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17 Attorneys for Named Plaintiffs KAREN
18 DHANOWA and NILIMA AMIN and Proposed
Class

19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 KAREN DHANOWA and NILIMA AMIN,
22 on behalf of themselves and all others
similarly situated;

23 Plaintiff,

24 v.

25 SUBWAY RESTAURANTS, INC., a
26 Delaware Corporation; FRANCHISE
27 WORLD HEADQUARTERS, LLC., a
28 Connecticut Limited Liability Corporation;
SUBWAY FRANCHISEE ADVERTISING
TRUST FUND LTD., a Connecticut

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Attorneys for Defendants
SUBWAY RESTAURANTS, INC.,
FRANCHISE WORLD HEADQUARTERS,
LLC and SUBWAY FRANCHISEE
ADVERTISING TRUST FUND LTD.

Case No: 4:21-CV-00498-JST

(Assigned for all purposes to the Honorable
Jon S. Tigar, Courtroom 6)

**JOINT CASE MANAGEMENT
STATEMENT**

Complaint Filed: January 21, 2021

1 Corporation; and DOES 1 through 50,
2 Inclusive,

3 Defendants.

4 TO THE HONORABLE JON S. TIGAR, JUDGE OF THE UNITED STATES DISTRICT
5 COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA:

6 The undersigned counsel, on behalf of their respective clients, submit the following Joint
7 Case Management Statement in accordance with the requirements of Rule 26(f) of the Federal Rules
8 of Civil Procedure, Local Rule 16-9, the Standing Order for All Judges of the Northern District of
9 California, and the Court's Order Setting Mandatory Scheduling Conference dated March 2, 2021
10 (Dkt. 21.) Counsel for Plaintiffs and Defendants (the "Parties") engaged in telephonic and
11 electronic meet and confer efforts to jointly prepare this Joint Case Management Statement.

12 **JOINT CASE MANAGEMENT STATEMENT**

13 **I. Jurisdiction And Service**

14 Plaintiffs submit that this Court has subject matter jurisdiction in this case under 28 U.S.C.
15 § 1332(a) and (d). Named Plaintiffs are citizens of California. Defendant Subway Restaurants, Inc.
16 is an entity duly incorporated in the state of Delaware with its principal place of business in
17 Connecticut. Defendant Franchise World Headquarters, LLC and Defendant Subway Franchisee
18 Advertising Trust Fund, Ltd. are incorporated in Connecticut with their principal places of business
19 in Connecticut.

20 Plaintiffs contend that the amount in controversy, exclusive of interests and costs, exceeds
21 \$5,000,000, the proposed class will include 100 or more members and at least one member of the
22 proposed class is a citizen of a state different from any defendant. Plaintiffs further contend that the
23 amount in controversy, exclusive of interests and costs, is greater than \$75,000. Accordingly, this
24 Court has subject matter jurisdiction over this matter on the basis of 28 U.S.C. § 1332(a) and 28
25 U.S.C. § 1332(d)(2).

26 Defendants contest that the plaintiffs have standing to assert the claims in their complaint,
27 as they have no injury in fact as a result of the purchase of the products identified in the operative
28 complaint. Moreover, jurisdiction is improper under 28 U.S.C. § 1332(a) because the named

1 plaintiffs' individual claims do not exceed the \$75,000 amount-in-controversy threshold for
2 diversity jurisdiction. The complaint likewise does not allege jurisdiction under section 1332(a).
3 Accordingly, Defendants contend that the Court does not have and cannot assert jurisdiction over
4 this matter.

5 All named defendants have been served but their deadline to respond to the complaint has
6 not yet occurred.

7 **II. Facts And Disputed Factual Issues**

8 **A. Statement Of Plaintiffs**

9 Plaintiffs contend that Defendants made false and misleading representations about their
10 tuna products ("Products") and mislabeled the Products as "100% wild caught" "skipjack and
11 yellowfin tuna," even though that is not the case. Plaintiffs' Complaint for Damages alleged that
12 they purchased units of the Products from Defendants' locations in Alameda County, and at the
13 time they made the purchases, Plaintiffs relied upon and believed Defendants' "tuna" marketing
14 and labeling scheme. Plaintiffs have brought a class-wide suit on behalf of themselves and all
15 purchasers of the Products statewide in California for common law fraud, negligent
16 misrepresentation, and unjust enrichment. Additionally, Plaintiffs allege on behalf of themselves
17 and all class members that Defendants have violated California's Legal Remedies Act ("CLRA")
18 as well as the State's Business and Professions Code §§ 17200 and 17500, which prohibit false
19 advertising and unfair competition.

