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 20 and others similarly situated

21 **UNITED STATES DISTRICT COURT**
 22 **CENTRAL DISTRICT OF CALIFORNIA**

23 CHRISTINE SHAW, individually, and)
 24 on behalf of others similarly situated,)
 25 Plaintiff,)
 26 vs.)
 27 TRADER JOES COMPANY, a)
 28 California Corporation)
 Defendant.)

Case No.:
CLASS ACTION COMPLAINT
FOR:
 1. California Unfair Competition Law
 2. California False Advertising Law
 3. California Consumer Legal Remedies Act
 4. Consumer Fraud and Deceptive Practices
 5. Fraud
 6. Negligent Misrepresentation
 7. Unjust Enrichment
 8. Breach of Warranty
 9. Breach of Implied Warranty of Merchantability

DEMAND FOR JURY TRIAL

1 COMES NOW, plaintiff Christine Shaw (“Plaintiff”), as an individual and
2 on behalf of the general public and all others similarly situated, by her undersigned
3 attorneys, alleges as follows:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this class action individually and on behalf of a class
6 of persons who purchased deceptively labeled canned tuna products from
7 Defendant, specifically five ounce cans of (a) Trader Joe’s Albacore Tuna in Olive
8 Oil Half-Salt; (b) Trader Joe’s Albacore Tuna in Water Half-Salt; (c) Trader Joe’s
9 Skipjack Tuna in Water with Sea Salt; (d) Trader Joe’s Albacore Tuna in Water
10 Salt Added; (e) Trader Joe’s Yellowfin Tuna in Olive Oil Solid Light; and (f)
11 Trader Joe’s Albacore Tuna in Water No Salt Added.

12 2. Section 341 of the Food Drug and Cosmetics Act authorizes the Food
13 and Drug Administration to “promulgate regulations fixing and establishing for
14 any food...reasonable standards of fill of container,” whenever “such action will
15 promote honesty and fair dealing in the interest of consumers.” 21 U.S.C. § 341.
16 Pursuant to this statutory grant of authority, the FDA enacted 21 C.F.R. § 161.190.

17 3. This regulation governs the packaging and selling of canned tuna and
18 provides the federally mandated minimum standards of fill for canned tuna. *See* 21
19 C.F.R. § 161.190 (c).

20 4. Testing conducted by the National Oceanic and Atmospheric
21 Administration has found that the above-named tuna products are under-filled
22 below the federally mandated minimum standard of required by 21 C.F.R. §
23 161.190.

24 5. Defendant has continued to advertise and sell the tuna products in
25 question by misrepresenting to consumers that they contain a sufficient amount of
26 tuna and are legal for sale. Defendant has engaged in this activity for the purpose
27 of inducing unknowing consumers, including Plaintiff herein, into buying under-
28 filled cans of tuna.

1 14. The method for measuring the amount of tuna in cans of tuna product
2 is given in detail by 21 C.F.R. § 161.190(c)(2)(i)-(viii). Independent testing
3 conducted by NOAA was performed in accordance with this protocol.

4 15. Under this regulation, the minimum fill for a five-ounce can of Trader
5 Joe's Albacore Tuna in Water Salt Added, Trader Joe's Albacore Tuna in Water
6 Half-Salt, Trader Joe's Albacore Tuna in Water No Salt Added, Trader Joe's
7 Albacore Tuna in Olive Oil Half Salt, and Trader Joe's Yellowfin Tuna in Olive
8 Oil Solid Light is 3.23 ounces of pressed cake tuna, and the minimum fill for a
9 five-ounce can of Trader Joe's Skipjack Tuna in Water with Sea Salt is 2.84
10 ounces of pressed cake tuna.

11 16. Per the required protocol, NOAA tested twenty-four cans of each tuna
12 product. Their findings were as follows:

- 13 a. Trader Joe's Albacore Tuna in Water Salt Added: Average 2.61
14 ounces of pressed cake tuna (19.2% under minimum);
- 15 b. Trader Joe's Albacore Tuna in Water Half-Salt: Average 2.43
16 ounces of pressed cake tuna (24.8% under minimum);
- 17 c. Trader Joe's Albacore Tuna in Water No Salt Added: Average
18 2.43 ounces of pressed cake tuna (24.8% under minimum);
- 19 d. Trader Joe's Albacore Tuna in Olive Oil Half Salt: Average
20 2.87 ounces of pressed cake tuna (11.1% under minimum);
- 21 e. Trader Joe's Yellowfin Tuna in Olive Oil Solid Light: Average
22 2.78 ounces of pressed cake tuna (13.9% less under minimum);
23 and
- 24 f. Trader Joe's Skipjack Tuna in Water with Sea Salt: Average
25 2.56 ounces of pressed cake tuna (9.9% less under minimum)
26
27
28

1 **THE PLAINTIFF TRANSACTION**

2 17. Plaintiff purchased five-ounce cans of Defendant’s tuna products at
3 issue at various grocery stores owned and operated by Defendant in Los Angeles
4 County within the last four years.

5 18. As NOAA’s testing revealed that the canned tuna products are under-
6 filled in violation of federal standards, Plaintiff purchased defective goods that
7 Defendant was not authorized to sell.

8 19. Defendant thus misrepresented to Plaintiff that its canned tuna
9 products contain a sufficient amount of tuna and are legal for sale.

