

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

TODD MCCAIN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MARY MAHONEY’S, INC. d/b/a MARY MAHONEY’S OLD FRENCH HOUSE, ANTHONY C. CVITANOVICH, CO-CONSPIRATORS 2–4, and DOE DEFENDANTS 1–10,

Defendants.

Case No.: 1:24cv241 TBM-RPM

CLASS ACTION COMPLAINT

DEMAND FOR A JURY TRIAL

Plaintiff Todd McCain (“Plaintiff”), by and through his undersigned counsel, brings this action on behalf of himself and all others similarly situated against Defendants Mary Mahoney’s, Inc. d/b/a Mary Mahoney’s Old French House (“Mary Mahoney’s”), Anthony C. Cvitanovich (“Cvitanovich”), Co-conspirators 2–4, and Doe Defendants 1–10 (collectively, “Defendants”), based upon personal knowledge as to himself and his own acts, publicly available records, and upon information and belief, and alleges as follows:

I. NATURE OF THIS ACTION

1. This action arises from a criminal scheme and conspiracy involving a prominent seafood restaurant, Mary Mahoney’s, its co-owner/manager Cvitanovich, and Co-conspirators 2–4, to defraud thousands of consumers, and thereby directly profit, by knowingly and willfully importing, mislabeling, marketing, and selling at least 58,750 pounds (over 29 tons) of inexpensive

frozen foreign fish to Plaintiff and the putative class as high-priced premium fresh fish, when in fact the species sold were neither the species advertised, nor locally caught in the Mississippi Gulf.

2. Instead of purchasing high-priced premium fish, including Red Snapper, Redfish, and/or Snapper from the Gulf, Plaintiff and the putative class were fraudulently sold inexpensive frozen foreign fish by Defendants, including Perch from Africa, Tripletail from South America, and Unicorn Filefish from India (the “Foreign Fish”). These fish species would not have been marketable, or substantially less profitably sold, if the actual species and origin had been known to Plaintiff and the putative class.

3. On May 30, 2024, the criminal scheme was finally exposed when the U.S. Attorney for the Southern District of Mississippi, Todd W. Gee, announced related criminal charges and guilty pleas and stated that “[m]islabeling food and defrauding customers are **serious crimes**, and this case will help convince restaurants and seafood suppliers that **it is not worth lying to customers about what is on the menu.**” See U.S. Attorney’s Press Release, attached hereto as **Exhibit A** (emphasis added). Special Agent in Charge Justin Fielder, from the Food and Drug Administration’s (“FDA”) Office of Criminal Investigations, emphasized that “[w]hen sellers purposefully substitute one fish species for another, **they deceive consumers and cause potential food safety hazards** to be overlooked or misidentified by processors or end users” and that the FDA will “continue to investigate and bring to justice those who **put profits above public health.**” *Id.* (emphasis added).

4. Defendants’ collective actions and common course of conduct include numerous racketeering and overt acts in furtherance of the criminal scheme and conspiracy, such as wire and mail fraud, misrepresentations, concealment, omissions, unfair and deceptive trade practices,

conspiracy to commit fraud, and other unlawful conduct—all used to target and directly cause actual monetary injury to Plaintiff and the putative class.

5. Plaintiff and the putative class now bring this action for violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961–1968, the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1, *et seq.*, and under common law. Based on these violations, Plaintiff and the putative class seek monetary damages, restitution and/or disgorgement of funds, civil penalties, punitive damages, attorney’s fees, and costs.

II. PARTIES

A. Plaintiff

6. Plaintiff TODD MCCAIN is and was at all relevant times a resident of Alabama. On or about July 29, 2013, December 28, 2016, and August 21, 2018, Plaintiff travelled across state lines to Mississippi where he purchased what was marketed and represented as Red Snapper and Snapper from Mary Mahoney’s. Had he known that, in fact, these species of fish were not Red Snapper and Snapper, but instead inexpensive Foreign Fish, he would not have purchased the fish.

B. Defendants

7. Defendant MARY MAHONEY’S, INC. d/b/a MARY MAHONEY’S OLD FRENCH HOUSE, is a Mississippi corporation with its headquarters and principal place of business located at 116 Rue Magnolia Street, Biloxi, Mississippi 39530. Mary Mahoney’s does business as Mary Mahoney’s Old French House, a restaurant that is widely known for its fresh local fish, and is actively managed by Mary Mahoney’s board of directors and officers.

8. Defendant ANTHONY C. CVITANOVICH is and was at all relevant times the co-owner and manager of Mary Mahoney’s. Cvitanovich is the registered agent for Mary Mahoney’s, and can be served at 116 Rue Magnolia Street, Biloxi, Mississippi 39530.

9. Defendant CO-CONSPIRATOR NO. 2 (the “Seafood Wholesaler”) is and was at all relevant times a Mississippi corporation operating as a wholesale supplier of seafood to restaurants, casinos, and retail markets, including Mary Mahoney’s.

10. Defendant CO-CONSPIRATOR NO. 3 (the “Business Manager”) is and was at all relevant times the Seafood Wholesaler’s business manager and a certified public accountant, overseeing all of the Seafood Wholesaler’s business operations. In that position, the Business Manager controlled the Seafood Wholesaler’s purchases of seafood from its suppliers and monitored the prices that the Seafood Wholesaler charged to its wholesale and retail customers, including Mary Mahoney’s.

11. Defendant CO-CONSPIRATOR NO. 4 (the “Sales Manager”) is and was at all relevant times the Seafood Wholesaler’s sales manager, supervising the Seafood Wholesaler’s sales staff, and was responsible for the Seafood Wholesaler’s sales to restaurants, including Mary Mahoney’s.

