

# Superior Court of California County of Orange



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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ORANGE

10

11 DUANA CHENIER, BLAIR ROBINSON, )  
ERIN JAMES, DeMARCUS JAMES, )  
12 individually and on behalf of all others )  
similarly situated, )

13 Plaintiff,

14 vs.

15 SHARKY'S FRANCHISE GROUP, LLC, )  
16 a California limited liability company; FIN )  
CITY FOODS, INC., a California )  
17 corporation; SHARKY'S BEVERLY )  
HILLS, INC., a California corporation; and )  
18 DOES 1 through 300, inclusive, )

19 Defendants.

Case No. 30-2012-00587784 CU-BT-CXC

COMPLEX CASE – CLASS ACTION

**Class Action Complaint For**

1. Violation of Business and Professions Code § 17200 *et seq.*
2. Violation of Business and Professions Code § 17500 *et seq.*
3. Violation of Civil Code § 1750 *et seq.*
4. Negligent Misrepresentation
5. Intentional Misrepresentation
6. Breach of Express Warranty

Judge Kim G. Dunning

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21

22 Plaintiffs DUANA CHENIER, BLAIR ROBINSON, ERIN JAMES, and  
23 DeMARCUS JAMES (each individually a "Plaintiff" and collectively "Plaintiffs") bring  
24 this Class Action Complaint against defendants SHARKY'S FRANCHISE GROUP, LLC;  
25 FIN CITY FOODS, INC.; SHARKY'S BEVERLY HILLS, INC., and DOES 1 through  
26 300 (each a Defendant and collectively "Defendants"). Plaintiffs bring this Class Action  
27 Complaint individually and on behalf of all similarly situated persons within California  
28 who purchased from a Sharky's Woodfired Mexican Grill a food product that was

1 represented to be made with Mahi Mahi fish.

2 **NATURE OF THE ACTION**

3 1. This is a class action that stems from Defendants’ scheme to falsely,  
4 misleadingly, deceptively, fraudulently, and unlawfully promote and sell at restaurants  
5 known as Sharky’s Woodfired Mexican Grill (each hereafter referred to as a “Sharky’s  
6 Restaurant”) food products that Defendants represented to be made with Mahi Mahi fish  
7 but which did not actually contain Mahi Mahi fish (the “Product”). These include the  
8 items that Defendants’ identified on the menu boards in each Sharky’s Restaurant as  
9 World Famous Tempura Mahi Mahi Tacos and Mahi Mahi Power Plate. Defendants made  
10 and continue to make these representations on large menu boards that are prominently  
11 displayed in each Sharky’s Restaurant, in print advertisements that are prominently  
12 displayed in each Sharky’s Restaurant, on the Internet, and elsewhere. Defendants made  
13 and continue to make these false representations as part of their deceptive, fraudulent,  
14 misleading, and unlawful scheme to deceive consumers and, thus, increase sales of the  
15 Product. Through these material misrepresentations, Defendants violate numerous  
16 provisions of the law, including California Business & Professions Code § 17200 *et seq.*  
17 (the Unfair Competition Law or “UCL”), California Business & Professions Code § 17500  
18 *et seq.* (the False Advertising Law or “FAL”), and California Civil Code § 1750 *et seq.*  
19 (the Consumer Legal Remedies Act or “CLRA”).

20 **PARTIES**

21 2. Plaintiff Duana Chenier is and at all relevant times was an individual residing  
22 in the county of Los Angeles in the state of California. She was exposed to and believed  
23 Defendants’ representations about the Product. In reliance on these representations,  
24 Plaintiff purchased the Product. Because Defendants’ representations about the Product  
25 were false, misleading, deceptive, fraudulent, and unlawful, the Product that Plaintiff  
26 received in exchange for her hard-earned money was not as Defendants had represented it  
27 to be. Plaintiff Duana Chenier lost property, suffered injury-in-fact, and suffered damages  
28 as a result her purchase of the Product.

