

CAUSE NO. _____

STATE OF TEXAS,
Plaintiff,

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IN THE DISTRICT COURT OF

v.

HARRIS COUNTY,

Cal-Maine Foods, Inc. d/b/a Wharton;
and Wharton County Foods, LLC;
Defendants.

_____ JUDICIAL DISTRICT

**PLAINTIFF’S PETITION AND APPLICATION
FOR TEMPORARY AND PERMANENT INJUNCTIONS**

COMES NOW THE STATE OF TEXAS, hereinafter referred to as Plaintiff, acting by and through Attorney General of Texas, KEN PAXTON, complaining of **Defendants Cal-Maine Foods, Inc. d/b/a Wharton and Wharton County Foods, LLC**, for selling eggs at an exorbitant or excessive price during a disaster declared by the governor and other violations of the Texas Deceptive Trade Practices—Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41–17.63 (“DTPA”), and for cause of action would respectfully show:

I. DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to Texas Rule of Civil Procedure 190.3.
2. This case is not subject to the restrictions of expedited discovery under Texas Rule of Civil Procedure 169 because the relief sought by the State includes non-monetary injunctive relief.
3. In addition to the claim for non-monetary injunctive relief, the State seeks monetary relief in excess of \$100,000, including civil penalties, attorney’s fees and costs.

II. INTRODUCTION

4. On March 13, 2020, the Texas governor declared a disaster due to the COVID-19

pandemic, and he renewed this declaration on April 12, 2020. The pandemic increased purchasing of eggs and other necessities because families are eating at home more. In Texas, the increased demand for eggs has resulted in egg prices jumping 300% or more for generic eggs. For the most part, these prices are passed on to retail customers.

5. Cal-Maine is the dominant egg supplier in Texas. Cal-Maine sells most of its eggs at the prevailing market price at the time of the sale. In the recent past, the prices for Cal-Maine’s generic eggs have hovered around \$1. During the COVID-19 pandemic, the market has driven generic egg market prices over \$3 per dozen and Cal-Maine has charged its customers accordingly. On information and belief, Cal-Maine has not experienced any supply issues or other disruptions that are driving it to charge more for eggs. It is simply charging more because it can, or, more specifically, because the pandemic caused market demand to jump.

6. In summary, Cal-Maine is taking advantage of a disaster by offering for sale, and/or selling, eggs at exorbitant or excessive prices after Texas Governor Abbott declared a disaster on March 13, 2020 under Chapter 418 of the Texas Government Code.

III. NATURE OF THIS SUIT

7. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection Division (“CPD”) against the named defendants for violations of the Texas Deceptive Trade Practices—Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41–17.63. The DTPA grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. DTPA § 17.47.

IV. DEFENDANTS

8. **Cal-Maine Foods, Inc. d/b/a Wharton** is a Delaware corporation doing business in Harris

County, Texas, and is registered as a foreign corporation with the Texas Secretary of State. Defendant's principal office is located at 3320 W. Woodrow Wilson Ave, Jackson, Mississippi, 39209 and defendant may be served with process through its Texas registered agent, CT Corporation System, 1999 Bryan St., Suite 990, Dallas, Texas, 75201.

9. **Wharton County Foods, LLC**, is a Texas limited liability company doing business in Harris County, Texas. Defendant is 100% owned by Cal-Maine Foods, Inc. Defendant's principal office is listed as a P.O. Box in Jackson, Mississippi, and defendant may be served with process through its Texas registered agent, CT Corporation System, 1999 Bryan St., Suite 990, Dallas, Texas, 75201.

10. **"Defendants"** or **"Cal-Maine"** means the aforementioned defendants: Cal-Maine Foods, Inc. d/b/a Wharton and Wharton County Foods, LLC.

V. JURISDICTION

11. This Court has jurisdiction over this action pursuant to DTPA § 17.47(b).

VI. VENUE

12. Venue of this suit lies in Harris County, Texas, under DTPA § 17.47(b), for the following reasons:

- (a) The transactions forming the basis of this suit occurred in Harris County, Texas.
- (b) Defendants have done business in Harris County, Texas.

