

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

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| ANIMAL OUTLOOK, | : | Case No. 2020 CA 002908 B |
| <i>Plaintiff,</i> | : | |
| | : | |
| v. | : | |
| | : | Judge Heidi M. Pasichow |
| COOKE AQUACULTURE INC., et al., | : | |
| <i>Defendants.</i> | : | |

ORDER (1) DENYING DEFENDANTS COOKE INC. AND COOKE AQUACULTURE, INC.’S AND TRUE NORTH SALMON CO. LTD’S MOTION TO QUASH, (2) DENYING DEFENDANTS COOKE INC. AND COOKE AQUACULTURE, INC.’S MOTION TO DISMISS, (3) DENYING DEFENDANTS TRUE NORTH SEAFOOD, INC. AND TRUE NORTH SALMON CO. LTD’S MOTION TO DISMISS, AND (4) DENYING DEFENDANT WANCHESE CO.’S MOTION TO DISMISS

This matter is before the Court based upon four (4) motions: (1) Defendants Cooke, Inc., Cooke Aquaculture, Inc., and True North Salmon Co.’s Motion to Quash (“Motion to Quash”), filed on March 26, 2021, (2) Defendants Cooke Inc. and Cooke Aquaculture, Inc.’s Motion to Dismiss (“First Motion to Dismiss”), filed on March 26, 2021, (3) Defendants True North Seafood, Inc. and True North Salmon Co.’s Motion to Dismiss (“Second Motion to Dismiss”), filed on November 17, 2020, and (4) Defendant Wanchese Co.’s Motion to Dismiss (“Third Motion to Dismiss”), filed on October 16, 2020.

I. Procedural History

On June 26, 2020, Plaintiff Animal Outlook filed the Complaint against Defendants Cooke Aquaculture, Inc (“Cooke Aqua”), True North Salmon U.S., Inc., and True North Maine. On August 5, 2020, Plaintiff filed three (3) Affidavits of Service representing that on July 29, 2020 Plaintiff served all three (3) Defendants by serving “paperwork in hand to Beth – paralegal after verbal confirmation of identification and authorization to accept” service for each Defendant.

On August 19, 2020, Defendants jointly filed an Opposed Motion to Quash Service and to Dismiss for Lack of Personal Jurisdiction and *Forum Non Conveniens* Grounds and Motion to Exceed as well as a Motion to Exceed Page Limits to which Plaintiff did not consent. On the same day, the parties filed a Joint Request to Extend Time and Page Limits regarding briefing of the Defendants' August 19, 2020 Motion to Dismiss. On August 25, 2020, Plaintiff filed a Memorandum as to Defendants' Motion to Exceed indicating that Plaintiff consents to Defendants' Motion to Exceed. On August 27, 2020, Plaintiff filed a Notice of Voluntary Dismissal without prejudice of Plaintiff's Claims Against Defendants North Salmon U.S., Inc., and True North Maine, but Plaintiff expressly indicated that it "does **not** dismiss its claims against Defendant Cooke Aquaculture, Inc." Notice at 1.

Nonetheless on August 28, 2020 the docket reflects that the instant case was closed and the September 25, 2020 Initial Scheduling Conference was vacated by the Civil Division Clerk's Office. On September 9, 2020, Plaintiff Animal Outlook filed an Amended Complaint against Defendants Cooke Aqua, Cooke, Inc. ("Cooke"), Wanchese Fish Company, Inc. ("Wanchese"), True North Salmon Co. Ltd. ("TN Salmon"), and True North Seafood, Inc. ("TN Seafood"). On September 24, 2020 at 3:37 p.m., the docket reflects that the instant case was reopened and the September 25, 2020 Initial Scheduling Conference was reset by the Civil Division Clerk's Office. Later on September 24, 2020 Chambers notified Plaintiff's Counsel via email that it only recently became aware of the reopening of the case and the setting of the September 25, 2020 Scheduling Conference and therefore would be continuing the Scheduling Conference.

On September 25, 2020, the Court issued an Order (1) denying as moot the Joint Request to Extend Time and Page Limits, (2) denying as moot Defendants' Opposed Motion to Quash Service and to Dismiss for Lack of Personal Jurisdiction and on *Forum Non Conevniens*

Grounds, (3) denying as moot Motion to Exceed Page Limits (Without Consent), and (4) *Sua Sponte* Continuing Parties' Scheduling Conference. In doing so, the Court ordered that Plaintiff would serve Defendants consistent with Super. Ct. Civ. R. 4 on or before January 8, 2021, that Defendants would file their responsive pleadings on or before January 29, 2021, and that the parties' Initial Scheduling Conference was vacated and rescheduled for February 5, 2021 at 9:30 a.m. to be held remotely in Courtroom 516.

