

1 BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.  
2 PATRICIA N. SYVERSON (CA SBN 203111)  
MANFRED P. MUECKE (CA SBN 222893)  
3 600 W. Broadway, Suite 900  
San Diego, California 92101  
4 [psyverson@bffb.com](mailto:psyverson@bffb.com)  
[mmuecke@bffb.com](mailto:mmuecke@bffb.com)  
5 Telephone: (619) 798-4593

6 BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.  
7 ELAINE A. RYAN (*Admitted Pro Hac Vice*)  
CARRIE A. LALIBERTE (*Admitted Pro Hac Vice*)  
8 2325 E. Camelback Rd. Suite 300  
Phoenix, AZ 85016  
9 [eryan@bffb.com](mailto:eryan@bffb.com)  
[claliberte@bffb.com](mailto:claliberte@bffb.com)  
10 Telephone: (602) 274-1100

11 *Attorneys for Plaintiffs*  
12 *Additional Attorneys on Signature Page*

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

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

24 Plaintiffs,

25 v.

26 TRI-UNION SEAFOODS LLC, dba  
27 Chicken of the Sea International, Inc.,  
28

Case No.: 19-cv-02562-WHO

**SECOND AMENDED 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;

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a California Company,  
Defendant.

6. VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT (UNFAIR PRACTICES) – Minn. Stat. §§325F.68, *et seq.* and Minn. Stat. §§8.31, *et seq.*;
7. VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT (FALSE STATEMENT IN ADVERTISING) – Minn. Stat. §§325F.67, *et seq.*;
8. VIOLATION OF THE MINNESOTA UNIFORM DECEPTIVE TRADE PRACTICES ACT – Minn. Stat. §§325D.43, *et seq.*; and
9. UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

1 Plaintiffs Tara Duggan, Lori Myers, Angela Cosgrove, Robert McQuade,  
2 Colleen McQuade, Anthony Luciano, Lori Luciano, Robert Nugent, James Borruso,  
3 Fidel Jamelo, Jocelyn Jamelo, Ken Petrovcik, Avraham Isac Zelig, Amar Mody,  
4 Heena Mody, and Megan Kiihne bring this action on behalf of themselves and all  
5 others similarly situated against Defendant Tri-Union Seafoods LLC, dba Chicken  
6 of the Sea International, Inc. (“Chicken of the Sea” or “Defendant”), and for their  
7 First Amended Class Action Complaint, state:

8 **FACTUAL ALLEGATIONS**

9 1. Chicken of the Sea tuna has been marketed, sold, and distributed  
10 throughout the United States since 1930. Today, Tri-Union Seafoods is the largest  
11 canned tuna company and one of the largest seafood companies in the world with  
12 major brands in the United States and close to 20 other countries.

13 2. Since 1990, Chicken of the Sea has engaged in a pervasive advertising  
14 campaign that expressly promises consumers that its tuna is “Dolphin Safe”. Chicken  
15 of the Sea’s canned tuna products prominently display a dolphin-safe logo on the  
16 front of their wrap around label immediately to the right of the Chicken of the Sea  
17 product name. The logo also is featured prominently on Defendant’s tuna pouches  
18 and cups.<sup>1</sup> Since the introduction of the dolphin-safe policy in 1990, including the  
19 last 4 years (the “Class Period”), however, Chicken of the Sea’s tuna has not been  
20 “Dolphin-Safe”.

21 3. Plaintiffs herein allege unjust enrichment and violations of: (1)  
22 California's Unfair Competition Law, Cal. Bus. & Prof. Code §17200, *et seq.*; (2)  
23 California’s Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*; (3) the  
24 Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201, *et seq.*; (4) the  
25 New York General Business Law §349; (5) the New Jersey Consumer Fraud Act,  
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27 <sup>1</sup> Defendant sells two tuna products in pouches (light and albacore) and three tuna  
28 products in cups (infusions, tuna to-go, and lunch solutions tuna salad).

1 §56:8-2.10; (6) the Minnesota Prevention of Consumer Fraud Act, Minn. Stat.  
2 §§325F.67-325F.68; and (7) the Minnesota Uniform Deceptive Trade Practices Act,  
3 Minn. Stat. §325D.43, *et seq.*

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

7 **Origin of "Dolphin-Safe" Tuna**

8 5. Prior to the development of modern purse seine fishing techniques,  
9 tropical tuna were caught one at a time using traditional pole-and-line methods.  
10 NOAA, The Tuna-Dolphin Issue, NOAA Fisheries Southwest Fisheries Science  
11 Center (Sept. 2, 2016), *available at* <https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408> (last visited May 3, 2019).  
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13 6. But by the 1950s, the development of synthetic netting (that would not  
14 rot in tropical waters) and hydraulically driven power-blocks (needed to haul very  
15 large nets) made it possible to deploy massive purse-seines (vertical net curtains  
16 closed by pulling on a chain located along the bottom to enclose the fish, much like  
17 tightening the cords of a drawstring purse) around entire schools of tuna.

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

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

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

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

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

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

16 13. For at least the last 4 years, reasonable consumers expected that all  
17 canned tuna and pre-packaged tuna in pouches and cups (collectively, "tuna  
18 products"), are dolphin-safe because they have been indoctrinated to believe  
19 precisely that by Defendant's and the other tuna companies' highly effective dolphin  
20 safety and sustainably fishing practices marketing campaigns. In fact, 98% of the  
21 prepacked tuna sold today in the United States is labeled with some "dolphin-safe"  
22 representation. Forbes, K. William Watson, 'Dolphin Safe' Labels on Canned Tuna  
23 Are A Fraud (Apr. 29, 2015), *available at* [https://www.forbes.com/](https://www.forbes.com/sites/realspin/2015/04/29/dolphin-safe-labels-on-canned-tuna-are-a-fraud/#51db16b8295e)  
24 [sites/realspin/2015/04/29/dolphin-safe-labels-on-canned-tuna-are-a-fraud/#51db1](https://www.forbes.com/sites/realspin/2015/04/29/dolphin-safe-labels-on-canned-tuna-are-a-fraud/#51db16b8295e)  
25 [6b8295e](https://www.forbes.com/sites/realspin/2015/04/29/dolphin-safe-labels-on-canned-tuna-are-a-fraud/#51db16b8295e) (last visited May 3, 2019).

1 14. Chicken of the Sea tuna, however, is not dolphin-safe. Nor is it  
2 sustainably sourced. Defendant’s dolphin-safe representations are false, misleading,  
3 and/or deceptive.

4 **Chicken of the Sea’s Dolphin-Safe Representations**

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6 15. In 1990, Chicken of the Sea was one of the first major tuna companies  
7 to adopt a “dolphin-safe” policy. According to Chicken of the Sea, “[w]e  
8 implemented ‘The Mermaid Cares’ dolphin-safe policy in April 1990 and this  
9 program places us among the industry leaders in preventing accidental dolphin  
10 mortality. All tuna purchased, processed and sold by Chicken of the Sea is dolphin-  
11 safe. There is no flexibility in our policy. All suppliers of our tuna and all suppliers  
12 of finished goods must be 100 percent dolphin-safe. None of the tuna we purchase  
13 is caught in association with dolphins.” Chicken of the Sea, 2015 Sustainability  
14 Report, at 35, *available at* <http://sustainability.chickenofthesea.com/>. In sum, “[a]ll  
15 tuna purchased, processed and sold by Chicken of the Sea is dolphin-safe ... period.”  
16 *Id.* at 49.

17 16. On every can and pre-packaged tuna pouch and cup, Defendant states  
18 that the tuna products are “Dolphin Safe” with a prominent dolphin logo and  
19 encourages consumers of its canned tuna “to trace your fish” by visiting the Chicken  
20 of the Sea website. Defendant’s website, which is identified on all its tuna products,  
21 also sets forth Defendant’s dolphin-safe policy.

22 17. Chicken of the Sea’s website explains what Defendant means by  
23 “dolphin-safe,” and the meaning attributed to “dolphin-safe” by Defendant reflects  
24 its importance to consumers. Defendant promises in pertinent part:

- 25 • Chicken of the sea remains “fully committed” to the “100% dolphin-  
26 safe policy” implemented in April 1990. Chicken of the Sea, Frequently  
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1 Asked Questions, available at [https://chicken](https://chickenofthesea.com/company/faqs)  
 2 [ofthesea.com/company/faqs](https://chickenofthesea.com/company/faqs) (last visited May 6, 2019).

- 3 • Chicken of the Sea is “committed to protecting dolphins.” Chicken of  
 4 the Sea, A Sea of Good, Company, available at  
 5 <https://chickenofthesea.com/company> (last visited May 6, 2019).
- 6 • Chicken of the Sea will not purchase any tuna from vessels that net fish  
 7 associated with dolphins. Chicken of the Sea, Frequently Asked  
 8 Questions, available at <https://chickenofthesea.com/company/faqs> (last  
 9 visited May 6, 2019).
- 10 • All fishing techniques are compliant with our Dolphin-Safe Policy.  
 11 Chicken of the Sea, Know Your Seafood, available at  
 12 <https://chickenofthesea.com/company/know-your-seafood> (last visited  
 13 May 6, 2019).
- 14 • Chicken of the Sea will require certification of dolphin-safe fishing  
 15 practices from all tuna suppliers. Chicken of the Sea, Frequently Asked  
 16 Questions, available at [https://chickenofthesea.](https://chickenofthesea.com/company/faqs)  
 17 [com/company/faqs](https://chickenofthesea.com/company/faqs) (last visited May 6, 2019).

18 18. Defendant also transmitted (or caused to be transmitted) its dolphin-safe  
 19 and sustainable seafood sourcing and manufacturing promises and policies to the  
 20 general public via several social media outlets and website postings, including those  
 21 alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
Chicken of the Sea	General Public	2019	Chicken of the Sea FAQs stating that it “remains fully committed to the 100% dolphin-safe policy implemented in April 1990” which “guarantees that Chicken of the Sea will not purchase tuna from vessels that net fish associated with



			dolphins”
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2	Chicken of the Sea	General Public	2019
3			Chicken of the Sea webpage titled “Keeping Dolphins Safe”
4	Chicken of the Sea	General Public	2019
5			Chicken of the Sea webpage titled “Sustainability” stating that “At Chicken of the Sea, we pride ourselves on our long-standing commitment to operating a socially and environmentally responsible business. We realize that our sustainability obligations don't end when the seafood is caught, but extend all the way through the processing, packaging, and delivery of sustainable seafood to our customers.”
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9	Chicken of the Sea	General Public	2019
10			Chicken of the Sea webpage titled “Know Your Seafood” stating that “We take great pride in sourcing and catching seafood with a level of integrity that is leagues above. The care we bring to our practices not only contributes to long-term sustainability, it puts only the best seafood on your family’s table.”
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13	Chicken of the Sea	General Public	2019
14			Facebook page at <a href="https://www.facebook.com/ChickenoftheSea/">https://www.facebook.com/ChickenoftheSea/</a> stating that Chicken of the Sea tuna was “Certified sustainable”
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16	Chicken of the Sea	General Public	Apr. 24, 2018
17			Facebook post at <a href="https://www.facebook.com/ChickenoftheSea/photos/a.10150117888942733/10156324855717733/?type=3&amp;theater">https://www.facebook.com/ChickenoftheSea/photos/a.10150117888942733/10156324855717733/?type=3&amp;theater</a> , showing photos of Chicken of the Sea products with “Certified sustainable” logo.
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19	Chicken of the Sea	General Public	Oct. 11, 2016
20			Facebook post at <a href="https://www.facebook.com/ChickenoftheSea/photos/a.10150117888942733/10154595565122733/?type=3&amp;theater">https://www.facebook.com/ChickenoftheSea/photos/a.10150117888942733/10154595565122733/?type=3&amp;theater</a> , showing photo of can of tuna with “dolphin-safe” logo
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23	Chicken of the Sea	General Public	2019
24			Posting of Tri-Union Seafoods, LLC’s Sustainability Reports at <a href="https://chickenofthesea.com/company/sustainability">https://chickenofthesea.com/company/sustainability</a>
25			
26	Chicken of the Sea	General Public	2017-present
27			Posting of 2017 Sustainability Report at <a href="https://chickenofthesea.com/company/sustainability">https://chickenofthesea.com/company/sustainability</a> , and stating, “Ensuring a healthy supply of seafood for future generations is



