

# EXHIBIT 19

[REDACTED VERSION OF DOCUMENT  
PROPOSED TO BE FILED UNDER SEAL]

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

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SARA SAFARI, PEYMON KHAGHANI, on :  
behalf of themselves and others similarly situated, :  
 :  
 : Plaintiffs, :  
 : Case No. 8:22-CV-01562-JWH-KES  
 :  
 : v. :  
 :  
 :  
 : WHOLE FOODS MARKET SERVICES, INC., :  
 : a Delaware corporation, WHOLE FOODS :  
 : MARKET CALIFORNIA, INC., a California :  
 : corporation, MRS. GOOCH'S NATURAL FOOD :  
 : MARKETS, INC., doing business as Whole Foods :  
 : Market, a California Corporation, :  
 :  
 : Defendant. :  
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**EXPERT REPORT OF JON M. RIDDLE**

**December 6, 2024**

**CONFIDENTIAL**

**[REDACTED VERSION OF DOCUMENT PROPOSED  
TO BE FILED UNDER SEAL]**

I, Jon M. Riddle, declare as follows,

**I. QUALIFICATIONS**

1. I am an economist and an expert on economic damages and related issues arising in this matter. I received a Ph.D. in economics with specializations in industrial organization and finance from University of California Santa Barbara and before that a Bachelor of Science in economics from the California State Polytechnic University at Pomona. I have spent my career researching, analyzing, and describing economic conduct and outcomes for numerous projects that lie at the intersection of the law and economics. A copy of my resume is attached in Appendix A.
2. I have taught courses in industrial organization and finance at University of California Santa Barbara. In my industrial organization courses, students learned about market structure (e. g., the number of competing buyers and sellers), strategic conduct (e. g., the determination of prices, quantities, the roles of product promotion, and the outcomes of research & development processes), performance (e. g., profits, rates of innovation, and entry & exit), and antitrust policy. My courses in finance introduced students to alternative measures of investment performance (e. g., profitability and rates of return), risk and return, sources of capital, capital structure, and financial markets. I also taught courses on the microeconomic theory of the healthcare sector for ten years, in University of California Los Angeles, Fielding School of Public Health's Executive Programs in Health Policy and Management, which applied many of the principles of industrial organization to the U.S. health sector. From 2006 to 2007, I was a senior fellow at the Milken Institute, where I conducted research on the economic burden of chronic diseases.
3. With colleagues I have published research in peer-reviewed journals on various topics in industrial organization, including market power in advertising, economic cost of gasoline regulation, and efficiency effects of the Bell System divestiture, and pricing, innovation, and entry in pharmaceuticals markets.
4. I have worked on many engagements that have required estimating economic damages arising from various forms of alleged illegal conduct, including misrepresentation, concealment of harmful side-effects, antitrust violations (e. g., price-fixing, exclusionary

conduct, and monopolization), breaches of contracts, and patent infringement. I have testified numerous times as an expert on economic damages and on related economic issues arising in this matter both in deposition and at trial, in state and in federal courts. Recently I worked together with another expert on pharmaceutical markets whereby I proposed and executed an economic model that would reliably estimate damages suffered by a class of third-party payers (e. g., private commercial health insurers and self-insured entities) of prescription diabetes medications that arose when the drug's manufacturer allegedly withheld scientific evidence of the drug's harmful side effects from the U. S. Food and Drug Administration, third-party payers, and consumers. I have also investigated the likely anticompetitive effects of supermarket and retail pharmacy mergers affecting California consumers, including the extent to which these combinations would likely increase food prices. I testified before the Federal Trade Commission regarding two of these mergers. A listing of the cases in which I have testified is included at the end of Appendix A.

5. I am assisted with my work by the staff of Vega Economics, an economic consulting firm. Its staff worked under my direction. The opinions put forth in this declaration are mine and mine alone.

## II. ASSIGNMENT

6. I have been asked by counsel for the Plaintiffs to review the Plaintiffs' allegations and available evidence regarding the conduct at issue in this class action and then to propose an economic analysis whereby it would be possible to determine the harm sustained by the class of consumers who purchased beef products from Whole Foods Market stores in California, from Whole Foods Market's website, and via Whole Foods Market on Amazon from 2018 to the present ("Class Period") using sources and methods common to class members. My compensation is based on my time, not the content of my opinions. I make this declaration based upon my own personal knowledge and, if called as a witness in this action, I would be able to competently testify as to the facts and opinions set forth herein.
7. I have also been asked by counsel to review the *Expert Declaration of Dr. Elizabeth Howlett* regarding a conjoint survey to be used to determine whether Whole Foods Market's beef sold at a premium due to the "No Antibiotics, Ever" marketing. If requested

to do so as this litigation progresses, I could rely upon the conjoint analysis proposed, and results performed, to determine key inputs for my economic damages calculations.

8. In undertaking this assignment, I have assumed that the allegations in the *Second Amended Complaint*<sup>1</sup> are true. This assumption is logically appropriate and is also consistent with economic best practices when conducting analyses of economic damages arising from illegal conduct.<sup>2</sup>

### III. BACKGROUND

9. This class action is about a retailer, Whole Foods Market,<sup>3</sup> making claims and guarantees regarding an attribute of some of the products it sold, then consumers in California making choices based on their beliefs that the products that they desired and purchased contained the attribute, and finally the harm to consumers because the claims and guarantees were false or likely to mislead a reasonable consumer. I am assuming that consumers purchased products that did not meet their expectations.
10. Whole Foods Market was founded in 1980 in Austin, Texas. Among its core values is the aim to sell the highest quality natural and organic foods.<sup>4</sup> Whole Foods Market considers itself to be the world's leading natural and organic foods retailer<sup>5</sup> and is recognized as one

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<sup>1</sup> Sara Safari et al., v. Whole Foods Market Services, Inc. et al. (C.D. Cal. No. 8:22-CV-01562-JWH-KES), *Second Amended Complaint*, (Oct. 31, 2023), ECF 108.

