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

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

24 Plaintiffs,

25 v.

26 STARKIST CO., a Delaware  
27 Corporation, and DONGWON  
28

Case No.: 19-cv-02561-WHO

**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 – Cal. Bus. & Prof. Code §17200, *et seq.*;
3. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT – Cal. Civ. Code §1750, *et seq.*;
4. VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT – Fla. Stat. §501.201, *et seq.*;
5. VIOLATION OF THE NEW YORK

1 INDUSTRIES CO. LTD., a South  
2 Korea corporation,

3 Defendants.  
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6. GENERAL BUSINESS LAW § 349;  
VIOLATION OF THE NEW  
JERSEY CONSUMER FRAUD  
ACT, § 56:8-2.10;
7. VIOLATION OF THE MINNESOTA  
PREVENTION OF CONSUMER  
FRAUD ACT (UNFAIR  
PRACTICES) – Minn. Stat.  
§325F.68, *et seq.* and Minn. Stat.  
§8.31, *et seq.*;
8. VIOLATION OF THE MINNESOTA  
PREVENTION OF CONSUMER  
FRAUD ACT (FALSE  
STATEMENT IN ADVERTISING) –  
Minn. Stat. §325F.67, *et seq.*;
9. VIOLATION OF THE MINNESOTA  
UNIFORM DECEPTIVE TRADE  
PRACTICES ACT – Minn. Stat.  
§325D.43, *et seq.*;
10. VIOLATION OF THE ARIZONA  
CONSUMER FRAUD ACT, A.R.S.  
§§44-1521, *et seq.*; and
11. UNJUST ENRICHMENT

18 DEMAND FOR JURY TRIAL  
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1 Plaintiffs Warren Gardner, Lori Myers, Angela Cosgrove, Autumn Hessong,  
2 Robert McQuade, Colleen McQuade, James Borruso, Fidel Jamelo, Jocelyn Jamelo,  
3 Anthony Luciano, Lori Luciano, Robert Nugent, Avraham Isac Zelig, Ken Petrovcik,  
4 Megan Kiihne, and Kathleen Miller bring this action on behalf of themselves and all  
5 others similarly situated against Defendants StarKist Co. (“StarKist”) and Dongwon  
6 Industries Co. Ltd (“Dongwon”) (collectively, “Defendants”), and for their First  
7 Amended Class Action Complaint, state:

8 **FACTUAL ALLEGATIONS**

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

12 2. Since 1990, Defendants have engaged in a pervasive advertising  
13 campaign that expressly promises consumers that StarKist tuna products are  
14 “Dolphin-Safe.” Since the introduction of the dolphin-safe policy in 1990, including  
15 the last 4 years (the “Class Period”), however, StarKist tuna has not been “Dolphin-  
16 Safe.”

17 3. Plaintiffs herein allege unjust enrichment and violations of: (1) the  
18 Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §1962;  
19 (2) California's Unfair Competition Law, Cal. Bus. & Prof. Code §17200, *et seq.*; (3)  
20 California’s Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*; (4) the  
21 Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201, *et seq.*; (5) the  
22 New York General Business Law §349; (6) the New Jersey Consumer Fraud Act,  
23 §56:8-2.10; (7) the Minnesota Prevention of Consumer Fraud Act, Minn. Stat.  
24 §§325F.67-325F.68; (8) the Minnesota Uniform Deceptive Trade Practices Act,  
25 Minn. Stat. §325D.43, *et seq.*; and (9) the Arizona Consumer Fraud Act, A.R.S. §44-  
26 1521, *et seq.*

1 4. Plaintiffs seek, on behalf of themselves and all Class members,  
2 nationwide monetary damages, restitution, injunctive relief, and all relief deemed  
3 appropriate, arising out of Defendants' illegal scheme and conspiracy alleged herein.

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

5 5. Prior to the development of modern purse seine fishing techniques,  
6 tropical tuna were caught one at a time using traditional pole-and-line methods.  
7 NOAA, The Tuna-Dolphin Issue, NOAA Fisheries Southwest Fisheries Science  
8 Center (Sept. 2, 2016), *available at* [https://swfsc.noaa.gov/textblock.aspx?](https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408)  
9 [Division=PRD&ParentMenuId=228&id=1408](https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408) (last visited May 3, 2019) ("NOAA  
10 2016").

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

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

20 8. This practice led to millions of dolphins being killed as unintended  
21 bycatch.

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

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

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

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

14 13. For at least the last 4 years, reasonable consumers expected that all  
15 StarKist canned tuna and pre-packaged tuna in pouches (collectively, “tuna  
16 products”) are dolphin-safe because they have been indoctrinated to believe precisely  
17 that by Defendants’ and the other tuna companies’ highly effective dolphin safety  
18 and sustainable fishing practices marketing campaigns. In fact, 98% of the prepacked  
19 tuna sold today in the United States is labeled with some “dolphin-safe”  
20 representation. Forbes, K. William Watson, ‘Dolphin Safe’ Labels on Canned Tuna  
21 Are A Fraud (Apr. 29, 2015), *available at* [https://www.forbes.com/sites/  
22 realspin/2015/04/29/dolphin-safe-labels-on-canned-tuna-are-a-  
23 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).

24 14. StarKist tuna, however, is not dolphin-safe. Nor is it sustainably  
25 sourced. Defendants’ dolphin-safe representations are false, misleading, and/or  
26 deceptive.



1 and private label products. StarKist tuna is labeled with a special  
2 “Dolphin-Safe” logo.”

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

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

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

22 21. The importance to consumers of dolphin safety has not lessened in the  
23 ensuing 12 years since the Court’s finding, as evidenced by Defendants’ continued  
24 labeling of StarKist tuna products with a dolphin-safe logo.

25 22. If anything, dolphin safety and the sustainable sourcing of seafood has  
26 grown in importance to consumers as evidenced by many retailers’ refusal to sell  
27

1 tuna that is not caught using dolphin-safe pole-and-line, trolling<sup>1</sup>, or handline catch  
2 methods. *See, e.g.*, Whole Foods Market, Sustainable Canned Tuna, available at  
3 <https://www.wholefoodsmarket.com/sustainable-canned-tuna> (last visited Apr. 17,  
4 2019) (“Our sourcing policy requires all fisheries supplying canned tuna to use pole-  
5 and-line, troll or handline catch methods” unlike “[m]uch of conventional canned  
6 tuna [which] is caught by vessels using purse seine nets with Fish Aggregating  
7 Devices (known as FADs), that attract tuna but also result in high bycatch of ... other  
8 marine life.”); Whole Foods Market, Canned Tuna Sourcing Policy (Aug. 15, 2018),  
9 available at [http://assets.wholefoodsmarket.com/  
10 www/departments/seafood/Whole\\_Foods\\_Market\\_Canned\\_Tuna\\_Sourcing\\_Policy  
11 \\_102017.pdf](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf) (last visited Apr. 17, 2019) (“Requirements for Source Fisheries”  
12 include “1. All canned tuna must be sourced from pole and line, troll, and handline  
13 fisheries. Tuna from longline or purse seine fisheries is prohibited.”); PR Newswire,  
14 Safeway Announces New Sustainable Sourcing Practice for Tuna (Feb. 10, 2012),  
15 available at [https://www.prnewswire.com/news-releases/safeway-announces-new-  
16 sustainable-sourcing-practice-for-tuna-1390967-  
17 14.html](https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-sourcing-practice-for-tuna-1390967-14.html) (last visited Apr. 17, 2019); Albertsons/Safeway, Supplier Sustainability  
18 Guidelines and Expectations (Aug. 2015), at 21, available at  
19 [https://suppliers.safeway.com/usa/pdf/supplier\\_sustainability\\_expectations.pdf](https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf) (last  
20 visited Apr. 29, 2019) (“Suppliers are encouraged to “Not use Purse-seine nets  
21 deployed on Fish Aggregation Devices (FADs) and employ alternatives such as pole  
22 and line trolling in an effort to reduce or eliminate by-catch”); H-E-B, H-E-B seafood  
23 policy, available at [https://www.heb.com/static-page/article-template/H-E-B-  
24 Seafood-Policy](https://www.heb.com/static-page/article-template/H-E-B-Seafood-Policy) (last visited Apr. 17, 2019) (for wild-caught seafood, H-E-B

25 \_\_\_\_\_  
26 <sup>1</sup> Method of fishing whereby one or more fishing lines with baits are drawn through  
27 the water. Monterey Bay Aquarium Seafood Watch, Fishing & Farming Methods,  
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 preferentially sources from fisheries that reduce bycatch, and H-E-B “will never  
2 knowingly buy or sell any illegal, unreported, or unregulated (IUU) fish”); Giant  
3 Eagle, Tuna Policy, available at [https://www.gianteagle.com/about-us/sustainable-](https://www.gianteagle.com/about-us/sustainable-seafood/tuna-policy)  
4 [seafood/tuna-policy](https://www.gianteagle.com/about-us/sustainable-seafood/tuna-policy) (last visited Apr. 29, 2019) (encourages suppliers to “eliminate  
5 harvest with the use of non-entangling FADs”); Wegmans, Seafood Sustainability,  
6 available at [https://www.wegmans.com/about-us/making-a-difference/sustain-](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html)  
7 [ability-at-wegmans/seafood-sustainability.html](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html) (last visited Apr. 29, 2019) (“Our  
8 wild-caught seafood suppliers must meet Wegmans’ high standards to source seafood  
9 that is caught responsibly” including having “[g]ear chosen to reduce bycatch.”).

10 23. The special “Dolphin-Safe” logo Defendants include on each StarKist  
11 tuna product as shown below is intended by Defendants to convey the message: “No  
12 harm to dolphins” (Bass 1990):



22 24. However, unbeknownst to consumers, substantial numbers of dolphins  
23 and other marine life are killed and harmed by the fishermen and fishing methods  
24 used to catch Defendants’ tuna. Thus, Defendants’ dolphin-safe label representations  
25 are false, misleading, and/or deceptive, and constitute systemic acts of mail and wire  
26 fraud, predicate acts under RICO.

### Dolphin Safety Legislation

1  
2 25. Since the 1980s, Congress has passed a series of laws to protect dolphins  
3 and other marine life from indiscriminate fishing methods. Beginning with the  
4 MMPA, which Congress repeatedly strengthened in 1984, 1988, and 1992, Congress  
5 “ban[ned] importation of tuna that failed to meet certain conditions regarding dolphin  
6 mortality.” *Earth Island Institute v. Evans*, No. C 03-0007-THE, ECF No. 293 at 3  
7 (N.D. Cal.).

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

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

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



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

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

19           31. Plaintiffs allege that Defendants falsely represent that StarKist tuna  
20 products are dolphin-safe – meaning “no” dolphins were killed or seriously injured –  
21 when Defendants’ tuna fishing practices kill or harm substantial numbers of dolphins  
22 each year. And because Defendants do not adequately trace or otherwise identify the  
23 tuna that is not dolphin-safe and physically segregate and store it separately from any  
24 tuna that may be dolphin-safe, Defendants may not label any of their StarKist tuna  
25 products as dolphin-safe.

