

COOPER AND SCULLY, PC  
 Alan Law, CA #268334  
 alan.law@cooperscully.com  
 505 Sansome #1550  
 San Francisco, CA 94111  
 Telephone: (415) 956-9700; f. (415) 391-0274

ELSNER LAW & POLICY, LLC  
 Gretchen Elsner (*Pro Hac Vice forthcoming*)  
 Gretchen@ElsnerLaw.org  
 314 South Guadalupe Street  
 Santa Fe, NM 87501  
 Telephone: (505) 303-0980

THE POTTS FIRM, LLP  
 Timothy L. Sifers, KS #1992 (*Pro Hac Vice  
 Forthcoming*)  
 1901 W. 47<sup>th</sup> Place, Suite 210  
 Westwood, Kansas 66205  
 P: (816) 931-2230; f: (816) 931-7030  
 Email: tsifers@potts-law.com

Attorneys for Plaintiff & the Proposed Class  
 Action

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

ROBERT DONOVAN, on behalf of himself  
 and all others similarly situated,

Plaintiff,

v.

DIESTEL TURKEY RANCH,

Defendant.

Case No.

**CLASS ACTION COMPLAINT FOR  
 VIOLATIONS OF CALIFORNIA'S  
 CONSUMER PROTECTION LAWS**

**JURY TRIAL DEMANDED**

Plaintiff Robert Donovan ("Plaintiff"), by and through his undersigned attorneys, brings this action on behalf of himself and all others similarly situated, based upon personal knowledge as to himself and his activities, and on information and belief as to all other matters against defendant Diestel Turkey Ranch ("Defendant" or "Diestel"), and alleges as follows:

CLASS ACTION COMPLAINT

## NATURE OF THE CASE

1. This is a consumer class action against Defendant Diestel Turkey Ranch, which markets and sells premium-priced turkey products (collectively the “Turkey Products” listed below) nationwide through retailers such as Whole Foods and Amazon.com.

2. The label of each Diestel turkey product (like that pictured below) and Diestel’s online advertising uniformly state that Diestel’s turkeys originate from its idyllic, family-run turkey ranch in Sonora, California (the “Sonora Ranch”), where turkeys are represented to be, among other things, “[t]houghtfully raised on sustainable family farms with plenty of fresh air and space to roam [and] are given individual care and a wholesome diet,” “slow grown,” and Diestel workers reportedly “walk the flock every day.” Defendant invites the public to visit the Sonora Ranch to see the turkeys and conditions for themselves. Diestel’s representations indicate to consumers that its turkeys are not raised on typical factory farms.



3. To further bolster its representations that its turkeys are from its Sonora Ranch, not from typical industrial farms, Defendant also represents that its turkeys are raised in conformance with the highest animal welfare standards under the Global Animal Partnership (“GAP”) Animal Welfare

1 Certified program. The GAP scale, which ranges from one to five, indicates how closely the  
2 conditions under which an animal was raised mimic the animal's natural environment, with five being  
3 the best, which helps consumers distinguish products that are from factory farms and those that are  
4 not. Defendant markets its Turkey Products as coming from turkeys raised in a manner consistent  
5 with either GAP "Animal Welfare Rating 3 Enhanced Outdoor Access" or "Animal Welfare Rating 5+  
6 Animal Centered" standards. Defendant widely advertises its Turkey Products as meeting high levels  
7 of GAP animal welfare certification standards, despite raising a large proportion of its turkeys in a  
8 manner that fails, in numerous significant respects, to meet even the lowest tier of GAP's certification  
9 standards.

10 4. Additionally, Diestel Turkey Ranch in Sonora, California is a turkey processing  
11 company that sources the overwhelming majority of its turkeys from growers outside of Sonora,  
12 California, at typical factory farms (the "Off-Site Facilities"), where turkeys are raised in large,  
13 overcrowded metal sheds that lack sufficient space to engage in natural behaviors and are often mired  
14 in manure and slaughterhouse waste — *i.e.*, not ranches or ranch-like conditions depicted at the  
15 Sonora Ranch. Furthermore, despite widely advertising its Turkey Products as meeting high level  
16 animal welfare and GAP certification standards, Diestel raises a large proportion of its turkeys in a  
17 manner that fails, in numerous significant respects, to meet even the lowest tier of GAP's certification  
18 standards.

19 5. Each of Defendant's misrepresentations creates an overall marketing scheme that  
20 misleads the public as to the origin of Diestel's Turkey Products, including the conditions under which  
21 the turkeys are raised. The use of factory farming techniques means that Defendant's turkeys  
22 commonly suffer from, among other things, overcrowding, illness, injury, pain, filth, excessive  
23 confinement, lack of enrichment, and premature death.

24 6. Defendant knows that consumers care about animal welfare, and are willing to pay  
25 extra money for products that they believe come from animals that were raised outdoors on a family-  
26 run ranch, where they were treated "thoughtfully" as Defendant represents with "plenty of room to  
27 roam" and "fresh air" – in other words not from a typical industrial farm. Defendant exploits the  
28

growing consumer demand for non-factory farmed, humanely raised<sup>1</sup> animal products through these misrepresentations, that are intended to induce consumers to pay significant premiums for Diestel's Turkey Products that consumers reasonably believe come from turkeys that were "thoughtfully raised" on the Diestel family's Sonora Ranch.

7. Although there is a labeling process involving the USDA, internal reporting has indicated how unreliable these meat and poultry labels are. An excerpt from executive summary of the USDA OIG report states:

"As a result, meat, poultry, and egg product labels may reflect inaccurate statements and claims made by establishments. Additionally, there is reduced assurance that establishments' generic labels meet requirements. Based on our sample results, we estimated that approximately 2,038 (15.00 percent) of the approved required labels and 161 (18.34 percent) of the approved generic labels may have one or more exceptions."<sup>2</sup>

8. As a result of Defendant's misrepresentations about its turkey products from the Sonora Ranch, consumers paid more for Diestel Turkey Products and suffer harm in the form of paying a higher price for them than they would have paid if they had known that Diestel turkeys were raised at the agro-industrial Offsite Facilities.

9. Plaintiff brings this class and private attorney general action against Defendant, on behalf of himself and the proposed classes, in order to seek damages and injunctive relief for Defendant's false and misleading representations regarding its turkey products. Defendant's misrepresentations constitute violations of the California Consumers Legal Remedy Act, Cal. Civ. Code §§ 1750-1785 ("CLRA"); the California False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.* ("FAL"); and the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* ("UCL").

<sup>1</sup> Defendant previously represented its Turkey Products as "Humanely Raised." Upon information and belief, this phrase was only phased out in favor of "Thoughtfully Raised." Defendant's interchangeable use of these phrases capitalizes on the widespread consumer confusion over the meanings of these and similar marketing claims.

<sup>2</sup> <https://www.usda.gov/sites/default/files/audit-reports/24601-0002-23.pdf>

**PARTIES**

10. Plaintiff Robert Donovan is, and at all times alleged in this Complaint was, a natural person and resident of Arcata, California. He purchased Diestel Turkey Products for more than ten years in various locations throughout the United States, including in northern California at the North Coast Coop in Arcata, California in 2015, 2016 and 2017. For those years, Plaintiff purchased and consumed Diestel's whole-body turkeys approximately six times a year and paid an estimated \$50 for each bird. The birds were usually packaged in cardboard boxes. Plaintiff also purchased approximately twelve packages of Diestel's ground turkey, which were sold as plastic-wrapped logs for approximately \$8.79 each. The images reproduced below are from the boxes that contained the product that Plaintiff purchased.





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FAMILY 2 SECRET**  
LET TURKEYS BE TURKEYS

*100% Vegetarian Diet*  
We put the grain ourselves to ensure that it contains no antibiotics, growth enhancers, hormones, chemical preservatives, dyes, or other (toxic) additives.

**4TH GENERATION FAMILY FARM**  
SINCE 1949

*Early Days*  
The ranch was a popular destination for locals and, as word spread, we began selling our turkeys to San Francisco restaurants.

**FAMILY 4 SECRET**  
NEVER COMPROMISE ON QUALITY

*Our Family Story*  
Our great-great Uncle Ernest began raising turkeys more than 100 years ago on 400 pristine acres in the Sierra foothills. Our Grandfather founded the Diestel Family Turkey Ranch in 1949 passing down Ernest's timeless farming wisdom.

*The Diestel Difference*  
We feed our turkeys the highest quality grains and have a free choice diet.  
We give our birds the extra time to grow naturally.  
We raise multiple breeds, for truly mature turkeys at every weight.  
We treat our animals with compassion.

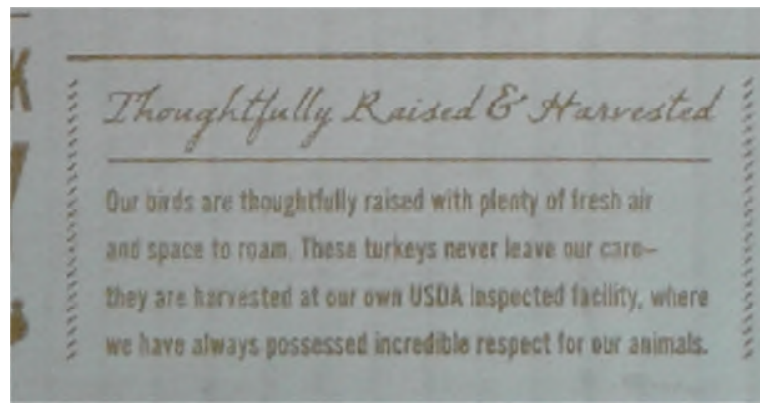
**DIESTEL**  
SINCE 1949  
**SONORA TURKEY RANCH® CALIFORNIA**

**FAMILY SECRET 1**  
WALK THE FLOCK EACH DAY

*Thoughtfully Raised & Harvested*  
Our birds are thoughtfully raised with plenty of fresh air and space to roam. These turkeys never leave our care—they are harvested at our own USDA inspected facility, where we have always possessed incredible respect for our animals.

*Family Owned & Operated*  
We sincerely thank you for supporting our family's vision and farming operation.  
*The Diestel Family*  
Tom, Lisa, Jason, Garrett & Heidi

**FAMILY SECRET 3**  
DON'T RUSH THINGS  
DIESTEL TURKEYS ARE SLOW GROWN



11. Plaintiff purchased and paid higher prices for the Diestel turkey products based on Defendant's representations that its turkeys were from a small, family-run ranch in Sonora, California, including but not limited to, the turkey products being "thoughtfully raised" outside with fresh air – *not* raised in a manner consistent with factory farming. However, many of Diestel's turkeys were in fact raised under typical factory farm conditions at Off-site Facilities. Had Plaintiff, and other Class members, known the truth that Diestel's turkey were not raised at the Sonora Ranch, they would not have purchased those products, or would not have paid the inflated prices for them. If Diestel were to disclose the truth about its Turkey Products, consumers, including Plaintiff, would be better able to make an informed choice about whether to purchase them at the prices offered. Plaintiff would be interested in buying another Diestel Turkey Product that is truthfully advertised with animal welfare claims consistent with not being from a factory farm.

