

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ANIMAL LEGAL DEFENSE FUND,

Plaintiff,

v.

HORMEL FOODS CORPORATION,

Defendant.

Case No. 2016 CA 004744 B

Judge Fern Flanagan Saddler

Next Event: Opposition briefs, Jan. 25, 2019

**PLAINTIFF’S RULE 56 STATEMENT IN SUPPORT OF PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Animal Legal Defense Fund (ALDF) submits this statement pursuant to Rule 56(b)(2)(A) of the D.C. Superior Court Rules of Civil Procedure, setting forth the material facts that ALDF contends are not genuinely disputed:

1. ALDF filed its Complaint on June 29, 2016. *See* Complaint.
2. In the Complaint, ALDF brings claims under the District of Columbia Consumer Protection Procedures Act (“DC CPPA”), D.C. Code § 28-3901 *et seq.*, related to the marketing and sales of Natural Choice products (“Products” or “the Products”) by Hormel Foods Corporation (“Hormel”). *See* Complaint.

ALDF and this Action

3. ALDF is a 501(c)(3) non-profit, public interest organization that works to protect the lives and advance the interests of animals. ALDF001358-59 (A2682-83); Declaration of Mark Walden (hereafter, “Walden Decl.”) ¶ 1.
4. ALDF has approximately 750 members and supporters in the District of Columbia. ALDF’s First Supplemental Responses to Hormel’s Interrogatories Nos. 4 and 5.

5. ALDF targets audiences in the District of Columbia. Walden Decl. ¶ 6; Declaration of Elizabeth Putsché (hereafter, “Putsché Decl.”) ¶ 15.

6. ALDF engages in activities in the District of Columbia, including legal advocacy and public outreach. Walden Decl. ¶ 6; Putsché Decl. ¶ 15.

7. ALDF’s mission includes working against factory farming. Walden Decl. ¶¶ 7-10; Declaration of Carter Dillard (hereafter, “Dillard Decl.”) ¶¶ 4, 7; Putsché Decl. ¶ 4.

8. Working against factory farming is and has long been a primary focus area for ALDF. Walden Decl. ¶ 7; (Deposition of Mark Walden, Rule 30(b)(6) Witness for ALDF), at 120:25-121:8 (A2993-94); Putsché Decl. ¶ 4; Dillard Decl. ¶ 4.

9. ALDF works against factory farming because of the severe cruelties it inflicts on farm animals. Walden Decl. ¶ 7; Dillard Decl. ¶ 4. *See, e.g.*, ALDF043751 (A3169).

10. In pursuit of its mission, ALDF works to educate and empower consumers with truthful information about the conditions and practices of factory farming, including the animal cruelty, environmental degradation, and human health risks associated with factory farming. Walden Decl. ¶ 8; Putsché Decl. ¶¶ 9, 11; Dillard Decl. ¶¶ 5-8; ALDF000512-14 (A2641-43); ALDF000554-57 (A2661-64).

11. ALDF works to decrease consumer demand for factory-farmed food products. Walden Decl. ¶¶ 8, 11; Dillard Decl. ¶¶ 5-7.

12. ALDF believes that empowering consumers with accurate information about factory farming conditions and practices will reduce consumer demand for factory farmed products. Walden Decl. ¶ 8; Dillard Decl. ¶¶ 5-7; Putsché Decl. ¶ 4.

13. ALDF became aware of and started to work against Hormel’s Make the Natural Choice advertising campaign in 2015. Dillard Decl. ¶ 8.

14. ALDF's research and knowledge led it to conclude that Hormel's Natural Choice products were made from factory farmed animals. Dillard Decl. ¶¶ 8, 12-13.

15. ALDF has worked and continues to work against Hormel's Make the Natural Choice advertising campaign because of ALDF's belief that Hormel's "natural" and other messaging hides that Natural Choice products are produced from factory farmed animals. Dillard Decl. ¶¶ 5-8; Walden Decl. ¶¶ 22-23.

16. ALDF's research and knowledge has led it to believe that consumers care about animal welfare and food safety, and do not knowingly wish to purchase products sourced from inhumane and unsafe factory farms. Walden Decl. ¶ 26; Dillard Decl. ¶ 21.

17. ALDF advocated to the U.S. Food and Drug Administration (FDA) and U.S. Department of Agriculture (USDA) to prohibit the misleading use of the term "natural" on factory farmed products, and specifically pointed to Hormel's Natural Choice "100% Natural" claim as part of the problem. ALDF000495-502 (A2627-34); Dillard Decl. ¶¶ 8-10.

18. ALDF's advocacy to the FDA to protect consumers by barring the use of the term "natural" on factory farmed meat products, including Hormel's, was supported and broadcast by ALDF's communications department, who spread ALDF's message to the press, public, and ALDF supporters to, in part, educate and empower them with truthful information regarding such misleading "natural" claims on factory-farmed products. Dillard Decl. ¶¶ 8-10; Putsché Decl. ¶ 6; ALDF000503-06 (A2636-39).

19. ALDF incurred expenses to prepare, submit, and publicize its comments to the FDA regarding use of the term "natural" that included, but were not limited to, ALDF staff time as well as 20.5 hours of attorney time paid to a contract attorney. ALDF045051, 53 (A2767, 69); Dillard Decl. ¶ 10.

20. Starting on May 25, 2016 and continuing for several weeks thereafter, ALDF publicized an undercover investigation of a Nebraska pig breeding facility owned by The Maschhoffs. Dillard Decl. ¶¶ 11-14; Putsché Decl. ¶¶ 7-12; ALDF000537-38 (A2645, 46); ALDF000544-47 (A2653-56); ALDF000552-53 (A2658-59); ALDF000554-57 (A2661-64); ALDF030334-35 (A2748-49); ALDF030298 (A2744); ALDF043751, *available at* <https://www.youtube.com/watch?v=z5VitkAhM7Y> (video from the investigation) (A3169).

21. ALDF considers The Maschhoffs a factory farming operation. Deposition of Mark Walden (in his individual capacity) (hereafter, “Walden Dep.”), at 105:7-13; *see* Dillard Decl. ¶ 13.

22. ALDF identified Hormel as one of The Maschhoffs largest customers in its media related to the undercover investigation. ALDF000537-38 (A2645, 46); ALDF000544-47 (A2653-56); ALDF000552-53 (A2658-59); ALDF000554-57 (A2661-64); ALDF030334 (A2748); ALDF030298 (A2744); Putsché Decl. ¶ 9.

23. ALDF publically identified Hormel in its media related to the undercover investigation because it believed Hormel was a recognizable name to consumers and wanted to provide information about the treatment and living conditions of pigs used for Hormel products for the public to consider when making purchasing decisions. Putsché Decl. ¶ 9.

24. ALDF incurred expenses to prepare, publish, and publicize the investigation of The Maschhoffs. These include at least: \$10,000 paid to Elizabeth Putsché Strategies, LLC (ALDF034043); \$1,500 paid to Jason Putsche Photography (ALDF030487) (A2751); and \$200 paid to Matt Davis for voice-over work (ALDF035879) (2764). Putsché Decl. ¶ 11.

25. After ALDF’s public release of the undercover investigation of The Maschhoffs, ALDF continued to devote organizational resources to Hormel-related activities to publicize the

Hormel supplier's cruel treatment of pigs. Putsché Decl. ¶ 10; ALDF000552-53 (A2658-59); ALDF000554-57 (A2661-64); ALDF030334-35 (A2748-49); ALDF030298-300 (A2744-46); ALDF033006-13 (A2753-60).

26. ALDF's work to educate consumers about factory farming and reduce demand for factory farmed products is in conflict with Hormel's Make the Natural Choice campaign. Dillard Decl. ¶ 8.

27. Specifically, ALDF's mission to protect farm animals by educating consumers and reducing demand for factory farmed products is in conflict with Hormel's advertising of Natural Choice products as "natural," without "preservatives," and related claims that mislead consumers to believe the products are somehow superior to factory farmed ones. Dillard Decl. ¶¶ 6-8; Walden Decl. ¶ 11.

28. ALDF has committed vast organizational resources to opposing "ag-gag" laws—laws that prohibit undercover investigations of agricultural facilities. Walden Decl. ¶ 16.

29. The investigations that ag-gag laws prohibit are an indispensable tool to expose truthful information about animal agriculture production practices, and are made all the more important and mission-critical for ALDF when companies, like Hormel, are engaged in potentially misleading advertising of animal products. Walden Decl. ¶¶ 14-16.

30. ALDF has engaged in legal and public advocacy against what it considers an inhumane, high-speed pig slaughter program run in Hormel's slaughter plants, known as HIMP, in part because the practices allowed by the HIMP program are at odds with how participating companies, including Hormel, represent their products. ALDF000554-57 (A2661-64); ALDF030056 (A2742); Walden Decl. ¶ 24.

31. ALDF's work to educate consumers about factory farming and reduce demand for factory farmed products is materially impeded by Hormel's Make the Natural Choice campaign, which hides the factory-farm origins of its products and seeks to increase demand for factory farmed products. Walden Decl. ¶ 10.

32. ALDF believes that its work to increase transparency into factory farming and reduce consumer demand for factory farmed products risks being drowned out by Hormel's more pervasive Natural Choice advertising messages. Walden Decl. ¶ 12; Putsché Decl. ¶ 4.

33. ALDF's efforts to increase transparency and consumer awareness about factory farming conditions and practices are made less effective when Hormel's Make the Natural Choice messaging makes consumers believe Natural Choice products are somehow superior to the factory farmed ones ALDF advocates against. Dillard Decl. ¶¶ 5-8; Putsché Decl. ¶ 4.

34. ALDF is donor-supported and has limited resources such that when ALDF works on one issue, it necessarily is unable to work on other important issues to advance its mission. Walden Decl. ¶ 18; Dillard Decl. ¶ 18.

35. ALDF has felt compelled to work on and commit organizational resources to the following activities in an effort to, in part, combat Hormel's Make the Natural Choice advertising campaign: publicizing the undercover investigation of The Maschhoffs' Nebraska pig breeding facility; researching and publicizing Hormel's relationship to The Maschhoffs; advocating to the U.S. Food and Drug Administration (FDA) and U.S. Department of Agriculture (USDA) to limit use of the term "natural" on factory farmed meat products, including Hormel Natural Choice; publicizing ALDF's advocacy to FDA and USDA to educate the public about misleading use of "natural" claims on meat products; engaging in legal and public advocacy against the high-speed

pig slaughter program run in Hormel slaughterhouses, known as HIMP; and working to combat “ag-gag” laws. Walden Decl. ¶¶ 10, 13-17, 22-24; Dillard Decl. ¶¶ 9-16, 19.

36. Each of the activities identified in Paragraph 35 above caused ALDF to be unable to commit those same organizational resources to numerous other mission-driven projects to gain new protections or legal status for animals. Dillard Decl. ¶¶ 18-20; Walden Decl. ¶¶ 19-20.

37. Specifically, because of its work on The Maschhoffs investigation, ALDF lost opportunities to expend organizational resources on preparing for trial in a lawsuit against the monkey breeding facility; gathering information on the use of humanized chimera research at public universities; filing a Freedom of Information Act lawsuit over records relating to a slaughterhouse; and investigating egg production facilities’ husbandry methods. Dillard Decl. ¶ 19.

38. Specifically, because of its advocacy related to misleading use of “natural” messaging, ALDF lost opportunities to expend organizational resources on drafting a section of an Endangered Species Act listing petition for the Florida Black Bear; preparing for summary judgement in a lawsuit involving monkey breeding facilities; preparing for discovery and a demurrer hearing in a lawsuit against a pet store chain selling sick puppies; preparing a First Amendment lawsuit on behalf of a journalists and advocates for animals; and preparing for ALDF’s case against the USDA to condemn foie gras as an adulterated product. Dillard Decl. ¶ 19.

39. Specifically, because of its advocacy related to combating the HIMP program, ALDF lost opportunities to expend organizational resources on a variety of efforts to increase animals’ protection and improve their legal status. Walden Decl. ¶¶ 19-20, 26.

