

1 L. STEPHEN ALBRIGHT Esq. (SBN 110878)  
17337 Ventura Boulevard, Suite 208  
2 Encino, California 91316  
Telephone: (818) 789-0779

3 Rachel K. Alexander  
4 BERENS & TATE, PC, LLO  
10050 Regency Circle, Suite 400  
5 Omaha, NE 68144  
Telephone: (402) 391-1991

6 Attorneys for all named Defendants  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SONOMA

10 ANNA GUHA, SUSAN MARY JACKSON, )  
11 and CHRISTY ANN MORGAN, )

12 Plaintiffs, )

13 v. )

14 CLOUGHERTY PACKING, LLC dba )  
FARMER JOHN; CORCPORK, INC., a )  
15 California corporation; CORCPORK LLC; )  
and DOES 1-50, inclusive, )

16 Defendants. )

CASE NO. SCV240050

Assigned to the Hon. Gary Nadler

17 ) **MEMORANDUM OF POINTS AND**  
18 ) **AUTHORITIES IN SUPPORT OF**  
19 ) **DEFENDANTS' DEMURRER TO**  
20 ) **PLAINTIFFS' SECOND AMENDED**  
21 ) **COMPLAINT**

22 ) [filed concurrently with Demurrer, Notice  
23 ) of Hearing, and Proof of Service]

24 ) Date: \_\_\_\_\_, 200\_\_

25 ) Time: \_\_\_\_\_ .m.

26 ) Ctrm.: 20

Complaint filed: January 18, 2007

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Table of Authorities ..... iii

Statement of Facts ..... 1

Legal Analysis ..... 2

Plaintiffs have not alleged standing sufficient to plead a cause of action for  
a UCL violation related directly to section 597t because they have not shown  
a loss of money or property "as a result" of Defendants' use of gestation  
stalls ..... 2

Conclusion ..... 7

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**Statutory Authority**

Cal. Bus. & Prof. Code § 17204 ..... 3

**Decisional Authority**

*Benson v. Kwikset Corp.*,  
152 Cal. App. 4th 1254, 62 Cal. Rptr. 3d 284 (2007) ..... 7

*In re Tobacco Cases II*,  
41 Cal. 4th 1257, 163 P.3d 106 (2007) ..... 7

*Shersher v. Superior Court*,  
154 Cal. App. 4th 1491, 65 Cal. Rptr. 3d 634 (2007) ..... 3

1 **STATEMENT OF FACTS**

2 The remaining Plaintiffs, Anna Guha (formerly pleaded as "Ann DeChenne"), Susan  
3 Mary Jackson, and Christy Ann Morgan, served their Second Amended Complaint on  
4 October 22, 2007. (2nd Am. Compl.). Plaintiffs' Second Amended Complaint alleges  
5 violations of Business and Professions Code §§ 17200 et seq. (the "Unfair Competition  
6 Law" or "UCL") and Business and Professions Code §§ 17500 et seq. (the "False  
7 Advertising Law" or "FAL"). Prior to that point, the Court heard Defendants' Demurrer to  
8 Plaintiffs' Amended Complaint on September 19, 2007, sustaining it in part and overruling  
9 it in part. (Order filed Oct. 19, 2007). In that Order, the Court gave Plaintiffs leave to  
10 amend as to the Second and Third Causes of Action (now the First and Second Causes  
11 of Action, respectively) relating to Defendants Corcpork, Inc. and Corcpork, LLC. (Order  
12 filed Oct. 19, 2007).

13 While Plaintiffs added some allegations about the purported interrelationship  
14 between the various Defendants, the issue on which they were granted leave to amend,  
15 they also significantly altered and added allegations that have nothing to do with the  
16 relationship amongst the Defendants. Because the Court is in a position to compare the  
17 allegations between the First and Second Amended Complaints, Defendants have not  
18 itemized the changes here. However, a few examples include the additions of: (1) the  
19 allegation that "[c]onsumers are not informed that the animals who are used as ingredients  
20 in their food were subjected to animal cruelty under California law," (2) a definition of  
21 "exercise" for Merriam-Webster's Collegiate Dictionary, (3) the allegation that Corcpork's  
22 everyday operations "include thousands of acts of illegal animal cruelty," (4) the allegation  
23 that sows "suffer constantly," (5) the allegation that pigs have a "fundamental" need to  
24 exercise, and (6) citations to case law on the theory that Defendants' alleged violation of  
25 section 597t constitutes a violation of the UCL. (2nd Am. Comp., ¶¶ 9, 12, 39, 42, 51, 55).

