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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF ALAMEDA**

10 DIRECT ACTION EVERYWHERE SF BAY
AREA, an unincorporated association, on behalf of
11 the general public, and BARBARA ELLIOTT, a
consumer, on behalf of herself and all others
12 similarly situated,

13 Plaintiffs,

14 v.

15 DIESTEL TURKEY RANCH, a California
corporation, exempt private foundation,

16 Defendant.
17

Case No. RG17847475

Class Action

**SECOND AMENDED COMPLAINT FOR
NEGLIGENT REPRESENTATION, BREACH
OF EXPRESS WARRANTY, VIOLATIONS
OF CALIFORNIA'S CONSUMERS LEGAL
REMEDIES ACT, CAL. CIV. CODE §§ 1750-
1785, FALSE ADVERTISING LAW, CAL.
BUS. & PROF. CODE § 17500, *ET SEQ.*, AND
UNFAIR COMPETITION LAW, CAL. BUS. &
PROF. CODE §§ 17200-17210**

JURY TRIAL DEMANDED

19
20 Direct Action Everywhere SF Bay Area ("Plaintiff DxE"), an unincorporated association,
21 acting on behalf of the general public, and Barbara Elliott ("Plaintiff Elliott"), a California resident and
22 consumer, by and through their counsel, bring this action against Diestel Turkey Ranch ("Defendant"),
23 a California corporation. Plaintiff DxE alleges the following based on personal knowledge as to its
24 own actions and its counsel's investigation, and upon information and belief as to all other matters.
25 Plaintiff Elliott alleges the following class action claims based upon Plaintiff Elliott's personal
26 knowledge as to her own actions and her counsel's investigations, and upon information and belief as
27 to all other matters.
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NATURE OF THE CASE

1. Plaintiffs bring this action against Defendant Diestel Turkey Ranch, which markets and advertises its turkey products in various media in such a manner as to falsely and misleadingly suggest that all of the turkeys in its products are “Thoughtfully Raised” in a manner more humane than in typical agro-industrial conditions.

2. Defendant prominently features the phrase “Thoughtfully Raised” across its marketing materials, including on its website, social media postings, and in television appearances. Defendant also labels its Turkey Products as “Thoughtfully Raised.”

3. “Thoughtfully Raised” is often accompanied on Defendant’s marketing materials by other representations intended to suggest that Defendant’s turkeys are raised in humane, ranch-like conditions. These representations include, but are not limited to, claims that Defendant’s products come from turkeys who are “Range Grown,” “Slow Grown,” “Thoughtfully Raised on Sustainable Family Farms,” and/or raised in conformance with Global Animal Partnership (“GAP”) standards.

4. Together, these representations form the cornerstone of an overall marketing scheme designed by Defendant to mislead the public as to (a) the animal welfare conditions in which it raises and slaughters its turkeys; and (b) the sustainability of its agro-industrial practices.

5. The Diestel turkey products at issue (collectively, the “Turkey Products”) include the following:

- Naturally Smoked Whole Turkey
- Naturally Oven Roasted Whole Turkey
- Organic Oven Roasted Whole Turkey
- Organic Heirloom Whole Turkey
- Diestel Organic Whole Turkey
- Low Sodium Oven Roasted Turkey Breast
- Organic Roasted Turkey Breast
- Organic Honey Roasted Turkey Breast
- Organic Pre-Sliced Smoked Turkey
- Organic Pre-Sliced Oven Roasted Turkey

- Diestel Non-GMO Project Verified Young Turkey
- Original Diestel Turkey
- Petite Turkey
- Diestel Turkey Chorizo
- Fully Cooked Drums and Thighs
- Natural Burgers
- Boneless Young Turkey Roast
- Heidi's Hens Organic Breast Roast
- Bone-In Breasts Young Turkey Breast
- Brined Turkey Breast.¹

6. The Turkey Products are available for purchase throughout California at retail locations such as Whole Foods Market, Farmer Joe's Marketplace, and Erewhon Natural Foods. Defendant also supplies the University of California, Berkeley.

7. The Turkey Products are available for purchase at Whole Foods Markets in multiple states, including at Whole Foods Markets throughout California.

8. Despite Defendant's claims, the turkeys used in its Turkey Products are not raised in a manner a reasonable consumer would consider "Thoughtfully Raised" or otherwise consistent with Defendant's marketing claims.

9. In fact, Defendant does not raise its turkeys in a manner materially different from or more humane than typical agro-industrial conditions. Defendant's turkeys commonly suffer from, among other things, overcrowding, illness, injury, pain, filth, excessive confinement, lack of enrichment, and premature death.

10. Consumers care about animal welfare, and many are willing to pay extra money for products that they believe come from animals who were treated humanely, as numerous consumer studies have documented.² For instance, a 2007 consumer survey found that 58% of consumers are

¹ Discovery may indicate that additional products should be included within the scope of this Complaint, and Plaintiff reserves the right to add those products.

² Animal Welfare Institute, *Consumer Perceptions of Farm Animal Welfare*, https://awionline.org/sites/default/files/uploads/documents/fa-consumer_perceptionsoffarmwelfare_-112511.pdf (last visited Nov. 13, 2017).

1 willing to pay more for animal products labeled as “humanely raised.”³ Similarly, a 2010 survey found
2 that 57% of consumers are willing to pay a premium for “food that promises to be produced according
3 to higher ethical standards.”⁴

4 11. A 2016 American Society for the Prevention of Cruelty to Animals (“ASPCA”) survey
5 found that two-thirds of consumers would be willing to pay more for animal products that are
6 “welfare-certified.”⁵

7 12. A Consumer Reports survey also found that it is important to consumers that food not
8 be produced via standard factory farm methods. For example, 82% of consumers said it was
9 “important” or “very important” to reduce antibiotic use in food production, and 84% said the same
10 about improving living conditions for animals.⁶

11 13. Defendant is aware of the growing demand for humanely raised⁷ animal products,
12 which Defendant exploits through its false and misleading advertising in order to induce consumers to
13 pay a premium for its “Thoughtfully Raised” Turkey Products.⁸

14 14. Due to its misrepresentations, Defendant is able to charge a premium for Turkey
15 Products, which are sold for as much as \$8.99 per pound.⁹

16 15. In comparison, truthfully marketed turkey products from other typical agro-industrial
17 facilities sell for as little as \$0.59 per pound.¹⁰

19 ³ *Id.* at 8.

20 ⁴ *Id.*

21 ⁵ Animal Welfare Institute, *supra* n.2, at 7.

22 ⁶ Consumer Reports National Research Center, *Natural Food Labels Survey* (2015), at 3, available at
23 [http://www.consumerreports.org/content/dam/cro/magazine-](http://www.consumerreports.org/content/dam/cro/magazine-articles/2016/March/Consumer_Reports_Natural_Food_Labels_Survey_2015.pdf)
24 [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).

25 ⁷ Defendant previously represented its Turkey Products as “Humanely Raised.” Upon information and belief, this phrase
26 was only recently phased out in favor of “Thoughtfully Raised.” Defendant’s interchangeable use of these regulated and
27 unregulated phrases capitalizes on the widespread consumer confusion over the meanings of these and similar marketing
28 claims. *See id.* at 9-11.

⁸ As evidence of Defendant’s desire to market “humanely raised” products to exploit consumer willingness to pay more,
Defendant has previously advertised its Turkey Products as “humanely raised on sustainable family farms.” On May 22,
2014, a USDA inspector discussed with Defendant that it did not have the approval for such a special labeling claim. The
inspector raised the issue of non-compliance with 9 CFR 381.129(b) and 9 CFR 381.133(b). In December 2014,
Defendant’s “Thoughtfully Raised” label was approved as modified. This suggests that perhaps Defendant never had
USDA approval to make a special claim at all, and that the change to the “Thoughtfully Raised” advertising claim was an
attempt to avoid the government regulation.

⁹ *See* Eat Like No One, Whole Foods Market Turkey Prices 2015, [http://www.eatlikenoone.com/whole-foods-market-](http://www.eatlikenoone.com/whole-foods-market-turkey-prices-2015.htm)
[turkey-prices-2015.htm](http://www.eatlikenoone.com/whole-foods-market-turkey-prices-2015.htm).

¹⁰ *See* Time, *Cheap Thanksgiving Turkey Prices* (Nov. 23, 2015), [http://time.com/money/4124279/cheap-thanksgiving-](http://time.com/money/4124279/cheap-thanksgiving-turkey-prices)
[turkey-prices](http://time.com/money/4124279/cheap-thanksgiving-turkey-prices).

1 16. As part of its false and misleading marketing scheme, Defendant invites the public to
2 visit its picturesque Sonora-based turkey ranch (“Sonora Ranch”), where guests watch as turkeys
3 freely roam sprawling green pastures in the foothills of Northern California.

4 17. During the applicable limitations period, Defendant marketed and advertised on social
5 media and other marketing materials in such a manner as to create the impression that **all** of its turkeys
6 are raised in the same location and in the same manner as the turkeys on the Sonora Ranch.¹¹

7 18. Contrary to this impression, however, only a tiny percentage of Turkey Products sold
8 by Defendant contain turkeys raised on the Sonora Ranch.

9 19. To obfuscate the origins of its Turkey Products, Defendant has intentionally omitted
10 from its social media, website, and other marketing materials the fact that most Diestel turkeys are not
11 raised on the scenic Sonora Ranch.

12 20. This omission of material fact, coupled with affirmative representations and imagery of
13 pasture-raised turkeys, conceal the fact that Diestel turkeys are actually housed in industrial barns in
14 facilities (“Off-Site Facilities”) located miles away from the idyllic Sonora Ranch.

15 21. The animal welfare conditions and the agricultural practices at these Off-Site
16 Facilities—which are not open to public scrutiny—are not materially different from typical agro-
17 industrial conditions, i.e., overcrowded poultry barns, insufficient space for birds to engage in natural
18 behaviors, and waterways polluted by massive amounts of manure and slaughterhouse waste.

19 22. As a result of Defendant hiding the Off-Site Facilities from the public and promoting
20 the Sonora Ranch to consumers, reasonable consumers who purchased Turkey Products based on the
21 false representations that Diestel turkeys are “Thoughtfully Raised” in idyllic, ranch-like conditions
22 suffered harm in the form of the higher price that Defendant was able to command of consumers
23 willing to pay more for humanely raised animal products.

24 23. Defendant has compounded these misrepresentations by marketing its Turkey Products
25 as coming from turkeys who are raised in a manner consistent with either GAP “Animal Welfare
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27 ¹¹ Even Defendant’s name, Diestel Turkey Ranch, as well as the position and placement of “Turkey Ranch” separate from
28 “Diestel” in displaying its brand name, is calculated to contribute to the reasonable impression that Defendant makes its
turkey products from turkeys who enjoy ranch-like conditions, and enjoy a lifestyle more humane than turkeys raised under
typical agro-industrial conditions.