VII. PUBLIC INTEREST

13. Plaintiff, the State of Texas, has reason to believe Defendants are engaging in, have engaged in, or are about to engage in, the unlawful acts or practices set forth below, that Defendants have, by means of these unlawful acts and practices, caused damage to, harm to, and/or acquired

money or property from persons, and that Defendants have adversely affected the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas believes, and is of the opinion, that these proceedings are in the public interest. *See* DTPA § 17.47(a). Furthermore, the Consumer Protection Division has good cause to believe that immediate and irreparable injury, loss, or damage may occur in the near future, *see* DTPA § 17.47(a), given that Defendants appear to be continuing to advertise products at exorbitant or excessive prices. (*See, e.g.,* Ex. D, Cal-Maine Foods, Inc. Weekly Price Sheet.)

VIII. TRADE AND COMMERCE

14. Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce,” as those terms are defined in section 17.45(6) of the DTPA.

IX. ACTS OF AGENTS

15. Whenever in this petition, Plaintiff alleges a particular defendant or defendants did any act, Plaintiff means that that the officers, agents, partners, or employees of that particular defendant or defendants performed or participated in the act on behalf of, and under the authority of, the particular defendant or defendants.

X. APPLICABLE LAW

16. The DTPA prohibits “false, misleading, or deceptive acts or practices in the conduct of any trade or commerce.” DTPA § 17.46 (a).

17. The DTPA also prohibits taking advantage of a disaster declared by the governor under Chapter 418 of the Texas Government Code by offering, demanding in connection with the sale, and/or selling at an exorbitant or excessive price, fuel, food, medicine, or other necessities. *See*

DTPA § 17.46(b)(27)(A), (B).

18. Section 418.014 of the Texas Government Code provides:

(a) The governor by executive order or proclamation may declare a state of disaster if the governor finds a disaster has occurred or that the occurrence or threat of disaster is imminent.

(b) Except as provided by Subsection (c), the state of disaster continues until the governor:

(1) finds that:

(A) the threat or danger has passed; or

(B) the disaster has been dealt with to the extent that emergency conditions no longer exist; and

(2) terminates the state of disaster by executive order.

(c) A state of disaster may not continue for more than 30 days unless renewed by the governor.

XI. FACTUAL ALLEGATIONS

A. Governor's Disaster Declaration

19. On March 13, 2020 at 11:20 a.m., pursuant to Texas Government Code section 481.014, Texas Governor Greg Abbott issued a statewide disaster proclamation because of COVID-19, a contagious respiratory virus. (Ex. A, Governor's Disaster Declaration.) The governor renewed the disaster proclamation on April 12, 2020. (Ex. B, Governor's Renewed Disaster Declaration.) The statewide disaster remains in effect at this time.

B. U.S. and Texas Egg price jumps

20. During the current pandemic, egg pricing has skyrocketed in America, and Texas is no exception. Cal-Maine, the largest producer and marketer of shell eggs in America¹, has said market

¹ Cal-Maine Foods, Inc., February 29, 2020 Form 10-Q [hereinafter 2020Q3 Form 10-Q], <https://www.sec.gov/Archives/edgar/data/16160/000001616020000056/calm-20200229.htm>, at 19; *see also* Cal-Maine Foods, Inc., June 1, 2019 Form 10-K [hereinafter 2019 Form 10-K],

prices for producers “have moved . . . to record levels”². The key fact is that producers’ pricing is squeezing consumers as well as small and large businesses, with prices recently being “\$3.01 a dozen . . . compared with 94 cents” earlier in March.³ In fact, Cal-Maine says generic egg pricing rose to **\$3.18** in March 2020.⁴

21. Cal-Maine’s Texas prices have exceeded the national trend. As recently as April 9, 2020, Cal-Maine delivered a batch of generic eggs to a Texas mom-and-pop business, charging **\$3.32** for a dozen generic jumbo eggs, and **\$3.44** for a dozen generic large brown eggs. (Ex. E, Cal-Maine Invoice.) This was a huge jump from Cal-Maine’s average generic egg price from December 2019 to February 2020, which was **\$1.02**.⁵

C. Cal-Maine Background, Financial Strength, and Corporate Structure

Cal-Maine dominance nationally and in Texas.

