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11 SUBWAY RESTAURANTS, INC.,
12 FRANCHISE WORLD HEADQUARTERS, LLC and
13 SUBWAY FRANCHISEE ADVERTISING TRUST FUND LTD.

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

16 KAREN DHANOWA and NILIMA AMIN, on
17 behalf of themselves and all others,

18 Plaintiffs,

19 vs.

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

27 Defendants.

Case No. 4:21-cv-00498-JST

**MOTION TO DISMISS SECOND
AMENDED COMPLAINT**

Date: February 3, 2022

Time: 2:00 p.m.

Ctrm: Courtroom 6 – 2nd Floor

Judge: Hon. Jon S. Tigar

Oakland Courthouse

Complaint Filed: January 21, 2021

Amended Complaint Filed: June 8, 2021

Second Amended Complaint Filed:

November 8, 2021

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1 **NOTICE OF MOTION AND RELIEF REQUESTED**

2 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

3 Please take notice that, on February 3, 2022, at 2:00 p.m. or as soon thereafter as the matter
4 can be heard in Courtroom 6, 2nd Floor, of the United States District Court, Oakland Courthouse,
5 located at 1301 Clay Street, Oakland, CA 94612, Defendants Subway Restaurants, Inc., Franchise
6 World Headquarters, LLC and Subway Franchisee Advertising Trust Fund Ltd. (collectively,
7 “Subway”) will move the Court for an order dismissing the plaintiffs’ Second Amended Complaint
8 (the “SAC”).

9 Subway’s motion is based on this Notice of Motion and Motion, the accompanying
10 Memorandum of Points and Authorities, the Request for Judicial Notice, the declarations of Anne
11 Kelts Assayag and Jennifer Myers, the Proposed Order, any oral argument that may be presented at
12 the hearing, on all other papers, records and pleadings on file in this action and on such additional
13 evidence and argument as the Court may allow prior to and during the hearing on this motion.

14 ***Relief Requested:*** Subway respectfully requests that the Court (1) grant its request for
15 judicial notice and (2) issue an order dismissing with prejudice the SAC in its entirety under Federal
16 Rule of Civil Procedure 12(b)(6) for failure to state any claim on which relief may be granted and
17 terminating the action.

18 **STATEMENT OF ISSUES TO BE DECIDED**

19 1. Whether the SAC must be dismissed under Federal Rules of Civil Procedure 8 and
20 9(b) because it fails to allege facts demonstrating that alleged representations by Subway about its
21 tuna products are false or misleading to a reasonable consumer of tuna products.

22 2. Whether the SAC must be dismissed under Federal Rules of Civil Procedure 8 and
23 9(b) because it fails to allege facts supporting a plausible inference that the plaintiffs relied on
24 actually misleading statements before purchasing tuna products from Subway restaurant locations in
25 California between 2013 and 2019 or were actually damaged as a result of purchasing such products.
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