Rating 3 Enhanced Outdoor Access”¹² or “Animal Welfare Rating 5+ Animal Centered” standards. Defendant widely advertises its Turkey Products as meeting various levels of GAP animal welfare certification standards despite raising a large proportion of its turkeys in a manner that fails, in numerous significant respects, to meet even the lowest tier of GAP’s certification standards, as alleged more fully below.

24. As a result of this misrepresentation, consumers who purchased Defendant’s Turkey Products under the impression that its turkeys were “Thoughtfully Raised” in a manner consistent with animal welfare certification standards suffered harm in the form of the higher price that Defendant was able to command.

25. Defendant’s false and misleading representations and omissions of fact constitute negligent misrepresentation, breach of express warranty, and 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”). Plaintiffs seek an order requiring Defendant to, among other things, (1) cease the unlawful marketing of the Turkey Products, and (2) conduct a corrective advertising campaign.

FACTUAL ALLEGATIONS

I. Defendant’s Advertising Is Designed To, and Does, Mislead Consumers About Whether Its Turkeys Are “Humanely Raised” and/or “Thoughtfully Raised.”

26. Defendant has previously labeled and advertised its products as “Humanely Raised” and currently labels and advertises its Turkey Products as “Thoughtfully Raised,” including on its website, reproduced below.

¹² The “Animal Welfare Rating 3 Enhanced Outdoor Access” label only appears on Turkey Products sold in Whole Foods Markets, but Defendant generally markets its Turkey Products as GAP-certified and “GAP-Rated Step 3” appears on Turkey Product listings throughout its online store.

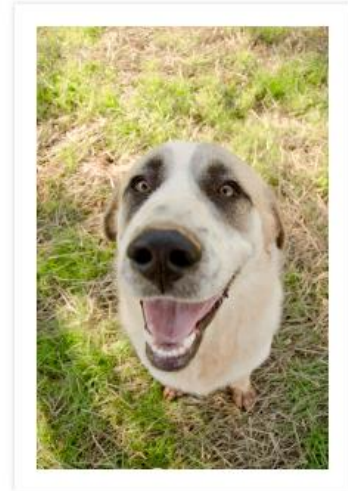
Thoughtfully Raised

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.



27. On or about May 16, 2014, a USDA inspector became aware of labels on whole body turkeys, one of the Turkey Products, that made the special claim the turkeys were “Humanely Raised on Sustainable Family Farms.” The inspector noted that 996 cases containing about 20,122.06 pounds of turkeys with that label had been shipped, therefore entering commerce. The inspector stated, “[t]his is, therefore, a noncompliance with” 9 C.F.R. § 381.129(b) and 9 C.F.R. § 381.133(b), which concerns false or misleading labeling.

28. On or about May 22, 2014, a USDA inspector had an awareness meeting with Defendant and noted, “[i]t was discussed that they did not have approved label for special claim of ‘Humanely raised on sustainable family Farms’” (typographical error in original). Defendant claimed to have the special label approval that could be produced to the USDA in short order. However, the USDA’s notes for the coming months do not indicate that Defendant proffered any documentation regarding approval of this special label claim prior to the Turkey Products entering commerce.

29. Instead, later in 2014, Defendant submitted draft labels for approval to USDA FSIS using the term “Thoughtfully Raised” instead of “Humanely Raised.”

30. Defendant falsely and misleadingly markets and advertises the Turkey Products as “Thoughtfully Raised” because it knows consumers will buy more of, and pay more for, a “thoughtful” product, and for a product that originates from animals raised humanely, animals raised with higher welfare standards, animals raised without intensive use of pharmaceuticals, or animals

1 raised according to agricultural practices that are environmentally sustainable.

2 31. Defendant additionally falsely and misleading labels its Turkey Products as
3 “Thoughtfully Raised.” Upon information and belief, Defendant did not submit the required evidence
4 to substantiate its special animal raising claims that the turkeys were “Thoughtfully Raised” before
5 placing the label on the Turkey Products that entered commerce, as is required by the Food Safety and
6 Inspection Service Labeling Guideline on Documentation Needed to Substantiate Animal Raising
7 Claims for Label Submissions.¹³

8 32. The FSIS Compliance Guide that addresses labels, including the 2015 version that
9 Defendant previously requested that the Court judicially notice, explains that animal raising terms
10 such as “Humanely raised” are a special statement or claim that must be approved by the Label
11 Program Delivery Staff before entering commerce, per 9 C.F.R. § 412.1.

12 33. Some labels that appeared on Turkey Products during the applicable limitations period
13 did not have any asterisk, definition or qualifications to the consumer regarding this representation, as
14 required by Food Safety and Inspection Service Labeling Guideline on Documentation Needed to
15 Substantiate Animal Raising Claims for Label Submissions.

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¹³ Available at <https://www.fsis.usda.gov/wps/wcm/connect/6fe3cd56-6809-4239-b7a2-bccb82a30588/RaisingClaims.pdf?MOD=AJPERES> (Sept. 2016).



34. Some labels do provide an asterisk and definition, as pictured below, and circularly define “Thoughtfully Raised” as “Thoughtfully raised on sustainable family farms with plenty of fresh air and space to roam, our turkeys are given individual care and a wholesome diet.”

35. As more fully explained below, the representations that the turkeys are raised on “sustainable family farms,” “with plenty of fresh air,” “space to roam,” and “given individual care and a wholesome diet,” are false and misleading.

36. Defendant’s conduct regarding “Thoughtfully Raised” does not meet consumer expectations.

37. Defendant places these false and misleading statements in close proximity to the formal USDA inspection seal on the product label, which further misleads and deceives reasonable consumers into thinking that the USDA inspected and approved these claims. The use of the statements in concert with the USDA shield creates the impression in the mind of consumers that an unbiased third party inspected or certified the claims.

38. The reality of the Turkey Products does not match the (a) marketing and advertising representations and (b) labeling representations that Defendant makes about them. The Turkey

Products negatively affect human health, and do not match Defendant's representations, because they contain chemical residues that Defendant denies. The Turkey Products negatively affect animal welfare, and do not match Defendant's representations, because the turkeys who end up in the Turkey Products are not raised in the manner that Defendant presents. The Turkey Products negatively affect the environment, and do not match Defendant's representations, because Defendant's farming methods have repeatedly violated clean air and water laws, when Defendant advertises and markets its "sustainable" approach.

A. Chemical Residues Present in the Turkey Products.

39. Defendant claims on its website that it does not use hormones, antibiotics, or growth stimulants, as shown in this screenshot:

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.

40. On its website, Defendant posts a video called "Meet the Ranchers," in which it claims that Defendant's practices are different than conventional agriculture and that Defendant does not feed the turkeys any hormones, antibiotics, or chemicals.



41. The representations are false. The National Residue Program (“NRP”) of the Food Safety and Inspection Service (“FSIS”) at the United States Department of Agriculture (“USDA”) routinely tests Defendant’s poultry. The FSIS inspected Defendant’s turkeys on four dates in 2015 and 2016 and reported residues of antibiotics important for human use, veterinary antibiotics, a hormone, and other pharmaceuticals.

42. Amikacin, an antibiotic for human use that the Food and Drug Administration (“FDA”) considers important for humans, appeared at 22.6 parts per billion (ppb) in Turkey Product samples. Spectinomycin, also an antibiotic for human use, appeared at up to 12.5 ppb.

43. Chloramphenicol, an antibiotic for human use, appeared at 0.303 ppb in Turkey Product samples. “Chloramphenicol is a potent, broad-spectrum antibiotic with severe toxic effects in humans including bone marrow suppression or aplastic anemia in susceptible individuals. While microorganisms have developed resistance to this drug, it is still used selectively in human and veterinary medicine to treat companion animal bacterial infections. This drug is AMDUCA [Animal Medicinal Drug Use Clarification Act of 1994]-prohibited for extra-label use in animals intended for food.”¹⁴ Because of a zero-tolerance policy, the result exceeded the regulatory tolerance level, and the USDA is permitted to seize poultry where chloramphenicol is found. Chloramphenicol has never been approved to treat food-producing animals.¹⁵ It is dangerous to public health to dose any animal intended as human food with chloramphenicol, even in small amounts.¹⁶

44. Hygromycin, an antibiotic for veterinary use, appeared at 28.9 ppb in Turkey Product

¹⁴ USDA, U.S. National Residue Program for Meat, Poultry, and Egg Products, *2015 Residue Sampling Plans* (Mar. 2015), at 15, available at <https://www.fsis.usda.gov/wps/wcm/connect/04c818ed-9bb1-44b2-9e3f-896461f1ffb9/2015-Blue-Book.pdf?MOD=AJPERES>.

¹⁵ According to the U.S. Food & Drug Administration (FDA), “The CVM [Center for Veterinary Medicine] . . . had never approved it to treat food-producing animals because of the fear that harmful residues would remain in food products. During the early 1980s, testing of American meat samples showed potentially dangerous residue levels of chloramphenicol, indicating that veterinarians and farmers were using the drug illegally to treat cattle and pigs.” *Available at* <https://www.fda.gov/AboutFDA/WhatWeDo/History/ProductRegulation/AnimalHealthandConsumerProtection/> (last visited Nov. 13, 2017).

¹⁶ U.S. FDA, Compliance Policy Guides, Sec. 654.300, Chloramphenicol as an Unapproved New Animal Drug – Direct Reference Seizure Authority, states “The drug, when used in humans, is associated with many toxic effects and, therefore, is used only in life-threatening situations when less toxic drugs are not effective. The principal toxic effect is the development of a type of bone marrow depression (aplastic anemia) in susceptible individuals, which is usually irreversible and fatal. Since this condition only occurs in humans, an appropriate animal test model has never been developed. *The onset of the condition is not dose dependent.*” *Available at* <https://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074681.htm> (emphasis added), (last updated Mar. 20, 2015).

1 samples.

2 45. Iprnidazole, also a veterinary pharmaceutical, appeared at 0.16 ppb.

3 46. Ketamine, a narcotic, appeared at 9.32 ppb in Turkey Product samples. Ketamine is a
4 Schedule III non-narcotic substance under the Federal Controlled Substances Act, 21 U.S.C. § 301 *et*
5 *seq.* The Drug Enforcement Agency describes ketamine as “a dissociative anesthetic that has some
6 hallucinogenic effects.”¹⁷ Ketamine’s street names include Special K, Cat Tranquilizer, and Cat
7 Valium, the latter two referencing its veterinary uses, and it is commonly referred to as a club drug
8 because it is used illegally at dance clubs and raves. The FDA has not approved the use of ketamine in
9 poultry. The regulation addressing ketamine is silent on turkeys and, consistent with lack of regulation
10 and legal use of ketamine in poultry, the governmental testing method has not been validated for
11 poultry. Upon information and belief, this residue indicates that Defendant doses its turkeys with
12 ketamine.

