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and Proposed Class

9
10 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

11
12 DEZZI RAE MARSHALL, on behalf of
13 herself and all others similarly situated,

14 Plaintiff,

15 v.

16 RED LOBSTER MANAGEMENT
LLC; RED LOBSTER SEAFOOD
17 CO., LLC; RED LOBSTER
RESTAURANTS LLC; and RED
18 LOBSTER HOSPITALITY LLC,

19 Defendants.

Case No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Dezzi Rae Marshall, a resident of Los Angeles County, California,
2 individually and on behalf of other similarly situated individuals, by and through
3 her counsel, hereby brings this action against Defendants Red Lobster Management
4 LLC, Red Lobster Seafood Co., LLC, Red Lobster Restaurants LLC, and Red
5 Lobster Hospitality LLC (collectively, “Red Lobster” or “Defendants”) regarding
6 the deceptive marketing and sale of Red Lobster’s Maine lobster and shrimp
7 products (the “Products”) as “sustainable” when they may be sourced from
8 suppliers that use environmentally harmful and inhumane practices, and alleges the
9 following based upon information, belief, and the investigation of her counsel:

10 **JURISDICTION AND VENUE**

11 1. This Court has original subject-matter jurisdiction over this proposed
12 class action pursuant to 28 U.S.C. § 1332(d), the Class Action Fairness Act
13 (“CAFA”). There are at least 100 members in the proposed class. Plaintiff Marshall
14 is a citizen of California. On information and belief, Defendant Red Lobster
15 Management LLC is a citizen of the State of Florida; Defendant Red Lobster
16 Seafood Co., LLC is a citizen of the State of Delaware; Defendant Red Lobster
17 Restaurants LLC is a citizen of the State of Florida; and Defendant Red Lobster
18 Hospitality LLC is a citizen of the State of Florida. The amount in controversy
19 exceeds the sum of \$5,000,000, exclusive of interest and costs.

20 2. This Court has personal jurisdiction over Defendants in that they

1 regularly conduct and transact business in California, purposefully avail themselves of
2 the laws of California, market their Products with the Sustainability
3 Representations to consumers in California, and sell their Products in numerous
4 restaurants in California.

5 3. Venue is proper in this District under 28 U.S.C. § 1391(a). Substantial
6 acts in furtherance of the alleged improper conduct, including the dissemination of
7 false and misleading marketing and advertising regarding the nature and sourcing
8 of the Products and sales of the Products at issue, occurred within this District.

9 **INTRODUCTION**

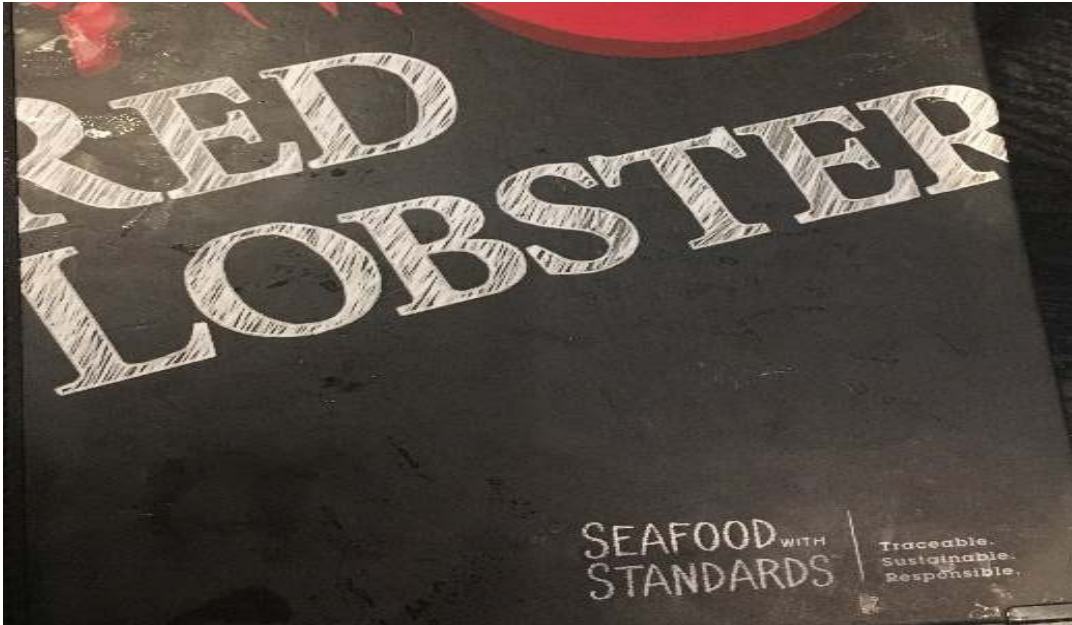
10 4. Due to concerns about sustainability, consumers are increasingly
11 concerned with how their food is produced.

12 5. In particular, consumers have grown concerned about the
13 environmental, animal welfare, and public health impacts of seafood production,
14 and they consciously seek out seafood products that are sourced sustainably in
15 accordance with high environmental and animal welfare standards.

16 6. Red Lobster knows that consumers seek out and wish to buy seafood
17 products that are sourced sustainably in accordance with high environmental and
18 animal welfare standards. Red Lobster also knows that consumers will pay more
19 for such products than they will for products sourced from suppliers that use
20 unsustainable, environmentally harmful, and/or inhumane practices, or will

1 purchase more of the products they believe to be sustainably sourced.

