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**FILED**

FEB 19 2013

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

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ISS

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E. M. G.

*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PATRICK HENDRICKS, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

STARKIST CO.,

Defendant.

**C13-0729**  
Case No.

NC

ADR

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT



**ORIGINAL**

1 Plaintiff Patrick Hendricks (“Plaintiff”) brings this action on behalf of himself and all  
2 others similarly situated against Defendant StarKist Co. (“StarKist” or “Defendant”). Plaintiff  
3 makes the following allegations pursuant to the investigation of his counsel and based upon  
4 information and belief, except as to the allegations specifically pertaining to himself, which are  
5 based on personal knowledge.

#### 6 NATURE OF ACTION

7 1. This is a class action lawsuit on behalf of purchasers of 5-ounce cans of StarKist  
8 Chunk Light Tuna in Water, 5-ounce cans of StarKist Solid White Albacore Tuna in Water,  
9 5-ounce cans of StarKist Solid White Albacore Tuna in Vegetable Oil, and 5-ounce cans of  
10 StarKist Chunk Light Tuna in Vegetable Oil (collectively, “StarKist Tuna”).

11 2. Plaintiff Hendricks purchased one or more 5-ounce cans of StarKist Chunk Light  
12 Tuna in Water, which were underfilled and thus substantially underweight. Independent testing by  
13 a laboratory retained by Plaintiff’s counsel determined that 5-ounce cans of StarKist Chunk Light  
14 Tuna in Water contain an average of only 2.35 ounces of pressed cake tuna when measured  
15 precisely according to the methods specified by 21 C.F.R. § 161.190(c). This is 17.3% below the  
16 federally mandated minimum standard of fill of 2.84 ounces for these cans. *See* 21 C.F.R.  
17 § 161.190(c)(2)(i)-(xii). StarKist is cheating purchasers by providing 17.3% less tuna than  
18 purchasers are paying for.

19 3. The same laboratory tests revealed that 5-ounce cans of StarKist Solid White  
20 Albacore Tuna in Water contain an average of only 3.01 ounces of pressed cake tuna, which is  
21 6.8% below the federally mandated minimum standard of fill of 3.23 ounces for these cans. *Id.*  
22 These tests also revealed that 5-ounce cans of StarKist Solid White Albacore Tuna in Vegetable  
23 Oil contain an average of only 3.11 ounces of pressed cake tuna, which is 3.7% below the federally  
24 mandated minimum standard of fill of 3.23 ounces for these cans. *Id.* Finally, these tests revealed  
25 that 5-ounce cans of StarKist Chunk Light Tuna in Vegetable Oil contain an average of only 2.81  
26 ounces of pressed cake tuna, which is 1.1% below the federally mandated minimum standard of fill  
27 of 2.84 ounces for these cans. *Id.*



**CLASS REPRESENTATION ALLEGATIONS**

1  
2           10. Plaintiff seeks to represent a class defined as all persons in the United States who  
3 purchased StarKist Tuna (the “Class”). Excluded from the Class are persons who made such  
4 purchase for purpose of resale.

5           11. Plaintiff also seeks to represent a subclass of all Class members who purchased  
6 StarKist Tuna in California (the “California Subclass”).

7           12. Members of the Class and Subclass are so numerous that their individual joinder  
8 herein is impracticable. On information and belief, members of the Class and Subclass number in  
9 the hundreds of thousands. The precise number of Class members and their identities are unknown  
10 to Plaintiff at this time but may be determined through discovery. Class members may be notified  
11 of the pendency of this action by mail and/or publication through the distribution records of  
12 Defendant and third party retailers and vendors.

13           13. Common questions of law and fact exist as to all Class members and predominate  
14 over questions affecting only individual Class members. Common legal and factual questions  
15 include, but are not limited to: whether StarKist Tuna is underfilled and thus substantially  
16 underweight; whether Defendant warranted that StarKist Tuna contained an adequate amount of  
17 tuna for a 5-ounce can; whether Defendant warranted that StarKist Tuna is legal for sale in the  
18 United States; whether Defendant breached these warranties; and whether Defendant committed  
19 statutory and common law fraud by doing so.

