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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 COUNTY OF ALAMEDA

CAMILLA GLOVER, on behalf of herself
 and all others similarly situated
 Plaintiff,
 v.
 STEVEN MAHRT, D/B/A PETALUMA
 EGG FARM, and DOES 1 through 25,
 inclusive,
 Defendants.

Case No *RG 12650058*

CLASS ACTION COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF

JURY TRIAL DEMANDED

**FILED
ALAMEDA COUNTY**

OCT 01 2012

CLERK OF THE SUPERIOR COURT
 By *A. John* Deputy

1 Plaintiff, Camilla Glover, on behalf of herself and all others similarly situated, alleges as
2 follows:

3 **INTRODUCTORY STATEMENT**

4 1. The California Supreme Court has recently held that misrepresenting a product's
5 intangible qualities may form the basis of a lawsuit under the Unfair Competition Law, Cal.
6 Bus. & Prof. Code §§ 17200-17209 ("UCL"), the False Advertising Law Cal. Bus. & Prof.
7 Code §§ 17500-17509 ("FAL"), and the Consumers Legal Remedies Act, Cal. Civ. Code §§
8 1750-1784 ("CLRA"), even if the misrepresentations convey no functional value. "Simply
9 stated: labels matter. The marketing industry is based on the premise that labels matter—that
10 consumers will choose one product over another similar product based on its label and various
11 tangible and intangible qualities they may come to associate with a particular source." *Kwikset*
12 *Corp. v. Superior Court*, 51 Cal. 4th 310, 328 (2011).

13 2. The UCL protects consumers and the integrity of the marketplace by prohibiting
14 businesses from engaging in unfair competition. Unfair competition is defined as "any
15 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or
16 misleading advertising and any act prohibited by [the UCL]." Cal. Bus. & Prof. Code § 17200.
17 A business practice is "fraudulent" within the meaning of the UCL if it is likely to deceive
18 members of the public. The elements for common law tort of fraud are not necessary to prove
19 fraud under the UCL; nonetheless, those elements *are* clearly present in the present case.

20 3. Similarly, a business engages in "unfair, deceptive, untrue or misleading
21 advertising" under the UCL if the advertisement is either objectively false or technically true
22 but likely to mislead or deceive members of the public. The UCL also prohibits any acts
23 unlawful under any regulation or statute, including the FAL, which forbids the use of any untrue
24 or misleading statement that the maker knows or should know to be untrue or misleading for the
25 purpose of inducing the public to purchase personal property. The same is true of the statutes
26 that codify common law fraud (Cal. Civ. Code §§ 1572, 1709, 1710, 1711) and the CLRA—
27 which prohibits "[m]isrepresenting the source, sponsorship, approval, or certification of goods
28 or services[,] Cal. Civ. Code § 1770(a)(2), "[r]epresenting that goods or services have

1 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do
 2 not have or that a person has a sponsorship, approval, status, affiliation, or connection which he
 3 or she does not have[.]” Cal. Civ. Code § 1770(a)(5), “[r]epresenting that goods or services are
 4 of a particular standard, quality, or grade, or that goods are of a particular style or model, if they
 5 are of another[.]” Cal. Civ. Code § 1770(a)(7), and “[a]dvertising goods or services with intent
 6 not to sell them as advertised.”

7 4. The conduct at issue in this case violates each of these statutory prohibitions.
 8 Defendant Steven Mahrt, doing business as Petaluma Egg Farm, produces, packages, and
 9 markets eggs sold under the brand Judy’s Family Farm (“Judy’s Family Farm Eggs”). The
 10 dozen-egg packages of the large and extra-large varieties Judy’s Family Farm Eggs feature the
 11 label “Old Fashioned” with a depiction of chicks and hens in an open, grassy field, giving the
 12 impression that the eggs are laid by hens that are running free in a bucolic environment that is
 13 reminiscent of days gone by. And every package of Judy’s Family Farm Eggs contains the
 14 following representations of fact:

- 15 • each package includes an image of hens benefitting from their natural
 16 environment outdoors;
- 17 • one version of the packaging states that “[t]he hens that produce these eggs are
 18 raised free of cages and can ‘run, scratch, and play’ in the fresh air of Sonoma
 19 Valley”;
- 20 • another version of the packaging states that “[the] hens are raised in wide open
 21 spaces in Sonoma Valley, where they are free to ‘roam, scratch, and play”;
- 22 • yet another version of the packaging actually asserts that “[a]ll of our hens have
 23 access to the outdoors and enjoy large communal areas with natural ventilation
 24 and sunlight.” (emphasis added)¹

25 5. Each of these Representations is demonstrably false. The hens do not enjoy the

26
 27 ¹ Unless otherwise stated, these depictions and statements shall be referred to
 28 collectively herein as the “Representations.”

1 outdoor, open, and grassy fields on an "Old Fashioned" farm like the one depicted on the
 2 packaging, where they can "run scratch and play." Rather, the hens that lay Judy's Family
 3 Farm Eggs spend their entire lives inside modern, barren industrial sheds with no grassy fields
 4 and no outdoor access. In short, they are not "raised in wide open spaces in Sonoma Valley,
 5 where they are free to 'roam, scratch, and play," nor do they "have access to the outdoors and
 6 enjoy large communal areas with natural ventilation and sunlight." These Representations are
 7 statements of fact carefully designed to dupe consumers who care about how the hens that
 8 produce the eggs actually live. Defendant knows this.