<sup>2</sup> Mark A. Allen, Robert E. Hall, and Victoria A. Lazear, "Reference Guide on Estimation of Economic Damages" in *Reference Manual on Scientific Evidence*, 3<sup>rd</sup> Edition Federal Judicial Center and National Research Council of the National Academies (2011), p. 432: "the damages expert proceeds on the hypothesis that the defendant committed the harmful act and that the act was unlawful."

<sup>3</sup> The Defendants include Whole Foods Market Services, Inc., Whole Foods Market California, Inc., and Mrs. Gooch's Natural Food Markets, Inc. Hereafter I refer to Defendants as Whole Foods Market.

<sup>4</sup> <https://www.wholefoodsmarket.com/mission-values/core-values>.

<sup>5</sup> See Whole Foods Market press release from October 16, 2024 at <https://media.wholefoodsmarket.com/new-whole-foods-market-in-phoenix-now-open/>.

of the largest operators of premium natural organic supermarkets in the United States.<sup>6</sup>

Plaintiffs further allege that as part of this mission, beginning in 2002, Whole Foods Market launched a promotional campaign marketing its beef products as being raised with “No Antibiotics, Ever.”

11. The goods alleged to be at issue are beef products sold through Whole Foods Market stores in California and websites, including various cuts of fresh beef sold at each store’s butcher counter, packaged fresh beef available in each store’s refrigerated areas, and beef products contained in sandwiches, pizzas, beef jerky and the like. Plaintiffs allege that Whole Foods Market has extensively promoted its beef products as “No Antibiotics, Ever.”<sup>7</sup> Furthermore, Whole Foods Market buttressed these promises with guarantees that “if it does not meet our standards, we won’t sell it.”<sup>8</sup> To provide underpinnings for these “No Antibiotics, Ever” campaigns and promises, Whole Foods Market also invested in a proxy organization, Global Animal Partnership (“GAP”), that would serve as a seemingly independent verifier

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<sup>6</sup> Federal Trade Commission v. Whole Foods Market, Inc. and Wild Oats Markets, Inc., *Complaint for Temporary Restraining Order and Preliminary Injunction Pursuant to Section 13(b) of the Federal Trade Commission Act*, United States District Court, the District of Columbia, June 6, 2007, p. 3. The company operated 190 stores when it acquired Wild Oats. Since then, it has grown to have a domestic footprint of nearly 500 stores.

<sup>7</sup> *Second Amended Complaint*, ¶¶ 1-2. The United States Department of Agriculture’s Food Safety and Inspection Service uses NAE along with “No Antibiotics;” “No Antibiotics Added;” “No Antibiotics Administered;” “Antibiotic Free;” “No Added Antibiotics;” “No Antibiotics in Feed, Water, or Intra-muscular Injection;” “Raised Without Antibiotics, Pesticides, or Added Growth Hormones;” “No Added Antibiotics or Added Hormones;” “No Antibiotics Administered, No Growth Stimulants or Added Hormones;” “No Antibiotics – No Added Hormones;” and Other applicable claims indicating no antibiotic use to indicate that slaughtering cattle were raised without antibiotics. See <https://www.fsis.usda.gov/policy/fsis-notice/48-23>. In this report, I use no antibiotics ever (“NAE”) and/or raised without antibiotics (“RWA”) to indicate that beef was raised without the use of any antibiotics.

<sup>8</sup> *Second Amended Complaint*, ¶40 and ¶49. See also *Quality Standards for Ingredients*, at [https://wholestory.wholefoodsmarket.com/app/uploads/2022/01/QualityStandards\\_v5.pdf](https://wholestory.wholefoodsmarket.com/app/uploads/2022/01/QualityStandards_v5.pdf). Last viewed on November 4, 2024 and *Whole Foods Market Meat Department Quality Standards*, at <https://www.wholefoodsmarket.com/quality-standards/meat-standards>. Last accessed on November 4, 2024.

of animal welfare and supply chain standards.<sup>9</sup> These claims are now pervasive, prominently displayed throughout Whole Foods Market stores, on product packaging, on its online materials, and on Whole Foods Market beef products sold on Amazon.<sup>10</sup>

12. Plaintiffs also allege that Whole Foods Market did not have any testing program at the start of the Class Period, and independent testing has shown Whole Foods Market's promises were untrue and that its supply chain was tainted by cattle that were raised using antibiotics.<sup>11</sup> For example, as described in the *Second Amended Complaint*, in 2020 Food In Depth ("FoodID"), an independent, third-party scientific food testing company conducted an antibiotics testing protocol at a slaughterhouse supplying beef to Whole Foods Market's stores in California. FoodID detected antibiotics in samples destined for Whole Foods Market's beef supply chain. Farm Forward, a nonprofit advocacy organization, conducted a different investigation, this one at the retail level (i. e., at the end of the supply chain) and found antibiotics present in the supply chain of beef products sold at Whole Foods Market stores in California.<sup>12</sup>

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<sup>9</sup> Global Animal Partnership was created by John Mackey, then CEO of Whole Foods Market in 2008. A relevant GAP animal welfare standard for beef cattle is Section 3: Animal Health, 3.1 Medication Use, 3.1.1 "The therapeutic use of antibiotics, ionophores, or sulfa drugs is prohibited for market animals." See *Global Animal Partnership 5-Step Animal Welfare Standards for Beef Cattle* at <https://globalanimalpartnership.org/wp-content/uploads/2022/04/Global-Animal-Partnership-Animal-Welfare-Standards-for-Beef-Cattle-v1.2-20220407.pdf>.

