

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

HENRY HENDERSON, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

THE COCA-COLA COMPANY, and
FAIRLIFE, LLC,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Henry Henderson (“Plaintiff”), individually and on behalf of all others similarly situated (the “Class,” as more fully defined below), brings this class action complaint against Defendants The Coca-Cola Company and Fairlife, LLC (collectively, “Fairlife” or “Defendants”). Plaintiff makes the following allegations upon personal knowledge as to his own acts, and upon information and belief and the investigation of his attorneys as to all other matters, and alleges as follows:

NATURE OF THE ACTION

1. Defendants produce, market, and sell a brand of milk products marketed as premium products (the “Products”) under the “Fairlife” label. Crucial to Defendants’ marketing of the Products is the representation that the cows that are part of producing the Products are treated humanely.

2. Throughout the labeling and marketing of Defendants’ Products and culminating with the egregious name of Defendants’ Products, “Fairlife,” the pervasive marketing scheme promises to reasonable consumers that the animals involved in producing the Products are treated humanely.

3. For example, the packaging of the Products prominently states, under the heading “our promise,” that the Products are a “one-of-a-kind milk” based on the goal of “making the world a better place.” In bold font, Defendants promise: “Extraordinary care and comfort for our cows”; “Traceability back to our farms”; and “Continual pursuit of sustainable farming.” Defendants also direct consumers to the Fairlife website—which makes additional claims about the humane treatment of animals—and invites consumers to “visit our flagship farm in Indiana so you can see for yourself!”

4. Fairlife’s entire marketing strategy revolves around the company’s humane treatment of its dairy cows. Fairlife leverages the strategy by targeting consumers who would be willing to pay a price premium for a product that guarantees the humane treatment of animals.

5. Defendants’ marketing representations are false. The Products are not sourced from cows that are treated “fairly” or with “extraordinary care and comfort”; to the contrary, Defendants’ dairy cows are not treated “fairly” at all. The cows are the victims of horrendous animal abuse. The cruelty and suffering inflicted on the cows and calves at Fair Oaks Farms—the *flagship farm* for the Fairlife Products—was so significant that it has led to criminal charges being brought against three individuals and Fairlife’s discontinuing the sourcing of milk products from Fair Oak Farms.

6. Plaintiff, and the many other consumers he seeks to represent, have been scammed by Defendants’ false representations. The Defendants’ deceptive claims regarding the humane treatment of animals at Fairlife farms were produced on the Product’s labels and published on the Defendants’ websites. The material misrepresentations caused the Plaintiff and the many other consumers he seeks to represent to purchase the Products that were sold not as advertised. Plaintiff and the Class members (defined below) suffered financial injury because

they bought Products they otherwise would not have bought, or for which they would have paid less. But beyond that, they were forced, through Defendants' deception, to unknowingly contribute to and participate in the infliction of cruelty on the Fairlife cows through their purchases of the Products. To remedy this wrongdoing, Plaintiff brings this class action to put a stop to Defendants' deceptive and unlawful practices and to recover financial compensation for their injuries.

PARTIES

Plaintiff

7. Plaintiff Henry Henderson is a citizen of Massachusetts, residing in Newton, Massachusetts. During the past several years or more, Mr. Henderson purchased Defendants' Products from several retail stores in the Newton, Massachusetts area. Prior to purchasing the Products, Mr. Henderson reviewed the Products' labels and relied on the following Animal Welfare Claims on the Products' labels:

1.5 Liter Label:

- "our promise"
- "The idea for this one-of-a-kind milk began at our kitchen table over 20 years ago. It was an ambition to provide the world with better nutrition while making the world a better place. Our fairlife® family farmers provide high quality, real milk, filtered for wholesome nutrition with exceptional care taken every step of the way."
- "Extraordinary care and comfort for our cows"
- "We'd love to have you visit our flagship farm in Indiana so you can see for yourself!"

