12 Bumble Bee conspired to procure, process, package, label, and sell tuna products that
13 are not dolphin-safe to illegally circumvent stringent U.S. laws and regulations.
14 Employing these illegal practices, Bumble Bee fraudulently told consumers that its
15 tuna products were "Dolphin Safe" and "sourced . . . sustainably," and submitted
16 false dolphin safe statements to port authorities, the U.S. Department of Commerce
17 (including NOAA), and in written and online marketing and advertising for Bumble
18 Bee's tuna products.

19 2. **The Co-Conspirator Fishing Vessel Entities and Individuals**

20 130. As explained above, RICO Co-Conspirators Luen, Sapmer, Tunago,
21 FCF, Anova, and their shipping companies and fishermen, among other third-party
22 fishing vessel companies and employees unknown to Plaintiffs, supplied tuna to
23 Defendant for processing and sale that is not dolphin-safe or sustainably sourced,
24 knowing that Defendant would package, label, market, and sell its tuna products to
25 Plaintiffs and the Class as dolphin-safe and compliant with federal laws and
26 regulations. On information and belief, these RICO Co-Conspirators further supplied
27 false Captain Statements to Defendant knowing that such Captain Statements were

1 false and, if the truth were known, Defendant would not be able to package, label,
2 market, and sell its tuna products to the Class as dolphin-safe, sustainably sourced,
3 and compliant with federal laws and regulations.

4 131. RICO Co-Conspirators Luen, Sapmer, Tunago, FCF, Anova, and their
5 shipping companies and fishermen, among other third-party fishing vessel companies
6 and employees unknown to Plaintiffs were key to the conspiracy with Defendant
7 enabling Defendant to sell its tuna to consumers as dolphin-safe and sustainably
8 sourced.

9 132. RICO Co-Conspirators Luen, Sapmer, Tunago, FCF, Anova, and their
10 shipping companies and fishermen, among other third-party fishing vessel companies
11 and employees unknown to Plaintiffs worked with Defendant to design and
12 implement the scheme by using cheaper and more efficient tuna fishing techniques
13 they knew would result in the killing and harming of dolphins and render false
14 Defendant's dolphin-safe and sustainably sourced representations to consumers and
15 retailers in the United States, and by submitting false Captain Statements and other
16 documents to Defendant they knew would be relied upon to permit Defendant to
17 import, process and sell its tuna as dolphin-safe and sustainably sourced.

18 133. Put simply, RICO Co-Conspirators Luen, Sapmer, Tunago, FCF,
19 Anova, and their shipping companies and fishermen, among other third-party fishing
20 vessel companies and employees unknown to Plaintiffs were well aware that the tuna
21 they procured on their fishing vessels for Defendant would be used to defraud
22 consumers, retailers, and federal regulators. Indeed, these companies and individuals
23 were critical to the concealment of the truth from consumers, retailers, and federal
24 regulators regarding Defendant's tuna products.

25 **3. The Co-Conspirator Importers and Individuals**

26 134. RICO Co-Conspirators R S Cannery Co., Ltd., Western Overseas
27 Corporation, General Tuna Corporation, Century Pacific Food Inc., Unicord Public
28

1 Co. Ltd. (Sea Value Group), Paxicon, Marine Chartering Co., Inc., Toba Surimi
2 Industries, Gralco S.A., Almacenistas Importadores Genesa S.A., Pataya Food
3 Industries Ltd., Ningbo Today Food Company, Ltd., and PAFCO and their
4 employees, among other third-party importers and employees unknown to Plaintiffs,
5 imported Defendant's tuna products for sale, knowing that Defendant would market
6 and sell its tuna products to Plaintiffs and the Class as dolphin-safe, sustainably
7 sourced, and compliant with federal laws and regulations. On information and belief,
8 these RICO Co-Conspirators further supplied false bills of lading in connection with
9 the importation of the tuna products into the United States knowing that such bills of
10 lading were false and, if the truth were known, Defendant would not be able to
11 package, label, market, and sell its tuna products to the Class as dolphin-safe,
12 sustainably sourced, and compliant with federal laws and regulations.

13 135. RICO Co- Conspirators R S Cannery Co., Ltd., Western Overseas
14 Corporation, General Tuna Corporation, Century Pacific Food Inc., Unicord Public
15 Co. Ltd. (Sea Value Group), Paxicon, Marine Chartering Co., Inc., Toba Surimi
16 Industries, Gralco S.A., Almacenistas Importadores Genesa S.A., Pataya Food
17 Industries Ltd., Ningbo Today Food Company, Ltd., and PAFCO and their
18 employees, among other third-party fishing importers and employees unknown to
19 Plaintiffs, were key to the conspiracy with Defendant enabling Defendant to sell its
20 tuna to consumers as dolphin-safe and sustainably sourced.

21 136. RICO Co-Conspirators R S Cannery Co., Ltd., Western Overseas
22 Corporation, General Tuna Corporation, Century Pacific Food Inc., Unicord Public
23 Co. Ltd. (Sea Value Group), Paxicon, Marine Chartering Co., Inc., Toba Surimi
24 Industries, Gralco S.A., Almacenistas Importadores Genesa S.A., Pataya Food
25 Industries Ltd., Ningbo Today Food Company, Ltd., and PAFCO and their
26 employees, among other third-party importers and employees unknown to Plaintiffs,
27 worked with Defendant to design and implement the scheme by importing tuna that

1 was neither dolphin-safe nor sustainably caught which they knew would render false
2 Defendant's dolphin-safe and sustainability representations to consumers and
3 retailers in the United States, and by submitting false bills of lading and other
4 documents to port authorities and regulators they knew would be relied upon to
5 permit Defendant to import, process and sell its tuna as dolphin-safe and sustainably
6 sourced.

7 137. Put simply, RICO Co- Conspirators R S Cannery Co., Ltd., Western
8 Overseas Corporation, General Tuna Corporation, Century Pacific Food Inc.,
9 Unicord Public Co. Ltd. (Sea Value Group), Paxicon, Marine Chartering Co., Inc.,
10 Toba Surimi Industries, Gralco S.A., Almacenistas Importadores Genesa S.A.,
11 Pataya Food Industries Ltd., Ningbo Today Food Company, Ltd., and PAFCO and
12 their employees, among other third-party importers and employees unknown to
13 Plaintiffs, were well aware that the tuna they imported for Defendant into the United
14 States would be used to defraud consumers, retailers, and federal regulators. Indeed,
15 these companies and individuals were critical to the concealment of the truth from
16 consumers, retailers, and federal regulators regarding Defendant's tuna products.