9 6. Indeed, the very prospect of being required to provide the hens with enough
 10 room to "run scratch and play" is the reason that Defendant Mahrt opposed the Prevention of
 11 Farm Animal Cruelty Act, Cal. Health & Saf. Code §§ 25990-25994, when it was still on the
 12 ballot as Proposition 2. In 2008, Defendant Mahrt told reporters that, to comply with the
 13 Prevention of Farm Cruelty Act, he would "need four to five times more land if this proposition
 14 passes," estimating that for the birds to spread their wings they'll need 5 feet of space between
 15 them. "This is a huge deal for me and will kill my business." Stacy Finz, *Prop 2: Caging of*
 16 *farm animals under debate* (Sept. 30, 2008), available online at
 17 [http://www.sfgate.com/bayarea/article/Prop-2-Caging-of-farm-animals-under-debate-](http://www.sfgate.com/bayarea/article/Prop-2-Caging-of-farm-animals-under-debate-3192682.php#page-2)
 18 [3192682.php#page-2](http://www.sfgate.com/bayarea/article/Prop-2-Caging-of-farm-animals-under-debate-3192682.php#page-2).

19 7. Defendant Mahrt recently defended his company's practices in an interview for a
 20 news story stating that "[p]eople have the expectation that all the chickens are outside. . . .
 21 That doesn't happen. That doesn't happen anywhere." Robert Digitale, Petaluma egg farm
 22 at center of debate over organic rules, PRESS DEMOCRAT (Apr. 27, 2011), available online at
 23 <http://www.pressdemocrat.com/article/20110427/BUSINESS/110429469/1036> (emphasis
 24 added).

25 8. Defendant Mahrt misrepresents the way his eggs are produced so that he can
 26 either sell eggs that he would otherwise not, and/or to garner a premium on the eggs he does
 27 sell. He does so because he knows egg purchasers care about the way hens actually live and
 28 that this is material to purchasing decisions, and also that purchasers favor the actual

1 condition—a barren shed—significantly less than the misrepresented one, an open grassy field.

2 9. The reason Defendant is able to sell eggs he would otherwise not and/or charge
3 higher prices for his product is simple: Consumers, such as Plaintiff Glover and those she
4 proposes to represent in this action, increasingly make choices at the grocery store based on
5 animal welfare concerns. They are willing to purchase products they would otherwise not, and
6 pay more for products they do buy, when they perceive those products as promoting animal
7 welfare. However, it costs more money to produce eggs in this fashion, which results in an
8 animal welfare premium built into the cost of eggs from hens that actually have outdoor access.

9 10. By advertising that Judy’s Family Farm Eggs are laid by hens that are raised the
10 “Old Fashioned” way—on farms where they are free to “run, scratch, and play” in the fresh air
11 of Sonoma Valley”—even though they are actually housed in industrial sheds with no access to
12 the outdoors, Defendant is not only engaging in fraud, he is engaging in a classic form of unfair
13 competition. When Farmers actually do provide their hens with outdoor access and take other
14 steps to ensure their health and welfare, they are forced to bear the expense of doing so—which
15 typically increases costs by roughly 33%. Defendant avoids those costs by falsely advertising
16 Judy’s Family Farm Eggs in a manner that induces prospective customers to believe there is no
17 difference between the conditions at Defendant’s facilities and the facilities of competitors who
18 actually do provide their hens with outdoor access. Similarly, Defendant competes unfairly
19 with other producers that do not provide their hens with outdoor access because Defendant
20 sends the message that Judy’s Family Farm Eggs are laid by hens that *do* have such access.

21 11. Plaintiff and members of the proposed class have reasonably relied on the
22 Representations Defendant has made, and would not have purchased and/or paid a premium for
23 Judy’s Family Farm Eggs if they had not been misled to believe that the Representations were
24 true. Plaintiff and the proposed class has, therefore, lost money and suffered economic harm as
25 a result of Defendant’s conduct.

26 12. Plaintiff, with assistance of counsel, has notified Defendant of these violations
27 and attempted to resolve the dispute without resort to litigation. However, Defendant—aware
28 of the impact of the Representations on consumers—was unwilling or unable to make any

1 progress towards resolving the matter, despite the lapse of three months More recently,
 2 Plaintiff has also provided Defendant with the formal notice required by the CLRA (Cal. Civ.
 3 Code § 1782).

4 13. Accordingly, Plaintiff brings this action to enjoin Defendant's use of false and
 5 misleading Representations, for restitution, and for compensatory and punitive damages.
 6 Plaintiff will amend this Complaint to seek damages under the CLRA if Defendant fails to
 7 rectify the problems described in the CLRA notice within the prescribed period of time.

8 **PARTIES**

9 14. Plaintiff Camilla Glover is a resident of California. Ms. Glover purchased Judy's
 10 Family Farm Eggs on a regular basis prior to January 2012, when she learned that the
 11 Representations made by the Defendant were false and misleading.

12 15. But for the Representations, Ms. Glover would not have purchased the
 13 Defendant's eggs, and would not have paid the premium reflected in the cost of the
 14 Defendant's eggs. As such, she lost money and suffered economic harm as a result of
 15 Defendant's conduct.

