

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

<p>Organic Consumers Association, a non-profit corporation, 6771 South Silver Hill Drive, Finland, MN 55603,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>West Pak Avocado, Inc., 38655 Sky Canyon Drive, Murrieta, CA 92563,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: right;">2024-CAB-004863</p> <p style="text-align: center;">COMPLAINT</p> <p style="text-align: center;"><u>DEMAND FOR JURY TRIAL</u></p>
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This is a nonprofit, public-interest action brought on behalf of District consumers alleging false and deceptive advertising in the sale of avocado products. Plaintiff Organic Consumers Association (“OCA”), acting pursuant to D.C. Code § 28-3905(k)(1)(D), brings the action against Defendant West Pak Avocado, Inc. (“West Pak”). In order to generate sales, West Pak represents that its avocados are responsibly and sustainably sourced. These statements are not true, because West Pak’s sourcing practices contribute to deforestation (both legal and illegal), water scarcity, climate change, biodiversity and habitat loss, and other negative environmental consequences in the avocado-growing region of Mexico. West Pak’s avocados, therefore, are sourced neither responsibly nor in a manner that ensures ecosystem health.

OCA requests no money damages but seeks declaratory and injunctive relief, aimed at putting an end to West Pak’s false and deceptive advertising. OCA brings the action on behalf of the general public of the District of Columbia (D.C.), and D.C. consumers. This is not a class

action, and no class certification will be sought. OCA alleges the following based upon personal knowledge, information and belief, and the investigation of its counsel.

INTRODUCTION

1. Consumers are increasingly concerned about the sustainability and environmental consequences of their food purchases.

2. Consumers are motivated to purchase produce marketed as “sustainable” due to growing awareness of the negative environmental consequences of the commercial agriculture industry. These negative environmental consequences include deforestation, water and air pollution, soil degradation, and habitat/biodiversity loss.

3. Many consumers seek to minimize their ecological footprint and prioritize supporting environmentally responsible farming methods for long-term ecological health. These values are thought to be promoted by products that are marketed to consumers as “sustainable” and/or “responsibly sourced,” such as West Pak’s avocados.

4. Consumers are often willing to pay more for products that align with their values, or to buy more of those products. Corporations that market these products, such as West Pak, are keenly aware of this consumer willingness.

5. For example, West Pak makes representations that it is “committed to growing avocados without forest clearing,”¹ and states that its mission is to bring “sustainably, and responsibly sourced avocados to consumers,”²

6. West Pak’s avocado sourcing practices, however, do not match these consumer-facing statements.

¹*Growing a Legacy of Responsibility: West Pak 2020 Sustainability Report*, WEST PAK at 51 (Jan. 5, 2022), https://issuu.com/westpakavocado/docs/wpa_sustainability_report_2020_final_pages.

² *Company Overview*, WEST PAK, <https://www.westpakavocado.com/about-us/> (last visited Aug. 1, 2024).

7. West Pak is one of the leading producers and distributors of avocados globally.
 8. The popularity of, and demand for, avocados in the United States has increased exponentially over the past few decades.³
 9. The presence of avocados in United States supermarkets has tripled in the past twenty years, and avocados in the United States are now a \$3-billion-per-year industry.⁴
 10. Mexican avocados make up 83-to-93% of avocados imported to the United States.⁵
- All Mexican avocados sold in the United States are exported from two states, Michoacán and Jalisco.⁶
11. Michoacán is the only place on earth where avocado trees bloom four times a year, instead of just once. This occurs because of the state's rich volcanic soil and ideal elevation for growing.⁷
 12. Unfortunately, due to a combination of factors, Michoacán and Jalisco have been decimated by uncontrolled deforestation, severe water shortages, and biodiversity and habitat loss, among other adverse environmental consequences. Those factors include rising international demand for avocados, lax enforcement of environmental regulations, cartel and organized crime

³ *Imports play dominant role as U.S. demand for avocados climbs*, U.S.D.A., ECON. RSCH. SERV., <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=103810> (May 2, 2022).

⁴ Jorge Simancas, *Arson, logging and water theft: The avocado industry deforests Mexico*, EL PAÍS (Nov. 29, 2023, 10:07 AM), <https://english.elpais.com/international/2023-11-29/arson-logging-and-water-theft-the-avocado-industry-deforests-mexico.html>.

⁵ *Forests Falling Fast to Make Way for Mexican Avocado*, GLOB. FOREST WATCH (Mar. 20, 2019), https://www.globalforestwatch.org/blog/commodities/forests-falling-fast-to-make-way-for-mexican-avocado/?utm_campaign=gfw&utm_source=gfwblog&utm_medium=hyperlink&utm_term=jaliscoavocado.

⁶ Mark Stevenson, *2nd state in Mexico begins avocado exports to U.S. market*, AP (July 29, 2022, 1:40 PM), https://apnews.com/article/mexico-caribbean-global-trade-climate-and-environment-37ab9c9439de14d5393eb4dbf94f3d8b?utm_source=copy&utm_medium=share.

⁷ Cassandra Garrison, *Mexican Avocados Grown on Illegal Orchards Should Not Be Exported to U.S., Ambassador Says*, U.S. NEWS & WORLD REP. (Feb. 26, 2024, 6:13 PM), <https://www.usnews.com/news/world/articles/2024-02-26/mexican-avocados-grown-on-illegal-orchards-should-not-be-exported-to-u-s-ambassador-says#:~:text=Michoacan%20state%20is%20the%20only,perfect%20location%20for%20avocado%20farming>.

links to the Mexican avocado industry, and high profit margins for avocados exported to the United States.

13. Michoacán's Secretary of Environment, Alejandro Mendez, stated: "In Michoacán right now I think the most sensitive, serious environmental issue is the indiscriminate change of land use for avocado crops . . . , [which] puts at increasing risk our biodiversity, the provision of water, and the forests in this state."⁸

14. Avocado trees consume four-to-five times more water than native fir and pine trees, jeopardizing water availability for the local communities in an already water-scarce region.⁹

15. Water is often diverted from local rivers and streams in the area in order to irrigate avocado orchards. Water theft and uncontrolled use of water by the avocado industry wreak havoc on the local environment and population, as streams dry up and residents do not have enough water for human consumption.¹⁰

16. Just a few months ago it was reported that "[r]ivers and even whole lakes are disappearing in the once green and lush state of Michoacán," and that local residents have organized to "rip out illegal water pumps and breach unlicensed irrigation holding ponds" in a desperate attempt to restore water security to their community.¹¹

⁸ Aguacate: negocio, ecocidio y crimen: Parte 1 [Avocado: Business, Ecocide and Crime: Part 1], UGTV Territory Reporting Canal 44 video clip, YOUTUBE (Sept. 7, 2022), <https://www.youtube.com/watch?v=PaaaJXAx6NQ>.

