

ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

SEP 26 2019

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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF SAN BERNARDINO**

18 **YOUNGSUK KIM**, an individual, and on
behalf of other members of the general public
19 similarly situated;

20 Plaintiff,

21 vs.

22 **BENIHANA, INC.**, a Florida corporation; and
DOES 1-100, inclusive

23 Defendants.
24
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27
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CASE NO. **CIV DS 1928928**

CLASS ACTION

1. VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200, *et seq.*
2. VIOLATION OF BUSINESS AND PROFESSIONS CODE §17500, *et seq.*
3. VIOLATION OF CALIFORNIA CIVIL CODE § 1750. *et seq.*
4. BREACH OF EXPRESS WARRANTY

JURY TRIAL DEMANDED

BY FAX

1 Plaintiff Youngsuk Kim ("Plaintiff") alleges the following based upon personal knowledge
2 as to himself and his own acts, and upon information and belief and the investigation by Plaintiff's
3 counsel, Plaintiff believes that substantial additional evidentiary support exists for the allegations
4 set forth herein and will be available after a reasonable opportunity for discovery.

5 **NATURE OF THE ACTION**

6 1. This action seeks to remedy the unfair, deceptive, and unlawful business practices
7 of Benihana, Inc. ("Defendant" or "Benihana") with respect to the adulteration of food and the
8 false advertising or misbranding of food items. Specifically, during the Class Period (defined
9 below), Benihana employs a classic bait and switch tactic whereby it falsely labeled and
10 advertised food products containing crab on their menu, when in fact, no crab meat was present in
11 the product.

12 2. Benihana Inc. is an American restaurant company based in Aventura, Florida. It
13 owns or franchises 116 Japanese cuisine restaurants around the world, including its flagship
14 Benihana Teppanyaki brand, as well as the Haru and RA Sushi restaurants. Benihana sells food
15 items containing "crab" on their menu, including but not limited to Shrimp Lovers Roll, Shrimp
16 Crunchy Roll, Alaskan Roll, Dragon Roll, Chili Shrimp Roll, Rainbow Roll, Spider Roll, Sumo
17 Roll Baked, and Lobster Roll, and/or California Roll (hereinafter the "Food Product(s)") at any
18 and all of their locations in California during the last four years.

19 3. In connection with the sale of the Food Products, Benihana has engaged in unfair
20 and deceptive practices constituting violations of the CLRA by purporting to represent that the
21 Food Products contain "crab," when in fact, no crab meat was present in the product. Although
22 these menu items provide notice that "Kani kama crab" and "kani kama crab mix" contain
23 imitation crab, they have failed to disclose that the Food Products contain "Kani kama crab" or
24 "kani kama crab mix," thereby misleading and deceiving their customers into believing that the
25 Food Products contain actual crab meat. In doing so, they have intentionally misbranded the Food
26 Products by using imitation crab meat in the Food Products, despite advertising that these Food
27 Products contain "crab."

28 4. As such, Benihana has concealed, suppressed and/or misrepresented through the in-

1 store and online menus regarding the contents of the Food Products in violation of Civil Code
2 section 1770. The company also has engaged in unfair business practices under Business and
3 Professions Code section 17220, et seq., engaged in false advertising, fraud, negligent
4 misrepresentation and related violations. Benihana has represented that the Food Products have
5 characteristics and ingredients which they do not have. It also represented that the Food Products
6 are of a particular standard quality or grade, when they are not.

7 5. Food items are displayed with pricing and ingredient information; however, the
8 ingredient information is false and deceptive.

9 6. When purchasing food items from Benihana, Plaintiff relied on Defendant's
10 misrepresentations on the menu. Plaintiff would not have purchased the various Food Products
11 had he known that Defendant's representations were false and misleading.

12 7. Defendant's conduct of falsely marketing, advertising, labeling, and selling its
13 Food Products constitutes unfair, unlawful, and fraudulent conduct; is likely to deceive members
14 of the public; and is unethical, oppressive, unscrupulous, and/or substantially injurious to
15 consumers, because, among other things, it misrepresents the characteristics of goods and services.

16 8. Benihana intentionally concealed and failed to disclose the truth about its
17 misrepresentations and false advertising scheme for the purpose of inducing Plaintiff and others
18 similarly situated to purchase food items at Benihana.

