United States Court of Appeals for the Fifth Circuit

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Fifth Circuit
FILED
October 16, 2026
Thomas B. Plunkett, III
Clerk

No. 25-60663

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

Plaintiff—Appellant,

versus

MARY MAHONEY'S, INCORPORATED, *doing business as* MARY MAHONEY'S OLD FRENCH HOUSE; ANTHONY C. CVITANOVICH; QUALITY POULTRY & SEAFOOD, INCORPORATED; JAMES W. GUNKEL; TODD A. ROSETTI; DOES 1-10,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:24-CV-241

Before KING, SMITH, and RAMIREZ, *Circuit Judges*.

KING, *Circuit Judge*:

A customer walked into a high-end restaurant that specializes in fresh local seafood and ordered an entrée of premium snapper caught in local waters. Unbeknownst to the customer, the restaurant had been engaging in a multi-year scheme to substitute a substantial quantity of premium local fish with inexpensive, imported frozen fish. Has the customer plausibly suffered

an injury in fact cognizable under Article III? For the reasons below, we answer in the affirmative.

I

We start with an overview of the criminal proceedings that precede this action. Mary Mahoney's, Inc., doing business as Mary Mahoney's Old French House ("Mahoney's") is a Mississippi restaurant that specializes in fresh local seafood. Quality Poultry & Seafood, Inc. ("QPS") was a wholesale supplier of seafood to Mahoney's. James Gunkel and Todd Rosetti were QPS's business manager and sales manager, respectively. Anthony Cvitanovich was a co-owner and manager at Mahoney's. In 2024, the United States Attorney for the Southern District of Mississippi criminally charged Mahoney's, QPS, Cvitanovich, Gunkel, and Rosetti for their participation in a conspiracy to fraudulently misbrand imported frozen fish as locally sourced premium fish. Each party pled guilty. Mahoney's pled guilty to the charge that the fish substitution scheme began "[a]t a time no later than 2012, and as early as 2002, and continuing through November 2019." Mahoney's also admitted that "between December 2013 and November 2019, it and its co-conspirators, fraudulently sold as local premium species, approximately 58,750 pounds (over 29 tons) of fish that was frozen and imported from Africa, India, and South America." In a press release, the United States Attorney commented: "[w]hen people spend their hard-earned dollars to enjoy the incredible local seafood on the Mississippi Gulf Coast, they should get what they paid for, not frozen fish from overseas."

Turning to the instant dispute. Plaintiff Todd McCain dined at Mahoney's on three occasions: July 29, 2013, December 28, 2016, and August 21, 2018. On those occasions, he purchased what he believed to be premium local snapper and red snapper. Relying on factual admissions from the criminal proceedings, McCain alleged that Mahoney's charged a high

price for premium Mississippi Gulf catch but served him inferior imported frozen fish. McCain filed a class action against Mahoney's, QPS, Cvitanovich, Gunkel, and Rosetti under the Racketeer Influenced and Corrupt Organizations Act and Mississippi law, and seeks monetary damages due to Defendants' fraudulent fish sales.

The district court dismissed McCain's complaint under Federal Rule of Civil Procedure 12(b)(1) for lack of Article III injury. The district court reasoned that because McCain "consumed the meal[s] without complaint or concern," his asserted injury from "paying for fish he would not have otherwise purchased does not constitute" a cognizable injury. The district court also rejected McCain's claim that his injury derived from overpayment for the fish entrées: McCain did not plausibly allege that Mahoney's served him frozen fish because "he does not allege that QPS and Mahoney's mislabeled all of the fish they sold or that Mahoney's mislabeled all of the snapper it sold on a date that he purchased fish."

McCain subsequently moved to alter or amend the judgment under Federal Rule of Civil Procedure 59(e) and requested leave to amend the complaint under Rule 15(a). The district court denied both. The district court ruled that the proposed amendments would be futile: the new allegations are insufficient to establish Article III injury, for they do not plausibly show that Mahoney's served McCain frozen fish entrées. McCain timely appeals.

