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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BEVERLY BEAL and COURTNEY
WHETSTONE, on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

MW POLAR FOODS CORPORATION,

Defendant.

Case No. **'25CV1358 WQHJLB**

CLASS ACTION COMPLAINT

1 Plaintiffs Beverly Beal and Courtney Whetstone (“Plaintiffs”) bring this action
2 on behalf of themselves and all others similarly situated against MW Polar Foods
3 Corporation (“Defendant”). Plaintiffs make the following allegations pursuant to the
4 investigations of their counsel and based upon information and belief, except as to
5 the allegations specifically pertaining to themselves, which are based on personal
6 knowledge.

7 **NATURE OF THE ACTION**

8 1. Plaintiffs bring this class action lawsuit on behalf of themselves and all
9 others similarly situated who purchased Defendant’s canned Salmon Fillet in Brine
10 and Juice (the “Product”).¹

11 2. The flesh of farm-raised salmon is naturally grey or white. So, to make
12 it a more appealing pink, salmon farmers add color additives to the farmed salmon’s
13 feed. The additives used are one of two chemicals: astaxanthin or canthaxanthin. As
14 such, “[t]o prevent economic fraud in salmonid fish containing added astaxanthin,
15 the [FDA] requires declaration of the presence of the color additive” on the product
16 packaging. 63 Fed. Reg. 18738 (1998).

17 3. Defendant’s Product is farm-raised in net-pens in Norway and Chile.
18 As such, the only way that the fish in Defendant’s Product get their signature salmon
19 pink is from color additives Defendant intentionally added to the salmon’s feed.

20 4. Indeed, Independent testing conducted by Plaintiffs’ counsel confirmed
21 the presence of astaxanthin in the Product. Because the Product contains a color
22 additive, Defendant was required to disclose it on the label but failed to do so.

23 5. Plaintiffs sustained injuries by purchasing Defendant’s Product which
24 was deceptively marketed as containing salmon fillets with a healthy, natural pink
25 coloring when, instead, Defendant’s farm-raised salmon necessarily contained

26
27 ¹ Discovery may reveal that additional products are within the scope of this
28 Complaint. Accordingly, Plaintiffs reserve the right to include additional items
identified through the course of discovery.

1 **artificial** coloring. The Product is advertised, sold, and distributed by Defendant or
2 its agents, to consumers, including Plaintiffs and Members of the Classes, throughout
3 the United States.

4 6. Accordingly, Plaintiffs bring claims against Defendant individually and
5 on behalf of classes of all others similarly situated for (1) violation of California's
6 Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*; (2) violation of
7 California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; (3)
8 violation of California's False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et*
9 *seq.*; (4) violation of New York Gen. Bus. Law § 349; (5) violation of New York
10 Gen. Bus. Law § 350; (6) breach of express warranty; and (7) unjust enrichment.

11 **PARTIES**

12 7. Plaintiff Beverly Beal is a citizen of California who resides in
13 Escondido, California. Plaintiff Beal most recently purchased the Product in or
14 around January 2024 from a Walmart store in San Marcos, California. Prior to her
15 purchase, Plaintiff Beal reviewed the Product packaging and relied on Defendant's
16 representations, labeling, and packing and understood that the Product was warranted
17 as being a salmon product that contained a naturally occurring healthy coloring with
18 no artificial coloring added, indicative of wild caught salmon. As such, those
19 representations and warranties were part of the basis of the bargain, in that she would
20 not have purchased the Product on the same terms had she known those
21 representations were not true. In making her purchase, Plaintiff Beal paid a price
22 premium due to the false and misleading representation that the Product contains
23 naturally colored salmon filet free of artificial dyes and coloring. Accordingly,
24 Plaintiff Beal relied on these representations and warranties in deciding to purchase
25 the Product. Had Plaintiff Beal known that the Product contained artificial coloring
26 she would not have purchased the Product or would have purchased it under
27 substantially different terms. Plaintiff Beal did not receive the benefit of her bargain
28 because the Product was not, in fact, free of artificial coloring.

1 8. Plaintiff Beal remains interested in purchasing the Product from
2 Defendant. However, she is unable to determine if the Product is actually free of
3 artificial coloring. She understands that the composition of the Product may change
4 over time, but as long as Defendant continues to represent the Product as being free
5 of artificial coloring, when it is not, she will be unable to make informed decisions
6 about whether to purchase the Product and will be unable to evaluate the different
7 prices between Defendant's Product and competitors' products. Plaintiff Beal is
8 further likely to be repeatedly misled by Defendant, unless and until Defendant is
9 compelled to ensure that the Product's marketing as being free of artificial coloring,
10 is, in fact, true.

11 9. Plaintiff Courtney Whetstone is a citizen of New York who resides in
12 Buffalo, New York. Plaintiff Whetstone has purchased the Product multiple times
13 for the past three years, the most recent being in March of 2025 from a Walmart in
14 Buffalo, New York. Prior to her purchase, Plaintiff Whetstone reviewed the Product
15 packaging and relied on Defendant's representations, labeling, and packing and
16 understood that the Product was warranted as being a salmon product that contained
17 a naturally occurring healthy coloring with no artificial coloring added, indicative of
18 wild caught salmon. As such, those representations and warranties were part of the
19 basis of the bargain, in that she would not have purchased the Product on the same
20 terms had she known those representations were not true. As such, those
21 representations and warranties were part of the basis of the bargain, in that she would
22 not have purchased the Product on the same terms had she known those
23 representations were not true. Accordingly, Plaintiff Whetstone relied on these
24 representations and warranties in deciding to purchase the Product. In making her
25 purchase, Plaintiff Whetstone paid a price premium due to the false and misleading
26 claim that the Product is free of artificial dyes and coloring. Had Plaintiff Whetstone
27 known that the Product contained artificial coloring she would not have purchased
28 the Product or would have purchased it under substantially different terms. Plaintiff

1 Whetstone did not receive the benefit of her bargain because the Product was not, in
2 fact, free of artificial coloring.

3 10. Plaintiff Whetstone remains interested in purchasing the Product from
4 Defendant. However, she is unable to determine if the Product is actually free of
5 artificial coloring. She understands that the composition of the Product may change
6 over time, but as long as Defendant continues to represent the Product as being free
7 of artificial coloring, when it is not, she will be unable to make informed decisions
8 about whether to purchase the Product and will be unable to evaluate the different
9 prices between Defendant's Product and competitors' products. Plaintiff Whetstone
10 is further likely to be repeatedly misled by Defendant, unless and until Defendant is
11 compelled to ensure that the Product's marketing as being free of artificial coloring,
12 is, in fact, true.

13 11. Defendant MW Polar Corporation is a Canadian corporation with its
14 principal place of business in Norwalk, California. Defendant markets, sells, and
15 distributes the Product throughout the United States, including in California and New
16 York. Defendant manufactured, marketed, and sold the Product at issue at all times
17 during the relevant Class Period.