8. Reasonably relying on these representations, Mr. Henderson paid an increased cost for the Products, which were worth less than represented because the statements were not true and were highly misleading. Defendants' representations were part of the basis of the bargain in that Mr. Henderson attributed value to these promises and would not have purchased

the Products, or would not have purchased them on the same terms, if he knew the truth about Defendants' abuse of their dairy cows. Should Mr. Henderson encounter any of the Products in the future, he cannot rely on the truthfulness of the labels' statements absent corrective advertising. If Defendants take corrective action of their treatment of cows and corrects the Products' labels, pricing, or treatment of its animals, Mr. Henderson would consider buying the current formulations of the Products in the future, as he is a regular milk purchaser.

Defendants

9. Defendant Fairlife, LLC, is a Delaware limited liability company with its principal place of business located in Chicago, Illinois.

10. Fairlife, LLC, manufactures, markets, and sells the Products throughout the United States.

11. Fairlife, LLC, is a joint venture owned by The Coca-Cola Company ("Coca-Cola") and Select Milk Producers, Inc.

12. Defendant The Coca-Cola Company is a Delaware corporation with its principal place of business located in Atlanta, Georgia.

13. The Coca-Cola Company markets and distributes the Products throughout the United States.

14. In marketing the Products on its website, The Coca-Cola Company refers to the Products as one of its "brands."¹

¹ *fairlife*, The Coca-Cola Company, <https://www.coca-colacompany.com/brands/fairlife> (last visited June 13, 2019).

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because this is a class action, there is minimal diversity, and the amount in controversy exceeds \$5 million, exclusive of interest and costs.

16. The Court has personal jurisdiction over The Coca-Cola Company, and Fairlife, LLC, because they market, distribute, and sell the Products throughout the United States, including in this District, and the conduct complained of occurred in or was targeted at this District.

17. Venue is proper because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District and because Defendants are subject to personal jurisdiction in this District. 28 U.S.C. § 1391(b)(2)-(3).

FACTUAL ALLEGATIONS

I. Coca-Cola's Partnership with Fairlife

18. In 2011, sales of major carbonated soft drinks were declining, affecting the bottom lines of companies like Coca Cola. Eager to increase sales of its product lines and bolster their bottom line, in 2012, Coca-Cola formed a partnership with Select Milk Producers that would "rain[] money" for Coca Cola.²

19. Fairlife's former CEO Stephen Jones, who is also a former Coca Cola executive, publicly acknowledged that Coca Cola's sale of a premium milk product would help Coca Cola's bottom line by also reversing declining milk consumption. Betting on a premium milk product, Coca Cola hoped that Fairlife would be a significant driver of sales growth.

² Coke Bets on "Premium Milk" to Boost Declining Category, *available at* <https://www.agweb.com/article/coke-bets-on-premium-milk-to-boost-declining-category-naa-associated-press/>.

20. Coca-Cola has, at all times relevant to this lawsuit, including to this day, maintained control over Fairlife—including regulating animal welfare, “ensur[ing] [that the dairy farmers] uphold the highest standards of animal welfare,” and demanding that Fairlife conduct audits of dairy suppliers.³

21. Coca-Cola’s control over its suppliers includes enforceable Sustainable Agriculture Guiding Principles, and Supplier Guiding Principles, as well as an internal auditing process, all of which were in place throughout its relationship and ownership of Fairlife.

II. Animal-Welfare Claims Are Central to Defendants’ Marketing

22. Defendants’ Products are named “Fairlife.” This prominent claim—namely the brand itself—means to reasonable consumers that the Fairlife dairy cows are treated “fairly.” Further, Defendants devote an entire side of the packaging to telling the story about how humanely Fairlife dairy cows are treated, and make nearly identical animal welfare claims on the labeling and packaging of all of the Products.

23. The packaging invites consumers to “LEARN OUR STORY” at fairlife.com. Below that, Defendants make a lengthy promise to treat Fairlife dairy cows humanely.