2 7. To capture this growing market of consumers, Red Lobster makes
3 prominent marketing claims on its restaurant menu that the Products are sustainable
4 (“Sustainability Representations”). For example, the cover of Red Lobster’s menu
5 includes the representations “SEAFOOD WITH STANDARDS” and “Traceable.
6 Sustainable. Responsible.” An example is show below, with the relevant claims in
7 the bottom right corner:



16 8. On the inside of Red Lobster’s restaurant menu, the company repeats
17 these Sustainability Representations, emphasizing, “These are more than just words
18 on our menu—it’s our promise that all of the seafood we serve is sourced to the
19 highest standards.” An example is below:



9. Reasonable consumers who see Red Lobster’s Sustainability Representations—*i.e.*, Red Lobster’s “promise” to provide “sustainable” seafood “sourced to the highest standards”—would expect that the Products are sourced sustainably in accordance with the highest environmental and animal welfare standards.

10. Contrary to Red Lobster’s claims, its Maine lobster menu items (“the

1 Maine Lobster Products”¹) are sourced from suppliers that use environmentally
2 destructive practices that threaten endangered populations of North American right
3 whales.

4 11. Furthermore, Red Lobster’s shrimp menu items (“the Shrimp
5 Products”²) are sourced from industrial shrimp farms that do not employ the highest
6 environmental or animal welfare standards. Monterey Bay Aquarium Seafood
7 Watch (“Seafood Watch”) recommends that consumers seeking sustainable
8 seafood should not choose shrimp from the regions that Red Lobster sources from,
9 because of environmentally destructive practices, poor reporting of environmental
10 data and standards, and overuse of antibiotics.

11 12. Moreover, Red Lobster shrimp suppliers use inhumane practices
12

13
14 ¹ The “Maine Lobster Products” include all Red Lobster menu items that contain
15 Maine Lobster. The Maine Lobster Products include, but are not limited to, the
16 following: Live Maine Lobster; Maine Lobster Tail; Steak-And-Lobster; Ultimate
17 Surf & Turf; Lobster Lover’s Dream; Ultimate Feast; Lobster, Shrimp And Salmon;
18 Bar Harbor Lobster Bake; Lobster Linguini; Lobster Bisque; Petite Maine Lobster
19 Tail; and Lobster And Langostino Pizza.

20 ² The “Shrimp Products” include all Red Lobster menu items that contain farmed
shrimp. The Shrimp Products include, but are not limited to, the following: Seaside
Shrimp Trio; Admiral’s Feast; Ultimate Feast; Lobster, Shrimp And Salmon; Bar
Harbor Lobster Bake; Lobster Lover’s Dream; Baja Shrimp Bowl; Classic Caesar
Salad With Seasoned Shrimp; Parrot Isle Jumbo Coconut Shrimp; Crispy Shrimp;
Today’s Catch; Walt’s Favorite Shrimp; Garlic Shrimp Skewers; Shrimp Linguini
Alfredo; Garlic-Grilled Shrimp; Popcorn Shrimp; Garlic Shrimp Scampi; and
Signature Jumbo Shrimp Cocktail.

1 including routine eyestalk ablation, a practice in which the eyestalk gland of female
2 shrimps is crushed, burned, or cut off—without painkillers—in order to increase
3 reproduction.

4 13. Consumers who dine at Red Lobster or otherwise purchase menu
5 items lack the information necessary to discover whether the Products are in fact
6 “sustainable,” or to know or ascertain the true nature and sourcing of the Products.
7 Reasonable consumers must therefore rely on Red Lobster’s representations.

8 14. Red Lobster intends for consumers to rely on its Sustainability
9 Representations, calling them “a promise” and “more than words,” and reasonable
10 consumers did and do, in fact, rely on these representations.

11 15. By deceiving consumers about the nature and sourcing of the
12 Products, Red Lobster has sold a greater volume of the Products, been able to
13 charge higher prices for the Products than otherwise, and has taken away market
14 share from competing products, thereby increasing its own sales and profits.

15 16. During any applicable statute of limitations period, Plaintiff Marshall
16 and Class members (described below) saw Red Lobster’s Sustainability
17 Representations when purchasing the Products in California. Based upon these
18 misrepresentations, Plaintiff Marshall and Class members paid more for the
19 Products than they otherwise would have paid, purchased the Products when they
20 otherwise would not have, or purchased more of the Products than they otherwise

1 would have, had they known the truth about Red Lobster’s production and sourcing
2 practices. As a result, Plaintiff Marshall and Class members suffered injury.

3 17. Red Lobster’s false and deceptive representations violate the
4 consumer-protection statutes of California.

5 18. Because Red Lobster’s Sustainability Representations are false,
6 deceptive, and misleading, Plaintiff Marshall brings this case on behalf of a class
7 of California consumers who purchased the Products within the statute of limitation
8 period. Plaintiff Marshall seeks relief including actual damages, interest, costs,
9 reasonable attorneys’ fees, and an order enjoining Red Lobster’s unlawful and
10 deceptive acts. Even today, proposed Class members in California are purchasing
11 the misrepresented Products, and they will continue to do so in the future unless
12 Red Lobster’s deceptive marketing is stopped.

13 **PARTIES**

14 19. Defendant Red Lobster Management LLC is a Florida limited-liability
15 company with a principal place of business in Florida.

16 20. Red Lobster Seafood Co., LLC is a Delaware limited-liability
17 company with a principal place of business in Delaware.

18 21. Red Lobster Restaurants LLC is a Florida limited-liability company
19 with a principal place of business in Florida.

20 22. Red Lobster Hospitality LLC is a Florida limited-liability company

1 with a principal place of business in Florida.

2 23. Collectively, Red Lobster produces, advertises, markets, and
3 distributes the Products throughout the United States. Red Lobster created and/or
4 authorized the false and deceptive marketing of the Products.

5 24. Plaintiff Marshall is a citizen of the State of California, and a resident
6 of Los Angeles County. At all times mentioned herein, Plaintiff Marshall was and
7 is an individual consumer over the age of 18.