40. ALDF will be compelled to continue to advocate against Hormel's Make the Natural Choice campaign's use of "natural" and other marketing claims so long as it misleads consumers to purchase factory farmed products. Walden Decl. ¶¶ 23-24.

41. ALDF's work and mission will continue to be harmed by Hormel's Make the Natural Choice advertising campaign so long as Hormel is allowed to mislead consumers. Walden Decl. ¶¶ 22-23.

Hormel's Make the Natural Choice Campaign

42. Hormel's "Natural Choice" line—which consists of ham, turkey, chicken, and beef lunch meats, breakfast meats, and other meat products—is one of Hormel's premier brands. *See* HORM_DC00010032; Hormel, *2018 Annual Report* 4 (2018), available at https://investor.hormelfoods.com/interactive/newlookandfeel/4068867/2018_Annual_Report.pdf (A2).

43. Hormel explains the brand's claim that its meats are "100 percent natural with zero preservatives" "resonate[s] with many consumers," setting the line apart. Hormel, *2015 Annual Report* 5 (2015), available at <https://investor.hormelfoods.com/Cache/1001205813.PDF?O=PDF&T=&Y=&D=&FID=1001205813&iid=4068867>.

44. Hormel's current advertising campaign for the brand was launched in mid-2015 with the tagline "Make the Natural Choice." *See* HORM_DC00010032, at 33 (A3).

45. The Make the Natural Choice campaign's objective is to refresh the brand and make "Natural [the] motivating point of difference" for the products. HORM_DC00023896, at 898 (A14); *see also id.*, at 900 (A16); Deposition of Karen Kraft (hereafter, "Kraft Dep."), at 88:18-89:9 (A2902); HORM_DC00023920 *et seq.* (A37-92).

46. Hormel believes “natural is something that consumers see as different and makes [a product] unique ... [it] believe[s] that’s what consumers are looking for.” Aug. 22, 2018 Deposition of Jeremy Zavoral, Rule 30(b)(6) Witness for Hormel (hereafter, “Aug. 22, 2018 Zavoral 30(b)(6) Dep.”), at 103:5-25, 104:13-23 (A3079-80).

47. Hormel elaborated that the “natural” claim creates “more perceived value.” HORM_DC000139775, at 75 (A94); *see also* HORM_DC00023896, at 900 (A16).

48. The Make the Natural Choice campaign was structured to target consumers “defined by [their] motivation for Natural/Green/Healthy/Organic options.” HORM_DC00078337 (A102); *see also* HORM_DC00014884 (A104); Deposition of Amy Sand (hereafter, “Sand Dep.”), at 15:1-21 (A2986); Deposition of Jeremy Zavoral (in his individual capacity) (hereafter, “Zavoral Dep.”), at 16:16-17, 17:2-6 (A3085); Kraft Dep., at 278:3-7 (A2910); HORM_DC00058235, at 48 (A119); HORM_DC00063021, at 32 (A155); HORM_DC00049073, at 99-105 (A219-25); HORM_DC00018661, at 78 (A247); HORM_DC00002735, at 37 (A282); HORM_DC00021855, at 68 (A309); HORM_DC00002594, at 28 (A385); HORM_DC00013844, at 70 (A420); HORM_DC00064064, at 65 (A451); HORM_DC00161464 (A454); HORM_DC00137175, at 83 (A465); HORM_DC00137154, at 57-58 (A472-73).

49. Hormel’s advertising agency explained the campaign would target people who “believe[] in and buy[] natural and organic foods,” by emphasizing the products’ “artisanal quality,” among other aspects. HORM_DC00002359 (A491); HORM_DC00021462, at 62 (Hormel rejecting Make the Natural Choice ad because it featured images of “mass production” and that “just feels not natural”) (A492).

50. Hormel’s first step in bringing the campaign to fruition was to redesign Natural Choice’s lunchmeat packaging, so that the “main message [is] 100% natural & fresh” and

connected with a “premium ... simple ... rural ... feel,” particularly one that “remind[ed] [people] of farm[s].” HORM_DC00087697, at 705 (A506); *see also* Kraft Dep., at 207:21-208:11 (A2907).

51. For the redesigned Natural Choice packaging, Hormel settled on visuals that it described as “communicat[ing] farm, land, nature, rural, unprocessed,” “organic,” and a “time lived on the land or in a small town,” and which a consumer described as “mak[ing] me think [of] cows [] out roaming.” HORM_DC00087660, at 74, 78 (A529, 33).

52. Hormel selected the key claims to feature in the campaign: (i) “100% Natural”; (ii) “No Preservatives”; and (iii) “No Nitrates or Nitrites Added[.]” HORM_DC00073376 (A553); *see also* HORM_DC00010032, at 32-33 (A2-3).

53. Hormel had determined that it could build its “natural equity” by associating “natural” claims with “no preservatives” and “no artificial ingredients.” HORM_DC00073833, at 37 (A559).

54. Hormel stated internally its only standard for making advertising claims was that the claims “adhere to the USDA guidelines.” HORM_DC00078337 (A102).

55. The USDA guidelines allow the use of “natural” on meat product labels so long as the product meets USDA guidance for being minimally processed and containing no artificial ingredients, and the label clearly states this is what the seller means by “natural.” USDA Food Safety and Inspection Service, Food Standards and Labeling Policy Book 109-10 (2005), *available at* <https://www.fsis.usda.gov/wps/wcm/connect/7c48be3e-e516-4ccf-a2d5-b95a128f04ae/Labeling-Policy-Book.pdf?MOD=AJPERES>.

56. Before the rollout of the Make the Natural Choice campaign, Hormel tested some of its initial print ads. The test results showed that based on those ads more than 55% (and up to

72%) of consumers associated Natural Choice products with being “100% Natural.” HORM_DC00049073, at 96 (A216).

57. Respondents explained that the various ads indicated the products are “wholesome,” had “only natural mother nature ingredients,” had “no preservatives,” had “[n]o chemicals,” and were “as good as the high priced stuff at a better price.” HORM_DC00049073, at 85, 96 (A206, 16); *see also id.*, 86-90 (A207-10).

58. Because of the tagline “Make the Natural Choice”, the claim that the products are “natural” has appeared in nearly every advertisement in every medium since the campaign was launched. *See, e.g.*, ALDF’s Third Supplemental Response to Hormel’s Interrogatory No. 7 (A3128-54).

59. Both the brand manager for Natural Choice and an employee in charge of analyzing ads’ impact on consumers explain that the tagline is used to convince purchasers the products are “natural.” Zavoral Dep., at 76:12-14 (A3087); Kraft Dep., at 312:18-313:24 (A2912).

60. Beyond the tagline and product name, terms and phrases using the word “natural” appear in at least 138 of the Make the Natural Choice advertisements. *See* ALDF Third Suppl. Resp. to Hormel Interrogatory No. 7 (listing advertisements and their claims) (A3128-54).

61. “No preservatives”-type claims appear in at least 90 advertisements. *See* ALDF’s Third Supplemental Response to Hormel’s Interrogatory No. 7 (listing advertisements and their claims) (A3128-54).

62. As Karen Kraft testified, “100 percent natural ... is a key message along with ... has no preservatives. So it’s those ... key messages ... we wanted to make sure that people were walking away with.” Kraft Dep., at 296:17-21 (A2911).

63. In describing the campaign, Hormel stated: “KEY MESSAGES...Staying true to the brand’s original mission, the relaunch and advertising campaign puts emphasis on the brand’s commitment to providing consumers with 100 percent natural and preservative free options.” HORM_DC00010032, at 32-33, 35-36 (A2-3, 5-6).

64. Additional ads in the Make the Natural Campaign make variations on the claim that no nitrates or nitrites are added. *E.g.*, HORM_DC00000007, at 08 (A623); HORM_DC00000065, at 67 (A627); HORM_DC00000264 (A640).

65. Many ads also feature “supporting” claims to color how consumers understand “natural” and “no preservatives”. Advertisements feature claims such as “higher standards”, “simple”, “clean”, and “wholesome” in furtherance of Hormel’s belief that including “supporting” narratives like “clean and simple [was] very important to connect with our target” consumer who is looking for “green”, “organic”, “artisanal” products. HORM_DC00125975, at 90 (A657); *e.g.*, HORM_DC00000166, at 68 (A828); HORM_DC00000269 (A831).

66. Hormel’s video commercial “Judy Communes with Nature” presents spokeswoman Judy Greer at a potluck with foragers who collected their dishes in the forest. After her tablemates describe their efforts, Ms. Greer says, “I just went to the store and bought Hormel Natural Choice lunchmeat,” and the foragers gorge themselves. Ms. Greer says, “It’s preservative free.” HORM_DC00003878, at 0:25-0:27 (A833).

67. Hormel’s video commercial “Lunch with Judy Gone Wild” shows Ms. Greer having lunch with a neighbor supposedly raised by wolves, who will only eat Natural Choice lunchmeat because it is consistent with her “wild” diet. Ms. Greer asserts, “It’s preservative-free Hormel Natural Choice lunchmeat.” HORM_DC00003880, at 0:13-0:16 (A835).

68. Hormel's other video commercials contain similar "natural" and "no preservatives" statements. HORM_DC00004021 (A833); HORM_DC00004023 (A835); HORM_DC00150985 (A837).

69. Hormel sought to physically place its products with natural and organic products in retailers' so-called "Natural Destination sets," sections that contain "signage blades" reading "Better for You" and "Natural/Organic[.]" HORM_DC00055643 (A839); HORM_DC00020881, at 81 (A841).

70. By positioning its brand, both narratively and physically, close to organic products, Hormel expected that "natural accepting" consumers would associate "organic" benefits with Natural Choice products. HORM_DC00020881, at 81 (A841); HORM_DC00049363, at 64 (A845).

71. The North American Meat Institute (NAMI)'s recommended brands "[e]xtend ... all-natural claims" and "PREMIUM-TIZ[E]" the products in the eyes of consumers. HORM_DC00020348, at 66, 79, 86, 89 (A872, 85, 92, 95).

72. As NAMI puts it, the end goal is to "fus[e] trending concepts," so that consumers will regard the products as "gourmet" and "artisanal." HORM_DC00020348, at 79 (A885).

73. Hormel also developed a brand website: MakeTheNaturalChoice.com. The site's "Our Story" page stated "[w]e protect this brand, we make it wholesome"; "[w]e're committed to delivering a consistent, honest product made with clean ingredients"; "[w]e find pleasure in the simplicity of the brand and the product itself. It has integrity: safe, clean." HORM_DC00000269 (A831).

74. Other webpages linked to the “Our Story” webpage with the text, “Find out what drives our commitment to higher standards and environmental sustainability.” HORM_DC00000260 (A898).

75. The language on and referencing the Our Story page was chosen to influence how consumers understood Natural Choice’s “natural” claim. Deposition of Michael Forbes, Rule 30(b)(6) Witness for Hormel (hereafter, “Forbes Dep.”), at 63:12-21 (A2835).

76. The “Our Story” webpage was the most popular of the front page content on MaketheNaturalChoice.com, which Hormel concluded demonstrated the campaign appeals to people who “are interested in ... where the products come from[.]” HORM_DC00012720, at 34 (A914); *see also* HORM_DC00019324, at 28 (A931); HORM_DC00012183, at 207 (A968).

77. A print advertisement for the Products that is currently running contains the title, “Love Me Some Bacon ... Not Me Some Preservatives”. HORM_DC00000190 (A978).

78. This ad contains the text, “Thanks to our 100% natural bacon, you’ll relive the flavor of that first strip and preserve the memory – without the added preservatives”, along with the tagline “Make the Natural Choice.” HORM_DC00000190 (A978).

79. Another currently running an advertisement has the title, “Preservatives Bad. Turkey Good” followed by the statement, “[Y]ou can still get your meat 100% NATURAL* and right in the grocery store”, and the tagline “Make the Natural Choice.” HORM_DC00000233 (A972).

80. Hormel’s current video commercial features large text saying “100% NATURAL.” A tiny image of a leaf appears above the “L” in “Natural.” HORM_DC00150985 (A837).

Consumer Perception of the Make the Natural Choice Campaign.

