

1 **INTRODUCTION**

2 1. In response to skyrocketing consumer demand for healthier, more naturally raised,
3 and less cruelly-produced foods, the egg industry has undergone a sea change. California is at the
4 forefront of this change, having voted to rid the state and its marketplace of eggs from hens
5 crammed into barren, filthy battery cages. Food companies and grocers have rushed to meet
6 consumer demand in this changing egg arena, increasingly adding “specialty” eggs to their
7 offerings, including cage-free, free-range, and pasture-raised.

8 2. Defendant Trader Joe’s is one such grocer. Trader Joe’s is a successful grocery-store
9 chain whose shelves are primarily stocked with products bearing the Trader Joe’s name – a private
10 label that is synonymous, to its loyal customer base, with affordable, high-quality food.

11 3. As one analyst described Trader Joe’s:

12 The sum total of all this uniqueness is not a branding illusion, but a distinctly
13 remarkable Trader Joe's experience of sights, sounds, smells, and tastes that is
14 different than any other grocery retailer in the U.S. Customer[s] love what
they call the Trader Joe's "vibe," similar to the vibe Apple created for its in-
store customers.¹

15 4. The “Trader Joe’s Difference” has been described as something that is “real,
16 perceptible, valued by customers, and a difference shoppers without access to a local Trader Joe’s
17 covet.”² The trust that the “Trader Joe’s Difference” inspires in its customer base has enabled
18 Trader Joe’s to outperform its rivals in a highly competitive industry.³

19 5. Cage-free eggs are among the items that bear the Trader Joe’s private label.
20 Unfortunately for its unsuspecting costumers, Trader Joe’s has sought to capitalize on (1)
21 customers’ trust in the Trader Joe’s brand name and (2) their expectations and desires for less cruel
22 egg production by falsely representing that the hens who lay its private label, cage-free eggs are free
23 to roam outdoors, under the sun and in green pastures.

24
25 _____
26 ¹ See Barbara Farfan, *Why Trader Joe’s Has No Grocery Store Competition*, THE BALANCE (updated
27 Nov. 11, 2017), <https://www.thebalance.com/why-trader-joes-has-no-competition-2892549> (last
accessed Mar. 13, 2018).

28 ² *Id.*

³ *Id.*

1 6. This is not mere speculation. In an announcement posted on its website, Trader Joe's
2 explains that "[i]n 2005, in response to valuable customer feedback, we made a change to have all
3 Trader Joe's brand eggs come only from cage-free hens. Since then, we have seen steady increases
4 in our sales of cage-free eggs."⁴ Although the move towards cage-free eggs was laudable, Trader
5 Joe's uses its packages to represent that its Cage Free eggs are laid by hens who enjoy a much more
6 humane existence than they actually do by painting a picture (literally) of hens foraging outdoors in
7 green, wide-open pastures in front of idyllic barns. This illustration is unavoidable to the egg
8 shopper, dominating the entire top of each carton of a dozen Cage Free eggs.

9 7. Trader Joe's bucolic imagery is, however, a sham. While the hens who lay Trader
10 Joe's Cage Free eggs are not confined to battery cages, they also never see the sunshine, grass, and
11 natural living conditions depicted on Trader Joe's Cage Free egg cartons. Instead, on information
12 and belief, the hens who lay Trader Joe's Cage Free eggs are never allowed to leave the indoor
13 confines of industrial hen houses, and are never given access to grass, much less expansive pasture,
14 upon which to roam, forage, and engage in other natural behaviors.

15 8. There can be only one reason Trader Joe's uses false representations of hens foraging
16 outdoors on its Cage Free egg cartons: To trick consumers into believing that Trader Joe's use of
17 the term "cage-free" is synonymous with hens humanely living outdoors (often referred to as
18 "pasture-raised"). In using these misleading representations to trick discerning egg purchasers,
19 Trader Joe's has misrepresented and continues to misrepresent its eggs and the living conditions of
20 its hens, and is engaging in unfair and misleading business practices that have deceived and harmed
21 California consumers, in violation of California law.

22 9. Like many shoppers, Plaintiff Carolyn Claybaugh cares deeply about the source of the
23 eggs she buys. As a result of Trader Joe's bucolic imagery on its egg cartons, Mrs. Claybaugh was
24 misled into believing that the Cage Free eggs she purchased were what she wanted and expected
25 based on Trader Joe's representations: namely, reasonably priced eggs laid by hens free to forage

27 ⁴ See Trader Joe's Customer Updates, *About Trader Joe's Offerings of Eggs* (Feb. 12, 2016),
28 <https://www.traderjoes.com/announcement/about-trader-joes-offerings-of-eggs> (last accessed Mar.
13, 2018).

1 and roam outdoors on grass. Had she known that Trader Joe's Cage Free eggs instead came from
2 hens never allowed to roam on pasture or even set foot outside of their industrial hen houses, in
3 contradiction to the packaging illustrations, she would not have purchased them or would have
4 expected to pay less for them.