26 //

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

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

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

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

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

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

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

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

6  
7 examined whether the different conditions for access to a  
8 “dolphin-safe” label are “calibrated” to the risks to dolphins  
9 arising from different fishing methods in different areas of the  
10 ocean, as the United States had claimed. The Appellate Body  
11 noted the Panel’s finding that the fishing technique of setting on  
12 dolphins is particularly harmful to dolphins and that this fishing  
13 method has the capacity of resulting in observed and unobserved  
14 adverse effects on dolphins. *At the same time, the Panel was*  
15 *not persuaded that the risks to dolphins from other fishing*  
16 *techniques are insignificant and do not under some*  
17 *circumstances rise to the same level as the risks from setting on*  
18 *dolphins*. The Appellate Body further noted the Panel’s finding  
19 that, while the US measure fully addresses the adverse effects on  
20 dolphins resulting (including observed and unobserved effects)  
21 from setting on dolphins in the ETP, it does not address mortality  
22 arising from fishing methods other than setting on dolphins in  
23 other areas of the ocean. In these circumstances, the Appellate  
24 Body found that the measure at issue is not even-handed in the  
25 manner in which it addresses the risks to dolphins arising from  
26 different fishing techniques in different areas of the ocean.

21 *Id.* (emphasis added).

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

1           38. Following this Report, on May 31, 2012 Defendant StarKist, along with  
2 Chicken of the Sea and Bumble Bee, issued the following press release through the  
3 National Fisheries Institute (“NFI”):

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

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

7  
8           Household tuna brands Bumble Bee, Chicken of the Sea and  
9 StarKist are disappointed in the World Trade Organization's  
10 (WTO) appeals court ruling because it is likely to create  
11 consumer confusion about whether or not their products continue  
12 to be dolphin safe. *The three U.S. brands want to reassure*  
13 *consumers they have no reason to be concerned that their*  
14 *companies are wavering in their commitment to providing*  
15 *dolphin safe tuna as a result of this ruling. These companies*  
16 *do not and will not utilize tuna caught in a manner that harms*  
17 *dolphins. Providing consumers with sustainable and dolphin*  
18 *safe tuna remains a top priority.*

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

20           39. Following the Appellate Body’s Report and recommendations to  
21 strengthen the DPCIA, the United States amended the Act to impose more exacting  
22 requirements on tuna caught outside the ETP. These amendments required that:

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

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

4 **Defendants' Fishing Practices and Violation of their Dolphin-Safe**  
5 **Representations**

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

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

17 42. Defendants are not among the tuna companies that use only dolphin-  
18 safe pole-and-line or trolling techniques to capture their tuna. Rather, the fishing  
19

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

1 vessels that supply Defendants' tuna, including Defendant Dongwon itself, use  
2 indiscriminate fishing methods that kill and harm substantial numbers of dolphins.

3 43. For example, during the Class Period, Defendants sourced much of their  
4 tuna from vessels operated by Imperial Shipping Logistic Co. Ltd. Those vessels  
5 routinely used longlines – which consist of a 40-80 mile long main line to which  
6 many smaller branch lines with baited hooks are attached – to catch tuna. Longlines  
7 are highly indiscriminate fishing gear as they attract large numbers of target and non-  
8 target fish, as well as dolphins, that get snagged on the hooks by their mouth or other  
9 body parts when they go after the bait and then remain on the line for extended  
10 periods of time as the lines are drawn in to the vessel and the catch is obtained. The  
11 hooked fish are retrieved by mechanically pulling the main line back onto the fishing  
12 vessel which can take 10 hours. As dolphins are oxygen breathers, most do not  
13 survive the 10-hour retrieval process.

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

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

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

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

11           48. While FADs are extremely effective at luring tuna, they also attract  
12 dolphins – particularly in the ETP where schools of tuna routinely gather beneath  
13 schools of dolphins to reduce the risk of predation. The tuna, dolphins, and other  
14 marine life are all then caught in the gigantic mile circumference purse seine nets that  
15 are deployed around the FAD to catch the tuna.

16           49. Since the 1980s, changes in the design of nets and fishing practices that  
17 allow dolphins to escape the net have significantly reduced dolphin mortality. Brown  
18 2016. Nonetheless, significant numbers of dolphins (over a thousand a year  
19 according to NOAA<sup>4</sup>) are still harmed by this method, as even unintended bycatch  
20 can account for more than 30% of a ship’s haul. And, even though unintended  
21 bycatch may still be alive when dumped out of the nets onto the boat, by the time  
22 they are thrown back into the ocean, most are dead or near dead.

23  
24  
25  
26 <sup>3</sup> Elizabeth Brown, Fishing Gear 101: Purse Seines – The Encirclers (June 6, 2016),  
27 *available at* <http://safinacenter.org/2015/12/fishing-gear-101-purse-seines-the-encirclers/> (last visited May 3, 2019) (“Brown 2016”).

28 <sup>4</sup> NOAA 2016.

1           50. Even when dolphins escape the purse seine nets or are released alive  
2 from the longlines and nets, dolphins are harmed (*i.e.*, far from “safe”) by these  
3 fishing practices.

4           51. Several studies have observed a number of indirect ways these fishing  
5 practices cause additional unobserved dolphin deaths, including: dolphin mother-calf  
6 separation as calves are dependent upon their mothers until weaned 1.5 years  
7 postpartum, and, even then, the calves do not reach full muscle maturation until age  
8 3; acute cardiac and muscle damages caused by the exertion of avoiding or detangling  
9 from the FADs and purse seine nets; cumulative organ damage in released dolphins  
10 due to overheating from escape efforts; failed or impaired reproduction;  
11 compromised immune function; and unreported mortalities due to under-counting by  
12 purse-seine fishing vessels. *See, e.g.*, U.S. Department of Commerce, Reilly, *et al.*,  
13 Report of the Scientific Research Program Under the International Dolphin  
14 Conservation Program Act, NOAA Technical Memorandum NMFS (Mar. 2005), at  
15 67-71,           76           available           at           [https://swfsc.noaa.gov/](https://swfsc.noaa.gov/publications/TM/SWFSC/NOAA-TM-NMFS-SWFSC-372.PDF)  
16 [publications/TM/SWFSC/NOAA-TM-NMFS-SWFSC-372.PDF](https://swfsc.noaa.gov/publications/TM/SWFSC/NOAA-TM-NMFS-SWFSC-372.PDF) (last visited May 3,  
17 2019). *See also* Wade, et al, *Depletion of spotted and spinner dolphins in the eastern*  
18 *tropical Pacific: modeling hypotheses for their lack of recovery*, Mar Ecol Prog Ser  
19 343:1-14, 2007, at 11 (noting “[a] summary of recent research ... clearly illustrates  
20 that the purse seine fishery has the capacity to affect dolphins beyond the direct  
21 mortality observed as bycatches”); Kellar, et al., *Pregnancy patterns of pantropical*  
22 *spotted dolphins (Stenella attenuata) in the eastern tropical Pacific determined from*  
23 *hormonal analysis of blubber biopsies and correlations with the purse-seine tuna*  
24 *fishery*, Mar Biol (2013) 160:3113-3124, at 3120 (tuna fishery reduces likelihood of  
25 female becoming pregnant or maintaining pregnancy).

26           52. Additional indirect harm to dolphins and the marine environment result  
27 from discarded and abandoned fishing gear, including FADs, which is estimated to

1 make up to 70% by weight of microplastics in the ocean and, among other harms,  
2 ensnares marine life.

3 53. As the indirect harmful effects of Defendants' fishing practices also  
4 "likely result in [dolphin] mortality" (50 CFR §216.3), Defendants' tuna is not  
5 dolphin-safe. It is conservatively estimated that the total reported dolphin mortality  
6 is underestimated by 10-15% for spotted dolphins and 6-10% for spinner dolphins  
7 given these indirect harmful effects and unobserved and underreported kills. Reilly,  
8 *et al.*, 2005, at 7.

9 54. Because the use of FADs, purse seine nets, and longlines are  
10 unsustainable fishing practices, several companies that supply the U.S. tuna market  
11 will not source their tuna from boats that use these indiscriminate fishing methods.  
12 But Defendants are not among these companies. For example, to avoid competition  
13 from its primary market rivals over the sale of FAD-free tuna (which would be more  
14 expensive), in or about February 2012, Defendant StarKist allegedly entered into a  
15 written agreement with Bumble Bee and Chicken of the Sea, who together with  
16 Defendant StarKist control 70-80% of the U.S. canned tuna market, whereby none  
17 of them would sell a branded FAD-free tuna product in the U.S. *See* Tom Seaman,  
18 Lawsuits: US brands colluded on not selling FAD-free tuna,  
19 undercurrentnews>analysis>US Investigates Tuna Brands>Companies (July 18,  
20 2016), *available at* [https://www.undercurrentnews.com/2016/07/18/lawsuits-us-](https://www.undercurrentnews.com/2016/07/18/lawsuits-us-brands-colluded-on-not-selling-fad-free-tuna/)  
21 [brands-colluded-on-not-selling-fad-free-tuna/](https://www.undercurrentnews.com/2016/07/18/lawsuits-us-brands-colluded-on-not-selling-fad-free-tuna/) (last visited May 3, 2019).

22 55. Because "StarKist's failure to take sustainability seriously is devastating  
23 the oceans – all while it continues to sell cheap and dirty tuna nationwide" – and  
24 because "StarKist sources from destructive fisheries that kill tons of marine life as  
25 bycatch", Greenpeace has consistently ranked StarKist at the bottom of its list of  
26 well-known tuna brands when it comes to responsible sourcing of tuna. Greenpeace,  
27 2017 Tuna Shopping Guide, *available at* <https://www.greenpeace.org/>

1 usa/oceans/tuna-guide/ (last visited May 3, 2019) (ranking StarKist 20 out of 20).

2  
3 **Defendants Do Not Comply with Mandatory Tracking**  
4 **and Verification Requirements**

5 56. Defendants' use of an alternative dolphin-safe logo on StarKist tuna  
6 products legally requires them to track, audit, and spot check for accuracy that "no  
7 dolphins were killed or seriously injured in the sets or other gear deployments in  
8 which the tuna were caught" from capture, to transshipment<sup>5</sup>, to cannery, to shelf.  
9 And, in the event that even a single dolphin is "killed or seriously injured" during the  
10 catch, Defendants must physically separate and store that catch from any tuna catches  
11 in which no dolphins were harmed (if any) and maintain records tracing the catch(es)  
12 in which dolphins were harmed back to the fishing vessel and trip. 50 CFR §216.91

13 57. Unlike fisheries in the ETP, boats in the other oceanic regions that  
14 supply Defendants' tuna are not required to have independent observers onboard to  
15 track and report the number of dolphins killed or seriously injured. 16 U.S.C.  
16 §1385(d)(1). Defendants are solely responsible for collecting this information, which  
17 they fail to do. Defendants do not track, trace, and report the number of dolphins  
18 killed or harmed by their tuna fishing vessels or disclose the dolphin hazardous  
19 fishing methods used to catch StarKist tuna, even though Defendants are able to do  
20 so. As confirmed on a StarKist webpage entitled "Sustainability Knowledge Center",  
21 StarKist claims to trace each tuna Product sold in the U.S. to the vessel that caught  
22 it, the ocean where it was caught, the method used to catch the tuna, and the cannery  
23 where it was processed. StarKist, Sustainability Knowledge Center, *available at*

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

1 <https://starkist.com/sustainability-knowledge-center> (last visited May 3, 2019).  
2 Other tuna brands that claim to have similar tracking methods actually provide that  
3 information to consumers via tracking portals on their website that allow consumers  
4 to see this critical information. Defendants' tracking portal provides information  
5 only on the ocean in which StarKist tuna was caught.

