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

15 WARREN GARDNER, LORI  
MYERS, ANGELA COSGROVE,  
16 AUTUMN HESSONG, ROBERT  
MCQUADE, COLLEEN  
17 MCQUADE, JAMES BORRUSO,  
18 FIDEL JAMELO, JOCELYN  
JAMELO, ANTHONY LUCIANO,  
19 LORI LUCIANO, ROBERT  
20 NUGENT, AVRAHAM ISAC  
ZELIG, KEN PETROVCIK, MEGAN  
21 KIIHNE, and KATHLEEN MILLER,  
22 On Behalf of Themselves and All  
23 Others Similarly Situated,

24 Plaintiffs,

25 v.

26 STARKIST CO., a Delaware  
27 Corporation,

Case No.:

**CLASS ACTION COMPLAINT FOR:**

1. VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT. 18 U.S.C. §§1962(c)-(d)
2. VIOLATION OF THE UNFAIR COMPETITION LAW – Cal. Bus. & Prof. Code §17200, *et seq.*;
3. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT – Cal. Civ. Code §1750, *et seq.*;
4. VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT – Fla. Stat. §501.201, *et seq.*;
5. VIOLATION OF THE NEW YORK GENERAL BUSINESS LAW § 349;

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Defendant.

6. VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT, § 56:8-2.10;
7. VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT (UNFAIR PRACTICES) – Minn. Stat. §325F.68, *et seq.* and Minn. Stat. §8.31, *et seq.*;
8. VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT (FALSE STATEMENT IN ADVERTISING) – Minn. Stat. §325F.67, *et seq.*;
9. VIOLATION OF THE MINNESOTA UNIFORM DECEPTIVE TRADE PRACTICES ACT – Minn. Stat. §325D.43, *et seq.*;
10. VIOLATION OF THE ARIZONA CONSUMER FRAUD ACT, A.R.S. §§44-1521, *et seq.*; and
11. UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

1 Plaintiffs Warren Gardner, Lori Myers, Angela Cosgrove, Autumn Hessong,  
2 Robert McQuade, Colleen McQuade, James Borruso, Fidel Jamelo, Jocelyn Jamelo,  
3 Anthony Luciano, Lori Luciano, Robert Nugent, Avraham Isac Zelig, Ken Petrovcik,  
4 Megan Kiihne, and Kathleen Miller bring this action on behalf of themselves and all  
5 others similarly situated against Defendant StarKist Co. (“StarKist” or “Defendant”)  
6 and state:

7 **FACTUAL ALLEGATIONS**

8 1. StarKist tuna has been marketed, sold, and distributed throughout the  
9 United States, including in California, since 1942. Today, StarKist is the No. 1 selling  
10 prepackaged tuna brand in the United States.

11 2. Since 1990, StarKist has promised consumers that its tuna is “Dolphin-  
12 Safe.” Since the introduction of the dolphin-safe policy in 1990, including the last 4  
13 years (the “Class Period”), however, StarKist’s tuna has not been “Dolphin-Safe.”

14 3. Plaintiffs herein allege unjust enrichment and violations of: (1) the  
15 Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §1962;  
16 (2) California's Unfair Competition Law, Cal. Bus. & Prof. Code §17200, *et seq.*; (3)  
17 California’s Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*; (4) the  
18 Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201, *et seq.*; (5) the  
19 New York General Business Law §349; (6) the New Jersey Consumer Fraud Act,  
20 §56:8-2.10; (7) the Minnesota Prevention of Consumer Fraud Act, Minn. Stat.  
21 §§325F.67-325F.68; (8) the Minnesota Uniform Deceptive Trade Practices Act,  
22 Minn. Stat. §325D.43, *et seq.*; and (9) the Arizona Consumer Fraud Act, A.R.S. §44-  
23 1521, *et seq.*

24 4. Plaintiffs seek, on behalf of themselves and all Class members,  
25 nationwide monetary damages, restitution, injunctive relief, and all relief deemed  
26 appropriate, arising out of Defendant’s illegal scheme and conspiracy alleged herein.

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1 **Origin of “Dolphin-Safe” Tuna**

2 5. Prior to the development of modern purse seine fishing techniques,  
3 tropical tuna were caught one at a time using traditional pole-and-line methods.  
4 NOAA, The Tuna-Dolphin Issue, NOAA Fisheries Southwest Fisheries Science  
5 Center (Sept. 2, 2016), *available at* [https://swfsc.noaa.gov/textblock.aspx?](https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408)  
6 [Division=PRD&ParentMenuId=228&id=1408](https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408) (last visited May 3, 2019) (“NOAA  
7 2016”).

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

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

17 8. This practice led to millions of dolphins being killed as unintended  
18 bycatch.

19 9. In the late 1980s, the world learned of the large numbers of dolphins  
20 indiscriminately killed by tuna fishermen. In 1988, a worldwide telecast showed  
21 video images of dolphins being killed in tuna fishing nets. That video was captured  
22 by an undercover environmental activist posing as a ship’s cook. Public outcry was  
23 immediate and intense.

24 10. Heightened public awareness of these mass dolphin deaths led to the  
25 development and enhancement of fishing regulations around the world, including a  
26 strengthening of the Marine Mammal Protection Act (“MMPA”) and the enactment  
27 of the Dolphin Protection Consumer Information Act (“DPCIA”) of 1990.

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

5 12. In the ensuing 25 years, U.S. tuna sellers, led by StarKist, implemented  
6 a widespread and long-term marketing campaign that continues to this day –  
7 representing to consumers that no dolphins were killed or harmed in capturing their  
8 tuna, as well as expressing their commitment to sustainably sourcing tuna.

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

19 14. StarKist tuna, however, is not dolphin-safe. Nor is it sustainably  
20 sourced. StarKist's dolphin-safe representations are false, misleading, and/or  
21 deceptive.

22 **StarKist's Dolphin-Safe Representations**

23 15. According to StarKist, Defendant “condemns the use” of  
24 “indiscriminate fishing methods that trap dolphins.”

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1           16. In 1990, StarKist was the first major tuna company to adopt a “dolphin-  
2 safe” policy. StarKist, FAQ, *available at* <https://starkist.com/faq> (last visited May  
3 3, 2019).

4           17. On every can and pre-packaged tuna pouch, Defendant states that the  
5 tuna products are “Dolphin Safe” with a dolphin logo. The tuna products also  
6 encourage consumers to “visit” the StarKist website for more information on  
7 StarKist’s dolphin-safe policy.

8           18. StarKist’s website explains what StarKist means by “Dolphin Safe,” and  
9 how StarKist’s pledge promises consumers it will not only protect dolphins but will  
10 refrain from any indiscriminate fishing practices that harm other marine life. The  
11 meaning StarKist attributes to “Dolphin Safe” also reflects its importance to  
12 consumers. Defendant promises, in pertinent part, that:

- 13           • “StarKist will not purchase any tuna caught in association with  
14 dolphins.”
- 15           • “StarKist continues its practice of refusing to purchase tuna caught with  
16 gill or drift nets which are known to be dangerous to many forms of  
17 marine life. StarKist condemns the use of these indiscriminate fishing  
18 methods that trap dolphins, whales and other marine life along with the  
19 intended catch of fish.”
- 20           • “StarKist was the first major American tuna canning company to make  
21 this commitment to the public. We remain committed to this policy and  
22 require certification that all tuna we purchase is dolphin-safe. Our  
23 dolphin-safe policy includes StarKist tuna, as well as all of our branded  
24 and private label products. StarKist tuna is labeled with a special  
25 “Dolphin-Safe” logo.”

26 StarKist, FAQ, *available at* <https://starkist.com/faq> (last visited May 3, 2019).

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1           19. When StarKist announced its dolphin-safe policy, Anthony J.F.  
2 O'Reilly – Chairman of StarKist's then-parent company, H.J. Heinz Co – stated at a  
3 news conference that his company was responding to consumer concerns in adopting  
4 a policy of buying only “dolphin-safe” tuna and “[t]he StarKist policy will save  
5 dolphin lives. **Nothing short of dolphin-safe tuna will be acceptable . . . .**” Janet  
6 Bass, StarKist adopts dolphin-safe policy for its tuna, UPI Archives (Apr. 12, 1990),  
7 *available at* [https://www.upi.com/Archives/1990/04/12/StarKist-adopts-dolphin-](https://www.upi.com/Archives/1990/04/12/StarKist-adopts-dolphin-safe-policy-for-its-tuna/5799639892800/)  
8 [safe-policy-for-its-tuna/5799639892800/](https://www.upi.com/Archives/1990/04/12/StarKist-adopts-dolphin-safe-policy-for-its-tuna/5799639892800/) (last visited May 3, 2019) (emphasis  
9 added) (“Bass 1990”).

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

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

22           22. If anything, dolphin safety and the sustainable sourcing of seafood has  
23 grown in importance to consumers as evidenced by many retailers' refusal to sell  
24 tuna that is not caught using dolphin-safe pole-and-line, trolling<sup>1</sup>, or handline catch  
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26 <sup>1</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,  
*available at* [https://www.seafoodwatch.org/ocean-issues/fishing-and-farming-](https://www.seafoodwatch.org/ocean-issues/fishing-and-farming-methods)  
28 [methods](https://www.seafoodwatch.org/ocean-issues/fishing-and-farming-methods) (last visited May 3, 2019).

1 methods. *See, e.g.*, Whole Foods Market, Sustainable Canned Tuna, *available at*  
2 <https://www.wholefoodsmarket.com/sustainable-canned-tuna> (last visited April 17,  
3 2019) (“Our sourcing policy requires all fisheries supplying canned tuna to use pole-  
4 and-line, troll or handline catch methods” unlike “[m]uch of conventional canned  
5 tuna [which] is caught by vessels using purse seine nets with Fish Aggregating  
6 Devices (known as FADs), that attract tuna but also result in high bycatch of ... other  
7 marine life.”); Whole Foods Market, Canned Tuna Sourcing Policy (August 15,  
8 2018), *available at* [http://assets.wholefoodsmarket.com/  
9 www/departments/seafood/Whole\\_Foods\\_Market\\_Canned\\_Tuna\\_Sourcing\\_Policy  
10 \\_102017.pdf](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf) (last visited Apr. 17, 2019) (“Requirements for Source Fisheries”  
11 include “1. All canned tuna must be sourced from pole and line, troll, and handline  
12 fisheries. Tuna from longline or purse seine fisheries is prohibited.”); PR Newswire,  
13 Safeway Announces New Sustainable Sourcing Practice for Tuna (February 10,  
14 2012), *available at* [https://www.prnewswire.com/news-releases/safeway-  
15 announces-new-sustainable-sourcing-practice-for-tuna-1390967  
16 14.html](https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-sourcing-practice-for-tuna-139096714.html) (last visited Apr. 17, 2019); Albertsons/Safeway, Supplier Sustainability  
17 Guidelines and Expectations (Aug. 2015), at 21, *available at*  
18 [https://suppliers.safeway.com/usa/pdf/supplier\\_sustainability\\_expectations.pdf](https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf) (last  
19 visited Apr. 29, 2019) (“Suppliers are encouraged to “Not use Purse-seine nets  
20 deployed on Fish Aggregation Devices (FADs) and employ alternatives such as pole  
21 and line trolling in an effort to reduce or eliminate by-catch”); H-E-B, H-E-B seafood  
22 policy, *available at* [https://www.heb.com/static-page/article-template/H-E-B-  
23 Seafood-Policy](https://www.heb.com/static-page/article-template/H-E-B-Seafood-Policy) (last visited Apr. 17, 2019) (for wild-caught seafood, H-E-B  
24 preferentially sources from fisheries that reduce bycatch, and H-E-B “will never  
25 knowingly buy or sell any illegal, unreported, or unregulated (IUU) fish”); Giant  
26 Eagle, Tuna Policy, *available at* [https://www.gianteagle.com/about-us/sustainable-  
27 seafood/tuna-policy](https://www.gianteagle.com/about-us/sustainable-seafood/tuna-policy) (last visited Apr. 29, 2019) (encourages suppliers to “eliminate



1 harvest with the use of non-entangling FADs”); Wegmans, Seafood Sustainability,  
2 *available at* [https://www.wegmans.com/about-us/making-a-difference/sustain](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html)  
3 [ability-at-wegmans/seafood-sustainability.html](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html) (last visited Apr. 29, 2019) (“Our  
4 wild-caught seafood suppliers must meet Wegmans’ high standards to source seafood  
5 that is caught responsibly” including having “[g]ear chosen to reduce bycatch.”).