1           3.       Plaintiff Blair Robinson is and at all relevant times was an individual  
2 residing in the county of Los Angeles in the state of California. She was exposed to and  
3 believed Defendants’ representations about the Product. In reliance on these  
4 representations, Plaintiff purchased the Product. Because Defendants’ representations  
5 about the Product were false, misleading, deceptive, fraudulent, and unlawful, the Product  
6 that Plaintiff received in exchange for her hard-earned money was not as Defendants had  
7 represented it to be. Plaintiff Blair Robinson lost property, suffered injury-in-fact, and  
8 suffered damages as a result her purchase of the Product.

9           4.       Plaintiff Erin James is and at all relevant times was an individual residing in  
10 the county of Los Angeles in the state of California. She was exposed to and believed  
11 Defendants’ representations about the Product. In reliance on these representations,  
12 Plaintiff purchased the Product. Because Defendants’ representations about the Product  
13 were false, misleading, deceptive, fraudulent, and unlawful, the Product that Plaintiff  
14 received in exchange for her hard-earned money was not as Defendants had represented it  
15 to be. Plaintiff Erin James lost property, suffered injury-in-fact, and suffered damages as a  
16 result her purchase of the Product.

17           5.       Plaintiff DeMarcus James is and at all relevant times was an individual  
18 residing in the county of Los Angeles in the state of California. He was exposed to and  
19 believed Defendants’ representations about the Product. In reliance on these  
20 representations, Plaintiff purchased the Product. Because Defendants’ representations  
21 about the Product were false, misleading, deceptive, fraudulent, and unlawful, the Product  
22 that Plaintiff received in exchange for her hard-earned money was not as Defendants had  
23 represented it to be. Plaintiff DeMarcus James lost property, suffered injury-in-fact, and  
24 suffered damages as a result her purchase of the Product.

25           6.       Defendant Sharky’s Franchise Group, LLC, is a California limited liability  
26 company that has its headquarters and principle place of business in Westlake Village,  
27 California. It owns and operates the Sharky’s Restaurants throughout the State of  
28 California. It made and continues to make the false representations described in this

1 Complaint, including those described in Paragraph 14. It promotes and sells the Product at  
2 the Sharky's Restaurants throughout the State of California. It has received and will  
3 continue to receive substantial benefits and income from each sale of the Product at each  
4 Sharky's Restaurant. It authorized the false, misleading, deceptive, fraudulent, and  
5 unlawful misrepresentations about the Product described herein through its officers,  
6 directors, and managing agents.

7         7. Defendant Fin City Foods, Inc., is a California corporation that has its  
8 headquarters and principle place of business in Tustin, California. It owns and operates the  
9 Sharky's Restaurants throughout the State of California. It made and continues to make  
10 the false representations described in this Complaint, including those described in  
11 Paragraph 14. It promotes and sells the Product at the Sharky's Restaurants throughout the  
12 State of California. It has received and will continue to receive substantial benefits and  
13 income from each sale of the Product at each Sharky's Restaurant. It authorized the false,  
14 misleading, deceptive, fraudulent, and unlawful misrepresentations about the Product  
15 described herein through its officers, directors, and managing agents.

16         8. Defendant Sharky's Beverly Hills, Inc., is a California corporation that has  
17 its headquarters and principle place of business in Westlake Village, California. It  
18 operates the Sharky's Restaurants throughout the State of California. It made and  
19 continues to make the false representations described in this Complaint, including those  
20 described in Paragraph 14. It promotes and sells the Product at the Sharky's Restaurants  
21 throughout the State of California. It has received and will continue to receive substantial  
22 benefits and income from each sale of the Product at each Sharky's Restaurant. It  
23 authorized the false, misleading, deceptive, fraudulent, and unlawful misrepresentations  
24 about the Product described herein through its officers, directors, and managing agents.

25         9. The names of defendants DOES 1 through 300, inclusive, are presently  
26 unknown to Plaintiffs, who therefore sue these defendants by fictitious names. Plaintiffs  
27 will seek leave of this Court to amend the Complaint to show these defendants' true names  
28 and capacities when the same have been ascertained. Plaintiffs are informed and believe,

1 and based thereon allege, that these defendants made and/or authorized the false,  
2 misleading, deceptive, fraudulent, and unlawful misrepresentations about the Product  
3 and/or sold the non-conforming Product to Class members and other consumers in the  
4 State of California. These defendants have received, and will continue to receive,  
5 substantial benefits and income through these activities.