8 25. Within the Class Period (as defined below), Plaintiff Marshall
9 purchased Red Lobster's "Family Feast," which is a Maine Lobster Product and a
10 Shrimp Product; "Lobster Lover's Dream," which is a Maine Lobster Product; and
11 "Ultimate Feast," which is a Maine Lobster Product and a Shrimp Product. Plaintiff
12 Marshall purchased the Products at the Red Lobster located in Santa Clarita,
13 California at 27524 The Old Road.

14 26. In deciding to make her purchases, Plaintiff Marshall saw, relied upon,
15 and reasonably believed Red Lobster's Sustainability Representations.

16 27. Plaintiff Marshall was willing to purchase and to pay the requested
17 prices for Red Lobster's Products because of the expectation that the Products
18 were, in fact, sustainable and sourced in accordance with the highest environmental
19 and animal welfare standards, and thus, were not sourced from suppliers that use
20 environmentally harmful and inhumane practices.

1 *standards*” (emphases added). Examples of these marketing claims are provided
2 *supra* at paragraphs 4-5.

3 32. Red Lobster’s Sustainability Representations convey to a reasonable
4 consumer that the Products are made from lobster and shrimp sourced in
5 accordance with the highest environmental and animal welfare standards.

6 33. The Federal Trade Commission (“FTC”) has determined that
7 unqualified general environmental benefit claims such as “sustainable”³ “likely
8 convey that the product . . . has specific and far-reaching environmental benefits
9 and may convey that the item . . . has no negative environmental impact.”⁴ For that
10 reason, the FTC has admonished companies not to use unqualified claims such as
11 “sustainable” due to its determination that “it is highly unlikely that marketers can
12 substantiate all reasonable interpretations of these claims.”⁵

13 34. Research demonstrates that claims such as “sustainably produced” are
14 perceived by many consumers to mean “produced according to higher animal
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18 ³ *FTC Sends Warning Letters to Companies Regarding Diamond Ad*
19 *Disclosures*, Federal Trade Commission (Apr. 2, 2019), [https://www.ftc.gov/news-](https://www.ftc.gov/news-events/press-releases/2019/03/ftc-sends-warning-letters-companies-regarding-diamond-ad)
20 [events/press-releases/2019/03/ftc-sends-warning-letters-companies-regarding-](https://www.ftc.gov/news-events/press-releases/2019/03/ftc-sends-warning-letters-companies-regarding-diamond-ad)
diamond-ad.

⁴ FTC Green Guides, 16 C.F.R. § 260.4(b) (2012).

⁵ *Id.*; *FTC Sends Warning Letters*, *supra* note 3.

1 welfare standards.”⁶

2 35. Consumers have ranked the minimal use of hormones and drugs, no
3 pollution of the environment, and animal welfare as three of the four most
4 important elements of sustainable aquaculture.⁷

5 36. A study on consumer perception of the phrase “ecologically
6 sustainable” found that a majority of consumers “expect eco-labeled seafood to be
7 harvested in a way that reduced impact on the fish population or the marine
8 environment.”⁸ And, out of 235 responses, only 4% “expressed skepticism about
9 the term [‘ecologically sustainable’]” and felt that “it was primarily a marketing
10 term without real meaning.”⁹

11 **B. Contrary to Red Lobster’s Sustainability Representations, Its**
12 **Maine Lobster Products Are Sourced from Suppliers That Use**
13 **Environmentally Destructive and Inhumane Practices.**

14 37. Red Lobster sources Maine lobster for its Maine Lobster Products
15 from the Gulf of Maine lobster fishery.

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17 ⁶ Katrin Zander et al., *Consumers’ Willingness to Pay for Sustainable Seafood*
18 *Made in Europe*, 30 J. Int’l Food & Agribusiness Mktg. 251 (Dec. 22, 2017),
19 <https://www.tandfonline.com/doi/full/10.1080/08974438.2017.1413611>.

20 ⁷ *See id.*

⁸ Loren McClenachan et al., *Fair Trade Fish: Consumer Support for Broader*
Seafood Sustainability, 17 Fish & Fisheries 825 (Sept. 2016),
<https://onlinelibrary.wiley.com/doi/abs/10.1111/faf.12148>.

⁹ *Id.*

1 38. In April 2020, the U.S. District Court for the District of Columbia held
2 that inadequate regulation of the Gulf of Maine lobster fishery violated the
3 Endangered Species Act and found that the fishery “had the potential to harm the
4 North Atlantic right whale at more than three times the sustainable rate.”¹⁰

5 39. In August 2020, in the wake of that decision, and having found that
6 the fishing gear used in the Gulf of Maine lobster fishery posed legitimate risk to
7 right whales, the Marine Stewardship Council suspended its sustainability
8 certification of the Gulf of Maine lobster fishery.¹¹

9 40. The Gulf of Maine lobster fishery is considered a Category I fishery
10 by the National Marine Fisheries Service (“NMFS”) due to the frequency of serious
11 injuries to marine mammals caused by entanglement in lobster gear.¹²

12 41. A “Category I fishery” means “a commercial fishery determined by
13 the Assistant Administrator to have frequent incidental mortality and serious injury
14 of marine mammals. A commercial fishery that frequently causes mortality or

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16 ¹⁰ *Ctr. for Biological Diversity v. Ross*, No. CV 18-112 (JEB), 2020 U.S. Dist.
LEXIS 62550, 2020 WL 1809465, at *9 (D.D.C. Apr. 9, 2020).

17 ¹¹ Chris Chase, *MSC suspends Maine lobster fishery certification*,
18 SeafoodSource (Aug. 4, 2020),
[https://www.seafoodsource.com/news/environment-sustainability/msc-suspends-
us-lobster-fishery-certification](https://www.seafoodsource.com/news/environment-sustainability/msc-suspends-us-lobster-fishery-certification).

19 ¹² List of Fisheries, 86 Fed. Reg. 3,028 (Jan. 14, 2021),
20 [https://www.federalregister.gov/documents/2021/01/14/2021-00570/list-of-
fisheries-for-2021](https://www.federalregister.gov/documents/2021/01/14/2021-00570/list-of-fisheries-for-2021).