			<p>imperative to both Chicken of the Sea and its consumers. Over the past century, Chicken of the Sea has pioneered responsible sourcing initiatives including the Dolphin-Safe Policy, Shark Finning Ban, and a partnership with the International Seafood Sustainability Foundation.”</p>
<p>Chicken of the Sea</p>	<p>General Public</p>	<p>2016-present</p>	<p>Posting of 2016 Sustainability Report at <a href="https://chickenofthesea.com/company/sustainability">https://chickenofthesea.com/company/sustainability</a>, and stating, “Ensuring a healthy supply of seafood for future generations is imperative to both Chicken of the Sea and its consumers. Over the past century, Chicken of the Sea has pioneered responsible sourcing initiatives including the Dolphin-Safe Policy, Shark Finning Ban, and a partnership with the International Seafood Sustainability Foundation.”</p>
<p>Chicken of the Sea</p>	<p>General Public</p>	<p>2015-present</p>	<p>Posting of 2015 Sustainability Report and Product Responsibility and Labeling webpage at <a href="http://sustainability.chickenofthesea.com/product-responsibility/product-responsibility-and-labeling">http://sustainability.chickenofthesea.com/product-responsibility/product-responsibility-and-labeling</a>, stating, “We implemented “The Mermaid Cares” dolphin-safe policy in April 1990 and this program placed us among the industry’s leaders in preventing accidental dolphin mortality. All tuna purchased, processed and sold by Chicken of the Sea is dolphin-safe. There is no flexibility in our policy. All the suppliers of our tuna and all suppliers of finished goods must be 100 percent dolphin-safe. None of the tuna we purchase is caught in association with dolphins.”</p>
<p>Chicken of the Sea</p>	<p>General Public</p>	<p>2014 – present</p>	<p>Posting of 2014 Sustainability Report at <a href="https://chickenofthesea.com/company/sustainability">https://chickenofthesea.com/company/sustainability</a>, and stating, “We implemented ‘The Mermaid Cares’ dolphin safe policy in April 1990 and this program placed us among the industry’s leaders in preventing accidental dolphin mortality. All tuna purchased, processed and sold by Chicken of the Sea is dolphin-safe. There is no flexibility in our policy. All the suppliers of our tuna and all suppliers of finished goods must be 100 percent dolphin-safe.</p>

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			None of the tuna we purchase is caught in association with dolphins.”
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19. As noted by the Ninth Circuit in a recent decision, “[g]iven the choice of whether to purchase dolphin-safe tuna or to purchase tuna not labeled dolphin-safe, American consumers overwhelmingly chose to purchase tuna that was labeled dolphin-safe. As a result, foreign tuna sellers who did not adjust their fishing methods were quickly forced out of the market.” *Earth Island Institute v. Hogarth*, 494 F.3d 757, 761 (9th Cir. 2007) (rejecting Government efforts to lessen restrictions on tuna fisheries in the Eastern Tropical Pacific and upholding previous finding that best evidence available indicates that tuna fishing was having significant adverse impact on dolphin stocks).

20. The importance to consumers of dolphin safety has not lessened in the ensuing 12 years since the Court’s finding, as evidenced by Defendant’s continued labeling of its tuna products with a dolphin-safe logo.

21. In each of the last 4 years of the Class Period, Chicken of the Sea has acknowledged that dolphin safe and sustainable sourcing are “very important” to consumers. In 2015, Chicken of the Sea conducted a materiality assessment to identify the most important issues to its stakeholders, including consumers and retailers. After reviewing score cards and questionnaires from retailers and communicating with consumers and retailers on social media (Facebook and Twitter feed) and its 24/7 hotline, Chicken of the Sea determined fish stocks and ocean health and supply chain sustainability issues were the second and third most material (meaning “very important”) factors in consumers’ and retailers’ decisions. Chicken of the Sea, 2015 Sustainability Report, at 13, 15, *available at* <http://sustainability.chickenofthesea.com/>. In 2016, Chicken of the Sea’s parent company reported that key issues for both consumers and retailers were “dolphin-

1 safe eco-labelling” and “environmental responsibilities”. Thai Union Group,  
2 Sustainability Report 2016, at 40, available at  
3 [https://seachangesustainability.org/wp-](https://seachangesustainability.org/wp-content/uploads/ENG_Thai%20Union_SD%20report_2016.pdf)  
4 [content/uploads/ENG\\_Thai%20Union\\_SD%20report\\_2016.pdf](https://seachangesustainability.org/wp-content/uploads/ENG_Thai%20Union_SD%20report_2016.pdf). In 2017, it reported  
5 these same key issues and noted “consumers around the globe want to know where  
6 the food on their plates comes from and that it meets the highest quality and  
7 sustainability standards.” Thai Union Group, 2017 Sustainability Report, at 68,  
8 available at [https://seachangesustainability.org/wp-content/uploads/Thai-Union-](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf)  
9 [2017-Sustainability-Report-Online-Format-1.pdf](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf). And in 2018 it reported that  
10 consumers are “increasingly conscious of where and how their food is sourced”. Thai  
11 Union Group, 2018 Sustainability Report, at 6, available at  
12 [http://www.thaiunion.com/files/download/sustainability/20190502-tu-](http://www.thaiunion.com/files/download/sustainability/20190502-tu-sustainability-report-2018-en.pdf)  
13 [sustainability-report-2018-en.pdf](http://www.thaiunion.com/files/download/sustainability/20190502-tu-sustainability-report-2018-en.pdf).

14 22. That dolphin safety and the sustainable sourcing of seafood has grown  
15 in importance to consumers is also evidenced by many retailers’ refusal to sell tuna  
16 that is not caught using dolphin-safe pole-and-line, trolling<sup>2</sup>, or handline catch  
17 methods. See, e.g., Whole Foods Market, Sustainable Canned Tuna, available at  
18 <https://www.wholefoodsmarket.com/sustainable-canned-tuna> (last visited Apr. 17,  
19 2019) (“Our sourcing policy requires all fisheries supplying canned tuna to use pole-  
20 and-line, troll or handline catch methods” unlike “[m]uch of conventional canned  
21 tuna [which] is caught by vessels using purse seine nets with Fish Aggregating  
22 Devices (known as FADs), that attract tuna but also result in high bycatch of ... other  
23 marine life.”); Whole Foods Market, Canned Tuna Sourcing Policy (Aug. 15, 2018),  
24 available at [http://assets.wholefoodsmarket.](http://assets.wholefoodsmarket.com)

25 \_\_\_\_\_  
26 <sup>2</sup> 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](https://www.seafoodwatch.org/ocean-issues/fishing-and-farming-methods) (last visited May 3, 2019).

1 com/www/departments/seafood/Whole\_Foods\_Market\_Canned\_Tuna\_Sourcing\_P  
2 olicy\_102017.pdf (last visited Apr. 17, 2019) (“Requirements for Source Fisheries”  
3 include “1. All canned tuna must be sourced from pole and line, troll, and handline  
4 fisheries. Tuna from longline or purse seine fisheries is prohibited.”); PR Newswire,  
5 Safeway Announces New Sustainable Sourcing Practice for Tuna (Feb. 10, 2012),  
6 *available at* [https://www.prnewswire.com/news-releases/safeway-announces-new-](https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-sourcing-practice-for-tuna-139096714.html)  
7 [sustainable-sourcing-practice-for-tuna-139096714.html](https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-sourcing-practice-for-tuna-139096714.html) (last visited Apr. 17, 2019);  
8 Albertsons/Safeway, Supplier Sustainability Guidelines and Expectations (Aug.  
9 2015), at 21, *available at* [https://suppliers.safeway.com/usa/](https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf)  
10 [pdf/supplier\\_sustainability\\_expectations.pdf](https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf) (last visited Apr. 29, 2019) (“Suppliers  
11 are encouraged to “Not use Purse-seine nets deployed on Fish Aggregation Devices  
12 (FADs) and employ alternatives such as pole and line trolling in an effort to reduce  
13 or eliminate by-catch”); H-E-B, H-E-B seafood policy, *available at*  
14 <https://www.heb.com/static-page/article-template/H-E-B-Seafood-Policy> (last  
15 visited Apr. 17, 2019) (for wild-caught seafood, H-E-B preferentially sources from  
16 fisheries that reduce bycatch, and H-E-B “will never knowingly buy or sell any  
17 illegal, unreported, or unregulated (IUU) fish”); Giant Eagle, Tuna Policy, *available*  
18 *at* <https://www.gianteagle.com/about-us/sustainable-seafood/tuna-policy> (last  
19 visited Apr. 29, 2019) (encourages suppliers to “eliminate harvest with the use of  
20 non-entangling FADs”); Wegmans, Seafood Sustainability, *available at*  
21 [https://www.wegmans.com/about-us/making-a-difference/sustainability-at-weg-](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html)  
22 [mans/seafood-sustainability.html](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html) (last visited Apr. 29, 2019) (“Our wild-caught  
23 seafood suppliers must meet Wegmans’ high standards to source seafood that is  
24 caught responsibly” including having “[g]ear chosen to reduce bycatch.”).

25 23. Almost all retailers have implemented sustainable seafood sourcing  
26 policies and goals in response to customer feedback. Kroger, for example, which  
27 operates 2,782 retail supermarkets in 35 states and the District of Columbia and  
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1 serves over 9 million customers a day, has adopted a comprehensive sustainable  
2 sourcing program in response to customer feedback received at “in-store service  
3 counters, online surveys, telephone surveys, focus groups, websites and social  
4 media” as well as its live call “Kroger Customer Connect” center. The Kroger Family  
5 of Companies 2018 Sustainability Report (“Kroger Sustainability Report”), *available*  
6 *at* [http://sustainability.kroger.com/Kroger\\_CSR2018.pdf](http://sustainability.kroger.com/Kroger_CSR2018.pdf) (last visited Apr. 17, 2019),  
7 at 12.

8 24. The special “Dolphin Safe” logo Defendant includes on each Chicken  
9 of the Sea tuna product as shown below is intended by Defendant to convey the  
10 message “100% dolphin-safe”<sup>3</sup>:



17 25. However, unbeknownst to consumers, substantial numbers of dolphins  
18 and other marine life are killed and harmed by the fishermen and fishing methods  
19 used to catch Defendant’s tuna. Thus, Defendant’s dolphin-safe label representations  
20 are false, misleading, and/or deceptive.