26 Even with these altered and additional allegations, Plaintiffs have not sufficiently

1 alleged standing to assert a violation of section 597t such as to support their cause of  
2 action under the UCL. As a result, Defendants have filed their Demurrer seeking dismissal  
3 of any cause of action, such as that under the UCL, related to a violation of section 597t  
4 for lack of standing.

### 5 LEGAL ANALYSIS

#### 6 **PLAINTIFFS HAVE NOT ALLEGED STANDING SUFFICIENT TO PLEAD A CAUSE** 7 **OF ACTION FOR A UCL VIOLATION RELATED DIRECTLY TO SECTION 597t** 8 **BECAUSE THEY HAVE NOT SHOWN A LOSS OF MONEY OR PROPERTY "AS A** 9 **RESULT" OF DEFENDANTS' USE OF GESTATION STALLS**

10 Plaintiffs lack standing to sue through the UCL for a violation of section 597t  
11 because they have not alleged loss of money or property "as a result of" Defendants' use  
12 of gestation stalls. Based on what Defendants can glean from their Second Amended  
13 Complaint, Plaintiffs' lawsuit has essentially two facets. Plaintiffs sue for violations of the  
14 UCL and FAL based on advertising-related issues.<sup>1</sup> Plaintiffs also sue for a violation of the  
15 UCL based on Defendants' alleged violation of section 597t specifically, unrelated to any  
16 advertising concepts.<sup>2</sup> Defendants' present Demurrer focuses only on the latter claim, that

---

17 <sup>1</sup>See, for example, allegations including: "Consumers are **not informed** that the  
18 animals who are used as ingredients in their food were subjected to animal cruelty under  
19 California law"; "A reasonable consumer would believe these express statements and  
20 assume that Defendants are complying with all laws"; "Defendants' **failure to inform** the  
21 public, including Plaintiffs, about the treatment of the sows, which constitutes an unfair and  
22 fraudulent business practice, since it **prevents reasonable consumers from making**  
23 **educated choices** about the foods they purchase"; "Defendants engage in the **deceptive**  
24 **business practice of labeling its [sic] products** in such a way that suggests to the  
25 reasonable consumer that the animals involved in the production are kept in conditions that  
26 meet or exceed the requirements of California animal protection laws, and are treated  
humanely and kindly." (2nd Am. Compl., ¶¶ 9, 60, 62) (emphasis added).

23 <sup>2</sup>See, for example, allegations including: "Plaintiffs bring this action, seeking a court  
24 order that will change the way these sows are treated. Longstanding and extensive  
25 California law embodies a strong public policy against cruelty to animals, and the specific  
26 law against confinement without adequate exercise makes clear that the Legislature has  
determined that Defendants' mistreatment of the sows is prohibited under the law in accord  
with that policy"; "Plaintiffs bring this action for declaratory and injunctive relief **to declare**  
**unlawful the intensive confinement of Corcpork's sows**, and **to permanently enjoin**  
**Defendants from confining these sows in violation of California Penal Code Section**

1 Plaintiffs are entitled to declaratory and injunctive relief based solely on Defendants'  
2 alleged violation of section 597t without respect to advertising practices, because Plaintiffs  
3 have alleged in their Second Amended Complaint that the section 597t-related claim  
4 "standing by itself" entitles them to such declaratory and injunctive relief. (2nd Am. Compl.,  
5 ¶ 13).

6 The UCL's standing provision provides that a proper plaintiff must have lost money  
7 or property "as a result of" the unlawful act that is the basis of the lawsuit. Cal. Bus. &  
8 Prof. Code § 17204. California courts have further defined a plaintiff's ability to recover as  
9 requiring "that the plaintiff must be a 'person in interest' (that is, the plaintiff must have had  
10 an ownership interest in the money or property sought to be recovered), and the defendant  
11 must have acquired the plaintiff's money or property '**by means of** . . . unfair competition'  
12 or some other act prohibited by the UCL or the false advertising law." *Shersher v. Superior*  
13 *Court*, 154 Cal. App. 4th 1491, 1494, 65 Cal. Rptr. 3d 634, 636 (2007) (emphasis added).  
14 In their Second Amended Complaint, Plaintiffs have not alleged how they lost money or  
15 property as a result of Defendants' use of gestation stalls or how Defendants acquired their  
16 money "by means of" using gestation stalls.

17 Defendants understand, at least for purposes of this Demurrer, how Plaintiffs  
18 contend they lost money or property as a result of the advertising issues they've alleged.  
19 Plaintiffs allege that they "lost the money they spent on Farmer John products because the  
20 products they received were not the projects they believed they were buying" because  
21 "Defendants made express and implied representations that their products were produced  
22 in compliance with California laws regarding cruelty to animals." (2nd Am. Compl., ¶ 64).