⁹ Alberto Gómez-Tagle et al., Hydrological impact of green hold (avocado culture) in central Mexico; rainfall partition and water use comparison with native forests, Presentation at Joint Conference on Forests and Water, UNIVERSIDAD MICHOACANA DE SAN NICOLÁS DE HIDALGO (Nov. 2018), https://www.researchgate.net/publication/329060308_Hydrological_impact_of_green_gold_avocado_culture_in_central_Mexico_rainfall_partition_and_water_use_comparison_with_native_forests/link/5bf3eddda6fdcc3a8de38777/download.

¹⁰ *A serious risk': Mexican villagers take on cartel-backed avocado farms as water dries up*, EURONEWS (Apr. 24, 2024), <https://www.euronews.com/green/2024/04/24/a-serious-risk-mexican-villagers-take-on-cartel-backed-avocado-farms-as-water-dries-up>.

¹¹ *Id.*

17. Patzcuaro Lake in Michoacán has been reduced to approximately half its former size due to the drought, deforestation, sediment build-up and the increased water demands from avocado and berry growers in the region. Nearby Lake Cuitzeo, one of the largest freshwater lakes in Mexico, has nearly dried up.

18. West Pak promises consumers that its avocados are sustainably and responsibly sourced and that it “work[s] relentlessly to ensure our avocados are grown and distributed safely, fairly, and responsibly and vow[s] to maintain our commitment to people, communities, and the planet.”¹²

19. Despite these assurances, Mexican government shipping records show that in 2022, for example, West Pak sourced 315,450 kilograms of avocados (roughly 1.2 million avocados) from at least nineteen orchards operating on deforested land in Michoacán and Jalisco. Upon information and belief, based on satellite imagery, these orchards exist on land that previously contained mature, native forest.

20. Whether legal or illegal, the conversion of Michoacán and Jalisco’s natural forests to avocado orchards releases greenhouse gases, reduces carbon storage, decreases biodiversity, and impedes the natural replenishment of local aquifers.

21. In February of this year, Ken Salazar, the United States ambassador to Mexico, expressed concern about the proliferation of avocado orchards on illegally deforested land during a visit to Michoacán. Salazar opined that Mexican avocado exporters “shouldn’t have the opportunity to sell those avocados to the United States market.”¹³

¹² *Advantage*, WEST PAK, <https://www.westpakavocado.com/our-avocados/> (last visited Aug. 1, 2024).

¹³ Garrison, *supra* note 7.

22. Consumers who wish to purchase sustainably and responsibly sourced avocados rely on marketing and advertising to make purchasing decisions and to choose avocados that they believe align with their values.

23. Reasonable consumers in the District of Columbia do not expect avocados marketed as sustainably and responsibly sourced to be grown on deforested land or to contribute to extreme water depletion and other negative environmental consequences.

24. This is a consumer-protection case concerning deceptive marketing representations about West Pak's avocados. The case is brought by Organic Consumers Association, a public-interest organization dedicated to consumer protection and education. OCA seeks no money damages. Acting on behalf of the general public of D.C. and D.C. consumers, OCA seeks an end to the deceptive marketing and advertising at issue, and a declaration that West Pak's conduct violates D.C.'s consumer protection law.

FACT ALLEGATIONS

I. West Pak Represents to Consumers That Its Food Products Are Sustainable and Responsibly Sourced.

25. West Pak is one of the largest producers, distributors, and sellers of avocados and is vertically integrated, meaning that "they or their subsidiaries own packinghouses in Mexico, export abroad, and control imports within the receiving country, before distributing to retailers."¹⁴

26. West Pak claims to be the "trusted leader in avocados,"¹⁵ and represents on its website that it "work[s] hard to ensure [its] avocados are grown, processed, and delivered safely,

¹⁴ *Unholy Guacamole: Deforestation, Water Capture, and Violence Behind Mexico's Avocado Exports to the U.S. and Other Major Markets*, CLIMATE RTS. INT'L (Nov. 2023), <https://cri.org/reports/unholy-guacamole/>.

¹⁵ West Pak Avocado Home Page, WEST PAK, <https://www.westpakavocado.com/> (last visited Aug. 1, 2024).

fairly, and responsibly . . . [and its] respect for people and nature enables [the] company to grow and prosper over the long term in harmony with the needs of communities and ecosystems.”¹⁶

27. Examples of West Pak’s representations about the sustainable and responsible production of its avocados (herein called the “Sustainability Representations”) are seen in the images below:

- a. West Pak’s mission is “to bring delicious, healthy, sustainable, and responsibly sourced avocados to consumers around the world.”¹⁷



- b. “West Pak is committed to delivering nutritious, high-quality, responsibly produced avocados.”¹⁸

WEST PAK IS COMMITTED TO DELIVERING NUTRITIOUS, HIGH-QUALITY, RESPONSIBLY PRODUCED AVOCADOS.

¹⁶ *Id.*

¹⁷ *Company Overview*, *supra* note 2.

¹⁸ West Pak Avocado Home Page, *supra* note 15.

- c. West Pak “work[s] relentlessly to ensure our avocados are grown and distributed safely, fairly, and responsibly and [vows] to maintain our commitment to people, communities, and the planet.”¹⁹

ENVIRONMENT & SUSTAINABILITY COMMITMENT

We work relentlessly to ensure our avocados are grown and distributed safely, fairly, and responsibly and vow to maintain our commitment to people, communities, and the planet.

- d. “We are committed to water-smart practices aimed at increasing efficiency, ensuring sustainable withdrawals and supply of fresh water, and protecting water quality in avocado groves and our facilities.”²⁰



We are committed to water-smart practices aimed at increasing efficiency, ensuring sustainable withdrawals and supply of fresh water, and protecting water quality in avocado groves and our facilities.

- e. West Pak is “intimately connected to and dependent upon nature and the environment. Our respect for the land propels us to do more with less. We are

¹⁹ *Advantage*, *supra* note 12.

²⁰ *Growing a Legacy of Responsibility: West Pak 2020 Sustainability Report*, *supra* note 1, at 9.

working to conserve resources, safeguard ecosystems, and reduce greenhouse gas emissions to ensure a healthy planet and climate today and for generations.”²¹

PROTECT THE ENVIRONMENT



As a food company, we are intimately connected to and dependent upon nature and the environment. Our respect for the land propels us to do more with less. We are working to conserve resources, safeguard ecosystems, and reduce greenhouse gas emissions to ensure a healthy planet and climate today and for generations.

- f. West Pak promises that it is “committed to growing avocados without forest clearing.”²²
- g. West Pak highlights its “commitment to environmental protection, resource conservation, and climate action across the value chain” in its sustainability reports.²³
- h. West Pak specifically refers to its “sustainable farming” practices in Jalisco,²⁴ stating that it “practice[s] responsible agricultural practices to promote healthy, productive trees and a healthy environment,” and is “committed to growing avocados without forest clearing.”²⁵

28. The foregoing statements made by West Pak in Paragraph 27 (a) through (h) (the “Sustainability Representations”) are intended to, and do, lead D.C. consumers to believe that West

²¹ *Id.* at 36.

²² *Growing a Legacy of Responsibility: West Pak 2020 Sustainability Report*, *supra* note 1, at 51.

²³ *Id.* at 10.

²⁴ *Id.* at 51.