12. Defendant Diestel Turkey Ranch is a California corporation with a principal place of business located at 22200 Lyons Bald Mountain Road, Sonora, California 95370. It sells, or during the applicable statute of limitations has sold, its Turkey Products in California and across the country online (through its website and Amazon) and through major retailers like Whole Foods Markets.

13. Plaintiff alleges, on information and belief, that at all relevant times Defendant's agents, employees, representatives, executives, directors, partners, and/or subsidiaries were acting within the course and scope of such agency, employment, and representation on behalf of Defendant.

#### **JURISDICTION AND VENUE**

14. Diversity subject matter jurisdiction exists over this class action pursuant to the Class Action Fairness Act of 2005, Pub. No. 109-2, 119 Stat. 4 (2005), amending 28 U.S.C. § 1332, at new subsection (d), conferring federal jurisdiction over class actions involving: (a) 100 or more members in the proposed class; (b) where at least some members of the proposed class have different citizenship from some defendants; and (c) where the claims of the proposed class members exceed the sum or value of five million dollars (\$5,000,000) in the aggregate. 28 U.S.C. § 1332(d)(2) and (6).

15. While the exact number of members in the proposed class is unknown at this time, Plaintiff has reason to believe that thousands of consumers purchased Defendant's Turkey Products

1 throughout California and the United States during the relevant time period. The number of class  
2 members could be discerned from the records maintained by Defendant.

3 16. While the exact damages to Plaintiff and the members of the classes are unknown at  
4 this time, Plaintiff reasonably believes that their claims exceed five million dollars (\$5,000,000) in the  
5 aggregate.

6 17. This Court has personal jurisdiction over the parties in this case. Plaintiff resides in this  
7 District, purchased Turkey Products in this District, and was injured thereby in this District. Further,  
8 by filing this Complaint, Plaintiff consents to this Court having personal jurisdiction over him.  
9 Defendant, a citizen of California, is authorized to, and in fact does, conduct substantial business in  
10 California, including in this District, where Plaintiff purchased its products. Defendant purposefully  
11 avails itself of the laws of California to market, promote, distribute, and sell the Turkey Products to  
12 consumers in California and this District.

13 18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because many of the acts  
14 and transactions giving rise to this action occurred in this District and because Defendant:

- 15 (a) has intentionally availed itself of the laws and markets within this District through the
- 16 promotion, marketing, distribution and sale of its products in this District;
- 17 (b) does substantial business in this District; and
- 18 (c) is subject to personal jurisdiction in this District.

### 19 **FACTUAL ALLEGATIONS**

20 19. Defendant sells or, during the applicable statute of limitations, has sold, its Turkey  
21 Products in California and across the country online (through its website and Amazon) and through  
22 major retailers like Whole Foods Markets.

23 20. Defendant Diestel Turkey Ranch processes, distributes, and sells turkey products in the  
24 United States including the following (referred to collectively here as the "Turkey Products"):

- 25 a) Naturally Smoked Whole Turkey;
- 26 b) Naturally Oven Roasted Whole Turkey;
- 27 c) Organic Oven Roasted Whole Turkey;
- 28 d) Organic Heirloom Whole Turkey;



- e) Organic Whole Turkey;
- f) Low Sodium Oven Roasted Turkey Breast;
- g) Organic Roasted Turkey Breast;
- h) Organic Honey Roasted Turkey Breast;
- i) Organic Pre-Sliced Smoked Turkey;
- j) Organic Pre-Sliced Oven Roasted Turkey;
- k) Diestel Non-GMO Project Verified Young Turkey;
- l) Original Diestel Turkey;
- m) Petite Turkey;
- n) Diestel Turkey Chorizo;
- o) Fully Cooked Drums and Thighs;
- p) Natural Burgers;
- q) Boneless Young Turkey Roast;
- r) Heidi's Hens Organic Breast Roast;
- s) Diestel Ground Turkey
- t) Bone-In Breasts Young Turkey Breast; and
- u) Brined Turkey Breast.<sup>3</sup>

**A. Diestel's Sonora Ranch Representations Are Likely to Deceive Reasonable Consumers Into Thinking That Diestel Has One, Idyllic Location Where It Raises Its Turkeys. In Reality, Diestel Raises Less Than 1% of the Turkeys in These Picturesque Conditions.**

21. Defendant's packaging for the Turkey Products, and on its website, uniformly and consistently state on the principle display panels of the product labels that they are from the "Diestel Turkey Ranch" "family farm" in Sonora, California. The packaging for the Turkey Products further bolsters the representation that Diestel turkeys are not from a typical industrial, factory farm by stating

<sup>3</sup> Discovery may indicate that additional products should be included within the scope of this Complaint, and Plaintiff reserves the right to add those products.

1 that the turkeys are, among other things, “thoughtfully raised” with “plenty of room to roam” and  
 2 “fresh air,” “Diestel turkeys are slow grown,” and “Family Secret 1 [is to] Walk the flock each day.”

3 22. Defendant has promoted “A Family-Run Sustainable Ranch” on its website<sup>4</sup> and  
 4 encourages consumers to visit to the Sonora Ranch. On its website during the class period, Defendant  
 5 promoted the “family-run ranching tradition” of “free-range turkeys from our beautiful ranch in the  
 6 Northern California foothills.”<sup>5</sup>



13  
 14  
 15 23. Diestel advertising brochures have been available at Whole Foods stores across the  
 16 country without the need to purchase any products. Defendant references and pictures only the Sonora  
 17 Ranch, “a family run sustainable ranch.” The leaflet includes imagery of turkeys grazing freely on  
 18 green pastures, accompanied by the text “Slow Grown Turkeys from the Diestel Family Ranch.” In the  
 19 leaflet, Defendant recites its alleged belief that “turkeys should be raised in the most natural  
 20 environment possible,” alongside images of grazing turkeys. The representations and imagery in this  
 21 leaflet are consistent with similar representations and imagery on Defendant’s website, which focus on  
 22 the idyllic Sonora Ranch and the conditions there in order to demonstrate to consumers that Diestel’s  
 23 turkeys are not from a factory farm and are treated with high animal welfare standards.

24  
 25 <sup>4</sup> The images of Defendant’s website appeared during the applicable class period. However, at a  
 26 certain point during the pendency of the previous case against Defendant and during the class period,  
 Defendant removed many representations depicted here.

27 <sup>5</sup> Diestel Turkey Ranch, <http://diestelturkey.com/>; Farms of Tuolumne County, Diestel Family Turkey  
 28 Ranch, <https://farmsoftuolumnecounty.org/farms/diestel-family-turkey-ranch/> (last visited August 5,  
 2019) (“Feel free to come by and visit the ranch and our onsite salesroom.”)

We're grateful for your support of our family-owned & operated ranch



Thank you for supporting our family's fourth-generation farming operation. We're committed to delivering to you the same premium natural and organic Diestel turkey products that you have trusted for over 64 years.

*The Diestel Family*  
Tim, Joan, Jason, Garrett & Heidi

We invite you to come visit our ranch. We're located approximately 1.5 hours east of San Francisco in the Sierra Nevada foothills near Yosemite.



**DIESTEL**  
SONOMA TURKEY RANCH

22200 Lyons Bald Mountain Road  
Sonoma, CA 95370  
(209) 532-4950 www.diestelturkey.com



**Slow-Grown Turkeys**  
from the  
**Diestel Family Ranch**

A FAMILY-RUN SUSTAINABLE RANCH  
Since 1949

**We don't rush our farming practices,  
and quality is never left to chance**



**We're committed to** farming practices that are respectful to the animals and land and result in a wholesome turkey. Our birds live in harmony with the environment, and we allow them to grow slowly and naturally, with plenty of room to roam on our ranches.

To produce the highest-quality, most delicious turkeys for you and your family, our birds are fed the finest U.S.-sourced grain. We feed a 100% vegetarian diet, and we never administer growth stimulants or antibiotics. Diestel turkeys are tender and juicy with that real old-fashioned flavor, and our products never contain any artificial ingredients. Our turkeys and deli meats are gluten free, and the majority of our turkey products contain no gluten.

You can be assured that all of our products, both organic and all-natural, are produced under our strict animal welfare standards.



**For us, sustainable isn't a trend - it's a way of life**

In everything we do—from raising our turkeys to managing our ranches— we're committed to sustainable practices. We oversee all aspects of farming, processing, and production, which results in the consistently premium Diestel turkey that you and your family have come to trust.

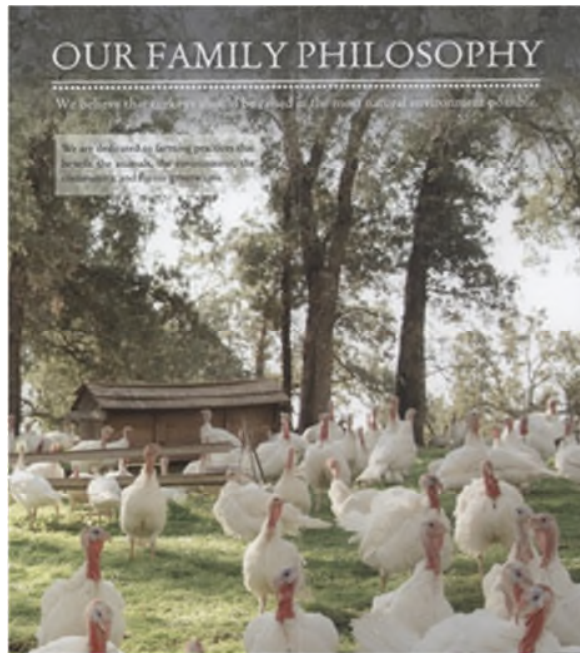
**You make it possible**

Our customers are the heart and soul of our business, and we are so honored that you value our family's efforts and our cause. By supporting a sustainable family farm such as ours, you are helping to make a positive impact on the environment and our food system. We welcome and value your input and feedback.

**We've been raising turkeys on our sustainable ranch since 1949.**

**DIESTEL**  
SONOMA TURKEY RANCH





24. Defendant's representations carry over to advertisements with retailers, such as this one for Bi-Rite Market, in which Defendant gives the impression that all turkeys are from the Sonora Ranch and are "range grown, never caged."

**DIESTEL RANCH FRESH TURKEYS**

- Locally raised in Sonora, CA
- Range grown, never caged
- No hormones or antibiotics

**Organic Heidi's Hens**  
Certified organic feed \$4.99/lb

**Range Grown Turkeys**  
\$3.49/lb

**Boneless Raw Turkey Breast**  
(for you white meat lovers!)  
3-6 lb roasts \$7.99/lb

*Turkey cooking directions: [biritemarket.com/departments/butcher](http://biritemarket.com/departments/butcher)*

25. Defendant's advertising gives reasonable consumers the false impression that all of the Turkey Products are made from turkeys that were "Thoughtfully Raised" on the Sonora Ranch.

