

Matthew Strugar (SBN 232951)
 Law Office of Matthew Strugar
 3435 Wilshire Blvd., Suite 2910
 Los Angeles, CA 90010
 (323) 696-2299
 matthew@matthewstrugar.com

Jay R. Shooster (*pro hac vice*)
 jshooster@richmanlawpolicy.com
 535 Mission Street
 San Francisco, CA 94105
 Telephone: (718) 705-4579
 Facsimile: (718) 228-8522

*Attorneys for Plaintiff Marshall
 and Proposed Class*

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

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

Plaintiff,

v.

RED LOBSTER MANAGEMENT
 LLC and RED LOBSTER
 HOSPITALITY LLC,

Defendants.

Case No. 2:21-cv-04786-JAK-MAR

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

Judge John A. Kronstadt

Magistrate Judge Margo A. Rocconi

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 and Red Lobster Hospitality LLC (collectively, “Red Lobster” or
5 “Defendants”) regarding the deceptive marketing and sale of Red Lobster’s Maine
6 lobster and shrimp products (the “Products”) as “sustainable” when they may be
7 sourced from suppliers that use environmentally harmful and inhumane practices,
8 and alleges the following based upon information, belief, and the investigation of
9 her counsel:

10 **INTRODUCTION**

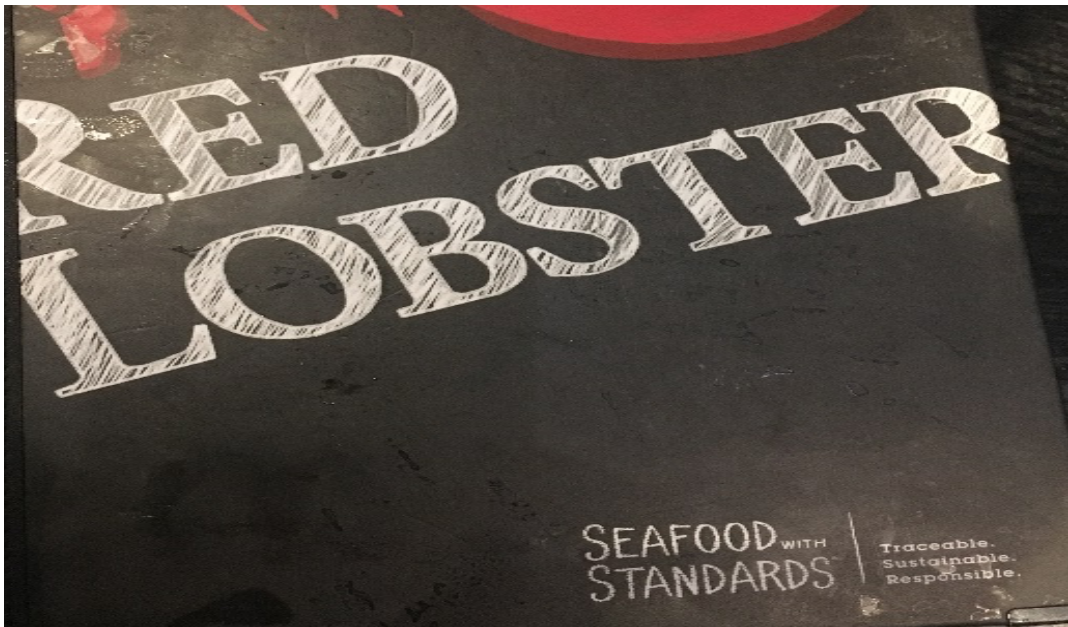
11 1. Due to concerns about sustainability, consumers are increasingly
12 concerned with how their food is produced.

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

17 3. Red Lobster knows that consumers seek out and wish to buy seafood
18 products that are sourced sustainably in accordance with high environmental and
19 animal welfare standards. Red Lobster also knows that consumers will pay more

