

1 is safe for seafood. 44 Fed. Reg. 3990, 3992 (January 19, 1979). Since then, FDA has
2 maintained a rigorous monitoring and evaluation program but has found no need to adjust the
3 methylmercury action levels in seafood. *See id.*

4 **B. Tuna Is a Healthy Product that the Federal Government Encourages**
5 **Americans to Eat**

6 3. The Court heard the testimony of Dr. Louis Sullivan, the former Secretary of
7 Health and Human Services (“HHS”) from 1989 to 1993, regarding FDA’s food labeling
8 policy. Sullivan, 14 Tr. 1689:12-16; TX 836, p. 2. Dr. Sullivan has practiced medicine since
9 1958, held numerous teaching and academic positions, and is the founding dean of the
10 Morehouse College School of Medicine. Sullivan, 14 Tr. 1693:28-1694:13; TX 836, pp. 1-2.

11 4. According to Dr. Sullivan, it is generally accepted in the medical community
12 that fish consumption benefits health and that Americans would be better off eating more
13 fish. Sullivan, 14 Tr. 1720:19-21; 14 Tr. 1721:4-7. For example, fish, including tuna, is a
14 low-calorie source of protein and omega-3 fatty acids. Sullivan, 14 Tr. 1720:22-1721:3;
15 Beard, 17 Tr. 2073:19-22; 17 Tr. 2073:25-2074:1; 17 Tr. 2074:11-24. Omega-3 fatty acids
16 are important in enhancing the growth and development of infants prior to birth, and aid in
17 the development the brain, nerves and eyes. Beard, 17 Tr. 2072:13-19; TX 501.

18 5. The Court also heard testimony about the health benefits of tuna from
19 Dr. Lillian Beard, an expert witness proffered by the Tuna Canners who is a practicing
20 physician with over thirty years of experience. TX 500, p. 1. Dr. Beard’s practice specialty
21 is pediatrics and adolescent medicine. Beard, 17 Tr. 2059:5-8. Dr. Beard is a Board-
22 certified pediatric specialist and Diplomate for the National Board of Medical Examiners.
23 Beard, 17 Tr. 2060:4-21; TX 500, p. 1. She is a spokesperson for the American Academy of
24 Pediatrics and is an advocate for children. Beard, 17 Tr. 2067:26-2068:20; 17 Tr. 2070:18-
25 21; TX 500, p. 5. Dr. Beard has been honored for her work improving the health of infants.
26 Beard, 17 Tr. 2061:2-11; TX 500, p. 2.

27 6. **Dr. Sullivan explained that pregnant women who consume less fish have a**
28 **higher incidence of low birth weight preterm babies and babies born with complications.**

1 Sullivan, 14 Tr. 1723:1-1724:1; TX 705. Interestingly, preterm birth is considered a
2 developmental harm, which is the harm Proposition 65 warnings are supposed to
3 communicate. Sullivan, 14 Tr. 1724:12-18; TX 2, p. 196 (22 CCR § 12601). Moreover,
4 consumption of canned tuna, which is a low-cost, low-calorie food, is vital to American
5 health because there is such a high incidence of obesity, especially among the poor.
6 Sullivan, 14 Tr. 1696:4-27; Beard, 17 Tr. 2074:20-24; 17 Tr. 2075:7-21.

7 7. It is Dr. Beard's expert testimony that if people stop eating canned tuna, they
8 will substitute other low-cost foods that are higher in fat, calories and cholesterol, such as
9 processed meat or cheese. Beard, 17 Tr. 2077:17-2078:13; TX 501. For many people,
10 substituting other fish for canned tuna is not practical because of the higher cost and
11 increased difficulty in preparing the meal. Beard, 17 Tr. 2129:12-19.

12 8. The United States Food and Drug Administration ("FDA") and
13 Environmental Protection Agency ("EPA") recommend in their 2004 Advisory ("FDA/EPA
14 Advisory") that women who may become pregnant, pregnant women, nursing mothers, and
15 young children eat up to 12 ounces (2 average meals) a week of fish and shellfish that are
16 lower in mercury, including canned light tuna. TX 706. The FDA and EPA advise the same
17 group that they may eat up to 6 ounces (one average meal) of albacore tuna per week. TX
18 706. According to FDA and EPA, fish and shellfish can contribute to heart health and
19 children's proper growth and development. TX 706.

20 **C. FDA Is Uniquely Qualified to Determine How to Convey Information to**
21 **Consumers About Food and Health Issues**

22 9. Dr. Sullivan is a well-known food-labeling expert who has advised and
23 monitored the administration of food labeling in the United States for many years. TX 837,
24 p. 2; Sullivan, 14 Tr. 1707:16-1710:24. During his tenure as HHS Secretary, Dr. Sullivan
25 was responsible for overseeing the fourth largest budget in the world. Sullivan, 14
26 Tr. 1706:16-20. As HHS Secretary, Dr. Sullivan provided leadership and oversight of
27 several agencies, including the Public Health Service, Social Security Administration and
28 FDA. Sullivan, 14 Tr. 1705:16-1706:2.