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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.

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27 BUMBLE BEE FOODS LLC, a
Delaware company,
28

Case No.:

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §17200 *et seq.*;
2. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, Civil Code §1750 *et seq.*;
3. VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT – Fla. Stat. § 501.201, *et seq.*;
4. VIOLATION OF THE NEW YORK GENERAL BUSINESS LAW § 349;
5. VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT, § 56:8-2.10;
6. VIOLATION OF THE MARYLAND

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Defendant.

CONSUMER PROTECTION ACT –
Maryland Code §§13-101, *et seq.*;
7. VIOLATION OF THE ARIZONA
CONSUMER FRAUD ACT, A.R.S.
§§44-1521, *et seq.*; and
8. 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 state:

7 **FACTUAL ALLEGATIONS**

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

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

22 **Origin of “Dolphin Safe” Tuna**

23 3. Prior to the development of modern purse seine fishing techniques,
24 tropical tuna were caught one at a time using traditional pole-and-line methods.
25 NOAA, The Tuna-Dolphin Issue, NOAA Fisheries Southwest Fisheries Science
26 Center (September 2, 2016), *available at*

1 <https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=140>
2 8 (last visited May 3, 2019) (“NOAA 2016”).

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

8 5. Recognizing that tuna schools (swimming deeper in the water) often
9 congregate with dolphin schools (swimming at observable depths), fishermen began
10 routinely encircling tuna *and* dolphin schools with purse seine nets and hauling the
11 entire catch aboard.

12 6. This practice led to millions of dolphins being killed as unintended
13 bycatch.

14 7. In the late 1980s, the world learned of the large numbers of dolphins
15 indiscriminately killed by tuna fishermen. In 1988, a worldwide telecast showed
16 video images of dolphins being killed in tuna fishing nets. That video was captured
17 by an undercover environmental activist posing as a ship’s cook. Public outcry was
18 immediate and intense.

19 8. Heightened public awareness of these mass dolphin deaths led to the
20 development and enhancement of fishing regulations around the world, including a
21 strengthening of the Marine Mammal Protection Act (“MMPA”) and the enactment
22 of the Dolphin Protection Consumer Information Act (“DPCIA”) of 1990.

23 9. Recognizing these indiscriminate fishing methods were also deflating
24 consumers’ enthusiasm for tuna products, the major sellers of tuna fish – including
25 Bumble Bee, Chicken of the Sea, and StarKist – started promising consumers that
26 the tuna they sold would only be procured through dolphin safe fishing practices.

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

6 11. For at least the last 4 years, reasonable consumers expected that all
7 Bumble Bee canned, pouched, and on-the-go kit tuna (collectively, “tuna products”)
8 are dolphin safe because they have been indoctrinated to believe precisely that by
9 Defendant’s and the other tuna companies’ highly effective dolphin safety and
10 sustainable fishing practices marketing campaigns. In fact, 98% of the prepacked
11 tuna sold today in the United States is labeled with some “dolphin safe”
12 representation. Forbes, K. William Watson, ‘Dolphin Safe’ Labels on Canned Tuna
13 Are A Fraud (April 29, 2015), *available at*
14 [https://www.forbes.com/sites/realspin/2015/04/29/dolphin-safe-labels-on-canned-](https://www.forbes.com/sites/realspin/2015/04/29/dolphin-safe-labels-on-canned-tuna-are-a-fraud/#51db16b8295e)
15 [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 visited May 3, 2019).

16 12. Bumble Bee tuna, however, is not dolphin safe. Nor is it sustainably
17 sourced. Defendant’s dolphin safe representations are false, misleading, and/or
18 deceptive.

19 **Bumble Bee’s Dolphin Safe Representations**

20 13. In 1990, Bumble Bee was one of the first major tuna companies to adopt
21 a “dolphin safe” policy.

22 14. On every can, pouch, and kit, Defendant states that the tuna products are
23 “Dolphin Safe” with a prominent dolphin logo. The tuna products also include
24 Bumble Bee’s website which sets forth Defendant’s dolphin safe policy.

25 15. Bumble Bee’s website explains what Defendant means by “Dolphin
26 Safe,” and the meaning attributed to “Dolphin Safe” by Defendant reflects its
27 importance to consumers. Defendant promises in pertinent part:

- 1 • Bumble Bee remains “fully committed to” and “strictly adhere[s]” to the
2 dolphin safe policy implemented in April 1990.
- 3 • Bumble Bee “will not purchase tuna from vessels that net fish associated
4 with dolphins”.
- 5 • All of Bumble Bee’s tuna products “are Dolphin Safe meeting both the
6 standards of United States 1990 Dolphin Protection Consumer
7 Information Act (Dolphin Safe Labeling Law) and of the Earth Island
8 Institute. All of our products carry a Dolphin Safe logo to indicate that.”
9 Bumble Bee, FAQ, *available at* <http://www.bumblebee.com/faqs/> (last visited May
10 7, 2019).

11 16. As noted by the Ninth Circuit in a recent case, “[g]iven the choice of
12 whether to purchase dolphin-safe tuna or to purchase tuna not labeled dolphin-safe,
13 American consumers overwhelmingly chose to purchase tuna that was labeled
14 dolphin-safe. As a result, foreign tuna sellers who did not adjust their fishing methods
15 were quickly forced out of the market.” *Earth Island Institute v. Hogarth*, 494 F.3d
16 757, 761 (9th Cir. 2007) (rejecting Government efforts to lessen restrictions on tuna
17 fisheries in the Eastern Tropical Pacific and upholding previous finding that best
18 evidence available indicates that tuna fishing was having significant adverse impact
19 on dolphin stocks).

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

24 18. If anything, dolphin safety and the sustainable sourcing of seafood has
25 grown in importance to consumers as evidenced by many retailers’ refusal to sell
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1 tuna that is not caught using dolphin safe pole-and-line, trolling¹, or handline catch
2 methods. *See, e.g.*, Whole Foods Market, Sustainable Canned Tuna, *available at*
3 <https://www.wholefoodsmarket.com/sustainable-canned-tuna> (last visited April 17,
4 2019) (“Our sourcing policy requires all fisheries supplying canned tuna to use pole-
5 and-line, troll or handline catch methods” unlike “[m]uch of conventional canned
6 tuna [which] is caught by vessels using purse seine nets with Fish Aggregating
7 Devices (known as FADs), that attract tuna but also result in high bycatch of ... other
8 marine life.”); Whole Foods Market, Canned Tuna Sourcing Policy (August 15,
9 2018), *available at*
10 [http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Mar](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf)
11 [ket_Canned_Tuna_Sourcing_Policy_102017.pdf](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf) (last visited April 17, 2019)
12 (“Requirements for Source Fisheries” include “1. All canned tuna must be sourced
13 from pole and line, troll, and handline fisheries. Tuna from longline or purse seine
14 fisheries is prohibited.”); PR Newswire, Safeway Announces New Sustainable
15 Sourcing Practice for Tuna (February 10, 2012), *available at*
16 [https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-](https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-sourcing-practice-for-tuna-139096714.html)
17 [sourcing-practice-for-tuna-139096714.html](https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-sourcing-practice-for-tuna-139096714.html) (last visited April 17, 2019);
18 Albertsons/Safeway, Supplier Sustainability Guidelines and Expectations (August
19 2015), *at* 21, *available at*
20 https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf (last
21 visited April 29, 2019) (“Suppliers are encouraged to “Not use Purse-seine nets
22 deployed on Fish Aggregation Devices (FADs) and employ alternatives such as pole
23 and line trolling in an effort to reduce or eliminate by-catch”); H-E-B, H-E-B seafood
24 policy, *available at* <https://www.heb.com/static-page/article-template/H-E-B->
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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-](https://www.seafoodwatch.org/ocean-issues/fishing-and-farming-methods)
methods (last visited May 3, 2019).

1 Seafood-Policy (last visited April 17, 2019) (for wild-caught seafood, H-E-B
2 preferentially sources from fisheries that reduce bycatch, and H-E-B “will never
3 knowingly buy or sell any illegal, unreported, or unregulated (IUU) fish”); Giant
4 Eagle, Tuna Policy, available at [https://www.gianteagle.com/about-us/sustainable-](https://www.gianteagle.com/about-us/sustainable-seafood/tuna-policy)
5 [seafood/tuna-policy](https://www.gianteagle.com/about-us/sustainable-seafood/tuna-policy) (last visited April 29, 2019) (encourages suppliers to “eliminate
6 harvest with the use of non-entangling FADs”); Wegmans, Seafood Sustainability,
7 available at [https://www.wegmans.com/about-us/making-a-](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html)
8 [difference/sustainability-at-wegmans/seafood-sustainability.html](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html) (last visited April
9 29, 2019) (“Our wild-caught seafood suppliers must meet Wegmans’ high standards
10 to source seafood that is caught responsibly” including having “[g]ear chosen to
11 reduce bycatch.”).

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

22 20. The special “Dolphin Safe” logo Defendant includes on each Bumble
23 Bee tuna product as shown below is intended by Defendant to convey the message
24 “All of our tuna products are Dolphin Safe”:
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21. However, unknown to consumers, substantial numbers of dolphins and other marine life are killed and harmed by the fishermen and fishing methods used to catch Defendant's tuna. Thus, Defendant's dolphin safe label representations are false, misleading, and/or deceptive.