13 47. Melengesterol acetate, also known as MGA, a synthetic hormone, appeared at 2.30 ppb
14 in Turkey Product samples. The FDA has not approved the use of melengesterol acetate in poultry.

15 48. Sulfanitran, an antibacterial drug feed additive, appeared at 8.48 ppb in Turkey Product
16 samples.

17 49. The presence of these residues in the Turkey Product samples means that consumers,
18 when they eat Defendant’s Turkey Products, are unknowingly ingesting these antibiotics important for
19 human medicine, veterinary antibiotics, and other pharmaceuticals.

20 50. The presence of these chemicals in the Turkey Product samples indicates that drugs and
21 other chemicals were used in the raising and/or harvesting of Defendant’s turkeys.

22 51. The use of these drugs and other chemicals in the raising and/or harvesting of
23 Defendant’s turkeys indicates that Defendant’s turkeys, before they wind up in the Turkey Products,
24 are raised in unnatural, intensive-confinement, warehouse conditions that are contrary to the
25 “Thoughtfully Raised” advertising and marketing claims.

26 52. Defendant continues to make the “slow grown in a natural environment” claim on its
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28 ¹⁷ U.S. Drug Enforcement Agency, “Drug Fact Sheet – Ketamine,” *available at*
https://www.dea.gov/druginfo/drug_data_sheets/Ketamine.pdf (last visited Nov. 13, 2017).

website, reproduced below, and the “slow-grown” claim in its advertising brochure. Contrary to that representation, upon information and belief, antibiotics and hormones are used to speed growth.

Slow Grown in a natural environment

Diestel turkeys enjoy the freedom of being slow grown in the clean Sierra Nevada Foothills where they are raised almost twice as long and with four times as much space as conventional birds. We give turkeys time to be turkeys, which means they develop premium texture and flavor naturally.

53. Upon information and belief, Defendant’s turkeys are raised and fed exclusively inside crowded barns, instead of on the range, so that they remain close to an administered food source to expedite the time from hatching to hatchet, contrary to Defendant’s representation that its turkeys are “slow grown.”

54. Despite these facts, Defendant markets and advertises the Turkey Products as “Thoughtfully Raised” and “never given hormones, antibiotics, or growth stimulants.”

B. Animal Welfare Reality, Contrary to Defendant’s Representations.

55. Defendant makes explicit representations regarding its care for the animals, such as assertions regarding fresh air, space to roam, outdoor access, and individual care.¹⁸ Defendant asserts on its website, reproduced below, that it walks 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.

56. The misrepresentations in advertising are known to the community surrounding Defendant’s operations. A neighbor of a Defendant’s 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.”¹⁹ 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’.”²⁰

57. Upon information and belief, and directly contrary to Defendant’s advertising and

¹⁸ Diestel Turkey Ranch, <http://diestelturkey.com/thoughtfully-raised/> (last visited Nov. 13, 2017).

¹⁹ Deposition of Kent Larson (“Larson Depo.”), at 14:4-5.

²⁰ *Id.* at 15: 3-5.

1 marketing, undercover footage of the Jamestown Facility demonstrates that turkeys who end up in the
2 Turkey Products are not “Thoughtfully Raised” or otherwise raised in a manner materially different
3 than turkeys raised under typical agro-industrial conditions, for at least the following reasons²¹:

- 4 • turkeys were raised in over-crowded barns²²;
- 5 • turkeys were found languishing or dead;
- 6 • turkeys suffered from excessive confinement;
- 7 • turkeys were covered in feces;
- 8 • turkeys were trapped in feces that covered much of the barn floor, up to one-half foot
9 deep;
- 10 • turkeys suffered from swollen-shut eyes, swollen nostrils, open wounds, and/or bruises;
- 11 • turkeys were missing large patches of feathers as a result of pecking one another and/or
12 de-feathering from extreme stress;
- 13 • turkeys were routinely subject to debeaking and/or beak-trimming;
- 14 • turkeys suffered from grossly inflamed and swollen crops, which are located near a
15 turkey’s throat;
- 16 • turkeys labored to breathe in an enclosed barn environment dense with ammonia and
17 particles of dried feces and feathers; and
- 18 • turkeys were subject to high mortality rates, with as many as 7% of birds in a barn
19 dying in a single week.
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27 ²¹ Direct Action Everywhere, “A Deadly Feast,” <http://directactioneverywhere.com/s/A-Deadly-Feast.pdf> (last visited Nov.
28 13, 2017).

²² 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.

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



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



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



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



1 *Diestel turkeys were sometimes packed so densely that some were helplessly trampled to death, 2015.*



1 *Diestel turkeys, such as the one below, live in filthy conditions.*

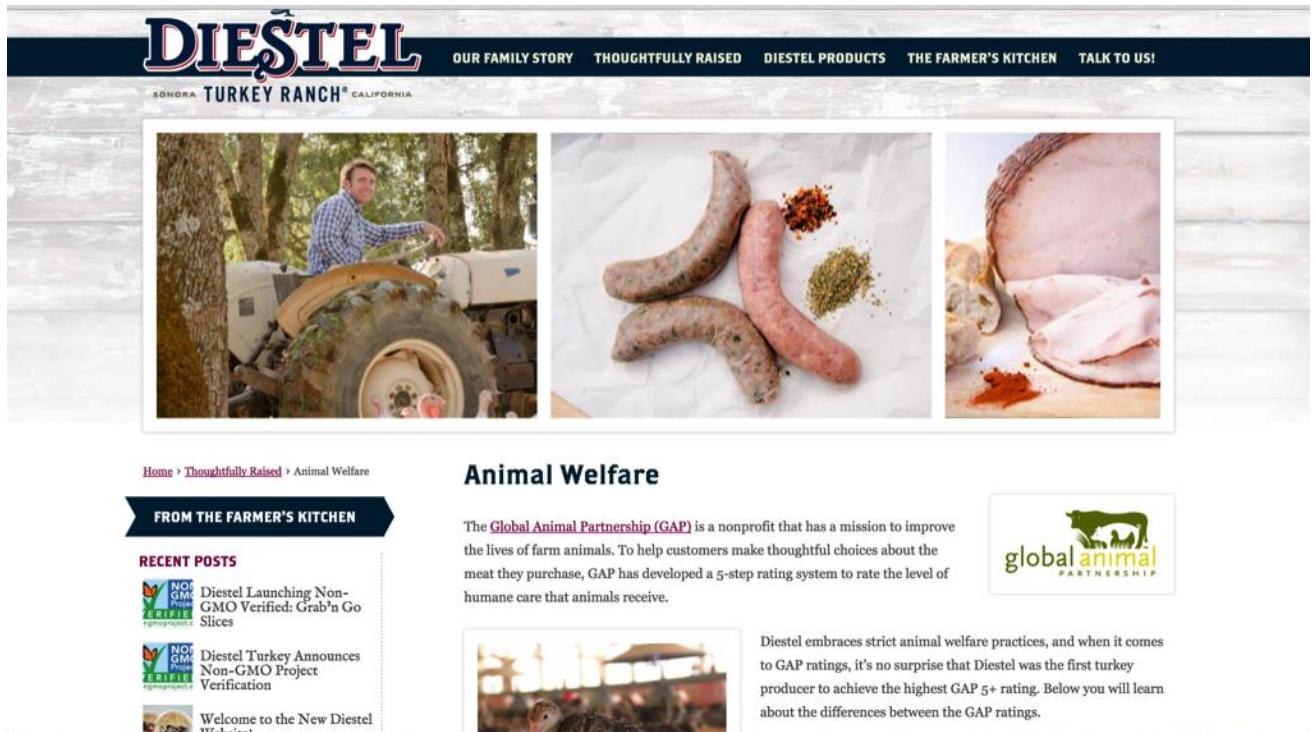


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18 58. As the photographs taken at the over-crowded Diestel facilities indicate, Defendant has
19 deprived turkeys of necessary sustenance, drink, or shelter, and/or failed to provide animals with
20 proper food, drink, shelter, or protection from the weather, to the extent that up to 7% of turkeys inside
21 the barns die in a single week.

22 59. Defendant, as the keeper of animals, has permitted the turkeys to be in a building or
23 enclosure without proper care and attention, to the extent that inadequate care likely resulted in the
24 infliction of unjustifiable pain, suffering or cruelty. While in Defendant's care, turkeys were sick,
25 mired in their own manure, and trampling each other to death.
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II. Defendant's Advertising Is Designed To, and Does, Mislead Consumers About Whether the Turkeys Are Raised in Compliance With GAP-5 Animal Welfare Standards.

60. On its website, Defendant represents that it "embraces strict animal welfare practices" and adheres to GAP animal welfare standards.²³ Defendant also emphasizes GAP 5+ while making humanely raised and harvested claims.



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.

61. While the "GAP Animal Welfare Rating 5+" may apply to turkeys raised on Sonora Ranch,²⁴ Defendant generally emphasizes the GAP ratings in its marketing materials, including when

²³ Diestel Turkey Ranch, <http://diestelturkey.com/thoughtfully-raised/global-animal-partnership-ratings/> (last visited Nov. 13, 2017).

²⁴ See *id.*

describing the meaning of its more widely used “Thoughtfully Raised” representation.²⁵

62. Defendant advertises on Facebook that it sells a GAP Step 5+ rated turkey, giving the misleading impression that all of its turkeys are GAP Step 5+ rated.

63. Upon information and belief, only after Plaintiffs filed this lawsuit did Defendant update its website to address the confusion it had created regarding whether its Turkey Products were rated GAP 3, GAP 5, GAP+.

64. 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.

65. Upon information and belief, Defendant raises the majority of its turkeys at Off-Site Facilities, rather than at the Sonora Ranch.

66. Upon information and belief, turkeys at the Off-Site Facilities endure conditions that would not even meet the requirements of the lowest “steps” of the GAP animal welfare standards, including but not limited to overcrowding, confinement to cages, physical alterations, and lack of proper treatment for sick and injured turkeys.

67. Thus, despite Defendant’s emphasis throughout its marketing materials on the GAP animal welfare standards, most of its Turkey Products come from turkeys who are *not* raised in compliance with the standards.

68. In addition to the advertising and marketing materials, Defendant asserts on its label that the turkeys are raised in conformance with GAP animal welfare standards.