18 **JURISDICTION AND VENUE**

19 12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
20 1332(d)(2)(A) because there are more than 100 Members of the Classes, the
21 aggregate claims of all members of the proposed Classes exceed \$5,000,000.00,
22 exclusive of interest and costs, and at least one Member of the Classes is a citizen of
23 a state different from Defendant.

24 13. This Court has personal jurisdiction over Defendant because
25 Defendant's principal place of business is in California. Further, Defendant conducts
26 substantial business within California, including this District, and purposefully avails
27 itself to the benefits of this District by selling its Product in this District.
28

1 Additionally, a substantial portion of the events giving rise to Plaintiff Beal's claims
2 occurred in this District.

3 14. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a
4 substantial portion of the events, omissions, and acts giving rise to the claims herein
5 occurred in this District and Plaintiff Beal resides in this District.

6 **FACTUAL ALLEGATIONS**

7 **A. The Rise of Farm Raised Salmon**

8 15. The farmed salmon industry is estimated to be worth \$20-billion a
9 year.² "In 2022, more fish were farmed than were captured from the ocean."³

10 16. Salmon—being high in omega-3 fatty acids, DHA, and EPA⁴—is one of
11 the healthiest foods to consume and the second most popular seafood item in the
12 United States.⁵

13 17. Salmon is associated with lowering this risk of stroke, heart disease, and
14 high blood pressure. It is also known to protect against inflammation, obesity, and
15 cognitive decline.⁶ These factors have contributed to a high demand for salmon.

16 18. Because salmon consumption has risen in popularity, wild salmon
17 populations on both U.S. coasts have declined. Human impacts like dams,
18 overfishing, pollution, and climate change, are largely to blame.⁷

19 _____
20 ² Douglas Frantz and Catherine Collins, *3 Reasons to Avoid Farmed Salmon*, TIME
21 MAGAZINE (July 21, 2022), <https://time.com/6199237/is-farmed-salmon-healthy-sustainable/>.

22 ³ Priscilla Du Preez, *Salmon is Probably Not as Healthy as You Think*, FARM
23 SANCTUARY (Aug. 9, 2024), <https://www.farmsanctuary.org/news-stories/salmon-not-healthy/>.

24 ⁴ *Omega-3 Fatty Acids*, NAT'L INST. OF HEALTH (Dec. 17, 2024),
<https://ods.od.nih.gov/factsheets/Omega3FattyAcids-HealthProfessional/>.

25 ⁵ Mahita Gajanan, *How Farmers Turn Their Salmon Pink*, TIME MAGAZINE (June 13,
26 2017), <https://time.com/4790794/farmed-salmon-pink/>.

27 ⁶ See NIH, *supra* note 4.

28 ⁷ *What is Hurting Salmon?*, WASHINGTON STATE RECREATION AND CONSERVATION
OFFICE, <https://rco.wa.gov/salmon-recovery/problem/>.

1 19. 28 different salmonid species call the West Coast home. Their
2 populations, however, have been listed as threatened or endangered under the
3 Endangered Species Act.⁸ But despite their protected status, most of those species
4 continued to struggle and decline.⁹

5 20. On the East Coast, Atlantic salmon is the only native salmon species.
6 Like their West Coast relatives, human activities have decimated the wild Atlantic
7 salmon populations, culminating in the total collapse of Atlantic salmon fisheries¹⁰
8 by 1948.¹¹ Those fisheries never again reopened and today all Atlantic salmon
9 available for purchase in the United States is farmed.¹²

10 21. With the wild salmon population shrinking but consumer demand for
11 salmon growing, aquaculture (or fish farming) became popularized in the 1960s.¹³

12 22. Aquaculture works through the use of net pens that float a few hundred
13 yards offshore that are anchored in place through the use of heavy cables attached to
14 the sea floor.¹⁴ Hatchery-born salmon are transferred to these pens at 10 months
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16 ⁸ West Coast Regional Office, *Report Card on Recovery: Reviews Assess 28 Salmon*
17 *and Steelhead Species Returning to West Coast Rivers*, NAT'L OCEANIC AND
18 ATMOSPHERIC ADMIN. FISHERIES (last updated Dec. 11, 2024),
19 <https://www.fisheries.noaa.gov/west-coast/endangered-species-conservation/report-card-recovery-reviews-assess-28-salmon-and#:~:text=Under%20the%20Endangered%20Species%20Act,review%20answers%20questions%20such%20as:>.

20 ⁹ *Id.*

21 ¹⁰ The term “fishery” refers the areas of bodies of water where certain populations of
22 fish can be caught for commercial or recreational purposes. (For more information
23 see, *What is a Fishery*, MARINE STEWARDSHIP COUNCIL, <https://www.msc.org/en-au/what-we-are-doing/our-collective-impact/what-is-a-fishery#:~:text=A%20basic%20definition%20of%20a,species%20of%20fish%20or%20shellfish.> .

24 ¹¹ *Atlantic Salmon*, NAT'L OCEANIC AND ATMOSPHERIC ADMIN. FISHERIES,
25 <https://www.fisheries.noaa.gov/species/atlantic-salmon-protected/overview> .

26 ¹² *Id.*

27 ¹³ See Bruce Barcott, *Aquaculture's Troubled Harvest*, MOTHER JONES
(November/December 2001),
28 <https://www.motherjones.com/politics/2001/11/aquacultures-troubled-harvest/>.

¹⁴ *Id.*

old,¹⁵ where they are fed pellets made of fish meal, fish oil, vitamins, color additives, and antibiotics. Each pen can be home to between 15,000 and 50,000 salmon with a single farm operating between eight and ten pens total.



Figure 1: Norwegian Salmon Farm

23. At first, the practice was hailed as a sustainable solution to the increasing demand.¹⁶ But as time went on, the harms of aquaculture became more and more apparent: farms pushed out the few remaining wild salmon populations,¹⁷ hinder conservation and wild salmon population restoration efforts.

¹⁵ *Id.*

¹⁶ *Id.* (“Back when we envisioned the future in utopian terms, aquaculture was an integral part of the dream. As surely as we would all drive flying cars, wet-suit-clad cultivators would farm the seas and feed the world with their bounty.”)

¹⁷ *Id.*

1 24. Indeed, in “[e]very place where Atlantic salmon is raised in net-pens,
2 the wild population[s of other salmon species] has declined by as much as 70
3 percent[.]”¹⁸

4 25. This is because, in part, farmed salmon are doused with heavy
5 antibiotics and antiparasitics, resulting in the “[f]armed fish contract[ing] antibiotic-
6 resistant strains of furunculosis, a fatal disease that produces ugly skin ulcers; [which
7 then] wild salmon that migrated past their pens also contracted[.]”¹⁹

8 26. Moreover, “[f]armers count on the tide to disperse net pen effluent, but
9 the water often doesn’t flush it all away. A salmon farm of 200,000 fish releases an
10 amount of fecal solids roughly equivalent to a town of 62,000 people.”²⁰ As such, in
11 areas near salmon farms, “[s]hrimp fishermen began pulling up traps full of farm
12 muck, a gooey black mixture of feces, excess antibiotic-laden fish feed, and decayed
13 salmon carcasses that filtered out of the pens.”²¹

14 27. This muck also wreaks havoc on natural ecosystems. Through a process
15 called eutrophication, this muck introduces excess nutrients like nitrogen and
16 phosphorous into the surrounding waters resulting in an algal bloom. Bacteria feed
17 not only on the muck but on the decaying algae that is inevitably produced in a
18 eutrophic environment. The bacteria then consume vast amounts of oxygen, turning
19 the sea-bed into an oxygen-depleted “dead zone,” scientifically known as a hypoxic
20 environment, where few organisms can live.