23 \_\_\_\_\_  
24 **597t** ("Section 597t"), and from selling products created as a result of this cruelty";  
25 Defendants' violation of Section 597t, **standing by itself**, represents the requisite predicate  
26 act for plaintiffs' First Cause of Action under Business and Professions Code Sections  
17200. Cal. Bus. & Prof. Code § 17200 ("[U]nfair competition shall mean and include any  
unlawful . . . business act or practice . . ."); **In addition to** their violation of Section 597t,  
. . . ." (2nd Am. Compl., ¶¶ 10, 11, 13, 14) (emphasis added).

1 However, nothing in Plaintiffs' Second Amended Complaint shows how they lost money or  
2 property as a result of Defendants' use of gestation stalls or the alleged corresponding  
3 violation of section 597t. Instead, Plaintiffs only allege how they were injured as a result  
4 of the failure to advertise Defendants' use of gestation stalls, which is something legally  
5 distinct that results in a different remedy.

6 Although they have since added and altered many of the allegations in their  
7 pleading, Plaintiffs' counsel recognized this distinction in their Opposition to Defendants'  
8 Demurrer to First Amended Complaint. In that Memorandum, Plaintiffs noted, "Similarly,  
9 Defendants' contention that the individual Plaintiffs' claims fail because they have not  
10 alleged a loss of money 'as a result' of Defendants' section 597t violation is off point.  
11 Plaintiffs lost money as a result of Defendants' misleading representations that their  
12 products came from hog operations that comply with state anti-cruelty laws." (Pls.' Opp.  
13 to Dem. to 1st Am. Compl. at 11). In other words, Plaintiffs represented to the Court, even  
14 prior to amending their pleading a second time, that their claim was not based on loss of  
15 money or property as a result of the alleged section 597t violation; they lost money or  
16 property "as a result of Defendants' misleading representations."

17 However, nothing in Plaintiffs' Second Amended Complaint further clarifies the issue  
18 from the admission made in the Opposition to the Demurrer on the First Amended  
19 Complaint. Plaintiffs have not alleged how they lost money or property directly as a result  
20 of breeding sows not getting an "adequate exercise area" allegedly in violation of  
21 section 597t. In their Second Amended Complaint, each individual Plaintiff outlines how  
22 she bought Farmer John pork products and did not received the products "she expected  
23 to receive." (2nd Am. Compl., ¶¶ 15, 16, 17). Plaintiffs also allege, with respect to their  
24 supposed injury, as follows:

25 56. Plaintiffs are injured by Defendants' violation of Section 597t because  
26 of the connection between the cruelty to which animals are subjected at  
Corcpork's facility, and the pork products Plaintiffs have suffered economic  
damages in purchasing.

1 63. Plaintiffs Morgan, Jackson, and Guha have suffered harm and lost  
2 money as a result of Defendants' violations of California Business and  
Professions Code section 17200, *et seq.*

3 64. Plaintiffs Morgan, Jackson, and Guha lost the money they spent on  
4 Farmer John products because the products they received were not the  
products they believed they were buying. . . .

5 65. Plaintiffs relied on Defendants' express and implied  
6 representations, . . . . Plaintiffs viewed, reviewed, and relied on Defendants'  
express and implied representations in purchasing Farmer John products.

7 66. Defendants' conduct has harmed Plaintiffs because they would not  
8 have spent the money they paid for the products if they had know the  
9 material facts omitted by Defendants that, *inter alia*, Defendants were  
participating in violations of the animal cruelty laws in creating their products,  
and treating their sows in an inhumane manner.

10 68. If Defendants had disclosed the fact that the sows involved in the  
11 creation of Farmer John products were cruelly confined in violation of  
California laws, Plaintiffs would not have bought the products. . . .

12 69. Plaintiffs spent money because of Defendants' acts in violation of  
13 Section 17200 when the purchased the illegally-produced pork products.  
14 Therefore, Plaintiffs suffered economic injury as a result of Defendants'  
conduct that was unlawful, unfair, and deceitful.

15 (2nd Am. Compl., ¶¶ 56, 63-66, 68-69).

16 Put another way, according to Plaintiffs' Second Amended Complaint, they would  
17 have suffered no injury if Defendants had stamped each Farmer John pork product with  
18 the language, "We use gestation stalls to house our breeding sows," or even (although  
19 untrue and unrealistically), "We violate animal-confinement laws." The injury alleged is not  
20 that Defendants **use** gestation stalls or even that they **violate animal-confinement laws**;  
21 it's that Plaintiffs **did not know about the gestation stalls** when purchasing pork  
22 products. Plaintiffs have not alleged any facts showing that they suffered loss of money  
23 or property as a result of gestation stalls being used. Because Plaintiffs cannot tie their  
24 injury in any way to actual use of the gestation stalls, their claim under the UCL for violation  
25 of section 597t cannot continue because Plaintiffs have not alleged standing.