19 9. Through its false and deceptive marketing, advertising and pricing scheme,
20 Benihana violated (and continues to violate) California laws prohibiting advertising goods for sale
21 of prices which are false. Specifically, Defendant violated (and continues to violate) California's
22 Business & Professions Code §§ 17200, et seq. (the "UCL"), California's Business & Professions
23 Code §§ 17500, et seq. (the "FAL"), the California Consumers' Legal Remedies Act, California
24 Civil Code §§ 1750, et seq., (the "CLRA"); the warranty laws of California; California common
25 law; Arizona Consumer Fraud Act, A.R.S. § 44-1521 et seq.; Texas Deceptive Trade Practices-
26 Consumer Protection Act, Business & Commerce Code § 17.41 et seq.; and New York Deceptive
27 Acts and Practices Act, N.Y. Gen. Bus. Law § 349 et seq.

28 10. Plaintiff, individually and on behalf of all others similarly situated, seeks restitution

1 and other equitable remedies, including an injunction under the UCL and FAL; and restitution,
2 damages and an injunction under the CLRA.

3 **JURISDICTION AND VENUE**

4 11. This class action is brought pursuant to the California Code of Civil Procedure
5 section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal
6 jurisdiction limits of the Superior Court and will be established according to proof at trial.

7 12. This Court has jurisdiction over this action pursuant to the California Constitution,
8 Article VI, Section 10, which grants the superior court "original jurisdiction in all other causes"
9 except those given by statute to other courts. The statutes under which this action is brought do
10 not specify any other basis for jurisdiction.

11 13. This Court has jurisdiction over the named Defendant and DOES 1 through 100
12 because, upon information and belief, Defendant has sufficient minimum contacts with the State
13 of California or otherwise intentionally avail themselves of the California market so as to render
14 the exercise of jurisdiction over them by the California courts consistent with traditional notions of
15 fair play and substantial justice.

16 14. Venue is proper in this Court because, upon information and belief, Defendant
17 maintains offices, has agents, and/or transacts business in the State of California, County of San
18 Bernardino, and the acts and omissions alleged herein took place in the State of California, County
19 of San Bernardino.

20 **PARTIES**

21 15. Plaintiff Youngsuk Kim is an individual and consumer residing in the State of
22 California. During the Class Period, Plaintiff purchased Food Products from Benihana locations in
23 California, including locations in the city of Santa Monica.

24 16. Prior to purchasing the Product, Plaintiff read and relied upon false and misleading
25 statements that were prepared by and/or approved by Defendant and its agents and disseminated
26 through hard-copy and online menus. For each purchase, he understood that he was paying a
27 particular price for a particular item and was deceived when he received an item other than that
28 labeled and advertised. Plaintiff would not have purchased the Food Products, and/or would not

1 have paid a premium for the Food Products had he known the true quality and ingredients of the
2 Food Products. Plaintiff thus was damaged by Defendant's practice.

3 17. Benihana, Inc. is a Florida corporation with a principal place of business in
4 Aventura, Florida. Benihana distributes, markets, advertises, and sells in-store food items at its
5 stores in California and throughout the rest of the United States. Benihana has experienced
6 massive growth, both domestically and internationally.

7 18. The use of the term "Defendant" in any of the allegations in this Complaint, unless
8 specifically alleged otherwise, is intended to include and charge, both jointly and severally, not
9 only the Defendant identified in this Complaint, but also all Defendants designated as DOES 1
10 through 100, inclusive, as though the term "Defendant" was followed in each and every instance
11 throughout this Complaint with the phrase "and each of them jointly and severally, including the
12 named Defendant and Defendants included herein and sued under the fictitious names of DOES 1
13 through 100, inclusive."

14 19. Plaintiff is informed and believes, and thereon alleges, that Defendant, at all times
15 herein mentioned, were the partners, joint venturers, subsidiaries, successors in interest, managing
16 agent, merged entities, agents, alter egos, part of a jointly owned, managed, and/or operated
17 business enterprise, and/or employees of each other Defendant and in doing the acts, omissions,
18 and things alleged herein were acting as such and within the scope of their authority as such agents
19 and employees and with the permission and consent of all other Defendant. Plaintiff is informed
20 and believes, and thereon alleges, that Defendant has, and at all times herein mentioned had, a
21 joint economic and business interest, goal and purpose in the products that are the subject of this
22 lawsuit.