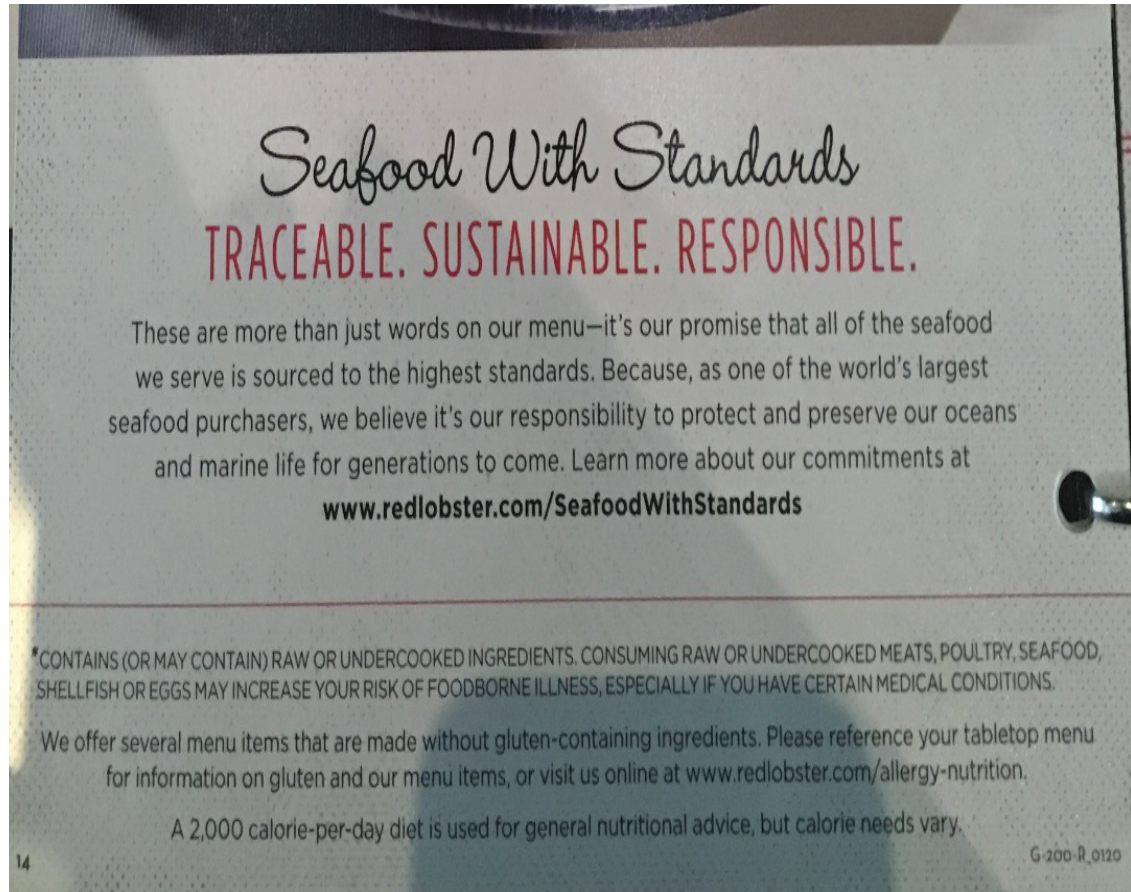
1 for such products than they will for products sourced from suppliers that use
 2 unsustainable, environmentally harmful, and/or inhumane practices, or will
 3 purchase more of the products they believe to be sustainably sourced.

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



18 5. On the inside of Red Lobster’s restaurant menu, the company repeats
 19 these Sustainability Representations, emphasizing, “These are more than just words
 20

on our menu—it's our promise that all of the seafood we serve is sourced to the highest standards." An example is below:



6. 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.

7. 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 8. 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 9. Moreover, Red Lobster shrimp suppliers use inhumane practices
 12 including routine eyestalk ablation, a practice in which the eyestalk gland of female
 13

14
 15 ¹ The “Maine Lobster Products” include all Red Lobster menu items that contain Maine
 16 Lobster. The Maine Lobster Products include, but are not limited to, the following: Live Maine
 17 Lobster; Maine Lobster Tail; Steak-And-Lobster; Ultimate Surf & Turf; Lobster Lover’s Dream;
 18 Ultimate Feast; Lobster, Shrimp and Salmon; Bar Harbor Lobster Bake; Lobster Linguini;
 19 Lobster Bisque; Petite Maine Lobster 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 shrimps is crushed, burned, or cut off—without painkillers—in order to increase
2 reproduction.

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

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

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

14 13. During any applicable statute of limitations period, Plaintiff Marshall
15 and Class members (described below) saw Red Lobster’s Sustainability
16 Representations when purchasing the Products in California. Based upon these
17 misrepresentations, Plaintiff Marshall and Class members paid more for the
18 Products than they otherwise would have paid, purchased the Products when they
19 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 14. Red Lobster's false and deceptive representations violate the
4 consumer-protection statutes of California.

