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9 Attorneys for Defendants,
 10 TRADER JOE’S COMPANY and TRADER JOE’S EAST INC.

11
 12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA

14
 15 *In re Trader Joe’s Tuna Litigation*

Case No. 2:16-cv-01371-ODW (AJW)
**DEFENDANTS TRADER JOE’S
 COMPANY AND TRADER JOE’S
 EAST INC.’S AMENDED ANSWER
 TO SECOND AMENDED CLASS
 ACTION COMPLAINT**

Courtroom: 5D
 Judge: Hon. Otis D. Wright II

1 Defendants Trader Joe’s Company and Trader Joe’s East, Inc. (collectively,
2 “Defendants”) hereby file their Amended Answer to the Second Amended Class Action
3 Complaint (the “SAC”) of Atzimba Reyes (“Reyes”) and Sarah Magier (“Magier”)¹
4 (collectively, “Plaintiffs”) as follows:

5 **NATURE OF THE ACTION**

- 6 1. Defendants deny the allegations in Paragraph 1 of the SAC.
- 7 2. Defendants lack sufficient knowledge or information to form a belief as
8 to the truth of the allegations in Paragraph 2 of the SAC and on that basis deny those
9 allegations.
- 10 3. Defendants lack sufficient knowledge or information to form a belief as
11 to the truth of the allegations in Paragraph 3 of the SAC and on that basis deny those
12 allegations.
- 13 4. Defendants lack sufficient knowledge or information to form a belief as
14 to the truth of the allegations in Paragraph 4 of the SAC and on that basis deny those
15 allegations.
- 16 5. Defendants lack sufficient knowledge or information to form a belief as
17 to the truth of the allegations in Paragraph 5 of the SAC and on that basis deny those
18 allegations.
- 19 6. Defendants lack sufficient knowledge or information to form a belief as
20 to the truth of the allegations in Paragraph 6 of the SAC and on that basis deny those
21 allegations.
- 22 7. Defendants lack sufficient knowledge or information to form a belief as
23 to the truth of the allegations in Paragraph 7 of the SAC and on that basis deny those
24 allegations.

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26 _____
27 ¹ The Court, in its Order Granting, In Part, Defendants’ Motion to Dismiss (“Order”),
28 dismissed Magier’s claims. (Order, Doc. No. 68 at 12.) Nonetheless, as a
precautionary measure, and for completeness, Defendants have responded herein to all
allegations in the SAC as filed.

1 knowledge or information to form a belief as to the truth of the allegations and on that
2 basis deny the allegations.

3 14. Defendants admit that Trader Joe's is a California corporation with its
4 principal place of business in Monrovia, California. Defendants admit that Trader
5 Joe's is a privately-held chain of grocery stores with 474 retail locations in the United
6 States. Defendants admit that Trader Joe's distributes Trader Joe's-brand canned tuna
7 products to its retail locations and sells Trader Joe's-brand canned tuna products in its
8 retail locations. Defendants deny that Trader Joe's is engaged in the processing and
9 packaging of Trader Joe's-brand canned products. The remaining allegations in
10 Paragraph 14 of the SAC are irrelevant and assert legal conclusions and arguments to
11 which no response is required.

12 15. Defendants admit that Trader Joe's East Inc. is a Massachusetts
13 corporation with its principal place of business in Boston, Massachusetts. Defendants
14 admit that Trader Joe's East Inc. is a subsidiary of Trader Joe's Company.

15 16. Paragraph 16 asserts legal conclusions and arguments to which no
16 response is required. To the extent a response is required, Defendants deny the
17 allegations in Paragraph 16 of the SAC.

18 **JURISDICTION AND VENUE**

19 17. Paragraph 17 asserts legal conclusions to which no response is required.
20 To the extent a response is required, Defendants deny that the amount in controversy
21 exceeds \$5,000,000, deny that most members of the proposed class are citizens of states
22 different from Defendants, and deny that there is original or supplemental federal
23 subject matter jurisdiction.