17
18 **4. The Co-Conspirator Storage, Canning, and Processing
Entities and Individuals**

19 138. RICO Co-Conspirator PAFCO and its employees, among other third-
20 party storage, canning, and processing companies and employees unknown to
21 Plaintiffs, stored, canned, and processed Defendant's tuna products for sale, knowing
22 that Defendant would market and sell its tuna products to Plaintiffs and the Class as
23 dolphin-safe, sustainably sourced, and compliant with federal laws and regulations.

24 139. RICO Co-Conspirator PAFCO and its employees, among other third-
25 party storage, canning, and processing companies and employees unknown to
26

1 Plaintiffs, were key to the conspiracy with Defendant enabling Defendant to sell its
2 tuna to consumers as dolphin-safe and sustainably sourced.

3 140. RICO Co-Conspirator PAFCO and its employees, among other third-
4 party storage, canning, and processing companies and employees unknown to
5 Plaintiffs, worked with Defendant to design and implement the scheme by storing,
6 canning, and processing tuna that was neither dolphin-safe nor sustainably caught
7 which they knew would render false Defendant's dolphin-safe and sustainability
8 representations to consumers and retailers in the United States.

9 141. Put simply, RICO Co-Conspirator PAFCO and its employees, among
10 other third-party storage, canning, and processing companies and employees
11 unknown to Plaintiffs, were well aware that the tuna they stored, processed, and
12 canned for Defendant prior to importing into the United States would be used to
13 defraud consumers, retailers, and federal regulators. Indeed, these companies and
14 individuals were critical to the concealment of the truth from consumers, retailers,
15 and federal regulators regarding Defendant's tuna products.

16 **B. The Dolphin-Unsafe RICO Enterprise Sought to Increase**
17 **Defendant's Profits and Revenues, as well as Their Own**

18 142. As alleged in detail above, tuna-fishing techniques that meet the
19 "dolphin-safe" standards (not used by Defendant and its RICO Co-Conspirators) are
20 more expensive than other techniques. They are more time consuming, require more
21 manpower, and are less efficient because fish are caught using barbless hooks and
22 poles one at a time, rather than en masse with longlines or enormous purse seine nets.
23 Consequently, Defendant and its RICO Co-Conspirators' bottom lines are greatly
24 increased by the indiscriminate killing and harming of dolphins while fishing for
25 tuna.

1 143. The Dolphin-Unsafe RICO Enterprise began prior to the start of the
2 Class Period. On information and belief, Defendant has entered into numerous
3 agreements with Luen, Sapmer, Tunago, FCF, Anova, and other fishing vessel
4 companies unknown to Plaintiffs to also procure tuna to be used in Defendant's tuna
5 products sold to Plaintiffs and the Class. Defendant has also entered into numerous
6 agreements with R S Cannery Co., Ltd., Western Overseas Corporation, General
7 Tuna Corporation, Century Pacific Food Inc., Unicord Public Co. Ltd. (Sea Value
8 Group), Paxicon, Marine Chartering Co., Inc., Toba Surimi Industries, Gralco S.A.,
9 Almacenistas Importadores Genesa S.A., Pataya Food Industries Ltd., Ningbo Today
10 Food Company, Ltd., and PAFCO to import Defendant's tuna products, and with
11 PAFCO to store, process, and can Defendant's tuna products.

12 144. The scheme continues to this day, as consumers, retailers, and federal
13 regulators remain in the dark about the truth of Defendant's so-called "Dolphin Safe"
14 tuna products.

15 145. At all relevant times, the Dolphin-Unsafe RICO Enterprise: (a) had an
16 existence separate and distinct from Defendant and each RICO Co-Conspirator; (b)
17 was separate and distinct from the pattern of racketeering in which Defendant and
18 each RICO Co-Conspirator engaged; and (c) was an ongoing and continuing
19 organization consisting of legal entities, including Defendant, Luen, Sapmer,
20 Tunago, FCF, Anova, and their shipping companies and fishermen; R S Cannery Co.,
21 Ltd. and its employees; PAFCO and its employees; Western Overseas Corporation
22 and its employees; General Tuna Corporation and its employees; Century Pacific
23 Food Inc. and its employees; Unicord Public Co. Ltd. (Sea Value Group) and its
24 employees; Paxicon and its employees, Marine Chartering Co., Inc. and its
25 employees; Toba Surimi Industries and its employees; Gralco S.A. and its
26 employees; Almacenistas Importadores Genesa S.A. and its employees; Pataya Food
27 Industries Ltd. and its employees; Ningbo Today Food Company, Ltd. and its

1 employees; and other entities and individuals associated for the common purpose of
2 procuring, storing, processing, importing, packaging, labeling, distributing,
3 marketing, and selling Defendant's tuna products to consumers in the Class through
4 fraudulent representations in, among other places, consumer-facing product
5 packaging and labels, Internet websites, marketing and advertising to consumers,
6 bills of lading, Form 370s, and Captain Statements, and deriving profits and revenues
7 from those activities. Each member of the Dolphin-Unsafe RICO Enterprise shared
8 in the bounty generated by the enterprise, *i.e.*, by sharing the benefit derived from
9 increased sales revenue generated by the scheme to defraud Class members
10 nationwide.

11 146. The Dolphin-Unsafe RICO Enterprise functioned by selling
12 Defendant's tuna products to the consuming public. All of these products are
13 illegitimate. Defendant and its RICO Co-Conspirators, through their illegal
14 Enterprise, engaged in a pattern of racketeering activity, which involves a fraudulent
15 scheme to increase revenue for themselves and the other entities and individuals
16 associated-in-fact with the Enterprise's activities through the illegal scheme to sell
17 Defendant's falsely-labeled tuna products.

18 147. The Dolphin-Unsafe RICO Enterprise engaged in, and its activities
19 affected, interstate and foreign commerce, because it involved commercial activities
20 across state and national boundaries, such as the procuring, importing, storing,
21 processing, packaging, labeling, distributing, marketing, and sale of Defendant's tuna
22 products throughout the country, and the receipt of monies from the sale of the same.

23 148. Within the Dolphin-Unsafe RICO Enterprise, on information and belief,
24 there was a common communication network by which co-conspirators shared
25 information on a regular basis. The Enterprise used this common communication
26 network for the purpose of procuring, importing, storing, processing, packaging,
27

1 labeling, distributing, marketing, and selling Defendant's tuna products to the general
2 public nationwide.