On October 2, 2020, Plaintiff filed its Praecipe to Withdraw Affidavit of Service for Defendant Cooke Aqua. On October 16, 2020, Defendant Wanchese filed the instant Third Motion to Dismiss and Plaintiff and Defendant Wanchese filed its instant Joint Request to Extend Time and Page Limits regarding the briefing of the Third Motion to Dismiss.¹ On October 29, 2020, Plaintiff filed an Affidavit of Service certifying that TN Seafood had been properly served. On November 2, 2020, Plaintiff filed an Affidavit of Service certifying that Wanchese Fish Company, Inc. was properly served. On November 16, 2020,

On November 16, 2020, Defendants True North Seafood, Inc. and True North Salmon Company, Ltd. filed the First Motion to Dismiss. Then, on November 17, 2020, Defendants TN Seafood and TN Salmon filed a Motion to Exceed Page Limits (Without Consent) and the Second Motion to Dismiss. On November 30, 2020, Plaintiff filed its Memorandum in Opposition to Defendant's Motion to Exceed Page Limits and the associated Memorandum of Law in Opposition to Defendants TN Seafood and TN Salmon's Second Motion to Dismiss.

On December 1, 2020, Plaintiff filed Plaintiff's Memorandum of Law in Opposition to Defendant Wanchese's Third Motion to Dismiss. On December 7, 2020, Defendant Wanchese

¹ As Defendant Wanchese filed its First Motion to Dismiss twice on October 16, 2020, Defendant Wanchese filed a praecipe on October 19, 2020 requesting that the first filing be withdrawn as it had inadvertently filed First Motion to Dismiss without the Memorandum in Support and Exhibits.

filed a Reply Brief in Support of Defendant Wanchese's Third Motion to Dismiss and a Reply in support of its Motion to Exceed Page Limits. Also on December 7, 2020, Defendants TN Seafood and TN Salmon filed Reply Brief in support of their Second Motion to Dismiss. On December 9, 2020, Plaintiff filed a Motion to Strike Defendants TN Seafood and TN Salmon's Reply Brief in Support of Motion to Exceed Page Limits. On December 10, 2020, Moving Defendants filed a Brief in Opposition to Motion to Strike True North Defendants' Reply Brief in Support of Motion to Exceed Page Limits.

On January 27, 2021, Plaintiff filed a Notice of Supplemental Authority to bring to the Court's attention a recent ruling by Judge Hiram E. Puig-Lugo for the Court's consideration of Plaintiff's Oppositions to the Motions to Dismiss filed by the Moving Defendants. On February 1, 2021, Moving Defendants filed the Motion to Strike and Plaintiff filed an Unopposed Motion to Continue Initial Scheduling Conference.

On February 3, 2021, the Court issued an Order (1) granting Joint Request to Extend Time and Page Limits *Nunc Pro Tunc* (2) granting Motion to Exceed Page Limits (Without Consent) *Nunc Pro Tunc* (3) granting Plaintiff's Motion to Strike Defendants TN Seafood and TN Salmon's Reply Brief in Support of Motion to Exceed Page Limits, and (4) granting Consent Motion to Continue Parties' Scheduling Conference. On February 8, 2021, Plaintiff filed an Opposition to Moving Defendants' Motion to Strike. On February 12, 2021, Moving Defendants filed the First Motion for Admission and the Second Motion for Admission.

On March 3, 2021, the Court issued an Order (1) granting Defendants' First Motion for Admission, (2) granting Defendants' Second Motion for Admission, (3) granting Defendants' Motion to Strike, (4) denying as duplicative Defendant TN Seafood and TN Salmon's First Motion to Dismiss for Lack of Standing and Lack of Personal Jurisdiction, (5) holding in

abeyance Defendant TN Seafood and TN Salmon's instant Second Motion to Dismiss for Lack of Standing, and (6) holding in abeyance Defendant Wanchese's instant Motion to Dismiss for Lack of Standing and Lack of Personal Jurisdiction. On March 26, 2021, Defendants Cooke, Cooke Aqua, and TN Salmon filed the instant Motion to Quash Service and the Memorandum of Points and Authorities in Support of Motion to Quash Service, Defendants Cooke and Cooke Aqua filed the Motion to Exceed Page Limits (With Consent), and Defendants Cooke and Cooke Aqua filed the instant Motion to Dismiss for Lack of Standing, Lack of Personal Jurisdiction, and Improper Venue. On March 30, 2021, the parties filed the Joint Motion to Extend Time for the briefing deadlines related to the Motion to Dismiss and Motion to Quash filed by Defendants on March 26, 2021.

On April 7, 2021, the Court issued an Order (1) granting Defendants Cooke and Cooke Aqua's Motion to Exceed Page Limits (With Consent), (2) granting parties' Joint Motion to Extend Time, (3) holding in abeyance Defendants Cooke and Cooke Aqua's instant Motion to Quash Service, (4) holding in abeyance Defendants Cooke and Cooke Aqua's instant Motion to Dismiss, (5) holding in abeyance Defendants TN Seafood and TN Salmon's instant Second Motion to Dismiss, and (6) holding in abeyance Defendant Wanchese's instant Motion to Dismiss. On April 27, 2021, Defendants, with the consent of Plaintiff, filed the Consent Motion to Continue Hearing Date.

On May 3, 2021, the Court issued an Amended Order (1) granting Defendants' Consent Motion to Continue Hearing Date, (2) holding in abeyance Defendants Cooke, Cooke Aqua, and TN Salmon's instant Motion to Quash Service, (3) holding in abeyance Defendants Cooke and Cooke Aqua's instant Motion to Dismiss, (4) holding in abeyance Defendants TN Salmon and TN Seafood's instant Second Motion to Dismiss, and (5) holding in abeyance Defendant

Wanchese's instant Motion to Dismiss. On May 14, 2021, Defendants Cooke and Cooke Aqua filed the Motion for Admission *Pro Hac Vice* of Marissa M. Henderson and the Motion for Admission *Pro Hac Vice* of David N. Ventker.