10 20. Plaintiff relied on Defendant’s misrepresentations when she purchased
11 Defendant’s canned tuna products. Had Defendant not made these
12 misrepresentations, Plaintiff would not have purchased Defendant’s canned tuna
13 products. Plaintiff was therefore damaged by Defendant’s conduct.

14 **CLASS ALLEGATIONS**

15 21. Plaintiff brings this action, as set forth below, against Defendant,
16 pursuant to Rules 23(a), 23(b)(1), 23(b)(2), and 23(b)(3) of the Federal Rules of
17 Civil Procedure, individually and on behalf of a class consisting of:

18 All persons who purchased a five-ounce can of Trader
19 Joe’s Albacore Tuna in Water Salt Added, Trader Joe’s
20 Albacore Tuna in Water Half-Salt, Trader Joe’s Albacore
21 Tuna in Water No Salt Added, Trader Joe’s Albacore
22 Tuna in Olive Oil Half Salt, Trader Joe’s Yellowfin Tuna
23 in Olive Oil Solid Light, or Trader Joe’s Skipjack Tuna
24 in Water with Sea Salt in the United States.

25 22. Excluded from the class are the Court and its employees; Defendant;
26 any parent, subsidiary, or affiliate of Defendant; and all employees and directors
27 who are or have been employed by Defendant during the relevant time period.
28

1 **Class Action Requirements**

2 23. The numerosity requirement of Fed. R. Civ. P. 23(a)(1) is satisfied for
3 the foregoing class because the members of the class are so numerous and
4 geographically dispersed that joinder of all class members is impracticable.
5 Plaintiff currently believes that there are hundreds of thousands of members of the
6 class located in the United States.

7 24. Common questions of fact and law exist here, satisfying the
8 requirement of Rule 23(a)(2), including but not limited to:

- 9 a. whether Defendant participated in, or committed the wrongful
10 conduct alleged herein;
- 11 b. whether Defendant’s acts, transactions, or course of conduct
12 constitute the violations of law alleged herein;
- 13 c. whether the members of the class sustained and/or continue to
14 sustain damages by reason of Defendant’s conduct, and, if so,
15 the proper measure and appropriate formula to be applied in
16 determining such damages; and
- 17 f. whether the members of the class are entitled to injunctive or
18 other equitable relief.

19 25. Plaintiff’s claims are typical of the claims of all other members of the
20 class and involve the same violations of law by Defendant as other class members’
21 claims. Plaintiff and members of the class also sustained damages arising out of
22 Defendant’s common course of conduct complained herein. Accordingly, Plaintiff
23 satisfies the “typicality” requirements of Fed. R. Civ. P. 23(a)(3) with respect to
24 the class.

25 26. Plaintiff will fairly and adequately protect the interests of the other
26 members of the class, and has no interests that are antagonistic to or which conflict
27 with those of the other members of those classes. Plaintiff is committed to the
28 vigorous prosecution of this action and has retained competent counsel

1 experienced in litigation of this nature and the other members of the class; as such,
2 the requirements of Rule 23(a)(4) are satisfied.

3 27. Absent a representative class action, members of the class would
4 continue to suffer the harm described herein, for which they would have no
5 remedy. Even if separate actions could be brought by individual purchasers, the
6 resulting multiplicity of lawsuits would cause undue hardship and expense for both
7 the Court and the litigants, as well as create a risk of inconsistent rulings and
8 adjudications that might be dispositive of the interests of similarly situated
9 purchasers, substantially impeding their ability to protect their interests, while
10 establishing incompatible standards of conduct for Defendant. The proposed class,
11 thus satisfies the requirements of Fed. R. Civ. P. 23(b)(1).

12 28. Defendant acted or refused to act on grounds generally applicable to
13 Plaintiff and the other members of the class, thereby rendering class certification
14 and injunctive relief with respect to the class as a whole appropriate. Certification
15 under Fed. R. Civ. P. 23(b)(2) is proper in this regard.

16 29. As discussed above, numerous common questions of fact and law
17 exist. These questions predominate over the individual questions presented in this
18 action. The predominance requirement of Rule 23(b)(3) is thus satisfied.

19 30. A class action is the superior method for the fair and efficient
20 adjudication of this controversy, because joinder of all members of the class is
21 impracticable. Because the damages suffered by individual members of the class
22 may be relatively small, the expense and burden of litigation would prevent class
23 members from individually redressing the wrongs done to them. Where, as here,
24 the size and nature of individual class members' claims would allow few, if any,
25 members of the classes to seek legal redress against Defendant for the wrongs
26 complained of herein, a representative class action is both the appropriate vehicle
27 by which to adjudicate these claims and is essential to the interests of justice.
28 Furthermore, a class action regarding the issues in this action creates no significant

1 problems of manageability. The superiority and manageability requirements of
2 Rule 23(b)(3) are thus satisfied.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Business & Prof. Code Section 17200 *et seq.*)**

5 31. Plaintiff realleges and incorporates herein by reference all of the
6 allegations contained in Paragraphs 1 through 30, inclusive, of this complaint as
7 though fully set forth herein.

8 32. Business & Professions Code section 17200 *et seq.* provides that
9 unfair competition means and includes “any unlawful, unfair or fraudulent business
10 act or practice and unfair, deceptive, untrue or misleading marketing.”