10 Dolphin Safety Legislation

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

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23. Then, in 1990, Congress passed the DPCIA, which created the dolphin safe mark. 16 U.S.C. §1385. The Act provided that tuna could only be labeled with the official "dolphin safe" mark codified at 50 CFR §216.95 if, *inter alia*, the tuna was not caught in the Eastern Tropical Pacific ("ETP") using nets intentionally deployed on or to encircle dolphins, was certified as dolphin safe by an independent observer on the tuna boat, and can be traced from the fishery, to the cannery, to the shelf. *Id.*

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

1 25. The DPCIA-established official dolphin safe mark is codified at 50 CFR
2 §216.95. That official mark contains the words “U.S. Department of Commerce”,
3 along with the words “Dolphin Safe” in red next to a blue-colored dolphin profile
4 facing the upper left, and a tricolor (light blue, blue, and dark blue) banner along the
5 bottom of the mark that overlaps with the dolphin’s fluke:



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

25 27. To be clear, the Act and implementing regulations specify that “no”
26 dolphins must be “killed or seriously injured” and if “a” dolphin “was killed or
27 seriously injured [defined as ‘any injury that will likely result in mortality’ (50 CFR

1 §216.3)]” the tuna is not dolphin safe and must be stored physically separate from
2 tuna that is dolphin safe and must be supported by sufficient documentation to enable
3 the National Marine Fisheries Service to trace the non-dolphin safe tuna back to the
4 fishing trip. 50 CFR §216.91.

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

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

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

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

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

2 32. On May 16, 2012, the WTO Appellate Body issued its Report. Among
3 other findings, the Appellate Body found the DPCIA and the ruling in *Hogarth*
4 together:

5 set out a single and legally mandated definition of a “dolphin-
6 safe” tuna product and disallows the use of other labels on tuna
7 products that use the terms “dolphin-safe”, dolphins, porpoises
8 and marine mammals and do not satisfy this definition. In doing
9 so, the US measure prescribes in a broad and exhaustive manner
10 the conditions that apply for making any assertion on a tuna
11 product as to its “dolphin-safety”, regardless of the manner in
12 which that statement is made.

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

16 33. However, the Appellate Body also found the DPCIA discriminated
17 against Mexico. In doing so, the Appellate Body:

18 examined whether the different conditions for access to a
19 “dolphin-safe” label are “calibrated” to the risks to dolphins
20 arising from different fishing methods in different areas of the
21 ocean, as the United States had claimed. The Appellate Body
22 noted the Panel’s finding that the fishing technique of setting on
23 dolphins is particularly harmful to dolphins and that this fishing
24 method has the capacity of resulting in observed and unobserved
25 adverse effects on dolphins. **At the same time, the Panel was
not persuaded that the risks to dolphins from other fishing
techniques are insignificant and do not under some
circumstances rise to the same level as the risks from setting
on dolphins.** The Appellate Body further noted the Panel’s
finding that, while the US measure fully addresses the adverse
effects on dolphins resulting (including observed and unobserved
effects) from setting on dolphins in the ETP, it does not address
mortality arising from fishing methods other than setting on
dolphins in other areas of the ocean. In these circumstances, the
Appellate Body found that the measure at issue is not even-
handed in the manner in which it addresses the risks to dolphins
arising from different fishing techniques in different areas of the
ocean.

26 *Id.* (emphasis added).

27 34. In other words, the WTO Appellate Body found that fishing methods

1 being employed in and out of the ETP were likely harming dolphin populations and
2 the U.S. regulatory regime designed to protect dolphins was perhaps not strong
3 enough in its regulation of fisheries outside the ETP.

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

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

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

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

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

22 36. Following the Appellate Body’s Report and recommendations to
23 strengthen the DPCIA, the United States made amendments to it that imposed
24 additional requirements on tuna caught outside the ETP. These amendments required
25 that:

26 **all tuna sought to be entered into the United States as
27 “dolphin-safe”, regardless of where it was caught or the
28 nationality of the fishing vessel, must be accompanied by a
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.**

29 *See* Official Summary, WTO DS381, current through Jan. 31, 2019 (emphasis
30 added), *available* *at*

31 https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm (last visited

1 May 10, 2019).

2 **Bumble Bee’s Fishing Practices and Violation of its**
 3 **Dolphin Safe Representations**

4 37. Several tuna companies use traditional pole-and-line and trolling
 5 methods of catching tuna. These products include Safe Catch, Ocean Naturals (for
 6 its Albacore tuna), and Wild Planet, which are caught using pole-and-line and
 7 trolling, and American Tuna, Whole Foods 365 Everyday Value brand (for its
 8 skipjack and albacore tuna), and Trader Joe’s (for its yellowfin tuna), which are
 9 caught using exclusively pole-and-line.²

10 38. While more costly, these traditional methods ensure that dolphins (and
 11 other bycatch) are not harmed in the fishing process because fish are caught using
 12 barbless hooks and poles one at a time near the sea’s surface and unintended captured
 13 species are easily released. Tuna caught by these methods are actually “dolphin
 14 safe.”

15 39. Bumble Bee uses pole-and-line fishing methods to capture the tuna in
 16 its Wild Selections premium brand tuna products and prominently identifies “line
 17 caught” as the catch method used on the front and center of the product labels.
 18 Bumble Bee does not, however, use only dolphin safe pole-and-line or trolling
 19 techniques to capture the tuna in its flagship Bumble Bee branded tuna products that

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
 28 [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 are the subject of this lawsuit. Nor does Bumble Bee identify the dolphin harming
2 fishing methods it does use on the tuna product labels even though Defendant
3 acknowledges it is capable of tracing the fishing gear employed to capture the tuna.
4 Bumble Bee, Trace My Catch, *available at*
5 <http://www.bumblebee.com/tracemycatch/> (last visited May 7, 2019).

6 40. While not disclosed on the product labels, Defendant's website
7 identifies purse seine nets and longlines as the methods used to capture the tuna in its
8 Bumble Bee branded products. Bumble Bee, Tuna 101, About Us, *available at*
9 <http://www.bumblebee.com/about-us/seafood-school/tuna-101/> (last visited May 7,
10 2019). Both of these fishing methods kill and harm substantial numbers of dolphins.

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

20 42. Even when dolphins are mistakenly caught by these longlines, they are
21 often not released. Rather, the fishermen that catch these dolphins often kill them
22 onboard and have been photographed posing with their catch, mutilating the dolphins
23 and removing their teeth, which can be used as currency. Because of the harm caused
24 to non-target fish, longlines have been condemned by environmental groups like the
25 World Wildlife Foundation ("WWF") as an unsustainable fishing practice WWF,
26 Bycatch, Threats, *available at* www.worldwildlife.org/threats/bycatch (last visited
27 May 3, 2019).

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

10 44. FADs are known as floating death traps because dolphins and other
11 marine life get entangled in the devices. Even though Defendant states it recently
12 began sourcing some of its tuna from purse seiners utilizing non-entangling FADs
13 (*id.*), their sheer numbers estimated at 30,000 to 50,000 per year disrupt behavior and
14 movement patterns of dolphins and other ocean species crucial to their survival. And,
15 as most FADs are not removed after use, they pollute the oceans in direct conflict
16 with Defendant’s proclaimed goal of “ensuring safer, cleaner oceans” as part of its
17 commitment to sustainable fishing practices. *Id.*

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

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

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

1 46. Since the 1980s, changes in the design of nets and fishing practices that
2 allow dolphins to escape the net have significantly reduced dolphin mortality. Brown
3 2016. Nonetheless, significant numbers of dolphins (over a thousand a year
4 according to NOAA⁵) are still harmed by this method, as unintended bycatch can
5 account for more than 30% of a ship's haul. And, even though unintended bycatch
6 may still be alive when dumped out of the nets onto the boat, by the time they are
7 thrown back into the ocean, most are dead or near dead.

8 47. Even when dolphins escape the purse seine nets or are released alive
9 from the longlines and nets, dolphins are harmed by these fishing practices.

10 48. Several studies have observed a number of indirect ways these fishing
11 practices cause additional unobserved dolphin deaths, including: dolphin mother-calf
12 separation as calves are dependent upon their mothers until weaned 1.5 years
13 postpartum, and, even then, the calves do not reach full muscle maturation until age
14 3; acute cardiac and muscle damages caused by the exertion of avoiding or detangling
15 from the FADs and purse seine nets; cumulative organ damage in released dolphins
16 due to overheating from escape efforts; failed or impaired reproduction;
17 compromised immune function; and unreported mortalities due to under-counting by
18 purse-seine fishing vessels. *See, e.g.,* Department of Commerce, Reilly, *et al.*, Report
19 of the Scientific Research Program Under the International Dolphin Conservation
20 Program Act, NOAA Technical Memorandum NMFS (March 2005), at 67-71, 76
21 *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)
22 [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*
23 *spotted and spinner dolphins in the eastern tropical Pacific: modeling hypotheses for*
24 *their lack of recovery*, Mar Ecol Prog Ser 343:1-14, 2007, at 11 (noting “[a] summary
25 of recent research ... clearly illustrates that the purse seine fishery has the capacity
26

27 ⁵ NOAA 2016.

1 to affect dolphins beyond the direct mortality observed as bycatches”); Kellar, et al.,
2 *Pregnancy patterns of pantropical spotted dolphins (Stenella attenuata) in the*
3 *eastern tropical Pacific determined from hormonal analysis of blubber biopsies and*
4 *correlations with the purse-seine tuna fishery*, Mar Biol (2013) 160:3113-3124, at
5 3120 (tuna fishery reduces likelihood of female becoming pregnant or maintaining
6 pregnancy).

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

13 50. Because the use of FADs, purse seine nets, and longlines are
14 unsustainable fishing practices, several companies that supply the U.S. tuna market
15 will not source their tuna from boats that use these indiscriminate fishing methods.
16 But Bumble Bee is not among these companies. While Defendant emphasizes on its
17 website that post January 1, 2016 it began “increasing sourcing of tuna caught by
18 vessels on the International Seafood Sustainability Foundation (ISSF) Proactive
19 Vessel Register (PVR)” as an “effective, credible, and verifiable way to identify those
20 purse seine vessels that are taking meaningful sustainability efforts to improve
21 responsible practices in tuna fishing and that are in compliance with ISSF Multi-
22 Annual Commitments”⁶; as stated on the PVR website under the “FAQ” header, all
23 vessels are eligible for the registry regardless of the fishing method used⁷, such that
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-
28 foundation.org/knowledge-tools/databases/proactive-vessel-register/](https://iss-foundation.org/knowledge-tools/databases/proactive-vessel-register/) (last visited
May 7, 2019).