5 10. Trader Joe's conduct is precisely that which California law is meant to guard against.
6 California protects consumers and the integrity of the marketplace by broadly prohibiting business
7 practices that are fraudulent, misleading, or fostering unfair competition. A business violates
8 California's Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750-1784 ("CLRA"), False
9 Advertising Law, Cal. Bus. & Prof. Code §§ 17500-17509 ("FAL"), and the Unfair Competition
10 Law, Cal. Bus. & Prof. Code §§ 17200-17209 ("UCL"), when it engages in conduct that
11 fraudulently misrepresents a product, including a product's intangible qualities. Defendant Trader
12 Joe's does just that through its bucolic illustrations on its Cage Free egg cartons.

13 11. In misrepresenting the living conditions of the hens who lay its Cage Free eggs,
14 Trader Joe's is harming not just Mrs. Claybaugh and her fellow egg consumers, but also those
15 competing egg sellers who have invested the significant funds and energy necessary to give
16 consumers like Mrs. Claybaugh what they thought they were buying from Trader Joe's—less
17 cruelly produced eggs, laid by hens with access to pastures and natural living environments. Trader
18 Joe's harms these producers by marketing its eggs as pasture-raised while failing to make these
19 investments, thereby undercutting the market and diverting conscientious consumers away from
20 competitors and towards its own Cage Free eggs.

21 12. Trader Joe's deceptive imagery also unfairly disadvantages competitors in the egg
22 business who, like itself, do *not* provide outdoor access to their cage-free egg-laying hens. These
23 sellers, who refrain from misrepresenting their eggs with misleading imagery, find their eggs less
24 marketable to consumers than Trader Joe's Cage Free eggs.

25 13. Trader Joe's deceptive practices are harming egg consumers and competitors alike.
26 They have caused Plaintiff Claybaugh to lose money and unfairly distorted the egg marketplace,
27 and should be enjoined immediately. The purpose of this lawsuit is to stop Trader Joe's from
28 continuing to mislead consumers.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

7
8
9
0
1
2
3
4
5
6
7
8

8
9
0
1
2
3
4
5
6
7
8

22
23
24
25
26
27
28

1 **FACTUAL ALLEGATIONS**

2 **ANIMAL WELFARE IN A CHANGING EGG LANDSCAPE**

3 19. Mrs. Claybaugh cares about animal welfare. In an effort to purchase eggs that match
4 her preferences, she pays attention to the representations on egg cartons for information as to how
5 the eggs were produced and the living conditions afforded to egg-laying hens. She seeks out eggs
6 that are produced using superior animal welfare practices and, like most consumers, relies on
7 information provided on the packaging to make that determination. By purchasing Cage Free eggs
8 at Trader Joe's, Mrs. Claybaugh was misled into believing that she was paying a reasonable price
9 for the superior animal welfare practices depicted on those cartons.

10 20. Mrs. Claybaugh is far from alone in her desire for and pursuit of less cruelly-produced
11 animal products. Numerous surveys reveal that most consumers are concerned about the treatment
12 and living conditions of farmed animals, and many seek out companies that provide more spacious
13 and natural living conditions for their animals.⁵

14 21. Animal welfare in the egg industry is particularly and heavily affected by the
15 environment in which egg-laying hens are housed and kept.

16 22. Hens may be raised in cages or cage-free. Eggs from caged systems—particularly
17 from notorious battery cage facilities—are less expensive to produce but result in the worst animal
18 welfare outcomes for hens and carry food safety risks due to the overcrowded, filthy living
19 conditions in which hens are laying eggs.

20 23. Cage-free systems account for an increasing share of the egg market as more and
21 more consumers reject battery cage-sourced eggs and make purchasing decisions based on concern
22 for animal welfare and food safety.

23 24. Cage-free systems can be indoor-only or provide egg-laying hens access to the
24 outdoors. Certain terms have emerged in the marketplace to describe housing systems that provide
25 hens outdoor access, including “free-range” and “pasture-raised.”

26
27 ⁵ A compilation of relevant surveys about consumer attitudes can be found at Animal Welfare
28 Institute, *Consumer Perceptions of Farm Animal Welfare*,
[https://awionline.org/sites/default/files/uploads/documents/fa-](https://awionline.org/sites/default/files/uploads/documents/fa-consumer_perceptionsoffarmwelfare_-112511.pdf)
consumer_perceptionsoffarmwelfare_-112511.pdf (last visited Mar. 13, 2018).

1 25. While there is considerable variation in the marketplace (and resulting consumer
2 uncertainty about these terms), in general “free-range” systems provide birds with *some* outdoor
3 “access”—anything from free entry onto a grassy or dirt-covered area, to small pop-holes leading to
4 a small, cement-floor screened-in porch—whereas “pasture-raised” eggs come from hens afforded
5 daily, unfettered access to pasture on which to forage. The industry standard for “pasture-raised”
6 hens is roughly 108 square feet of pasture per hen. The pictures on Trader Joe’s Cage Free egg
7 cartons falsely depict pasture-raised hens.

8 26. Specifically (as discussed in more detail in paragraph Nos. 32-35, below), this is how
9 Trader Joe’s tells its customers the hens who lay its Cage Free eggs are raised:



27. In reality, however (as discussed in more detail in paragraph Nos. 37-44, below), the hens who lay the Trader Joe's Cage Free eggs are confined to the inside of these massive, industrial, egg-laying compounds:



28. Well-managed outdoor systems, like the ones depicted on the Trader Joe's cartons, carry significant welfare benefits for hens as compared to the indoor, cage-free systems in which the Trader Joe's hens actually live, by allowing the hens to engage in more natural behaviors (such as dust-bathing and foraging for food), providing greater space, and decreasing overall stress.⁶

29. On information and belief, production costs per dozen eggs is higher for farmers using outdoor-access systems than for those who use indoor-only systems. This cost is in large part passed on to consumers.