16 16. Ms. Glover regularly purchased Judy's Family Farm Eggs at the following
 17 grocery stores: Safeway in Albany, California; Safeway in Richmond, California; and Lucky's
 18 in El Cerrito, California.

19 17. Defendant Steven Mahrt, doing business as Petaluma Egg Farm, owns and
 20 operates a large California egg producer that packages and markets its eggs under a number of
 21 different labels. Petaluma Egg Farm's brands include Judy's Family Farm, Uncle Eddie's Cage
 22 Free Eggs, and Rock Island Fertile Brown Eggs. The company also produces eggs for Organic
 23 Valley and for Whole Foods' 365 Everyday Value brand for regional distribution. Some of
 24 these brands, including Judy's Family Farm Eggs, have sub-varieties that are tailored to
 25 different egg types and quantities.

26 18. Upon information and belief, Defendant Mahrt is the owner and sole proprietor
 27 of Petaluma Egg Farm, which is an unincorporated entity. Defendant Mahrt is personally
 28 involved in the production, packaging, and marketing of all Petaluma Egg Farm eggs.

1 of eggs produced in the United States. Eggs from caged systems are less expensive to produce
2 but result in the worst animal welfare outcomes for hens.

3 25. Cage-free systems account for a growing share of the egg market as consumers
4 increasingly make purchasing decisions based on concern for animal welfare. Cage-free systems
5 may be either indoor or outdoor. Outdoor systems are also sometimes called pasture or free-
6 range housing. Outdoor systems afford hens the highest level of animal welfare.

7 26. Outdoor systems significantly increase the welfare of the hens compared to
8 indoor cage-free systems by allowing the hens to engage in more natural behaviors, providing
9 greater space, and decreasing overall stress. See D. C. Lay Jr., et al., *Hen welfare in different*
10 *housing systems*, 90 POULTRY SCIENCE 1, 278-294 (January 2011), available online at
11 <http://ps.fass.org/content/90/1/278.long#ref-142>.

12 27. The production cost of a dozen eggs for farmers utilizing an outdoor system is
13 approximately 33% higher than for a dozen eggs from a cage-free indoor counterpart. These
14 increased production costs are passed on to consumers in rough proportion resulting in prices
15 that are also about 33% higher than indoor cage-free eggs at the grocery store. Another way of
16 framing the cost is that 25% of the ultimate price for the eggs is a premium to provide hens with
17 the benefit of outdoor access. For example, eggs produced from an indoor cage-free system
18 might cost \$3 per dozen at the grocery store as compared to \$4 a dozen for eggs produced by
19 hens who can go outside. See Promar International, *Impacts of Banning Cage Egg Production*
20 *in the United States*, 28-30 (August 2009), available online at
21 http://www.unitedegg.org/information/pdf/Promar_Study.pdf.

22 28. No applicable statute or regulation prescribes rules for egg-production labeling,
23 and there is no legally significant definition for the phrase "cage-free." While the United States
24 Department of Agriculture has issued regulations on the use of "free-range" on labels for
25 chickens *raised for meat*, these rules are inapplicable to egg production and omit guidance on
26 the use of descriptions, illustrations, or words like "outdoor" and "pasture" with synonymous
27 meanings. This regulatory void coupled with consumer concern for animal welfare creates a
28 perverse incentive to market eggs as humanely produced without bearing the costs of actually

1 providing enhanced animal welfare. Thus, robust enforcement of the law through the common
 2 law and statutes such as California's Unfair Competition Law, False Advertising Law, and
 3 Consumers Legal Remedies Act is necessary to prevent unlawful, fraudulent, and unfair
 4 business practices in which producers like Defendant engage at the expense of consumers and
 5 competitors alike.

6 **DEFENDANT'S REPRESENTATION OF OUTDOOR ACCESS**

7 29. Defendant Mahrt owns and operates Petaluma Egg Farm, a company that
 8 produces, packages, and markets eggs under a number of different brands. One of these brands
 9 is Judy's Family Farm. Judy's Family Farm Eggs are sold by the dozen and include different
 10 varieties for large, extra-large, jumbo, and Omega-3. The extra-large and Omega-3 varieties are
 11 also sold in smaller one-half dozen packages.

12 30. Although there are some minor differences on the packaging of the different
 13 varieties of Judy's Family Farm Eggs, all cartons feature an image of hens roaming outside on
 14 an open, grassy field alongside. The background includes an idyllic natural scene of rolling
 15 hills, a butterfly, and, in some versions, a flower. This scene does *not* include walls, a shed, a
 16 roof, or anything else that even indicates that the hens are confined inside barren industrial
 17 sheds with no outdoor access.

18 31. Additionally, the cartons all include the brand name "Judy's Family Farm." The
 19 packages for the dozen large and extra-large varieties feature the label "Old Fashioned." Each
 20 package evokes the image of outdoor hens benefitting from their natural environment, and
 21 although the text differs slightly between some of the packages, every one of them contains
 22 statements that are demonstrably false.

23 32. One version of the text states that "[the] hens are raised in wide open spaces in
 24 Sonoma Valley, where they are free to 'roam, scratch, and play.'"

25 33. Another version of this text asserts that "[a]ll of our hens have access to the
 26 outdoors and enjoy large communal areas with natural ventilation and sunlight."

27 34. A third version states that "[t]he hens that produce these eggs are raised free of
 28 cages and can 'run, scratch, and play' in the fresh air of Sonoma Valley."