²⁵ *Id.*

Pak's avocados are sourced responsibly and sustainably, in a manner that is not harmful to the environment. In reality, West Pak sources its avocados from orchards grown on deforested land and use practices that are environmentally destructive, specifically contributing to deforestation, climate change, natural habitat and biodiversity loss, and extreme water scarcity for local communities.

II. West Pak Avocados Are Not Sustainably Grown or Responsibly Sourced.

29. Contrary to West Pak's representations, its avocados are neither responsibly sourced nor environmentally sustainable, as the sourcing and production of its avocados contribute to deforestation, water depletion, and other negative environmental consequences in Michoacán and Jalisco.

30. Contrary to West Pak's representations, the avocados it markets and distributes are not grown safely, fairly, and responsibly but rather are contributing to massive deforestation, water loss, and biodiversity loss throughout the avocado-growing region of Mexico.

A. Mexican Government Shipping Records and Maps of Avocado Orchards Certified to Export to the U.S. Cross-Referenced with Satellite Imagery Confirm that West Pak Has Sourced Avocados from Deforested Land.

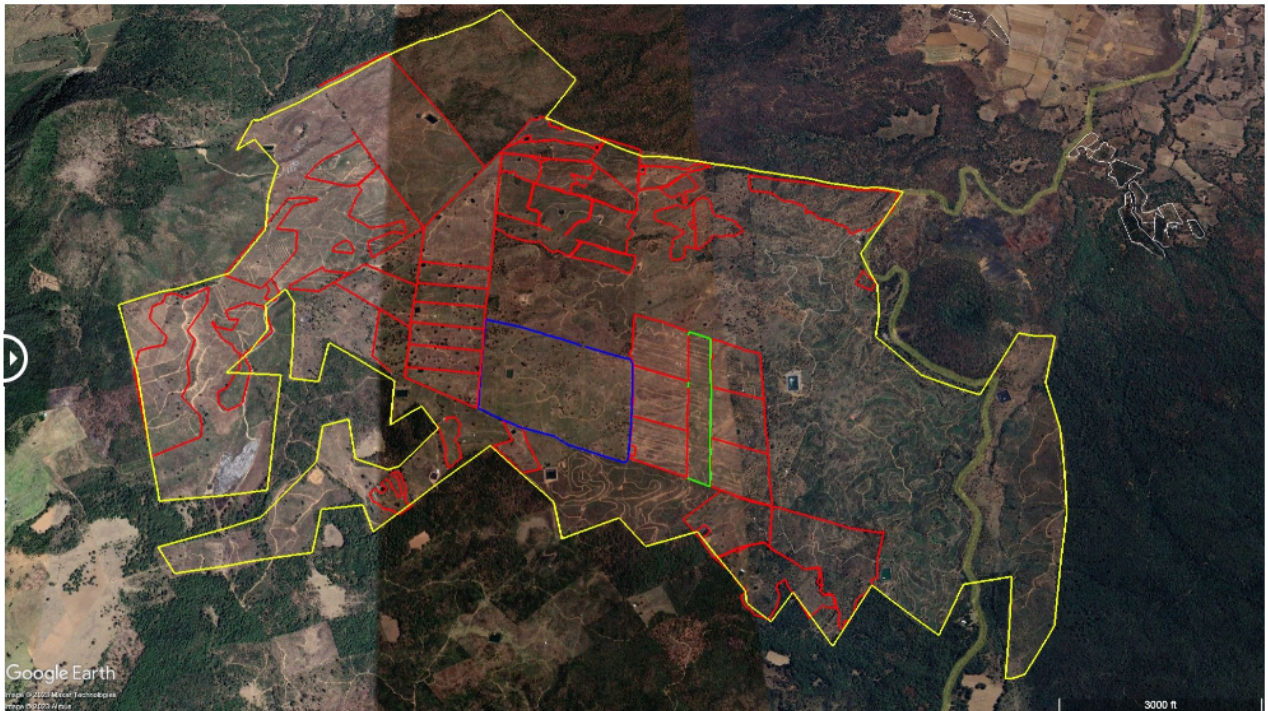
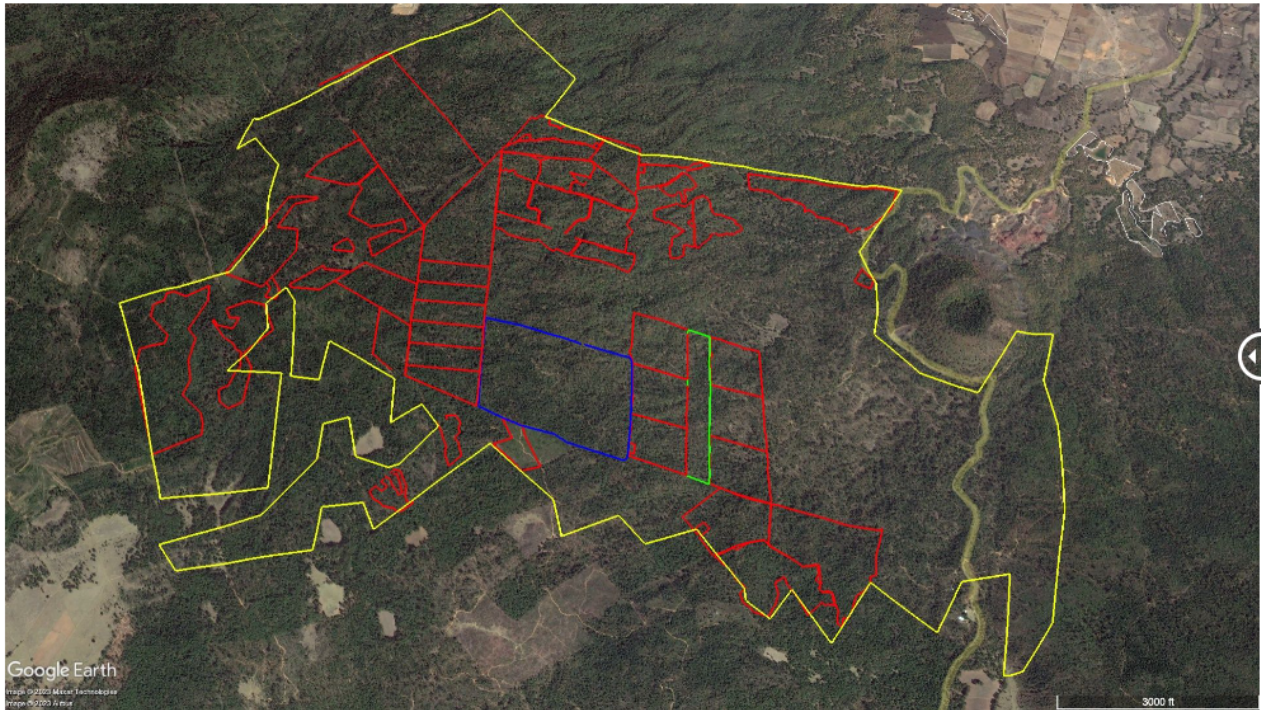
31. Mexican government shipping records, cross-referenced with Mexican government maps of avocado orchards certified to export to the United States and with satellite imagery, confirm that West Pak sourced avocados from deforested orchards in 2022, as explained in further detail below.