81. A “summary of Hormel custom[er] research” prepared by the Brand Manager of the Natural Choice line acknowledged that “consumers assume that Natural includes other health claims (ABF [Antibiotic-Free], No Preservatives, etc.)” HORM_DC00027651, at 53 (A982).

82. Hormel Consumer Insights & Market Intelligence division employee similarly noted that “‘All Natural’ is considered an umbrella which many people think includes ABF already.” HORM_DC00044155, at 57 (A986).

83. Hormel’s Director of Marketing has further recognized “consumer confusion” around the term “natural” and noted “the fact that many consumer[s] assume Natural=RWOA [Raised Without Antibiotics].” HORM_DC00054607 (A989).

84. In 2016, Mr. Zavoral, the current manager of the Natural Choice brand, informed multiple senior members of Hormel’s marketing staff that “[c]onsumers assume natural meat is antibiotic free.” HORM_DC00024702 (A994).

85. A Hormel Natural Choice Lunch Meat “Situation Assessment,” dated May 25, 2017, stated, “[c]onsumers will begin to doubt our ‘naturalness’” if the brand does not “go RWA [raised without antibiotics].” HORM_DC00063021, at 53 (A176).

86. In another 2016 study, Hormel found the attributes contributing to the general population’s “decision to purchase a natural meat or cheese” are: (i) product came from animals “never administrated growth [hormones]” (56%); (ii) product had “[n]o preservatives” (55%); (iii) product came from “humanely raised” animals (54%); (iv) product came from animals “never administered antibiotics” (53%); (v) product had “[no] nitrates or nitrites added” (52%); and (vi) product came from “[a]nimals fed 100% organic diet” (46%). HORM_DC00073833, at 54 (A576).

87. The Hormel study revealed that the “importance of each” of these attributes is even higher for consumers already inclined to purchase natural products. HORM_DC00073833, at 54 (A576).

88. The Hormel study also found consumers had equivalent responses when they were asked what they associate with the Natural Choice brand name. HORM_DC00073833, at 75 (A597).

89. A 2016 presentation put together by Hormel employees working on the Natural Choice brand for Hormel’s executive marketing team, stated, “A majority of consumers believe that if a meat product is labeled as Natural then it is important to be Growth Hormone and Antibiotic free[,]” and that “Many more consumers assume that Natural meat has been Humanely Raised, Free Range, or Pasture Raised.” HORM_DC00058235, at 45 (A116); Sand Dep., at 171:12-22, 172:1-3 (A2987).

90. The presentation also explained that Hormel understood “[t]here is a very wide halo around ‘Natural’ and consumers assume we have benefits beyond our product claims.” HORM_DC00058235, at 45 (A116).

91. In 2016, Hormel’s Consumer Insights Division provided Natural Choice’s brand manager a study by the Natural Research Marketing Institute (“NMI”) that concluded “if a meat is to be labeled Natural,” “‘No Added Growth Hormones’ and ‘Antibiotic Free’ are the most important attributes.” HORM_DC00044221 (A998); HORM_DC00044223, at 25 (A1002).

92. The NMI study further found that of “heavy users” of natural products, 88% thought that if the product “was labeled as **Natural**, it is important for it to” have “no added growth hormones”; 74% responded the same for “antibiotics free”; 53% for “humane[ly] raised”; 51% for

“free range”; and 48% for “pasture raised.” HORM_DC00044223, at 32 (emphasis in original) (A1009).

93. That same study also found, “One third of American adults do not believe there is any difference between” organic and natural labels. HORM_DC00044223, at 25 (A1002).

94. The NMI study further found that “approximately half of consumers think ‘natural’ means ‘no pesticides’ or ‘no-GMOs’ – attributes that are uniquely organic ... And while three-fourths of consumers perceive that organic foods must be at least 95% free from synthetic additives, almost two-thirds expect the same thing of ‘natural’ foods.” HORM_DC00044223, at 25 (A1002).

95. A 2017 report on the Natural Choice brand confirmed that consumers “don’t know” the USDA guidance on “natural” label claims, with “60% believ[ing] it means no GMO’s, artificial ingredients or colors, chemicals or pesticides” and “24% think[ing] it means ‘good for the environment.’” HORM_DC00124268, at 96 (A1039).

96. A 2017 presentation prepared by Hormel employees contained a slide entitled “Consumers expect Natural to stand for more than it currently does.” HORM_DC00063021, at 68 (A191).

97. It summarized Consumer Reports’ findings that for “meat and poultry” products, at least half of “consumers think ‘NATURAL’ currently means” “Animals went outdoors” (50%); 57% think ‘NATURAL’ means “No antibiotics/drugs”; 59% think it means “No GMOs in feed”; and 64% think it means “No artificial growth hormones”. HORM_DC00063021, at 68 (A191).

98. A 2017 document summarizing the meaning of the Hormel Natural Choice brand found that consumers valued “key benefits of ‘100% natural,’ ‘antibiotic free’ and ‘preservative

free,” and had the “expectation[.]” that having a “100% natural” brand meant that the “[a]nimals [were] treated humanely.” HORM_DC00049216, at 35, 45, 47 (A1095, 1105, 1107).

99. A 2018 planning document on Hormel Snacking Trends summarizes “Changes in Consumer Trends.” The lead slide in that section is entitled, “Animal Transparency is a driving factor in meat sales.” The slide has images saying “free range meat,” “raised without antibiotics,” “GMO free USA,” and “Food, Inc.” The slide indicates Hormel understands that consumers care about “animal safety and cruelty,” and that “natural” claims “increase consumer conversations about animal treatment.” HORM_DC00175952, at 6043-44 (A1205).

100. Hormel received consumer comments throughout the campaign that indicated people bought Natural Choice products believing they were free of nitrate, nitrite, hormones, and preservatives. One consumer said, “We love that [your ‘Natural Choice’ products] are nitrate/nitrite free.” HORM_DC00080120, at 22 (A1220).

101. Another consumer commented, “As a recent cancer survivor and lover of lunch meat for my sandwiches I thought I had to give it up due to all the other brands being loaded with nitrates and chemicals. That i[s] until I discovered these.” HORM_DC00021841, at 46 (A1229).

102. Another consumer commented, “We love your [‘Natural Choice’] meats, my husband is allergic to nitrates, so thankful for your products[.]” HORM_DC00021841, at 47 (A1230).

103. Another consumer commented, “[K]udos – appreciate no nitrates, no hormones.” HORM_DC00021841, at row 2281, column Q (A1236).

104. And another consumer commented, “[B]ought [Natural Choice] yesterday morning ... [I] am [an] organic person and [I] like no preservatives.” HORM_DC00020084, at row 2451, column Q (A1236).

105. Four segments of consumers represent “60% of Natural Choice buyers ... [and] 70% of Natural Choice” sales: (1) “True Believers”; (2) “Enlightened Environmentalists”; (3) “Healthy Realists”; and (4) “Strapped Seekers.” HORM_DC00137175, at 84 (A466); *see also* HORM_DC00137154, at 58 (A473); HORM_DC00103598, at 601-02 (A1241-42).

106. These consumers are identified by things they are “willing to pay more” for: “Sustainability” and “Organic” (True Believers); “Eco-friendly” (Enlightened Environmentalists); “All Natural” (Healthy Realists); and “Non-GMO” (Strapped Seekers). HORM_DC00103598, at 604-07 (A1244-47); Kraft Dep., at 234:21-25; 236:11-15; 238:14-20 (A2908-09).

107. According to a report examining the Natural Choice brand through segmentation, three of these groups chose Natural Choice as the “top brand they purchase when they buy Premium Natural.” HORM_DC00103598, at 620-22, 624 (A1260-62, 64).

108. The fourth group, True Believers, preferred Hormel’s “Applegate” brand but listed Natural Choice as “their second favorite brand next to Applegate.” HORM_DC00103598, at 619, 624 (A1259-64).

109. The report explained that “in the segments where Applegate is strong, [Natural Choice is] EXTREMELY strong.” HORM_DC00103598, at 613 (A1253).

110. The Make the Natural Choice ads produced steady increases in sales. HORM_DC00174661, at 86-88 (A1295-97).

111. In 2017, Hormel applied for an award to recognize the Natural Choice campaign’s success at increasing awareness of the Natural Choice line’s “100% natural” claim by its target audience, as well as increasing total sales and household penetration. HORM_DC00154514 *et seq.* (A1335-47).

112. A 2017 study explained that following the development of the campaign, “Our logo and box are a stamp of natural credibility.” HORM_DC00130821, at 27, 31, 36-39 (A1355, 59, 64-67).

113. An email to Hormel’s marketing team explained the Natural Choice “brand is highly regarded (from users and non-users) ... [as] less processed, [having] natural ingredients, [being] wholesome, [and having] no preservatives.” HORM_DC00032759, at 61-62 (A1413-14).

114. According to Hormel’s head of consumer insights team, consumers associated claims like “natural” and “no preservatives” as ... product benefit(s) of Natural Choice.” HORM_DC00105261, at 67-68, 74 (A1422-23, 29); Kraft Dep., at 279:20-280:5 (A2910).

Hormel’s “Disclaimers”

115. Hormel eventually concluded it needed to add “disclaimers” to some Natural Choice advertisements. Hormel testified that in 2016 (after this suit commenced) it began adding an asterisk after “100% Natural” because “we were shown that there was some confusion among consumers about what ‘natural’ means.” Aug. 22, 2018 Zavoral 30(b)(6) Dep., at 36:3-9 (A3073); Zavoral Dep., 52:2-16 (A3086).

116. The asterisk later became a small leaf. Zavoral Dep., at 166:15-20 (A3090).

117. The asterisk or leaf is meant to be associated with language at the bottom of the page, which in small font states: “Minimally processed[;] No artificial ingredients.” *See, e.g.*, HORM_DC00000233 (A972).

118. Hormel decided not to place a leaf next to its “Make the Natural Choice” tagline. Forbes Dep., at 27:23-28:4 (A2817-18).

119. Hormel stated it had no basis to assume consumers would regard a small leaf as equivalent to an asterisk. Aug. 22, 2018 Zavoral 30(b)(6) Dep., at 41:2-11 (A3076).

120. Hormel's Consumer Insights Division did not test whether consumers understand the "disclaimers" in the ads. Kraft Dep., 314:14-315:6 (A2913).

121. Natural Choice's current brand manager acknowledged the "disclaimer" may not be legible depending on the device you used to view a video ad. Zavoral Dep., at 176:12-16 (A3091).

122. Ms. Kraft also testified that she was unable to read the "Sandwich Tasting" commercial's disclaimer as it appeared on a normal computer screen. Kraft Dep., at 116:2-23 (A2905).

123. Although Ms. Kraft previously viewed the ad more than 20 times, she did not notice or recall the disclaimer when she viewed the ad at her deposition. Kraft Dep., at 109:15-16, 110:15-111:7, 117:18-20 (A2903, 04, 05).

Third-Party Research on Consumer Perception

124. A 2009 survey in a peer-reviewed academic journal concluded people understand "all natural" to mean "no hormones, no antibiotics, no chemicals, etc.," and make a "connection between all-natural pork and superior welfare for the pigs." ALDF000739, at 42 (A2669).

125. This survey further found that consumers associate natural with "less bad stuff," including fewer chemicals and fewer "risks" to the animal. ALDF000739, at 43 (A2670).

126. "Several participants [in the 2009 survey] focused on the connection between all-natural and livestock raised free range." ALDF000739, at 43 (A2670).

127. The survey also found that people "also associated the term with the ideal that the pigs from which these products were produced would be small-farm raised, fed natural foods, and/or fed organic foods." ALDF000739, at 43 (A2670).

128. A 2016 survey conducted for the ASPCA concluded that 46% of consumers believe “[t]he word ‘natural’ on a package of meat, eggs, or dairy products indicates that the animal had a better than average quality of life on the farm.” ALDF000858, 59 (A2677-78).

129. A 2016 peer-reviewed study in the journal *Applied Economics Perspectives and Policy* found people will pay more for “natural” meat, but *only* if they do *not* understand the criteria by which USDA allows meat to be so labeled. Deposition of Ravi Dhar (hereafter, “Dhar Dep.”), Exhibit 264 (A3095-110).