69. Defendant’s representations regarding animal welfare certification, reproduced below, contribute to the misleading impression that all of its turkeys are “Thoughtfully Raised.”

²⁵ See, e.g., <http://diestelturkey.com/thoughtfully-raised/the-diestel-difference/> (last visited Nov. 13, 2017).



[y Raised](#) › Animal Welfare

Animal Welfare

FARMER'S KITCHEN

Launching Non-Verified: Grab'n Go

Turkey Announces MO Project ation

me to the New Diestel: e!

The [Global Animal Partnership \(GAP\)](#) is a nonprofit that has a mission to improve the lives of farm animals. To help customers make thoughtful choices about the meat they purchase, GAP has developed a 5-step rating system to rate the level of humane care that animals receive.



Diestel embraces strict animal welfare practices, and when it comes to GAP ratings, it's no surprise that Diestel was the first turkey producer to achieve the highest GAP 5+ rating. Below you will learn about the differences between the GAP ratings.

[Learn more](#) about the Jason Diestel's involvement with the GAP program.

Coming soon! Stay tuned.

III. Defendant's Advertising Is Designed To, and Does, Mislead Consumers About Whether the Turkeys Are Raised on the Idyllic Sonora Ranch, or at Off-Site Facilities Out of Public View.

70. Defendant's advertising materials omit reference to its Off-Site Facilities where most of their turkeys live. Instead, the advertising focuses on the idyllic Sonora Ranch where comparatively few turkeys live, which gives the misleading impression that all of Defendant's turkeys are raised in ranch-like conditions.

71. Defendant promotes “A Family-Run Sustainable Ranch” on its website and encourages consumers and prospective consumers to visit to the Sonora Ranch, without any mention of the out-of-sight, Off-Site Facilities. On its website, Defendant promotes the “family-run ranching tradition” of “free-range turkeys from our beautiful ranch in the Northern California foothills.”²⁶

72. Through Facebook, reproduced below, Defendant continues to provide the misleading impression that its Sonora Ranch is representative of its turkey-raising operations.



²⁶ Diestel Turkey Ranch, <http://diestelturkey.com/>, captured Nov. 17, 2015.

73. In a promotional marketing leaflet, available at Whole Foods Markets throughout the applicable limitations period, Defendant references and pictures only the Sonora Ranch. The leaflet includes imagery of turkeys grazing freely on green pastures, accompanied by the text “Range-Grown Turkeys from the Diestel Family Ranch.” In the leaflet, Defendant recites its alleged belief that “turkeys should be raised in the most natural environment possible,” alongside imagery of grazing turkeys.





74. The representations and imagery in this leaflet are consistent with similar representations and imagery on Defendant's website, which focus on the idyllic Sonora Ranch and omit reference to Defendant's Off-Site Facilities and the conditions therein.

75. Upon information and belief, Defendant sends its turkeys to the Sonora Ranch only for slaughter and processing, at the conclusion of lives spent in deplorable conditions at Off-Site Facilities.²⁷

76. Defendant has also provided information about Sonora Ranch to government regulators that differs from what Defendant has marketed to consumers. A 2013 California Regional Water Quality Control Board report on the Sonora Ranch states in relevant part (emphasis added):

Prior to 2011, up to 20,000 turkeys were raised on-site each year. In 2011, the amount of turkeys raised at the Ranch was reduced to 8,000. In 2012, the Discharger [Diestel Turkey Ranch] eliminated all commercial use of the on-site pens, but will continue to raise several hundred chickens and turkeys, several dozen goats, pigs, and/or sheep, and 4 to 6 cattle for *non-commercial* purposes. *Commercial turkeys are raised off-site and delivered by truck to the Ranch for processing.*²⁸

77. Upon information and belief, Defendant slaughters approximately 2 million turkeys

²⁷ Upon information and belief, the Sonora Ranch houses a five-acre processing facility, a slaughterhouse, and wastewater treatment plant.

²⁸ California Regional Water Quality Control Board, http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/tuolumne/r5-2013-0112.pdf (2013) (emphasis added).

1 each year.

2 78. Thus, if the information Defendant provided to the California Regional Water Quality
3 Control Board is true, all or most of Defendant's turkeys must originate from Off-Site Facilities, even
4 though they may end up at the Sonora Ranch for slaughter.

5 79. Defendant's marketing materials also heavily emphasize its idyllic Sonora Ranch,
6 intentionally obscuring and omitting the fact that a large proportion of its turkeys are raised in Off-Site
7 Facilities in which conditions are not materially different from typical agro-industrial operations that
8 consumers seek to avoid.

9 80. On November 23, 2015, the *Wall Street Journal* and *Washington Post* reported on a
10 nine-month undercover investigation of Defendant (the "Investigation").²⁹

11 81. The Investigation included extensive footage of Sonora Ranch and of Defendant's
12 Jamestown Facility.

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

16 83. The Jamestown Facility is materially different from what Defendant leads the public to
17 believe about its purported idyllic turkey ranch.

18 84. In addition to the misrepresentations in advertising and marketing materials, Defendant
19 labels its Turkey Products with "Sonora Ranch" or "Sonora, California," which misleads the
20 reasonable consumer into thinking that the Turkey Products originated from idyllic Sonora Ranch
21 instead of the Off-Site Facilities located outside of Sonora, California.

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²⁹ 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>.

1 *Satellite view of Sonora Ranch. Google Earth, <https://www.google.com/earth/>, captured Jan. 27, 2017.*



11 *Satellite view of Off-Site Jamestown Facility. Google Earth, <https://www.google.com/earth/>, captured Jan. 27, 2017.*



22 **IV. Defendant's Advertising Is Designed To, and Does, Mislead Consumers About**
23 **Whether the Turkeys Are "Range Grown."**

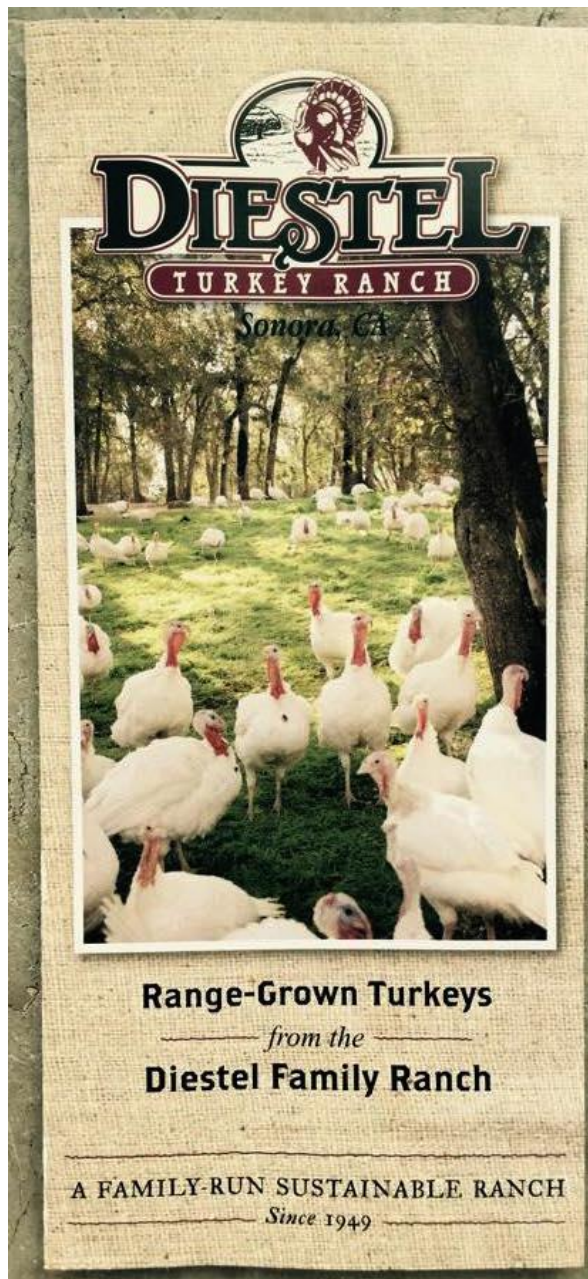
24 85. Defendant's website expands upon the "Thoughtfully Raised" representations, claiming
25 that its turkeys are "Thoughtfully Raised with plenty of fresh air and space to roam, whether
26 indoors or outdoors."³⁰

27
28
³⁰ Diestel Turkey Ranch, <http://diestelturkey.com/thoughtfully-raised/the-diestel-difference/> (last visited Nov. 13, 2017).

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.

86. Defendant specifically claims that its turkeys are “Range-Grown Turkeys,” as depicted in these advertising brochures.



Tender & Juicy · Range Grown · Fed A Low Fat Vegetarian Diet · Family Ranch Since 1949 · Broad-Breasted



87. Defendant's representations carry over to store advertisements, such as this one for Bi-Rite Market, in which Defendant gives the impression that all turkeys are from Sonora and that they are range grown.

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

1 88. Defendant creates and posts videos online that give the misleading impression that all
2 of its Turkey Products are range grown. The video below shows Diestel family members outside with
3 turkeys in fields, and there is not any visual depicting where most of Defendant's turkeys spend their
4 lives.



17 89. Contrary to this representation, the turkeys are rarely, if ever, allowed outside the agro-
18 industrial barns where they spend their lives.³¹

19 90. In reality, most of Defendant's turkeys are not on the idyllic Sonora Ranch portrayed in
20 the advertising and instead are housed in commercial poultry barns with thousands of birds in each
21 barn.

22 91. Upon information and belief, Defendant has allowed the turkeys outside the barns for
23 staged inspections.³²

25 _____
26 ³¹ Deposition of Kent Larson, at 19-20. When asked whether he saw the turkeys out, Mr. Larson answered, "I have not—in
27 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
28 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."

³² *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."

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

4 93. Upon information and belief, the California Regional Water Quality Control Board
5 does not freely permit the turkeys to be “Range Grown.”

6 94. Despite these facts, Defendant represented (a) in advertising and (b) on the label of the
7 Turkey Products that the turkeys were “Range Grown.”

8 95. The FSIS Compliance Guide that addresses labels, including the 2015 version that
9 Defendants previously requested that the Court judicially notice, explains that animal raising terms
10 such as “Free Range” are a special statement or claim that must be approved by the Label Program
11 Delivery Staff before entering commerce, per 9 C.F.R. § 412.1.

12 96. Upon information and belief, Defendant did not submit the required evidence to
13 substantiate its claims that the turkeys were “Range Grown” before placing the label on the Turkey
14 Products that entered commerce, as is required by the Food Safety and Inspection Service Labeling
15 Guideline on Documentation Needed to Substantiate Animal Raising Claims for Label Submissions.³³

16 97. The labels that appeared on Turkey Products during the applicable limitations period
17 did not have any asterisk, definition or qualifications to the consumer regarding this representation, as
18 required by Food Safety and Inspection Service Labeling Guideline on Documentation Needed to
19 Substantiate Animal Raising Claims for Label Submissions.