<sup>10</sup> *Second Amended Complaint* at ¶¶ 42, 46-47.

<sup>11</sup> *Second Amended Complaint* at ¶ 2.

<sup>12</sup> *Second Amended Complaint* at ¶¶ 2-3.

See Sara Safari et al., v. Whole Foods Market Services, Inc. et al. (C.D. Cal. No. 8:22-CV-01562-JWH-KES),

#### IV. THE MARKET FOR “NO ANTIBIOTICS, EVER” BEEF

13. The market at issue is the retail sale of beef products to consumers in California, and specifically a segment comprised of beef products having been raised without antibiotics, or having a no antibiotics ever attribute. Evidence indicates that the beef products market and this segment is large and important to both retailers and consumers, nationwide and in California.<sup>13</sup>
14. Household scanner and point of sale data<sup>14</sup> summarized in *The Power of Meat*<sup>15</sup> reports show that U.S. households consumed approximately \$49.5 billion (over 15.4 billion pounds) in fresh meat products in 2017, increasing to \$57.7 billion (20.3 billion pounds) in 2022.<sup>16</sup> Beef products accounted for \$24.9 billion (5.2 billion pounds) of fresh meat expenditures in 2017 and \$30.6 billion (5.1 billion pounds) in 2022. Throughout the class period beef accounted for roughly half of all fresh meat expenditures in the U.S.<sup>17</sup> Beef

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<sup>13</sup> California represented 11.63 percent of U. S. population and 10.59 percent of U. S. households as of July 1, 2023. A reasonable assumption would be that California consumers represent at least 10 percent of the nation’s beef products purchases. See <https://www.census.gov/quickfacts/fact/table/US,CA/PST045223>. Last accessed on November 4, 2024.

<sup>14</sup> The three well-known consumer information/intelligence companies in the U. S., Circana (nee IRI), NielsenIQ, and SPINS maintain two notable “scanner” data products. Their point-of-sale (“POS”) information tabulates purchases made in a range of retail outlets including supermarkets, supercenters, convenience stores, drug stores, stores such as Whole Foods and Sprouts, and others. These POS data products capture quantities and prices of every product scanned at check-out registers. The other, generically household/consumer panels, collect comprehensive purchase histories or purchase diaries directly from thousands of households nationwide on a periodic basis (e. g., after every shopping trip) via in-home, Internet-connected scanning devices.

<sup>15</sup> *The Power of Meat* is published annually by Food Industry Association (“FMI”) and the Foundation for Meat and Poultry Research and Education. The 2023 report was the 18<sup>th</sup> edition. Several of these reports were produced by Whole Foods Market, including WFM\_023443.pdf (2019), WFM\_023633.pdf (mid 2020), WFM\_023928.pdf (2020) and WFM\_102413.pdf (2021).

<sup>16</sup> Processed meats, including “franks, breakfast meats, smoked ham, bacon, packaged lunchmeat, heat-and-eat cooked meats and refrigerated entrees and side dishes sold in the meat and refrigerated departments” (*The Power of Meat 2023*, p. 45) represented an additional \$29.4 billion in meat expenditures in 2022. Comparable data are not yet available for 2017.

<sup>17</sup> Other facts that may be useful: fresh meat is purchased by virtually every household nationwide (97.9 percent in 2017 and 98.3 percent in 2022).



marketed as raised without antibiotics accounted for more than 10 percent of fresh meat purchases annually during the Class Period.<sup>18</sup>

15. Whole Foods Market produced information showing that it sold from \$80.7 million to \$113.5 million per year of beef products through its meat department. These transactions represent annual purchases of 8.2 to 11.61 million pounds beef products sold through the stores' butcher counters and refrigerated cases in California. All these fresh beef products were marketed with the "No Antibiotics, Ever" claim.<sup>19</sup> These figures do not include the many beef-containing products sold in each store's deli and other shopping isles, which was also marketed as "No Antibiotics, Ever." As these data indicate, Whole Foods Market sells substantial amount of beef products that it claims to have the attribute of raised without antibiotics.
16. *The Power of Meat* reports<sup>20</sup> also show a pattern of preferences for beef raised without antibiotics. For example, in the 2018 report, approximately 65 percent of consumers indicated that they were more likely to purchase meat or poultry when package labels indicated antibiotic-free.<sup>21</sup> Likewise, in the 2023 report, about 71 percent of consumers

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<sup>18</sup> *The Power of Meat 2018*, pp. 9-10 and *The Power of Meat 2023*, p. 8 and pp. 44-45. The 2018 data are from IRI's point of sale (i. e., in-store) scanners across its "multi outlet" channel for the 52-week period ended December 31, 2017. Sales included products identified as "antibiotics free or Never antibiotics" meat. The 2023 data, also from IRI's point of sale (i. e., in-store) scanners across its "multi outlet" channel for the 52-week period ended January 1, 2023. This report tabulated antibiotic claims meat where "antibiotic" was defined to be "Combination of all antibiotics-related claims seen on pack, including antibiotic-free, no antibiotic ever ("NAE"), Never Any!, raised without the use of antibiotics, etc."

<sup>19</sup> [REDACTED]

<sup>20</sup> *The Power of Meat* reports are published annually. The underlying research includes surveys of adults primarily or partly responsible for food purchases, household scanner, and point-of-sale data collected by Nielsen, IRI/Circana and Market Track.