21 **Dolphin Safety Legislation**

22 26. Since the 1980s, Congress has passed a series of laws to protect dolphins  
23

24 <sup>3</sup> Chicken of the Sea, Frequently Asked Questions, *available at*  
25 <https://chickenofthesea.com/company/faqs> (last visited May 6, 2019). Chicken of the  
26 Sea, Sustainability Report 2012 at 4, *available at*  
27 [https://chickenofthesea.com/uploads/pdf/COSI\\_2014\\_Sustainability\\_Report.pdf](https://chickenofthesea.com/uploads/pdf/COSI_2014_Sustainability_Report.pdf)  
(last visited May 22, 2019) (“There is no flexibility in our policy. All the suppliers  
of our tuna and all suppliers of finished goods must be 100 percent dolphin-safe.  
None of the tuna we purchase is caught in association with dolphins.”).

1 and other marine life from indiscriminate fishing methods. Beginning with the  
 2 MMPA, which Congress repeatedly strengthened in 1984, 1988, and 1992, Congress  
 3 “ban[ned] importation of tuna that failed to meet certain conditions regarding dolphin  
 4 mortality.” *Earth Island Institute v. Evans*, No. C 03-0007-THE, ECF No. 293 at 3  
 5 (N.D. Cal.).

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

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

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





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

12           31. To be clear, the Act and implementing regulations specify that “no”  
13 dolphins must be “killed or seriously injured” and if “a” dolphin “was killed or  
14 seriously injured [defined as ‘any injury that will likely result in mortality’ (50 CFR  
15 §216.3)]”, the tuna is *not dolphin-safe* and must be *stored physically separate* from  
16 tuna that is dolphin-safe and *must be supported by sufficient documentation* to enable  
17 the National Marine Fisheries Service to trace the non-dolphin-safe tuna back to the  
18 fishing trip. 50 CFR §216.91.

19           32. Plaintiffs allege that Defendant falsely represents that Chicken of the  
20 Sea tuna products are “Dolphin Safe” – meaning “no” dolphins were killed or  
21 seriously injured – when Defendant’s tuna fishing practices kill or harm substantial  
22 numbers of dolphins each year. And because Defendant does not adequately trace or  
23 otherwise identify the tuna that is not dolphin-safe and physically segregate and store  
24 it separately from any tuna that may be dolphin-safe, Defendant may not label any of  
25 its products as dolphin-safe.

26           **World Trade Organization Dispute Regarding “Dolphin-Safe” Labels**

27           33. In 2008, a trade dispute erupted between Mexico and the United States



1 over the use of a dolphin-safe representation on labels of prepacked tuna products  
2 sold in the United States pursuant to the DPCIA and the Ninth Circuit’s holding in  
3 *Earth Island Institute v. Hogarth, supra*.

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

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

14 36. On May 16, 2012, the WTO Appellate Body issued its Report. Among  
15 other findings, the Appellate Body found the DPCIA and the ruling in *Hogarth*  
16 together:

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

22 See Official Summary, WTO DS381, current through Jan. 31, 2019, *available at*  
23 [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds381\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm) (last visited  
24 May 10, 2019).

25 37. However, the Appellate Body also found the DPCIA discriminated  
26 against Mexico. In doing so, the Appellate Body:

27 examined whether the different conditions for access to a “dolphin-safe”

1 label are “calibrated” to the risks to dolphins arising from different  
 2 fishing methods in different areas of the ocean, as the United States had  
 3 claimed. The Appellate Body noted the Panel’s finding that the fishing  
 4 technique of setting on dolphins is particularly harmful to dolphins and  
 5 that this fishing method has the capacity of resulting in observed and  
 6 unobserved adverse effects on dolphins. **At the same time, the Panel  
 7 was not persuaded that the risks to dolphins from other fishing  
 8 techniques are insignificant and do not under some circumstances  
 9 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.

10 *Id.* (emphasis added).

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

15 39. Following this Report, on May 31, 2012 Defendant, along with StarKist  
 16 and Bumble Bee, issued the following press release through the National Fisheries  
 17 Institute (“NFI”):

#### 19 **STATEMENT ON WTO DOLPHIN SAFE TUNA RULING**

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

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

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

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

5 **all tuna sought to be entered into the United States as**  
6 **"dolphin-safe", regardless of where it was caught or the**  
7 **nationality of the fishing vessel, must be accompanied by a**  
8 **certification that (a) no nets were intentionally set on**  
9 **dolphins in the set in which the tuna was caught; and (b) no**  
10 **dolphins were killed or seriously injured in the sets in which**  
11 **the tuna was caught.**

12 See Official Summary, WTO DS381, current through Jan. 31, 2019 (emphasis  
13 added), *available at* [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds381\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm) (last visited May 10, 2019).

14 **Chicken of the Sea's Fishing Practices and Violation of its**  
15 **Dolphin-Safe Representations**

16 41. Several tuna companies use traditional pole-and-line and trolling  
17 methods of catching tuna. These products include Safe Catch, Ocean Naturals (for  
18 its Albacore tuna), and Wild Planet, which are caught using pole-and-line and  
19 trolling, and American Tuna, Whole Foods 365 Everyday Value brand (for its  
20 skipjack and albacore tuna), and Trader Joe's (for yellowfin tuna), which are caught  
21 using exclusively pole-and-line.<sup>4</sup>

22 <sup>4</sup> See Safe Catch, The Safe Catch Way, *available at* <https://safecatch.com/> (last  
23 visited May 3, 2019); Ocean Naturals, Albacore, Responsibly Caught, *available at*  
24 <https://oceannaturals.com/responsibly-caught/albacore-tuna/> (last visited May 3,  
25 2019); Wild Planet, Good to the Core, Products-Tuna, *available at* [https://www.  
26 wildplanetfoods.com/products/tuna/](https://www.wildplanetfoods.com/products/tuna/) (last visited May 3, 2019); American Tuna,  
27 American Tuna, Home, *available at* <https://americantuna.com/> (last visited May 3,  
28 2019); Whole Foods Market, Wild, Salt Added Tuna, 5 oz, Products>365 Everyday  
Value, *available at* [https://products.wholefoodsmarket.com/product/365-everyday-  
value-wild-salt-added-tuna-10e1c0](https://products.wholefoodsmarket.com/product/365-everyday-value-wild-salt-added-tuna-10e1c0) (last visited May 3, 2019); Whole Foods Market,  
Albacore Wild Tuna, 5 oz, Products>365 Everyday Value, *available at*  
[https://products.wholefoodsmarket.com/product/365-everyday-value-albacore-wild-  
tuna-5-oz-b83f86](https://products.wholefoodsmarket.com/product/365-everyday-value-albacore-wild-tuna-5-oz-b83f86) (last visited May 3, 2019); Trader Joe's, About Trader Joe's  
Seafood, Announcements>Customer Updates (July 17, 2013), *available at*

1           42. While more costly, these traditional methods ensure that dolphins (and  
2 other bycatch) are not harmed in the fishing process because fish are caught using  
3 barbless hooks and poles one at a time near the sea's surface and unintended captured  
4 species are easily released. Tuna caught by these methods are actually "dolphin-  
5 safe."

6           43. Despite representing that all fishing techniques used to capture its tuna  
7 are compliant with Defendant's "100% dolphin safe" policy, Chicken of the Sea is  
8 not among the tuna companies that use only dolphin-safe pole-and-line or trolling  
9 techniques to capture their tuna. In 2016, Chicken of the Sea reported only 7% of its  
10 tuna was pole-and-line caught. Thai Union Group, Sustainability Report 2016, at 65,  
11 *available at* [https://seachangesustainability.org/wp-content/uploads/ENG\\_Thai%20](https://seachangesustainability.org/wp-content/uploads/ENG_Thai%20Union_SD%20report_2016.pdf)  
12 [Union\\_SD%20report\\_2016.pdf](https://seachangesustainability.org/wp-content/uploads/ENG_Thai%20Union_SD%20report_2016.pdf). In 2017, Chicken of the Sea reported a de minimus  
13 1% increase. Thai Union Group, 2017 Sustainability Report, at 75, *available at*  
14 [https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf)  
15 [Sustainability-Report-Online-Format-1.pdf](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf). Rather, Defendant admits the bulk of its  
16 tuna is purchased from fishing vessels that use purse seine nets and longlines to  
17 capture tuna. Chicken of the Sea, Know Your Seafood, *available at*  
18 [https://chickenofthesea.com/](https://chickenofthesea.com/company/know-your-seafood)  
19 [company/know-your-seafood](https://chickenofthesea.com/company/know-your-seafood) (last visited May 6, 2019). Both of these fishing  
20 methods kill and harm substantial numbers of dolphins.

21           44. Longlines consist of a 40-80 mile long main line to which many smaller  
22 branch lines with baited hooks are attached to catch tuna. Longlines are highly  
23 indiscriminate fishing gear as they attract large numbers of target and non-target fish,  
24 as well as dolphins, that get snagged on the hooks by their mouth or other body parts  
25 when they go after the bait and then remain on the line for extended periods of time

26 \_\_\_\_\_  
27 [https://www.traderjoes.com/announcement/a-note-to-our-customers-about-trader-](https://www.traderjoes.com/announcement/a-note-to-our-customers-about-trader-joes-seafood)  
28 [joes-seafood](https://www.traderjoes.com/announcement/a-note-to-our-customers-about-trader-joes-seafood) (last visited May 3, 2019).

1 as the lines are drawn in to the vessel and the catch is obtained. The hooked fish are  
2 retrieved by mechanically pulling the main line back onto the fishing vessel, which  
3 can take 10 hours. As dolphins are oxygen breathers, most do not survive the 10-  
4 hour retrieval process. And any that do are often not released.

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

13 46. Purse seine nets also trap, kill, and harm substantial numbers of  
14 dolphins. Because purse seine nets can reach more than 6,500 feet in length and 650  
15 feet deep – the equivalent of 18 football fields by 2 football fields<sup>5</sup>– they often entrap  
16 dolphins when drawn closed, particularly because many of the purse seine fishing  
17 vessels use free floating rafts of flotsam known as fish aggregating devices, or FADs,  
18 to capture tuna.

19 47. FADs are known as floating death traps because dolphins and other  
20 marine life get entangled in the devices and their sheer numbers estimated at 30,000  
21 to 50,000 per year disrupt behavior and movement patterns of dolphins and other  
22 ocean species crucial to their survival.

23 48. While FADs are extremely effective at luring tuna, they also attract  
24 dolphins – particularly in the ETP where schools of tuna routinely gather beneath  
25

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26 <sup>5</sup> Elizabeth Brown, Fishing Gear 101: Purse Seines – The Encirclers (June 6, 2016),  
27 *available at* <http://safinacenter.org/2015/12/fishing-gear-101-purse-seines-the-encirclers/> (last visited May 3, 2019) (“Brown 2016”).

1 schools of dolphins to reduce the risk of predation. The tuna, dolphins, and other  
2 marine life are all then caught in the gigantic mile circumference purse seine nets that  
3 are deployed around the FAD to catch the tuna.