6 23. The special “Dolphin-Safe” logo Defendant includes on each StarKist  
7 tuna product as shown below is intended by Defendant to convey the message: “No  
8 harm to dolphins” (Bass 1990):



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

### 20 Dolphin Safety Legislation

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

27 26. Then, in 1990, Congress passed the DPCIA, which created the dolphin-

1 safe mark. 16 U.S.C. §1385. The Act provided that tuna could only be labeled with  
2 the official “dolphin safe” mark codified at 50 CFR §216.95 if, *inter alia*, the tuna  
3 was not caught in the Eastern Tropical Pacific (“ETP”) using nets intentionally  
4 deployed on or to encircle dolphins, was certified as dolphin-safe by an independent  
5 observer on the tuna boat, and can be traced from the fishery, to the cannery, to the  
6 shelf. *Id.*

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

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



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

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

14 31. Plaintiffs allege that Defendant falsely represents that StarKist tuna  
15 products are dolphin-safe – meaning “no” dolphins were killed or seriously injured –  
16 when Defendant’s tuna fishing practices kill or harm substantial numbers of dolphins  
17 each year. And because Defendant does not adequately trace or otherwise identify  
18 the tuna that is not dolphin-safe and physically segregate and store it separately from  
19 any tuna that may be dolphin-safe, Defendant may not label any of its products as  
20 dolphin-safe.

### 21 **World Trade Organization Dispute Regarding “Dolphin Safe” Labels**

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

26 33. Mexico, which fishes for tuna primarily in the ETP using purse seine  
27 nets, alleged that the DPCIA discriminated against Mexican tuna because it imposed

1 stricter regulations and required more exacting documentary evidence of compliance  
2 with the Act for tuna caught in the ETP than in other fisheries.

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

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

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

20 *See* Official Summary, WTO DS381, current through Jan. 31, 2019, *available at*  
21 [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  
22 May 10, 2019).

23 36. However, the Appellate Body also found the DPCIA discriminated  
24 against Mexico. In doing so, the Appellate Body:

25 examined whether the different conditions for access to a  
26 “dolphin-safe” label are “calibrated” to the risks to dolphins  
27 arising from different fishing methods in different areas of the  
28 ocean, as the United States had claimed. The Appellate Body  
noted the Panel’s finding that the fishing technique of setting on  
dolphins is particularly harmful to dolphins and that this fishing

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

16 *Id.* (emphasis added).

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

21 38. Following this Report, on May 31, 2012 Defendant, along with Chicken  
22 of the Sea and Bumble Bee, issued the following press release through the National  
23 Fisheries Institute ("NFI"):

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

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

27 Household tuna brands Bumble Bee, Chicken of the Sea and  
28 StarKist are disappointed in the World Trade Organization's  
(WTO) appeals court ruling because it is likely to create  
consumer confusion about whether or not their products continue  
to be dolphin safe. **The three U.S. brands want to reassure  
consumers they have no reason to be concerned that their**

1           **companies are wavering in their commitment to providing**  
2           **dolphin safe tuna as a result of this ruling. These companies**  
3           **do not and will not utilize tuna caught in a manner that**  
4           **harms dolphins. Providing consumers with sustainable and**  
5           **dolphin safe tuna remains a top priority.**

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

7           39. Following the Appellate Body’s Report and recommendations to  
8           strengthen the DPCIA, the United States made amendments to it that imposed  
9           additional requirements on tuna caught outside the ETP. These amendments required  
10          that:

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

18           *See* Official Summary, WTO DS381, current through Jan. 31, 2019 (emphasis  
19           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).

20           **StarKist’s Fishing Practices and Violation of its Dolphin-Safe Representations**

21           40. Several tuna companies use traditional pole-and-line and trolling  
22           methods of catching tuna. These products include Safe Catch, Ocean Naturals (for  
23           its Albacore tuna), and Wild Planet, which are caught using pole-and-line and  
24           trolling, and American Tuna, Whole Foods 365 Everyday Value brand (for its  
25           skipjack and albacore tuna), and Trader Joe’s (for its yellowfin tuna), which are

1 caught using exclusively pole-and-line.<sup>2</sup>

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

7 42. StarKist is not among the tuna companies that use only dolphin-safe  
8 pole-and-line or trolling techniques to capture their tuna. Rather, the fishing vessels  
9 that supply StarKist's tuna use indiscriminate fishing methods that kill and harm  
10 substantial numbers of dolphins.

11 43. For example, during the Class Period StarKist sourced much of its tuna  
12 from vessels operated by Imperial Shipping Logistic Co. Ltd. Those vessels  
13 routinely used longlines – which consist of a 40-80 mile long main line to which  
14 many smaller branch lines with baited hooks are attached – to catch tuna. Longlines  
15 are highly indiscriminate fishing gear as they attract large numbers of target and non-  
16 target fish, as well as dolphins, that get snagged on the hooks by their mouth or other  
17 body parts when they go after the bait and then remain on the line for extended  
18 periods of time as the lines are drawn in to the vessel and the catch is obtained. The

19  
20 <sup>2</sup> See Safe Catch, The Safe Catch Way, available at <https://safecatch.com/> (last visited  
21 May 3, 2019); Ocean Naturals, Albacore, Responsibly Caught, available at  
22 <https://oceannaturals.com/responsibly-caught/albacore-tuna/> (last visited May 3,  
23 2019); Wild Planet, Good to the Core, Products-Tuna, available at  
24 <https://www.wildplanetfoods.com/products/tuna/> (last visited May 3, 2019);  
25 American Tuna, American Tuna, Home, available at <https://americantuna.com/> (last  
26 visited May 3, 2019); Whole Foods Market, Wild, Salt Added Tuna, 5 oz,  
27 Products>365 Everyday Value, available at [https://products.wholefoodsmarket.  
28 com/product/365-everyday-value-wild-salt-added-tuna-10e1c0](https://products.wholefoodsmarket.com/product/365-everyday-value-wild-salt-added-tuna-10e1c0) (last visited May 3,  
2019); Whole Foods Market, Albacore Wild Tuna, 5 oz, Products>365 Everyday  
Value, available at [https://products.wholefoodsmarket.com/product/365-everyday-  
value-albacore-wild-tuna-5-oz-b83f86](https://products.wholefoodsmarket.com/product/365-everyday-value-albacore-wild-tuna-5-oz-b83f86) (last visited May 3, 2019); Trader Joe's,  
About Trader Joe's Seafood, Announcements>Customer Updates (July 17, 2013),  
available at [https://www.traderjoes.com/announcement/a-note-to-our-customers-  
about-trader-joes-seafood](https://www.traderjoes.com/announcement/a-note-to-our-customers-about-trader-joes-seafood) (last visited May 3, 2019).

1 hooked fish are retrieved by mechanically pulling the main line back onto the fishing  
2 vessel which can take 10 hours. As dolphins are oxygen breathers, most do not  
3 survive the 10-hour retrieval process. And any that do are often not released.

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

12 45. StarKist also uses vessels owned by its parent company, Dongwon  
13 Industries Co. Ltd., to catch tuna in the waters around a dozen or so Western Pacific  
14 Island nations and more recently in the Atlantic. These vessels employ modern purse  
15 seine fishing techniques that also harm substantial numbers of dolphins.

16 46. Almost all of Dongwon’s distant water boats are purse seiners whose  
17 nets, which can reach more than 6,500 feet in length and 650 feet deep – the  
18 equivalent of 18 football fields by 2 football fields<sup>3</sup> – often entrap dolphins when  
19 drawn closed, particularly because many of the purse seine fishing vessels use free  
20 floating rafts of flotsam known as fish aggregating devices, or FADs, to capture tuna.

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

25  
26 <sup>3</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           48. While FADs are extremely effective at luring tuna, they also attract  
2 dolphins – particularly in the ETP where schools of tuna routinely gather beneath  
3 schools of dolphins to reduce the risk of predation. The tuna, dolphins, and other  
4 marine life are all then caught in the gigantic mile circumference purse seine nets that  
5 are deployed around the FAD to catch the tuna.

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

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

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

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26  
27 <sup>4</sup> NOAA 2016.

1 67-71, 76 available at [https://swfsc.noaa.gov/](https://swfsc.noaa.gov/publications/TM/SWFSC/NOAA-TM-NMFS-SWFSC-372.PDF)  
2 publications/TM/SWFSC/NOAA-TM-NMFS-SWFSC-372.PDF (last visited May 3,  
3 2019). See also Wade, et al, *Depletion of spotted and spinner dolphins in the eastern*  
4 *tropical Pacific: modeling hypotheses for their lack of recovery*, Mar Ecol Prog Ser  
5 343:1-14, 2007, at 11 (noting “[a] summary of recent research ... clearly illustrates  
6 that the purse seine fishery has the capacity to affect dolphins beyond the direct  
7 mortality observed as bycatches”); Kellar, et al., *Pregnancy patterns of pantropical*  
8 *spotted dolphins (Stenella attenuata) in the eastern tropical Pacific determined from*  
9 *hormonal analysis of blubber biopsies and correlations with the purse-seine tuna*  
10 *fishery*, Mar Biol (2013) 160:3113-3124, at 3120 (tuna fishery reduces likelihood of  
11 female becoming pregnant or maintaining pregnancy).

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

18 53. Because the use of FADs, purse seine nets, and longlines are  
19 unsustainable fishing practices, several companies that supply the U.S. tuna market  
20 will not source their tuna from boats that use these indiscriminate fishing methods.  
21 But StarKist is not among these companies. For example, to avoid competition from  
22 its primary market rivals over the sale of FAD-free tuna (which would be more  
23 expensive), in or about February 2012, StarKist allegedly entered into a written  
24 agreement with Bumble Bee and Chicken of the Sea, who together with Defendant  
25 control 70-80% of the U.S. canned tuna market, whereby none of them would sell a  
26 branded FAD-free tuna product in the U.S. See Tom Seaman, [Lawsuits: US brands](#)  
27 [colluded on not selling FAD-free tuna](#), [undercurrentnews>analysis>US Investigates](#)

1 Tuna Brands>Companies (July 18, 2016), *available at*  
2 [https://www.undercurrentnews.com/2016/07/18/lawsuits-us-brands-colluded-on-](https://www.undercurrentnews.com/2016/07/18/lawsuits-us-brands-colluded-on-not-selling-fad-free-tuna/)  
3 [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).

4 54. Because “StarKist’s failure to take sustainability seriously is devastating  
5 the oceans – all while it continues to sell cheap and dirty tuna nationwide” – and  
6 because “StarKist sources from destructive fisheries that kill tons of marine life as  
7 bycatch”, Greenpeace has consistently ranked StarKist at the bottom of its list of  
8 well-known tuna brands when it comes to responsible sourcing of tuna. Greenpeace,  
9 2017 Tuna Shopping Guide, *available at*  
10 <https://www.greenpeace.org/usa/oceans/tuna-guide/> (last visited May 3, 2019)  
11 (ranking StarKist 20 out of 20).

