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13 UNITED FARM WORKERS OF AMERICA,
MICAELA ALVARADO and MARIA
14 TRINIDAD MADRIGAL

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF MERCED**
17

18 UNITED FARM WORKERS OF AMERICA,
19 MICAELA ALVARADO, an individual, and
20 MARIA TRINIDAD MADRIGAL, an
individual,
21 Plaintiffs,
22 v.
23 FOSTER POULTRY FARMS, a California
24 corporation, and DOES 1-10, inclusive,
25 Defendants.

Case No. 20CV-03605
COMPLAINT FOR INJUNCTION
1. Public Nuisance
(Cal. Code Civ. Proc. § 731)
2. Unfair and Unlawful Business Practice
(Cal. Bus. & Prof. Code § 17200)
3. Declaratory Judgment
(Cal. Code Civ. Proc. §1060, et seq.)

This e-copy is the official court record (GC68150)

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INTRODUCTION

1. Plaintiffs UNITED FARM WORKERS OF AMERICA (the “Union” or “UFW”), acting on behalf of its members, MICAELA ALVARADO, on behalf of herself, and MARIA TRINIDAD MADRIGAL, on behalf of herself, bring this action against Defendant FOSTER POULTRY FARMS (“Foster Farms” or the “Company”) to enjoin Foster Farms from continuing to put workers at its poultry processing plant in Livingston, California (the “Livingston Plant”) at an increased risk of contracting and dying from COVID-19. Despite being subject to prior targeted government orders, including a week-long shutdown, Foster Farms has failed to implement sufficient social distancing or safety precautions to protect its workers from the virus, thereby exacerbating and facilitating the spread – and the reasonable fear of spread – of COVID-19 among its employees and the surrounding community, and putting its workers, their families, and the surrounding community at an unnecessarily high risk of infection and death.

2. On December 3, 2020, Merced County (the “County”) declared a coronavirus outbreak at the Livingston Plant, meaning that there had been at least three or more unrelated, laboratory-confirmed cases linked to the Livingston Plant within the prior two weeks. This outbreak remains ongoing.

3. The current outbreak is the second coronavirus outbreak at the Livingston Plant. The Merced County Department of Public Health (“MCDPH”) declared the Livingston Plant an outbreak location for the first time on June 29, 2020.

4. On information and belief, even after eight workers died and 392 tested positive, the Company failed to comply with local safety guidelines and was ordered to shut down by MCDPH from September 1 to September 7.

5. Since June, over 400 Foster Farms employees at the Plant have contracted COVID-19, and at least nine have died from the virus—a death rate almost double that of Merced County (the “County”), where the Plant is located.¹ In spite of national Center for Disease Control

¹ Alexandra Hall, “COVID-19 Again Sweeps Through Foster Farms Plants in Central Valley,” KOED (Dec. 8, 2020), *available* at ibit.ly/ycPb; “Central Valley Foster Farms plant shut down 00098079-3”

1 (“CDC”) COVID-19 guidance and best practices, mandatory state and local safety regulations,
2 multiple Plant outbreaks, and the government-mandated shutdown in September, Foster Farms
3 continues to ignore baseline workplace safety protocol, inexorably leading to further spread and
4 infection in the Plant and community at large.

5 6. Although the County allowed Foster Farms to reopen the Livingston Plant on
6 September 7, the current outbreak at the Livingston Plant just three months after reopening
7 demonstrates that Foster Farms has failed to take the necessary safety precautions to prevent the
8 spread of COVID-19 in and around the Livingston Plant and in the County. While the Company
9 made certain alterations following the September shutdown, its compliance has been irregular,
10 ineffective, inconsistent, or nonexistent – all emblematic of a basic disregard of worker health and
11 safety.

12 7. To date, in naked disregard of both national and local guidelines, Foster Farms
13 requires employees to work substantially less than six feet apart from each other for prolonged
14 periods of time with no plastic divider or similar protection between them, fails to rigorously or
15 effectively enforce social distancing or even to supply masks, and fails to keep its workforce
16 adequately informed of safety and sick leave protocol, including access to COVID leave pay.
17 These abject failures to impose and enforce protocols recognized the world over precipitated the
18 latest outbreak just three months after the County shut the Plant down.