1 serious injury of marine mammals is one that is by itself responsible for the annual
2 removal of 50 percent or more of any stock’s potential biological removal level.”¹³

3 In particular, NMFS points to harms caused by lobster gear to the North Atlantic
4 right whales.

5 42. Thus, contrary to Red Lobster’s claims, its Maine Lobster Products do
6 not meet the highest standards of sustainability. In reality, they are sourced from
7 suppliers that have used environmentally destructive practices that threaten
8 endangered populations of North American right whales.

9 **C. Contrary to Red Lobster’s Sustainability Representations, Its**
10 **Shrimp Products Are Sourced from Suppliers That Use**
11 **Environmentally Destructive and Inhumane Practices.**

12 43. Red Lobster’s Shrimp Products are made with shrimp sourced from
13 Indonesia, Vietnam, India, and China.

14 44. Shrimp farming in Indonesia, Vietnam, India, and China utilizes
15 unsustainable and inhumane high-density industrial farming methods to increase
16 production.¹⁴

17 ¹³ 50 CFR § 229.2.

18 ¹⁴ See, e.g., Ben Fisher, *You Should Never Eat Imported Farm-Raised Shrimp.*
19 *Here’s Why*, Mashed (July 25, 2020 6:39 A.M.; updated Dec. 13, 2020 8:18 P.M.),
20 <https://www.mashed.com/230219/you-should-never-eat-imported-farm-raised-shrimp-heres-why/>; Melissa Clark, *What Are We Supposed to Think About Shrimp?*,
NY Times (Oct. 15, 2019; updated Nov. 8, 2019),
<https://www.nytimes.com/2019/10/15/dining/shrimp-sourcing-united-states.html>;

1 45. Due to rampant overcrowding in the crowded ponds used for shrimp
2 farming, and to the corresponding stress of increased stocking density upon on a
3 shrimp's immune system, severe disease outbreaks on shrimp farms are common
4 on industrial shrimp farms around the world.¹⁵

5 46. Shrimp farms—especially in the regions from which shrimp for Red
6 Lobster's Shrimp Products are sourced—frequently overuse antibiotics to prevent
7 these disease outbreaks. Farmers also use chlorine-based disinfectants, with one
8 survey of shrimp farmers in Vietnam finding that 90 percent of farmers relied on
9 chemical disinfectants.¹⁶

10
11 _____
12 Malcolm Bedell, *What You Need To Know Before You Eat Another Bite Of Shrimp*,
13 Mashed (Apr. 8, 2019 3:20 P.M.), <https://www.mashed.com/149791/what-you-need-to-know-before-you-eat-another-bite-of-shrimp/>; Allison Guy, *5 Facts that Will Make You Think Twice about Eating Imported, Farm-Raised Shrimp*, Oceana (Feb. 14, 2017), https://oceana.org/blog/5-facts-will-make-you-think-twice-about-eating-imported-farm-raised-shrimp; Eli Penberthy, *Unsustainable Shrimp Farming Degrading the Environment, Posing Health Risks*, Cornucopia Institute (July 3, 2013), <https://www.cornucopia.org/2008/01/unsustainable-shrimp-farming/>; Alister Doyle, *Mangroves under threat from shrimp farms: U.N.*, Reuters (Nov. 14, 2012 2:50 P.M.), <https://www.reuters.com/article/us-mangroves/mangroves-under-threat-from-shrimp-farms-u-n-idUSBRE8AD1EG20121114>; *Tiny shrimp leave giant carbon footprint: scientist*, PhysOrg (Feb. 18, 2012), <https://phys.org/news/2012-02-tiny-shrimp-giant-carbon-footprint.html>; *see also infra* notes 21-25.

18 ¹⁵ *Natural Resource Efficiency in Farmed Shrimp*, World Wildlife Fund,
19 <https://seafoodsustainability.org/aquaculture/farmed-shrimp/resource-use/> (last
20 visited June 11, 2021).

¹⁶ Tran Thi Kim Chi et al., *Use Practices of Antimicrobials and Other
Compounds by Shrimp and Fish Farmers in Northern Vietnam*, 7 *Aquaculture*

1 to a road trip from New York to Los Angeles.¹⁹

2 50. Monterey Bay Aquarium’s Seafood Watch (“Seafood Watch”)
3 generally warns consumers to avoid various shrimp products from Indonesia,
4 Vietnam, India, and China due to harmful environmental impacts and overuse of
5 antibiotics.²⁰

6 51. Specifically, Red Lobster sources Pacific Whiteleg Shrimp from
7 Indonesia, despite the fact that Seafood Watch concluded that such shrimp should
8 generally be avoided due to “poor management of cumulative environmental
9 impacts from effluent discharge,” as well as “the widespread use of several
10 antibiotics [that] has led to the development of strains of bacteria that are resistant
11 to medicines that are highly or critically important to human health.”²¹ Seafood
12 Watch further found that these issues are exacerbated by “weak regulatory
13 structures and lax enforcement.”²²

14 52. Red Lobster also sources Pacific Whiteleg Shrimp from Vietnam.
15 Seafood Watch also found such shrimp from Vietnam should generally be avoided
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17 ¹⁹ *See id.*

18 ²⁰ *See also supra* note 14.

19 ²¹ *Recommendation: Whiteleg Shrimp, Indonesia*, Monterey Bay Aquarium
Seafood Watch [https://www.seafoodwatch.org/recommendation/shrimp/red-](https://www.seafoodwatch.org/recommendation/shrimp/red-shrimp-whiteleg-shrimp-indonesia-ponds?species=156)
20 [shrimp-whiteleg-shrimp-indonesia-ponds?species=156](https://www.seafoodwatch.org/recommendation/shrimp/red-shrimp-whiteleg-shrimp-indonesia-ponds?species=156) (last visited June 11, 2021).