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

11 50. Even when dolphins escape the purse seine nets or are released alive  
12 from the longlines and nets, dolphins are harmed by these fishing practices.

13 51. Several studies have observed a number of indirect ways these fishing  
14 practices cause additional unobserved dolphin deaths, including: dolphin mother-calf  
15 separation as calves are dependent upon their mothers until weaned 1.5 years  
16 postpartum, and, even then, the calves do not reach full muscle maturation until age  
17 3; acute cardiac and muscle damages caused by the exertion of avoiding or detangling  
18 from the FADs and purse seine nets; cumulative organ damage in released dolphins  
19 due to overheating from escape efforts; failed or impaired reproduction;  
20 compromised immune function; and unreported mortalities due to under-counting by  
21 purse-seine fishing vessels. *See, e.g.,* Department of Commerce, Reilly, *et al.*, Report  
22 of the Scientific Research Program Under the International Dolphin Conservation  
23 Program Act, NOAA Technical Memorandum NMFS (Mar. 2005), at 67-71, 76  
24 *available* *at* [https://swfsc.noaa.gov/publications/](https://swfsc.noaa.gov/publications/TM/SWFSC/NOAA-TM-NMFS-SWFSC-372.PDF)  
25 [TM/SWFSC/NOAA-TM-NMFS-SWFSC-372.PDF](https://swfsc.noaa.gov/publications/TM/SWFSC/NOAA-TM-NMFS-SWFSC-372.PDF) (last visited May 3, 2019). *See*

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26  
27 <sup>6</sup> NOAA 2016.



1 also Wade, et al., *Depletion of spotted and spinner dolphins in the eastern tropical*  
2 *Pacific: modeling hypotheses for their lack of recovery*, Mar Ecol Prog Ser 343:1-  
3 14, 2007, at 11 (noting “[a] summary of recent research ... clearly illustrates that the  
4 purse seine fishery has the capacity to affect dolphins beyond the direct mortality  
5 observed as bycatches”); Kellar, et al., *Pregnancy patterns of pantropical spotted*  
6 *dolphins (Stenella attenuata) in the eastern tropical Pacific determined from*  
7 *hormonal analysis of blubber biopsies and correlations with the purse-seine tuna*  
8 *fishery*, Mar Biol (2013) 160:3113-3124, at 3120 (tuna fishery reduces likelihood of  
9 female becoming pregnant or maintaining pregnancy).

10 52. Additional indirect harm to dolphins and the marine environment result  
11 from discarded and abandoned fishing gear, including FADs, which, according to the  
12 CEO of Thai Union, “is estimated to make up to 70% by weight of microplastics in  
13 the ocean”, Thai Union Group, 2018 Sustainability Report, at 7, *available at*  
14 [http://www.thaiunion.com/files/download/sustainability/20190502-tu-](http://www.thaiunion.com/files/download/sustainability/20190502-tu-sustainability-report-2018-en.pdf)  
15 [sustainability-report-2018-en.pdf](http://www.thaiunion.com/files/download/sustainability/20190502-tu-sustainability-report-2018-en.pdf), and among other harms “ensnares marine life.” *Id.*  
16 at 16.

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

23 54. Because the use of FADs, purse seine nets, and longlines are  
24 unsustainable fishing practices, several companies that supply the U.S. tuna market  
25 will not source their tuna from boats that use these indiscriminate fishing methods.  
26 But Chicken of the Sea is not among these companies. For example, to avoid  
27 competition from its primary market rivals over the sale of FAD-free tuna (which



1 would be more expensive), in or about February 2012, Chicken of the Sea allegedly  
2 entered into a written agreement with Bumble Bee Foods LLC and StarKist Co., who  
3 together with Defendant control 70-80% of the U.S. canned tuna market, whereby  
4 none of them would sell a branded FAD-free tuna product in the U.S. See Tom  
5 Seaman, Lawsuits: US brands colluded on not selling FAD-free tuna,  
6 undercurrentnews>analysis>US Investigates Tuna Brands>Companies (July 18,  
7 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/)  
8 [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).

9 55. Because “Chicken of the Sea sources its tuna from destructive fishing  
10 methods that unnecessarily kill vulnerable marine life,” including “purse seines  
11 employing FADs,” and “provides little information on product labels about where  
12 and how its tuna is caught,” Greenpeace has consistently ranked Defendant near the  
13 bottom of its list of well-known tuna brands when it comes to responsible sourcing  
14 of tuna. Greenpeace, 2017 Tuna Shopping Guide, *available at* [https://www.](https://www.greenpeace.org/usa/oceans/tuna-guide/)  
15 [greenpeace.org/usa/oceans/tuna-guide/](https://www.greenpeace.org/usa/oceans/tuna-guide/) (last visited Apr. 17, 2019) (ranking Chicken  
16 of the Sea 15th out of 20).

17 **Chicken of the Sea Does Not Track and Report the Numbers of Dolphins**  
18 **Killed or Maimed in Capturing Its Tuna**

19 56. Defendant’s use of an alternative dolphin-safe logo on its tuna products  
20 requires it to track, audit, and spot check for accuracy that “no dolphins were killed  
21 or seriously injured in the sets or other gear deployments in which the tuna were  
22 caught” from capture, to transshipment<sup>7</sup>, to cannery, to shelf. And, in the event that  
23 even a single dolphin is “killed or seriously injured” during the catch, Defendant must  
24

25 <sup>7</sup> Transfer of a shipment from one carrier, or more commonly, from one vessel to  
26 another whereas in transit. Transshipments are usually made (1) where there is no  
27 direct air, land, or sea link between the consignor's and consignee's countries, (2)  
28 where the intended port of entry is blocked, or (3) to hide the identity of the port or  
country of origin. Business Dictionary, transshipment, *available at* [http://www.](http://www.businessdictionary.com/definition/transshipment.html)  
[businessdictionary.com/definition/transshipment.html](http://www.businessdictionary.com/definition/transshipment.html) (last visited May 3, 2019).

1 physically separate and store that catch from any tuna catches in which no dolphins  
2 were harmed (if any) and maintain records tracing the catch(es) in which dolphins  
3 were harmed back to the fishing vessel and trip. 50 CFR §216.91.

4 57. Unlike fisheries in the ETP, boats in the other oceanic regions that  
5 supply Chicken of the Sea tuna are not required to have independent observers  
6 onboard to track and report the number of dolphins killed or seriously injured. 16  
7 U.S.C. §1385(d)(1). A declaration from the ship's captain suffices. 16 U.S.C.  
8 §1385(d)(1)(B). These declarations are limited to certifying that "no purse seine net  
9 was intentionally deployed on or used to encircle dolphins during the particular  
10 voyage on which the tuna was harvested" and do not require certification that FADs,  
11 gillnets, longlines and other dolphin-harming fishing techniques were not used. Nor  
12 must the captain quantify the number of dolphins killed or otherwise harmed.

13 58. Instead, Defendant is solely responsible for collecting information about  
14 the number of dolphins killed or seriously injured, which Defendant fails to do.  
15 According to Defendant, traceability is the "back bone" to ensuring its tuna is  
16 responsibly sourced and "without full traceability of our supply chain, we cannot  
17 begin to understand its risks", particularly because Defendant's supply chain includes  
18 over 300 captains, boat owners, and fishers. Thai Union Group, 2018 Sustainability  
19 Report, at 11, 25, *available at*  
20 [http://www.thaiunion.com/files/download/sustainability/20190502-tu-](http://www.thaiunion.com/files/download/sustainability/20190502-tu-sustainability-report-2018-en.pdf)  
21 [sustainability-report-2018-en.pdf](http://www.thaiunion.com/files/download/sustainability/20190502-tu-sustainability-report-2018-en.pdf). Yet, Defendant claims "tracing seafood's origins  
22 is challenging since activities that take place at sea can be difficult to monitor or  
23 supervise. All too often, only those on boats understand the conditions faced and the  
24 type of fishing being conducted." Thai Union Group, 2017 Sustainability Report, at  
25 68, *available at* [https://seachangesustainability.org/wp-content/uploads/Thai-Union-](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf)  
26 [2017-Sustainability-Report-Online-Format-1.pdf](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf). And, what Defendant does not  
27 mention is that there is a strong financial incentive for a captain to falsely omit any

1 report of dolphin mortality or harm” as any catch that is not “dolphin-safe” is  
2 essentially worthless. Further, it is relatively simple to do this as, according to  
3 Defendant, the “fishing industry is reliant upon paper-based systems” (*id.* at 69), with  
4 reports typically filled in by hand – often after the vessel has returned to port –  
5 making it virtually impossible to adequately verify the information provided. The  
6 potential and incentive for false reporting by its tuna suppliers make it even more  
7 incumbent upon Defendant to independently track, trace, and report the number of  
8 dolphins killed or harmed by Defendant’s tuna fishing vessels. Even though  
9 Defendant is able to do track, trace, and report the number of dolphins killed or  
10 harmed by Defendant’s tuna fishing vessels, it does not. As confirmed on Chicken  
11 of the Sea’s webpage entitled “Dive into the story of your seafood”, Chicken of the  
12 Sea is able to trace each tuna product sold in the U.S. to the vessel that caught it, the  
13 ocean where it was caught, the method used to catch the tuna, and the cannery where  
14 it was processed. Chicken of the Sea, Dive into the story of your seafood, *available*  
15 *at* <https://chickenofthesea.com/trace> (last visited May 6, 2019).

16 59. By purchasing its tuna from fishing vessels that use purse seine nets  
17 deployed around FADs and/or longlines, Chicken of the Sea is able to reduce its tuna  
18 product costs by using less costly fishing methods that kill or harm dolphins. This  
19 enables Chicken of the Sea to sell its tuna at a lower price and capture more of the  
20 declining tuna market, which has experienced a 40% per capita decline over the last  
21 30 years.

22 **Chicken of the Sea’s MSC Logo and Sustainable**  
23 **Fishing Practices Misrepresentations**

24 60. Defendant’s tuna pouches are labeled with a prominent blue MSC logo,  
25 which stands for Marine Stewardship Council, on the front of the pouch to the  
26 immediate left of the Chicken of the Sea product name which states: “Certified  
27 Sustainable Seafood MSC [www.msc.org](http://www.msc.org)”:



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6  
7 61. On its website, Defendant explains that: “MSC certified products must  
8 meet vigorous standards for sustainable fishing practices, like limiting bycatch  
9 (unwanted fish), avoid overfishing and protecting marine environment”. Chicken of  
10 the Sea, Marine Stewardship Council Certification, Sustainability, *available at*  
11 <https://chickenofthesea.com/msc> (last visited May 13, 2019).

12 62. Defendant explains that it is committed to a comprehensive approach to  
13 sustainability that it has trademarked “SeaChange®”, which includes its dolphin-safe  
14 policy, “following ISSF [International Seafood Sustainability Foundation]  
15 conservation measures such as traceability, bycatch mitigation and elimination of  
16 IUU fishing” (Thai Union, Annual Report 2015, at 77), working with WWF to utilize  
17 the best conservation measures, and MSC certification. Chicken of the Sea, Marine  
18 Stewardship Council Certification, Sustainability, *available at*  
19 <https://chickenofthesea.com/msc> (last visited May 13, 2019). Shortly before Thai  
20 Union launched SeaChange®, Chicken of the Sea publicly proclaimed that it is  
21 “committed to supporting Thai Union’s global sustainability strategy”. Chicken of  
22 the Sea, 2015 Sustainability Report, at 7, *available at*  
23 <http://sustainability.chickenofthesea.com/>.