5 15. 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 **JURISDICTION AND VENUE**

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

1 interest and costs.

2 17. This Court has personal jurisdiction over Defendants in that they
3 regularly conduct and transact business in California, purposefully avail themselves of
4 the laws of California, market their Products with the Sustainability
5 Representations to consumers in California, and sell their Products in numerous
6 restaurants in California.

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

11 **PARTIES**

12 19. Defendant Red Lobster Management LLC is a Florida limited-liability
13 company with a principal place of business in Florida. Red Lobster Management
14 LLC is involved in Red Lobster's "Seafood with Standards" campaign and
15 marketing.

16 20. Red Lobster Hospitality LLC is a Florida limited-liability company
17 with a principal place of business in Florida. Red Lobster Hospitality LLC is
18 involved in Red Lobster's restaurants and sales.

19 21. Collectively, Red Lobster produces, advertises, markets, and
20

1 distributes the Products throughout the United States. Red Lobster created and/or
2 authorized the false and deceptive marketing of the Products.

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

6 23. On January 4, 2020, Plaintiff Marshall purchased Red Lobster's
7 "Family Feast," which is a Maine Lobster Product and a Shrimp Product; "Lobster
8 Lover's Dream," which is a Maine Lobster Product; and "Ultimate Feast," which
9 is a Maine Lobster Product and a Shrimp Product. Plaintiff Marshall purchased the
10 Products at the Red Lobster located at 27524 The Old Road, Magic Mountain
11 Pkwy, Valencia, CA 91355.

12 24. In deciding to make her purchases, Plaintiff Marshall saw, relied upon,
13 and reasonably believed Red Lobster's on-menu Sustainability Representations,
14 including: (1) "Seafood With Standards," (2) "Traceable. Sustainable.
15 Responsible.," and (3) "These are more than just words on our menu—it's our
16 promise that all of the seafood we serve is sourced to the highest standards."
17 Photographs of these marketing claims as they appear on the menu are provided
18 *supra* at paragraphs 4-5.

19 25. Plaintiff Marshall was willing to purchase and to pay the requested
20

1 prices for Red Lobster's Products because of the expectation that the Products
2 were, in fact, sustainable and sourced in accordance with the highest environmental
3 and animal welfare standards, and thus, were not sourced from suppliers that use
4 environmentally harmful and inhumane practices.

5 26. Had Plaintiff Marshall known at the time that Red Lobster's Products
6 were not sustainable but sourced from suppliers that use environmentally harmful
7 and inhumane practices, she would not have purchased or continued to purchase
8 the Products at the requested prices.

9 27. Plaintiff Marshall wishes to be able to continue purchasing the
10 Products and, therefore, wishes to see them truthfully and sustainably sourced in
11 accordance with the highest environmental and animal welfare standards.
12 Moreover, Plaintiff Marshall believes that members of her proposed class are
13 currently purchasing, and will continue to purchase, the Products at the requested
14 prices, unaware that the Sustainability Representations are misleading, unless Red
15 Lobster's conduct is enjoined.

16 **FACT ALLEGATIONS**

17 **A. Red Lobster Falsely and Deceptively Markets the Products with** 18 **Sustainability Representations.**

19 28. Red Lobster markets and sells the Products throughout the United
20 States, including in California.

1 29. Red Lobster’s restaurant menu markets the Products with
 2 Sustainability Representations, including “Seafood With Standards,” “Traceable.
 3 ***Sustainable.*** Responsible.,” and “These are more than just words on our menu—
 4 it’s our ***promise*** that all of the seafood we serve is ***sourced to the highest***
 5 ***standards***” (emphases added). Examples of these marketing claims are provided
 6 *supra* at paragraphs 4-5.

7 30. Red Lobster’s Sustainability Representations convey to a reasonable
 8 consumer that the Products are made from lobster and shrimp sourced in
 9 accordance with the highest environmental and animal welfare standards.

10 31. The Federal Trade Commission (“FTC”) has determined that
 11 unqualified general environmental benefit claims such as “sustainable”³ “likely
 12 convey that the product . . . has specific and far-reaching environmental benefits
 13 and may convey that the item . . . has no negative environmental impact.”⁴ For that
 14 reason, the FTC has admonished companies not to use unqualified claims such as
 15 “sustainable” due to its determination that “it is highly unlikely that marketers can
 16
 17

18 ³ *FTC Sends Warning Letters to Companies Regarding Diamond Ad Disclosures*, Federal
 19 Trade Commission (Apr. 2, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-sends-warning-letters-companies-regarding-diamond-ad>.