22. Cal-Maine is the largest producer and marketer of shell eggs in the United States, with a 19% overall market share.⁶ Cal-Maine is almost twice the size of America’s next largest egg producer.⁷ Cal-Maine is an integrated producer, meaning it does everything, including maintaining

<https://www.sec.gov/Archives/edgar/data/16160/000001616019000048/calm-2019x06x01x10k.htm>, at 3.

² 2020Q3 Form 10-Q at 20.

³ Jaewon Kang and Jacob Bunge, *For Grocers, Eggs Are Getting More Expensive Amid Coronavirus*, THE WALL STREET JOURNAL (April 6, 2020), <https://www.wsj.com/articles/for-grocers-eggs-are-getting-more-expensive-amid-coronavirus-11586172611>.

⁴ 2020Q3 Form 10-Q at 20.

⁵ 2020Q3 Form 10-Q at 24.

⁶ *Cal-Maine Investor Presentation 3rd Quarter 2020* [hereinafter Investor Presentation], CALMAINEFOODS.COM, <https://www.calmainefoods.com/media/1124/investor-presentation-09-2020-3q.pdf> (last visited April 18, 2020).

⁷ Watt Ag, *Top 20 US egg producers in 2020*, WATT AG NET (Feb. 6, 2020), <https://www.wattagnet.com/articles/39458-top-20-us-egg-producersin-2020> (last visited April 20, 2020).

flocks, processing eggs, and distributing and delivering eggs.⁸

23. Cal-Maine produces eggs for the two main segments of the retail egg market, non-specialty eggs and specialty eggs. Non-specialty eggs are also referred to as commodity, generic, or store-branded eggs, and are much cheaper than specialty eggs, which consist of cage-free, organic, and nationally-branded eggs. Both in terms of volume and sales, Cal-Maine's main business is non-specialty (generic) eggs.⁹ These shell eggs are sold to national and regional grocery store chains, club stores, and foodservice distributors.¹⁰ Indeed, Cal-Maine also has the largest market share in the retail grocery egg segment.¹¹

24. As for the shell egg market in Texas, Cal-Maine is the dominant player. Even as of 2015, it operated over 90% of the largest processing facilities in Texas.¹² Cal-Maine operates more processing facilities in Texas than in any other state but Florida.¹³ Texans would recognize the many brands Cal-Maine markets, including Egg-Land's Best, Land O' Lakes, Farmhouse, and 4-Grain. Plus, "[t]he majority of [Cal-Maine's] customers rely on [them] to provide most of their shell egg needs, including specialty and non-specialty eggs."¹⁴ In summary, Cal-Maine is a powerhouse nationally, a powerhouse in Texas, and, for any store supplied by Cal-Maine,

⁸ 2020Q3 Form 10-Q at 19.

⁹ See generally 2019 Form 10-K at 65 (Cal-Maine also has a minor egg products business (e.g. liquid eggs), but this is an immaterial 3% of its revenues).

¹⁰ 2019 Form 10-K at 4.

¹¹ 2019 Form 10-K at 4.

¹² UT Center for Transportation Research, *Commodity-based Approach for Evaluating the Value of Freight Moving on Texas' Roadway Network*, U. OF TEXAS (August 2017), at 159, <http://library.ctr.utexas.edu/ctr-publications/0-6898-1.pdf>.

¹³ *Properties & Facilities*, CALMAINEFOODS.COM, <https://www.calmainefoods.com/company/properties-facilities/> (last visited April 18, 2020).

¹⁴ 2020Q3 Form 10-Q at 19.

Cal-Maine is likely that store's primary egg supplier.

Profitability and financial strength.

25. While Cal-Maine is successful in terms of scale, it is also a financial success. In its most recent earnings presentation, Cal-Maine touts its “Solid financial position” and “State-of-the-art” facilities.¹⁵ In 2019, Cal-Maine paid out \$41.7 million in dividends.¹⁶ Cal-Maine's financial resources allowed it to spend \$45.5 million a few months ago to acquire a Texas-based egg production and distribution firm.¹⁷ In the most recent fiscal quarter, Cal-Maine's net income was \$13.7 million, despite generic eggs selling for an average price of **\$1.02** per dozen.¹⁸

Entity structure, Texas operations, and Harris County connections.