32. Based upon Mexican government shipping records, West Pak sourced 25,455 kilograms of avocados (more than a quarter million avocados) from the orchard outlined in green

below—the lines comport with Mexican government maps of orchards certified to export to the United States—in the Google Earth images below.²⁶

33. The first image below from 2015 reveals an area outside of the municipality of Zacapu, Michoacán covered in native forest, while the next image shows the same area in 2023, now deforested and replaced with avocado orchards:

²⁶ Records of “harvest logs” (“bitacoras de cosecha”) provided via Mexico’s transparency law response from National Service of Health, Food Safety and Quality (SENASICA) to request number 330028323000180, June 27, 2023. The referenced numbers are taken from Mexican Government Shipping records with the following reference number: HUE08161070572 (on file with Plaintiff OCA).



34. Additionally, Mexican government shipping records indicate that in 2022, West Pak received 21,150 kilograms of avocados from land in the municipality of Salvador Escalante,

Michoacan, that was deforested at some point between 2015 and 2017. Google Earth images show the before (February 2015) and after (February 2022) photos of the land where the avocado orchard currently exists.²⁷



²⁷ *Id.*, HUE08160660973.



35. Further, the Google Earth satellite images below show before and after photos of existing orchards in the municipality of Tacámbaro, Michoacán from 2016 and 2023. The letters on the photos indicate which orchards supplied West Pak with avocados in 2022:

- a. The orchard containing deforested land marked with “A”²⁸ supplied 14,505 kilograms of avocados to West Pak in 2022²⁹;
- b. The orchard containing deforested land marked with “B” supplied 13,785 kilograms of avocados to West Pak in 2022³⁰;

²⁸ Google Earth images. Data sourced from Mexican Government Transparency Request 330028323000032; publico.senasica.gob.mx/?id=7258. Mexican Government Shipping Records Reference Number HUE08160826972.

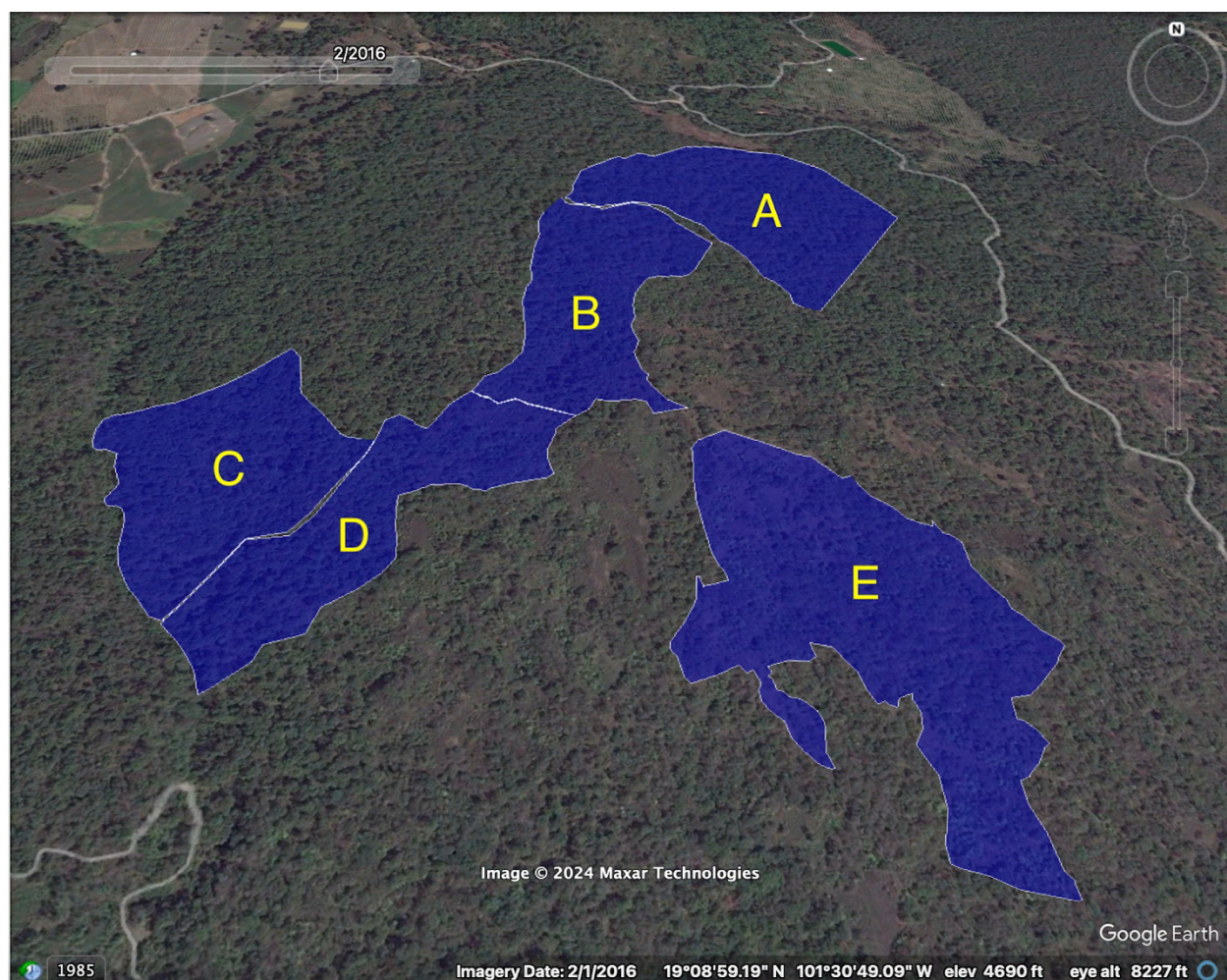
²⁹ Mexican Government Shipping Records Reference Number HUE08160826972 (on file with Plaintiff OCA).

³⁰ Mexican Government Shipping Records Reference Number HUE08160826939 (on file with Plaintiff OCA).

c. The orchard containing deforested land marked with “C” supplied 30,585 kilograms of avocados to West Pak in 2022³¹;

d. The orchard containing deforested land marked with “D” supplied 7,435 kilograms of avocados to West Pak in 2022³²; and