6 10. Plaintiffs are informed and believe and based thereon allege that at all  
7 relevant times each of the defendants was the agent, servant, employee, subsidiary,  
8 affiliate, partner, assignee, successor-in-interest, alter ego, joint venturer, and/or other  
9 representative of each of the remaining defendants and was acting in such capacity in  
10 doing the things herein alleged.

### 11 JURISDICTION AND VENUE

12 11. This Court has jurisdiction over all causes of action asserted herein pursuant  
13 to the California Constitution, Article VI, § 10. This lawsuit is a cause not given by statute  
14 to other trial courts. Plaintiffs have standing to bring this action pursuant to the UCL,  
15 FAL, and CLRA.

16 12. Venue is proper in this Court because Defendant Fin City Foods, Inc., has its  
17 principal place of business in the City of Tustin, which is located in Orange County, and is  
18 doing business in Orange County. Additionally, Defendants made the false representations  
19 that are the subject of this lawsuit and sold the non-conforming Product that is the subject  
20 of this lawsuit at Sharky's Restaurants located in the cities of Newport Beach, Irvine, and  
21 Tustin, which are each located in Orange County.

22 13. Defendants and out-of-state parties can be brought before this Court pursuant  
23 to Code of Civil Procedure § 395.5.

### 24 FACTUAL BACKGROUND

25 14. Since at least four years prior to the date of the filing of this lawsuit,  
26 Defendants owned and operated the Sharky's Restaurants throughout the State of  
27 California. During this time, Defendants uniformly represented on a large menu board that  
28 was prominently displayed above the ordering station and cash register in each Sharky's

1 Restaurant that the Product was made with Mahi Mahi fish. Defendants uniformly  
2 repeated this representation in printed menus that were also prominently displayed  
3 adjacent to the ordering station and cash register in each Sharky's Restaurant.

4 15. Defendants' representations about the Product, including the representations  
5 that the Product was made with Mahi Mahi, are and at all times since at least four years  
6 prior to the date of the filing of this lawsuit were false. During this time, each Sharky's  
7 Restaurant did not include Mahi Mahi fish in the food items that Defendants represented to  
8 be made from Mahi Mahi fish. More specifically, Defendants did not include Mahi Mahi  
9 fish in the items that they called Tempura Mahi Mahi Tacos, World Famous Tempura  
10 Mahi Mahi Tacos, and Mahi Mahi Power Plate.

11 16. Defendant Sharky's Franchise Group, LLC, admitted on its website  
12 (<http://www.sharky's.com/locations/index.html>) that the Product did not contain Mahi  
13 Mahi fish. Defendants did not at any time disclose this material fact on the menu board  
14 that was prominently displayed above the ordering station and the cash register in each  
15 Sharky's Restaurant or on the printed menus that were also prominently displayed adjacent  
16 to the ordering station and the cash register in each Sharky's Restaurant, even after  
17 Defendants made this admission on their website.

18 17. Each Plaintiff was exposed to and reviewed the false representations about  
19 the Product that Defendants disseminated, including the false representations identified in  
20 Paragraph 14. Each Plaintiff reasonably believed that these false representations were true.  
21 In reliance on these false representations, each Plaintiff purchased the Product at least once  
22 from a Sharky's Restaurant. Each Plaintiff would not have purchased the Product if the  
23 Plaintiff had known that the representations about the Product identified in Paragraph 14  
24 were false, misleading, deceptive, fraudulent, and unlawful.

25 18. Prior to purchasing the Product, each Plaintiff reasonably believed that the  
26 Product was made with Mahi Mahi fish. Each Plaintiff would not have purchased the  
27 Product if the Plaintiff had known that the Product was in actuality not made with Mahi  
28 fish.



- 1 f. Whether Defendants knew or should have known that their  
2 representations about the Product were false and misleading;  
3 g. Whether Defendants' conduct is an unfair method of competition  
4 and/or an unfair or deceptive act or practice within the meaning of the  
5 CLRA;  
6 h. Whether Defendants represented that the Product has ingredients,  
7 characteristics, benefits, uses or quantities that it does not have; and  
8 i. Whether Defendants represented that the Product is of a particular  
9 standard, quality, or grade or that it is of a particular style, when it is  
10 of another.