24 18. Defendants admit that Trader Joe's Co. distributed, advertised, and sold
25 Trader Joe's canned tuna in the Central District of California. Defendants admit that
26 Trader Joe's Co.'s principal place of business is in the Central District of California.
27 Defendants deny that any misrepresentations were made. Defendants admit that this
28 matter is a consolidated proceeding following a petition to the U.S. Judicial Panel on

1 Multidistrict Litigation (the “JPML”), where the JPML considered the petition
2 withdrawn in favor of voluntary transfer and coordination in the Central District of
3 California. Paragraph 18 otherwise contains either legal conclusions or allegations as
4 to which Defendants lack sufficient knowledge or information to form a belief as to the
5 truth of the allegations. On those bases, Defendants deny the remainder of the
6 allegations in Paragraph 18.

7 **CLASS REPRESENTATION ALLEGATIONS**

8 19. Paragraph 19 asserts legal conclusions and argument to which no response
9 is required. To the extent a response is required, Defendants deny the allegations in
10 Paragraph 19 of the SAC, including that this case may be maintained as a class action.

11 20. Paragraph 20 asserts legal conclusions and argument to which no response
12 is required. To the extent a response is required, Defendants deny the allegations in
13 Paragraph 20 of the SAC, including that this case may be maintained as a class action.
14 Further, the Court dismissed Plaintiff Magier’s claims in their entirety.

15 21. Paragraph 21 asserts legal conclusions and argument to which no response
16 is required. To the extent a response is required, Defendants deny the allegations in
17 Paragraph 21 of the SAC, including that this case may be maintained as a class action.

18 22. Paragraph 22 asserts legal conclusions and argument to which no response
19 is required. To the extent a response is required, Defendants deny the allegations in
20 Paragraph 22 of the SAC, including that this case may be maintained as a class action.

21 23. Paragraph 23 asserts legal conclusions and argument to which no response
22 is required. To the extent a response is required, Defendants deny the allegations in
23 Paragraph 23 of the SAC, including that this case may be maintained as a class action.

24 24. Paragraph 24 asserts legal conclusions and argument to which no response
25 is required. To the extent a response is required, Defendants deny the allegations in
26 Paragraph 24 of the SAC, including that this case may be maintained as a class action.

1 allegations in Paragraph 33 of the SAC, including that this case may be maintained as
2 a class action.

3 34. Paragraph 34 of the SAC asserts legal conclusions and arguments to which
4 no response is required. To the extent a response is required, Defendants deny the
5 allegations in Paragraph 34 of the SAC.

6 35. Defendants deny the allegations in Paragraph 35 of the SAC.

7 36. Defendants lack sufficient knowledge or information to form a belief as
8 to the truth of the allegations in Paragraph 36 of the SAC and on that basis deny those
9 allegations.

10 37. Defendants lack sufficient knowledge or information to form a belief as
11 to the truth of the allegations in Paragraph 37 of the SAC and on that basis deny those
12 allegations.

13 38. Defendants deny the allegations in Paragraph 38 of the SAC.

14 39. Defendants deny the allegations in Paragraph 39 of the SAC.

15 40. Defendants deny the allegations in Paragraph 40 of the SAC.

16 41. Defendants deny the allegations in Paragraph 41 of the SAC.

17 **COUNT III**

18 42. Defendants incorporate by reference their responses contained in all
19 preceding paragraphs.

20 43. Paragraph 43 asserts legal conclusions and arguments to which no
21 response is required. To the extent a response is required, Defendants deny the
22 allegations in Paragraph 43 of the SAC, including that this case may be maintained as
23 a class action.

24 44. Defendants deny the allegations in Paragraph 44 of the SAC.

25 45. Defendants deny the allegations in Paragraph 45 of the SAC.

26 46. Defendants deny the allegations in Paragraph 46 of the SAC.

COUNT IV

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2 47. Defendants incorporate by reference their responses contained in all
3 preceding paragraphs.