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23 ¹⁸ Melissa Clark, *The Salmon on Your Plate Has a Troubling Cost. These Farms*
24 *Offer Hope*, NEW YORK TIMES (Oct. 16, 2023),
<https://www.nytimes.com/2023/10/16/dining/farm-raised-salmon->

¹⁹ *Id.*

25 ²⁰ *Id.*; see also Stuart Miller, *How the King of Fish is Being Farmed to Death*, THE
26 OBSERVER (Jan. 6, 2001),
27 <https://www.theguardian.com/environment/2001/jan/07/fishing.food#:~:text=It%20is%20estimated%20that%20a,a%20town%20of%2020%2C000%20people.>

28 ²¹ Barcott, *supra* note 13.

1 28. Moreover, the environment that farm raised salmon are raised in is so
2 bad that millions of farm-raised salmon die before ever reaching maturity. In 2019
3 alone 25,770 tons, amounting to over ten million salmon, died in their cages.²² “The
4 main causes of [those] deaths are said to have been viral, bacterial and fungal
5 infections, along with algal blooms, and ‘treatment losses’ from mistakes with
6 chemicals or de-licing machines.”²³

7 29. Because of these impacts, environmental groups like The Sierra Club
8 have concluded that “aquaculture poses numerous potential environmental risks,
9 including the spread of diseases and parasites to nearby wild fish populations and
10 impacts on wild forage fish populations.”²⁴ Therefore, many environmental
11 organizations advise against consuming farm-raised salmon.

12 30. “The fish-farming industry has fed us a line about eating farmed salmon
13 to protect wild stock ... [but a]ctually the reverse is true. If you purchase farmed
14 salmon, you’re contributing to the risk to the wild fish.”²⁵

15 **B. Consumers Prefer Wild Caught Salmon Over Farm-**
16 **Raised Salmon**

17 31. Unlike wild salmon, “[f]armed salmon serves as an inferior food source,
18 accumulating more toxic chemicals in fatty tissue with fewer healthy nutrient
19 properties[.]”²⁶ Research shows that consuming farmed salmon leads to higher
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22 ²² Rob Edwards, *Farmed Salmon Deaths From Disease Reach Record High*, THE
23 FERRET (July 13, 2020), [https://theferret.scot/farmed-salmon-deaths-disease-reach-](https://theferret.scot/farmed-salmon-deaths-disease-reach-record-high/)
[record-high/](https://theferret.scot/farmed-salmon-deaths-disease-reach-record-high/).

24 ²³ *Id.*

25 ²⁴ *Aquaculture*, THE SIERRA CLUB, [https://www.sierraclub.org/grassroots-](https://www.sierraclub.org/grassroots-network/marine-team/aquaculture)
[network/marine-team/aquaculture](https://www.sierraclub.org/grassroots-network/marine-team/aquaculture) .

26 ²⁵ Barcott, *supra* note 13.

27 ²⁶ *Farmed Salmon Just as Toxic to Human Health as Junk Food*, BEYOND PESTICIDES
28 (June 16, 2022), [https://beyondpesticides.org/dailynewsblog/2022/06/farmed-](https://beyondpesticides.org/dailynewsblog/2022/06/farmed-salmon-just-as-toxic-to-human-health-as-junk-food/)
[salmon-just-as-toxic-to-human-health-as-junk-food/](https://beyondpesticides.org/dailynewsblog/2022/06/farmed-salmon-just-as-toxic-to-human-health-as-junk-food/).

1 instances of metabolic disorders like diabetes and obesity,²⁷ contrary to the largely
2 understood health benefits of salmon generally.

3 32. “Some studies warn that a single meal per month of farmed Atlantic
4 salmon can expose consumers to contaminant levels exceeding standards from the
5 World Health Organization. The risk is greatest for infants, children, and pregnant
6 women because of the potential harm from contaminants to developing brains.”²⁸

7 33. Accordingly, nutritionists explain that for consumers get the health
8 benefits of salmon—which consumers like Plaintiffs reasonably expect—they need
9 to eat wild rather than farmed salmon.²⁹

10 34. Moreover, a blind taste test shows that while consumers preferred the
11 taste of farmed salmon over wild salmon, as soon as the consumers were aware that
12 the salmon was farmed, they indicated that they would still choose a wild salmon
13 product over a farmed salmon product.³⁰ Accordingly, whether the product is wild
14 caught or farm raised is material to a consumer’s purchasing decision.

15 35. Indeed, consumer research confirms that color plays a decisive role for
16 consumers evaluating the quality of salmon at point-of-sale. In fact, color is
17 considered the consumers’ primary consideration in purchasing salmon.³¹

18 36. Consumers believe that color indicates a salmon’s species, age, origin,
19 price, expected flavor/texture, *freshness*, and quality. Consumers equate redder
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21 _____
22 ²⁷ *Id.*

23 ²⁸ Frantz and Collins, *supra* note 2.

24 ²⁹ *Id.*

25 ³⁰ Helene Christine Reinbach, *We Prefer Farmed Salmon – As Long As We Don’t*
26 *Know What We’re Eating*, UNIVERSITY OF COPENHAGEN FACULTY OF SCI. (Nov. 22,
2021), <https://science.ku.dk/english/press/news/2021/we-prefer-farmed-salmon--as-long-as-we-dont-know-what-were-eating/>.

27 ³¹ Gajanan, *supra* note 5 (“If we didn’t do it, customers wouldn’t buy it ...
28 Consumers buy what they’re familiar with. They won’t go into the store to buy
white salmon.”).

1 flesh as a sign of higher quality salmon and are willing to pay more for deeply
2 colored salmon.

3 37. Wild Salmon, which is usually a much deeper red than farmed salmon
4 “fares better on the market because the deep red carries cultural significance, a
5 reminder of a time before mass farming when salmon was ‘the fish of the rich.’”³²

6 38. Accordingly, salmon farmers admit that if they did not include the color
7 additive in their products, consumers will not purchase the products at all.³³ Color is
8 so important to consumers that they “will pay up to \$1 per pound more for darker
9 colored salmon compared to salmon with lighter hues[.]”³⁴

10 39. However, once “consumers know that color has been added to farmed
11 salmon, they are less willing to pay for the darkest fish[.]”³⁵ For this reason, salmon
12 farmers like Defendant, seek to hide the use of color additives in their Products.

13 40. To prevent this fraud, Federal and California law requires that color
14 additives be noted on salmon products to ensure that consumers are *actually* buying
15 what they believe they are buying.