1 a vessel's PVR designation does not indicate it uses sustainable fishing methods. In
2 fact, compliance with the ISSF Conservation Measures of relevance here is
3 determined by "remote" audits once every three years wherein vessel owners self-
4 attest either directly or electronically that no driftnets are used, FADs are non-
5 entangling, no shark finning is occurring, and they are not on the RFMD Illegal,
6 Unreported and Unregulated vessel list. ISSF, Audits, ProActive Vessel Register,
7 available at [https://iss-foundation.org/knowledge-tools/databases/proactive-vessel-](https://iss-foundation.org/knowledge-tools/databases/proactive-vessel-register/)
8 [register/](https://iss-foundation.org/knowledge-tools/databases/proactive-vessel-register/) (last visited May 8, 2019); MRAG Americas, ISSF ProActive Vessel
9 Register: Audit Policy Document & Standard Operating Procedures For Purse Seine
10 Vessels (March 2018, updated September 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/)
11 [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/)
12 [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/)
13 [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
14 ProActive Vessel Register: Audit Policy Document & Standard Operating
15 Procedures For Longline Vessels Vessels (March 2018, updated September 2018),
16 *available at* [https://iss-foundation.org/download-monitor-demo/download-info/issf-](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/)
17 [proactive-vessel-register-pvr-audit-policy-document-standard-operating-](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/)
18 [procedures-for-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).
19 "Dolphin" and "bycatch" are not mentioned at all in the Audit Protocols. And the
20 use of non-entangling FADs, longlines, and purse seine nets are all permissible
21 practices not subject to audit. *See id.*

22 51. Further belying its supposed commitment to sustainable fishing
23 practices is that, to avoid competition from its primary market rivals over the sale of
24 FAD-free tuna (which would be more expensive), in or about February 2012, Bumble
25 Bee allegedly entered into a written agreement with Chicken of the Sea and StarKist
26 Co., who together with Defendant control 70-80% of the U.S. canned tuna market,
27 whereby none of them would sell a branded FAD-free tuna product in the U.S. *See*

1 Tom Seaman, Lawsuits: US brands colluded on not selling FAD-free tuna,
2 undercurrentnews>analysis>US Investigates Tuna Brands>Companies (July 18,
3 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/)
4 [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).

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

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

14 53. Defendant’s use of an alternative dolphin safe logo on its tuna products
15 requires it to track, audit, and spot check for accuracy that “no dolphins were killed
16 or seriously injured in the sets or other gear deployments in which the tuna were
17 caught” from capture, to transshipment⁸, to cannery, to shelf. And, in the event that
18 even a single dolphin is “killed or seriously injured” during the catch, Defendant must
19 physically separate and store that catch from any tuna catches in which no dolphins
20 were harmed (if any) and maintain records tracing the catch(es) in which dolphins
21 were harmed back to the fishing vessel and trip. 50 CFR §216.91.

22 54. Defendant sources its tuna globally in all oceans. Bumble Bee, Tuna
23 101, About Us, *available at* <http://www.bumblebee.com/about-us/seafood->

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 school/tuna-101/ (last visited May 8, 2019). Unlike fisheries in the ETP, boats in the
2 other oceanic regions that supply Bumble Bee tuna are not required to have
3 independent observers onboard to track and report the number of dolphins killed or
4 seriously injured. 16 U.S.C. §1385(d)(1). A declaration from the ship's captain that
5 no purse seines were intentionally set on dolphins suffices. 16 U.S.C.
6 §1385(d)(1)(B). These declarations are limited to certifying that "no purse seine net
7 was intentionally deployed on or used to encircle dolphins during the particular
8 voyage on which the tuna was harvested" and do not require certification that FADs,
9 gillnets, longlines and other dolphin harming fishing techniques were not used. Nor
10 must the captain quantify the number of dolphins killed or otherwise harmed. There
11 is a strong financial incentive for a captain to falsely certify a catch is "dolphin safe,"
12 as any catch that is not "dolphin safe" is essentially worthless. Defendant
13 acknowledges "there is currently no existing standard or credible audit process for
14 the challenging and often remote operation of tuna fishing vessels." Bumble Bee,
15 Social Responsibility, Sustainability, available at
16 <http://www.bumblebee.com/sustainability/social-responsibility/> (last visited May 7,
17 2019).

18 55. Further, while Defendant claims that all of its tuna products meet the
19 dolphin safe labeling standards of the Earth Island Institute ("EII")⁹, including
20 dolphin-friendly sourcing, EII's tuna monitoring program does not guarantee that no
21 dolphins were killed or seriously injured by Bumble Bee tuna vessels. EII's list of
22 "verified dolphin-safe companies" is based on supplier "commitments" to not chase
23 and encircle dolphins during their fishing trips. *See* David Phillips, International
24 Marine Mammal Project, Earth Island Institute International Tuna Monitoring
25 Program 2014 Annual Report (August 19, 2015), *available at*

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

1 <http://savedolphins.eii.org/news/entry/2014-annual-report-international-tuna->
2 [monitoring-report](http://savedolphins.eii.org/news/entry/2014-annual-report-international-tuna-) (last visited May 8, 2019). EII does not have the resources to
3 monitor all the vessels supplying Defendant’s tuna, let alone each and every fishing
4 trip made by those vessels. Further, as evidenced by the “commitment” it requires
5 of its suppliers, EII’s focus is on ensuring dolphins are not chased and encircled. *Id.*
6 Suppliers’ use of FADs, longlines, and other destructive fishing methods is not a bar
7 to verification. In fact, EII expressly states that it is not opposed to the use of FADs.
8 *Id.*

9 56. By purchasing its tuna from fishing vessels that use purse seine nets
10 deployed around FADs and/or longlines, Bumble Bee is able to reduce its tuna
11 product costs by using less costly fishing methods that kill or harm dolphins. This
12 enables Bumble Bee to sell its tuna products at a lower price and capture more of the
13 declining tuna market, which has experienced a 40% per capita decline over the last
14 30 years.

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

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

26 58. Defendant claims its membership in the International Seafood
27 Sustainability Foundation (“ISSF”) is the “primary channel” for accomplishing its

1 sustainable fishing practices goals. Bumble Bee, Tuna 101, About Us, *available at*
2 <http://www.bumblebee.com/about-us/seafood-school/tuna-101/> (last visited May 7,
3 2019). Despite its organization name and purported sustainable fishing practice
4 mission, the ISSF does not support the banning or effective control of FADs,
5 longlines, or other unsustainable fishing techniques.

6 59. The ISSF lacks the independence and impartiality to embrace and
7 champion meaningful sustainability practices and industry reform. It was created in
8 2009 by Bumble Bee and several other big tuna companies and its funding comes
9 from corporate fees which are several hundreds of thousands of dollars for large
10 companies like Bumble Bee. As noted by Greenpeace when refusing an invite to join
11 ISSF's Environmental Stakeholder Committee, the "ISSF's role [is] to deflect
12 attention from the real problems, and to delay adoption of real solutions that its
13 corporate members would prefer to avoid" such as banning FADs and other harmful
14 fishing techniques that its corporate members use and simply allows its members "to
15 brandish their ISSF membership as a way to deflect criticism." Greenpeace, How the
16 International Seafood Sustainability Foundation (ISSF) Blocks Environmental
17 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/)
18 [seafood/how-international-seafood-sustainability-foundation-blocks-environmental-](https://www.greenpeace.org/usa/oceans/sustainable-seafood/how-international-seafood-sustainability-foundation-blocks-environmental-action/)
19 [action/](https://www.greenpeace.org/usa/oceans/sustainable-seafood/how-international-seafood-sustainability-foundation-blocks-environmental-action/) (last visited May 3, 2019).

20 60. Because Bumble Bee uses longlines, purse seine nets, FADs, and other
21 well-known dolphin-harming fishing techniques, notwithstanding its ISSF
22 membership, Bumble Bee's sustainability representations are false, misleading,
23 and/or deceptive.

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

26 61. Unlike several other tuna companies who sell to the U.S. market,
27 Defendant has not adopted dolphin safe fishing practices for its flagship Bumble Bee

1 branded tuna products, such as pole-and-line, trolling, and/or handline catch
2 methods, whereby fishermen catch one fish at a time and release unwanted species
3 soon after a fish takes the bait.