²² *Id.*

1 because shrimp “farming in Vietnam has historically contributed to large amounts
2 of mangrove loss,” and “import data from the U.S. and European Union shows that
3 illegal antibiotic use is occurring.”²³

4 53. Red Lobster also sources Pacific Whiteleg Shrimp from China,
5 notwithstanding a finding by Seafood Watch that such shrimp should generally be
6 avoided due to “poor management of cumulative environmental impacts from
7 effluent discharge” and environmental regulations that are “poorly implemented
8 and enforced” which has led to “ongoing use of banned antibiotics and
9 antimicrobials.”²⁴

10 54. Red Lobster also sources Pacific Whiteleg Shrimp from India, even
11 though Seafood Watch determined that such shrimp should generally be avoided
12 due to inadequate data concerning environmental impacts and antibiotic use, with
13 a likelihood that “antibiotics listed as critically important to human health are
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17 ²³ *Recommendation: Whiteleg Shrimp, Vietnam*, Monterey Bay Aquarium
18 Seafood Watch, [https://www.seafoodwatch.org/recommendation/shrimp/red-
19 shrimp-whiteleg-shrimp-vietnam-intensive-pond?species=156](https://www.seafoodwatch.org/recommendation/shrimp/red-shrimp-whiteleg-shrimp-vietnam-intensive-pond?species=156) (last visited June
20 11, 2021).

²⁴ *Recommendation: Whiteleg Shrimp, China*, Monterey Bay Aquarium Seafood
Watch [https://www.seafoodwatch.org/recommendation/shrimp/red-shrimp-
whiteleg-shrimp-china-ponds?species=156](https://www.seafoodwatch.org/recommendation/shrimp/red-shrimp-whiteleg-shrimp-china-ponds?species=156) (last visited June 11, 2021)

1 used.”²⁵

2 55. Importantly, even shrimp farms from these regions that achieve “Best
3 Aquaculture Practices” (“BAP”) certification do not conform to the “*highest*
4 standards” promised by Red Lobster. “In a comparison of marine aquaculture
5 standards published [in 2011] by the Seafood Ecology Research Group at the
6 University of Victoria in Canada, the GAA-BAP standard was ranked in the bottom
7 half of 20 aquaculture standards”²⁶

8 56. BAP standards are promulgated by the Global Aquaculture Alliance,
9 an organization led by the farmed seafood industry.²⁷ Red Lobster itself is a
10 “founding member” of the Global Aquaculture Alliance and even “helped establish
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14 ²⁵ *Recommendation: Whiteleg Shrimp, India*, Monterey Bay Aquarium Seafood
Watch [https://www.seafoodwatch.org/recommendation/shrimp/red-shrimp-
whiteleg-shrimp-india-ponds?species=156](https://www.seafoodwatch.org/recommendation/shrimp/red-shrimp-whiteleg-shrimp-india-ponds?species=156) (last visited June 11, 2021).

15 ²⁶ Marc Gunther, *Shrimp Farms’ Tainted Legacy Is Target of Certification*
Drive, Yale Env’t 360 (Aug. 6, 2012),
16 [https://e360.yale.edu/features/shrimp_farms_tainted_legacy_is_target_of_certifica-
tion_drive](https://e360.yale.edu/features/shrimp_farms_tainted_legacy_is_target_of_certification_drive) (“Because the GAA-BAP certification applies to processors, as well as
17 shrimp farms, companies like Darden [Red Lobster’s former owner], which buys
18 about \$750 million worth of seafood a year, can claim that ‘100 percent of the
19 aquacultured shrimp processors that supply Darden are certified.’ Note the
reference to processors, and not farms, where the environmental footprint of
aquaculture is greater.”).

20 ²⁷ *Id.*; Global Aquaculture Alliance, <https://www.aquaculturealliance.org/> (last
visited June 11, 2021).

1 guidelines for best practices and aquaculture certifications.”²⁸

2 57. As one example of why BAP certification falls short of the “highest
3 standards,” BAP standards do not include effective measures to control the use of
4 antibiotics or other chemicals—meaning that, among other shortcomings, these
5 farms may still use, in unrestricted amounts, antibiotics that are critically important
6 to human health.²⁹

7 58. Consumers also reasonably perceive “sustainable” to mean “produced
8 according to higher animal welfare standards.” But shrimp farms in each of the
9 aforementioned countries, from which Red Lobster sources shrimp for its Shrimp
10 Products, perform eyestalk ablation, an unnecessary and inhumane practice in
11 which the eyestalk gland of female shrimps is macerated or destroyed to stimulate

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18 ²⁸ *Seafood with Standards*, Red Lobster, <https://www.redlobster.com/our-story/seafood-with-standards/our-beliefs> (last visited June 11, 2021).

19 ²⁹ *E.g.*, *Best Aquaculture Practices Certified: Seafood*, FoodPrint, <https://foodprint.org/eating-sustainably/food-label-guide/food-label-guide-seafood/bap-certified-seafood/> (last visited June 11, 2021).

1 spawning.³⁰ Eyestalk ablation increases shrimp vulnerability to disease.³¹
2 Painkillers are not used during eyestalk ablation, resulting in a cruel and traumatic
3 experience that leaves the shrimp disoriented and in pain.³²

4 59. In addition to practicing eyestalk ablation, shrimp farms in the
5 countries where Red Lobster sources from routinely subject shrimp to other
6 inhumane conditions.

7 60. For example, India, Indonesia, Vietnam, and China all lack
8 enforceable water quality standards.³³ Accordingly, shrimp from farms in these
9 regions routinely suffer significant stress and increased mortality.

