

Multiple Documents

Part	Description
1	17 pages
2	Civil Cover Sheet Civil Cover Sheet

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**KENNETH BELL, SHERRY DABBS-
LAURY, CHARLENE DIRKS,
WENDY BROWN, and TONNIE
WALKER-BECK, on behalf of
themselves and all others similarly
situated,**

Plaintiffs,

v.

Case No. 1:20-cv-00461

**CAL-MAINE FOODS, ROSE
ACRE FARMS, INC., HILLANDALE
FARMS, TRILLIUM FARM
HOLDINGS, LLC, REMBRANDT
ENTERPRISES, INC., HICKMAN
EGG RANCH, INC., DAYBREAK
FOODS, INC., WEAVER BROS., INC.,
SPARBOE FOODS CORP.,
HERBRUCK'S POULTRY RANCH,
INC., CENTRUM VALLEY FARMS,
L.P., OPAL FOODS, LLC, MIDWEST
POULTRY SERVICES, L.P.,
COSTCO WHOLESARE CORP.,
ALBERTSON'S COMPANIES, INC.,
WAL-MART STORES, INC.,
THE KROGER CO.,
HEB GROCERY CO., L.P.,
BROOKSHIRE'S GROCERY CO.,
LOWE'S MARKETS, INC.**

Defendants.

CLASS ACTION COMPLAINT

INTRODUCTION

1. This statewide class action concerns the despicable and illegal practice of price-gouging of essential groceries, specifically eggs, in the midst of the ongoing and unprecedented pandemic. Plaintiffs and the class they seek to represent bought grossly marked-up eggs through the supply chain created by the defendants, which includes producers, wholesalers, and retailers. Because consumers such as plaintiffs lack access to information about which of the defendants, or all of them, participated in the price-gouging resulting in a near-tripling of egg prices in the past 30 days, plaintiffs have sued all the defendants in the alternative. Plaintiffs cannot assert that every defendant engaged in price-gouging, but plaintiffs can and do assert that some or all of these defendants illegally marked up egg prices following Governor Abbott's declaration of an emergency in violation of Texas law.

2. The world is in the midst of a global pandemic involving a novel coronavirus called COVID-19 that causes an often severe and sometimes fatal respiratory infection. The outbreak originated in December, 2019, in Wuhan, Hubei Province, China, and in short order the local epidemic spread globally and was deemed a pandemic by the World Health Organization in March, 2020.

3. The first reported case of COVID-19 in the United States was diagnosed in Washington state in late January, 2020. The case involved a man who had recently travelled to the epicenter of the outbreak in Wuhan. Although this was

the first case confirmed by the Centers for Disease Control, scientists and public health officials now believe that there may have been other cases of COVID-19 in the United States prior to that date.

4. By mid-March 2020, there were reported cases in all 50 American states. The federal government, most states, and many local governments called for stay-at-home and social distancing measures designed to slow the spread of the disease. Texas Governor Greg Abbott declared a state of emergency in this state on March 13, 2020 and extended it on April 12, 2020. As of the writing of this complaint, the vast majority of Americans are subject to similar measures. Even in areas not subject to government-mandated stay-at-home orders, most people are voluntarily staying at home except to shop for necessities and to go to work in “essential” occupations such as healthcare and food sales and delivery services. The undersigned counsel writing this complaint is doing so from his home office.

5. The economic effect of the government-mandated and voluntary measures to combat the pandemic has been extreme. Many are out of work. Many have had their wages and salaries reduced. Bars and restaurants have been mostly closed for weeks, some remaining open but limiting themselves to curbside delivery and home delivery, and it is predicted many will never re-open. Professional and college sports seasons have been canceled altogether, throwing many out of work. Schools, colleges, and universities are now limited to online classes. Those in the

business of putting on concerts, plays, and other forms of entertainment are idle as public gatherings have been banned. All casinos are closed, throwing many more out of work. The Riverwalk in San Antonio, Sixth Street in Austin, and other famous Texas attractions are all deserted. Oil prices are at their lowest point in decades. The stock market is in freefall.