3 149. Each participant in the Dolphin-Unsafe RICO Enterprise had a
4 systematic linkage to each other through corporate ties, contractual relationships,
5 financial ties, and continuing coordination of activities. Through the Dolphin-Unsafe
6 RICO Enterprise, Defendant and its RICO Co-Conspirators functioned as a
7 continuing unit with the purpose of furthering the illegal scheme and their common
8 purposes of increasing their revenues and market share, and minimizing losses.

9 150. Defendant and its RICO Co-Conspirators participated in the operation
10 and management of the Dolphin-Unsafe RICO Enterprise by directing its affairs, as
11 described herein. While Defendant and its RICO Co-Conspirators participated in, and
12 are members of, the Enterprise, they have a separate existence including distinct legal
13 statuses, different offices and roles, bank accounts, officers, directors, employees,
14 individual personhood, reporting requirements, and financial statements.

15 151. Defendant exerted substantial control over the Dolphin-Unsafe RICO
16 Enterprise, and participated in the affairs of the Enterprise, by:

17 (a) procuring tuna in a manner that does not permit a company to market
18 and sell shelf-stable tuna products as "Dolphin Safe" and sustainably sourced;

19 (b) concealing that tuna products marketed and sold as "Dolphin Safe" and
20 sustainably sourced are, in fact, not;

21 (c) failing to correct false statements regarding tuna products marketed and
22 sold as dolphin-safe and sustainably sourced;

23 (d) storing, importing, processing, packaging, labeling, distributing,
24 marketing, and selling Defendant's tuna products that may not contain the
25 "Dolphin Safe" representation;

26 (e) misrepresenting (or causing such misrepresentations to be made)
27 Defendant's tuna products as "Dolphin Safe" and sustainably sourced;

1 (f) misrepresenting (or causing such misrepresentations to be made) facts
2 in bills of lading, Form 370s filed with NOAA, and Captain Statements;

3 (g) introducing Defendant's tuna products into the stream of U.S.
4 commerce with false, deceptive, and misleading representations;

5 (h) concealing the truth behind the tuna procured for Defendant's tuna
6 products from regulators, retailers, and the public;

7 (i) misleading government regulators as to the nature of the tuna procured
8 for Defendant's tuna products;

9 (j) misleading the consuming public as to the nature of the tuna procured
10 for Defendant's tuna products;

11 (k) misleading retailers as to the nature of the tuna procured for Defendant's
12 tuna products;

13 (l) designing and distributing marketing materials, product labels, and
14 websites on the Internet that misrepresented Defendant's tuna products;

15 (m) illegally selling and/or distributing Defendant's tuna products;

16 (n) collecting revenues and profits from the sale of Defendant's tuna
17 products; and/or

18 (o) ensuring that the RICO Co-Conspirators and unnamed co-conspirators
19 complied with the scheme or common course of conduct.

20 152. RICO Co-Conspirators Luen, Sapmer, Tunago, FCF, Anova, and their
21 shipping companies and fishermen, R S Cannery Co., Ltd. and its employees;
22 PAFCO and its employees; Western Overseas Corporation and its employees;
23 General Tuna Corporation and its employees; Century Pacific Food Inc. and its
24 employees; Unicord Public Co. Ltd. (Sea Value Group) and its employees; Paxicon
25 and its employees, Marine Chartering Co., Inc. and its employees; Toba Surimi
26 Industries and its employees; Gralco S.A. and its employees; Almacenistas
27 Importadores Genesa S.A. and its employees; Pataya Food Industries Ltd. and its

1 employees; Ningbo Today Food Company, Ltd. and its employees, among other third
2 parties and employees unknown to Plaintiffs, also participated in, operated and/or
3 directed the Dolphin-Unsafe RICO Enterprise. These RICO Co-Conspirators knew
4 that federal laws and regulations forbade Defendant from importing, storing,
5 packaging, labeling, marketing, and selling Defendant's tuna products containing
6 tuna they procured and processed for Defendant as "Dolphin Safe," and yet formed
7 agreements with Defendant to procure and process tuna for Defendant's tuna
8 products that was neither dolphin-safe nor sustainably sourced.

9 153. RICO Co-Conspirators Luen, Sapmer, Tunago, FCF, Anova, and their
10 shipping companies and fishermen, R S Cannery Co., Ltd. and its employees;
11 PAFCO and its employees; Western Overseas Corporation and its employees;
12 General Tuna Corporation and its employees; Century Pacific Food Inc. and its
13 employees; Unicord Public Co. Ltd. (Sea Value Group) and its employees; Paxicon
14 and its employees, Marine Chartering Co., Inc. and its employees; Toba Surimi
15 Industries and its employees; Gralco S.A. and its employees; Almacenistas
16 Importadores Genesa S.A. and its employees; Pataya Food Industries Ltd. and its
17 employees; Ningbo Today Food Company, Ltd. and its employees, among other third
18 parties and employees unknown to Plaintiffs, directly participated in the fraudulent
19 scheme by procuring, storing, importing, and processing the tuna used by Defendant
20 in its tuna products. These RICO Co-Conspirators exercised tight control over the
21 manner and method of fishing for tuna and other aspects of the procurement, storage,
22 importation, and distribution process and closely collaborated and cooperated with
23 Defendant in the process.

24 154. RICO Co-Conspirators Luen, Sapmer, Tunago, FCF, Anova, and their
25 shipping companies and fishermen, also participated in the affairs of the Enterprise
26 by working with Defendant to conceal from U.S. regulators the truth behind the tuna
27 caught for use in Defendant's tuna products, and collected substantial sums of money

1 in revenues and profits because they did not use less efficient and more costly fishing
2 techniques necessary to protect the dolphin population. The techniques they did
3 employ yielded higher catches at lower costs, thus increasing profits and margins on
4 both accounts. Through their conspiracy to sell non-dolphin safe tuna as dolphin-
5 safe, all of the co-conspirators profited handsomely from their scheme.

6 155. Each of the RICO Co-Conspirators knew that the tuna they procured,
7 stored, canned, processed, imported, and distributed was not sustainably sourced and
8 did not meet the requirements to be labeled as dolphin-safe, and also knew that the
9 tuna would eventually be sold in the United States as dolphin-safe and sustainably
10 sourced.