12  
13 **StarKist Does Not Comply with Mandatory Tracking**  
14 **and Verification Requirements**

15 55. Defendant’s use of an alternative dolphin-safe logo on StarKist tuna  
16 products requires it to track, audit, and spot check for accuracy that “no dolphins  
17 were killed or seriously injured in the sets or other gear deployments in which the  
18 tuna were caught” from capture, to transshipment<sup>5</sup>, to cannery, to shelf. And, in the  
19 event that even a single dolphin is “killed or seriously injured” during the catch,  
20 Defendant must physically separate and store that catch from any tuna catches in  
21 which no dolphins were harmed (if any) and maintain records tracing the catch(es)  
22 in which dolphins were harmed back to the fishing vessel and trip. 50 CFR §216.91

23 56. Unlike fisheries in the ETP, boats in the other oceanic regions that

24 <sup>5</sup> Transfer of a shipment from one carrier, or more commonly, from one vessel to  
25 another whereas in transit. Transshipments are usually made (1) where there is no  
26 direct air, land, or sea link between the consignor's and consignee's countries, (2)  
27 where the intended port of entry is blocked, or (3) to hide the identity of the port or  
28 country of origin. Business Dictionary, transshipment, *available at*  
<http://www.businessdictionary.com/definition/transshipment.html> (last visited May  
3, 2019).

1 supply StarKist tuna are not required to have independent observers onboard to track  
2 and report the number of dolphins killed or seriously injured. 16 U.S.C. §1385(d)(1).  
3 Defendant is solely responsible for collecting this information, which Defendant fails  
4 to do. Defendant does not track, trace, and report the number of dolphins killed or  
5 harmed by Defendant's tuna fishing vessels or disclose the dolphin hazardous fishing  
6 methods used to catch its tuna, even though Defendant is able to do so. As confirmed  
7 on a StarKist webpage entitled "Sustainability Knowledge Center", StarKist claims  
8 to trace each tuna Product sold in the U.S. to the vessel that caught it, the ocean where  
9 it was caught, the method used to catch the tuna, and the cannery where it was  
10 processed. StarKist, Sustainability Knowledge Center, available at  
11 <https://starkist.com/sustainability-knowledge-center> (last visited May 3, 2019).  
12 Other tuna brands that claim to have similar tracking methods actually provide that  
13 information to consumers via tracking portals on their website that allow consumers  
14 to see this critical information. StarKist's tracking portal provides information only  
15 on the ocean in which its tuna was caught.

16 57. By not adequately tracking its tuna catch from net or hook to can,  
17 StarKist conceals the actual harm to dolphins caused in its supply chain.

18 58. StarKist's concealment is wide ranging and multi-layered. For example,  
19 by using Dongwon boats to catch its tuna in the Western Pacific Ocean, StarKist is  
20 not required by international law to have an independent observer on board to certify  
21 no dolphins were harmed. It is estimated that observers are aboard only about 1 in  
22 50 WPO tuna longliners. A declaration from the ship's captain that no purse seines  
23 were intentionally set on dolphins suffices. 16 U.S.C. § 1385(d)(1)(B)(ii). These  
24 declarations are limited to certifying that "no purse seine net was intentionally  
25 deployed on or used to encircle dolphins during the particular voyage on which the  
26 tuna was harvested" and do not require certification that FADs, gillnets, longlines  
27 and other dolphin harming fishing techniques were not used. *Id.* Nor must the

1 captain quantify the number of dolphins killed or otherwise harmed. There is a strong  
2 financial incentive for a captain to falsely certify a catch is “dolphin-safe,” as any  
3 catch that is not “dolphin-safe” is essentially worthless.

4 59. Further, as Dongwon’s distant water fleet transship their catch at sea to  
5 cargo ships and not in port, their unsafe dolphin fishing practices and onboard delay  
6 in releasing trapped dolphins, mutilation of dolphins, and other dolphin harming  
7 activities escape detection by port authorities. And since December 2014, when then  
8 President Barack Obama signed a new Coast Guard and Maritime Transportation Act  
9 into law, the distant water fleet no longer have to make even an annual call into a  
10 U.S. port. Nor do they report the percentage of foreign ownership of the boats or the  
11 number of crew injuries and deaths. Thus, as cargo ships deliver food, fuel, and  
12 supplies as well as ferry their frozen fish to shore, they are able to roam the sea for  
13 months or years, their unsafe dolphin fishing activities going unchecked and  
14 undetected.

15 60. To further avoid detection that their tuna products are not dolphin-safe  
16 as represented, and to mitigate the risk that authorities will act to stop their unsafe  
17 dolphin fishing practices, Dongwon’s distant water fleet can and have changed the  
18 names of their boats, their port registry, and/or their country of origin flags (a practice  
19 known as flying a flag of convenience).

20 61. Exemplative is the vessel known as the STS-50 whose chain of  
21 ownership includes Defendant Dongwon Industries Company Ltd. The STS-50 was  
22 seized by Indonesian authorities for carrying 18 miles of illegal drifting gill nets  
23 (which StarKist has promised consumers it does not use) which are almost invisible  
24 to fish and known to be dangerous to dolphins and other marine life as acknowledged  
25 on StarKist’s website recital of its dolphin-safe policy. The STS-50 evaded earlier  
26 seizure efforts by China and other countries by flying the flags of eight separate  
27 countries on different occasions. *See* Stop Illegal Fishing, [Indonesia seeks global](#)

1 pushback on illegal fishing (January 7, 2019), *available at*  
2 [https://stopillegalfishing.com/press-links/indonesia-seeks-global-pushback-on-](https://stopillegalfishing.com/press-links/indonesia-seeks-global-pushback-on-illegal-fishing/)  
3 [illegal-fishing/](https://stopillegalfishing.com/press-links/indonesia-seeks-global-pushback-on-illegal-fishing/) (last visited May 3, 2019).

4 62. The ability to purchase the flag of any country and change flags at will  
5 effectively prevents the military and enforcement authorities from investigating and  
6 stopping harmful fishing practices as they are forbidden from boarding ships flying  
7 another country's flag. Thus, most nations have no ships that regularly patrol beyond  
8 their national waters.

9 63. Further, most countries are reluctant to give chase and seize vessels  
10 suspected of harmful fishing practices given the expense. The vessels can be a  
11 pollution risk, the onboard catch needs to be safely disposed, the crew must be  
12 repatriated, pests eradicated, and 24-hour security posted.

13 64. As to those few boats – like the STS-50 – that authorities are able to  
14 seize, they often are unable to determine the responsible owners and operators. What  
15 confronts them is a nebulous web of companies, some registered in offshore tax  
16 havens whose ownership is virtually impossible to determine. The STS-50, for  
17 example, identified one company as the registered owner, another company as the  
18 beneficial owner, and 4 other companies as previous owners including StarKist's  
19 parent company, Dongwon Industries Company Ltd.

20 65. By not complying with mandatory tracking and verification  
21 requirements, StarKist is able to reduce its tuna product costs by using less costly  
22 fishing methods that kill or harm dolphins. This enables StarKist to sell its tuna at a  
23 lower price and capture more of the declining tuna market, which has experienced a  
24 40% per capita decline over the last 30 years, as well as mitigate the risk of detection  
25 that StarKist tuna products are not dolphin-safe as represented.

26 **StarKist, Unlike Many Other Tuna Companies, Does Not Use**

### **Dolphin-Safe Tuna Fishing Methods**

1  
2 66. Unlike several other tuna companies who sell to the U.S. market,  
3 Defendant has not adopted dolphin-safe fishing practices, such as pole-and-line,  
4 trolling, and/or handline catch methods, whereby fishermen catch one fish at a time  
5 and release unwanted species soon after a fish takes the bait.

6 67. Most U.S. retailers have sustainability guidelines and expectations of  
7 their seafood suppliers that include: using recognized dolphin-safe tuna capture  
8 methods, having programs in place to trace the tuna back to the boat and place of  
9 capture, and guaranteeing the catch method used. *See, e.g.*, Whole Foods Market,  
10 Sustainable Canned Tuna, available at <https://www.wholefoodsmarket.com/sustainable-canned-tuna> (last visited May 3, 2019); Whole Foods Market, Canned  
11 Tuna Sourcing Policy (Aug. 15, 2018), available at [http://assets.wholefoodsmarket.com/www/departments/seafood/Whole\\_Foods\\_Market\\_Canned\\_Tuna\\_Sour](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf)  
12 cing\_Policy\_102017.pdf (last visited May 3, 2019); PR Newswire, Safeway  
13 Announces New Sustainable Sourcing Practice for Tuna (Feb. 10, 2012), available  
14 at [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)  
15 -sourcing-practice-for-tuna-139096714.html (last visited May 3, 2019);  
16 Albertsons/Safeway, Supplier Sustainability Guidelines and Expectations (August  
17 2015), at 3, available at [https://suppliers.safeway.com/usa/pdf/supplier\\_](https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf)  
18 sustainability\_expectations.pdf (last visited May 3, 2019) (“Safeway-Albertsons will  
19 strive to purchase environmentally preferable products”); H-E-B, H-E-B seafood  
20 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)  
21 Seafood-Policy (last visited May 3, 2019); Sprouts, Sustainable Seafood Policy,  
22 available at <https://about.sprouts.com/product-sourcing/sustainable-seafood-policy/>  
23 (last visited May 3, 2019); Giant Eagle, Tuna Policy, available at  
24 <https://www.gianteagle.com/about-us/sustainable-seafood/tuna-policy> (last visited  
25 May 3, 2019) (“Our goal is to source tuna only from healthy and well-managed  
26  
27  
28

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

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

18 **StarKist’s Dolphin-Safe Representations are False, Misleading,**  
19 **and/or Deceptive**

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

26 70. Reasonable consumers rightly believe StarKist’s plain words that  
27 “dolphin-safe” means “no” dolphins were harmed in the process of catching the tuna



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

5 71. Dolphin safety matters to consumers and it materially affects their  
6 decision whether to purchase StarKist tuna. If consumers knew StarKist's tuna  
7 products were not dolphin-safe they would not buy Defendant's tuna products,  
8 particularly because there are several competing brands of like tuna products that are  
9 dolphin safe. Thus, Plaintiffs and Class members are entitled to a full refund.

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

23 73. Alternatively, Plaintiffs and Class members are entitled to the premium  
24 attributable to the dolphin-safe representations.

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

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

### 7 **JURISDICTION AND VENUE**

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

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

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

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

#### 5 **PARTIES**

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

1           79. Plaintiff Lori Myers resides in Moreno Valley, California and is a citizen  
2 of California. Throughout the relevant period, Plaintiff Myers routinely was exposed  
3 to, saw, and relied upon Defendant's dolphin-safe representations by viewing the  
4 dolphin-safe mark on the StarKist canned and pouched tuna in water through  
5 Instacart, Amazon, and at Ralphs in Canyon Crest Town Center in Riverside,  
6 California. Plaintiff Myers purchased the tuna products many times throughout the  
7 relevant period. At all relevant times, Plaintiff Myers believed the tuna products  
8 were dolphin-safe and was unaware that the tuna was not dolphin-safe as represented  
9 and was caught using fishing methods that are harmful to dolphins. Had Plaintiff  
10 Myers known the tuna was not dolphin-safe and/or had Defendant not represented  
11 that the tuna was dolphin-safe, Plaintiff Myers would not have purchased the StarKist  
12 tuna products. As a result, Plaintiff Myers suffered injury in fact and lost money at  
13 the time of purchase. Plaintiff Myers continues to desire to purchase StarKist tuna  
14 products that contain dolphin-safe tuna caught using fishing methods that do not  
15 harm dolphins, and she would purchase such a product manufactured by Defendant  
16 if it were possible to determine prior to purchase whether no dolphins were harmed  
17 in capturing the tuna in the product. Indeed, Plaintiff Myers regularly purchases  
18 online and visits stores such as Ralphs and Stater Brothers, where Defendant's tuna  
19 products are sold, but will be unable to rely upon the dolphin-safe representations  
20 and will not be able to determine if the tuna in the products is dolphin-safe and was  
21 caught using fishing methods that do not harm dolphins when deciding whether to  
22 purchase the tuna products in the future.