20           14. The claims of the named Plaintiff are typical of the claims of the Class in that the  
21 named Plaintiff purchased StarKist Tuna in reliance on the representations and warranties  
22 described above, and suffered a loss as a result of that purchase.

23           15. Plaintiff is an adequate representative of the Class and Subclass because his interests  
24 do not conflict with the interests of the Class members he seeks to represent, he has retained  
25 competent counsel experienced in prosecuting class actions, and he intends to prosecute this action  
26 vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and  
27 his counsel.

1           16.    The class mechanism is superior to other available means for the fair and efficient  
2 adjudication of the claims of Class and Subclass members. Each individual Class member may  
3 lack the resources to undergo the burden and expense of individual prosecution of the complex and  
4 extensive litigation necessary to establish Defendant's liability. Individualized litigation increases  
5 the delay and expense to all parties and multiplies the burden on the judicial system presented by  
6 the complex legal and factual issues of this case. Individualized litigation also presents a potential  
7 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer  
8 management difficulties and provides the benefits of single adjudication, economy of scale, and  
9 comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment  
10 of the liability issues will ensure that all claims and claimants are before this Court for consistent  
11 adjudication of the liability issues.

### COUNT I

#### **Breach Of Express Warranty**

12  
13  
14           17.    Plaintiff hereby incorporates by reference the allegations contained in all preceding  
15 paragraphs of this complaint.

16           18.    Plaintiff brings this claim individually and on behalf of the members of the  
17 proposed Class against Defendant.

18           19.    Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,  
19 expressly warranted that StarKist Tuna contained an adequate amount of tuna for a 5-ounce can  
20 and that StarKist Tuna is legal for sale in the United States.

21           20.    In fact, StarKist Tuna is not fit for such purposes because each of these express  
22 warranties is false. Particularly, StarKist Tuna is underfilled and thus substantially underweight,  
23 does not contain an adequate amount of tuna for a 5-ounce can, and is illegal for sale in the United  
24 States.

25           21.    As a direct and proximate cause of Defendant's breach of express warranty, Plaintiff  
26 and Class members have been injured and harmed because: (a) they would not have purchased  
27 StarKist Tuna on the same terms if the true facts were known concerning its quantity and failure to  
28 comply with FDA regulations; (b) they paid a price premium for StarKist Tuna due to Defendant's

1 promises that it contained an adequate amount of tuna for a 5-ounce can; and (c) StarKist Tuna did  
2 not have the characteristics, ingredients, uses, benefits, or quantities as promised.

3 **COUNT II**

4 **Breach Of Implied Warranty Of Merchantability**

5 22. Plaintiff hereby incorporates by reference the allegations contained in all preceding  
6 paragraphs of this complaint.

7 23. Plaintiff brings this claim individually and on behalf of the members of the  
8 proposed Class against Defendant.

9 24. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,  
10 impliedly warranted that StarKist Tuna contained an adequate amount of tuna for a 5-ounce can  
11 and that StarKist Tuna is legal for sale in the United States.

12 25. Defendant breached the warranty implied in the contract for the sale of StarKist  
13 Tuna because it could not pass without objection in the trade under the contract description, the  
14 goods were not of fair average quality within the description, and the goods were unfit for their  
15 intended and ordinary purpose because StarKist Tuna is underfilled and thus substantially  
16 underweight, does not contain an adequate amount of tuna for a 5-ounce can, and is illegal for sale  
17 in the United States. As a result, Plaintiff and Class members did not receive the goods as  
18 impliedly warranted by Defendant to be merchantable.

19 26. Plaintiff and Class members purchased StarKist Tuna in reliance upon Defendant's  
20 skill and judgment and the implied warranties of fitness for the purpose.

21 27. StarKist Tuna was not altered by Plaintiff or Class members.

22 28. StarKist Tuna was defective when it left the exclusive control of Defendant.