10 61. According to the Charity Entrepreneurship Shrimp Welfare Report,
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13 ³⁰ Lauren Kramer, *Innovation Award 2020 finalist: Simao Zacarias' shrimp*
14 *eyestalk ablation research*, Global Aquaculture Alliance (Sept. 21, 2020),
15 [https://www.aquaculturealliance.org/advocate/innovation-award-2020-finalist-](https://www.aquaculturealliance.org/advocate/innovation-award-2020-finalist-simao-zacarias-shrimp-eyestalk-ablation-research/)
16 [simao-zacarias-shrimp-eyestalk-ablation-research/](https://www.aquaculturealliance.org/advocate/innovation-award-2020-finalist-simao-zacarias-shrimp-eyestalk-ablation-research/); *see also* Palaniyandi
17 Thirunavukkarasu et al., *Procedure for Maturation and Spawning of Imported*
18 *shrimp Litopenaeus vannamei in Commercial Hatchery, South East Coast of India*,
19 *6 Fisheries & Aquaculture J.* (Jan. 2015),
20 [https://www.researchgate.net/publication/289585731_Procedure_for_Maturation_](https://www.researchgate.net/publication/289585731_Procedure_for_Maturation_and_Spawning_of_Imported_shrimp_Litopenaeus_vannamei_in_Commercial_Hatchery_South_East_Coast_of_India)
[and_Spawning_of_Imported_shrimp_Litopenaeus_vannamei_in_Commercial_Ha](https://www.researchgate.net/publication/289585731_Procedure_for_Maturation_and_Spawning_of_Imported_shrimp_Litopenaeus_vannamei_in_Commercial_Hatchery_South_East_Coast_of_India)
[tchery_South_East_Coast_of_India.](https://www.researchgate.net/publication/289585731_Procedure_for_Maturation_and_Spawning_of_Imported_shrimp_Litopenaeus_vannamei_in_Commercial_Hatchery_South_East_Coast_of_India)

³¹ *See id.*

³² Genaro Diarte-Plata, *Eyestalk ablation procedures to minimize pain in the*
freshwater prawn Macrobrachium americanum, 140 *Applied Animal Behav. Sci.*
172 (Sept. 2012),
<https://www.sciencedirect.com/science/article/abs/pii/S0168159112001761>.

³³ *Id.*

1 poor water quality on farms in these regions causes high levels of stress to the
2 shrimp who “struggle to breathe” as a result.³⁴

3 **D. Red Lobster’s Sustainability Claims Are Material and Misleading**
4 **to Reasonable Consumers, and in Turn, Cause Harm.**

5 62. As set forth above (*supra* ¶¶ 37-61), Red Lobster’s Maine Lobster
6 Products and Shrimp Products are made from lobster and shrimp sourced from
7 suppliers using environmentally destructive and inhumane practices. Thus, Red
8 Lobster’s Sustainability Representations—which suggest to consumers that the
9 Products are sourced in accordance with the highest environmental and animal
10 welfare standards (*supra* ¶¶ 31-36)—are false, deceptive, and misleading.

11 63. Red Lobster’s Sustainability Representations are material to
12 consumers. Researchers have found that consumers seek out and are willing to pay
13 more for products labeled as “ecologically sustainable.”³⁵ This finding is consistent
14 with other research that has found that consumers are willing to pay to improve
15 animal welfare and reduce undesirable environmental effects from aquaculture.³⁶

17 ³⁴ Vicky Cox et al., *Shrimp Welfare*, Charity Entrepreneurship (Aug. 2020)
18 <https://www.charityentrepreneurship.com/uploads/1/0/7/2/10726656/shrimpwelfare.pdf>.

19 ³⁵ McClenachan et al., *supra* note 8.

20 ³⁶ Ingrid Olesen et al., *Eliciting Consumers’ Willingness to Pay for Organic and Welfare-Labelled Salmon in a Non-Hypothetical Choice Experiment*, 127 *Livestock Sci.* 218 (Feb. 2010), <https://pubag.nal.usda.gov/catalog/775401>.

1 64. Red Lobster’s conduct in marketing and advertising the Products with
2 Sustainability Representations has deceived and/or is likely to deceive the public.
3 Consumers have been deceived into believing that the Products are made from
4 lobster and shrimp sourced in accordance with the highest environmental and
5 animal welfare standards.

6 65. Consumers lack the information and scientific knowledge necessary
7 to determine whether the Products are in fact “sustainable” or sourced to the
8 “highest standards” and to know or to ascertain the true quality of the Products.

9 66. Reasonable consumers must and do rely on Red Lobster to report
10 honestly whether the lobster and shrimp used in the Products are sourced from
11 suppliers that use environmentally destructive and inhumane practices.

12 67. Red Lobster knows that the Products were marketed with
13 Sustainability Representations. Red Lobster also knows how the Products are
14 sourced and produced. Red Lobster thus knows, or should know, the facts
15 demonstrating that the Products were falsely and deceptively marketed and
16 advertised.

17 68. In making the false, misleading, and deceptive representations at
18 issue, Red Lobster also knows and intends that consumers will choose to buy, and
19 pay the requested price for, products promoted with Sustainability Representations,
20 furthering Red Lobster’s private interest of increasing sales of its products at the

1 requested prices and decreasing the sales of its competitors' products that are
2 truthfully marketed.

3 69. Red Lobster intends for consumers to rely on its representations, and
4 reasonable consumers do in fact so rely. Indeed, Red Lobster goes so far as to assure
5 consumers that its Sustainability Representations are "more than just words on our
6 menu," and instead a "promise" on which consumers can rely "that all of the
7 seafood we serve is sourced to the highest standards." As a result of its false and
8 misleading marketing and advertising, Red Lobster has been and is able to sell the
9 Products to consumers in the State of California and to realize sizeable profits.