23 **ALLEGATIONS OF FACT**

24 20. Plaintiff is informed and believes, and based thereon alleges, that at all relevant
25 times mentioned in this Complaint, Defendant has owned and/or operated restaurants in the State
26 of California, including in the County of San Bernardino.

27 21. Plaintiff is informed and believes, and based thereon alleges, that Defendant fail to
28 disclose in their menus that the Food Products do not contain real crab meat.

1 22. At all times mentioned in this Complaint, Defendant through their menus have
2 suppressed and concealed and continue to suppress and conceal the fact that the Food Products do
3 not contain crab meat. For example, Defendant do not state anywhere in their restaurant or in their
4 in-store menus that the Food Products do not contain crab meat.

5 23. During the last four years, Plaintiff purchased the Food Products, purportedly
6 containing crab meat at the restaurant owned, operated or managed by Defendant, specifically
7 Benihana located at 1447 4th Street, Santa Monica, in the State of California, believing and having
8 been led to believe that the Food Products actually contained crab meat.

9 24. At all times herein relevant, when Plaintiff purchased the Food Products, he was
10 exposed to Defendant's in-store menus, which did not disclose that the Food Products did not
11 contain crab meat. To his detriment, Plaintiff relied upon these in-store menus when purchasing
12 and consuming the Food Products.

13 25. Plaintiff is informed and believes, and based thereon alleges, that Defendant's
14 concealment of the fact that the Food Products do not contain crab meat and being explicitly
15 informed by Defendant's in-store menus that the Food Products contain crab meat, was the
16 immediate cause of Plaintiff and the other class members consuming the Food Products.

17 26. In light of Defendant's representations and omissions, as alleged herein, regarding
18 the Food Products, Plaintiff and members of the putative class reasonably believed that the Food
19 Products contained crab meat.

20 27. Plaintiff is informed and believes, and based thereon alleges, as a result of
21 Defendant's false and misleading representations, as alleged herein, Plaintiff has suffered damages
22 including, but not limited to, monetary loss, caused by the fact he was misled by Defendant's in-
23 store menus into purchasing and consuming the Food Products, which did not contain crab meat.

24 **CLASS ACTION ALLEGATIONS**

25 28. Plaintiff brings this action individually and on behalf of all other persons similarly
26 situated pursuant to California Code of Civil Procedure Section 382. The Classes which Plaintiff
27 seeks to represent comprise:
28

1 **California Class**

2 All persons in California who purchased Food Products from Benihana for
3 personal or household use, and not for resale or distribution purposes, that
4 Benihana's menu labeled to contain "crab," between September 26, 2015 and the
5 date of judgment in this action. Specifically excluded from this Class are
6 Benihana; the officers, directors, or employees of Benihana; any entity in which
7 Benihana has a controlling interest; and any affiliate, legal representative, heir, or
8 assign of Benihana. Also excluded are those who assert claims for personal injury
9 as well as any federal, state, or local governmental entities, any judicial officer
10 presiding over this action and the members of his/her immediate family and
11 judicial staff, and any juror assigned to this action.

12 **State Consumer Protection Class**

13 All persons in California, New York, Arizona, or Texas who purchased Food
14 Products from Benihana for personal or household use, and not for resale or
15 distribution purposes, that Benihana's menu labeled to contain "crab," between
16 September 26, 2015 and the date of judgment in this action. Specifically excluded
17 from this Class are Benihana; the officers, directors, or employees of Benihana;
18 any entity in which Benihana has a controlling interest; and any affiliate, legal
19 representative, heir, or assign of Benihana. Also excluded are those who assert
20 claims for personal injury as well as any federal, state, or local governmental
21 entities, any judicial officer presiding over this action and the members of his/her
22 immediate family and judicial staff, and any juror assigned to this action.

23 29. Plaintiff reserves his rights under California Rule of Court 3.769(b) to amend or
24 modify the Class definitions with greater specificity or further division into sub-class or limitation
25 to particular issues.

26 30. The Classes are sufficiently numerous, as it includes thousands of persons who
27 have purchased the Food Products. Thus, joinder of such persons in a single action or bringing all
28 members of the Classes before the Court is impracticable for purposes of California Code of Civil

1 Procedure Section 382. The question is one of a general or common interest of many persons and
2 it is impractical to bring them all before the Court. The disposition of the claims of the members of
3 the Classes in this class action will substantially benefit both the parties and the Court.