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

1 substantiate all reasonable interpretations of these claims.”⁵

2 32. Research demonstrates that claims such as “sustainably produced” are
3 perceived by many consumers to mean “produced according to higher animal
4 welfare standards.”⁶

5 33. Consumers have ranked the minimal use of hormones and drugs, no
6 pollution of the environment, and animal welfare as three of the four most
7 important elements of sustainable aquaculture.⁷

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

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

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

18 ⁷ *See id.*

19 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>.

20 ⁹ *Id.*

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

35. Red Lobster sources Maine lobster for its Maine Lobster Products from the Gulf of Maine lobster fishery.

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

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

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

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).

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

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

1 39. A “Category I fishery” means “a commercial fishery determined by
 2 the Assistant Administrator to have frequent incidental mortality and serious injury
 3 of marine mammals. A commercial fishery that frequently causes mortality or
 4 serious injury of marine mammals is one that is by itself responsible for the annual
 5 removal of 50 percent or more of any stock’s potential biological removal level.”¹³
 6 In particular, NMFS points to harms caused by lobster gear to the North Atlantic
 7 right whales.

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

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

14 41. Red Lobster’s Shrimp Products are made with shrimp sourced from
 15 Indonesia, Vietnam, India, and China.

16 42. Shrimp farming in Indonesia, Vietnam, India, and China utilizes
 17 unsustainable and inhumane high-density industrial farming methods to increase
 18

19 ¹³ 50 CFR § 229.2.

1 production.¹⁴

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

6 44. Shrimp farms—especially in the regions from which shrimp for Red
7 Lobster's Shrimp Products are sourced—frequently overuse antibiotics to prevent
8 these disease outbreaks. Farmers also use chlorine-based disinfectants, with one
9 survey of shrimp farmers in Vietnam finding that 90 percent of farmers relied on
10

11
12 ¹⁴ See, e.g., Ben Fisher, *You Should Never Eat Imported Farm-Raised Shrimp. Here's Why*,
Mashed (July 25, 2020 6:39 A.M.; updated Dec. 13, 2020 8:18 P.M.),
13 <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;
14 updated Nov. 8, 2019), <https://www.nytimes.com/2019/10/15/dining/shrimp-sourcing-united-states.html>;
Malcolm Bedell, *What You Need To Know Before You Eat Another Bite Of Shrimp*,
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
15 Institute (July 3, 2013), <https://www.cornucopia.org/2008/01/unsustainable-shrimp-farming/>;
Alistair Doyle, *Mangroves under threat from shrimp farms: U.N.*, Reuters (Nov. 14, 2012 2:50
16 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>;
17 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 visited Sept. 20,
20 2021).

1 chemical disinfectants.¹⁶

2 45. The combination of organic waste, chemicals, and antibiotics from
3 shrimp farms like these contaminate groundwater, in turn significantly reducing the
4 size and diversity of fish populations that the ecosystems can support. The use of
5 harmful chemical contaminants is especially prevalent in the regions from which
6 Red Lobster sources shrimp for the Shrimp Products. Researchers in Vietnam, for
7 example, found that fish diversity was 35 percent lower in areas where shrimp
8 wastewater was discharged.¹⁷

9 46. Shrimp farm expansion in Southeast Asia is the single largest driver
10 of destruction of mangroves.¹⁸

11 47. In addition to bolstering biodiversity and protecting coastal areas from
12 storms and erosion, mangroves provide substantial carbon sequestration.
13 Researchers have calculated that the mangrove deforestation involved in the
14

15 ¹⁶ Tran Thi Kim Chi et al., *Use Practices of Antimicrobials and Other Compounds by Shrimp*
16 *and Fish Farmers in Northern Vietnam*, 7 *Aquaculture Reps.* 40 (Aug. 2017),
<https://www.sciencedirect.com/science/article/pii/S2352513417300029>.

17 ¹⁷ Van Trai Nguyen et al., *Water Pollution Concerns in Shrimp Farming in Vietnam: A Case*
Study of Can Gio, Ho Chi Minh City, 3.2 *Int'l J. Env't, Cultural, Econ., and Soc. Sustainability:*
18 *Ann. Rev.* 129 (Jan. 2006),
https://www.researchgate.net/publication/262014657_Water_pollution_concerns_in_shrimp_farming_in_Vietnam_A_case_study_of_Can_Gio_Ho_Chi_Minh_City.