19 8. Plaintiffs seek declaratory and injunctive relief to protect the Livingston Plant’s
20 workers—and the Merced County community—from Foster Farms’ reckless behavior that is
21 causing unnecessary exposure to and risk of death from the coronavirus. As the prior outbreak in
22 June—and the resulting tragic fatalities—demonstrate, Foster Farms cannot be trusted to handle
23 this second, ongoing outbreak in a manner that protects its workers. The threat of harm to
24 Plaintiffs, and the other workers at the Livingston Plant is imminent, serious, and must be
25 addressed by immediate judicial intervention.

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28 amid uncontrolled COVID-19 outbreak, 8 deaths,” ABC7 News (Aug. 28, 2020), *available at*
ibit.ly/jkvi.
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1 **JURISDICTION AND VENUE**

2 9. The Superior Court of California has jurisdiction in this matter because Defendant
3 Foster Farms regularly conducts business in California. No federal question is at issue in this
4 lawsuit. Plaintiff’s claims are solely based on California law.

5 10. Venue is proper in this judicial district and the County of Merced, California,
6 because Defendant Foster Farms maintains offices and facilities and transacts business in the
7 County of Merced; Plaintiff UFW conducts labor representation of members residing and working
8 in the County of Merced; Plaintiffs MARIA TRINIDAD MADRIGAL and MICAELA
9 ALVARADO each reside, performed work, and/or continue to perform work for Foster Farms in
10 the County of Merced; and Defendant’s wrongful conduct that is the subject of this action affects
11 Plaintiffs and other persons similarly situated in the County of Merced.

12 **PARTIES**

13 11. Plaintiff UFW is a labor organization within the meaning of § 2(5) of the National
14 Labor Relations Act, 29 U.S.C. § 152(5) (“NLRA”), as amended, with its principal place of
15 business in Kern County, California. UFW maintains offices in Merced County, California. UFW
16 is the sole representative of a bargaining unit of comprising all full-time and regular part-time
17 maintenance, production, live haul, deli plant, deli sanitation, rendering and NCDC employees
18 employed by Foster Farms at its facilities located at 843 Davis Street, Livingston, California and
19 8301 Sycamore Street, Delhi, California (excluding all equipment sanitation workers, staffing
20 agency, and labor contractor workers employed by third parties, confidential employees, office
21 clerical employees, guards, and supervisors as defined in the NLRA).

22 12. Plaintiff MICAELA ALVARADO is an employee of Foster Farms who currently
23 works at the Livingston Plant and resides in the County of Merced.

24 13. Plaintiff MARIA TRINIDAD MADRIGAL is an employee of Foster Farms who
25 currently works at the Livingston Plant and resides in the County of Merced.

26 14. Defendant Foster Farms is a California corporation, headquartered in Merced
27 County, California, that specializes in the production of poultry products. Foster Farms owns and
28 operates the Livingston Plant.

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FACTUAL ALLEGATIONS

The COVID-19 Pandemic

15. As of December 15, 2020, the number of COVID-19 cases surpassed 73 million globally, with more than 1,700,000 reported associated deaths. As of that date, the number of reported deaths in the United States alone related to COVID-19 exceeded 302,000 – far more than any other country in the world.⁴ The seriousness of COVID-19 cannot be understated.

16. COVID-19 is a highly contagious and potentially deadly respiratory disease. COVID-19 is known to cause fever, dry cough, extreme fatigue, body aches, headache, sore throat, loss of taste and smell, difficulty breathing, and pain or pressure on the chest. Since the outbreak of the disease in the United States in early 2020, it has been well understood that COVID-19 also presents a serious threat of death to those it infects, particularly those with underlying health conditions or other predispositions.

17. More than 302,000 people in the United States have died from COVID-19 since January 21, 2020, and at least 16.6 million have been infected.

18. To date, at least 207 Merced County residents have died from COVID-19.

19. The easiest way for COVID-19 to spread is through exposure to an infected person. The risk of infection increases dramatically when individuals are in close physical proximity (i.e., within six feet of each other), particularly indoors and for extended periods of time. COVID-19 can be spread by individuals who show no symptoms or only mild symptoms.

20. On or about March 4, 2020, California Governor Gavin Newsom declared a state of emergency and deployed resources to prevent the spread of COVID-19. On or about March 11, 2020, the World Health Organization declared COVID-19 to be a global pandemic. On or about March 13, 2020, President Donald Trump declared a national state of emergency and Merced County declared a local emergency as a result of the virus.

