

Congress of the United States

Washington, DC 20515

February 16, 2023

Marcus Rust
Chief Executive Officer
Rose Acre Farms
P.O. Box 1250
Seymour, IN 47274

Dear Mr. Rust:

I am writing regarding my concerns about the elevated price of eggs and the extent to which egg producers may be using fears about avian flu and supply shocks as a cover to pad their own profits at the expense of American families. In the midst of record-high egg prices, the largest egg producer in the United States announced a 65% annual increase in profits in the third quarter of 2022,¹ and no positive cases of avian flu.² Although wholesale prices are finally starting to drop,³ they have not yet dropped for retail consumers. And given the extent to which the high prices of eggs in 2022 and early 2023 harmed consumers and small businesses, we have ongoing questions about what caused the massive spike in egg prices – and how to make sure it is not repeated.⁴ As a private company, American consumers have very little transparency into how Rose Acre Farms sets prices and brings in profit. Given corporations' rampant profiteering during the COVID-19 pandemic and the ensuing economic crisis,⁵ and the egg industry's history of anticompetitive practices,⁶ I ask that you provide transparency about the rationale for the increase in egg prices and the financial impact on your company.

According to the Bureau of Labor Statistics, increases in retail egg prices have outpaced all other food categories, jumping 59.9% annually as of December 2022,⁷ with consumers in some states paying more than \$7 per carton.⁸ The avian flu outbreak, which producers have largely blamed

¹ CNN, "Surging egg prices mean record profits for largest US egg producer," Nathaniel Meyersohn, January 13, 2023, <https://www.cnn.com/2023/01/13/business/egg-prices-cal-maine-foods/index.html>.

² Reuters, "High egg prices should be investigated, U.S. farm group says," Leah Douglas, January 23, 2023, <https://www.reuters.com/markets/us/high-egg-prices-should-be-investigated-us-farm-group-says-2023-01-20/>.

³ CNBC, "Wholesale egg prices have 'collapsed.' Why consumers may soon see relief," Greg Iacurci, February 7, 2023, <https://www.cnbc.com/2023/02/07/wholesale-egg-prices-have-collapsed-from-record-highs-in-december.html>.

⁴ ABC News, "Egg prices reach historic highs amid avian flu outbreak, inflation woes," Peter Charalambous, January 13, 2023, <https://abcnews.go.com/Business/egg-prices-reach-record-highs-amid-avian-flu/story?id=96266185>.

⁵ Federal Reserve Bank of Kansas City, "How Much Have Record Corporate Profits Contributed to Recent Inflation?" Andrew Glover, José Mustre-del-Río and Alice von Ende-Becker, January 12, 2023, <https://www.kansascityfed.org/research/economic-review/how-much-have-record-corporate-profits-contributed-to-recent-inflation/>.

⁶ Letter from Farm Action to FTC Chair Lina Khan, January 19, 2023, <https://farmaction.us/wp-content/uploads/2023/01/Farm-Action-Letter-to-FTC-Chair-Lina-Khan.pdf>.

⁷ Bureau of Labor Statistics, Consumer Price Index, December 2022, <https://www.bls.gov/news.release/cpi.t02.htm>.

⁸ Food & Wine, "This Is Why Eggs Are So Expensive Right Now," Jelisa Castrodale, January 13, 2023, <https://www.foodandwine.com/why-eggs-are-so-expensive-right-now-7095052>.

for the price hikes, impacted approximately 43 million egg-laying chickens.⁹ However, advocates have noted that the outbreak has decreased the size of the total flock by no more than 6 percent in most months,¹⁰ and in October 2022, total table egg production was down no more than 4.2 percent.¹¹

At the same time that prices were skyrocketing, Cal-Maine Foods, which controls approximately 20% of the retail egg market, was reporting record profit margins and no positive avian flu cases on any of its farms.¹² In December, Cal-Maine Foods reported gross profits increase of more than 600% over the same quarter in 2021,¹³ which the company claimed was “driven by record average conventional egg selling price.”¹⁴