11 156. Without the RICO Co-Conspirators' willing participation, including
12 their necessary involvement in procuring, storing, processing, canning, and importing
13 tuna for use in Defendant's tuna products, the Enterprise's scheme and common
14 course of conduct would have been unsuccessful.

15 157. The RICO Co-Conspirators knew that any market for tuna products that
16 were not dolphin-safe was *very* limited, and that falsely representing that these
17 products were dolphin-safe opened up an exponentially larger market in the United
18 States for such products.

19 158. The RICO Co-Conspirators directed and controlled several aspects of
20 the ongoing organization necessary to implement the scheme through
21 communications with each other, with Defendant, with port authorities, and with
22 regulators of which Plaintiffs cannot fully know at present, because such information
23 lies in the Defendant's and others' hands. Similarly, because many of the RICO Co-
24 Conspirators are foreign entities, and their shipping, storing, processing, and canning
25 companies and employees are foreign citizens, Plaintiffs cannot fully know the full
26 extent of each individual corporate entity's and individual's involvement in the
27 wrongdoing prior to having access to discovery.

1 material facts. For the purpose of executing the illegal scheme, Defendant and its
2 RICO Co-Conspirators committed these racketeering acts, which number in the
3 thousands, intentionally and knowingly with the specific intent to advance the illegal
4 scheme.

5 163. Defendant's and its RICO Co-Conspirators' predicate acts of
6 racketeering (18 U.S.C. §1961(1)) include, but are not limited to:

7 (a) **Mail Fraud:** Defendant and its RICO Co-Conspirators violated 18
8 U.S.C. §1341 by sending or receiving, or by causing to be sent and/or received,
9 materials via U.S. mail or commercial interstate carriers for the purpose of
10 executing the unlawful scheme to procure, store, process, can, import, package,
11 label, distribute, market, and sell Defendant's tuna products by means of false
12 pretenses, misrepresentations, and promises.

13 (b) **Wire Fraud:** Defendant and its RICO Co-Conspirators violated 18
14 U.S.C. §1343 by transmitting and/or receiving, or by causing to be transmitted
15 and/or received, materials by wire for the purpose of executing the unlawful
16 scheme to defraud and obtain money on false pretenses, misrepresentations, and
17 promises.

18 164. Defendant's and its RICO Co-Conspirators' uses of the mails and wires
19 include, but are not limited to, the transmission, delivery, or shipment of the
20 following by Defendant and its RICO Co-Conspirators or third parties that were
21 foreseeably caused to be sent as a result of Defendant's and its RICO Co-
22 Conspirators' illegal scheme:

23 (a) Defendant's tuna products and the tuna itself;

24 (b) sales and marketing materials, including advertising, websites,
25 packaging, and labeling, concealing the true nature of Defendant's tuna products;
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1 (c) documents intended to facilitate the packing, labeling, and sale of
2 Defendant's tuna products, including bills of lading, invoices, shipping records,
3 reports and correspondence;

4 (d) documents and communications that facilitated the "passing-off" of
5 Defendant's tuna products as "Dolphin Safe" and sustainably sourced;

6 (e) documents to process and receive payment for Defendant's tuna
7 products by unsuspecting Class members, including invoices and receipts;

8 (f) false or misleading Form 370s to NOAA;

9 (g) false or misleading Captain Statements;

10 (h) false or misleading port authority reports;

11 (i) false or misleading tracing and tracking reports;

12 (j) false or misleading communications intended to prevent regulators,
13 retailers, and the public from discovering the true nature of Defendant's tuna
14 products;

15 (k) payments to Luen;

16 (l) payments to Sapmer;

17 (m) payments to Tunago;

18 (n) payments to FCF;

19 (o) payments to Anova;

20 (p) payments to R S Cannery Co., Ltd.;

21 (q) payments to PAFCO;

22 (r) payments to Western Overseas Corporation;

23 (s) payments to General Tuna Corporation;

24 (t) payments to Century Pacific Food Inc.;

25 (u) payments to Unicord Public Co. Ltd. (Sea Value Group);

26 (v) payments to Paxicon;

27 (w) payments to Marine Chartering Co., Inc.;

- 1 (x) payments to Toba Surimi Industries;
- 2 (y) payments to Gralco S.A.;
- 3 (z) payments to Almacenistas Importadores Genesa S.A.;
- 4 (aa) payments to Pataya Food Industries Ltd.;
- 5 (bb) payments to Ningbo Today Food Company, Ltd.;
- 6 (cc) compensation to ship captains on tuna fishing vessels;
- 7 (dd) deposits of proceeds; and/or
- 8 (ee) other documents and things, including electronic
- 9 communications.

10 165. Defendant and its RICO Co-Conspirators (or their agents), for the

11 purpose of executing the illegal scheme, sent and/or received (or caused to be sent

12 and/or received) by mail or by private or interstate carrier, shipments of Defendant's

13 tuna products and related documents by mail or a private carrier affecting interstate

14 commerce, including the items described above and alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
Bumble Bee Foods, LLC	Port of Savannah, GA	October 1, 2013	Bill of Lading # MSCUQ5540904
Bumble Bee Foods, LLC	Port of Los Angeles, CA	October 1, 2013	Bill of Lading # EGLV050300631461
Bumble Bee Foods, LLC	Port of Los Angeles, CA	June 4, 2013	Bill of Lading # MAEU865901548
Bumble Bee Foods, LLC	Port of Savannah, GA	July 30, 2013	Bill of Lading # MSCUQ5482115
Bumble Bee Foods, LLC	Port of Los Angeles, CA	June 1, 2015	Bill of Lading # APLU690284165
Bumble Bee Foods, LLC	Port of Los Angeles, CA	June 4, 2013	Bill of Lading # MAEU865901548
Bumble Bee Foods, LLC	Port of Long Beach, CA	July 2, 2016	Bill of Lading # SUDU46AKLPA18771