12. Co-conspirators 2–4 are known, but yet to be identified, individuals and a business entity. These Defendants’ identities will be provided after adequate discovery is allowed. Doe Defendants 1–10 are individuals, executives, officers, directors, corporations, limited liability companies, partnerships and/or other entities that participated in the scheme and conspiracy. Plaintiff reserves the right to seek leave of the Court to amend the Complaint to identify Co-conspirators 2–4 and/or add Doe Defendants 1–10, pursuant to Rule 15 of the F.R.C.P.

III. JURISDICTION AND VENUE

13. This Court has original subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff’s claims, in part, arise under 18 U.S.C. § 1964(c), as this action alleges violations of RICO, 18 U.S.C. § 1962.

14. This Court also has original jurisdiction over this action pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because at least one class member is of diverse citizenship from one Defendant, there are more than 100 class members, and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

15. This Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367.

16. This Court has personal jurisdiction over Defendants as they are authorized to conduct business in Mississippi; have transacted business, maintained substantial contacts, and/or committed overt acts in furtherance of the criminal scheme and conspiracy in this District; and the scheme and conspiracy have been directed at, and have had the intended effect of, causing monetary injury to persons residing in, located in, or doing business in this District.

17. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), (c), (d), and 18 U.S.C. § 1965. Defendants reside, are found, regularly conduct and transact business, committed predicate and overt acts in furtherance of the scheme and conspiracy, and/or have agents in this District. A portion of the events or omissions giving rise to Plaintiff’s claims occurred in this District, namely Defendants’ scheme to import, mislabel, market, and sell the Foreign Fish, which caused actual monetary injury to consumers residing in this District.

IV. GENERAL FACTUAL ALLEGATIONS

A. The Purpose of Defendants’ Scheme and Conspiracy.

18. Beginning no later than 2012, and continuing through November 2019, Defendants collectively and consensually entered into and participated in a criminal scheme and conspiracy with the objective and purpose of defrauding Plaintiff and the putative class by knowingly and willfully importing, mislabeling, marketing, and selling inexpensive frozen fish sourced from

foreign countries and waters that were not those of the Mississippi Gulf.¹ Defendants' unlawfully and directly profited from the scheme and conspiracy at the expense of Plaintiff and the putative class, who suffered ascertainable monetary losses based on Defendants' misconduct.

B. Defendants' Manner and Means of Carrying Out the Scheme and Conspiracy.

19. To achieve and carry out the criminal scheme and conspiracy, the Seafood Wholesaler, Business Manager, Sales Manager, Mary Mahoney's, and Cvitanovich collectively and knowingly entered into a continuous and ongoing unlawful agreement, using predicate and over acts, for the purpose of purchasing and importing into the United States inexpensive Foreign Fish, with the intended purpose of mislabeling, marketing, and selling the fish as high-priced premium fresh fish to Plaintiff and the putative class.

20. Defendants did not undertake the practices described herein in isolation, but as part of a scheme and conspiracy that was continuous and ongoing for at least eight (8) years. The conspiracy was successful because it functioned as an organized unit with continuity of structure, personnel, and a shared purpose that directly targeted Plaintiff and the putative class.

21. From an organizational standpoint, Defendants each played a distinct and indispensable role in the scheme and conspiracy. The Foreign Fish were imported through the Seafood Wholesaler, purchased and priced by the Business Manager, and sold by the Sales Manager to their co-conspirators, Mary Mahoney's and Cvitanovich. These Defendants were able to purchase, import, price, and sell the Foreign Fish only because they knew their co-conspirators, Mary Mahoney's and Cvitanovich, would then willfully mislabel, market, and sell the Foreign

¹ Upon information and belief, the scheme began as early as 2002. Plaintiff reserves the right to amend the Complaint to include a broader relevant time period if discovery provides sufficient evidence.

Fish to Plaintiff and the putative class as high-priced premium fresh fish. Defendants each knew full well the fish were neither local nor the species they were marketed to be.

22. Defendants Mary Mahoney's and Cvitanovich advertised high-priced premium fresh fish on their menu and through several interstate electronic communications, including the website Yelp®, where the menu was posted.² There and elsewhere, Mary Mahoney's stated that "all of our seafood is caught in our bountiful gulf waters," to appeal to consumers throughout the United States seeking local Gulf Coast seafood.³

23. Based on Defendants' continuous activity, structure, and relationship, each Defendant directly profited from the criminal scheme and conspiracy, while the actual monetary losses to Plaintiff and the putative class were the but-for cause and proximately caused by Defendants' misconduct.

24. To execute their criminal scheme, Defendants knowingly made use of numerous interstate wire transmissions to organize, facilitate, and manage the scheme, in violation of 18 U.S.C. § 1343. Defendants also executed their scheme by causing Foreign Fish to be deposited, delivered, taken, and/or received, via private and/or commercial interstate carrier, in violation of 18 U.S.C. § 1341.

25. The criminal scheme was successful and economically benefited all Defendants from the sale of Foreign Fish that would not have been marketable, or substantially less profitably sold, if its actual species and origin had been known to Plaintiff and the putative class.

C. Defendants' Racketeering Activity Relating to all RICO Claims.

26. Defendants used interstate wire communications to knowingly and willfully facilitate and execute their fraudulent scheme, in violation of 18 U.S.C. § 1343, including:

² Yelp®, <https://www.yelp.com/> (lasted visited July 5, 2024).

³ *Menu for Mary Mahoney's*, <https://www.yelp.com/menu/mary-mahoneys-biloxi-2> (last visited July 5, 2024).