4 48. The Court dismissed Count IV, Deceptive Acts or Practices, New York
5 Gen. Bus. Law § 349, without leave to amend. (Order, Doc. No. 68 at 12.) Further,
6 Paragraph 48 asserts legal conclusions and arguments to which no response is required.
7 To the extent a response is required, Defendants deny the allegations in Paragraph 48
8 of the SAC, including that this case may be maintained as a class action.

9 49. The Court dismissed Count IV, Deceptive Acts or Practices, New York
10 Gen. Bus. Law § 349, without leave to amend. (Order, Doc. No. 68 at 12.) Defendants
11 deny the allegations in Paragraph 49 of the SAC, to the extent a response is required.

12 50. The Court dismissed Count IV, Deceptive Acts or Practices, New York
13 Gen. Bus. Law § 349, without leave to amend. (Order, Doc. No. 68 at 12.) Defendants
14 deny the allegations in Paragraph 50 of the SAC, to the extent a response is required.

15 51. The Court dismissed Count IV, Deceptive Acts or Practices, New York
16 Gen. Bus. Law § 349, without leave to amend. (Order, Doc. No. 68 at 12.) Defendants
17 deny the allegations in Paragraph 51 of the SAC, to the extent a response is required.

18 52. The Court dismissed Count IV, Deceptive Acts or Practices, New York
19 Gen. Bus. Law § 349, without leave to amend. (Order, Doc. No. 68 at 12.) Defendants
20 deny the allegations in Paragraph 52 of the SAC, to the extent a response is required.

21 53. The Court dismissed Count IV, Deceptive Acts or Practices, New York
22 Gen. Bus. Law § 349, without leave to amend. (Order, Doc. No. 68 at 12.) Defendants
23 deny the allegations in Paragraph 53 of the SAC, to the extent a response is required.

COUNT V

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25 54. Defendants incorporate by reference their responses contained in all
26 preceding paragraphs.

27 55. The Court dismissed Count V, Deceptive Acts or Practices, New York
28 Gen. Bus. Law § 350, without leave to amend. (Order, Doc. No. 68 at 12.) Further,

1 Paragraph 55 asserts legal conclusions and arguments to which no response is required.
2 To the extent a response is required, Defendants deny the allegations in Paragraph 55
3 of the SAC, including that this case may be maintained as a class action.

4 56. The Court dismissed Count V, Deceptive Acts or Practices, New York
5 Gen. Bus. Law § 350, without leave to amend. (Order, Doc. No. 68 at 12.) Defendants
6 deny the allegations in Paragraph 56 of the SAC, to the extent a response is required.

7 57. The Court dismissed Count V, Deceptive Acts or Practices, New York
8 Gen. Bus. Law § 350, without leave to amend. (Order, Doc. No. 68 at 12.) Defendants
9 deny the allegations in Paragraph 57 of the SAC, to the extent a response is required.

10 58. The Court dismissed Count V, Deceptive Acts or Practices, New York
11 Gen. Bus. Law § 350, without leave to amend. (Order, Doc. No. 68 at 12.) Defendants
12 deny the allegations in Paragraph 58 of the SAC, to the extent a response is required.

13 59. The Court dismissed Count V, Deceptive Acts or Practices, New York
14 Gen. Bus. Law § 350, without leave to amend. (Order, Doc. No. 68 at 12.) Defendants
15 deny the allegations in Paragraph 59 of the SAC, to the extent a response is required.

16 60. The Court dismissed Count V, Deceptive Acts or Practices, New York
17 Gen. Bus. Law § 350, without leave to amend. (Order, Doc. No. 68 at 12.) Defendants
18 deny the allegations in Paragraph 60 of the SAC, to the extent a response is required.

19 **COUNT VI**

20 61. Defendants incorporate by reference their responses contained in all
21 preceding paragraphs.