24. This representation is captioned with the heading “our promise,” which is in bold font.

25. Below the “our promise” heading, Defendants state that the Product is a “one-of-a-kind milk” arising out of “an ambition to provide the world with better nutrition while making the world a better place.” It then states that Fairlife farmers take “exceptional care . . . every step of the way.”

³ The Coca-Cola Company, *Taking Action to Address Animal Abuses at Fair Oaks Farms* (June 6, 2019), <https://www.coca-colacompany.com/press-center/company-statements/coca-cola-company-statement-regarding-fair-oaks-farms>.

26. Next is a bullet-point list, in bold font, which states:

- “Extraordinary care and comfort for our cows”
- “Exceptional quality milk standards”
- “Traceability back to our farms”
- “Continual pursuit of sustainable farming”

27. Defendants then invite consumers to “visit our flagship farm in Indiana so you can see for yourself!” This refers to Fair Oaks Farms, where the Animal Recovery Mission (“ARM”) uncovered pervasive practices of animal abuse.

28. This side of the labeling is depicted below:



29. Defendants' message that animal welfare is paramount to Fairlife operations is reinforced by the front of the labeling, which includes a stylized drawing of a cow's face. The cute drawing—reminiscent of an illustration in a children's book—encourages consumers to conclude that the animal is healthy and happy.

30. Of course, the name "Fairlife" reinforces Defendants' animal-welfare message. Among the recognized meanings of the word "fair" are "marked by impartiality and honesty"; "conforming with the established rules"; "not stormy or foul"; "pleasing to the eye or mind"; and

“clean, pure.”⁴ Particularly when coupled with a stylized drawing of an apparently happy, well-treated cow, the very name “Fairlife” suggests to reasonable consumers that Fairlife’s animals are treated “fairly.”

31. The front of the labeling is depicted below:



⁴ *Fair*, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/fair> (last visited June 12, 2019).

32. Defendants' animal-welfare representations are also reinforced by the animal-welfare claims on the Fairlife website. As noted above, the "our promise" side of the labeling invites consumers to "LEARN OUR STORY" at the Fairlife website, fairlife.com.

33. The Fairlife website reinforces this animal-welfare branding and messaging.

34. Prior to the public revelations of animal abuse (discussed in more detail below), the Fairlife website contained a lengthy description of all the steps taken to make sure Fairlife dairy cows and calves were treated well.

35. Prior to the public revelations of animal abuse in early June 2019, the Fairlife website featured an "OUR PROMISE" page that stated, in relevant part:

- a. "We believe in doing better every step of the way, because it's the right thing to do. For us, 'better' means growing our own crops and putting our cows' well-being at the top of our list."
- b. "As dairy farmers, we treat our cows with the utmost care, because we know that their health and happiness are the foundation of our business. We grow the crops that feed our cows so we can ensure that they're getting high quality nutrition. We invite you to our flagship farm in Fair Oaks, Indiana, to see just how we do it."⁵

36. Prior to the public revelations of animal abuse in early June 2019, the Fairlife website featured an "Our Farms" page that stated, in relevant part:

⁵ This is from the version of the Fairlife website that existed on April 20, 2019, according to the Wayback Machine, *available at* <http://web.archive.org/web/20190420162213/https://fairlife.com/our-promise/> (last visited June 12, 2019).

- a. “**BEST *in* CLASS ANIMAL CARE:** Co-founder Mike McCloskey got his start as a veterinarian specializing in dairy cows, so we know how important it is to put our cows’ needs first. And since comfortable, healthy cows produce better quality milk, they reward us with some of the best milk in the industry.”⁶

37. Prior to the public revelations of animal abuse in early June 2019, the Fairlife website featured an “Animal Care” page that stated, in relevant part:

