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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 LORI MYERS, ALISON CULLEN,
15 and ALEXANDER MOUGANIS, On
Behalf of Themselves and All Others
16 Similarly Situated,

17 Plaintiffs,

18 v.

20 NESTLE PURINA PETCARE
21 COMPANY, a Missouri company,

22 Defendant.

Case No.: 5:19-cv-00898 GW (SPx)

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT, 18 U.S.C. §§ 1962(c)-(d);
2. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §17200 *et seq.*;
3. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, Civil Code §1750 *et seq.*;
4. VIOLATION OF THE NEW YORK GENERAL BUSINESS LAW §349; and
5. UNJUST ENRICHMENT

27 DEMAND FOR JURY TRIAL

1 Plaintiffs Lori Myers, Alison Cullen, and Alexander Mouganis bring this
2 action on behalf of themselves and all others similarly situated against Defendant
3 Nestle Purina PetCare Company (“Nestle” or “Defendant”), and for their First
4 Amended Class Action Complaint state:

5 **FACTUAL ALLEGATIONS**

6 1. Nestle Purina PetCare Company (“Nestle” or “Defendant”) markets,
7 sells, and distributes tuna cat food products under its Fancy Feast brand. Nestle is
8 headquartered in St. Louis, Missouri, and is the second largest pet food company in
9 the world and the largest in the United States.

10 2. Recognizing that “[o]ur consumers do not just care about what they eat,
11 but they also care about how products are made and their impact on the environment
12 and society”¹, Defendant promises consumers that “we work hard to ensure our fish
13 and seafood come from responsible sources”² and that its Fancy Feast[®] tuna products
14 are “Dolphin Safe” by displaying a dolphin safe logo on every Fancy Feast[®] tuna
15 product label.³ Since the introduction of Defendant’s dolphin safe policy, including
16

17 ¹ Nestle, Annual Review 2018, at 4, *available at* [https://www.nestle.com/asset-](https://www.nestle.com/asset-library/documents/library/documents/annual_reports/2018-annual-review-en.pdf)
18 [library/documents/library/documents/annual_reports/2018-annual-review-en.pdf](https://www.nestle.com/asset-library/documents/library/documents/annual_reports/2018-annual-review-en.pdf)
(last visited June 24, 2019).

19 ² Nestle, Fish and Seafood, Our impact, *available at* [https://www.nestle.com/csv/](https://www.nestle.com/csv/raw-materials/fish-seafood)
20 [raw-materials/fish-seafood](https://www.nestle.com/csv/raw-materials/fish-seafood) (last visited June 24, 2019).

21 ³ The “Fancy Feast tuna products” include: (1) Classic Pate Ocean Whitefish &
22 Tuna; (2) Grilled Ocean Whitefish & Tuna in Gravy; (3) Grilled Tuna Feast in Gravy;
23 (4) Flaked Chicken & Tuna Feast; (5) Flaked Tuna & Mackerel Feast; (6) Flaked
24 Tuna Feast; (7) Flaked Chicken & Tuna; (8) Gourmet Naturals Tuna in Gravy; (9)
25 Gourmet Naturals Trout & Tuna Pate; (10) Medleys Tuna Primavera with Garden
26 Veggies & Greens in a Classic Sauce; (11) Medleys Tuna Florentine with Garden
27 Greens in a Delicate Sauce; (12) Medleys Tuna & Shrimp Recipe with Wild Rice in
28 Gravy; (13) Medleys White Meat Chicken & Tuna Recipe with Wild Rice & Spinach
in Broth; (14) Medleys Ocean Whitefish & Tuna Florentine Pate with Cheese &
Garden Greens; (15) Medleys Tuna Tuscany with Long Grain Rice & Garden Greens
in a Savory Sauce; (16) Medleys Shredded Tuna Fare with Garden Greens in a Savory
Broth; (17) Wet Cat Food Complement Classic Tuna & Vegetable Broths; (18) Gravy
Lovers Ocean Whitefish & Tuna in Sautéed Seafood Flavor Gravy; (19) Purely Fancy
Feast Natural Flaked SkipJack Tuna in Delicate Broth; (20) Purely Fancy Feast
Natural White Meat Chicken & Flaked Tuna in a Delicate Broth; (21) Purely Fancy
Feast Natural Tender Tongol Tuna in a Delicate Broth; (22) Light Meat Tuna

1 the last 4 years (the “Class Period”), however, Defendant’s Fancy Feast tuna products
2 have not been “Dolphin Safe”.

3 3. Plaintiffs herein allege unjust enrichment and violations of: (1) the
4 Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §1962;
5 (2) California's Unfair Competition Law, Cal. Bus. & Prof. Code §17200, *et seq.*; (3)
6 California’s Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*; and (4)
7 the New York General Business Law §349.

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

11 **Origin of “Dolphin Safe” Tuna**

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

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

22 7. Recognizing that tuna schools, that swim deeper in the water, often
23 congregate with dolphin schools that swim at observable depths, fishermen began
24

25
26

Appetizer with Scallop Cat Food Topper in a Delicate Broth; (23) Delights with
27 Cheddar Grilled Tuna & Cheddar Cheese in Gravy; and (24) Creamy Delights Tuna
Feast. Plaintiffs reserve the right to add more products upon completion of discovery.

1 routinely encircling tuna *and* dolphin schools with purse seine nets and hauling the
2 entire catch aboard.

3 8. This practice led to millions of dolphins being killed as unintended by-
4 catch.

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

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

14 11. Recognizing these indiscriminate fishing methods were also reducing
15 consumers' enthusiasm for tuna products, the major sellers of shelf-stable tuna fish
16 products – including Nestle's Friskies Petcare Company, Defendant's predecessor –
17 started promising consumers that they would change their tuna fishing practices to
18 ensure that no dolphins were harmed or killed by their tuna fishing fleets.

19 12. In the ensuing 25 years, U.S. tuna sellers, including Defendant, initiated
20 and implemented a widespread and long-term advertising and marketing campaign
21 that continues to this day – representing to consumers that no dolphins were killed or
22 harmed in capturing their tuna, as well as expressing their commitment to sustainably
23 sourcing tuna.

24 13. For at least the last 4 years, reasonable consumers expected that all of
25 Defendant's Fancy Feast tuna products are dolphin safe because they have been
26 indoctrinated to believe precisely that by Defendant's and the other tuna companies'
27 highly effective dolphin safety and sustainable fishing practices advertising and
28

1 marketing campaign. In fact, 98% of the prepackaged tuna sold today in the U.S. for
2 human consumption is labeled with some “dolphin safe” representation. Forbes, K.
3 William Watson, ‘Dolphin Safe’ Labels on Canned Tuna Are A Fraud (Apr. 29,
4 2015), *available at* [https://www.forbes.com/sites/realspin/2015/04/29/dolphin-safe-](https://www.forbes.com/sites/realspin/2015/04/29/dolphin-safe-labels-on-canned-tuna-are-a-fraud/#51db16b8295e)
5 [labels-on-canned-tuna-are-a-fraud/#51db16b8295e](https://www.forbes.com/sites/realspin/2015/04/29/dolphin-safe-labels-on-canned-tuna-are-a-fraud/#51db16b8295e) (last visited May 3, 2019).

6 14. Defendant’s Fancy Feast tuna products, however, are not dolphin safe.
7 Nor are they sustainably sourced. Defendant’s dolphin safe representations, as well
8 as Defendant’s sustainability representations, are false, misleading, and/or deceptive.

9 **Defendant’s Dolphin Safe Representations**

10 15. On every Fancy Feast tuna product, Defendant states that the tuna
11 products are “Dolphin Safe” with a prominent dolphin logo set against a contrasting
12 colored background designed to capture consumers’ attention. The Fancy Feast tuna
13 products also include Defendant’s websites which state that Defendant and its
14 suppliers are committed to responsibly and sustainably sourcing Defendant’s tuna,
15 that the “company’s pet food division has worked closely with [the Sustainable
16 Fisheries Partnership] since 2013 to ensure the seafood that goes into its products is
17 sustainable”⁴, and that Defendant has implemented audits and verification procedures
18 to ensure compliance. *See, e.g.,* Purina, Keeping the Future in Mind Today,
19 Sustainability, *available at* <https://www.purina.com/about-purina/sustainability> (last
20 visited May 8, 2019); Nestle, Fish and seafood, Our Impact, *available at*
21 <https://www.nestle.com/csv/raw-materials/fish-seafood> (last visited May 7, 2019).

22 16. As noted by the Ninth Circuit in a recent decision, “[g]iven the choice
23 of whether to purchase dolphin safe tuna or to purchase tuna not labeled dolphin safe,
24 American consumers overwhelmingly chose to purchase tuna that was labeled

25 _____
26 ⁴ Sustainable Fisheries Partnership, Nestle Purina, *available at*
27 [https://www.sustainablefish.org/Programs/Industry-Partnerships/Partnership-](https://www.sustainablefish.org/Programs/Industry-Partnerships/Partnership-Profiles/Nestle-Purina)
28 [Profiles/Nestle-Purina](https://www.sustainablefish.org/Programs/Industry-Partnerships/Partnership-Profiles/Nestle-Purina); Nestle, Fish and seafood, Our impact, *available at*
<https://www.nestle.com/csv/raw-materials/fish-seafood> (last visited June 24, 2019).

1 dolphin safe. As a result, foreign tuna sellers who did not adjust their fishing methods
2 were quickly forced out of the market.” *Earth Island Institute v. Hogarth*, 494 F.3d
3 757, 761 (9th Cir. 2007) (rejecting Government efforts to lessen restrictions on tuna
4 fisheries in the Eastern Tropical Pacific and upholding previous finding that best
5 evidence available indicates that tuna fishery was having significant adverse impact
6 on dolphin stocks).

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

11 18. In the very first paragraph of its “Nestle Responsible Sourcing
12 Standard”, Defendant acknowledges the importance to consumers of sustainable
13 sourcing practices by claiming its responsible sourcing standards “deliver[] on
14 consumer expectations on where our products come from and how they are made.”
15 Nestle, “Nestle Responsible Sourcing Standard”, at 3, *available at*
16 [https://www.nestle.com/asset-](https://www.nestle.com/asset-library/documents/library/documents/suppliers/nestle-responsible-sourcing-standard-english.pdf)
17 [library/documents/library/documents/suppliers/nestle-responsible-sourcing-](https://www.nestle.com/asset-library/documents/library/documents/suppliers/nestle-responsible-sourcing-standard-english.pdf)
18 [standard-english.pdf](https://www.nestle.com/asset-library/documents/library/documents/suppliers/nestle-responsible-sourcing-standard-english.pdf) (last visited May 1, 2019).