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requirements, in English, Spanish, and Punjabi, working with the union as applicable....

Provide proper face coverings at no cost to all contract employees, permanent employees, temporary workers, and/or volunteers prior to each shift, and if a replacement is needed during a shift, and require use as directed in the Merced County Health Officer Order.

Foster Farms shall *follow all State Orders*, including State COVID-19 Industry Guidance for Food Packing and Processing:
<https://files.covid19.ca.gov/pdf/guidance-food-packing--en.pdf>.

(Emphasis added.)

27. On information and belief, Defendant did not comply with the August 5 Order.

28. By August 28, 2020, eight Livingston Plant workers had died from COVID-19 and 392 had tested positive for the virus.

29. On or about August 28, 2020, MCDPH issued an Order (the “August 28 Order”) requiring closure of the Livingston Plant for six days, effective September 1, 2020. The August 28 Order stated: “Of the approximate 2,600 workers at the Livingston facility, 13.7 percent of the workforce has received a positive test result based on worker self-reporting.” The MCDPH press release accompanying the August 28 Order noted that the Foster Farms outbreak “has become the most severe and long-lasting outbreak in Merced County.”

30. The August 28 Order concluded that “in response to the previous Merced County Health Officer Directives, Foster Farms has not implemented the required universal testing of the entire Livingston Complex, as directed.” MCDPH also identified the Livingston Plant as a “public nuisance as defined by California Penal Code 370 and Civil Code 3479, and posing a great risk to the health and safety of Merced residents and the surrounding counties.”

31. The August 28 Order provided that “Foster Farms shall follow all State Orders,” and noted that “[v]iolation [of this Order] also subjects Foster Farms to civil enforcement actions including injunctive relief, attorneys’ fees and costs. A violation of this Order constitutes a public nuisance.”

32. The Livingston Plant reopened as a whole on September 7, 2020.

33. By September 17, 2020, a ninth Livingston Plant worker had died from COVID-19.

1 34. In Merced County, as of this month, there have been over 14,000 documented
2 COVID-19 infections and 201 deaths.⁴ In August, County positivity numbers roughly doubled in
3 number.⁵ The current population of the County is 281,000.⁶ In August, County positivity numbers
4 roughly doubled in number.⁷ The COVID-19 fatality rate at the Plant is nearly twice the Merced
5 County rate and, as of late August 2020, accounted for 18% of all virus deaths of County residents
6 under 65 and 4 out of 10 deaths due to COVID-19 in the city of Livingston.⁸

7 35. On December 3, 2020, Merced County declared a second coronavirus outbreak at
8 the Livingston Plant. This outbreak remains ongoing.

9 **Recent State Response to the Pandemic**

10 36. Effective December 1, 2020, the California Occupational Safety and Health
11 Standards Board (“Cal/OSHA”) issued emergency COVID-19 regulations under § 3205 of Title 8
12 of the California Code of Regulations.

13 37. Section 3205(c)(6) of those Regulations requires employers to establish a COVID-
14 19 Prevention Program that includes adequate physical distancing.

15 38. COVID-19 most commonly spreads through close interaction with an infected
16 person that allows the virus to spread through airborne particles or aerosolized droplets, which are
17 secretions from talking, coughing, and sneezing; or through contact with a contaminated surface.
18 The risk of infection increases dramatically when individuals are in proximity, e.g., within six feet
19 of each other, particularly indoors and for extended periods of time. The risk of infection increases
20 exponentially for those in contact with infected persons who sneeze or cough or otherwise project
21 secretions into the air. Recent research published by the Centers for Disease Control and
22
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24 _____
25 ⁴ *California Coronavirus Map and Case Count*, N.Y. Times (Dec. 10, 2020), available at ibit.ly/PaqB

26 ⁵ *Coronavirus Resource Center*, Johns Hopkins, available at ibit.ly/zVPC.

27 ⁶ <https://worldpopulationreview.com/us-counties/ca/merced-county-population>.

28 ⁷ *Coronavirus Resource Center*, Johns Hopkins, available at ibit.ly/zVPC.