30. Trader Joe's Cage Free eggs are sold at lower prices than eggs sold by producers using outdoor-access systems. Indeed, "free-range" or "pasture-raised" eggs are frequently priced substantially more per dozen than Trader Joe's Cage Free eggs.

31. No applicable statute or regulation prescribes rules for egg-production labeling, and there is no mandatory statutory definition of the phrase "cage-free." Thus, the egg market is ripe for

⁶ D. C. Lay Jr. et al., *Hen Welfare in Different Housing Systems*, 90 POULTRY SCIENCE 278, 285-289 (2011).

1 producers to take unfair advantage of consumer confusion, and many unscrupulous sellers market
2 their eggs as more humanely produced without bearing the costs of employing superior animal
3 welfare practices such as providing hens regular access to pasture. This is the conduct in which
4 Trader Joe's is engaging by representing that its Cage Free eggs are produced by pasture-raised
5 hens.

6 DEFENDANT'S REPRESENTATIONS OF PASTURE ON ITS CAGE FREE EGG CARTONS

7 32. As discussed above, the cartons used for Trader Joe's Cage Free eggs depict bucolic
8 illustrations of hens occupying expansive pastures:



23
24 33. One carton design features hens spread out and foraging in the grass of a wide green
25 pasture. In the background stands an idyllic red barn open in the front with paths leading out of the
26 barn, indicating ready ingress and egress for animals housed inside. The depiction does not contain
27
28

1 a single industrial hen house, closed barn doors, or anything else that indicates the hens who laid the
2 eggs in the package were confined inside industrial hen houses without any outdoor access at all.

3 34. A second carton design shows a hen alongside a rooster, surrounded by rolling green
4 pasture and blades of grass. In the background is a multi-story red and yellow barn, again with a
5 large open door indicating that animals housed inside are free to reach the pasture. Adjacent to the
6 barn is an outdoor fenced-in space and a farm house. In sum, it is the scene of a small-scale family
7 farm that utilizes an outdoor system to raise its hens. The depiction gives no indication that the hens
8 who produced the eggs in the carton were confined to industrial hen houses with no access to the
9 outdoors.

10 35. Neither of these two Cage Free egg cartons offers any disclaimer or any other cue to
11 consumers that the illustrations occupying the entire top of the cartons in no way represent the true
12 conditions under which the enclosed eggs were produced.

13 36. The conclusion Mrs. Claybaugh, like any reasonable consumer, drew from looking at
14 these packages of Trader Joe's Cage Free eggs is precisely the inference Trader Joe's intended that
15 she draw from the images; namely, that the eggs inside come from hens who are given ready access
16 to pasture, benefiting from a natural environment in which they can forage for insects, feel the sun,
17 dust bathe, and generally experience the open space of grassland.

18 **DEFENDANT'S CAGE FREE EGGS COME FROM HENS RAISED ENTIRELY INDOORS**

19 37. On information and belief, despite Defendant's representations that Trader Joe's Cage
20 Free eggs come from hens afforded access to pasture, these hens are permanently confined inside
21 industrial sheds crowded with thousands of other birds. The hens have no access to outdoor areas.

22 38. Trader Joe's Cage Free egg cartons are each marked with a USDA plant number
23 associated with an egg processor. Every egg processing facility inspected by the USDA has its own
24 unique plant number.⁷

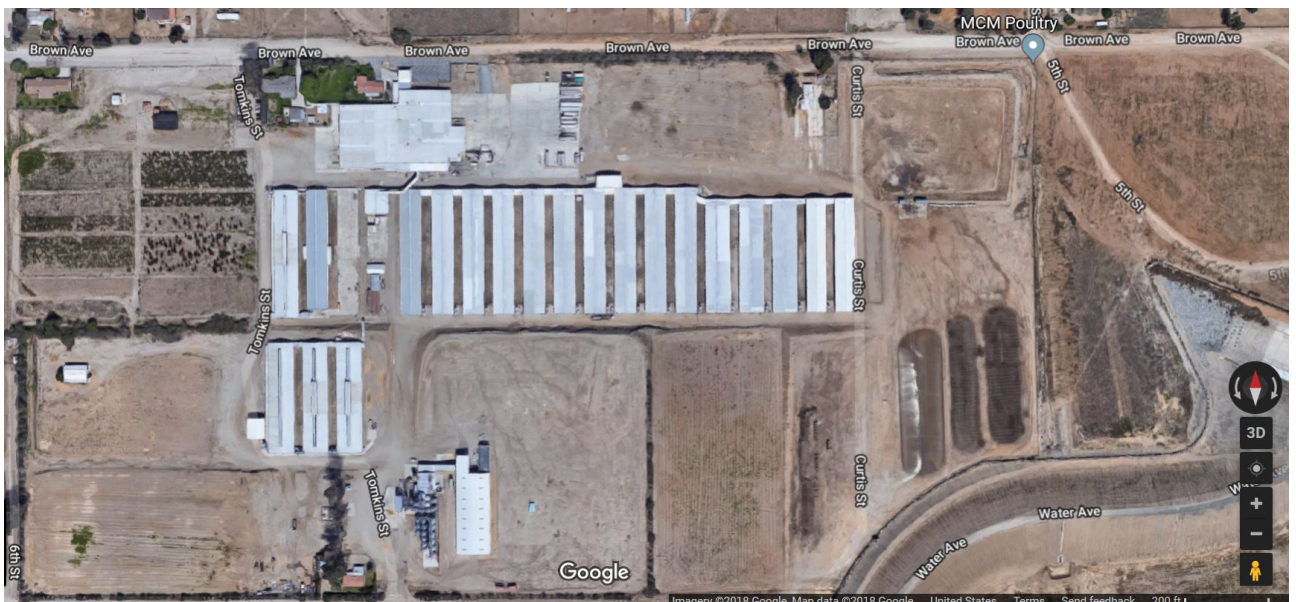
25 39. On information and belief, all Trader Joe's Cage Free eggs sold in California are
26 marked with the P1128 plant code.