20 98. Defendant’s conduct regarding “Range Grown” does not meet consumer expectations
21 and does not even meet the FSIS guidance on “Free Range” or “Free Roaming.” FSIS states:

22 In order to use these terms on a label, poultry producers must provide a brief description
23 of the bird’s housing conditions with the label when it is submitted for approval. The
24 written description of the housing conditions is evaluated to ensure the birds have
25 continuous, free access to the out-of-doors for over 51% of their lives, i.e., through their
26 normal growing cycle. During the winter months in a northern climate, birds are not
“free range,” if they stay in coops all winter. Producer testimonials that support the use
of the claim must state how the birds are raised in a northern climate in winter in order
to conform to the meaning of “free range” during the winter months.³⁴

27
28 ³³ FSIS, *supra* n. 13.

³⁴ 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, (last visited Nov. 13, 2017).

1 99. After Plaintiffs, through counsel, alerted Defendant to its “Range Grown”
2 misrepresentations, Defendant removed “Range Grown” claims from the Turkey Products label and
3 revised its advertising and marketing materials to omit or downplay any “Range Grown”
4 representations.

5
6 **V. Defendant’s Advertising Is Designed to, and Does, Mislead Consumers About
Whether the Turkeys Are Raised on “Family Farms.”**

7 100. Throughout the applicable limitations period, Defendant has advertised the Turkey
8 Products as “Thoughtfully Raised on Sustainable Family Farms.”

9 101. Defendant advertises its Turkey Ranch’s “family-run ranching tradition” in brochures,
10 on its website, and in videos that are available online.

11 *A Family-Run Ranching Tradition*

12 Our family’s turkey ranch has been providing the highest quality all-natural and organic free-range turkeys
13 from our beautiful ranch in the Northern California foothills since 1949. We still own and operate our
14 sustainable farming operation, which allows us to practice careful range management and ensures that every
15 Diestel turkey product we produce is absolutely delicious.

16 102. Defendant advertises on its website, “Meet the Family,” and posts a photo of Diestel
17 family members to give misleading impression that all of Defendant’s operations are family-run and
18 that the individuals in the photo are part of the business.

19 **Meet The Family**

20 **Tim & Joan Diestel**

21 Tim grew up in the turkey business working side-by-side
22 with his father, Jack Diestel, and his Great-Uncle, Ernest
23 Bottini. The popularity of the Diestel holiday birds was a
24 direct result of the careful farming practices that the family
25 employed: Allowing the birds to roam free, giving them
26 plenty of time to grow, offering the highest-quality all-
27 natural food sources, and being meticulous about the
28 finished product’s quality.



103. The website³⁵ continues: “[T]here’s a good chance that Joan or one of the kids will answer the phone,” giving the misleading impression that Diestel Turkey Ranch is a small operation.

104. The marketing materials are contrary to what Defendant’s neighbors see on a daily basis.³⁶

105. Upon information and belief, only some of the family members appearing in the photograph actually live in California.³⁷

106. Upon information and belief, the family outsources turkey raising to other individuals and entities outside the family.³⁸

107. In addition to the advertising and marketing, Defendant labels its Turkey Products with its “Family Farms” or similar representations.

VI. Defendant’s Advertising Is Designed to, and Does, Mislead Consumers About Whether Defendant’s Practices Are Sustainable.

108. Defendant prominently advertises its operations as “Sustainable.” Its website contains a section titled “Sustainability In Action.” Defendant states that it wants to improve and preserve clean air and water, and claims that it employs sustainable agricultural methods.

Sustainability In Action



Join us in sustainable living. **Why?** Because we want to improve and preserve the clean air we breathe, the water we drink, and the natural landscape we enjoy.

As a consumer, you have the right to choose products that benefit our environment. As a producer, we feel that it is our obligation to preserve our environment for future generations.

Our sustainability plan focuses on providing the best outcome for both our human and natural environments now and into the indefinite future. We are working symbiotically with nature to develop natural solutions. It's not about limiting our footprint. It's about eliminating it!

By employing sustainable methods of agriculture, such as composting and eliminating the use of toxic chemicals, fertilizers, and inorganic substances, we hope to enrich the earth we live on.

³⁵ Diestel Turkey Ranch, <http://diestelturkey.com/our-family-story/meet-the-family/> (last visited Nov. 13, 2017).

³⁶ Diestel’s neighbor, Kent Larson, stated, “Every photo I ever saw was basically this family-type operation with turkeys running around in a pasture. And that is not what I see on a daily basis.” Larson Depo., at 13:1-3.

³⁷ Larson Depo., at 19:1-4: “Q: So you are saying the people who are pictured on the website as the family aren’t actually living where the turkeys are? A: No, not here.”

³⁸ Larson Depo., at 46. Mr. Larson and his father grew turkeys for the Diestels in the 1990s.

1 109. Defendant also makes available online a video,³⁹ which has been posted to Facebook,
2 detailing its alleged sustainable farming practices.



12 110. Contrary to these representations regarding sustainability, Defendant's violations of
13 clean air and water laws have been documented over several years.

14 111. The Air Resources Board of the California Environmental Protection Agency
15 documented violations related to Defendant's failure to self-inspect its diesel truck emissions.
16 Defendant agreed to pay a penalty of \$10,500 and comply with the inspection program.⁴⁰

17 112. The California Regional Water Quality Control Board, Central Valley Region,
18 investigated Defendant's violations of the Water Code after receiving a citizen complaint of odors and
19 foams in a creek near Defendant's turkey operations.

20 113. The California Regional Water Quality Control Board issued a notice of violation to
21 Defendant for its operation at 22200 Lyons Bald Mountain Road, Sonora, California in September
22 2011. The report found that Defendant "discharged and threatens to continue to discharge turkey
23 wastewater and manure from its slaughterhouse facility (Facility) to several drainage channels"
24 These drainage channels connect a reservoir for Tuolumne County drinking water.⁴¹

25 114. Staff from the California Department of Fish and Game and Tuolumne County Health
26

27 ³⁹ Whole Foods Market, "Meet the Ranchers - Diestel Turkey Ranch" YouTube (Oct. 29, 2012),
28 <https://www.youtube.com/watch?v=gDcJszo1qE>.

⁴⁰ California Environmental Protection Agency, <https://www.arb.ca.gov/enf/casesett/diestel.htm> (last updated June 10, 2010).

⁴¹ Notice of Violation, Sept. 23, 2011, from California Regional Water Quality Control Board to Diestel Turkey Ranch.

1 Department observed wastewater from turkey processing discharge into a tributary that connects to the
2 drinking water reservoir. Sampling revealed that Defendant had discharged turkey manure and
3 wastewater to tributaries that led to a drinking-water reservoir.⁴² The Notice of Violation notes that
4 operations had changed significantly from 2007 to 2011.

5 115. Five months after the Water Quality Control Board made its initial visit, the Board
6 visited again and noted that Defendant had made improvements, but that water quality degradation
7 continued due to the total and fecal coliform and nitrogen compounds discharged to the drinking water
8 reservoir after significant rain events. The Board concluded that Defendant's discharge practices
9 contaminated the local creek, which led to the drinking water reservoir.

10 116. The Tuolumne County District Attorney filed a complaint against Defendant in March
11 2012 for water pollution, which resulted in a stipulated judgment in April 2012 and approximately
12 \$22,255.31 in fines to be paid by Defendant.

13 117. In May 2013, the Central Valley Regional Water Quality Control Board charged
14 Defendant with civil liability in the amount of \$132,160 for issues at the slaughterhouse and confined
15 animal feeding operation located at 22200 Lyons Bald Mountain Road, Sonora, California. The
16 Administrative Civil Liability Complaint, R5-2013-0537, found that Defendant "discharged storm
17 water containing turkey manure and turkey parts, with elevated coliform bacteria counts," to a
18 drinking-water reservoir. Defendant settled with the Board in July 2013, and agreed to pay a \$60,000
19 fine.

20 118. In November 2014, persistent offensive odors caused the Central Valley Regional
21 Water Quality Board to investigate Defendant again. That investigation resulted in the Board notifying
22 Defendant of another violation in October 2015 at a processing plant and packaging facility owned by
23 Defendant and located at the Hatler Industrial Park. The notice stated that the electrical conductivity of
24 the wastewater sample "suggests a potential threat to groundwater via infiltration from the unlined
25 ponds."⁴³ The notice also "found a failure to submit monitoring reports for the period January 2006
26 through July 2015," which constituted multiple violations.

27
28 _____
⁴² *Id.*

⁴³ Central Valley Regional Water Quality Control Board, Notice of Violation, Oct. 8, 2015.

119. In addition to the advertising and marketing, Defendant labels its Turkey Products as “Sustainable,” or similar representations. Environmental claims on the label, such as “Environmentally Raised,” are special statements and claims that require approval, per 9 C.F.R. 412.1.

PARTIES

120. Plaintiff DxE is a network of activists who engage in nonviolent direct action to expose violence against animals. Plaintiff DxE is based in and focuses its work in Alameda County, California.

121. DxE’s mission is to mobilize the public against animal abuse in industries such as the turkey industry. A key element of that mission is to educate the public that the agro-industrial process of raising and slaughtering animals for massive meat consumption is not humane or “thoughtful.”

122. As a result of the false and misleading representations and omissions of material fact made by Defendant in marketing its Turkey Products, Plaintiff DxE has had to devote substantial organizational resources to investigating Defendant's true practices, to counteracting Defendant's misinformation, to educating consumers about the falsehoods, and to publicizing the truth about Defendant's agro-industrial practices.

123. DxE is run by volunteers and does not rely on any paid employees to conduct its work. In 2015, approximately half of DxE's budget was spent on investigating and exposing Defendant's wrongdoing. DxE invested approximately \$15,000 of organizational funds into investigating Defendant. In addition to the organization's budget, individual members paid out of pocket for computer equipment, other technology, and travel costs.

124. DxE members committed significant volunteer hours to documenting Defendant's misinformation. Members invested approximately 200 hours in searching for online for documents, videos, and any other information related to Defendant's abuses. This included keyword searching in

1 Google News and Google search engines to determine whether Defendant had prior reported instances
2 of misconduct and to obtain documents detailing that misconduct.

3 125. DxE members traveled from the Bay Area to Defendant's sites in Tuolumne County to
4 assess whether birds had outdoor access as Defendant represented. DxE members interviewed local
5 parties regarding the veracity of Defendant's advertising claims. Interviews were conducted with
6 professionals in the fields of animals science and welfare, and with local activists.