4 62. Most U.S. retailers have sustainability guidelines and expectations of
5 their seafood suppliers that include: using recognized dolphin safe tuna capture
6 methods, having programs in place to trace the tuna back to the boat and place of
7 capture, and guaranteeing the catch method used. *See, e.g.*, Whole Foods Market,
8 Sustainable Canned Tuna, *available at*
9 <https://www.wholefoodsmarket.com/sustainable-canned-tuna> (last visited April 17,
10 2019); Whole Foods Market, Canned Tuna Sourcing Policy, *available at*
11 [http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Mar](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf)
12 [ket_Canned_Tuna_Sourcing_Policy_102017.pdf](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf) (last visited April 17, 2019); PR
13 Newswire, Safeway Announces New Sustainable Sourcing Practice for Tuna
14 (February 10, 2012), *available at* [https://www.prnewswire.com/news-](https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-sourcing-practice-for-tuna-139096714.html)
15 [releases/safeway-announces-new-sustainable-sourcing-practice-for-tuna-](https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-sourcing-practice-for-tuna-139096714.html)
16 [139096714.html](https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-sourcing-practice-for-tuna-139096714.html) (last visited April 17, 2019); Albertsons/Safeway, Supplier
17 Sustainability Guidelines and Expectations (August 2015), at 3, *available at*
18 https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf (last
19 visited May 3, 2019) (“Safeway-Albertsons will strive to purchase environmentally
20 preferable products”); H-E-B, H-E-B seafood policy, *available at*
21 <https://www.heb.com/static-page/article-template/H-E-B-Seafood-Policy> (last
22 visited May 3, 2019); Sprouts, Sustainable Seafood Policy, *available at*
23 <https://about.sprouts.com/product-sourcing/sustainable-seafood-policy/> (last visited
24 April 17, 2019); Giant Eagle, Tuna Policy, *available at*
25 <https://www.gianteagle.com/about-us/sustainable-seafood/tuna-policy> (last visited
26 April 17, 2019) (“Our goal is to source tuna only from healthy and well-managed
27 stocks, from fisheries using the most current best practice in methods, bycatch

1 reduction and environmentally responsible, socially responsible, Non GMO, BPA
2 free and priced reasonably for our consumers”); Wegmans, Seafood Sustainability,
3 *available at* [https://www.wegmans.com/about-us/making-a-](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html)
4 [difference/sustainability-at-wegmans/seafood-sustainability.html](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html) (last visited April
5 17, 2019); Publix, Publix Sustainability Report 2019, *available at*
6 <https://sustainability.publix.com/wp-content/uploads/sustainability-report.pdf> (last
7 visited April 17, 2019) (supplier commitment to sustainable fishing “helps us decide
8 whether to sell a product, enhance fisheries through improvement projects or halt the
9 sale of a product until the issue is resolved.”). Tuna companies who do not use
10 dolphin safe catch methods and do not adhere to traceability requirements can expect
11 retailers to refuse to sell their products.

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

18 **Bumble Bee’s Dolphin Safe Sustainability Representations are False,**
19 **Misleading, and/or Deceptive**

20 64. Because dolphins are killed and harmed by the fishing methods used to
21 catch the tuna in Defendant’s products; Defendant does not adequately track, verify,
22 audit, and spot check the number of dolphins killed and harmed; and Defendant does
23 not separately store the tuna that is not dolphin safe, Bumble Bee’s use of the
24 alternative dolphin safe logo, its dolphin safe representations, and its sustainability
25 representations are false, misleading, and/or deceptive.

26 65. Reasonable consumers rightly believe that “dolphin safe” means “no”
27 dolphins were harmed in the process of catching the tuna in Defendant’s products.

1 That is precisely the regulatory definition of dolphin safe. 50 CFR §§216.3, 216.91.
2 And it is the message that Bumble Bee has consistently conveyed to the public in its
3 widespread and long-term advertising and marketing campaign.

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

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

27 68. Alternatively, Plaintiffs and Class members are entitled to the premium
28

1 attributable to the dolphin safe and sustainable fishing practices misrepresentations.

2 69. Plaintiffs bring this action on behalf of themselves and other similarly
3 situated consumers who purchased the tuna products to halt the dissemination of this
4 false, misleading, and deceptive advertising message, correct the misleading
5 perception it has created in the minds of consumers, and obtain redress for those who
6 have purchased the tuna products. Based on Defendant's unjust enrichment and
7 violations of California, Florida, Arizona, New York, New Jersey, and Maryland
8 unfair competition laws (detailed below), Plaintiffs seek damages, declaratory,
9 injunctive, and restitutionary relief for consumers who purchased the tuna products.

10 **JURISDICTION AND VENUE**

11 70. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2).
12 The matter in controversy, exclusive of interest and costs, exceeds the sum or value
13 of \$5,000,000 and is a class action in which there are in excess of 100 class members
14 and some members of the Class are citizens of a state different from Defendant.

15 71. This Court has personal jurisdiction over Defendant because Defendant
16 is authorized to conduct and do business in California, including this District.
17 Defendant marketed, promoted, distributed, and sold the tuna products in California,
18 and Defendant has sufficient minimum contacts with this State and/or sufficiently
19 availed itself of the markets in this State through its promotion, sales, distribution,
20 and marketing within this State, including this District, to render the exercise of
21 jurisdiction by this Court permissible.

22 72. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)
23 because a substantial part of the events giving rise to Plaintiff Duggan's claims
24 occurred while she resided in this judicial district. Venue is also proper under 18
25 U.S.C. § 1965(a) because Defendant transacts substantial business in this District.

PARTIES

1
2 73. Plaintiff Tara Duggan resides in Marin County, California and is a
3 citizen of California. Throughout the relevant period, Plaintiff Duggan routinely was
4 exposed to, saw, and relied upon Defendant's dolphin safe representations by
5 viewing the dolphin safe mark on the Bumble Bee canned tuna in water at stores such
6 as Lucky's and Fairfax Market in her area. Plaintiff Duggan purchased the tuna
7 products for approximately \$3.50. At all relevant times, Plaintiff Duggan was
8 unaware that the tuna was not dolphin safe as represented and was caught using
9 fishing methods that are harmful to dolphins. Had Plaintiff Duggan known the tuna
10 was not dolphin safe and/or had Defendant not represented the tuna was dolphin safe,
11 Plaintiff Duggan would not have purchased the tuna products. As a result, Plaintiff
12 Duggan suffered injury in fact and lost money at the time of purchase. Plaintiff
13 Duggan continues to desire to purchase Bumble Bee products that contain dolphin
14 safe tuna caught using fishing methods that do not harm dolphins, and she would
15 purchase such a product manufactured by Defendant if it were possible to determine
16 prior to purchase whether no dolphins were harmed in capturing the tuna in the tuna
17 product. Indeed, Plaintiff Duggan regularly visits stores such as Lucky's and Fairfax
18 Market where Defendant's tuna products are sold, but will be unable to rely upon the
19 dolphin safe representations and will not be able to determine if the tuna in the
20 products is dolphin safe and was caught using fishing methods that do not harm
21 dolphins when deciding whether to purchase the tuna products in the future.

22 74. Plaintiff Lori Myers resides in Moreno Valley, California and is a citizen
23 of California. Throughout the relevant period, Plaintiff Myers routinely was exposed
24 to, saw, and relied upon Defendant's dolphin safe representations by viewing the
25 dolphin safe mark on the Bumble Bee canned and pouched tuna in water through
26 Instacart, Amazon, and at Ralphs in Canyon Crest Town Center in Riverside,
27 California. Plaintiff Myers purchased the tuna products many times throughout the

1 relevant period. At all relevant times, Plaintiff Myers was unaware that the tuna was
2 not dolphin safe as represented and was caught using fishing methods that are
3 harmful to dolphins. Had Plaintiff Myers known the tuna was not dolphin safe and/or
4 had Defendant not represented that the tuna was dolphin safe, Plaintiff Myers would
5 not have purchased the Bumble Bee tuna products. As a result, Plaintiff Myers
6 suffered injury in fact and lost money at the time of purchase. Plaintiff Myers
7 continues to desire to purchase Bumble Bee tuna products that contain dolphin safe
8 tuna caught using fishing methods that do not harm dolphins, and she would purchase
9 such a product manufactured by Defendant if it were possible to determine prior to
10 purchase whether no dolphins were harmed in capturing the tuna in the product.
11 Indeed, Plaintiff Myers regularly purchases online and visits stores such as Ralphs
12 and Stater Brothers, where Defendant's tuna products are sold, but will be unable to
13 rely upon the dolphin safe representations and will not be able to determine if the
14 tuna in the products is dolphin safe and was caught using fishing methods that do not
15 harm dolphins when deciding whether to purchase the tuna products in the future.

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

1 lost money at the time of purchase. Plaintiff Cosgrove continues to desire to purchase
2 Bumble Bee tuna products that contain dolphin safe tuna caught using fishing
3 methods that do not harm dolphins, and she would purchase such a product
4 manufactured by Defendant if it were possible to determine prior to purchase whether
5 no dolphins were harmed in capturing the tuna in the product. Indeed, Plaintiff
6 Cosgrove regularly visits stores such as Publix and Walmart, where Defendant's tuna
7 products are sold, but will be unable to rely upon the dolphin safe representations and
8 will not be able to determine if the tuna in the products is dolphin safe and was caught
9 using fishing methods that do not harm dolphins when deciding whether to purchase
10 the tuna products in the future.

11 76. Plaintiff Robert McQuade resides in Bronxville, New York and is a
12 citizen of New York. Throughout the relevant period, Plaintiff Robert McQuade
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 tuna in pouches in water, at stores like Shop-Rite in Yonkers, New York,
16 and Eastchester, New York, and ACME in Bronxville, New York. Plaintiff Robert
17 McQuade purchased the tuna products many times throughout the relevant period.
18 At all relevant times, Plaintiff Robert McQuade believed the tuna products were
19 dolphin safe and was unaware that the tuna was not dolphin safe as represented and
20 was caught using fishing methods that are harmful to dolphins. Had Plaintiff Robert
21 McQuade known the tuna was not dolphin safe and/or had Defendant not represented
22 that the tuna was dolphin safe, Plaintiff Robert McQuade would not have purchased
23 the Bumble Bee tuna products. As a result, Plaintiff Robert McQuade suffered injury
24 in fact and lost money at the time of purchase. Plaintiff Robert McQuade continues
25 to desire to purchase Bumble Bee tuna products that contain dolphin safe tuna caught
26 using fishing methods that do not harm dolphins, and he would purchase such a
27 product manufactured by Defendant if it were possible to determine prior to purchase

1 whether no dolphins were harmed in capturing the tuna in the product. Indeed,
2 Plaintiff Robert McQuade regularly visits stores such as Shop-Rite, where
3 Defendant's tuna products are sold, but will be unable to rely upon the dolphin safe
4 representations and will not be able to determine if the tuna in the products is dolphin
5 safe and was caught using fishing methods that do not harm dolphins when deciding
6 whether to purchase the tuna products in the future.