27 _____
28 ⁷ 21 U.S.C. § 1036(a); 9 C.F.R. § 590.150.



40. P1128 is the unique plant number for C.B. Nichols Egg Ranch, Inc.⁸

41. On information and belief, C.B. Nichols Egg Ranch, Inc. is owned by Chino Valley Ranchers, which operates several industrial-scale egg production facilities in Southern California. Specifically, many or all of Trader Joe's Cage Free eggs sold at the Danville Trader Joe's where Plaintiff purchased her eggs and throughout California come from MCM Poultry's (dba Chino Valley Ranchers) industrial hen houses located at 31571 Brown Avenue, Lakeview, CA. This facility, shown below, is a typical industrial factory farm, with rows of large hen houses and no indication of outdoor areas, much less grassy pasture for the hens to access.



⁸ USDA Plantbook Query Page, https://apps.ams.usda.gov/plantbook/Query_Pages/PlantFinder.asp (last visited Mar. 13, 2018) (search "1128").

1 42. This facility bears no resemblance to the representations of pastoral barns and
2 expansive pastures that Trader Joe’s uses to sell its Cage Free eggs.

3 43. On information and belief, while Chino Valley Ranchers’ free-range and organic eggs
4 are laid by hens afforded access to the outdoors, its cage-free hens raised in Lakeview, California,
5 or elsewhere, do not have access to the outdoors and instead are raised entirely inside large
6 industrial hen houses.

7 44. Indeed, Chino Valley Ranchers admits on its website that the hens who lay its cage-
8 free eggs are confined entirely indoors, whereas the hens who lay its free-range and organic eggs
9 enjoy access to the outdoors: “Our cage free hen houses are specially built to give the birds freedom
10 to roam the floor, and also are equipped with special roosting and nesting areas. ... Besides
11 enjoying the interior amenities of the cage free houses, our *free range and organic chickens are free*
12 *to go outside*—for sunning, socializing or dust bathing—anytime they want.”⁹

13 45. On information and belief, Trader Joe’s knows that its Cage Free eggs are sourced
14 from hens who live indoors and do not have access to outdoor spaces, much less green pasture, yet
15 the company makes this false and misleading imagery the centerpiece of its Cage Free egg
16 marketing.

17 **DEFENDANT’S REPRESENTATIONS ARE KNOWINGLY MISLEADING AND TAKE UNFAIR**
18 **ADVANTAGE OF CONSUMER CONFUSION OVER EGG LABELING**

19 46. By engaging in this intentional misrepresentation, Trader Joe’s is trading on the fact
20 that consumers are uncertain about the meaning of “cage-free” egg labeling claims and often
21 associate this claim with hens roaming and grazing on open pastures. In a 2016 consumer survey,
22 63 percent of survey participants mistakenly believed that the words “cage-free” indicated that the
23
24
25
26

27
28 ⁹ Chino Valley Ranchers, *Our Humane Practices*, <http://www.chinovalleyranchers.com/humane/>
(last visited Mar. 13, 2018) (emphasis added).

1 hens had access to the outdoors.¹⁰ Only 33 percent of grocery shoppers in a 2017 survey viewed
2 themselves as well-informed about what “cage-free” really means.¹¹

3 47. A survey conducted by the specialty-egg industry also found that consumers are
4 associating cage-free labels with the message that the laying hens spend their time outdoors in
5 pasture environments.¹²

6 48. But even those who are well-informed enough to know that “cage-free” *could* mean
7 that the hens are kept indoors would have no reason to know that the depictions on Trader Joe’s
8 Cage Free egg packages are false and misleading. Again, Trader Joe’s cynically takes advantage of
9 this consumer confusion by pairing the text “Cage Free” with the above-described imagery of hens
10 foraging outdoors on expansive pastures, reinforcing consumers’ incorrect preexisting beliefs about
11 what cage free might mean.

12 49. On information and belief, Trader Joe’s knows that the marketing shown and
13 described above is misleading, and has been deliberately and knowingly misleading its loyal egg
14 customers in this manner for at least the past decade.