- a. On January 26, 2015, the Seafood Wholesaler's Business Manager emailed the following to its Sales Manager: "We need to raise the price of perch on Mary Mahoney's perch we are getting 7%."
- b. In a text message dated July 5, 2017, the Seafood Wholesaler's Sales Manager communicated by wire to Cvitanovich, Mary Mahoney's co-owner/manager: "Still have no triple tail I'm sending you trigger-style fish 8 – 10 to use till we get it back in stock. An employee of [the Seafood Wholesaler] is using it already instead of triple tail at the [local restaurant] and said he has used it for grouper snapper and triple tail with no complaints. And it's cheaper than triple tail." Cvitanovich responded, "Ok."
- c. In a January 19, 2018 email, a purchasing agent employed by the Seafood Wholesaler, notified its Business Manager and Sales Manager, and other employees of the Seafood Wholesaler that "Due to the shortage on snapper we will be substituting triple tail for all snapper." Triple tail was not a local fish, but was imported by the Seafood Wholesaler from Suriname, South America.
- d. In an April 16, 2018 email, the Seafood Wholesaler's Business Manager sent the following instructions to its Sales Manager and other members of the Seafood Wholesaler's sales staff: "I don't understand why we are giving [African Lake Victoria] Perch away. This is a replacement for the triple tail which were selling at \$8.99 and \$9.99. Now we are selling perch at \$5.69 if we can't get at least \$6.99 or \$7.99 then it's not worth bringing it in here. This is a product that no one else has and it is versatile. Raise the price and make money where we can make money!"
- e. The Seafood Wholesaler's Sales Manager replied to Cvitanovich's September 19, 2018, text order for African Lake Victoria Perch, with the following text: "Tomorrow FDA here today." Cvitanovich responded, "Ok."
- f. On September 19, 2018, while an authorized federal search of the Seafood Wholesaler's premises was underway, Cvitanovich sent an electronic text message to the Sales Manager of the Seafood Wholesaler ordering the imported frozen African Lake Victoria Perch, which Mary Mahoney's regularly mislabeled and sold to customers as local Mississippi Gulf Coast Snapper.
- g. Eight days after the FDA's search of the Seafood Wholesaler's premises, in a text to the Sales Manager of the Seafood Wholesaler on September 27, 2018, Cvitanovich ordered 150 pounds of African Lake Victoria Perch in order to sell it to customers of Mary Mahoney's as Snapper.
- h. About a month after the FDA's search of the Seafood Wholesaler's premises, in a text to the Sales Manager of the Seafood Wholesaler on October 18, 2018, Cvitanovich ordered 60 pounds of African Lake Victoria Perch to sale as Snapper to customers of Mary Mahoney's.

- i. In an October 18, 2018 text, after the Sales Manager of the Seafood Wholesaler informed Cvitanovich that the Seafood Wholesaler was unlikely to obtain more African Lake Victoria Perch, by stating that “Perch about to be nonexistent,” Cvitanovich instructed him to “Get all they have.”
- j. In a February 21, 2019 text, the Sales Manager of the Seafood Wholesaler told Cvitanovich that “We have 110 cases of perch left when that is gone there is no more. FYI we are looking for alternatives. Unicorn, triple tail and parrot fish are always good alternatives.”
- k. In a responsive February 21, 2019 text, Cvitanovich told the Sales Manager for the Seafood Wholesaler not to sell the remaining cases of African Lake Victoria Perch to any other customer, stating that “I will buy them.” The Sales Manager responded, “You come bring a check and I will set it aside for you.”
- l. Between May 26, 2019, and August 16, 2019, and longer, Mary Mahoney’s advertised on the website Yelp®, that “all of our seafood is caught in our bountiful gulf waters . . .”
- m. During the relevant time period, Mary Mahoney’s advertised on websites OpenTable® and Tripadvisor® that it specialized in “locally sourced seafood.”⁴

27. In furtherance of the scheme to defraud, Defendants caused to be deposited, delivered, taken, and/or received, via private and/or commercial interstate carrier, at least 58,750 pounds of frozen Foreign Fish between December 2013, and November 2019, in violation of 18 U.S.C. § 1341.

28. In 2019 alone, Defendants caused to be deposited, delivered, and received, via private and/or commercial carrier, thousands of pounds of Perch from Africa, Tripletail from South America, and Unicorn Filefish from India, on or about the following dates:

1/7/19	1/11/19	1/15/19	1/21/19	1/25/19	1/31/19	2/5/19	2/8/19
2/13/19	2/20/19	2/21/19	2/26/19	3/4/19	3/7/19	3/13/19	3/16/19
3/19/19	3/20/19	3/22/19	3/27/19	4/1/19	4/5/19	4/10/19	4/15/19
4/18/19	4/25/19	5/2/19	5/7/19	5/10/19	5/15/19	5/20/19	5/28/19
6/3/19	6/5/19	6/10/19	6/11/19	6/12/19	6/18/19	6/20/19	6/24/19
6/28/19	7/2/19	7/9/19	7/15/19	7/18/19	7/22/19	7/26/19	7/30/19
8/5/19	8/8/19	8/13/19	8/15/19	8/22/19	8/23/19	8/27/19	9/3/19

⁴ OpenTable®, <https://www.opentable.com/r/mary-mahoneys-old-french-house-biloxi> (“locally sourced seafood”) (lasted visited July 5, 2024); Tripadvisor®, https://www.tripadvisor.com/Restaurant_Review-g43686-d2023580-Reviews-Mary_Mahoney_s_Old_French_House-Biloxi_Mississippi.html (same) (lasted visited July 5, 2024).

9/6/19	9/16/19	9/19/19	9/24/19	9/27/19	10/4/19	10/8/19	10/11/19
10/16/19	10/23/19	10/24/19	10/29/19	10/31/19	11/7/19	11/12/19	11/15/19

See Mary Mahoney's Criminal Info., ¶¶ 20–92, attached hereto as **Exhibit B**.