26. Upon information and belief, Defendant sends its turkeys to the Sonora Ranch ***only for slaughter and processing***. Some turkeys never make it to Sonora Ranch at all and are slaughtered and processed far away from Sonora and outside California, at the conclusion of lives spent in deplorable conditions at Off-Site Facilities.<sup>6</sup>

27. In contrast to its representations to consumers, Defendant admitted to government regulators, as detailed in a 2013 California Regional Water Quality Control Board report on the Sonora Ranch, that it "raise[d] several hundred chickens and turkeys [at the Sonora Ranch] for ***non-commercial*** purposes. ***Commercial turkeys are raised off-site and delivered by truck to the Ranch for processing.***"<sup>7</sup>

28. Upon information and belief, Defendant slaughters approximately 2 million turkeys each year.

29. According to California Regional Water Quality Control Board, Defendant's turkeys originate from Off-Site Facilities, even though they may end up at the Sonora Ranch for slaughter.

30. On November 23, 2015, the *Wall Street Journal* and *Washington Post* reported on a nine-month undercover investigation of Defendant (the "Investigation").<sup>8</sup> The Investigation included extensive footage of Sonora Ranch as well as a second facility owned and operated by Defendant in the city of Jamestown in Tuolumne County, California ("Jamestown Facility").

31. Upon information and belief, the Jamestown Facility is an agro-industrial operation with approximately 26 poultry barns, warehousing anywhere from 7,000 to 17,000 Diestel Turkeys per barn.

<sup>6</sup> Upon information and belief, the Sonora Ranch houses a five-acre processing facility, a slaughterhouse, and wastewater treatment plant.

<sup>7</sup> California Regional Water Quality Control Board, [http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/tuolumne/r5-2013-0112.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/tuolumne/r5-2013-0112.pdf) (2013) (emphasis added).

<sup>8</sup> Wall Street Journal, "Video Shows Abuse at Whole Foods Turkey Supplier, Activists Say" (Nov. 23, 2017), <http://www.wsj.com/articles/video-shows-abuse-at-whole-foods-turkey-supplier-activists-say-1448328713>.



32. The Jamestown Facility and other similar large scale, agro-industrial operations run by Defendant are materially different from what Defendant leads the public to believe about its purportedly idyllic Sonora Ranch. These google earth images show the visual, stark difference<sup>9</sup>:



<sup>9</sup> First: satellite view of Sonora Ranch. Google Earth, <https://www.google.com/earth/>, captured Jan. 27, 2017. Second: satellite view below of Off-Site Jamestown Facility. Google Earth, <https://www.google.com/earth/>, captured Oct. 12, 2019.

33. Defendant's advertising and labeling of the Turkey Products as originating from the Sonora Ranch is false, misleading, and intended to induce consumers to purchase Defendant's Turkey Products, at a premium price, while ultimately failing to meet consumer expectations. These representations deceive and mislead reasonable consumers into believing that the Turkey Products are from the Sonora Ranch, not a typical factory farm, when they are not.

34. In reality, less than 1% of Diestel's turkeys are raised at the Sonora Ranch. Instead, Diestel sells turkeys from approximately eight off-site facilities and purchases raw material (bird parts) from suppliers outside of Sonora and outside of California and then packages them as Diestel products from Sonora Ranch.

**B. Diestel's "Thoughtfully Raised" Statements Are Likely to Deceive A Reasonable Consumer Into Thinking That the Turkeys Are Raised in Fresh Air, Roam Outdoors in Fields, and Receive Individual Care. In Reality, Turkeys Live in Sheds with Thousands of Other Birds and "Care" is Culling Sick and Dead Birds.**

35. Although Defendant falsely claims that its turkeys are "Thoughtfully Raised with plenty of fresh air and space to roam, whether indoors or outdoors," the turkeys are rarely, if ever, allowed outside the agro-industrial barns where they spend their lives.<sup>10</sup>

36. In reality, most of Defendant's turkeys are raised in typical commercial poultry barns that house up to 17,000 birds at a single time.

37. Satellite images of Defendant's turkey barns taken over the turkeys' lifespan indicate that turkeys are not outdoors and not on any range. Instead, the satellite images indicate that the turkeys live and defecate inside the barns.

38. Upon information and belief, Defendant has allowed the turkeys outside the barns only for staged inspections.<sup>11</sup>

---

<sup>10</sup> Deposition of Kent Larson, at 19-20. When asked whether he saw the turkeys out, Mr. Larson answered, "I have not—in 20 years, the first time I ever saw turkeys out was in May of last year." Mr. Larson continued, "I looked up from my living room. And you'll see in one of the photos, I saw masses of turkeys out, smaller turkeys, out in buildings that I had never seen them out before. And so I was shocked—not shocked but surprised. So I took a photo."

<sup>11</sup> *Id.* at 35:9-13. After explaining that the turkeys were out in October 2016, "then they were never out again," Mr. Larson stated, "Well, if someone was to come along and inspect at that time, everything would look normal on those days because everything is out, everything is to the standard. And then when the inspection is over, closed back up and they go back in."

39. Upon information and belief, the California Regional Water Quality Control Board does not freely permit the turkeys to be “Range Grown.” The false nature of Defendant’s advertising is well-known to the community surrounding Defendant’s Off-site Facilities’ operations. A neighbor of a Diestel facility located at 10700 La Grange Road, Jamestown, California 95327 (the “Jamestown Facility”) states it is “general knowledge” “about what’s out here compared to what’s being advertised.”<sup>12</sup> The neighbor describes the local communication regarding Defendant and its operations as “like just a slight little wink/nod type thing. ‘We know what’s going on’.”<sup>13</sup>

40. Upon information and belief, and directly contrary to Defendant’s advertising and labeling, undercover footage of the Jamestown Facility demonstrates that turkeys used in the Turkey Products are not raised under the highest animal-welfare standards at the Sonora Ranch. To the contrary, Diestel’s turkeys are raised in a manner consistent with typical factory farming conditions as evidenced by the following published observations:<sup>14</sup>

- turkeys were raised in over-crowded barns<sup>15</sup>;
- turkeys were found languishing or dead;
- turkeys suffered from excessive confinement;
- turkeys were covered in feces;
- turkeys were trapped in feces that covered much of the barn floor, up to one-half foot deep;
- turkeys suffered from swollen-shut eyes, swollen nostrils, open wounds, and/or bruises;
- turkeys were missing large patches of feathers as a result of pecking one another and/or de-feathering from extreme stress;

<sup>12</sup>Direct Action Everywhere SF Bay Area is the Plaintiff in a lawsuit filed against Diestel Turkey Ranch in Alameda County Superior Court in January 2017, Case No. RG17847475 (“*Direct Action Lawsuit*”). The nonprofit Plaintiff conducted an undercover investigation at Diestel Turkey Ranch facilities and issued a report titled “A Deadly Feast: What You are Not Told About Your Thanksgiving Turkey.” *Direct Action Lawsuit*, Deposition of Kent Larson (“Larson Depo.”), at 14:4-5.

<sup>13</sup> *Id.* at 15: 3-5.

<sup>14</sup> Direct Action Everywhere, “A Deadly Feast,” <http://directactioneverywhere.com/s/A-Deadly-Feast.pdf> (last visited July 10, 2019).

<sup>15</sup> A 2014 *Consumer Reports* survey found that 90% of consumers expect that “humanely raised” animals are raised with adequate living space. Animal Welfare Institute, *supra* n.2, at 10.



- turkeys were routinely subject to debeaking and/or beak-trimming;
- turkeys suffered from grossly inflamed and swollen crops, which are located near a turkey's throat;
- turkeys labored to breathe in an enclosed barn environment dense with ammonia and particles of dried feces and feathers; and
- turkeys were subject to high mortality rates, with as many as 7% of birds in a barn dying in a single week.

*Many Diestel birds missing large portions of feathers, covered with feces, sometimes stuck in feces a half-foot deep, 2015.*



1 *The turkey pictured below is stuck in manure inside a Diestel barn.*



14 *Turkeys, pictured below, crowded inside a barn at Diestel's Jamestown facility, 2015. These turkeys*  
15 *were slaughtered and sold as "Thoughtfully Raised" and/or "Humanely Raised."*





1 *Diestel birds are debeaked, where a portion of the beak is burned off, an inefficient and painful*  
2 *process that in some cases leads to ongoing pain and even death, 2015.*



14  
15  
16 *Diestel turkeys were sometimes packed so densely that some were helplessly trampled to death,*  
17 *2015.*



41. Diestel reinforces the representation that its turkeys are raised on the Sonora Ranch, and not on factory farms, by using animal-raising claims, such as “thoughtfully raised” on “sustainable family farms” with “plenty of fresh air” and “room to roam.” Consumers are led to believe based on these statements that Diestel’s turkeys are raised on the Sonora Ranch and not raised under typical agro-industrial conditions that would not meet these characterizations.

42. For example, Defendant’s website, reproduced in relevant part here, prominently stated in the header that its turkeys are “Thoughtfully Raised” based on the Diestel family’s commitment to “sustainable farming” and providing the birds with “plenty of fresh air and space to roam” and “given individual care”:

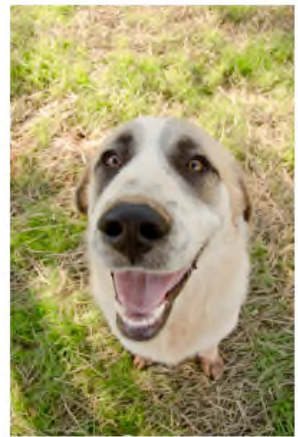
## Thoughtfully Raised

### Sustainable Farming Goes Beyond Our Ranch’s Fences

Our family is dedicated to a sustainable method of farming. To us thoughtfully raised means giving the birds plenty of fresh air and space to roam, whether indoors or outdoors. Our turkeys are given individual care and a wholesome diet. In fact, since the founding of our ranch we’ve been committed to the philosophy that our operation should be managed with a keen focus on the animals, the environment, and the community.

We believe that our farming methodology provides value through applied innovation, increases the quality and nutrient value of our products, and also stands as an inspiration to others, allowing us to make a long-term impact. We take our responsibility as farmers seriously and we partner with others that share our passion for doing things right.

Each day we support natural and organic farming methods that positively impact our farms, animals and community, so that future generations may enjoy the same family farm that started it all back in 1949.



43. Defendant’s website expanded upon the “Thoughtfully Raised” representations, claiming that its turkeys are “Thoughtfully Raised with plenty of fresh air and space to roam, whether indoors or outdoors” and “our turkeys are given individual care” in connection with stating that “we were the first turkey producer in the country to obtain a GAP 5+ Rating.”<sup>16</sup>

<sup>16</sup> Diestel Turkey Ranch, <http://diestelturkey.com/thoughtfully-raised/the-diestel-difference/> (last visited July 10, 2019). The “plenty of fresh air and room to roam” has since been moved to <https://diestelturkey.com/we-love-our-birds-and-then-some/> (last visited on July 10, 2019).