10 70. Plaintiff Marshall and members of the Class described below relied on
11 Red Lobster's Sustainability Representations when purchasing the Products.
12 Plaintiff Marshall and members of the Class described below paid the requested
13 price for the Products based upon the misrepresentations, and they purchased
14 Products they otherwise would not have bought had they known the truth about the
15 environmentally destructive and inhumane practices used by Red Lobster's
16 suppliers. As a result, Plaintiff Marshall and Class members suffered an injury.
17 Contrary to representations in the Products' marketing and advertising, consumers
18 received Products that did not meet the Sustainability Representations.

19 71. Had Red Lobster not made the false, misleading, and deceptive
20 representations, Plaintiff Marshall and the Class members would not have been

1 willing to pay the same amount for the Products they purchased and/or would not
2 have been willing to purchase the Products.

3 72. Upon information and belief, Red Lobster has profited enormously
4 from the falsely and deceptively marketed Products.

5 **CLASS ALLEGATIONS**

6 73. Plaintiff Marshall re-alleges and incorporates by reference the
7 allegations set forth in each of the preceding paragraphs of this Complaint.

8 74. Plaintiff Marshall brings this action pursuant to Rule 23 of the Federal
9 Rules of Civil Procedure on behalf of herself and all other similarly situated
10 individuals within the United States (the “Class”) defined as follows: All
11 consumers who purchased Red Lobster’s Maine Lobster Products and/or Shrimp
12 Products in California within the applicable statute of limitations, and until the date
13 of class certification (the “Class Period”).

14 75. Excluded from the Class are (1) Red Lobster, any entity or division in
15 which Red Lobster has a controlling interest, and Red Lobster’s legal
16 representatives, officers, directors, assigns, and successors; and (2) the judge to
17 whom this case is assigned and the judge’s staff.

18 76. Included in the Class, to the extent necessary, are (1) a subclass of all
19 persons who purchased the Maine Lobster Products in California during the Class
20 Period (the “Maine Lobster Subclass”), and (2) a subclass of all persons who

1 purchased the Shrimp Products in California during the Class Period (the “Shrimp
2 Subclass”).

3 77. There are substantial questions of law and fact common to all
4 members of the Class, which will predominate over any individual issues. These
5 common questions of law and fact include, without limitation:

6 (a) whether Red Lobster is responsible for the advertising at issue;

7 (b) whether Red Lobster’s practices and representations related to the
8 marketing and sales of its Products were unfair, deceptive, fraudulent,
9 and/or unlawful in any respect, in violation of California law;

10 (c) whether Red Lobster’s conduct as set forth above injured, and may
11 continue to injure, Plaintiff Marshall and Class members.

12 78. Plaintiff Marshall’s claims are typical of the claims of the Class.
13 Plaintiff Marshall is a member of a well-defined class of similarly situated persons,
14 and the members of the Class were similarly affected by Red Lobster’s conduct
15 and are owed the same relief, as alleged in this Complaint. Members of the Class
16 are ascertainable from Plaintiff Marshall’s description of the Class, from Red
17 Lobster’s records, and from records of third parties accessible through discovery.

18 79. Plaintiff Marshall will fairly and adequately protect the interests of the
19 Class and has no interests that are antagonistic to the claims of the Class. Plaintiff
20 Marshall will vigorously pursue the claims of the Class and Subclasses.

1 80. Plaintiff Marshall has retained counsel who are competent and
2 experienced in consumer protection litigation, including class actions relating to
3 false advertising. Plaintiff Marshall's counsel have successfully represented
4 plaintiffs in complex class actions and currently represent plaintiffs in similar
5 complex class action lawsuits involving false advertising.

6 81. A class action provides a fair and efficient method, if not the only
7 method, for adjudicating this controversy. The substantive claims of Plaintiff
8 Marshall and the Class are nearly identical and will require evidentiary proof of the
9 same kind and application of the same laws. There is no plain, speedy, or adequate
10 remedy other than by maintenance of this class action.

11 82. A class action is superior to other available methods for the fair and
12 efficient adjudication of this controversy because Class members number in the
13 thousands and individual joinder is impracticable. The expense and burden of
14 individual litigation would make it impracticable or impossible for proposed Class
15 members to prosecute their claims individually, and the disposition of this case and
16 as part of a single class action will benefit the parties and reduce the aggregate
17 judicial resources that would be spent if this matter were handled as hundreds or
18 thousands of separate lawsuits. Trial of Plaintiff Marshall's and the Class members'
19 claims together is manageable.

20 83. No member of the Class has a substantial interest in individually

1 controlling the prosecution of a separate action.

2 84. The prerequisites to maintaining a class action for equitable relief are
3 met, because Red Lobster—by representing that the Maine Lobster Products and
4 the Shrimp Products are sustainable despite the fact that they were sourced from
5 suppliers who use environmentally harmful and inhumane practices—has acted or
6 refused to act on grounds generally applicable to the Class, thereby making
7 appropriate final equitable relief with respect to the Class as a whole.

8 85. The prosecution of separate actions by members of the Class would
9 create a risk of establishing inconsistent rulings and/or incompatible standards of
10 conduct for Red Lobster. Additionally, individual actions could be dispositive of
11 the interests of the Class even where certain Class members are not parties to such
12 actions.

13 86. Red Lobster’s conduct is generally applicable to the Class as a whole,
14 and Plaintiff Marshall seeks, *inter alia*, equitable remedies with respect to the Class
15 as a whole. As such, Red Lobster’s systematic policies and practices make
16 declaratory relief appropriate with respect to the Class as a whole.

17 87. Plaintiff Marshall knows of no difficulty that will be encountered in
18 the management of this litigation that would preclude its maintenance of a class
19 action.

20

1 **CAUSES OF ACTION**

2 **COUNT I**

3 **Unfair and Deceptive Acts and Practices**
4 **in Violation of the California Consumer Legal Remedies Act**

5 88. Plaintiff Marshall incorporates by reference and realleges herein all
6 paragraphs alleged above.