On May 24, 2021, the Court issued an Order (1) granting Defendants Cooke and Cooke Aqua's Motion for Admission *Pro Hac Vice* of David N. Ventker, (2) granting Defendants Cooke and Cooke Aqua's Motion for Admission *Pro Hac Vice* of Marissa M. Henderson, (3) holding in abeyance Defendants Cooke, Cooke Aqua, and TN Salmon's instant Motion to Quash Service, (4) holding in abeyance Defendants Cooke and Cooke Aqua's instant Motion to Dismiss, (5) holding in abeyance Defendants TN Seafood and TN Salmon's instant Second Motion to Dismiss, and (6) holding in abeyance Defendant Wanchese's instant Motion to Dismiss. On June 8, 2021, Plaintiff filed the Memorandum of Law in Opposition to Defendants Cooke, Cooke Aqua, and TN Salmon's Motion to Quash Service. On June 16, 2021, Defendants Cooke and Cooke Aqua filed the Memorandum of Points and Authorities in Support of Cooke and Cooke Aqua's Reply to Opposition to Dismiss, and Defendants Cooke, Cooke Aqua, and TN Salmon filed the Reply Brief in Support of Defendants' Motion to Quash Service.

II. Factual History

This case is brought by Plaintiff Animal Outlook, a nonprofit organization incorporated in Delaware. Am. Compl. at 1. Defendants belong to a shared family of companies and are one of North America's largest producers of fish products. *Id.* Plaintiff brought this action under the District of Columbia Consumer Protection Act ("CPPA") and alleges that Defendants made "numerous marketing representations that convey to D.C. consumers that True North-brand salmon products are sustainably farmed," Defendants' sustainability representations lead D.C. consumers to believe that its farms go above and beyond regulatory requirements and its

products are ecologically sound, naturally raised, and adhere to optimal animal welfare standards, and Defendants allegedly “employ production practices that are environmentally destructive, unnatural, and inhumane.” *Id.* at 2. Plaintiff asserts that Defendants collectively produce, process, market, and distribute salmon products, and that Defendants’ representations are material and misleading to D.C. consumers. *Id.* at 21, 24.

III. Legal Standard

a. Motion to Quash

Pursuant to Super. Ct. Civ. R. 12(b)(5), every defense to a claim for relief must be asserted in the responsive pleading if one is required. However, a party may assert the defense of insufficient service of process by motion. Super. Ct. Civ. R. 12(b)(5). When asserting insufficient service of process by motion, the motion “must be made before pleading if a responsive pleading is allowed.” *Id.*

b. Motion to Dismiss

A Super. Ct. Civ. R. 12(b)(6) motion asks that the court dismiss a plaintiff’s complaint for “failure to state a claim upon which relief can be granted.” To survive a motion to dismiss under Super. Ct. Civ. R. 12(b)(6) a “complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Potomac Development Corp., et al. v. District of Columbia, et al.*, 28 A.3d 531, 544 (D.C. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)); see *Logan v. LaSalle Bank Nat. Ass’n.*, 80 A.3d 1014, 1019 (D.C. 2013). A complaint satisfies the plausibility requirement if it contains sufficient facts for the Court to “draw [a] reasonable inference that the defendant is liable for the misconduct alleged.” *Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1129 (D.C. 2015) (quoting *Iqbal*, 556 U.S. at 678; 129 S.Ct. 1937); *Potomac*, 28 A.3d at 544; see also *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

While the Court need not quantify the likelihood of a plaintiff's success, it should consider whether "there is more than a sheer possibility that a defendant has acted unlawfully." *Id.*

When the Court conducts an inquiry under Super. Ct. Civ. R. 12 (b)(6), all facts in the Complaint are presumed true and are construed in the light most favorable to the plaintiff. *Sundberg*, 109 A.3d at 1128; *Casco Marina Dev., L.L.C. v. District of Columbia Redevelopment Land Agency*, 834 A.2d 77, 81 (D.C. 2003). "[A] complaint [which] pleads facts that are merely consistent with a defendant's liability . . . stops short of the line between possibility and plausibility of entitlement to relief." *Sundberg*, 109 A.3d at 1129 (quoting *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937) (internal quotations omitted); *Potomac*, 28 A.3d at 544; see also *Twombly*, 550 U.S. at 555, 127 S.Ct. 1955. Since conclusory allegations of wrongdoing are not entitled to a presumption of truth, a mere formulaic recitation of the elements of a cause of action is "insufficient to sustain a complaint." *Ashcroft*, 556 U.S. at 679, 129 S.Ct. 1937; *Twombly*, 550 U.S. at 570; *Logan*, 80 A.3d at 1019; *Potomac*, 28 A.3d at 544; *Murray v. Motorola, Inc.*, 982 A.2d 764, n.32 (D.C. 2009).