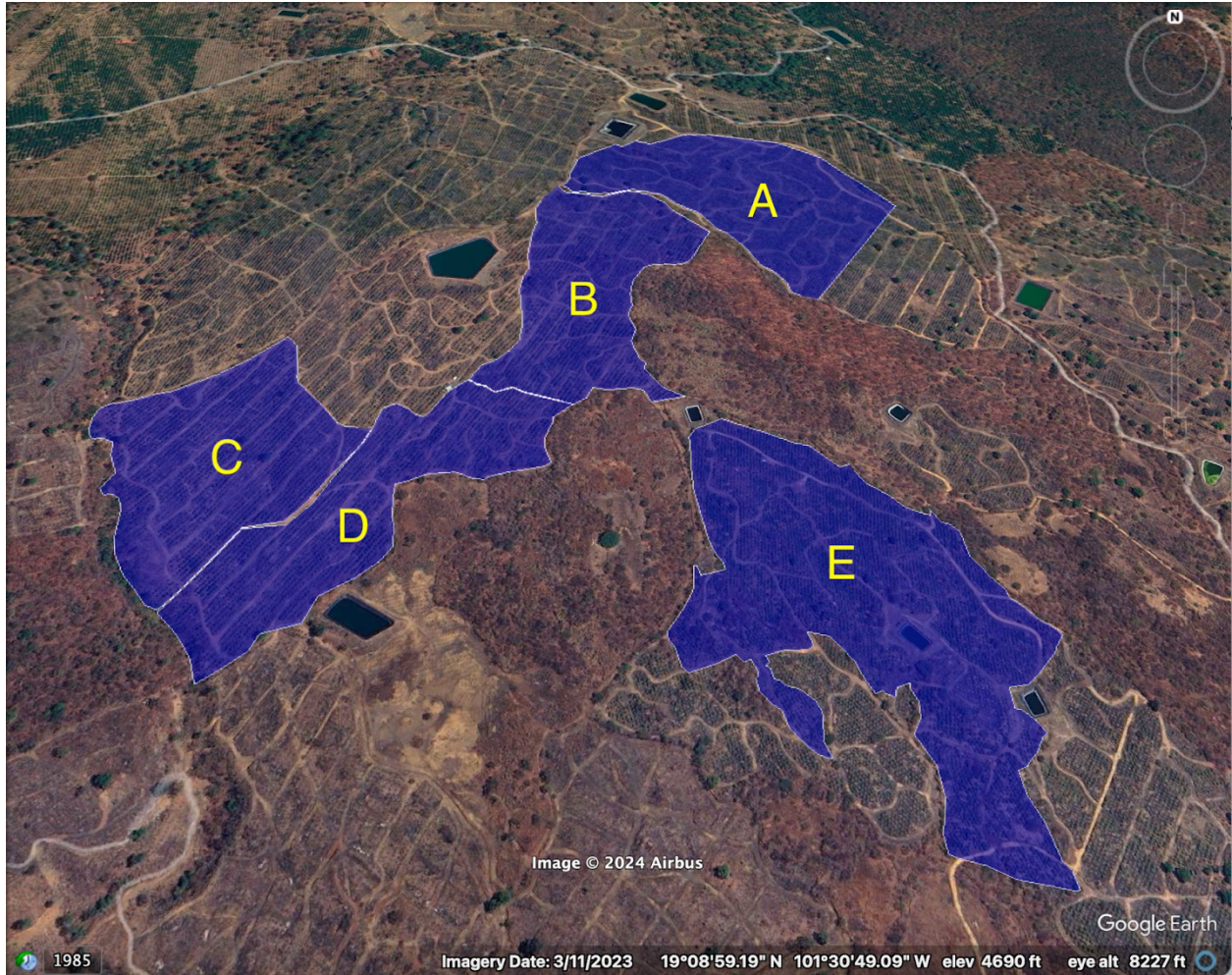
e. The orchard containing deforested land marked with “E” supplied 39,295 kilograms of avocados to West Pak in 2022.³³



³¹ Mexican Government Shipping Records Reference Number HUE08160826941 (on file with Plaintiff OCA).

³² Mexican Government Shipping Records Reference Number HUE08160826940 (on file with Plaintiff OCA).

³³ Mexican Government Shipping Records Reference Number HUE08160826376 (on file with Plaintiff OCA).



36. Mexican law requires a federal permit to convert forests to agricultural uses. Government records indicate that no such permits have been issued in Michoacán for at least two decades; none were issued in Jalisco between 2011 and 2022; and just nine were issued in the state for avocado plantations between 2000 and 2010.³⁴ In this regard, West Pak’s avocado sourcing, in addition to being unsustainable, appears to be illegal.

³⁴ Autorizaciones De Cambio De Uso Del Suelo En Terrenos Forestales 2003-2022 [Authorizations For Changes In Land Use On Forest Land 2003-2022], Secretaria De Medio Ambiente Y Recursos Naturales, Delegacion Federal En Michoacán [Sec’y of the Env’t and Nat. Res., Fed. Delegation] <https://www.gob.mx/tramites/ficha/solicitud-de-cambio-de-uso-de-suelo-en-terrenos-forestales/SEMARNAT237> (downloaded on May 1, 2024).

37. Forest clearing for avocado plantations has perpetuated deforestation of these important forests and threatened water supply across the state. A study published in the *Journal of Environmental Management* in 2020 indicated that avocado orchards accounted for about one-fifth of the deforestation in Michoacán and neighboring Jalisco between 2001 and 2017.³⁵

38. West Pak’s Sustainability Representations are contrary to its practices, as its avocados are sourced from orchards that are growing avocados on deforested land.

B. West Pak’s Sourcing of Avocados from Orchards on Deforested Land Exacerbates Water Scarcity.

39. Water depletion is endemic within the avocado industry, which uses 9.5 billion liters of water daily for production.³⁶

40. Mexico already experiences high levels of water scarcity due to its natural climate, industry use, water-management practices, and other contributing factors.³⁷ The avocado industry exacerbates this existing water scarcity crisis and jeopardizes the use of the limited water available for local populations.

41. Virtually all of the avocado-producing areas of Michoacán, and most of the areas in Jalisco, overlap with watersheds or aquifers that the Mexican government has determined to have a “deficit” of water available—meaning that additional water extraction cannot be sustained.

42. Upon information and belief, West Pak sources avocados from orchards in areas that the Mexican government has determined to have a “deficit” of water available.

³⁵ Kimin Cho et al., *Where does your guacamole come from? Detecting deforestation associated with the export of avocados from Mexico to the United States*, 278 J. OF ENV’T MGMT. 111482 (2020) <https://pubmed.ncbi.nlm.nih.gov/33126191/>.

³⁶ M.M. Mekonnen & A.Y. Hoekstra, *The Green, Blue and Grey Water Footprint of Crops and Derived Crop Products* (Volume 1: Main Report), UNESCO-IHE INST. FOR WATER EDUC., at 20 (Dec. 2010) <https://waterfootprint.org/resources/Report47-WaterFootprintCrops-Vol1.pdf>.

³⁷ Cody Copeland, *Mexico water crisis in spotlight on World Water Day*, COURTHOUSE NEWS SERVICE (March 22, 2023), <https://www.courthousenews.com/mexico-water-crisis-in-the-spotlight-on-world-water-day/>.