11 23. The claims of each Plaintiff is, and of all Plaintiffs are, typical of the claims  
12 of the Class, and each Plaintiff will fairly and adequately represent and protect the interests  
13 of the Class. Plaintiffs have retained counsel who is competent and experienced in class  
14 actions and other complex litigation.

15 24. Plaintiffs and the Class have suffered injury-in-fact, have lost money, and  
16 have suffered damages as a result of Defendants' conduct.

17 25. Absent a class action, Defendants will likely retain the benefits of their  
18 wrongdoing. Because of the relative size of each individual Class member's claims, few,  
19 if any, Class members could afford to seek legal redress for the wrongs about which  
20 Plaintiffs complain. Absent a representative action, the Class members will continue to  
21 suffer losses and Defendants will be allowed to continue these violations of law and to  
22 retain the ill-gotten proceeds of their fraudulent scheme.

23 **FIRST CAUSE OF ACTION**

24 **Violation of Business & Professions Code § 17200 et seq.**

25 **(By Plaintiffs against all defendants)**

26 26. Plaintiffs repeat and re-allege Paragraphs 1 through 25, inclusive, and  
27 incorporate the same as if set forth herein at length.

28 27. The UCL prohibits unfair, unlawful and/or fraudulent business practices as

1 well as false, misleading and/or deceptive advertising. Bus. & Prof. C. § 17200. It also  
2 prohibits any violation of the FAL. *Id.*

3 28. The UCL is modeled after Section 5 of the Federal Trade Commission Act,  
4 15 U.S.C. 45 (“FTCA”). Accordingly, decisional authorities interpreting Section 5 of the  
5 FTCA are “more than ordinarily persuasive” in interpreting the UCL. *People ex rel. Mosk*  
6 *v. National Research Co. of Calif.* (1962) 201 Cal.App.2d 765, 772-773. Indeed, courts  
7 frequently turn to FTCA cases to interpret the UCL. *See, e.g., O’Conner v. Sup. Ct.* (1986)  
8 177 Cal.App.3d 1013, 1018; *People v. Toomey* (1985) 157 Cal.App.3d 1, 15.

9 29. A scheme to mislead consumers is actionable under the UCL. *See*  
10 *Committee on Children’s Television, Inc. v. General Foods Corporation* (1983) 35 Cal.3d  
11 197, 212-213. For pleading purposes, a class action “plaintiff need not plead the exact  
12 language of every deceptive statement; it is sufficient for plaintiff to describe a scheme to  
13 mislead customers, and allege that each representation to each customer conforms to that  
14 scheme.” *Id.* All parties that scheme to defraud are directly liable for all  
15 misrepresentations made in connection with the scheme, as are parties who knowingly aid  
16 and abet the fraud or furnish the means for its accomplishment. *See People v. Bestline*  
17 *Products, Inc.* (1976) 61 Cal.App.3d 879, 918-919, *citing American Philatelic Soc. v.*  
18 *Claiborne* (1935) 3 Cal.2d 689.

19 30. Even a technically true statement is actionable if the statement is likely to  
20 mislead the reasonable consumer. *See People v. Lyman* (1967) 253 Cal.App.3d 959, 966;  
21 *Kalwaytys v. Federal Trade Commission*, 237 F.2d. 654, 656 (7<sup>th</sup> Cir. 1956) (applying  
22 same rule under Federal Trade Commission Act); *Federal Trade Commission v.*  
23 *Cyberspace.Com LLC*, 453 F.3d 1196 (9th Cir. 2006) (misleading net impression is  
24 actionable).

25 31. Defendants made the representations identified in Paragraph 14, and other  
26 misrepresentations, as part of a common scheme to mislead consumers into believing that  
27 the Product is made with Mahi Mahi fish. These representations about the Product are  
28 false, misleading, deceptive, unlawful, and fraudulent under the UCL. Plaintiffs and the

1 Class reasonably relied on these false representations and purchased the Product in reliance  
2 on them. As such, Plaintiffs and the Class have suffered injury-in-fact and have lost  
3 money as a result of Defendants’ false, misleading, deceptive, unlawful, and fraudulent  
4 representations.

