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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 DONNIE LEE GIBSON II, on behalf of himself
and all others similarly situated,

13
14 Plaintiff,

15 v.

16 WAL-MART STORES, INC., a Delaware
corporation, CAL-MAINE FOODS, INC., a
17 Delaware corporation,

18 Defendants.
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Case No. 3:18-cv-00134

CLASS ACTION

COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiff Donnie Lee Gibson II (plaintiff) brings this action on behalf of himself and all others
2 similarly situated against Wal-Mart Stores, Inc., and Cal-Maine Foods, Inc., both Delaware
3 corporations (collectively, defendants). Plaintiff's allegations against defendants are based upon
4 information and belief and upon investigation of plaintiff's counsel, except for allegations
5 specifically pertaining to plaintiff, which are based upon his personal knowledge.

6 I. OVERVIEW

7 1. America's largest and most profitable food companies should be honest and forthright
8 in their dealings with consumers. When these food companies fail to uphold their responsibility for
9 ensuring truthful advertising to consumers, such consumers are deceived into paying more for
10 products or buying products that they otherwise would not have. Such food companies should be
11 required to make restitution to the consumers they have deceived.

12 2. Walmart is the largest and most profitable retailer in the world. Walmart is
13 responsible for the marketing and sale of shell eggs to consumers across the United States, including
14 in California, under various store brands, including its own private label.

15 3. Cal-Maine is one of the largest and most profitable shell egg companies in the United
16 States. Cal-Maine is responsible for the production and marketing of shell eggs to consumers
17 nationwide, including in California, under various store brands, including a private label for
18 Walmart.

19 4. Defendants market these private label eggs as having provided the laying hens "with
20 outdoor access." Consumers typically pay a significant premium for such eggs, due to the perceived
21 improvements to the welfare of laying hens.

22 5. A recent investigation performed by plaintiffs' counsel, however, demonstrates that
23 the Cal-Maine hens supplying these private label eggs for Walmart do not actually have access to the
24 outdoors.

25 6. Instead, Cal-Maine confines its laying hens to industrial barns without outdoor access.
26 Upon counsel's investigation of one such industrial barn complex, there was not a single hen outside
27 on the grounds. Rather, the hens are kept inside enclosed structures, never stepping foot out onto the
28

1 pasture surrounding the industrial barns. The industrial barns have two main parts: the central
2 interior and the enclosed porches that run along the side. The enclosed porches, which purportedly
3 provide outdoor access, are fully roofed and screened. A reasonable consumer would not consider
4 this barred and screened porch to be outdoor access:



15 7. And each porch can hold only a small fraction of the flock housed in the industrial
16 barn. Indeed, inside one porch, only about one hundred of tens of thousands of hens—less than 1%
17 of the flock—were visible. And inside another porch, there were fewer still. This is not outdoor
18 access for the laying hens, as promised by defendants to the consumers paying a premium for it.

19 8. Thus, consumers paying more for these eggs have been deceived. Defendants falsely
20 advertise their “farm fresh” eggs as having been laid by hens “with outdoor access,” such that they
21 have failed to meet their basic obligation of truthfulness to consumers. A recent survey demonstrates
22 that a reasonable consumer believes outdoor access to mean that all animals have access to outdoor
23 pasture and fresh air throughout the day. Had plaintiff and class members known the truth, they
24 would not have purchased these private label eggs or paid as much for them.

25 9. Accordingly, defendants’ conduct described herein violates the (i) California’s
26 Business & Professions Code §§ 17200, *et seq.* (the Unfair Competition Law or UCL); (ii) California
27 Civil Code §§ 1750, *et seq.* (the Consumers Legal Remedies Act or CLRA); and (iii) California’s
28

1 Business & Professions Code §§ 17500, *et seq.* (the False Advertising Law or FAL). Plaintiff brings
2 this action on behalf of a California class for restitution, injunctive relief, and any other relief
3 deemed appropriate by the court to which this case is assigned.

4 II. PARTIES

5 10. Plaintiff Donnie Lee Gibson II is a resident of Pittsburg, California. During the year
6 preceding the filing of this complaint, plaintiff regularly purchased Organic Marketside private label
7 shell eggs from Walmart in the state of California. Prior to purchase, plaintiff saw the product
8 packaging stating that the hens were provided “with outdoor access.” Plaintiff Gibson would not
9 have purchased the shell eggs or paid as much for them had defendants disclosed the truth. Plaintiff
10 seeks restitution and injunctive relief requiring defendants to cease their deceptive marketing and
11 sale of private label eggs marketed as providing hens “with outdoor access.”

12 11. Wal-Mart Stores, Inc., is a Delaware company with its principal place of business in
13 Bentonville, Arkansas. Wal-Mart is responsible for the marketing and sale of shell eggs to
14 consumers under its Organic Marketside private label.

15 12. Cal-Maine Foods, Inc., is a Delaware corporation headquartered in Jackson,
16 Mississippi. Cal-Maine is responsible for the production, processing, and marketing of shell eggs to
17 consumers throughout the United States, including in California, under various store brands,
18 including Organic Marketside for Walmart.

19 III. JURISDICTION AND VENUE

20 13. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(d),
21 because the amount in controversy for the Class exceeds \$5,000,000, and the class includes members
22 who are citizens of a different state than defendant.