D. Defendants' Efforts to Unlawfully Conceal the Scheme and Conspiracy.

29. Defendants went to great efforts to conceal the scheme and conspiracy, through virtually uniform concealments and material omissions, including when being questioned by federal agents during a search of the Seafood Wholesaler's premises, including that:

- a. the Business Manager told federal agents that if anyone in the Seafood Wholesaler's retail market was labeling a fish with a name other than its true name, it was done without his approval and without his knowledge;
- b. the Business Manager told federal agents that the Seafood Wholesaler does not ship any fish outside of the State of Mississippi;
- c. the Business Manager told federal agents that the Seafood Wholesaler had sold fish to Mary Mahoney's restaurant in Biloxi, Mississippi, but not much anymore;
- d. the Business Manager told federal agents that he was not aware of any restaurant customer mislabeling and selling fish bought from the Seafood Wholesaler as something other than what it was, such as selling a cheap fish as an expensive one; and
- e. the Sales Manager told federal agents that any mislabeling of fish by the Seafood Wholesaler was inadvertent and he did not know of any mislabeling of fish by the restaurants to which the Seafood Wholesaler sold seafood.

E. Federal Criminal Charges and Guilty Pleas.

30. On April 26, 2024, the U.S. Attorney for the Southern District of Mississippi criminally charged Defendant Mary Mahoney's for its participation in the criminal scheme and conspiracy. See Criminal Info., **Exhibit B**.

31. On May 30, 2024, Mary Mahoney's, through unanimous written consent of its board of directors, pleaded guilty to federal charges for participating in the 18 U.S.C. § 371 conspiracy to defraud its consumers by marketing mislabeled seafood in violation of 21 U.S.C. §§

331(k) and 333(a)(2), and in using interstate wire transmissions to facilitate the fraud, in violation of 18 U.S.C. § 1343. *See* Mary Mahoney’s Plea Agreement, attached hereto as **Exhibit C**; and Consent Agreement, attached hereto as **Exhibit D**.

32. On April 26, 2024, the U.S. Attorney for the Southern District of Mississippi criminally charged Defendant Cvitanovich for his participation in the criminal scheme and conspiracy. *See* Cvitanovich Criminal Info., attached hereto as **Exhibit E**.

33. On May 30, 2024, Cvitanovich pleaded guilty to federal charges related to the conspiracy for mislabeling inexpensive imported seafood as local premium species to profit from its fraudulent sale in violation of 21 U.S.C. §§ 331(k) and 333(a)(2). *See* Cvitanovich Plea Agreement, attached hereto as **Exhibit F**.

34. Plaintiff incorporates by reference the factual allegations set forth in Exhibits B–F.

F. Harm to Plaintiff and the Putative Class.

35. At no point did Defendants disclose to Plaintiff and the putative class that the fish species they were being sold were not high-priced premium fresh fish, but instead inexpensive frozen Foreign Fish.

36. Defendants intentionally, knowingly, and willfully misrepresented and omitted material facts regarding the Foreign Fish to induce Plaintiff and the putative class to purchase what they reasonably believed to be high-priced premium fresh fish.

37. Defendants engaged in sophisticated methods of deception. Plaintiff and the putative class did not, nor could they, discover Defendants’ scheme and conspiracy on their own.

38. Plaintiff and the putative class suffered ascertainable losses, injury-in-fact, and actual damages proximately caused and but-for Defendants’ conduct. Plaintiff and the putative class would not have paid, or alternatively, paid substantially less for the Foreign Fish and did not

receive the benefit of the bargain. These injuries are the direct and natural consequence of Defendants' criminal scheme.

39. Defendants pursued a common plan and course of conduct, acted in concert with, aided and abetted, and otherwise conspired with one another, in furtherance of their scheme to defraud Plaintiff and the putative class. Thus, Defendants are jointly and severally liable for all damages caused by the criminal scheme and conspiracy.

40. Accordingly, Plaintiff and the putative class have suffered actual monetary damages as a result of Defendants' acts and omissions.

V. TOLLING OF THE STATUTES OF LIMITATION

41. All statutes of limitation applicable to Plaintiff and the putative class are subject to tolling under the doctrines of fraudulent concealment, the discovery rule, and/or equitable estoppel due to Defendants' concealment and omissions, as alleged herein. Plaintiff and the putative class could not have independently discovered the scheme and conspiracy either before purchasing the Foreign Fish, or until after the U.S. Attorney announced on May 30, 2024, that Defendants Mary Mahoney's and Cvitanovich had pleaded guilty to federal criminal charges related to the scheme. *See* Press Release, **Exhibit A**.

42. **Discovery Rule Tolling:** Plaintiff and the putative class had no means of knowing they were being defrauded, and that Defendants' were economically profiting from knowingly and willfully importing, mislabeling, marketing, and selling inexpensive Foreign Fish as high-priced premium fresh fish. Plaintiff and the putative class did not discover until recently, and could not have discovered through reasonable diligence, about the criminal scheme and conspiracy, which constitutes a cognizable injury. For these reasons, all applicable statutes of limitation have thus been tolled by operation of the discovery rule.

43. **Fraudulent Concealment:** Far from disclosing the criminal scheme and conspiracy, Defendants took numerous affirmative steps to conceal the scheme and conspiracy from Plaintiff and the putative class. Defendants knew that Plaintiff and the putative class would have no reason to suspect they were being sold inexpensive Foreign Fish instead of high-priced premium fresh fish. Defendants possessed special facts regarding the Foreign Fish, which were not known by Plaintiff and the putative class, and thus Defendants had a duty to disclose these facts. Further, Plaintiff and the putative class could not have discovered the fraud earlier through the exercise of reasonable diligence. For these reasons, all applicable statutes of limitation have been tolled by Defendants' active and fraudulent concealment.