130. This study found that, when told that the USDA allows meat to be labeled “natural” so long as it is “minimally processed and contain[s] no artificial ingredients,” consumers will not pay more for the products. Dhar Dep., Ex. 264 (A3095, 106).

131. A 2016 Consumer Reports survey concluded, “Nearly two-thirds [63%] of consumers think a ‘no nitrates’ label means no nitrates at all, whether from an artificial or natural source, were used,” whereas only 31% of consumers understood “no nitrates” claims to mean “no nitrates from artificial source[s].” ALDF000041, at 42, 53 (A2607, 18).

ALDF’s Experts’ Analyses Regarding Consumer Perception of the Campaign/Representations

132. Claudiu Dimofte, Ph.D., is an Associate Professor of Marketing in the Fowler College of Business at San Diego State University, and a Research Fellow at its Centre for Integrated Marketing Communications. Declaration of Claudiu V. Dimofte, Ph.D. (hereafter, “Dimofte Decl.”) ¶¶ 2-3.

133. Dr. Dimofte was retained by ALDF to conduct a literature review to determine how Hormel’s Make the Natural Choice advertising campaign affects the purchase behavior of consumers. Dimofte Decl. ¶¶ 8-9.

134. Dr. Dimofte performed that literature review using the research methodology employed in scholarly marketing science. Dimofte Decl. ¶ 10.

135. From his literature review, Dr. Dimofte concluded the academic research “consistently finds that consumers seek out products labeled ‘natural’ because consumers innately assign positive attributes to brands that make natural claims.” Dimofte Decl. ¶ 13.

136. Dr. Dimofte explains, the literature establishes these positive attributes consumers assign based on natural claims include “the absence of additives and the characteristics of the products’ production process.” Dimofte Decl. ¶ 13.

137. One reliable academic study examined a representative sample of adults from the United States and Western Europe and concluded “consumers largely define ‘natural’ to mean the absence of negative product features, such as ‘additives, pollution, or human intervention.’” Dimofte Decl. ¶ 14 (quoting Rozin et al. (2012); attached to Dr. Dimofte’s declaration).

138. Another reliable academic study “found consumers to understand ‘natural’ to mean being produced with minimal human interference and free of artificial ingredients.” Dimofte Decl. ¶ 14.

139. Another reliable academic study “found consumers infer ‘natural’ to mean something about the manufacturer” “engag[ing] in socially responsible corporate behavior.” Dimofte Decl. ¶ 14.

140. Dr. Dimofte further determined that these findings are consistent with how the literature explains natural claims influence consumers’ thinking, and that these explanations for how natural claims impact consumers further establish that the conceptions of a product brought about by its natural claims are hard to dislodge. Dimofte Decl. ¶¶ 22-33.

141. The literature explains that if a brand or product is advertised as “natural,” that advertisement encourages the consumer to differentiate the product from “non-natural” products. Dimofte Decl. ¶ 29.

142. This “call to differentiate the product,” the literature continues, “causes consumers to use their broad network of semantic associations with the term ‘natural.’” Dimofte Decl. ¶ 29.

143. In other words, if a product is advertised as “natural,” that will “elicit thoughts in consumers related to their broad network of semantic associations with the term ‘natural.’” Dimofte Decl. ¶ 26.

144. The literature explains that by making specific product claims advertisements “invite[]” consumers to see the claimed feature as distinguishing the product, calling on the consumer to use his or her “broad network of semantic associations with the term” to make assumptions about how the product is distinct. Dimofte Decl. ¶ 29.

145. Once these expectations are set by advertisements, the literature reveals, consumers are less likely to scrutinize product packaging at retail because their expectations have been set. Dimofte Decl. ¶ 30.

146. One reliable study found “no evidence that consumers benefit from government-mandated disclaimers in advertising.” Dimofte Decl. ¶ 31 (quoting Green and Armstrong (2012); attached to Dr. Dimofte’s declaration).

147. Another reliable study shows that once consumers associate a product as “healthier” consumers may be disinclined to seek further nutrition information. Dimofte Decl. ¶ 31.

148. Dr. Dimofte explains the academic literatures shows “the natural claim is particularly likely to bring about these effects.” Dimofte Decl. ¶ 32.

149. The literature explains “[c]onsumer expectations are particularly hard to change where the advertising implies values that the consumer views as superior and trustworthy.” Dimofte Decl. ¶ 32.

150. According to the literature, “consumers tend to trust traditional and natural production methods more than methods associated with modernity and industry.” Dimofte Decl. ¶ 32 (quoting Fernqvist & Ekelund (2014); attached to Dr. Dimofte’s declaration).

151. Dr. Dimofte’s review of documents associated with Hormel’s Make the Natural Choice campaign led him to conclude it is designed to take advantage of these features of the “natural” claim. Dimofte Decl. ¶¶ 34-41.

152. Dr. Dimofte concluded Hormel “has worked to differentiate its Natural Choice products using the natural food positioning.” Thus, the campaign works to lead consumers to associate the brand with the multiple positive qualities they associate with “natural.” It “activate[s] their broad schema of natural product benefits.” Dimofte Decl. ¶¶ 35-36.

153. Specifically, Dr. Dimofte highlights that the “name, slogan, and advertisements for Natural Choice products consistently prime Hormel’s target consumers with the ‘natural’ construct, thus activating their broad schema of natural product benefits.” Dimofte Decl. ¶ 35.

154. Further, Dr. Dimofte explains, “advertisements within the ‘Make the Natural Choice’ campaign also describe its product in terms of its lack of negative ingredients or additives.” Dimofte Decl. ¶ 37.

155. Dr. Dimofte states that based on his literature review and work, the lack of negative ingredients or additives are “characteristics associated with ‘natural.’” Dimofte Decl. ¶ 37.

156. Thus, Dr. Dimofte concludes that Hormel’s claims about the lack of negative attributes further cause “consumers to connect the product with their broad schematic associations with ‘natural.’” Dimofte Decl. ¶ 37.

157. Dr. Thomas Maronick, is an Emeritus Professor of Marketing in the College of Business and Economics at Towson University. Declaration of Thomas Maronick, DBA, JD (hereafter, “Maronick Decl.”) ¶ 2.

158. From 1980 to 1997, Dr. Maronick served as the Director of Impact Evaluation in the Bureau of Consumer Protection at the Federal Trade Commission (FTC). Maronick Decl. ¶ 3.

159. As Director, Dr. Maronick was the in-house marketing expert for all divisions of the Bureau, advising attorneys and senior management on marketing aspects of cases being considered or undertaken by FTC attorneys. Dr. Maronick was also responsible for the evaluation of research submitted by firms being investigated by the FTC and for the design and implementation of all consumer research undertaken by the Bureau during that period. Maronick Decl. ¶ 3.

160. Dr. Maronick designed and implemented a survey of consumers residing in the Washington, D.C. metropolitan area who have purchased or considered purchasing Hormel’s Natural Choice deli meats in the last two months. Specifically, the survey was designed to determine those consumers’ perceptions of claims or slogans associated with Hormel Natural Choice. Maronick Decl. ¶ 6.

161. Based on his survey results, and his background and experience, Dr. Maronick found the “Make the Natural Choice” advertisements communicate that the products are “natural” and free of preservatives. Maronick Decl. ¶¶ 8-9, 16.

162. In Dr. Maronick's survey, when the respondents were shown Hormel's "Preserve Your Right to No Preservatives" advertisement and were asked what it suggested about the product, 36.3% responded the product was "All Natural" or "100% Natural." Maronick Decl. ¶ 17.

163. In Dr. Maronick's survey, when respondents were shown Hormel's "100% Natural Ham" advertisement with Hormel's "disclaimer" and were asked what it suggested to them, 59.2% said the product was "all natural" or "100% natural." Maronick Decl. ¶ 18.

164. In Dr. Maronick's survey, when respondents were shown Hormel's "100% Natural Ham" advertisement without Hormel's "disclaimer" and were asked what it suggested to them, 64.3% said the product was "all natural" or "100% natural." Maronick Decl. ¶ 18.

165. Dr. Maronick's survey also showed that consumers associate "natural" with other factors they feel are important in their purchase decision. Maronick Decl. ¶¶ 9, 20-21.

166. The factors Dr. Maronick's survey showed consumers associate with "natural" and are important to their purchasing decision include that the animals were raised without antibiotics, raised with access to pasture, and humanely raised. Maronick Decl. ¶¶ 9, 20-21.

167. Dr. Maronick's survey also showed that "no preservatives" reinforces the "natural" claims in Hormel's Natural Choice branding and advertising. Maronick Decl. ¶ 25.

168. In Dr. Maronick's survey, 75.8% of people shown the "Preserve Your Right to No Preservatives" print advertisement perceived the phrase "no preservatives" to suggest that the advertised deli meat product is "all natural." Maronick Decl. ¶ 26.

169. The survey also showed that 53.9% of respondents stated that they understood the "no preservatives" claim to mean the products "are nitrate &/or nitrite free." Maronick Decl. ¶ 27.

170. Further, 29.7% of respondents shown the “Preserve Your Right to No Preservatives” ad also understood “no preservatives” to mean “No antibiotics were used when raising the animals”. Maronick Decl. ¶ 28.

171. More than 70% respondents shown the “Preserve Your Right to No Preservatives” ad characterized both of these qualities as important or very important to their purchasing decision. Maronick Decl. ¶ 29.

172. Dr. Maronick also had two separate groups of respondents view the same ad, one with and one without the “disclaimer” “Minimally Processed, no artificial ingredients” at the bottom. Maronick Decl. ¶ 13.

173. Dr. Maronick found there were no statistically significant differences in how consumers shown the advertisement with and without this disclaimer described their perception of the ad or described their understanding of the “100% Natural” claim within it. Maronick Decl. ¶ 24.

174. Specifically, Dr. Maronick found the presence of the disclaimer had little to no effect on consumers’ perception of the “natural” claims and/or the importance the consumers placed on the claims when making deli meat purchasing decisions. Maronick Decl. ¶ 21.

The Breeds of Animals Used for the Natural Choice Products

175. Hormel exclusively sources chicken for the Natural Choice products from Wayne Farms and believes all the chickens it uses in the products are “jumbo” chickens. Deposition of John Hilgers, Rule 30(b)(6) Witness for Hormel (hereafter, “Hilgers Dep.”), at 41:2-7, 42:4-7 (A2873-74).

176. Hormel Natural Choice chicken supplier Wayne Farms stated that all of its chickens are “jumbo” chickens, which have been bred to maximize “breast yield.” Deposition of Bryan

Miller, Rule 30(b)(6) Witness for Wayne Farms (hereafter, “Wayne Farms 30(b)(6) Dep.”), at 67:21-68:6, 69:3-17 (A3022-24).

177. According to Wayne Farms, these “jumbo” birds have such large breast muscles that they sometimes break their own wings by flapping. Wayne Farms 30(b)(6) Dep., at 173:22-175:25 (A3054).

178. Hormel has stated that male turkeys of the breed used in the Products “are unable to naturally mate with the hens” because “with their size of the breast that they have, they physically can’t get close to enough to the hen[.]” Deposition of Michelle Kromm, Rule 30(b)(6) Witness for Hormel (hereafter, “Kromm Dep.”), at 78:16-79:2 (A2930); *see id.*, at 75:13-24; 85:14-15 (A2928, 33).

179. A 2017 presentation produced by Hormel explains that swine genetics is a “Multi-million dollar industry” and that “[s]pecific genetic lines have been developed to meet specific packer demands.” HORM_DC00067451, at 66 (A1462).

180. It further shows that the Hormel uses a breed of pig specifically designed to “meet the needs of the Hormel Redbox” and notes that “improvements” have been made to “[r]ate of gain, feed efficiency, leanness, muscle mass.” HORM_DC00067451, at 66 (A1462).

Pathogens and Animal Health at Hormel Facilities

181. In 2013, Jennie-O Turkey Store, Hormel’s turkey division, conducted a feed additive experiment under what its researchers refer to as “dense and dirty” conditions, designed to “impose stress on turkeys to simulate commercial field challenges.” HORM_DC00140087 (A1476).