⁸ Manuela Tobias, “Foster Farms processing plant in California ordered to shut down over COVID-19 outbreak,” *The Fresno Bee* (Aug. 27, 2020), available at ibit.ly/nuLV.
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1 Prevention ("CDC") suggests that a single person with COVID-19 is likely to infect five or six
2 other individuals absent aggressive physical distancing practices.⁹

3 39. Section 3205(c)(6)(A) of the Regulations states that “[a]ll employees shall be
4 separated from other persons by at least six feet, except where an employer can demonstrate that
5 six feet of separation is not possible, and except for momentary exposure while persons are in
6 movement. Methods of physical distancing include: telework or other remote work
7 arrangements; reducing the number of persons in an area at one time, including visitors; visual
8 cues such as signs and floor markings to indicate where employees and others should be located or
9 their direction and path of travel; staggered arrival, departure, work, and break times; and adjusted
10 work processes or procedures, such as reducing production speed, to allow greater distance
11 between employees.”

12 40. Section 3205(c)(6)(B) of the Regulations states that “[w]hen it is not possible to
13 maintain a distance of at least six feet, individuals shall be as far apart as possible.”

14 **Foster Farms’ Compliance Failures at the Livingston, California Plant**

15 **Workers closer than six feet apart**

16 41. Foster Farms transports live haulers to the off-site chicken houses in company vans.
17 The nine-passenger vans currently carry five to six passengers, which does not permit six feet of
18 social distancing inside. Foster Farms does not provide monitoring for mask wearing in the vans,
19 and some workers remove their masks during the transport.

20 42. Within Plant 1 and Plant 2, the first point of entry for production is the live hanger
21 section. Here, live chickens are released from the containers delivered by forklift onto a conveyor
22 belt. Workers known as “live hangers,” catch individual chickens, and attach each chicken upside
23 down on hooks hung above the workers that then carry the chickens to the killing room. There are
24 usually six to nine live hangers in a row at a given time.

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27 ⁹ Seven Sanche, *High Contagiousness and Rapid Spread of Severe Acute Respiratory Syndrome Coronavirus*
28 2, Centers for Disease Control and Prevention, https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article?deliverName=USCDC_333-DM25287 (last visited July 20, 2020).
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1 43. There is no plexiglass or other divider between each line hanger. Id. There is not
2 now nor has there ever been six feet between the line hangers, who stand approximately two feet
3 or less, side by side to perform their job.

4 44. After the chickens are killed and bled out in the killing room, they are routed to a
5 variety of different production lines. Whole chickens may be sent to the Rotisserie section where
6 line workers standing side by side secure the chicken legs with elastic bands and season the birds
7 on their way to being vacuum-sealed and packed in cardboard boxes for shipping to Costco.

8 45. The line workers stand approximately two feet apart separated by plexiglass
9 dividers in four separate production lines, staffed by 4-5 workers on either side of the line,
10 standing face to face across the lines. Foster Farms installed the dividers after the September
11 closure. However, there are no barriers between the workers facing each other.

12 46. Moreover, there are two additional lines for packing the vacuum-sealed birds in
13 boxes. These four to five workers, per line, work on one side of the line only, are not separated by
14 any dividers and stand side by side, two feet or less apart.

15 47. There is also a sub-department in Rotisserie that makes the boxes to put the
16 chickens in. There is no separation for workers assembling the boxes and no 6-foot distancing.

17 48. Deboned chicken parts may also be routed to the Deli department, which handles
18 both corn dogs and natural franks. On the corn dog line, workers stand approximately two feet
19 apart separated only by flimsy plastic curtains hung from overhead. Because the curtains are hung
20 above the workers and therefore move around, the workers will often push them away in
21 frustration because the plastic interferes with their speed. Some of the curtains are ripped and
22 scratched. Moreover, the curtains are hung at or below eye level of the workers.

23 49. Peelers also work in the Deli department. After the chicken is processed, it is put
24 through a plastic tube to create the right shape for a frank; the peeler peels the plastic off of the
25 frank after the shape is formed.

26 50. There are four lines where this work is performed, with a total of seven or eight
27 workers on the lines. Lines 1 and 2 have two workers on the line plus a machinist and they prepare
28 the smaller packages of franks; Lines 3 and 4 have three workers (they process the larger orders)

1 plus a machinist, and Line 4 has three people peeling and one machinist. The workers are about 3
2 to 4 feet apart and there are no plastic sheets dividing the space from one another. The only section
3 of the work area that does have plastic shields is in packing, where two workers face each other.