15 50. Beginning as early as 2007, interested consumers and online advocates pointed out
16 the deceptive nature of Trader Joe’s marketing and asked that these cartons be changed or removed
17 from Trader Joe’s shelves.¹³ In an open letter to Trader Joe’s dated October 16, 2007, a blogger
18 detailed why one of the cartons at issue in this case is false and misleading and asked whether
19 Trader Joe’s “could redesign your packaging to give us an actual representation of where these eggs
20
21
22

23 ¹⁰ Lake Research Partners, Results from a Recent Survey of American Consumers at 2 (June 29,
24 2016), https://www.aspc.org/sites/default/files/publicmemo_aspca_labeling_fi_rev1_0629716.pdf
(last visited Mar. 13, 2018).

25 ¹¹ *Survey: More Consumers Concerned About Animal Welfare*, AG NEWS FEED,
<http://agnewsfeed.com/2017/06/02/survey-consumers-concerned-animal-welfare/> (last visited Mar.
26 13, 2018).

27 ¹² Bill Daley, *Egg Labels May Confuse Consumers*, CHICAGO TRIBUNE (June 20, 2014),
[http://articles.chicagotribune.com/2014-06-20/features/ct-food-0620-egg-survey-20140621_1_eggs-](http://articles.chicagotribune.com/2014-06-20/features/ct-food-0620-egg-survey-20140621_1_eggs-farms-consumers)
28 [farms-consumers](http://articles.chicagotribune.com/2014-06-20/features/ct-food-0620-egg-survey-20140621_1_eggs-farms-consumers) (last visited Mar. 13, 2018).

¹³ Mr. Homegrown, *An Open Letter to Trader Joes*, ROOT SIMPLE (Oct. 16, 2007),
<https://www.rootsimple.com/2007/10/an-open-letter-to-trader-joes/> (last visited Mar. 13, 2018).

1 came from to clarify a few issues for us.”¹⁴ The online community has reposted and commented on
2 this open letter to Trader Joe’s several times since 2007, most recently in December 2016.¹⁵

3 51. Furthermore, other misleadingly bucolic illustrations on egg cartons have drawn
4 scrutiny and complaints against other egg sellers. In 2015, for example, The Humane Society of the
5 United States (“HSUS”) filed a misleading advertising complaint with the Federal Trade
6 Commission (“FTC”) over Hillandale Farms, Inc.’s use of similar pastorally-illustrated egg cartons
7 to market eggs from caged hens, leading the company to promptly replace the offending cartons
8 with ones showing three stand-alone eggs and no depiction of a farm or hens.¹⁶

9 52. On information and belief, Trader Joe’s was aware of these and other indicators that
10 its packaging was misleading to consumers. This is especially true given Trader Joe’s position as a
11 specialty grocery chain that caters to conscientious consumers concerned about issues such as
12 farmed animal welfare.

13 53. On information and belief, the average grocery store shopper makes purchases using
14 and relying on information she sees on product labels and in-store signage, rather than extensively
15 researching the food products she buys by combing through online articles and the pages of a
16 grocery’s store’s website. Trader Joe’s knows this to be the case and uses the marketing shown and
17 described above to take advantage of consumers’ desire to purchase more naturally and less cruelly-
18 produced eggs.

19
20
21
22
23 ¹⁴ *Id.*

24 ¹⁵ *How to Buy Organic Eggs*, HEALTH AND BEAUTY 4EVER (Apr. 19, 2012),
25 <http://healthandbeauty4ever.blogspot.com/2012/04/organic-eggs.html> (last visited Mar. 13, 2018);
Ann Marie Michaels, *Pastured Eggs vs. Free Range Eggs: How to Buy Organic Eggs*,
26 CHEESESLEAVE (updated Dec. 27, 2016), [http://www.cheeseslave.com/how-to-buy-organic-eggs-](http://www.cheeseslave.com/how-to-buy-organic-eggs-pastured-vs-free-range-eggs/)
27 [pastured-vs-free-range-eggs/](http://www.cheeseslave.com/how-to-buy-organic-eggs-pastured-vs-free-range-eggs/) (last visited Mar. 13, 2018).

28 ¹⁶ Like Trader Joe’s Cage Free egg cartons, the Hillandale cartons were covered by images of hens
grazing freely on an outdoor grassy field in front of a traditional farmhouse. The HSUS complained
that the Hillandale eggs inside these packages came not from pasture-raised hens but from birds
confined to battery cages. Apparently recognizing the deceptive nature of its carton imagery,
Hillandale Farms discontinued the package after being contacted directly by the HSUS.

**DEFENDANT’S MISREPRESENTATIONS ARE MATERIAL TO REASONABLE CONSUMERS LIKE
PLAINTIFF CLAYBAUGH**

54. Surveys have repeatedly shown that how egg-laying hens are raised and treated is important to consumers and material to their purchasing decisions. A survey conducted by the American Humane Association found that 94.9 percent of respondents were “very concerned” about farmed animal welfare and 89.6 percent were “extremely interested” in supporting the “humane treatment” of farmed animals.¹⁷

55. The same survey found that 75.7 percent of people were willing to pay more for products produced in ways that caused less animal suffering.¹⁸ Many other surveys have similarly found that consumers are willing to pay more for what they perceive to be less cruelly-raised products.