182. An anonymous Jennie-O employee report from December 2017 documented an “ongoing issue” where “dead turkeys and severely injured turkeys” were “ignored for days”; the

caller “was concerned about the bio-security issue raised with dead turkeys in the area with live ones.” HORM_DC00162980 (A1480).

183. In 2014, Jennie-O Veterinarian Dr. Michelle Kromm wrote that some farms used to raise birds for the Products have “routinely” had issues with cholera. HORM_DC00111452 (A1483).

184. Multiple farms used to raise birds for the Products have tested positive for *Staphylococcus aureus*. HORM_DC00116758 (A1492); HORM_DC00116760 (A1495); HORM_DC00111246 (A1501); HORM_DC00145176 (A1497).

185. Several *Staphylococcus aureus* infections detected on farms used to produce animals for the Products were resistant to multiple antibiotics. HORM_DC00111246 (A1501); HORM_DC00116760 (A1495).

186. In 2013, a Jennie-O staff veterinarian stated, “The ammonia is intense and there is large amount of fecal build-up around drinkers” at a Jennie-O facility. HORM_DC00110895 (A1506).

187. *E.coli* outbreaks have occurred at multiple Jennie-O facilities used to produce animals for the Products. HORM_DC00110895 (A1506); HORM_DC00110510 (A1590); HORM_DC00110961 (A1512); HORM_DC00112056 (A1517); HORM_DC00157910, at 12 (A1521, 23); HORM_DC00116586 (A1530); HORM_DC00116600 (A1533); HORM_DC00145591 (A1526).

188. Jennie-O veterinarians have determined that some of the *E. coli* strains detected in Jennie-O flocks were resistant to multiple antibiotics. HORM_DC00116600 (A1533); HORM_DC00116586 (A1530).

189. In at least one case, Jennie-O veterinarians determined that an E. coli strain detected in a Jennie-O flock was resistant “all available drugs.” HORM_DC00116600 (A1533).

190. In 2014, Hormel testing of 33 Jennie-O turkey flocks found that 100% of the flocks tested positive for salmonella. HORM_DC00116566 (A1536).

191. On at least one occasion, Jennie-O veterinarians determined that “we have antibiotic resistant strains of salmonella on the farm,” and further noted that “[t]reatment of antibiotic resistant bacteria is not successful, because the antibiotics will not work.” HORM_DC00113426-27 (A1541-2).

192. In another case, a necropsy of a Jennie-O turkey detected a strain of salmonella that was resistant to 11 antibiotics, including drugs deemed by the FDA as highly important and critically important antibiotics. HORM_DC00111767, at 71 (A1546, 50); HORM_DC00166176, at 80 (A1593, 97).

193. Multiple farms used to raise birds for the Products have suffered from outbreaks of Avian Influenza. HORM_DC00116600 (A1533); Kromm Dep., at 111:8-17 (A2943); HORM_DC00143462, at 64 (A1553, 55).

194. Multiple other potentially deadly pathogens have been detected at facilities that raise animals for the Products. HORM_DC00135216 (A1587); HORM_DC00110510 (A1590).

195. Notes from a 2017 Jennie-O “Supervisor’s Meeting” explain that Bordetella contamination is high, advising, “the birds should be getting 4 days of bleach a week” and “you should never be running plain water.” HORM_DC00141373 (A1635).

196. Wayne Farms observes “hock burns” on the chickens used in the Products. Wayne Farms 30(b)(6) Dep., at 142:6-22 (A3037).

197. “Hock burns” are red or scabbed over areas on the chickens’ legs that are indicative of excess excrement and water in the litter that the chickens live in. Wayne Farms 30(b)(6) Dep., at 142:6-22 (A3037).

198. USDA testing of samples from animals whose meat was used in Natural Choice products has, on multiple occasions, detected the presence of antibiotic-resistant bacteria, including salmonella, campylobacter, and shiga toxin-producing E. coli. *See, e.g.*, HORM_DC00166176 (A1593); HORM_DC00166296 (A1601); HORM_DC00166208 (A1613); HORM_DC00166236 (A1624); HORM_DC00166316 (A1946).

199. Hormel agreed that a sample from a Jennie-O “turkey carcass tested positive for a salmonella serotype that is associated with human illness and that serotype was resistant to several antibiotics including one that was critically important for humane medicine.” Kromm Dep., at 155:13-160:18 (A2962).

200. Other pathogen strains detected by the USDA are resistant to several critical and highly important antibiotics. HORM_DC00166176 (A1593); HORM_DC00166296 (A1601); HORM_DC00166208 (A1613); HORM_DC00166236 (A1624).

201. Recently, a multidrug-resistant salmonella strain detected in Jennie-O products was linked to an outbreak that resulted in multiple hospitalizations and one death. *See, Limited Jennie-O Ground Turkey Product Recall*, Jennie-O, <https://www.jennieo.com/content/ground-turkey-recall>; *Jennie-O Turkey Store Sales, Inc. Recalls Raw Ground Turkey Products due to Possible Salmonella Reading Contamination*, United States Department of Agriculture Food Safety and Inspection Service, <https://www.fsis.usda.gov/wps/portal/fsis/topics/recalls-and-public-health-alerts/recall-case-archive/archive/2018/recall-124-2018-release>; *Outbreak of Multidrug-Resistant*

Salmonella Infections Linked to Raw Turkey Products, Centers for Disease Control, <https://www.cdc.gov/salmonella/reading-07-18/index.html>.

202. This outbreak has led to a recall of Jennie-O products. *Limited Jennie-O Ground Turkey Product Recall*, Jennie-O, <https://www.jennieo.com/content/ground-turkey-recall>.

203. Hormel chicken supplier Wayne Farms mixes the chemicals “decoquinate” and “nicarbazin” into the chicken feed to prevent parasitic infections. Wayne Farms 30(b)(6) Dep., at 156:1-22 (A3048); *Shrewd Moves: Like a Chess Match, Anticoccidial Rotation is a Game of Strategy at Wayne Farms*, Poultry Health Today, <https://poultryhealthtoday.com/shrewd-moves-like-chess-match-anticoccidial-rotation-game-strategy-wayne-farms/>.

204. Hormel routinely uses “Termin-8,” a mix of formaldehyde and propionic acid, in feed for turkeys to “disinfect” the bacteria in the feed. Kromm Dep., at 147:14-149:1 (A2957-59); HORM_DC00144855-56 (A1639); HORM_DC00113425 (A1641); HORM_DC00140462 (A1647-48).

205. Mel Gilbertson is the Vice President of Operations for Quality Pork Processors (QPP), which operates one of Hormel’s pig slaughter plants. Deposition of Mel Gilbertson (hereafter, “Gilbertson Dep.”), at 14:10-11 (A2843).

206. In his deposition, Gilbertson confirmed that pigs with abscesses, belly ruptures, bruising and frostbite, tail bites, prolapse, septic conditions, and pericarditis can be and are used to make Natural Choice products. HORM_DC00006776-863 (A1655-1742); Gilbertson Dep., at 199:15-221:11 (A2851-56).

207. Gilbertson explained that many of the images in a “Hormel Foods Swine Segregation Training” document (HORM_DC00006776 *et seq.*) accurately represent animals that

pass through its slaughterhouses and, if they pass postmortem inspection, can make their way into Natural Choice products. HORM_DC00006776-863 (A1655-1742).

208. A 2014 document titled “Hormel Foods Decision Matrix for Euthanasia or Harvest” indicates that animals with the following conditions may be slaughtered and used in the products: “bone fracture,” “blindness,” “dislocation/torn tendons and ligaments,” and porcine stress syndrome. HORM_DC00006959 (A1744).

209. This document describes the symptoms of porcine stress syndrome as “high pitched squealing, muscle tremors, blotchy skin, labored respirations that are like a death gasp.” HORM_DC00006959 (A1744).

210. A 2014 USDA memorandum notes that “hanging pieces of broken bone” and “bruising associated with these breaks needs to be removed” from pig carcasses in a Hormel slaughter plant. HORM_DC00007693 (A1746).

211. HORM_DC00006785 depicts a pig with a “Medium Head Abscess.” HORM_DC00006776, at 85 (A1655, 64).

212. HORM_DC00006796 depicts a pig with a “Small Belly Rupture.” HORM_DC00006776, at 96 (A1655, 75).

213. Pigs in a similar condition to those pictured on HORM_DC00006785 and HORM_DC00006796 are slaughtered for use in Hormel products, including Natural Choice products. Deposition of Corwyn Bollum, Rule 30(b)(6) Witness for Hormel (hereafter, “Bollum 30(b)(6) Dep.”), at 84:25-85:18; 86:14-87:22 (A2786-89).

214. Hormel has acknowledged that the “general gist” of the guidance provided in the “Hormel Foods Swine Segregation Training” document (HORM_DC00006776) “is consistent” with its current practices. Bollum 30(b)(6) Dep., at 84:25-85:18; 86:14-87:22 (A2786-89).

215. Some animals that have been segregated because they cannot walk due to sickness, injury, or fatigue can end up on Hormel's slaughter line and in Natural Choice products. Gilbertson Dep., at 62:10-18 (A2844); QPP00060 (A1775).

216. Wayne Farms does not "take action" to limit the number of chickens with broken wings that go into its products, as long as they represent less than three percent of the birds slaughtered at a given plant. Wayne Farms 30(b)(6) Dep., at 166:2-23 (A3051).

Production Practices for Natural Choice Products Compared to Other Products

217. Hormel believes that the "Global Animal Partnership" ("GAP") certification is considered a "higher standard" than other animal welfare standards, including those that apply to Natural Choice products. Hilgers Dep., at 118:19-119:19 (A2888-89).

218. Hormel testified that it "could acquire more humanely raised products than what [it] currently acquire[s]" for Natural Choice products, including products certified by GAP or Certified Humane products. Hilgers Dep., at 118:19-119:19 (A2888-89).

219. Hormel states that parts from an animal used to make a Natural Choice product may be used to make another Hormel product, such as SPAM. *See* Hormel's Response to ALDF's Request for Admission No. 3 (A3122-23).

220. Hormel further stated that it uses the same animal raising and slaughter practices for animals that become Natural Choice products as it uses for its other "conventionally raised" products. Hormel's Response to ALDF's Requests for Admission Nos. 1-2 (A3122-23).

221. Hormel further confirmed that "[t]here's no separate manner in which the pigs raised for Hormel Natural Choice products are raised versus any other of Hormel's products[.]" Bollum 30(b)(6) Dep., at 60:10-15 (A2779).

222. Hormel treats Applegate as a wholly separate entity within Hormel, with its own procurement supply chains separate from those used to source animals for Natural Choice and other Hormel products. Deposition of Corwyn Bollum (in his individual capacity) (hereafter, “Bollum Dep.”), at 42:21-43:8 (A2796).

223. Rabe’s Quality Meats (“Rabe’s”) is “the only supplier” of beef used for the Natural Choice Products. Hilgers Dep., at 103:14-16 (A2882).

224. Rabe’s confirmed that “Hormel has never ordered ‘natural’ or ‘organic’ product from Rabe’s.” Dec. 13, 2018 Ltr. Michael Cox to Kim Richman.

225. Rabe’s further confirmed that it could provide Hormel with “natural” products if Hormel asked for them, and noted that “Rabe’s would simply have to order that product....” Dec. 13, 2018 Ltr. Cox to Richman.

226. Hormel-owned Applegate’s website currently explains that cattle used in Applegate beef products are “100% grass-fed and pasture-raised,” and contrasts these practices with “typical industry” practices, which it says are “based on practices outlined by National Cattlemen's Beef Association.” *Applegate Humanely Raised vs Typical Industry Practices*, Applegate, <https://applegate.com/mission/animal-welfare>.

227. Applegate’s website further explains, “Our pasture-based system gives cattle plenty of room to graze and roam” and notes that “[i]n other systems, beef cattle spend the last three to six months of their lives on feed lots or in barns, with each animal getting between 40 to 500 square feet of space.” *Applegate Humanely Raised vs Typical Industry Practices*, Applegate, <https://applegate.com/mission/animal-welfare>.