23 14. This Court has personal jurisdiction over defendant because the injury to plaintiff and
24 class members arises from the marketing and sale of shell eggs in California.

25 15. Venue is proper in this Court under 28 U.S.C. § 1391(b), because Wal-Mart Organic
26 Marketside shell eggs are sold throughout the State of California, including in this judicial district.

IV. FACTUAL ALLEGATIONS

A. Defendants Are Responsible for the Marketing and Sale of Store-Brand Eggs for Walmart, Labeled as Having Come From Hens “With Outdoor Access.”

16. According to its website, Cal-Maine is the “largest producer and marketer of shell eggs in the United States.”¹ It operates in a single segment, “which is the production, grading, packaging, marketing and distribution of shell eggs.”² In 2016, Cal-Maine sold over twelve billion shell eggs, representing approximately 23% of domestic shell egg consumption.³ Besides its own brands, Cal-Maine “produce[s], market[s], and distribute[s] private label specialty shell eggs.”⁴

17. Walmart (including Sam’s Club) is Cal-Maine’s top customer, representing almost 30% of Cal-Maine’s total sales in 2016.⁵ Cal-Maine produces and packages eggs to be sold under Walmart’s store brands. One of those private labels is Organic Marketside.

18. Walmart is the “largest retailer in the world,” with over 260 million customers and revenue of \$485.9 billion for fiscal year 2017.⁶ Its supercenters “offer a one-stop shopping experience by combining a grocery store with fresh produce, bakery, deli and dairy products with electronics, apparel, toys and home furnishings.”⁷ Likewise, its neighborhood markets “offer fresh produce, meat and dairy products, bakery and deli items, household supplies, health and beauty aids and a pharmacy.”⁸ Wal-Mart markets and sells shell eggs to consumers under its Organic Marketside private label, including those produced and packaged by Cal-Maine.

19. These private label shell egg cartons are each marked with a USDA plant number associated with the egg processor. For example, P1100 is the USDA plant number for one of Cal-Maine’s major industrial complexes, located in Chase, Kansas⁹:

¹ <http://calmainefoods.com/company/>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ <http://calmainefoods.com/media/1133/calm-october-2016.pdf>, at 12.

⁶ <https://corporate.walmart.com/our-story>.

⁷ <https://corporate.walmart.com/our-story/our-business>.

⁸ *Id.*

⁹ https://apps.ams.usda.gov/plantbook/Query_Pages/PlantBook_Query.asp#PlantNumber.



20. P1100 is a certified organic operation for the handling of shell eggs.¹⁰ Cal-Maine also owns certified organic production facilities in Chase, Kansas. Accordingly, Cal-Maine produces shells eggs at its facilities in Chase, Kansas, and then packages them at its plant in Chase, Kansas, for marketing and sale under private label for Walmart.

21. As depicted, defendants advertise these store brand “farm fresh” eggs as laid by hens “free to roam, nest and perch in a protected barn with outdoor access”:¹¹



22. As described below, however, Cal-Maine’s hens are confined to industrial barns and do not actually have access to the outdoors.

¹⁰ <https://organic.ams.usda.gov/Integrity/Search.aspx>.

¹¹ And plaintiff notes that the abstract packaging is, in part, grass green, with a hen in mid-step.

B. The Hens Producing Cal-Maine's Store-Brand Eggs for Walmart Are Actually Confined to Industrial Barns, Without Outdoor Access.

23. Along with Cal-Maine's 24,000 square foot packing plant (P1100) on Avenue K in Chase, Kansas, Cal-Maine's neighboring parcel on 6th Road has eight industrial poultry houses, each measuring 370 feet by 113 feet and each housing tens of thousands of hens, as partially depicted in this picture taken before the completion of construction:



24. In 2014, Cal-Maine completed its acquisition of Delta Egg Farm, LLC, which included the above-depicted “organic egg production complex with capacity for approximately 400,000 laying hens located near Chase, Kansas.”¹² As stated in its 2014 annual report, after its acquisition of Delta Egg Farm, Cal-Maine embarked on an “organic facility expansion” in Chase,

¹² <http://www.businesswire.com/news/home/20140217005423/en/Cal-Maine-Foods-Announces-Agreement-Acquire-Remaining-Interests>. Property records show that Delta Egg Farm, LLC, was the prior owner of this parcel 080-067-26-0-00-00-005.00-0.

1 Kansas.¹³ Since that time, Cal-Maine has doubled the industrial barns at this location from four to
 2 eight.

3 25. In September and October of 2017, on days when it was 84°F and 70°F, respectively,
 4 counsel investigated this Cal-Maine industrial egg farm. Outside on the grounds, there was not a
 5 chicken in sight. Instead, Cal-Maine confines its laying hens to industrial barns without outdoor
 6 access. The hens are kept inside these enclosed structures, never stepping foot out onto the pasture
 7 surrounding the industrial barns. The industrial barns have two main parts: the central interior and
 8 the enclosed porches that run along the side. The porches, which purportedly provide outdoor
 9 access, are fully roofed and screened, without access to the soil and vegetation surrounding the
 10 industrial barns. A reasonable consumer would not deem this outdoor access.

