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SUBWAY RESTAURANTS, INC.,
7 FRANCHISE WORLD HEADQUARTERS, LLC and
SUBWAY FRANCHISEE ADVERTISING TRUST FUND LTD.
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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 NILIMA AMIN, on behalf of herself and all others
similarly situated,

12 Plaintiff,

13 vs.

14 SUBWAY RESTAURANTS, INC., a Delaware
15 Corporation; FRANCHISE WORLD
HEADQUARTERS, LLC., a Connecticut Limited
16 Liability Corporation; SUBWAY FRANCHISEE
ADVERTISING TRUST FUND LTD., a
17 Connecticut Corporation; and DOES 1 through 50,
Inclusive,

18 Defendants.
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Case No. 4:21-cv-00498-JST

**DEFENDANTS' ANSWER TO THIRD
AMENDED COMPLAINT**

Ctrm: Courtroom 6 – 2nd Floor
Judge: Hon. Jon S. Tigar
Oakland Courthouse

Complaint Filed: January 21, 2021
Amended Complaint Filed: June 8, 2021
Second Amended Complaint Filed:
November 8, 2021
Third Amended Complaint Filed
July 28, 2022

1 Defendants Subway Restaurants, LLC (improperly sued as “Subway Restaurants, Inc.”),
2 Franchise World Headquarters, LLC and Subway Franchisee Advertising Fund Trust LTD.
3 (improperly sued as “Subway Franchisee Advertising Trust Fund LTD.”) hereby answer Plaintiff
4 Nilma Amin’s Third Amended Complaint as follows:

5 **“NATURE OF ACTION”**

6 1. Paragraph 1 of the complaint states a legal conclusion to which no response is required.
7 To the extent a response is required, Defendants deny the allegations.

8 2. Paragraph 2 of the complaint states a legal conclusion to which no response is required.
9 To the extent a response is required, Defendants deny the allegations.

10 3. Paragraph 3 of the complaint states a legal conclusion to which no response is required.
11 To the extent a response is required, Defendants deny the allegations.

12 4. Paragraph 4 of the complaint states a legal conclusion to which no response is required.
13 To the extent a response is required, Defendants deny the allegations.

14 5. Paragraph 5 of the complaint states a legal conclusion to which no response is required.
15 To the extent a response is required, Defendants deny the allegations.

16 6. Paragraph 6 of the complaint states a legal conclusion to which no response is required.
17 To the extent a response is required, Defendants deny the allegations.

18 7. Paragraph 7 of the complaint states a legal conclusion to which no response is required.
19 To the extent a response is required, Defendants deny the allegations.

20 8. Paragraph 8 of the complaint states a legal conclusion to which no response is required.
21 To the extent a response is required, Defendants deny the allegations.

22 9. Paragraph 9 of the complaint states a legal conclusion to which no response is required.
23 To the extent a response is required, Defendants deny the allegations.

24 **“JURISDICTION AND VENUE”**

25 10. Paragraph 10 of the complaint states a legal conclusion as to jurisdiction to which no
26 response is required. To the extent a response is required, Defendants deny the allegations.

1 17. Paragraph 17 of the complaint states a legal conclusion to which no response is
2 required. To the extent a response is required, Defendants deny the allegations.

3 **“FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS”**

4 **A. “Subway Falsely Advertises the Tuna Products as Being ‘Tuna’ and ‘100% Tuna’”**

5 18. Defendants lack knowledge or information sufficient to form a belief concerning the
6 truth of the allegations in Paragraph 18 of the complaint and, therefore, deny all of those
7 allegations.

8 19. Paragraph 19 of the complaint states a legal conclusion to which no response is
9 required. To the extent a response is required, Defendants deny the allegations.

10 20. Paragraph 20 of the complaint states a legal conclusion to which no response is
11 required. To the extent a response is required, Defendants deny the allegations.

12 21. Defendants admit that in-store menus and websites refer to products containing tuna.
13 Defendants deny any and all other allegations.

14 22. Defendants lack knowledge or information sufficient to form a belief concerning the
15 truth of the allegations in Paragraph 22 of the complaint and, therefore, deny all of those
16 allegations.

17 23. Defendants lack knowledge or information sufficient to form a belief concerning the
18 truth of the allegations in Paragraph 23 of the complaint and, therefore, deny all of those
19 allegations.