16 **C. Defendant Adds Color Additives to the Product**

17 41. Defendant manufactures, distributes, advertises, and sells the Product,
18 Salmon Fillet in brine and juice. The Product is sold online and in brick-and-mortar
19 stores. The Product is made from Atlantic Salmon, a species of salmon that, as
20 explained above, must be farmed.

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25 ³² *Id.*

26 ³³ *Id.*

27 ³⁴ *Id.*

28 ³⁵ *Id.*

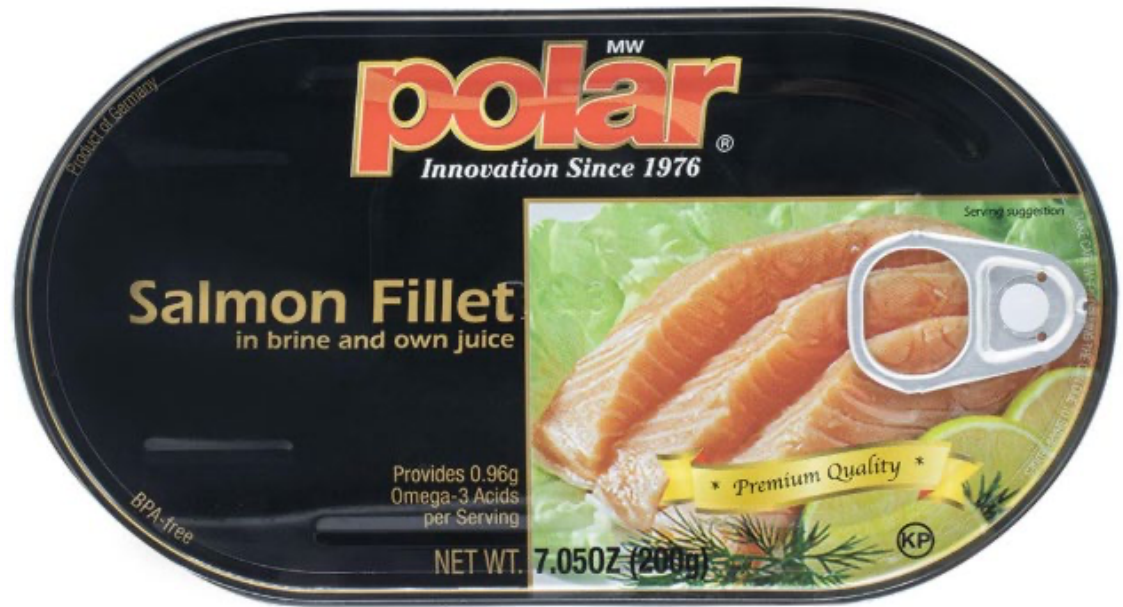


Figure 2: Product Image

42. Salmon, like flamingos, get their signature pink color from the food they eat. In the wild, salmon consume carotenoids from microalgae, phytoplankton, and small fish that, in turn, make the salmon pink.³⁶

43. But farm raised salmon—which live on a diet of pellets and antibiotics—do not consume beta carotenes. Thus, farmed raised salmon flesh is grey or white rather than pink.³⁷

44. Defendant's Product is farm-raised in net-pens in Norway and Chile. As such, the only way that the fish in Defendant's Product would contain color additives would be if Defendant intentionally added it to the salmon's feed.

45. Independent testing conducted by Plaintiffs' counsel has confirmed the presence of astaxanthin in the Product.

³⁶ Barcott, *supra* note 13.

³⁷ Gajanan, *supra* note 5.

46. The only reason farm raised salmon would contain astaxanthin is if it was being added to the salmon’s feed for the purpose of changing the color of the fishes’ flesh.

47. Because consumers have grown to understand the health benefits of salmon and their preference for brighter pink coloring, fish farmers add pigmentation to the salmon feed. This coloring is called astaxanthin or canthaxanthin.³⁸

48. Fish farmers use a “SalmoFan”—like an artist’s color wheel—that help determine how much astaxanthin or castaxanthin a farmer needs to add to the fish feed to achieve the desired color.



Figure 3: SalmoFan

49. But neither chemical comes without a risk to consumers. For example, canthaxanthin is banned in the United Kingdom³⁹ as an additive because it can deposit yellow particles in human retinas and impair vision.⁴⁰

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Stuart Millar, *How the King of Fish is Being Farmed to Death*, THE OBSERVER (Jan. 6, 2001),

1 50. Indeed, Canthaxanthin was the more popular color additive until the
2 early 2000s when salmon farmers were encouraged to switch to the more expensive
3 astaxanthin.

4 51. Under the Federal Food, Drug, and Cosmetics Act, 21 U.S.C. § 343, a
5 salmonid product is misbranded when the product packaging fails to inform
6 consumers of the presence of the artificial coloring astaxanthin. Specifically, the
7 implementing regulations require that “[t]he presence of the color additive in
8 salmonid fish that have been fed feeds containing astaxanthin shall be declared in
9 accordance with §§ 101.22(k)(2) ... of this chapter.” 21 C.F.R. § 73.35(d)(3).

10 52. The labeling requirement may be satisfied with statements on the
11 packaging like “‘Artificial Color,’ ‘Artificial Color Added,’ or ‘Color Added’ (or by
12 an equally informative term that makes clear that a color additive has been used in
13 the food).” 21 C.F.R. § 101.22(k)(2).

14 53. Laws enacted by most states, including California, also require this
15 disclosure. California Health and Safety Code declares that “[a]ny food is
16 misbranded if it bears or contains any artificial flavoring, artificial coloring, or
17 chemical preservative, unless its labeling states that fact.” Cal. Health & Safety §
18 110740. Moreover, for salmon specifically the California Health and Safety Code
19 expressly incorporates the FDA’s labeling requirements. Cal. Health & Safety Code
20 § 110795. However, as shown above, the front label, which Plaintiffs viewed and
21 relied on when making their purchases, is entirely devoid of these mandated
22 disclosures.

23 **D. Defendant Knew or Should Have Known That**
24 **Consumers Would Be Misled by its Omissions**

25 54. Defendant pursued a nationwide policy to violate federal and state
26 regulations by concealing that its Product contained (and continues to contain)

27 <https://www.theguardian.com/environment/2001/jan/07/fishing.food#:~:text=It%20is%20estimated%20that%20a,a%20town%20of%2020%2C000%20people>.
28

1 artificial coloring.

2 55. Knowledge of use of artificial coloring, like astaxanthin, is material to
3 consumers' purchasing decisions.

4 56. Not all farm-raised salmon is bad. Recent development in aquaculture
5 has introduced new systems that raise the salmon "in closed-containment facilities on
6 land. The fish swim in tanks filled with filtered, recirculated water and the salmon
7 never touch the ocean, eliminating the use of chemicals and damage to the
8 environment."⁴¹

9 57. The way consumers usually understand these differences comes down
10 primarily to consumer perception of the color of the salmon.