6 58. By not adequately tracking StarKist tuna catch from net or hook to can,  
7 Defendants conceal the actual harm to dolphins caused in its supply chain.

8 59. Defendants' concealment is wide ranging and multi-layered. For  
9 example, by using Defendant Dongwon's boats to catch StarKist tuna in the Western  
10 Pacific Ocean ("WPO"), Defendants are not required by international law to have an  
11 independent observer on board to certify no dolphins were harmed. It is estimated  
12 that observers are aboard only about 1 in 50 WPO tuna long-liners. A declaration to  
13 the U.S. National Oceanic and Atmospheric Administration ("NOAA") from the  
14 ship's captain suffices. 16 U.S.C. §1385(d)(1)(B)(ii). These declarations are limited  
15 to certifying that "no purse seine net was intentionally deployed on or used to encircle  
16 dolphins during the particular voyage on which the tuna was harvested" and do not  
17 require certification that FADs, gillnets, longlines, and other dolphin harming fishing  
18 techniques were not used. *Id.* Nor must the captain quantify the number of dolphins  
19 killed or otherwise harmed. And, even if they did, there is a strong financial incentive  
20 for a captain to falsely omit any report of dolphin mortality or harm, as any catch that  
21 is not "dolphin-safe" is essentially worthless. Further, it is relatively simple to do  
22 this as the majority of certifications are paper-based and typically filled in by hand –  
23 often after the vessel has returned to port – making it virtually impossible to  
24 adequately verify these certifications. The potential and incentive for false reporting  
25 by StarKist tuna suppliers make it even more incumbent upon Defendants to track,  
26 trace, and report the number of dolphins killed or harmed by StarKist tuna fishing  
27 vessels.

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

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

17           62. Exemplative is the vessel known as the STS-50 whose chain of  
18 ownership includes Defendant Dongwon. The STS-50 was seized by Indonesian  
19 authorities for carrying 18 miles of illegal drifting gill nets (which Defendant StarKist  
20 has promised consumers it does not use) which are almost invisible to fish and known  
21 to be dangerous to dolphins and other marine life as acknowledged on StarKist's  
22 website recital of its dolphin-safe policy. The STS-50 evaded earlier seizure efforts  
23 by China and other countries by flying the flags of eight separate countries on  
24 different occasions. *See* Stop Illegal Fishing, Indonesia seeks global pushback on  
25 illegal fishing (Jan. 7, 2019), *available at* [https://stopillegalfishing.com/press-](https://stopillegalfishing.com/press-links/indonesia-seeks-global-pushback-on-illegal-fishing/)  
26 [links/indonesia-seeks-global-pushback-on-illegal-fishing/](https://stopillegalfishing.com/press-links/indonesia-seeks-global-pushback-on-illegal-fishing/) (last visited May 3, 2019).

27           63. The ability to purchase the flag of any country and change flags at will  
28

1 effectively prevents the military and enforcement authorities from investigating and  
2 stopping harmful fishing practices as they are forbidden from boarding ships flying  
3 another country's flag. Thus, most nations have no ships that regularly patrol beyond  
4 their national waters.

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

9 65. As to those few boats – like the STS-50 – that authorities are able to  
10 seize, they often are unable to determine the responsible owners and operators. What  
11 confronts them is a nebulous web of companies, some registered in offshore tax  
12 havens whose ownership is virtually impossible to determine. The STS-50, for  
13 example, identified one company as the registered owner, another company as the  
14 beneficial owner, and 4 other companies as previous owners including Defendant  
15 Dongwon.

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

22  
23 **Defendants, Unlike Many Other Tuna Companies, Do Not Use**  
24 **Dolphin-Safe Tuna Fishing Methods**

25 67. Unlike several other tuna companies who sell to the U.S. market,  
26 Defendant StarKist and its parent company, Defendant Dongwon, have not adopted  
27 dolphin-safe fishing practices, such as pole-and-line, trolling, and/or handline catch

1 methods, whereby fishermen catch one fish at a time and release unwanted species  
2 soon after a fish takes the bait.

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

1 *available at* [https://www.wegmans.com/about-us/making-a-difference/sustain](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html)  
2 [ability-at-wegmans/seafood-sustainability.html](https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html) (last visited May 3, 2019); Publix,  
3 Publix Sustainability Report 2019, *available at* [https://sustainability.publix.com/](https://sustainability.publix.com/wp-content/uploads/sustainability-report.pdf)  
4 [wp-content/uploads/sustainability-report.pdf](https://sustainability.publix.com/wp-content/uploads/sustainability-report.pdf) (last visited May 3, 2019) (supplier  
5 commitment to sustainable fishing “helps us decide whether to sell a product,  
6 enhance fisheries through improvement projects or halt the sale of a product until the  
7 issue is resolved.”). Tuna companies who do not use dolphin-safe catch methods and  
8 do not adhere to traceability requirements can expect retailers to refuse to sell their  
9 products.

10 69. By labeling StarKist tuna products as dolphin safe, not tracking and  
11 reporting the number of dolphins killed and harmed in capturing StarKist tuna, and  
12 not separating tuna that is not dolphin-safe from tuna caught where no dolphins were  
13 harmed (if any), Defendants are able to sell their StarKist tuna products in several  
14 major retail stores to which it would otherwise be denied entry. For example,  
15 Walmart – the largest seller of canned tuna in the U.S. – who was StarKist’s former  
16 parent company, Del Monte Foods’, most significant customer, representing “in  
17 excess of 20% of list sales” in Del Monte’s StarKist tuna segment in 2007 (Del Monte  
18 Foods, 2007 Annual Report, at 10) and who is still StarKist’s largest customer today,  
19 has a sustainable seafood supply chain policy, which includes working with its  
20 suppliers to provide “sustainable seafood” and address bycatch. Walmart, 2017  
21 Global Responsibility Report, *available at*  
22 <file:///C:/Users/claliberte/Downloads/WalmartGRR2017CustomReport.pdf>;  
23 Walmart, Sustainable Supply Chain, Environmental, *available at*  
24 [https://corporate.walmart.com/esgreport/environmental?locale=en-US#sustainable-](https://corporate.walmart.com/esgreport/environmental?locale=en-US#sustainable-supply-chain)  
25 [supply-chain](https://corporate.walmart.com/esgreport/environmental?locale=en-US#sustainable-supply-chain). The importance of projecting the outward appearance of abiding by  
26 Walmart’s sustainability policy was not lost on Del Monte, who recognized that  
27 “[s]ustaining strong relationships with retailers has become a critical success factor

1 for food companies.” Del Monte Foods, 2007 Annual Report, at 6.

2  
3 **Defendants’ Dolphin-Safe Representations are False, Misleading,**  
4 **and/or Deceptive, and are Systemic Acts of Mail and Wire Fraud**

5 70. Because dolphins are killed and harmed by the fishing methods used to  
6 catch the tuna in Defendant’s products; Defendants do not adequately track, verify,  
7 audit, and spot check the number of dolphins killed and harmed; and they do not  
8 separately store the tuna that is not dolphins safe, Defendants’ use of the alternative  
9 dolphin-safe logo, and its dolphin-safe representations are false, misleading, and/or  
10 deceptive, as well as systemic acts of mail and wire fraud.

11 71. Reasonable consumers rightly believe Defendants’ plain words that  
12 “dolphin-safe” means “no” dolphins were harmed in the process of catching the tuna  
13 in StarKist products. That is precisely the regulatory definition of dolphin safe. 50  
14 CFR §§216.3, 216.91. And it is the message that Defendants have consistently  
15 conveyed to the public in their widespread and long-term advertising and marketing  
16 campaign.

17 72. Dolphin safety matters to consumers and it materially affects their  
18 decision whether to purchase StarKist tuna. If consumers, including Plaintiffs, knew  
19 Defendants’ tuna products were not dolphin-safe they would not buy StarKist tuna  
20 products, particularly because there are several competing brands of like tuna  
21 products that are dolphin safe. Thus, Plaintiffs and Class members are entitled to a  
22 full refund.

23 73. Any nutrient value notwithstanding, because Defendants’ false dolphin-  
24 safe representations taint the entire purchase – from whether StarKist tuna that was  
25 not dolphin-safe would even be made available by retailers for purchase by  
26 consumers to whether consumers would purchase StarKist tuna that was not dolphin-  
27 safe if available for purchase – consumers, like Plaintiffs here, are entitled to a full



1 than 100 members of the Class, and the aggregate amount in controversy exceeds  
2 \$5,000,000, exclusive of interest and costs.

3 77. Venue properly lies in this District pursuant to 28 U.S.C. §1391(a),  
4 because Defendants have transacted substantial business within this District within  
5 the meaning of 28 U.S.C. §1391(a), as defined in 28 U.S.C. §1391(c), and because a  
6 substantial part of the events giving rise to the claims alleged herein occurred in the  
7 Northern District of California. Specifically, Defendants marketed and sold their  
8 tuna products throughout the State of California, including throughout this District,  
9 and California Plaintiff Gardner, as well as other members of the Class, purchased  
10 Defendants' falsely advertised and labeled tuna products from retail outlets located  
11 within this District.

12 78. This Court has personal jurisdiction over Defendants pursuant to 18  
13 U.S.C. §1965(b) and (d). Defendants are authorized to conduct and do business in  
14 California, including this District. Defendants marketed, promoted, distributed, and  
15 sold the tuna products in California, and Defendants have sufficient minimum  
16 contacts with this State and/or sufficiently availed itself of the markets in this State  
17 through its promotion, sales, distribution, and marketing within this State, including  
18 this District, to render the exercise of jurisdiction by this Court permissible.

19 79. Defendants have also purposely availed themselves of the laws and  
20 markets of the United States. Dongwon, by itself and through StarKist, engaged in  
21 the unlawful and fraudulent shipping and/or importing of StarKist tuna products into  
22 the United States, and the marketing and sales practices described herein, and had,  
23 and was intended to have, direct, substantial and reasonably foreseeable effects on  
24 the commerce in the forum State and in the United States. Moreover, Dongwon has  
25 consented to or waived objection to this Court's personal jurisdiction over it through  
26 other prior litigation in which it has chosen forums in the United States. *See, e.g.,*  
27 *Dongwon Indus. Co., Ltd. v. Ships Gear & Transit, Inc.*, No. 93-cv-01691 (S.D. Cal.);

1 *Dongwon Indus. Co., Ltd. v. Yoshida*, No. 90-cv-00282 (D. Alaska); and *U.S. ex rel.*  
2 *Moore & Co. v. Majestic Blue Fisheries LLC*, No. 12-cv-01562 (D. Del.).

### 3 **PARTIES**

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

23 81. Plaintiff Lori Myers resides in Moreno Valley, California and is a citizen  
24 of California. Throughout the relevant period, Plaintiff Myers routinely was exposed  
25 to, saw, and relied upon Defendants' dolphin-safe representations by viewing the  
26 dolphin-safe mark on the StarKist canned and pouched tuna in water through  
27 Instacart, Amazon, and at Ralphs in Canyon Crest Town Center in Riverside,

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

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

1 in fact and lost money at the time of purchase. Plaintiff Cosgrove continues to desire  
2 to purchase StarKist tuna products that are dolphin-safe, and she would purchase such  
3 a product manufactured by Defendant if it were possible to determine prior to  
4 purchase whether no dolphins were harmed by Defendants' operations. Indeed,  
5 Plaintiff Cosgrove regularly visits stores such as Publix and Walmart where  
6 Defendant's tuna products are sold, but will be unable to rely upon the dolphin-safe  
7 representations and will not be able to determine if Defendants' products are dolphin-  
8 safe when deciding whether to purchase the tuna products in the future.