23 29. Defendant knew that StarKist Tuna would be purchased and used without additional  
24 testing by Plaintiff and Class members.

25 30. StarKist Tuna was defectively designed and unfit for its intended purpose, and  
26 Plaintiff and Class members did not receive the goods as warranted.

27 31. As a direct and proximate cause of Defendant's breach of the implied warranty,  
28 Plaintiff and Class members have been injured and harmed because: (a) they would not have

1 purchased StarKist Tuna on the same terms if the true facts were known concerning its quantity  
2 and failure to comply with FDA regulations; (b) they paid a price premium for StarKist Tuna due  
3 to Defendant's promises that it contained an adequate amount of tuna for a 5-ounce can; and (c)  
4 StarKist Tuna did not have the characteristics, ingredients, uses, benefits, or quantities as promised.

5 **COUNT III**

6 **Breach Of Implied Warranty Of Fitness For A Particular Purpose**

7 32. Plaintiff hereby incorporates by reference the allegations contained in all preceding  
8 paragraphs of this complaint.

9 33. Plaintiff brings this claim individually and on behalf of the members of the  
10 proposed Class against Defendant.

11 34. Defendant marketed, distributed, and/or sold StarKist Tuna with implied warranties  
12 that it was fit for its intended purposes in that it contained an adequate amount of tuna for a  
13 5-ounce can and that StarKist Tuna is legal for sale in the United States. At the time that StarKist  
14 Tuna was sold, Defendant knew or had reason to know that Plaintiff and Class members were  
15 relying on Defendant's skill and judgment to select or furnish a product that was suitable for sale.

16 35. Plaintiff and Class members purchased StarKist Tuna in reliance upon Defendant's  
17 implied warranties.

18 36. StarKist Tuna was not altered by Plaintiff or Class members.

19 37. As a direct and proximate cause of Defendant's breach of the implied warranty,  
20 Plaintiff and Class members have been injured and harmed because: (a) they would not have  
21 purchased StarKist Tuna on the same terms if the true facts were known concerning its quantity  
22 and failure to comply with FDA regulations; (b) they paid a price premium for StarKist Tuna due  
23 to Defendant's promises that it contained an adequate amount of tuna for a 5-ounce can; and (c)  
24 StarKist Tuna did not have the characteristics, ingredients, uses, benefits, or quantities as promised.

25 **COUNT IV**

26 **Unjust Enrichment**

27 38. Plaintiff hereby incorporates by reference the allegations contained in all preceding  
28 paragraphs of this complaint.





1 47. Plaintiff and the California Subclass suffered injuries caused by Defendant because:  
2 (a) they would not have purchased StarKist Tuna on the same terms if the true facts were known  
3 concerning its quantity and failure to comply with FDA regulations; (b) they paid a price premium  
4 for StarKist Tuna due to Defendant's promises that it contained an adequate amount of tuna for a  
5 5-ounce can; and (c) StarKist Tuna did not have the characteristics, ingredients, uses, benefits, or  
6 quantities as promised.

7 48. On or about January 9, 2013, prior to filing this action, a CLRA notice letter was  
8 served on Defendant which complies in all respects with California Civil Code § 1782(a). Plaintiff  
9 Hendricks sent StarKist a letter via certified mail, return receipt requested, advising StarKist that it  
10 is in violation of the CLRA and demanding that it cease and desist from such violations and make  
11 full restitution by refunding the monies received therefrom. A true and correct copy of Plaintiff  
12 Hendrick's letter is attached hereto as Exhibit A.

13 49. Wherefore, Plaintiff seeks damages, restitution, and injunctive relief for this  
14 violation of the CLRA.

15 **COUNT VI**

16 **Violation Of California's Unfair Competition Law,**  
17 **California Business & Professions Code §§ 17200, *et seq.***

18 50. Plaintiff hereby incorporates by reference the allegations contained in all preceding  
19 paragraphs of this complaint.

20 51. Plaintiff brings this claim individually and on behalf of the members of the  
21 proposed California Subclass against Defendant.