4 31. Plaintiff will fairly and adequately represent and protect the interests of the other
5 members of each respective Class for purposes of California Code of Civil Procedure Section 382.
6 Plaintiff has no interests antagonistic to those of other members of each respective Class. Plaintiff
7 is committed to the vigorous prosecution of this action and has retained counsel experienced in
8 litigation of this nature to represent her. Plaintiff anticipates no difficulty in the management of
9 this litigation as a class action.

10 32. Class certification is appropriate under California Code of Civil Procedure Section
11 382 because Defendant has acted on grounds that apply generally to each Class, so that final
12 injunctive relief or corresponding declaratory relief is appropriate respecting each Class as a
13 whole. Defendant utilizes an integrated, nationwide menu label that includes uniform
14 misrepresentations that misled Plaintiff and the other members of the Classes.

15 33. Class certification is appropriate under California Code of Civil Procedure Section
16 382 because common questions of law and fact substantially predominate over any questions that
17 may affect only individual members of the Classes. Among these common questions of law and
18 fact are:

- 19 a. Whether Defendant engaged in a pattern or practice of concealing, suppressing
20 and/or misrepresenting in their menus the fact that the Food Products do not
21 actually contain "crab" meat.
- 22 b. Whether Defendant engaged in a pattern or practice of concealing, suppressing
23 and/or misrepresenting the source, quality, and/or method of obtaining the Food
24 Products.
- 25 c. Whether Defendant thereby engaged in consumer fraud, deceptive trade
26 practices, or other unlawful acts.
- 27 d. Whether Class Members are entitled to damages including punitive damages,
28 restitution, disgorgement of profits, and injunctive relief, and the proper

1 measure, nature and extent of such relief.

2 e. Whether the Plaintiff and the Class Members suffered monetary, general,
3 consequential, and special damages and, if so, what is the measure of those
4 damages.

5 f. Whether Plaintiff and members of the Classes are entitled to injunctive and other
6 equitable relief.

7 g. Whether Defendant were unjustly enriched by their conduct.

8 34. Defendant engaged in a common course of conduct giving rise to the legal rights
9 sought to be enforced by the members of the Classes. Similar or identical statutory and common
10 law violations and deceptive business practices are involved. Individual questions, if any, pale by
11 comparison to the numerous common questions that predominate.

12 35. The injuries sustained by Plaintiff and the members of the Classes flow, in each
13 instance, from a common nucleus of operative facts – Defendant’s misconduct.

14 36. Plaintiff and the members of the Classes have been damaged by Defendant’s
15 misconduct. The members of the Classes have paid for a product that would not have been
16 purchased in the absence of Defendant’s deceptive scheme, or, alternatively, would have been
17 purchased at a lesser price.

18 37. Proceeding as a class action provides substantial benefits to both the parties and the
19 Court because this is the most efficient method for the fair and efficient adjudication of the
20 controversy. Members of the Classes have suffered and will suffer irreparable harm and damages
21 as a result of Defendant’s wrongful conduct. Because of the nature of the individual claims of the
22 members of the Classes, few, if any, could or would otherwise afford to seek legal redress against
23 Defendant for the wrongs complained of herein, and a representative class action is therefore the
24 appropriate, superior method of proceeding and essential to the interests of justice insofar as the
25 resolution of claims of the members of the Classes is concerned. Absent a representative class
26 action, members of the Classes would continue to suffer losses for which they would have no
27 remedy, and Defendant would unjustly retain the proceeds of its ill-gotten gains. Even if separate
28 actions could be brought by individual members of the Classes, the resulting multiplicity of

1 lawsuits would cause undue hardship, burden, and expense for the Court and the litigants, as well
2 as create a risk of inconsistent rulings, which might be dispositive of the interests of the other
3 members of the Classes who are not parties to the adjudications and/or may substantially impede
4 their ability to protect their interests.

5 **FIRST CAUSE OF ACTION**

6 **UNFAIR, UNLAWFUL, AND FRAUDULENT BUSINESS PRACTICES**
7 **IN VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, *et seq.***

8 **(By Plaintiff and the California Class against Defendant)**

9 38. Plaintiff repeats and realleges the allegations set forth above and incorporates the
10 same as if set forth herein at length.