9 83. Plaintiff Autumn Hessong resides in Jacksonville, Florida and is a  
10 citizen of Florida. Throughout the relevant period, Plaintiff Hessong routinely was  
11 exposed to, saw, and relied upon Defendants' dolphin-safe representations by  
12 viewing the dolphin-safe mark on the StarKist canned and pouched tuna at various  
13 stores in Jacksonville, Florida, including Winn-Dixie. Plaintiff Hessong purchased  
14 the tuna products many times throughout the relevant period. At all relevant times,  
15 Plaintiff Hessong believed the tuna products were dolphin-safe and was unaware that  
16 StarKist tuna was not dolphin-safe as represented and was caught using fishing  
17 methods that are harmful to dolphins. Had Plaintiff Hessong known the tuna was not  
18 dolphin-safe and/or had Defendant not represented that the tuna was dolphin-safe,  
19 Plaintiff Hessong would not have purchased the StarKist tuna products. As a result,  
20 Plaintiff Hessong suffered injury in fact and lost money at the time of purchase.  
21 Plaintiff Hessong continues to desire to purchase StarKist tuna products that are  
22 dolphin-safe, and she would purchase such a product manufactured by Defendant if  
23 it were possible to determine prior to purchase whether dolphins were harmed by  
24 Defendants' operations. Indeed, Plaintiff Hessong regularly visits stores such as  
25 Winn-Dixie, where Defendants' tuna products are sold, but will be unable to rely  
26 upon the dolphin-safe representations and will not be able to determine if Defendants'  
27

1 products are dolphin-safe when deciding whether to purchase the tuna products in  
2 the future.

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

25 85. Plaintiff Colleen McQuade resides in Bronxville, New York and is a  
26 citizen of New York. Throughout the relevant period, Plaintiff Colleen McQuade  
27 routinely was exposed to, saw, and relied upon Defendants' dolphin-safe  
28

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

21 86. Plaintiff James Borruso resides in Staten Island, New York and is a  
22 citizen of New York. Throughout the relevant period, Plaintiff Borruso routinely  
23 was exposed to, saw, and relied upon Defendants' dolphin-safe representations by  
24 viewing the dolphin-safe mark on the StarKist tuna products, including canned tuna  
25 in water and oil, at stores like Stop & Shop and Pathmark in Staten Island, New York.  
26 Plaintiff Borruso purchased the tuna products many times throughout the relevant  
27 period. At all relevant times, Plaintiff Borruso believed the tuna products were

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

14 87. Plaintiff Fidel Jamelo resides in Bronx, New York and is a citizen of  
15 New York. Throughout the relevant period, Plaintiff Fidel Jamelo routinely was  
16 exposed to, saw, and relied upon Defendants' dolphin-safe representations by  
17 viewing the dolphin-safe mark on the StarKist canned tuna products, including  
18 canned tuna in water, at stores like Costco in New Rochelle, New York. Plaintiff  
19 Fidel Jamelo purchased the tuna products many times throughout the relevant period.  
20 At all relevant times, Plaintiff Fidel Jamelo believed the tuna products were dolphin-  
21 safe and was unaware that StarKist tuna was not dolphin-safe as represented and was  
22 caught using fishing methods that are harmful to dolphins. Had Plaintiff Fidel Jamelo  
23 known the tuna was not dolphin-safe and/or had Defendants not represented that the  
24 tuna was dolphin-safe, Plaintiff Fidel Jamelo would not have purchased the StarKist  
25 tuna products. As a result, Plaintiff Fidel Jamelo suffered injury in fact and lost  
26 money at the time of purchase. Plaintiff Fidel Jamelo continues to desire to purchase  
27 StarKist tuna products that are dolphin-safe tuna, and he would purchase such a

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

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

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

24           90. Plaintiff Lori Luciano resides in Eastchester, New York and is a citizen  
25 of New York. Throughout the relevant period, Plaintiff Lori Luciano routinely was  
26 exposed to, saw, and relied upon Defendants' dolphin-safe representations by  
27 viewing the dolphin-safe mark on the StarKist tuna products, including canned tuna

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

19 91. Plaintiff Robert Nugent resides in Staten Island, New York and is a  
20 citizen of New York. Throughout the relevant period, Plaintiff Nugent routinely was  
21 exposed to, saw, and relied upon Defendants' dolphin-safe representations by  
22 viewing the dolphin-safe mark on the StarKist tuna products, including canned tuna  
23 in water, at stores like Stop & Shop, Shop Rite and Key Food in Staten Island, New  
24 York. Plaintiff Nugent purchased the tuna products many times throughout the  
25 relevant period. At all relevant times, Plaintiff Nugent believed the tuna products  
26 were dolphin-safe and was unaware that StarKist tuna was not dolphin-safe as  
27 represented and was caught using fishing methods that are harmful to dolphins. Had  
28

1 Plaintiff Nugent known the tuna was not dolphin-safe and/or had Defendants not  
2 represented that the tuna was dolphin-safe, Plaintiff Nugent would not have  
3 purchased the StarKist tuna products. As a result, Plaintiff Nugent suffered injury in  
4 fact and lost money at the time of purchase. Plaintiff Nugent continues to desire to  
5 purchase StarKist tuna products are dolphin-safe, and he would purchase such a  
6 product manufactured by Defendants if it were possible to determine prior to  
7 purchase whether dolphins were harmed by Defendants' operations. Indeed, Plaintiff  
8 Nugent regularly visits stores such as Stop & Shop, Shop Rite and Key Food where  
9 Defendant's tuna products are sold, but will be unable to rely upon the dolphin-safe  
10 representations and will not be able to determine if Defendants' products are dolphin-  
11 safe when deciding whether to purchase the tuna products in the future.

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

1 operations. Indeed, Plaintiff Zelig regularly visits stores such as Costco and Shop-  
2 Rite, where Defendant's tuna products are sold, but will be unable to rely upon the  
3 dolphin-safe representations and will not be able to determine if Defendants'  
4 products are dolphin-safe when deciding whether to purchase the tuna products in  
5 the future.

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

26 94. Plaintiff Megan Kiihne resides in Winona, Minnesota and is a citizen of  
27 Minnesota. Throughout the relevant period, Plaintiff Kiihne routinely was exposed  
28

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

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

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

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

21 97. Defendant Dongwon Industries Co. Ltd. is a corporation organized,  
22 existing, and doing business in South Korea, with its headquarters located in Seoul,  
23 South Korea. Dongwon is a vertically integrated fishing conglomerate that owns  
24 the world's largest fishing fleet used to source much of StarKist's tuna.

25 98. In 2008, Dongwon purchased StarKist, and Dongwon is StarKist's  
26 parent. Dongwon sells a substantial volume of canned tuna products in the United  
27

1 States, and according to its quarterly and annual reports, it typically derives more  
2 than 50% of its global revenue from sales in the United States.

3 99. The Dongwon family of companies can be described as a *chaebol*. See  
4 generally David Hundt, Korea's Developmental Alliance: State, Capital and the  
5 Politics of Rapid Development (2009) (explaining *chaebols* are closely knit business  
6 groups under the control and guidance of a single family or extended family).

7 100. Dongwon began in 1969 and, until recently, was controlled by its  
8 Chairman Jae-chul Kim ("Chairman Kim") and members of his extended family.  
9 Chairman Kim stepped down in April 2019 and turned over control of the enterprise  
10 to his son, Nam-Jung Kim.

11 101. After purchasing StarKist in 2008, Chairman Kim placed family  
12 members and Dongwon executives in key control positions at StarKist.

13 102. For example, StarKist's current President, Andrew Choe, had been  
14 Dongwon's Director of Strategic Planning until 2012 when he was sent to StarKist.

15 103. Nam-Jung Kim, Chairman Kim's son, served as StarKist's COO from  
16 2012 until October 2014, when he was promoted to Vice Chairman of StarKist. For  
17 years he has served on the board of directors for both StarKist and Dongwon. As  
18 part of a leadership succession plan, Chairman Kim has been transferring ownership  
19 of Dongwon Enterprises to his son N.J. Kim. On information and belief, N.J. Kim  
20 now owns a controlling interest in Dongwon, and had a significant ownership interest  
21 in Dongwon even when he served as StarKist's COO. In fact, it has been reported  
22 that the position of COO of StarKist was created specifically for N.J. Kim to allow  
23 him to "continu[e] growth and expansion of Dongwon-StarKist global business."  
24 After Chairman Kim's departure, N.J. Kim is now the Chairman of Dongwon.

25 104. StarKist's board of directors also includes Ingu Park, who is the Chief  
26 Executive Officer of Dongwon Precision Machinery. He was StarKist's acting  
27

1 president from November 19, 2010 to March 2, 2011 and is currently StarKist's  
2 Chairman. He also served as the Vice Chairman and Director of Dongwon F&B Co.

3 105. As a *chaebol*, Dongwon does not follow the principles of corporate  
4 separateness and instead operates all of its subsidiaries and parents as a single entity.

5 106. Dongwon directly participated in the acts alleged herein and  
6 purposefully directed its conduct at the United States (including the forum State).  
7 Indeed, Dongwon purchased StarKist specifically to integrate its fishing, marketing  
8 and sales operations within a single entity and thus directly avail itself of the United  
9 States market for canned tuna products.

10 107. Throughout the relevant period, StarKist has operated as Dongwon's  
11 alter ego or agent. During this period, Dongwon controlled all aspects of StarKist's  
12 canned tuna business, including production, marketing, pricing, sales, hiring,  
13 budgeting, and capitalization. In essence, Dongwon purchased StarKist to operate  
14 merely as a conduit for StarKist tuna products. In fact, Dongwon once admitted on  
15 its website that "StarKist is an iconic tuna brand in the United States, and *has been*  
16 *controlled by Dongwon Group since 2008...*"

### 17 CLASS DEFINITION AND ALLEGATIONS

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

#### 21 **Nationwide Class**

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

25 Excluded from this Class are Defendants and their officers,

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

1 directors, employees and those who purchased the tuna  
2 products for the purpose of resale.

3 109. In addition, Plaintiffs Gardner and Myers seek certification of the  
4 following California-Only Class:

5 **California-Only Class**

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

9 Excluded from this Class are Defendants and their officers,  
10 directors and employees, and those who purchased the tuna  
11 products for the purpose of resale.

12 110. In addition, Plaintiffs Cosgrove and Hessong seek certification of the  
13 following Florida-Only Class:

14 **Florida-Only Class**

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

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

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

24 **New York-Only Class**

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

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

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

**New Jersey-Only Class**

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

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

7 113. In addition, Plaintiff Kiihne seeks certification of the following  
8 Minnesota-Only Class:

9 **Minnesota-Only Class**

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

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

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

18 **Arizona-Only Class**

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

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

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

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

1 (a) whether Defendants' dolphin-safe representations are false, misleading,  
2 or objectively reasonably likely to deceive;

3 (b) whether Defendants failed to comply with traceability and verification  
4 requirements;

5 (c) whether Defendants engaged in fishing practices that harmed dolphins;

6 (d) whether Defendants' alleged conduct is unlawful;

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

9 (f) whether Defendants engaged in false, misleading and/or deceptive  
10 advertising;

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

13 (h) whether Defendants and their RICO Co-Conspirators conducted or  
14 participated in the conduct of the Dolphin-Unsafe RICO Enterprise's affairs  
15 through a pattern of racketeering activities;

16 (i) whether Defendants and their RICO Co-Conspirators knowingly  
17 participated in, devised, or intended to devise a scheme or plan to defraud, or a  
18 scheme or plan for obtaining money or property by means of false or fraudulent  
19 pretenses, representations, promises, or omissions;

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

23 (k) whether Defendants and their RICO Co-Conspirators used, or caused to  
24 be used, the mails or interstate wire transmission to carry out, or attempt to carry  
25 out, an essential part of the scheme;

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

4 (m) whether Plaintiffs and Class members are entitled to appropriate  
5 equitable remedies, including damages, restitution, corrective advertising, and  
6 injunctive relief.