23           80. Plaintiff Angela Cosgrove resides in Pompano Beach, Florida and is a  
24 citizen of Florida. Throughout the relevant period, Plaintiff Cosgrove routinely was  
25 exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
26 viewing the dolphin-safe mark on the StarKist canned tuna in water and canned  
27 yellowfin tuna at various stores in her area, including Publix and Walmart. Plaintiff

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

18 81. Plaintiff Autumn Hessong resides in Jacksonville, Florida and is a  
19 citizen of Florida. Throughout the relevant period, Plaintiff Hessong routinely was  
20 exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
21 viewing the dolphin-safe mark on the StarKist canned and pouched tuna at various  
22 stores in Jacksonville, Florida, including Winn-Dixie. Plaintiff Hessong purchased  
23 the tuna products many times throughout the relevant period. At all relevant times,  
24 Plaintiff Hessong believed the tuna products were dolphin-safe and was unaware that  
25 the tuna was not dolphin-safe as represented and was caught using fishing methods  
26 that are harmful to dolphins. Had Plaintiff Hessong known the tuna was not dolphin-  
27 safe and/or had Defendant not represented that the tuna was dolphin-safe, Plaintiff

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

12 82. Plaintiff Robert McQuade resides in Bronxville, New York and is a  
13 citizen of New York. Throughout the relevant period, Plaintiff Robert McQuade  
14 routinely was exposed to, saw, and relied upon Defendant's dolphin-safe  
15 representations by viewing the dolphin-safe mark on the StarKist tuna products  
16 including canned tuna in water and tuna in pouches, at various stores in Bronxville,  
17 Yonkers, Eastchester and Tuckahoe, New York, including ACME, Shop-Rite, Stop  
18 & Shop, and Costco. Plaintiff Robert McQuade purchased the tuna products many  
19 times throughout the relevant period. At all relevant times, Plaintiff Robert McQuade  
20 believed the tuna products were dolphin-safe and was unaware that the tuna was not  
21 dolphin-safe as represented and was caught using fishing methods that are harmful  
22 to dolphins. Had Plaintiff Robert McQuade known the tuna was not dolphin-safe  
23 and/or had Defendant not represented that the tuna was dolphin-safe, Plaintiff Robert  
24 McQuade would not have purchased the StarKist tuna products. As a result, Plaintiff  
25 Robert McQuade suffered injury in fact and lost money at the time of purchase.  
26 Plaintiff Robert McQuade continues to desire to purchase StarKist tuna products that  
27 contain dolphin-safe tuna caught using fishing methods that do not harm dolphins,

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

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

1 visits stores such as ACME, Shop-Rite, Stop & Shop, and Costco, where Defendant's  
2 tuna products are sold, but will be unable to rely upon the dolphin-safe  
3 representations and will not be able to determine if the tuna in the products is dolphin-  
4 safe and was caught using fishing methods that do not harm dolphins when deciding  
5 whether to purchase the tuna products in the future.

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



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

23           86. Plaintiff Jocelyn Jamelo resides in Bronx, New York and is a citizen of  
24 New York. Throughout the relevant period, Plaintiff Jocelyn Jamelo routinely was  
25 exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
26 viewing the dolphin-safe mark on the StarKist canned tuna products, including  
27 canned tuna in water, at stores like Costco in New Rochelle, New York. Plaintiff  
28

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

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

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

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

1 injury in fact and lost money at the time of purchase. Plaintiff Lori Luciano continues  
2 to desire to purchase StarKist tuna products that contain dolphin-safe tuna caught  
3 using fishing methods that do not harm dolphins, and she would purchase such a  
4 product manufactured by Defendant if it were possible to determine prior to purchase  
5 whether no dolphins were harmed in capturing the tuna in the product. Indeed,  
6 Plaintiff Lori Luciano regularly visits stores such as Stop & Shop, Shop Rite, ACME,  
7 Foodtown and Costco, where Defendant's tuna products are sold, but will be unable  
8 to rely upon the dolphin-safe representations and will not be able to determine if the  
9 tuna in the products is dolphin-safe and was caught using fishing methods that do not  
10 harm dolphins when 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 StarKist tuna products, including canned tuna  
15 in water, at stores like Stop & Shop, Shop Rite and Key Food in Staten Island, New  
16 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 StarKist tuna products. As a result, Plaintiff Nugent suffered injury in fact and lost  
23 money at the time of purchase. Plaintiff Nugent continues to desire to purchase  
24 StarKist tuna products that contain dolphin-safe tuna caught using fishing methods  
25 that do not harm dolphins, and he would purchase such a product manufactured by  
26 Defendant if it were possible to determine prior to purchase whether no dolphins  
27 were harmed in capturing the tuna in the product. Indeed, Plaintiff Nugent regularly  
28

1 visits stores such as Stop & Shop, Shop Rite and Key Food where Defendant's tuna  
2 products are sold, but will be unable to rely upon the dolphin-safe representations  
3 and will not be able to determine if the tuna in the products is dolphin-safe and was  
4 caught using fishing methods that do not harm dolphins when deciding whether to  
5 purchase the tuna products in the future.

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

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

23           92. Plaintiff Megan Kiihne resides in Winona, Minnesota and is a citizen of  
24 Minnesota. Throughout the relevant period, Plaintiff Kiihne routinely was exposed  
25 to, saw, and relied upon Defendant's dolphin-safe representations by viewing the  
26 dolphin-safe mark on the StarKist canned tuna in water and tuna in pouches at various  
27 stores in Winona, Minnesota, including Walmart and Midtown Foods. Plaintiff

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

17 93. Plaintiff Kathleen Miller resides in Scottsdale, Arizona and is a citizen  
18 of Arizona. Throughout the relevant period, Plaintiff Miller routinely was exposed  
19 to, saw, and relied upon Defendant's dolphin-safe representations by viewing the  
20 dolphin-safe mark on the StarKist canned tuna in water at Albertson's and Fry's in  
21 Phoenix and Scottsdale, Arizona. Plaintiff Miller purchased the canned tuna products  
22 many times throughout the relevant period. At all relevant times, Plaintiff Miller  
23 believed the tuna products were dolphin-safe and was unaware that the tuna was not  
24 dolphin-safe as represented and was caught using fishing methods that are harmful  
25 to dolphins. Had Plaintiff Miller known the tuna was not dolphin-safe and/or had  
26 Defendant not represented that the tuna was dolphin-safe, Plaintiff Miller would not  
27 have purchased the StarKist tuna products. As a result, Plaintiff Miller suffered

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

11 94. Defendant StarKist Co. is corporation organized, existing, and doing  
12 business under the laws of the State of Pennsylvania, with its headquarters and  
13 principal place of business located at 225 North Shore Drive, Suite 400, Pittsburgh,  
14 PA 15212, and is a citizen of Pennsylvania. StarKist processes much of the tuna it  
15 sold during the Class Period in Pago Pago, American Samoa, for shipment to the  
16 United States. During the time period relevant to Plaintiffs' claims, StarKist  
17 produced and sold canned tuna and tuna pouches throughout the United States and  
18 its territories, sold canned tuna and tuna pouches to Plaintiffs and others in the United  
19 States, and engaged in the false, misleading, and deceptive advertising alleged in this  
20 Complaint.

### 21 CLASS DEFINITION AND ALLEGATIONS

22 95. Plaintiffs bring this action on behalf of themselves and all other  
23 similarly situated consumers pursuant to Rules 23(a), (b)(2), (b)(3), and (c)(4) of the  
24 Federal Rules of Civil Procedure and seek certification of the following Classes:<sup>6</sup>

#### 25 Nationwide Class

26  
27 <sup>6</sup> For ease of reference, the Nationwide Class and state-only classes alleged herein  
may sometimes be referred to as the "Class" or the "Classes."



1 All consumers who, within the applicable statute of  
2 limitations period until the date notice is disseminated,  
3 purchased the tuna products in the United States.

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

7 96. In addition, Plaintiffs Gardner and Myers seek certification of the  
8 following California-Only Class:

9 **California-Only Class**

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

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

16 97. In addition, Plaintiffs Cosgrove and Hessong seek certification of the  
17 following Florida-Only Class:

18 **Florida-Only Class**

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

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

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

28 **New York-Only Class**

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

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

1           99. In addition, Plaintiffs Zelig and Petrovcik seek certification of the  
2 following New Jersey-Only Class:

3                   **New Jersey-Only Class**

4                   All New Jersey 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           100. In addition, Plaintiff Kiihne seeks certification of the following  
11 Minnesota-Only Class:

12                   **Minnesota-Only Class**

13                   All Minnesota consumers who within the applicable statute  
14 of 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           101. In addition, Plaintiff Miller seeks certification of the following Arizona-  
20 Only Class:

21                   **Arizona-Only Class**

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

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

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

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

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

7           (b) whether Defendant failed to comply with traceability and verification  
8 requirements;

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

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

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

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

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

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

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

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

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

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

7 (m) whether Plaintiffs and Class members are entitled to appropriate  
8 equitable remedies, including damages, restitution, corrective advertising, and  
9 injunctive relief.

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

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

19 106. **Superiority.** A class action is superior to all other available means for  
20 the fair and efficient adjudication of this controversy. The damages or other financial  
21 detriment suffered by individual Class members is relatively small compared to the  
22 burden and expense that would be entailed by individual litigation of their claims  
23 against Defendant. It would thus be virtually impossible for members of the Classes,  
24 on an individual basis, to obtain effective redress for the wrongs done to them.  
25 Furthermore, even if Class members could afford such individualized litigation, the  
26 court system could not. Individualized litigation would create the danger of  
27 inconsistent or contradictory judgments arising from the same set of facts.

1 Individualized litigation would also increase the delay and expense to all parties and  
2 the court system from the issues raised by this action. By contrast, the class action  
3 device provides the benefits of adjudication of these issues in a single proceeding,  
4 economies of scale, and comprehensive supervision by a single court, and presents  
5 no unusual management difficulties under the circumstances here.

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

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

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

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

1 misrepresentations regarding its tuna products would be material to a reasonable  
2 consumer.

3 **COUNT I**  
4 **Violation of Racketeer Influenced and Corrupt Organizations Act (“RICO”) –**  
5 **18 U.S.C. §§1962(c)-(d)**  
6 **(On Behalf of the Nationwide Class)**

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

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

11 113. Defendant conducts its business—legitimate and illegitimate—in  
12 concert with numerous other persons and entities, including, but not limited to,  
13 Defendant’s parent company, Dongwon Industries Co. Ltd. (“Dongwon”), a South  
14 Korean fishing conglomerate that owns the world’s largest fishing fleet; Imperial  
15 Shipping Logistic Co. Ltd. (“Imperial”), a fishing vessel operation company that  
16 sources much of Defendant’s tuna products; Ocean Treasure Co. Ltd. (“Ocean  
17 Treasure”), another fishing vessel operator for Defendant; Genesis Ocean S.A.,  
18 another fishing vessel operator for Defendant; StarKist Samoa Co. (“StarKist  
19 Samoa”), one of Defendant’s top importers; Ping Tai Rong Ocean Fishery Company  
20 (“Ping Tai”), another fishing vessel operator for Defendant with a partnership with  
21 StarKist Samoa; Société de Conserverie en Afrique SA. (“SCASA”), a Dongwon-  
22 owned (since 2011) tuna cannery in Senegal and one of the largest tuna canneries in  
23 Africa that exports to the U.S. market through StarKist; Tri Marine International, Inc.  
24 (“Tri Marine”), a U.S.-based tuna fishing, processing, and trading group that, *inter*  
25 *alia*, opened Samoa Tuna Processors Inc. (“STP”) in Paga Pago, American Samoa  
26 which signed a 10-year lease deal with Defendant in May 2018 to use STP’s “cold  
27 storage freezer” to store Defendant’s large volume of tuna products; various other

1 fishing, import/export, packaging, labeling, and distributing companies (collectively,  
2 the “RICO Co-Conspirators”).

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

6 115. Section 1962(c) of RICO makes it “unlawful for any person employed  
7 by or associated with any enterprise engaged in, or the activities of which affect,  
8 interstate or foreign commerce, to conduct or participate, directly or indirectly, in the  
9 conduct of such enterprise’s affairs through a pattern of racketeering activity.” 18  
10 U.S.C. §1962(c).