Although your company and other top egg producers are private companies that have not publicly announced either their profits or disclosed the financial impact of the avian flu on their flocks, past anticompetitive practices in the egg industry raise concerns about price gouging on their part. Lawsuits against Rose Acre Farms and other dominant producers accused the companies of price-gouging, collusion, and “cartelistic conspiracies” to limit production and keep supply artificially limited.¹⁵ In August 2020, New York Attorney General Letitia James sued Hillandale Farms, the nation’s second largest egg producer, for illegally gouging “the prices of more than four million cartons of eggs,”¹⁶ Similarly, a wide-ranging lawsuit accused several of the largest egg producers, including your company, of colluding to increase prices during the COVID-19 pandemic.¹⁷

This pattern of price-gouging and abusing market conditions to rake in profits appears to have continued in 2022. Advocates found “no evidence of aggressive price competition among the largest egg producers over the past year,” suggesting that as Cal-Maine and other ‘bellwether’ companies raised prices, it provided an “invitation for rival egg producers to tacitly collude with Cal-Maine, forego price competition themselves, and maintain high prices for the entire industry.”¹⁸ And egg producers appear to be impervious to the basic laws of supply and demand

⁹ Associated Press, “Soaring egg prices prompt demands for price-gouging probe,” Josh Funk, January 24, 2023, <https://apnews.com/article/inflation-commodity-markets-jack-reed-business-1b32cb587f20a8d44eaf707f72635e70>.

¹⁰ Letter from Farm Action to FTC Chair Lina Khan, January 19, 2023, <https://farmaction.us/wp-content/uploads/2023/01/Farm-Action-Letter-to-FTC-Chair-Lina-Khan.pdf>.

¹¹ U.S. Department of Agriculture, “Livestock, Dairy, and Poultry Outlook: December 2022,” December 15, 2022, p.21, <https://www.ers.usda.gov/webdocs/outlooks/105496/ldp-m-342.pdf?v=1270.7>.

¹² Reuters, “High egg prices should be investigated, U.S. farm group says,” Leah Douglas, January 23, 2023, <https://www.reuters.com/markets/us/high-egg-prices-should-be-investigated-us-farm-group-says-2023-01-20/>.

¹³ Reuters, “High egg prices should be investigated, U.S. farm group says,” Leah Douglas, January 23, 2023, <https://www.reuters.com/markets/us/high-egg-prices-should-be-investigated-us-farm-group-says-2023-01-20/>.

¹⁴ CNN, “Surging egg prices mean record profits for largest US egg producer,” Nathaniel Meyersohn, January 13, 2023, <https://www.cnn.com/2023/01/13/business/egg-prices-cal-maine-foods/index.html>.

¹⁵ Letter from Farm Action to FTC Chair Lina Khan, January 19, 2023, <https://farmaction.us/wp-content/uploads/2023/01/Farm-Action-Letter-to-FTC-Chair-Lina-Khan.pdf>.

¹⁶ Office of the New York State Attorney General, “Attorney General James Sues One of the Nation’s Largest Egg Producers for Price Gouging During the Coronavirus Pandemic,” press release, August 11, 2020, <https://ag.ny.gov/press-release/2020/attorney-general-james-sues-one-nations-largest-egg-producers-price-gouging>.

¹⁷ Bloomberg Law, “Amazon, Walmart, Costco Gouging on Egg Prices, Lawsuit Says,” Mike Leonard, April 21, 2020, <https://news.bloomberglaw.com/class-action/amazon-walmart-costco-gouging-on-eggs-in-california-suit-says>.

¹⁸ Letter from Farm Action to FTC Chair Lina Khan, January 19, 2023, <https://farmaction.us/wp-content/uploads/2023/01/Farm-Action-Letter-to-FTC-Chair-Lina-Khan.pdf>.

when it comes to increasing inventory. According to USDA, “producers – despite the record-high wholesale prices – are taking a cautious approach to expanding production.”¹⁹ Since many of the largest egg producers are private companies, American consumers are being left in the dark about the conditions causing these skyrocketing prices.