- a. “**IT’S *all* ABOUT HER:** Our co-founder Mike McCloskey started his career as a cow veterinarian before turning to dairy farming, and under his care and guidance, we know that nothing is as important to us as the health and well-being of our animals. Our world revolves around making sure that our cows are fed well, treated humanely and live in comfortable, stress-free conditions.”
- b. “**SPOILED *from the* VERY START:** Newborn calves are visually monitored daily and are given immediate and proper medical treatment should they become ill.”
- c. “**COMFORTABLE *at all* TIMES:** She and her friends have comfortable beds and freestanding stalls, allowing them to walk freely while being protected from harsh weather. In the winter we keep wind and the elements out of their living areas by closing the curtained sidewalls of the

⁶ This is from the version of the Fairlife website that existed on April 20, 2019, according to the Wayback Machine, *available at* <http://web.archive.org/web/20190420162213/https://fairlife.com/our-promise/our-farms/> (last visited June 12, 2019).

barns. Cows love to stay cool, so in the warm summer months we use fans to maintain a 7 mph breeze over the feed manger and over the cows' beds. We also spray our cows' skin with water many times a day in order to keep their body temperature down.”

- d. “**ALWAYS in GOOD HANDS:** We spend a significant amount of time training all of our employees not only in proper animal husbandry but also indoctrinating them as to why we will accept nothing less than the utmost care, respect and humane treatment of our cows.”⁷

38. In addition, prior to the public revelation of animal abuse, the website for Fair Oaks Farms linked to the farm's Facebook page, which explicitly stated that bull calves were not sent to be turned into veal. In a response posted on the Fair Oak Farms website, Mike McCloskey has now acknowledged that the representation regarding bull calves was untrue.⁸

39. After the public revelation of widespread animal abuse at Fair Oaks Farms, Fairlife changed its website to remove some of the most blatant misrepresentations. Nevertheless, the Fairlife website still claims that animal welfare is an important part of its philosophy and operations. For example, the current Fairlife website states, in relevant part:

- a. “**FAIRLIFE PROMISES AND ETHICAL PRACTICES:** We recognize that now more than ever we need more rigorous auditing and

⁷ This is from the version of the Fairlife website that existed on April 20, 2019, according to the Wayback Machine, *available at* <http://web.archive.org/web/20190420162213/https://fairlife.com/our-promise/animal-care/> (last visited June 12, 2019).

⁸ *Official Statement From Our Founder Mike McCloskey On The ARM Video Release*, Fair Oaks Farms, <https://fofarms.com/post/response/> (last visited June 13, 2019).

verification of our milk suppliers' practices when it comes to cow well-being."

- b. "*cow care*: Our suppliers' cows' health and happiness are the foundation of the what we do. To better protect cows, we are increasing our investment in animal welfare actions, requiring training, certification and support programs for supplying farmers, so they can set the standard in the best practices in animal well-being. We are enhancing our farm monitoring policy, significantly increasing the number of animal welfare audits to 24 audits per year in cooperation with Select Milk Producers, all of which will be unannounced."⁹

40. Prior to the discovery of animal abuse, the Coca-Cola website also corroborated that the welfare of Fairlife cows is one of the critical aspects of the Products. For example, one prominently displayed marketing article about the introduction of the Products to the Canadian market referred to "high-quality milk and animal care practices, which pair well with the premium standards and passion for quality fairlife is known for."¹⁰

41. Prior to the discovery of animal abuse, the Coca-Cola website prominently displayed an article entitled *From Staple to Superfood: How fairlife's Belief in Better Milk is Shaking Up the Dairy Aisle*, which re-emphasized the Defendants' animal-welfare claims:

⁹ *Our Promise*, Fairlife, <https://fairlife.com/our-promise/> (last visited June 12, 2019).

¹⁰ This is from the version of the Coca-Cola website that existed on July 12, 2018, according to the Wayback Machine, *available at* <https://web.archive.org/web/20180612212301/https://www.coca-colacompany.com/stories/fairlife-ultrafiltered-milk-coming-to-canada> (last visited June 13, 2019).