11 26. In addition, each porch can hold only a small fraction of the flock housed in the
 12 industrial barn. Indeed, inside one porch, only about one hundred of tens of thousands of hens—less
 13 than 1% of the flock—were visible. And inside another porch, there were fewer still. This is not
 14 outdoor access for the hens, as promised by defendants to the consumers paying a premium for it

15 27. Pictures taken during counsel's investigation document the lack of outdoor access for
 16 the laying hens. In the below picture, you can see in the distance the completed construction of the
 17 eight industrial barns:



27 ¹³ [http://phx.corporate-](http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjQ5NjU3fENoaWxkSUQ9LTF8VHlwZT0z&t=1)
 28 [ir.net/External.File?item=UGFyZW50SUQ9MjQ5NjU3fENoaWxkSUQ9LTF8VHlwZT0z&t=1](http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjQ5NjU3fENoaWxkSUQ9LTF8VHlwZT0z&t=1), at
 13.

1
2 28. As you get closer, you can see that each barn has fans at the end to circulate air inside
3 the barn, with screened porches running along each side:



13 29. Viewed head on, with trucks parked to the right, you can see that the porches are
14 completely enclosed—with the same roof as the interior part of the industrial barn, an enclosing wall
15 on one side and enclosing bars with screening on the other side:



1 30. A closer view of the enclosed porches confirms that they are without access to non-
2 enclosed space or to the pasture surrounding the industrial barns. The theoretical ability to view the
3 outdoors is not the same as having access to it:



13
14 31. The man standing in the porch provides perspective on the vast size of these industrial
15 barns—the screened side is three times his height:



1 32. Here is a close up of the individual, who is maneuvering an interior door, which
2 separates the enclosed porch into sections:



12 33. To the right of the man's feet, you can see one of the lower popholes that provide
13 access for a small fraction of the laying flock to the enclosed porch:



1 34. And this picture also shows points of debris on the screen that runs across the vertical
2 slats and keeps the hens on the enclosed porch:



12
13 35. The below picture shows another of the approximately four lower popholes along
14 each side of the vast industrial barn:



1 36. And because this is a multi-tiered barn, there are also approximately four upper
2 popholes along each side. You can see the little door at the top of the ramp (recall that the man was
3 one third the height of the screened side):



14
15 37. And here is a close up of an upper pophole:



1 38. When counsel's investigation continued in October, the man shown above to
2 demonstrate proportion was no longer working on the interior door of the porch. Yet inside the
3 porch visible from the road, there were only about one hundred of the tens of thousands of laying
4 hens housed in the barn—or less than 1% of the flock. And none were actually outside the enclosure
5 pecking in the soil and vegetation surrounding the industrial barns.

6 39. Here are a few hens at one end of the screened and barred porch:



16 40. And here is a closer view of hens at one end of the enclosed porch:



41. Here are hens seen at the base of the long ramp/steps:



42. And here is a closer view of hens at the base of the ramp/steps. None is able to leave the industrial barn or peck and scratch in the soil and vegetation surrounding the industrial barn:



43. Here are hens clustered near a lower pophole:



44. And here are some hens scattered in between popholes. None have outdoor access—they can only look out at it:



1 45. At a second enclosed porch, even fewer hens were present:



9
10 46. Of the twenty or thirty seen along the length of this porch, here is a hen on the
11 platform at the top of the ramp/steps:



19
20 47. And here is a hen near the base of the ramp/steps. This is not access to the outdoors:



1 48. Thus, each of these eight industrial barns, together housing hundreds of thousands of
2 hens, has roofed porches running along both sides, enclosed by bars and screening, without any
3 access to the soil and vegetation surrounding the industrial barns. A reasonable consumer would not
4 consider this to be “outdoors.”

5 49. Moreover, each porch can hold only a tiny fraction of the tens of thousands of hens
6 housed in the central interior of the structure.

7 50. Further, only a tinier fraction still—less than 1% of the flock—was seen out on the
8 enclosed porches. There are multiple reasons for this.

9 51. Each enclosed porch has popholes through which some hens can enter from the
10 central portion of the barn into the porch and later exit the porch back into the central portion of the
11 barn. For each of these barns, however, there is only two porches with about eight popholes each,
12 including both lower and upper, such that any one of the tens of thousands of hens inside each
13 industrial barn would need to travel over an immense quantity of birds to get to a pophole. But hens
14 are not naturally inclined (or even physically capable) of trampling or flying over much of a massive
15 flock to get to pophole. Rather, the natural behavior of chickens precludes them from aggressively
16 encroaching on the space of other birds in an effort to reach a door. In addition, the hens entering the
17 enclosed porch from the upper pophole need to walk down a long, steep ramp to reach the bottom.
18 For these reasons, a reasonable consumer would not consider the popholes of industrial barns to
19 provide meaningful access to the enclosed porches—and certainly not access to the outdoors.

20 52. Thus, a claim that hens housed in such a manner are provided “with outdoor access”
21 is false and misleading both as to “access” and as to “outdoors.” Instead, Cal-Maine’s hens are
22 confined to industrial poultry houses and do not have actual outdoor access, rendering defendants’
23 packaging of the eggs false and misleading.