7 126. DxE expended significant financial resources on camera and other equipment in order
8 to be able to conduct a credible undercover investigation of Defendant's practices. More than 10 DxE
9 members were trained to use the camera and other equipment in various phases of the investigation.
10

11 127. Once the camera equipment was procured and members trained, members invested
12 dozens of hours in (a) outdoor surveillance, (b) grocery store visits, (c) visits to Defendant's show
13 ranch and company store open to the public, and (d) visits to Defendant's Off-Site Facilities hidden
14 from public view.

15 128. After collecting raw footage from January through September 2015, a DxE member
16 invested approximately 40 hours in professionally creating and editing short films for public
17 viewing.⁴⁴
18

19 129. With online and on-site investigation complete, DxE members spent weeks writing,
20 editing and producing a report titled, "A Deadly Feast: What You are Not Told About Your
21 Thanksgiving Turkey." The executive summary begins, "A nine-month investigation by Direct Action
22 Everywhere (DxE) reveals an elaborate scheme to deceive consumers about the horrific conditions at
23 one of Whole Foods Market's most famous suppliers."⁴⁵
24

25
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27 ⁴⁴ Washington Post, "Whole Foods Thanksgiving turkeys endure 'horrific conditions' at Calif. farm, activists say" (Nov.
28 24, 2015), *available at* https://www.washingtonpost.com/news/morning-mix/wp/2015/11/24/whole-foods-thanksgiving-turkeys-endure-horrific-conditions-at-calif-farm-animal-rights-activists-say/?utm_term=.676f0e065f23.

⁴⁵ Direct Action Everywhere, *supra* note 20.

1 130. DxE repeatedly attempted to address its concerns with Whole Foods, which also
2 advertises Defendant's Turkey Products in its store. DxE's attempts to communicate with Whole
3 Foods included attending an event at a college campus in which a high level Whole Foods
4 representative was present, in hopes of raising the issue of the false advertising of Defendant's Turkey
5 Products.

6 131. DxE spent dozens of hours preparing a press kit to publicize Defendant's deceit. The
7 work included gathering quotes from activists with first-hand knowledge of Defendant's barns, writing
8 a press release, spending hours viewing and selecting representative photos of the turkeys, preparing
9 the video for public dissemination, pitching the story to journalists, and engaging in other press-related
10 tasks in order to inform the public regarding Defendant's misinformation.

11 132. DxE posted articles on its website regarding a turkey rescued from Defendant's barns,
12 and an article specifically refuting Defendant's responses to DxE's investigation.⁴⁶

13 133. Approximately 10 hours were spent in producing a leaflet on Defendant to share with
14 the public.⁴⁷

15 134. A DxE member with an investigative journalism background interviewed Defendant
16 spokesperson Heidi Diestel on behalf of *The Daily Pitchfork* online magazine and prepared a
17 comprehensive article that appeared on the Daily Pitchfork website,⁴⁸ authored by a DxE member who
18 was not compensated for his research and writing to expose Defendant's deception, and who otherwise
19 would have spent his time on DxE's other core projects, including outreach to the public, training and
20 development of members, and investigations and research into industries that abuse animals.
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26 ⁴⁶ Direct Action Everywhere,
27 <http://www.directactioneverywhere.com/theliberationist/2015/11/25/qfaeby7ugjraswketwlybegfityt9n> (Nov. 25, 2015).

28 ⁴⁷ DxE's leaflet is available at
 https://www.dropbox.com/s/vhrm10yxgwoh2ss/Leaflet_WhatAnimalsDeserve_8_PDF.pdf?dl=0.

⁴⁸ Daily Pitchfork, "There's Nothing Humane About Whole Foods Turkey" (Nov. 24, 2015),
 <http://dailypitchfork.org/?p=992>.

135. DxE facilitated more than 37 protests across the United States and internationally to educate the public about the truth that Defendant was hiding. Organizing and preparing protests to inform the public about Defendant's deceit required DxE members to make signs and banners, and this was time that time and energy that could have been spent generally educating the public about animal welfare rather than specifically addressing Defendant's misinformation campaign. In the U.S., protests occurred in Asheville, North Carolina; Bakersfield, California; Baltimore, Maryland; Birmingham, Alabama; Bloomington, Illinois; Chicago, Illinois; Cleveland, Ohio; Coachella, California; Denver, Colorado; Edmonton, Canada; Grand Rapids, Michigan; Harrisburg, Virginia; Iowa City, Iowa; Orange County, California; Los Angeles, California; New Haven, Connecticut; New York, New York; San Francisco, California; Philadelphia, Pennsylvania; Portland, Oregon; Raleigh, North Carolina; Inland Empire, California; San Luis Obispo, California; Seattle, Washington; Tallahassee, Florida; Internationally, protests occurred in Auckland, New Zealand; Copenhagen, Denmark; Halifax, Canada; Hyderabad, Pakistan; Leeds, England; Lisbon, Portugal; London, England; Madrid, Spain; Montreal, Canada; Mumbai, India; Tel Aviv, Israel; Toronto, Canada; Vancouver, Canada.⁴⁹

136. DxE contacted various governmental entities to bring to light Defendant's misinformation. DxE contacted local district attorneys, sheriff's offices, and animal control officers regarding enforcement of animal cruelty provisions of California law. Members committed more than 100 hours in 2015-2016 to contact with governmental entities.

137. Defendant's misleading advertising of the Turkey Products has forced DxE to divert its organizational resources away from other priorities and campaigns that could have protected more animals in furtherance of its mission. The injury to DxE is not speculative; instead, expenses incurred by the efforts described above, which resulted from Defendant's misconduct, could have been spent in ways that better furthered DxE's mission had Defendant not engaged in that misconduct.

⁴⁹ Some of the protests appear in a video compilation. Direct Action Everywhere, "Speaking out for Sarah" (Jan. 12, 2016), YouTube, <https://www.youtube.com/watch?v=LUjea52qodA>.

1 138. DxE also engages in corporate and institutional campaigns to improve the lives of
2 animals. As one example, DxE has encouraged university students such as at the University of
3 California – Berkeley to reduce meat consumption on campus. DxE’s efforts to accomplish this goal
4 are directly frustrated by Defendant’s false advertising on campus that its meat is humane. Constantly
5 challenging the false, deceptive and misleading marketing practices of agro-industrial operations like
6 Defendant’s operation frustrate DxE’s ability to build coalitions and make institutional changes that
7 improve the lives of animals.
8

9 139. DxE also engages in direct animal care, creates media content regarding animals,
10 organizes lectures and educational events across the country, and engages in extensive efforts to
11 mobilize the public to support animal-friendly initiatives. These efforts were frustrated by the
12 diversion of resources to address Defendant’s false, misleading and deceptive advertising.

13 140. The above-described diversion of resources to counter Defendant’s misleading
14 marketing has injured Plaintiff DxE’s organizational mission by harming its ability to combat cruelty
15 and evasiveness in the animal agriculture industry and promote transparency in the food industry.
16 Plaintiff DxE could have avoided the expenditures related to “Thoughtfully Raised” and similar
17 claims, and pursued work that more directly advanced its mission to educate the public had Defendant
18 not been falsely marketing its Turkey Products as “Thoughtfully Raised” in a manner more humane
19 than in typical agro-industrial conditions.
20

21 141. If Defendant were to cease its misleading advertising, including by the injunctive relief
22 sought through this action, then Plaintiff DxE would not have to continue diverting these
23 organizational resources to warn consumers and educate the public about Defendant’s Turkey
24 Products and agro-industrial practices, and could redirect these resources to other projects, in
25 furtherance of Plaintiff DxE’s mission.
26

27 142. Plaintiff Elliott is a resident of Santa Rosa, California. She is a senior citizen as that
28 term is defined in Cal. Civ. Code § 1761(f) and § 1780(b).

1 143. Plaintiff Elliott purchased Diestel Turkey Products from the Whole Foods Market
2 located at 1181 Yulupa Avenue, Santa Rosa, California 95405. She purchased whole, uncooked
3 turkeys in November each year, for approximately the last four years, for Thanksgiving.

4 144. Prior to Thanksgiving, Whole Foods Market places a table outside and near the
5 entrance to the store. The table displays Diestel Turkey brochures, in addition to the written material
6 on other turkey purveyors. Whole Foods employees are provided training on Diestel's Turkey
7 Products so that they can converse with customers regarding Diestel's purported turkey raising
8 practices. After an opportunity to view Diestel's marketing materials, Plaintiff Elliott proceeded to
9 order a Diestel Turkey from a Whole Foods employee at the table stationed near the store entrance.
10

11 145. As a repeat purchaser of Diestel Turkey Products, Plaintiff Elliott also viewed the label
12 on the Turkey Products, which represented over the course of several years that the Turkey Products
13 were "Thoughtfully Raised," "Humanely Raised on Sustainable Family Farms," "Range Grown,"
14 "Slow Grown," "Thoughtfully Raised on Sustainable Family Farms," and/or were raised in
15 conformance with GAP ratings.
16

17 146. Plaintiff Elliott is willing to and would purchase the Turkey Products again, if they
18 conformed to the representations made.

19 147. Defendant Diestel Turkey Ranch is a California corporation with a principal place of
20 business located at 22200 Lyons Bald Mountain Road, Sonora, California 95370.

21 **JURISDICTION AND VENUE**

22 148. This Court has jurisdiction over the subject matter of this complaint pursuant to Cal.
23 Bus. & Prof. Code § 17203, which provides that any person who engages, has engaged, or proposes to
24 engage in unfair competition may be enjoined in any court of competent jurisdiction. As more fully
25 alleged herein, Defendant's misrepresentations and omissions of material fact in its marketing of the
26 Turkey Products constitute false advertising under Cal. Bus. & Prof. Code § 17500.

27 149. This Court has personal jurisdiction over the parties in this case. Plaintiff DxE
28 maintains a presence in Alameda County, including its activist house located at 25 The Plaza Drive,

1 Berkeley, California 94705, and, by filing this Complaint, consents to this Court having personal
2 jurisdiction over it. Plaintiff Elliott resides in Santa Rosa, California, and by filing this Complaint,
3 consents to this Court having personal jurisdiction over her. Defendant, a citizen of California, is
4 authorized to, and in fact does, conduct substantial business in California, including in this County.
5 Defendant purposefully avails itself of the laws of California to market, promote, distribute, and sell
6 the Turkey Products to consumers in California and Alameda County.

7 150. Venue is proper in this County pursuant to Cal. Civ. Proc. Code § 395(a), because
8 Defendant does business in Alameda County, because Plaintiff DxE suffered an injury in Alameda
9 County, and because, based upon information and belief, Defendant contracted to perform an
10 obligation in Alameda County.