22 52. Defendant is subject to California's Unfair Competition Law, Cal. Bus. & Prof.  
23 Code §§ 17200, *et seq.* The UCL provides, in pertinent part: "Unfair competition shall mean and  
24 include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or  
25 misleading advertising ...."

26 53. Defendant's misrepresentations and other conduct, described herein, violated the  
27 "unlawful" prong of the UCL by violating the CLRA as described herein; the FAL as described  
28 herein; and Cal. Com. Code § 2607.

1           54. Defendant’s misrepresentations and other conduct, described herein, violated the  
2 “unfair” prong of the UCL in that their conduct is substantially injurious to consumers, offends  
3 public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the  
4 conduct outweighs any alleged benefits.

5           55. Defendant violated the “fraudulent” prong of the UCL by making  
6 misrepresentations about StarKist Tuna, as described herein.

7           56. Plaintiff and the California Subclass lost money or property as a result of  
8 Defendant’s UCL violations because: (a) they would not have purchased StarKist Tuna on the  
9 same terms if the true facts were known concerning its quantity and failure to comply with FDA  
10 regulations; (b) they paid a price premium for StarKist Tuna due to Defendant’s promises that it  
11 contained an adequate amount of tuna for a 5-ounce can; and (c) StarKist Tuna did not have the  
12 characteristics, ingredients, uses, benefits, or quantities as promised.

13                                   COUNT VII

14                                   **Violation Of California’s False Advertising Law,  
15                                   California Business & Professions Code §§ 17500, et seq.**

16           57. Plaintiff hereby incorporates by reference the allegations contained in all preceding  
17 paragraphs of this complaint.

18           58. Plaintiff brings this claim individually and on behalf of the members of the  
19 proposed California Subclass against Defendant.

20           59. California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*,  
21 makes it “unlawful for any person to make or disseminate or cause to be made or disseminated  
22 before the public in this state, ... in any advertising device ... or in any other manner or means  
23 whatever, including over the Internet, any statement, concerning ... personal property or services,  
24 professional or otherwise, or performance or disposition thereof, which is untrue or misleading and  
25 which is known, or which by the exercise of reasonable care should be known, to be untrue or  
26 misleading.”  
27  
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1 60. Defendant committed acts of false advertising, as defined by §17500, by  
2 misrepresenting that StarKist Tuna contained an adequate amount of tuna for a 5-ounce can and  
3 that StarKist Tuna is legal for sale in the United States.

4 61. Defendant knew or should have known, through the exercise of reasonable care that  
5 their representations about StarKist Tuna were untrue and misleading.

6 62. Defendant's actions in violation of § 17500 were false and misleading such that the  
7 general public is and was likely to be deceived.

8 63. Plaintiff and the California Subclass lost money or property as a result of  
9 Defendant's FAL violations because: (a) they would not have purchased StarKist Tuna on the  
10 same terms if the true facts were known concerning its quantity and failure to comply with FDA  
11 regulations; (b) they paid a price premium for StarKist Tuna due to Defendant's promises that it  
12 contained an adequate amount of tuna for a 5-ounce can; and (c) StarKist Tuna did not have the  
13 characteristics, ingredients, uses, benefits, or quantities as promised.

14 **COUNT VIII**

15 **Negligent Misrepresentation**

16 64. Plaintiff hereby incorporates by reference the allegations contained in all preceding  
17 paragraphs of this complaint.

18 65. Plaintiff brings this claim individually and on behalf of the members of the  
19 proposed Class against Defendant.

20 66. As discussed above, Defendant misrepresented that StarKist Tuna contained an  
21 adequate amount of tuna for a 5-ounce can and that StarKist Tuna is legal for sale in the United  
22 States. Defendant had a duty to disclose this information.

23 67. At the time Defendant made these representations, Defendant knew or should have  
24 known that these representations were false or made them without knowledge of their truth or  
25 veracity.

26 68. At an absolute minimum, Defendant negligently misrepresented and/or negligently  
27 omitted material facts about StarKist Tuna.