7 77. Plaintiff Colleen McQuade resides in Bronxville, New York and is a
8 citizen of New York. Throughout the relevant period, Plaintiff Colleen McQuade
9 routinely was exposed to, saw, and relied upon Defendant's dolphin safe
10 representations by viewing the dolphin safe mark on the Bumble Bee tuna products,
11 including tuna in pouches in water, at stores like Shop-Rite in Yonkers, New York,
12 and Eastchester, New York, and ACME in Bronxville, New York. Plaintiff Colleen
13 McQuade purchased the tuna products many times throughout the relevant period.
14 At all relevant times, Plaintiff Colleen McQuade believed the tuna products were
15 dolphin safe and was unaware that the tuna was not dolphin safe as represented and
16 was caught using fishing methods that are harmful to dolphins. Had Plaintiff Colleen
17 McQuade known the tuna was not dolphin safe and/or had Defendant not represented
18 that the tuna was dolphin safe, Plaintiff Colleen McQuade would not have purchased
19 the Bumble Bee tuna products. As a result, Plaintiff Colleen McQuade suffered
20 injury in fact and lost money at the time of purchase. Plaintiff Colleen McQuade
21 continues to desire to purchase Bumble Bee tuna products that contain dolphin safe
22 tuna caught using fishing methods that do not harm dolphins, and she would purchase
23 such a product manufactured by Defendant if it were possible to determine prior to
24 purchase whether no dolphins were harmed in capturing the tuna in the product.
25 Indeed, Plaintiff Colleen McQuade regularly visits stores such as Shop-Rite, where
26 Defendant's tuna products are sold, but will be unable to rely upon the dolphin safe
27 representations and will not be able to determine if the tuna in the products is dolphin

1 safe and was caught using fishing methods that do not harm dolphins when deciding
2 whether to purchase the tuna products in the future.

3 78. Plaintiff James Borruso resides in Staten Island, New York and is a
4 citizen of New York. Throughout the relevant period, Plaintiff Borruso routinely
5 was exposed to, saw, and relied upon Defendant's dolphin safe representations by
6 viewing the dolphin safe mark on the Bumble Bee tuna products, including canned
7 tuna in water or oil, at stores like Stop & Shop in Staten Island, New York. Plaintiff
8 Borruso purchased the tuna products many times throughout the relevant period. At
9 all relevant times, Plaintiff Borruso believed the tuna products were dolphin safe and
10 was unaware that the tuna was not dolphin safe as represented and was caught using
11 fishing methods that are harmful to dolphins. Had Plaintiff Borruso known the tuna
12 was not dolphin safe and/or had Defendant not represented that the tuna was dolphin
13 safe, Plaintiff Borruso would not have purchased the Bumble Bee tuna products. As
14 a result, Plaintiff Borruso suffered injury in fact and lost money at the time of
15 purchase. Plaintiff Borruso continues to desire to purchase Bumble Bee tuna
16 products that contain dolphin safe tuna caught using fishing methods that do not harm
17 dolphins, and he would purchase such a product manufactured by Defendant if it
18 were possible to determine prior to purchase whether no dolphins were harmed in
19 capturing the tuna in the product. Indeed, Plaintiff Borruso regularly visits stores such
20 as Stop & Shop where Defendant's tuna products are sold, but will be unable to rely
21 upon the dolphin safe representations and will not be able to determine if the tuna in
22 the products is dolphin safe and was caught using fishing methods that do not harm
23 dolphins when deciding whether to purchase the tuna products in the future.

24 79. Plaintiff Robert Nugent resides in Staten Island, New York and is a
25 citizen of New York. Throughout the relevant period, Plaintiff Nugent routinely was
26 exposed to, saw, and relied upon Defendant's dolphin safe representations by
27 viewing the dolphin safe mark on the Bumble Bee tuna products, including canned

1 tuna in water, at stores like Stop & Shop in Staten Island, New York. Plaintiff Nugent
2 purchased the tuna products many times throughout the relevant period. At all
3 relevant times, Plaintiff Nugent believed the tuna products were dolphin safe and was
4 unaware that the tuna was not dolphin safe as represented and was caught using
5 fishing methods that are harmful to dolphins. Had Plaintiff Nugent known the tuna
6 was not dolphin safe and/or had Defendant not represented that the tuna was dolphin
7 safe, Plaintiff Nugent would not have purchased the Bumble Bee tuna products. As
8 a result, Plaintiff Nugent suffered injury in fact and lost money at the time of
9 purchase. Plaintiff Nugent continues to desire to purchase Bumble Bee tuna products
10 that contain dolphin safe tuna caught using fishing methods that do not harm
11 dolphins, and he would purchase such a product manufactured by Defendant if it
12 were possible to determine prior to purchase whether no dolphins were harmed in
13 capturing the tuna in the product. Indeed, Plaintiff Nugent regularly visits stores such
14 as Stop & Shop, where Defendant's tuna products are sold, but will be unable to rely
15 upon the dolphin safe representations and will not be able to determine if the tuna in
16 the products is dolphin safe and was caught using fishing methods that do not harm
17 dolphins when deciding whether to purchase the tuna products in the future.

18 80. Plaintiff Anthony Luciano resides in Eastchester, New York and is a
19 citizen of New York. Throughout the relevant period, Plaintiff Anthony Luciano
20 routinely was exposed to, saw, and relied upon Defendant's dolphin safe
21 representations by viewing the dolphin safe mark on the Bumble Bee tuna products,
22 including canned tuna in water and oil, at various stores in Eastchester, Yonkers,
23 Tuckahoe, New Rochelle, and the Bronx, New York, including Stop & Shop, Shop
24 Rite, ACME, Foodtown, and Costco. Plaintiff Anthony Luciano purchased the tuna
25 products many times throughout the relevant period. At all relevant times, Plaintiff
26 Anthony Luciano believed the tuna products were dolphin safe and was unaware that
27 the tuna was not dolphin safe as represented and was caught using fishing methods

1 that are harmful to dolphins. Had Plaintiff Anthony Luciano known the tuna was not
2 dolphin safe and/or had Defendant not represented that the tuna was dolphin safe,
3 Plaintiff Anthony Luciano would not have purchased the Bumble Bee tuna products.
4 As a result, Plaintiff Anthony Luciano suffered injury in fact and lost money at the
5 time of purchase. Plaintiff Anthony Luciano continues to desire to purchase Bumble
6 Bee tuna products that contain dolphin safe tuna caught using fishing methods that
7 do not harm dolphins, and he would purchase such a product manufactured by
8 Defendant if it were possible to determine prior to purchase whether no dolphins
9 were harmed in capturing the tuna in the product. Indeed, Plaintiff Anthony Luciano
10 regularly visits stores such as Stop & Shop, Shop Rite, ACME, Foodtown, and
11 Costco, where Defendant's tuna products are sold, but will be unable to rely upon the
12 dolphin safe representations and will not be able to determine if the tuna in the
13 products is dolphin safe and was caught using fishing methods that do not harm
14 dolphins when deciding whether to purchase the tuna products in the future.

15 81. Plaintiff Lori Luciano resides in Eastchester, New York and is a citizen
16 of New York. Throughout the relevant period, Plaintiff Lori Luciano 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 and oil, at various stores in Eastchester, Yonkers, Tuckahoe, New
20 Rochelle, and the Bronx, New York, including Stop & Shop, Shop Rite, ACME,
21 Foodtown, and Costco. Plaintiff Lori Luciano purchased the tuna products many
22 times throughout the relevant period. At all relevant times, Plaintiff Lori Luciano
23 believed the tuna products were dolphin safe and was unaware that the tuna was not
24 dolphin safe as represented and was caught using fishing methods that are harmful to
25 dolphins. Had Plaintiff Lori Luciano known the tuna was not dolphin safe and/or
26 had Defendant not represented that the tuna was dolphin safe, Plaintiff Lori Luciano
27 would not have purchased the Bumble Bee tuna products. As a result, Plaintiff Lori
28

1 Luciano suffered injury in fact and lost money at the time of purchase. Plaintiff Lori
2 Luciano continues to desire to purchase Bumble Bee tuna products that contain
3 dolphin safe tuna caught using fishing methods that do not harm dolphins, and she
4 would purchase such a product manufactured by Defendant if it were possible to
5 determine prior to purchase whether no dolphins were harmed in capturing the tuna
6 in the product. Indeed, Plaintiff Lori Luciano regularly visits stores such as Stop &
7 Shop, Shop Rite, ACME, Foodtown, and Costco, where Defendant's tuna products
8 are sold, but will be unable to rely upon the dolphin safe representations and will not
9 be able to determine if the tuna in the products is dolphin safe and was caught using
10 fishing methods that do not harm dolphins when deciding whether to purchase the
11 tuna products in the future.

12 82. Plaintiff Fidel Jamelo resides in Bronx, New York and is a citizen of
13 New York. Throughout the relevant period, Plaintiff Fidel Jamelo routinely was
14 exposed to, saw, and relied upon Defendant's dolphin safe representations by
15 viewing the dolphin safe mark on the Bumble Bee canned tuna products, including
16 canned tuna in water, at stores like Costco in New Rochelle, New York. Plaintiff
17 Fidel Jamelo purchased the tuna products many times throughout the relevant period.
18 At all relevant times, Plaintiff Fidel Jamelo believed the tuna products were dolphin
19 safe and was unaware that the tuna was not dolphin safe as represented and was
20 caught using fishing methods that are harmful to dolphins. Had Plaintiff Fidel Jamelo
21 known the tuna was not dolphin safe and/or had Defendant not represented that the
22 tuna was dolphin safe, Plaintiff Fidel Jamelo would not have purchased the Bumble
23 Bee tuna products. As a result, Plaintiff Fidel Jamelo suffered injury in fact and lost
24 money at the time of purchase. Plaintiff Fidel Jamelo continues to desire to purchase
25 Bumble Bee tuna products that contain dolphin safe tuna caught using fishing
26 methods that do not harm dolphins, 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 no dolphins were harmed in capturing the tuna in the product. Indeed, Plaintiff Fidel
2 Jamelo regularly visits stores such as Costco, where Defendant's tuna products are
3 sold, but will be unable to rely upon the dolphin safe representations and will not be
4 able to determine if the tuna in the products is dolphin safe and was caught using
5 fishing methods that do not harm dolphins when deciding whether to purchase the
6 tuna products in the future.