11 39. This cause of action is brought pursuant to Business and Professions Code § 17200,
12 *et seq.*

13 40. In the labeling and advertising of its Food Products, Defendant makes false and
14 misleading statements regarding the ingredients of products. Specifically, Defendant labels and
15 advertises that the Food Products contain real crab meat when they do not.

16 41. Defendant is aware of the representations it makes regarding the ingredients on its
17 menu are false and misleading.

18 42. As alleged in the preceding paragraphs, the misrepresentations by Defendant of the
19 material facts detailed above constitute an unfair and fraudulent business practice within the
20 meaning of California Business & Professions Code § 17200.

21 43. There were reasonably available alternatives to further Defendant's legitimate
22 business interests, other than the conduct described herein.

23 44. All of the conduct alleged herein occurs and continues to occur in Defendant's
24 business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct
25 repeated on thousands of occasions daily.

26 45. Pursuant to Business & Professions Code §§ 17203 and 17535, Plaintiff and the
27 members of the Class seek an order of this Court enjoining Defendant from continuing to engage,
28 use, or employ their practice of advertising the sale of their food products. Likewise, Plaintiff and

1 the members of the Class seek an order requiring Defendant to disclose such misrepresentations,
2 and additionally request an order awarding Plaintiff restitution of the money wrongfully acquired
3 by Defendant by means of responsibility attached to Defendant's failure to disclose the existence
4 and significance of said misrepresentations.

5 **SECOND CAUSE OF ACTION**

6 **FALSE AND MISLEADING ADVERTISING**

7 **IN VIOLATION OF BUSINESS & PROFESSIONS CODE § 17500, *et seq.***

8 **(By Plaintiff and the California Class against Defendant)**

9 46. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs
10 and incorporates the same as if set forth herein at length.

11 47. This cause of action is brought pursuant to Business and Professions Code § 17500,
12 *et seq.*

13 48. As alleged above, Defendant made untrue, false, deceptive and/or misleading
14 statements in connection with the labeling and advertising of the Food Products.

15 49. Defendant made representations and statements (by omission and commission) that
16 led reasonable customers to believe that they were purchasing items containing crab, when in fact,
17 no crab meat was present in the Food Products.

18 50. Defendant further deceptively failed to inform Plaintiff and members of the Class
19 that the Food Products did not contain any crab meat.

20 51. Plaintiff and members of the Class relied to their detriment on Defendant's false,
21 misleading and deceptive advertising and marketing practices, including each of the
22 misrepresentations and omissions set forth above.

23 52. Had Plaintiff and members of the Class been adequately informed and not
24 intentionally deceived by Defendant, they would have acted differently by, without limitation,
25 refraining from purchasing the Food Products or paying less for them.

26 53. Defendant's acts and omissions are likely to deceive the general public.

27 54. Defendant engaged in these false, misleading and deceptive advertising and
28 marketing practices to increase its profits. Accordingly, Defendant has engaged in false

1 advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and
2 Professions Code.

3 55. The aforementioned practices, which Defendant used, and continue to use, to its
4 significant financial gain, also constitutes unlawful competition and provides an unlawful
5 advantage over Defendant's competitors as well as injury to the general public.

6 56. Pursuant to Business & Professions Code §§ 17203 and 17535, Plaintiff and the
7 members of the Classes seek an order of this Court enjoining Defendant from continuing to
8 engage, use, or employ their practice of advertising the sale and use of Defendant's Food Products.
9 Likewise, Plaintiff and the members of the Class seek an order requiring Defendant to disclose
10 such misrepresentations, and additionally request an order awarding Plaintiff restitution of the
11 money wrongfully acquired by Defendant by means of responsibility attached to Defendant's
12 failure to disclose the existence and significance of said misrepresentations.

13 **THIRD CAUSE OF ACTION**

14 **VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT**

15 **CALIFORNIA CIVIL CODE § 1750, *et seq.***

16 **(By Plaintiff and the California Class against Defendant)**

17 57. Plaintiff repeats and realleges all the allegations of the previous paragraphs and
18 incorporates the same as if set forth herein at length.

19 58. This cause of action is brought pursuant to Civil Code § 1750, *et seq.*, the
20 Consumers Legal Remedies Act ("CLRA").

21 59. The policies, acts, and practices heretofore described were intended to result in the
22 sale of Defendant's Food Products to the consuming public .