11 33. By and through its conduct, including the conduct detailed above,
12 Defendant engaged in activities which constitute unlawful, unfair, and fraudulent
13 business practices prohibited by Business & Professions Code Section 17200 *et*
14 *seq.* Beginning at an exact date unknown as yet and continuing up through the
15 present, Defendant committed acts of unfair competition, including those described
16 above, by engaging in a pattern of “unlawful” business practices, within the
17 meaning of Business & Professions Code Section 17200 *et seq.*, by selling canned
18 tuna products that were insufficiently filled in violation of federal regulations.

19 34. Beginning at an exact date unknown as yet and continuing up through
20 the present, Defendant committed acts of unfair competition that are prohibited by
21 Business and Professions Code section 17200 *et seq.* Defendant engaged in a
22 pattern of “unfair” business practices that violate the wording and intent of the
23 statutes, by engaging in practices that threaten an incipient violation of law or
24 violate the policy or spirit of laws because their effects are comparable to or the
25 same as a violation of the law by selling canned tuna products that were
26 insufficiently filled in violation of federal regulations.

27 35. Alternatively, Defendant engaged in a pattern of “unfair” business
28 practices that violate the wording and intent of the statutes, by engaging in

1 practices that are immoral, unethical, oppressive or unscrupulous, the utility (if
2 any) of which conduct is far outweighed by the harm done to consumers and public
3 policy by selling canned tuna products that were insufficiently filled in violation of
4 federal regulations.

5 36. Alternatively, Defendant engaged in a pattern of “unfair” business
6 practices that violate the wording and intent of the statutes, by engaging in
7 practices, including by selling canned tuna products that were insufficiently filled
8 in violation of federal regulations, wherein: (1) the injury to the consumer was
9 substantial; (2) the injury was not outweighed by any countervailing benefits to
10 consumers or competition; and (3) the injury was of the kind that the consumers
11 themselves could not reasonably have avoided.

12 37. Beginning at an exact date unknown as yet and continuing up through
13 the present, Defendant committed acts of unfair competition, including those
14 described above, prohibited by Business and Professions Code section 17200 *et*
15 *seq.* by engaging in a pattern of “fraudulent” business practices within the meaning
16 of Business & Professions Code section 17200 *et seq.*, by selling canned tuna
17 products that were insufficiently filled in violation of federal regulations.

18 38. Defendant engaged in these unlawful, unfair, and fraudulent business
19 practices for the primary purpose of collecting unlawful and unauthorized monies
20 from Plaintiff and all others similarly situated; thereby unjustly enriching
21 Defendant.

22 39. As a result of the repeated violations described herein, Defendant
23 received and continue to receive unearned commercial benefits at the expense of
24 their competitors and the public.

25 40. Defendant’s unlawful, unfair, and fraudulent business practices
26 presents a continuing threat to the public in that Defendant continues to engage in
27 unlawful conduct.

28

1 41. Such acts and omissions are unlawful and/or unfair and/or fraudulent
2 and constitute a violation of Business & Professions Code section 17200 *et seq.*
3 Plaintiff reserves the right to identify additional violations by Defendant as may be
4 established through discovery.

5 42. As a direct and legal result of their unlawful, unfair, and fraudulent
6 conduct described herein, Defendant has been and will be unjustly enriched by the
7 receipt of ill-gotten gains from customers, including Plaintiff, who unwittingly
8 provided money to Defendant based on Defendant’s advertising canned tuna
9 products as legal for sale, when in reality Defendant was selling canned tuna
10 products that were insufficiently filled in violation of federal regulations.

11 43. Plaintiff suffered an “injury in fact” because Plaintiff’s money was
12 taken by Defendant as a result of Defendant’s by advertising canned tuna products
13 as legal for sale, when in reality Defendant was selling canned tuna products that
14 were insufficiently filled in violation of federal regulations.

15 44. In prosecuting this action for the enforcement of important rights
16 affecting the public interest, Plaintiff seeks the recovery of attorneys’ fees, which
17 is available to a prevailing plaintiff in class action cases such as this.

18 **SECOND CAUSE OF ACTION**

19 **(Violation of Business & Professions Code § 17500 *et seq.*)**

20 45. Plaintiff realleges and incorporates herein by reference all of the
21 allegations contained in Paragraphs 1 through 44, inclusive, of this complaint as
22 though fully set forth herein.

23 36. Business & Professions Code § 17500 *et seq.* provides that it is
24 “unlawful for any person, firm [or other party] . . . to make or disseminate before
25 the public . . . any statement which is untrue or misleading” in connection with the
26 sale or disposition of goods or services.

27 37. Beginning at an exact date unknown as yet and continuing up through
28

1 the present, Defendant committed acts of unfair competition, including those set
2 forth above, prohibited by Business & Professions Code § 17500 et seq. by
3 engaging in a pattern of false and misleading advertising and business practices
4 that violate the wording and intent of the statutes.

5 38. On information and belief, Defendant engages in unlawful advertising
6 practices with the intent to induce members of the public to purchase goods that
7 they believe to be of a particular quality.

8 39. Defendant's deceptive advertising practices, including selling canned
9 tuna products that were insufficiently filled in violation of federal regulations,
10 present a continuing threat to members of the public in that Defendant continues to
11 engage in the conduct described above.