20 **B. Defendants' Statement**

21 Defendants contend that the plaintiffs' claims are without basis in fact or law. Defendants'
22 tuna products consist of 100% wild caught skipjack or yellowfin tuna and there is no rational basis
23 for the plaintiffs or their counsel to claim otherwise. Defendants have provided information to the
24 plaintiffs demonstrating that the products about which the plaintiffs complain consist of tuna with
25 the expectation that the plaintiffs would withdraw their complaint. Despite receiving this
26 information, the plaintiffs have refused to dismiss this meritless litigation. Since the tuna products
27 are not mislabeled, the plaintiffs purchased what they intended to purchase and they have not been
28

1 damaged in any amount whatsoever and they have no injury in fact to confer Article III standing
2 in this case.

3 **III. Legal Issues And Disputed Points Of Law**

4 Defendants will file a motion to dismiss this action pursuant to the Federal Rules of Civil
5 Procedure 12(b)(1) and 12(b)(6). Plaintiffs contend that Defendants have no basis to seek dismissal.
6 Plaintiffs further assert that their claims have been pleaded with adequate particularity and on a
7 reasonable basis; nevertheless, Plaintiffs have informed Defendants of their intent to file a First
8 Amended Complaint to address Defendants' concerns and clarify their allegations. Defendants
9 contend that, no matter how many times they try to amend their pleadings, Plaintiffs cannot state a
10 claim relating to the Products on which relief can be granted against Defendants.

11 **IV. Motions**

12 **A. Motions Seeking To Add Other Parties Or Claims**

13 At this time, Plaintiffs do not anticipate filing any motion to add other parties. At this
14 time, Plaintiffs do not contemplate adding additional causes of action.

15 **B. Motions To File Amended Pleadings**

16 Plaintiffs intend to file a First Amended Complaint in this action. Defendants have
17 stipulated to allow Plaintiffs to file a First Amended Complaint by June 7, 2021. Plaintiffs agreed
18 to permit Defendants to file their responsive pleadings by June 21, 2021.

19 **C. Motion To Dismiss**

20 Defendants will file a motion to dismiss if the plaintiffs file an amended complaint or
21 otherwise attempt to maintain this action.

22 **V. Amendment Of Pleadings**

23 Plaintiffs intend to amend the operative complaint by June 7, 2021.

24 **VI. Evidence Preservation**

25 Plaintiffs have reviewed the Guidelines for the Discovery of Electronically Stored
26 Information and have spoken with the opposing parties about preserving evidence.
27
28

1 **VII. Disclosures**

2 The Parties have not yet made initial disclosures. Plaintiffs propose that the parties
3 exchange initial disclosures by June 15, 2020. Defendants propose that such disclosures be made,
4 if at all, only after the Court resolves Defendants' motion to dismiss this litigation with prejudice.

5 **VIII. Discovery**

6 **A. Subjects On Which Discovery May Be Needed**

7 Plaintiffs intend to conduct discovery on all issues identified in Plaintiffs' Complaint, as
8 well as any issues identified by Defendants in their answer thereto. Plaintiffs do not anticipate any
9 unusual issues about disclosure or discovery of electronically stored information, including the form
10 or forms in which it should be produced. Plaintiffs anticipate that the scope of discovery will include
11 seeking information related to class certification, as well as the merits of the instant matter. They
12 do not seek a distinction between certification and merits discovery, because discovery that assists
13 the certification decision will likely include information necessary to identify the nature of the
14 issues. Plaintiffs anticipate that discovery outside of the United States may be required, because
15 Defendants have supply chains outside of the United States. Therefore, intentional discovery may
16 be needed to confirm all potential and actual sources of fraud.

17 Defendants do not believe that discovery will be required in this case because the litigation
18 should be fully and finally dismissed at the pleadings stage, obviating the need to conduct discovery
19 or to incur the expenses required to conduct discovery. If there is discovery in this case, discovery
20 should be bifurcated to conserve resources. The first phase of discovery should focus on the
21 plaintiffs' standing to bring the claims at issue. This would involve discovery relating to the tuna
22 products at issue in the complaint and their ingredients. If the products consist of tuna, which they
23 do, remaining costly and invasive discovery into Defendants' sales and business practices will be
24 unnecessary. If discovery indicates that the products do not consist of tuna as advertised, then
25 discovery into sales and business practices can proceed. Defendants will depose the plaintiffs, the
26 plaintiffs' experts and consultants and third parties regarding the tuna products that the plaintiffs
27 allegedly purchased and the ingredients of those products.