5         32. Defendants’ false representations, identified in Paragraph 14, violate  
6 numerous statutes, including California Civil Code § 1710 (Deceit), the FAL, and the  
7 CLRA, and the FTCA. Defendants violate Civil Code § 1710, the FAL, and the CLRA by  
8 making false, misleading, deceptive, unlawful, and fraudulent representations about the  
9 Product, as described above. Defendants violate the FTCA because they cannot  
10 substantiate their false, misleading, deceptive, and fraudulent representations about the  
11 Product, as the FTCA requires. As a result of these violations, Defendants’ false  
12 representations and the sale of the Product as a result of those representations also  
13 constitute unlawful acts under the UCL.

14         33. Pursuant to Business & Professions Code §§ 17203 and 17535, Plaintiffs and  
15 the Class seek an Order enjoining Defendants from continuing to make the aforementioned  
16 false, misleading, deceptive, fraudulent, and unlawful representations. Plaintiffs and the  
17 Class also seek an Order directing Defendants to affirmatively disclose to the public in  
18 California that their prior misrepresentations were false, misleading, deceptive fraudulent,  
19 and unlawful so that the public does not continue to maintain the false impressions that  
20 Defendants’ prior misrepresentations created. Plaintiff and the Class also seek an Order  
21 that directs Defendants to disgorge all monies that they received from the sale of the  
22 Product in the State of California during the Class Period, permits each Class member to  
23 obtain restitution for his/her purchase(s) of the Product in the State of California during the  
24 Class Period, and distributes any remainder of the disgorged amount under the doctrine of  
25 *cy pres*.

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1 **SECOND CAUSE OF ACTION**

2 **Violation of Business & Professions Code § 17500 et seq.**

3 **(By Plaintiffs against all defendants)**

4 34. Plaintiffs repeat and re-allege Paragraphs 1 through 25, inclusive, and  
5 incorporate the same as if set forth herein at length.

6 35. The FAL prohibits the dissemination before the public in this state of any  
7 statement, made in connection with the sale of a product, that is known or that should  
8 reasonably be known to be false or misleading.

9 36. Defendants created, disseminated and/or caused to be disseminated the  
10 representations, promotional statements, and advertisements identified in Paragraph 14.

11 37. Defendants disseminated these representations, promotional statements, and  
12 advertisements as part of a common scheme to mislead consumers into believing that the  
13 Product is made with Mahi Mahi fish.

14 38. Defendants' representations and advertisements about the Product are false,  
15 misleading, deceptive, and fraudulent under the FAL. And, Defendants made these  
16 representations while Defendants knew or should have known that they were false  
17 misleading, deceptive, and fraudulent. Plaintiffs and the Class have suffered injury-in-fact  
18 and have lost money as a result of Defendants' false, misleading, deceptive, and fraudulent  
19 representations.

20 39. Pursuant to Business & Professions Code §§ 17203 and 17535, Plaintiffs and  
21 the Class seek an Order enjoining Defendants from continuing to make the aforementioned  
22 false, misleading, deceptive, and fraudulent advertisements. Plaintiffs and the Class also  
23 seek an Order directing Defendants to affirmatively disclose to the public in California that  
24 the aforementioned advertisements were false, misleading, deceptive, and fraudulent so  
25 that the public does not continue to maintain the false impressions that Defendants' prior  
26 false representations and advertisements created. Plaintiffs and the Class also seek an  
27 Order that directs Defendants to disgorge all monies they received from the sale of the  
28 Product in the State of California during the Class Period, permits each Class member to

1 obtain restitution for his/her purchase(s) of the Product in the State of California during the  
2 Class Period, and distributes any remainder of the disgorged amount under the doctrine of  
3 *cy pres*.

4 **THIRD CAUSE OF ACTION**

5 **Violation of California Civil Code § 1750 et seq.**

6 **(By Plaintiff against all defendants)**

7 40. Plaintiffs repeat and re-allege Paragraphs 1 through 25, inclusive, and  
8 incorporate the same as if set forth herein at length.

9 41. The CLRA prohibits the following unfair methods of competition and unfair  
10 or deceptive acts or practices when undertaking in connection with a transaction that is  
11 intended to result or that does result in the sale of goods to a consumer:

12 a. “Representing that goods or services have sponsorship, approval,  
13 characteristics, ingredients, uses, benefits, or quantities which they do  
14 not have or that a person has a sponsorship, approval, status,  
15 affiliation, or connection which he or she does not have.” Civil Code  
16 § 1770(a)(5).