20 24. Defendants lack knowledge or information sufficient to form a belief concerning the
21 truth of the allegations in Paragraph 24 of the complaint and, therefore, deny all of those
22 allegations.

23 25. Paragraph 25 of the complaint states a legal conclusion to which no response is
24 required. To the extent a response is required, Defendants deny the allegations.

25 26. Defendants admit that Subway restaurant franchisees in California may use the same
26 supply chain for products, including tuna. Defendants deny any and all other allegations in
27 Paragraph 26 of the complaint.

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1 27. Paragraph 27 of the complaint states legal conclusions to which no response is
2 required. To the extent a response is required, Defendants deny the allegations.

3 28. Paragraph 28 of the complaint states legal conclusions to which no response is
4 required. To the extent a response is required, Defendants deny the allegations.

5 29. Paragraph 29 of the complaint states a legal conclusion to which no response is
6 required. To the extent a response is required, Defendants respond that the statutes referenced in
7 that paragraph are the best evidence of their meaning and content and Defendants deny the
8 remaining allegations.

9 30. Paragraph 30 of the complaint states a legal conclusion to which no response is
10 required. To the extent a response is required, Defendants deny the allegations.

11 31. Paragraph 31 of the complaint states a legal conclusion to which no response is
12 required. To the extent a response is required, Defendants respond that the statute referenced in that
13 paragraph is the best evidence of its meaning and content and Defendants deny the remaining
14 allegations.

15 32. Paragraph 32 of the complaint states a legal conclusion to which no response is
16 required. To the extent a response is required, Defendants respond that the statute referenced in that
17 paragraph is the best evidence of its meaning and content and Defendants deny the remaining
18 allegations.

19 33. Paragraph 33 of the complaint states a legal conclusion to which no response is
20 required. To the extent a response is required, Defendants respond that the statutes referenced in
21 that paragraph are the best evidence of their meaning and content and Defendants deny the
22 remaining allegations.

23 34. Paragraph 34 of the complaint states legal conclusions to which no response is
24 required. To the extent a response is required, Defendants deny the allegations.

25 **B. “Plaintiff’s Experience”**

26 35. Defendants lack knowledge or information sufficient to form a belief concerning the
27 truth of the allegations in Paragraph 35 of the complaint and, therefore, deny all of those allegations.

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1 36. Defendants lack knowledge or information sufficient to form a belief concerning the
2 truth of the allegations in Paragraph 36 of the complaint and, therefore, deny all of those allegations.

3 37. Paragraph 37 of the complaint states a legal conclusion to which no response is
4 required. To the extent a response is required, Defendants lack knowledge or information sufficient
5 to form a belief concerning the truth of the allegations in Paragraph 37 of the complaint and,
6 therefore, deny all of those allegations.

7 38. Defendants deny the allegations in Paragraph 38 of the complaint.

8 39. Defendants lack knowledge or information sufficient to form a belief concerning the
9 truth of the allegations in Paragraph 39 of the complaint and, therefore, deny all of those allegations.

10 40. Defendants deny the allegations in Paragraph 40 of the complaint.

11 41. Paragraph 41 of the complaint and its subparts state legal conclusions to which no
12 response is required. To the extent a response is required, Defendants deny the allegations.

13 **C. “Class Action Allegations”**

14 42. Paragraph 42 of the complaint states a legal conclusion to which no response is
15 required. To the extent a response is required, Defendants admit that the plaintiff purports to seek
16 to represent a class of individuals but deny that any class should be certified in relation to this matter
17 and deny the remaining allegations in Paragraph 42.

18 43. Paragraph 43 of the complaint states a legal conclusion to which no response is
19 required. To the extent a response is required, Defendants admit that the plaintiff purports to seek
20 to represent a class of individuals but deny that any class should be certified in this matter and deny
21 the remaining allegations in Paragraph 43.

22 44. Paragraph 44 of the complaint and its subparts state a legal conclusion to which no
23 response is required. To the extent a response is required, Defendants admit that the plaintiff
24 purports to seek to represent a class of individuals but deny that any class should be certified in this
25 matter and deny the remaining allegations in Paragraph 44.

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1 **“FIRST CAUSE OF ACTION**

2 **Common Law Fraud”**

3 45. In response to Paragraph 45 of the complaint, Defendants incorporate their responses
4 to the allegations in Paragraphs 1 through 44 of the complaint as though fully set forth herein.

5 46. Defendants admit that the plaintiff purports to seek to represent a class of individuals
6 and herself but they deny that any such class should be certified.