II

"We review *de novo* rulings on motions to dismiss for lack of subject-matter jurisdiction under Federal Rules of Civil Procedure 12(b)(1), including motions to dismiss for lack of standing." *Burnett Specialists v. Cowen*, 140 F.4th 686, 693 (5th Cir. 2025). The court "accept[s] as true all well-pleaded allegations set forth in the complaint and construe[s] those allegations in the light most favorable to a plaintiff." *Id.* At the pleading stage,

a plaintiff needs only "to allege a plausible set of facts establishing jurisdiction." *Id.*

III

McCain raises two issues on appeal. First, whether the district court erred in dismissing McCain's complaint for want of Article III injury. Second, whether the district court erred in denying McCain leave to amend based on futility. We hold that McCain prevails on the first issue; we vacate the denial of leave to amend accordingly.

A

We start with the familiar test for Article III injury in fact. Standing requires "an injury in fact that is concrete, particularized, and actual or imminent." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). In the class action context, "the class representative must establish his standing as an individual before he may represent a class of other allegedly injured persons." *Wilson v. Centene Mgmt. Co., L.L.C.*, 168 F.4th 217, 224 (5th Cir. 2026). "If a defendant has caused physical or monetary injury to the plaintiff, the plaintiff has suffered a concrete injury in fact under Article III." *TransUnion* at 425. An injury is "particularized" if it "affect[s] the plaintiff in a personal and individual way." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (citation modified). "Concreteness . . . is quite different from particularization," and "an injury in fact must be both concrete *and* particularized." *Id.* at 340.

McCain postulates two theories of economic injury: (1) Defendants fraudulently induced him to purchase foreign frozen fish he otherwise would not have purchased ("fraudulent-inducement theory"), and (2) Defendants' fraud caused him to pay a higher price for an inferior product ("overcharge-by-fraud theory"). The district court rejected McCain's first theory as foreclosed by our decision in *Earl v. Boeing Company*, 53 F.4th 897 (5th Cir.

2022). The district court accepted the second theory as a concrete but not particularized injury: McCain did not allege enough facts that "would allow the [c]ourt to reasonably infer that Mahoney's restaurant served him foreign fish but charged him for local fish." We address the district court's ruling on each theory in turn.

1

This circuit has previously rejected *and* accepted the fraudulent-inducement theory as a concrete injury under different factual circumstances. In *Rivera v. Wyeth-Ayerst Laboratories*, purchasers of painkillers sued the manufacturer for monetary damages because the medications allegedly carried a risk of liver harm, though the plaintiffs did not claim any physical injury or future health consequences. 283 F.3d 315, 319 (5th Cir. 2002). We held that because "the drug was not defective as to" the plaintiffs, and because the drug was otherwise effective at reducing pain, the plaintiffs suffered no concrete injury. *Id.* at 320–21.

We subsequently decided *Earl*, where the plaintiffs purchased air travel tickets on Boeing MAX 8 planes that allegedly had safety defects but disclaimed any physical injury. 53 F.4th at 900–02. Relying on *Rivera*, we held that the plaintiffs' "theory of injury" that "defendants' fraud induced them to buy tickets they never would have bought otherwise" "cannot support Article III standing." *Earl*, 53 F.4th at 902. We reached this conclusion because, like the drug purchasers in *Rivera*, the risk of physical injury in *Earl* "never materialized" for any passenger plaintiff, and the flights were otherwise functional, so the plaintiffs received what they paid for. *Earl*, 53 F.4th at 902, 903.

Earlier this year, we revisited the fraudulent-inducement theory of economic injury in *Wilson*. There, purchasers of a health insurance plan alleged that the plan's provider directories were materially inaccurate and

represented as in-network providers who were actually out-of-network. *Wilson*, 168 F.4th at 222. We found that the purchasers had plausibly alleged economic injury because a court could infer "that the [p]laintiffs in this case would have expected to pay less for access to an inaccurate and inadequate provider network, or, *more likely, that the [p]laintiffs would not have purchased the [insurance] policy at all.*" *Id.* at 228 (emphasis added). We distinguished the insurance purchasers in *Wilson* from the plaintiffs in *Earl* because the former "had a contract with [the insurance company], which promised to provide insureds with . . . an accurate list of network providers[.]" *Id.*

McCain's pleaded injury more resembles that of the insurance purchasers in *Wilson* than that of the plane ticket purchasers in *Earl*. Both *Rivera* and *Earl* are akin to "no-injury products liability law suit[s]" because the plaintiffs' "core allegation" was that "the defendant produced or sold a defective product and/or failed to warn of the product's dangers." *See Rivera*, 283 F.3d at 320 (quoting *Coghlan v. Wellcraft Marine Corp.*, 240 F.3d 449, 455 n.4 (5th Cir.2001)). Therefore, *Rivera*'s and *Earl*'s rejection of the fraudulent-inducement theory applies where a plaintiff has suffered no physical injury but bases his *economic* injury on the product's risk of *physical* harm.