<sup>21</sup> Food Marketing Institute and Foundation for Meat & Poultry Research & Education, *The Power of Meat 2018* (2018), p. 48. These findings were based on an online survey of 1,500 consumers conducted between December 5, 2017 and December 14, 2017.

indicated that antibiotic-free/no antibiotics ever claims would influence their meat-purchasing decisions.<sup>22</sup>

17. Research undertaken in-house by Whole Foods Market also indicates that consumers desire products raised without antibiotics.<sup>23</sup> For example, in an internal report for Whole Foods Market from 2020, survey responses showed that 59 percent of consumers looked for animal products that were raised without antibiotics.<sup>24</sup> Another analysis from 2021 showed that 77 percent of consumers considered “no hormones/antibiotics” attributes when shopping for fresh meat or poultry, while 66 percent considered the same attributes when shopping for packaged meat or poultry.<sup>25</sup>
18. Peer reviewed published research has found similar preferences among meat-eating consumers. For example, in a 2016 survey of 1,000 consumers, Spain and colleagues found

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<sup>22</sup> Food Marketing Institute and Foundation for Meat & Poultry Research & Education, *The Power of Meat 2023* (2023), p. 43. The underlying results are from a survey of 1,607 grocery shoppers conducted between December 14, 2022 and December 16, 2022.

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The underlying data were provided by the Hartman Group from its online survey of approximately 1,900 adults nationwide. Hartman’s Sustainability survey was of 1,697 adults nationwide. An earlier study commissioned by Whole Foods Market in 2006 reported similar preferences, “When asked what would make them invest more in meat purchases, ...59 percent said a guarantee it is coming from a trusted source and raised naturally without growth hormones or antibiotics.” These findings were based on a nationally representative sample of 1,014 Americans aged 25 or older. See PLTF004161.

<sup>25</sup>

that 76 percent of respondents indicated that knowing that an animal did not receive antibiotics was important when making their meat purchasing decisions.<sup>26</sup>

19. Beef raised without antibiotics is available at alternative retail channels throughout California, including, for example, at premium natural organic stores, not only Whole Foods Market (89 stores)<sup>27</sup>, Sprouts Farmers Market (139 locations)<sup>28</sup>, and many stand-alone natural food stores, co-ops, and farmer's markets.
20. To be sure, store counts alone do not fully capture the importance of premium natural organic supermarkets in terms of satisfying consumers' demand for "claims-based"<sup>29</sup> meat products, including beef with the no antibiotics ever attribute. None of the other food retailers described above offer the same extensive selection of beef products marketed as "No Antibiotics, Ever" compared to Whole Foods Market.<sup>30</sup> Even its principal premium natural organic competitor, Sprouts, offers fewer beef products and even then, not all of Sprouts' beef offerings have the no antibiotics ever attribute. Whole Foods Market is an important shopping destination for no antibiotics ever beef in California.

**V. REVIEW OF THE LITERATURE ON CONSUMERS' WILLINGNESS TO PAY**

21. Survey research has found the consumers are willing to pay more for beef products having a no antibiotics attribute. For example, a survey of 2,274 adults commissioned by Whole

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<sup>26</sup>C. Victor Spain, Daisy Freund, Heather Mohan-Gibbons, Robert G. Meadows, and Laurie Beacham, "Are They Buying It? United States Consumers' Changing Attitudes toward More Humanely Raised Meat, Eggs, and Dairy." *Animals* 8.8 (2018), p. 6. The percentage represents those indicating the attribute was somewhat or very important to their purchasing decision.

<sup>27</sup> [REDACTED]

<sup>28</sup> Sprouts Farmers Market Annual Report to the Securities and Exchange Commission on Form 10-K for the year ended December 31, 2023, p. 10.

<sup>29</sup> The phrase "claims-based" meat is used in *The Power of Meat* to differentiate products with specialty marketing claims from meat products that do not make such claims. Claims include raised in the USA, raised locally, grass-fed, free range, antibiotics free, no antibiotics ever, no added hormones, and humanely raised. See *The Power of Meat 2023*, pp. 42-43.

<sup>30</sup> Whole Foods Market's "No Antibiotics Ever" messages are pervasive as the images cited in the *Second Amended Complaint* at ¶¶ 42 and 46-47 indicate. For these reasons, Whole Foods Market is declaring that all its beef products are raised without antibiotics ever.

Foods Market and conducted in 2012 found that approximately 30 percent of consumers were willing to pay more for meats “raised with no antibiotics or added growth hormones.”<sup>31</sup>

22. Recent peer reviewed published literature establishes that consumers are willing to pay more for beef products with no antibiotics. Many of these studies rely on similar survey methods to those proposed by Dr. Howlett in this matter. For example, Tait *et al.* (2018) surveyed consumers in California on their beef purchases. Using discrete choice survey,<sup>32</sup> they estimated that California consumers were willing to pay between 4 to 9 percent more for beef with "No Added Antibiotics."<sup>33</sup> Syrengelas and colleagues, also using a discrete choice survey, found that consumers were willing to pay a 7 to 14 percent premium for ribeye steaks labeled as "No Antibiotics."<sup>34</sup> In another example, Ardeshiri *et al.* (2019) studied consumer willingness to pay for different quality attributes, including no added antibiotics, of several beef products. For example, these authors estimated that consumers

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<sup>31</sup> PLTF004172. The survey was conducted by Harris Interactive.

<sup>32</sup> Conjoint and discrete choice surveys and econometrics are very similar preference-based models used in market research to estimate willingness to pay. Conjoint surveys present choice attributes separately, while discrete choice presents multiple attributes at once.