1 **C. Whether Discovery Should Be Conducted In Phases**

2 Plaintiff believes that discovery does not need to be conducted in phases. Defendants
3 submit that, in the interests of efficiency and economy, discovery should be conducted in phases
4 as explained *supra*. The Parties agree that discovery should be limited to or focused on particular
5 issues identified in the pleadings.

6 **D. What Discovery Has Been Conducted Thus Far**

7 To date, no formal discovery has been conducted. Pursuant to the Manual for Complex
8 Litigation, Plaintiffs are amenable to confer and stipulate to relevant facts that are not genuinely
9 disputed. The Parties are amenable to entering into a stipulated e-discovery order as needed and
10 any other written protective orders that will facilitate the exchange of information and support
11 resolution efforts.

12 **E. Whether Applicable Limitations Should Be Changed Or Other Limitations
13 Imposed**

14 Other than the phasing of discovery identified by Defendants, the Parties do not believe
15 that the ordinary limits should be modified at this point.

16 **F. Proposed Discovery Plan**

17 The Parties' proposed discovery plan is set forth in Exhibit A to this Joint Statement.

18 **IX. Class Actions**

19 Plaintiffs seek to maintain this case as a class action pursuant to Federal Rules of Civil
20 Procedure 23(a) and (b)(1), (b)(2), and/or (b)(3). Pursuant to F.R.C.P. 23, Plaintiffs bring this class
21 action on behalf of themselves individually and all other similarly situated statewide in California.
22 Plaintiffs seek to represent a class comprised of all persons in California who, on or after January
23 21, 2017 (the "Class Period") purchased the Products for household use and not for resale or
24 distribution. Excluded from the proposed class are Defendants, their affiliates, employees, officers,
25 and directors, any individual who received remuneration from Defendants in connection with that
26 individual's use or endorsement of the Products, the judge(s) assigned to this case, and the attorneys
27 of record in this case. Defendants do not believe this matter is properly brought as a class action.

28 Plaintiffs' Statement

 Plaintiffs contend that this action is properly brought as a class action for the following

1 reasons:

2 (a) The members in the proposed class, which contains no less than one thousand
3 members and based on good information and belief is comprised of several thousands of
4 individuals, are so numerous that individual joinder of all members is impracticable, and
5 disposition of the claims in a single class action will provide substantial benefits to the Parties and
6 Court, and is in the best interests of the parties and judicial economy;

7 (b) Plaintiffs can fairly and adequately protect the interests of all members of the proposed
8 class. Plaintiffs' claims are typical of the claims of the members of the proposed class. Plaintiffs
9 and all class members have been injured by the same practices of Defendants. Plaintiffs' claims
10 arise from the same practices and conduct that give rise to the claims of all class members and are
11 based on the same legal theories. Plaintiffs' claims are typical of class members' claims, as they are
12 based on the same underlying facts, events and circumstances relating to Defendants' conduct.
13 Plaintiffs will fairly and adequately represent and protect the interests of the class, have no interest
14 incompatible with the interests of the class, and have retained counsel competent and experienced
15 in class actions, consumer protection, and false advertising litigation, including within the context
16 of food and the food industry. Plaintiffs' attorneys have the experience, knowledge, and resources
17 to adequately and properly represent the interests of the proposed class. Plaintiffs have no interests
18 antagonistic to those of other proposed class members, and they have retained attorneys experienced
19 in consumer class actions and complex litigation as counsel;

20 (c) Defendants have, or have access to, address information for the proposed Class
21 Members, which may be used for the purpose of providing notice of the pendency of this class
22 action. Further, the class definition itself describes a set of common characteristics sufficient to
23 allow a prospective plaintiff or class member to identify himself or herself as having a right to
24 recover based on the description;

25 (d) Class treatment is superior to other options for resolution of the controversy because
26 the relief sought for each class member is so small, that, absent representative litigation, it would
27 be infeasible for class members to redress the wrongs done to them. Prosecution of separate
28 actions by individual members of the proposed class would create a risk of inconsistent or varying

1 adjudications with respect to individual members of the class and thus establish incompatible
2 standards of conduct for the party or parties opposing the class. Further, individual cases would
3 be so numerous as to inefficiently exhaust judicial resources;