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

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

16 119. **Superiority.** A class action is superior to all other available means for  
17 the fair and efficient adjudication of this controversy. The damages or other financial  
18 detriment suffered by individual Class members is relatively small compared to the  
19 burden and expense that would be entailed by individual litigation of their claims  
20 against Defendants. It would thus be virtually impossible for members of the Classes,  
21 on an individual basis, to obtain effective redress for the wrongs done to them.  
22 Furthermore, even if Class members could afford such individualized litigation, the  
23 court system could not. Individualized litigation would create the danger of  
24 inconsistent or contradictory judgments arising from the same set of facts.  
25 Individualized litigation would also increase the delay and expense to all parties and  
26 the court system from the issues raised by this action. By contrast, the class action  
27 device provides the benefits of adjudication of these issues in a single proceeding,

1 economies of scale, and comprehensive supervision by a single court, and presents  
2 no unusual management difficulties under the circumstances here.

3 120. Plaintiffs seek preliminary and permanent injunctive and equitable relief  
4 on behalf of the entire Classes, on grounds generally applicable to the entire Classes,  
5 to enjoin and prevent Defendants from engaging in the acts described and requiring  
6 Defendants to provide full restitution to Plaintiff and Class members.

7 121. Unless a Class is certified, Defendants will retain monies received as a  
8 result of its conduct that were taken from Plaintiffs and Class members.

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

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

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

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

125. Plaintiffs bring this claim against Defendants individually and on behalf of the Nationwide Class.

126. Defendants conduct their business—legitimate and illegitimate—in concert with numerous other persons and entities, including, but not limited to, Imperial Shipping Logistic Co. Ltd. (“Imperial”), a fishing vessel operation company that sources much of Defendants’ tuna products; Ocean Treasure Co. Ltd. (“Ocean Treasure”), another fishing vessel operator for Defendants; Genesis Ocean S.A., another fishing vessel operator for Defendants; StarKist Samoa Co. (“StarKist Samoa”), one of Defendants’ top importers; Ping Tai Rong Ocean Fishery Company (“Ping Tai”), another fishing vessel operator for Defendants with a partnership with StarKist Samoa; Société de Conserverie en Afrique SA. (“SCASA”), a Dongwon-owned (since 2011) tuna cannery in Senegal and one of the largest tuna canneries in Africa that exports to the U.S. market through StarKist; Tri Marine International, Inc. (“Tri Marine”), a U.S.-based tuna fishing, processing, and trading group that, *inter alia*, opened Samoa Tuna Processors Inc. (“STP”) in Paga Pago, American Samoa which signed a 10-year lease deal with Defendant StarKist in May 2018 to use STP’s “cold storage freezer” to store Defendants’ large volume of tuna products; various other fishing, import/export, packaging, labeling, and distributing companies (collectively, the “RICO Co-Conspirators”).

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

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

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

8           130. As part of a strategy to save millions (if not billions) of dollars and  
9 convince consumers to purchase StarKist tuna products, Defendants and their RICO  
10 Co-Conspirators concocted a scheme at or before 2008, and continuing throughout  
11 the Class Period, to falsely represent, in various pieces of mail, through wires, and  
12 on the Internet, that StarKist tuna products were dolphin-safe under U.S. law and  
13 regulations, including the MMPA as amended, 16 U.S.C. §1361, *et seq.*, the DPCIA,  
14 16 U.S.C. §1385, *et seq.*, and 50 CFR §216.95. In making this express representation,  
15 Defendants falsely assured the public and regulators that “no” dolphins were killed  
16 or seriously injured, that Defendants adequately trace or otherwise identify StarKist  
17 tuna that is not dolphin-safe, and that Defendants physically segregate and store tuna  
18 that is not dolphin-safe separately from any tuna that may be dolphin-safe.

19           131. Defendants and their RICO Co-Conspirators’ scheme is similar to that  
20 of Volkswagen, General Motors, Fiat Chrysler, and other automobile manufacturers  
21 and parts suppliers who brazenly violated federal and state emissions laws and  
22 regulations, concomitantly deceiving consumers, car dealers, and regulatory bodies  
23 alike, by marketing and labeling their vehicles as “clean” and “eco” friendly when,  
24 in fact, the vehicles contained undisclosed emission control devices that served to  
25 “defeat” emissions testing under the Clean Air Act, and actually significantly  
26 increased NOx emissions when activated. RICO allegations against these companies  
27 have repeatedly been upheld by the federal judiciary. *See, e.g., Bledsoe v. FCA US*

1 *LLC*, No. 16-14024, 2019 WL 1379588, at \*16 (E.D. Mich. Mar. 27, 2019); *In re*  
2 *Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices, & Prod. Liab. Litig.*, 295 F.  
3 Supp. 3d 927, 984 (N.D. Cal. 2018); *In re Duramax Diesel Litig.*, 298 F. Supp. 3d  
4 1037, 1087 (E.D. Mich. 2018); *In re Volkswagen “Clean Diesel” Mktg., Sales*  
5 *Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 4890594, at  
6 \*18 (N.D. Cal. Oct. 30, 2017).

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

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

18 134. However, Defendants were either unable or unwilling to conduct their  
19 tuna fishing activities within the constraints of the law. And so, they devised one  
20 outside of it. Instead of spending money on more expensive tuna fishing, tracing and  
21 segregation operations as the laws required to label tuna as dolphin-safe, or coming  
22 clean, Defendants and their RICO Co-Conspirators agreed to continue using cost-  
23 saving, unsustainable tuna fishing methods that kill and otherwise harm dolphins.

24 135. These methods were concealed from, among other persons and entities:  
25 consumers throughout the United States, including California (on Defendant’s tuna  
26 product packaging, labeling, and the Internet); port authorities (such as Pago Pago  
27 Harbor in the village of Atu’u on the island of Tutuila, American Samoa; Guayaquil,  
28

1 Ecuador; Papua New Guinea; and Senegal, where much of Defendant’s tuna is off-  
2 loaded and processed); NOAA in, among other things, NOAA’s Form 370<sup>7</sup> and  
3 Captain Statements,<sup>8</sup> both part of NOAA’s “Fisheries’ Tuna Tracking and  
4 Verification Program;” and other tracing and tracking reports.

5 136. To accomplish their scheme or common course of conduct, Defendants  
6 and their RICO Co-Conspirators, along with others, had to work together to conceal  
7 the truth. Each of them was employed by, hired by, or associated with, and conducted  
8 or participated in the affairs of, a RICO enterprise (defined below and referred to as  
9 the “Dolphin-Unsafe RICO Enterprise” or the “Enterprise”). The purpose of the  
10 Dolphin-Unsafe RICO Enterprise was to deceive regulators, retailers, and consumers  
11 into believing that StarKist tuna products were sustainably sourced and “Dolphin  
12 Safe” as that term is defined by U.S. laws and regulations. The motivation was  
13 simple: to increase their revenues and minimize their costs from what would  
14 otherwise be more expensive tuna fishing, tracing, and segregation operations. As a  
15 direct and proximate result of their fraudulent scheme and common course of  
16 conduct, Defendants and their RICO Co-Conspirators were able to extract billions of  
17 dollars from consumers. As explained below, their years-long misconduct violated  
18 Sections 1962(c) and (d).

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

20 137. StarKist, which control over one-third of the shelf-stable tuna market in  
21 the U.S., is owned and controlled by Dongwon, a South Korean fishing vessel  
22 conglomerate. Defendants use the fishing vessels of Dongwon, Imperial, Ocean  
23 Treasure, Genesis Ocean, Ping Tai, and other companies’ currently unknown to  
24 Plaintiffs, as well as those companies’ fishermen, to catch and procure tuna for use

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

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

1 in StarKist tuna products. Defendants use, among others, StarKist Samoa to import  
2 their tuna into the United States, including into the Port of Oakland in Oakland,  
3 California. Defendants use, among others, SCASA, Tri Marine, and STP to store and  
4 package their tuna products in, among other places, Pago Pago, American Samoa.  
5 Defendants use a network of distributors to deploy StarKist tuna products throughout  
6 the United States for sale to consumers. Throughout this process, Defendants and  
7 their RICO Co-Conspirators sent through the mails and wires, among other things,  
8 consumer tuna products with product labels, Internet website postings, invoices, wire  
9 payment records, shipping manifests, bills of lading, NOAA Form 370s, Captain  
10 Statements, and tracing and tracking reports identifying that the tuna being sold was  
11 dolphin safe, when it was not.

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

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





1           146. Put simply, RICO Co-Conspirators Imperial, Ocean Treasure, Genesis  
2 Ocean, Ping Tai, and their shipping companies and fishermen, among other third-  
3 party fishing vessel companies and employees unknown to Plaintiffs were well aware  
4 that the tuna they procured on their fishing vessels for Defendants would be used to  
5 defraud consumers, retailers, and federal regulators. Indeed, these companies and  
6 individuals were critical to the concealment of the truth from consumers, retailers,  
7 and federal regulators regarding StarKist tuna products.

### 8                           **3. The Co-Conspirator Importers and Individuals**

9           147. RICO Co-Conspirator StarKist Samoa and its employees, among other  
10 third-party importers and employees unknown to Plaintiffs, imported Defendants'  
11 tuna products for sale, knowing that Defendants would market and sell their tuna  
12 products to Plaintiffs and the Class as dolphin-safe, sustainably sourced, and  
13 compliant with federal laws and regulations. On information and belief, these RICO  
14 Co-Conspirators further supplied false bills of lading in connection with the  
15 importation of the tuna products into the United States knowing that such bills of  
16 lading were false and, if the truth were known, Defendants would not be able to  
17 package, label, market, and sell their tuna products to the Class as dolphin-safe,  
18 sustainably sourced, and compliant with federal laws and regulations.

19           148. RICO Co-Conspirator StarKist Samoa and its employees, among other  
20 third-party fishing importers and employees unknown to Plaintiffs, were key to the  
21 conspiracy with Defendants enabling Defendants to sell StarKist tuna to consumers  
22 as dolphin-safe and sustainably sourced.

23           149. RICO Co-Conspirator StarKist Samoa and its employees, among other  
24 third-party importers and employees unknown to Plaintiffs, worked with Defendants  
25 to design and implement the scheme by importing tuna that was neither dolphin-safe  
26 nor sustainably caught which they knew would render false Defendants' dolphin-safe  
27 and sustainability representations to consumers and retailers in the United States, and

1 by submitting false bills of lading and other documents to port authorities and  
2 regulators they knew would be relied upon to permit Defendants to import, process  
3 and sell their tuna as dolphin-safe and sustainably sourced.