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

13 117. As part of a strategy to save millions if not billions of dollars and  
14 convince consumers to purchase its tuna products, Defendant and its RICO Co-  
15 Conspirators concocted a scheme at or before 2008, and continuing throughout the  
16 Class Period, to falsely represent, in various pieces of mail, through wires, and on the  
17 Internet, that Defendant’s tuna products were dolphin-safe under U.S. law and  
18 regulations, including the MMPA as amended, 16 U.S.C. §1361, *et seq.*, the DPCIA,  
19 16 U.S.C. §1385, *et seq.*, and 50 CFR §216.95. In making this express representation,  
20 Defendant falsely assured the public and regulators that “no” dolphins were killed or  
21 seriously injured, that Defendant adequately traces or otherwise identifies its tuna  
22 that is not dolphin-safe, and that Defendant physically segregates and stores tuna that  
23 is not dolphin-safe separately from any tuna that may be dolphin-safe.

24 118. Defendant and its RICO Co-Conspirators’ scheme is similar to that of  
25 Volkswagen, General Motors, Fiat Chrysler, and other automobile manufacturers and  
26 parts suppliers who brazenly violated federal and state emissions laws and  
27 regulations, concomitantly deceiving consumers, car dealers, and regulatory bodies

1 alike, by marketing and labeling their vehicles as “clean” and “eco” friendly when,  
2 in fact, the vehicles contained undisclosed emission control devices that served to  
3 “defeat” emissions testing under the Clean Air Act, and actually significantly  
4 increased NOx emissions when activated. RICO allegations against these companies  
5 have repeatedly been upheld by the federal judiciary. *See, e.g., Bledsoe v. FCA US*  
6 *LLC*, No. 16-14024, 2019 WL 1379588, at \*16 (E.D. Mich. Mar. 27, 2019); *In re*  
7 *Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices, & Prod. Liab. Litig.*, 295 F.  
8 Supp. 3d 927, 984 (N.D. Cal. 2018); *In re Duramax Diesel Litig.*, 298 F. Supp. 3d  
9 1037, 1087 (E.D. Mich. 2018); *In re Volkswagen “Clean Diesel” Mktg., Sales*  
10 *Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 4890594, at  
11 \*18 (N.D. Cal. Oct. 30, 2017).

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

16 120. Along with other canned tuna companies, Defendant began promising  
17 consumers that the tuna it sold would *only* be procured through dolphin-safe fishing  
18 practices. Defendant thereafter implemented a widespread and long-term marketing  
19 campaign that continues to this day – expressly representing to consumers its  
20 commitment to sustainably sourcing tuna and that no dolphins are killed or harmed  
21 in capturing its tuna and that it is in compliance with federal laws and regulations  
22 regarding the use of a special “Dolphin Safe” logo on its tuna products.

23 121. However, Defendant was either unable or unwilling to conduct its tuna  
24 fishing activities within the constraints of the law. And so, it devised one outside of  
25 it. Instead of spending money on more expensive tuna fishing, tracing and  
26 segregation operations as the laws required to label tuna as dolphin-safe, or coming  
27



1 clean, Defendant and its RICO Co-Conspirators agreed to continue using more cost-  
2 saving, unsustainable tuna fishing methods that kill and otherwise harm dolphins.

3 122. These methods were concealed from, among other persons and entities:  
4 consumers throughout the United States, including California (on Defendant's tuna  
5 product packaging, labeling, and the Internet); port authorities (such as Pago Pago  
6 Harbor in the village of Atu'u on the island of Tutuila, American Samoa; Guayaquil,  
7 Ecuador; Papua New Guinea; and Senegal, where much of Defendant's tuna is off-  
8 loaded and processed); the U.S. National Oceanic and Atmospheric Administration  
9 ("NOAA") in, among other things, NOAA's Form 370<sup>7</sup> and Captain Statements,<sup>8</sup>  
10 both part of NOAA's "Fisheries' Tuna Tracking and Verification Program;" and  
11 other tracing and tracking reports.

12 123. To accomplish their scheme or common course of conduct, Defendant  
13 and its RICO Co-Conspirators, along with others, had to work together to conceal the  
14 truth. Each of them was employed by, hired by, or associated with, and conducted  
15 or participated in the affairs of, a RICO enterprise (defined below and referred to as  
16 the "Dolphin-Unsafe RICO Enterprise" or the "Enterprise"). The purpose of the  
17 Dolphin-Unsafe RICO Enterprise was to deceive regulators, retailers, and consumers  
18 into believing that Defendant's tuna products were sustainably sourced and "Dolphin  
19 Safe" as that term is defined by U.S. laws and regulations. The motivation was  
20 simple: to increase Defendant's revenues and profits and minimize its costs from  
21 what would otherwise be more expensive tuna fishing, tracing, and segregation  
22 operations. As a direct and proximate result of their fraudulent scheme and common  
23 course of conduct, Defendant and its RICO Co-Conspirators were able to extract  
24

25  
26 <sup>7</sup> <https://www.fisheries.noaa.gov/national/marine-mammal-protection/noaa-form-370-fisheries-certificate-origin> (last visited May 2, 2019).

27 <sup>8</sup> <https://www.fisheries.noaa.gov/national/marine-mammal-protection/captains-statement-templates> (last visited May 2, 2019).

1 billions of dollars from consumers. As explained below, their years-long misconduct  
2 violated Sections 1962(c) and (d).

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

4 124. Defendant, which controls over one-third of the shelf-stable tuna market  
5 in the U.S., is owned and controlled by Dongwon, a South Korean fishing vessel  
6 conglomerate. Defendant uses Dongwon's fishing vessels, Imperial's fishing vessels,  
7 Ocean Treasure's fishing vessels, Genesis Ocean's fishing vessels, Ping Tai's fishing  
8 vessels, and other companies' fishing vessels currently unknown to Plaintiffs, as well  
9 as those vessels' companies and fishermen, to catch and procure tuna for use in  
10 Defendant's tuna products. Defendant uses, among others, StarKist Samoa to import  
11 its tuna into the United States, including into the Port of Oakland in Oakland,  
12 California. Defendant uses, among others, SCASA, Tri Marine, and STP to store and  
13 package its tuna products in, among other places, Pago Pago, American Samoa.  
14 Defendant uses a network of distributors to distribute its tuna products throughout  
15 the United States for sale to consumers. Throughout this process, Defendant and its  
16 RICO Co-Conspirators sent through the mails and wires, among other things,  
17 consumer tuna products with product labels, Internet website postings, invoices, wire  
18 payment records, shipping manifests, bills of lading, NOAA Form 370s, Captain  
19 Statements, and tracing and tracking reports identifying that the tuna being sold was  
20 dolphin safe, when it was not.

21 125. At all relevant times, Defendant and its RICO Co-Conspirators, along  
22 with other individuals and entities, including unknown third parties involved in the  
23 procuring, processing, exporting, importing, labeling, packaging, distributing, and  
24 sale of Defendant's tuna products, operated an association-in-fact enterprise, which  
25 was formed for the purpose of fraudulently marketing, advertising, and labeling  
26 Defendant's tuna products as "Dolphin Safe" and sustainably sourced and deceiving  
27 consumers and retailers, as well as federal regulators at the Department of Commerce

1 and NOAA, in order to sell Defendant's tuna products throughout the United States  
2 (and California), and through which enterprise they conducted a pattern of  
3 racketeering activity under 18 U.S.C. §1961(4).

4 126. At all relevant times, the Dolphin-Unsafe RICO Enterprise constituted  
5 a single "enterprise" or multiple enterprises within the meaning of 18 U.S.C.  
6 §1961(4), as legal entities, as well as individuals and legal entities associated-in-fact  
7 for the common purpose of engaging in Defendant's and the RICO Co-Conspirators'  
8 unlawful profit-making scheme.

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

11 **1. StarKist**

12 128. StarKist, the Defendant in this action, is one of the largest sellers of  
13 shelf-stable tuna products in the United States, holding over one-third of the market.  
14 StarKist is wholly owned by Dongwon of South Korea, which purchased StarKist  
15 from Del Monte Foods for over \$360 million in June 2008. StarKist is run by Andrew  
16 Choe who previously held leadership positions at one of Dongwon's subsidiaries.  
17 StarKist is a distinct legal entity, controlled and owned by Dongwon. As more fully  
18 detailed herein, StarKist conspired with Dongwon, Imperial, Ocean Treasure,  
19 Genesis Ocean, Ping Tai, and other entities and individuals to procure, process,  
20 package, label, and sell tuna products as dolphin-safe and sustainably sourced when  
21 they are not, to package and label Defendant's tuna products with false and material  
22 misrepresentations, and to gather information for submission to port authorities and  
23 regulators in the Form 370s and Captain Statements. StarKist knew or recklessly  
24 disregarded that its tuna products sold to Plaintiffs and the Class did not comply with  
25 U.S. laws and regulations for labeling the products dolphin-safe and yet concealed  
26 this information from consumers, retailers, and regulators.

1           129. Working with other members of the Dolphin-Unsafe RICO Enterprise,  
2 StarKist conspired to procure, process, package, label, and sell tuna products that are  
3 not dolphin-safe to illegally circumvent stringent U.S. laws and regulations.  
4 Employing these illegal practices, StarKist fraudulently told consumers that its tuna  
5 products were “Dolphin Safe” and “sourced responsibly,” and submitted false  
6 dolphin safe statements to port authorities, the U.S. Department of Commerce  
7 (including NOAA), and in written and online marketing and advertising for  
8 StarKist’s tuna products.

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

10           130. As explained above, RICO Co-Conspirators Dongwon, Imperial, Ocean  
11 Treasure, Genesis Ocean, Ping Tai, and their shipping companies and fishermen,  
12 among other third-party fishing vessel companies and employees unknown to  
13 Plaintiffs, supplied tuna to Defendant for processing and sale that is not dolphin safe  
14 or sustainably sourced, knowing that Defendant would package, label, market, and  
15 sell its tuna products to Plaintiffs and the Class as dolphin-safe and compliant with  
16 federal laws and regulations. On information and belief, these RICO Co-  
17 Conspirators further supplied false Captain Statements to Defendant knowing that  
18 such Captain Statements were false and, if the truth were known, Defendant would  
19 not be able to package, label, market, and sell its tuna products to the Class as  
20 dolphin-safe, sustainably sourced, and compliant with federal laws and regulations.

21           131. RICO Co-Conspirators Dongwon, Imperial, Ocean Treasure, Genesis  
22 Ocean, Ping Tai, and their shipping companies and fishermen, among other third-  
23 party fishing vessel companies and employees unknown to Plaintiffs were key to the  
24 conspiracy with Defendant enabling Defendant to sell its tuna to consumers as  
25 dolphin-safe and sustainably sourced.

26           132. RICO Co-Conspirators Dongwon, Imperial, Ocean Treasure, Genesis  
27 Ocean, Ping Tai, and their shipping companies and fishermen, among other third-

1 party fishing vessel companies and employees unknown to Plaintiffs worked with  
2 Defendant to design and implement the scheme by using cheaper and more efficient  
3 tuna fishing techniques they knew would result in the killing and harming of dolphins  
4 and render false Defendant's dolphin-safe and sustainably sourced representations to  
5 consumers and retailers in the United States, and by submitting false Captain  
6 Statements and other documents to Defendant they knew would be relied upon to  
7 permit Defendant to import, process and sell its tuna as dolphin-safe and sustainably  
8 sourced.

9 133. Put simply, RICO Co-Conspirators Dongwon, Imperial, Ocean  
10 Treasure, Genesis Ocean, Ping Tai, and their shipping companies and fishermen,  
11 among other third-party fishing vessel companies and employees unknown to  
12 Plaintiffs were well aware that the tuna they procured on their fishing vessels for  
13 Defendant would be used to defraud consumers, retailers, and federal regulators.  
14 Indeed, these companies and individuals were critical to the concealment of the truth  
15 from consumers, retailers, and federal regulators regarding Defendant's tuna  
16 products.