11 58. Astaxanthin is very expensive, accounting for 20% of the cost of the
12 feed for farmed salmon.⁴² But because color is so important to consumers and
13 results in an increase in consumer purchase price salmon farmers find that adding
14 color additives to the feed is worthwhile.⁴³

15 59. As such, the addition of artificial color to farm-raised salmon increases
16 the marketability of farm-raised salmon and inflates the price of the Product.

17 60. However, Defendant did not disclose its use of astaxanthin in its
18 Product. Therefore, Defendant's concealment of artificial coloring in its salmon
19 misled consumers, including Plaintiffs and Members of the proposed Classes, into
20

21 ⁴¹ Frantz et al., *supra* note **Error! Bookmark not defined.**; *see also* Clark, *supra*
22 note 18 ("Now, several land-based farms across the country are beginning to offer a
23 more climate-stable alternative to traditional salmon aquaculture — one that's
24 cleaner, more ecologically responsible and potentially has a lower carbon
footprint.").

25 ⁴² *Id.*

26 ⁴³ Donna Byrne, *Disclosing the Potentially Dangerous Dyes that Make Gray Salmon*
27 *Pink: The California Supreme Court Holds that Actions to Enforce the State's Food*
28 *Labeling Law Are Not Preempted By Federal Law*, FINDLAW (Feb. 18, 2008),
[https://supreme.findlaw.com/legal-commentary/disclosing-the-potentially-](https://supreme.findlaw.com/legal-commentary/disclosing-the-potentially-dangerous-dyes-that-make-gray-salmon-pink.html)
[dangerous-dyes-that-make-gray-salmon-pink.html](https://supreme.findlaw.com/legal-commentary/disclosing-the-potentially-dangerous-dyes-that-make-gray-salmon-pink.html).

believing that the salmon they purchased did not contain color additives and/or was of a higher quality than other farmed salmon products.

61. By concealing the presence of artificial color in its Product and thereby capitalizing on consumers' understanding of the higher quality, wild caught salmon. Defendant's conduct was uniform across all its salmon Products.

62. In line with the F.D.A.'s concern and corresponding labeling requirements, "transparency, better regulation, and accurate labels on farmed salmon are essential to ensure good choices for our health[.]"⁴⁴

63. But unfortunately for consumers, the Product "looks like it came from the same place as its wild relation, with that rich, pink hue. Nothing, apart from the bargain-basement price tag, to give away the reality of intensive salmon production, which has turned the King of Fish into the battery chicken of the seas."⁴⁵

64. Given consumers' undisputed reliance on salmon color in their purchasing decision, their preference for health-benefit-supporting salmon, and their concerns about farmed fish and artificial coloring agents, consumers like Plaintiffs were injured by Defendant's failure to comply with its labeling requirements.

65. By concealing the artificial coloring of their Product, Defendant has become unjustly enriched because consumers have been (and continue to be) misled into purchasing the Product in that they would not have done so or would have done so on substantially different terms.

66. Although Defendant is in the best and exclusive position to know the true composition and contents of its Product, Plaintiffs satisfy the requirements of Rule 9(b) by alleging the following facts with particularity:

67. **WHO:** Defendant MW Polar Corporation.

⁴⁴ *Id.*

⁴⁵ Millar, *supra* note 40.

1 68. **WHAT:** Defendant's conduct here was, and continues to be, fraudulent
2 because it had a duty to disclose that its Product contains a color additive but failed
3 to do so on the Product packaging. The inclusion of color additives in salmon
4 products is known to be material to consumers' purchasing decisions by giving the
5 impression that the Product is comprised of wild caught salmon which consumers
6 prefer. Defendant knew, or reasonably should have known, that this information is
7 material to reasonable consumers, including Plaintiff and the members of the Classes
8 when they make their purchasing decisions, yet Defendant continued to pervasively
9 and affirmatively warrant and represent that the Product is of a quality and character
10 that it is not.

11 69. Indeed, by concealing the presence of artificial color in its Product, and
12 thereby imitating wild salmon, Defendant unfairly and deceptively disassociate the
13 Product from the real defects of farm-raised salmon including the following:

- 14 (a) The potential health risks of eating farmed salmon;
- 15 (b) The vast amount of antibiotics, pesticides, and antiparasitics fed
16 to farm-raised salmon;
- 17 (c) The higher levels of chemicals and other dangerous contaminants
18 found in farm-raised salmon;
- 19 (d) The higher saturated fat content of farm-raised salmon;
- 20 (e) The lower beneficial nutrient and omega-3 fatty acid content in
21 farm-raised salmon;
- 22 (f) The significant source of pollution farm-raised salmon are in the
23 marine environment;
- 24 (g) The threat farm-raised salmon pose to wild salmon runs; and
- 25 (h) The controversy around the health risks associated with the
26 artificial coloring agents.

27 70. **WHEN:** Defendant made material misrepresentations and omissions
28 during the putative class period, including prior to and at the time of Plaintiffs' and

1 the Members of the Classes purchases, despite Defendant knowing—or reasonably
2 should have known—that the Product contained astaxanthin. Plaintiffs viewed the
3 packaging and advertising of the Product at the time of purchase and viewed the
4 representations and warranties made by Defendant on the packaging and
5 corresponding marketing, understanding them to mean that the Product was of a
6 higher, fresher, naturally caught composition than farm raised.

7 71. **WHERE:** Defendant’s marketing messages were uniform and
8 pervasive throughout California, New York, and the United States, carried through
9 material misrepresentations, warranties, and omissions on its labeling, packaging,
10 and marketing materials.

11 72. **HOW:** Defendant made material misrepresentations and omissions of
12 fact regarding the Product by representing and warranting that the Product did not
13 include color additives and therefore was of a higher quality than it is.

14 73. **WHY IT IS FALSE:** Defendant made material representations and
15 warranties that the Product did not include color additives. These representations
16 and warranties communicate to reasonable consumers that the Product is of a
17 “premium quality” comparable to, if not the same as, quality consumers reasonably
18 have come to expect from wild caught salmon. However, and although consumers
19 like Plaintiffs purchased the Product for the purpose of purchasing salmon that was
20 free of synthetic color additives, the Product actually contains astaxanthin..

21 74. **INJURY:** Plaintiffs and the members of the Classes purchased, and
22 paid a premium, or otherwise paid more for the Product they otherwise would not
23 have—had they known that the Product contained color additives and so was of a
24 lessor farm-raised quality than a wild-caught quality fish.

25 **CLASS ALLEGATIONS**

26 75. ***Nationwide Class.*** Plaintiffs bring this nationwide class action pursuant
27 to Rule 23 of the Federal Rules of Civil Procedure, individually and on behalf of a
28 class defined as:

1 All persons in the United States who purchased the Product during the
2 statute of limitations period.

3 76. **California Subclass.** Plaintiff Beal brings this California Subclass
4 action pursuant to Rule 23 of the Federal Rules of Civil Procedure, individually and
5 on behalf of the subclass defined as:

6 All persons in the State of California who purchased the Product during
7 the statute of limitations period.

8 77. **New York Subclass.** Plaintiff Whetstone brings this New York
9 Subclass action pursuant to Rule 23 of the Federal Rules of Civil Procedure,
10 individually and on behalf of the subclass defined as:

11 All persons in the State of New York who purchased the Product during
12 the statute of limitations period.

13 78. Unless otherwise specified, the “Class” shall refer to the Nationwide
14 Class. The Classes collectively shall be referred to as the “Classes.”