24 63. Defendant’s sustainability representations and its use of the MSC  
25 certified sustainability logo are false, deceptive, and/or misleading because it uses  
26 longlines and purse seines employing FADs to capture its tuna that kill and/or harm  
27

1 dolphins and other marine life. As Defendant acknowledges, “sustainable sourcing  
2 is only achievable if we can trace where our tuna comes from”, including managing  
3 bycatch (Thai Union Group, Sustainability Report 2016, at 65, *available at*  
4 [https://seachangesustainability.org/wp-](https://seachangesustainability.org/wp-content/uploads/ENG_Thai%20Union_SD%20report_2016.pdf)  
5 [content/uploads/ENG\\_Thai%20Union\\_SD%20report\\_2016.pdf](https://seachangesustainability.org/wp-content/uploads/ENG_Thai%20Union_SD%20report_2016.pdf)), neither of which it  
6 does. Further, Defendant concedes: “[w]e recognize that we can’t call ourselves  
7 sustainable without ensuring that our suppliers use responsible fishing practices”  
8 (Chicken of the Sea, 2015 Sustainability Report, at 47, *available at*  
9 <http://sustainability.chickenofthesea.com/>), which Defendant does not do, claiming  
10 it is too “difficult to monitor or supervise” “activities that take place at sea”. Thai  
11 Union Group, 2017 Sustainability Report, at 68, *available at*  
12 [https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf)  
13 [Sustainability-Report-Online-Format-1.pdf](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf). And, among the best evidence of falsity  
14 is Defendant’s CEO’s acknowledgement that nowhere near 100% of its tuna is  
15 sustainably sourced (in efforts to meet “ambitious” goal of 100% sustainably sourced  
16 tuna, hoping to reach 75% by 2020). Thai Union Group, 2018 Sustainability Report,  
17 at 7, *available at*  
18 [http://www.thaiunion.com/files/download/sustainability/20190502-tu-](http://www.thaiunion.com/files/download/sustainability/20190502-tu-sustainability-report-2018-en.pdf)  
19 [sustainability-report-2018-en.pdf](http://www.thaiunion.com/files/download/sustainability/20190502-tu-sustainability-report-2018-en.pdf).

20 64. Notwithstanding their organizations’ names and purported sustainable  
21 fishing practice mission statements, neither the ISSF nor the MSC support the  
22 banning or effective control of FADs, longlines, or other unsustainable fishing  
23 techniques.

24 65. For example, in or about October 2018, over 800,000 tonnes of  
25 industrial boats were certified by the MSC – 10 times more than available before.<sup>8</sup>

26  
27 <sup>8</sup> Fish4Ever, Fishy Business (October 4, 2018), Blog, *available at*  
<https://fish4ever.blog/2018/10/04/fishy-business/> (last visited May 8, 2010).

1 As the massive number of MSC certified vessels attests, certification does not  
2 guarantee only dolphin-safe sustainable fishing methods are used. Far from it, as  
3 the MSC will certify fisheries using gill nets even though it recognizes that gill nets  
4 “carry the risk of bycatch (accidental capture of unwanted species) and interaction  
5 with other marine animals”. MSC, Gillnets, available at [https://www.msc.org/  
6 what-we-are-doing/our-approach/fishing-methods-and-gear-types/gillnets](https://www.msc.org/what-we-are-doing/our-approach/fishing-methods-and-gear-types/gillnets) (last  
7 visited May 6, 2019). The MSC also will certify companies like Chicken of the Sea  
8 who use longlines to capture tuna even though it recognizes longlines “can have  
9 unintended interaction with non-target fish, sea birds and other marine life.” MSC,  
10 Longlines, available at [https://www.msc.org/what-we-are-doing/our-approach/  
11 fishing-methods-and-gear-types/longlines](https://www.msc.org/what-we-are-doing/our-approach/fishing-methods-and-gear-types/longlines) (last visited May 6, 2019). And  
12 companies like Chicken of the Sea who use purse seine nets to catch tuna  
13 congregating around FADs also qualify for MSC certification even though the MSC  
14 recognizes FADs also “can result in higher levels of bycatch”. MSC, Purse seine,  
15 available at [https://www.msc.org/what-we-are-doing/our-approach/fishing-  
16 methods-and-gear-types/purse-seine](https://www.msc.org/what-we-are-doing/our-approach/fishing-methods-and-gear-types/purse-seine) (last visited May 6, 2019). In fact, the only  
17 fisheries the MSC will not certify are those using explosives and poisons. MSC,  
18 Fishing methods and gear types, available at [https://www.msc.org/what-we-are-  
19 doing/our-approach/fishing-methods-and-gear-types](https://www.msc.org/what-we-are-doing/our-approach/fishing-methods-and-gear-types) (last visited May 6, 2019). In  
20 short, Chicken of the Sea’s MSC label logo does not mean it uses only “certified  
21 sustainable” tuna fishing methods as represented, which Defendant does not do.  
22 Thus, Defendant’s labeling of its tuna pouches with the MSC logo and its sustainable  
23 fishing methods representations are false, misleading, and/or deceptive.

24 66. The MSC’s certification of companies like Chicken of the Sea who use  
25 indiscriminate, destructive, and unsustainable fishing techniques has caused the  
26 WWF – the very organization that created the MSC in 1997 – to criticize MSC’s  
27 certification protocols and to call for a number of specific changes, including a  
28



1 requirement to minimize unwanted bycatch. Greenpeace, Assessment of the Marine  
2 Stewardship Council (MSC) Fisheries Certification Programme, *available at*  
3 [https://www.greenpeace.org/usa/wp-content/uploads/legacy/Global/usa/report/](https://www.greenpeace.org/usa/wp-content/uploads/legacy/Global/usa/report/2009/7/assessment-of-the-msc.pdf)  
4 [2009/7/assessment-of-the-msc.pdf](https://www.greenpeace.org/usa/wp-content/uploads/legacy/Global/usa/report/2009/7/assessment-of-the-msc.pdf) (last visited Apr. 17, 2019).

5 67. The MSC also has been criticized as being unduly influenced by its  
6 financial dependence on the fishing industry that its standards govern. The MSC  
7 collects approximately \$20M per year in licensing fees from its certified members.  
8 Its revenues are also dependent on the amount of fish certified, as it .5% of the value  
9 of the fish it certifies.

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

24 69. Because Chicken of the Sea uses longlines, purse seine nets, and FADs,  
25 and other well-known dolphin-harming fishing techniques, notwithstanding its MSC  
26 certification and ISSF membership, Chicken of the Sea's labeling of its tuna products  
27 with the MSC certified sustainability logo and its sustainable fishing practices



1 representations are false, misleading, and/or deceptive.

2 **Chicken of the Sea, Unlike Many Other Tuna Companies, Does Not Use**  
3 **Dolphin-Safe Tuna Fishing Methods**

4 70. Unlike several other tuna companies who sell to the U.S. market,  
5 Defendant has not adopted dolphin-safe fishing practices, such as pole-and-line,  
6 trolling, and/or handline catch methods, whereby fishermen catch one fish at a time  
7 and release unwanted species soon after a fish takes the bait.

8 71. Most U.S. retailers have sustainability guidelines and expectations of  
9 their seafood suppliers that include: using recognized dolphin-safe tuna capture  
10 methods, having programs in place to trace the tuna back to the boat and place of  
11 capture, and guaranteeing the catch method used. *See, e.g.*, Whole Foods Market,  
12 Sustainable Canned Tuna, available at [https://www.wholefoodsmarket.com/](https://www.wholefoodsmarket.com/sustainable-canned-tuna)  
13 [sustainable-canned-tuna](https://www.wholefoodsmarket.com/sustainable-canned-tuna) (last visited Apr. 17, 2019); Whole Foods Market, Canned  
14 Tuna Sourcing Policy, available at [http://assets.wholefoodsmarket.com/www/](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_1020)  
15 [departments/seafood/Whole\\_Foods\\_Market\\_Canned\\_Tuna\\_Sourcing\\_Policy\\_1020](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_1020)  
16 [17.pdf](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_1020) (last visited Apr. 17, 2019); PR Newswire, Safeway Announces New  
17 Sustainable Sourcing Practice for Tuna (Feb. 10, 2012), available at  
18 [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)  
19 [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);  
20 Albertsons/Safeway, Supplier Sustainability Guidelines and Expectations (August  
21 2015), at 3, available at [https://suppliers.safeway.com/usa/pdf/supplier\\_](https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf)  
22 [sustainability\\_expectations.pdf](https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf) (last visited May 3, 2019) (“Safeway-Albertsons will  
23 strive to purchase environmentally preferable products”); H-E-B, H-E-B seafood  
24 policy, available at [https://www.heb.com/static-page/article-template/H-E-B-](https://www.heb.com/static-page/article-template/H-E-B-Seafood-Policy)  
25 [Seafood-Policy](https://www.heb.com/static-page/article-template/H-E-B-Seafood-Policy) (last visited May 3, 2019); Sprouts, Sustainable Seafood Policy,  
26 [available at https://about.sprouts.com/product-sourcing/sustainable-seafood-policy/](https://about.sprouts.com/product-sourcing/sustainable-seafood-policy/)  
27 (last visited Apr. 17, 2019); Giant Eagle, Tuna Policy, available at [https://www.](https://www.gianteagle.com/seafood/tuna-policy)

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

15 72. By expressing a commitment to sustainability, labeling its tuna products  
16 as dolphin-safe, labeling its tuna pouches as MSC certified, not tracking and  
17 reporting the number of dolphins killed and harmed in capturing its tuna, and not  
18 separating tuna that is not dolphin-safe from tuna caught where no dolphins were  
19 harmed (if any), Defendant is able to sell its Chicken of the Sea tuna products in  
20 several major retail stores to which it would otherwise be denied entry.

21 **Chicken of the Sea’s Use of the MSC Logo and Dolphin-Safe Sustainability**  
22 **Representations are False, Misleading, and/or Deceptive**

23 73. Because dolphins are killed and harmed by the fishing methods used to  
24 catch the tuna in Defendant’s products; Defendant does not adequately track, verify,  
25 audit, and spot check the number of dolphins killed and harmed; and Defendant does  
26 not separately store the tuna that is not dolphin-safe, Chicken of the Sea’s use of the  
27 alternative dolphin-safe logo and its dolphin-safe representations, its use of the MSC

1 logo, and its sustainability representations are false, misleading, and/or deceptive.

2 74. Reasonable consumers rightly believe that “dolphin-safe” means “no”  
3 dolphins were harmed in the process of catching the tuna in Defendant’s products.  
4 That is precisely the regulatory definition of dolphin-safe. 50 CFR §§216.3, 216.91.  
5 And it is the message that Chicken of the Sea has consistently conveyed to the public  
6 in its widespread and long-term advertising and marketing campaign, including its  
7 2016 campaign to “increase our consumer engagement on sustainability through our  
8 website and social media platforms.” Chicken of the Sea, 2015 Sustainability Report,  
9 at 5, *available at* <http://sustainability.chickenofthesea.com/>. As Defendant readily  
10 acknowledges and boasts, it is “highly engaged” with consumers through its website,  
11 Facebook, Twitter, online newsletter and 24/7 hotline. Chicken of the Sea,  
12 Sustainability Report 2012 at 4, *available at*  
13 [https://chickenofthesea.com/uploads/pdf/COSI\\_2014\\_Sustainability\\_Report.pdf](https://chickenofthesea.com/uploads/pdf/COSI_2014_Sustainability_Report.pdf).