24 **C. The “With Outdoor Access” Label Is Material to Consumers.**

25 53. Surveys consistently demonstrate that consumers have become increasingly interested
26 in farm animal welfare. According to an online survey of 1,000 Americans dated June 29, 2016,
27 more than three in four (77%) consumers say that they are concerned about the welfare of animals
28

that are raised for human food, including laying hens.¹⁴ In addition, “more than two-thirds (69%) of consumers pay some or a lot of attention to food labels regarding how the animal was raised.”¹⁵ And consumers’ concern “about how animals are raised has increased over time, as 74% of consumers say they are paying more attention to the labels that pertain to how an animal was raised than they were five years ago.”¹⁶

54. Part of raising animals in a way beneficial to their welfare includes maintaining living conditions and health care practices in a way that accommodates the health and natural behavior of the animals, including laying hens. True outdoor access is intended to ensure a production system that provides living conditions that allow the chickens to satisfy their natural behavior patterns and provides preventative health care benefits. Such true outdoor access contributes to preventative health care management by enabling hens to develop and reproduce under conditions that reduce stress, strengthen immunity, and deter illness. And true outdoor access affords hens the freedom of choice to satisfy natural behavior patterns. Being outside in the sunlight to engage in natural behaviors like scratching in the soil and pecking in the grass thus improves the welfare of laying hens. Here is an example of a large-scale egg farm with hens that are actually outdoors:



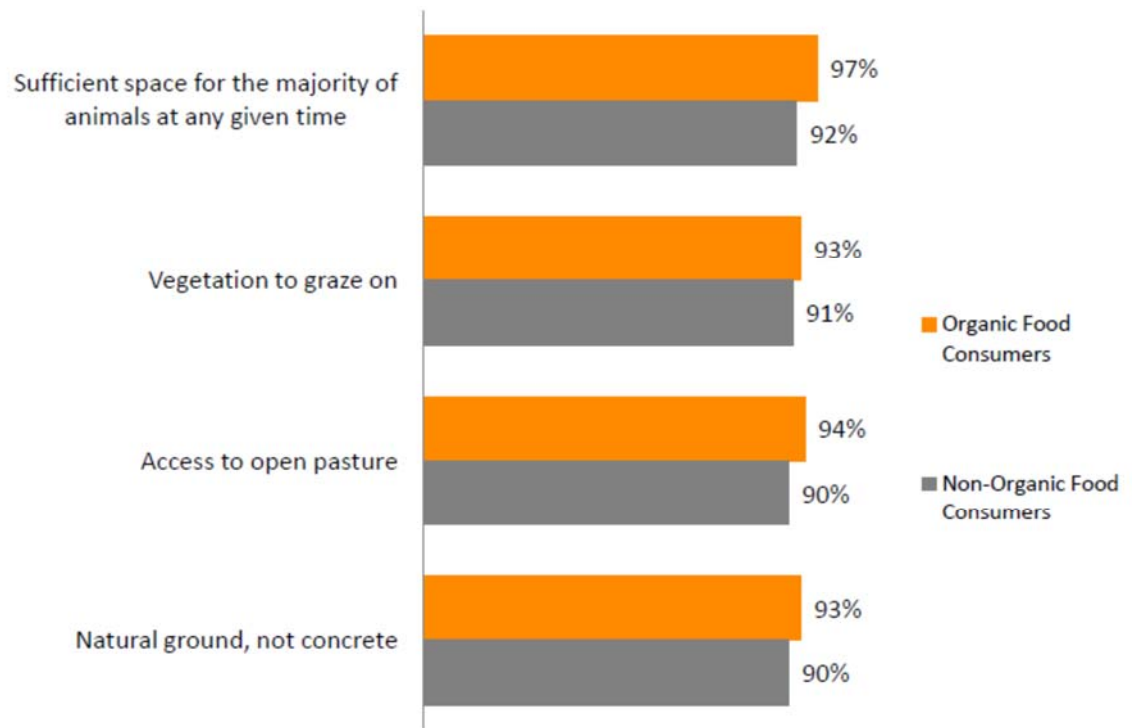
¹⁴ <https://www.asPCA.org/animal-cruelty/farm-animal-welfare/asPCA-farm-surveys>:
https://www.asPCA.org/sites/default/files/publicmemo_asPCA_labeling_fi_rev1_0629716.pdf.

¹⁵ *Id.*

¹⁶ *Id.*

55. Accordingly, the “with outdoor access” claim is material to consumers, and defendants therefore use that purported attribute to tout its product. But, as set forth above, that claim is false and misleading to consumers.

56. Indeed, an April 2104 survey of 1,000 consumers nationwide conducted by the American Society for the Prevention of Cruelty to Animals, found that almost seventy percent of consumers (68%) believe outdoor access to mean that “[a]ll animals have access to outdoor pasture and fresh air throughout the day.”¹⁷ Moreover, consumers believe the following should be conditions of outdoor access:¹⁸



57. Thus, it is materially misleading for defendants to claim that the hens are provided “with outdoor access” when a reasonable consumer believes that to mean there is access for the majority of animals at any given time to open pasture and vegetation throughout the day.

¹⁷ http://www.asPCA.org/sites/default/files/asPCA_organic_labeling_public_memo_4-10-14.pdf.