228. Hormel’s “Animal Raising Classification” chart confirms that its Natural Choice products are “conventional[ly]” raised. HORM_DC00049738 (A1873).

229. This chart lists numerous steps that Hormel recognizes it could take to “enhanc[e]” the welfare of animals used in its products, including discontinuing the use of antibiotics, or seeking out animal welfare certifications. HORM_DC00049738 (A1873).

230. The chart shows that “conventional” meat, which Hormel uses for Natural Choice, has the lowest production cost of all categories listed, and shows that “conventional” production employs no “Animal Welfare Enhancements.” HORM_DC00049738-40 (A1873-75).

Fecal Matter and Pathogens at Hormel Slaughter Plants

231. On January 19, 2018, the USDA’s Food Safety and Inspection Service (“FSIS”) issued a noncompliance record to a Hormel slaughter plant which noted, “The establishment management is not preventing carcasses with fecal material from entering the chiller.” HORM_DC00008386 (A1880).

232. On August 17, 2017, FSIS issued a noncompliance record to a Hormel slaughter plant which noted, “The establishment management is not preventing carcasses with fecal material from entering the chiller” and “the establishment[’s] further planned actions are not effective or not being implemented.” HORM_DC00008612 (A1877); *see also* HORM_DC00008482 (A1883); HORM_DC00008566 (A1886).

233. On October 17, 2017, FSIS issued a noncompliance record to a Hormel slaughter plant after an inspector detected a “mound of fecal contamination” on a “finished” carcass. HORM_DC00166428 (A1889).

234. This noncompliance record states that the “establishment has failed to prevent fecal contamination from entering the chiller” and further noted that it was a repeat “performance issue”, and that the “preventative measure was ineffective and caused another failure.” HORM_DC00166428 (A1889).

235. On October 28, 2015, FSIS issued a noncompliance record to a Hormel slaughter plant noting that “At least 5 fecal (yellow shiny and greenish fibrous particles) spots were observed in a 6 inch by 8 inch area on the back of the sample carcass” and further noted that the “Establishment[’s] planned further actions were not effective in preventing this noncompliance.” HORM_DC00007574 (A1892).

236. A 2014 FSIS noncompliance record identifying “fecal matter in right kidney crypt” noted that, in “the last three months, USDA has documented eleven zero tolerance failures” and the slaughter plant’s attempted corrective actions “do not appear to be effective in controlling a zero-tolerance environment.” HORM_DC00166700 (A1895).

237. Another USDA document from 2015 noted that slaughter speed was a factor in increased fecal contamination. HORM_DC00007698 (A1898).

238. HORM_DC00111325 is a picture of a Jennie-O turkey with air sac and fecal contamination. HORM_DC00111325 (A1901).

239. The Affidavit of Joe Ferguson, a former USDA inspector at Hormel’s slaughter plant operated by QPP, states that, “I don’t think [the products from this plant are] wholesome or safe to consume.” ALDF000277, at 78 (A2623, 24).

240. A document produced by Hormel confirms that Joe Ferguson was in fact, formerly a USDA inspector at QPP. HORM_DC00100981, at 84 (A1910).

241. A USDA letter dated June 4, 2017 to Hormel’s Fremont, Nebraska pig slaughter plant states that salmonella was detected on 41.7% of “intact cuts” of pork. HORM_DC00166218, at 19 (A1614).

242. A USDA letter dated February 2, 2018 to the Fremont slaughter plant states that salmonella was detected on 40.0% of “intact cuts” of pork and 100% of certain other pork products. *HORM_DC00166208*, at 09 (A1938).

243. A USDA letter dated May 7, 2018 to a Jennie-O turkey slaughter plant states that salmonella was detected on 71.4% of mechanically separated turkey. *HORM_DC00166316*, at 18 (A1946, 48).

244. Multiple tests of pork and turkey at Hormel’s slaughterhouses have found that 100% of tested samples were positive for salmonella. *See e.g.*, *HORM_DC00135837*, at 39 (A1916); *HORM_DC00166296*, at 98 (A1603).

Chemical Disinfectants Applied to Carcasses that Become the Products

245. Hormel pork products are washed with chemical disinfectants including chlorine. *Gilbertson Dep.*, at 98:10-23 (A2846).

246. Wayne Farms washes chicken carcasses with peracetic acid to control “the incident of salmonella and campylobacter.” *Wayne Farms 30(b)(6) Dep.*, at 202:2-12 (A3060); *see also Hilgers Dep.*, at 94:2-17 (A2880).

247. Jennie-O uses peracetic acid as a disinfectant. *Kromm Dep.*, at 176:14-177:21 (A2975-76).

Use of Nitrates and Nitrites in the Natural Choice Products

248. Hormel adds celery juice powder or cultured celery juice powder to Natural Choice ham, chicken, and turkey. *HORM_DC00009079*, at 80-86 (A1958-64).

249. When Hormel adds celery juice powder to a product because it is high in nitrates and with “the intent is to introduce some nitrate.” *Forbes Dep.*, at 32:1-10; 49:20-50:7 (A2822, 28-29).

250. In *cultured* celery juice powder, the nitrates have already been converted to nitrites. Forbes Dep., at 31:15-32:3; 49:20-50:7 (A2821-22, 28-29).

251. Hormel adds cultured celery juice powder to the products in order to add nitrites. Forbes Dep., at 31:1-14; 32:4-10 (A2821-22).

252. Hormel acknowledges that its final Natural Choice products will test positive for nitrates and/or nitrites. Forbes Dep., at 50:8-18; *see also, id.*, at 53:10-18 (A2829, 32); HORM_DC00106040 (A1976).

253. Hormel explains on its website that, “when [celery] juice is used in concentrated form, it becomes an excellent meat preserver.” HORM_DC00070944, at 45 (A1979-80); *see also* Forbes Dep., at 39:5-7 (explaining that nitrate inhibits growth of certain bacteria) (A2825).

254. Hormel has recognized that “celery powder gives a loophole,” allowing it to make labeling claims about Natural Choice that would otherwise not be permitted by USDA. HORM_DC00064445 (A1983).

Use of Antibiotics in Animal Production and on Meat

255. An outline prepared for the Hormel Natural Choice Managers Meeting 2017 recognizes that, “Any large number of animals or humans leads to more risk for disease, so they are given antibiotic medication to treat the sick animals and prevent the most common diseases.” HORM_DC00054564, at 72 (A1994).

256. Wayne Farms explained that every single chicken sold to Hormel is administered gentamicin in the hatchery, and then virginiamycin as a preventative, to keep the birds from getting necrotic enteritis. Wayne Farms 30(b)(6) Dep., at 148:16-149:7; 149:9-12; 150:3-20 (A3040-42).

257. Virginiamycin is an antibiotic with growth promoting effects. HORM_DC00116067 (A2108); Wayne Farms 30(b)(6) Dep., at 152:9-15 (A3044).

258. Wayne Farms further confirmed that 100% of the chickens sold to Hormel receive ionophore antibiotics to prevent intestinal disease. Wayne Farms 30(b)(6) Dep., at 151:16-155:25 (A3043-47).

259. Wayne Farms further testified that its chickens sometimes receive other antibiotics for treatment including but not limited to penicillin, tetracycline, and lincomycin. Wayne Farms 30(b)(6) Dep., at 151:16-155:25 (A3043-47).

260. Hormel has stated that “[t]here’s a high, high likelihood” that any turkey used for Natural Choice products has been given antibiotics. Kromm Dep., at 168:20-169:20 (A2971-72).

261. Hormel acknowledged that a majority of turkeys raised for the Products are administered the antibiotic bacitracin, which Hormel uses for “feed efficiency and growth promotion” purposes. Kromm Dep., at 167:3-11 (A2970).

262. Hormel acknowledged that “Bacitracin would be classified as a growth promoter.” Kromm Dep., at 167:3-11 (A2970).

263. Hormel testified that the majority of turkeys that become Natural Choice products are administered either lasalocoid or monensin, which are ionophore antibiotics. Kromm Dep., at 187:2-20 (A2979).

264. A 2016 Hormel piglet instruction manual notes that “[e]ach piglet will receive an injection of an antibiotic.” HORM_DC00006319 (A1997).

265. Hormel assumes the cattle who become Natural Choice roast beef also receive antibiotics, but it does not know whether or how they are administered. Hilgers Dep., at 105:12-20; 125:18-126:5 (A2884; A2892).

266. Hormel has recognized that carcasses or parts of animals destined for the Products may contain antibiotic and other drug residues. HORM_DC00111274 (A2038).

267. In 2014, the Director of Technical Services and Live Production Research for Jennie-O Turkey Store, Michelle Kromm, recognized that it was a “major concern” to say Hormel products are “antibiotic free” because Hormel’s production methods only “ensur[e] we’d be below the USDA legal allowable levels not that the meat would be guaranteed to be antibiotic free.” HORM_DC00111274 (A2038).

268. In February 2016, a Staff Engineer in Hormel’s Quality and Process Control Department informed Natural Choice Senior Brand Manager Amy Sand that a batch of Natural Choice turkey products were withdrawn from the market after a “routine test that showed higher than normal levels of an approved farm medication in turkeys that were marketed.” HORM_DC00022758 (A2000).

269. Random tests conducted or commissioned by Hormel have detected the presence of antibiotic residues in carcasses from flocks or herds that were slaughtered and used in the Products. HORM_DC00069298 (A2006).

270. Residues of the antibiotic tulathromycin were detected by USDA testing of a sample collected from QPP on August 14, 2017. HORM_DC00069131 (A2017).

271. Another Hormel document shows thirteen positive test results for antibiotic residues at QPP from 2009-2015. HORM_DC00005533 (A2019).

272. An antibiotic analysis dated September 28, 2017 shows “presumptive positive” residue results for sulfonamide and tetracycline antibiotics in samples taken from QPP. HORM_DC00069419 (A2012).

273. A USDA letter to QPP dated June 14, 2017 states that a violative level of penicillin residue was detected by USDA at QPP. HORM_DC00166176-79 (A1593-96).

274. In March 2016, the Vice President of Quality Management wrote to Michelle Kromm about the detection of antibiotics in Jennie-O turkey meat, stating “The residue found was sulfadimethoxine.” HORM_DC00140788 (A2029).

275. Another USDA document dated September 9, 2015 refers to the detection of another antibiotic residue in a Hormel plant. HORM_DC00007728 (A2021).

276. A 2013 email shows that veterinarians for Jennie-O acknowledge that its turkeys “tested positive in the plant” for residues of the antibiotic chlortetracycline. HORM_DC00116129-31 (A2023-25).

277. A 2013 residue analysis shows that penicillin residues were detected in “turkey meat” from Jennie-O. HORM_DC00116134 (A2032).

278. Another 2013 analysis shows that penicillin and chlortetracycline were detected in “turkey meat” from Jennie-O. HORM_DC00116136 (A2035).

279. In a 2015 email from Dr. Kromm noted that “we’re slowly [losing] the battle of public perception” regarding antibiotic usage, and that Hormel needed to “adapt” their production methods. HORM_DC00111492 (A2041).

280. Hormel has established an “Antibiotic Working Group” to address “the growing public concern regarding antibiotics used in meat production.” HORM_DC00134622 (A2044).

Use of Other Pharmaceuticals in Animal Production

281. Hormel also acknowledges that the cattle who become Natural Choice beef receive hormones. Hilgers Dep., at 129:11-130:12 (A2896-97).

282. A document produced by Rabe's Quality Meat—the sole beef supplier for Natural Choice products—contemplates that hormones “will be administered in prescribed amounts.” RAB000175, at 77 (A2049).

283. Hormel expects and will accept chickens from its suppliers that have received GMO feed throughout their lifespans. Hilgers Dep., at 21:4-22:5; 51:6-15 (A2866-67, 77).

284. Likewise, it assumes that the beef cattle in its Products have been given GMO feed, although it has not determined if that is actually the case. Hilgers Dep., at 106:6-10 (A2885).

285. Hormel feeds animals used in the Products a variety of GMO products. Deposition of Corwyn Bollum (in his individual capacity) (hereafter, “Bollum (indv.) Dep.”), at 109:22-110:9 (A2806-07); Bollum 30(b)(6) Dep., at 64:2-20 (A2783).