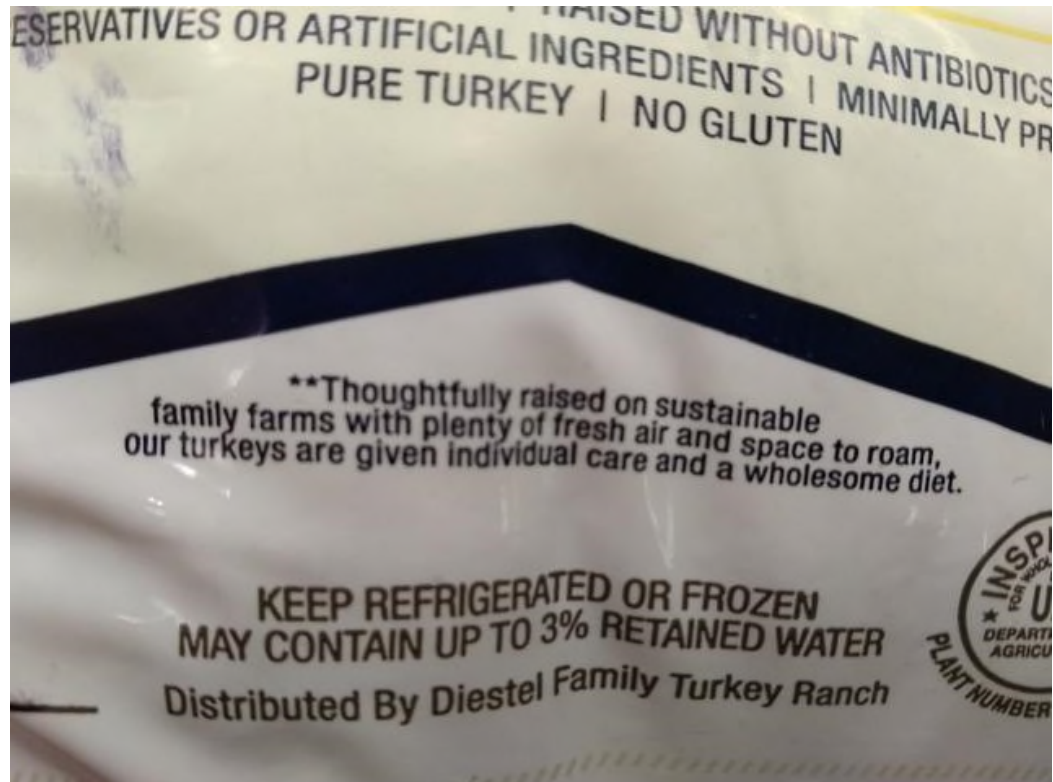
### Thoughtfully Raised & Harvested

Diestel turkeys are thoughtfully raised with plenty of fresh air and space to roam, whether indoors or outdoors. Our turkeys are given individual care and a wholesome diet. In fact, we were the first turkey producer in the country to obtain a GAP 5+ Rating on our Pasture Raised Holiday Turkeys. This is the very highest rating in the GAP system! Our birds are harvested in our own USDA-inspected processing facility, where we have always possessed incredible respect for our animals. Please feel free to give us a call at the ranch if you have any further questions: 209.532.4950.

44. Defendant's packaging of its Turkey Products also includes these "Thoughtfully Raised" representations, including the Products featured below:







45. On its website, Defendant posted a video called “Meet the Ranchers,” in which it claims that Defendant’s practices are different from conventional agriculture:



46. Defendant creates and posts videos online that give the impression that all of its Turkey Products are range grown. The video below shows Diestel family members outside with turkeys in fields:



47. Defendant described pasture raising birds without qualification as to which birds are raised this way creating the impression that they are all pasture raised on the Sonora Ranch:

### **Pasture Raised Life**

It truly doesn't get any better than pasture raised. Under a canopy of oak trees, these birds have it made. Raised slowly on an all vegetarian diet that is supplemented with fresh green pasture every day of their adolescent and adult lives, these turkeys are given no antibiotics or chemicals. Diestel's pasture raised turkeys attained the Global Animal Partnership Step 5 rating, which is the highest rating to date.

48. Defendant made further explicit representations regarding its care for the turkeys at the Sonora Ranch, such as assertions regarding fresh air, space to roam, outdoor access, and individual



care.<sup>17</sup> Defendant asserted on its website, reproduced below, and its product labels that it “walk[s] the flock every day,” spends time with birds in the field, and makes sure that the turkeys “have the best environment possible”:

**Family Secret #1:** Walk the flock every day. This is a practice, passed down from Great Uncle Ernest, that we have incorporated and refined through the years. We pay close attention to the health of our birds by spending time with them in the fields, observing their behaviors, and making sure that they have the best environment possible.

49. Diestel’s advertising consistently indicates that its turkeys are range grown on the pasture at the Sonora Ranch:



50. Defendant’s advertising of its Turkey Products creates the impression that its turkeys are thoughtfully raised on the Sonora Ranch in compliance with the highest animal welfare standards, including that they are range and slow grown with plenty of fresh air and room to roam.

51. In reality, birds are raised in crowded sheds with thousands of other birds and the sheds are surrounded by barren land that is not home to outdoor turkeys. The crowding is so intense enough that Diestel conditions the beaks in order to prevent cannibalism. Diestel’s contracts with its growers do not have any requirements for thoughtful raising by any definition. Instead of individual care, Diestel’s veterinarian visits Diestel’s operations only four times a year and sees only 2-3 farms per

<sup>17</sup> Diestel Turkey Ranch, <http://diestelturkey.com/thoughtfully-raised/> (last visited Nov. 13, 2017).

1 visit and has documented double digit mortality inside the sheds. Walking the flock actually means  
2 picking up dead birds to discard them.

3 **C. Diestel's Third-Party Certification Statements Are Likely to Deceive Reasonable**  
4 **Consumers Into Thinking that Diestel's Entire Operation Satisfied the Highest**  
5 **Standards. In Reality, Less than 1% of The Birds Enjoy GAP Step 5/5+**  
6 **Conditions.**

7 52. On its website, Defendant represented that it “embraces strict animal welfare practices”  
8 and adheres to third party Global Animal Partnership (GAP) animal welfare standards.<sup>18</sup> Defendant  
9 also emphasizes “GAP 5+” while making humanely raised and harvested claims. The GAP 5-Step  
10 rating system allows turkey products to be rated at Step 1, Step 2, Step 3, Step 4, Step 5, or Step 5+. A  
11 turkey producer may produce certain products that do not achieve any GAP Step rating, not even the  
12 lowest rating of Step 1. That same turkey producer may also produce turkey products that are rated  
13 Step 5+. The standards are determined by GAP and the audits are conducted less than once a year by  
14 auditors, who purportedly audit for compliance with GAP’s standards for each particular step rating.  
15 According to GAP’s website, each farm must be audited individually in order to receive a rating rather  
16 than a company as a whole.

17 53. Diestel emphasizes its GAP Step 5+ rating in its marketing materials, including on  
18 Facebook, when describing the animal welfare standards applied to its turkeys including for example  
19 its “Thoughtfully Raised” representations<sup>19</sup> creating the impression that all of Diestel’s Turkey  
20 Products are raised on the Sonora Ranch consistent with GAP 5+ standards.

21  
22  
23  
24  
25 <sup>18</sup> Diestel Turkey Ranch, <http://diestelturkey.com/thoughtfully-raised/global-animal-partnership-ratings/> (last visited Nov. 13, 2017); <https://diestelturkey.com/about/the-diestel-difference/> (“we make only choices we’d be proud to talk about—like deciding to become one of the first turkey producers to earn a Global Animal Partnership Step 5 rating”) (last visited August 6, 2019).

26  
27  
28 <sup>19</sup> See, e.g., <http://diestelturkey.com/thoughtfully-raised/the-diestel-difference/> (last visited Nov. 13, 2017).

1 COOPER AND SCULLY, PC  
Alan Law, CA #268334  
2 alan.law@cooperscully.com  
505 Sansome #1550  
3 San Francisco, CA 94111  
Telephone: (415) 956-9700; f: (415) 391-0274  
4

5 ELSNER LAW & POLICY, LLC  
Gretchen Elsner (*Pro Hac Vice forthcoming*)  
Gretchen@ElsnerLaw.org  
6 314 South Guadalupe Street  
Santa Fe, NM 87501  
7 Telephone: (505) 303-0980

8 THE POTTS FIRM, LLP  
Timothy L. Sifers, KS #1992 (*Pro Hac Vice*  
9 *Forthcoming*)  
10 1901 W. 47<sup>th</sup> Place, Suite 210  
Westwood, Kansas 66205  
11 P: (816) 931-2230; f: (816) 931-7030  
Email: tsifers@potts-law.com  
12

13 Attorneys for Plaintiff & the Proposed Class  
Action  
14

15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 ROBERT DONOVAN, on behalf of himself  
18 and all others similarly situated,

19 Plaintiff,

20 v.

21 DIESTEL TURKEY RANCH,

22 Defendant.  
23

Case No.

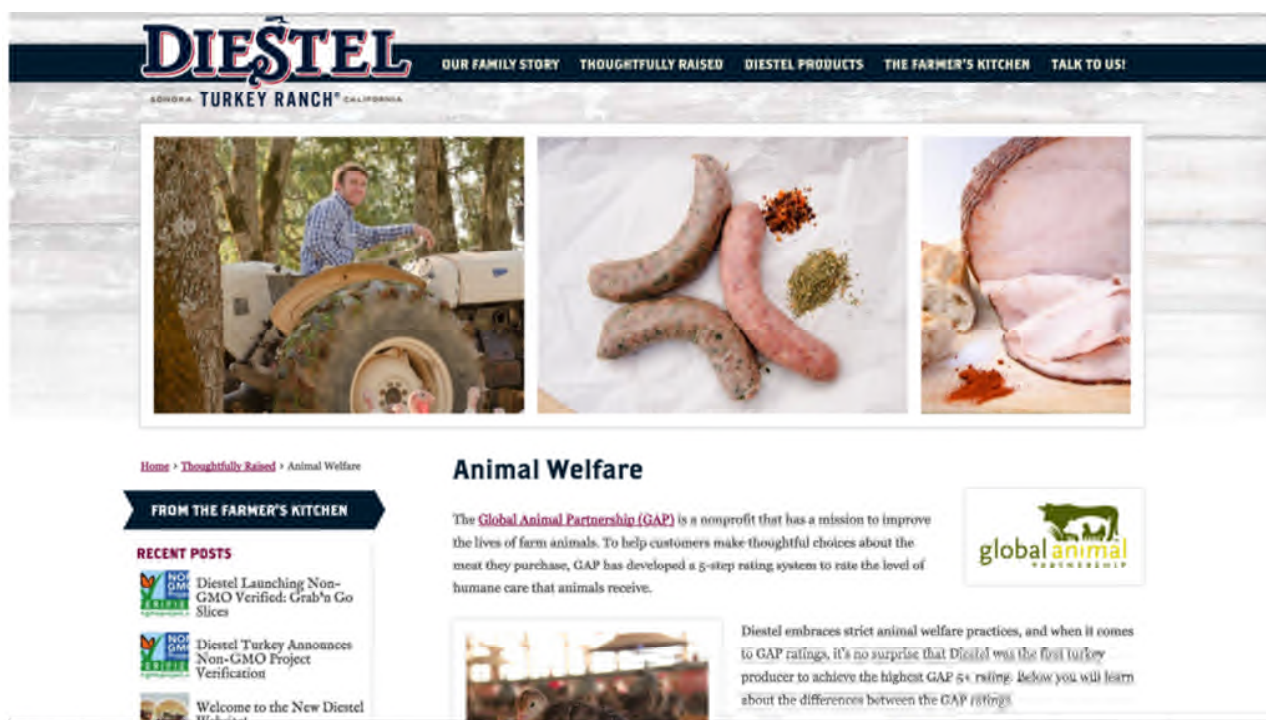
**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF CALIFORNIA'S  
CONSUMER PROTECTION LAWS - PAGES  
26 – 51 OF THE COMPLAINT**

**JURY TRIAL DEMANDED**

24  
25  
26  
27  
28  

---

CLASS ACTION COMPLAINT



## Humanely Raised & Harvested

Diestel turkeys are raised sustainably and humanely with plenty of room both indoors and outdoors. In fact, we were the first turkey producer in the country to obtain **a GAP 5+ Rating**. This is the very highest rating in the GAP system! Our birds are harvested in our own USDA-inspected processing facility, where we have always possessed incredible respect for our animals. Please feel free to give us a call at the ranch if you have any further questions: 209.532.4950.