44. **Estoppel:** Defendants were under a continuous duty to disclose to Plaintiff, the putative class, and federal regulators the true character, quality, and nature of the fish species they were importing, mislabeling, marketing, and selling. Defendants knowingly, affirmatively, and actively concealed the true nature, quality, and character of the Foreign Fish from Plaintiff, the putative class, and regulators. Based on the foregoing, Defendants are estopped from relying on any statutes of limitation in defense of this action.

VI. CLASS ALLEGATIONS

45. Plaintiff brings this action on behalf of himself and the putative class (the "Class"), pursuant to Rule 23(a), (b)(1), and (b)(3) of the Federal Rules of Civil Procedure, as representative of a class defined as follows:

All persons residing in the United States who purchased Foreign Fish at Mary Mahoney's between January 1, 2012, and November 30, 2019.

46. Excluded from the Class are Defendants and their directors, officers, predecessors, successors, affiliates, agents, co-conspirators, and employees, as well as the immediate family

members of such persons; Class counsel and their employees; and the Judge to whom this case is assigned and his/her immediate family.

47. Plaintiff reserves the right to amend or otherwise alter the class definition presented to the Court at the appropriate time, or to propose subclasses, in response to facts learned through discovery, legal arguments, or otherwise.

48. Certification of Plaintiff's claims for class treatment are appropriate because Plaintiff can prove the elements of his claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

49. Class members have suffered similar economic injury by reason of Defendants' unlawful scheme and course of conduct.

50. **Numerosity—Fed. R. Civ. P. 23(a)(1).** The Class is comprised of several thousand individuals, the joinder of which in one action would be impracticable. The exact number or identification of the Class is presently unknown. The identity of Class members is ascertainable and can be determined based on Defendants' books and records. Class members may be notified of the pendency of this action by Court-approved notice methods, which may include U.S. mail, electronic mail, internet postings, and/or published notice.

51. **Predominance of Common Questions—Fed. R. Civ. P. 23(a)(2) & 23(b)(3).** The questions of law and fact common to the Class predominate over questions affecting only individual Class members, including, without limitation:

- a. Whether Defendants engaged and participated in the scheme and conspiracy;
- b. Whether Defendants' conduct violated RICO;
- c. Whether Defendants engaged in an association-in-fact enterprise under RICO;
- d. Whether Defendants, through a RICO enterprise, committed repeated predicate offenses of wire and mail fraud sufficient to ground a RICO claim;

- e. Whether Defendants are liable to Plaintiff and the Class for damages flowing from Defendants' misconduct under RICO, and if so, in what amount;
- f. Whether Defendants violated the Mississippi Consumer Protection Act through unfair methods of competition affecting commerce and/or unfair or deceptive trade practices affecting commerce;
- g. Whether Plaintiff and the Class are entitled to damages and/or penalties under the Mississippi Consumer Protection Act, and if so, in what amount;
- h. Whether Defendants' conduct constitutes fraudulent concealment;
- i. Whether Defendants have been unjustly enriched at the expense of Plaintiff and the Class;
- j. Whether Plaintiff and the Class have sustained damages as a result of Defendants' conduct, and if so, what are the appropriate damages and/or restitution; and
- k. Whether Defendants' conduct entitles Plaintiff and the Class to recover punitive damages, attorney's fees, costs, and expenses.

52. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff and the Class. Identical statutory violations, business practices, and harms are involved. Individual questions, if any, are not prevalent in comparison to the numerous common questions that dominate this action.

53. **Typicality—Fed. R. Civ. P. 23(a)(3).** Plaintiff's claims are typical of Class members because, among other things, all Class claims are based on the same underlying facts, events, and circumstances relating to Defendants' conduct and Class members were comparably injured through Defendants' wrongful conduct as described herein.

54. **Adequacy—Fed. R. Civ. P. 23(a)(4); 23(g)(1).** Plaintiff will fairly and adequately represent and protect the interests of the Class, has no interest incompatible with the interests of the Class, and has retained counsel competent and experienced in class action litigation. The Classes' interests will be fairly and adequately protected by Plaintiff and his counsel.

55. **Superiority—Fed. R. Civ. P. 23(b)(3).** A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Such treatment will permit a large number of similarly situated and commonly affected Class members to prosecute their claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender.

56. Because of the size of each individual Class member’s claim, no Class member could afford to seek legal redress for the wrongs identified in the Complaint. Without the class action vehicle, the Class would have no reasonable remedy and would suffer losses. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

57. Plaintiff does not anticipate any difficulty in the management of this litigation.

VII. CLAIMS FOR RELIEF

COUNT I VIOLATIONS OF RICO – 18 U.S.C. § 1962(c) & (d)

58. Plaintiff incorporates by reference all allegations in paragraphs 1 through 57 as if fully set forth herein.

59. Plaintiff brings this Count on behalf of the Class against all Defendants.

60. RICO makes it “unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity.” 18 U.S.C. § 1962(c).

61. RICO also makes it “unlawful for any person to conspire to violate any of the provisions [of 18 U.S.C. § 1962].” 18 U.S.C. § 1962(d).

62. RICO provides that: “Any person injured in his business or property by reason of a violation of [18 U.S.C. § 1962] may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee[.]” 18 U.S.C. § 1964(c).

63. Each Defendant is a “person” within the meaning of 18 U.S.C. § 1961(3).

64. Plaintiff and the Class are “person[s]” within the meaning of 18 U.S.C. § 1964(c).

65. Defendants are liable under 18 U.S.C. § 1962(c), because each is a person who conducted and participated, directly or indirectly, in the conduct of the affairs of an enterprise through a pattern of racketeering activity, which affected interstate and foreign commerce, and were the but-for cause and proximately caused injuries to Plaintiff and the Class.