4 51. Still other chicken parts are sent to Packing, where they are sorted and packed into
5 plastic trays. Workers stand on both sides of parallel production lines separated by plastic dividers.
6 However, the workers stand substantially closer than 6 feet apart and are not protected by the
7 plastic barriers when they lean forward and over the conveyor belt to perform their tasks.

8 52. When Cal/OSHA toured Packing post-closure on September 16, to see what
9 changes had been made the Cal/OSHA inspector expressly noted that there needed to be more
10 social distancing on the line and that there was not sufficient protection for workers from the
11 plastic dividers when they leaned forward to do their work.

12 53. In the Food Services Operations building (“FSO,” also known to workers as the
13 “new building”) workers charged with cleaning chicken feet stand in two lines receiving feet from
14 Plants 1 and 2.

15 54. Approximately six people work on these lines, with three or four workers to a line.
16 Everyone works on the same side of the line, with plastic shields between workers, standing
17 approximately 2 to 2.5 feet apart from one another.

18 **Inconsistent or nonexistent mask provision**

19 55. Foster Farms’ provision of masks to its workers is characterized by inconsistency
20 and negligence. Pre-shutdown, Foster Farms provided approximately 50% of the workers in the
21 Rotisserie department with yellow cloth face coverings; the Company provided no explanation as
22 to why not all Rotisserie workers received masks.

23 56. In August, MDPH mandated, among other things, that Foster Farms “[p]rovide
24 proper face coverings at no cost to all contract employees, permanent employees, temporary
25 workers, and/or volunteers prior to each shift, and if a replacement is needed during a shift, and
26 require use as directed in the Merced County Health Officer Order.”

27 57. This has not occurred. Post-shutdown, all Rotisserie workers received plastic
28 shields, but the Company does not provide workers with masks in this department. As of now, no

1 one wears the company-supplied yellow face coverings. Workers in Rotisserie all provide their
2 own masks at their own cost and there is no consistency as to type; some are cloth, some are
3 paper.

4 58. There is also no consistency as to the type of mask worn by workers in Plant 1 or in
5 the sanitation unit. Sanitation workers were originally given a box of masks in April; after that
6 they have replaced their masks at their own expense.

7 59. In the live hanger area, the foremen provide masks; however, they discourage
8 workers from asking for replacements.

9 60. Initial mask provision in other departments was been equally haphazard, but the
10 bottom line is that Foster Farms does not give its workers masks, expects them to provide them at
11 their own expense and provides them with no direction as to type or quality.

12 **Inconsistent testing**

13 61. Workers do not have their temperature regularly taken and monitoring for exposure
14 is perfunctory at best. For example, the live haulers self-report if they have a temperature. The
15 foremen used to ask workers if they had a fever or flu-like or cold-like symptoms, and then
16 workers would sign a sheet to confirm that they had been asked the questions. Since
17 approximately one month ago, the foremen no longer ask the questions and simply have workers
18 sign the sheet saying they do not have symptoms.

19 **Failure to effectively monitor for social distancing**

20 62. There is frequent congestion around certain areas where workers congregate,
21 including around the time clock and around bathrooms at breaks. Little or no effort is made to
22 monitor that congestion and complaints have been met with no response from management.

23 63. Furthermore, to the extent the Company does provide a monitor, there is only one
24 for multiple areas, requiring one person simultaneously to monitor and enforce, for example, the
25 men's and women's restroom, the hallway (a frequent congestion spot) and the breakroom.

26 64. Foremen do not provide positive examples, sending mixed messages. In full view
27 of the workers, when leads or foremen talk to each other they frequently take off their face masks
28 or pull up their plastic shields so that they can talk.

1 interfered with Plaintiffs', including UFW's members', comfortable enjoyment of their lives and
2 property.

3 72. Defendant's acts and omissions as alleged herein have substantially and
4 unreasonably caused the spread and transmission of grave, life-threatening disease and infection,
5 and the actual and real fear and anxiety of the spread and transmission of grave, life-threatening
6 disease and infection.