14 75. Dolphin safety matters to consumers and it materially affects their  
15 decision whether to purchase Chicken of the Sea tuna. So, too, does the use of  
16 sustainable fishing practices that, among other things, minimize the amount of  
17 unwanted bycatch. Thai Union Group, 2017 Sustainability Report at 68, *available*  
18 *at* [https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf)  
19 [Sustainability-Report-Online-Format-1.pdf](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf) (“Consumers around the globe want to  
20 know where the food on their plates comes from and that it meets the highest quality  
21 and sustainability standards”). If consumers, including Plaintiffs, knew Chicken of  
22 the Sea’s tuna products were not dolphin-safe and/or not caught using sustainable  
23 fishing methods, they would not buy Defendant’s tuna products, particularly because  
24 there are several competing brands of like tuna products that are dolphin-safe and  
25 sustainably sourced. Thus, Plaintiffs and Class members are entitled to a full refund.

26 76. Any nutrient value notwithstanding, because Defendant’s false dolphin-  
27 safe representations and/or unsustainable catch methods taint the entire purchase –

1 from whether Chicken of the Sea tuna that was not dolphin-safe and/or not  
2 sustainably caught would even be sold by retailers to whether consumers would  
3 purchase Chicken of the Sea tuna that was not dolphin-safe and/or sustainably caught  
4 if available for purchase – consumers, like Plaintiffs here, are entitled to a full refund.  
5 The importance consumers place upon dolphin safety and their abject distaste for  
6 indiscriminate and destructive fishing methods makes tuna fish consumers no  
7 different from Hindus attributing zero value to beef products, or vegans attributing  
8 zero value to animal products, or vegetarians attributing zero value to meat, fish, and  
9 poultry, no matter what nutritive value these products may otherwise have. Further,  
10 if the retailers of Defendant’s tuna products knew they were not sustainably sourced  
11 and dolphin-safe, they would refuse to sell Defendant’s tuna products. This too  
12 entitles Plaintiffs and Class members to a full refund.

13 77. Alternatively, Plaintiffs and Class members are entitled to the premium  
14 attributable to the dolphin-safe and sustainable fishing practices representations.

15 78. Plaintiffs bring this action on behalf of themselves and other similarly  
16 situated consumers who purchased the tuna products to halt the dissemination of this  
17 false, misleading, and deceptive advertising message, correct the misleading  
18 perception it has created in the minds of consumers, and obtain redress for those who  
19 have purchased the tuna products. Based on Defendant’s unjust enrichment, and  
20 violations of California, Florida, New York, New Jersey, and Minnesota unfair  
21 competition and deceptive trade practice laws (detailed below), Plaintiffs seek  
22 damages, declaratory, injunctive, and restitutionary relief for consumers who  
23 purchased the tuna products.

24 **JURISDICTION AND VENUE**

25 79. This Court has original jurisdiction over the subject matter of this action  
26 pursuant to 28 U.S.C. §1331. The Court has supplemental jurisdiction over  
27 Plaintiffs’ state law claims pursuant to 28 U.S.C. §1367. This Court also has

1 jurisdiction pursuant to 28 U.S.C. §1332, as modified by the Class Action Fairness  
2 Act of 2005, because at least one member of the Class is a citizen of a different state  
3 than Defendant, there are more than 100 members of the Class, and the aggregate  
4 amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

5 80. Venue properly lies in this District pursuant to 28 U.S.C. §1391(a),  
6 because Defendant has transacted substantial business within this District within the  
7 meaning of 28 U.S.C. §1391(a), as defined in 28 U.S.C. §1391(c), and because a  
8 substantial part of the events giving rise to the claims alleged herein occurred in the  
9 Northern District of California. Specifically, Defendant marketed and sold its tuna  
10 products throughout the State of California, including throughout this District, and  
11 California Plaintiffs Duggan and Myers, as well as other members of the Class,  
12 purchased Defendant's falsely advertised and labeled tuna products from retail  
13 outlets located within this District.

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

21 **PARTIES**

22 82. Plaintiff Tara Duggan resides in Marin County, California and is a  
23 citizen of California. Throughout the relevant period, Plaintiff Duggan routinely was  
24 exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
25 viewing the dolphin-safe mark on the Chicken of the Sea canned tuna in water at  
26 stores such as Lucky's and Fairfax Market in her area. Plaintiff Duggan purchased  
27 the tuna products for approximately \$3.50. At all relevant times, Plaintiff Duggan

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

14 83. Plaintiff Lori Myers resides in Moreno Valley, California and is a citizen  
15 of California. Throughout the relevant period, Plaintiff Myers routinely was exposed  
16 to, saw, and relied upon Defendant's dolphin-safe representations by viewing the  
17 dolphin-safe mark on the Chicken of the Sea canned and pouched tuna in water  
18 through Instacart, Amazon, and at Ralph's in Canyon Crest Town Center in  
19 Riverside, California. Plaintiff Myers purchased the tuna products many times  
20 throughout the relevant period. At all relevant times, Plaintiff Myers was unaware  
21 that the tuna was not dolphin-safe as represented and was caught using fishing  
22 methods that are harmful to dolphins. Had Plaintiff Myers known the tuna was not  
23 dolphin-safe and/or had Defendant not represented that the tuna was dolphin-safe,  
24 Plaintiff Myers would not have purchased the Chicken of the Sea tuna products. As  
25 a result, Plaintiff Myers suffered injury in fact and lost money at the time of purchase.  
26 Plaintiff Myers continues to desire to purchase Chicken of the Sea tuna products that  
27 are dolphin-safe, and she would purchase such a product manufactured by Defendant

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

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



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

24           86. Plaintiff Colleen McQuade resides in Bronxville, New York and is a  
25 citizen of New York. Throughout the relevant period, Plaintiff Colleen McQuade  
26 routinely was exposed to, saw, and relied upon Defendant's dolphin-safe  
27 representations by viewing the dolphin-safe mark on the Chicken of the Sea tuna  
28

1 products, including canned tuna in water and tuna in pouches at various stores in  
2 Bronxville, Yonkers, Eastchester and Tuckahoe, New York, including ACME, Shop-  
3 Rite, Stop & Shop and Costco. Plaintiff Colleen McQuade purchased the tuna  
4 products many times throughout the relevant period. At all relevant times, Plaintiff  
5 Colleen McQuade believed the tuna products were dolphin-safe and was unaware  
6 that the tuna was not dolphin-safe as represented and was caught using fishing  
7 methods that are harmful to dolphins. Had Plaintiff Colleen McQuade known the  
8 tuna was not dolphin-safe and/or had Defendant not represented that the tuna was  
9 dolphin-safe, Plaintiff Colleen McQuade would not have purchased the Chicken of  
10 the Sea tuna products. As a result, Plaintiff Colleen McQuade suffered injury in fact  
11 and lost money at the time of purchase. Plaintiff Colleen McQuade continues to  
12 desire to purchase Chicken of the Sea tuna products that are dolphin-safe, and she  
13 would purchase such a product manufactured by Defendant if it were possible to  
14 determine prior to purchase whether dolphins were harmed by Defendant's  
15 operations. Indeed, Plaintiff Colleen McQuade regularly visits stores such as ACME,  
16 Shop-Rite, Stop & Shop, and Costco, where Defendant's tuna products are sold, but  
17 will be unable to rely upon the dolphin-safe representations and will not be able to  
18 determine if Defendant's products are dolphin-safe when deciding whether to  
19 purchase the tuna products in the future.

20 87. Plaintiff Anthony Luciano resides in Eastchester, New York and is a  
21 citizen of New York. Throughout the relevant period, Plaintiff Anthony Luciano  
22 routinely was exposed to, saw, and relied upon Defendant's dolphin-safe  
23 representations by viewing the dolphin-safe mark on the Chicken of the Sea tuna  
24 products, including canned tuna in water and oil at various stores in Eastchester,  
25 Yonkers, Tuckahoe, New Rochelle and the Bronx, New York, including Stop &  
26 Shop, Shop Rite, ACME, Foodtown, and Costco. Plaintiff Anthony Luciano  
27 purchased the tuna products many times throughout the relevant period. At all  
28

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

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

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

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

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

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

24 91. Plaintiff Fidel Jamelo resides in Bronx, New York and is a citizen of  
25 New York. Throughout the relevant period, Plaintiff Fidel Jamelo routinely was  
26 exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
27 viewing the dolphin-safe mark on the Chicken of the Sea canned tuna products,

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

17 92. Plaintiff Jocelyn Jamelo resides in Bronx, New York and is a citizen of  
18 New York. Throughout the relevant period, Plaintiff Jocelyn Jamelo routinely was  
19 exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
20 viewing the dolphin-safe mark on the Chicken of the Sea canned tuna products,  
21 including canned tuna in water, at a Costco in New Rochelle, New York. Plaintiff  
22 Jocelyn Jamelo purchased the tuna products many times throughout the relevant  
23 period. At all relevant times, Plaintiff Jocelyn Jamelo believed the tuna products  
24 were dolphin-safe and was unaware that the tuna was not dolphin-safe as represented  
25 and was caught using fishing methods that are harmful to dolphins. Had Plaintiff  
26 Jocelyn Jamelo known the tuna was not dolphin-safe and/or had Defendant not  
27 represented that the tuna was dolphin-safe, Plaintiff Jocelyn Jamelo would not have

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

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



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

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

26 95. Plaintiff Amar Mody resides in Jersey City, New Jersey, and is a citizen  
27 of New Jersey. Throughout the relevant period, Plaintiff Amar Mody routinely was

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

20       96. 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 Chicken of the Sea tuna products, including  
24 canned tuna in water, at various stores in Jersey City, New Jersey, including Shop  
25 Rite and ACME. Plaintiff Heena Mody purchased the tuna products many times  
26 throughout the relevant period. At all relevant times, Plaintiff Heena Mody believed  
27 the tuna products were dolphin-safe and was unaware that the tuna was not dolphin-

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

14 97. Plaintiff Megan Kiihne resides in Winona, Minnesota and is a citizen of  
15 Minnesota. Throughout the relevant period, Plaintiff Kiihne routinely was exposed  
16 to, saw, and relied upon Defendant's dolphin-safe representations by viewing the  
17 dolphin-safe mark on the Chicken of the Sea canned tuna in water and tuna in  
18 pouches at various stores in Winona, Minnesota, including Walmart and Midtown  
19 Foods. Plaintiff Kiihne purchased the tuna products many times throughout the  
20 relevant period. At all relevant times, Plaintiff Kiihne believed the tuna products  
21 were dolphin-safe and was unaware that the tuna was not dolphin-safe as represented  
22 and was caught using fishing methods that are harmful to dolphins. Had Plaintiff  
23 Kiihne known the tuna was not dolphin-safe and/or had Defendant not represented  
24 that the tuna was dolphin-safe, Plaintiff Kiihne would not have purchased the  
25 Chicken of the Sea tuna products. As a result, Plaintiff Kiihne suffered injury in fact  
26 and lost money at the time of purchase. Plaintiff Kiihne continues to desire to  
27 purchase Chicken of the Sea tuna products that are dolphin-safe, and she would

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

7 98. Defendant Tri-Union Seafoods LLC, dba Chicken of the Sea  
8 International, Inc., is a limited liability company organized, existing, and doing  
9 business under the laws of the State of California, with its headquarters and principal  
10 place of business located in San Diego, California, and is a citizen of California.  
11 Chicken of the Sea operates its tuna processing facility in Lyons, Georgia. During  
12 the time period relevant to Plaintiffs' claims, Chicken of the Sea produced and sold  
13 canned tuna and tuna pouches throughout the United States and its territories; sold  
14 canned tuna and tuna pouches to Plaintiffs and others in the United States; and  
15 engaged in the false, misleading, and deceptive advertising alleged in this Complaint.