286. Corn and soybean meal are “the predominant feed ingredients” and “[t]he majority of the corn and soybean meal that is out there is genetically modified,” so “certainly...that product would be fed to pigs.” Bollum (indv.) Dep., at 109:22-110:9 (A2806-07); Bollum 30(b)(6) Dep., at 64:2-20 (A2783).

287. Hormel documents confirm that “ractopamine is used in hog feed,” used by Hormel. HORM_DC00021428, at 34 (A2060).

288. Hormel acknowledges that ractopamine is used by “many” of its suppliers. HORM_DC00100033 (A2062); HORM_D00134387-88 (A2065-66).

289. Ractopamine is a feed additive in the beta agonist family, and is used by pig producers to increase feed efficiency (i.e., to produce more meat on less feed). Bollum (indv.) Dep., at 105:5-8; 108:3-4 (A2805, 06); HORM_DC00085673 (A2091).

290. In June 2016, ractopamine residue was detected in the carcass of a pig slaughtered by Hormel. HORM_DC00099911 (A2105).

291. At that time, Hormel's Director of Pork Procurement Corwyn Bollum acknowledged that any use of ractopamine in pigs will "most likely" leave detectable residues in the carcass of the slaughtered animals. HORM_DC00099911 (A2105).

292. Hormel-owned Applegate explains that it does not allow ractopamine use because it is banned in 160 countries and "[w]e don't believe it's natural." See <https://applegate.com/mission/animal-welfare>.

293. Every chicken and the majority of turkeys used in Natural Choice products are administered growth-promoting antibiotics. Wayne Farms 30(b)(6) Dep., at 148:25-149:7; 149:9-12; 150:5-7, 152:9-15 (A3040-42, 44); *see also* HORM_DC00116067 (A2108); Kromm Dep., at 167:3-11 (admitting use of antibiotics in turkey feed for feed efficiency and growth promotion purposes) (A2970).

294. Hormel routinely adds bleach to animals' drinking water to kill pathogens in the water. *See e.g.*, HORM_DC00141373, at 75 (A1635, 37).

295. Oxytocin, a hormone, is listed in multiple Hormel animal husbandry manuals as an approved drug to use to stimulate the uterine contractions of breeding sows used to breed animals for the Products. HORM_DC00006433; HORM_DC00006305; HORM_DC00006345 (A2110; A2112; A2115).

296. Dexamethazone, a steroid, is listed in multiple Hormel animal husbandry manuals as an approved drug to use to treat various health conditions. HORM_DC00006433; HORM_DC00006305; HORM_DC00006345 (A2110; A2112; A2115).

297. Chickens eat, as part of their feed, the rendered remains of other dead chickens. Wayne Farms 30(b)(6) Dep., at 119:25-121:14 (A3027-29).

298. “[T]here is that possibility” that chickens who become Natural Choice products have eaten their parents, grandparents, or other chickens they are related to. Wayne Farms 30(b)(6) Dep., at 121:8-22 (A3029).

The Facilities Used to Raise Animals for the Natural Choice Products

299. Hormel’s Director of Pork Procurement explained that the “majority of the pigs” Hormel slaughters for use in the Products are “from inside, confined” housing systems. Bollum (indv.) Dep., at 70:3-15; 72:22-73:6 (A2801).

300. Only a “fairly small percent” of pigs used in the Natural Choice products had any access to the outdoors. Bollum 30(b)(6) Dep., at 61:15-62:2 (A2780-81).

301. A 2015 “Animal Protein Animal Welfare Survey” noted that Hormel’s “Internal” supplier/brand of pork and turkey did not provide the animals “outdoor access”. HORM_DC00005215 (A2144).

302. Hormel prohibits turkeys from ever going outdoors. Kromm Dep., at 97:15-98:5; 99:3-25 (A2935-37); HORM_DC00004576, at 84-85 (A2130-31); HORM_DC00110502, at 507 (A2142).

303. Hormel believes that the beef industry guidelines its Natural Choice beef supplier follows allow for the use of feedlots to raise the cattle sourced for Natural Choice beef. Hilgers Dep., at 106:11-14 (A2885).

304. Chickens used in the Natural Choice products are raised entirely indoors in a “building that's about the length of a football field,” which can hold “tens of thousands – typically more than 20,000 chickens” inside. Hilgers Dep., at 34:13-22 (A2863).

305. Chickens raised in these buildings “never go outdoors or see natural light.” Hilgers Dep., at 12:1-5 (A2870).

306. During “brooding”—the “first days of...a chick’s life”—chicks raised for the products are given 24 hours-per-day of light, and “then the light is reduced” so that the birds have “something akin to moonlight for ... 18 hours a day,” and “six hours of darkness”, for the remainder of their lives. Wayne Farms 30(b)(6) Dep., at 58:24-61:2; 61:15-24; 62:7-18 (A3013-16).

307. Hormel’s chicken supplier, Wayne Farms, does not consider this lighting regimen to be natural. Wayne Farms 30(b)(6) Dep., at 59:16-60:3; 62:7-18 (A3016-17).

308. Wayne Farms employs a stocking density standard for chickens of nine pounds per square foot. Wayne Farms 30(b)(6) Dep., at 133:13-135:10 (A3032-34).

309. Full-size chickens raised by Wayne Farms weigh between 8.5 to 9.25 lbs. Wayne Farms 30(b)(6) Dep., at 133:13-135:10 (A3032-34).

310. Around the time chickens used in the Products reach slaughter weight, the facilities used to raise the chickens contain roughly one bird per square foot. Wayne Farms 30(b)(6) Dep., at 133:13-135:10 (A3032-34).

311. Hormel’s Director of Pork Procurement agreed that there was nothing “unusual” about piglets dying from being “crushed” in the farrowing crates in which they are confined with their mothers and littermates. Bollum (indv.) Dep., at 54:4-10 (A2798).

312. An Animal Welfare Video Assessment Form Hormel used to assess a video made public by Mercy for Animals, of a sow farm owned by The Maschhoffs, classified “piglet crushing” as a “normal acceptable practice[] for [the] production system”. HORM_DC00005022-23 (A2146-47).

313. A slideshow contains images of Jennie-O’s turkey confinement facilities. HORM_DC00110502, at 507 (A2142).

314. These facilities provides three feet of space per each 41 pound bird. Kromm Dep., at 63:9-12; 126:3-8 (A2927, A2949).

315. Hormel loses 4,000 to 8,000 turkeys per year from “piling” incidents in which the birds suffocate one another by piling on top of each other. Kromm Dep., at 132:23-133:8, 133:23-134:10 (A2952-54).

316. Around 89 percent of all sows used to produce piglets for Hormel’s products live in crates for their entire lives. Bollum (indv.) Dep., at 65:2-7 (A27800).

317. For the approximately 11 percent of sows in Hormel’s supply chain that are “loose sow housed”—not exclusively confined in crates—the pigs are confined in crates for 38% of their lives rather than their whole lives. Bollum (indv.) Dep., at 33:4-22 (A2795); 65:2-7 (A27800); Bollum 30(b)(6) Dep., at 58:9-25 (A2778-79); HORM_DC00157269, at 83 (A2163).

318. Hormel does not use “low sow housed”-derived pork in its Natural Choice products, but instead directs the product to “food service customers that pay a premium” for it. Bollum (indv.) Dep., at 57:13-17; 58:22-59:7; 65:2-2 (A2798-800); Bollum 30(b)(6) Dep., at 59:13-60:6 (A2778-79); HORM_DC00157269, at 83 (A2163).

319. HORM_DC00005292 shows a picture of a gestation crate similar to those used by Hormel. HORM_DC00005280, at 92 (A2200).

320. Hormel documents indicate that gestation crates range from 19-26” wide (average 24”) and 6.5-8’ long (average 7.0’). HORM_DC00157269, at 83 (A2163).

321. Sows that breed animals for use in the Natural Choice products are confined in gestation crates for their entire pregnancy (114 days) and then moved to another form of confinement, the farrowing crate, roughly 7-8’ by 30-30” wide. HORM_DC00157269, at 83 (A2163); HORM_DC00134489 (A2163); Bollum 30(b)(6) Dep., at 58:9-25 (A2777).

322. HORM_DC00134692 shows a picture of a farrowing crate similar to those used by Hormel. HORM_DC00134681, at 92 (A2239).

323. Sows that breed animals for use in the Natural Choice products remain in the farrowing crate for 3-4 weeks until they are re-impregnated and moved back to the gestation crate to start the cycle all over again. Bollum (indv.) Dep., at 33:4-22 (A2795); HORM_DC00085650, at 75 (A2093).

324. Some of these crates used by Hormel do not allow the sows to fully lie down on their sides. Bollum (indv.) Dep., at 62:23-63:14 (A2800).

325. Hormel explained that the “Public perception” of gestation crates “is bad” because they keep the sows “turn[ing] around” and “socially interact[ing].” HORM_DC00157269, at 82 (A2162).

326. Hormel’s Board of Directors was warned that if it continues to use these crates it “[r]isk[s] losing consumers.” HORM_DC00157269, at 303 (A2183).

327. Hormel’s digital engagement team produced a document explaining that “many individuals believe a gestation-crate-free environment is more humane.” HORM_DC00100640 (A2440); *see also* HORM_DC00066137, at 54, 56, 67, 71 (noting that companies should eliminate use of gestation crates because “as consumers become aware of the practice,” they develop a “mainly negative” view of it) (A2464, 66, 77, 81).

Inhumane Acts and Practices Used on Animals Raised for Hormel or Slaughtered at Hormel

Plants

328. One senior Hormel employee expressed concern that the “unwillingness to discipline” abusive employees at Hormel slaughter plants might signal an “underlying culture issue when it comes to animal welfare[.]” HORM_DC00085231 (A2258).

329. Similarly, a Hormel sow farm manager who visited The Maschhoffs, a Hormel pig supplier, observed that the supplier “has a big culture challenge regarding animal care issues” among “mid-level and up” employees. *HORM_DC00100409* (A2262).

330. Hormel continues to buy pigs from The Maschhoffs. *Bollum (indv.) Dep.*, at 157:10-15 (A2808).

331. In a May 2017 letter, Hormel Manager of Animal Welfare Eric Hogle, wrote to a driver that he was observed “lifting a non-ambulatory pig by the ears.” *HORM_DC00067740* (A2308).

332. This letter further noted that “this action would be considered an egregious act of abuse” and that “there was clear evidence of this egregious act verified by our video recording system.” *HORM_DC00067740* (A2308).

333. On October 25, 2016, Hormel Manager of Animal Welfare Eric Hogle wrote in an email that third-party auditors failed to identify “an egregious act of abuse.” *AS152205* (A2284).

334. In a June 2014 letter, Hormel Manager of Animal Welfare Eric Hogle wrote to a driver that he was observed striking a hog in the face several times with a paddle and then “grabbed the hog by both ears and began pulling the hog down the ramp.” *HORM_DC00100125* (A2310).

335. Arrowsight, Inc. conducts animal welfare audits of Hormel slaughter plants pursuant to its contracts with Hormel. *See. e.g.* *AS000014* (A2264).

336. Arrowsight, Inc. conducts these audits by reviewing video footage of Hormel slaughter plants and “using Customer approved criteria standards.” *See. e.g.* *AS000014*, at 22 (A2272).

337. A remote video audit document from September 14, 2018 describes the “potential occurrence” of an “[e]gregious [a]ct” in which a “Bobcat operator makes contact with a hog.” AS002774 (A2287).

338. A remote video audit document from April 11, 2018 documents the “potential occurrence” of a “Bird Thrown, Hit or Handled Inhumanely.” AS000253 (A2290).

339. A remote video audit document from July 28, 2017 documents the “potential occurrence” of four “Bird[s] Thrown, Hit or Handled Inhumanely.” AS207182 (A2293).

340. A remote video audit document from June 19, 2018 documents the “potential occurrence” of two “Bird[s] Thrown, Hit or Handled Inhumanely.” AS001447 (A2296).