¹⁸ *Id.*

1 58. Another recent article asks its readers: “Does ‘outdoor access’ mean claws on grass?
2 Or are screened-in porches acceptable?”¹⁹ The overwhelming response was that porches are not
3 acceptable. For example, consumers had the following to say:

- 4 • Yes, of course! How can they call them free range if they
5 can’t even go outside?
6 Tracylekels (9/17/17)
- 7 • Yes. If labeled organic and free range, they must eat organic
8 feed and roam outside at will.
9 BDSmith (9/17/17)
- 10 • This is a no brainer.....let the chickens or hens graze outdoors
11 in large fields if you want to be able to call them free range,
12 and organic. The poultry industry has been playing word
13 games with the wording a vast majority of all their products.
14 The public truest has no idea what their [sic] purchasing
15 based on these misleading labels, and this is wrong.
16 Brad (9/17/17)
- 17 • Yes! We pay more for the eggs and chicken meat with the
18 belief that these animals are treated humanely and with as
19 natural a diet as possible only to find out they are treated as
20 terribly as most factory farmed animals. If I’m gonna pay
21 extra I want them to be out there enjoying outside, eating
22 bugs and being free range!
23 Abbi (9/17/17)
- 24 • ‘Porches’? Give me a break--this cute name obscures the fact
25 that this is just a way of reintroducing factory farming for
26 organic hens. Truth in advertising! The standard is about
27

28 ¹⁹ <https://www.countable.us/articles/1114-organic-chickens-outdoor-access>.

ensuring that consumers know what they are buying, without having to be detectives and visit personally every farm that claims its hens are organic. 100,000 hens in each coop, smack up against another coop, with no outside access, should not be called ‘organic.’ The whole point of organic regulations is to reconnect the animals with nature. A concrete floor with screening, aka ‘porch,’ with no grass, sun, natural water source, or room to move is not nature.

Jerise (9/18/17)

- Should free range mean free range? Of course! The real issue seems to be that corporate interests will pay lawyers a huge amount of money to try to twist common language and get around the meaning of the labels in the hopes that the profit they make with delays and arguments and getting away with abuses.

Lucinda (9/18/17)

59. So it is materially misleading for defendants to claim that laying hens are provided “with outdoor access” when reasonable consumers believe this to mean that the hens can put their claws in the grass—not be confined to enclosed porches.

60. To be sure, under new, clarifying regulations issued during the Obama administration but presently postponed under the Trump administration until May 14, 2018,²⁰ defendants would not even qualify for use of the “organic” label under the National Organic Program (NOP), which governs use of the term “organic.”²¹ Use of “organic” on the label requires, *inter alia*, that there is “access for all animals to the outdoors,”²² but the comments received by USDA demonstrated “there is a gap between how consumers think birds are raised on organic farms and the actual practices of

²⁰ 82 Fed. Reg. 52643.

²¹ 7 C.F.R. §205.102.

²² 7 C.F.R. § 205.239.

some—but not all—organic producers”²³ using the porch system, because “consumers expect that organic birds come into contact with soil and vegetation and can exhibit natural behaviors.”²⁴

61. Indeed, a recent Los Angeles Times article describes the porch system as a “loophole in organic regulations that has allowed factory egg farms, some with 100,000 hens to a barn, to earn an organic imprimatur without much more than a nod to letting chickens leave their coop—that is, attaching a gated, screened porch to their barns.”²⁵ And, as an industry insider notes, when you put hens in “a building with no windows, no natural light and a screened porch and label it as ‘organic,’” consumers are “going to be a little bit ticked off.”²⁶

62. Thus, under the clarifying regulation if and when it becomes effective, Cal-Maine’s private label eggs for Walmart here at issue would not even qualify as “organic.”²⁷ But defendants take their marketing one step further—beyond the purview of the NOP—and affirmatively describe the hens as free to roam “with outdoor access” though that description is false and misleading to a reasonable consumer.

D. Eggs Touting Animal Welfare Attributes Command a Significant Price Premium Over Conventional Eggs.

63. As further evidence of its materiality to consumers, consumers usually pay a significant price premium for eggs touting animal welfare attributes. The Cal-Maine eggs marketed

²³ 82 Fed. Reg. 7042, 7068.

²⁴ USDA Agricultural Marketing Service, National Organic Program, *Organic Livestock and Poultry Practices Final Rule: Questions and Answers* (Jan. 2017), at 1, available at <https://www.ams.usda.gov/sites/default/files/media/OLPPEExternalQA.pdf>.

²⁵ <http://www.latimes.com/business/la-fi-organic-eggs-20171121-story.html>.

²⁶ *Id.*

²⁷ The clarifying regulation at § 205.241 includes, *inter alia*, the following outdoor space requirements: “(1) Access to outdoor space and door spacing must be designed to promote and encourage outside access for all birds on a daily basis.... (2) At least 50 percent of outdoor space must be soil. Outdoor space with soil must include maximal vegetative cover appropriate for the season, climate, geography, species of livestock, and stage of production.... (4) For layers (*Gallus gallus*), outdoor space must be provided at a rate of no less than one square foot for every 2.25 pounds of bird in the flock....” 82 Fed. Reg. 7042, 7091. Outdoor access need not be provided for pullets under 16 weeks of age or during nest box training not to exceed five weeks. *Id.* at 7092.