4 150. Put simply, RICO Co-Conspirator StarKist Samoa and its employees,  
5 among other third-party importers and employees unknown to Plaintiffs, were well  
6 aware that the tuna they imported for Defendants into the United States would be  
7 used to defraud consumers, retailers, and federal regulators. Indeed, these companies  
8 and individuals were critical to the concealment of the truth from consumers,  
9 retailers, and federal regulators regarding Defendants' tuna products.

10 **4. The Co-Conspirator Storage, Canning, and Processing**  
11 **Entities and Individuals**

12 151. RICO Co-Conspirators SCASA, Tri Marine, and STP and their  
13 employees, among other third-party storage, canning, and processing companies and  
14 employees unknown to Plaintiffs, stored, canned, and processed Defendants' tuna  
15 products for sale, knowing that Defendants would market and sell StarKist tuna  
16 products to Plaintiffs and the Class as dolphin-safe, sustainably sourced, and  
17 compliant with federal laws and regulations.

18 152. RICO Co-Conspirators SCASA, Tri Marine, and STP and their  
19 employees, among other third-party storage, canning, and processing companies and  
20 employees unknown to Plaintiffs, were key to the conspiracy with Defendants  
21 enabling them to sell StarKist tuna to consumers as dolphin-safe and sustainably  
22 sourced.

23 153. RICO Co-Conspirators SCASA, Tri Marine, and STP and their  
24 employees, among other third-party storage, canning, and processing companies and  
25 employees unknown to Plaintiffs, worked with Defendants to design and implement  
26 the scheme by storing, canning, and processing tuna that was neither dolphin-safe  
27

1 nor sustainably caught which they knew would render false Defendants' dolphin-safe  
2 and sustainability representations to consumers and retailers in the United States.

3 154. Put simply, RICO Co-Conspirators SCASA, Tri Marine, and STP and  
4 their employees, among other third-party storage, canning, and processing companies  
5 and employees unknown to Plaintiffs, were well aware that the tuna they stored,  
6 processed, and canned for Defendants prior to importing into the United States would  
7 be used to defraud consumers, retailers, and federal regulators. Indeed, these  
8 companies and individuals were critical to the concealment of the truth from  
9 consumers, retailers, and federal regulators regarding Defendants' tuna products.

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

12 155. As alleged in detail above, tuna-fishing techniques that meet the  
13 "dolphin-safe" standards (not used by Defendants and their RICO Co-Conspirators)  
14 are more expensive than other techniques. They are more time consuming, require  
15 more manpower, and are less efficient because fish are caught using barbless hooks  
16 and poles one at a time, rather than en masse with longlines or enormous purse seine  
17 nets. Consequently, Defendants and their RICO Co-Conspirators' bottom lines are  
18 greatly increased by the indiscriminate killing and harming of dolphins while fishing  
19 for tuna.

20 156. The Dolphin-Unsafe RICO Enterprise began as early as 2008, when  
21 Dongwon acquired StarKist. On information and belief, Defendants have entered into  
22 agreements with Imperial, Ocean Treasure, Genesis Ocean, Ping Tai, and other  
23 fishing vessel companies unknown to Plaintiffs to procure tuna to be used in StarKist  
24 tuna products sold to Plaintiffs and the Class. Defendants have also entered into  
25 numerous agreements with StarKist Samoa to import their tuna products, and with  
26 SCASA, Tri Marine, and STP to store, process, and can Defendants' tuna products.

1           157. The scheme continues to this day, as consumers, retailers, and federal  
2 regulators remain in the dark about the truth of Defendants’ so-called “Dolphin Safe”  
3 tuna products.

4           158. At all relevant times, the Dolphin-Unsafe RICO Enterprise: (a) had an  
5 existence separate and distinct from Defendants and each RICO Co-Conspirator; (b)  
6 was separate and distinct from the pattern of racketeering in which Defendants and  
7 each RICO Co-Conspirator engaged; and (c) was an ongoing and continuing  
8 organization consisting of legal entities, including Defendants Imperial, Ocean  
9 Treasure, Genesis Ocean, Ping Tai, and their shipping companies and fishermen;  
10 StarKist Samoa and its employees; SCASA, Tri Marine, and STP and their  
11 employees; and other entities and individuals associated for the common purpose of  
12 procuring, storing, processing, importing, packaging, labeling, distributing,  
13 marketing, and selling StarKist tuna products to consumers in the Class through  
14 fraudulent representations in, among other places, consumer-facing product  
15 packaging and labels, Internet websites, marketing and advertising to consumers,  
16 bills of lading, Form 370s, and Captain Statements, and deriving profits and revenues  
17 from those activities. Each member of the Dolphin-Unsafe RICO Enterprise shared  
18 in the bounty generated by the enterprise, *i.e.*, by sharing the benefit derived from  
19 increased sales revenue generated by the scheme to defraud Class members  
20 nationwide.

21           159. The Dolphin-Unsafe RICO Enterprise functioned by selling StarKist  
22 tuna products to the consuming public. All of these products are illegitimate.  
23 Defendants and their RICO Co-Conspirators, through their illegal Enterprise,  
24 engaged in a pattern of racketeering activity, which involves a fraudulent scheme to  
25 increase revenue for themselves and the other entities and individuals associated-in-  
26 fact with the Enterprise’s activities through the illegal scheme to sell StarKist’s  
27 falsely-labeled tuna products.



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

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

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

7 (d) storing, importing, processing, packaging, labeling, distributing,  
8 marketing, and selling StarKist tuna products that may not contain the “Dolphin  
9 Safe” representation;

10 (e) misrepresenting (or causing such misrepresentations to be made)  
11 StarKist tuna products as “Dolphin Safe” and sustainably sourced;

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

14 (g) introducing StarKist tuna products into the stream of U.S. commerce  
15 with false, deceptive, and misleading representations;

16 (h) concealing the truth behind the tuna procured for StarKist tuna products  
17 from regulators, retailers, and the public;

18 (i) misleading government regulators as to the nature of the tuna procured  
19 for StarKist tuna products;

20 (j) misleading the consuming public as to the nature of the tuna procured  
21 for StarKist tuna products;

22 (k) misleading retailers as to the nature of the tuna procured for StarKist  
23 tuna products;

24 (l) designing and distributing marketing materials, product labels, and  
25 websites on the Internet that misrepresented StarKist tuna products;

26 (m) illegally selling and/or distributing StarKist’s tuna products;

1 (n) collecting revenues and profits from the sale of StarKist tuna products;  
2 and/or

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

5 165. RICO Co-Conspirators Imperial, Ocean Treasure, Genesis Ocean, Ping  
6 Tai, and their shipping companies and fishermen, StarKist Samoa and its employees,  
7 and SCASA, Tri Marine, and STP and their employees, among other third parties and  
8 employees unknown to Plaintiffs, also participated in, operated and/or directed the  
9 Dolphin-Unsafe RICO Enterprise. These RICO Co-Conspirators knew that federal  
10 laws and regulations forbade Defendants from importing, storing, packaging,  
11 labeling, marketing, and selling StarKist tuna products containing tuna they procured  
12 and processed for Defendants as “Dolphin Safe,” and yet formed agreements with  
13 Defendants to procure and process tuna for StarKist tuna products that was neither  
14 dolphin-safe nor sustainably sourced.

15 166. RICO Co-Conspirators Imperial, Ocean Treasure, Genesis Ocean, Ping  
16 Tai, and their shipping companies and fishermen, StarKist Samoa and its employees,  
17 and SCASA, Tri Marine, and STP and their employees, among other third parties and  
18 employees unknown to Plaintiffs, directly participated in the fraudulent scheme by  
19 procuring, storing, importing, and processing the tuna used by Defendants in StarKist  
20 tuna products. These RICO Co-Conspirators exercised tight control over the manner  
21 and method of fishing for tuna and other aspects of the procurement, storage,  
22 importation, and distribution process and closely collaborated and cooperated with  
23 Defendants in the process.

24 167. RICO Co-Conspirators Imperial, Ocean Treasure, Genesis Ocean, Ping  
25 Tai, and their shipping companies and fishermen, also participated in the affairs of  
26 the Enterprise by working with Defendants to conceal from U.S. regulators the truth  
27 behind the tuna caught for use in StarKist tuna products, and collected substantial

1 sums of money in revenues and profits because they did not use less efficient and  
2 more costly fishing techniques necessary to protect the dolphin population. The  
3 techniques they did employ yielded higher catches at lower costs, thus increasing  
4 profits and margins on both accounts. Through their conspiracy to sell non-dolphin  
5 safe tuna as dolphin-safe, all of the co-conspirators profited handsomely from their  
6 scheme.

7 168. Each of the RICO Co-Conspirators knew that the tuna they procured,  
8 stored, canned, processed, imported, and distributed was not sustainably sourced and  
9 did not meet the requirements to be labeled as dolphin-safe, and also knew that the  
10 tuna would eventually be sold in the United States as dolphin-safe and sustainably  
11 sourced.

12 169. Without the RICO Co-Conspirators' willing participation, including  
13 their necessary involvement in procuring, storing, processing, canning, and importing  
14 tuna for use in StarKist tuna products, the Enterprise's scheme and common course  
15 of conduct would have been unsuccessful.

16 170. The RICO Co-Conspirators knew that any market for tuna products that  
17 were not dolphin-safe was *very* limited, but falsely representing that these products  
18 were dolphin-safe opened up an exponentially larger market in the United States for  
19 such products.

20 171. The RICO Co-Conspirators directed and controlled several aspects of  
21 the ongoing organization necessary to implement the scheme through  
22 communications with each other, with Defendants, with port authorities, and with  
23 regulators of which Plaintiffs cannot fully know at present, because such information  
24 lies in the Defendants' and others' hands. Similarly, because Defendant Dongwon  
25 and many of the RICO Co-Conspirators are foreign entities, and their shipping,  
26 storing, processing, and canning companies and employees are foreign citizens,  
27

1 Plaintiffs cannot fully know the full extent of each individual corporate entity's and  
2 individual's involvement in the wrongdoing prior to having access to discovery.

3 **C. Mail and Wire Fraud**

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

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

20 174. Defendants and their RICO Co-Conspirators participated in the scheme  
21 to defraud by using mail, telephone, and the Internet to transmit mailings and wires  
22 in interstate or foreign commerce. Defendants and their RICO Co-Conspirators used,  
23 directed the use of, and/or caused to be used, thousands of interstate mail and wire  
24 communications in service of their scheme through virtually uniform  
25 misrepresentations.

26 175. In devising and executing the illegal scheme, Defendants and their  
27 RICO Co-Conspirators devised and knowingly carried out a material scheme and/or

1 artifice to defraud Plaintiffs and the Class or to obtain money from Plaintiffs and the  
2 Class by means of materially false or fraudulent pretenses, representations, or  
3 promises of material facts. For the purpose of executing the illegal scheme,  
4 Defendants and their RICO Co-Conspirators committed these racketeering acts,  
5 which number in the thousands, intentionally and knowingly with the specific intent  
6 to advance the illegal scheme.