12 40. Such acts and omissions are unfair and/or deceptive and/or untrue
13 and/or misleading and constitute a violation of Business & Professions Code §
14 17500 *et seq.* Plaintiff reserves the right to identify additional violations by
15 Defendant as may be established through discovery.

16 41. As a direct and legal result of Defendant's conduct described above,
17 Defendant has been and will be unjustly enriched with ill-gotten gains. Plaintiff
18 and the general public are entitled to restitution and/or reimbursement of the gains
19 Defendant received because of the misdeeds described herein.

20 42. In prosecuting this action for the enforcement of important rights
21 affecting the public interest, Plaintiff seeks the recovery of attorneys' fees pursuant
22 to Code of Civil Procedure § 1021.5, which is available to a prevailing plaintiff
23 who wins relief for the general public.
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THIRD CAUSE OF ACTION

(Violation of California Consumers Legal Remedies Act)

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3 46. Plaintiff realleges and incorporates herein by reference all of the
4 allegations contained in Paragraphs 1 through 45, inclusive, of this complaint as
5 though fully set forth herein.

6 47. California Civil Code Section 1750 et seq. (entitled the Consumers
7 Legal Remedies Act) provides a list of “unfair or deceptive” practices in a
8 “transaction” relating to the sale of “goods” or “services” to a “consumer.” The
9 Legislature’s intent in promulgating the Consumers Legal Remedies Act is
10 expressed in Civil Code Section 1760, which provides, inter alia, that its terms are
11 to be “construed liberally and applied to promote its underlying purposes, which
12 are to protect consumers against unfair and deceptive business practices and to
13 provide efficient and economical procedures to secure such protection.”

14 48. Defendant’s canned tuna products constituted “goods” as defined in
15 Civil Code Section 1761(a).

16 49. Plaintiff, and class members, are each a “Consumer” as defined in
17 Civil Code Section 1761(d).

18 50. Each of Plaintiff’s and class members’ purchases of Defendant’s
19 canned tuna products constituted a “transaction” as defined in Civil Code Section
20 1761(e).

21 51. Civil Code Section 1770(a)(4) and (9) provides that “[t]he following
22 unfair methods of competition and unfair or deceptive acts or practices undertaken
23 by any person in a transaction intended to result or which results in the sale or
24 lease of goods or services to any consumer are unlawful: Using deceptive
25 representations or designations of geographic origin in connection with goods or
26 services [and] [a]dvertising goods or services with intent not to sell them as
27 advertised.”
28

1 52. Defendant violated Civil Code Section 1770(a)(4) and (9) by selling
2 canned tuna products that were insufficiently filled in violation of federal
3 regulations.

4 53. It is alleged on information and belief that Defendant’s violations of
5 the Consumer’s Legal Remedies Act set forth herein were done with awareness of
6 the fact that the conduct alleged was wrongful and were motivated solely for
7 increased profit. It is also alleged on information and belief that Defendant did
8 these acts knowing the harm that would result to Plaintiff and that Defendant did
9 these acts notwithstanding that knowledge.

10 54. As a direct and proximate result of Defendant’s violations of the
11 Consumers Legal Remedies Act, Plaintiff and class members are entitled to the
12 following remedies as against Defendant: (a) a declaration that Defendant violated
13 the Consumers Legal Remedies Act, and (b) an injunction preventing Defendant’s
14 unlawful actions.

15 55. Plaintiff suffered an “injury in fact” because Plaintiff’s money was
16 taken by Defendant as a result of Defendant selling canned tuna products that were
17 insufficiently filled in violation of federal regulations.

18 56. On or about March 17, 2016, Plaintiff provided to Defendant the
19 requisite thirty-day notice, which was sent pursuant to California Civil Code
20 section 1782. The thirty-day notice complied with the relevant provisions of the
21 CLRA as it was a demand to correct, repair, replace, or otherwise rectify their
22 improper practices related to their canned tuna products. As of the date of the filing
23 of this Complaint, Defendant has not agreed to undertake such actions. As such,
24 Plaintiff seeks “actual damages” and/or punitive damages pursuant to the CLRA
25 from Defendant.
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FOURTH CAUSE OF ACTION
(Consumer Fraud and Deceptive Practices)

57. Plaintiff realleges and incorporates herein by reference all of the allegations contained in Paragraphs 1 through 56, inclusive, of this complaint as though fully set forth herein.

58. Plaintiff brings this cause of action individually, and on behalf of all similarly situated residents of each of the fifty states and the District of Columbia for violations of the respective statutory consumer protection laws, as follows:

- a. the Alabama Deceptive Trade Practices Act, Ala.Code 1975, § 8-19-1, et seq.;
- b. the Alaska Unfair Trade Practices and Consumer Protection Act, AS § 45.50.471, et seq.;
- c. the Arizona Consumer Fraud Act, A.R.S §§ 44-1521, et seq.;
- d. the Arkansas Deceptive Trade Practices Act, Ark.Code §§ 4-88-101, et seq.;
- e. the Colorado Consumer Protection Act, C.R.S.A. §6-1-101, et seq.;
- f. the Connecticut Unfair Trade Practices Act, C.G.S.A. § 42-110, et seq.;
- g. the Delaware Consumer Fraud Act, 6 Del. C. § 2513, et seq.;
- h. the District of Columbia Consumer Protection Procedures Act, DC Code § 28- 3901, et seq.;
- i. the Florida Deceptive and Unfair Trade Practices Act, FSA § 501.201, et seq.;
- j. the Georgia Fair Business Practices Act, OCGA § 10-1-390, et seq.;
- k. the Hawaii Unfair Competition Law, H.R.S. § 480-1, et seq.;