19 ¹⁸ J. Boone Kauffman et al., *The Jumbo Carbon Footprint of a Shrimp: Carbon Losses from*
Mangrove Deforestation, 15 *Frontiers in Ecology & Env't* 183 (Apr. 2017),
20 <https://esajournals.onlinelibrary.wiley.com/doi/abs/10.1002/fee.1482>.

1 production of a single shrimp dinner produces greenhouse gas emissions equivalent
2 to a road trip from New York to Los Angeles.¹⁹

3 48. Monterey Bay Aquarium's Seafood Watch ("Seafood Watch")
4 generally warns consumers to avoid various shrimp products from Indonesia,
5 Vietnam, India, and China due to harmful environmental impacts and overuse of
6 antibiotics.²⁰

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

15 50. Red Lobster also sources Pacific Whiteleg Shrimp from Vietnam.
16

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-shrimp-whiteleg-shrimp-indonesia-
ponds?species=156](https://www.seafoodwatch.org/recommendation/shrimp/red-shrimp-whiteleg-shrimp-indonesia-ponds?species=156) (last visited Sept. 20, 2021).

20 ²² *Id.*

1 Seafood Watch also found such shrimp from Vietnam should generally be avoided
2 because shrimp “farming in Vietnam has historically contributed to large amounts
3 of mangrove loss,” and “import data from the U.S. and European Union shows that
4 illegal antibiotic use is occurring.”²³

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

11 52. Red Lobster also sources Pacific Whiteleg Shrimp from India, even
12 though Seafood Watch determined that such shrimp should generally be avoided
13 due to inadequate data concerning environmental impacts and antibiotic use, with
14 a likelihood that “antibiotics listed as critically important to human health are
15
16

17
18 ²³ *Recommendation: Whiteleg Shrimp, Vietnam*, Monterey Bay Aquarium Seafood Watch,
[https://www.seafoodwatch.org/recommendation/shrimp/red-shrimp-whiteleg-shrimp-vietnam-](https://www.seafoodwatch.org/recommendation/shrimp/red-shrimp-whiteleg-shrimp-vietnam-intensive-pond?species=156)
[intensive-pond?species=156](https://www.seafoodwatch.org/recommendation/shrimp/red-shrimp-whiteleg-shrimp-vietnam-intensive-pond?species=156) (last visited Sept. 20, 2021).

19 ²⁴ *Recommendation: Whiteleg Shrimp, China*, Monterey Bay Aquarium Seafood Watch
[https://www.seafoodwatch.org/recommendation/shrimp/red-shrimp-whiteleg-shrimp-china-](https://www.seafoodwatch.org/recommendation/shrimp/red-shrimp-whiteleg-shrimp-china-ponds?species=156)
[ponds?species=156](https://www.seafoodwatch.org/recommendation/shrimp/red-shrimp-whiteleg-shrimp-china-ponds?species=156) (last visited Sept. 20, 2021)
20

used.”²⁵

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

54. BAP standards are promulgated by the Global Aquaculture Alliance, an organization led by the farmed seafood industry.²⁷ Red Lobster itself is a “founding member” of the Global Aquaculture Alliance and even “helped establish guidelines for best practices and aquaculture certifications.”²⁸

²⁵ *Recommendation: Whiteleg Shrimp, India*, Monterey Bay Aquarium Seafood Watch <https://www.seafoodwatch.org/recommendation/shrimp/red-shrimp-whiteleg-shrimp-india-ponds?species=156> (last visited Sept. 20, 2021).

²⁶ Marc Gunther, *Shrimp Farms’ Tainted Legacy Is Target of Certification Drive*, Yale Env’t 360 (Aug. 6, 2012), 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 shrimp farms, companies like Darden [Red Lobster’s former owner], which buys about \$750 million worth of seafood a year, can claim that ‘100 percent of the aquacultured shrimp processors that supply Darden are certified.’ Note the reference to processors, and not farms, where the environmental footprint of aquaculture is greater.”).

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

²⁸ *Seafood with Standards*, Red Lobster, <https://www.redlobster.com/our-story/seafood-with-standards/our-beliefs> (last visited Sept. 20, 2021).