### 17 3. The Co-Conspirator Importers and Individuals

18 134. RICO Co-Conspirator StarKist Samoa and its employees, among other  
19 third-party importers and employees unknown to Plaintiffs, imported Defendant's  
20 tuna products for sale, knowing that Defendant would market and sell its tuna  
21 products to Plaintiffs and the Class as dolphin-safe, sustainably sourced, and  
22 compliant with federal laws and regulations. On information and belief, these RICO  
23 Co-Conspirators further supplied false bills of lading in connection with the  
24 importation of the tuna products into the United States knowing that such bills of  
25 lading were false and, if the truth were known, Defendant would not be able to  
26 package, label, market, and sell its tuna products to the Class as dolphin-safe,  
27 sustainably sourced, and compliant with federal laws and regulations.

1 135. RICO Co-Conspirator StarKist Samoa and its employees, among other  
2 third-party fishing importers and employees unknown to Plaintiffs, were key to the  
3 conspiracy with Defendant enabling Defendant to sell its tuna to consumers as  
4 dolphin-safe and sustainably sourced.

5 136. RICO Co-Conspirator StarKist Samoa and its employees, among other  
6 third-party importers and employees unknown to Plaintiffs, worked with Defendant  
7 to design and implement the scheme by importing tuna that was neither dolphin-safe  
8 nor sustainably caught which they knew would render false Defendant's dolphin-safe  
9 and sustainability representations to consumers and retailers in the United States, and  
10 by submitting false bills of lading and other documents to port authorities and  
11 regulators they knew would be relied upon to permit Defendant to import, process  
12 and sell its tuna as dolphin-safe and sustainably sourced.

13 137. Put simply, RICO Co-Conspirator StarKist Samoa and its employees,  
14 among other third-party importers and employees unknown to Plaintiffs, were well  
15 aware that the tuna they imported for Defendant into the United States would be used  
16 to defraud consumers, retailers, and federal regulators. Indeed, these companies and  
17 individuals were critical to the concealment of the truth from consumers, retailers,  
18 and federal regulators regarding Defendant's tuna products.

19  
20 **4. The Co-Conspirator Storage, Canning, and Processing  
Entities and Individuals**

21 138. RICO Co-Conspirators SCASA, Tri Marine, and STP and their  
22 employees, among other third-party storage, canning, and processing companies and  
23 employees unknown to Plaintiffs, stored, canned, and processed Defendant's tuna  
24 products for sale, knowing that Defendant would market and sell its tuna products to  
25 Plaintiffs and the Class as dolphin-safe, sustainably sourced, and compliant with  
26 federal laws and regulations.

1           139. RICO Co-Conspirators SCASA, Tri Marine, and STP and their  
2 employees, among other third-party storage, canning, and processing companies and  
3 employees unknown to Plaintiffs, were key to the conspiracy with Defendant  
4 enabling Defendant to sell its tuna to consumers as dolphin-safe and sustainably  
5 sourced.

6           140. RICO Co-Conspirators SCASA, Tri Marine, and STP and their  
7 employees, among other third-party storage, canning, and processing companies and  
8 employees unknown to Plaintiffs, worked with Defendant to design and implement  
9 the scheme by storing, canning, and processing tuna that was neither dolphin-safe  
10 nor sustainably caught which they knew would render false Defendant's dolphin-safe  
11 and sustainability representations to consumers and retailers in the United States.

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

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

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

1 increased by the indiscriminate killing and harming of dolphins while fishing for  
2 tuna.

3 143. The Dolphin-Unsafe RICO Enterprise began as early as 2008, when  
4 Dongwon acquired StarKist. On information and belief, Defendant has entered into  
5 numerous agreements with Dongwon to procure tuna to be used in Defendant's tuna  
6 products sold to Plaintiffs and the Class, and has entered into agreements with  
7 Imperial, Ocean Treasure, Genesis Ocean, Ping Tai, and other fishing vessel  
8 companies unknown to Plaintiffs to also procure tuna to be used in Defendant's tuna  
9 products sold to Plaintiffs and the Class. Defendant has also entered into numerous  
10 agreements with StarKist Samoa to import Defendant's tuna products, and with  
11 SCASA, Tri Marine, and STP to store, process, and can Defendant's tuna products.

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

15 145. At all relevant times, the Dolphin-Unsafe RICO Enterprise: (a) had an  
16 existence separate and distinct from Defendant and each RICO Co-Conspirator; (b)  
17 was separate and distinct from the pattern of racketeering in which Defendant and  
18 each RICO Co-Conspirator engaged; and (c) was an ongoing and continuing  
19 organization consisting of legal entities, including Defendant, Dongwon, Imperial,  
20 Ocean Treasure, Genesis Ocean, Ping Tai, and their shipping companies and  
21 fishermen; StarKist Samoa and its employees; SCASA, Tri Marine, and STP and  
22 their employees; and other entities and individuals associated for the common  
23 purpose of procuring, storing, processing, importing, packaging, labeling,  
24 distributing, marketing, and selling Defendant's tuna products to consumers in the  
25 Class through fraudulent representations in, among other places, consumer-facing  
26 product packaging and labels, Internet websites, marketing and advertising to  
27 consumers, bills of lading, Form 370s, and Captain Statements, and deriving profits



1 and revenues from those activities. Each member of the Dolphin-Unsafe RICO  
2 Enterprise shared in the bounty generated by the enterprise, *i.e.*, by sharing the benefit  
3 derived from increased sales revenue generated by the scheme to defraud Class  
4 members nationwide.

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

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

17 148. Within the Dolphin-Unsafe RICO Enterprise, on information and belief,  
18 there was a common communication network by which co-conspirators shared  
19 information on a regular basis. The Enterprise used this common communication  
20 network for the purpose of procuring, importing, storing, processing, packaging,  
21 labeling, distributing, marketing, and selling Defendant's tuna products to the general  
22 public nationwide.

23 149. Each participant in the Dolphin-Unsafe RICO Enterprise had a  
24 systematic linkage to each other through corporate ties, contractual relationships,  
25 financial ties, and continuing coordination of activities. Through the Dolphin-Unsafe  
26 RICO Enterprise, Defendant and its RICO Co-Conspirators functioned as a  
27

1 continuing unit with the purpose of furthering the illegal scheme and their common  
2 purposes of increasing their revenues and market share, and minimizing losses.

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

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

12 (a) procuring tuna in a manner that does not permit a company to market  
13 and sell shelf-stable tuna products as “Dolphin Safe” and sustainably sourced;

14 (b) concealing that tuna products marketed and sold as “Dolphin Safe” and  
15 sustainably sourced are, in fact, not;

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

18 (d) storing, importing, processing, packaging, labeling, distributing,  
19 marketing, and selling Defendant’s tuna products that may not contain the  
20 “Dolphin Safe” representation;

21 (e) misrepresenting (or causing such misrepresentations to be made)  
22 Defendant’s tuna products as “Dolphin Safe” and sustainably sourced;

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

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

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

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

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

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

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

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

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

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

16 152. RICO Co-Conspirators Dongwon, Imperial, Ocean Treasure, Genesis  
17 Ocean, Ping Tai, and their shipping companies and fishermen, StarKist Samoa and  
18 its employees, and SCASA, Tri Marine, and STP and their employees, among other  
19 third parties and employees unknown to Plaintiffs, also participated in, operated  
20 and/or directed the Dolphin-Unsafe RICO Enterprise. These RICO Co-Conspirators  
21 knew that federal laws and regulations forbade Defendant from importing, storing,  
22 packaging, labeling, marketing, and selling Defendant's tuna products containing  
23 tuna they procured and processed for Defendant as "Dolphin Safe," and yet formed  
24 agreements with Defendant to procure and process tuna for Defendant's tuna  
25 products that was neither dolphin-safe nor sustainably sourced.

26 153. RICO Co-Conspirators Dongwon, Imperial, Ocean Treasure, Genesis  
27 Ocean, Ping Tai, and their shipping companies and fishermen, StarKist Samoa and

1 its employees, and SCASA, Tri Marine, and STP and their employees, among other  
2 third parties and employees unknown to Plaintiffs, directly participated in the  
3 fraudulent scheme by procuring, storing, importing, and processing the tuna used by  
4 Defendant in its tuna products. These RICO Co-Conspirators exercised tight control  
5 over the manner and method of fishing for tuna and other aspects of the procurement,  
6 storage, importation, and distribution process and closely collaborated and  
7 cooperated with Defendant in the process.

8 154. RICO Co-Conspirators Dongwon, Imperial, Ocean Treasure, Genesis  
9 Ocean, Ping Tai, and their shipping companies and fishermen, also participated in  
10 the affairs of the Enterprise by working with Defendant to conceal from U.S.  
11 regulators the truth behind the tuna caught for use in Defendant's tuna products, and  
12 collected substantial sums of money in revenues and profits because they did not use  
13 less efficient and more costly fishing techniques necessary to protect the dolphin  
14 population. The techniques they did employ yielded higher catches at lower costs,  
15 thus increasing profits and margins on both accounts. Through their conspiracy to  
16 sell non-dolphin safe tuna as dolphin-safe, all of the co-conspirators profited  
17 handsomely from their scheme.

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

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

1           157. The RICO Co-Conspirators directed and controlled several aspects of  
2 the ongoing organization necessary to implement the scheme through  
3 communications with each other, with Defendant, with port authorities, and with  
4 regulators of which Plaintiffs cannot fully know at present, because such information  
5 lies in the Defendant's and others' hands. Similarly, because many of the RICO Co-  
6 Conspirators are foreign entities, and their shipping, storing, processing, and canning  
7 companies and employees are foreign citizens, Plaintiffs cannot fully know the full  
8 extent of each individual corporate entity's and individual's involvement in the  
9 wrongdoing prior to having access to discovery.

10           **C. Mail and Wire Fraud**

11           158. To carry out, or attempt to carry out the scheme to defraud, Defendant  
12 and its RICO Co-Conspirators, each of whom is a person associated-in-fact with the  
13 Dolphin-Unsafe RICO Enterprise, did knowingly conduct or participate, directly or  
14 indirectly, in the conduct of the affairs of the Enterprise through a pattern of  
15 racketeering activity within the meaning of 18 U.S.C. §§1961(1), 1961(5) and  
16 1962(c), and which employed the use of the mail and wire facilities, in violation of  
17 18 U.S.C. §1341 (mail fraud) and §1343 (wire fraud).

18           159. Specifically, as alleged herein, Defendant and its RICO Co-  
19 Conspirators have committed and/or conspired to commit at least two predicate acts  
20 of racketeering activity (*i.e.*, violations of 18 U.S.C. §§1341 and 1343), within the  
21 past ten years. The multiple acts of racketeering activity that Defendant and its RICO  
22 Co-Conspirators committed were related to each other, posed a threat of continued  
23 racketeering activity, and therefore constitute a "pattern of racketeering activity."  
24 The racketeering activity was made possible by Defendant's and its RICO Co-  
25 Conspirators' regular use of the facilities, services, distribution channels, and  
26 employees of the Dolphin-Unsafe RICO Enterprise.

1           160. Defendant and its RICO Co-Conspirators participated in the scheme to  
2 defraud by using mail, telephone, and the Internet to transmit mailings and wires in  
3 interstate or foreign commerce. Defendant and its RICO Co-Conspirators used,  
4 directed the use of, and/or caused to be used, thousands of interstate mail and wire  
5 communications in service of their scheme through virtually uniform  
6 misrepresentations.

7           161. In devising and executing the illegal scheme, Defendant and its RICO  
8 Co-Conspirators devised and knowingly carried out a material scheme and/or artifice  
9 to defraud Plaintiffs and the Class or to obtain money from Plaintiffs and the Class  
10 by means of materially false or fraudulent pretenses, representations, or promises of  
11 material facts. For the purpose of executing the illegal scheme, Defendant and its  
12 RICO Co-Conspirators committed these racketeering acts, which number in the  
13 thousands, intentionally and knowingly with the specific intent to advance the illegal  
14 scheme.