7 83. Plaintiff Jocelyn Jamelo resides in Bronx, New York and is a citizen of
8 New York. Throughout the relevant period, Plaintiff Jocelyn Jamelo routinely was
9 exposed to, saw, and relied upon Defendant's dolphin safe representations by
10 viewing the dolphin safe mark on the Bumble Bee canned tuna products, including
11 canned tuna in water, at stores like Costco in New Rochelle, New York. Plaintiff
12 Jocelyn Jamelo purchased the tuna products many times throughout the relevant
13 period. At all relevant times, Plaintiff Jocelyn Jamelo believed the tuna products
14 were dolphin safe and was unaware that the tuna was not dolphin safe as represented
15 and was caught using fishing methods that are harmful to dolphins. Had Plaintiff
16 Jocelyn Jamelo known the tuna was not dolphin safe and/or had Defendant not
17 represented that the tuna was dolphin safe, Plaintiff Jocelyn Jamelo would not have
18 purchased the Bumble Bee tuna products. As a result, Plaintiff Jocelyn Jamelo
19 suffered injury in fact and lost money at the time of purchase. Plaintiff Jocelyn
20 Jamelo continues to desire to purchase Bumble Bee tuna products that contain
21 dolphin safe tuna caught using fishing methods that do not harm dolphins, and she
22 would purchase such a product manufactured by Defendant if it were possible to
23 determine prior to purchase whether no dolphins were harmed in capturing the tuna
24 in the product. Indeed, Plaintiff Jocelyn Jamelo regularly visits stores such as Costco,
25 where Defendant's tuna products are sold, but will be unable to rely upon the dolphin
26 safe representations and will not be able to determine if the tuna in the products is
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1 dolphin safe and was caught using fishing methods that do not harm dolphins when
2 deciding whether to purchase the tuna products in the future.

3 84. Plaintiff Robert Lantos resides in Eatontown, New Jersey and is a citizen
4 of New Jersey. Throughout the relevant period, Plaintiff Lantos routinely was
5 exposed to, saw, and relied upon Defendant's dolphin safe representations by
6 viewing the dolphin safe mark on the Bumble Bee tuna products, including canned
7 tuna in water, at stores like Costco in Eatontown, New Jersey, and ACME in
8 Shrewsbury, New Jersey Plaintiff Lantos purchased the tuna products many times
9 throughout the relevant period. At all relevant times, Plaintiff Lantos believed the
10 tuna products were dolphin safe and was unaware that the tuna was not dolphin safe
11 as represented and was caught using fishing methods that are harmful to dolphins.
12 Had Plaintiff Lantos known the tuna was not dolphin safe and/or had Defendant not
13 represented that the tuna was dolphin safe, Plaintiff Lantos would not have purchased
14 the Bumble Bee tuna products. As a result, Plaintiff Lantos suffered injury in fact
15 and lost money at the time of purchase. Plaintiff Lantos continues to desire to
16 purchase Bumble Bee tuna products that contain dolphin safe tuna caught using
17 fishing methods that do not harm dolphins, and he would purchase such a product
18 manufactured by Defendant if it were possible to determine prior to purchase whether
19 no dolphins were harmed in capturing the tuna in the product. Indeed, Plaintiff Lantos
20 regularly visits stores such as Costco and ACME, where Defendant's tuna products
21 are sold, but will be unable to rely upon the dolphin safe representations and will not
22 be able to determine if the tuna in the products is dolphin safe and was caught using
23 fishing methods that do not harm dolphins when deciding whether to purchase the
24 tuna products in the future.

25 85. Plaintiff Amar Mody resides in Jersey City, New Jersey, and is a citizen
26 of New Jersey. Throughout the relevant period, Plaintiff Amar Mody routinely was
27 exposed to, saw, and relied upon Defendant's dolphin safe representations by

1 viewing the dolphin safe mark on the Bumble Bee tuna products, including canned
2 tuna in water, at stores like Shop Rite and ACME in Jersey City, New Jersey.
3 Plaintiff Amar Mody purchased the tuna products many times throughout the relevant
4 period. At all relevant times, Plaintiff Amar Mody believed the tuna products were
5 dolphin safe and was unaware that the tuna was not dolphin safe as represented and
6 was caught using fishing methods that are harmful to dolphins. Had Plaintiff Amar
7 Mody known the tuna was not dolphin safe and/or had Defendant not represented
8 that the tuna was dolphin safe, Plaintiff Amar Mody would not have purchased the
9 Bumble Bee tuna products. As a result, Plaintiff Amar Mody suffered injury in fact
10 and lost money at the time of purchase. Plaintiff Amar Mody continues to desire to
11 purchase Bumble Bee tuna products that contain dolphin safe tuna caught using
12 fishing methods that do not harm dolphins, and he would purchase such a product
13 manufactured by Defendant if it were possible to determine prior to purchase whether
14 no dolphins were harmed in capturing the tuna in the product. Indeed, Plaintiff Amar
15 Mody regularly visits stores such as Shop Rite and ACME, where Defendant's tuna
16 products are sold, but will be unable to rely upon the dolphin safe representations and
17 will not be able to determine if the tuna in the products is dolphin safe and was caught
18 using fishing methods that do not harm dolphins when deciding whether to purchase
19 the tuna products in the future.

20 86. Plaintiff Heena Mody resides in Jersey City, New Jersey, and is a citizen
21 of New Jersey. Throughout the relevant period, Plaintiff Heena Mody routinely was
22 exposed to, saw, and relied upon Defendant's dolphin safe representations by
23 viewing the dolphin safe mark on the Bumble Bee tuna products, including canned
24 tuna in water, at stores like Shop Rite and ACME in Jersey City, New Jersey.
25 Plaintiff Heena Mody purchased the tuna products many times throughout the
26 relevant period. At all relevant times, Plaintiff Heena Mody believed the tuna
27 products were dolphin safe and was unaware that the tuna was not dolphin safe as
28

1 represented and was caught using fishing methods that are harmful to dolphins. Had
2 Plaintiff Heena Mody known the tuna was not dolphin safe and/or had Defendant not
3 represented that the tuna was dolphin safe, Plaintiff Heena Mody would not have
4 purchased the Bumble Bee tuna products. As a result, Plaintiff Heena Mody suffered
5 injury in fact and lost money at the time of purchase. Plaintiff Heena Mody continues
6 to desire to purchase Bumble Bee tuna products that contain dolphin safe tuna caught
7 using fishing methods that do not harm dolphins, and she would purchase such a
8 product manufactured by Defendant if it were possible to determine prior to purchase
9 whether no dolphins were harmed in capturing the tuna in the product. Indeed,
10 Plaintiff Heena Mody regularly visits stores such as Shop Rite and ACME, where
11 Defendant's tuna products are sold, but will be unable to rely upon the dolphin safe
12 representations and will not be able to determine if the tuna in the products is dolphin
13 safe and was caught using fishing methods that do not harm dolphins when deciding
14 whether to purchase the tuna products in the future.

15 87. Plaintiff Avraham Isac Zelig resides in Manalapan, New Jersey, and is a
16 citizen of New Jersey. Throughout the relevant period, Plaintiff Zelig 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 canned tuna products, including
19 canned tuna in water, at various stores, including Shop-Rite in Marlboro, New Jersey.
20 Plaintiff Zelig purchased the tuna products many times throughout the relevant
21 period. At all relevant times, Plaintiff Zelig believed the tuna products were dolphin
22 safe and was unaware that the tuna was not dolphin safe as represented and was
23 caught using fishing methods that are harmful to dolphins. Had Plaintiff Zelig known
24 the tuna was not dolphin safe and/or had Defendant not represented that the tuna was
25 dolphin safe, Plaintiff Zelig would not have purchased the Bumble Bee tuna products.
26 As a result, Plaintiff Zelig suffered injury in fact and lost money at the time of
27 purchase. Plaintiff Zelig continues to desire to purchase Bumble Bee tuna products

1 that contain dolphin safe tuna caught using fishing methods that do not harm
2 dolphins, and he would purchase such a product manufactured by Defendant if it
3 were possible to determine prior to purchase whether no dolphins were harmed in
4 capturing the tuna in the product. Indeed, Plaintiff Zelig regularly visits stores such
5 as Shop-Rite, where Defendant's tuna products are sold, but will be unable to rely
6 upon the dolphin safe representations and will not be able to determine if the tuna in
7 the products is dolphin safe and was caught using fishing methods that do not harm
8 dolphins when deciding whether to purchase the tuna products in the future.

9 88. Plaintiff Denese Depeza resides in Martinsburg, West Virginia and is a
10 citizen of West Virginia. Throughout the relevant period, Plaintiff Depeza routinely
11 was exposed to, saw, and relied upon Defendant's dolphin safe representations by
12 viewing the dolphin safe mark on the Bumble Bee tuna products, including White
13 Albacore in cans, at stores like Costco in Frederick, Maryland. Plaintiff Depeza
14 purchased the tuna products many times throughout the relevant period. At all
15 relevant times, Plaintiff Depeza believed the tuna products were dolphin safe and was
16 unaware that the tuna was not dolphin safe as represented and was caught using
17 fishing methods that are harmful to dolphins. Had Plaintiff Depeza known the tuna
18 was not dolphin safe and/or had Defendant not represented that the tuna was dolphin
19 safe, Plaintiff Depeza would not have purchased the Bumble Bee tuna products. As
20 a result, Plaintiff Depeza suffered injury in fact and lost money at the time of
21 purchase. Plaintiff Depeza continues to desire to purchase Bumble Bee tuna products
22 that contain dolphin safe tuna caught using fishing methods that do not harm
23 dolphins, and she would purchase such a product manufactured by Defendant if it
24 were possible to determine prior to purchase whether no dolphins were harmed in
25 capturing the tuna in the product. Indeed, Plaintiff Depeza regularly visits stores such
26 as Costco where Defendant's tuna products are sold, but will be unable to rely upon
27 the dolphin safe representations and will not be able to determine if the tuna in the

1 products is dolphin safe and was caught using fishing methods that do not harm
2 dolphins when deciding whether to purchase the tuna products in the future.