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

6 56. Consumers also reasonably perceive “sustainable” to mean “produced
7 according to higher animal welfare standards.” But shrimp farms in each of the
8 aforementioned countries, from which Red Lobster sources shrimp for its Shrimp
9 Products, perform eyestalk ablation, an unnecessary and inhumane practice in
10 which the eyestalk gland of female shrimps is macerated or destroyed to stimulate
11 spawning.³⁰ Eyestalk ablation increases shrimp vulnerability to disease.³¹
12 Painkillers are not used during eyestalk ablation, resulting in a cruel and traumatic

14
15 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 Sept. 20, 2021).

16 ³⁰ Lauren Kramer, *Innovation Award 2020 finalist: Simao Zacarias’ shrimp eyestalk ablation*
17 *research*, Global Aquaculture Alliance (Sept. 21, 2020), <https://www.aquaculturealliance.org/advocate/innovation-award-2020-finalist-simao-zacarias-shrimp-eyestalk-ablation-research/>; see also Palaniyandi Thirunavukkarasu et al., *Procedure for*
18 *Maturation and Spawning of Imported shrimp Litopenaeus vannamei in Commercial Hatchery,*
19 *South East Coast of India*, 6 Fisheries & Aquaculture J. (Jan. 2015), https://www.researchgate.net/publication/289585731_Procedure_for_Maturation_and_Spawning_of_Imported_shrimp_Litopenaeus_vannamiei_in_Commercial_Hatchery_South_East_Coast_of_India.

20 ³¹ See *id.*

1 experience that leaves the shrimp disoriented and in pain.³²

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

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

8 59. According to the Charity Entrepreneurship Shrimp Welfare Report,
9 poor water quality on farms in these regions causes high levels of stress to the
10 shrimp who “struggle to breathe” as a result.³⁴

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

13 60. As set forth above (*supra* ¶¶ 37-61), Red Lobster’s Maine Lobster
14 Products and Shrimp Products are made from lobster and shrimp sourced from
15 suppliers using environmentally destructive and inhumane practices. Thus, Red
16 Lobster’s Sustainability Representations—which suggest to consumers that the

17
18 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>.

19 ³³ *Id.*

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

1 Products are sourced in accordance with the highest environmental and animal
 2 welfare standards (*supra* ¶¶ 31-36)—are false, deceptive, and misleading.

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

8 62. Red Lobster’s conduct in marketing and advertising the Products with
 9 Sustainability Representations has deceived and/or is likely to deceive the public.
 10 Consumers have been deceived into believing that the Products are made from
 11 lobster and shrimp sourced in accordance with the highest environmental and
 12 animal welfare standards.

13 63. Consumers lack the information and scientific knowledge necessary
 14 to determine whether the Products are in fact “sustainable” or sourced to the
 15 “highest standards” and to know or to ascertain the true quality of the Products.

16 64. Reasonable consumers must and do rely on Red Lobster to report
 17

18 ³⁵ McClenahan et al., *supra* note 8.

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

1 honestly whether the lobster and shrimp used in the Products are sourced from
2 suppliers that use environmentally destructive and inhumane practices.

3 65. Red Lobster knows that the Products were marketed with
4 Sustainability Representations. Red Lobster also knows how the Products are
5 sourced and produced. Red Lobster thus knows, or should know, the facts
6 demonstrating that the Products were falsely and deceptively marketed and
7 advertised. Red Lobster's deceptive advertising could not have occurred in the
8 absence of the authorization or ratification of an officer, director, or manager of
9 Defendants.

10 66. For example, Red Lobster intentionally continued to source from its
11 suppliers of the Maine Lobster Products even after Red Lobster learned that these
12 suppliers were held to be in violation of the Endangered Species Act. Furthermore,
13 Red Lobster intentionally continued to source from these suppliers even after Red
14 Lobster learned that their Marine Stewardship Council sustainability certification
15 was revoked.

16 67. In making the false, misleading, and deceptive representations at
17 issue, Red Lobster also knows and intends that consumers will choose to buy, and
18 pay the requested price for, products promoted with Sustainability Representations,
19 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 68. 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 69. 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 70. Had Red Lobster not made the false, misleading, and deceptive
20

1 representations, Plaintiff Marshall and the Class members would not have been
2 willing to pay the same amount for the Products they purchased and/or would not
3 have been willing to purchase the Products.

