

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CONSTANCE MOGULL, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

PETE AND GERRY’S ORGANICS, LLC,

Defendant.

CASE NO.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Constance Mogull (“Plaintiff” or “Ms. Mogull”), by and through her attorneys, makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to allegations specifically pertaining to herself and her counsel, which are based on personal knowledge, against Defendant Pete and Gerry’s Organics, LLC (“Nellie’s” or “Defendant”).

NATURE OF THE ACTION

1. This is a class action lawsuit on behalf of purchasers of Nellie’s Free Range Eggs (the “Eggs”) in the United States.

2. Defendant, the distributor of the Eggs, falsely markets them as being “Free Range” eggs from hens raised in humane living conditions.

3. In fact, while boasting about the living conditions of Nellies’ hens, Defendant goes as far as to draw a contrast between its farms with other farms with purportedly less humane conditions:

Most hens don’t have it as good as Nellie’s. 9 out of 10 hens in the U.S. are kept in tiny cages at giant egg factories housing millions of birds. Sadly, even “cage-free” is now being used to describe hens that are crowded into large, stacked cages on factory farms, who never see the sun. Nellie’s small family farms are all

Certified Human Free-Range. Our hens can peck, perch, and play on plenty of green grass.

www.nelliesfreerange.com
kindnesscrew@nelliesfreerange.com
or Toll Free at 877.476.6384



EARTH FRIENDLY PACKAGING
OUR 100% RECYCLED PET CARTONS HAVE A SMALLER CARBON FOOTPRINT THAN OTHER CARTON TYPES.

LEARN MORE ABOUT OUR PACKAGING ON OUR WEBSITE: NELLIESFREERANGE.COM



**WE LOVE OUR HENS,
YOU'LL LOVE OUR EGGS™**

Nutrition Facts		Vitamin D 1mcg 6%	
12 servings per container		Calcium 28mg 2%	
Serving size 1 egg (50 g)		Iron 1mg 6%	
Amount per serving		Potassium 69mg 2%	
Calories 70			
	% Daily Value*		
Total Fat 5g	6%		
Saturated Fat 1.5g	8%		
Trans Fat 0g			
Cholesterol 185mg	62%		
Sodium 70mg	3%		
Total Carbohydrate 0g	0%		
Dietary Fiber 0g	0%		
Total Sugars 0g			
Includes 0g Added Sugars	0%		
Protein 6g	12%		

OMEGA 3 EACH EGG CONTAINS 100% OF OMEGA 3

SAFE HANDLING INSTRUCTIONS
TO PREVENT ALLERGENS FROM BACTERIA, KEEP EGGS REFRIGERATED. COOK EGGS UNTIL YOLKS ARE FIRM AND COOK FOODS CONTAINING EGGS THOROUGHLY.

Certified  Corporation

CERTIFIED HUMANE
RAISED & HANDLED

Most hens don't have it as good as Nellie's. 9 of 10 hens in the U.S. are kept in tiny cages at giant egg factories housing millions of birds. Sadly, even "cage-free" is now being used to describe hens that are crowded into large, stacked cages on factory farms, who never see the sun. Nellie's small family farms are all Certified Humane Free-Range. Our hens can peck, perch, and play on plenty of green grass. [Learn more at nelliesfreerange.com](http://www.nelliesfreerange.com).

12 LARGE FRESH BROWN EGGS
GRADE A

NELLIE'S
FREE RANGE EGGS

NO ADDED HORMONES & NO ANTIBIOTICS

NELLIE'S FREE RANGE
12 EGGS LARGE

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15362-00478

RECYCLED PET

100% VEGETARIAN FEED

OUTDOOR FORAGE

Keep refrigerated at or below 45°F

Product of the USA

CA SEFS COMPLIANT

PEE

Net Wt. 24 oz (1 LB 8 OZ) 680g

TX, LLC # 707917, LA388, WA-134, CA2865

140 Butternut Road, Morrice, MN 55771

Distributed by Pete and Gerry's LLC

Use by

NESTLE'S



4. This statement and this imagery are reinforced by Defendants' further statements that the Eggs come from "Outdoor Forage" hens.

5. These representations led Plaintiff and other reasonable consumers to understand that Defendant's hens had space to move around both indoors and outdoors, that the hens in fact spent time outdoors, and that Defendant's hens have better lives than other hens because they have more access to the outdoors.

6. Unfortunately for consumers, none of this is accurate. Defendant's portrait of a its hens' Free Range" lifestyle is far from the reality. Defendant's hens are crammed into sheds up to 20,000 at a time, preventing them from extending their wings, foraging or making their way to the outdoor space Defendant advertises so prominently.



7. These conditions are a very far cry from the impression reasonable consumers gain from Defendant's representations and photographs on the Eggs' packaging.

8. Media on Defendant's own website provides powerful evidence of how consumers interpret its claim that the Eggs are "free range." In a video found on the Nellie's YouTube Channel titled "Nellie's Free Range Eggs – Understanding Eggs," Nellie's purports to provide a "Helpful explanation of some of the terms used on egg cartons and their validity from Nellie's Free Range Eggs."¹

9. The video discusses the difference between specialized egg labels: "all natural farm fresh," "cage free," and "free range."² The narrator describes a "cage free" hen as "still liv[ing] inside a space much like a large overcrowded warehouse"—deeming it "still a pretty grim existence" because "she'll never get to see the outdoors or have the environment she needs to act like a normal hen." For comparison, the video includes an image of a cage free farm:³

¹ <https://www.youtube.com/watch?v=b62wACS0ln0> (last visited March 23, 2021)

² *Id.*

³ *Id.*



In contrast, the video argues, the “hen that made [a Nellie’s egg]? Well, she’s one happy hen. Our free-range hens get to live their lives like real hens, with access to pasture everyday in good weather. Our hens can spread their wings, forage in the fields, or scratch in the dirt.”⁴ This narration is accompanied with a series of images purportedly depicting Nellie’s farms:

⁴ *Id.*

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