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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13
14 KAREN DHANOWA and NILIMA AMIN,
15 on behalf of themselves and all others
16 similarly situated;

16 Plaintiff,

17 v.

18 SUBWAY RESTAURANTS, INC., a
19 Delaware Corporation; FRANCHISE
20 WORLD HEADQUARTERS, LLC., a
21 Connecticut Limited Liability Corporation;
22 SUBWAY FRANCHISEE ADVERTISING
23 TRUST FUND LTD., a Connecticut
24 Corporation; and DOES 1 through 50,
25 Inclusive,

25 Defendants.

Case No:

PLAINTIFFS' CLASS ACTION
COMPLAINT

- 1. COMMON LAW FRAUD
- 2. INTENTIONAL MISREPRESENTATION
- 3. NEGLIGENT MISREPRESENTATION
- 4. UNJUST ENRICHMENT
- 5. CONSUMERS LEGAL REMEDIES ACT, CAL. CIV. CODE §§ 1750, *et seq.*
- 6. VIOLATION OF THE FALSE ADVERTISING LAW ("FAL"), CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17500, *et seq.*
- 7. VIOLATION OF THE UNFAIR COMPETITION LAW ("UCL"), CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiffs Karen Dhanowa and Nilima Amin, by and through their attorneys, bring this action
2 on behalf of themselves and all other similarly situated against Subway Restaurants, Inc., Franchise
3 World Headquarters, LLC., and Subway Franchisee Advertising Trust Fund Ltd. Corporation
4 (collectively hereinafter referred to as “Defendants”), and Does 1 through 50. Plaintiffs hereby
5 allege, on information and belief, except as those allegations which pertain to the named Plaintiffs,
6 which allegations are based on personal knowledge, as follows:

7 **NATURE OF THE ACTION**

8 1. To capitalize on the premium price consumers are willing to pay for tuna, Defendants
9 intentionally make false and misleading representations about tuna being used as an ingredient in
10 some of their food items, including sandwiches and wraps (“the Products”). Aware that consumers
11 place a heightened value on tuna as an ingredient, Defendants deliberately make false and
12 misleading claims about the composition of the Products to increase profits at the expense of
13 unsuspecting buyers.

14 2. Defendants label and advertise the Products as “tuna.” However, the Products’
15 labeling, marketing and advertising is false and misleading. In reality, the Products do not contain
16 tuna nor have any ingredient that constitutes tuna. The Products lack tuna and are completely bereft
17 of tuna as an ingredient.

18 3. The Products are misbranded under federal and California State law. Defendants’
19 deceptive marketing scheme of the Products includes tactics such as falsely labeling the Products
20 as “tuna” on menus throughout Defendants’ “Subway” eatery locations, as well as Defendants’
21 website.

22 4. At all relevant times, Defendants packaged, advertised, marketed, distributed and sold
23 the Products to consumers at their “Subway” dining establishment throughout California and the
24 United States based on the misrepresentation that the Products were manufactured with tuna. In
25 truth, the Products do not contain tuna as ingredient. On the contrary, the filling in the Products has
26 no scintilla of tuna at all. In fact, the Products entirely lack any trace of tuna as a component, let
27 alone the main or predominant ingredient.

1 When a reasonable consumer sees a sandwich or wrap labeled as “tuna,” he or she reasonably
2 expects that the food product will indeed contain tuna.

3 6. In reliance on Defendants’ misleading marketing and deceptive advertising practices
4 for the Products, Plaintiffs and similarly situated class members reasonably thought they were
5 purchasing tuna sandwiches and/or tuna wraps and buying a food that was made with tuna or
6 contained tuna. In fact, neither Plaintiffs nor any of the members of the putative class received any
7 sandwich or wrap that had tuna at all, or even partially included tuna. Thus, they were tricked into
8 buying food items that wholly lacked the ingredient they reasonably thought they were purchasing.

9 7. Plaintiffs and other consumers purchased the Products because they reasonable
10 believed, based on Defendants’ packaging and advertising that the Products contained tuna. Had
11 Plaintiffs and other consumers known the Products actually lacked tuna, they would not have
12 purchased the Products or would have paid significantly less for them. As a result, Plaintiffs and
13 other similarly situated class members have been deceived and suffered economic injury.

14 8. Defendants’ labeling, marketing and advertising uniformly involves multiple false
15 and misleading statements, as well as material omissions of fact, concerning the Products that have
16 injured Plaintiffs and the Class by duping them into buying premium priced food dishes. Due to the
17 false and deceptive business practices and representations, Defendants have mislead the general
18 public into believing that the Products contain tuna.

19 9. Based on the fact that Defendants’ advertising misled Plaintiffs and all others like
20 them, Plaintiffs bring this class against Defendants to seek reimbursement of the premium they and
21 the Class Members paid due to Defendants’ false and deceptive representations about the
22 composition and ingredients of the Products.