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

6 **CLASS ALLEGATIONS**

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

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

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

19 75. Included in the Class, to the extent necessary, are (1) a subclass of all
20

1 persons who purchased the Maine Lobster Products in California during the Class
2 Period (the “Maine Lobster Subclass”), and (2) a subclass of all persons who
3 purchased the Shrimp Products in California during the Class Period (the “Shrimp
4 Subclass”).

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

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

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

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

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

1 78. Plaintiff Marshall will fairly and adequately protect the interests of the
2 Class and has no interests that are antagonistic to the claims of the Class. Plaintiff
3 Marshall will vigorously pursue the claims of the Class and Subclasses.

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

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

14 81. A class action is superior to other available methods for the fair and
15 efficient adjudication of this controversy because Class members number in the
16 thousands and individual joinder is impracticable. The expense and burden of
17 individual litigation would make it impracticable or impossible for proposed Class
18 members to prosecute their claims individually, and the disposition of this case and
19 as part of a single class action will benefit the parties and reduce the aggregate

1 judicial resources that would be spent if this matter were handled as hundreds or
2 thousands of separate lawsuits. Trial of Plaintiff Marshall's and the Class members'
3 claims together is manageable.

4 82. No member of the Class has a substantial interest in individually
5 controlling the prosecution of a separate action.

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

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

17 85. Red Lobster's conduct is generally applicable to the Class as a whole,
18 and Plaintiff Marshall seeks, *inter alia*, equitable remedies with respect to the Class
19 as a whole. As such, Red Lobster's systematic policies and practices make

1 declaratory relief appropriate with respect to the Class as a whole.

2 86. Plaintiff Marshall knows of no difficulty that will be encountered in
3 the management of this litigation that would preclude its maintenance of a class
4 action.

5 **CAUSES OF ACTION**

6 **COUNT I**

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

8 87. Plaintiff Marshall incorporates by reference and realleges herein all
9 paragraphs alleged above.

10 88. This cause of action is brought pursuant to California's Consumers
11 Legal Remedies Act, Cal. Civ. Code §§ 1750-1785 (the "CLRA").

12 89. Plaintiff Marshall and other members of the Class are "consumers,"
13 as the term is defined by California Civil Code § 1761(d), because they bought Red
14 Lobster's Products for personal, family, or household purposes.

15 90. Plaintiff Marshall, the other members of the Class, and Red Lobster
16 have engaged in "transactions," as that term is defined by California Civil Code
17 §1761(e).

18 91. The conduct alleged in this Complaint constitutes unfair methods of
19 competition and unfair and deceptive acts and practices for the purpose of the

1 CLRA, and the conduct was undertaken by Red Lobster in transactions intended to
2 result in, and which did result in, the sale of goods to consumers.

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

6 93. As a result of engaging in such conduct, Red Lobster has violated
7 California Civil Code § 1770(a)(5), (a)(7), and (a)(9).

8 94. CLRA § 1782 NOTICE. On March 29, 2021, a CLRA demand letter
9 was sent on behalf of Plaintiff Marshall to Red Lobster via certified mail, which
10 provided notice of Red Lobster’s violation of the CLRA and demanded that within
11 thirty (30) days from that date, Red Lobster correct, repair, replace, or otherwise
12 rectify the unlawful, unfair, false, and/or deceptive practices complained of herein.
13 The letter also stated that if Red Lobster refused to do so, a complaint seeking
14 damages in accordance with the CLRA would be filed. Red Lobster received the
15 letter on behalf of Plaintiff Marshall on April 1, 2021 but has failed to comply with
16 the letters. Accordingly, pursuant to California Civil Code § 1780(a)(3), Plaintiff
17 Marshall, on behalf of herself and the Class, seeks compensatory damages, punitive
18 damages, injunctive relief, and restitution of any ill-gotten gains due to Red
19 Lobster’s acts and practices.

COUNT II
Violations of California's False Advertising Law

95. Plaintiff Marshall incorporates by reference and realleges herein all paragraphs alleged above.

96. As alleged more fully above, Red Lobster has falsely advertised the Products with the Sustainability Representations.

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

98. The misrepresentations and non-disclosures by Defendant of the material facts detailed above constitute false and misleading advertising, and therefore constitute a violation of California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500 *et seq.*

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

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

101. Plaintiff Marshall and the other members of the Class have suffered injury in fact and have lost money or property as a result of Red Lobster's violations of California's False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.*

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

- (a) provide restitution to Plaintiff and the other members of the Class;
- (b) cease its unlawful and deceptive acts; and
- (c) pay the attorney fees and costs of Plaintiff Marshall and the Class.