11 151. Venue is proper in this County pursuant to Cal. Civ. Proc. Code § 395.5 because
12 Alameda County is where Defendant's breach occurred and because Defendant is a corporation.

13 152. Venue is proper in this County pursuant to Cal. Civ. Proc. Code § 395(b) because this
14 is "an action arising from an offer or provision of goods [or] services...intended primarily for
15 personal, family or household use" in Alameda County.

16 **STATUTORY FRAMEWORK**

17 *California Unfair Competition Law*

18 153. The UCL, Cal. Bus. & Prof. Code § 17200 *et seq.*, prohibits businesses from engaging
19 in unlawful, fraudulent, or unfair business practices.

20 154. An action based on Section 17200 to redress an unlawful business practice essentially
21 borrows violations of other laws and treats them as a violation of Section 17200. In other words, a
22 business practice is "unlawful" under Section 17200 when it violates another state law.

23 155. Cal. Bus. & Prof. Code § 17203 allows any person to pursue representative claims or
24 relief on behalf of others if the claimant meets the standing requirements of Cal. Bus. & Prof. Code
25 § 17204 and Cal. Civ. Proc. Code § 382.

26 156. Plaintiff DxE has standing under Cal. Bus. & Prof. Code § 17204, which provides that
27 actions for relief pursuant to the UCL shall be prosecuted exclusively in a court of competent
28 jurisdiction by, *inter alia*, a person who has suffered injury in fact and has lost money or property as

1 a result of the unfair competition. As more fully alleged herein, Plaintiff DxE has suffered injury in
2 fact, because it was forced to divert substantial organizational resources away from its core mission
3 as a result of Defendant's unlawful, fraudulent, and unfair business practices.

4 157. Plaintiff Elliott has standing under Cal. Civ. Proc. Code § 382, which provides that
5 "when the question is one of a common or general interest, of many persons, or when the parties are
6 numerous, and it is impracticable to bring them all before the court, one or more may sue or defend
7 for the benefit of all." As more fully alleged herein, Defendant's unlawful, fraudulent, and unfair
8 business practices raise questions of common or general interest, because they are injurious to
9 consumers throughout California. Plaintiff Elliott and similarly situated consumers have suffered an
10 injury in fact and lost money or property as a result of Diestel's deceit because they bought the
11 Turkey Products, bought more of the Turkey Products, and/or paid more for the Turkey Products
12 than they would have had they known the truth about the Turkey Products.

13 *California False Advertising Law*

14 158. The FAL, Cal. Bus. & Prof. Code § 17500, declares it unlawful for any person to
15 disseminate before the public any statement concerning personal property that the person knows, or
16 through the exercise of reasonable care should know, to be untrue or misleading, with intent to dispose
17 of that property or to induce the public to enter into any obligation relating thereto; or to disseminate
18 such untrue or misleading statements as part of a plan or scheme with the intent not to sell the property
19 as advertised.

20 159. Pursuant to Cal. Bus. & Prof. Code § 17535, any person, association, or organization
21 which violates the FAL may be enjoined by any court of competent jurisdiction. Actions for injunctive
22 relief under the FAL may be prosecuted by any person who has suffered injury in fact and has lost
23 money or property as a result of a violation of the FAL. Plaintiff Elliott lost money or property as a
24 result of purchasing the Turkey Products, buying more of the Turkey Products, and paying more for
25 the Turkey Products than she would have had Diestel told the truth about the Turkey Products.
26 Plaintiff DxE suffered an injury in fact by diverting substantial organizational resources to address
27 Diestel's unlawful conduct of making false, misleading and deceptive representations about the
28 Turkey Products.

160. 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.

California Consumers Legal Remedies Act

161. 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 intended to result or which does result in the sale or lease of goods or services to any consumer.

162. 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.

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

CLASS ACTION ALLEGATIONS

164. Plaintiff Elliott brings this action on her own behalf, and on behalf of all persons similarly situated, pursuant to Code of Civil Procedure § 382. Plaintiff Elliott seeks to represent the following class:

All California residents who purchased Turkey Products that were advertised or marketed as “Thoughtfully Raised,” “Thoughtfully Raised on Sustainable Family Farms,” “Range Grown,” “Slow Grown,” or raised in conformance with Global Animal Partnership (GAP) standards, within California within the applicable time limitations period through today. 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.

165. 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.

166. Plaintiff Elliott's claims are typical of the claims of the Class. Plaintiff Elliott is a member of a well-defined Class of similarly situated persons, and the members of the Class were

1 similarly affected by Defendant's conduct and are owed the same relief, as alleged in this Complaint.
2 Members of the Class are ascertainable from Plaintiff Elliott's description of the Class and/or
3 Defendant's records and/or records of third parties accessible through discovery.

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

8 168. Plaintiff Elliott has retained counsel who are competent and experienced in consumer
9 protection litigation, including class actions relating to false advertising and who have successfully
10 represented plaintiffs in complex class actions. Plaintiff Elliott's counsel currently represents other
11 plaintiffs in several similar complex class actions involving false advertising.

12 169. Common questions of law and fact affect the rights of each member of the Class, and a
13 common remedy is sought for the Class.

14 170. There are substantial questions of law and fact common to all members of the Class that
15 will predominate over any individual issues. These common questions of law and fact include, without
16 limitation:

- 17 a) whether Defendant advertised its Turkey Products with the intent not to sell them as
18 advertised in violation of California Civil Code § 1770(a)(7);
- 19 b) whether Defendant represented in advertising for the Turkey Products that the
20 Products had characteristics, ingredients, uses, or benefits that they do not have in
21 violation of California Civil Code §1770(a)(5);
- 22 c) whether Defendant is subject to liability for violating the CLRA, Cal. Civ. Code §§
23 1750-1784;
- 24 d) whether Defendant has violated the FAL, Cal. Bus. & Prof. Code §§ 17500-17536;
- 25 e) whether Defendant has violated the UCL, Cal. Bus. & Prof. Code §§ 17200-17210;
- 26 f) whether Defendant's wrongful conduct constitutes negligent misrepresentation;
- 27 g) whether Defendant's misrepresentations regarding the Turkey Products constitute
28 breach of express warranty; and

h) whether the Class is entitled to an award of restitution pursuant to California Business and Professions Code § 17203.

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

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

173. The persons in the Class are so numerous that the joinder of all such persons individually in this case is impracticable, and the disposition of their claims in this case and as part of a single class action lawsuit, rather than hundreds or thousands of individual lawsuits, will benefit the parties and greatly reduce the aggregate judicial resources that would be spent if this matter were handled as hundreds or thousands of separate lawsuits.

174. Plaintiff Elliott knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance of a class action.

CAUSES OF ACTION

COUNT I

(Negligent Misrepresentation on Behalf of Plaintiff Elliott)

175. Plaintiff Elliott incorporates by reference and realleges herein all paragraphs alleged above.

176. Defendant, in its marketing materials, misrepresented to Plaintiff Elliott that turkeys in the Turkey Products come from turkeys who are "Thoughtfully Raised," "Humanely Raised on Sustainable Family Farms," "Range Grown," "Slow Grown," "Thoughtfully Raised on Sustainable Family Farms," and/or raised in conformance with GAP standards, when they are not.

177. Defendant, on the label of the Turkey Products, misrepresented to Plaintiff Elliott that

1 turkeys in the Turkey Products come from turkeys who are “Thoughtfully Raised,” “Humanely Raised
2 on Sustainable Family Farms,” “Range Grown,” “Slow Grown,” “Thoughtfully Raised on Sustainable
3 Family Farms,” and/or raised in conformance with GAP standards, when they are not.

4 178. Defendant had no reasonable grounds to believe that these misrepresentations were
5 true, because, among other things, Defendant has intentionally omitted from its social media, website,
6 and other marketing materials the fact that most of its turkeys are not raised on the idyllic Sonora
7 Ranch.

8 179. Defendant intended to induce Plaintiff Elliott to rely on its misrepresentations.
9 Defendant knew that in deciding whether to purchase Defendant’s Turkey Products, Plaintiff Elliott
10 would rely on its representations that the Turkey Products come from turkeys who are “Thoughtfully
11 Raised,” “Humanely Raised on Sustainable Family Farms,” “Range Grown,” “Slow Grown,” and/or
12 “Thoughtfully Raised on Sustainable Family Farms.” Defendant knew that Plaintiff Elliott would rely
13 on the misrepresentations made to her, because consumers are willing to pay more for animal products
14 that they believe are humanely and/or ethically raised than they would for animal products that they
15 believe are not humanely and/or ethically raised.

16 180. Plaintiff Elliott did rely on Defendant’s misrepresentations, and subsequently was
17 willing to buy the Turkey Products, buy more of the Turkey Products, and pay more for the Turkey
18 Products that she believed were “Thoughtfully Raised,” “Humanely Raised on Sustainable Family
19 Farms,” “Range Grown,” “Slow Grown,” “Thoughtfully Raised on Sustainable Family Farms,” and/or
20 in compliance with GAP Step ratings as advertised.

21 181. Plaintiff Elliott was justified in relying upon Defendant’s representations that the
22 Turkey Products come from turkeys who are “Thoughtfully Raised,” “Humanely Raised on
23 Sustainable Family Farms,” “Range Grown,” “Slow Grown,” and/or “Thoughtfully Raised on
24 Sustainable Family Farms.”

25 **COUNT II**

26 **(Breach of Express Warranty on Behalf of Plaintiff Elliott)**

27 182. Plaintiff Elliott incorporates by reference and realleges herein all paragraphs alleged
28 above.

1 183. Defendant's representations that the Turkey Products come from turkeys who are
2 "Thoughtfully Raised," "Humanely Raised on Sustainable Family Farms," "Range Grown," "Slow
3 Grown," "Thoughtfully Raised on Sustainable Family Farms," and/or in compliance with GAP Step
4 ratings as advertised constitute affirmations of fact made with regard to the Turkey Products.

5 184. Defendant's representations that the Turkey Products come from turkeys who are
6 "Thoughtfully Raised," "Humanely Raised on Sustainable Family Farms," "Range Grown," "Slow
7 Grown," and/or "Thoughtfully Raised on Sustainable Family Farms," and Defendant's advertising and
8 promotions for the Turkey Products are part of the basis of the bargain between Defendant and
9 purchasers of the Products.

10 185. As set forth in the paragraphs above, Defendant's representations in advertising and
11 marketing materials concerning the Turkey Products are false.

12 186. As set forth in the paragraphs above, Defendant's representations on the labels of the
13 Turkey Products are false.

14 187. Plaintiff Elliott has performed all conditions precedent to Defendant's liability under
15 the above-referenced contract.