7 89. This cause of action is brought pursuant to California’s Consumers
8 Legal Remedies Act, Cal. Civ. Code §§ 1750-1785 (the “CLRA”).

9 90. Plaintiff Marshall and other members of the Class are “consumers,”
10 as the term is defined by California Civil Code § 1761(d), because they bought Red
11 Lobster’s Products for personal, family, or household purposes.

12 91. Plaintiff Marshall, the other members of the Class, and Red Lobster
13 have engaged in “transactions,” as that term is defined by California Civil Code
14 §1761(e).

15 92. The conduct alleged in this Complaint constitutes unfair methods of
16 competition and unfair and deceptive acts and practices for the purpose of the
17 CLRA, and the conduct was undertaken by Red Lobster in transactions intended to
18 result in, and which did result in, the sale of goods to consumers.

19 93. As alleged more fully above, Red Lobster has violated the CLRA by
20 falsely representing to Plaintiff Marshall and the other members of the Class that
the Products are, *inter alia*, “sustainable” and “sourced to the highest standards.”

1 98. At all material times, Red Lobster engaged in a scheme of offering the
2 Products for sale to Plaintiff Marshall and the other members of the Class through,
3 *inter alia*, Red Lobster’s website and in-restaurant menu.

4 99. The misrepresentations and non-disclosures by Defendant of the
5 material facts detailed above constitute false and misleading advertising, and
6 therefore constitute a violation of California’s False Advertising Law (“FAL”),
7 Cal. Bus. & Prof. Code § 17500 *et seq.*

8 100. Said advertisements and inducements were made within the State of
9 California and come within the definition of advertising contained in the FAL, in
10 that such promotional materials were intended as inducements to purchase the Red
11 Lobster Products and are statements disseminated by Red Lobster to, and intended
12 to reach, Plaintiff Marshall and the other members of the Class. Red Lobster knows,
13 or in the exercise of reasonable care should know, that these representations are
14 misleading and deceptive.

15 101. The above-described acts of Red Lobster did deceive, were likely to
16 deceive, and are likely to continue deceiving reasonable consumers, including
17 Plaintiff Marshall and the other members of the Class, by obfuscating the nature
18 and sourcing of the Products, in violation of the “misleading” prong of the FAL.

19 102. Plaintiff Marshall and the other members of the Class have suffered
20 injury in fact and have lost money or property as a result of Red Lobster’s violations

1 of California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.*

2 103. Pursuant to California Business and Professions Code §§ 17203 and
3 17535, Plaintiff Marshall and the Class seek an order of this Court that includes,
4 but is not limited to, requiring Red Lobster to:

5 (a) provide restitution to Plaintiff and the other members of the Class;

6 (b) cease its unlawful and deceptive acts; and

7 (c) pay the attorney fees and costs of Plaintiff Marshall and the Class.

8 **COUNT III**

9 **Violation of California’s Unfair Competition Law**

10 104. Plaintiff Marshall incorporates by reference and realleges herein all
11 paragraphs alleged above.

12 105. By committing the acts and practices alleged herein, Red Lobster has
13 violated California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code
14 §§ 17200-17210, as to the Class as a whole, by engaging in unlawful, fraudulent,
15 and unfair conduct.

16 106. Red Lobster has violated the UCL’s proscription against engaging in
17 *unlawful* conduct as a result of:

18 (a) Violations of the CLRA, Cal. Civ. Code §§ 1770(a)(5), (a)(7), and (a)(9),
19 as alleged above; and

20 (b) Violations of the FAL, Cal. Bus. & Prof. Code § 17500 *et seq.*, as alleged

1 above.

2 107. Red Lobster’s acts and practices described above also violate the
3 UCL’s proscription against engaging in fraudulent conduct.

4 108. As more fully described above, Red Lobster’s misleading marketing
5 and advertising of the Red Lobster Products is likely to deceive reasonable
6 consumers. Indeed, Plaintiff Marshall and the other members of the Class were
7 deceived regarding the “sustainable” qualities of the Products, as Red Lobster’s
8 marketing and advertising of the Products misrepresent or omit the true facts
9 concerning the benefits of the Products. Those acts are fraudulent business
10 practices.

11 109. Red Lobster’s acts and practices described above also violate the
12 UCL’s proscription against engaging in unfair conduct.

13 110. Plaintiff Marshall and the other members of the Class suffered injury
14 by virtue of buying the Red Lobster Products that they would not have purchased,
15 or would not have paid the requested prices for, absent Red Lobster’s unlawful,
16 fraudulent, and unfair marketing and advertising.

17 111. There is no benefit to consumers or competition from deceptively
18 marketing products like the Red Lobster Products, which purport to be
19 “sustainable” and “sourced to the highest standards” when these unqualified claims
20 are false.

1 A. An order certifying the proposed Class (and/or Subclasses as deemed
2 necessary); appointing Plaintiff Marshall as representative of the Class (and/or
3 Subclasses as deemed necessary); and appointing Plaintiff Marshall's undersigned
4 counsel as class counsel for the Class (and/or Subclasses as deemed necessary);

5 B. A declaration that Red Lobster is financially responsible for notifying
6 Class members of the pendency of this suit;

7 C. An order enjoining Red Lobster's unlawful and deceptive acts;

8 D. Monetary damages for members of the Class pursuant to California Civil
9 Code § 1780;

10 E. Monetary damages and statutory damages in the maximum amount
11 provided by law;

12 F. Punitive damages in accordance with proof and in an amount consistent
13 with applicable precedent;

14 G. An order awarding Plaintiff Marshall and the other Class members the
15 reasonable costs and expenses of suit, including their attorneys' fees; and

16 H. Any further relief that the Court may deem appropriate.

17 **JURY TRIAL DEMANDED**

18 Plaintiff Marshall hereby demands a trial by jury.
19
20

1 DATED: June 11, 2021

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