Bumble Bee Foods, LLC	Port of Long Beach, CA	July 4, 2016	Bill of Lading # TOPOBKKLAXG60138
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166. Defendant and its RICO Co-Conspirators (or their agents), for the purpose of executing the illegal scheme, transmitted (or caused to be transmitted) in interstate commerce by means of wire communications, certain writings, signs, signals and sounds, including those items described above and alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
Bumble Bee	General Public	2019	Bumble Bee FAQs stating, <i>inter alia</i> , that it “All of our tuna products are Dolphin Safe meeting both the standards of United States 1990 Dolphin Protection Consumer Information Act (Dolphin Safe Labeling Law) and of the Earth Island Institute. All or our products carry a Dolphin Safe logo to indicate that.” https://www.bumblebee.com/faqs/
Bumble Bee	General Public	2019	Bumble Bee webpage titled “Sustainability – Sustaining Fisheries” stating, <i>inter alia</i> , that “No single aspect is more important, or more central, to Bumble Bee Seafoods sustainability program than ensuring the responsible harvesting and management of fisheries from which we source—this is not only important to the environment and our consumers, but for our business as well.” https://www.bumblebee.com/sustainability/fisheries/
Bumble Bee	General Public	2019	Bumble Bee webpage titled “Sustainability – Conserving Resources” stating that “In addition to sustaining the global fisheries from which we source, is also committed to reducing the environmental impact of our operations, packaging, and supply chain of our products.” https://www.bumblebee.com/sustainability/conserving-resources/
Bumble Bee	General Public	2019	Bumble Bee webpage titled “Sustainability – Social Responsibility” stating that “Bumble Bee Seafoods

			<p>conducts business ethically and honestly and in a manner that respects individuals, their communities and the environment. We expect the same from those with whom we work and expect that our suppliers operate with similar values and adhere to the following basic requirements in order to maintain a relationship with us. We require that our Suppliers provide written acknowledgment and compliance with our Code of Conduct.”</p> <p>https://www.bumblebee.com/sustainability/social-responsibility/</p>
Bumble Bee	General Public	2019	<p>Bumble Bee “Supplier Code of Conduct” stating, <i>inter alia</i>, “The Company is committed to doing business legally and ethically. That includes obeying all anti-bribery laws, practicing social responsibility, protecting the environment, and actively promoting the sustainability of the food sources that the Company sells to its valued customers. The Company expects the same commitment from its suppliers,” and “The Supplier agrees to supply ingredients, materials and finished products that are safe for human consumption, unadulterated, and in compliance with all applicable laws and regulations – including the laws of the country of final importation and marketing.”</p> <p>https://www.bumblebee.com/wp-content/uploads/2016/12/Bumble-Bee-Seafoods-Supplier-Code-of-Conduct.pdf</p>

167. Defendant, in concert with the RICO Co-Conspirators, also used the internet and other electronic facilities to carry out the scheme and conceal their ongoing fraudulent activities. Specifically, Defendant, in concert with the RICO Co-Conspirators, made material misrepresentations about its tuna products on its websites, Facebook, Instagram, Twitter, and through ads online, all of which were made in interstate commerce and intended to mislead regulators and the public about the truth about Defendant’s non-dolphin-safe and unsustainably sourced tuna products.

1 revenues, increase market share, and/or minimize losses for Defendant and its RICO
2 Co-Conspirators and their unnamed additional co-conspirators throughout the illegal
3 scheme and common course of conduct.

4 172. To achieve their common goals, Defendant and its RICO Co-
5 Conspirators concealed from the general public the true nature of Defendant's tuna
6 products and obfuscated the fact that the tuna in Defendant's tuna products was not
7 dolphin-safe at all or sustainably sourced.

8 173. Defendant and its RICO Co-Conspirators and each member of the
9 conspiracy, with knowledge and intent, have agreed to the overall objectives of the
10 conspiracy, and have participated in the common course of conduct, to commit acts
11 of fraud and indecency in procuring, processing, packaging, labeling, distributing,
12 marketing, and/or selling Defendant's tuna products.

13 174. Indeed, for the conspiracy to succeed, Defendant and each of its RICO
14 Co-Conspirators had to agree to each play a role in the conspiracy by implementing
15 and using similar devices and fraudulent tactics.

16 175. Specifically, Defendant and its RICO Co-Conspirators committed to
17 secrecy about the truth of Defendant's tuna products not being dolphin-safe or
18 sustainably sourced and in compliance with federal laws and regulations.

19 176. Defendant and its RICO Co-Conspirators knew and intended that
20 consumers would purchase Defendant's tuna products and incur costs as a result.
21 Defendant and its RICO Co-Conspirators also knew and intended that government
22 regulators would rely on their material misrepresentations made about the tuna in
23 Defendant's tuna products to approve them for marketing and sale in the United
24 States and each state. Defendant and its RICO Co-Conspirators also knew and
25 intended that retailers would rely on their material misrepresentations made about the
26 tuna in Defendant's products to agree to offer them for sale to the general public.

1 177. Plaintiffs’ and the Class’ reliance on this ongoing concealment is
2 demonstrated by the fact that they purchased, and lost money or property by
3 purchasing, falsely advertised tuna products that never should have been introduced
4 into the U.S. stream of commerce in the manner in which they were. In addition,
5 NOAA and other regulators relied on the misrepresentations and material
6 concealment and omissions made or caused to be made by Defendant and its RICO
7 Co-Conspirators; otherwise, Defendant would never have been able to market, label,
8 and sell its tuna products as “Dolphin Safe” in the United States and sell the same to
9 the consuming public.

10 178. As described herein, Defendant and its RICO Co-Conspirators engaged
11 in a pattern of related and continuous predicate acts for years. The predicate acts
12 constituted a variety of unlawful activities, each conducted with the common purpose
13 of obtaining significant monies and revenues from Plaintiffs and Class members
14 based on their misrepresentations, while providing to Plaintiffs and Class members
15 Defendant’s tuna products that were worthless, worth significantly less than the
16 purchase price paid, or that consumers would simply not have purchased at all but
17 for the conspiracy. The predicate acts also had the same or similar results,
18 participants, victims, and methods of commission. The predicate acts were related
19 and not isolated events.

20 179. The predicate acts had the purpose of generating significant revenue and
21 profits for Defendant and its RICO Co-Conspirators at the expense of Plaintiffs and
22 Class members. The predicate acts were committed or caused to be committed by
23 Defendant and its RICO Co-Conspirators through their participation in the Dolphin-
24 Unsafe RICO Enterprise and in furtherance of its fraudulent scheme, and were
25 interrelated in that they involved obtaining Plaintiffs’ and Class members’ funds and
26 avoiding the expenses associated with using fishing methods that permit the capture
27 of tuna sustainably sourced without harming the dolphin population.

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COUNT II
Violation of Business & Professions Code §§17200, et seq.
(On Behalf of the Nationwide or California-Only Class)

183. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1-110 above, as if fully set forth herein.