6. As in any time of economic turmoil, there are those who seek to profit from the misery of millions. Defendants, who are producers, wholesalers, and retailers of eggs, comprise one such set of actors seeking to unfairly profit from the increased consumer demand for eggs in the midst of the ongoing crisis. Again, because it is impossible for consumers such as plaintiffs to obtain information concerning the secretive process of price-setting, this lawsuit does not assert that each and every defendant engaged in price-gouging. Rather, plaintiffs assert that, at a minimum, some of these defendants did so. This pleading in the alternative is specifically authorized by Rule 20(2)(A) of the Federal Rules of Civil Procedure.

7. Between the onset of the COVID-19 pandemic and March 30, 2020, the price of eggs nearly tripled in Texas. In the weeks since, they have remained much higher than their pre-emergency prices. Some or all of the defendants are engaging in price-gouging prohibited by Texas law. Plaintiffs allege this because of the undeniable fact that egg prices nearly tripled after the emergency declaration.

PARTIES

8. Plaintiff Kenneth Bell purchased eggs at a store owned or operated by defendant HEB Grocery Co., LP, at a grossly inflated price after the declaration of emergency by Governor Abbott.

9. Plaintiff Sherry Dabbs-Laury purchased eggs at stores owned or operated by defendants Lowe's Markets Inc., Costco Wholesale Corp., Walmart Stores, Inc., and The Kroger Company at grossly inflated prices after the declaration of emergency by Governor Abbott.

10. Plaintiff Charlene Dirks purchased eggs at stores owned or operated by defendants Brookshire's Grocery Co., Walmart Stores, Inc., and The Kroger Company at grossly inflated prices after the declaration of emergency by Governor Abbott.

11. Plaintiff Wendy Brown purchased eggs at a store owned by defendant Walmart Stores, Inc. at a grossly inflated price after the declaration of emergency by Governor Abbott.

12. Plaintiff Tonnie Walker-Beck purchased eggs at a store owned by defendant Albertson's Companies, Inc. at a grossly inflated price after the declaration of emergency by Governor Abbott

13. Defendant Cal-Maine Foods, Inc. is a corporation organized under the laws of Delaware with its principal place of business in Jackson, Mississippi. It is a corporate citizen of Delaware and Mississippi.

14. Defendant Rose Acre Farms, Inc. is a corporation organized under the laws of Indiana with its principal place of business in Seymour, Indiana. It is a corporate citizen of Indiana.

15. Defendant Hillandale Farms is a corporation organized under the laws of Ohio, with its principal place of business in Newark, Ohio. It is a corporate citizen of Ohio.

16. Defendant Trillium Farm Holdings, LLC is an entity organized under the laws of Ohio, with its principal place of business in Johnstown, Ohio. It is a corporate citizen of Ohio.

17. Defendant Rembrandt Enterprises, Inc. is a corporation organized under the laws of Iowa, with its principal place of business in Spirit Lake, Iowa. It is a corporate citizen of Iowa.

18. Defendant Hickman's Egg Ranch, Inc. is a corporation organized under the laws of Arizona, with its principal place of business in Buckeye, Arizona. It is a corporate citizen of Arizona.

19. Defendant Daybreak Foods, Inc. is a corporation organized under the laws of Wisconsin, with its principal place of business in Lake Mills, Wisconsin. It is a corporate citizen of Wisconsin.

20. Defendant Weaver Bros., Inc. is a corporation organized under the laws of Ohio, with its principal place of business in Versailles, Ohio. It is a corporate citizen of Ohio.

21. Defendant Sparboe Foods Corp. is a corporation organized under the laws of Iowa, with its principal place of business in Litchfield, Minnesota. It is a corporate citizen of Iowa and Minnesota.

22. Defendant Herbruck's Poultry Ranch, Inc. is a corporation organized under the laws of Michigan, with its principal place of business in Saranac, Michigan. It is a corporate citizen of Michigan.