26. As for its corporate structure, Cal-Maine Foods, Inc., is a large conglomerate composed of its own operations as well as those of its subsidiaries, including Wharton County Foods, LLC. Cal-Maine Foods, Inc. itself “deliver[s]” goods to Harris County purchasers. (Ex. F, Cal-Maine Collection Lawsuit at 2.) Cal-Maine Foods, Inc.'s own employees are the sales force for the enterprise, and orders are received at its “CMFOODS.com” domain. (*See, e.g.*, Ex. D, Cal-Maine Weekly Price Sheet (sales rep's signature block shows logo of Cal-Maine Foods, Inc.)) Finally, Wharton County Foods, LLC operates in the Houston-area. (*See, e.g.*, Ex. F, Cal-Maine Collection Lawsuit (*see* attached Wharton County Foods, LLC business records).)

¹⁵ Investor Presentation.

¹⁶ 2019 Form 10-K at 42.

¹⁷ 2020Q3 Form 10-Q at 8.

¹⁸ 2020Q3 Form 10-Q at 5, 24.

D. Cal-Maine’s Business Model

Nothing forces or mandates Cal-Maine to charge exorbitant prices.

27. The most important part of Cal-Maine’s business model is that it is an *integrated* producer, doing everything from hatching chicks to delivering eggs to grocery stores.¹⁹ It is not a middleman, passing along the cost of eggs it purchased from a supplier. During the COVID-19 pandemic, Cal-Maine’s egg supply has remained stable, and production and distribution costs have been stable as well. Specifically, “supplies of corn and soybeans are favorable . . . and [Cal-Maine] will continue to have an adequate supply of both” for feeding hens.²⁰ Cal-Maine also stated, “our facilities have been fully operational and we have not experienced any supply chain or delivery disruptions.”²¹

Pandemic egg price jumps are not due to any increase in Cal-Maine’s costs.

28. Cal-Maine is not legally compelled or otherwise obligated to sell eggs at exorbitant prices. While Cal-Maine has “long-term [customer] relationships,” its customers are generally “free to acquire shell eggs from other sources.”²² Also, its financials reveal no long-term contracts (with either customers or its own suppliers) or other legal obligations which could theoretically *compel* Cal-Maine to sell eggs at \$3.00 levels.²³ *During this pandemic, neither production costs nor contractual obligations forced Cal-Maine to charge exorbitant prices.*

Cal-Maine and the rest of the industry mostly sell on the spot market.

29. Grocers, food distributors, and foodservice suppliers buy eggs on the spot market (i.e. at market price). One reason is that long-term contracts which mandate the purchase of specific

¹⁹ 2019 Form 10-K at 6.

²⁰ 2020Q3 Form 10-Q at 21.

²¹ 2020Q3 Form 10-Q at 33.

²² 2019 Form 10-K at 7.

²³ *See generally*, 2019 Form 10-K.

quantities can increase the risk of having too much perishable inventory on hand.²⁴ In fact, “the majority of shell eggs sold in the U.S. in the retail and foodservice channels are sold at independently quoted wholesale market prices for shell eggs.”²⁵ Cal-Maine’s own average egg prices align with wholesale “Egg Market” pricing, and Cal-Maine’s financials emphasize that “spot egg market” pricing drives its operating results.”²⁶

E. Cal-Maine’s Historical and COVID-19-Era Pricing

Cal-Maine’s non-specialty egg prices are normally in the \$1 per dozen range.