19 19. Last year, Nestle posted a web article wherein it stated “sustainable
20 seafood ... is important to ... consumers”, “gets consumers’ attention”, and “seafood
21 sustainability is a hot-button issue ... for a growing number of consumers,
22 particularly Millennials and members of Generation Z.” Nestle Professional,
23 Quality, Sustainable Seafood Gets Consumers’ Attention, Trends & Insights,
24 *available at* [https://www.nestleprofessional.us/trends/quality-sustainable-seafood-](https://www.nestleprofessional.us/trends/quality-sustainable-seafood-gets-consumers-attention)
25 [gets-consumers-attention](https://www.nestleprofessional.us/trends/quality-sustainable-seafood-gets-consumers-attention) (last visited June 24, 2019).

26 20. Petco Animal Supplies, Inc., the second largest U.S. retailer of pet
27 products, in answer to “what are the driving forces behind pursuing sustainability as
28

1 a retailer,” replied: “Pet parents really care about the environment, and our job is to
2 provide them with products that are aligned with their values.” Pet Age,
3 “Sustainability Top Priority at Petco”, *available at* [https://www.petage.com/
4 sustainability-top-priority-at-petco/](https://www.petage.com/sustainability-top-priority-at-petco/) (last visited May 1, 2019) (Petco’s vice president
5 of sustainability, safety, and environmental health).

6 21. Petco is not alone in its recognition of the importance to consumers of
7 dolphin safety and the sustainable sourcing of seafood as evidenced by many
8 retailers’ refusal to sell tuna that is not caught using dolphin safe pole-and-line,
9 trolling⁵, or handline catch methods. *See, e.g.,* PetSmart, Environmental
10 Sustainability Report, at 3, *available at* [http://media.corporate-ir.net/
11 media_files/irol/19/196265/2011_Sustainability_Report_PetSmart.pdf](http://media.corporate-ir.net/media_files/irol/19/196265/2011_Sustainability_Report_PetSmart.pdf) (last visited
12 May 1, 2019) (“As a company dedicated to improving the lives of pets and Pet
13 Parents, we are committed to being environmentally conscious by developing
14 innovative and sustainable approaches for our unique resource needs.”); Whole
15 Foods Market, Sustainable Canned Tuna, *available at* [https://www.
16 wholefoodsmarket.com/sustainable-canned-tuna](https://www.wholefoodsmarket.com/sustainable-canned-tuna) (last visited Apr. 17, 2019) (“Our
17 sourcing policy requires all fisheries supplying canned tuna to use pole-and-line, troll
18 or handline catch methods” unlike “[m]uch of conventional canned tuna [which] is
19 caught by vessels using purse seine nets with Fish Aggregating Devices (known as
20 FADs), that attract tuna but also result in high bycatch of ... other marine life.”);
21 Whole Foods Market, Canned Tuna Sourcing Policy, *available at*
22 [http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Mar
23 ket_Canned_Tuna_Sourcing_Policy_102017.pdf](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf) (last visited Apr. 17, 2019)
24 (“Requirements for Source Fisheries” include “1. All canned tuna must be sourced

25 _____
26 ⁵ Method of fishing whereby one or more fishing lines with baits are drawn through
27 the water. Monterey Bay Aquarium Seafood Watch, Fishing & Farming Methods,
28 *available at* [https://www.seafoodwatch.org/ocean-issues/fishing-and-farming-
methods](https://www.seafoodwatch.org/ocean-issues/fishing-and-farming-methods) (last visited May 3, 2019).

1 sourcing program in response to customer feedback received at “in-store service
2 counters, online surveys, telephone surveys, focus groups, websites and social
3 media” as well as its live call “Kroger Customer Connect” center. The Kroger Family
4 of Companies, 2018 Sustainability Report (“Kroger Sustainability Report”),
5 *available at* http://sustainability.kroger.com/Kroger_CSR2018.pdf (last visited Apr.
6 17, 2019), at 12.

7 23. The special “Dolphin Safe” logo Defendant includes on each Fancy
8 Feast tuna product as shown below is intended to convey the message 100% dolphin
9 safe – meaning no dolphins were killed or seriously injured in capturing Defendant’s
10 Fancy Feast tuna:



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

1 requirements under the DPCIA applicable to *all* locations where Defendant captures
2 its tuna and to *all* fishing methods used whether nets or other gear. Pursuant to the
3 regulations, Defendant *must* ensure that (1) “*no* dolphins were killed or seriously
4 injured in the sets or other gear deployments in which the tuna were caught”
5 (emphasis added); and (2) “the label is supported by a tracking and verification
6 program” throughout the fishing, transshipment and canning process, “periodic
7 audits and spot checks” are conducted, and Defendant must provide “timely access
8 to data required”. 16 U.S.C. §§1385(d)(3)(C) and (f).

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

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

23
24 **Defendant’s Fishing Practices and Violation of Its
Dolphin Safe Representations**

25 32. Several cat food tuna companies and companies that manufacture shelf-
26 stable tuna products for human consumption use traditional pole-and-line and trolling
27

1 methods of catching tuna. These companies include American Tuna (for its Deck
2 Hand Premium Cat Food and The Cat's Fish brands) and Fish4Ever (for its tuna cat
3 food sold in the UK), which use pole-and-line to capture their tuna; Safe Catch,
4 Ocean Naturals (for its Albacore tuna), and Wild Planet, which use pole-and-line and
5 trolling; and American Tuna, Whole Foods 365 Everyday Value brand (for its
6 skipjack and albacore tuna), and Trader Joe's (for its skipjack and yellowfin tuna),
7 which exclusively use pole-and-line to capture their tuna.⁶

8 33. While more costly, these traditional methods ensure that dolphins (and
9 other bycatch⁷) are not harmed in the fishing process because fish are caught using
10 barbless hooks and poles one at a time near the sea's surface and unintended captured
11 species are easily released. Tuna caught by these methods are actually "dolphin
12 safe".

13 34. Defendant is not among the tuna companies that use only dolphin safe
14 pole-and-line or trolling techniques to capture the tuna in its Fancy Feast tuna
15

16 ⁶ See Deck Hand Cat Food Coming Soon, available at <https://deckhandcatfood.com/>
17 (last visited May 7, 2019); The Cat's Fish, Home, available at
18 <https://thecatsfish.com/> (last visited May 7, 2019); Fish4Ever, Sustainability,
19 <http://www.fish4ever.co.uk/> (last visited May 7, 2019); Safe Catch, The Safe Catch
20 Way, available at <https://safecatch.com/> (last visited May 3, 2019); Ocean Naturals,
21 Albacore, Responsibly Caught, available at [https://oceannaturals.com/responsibly-](https://oceannaturals.com/responsibly-caught/albacore-tuna/)
22 caught/albacore-tuna/ (last visited May 3, 2019); Wild Planet, Good to the Core,
23 Products-Tuna, available at <https://www.wildplanetfoods.com/products/tuna/> (last
24 visited May 3, 2019); American Tuna, American Tuna, Home, available at
25 <https://americantuna.com/> (last visited May 3, 2019); Whole Foods Market, Wild,
26 Salt Added Tuna, 5 oz, Products>365 Everyday Value, available at
27 [https://products.wholefoodsmarket.com/product/365-everyday-value-wild-salt-](https://products.wholefoodsmarket.com/product/365-everyday-value-wild-salt-added-tuna-10e1c0)
28 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-](https://products.wholefoodsmarket.com/product/365-everyday-value-albacore-wild-tuna-5-oz-b83f86)
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-](https://www.traderjoes.com/announcement/a-note-to-our-customers-about-trader-joes-seafood)
joes-seafood (last visited May 3, 2019).

⁷ The World Wildlife Fund ("WWF") defines "bycatch" as "the incidental capture of non-target species such as dolphins, marine turtles and seabirds." WORLD WILDLIFE FUND, Bycatch, <https://www.worldwildlife.org/threats/bycatch> (last visited June 24, 2019).

1 products. Nor does Defendant identify the dolphin-harming fishing methods it does
2 use on the Product labels or on its website, simply stating “our fish and seafood come
3 from a variety of sources, including wild fisheries in oceans around the world...”
4 Nestle, Fish and seafood, Our Impact, *available at* [https://www.nestle.com/csv/raw-](https://www.nestle.com/csv/raw-materials/fish-seafood)
5 [materials/fish-seafood](https://www.nestle.com/csv/raw-materials/fish-seafood) (last visited May 7, 2019). The unspecified “variety of
6 sources” principally include Thai Union Group, which is based in Thailand and
7 known for its illegal, unreported, and unregulated fishing practices,⁸ and its
8 indiscriminate use of purse seine nets and longlines to capture tuna. Nestle, Fish and
9 seafood, Our Impact, *available at* [https://www.nestle.com/csv/raw-materials/fish-](https://www.nestle.com/csv/raw-materials/fish-seafood)
10 [seafood](https://www.nestle.com/csv/raw-materials/fish-seafood) (last visited May 7, 2019). Both of these fishing methods kill and harm
11 substantial numbers of dolphins.

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

22 36. Even when dolphins are mistakenly caught by these longlines, they are
23 often not released. Rather, the fishermen that catch these dolphins often kill them
24 onboard and have been photographed posing with their catch, mutilating the dolphins
25 and removing their teeth, which can be used as currency. Because of the harm caused

26
27 ⁸ Greenpeace, 2017 Tuna Shopping Guide, *available at* [https://www.](https://www.greenpeace.org/usa/oceans/tuna-guide/)
28 [greenpeace.org/usa/oceans/tuna-guide/](https://www.greenpeace.org/usa/oceans/tuna-guide/) (last visited Apr. 17, 2019).

1 to non-target fish, longlines have been condemned by environmental groups like the
2 World Wildlife Foundation (“WWF”) as an unsustainable fishing practice. WWF,
3 Bycatch, Threats, *available at* www.worldwildlife.org/threats/bycatch (last visited
4 June 24, 2019).