- 1 l. the Idaho Consumer Protection Act, I.C. § 48-601, et seq.;
- 2 m. the Illinois Consumer Fraud and Deceptive Business Practices
- 3 Act, 815 ILCS 501/1 et seq.;
- 4 n. the Indiana Deceptive Consumer Sales Act, IN ST § 24-5-0.5-2,
- 5 et seq.;
- 6 o. The Iowa Private Right of Action for Consumer Frauds Act,
- 7 Iowa Code Ann. § 714H.1, et seq.;
- 8 p. the Kansas Consumer Protection Act, K.S.A. § 50-623, et seq.;
- 9 q. the Kentucky Consumer Protection Act, KRS 367.110, et seq.;
- 10 r. the Louisiana Unfair Trade Practices and Consumer Protection
- 11 Law, LSA-R.S. 51:1401, et seq.;
- 12 s. the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 205-A, et
- 13 seq.;
- 14 t. the Maryland Consumer Protection Act, MD Code, Commercial
- 15 Law, § 13-301, et seq.;
- 16 u. the Massachusetts Regulation of Business Practices for
- 17 Consumers Protection Act, M.G.L.A. 93A, et seq.;
- 18 v. the Michigan Consumer Protection Act, M.C.L.A. 445.901, et
- 19 seq.;
- 20 w. the Minnesota Prevention of Consumer Fraud Act, Minn. Stat.
- 21 § 325F.68, et seq.;
- 22 x. the Mississippi Consumer Protection Act, Miss. Code Ann. §
- 23 75-24-1, et seq.;
- 24 y. the Missouri Merchandising Practices Act, V.A.M.S. § 407, et
- 25 seq.;
- 26 z. the Montana Unfair Trade Practices and Consumer Protection
- 27
- 28

1 Act of 1973, Mont. Code Ann. § 30-14-101, et seq.;

2 aa. the Nebraska Consumer Protection Act, Neb.Rev.St. §§ 59-
3 1601, et seq.;

4 bb. the Nevada Deceptive Trade Practices Act, N.R.S. 41.600, et
5 seq.;

6 cc. the New Hampshire Regulation of Business Practices for
7 Consumer Protection, N.H.Rev.Stat. § 358-A:1, et seq.;

8 dd. the New Jersey Consumer Fraud Act, N.J.S.A. 56:8, et seq.;

9 ee. the New Mexico Unfair Practices Act, N.M.S.A. §§ 57-12-1, et
10 seq.;

11 ff. the New York Consumer Protection from Deceptive Acts and
12 Practices, N.Y. GBL (McKinney) § 349, et seq.;

13 gg. the North Carolina Unfair and Deceptive Trade Practices Act,
14 N.C. Gen Stat. § 75-1.1, et seq.;

15 hh. the North Dakota Consumer Fraud Act, N.D. Cent.Code
16 Chapter 51-15, et seq.;

17 ii. the Ohio Consumer Sales Practices Act, R.C. 1345.01, et seq.;

18 jj. the Oklahoma Consumer Protection Act, 15 O.S.2001, §§ 751,
19 et seq.;

20 kk. the Oregon Unlawful Trade Practices Act, ORS 646.605, et
21 seq.;

22 ll. the Pennsylvania Unfair Trade Practices and Consumer
23 Protection Law, 73 P.S. § 201-1, et seq.;

24 mm. the Rhode Island Deceptive Trade Practices Act, G.L.1956 § 6-
25 13.1-5.2(B), et seq.;

26 nn. the South Carolina Unfair Trade Practices Act, SC Code 1976,
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1 §§ 39-5-10, et seq.;

2 oo. the South Dakota Deceptive Trade Practices and Consumer
3 Protection Act, SDCL § 37-24-1, et seq.;

4 pp. the Tennessee Consumer Protection Act, T.C.A. § 47-18-101, et
5 seq.;

6 qq. the Texas Deceptive Trade Practices-Consumer Protection Act,
7 V.T.C.A., Bus. & C. § 17.41, et seq.;

8 rr. the Utah Consumer Sales Practices Act, UT ST § 13-11-1, et
9 seq.;

10 ss. the Vermont Consumer Fraud Act, 9 V.S.A. § 2451, et seq.;

11 tt. the Virginia Consumer Protection Act of 1977, VA ST § 59.1-
12 196, et seq.;

13 uu. the Washington Consumer Protection Act, RCWA 19.86.010, et
14 seq.;

15 vv. the West Virginia Consumer Credit And Protection Act,
16 W.Va.Code § 46A-1-101, et seq.;

17 ww. the Wisconsin Deceptive Trade Practices Act, WIS.STAT. §
18 100.18, et seq.; and

19 xx. the Wyoming Consumer Protection Act, WY ST § 40-12-101,
20 et seq.

21
22 59. Defendant's canned tuna products are consumer goods.

23 60. As set forth above, Defendant engaged, and still engages, in unfair or
24 deceptive acts or practices when, in marketing and selling canned tuna products,
25 Defendant misrepresents that its canned tuna products are legal for sale in the
26 United States, comply with all state and federal laws, and contain a sufficient
27 amount of tuna.