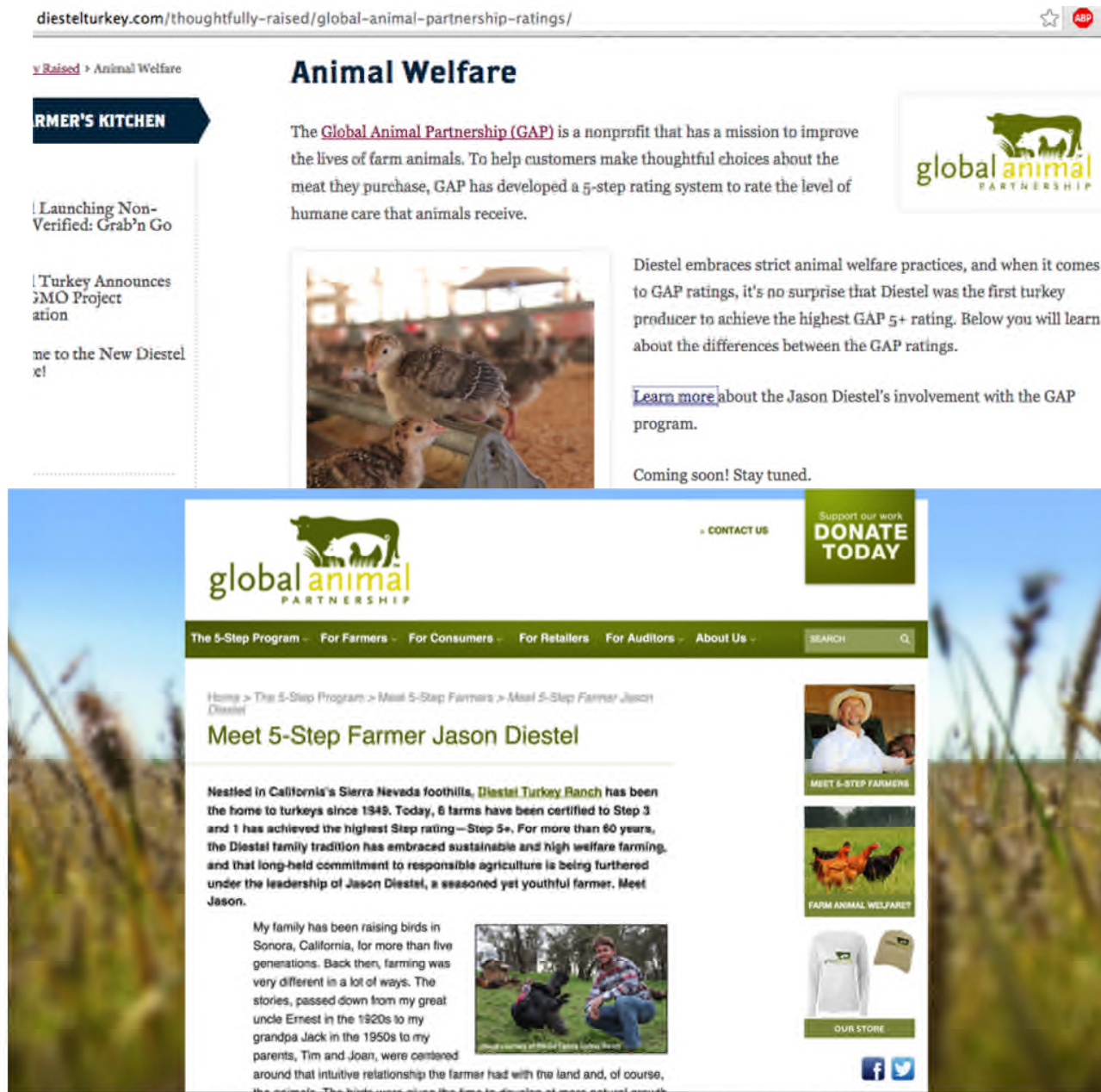
### Are the animals humanely raised & harvested?

Yes! Our animals are **raised with room to roam**, whether indoors or outdoors. They're fed an all-vegetarian diet and are given the time to develop naturally. The animals are never given hormones, antibiotics or growth stimulants. Our priority is to ensure the animals are **raised humanely and with compassion** during every aspect of their life. Ultimately, our animals are happier and healthier which result in more flavorful and better quality products. Learn more about our animal welfare standards and if you would like talk with someone about our commitment to animal welfare feel free to give us a call here at the ranch (209) 532-4950.

1. Defendant, through its other marketing materials, represents that its various Turkey Products are "GAP-Rated Step 3" and/or come from turkeys raised in compliance with GAP "Animal Welfare Rating 3 Enhanced Outdoor Access" or "Animal Welfare Rating 5+ Animal Centered" standards.



2. Defendant's representations regarding animal welfare certification from GAP, reproduced below, contribute to the reasonable belief that all of its turkeys are "Thoughtfully Raised."



3. Defendant's marketing materials and labeling misrepresent that the turkeys are raised under the highest animal welfare standards at the Sonora Ranch, when in fact most of Diestel's turkeys



1 are grown in Off-Site Facilities that no reasonable person would confuse for a ranch or facility in  
2 which turkeys are raised in ranch-like conditions, and are not located in Sonora, California.

3 4. In reality, less than 1% of Diestel's birds match the GAP 5 marketing, from at least  
4 2012 to 2019. More than 99% of Diestel's birds are not GAP 5 rated and some are not GAP rated at  
5 all. Diestel purchases bird parts from contractors and does not require the contractors to be GAP rated.  
6 Even when Diestel does achieve a GAP rating for part of its operations, not all flocks at a particular  
7 facility have the GAP rating. Diestel's turkeys live approximately four months, but auditors visit  
8 facilities at 15 month-intervals, meaning that even flocks that are sold as GAP rated were never visited  
9 by a third-party auditor. Diestel's purported third party auditor, GAP, is not independent from the  
10 store, Whole Foods, that purchases and resells Diestel products as GAP rated. If Diestel fails to satisfy  
11 audit requirements, its nonconformances related to how it raises its birds can be cleared even when the  
12 birds are in cold storage. Diestel is also allowed to apply for deviations from a particular standard, and  
13 then still market its birds as having achieved that standard.

14 **A. Diestel's Slow Grown and Proprietary Breeds Statements Are Likely to Deceive**  
15 **Reasonable Consumers Into Thinking That Diestel Birds Live Long Lives and**  
16 **That Diestel Does Not Use the Common Commercial Breed. In Reality, Diestel**  
**Birds Also Have Short Lives and Diestel Purchases a Common Commercial Breed.**

17 5. The Diestel Difference page, 2015 website, states that at Diestel we "give our animals  
18 extra time to grow naturally" and "Diestel turkeys enjoy the freedom of being slow grown in the clean  
19 Sierra Nevada Foothills where they are raised almost twice as long and with four times as much space  
20 as conventional birds." The Family Secrets page says, "Don't rush things. We give our turkeys the  
21 time to develop flavor naturally."

22 6. Diestel markets that its turkeys are raised two months longer and that it uses its own  
23 breeds. When presenting to grocery store chains, Diestel represents that it uses many different breeds  
24 to compare to the rest of the industry that uses only one standard breed. It also asserts that its birds  
25 "are raised almost twice as long and with nearly three times as much space as conventional birds."

26 7. In reality, Defendant purchases the most common commercial turkey breed and  
27 slaughters the birds at approximately the same time as the rest of the commercial turkey industry.  
28

**B. Diestel's Small Family Farm Statements Are Likely to Deceive Reasonable Consumers Into Thinking That Diestel's Birds Are Cared For By the Family Members and That the Operation is No Bigger Than the Family. In Reality, Diestel Is a Multi-Site, Multi-State Operation.**

8. On its 2015 website, Diestel published a family photo in front of outdoor turkeys and referred to its "truly family-owned and operated company." The website continues with a "Meet the Family" page and omits any clues to an operation larger than what five family members can manage. The 2015 website says, "We are one of the last small, family-owned turkey grower-processors in the United States." Diestel promotes the small family farm theme on Facebook with photos, and statements like "Diestel Turkey isn't just a brand...we are a FAMILY!" The post links to DiestelTurkey.com's "Meet the Family" page. In press releases, Diestel asserts that it is "one of the last small, family owned turkey grower-processors in the United States." In the Meet the Ranchers video, promoted on both its website and its Facebook page, Diestel emphasizes that it is a family run ranch by featuring mom, dad and siblings hand feeding and interacting with the birds and does not reveal the multi-site and multi-state operation that slaughters more than a million birds a year.

9. In reality, Heidi Diestel cannot even estimate the number of birds that the Diestel operation grows. Even though she promoted herself in marketing materials as walking the flock, and put that video on the Diestel website that she managed, Heidi Diestel does not walk the flock on a daily or even weekly basis and has stated that it is not one of her responsibilities. Contrary to being a small family farm, Diestel employees 100-300 employees and only six of those are Diestel family members. Some of the sheds in which birds live their lives are as long as a football field and some facilities raise 400,000 birds each year.

**C. Diestel's No Antibiotics Ever, No Chemicals Statements Are Likely to Deceive Reasonable Consumers Into Thinking That Diestel's Operations Are Free of Antibiotics and Chemicals. In Reality, Diestel Doses the Birds Thousands at A Time.**

10. Diestel repeatedly promises consumers "no antibiotics," which is highly important to poultry purchasers. The 2015 website says, "our careful farming management and strict sanitation procedures eliminate the need for us to administer antibiotics." In the Meet the Ranchers video, Jason Diestel says they "never" feed any antibiotics or chemicals to the turkeys. In press releases, Diestel asserts that "Diestel farmers walk the flock every day and pay close attention to their health, removing

1 the need for antibiotics.” When presenting information to grocery store chains, Diestel represents “No  
2 Antibiotics, Hormones or Growth Stimulants, Ever.”