23. Defendant Centrum Valley Farms, L.P., is an entity organized under the laws of Indiana, with its principal place of business in Clarion, Iowa. It is a corporate citizen of Iowa and Indiana.

24. Defendant Opal Foods, LLC is an entity organized under the laws of Delaware, with its principal place of business in Neosho, MO. It is a corporate citizen of Delaware and Missouri.

25. Defendant Midwest Poultry Services, L.P., is an entity organized under the laws of Indiana, with its principal place of business in Mentone, Indiana. It is a corporate citizen of Indiana.

26. The defendants described in Paragraphs 15-27 are involved in egg production, distribution, and wholesale delivery, and are in the supply chain bringing eggs to market in the Western District of Texas.

27. Defendant Costco Wholesale Corp. is a corporation organized under the laws of Washington with its principal place of business in Issaquah, Washington. It is a corporate citizen of Washington.

28. Defendant Albertson's Companies, Inc. is a corporation organized under the laws of Delaware, with its principal place of business in Boise, Idaho. It is a corporate citizen of Delaware and Idaho.

29. Defendant Wal-Mart Stores, Inc. is a corporation organized under the laws of Delaware, with its principal place of business in Bentonville, Arkansas. It is a corporate citizen of Delaware and Arkansas.

30. Defendant The Kroger Co. is a corporation organized under the laws of Ohio, with its principal place of business in Cincinnati, Ohio. It is a corporate citizen of Ohio.

31. Defendant HEB Grocery Co., L.P. is an entity organized under the laws of Texas, with its principal place of business in San Antonio, Texas. It is a corporate citizen of Texas.

32. Defendant Brookshire's Grocery Co. is a corporation organized under the laws of Texas, with its principal place of business in Tyler, Texas. It is a corporate citizen of Texas.

33. Defendant Lowe's Markets, Inc. is a corporation organized under the laws of Texas, with its principal place of business in Littlefield, Texas.

34. The defendants described in paragraphs 29-34 are owners or operators of retail stores or online retailers doing business in this district.

JURISDICTION AND VENUE

35. Jurisdiction is proper in this Court under 28 U.S.C. § 1332 because the claims in this case form part of a class action in which the amount in controversy exceeds the sum of \$5,000,000.00 and the members of the class include citizens of different states than some or all of the defendants.

36. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a substantial portion of the events giving rise to plaintiffs' complaint occurred in this district.

37. Each defendant, whether a retailer, wholesaler, or producer of eggs, is in the business of supplying eggs to customers in this federal district. Each defendant is part of the supply chain for eggs in Texas.

LEGAL FRAMEWORK AND BACKGROUND

38. The Texas Deceptive Trade Practices Act contains a section that specifically addresses the pricing of necessities like food in an emergency situations. Section 17.46(b)(27) of the Texas Business and Commerce Code prohibits “selling or leasing fuel, food, medicine, lodging, building materials, construction tools, or another necessity at an exorbitant or excessive price.”

39. This section applies when Section 17.4625 of the same code is triggered. Section 17.4625 states that the “designated disaster period” begins, inter alia, when the Governor issues a proclamation or executive order declaring the disaster. This period ends thirty days after the disaster declaration expires.

40. Governor Greg Abbott issued a disaster declaration on March 13th, and extended it for an additional 30 days on April 12th. See “Texas Gov. Greg Abbott extends disaster declaration for 30 days,” available at <https://abc13.com/coronavirus-covid-19-pandemic-texas-governor-abbott/6097736>

41. Because a declared disaster has existed in this state since March 13th, the provisions of Section 17.46(b)(27) have been in effect, making it unlawful for anyone in the state to sell food at an exorbitant or excessive price.

42. Nothing in the Texas Code limits this provision to food or other necessities being sold at retail, rather than by producers, distributors, or wholesalers. On the contrary, the natural implication of the provision is that all sales at an exorbitant or excessive price, at any level of the supply chain, are prohibited during a declared disaster.