341. A remote video audit document from May 17, 2017 documents the “potential occurrence” of five “Bird[s] Thrown, Hit or Handled Inhumanely.” AS192041 (A2302).

342. A remote video audit document from March 20, 2017 notes that a Jennie-O employee “appears to slam gate on birds.” AS179284 (A2299).

343. A remote video audit document from May 17, 2017 describes an employee who “appears to be sitting on bird to force it onto the conveyor” at a Jennie-O slaughter plant. AS191860 (A2305).

344. HORM_DC00067857 is a video that depicts a Hormel employee forcefully hitting a pig with an electrical stunner (A2312).

Procedures that Cause Pain and Tissue Damage to Animals Used in Natural Choice Products

345. With every one of its pigs, Hormel or its suppliers amputate the animals’ appendages, without any anesthetic. *See, e.g.*, Bollum (indv.) Dep., at 46:11-14 (A2797); Bollum 30(b)(6) Dep., at 51:4-8 (A2774).

346. Hormel instruction manuals demonstrate that workers in pig nurseries that work with animals used in the Products will use scissors to cut the tails cut off of piglets, to a length of no more than half an inch. *See e.g.*, [HORM_DC00006319 \(A1997\)](#).

347. One Hormel manual instructs workers to hold male piglets upside down, make incisions with a scalpel in the animals' scrotums, and pull out the animals' testicles with their fingers. [HORM_DC00006319 \(A1997\)](#).

348. The Hormel manual does not instruct workers to provide any analgesics to piglets who are subjected to these procedures. [HORM_DC00006319 \(A1997\)](#).

349. Hormel acknowledges "short (acute trauma), medium (post trauma inflammation) and long term (traumatic neuroma formation) pain associated with tail docking." [HORM_DC00100118 \(A2317\)](#).

350. These standard practices have been a subject of concern by Hormel's corporate customers, because these and similar practices are widely viewed as inhumane by consumers. [HORM_DC00139737 \(A2319\)](#); [HORM_DC00134504 \(A2314\)](#).

351. For example, because of the pain Hormel's methods can cause, Walmart has demanded Hormel only perform castration with "proper pain management" procedures. [HORM_DC00139737 \(A2319\)](#).

352. In January of 2017, Hormel asked a veterinarian to make comments on an undercover video that showed footage of tail docking and castration at a facility that supplies pigs for use in Hormel products. [HORM_DC00134504 \(A2314\)](#).

353. In that correspondence, Hormel's Director of Pork Procurement noted that "we are getting quite a bit of push back on the pain mitigation and lack of pain relief on castration." [HORM_DC00134504 \(A2314\)](#).

354. There, the veterinarian responded that he is “not comfortable stepping out and commenting on standard practices where local anesthesia is not used. I just can’t come up with way to make it really sound OK.” HORM_DC00134504 (A2314).

355. An undercover video of a pig breeding facility owned by The Maschhoffs, a Hormel pig supplier that raises animals for the Products, produced by ALDF shows: lameness (0:06); infections (0:10, 0:26, 0:28, 0:44); deceased animals (0:29, 0:55, 1:27, 2:47, 2:51); prolapses (0:33, 0:35, 0:39, 2:51); and an animal with a large open wound (0:42). ALDF043751 (A3169).

356. ALDF’s The Maschhoffs undercover investigation video also shows overcrowding (0:03, 4:00); the blunt force trauma method of euthanizing piglets (at 0:58, 1:12); ineffective euthanasia (at 1:07, 1:17, 3:13-3:49); castration by hand without anesthesia or analgesics (at 1:20); piglets trapped in floor slats that lead to waste collection pits (at 1:29-1:39); pigs left without food for 3 days (at 1:40-1:59); a sow trapped by her enclosure after attempting to maneuver out of it (at 2:09-2:22); and a pig covered in spray paint (at 2:38). ALDF043751 (A3169).

357. If not performed with adequate force and precision, the blunt force trauma method of euthanasia can fail to immediately kill the piglet, allowing the animal to slowly die. HORM_DC00099528 (A2428); ALDF043751 (at 0:58-1:17) (showing piglets conscious and moving minutes after being “euthanized” through blunt force trauma) (A3169).

358. The undercover video produced by ALDF shows a botched castration of a piglet, causing intestinal rupture in the piglet. ALDF043751 (at 1:20-1:25) (A3169).

359. Applegate’s website currently states “piglets have their tails cut and teeth trimmed because overcrowded conditions lead to pigs gnawing on each others’ tails. We make sure pigs have enough space and the proper environment so that this practice is not necessary.” *Applegate*

Humanely Raised vs Typical Industry Practices, Applegate, <https://applegate.com/mission/animal-welfare>.

360. Turkeys raised for Natural Choice have their beaks trimmed by a half and inch, and toes clipped. Kromm Dep., at 67:13-68:7; 123:2-8 (A2925-26, 46).

361. Chickens raised for Natural Choice have their beaks trimmed, and the spur on the back of their nail removed. Wayne Farms 30(b)(6) Dep., at 43:14-25; 50:25-51:3 (A3005, 09-10).

362. Beak trimming causes significant acute and chronic pain for birds. *Animal Welfare Issues in the Poultry Industry: Is There a Lesson to Be Learned?* (Journal article), ALDF004601, at 8-10 (2726, 33-35).

363. Applegate’s website notes that, “In other systems, turkeys often have toenails trimmed or ‘conditioned,’ to prevent the birds from harming each other. By providing more space, Applegate farmers lessen the chances of the birds scratching each other – eliminating the need for any toe-nail alterations.” *Applegate Humanely Raised vs Typical Industry Practices*, Applegate, <https://applegate.com/mission/animal-welfare>.

“Euthanasia” Practices at Facilities that Raise Animals for Use in the Products

364. Hormel’s approved methods for “euthanizing” animals that otherwise would be destined for the Natural Choice line include CO₂ gassing, cervical dislocation, blunt trauma, and maceration. HORM_DC00004592 (A2322); *see also* Hilgers Dep., at 22:6-24 (A2867).

365. Hormel acknowledges that certain of its approved euthanasia methods risk inflicting “pain and distress” before death. HORM_DC00004592 (A2322).

366. In the case of piglets, manual blunt force trauma is a common and accepted form of euthanasia for farms supplying Natural Choice products. Bollum (indv.) Dep., at 50:3-51:18 (A3173-74).

367. The manual blunt force trauma method is performed by holding a piglet's back feet and slamming its head on the floor or similar hard surface. HORM_DC00112312, at 95 (A2408).

368. If not performed correctly, it can fail to immediately kill the piglet, leading to a slow and painful death. HORM_DC00099528 (A2428); ALDF043751 (showing piglet conscious and moving minutes after being "euthanized") (A3169).

369. Cervical dislocation" is used for poultry, a technique that involves physically "stretching" or "rotating" live birds' heads away from their bodies, either by hand or using the back of a pair of scissors. HORM_DC00004514, at 18 (A2436).

370. Wayne Farms described cervical dislocation as a poultry euthanasia method where "you hold the bird's feet in one hand and you hold their neck in another, and you – there's a – there's just a way that you can pull and separate the neck," like a "bottle opener." Wayne Farms 30(b)(6) Dep., at 63:4-15 (A3018).

371. Hormel recognized that this method can result in decapitation, but further noted that "cervical dislocation can happen without having the bird basically, for lack of a better description, end up in two pieces. You can still successfully sever the spinal cord without decapitating the bird." Kromm Dep., at 104:4-20 (A2940).

372. Wayne Farms uses a macerator to euthanize recently-hatched chickens at hatcheries that it owns. Wayne Farms 30(b)(6) Dep., at 64:3-65:12 (A3019-20).

373. Wayne Farms described a macerator as follows: "a machine that has blades that cause instantaneous death when the chicks fall into it. . . . I would describe it more as a blender than a meat grinder." Wayne Farms 30(b)(6) Dep., at 64:3-65:9 (A3019-20).

Practices and Conditions at Plants that Slaughter Animals for Use in the Products

374. The USDA has repeatedly documented a “cadaver” “trend” at a large Jennie-O slaughter plant. *E.g.*, HORM_DC00166381 (A2499), HORM_DC00166384 (A2501).

375. In 2017, a USDA inspector documented an “ongoing issue” at a Jennie-O plant where “birds were exiting the stunner conscious....” HORM_DC00166384 (A2501).

376. In 2015, a USDA inspection of a Jennie-O plant found that multiple “birds exiting the CO2 chamber” were “displaying arched necks, blinking eyes and gasping.” HORM_DC00008015 (A2503).

377. USDA inspectors have also noted increases in the “number of cadavers,” *i.e.*, birds killed by entering the scalding alive, at the slaughter plant supplying chicken to Hormel for Natural Choice, up to 42 birds per shift. WF000428, at 29 (A2515).

378. Wayne Farms slaughter plants have their slaughter lines stopped on occasion, and when the kill line stops, water in the stun bath does not lower until after two minutes. Wayne Farms 30(b)(6) Dep., at 215:4-14 (A3066).

379. During that time, the 15-20 birds over the bath “hang there upside down within the stun bath,” . . . “fairly submerged” with their heads under the water. Wayne Farms 30(b)(6) Dep., at 212:12-213:23 (A3063-64).

380. A 2017 review of USDA humane handling violations by the Animal Welfare Institute found that Jennie-O is one of only two turkey companies that received a “significant number of humane handling citations” from 2015-2016, and one Jennie-O slaughterhouse received the most humane handling violations of any turkey plant in the nation. HORM_DC00069718, at 20 (A2529).

381. Hormel's pig slaughterhouse is regularly cited for "egregious inhumane" handling because its procedures fail to properly render the animals unconscious. *E.g.*, HORM_DC00005208 (A2532).

382. A QPP audit report dated October 23, 2017 documented an incident where a non-ambulatory pig was shot with a captive bolt gun in the head five times before losing consciousness, and noted that the pig made loud "vocalizations" in the process. QPP06437 (A2536).

383. In January 2016, QPP was issued a Notice of Suspension for a similar incident where a hog was shot with a captive bolt gun multiple times before being rendered insensible. HORM_DC00102311-12 (A2538-39).

384. A Hormel document shows that Hormel pig slaughter plants failed over a dozen third-party audits in 2013 due to instances of pigs regaining consciousness during the slaughter process. HORM_DC00134403 (A2547); *see also* HORM_DC00157658 (A2572).

385. A May 2014 Animal Welfare Audit noted a pig was observed conscious and blinking on the "bleed table." HORM_DC00037316, at 18 (A2542).

386. The Senior Vice President of one of Hormel's pig slaughterhouses admitted he would not doubt that documents Hormel produced showed a number of violations of the Humane Slaughter Act. Gilbertson Dep., at 167:20-168:22; 170:3-7 (A2849, A2850).

387. A Hormel document recognized that converting to CO₂ stunning would result in a "reduction in failed animal handling audits." HORM_DC00100696 (A2574).

388. This document further noted that it is "Hormel against the world" when it comes to its failure to use gas stunning, since all of its competitors converted to gas stunning. HORM_DC00100696 (A2574).

389. The document also acknowledged its electrical slaughter practices used on pigs are out of line with the rest of the industry and “[p]ublic perception of what is ‘right.’” HORM_DC00100696, at 703 (A2574, 81).

390. The Senior Vice-President of Operation of one of Hormel’s pork slaughterhouses recognizes that, from an animal welfare perspective, a “better” form of slaughter is to gas the pigs before they move down the line. Gilbertson Dep., at 66:20-67:1 (A2845).

391. Currently, one of the pig slaughterhouses used by Hormel uses an electrical stunning system. HORM_DC00100702 (A2580).

392. Hormel acknowledged that using gas to stun birds before placing them on the slaughter line is a “preferred harvest method.” HORM_DC00112596-97 (A2603-04).

393. Hormel continues to source chicken from a supplier that hangs conscious animals on the line upside down by their feet rather than using gas to stun them. Wayne Farms 30(b)(6) Dep., at 176:20-177:1 (A3057-58).

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CERTIFICATE OF SERVICE

I, David Muraskin, hereby certify that on January 11, 2019, I caused a true and correct copy of the foregoing Statement to be served on all counsel of record via CaseFileXpress.

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