1           69.     The negligent misrepresentations and omissions made by Defendant, upon which  
2 Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually  
3 induced Plaintiff and Class members to purchase StarKist Tuna.

4           70.     Plaintiff and Class members would not have purchased StarKist Tuna if the true  
5 facts had been known.

6           71.     The negligent actions of Defendant caused damage to Plaintiff and Class members,  
7 who are entitled to damages and other legal and equitable relief as a result.

8                               **COUNT IX**

9                               **Fraud**

10          72.     Plaintiff hereby incorporates by reference the allegations contained in all preceding  
11 paragraphs of this complaint.

12          73.     Plaintiff brings this claim individually and on behalf of the members of the  
13 proposed Class against Defendant.

14          74.     As discussed above, Defendant provided Plaintiff and Class members with false or  
15 misleading material information and failed to disclose material facts about StarKist Tuna, including  
16 but not limited to the fact that it contained an adequate amount of tuna for a 5-ounce can and that  
17 StarKist Tuna is legal for sale in the United States. These misrepresentations and omissions were  
18 made with knowledge of their falsehood.

19          75.     The misrepresentations and omissions made by Defendant, upon which Plaintiff and  
20 Class members reasonably and justifiably relied, were intended to induce and actually induced  
21 Plaintiff and Class members to purchase StarKist Tuna.

22          76.     The fraudulent actions of Defendant caused damage to Plaintiff and Class members,  
23 who are entitled to damages and other legal and equitable relief as a result.

24                               **PRAYER FOR RELIEF**

25               WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks  
26 judgment against Defendant, as follows:

- 27           a.     For an order certifying the nationwide Class and the Subclass under Rule 23 of the  
28               Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class

1 and Subclass and Plaintiff's attorneys as Class Counsel to represent the Class and  
2 Subclass members;

- 3 b. For an order declaring the Defendant's conduct violates the statutes referenced  
4 herein;
- 5 c. For an order finding in favor of Plaintiff, the nationwide Class, and the Subclass on  
6 all counts asserted herein;
- 7 d. For compensatory and punitive damages in amounts to be determined by the Court  
8 and/or jury;
- 9 e. For prejudgment interest on all amounts awarded;
- 10 f. For an order of restitution and all other forms of equitable monetary relief;
- 11 g. For injunctive relief as pleaded or as the Court may deem proper; and
- 12 h. For an order awarding Plaintiff and the Class and Subclass his reasonable attorneys'  
13 fees and expenses and costs of suit.

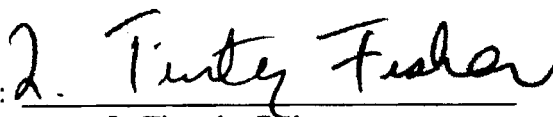
14 **DEMAND FOR TRIAL BY JURY**

15 Plaintiff demands a trial by jury of all issues so triable.

16  
17 Dated: February 19, 2013

Respectfully submitted,

18 **BURSOR & FISHER, P.A.**

19  
20 By:   
21 L. Timothy Fisher

22 L. Timothy Fisher (State Bar No. 191626)  
23 Sarah N. Westcot (State Bar No. 264916)  
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*Attorneys for Plaintiff*

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I, Patrick Hendricks, declare as follows:

1. I am a plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently thereto.

2. The complaint filed in this action is filed in the proper place for trial under California Civil Code Section 1780(d) in that Defendant conducts a substantial amount of business in this District.

3. While living in California, I purchased one or more 5-ounce cans of StarKist Chunk Light Tuna in Water for my household and for my personal use. I purchased StarKist Chunk Light Tuna in Water after I read the label on the can that said it contained an adequate amount of tuna for a 5-ounce can. The representations on the label were substantial factors influencing my decision to purchase StarKist Chunk Light Tuna in Water. I would not have purchased StarKist Chunk Light Tuna in Water had I known that the cans were underfilled and underweight.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on February 15, 2013 at Oakland, California.