17 b. “Representing that goods or services are of a particular standard,  
18 quality, or grade, or that goods are of a particular style or model, if  
19 they are of another.” Civil Code § 1770(a)(7).

20 42. Defendants made the false representations identified in Paragraph 14.  
21 Defendants made these false, misleading, deceptive, fraudulent, and unlawful  
22 misrepresentations about the Product with the intent that Plaintiff, the Class, and other  
23 consumers in the State of California would buy the Product. In doing so, Defendants  
24 violated and continue to violate the CLRA. Plaintiff and the Class have been damaged as a  
25 result of Defendants’ false representations.

26 43. Defendants were aware of the falsity of the misrepresentations identified in  
27 Paragraph 14 yet nonetheless made them as part of their fraudulent scheme to induce  
28 Plaintiff and the Class to buy the Product. Defendants had no reasonable basis to make

1 these representations.

2 44. Pursuant to Civil Code § 1782, Plaintiffs will notify Defendants in writing of  
3 the particular violations of the CLRA alleged in this amended Complaint (the “Notice”)  
4 and will demand that Defendants pay restitution to Plaintiffs and the Class members.  
5 Plaintiffs will serve this Notice by certified mail, return-receipt requested, to each  
6 Defendant at its principal place of business and/or its registered agent for service of  
7 process. If, thereafter, Defendants fail to adequately respond to the Notice within 30 days,  
8 Plaintiffs will amend this amended Class Action Complaint to request statutory damages,  
9 actual damages, and punitive damages in connection with this cause of action.

10 45. Pursuant to Civil Code §§ 1780 and 1781, Plaintiffs and the Class seek an  
11 Order enjoining Defendants from continuing to make the aforementioned false,  
12 misleading, and unlawful representations. Plaintiffs and the Class also seek an Order  
13 directing Defendants to affirmatively disclose to the public in the State of California the  
14 falsity and unlawfulness of their prior misrepresentations so that the public does not  
15 continue to maintain the false impressions that Defendants’ prior false representations  
16 created. Plaintiff and the Class also seek an Order that directs Defendants to disgorge all  
17 monies that they received from the sale of the Product in the State of California during the  
18 Class Period, permits each Class member to receive restitution for his/her purchase(s) of  
19 the Product in the State of California during the Class Period, and distributes any  
20 remainder of the disgorged amount under the doctrine of *cy pres*.

21 **FOURTH CAUSE OF ACTION**

22 **Negligent Misrepresentation**

23 **(By Plaintiff against all defendants)**

24 46. Plaintiffs repeat and re-allege Paragraphs 1 through 25, inclusive, and  
25 incorporate the same as if set forth herein at length.

26 47. Defendants made the representations identified in Paragraph 14. Defendants  
27 made these misrepresentations as part of a common scheme to mislead consumers into  
28 believing that the Product is made with Mahi Mahi fish.

1 48. Defendants' representations about the Product were false, misleading, and  
2 deceptive, as set forth above.

3 49. Defendants made these representations with the intent of inducing Plaintiffs  
4 and Class members to purchase the Product.

5 50. Plaintiffs and Class members reasonably believed Defendants'  
6 representations and purchased the Product in reliance on those representations.

7 51. When Defendants made these representations, they had no reasonable  
8 grounds for believing that the representations were true.

9 52. In reasonable reliance on Defendants' representations, Plaintiffs and the  
10 Class purchased the Product. Yet, instead of receiving what the Defendants represented,  
11 Plaintiffs and the Class received a product that was not as Defendants represented it to be.  
12 Accordingly, Plaintiffs and the Class suffered damage in the amount of the purchase price  
13 of the Product plus other damages.

14 **FIFTH CAUSE OF ACTION**

15 **Intentional Misrepresentation**

16 **(By Plaintiff against all defendants)**

17 53. Plaintiffs repeat and re-allege Paragraphs 1 through 25, inclusive, and  
18 incorporate the same as if set forth herein at length.

19 54. Defendants created, disseminated and/or caused to be disseminated the false  
20 representations identified in Paragraph 14. Defendants made these false representations as  
21 part of a common scheme to mislead consumers into believing that the Product is a made  
22 with Mahi Mahi fish.