<sup>33</sup> Tait, Peter, et al. “Consumer Insights and Willingness to Pay for Attributes: Beef Products in California, USA.” *Agribusiness and Economics Research Unit, Lincoln University* (2018) at 40. These researchers studied California consumers’ preferences and willingness to pay for beef with various attributes, including no added antibiotics through a survey/choice experiment of 874 consumers in January 2018. The relevant attribute was the choice of beef raised with no added antibiotics and/or no added hormones. Prices were based on observed market prices in California in December 2017. The three beef products were ground beef, top sirloin, and ribeye steak. These products were purchased within the month preceding the survey by 26 percent (top sirloin), 31 percent (ribeye steak), and 73 percent (ground beef) of participants.

<sup>34</sup> Syrengelas, Konstantinos G., et al. “Is the Natural Label Misleading? Examining Consumer Preferences for Natural Beef.” *Applied Economic Perspectives and Policy* 40.3 (2018): 445-460 at Table 4. The estimated willingness to pay for the “No Antibiotics” attribute ranges from \$0.57 to \$1.12, relative to the average market price of \$7.99, which translates to the 7 to 14 percent premium. The underlying survey provided consumers’ preferences and willingness to pay for boneless ribeye steaks labeled with different attributes, including produced without antibiotics. A total of 663 individuals were surveyed in June 2016.

were willing to pay \$4.53 per pound for ground beef having a no added antibiotics claim.<sup>35</sup> According to cost of living data collected by the Federal Reserve Bank of St. Louis, the average price per pound of ground beef in the U. S. in 2017 was \$3.64 per pound.<sup>36</sup> These data suggest that consumers were willing to pay around 24.5 percent more for this cut of beef having a no added antibiotics claim.

23. This review documents that consumers are willing to pay for beef with the no antibiotics ever attribute and that they are willing to pay a statistically significant and economically meaningful premium for beef having this attribute.

## VI. CLASS-WIDE DAMAGES

24. A class-wide methodology exists that can reliably and accurately estimate economic damages to class members. Economic damages are the difference between the economic outcomes that actually happened and the economic outcomes that would have happened absent or “but-for” the Defendants’ wrongful conduct. A conceptually correct damages model involves an analysis of actual outcomes (e. g., prices, quantities or expenditures for the products at issue) and the Defendants’ conduct, which is assumed unlawful, and then estimates an alternative but-for scenario free of the alleged illegal conduct.<sup>37</sup> In this matter, economic damages equal the Class members’ economic position as it occurred, less Class members’ economic position in the but-for scenario. Damages can be estimated reliably as Class members’ actual expenditures on beef products purchased at Whole Foods Market stores in California and from related websites during the Class Period, less their

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<sup>35</sup> Ardeshiri, Ali, et al. “Seasonality Effects on Consumers' Preferences Over Quality Attributes of Different Beef Products.” *Meat Science* 157 (2019): 107868 at Tables 7 and 8. These findings were based on discrete choice survey of 946 consumers, conducted in April 2017. Beef products included ground beef, roasts, and six types of steak. Respondents were asked to express preferences for ten claim attributes, including no added antibiotics. The authors do not report average prices for the beef products in their study such that their willingness to pay estimates cannot be expressed as a percentage of average prices per pound.

<sup>36</sup> See <https://fred.stlouisfed.org/series/APU0000703112>.

<sup>37</sup> See Mark A. Allen, Robert E. Hall, and Victoria A. Lazear, “Reference Guide on Estimation of Economic Damages” in *Reference Manual on Scientific Evidence*, 3<sup>rd</sup> Edition Federal Judicial Center and National Research Council of the National Academies (2011), p. 432.

expenditures had they known of Whole Foods Market’s misrepresentations, that is, that its beef was not in fact guaranteed to be raised without antibiotics as the “No Antibiotics, Ever” claim indicates.

25. Class members’ actual economic circumstances are straightforward, as they result from conduct as it transpired, meaning that actual expenditures on class products can be measured reliably using prices paid to Whole Foods Market for beef products purchased by Class members, and quantities of these products that they purchased from Whole Foods Market stores in California. The evidence required to determine class members’ actual purchases (i. e., prices and quantities) should be readily available and found among Defendants’ business records.

26. I have reviewed several data spreadsheets produced by Whole Foods Market, including WFM\_000361, WFM\_000191, and WFM\_166947 that record meat department<sup>38</sup> sales at Whole Foods Market stores in California from August 2018 through mid-November 2024,<sup>39</sup>

[REDACTED]

[REDACTED] These business records provide the necessary information from which I can reliably estimate actual expenditures made by consumers during the class period for Whole Foods Meat Department products.<sup>40</sup> The information reported in these spreadsheets can be tabulated as necessary to conform with the requirements of Dr. Howlett’s conjoint methods.

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<sup>38</sup> Whole Foods Market’s meat department is comprised of fresh meat products sold at its butcher counters, plus packaged fresh meat products sold from stores’ refrigerated areas.

<sup>39</sup> I have also been provided with an *Everclear Data Dictionary* (WFM\_155394) that partly explains some aspects of these data files. I believe that other unresolved captions, definitions and explanations of these Whole Foods Market data can be resolved through additional discovery.