And § 205.2 defines soil as the “outermost layer of the earth comprised of minerals, water, air, organic matter, fungi, and bacteria in which plants may grow roots,” and vegetation is defined as “[l]iving plant matter that is anchored in the soil by roots and provides ground cover.” *Id.* at 7089.

and sold at Walmart are no exception. There is a premium for cage-free eggs as compared to conventional eggs, and a further premium still for cage-free eggs “with outdoor access”:

Shell Egg Product	Specialty Description	Cost
Great Value (Walmart Brand)	No	\$1.86
Marketside (Walmart Brand)	Yes, cage free	\$2.98
Organic Marketside (Walmart Brand)	Yes, cage free with outdoor access	\$3.97

For a premium price:



And for a further premium still:



64. Thus, consumers pay a significant premium for Cal-Maine's private label eggs for Walmart, and in particular for "outdoor access," which further supports the materiality of their marketing claim to consumers.

65. Indeed, defendant Cal-Maine acknowledges that prices for such specialty eggs are generally higher because their perceived benefits are important to consumers. As it reports online, "We are one of the largest producers and marketers of value-added specialty shell eggs in the U.S." and "we classify nutritionally enhanced, cage-free, organic and brown eggs as specialty products."²⁸ As of 2017, specialty eggs represent 24.69 percent of dozens sold and 50.3 percent of Cal-Maine's sales revenue.²⁹ As it explains: "Prices for specialty eggs...are generally higher due to consumer willingness to pay for the perceived increased benefits from those products."³⁰

66. Survey data supports Cal-Maine's acknowledgement: 81% of respondents to a poll of 1,204 adults nationwide stated that they were "willing to pay more for eggs from chickens" that they know were "raised in a humane manner."³¹

V. CLASS ACTION ALLEGATIONS

67. Under Rule 23 of the Federal Rules of Civil Procedure, plaintiff seeks certification of a class defined as follows:

All consumers who purchased Cal-Maine shell eggs sold under the Organic Marketside private label for Walmart in California during the four years prior to the filing of the complaint.

68. Excluded from the class are defendants; the officers, directors or employees of defendants; any entity in which any defendant has a controlling interest; and any affiliate, legal representative, heir or assign of defendants. Also, excluded from the class are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

²⁸ <http://calmainefoods.com/company/>.

²⁹ <http://calmainefoods.com/media/1133/calm-october-2016.pdf>, at 24.

³⁰ <http://calmainefoods.com/company/>.

³¹ *U.S. Public Supports Humane Treatment for Hens*, Zogby International for Farm Sanctuary (Sept. 2000), accessible at <http://www.isecruelty.com/poll.php>.

1 69. Plaintiff does not know the exact number of class members at the present time.
2 However, due to the nature of the trade and commerce involved, there appear to be tens if not
3 hundreds of thousands of class members such that joinder of all class members is impracticable.

4 70. The class is defined by objective criteria permitting self-identification in response to
5 notice, and notice can be provided through techniques similar to those customarily used in other
6 consumer fraud cases and complex class actions.

7 71. There are questions of law and fact common to the class. Defendants' deceptive
8 marketing and sale of shells eggs similarly impact class members, all of whom purchased and paid
9 more than they should have for shell eggs.

10 72. Plaintiff asserts claims that are typical of the class. Plaintiff and all class members
11 have been subjected to the same wrongful conduct because they all have purchased deceptively
12 advertised shell eggs. As a result, and like other members of the class, plaintiff purchased and paid
13 an amount for shell eggs which he otherwise would not have paid.

14 73. Plaintiff will fairly and adequately represent and protect the interests of the class.
15 Plaintiff is represented by counsel competent and experienced in both consumer protection and class
16 action litigation.

17 74. Class certification is appropriate because defendants have acted on grounds that apply
18 generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate
19 respecting the class as a whole.

20 75. Class certification is also appropriate because common questions of law and fact
21 substantially predominate over any questions that may affect only individual members of the class,
22 including, *inter alia*, the following:

- 23 a. Whether defendants advertised their shell eggs as providing the
24 laying hens with access to the outdoors;
- 25 b. Whether these laying hens did not in fact have access to the
26 outdoors;
- 27 c. Whether the lack of access to the outdoors would be material to
28 a reasonable consumer purchasing shells eggs advertised as
 providing hens with access to the outdoors;

- d. Whether defendants' shell eggs label was likely to deceive a reasonable consumer;
- e. Whether defendants' conduct violates the UCL, FAL and CLRA;
- f. Whether the challenged practices harmed plaintiff and members of the class; and
- g. Whether plaintiff and members of the class are entitled to restitutionary, injunctive, or other relief.

76. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all the individual class members is impracticable. Furthermore, because the injury suffered by each individual class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual class members to redress the wrongs done to each of them individually and the burden imposed on the judicial system would be enormous.

77. The prosecution of separate actions by the individual class members would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for defendants. In contrast, the conduct of this action as a class action presents far fewer management difficulties, conserves judicial resources and the parties' resources, and protects the rights of each class member.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE § 17200, *et seq.*)

78. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

79. Cal. Bus. & Prof. Code § 17200 prohibits any "unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Defendants have engaged in unlawful, and unfair, and fraudulent business acts and practices and unfair, deceptive, untrue, and misleading advertising in violation of the UCL.

80. Defendants have violated the unlawful prong by virtue of their violations of the CLRA, as described in the second cause of action.