15 79. Excluded from the Classes are: (1) persons who made such purchases
16 for the purpose of resale; (2) any Judge or Magistrate presiding over this action and
17 any members of their families; (3) Defendant, Defendant’s subsidiaries, parents,
18 successors, predecessors, and any entity in which Defendant or its parent has a
19 controlling interest and their current or former employees, officers, and directors;
20 and (4) Plaintiffs’ counsel and Defendant’s counsel.

21 80. **Numerosity.** At this time, Plaintiffs do not know the exact number of
22 members of the aforementioned Class and Subclasses (“Class Members” or
23 “Subclass Members”). However, given the nature of the claims, Plaintiffs believe
24 that Class and Subclass Members are so numerous that joinder of all members is
25 impracticable.

26 81. There is a well-defined community of interest in the questions of law
27 and facts involved in this case. Questions of law and fact common to members of
28

1 the Class and Subclasses that predominate over questions that may affect individual
2 Class Members include:

- 3 (a) Whether the Product contained astaxanthin;
- 4 (b) Whether a reasonable consumer would understand Defendant's
5 marketing and packaging to understanding that the Product would
6 be free color additives like astaxanthin;
- 7 (c) Whether Defendant misrepresented and/or failed to disclose
8 material facts concerning the Product;
- 9 (d) Whether Defendant had a duty to disclose the presence of
10 astaxanthin in its Product;
- 11 (e) Whether Defendant's conduct was unlawful;
- 12 (f) Whether the salmon was farm raised or wild caught;
- 13 (g) Whether Defendant has been unjustly enriched as a result of the
14 unlawful conduct alleged in this Complaint such that it would be
15 inequitable for Defendant to retain the benefits conferred upon it
16 by Plaintiffs and the Class and Subclasses;
- 17 (h) Whether Plaintiffs, the Class, and Subclasses sustained damages
18 with respect to common law claims asserted, and if so, the proper
19 measure of those damages.

20 82. With respect to the California Subclass, additional questions of law and
21 fact common to the members include whether Defendant violated California Civil
22 Code § 1750, *et seq.*, California's Consumers Legal Remedies Act ("CLRA");
23 California's Unfair Competition Law, California Business & Professions Code §
24 17200, *et seq.* ("UCL"); and California's False Advertising Law, California Business
& Professions Code § 17500, *et seq.* ("FAL").

25 83. With respect to the New York Subclass, additional questions of law and
26 fact common to the members include whether Defendants violated New York Gen.
27 Bus. Law § 349 and New York Gen. Bus. Law § 350.

1 84. **Typicality.** The claims of the named Plaintiffs are typical of the claims
2 of the Classes because the named Plaintiffs, like other members of the Class and
3 Subclasses, purchased the Product relying on the representations and warranties
4 made by Defendants on the Product's packaging that the Products did not include
5 color additives.

6 85. **Adequate Representation.** Plaintiffs are adequate representatives of the
7 Class and Subclasses because their interests do not conflict with the interests of the
8 Class Members they seek to represent, they have retained competent counsel
9 experienced in prosecuting class actions, and they intend to prosecute this action
10 vigorously. The interests of the Class Members will be fairly and adequately
11 protected by Plaintiffs and their counsel.

12 86. **Superiority.** The class mechanism is superior to other available means
13 for the fair and efficient adjudication of the claims of the members of the Class and
14 Subclasses. Each individual Class Member may lack the resources to undergo the
15 burden and expense of individual prosecution of the complex and extensive litigation
16 necessary to establish Defendant's liability. Individualized litigation increases the
17 delay and expense to all parties and multiplies the burden on the judicial system
18 presented by the complex legal and factual issues of this case. Individualized
19 litigation also presents a potential for inconsistent or contradictory judgments. In
20 contrast, the class action device presents far fewer management difficulties and
21 provides the benefits of single adjudication, economy of scale, and comprehensive
22 supervision by a single court on the issue of Defendant's liability. Class treatment of
23 the liability issues will ensure that all claims and claimants are before this Court for
24 consistent adjudication of liability issues.

COUNT I

**Violation of California’s Consumers Legal Remedies Act (“CLRA”)
California Civil Code § 1750, *et seq.*
(On Behalf of Plaintiffs, the Nationwide Class, and California Subclass)**

87. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

88. Plaintiffs bring this claim individually and on behalf of themselves, the Nationwide Class, and California Subclass against Defendant.

89. Civil Code § 1770(a)(5) prohibits “[r]epresenting that goods ... have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have...”

90. Civil Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a particular standard, quality, or grade, or that the goods are of a particular style or model, if they are of another.”

91. Civil Code § 1770(a)(9) prohibits “advertising goods ... with the intent not to sell them as advertised.”

92. Defendant violated Civil Code §§ 1770(a)(5), (a)(7), and (a)(9) by holding out the Product as not containing color additives when it contained astaxanthin, a color additive.

93. Defendant had exclusive knowledge and/or superior knowledge of the contents of the Product as it was responsible for maintaining its farms and feeding its fish, which was not known to Plaintiffs or the Classes.

94. Defendant made material misrepresentations about the Product to Plaintiffs and the Members of the Classes while suppressing the true nature of the Product. Specifically, by warranting that the Product was of a “premium quality,” with an image of a bright pink salmon filet akin to natural pink coloring consumers like Plaintiffs associate with wild caught salmon, and failing to disclose that it contained color additives when the Product actually contained astaxanthin, Defendant affirmatively and materially misrepresented the Product as being of a

1 higher quality consumers attach to wild caught salmon when, instead, the Product is
2 farm-raised and colored through synthetic, non-natural alternatives.

3 95. Plaintiffs and the Classes have suffered harm as a result of these
4 violations of the CLRA because they have incurred charges and/or paid monies for
5 the Product that they otherwise would not have incurred or paid.

6 96. On April 2, 2025., prior to the filing of this complaint, Plaintiffs'
7 counsel sent Defendant a CLRA notice letter, which complies in all material respects
8 with California Civil Code § 1782(a). The letter advised Defendant that it was in
9 violation of the CLRA with respect to the presence of astaxanthin in the Product and
10 demanded that Defendant cease and desist from such violations and make full
11 restitution by refunding the monies received therefrom to consumers. The letter
12 stated that it was sent on behalf of all other similarly situated purchasers.

13 97. Defendant failed to remedy the issues raised by the notice letter.