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DEFENDANT’S REPRESENTATIONS ARE UNTRUE AND MISLEADING

35. Despite Defendant’s Representations that the hens that lay Judy’s Family Farm Eggs have access to outdoor grassy fields, the hens are permanently confined inside barren industrial sheds. The hens have no access to uncovered outdoor areas.

36. Upon information and belief, Defendant Mahrt owns and operates egg production facilities at 700 Cavanaugh Lane, 2400 Fallon Two-Rock Road, 1870 Fallon Two-Rock Road, and 311 McBrown Road. Each of these addresses are part of Petaluma, California in Sonoma County.

37. These properties contain large industrial sheds with no hens roaming, scratching, or playing in the adjacent green fields. Upon information and belief, some of the eggs produced at these facilities are ultimately branded as Judy’s Family Farm and packaged as described above.

38. While promoting his products as being raised outdoors, Defendant Mahrt himself has made public admissions that Judy’s Family Farm Eggs hens *do not* have bona fide outdoor access. For example, Defendant Mahrt recently defended his company’s practices in an interview for a news story stating that “[p]eople have the expectation that all the chickens are outside. . . . That doesn’t happen. That doesn’t happen anywhere.” Robert Digitale, *Petaluma egg farm at center of debate over organic rules*, PRESS DEMOCRAT (Apr. 27, 2011), available online at <http://www.pressdemocrat.com/article/20110427/BUSINESS/110429469/1036> (emphasis added).

39. Similarly, at a United States Department of Agriculture hearing, Defendant Mahrt spoke on the record opposing regulations that would prescribe the appropriate amount of space to give his hens stating that “[w]e don’t have enough space . . . to fulfill these regulations.” Meeting of the Nat’l Organic Standards Board, at 177 (Apr. 27, 2010) available online at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5084710>.

PLAINTIFF’S RELIANCE ON REPRESENTATION OF OUTDOOR ACCESS

40. Ms. Glover relied on Defendant’s Representations and purchased Judy’s Family Farm Eggs at the following grocery stores: Safeway in Albany, California; Safeway in

1 Richmond, California; and Lucky's in El Cerrito, California, on numerous occasions over a
2 period of two years ending in January 2012. Ms. Glover purchased Judy's Family Farm Eggs
3 instead of other available brands as a result of Defendant's Representations, which she believed
4 to be true and led her to believe that the hens that lay Judy's Family Farm Eggs have outdoor
5 access.

6 41. Ms. Glover knew that Judy's Family Farm Eggs were significantly more
7 expensive than competing brands, but she paid the higher price because she believed in the
8 veracity of the Defendant's Representations. Ms. Glover would not have purchased Judy's
9 Family Farm Eggs at all had she known that the Representations were false and that the hens
10 that lay Judy's Family Farm Eggs are not given the promised outdoor access.

11 42. The Representations made by Defendant about Judy's Family Farm Eggs misled
12 Plaintiff and are likely to mislead and have misled members of the proposed class because the
13 Representations are false and do not accurately describe the true nature of Defendant's farm or
14 accurately describe the actual living conditions of Defendant's hens. Had Ms. Glover and
15 members of the proposed class been aware that the Representations made about Judy's Family
16 Farm Eggs were false, they would not have purchased the eggs and/or would not have paid a
17 premium for the eggs.

18 43. Defendant holds out Judy's Family Farm Eggs as providing its hens with natural
19 outdoor access but do not have to pass these additional production costs to consumers. Thus,
20 Defendant gains an unfair competitive advantage in the marketplace both against producers
21 who do not provide outdoor access as well as those who do.

22 44. By falsely representing that the hens that lay Judy's Family Farm Eggs have
23 outdoor access, and selling more eggs for higher prices based on this mistaken belief,
24 Defendant has misled—and continue to mislead—consumers like Ms. Glover and members of
25 the proposed class and unfairly deprived them of their money.

26 **CLASS ALLEGATIONS**

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1 45. Plaintiff brings this class action on behalf of herself and all other persons similarly
2 situated pursuant to the provisions of Code of Civil Procedure section 382 and Civil Code section
3 1781.

4 46. Plaintiff seeks to represent a class composed of all California residents who
5 purchased Judy's Family Farm Eggs.

6 47. Excluded from the class are the following:

- 7 a. Defendant, and its subsidiaries, affiliates, officers, directors, and employees;
- 8 b. Persons who have claims for personal injuries as a result of consuming Judy's
9 Family Farm Eggs;
- 10 c. Persons who have filed separate, non-class legal actions against Defendant asserting
11 claims based on the operative facts set forth in this Complaint; and
- 12 d. Persons who have pursued a claim against, and reached a verdict against or settled
13 with and validly released Defendant from individual claims substantially similar to
14 those alleged in this Complaint.

15 48. Plaintiff is informed and believes that the proposed class comprises thousands of
16 persons throughout California who have purchased Judy's Family Farm Eggs. The class is,
17 therefore, so numerous and geographically dispersed that joinder of all members in one action is
18 impracticable.