5 37. Purse seine nets, used by Defendant, also trap, kill, and harm substantial
6 numbers of dolphins. Because purse seine nets can reach more than 6,500 feet in
7 length and 650 feet deep – the equivalent of 18 football fields by 2 football fields⁹–
8 they often entrap dolphins when drawn closed, particularly because many of the purse
9 seine fishing vessels use free floating rafts of flotsam known as fish aggregating
10 devices, or FADs, to capture tuna.

11 38. FADs are known as floating death traps because dolphins and other
12 marine life get entangled in the devices and their sheer numbers – estimated at 30,000
13 to 50,000 per year – disrupt behavior and movement patterns of dolphins and other
14 ocean species crucial to their survival. And, as most FADs are not removed after use,
15 they pollute the oceans in direct conflict with Defendant’s proclaimed goals of “zero
16 waste” and “a cleaner planet for future generations.” *See* Purina, Keeping the Future
17 in Mind Today, Sustainability, *available at* [https://www.purina.com/about-](https://www.purina.com/about-purina/sustainability)
18 [purina/sustainability](https://www.purina.com/about-purina/sustainability) (last visited May 7, 2019).

19 39. While FADs are extremely effective at luring tuna, they also attract
20 dolphins – particularly in the ETP where schools of tuna routinely gather beneath
21 schools of dolphins to reduce the risk of predation. The tuna, dolphins, and other
22 marine life are all caught in the gigantic mile circumference purse seine nets that are
23 deployed around the FAD to catch the tuna.

24
25
26 ⁹ 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-](http://safinacenter.org/2015/12/fishing-gear-101-purse-seines-the-encirclers/)
28 [encirclers/](http://safinacenter.org/2015/12/fishing-gear-101-purse-seines-the-encirclers/) (last visited May 3, 2019) (“Brown 2016”).

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

7 43. Additional indirect harm to dolphins and the marine environment result
8 from discarded and abandoned fishing gear, including FADs, which is estimated to
9 make up to 70% by weight of microplastics in the ocean and among other harms,
10 ensnares marine life. Defendant’s use of FADs is contrary to the Global Ghost Gear
11 Initiative to combat marine plastic pollution, which Defendant represents to the
12 public that it supports. Nestle, Annual Review 2018, at 39, *available at*
13 [https://www.nestle.com/asset-](https://www.nestle.com/asset-library/documents/library/documents/annual_reports/2018-annual-review-en.pdf)
14 [library/documents/library/documents/annual_reports/2018-annual-review-en.pdf](https://www.nestle.com/asset-library/documents/library/documents/annual_reports/2018-annual-review-en.pdf)
15 (last visited June 24, 2019).

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

22 45. Because the use of FADs, purse seine nets, and longlines are
23 unsustainable fishing practices, several companies that supply the U.S. tuna market
24 will not source their tuna from boats that use these indiscriminate fishing methods.
25 But Defendant is not among these companies.

26 ///

27 ///

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

3 46. Defendant’s use of an alternative dolphin safe logo on its Fancy Feast
4 tuna products requires it to track, audit, and spot check for accuracy that “no dolphins
5 were killed or seriously injured in the sets or other gear deployments in which the
6 tuna were caught” from capture, to transshipment¹¹, to cannery, to shelf. And, in the
7 event even a single dolphin is “killed or seriously injured” during the catch,
8 Defendant must physically separate and store that catch from any tuna catches in
9 which no dolphins were harmed (if any) and maintain records tracing the catch(es)
10 in which dolphins were harmed back to the fishing vessel and trip. 50 CFR §216.91.

11 47. Unlike fisheries in the ETP, boats in the other oceanic regions that
12 supply Defendant’s tuna are not required to have independent observers onboard to
13 track and report the number of dolphins killed or seriously injured. 16 U.S.C.
14 §1385(d)(1). A declaration from the ship’s captain that no purse seines were
15 intentionally set on dolphins suffices. 16 U.S.C. §1385(d)(1)(B). These declarations
16 are limited to certifying that “no purse seine net was intentionally deployed on or
17 used to encircle dolphins during the particular voyage on which the tuna was
18 harvested” and do not require certification that FADs, gillnets, longlines and other
19 dolphin harming fishing techniques were not used. Nor must the captain quantify the
20 number of dolphins killed or otherwise harmed.

21 48. Instead, Defendant is solely responsible for collecting information about
22 the number of dolphins killed or seriously injured, which Defendant fails to do.
23 Defendant acknowledges that “identifying the precise sources for fish and seafood is

24 ¹¹ 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 Apr.
30, 2019).

1 difficult. For pet food, which primarily uses fish by-products, traceability is even
2 more challenging as the typical traceability mechanisms for whole fish do not
3 suffice.” Nestle, Fish and seafood, Our Impact, *available at*
4 <https://www.nestle.com/csv/raw-materials/fish-seafood> (last visited May 7, 2019).¹²
5 What Defendant does not mention is that there is a strong financial incentive for a
6 captain to falsely omit any report of dolphin mortality or harm, as any catch that is
7 not “dolphin safe” is essentially worthless. And, it is relatively simple to do so as the
8 majority of certifications are paper-based and typically filled in by hand – often after
9 the vessel has returned to port – making it virtually impossible to adequately verify
10 these certifications. The potential and incentive for false reporting by its tuna
11 suppliers make it even more incumbent upon Defendant to overcome the self-
12 proclaimed traceability “challenges” and track, trace, and report the number of
13 dolphins killed or harmed by Defendant’s tuna fishing vessels. Consistent with its
14 admission that it does not track, audit, and spot check for accuracy its dolphin safe
15 representation, Defendant does not answer the query on its own website “[w]here do
16 our dog and cat food ingredients come from” as it pertains to the tuna in its Fancy
17 Feast tuna products. Purina, Where do our dog and cat food ingredients come from?,
18 *available at* [https://www.purina.com/nutrition/nutrition-articles/where-do-our-pet-](https://www.purina.com/nutrition/nutrition-articles/where-do-our-pet-food-ingredients-come-from)
19 [food-ingredients-come-from](https://www.purina.com/nutrition/nutrition-articles/where-do-our-pet-food-ingredients-come-from) (last visited May 7, 2019).

20 49. By purchasing its tuna from fishing vessels that use purse seine nets

21 _____
22 ¹² Traceability is possible as evidenced by, among other facts, American Tuna’s
23 statement that its Cat’s Fish premium canned tuna “is sustainable, traceable, 3rd party
24 audited, tested safe and labeled with the name of the fishery” and the links provided
25 on its website introducing consumers to the fishermen who caught the tuna with
26 photos using pole and lines go catch the tuna. The Cat’s Fish, Home, *available at*
27 <https://thecatsfish.com/> (last visited May 7, 2019); The Cat’s Fish, About, *available at*
28 <https://thecatsfish.com/about/> (last visited May 7, 2019). American Tuna’s Deck
Hand premium cat food wild caught tuna is similarly traceable to the specific catch.
Lucy Towers, Sustainable Pole & Line Tuna and Deck Hand Premium Cat Food
Launched, The Fish Site (May 27, 2014), *available at* [https://thefishsite.com/](https://thefishsite.com/articles/sustainable-pole-line-tuna-and-deck-hand-premium-cat-food-launched)
[articles/sustainable-pole-line-tuna-and-deck-hand-premium-cat-food-launched](https://thefishsite.com/articles/sustainable-pole-line-tuna-and-deck-hand-premium-cat-food-launched) (last
visited May 7, 2019).

1 deployed around FADs and/or longlines, each of which harms and kills dolphins,
2 Defendant is able to reduce its product costs and more effectively compete with other
3 tuna companies for a bigger share of the cat food market.

4 **Defendant’s Sustainable Fishing Practices Misrepresentations**

5 50. Defendant’s commitment to sustainable fishing practices, including
6 dolphin safe sourcing, is the common message in its widespread and long-term
7 advertising campaign. In the preamble of its Responsible Sourcing Standard,
8 Defendant states: “Nestle’s approach to Responsible Sourcing is a fundamental pillar
9 of our purpose, enhancing quality of life and contributing to a healthier future.” ...
10 “It delivers on consumers[’] expectations on where our products come from and how
11 they are made.” Nestle, Nestle Responsible Sourcing Standard (July 2018), at 3,
12 *available at* [https://www.nestle.com/asset-library/documents/library/documents/
13 suppliers/nestle-responsible-sourcing-standard-english.pdf](https://www.nestle.com/asset-library/documents/library/documents/suppliers/nestle-responsible-sourcing-standard-english.pdf) (last visited May 7,
14 2019).

15 51. Recognizing that “Fish and Seafood are precious resources for our
16 planet and all who live on it”, Defendant claims it “work[s] hard to ensure our fish
17 and seafood come from responsible sources...” Nestle, Fish and seafood, Our
18 Impact, *available at* <https://www.nestle.com/csv/raw-materials/fish-seafood> (last
19 visited May 7, 2019).

20 52. Defendant’s self-proclaimed “innovative solutions” (*id.*) are set forth in
21 its July 2018 Nestle Responsible Sourcing Standard. Notably absent from its
22 Responsible Sourcing Standard is the banning or effective control of FADs,
23 longlines, or other unsustainable fishing techniques. Nestle Responsible Sourcing
24 Standard (July 2018), at 22. Only “bottom trawling or dredging fishing methods,
25 dynamite, cyanide, muro-ami or high seas drift nets” are identified as banned
26 practices. *Id.* And, even as to these “highly destructive” fishing methods, Defendant
27 allows its suppliers 3 years to phase them out upon discovery and relies upon its

1 suppliers to self-report standards violations, which they are unlikely to do. *Id.* at 4,
2 23.

3 53. Defendant also does not set any limits or restrictions on bycatch, other
4 than prohibiting the capture of endangered, threatened, and protected species as
5 identified in the International Union for Conservation of Nature’s Red List. *Id.* at 22.
6 Of the 38 species of oceanic dolphins, only 4 are included on the Red List as
7 endangered or critically endangered and they are generally not found in the areas
8 Defendant sources its tuna – primarily Indonesia, Malaysia, Myanmar, and
9 Thailand.¹³ IUCN Red List, Irrawaddy Dolphin, *available at*
10 <https://www.iucnredlist.org/species/15419/123790805> (last visited May 7, 2019);
11 IUCN Red List, Hector’s Dolphin, *available at*
12 <https://www.iucnredlist.org/species/4162/44199757> (last visited May 7, 2019);
13 IUCN Red List, Indian Ocean Humpback Dolphin, *available at*
14 <https://www.iucnredlist.org/species/82031633/82031644> (last visited May 7, 2019);
15 IUCN Red List, Atlantic Humpback Dolphin, *available at*
16 <https://www.iucnredlist.org/species/20425/123792572> (last visited May 7, 2019).