14 98. Pursuant to Civ. Code § 1780, Plaintiffs and the Classes seek: (a) actual
15 damages in an amount to be determined at trial; (b) an order enjoining Defendant
16 from continuing its violative acts and practices; (c) restitution of all money and
17 property lost by Plaintiffs and Members of the Classes as a result of Defendant's
18 unlawful conduct; (d) punitive damages; (e) any other relief that the Court deems
19 proper; and (f) attorneys' costs and fees.

20 **COUNT II**

21 **Violation of California's Unfair Competition Law ("UCL")**
22 **California Civil Code § 17200, *et seq.***

23 **(On Behalf of Plaintiffs, the Nationwide Class and California Subclass)**

24 99. Plaintiffs incorporate the foregoing allegations as if fully set forth
25 herein.

26 100. Plaintiffs bring this claim individually and on behalf of the Nationwide
27 and California Subclass against Defendant.
28

1 101. California Business and Professions Code § 17200 prohibits “any
2 unlawful, unfair, or fraudulent business act or practice.” For the reasons discussed
3 above, Defendant has engaged in unlawful, unfair, and fraudulent business acts or
4 practices in violation of California Business & Professions Code § 17200.

5 102. Defendant has violated the UCL’s proscription against engaging in
6 **Unlawful Business Practices** by misbranding its Product pursuant to 21 U.S.C. §
7 343, by violating FDA’s labeling requirements for salmon under 21 C.F.R. 101. §
8 101.22(k)(2).

9 103. Additionally, Defendant also engaged in unlawful business practices by
10 misbranding its Product under California law, Cal. Health & Safety Code §§ 110740
11 and 110795, by failing to follow FDA’s labeling requirements for salmonid fish.

12 104. Finally, Defendant engaged in unlawful business practices by violating
13 CLRA, Cal. Civ. Code §§ 1770(a)(5), (a)(7), and (a)(9); California’s False
14 Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500, *et seq.*; and New York
15 Gen. Bus. Law §§ 349 and 350.

16 105. In addition, as described more fully above, Defendant’s misleading
17 marketing, advertising, packaging, and labeling of its Product is likely to deceive
18 reasonable consumers. In addition, Defendants have committed unlawful business
19 practices by, *inter alia*, making the presentation and omission of material facts, as set
20 forth more fully above, thereby violating the common law.

21 106. Defendant also violated the UCL’s prohibition against engaging in
22 **Unfair Business Practices**. Defendant’s acts, omissions, misrepresentations,
23 practices, and non-disclosures as alleged herein also constitutes “unfair” business
24 acts and practices within the meaning of Bus. & Prof. Code § 17200, *et seq.*, as the
25 conduct is substantially injurious to consumers, offends public policy, and is
26 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct
27 outweighs any alleged benefits attributable to such conduct.
28

1 107. There were reasonably available alternatives to further Defendant's
2 legitimate business interest, other than the conduct described above.

3 108. Defendant has further violated the UCL's proscription against engaging
4 in **Fraudulent Business Practices**. Defendant's claims, nondisclosures, and
5 misleading statements with respect to the Product, are more fully set forth above,
6 were false, misleading, and/or likely to deceive the consuming public within the
7 meaning of Bus. & Prof. Code § 17200.

8 109. Plaintiffs and the Members of the Classes suffered a substantial injury
9 by virtue of buying the Product that they would not have purchased absent
10 Defendant's unlawful, fraudulent, and unfair marketing, advertising, packaging, and
11 omission about the inclusion of astaxanthin in the Product.

12 110. There is no benefit to consumers or competition from deceptively
13 marketing and omitting material facts about the true nature of the Product.

14 111. Plaintiffs and the Members of the Classes had no way of reasonably
15 knowing that the Product they purchased was not marketed, advertised, packaged, or
16 labeled in conformity with Defendant's representations. Thus, they could not have
17 reasonably avoided the injury each of them suffered.

18 112. The gravity of the consequences of Defendant's conduct, as described
19 above, outweighs any justification, motive, or reason therefore, particularly
20 considering the available legal alternatives which exist in the marketplace. Such
21 conduct is immoral, unethical, unscrupulous, offends established public policy, or is
22 substantially injurious to Plaintiff Beal and the other Members of the Classes.

23 113. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiffs and the Classes
24 seek an order of this Court that includes, but is not limited to, requiring Defendant to
25 (a) provide restitution to Plaintiffs and the other Class Members; (b) disgorge all
26 revenues obtained as a result of violations of the UCL; and (c) pay Plaintiffs'
27 attorneys' fees and costs.

COUNT III
Violation of California’s False Advertising Law (“FAL”)
California Business & Professions Code § 17500, *et seq.*
(On Behalf of Plaintiffs, the Nationwide Class, and California Subclass)

114. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

115. Plaintiffs bring this claim individually and on behalf of themselves, the Nationwide Class, and California Subclass against Defendant.

116. Defendant’s acts and practices, as described herein, have deceived and are likely to continue to deceive members of the Nationwide and California Subclass and the public. As described throughout this complaint, Defendant misrepresented the Product as not containing color additives and representing to reasonable consumers that the Product is of a “premium quality” comparable to, if not the same as, wild-caught salmon quality. However, the Product is not as it gets its pink coloring from astaxanthin, a synthetic color additive.

117. By its actions, Defendant disseminated uniform advertising regarding the Product to and across California and the United States. The advertising was, by its very nature, unfair, deceptive, untrue, and misleading within the meaning of Cal. Bus. & Prof. Code § 17500, *et seq.* Such advertisements were intended to and likely did deceive the consuming public.

118. The above-described false, misleading, and deceptive advertising Defendant disseminated continues to have a likelihood to deceive in that Defendant failed to disclose that the Product contains color additives.

119. Defendant continues to misrepresent to consumers that the Product is of “premium quality” akin to wild caught salmon and does not contain color additives when, in fact, the Product contains astaxanthin.

120. In making and disseminating these statements, Defendant knew, or should have known, its advertisements were untrue and misleading in violation of

1 California law. Plaintiffs and the Members of the Classes based their purchasing
2 decisions on Defendant's omitted material facts. The revenue attributable to the
3 Product sold in those false and misleading advertisements likely amounts to millions
4 of dollars. Plaintiffs and the Members of the Classes were injured in fact and lost
5 money and property as a result.

6 121. The misrepresentation and non-disclosures by Defendant and the
7 material facts described and detailed herein constitute false and misleading
8 advertising and, therefore, constitute a violation of Cal. Bus. & Prof. Code § 17500,
9 *et seq.*

10 122. As a result of Defendant's wrongful conduct, Plaintiffs and the
11 Members of the Classes lost money in an amount to be proven at trial. Plaintiffs and
12 the Members of the Classes are therefore entitled to restitution as appropriate for this
13 cause of action.

14 123. Plaintiffs and the Classes therefore seek (a) all monetary and non-
15 monetary restitution allowed by law, including restitution of all profits stemming
16 from Defendant's unfair, unlawful, and fraudulent business practices; (b) declaratory
17 relief; (c) reasonable attorneys' fees and costs under California Code Civ. Proc.
18 1021.5; (d) injunctive relief, and other appropriate equitable relief.