23 55. Defendants' representations were not true, as previously discussed.  
24 Defendants knew that the representations were false when they made them; Defendants  
25 made them recklessly and without regard for their truth.

26 56. Defendants intended that Plaintiff and the public would rely on their false  
27 representations.

28 57. In reasonable reliance on Defendants' false representations, Plaintiff and the

1 Class purchased the Product. Yet, instead of receiving what Defendants represented,  
2 Plaintiff and the Class received a product that was other than what Defendants represented.  
3 Accordingly, Plaintiffs and the Class suffered damage in the amount of the purchase price  
4 of the Product plus other damages.

5 58. Defendants knew when they made the aforementioned representations that  
6 the representations were false. Defendants intended that Plaintiffs and the Class would  
7 reasonably rely on the false representations. Plaintiffs and the Class did rely on these false  
8 representations and purchased the Product, to their detriment. In this context, Defendants'  
9 conduct constituted malice, oppression and fraud. Plaintiffs and the Class are therefore  
10 intended to recover punitive or exemplary damages.

11 **SIXTH CAUSE OF ACTION**

12 **Breach of Express Warranty**

13 **(By Plaintiff against all defendants)**

14 59. Plaintiffs repeat and re-allege Paragraphs 1 through 14, inclusive, and  
15 incorporate the same as if set forth herein at length.

16 60. Defendants expressly warranted to Plaintiff and the Class that the Product  
17 was made with Mahi Mahi fish. Defendants made these false representations on large  
18 menu boards that are prominently displayed in each Sharky's Restaurant, in print  
19 advertisements that are prominently displayed in each Sharky's Restaurant, and on the  
20 Internet.

21 61. Plaintiffs and the Class reasonably relied on these express warranties when  
22 they purchased the Product.

23 62. The Product did not conform to Defendants' express warranties because the  
24 Product is not made with Mahi Mahi fish, as Defendant Sharky's Franchise Group, LLC,  
25 admits on its website.

26 63. In reasonable reliance on Defendants' express warranties, Plaintiffs and the  
27 Class purchased the Product. Yet, instead of receiving what Defendants expressly  
28 warranted, Plaintiffs and the Class received an unapproved prescription drug that cannot be

1 legally sold or bought in the United States. Accordingly, Plaintiffs and the Class suffered  
2 damages in the amount of the purchase price of the Product and other damages.

3 **PRAYER FOR RELIEF**

4 Plaintiffs pray for the following judgment and relief, each individually and on  
5 behalf of the Class:

- 6 1. An Order certifying the action as a Class Action;
- 7 2. Judgment in favor of Plaintiffs and the Class and against Defendants on each  
8 cause of action;
- 9 3. An Order that directs Defendants to disgorge all monies they received from  
10 the sale of the Product in the State of California during the Class Period, permits each  
11 Class member to receive restitution for his/her purchase(s) of the Product in the State of  
12 California during the Class Period, and distributes any remainder of the disgorged amount  
13 under the doctrine of *cy pres*;
- 14 4. An Order directing Defendants to affirmatively disclose to the public in  
15 California that their prior representations about the Product were false, misleading,  
16 deceptive, fraudulent, and unlawful so that the public in California does not continue to  
17 maintain the false impressions that Defendants' prior misrepresentations and false  
18 advertisements created;
- 19 5. An order enjoining Defendants from pursuing the policies, acts, and practices  
20 complained of herein;
- 21 6. Compensatory damages;
- 22 7. Punitive Damages on the Fifth Cause of Action (Intentional  
23 Misrepresentation);
- 24 8. Reasonable attorneys' fees;
- 25 9. Costs of this suit; and

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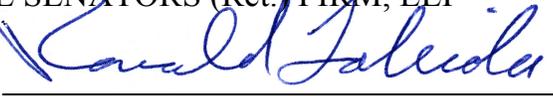
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1           10.    Such other and further relief as the Court may deem necessary or  
2 appropriate.

3  
4 DATED: July 31, 2012

THE SENATORS (Ret.) FIRM, LLP

By: 

Thomas M. Moore  
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Attorneys for Plaintiffs  
DUANA CHENIER,  
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