17 54. There is no evidence that Defendant will act any time soon to halt its
18 destructive and dolphin-harming fishing practices, notwithstanding its membership
19 in the Sustainable Fisheries Partnership (“SFP”), whose “ambition has always been
20 to see that 100% of seafood worldwide is produced sustainably” through “industry-
21 driven change”. Sustainable Fisheries Partnership, Home, *available at*
22 <https://www.sustainablefish.org/> (last visited May 7, 2019). According to SFP,
23 “[t]his is obviously a distant and aspirational goal, likely many decades away into the
24 future...”¹⁴, of which Defendant’s tuna fishing practices confirm.

25 _____
26 ¹³ Nestle, Fish and seafood, Our impact, *available at* [https://www.nestle.com/
csv/raw-materials/fish-seafood](https://www.nestle.com/csv/raw-materials/fish-seafood) (last visited June 24, 2019).

27 ¹⁴ Sustainable Fisheries Partnership, Target 75, *available at*
28 <https://www.sustainablefish.org/Programs/Target-75> (last visited May 7, 2019).

1 55. Because Defendant uses longlines, FADs, and other well-known
2 dolphin-harming fishing techniques, notwithstanding its Responsible Sourcing
3 Standards, Defendant's sustainability representations are false, misleading, and/or
4 deceptive.

5 **Defendant, Unlike Other Tuna Companies, Does Not Use**
6 **Dolphin Safe Tuna Fishing Methods**

7 56. Unlike several other tuna companies who sell to the U.S. market,
8 Defendant has not mandated dolphin safe fishing practices in the supply chain for its
9 Fancy Feast tuna products, such as pole-and-line, trolling, and/or handline catch
10 methods, whereby fishermen catch one fish at a time and release unwanted species
11 soon after a fish takes the bait.

12 57. Most U.S. retailers have sustainability guidelines and expectations of
13 their seafood suppliers that include: using recognized dolphin safe tuna capture
14 methods, having programs in place to trace the tuna back to the boat and place of
15 capture, and guaranteeing the catch method used. *See, e.g.*, Whole Foods Market,
16 Sustainable Canned Tuna, available at [https://www.wholefoodsmarket.com/](https://www.wholefoodsmarket.com/sustainable-canned-tuna)
17 [sustainable-canned-tuna](https://www.wholefoodsmarket.com/sustainable-canned-tuna) (last visited Apr. 17, 2019) (“Our sourcing policy requires
18 all fisheries supplying canned tuna to use pole-and-line, troll or handline catch
19 methods” unlike “[m]uch of conventional canned tuna [which] is caught by vessels
20 using purse seine nets with Fish Aggregating Devices (known as FADs), that attract
21 tuna but also result in high bycatch of ... other marine life.”); Whole Foods Market,
22 Canned Tuna Sourcing Policy (Aug. 15, 2018), available at
23 [http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Mar](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf)
24 [ket_Canned_Tuna_Sourcing_Policy_102017.pdf](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf) (last visited Apr. 17, 2019)
25 (“Requirements for Source Fisheries” include “1. All canned tuna must be sourced
26 from pole and line, troll, and handline fisheries. Tuna from longline or purse seine
27 fisheries is prohibited.”); PR Newswire, Safeway Announces New Sustainable

1 Sourcing Practice for Tuna (Feb. 10, 2012), *available at*
2 [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)
3 [sourcing-practice-for-tuna-139096714.html](https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-sourcing-practice-for-tuna-139096714.html) (last visited Apr. 17, 2019);
4 Albertsons/Safeway, Supplier Sustainability Guidelines and Expectations (August
5 2015), at 21, *available at* [https://suppliers.safeway.com/usa/pdf/](https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf)
6 [supplier_sustainability_expectations.pdf](https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf) (last visited Apr. 29, 2019) (“Suppliers are
7 encouraged” to “[n]ot use Purse-seine nets deployed on Fish Aggregation Devices
8 (FADs) and employ alternatives such as pole and line trolling in an effort to reduce
9 or eliminate by-catch”); H-E-B, H-E-B seafood policy, *available at*
10 <https://www.heb.com/static-page/article-template/H-E-B-Seafood-Policy> (last
11 visited Apr. 17, 2019) (for wild-caught seafood, H-E-B preferentially sources from
12 fisheries that reduce bycatch, and H-E-B “will never knowingly buy or sell any
13 illegal, unreported, or unregulated (IUU) fish”); Giant Eagle, Tuna Policy, *available*
14 *at* <https://www.gianteagle.com/about-us/sustainable-seafood/tuna-policy> (last
15 visited Apr. 29, 2019) (encourages suppliers to “eliminate harvest with the use of
16 non-entangling FADs”); Wegmans, Seafood Sustainability, *available at*
17 [https://www.wegmans.com/about-us/making-a-difference/sustainability-at-](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html)
18 [wegmans/seafood-sustainability.html](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html) (last visited Apr. 29, 2019) (“Our wild-caught
19 seafood suppliers must meet Wegmans’ high standards to source seafood that is
20 caught responsibly” including having “[g]ear chosen to reduce bycatch.”); Sprouts,
21 Sustainable Seafood Policy, *available at* [https://about.sprouts.com/product-](https://about.sprouts.com/product-sourcing/sustainable-seafood-policy/)
22 [sourcing/sustainable-seafood-policy/](https://about.sprouts.com/product-sourcing/sustainable-seafood-policy/) (last visited Apr. 17, 2019); Publix, Publix
23 Sustainability Report 2019, *available at* [https://sustainability.publix.com/wp-](https://sustainability.publix.com/wp-content/uploads/sustainability-report.pdf)
24 [content/uploads/sustainability-report.pdf](https://sustainability.publix.com/wp-content/uploads/sustainability-report.pdf) (last visited Apr. 17, 2019) (supplier
25 commitment to sustainable fishing “helps us decide whether to sell a product,
26 enhance fisheries through improvement projects or halt the sale of a product until the
27 issue is resolved.”).

1 58. Pet stores also have sustainability guidelines and expectations of their
2 pet food suppliers, including both PetSmart and Petco – the two largest pet product
3 retailers in the U.S. with close to 3,000 retail outlets combined. Petco, Code of Ethics
4 and Conduct (2018), *available at* [https://s7d1.scene7.com/is/content/](https://s7d1.scene7.com/is/content/PETCO/public/sourcelib/copy/about/about-petco/code-of-ethics-2018.pdf)
5 [PETCO/public/sourcelib/copy/about/about-petco/code-of-ethics-2018.pdf](https://s7d1.scene7.com/is/content/PETCO/public/sourcelib/copy/about/about-petco/code-of-ethics-2018.pdf) (last
6 visited May 8, 2019) (memorializing Petco’s commitment to sustainability and
7 setting forth standards to preserve the environment); PetSmart, Environmental
8 Sustainability Report, *available at* [http://media.corporate-ir.net/media_files/](http://media.corporate-ir.net/media_files/irol/19/196265/2011_Sustainability_Report_PetSmart.pdf)
9 [irol/19/196265/2011_Sustainability_Report_PetSmart.pdf](http://media.corporate-ir.net/media_files/irol/19/196265/2011_Sustainability_Report_PetSmart.pdf) (last visited May 1, 2019)
10 (same).

11 59. The importance of sustainability throughout the pet industry is
12 evidenced by the formation of the Pet Sustainability Coalition in 2013, which counts
13 both PetSmart and Petco among its approximately 100 vendor members working
14 collectively to accelerate sustainability in the pet industry. Tuna companies who do
15 not use sustainable and dolphin safe catch methods and do not adhere to traceability
16 requirements can expect retailers to refuse to sell their products.

17 60. By expressing a commitment to sustainability and labeling its Fancy
18 Feast tuna products as dolphin safe, Defendant is able to sell its Fancy Feast tuna
19 products in several major retail stores to which it otherwise would be denied entry.

20 **Defendant’s Dolphin Safe Sustainability Representations are**
21 **False, Misleading, and/or Deceptive**

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

1 Defendant's falsely advertised and labeled tuna products from retail outlets located
2 within this District.

3 69. This Court has personal jurisdiction over Defendant pursuant to 18
4 U.S.C. §1965(b) and (d). Defendant is authorized to conduct and do business in
5 California, including this District. Defendant marketed, promoted, distributed, and
6 sold the tuna products in California, and Defendant has sufficient minimum contacts
7 with this State and/or sufficiently availed itself of the markets in this State through
8 its promotion, sales, distribution, and marketing within this State, including this
9 District, to render the exercise of jurisdiction by this Court permissible.