By contrast, the alleged injury in neither *Wilson* nor the instant case relies on any unmaterialized risk of physical harm. Both McCain and the plaintiffs in *Wilson* purchased a product devoid of an important characteristic that the seller explicitly promised. The seller in both cases promised a high-quality product, charged the buyer for that high-quality product, and delivered an inferior version of that product. Just as patients may choose insurance plans based on the identity and adequacy of in-network providers, consumers may choose a restaurant or an entrée on the menu based on the quality of the ingredients. *Wilson* therefore provides a more apt analogy for McCain.

In sum, McCain claims that he suffered an economic injury because he purchased inexpensive frozen fish he would not have purchased but for Defendants' misrepresentation of them as premium local fish. That injury is sufficiently concrete to support Article III standing.

2

We next determine whether McCain has pleaded a particularized injury. We have held *supra* that McCain's fraudulent-inducement theory constitutes a concrete injury in fact. McCain's overcharge-by-fraud theory also "could provide the basis for a[concrete] Article III injury." *Monahan v. Sw. Airlines Co.*, No. 25-50559, 2026 WL 1035070, at *4 (5th Cir. Apr. 16, 2026) (unpublished); *see also Wilson*, 168 F.4th at 228. As both McCain's theories could support a concrete injury in fact, the only remaining question is whether the injury "affect[ed] [McCain] in a personal and individual way." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 n.1 (1992). McCain demonstrates a particularized injury if he plausibly alleges that during at least one of his three visits to Mahoney's, Mahoney's actually served him imported frozen fish rather than the premium Mississippi Gulf catch listed on the menu.

Viewing the allegations in the light most favorable to McCain, we find that fraudulent fish substitution at Mahoney's was routine and systematic. According to the operative complaint, Defendants had a "a continuous and ongoing unlawful agreement" to purchase inferior foreign frozen fish and sell them as "high-priced premium fresh fish." For example, QPS substituted "all snapper" with imported triple tail in January 2018. In September 2018, Cvitanovich "order[ed] imported frozen African perch, which Mary Mahoney's regularly mislabeled and sold to customers as local Mississippi Gulf Coast snapper." In October 2018, Cvitanovich "ordered 60 pounds of African perch to sale [sic] as snapper to customers of Mary Mahoney's." During the criminal proceedings, Mahoney's "admitted that between

December 2013 and November 2019, it and its co-conspirators fraudulently sold as local species, approximately 58,750 pounds (over 29 tons) of" imported frozen fish. Cvitanovich also "admitted that between 2018 and 2019 alone, he was involved in mislabeling approximately 17,190 pounds of fish sold at the restaurant."

The district court ruled that these allegations are insufficient to show that Defendants' fish substitution scheme plausibly affected McCain's entrées. The district court reasoned that (1) the complaint lacked specific allegations of fish substitution around the dates McCain dined at Mahoney's; and (2) McCain did not allege the percentage of fish entrées that were served with imported frozen fish.[1] We disagree; neither is necessary to support a finding of particularized injury.

The crux of the district court's analysis is that without specific allegations of fish substitution around the dates McCain visited Mahoney's, the court needs *some* estimate of the prevalence of fish substitution to infer that McCain's entrées were tainted by the scheme. The district court looked to three out-of-circuit cases for guidance: *In re Recalled Abbott Infant Formula Products Liability Litigation*, 97 F.4th 525 (7th Cir. 2024), *Wallace v. ConAgra Foods, Inc.*, 747 F.3d 1025 (8th Cir. 2014), and *John v. Whole Foods Market Group*, 858 F.3d 732 (2d Cir. 2017). In *In re Abbott Infant Formula*, the Seventh Circuit found that where only one out of several manufacturing facilities had bacterial contamination, the alleged contamination was not "sufficiently widespread so as to plausibly affect any given product, including

[1] The district court also stated that McCain presented contradictory allegations about the time frame of the conspiracy, which prevented it from "determining whether the mislabeling of Mahoney's fish was widespread." That is not a problem, for "[i]f an exhibit to a complaint contradicts an allegation in the complaint, the exhibit controls." *Stevenson v. Tocé*, 113 F.4th 494, 502–03 (5th Cir. 2024). We therefore rely on McCain's attached exhibits for the time frame of the fish substitution scheme.