1 61. Defendant intended, and still intends, that Plaintiff and the members
2 of the class rely upon Defendant's misrepresentations and omissions concerning
3 the quality, characteristics, and reliability of canned tuna products.

4 62. Defendant's misrepresentations and omissions possess the tendency or
5 capacity to mislead and create the likelihood of deception.

6 63. The above-described deceptive and unfair acts and practices were
7 used or employed in the conduct of trade or commerce, namely, the marketing,
8 sale, and distribution of the Defendant's canned tuna products to Plaintiff and class
9 members.

10 64. The above-described deceptive and unfair acts offend public policy
11 and cause substantial injury to consumers.

12 65. Acting as reasonable consumers, had Plaintiff and the class known
13 that Defendant's canned tuna products were under-filled in violation of federal
14 regulations, that they are illegal for sale in the United States, and that they do not
15 contain a sufficient amount of tuna, they would not have purchased Defendant's
16 canned tuna products, or they would have paid less for them.

17 66. As a direct and proximate result of these unfair, deceptive and
18 unconscionable commercial practices, Plaintiff and the members of the class have
19 suffered damages in the form of the money they paid to purchase canned tuna
20 products and additional incidental and consequential damages. Plaintiff,
21 individually, and on behalf of the class, seeks restitution damages, actual damages,
22 and punitive damages, along with reasonable attorneys' fees and costs.

23 67. Due to Defendant's misrepresentations and omissions described
24 above, Plaintiff, individually, and on behalf of the class, also seeks injunctive
25 relief. Plaintiff seeks an order (1) requiring Defendant cease the deceptive and
26 unfair practices described herein; (2) requiring Defendant to change its marketing
27 and advertising materials to reflect the illegal nature of its canned tuna products,
28 their violation of the Code of Federal Regulations, and their insufficient quantity of

1 tuna; (3) requiring Defendant to remove the false and misleading descriptions of its
2 canned tuna products from marketing and advertising materials; and (4) requiring
3 Defendant to disclose that its canned tuna products are under-filled below the
4 federally standard.

5 68. Plaintiff seeks the recovery of court costs and attorneys' fees pursuant
6 to California Civil Code § 1780(e) and § 1021.5, as she is prosecuting this action
7 for important rights affecting the public interest.

8 **FIFTH CAUSE OF ACTION**

9 **(Fraud)**

10 69. Plaintiff realleges and incorporates herein by reference all of the
11 allegations contained in Paragraphs 1 through 68, inclusive, of this complaint as
12 though fully set forth herein.

13 70. Defendant intentionally misrepresented and concealed, and continues
14 to misrepresent and conceal, material facts concerning the legality, quantity, and
15 characteristics of goods by misrepresenting that its canned tuna products are legal
16 for sale in the United States, comply with state and federal laws, and contain a
17 sufficient amount of tuna.

18 71. The facts Defendant's canned tuna products are not legal for sale in
19 the United States, that the canned tuna products in question are significantly
20 underfilled in violation of the federal regulations, and that the canned tuna products
21 of are significantly under-filled such that they do not contain a sufficient amount of
22 tuna are all material facts that Defendant has falsely represented and actively
23 concealed.

24 72. Defendant knew that its canned tuna products are not legal for sale in
25 the United States, are under-filled in violation of federal regulations, and do not
26 contain a sufficient amount of tuna at the time that Defendant made the
27 misrepresentations and concealments of material facts. Defendant's
28 misrepresentations were made with scienter.

1 73. Defendant affirmatively misrepresented and/or actively concealed
2 material facts with the intent that Plaintiff and the members of the class purchase
3 its canned tuna products.

4 74. Acting as reasonable consumers, Plaintiff and the class were unaware
5 of these misrepresented material facts, and if they had been aware of the truth,
6 Plaintiff and class members would not have purchased Defendant's canned tuna
7 products, or they had would have paid less for them.

8 75. It was reasonable for Plaintiff and the class to rely on Defendant's
9 misrepresentations and omissions and believe Defendant's canned tuna products
10 were not significantly under-filled at the time that they purchased them.

11 76. As a direct and proximate result of Defendant's fraud, Plaintiff and
12 the members of the class have suffered damages in the form of the money they
13 paid to purchase canned tuna products and additional incidental and consequential
14 damages. Plaintiff, individually, and on behalf of the class seeks actual damages,
15 restitution damages, and punitive damages, along with reasonable attorneys' fees
16 and costs.

17 **SIXTH CAUSE OF ACTION**

18 **(Negligent Misrepresentation)**

19 77. Plaintiff realleges and incorporates herein by reference all of the
20 allegations contained in Paragraphs 1 through 76, inclusive, of this complaint as
21 though fully set forth herein.

22 78. During the relevant statutory time period, Defendant made false
23 representations to Plaintiff and class members by selling canned tuna products that
24 were insufficiently filled in violation of federal regulations.

25 79. The representation that Defendant's canned tuna products were legal
26 for sale was false. The true fact is that Defendant was selling canned tuna products
27 that were insufficiently filled in violation of federal regulations
28

1 80. When Defendant made the representations set forth above, it had no
2 reasonable grounds for believing them to be true.

3 81. Defendant made the representations with the intention of inducing
4 Plaintiff and class members to act in reliance upon these representations in the
5 manner hereafter alleged, or with the expectation that they would so act.