184. Plaintiffs bring this claim individually and on behalf of the Nationwide or California-Only Classes.

185. The Unfair Competition Law, Business & Professions Code §§17200, et seq. (“UCL”) prohibits any “unlawful,” “fraudulent,” or “unfair” business act or practice and any false or misleading advertising. More specifically, the UCL provides, in pertinent part: “Unfair competition shall mean and include unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising”

186. **Unlawful Business Practices:** In the course of conducting business, Defendant committed “unlawful” business practices in violation of the UCL by, *inter alia*, making the dolphin safe representations and sustainable fishing methods representations which are false, misleading, and/or deceptive (which also constitute advertising within the meaning of §17200; failing to comply with traceability and verification requirements, as set forth more fully herein; and violating California Civil Code §§1572, 1573, 1709, and 1711; the California Legal Remedies Act, California Civil Code §§1750, et seq.; California Business & Professions Code §§17200, et seq. and 17500, et seq., and 16 U.S.C. §1385.

187. Plaintiffs reserve the right to allege other violations of law, which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

188. **Unfair Business Practices:** In the course of conducting business, Defendant committed “unfair” business acts or practices by, *inter alia*, making the

1 dolphin safe representations and sustainable fishing method representations which
2 are false, misleading, and/or deceptive (which also constitute advertising within the
3 meaning of §17200), and failing to comply with traceability and verification
4 requirements, as set forth more fully herein. There is no societal benefit from false
5 advertising, only harm. While Plaintiffs and the public at large were and continue to
6 be harmed, Defendant has been unjustly enriched by its false, misleading, and/or
7 deceptive representations as it unfairly enticed Plaintiffs and Class members to
8 purchase its tuna products instead of similar tuna products sold by other
9 manufacturers that were dolphin safe, sustainably caught, stored separately from non-
10 dolphin safe tuna, traceable, and verified. Because the utility of Defendant's conduct
11 (zero) is outweighed by the gravity of harm to Plaintiffs, consumers, and the
12 competitive market, Defendant's conduct is "unfair" having offended an established
13 public policy embodied in, among other things, 16 U.S.C. §1385, where Congress
14 expressly found that it is the policy of the United States to protect the dolphin
15 population and that "consumers would like to know if the tuna they purchase is
16 falsely labeled as to the effect of the harvesting of the tuna on dolphins." 16 U.S.C.
17 §§1385(b)(2)-(3).

18 189. Defendant also engaged in immoral, unethical, oppressive, and
19 unscrupulous activities that are substantially injurious to the public at large.

20 190. There were reasonably available alternatives to further Defendant's
21 legitimate business interests, other than the conduct described herein.

22 191. **Fraudulent Business Practices:** In the course of conducting business,
23 Defendant committed "fraudulent business act[s] or practices" and deceptive or
24 misleading advertising by, *inter alia*, making the dolphin safe representations and
25 sustainable fishing methods representations, which are false, misleading, and/or
26 deceptive to reasonable consumers, and by and failing to comply with traceability,
27 and verification requirements, regarding the tuna products as set forth more fully

1 herein.

2 192. Defendant's actions, claims, and misleading statements, as more fully
3 set forth above, are misleading and/or likely to deceive the consuming public within
4 the meaning of Business & Professions Code §§17200, *et seq.*

5 193. Plaintiffs relied on Defendant's dolphin safe representations and
6 Defendant's compliance with traceability and verification requirements and were in
7 fact injured as a result of those false, misleading, and deceptive representations and
8 by Defendant's failure to comply with traceability, and verification requirements.

9 194. As alleged herein, Plaintiffs have suffered injury in fact and lost money
10 or property at the time of purchase as a result of Defendant's conduct because they
11 were exposed to and purchased Defendant's tuna products in reliance on the dolphin
12 safe representations, sustainable fishing methods representations, and Defendant's
13 compliance with tracing and verification requirements, but did not receive tuna
14 products that contain tuna caught using fishing methods that do not harm dolphins.

15 195. Unless restrained and enjoined, Defendant will continue to engage in
16 the above described conduct. Accordingly, injunctive relief is appropriate.

17 196. Plaintiffs, on behalf of themselves, all others similarly situated, and the
18 general public, seek declaratory relief and an injunction prohibiting Defendant from
19 continuing such practices, corrective advertising, restitution of all money obtained
20 from Plaintiffs and the members of the Classes collected as a result of unfair
21 competition, and all other relief this Court deems appropriate, consistent with
22 Business & Professions Code §17203.

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1 CLRA and demanded that Defendant rectify the problems associated with the actions
2 detailed above and give notice to all affected consumers of Defendant’s intent to so
3 act.

4 204. Defendant failed to rectify or agree to rectify the problems associated
5 with the actions detailed above and give notice to all affected consumers within 30
6 days of the date of written notice pursuant to §1782 of the CLRA. Thus, the
7 California Plaintiffs further seek actual, punitive, and statutory damages as
8 appropriate.

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10 **COUNT IV-**
11 **Violation of Florida Deceptive and Unfair Trade Practices Act – Fla. Stat.**
12 **§§501.201, et seq.**
13 **(On Behalf of the Florida-Only Class)**

14 205. Plaintiff Cosgrove repeats and incorporates by reference the allegations
15 contained in the paragraphs 1 through 110 above as if fully set forth herein.

16 206. Plaintiff Cosgrove brings this claim individually and on behalf of the
17 Florida-Only Class.

18 207. This cause of action is brought pursuant to the Florida Deceptive and
19 Unfair Trade Practices Act, §§501.201, et seq., Fla. Stat. (“FDUTPA”). The stated
20 purpose of FDUTPA is to “protect the consuming public . . . from those who engage
21 in unfair methods of competition, or unconscionable, deceptive, or unfair acts or
22 practices in the conduct of any trade or commerce.” §501.202(2), Fla. Stat.

23 208. Plaintiff Cosgrove and the Florida-Only Class are consumers as defined
24 by §501.203, Fla. Stat. The tuna products are goods within the meaning of FDUTPA.
25 Defendant is engaged in trade or commerce within the meaning of FDUTPA.

26 209. Florida Statute §501.204(1) declares unlawful “[u]nfair methods of
27 competition, unconscionable acts or practices, and unfair or deceptive acts or
28 practices in the conduct of any trade or commerce.” FDUTPA also prohibits false

1 and misleading advertising.

2 210. Florida Statute §501.204(2) states that “due consideration and great
3 weight shall be given to the interpretations of the Federal Trade Commission and the
4 federal courts relating to [section] 5(a)(1) of the Federal Trade Commission Act.”
5 Defendant’s unfair and deceptive practices are likely to mislead – and have misled –
6 consumers acting reasonably in the circumstances, and violate §500.04, Fla. Stat.,
7 and 21 U.S.C. §343.