3 11. In reality, Diestel’s veterinarian has prescribed antibiotics, such as oxytetracycline and  
4 penicillin, for entire flocks of up to 10,000 birds at a time. Diestel’s bird food has been screened for  
5 antibiotics and tested positive. Diestel also uses chemicals that address bird respiratory problems,  
6 E.coli and bacterial infections. Post-slaughter, Diestel uses ozone, chlorine and peracetic acid.

7 **D. Diestel’s Marketing Exploits Consumer Demand for Meat from Animals Not**  
8 **Raised on Large-Scale, Factory Farms.**

9 12. Consumers increasingly demand transparency about ingredients and sources that is  
10 largely driven by a desire to know how their food is made.<sup>1</sup> Studies have shown that modern  
11 consumers, define “healthy” food as food that is “locally sourced or sustainable.”<sup>2</sup> The sourcing and  
12 growing of food, and how that effects its carbon footprint, matters to consumers.

13 13. Many are willing to pay a premium for products that are believed to have come from  
14 animals that are not from industrial factory farms where they are treated “humanely or” “thoughtfully”  
15 as numerous consumer studies have documented.<sup>3</sup> For instance, a 2007 consumer survey found that  
16 58% of consumers are willing to pay more for animal products labeled as “humanely raised.”<sup>4</sup>  
17 Similarly, a 2010 survey found that 57% of consumers are willing to pay a premium for “food that  
18 promises to be produced according to higher ethical standards.”<sup>5</sup>

19 14. A 2016 American Society for the Prevention of Cruelty to Animals (“ASPCA”) survey  
20 found that two-thirds of consumers would be willing to pay more for animal products that are  
21 “welfare-certified.”<sup>6</sup>

22  
23  
24 <sup>1</sup> Cara Rosenbloom, WASHINGTON POST, *9 Ways Millenials are Changing the Way We Eat*, February  
23, 2018, <http://tinyurl.com/yxqv7gct> (last visited September 2020).

25 <sup>2</sup> *Id.*

26 <sup>3</sup> Animal Welfare Institute, *Consumer Perceptions of Farm Animal Welfare*,  
[https://awionline.org/sites/default/files/uploads/documents/fa-consumer\\_perceptionsoffarmwelfare\\_-](https://awionline.org/sites/default/files/uploads/documents/fa-consumer_perceptionsoffarmwelfare_-112511.pdf)  
112511.pdf (last visited July 10, 2019).

27 <sup>4</sup> *Id.* at 8.

28 <sup>5</sup> *Id.*

<sup>6</sup> Animal Welfare Institute, *supra* n.2, at 7.

15. A Consumer Reports 2015 survey also found that it is important to consumers that food not be produced using standard factory farm methods. For example, 84% of consumers said it was “important” or “very important” to improve living conditions for animals.<sup>7</sup>

16. Defendant labels and advertises the Turkey Products as from the Sonora Ranch to appeal to consumers who are willing to pay a premium for products that they believe to be from turkeys raised on the idyllic Sonora Ranch. Defendant bolsters this idea by including animal-raising claims such as “Thoughtfully Raised on sustainable family farm with fresh air and plenty of room to roam” to target those consumers willing to buy and pay more for an animal product subject to higher welfare standards.

17. An independent nonprofit organization concluded in 2019 that “thoughtfully raised” and similar terms should not be used on food labels because it leads to consumer deception.<sup>8</sup>

18. Due to its misrepresentations, Defendant is able to charge a significant premium for Turkey Products, some of which are sold for as much as \$8.99<sup>9</sup> or \$9.99 per pound. By way of example, and for purposes of comparison, turkey products without animal raising claims from other typical agro-industrial facilities sell for as little as \$0.59 per pound.<sup>10</sup>

19. Plaintiff and other consumers like him pay more for Defendant’s Turkey Products based on their animal-raising claims that their turkeys are treated better than those on industrial farms.

<sup>7</sup> Consumer Reports National Research Center, *Natural Food Labels Survey* (2015), at 3, available at [http://www.consumerreports.org/content/dam/cro/magazine-articles/2016/March/Consumer\\_Reports\\_Natural\\_Food\\_Labels\\_Survey\\_2015.pdf](http://www.consumerreports.org/content/dam/cro/magazine-articles/2016/March/Consumer_Reports_Natural_Food_Labels_Survey_2015.pdf).

<sup>8</sup> Animal Welfare Institute, *Label Confusion 2.0: How the USDA Allows Producers to Use “Humane” and “Sustainable” Claims on Meat Packages and Deceive Consumers*, published in September 2019, available at

[https://awionline.org/sites/default/files/publication/digital\\_download/19%20Label%20Confusion%20Report%20FINAL%20WEB%20II.pdf](https://awionline.org/sites/default/files/publication/digital_download/19%20Label%20Confusion%20Report%20FINAL%20WEB%20II.pdf) (last visited July 2020).

<sup>9</sup> See Eat Like No One, Whole Foods Market Turkey Prices 2015, <http://www.eatlikenoone.com/whole-foods-market-turkey-prices-2015.htm>.

<sup>10</sup> See Supermarkets with Thanksgiving Turkeys for Under \$1 a Pound – or Free!, <http://money.com/money/5023620/thanksgiving-turkey-free-sales-deals-cheap/>, last visited July 10, 2019. Under federal poultry labeling regulations, a poultry product is “misbranded” where its labeling is false or misleading in any particular. 9 CFR § 381.1.



1        20.        A nonprofit organization commissioned a consumer survey specific to Diestel's  
2 advertising. Survey respondents were exposed to Diestel's website and video advertising and then  
3 asked questions about their understanding. The findings include:

- 4            a) 91% of respondents thought that Diestel raises its turkeys at "the Diestel family ranch in  
5 Sonora, California." In reality, less than 1% of Diestel's birds are raised at Sonora Ranch.  
6  
7            b) 85% of respondents thought that the turkeys live outside. In reality, the turkeys live inside  
8 crowded sheds.  
9  
10          c) 54% thought that Diestel followed the GAP 5 or 5+ standards. In reality, less than 1% of  
11 Diestel's birds enjoy GAP Step 5/5+ conditions.  
12  
13          d) 92% thought that Diestel was a small operation where a family member is regularly  
14 personally involved for activities like walking the flock. In reality, Diestel employs more  
15 than a hundred people, contracts with other entities out of state, and operates across  
16 numerous states with facilities that have up to 15 flocks at a time and up to 20,000 birds in  
17 a flock.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## **FEDERAL AND STATE REGULATORS' ROLE IN POULTRY LABELING**

21. Under the Poultry Products Inspection Act ("PPIA"), states may exercise concurrent jurisdiction with the USDA over poultry products inspected under the PPIA "consistent with the requirements" of the PPIA. 21 U.S.C. § 467e. This provision authorizes states to undertake, concurrently with the USDA, efforts to enforce federal requirements.

22. Under federal poultry labeling regulations, a poultry product is "misbranded" where its labeling is false or misleading in any particular. 9 CFR § 381.1. Poultry labeling is false or misleading where any "statement, word, picture, design, or device which is false or misleading in any particular or conveys any false impression or gives any false indication of origin, identity, or quality." 9 CFR § 381.129(b). Federal law also prohibits trade names on labels that are false or misleading, 9 CFR § 381.129(a).

23. California's regulatory scheme to enforce the PPIA is embodied in the California Meat and Poultry Inspection Act ("CMPPIA"), Cal. Food & Agr. Code § 1 *et seq.*, which imposes and enforces requirements "equal to those imposed and enforced under the . . . Poultry Products Inspection Act." Cal. Food & Agr. Code § 18692. Like the PPIA, California's poultry regulations deem misbranded any poultry product with labeling that is "false or misleading in any particular." Cal. Food & Agr. Code § 18781. Like federal regulations, California law prohibits the sale of "misbranded" poultry.

24. Representing that a Turkey Product originates from the Sonora Ranch – *i.e.* not a factory farm – is a statement of fact, as one example of Diestel's deception. The words and design on Diestel's labels that give rise to this representation are subject to the misbranding provisions embodied in the PPIA and the CMPPIA.

25. The USDA-Food Safety and Inspection Service Compliance Guideline that addresses labels explains that animal raising terms such as "Humanely Raised" are a special statement or claim that must be approved by the Label Program Delivery Staff before entering commerce, per 9 C.F.R. § 412.1.

26. However, the USDA-Food Safety and Inspection Service ("FSIS") ***does not independently verify through on-site inspections*** whether Defendant's animal-raising claims are

1 true.

2 27. Instead, the FSIS Labeling Guideline on “Documentation Needed to Substantiate  
3 Animal Raising Claims for Label Submissions” only requires that Defendant define its animal-  
4 raising claims, such as “Thoughtfully Raised,” with explanatory statements like “fresh air” and  
5 “room to roam.” FSIS also requires submission of evidence of self-serving statements from  
6 Defendant about its facilities and practices to substantiate its special animal-raising claims before  
7 placing the label on the Turkey Products that enter commerce.<sup>11</sup>

8 28. For example, the FSIS guidance on “Free Range” or “Free Roaming” states in  
9 pertinent part:

10 In order to use these terms on a label, poultry producers must provide a brief  
11 description of the bird’s housing conditions with the label when it is submitted for  
12 approval. The written description of the housing conditions is evaluated to ensure the  
13 birds have continuous, free access to the out-of-doors for over 51% of their lives, *i.e.*,  
14 through their normal growing cycle. During the winter months in a northern climate,  
15 birds are not “free range,” if they stay in coops all winter. Producer testimonials that  
16 support the use of the claim must state how the birds are raised in a northern climate  
17 in winter in order to conform to the meaning of “free range” during the winter  
18 months.<sup>12</sup>

19 29. Because of the lack of independent oversight by the USDA-FSIS to review whether  
20 producers’ animal-raising claims are correct, these labels are often used without verification as to  
21 their content.

22 30. The USDA Office of Inspector General issued an audit report titled “Controls over  
23 Meat, Poultry, and Egg Product Labels,” in June 2020. The executive summary concluded:

24 As a result, meat, poultry, and egg product labels may reflect inaccurate statements and claims  
25

26 <sup>11</sup> Available at <https://www.fsis.usda.gov/wps/wcm/connect/6fe3cd56-6809-4239-b7a2-bccb82a30588/RaisingClaims.pdf?MOD=AJPERES> (last visited July 10, 2019).

27 <sup>12</sup> FSIS website, “Turkey Raised by the Rules,” [https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/poultry-preparation/turkey-raised-by-the-rules/ct\\_index](https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/poultry-preparation/turkey-raised-by-the-rules/ct_index), (last visited July 10, 2019).  
28

made by establishments. Additionally, there is reduced assurance that establishments' generic labels meet requirements. Based on our sample results, we estimated that approximately 2,038 (15.00 percent) of the approved required labels and 161 (18.34 percent) of the approved generic labels may have one or more exceptions.

31. Diestel has been cited for its failure to follow the Code of Federal Regulations related to poultry labeling. It made a special labeling claim of "Humanely Raised on Sustainable Family Farms" on its turkey products. The USDA slaughterhouse inspector discovered this and issued a "noncompliance" notice to Diestel for its unapproved use of that claim.