10 **PARTIES**

11 70. Plaintiff Lori Myers resides in Moreno Valley, California and is a citizen
12 of California. Throughout the relevant period, Plaintiff Myers routinely was exposed
13 to, saw, and relied upon Defendant's dolphin safe representations by viewing the
14 dolphin safe mark on the Fancy Feast Classic Pate Ocean Whitefish & Tuna product.
15 Plaintiff Myers purchased the tuna product at a PetSmart near her and online through
16 Instacart and Amazon. Plaintiff Myers purchased the tuna products many times
17 throughout the relevant period. At all relevant times, Plaintiff Myers was unaware
18 that the tuna was not dolphin safe as represented and was caught using fishing
19 methods that are harmful to dolphins. Had Plaintiff Myers known the tuna was not
20 dolphin safe and/or had Defendant not represented that the tuna was dolphin safe,
21 Plaintiff Myers would not have purchased the Nestle tuna products. As a result,
22 Plaintiff Myers suffered injury in fact and lost money at the time of purchase.
23 Plaintiff Myers continues to desire to purchase Nestle tuna products that are dolphin
24 safe, and she would purchase such a product manufactured by Defendant if it were
25 possible to determine prior to purchase whether dolphins were harmed by
26 Defendant's operations. Indeed, Plaintiff Myers regularly purchases online and visits
27 stores such as PetSmart, where Defendant's tuna products are sold, but will be unable

1 72. Plaintiff Alexander Mouganis resides in Port Washington, New York,
2 and is a citizen of New York. Throughout the relevant period, Plaintiff Mouganis
3 routinely was exposed to, saw, and relied upon Defendant's dolphin safe
4 representations by viewing the dolphin safe mark on Defendant's Fancy Feast Classic
5 Pate Ocean Whitefish & Tuna, Wet Cat Food Complement Classic Tuna & Vegetable
6 Broths, Gravy Lovers Ocean Whitefish & Tuna in Sautéed Seafood Flavor Gravy,
7 and Delights with Cheddar Grilled Tuna & Cheddar Cheese in Gravy products at
8 various retailers, including Target in Port Washington, New York, Pet Supplies Plus
9 in Manhasset, New York, and online at Chewy.com. Plaintiff Mouganis purchased
10 the Fancy Feast tuna product on multiple occasions throughout the relevant period.
11 At all relevant times, Plaintiff Mouganis was unaware that the Fancy Feast tuna
12 product was not dolphin safe as represented and was caught using fishing methods
13 that are harmful to dolphins. Had Plaintiff Mouganis known the Fancy Feast tuna
14 product was not dolphin safe and/or had Defendant not represented that the tuna
15 product was dolphin safe, Plaintiff Mouganis would not have purchased the Fancy
16 Feast tuna product. As a result, Plaintiff Mouganis suffered injury in fact and lost
17 money at the time of purchase. Plaintiff Mouganis continues to desire to purchase
18 tuna products that are dolphin safe, and she would purchase such a product
19 manufactured by Defendant if it were possible to determine prior to purchase whether
20 dolphins were harmed by Defendant's operations. Indeed, Plaintiff Mouganis
21 regularly visits stores such as Target and Pet Supplies Plus, where Defendant's Fancy
22 Feast tuna products are sold, but will be unable to rely upon the dolphin safe
23 representations and will not be able to determine if Defendant's products are dolphin
24 safe when deciding whether to purchase the Fancy Feast tuna products in the future.

25 73. Defendant Nestle Purina PetCare Company is a Missouri company with
26 its headquarters and principal place of business located at 1 Checkerboard Square,
27 St. Louis, MO 63164, and is a citizen of Missouri. During the time period relevant
28

1 to Plaintiffs' claims, Defendant: produced and sold tuna products throughout the
2 United States and its territories; sold Fancy Feast tuna products to Plaintiffs and
3 others in the United States; and engaged in the false, misleading, and deceptive
4 advertising alleged in this Complaint.

5 **CLASS DEFINITION AND ALLEGATIONS**

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

9 **Nationwide Class**

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

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

14 75. In addition, Plaintiff Myers seeks certification of the following
15 California-Only Class:

16 **California-Only Class**

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

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

21 76. In addition, Plaintiffs Cullen and Mouganis seek certification of the
22 following New York-Only Class:

23 **New York-Only Class**

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

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

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

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

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

13 (b) whether Defendant failed to comply with storage, traceability and
14 verification requirements;

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

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

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

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

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

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

26 (i) whether Defendant and its RICO Co-Conspirators knowingly
27 participated in, devised, or intended to devise a scheme or plan to defraud, or a
28

1 scheme or plan for obtaining money or property by means of false or fraudulent
2 pretenses, representations, promises, or omissions;

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

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

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

12 (m) whether Plaintiffs and Class members are entitled to appropriate
13 remedies, including damages, restitution, corrective advertising, and injunctive relief.

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

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

23 **81. Superiority.** A class action is superior to all other available means for
24 the fair and efficient adjudication of this controversy. The damages or other financial
25 detriment suffered by individual Class members is relatively small compared to the
26 burden and expense that would be entailed by individual litigation of their claims
27 against Defendant. It would thus be virtually impossible for members of the Classes,

1 on an individual basis, to obtain effective redress for the wrongs done to them.
2 Furthermore, even if Class members could afford such individualized litigation, the
3 court system could not. Individualized litigation would create the danger of
4 inconsistent or contradictory judgments arising from the same set of facts.
5 Individualized litigation would also increase the delay and expense to all parties and
6 the court system from the issues raised by this action. By contrast, the class action
7 device provides the benefits of adjudication of these issues in a single proceeding,
8 economies of scale, and comprehensive supervision by a single court, and presents
9 no unusual management difficulties under the circumstances here.

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

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

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

22 85. Likewise, particular issues under Rule 23(c)(4) are appropriate for
23 certification because such claims present only particular, common issues, the
24 resolution of which would advance the disposition of this matter and the parties'
25 interests therein. Such particular issues include, but are not limited to: (a) whether
26 Defendant marketed and sold its Fancy Feast tuna products as “Dolphin Safe” when
27 they were not; (b) whether Defendant’s conduct was unlawful, unfair, or fraudulent

1 in violation of state consumer protections law; (c) whether Defendant’s
2 misrepresentations would deceive a reasonable consumer; (d) whether Defendant has
3 been unjustly enriched; (e) whether Defendant failed to comply with federal law in
4 branding its Fancy Feast tuna products “Dolphin Safe”; and (f) whether Defendant’s
5 misrepresentations regarding its tuna products would be material to a reasonable
6 consumer.

7
8 **COUNT I –**
9 **Violation of Racketeer Influenced and Corrupt Organizations Act (“RICO”),**
10 **18 U.S.C. §§ 1962(c)-(d)**
11 **(On Behalf of the Nationwide Class)**

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

14 87. Plaintiffs bring this claim against Defendant individually and on behalf
15 of the Nationwide Class.

16 88. Defendant conducts its business—legitimate and illegitimate—in
17 concert with numerous other persons and entities, including, but not limited to, Thai
18 Union Frozen Products PCL (“TUFP”), one of Nestle’s largest importers of tuna
19 products into the United States; Thai Union Manufacturing Co., Ltd. (“TUM”), one
20 of Nestle’s canning, shipping, and importing partners for its tuna products; Songkla
21 Canning PCL (“Songkla”), another canning company for Nestle’s tuna products;
22 Southeast Asian Packaging and Canning Co., Ltd. (“SEAPAC”), a canning,
23 packaging, and importing company for Nestle based in Thailand; and various other
24 fishing, import/export, packaging, labeling, and distributing companies currently
25 unknown to Plaintiffs (collectively, the “RICO Co-Conspirators”).

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

1 have repeatedly been upheld by the federal judiciary. *See, e.g., Bledsoe v. FCA US*
2 *LLC*, No. 16-14024, 2019 WL 1379588, at *16 (E.D. Mich. Mar. 27, 2019); *In re*
3 *Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices, & Prod. Liab. Litig.*, 295 F.
4 Supp. 3d 927, 984 (N.D. Cal. 2018); *In re Duramax Diesel Litig.*, 298 F. Supp. 3d
5 1037, 1087 (E.D. Mich. 2018); *In re Volkswagen “Clean Diesel” Mktg., Sales*
6 *Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 4890594, at
7 *18 (N.D. Cal. Oct. 30, 2017).

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

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

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

26 97. These methods were concealed from, among other persons and entities:
27 consumers throughout the United States, including California (on Defendant’s tuna
28

1 product packaging, labeling, and the Internet); port authorities where Defendant's
2 tuna is off-loaded and processed; the U.S. National Oceanic and Atmospheric
3 Administration ("NOAA") in, among other things, NOAA's Form 370¹⁵ and Captain
4 Statements,¹⁶ both part of NOAA's "Fisheries' Tuna Tracking and Verification
5 Program;" and other tracing and tracking reports.

6 98. To accomplish their scheme or common course of conduct, Defendant
7 and its RICO Co-Conspirators, along with others, had to work together to conceal the
8 truth. Each of them was employed by, hired by, or associated with, and conducted
9 or participated in the affairs of, a RICO enterprise (defined below and referred to as
10 the "Dolphin-Unsafe RICO Enterprise" or the "Enterprise"). The purpose of the
11 Dolphin-Unsafe RICO Enterprise was to deceive regulators, retailers, and consumers
12 into believing that Defendant's tuna products were sustainably sourced and "Dolphin
13 Safe" as that term is defined by U.S. laws and regulations. The motivation was
14 simple: to increase Defendant's revenue by promising consumers its tuna products
15 were dolphin safe, while also minimizing its costs by not adopting more expensive
16 tuna fishing, tracing, and segregation operations that would comply with the law. As
17 a direct and proximate result of their fraudulent scheme and common course of
18 conduct, Defendant and its RICO Co-Conspirators were able to extract billions of
19 dollars from consumers. As explained below, their years-long misconduct violated
20 Sections 1962(c) and (d).

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

22 99. A subsidiary of Swiss conglomerate Nestle S.A., Defendant is one of
23 the largest pet food companies in the United States, providing consumers with a wide-
24 range of pet food, snacks, and cat litter products, including its Fancy Feast[®] gourmet
25

26 ¹⁵ <https://www.fisheries.noaa.gov/national/marine-mammal-protection/noaa-form-370-fisheries-certificate-origin> (last visited May 2, 2019).

27 ¹⁶ <https://www.fisheries.noaa.gov/national/marine-mammal-protection/captains-statement-templates> (last visited May 2, 2019).

1 cat food tuna products. Defendant uses fishing vessels owned by companies
2 currently unknown to Plaintiffs, as well as those companies' fishermen, to catch and
3 procure tuna for use in Defendant's tuna products. Defendant uses, among others,
4 TUFPP, TUM, and SEAPAC to import its tuna into the United States, including into
5 California. Defendant uses, among others, TUM, Songkla, and SEAPAC to store
6 and package its tuna products. Defendant uses a network of distributors to supply its
7 tuna products throughout the United States for sale to consumers. Throughout this
8 process, Defendant and its RICO Co-Conspirators sent through the mails and wires,
9 among other things, consumer tuna products with product labels, Internet website
10 postings, invoices, wire payment records, shipping manifests, bills of lading, NOAA
11 Form 370s, Captain Statements, and tracing and tracking reports which all identified
12 the tuna being sold as sustainably sourced and dolphin safe, when it was not.

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

23 101. At all relevant times, the Dolphin-Unsafe RICO Enterprise constituted
24 a single "enterprise" or multiple enterprises within the meaning of 18 U.S.C.
25 §1961(4), as legal entities, as well as individuals and legal entities associated-in-fact
26 for the common purpose of engaging in Defendant's and the RICO Co-Conspirators'
27 unlawful profit-making scheme.