7 47. Defendants deny the allegations in Paragraph 47 of the complaint.

8 48. Defendants deny the allegations in Paragraph 48 of the complaint.

9 49. Defendants deny the allegations in Paragraph 49 of the complaint.

10 **“SECOND CAUSE OF ACTION**

11 **Intentional Misrepresentation”**

12 50. In response to Paragraph 50 of the complaint, Defendants incorporate their responses
13 to the allegations of Paragraphs 1 through 49 of the complaint as though fully set forth herein.

14 51. Defendants deny the allegations of Paragraph 51 of the complaint.

15 52. Defendants deny the allegations in Paragraph 52 of the complaint.

16 53. Paragraph 53 of the complaint states a legal conclusion to which no response is
17 required. To the extent a response is required, Defendants deny the allegations.

18 54. Defendants deny the allegations in Paragraph 54 of the complaint.

19 55. Paragraph 55 of the complaint states a legal conclusion to which no response is
20 required. To the extent a response is required, Defendants deny the allegations.

21 **“THIRD CAUSE OF ACTION**

22 **Negligent Misrepresentation”**

23 56. In response to Paragraph 56 of the complaint, Defendants incorporate their responses
24 to the allegations of Paragraphs 1 through 55 of the complaint as though fully set forth herein.

25 57. Defendants admit that the plaintiff purports to seek to represent a class of individuals
26 and herself but they deny that any such class should be certified.

27 58. Defendants deny the allegations in Paragraph 58 of the complaint.

28 59. Defendants deny the allegations in Paragraph 59 of the complaint.

1 106. Defendants deny the allegations in Paragraph 106 of the complaint.

2 107. Defendants deny the allegations in Paragraph 107 of the complaint.

3 **B. “‘Fraudulent’ Prong”**

4 108. Paragraph 108 of the complaint states a legal conclusion to which no response is
5 required. To the extent a response is required, Defendants respond that the statute referenced in this
6 paragraph is the best evidence of its content and meaning and Defendants deny the remaining
7 allegations.

8 109. Defendants deny the allegations in Paragraph 109 of the complaint.

9 110. Defendants deny the allegations in Paragraph 110 of the complaint.

10 111. Defendants deny the allegations in Paragraph 111 of the complaint.

11 112. Defendants deny the allegations in Paragraph 112 of the complaint.

12 113. In response to Paragraph 113, Defendants admit that the plaintiff purports to seek to
13 relief under the California Business and Professions Code but deny that such relief should be
14 awarded and deny all other allegations in that paragraph.

15 114. Defendants deny the allegations in Paragraph 114 of the complaint

16 **C. “‘Unlawful’ Prong”**

17 115. Paragraph 115 of the complaint states a legal conclusion to which no response is
18 required. To the extent a response is required, Defendants respond that the statute referenced in this
19 paragraph is the best evidence of its content and meaning and Defendants deny the remaining
20 allegations.

21 116. Defendants deny the allegations in Paragraph 116 of the complaint.

22 117. Defendants deny the allegations in Paragraph 117 of the complaint.

23 118. Defendants deny the allegations in Paragraph 118 of the complaint.

24 119. Defendants deny the allegations in Paragraph 119 of the complaint.

25 120. Defendants deny the allegations in Paragraph 120 of the complaint.

26 121. Defendants deny the allegations in Paragraph 121 of the complaint.

27 122. Defendants deny the allegations in Paragraph 122 of the complaint.

28 123. Defendants deny the allegations in Paragraph 123 of the complaint.

1 124. Defendants deny the allegations in Paragraph 124 of the complaint.

2 **“PRAYER FOR RELIEF”**

3 Defendants deny the propriety of each and every request for prayer for relief, including
4 subsections 1–9. Defendants request that the Court deny all of the relief requested.

5 **“JURY DEMAND”**

6 Plaintiff’s demand for jury trial contains no factual allegations and no response is required.

7 **DEFENSES/AFFIRMATIVE DEFENSES**

8 Without assuming the burden to prove that which properly falls on the plaintiff, Defendants
9 plead the following separate and additional defenses.

10 **FIRST SEPARATE AND ADDITIONAL DEFENSE**

11 Defendants deny all allegations not expressly admitted and specifically reserve all
12 affirmative or other defenses that they may have against the plaintiff and the putative class. It is not
13 necessary at this time for Defendants to delineate such defenses against the putative class because
14 no class has been certified and the putative class members are not parties to this litigation.