This is a pattern we’ve seen too often since the COVID-19 pandemic: companies jacking up their prices to pad their own profits, putting an additional burden on American families and the economy as a whole. A recent study by the Federal Reserve Bank of Kansas City found that “markup growth was a major contributor to inflation in 2021,” potentially accounting for “more than half of 2021 inflation.”²⁰ My bill, the *Price Gouging Prevention Act of 2022*, would rein in out-of-control markups by enforcing a federal ban against unconscionably excessive price increases and expanding requirement for public companies to disclose their pricing strategies in public filings.²¹

American families working to put food on the table deserve to know whether the increased prices they are paying for eggs represent a legitimate response to reduced supply or out-of-control corporate greed. Although wholesale prices have decreased, consumers are still waiting for relief at the grocery checkout, which could take several more weeks.²² In order to address my concerns about your company’s pricing decisions, I ask that you please provide answers to the following questions by March 1, 2023:

1. To what extent has your company met or exceeded quarterly profit margin goals during the 2022 avian flu outbreak?
2. How was your flock impacted by the 2022 avian flu outbreak? What percentage of hens were lost in each month of 2022?
3. What was your compensation, including your base salary and all bonuses or incentive payments, in 2021?
 - a. What incentives or bonuses are part of your compensation, and what criteria are the basis for these incentives and bonuses?
 - b. Were you awarded any incentives or bonuses based on retaining low prices for consumers?
 - c. Were you awarded any incentives or bonuses based on increasing profit margins?

¹⁹ United States Department of Agriculture, Economic Research Service, “Livestock, Dairy, and Poultry Outlook: December 2022,” December 15, 2022, p.22, <https://www.ers.usda.gov/webdocs/outlooks/105496/ldp-m-342.pdf?v=1270.7>.

²⁰ Federal Reserve Bank of Kansas City, “How Much Have Record Corporate Profits Contributed to Recent Inflation?” Andrew Glover, José Mustre-del-Río and Alice von Ende-Becker, January 12, 2023, <https://www.kansascityfed.org/research/economic-review/how-much-have-record-corporate-profits-contributed-to-recent-inflation/>.

²¹ Senator Elizabeth Warren, “Warren, Baldwin, Schakowsky, Colleagues Introduce Bicameral Legislation to Crack Down on Corporate Price Gouging,” press release, May 12, 2022, <https://www.warren.senate.gov/newsroom/press-releases/warren-baldwin-schakowsky-colleagues-introduce-bicameral-legislation-to-crack-down-on-corporate-price-gouging>.

²² CNBC, “Wholesale egg prices have ‘collapsed.’ Why consumers may soon see relief,” Greg Iacurci, February 7, 2023, <https://www.cnbc.com/2023/02/07/wholesale-egg-prices-have-collapsed-from-record-highs-in-december.html>.

4. What was your compensation, including your base salary and all bonuses or incentive payments, in 2022?
 - a. What incentives or bonuses were part of your compensation, and what criteria were the basis for these incentives and bonuses?
 - b. Were you awarded any incentives or bonuses based on retaining low prices for consumers?
 - c. Were you awarded any incentives or bonuses based on increasing profit margins?
5. What is your expected compensation, including your base salary and all bonuses or incentive payments, in 2023?
 - a. What incentives or bonuses are part of your compensation, and what criteria will be the basis for these incentives and bonuses?
 - b. Are you expecting any incentives or bonuses based on retaining low prices for consumers?
 - c. Are you expecting any incentives or bonuses based on increasing profit margins?
6. When do you anticipate egg prices will decrease for consumers to 2021 levels? What factors will account for any reductions in price?
7. Did your company's executives, officials, or any other affiliated individuals have any direct or indirect communication with other egg producers about production or prices for eggs? If so, please describe the timing and nature of these communications.

Sincerely,



Elizabeth Warren
United States Senator



Katie Porter
Member of Congress