23 60. By engaging in the actions, representations and conduct set forth herein, Defendant
24 has violated, and continues to violate, § 1770(a)(2), § 1770(a)(5), § 1770(a)(7), and § 1770(a)(9)
25 of the CLRA. In violation of California Civil Code §1770(a)(2), Defendant's acts and practices
26 constitute improper representations regarding the source, sponsorship, approval, or certification of
27 the goods they sold. In violation of California Civil Code §1770(a)(5), Defendant's acts and
28 practices constitute improper representations that the goods they sell have sponsorship, approval,

1 characteristics, ingredients, uses, benefits, or quantities, which they do not have. In violation of
2 California Civil Code §1770(a)(7), Defendant's acts and practices constitute improper
3 representations that the goods they sell are of a particular standard, quality, or grade, when they
4 are of another. In violation of California Civil Code §1770(a)(9), Defendant has advertised goods
5 or services with intent not to sell them as advertised.

6 61. Specifically, Defendant's acts and practices led customers to falsely believe that the
7 Food Products contain crab meat, when no crab meat is present.

8 62. Defendant's actions as described hereinabove were done with conscious disregard
9 of Plaintiff's rights and Defendant were wanton and malicious in their concealment of the same.

10 63. Pursuant to § 1780(a) of the Act, Plaintiff seeks injunctive relief in the form of an
11 order enjoining the above-described wrongful acts and practices of Defendant including, but not
12 limited to, an order enjoining Defendant from distributing such false advertising and
13 misrepresentations. Plaintiff shall be irreparably harmed if such an order is not granted.

14 64. Pursuant to Civil Code §1782, Plaintiff gave Defendant notice by letter dated April
15 29, 2019, by certified mail, of the particular violations of Civil Code § 1770. The Notice requested
16 that Defendant rectify the problems associated with the actions alleged in this Complaint and give
17 notice to all affected consumers of its intent to so act.

18 65. Plaintiff seeks, pursuant to California Civil Code § 1780(a)(3), on behalf of himself
19 and members of the Class, compensatory damages, punitive damages and restitution of any ill-
20 gotten gains due to Defendant's acts and practices.

21 **FOURTH CAUSE OF ACTION**

22 **BREACH OF EXPRESS WARRANTY**

23 **(By Plaintiff and the California Class against Defendant)**

24 66. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs
25 and incorporates the same as if set forth herein at length.

26 67. Defendant has broadly disseminated, and continues to make, misrepresentations
27 and/or omissions regarding the pricing of the Food Products. Specifically, Defendant systemically
28 represents the ingredients of the Food Products to consumers.

1 68. Defendant knew that its assertions were false, but asserted such facts nonetheless,
2 with the intent to procure each consumer's business.

3 69. Had Plaintiff and the members of the Class known that Defendant's assertion was
4 untrue, Plaintiffs and the members of the Class would not have purchased such Food Products or
5 would have paid less for such products.

6 70. As a proximate result of Defendant's deceit, as set forth above, Plaintiff and each
7 member of the Class purchased the Food Products.

8 71. Plaintiff and the members of the Class are entitled to punitive damages since
9 Defendant willfully and fraudulently acted with malice, oppression, and/or in conscious disregard
10 for Plaintiff's and the members of the Class' legal rights as a result of Defendant's deceit, as set
11 forth above.

12 **FIFTH CAUSE OF ACTION**

13 **VIOLATIONS OF CONSUMER FRAUD LAWS**

14 **(By Plaintiff, the California Class, and Consumer Protection Class**
15 **against Defendant)**

16 72. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs
17 and incorporates the same as if set forth herein at length.

18 73. Plaintiff brings this Count individually under the laws of the state where he
19 purchased the Food Products and on behalf of all other persons who purchased the Food Products
20 in states having similar laws regarding consumer fraud and deceptive trade practices; namely, in
21 Arizona, Texas, and New York.

22 74. Plaintiff and each of the other members of the Classes are consumers, purchasers,
23 or other persons entitled to the protection of the consumer protection laws of the state in which
24 they purchased the Food Products.

25 75. The consumer protection laws of the State in which Plaintiff and the other members
26 of the Classes purchased the Food Products declare that unfair or deceptive acts or practices, in the
27 conduct of trade or commerce, are unlawful.