43. Before the pandemic, the price for generic eggs in Texas hovered near \$1.00 per dozen. During the month of March, that price nearly tripled to almost \$3.00 per dozen. This increase has not been caused by an increase in the cost or difficulty in producing eggs. Rather, it has been driven by increased demand, caused by the emergency situation. The price-gouging statute exists to prevent unscrupulous companies from taking advantage of such demand in emergencies. Yet many egg producers, wholesalers, and retailers have done precisely that. Because the price of eggs nearly tripled during the month of March, and have remained at excessive or exorbitant prices to this day, it is clear that some defendant, or all of them, has disregarded Texas law and taken outrageous advantage of the emergency situation to profit from the misery of Texas residents.

44. Pursuant to Rule 20 of the Federal Rules of Civil Procedure, plaintiffs may join all defendants against whom they seek relief jointly, severally, or in the alternative, arising out of the same transaction or series of transactions. Plaintiffs' purchases of eggs from retailers was part of a series of transactions that also included

any other sale of the eggs that occurred between their being laid and their arrival at the point of retail sale. Plaintiffs seek relief in the alternative from any and all entities that marked up the eggs more than ten percent during the COVID-19 emergency.

CLASS ALLEGATIONS

45. This statewide class action is maintainable against the defendants pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs seek to represent the following class against each defendant:

All consumers who purchased eggs in the state of Texas that were sold, distributed, produced, or handled by any of the defendants during the state of emergency declared by Governor Greg Abbott on March 13, 2020. All employees of the Court and plaintiffs' counsel are excluded.

46. Because plaintiffs bring this case in the alternative against numerous individual entities involved in selling eggs in Texas, plaintiffs anticipate that they will seek to certify a number of subclasses against particular defendants.

47. Pursuant to Rule 23(a)(1), the class is so numerous that joinder of all class members is impracticable. Texas is the nation's second most populous state, with more than 28 million residents. Since the average per capita egg consumption in the United States is more than 285 per year, this means that Texans purchase almost eight billion eggs per year. See <https://www.statista.com/statistics/183678/per-capita-consumption-of-eggs-in-the-us-since-2000/>. The vast majority of these eggs are sold by the defendants named in this lawsuit, who represent a large percentage of the Texas grocery market, as well

as the thirteen largest wholesalers of eggs in Texas. The number of people who purchased eggs during the state of emergency is far too large for practicable joinder in a single suit.

48. Pursuant to Rule 23(a)(2), this case is predominated by questions of law and fact common to all class members, including whether the defendants charged an excessive or exorbitant price for eggs during the COVID-19 emergency.

49. Pursuant to Rule 23(a)(3), the claims of the named plaintiffs are typical of those of the class. Every member of the class is a consumer who purchased eggs during the emergency.

50. Pursuant to Rule 23(a)(4), the named plaintiffs will fairly and adequately represent the interests of the class. The named plaintiffs have no interest adverse to the interests of absent class members. The named plaintiffs have hired experienced class action plaintiff lawyers as class counsel, who will diligently and competently represent the interests of the class.

51. Pursuant to Rule 23(b), questions of law and fact common to all class members predominate over any questions affecting only individual class members. The claims of the named plaintiff, like those of all class members, arise out of conduct by one or more of the defendants to raise the price of eggs in Texas, affecting all Texas consumers, and thus all class members, in the same fashion. For these

reasons, a class action is far superior to other available methods of adjudicating this controversy. Individual lawsuits would be inefficient and duplicative by comparison.

**COUNT ONE: VIOLATION OF THE TEXAS DECEPTIVE TRADE
PRACTICES ACT**

CLAIM FOR INJUNCTIVE RELIEF

52. Plaintiffs incorporate by reference the factual averments of the preceding paragraphs as if fully set forth herein.

53. The Texas Deceptive Trade Practices Act (DTPA, Tex. Bus. & Comm. Code Chapter 17) prohibits businesses from engaging “false, misleading, or deceptive practices,” and contains an illustrative list of such practices.