43. Furthermore, a recent study revealed that agro-industrial avocado production consumes up to 120% of the surface and groundwater volumes granted to agriculture use in years with dry conditions in Michoacán, which is “creating water stress and scarcity, and leading to water rights conflicts and social discomfort” for communities across the region.³⁸

44. Although West Pak states that it is “committed to water-smart practices aimed at increasing efficiency, ensuring sustainable withdrawals and supply of fresh water...”³⁹ West Pak’s sourcing of its avocados from deforested avocado orchards directly links West Pak’s sourcing practices with increased water scarcity in the avocado-growing regions of Mexico. This is because native forests play a crucial role in allowing water to infiltrate the soil to replenish aquifers. While native forests “naturally act to retain water in the soil,” agricultural monocultures such as avocado production “usually result in lower soil water retention and increased runoff.”⁴⁰

45. Researchers have found that pine trees native to avocado-growing regions of Mexico naturally filter water into the ground at least fourteen times more effectively than avocado trees. This is because branch pruning alters the way water moves down avocado trees, avocado trees are spaced further apart in orchards than native plants in a forest, and avocado tree roots tend to grow more horizontally than pine roots.⁴¹

³⁸Alberto F. Gómez-Tagle et al., *Blue and green water footprint of agro-industrial avocado production in Central Mexico*, 14 SUSTAINABILITY 9664 (2022).

³⁹*Growing a Legacy of Responsibility*, West Pak 2020 Sustainability Report, West Pak, https://issuu.com/westpakavocado/docs/wpa_sustainability_report_2020_final_pages at 9 (last visited Aug. 1, 2024).

⁴⁰ M. Bravo-Espinosa et al., *Effects of converting forest to avocado orchards on topsoil properties in the trans Mexican Volcanic System, Mexico*, 25 LAND DEGRADATION & DEV. 452–467 (2012).

⁴¹ Alberto Gómez-Tagle et al., *supra* note 9.

46. The *New York Times* recently reported that “clear-cutting for avocados, which require[s] vast amounts of water, has ignited another crisis [for communities in the avocado-growing region of Mexico] by draining aquifers that are a lifeline for many farmers.”⁴²

47. All Mexican avocados that are exported to the U.S. are grown in either Michoacán or Jalisco.

48. As these facts suggest, not only is West Pak sourcing one of the most water-intensive crops from an already water-deficient region, but it is also actively contributing to increased water scarcity by sourcing avocados from orchards grown on deforested land—all while marketing its products to D.C. consumers as sustainably and responsibly sourced.

C. West Pak’s Sourcing of Avocados from Orchards on Deforested Land Contributes to Climate Change and to Habitat and Biodiversity Loss.

49. Deforestation exacerbates the global climate crisis by disrupting the natural carbon cycle of native forests. Native forests act as crucial carbon sinks, absorbing large amounts of carbon dioxide from the atmosphere and storing it in their biomass and soil. When native forests are cleared or burned down, stored carbon is released back into the atmosphere as carbon dioxide, contributing to greenhouse gas emissions and global warming.

50. Recognizing the importance of preserving forests as vital carbon reservoirs and their role in mitigating climate change, more than 140 governments around the world, including the United States and Mexico, have made climate commitments aimed at ending or significantly reducing deforestation by 2030.⁴³

⁴² Simon Romero & Emiliano Rodriguez Mega, *Americans Love Avocados. It’s Killing Mexico’s Forests*, N.Y. TIMES (Nov. 28, 2023), <https://www.nytimes.com/2023/11/28/us/mexico-avocado-deforestation.html>.

⁴³ *Glasgow Leaders’ Declaration on Forests and Land Use*, NAT’L ARCHIVES (Feb. 11, 2021), <https://webarchive.nationalarchives.gov.uk/ukgwa/20230418175226/https://ukcop26.org/glasgow-leaders-declaration-on-forests-and-land-use/>.

51. The destruction and replacement of native forests in the avocado-growing regions of Mexico with avocado monocrop orchards reduces the capture and storage of atmospheric carbon. One scientific study found that the “need to minimize deforestation for avocado expansion is clear, as aboveground carbon storage in Michoacán’s pine-oak forests is more than double that of avocado orchards.”⁴⁴

52. Avocado trees sequester much less carbon than other local species, such as the native pine, which captures four times more carbon dioxide per hectare than avocado trees.⁴⁵

53. West Pak’s sourcing of avocados from orchards grown on deforested land is therefore directly linked to the release of harmful greenhouse gases into the atmosphere and decreased carbon capture, exacerbating the global climate crisis and contravening West Pak’s representations to consumers.

54. Michoacán’s native forests are described as a “hotspot of pine and oak diversity”⁴⁶ and are of conservation importance for the diversity of plant and animal life that they contain.

55. The Trans-Mexican Volcanic Belt Pine-Oak Forests ecoregion, which runs through Michoacán, includes white oak species and the family *Asteraceae* with 370 endemic species.⁴⁷

56. The prevalence of volcanic activity in this area has created myriad microhabitats with a wide variety of flora and fauna. The area is home to numerous animals including axolotls, the Mexican bearded lizard, several species of frogs, and other amphibians and reptiles.

⁴⁴ Audrey Denvir, *Avocados Become a Global Commodity: Consequences for Landscapes and People*, at 92 (Aug. 2023) (Ph.D. dissertation, University of Texas at Austin) (on file with Plaintiff OCA).

⁴⁵ *Forests Falling Fast to Make Way for Mexican Avocado*, *supra* note 5.

⁴⁶ Audrey Denvir, *Avocado expansion and the threat of forest loss in Michoacán, Mexico under climate change scenarios*, 151 APPLIED GEOGRAPHY, at 2 (2023).

⁴⁷ Jan Schipper, *Trans-Mexican Volcanic Belt Pine-Oak Forests*, ONE EARTH, <https://www.oneearth.org/ecoregions/trans-mexican-volcanic-belt-pine-oak-forests/> (last visited Aug. 1, 2024).

57. The volcano rabbit and Mexican volcano mouse are examples of unique, endemic mammals that live in these native forests. In fact, 50% of Mexico’s mammals can be found in the ecoregion.

58. Restricted range birds native to the Trans-Mexican Volcanic Belt Pine-Oak Forests ecoregion include the Sierra Madre sparrow and green-stripe brush finch.

59. Michoacán is home to some of the most biologically important forests in Mexico,⁴⁸ such as the Monarch Butterfly Biosphere Reserve, where millions of endangered monarch butterflies travel to during their annual migration journey.⁴⁹ Colonies of monarch butterflies hibernate in these forests annually before migrating north.

60. The number of endangered monarch butterflies in Mexico dropped by 59% in the 2023-2024 season to the second-lowest level since record keeping began.⁵⁰

61. The monocrop avocado orchards that are replacing forests across Michoacán exacerbate water scarcity in the region, contribute to habitat and biodiversity loss, and contribute to climate change.

62. Therefore, West Pak’s marketing—which suggests that its products are sustainable and responsibly sourced—is false and misleading to D.C. consumers.

63. The loss of these incredibly diverse and ecologically important forests to avocado orchards has devastating effects on the biodiversity of the region as well as the local habitats for dozens of unique species, such as those mentioned above.⁵¹

⁴⁸ *Avocado expansion and the threat of forest loss in Michoacán, Mexico under climate change scenarios*, supra note 46.

⁴⁹ *Forests Falling Fast to Make Way for Mexican Avocado*, supra note 5.