7 73. Defendant's acts and omissions as alleged herein have caused, and are reasonably
8 certain to cause, community spread of COVID-19. Such community spread has not been, and will
9 not be, limited to the physical location of the Livingston Plant or its workers, as infected workers
10 have gone home and will go home to interact with their family members, co-habitants, neighbors,
11 and others as they undertake essential daily activities such as shopping, doctor's visits, and
12 childcare.

13 74. This community spread has resulted in, and will continue to result in, increased
14 disease.

15 75. Defendant's acts and omissions as alleged herein have unreasonably interfered with
16 the common public right to public health and safety.

17 76. Defendant's acts and omissions as alleged herein also violate that certain order of
18 August 28, 2020 issued by the Health Officer of the County of Merced Directing Foster Farms
19 Poultry Processing Plant In Livingston, Ca to Respond to Current Outbreaks at the Livingston
20 Complex and Comply With Other Directives of This Order (the "Order"), and requiring, among
21 other things, that:

22 Foster Farms management shall *ensure that all employees be informed of testing*
23 *requirements, outbreaks that occur, areas affected, and trained on safety*
24 *requirements*, in English, Spanish, and Punjabi, working with the union as
applicable....

25 *Provide proper face coverings at no cost* to all contract employees, permanent
26 employees, temporary workers, and/or volunteers prior to each shift, and if a
replacement is needed during a shift, and require use as directed in the Merced
County Health Officer Order.

27 Foster Farms shall *follow all State Orders*, including State COVID-19 Industry
28 Guidance for Food Packing and Processing:
<https://files.covid19.ca.gov/pdf/guidance-food-packing--en.pdf>.

1 (Emphasis added.) The last of these requirements encompasses comprehensive guidance and
2 recommendations for six feet of distancing between workers where possible.

3 77. On information and belief, Defendant has failed to follow and violated the Health
4 Officer's Order, exposing it to penalties under the Order including but not limited to fines up to
5 \$1,000 per day, imprisonment of 90 days, or both. Violation also subjects Foster Farms to civil
6 enforcement actions including injunctive relief, attorneys' fees and costs. Violation of the Order
7 constitutes a public nuisance.

8 78. The public nuisance caused by Defendant as alleged herein has caused and will
9 continue to cause special injury to Plaintiff UFW and its members, and to the individual Plaintiffs
10 due to the heightened risk of infection for Livingston Plant workers which leads to lost wages and
11 medical expenses for workers and lost dues for the Union.

12 79. If prompt and immediate injunctive relief is not granted, Plaintiffs face a significant
13 risk of irreparable harm in the form of physical and emotional injuries and death from Defendant's
14 continuing creation and perpetuation of a public nuisance. Such threat of future injuries cannot be
15 adequately compensated through an award of damages or otherwise remedied at law.

16 80. The risk of injury faced by Plaintiffs outweighs the cost of the reasonable measures
17 included in Plaintiffs' proposed injunction.

18 **SECOND CAUSE OF ACTION**

19 **Unfair and Unlawful Business Practices (Cal. Bus. & Prof. Code § 17200)**

20 **(Brought by the Individual Plaintiffs)**

21 81. Plaintiffs incorporate herein by specific reference as though fully set forth the
22 allegations in Paragraphs 1 to 80.

23 82. Defendant's acts and omissions constituting a public nuisance as alleged herein
24 also constitute unfair and unlawful business practices under California Business and Professions
25 Code §§ 17200 et seq.

26 83. Defendant's aforementioned acts and omissions constitute business practices in that
27 Defendant has engaged in them over a significant period of time and in a systematic manner, to the
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1 detriment of Plaintiff UFW and its members, and the individual Plaintiffs, and to Defendant's
2 economic benefit.

3 84. As a result of Defendant's unfair and unlawful business practices, Defendant has
4 gained an unfair competitive advantage over its competitors that adequately protect the health and
5 safety of their workers and the public.

6 85. As a result of Defendant's unfair and unlawful business practices, Plaintiff and its
7 members have lost and will continue to lose money and/or property, including, but not limited to,
8 lost dues, lost wages, and medical expenses.

9 86. Defendant's acts and omissions as alleged herein also violate § 3205(c)(6) of Title
10 8 of the California Code of Regulations. Section 3205(c)(6) mandates that employers in California
11 establish a COVID-19 Prevention Program that includes adequate physical distancing. Under
12 § 3205(c)(6), workers must be separated by at least six feet, unless an employer can demonstrate
13 that six feet of separation is not possible, and except for momentary exposure while persons are in
14 movement. Where six feet of separation is not possible, workers must be as far apart as possible.
15 On information and belief, Defendant has failed to adhere to the requirements set forth under
16 § 3205(c)(6).