54. One of the practices explicitly banned in the DTPA’s list is “selling or leasing fuel, food, medicine, lodging, building materials, construction tools, or another necessity at an exorbitant or excessive price.” Tex. Bus. & Comm. Code § 17.46(b)(27). Subsection 27 also bans “demanding an exorbitant or excessive price” for such items. *Id.*

55. One or more defendants violated § 17.46(b)(27) by unjustifiably raising the price of eggs to an exorbitant or excessive price during the declared state of emergency.

56. Plaintiffs sent the notice required by Section 17.505 of the Business and Professions Code prior to filing this action, and intend to proceed with the case sixty

days after the date of the notice. In addition, plaintiffs sent a copy of these notices to the Consumer Protection Division of the Texas Attorney General's office.

57. The Texas Deceptive Trade Practices Act Authorizes injunctive relief for violation of any of the enumerated categories in Section 17.46 of the Business and Professions Code. Tex. Bus. & Prof. Code 17.50(b)(2).

58. Plaintiffs seek to enjoin all defendants from selling (at any level in the supply chain) eggs at a price more than ten percent greater than the price of eggs prior to the declaration of emergency on March 13, 2020.

**COUNT TWO: VIOLATION OF THE TEXAS DECEPTIVE TRADE
PRACTICES ACT**

CLAIM FOR DAMAGES, INCLUDING TREBLE DAMAGES

59. Plaintiffs incorporate by reference and reallege all factual averments of the preceding paragraphs as if fully set forth herein.

60. As explained in Count One, the defendants violated the Texas Deceptive Trade Practices Act, specifically subsection 27 of Section 17.46(b) of the Texas Business and Professions Code, by selling eggs at an exorbitant or excessive price.

61. Defendants, or some of them, set the exorbitant or excessive price of eggs intentionally.

62. This intentional violation entitles plaintiffs and the class to damages, including up to three times the excess amount paid for eggs during the emergency.

PRAYER FOR RELIEF

Plaintiff respectfully prays for the following relief,

- (A) An order certifying the above-described class pursuant to Federal Rule of Civil Procedure 23, with appropriate notice to absent class members;
- (B) An order appointing plaintiffs' counsel as class counsel for the statewide class;
- (C) A declaratory ruling that the defendants have engaged in the practices alleged herein in violation of Texas law;
- (D) A permanent injunction enjoining defendants from selling eggs at prices prohibited by Section 17.46(b)(27) of the Texas Business & Professions Code for the remainder of the COVID-19 emergency;
- (E) After a jury trial, and award of damages, including treble damages, to plaintiffs and absent class members in an amount determined by the court pursuant to Texas law;
- (F) Attorneys' fees as authorized by Section 17.50(d) of the Texas Business & Professions Code;
- (G) Any further or different relief the Court may find appropriate.

Respectfully submitted,

/s/ Alexander McSwain

ATTORNEY

THE CARLSON LAW FIRM

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Facsimile: 205.930.9989

jnorris@davisnorris.com

ATTORNEYS FOR PLAINTIFFS

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Kenneth Bell, Sharry Dabbs-Laury, Charlene Dirks, Wendy Brown, Tonnie Walker-Beck,

(b) County of Residence of First Listed Plaintiff _____

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Alexander McSwain, The Carlson Law Firm, 100 E. Central Texas Expy, Killeen, Texas 76541, (254) 526-5688;

DEFENDANTS

CAL-MAINE FOODS, ROSE ACRE FARMS, INC., HILLANDALE FARMS, TRILLIUM FARM HOLDINGS, LLC, REMBRANDT ENTERPRISES, INC., HICKMAN EGG RANCH, INC., DAYBREAK F

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input checked="" type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332

Brief description of cause:
Deceptive trade practices

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

04/30/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Alexander McSwain

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

General Information

Court	United States District Court for the Western District of Texas; United States District Court for the Western District of Texas
Federal Nature of Suit	Contract - Other[190]
Docket Number	1:20-cv-00461