1 102. The association-in-fact Dolphin-Unsafe RICO Enterprise consisted of
2 at least the following entities and individuals, and likely others:

3 **1. Nestle Purina PetCare Company**

4 103. Nestle, the Defendant in this action, is the second largest pet food
5 company in the world and the largest in the United States. One of its line of pet food
6 products is the Fancy Feast brand of cat food, which includes several varieties of tuna
7 products. Nestle is wholly owned by Swiss conglomerate Nestle S.A. Nestle is a
8 distinct legal entity, controlled and owned by Nestle S.A. As more fully detailed
9 herein, Nestle conspired with TUFPP, TUN, Songkla, SEAPAC, and other entities and
10 individuals to procure, process, package, label, and sell tuna products as sustainably
11 sourced and dolphin safe when they are not, to package and label Defendant's tuna
12 products with false and material misrepresentations, and to gather information for
13 submission to port authorities and regulators in the Form 370s and Captain
14 Statements. TUFPP and TUM's parent company, Thai Union Group PCL, is a
15 participating company with, and founding member of, the International Seafood
16 Sustainability Foundation ("ISSF").

17 104. Created in 2009, the ISSF purports to be a non-profit conservation group
18 whose mission is to undertake science-based initiatives for the long-term
19 conservation and sustainable use of tuna stocks, reducing bycatch and promoting
20 ecosystem health. In reality, the ISSF is simply a clever way for canned tuna
21 companies to disguise their poor environmental and sustainability records insofar as
22 the ISSF was founded by the world's largest canned tuna industry companies, is
23 funded by corporate donations from the canned tuna giants and tuna fishing device
24 manufacturers, among others, is linked to tuna industry trade organizations, such as
25 the National Fisheries Institute, and has generally bowed to the whims and wishes of
26 its industry members rather than truly working to reduce the slaughter of dolphins
27 and sustain the global tuna population.

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

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

11 114. Put simply, RICO Co-Conspirators TUFPP, TUM, and SEAPAC, and
12 their employees, among other third-party importers and employees unknown to
13 Plaintiffs, were well aware that the tuna they imported for Defendant into the United
14 States would be used to defraud consumers, retailers, and federal regulators. Indeed,
15 these companies and individuals were critical to the concealment of the truth from
16 consumers, retailers, and federal regulators regarding Defendant's tuna products.

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

19 115. RICO Co-Conspirators TUM, Songkla, and SEAPAC, and their
20 employees, among other third-party storage, canning, and processing companies and
21 employees unknown to Plaintiffs, stored, canned, and processed Defendant's tuna
22 products for sale, knowing that Defendant would market and sell its tuna products to
23 Plaintiffs and the Class as dolphin safe, sustainably sourced, and compliant with
24 federal laws and regulations. Indeed, these RICO Co-Conspirators were tasked by
25 Defendant with physically segregating and storing non-dolphin-safe tuna separately
26 from any tuna that may be dolphin safe (if any), which they did not do.

1 116. RICO Co-Conspirators TUM, Songkla, and SEAPAC, 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.

6 117. RICO Co-Conspirators TUM, Songkla, and SEAPAC, 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, nor properly segregated from actual dolphin-safe tuna, which
11 they knew would render false Defendant's dolphin safe and sustainability
12 representations to consumers and retailers in the United States.

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

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

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

1 Conspirators' bottom lines are greatly increased by the indiscriminate killing and
2 harming of dolphins while fishing for tuna.

3 120. The Dolphin-Unsafe RICO Enterprise began well before the beginning
4 of the Class Period. On information and belief, Defendant has entered into numerous
5 agreements with third-party fishing vessel companies unknown to Plaintiffs to
6 procure tuna to be used in Defendant's tuna products sold to Plaintiffs and the Class.
7 Defendant has also entered into numerous agreements with TUFPP, TUM, and
8 SEAPAC to import Defendant's tuna products, and with TUM, Songkla, and
9 SEAPAC to store, process, and can Defendant's tuna products.

10 121. The scheme continues to this day, as consumers, retailers, and federal
11 regulators remain in the dark about the truth of Defendant's so-called "sustainably
12 sourced" and "dolphin safe" tuna products.

13 122. At all relevant times, the Dolphin-Unsafe RICO Enterprise: (a) had an
14 existence separate and distinct from Defendant and each RICO Co-Conspirator; (b)
15 was separate and distinct from the pattern of racketeering in which Defendant and
16 each RICO Co-Conspirator engaged; and (c) was an ongoing and continuing
17 organization consisting of legal entities, including Defendant; third-party fishing
18 vessel companies and fishermen; TUFPP, TUM, SEAPAC, and Songkla and their
19 employees; and other entities and individuals associated for the common purpose of
20 procuring, storing, processing, importing, packaging, labeling, distributing,
21 marketing, and selling of Defendant's tuna products to consumers in the Class
22 through fraudulent representations in, among other places, consumer-facing product
23 packaging and labels, Internet websites, marketing and advertising to consumers,
24 bills of lading, Form 370s, and Captain Statements, and deriving profits and revenues
25 from those activities. Each member of the Dolphin-Unsafe RICO Enterprise shared
26 in the bounty generated by the enterprise, *i.e.*, by sharing the benefit derived from
27

1 increased sales revenue generated by the scheme to defraud Class members
2 nationwide.

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

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

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

21 126. Each participant in the Dolphin-Unsafe RICO Enterprise had a
22 systematic linkage to each other through corporate ties, contractual relationships,
23 financial ties, and continuing coordination of activities. Through the Dolphin-Unsafe
24 RICO Enterprise, Defendant and its RICO Co-Conspirators functioned as a
25 continuing unit with the purpose of furthering the illegal scheme and their common
26 purposes of increasing their revenues and market share, and minimizing losses.

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

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

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

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

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

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

12 129. The unknown third-party RICO Co-Conspirator fishing companies and
13 fishermen and other employees also participated in, operated and/or directed the
14 Dolphin-Unsafe RICO Enterprise. These RICO Co-Conspirators knew that federal
15 laws and regulations forbade Defendant from importing, storing, packaging, labeling,
16 marketing, and selling Defendant's tuna products containing tuna they procured and
17 processed for Defendant as "sustainably sourced" and "Dolphin Safe," and yet
18 formed agreements with Defendant to procure and process tuna for Defendant's tuna
19 products that was neither dolphin safe nor sustainably sourced.

20 130. The unknown third-party RICO Co-Conspirator fishing companies and
21 fishermen and other employees, and TUFPP, TUM, SEAPAC, and Songkla and their
22 employees, directly participated in the fraudulent scheme by procuring, storing,
23 importing, and processing the tuna used by Defendant in its tuna products. These
24 RICO Co-Conspirators exercised tight control over the manner and method of fishing
25 for tuna and other aspects of the procurement, storage, importation, and distribution
26 process and closely collaborated and cooperated with Defendant in the process.

1 131. The unknown third-party RICO Co-Conspirator fishing companies and
2 fishermen and other employees, and TUFPP, TUM, SEAPAC, and Songkla and their
3 employees, also participated in the affairs of the Enterprise by working with
4 Defendant to conceal from U.S. regulators the truth behind the tuna caught for use in
5 Defendant's tuna products, and collected substantial sums of money in revenues and
6 profits because they did not use less efficient and more costly fishing techniques
7 necessary to protect the dolphin population. The techniques they did employ yielded
8 higher catches at lower costs, thus increasing profits and margins on both accounts.
9 Through their conspiracy to sell non-sustainably sourced tuna as sustainable sourced,
10 and to sell non-dolphin safe tuna as dolphin safe, all of the co-conspirators profited
11 handsomely from their scheme.

12 132. Each of the RICO Co-Conspirators knew that the tuna they procured,
13 stored, canned, processed, imported, and distributed was not sustainably sourced and
14 did not meet the requirements to be labeled as dolphin safe, and also knew that the
15 tuna would eventually be sold in the United States as dolphin safe and sustainably
16 sourced.

17 133. Without the RICO Co-Conspirators' willing participation, including
18 their necessary involvement in procuring, storing, processing, canning, and importing
19 tuna for use in Defendant's tuna products, the Enterprise's scheme and common
20 course of conduct would have been unsuccessful.

21 134. The RICO Co-Conspirators knew that any market for tuna products that
22 were not dolphin safe was *very* limited, and that falsely representing that these
23 products were dolphin safe opened up an exponentially larger market in the United
24 States for such products.

25 135. The RICO Co-Conspirators directed and controlled several aspects of
26 the ongoing organization necessary to implement the scheme through
27 communications with each other, with Defendant, with port authorities, and with
28

1 regulators of which Plaintiffs cannot fully know at present, because such information
2 lies in the Defendant's and others' hands. Similarly, because many of the RICO Co-
3 Conspirators are foreign entities, and their shipping, storing, processing, and canning
4 companies and employees are foreign citizens, Plaintiffs cannot fully know the full
5 extent of each individual corporate entity's and individual's involvement in the
6 wrongdoing prior to having access to discovery.

7 **C. Mail and Wire Fraud**

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

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

24 138. Defendant and its RICO Co-Conspirators participated in the scheme to
25 defraud by using mail, telephone, and the Internet to transmit mailings and wires in
26 interstate or foreign commerce. Defendant and its RICO Co-Conspirators used,
27 directed the use of, and/or caused to be used, thousands of interstate mail and wire

1 communications in service of their scheme through virtually uniform
2 misrepresentations.