22 62. The Court dismissed Count VI, Negligent Misrepresentation, without
23 leave to amend. (Order, Doc. No. 68, pp. 21-22.) In addition, Paragraph 62 asserts
24 legal conclusions and arguments to which no response is required. To the extent a
25 response is required, Defendants deny the allegations in Paragraph 62 of the SAC,
26 including that this case may be maintained as a class action.

COUNT VIII

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2 73. Defendants incorporate by reference their responses contained in all
3 preceding paragraphs.

4 74. Paragraph 74 asserts legal conclusions and arguments to which no
5 response is required. To the extent a response is required, Defendants deny the
6 allegations in Paragraph 74 of the SAC, including that this case may be maintained as
7 a class action.

8 75. Defendants admit that Cal. Civ. Code § 1770(a)(5) reads as Plaintiffs have
9 quoted it, with the exception that the current version replaces “which” with “that.”

10 76. Defendants admit that Cal. Civ. Code § 1770(a)(9) reads as Plaintiffs have
11 quoted it.

12 77. Defendants deny the allegations in Paragraph 77 of the SAC.

13 78. Defendants deny the allegations in Paragraph 78 of the SAC.

14 79. Paragraph 79 asserts legal conclusions and argument to which no response
15 is required. To the extent a response is required, Defendants admit that they received
16 a letter from counsel for Magier and Reyes, dated December 21, 2015, with allegations
17 relating to Trader Joe’s canned tuna. Defendants admit that a copy of Plaintiffs’
18 demand letter to Defendants is attached as Exhibit A to the SAC. Defendants deny all
19 other allegations of Paragraph 79 of the SAC.

20 80. Defendants deny that Reyes is entitled to any of the relief requested in
21 Paragraph 80 of the SAC.

COUNT IX

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23 81. Defendants incorporate by reference their responses contained in all
24 preceding paragraphs.

25 82. Paragraph 82 asserts legal conclusions and arguments to which no
26 response is required. To the extent a response is required, Defendants deny the
27 allegations in Paragraph 82 of the SAC, including that this case may be maintained as
28 a class action.

1 83. Paragraph 83 asserts legal conclusions and arguments to which no
2 response is required. To the extent a response is required, Defendants deny the
3 allegations in Paragraph 83 of the SAC.

4 84. Defendants deny the allegations in Paragraph 84 of the SAC.

5 85. Defendants deny the allegations in Paragraph 85 of the SAC.

6 86. Defendants deny the allegations in Paragraph 86 of the SAC.

7 87. Defendants deny the allegations in Paragraph 87 of the SAC.

8 **COUNT X**

9 88. Defendants incorporate by reference their responses contained in all
10 preceding paragraphs.

11 89. Paragraph 89 asserts legal conclusions and arguments to which no
12 response is required. To the extent a response is required, Defendants deny the
13 allegations in Paragraph 89 of the SAC, including that this case may be maintained as
14 a class action.

15 90. Defendants deny the allegations in Paragraph 90 of the SAC (as Plaintiffs
16 have not accurately quoted Cal. Bus. & Prof. Code § 17500).

17 91. Defendants deny the allegations in Paragraph 91 of the SAC.

18 92. Defendants deny the allegations in Paragraph 92 of the SAC.

19 93. Defendants deny the allegations in Paragraph 93 of the SAC.

20 94. Defendants deny the allegations in Paragraph 94 of the SAC.

21 **RELIEF DEMANDED**

22 Defendants deny that Plaintiffs or any putative class members are entitled to the
23 relief sought in the “RELIEF DEMANDED” section of the SAC or any other relief
24 whatsoever, and further deny that Plaintiffs or any putative class members suffered any
25 injury or incurred any damages by any act or omission of Defendants as alleged in the
26 SAC or under any theory by means of the allegations set forth in each of the paragraphs
27 and their subparts in the SAC.
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AFFIRMATIVE DEFENSES

Defendants allege the following separate and affirmative defenses to the SAC and, in so doing, do not assume the burden to establish any fact or proposition necessary to that defense where that burden is properly imposed on Plaintiffs. All defenses are asserted as to Plaintiffs and, in the event that this action is permitted to proceed on a class basis, as to any other member of the purported class.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The SAC fails, in whole or in part, to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Failure to State a Claim with Particularity)

Plaintiffs have failed to plead the allegations in the SAC with sufficient particularity, including, but not limited to, the fact that the SAC fails to state and identify with sufficient particularity the circumstances and communications allegedly constituting misrepresentation and fraud, as required by Rule 9(b) of the Federal Rules of Civil Procedure.