19 49. As alleged more fully above, Defendant has acted with respect to Plaintiff and the
20 proposed class in a manner generally applicable to each of them. There is a well-defined
21 community of interest in the questions of law and fact involved, which affect all proposed class
22 members. The questions of law and fact common to the class predominate over the questions that
23 may affect individual class members include, but are not limited to, the following:

- 24 a. whether Defendant falsely represented that the hens that lay Judy's Family Farm
25 Eggs are "raised free of cages and can 'run, scratch, and play' in the fresh air of
26 Sonoma Valley";

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- 1 b. whether Defendant falsely represented that the hens that lay Judy's Family Farm
- 2 Eggs are "raised in wide open spaces in Sonoma Valley, where they are free to
- 3 'roam, scratch, and play";
- 4 c. whether Defendant falsely represented that the hens that lay Judy's Family Farm
- 5 Eggs "have access to the outdoors and enjoy large communal areas with natural
- 6 ventilation and sunlight";
- 7 d. whether Defendant falsely represented that hens that lay Judy's Family Farm Eggs
- 8 have outdoor access;
- 9 e. whether Defendant falsely misrepresented themselves as a "family farm";
- 10 f. whether Defendant knew or reasonably should have known that the Representations
- 11 were false;
- 12 g. whether Defendant made these false Representations intentionally;
- 13 h. whether these false Representations are material;
- 14 i. whether these false Representations enabled Defendant to wrongfully profit from
- 15 the distribution and sale of Judy's Family Farm Eggs;
- 16 j. whether Defendant's conduct, as alleged in this Complaint, has violated the UCL;
- 17 k. whether Defendant's conduct, as alleged in this Complaint, has violated the FAL;
- 18 l. whether Defendant's conduct, as alleged in this Complaint, has violated the CLRA;
- 19 m. whether Defendant's conduct, as alleged in this Complaint, constitutes actual fraud;
- 20 n. whether Defendant's conduct, as alleged in this Complaint, has led to their unjust
- 21 enrichment; and
- 22 o. whether Defendant's willful, fraudulent conduct warrants the imposition of punitive
- 23 damages.

24 50. Plaintiff is asserting claims that are typical of the proposed class in that Plaintiff
 25 purchased Judy's Family Farm Eggs; Plaintiff is a "consumer" as that term is defined by the
 26 CLRA; and Plaintiff has sustained injury in fact and lost money or property as a result of the
 27 Defendant's conduct.

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1 51. Plaintiff will fairly and adequately represent and protect the interests of the
2 proposed class, and she has no interests that are antagonistic to or in conflict with those she seeks
3 to represent.

4 52. Plaintiff has retained counsel who have considerable experience and success in the
5 prosecution of class actions and other forms of complex litigation.

6 53. In view of the complexity of the issues and the expense that an individual class
7 member would incur if he or she attempted to obtain relief from Defendant, the claims of
8 individual members of the proposed class do not involve monetary amounts that are sufficient to
9 support separate actions. Because of the size of individual class members' claims, few, if any,
10 class members could afford to seek legal redress for the wrongs complained of in this Complaint.

11 54. The class is readily ascertainable, and prosecution as a class action will eliminate
12 the possibility of repetitious litigation and will provide redress for claims too small to support the
13 expense of individual, complex litigation. Absent a class action, the proposed class members will
14 continue to suffer losses, Defendant's violations of law will be allowed to proceed without
15 remedy, and Defendant will retain revenue as a result of his wrongdoing. A class action, therefore,
16 provides a fair and efficient method for adjudicating this controversy.

17 55. The prosecution of separate claims by individual members of the proposed class
18 would create a risk of inconsistent or varying adjudications with respect to at least thousands of
19 individual class members, which would, as a practical matter, dispose of the interests of the class
20 members who are not parties to those separate actions, or would substantially impair or impede
21 their ability to protect their interests and enforce their rights.

22 56. The proposed class fulfills the requirements of Code of Civil Procedure § 382, Civil
23 Code § 1781 and the cases construing and applying those statutes. Accordingly, class certification
24 is appropriate.

25 **FIRST CAUSE OF ACTION**

26 **(FRAUD AND DECEIT)**

27 57. The allegations in the preceding paragraphs are re-alleged and incorporated by
28 reference as if fully set forth herein.

1 58. Defendant's Representations are alleged in paragraph Nos. 4 and 27 through 32
 2 of this Complaint. Plaintiff is informed and believes that Defendant's Representations are false,
 3 deceptive, and misleading because, *inter alia*, the pictures depicted on the Judy's Family Farms
 4 Eggs carton do not bear any resemblance to the hens' actual living conditions, the hens that lay
 5 Judy's Family Farm Eggs are confined indoors where they do not ever touch outdoor soil, and
 6 the Defendant's business is a large corporate facility that bears no resemblance to a family
 7 farm.

8 59. Defendant's Representations are essential to the analysis undertaken by Plaintiff
 9 and members of the proposed class in deciding whether to purchase Judy's Family Farm Eggs
 10 as opposed to another brand of eggs and are, therefore, material to the transaction.

11 60. Plaintiff is informed and believes that Defendant knew the Representations were
 12 false, deceptive, and misleading when they made them. As alleged more fully in the preceding
 13 paragraphs of this Complaint, Defendant Mahrt is a sophisticated business person with
 14 marketing expertise who understands the existence of consumer demand for eggs from hens
 15 with outdoor access. Moreover, Defendant Mahrt is involved in the production and packaging
 16 of the eggs and thoroughly understands the production practice of indoor housing employed by
 17 Judy's Family Farm Eggs.