6 82. Plaintiff and class members, at the time the representations were made
7 by Defendant, and at the time Defendant took the actions herein alleged, were
8 ignorant of the falsity of the representations and believed them to be true. In
9 reliance on these representations, Plaintiff and class members were induced to and
10 did pay monies to purchase Defendant's canned tuna products.

11 83. Had Plaintiff and class members known the actual facts, they would
12 not have taken such action. Furthermore, Plaintiff and other consumers had no
13 reason to believe that Defendant would act otherwise than as to rely on the
14 Defendant's representations.

15 84. Without knowledge, Plaintiff and class members acted on the false
16 representation and purchased the canned tuna products they did not truly want (in
17 hindsight). Had Plaintiff and class members known the actual facts, they would not
18 have taken such action.

19 85. As a proximate result of the fraudulent conduct of Defendant as herein
20 alleged, Plaintiff and class members paid monies to Defendant, through
21 Defendant's regular retail sales channels, to which Defendant is not entitled, and
22 have been damaged in an amount to be proven at trial.

23 86. Plaintiff and class members seek the recovery of a large portion of
24 their purchase monies, plus prejudgment interest, and reasonable attorneys' fees
25 (pursuant to Code of Civil Procedure § 1021.5) and costs as will be determined at
26 time of trial. The specific amount of class members' recovery is the realm of expert
27 testimony and will be established at trial.

28

SEVENTH CAUSE OF ACTION
(Unjust Enrichment)

1
2
3 87. Plaintiff realleges and incorporates herein by reference all of the
4 allegations contained in Paragraphs 1 through 86, inclusive, of this complaint as
5 though fully set forth herein.

6 88. Plaintiff and members of the class paid a retail price for Defendant's
7 canned tuna products believing that the tuna cans they purchased contained a
8 sufficient amount of tuna. However, the products purchased by Plaintiff and
9 members of the Class were substantially under-filled below the federally mandated
10 minimum standard.

11 89. Defendant has unjustly received and retained a benefit at the expense
12 of Plaintiff and the class because Defendant unlawfully acquired its profits for
13 canned tuna products appreciating and knowing that the cans purchased by
14 Plaintiff and members of the Class did not contain a sufficient amount of tuna.

15 90. Defendant has acquired and retained money belonging to Plaintiff and
16 the class as a result of its wrongful conduct: Defendant's under-filling its canned
17 tuna products in violation of the federally mandated standard of fill. Each
18 individual sale of canned tuna products nets Defendant profit at the expense of the
19 consumer.

20 91. Further, Defendant intentionally misrepresented, and continues to
21 misrepresent, that its canned tuna products are legal for sale in the United States
22 and comply with all state and federal laws.

23 92. Acting as reasonable consumers, Plaintiff and the class were unaware
24 of these misrepresented material facts, and would not have purchased the canned
25 tuna products, or they would have paid less for them, had they been aware of the
26 truth.

27 93. Defendant's retention of the benefit violates the fundamental
28 principles of justice, equity, and good conscience because Defendant mislead

1 Plaintiff and the Class into falsely believing its canned tuna products are legal for
2 sale in the United States, comply with all state and federal laws, and contain a
3 sufficient amount of tuna in order to unjustly receive and retain a benefit.

4 94. Under the principles of equity, Defendant should not be allowed to
5 keep the money belonging to Plaintiff and the members of the class because
6 Defendant has unjustly received it as a result of Defendant's unlawful actions
7 described herein.

8 95. Plaintiff and the members of the class have suffered damages as a
9 direct result of Defendant's conduct.

10 96. Plaintiff, individually and on behalf of the class, seeks restitution for
11 Defendant's unlawful conduct, as well as interest and attorneys' fees and costs.

12 **EIGHTH CAUSE OF ACTION**

13 **(Breach of Express Warranty)**

14 97. Plaintiff realleges and incorporates herein by reference all of the
15 allegations contained in Paragraphs 1 through 96, inclusive, of this complaint as
16 though fully set forth herein.

17 98. By packaging, labeling, and selling canned tuna products, Defendant,
18 as the manufacturer, marketer, distributor, and seller of canned tuna products,
19 expressly warranted that said products contained a sufficient amount of tuna.

20 99. Defendant's representations, affirmations of fact, and promises related
21 to its canned tuna products constitute an express warranty because the
22 representations, affirmations, and promises became a part of the basis of the
23 bargain with Plaintiff and members of the class that its canned tuna products
24 contain a sufficient amount of tuna.

25 100. Defendant breached its express warranty because its canned tuna
26 products are significantly under-filled below the federally-mandated standard of
27 fill and, therefore, do not contain a sufficient amount of tuna.

28

1 101. Plaintiff and members of the class complied with the terms of the
2 warranty because they paid money in exchange for the purchase of canned tuna
3 products. Neither Plaintiff nor members of the Class misused the canned tuna
4 products or contributed to their deficiency.

5 102. Defendant had actual knowledge that its canned tuna products do not
6 contain a sufficient amount of tuna. Defendant was responsible for manufacturing
7 the canned tuna, packaging the canned tuna, and implementing a standard
8 mechanized process for distributing a uniform amount of pressed cake tuna in each
9 can.