30. Cal-Maine’s normal egg pricing levels are available publicly and, generally over time, are in the \$1 range and often trend slightly below regional egg index prices. One illustrative period is the ten-year period from 2005 to 2014. During that period, regional egg index prices “ranged from a low of \$0.72 during 2005 to a high of \$1.43 [in] 2014.”²⁷

31. Pricing was in that normal range prior to the COVID-19 pandemic’s arrival. From December 2019 through February 2020, Cal-Maine’s average selling prices per dozen were **\$1.02** for generics and **\$1.89** for lower-volume specialty eggs.²⁸ Even at those levels, Cal-Maine was profitable, making \$13.7 million in net income for the quarter.²⁹

²⁴ See generally Watts and Associates, Inc., *Final Study for the Study on Poultry Catastrophic Disease* [hereinafter USDA Study on Poultry Catastrophic Disease], U.S. DEPT. OF AG., <https://legacy.rma.usda.gov/pubs/2015/poultrydisease.pdf> (“spot market transactions . . . are a matter of routine . . . as a way to deal with inventory fluctuations”).

²⁵ 2019 Form 10-K at 5.

²⁶ 2019 Form 10-K at 24.

²⁷ Cal-Maine Foods, Inc., May 31, 2014 Form 10-K [hereinafter 2014 Form 10-K], <https://www.sec.gov/Archives/edgar/data/16160/000001616014000015/calm-20140531x10k.htm>, at 21.

²⁸ 2020Q3 Form 10-Q at 24.

²⁹ 2020Q3 Form 10-Q at 5.

Egg prices have jumped in the past, but not above \$3.

32. During periods in which egg-yield declines or when demand jumps, spot market egg prices will jump because of the inelasticity (relatively fixed nature) of demand. For example, the 2015 avian flu outbreak made prices skyrocket. This outbreak decimated potentially 12% of the national flock of laying hens.³⁰

33. During the peak of the 2015 outbreak, Cal-Maine said egg pricing in the southeast hit a “peak of **\$2.97** during August [2015].”³¹ Cal-Maine’s own quarterly generic average price was **\$2.16**.³² After the epidemic, as companies reestablished flocks and the egg supply returned to normal, pricing also returned to normal. *Because no influenza outbreaks occurred at Cal-Maine facilities*³³, *Cal-Maine saw windfall quarterly net income of \$143 million*.³⁴ No disaster was declared during the avian flu epidemic.

Cal-Maine is on track to make windfall profits from COVID-19.

34. As discussed, Cal-Maine’s pre-pandemic prices were **\$1.02** for generics and **\$1.89** for specialty eggs.³⁵ Then, during March and April 2020, Cal-Maine and the rest of the industry’s commodity egg prices skyrocketed, with a regional market index hitting **\$3.18** in March 2020.³⁶ As of April 2020, Cal-Maine followed that trend in Texas, charging, for example, a mom-and-pop

³⁰ Cal-Maine Foods, Inc., November 28, 2015 Form 10-Q [hereinafter 2016Q2 Form 10-Q], <https://www.sec.gov/Archives/edgar/data/16160/000001616015000043/calm-20151128x10q.htm>, at 14.

³¹ 2016Q2 Form 10-Q at 14.

³² Cal-Maine Foods, Inc., August 29, 2015 Form 10-Q [hereinafter 2016Q1 Form 10-Q], <https://www.sec.gov/Archives/edgar/data/16160/000001616015000035/calm-20150829x10q.htm>, at 17 (calculated by dividing quarterly data consisting of non-specialty sales of \$422,921,000 by non-specialty egg dozens sold of 195,352,000).

³³ 2016Q1 Form 10-Q at 15.

³⁴ 2016Q1 Form 10-Q at 3.

³⁵ 2020Q3 Form 10-Q at 24.

³⁶ 2020Q3 Form 10-Q at 20.

business **\$3.32** for a dozen generic jumbo eggs, and **\$3.44** for a dozen generic large brown eggs. (Ex. E, Cal-Maine Invoice.)