⁵⁰ *Eastern migratory monarch butterfly populations decrease by 59% in 2024 grounds*, WORLD WILDLIFE FUND (Feb. 7, 2024) <https://www.worldwildlife.org/stories/eastern-migratory-monarch-butterfly-populations-decrease-by-59-in-2024>.

⁵¹ Audrey Denvir et al., *Ecological and Human Dimensions of Avocado Expansion in Mexico: Towards Supply-Chain Sustainability*, 51 NAT’L LIBR. OF MED. 152-166 (Mar. 18, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8651965/>.

64. West Pak’s sourcing of avocados from orchards grown on deforested land in this region is directly linked to the rampant biodiversity and habitat loss occurring in Michoacán and Jalisco.

65. West Pak’s Sustainability Representations are false and misleading to consumers because West Pak sells avocados harvested from deforested land. As explained herein, the sourcing of the avocados sold and distributed by West Pak contributes to deforestation, water scarcity, climate change, and biodiversity/habitat loss.

III. West Pak’s Sustainability Representations Are Misleading to D.C. Consumers

66. Defendant’s Sustainability Representations are false and misleading to D.C. consumers.

67. Consumers care deeply about environmentally conscious practices in supply chains.

68. A survey of 5,000 United States consumers showed that significant segments prioritize “more transparency from food producers and retailers” and “accountability and transparency through the entire food supply chain.”⁵²

69. A recent survey by Specright found that “more than half (58 percent) of consumers indicated they are willing to spend more money on products that are deemed sustainable or environmentally friendly.”⁵³

⁵² *Consumer Survey Shows Changing Definition of Food Safety*, FOOD SAFETY NEWS (Feb. 4, 2016), <https://www.foodsafetynews.com/2016/02/123246/>.

⁵³ *Survey Reveals Consumers Prioritize Purchasing Sustainable Products and Desire Greater Transparency from Companies on Sustainability Progress*, PR NEWswire (Nov. 15, 2023, 10:00 AM), <https://www.prnewswire.com/news-releases/survey-reveals-consumers-prioritize-purchasing-sustainable-products-and-desire-greater-transparency-from-companies-on-sustainability-progress-301988839.html>.

70. Another survey concluded that 77% of consumers are concerned about sustainability specifically as it relates to “day-to-day decisions about food.”⁵⁴

71. A recent study by NielsenIQ found that 78% of United States consumers say that a “sustainable” lifestyle is “important to them.”⁵⁵

72. Deloitte’s “Sustainable Consumer 2023” report states that “one in four consumers are prepared to pay more for sustainability.”⁵⁶

73. The Federal Trade Commission (“FTC”) has specifically acknowledged that “sustainable” claims are material to consumers.⁵⁷

74. The FTC has determined that unqualified general environmental benefit claims such as “sustainable”⁵⁸ are “likely convey that the product . . . has specific and far-reaching environmental benefits and may convey that the item . . . has no negative environmental impact.”⁵⁹ The FTC has admonished companies not to use unqualified claims such as “sustainable” due to its determination that “it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims.”

75. Researchers have found that consumers seek out and are willing to pay significantly more for products labeled as “ecologically sustainable.”⁶⁰

⁵⁴ Louise Berrebi et al., *Whetting Consumers’ Appetite for Sustainable Foods*, BCG (May 30, 2023), <https://www.bcg.com/publications/2023/whetting-consumers-appetite-for-sustainable-foods>.

⁵⁵ *Consumers care about sustainability—and back it up with their wallets*, MCKINSEY & CO. (Feb. 6, 2023), https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/consumers-care-about-sustainability-and-back-it-up-with-their-wallets#.

⁵⁶ *What Consumers Care About When It Comes to Sustainability*, DELOITTE (Oct. 19, 2023), <https://www2.deloitte.com/uk/en/pages/consumer-business/articles/sustainable-consumer-what-consumers-care-about.html>.

⁵⁷ See FTC Green Guides, 16 C.F.R. § 260.4(b) (2014).

⁵⁸ Press Release, *FTC Sends Warning Letters to Companies Regarding Diamond Ad Disclosures*, F.T.C. (Apr. 2, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-sends-warning-letters-companies-regarding-diamond-ad>.

⁵⁹ § 260.4(b) (2014).

⁶⁰ Loren McClenachan et al., *Fair trade fish: Consumer support for broader seafood sustainability*, 17 FISH AND FISHERIES 825–838, 825 (2016).

76. West Pak is aware that consumers are willing to pay more for sustainable and responsibly sourced avocados, and deceptively tailors its marking to take advantage of that willingness.

STATUTORY FRAMEWORK

77. This action is brought under the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*

78. The CPPA makes it a violation for “any person” to, *inter alia*:

Represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

Represent that goods or services are of a particular standard, quality, grade, style, or model, if in fact they are of another;

Misrepresent as to a material fact which has a tendency to mislead;

Fail to state a material fact if such failure tends to mislead;

Use innuendo or ambiguity as to a material fact, which has a tendency to mislead;

Advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered; or

Use deceptive representations or designations of geographic origin in connection with goods or services.

D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h), (t).

79. A violation of the CPPA may occur regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” *Id.* § 28-3904.

80. The CPPA “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.” *Id.* § 28-3901(c).

81. The CPPA “shall be construed and applied liberally to promote its purpose.” *Id.*

82. Under the statute, a “merchant” is defined as “a person, whether organized or operating for profit or for a nonprofit purpose, who in the ordinary course of business does or would sell, lease (to), or transfer, either directly or indirectly, consumer goods or services, or a person who in the ordinary course of business does or would supply the goods or services which are or would be the subject matter of a trade practice” *Id.* § 28-3901(a)(3).

83. Because OCA is a public-interest organization, it is empowered under the CPPA to act on behalf of consumers, *i.e.*, the general public of the District of Columbia, so long as the organization has a “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” *Id.* § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, *see infra* ¶¶ 98-104, Plaintiff OCA’s mission is to advocate for and educate consumers on the health and environmental impact of their food choices, which it has long done within the District of Columbia, and OCA has previously represented D.C. consumers in similar actions under the CPPA. OCA has a sufficient nexus to D.C. consumers to adequately represent their interests.

84. The CPPA is the nation’s broadest consumer-protection statute, “applied liberally to promote its purpose.” D.C. Code Section 28-3901(c).

85. OCA is a public interest organization statutorily empowered pursuant to D.C. Code Section 28-3905(k)(1)(D) to represent the interests of District of Columbia consumers.

86. The beneficiaries of this action are District of Columbia consumers, and the case concerns representations made in the District of Columbia, to residents of the District of Columbia, and with the intent that residents would act upon those representations and purchase products within the District of Columbia.

87. The District has a strong interest in protecting its consumers through enforcement of the CPPA.

88. The general public of the District has a corresponding interest in the vigorous enforcement of laws established to protect District consumers. OCA, who has agreed to represent the interest of those consumers, has an interest in vindicating its rights conferred by the CPPA and challenging misrepresentations made to those consumers.

89. OCA has an interest in prosecuting its case within the District, which is where the alleged injuries occurred and where the relevant products were advertised for purchase and/or purchased.