IV. Analysis

a. Motion to Quash

i. Defendants' Grounds to Quash Service

Defendants Cooke, Cooke Aqua, and TN Salmon ("Defendants") argue that the Motion to Quash Service should be granted for three (3) reasons: (1) Plaintiff fails to assert that Defendants have been properly summoned to appear before the Court, (2) Defendants Cooke and TN Salmon have not been properly served, and (3) Defendant Cooke Aqua has not been served. Defs.' Mot. to Quash at 1. First, Defendants assert that before the Court can exercise personal jurisdiction over Defendants, and before Defendants can be required to respond to a summons

and the Complaint, Plaintiff must first effectively service process upon Defendants. Defs.’ Mot. to Quash at 5. Second, Defendants argue that James Trask, Director of Global Analytics for Defendant Cooke Aqua, is unauthorized to receive service for Defendant Cook or TN Salmon. *Id.* at 6. Third, Defendants claim that Plaintiff improperly used an old summons, instead of requesting and using a new summons, when it attempted to serve the Amended Complaint. *Id.* at 7. Further, Defendants argue that even if the August 26, 2020 summons was properly used, Defendant Cooke Aqua has not been properly served because Mr. Trask is unauthorized to accept service. *Id.* at 8.

ii. Plaintiff’s Opposition

Plaintiff opposes Defendants’ Motion to Quash for four (4) reasons: (1) the rules do not preclude using the original summons to serve the Amended Complaint, (2) Defendant Cooke Aqua was properly served through Mr. Trask, (3) service was effected when Mr. Trask accepted on behalf of Defendants Cooke and TN Salmon, and (4) a hearing may be held on the totality of the circumstances, in place of dismissing the action. First, Plaintiff argues that Defendants fail to cite any authority suggesting “that service of an amended complaint with no alteration in substantive claims is ineffective if the summons was issued for the original complaint.” Pl.’s Opp’n to Defs.’ Mot. to Quash at 7. In support, Plaintiff argues that in other jurisdictions, courts trend towards allowing the use of previously issued summons for service of an amended complaint. *Id.* at 3-7.

Second, Plaintiff claims that Defendant Cooke Aqua was properly served through Mr. Trask, Defendant Cooke Aqua’s Director of Global Analytics. *Id.* at 8. As Defendants Cooke, Cooke Aqua, and TN Salmon are Canadian corporations headquartered together at one address in Saint John, New Brunswick, Plaintiff states that pursuant to Super. Ct. Civ. R. 4(f)(1), a

defendant “may be served at a place not within the United States . . . by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents.” *Id.* (citing Super. Ct. Civ. R. 4(f)(1)). Plaintiff claims that Canada’s ratification of the Hague Convention specifies that “service will be effected according to the methods of service prescribed by the laws in force in each province and territory.” *Id.* (citing Canada Ratification, Hague Service Convention, § 2.1). Plaintiff asserts that in New Brunswick, service upon a corporation may be made “by leaving a copy of the document with an officer, director, or agent, or with the manager or a person who appears to be in control or management of any office or other place where the corporation carries on business in New Brunswick.” *Id.* (citing New Brunswick Rules of Service of Process 18.02(c)). Consequently, Plaintiff argues that Mr. Trask, as a director, was properly served pursuant to New Brunswick Rules, and service was effective upon Defendant Cooke Aqua. *Id.* at 10.

Third, Plaintiff argues that service was effective when Mr. Trask accepted on behalf of Defendants Cooke and TN Salmon. *Id.* at 11. In support, Plaintiff states that Defendants are interrelated companies headquartered and operating from a single address, Defendants share one Chief Legal Officer and Chief Executive Officer, Defendant Cooke is the parent of Defendants TN Salmon and Cooke Aqua, and Defendants admit that Mr. Trask signed for the service of process on behalf of multiple companies. *Id.* Further, Plaintiff argues that the “intention of the Hague Service Convention is to ensure actual and timely notice of a lawsuit,” and that “[n]either Cooke Inc. nor True North Salmon Co. Ltd. can (or attempts to) contend that it lacks actual and timely notice of this action.” *Id.*

Fourth, Plaintiff asserts that “[n]o Rule 4(m) dismissal could be granted on the ground of ineffective service without consideration of the totality of facts surrounding the attempts to effectuate service” *Id.* at 12. Following this, Plaintiff states that if “the Court needs more information, the Court may order development of a fact record and hearing on the totality of the circumstances surrounding the efforts of [Plaintiff] . . . in effecting service under the Hague Convention.” *Id.* at 13.

iii. Defendants’ Reply

Defendants argue that this Court should grant Defendants’ Motion to Quash because service upon Mr. Trask fails to meet New Brunswick rules and Plaintiff’s prior summons should not stand to support its later filed Amended Complaint. First, Defendants claim that the assumption that Mr. Trask “appears to be in control or management” is insufficient, and that “any reasonable person serving these papers would not conclude that [Mr. Trask] ‘appeared’ to be in charge.” Defs.’ Reply at 1-2 (citing New Brunswick Rules of Service of Process 18.02(c)).