7 176. Defendants' and their RICO Co-Conspirators' predicate acts of  
8 racketeering (18 U.S.C. §1961(1)) include, but are not limited to:

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

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

20 177. Defendants' and their RICO Co-Conspirators' use of the mails and wires  
21 include, but are not limited to, the transmission, delivery, or shipment of the  
22 following by Defendants and their RICO Co-Conspirators or third parties that were  
23 foreseeably caused to be sent as a result of Defendants' and their RICO Co-  
24 Conspirators' illegal scheme:

25 (a) StarKist tuna products and the tuna itself;

26 (b) sales and marketing materials, including advertising, websites,  
27 packaging, and labeling, concealing the true nature of StarKist tuna products;

1 (c) documents intended to facilitate the packing, labeling, and sale of  
2 StarKist tuna products, including bills of lading, invoices, shipping records,  
3 reports and correspondence;

4 (d) documents and communications that facilitated the “passing-off” of  
5 StarKist tuna products as “Dolphin Safe” and sustainably sourced;

6 (e) documents to process and receive payment for StarKist tuna products  
7 by unsuspecting Class members, including invoices and receipts;

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

9 (g) false or misleading Captain Statements;

10 (h) false or misleading port authority reports;

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

12 (j) false or misleading communications intended to prevent regulators,  
13 retailers, and the public from discovering the true nature of StarKist tuna products;

14 (k) payments to Imperial;

15 (l) payments to Ocean Treasure;

16 (m) payments to Genesis Ocean;

17 (n) payments to Ping Tai;

18 (o) payments to StarKist Samoa;

19 (p) payments to SCASA;

20 (q) payments to Tri Marine;

21 (r) payments to STP;

22 (s) compensation to ship captains on tuna fishing vessels;

23 (t) deposits of proceeds; and/or

24 (u) other documents and things, including electronic communications.

25 178. Defendants and their RICO Co-Conspirators (or their agents), for the  
26 purpose of executing the illegal scheme, sent and/or received (or caused to be sent  
27 and/or received) by mail or by private or interstate carrier, shipments of StarKist tuna

1 products and related documents by mail or a private carrier affecting interstate  
 2 commerce, including the items described above and alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
StarKist Samoa	Port of Oakland, CA	June 17, 2018	Bill of Lading # SUDU28999AAPMBSK
Genesis Ocean S.A./StarKist Samoa	Port of Oakland, CA	January 7, 2018	Bill of Lading # SUDU27999A8OX8JS
Genesis Ocean S.A./StarKist Samoa	Port of Oakland, Oakland, CA	December 24, 2017	Bill of Lading # SUDU27999A814GW6
Imperial Shipping Logistics Co., Ltd/StarKist Samoa	Port of Oakland, CA	October 29, 2017	Bill of Lading # SUDU27POSWA00141
Imperial Shipping Logistics Co., Ltd/StarKist Samoa	Port of Oakland, CA	November 20, 2016	Bill of Lading # SUDU26POSWA00141
StarKist Samoa	Port of Philadelphia, PA	July 5, 2016	Bill of Lading # SUDU46AKLAA18461
Long Line International Co., Ltd./StarKist Samoa	Port of Oakland, CA	June 6, 2016	Bill of Lading # SUDU26999A193CUZ
Galapesca S.A./StarKist Samoa	Port of Oakland, Oakland, CA	June 6, 2016	Bill of Lading # SUDUB6370A0A34VP
StarKist Samoa	Port of Philadelphia, PA	May 17, 2016	Bill of Lading # SUDU46AKLAA11501
StarKist Samoa	Port of Philadelphia,	April 19, 2016	Bill of Lading #

	PA		SUDU46AKLAA07881
StarKist Samoa	Port of Philadelphia, PA	December 15, 2015	Bill of Lading # SUDU45AKLAA45571
Imperial Shipping Logistics Co., Ltd/StarKist Samoa	Port of Oakland, CA	July 21, 2015	Bill of Lading # SUDU25POSSE0012A

179. Defendants and their 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>
StarKist	General Public	2019	StarKist Corporate Responsibility Webpage discussing how Defendant's tuna is "sourced responsibly"
StarKist	General Public	April 23, 2012 at 7:06 PM	Facebook post discussing Defendant's "Dolphin Safe" tuna
StarKist	General Public	2019	StarKist FAQs discussing in detail Defendant's "Dolphin-Safe Policy"
StarKist	General Public	2019	StarKist Natural Resources & Policies Webpage explaining Defendant's "Dolphin Safe" policies
StarKist	General Public	January 10, 2018	StarKist Facebook post stating "and did we mention that [Defendant's tuna products are] soy-free,

1			wild caught and dolphin safe?"
2	StarKist	General Public	January 10, 2018
3			StarKist Facebook video showing Defendant's "Dolphin Safe" logo
4	StarKist	General Public	February 3, 2010
5			StarKist Facebook post of company press release including language that Defendant has "a dolphin-safe policy"
6	StarKist	General Public	January 25, 2012
7			StarKist Tweet stating that "StarKist tuna is dolphin-safe, not to worry"
8	StarKist	General Public	April 12, 1990
9			Statements by then-Chairman of Heinz (owner of StarKist) explaining that StarKist will be the first major tuna company to sell only "dolphin-safe" tuna meaning "No harm to dolphins"
10			
11			
12			
13			
14			
15			
16			

17 180. Defendants, in concert with their RICO Co-Conspirators, also used the  
18 internet and other electronic facilities to carry out the scheme and conceal their  
19 ongoing fraudulent activities. Specifically, Defendants, in concert with their RICO  
20 Co-Conspirators, made material misrepresentations about StarKist tuna products on  
21 its websites, Facebook, Instagram, Twitter, and through ads online, all of which were  
22 made in interstate commerce and intended to mislead regulators and the public about  
23 the truth about Defendants' non-dolphin-safe and unsustainably sourced StarKist  
24 tuna products.

25 181. Defendants and their RICO Co-Conspirators also communicated by  
26 U.S. mail, by interstate facsimile, and by interstate electronic mail with various other  
27 affiliates, regional offices, divisions, packaging companies, distributors, grocery  
28

1 chains, wholesale companies, and other third-party entities in furtherance of the  
2 scheme.

3 182. The mail and wire transmissions described herein were made in  
4 furtherance of Defendants' and their RICO Co-Conspirators' scheme and common  
5 course of conduct to deceive regulators, retailers, and consumers and lure consumers  
6 into purchasing StarKist tuna products, which Defendants and their RICO Co-  
7 Conspirators knew or recklessly disregarded as not justifying the "dolphin safe"  
8 label, despite their decades-long advertising and marketing campaign that StarKist  
9 tuna products were "Dolphin Safe" and sustainably sourced.

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

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

1 185. To achieve their common goals, Defendants and their RICO Co-  
2 Conspirators concealed from the general public the true nature of StarKist tuna  
3 products and obfuscated the fact that the tuna in Defendant's tuna products was not  
4 dolphin-safe at all or sustainably sourced.

5 186. Defendants and their RICO Co-Conspirators and each member of the  
6 conspiracy, with knowledge and intent, have agreed to the overall objectives of the  
7 conspiracy, and have participated in the common course of conduct, to commit acts  
8 of fraud and indecency in procuring, processing, packaging, labeling, distributing,  
9 marketing, and/or selling StarKist tuna products.

10 187. Indeed, for the conspiracy to succeed, Defendants and each of their  
11 RICO Co-Conspirators had to agree to each play a role in the conspiracy by  
12 implementing and using similar devices and fraudulent tactics.

13 188. Specifically, Defendants and their RICO Co-Conspirators committed to  
14 secrecy about the truth of StarKist tuna products not being dolphin-safe or  
15 sustainably sourced and in compliance with federal laws and regulations.

16 189. Defendants and their RICO Co-Conspirators knew and intended that  
17 consumers would purchase StarKist tuna products and incur costs as a result.  
18 Defendants and their RICO Co-Conspirators also knew and intended that government  
19 regulators would rely on their material misrepresentations made about the tuna in  
20 StarKist tuna products to approve them for marketing and sale in the United States  
21 and each state. Defendants and their RICO Co-Conspirators also knew and intended  
22 that retailers would rely on their material misrepresentations made about the tuna in  
23 StarKist products to agree to offer them for sale to the general public.

24 190. Plaintiffs' and the Class' reliance on this ongoing concealment is  
25 demonstrated by the fact that they purchased, and lost money or property by  
26 purchasing, falsely advertised tuna products that never should have been introduced  
27 into the U.S. stream of commerce in the manner in which they were. In addition,  
28

1 NOAA and other regulators relied on the misrepresentations and material  
2 concealment and omissions made or caused to be made by Defendants and their  
3 RICO Co-Conspirators; otherwise, Defendants would never have been able to  
4 market, label, and sell StarKist tuna products as “Dolphin Safe” in the United States  
5 and sell the same to the consuming public.

6 191. As described herein, Defendants and their RICO Co-Conspirators  
7 engaged in a pattern of related and continuous predicate acts for years. The predicate  
8 acts constituted a variety of unlawful activities, each conducted with the common  
9 purpose of obtaining significant monies and revenues from Plaintiffs and Class  
10 members based on their misrepresentations, while providing to Plaintiffs and Class  
11 members StarKist tuna products that were worthless, worth significantly less than the  
12 purchase price paid, or would not have been available for purchase at all. The  
13 predicate acts also had the same or similar results, participants, victims, and methods  
14 of commission. The predicate acts were related and not isolated events.

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

23 193. During the procurement, processing, packaging, labeling, distribution,  
24 marketing, and sale of StarKist tuna products, Defendants and their RICO Co-  
25 Conspirators shared among themselves logistical, marketing, and financial  
26 information that revealed the existence of the fishing practices employed that prevent  
27 StarKist tuna products from being marketed and sold as “Dolphin Safe”, sustainably  
28

1 sourced, and in compliance with federal laws and regulations. Nevertheless,  
2 Defendants and their RICO Co-Conspirators chose and agreed to disseminate  
3 information that deliberately misrepresented StarKist tuna products as “Dolphin  
4 Safe” and sustainably sourced in their concerted efforts to market and sell them to  
5 consumers.

6 194. By reason of, and as a result of the conduct of Defendants and their  
7 RICO Co-Conspirators, and in particular, their pattern of racketeering activity,  
8 Plaintiffs and Class members have been injured in their business and/or property in  
9 multiple ways, including but not limited to:

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

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

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

21 **COUNT II –**

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

24 196. Plaintiffs Gardner and Myers (the “California Plaintiffs”) repeat and re-  
25 allege the allegations contained in paragraphs 1 through 123 above, as if fully set  
26 forth herein.

27 197. The California Plaintiffs bring this claim individually and on behalf of

1 the California-Only Class.

2 198. The Unfair Competition Law, Business & Professions Code §17200, *et*  
3 *seq.* (“UCL”) prohibits any “unlawful,” “fraudulent,” or “unfair” business act or  
4 practice and any false or misleading advertising. More specifically, the UCL  
5 provides, in pertinent part: “Unfair competition shall mean and include unlawful,  
6 unfair, or fraudulent business act or practice and unfair, deceptive, untrue or  
7 misleading advertising . . . .”

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

17 200. The California Plaintiffs reserve the right to allege other violations of  
18 law, which constitute other unlawful business acts or practices. Such conduct is  
19 ongoing and continues to this date.

20 201. **Unfair Business Practices:** In the course of conducting business,  
21 Defendants committed “unfair” business acts or practices by, *inter alia*, making the  
22 dolphin-safe representations, which are false, misleading, and deceptive (which also  
23 constitute advertising within the meaning of §17200), and failing to comply with  
24 traceability and verification requirements, as set forth more fully herein. There is no  
25 societal benefit from false advertising, only harm. While Plaintiffs and the public at  
26 large were and continue to be harmed, Defendants have been unjustly enriched by  
27 their false, misleading, and deceptive representations as they unfairly enticed

1 Plaintiffs and Class members to purchase StarKist tuna products instead of similar  
2 tuna products sold by other manufacturers that were dolphin-safe, traceable, and  
3 verified. Because the utility of Defendants' conduct (zero) is outweighed by the  
4 gravity of harm to Plaintiffs, consumers, and the competitive market, Defendants'  
5 conduct is "unfair" having offended an established public policy embodied in, among  
6 other things, 16 U.S.C. §1385, where Congress expressly found that it is the policy  
7 of the United States to protect the dolphin population and that "consumers would like  
8 to know if the tuna they purchase is falsely labeled as to the effect of the harvesting  
9 of the tuna on dolphins." 16 U.S.C. §§1385(b)(2)-(3).