19 **COUNT IV**
20 **Violation of New York General Business Law § 349**
21 **(On Behalf of Plaintiff Whetstone and the New York Subclass)**

22 124. Plaintiff Whetstone incorporates the forgoing allegations as if fully set
23 forth herein.

24 125. The acts of Defendant, as described above, constitute unlawful,
25 deceptive, and fraudulent business acts and practice.

26 126. Defendant markets the Product as being of a "premium quality" akin to
27 quality reasonably expected of wild caught salmon, and not containing color
28 additives, when testing demonstrates that the Product actually contains astaxanthin.

1 127. Defendant thus has violated, and continues to violate, § 349 of the New
2 York General Business Law (“NYGBL”), which makes deceptive acts and practices
3 unlawful. As a direct and proximate result of Defendant’s violations of § 349,
4 Plaintiff Whetstone and other members of the New York Subclass have suffered
5 damages in an amount to be determined at trial.

6 128. Defendant’s improper consumer-oriented conduct is misleading in a
7 material way in that it, *inter alia*, induced Plaintiff Whetstone and the New York
8 Subclass members to purchase and pay the requested price for the Product when they
9 otherwise would not have, or would not have, purchased as much.

10 129. Defendant made the untrue and/or misleading statements and
11 representations willfully, wantonly, and with reckless disregard for the truth.

12 130. Plaintiff Whetstone and the New York Subclass members have been
13 injured by their purchase of the Product, which was worth less than what they
14 bargained and/or paid for, and which they selected over other products that may have
15 been truthfully marketed.

16 131. Defendant’s advertising induced Plaintiff Whetstone and the New York
17 Subclass members to buy the Product, to buy more of it, and/or to pay the price
18 requested.

19 132. As a direct and proximate result of Defendant’s violations of § 349,
20 Plaintiff Whetstone and the other members of the New York Subclass paid for a
21 falsely advertised Product and, as such, have suffered damages in an amount to be
22 determined at trial.

23 133. By reason of the foregoing, Plaintiff Whetstone and the New York
24 Subclass members are entitled to (1) actual damages and/or statutory damages; (2)
25 punitive damages; and (3) reasonable attorneys’ fees, pursuant to NYGBL § 349(h).
26
27
28

COUNT V

**Violation of New York General Business Law § 350
(On Behalf of Plaintiff Whetstone and the New York Subclass)**

134. Plaintiff Whetstone hereby incorporates the foregoing allegations as if fully stated herein.

135. Each of the acts of Defendant, as described above, constitute unlawful, deceptive, and fraudulent business acts and practices.

136. New York General Business Law § 350 declares unlawful any “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state[.]”

137. NYGBL § 350-a defines “false advertising” in relevant part, as “advertising, including labeling, of a commodity ... if such advertising is misleading in a material respect.”

138. Plaintiff Whetstone and the members of the New York Subclass are consumers who purchased Defendant’s Product in New York.

139. As a seller of goods to the consuming public, Defendant is engaged in the conduct of business, trade, or commerce, within the intended ambit of § 350.

140. Defendant’s representations (made by statement, word, design, device, sound, or any combination thereof), and also the extent to which Defendant’s advertising has failed to reveal material facts with respect to its Product, as described above, have constituted false advertising in violation of § 350.

141. Defendant knew, or reasonably should know, that its advertising of the Product is false. Defendant is the manufacturer, marketer, and seller of the Product and thereby is privy to the production, marketing, labeling, and production processes that create and put the Product into commerce. Defendant was in the best position to know of, and test for, the quality and safety of the Product but nonetheless chose to continue its course of marketing regardless.

1 142. Defendant's actions led to direct, foreseeable, and proximate injury to
2 Plaintiff Whetstone and the members of the New York Subclass.

3 143. As a consequence of Defendant's deceptive marketing scheme, Plaintiff
4 Whetstone and the other members of the New York Subclass suffered an
5 ascertainable loss, insofar as they would not have purchased the Product had the
6 truth been known, would not have paid the requested price of the Product and/or
7 would have purchased less of the Product; moreover, as a result of Defendant's
8 conduct, Plaintiff Whetstone and the other members of the New York Subclass
9 received the Product at a lesser value than what they paid for.

10 144. By reason of the foregoing, Plaintiff Whetstone and the New York
11 Subclass members are entitled to (1) actual damages and/or statutory damages; (2)
12 punitive damages; and (3) reasonable attorneys' fees, pursuant to NYGBL § 350-
13 e(3).

14 **COUNT VI**
15 **Unjust Enrichment**
16 **(On Behalf of Plaintiffs and the Nationwide Class)**

17 145. Plaintiffs hereby incorporate the foregoing allegations as if fully set
18 forth herein.

19 146. Plaintiffs bring this claim individually and on behalf of the Nationwide
20 Class under the laws of California.

21 147. To the extent required by the law, this cause of action is alleged in the
22 alternative to legal claims, as permitted under Fed. R. Civ. P. 8.

23 148. Plaintiffs and the Nationwide Class conferred benefits on Defendant by
24 purchasing the Product.

25 149. Defendant was unjustly enriched in retaining the revenues derived from
26 Plaintiffs and the members of the Nationwide Class. Retention of those monies
27 under these circumstances is unjust and inequitable because Defendant failed to
28 disclose that the Product contained color additives, rendering its representations that

1 the Product is of a “premium quality” false and misleading as consumers like
2 Plaintiffs reasonably understood that the Product was of a wild caught quality instead
3 of the lessor farm raised quality. These omissions caused injuries to Plaintiffs and
4 the members of the Nationwide Class because they would not have purchased the
5 Product if the facts were known.

6 150. Because Defendant’s retention of the non-gratuitous benefits conferred
7 on them by Plaintiffs and the members of the Nationwide Class is unjust and
8 inequitable, Defendant has been unjustly enriched in an amount to be determined at
9 trial.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly
12 situated, seek judgement against Defendant as follows:

- 13 (a) For an order certifying the Classes under Fed. R. Civ. P. 23 and
14 naming Plaintiffs as representatives of the Classes, and Plaintiffs’
attorneys as Class Counsel;
- 15 (b) For an order declaring that the Defendant’s conduct violates the
16 statutes referenced herein;
- 17 (c) For an order finding in favor of Plaintiffs and the Classes on all
counts asserted herein;
- 18 (d) For compensatory, statutory, and punitive damages in the
19 amounts to be determined by the Court and/or jury;
- 20 (e) For prejudgment interest on all amounts awarded;
- 21 (f) For an order of restitution and all other forms of equitable
22 monetary relief;
- 23 (g) For injunctive relief as pleaded or as the Court may deem proper;
- 24 (h) For an order awarding Plaintiffs and the Classes their reasonable
25 attorneys’ fees and expenses and costs of suit.

26 **JURY TRIAL DEMANDED**

27 Plaintiffs demand a trial by jury on all claims so triable.
28

1 Dated: May 28, 2025

Respectfully submitted,

2 **BURSOR & FISHER, P.A.**

3 By: /s/ L. Timothy Fisher
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