Second, Defendants assert that Plaintiff’s prior summons were ineffective for service of the Amended Complaint. *Id.* at 3. In support, Defendants claim that Plaintiff “offers no DC Superior Court-based authority in support of an invitation to this court to approve such behavior.” *Id.* at 4. Further, Defendants state that although “there is not DC authority on this issue . . . it is clear the DC Council has chosen not to address this issue,” and “this Court [should] exercise its equitable discretion and require an Amended Summons.” *Id.* (citing *Schoonover v. Chavous*, 974 A.2d 876, 884 (D.C. 2009)).

iv. Defendants’ Motion to Quash Service

First, the Court agrees with Plaintiff that as the Director of Global Analytics, Mr. Trask was authorized to accept service on behalf of Defendant Cooke Aqua, pursuant to D.C. Superior

Court and New Brunswick rules. When serving an individual in a foreign country, Super. Ct. Civ. R. 4(f)(1) provides that an individual may be served “by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents” Further, Canada’s ratification of the Hague Convention states that “[e]ach State shall organize the Central Authority in conformity with its own law.” Canada Ratification, Hague Service Convention § 2.1. Therefore, the rules of service in Canada conform with those of the State where service is being made, and the laws of New Brunswick state that service on a corporation shall be made by “leaving a copy of the document with an officer, director, or agent, or with the manager or a person who appears to be in control or management of any office or other place where the corporation carries on business in New Brunswick” Rules of Court New Brunswick 18.02(c). As Mr. Trask’s title explicitly states that he is a director for Defendant Cooke Aqua, Defendant Cooke Aqua was properly served. The Court finds it unpersuasive that Mr. Trask was carrying pizza boxes and did not “appear to be in charge.” Defs.’ Reply at 2.

Second, the Court agrees with Plaintiff that service was effective when Mr. Trask accepted on behalf of Defendants Cooke and TN Salmon. As Defendants are all interrelated companies that share the same CLO, CEO, business address, and counsel, the Court finds that Defendants Cooke and TN Salmon received sufficient notice and service through Mr. Trask’s acceptance.

Finally, the Court concludes that Defendants Cooke, Cooke Aqua, and TN Salmon were adequately summoned. D.C. Super. Ct. Civ. R. 4(c)(1) states that in general, “[a] summons must be served with a copy of the complaint” As Defendants do not dispute having notice of this litigation, the Court uses the rule of “liberal construction” to find that Defendants were

effectively served with process. *Corpening v. Corpening*, 258 A.2d 262, 263 (D.C. 1969). The D.C. Superior Court Rules of Civil Procedure prioritize Defendants having sufficient notice of the claims alleged against them. Here, the Court is satisfied that all parties are aware of the instant suit, have sufficient notice of the claims alleged here, and were properly served with the Summons, Initial Order, and Complaint. Defendants have actual notice of this action, and the Court is not interested in delaying proceedings due to an alleged technical deficiency. For the foregoing reasons, Defendants Cooke, Cooke Aqua, and TN Salmon's Motion to Quash Service is denied.

b. Motions to Dismiss

The Court notes that there are three (3) separate Motions to Dismiss to address: (1) Defendants Cooke and Cooke Aqua's Motion to Dismiss, (2) Defendants TN Seafood and TN Salmon's Motion to Dismiss, and (3) Defendant Wanchese's Motion to Dismiss. As many of the presented issues overlap, the Court addresses them all simultaneously herein. All parties have fully briefed the pending Motions to Dismiss.

i. Defendants Cooke and Cooke Aqua's Grounds for Dismissal

Defendants Cooke and Cooke Aqua ("Cooke Defendants") argue the Amended Complaint should be dismissed as Plaintiff lacks standing because the Court cannot issue an injunction to order someone to stop doing something they have never done and the Court cannot exercise personal jurisdiction over Cooke Defendants.

First, Cooke Defendants argue that pursuant to Super. Ct. Civ. R. 12(b)(1), Plaintiff lacks standing. Cooke Defs.' Mot. to Dismiss at 4. Cooke Defendants state that Plaintiff seeks an order enjoining Defendants from advertising and selling farm-raised salmon in the District in violation of the CPPA. *Id.* at 5. Cooke Defendants argue that they "have never targeted consumers in the

District with advertising for farm-raised Atlantic salmon, and they have never sold such salmon in the District,” and therefore, the Court cannot enjoin Cooke Defendants from doing something they have never done. *Id.* Consequently, Cooke Defendants assert that “[t]here simply never was a live case or controversy as to these two defendants *when suit was filed* . . . [and] the Court should find Animal Outlook lacks standing to sue the Cooke Defendants.” *Id.* at 8. Further, Cooke Defendants allege that a favorable ruling for Plaintiff would not redress any injuries, and “[a]n injunction ordering these defendants to stop doing what they are not doing does not provide Animal Outlook any tangible benefit.” *Id.* at 9.

Second, Cooke Defendants argue that pursuant to Super. Ct. Civ. R. 12(b)(2), the Court cannot exercise personal jurisdiction over Cooke Defendants. *Id.* at 12. Cooke Defendants argue that D.C. Code § 13-334 controls over methods of service on foreign corporations transacting business in the District, and because Plaintiff did not serve Cooke Defendants in the District, the Court does not have general jurisdiction over Cooke Defendants. *Id.* at 13. Next, Cooke Defendants argue that D.C. Code § 13-423, the long-arm statute, does not provide a foundation for specific jurisdiction over Cooke Defendants because Plaintiff’s claim does not arise from Cooke Defendants transacting business in the District. *Id.* at 15. Further, Cooke Defendants state that because they are not domiciled in the District, Cooke Defendants “cannot be subject to the exercise of general jurisdiction in the District as a simple matter of due process.” *Id.* at 17-18.