26 The difference between suffering an injury as a result of gestation-stall use and  
suffering an injury as a result of advertising-related issues is significant because each claim



1 affects the scope of the remedy Plaintiffs would be entitled to if successful. The Court  
2 must recognize that Plaintiffs have not adequately pleaded standing sufficient to establish  
3 a claim for unfair competition related directly to violating section 597t because failure to  
4 plead standing under that claim changes the relief Plaintiffs would be entitled to. In their  
5 Second Amended Complaint, Plaintiffs have pleaded:

6 WHEREFORE, Plaintiffs request the following relief:

- 7 1. An order declaring that Defendants treatment of animals in their  
possession and control violates Section 597t of the California Penal Code;
- 8 2. An order enjoining Defendants from continuing to violate the California  
Penal Code with respect to the animals in their possession;
- 9 3. An order enjoining Defendants from selling pork products raised in  
facilities acting in violation of Section 597t;
- 10 4. Reasonable costs and expenses, including attorneys' fees according  
to proof at trial;
- 11 5. Statutory attorneys' fees if applicable; and
6. Such other and further relief as the Court deems just and proper.

12 (2nd Am. Compl. at 17).

13 As is evident from the prayer for relief, Plaintiffs have not sought any remedies  
14 related to the advertising aspects of the claims. Plaintiffs have sought a declaration and  
15 injunction preventing Defendants from using gestation stalls and from selling pork products  
16 derived from facilities using gestation stalls - all pork products, not just those derived from  
17 animals actually housed in gestation stalls. Plaintiffs have not requested any relief that is  
18 related to the reasons they articulated to show why they have been allegedly injured - the  
19 failure to inform consumers that Defendants use gestation stalls. Plaintiffs have not asked  
20 for a change in Defendants' marketing or product packaging; they only ask for injunctive  
21 relief banning gestation stalls and the sale of Defendants' product. Therefore, it is vital that  
22 Plaintiffs plead and establish standing for a UCL claim tied directly to section 597t because  
23 it is the basis for the only relief they have sought.

24 The scope of appropriate relief is also reflected in other UCL cases involving  
25 advertising claims. For example, in *In re Tobacco Cases II*, the California Supreme Court  
26 addressed a case in which the State of California, through the Attorney General, brought

1 suit under the UCL to enjoin the "defendants from targeting minors in their advertising, and  
2 it has secured a settlement in which defendants agreed to refrain from such advertising."  
3 *In re Tobacco Cases II*, 41 Cal. 4th 1257, 1275, 163 P.3d 106, 117 (2007). In that case,  
4 the State did not seek to enjoin the sale of all tobacco products, period. The remedy was  
5 tied to the claims pleaded -- advertising issues. Similarly, in *Benson v. Kwikset*  
6 *Corporation*, the trial court found that the defendants had marketed products and packaged  
7 products with misleading country-of-origin labels. *Benson v. Kwikset Corp.*, 152  
8 Cal. App. 4th 1254, 1262, 62 Cal. Rptr. 3d 284, 289 (2007). The trial court entered a  
9 judgment for the plaintiff enjoining the defendants' use of inaccurate labels. *Id.* The court  
10 did not, as Plaintiffs here would have the Court order, enjoin the sale of products in their  
11 entirety. To allow Plaintiffs to maintain a cause of action resulting in a complete bar on  
12 gestation stalls and sale of pork products without establishing standing to sue under the  
13 UCL for a section 597t violation would be tantamount to allowing Plaintiffs to sue directly  
14 under section 597t -- something the Court has already refused to allow other Plaintiffs to  
15 do.

### 16 CONCLUSION

17 For the foregoing reasons, Defendants respectfully request the Court dismiss  
18 Plaintiffs' First Cause of Action as to the section 597t violation, with prejudice and without  
19 leave to amend. Plaintiffs have not pleaded standing to maintain an action under the UCL  
20 for violation of section 597t, and the relief they have sought only relates to a violation of  
21 section 597t rather than the other advertising-related claims they have pleaded.  
22 Therefore, the Court would properly dismiss that claim on the basis that Plaintiffs lack  
23 standing.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

DATED this 21st day of November, 2007.

RACHEL K. ALEXANDER,  
Attorney for Defendants,

By *Rachel Alexander*  
Rachel K. Alexander  
BERENS & TATE, PC, LLO  
10050 Regency Circle, Suite 400  
Omaha, NE 68114