16 188. Defendant breached its express warranties about the Turkey Products because, as
17 alleged above, the Products come from turkeys who are not "Thoughtfully Raised," "Humanely Raised
18 on Sustainable Family Farms," "Range Grown," "Slow Grown," "Thoughtfully Raised on Sustainable
19 Family Farms," and/or in compliance with GAP Step ratings as advertised.

20 189. Plaintiff Elliott relied on Defendant's representations (a) in the advertising and
21 marketing materials and (b) on the product labels regarding the Turkey Products when she bought the
22 Turkey Products, bought more of the Turkey Products, and paid more for the Turkey Products.

23 190. Within a reasonable time after she knew or should have known of such breach, Plaintiff
24 Elliott placed Defendant on notice thereof via letters to Defendant on May 5 and June 7, 2017.

25 **COUNT III**

26 **(Violations of the California Consumers Legal Remedies Act on Behalf of Plaintiff Elliott)**

27 191. Plaintiff Elliott incorporates by reference and realleges herein all paragraphs alleged
28 above.

1 192. This cause of action is brought pursuant to California’s Consumers Legal Remedies
2 Act, Cal. Civ. Code §§ 1750-1785 (the “CLRA”).

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

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

8 195. The conduct alleged in this Complaint constitutes unfair methods of competition and
9 unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was undertaken
10 by Defendant in transactions intended to result in, and which did result in, the sale of goods to
11 consumers.

12 196. As alleged more fully above, the unlawful conduct comprised Defendant falsely
13 representing to Plaintiff and the other members of the Class that the Turkey Products are
14 “Thoughtfully Raised,” “Humanely Raised on Sustainable Family Farms,” “Range Grown,” “Slow
15 Grown,” and/or “Thoughtfully Raised on Sustainable Family Farms.”

16 197. Defendant made false representations concerning the Turkey Products in its
17 advertising and marketing materials.

18 198. Defendant made false representations concerning the Turkey Products on the product
19 label.

20 199. As a result of engaging in such conduct, Defendant has violated California Civil Code
21 § 1770(a)(2), (a)(3), (a)(4) (a)(5), (a)(7), and (a)(9).

22 200. The unfair and deceptive acts and practices of Defendant, as described above, present
23 a serious threat to Plaintiff and the other members of the Class.

24 201. CLRA § 1782 NOTICE. On May 5 and June 7, 2017, a CLRA demand letter was sent
25 to Defendant via certified mail that provided notice of Defendant’s violation of the CLRA and
26 demanded that within thirty (30) days from that date, Defendant correct, repair, replace, or otherwise
27 rectify the unlawful, unfair, false and/or deceptive practices complained of herein. The letter also
28 stated that if Defendant refused to do so, a complaint seeking damages in accordance with the CLRA

1 would be filed. Defendant received the letter, but has failed to comply with the letter. Accordingly,
2 pursuant to California Civil Code § 1780(a)(3), Plaintiff, on behalf of herself and all other members of
3 the California Subclass, seeks compensatory damages, punitive damages, and restitution of any ill-
4 gotten gains due to Defendant's acts and practices.

5 202. As more fully alleged below, by committing the acts and practices alleged herein,
6 Defendant has violated the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§
7 17200 *et seq.*

8 **COUNT IV**

9 **(Violation of California False Advertising Law – Cal. Bus. & Prof. Code § 17500, *et seq.* 10 on Behalf of Plaintiff Elliott and Plaintiff DxE)**

11 203. Plaintiffs incorporate by reference and re-allege the preceding paragraphs.

12 204. As alleged more fully above, the unlawful conduct comprised Defendant falsely
13 advertising the Turkey Products by claiming that the Products are "Thoughtfully Raised," "Humanely
14 Raised on Sustainable Family Farms," "Range Grown," "Slow Grown," and/or "Thoughtfully Raised
15 on Sustainable Family Farms" when they are not.

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

19 206. Plaintiff Elliott has suffered injury in fact and has lost money or property as a result of
20 Defendant's violations of the California False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §
21 17500 *et seq.* because she bought Turkey Products, bought more of the Turkey Products, and paid
22 more for the Turkey Products in reliance on Defendant's false and misleading representations and
23 omissions regarding the Products.

24 207. As a direct and proximate result of Defendant's violations, Plaintiff DxE suffered injury
25 in fact because it was forced to divert substantial organizational resources away from its core mission
26 of improving the lives of animals and instead had to address false and misleading advertising
27 regarding animals raised for slaughter. Plaintiff DxE's efforts to promote on behalf of the general
28 public transparency in the food system and to end cruel industrial practices have been frustrated by
Defendant's unlawful encouragement of such practices.

COUNT V

**(Violation of California Unfair Competition Law – Cal. Bus. & Prof. Code § 17200, *et seq.*
on Behalf of Plaintiff Elliott and Plaintiff DxE)**

208. Plaintiff Elliott incorporates by reference and realleges herein all paragraphs alleged above.

209. By committing the acts and practices alleged herein, Defendant has violated the California Unfair Competition Law (“UCL”), 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.

210. Defendant has violated the UCL’s proscription against engaging in *unlawful* conduct as a result of:

- a) its violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7), and (a)(9), as alleged above;
- b) its violations of the FAL, Cal. Bus. & Prof. Code § 17500 *et seq.*, as alleged above; and
- c) its violations of Cal. Pen. Code §§ 597(b), 597.1(a)(1), and 597f(a), as alleged below.

211. Defendant’s acts and practices described above violate Cal. Pen. Code § 597(b), which makes it a felony to, *inter alia*, deprive or cause or procure any animal to be deprived of necessary sustenance, drink, or shelter or fail to provide any animal with proper food, drink, shelter, or protection from the weather.

212. Defendant’s acts and practices described above violate Cal. Pen. Code § 597.1(a)(1), which makes it a misdemeanor for an owner, driver, or keeper of any animal to permit the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention.

213. Defendant’s acts and practices described above violate Cal. Pen. Code § 597f(a)(1), which makes it a misdemeanor for an owner, driver, or possessor of any animal to permit the animal to be in any building, enclosure, lane, street, square, or lot of any city, city and county, or judicial district without proper care and attention.

214. Defendant’s acts and practices described above also violate the UCL’s proscription

1 against engaging in *fraudulent* conduct.

2 215. As more fully described above, Defendant's misleading marketing and advertising of
3 the Turkey Products are likely to deceive reasonable consumers. Indeed, Plaintiff Elliott was
4 unquestionably deceived when she viewed Defendant's brochures as to whether the Turkey Products
5 are "Thoughtfully Raised," "Humanely Raised on Sustainable Family Farms," "Range Grown," "Slow
6 Grown," and/or "Thoughtfully Raised on Sustainable Family Farms," as Defendant's marketing and
7 advertising of the Products misrepresent and/or omit the true facts concerning the benefits of the
8 Products. Said acts are fraudulent business practices.

9 216. Defendant's acts and practices described above also violate the UCL's proscription
10 against engaging in *unfair* conduct.

11 217. Plaintiff Elliott had no way of reasonably knowing that the Turkey Products she
12 purchased were not as marketed or advertised in the brochures that she viewed prior to purchase
13 because Defendant unethically and unscrupulously hid or otherwise omitted the truth regarding the
14 Turkey Products. Thus, she could not have reasonably avoided the injury she suffered.

15 218. Plaintiff Elliott suffered a substantial injury by virtue of buying the Turkey Products
16 that she would not have purchased or paid more for absent Defendant's unlawful, fraudulent, and
17 unfair marketing and advertising for the Products.

18 219. Plaintiff DxE suffered a substantial injury by virtue of devoting substantial
19 organizational resources to investigating and exposing Defendant's unlawful, fraudulent, and unfair
20 marketing and advertising for the Turkey Products, and by diverting those resources away from
21 advancing DxE's mission.

22 220. There is no benefit to consumers or competition by deceptively marketing the Products,
23 which purport to be are "Thoughtfully Raised," "Humanely Raised on Sustainable Family Farms,"
24 "Range Grown," "Slow Grown," and/or "Thoughtfully Raised on Sustainable Family Farms," when
25 these claims are false.

26 221. Defendant's violations of the UCL continue to this day.

27 222. Defendant's conduct is unfair in that it offends established public policy and/or is
28 immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to Plaintiff Elliott and

1 California consumers. The harm to Plaintiff Elliott arising from Defendant's conduct outweighs any
2 legitimate benefit Defendant derived from the conduct. Defendant's conduct undermines and violates
3 the stated spirit and policies underlying the FAL and other California statutes as alleged herein.

4 223. Defendant's actions and practices constitute "fraudulent" business practices in violation
5 of the UCL because, among other things, they are likely to deceive reasonable consumers. As a direct
6 and proximate result of Defendant's violations, Plaintiff DxE suffered injury in fact because it was
7 forced to divert substantial organizational resources away from its core mission. Defendant's unlawful
8 encouragement of such practices has frustrated Plaintiff DxE's efforts to promote transparency in the
9 food system and to end cruel agro-industrial practices.

10 **DAMAGES**

11 224. As a result of Defendant's negligent misrepresentation, breaches of express warranties,
12 violations of the CLRA, violations the FAL, and violations of the UCL, Plaintiff Elliott was damaged
13 in the amount of the purchase price, or in the alternative, in the amount of the purchase price tied to
14 the false and misleading representations, in amounts to be proven at trial.

15 **JURY DEMAND**

16 Plaintiffs demand a trial by jury of all claims in this Complaint so triable.

17 **REQUEST FOR RELIEF**

18 WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and
19 against Defendant, as follows:

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

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

24 C. An order enjoining Defendant's unlawful and deceptive acts and practices, pursuant to
25 California Business and Professions Code §§ 17203 and 17535, that includes, but is not limited to,
26 requiring Defendant to cease the acts of unfair competition alleged herein and to correct its
27 advertising, promotion, and marketing campaigns by, without limitation, removing and/or refraining
28 from making representations in the Turkey Products' marketing materials that the Products are

1 “Thoughtfully Raised,” “Humanely Raised on Sustainable Family Farms,” “Range Grown,” “Slow
2 Grown,” and/or “Thoughtfully Raised on Sustainable Family Farms”;

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

5 E. An award of disgorgement pursuant to California Business and Professions Code
6 §§ 17203 and 17535 for members of the Class;

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

9 G. Punitive damages in accordance with proof and in an amount consistent with applicable
10 precedent;

11 H. An order requiring Defendant to pay attorneys’ fees and litigation costs to Plaintiffs
12 pursuant to California Code of Civil Procedure Section 1021.5 and the common-law private-attorney-
13 general doctrine;

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

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

17 Dated: November 13, 2017

Respectfully submitted,

19 **RICHMAN LAW GROUP**

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