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

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

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

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

24 141. Defendant's and its RICO Co-Conspirators' uses of the mails and wires
25 include, but are not limited to, the transmission, delivery, or shipment of the
26 following by Defendant and its RICO Co-Conspirators or third parties that were
27

1 foreseeably caused to be sent as a result of Defendant's and its RICO Co-
2 Conspirators' illegal scheme:

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

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

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

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

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

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

14 (g) false or misleading Captain Statements;

15 (h) false or misleading port authority reports;

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

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

20 (k) payments to TUFPP;

21 (l) payments to TUM;

22 (m) payments to Songkla;

23 (n) payments to SEAPAC;

24 (o) compensation to ship captains on tuna fishing vessels;

25 (p) deposits of proceeds; and/or

26 (q) other documents and things, including electronic communications.
27

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

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
TUM (for Nestle)	Port of Oakland, CA	May 23, 2019	Bill of Lading # APLUGAT0132019
TUM (for Nestle)	Port of Kansas City, MO	May 23, 2019	Bill of Lading # MSCUWT227623
SEAPAC (for Nestle)	Port of New York/Newark	June 16, 2016	Bill of Lading # MAEU566884729
TUM (for Nestle)	Port of Kansas City, MO	June 6, 2016	Bill of Lading # MOLU13805494215
SEAPAC (for Nestle)	Port of Los Angeles, CA	June 6, 2016	Bill of Lading # MOLU13805498801
SEAPAC (for Nestle)	Port of Kansas City, MO	May 16, 2016	Bill of Lading # MOLU13805419356
TUM (for Nestle)	Port of Kansas City, MO	Apr. 19, 2016	Bill of Lading # MSCUWT791768
SEAPAC (for Nestle)	Port of Long Beach, CA	Apr. 19, 2016	Bill of Lading # MSCUWT792493
TUM (for Nestle)	Port of New York/Newark	Nov. 20, 2015	Bill of Lading # NYKS3024672050
SEAPAC (for Nestle)	Port of Long Beach, CA	Oct. 27, 2015	Bill of Lading # MSCUWT456016
SEAPAC (for Nestle)	Port of New York/Newark	June 1, 2015	Bill of Lading # NYKS3023183592
TUM (for Nestle)	Port of Kansas City, MO	April 25, 2015	Bill of Lading # MSCUWT227623
TUM (for Nestle)	Port of Long Beach, CA	Apr. 1, 2015	Bill of Lading # MSCUWT148043

TUM (for Nestle)	Port of Kansas City, MO	Feb. 1, 2015	Bill of Lading # MSCUWT130355
SEAPAC (for Nestle)	Port of Baltimore, MD	Oct. 18, 2013	Bill of Lading # MSCUBP571363

143. Defendant and its RICO Co-Conspirators (or their agents), for the purpose of executing the illegal scheme, transmitted (or caused to be transmitted) in interstate commerce by means of wire communications, certain writings, signs, signals and sounds, including those items described above and alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
Nestle	General Public	12/13/17	Nestle tweet on Twitter stating: “Discover how Nestle and Thai Union are supporting #HumanRights and #ResponsibleSourcing in the Thai fishing industry....”
Nestle	General Public	2019	Nestle webpage under tab “Sourcing” and titled “Sourcing Quality Ingredients” stating, <i>inter alia</i> , that “Sourcing is important, not just to ensure we use high-quality ingredients in our pet food products, but also for the environment. We can trace every single ingredient back to our trusted sources. Our experts don’t just monitor our ingredients once they arrive at our factories—they evaluate quality from the source,” “Purina is committed to minimizing our global environmental impact. That’s why we make responsible sourcing of our ingredients a top priority,” and “Seafood is a top priority in terms of sustainability because overfishing is such a serious issue. We work closely not only with our seafood suppliers, but also with external seafood sustainability experts, to ensure we source from responsible fisheries.” https://www.purina.com/nutrition/sourcing
Nestle	General Public	2019	Nestle webpage titled “Fish and Seafood” stating, “We work hard to ensure our fish and seafood come from responsible sources, as well as bringing innovative solutions to tackle challenges such as labor conditions,” “Working with our suppliers, we’re moving toward a future

1			where we can verify that the fish and seafood we source come from fisheries and farms that are engaged in improvement projects,” “All of our suppliers are actively committed to responsible sourcing,” “we work closely with our suppliers to identify, as far as possible, the sources of our fish and seafood ingredients,” and “We are also able to evaluate the sustainability of seafood sources (wild and farmed) and identify projects to enhance the environmental performance of our suppliers.” https://www.nestle.com/csv/raw-materials/fish-seafood
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9	Nestle	General Public	2019
10			“Nestlé Purina’s partnership with SFP proves that sustainable seafood production doesn’t just apply to what people eat. The company’s pet food division has worked closely with SFP since 2013 to ensure the seafood that goes into its products is sustainable.” https://www.sustainablefish.org/Programs/Industry-Partnerships/Partnership-Profiles/Nestle-Purina
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15	Nestle	General Public	2018
16			Nestle Annual Review 2018 at 32: stating that “we have made public commitments against our most material issues, which help us achieve our ambitions and ultimately support the UN Sustainable Development Goals (SDG) for 2030,” including “Life below water”: https://www.nestle.com/asset-library/documents/library/documents/annual_reports/2018-annual-review-en.pdf
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20	Nestle	General Public	July 2018
21			“Nestlé Responsible Sourcing Standard” stating, <i>inter alia</i> , that one of the “Big 5 executive summary principles” is fishers improving on “caring and respecting ... animals” (p. 4), and standard 4.2.11.1 – wild fisheries, states that fishers shall “not use highly destructive fishing gear or fishing methods” and “not engage in fisheries with bycatch of Endangered, Threatened, and Protected Species as defined by national legislation or international agreements” (p. 21): https://www.nestle.com/asset-library/documents/library/documents/supp
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1			liers/nestle-responsible-sourcing-standard-english.pdf
2	Nestle	General Public	Quote from Nestle's Head of Sustainability Jack Scott in Greenpeace Press Release stating, "Over the past several years, Nestlé and Greenpeace have worked together to strengthen Nestlé's policies governing the procurement and responsible sourcing of seafood" and "In light of Greenpeace's research findings, Nestlé has committed to a ban on all transshipments at sea." Press release, <i>Mars, Nestle Commit to Clean Up Pet Food Supply chains, Increasing Pressure on Thai Union to Act</i> , GREENPEACE (Mar. 16, 2017), available at https://www.greenpeace.org/international/press-release/7106/mars-nestle-commit-to-clean-up-pet-food-supply-chains-increasing-pressure-on-thai-union-to-act/
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11	Nestle	General Public	Nestle Professional website posting titled "Quality, Sustainable Seafood Gets Consumers' Attention," where Nestle states, "Learn why sustainable seafood, including a traceable supply chain, is important to the planet, consumers, and you. It's more than just "doing the right thing." It's an intelligent business strategy." https://www.nestleprofessional.us/trends/quality-sustainable-seafood-gets-consumers-attention
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17	Nestle	General Public	Nestle "Responsible Sourcing" update for 2017, stating, <i>inter alia</i> , "In 2017 we continued to work with our suppliers in Thailand to map and trace the seafood that we purchase back to the vessels used. Through this work we were able to achieve 99% traceability for wild caught tuna, back to the vessel used. In practical terms, this means we can identify all of the Thai flagged vessels used to catch our tuna by name and vessel number. For all of the tuna we purchase, we are now able to receive Port In Port Out (PIPO) logs, Captains logs, and Marine Catch Purchasing documents.... We are now working with the Seafood Task Force to trace farm raised shrimp back to the fish meal sourcing vessels using the feed lot numbering process. We continue to update our traceability information on an annual
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			basis. Knowing where our products come from is a critical first step in ensuring we source our seafood ingredients responsibly. https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-sourcing/seafood-responsible-sourcing-update-2017.pdf
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144. Defendant, in concert with the RICO Co-Conspirators, also used the internet and other electronic facilities to carry out the scheme and conceal their ongoing fraudulent activities. Specifically, Defendant, in concert with the RICO Co-Conspirators, made material misrepresentations about its tuna products on its websites, Twitter, and through ads online, all of which were made in interstate commerce and intended to mislead regulators and the public about the truth about Defendant’s non-dolphin safe and unsustainably sourced tuna products.

145. Defendant and its RICO Co-Conspirators also communicated by U.S. mail, by interstate facsimile, and by interstate electronic mail with various other affiliates, regional offices, divisions, packaging companies, distributors, grocery chains, wholesale companies, and other third-party entities in furtherance of the scheme.

146. The mail and wire transmissions described herein were made in furtherance of Defendant’s and its RICO Co-Conspirators’ scheme and common course of conduct to deceive regulators, retailers, and consumers and lure consumers into purchasing Defendant’s tuna products, which Defendant and its RICO Co-Conspirators knew or recklessly disregarded as not justifying the “dolphin safe” label, despite their decades-long advertising and marketing campaign that Defendant’s tuna products were “Dolphin Safe” and sustainably sourced.

147. Many of the precise dates of the fraudulent uses of the U.S. mail and interstate wire facilities have been deliberately hidden, and cannot be alleged without

1 access to Defendant's and its RICO Co-Conspirators' books and records. However,
2 Plaintiffs have described the types of, and in some instances, occasions on which the
3 predicate acts of mail and/or wire fraud occurred. These include thousands of
4 communications to perpetuate and maintain the scheme, including the things and
5 documents described in the preceding paragraphs.

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

17 149. To achieve their common goals, Defendant and its RICO Co-
18 Conspirators concealed from the general public the true nature of Defendant's tuna
19 products and obfuscated the fact that the tuna in Defendant's tuna products was not
20 dolphin safe at all or sustainably sourced.

21 150. Defendant and its RICO Co-Conspirators and each member of the
22 conspiracy, with knowledge and intent, have agreed to the overall objectives of the
23 conspiracy, and have participated in the common course of conduct, to commit acts
24 of fraud and indecency in procuring, processing, packaging, labeling, distributing,
25 marketing, and/or selling Defendant's tuna products.

1 151. Indeed, for the conspiracy to succeed, Defendant and each of its RICO
2 Co-Conspirators had to agree to each play a role in the conspiracy by implementing
3 and using similar devices and fraudulent tactics.

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

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

15 154. Plaintiffs' and the Class' reliance on this ongoing concealment is
16 demonstrated by the fact that they purchased, and lost money or property by
17 purchasing, falsely advertised tuna products that never should have been introduced
18 into the U.S. stream of commerce in the manner in which they were. In addition,
19 NOAA and other regulators relied on the misrepresentations and material
20 concealment and omissions made or caused to be made by Defendant and its RICO
21 Co-Conspirators; otherwise, Defendant would never have been able to market, label,
22 and sell its tuna products as "Dolphin Safe" and "sustainably sourced" in the United
23 States and sell the same to the consuming public.

