

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

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