23 10. Plaintiffs seek relief in this action individually and on behalf of all purchasers of the
24 Products statewide in California for common law fraud, intentional misrepresentation, negligent
25 misrepresentation, and unjust enrichment. Additionally, Plaintiffs seek relief in this action
26 individually and on behalf of all purchasers of the Products in California for violation of the
27 California Bus. & Prof. Code §§17500, *et seq.*, California’s False Advertising Law (“FAL”), Bus.

28

1 **JURISDICTION AND VENUE**

2 11. This Court has subject matter jurisdiction pursuant to the 28 U.S.C. § 1332(d), the
3 Class Action Fairness Act, because the aggregate amount in controversy exceeds \$5,000,000.00,
4 exclusive of interests and costs, and at least one class member is a citizen of a state different from
5 Defendant Subway Restaurants, Defendant Franchise World Headquarters, as well as Defendant
6 Subway Franchisee Advertising Trust Fund Ltd. Additionally, this is a class action involving more
7 than 1,000 (one thousand) class members.

8 12. The Court has personal jurisdiction over Defendants pursuant to Cal. Code Civ. P. §
9 410.10, as a result of Defendants’ substantial, continuous and systematic contacts with the State,
10 and because Defendants have purposely availed themselves to the benefits and privileges of
11 conducting business activities within the State.

12 13. Pursuant to 28 U.S.C. §1391, this Court is the proper venue for this action because a
13 substantial part of the events, omissions and acts giving rise to the claims herein occurred in this
14 District. Moreover, Defendants distributed, advertised and sold the Products, which are the subject
15 of the present Complaint, in this District.

16 **PARTIES**

17 14. Plaintiff Dhanowa is a citizen and resident of California, and lives in Alameda County.

18 15. Plaintiff Amin is a citizen and resident of California, and lives in Alameda County.

19 16. Defendant Subway Restaurants is a Delaware corporation headquartered in the State
20 of Connecticut, with its principal place of business at 325 Sub Way, Milford, CT 06461. Therefore,
21 Defendant Subway Restaurants is a citizen of the states of Delaware and Connecticut. Defendant
22 Subway Restaurants manufactures, mass markets, and distributes the Products throughout
23 California and the United States.

24 17. Defendant Franchise World Headquarters, LLC. is a Connecticut limited liability
25 corporation headquartered in the State of Connecticut, with its principal place of business at 325
26 Sub Way, Milford, CT 06461. Hence, Defendant Franchise World Headquarters is a citizen of the
27 State of Connecticut. Defendant Franchise World Headquarters manufactures, mass markets, and

1 18. Defendant Subway Franchisee Advertising Trust Fund Ltd. is a Connecticut
2 corporation headquartered in the State of Connecticut, with its principal place of business at 325
3 Sub Way, Milford, CT 06461. Thus, Defendant Subway Franchisee Advertising Trust Fund is a
4 citizen of the State of Connecticut. Defendant Subway Franchisee Advertising Trust Fund Ltd.
5 manufactures, mass markets, and distributes the Products throughout California and the United
6 States.

7 19. Plaintiffs are informed and believes, and based thereon alleges that at all times
8 relevant herein each of these individuals and/or entities was the agent, servant, employee,
9 subsidiary, affiliate, partner, assignee, successor-in-interest, alter ego, or other representative of
10 each of the remaining Defendants and was acting in such capacity in doing the things herein
11 complained of and alleged. Plaintiffs reserve their right to amend this Complaint to add different or
12 additional defendants, including without limitation any officer, director, employee, supplier, or
13 distributor of Defendant Subway Restaurants, Defendant Franchise World Headquarters, and
14 Defendant Subway Franchisee Advertising Trust Fund Ltd. who has knowingly and willfully aided,
15 abetted, or conspired in the false and deceptive conduct alleged herein.

16 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

17 20. Consumers often purchase a particular type of sandwich or wrap due to main
18 ingredient of the food, and its type of filling. Indeed, the filling of sandwich or wrap is usually the
19 most important attribute to buyers when they are deciding which food dish to purchase. Moreover,
20 consumers typically associate tuna as a superior ingredient and are typically willing to pay a
21 premium for it. Furthermore, buyers are often willing to pay more for tuna as the filling in wraps
22 and sandwiches because they associate the ingredient as having higher nutritional value, including
23 greater protein levels.

24 21. Defendants know or have reason to know that consumers would find the challenged
25 attribute important in their decision to purchase the Products, as indicated by the fact that
26 Defendants repeatedly emphasized the advertising claim prominently on the Products' labeling, as
27 well as Defendants' menus and website. Defendants have been advertising and selling the Products

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