1 81. Defendants have violated the unfair prong of section 17200 because the acts and
2 practices set forth herein offend established public policies supporting truth in advertising to
3 consumers. Defendants' deceptive use of the "with outdoor access" packaging is unethical,
4 oppressive, unscrupulous and injurious to consumers. The harm that these acts and practices cause
5 greatly outweighs any benefits associated with them. Defendants' conduct also impairs competition
6 within the market for shell eggs, and prevents plaintiff and class members from making fully
7 informed decisions about the kind of shell eggs to purchase and the price to pay for such products.

8 82. Defendants have violated the deceptive prong of section 17200 because, as set forth
9 above, they deceptively marketed shell eggs sold under private label for Walmart as providing hens
10 "with outdoor access." This misrepresentation of material information was likely to deceive a
11 reasonable consumer.

12 83. Plaintiff has suffered injury in fact, including the loss of money, as a result of
13 defendants' unlawful, unfair, and/or deceptive practices. Plaintiff and members of the class were
14 directly and proximately injured by defendants' conduct and lost money as a result of defendants'
15 material misrepresentations, because they would not have purchased or paid as much for the shell
16 eggs had they known the truth.

17 84. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
18 conduct of defendants' business. Defendants' wrongful conduct is part of a general practice that is
19 still being perpetuated and repeated throughout the State of California.

20 85. Plaintiff requests that this Court enter such orders or judgments as may be necessary
21 to enjoin defendants from continuing their unfair and deceptive business practices, to restore to
22 plaintiff and members of the class the money that defendants acquired from them by this unfair
23 competition, and to provide such other relief as set forth below.

24 86. Plaintiff is entitled to an award of reasonable attorneys' fees under California Code of
25 Civil Procedure Section 1021.5 for the benefit conferred upon the general public of the State of
26 California by any injunctive or other relief entered herein.

SECOND CAUSE OF ACTION

**VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT
(CAL. CIV. CODE § 1750, *et seq.*)**

87. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

88. Defendants are each a “person” under Cal. Civ. Code § 1761(c).

89. Plaintiff is a “consumer,” as defined by Cal. Civ. Code § 1761(d), who purchased Cal-Maine’s shell eggs sold under private label for Walmart.

90. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have....”

91. Defendants violated this provision of the CLRA with their material misrepresentations set forth on the egg carton packaging.

92. As set forth above, defendants deceptively marketed shell eggs sold under private label for Walmart as providing hens “with outdoor access.”

93. Plaintiff and members of the class were directly and proximately injured by defendants’ conduct and lost money as a result of defendants’ material misrepresentations, because they would not have purchased or paid as much for the shell eggs had they known the truth.

94. In accordance with Civil Code § 1780 (a), plaintiff and class members seek restitutionary, injunctive and equitable relief for defendants’ violations of the CLRA. Plaintiff requests that this Court enter such orders or judgments as may be necessary to restore to any person in interest any money which may have been acquired by means of such unfair business practices, and for such other relief, including attorneys’ fees and costs, as provided in Civil Code § 1780 and the prayer for relief. In addition, after mailing appropriate notice and demand in accordance with Civil Code § 1782(a) & (d), plaintiff will amend this complaint to include a request for damages.

95. Plaintiff includes an affidavit with this complaint reflecting that venue in this district is proper, to the extent such an affidavit is required by Cal. Civ. Code § 1780(d) in federal court.

THIRD CAUSE OF ACTION

**VIOLATIONS OF THE FALSE ADVERTISING LAW
(CAL. BUS. & PROF CODE §§ 17500, *et seq.*)**

96. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

97. California Business & Professions Code §§ 17500, *et seq.* broadly proscribes deceptive advertising in this State. Section 17500 makes it unlawful for any corporation intending to sell products or perform services to make any statement in advertising those products or services concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or not to sell those products or services as advertised at the price stated therein, or as so advertised.

98. As alleged herein, defendants deceptively marketed shell eggs sold under private label for Walmart as providing its hens “with outdoor access.” As described above, this misrepresentation of material information was likely to deceive a reasonable consumer.

99. Defendants knew or reasonably should know that such marketing of shell eggs was and is deceptive.

100. Plaintiff has suffered injury in fact, including the loss of money, as a result of defendants’ false advertising. Plaintiff and members of the class were directly and proximately injured by defendant’s conduct and lost money as a result of defendants’ material misrepresentations, because they would not have purchased or paid as much for defendants’ shell eggs had they known the truth.

101. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of defendants’ business. Defendants’ wrongful conduct is part of a general practice that is still being perpetuated and repeated throughout the State of California.

102. Plaintiff requests that this Court enter such orders or judgments as may be necessary to enjoin defendants from continuing their deceptive advertising, to restore to plaintiff and members of the class the money that defendants unlawfully acquired, and to provide such other relief as set forth below.

1 103. Plaintiff is entitled to an award of reasonable attorneys' fees under California Code of
2 Civil Procedure Section 1021.5 for the benefit conferred upon the general public of the State of
3 California by any injunctive or other relief entered herein.

4 **FOURTH CAUSE OF ACTION**

5 **BREACH OF CALIFORNIA COMMON LAW**
6 **OF UNJUST ENRICHMENT**

7 104. Plaintiff realleges and incorporates by reference all paragraphs alleged herein.