### **CLASS ACTION ALLEGATIONS**

32. Plaintiff Donovan brings this action as a class action pursuant to Rule 23(a) and (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure ("Rule") for the purposes of asserting the claims alleged in this Complaint on a common basis. Plaintiff brings this action on behalf of himself and all members of the following classes:

**California Class:** All persons in California who purchased one or more of Diestel's Turkey Products on or after October 13, 2016.

33. Excluded from the Class are any of Defendant's officers, directors, or employees; officers, directors, or employees of any entity in which Defendant currently has or has had a controlling interest; and Defendant's legal representatives, heirs, successors, and assigns. Plaintiff reserves the right to modify, change, or expand the Class definition, including proposing additional subclasses, based upon discovery and further investigation.

34. Upon information and belief, the scope of this Class definition, including its temporal scope, may be further refined after discovery of Defendant's and/or third-party records.

35. **Numerosity.** Class members are so numerous that joinder is impracticable. Thousands of individuals were deceived by Defendant's advertising.

36. **Typicality.** Plaintiff Donovan's claims are typical of the claims of the Class. Plaintiff Donovan is a member of a well-defined Class of similarly situated persons, and the members of the Class were similarly affected by Defendant's conduct and are owed the same relief, as alleged in this



1 Complaint. Members of the Class are ascertainable from Plaintiff Donovan's description of the Class  
2 and/or Defendant's records and/or records of third parties accessible through discovery.

3 37. **Adequacy.** The representative Plaintiff will fairly and adequately represent the  
4 members of the Class and has no interests that are antagonistic to the claims of the Class. Plaintiff  
5 Donovan's interests in this action are antagonistic to the interests of Defendant, and Plaintiff Donovan  
6 will vigorously pursue the claims of the Class.

7 38. **Commonality and Predominance.** The representation that the Turkey Products  
8 originate from a family "Turkey Ranch" in "Sonora, California" that does not treat its turkeys like a  
9 traditional factory farm is uniformly communicated to Plaintiff and every other person, who purchase  
10 any of the Turkey Products during the Class Period. Common questions of law and fact affect the  
11 rights of each member of the Class, and a common remedy is sought for the Class. There are  
12 substantial questions of law and fact common to all members of the Class that will predominate over  
13 any individual issues. These common questions of law and fact include, without limitation:

- 14 a) whether Defendant advertised its Turkey Products with the intent to not sell  
15 them as advertised in violation of California Civil Code § 1770(a)(7);
- 16 b) whether Defendant represented in advertising for the Turkey Products that the  
17 Products had characteristics, ingredients, uses, or benefits that they do not have,  
18 in violation of California Civil Code §1770(a)(5);
- 19 c) whether Defendant is subject to liability for violating the CLRA, Cal. Civ. Code  
20 §§ 1750-1784;
- 21 d) whether Defendant has violated the FAL, Cal. Bus. & Prof. Code §§ 17500-  
22 17536;
- 23 e) whether Defendant has violated the UCL, Cal. Bus. & Prof. Code §§ 17200-  
24 17210;
- 25 f) whether the Class is entitled to an award of restitution pursuant to California  
26 Business and Professions Code § 17203;
- 27 g) whether Plaintiff and Class members are entitled to damages, and if so, in what  
28 amount; and

1 h) whether Plaintiff and Class members are entitled to equitable relief, including  
2 restitution or injunctive relief.

3 39. A class action provides a fair and efficient method, if not the only method, for  
4 adjudicating this controversy. The substantive claims of Plaintiff Donovan and the Class are nearly  
5 identical and will require evidentiary proof of the same kind and application of the same laws. There is  
6 no plain, speedy, or adequate remedy other than by maintenance of this class action.

7 40. **Superiority.** A class action is superior to other available methods for the fair and  
8 efficient adjudication of this controversy because Class members number in the thousands and  
9 individual joinder is impracticable. The expense and burden of individual litigation would make it  
10 impracticable or impossible for proposed Class members to prosecute their claims individually. Trial  
11 of Plaintiff Donovan's and the Class members' claims is manageable.

12 41. Plaintiff Donovan has retained counsel who are competent and experienced in  
13 consumer protection litigation, including class actions relating to false advertising and who have  
14 successfully represented plaintiffs in complex class actions. Plaintiff Donovan's counsel currently  
15 represents other plaintiffs in several similar complex class actions involving false advertising.

16 42. Plaintiff Donovan knows of no difficulty that will be encountered in the management of  
17 this litigation that would preclude its maintenance of a class action.

18  
19 **NOTICE OF CLAIMS**

20 43. Diestel has been on notice of the claims asserted in this action for years. First, Diestel  
21 was sued by a nonprofit organization, Direct Action Everywhere, in January 2017 and fought those  
22 claims for years. Second, Plaintiff sent a CLRA demand letter via certified mail to Diestel on March 1,  
23 2019.

**CAUSES OF ACTION**

**COUNT I**

**Violations of the California Consumers Legal Remedies Act**

**on Behalf of Plaintiff Donovan and the Class**

44. Plaintiff Donovan incorporates by reference and realleges here all paragraphs alleged above.

45. The CLRA, California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750-1785 (the “CLRA”).

46. The CLRA, Cal. Civ. Code §§ 1750-1785, declares it unlawful for any person to undertake unfair methods of competition and unfair or deceptive acts or practices in a transaction that is intended to result, or that does result, in the sale or lease of goods or services to any consumer.

47. Cal. Civ. Code § 1780(a) allows any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 to bring an action against that person to recover or obtain actual damages, injunctive relief, restitution of property, punitive damages, and any other relief that the court deems proper.

48. Pursuant to Cal. Civ. Code § 1752, the provisions of the CLRA are not exclusive, and the remedies provided there are in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

49. Plaintiff complied with Cal. Civ. Code § 1782(a) regarding CLRA notice to Defendant on his own behalf and on behalf of the class. On March 1, 2019, Plaintiff sent a letter via certified mail, which was received by Defendant on March 7, 2019.

50. Plaintiff’s CLRA venue declaration is attached to this Complaint as Exhibit A, consistent with Cal. Civ. Code § 1780(d).

51. Plaintiff and the other members of the Class are “consumers,” as the term is defined by California Civil Code § 1761(d), because they bought the Products for personal, family, or household purposes.

52. Plaintiff, the other members of the Class, and Defendant have engaged in “transactions,” as that term is defined by California Civil Code §1761(e).

1        53.        The conduct alleged in this Complaint constitutes unfair methods of competition and  
2 unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was undertaken  
3 by Defendant in transactions intended to result in, and which did result in, the sale of goods to  
4 consumers.

5        54.        As alleged more fully above, the unlawful conduct included Defendant falsely  
6 representing to Plaintiff and the other members of the Class that the Turkey Products are made from  
7 turkeys raised on the Sonoma Ranch where they were in compliance with the highest animal welfare  
8 standards, when they are not.

9        55.        Defendant made false representations concerning the Turkey Products in its advertising  
10 and marketing materials.

11       56.        Defendant made false representations concerning the Turkey Products on the product  
12 label.

13       57.        As a result of engaging in such conduct, Defendant has violated California Civil Code  
14 § 1770(a)(2), (a)(3), (a)(4) (a)(5), (a)(7), and (a)(9).

15       58.        The unfair and deceptive acts and practices of Defendant, as described above, present a  
16 serious threat to Plaintiff and the other members of the Class.

17       59.        CLRA § 1782 NOTICE. On March 1, 2019, a CLRA demand letter was sent to  
18 Defendant via certified mail that provided notice of Defendant's violation of the CLRA and demanded  
19 that within thirty (30) days from that date, Defendant correct, repair, replace, or otherwise rectify the  
20 unlawful, unfair, false and/or deceptive practices complained of here. The letter also stated that if  
21 Defendant refused to do so, a complaint seeking damages in accordance with the CLRA would be  
22 filed. Defendant received the letter, but has failed to comply with the letter. Accordingly, pursuant to  
23 California Civil Code § 1780(a)(3), Plaintiff, on behalf of herself and all other members of the  
24 California Subclass, seeks compensatory damages, punitive damages, and restitution of any ill-gotten  
25 gains due to Defendant's acts and practices.

26       60.        As more fully alleged below, by committing the acts and practices alleged here,  
27 Defendant has violated the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§  
28 17200 *et seq.*



**COUNT II**

**Violation of California False Advertising Law – Cal. Bus. & Prof. Code § 17500, *et seq.***

**on Behalf of Plaintiff Donovan and the Class**

61. Plaintiff Donovan incorporates by reference and realleges here the preceding paragraphs.

62. The California False Advertising Law, Cal. Bus. & Prof. Code § 17500 (“FAL”), declares it unlawful for any person to disseminate before the public any statement concerning personal property that the person knows, or through the exercise of reasonable care should know, to be untrue or misleading, with intent to dispose of that property or to induce the public to enter into any obligation relating thereto; or to disseminate such untrue or misleading statements as part of a plan or scheme with the intent not to sell the property as advertised.

63. Pursuant to Cal. Bus. & Prof. Code § 17535, any person, association, or organization which violates the FAL may be enjoined by any court of competent jurisdiction. Actions for injunctive relief under the FAL may be prosecuted by any person, who has suffered injury in fact and has lost money or property as a result of a violation of the FAL. Plaintiff suffered an injury in fact and has lost money as a result of Diestel’s violation of the FAL.

64. Under Cal. Bus. & Prof. Code § 17535, the court may make such orders or judgments, which may be necessary to restore to any person in interest any money or property which may have been acquired by means declared to be unlawful by the FAL.

65. The unlawful conduct as alleged comprised Defendant falsely advertising the Turkey Products by claiming that the Turkey Products come from turkeys raised on the Sonoma Ranch where they were in compliance with the highest animal welfare standards, when they do not.

66. Defendant publicly disseminated untrue or misleading representations regarding the Turkey Products, which it knew, or in the exercise of reasonable care should have known, were untrue or misleading, in violation of the FAL.

67. Plaintiff Donovan has suffered injury in fact and has lost money or property as a result of Defendant’s violations of the California False Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500 *et seq.* because he bought Turkey Products, bought more of the Turkey Products, and paid more

1 for the Turkey Products in reliance on Defendant's false and misleading representations and omissions  
2 regarding the Products.

3  
4 **COUNT III**

5 **Violation of California Unfair Competition Law – Cal. Bus. & Prof. Code § 17200, *et seq.***

6 **on Behalf of Plaintiff Donovan and the Class**

7 68. Plaintiff Donovan incorporates by reference and realleges here all paragraphs alleged  
8 above.

9 69. Cal. Bus. & Prof. Code § 17203 allows any person to pursue representative claims or  
10 relief on behalf of others if the claimant meets the standing requirements of Cal. Bus. & Prof. Code  
11 § 17204 and Cal. Civ. Proc. Code § 382.