  
PATRICK HENDRICKS

**EXHIBIT A**



# BURSOR FISHER

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January 9, 2013

**Via Certified Mail – Return Receipt Requested**

StarKist Co.  
225 N. Shore Dr., Ste. 400  
Pittsburgh, PA 15212

*Re: Demand Letter Pursuant to California Civil Code § 1782*

To Whom It May Concern:

This letter serves as a preliminary notice and demand for corrective action by StarKist Co. (“StarKist”) pursuant to the provisions of California Civil Code § 1782, on behalf of our client, Patrick Hendricks, and a class of all similarly situated purchasers of StarKist Chunk Light Tuna in Water (the “Class”).



Our client purchased one or more 5-ounce cans of StarKist Chunk Light Tuna in Water, which were underfilled and thus substantially underweight. Independent testing by a laboratory retained by our firm determined that 5-ounce cans of StarKist Chunk Light Tuna in Water contain an average of only 2.35 ounces of pressed cake tuna when measured precisely according to the methods specified by 21 C.F.R. § 161.190(c). This is 17.3% below the federally mandated minimum standard of fill for these 5-ounce cans. See 21 C.F.R. § 161.190(c)(2)(i)-(xii). StarKist is cheating purchasers by providing 17.3% less tuna than purchasers are paying for.

By systematically underfilling and selling short-weighted cans of StarKist Chunk Light Tuna in Water, StarKist has violated and continues to violate subsection (a)(5) of the Consumers Legal Remedies Act, Civil Code § 1770, which prohibits representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have.

On behalf of our client and the Class, we hereby demand that StarKist immediately (1) cease and desist from continuing to underfill and sell short-weighted cans of tuna; (2) issue an immediate recall of these underfilled, short-weighted cans; and (3) make full restitution to all purchasers of StarKist tuna of all purchase money obtained from sales thereof.

We also demand that StarKist preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to, the following:


1. All documents concerning the packaging, canning, and manufacturing process for StarKist Chunk Light Tuna in Water;
2. All documents concerning the measurements of the quantity of tuna in StarKist Chunk Light Tuna in Water;
3. All standard of fill tests conducted on StarKist Chunk Light Tuna in Water;
4. All documents concerning the pricing, advertising, marketing, and/or sale of StarKist Chunk Light Tuna in Water;
5. All communications with customers concerning complaints or comments concerning the underfilling, short-weighting, or otherwise referencing the quantity of tuna in StarKist Chunk Light Tuna in Water.

If StarKist contends that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents immediately upon receipt of this letter.

This letter also serves as a thirty (30) day notice and demand requirement under § 1782 for damages. Accordingly, should StarKist fail to rectify the situation on a class-wide basis within 30 days of receipt of this letter, we will seek actual damages, plus punitive damages, interest, attorneys' fees and costs.

Please contact me right away if you wish to discuss an appropriate way to remedy this matter. If I do not hear from you promptly, I will take that as an indication that you are not interested in doing so.

Very truly yours,



L. Timothy Fisher

13-129-100

JS 44 (Rev. 12/12) and rev (1/15/13)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
 PATRICK HENDRICKS, individually and on behalf of all others similarly situated.

**DEFENDANTS**  
 STARKIST CO.

(b) County of Residence of First Listed Plaintiff Alameda  
 (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant \_\_\_\_\_  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (First Name, Address, and Telephone Number)  
 L. Timothy Fisher, Bursor & Fisher, P. A., 1990 North California Blvd., Suite 940, Walnut Creek, CA 94596, Tel: (925) 300-4455

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 130 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>ROYALTY/INTELLECTUAL PROPERTY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DFWW (40)(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. Section 1332 (d)(2)(A)

Brief description of cause:  
Plaintiff alleges that defendant underfills its cans of tuna.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ \_\_\_\_\_  
 CHECK YES only if demanded in complaint  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See Instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 02/19/2013 SIGNATURE OF ATTORNEY OF RECORD: [Signature]

**IX. DIVISIONAL ASSIGNMENT** (Civil L.R. 3-2)

(Place an "X" in One Box Only)  SAN FRANCISCO/OAKLAND  SAN JOSE  EUREKA

**COPY**