4 (e) Questions of law and fact common to the class predominate over any questions
5 affecting only individual class members. There are questions of law and fact common to the
6 proposed class which predominate over any questions that may affect particular class members.
7 Such questions of law and fact common to Plaintiffs and the class include, without limitation:

8 Plaintiffs further contend that, whether Defendants were unjustly enriched by their conduct;
9 whether Class Members suffered an ascertainable loss as a result of Defendants' misrepresentations;
10 whether, as a result of Defendants' misconduct as alleged herein, Plaintiffs and the Class Members
11 are entitled to restitution, injunctive relieve, and/or monetary relief, and if so, the amount and natural
12 of such relief; whether Defendants made any statement they knew or should have known were false
13 or misleading; whether Defendants maintained a longstanding marketing policy, practice and
14 strategy of labeling, advertising and selling the Products labeled as "100% wild caught" "skipjack
15 and yellowfin tuna," when that is not the case; whether the utility of Defendants' practices, if any,
16 outweighed the gravity of the harm to their victims; whether Defendants' conduct violated public
17 policy, included as declared by specific constitutional, statutory, or regulatory provisions; whether
18 Defendants' conduct or any of their practices violated the California False Advertising Law, Cal.
19 Bus. & Prof. Code §§ 17500 *et seq.*, the California Consumers Legal Remedies Act, Cal. Civ. Code
20 §§ 1750 *et seq.*, The Federal Food, Drug and Cosmetics Act, 28 U.S.C. §§ 301 *et seq.* and its
21 implementing regulations, 21 C.F.R. §§ 101 *et seq.*, the Cal. Health & Safety Code §§ 109875 *et*
22 *seq.*, or any other regulation, statute or law; whether Defendants passed off the Products as that of
23 another, within the meaning of Cal. Civ. Code § 1770(a)(1); whether Defendants misrepresented
24 the source, sponsorship, approval or certification of the Products, within the meaning of Cal. Civ.
25 Code § 1770(a)(2); whether Defendants misrepresented the Products' affiliation, connection or
26 association with, or certification by another, within the meaning of Cal. Civ. Code § 1770(a)(3);
27 whether Defendants represented that the Products have characteristics, uses, or benefits which they
28 does not have, within the meaning of Cal. Civ. Code § 1770(a)(5); whether Defendants represented

1 that the Products are of a particular standard, quality, or grade, when they were really of another,
2 within the meaning of Cal. Civ. Code § 1770(a)(7); whether Defendants advertised the Products
3 with the intent not to sell them as advertised, within the meaning of Cal. Civ. Code § 1770(a)(9);
4 whether Defendants represented that the Products have been supplied in accordance with a previous
5 representation when they have not, within the meaning of Cal. Civ. Code § 1770(a)(16); the proper
6 equitable and injunctive relief, amount of restitution or disgorgement, and the proper amount of
7 reasonable litigation expenses and attorneys' fees.

8 (f) As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P.
9 23(a), (b)(1), (b)(2) and (b)(3), and may be appropriate for certification "with respect to particular
10 issues" under Rule 23(b)(4).

11 Plaintiffs' Counsel and Attorneys of Record have reviewed the Procedural Guidance for
12 Class Action Settlements. Plaintiffs propose that the Court consider whether the case can be
13 maintained as a class action on or by March 22, 2022.

14 Defendants' Statement

15 Defendants do not believe that this action is properly maintained as a lawsuit, much less a
16 class action. If the claims survive a Rule 12 motion to dismiss -- and they should not, given the lack
17 of factual support for any claim that the products at issue do not consist of tuna -- this litigation
18 cannot proceed as a class action because individual issues of proof will predominate. Individual
19 issue of damages alone will preclude class treatment in this case. Accordingly, if the case proceeds
20 past the pleadings stage, Defendants will bring a motion to preclude class certification.

21 Defendants' counsel of record have reviewed the Procedural Guidance for Class Action
22 Settlements.

23 **X. Related Cases**

24 The Parties agree that this matter is not related to any matter pending in this Court or any
25 other Court, including bankruptcy court.

26 **XI. Relief**

27 Plaintiffs believe that they and members of the class are entitled to recover damages in the
28 form of, *inter alia*, compensatory, statutory, and punitive damages, as well as reasonable

1 attorneys' fees and expenses and injunctive relief to enjoin Defendants from continuing to engage
2 in the false and deceptive practices fully alleged in Plaintiffs' Complaint. Furthermore, Plaintiffs
3 assert that they and all class members should be awarded equitable monetary relief, including
4 restitution and disgorgement of the entirety of all Defendants' ill-gotten gains, and all other relief
5 the Court deems proper.