12 70. Plaintiff Donovan has standing under Cal. Bus. & Prof. Code § 17204, which provides  
13 that actions for relief pursuant to the UCL shall be prosecuted exclusively in a court of competent  
14 jurisdiction by, *inter alia*, a person who has suffered injury in fact and has lost money or property as a  
15 result of the unfair competition. Plaintiff has suffered injury in fact, because he bought the Turkey  
16 Products, and/or paid more for the Turkey Products than he would have had he known the truth about  
17 them.

18 71. Plaintiff Donovan has standing under Cal. Civ. Proc. Code § 382, which provides that  
19 “when the question is one of a common or general interest, of many persons, or when the parties are  
20 numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for  
21 the benefit of all.” As more fully alleged here, Defendant's unlawful, fraudulent, and unfair business  
22 practices raise questions of common or general interest, because they are injurious to consumers  
23 throughout California. Plaintiff Donovan and similarly situated consumers have suffered an injury in  
24 fact and lost money or property as a result of Diestel's deceit because they bought the Turkey  
25 Products, bought more of the Turkey Products, and/or paid more for the Turkey Products than they  
26 would have had they known the truth about the Turkey Products.

27 72. By committing the acts and practices alleged here, Defendant has violated the UCL,  
28 Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by engaging in unlawful, fraudulent, and unfair conduct,

comprised of negligently misrepresenting the Turkey Products, breaching an express warranty regarding the Turkey Products, and/or falsely advertising the Turkey Products, and by the conduct enumerated below.

73. **Unlawful.** Defendant has violated the UCL's proscription against engaging in *unlawful* conduct as a result of:

- a) its violations of the Poultry Products Inspection Act, 21 U.S.C. § 451 et seq., which prohibits labeling that is false or misleading in any particular, § 453(h) and its implementing regulations, including 9 C.F.R. § 381.129(a), requiring that, "No poultry product . . . shall have any false or misleading labeling . . ."
- b) its violations of the Federal Trade Commission Act, 15 U.S.C. § 45, which prohibits unfair or deceptive acts or practices affecting commerce, and prohibits any false advertisements related to food, § 52. Defendant's conduct is unlawful because it violates the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301, which prohibits a food supplier from making false, fraudulent or misleading representations to consumers regarding consumer products.
- c) its violation of express warranty law, Cal. Comm. Code § 2313, which prohibits Diestel from making any affirmation of fact or promise to a buyer for goods when the goods do not conform to the description provided.
- d) its violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7), and (a)(9), as alleged above;
- e) its violations of the FAL, Cal. Bus. & Prof. Code § 17500 et seq., as alleged above; and
- f) its violation of the California Meat and Poultry Inspection Act ("CMPIA"), Cal. Food & Agr. Code § 1 et seq., which imposes and enforces requirements "equal to those imposed and enforced under the . . . Poultry Products Inspection Act." Cal. Food & Agr. Code § 18692. Like the PPIA, California's poultry regulations deem misbranded any poultry product with labeling that is "false or misleading in any particular." Cal. Food & Agr. Code § 18781.
- g) its violations of Cal. Pen. Code §§ 597(b), 597.1(a)(1), and 597f(a), because

1 Defendant's acts and practices described above violate Cal. Pen. Code § 597(b), which  
2 makes it a felony to, inter alia, deprive or cause or procure any animal to be deprived of  
3 necessary sustenance, drink, or shelter or fail to provide any animal with proper food,  
4 drink, shelter, or protection from the weather. Defendant's acts and practices described  
5 above violate Cal. Pen. Code § 597.1(a)(1), which makes it a misdemeanor for an  
6 owner, driver, or keeper of any animal to permit the animal to be in any building,  
7 enclosure, lane, street, square, or lot of any city, county, city and county, or judicial  
8 district without proper care and attention. Defendant's acts and practices described  
9 above violate Cal. Pen. Code § 597f(a)(1), which makes it a misdemeanor for an owner,  
10 driver, or possessor of any animal to permit the animal to be in any building, enclosure,  
11 lane, street, square, or lot of any city, county, city and county, or judicial district without proper  
12 care and attention.

13 74. **Fraudulent.** Defendant's acts and practices described above also violate the UCL's  
14 proscription against engaging in *fraudulent* conduct.

15 75. As more fully described above, Defendant's misleading marketing and advertising of  
16 the Turkey Products are likely to deceive reasonable consumers. Indeed, Plaintiff Donovan was  
17 deceived when he viewed Defendant's advertising that indicated the Turkey Products come from  
18 turkeys raised on the Sonora Ranch where they are treated in compliance with the highest animal  
19 welfare standards, as Defendant's marketing and advertising of the Turkey Products misrepresent the  
20 true facts concerning the benefits of the Products. Said acts are fraudulent business practices.

21 76. **Unfair.** Defendant's acts and practices described above also violate the UCL's  
22 proscription against engaging in *unfair* conduct.

23 77. Plaintiff Donovan had no way of reasonably knowing that the Turkey Products he  
24 purchased were not as marketed or advertised that he viewed prior to purchase because Defendant  
25 unethically and unscrupulously hid or otherwise omitted the truth regarding the Turkey Products.  
26 Thus, he could not have reasonably avoided the injury that he suffered.





86. Plaintiff and Class Members reasonably relied upon the Defendant's affirmations of fact and justifiably acted in ignorance of the material facts omitted or concealed when they decided to buy Defendant's Products.

87. Within a reasonable time after they knew or should have known of Defendant's breach, Defendant was placed on notice of its breach by the CLRA letter Plaintiff sent, giving Defendant an opportunity to cure its breach, which it did not do.

88. Defendant breached the express warranty because the Products are not "100% Natural."

89. As a direct and proximate result of Defendant's breach of express warranty, Plaintiffs and Class Members were damaged in an amount to be proven at trial.

#### **COUNT IV**

#### **Common Law Unjust Enrichment**

#### **on Behalf of Plaintiff Donovan and the Class**

90. Plaintiff repeats and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth here.

91. Defendant's conduct violated state and federal law by producing, manufacturing, advertising, marketing, and selling the products while misrepresenting and omitting material facts.

92. Defendant's unlawful conduct as described in this Complaint allowed Defendant to knowingly realize substantial revenues from selling its Products at the expense of, and to the detriment or impoverishment of, Plaintiffs and similarly-situated consumers, and to Defendant's benefit and enrichment. Defendant has thereby violated fundamental principles of justice, equity, and good conscience.

93. Plaintiffs and Class Members conferred significant financial benefits and paid substantial compensation to Defendant for the Products, which were not as Defendant represented them to be.

94. Under common law principles of unjust enrichment, it is inequitable for Defendant to retain the benefits conferred by Plaintiffs' and Class Members' overpayments.

95. Plaintiffs and Class Members seek disgorgement of all profits resulting from such overpayments and establishment of a constructive trust from which Plaintiffs and Class Members may seek restitution.

**COUNT V**

## Fraud by Concealment

**on Behalf of Plaintiff Donovan and the Class**

96. Plaintiff repeats and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth here.

97. Diestel concealed material facts concerning its turkey operations as described above. Diestel had a duty to disclose material facts based on its superior knowledge regarding its operations, in addition to its affirmative misrepresentations.

98. Diestel actively concealed material facts with the intent to induce Plaintiff and the Class to purchase its products.

99. Plaintiff and the class were unaware of these omitted material facts and would not have purchased the products if they had known the concealed facts.

100. As a result of the concealed facts, Plaintiff and the class sustained damages in an amount to be determined at trial.

## COUNT VI

## Intentional Misrepresentation

**on Behalf of Plaintiff Donovan and the Class**

101. Plaintiff repeats and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth here.

102. Defendant materially and intentionally misrepresented its turkey operations to consumers.

103. Defendant's misrepresentations about its turkey operations were intended to influence Plaintiff and the Class who justifiably relied upon the accuracy of Defendant's representations.

104. Defendant's misrepresentations caused Plaintiff and the Class to purchase a product they would not have otherwise purchased and/or at a price that they would have otherwise paid.

#### **DAMAGES**

105. As a result of Defendant's negligent misrepresentations as alleged here, including, violations of the CLRA, violations the FAL, and violations of the UCL, Plaintiff Donovan was damaged in the amount of the purchase price, or in the alternative, in the amount of the purchase price tied to the false and misleading representations, in amounts to be proven at trial.

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in Plaintiff's favor and against Defendant, as follows:

A. An order certifying the proposed Class; appointing Plaintiff Donovan as representative of the Class; and appointing Plaintiff Donovan's undersigned counsel as class counsel for the Class;

B. A declaration that Defendant is financially responsible for notifying Class members of the pendency of this suit;

C. An order enjoining Defendant's unlawful and deceptive acts and practices, pursuant to California Business and Professions Code §§ 17203 and 17535, that includes, but is not limited to, requiring Defendant to cease the acts of unfair competition alleged here and to correct its advertising, promotion, and marketing campaigns by, without limitation, removing and/or refraining from making representations in the Turkey Products' marketing materials that the Products come from turkeys raised on the Sonora Ranch, are "Thoughtfully Raised," are third party certified at the highest animal welfare standard, are slow grown and proprietary breeds, come from a small family farm, are raised antibiotic and chemical free, and produced in an environmentally friendly way.

D. An award of restitution pursuant to California Business and Professions Code §§ 17203 and 17535 for members of the Class;

E. An award of disgorgement pursuant to California Business and Professions Code §§ 17203 and 17535 for members of the Class;



1 F. Monetary damages, statutory damages injunctive relief for members of the Class  
2 pursuant to California Civil Code § 1780 in the maximum amount provided by law;

3 G. Punitive damages in accordance with proof and in an amount consistent with applicable  
4 precedent;

5 H. An order requiring Defendant to pay attorneys' fees and litigation costs to Plaintiffs  
6 pursuant to California Code of Civil Procedure Section 1021.5 and the common-law private-attorney-  
7 general doctrine;

8 I. Ordering Defendant to pay both pre- and post-judgment interest at the highest rate  
9 allowable by law on any amounts awarded; and

10 J. Any further relief that the Court may deem appropriate.

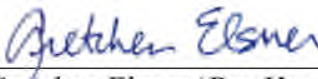
11  
12 **JURY DEMAND**

13 Plaintiff demands a trial by jury of all claims in this Complaint so triable.

14 Dated: October 13, 2020

Respectfully submitted,

16 **ELSNER LAW & POLICY, LLC**

17   
18 Gretchen Elsner (Pro Hac Vice)  
19 Gretchen@ElsnerLaw.org  
20 314 South Guadalupe Street  
21 Santa Fe, New Mexico 87501  
22 Telephone: (505) 303-0980

**THE POTTS FIRM, LLP**

23 By: /s/ Timothy L. Sifer  
24 Timothy L. Sifers, KS #19922  
25 1901 W. 47<sup>th</sup> Place, Suite 210  
26 Westwood, Kansas 66205  
27 P: (816) 931-2230  
28 F: (816) 931-7030  
Email: tsifers@potts-law.com

**COOPER AND SCULLY, PC**



—

---

Alan Law, CA #268334  
Alan.Law@cooperscully.com  
505 Sansome #1550  
San Francisco, CA 94111  
Telephone: 415.956.9700

*Counsel for Plaintiff & the Proposed Class*