- a. “We’ve always known that the better you treat an animal, the happier and more productive she is. It’s a symbiotic relationship.”
- b. “The McCloskeys formed the co-op of fellow family-owned farms in 2004, gradually building a network of progressive farmers who share their ‘grass to glass’ commitment to milk quality, animal care and environmental sustainability. All fairlife products can be traced back to the dairies their milk comes from.”
- c. “When we share our story of how we treat our cows and focus on their comfort and care and creating a stress-free environment, that really resonates with people who visit our farm”¹¹

42. A reasonable consumer would understand from each of the representations described above that Fairlife’s dairy farms prioritize animal welfare and treat their cows humanely. Moreover, the websites and articles work in tandem to reinforce the message to consumers that Fairlife’s cows are treated well.

III. Defendants’ Animal Welfare Claims Are False

43. On June 4, 2019, and on June 12, 2019, ARM released the results of an undercover investigation it conducted of Fair Oaks Farms.¹² Fair Oaks Farms is the “flagship

¹¹ This is from the version of the Coca-Cola website available on January 21, 2018, according to the Wayback Machine, *available at* <https://web.archive.org/web/20180121142609/http://www.coca-colacompany.com/stories/from-staple-to-superfood-how-fairlifes-belief-in-better-milk-is-shaking-up-the-dairy-category> (last visited June 13, 2019).

¹² The results of ARM’s undercover investigation are available at https://animalrecoverymission.org/wp-content/uploads/2019/06/Operation_Fair_Oaks_Farms_Dairy_Adventure.pdf (last visited June 12, 2019).

farm” for the Fairlife brand that Defendants invite consumers to visit in order to witness firsthand the “extraordinary care and comfort” and transparency that they are committed to.

44. An undercover investigator working for ARM was hired as a calf-care employee at Fair Oaks Farms. In that role, the investigator bottle fed newborn calves, assisted loading calves on transports, and disposed of dead calves. The investigator used surveillance equipment to capture the farm’s normal daily practices.

45. ARM placed another investigator in the milking areas of Fair Oaks Farms, where day-to-day operations with cows took place.

46. ARM’s investigator found “extreme animal abuse” that was evidently “the normal way to do business at Fair Oaks Farms.” Daily or commonplace practices included:

- a. Separating calves from their mothers soon after birth (distressing both animals);
- b. Throwing calves in and out of their huts;
- c. Dragging calves by their ears or by their tails and legs;
- d. Pushing, throwing, slapping, kicking, and slamming calves to the ground if the calves did not nurse from the artificial rubber nipple during the feeding process;
- e. Dumping formula on the ground instead of feeding it to calves, thereby denying them the appropriate nutrition and hydration needed to survive;
- f. Ignoring the numerous emaciated cows, which had a body score of two or three on the nine-point scale;
- g. Maintaining calves in filthy conditions;

- h. Joking with other employees while sitting on top of a calf, whose legs buckled because they could not support the extra weight;
- i. Stabbing and hitting calves with objects including steel rebars, hard plastic milking bottles, steel branding irons;
- j. Burning calves' faces and bodies with hot branding irons;
- k. Breaking tails of cows who would not move in the milking parlor;
- l. Kicking, beating, punching, pushing, and otherwise abusing cows;
- m. Pinning cows inside milking-carousel machinery and allowing them to fall out of it;
- n. Dragging downed cows with straps when the cows were too sick or weak to walk;
- o. Packing cows into overcrowded housing; and
- p. Denying medical care to sick cows, including downers that were left to die slowly.

47. None of the problematic footage found by the ARM investigation took place in areas open to the public.

48. The ARM investigation is also notable for what it did *not* find. The investigator never observed disciplinary action being taken against any employee, even though knowledge of the animal abuse was known and perpetuated at all levels of employment, including foremen and upper management. Law enforcement was never contacted or notified.