THIRD AFFIRMATIVE DEFENSE

(Lack of Standing)

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs lack standing to sue, including because Plaintiffs have suffered no injury as a result of the matters alleged in the SAC.

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FOURTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiffs’ claims and the claims of putative class members are time-barred, in whole or in part, under the applicable statutes of limitations.

FIFTH AFFIRMATIVE DEFENSE

(Preemption)

Plaintiffs’ claims are preempted, in whole or in part, by federal and/or state statutes and/or regulations.

SIXTH AFFIRMATIVE DEFENSE

(Equitable Defenses)

Plaintiffs’ claims are barred by the equitable defenses of waiver, laches, unclean hands, and/or estoppel.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

Plaintiffs’ claims are barred, in whole or in part, for failure to exhaust administrative remedies available under the Federal Food Drug and Cosmetic Act and/or the California Sherman Law.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Provide Reasonable Notice of Claim)

Plaintiffs’ claims are barred for failure to provide reasonable, timely notice to Defendants of Plaintiffs’ purported claims.

NINTH AFFIRMATIVE DEFENSE

(Lack of Privity)

Plaintiffs’ claims are barred, in whole or in part, for lack of privity.

TENTH AFFIRMATIVE DEFENSE

(Equal Protection)

Enforcement of the Pressed Weight Standard, 21 C.F.R. § 161.190, against Defendants, either directly or through incorporation by reference to the California

1 Sherman Law, violates Defendants’ right to equal protection under the United States
2 and California Constitutions.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 (Substantive Due Process)

5 Enforcement of the Pressed Weight Standard, 21 C.F.R. § 161.190, against
6 Defendants, either directly or through incorporation by reference to the California
7 Sherman Law, violates Defendants’ right to substantive due process under the United
8 States and California Constitutions.

9 **TWELFTH AFFIRMATIVE DEFENSE**

10 (Procedural Due Process)

11 Enforcement of the Pressed Weight Standard, 21 C.F.R. § 161.190, against
12 Defendants, either directly or through incorporation by reference to the California
13 Sherman Law, violates Defendants’ right to procedural due process under the United
14 States and California Constitutions.

15 **THIRTEENTH AFFIRMATIVE DEFENSE**

16 (Commerce Clause)

17 Enforcement of the Pressed Weight Standard, 21 C.F.R. § 161.190, against
18 Defendants, either directly or through incorporation by reference to the California
19 Sherman Law, violates the commerce clause of the United States Constitution, U.S.
20 Const., Art. I, § 8, cl. 3.

21 **FOURTEENTH AFFIRMATIVE DEFENSE**

22 (Temporary Marketing Permit)

23 Plaintiffs’ claims are barred, in whole or in part, by the Temporary Marketing
24 Permit issued on or about June 20, 2014, 79 Fed. Red. 35362, and indefinitely extended
25 on or about March 7, 2016, 81 Fed. Reg. 11813, which Trader Joe’s has applied to
26 participate in per its application filed with the Food and Drug Administration on or
27 about February 14, 2017.

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DEFENDANTS' PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiffs take nothing by reason of their SAC, and that judgment be rendered in favor of Defendants;
2. That Defendants be awarded their attorneys' fees and costs of suit incurred in defense of this action; and
3. For such other and further relief as the Court deems just and proper.

DATED: March 30, 2018

By: /s/ Robert J. Parks

ROBERT J. PARKS