<sup>40</sup> Alternatively, estimates of actual prices, quantities, and consumers’ expenditures can be ascertained from point-of-sale data collected by consumer intelligence companies such as NielsenIQ. According to a June 28, 2016 press release, Whole Foods Market “selected Nielsen as its primary U.S. analytics provider for point-of-sale data, consumer insights, and industry metrics.” See <https://nielseniq.com/global/en/news-center/2016/whole-foods-market-selects->

27. I have also been provided with other data spreadsheets, including WFM\_106207, WFM\_106208, WFM\_119748, and WFM\_119749 that record sales of beef-containing food items [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. A complete set of such business records for all products at issue would provide the necessary information from which I can reliably estimate actual expenditures made by consumers during the class period for Whole Foods for these products. These data also can be tabulated as necessary to conform with the requirements of Dr. Howlett's conjoint methods.
28. As alleged, Class members' economic circumstances but-for the Defendants' conduct would have been much different. As economic principles predict, had Class members known that Whole Foods Market's beef products did not have a no antibiotics ever attribute as promised, they would not have been willing to pay Whole Foods Market's actual prices. Class members' but-for circumstances therefore would be comprised of an alternative set of (lower) prices. These magnitudes must be estimated. A conjoint survey is a useful tool for this purpose, has been used numerous times in class proceeding for similar purposes, and has been accepted by courts in similar class actions in California.
29. I have been provided with, and have reviewed, the *Expert Declaration of Dr. Howlett*, an expert in the field markets and specifically in the use of conjoint methods. Dr. Howlett is proposing conjoint methods that would be capable of measuring the requisite price premium that class members would be willing to pay for the "No Antibiotics, Ever" beef products purchased from Whole Foods Market stores in California and from related websites.
30. Conjoint analysis can produce statistically robust, economically meaningful estimates of the price premium that consumers would be willing to pay for Whole Foods Market beef with

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nielsen-as-u-s-analytics-provider/. This indicates that the requisite actual prices and quantities are probably available from NielsenIQ.

the no antibiotics ever attribute. A conjoint analysis would likely result in a price premium paid for the “No Antibiotics, Ever” attribute. For example, a price premium of 10 percent for the attribute on a product that sold for \$10.00 (per pound) means that \$1.00 of the beef product’s actual price would be the amount that consumers would be willing to pay for no antibiotic ever attribute. But for prices, therefore, equal actual prices less the price premium.<sup>41</sup>

31. The price premium formulation simplifies economic damages calculations. One can apply the percentage price premium to actual prices for individual beef products, then multiply the resulting but for prices by the quantity of each product purchased to estimate consumers’ but for expenditures. Subtracting but for expenditures from actual expenditures would result in economic damages. A second approach would be to apply the percentage price premium directly to actual expenditures, which would produce largely similar if not identical estimates of economic damages.
32. Supply-side considerations would be factored into a conjoint study and corresponding analysis of price premium to sales data and would account for marketplace realities of the products with different features and prices. Actual transactions took place at prices that reflected the nature and extent of competition faced by Whole Foods Market, plus the costs it incurred in supplying beef products. Thus, Whole Foods Market’s actual prices represent the intersection of demand-side (willingness to pay) and supply-side (willingness to sell) factors and therefore would be equilibrium prices. The conjoint analysis and subsequent application of price premium to sales data would be informed by actual prices and quantities.

## VII. CONCLUSIONS

33. My expert conclusion is that classwide economic damages can be reliably and accurately measured by applying a price premium, as determined by conjoint analysis, to prices and quantities of beef sold as reflected in sales data produced from Defendant’s business records. This damages model is a tested and widely accepted method of determining class-

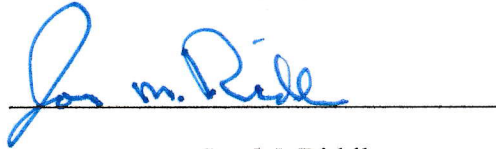
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<sup>41</sup> For example, but for price = actual price \* (1 – percent premium).



wide injury in so far as economic damages are concerned. The evidence confirms that there are numerous substantially similar claims. As the actual transaction data I have seen thus far indicates, Whole Foods Market sold, through its stores in California and related websites, over 84.35 million pounds<sup>42</sup> of fresh beef products alone during the class period, likely representing thousands of transactions by thousands of individual consumers. This model can reliably determine economic damages for all categories of beef products so long as comprehensive sales data is made available by Whole Foods Market.

Dated: December 5, 2024



Jon M. Riddle

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# APPENDIX A

**Jon M. Riddle**  
**Curriculum Vitae – July 15, 2024**

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jonmriddle@gmail.com

**Education**

*Ph. D. in Economics*, University of California, Santa Barbara, June 1998  
*Bachelor of Science in Economics*, California State Polytechnic University, Pomona, 1985

**Research and Professional Experience**

Since 1993      Economist: ECONOMIC ASSOCIATES

Responsible for the completion of all aspects of a wide range of economic consulting, antitrust, healthcare, pharmaceutical industry, and litigation support cases, including defining the relevant market, developing the appropriate theories of damages, complex forecasting, applied econometrics, estimating damages and testifying as an expert witness. Tasks involve organizing, analyzing and presenting findings from a wide range of information sources including depositions, trial transcripts, government documents, financial statements and other expert's reports.

2006-2007      Senior Fellow: Milken Institute

Conduct research on the economic burden of chronic disease, including the impact of innovations in diagnosis, treatment and prevention processes on the incidence and prevalence of diseases, the costs of treatment and the indirect costs in terms of lost income and productivity. Developed indicators of innovation based on branded and generic drug introduction patterns and clinical trials data.

2005 - 2006      Principal Investigator: Long Beach Alliance for Children with Asthma - Economic Analysis

Conducted a cost-effectiveness analysis of a community health worker and physician education intervention to improve outcomes among children living with asthma in the community of Long Beach, California.