24 155. As described herein, Defendant and its RICO Co-Conspirators engaged
25 in a pattern of related and continuous predicate acts for years. The predicate acts
26 constituted a variety of unlawful activities, each conducted with the common purpose
27 of obtaining significant monies and revenues from Plaintiffs and Class members
28

1 based on their misrepresentations, while providing to Plaintiffs and Class members
2 Defendant's tuna products that were worthless, worth significantly less than the
3 purchase price paid, or that consumers would simply not have purchased at all but
4 for the conspiracy. The predicate acts also had the same or similar results,
5 participants, victims, and methods of commission. The predicate acts were related
6 and not isolated events.

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

15 157. During the procurement, processing, packaging, labeling, distribution,
16 marketing, and sale of Defendant's tuna products, Defendant and its RICO Co-
17 Conspirators shared among themselves logistical, marketing, and financial
18 information that revealed the existence of the fishing practices employed that prevent
19 Defendant's tuna products from being marketed and sold as "Dolphin Safe",
20 sustainably sourced, and in compliance with federal laws and regulations.
21 Nevertheless, Defendant and its RICO Co-Conspirators chose and agreed to
22 disseminate information that deliberately misrepresented Defendant's tuna products
23 as "Dolphin Safe" and sustainably sourced in their concerted efforts to market and
24 sell them to consumers.

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

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

4 (b) payment at the time of purchase for falsely advertised tuna products
5 purportedly being “Dolphin Safe,” sustainably sourced, and meeting applicable
6 federal laws and regulations, that were not capable of being sold as “Dolphin
7 Safe” and sustainably sourced.

8 159. Defendant’s and its RICO Co-Conspirators’ violations of 18 U.S.C.
9 §§1962(c) and (d) have directly and proximately caused economic damage to
10 Plaintiffs’ and Class members’ business and property, and Plaintiffs and Class
11 members are entitled to bring this action for three times their actual damages, as well
12 as injunctive/equitable relief, costs, and reasonable attorneys’ fees pursuant to 18
13 U.S.C. §1964(c).

14 **COUNT II –**
15 **Violation of California Business & Professions Code §§17200, *et seq.***
16 **(On Behalf of the California-Only Class)**

17 160. Plaintiff Myers repeats and re-alleges the allegations contained in
18 paragraphs 1 through 85 above, as if fully set forth herein.

19 161. Plaintiff Myers brings this claim individually and on behalf of the
20 California-Only Class.

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

27 163. **Unlawful Business Practices:** In the course of conducting business,
28 Defendant committed “unlawful” business practices in violation of the UCL by, *inter*

1 *alia*, making the dolphin safe representations and sustainable fishing methods
2 representations, which are false, misleading, and/or deceptive (which also constitute
3 advertising within the meaning of §§17200); failing to comply with storage,
4 traceability, and verification requirements, as set forth more fully herein; violating
5 California Civil Code §§1572, 1573, 1709, and 1711; the California Legal Remedies
6 Act, California Civil Code §§1750, *et seq.*; California Business & Professions Code
7 §§17200, *et seq.*, 17500, *et seq.*, and 17580, *et seq.*; and 16 U.S.C. §1385.

8 164. Plaintiff Myers reserves the right to allege other violations of law, which
9 constitute other unlawful business acts or practices. Such conduct is ongoing and
10 continues to this date.

11 165. **Unfair Business Practices:** In the course of conducting business,
12 Defendant committed “unfair” business acts or practices by, *inter alia*, making the
13 dolphin safe representations and sustainable fishing methods representations which
14 are false, misleading, and/or deceptive (which also constitute advertising within the
15 meaning of §17200), and failing to comply with storage, traceability, and verification
16 requirements, as set forth more fully herein. There is no societal benefit from false
17 advertising, only harm. While Plaintiff Myers and the public at large were and
18 continue to be harmed, Defendant has been unjustly enriched by its false, misleading,
19 and/or deceptive representations as it unfairly enticed Plaintiff Myers and California-
20 Only Class members to purchase its Fancy Feast tuna products instead of similar tuna
21 products sold by other manufacturers that were dolphin safe, sustainably caught,
22 stored separately from any non-dolphin safe tuna, traceable, and verified. Because
23 the utility of Defendant’s conduct (zero) is outweighed by the gravity of harm to
24 Plaintiffs, consumers, and the competitive market, Defendant’s conduct is “unfair”
25 having offended an established public policy embodied in, among other things, 16
26 U.S.C. §1385, where Congress expressly found that it is the policy of the United
27 States to protect dolphin populations and that “consumers would like to know if the

1 tuna they purchase is falsely labeled as to the effect of the harvesting of the tuna on
2 dolphins.” 16 U.S.C. §§1385(b)(2)-(3).

3 166. Defendant also engaged in immoral, unethical, oppressive, and
4 unscrupulous activities that are substantially injurious to the public at large.

5 167. There were reasonably available alternatives to further Defendant’s
6 legitimate business interests, other than the conduct described herein.

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

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

17 170. Plaintiff Myers relied on Defendant’s dolphin safe representations and
18 compliance with traceability and verification requirements and were in fact injured
19 as a result of those false, misleading, and deceptive representations and by
20 Defendant’s failure to comply with storage, traceability, and verification
21 requirements.

22 171. As alleged herein, Plaintiff Myers has suffered injury in fact and lost
23 money or property at the time of purchase as a result of Defendant’s conduct because
24 she was exposed to and purchased Defendant’s Fancy Feast tuna products in reliance
25 on the dolphin safe representations and sustainable fishing methods representations,
26 and Defendant’s compliance with storage, tracking, and verification requirements,
27 but did not receive Fancy Feast tuna products that contain tuna caught using fishing

1 methods that do not harm dolphins.

2 172. Unless restrained and enjoined, Defendant will continue to engage in
3 the above described conduct. Accordingly, injunctive relief is appropriate.

4 173. Plaintiff Myers, on behalf of herself, all others similarly situated, and
5 the general public, seek declaratory relief and an injunction prohibiting Defendant
6 from continuing such practices, corrective advertising, restitution of all money
7 obtained from Plaintiff Myers and California-Only Class members collected as a
8 result of unfair competition, and all other relief this Court deems appropriate,
9 consistent with Business & Professions Code §17203.

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

13 174. Plaintiff Myers repeats and incorporates by reference the allegations
14 contained in the paragraphs 1 through 85 above as if fully set forth herein.

15 175. Plaintiff Myers brings this claim individually and on behalf of the
16 California-Only Class.

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

19 177. Plaintiff Myers is a consumer as defined by California Civil Code
20 §1761(d). The Fancy Feast tuna products are “goods” within the meaning of the
21 CLRA.

22 178. Defendant violated and continues to violate the CLRA by engaging in
23 the following practices proscribed by California Civil Code §1770(a) in transactions
24 with Plaintiff Myers and the California-Only Class which were intended to result in,
25 and did result in, the sale of the Products:

- 26 (5) Representing that [the Products have] . . . characteristics, . . . uses
27 [and] benefits . . . which [they do] not have

1 * * *

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

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

8 180. Pursuant to §1782 of the CLRA, Plaintiff Myers notified Defendant in
9 writing by certified mail of the particular violations of §1770 of the CLRA and
10 demanded that Defendant rectify the problems associated with the actions detailed
11 above and give notice to all affected consumers of Defendant's intent to so act.

12 181. Defendant failed to rectify or agree to rectify the problems associated
13 with the actions detailed above and give notice to all affected consumers within 30
14 days of the date of written notice pursuant to §1782 of the CLRA. Thus, Plaintiff
15 Myers further seeks actual, punitive, and statutory damages as appropriate.

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

19 182. Plaintiffs Cullen and Mouganis (the "New York Plaintiffs") repeat and
20 incorporate by reference the allegations contained in the paragraphs 1 through 85
above as if fully set forth herein.

21 183. The New York Plaintiffs bring this claim individually and on behalf of
22 the New York-Only Class.

23 184. Defendant's actions alleged herein constitute unlawful, unfair, and
24 deceptive business practices. Those actions include misrepresenting that the tuna
25 products are "Dolphin Safe" when they are not.

26 185. Defendant's conduct constitutes acts, uses and/or employment by
27 Defendant or its agents or employees of deception, fraud, unconscionable and unfair

1 commercial practices, false pretenses, false promises, misrepresentations and/or the
2 knowing concealment, suppression, or omission of material facts with the intent that
3 others rely upon such concealment, suppression or omission, in connection with the
4 sale or advertisement of goods in violation of §349 of New York's General Business
5 Law.

6 186. Defendant's deceptive conduct was generally directed at the consuming
7 public.

8 187. Defendant's unfair and deceptive trade acts and practices in violation of
9 §349 of New York's General Business Law have directly, foreseeably, and
10 proximately caused damages and injury to the New York Plaintiffs and other
11 members of the New York-Only Class.

12 188. Defendant's deceptive conduct has caused harm to New York-Only
13 Class members in that they purchased the tuna products when they otherwise would
14 not have absent Defendant's deceptive conduct.

15 189. Defendant's violations of §349 of New York's General Business Law
16 threaten additional injury to the New York-Only Class members if the violations
17 continue.

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

22
23 **COUNT V**
Unjust Enrichment/Quasi-Contract

24 191. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1
25 through 85 above, as if fully set forth herein.

26 192. Plaintiffs and Class members conferred a benefit on Defendant by
27

1 purchasing the Fancy Feast tuna products.

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

8 194. Defendant has profited from its unlawful, unfair, false, misleading, and
9 deceptive practices and advertising at the expense of Plaintiffs and Class members,
10 under circumstances in which it would be unjust for Defendant to be permitted to
11 retain the benefit.

12 195. Plaintiffs do not have an adequate remedy at law against Defendant.

13 196. Plaintiffs and Class members are entitled to restitution of all monies paid
14 for the Fancy Feast tuna products or, at a minimum, the premium paid for the Fancy
15 Feast tuna products.

16 **PRAYER FOR RELIEF**

17 Wherefore, Plaintiffs pray for a judgment:

18 A. Certifying the Classes as requested herein;

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

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

24 D. Awarding restitution of Defendant's revenues to Plaintiffs and the
25 proposed Class members;

26 E. Awarding the Classes damages, including statutory and punitive
27 damages, and interest thereon;

- 1 F. Awarding attorneys' fees and costs; and
2 G. Providing such further relief as may be just and proper.

3 **DEMAND FOR JURY TRIAL**

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

6 Dated: June 28, 2019

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

/s/Patricia N. Syverson

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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

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

Executed the 28th day of June 2019.

/s/ Patricia N. Syverson
Patricia N. Syverson