COUNT III
Violation of California’s Unfair Competition Law

103. Plaintiff Marshall incorporates by reference and realleges herein all paragraphs alleged above.

104. By committing the acts and practices alleged herein, Red Lobster has violated California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17210, as to the Class as a whole, by engaging in unlawful, fraudulent,

1 and unfair conduct.

2 105. Red Lobster has violated the UCL's proscription against engaging in
3 *unlawful* conduct as a result of:

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

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

8 106. Red Lobster's acts and practices described above also violate the
9 UCL's proscription against engaging in fraudulent conduct.

10 107. As more fully described above, Red Lobster's misleading marketing
11 and advertising of the Red Lobster Products is likely to deceive reasonable
12 consumers. Indeed, Plaintiff Marshall and the other members of the Class were
13 deceived regarding the "sustainable" qualities of the Products, as Red Lobster's
14 marketing and advertising of the Products misrepresent or omit the true facts
15 concerning the benefits of the Products. Those acts are fraudulent business
16 practices.

17 108. Red Lobster's acts and practices described above also violate the
18 UCL's proscription against engaging in unfair conduct.

19 109. Plaintiff Marshall and the other members of the Class suffered injury
20

1 by virtue of buying the Red Lobster Products that they would not have purchased,
2 or would not have paid the requested prices for, absent Red Lobster's unlawful,
3 fraudulent, and unfair marketing and advertising.

4 110. There is no benefit to consumers or competition from deceptively
5 marketing products like the Red Lobster Products, which purport to be
6 "sustainable" and "sourced to the highest standards" when these unqualified claims
7 are false.

8 111. Plaintiff Marshall and the other members of the Class had no way of
9 reasonably knowing that the Red Lobster Products they purchased were not as
10 marketed or advertised. Thus, they could not have reasonably avoided the injury
11 each of them suffered.

12 112. The consequences of Red Lobster's conduct as described above
13 outweighs any justification, motive, or reason therefore, particularly considering
14 the available legal alternatives that exist in the marketplace, and such conduct is
15 immoral, unethical, unscrupulous, offends established public policy, or is
16 substantially injurious to Plaintiff Marshall and the other members of the Class.

17 113. Pursuant to California Business and Professional Code § 17203,
18 Plaintiff Marshall and the members of the Class seek an order of this Court that,
19 *inter alia*, requires Red Lobster to:

1 (a) provide restitution to Plaintiff Marshall and the other members of the
2 Class;

3 (b) disgorge all revenues obtained as a result of violations of the UCL;

4 (c) cease their unlawful and deceptive acts; and

5 (d) pay the attorneys' fees and costs of Plaintiff Marshall and the Class.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff Marshall respectfully requests that the Court enter
8 judgment in her favor and in favor of the Class as follows:

9 A. An order certifying the proposed Class (and/or Subclasses as deemed
10 necessary); appointing Plaintiff Marshall as representative of the Class (and/or
11 Subclasses as deemed necessary); and appointing Plaintiff Marshall's undersigned
12 counsel as class counsel for the Class (and/or Subclasses as deemed necessary);

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

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

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

18 E. Monetary damages and statutory damages in the maximum amount
19 provided by law;

1 F. Punitive damages in accordance with proof and in an amount consistent
2 with applicable precedent;

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

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

6 **JURY TRIAL DEMANDED**

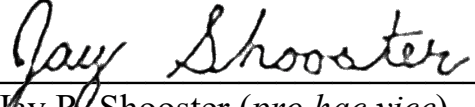
7 Plaintiff Marshall hereby demands a trial by jury.
8
9
10
11
12
13
14
15
16
17
18
19
20

1 DATED: September 20, 2021

2 **LAW OFFICE OF MATTHEW STRUGAR**

3 /s/ Matthew Strugar
4 Matthew Strugar (SBN 232951)
5 matthew@matthewstrugar.com
6 3435 Wilshire Blvd., Suite 2910
7 Los Angeles, CA 90010
8 (323) 696-2299

9 **RICHMAN LAW & POLICY**

10 
11 Jay R. Shooster (*pro hac vice*)
12 jshooster@richmanlawpolicy.com
13 535 Mission Street
14 San Francisco, CA 94105
15 Telephone: (718) 705-4579
16 Facsimile: (718) 228-8522

17 *Attorneys for Plaintiff Marshall*
18 *and Proposed Class*