10 103. Plaintiff and members of the class relied on Defendant's warranty that
11 Defendant's canned tuna products contained a sufficient amount of tuna when they
12 purchased them. Because Defendant packaged the Trader Joe's Tuna products in 5-
13 ounce cans and labeled them as "5-ounce" cans, it was reasonable for Plaintiff and
14 members of the Class to believe that cans contained a sufficient amount of tuna
15 and to rely on that belief when they purchased the tuna.

16 104. Acting as reasonable consumers, Plaintiff and the class were unaware
17 of these misrepresented warranties, and if they had been aware of the truth,
18 Plaintiff and class members would not have purchased Defendant's canned tuna
19 products, or they had would have paid less for them.

20 105. Plaintiff and the members of the class did not receive 5-ounce cans of
21 Trader Joe's Tuna as warranted. The canned tuna products they purchased were
22 worth substantially less than the tuna cans they were promised and expected.

23 106. As a direct and proximate result of Defendant's breach of an express
24 warranty, Plaintiff and members of the class have suffered damages in the form of
25 the money they paid to purchase these canned tuna products and additional
26 incidental and consequential damages. Plaintiff, individually, and on behalf of the
27 class seeks actual damages, restitution damages, and punitive damages, along with
28 reasonable attorneys' fees and costs.

1 **NINTH CAUSE OF ACTION**

2 **(Breach of Implied Warranty of Merchantability)**

3 107. Plaintiff realleges and incorporates herein by reference all of the
4 allegations contained in Paragraphs 1 through 106, inclusive, of this complaint as
5 though fully set forth herein.

6 108. Defendant, as the manufacturer, marketer, distributor, and/or seller of
7 Trader Joe’s Tuna is a merchant.

8 109. Defendant’s canned tuna products are not adequately contained,
9 packaged, and labeled because they are packaged and labeled as “5-ounce” cans of
10 tuna, but they are significantly under-filled below the federally mandated standard
11 of fill and, therefore, do not contain a sufficient amount of tuna.

12 110. These canned tuna products do not conform to the promises and
13 affirmations of facts made on their container and label because they do not contain
14 a sufficient amount of tuna as their packaging and labeling warrants.

15 111. Defendant impliedly warranted that these canned tuna products are
16 legal for sale in the United States, comply with all state and federal laws, and
17 contain a sufficient amount of tuna.

18 112. Defendant had reason to know of the particular purpose of these
19 canned tuna products because Defendant was solely responsible for the
20 manufacturing, packaging, labeling, distribution, marketing, and sale thereof.

21 113. Defendant breached the warranty of merchantability implied in the
22 contract for sale of its canned tuna products because they are not legal for sale in
23 the United States, are under-filled in violation of the Code of Federal Regulations,
24 and do not contain a sufficient amount of tuna.

25 114. Defendant knew that its canned tuna products would be purchased and
26 used by Plaintiff and members of the class without additional testing or measuring
27 of their quantity and sufficiency.

28

1 115. Plaintiff and members of the class relied on Defendant's ability to
2 truthfully represent the quantity and capacity of its canned tuna products when they
3 purchased the tuna.

4 116. Acting as reasonable consumers, Plaintiff and the class were unaware
5 of these misrepresented warranties, and if they had been aware of the truth,
6 Plaintiff and class members would not have purchased the Defendant's canned
7 tuna products, or they had would have paid less for them.

8 117. Plaintiff and the members of the class did not receive canned tuna
9 products as warranted. The canned tuna products they purchased were worth
10 substantially less than the tuna cans they were promised and expected.

11 118. The canned tuna products were not altered by Plaintiff or any
12 members of the Class.

13 119. The canned tuna products were defective and unfit for their intended
14 purpose when they left the exclusive control of Defendant.

15 120. As a direct and proximate result of Defendant's breach of an express
16 warranty, Plaintiff and members of the class have suffered damages in the form of
17 the money they paid to purchase the canned tuna products and additional incidental
18 and consequential damages. Plaintiff, individually, and on behalf of the class seeks
19 actual damages, restitution damages, and punitive damages, along with reasonable
20 attorneys' fees and costs.

21 **PRAYER**

22 WHEREFORE, Plaintiff, on behalf of herself, collectively on behalf of the
23 class, respectfully request the following relief:

- 24 1. That the Court determine that this action may be maintained as a class
25 action by certifying this case as a class action as to the class;
- 26 2. That the Court certify Plaintiff to serve as a class representative in this
27 case;
- 28 3. That Defendant's wrongful conduct alleged herein be adjudged and

1 decreed to violate the consumer protection statutory claims asserted herein;

2 4. That Plaintiff and each of the other members of the class recover the
3 amounts by which Defendant has been unjustly enriched;

4 5. That Defendant be enjoined from continuing the wrongful conduct
5 alleged herein and required to comply with all applicable law;

6 6. That Plaintiff and each of the other members of the class recover their
7 costs of suit, including reasonable attorneys' fees and expenses as provided by law;
8 and

9 7. That Plaintiff and each of the other members of class be granted such
10 other and further relief as the nature of the case may require or as this Court deems
11 just and proper.

12 **DEMAND FOR JURY TRIAL**

13 Pursuant to Rule 38, Federal Rules of Civil Procedure, Plaintiff hereby
14 demands a trial by jury with respect to all issues triable to a jury.

15
16 Dated: April 19, 2016

DEL MAR LAW GROUP, LLP

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