

## Proposed Settlement in Mowi Smoked Salmon Class Action

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By way of background, in November 2020, a class action lawsuit was filed asserting various causes of action against Mowi USA, LLC and Mowi Ducktrap, LLC (collectively “Mowi”) arising out of their alleged misrepresentations in marketing smoked salmon products sold under the brand name Ducktrap River of Maine. Specifically, the lawsuit alleged that the salmon products, while represented as sustainable, natural, and sourced from Maine, were in fact the products of unsustainable and environmentally unfriendly industrial farming, not natural because the farmed salmon were treated with antibiotics and pesticides, and sourced from international waters rather than off the coast of Maine.

On March 16, 2021, Plaintiffs requested that the Court approve a proposed settlement between the parties. By the terms of the proposed settlement, a fund of \$1.3 million would be established to reimburse consumers who had purchased the salmon products between March 1, 2017 and the [yet undetermined] date of entry of the preliminary settlement approval. The class representative plaintiffs would be paid a total of \$9000 from this fund and claimants would be reimbursed \$2.50 per product purchased, with a \$25 limit on reimbursement without proof of purchase. In addition, under the proposed terms, Mowi would pay \$360,000 in attorney fees and would be prohibited from using the phrases “sustainably sourced,” “all natural,” and “Naturally Smoked Salmon FROM MAINE” on any Ducktrap product for two years from the date of entry of the judgment.

Plaintiffs argued that the court should approve the settlement, in part because the compensation of \$2.50 per claim represents a significant increase over the estimated \$1.06 premium that the various representations at issue allowed the products to be sold for. Plaintiffs’ motion has been opposed by two intervenors in the litigation who allege that the proposed settlement is driven by attorneys’ fees and does not sufficiently advance the class interests.

This case serves as a reminder to substantiate all labeling claims and to tread cautiously when making natural claims, which the FDA has still not yet defined.

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