6 Defendants contend that the facts demonstrate that the plaintiffs have not been -- and could
7 not have been -- damaged in any amount, as they purchased tuna products that consisted of the
8 ingredients set forth on the labels for the products available either at the restaurants at which the
9 products were purchased or online.

10 **XII. Settlement And ADR**

11 The Parties have not yet tried to settle the case. Plaintiffs are amenable to engaging in
12 settlement efforts after conducting limited discovery, but before moving for class certification.
13 Additionally, in the event that pre-certification resolution is not reached, Plaintiffs will remain
14 agreeable to settlement efforts after certification as well. Presently, Plaintiffs believe that private
15 mediation will offer the most optimal opportunity for resolution efforts, but they are also agreeable
16 to engaging in a settlement conference with a magistrate judge if necessary.

17 Defendants do not believe that private mediation would be productive in this case, as the
18 case is meritless and, if the Court will not dismiss the case at the pleadings stage, Defendants intend
19 to vindicate themselves on summary judgment, at trial or on appeal. Defendants agree to
20 participating in a settlement conference with a magistrate judge if the case proceeds past the
21 pleadings stage.

22 **XIII. Consent To Magistrate Judge For All Purposes**

23 On March 1, 2021, Defendants declined the jurisdiction of a magistrate judge for this
24 matter. (ECF No. 18.)

25 **XIV. Other References**

26 The Parties agree that this case is not suitable for binding arbitration, a special master or
27 referral to the Judicial Panel on Multidistrict Litigation.

1 **XV. Narrowing Of Issues**

2 Given that this case is in the very initial stages of litigation, and given that no discovery or
3 initial disclosures have commenced, Plaintiffs believe it is premature to consider if any issues can
4 be narrowed by agreement or motion. However, after initial disclosures have been exchanged and
5 some discovery has occurred, Plaintiffs are agreeable to revisiting the option of identifying issues
6 that can be narrowed by agreement or motion and taking steps to expedite the presentation of
7 evidence at trial, included through summaries or stipulated facts.

8 Defendants submit that the litigation can and should be eliminated at the pleadings stage,
9 as the Court does not have subject matter jurisdiction over these claims because there has been no
10 injury in fact or damages that can be plausibly alleged and, in any event, the plaintiffs cannot state
11 a cause of action on which relief can be granted against Defendants. Even if the Court does not
12 dismiss the litigation in full, the issues can be significantly narrowed in this case by a ruling on a
13 motion to dismiss and then on a motion to preclude class certification.

14 **XVI. Scheduling And Trial**

15 Attached hereto as Exhibit A is the Parties' proposed schedule of pretrial and trial dates.

16 **XVII. Disclosure Of Non-Party Interested Entities Or Persons**

17 The Parties will file their "Certification of Interested Entities or Persons," pursuant to Civil
18 Local Rule 3-15 prior to the June 1, 2021 Case Management Conference.

19 **XVIII. Professional Conduct**

20 All attorneys of record for the Parties have reviewed the Guidelines for Professional
21 Conduct for the Northern District of California.

22
23 Dated: May 25, 2021

McNICHOLAS & McNICHOLAS, LLP

24 By: /s/Patrick McNicholas
25 Patrick McNicholas
26 Attorneys for Plaintiffs
KAREN DHANOWA and NILIMA AMIN

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Dated: May 25, 2021

THE LANIER LAW FIRM, PC

By: /s/ Mark Lanier
Mark Lanier
Attorneys for Plaintiffs
KAREN DHANOWA and NILIMA AMIN

Dated: May 25, 2021

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By: 
Shalini Dogra
Attorneys for Plaintiffs
KAREN DHANOWA and NILIMA AMIN

Dated: May 25, 2021

BAKER & MCKENZIE LLP


By: /s/ Mark C. Goodman
Mark C. Goodman
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FILER'S ATTESTATION OF CONCURRENCE

I, Shalini Dogra, attest that I am one of the attorneys for Plaintiffs Nilima Amin and Karen Dhanowa. As the ECF user and filer of this document, I attest that concurrence with the filing of this document has been obtained from its signatories.

Dated: May 25, 2021

By: 

Shalini Dogra