8 211. Plaintiff Cosgrove and the Florida-Only Class have been substantially
9 injured and aggrieved by Defendant’s unfair and deceptive practices and acts of false
10 advertising in that they paid for tuna products that were not dolphin safe and/or
11 sustainably caught as represented. The harm suffered by Plaintiff Cosgrove and
12 Florida consumers was directly and proximately caused by the deceptive, misleading,
13 and unfair practices of Defendant, as more fully described herein.

14 212. Pursuant to §§501.211(2) and 501.2105, Fla. Stat., Plaintiff Cosgrove
15 and Florida consumers seek damages, injunctive relief, attorneys’ fees and costs
16 against Defendant.

17 **COUNT V –**
18 **Violations of the New York General Business Law § 349**
19 **(On Behalf of the New York-Only Class)**

20 190. Plaintiffs Borruso and Nugent, Anthony and Lori Luciano, Robert and
21 Colleen McQuade, and Fidel and Jocelyn Jamelo (the “New York Plaintiffs”) repeat
22 and incorporate by reference the allegations contained in the paragraphs 1 through
23 110 above as if fully set forth herein.

24 191. The New York Plaintiffs bring this claim individually and on behalf of
25 the New York-Only Class.

26 192. Defendant’s actions alleged herein constitute unlawful, unfair, and
27 deceptive business practices. Those actions include misrepresenting that the tuna
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1 products are “Dolphin Safe” when they are not.

2 193. Defendant’s conduct constitutes acts, uses and/or employment by
3 Defendant or its agents or employees of deception, fraud, unconscionable and unfair
4 commercial practices, false pretenses, false promises, misrepresentations and/or the
5 knowing concealment, suppression, or omission of material facts with the intent that
6 others rely upon such concealment, suppression or omission, in connection with the
7 sale or advertisement of goods in violation of §349 of New York’s General Business
8 Law.

9 194. Defendant’s deceptive conduct was generally directed at the consuming
10 public.

11 195. Defendant’s unfair and deceptive trade acts and practices in violation of
12 §349 of New York’s General Business Law have directly, foreseeably, and
13 proximately caused damages and injury to the New York Plaintiffs and other
14 members of the New York-Only Class.

15 196. Defendant’s deceptive conduct has caused harm to New York-Only
16 Class members in that they purchased the tuna products when they otherwise would
17 not have absent Defendant’s deceptive conduct.

18 197. Defendant’s violations of §349 of New York’s General Business Law
19 threaten additional injury to the New York-Only Class members if the violations
20 continue.

21 197. The New York Plaintiffs, on their own behalf and on behalf of the New
22 York-Only Class, seek damages, injunctive relief, including an order enjoining
23 Defendant’s §349 violations alleged herein, and court costs and attorneys’ fees,
24 pursuant to NY Gen. Bus. Law §349.

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**COUNT VI –
Violation of the New Jersey Consumer Fraud Act, § 56:8-2.10
(On Behalf of the New Jersey-Only Class)**

198. Plaintiffs Lantos and Zelig and Amar and Heena Mody (the “New Jersey Plaintiffs”) repeat and incorporate by reference the allegations contained in paragraphs 1 through 110 above as if fully set forth herein.

199. Defendant’s tuna product packaging constitutes an “advertisement” within the meaning of §56-8-1(a) of the New Jersey Fraud Act, as it is an attempt by publication, dissemination, solicitation, indorsement, or circulation to induce consumers to acquire an interest in Defendant’s merchandise.

200. Defendant’s tuna products constitute “merchandise” within the meaning of §56-8-1(c), as they are directly or indirectly offered to the public for sale and fall within one of the statutory categories of objects, wares, goods, commodities, services, or “anything.”

201. Defendant’s tuna products are misrepresented within the meaning of §56:8-2.10, as the descriptions of said products are misleading, the descriptions omit information in ways that render the description false or misleading, and/or the descriptions represent the merchandise as having qualities they do not have.

202. Specifically, Defendant has violated, and continues to violate, the New Jersey Fraud Act by representing that its tuna products are “Dolphin Safe” when they are not.

203. The New Jersey Plaintiffs, on their own behalf, and on behalf of the New Jersey-Only Class members, seek damages, injunctive relief, including an order enjoining Defendant’s violations of the New Jersey Consumer Fraud Act alleged herein, and court costs and attorneys’ fees.

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1 **COUNT VII –**
2 **Violation of the Maryland Consumer Protection Act – Maryland Code §§ 13-**
3 **101, et seq.**
4 **(On Behalf of the Maryland-Only Class)**

5 204. Plaintiff Depeza repeats and re-alleges the allegations contained in
6 paragraphs 1-110 above, as if fully set forth herein.

7 205. Plaintiff Depeza brings this claim individually and on behalf of the
8 Maryland-Only Class.

9 206. This cause of action is brought pursuant to the Maryland Consumer
10 Protection Act, Maryland Code §§13-101, *et seq.* (the “MCPA”). The stated purpose
11 of the MCPA is to “take strong protective and preventive steps ... to assist the public
12 in obtaining relief from [unlawful consumer practices], and to prevent these practices
13 from occurring in Maryland.” §13-102 (b)(3).

14 207. The MCPA prohibits unfair or deceptive trade practices in the sale or offer
15 for sale of any consumer goods. §§13-303(1)-(2).

16 208. Plaintiff Depeza is a “consumer” and the tuna products are “consumer
17 goods” as defined by §13-101 of the MCPA.

18 209. Defendant has engaged in and continues to engage in unfair or deceptive
19 trade practices in connection with its sale of the tuna products because its dolphin
20 safe representations and sustainable fishing method representations are false and/or
21 misleading and have the capacity, tendency, or effect of deceiving or misleading
22 consumers, as more fully described herein. §13-301(1).

23 210. Defendant has also engaged in and continues to engage in unfair or
24 deceptive trade practices in connection with its sale of the tuna products by engaging
25 in the following practices proscribed by §13-301(2):

- 26 (i) representing that the tuna products “have ... characteristic[s]... which
27 they do not have”; and

28 ***

1 (iv) representing that the tuna products “are of a particular standard, quality,
2 [or] grade ... which they are not”.