3 89. Plaintiff Kathleen Miller resides in Scottsdale, Arizona and is a citizen
4 of Arizona. Throughout the relevant period, Plaintiff Miller routinely was exposed
5 to, saw, and relied upon Defendant's dolphin safe representations by viewing the
6 dolphin safe mark on the Bumble Bee canned tuna in water at Albertson's and Fry's
7 in Phoenix and Scottsdale, Arizona. Plaintiff Miller purchased the canned tuna
8 products many times throughout the relevant period. At all relevant times, Plaintiff
9 Miller believed the tuna products were dolphin safe and was unaware that the tuna
10 was not dolphin safe as represented and was caught using fishing methods that are
11 harmful to dolphins. Had Plaintiff Miller known the tuna was not dolphin safe and/or
12 had Defendant not represented that the tuna was dolphin safe, Plaintiff Miller would
13 not have purchased the Bumble Bee tuna products. As a result, Plaintiff Miller
14 suffered injury in fact and lost money at the time of purchase. Plaintiff Miller
15 continues to desire to purchase Bumble Bee tuna products that contain dolphin safe
16 tuna caught using fishing methods that do not harm dolphins, and she would purchase
17 such a product manufactured by Defendant if it were possible to determine prior to
18 purchase whether no dolphins were harmed in capturing the tuna in the product.
19 Indeed, Plaintiff Miller regularly visits stores such as Fry's, where Defendant's tuna
20 products are sold, but will be unable to rely upon the dolphin safe representations and
21 will not be able to determine if the tuna in the products is dolphin safe and was caught
22 using fishing methods that do not harm dolphins when deciding whether to purchase
23 the tuna products in the future.

24 90. Defendant Bumble Bee Foods LLC is a Delaware limited liability
25 company with its headquarters and principal place of business located at 280 Tenth
26 Ave, San Diego, CA, 92101, and is a citizen of Delaware and California. Bumble
27 Bee operates its tuna processing facility in San Diego, California. During the time

1 period relevant to Plaintiffs' claims, Bumble Bee: produced and sold canned tuna and
2 tuna pouches throughout the United States and its territories; sold canned tuna and
3 tuna pouches to Plaintiffs and others in the United States; and engaged in the false,
4 misleading, and deceptive advertising alleged in this Complaint.

5 **CLASS DEFINITION AND ALLEGATIONS**

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

9 **Nationwide Class**

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

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

16 92. Alternatively, Plaintiffs Duggan and Myers seek certification of the
17 following California-Only Class:

18 **California-Only Class**

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

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

25 93. In addition, Plaintiff Cosgrove seeks certification of the following
26 Florida-Only Class:

27 **Florida-Only Class Action**

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

1 94. In addition, Plaintiffs Borruso and Nugent, Plaintiffs Anthony and Lori
2 Luciano, Plaintiffs Fidel and Jocelyn Jamelo, and Plaintiffs Robert and Colleen
3 McQuade seek certification of the following New York-Only Class:

4 **New York-Only Class**

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

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

11 95. In addition, Plaintiffs Lantos and Zelig and Plaintiffs Amar and Heena
12 Mody seek certification of the following New Jersey-Only Class:

13 **New Jersey-Only Class**

14 All New Jersey consumers who within the applicable statute
15 of limitations period until the date notice is disseminated,
16 purchased the tuna products.

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

20 96. In addition, Plaintiff Depeza seeks certification of the following
21 Maryland-Only Class:

22 **Maryland-Only Class**

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

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

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

Arizona-Only Class

 All Arizona 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. **Numerosity.** The members of the Classes are so numerous that their
5 joinder is impracticable. Plaintiffs are informed and believe that the proposed
6 Classes contain thousands of purchasers of the tuna products who have been damaged
7 by Defendant's conduct as alleged herein. The precise number of Class members is
8 unknown to Plaintiffs.

9 99. **Existence and Predominance of Common Questions of Law and**
10 **Fact.** This action involves common questions of law and fact, which predominate
11 over any questions affecting individual Class members. These common legal and
12 factual questions include, but are not limited to, the following:

13 (a) whether Defendant's dolphin safe representations and sustainable
14 fishing practices representations are false, misleading, and/or objectively
15 reasonably likely to deceive;

16 (b) whether Defendant failed to comply with traceability and verification
17 requirements;

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

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

20 (e) whether the alleged conduct constitutes violations of the laws asserted;

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

23 (g) whether Plaintiffs and Class members are entitled to appropriate
24 remedies, including damages, restitution, corrective advertising, and injunctive
25 relief.

26 100. **Typicality.** Plaintiffs' claims are typical of the claims of the members
27 of the Classes because, *inter alia*, all Class members were injured through the
28 uniform misconduct described above. Plaintiffs are also advancing the same claims

1 and legal theories on behalf of themselves and all Class members.

2 101. **Adequacy of Representation.** Plaintiffs will fairly and adequately
3 protect the interests of Class members. Plaintiffs have retained counsel experienced
4 in complex consumer class action litigation, and Plaintiffs intend to prosecute this
5 action vigorously. Plaintiffs have no adverse or antagonistic interests to those of the
6 Classes.

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

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

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

27 105. Unless an injunction is issued, Defendant will continue to commit the
28

1 violations alleged, and the members of the Classes and the general public will
2 continue to be deceived and not know whether the dolphin safe representations and/or
3 sustainable fishing methods representations are true or if the tuna products continue
4 to contain tuna caught using fishing methods that are harmful to dolphins.

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

16
17 **COUNT I**
18 **Violation of Business & Professions Code §§17200, *et seq.***
19 **(On Behalf of the Nationwide or California-Only Class)**

20 107. Plaintiffs repeat and re-allege the allegations contained in the
21 paragraphs above, as if fully set forth herein.

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

24 109. The Unfair Competition Law, Business & Professions Code §§17200,
25 *et seq.* (“UCL”) prohibits any “unlawful,” “fraudulent,” or “unfair” business act or
26 practice and any false or misleading advertising. More specifically, the UCL
27 provides, in pertinent part: “Unfair competition shall mean and include unlawful,
28

1 unfair, or fraudulent business act or practice and unfair, deceptive, untrue or
2 misleading advertising”

3 110. **Unlawful Business Practices:** In the course of conducting business,
4 Defendant committed “unlawful” business practices in violation of the UCL by, *inter*
5 *alia*, making the dolphin safe representations and sustainable fishing methods
6 representations which are false, misleading, and/or deceptive (which also constitute
7 advertising within the meaning of §17200; failing to comply with traceability and
8 verification requirements, as set forth more fully herein; and violating California
9 Civil Code §§1572, 1573, 1709, and 1711; the California Legal Remedies Act,
10 California Civil Code §§1750, *et seq.*; California Business & Professions Code
11 §§17200, *et seq.* and 17500, *et seq.*, and 16 U.S.C. §1385.

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

15 112. **Unfair Business Practices:** In the course of conducting business,
16 Defendant committed “unfair” business acts or practices by, *inter alia*, making the
17 dolphin safe representations and sustainable fishing method representations which
18 are false, misleading, and/or deceptive (which also constitute advertising within the
19 meaning of §17200), and failing to comply with traceability and verification
20 requirements, as set forth more fully herein. There is no societal benefit from false
21 advertising, only harm. While Plaintiffs and the public at large were and continue to
22 be harmed, Defendant has been unjustly enriched by its false, misleading, and/or
23 deceptive representations as it unfairly enticed Plaintiffs and Class members to
24 purchase its tuna products instead of similar tuna products sold by other
25 manufacturers that were dolphin safe, sustainably caught, stored separately from non-
26 dolphin safe tuna, traceable, and verified. Because the utility of Defendant’s conduct
27 (zero) is outweighed by the gravity of harm to Plaintiffs, consumers, and the

1 competitive market, Defendant’s conduct is “unfair” having offended an established
2 public policy embodied in, among other things, 16 U.S.C. §1385, where Congress
3 expressly found that it is the policy of the United States to protect the dolphin
4 population and that “consumers would like to know if the tuna they purchase is
5 falsely labeled as to the effect of the harvesting of the tuna on dolphins.” 16 U.S.C.
6 §§1385(b)(2)-(3).

7 113. Defendant also engaged in immoral, unethical, oppressive, and
8 unscrupulous activities that are substantially injurious to the public at large.

9 114. There were reasonably available alternatives to further Defendant’s
10 legitimate business interests, other than the conduct described herein.

11 115. **Fraudulent Business Practices:** In the course of conducting business,
12 Defendant committed “fraudulent business act[s] or practices” and deceptive or
13 misleading advertising by, *inter alia*, making the dolphin safe representations and
14 sustainable fishing methods representations, which are false, misleading, and/or
15 deceptive to reasonable consumers, and by and failing to comply with traceability,
16 and verification requirements, regarding the tuna products as set forth more fully
17 herein.

18 116. Defendant’s actions, claims, and misleading statements, as more fully
19 set forth above, are misleading and/or likely to deceive the consuming public within
20 the meaning of Business & Professions Code §§17200, *et seq.*

21 117. Plaintiffs relied on Defendant’s dolphin safe representations and
22 Defendant’s compliance with traceability and verification requirements and were in
23 fact injured as a result of those false, misleading, and deceptive representations and
24 by Defendant’s failure to comply with traceability, and verification requirements.