2001 - 2006      Principal Investigator: California Asthma Among the School-Aged - Economic Analysis

Conduct a cost-effectiveness analysis of a best practices and continuous quality improvement intervention targeting asthma treatment among school-aged children at eight community clinics throughout California. Tasks include assisting with designing the data capture procedures and instruments, preparing annual cost-effectiveness analyses for each clinic and preparing a final program-level cost-effectiveness analysis when the intervention is completed in 2004.

2001 Project Director: Health Care Options Project, Part 1  
UCLA Center for Health Policy Research

This two-part project, funded by the California Health and Human Services Agency, implemented a micro-simulation of the California health care sector. I participated in planning meetings and telephone conference calls, working to integrate health policy reform proposals with a micro-simulation model of health care in California. I also assisted in writing a proposal for Part 2 of the Health Care Options Project.

1991 - 1993 Research Assistant: Professor Linda Tesar, UCSB

Assisted in collecting and analyzing data on international securities transactions and on the policies regulating cross-border stock and bond transactions.

1987 - 1989 Senior Consultant: Deloitte Haskins & Sells

Worked as part of a management consulting team on numerous consulting engagements related to business strategy, market definition, competitive assessment, project valuation and financial analysis.

1985 - 1987 Consultant: Roulac & Company

Provided research support to project managers. Tasks included financial analysis and the researching and writing of a number of market feasibility studies.

### **Teaching Experience**

2009 Adjunct Assistant Professor of Economics  
University of California Santa Barbara

Undergraduate and Masters Degree courses in financial management, investments and Industrial Organization

1999-2006 Adjunct Assistant Professor: Empirical Methods for Health Care Management  
UCLA School of Public Health

MPH for Health and Allied Professionals Program

Masters Degree-level quantitative methods courses designed to satisfy the increasing need for health services managers skilled in evidence-based decision making. Students use large public use data sets and statistical methods to describe and analyze current issues, problems and policy questions in health care markets in California.

1996-2006 Adjunct Assistant Professor: Microeconomic Theory of the Health Sector

UCLA School of Public Health  
MPH for Health and Allied Professionals Program

Masters Degree-level microeconomic theory course in an executive program in health services management. Topics include consumers' health care choices, insurance and the provision of health care products and services.

1998 Lecturer: Economic Decisions  
UCSB Department of Economics

Master Degree-level microeconomic theory and applications.

1996 - 1998 Lecturer: Business Finance  
International Professional Programs, University of California Santa Barbara Extended Learning

Principles-level course in financial management and decision-making. Advanced course in investment strategy, investment selection and portfolio management. Both courses taught to international students from Asia, Europe and South America.

1995 - 1996 Academic Coordinator: Business Foundations Course  
International Professional Programs, University of California Santa Barbara Extended Learning

Assisted the program director in organizing a five-week business foundations course as part of a certificate program on business and management. Responsibilities included developing and coordinating course content among four other instructors; preparing a pre-arrival student assessment; and contributing to the writing of the program evaluation.

1993 Lecturer: Macroeconomics  
Department of Economics, University of California Santa Barbara

Intermediate macroeconomics and policy.

1989 - 1996     Teaching Assistant: Department of Economics, UCSB

Courses included: Graduate Microeconomic Theory, Financial Management, Intermediate Macroeconomics, Principles of Microeconomics, and Principles of Macroeconomics and Statistics.

### **Publications**

“Value Based Pricing of Pharmaceuticals in the US and UK: Does Centralized Cost Effectiveness Analysis Matter?,” with William S. Comanor, Stuart O. Schweitzer, and Frederic Schoenberg, *Review of Industrial Organization*, (2018).

“The Costs of Regulation: Branded Open Supply and Uniform Pricing of Gasoline,” with W. S. Comanor in *International Journal of the Economics of Business*, vol. 10, no. 2 (2003), pp.135-155.

“Geographic Market Limits for Yellow Pages Advertising in California,” with W. S. Comanor, in *Contributions to Economic Analysis: Measuring Market Power*, edited by Daniel Slottje. Amsterdam: North-Holland (2002), pp.295-307.

“The Bell System Divestiture and the Efficiency of the Operating Companies,” with co-authors, *Journal of Law and Economics* Spring 1999.

“Controls on International Securities Transactions,” manuscript, 1993.

“Speculation and the Pricing of New Equity Issues,” manuscript, 1992.

*Applying Principles of Macroeconomics: A Handbook*, 1991. Study guide and problem sets used in principles of macroeconomics courses taught at University of California, Santa Barbara.

### **Memberships and Professional Activities**

Referee: *The Journal of the Economics of Business*

Member:     American Economic Association

Cases at Which Jon M. Riddle Has Provided Testimony

**1999**

Baja v. Century Medicorp, Superior Court of the State of California, County of Los Angeles, case number BC190353, testimony at trial.

**2000**

Morgan Phillips, Inc. et al. v. Chittenden Eastman, et al., Superior Court of the State of California, County of Los Angeles, case number BC308482, testimony at deposition.

**2001**

Orange Line Oil Company v. Graymills Corporation, Superior Court of the State of California, County of Los Angeles, case number KC032103, testimony at deposition.

**2002**

Bebop, Inc. v. Speedplay, Inc., et al., United States District Court for the Southern District of California, case number 3:99-CV-02167, testimony at deposition.

Newport Corporation v. WareNet, Inc., Superior Court of the State of California, County of Orange, case number unknown, testimony at deposition.

**2003**

Robinson Golf Design, Inc. v. The Retreat Golf & Country Club, LLC, et al., Superior Court of the State of California, County of Riverside, case number RIC369667, testimony at arbitration.