Further, Cooke Defendants also assert that Plaintiff cannot create a jurisdictional nexus based on the websites referenced throughout the Amended Complaint because it is impossible for anyone to transact business with Cooke Defendants directly through these websites. *Id.* at 20. Finally, Cooke Defendants argue that pursuant to D.C. Code § 13-425, this action should be

dismissed “in the interests of substantial justice” and inconvenience of forum for Cooke Defendants. *Id.* at 24.

ii. Plaintiff’s Opposition

Plaintiff argues five (5) reasons for denial of Cooke Defendants Motion to Dismiss: (1) the CPPA confers standing upon a nonprofit Plaintiff to represent D.C. consumers on the basis of representations made in the D.C. marketplace, (2) specific personal jurisdiction exists over the Cooke Defendants because of their role in the sustainability representations to D.C. consumers, (3) a defendant cannot defeat standing or eliminate specific jurisdiction by declaring that the allegations of a well-pleaded complaint are false, (4) if the Cooke Defendants are able to raise a colorable argument regarding personal jurisdiction, discovery should be taken on the issue, and (5) this is the only proper forum for a nonprofit action under the CPPA.

First, Plaintiff asserts that under the CPPA, a claim arises as soon as untruth or misrepresentation enters the D.C. marketplace. Pl.’s Opp’n to Defs.’ Mot. to Dismiss at 4. Plaintiff highlights three key CPPA provisions: (1) D.C. Code § 28-3901(c) “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia,” (2) D.C. Code § 28-3904 states that misrepresenting the properties or qualities of consumer goods violates the CPPA regardless of “whether or not any consumer is in fact misled, deceived, or damaged thereby,” and (3) D.C. Code § 288-3905(k)(1)(A), which allows any consumer to “bring an action seeking relief from the use of a trade practice in violation of a law of the District.” *Id.* at 4 (citing *Organic Consumers Ass’n v. General Mills, Inc.*, No. 2016 CA 6309 B, 2017 D.C. Super. LEXIS 4, at *6-7 (July 6, 2017) and *Organic Consumers Ass’n v. Noble Foods, Inc.*, No. 2020 CA 002009 B, 2020 D.C. Super. LEXIS 13, at *5 (Aug. 25, 2020)).

Plaintiff argues that “the deprivation of the CPPA statutory right to be free from improper trade practices may constitute an injury-in-fact- sufficient to establish standing,” and “[t]he ‘transaction’ giving rise to such a claim is a defendant’s placement of misrepresentations within the D.C. marketplace—not the sale or purchase of a consumer good or service. . . .” *Id.* at 5.

Plaintiff states that under D.C. Code § 28-3905(k)(1)(c):

A nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

Id. at 6. Citing the Committee on Public services and Consumer Affairs Memorandum on Bill 19-0581, Nov. 18, 2012, at 5 (“Alexander Report”), Plaintiff asserts that:

New subsection (k)(1)(C) provides a similar right of action to that in subparagraph (B), for non-profit organizations who test consumer goods or services. As with an individual who tests goods or services, *a testing organization that has not actually been misled may nevertheless have standing based on a violation of its right to truthful information about the goods or services it tests.* The non-profit organization may sue on behalf of its own interests . . . as well as the interests of the general public, to better enable it to obtain the full relief that ends unlawful practices.

Id. at 7. Consequently, Plaintiff asserts that this action is brought “on its own behalf and on behalf of the general public,” based upon the Defendants “advertis[ing] and market[ing] the Products with phrases such as ‘sustainably-farmed,’ ‘naturally raised,’ and ‘optimal’ animal-welfare standards.” *Id.*

Second, Plaintiff argues that specific personal jurisdiction exists over Cooke Defendants because of their role in the sustainability representations to D.C. Consumers. *Id.* at 8. Citing D.C. Code § 13-423(a)(1), Plaintiff asserts that “[a] District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person’s . . . transacting any business in the District of Columbia.” *Id.* Plaintiff argues that the

claim for relief is “based on misrepresentation under the CPAA . . . [and] arises from the Cooke Defendants transacting business in the District of Columbia . . . [and] [t]herefore, the statutory requirements are met.” *Id.*

Third, Plaintiff contends that Defendants cannot defeat standing, or eliminate specific jurisdiction, simply by declaring that the allegations of a well-pleaded complaint are false. *Id.* at 10. Plaintiff argues that as a nonprofit organization, Plaintiff properly alleges standing to bring this action on its own behalf and on behalf of the general public, and that Cooke Defendants’ remaining tactic is a factual argument. *Id.* Specifically, Cooke Defendants claim “nothing alleged about them in the Amended Complaint is true, so there is no conduct to enjoin, the Court lacks personal jurisdiction, and their motion to dismiss should be granted.” *Id.* Consequently, Plaintiff asserts that “[e]stablishing the truth of the allegations is the very purpose of discovery and trial.” *Id.*

Fourth, Plaintiff argues that “[i]f the Cooke Defendants have raised a colorable argument about personal jurisdiction, the next step would be discovery limited to that issue, not dismissal of the action.” *Id.* at 13. Specifically, Plaintiff asserts that “if the allegations of a pleading ‘demonstrate a sufficient nexus between [the defendants] and the District of Columbia’ . . . then discovery is justified on ‘whether personal jurisdiction over [them] would comport with basic fairness.’” *Id.* (citing *Wilson v. Wilson*, 785 A.2d 647, 650 (D.C. 2001)). Consequently, Plaintiff argues that “[i]t is not appropriate to dismiss an action simply because defendants deny they acted in the jurisdiction; if it were, no action would proceed past the pleadings.” *Id.* at 13-14.