25 118. As alleged herein, Plaintiffs have suffered injury in fact and lost money
26 or property at the time of purchase as a result of Defendant’s conduct because they
27 were exposed to and purchased Defendant’s tuna products in reliance on the dolphin
28

1 safe representations, sustainable fishing methods representations, and Defendant’s
2 compliance with tracing and verification requirements, but did not receive tuna
3 products that contain tuna caught using fishing methods that do not harm dolphins.

4 119. Unless restrained and enjoined, Defendant will continue to engage in
5 the above described conduct. Accordingly, injunctive relief is appropriate.

6 120. Plaintiffs, on behalf of themselves, all others similarly situated, and the
7 general public, seek declaratory relief and an injunction prohibiting Defendant from
8 continuing such practices, corrective advertising, restitution of all money obtained
9 from Plaintiffs and the members of the Classes collected as a result of unfair
10 competition, and all other relief this Court deems appropriate, consistent with
11 Business & Professions Code §17203.

12
13 **COUNT II**
14 **Violations of the Consumers Legal Remedies Act – Cal. Civ. Code §§1750 *et***
15 **(On Behalf of the California-Only Class)**
16 *seq.*

17 121. Plaintiffs Duggan and Myers (the “California Plaintiffs”) repeat and
18 incorporate by reference the allegations contained in the paragraphs 1 through 106
19 above as if fully set forth herein.

20 122. The California Plaintiffs bring this claim individually and on behalf of
21 the California-Only Class.

22 123. This cause of action is brought pursuant to the Consumers Legal
23 Remedies Act, California Civil Code §§1750, *et seq.* (the “CLRA”).

24 124. The California Plaintiffs is a consumer as defined by California Civil
25 Code §1761(d). The tuna products are “goods” within the meaning of the CLRA.

26 125. Defendant violated and continues to violate the CLRA by engaging in
27 the following practices proscribed by California Civil Code §1770(a) in transactions
28 with the California Plaintiffs and the California-Only Class which were intended to

1 result in, and did result in, the sale of the tuna products:

2 (5) Representing that [the tuna products have] . . . characteristics, . . .
3 uses [and] benefits . . . which [they do] not have

4 * * *

5 (7) Representing that [the tuna products] are of a particular standard,
6 quality, or grade . . . if they are of another.

7 126. Pursuant to California Civil Code §1782(d), the California Plaintiffs and
8 the California-Only Class seek a Court Order declaring Defendant to be in violation
9 of the CLRA, enjoining the above-described wrongful acts and practices of
10 Defendant, and ordering restitution and disgorgement.

11 127. Pursuant to §1782 of the CLRA, the California Plaintiffs notified
12 Defendant in writing by certified mail of the particular violations of §1770 of the
13 CLRA and demanded that Defendant rectify the problems associated with the actions
14 detailed above and give notice to all affected consumers of Defendant’s intent to so
15 act. A copy of the letter is attached hereto as Exhibit A.

16 128. If Defendant fails to rectify or agree to rectify the problems associated
17 with the actions detailed above and give notice to all affected consumers within 30
18 days of the date of written notice pursuant to §1782 of the CLRA, the California
19 Plaintiffs will amend this Complaint to add claims for actual, punitive, and statutory
20 damages as appropriate.

21 129. Pursuant to §1780 (d) of the CLRA, attached hereto as Exhibit B is the
22 affidavit showing that this action has been commenced in the proper forum.

23
24 **COUNT III-**
25 **Violation of Florida Deceptive and Unfair Trade Practices Act – Fla. Stat.**
26 **§§501.201, et seq.**
27 **(On Behalf of the Florida-Only Class)**

28 130. Plaintiff Cosgrove repeats and incorporates by reference the allegations

1 contained in the paragraphs 1 through 106 above as if fully set forth herein.

2 131. Plaintiff Cosgrove brings this claim individually and on behalf of the
3 Florida-Only Class.

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

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

12 134. Florida Statute §501.204(1) declares unlawful “[u]nfair methods of
13 competition, unconscionable acts or practices, and unfair or deceptive acts or
14 practices in the conduct of any trade or commerce.” FDUTPA also prohibits false
15 and misleading advertising.

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

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

1 137. Pursuant to §§501.211(2) and 501.2105, Fla. Stat., Plaintiff Cosgrove
2 and Florida consumers seek damages, injunctive relief, attorneys' fees and costs
3 against Defendant.

4
5 **COUNT IV –**
6 **Violations of the New York General Business Law § 349**
7 **(On Behalf of the New York-Only Class)**

8 190. Plaintiffs Borruso and Nugent, Anthony and Lori Luciano, Robert and
9 Colleen McQuade, and Fidel and Jocelyn Jamelo (the "New York Plaintiffs") repeat
10 and incorporate by reference the allegations contained in the paragraphs 1 through
11 106 above as if fully set forth herein.

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

14 192. Defendant's actions alleged herein constitute unlawful, unfair, and
15 deceptive business practices. Those actions include misrepresenting that the tuna
16 products are "Dolphin Safe" when they are not.

17 193. Defendant's conduct constitutes acts, uses and/or employment by
18 Defendant or its agents or employees of deception, fraud, unconscionable and unfair
19 commercial practices, false pretenses, false promises, misrepresentations and/or the
20 knowing concealment, suppression, or omission of material facts with the intent that
21 others rely upon such concealment, suppression or omission, in connection with the
22 sale or advertisement of goods in violation of §349 of New York's General Business
23 Law.

24 194. Defendant's deceptive conduct was generally directed at the consuming
25 public.

26 195. Defendant's unfair and deceptive trade acts and practices in violation of
27 §349 of New York's General Business Law have directly, foreseeably, and
28

1 proximately caused damages and injury to the New York Plaintiffs and other
2 members of the New York-Only Class.

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

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

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

13
14 **COUNT V –**
15 **Violation of the New Jersey Consumer Fraud Act, § 56:8-2.10**
16 **(On Behalf of the New Jersey-Only Class)**

17 198. Plaintiffs Lantos and Zelig and Amar and Heena Mody (the “New Jersey
18 Plaintiffs”) repeat and incorporate by reference the allegations contained in
19 paragraphs 1 through 106 above as if fully set forth herein.

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

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

28 201. Defendant’s tuna products are misrepresented within the meaning of

1 §56:8-2.10, as the descriptions of said products are misleading, the descriptions omit
2 information in ways that render the description false or misleading, and/or the
3 descriptions represent the merchandise as having qualities they do not have.

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

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

11 **COUNT VI –**
12 **Violation of the Maryland Consumer Protection Act – Maryland Code §§ 13-**
13 **101, et seq.**
14 **(On Behalf of the Maryland-Only Class)**

15 204. Plaintiff Depeza repeats and re-alleges the allegations contained in
16 paragraphs 1-106 above, as if fully set forth herein.

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

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

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

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

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

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

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

11 ***

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

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

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

19
20 **COUNT VII**
21 **Violation of the Arizona Consumer Fraud Act,**
22 **A.R.S. §§44-1521, et seq.**
23 **(On Behalf of the Arizona-Only Class**

24 213. Plaintiff Miller repeats and incorporates by reference the allegations
25 contained in the paragraphs 1 through 106 above as if fully set forth herein.

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

28 The act, use or employment by any person of any deception, deceptive
or unfair act or practice, fraud, false pretense, false promise,

1 misrepresentation, or concealment, suppression or omission of any
2 material fact with intent that others rely on such concealment,
3 suppression or omission, in connection with the sale or advertisement of
any merchandise whether or not any person has in fact been misled,
deceived or damaged thereby, is declared to be an unlawful practice.

4 A.R.S. § 44-1522(A).

5 215. Plaintiff Miller and members of the Arizona-Only Class are “persons”
6 as defined by A.R.S. §44-1521(6), and Defendant is engaged in the “sale” and
7 “advertisement” of “merchandise” as those terms are defined in A.R.S. §§44-
8 1521(1), (5), and (7).

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

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

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

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

23 (d) Making a representation of fact or statement of fact material to the
24 transaction – i.e., that Defendant’s tuna products were dolphin safe and/or
25 sustainably caught – such that a person reasonably believed they were when they
26 were not.

27 217. Plaintiff Miller relied on Defendant’s representations and had

1 Defendant disclosed that its tuna products were not dolphin safe and/or sustainably
2 caught as represented, Plaintiff Miller would have paid less or, more likely, not
3 purchased the tuna products at all. Thus, as a result of Defendant's representations
4 and omissions, Plaintiff Miller and Arizona-Only Class Members were induced to
5 overpay for and purchase tuna products they otherwise would not have.

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

10 219. Defendant's wrongful practices occurred in the course of trade or
11 commerce.

12 220. Defendant's wrongful practices were and are injurious to the public
13 interest because those practices were part of a generalized course of conduct that
14 applied to Plaintiff Miller and all Arizona-Only Class Members, and were repeated
15 continuously before and after Defendant sold its tuna products to Plaintiff Miller and
16 the Arizona-Only Class. All Arizona-Only Class Members have been adversely
17 affected by Defendant's conduct and the public was and is at risk as a result thereof.

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

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

25 \\
26 \\
27 \\
28

**Count VIII –
Unjust Enrichment/Quasi-Contract**

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

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

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

12 226. Defendant has profited from its unlawful, unfair, false, misleading, and
13 deceptive practices and advertising at the expense of Plaintiffs and Class members,
14 under circumstances in which it would be unjust for Defendant to be permitted to
15 retain the benefit.

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

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

PRAYER FOR RELIEF

19
20 Wherefore, Plaintiffs pray for a judgment:

21 A. Certifying the Classes as requested herein;

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

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

1 D. Awarding the Classes damages, including statutory and punitive
2 damages, and interest thereon;

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

5 F. Awarding attorneys' fees and costs; and

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

7 **DEMAND FOR JURY TRIAL**

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

10
11 Dated: May 13, 2019

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

/s/Patricia N. Syverson

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