35. Cal-Maine appears to have ignored the governor’s disaster declaration and increased pricing by 300% or more.

36. Furthermore, Cal-Maine’s price jumps were exorbitant and excessive for the following reasons.

a. *Supply did not change like it did during the avian flu epidemic.* Cal-Maine’s “facilities have been fully operational and [they] have not experienced any supply chain or delivery disruptions.”³⁷

b. *Cal-Maine’s generic eggs are costing more than the \$2-plus levels seen during the 2015 avian flu pandemic.* Cal-Maine has admitted that pricing is at “record levels.”³⁸

c. *Cal-Maine’s generic eggs pricing (e.g. the \$3.32 and \$3.42 pricing on the invoice supra) makes generics cost more than Cal-Maine specialty eggs (priced around \$1.89).* Nothing has happened that would justify generic eggs costing more than specialty eggs. In fact, upon reason and belief, Cal-Maine’s specialty egg brand Egg-land’s Best has remained at 2019 pricing levels.

37. In conclusion, Cal-Maine’s March and April 2020 generic egg pricing is exorbitant, excessive, and unjustified. *Because this year’s exorbitant and excessive price increases occurred during a declared disaster, they violate the DTPA.*

³⁷ 2020Q3 Form 10-Q at 33.

³⁸ 2020Q3 Form 10-Q at 20.

F. Cal-Maine makes misleading statements which deflect blame for exorbitant prices.

38. Cal-Maine makes misleading public statements about the effect of market prices on its egg prices. For example, during April, Cal-Maine’s website stated, “wholesale shell egg market prices . . . are outside of our control.”³⁹ This is misleading, because as a producer selling on the spot market, Cal-Maine can *offer* purchasers whichever price it chooses.

39. Additionally, Cal-Maine’s financials claim pricing is based on “independently quoted wholesale market prices”⁴⁰ and that pricing is affected by “market quotations”⁴¹. Other discussions mention “Spot Egg Market Quotations.”⁴² These statements imply there is a regulated “market,” like the stock market, where one can observe actual prices paid by commodity purchasers (i.e. price “Quotations”). In fact, there is no egg market exchange.

40. Instead, a company called Urner Barry publishes an industry newsletter and maintains an accompanying website where it publishes various price indexes. Urner Barry gets information from “[d]ata submitters [who] provide transactional and market data on a voluntary basis.”⁴³ In other words, companies submit data voluntarily, and Urner Barry generates egg-related price indexes. But no public market exchange exists, as Cal-Maine implies. When Cal-Maine discusses “market prices” (when no market exchange exists) and market forces that are “outside of our control” (when Cal-Maine can exert control), it misleads purchasers who seek answers as to why

³⁹ *Volatility of Egg Prices*, CALMAINEFOODS.COM, <https://www.calmainefoods.com/investors/volatility-of-egg-prices/> (last visited April 18, 2020); *see also* 2020Q3 10-Q at 20 (financials filed after the disaster declaration similarly state “egg prices . . . are outside of our control”)

⁴⁰ 2019 Form 10-K at 24.

⁴¹ 2019 Form 10-K at 7.

⁴² 2019 Form 10-K at 24.

⁴³ *Data Submitter Policy*, URNER BARRY, https://www.urnerbarry.com/pdf/methodology/UB_Data_Submitter_Policy.pdf (last visited April 18, 2020).

pandemic egg prices have jumped.

XII. DTPA VIOLATIONS

41. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

42. Defendants, as alleged above, are engaging or have engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce violation of DTPA § 17.46(a).

43. Defendants, as alleged above, are engaging or have engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce, in violation of DTPA §§ 17.46(b)(27)(A) and (B), by offering, demanding in connection with the sale, and/or selling at an exorbitant or excessive price during a declared state of disaster, shell eggs.

44. Defendants, as alleged above, are engaging or have engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce, in violation of DTPA 17.46(b) as follows:

- a. “[R]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which the person does not,” DTPA § 17.46(b)(5); and
- b. “[F]ailing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed,” DTPA § 17.46(b)(24).

XIII. INJURY TO CONSUMERS

45. Defendants have, by means of these unlawful acts and practices, obtained money or

property from consumers who are entitled to restitution, or in the alternative, has caused actual damages to identifiable persons who are entitled to compensation.

46. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated the law as alleged in this petition. Unless restrained by this Honorable Court, Defendants will continue to violate the laws of the State of Texas and cause injury to the general public.