Fifth, Plaintiff argues that this is the only proper forum for a nonprofit action under the CPPA. *Id.* at 14. Plaintiff asserts that a court hearing a motion to dismiss on the grounds of *forum non conveniens* accepts all fact allegations in the pleading as true, Defendants bear the burden of

demonstrating that both private- and public-interest factors favor transfer, and the entire analysis is undertaken in the light most favorable to Plaintiff. *Id.* Plaintiff claims that Cooke Defendants fail to meet their *forum non conveniens* burden because the general public of the District of Columbia, the real parties in interest, reside in the present forum, and Cooke Defendants fail to suggest any more appropriate alternative venue besides Canada, but the basis for this action does not apply in Canada. *Id.* at 15.

iii. Defendants Cooke and Cooke Aqua's Reply

Cooke Defendants argue in support of Cooke Defendants' Motion to Dismiss that Cooke Defendants established they have no contacts related to this action that could support the Court's exercise of specific jurisdiction over them, and the standing doctrine of redressability, in light of the broad injunctive relief sought, precludes the Court's resolution of this action. First, Cooke Defendants argue that Plaintiff abandoned any argument that the Court may exercise general jurisdiction over Cooke Defendants, and that specific jurisdiction must be based on, and arise from, "the *intentional* acts of the defendant in the forum where jurisdiction is sought, acts which are *directly related* to the cause of the action." Defs.' Reply to Pl.'s Opp'n at 2 (citing *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1779-80 (2017)). Cooke Defendants argue that all mentioned internet websites are passive, and Plaintiff makes no allegations that D.C. consumers can engage in any business transactions on these websites. *Id.* Cooke Defendants assert that Plaintiff is not entitled to jurisdictional discovery, and that jurisdictional discovery is not a substitute for initial jurisdictional allegations. *Id.* at 3. Consequently, Cooke Defendants argue that "both Cooke Defendants do not advertise salmon for sale in D.C. or elsewhere . . . [and] this allegation cannot be linked to these Cooke Defendants to support personal jurisdiction." *Id.* at 4.

Second, Cooke Defendants assert that “absent acts done by these Defendants that can be subject to the relief sought, there is no live case or controversy to adjudicate.” *Id.* at 5.

Specifically, Cooke Defendants claim that:

although the CPPA statute on its face allows injunctive relief of acts under the statute, including misrepresentations of products available to D.C. consumers, the relief requested here is so broad—enjoining internet statements available worldwide—that the Court does not have the inherent power to issue such a broad, wide-reaching injunction.

Id. Consequently, Cooke Defendants assert that the constitutional principles of redressability preclude the Court’s granting of injunctive relief. *Id.*

iv. Cooke Defendants’ Motion to Dismiss

To survive a motion to dismiss under Super. Ct. Civ. R. 12(b)(6) a “complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Potomac Development Corp., et al. v. District of Columbia, et al.*, 28 A.3d 531, 544 (D.C. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)); see *Logan v. LaSalle Bank Nat. Ass’n.*, 80 A.3d 1014, 1019 (D.C. 2013). When the Court conducts an inquiry under Super. Ct. Civ. R. 12 (b)(6), all facts in the Complaint are presumed true and are construed in the light most favorable to the plaintiff. *Sundberg*, 109 A.3d at 1128; *Casco Marina Dev., L.L.C. v. District of Columbia Redevelopment Land Agency*, 834 A.2d 77, 81 (D.C. 2003).

First, the Court finds that the CPPA confers standing upon a nonprofit plaintiff to represent D.C. consumers on the basis of representations made in the D.C. marketplace. Pursuant to D.C. Code § 28-3905(k)(1)(C):

a nonprofit organization may . . . on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

Further, D.C. Code § 28-3905(k)(2) states that “any claim under this chapter shall be brought in the Superior Court of the District of Columbia” and recovery may include “an injunction against the use of the unlawful trade practice” As Plaintiff’s Amended Complaint alleges that Defendants have violated various provisions of the CPPA based on misrepresentations made in the D.C. marketplace, Plaintiff has standing to bring this action in the D.C. Superior Court pursuant to the CPPA. Am. Compl. at 29-30. The Court rejects Defendants’ argument availing when Defendants allege that enjoining internet statements available in the D.C. marketplace is overly broad relief that lacks redressability. Defs.’ Reply to Pl.’s Opp’n at 5. Pursuant to a thorough review of the arguments presented, the Court finds that under the CPPA, Plaintiff has standing to bring this action, injunctive relief is sufficiently redressible for the purposes of standing, and the D.C. Superior Court is the proper venue for this action.