90. The rights conferred by the CPPA for the protection of District consumers are unique.

91. This is not a class action, or an action brought on behalf of a specific consumer, but an action brought by OCA for injunctive and declaratory relief on behalf of the general public, *i.e.*, D.C. consumers generally. No class certification will be requested.

92. This action does not seek money damages. Instead, OCA seeks to end the unlawful conduct directed at D.C. consumers. Remedies available under the CPPA include “[a]n injunction against the use of the unlawful trade practice” and “[a]ny other relief which the court determines proper.” *Id.* § 28-3905(k)(2)(D), (F).

93. OCA also seeks declaratory relief in the form of an order holding West Pak’s conduct to be unlawful under the CPPA.

PARTIES

94. Defendant West Pak is a California business corporation founded in 1982 and headquartered in Murrieta, California.

95. West Pak is an avocado producer, packer, importer, and distributor with offices and distribution centers across the United States, and with sourcing operations in Mexico, Colombia, Peru, and Chile.

96. West Pak distributes, or causes its avocados, to be distributed and sold within the District of Columbia.

97. West Pak's avocados are marketed and sold in the District at stores such as Aldi's, Target, and Trader Joe's.

98. Plaintiff OCA is a Section 501(c)(3) non-profit public-interest organization that deals with crucial issues of truth in advertising, accurate food labeling, food safety, children's health, corporate accountability, and environmental sustainability. *See* D.C. Code § 28-3901(14) and (15).

99. OCA formed in 1998 in the wake of backlash by consumers against the U.S. Department of Agriculture's proposed national regulations for organic food. In its public education, network-building, and mobilization activities, OCA works with a broad range of public-interest organizations to challenge industrial agriculture and corporate globalization and to inspire consumers to "Buy Local, Organic, and Fair Made."

100. OCA focuses on promoting the views and interests of consumers, including the United States' estimated 50 million organic and socially responsible consumers. OCA's media team provides background information, interviews, and story ideas to media producers and journalists on a regular basis. OCA represents and advances the rights and interests of consumers by educating consumers on food safety, industrial agriculture, genetic engineering, corporate accountability, and environmental sustainability issues. OCA uses funds it raises to protect the environment by promoting regenerative, organic, and/or sustainable agriculture.

101. As part of this work, OCA has engaged in efforts to educate consumers about the realities of where consumers' food actually comes from, and the implications of food production. OCA also uses its funds and member base to pressure food companies to adopt honest labeling practices to benefit consumers. OCA's website, publications, public education, research, network building, and mobilization activities provide an important service to consumers and community activists every month.

102. Specifically, OCA educates consumers on the issues of rampant deforestation, water theft, and cartel violence associated with the Mexican avocado industry via its "The Dark Side of Avocados" campaign. This campaign encourages consumers to get informed and to take action, and it provides links to relevant articles explaining the issues.⁶¹ OCA further advises consumers to choose California-grown organic avocados or Mexican-grown organic and fair trade avocados and to avoid certain brands, including West Pak, that source from avocado orchards planted on deforested land.⁶²

103. OCA reaches out to its members through its newsletter, Organic Bytes. In June 2024, OCA highlighted the environmental and human rights issues surrounding Mexican avocados and encouraged its members to "[t]ell the rest of the avocado industry to . . . stop buying avocados grown on deforested land" by signing a petition.⁶³

⁶¹ *The Dark Side of Avocados*, OCA, <https://organicconsumers.org/campaigns/the-dark-side-of-avocados/> (last visited July 10, 2024).

⁶² Alexis Baden-Mayer, *Why You Should Only Buy Organic & Fair Trade Avocados*, OCA (May 22, 2024), <https://organicconsumers.org/why-you-should-only-buy-organic-fair-trade-avocados/>.

⁶³ *Organic Bytes Newsletter #851: Wholly Guacamole: Stop Deforestation!*, OCA, <https://organicconsumers.org/organic-bytes-newsletter-851-wholly-guacamole-stop-deforestation/> (last visited July 10, 2024).

104. Additionally, OCA has a sister non-profit organization, Vía Orgánica AC, that runs an organic farm, educational, and outreach center in Guanajuato, Mexico, that is dedicated to promoting the organic movement throughout Mexico.⁶⁴

JURISDICTION

105. This Court has subject matter jurisdiction over this action pursuant to the District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3901 *et seq.*

106. Plaintiff OCA consents to this Court's jurisdiction over it by filing this Complaint. OCA seeks to represent consumers and the general public of the District of Columbia.

107. OCA has hundreds of thousands of supporters nationwide, including consumers in the District of Columbia, who seek to purchase food products that are better for public health, animals, and the environment.

108. This Court has personal jurisdiction over West Pak because West Pak has purposefully directed its conduct to the District and has availed itself of the benefits and protections of District of Columbia law. West Pak distributes its products at stores within D.C. such as Target, Aldi, and Trader Joe's, and its internet advertising is accessible in the District by District consumers. West Pak's avocados can be, and are, purchased in D.C. by D.C. consumers.

CAUSE OF ACTION

Violations of the District of Columbia Consumer Protection Procedures Act

109. OCA incorporates by reference all the allegations of the preceding paragraphs of this Complaint.

⁶⁴ *Nuestra Misión* [Our Mission], *VIA ORGANICA*, <https://viaorganica.org/quienes-somos/> (last visited Aug. 1, 2024).

110. OCA is a public-interest organization that brings these claims on behalf of the general public of D.C. and D.C. consumers. *See* D.C. Code § 28-3905(k)(1)(D)(i).

111. Through § 28-3905(k)(1)(D)(i), the CPPA authorizes OCA to stand in the shoes of a consumer to seek relief from any violation of the CPPA.

112. West Pak is a “person” and a merchant that provides “goods” within the meaning of the CPPA. *See id.* § 28-3901(a)(1), (3), (7).

113. As set forth *supra* in Section I, Fact Allegations, West Pak has advertised and marketed the avocados with Sustainability Representations when, in fact, its avocados are produced through unsustainable and environmentally destructive practices that contribute to deforestation and water depletion. West Pak has violated the CPPA by representing that goods have a source, characteristics, or benefits that they do not have; representing that goods are of a particular standard or quality if in fact they are of another; misrepresenting as to a material fact which has a tendency to mislead; failing to state a material fact if such failure tends to mislead; using innuendo or ambiguity as to a material fact, which has a tendency to mislead; and advertising or offering goods without the intent to sell them as advertised or offered. *See id.* § 28-3904(a), (d), (e), (f), (f-1), (h).

JURY TRIAL DEMAND

114. Plaintiff OCA hereby demands a trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiff OCA prays for judgment against West Pak and requests the following relief:

- a) A declaration that West Pak’s conduct is in violation of the CPPA;
- b) An order enjoining West Pak’s conduct found to be in violation of the CPPA; and

- c) An order granting Plaintiff costs and disbursements, including reasonable attorneys' fees and expert fees, and prejudgment interest at the maximum rate allowable by law.

Dated: August 2, 2024

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