XIV. APPLICATION FOR TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

47. The State alleges that by reason of the foregoing, Defendants should not continue to sell or offer to sell goods in violation of the laws of Texas. Unless immediately restrained by this Honorable Court, Defendants will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public. The interests of the State of Texas and the public require immediate action to keep Defendants from continuing to sell necessary goods at exorbitant or excessive prices. Further, unless injunctive relief is granted, Defendants will continue collecting monies from consumers by use of false, misleading, or deceptive trade practices. Therefore, the State requests a Temporary Injunction and Permanent Injunction, as indicated below.

48. The State of Texas requests that, after notice and hearing, the Court issue a Temporary Injunction, and ORDER that Defendants, their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, who receive actual notice of the order by personal service or otherwise, be restrained from engaging in the following acts or practices:

- a. Selling eggs at a price per dozen which is exorbitant or excessive.
- b. Concealing, withholding, destroying, mutilating, altering, falsifying, or removing from

the jurisdiction of this Court any books, records, documents, invoices, receipts, or other written materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause; and

- c. Representing, directly or by implication, that this Court, the State of Texas, or the Office of the Attorney General has approved any good or service sold or offered for sale by any of Defendants or approved of any of Defendants' business practices or pricing.

49. The State requests leave of this Court to conduct discovery prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date with reasonably shortened deadlines. Any discovery and depositions, telephonic or otherwise, would be conducted with reasonable shortened notice to Defendants and their attorneys, if known.

50. The State further requests that this Court order Defendants to provide Plaintiff the following information within five (5) business days after the entry of the Temporary Injunction:

- a. A copy of all contracts or other arrangements in effect during 2020 which govern the prices of non-specialty eggs and prices of specialty eggs which Cal-Maine supplies to Cal-Maine's ten-largest customers in Texas;
- b. A copy of all weekly or daily price sheets advertising egg prices which were sent to Cal-Maine's ten-largest customers in Texas during 2020;
- c. A copy of any and all non-attorney-client-privileged emails mentioning or discussing price-gouging during 2020;
- d. A copy of any and all policy and procedure manuals in effect during 2020 discussing compliance with statutes pertaining to price-gouging, regardless of the jurisdiction; and
- e. A copy of any and all data submitted during the months of March 2020 and April 2020 to any company or business with "Urner Barry" or "ComTell" in the company or business name.

51. For the reasons set forth above, the State of Texas requests, after notice and hearing, that the Court issue Temporary and Permanent Injunctions, enjoining the acts set out in paragraphs 22, 23, 24, and 28 above, as authorized by sections 17.47(a) of the DTPA.

XV. CONDITIONS PRECEDENT

52. All conditions precedent to the State's claim for relief have been performed or have occurred.

XVI. TRIAL BY JURY

53. The State demands a jury trial and tenders the appropriate fee with this petition.

XVII. PRAYER

54. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, their officers, agents, servants, employees and attorneys and any other person in active concert or participation with any of the Defendants from engaging, directly or indirectly, in the acts or practices set out in paragraphs 22, 23, 24, and 28, above.

55. In addition, Plaintiff, State of Texas, respectfully prays that this Court:

- a. Award civil penalties in favor of Plaintiff, State of Texas, in the amount not to exceed more than \$10,000.00 per violation, and \$250,000 in the event the deception impacts anyone over 65 years of age;
- b. Order Defendants to restore all money or other property acquired by means of unlawful acts or practices, or in the alternative, to compensate identifiable persons for actual damages;

- c. Award Plaintiff reasonable attorney's fees and court costs pursuant to Texas Government Code section 402.006;
- d. Award Plaintiff pre-judgment and post-judgment interest at the highest lawful rate;
- e. Appoint a receiver or sequester Defendants' assets if any one or more of Defendants has been ordered by this Court to make restitution and the applicable Defendant or Defendants have failed to do so within three (3) months after the order to make restitution has become final and nonappealable;
- f. Adjudge that all fines, penalties or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. section 523(a)(7).

56. Further, Plaintiff, State of Texas, respectfully prays for all other relief to which Plaintiff, State of Texas, may be justly entitled.

Respectfully submitted,

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Attorney General of Texas

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First Assistant Attorney General

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