8 105. To the detriment of plaintiff and class members, defendants have and continue to be
9 unjustly enriched as a result of the wrongful conduct alleged herein. Defendants have unjustly
10 benefited by receiving higher prices for their shell eggs than would have been possible absent the
11 wrongful conduct. Between the parties, it would be unjust for defendants to retain the benefits
12 attained by its wrongful actions. By reason of the foregoing, defendants have violated California's
13 common law of unjust enrichment.

14 106. Accordingly, plaintiff and class members seek full restitution of defendants'
15 enrichment, benefits, and ill-gotten gains acquired as a result of the wrongful conduct alleged herein.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, plaintiff, individually and on behalf of all others similarly situated,
18 respectfully requests that this Court enter a judgment against defendant and in favor of plaintiff, and
19 grant the following relief:

20 A. Determine that this action may be maintained as a class action with respect to the
21 class identified herein and certify it as such under Rules 23(b)(2) and/or 23(b)(3), or alternatively
22 certify all issues and claims that are appropriately certified, and designate and appoint plaintiff as
23 class representative and his counsel as class counsel;

24 B. Declare, adjudge and decree the conduct of defendants as alleged herein to be
25 unlawful, unfair and/or deceptive;

26 C. Enjoin defendants from continuing the unfair and deceptive marketing of its shell
27 eggs;
28

1 D. Award plaintiff and the class restitution of all monies paid to defendants as a result of
2 its unfair and deceptive business practices;

3 E. Award plaintiff and the class reasonable attorneys' fees, costs, and pre- and post-
4 judgment interest; and

5 F. Award plaintiff and the class such other further and different relief as the nature of the
6 case may require or as may be determined to be just, equitable, and proper by this Court.

7 **JURY TRIAL DEMAND**

8 Plaintiff, by counsel, requests a trial by jury for all claims so triable.

9 DATED: January 8, 2018

HAGENS BERMAN SOBOL SHAPIRO LLP

10 By: /s/ Elaine T. Byszewski

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17 *Attorneys for Plaintiff and the Proposed Class*
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DECLARATION RE CLRA VENUE

I, Jennifer Broliar, do hereby declare and state as follows:

1. I am a party plaintiff in the above captioned action. Pursuant to Cal. Civ. Code § 1780(d), I make this declaration in support of the Class Action Complaint and the claim therein for relief under Cal. Civ. Code § 1780(a).

2. This action for relief under Cal. Civ. Code § 1780(a) has been commenced in a county that is a proper place for trial of this action because Wal-Mart Organic Marketside shell eggs are sold throughout the State of California, including in this county.

This declaration is signed under penalty of perjury under the laws of the State of California this 23 day of December 2017.



Donnie Lee Gibson II

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DONNIE LEE GIBSON II, on behalf of himself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Contra Costa County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
HAGENS BERMAN SOBOL SHAPIRO LLP
301 N. Lake Avenue, Suite 920
Pasadena, CA 91101

DEFENDANTS

WAL-MART STORES, INC., a Delaware corporation, CAL-MAINE FOODS, INC., a Delaware corporation

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☐ 2 U.S. Government Defendant

☐ 3 Federal Question
(U.S. Government Not a Party)

☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3
Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	LABOR	PROPERTY RIGHTS	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
150 Recovery of Overpayment of Veteran's Benefits	330 Federal Employers' Liability	720 Labor/Management Relations	830 Patent	430 Banks and Banking
151 Medicare Act	340 Marine	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	751 Family and Medical Leave Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	790 Other Labor Litigation	SOCIAL SECURITY	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit
190 Other Contract	360 Other Personal Injury	IMMIGRATION	862 Black Lung (923)	490 Cable/Sat TV
195 Contract Product Liability	362 Personal Injury -Medical Malpractice	462 Naturalization Application	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange
196 Franchise	CIVIL RIGHTS	465 Other Immigration Actions	864 SSID Title XVI	890 Other Statutory Actions
REAL PROPERTY	PRISONER PETITIONS		865 RSI (405(g))	891 Agricultural Acts
210 Land Condemnation	HABEAS CORPUS		FEDERAL TAX SUITS	893 Environmental Matters
220 Foreclosure	440 Other Civil Rights		870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
230 Rent Lease & Ejectment	441 Voting		871 IRS—Third Party 26 USC § 7609	896 Arbitration
240 Torts to Land	442 Employment			899 Administrative Procedure Act/Review or Appeal of Agency Decision
245 Tort Product Liability	443 Housing/Accommodations			950 Constitutionality of State Statutes
290 All Other Real Property	445 Amer. w/Disabilities—Employment			
	446 Amer. w/Disabilities—Other			
	448 Education			
	OTHER			
	540 Mandamus & Other			
	550 Civil Rights			
	555 Prison Condition			
	560 Civil Detainee—Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District (specify)

☐ 6 Multidistrict Litigation—Transfer

☐ 8 Multidistrict Litigation—Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d); CA Bus. & Prof. Codes §§ 17200, et seq., §§ 17500, et seq.; CA Civ. Code §§ 1750, et seq.
Brief description of cause:
Violations of above California Codes for misrepresentations on product labeling.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

☐ EUREKA-MCKINLEYVILLE

DATE

01/08/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Elaine T. Byszewski

Northern District of California

Civil Action No. 3:18-cv-00134

Signature of Clerk or Deputy Clerk