66. A RICO “enterprise” “includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.” 18 U.S.C. § 1961(4).

67. Defendants are individuals, corporations, and/or other legal entities that form the “association-in-fact” enterprise, hereinafter referred to as the “Seafood Enterprise”. The Seafood Enterprise consists of the following Defendants: (a) Mary Mahoney’s; (b) Cvitanovich; (c) the Seafood Wholesaler; (d) Business Manager; and (e) Sales Manager. The Seafood Enterprise associated together in fact for the collective purpose of carrying out a criminal scheme and conspiracy, as described in the Complaint. *See* ¶¶ 18–34, *supra*.

68. Through the Seafood Enterprise, Defendants knowingly and willfully conducted a “pattern of racketeering activity” as defined in 18 U.S.C. § 1961(5).

69. Beginning no later than 2012, and continuing through November 2019, Defendants, through the Seafood Enterprise, used numerous acts of wire and mail fraud to execute the

fraudulent scheme of importing, mislabeling, marketing, and selling Foreign Fish to Plaintiff and the Class. *See* ¶¶ 22, 24, 26–28 & 30–34, *supra*.

70. As a direct and proximate result of Defendants’ racketeering activities, Plaintiff and the Class suffered actual monetary damages.

71. In particular, the Seafood Wholesaler, Business Manager, and Sales Manager participated in the Seafood Enterprise by importing, pricing, and selling the inexpensive Foreign Fish, knowing full well that they were going to be fraudulently substituted as high-priced premium fresh fish, when co-conspirators Mary Mahoney’s and Cvitanovich, participated by mislabeling, marketing, and selling the Foreign Fish to Plaintiff and the Class. *See* ¶¶ 19–25, *supra*.

72. At all relevant times, the Seafood Enterprise had an existence separate and distinct from each Defendant, was separate and distinct from the pattern of racketeering activity in which Defendants engaged, and was an ongoing organization consisting of legal entities and individuals associated for the collective purpose of importing, supplying, mislabeling, marketing, and selling Foreign Fish through fraudulent, deceptive, and misleading means, all while deriving profits and revenues from these activities.

73. Each member of the Seafood Enterprise shared in the bounty generated by the enterprise—i.e., by sharing the benefits derived from increased sales revenue and substantial profits generated from the scheme.

74. The Seafood Enterprise functioned by selling seafood to the consuming public. Some of the products sold by the Enterprise were legitimate, including other types of seafood, that were not mislabeled and fraudulently sold to consumers. However, through the Seafood Enterprise, Defendants also engaged in a pattern of racketeering activity, which involved a fraudulent scheme

to increase revenue and profits for Defendants and other entities and individuals associated-in-fact with the Enterprise's activities. *See* ¶¶ 22, 24, 26–28 & 30–34, *supra*.

75. The Seafood Enterprise engaged in commercial activities, and these activities affected interstate and foreign commerce, because the scheme involved activities that crossed state and foreign boundaries, such as the importing and marketing of the Foreign Fish, and the receipt of money through credit and debit card wire transactions from the sale of same. *See* ¶¶ 26–28, *supra*.

76. Within the Seafood Enterprise, there was a common communication network by which Defendants shared information on a regular basis. The Seafood Enterprise used this communication network for the purposes of importing, mislabeling, marketing, and selling Foreign Fish to Plaintiff and the Class. *See* ¶ 26, *supra*.

77. Each participant in the Seafood Enterprise had a systematic linkage to each other through corporate ties, contractual relationships, financial ties, and continuing coordination of activities. Through the Seafood Enterprise, Defendants functioned as a continuing unit to further the criminal scheme and their common purpose of increasing revenues and profits.

78. Defendants participated in the operation and management of the Seafood Enterprise by directing its affairs, as described herein. While Defendants participated in, and are members of, the Enterprise, they have a separate existence from the Enterprise, including individuals and distinct entities with different offices and roles, bank accounts, officers, directors, employees, individual personhood, and financial statements.

79. Defendants worked closely together to further the Seafood Enterprise by and among the following manners and means:

- a. Jointly conspiring to import, supply, mislabel, market, and sell inexpensive Foreign Fish as high-priced premium fresh fish;

- b. Misrepresenting (or causing such misrepresentation to be made) that the fish were high-priced premium fresh fish;
- c. Omitting (or causing such omissions to be made) that the fish sold were from foreign countries and not from the Gulf;
- d. Concealing the true nature of the Foreign Fish from Plaintiff, the Class, and federal regulators;
- e. Illegally mislabeling, marketing, and selling the Foreign Fish; and
- f. Unlawfully collecting revenues and profits from the sale of the Foreign Fish.

80. To carry out, and attempt to carry out, the scheme to defraud, Defendants knowingly conducted and participated directly in the conduct of the affairs of the Enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5) & 1962(c), by using wire and mail facilities, in violation of 18 U.S.C. §§ 1343 (wire fraud) and 1341 (mail fraud).

81. Specifically, Defendants committed, conspired to commit, and/or aided and abetted in the commission of, numerous predicate acts of racketeering activity (i.e., violations of 18 U.S.C. §§ 1343 and 1341), the last of which occurred within ten years of the prior acts. The acts were related to each other, posed a threat of continued racketeering activity, and therefore constitute a “pattern of racketeering activity.” The racketeering activity was made possible by Defendants’ regular use of the facilities, services, and distribution channels of the Seafood Enterprise. Defendants knowingly and intentionally participated in the scheme to defraud by wire transmissions through interstate and/or foreign means and by use of private and/or commercial interstate carriers. *See* ¶¶ 22, 24, 26–28 & 30–34, *supra*.