Second, the Court agrees with Plaintiff that the CPPA confers jurisdiction over Cooke Defendants. D.C. Code § 13-423(a)(1) states that “[a] District of Columbia court may exercise personal jurisdiction over a person, who directly or by an agent, as to a claim for relief arising from the person’s . . . transacting any business in the District of Columbia” The claim for relief asserted by Plaintiff in the Amended Complaint is based on misrepresentation under the CPPA, and the claim for relief arises from Cooke Defendants transacting business in the District of Columbia. Therefore, the statutory requirements for personal jurisdiction pursuant to § 13-423 are met. Pl.’s Opp’n to Defs.’ Mot. to Dismiss at 8. Further, when accepting the facts of the Amended Complaint as true and construing them in the light most favorable to Plaintiff, Cooke Defendants cannot eliminate standing or jurisdiction by claiming the facts of the Amended Complaint are false. *Id.* at 10. As the CPPA provides a basis for nonprofit organizations to bring an action for misrepresentations on behalf of D.C. consumers, the Court is unpersuaded by

Cooke Defendants' arguments that Plaintiff must allege D.C. consumers were intentionally targeted, and that Defendants' websites are more than passive. Defs.' Reply to Pl.'s Opp'n at 2. Consequently, Cooke Defendants' Motion to Dismiss for Lack of Standing, Lack of Personal Jurisdiction and Improper Venue is denied.

In the interest of limiting repetition, the Court acknowledges that both Defendants TN Salmon and TN Seafood's Motion to Dismiss and Defendant Wanchese's Motion to Dismiss similarly argue for dismissal of this action due to lack of standing and personal jurisdiction. Further, the Court notes that Defendants Cooke, Cooke Aqua, TN Salmon, TN Seafood, and Wanchese all belong to "the Cooke family of companies." Cooke Seafood, <https://www.cookeseafood.com> (last visited June 21, 2021). For the foregoing reasons, the Court finds that Plaintiff has standing under the CPPA to bring this action against Defendants TN Salmon, TN Seafood, and Wanchese. Similarly, the Court may exercise personal jurisdiction over Defendants TN Salmon, TN Seafood, and Wanchese pursuant to D.C. Code § 13-423(a)(1). Consequently, Defendants TN Salmon and TN Seafood's Motion to Dismiss and Defendant Wanchese's Motion to Dismiss are both similarly denied.

V. Conclusion

The Court reminds the parties that if, as a result of private mediation, the parties require further time to finalize settlement terms or discussions, that they must notify the Court in writing by way of motion in advance of the Motions Hearing. Specifically, if the parties intend to submit a filing dismissing the case, please file and provide a courtesy copy to Chambers no later than *at least five (5) business days before your Motions Hearing. Otherwise all parties are required to attend the Status Hearing on June 24, 2021 at 2:30 p.m. in Courtroom 516.*

For any further questions as to the court's resources please access Chief Judge Josey-Herring's May 19, 2021 Amended Order at https://www.dccourts.gov/sites/default/files/matters-docs/Amended-General-Order-5_19_21.pdf. For updates on DC Superior Court's available resources and protocol in handling the ongoing coronavirus please continue to check: <https://www.dccourts.gov/coronavirus>

Accordingly, it is this 24th day of June 2021, hereby,

ORDERED that Defendants Cooke Inc. and Cooke Aquaculture, Inc.'s, and True North Salmon Co. LTD's Motion to Quash Service is **DENIED**; it is,

FURTHER ORDERED Defendants Cooke Inc. and Cooke Aquaculture, Inc.'s Motion to Dismiss for Lack of Standing, Lack of Personal Jurisdiction and Improper Venue is **DENIED**; it is,

FURTHER ORDERED Defendant True North Seafood, Inc. And True North Salmon Co. Ltd's Motion to Dismiss for Lack of Standing and Lack of Personal Jurisdiction is **DENIED**; it is,

FURTHER ORDERED Defendant Wanchese Company, Inc. Motion to Dismiss for Lack of Standing and Lack of Personal Jurisdiction is **DENIED**; and it is,

FURTHER ORDERED that the parties' June 24, 2021 Motions Hearing is **VACATED**; it is,

FURTHER ORDERED that Defendants **SHALL FILE** Answers to the Plaintiff's Amended Complaint **on or before July 7, 2021**; and it is,

FURTHER ORDERED that the parties **SHALL APPEAR** remotely for a Scheduling Conference **on August 6, 2021 at 9:30 a.m. to be held in Courtroom 516**; and it is,

FURTHER ORDERED that if the parties intend to submit a filing dismissing the case or requesting a Scheduling Order prior to the **August 6, 2021** Scheduling Conference that they **SHALL SUBMIT** a courtesy copy, no later than **July 30, 2021**, and the Court will vacate the **August 6, 2021** Scheduling Conference.



Heidi M. Pasichow
Associate Judge

Copies e-served to:

Kim E. Richman
Jay Shooster
Counsel for Plaintiff

Christopher T. Craig
Counsel for Defendants

Copies e-mailed to:

David N. Ventker
dventker@ventkerlaw.com
Pro Hac Vice Counsel for Defendants

Marissa M. Henderson
mhenderson@ventkerlaw.com
Pro Hac Vice Counsel for Defendants