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

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

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

1 163. Defendant's and its RICO Co-Conspirators' uses of the mails and wires  
2 include, but are not limited to, the transmission, delivery, or shipment of the  
3 following by Defendant and its RICO Co-Conspirators or third parties that were  
4 foreseeably caused to be sent as a result of Defendant's and its RICO Co-  
5 Conspirators' illegal scheme:

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

7 (b) sales and marketing materials, including advertising, websites,  
8 packaging, and labeling, concealing the true nature of Defendant's tuna products;

9 (c) documents intended to facilitate the packing, labeling, and sale of  
10 Defendant's tuna products, including bills of lading, invoices, shipping records,  
11 reports and correspondence;

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

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

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

17 (g) false or misleading Captain Statements;

18 (h) false or misleading port authority reports;

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

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

23 (k) payments to Dongwon;

24 (l) payments to Imperial;

25 (m) payments to Ocean Treasure;

26 (n) payments to Genesis Ocean;

27 (o) payments to Ping Tai;

- 1 (p) payments to StarKist Samoa;  
 2 (q) payments to SCASA;  
 3 (r) payments to Tri Marine;  
 4 (s) payments to STP;  
 5 (t) compensation to ship captains on tuna fishing vessels;  
 6 (u) deposits of proceeds; and/or  
 7 (v) other documents and things, including electronic communications.

8 164. Defendant and its RICO Co-Conspirators (or their agents), for the  
 9 purpose of executing the illegal scheme, sent and/or received (or caused to be sent  
 10 and/or received) by mail or by private or interstate carrier, shipments of Defendant's  
 11 tuna products and related documents by mail or a private carrier affecting interstate  
 12 commerce, including the items described above and alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
Genesis Ocean S.A./StarKist Samoa	Port of Oakland, Oakland, CA	December 24, 2017	Bill of Lading # SUDU27999A8I4GW6
Genesis Ocean S.A./StarKist Samoa	Port of Oakland, Oakland, CA	January 7, 2018	Bill of Lading # SUDU27999A8OX8JS

19  
 20  
 21 165. Defendant and its RICO Co-Conspirators (or their agents), for the  
 22 purpose of executing the illegal scheme, transmitted (or caused to be transmitted) in  
 23 interstate commerce by means of wire communications, certain writings, signs,  
 24 signals and sounds, including those items described above and alleged below:  
 25  
 26  
 27  
 28



<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
StarKist	General Public	2019	StarKist Corporate Responsibility Webpage discussing how Defendant's tuna is "sourced responsibly"
StarKist	General Public	April 23, 2012 at 7:06 PM	Facebook post discussing Defendant's "Dolphin Safe" tuna
StarKist	General Public	2019	StarKist FAQs discussing in detail Defendant's "Dolphin-Safe Policy"
StarKist	General Public	2019	StarKist Natural Resources & Policies Webpage explaining Defendant's "Dolphin Safe" policies
StarKist	General Public	January 10, 2018	StarKist Facebook post stating "and did we mention that [Defendant's tuna products are] soy-free, wild caught and dolphin safe?"
StarKist	General Public	January 10, 2018	StarKist Facebook video showing Defendant's "Dolphin Safe" logo
StarKist	General Public	February 3, 2010	StarKist Facebook post of company press release including language that Defendant has "a dolphin-safe policy"

1	StarKist	General Public	January 25, 2012	StarKist Tweet stating that “StarKist tuna is dolphin-safe, not to worry”
2				
3				
4	StarKist	General Public	April 12, 1990	Statements by then-Chairman of Heins (owner of StarKist) explaining that StarKist will be the first major tuna company to sell only “dolphin-safe” tuna meaning “No harm to dolphins”
5				
6				
7				
8				
9				
10				

11

12           166. Defendant, in concert with the RICO Co-Conspirators, also used the

13 internet and other electronic facilities to carry out the scheme and conceal their

14 ongoing fraudulent activities. Specifically, Defendant, in concert with the RICO Co-

15 Conspirators, made material misrepresentations about its tuna products on its

16 websites, Facebook, Instagram, Twitter, and through ads online, all of which were

17 made in interstate commerce and intended to mislead regulators and the public about

18 the truth about Defendant’s non-dolphin-safe and unsustainably sourced tuna

19 products.

20           167. Defendant and its RICO Co-Conspirators also communicated by U.S.

21 mail, by interstate facsimile, and by interstate electronic mail with various other

22 affiliates, regional offices, divisions, packaging companies, distributors, grocery

23 chains, wholesale companies, and other third-party entities in furtherance of the

24 scheme.

25           168. The mail and wire transmissions described herein were made in

26 furtherance of Defendant’s and its RICO Co-Conspirators’ scheme and common

27 course of conduct to deceive regulators, retailers, and consumers and lure consumers

1 into purchasing Defendant's tuna products, which Defendant and its RICO Co-  
2 Conspirators knew or recklessly disregarded as not justifying the "dolphin safe"  
3 label, despite their decades-long advertising and marketing campaign that  
4 Defendant's tuna products were "Dolphin Safe" and sustainably sourced.

5 169. Many of the precise dates of the fraudulent uses of the U.S. mail and  
6 interstate wire facilities have been deliberately hidden, and cannot be alleged without  
7 access to Defendant's and its RICO Co-Conspirators' books and records. However,  
8 Plaintiffs have described the types of, and in some instances, occasions on which the  
9 predicate acts of mail and/or wire fraud occurred. These include thousands of  
10 communications to perpetuate and maintain the scheme, including the things and  
11 documents described in the preceding paragraphs.

12 170. Defendant and its RICO Co-Conspirators have not undertaken the  
13 practices described herein in isolation, but as part of a common scheme and  
14 conspiracy. In violation of 18 U.S.C. §1962(d), Defendant and its RICO Co-  
15 Conspirators conspired to violate 18 U.S.C. §1962(c), as described herein. Various  
16 other persons, firms and corporations, including third-party entities and individuals  
17 not named as defendants in this Complaint, have participated as additional co-  
18 conspirators with Defendant and its RICO Co-Conspirators in these offenses and  
19 have performed acts in furtherance of the conspiracy to increase or maintain  
20 revenues, increase market share, and/or minimize losses for Defendant and its RICO  
21 Co-Conspirators and their unnamed additional co-conspirators throughout the illegal  
22 scheme and common course of conduct.

23 171. To achieve their common goals, Defendant and its RICO Co-  
24 Conspirators concealed from the general public the true nature of Defendant's tuna  
25 products and obfuscated the fact that the tuna in Defendant's tuna products was not  
26 dolphin-safe at all or sustainably sourced.

1 172. Defendant and its RICO Co-Conspirators and each member of the  
2 conspiracy, with knowledge and intent, have agreed to the overall objectives of the  
3 conspiracy, and have participated in the common course of conduct, to commit acts  
4 of fraud and indecency in procuring, processing, packaging, labeling, distributing,  
5 marketing, and/or selling Defendant's tuna products.

6 173. Indeed, for the conspiracy to succeed, Defendant and each of its RICO  
7 Co-Conspirators had to agree to each play a role in the conspiracy by implementing  
8 and using similar devices and fraudulent tactics.

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

12 175. Defendant and its RICO Co-Conspirators knew and intended that  
13 consumers would purchase Defendant's tuna products and incur costs as a result.  
14 Defendant and its RICO Co-Conspirators also knew and intended that government  
15 regulators would rely on their material misrepresentations made about the tuna in  
16 Defendant's tuna products to approve them for marketing and sale in the United  
17 States and each state. Defendant and its RICO Co-Conspirators also knew and  
18 intended that retailers would rely on their material misrepresentations made about the  
19 tuna in Defendant's products to agree to offer them for sale to the general public.

20 176. Plaintiffs' and the Class' reliance on this ongoing concealment is  
21 demonstrated by the fact that they purchased, and lost money or property by  
22 purchasing, falsely advertised tuna products that never should have been introduced  
23 into the U.S. stream of commerce in the manner in which they were. In addition,  
24 NOAA and other regulators relied on the misrepresentations and material  
25 concealment and omissions made or caused to be made by Defendant and its RICO  
26 Co-Conspirators; otherwise, Defendant would never have been able to market, label,  
27

1 and sell its tuna products as “Dolphin Safe” in the United States and sell the same to  
2 the consuming public.

3 177. As described herein, Defendant and its RICO Co-Conspirators engaged  
4 in a pattern of related and continuous predicate acts for years. The predicate acts  
5 constituted a variety of unlawful activities, each conducted with the common purpose  
6 of obtaining significant monies and revenues from Plaintiffs and Class members  
7 based on their misrepresentations, while providing to Plaintiffs and Class members  
8 Defendant’s tuna products that were worth significantly less than the purchase price  
9 paid. The predicate acts also had the same or similar results, participants, victims,  
10 and methods of commission. The predicate acts were related and not isolated events.

11 178. The predicate acts had the purpose of generating significant revenue and  
12 profits for Defendant and its RICO Co-Conspirators at the expense of Plaintiffs and  
13 Class members. The predicate acts were committed or caused to be committed by  
14 Defendant and its RICO Co-Conspirators through their participation in the Dolphin-  
15 Unsafe RICO Enterprise and in furtherance of its fraudulent scheme, and were  
16 interrelated in that they involved obtaining Plaintiffs’ and Class members’ funds and  
17 avoiding the expenses associated with using fishing methods that permit the capture  
18 of tuna sustainably sourced without harming the dolphin population.

19 179. During the procurement, processing, packaging, labeling, distribution,  
20 marketing, and sale of Defendant’s tuna products, Defendant and its RICO Co-  
21 Conspirators shared among themselves logistical, marketing, and financial  
22 information that revealed the existence of the fishing practices employed that prevent  
23 Defendant’s tuna products from being marketed and sold as “Dolphin Safe”,  
24 sustainably sourced, and in compliance with federal laws and regulations.  
25 Nevertheless, Defendant and its RICO Co-Conspirators chose and agreed to  
26 disseminate information that deliberately misrepresented Defendant’s tuna products  
27

1 as “Dolphin Safe” and sustainably sourced in their concerted efforts to market and  
2 sell them to consumers.

3 180. By reason of, and as a result of the conduct of Defendant and its RICO  
4 Co-Conspirators, and in particular, their pattern of racketeering activity, Plaintiffs  
5 and Class members have been injured in their business and/or property in multiple  
6 ways, including but not limited to:

7 (a) purchase of falsely advertised tuna products; and

8 (b) payment at the time of purchase of falsely advertised tuna products  
9 purportedly being “Dolphin Safe,” sustainably sourced, and meeting applicable  
10 federal laws and regulations, that were not capable of being sold as “Dolphin  
11 Safe” and sustainably sourced.

12 181. Defendant’s and its RICO Co-Conspirators’ violations of 18 U.S.C.  
13 §§1962(c) and (d) have directly and proximately caused economic damage to  
14 Plaintiffs’ and Class members’ business and property, and Plaintiffs and Class  
15 members are entitled to bring this action for three times their actual damages, as well  
16 as injunctive/equitable relief, costs, and reasonable attorneys’ fees pursuant to 18  
17 U.S.C. §1964(c).

18 **COUNT II –**

19 **Violation of California Business & Professions Code §§17200, *et seq.***  
20 **(On Behalf of the California-Only Class)**

21 182. Plaintiffs Gardner and Myers (the “California Plaintiffs”) repeat and re-  
22 allege the allegations contained in paragraphs 1 through 110 above, as if fully set  
23 forth herein.

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

26 184. The Unfair Competition Law, Business & Professions Code §17200, *et*  
27 *seq.* (“UCL”) prohibits any “unlawful,” “fraudulent,” or “unfair” business act or

1 practice and any false or misleading advertising. More specifically, the UCL  
2 provides, in pertinent part: “Unfair competition shall mean and include unlawful,  
3 unfair, or fraudulent business act or practice and unfair, deceptive, untrue or  
4 misleading advertising . . . .”

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

14       186. The California Plaintiffs reserve the right to allege other violations of  
15 law, which constitute other unlawful business acts or practices. Such conduct is  
16 ongoing and continues to this date.