17 87. In failing to adhere to California law regarding social distancing, Defendant's
18 actions constitute an unlawful business practice.

19 88. Defendant's acts and omissions as alleged herein also violate that certain order of
20 August 28, 2020 issued by the Health Officer of the County of Merced Directing Foster Farms
21 Poultry Processing Plant In Livingston, Ca to Respond to Current Outbreaks at the Livingston
22 Complex and Comply With Other Directives of This Order (the "Order"), and requiring, among
23 other things, that:

24 Foster Farms management shall *ensure that all employees be informed of testing*
25 *requirements, outbreaks that occur, areas affected, and trained on safety*
26 *requirements, in English, Spanish, and Punjabi, working with the union as*
applicable....

27 *Provide proper face coverings at no cost to all contract employees, permanent*
employees, temporary workers, and/or volunteers prior to each shift, and if a
28 *replacement is needed during a shift, and require use as directed in the Merced*
County Health Officer Order.

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Foster Farms shall *follow all State Orders*, including State COVID-19 Industry Guidance for Food Packing and Processing:
<https://files.covid19.ca.gov/pdf/guidance-food-packing--en.pdf>.

(Emphasis added.) The last of these requirements encompasses comprehensive guidance and recommendations for six feet of distancing between workers where possible.

89. On information and belief, Defendant has failed to follow and violated the Health Officer’s Order exposing it to penalties under the Order including but not limited to fines up to \$1,000 per day, imprisonment of 90 days, or both. Violation also subjects Foster Farms to civil enforcement actions including injunctive relief, attorneys’ fees and costs. Violation of the Order constitutes a public nuisance.

90. In failing to adhere to the Order, Defendant’s actions constitute an unlawful business practice.

91. Defendant’s acts and omissions as alleged herein also constitute unfair business practices because they have caused workers of the Livingston Plant, as well as those workers’ family members and other community members, to contract COVID-19 infections that could have been avoided by the implementation of reasonable safety measures.

92. Defendant’s unfair and unlawful business practices entitle Plaintiffs to seek preliminary and permanent injunctive relief, attorneys’ fees and expenses pursuant to California Code of Civil Procedure § 1021.5, and costs of suit.

THIRD CAUSE OF ACTION

Declaratory Judgment (Cal. Code Civ. Proc. §1060, et seq.)

93. Plaintiff incorporates herein by specific reference as though fully set forth the allegations in Paragraphs 1 to 92.

94. An actual controversy has arisen and now exists between the parties relating to the legal rights and duties of the parties as set forth above, for which Plaintiffs desire a declaration of rights and other relief available pursuant to the California Declaratory Judgment Act, C.C.P. § 1060 et seq.

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95. A declaratory judgment is necessary and proper in that Plaintiffs contend that Defendant has committed and continues to commit the violations set forth above and Defendant, on information and belief, will deny that it has done so and/or that it will continue to do so.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for relief against Defendant as follows:

- 1. For preliminary and permanent injunctive relief enjoining Defendant from engaging in and continuing to engage in the wrongful acts, omissions, and practices alleged herein whose commission and omission constitute a public nuisance and/or an unfair or unlawful business practice, including, but not limited to, an order prohibiting Defendant, its employees, officers or agents, from failing or refusing to comply with § 3205(c)(6) of Title 8 of the California Code of Regulations by separating workers by at least six feet, and with all aspects of the Merced County Health Officer’s August 28, 2020 Order;
- 2. For a declaration that Defendant has committed a public nuisance and engaged in unfair/unlawful business practices by the wrongful acts, omissions, and practices alleged herein;
- 3. For reasonable attorneys’ fees and costs pursuant to California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for attorneys’ fees and costs;
- 4. For such further relief that the Court may deem just and proper.

Dated: December 17, 2020

MESSING ADAM & JASMINE LLP

By /s/ Monique Alonso
 Gary M. Messing
 Monique Alonso
 Laurie M. Burgess
 Attorneys for Plaintiffs
 UNITED FARM WORKERS, MARIA TRINIDAD
 MADRIGAL and MICAELA ALVARADO