56. Trader Joe’s apparently knows that animal welfare and how egg-laying hens are raised matter to its customers. The clearest evidence of this is the company’s February 2016 announcement that it would phase out the sale of eggs from caged hens in its stores in western states by 2020, and by 2025, sell only “cage-free” eggs in all its stores nationally.¹⁹

57. In sum, on information and belief, Trader Joe’s knows, or reasonably should know, that: (a) customers like Mrs. Claybaugh want eggs produced in ways that maximize animal welfare; (b) representations on egg packaging are customers’ primary clue as to how the hens who laid those eggs were raised; and (c) its customers would be surprised and outraged to learn that the Trader Joe’s Cage Free eggs they purchased, emblazoned with images of hens foraging in a green field, instead came from hens confined in large warehouses for their entire lives.

PLAINTIFF RELIED TO HER DETRIMENT ON TRADER JOE’S REPRESENTATIONS

58. Mrs. Claybaugh is a savvy egg consumer and discerning shopper, but even she was fooled by Trader Joe’s misrepresentations on its Cage Free egg cartons. Indeed, businesses like Trader Joe’s regularly use imagery to communicate material attributes of goods for sale to

¹⁷ American Humane Association, 2014 Humane Heartland Farm Animal Welfare Survey at 9-10, <https://www.americanhumane.org/app/uploads/2016/08/2014-humane-heartland-farm-survey.pdf> (last visited Mar. 13, 2018).

¹⁸ *Id.* at 7.

¹⁹ See Trader Joe’s Customer Updates, *supra* note 4.

1 consumers, including their quality, nature, and production methods. Because “a picture is worth a
2 thousand words,” imagery is an effective and powerful means by which to promote a product.

3 59. On information and belief, Defendant’s use of its false and misleading representations
4 on its Cage Free eggs is a part and parcel of its carefully-cultivated brand—a deliberate attempt to
5 take advantage of consumer goodwill and trust to deceive shoppers into believing that its Cage Free
6 eggs are laid by hens raised on small, bucolic farms, in conditions that are less cruel, more natural,
7 and healthier than conventional, industrialized indoor systems.

8 60. Mrs. Claybaugh saw and relied on Defendant’s representations when she purchased,
9 in 2017, Trader Joe’s Cage Free eggs at her neighborhood Trader Joe’s, located at 85 Railroad
10 Avenue, Danville, California, 94526. Mrs. Claybaugh purchased Trader Joe’s Cage Free eggs
11 instead of eggs from other grocery stores.

12 61. Mrs. Claybaugh bought the Trader Joe’s Cage Free eggs precisely because she
13 believed that these eggs came from hens afforded access to the outdoors as represented on the
14 product’s packaging—a quality that mattered to her.

15 62. Defendant’s misleading representations on its Trader Joe’s Cage Free egg cartons
16 misled Mrs. Claybaugh and mislead or are likely to mislead other reasonable consumers because
17 they falsely depict the housing and husbandry conditions in which Trader Joe’s Cage Free eggs are
18 produced.

19 **FIRST CAUSE OF ACTION**

20 **DECLARATORY RELIEF**

21 **(Cal. Code Civ. Proc. § 1060)**

22 63. Plaintiff realleges and incorporates by reference the allegations set forth in each of the
23 preceding paragraphs of this Complaint.

24 64. Pursuant to Code of Civil Procedure section 1060, Plaintiff seeks a declaration of the
25 parties’ rights and duties.

26 65. Among the unfair, fraudulent, and unlawful conduct Plaintiff has alleged in this
27 Complaint is Trader Joe’s decision to market its Cage Free eggs by falsely and misleadingly depicting
28 hens in outdoor settings when, in actuality, they are kept indoors with thousands of other hens.

66. Plaintiff is informed and believes Trader Joe's will dispute these allegations. Therefore, an actual controversy has arisen and now exists between Trader Joe's and Plaintiff. Accordingly, Plaintiff hereby requests a judicial declaration of the rights and duties of the parties with respect to each of the foregoing issues in controversy, including, but not limited to, an order declaring that (a) the conditions in which hens are kept is material to the purchase decisions of Trader Joe's customers (as Trader Joe's itself has recognized); (b) the manner in which Trader Joe's advertises its Cage Free eggs is false and misleading; (c) the false and misleading manner in which Trader Joe's advertises its Cage Free eggs has harmed consumers by preventing them from making an informed decision about purchasing Cage Free eggs; and (d) that these representations violate the proscriptions enacted by the California Legislature in the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750-1784, ("CLRA"), the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500-17509 ("FAL"), and the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200-17209 ("UCL").

SECOND CAUSE OF ACTION
VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT
(Cal. Civ. Code §§ 1750 *et seq.*)

67. Plaintiff re-alleges and incorporates by references the allegations set forth in the above paragraphs as if fully set forth herein.

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

69. Trader Joe's Cage Free eggs are "goods" within the meaning of Cal. Civ. Code § 1761(a) and Defendant is a "person" within the meaning of Cal. Civ. Code § 1761(c). (Further references to "Section" in the Cause of Action are to the California Civil Code.)

70. Plaintiff Claybaugh purchased Trader Joe's Cage Free eggs for personal, family, or household purposes and is a "consumer" within the meaning of Section 1761(d).

71. By purchasing Trader Joe's Cage Free eggs, Claybaugh engaged in "transactions" intended to result in or which resulted in the sale of goods to a consumer within the meaning of Sections 1761(e) and 1770.