17       **187. Unfair Business Practices:** In the course of conducting business,  
18 Defendant committed “unfair” business acts or practices by, *inter alia*, making the  
19 dolphin-safe representations, which are false, misleading, and deceptive (which also  
20 constitute advertising within the meaning of §17200), and failing to comply with  
21 traceability and verification requirements, as set forth more fully herein. There is no  
22 societal benefit from false advertising, only harm. While Plaintiffs and the public at  
23 large were and continue to be harmed, Defendant has been unjustly enriched by its  
24 false, misleading, and deceptive representations as it unfairly enticed Plaintiffs and  
25 Class members to purchase its tuna products instead of similar tuna products sold by  
26 other manufacturers that were dolphin-safe, traceable, and verified. Because the  
27 utility of Defendant’s conduct (zero) is outweighed by the gravity of harm to  
28

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

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

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

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

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

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

25 193. As alleged herein, the California Plaintiffs and the California-Only  
26 Class have suffered injury in fact and lost money or property at the time of purchase  
27 as a result of Defendant's conduct because they were exposed to and purchased



1 Defendant's tuna products in reliance on the dolphin-safe representations and  
2 Defendant's compliance with tracing and verification requirements, but did not  
3 receive tuna products that contain tuna caught using fishing methods that do not harm  
4 dolphins.

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

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

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

17 196. The California Plaintiffs repeat and re-allege the allegations contained  
18 in paragraphs 1 through 110 above, as if fully set forth herein.

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

21 198. This cause of action is brought pursuant to the Consumers Legal  
22 Remedies Act, California Civil Code §§1750, *et seq.* (the "CLRA").

23 199. The California Plaintiffs are consumers as defined by California Civil  
24 Code §1761(d). The tuna products are "goods" within the meaning of the CLRA.

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

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

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

4 \* \* \*

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

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

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

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

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

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

27 205. Plaintiffs Cosgrove and Hessong (the “Florida Plaintiffs”) repeat and re-  
28 allege the allegations contained in paragraphs 1 through 110 above, as if fully set

1 forth herein.

2 206. The Florida Plaintiffs bring this claim individually and on behalf of the  
3 Florida-Only Class.

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

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

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

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

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

1 deceptive, misleading, and unfair practices of Defendant, as more fully described  
2 herein.

3 212. Pursuant to §§501.211(2) and 501.2105, Fla. Stat., the Florida Plaintiffs  
4 and Florida consumers seek damages, injunctive relief, attorneys' fees, and costs  
5 against Defendant.

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

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

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

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

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

25 217. Defendant's deceptive conduct was generally directed at the consuming  
26 public.

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

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

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

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

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

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

16 222. Plaintiffs Zelig and Petrovcik (the "New Jersey Plaintiffs"), repeat and  
17 incorporate by reference the allegations contained in paragraphs 1 through 110 above  
18 as if fully set forth herein.

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

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

27 225. Defendant's tuna products are misrepresented within the meaning of  
28

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

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

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

11 **Count VII –**  
12 **Violation of the Minnesota Prevention of Consumer Fraud Act (Unlawful**  
13 **Practices) – Minn. Stat. §§325F.68, et seq. and Minn. Stat. §§8.31, et seq.**  
14 **(On Behalf of the Minnesota-Only Class)**

15 228. Plaintiff Kiihne repeats and re-alleges the allegations contained in  
16 paragraphs 1 through 110 above, as if fully set forth herein.

17 229. Plaintiff Kiihne brings this claim individually and on behalf of the  
18 Minnesota-Only Class.

19 230. This cause of action is brought pursuant to the Minnesota Prevention of  
20 Consumer Fraud Act (Unlawful Practices), Minn. Stat. §325F.68, et seq. and Minn.  
21 Stat. §8.31, et seq. (“MCFA”).

22 231. The tuna products Defendant sold are “merchandise” as defined in  
23 Minn. Stat. §325F.68 and Defendant is a “person” as defined in Minn. Stat. §325F.68.

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

1           233. Defendant engaged in unlawful practices, misrepresentations, and the  
2 concealment, suppression, and omission of material facts with respect to the sale and  
3 advertisement of merchandise in violation of the MCFA in at least the following  
4 ways:

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

8           (b) Falsely promising Defendant's tuna products were dolphin-safe,  
9 packaged from tuna caught using sustainable fishing methods, and traceable and  
10 verifiable;

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

15           (d) Failing to reveal a material fact – that its tuna products were not dolphin-  
16 safe, were not packaged from tuna caught using sustainable fishing methods, and  
17 were not traceable and verifiable; and

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

23           234. That Plaintiff Kiihne and the Minnesota-Only Class believed they were  
24 purchasing dolphin-safe tuna caught from sustainable fishing methods with the  
25 ability of Defendant to trace and verify its dolphin-safe quality when these  
26 representations were not true were material facts and would be material to a  
27 reasonable person.

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

6 236. Plaintiff Kiihne seeks relief under Minn. Stat. §8.31, including, but not  
7 limited to, damages, attorneys’ fees, and costs.

8 **COUNT VIII –**  
9 **Violation of the Minnesota Prevention of Consumer Fraud Act (False**  
10 **Statement in Advertising) – Minn. Stat. §325F.67, et seq.**  
11 **(On Behalf of the Minnesota-Only Class)**

12 237. Plaintiff Kiihne repeats and re-alleges the allegations contained in  
13 paragraphs 1 through 110 above, as if fully set forth herein.

14 238. Plaintiff Kiihne brings this claim individually and on behalf of the  
15 Minnesota-Only Class.

16 239. The tuna products Defendant sold are “merchandise” as defined in  
17 Minn. Stat. §325F.68 and Defendant is a “person” as defined in Minn. Stat. §325F.68.

18 240. Defendant made materially misleading and deceptive statements to  
19 consumers about its tuna products as being dolphin-safe and/or sustainably caught.

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

22 242. Defendant had superior knowledge and bargaining power in its  
23 transactions with consumers and misrepresented its tuna products as being dolphin-  
24 safe and/or sustainably caught to induce consumers to purchase Defendant’s tuna  
25 products. These facts are material because reasonable consumers, like Plaintiff  
26 Kiihne would have paid less or, more likely, not purchased the tuna products at all if  
27 they had known the products were not dolphin-safe and/or sustainably caught.

28 243. Plaintiff Kiihne and the Minnesota-Only Class seek an order requiring



1 Defendant to disgorge all ill-gotten gains and provide full restitution of all monies it  
2 wrongfully obtained from Plaintiff Kiihne and the Minnesota-Only Class through its  
3 false and deceptive advertising of its tuna products.

4 244. Plaintiff Kiihne and the Minnesota-Only Class also seek an award of  
5 damages and attorneys' fees for violations of Minn. Stat. §325F.67 pursuant to Minn.  
6 Stat. §8.31, subd. 3a.

7 **COUNT IX –**  
8 **Violation of the Minnesota Uniform Deceptive Trade Practices Act – Minn.**  
9 **Stat. §§325D.43, et seq.**  
10 **(On Behalf of the Minnesota-Only Class)**

11 245. Plaintiff Kiihne repeats and re-alleges the allegations contained in  
12 paragraphs 1 through 110 above, as if fully set forth herein.

13 246. Plaintiff Kiihne brings this claim individually and on behalf of the  
14 Minnesota-Only Class.

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

17 248. Defendant is a “person” as defined in the MDTPA.

18 249. Under the MDTPA, a person engages in a deceptive trade practice when  
19 in the course of business, vocation, or occupation, the person:

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

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

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

28 250. Defendant violated these provisions of the MDTPA by:

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

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

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

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

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

16 251. Plaintiff Kiihne and the Minnesota-Only Class believed they were  
17 purchasing dolphin-safe and sustainably caught tuna products when they were not.  
18 These were material facts and would be material to a reasonable person.

19 252. The above unlawful and deceptive acts and practices by Defendant were  
20 immoral, unethical, oppressive, and unscrupulous. These acts caused substantial  
21 injury to consumers that the consumers could not reasonably avoid; this substantial  
22 injury outweighed any benefits to consumers or to competition.

23 253. As a direct and proximate result of Defendant's violation of the  
24 MDTPA, Plaintiff Kiihne and the Minnesota-Only Class have suffered and continue  
25 to suffer ascertainable loss in the form of money.

26 254. Pursuant to Minn. Stat. §325D.45, Plaintiff Kiihne seeks individually  
27 and on behalf of all others similarly situated, all available remedies under law,  
28

1 including, but not limited to, actual damages, costs, and attorneys' fees.

2 **COUNT X –**

3 **Violation of the Arizona Consumer Fraud Act, A.R.S. §§44-1521, et seq.**  
4 **(On Behalf of the Arizona-Only Class)**

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

7 256. This cause of action is brought pursuant to the Arizona Consumer Fraud  
8 Act, A.R.S. §§44-1521, et seq. ("ACFA"), which provides in pertinent part:

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

17 A.R.S. § 44-1522(A).

18 257. Plaintiff Miller and members of the Arizona-Only Class are "persons"  
19 as defined by A.R.S. §44-1521(6), and Defendant is engaged in the "sale" and  
20 "advertisement" of "merchandise" as those terms are defined in A.R.S. §§44-  
21 1521(1), (5), and (7).

22 258. Defendant engaged in deceptive and/or unfair acts and practices,  
23 misrepresentation, and the concealment, suppression, and omission of material facts  
24 in connection with the sale and advertisement of "merchandise" (as defined in the  
25 ACFA) in violation of the ACFA, including but not limited to the following:

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

(b) Failing to disclose to consumers, including Plaintiff Miller and the

1 Arizona-Only Class, that the tuna products were not dolphin-safe nor sustainably  
2 caught contrary to Defendant's representations;

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

7 (e) Making a representation of fact or statement of fact material to the  
8 transaction – i.e., that Defendant's tuna products were dolphin-safe and/or  
9 sustainably caught – such that a person reasonably believed they were when they  
10 were not.

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

17 260. Defendant intended that Plaintiff Miller and the Arizona-Only Class rely  
18 on its deceptive and/or unfair acts and practices, misrepresentations, and the  
19 concealment, suppression, and omission of material facts, in connection with  
20 Defendant's sale of the tuna products.

21 261. Defendant's wrongful practices occurred in the course of trade or  
22 commerce.

23 262. Defendant's wrongful practices were and are injurious to the public  
24 interest because those practices were part of a generalized course of conduct that  
25 applied to Plaintiff Miller and all Arizona-Only Class Members, and were repeated  
26 continuously before and after Defendant sold its tuna products to Plaintiff Miller and  
27 the Arizona-Only Class. All Arizona-Only Class Members have been adversely

1 affected by Defendant's conduct and the public was and is at risk as a result thereof.

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

6 264. Plaintiff Miller and the Arizona-Only Class seek actual damages,  
7 compensatory, punitive damages, injunctive relief, and court costs and attorneys' fees  
8 as a result of Defendant's violations of the ACFA.

9 **COUNT XI –**  
10 **Unjust Enrichment/Quasi-Contract**

11 265. Plaintiffs repeat and re-allege the allegations contained in the  
12 paragraphs above, as if fully set forth herein.

13 266. Plaintiffs and Class members conferred a benefit on Defendant by  
14 purchasing the tuna products.

15 267. Defendant appreciated and/or realized the benefits in the amount of the  
16 purchase price it earned from sales of the tuna products to Plaintiff and Class  
17 members or, at a minimum, the difference between the price it was able to charge  
18 Plaintiffs and Class members for the tuna products with the dolphin-safe  
19 representations and the price it would have been able to charge absent the same.

20 268. Defendant has profited from its unlawful, unfair, false, misleading, and  
21 deceptive practices and advertising at the expense of Plaintiffs and Class members,  
22 under circumstances in which it would be unjust for Defendant to be permitted to  
23 retain the benefit.

24 269. Plaintiffs do not have an adequate remedy at law against Defendant.

25 270. Plaintiffs and Class members are entitled to restitution of all monies paid  
26 for the tuna products or, at a minimum, the premium paid for the tuna products.

27 **PRAYER FOR RELIEF**

1 Wherefore, Plaintiffs pray for a judgment:

2 A. Certifying the Classes as requested herein;

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

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

8 D. Awarding the Classes damages, including statutory and punitive  
9 damages, and interest thereon;

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

12 F. Awarding attorneys' fees and costs; and

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

14 **DEMAND FOR JURY TRIAL**

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

18 Dated: May 13, 2019

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

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