15 **SECOND SEPARATE AND ADDITIONAL DEFENSE**

16 Plaintiff’s complaint, and each and every purported cause of action therein, fails to state a
17 claim on which relief can be granted.

18 **THIRD SEPARATE AND ADDITIONAL DEFENSE**

19 Plaintiff’s claims and the claims of the putative class members are barred, in whole or in
20 part, because the plaintiff and the putative class members lack standing to assert such claims.

21 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

22 The Court lacks jurisdiction over some or all of the claims asserted by the plaintiff and/or
23 the purported class.

24 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

25 Plaintiff and the putative class members have not sustained any injury or damage as a result
26 of any actions allegedly taken by Defendants and are, therefore, barred from asserting any claims
27 against Defendants.

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SIXTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff’s claims are barred, in whole or in part, because the damages sought by the plaintiff and the putative class members are speculative, remote and/or impossible to ascertain.

SEVENTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff’s claims are barred, in whole or in part, by the equitable doctrines of estoppel and/or waiver.

EIGHTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff’s claims are barred, in whole or in part, by the doctrine of laches, as the plaintiff unreasonably delayed notifying Defendants of the alleged actionable wrongs and/or unreasonably delayed seeking the relief requested, which delays resulted in prejudice to Defendants.

NINTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff’s claims are barred, in whole or in part, by federal preemption.

TENTH SEPARATE AND ADDITIONAL DEFENSE

Each of the causes of action of the complaint is barred, in whole or in part, by applicable statutes of limitation and statutes of repose.

ELEVENTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff and the putative class members’ claims for equitable relief are barred to the extent there is, or the plaintiff asserts there is, an adequate remedy at law.

TWELFTH SEPARATE AND ADDITIONAL DEFENSE

Defendants are absolved from any and all liability for the wrongs alleged in the complaint by reason of its full compliance with all statutes, regulations or other applicable laws in effect at the time of the conduct alleged in the complaint.

THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff and the putative class have enjoyed the full benefit of their alleged purchase of the products that are the subject of the Complaint and are thereby barred from making the claims for relief set forth in the Complaint.

1 **FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE**

2 Plaintiff's claims are barred, in whole or in part, because the plaintiff knew the
3 characteristics, uses and benefits of Defendants' products and, therefore, could not have justifiably
4 relied on the alleged misrepresentations or omissions asserted in the complaint.

5 **FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE**

6 This action is barred, in whole or in part, because Defendants provided clear and appropriate
7 descriptions of the ingredients in the products at issue.

8 **SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE**

9 No advertisements or labels relating to Defendants' products contain or contained any false
10 or misleading statement or promises or promised any good not intended to be delivered.
11 Accordingly, the advertisements and product labels are not, and were not, deceptive, false,
12 misleading, fraudulent, unlawful and/or unfair, and were not intended to mislead or deceive
13 consumers in any way whatsoever.

14 **SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE**

15 Plaintiff's claims are barred, in whole or in part, because Defendants' menus and website do
16 not, and did not, contain any false or misleading statements and, instead, accurately portrayed the
17 characteristics of Defendants' products.

18 **EIGHTEENTH SEPARATE AND ADDITIONAL DEFENSE**

19 Plaintiff's claims, and those of some or all of the putative class, for alleged violations of
20 California consumer protection laws are barred because: (a) the plaintiff and the putative class do
21 not have standing to assert those claims and/or the Court does not have jurisdiction over those
22 claims; (b) the plaintiff and all class members did not rely on an alleged misrepresentation or
23 omission leading to a product purchase and subsequent loss; (c) there is no causal link between the
24 alleged misrepresentation or omission and a resulting loss; (d) the information allegedly concealed
25 is not the kind of information required to be disclosed under the applicable consumer protection
26 acts; and/or (e) some or all of the statutes do not apply to actions authorized by a federal agency.

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F. For such other and/or further relief as this Court may deem just and proper.

Dated: August 11, 2022

BAKER & McKENZIE LLP

By: /s/ Mark C. Goodman
Mark C. Goodman
Attorneys for Defendants
SUBWAY RESTAURANTS, INC.,
FRANCHISE WORLD HEADQUARTERS,
LLC, and SUBWAY FRANCHISEE
ADVERTISING TRUST FUND LTD.