18 61. Defendant made their Representations knowing and intentionally, for the purpose
 19 of defrauding, deceiving, and misleading Plaintiff and members of the proposed class, so as to
 20 induce them to purchase Judy's Family Farm Eggs and/or to pay a premium for those eggs in
 21 reliance on the veracity of the Representations.

22 62. Plaintiff and members of the proposed class saw Defendant's Representations
 23 prior to purchasing Judy's Family Farm Eggs and justifiably relied on the veracity of the
 24 Defendant's Representations in deciding to purchase Judy's Family Farm Eggs and/or by
 25 paying a premium for those eggs. Had Plaintiff and members of the proposed class known
 26 Defendant's Representations were false and misleading, they would not have purchased Judy's
 27 Family Farm Eggs and/or would not have paid a premium for those eggs.

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1 Plaintiff and members of the proposed class been made aware of the facts Defendant
2 intentionally failed to disclose, concealed, and/or omitted, they would not have purchased
3 Judy's Family Farm Eggs and/or they would not have paid a premium for them.

4 70. As a proximate result of Defendant's failure to disclose, fraudulent concealment of,
5 and/or intentional omission of these material fact, Plaintiff and members of the proposed class
6 have sustained damage by, *inter alia*, buying eggs they would not have purchased but for
7 Defendant's fraud and deceit. Accordingly, Plaintiff seeks compensatory damages on behalf of
8 herself and members of the proposed class, the total amount of which will be proved at trial.

9 71. The willful and deliberate nature of Defendant's conduct, as described herein,
10 entitles Plaintiff and the members of the proposed class to an award of punitive damages

11 **THIRD CAUSE OF ACTION**

12 **(VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT)**

13 72. The allegations in the preceding paragraphs are re-alleged and incorporated by
14 reference as if fully set forth herein.

15 73. The CLRA was enacted to protect consumers from unfair and deceptive business
16 practices and to provide efficient and economical means to secure such protection.

17 74. Judy's Family Farm Eggs are "goods" within the meaning of Cal. Civ. Code §
18 1761(a) and Defendant is a "person" within the meaning of Cal. Civ. Code § 1761(c). (Further
19 references to "Section" in this Cause of Action are to the California Civil Code.)

20 75. Plaintiff and members of the proposed class purchased Judy's Family Farm Eggs
21 for personal, family, or household purposes and are "consumers" within the meaning of Section
22 1761(d).

23 76. By purchasing Judy's Family Farm Eggs, Plaintiff and members of the proposed
24 class engaged in "transactions" intended to result in or which resulted in the sale of goods to a
25 consumer within the meaning of Sections 1761(e) and 1770.

26 77. Defendant's use of false and misleading advertising in connection with their sale
27 of Judy's Family Farm Eggs constituted and continues to constitute unlawful conduct within
28 the meaning of the CLRA. Specifically, Defendant's deceptive acts and practices as alleged in

1 paragraph Nos. 4 and 27 through 32 of this Complaint violated, and continue to violate, the
 2 CLRA by “[m]isrepresenting the source, sponsorship, approval, or certification of goods or
 3 services” in violation of Section 1770(a)(2); by “[r]epresenting that goods or services have
 4 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do
 5 not have or that a person has a sponsorship, approval, status, affiliation, or connection which he
 6 or she does not have” in violation of Section 1770(a)(5); by “[r]epresenting that goods or
 7 services are of a particular standard, quality, or grade, or that goods are of a particular style or
 8 model, if they are of another” in violation of Section 1770(a)(7); and by “[a]dvertising goods or
 9 services with intent not to sell them as advertised” in violation of Section 1770(a)(9).

10 78. Defendant’s use of such deceptive and unlawful practices induced Plaintiff and
 11 members of the proposed class to purchase Judy’s Family Farm Eggs and/or to pay a premium
 12 for those eggs, causing them injury “as a result of the use or employment by any person of a
 13 method, act, or practice declared to be unlawful of Section 1770,” within the meaning of
 14 Section 1780.

15 79. Defendant’s violations of the CLRA constitute a continuing threat to Plaintiff
 16 and to members of the proposed class, thereby entitling them to injunctive relief pursuant to
 17 Section 1780(a)(2), by which they seek to enjoin Defendant from continuing to engage in the
 18 deceptive conduct alleged in this Complaint.

19 80. Pursuant to the procedures described at Sections 1782(a) and 1782(d), Plaintiff is
 20 notifying Defendant in writing describing the particular violations of Section 1770 alleged
 21 herein. Plaintiff is demanding in this notice that Defendant cease making the Representations
 22 alleged in this Complaint. Defendant’s failure to adequately respond to Plaintiff’s demand
 23 within thirty days will prompt Plaintiff to amend this complaint to include actual damages
 24 pursuant to Section 1780(a)(1), restitution pursuant to Section 1780(a)(3), and punitive
 25 damages pursuant to Section 1780(a)(4).

26 **FOURTH CAUSE OF ACTION**
 27 **(VIOLATIONS OF THE FALSE ADVERTISING LAW)**
 28

1 81. The allegations in the preceding paragraphs are re-alleged and incorporated by
2 reference as if fully set forth herein.

3 82. The FAL prohibits false advertising, which is defined as a statement that "is
4 untrue or misleading, and which is known, or which by the exercise of reasonable care should
5 be known, to be untrue or misleading" to induce the public to purchase personal property. Cal.
6 Bus. & Prof. Code § 17500. (Further references to "Section" in this Cause of Action are to the
7 California Business and Professions Code.)