72. Defendant's use of false and misleading advertising in connection with their sale of Trader Joe's Cage Free eggs constituted and continues to constitute unlawful conduct within the meaning of the CLRA. Specifically, Defendant's deceptive acts and practices as alleged in this Complaint violated, and continue to violate, the CLRA by "[m]isrepresenting the *source*, sponsorship, approval, or certification of goods or services" in violation of Section 1770(a)(2) (emphasis added); "[r]epresenting that goods or services have sponsorship, approval, *characteristics*, ingredients, uses, *benefits*, or quantities that they do not have" in violation of Section 1770(a)(5) (emphasis added); "[r]epresenting that goods or services are of a *particular standard, quality*, or grade, or that goods are of a *particular style or model*, if they are of another" in violation of Section 1770(a)(7) (emphasis added); and "[a]dvertising goods or services with intent not to sell them as advertised" in violation of Section 1770(a)(9).

73. Defendant violated these provisions of the CLRA with the material representations set forth on its Cage Free egg cartons.

74. Defendant's use of such deceptive and unlawful practices induced Plaintiff to purchase Trader Joe's Cage Free eggs and/or pay a premium for those eggs, causing her injury "as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770," within the meaning of Section 1780.

75. Defendant's violations of the CLRA constitute a continuing threat to Claybaugh and the general public, thereby entitling her to public injunctive relief pursuant to Section 1780(a)(2), by which she seeks to enjoin Defendant from continuing to engage in the deceptive conduct alleged in this Complaint.

THIRD CAUSE OF ACTION
VIOLATIONS OF THE FALSE ADVERTISING LAW
(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)

76. The allegations set forth in the above paragraphs are re-alleged and incorporated by reference as if fully set forth herein.

77. The FAL prohibits false advertising, defined by Cal. Bus. & Prof. Code § 17500 as a statement that “is untrue or misleading, and which is known, or which by the exercise of reasonable

1 care should be known, to be untrue or misleading” to induce the public to purchase personal
2 property. (Further references to “Section” in this Cause of Action are to the California Business and
3 Professions Code).

4 78. As alleged more fully above, Defendant advertises its Cage Free eggs using
5 packaging covered with imagery of hens roaming outside on open, grassy pastures. One package
6 includes in the background rolling hills, lush trees, and an idyllic red barn with wide-open doors and
7 a path leading from the interior of the barn. The scene does not include rows of hen houses, closed
8 barn doors, or anything else that indicates that the hens are confined inside industrial sheds with no
9 outdoor access whatsoever. These depictions falsely represent that the hens who lay Trader Joe’s
10 Cage Free eggs are able to explore, forage, and choose whether to be indoors or outdoors.

11 79. Another version of this packaging shows a hen alongside a rooster, surrounded by
12 green pasture and blades of grass. In the background is a yellow and red barn, again with a large
13 door open wide to allow for ready ingress and egress. These depictions falsely represent that the
14 hens who lay Trader Joe’s Cage Free eggs are able to explore, forage, and choose whether to be
15 indoors or outdoors.

16 80. By advertising Trader Joe’s Cage Free eggs with these representations, Defendant
17 misrepresents the availability of outdoor access to the hens at the production facilities from which
18 its eggs are sourced. These representations are false and are likely to induce reasonable customers to
19 purchase Trader Joe’s Cage Free eggs by appealing to their concerns about animal welfare and/or
20 the perceived benefits of free-range or pasture-raised eggs. Defendant knows or should know that
21 these “statements” on its packaging are false. This deception causes substantial injury to
22 competitors and consumers who buy Trader Joe’s Cage Free eggs, including Plaintiff Claybaugh.
23 Defendant’s use of such representations on their egg packaging thereby constitutes untrue and
24 misleading advertising pursuant to Section 17500.

25 81. The wrongful conduct alleged herein is part of a general practice that is being
26 perpetuated and repeated throughout the State of California.

27 82. Defendant’s unlawful conduct caused economic injury to Claybaugh. She would not
28 have purchased these packages of Trader Joe’s Cage Free eggs had she known the hens were

1 confined indoors in contradiction with the packaging illustrations. Accordingly, Plaintiff seeks an
2 order that will enjoin Defendant's false advertising.

3 83. Plaintiff is entitled to an award of reasonable attorney's fees under California Code
4 of Civil Procedure 1021.5 for the benefit conferred on the general public of the State of California
5 by any injunction or other relief entered as a result of this Complaint.

6
7 **FOURTH CAUSE OF ACTION**
8 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**
9 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

10 84. Plaintiff re-alleges and incorporates by references the allegations set forth in the
11 above paragraphs as if fully set forth herein.

12 85. In enacting the Unfair Competition Law (UCL), the Legislature empowered courts "to
13 prevent the use or employment by any person of any practice which constitutes unfair competition,
14 as defined in [the UCL], or as may be necessary to restore to any person in interest any money or
15 property, real or personal, which may have been acquired by means of such unfair competition."
16 Cal. Bus. & Prof. Code § 17203.

17 86. The UCL prohibits "any unlawful, unfair or fraudulent business act or practice and
18 unfair, deceptive, untrue or misleading advertising and any act prohibited by [the FAL]." Cal. Bus.
19 & Prof. Code § 17200. (Further references to "Section" in this Cause of Action are to the California
20 Business and Professions Code.)