3 211. Plaintiff Depeza and Maryland consumers suffered injury or loss as a
4 result of Defendant’s conduct in that they paid for tuna products that were not dolphin
5 safe and/or sustainably caught as represented, as more fully described herein.

6 212. Pursuant to §13-408, Plaintiff Depeza seeks damages and attorneys’
7 fees.

8 **COUNT VIII –**
9 **Violation of the Arizona Consumer Fraud Act,**
10 **A.R.S. §§44-1521, et seq.**
11 **(On Behalf of the Arizona-Only Class)**

12 213. Plaintiff Miller repeats and incorporates by reference the allegations
13 contained in the paragraphs 1 through 110 above as if fully set forth herein.

14 214. This cause of action is brought pursuant to the Arizona Consumer Fraud
15 Act, A.R.S. §§44-1521, et seq. (“ACFA”), which provides in pertinent part:

16 The act, use or employment by any person of any deception, deceptive
17 or unfair act or practice, fraud, false pretense, false promise,
18 misrepresentation, or concealment, suppression or omission of any
19 material fact with intent that others rely on such concealment,
20 suppression or omission, in connection with the sale or advertisement of
21 any merchandise whether or not any person has in fact been misled,
22 deceived or damaged thereby, is declared to be an unlawful practice.

23 A.R.S. § 44-1522(A).

24 215. Plaintiff Miller and members of the Arizona-Only Class are “persons”
25 as defined by A.R.S. §44-1521(6), and Defendant is engaged in the “sale” and
26 “advertisement” of “merchandise” as those terms are defined in A.R.S. §§44-
27 1521(1), (5), and (7).

28 216. Defendant engaged in deceptive and/or unfair acts and practices,
misrepresentation, and the concealment, suppression, and omission of material facts
in connection with the sale and advertisement of “merchandise” (as defined in the
ACFA) in violation of the ACFA, including but not limited to the following:

1 (a) Misrepresenting material facts to Plaintiff Miller and the Arizona-Only
2 Class in connection with the sale of its tuna products, by representing that the tuna
3 products were dolphin safe and/or sustainably caught;

4 (b) Failing to disclose to consumers, including Plaintiff Miller and the
5 Arizona-Only Class, that the tuna products were not dolphin safe nor sustainably
6 caught contrary to Defendant's representations;

7 (c) Failing to reveal a material fact – that Defendant's tuna products were
8 neither dolphin safe nor sustainably caught as represented – the omission of which
9 tends to mislead or deceive consumers, and which fact could not reasonably be
10 known by consumers; and

11 (d) Making a representation of fact or statement of fact material to the
12 transaction – i.e., that Defendant's tuna products were dolphin safe and/or
13 sustainably caught – such that a person reasonably believed they were when they
14 were not.

15 217. Plaintiff Miller relied on Defendant's representations and had
16 Defendant disclosed that its tuna products were not dolphin safe and/or sustainably
17 caught as represented, Plaintiff Miller would have paid less or, more likely, not
18 purchased the tuna products at all. Thus, as a result of Defendant's representations
19 and omissions, Plaintiff Miller and Arizona-Only Class Members were induced to
20 overpay for and purchase tuna products they otherwise would not have.

21 218. Defendant intended that Plaintiff Miller and the Arizona-Only Class rely
22 on its deceptive and/or unfair acts and practices, misrepresentations, and the
23 concealment, suppression, and omission of material facts, in connection with
24 Defendant's sale of the tuna products.

25 219. Defendant's wrongful practices occurred in the course of trade or
26 commerce.

27 220. Defendant's wrongful practices were and are injurious to the public
28

1 interest because those practices were part of a generalized course of conduct that
2 applied to Plaintiff Miller and all Arizona-Only Class Members, and were repeated
3 continuously before and after Defendant sold its tuna products to Plaintiff Miller and
4 the Arizona-Only Class. All Arizona-Only Class Members have been adversely
5 affected by Defendant's conduct and the public was and is at risk as a result thereof.

6 221. Defendant's unfair and/or deceptive conduct proximately caused
7 Plaintiff Miller's and Arizona-Only Class Members' injuries because, had Defendant
8 sourced its tuna from vessels using dolphin safe and sustainable fishing methods,
9 Plaintiff Miller and the Arizona-Only Class Members would not have suffered injury.

10 222. Plaintiff Miller and the Arizona-Only Class seek actual damages,
11 compensatory, punitive damages, injunctive relief, and court costs and attorneys' fees
12 as a result of Defendant's violations of the ACFA.

13 **Count IX –**
14 **Unjust Enrichment/Quasi-Contract**

15 223. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1
16 through 110 above, as if fully set forth herein.

17 224. Plaintiffs and Class members conferred a benefit on Defendant by
18 purchasing the tuna products.

19 225. Defendant appreciated and/or realized the benefits in the amount of the
20 purchase price it earned from sales of the tuna products to Plaintiff and Class
21 members or, at a minimum, the difference between the price it was able to charge
22 Plaintiffs and Class members for the tuna products with the dolphin safe
23 representations and sustainable fishing method representations and the price they
24 would have been able to charge absent the same.

25 226. Defendant has profited from its unlawful, unfair, false, misleading, and
26 deceptive practices and advertising at the expense of Plaintiffs and Class members,
27 under circumstances in which it would be unjust for Defendant to be permitted to

1 retain the benefit.

2 227. Plaintiffs do not have an adequate remedy at law against Defendant.

3 228. Plaintiffs and Class members are entitled to restitution of all monies paid
4 for the tuna products or, at a minimum, the premium paid for the tuna products.

5 **PRAYER FOR RELIEF**

6 Wherefore, Plaintiffs pray for a judgment:

7 A. Certifying the Classes as requested herein;

8 B. Issuing an order declaring that Defendant has engaged in unlawful,
9 unfair, and deceptive acts and practices in violation of the consumer fraud laws in the
10 certified states;

11 C. Enjoining Defendant's conduct and ordering Defendant to engage in a
12 corrective advertising campaign;

13 D. Awarding the Classes damages, including statutory, treble, and punitive
14 damages, and interest thereon;

15 E. Awarding disgorgement and restitution of Defendant's ill-gotten
16 revenues to Plaintiffs and the Classes;

17 F. Awarding attorneys' fees and costs; and

18 G. Providing such further relief as may be just and proper.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiffs hereby demand a trial of their claims by jury to the extent authorized
21 by law.

22
23 Dated: June 17, 2019

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed the 17th day of June 2019.

/s/ Patricia N. Syverson
Patricia N. Syverson