49. The investigator found no medical attention paid to calves or cows, even though the Fairlife website claimed the contrary. Medical attention was not provided even when temperatures in the calves' hutches reached 110 degrees Fahrenheit.

50. Adult cows that became sick or injured also did not receive treatment. When adult cows were too sick to produce milk, they were shot or left to languish and die slowly. When the animals were shot, small-caliber bullets were improperly used by untrained workers. As a result, the cows frequently suffered for hours before they died.

51. ARM's investigator received training related to the transportation of dead calves. Employees were instructed to "always take the back dairy roads while transporting the dead to a hidden dump area" to prevent any tourists or tour buses from seeing the workers disposing of the dead animals.

52. Male calves were sold to veal farms—contrary to Fair Oaks Farms' promise that this would not be done—where they were held in such small enclosures that they were unable to turn around and were forced constantly to stand in their own feces.

53. As a result of the ARM investigation, the Newton County Sheriff's Office (Indiana) launched an investigation of its own. Newtown County prosecutors have filed criminal charges against three individuals for animal cruelty (a Class A misdemeanor) and torturing or mutilating a vertebrate animal (a Class 6 felony). Prosecutors have issued arrest warrants and arrested at least one individual. The investigation is still active and ongoing.

54. On June 6, 2019, Fairlife, LLC, issued a statement acknowledging the ARM investigation, admitting the truth of its allegations, and apologizing for its failures. Fairlife, LLC, stated that it was "devastated by the abuse that was recently discovered at Fair Oaks Farms." It also indicated it was discontinuing the use of milk from Fair Oaks Farms, increasing animal-

welfare requirements, and seeking further audits by industry representatives.¹³ The current Coca-Cola website also references these events and refers to the Fairlife website.¹⁴

55. Coca-Cola, for its part, stated that, in addition to “conducting [its] own independent investigations of all fairlife’s dairy suppliers to ensure they uphold the highest standards of animal welfare,” stated that it was “taking action to ensure that internationally recognized animal welfare standards are appropriately enforced through our Sustainable Agriculture Guiding Principles, our Supplier Guiding Principles and our auditing processes.”¹⁵

IV. Animal Welfare Is Material to Consumers

56. Meat and dairy companies increasingly make animal-welfare claims about their products because they have discovered those claims increase sales, allow them to charge higher prices, or both. Animal-welfare claims are profitable because consumers care about the treatment of the animals that their food comes from. Consumers are more likely to buy a product, and will pay more for it, if the animals it is comes from were treated humanely.

57. Numerous studies conducted by third parties have confirmed the fact that animal welfare matters to consumers.

58. In one survey published in 2010, 68% of consumers agreed or strongly agreed they would like to know more about “ways [farmers] ensure animal care.”¹⁶ That was the

¹³ *Fairlife Statement on Animal Care*, Fairlife, <https://fairlife.com/news/fairlife-statement-regarding-arm-video/> (last visited June 12, 2019).

¹⁴ *fairlife*, The Coca-Cola Company, <https://www.coca-colacompany.com/brands/fairlife> (last visited June 13, 2019).

¹⁵ *Taking Action to Address Animal Abuses at Fair Oaks Farms*, The Coca-Cola Company, <https://www.coca-colacompany.com/press-center/company-statements/coca-cola-company-statement-regarding-fair-oaks-farms> (June 6, 2019).

¹⁶ *What “Indicator Consumers” Want to Know Most About How U.S. Foods Are Produced*, SEGMENTrak (June 2010), available at <http://demetercommunications.com/wp->

second-highest rate of agreement with any survey question, behind only “measures used to produce safe food.”

