

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

WOOD MOUNTAIN FISH LLC,

Plaintiff,

v.

Mowi ASA (fka Marine Harvest ASA),
Marine Harvest USA, LLC, Marine Harvest
Canada, Inc., Ducktrap River of Maine LLC,
Grieg Seafood ASA, Grieg Seafood BC Ltd.,
Bremnes Seashore AS, Ocean Quality AS,
Ocean Quality North America Inc., Ocean
Quality USA Inc., Ocean Quality Premium
Brands, Inc., SalMar ASA, Leroy Seafood
Group ASA, Leroy Seafood USA Inc., and
Scottish Sea Farms Ltd.,

Defendants.

CASE NO. 1:19-cv-22128-UU

**NOTICE OF PENDING, REFILED,
RELATED, OR SIMILAR ACTIONS
AND MOTION TO TRANSFER AND
COORDINATE WITH RELATED
CONSOLIDATED ACTIONS**

Plaintiff, Wood Mountain Fish LLC (“Plaintiff”), pursuant to Local Rule 3.8 and Section 2.15.00 of the Court’s Internal Operating Procedures, hereby files this Notice of Pending, Refiled, Related, or Similar Actions and notifies the Court that the action referred to in the caption alleges antitrust violations related to (albeit different from) those currently pending before the Honorable Cecilia Maria Altonaga: *In re Farm-Raised Salmon and Salmon Products Litigation*, No. 1:19-cv-21551-CMA (“Lead Case”). This action is an indirect antitrust case which arises out of federal (for injunctive relief) and state laws while the related actions before Judge Altonaga are direct antitrust cases arising solely out of federal law. They are related, however, in that both will be required to prove many of the same underlying facts. For that reason, Plaintiff moves to transfer this action to Judge Altonaga and have this action coordinated with the related direct antitrust cases which Judge Altonaga consolidated under Master File Docket No. 19-21551-CIV-

ALTONAGA (“the Master File Docket” or “the Consolidated Action”). The reasons are as follows:

1. On May 13, 2019, Judge Altonaga entered the Order attached as Exhibit A consolidating under the Master File Docket two federal antitrust actions, *Euclid Fish Company v. MOWI ASA, et al.*, Case No. 19-21551-cv-Altonaga and *Schneider’s Fish and Sea Food Corp. v. MOWI ASA, et al.*, Case No. 2019-cv-21652-Altonaga (“the Consolidation Order”). In the Consolidation Order, the Court directed the Clerk to change the style in the civil docket of the Consolidated Action to “*In re Farm-Raised Salmon and Salmon Products Antitrust Litigation.*” (emphasis in original). These federal antitrust actions are, we respectfully submit, related to this action which is a class action arising under federal law for injunctive relief and state laws for damages.

2. As part of the Consolidation Order, the Court further ordered that, without objection, each subsequent action that arises out of the same subject matter “shall be consolidated with *In re Farm-Raised Salmon and Salmon Products Litigation*”.

3. This action filed on May 24, 2019, arises out of the same subject matter as *In re Farm-Raised Salmon and Salmon Products Litigation*, but is filed on behalf of a class of indirect-purchasers under state laws whereas the cases presently subject to the Consolidation Order were filed on behalf of a class of direct-purchasers under federal law.

4. Although proof of liability will be common to both direct-purchaser and indirect-purchaser classes, they are differently situated. Indirect purchasers of a price-fixed product are situated at a different level of the chain of commerce will be required to show that the overcharges paid by the direct claimants were passed down to them in order to prove damages. Different economists will be tasked with these reports. Indirect purchasers as a general matter do not have

claims for money damages. Their claims for damages generally lie under state antitrust statutes and other relevant state law. *See United Wis. Servs. v. Abbott Labs. (In re Terazosin Hydrochloride Antitrust Litig.)*, 220 F.R.D. 672, 678 n.5 (S.D. Fla. 2004); *see also California v. ARC Am. Corp.*, 490 U.S. 93, 101 (1989). The discovery and expert analyses required and sought by each class, though overlapping in some respects will differ on certain issues.

5. Further, rather than consolidating direct and indirect-purchaser actions, courts have coordinated direct and indirect purchaser claims as separate actions, requiring cooperation between those groups for discovery and other pre-trial matters, but maintaining separate actions and ordering that separate consolidated class action complaints be filed for each. *See, e.g., In re Processed Egg Prods. Antitrust Litig.*, 881 F.3d 262, 265 (3d Cir. 2018) (noting that for pretrial purposes with other cases involving similar antitrust claims, cases were transferred and consolidated); *see also* Case Management Order No. 1 Consolidating & Coordinating Cases, *In re Lipitor Antitrust Litig.*, No. 12-cv-2389 (D.N.J. Aug. 10, 2012) (ECF No. 109) (coordinating indirect- and direct-purchaser actions, consolidating all direct purchaser actions, consolidating all indirect-purchaser action, directing each plaintiff group to file separate consolidated class action complaints).¹

6. Plaintiff's counsel is also sending a letter, enclosing a copy of this motion and the Complaint in this action, to Judge Altonaga to provide her notice of this action and motion.

WHEREFORE, Plaintiff Wood Mountain Fish, LLC respectfully requests the Court to transfer this action to Judge Altonaga to coordinate this action with *In re Farm-Raised Salmon and*

¹ *See also, e.g., Pre-trial Order No. 2, In re Effexor XR Antitrust Litig., No. 11-cv-5479 (D.N.J. Dec. 13, 2011) (ECF No. 85) (coordinating direct and indirect purchaser actions); In re Remeron End-Payor Antitrust Litig., No. 02-cv-2007, 2005 WL 2230314, at *2 (D.N.J. Sept. 13, 2005) (noting the court had ordered coordinated discovery in the end-payor class actions and the direct purchaser cases).*

Salmon Products Litigation, in Master File Docket No. 19-21551-CIV-ALTONAGA.

Dated: May 30, 2019

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/s/ Jayne A. Goldstein

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 30, 2019, the foregoing document was filed with the Court's CM/ECF system, which will send electronic notice to all counsel of record.

/s/ Jayne A. Goldstein

Jayne A. Goldstein