82. Defendants devised and knowingly carried out the scheme and/or artifice to defraud Plaintiff and the Class and to obtain money that was not rightfully theirs using materially false or fraudulent pretenses, representations, or omissions of material facts. *Id.*

83. The Seafood Enterprises use of wire transmissions and private or commercial interstate carriers foreseeably caused and were in furtherance of the scheme in a number of ways, including:

- a. The shipping, importing, delivery, and/or receipt of the Foreign Fish;
- b. False or misleading communications to Plaintiff and Class;
- c. Sales and marketing materials, including website advertising, product packaging, menus, and labeling; which omitted and concealed the true nature of the Foreign Fish;
- d. Documents intended to facilitate the sale of the Foreign Fish, including bills of lading, invoices, shipping records, reports, and correspondence;
- e. Documents to process and receive payment for the Foreign Fish from Plaintiff and the Class, including invoices and receipts;
- f. Wire payments to Defendants and deposits of proceeds from the criminal scheme; and
- g. Wire transactions and receipts of money from Plaintiff and the Class.

84. The wire transmissions and use of private and/or commercial carriers, as described herein, were made in furtherance of Defendants' scheme and common course of conduct to deceive and lure consumers into purchasing the Foreign Fish.

85. As described herein, Defendants engaged in a pattern of related and continuous predicate acts for at least eight (8) years. The predicate acts constituted various unlawful activities, each conducted with the common purpose of obtaining significant money and revenue from Plaintiff and the Class. The predicate acts also had the same or similar results, participants, victims, and methods of commission. The predicate acts were interrelated, and not isolated events, in that

they targeted Plaintiff and Class members' funds and avoiding the expenses associated with selling high-priced premium fresh fish.

86. Other dates regarding certain predicate acts are hidden from Plaintiff and the Class, and cannot be alleged without access to Defendants' books and records. However, Plaintiff has already described in detail numerous predicate acts throughout the Complaint.

87. In violation of 18 U.S.C. § 1962(d), Defendants conspired to violate 18 U.S.C. § 1962(c), as described herein. Defendants participated in these offenses and have performed acts in furtherance of the conspiracy to increase or maintain revenues and profits for the Seafood Enterprise throughout a common course of conduct.

88. Defendants unlawfully, knowingly, and willfully combined, conspired, confederated and agreed together to violate 18 U.S.C. § 1962(c), in violation of 18 U.S.C. § 1962(d). *See* ¶¶ 18–34, *supra*.

89. To achieve their common goals, Defendants actively and intentionally concealed from the general public the unlawfulness of the criminal scheme and conspiracy.

90. Defendants, with knowledge and intent, agreed to the overall objectives of the conspiracy and collectively participated in the common course of conduct to commit acts of fraud by importing, mislabeling, marketing, and selling the Foreign Fish. *Id.*

91. Indeed, for the conspiracy to succeed, each Defendant had to agree to implement and use similar devices and fraudulent tactics—specifically, complete secrecy about the conspiracy and its activities.

92. Defendants knew and intended that Plaintiff and the Class would incur damages as a result of the conspiracy.

93. Plaintiff and the Class were damaged by Defendants' misrepresentations, omissions, and concealment and were systematically victimized by Defendants' long-term unlawful conduct.

94. By reason of and as a result of the conduct of the Seafood Enterprise, Plaintiff and the Class have been injured in multiple ways, including, but not limited to:

- a. Payment, or alternatively significant overpayment, for the Foreign Fish, as Plaintiff and the Class would not have paid for the Foreign Fish at the time of purchase had Defendants disclosed the true nature of the fish and criminal scheme.
- b. Plaintiff and the Class have been wrongfully deprived of their property in that deliberate misrepresentations, omissions, and concealment caused them to pay for the Foreign Fish, or at a minimum, artificially inflated prices for the Foreign Fish.

95. Defendants' violations of 18 U.S.C. § 1962(c) & (d) have directly and proximately caused injuries and damages to Plaintiff and the Class, and as such, are entitled to bring this action for three times their actual damages, reasonable attorney's fees, and costs, all pursuant to 18 U.S.C. § 1964(c).

COUNT II
VIOLATIONS OF THE MISSISSIPPI CONSUMER PROTECTION ACT
(MISS. CODE ANN. § 75-24-1, *et seq.*)

96. Plaintiff incorporates by reference all allegations in paragraphs 1 through 95 as if fully set forth herein.

97. Plaintiff brings this Count on behalf of the Class against all Defendants.

98. Plaintiff and the Class are "person[s]" pursuant to Miss. Code Ann. § 75-24-3(a).

99. Defendants are "person[s]" pursuant to Miss. Code Ann. § 75-24-3(a).

100. The direct or indirect "offering for sale, [and] distribution" of goods or products qualifies as "trade" and "commerce" as defined under Miss. Code Ann. § 75-24-3(b).

101. Defendants engaged in “unfair methods of competition affecting commerce and unfair or deceptive trade practices in or affecting commerce” against Plaintiff and the Class, pursuant to Miss. Code Ann. § 75-24-5(1).

102. Over a period of at least eight (8) years, Defendants collectively agreed to and did participate in an illegal scheme and conspiracy to import, mislabel, market, and sell at least 58,750 pounds (over 29 tons) of inexpensive Foreign Fish to Plaintiff and the Class, when they reasonably believed the fish species they purchased were high-priced premium fish.

103. Defendants also engaged in “unfair methods of competition and unfair or deceptive trade practices” against Plaintiff and the Class, pursuant to Miss. Code Ann. § 75-24-5(2)(b), (c), (d), (e), & (g), as outlined herein. Defendants’ actions involved the misrepresentation of the source, sponsorship, certification, affiliation, connection, association, geographic origin, and characteristics of the fish species sold to Plaintiff and the Class.

104. By engaging in the “offering for sale, [and] distribution” of these products or things of value, Defendants committed unfair and deceptive trade practices in or affecting commerce.

105. Defendants’ trade practices violated the Mississippi Consumer Protection Act in a manner that is willful, wanton, and/or grossly negligent and which evidences, at a minimum, reckless disregard for the economic well-being of Plaintiff and the Class.