59. Another 2010 study found “that consumers desire high standards of animal care, even if it raises food prices and involves government regulation.”¹⁷

60. A study published by the Animal Humane Association in 2014, indicated that concerns may be increasing among consumers. For instance, it found that 94.9% of survey participants “stated they were very concerned about farm animal welfare,” up from 89% the year before. Similarly, “75.7% stated that they were very willing to pay more for humanely raised meat, dairy and eggs,” which was an increase from 74% the year before. Additionally, the most important labeling attribute to consumers was “humanely raised,” including over labels such as “antibiotic free,” “natural,” and “organic.”¹⁸

61. Wal-Mart announced in 2015 that its own research shows that 77% of its shoppers would increase their trust of, and 66% would increase their likelihood to shop at, a retailer that improved the treatment of livestock.¹⁹

[content/uploads/2011/05/FINAL.Demeter.SegemenTrak.Full_Report.June2010.pdf](https://www.ingentaconnect.com/content/uploads/2011/05/FINAL.Demeter.SegemenTrak.Full_Report.June2010.pdf) (last visited June 12, 2019).

¹⁷ RW Prickett et al., *Consumer Preferences for Farm Animal Welfare: Results from a Telephone Survey of US Households*, Animal Welfare (Aug. 2010), available at <https://www.ingentaconnect.com/contentone/ufaw/aw/2010/00000019/00000003/art00015> (last visited June 12, 2019).

¹⁸ *2014 Humane Heartland Farm Animal Welfare Survey*, available at <https://www.americanhumane.org/app/uploads/2016/08/2014-humane-heartland-farm-survey.pdf> (last visited June 12, 2019).

¹⁹ Christine M. Boynton, *Wal-Mart’s Push on Animal Welfare Hailed as Game Changer*, Fox 5 News, <https://foxbaltimore.com/news/local/wal-mart39s-push-on-animal-welfare-ailed-as-game-changer> (last visited June 12, 2019).

62. One 2018 survey found that 77% of consumers were concerned about animal welfare as it relates to their food, more than 66% of consumers paid some or a lot of attention to food labels regarding how the animal was raised, and over 70% of retailers stocking products with humane claims reported increased sales.²⁰

63. Fairlife, LLC, itself has acknowledged the importance of animal welfare to its consumers. In an interview conducted after public revelation of animal abuse at Fair Oaks Farms, Fairlife COO Tim de Doleman stated that “this whole company . . . [is] built on great animal welfare.”²¹

64. Accordingly, Fairlife’s marketing of its Products as humanely treating the animals used to produce the Products is material to the reasonable consumer. Reasonable consumers would not expect that Products labeled with promise of humane treatment of animals would actually be produced through the inhumane treatment of animals purported above.

65. The marketplace’s reaction, namely numerous retailer pulling the product off their shelves, to the public revelation of animal abuse at Fair Oaks Farms further demonstrates the importance to consumers of humane animal treatment.

CLASS ACTION ALLEGATIONS

66. Pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), Plaintiff brings this action on behalf of himself and on behalf of following Class and Subclasses, which unless otherwise specified are referred to collectively as the “Class”:

²⁰ Alicia Kelso, *Consumers Are Willing to Pay a Premium for Animal Welfare Certifications*, Grocery Dive (July 17, 2018), <https://www.grocerydive.com/news/grocery--consumers-are-willing-to-pay-a-premium-for-animal-welfare-certifications/533852/> (last visited June 12, 2019).

²¹ *Fairlife COO Speaks Out After Release of Undercover Videos*, NBC Chicago (June 7, 2019), https://www.nbcchicago.com/multimedia/web-fairlife-coo-interview_Chicago-510995412.html (last visited June 13, 2019).

- a. Nationwide Class: All persons within the United States who purchased the Products within the applicable statute of limitations period.
- b. Massachusetts Subclass: Also persons who purchased the Products within the State of Massachusetts and within the applicable statute of limitations period.

67. Excluded from the Class are Defendants, their parents, subsidiaries, affiliates, officers, and directors; those who purchased the Products for resale; all those who timely elect to be excluded from the Class; and the judicial officers and staff to whom this case is assigned, including any immediate family members thereof.

68. **Numerosity**: The members of the Class are so numerous that individual joinder of all Class members is impracticable. Although the exact number of Class members is known only to Defendants, based on the nature of the industry and the size of Defendants, Defendants have sold many thousands of units of the Products to Class members.