the ones [the plaintiffs] purchased." 97 F.4th at 530. In *Wallace*, slaughterhouses making meat products labeled as 100% kosher pressured employees to mark 70% of all cows as kosher; as a result, some non-kosher beef was certified as kosher. 747 F.3d at 1028. The Eighth Circuit ruled that without any allegation on how many cows were improperly certified, it could not infer from the 70% quota alone that "the particular packages sold to the [plaintiffs] were tainted by non-kosher beef." *See id.* at 1030–31. And in *John*, the Second Circuit found particularized injury where allegedly 89 percent of the products were mislabeled, and the plaintiff regularly purchased the products throughout the relevant period. *See* 858 F.3d at 736–37.

McCain's factual pleadings are distinguishable from those in *In re Abbott Infant Formula* and *Wallace.* Unlike the plaintiffs in those cases, McCain provided the specific quantities of mislabeled products at various times during the relevant period. In *In re Abbott Infant Formula*, the court did not have an estimate of how many products manufactured at the contaminated facility were actually affected, nor an estimate of how many unaffected products were manufactured at the non-contaminated facilities. 97 F.4th at 530. In *Wallace*, the court noted that under the 70% kosher quota, "[f]or most of the beef labeled as kosher not to be kosher, in fact, one would have to assume fewer than 35% of all cows processed by [the slaughterhouses] met kosher requirements." 747 F.3d at 1031 n.2. The complaint lacked allegations showing that the slaughterhouses had such a low compliance rate. *Id.* By contrast, McCain alleged that a single restaurant mislabeled over 29 tons of fish over approximately six years. These quantities can plausibly support an inference that fish entrées at Mahoney's "were systematically and routinely mislabeled and overpriced." *John*, 858 F.3d at 737.

The district court also overemphasized the percentage estimate in *John*. In *John*, the Second Circuit's inquiry focused on whether the products "were systematically and routinely mislabeled," and the estimated

percentage of mislabeled products was simply a proxy for whether mislabeling was "systematic and routine." *John*, 858 F.3d at 737 (citation modified). At the pleading stage, McCain need not allege the proportion of misbranded fish at Mahoney's; McCain only needs to show that fish substitution "was sufficiently widespread so as to plausibly affect any given [fish entrée.]" *In re Abbott Infant Formula*, 97 F.4th at 530. McCain "may ultimately be unable to show he was injured under the more demanding standards applicable at summary judgment or trial," but for present purposes, his litany of quantitative allegations plausibly shows that he "overpaid for at least one" entrée. *See John*, 858 F.3d at 737.

Moreover, McCain specifically alleged that Cvitanovich ordered imported fish in September and October 2018 for sale at Mahoney's as local snapper. That these orders were placed shortly after McCain's August 21, 2018, visit to Mahoeny's, together with Cvitanovich's admission that he mislabeled "approximately 17,190 pounds of fish sold at the restaurant" between 2018 and 2019, plausibly supports an inference that McCain was served frozen fish on August 21, 2018. This inference is especially justified in light of our presumption on a motion to dismiss "that general allegations embrace those specific facts that are necessary to support the claim." *See Lujan*, 504 U.S. at 561 (citation modified).

Because McCain has plausibly alleged that fish mislabeling at Mahoney's was widespread and routine, and that Mahoney's substituted his premium fish entrée with frozen fish on August 21, 2018, we find that McCain has sufficiently pleaded a particularized injury.

B

We now turn to the district court's denial of McCain's request for leave to amend the complaint. The district court denied leave because the proposed amendments would be futile: the new allegations still fail to support

"an actual and particularized injury" and only show "a possibility that [McCain] may have been overcharged for the entrées he consumed." Because we hold that McCain's current complaint plausibly alleges an injury in fact, we vacate the denial of leave to amend. *See Williams v. Wingrove*, 153 F.4th 455, 464 (5th Cir. 2025). "Whether an amendment is still requested is a decision for [McCain], and whether to allow it is for the district court to reconsider." *Jim S. Adler, P.C. v. McNeil Consultants, L.L.C.*, 10 F.4th 422, 430 (5th Cir. 2021).

IV

For the foregoing reasons, we REVERSE the dismissal under Rule 12(b)(1), VACATE the denial of leave to amend, and REMAND for further proceedings consistent with this opinion.