8 83. As alleged above, Defendant advertises its product under the brand name of
9 Judy's Family Farm Eggs and uses packaging that contains an image of hens roaming outside
10 on an open, grassy field alongside two children. The background includes an idyllic natural
11 scene of rolling hills, a butterfly, and, in some versions, a flower. This scene does *not* include
12 walls, a shed, a roof, or anything else that even indicates that the hens are confined inside barren
13 industrial sheds with no outdoor access.

14 84. Additionally, the packages for the dozen large and extra-large varieties feature
15 the label "Old Fashioned," which, when coupled with the images described above, give the
16 impression that the hens are raised under conditions that existed long before factory farming
17 existed. And although the text differs slightly between some of the packages, every one of them
18 contains statements that are demonstrably false.

19 85. One version of the text states that "[the] hens are raised in wide open spaces in
20 Sonoma Valley, where they are free to 'roam, scratch, and play.'"

21 86. Another version of this text asserts that "[a]ll of our hens have access to the
22 outdoors and enjoy large communal areas with natural ventilation and sunlight."

23 87. A third version states that "[t]he hens that produce these eggs are raised free of
24 cages and can 'run, scratch, and play' in the fresh air of Sonoma Valley."

25 88. By advertising Judy's Family Farm Eggs with these images and statements,
26 Defendant misrepresents the availability of outdoor access to the hens at their production
27 facility. These misrepresentations are objectively false and are likely to induce reasonable
28 customers to purchase Judy's Family Farm Eggs by appealing to their concerns about animal

1 welfare. This deception causes substantial injury to competitors and consumers who buy Judy's
 2 Family Farm Eggs, including Ms. Glover and the proposed class. Defendant's use of such
 3 representations on their egg labels thereby qualifies as untrue and misleading advertising
 4 pursuant to Section 17500.

5 89. Defendant's unlawful conduct caused economic injury to Plaintiff and members
 6 of the proposed class. Plaintiff would not have purchased Judy's Family Farm Eggs at all if she
 7 had known the hens were confined indoors and would certainly not have paid the premium
 8 price Defendant charges if she had known that the representations were false. Accordingly,
 9 Plaintiff seeks an order that (a) will enjoin Defendant's false advertising and (b) requires
 10 Defendant to provide restitution of the funds obtained through the use of false advertising.

11 **FIFTH CAUSE OF ACTION**

12 **(VIOLATIONS OF THE UNFAIR COMPETITION LAW)**

13 90. The allegations in the preceding paragraphs are re-alleged and incorporated by
 14 reference as if fully set forth herein.

15 91. In enacting the UCL, the Legislature has empowered the courts "to prevent the
 16 use or employment by any person of any practice which constitutes unfair competition, as
 17 defined in [the UCL], or as may be necessary to restore to any person in interest any money or
 18 property, real or personal, which may have been acquired by means of such unfair
 19 competition." Cal. Bus. & Prof. Code § 17203. And, as used in the UCL, "unfair competition
 20 shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair,
 21 deceptive, untrue or misleading advertising and any act prohibited by [the FAL]." Cal. Bus. &
 22 Prof. Code § 17200. (Further references to "Section" in this Cause of Action are to the
 23 California Business and Professions Code.)

24 92. As alleged in Paragraphs 1 through 42 of this Complaint, Defendant has engaged
 25 in unlawful, fraudulent, and unfair conduct that has caused, and continues to cause, a loss of
 26 money and property to Plaintiffs and to members of the proposed class. Defendant's provides
 27 no countervailing benefits to Plaintiff or members of the proposed class, and it offends clearly-
 28 established public policy.

1 93. The Legislature has stated that it is the public policy of California “to protect
 2 consumers from unfair and deceptive business practices and to provide efficient and
 3 economical means to secure such protection.” Cal. Civ. Code § 1760. Moreover, the California
 4 Supreme Court has recently affirmed that, under California law, “labels matter”: “The
 5 marketing industry is based on the premise that labels matter—that consumers will choose one
 6 product over another similar product based on its label and various tangible and intangible
 7 qualities they may come to associate with a particular source.” *Kwikset Corp. v. Superior*
 8 *Court*, 51 Cal. 4th 310, 328 (2011).

9 94. Plaintiff is also informed and believes that said conduct also undermines,
 10 threatens and impacts competition. For example, Defendant has represented that the hens that
 11 lay Judy’s Family Farm Eggs have natural outdoor access and Defendant prices his product
 12 accordingly, but need not incur or pass these additional production costs to consumers, thereby
 13 giving himself an unfair competitive advantage in the marketplace both against producers who
 14 do not provide outdoor access as well as those who do.

15 95. By making the Representations and engaging in the conduct alleged in this
 16 Complaint, Defendant has engaged in unlawful, deceptive, and unfair business practices in
 17 violation of the UCL. Specifically, Defendant’s conduct violated, and continues to violate, the
 18 UCL as follows:

19 a. **Unlawful Conduct:** Defendant has violated the UCL’s proscription against
 20 engaging in unlawful conduct as a result of (i) their fraudulent and deceitful conduct in violation
 21 of California Civil Code sections 1572, 1709, 1710, and 1711; (ii) their violations of the CLRA;
 22 and (iii) their violations of the FAL.