28 76. Forty States and the District of Columbia have enacted statutes designed to protect

1 consumers against unfair, deceptive, fraudulent, and unconscionable trade and business practices
2 and false advertising and that allow consumers to bring private and/or class actions. The relevant
3 statutes are found at:

4 a. Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*;

5 b. Texas Deceptive Trade Practices-Consumer Protection Act, Business &
6 Commerce Code § 17.41 *et seq.*;

7 c. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law § 349 *et seq.*;

8 77. The Food Products constitute products to which these consumer protection laws
9 apply.

10 78. In the conduct of trade or commerce regarding its production, marketing, and sale
11 of the Food Products, Defendant engaged in one or more unfair or deceptive acts or practices
12 including, but not limited to, falsely labeling and advertising food products containing crab on
13 their menu, when in fact, no crab meat was present.

14 79. Defendant's representations and omissions were false, untrue, misleading,
15 deceptive, and/or likely to deceive.

16 80. Defendant knew, or should have known, that their representations and omissions
17 were false, untrue, misleading, deceptive, and/or likely to deceive.

18 81. Defendant used or employed such deceptive and unlawful acts or practices with the
19 intent that Plaintiff and members of the Classes rely thereon.

20 82. Plaintiff and the other members of the Classes did so rely.

21 83. Plaintiff and the other members of the Classes purchased the Food Products which
22 misrepresented the characteristics and nature of the Product.

23 84. Plaintiff and the other members of the Classes would not have purchased the Food
24 Products but for Defendant's deceptive and unlawful acts.

25 85. As a result of Defendant's conduct, Plaintiff and the other members of the Classes
26 sustained damages in amounts to be proven at trial.

27 86. Defendant's conduct showed complete indifference to, or conscious disregard for,
28 the rights and safety of others such that an award of punitive and/or statutory damages is

1 appropriate under the consumer protection laws of those states that permit such damages to be
2 sought and recovered.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment and relief against Defendant as follows:

5 A. That the Court certify the Classes pursuant to California Code of Civil Procedure
6 Section 382 and appoint Plaintiff as Class Representative and his attorneys as Class Counsel to
7 represent the members of the Classes;

8 B. That the Court declare that Defendant's conduct violates the statutes and law
9 referenced herein;

10 C. That the Court preliminarily and permanently enjoin Defendant from conducting its
11 business through the unlawful, unfair, or fraudulent business acts or practices, untrue, and
12 misleading labeling and marketing and other violations of law described in this Complaint;

13 D. That the Court order Defendant to conduct a corrective advertising and information
14 campaign advising consumers that the Food Products do not have the characteristics, uses,
15 benefits, and quality Defendant has claimed;

16 E. That the Court order Defendant to implement whatever measures are necessary to
17 remedy the unlawful, unfair, or fraudulent business acts or practices, untrue and misleading
18 advertising, and other violations of law described in this Complaint;

19 F. That the Court order Defendant to pay restitution to restore to all affected persons
20 all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair,
21 or a fraudulent business act or practice, untrue or misleading labeling, advertising, and marketing,
22 plus pre and post-judgment interest thereon;

23 G. That the Court order Defendant to disgorge all monies wrongfully obtained and all
24 revenues and profits derived by Defendant as a result of its acts or practices as alleged in this
25 Complaint;

26 H. For compensatory and punitive damages in amounts to be determined by the Court
27 and/or jury;

28 I. For prejudgment interest on all amounts awarded;

- 1 J. For an Order of restitution and all other forms of equitable monetary relief;
- 2 K. For costs, expenses, and reasonable attorneys' fees;
- 3 L. For punitive damages;
- 4 M. That the Court grant such other and further relief as may be just and proper.

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6 DATED: September 25, 2019

YOON LAW, APC

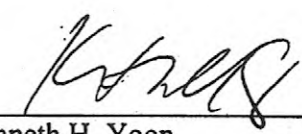
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8 By: 
9 Kenneth H. Yoon
10 Attorneys for Plaintiff
11 YOUNGSUK LEE

12 **JURY DEMAND**

13 Plaintiff demands a trial by jury on all causes of action so triable.

14
15 DATED: September 25, 2019

YOON LAW APC

16
17 By: 
18 Kenneth H. Yoon
19 Attorneys for Plaintiff
20 YOUNGSUK LEE