16 **CLASS DEFINITION AND ALLEGATIONS**

17 99. Plaintiffs bring this action on behalf of themselves and all other  
18 similarly situated consumers pursuant to Rules 23(a), (b)(2), (b)(3), and (c)(4) of the  
19 Federal Rules of Civil Procedure and seek certification of the following Classes:<sup>9</sup>

20 **Nationwide Class**

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

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

27 <sup>9</sup> For ease of reference, the Nationwide Class and state-only classes alleged herein  
28 may sometimes be referred to as the "Class" or the "Classes."

1           100. Alternatively, Plaintiffs Duggan and Myers seek certification of the  
2 following California-Only Class:

3                   **California-Only Class**

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

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

10           101. In addition, Plaintiff Cosgrove seeks certification of the following  
11 Florida-Only Class:

12                   **Florida-Only Class**

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

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

19           102. In addition, Plaintiffs Robert and Colleen McQuade, Plaintiffs Anthony  
20 and Lori Luciano, Plaintiffs Fidel and Jocelyn Jamelo, and Plaintiffs Borruso and  
21 Nugent seek certification of the following New York-Only Class:

22                   **New York-Only Class**

23                   All New York 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.

          103. In addition, Plaintiffs Amar and Heena Mody and Plaintiffs Zelig and  
Petrovcik seek certification of the following New Jersey-Only Class:

**New Jersey-Only Class**

All New Jersey 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  
products for the purpose of resale.

3 104. In addition, Plaintiff Kiihne seeks certification of the following  
4 Minnesota-Only Class:

5 **Minnesota-Only Class**

6 All Minnesota consumers who within the applicable statute  
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  
products for the purpose of resale.

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

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

- 19 a. whether Defendant's dolphin-safe representations are false,  
20 misleading, or objectively reasonably likely to deceive;
- 21 b. whether Defendant failed to comply with traceability and  
22 verification requirements;
- 23 c. whether Defendant engaged in fishing practices that harmed  
24 dolphins;
- 25 d. whether Defendant's alleged conduct is unlawful;
- 26 e. whether the alleged conduct constitutes violations of the laws  
27 asserted;

1 f. whether Defendant engaged in false, misleading and/or deceptive  
2 advertising;

3 g. whether the statements made or facts omitted were material; that  
4 is, whether they had a natural tendency to influence, or were capable of influencing,  
5 a person to part with money or property;

6 h. what is the measure and amount of damages suffered by Plaintiffs  
7 and Class Members, and whether Plaintiffs and the Class are entitled to punitive  
8 damages; and

9 i. whether Plaintiffs and Class members are entitled to appropriate  
10 equitable remedies, including damages, restitution, corrective advertising, and  
11 injunctive relief.

12 107. **Typicality.** Plaintiffs' claims are typical of the claims of the members  
13 of the Classes because, *inter alia*, all Class members were injured through the  
14 uniform misconduct described above. Plaintiffs are also advancing the same claims  
15 and legal theories on behalf of themselves and all Class members.

16 108. **Adequacy of Representation.** Plaintiffs will fairly and adequately  
17 protect the interests of Class members. Plaintiffs have retained counsel experienced  
18 in complex consumer class action litigation, and Plaintiffs intend to prosecute this  
19 action vigorously. Plaintiffs have no adverse or antagonistic interests to those of the  
20 Classes.

21 109. **Superiority.** A class action is superior to all other available means for  
22 the fair and efficient adjudication of this controversy. The damages or other financial  
23 detriment suffered by individual Class members is relatively small compared to the  
24 burden and expense that would be entailed by individual litigation of their claims  
25 against Defendant. It would thus be virtually impossible for members of the Classes,  
26 on an individual basis, to obtain effective redress for the wrongs done to them.  
27 Furthermore, even if Class members could afford such individualized litigation, the



1 court system could not. Individualized litigation would create the danger of  
2 inconsistent or contradictory judgments arising from the same set of facts.  
3 Individualized litigation would also increase the delay and expense to all parties and  
4 the court system from the issues raised by this action. By contrast, the class action  
5 device provides the benefits of adjudication of these issues in a single proceeding,  
6 economies of scale, and comprehensive supervision by a single court, and presents  
7 no unusual management difficulties under the circumstances here.

8 110. Plaintiffs seek preliminary and permanent injunctive and equitable relief  
9 on behalf of the entire Classes, on grounds generally applicable to the entire Classes,  
10 to enjoin and prevent Defendant from engaging in the acts described and requiring  
11 Defendant to provide full restitution to Plaintiff and Class members.

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

14 112. Unless an injunction is issued, Defendant will continue to commit the  
15 violations alleged, and the members of the Classes and the general public will  
16 continue to be deceived and not know whether the dolphin-safe representations  
17 and/or sustainable fishing methods representations are true or if the tuna products  
18 continue to contain tuna caught using fishing methods that are harmful to dolphins.

19 113. Likewise, particular issues under Rule 23(c)(4) are appropriate for  
20 certification because such claims present only particular, common issues, the  
21 resolution of which would advance the disposition of this matter and the parties'  
22 interests therein. Such particular issues include, but are not limited to: (a) whether  
23 Defendant marketed and sold its tuna products as “Dolphin Safe” and sustainably  
24 sourced when they were not; (b) whether Defendant’s conduct was unlawful, unfair,  
25 or fraudulent in violation of state consumer protections law; (c) whether Defendant’s  
26 misrepresentations would deceive a reasonable consumer; (d) whether Defendant has  
27 been unjustly enriched; (e) whether Defendant failed to comply with federal law in

1 branding its tuna products “Dolphin Safe”; and (f) whether Defendant’s  
2 misrepresentations regarding its tuna products would be material to a reasonable  
3 consumer.

4  
5 **COUNT I –**  
6 **Violation of California Business & Professions Code §§17200, *et seq.***  
7 **(On Behalf of the Nationwide or California-Only Class)**

8 114. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1-  
9 113 above, as if fully set forth herein.

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

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

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

27 118. Plaintiffs reserve the right to allege other violations of law, which  
28 constitute other unlawful business acts or practices. Such conduct is ongoing and

1 continues to this date.

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

21       120. Defendant also engaged in immoral, unethical, oppressive, and  
22 unscrupulous activities that are substantially injurious to the public at large.

23       121. There were reasonably available alternatives to further Defendant’s  
24 legitimate business interests, other than the conduct described herein.

25       122. **Fraudulent Business Practices:** In the course of conducting business,  
26 Defendant committed “fraudulent business act[s] or practices” and deceptive or  
27 misleading advertising by, *inter alia*, making the dolphin-safe representations and

1 sustainable fishing methods representations, and using the MSC logo, which are  
2 false, misleading, and/or deceptive to reasonable consumers, and by failing to comply  
3 with traceability and verification requirements, regarding the tuna products as set  
4 forth more fully herein.

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

8 124. Plaintiffs relied on Defendant's dolphin-safe representations and  
9 Defendant's compliance with traceability and verification requirements and were in  
10 fact injured as a result of those false, misleading, and deceptive representations and  
11 by Defendant's failure to comply with traceability and verification requirements.

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

18 126. Unless restrained and enjoined, Defendant will continue to engage in  
19 the above described conduct. Accordingly, injunctive relief is appropriate.

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

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

128. Plaintiffs Duggan and Myers (the “California Plaintiffs”) repeat and incorporate by reference the allegations contained in the paragraphs 1 through 113 above as if fully set forth herein.

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

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

131. The California Plaintiffs are consumers as defined by California Civil Code § 1761(d). The tuna products are “goods” within the meaning of the CLRA.

132. Defendant violated and continues to violate the CLRA by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions with the California Plaintiffs and the California-Only Class which were intended to result in, and did result in, the sale of the tuna products:

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

\* \* \*

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

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

134. Pursuant to §1782 of the CLRA, the California Plaintiffs notified Defendant in writing by certified mail of the particular violations of §1770 of the

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

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

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

13 136. Plaintiff Cosgrove repeats and incorporates by reference the allegations  
14 contained in the paragraphs 1 through 113 above as if fully set forth herein.

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

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

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

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

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

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

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

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

19 144. Plaintiffs Robert and Colleen McQuade, Plaintiffs Anthony and Lori  
20 Luciano, Plaintiffs Fidel and Jocelyn Jamelo, and Plaintiffs Borruso and Nugent (the  
21 “New York Plaintiffs”) repeat and incorporate by reference the allegations contained  
22 in the paragraphs 1 through 113 above as if fully set forth herein.

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

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



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

8 148. Defendant’s deceptive conduct was generally directed at the consuming  
9 public.

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

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

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

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

24 **COUNT V**  
25 **Violation of the New Jersey Consumer Fraud Act, N.J. Stat -- §§56:8-2.10**  
26 **(On Behalf of the New Jersey-Only Class)**

27 153. Plaintiffs Amar and Heena Mody and Plaintiffs Zelig and Petrovcik (the  
28 “New Jersey Plaintiffs”) repeat and incorporate by reference the allegations

1 contained in paragraphs 1 through 113 above as if fully set forth herein.

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

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

10 156. Defendant's tuna products are misrepresented within the meaning of  
11 §56:8-2.10, as the descriptions of said products are misleading, the descriptions omit  
12 information in ways that render the description false or misleading, and/or the  
13 descriptions represent the merchandise as having qualities they do not have.

14 157. Specifically, Defendant has violated, and continues to violate, the New  
15 Jersey Fraud Act by representing that its tuna products are "Dolphin Safe" when they  
16 are not.

17 158. The New Jersey Plaintiffs, on their own behalf, and on behalf of the  
18 New Jersey-Only Class members, suffered an ascertainable loss of money by their  
19 purchase of falsely advertised consumer products worth less than they paid, and seek  
20 damages, injunctive relief, including an order enjoining Defendant's violations of the  
21 New Jersey Consumer Fraud Act alleged herein, and court costs and attorneys' fees.

22 **COUNT VI**  
23 **Violation of the Minnesota Prevention of Consumer Fraud Act (Unlawful**  
24 **Practices) – Minn. Stat. §325F.68, et seq. and Minn. Stat. §8.31, et seq.**  
25 **(On Behalf of the Minnesota-Only Class)**

26 159. Plaintiff Kiihne repeats and incorporates by reference the allegations  
27 contained in the paragraphs 1 through 113 above as if fully set forth herein.