23 b. **Fraudulent Conduct:** Defendant has violated the UCL’s proscription against
 24 fraud as a result of the conduct alleged in Paragraphs as alleged in Paragraphs 4, 27 through 32,
 25 and 55 through 69 of this Complaint.

26 c. **Unfair Conduct:** Defendant has violated the UCL’s proscription against unfair
 27 conduct by engaging in the conduct alleged in Paragraphs 1 through 42 of this Complaint, which
 28 violates, *inter alia*, the clearly-articulated policies underlying California consumer protection law,

1 including those that inform the CLRA and the FAL.

2 96. Defendant's unlawful, fraudulent, and unfair conduct has caused Plaintiff and
3 members of the proposed class to suffer injury in fact and to lose money as a result of
4 Defendant's conduct. As alleged more fully herein, Plaintiff and members of the proposed
5 class would not have purchased Judy's Family Farm Eggs and/or would not have paid a
6 premium for the eggs but for Defendant's conduct. They are, therefore, entitled to
7 restitutionary and injunctive relief under Sections 17203 and 17204 to enjoin the use of the
8 unfair competition.

9 **SIXTH CAUSE OF ACTION**

10 **(UNJUST ENRICHMENT)**

11 97. The allegations in the preceding paragraphs are re-alleged and incorporated by
12 reference as if fully set forth herein.

13 98. By engaging in the conduct described in this Complaint, Defendant has been
14 unjustly enriched and, as a proximate result of that conduct, Defendant obtained profits by
15 which he became unjustly enriched at the expense of Plaintiff and members of the proposed
16 class. Under the circumstances alleged herein, it would be unfair for Defendant to retain the
17 profits he has unjustly obtained.

18 99. Accordingly, Plaintiff and members of the proposed class seek an order
19 establishing Defendant as a constructive trustee of the profits that served to unjustly enrich the
20 Defendant, together with interest during the period in which Apple has retained such funds, and
21 requiring Defendant to disgorge those funds to Plaintiff and members of the proposed class in a
22 manner to be determined by the Court.

23 **RELIEF REQUESTED**

24 WHEREFORE, Plaintiff seeks judgment as follows:

- 25 1. Permanent injunctive relief preventing Defendant, his successors, agents,
26 representatives, employees, and any party acting in concert with Defendant, from using images
27 or statements falsely depicting or describing hens in an outdoor environment in connection with
28 any advertisement, label, or other marketing efforts relating to Defendant's products;

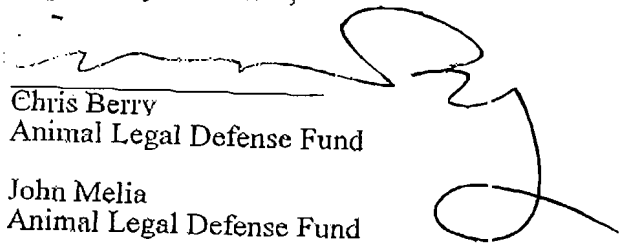
- 1 2. Permanent injunctive relief preventing Defendant, his successors, agents,
- 2 representatives, employees, and any party acting in concert with Defendant, from using any
- 3 images or statements in their advertisements, labeling, or other marketing efforts that
- 4 misrepresent the living condition of hens at their production facilities;
- 5 3. Injunctive relief in the form of an order requiring Defendant to issue corrective
- 6 advertising for misled consumers;
- 7 4. Compensatory damages under the First and Second causes of action in amounts
- 8 to be determined at trial;
- 9 5. Punitive damages under the First and Second causes of action in amounts to be
- 10 determined at trial;
- 11 6. Restitution under the, Fourth, Fifth, and Six causes of action in amounts to be
- 12 determined at trial;
- 13 7. An award to Plaintiff of all applicable costs and the reimbursement and payment
- 14 of reasonable attorneys' fees, to the extent permitted by law; and
- 15 8. Other and further relief as the court may deem just and proper.

DEMAND FOR JURY TRIAL

17 Plaintiff and the proposed class demand a jury trial in this action for all the causes of
18 action so triable.

19 DATED: October 1, 2012

Respectfully submitted,

21 

22 Chris Berry
Animal Legal Defense Fund

23 John Melia
Animal Legal Defense Fund

24 Carter Dillard
Animal Legal Defense Fund


25
26
27 Attorneys for Plaintiff

DECLARATION OF CAMILLA GLOVER

The undersigned, Ms. Camilla Glover, hereby declares:

1. My name is Ms. Camilla Glover. I am over eighteen years of age and have not been convicted of a felony or a misdemeanor crime. I am fully competent to make this affidavit and have personal knowledge of the factual assertions made herein, all of which I believe to be true and correct.
2. Between June 2010 and August 2012 I resided in Richmond, California.
3. Between September 2012 and present I resided in El Cerrito, California.
4. Between June 2010 and January 2012 I sometimes purchased Judy's Family Farm eggs from Safeway in Albany, California, which is part of Alameda County.
5. Between June 2010 and January 2012 I sometimes purchased Judy's Family Farm eggs from grocery stores in Richmond, California and El Cerrito, California.
6. I was induced to buy Judy's Family Farm eggs because of the package's brand name, picture of hens roaming outdoors in an open grassy field, and description inside the lid about the hens' living conditions.
7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: September 26, 2012


 Camilla Glover