21 87. As alleged above, Defendant has engaged in unlawful, fraudulent, and unfair conduct
22 that has caused Plaintiff, who purchased Defendant's Cage Free eggs, to lose money. Defendant's
23 conduct provides no countervailing benefits to Plaintiff, and it offends clearly-established public
24 policy "to protect consumers from unfair and deceptive business practices." Cal. Civ. Code § 1760.

25 88. Marketing images are a widely used and valuable form of communication that sellers
26 employ to inform potential customers about material aspects of goods for sale including, but not
27 limited to, the intangible qualities of the product. To effectuate California's public policy of
28 protecting consumers from unfair and deceptive business practices, the UCL necessarily protects

1 against unfair and deceptive imagery that falsely represents a product's nature, quality, type, or
2 other material characteristics.

3 89. Plaintiff is informed and on this basis believes that this conduct also undermines,
4 threatens, and impacts competition. For example, Defendant has represented that the hens who lay
5 Trader Joe's Cage Free eggs have access to natural, outdoor areas, but does not bear the production
6 cost associated with such raising practices. Defendant is therefore able to sell Trader Joe's Cage
7 Free eggs at a lower price than any other competitor selling eggs sourced from hens provided access
8 to pasture.

9 90. Furthermore, on information and belief, with its falsely-marketed Cage Free eggs
10 Trader Joe's is able to outsell other egg sellers who also do not source eggs from hens raised in
11 outdoor systems, but who do not misleadingly represent the eggs' source. Thus, Defendant's false
12 and misleading representations give it an unfair competitive advantage in the marketplace against its
13 competing egg sellers.

14 91. By making the representations and engaging in the conduct alleged in this Complaint,
15 Defendant has engaged in unlawful, deceptive, and unfair business practices in violation of the
16 UCL. Specifically, Defendant's conduct violated, and continues to violate, the UCL as follows:

17 a. **Unlawful Conduct:** Defendant has violated the UCL's proscription against engaging
18 in unlawful conduct as a result of (i) its fraudulent and deceitful conduct in violation of Cal. Civ.
19 Code §§ 1572, 1709, 1710, and 1711; (ii) its violations of the Consumer Legal Remedies Act
20 (CLRA); and (iii) its violations of the False Advertising Law (FAL).

21 b. **Deceptive Conduct:** Defendant has violated the UCL's proscription against deceptive
22 advertising as a result of the conduct alleged in this Complaint.

23 c. **Misleading Conduct:** Defendant has violated the UCL's proscription against
24 misleading advertising as a result of the conduct alleged in this Complaint.

25 d. **Fraudulent Conduct:** Defendant has violated the UCL's proscription against fraud as
26 a result of the conduct alleged in this Complaint.

27 e. **Unfair Conduct:** Defendant has violated the UCL's proscription against unfair
28 conduct by engaging in the conduct alleged in this Complaint, which violates, *inter alia*, the clearly-

1 articulated policies underlying California consumer protection law, including those that inform the
2 CLRA and FAL.

3 92. Defendant's unlawful, fraudulent, and unfair conduct has caused Plaintiff to suffer
4 injury in fact and to lose money as a result of Defendant's conduct. As alleged more fully herein,
5 Plaintiff would not have sought out and purchased Trader Joe's Cage Free eggs over other eggs but
6 for Defendant's conduct. Plaintiff is, therefore, entitled to public injunctive relief under Section
7 17203 to enjoin Trader Joe's violations of the UCL.

8 93. Plaintiff is entitled to an award of reasonable attorney's fees under California Code
9 of Civil Procedure 1021.5 for the benefit conferred on the general public of the State of California
10 by any injunction or other relief entered as a result of this Complaint.

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff respectfully requests an order and judgment:

14 1. Declaring that Defendant's conduct described in this Complaint constitutes
15 misrepresentations of material fact in violation of the Consumers Legal Remedies Act, the False
16 Advertising Law, and the Unfair Competition Law;

17 2. Issuing a public injunction that permanently enjoins Defendant, its successors, agents,
18 representatives, employees, and any party acting in concert with Defendant, from using images
19 falsely depicting hens in an outdoor environment in connection with any advertisement, label, or
20 other marketing effort for or relating to Trader Joe's Cage Free eggs;

21 3. Requiring Defendant to issue corrective advertising for misled consumers;

22 4. Awarding to Plaintiff all applicable costs and the reimbursement and payment of
23 reasonable attorney's fees, to the full extent permitted by law; and

24 5. Awarding any such further relief that the Court may deem just and proper.

25
26 DATED: March 14, 2018

ANIMAL LEGAL DEFENSE FUND

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

By Kelsey Eberly

Kelsey Eberly

Kelsey Eberly (SBN 301025)
ANIMAL LEGAL DEFENSE FUND
525 E. Cotati Avenue
Cotati, CA 94931
Tel: (707) 795-2533 ext. 1048
keberly@aldf.org

Jeffrey L. Fazio (SBN 146043)
Dina E. Micheletti (SBN 184141)
FAZIO | MICHELETTI LLP
2410 Camino Ramon, Suite 315
San Ramon, CA 94583
Tel: (925) 543-2555
jlf@fazmiclaw.com
dem@fazmiclaw.com