106. As a direct and proximate cause of Defendants’ unfair and deceptive conduct, Plaintiff and the Class have suffered ascertainable losses. Accordingly, they seek restitution under Miss. Code Ann. § 75-24-11 to recover all money paid by Plaintiff and the Class for the Foreign Fish.

107. As a direct and proximate result of the Defendants' conduct, Plaintiff and the Class seek and are entitled to recover, pursuant to Miss. Code Ann. § 75-24-15, all actual damages which Plaintiff and the Class have sustained through the purchase of the Foreign Fish.

108. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class are also entitled to civil penalties of up to \$10,000 for each violation resulting from Defendants' unlawful conduct, along with investigation costs and reasonable attorney's fees under Miss. Code Ann. § 75-24-19(1)(b).

109. As a direct and proximate result of Defendants' collective misconduct, Defendants are jointly and severally liable to Plaintiff and the Class for all damages and civil penalties, which recovery is sought herein.

COUNT III
COMMON LAW FRAUD

110. Plaintiff incorporates by reference all allegations in paragraphs 1 through 109 as if fully set forth herein.

111. Plaintiff brings this Count on behalf of the Class against all Defendants.

112. Defendants agreed to, and did participate in, a common scheme to defraud Plaintiff and the Class. Defendants intended to deceive Plaintiff and the Class by fraudulently importing, mislabeling, marketing, and selling inexpensive Foreign Fish as high-priced premium fresh fish.

113. Defendants concealed, or misrepresented by omission, the existence of the underlying conspiracy.

114. Beginning no later than 2012, and continuing through November 2019, Defendants agreed to participate in the criminal scheme and conspiracy to import, mislabel, market, and sell Foreign Fish to obtain money from Plaintiff and the Class, and in fact did import, mislabel, market, and sell at least 58,750 pounds (over 29 tons) of Foreign Fish to Plaintiff and the Class.

115. Plaintiff and the Class were unaware of the fraud and conspiracy, and Defendants anticipated and knew that Plaintiff and the Class were unaware of the fraud and conspiracy.

116. As a direct and proximate result of Defendants' acts of fraud, Plaintiff and the Class have been harmed and have suffered damages, for which demand is made.

COUNT IV
CIVIL CONSPIRACY

117. Plaintiff incorporates by reference all allegations in paragraphs 1 through 116 as if fully set forth herein.

118. Plaintiff brings this Count on behalf of the Class against all Defendants.

119. Under Mississippi law, a civil conspiracy occurs when two or more persons combine and commit overt acts to accomplish a purpose that is unlawful or to accomplish a lawful purpose unlawfully which gives rise to damages therefrom.

120. Defendants' actions constitute a combination or conspiracy of entities to accomplish an unlawful purpose, or to accomplish a lawful purpose unlawfully.

121. As set forth herein, Defendants committed unlawful acts against Plaintiff and the Class, including acts of racketeering, fraud, aiding and abetting fraud, and violations of consumer protection laws.

122. Defendants intentionally participated in a plan and purpose to obtain money from Plaintiff and the Class.

123. As a direct and proximate result of Defendants' conspiracy and the overt acts committed in furtherance of the conspiracy, Plaintiff and the Class have been harmed and have suffered damages, for which demand is made.

COUNT V
UNJUST ENRICHMENT

124. Plaintiff incorporates by reference all allegations in paragraphs 1 through 123 as if fully set forth herein.

125. Plaintiff brings this Count on behalf of the Class against all Defendants.

126. Under Mississippi law, unjust enrichment can be found when a party is in possession of money which in good conscience and justice he should not retain, but should deliver to another and the court imposes a duty to refund the money to whom in good conscience it ought to belong.

127. Defendants willfully, intentionally, and wrongfully retained unjust benefits from Plaintiff and the Class during the conspiratorial scheme used to unlawfully import, mislabel, market, and sell millions of dollars of Foreign Fish to Plaintiff and the Class, and therefore, secured and retained a financial windfall.

128. It is inequitable, unconscionable, and unjust for Defendants to retain these benefits.

129. Defendants knowingly accepted these unjust benefits.

130. Accordingly, Defendants should not be permitted to retain the proceeds from the benefits conferred upon them by Plaintiff and the Class. Thus, Plaintiff and the Class seek disgorgement of these ill-gotten funds Defendants received as a result of the unlawful conduct in an amount to be determined at trial.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, respectfully requests that the Court enter judgment in their favor and against Defendants, jointly and severally, as follows:

- a. Certification of the Class, designation of Plaintiff as class representative, and appointment of Plaintiff's counsel as class counsel;

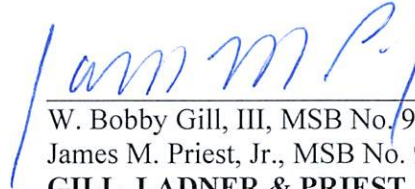
- b. Restitution, including recovery of the purchase price for all Foreign Fish sold, or alternatively, for the substantial overpayment of same;
- c. Damages, including actual, punitive, and treble damages, and disgorgement in an amount to be determined at trial;
- d. An order requiring Defendants to pay both pre- and post-judgment interest on any amounts awarded;
- e. An award of attorney's fees, costs, and expert fees; and
- f. Such other or further relief as may be appropriate.

DEMAND FOR JURY TRIAL

131. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff and the Class, hereby demand a jury trial for all claims so triable.

Dated: August 2, 2024.

Respectfully submitted,



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* Motion for *pro hac vice* admission forthcoming
Counsel for Plaintiff and the putative class

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Mary Mahoney's Lawsuit Says Restaurant Defrauded Customers By Selling Nearly 30 Tons of Frozen Foreign Fish](#)