Bradley Fischl v. New Horizons Computer Learning Center of Southern California, Scott Hardin and Jamie Fieley, Superior Court of the State of California, County of Los Angeles, case number BC273642, testimony at deposition.

**2004**

Arleen Freeman, et al. v. San Diego Association of Realtors, et al., United States District Court for the Southern District of California, case number 3:98-CV-00139, testimony at deposition.

Consolidated Credit Agency v. Equifax, Inc., United States District Court for the Central District of California, case number 2:03-CV-01229, testimony at deposition.

## **2005**

Buyer's Corner Realty, Inc., Sherry Edwards v. Northern Kentucky Association of Realtors, Inc., Northern Kentucky Multiple Listing Service, United States District Court for the Eastern District of Kentucky, Covington Division, case number 2:04-CV-00037, testimony at deposition.

A & P Trading, Inc. v. David Nemani, Bella Findings and Bella Findings House, United States District Court, Central District of California, case number 2:03-CV-00724, testimony at deposition.

Jay Reifert v. South Central Wisconsin MLS, et al., United States District Court, Western District of Wisconsin, case number 3:04-CV-00969, testimony at deposition.

## **2006**

Morgan Phillips, Inc. et al. v. Chittenden Eastman, et al., Superior Court of the State of California, County of Los Angeles, case numbers BC318135/BC217763, testimony at trial.

Budget Pest Prevention, Inc. v. Bayer Corporation, Bayer Cropscience and BASF Corporation, United States District Court, Western District of North Carolina Asheville Division, case number 1:05-CV-00090, testimony at deposition.

HiRel Connectors, Inc. v. United States of America, et al., United States District Court, Central District of California – Western Division, case number 2:04-CV-06141, testimony at deposition.

Breakdown Services, Ltd. v. Now Casting, Inc., United States District Court, Central District of California, case number 2:05-06732, testimony at deposition.

## **2008**

Consortium Information Services v. Equifax, Inc., et al., United States District Court, Central District of California, case number 8:06-CV-00384, testimony at deposition and at trial.

## **2009**

Daniel Duchardt v. Midland National Life Insurance Co., United States District Court, Southern District of Iowa, Central Division, case number 4:07-CV-00351, testimony at deposition.

George S. Cohlma, Jr., M. D., and Cardiovascular Surgical Specialists Corporation v. Ardent Health Services, LLC, United States District Court, Northern District of Oklahoma, case number 4:05-CV-00384, testimony at deposition.



**2013**

Le Kun Wu et al. v. Magnus Sunhill Group, LLC, et al., Superior Court of the State of California for the County of Los Angeles, case number BC46695, testimony at deposition and at trial.

Ron Levy v. Washington Mutual Bank, et al., Superior Court of the State of California for the County of Los Angeles—West District, case number BC429088 testimony at deposition and at trial.

Regents of the University of California v. Blue Shield of California, case number AAA 72187Y0016712, testimony at arbitration.

**2014**

Gnanh Nora Krouch v. Wal-Mart Stores, Inc., United States District Court, Northern District of California, case numbers 3:12-CV-02119/4:12-CV-02217/4:12-CV-02217, testimony at deposition.

**2017**

Steven Roth and Paula Roth v. Dale Prokupek, M. D., Superior Court of the State of California for the County of Los Angeles, case number BC520289, testimony at deposition and at trial.

The Regents of the University of California on behalf of University of California, Irvine Medical Center v. Global Excel Management, Inc., United States District Court for the Central District of California, case no. 8:16-cv-00714-DOC-E, testimony at trial.

**2018**

Alex Youssef v. 5D Building Systems, Inc., et al., Superior Court of the State of California for the County of Los Angeles, case no. VC 064688, testimony at deposition and at trial.

Melody, Inc. and Coda, LP v. Neuro Pad LLC, et al., Superior Court of the State of California for the County of Los Angeles, case no. SC126526, testimony at deposition.

St. Mary Medical Center-Apple Valley v. Molina Healthcare of California and Molina Healthcare, Inc., AAA Arbitration, case no. 01-16-0002-7530, testimony at arbitration.

**2019**

San Joaquin General Hospital v. Aetna Health of California, Inc. et al., case no. STK-CV-UBC-2016-6555, testimony at deposition.

San Joaquin General Hospital v. California Physicians' Service, case no. STK-CV-UBC-2016-0003959, testimony at deposition.

**2022**

The Regents of the University of California on behalf of Ronald Reagan University of California Los Angeles Medical Center, et al. v. Molina Healthcare, Inc., testimony at deposition.

**2023**

Dignity Health dba Yavapai Regional Medical Center v. CopperPoint Insurance Company, case no. CV2021-015812, testimony at deposition.

Dignity Health dba Yavapai Regional Medical Center v. WCF National Insurance Company, case no. P1300-CV2022-00294, testimony at deposition.

Dignity Health dba Yavapai Regional Medical Center v. CorVel Healthcare Corporation, case no. CV2022-002262, testimony at deposition.

Dignity Health dba Yavapai Regional Medical Center v. Federated Mutual Insurance Company, case no. CV2022-005726, testimony at deposition.

Dignity Health dba Yavapai Regional Medical Center v. Wesco Insurance Company, case no. CV2022-000554, testimony at deposition.

**2024**

Long Beach Memorial Medical Center dba Miller Children's Hospital and Saddleback Memorial Medical Center v. Liberty Healthshare and The Medical Cost Savings Solution, Ltd, et al., case no. 30-2020-01170084-CU-CO-CJC, testimony at deposition.