69. **Commonality and Predominance**: This action involves common questions of law and fact that will drive the litigation and predominate over any questions affecting only individual Class members. Common questions include, but are not limited to:

- a. Whether the representations discussed herein that Defendants made about the Products were or are true, misleading, or likely to deceive a reasonable consumer;
- b. Whether the representations discussed herein were material to a reasonable consumer;
- c. Whether Defendants' conduct violates public policy;
- d. Whether Defendants engaged in false or misleading advertising;

- e. Whether Defendants' conduct constitutes violations of the laws asserted herein;
- f. Whether Plaintiff and the other Class members have been injured and the proper measure of their losses as a result of those injuries; and
- g. Whether Plaintiff and the other Class members are entitled to injunctive, declaratory, or other equitable relief.

70. **Typicality:** Plaintiff's claims are typical of those of the other Class members because, among other things, Plaintiff and all Class members were comparably injured through the uniform conduct described herein.

71. **Adequacy:** Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the other Class members Plaintiff has retained counsel competent in complex class action litigation, and Plaintiff and his counsel intend to vigorously prosecute this action for the benefit of the Class as a whole. The interests of the Class members will be fairly and adequately protected by Plaintiff and his counsel.

72. **Declaratory and Injunctive Relief:** Defendants have acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to Class as a whole.

73. **Superiority:** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants,

making it impracticable for Class members to individually seek redress for Defendants' wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

CAUSE OF ACTION

Count I

Unjust Enrichment

74. Plaintiff incorporates by reference the allegations in Paragraphs 1-73.

75. Plaintiff and the other members of the Class conferred benefits on Defendants by purchasing the Products, including a price premium for the Products.

76. Defendants were unjustly enriched because they collected money from Plaintiff and the Class Members for the purchase of products based on misrepresentations made about those products. Plaintiff and the Class Members paid money to Defendants based on the false and misleading claims regarding the treatment of cows that Defendants made in their product labels.

77. Defendants have been unjustly enriched by retaining the revenues derived from Plaintiff and Class members' purchases of the Products. Retention of the monies under these circumstances is unjust and inequitable because Defendants' labeling of the Products was misleading to consumers.

78. Defendant's unjust enrichment was at the expense of Plaintiff and Class members. By misrepresenting the treatment of the animals that are part of producing the Products, Defendant collected money from Plaintiff and Class members for the purchase of Products they

would not have otherwise purchased or that they would have paid less for if the true facts were known.

79. There was no justification for Defendant's misrepresentations. Defendants obtained the Plaintiff and Class Members' money against fundamental principles of justice or equity and good conscience.

80. On behalf of himself and the Class, Plaintiff seeks the equitable remedy of restitution as Defendant has been unjustly enriched at the expense of Plaintiff and Class members.

PRAYER FOR RELIEF

Plaintiff, individually and on behalf of the members of the proposed Class, respectfully requests that the Court enter judgment in Plaintiff's favor and against Defendants as follows:

1. An Order certifying the Class, appointing Plaintiff as class representative, and the undersigned counsel as class counsel;
2. Declaring that Defendants are financially responsible for notifying the Class members of the pendency of this suit;
3. All recoverable actual, compensatory, or other damages sustained by Plaintiff and Class members, in an amount to be proven at trial;
4. Equitable disgorgement and restitution of all profits and unjust enrichment Defendant obtained from Plaintiff and Class members as a result of Defendants' unlawful, unfair and fraudulent business practices;
5. Injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein, and ordering Defendants to engage in a corrective advertising campaign;

6. Pre-judgment and post-judgment interest, to the full extent permitted by law;
7. Payment of reasonable attorneys' fees and costs; and
8. Such other and further relief as may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all claims in this Complaint so triable.

Dated: September 13, 2019

/s/ Katherine Aizpuru
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