10 202. Defendants also engaged in immoral, unethical, oppressive, and  
11 unscrupulous activities that are substantially injurious to the public at large.

12 203. There were reasonably available alternatives to further Defendants'  
13 legitimate business interests, other than the conduct described herein.

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

20 205. Defendants' actions, claims, and misleading statements, as more fully  
21 set forth above, are misleading and/or likely to deceive the consuming public within  
22 the meaning of Business & Professions Code §§17200, *et seq.*

23 206. The California Plaintiffs relied on Defendants' dolphin-safe  
24 representations and Defendants' compliance with traceability and verification  
25 requirements and were in fact injured as a result of those false, misleading, and  
26 deceptive representations and by Defendants' failure to comply with traceability and  
27 verification requirements.









1 Business Law.

2 230. Defendants’ deceptive conduct was generally directed at the consuming  
3 public.

4 231. Defendants’ unfair and deceptive trade acts and practices in violation of  
5 §349 of New York’s General Business Law have directly, foreseeably, and  
6 proximately caused damages and injury to the New York Plaintiffs and other  
7 members of the New York-Only Class.

8 232. Defendants’ deceptive conduct has caused harm to New York-Only  
9 Class members in that they purchased the tuna products when they otherwise would  
10 not have absent Defendants’ deceptive conduct.

11 233. Defendants’ violations of §349 of New York’s General Business Law  
12 threaten additional injury to the New York-Only Class members if the violations  
13 continue.

14 234. The New York Plaintiffs, on their own behalf and on behalf of the New  
15 York-Only Class, seek damages, injunctive relief, including an order enjoining  
16 Defendants’ §349 violations alleged herein, and court costs and attorneys’ fees,  
17 pursuant to NY Gen. Bus. Law §349.

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

21 235. Plaintiffs Zelig and Petrovcik (the “New Jersey Plaintiffs”), repeat and  
22 incorporate by reference the allegations contained in paragraphs 1 through 123 above  
23 as if fully set forth herein.

24 236. Defendants’ StarKist tuna product packaging constitutes an  
25 “advertisement” within the meaning of §56-8-1(a) of the New Jersey Fraud Act, as it  
26 is an attempt by publication, dissemination, solicitation, indorsement, or circulation  
27 to induce consumers to acquire an interest in Defendants’ merchandise.



1 Minn. Stat. §325F.68 and Defendants are “persons” as defined in Minn. Stat.  
2 §325F.68.

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

8 246. Defendants engaged in unlawful practices, misrepresentations, and the  
9 concealment, suppression, and omission of material facts with respect to the sale and  
10 advertisement of merchandise in violation of the MCFA in at least the following  
11 ways:

12 (a) Deceptively representing to Plaintiff Kiihne and the Minnesota-Only  
13 Class that StarKist tuna products were dolphin-safe, packaged from tuna caught using  
14 sustainable fishing methods, and traceable and verifiable;

15 (b) Falsely promising StarKist tuna products were dolphin-safe, packaged  
16 from tuna caught using sustainable fishing methods, and traceable and verifiable;

17 (c) Failing to warn or disclose to consumers, including Plaintiff Kiihne and  
18 the Minnesota-Only Class that StarKist tuna products were not dolphin-safe, were  
19 not packaged from tuna caught using sustainable fishing methods, and were not  
20 traceable and verifiable;

21 (d) Failing to reveal a material fact – that StarKist tuna products were not  
22 dolphin-safe, were not packaged from tuna caught using sustainable fishing methods,  
23 and were not traceable and verifiable; and

24 (e) Making a misrepresentation of material fact or statement of fact material  
25 to the transaction – *i.e.*, that StarKist tuna products were dolphin-safe, were packaged  
26 from tuna caught using sustainable fishing methods, and were traceable and  
27 verifiable – such that a person reasonably believed StarKist tuna products had such  
28

1 characteristics when they did not.

2 247. That Plaintiff Kiihne and the Minnesota-Only Class believed they were  
3 purchasing dolphin-safe tuna caught from sustainable fishing methods with the  
4 ability of Defendants to trace and verify its dolphin-safe quality when these  
5 representations were not true, were material facts and would be material to a  
6 reasonable person.

7 248. As a direct and proximate result of Defendants' violation of the MCFA,  
8 Plaintiff Kiihne and the Minnesota-Only Class have suffered and continue to suffer  
9 ascertainable loss in the form of money in that they paid for tuna products that were  
10 not dolphin-safe and/or sustainably caught as represented, as more fully described  
11 herein.

12 249. Plaintiff Kiihne seeks relief under Minn. Stat. §8.31, including, but not  
13 limited to, damages, attorneys' fees, and costs.

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

18 250. Plaintiff Kiihne repeats and re-alleges the allegations contained in  
19 paragraphs 1 through 123 above, as if fully set forth herein.

20 251. Plaintiff Kiihne brings this claim individually and on behalf of the  
21 Minnesota-Only Class.

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

24 253. Defendants made materially misleading and deceptive statements to  
25 consumers about StarKist tuna products as being dolphin-safe and/or sustainably  
26 caught.

27 254. This advertising was and continues to be deceptive and misleading  
28 because StarKist tuna products are neither dolphin-safe nor sustainably caught.



1 a person has a sponsorship, approval, status, affiliation, or connection that the person  
2 does not have”;

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

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

7 263. Defendants violated these provisions of the MDTPA by:

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

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

12 (c) Failing to warn or disclose to consumers, including Plaintiff Kiihne and  
13 the Minnesota-Only Class, that StarKist tuna products were not dolphin-safe nor  
14 sustainably caught contrary to Defendants’ representations;

15 (d) Failing to reveal a material fact – that StarKist tuna products were  
16 neither dolphin-safe nor sustainably caught as represented – the omission of which  
17 tends to mislead or deceive consumers, and which fact could not reasonably be  
18 known by consumers; and

19 (e) Making a representation of fact or statement of fact material to the  
20 transaction – *i.e.*, that StarKist tuna products were dolphin-safe and/or sustainably  
21 caught – such that a person reasonably believed they were when they were not.

22 264. Plaintiff Kiihne and the Minnesota-Only Class believed they were  
23 purchasing dolphin-safe and sustainably caught tuna products when they were not.  
24 These were material facts and would be material to a reasonable person.

25 265. The above unlawful and deceptive acts and practices by Defendants  
26 were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial  
27 injury to consumers that the consumers could not reasonably avoid; this substantial

1 injury outweighed any benefits to consumers or to competition.

2 266. As a direct and proximate result of Defendants' violation of the  
3 MDTPA, Plaintiff Kiihne and the Minnesota-Only Class have suffered and continue  
4 to suffer ascertainable loss in the form of money.

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

8 **COUNT X –**

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

11 268. Plaintiff Miller repeats and re-alleges the allegations contained in  
12 paragraphs 1 through 123 above, as if fully set forth herein.

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

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

23 A.R.S. § 44-1522(A).

24 270. Plaintiff Miller and members of the Arizona-Only Class are "persons"  
25 as defined by A.R.S. §44-1521(6), and Defendants are engaged in the "sale" and  
26 "advertisement" of "merchandise" as those terms are defined in A.R.S. §§44-  
27 1521(1), (5), and (7).

28 271. Defendants engaged in deceptive and/or unfair acts and practices,  
misrepresentation, and the concealment, suppression, and omission of material facts

1 in connection with the sale and advertisement of “merchandise” (as defined in the  
2 ACFA) in violation of the ACFA, including but not limited to the following:

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

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

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

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

16 272. Plaintiff Miller relied on Defendants’ representations and had  
17 Defendants disclosed that StarKist tuna products were not dolphin-safe and/or  
18 sustainably caught as represented, Plaintiff Miller would have paid less or, more  
19 likely, not purchased the tuna products at all. Thus, as a result of Defendants’  
20 representations and omissions, Plaintiff Miller and Arizona-Only Class Members  
21 were induced to overpay for and purchase tuna products they otherwise would not  
22 have.

23 273. Defendants intended that Plaintiff Miller and the Arizona-Only Class  
24 rely on their deceptive and/or unfair acts and practices, misrepresentations, and the  
25 concealment, suppression, and omission of material facts, in connection with  
26 Defendants’ sale of StarKist tuna products.

27 274. Defendants’ wrongful practices occurred in the course of trade or  
28

1 commerce.

2 275. Defendants' wrongful practices were and are injurious to the public  
3 interest because those practices were part of a generalized course of conduct that  
4 applied to Plaintiff Miller and all Arizona-Only Class Members, and were repeated  
5 continuously before and after Defendants sold StarKist tuna products to Plaintiff  
6 Miller and the Arizona-Only Class. All Arizona-Only Class Members have been  
7 adversely affected by Defendants' conduct and the public was and is at risk as a result  
8 thereof.

9 276. Defendants' unfair and/or deceptive conduct proximately caused  
10 Plaintiff Miller's and Arizona-Only Class Members' injuries because, had  
11 Defendants sourced StarKist tuna using dolphin-safe and sustainable fishing  
12 methods, Plaintiff Miller and the Arizona-Only Class Members would not have  
13 suffered injury.

14 277. Plaintiff Miller and the Arizona-Only Class seek actual damages,  
15 compensatory, punitive damages, injunctive relief, and court costs and attorneys' fees  
16 as a result of Defendants' violations of the ACFA.

17 **COUNT XI –**  
18 **Unjust Enrichment/Quasi-Contract**

19 278. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1  
20 through 123 above, as if fully set forth herein.

21 279. Plaintiffs and Class members conferred a benefit on Defendants by  
22 purchasing StarKist tuna products.

23 280. Defendants appreciated and/or realized the benefits in the amount of  
24 the purchase price it earned from sales of StarKist tuna products to Plaintiffs and  
25 Class members or, at a minimum, the difference between the price they were able to  
26 charge Plaintiffs and Class members for StarKist tuna products with the dolphin-safe  
27 representations and the price they would have been able to charge absent the same.



& BALINT, P.C.

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 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 17th day of June 2019.

/s/ Patricia N. Syverson

Patricia N. Syverson

**Yolanda Sherman**

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**California Northern District**

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The following transaction was entered by Syverson, Patricia on 6/17/2019 at 3:55 PM and filed on 6/17/2019

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**Case Number:** [3:19-cv-02561-WHO](#)

**Filer:** Lori Luciano  
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### **Docket Text:**

**[AMENDED COMPLAINT against Starkist Co.. Filed by Lori Luciano, Fidel Jamelo, Lori Myers, Warren Gardner, Avraham Isac Zelig, Kathleen Miller, Colleen McQuade, Angela Cosgrove,](#)**

**James Borruso, Robert Nugent, Megan Kiihne, Ken Petrovcik, Jocelyn Jamelo, Autumn Hessong, Anthony Luciano, Robert McQuade. (Syverson, Patricia) (Filed on 6/17/2019)**

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