28 160. Plaintiff Kiihne brings this claim individually and on behalf of the

1 Minnesota-Only Class.

2 161. This cause of action is brought pursuant to the Minnesota Prevention of  
3 Consumer Fraud Act (Unlawful Practices), Minn. Stat. §325F.68, *et seq.* and Minn.  
4 Stat. §8.31, *et seq.* (“MCFA”).

5 162. The tuna products Defendant sold are “merchandise” as defined in  
6 Minn. Stat. §325F.68 and Defendant is a “person” as defined in Minn. Stat. §325F.68.

7 163. The MCFA prohibits “[t]he act, use, or employment by any person of  
8 any fraud, false pretense, false promise, misrepresentation, misleading statement or  
9 deceptive practice, with the intent that others rely thereon in connection with the sale  
10 of any merchandise, whether or not any person has in fact been misled, deceived, or  
11 damaged thereby . . . .” Minn. Stat. §325F.69(1).

12 164. Defendant engaged in unlawful practices, misrepresentations, and the  
13 concealment, suppression, and omission of material facts with respect to the sale and  
14 advertisement of merchandise in violation of the MCFA in at least the following  
15 ways:

16 (a) Deceptively representing to Plaintiff Kiihne and the Minnesota-Only  
17 Class that its tuna products were dolphin-safe, packaged from tuna caught using  
18 sustainable fishing methods, and traceable and verifiable;

19 (b) Falsely promising Defendant’s tuna products were dolphin-safe,  
20 packaged from tuna caught using sustainable fishing methods, and traceable and  
21 verifiable;

22 (c) Failing to warn or disclose to consumers, including Plaintiff Kiihne  
23 and the Minnesota-Only Class that its tuna products were not dolphin-safe, were  
24 not packaged from tuna caught using sustainable fishing methods, and were not  
25 traceable and verifiable;

26 (d) Failing to reveal a material fact – that its tuna products were not  
27 dolphin-safe, were not packaged from tuna caught using sustainable fishing  
28

1 methods, and were not traceable and verifiable; and

2 (e) Making a misrepresentation of material fact or statement of fact  
3 material to the transaction – *i.e.*, that its tuna products were not dolphin-safe, were  
4 not packaged from tuna caught using sustainable fishing methods, and were not  
5 traceable and verifiable – such that a person reasonably believed Defendant’s tuna  
6 products had such characteristics when they did not.

7 165. That Plaintiff Kiihne and the Minnesota-Only Class believed they were  
8 purchasing dolphin-safe tuna caught from sustainable fishing methods with the  
9 ability of Defendant to trace and verify its dolphin-safe quality when these  
10 representations were not true were material facts and would be material to a  
11 reasonable person.

12 166. As a direct and proximate result of Defendant’s violation of the MCFA,  
13 Plaintiff Kiihne and the Minnesota-Only Class have suffered and continue to suffer  
14 ascertainable loss in the form of money in that they paid for tuna products that were  
15 not dolphin-safe and/or sustainably caught as represented, as more fully described  
16 herein.

17 167. Plaintiff Kiihne seeks relief under Minn. Stat. §8.31, including, but not  
18 limited to, damages and attorneys’ fees.

19  
20 **COUNT VII –**  
21 **Violation of the Minnesota Prevention of Consumer Fraud Act (False**  
22 **Statement in Advertising) – Minn. Stat. §§325F.67, et seq.**  
23 **(On Behalf of the Minnesota-Only Class)**

24 168. Plaintiff Kiihne repeats and incorporates by reference the allegations  
25 contained in the paragraphs 1 through 113 above as if fully set forth herein.

26 169. Plaintiff Kiihne brings this claim individually and on behalf of the  
27 Minnesota-Only Class.

28 170. The tuna products Defendant sold are “merchandise” as defined in

1 Minn. Stat. §325F.68 and Defendant is a “person” as defined in Minn. Stat. §325F.68.

2 171. Defendant made materially misleading and deceptive statements to  
3 consumers about its tuna products as being dolphin-safe and/or sustainably caught.

4 172. This advertising was and continues to be deceptive and misleading  
5 because Defendant’s tuna products are neither dolphin-safe nor sustainably caught.

6 173. Defendant had superior knowledge and bargaining power in its  
7 transactions with consumers and misrepresented its tuna products as being dolphin-  
8 safe and/or sustainably caught to induce consumers to purchase Defendant’s tuna  
9 products. These facts are material because reasonable consumers, like Plaintiff  
10 Kiihne would have paid less or, more likely, not purchased the tuna products at all if  
11 they had known the products were not dolphin-safe and/or sustainably caught.

12 174. Plaintiff Kiihne and the Minnesota-Only Class seek an order requiring  
13 Defendant to disgorge all ill-gotten gains and provide full restitution of all monies it  
14 wrongfully obtained from Plaintiff Kiihne and the Minnesota-Only Class through its  
15 false and deceptive advertising of its tuna products.

16 175. Plaintiff Kiihne and the Minnesota-Only Class also seek an award of  
17 damages and attorneys’ fees for violations of Minn. Stat. §325F.67 pursuant to Minn.  
18 Stat. §8.31, subd. 3a.

19 **COUNT VIII –**  
20 **Violation of the Minnesota Uniform Deceptive Trade Practices Act – Minn.**  
21 **Stat. §§325D.43, et seq.**  
**(On Behalf of the Minnesota-Only Class)**

22 176. Plaintiff Kiihne repeats and incorporates by reference the allegations  
23 contained in the paragraphs 1 through 113 above as if fully set forth herein.

24 177. Plaintiff Kiihne brings this claim individually and on behalf of the  
25 Minnesota-Only Class.

26 178. This claim is brought under the Minnesota Uniform Deceptive Trade  
27 Practices Act, Minn. Stat. §§325D.43, et seq. (the “MDTPA”)

1 179. Defendant is a “person” as defined in the MDTPA.

2 180. Under the MDTPA, a person engages in a deceptive trade practice when  
3 in the course of business, vocation, or occupation, the person:

4 (a) “[R]epresents that goods or services have sponsorship, approval,  
5 characteristics, ingredients, uses, benefits, or quantities that they do not have or  
6 that a person has a sponsorship, approval, status, affiliation, or connection that the  
7 person does not have”;

8 (b) “[R]epresents that goods or services are of a particular standard,  
9 quality, or grade, or that goods are of a particular style or model, if they are of  
10 another”; and

11 (c) “[A]dvertises goods or services with intent not to sell them as  
12 advertised.” (Minn. Stat. §325D.44 (5)(7)(9)).

13 181. Defendant violated these provisions of the MDTPA by:

14 (a) Deceptively representing to Plaintiff Kiihne and the Minnesota-Only  
15 Class that the tuna products were dolphin-safe and/or sustainably caught;

16 (b) Falsely advertising the tuna products as dolphin-safe and/or  
17 sustainably caught;

18 (c) Failing to warn or disclose to consumers, including Plaintiff Kiihne  
19 and the Minnesota-Only Class, that the tuna products were not dolphin-safe nor  
20 sustainably caught contrary to Defendant’s representations;

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

25 (e) Making a representation of fact or statement of fact material to the  
26 transaction – *i.e.*, that Defendant’s tuna products were dolphin-safe and/or  
27 sustainably caught – such that a person reasonably believed they were when they

1 were not.

2 182. Plaintiff Kiihne and the Minnesota-Only Class believed they were  
3 purchasing dolphin-safe and sustainably caught tuna products when they were not.  
4 These were material facts and would be material to a reasonable person.

5 183. The above unlawful and deceptive acts and practices by Defendant were  
6 immoral, unethical, oppressive, and unscrupulous. These acts caused substantial  
7 injury to consumers that the consumers could not reasonably avoid; this substantial  
8 injury outweighed any benefits to consumers or to competition.

9 184. As a direct and proximate result of Defendant's violation of the  
10 MDTPA, Plaintiff Kiihne and the Minnesota-Only Class have suffered and continue  
11 to suffer ascertainable loss in the form of money.

12 185. Pursuant to Minn. Stat. §325D.45, Plaintiff Kiihne seeks individually  
13 and on behalf of all others similarly situated, all available remedies under law,  
14 including, but not limited to, actual damages, costs, and attorneys' fees.

15  
16 **COUNT IX**  
**Unjust Enrichment/Quasi-Contract**

17 186. Plaintiffs repeat and incorporate by reference the allegations contained  
18 in the paragraphs 1 through 113 above as if fully set forth herein.

19 187. Plaintiffs and Class members conferred a benefit on Defendant by  
20 purchasing the tuna products.

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



1 189. Defendant has profited from its unlawful, unfair, false, misleading, and  
2 deceptive practices and advertising at the expense of Plaintiffs and Class members,  
3 under circumstances in which it would be unjust for Defendant to be permitted to  
4 retain the benefit.

5 190. Plaintiffs do not have an adequate remedy at law against Defendant.

6 191. Plaintiffs and Class members are entitled to restitution of all monies paid  
7 for the tuna products or, at a minimum, the premium paid for the tuna products.

8 **PRAYER FOR RELIEF**

9 Wherefore, Plaintiffs pray for a judgment:

10 A. Certifying the Classes as requested herein;

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

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

16 D. Awarding the Classes damages, including statutory and punitive  
17 damages, and interest thereon;

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

20 F. Awarding attorneys' fees and costs; and

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

22 **DEMAND FOR JURY TRIAL**

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

25  
26 Dated: January 29, 2020

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

/s/Patricia N. Syverson

Patricia N. Syverson (203111)  
Manfred P. Muecke (222893)  
600 W. Broadway, Suite 900  
San Diego, California 92101  
psyverson@bffb.com  
mmuecke@bffb.com  
Telephone: (619) 798-4593

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

Elaine A. Ryan (*Pro Hac Vice*)  
Carrie A. Laliberte (*Pro Hac Vice*)  
2325 E. Camelback Rd., Suite 300  
Phoenix, AZ 85016  
eryan@bffb.com  
claliberte@bffb.com  
Telephone: (602) 274-1100

GOLDMAN SCARLATO & PENNY P.C.

Brian D. Penny (*To Be Admitted Pro Hac Vice*)  
penny@lawgsp.com  
8 Tower Bridge, Suite 1025  
161 Washington Street  
Conshohocken, Pennsylvania 19428  
Telephone: (484) 342-0700

ZAREMBA BROWN PLLC

Brian M. Brown (*Pro Hac Vice*)  
bbrown@zarembabrown.com  
40 Wall Street, 52<sup>nd</sup> Floor  
New York, NY 10005  
Telephone: (212) 380-6700

ROBBINS GELLER RUDMAN & DOWD LLP

Stuart A. Davidson (*Pro Hac Vice*)  
Christopher C. Gold (*Pro Hac Vice*)  
Bradley M. Beall (*Pro Hac Vice*)  
sdavidson@rgrdlaw.com  
cgold@rgrdlaw.com  
bbeall@rgrdlaw.com  
120 East Palmetto Park Road, Suite 500  
Boca Raton, FL 33432  
Telephone: (561) 750-3000

Attorneys for Plaintiffs

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 29, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

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

Executed the 29th day of January 2020.

/s/ Patricia N. Syverson  
Patricia N. Syverson