

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ANIMAL LEGAL DEFENSE FUND,
Plaintiff,
v.
HORMEL FOODS CORPORATION,
Defendant.

Case No. 2016 CA 004744

Judge Fern Flanagan Saddler

Next Event: Opposition briefs, Jan. 25, 2019

PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY

Plaintiff Animal Legal Defense Fund (“ALDF”), by and through its undersigned counsel, files this Motion for Partial Summary Judgment as to Liability. As explained in the attached Memorandum of Points and Authorities, ALDF has ample evidence that Defendant Hormel Food Corporation’s (“Hormel’s”) “Make the Natural Choice” advertising campaign violates the D.C. Consumer Protection Procedures Act (“CPPA”). Since 2015, Hormel’s records reveal the campaign—particularly its natural, no preservative, and no added nitrate and/or nitrite claims—has misled consumers about the nature of Hormel’s “Natural Choice” products. The evidence demonstrates that consumers would read Hormel’s claims to communicate attributes the products do not have: That they are (1) “premium” products, produced using “artisanal” methods and do not contain preservatives, nitrates, or nitrites; (2) produced using animals raised without antibiotics; (3) produced using animals grown without hormones, GMO feed, or the like; (4) produced using animals who had access to the outdoors or pasture; and (5) produced using animals who were treated humanely. None of this is true. The animals that become Natural Choice meats are raised in the same industrialized manner as those used to produce the canned meat SPAM, with all of the substances described above (and more), trapped indoors and in cages, and subject to regular abuse. The Court should find Hormel is violating the CPPA. This would leave the only remaining issue to resolve the scope of the injunctive relief ALDF seeks—ALDF does not seek

damages in this matter, as it is proceeding as a non-profit, public interest organization working to protect the rights of the general public, as the CPPA authorizes it to do.

12-I CERTIFICATION: On January 9, 2019, ALDF informed Hormel of its intention to file this motion and sought consent; which was denied.

Date: January 11, 2019

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Leah M. Nicholls hereby certify that on this date, January 11, 2018, I caused a copy of the foregoing to be filed and served on all counsel of record *via* the Court's electronic filing system.

/s/ Leah M. Nicholls

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

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**PLAINTIFF ANIMAL LEGAL DEFENSE FUND'S MEMORANDUM IN SUPPORT OF
ITS MOTION FOR SUMMARY JUDGMENT**

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Plaintiff Animal Legal Defense Fund (“ALDF”) seeks summary judgment that Defendant Hormel Food Corporation’s (“Hormel’s”) “Make the Natural Choice” advertising campaign violates the D.C. Consumer Protection Procedures Act (“CPPA”). Since 2015, the campaign—particularly its natural, no preservative, and no added nitrate and/or nitrite claims—has purposefully misled consumers about the nature of Hormel’s “Natural Choice” products. The evidence demonstrates that consumers would read Hormel’s claims to communicate attributes the products do not have: That they are (1) “premium” products, produced using “artisanal” methods and do not contain preservatives, nitrates, or nitrites; (2) produced using animals raised without antibiotics; (3) produced using animals grown without hormones, GMO feed, or the like; (4) produced using animals who had access to the outdoors; and (5) produced using animals who were treated humanely. None of this is true. [REDACTED]

[REDACTED], with all of the substances described above and more, trapped indoors and in cages, and subject to regular abuse.

The Make the Natural Choice advertising campaign is the exact type of scheme the CPPA was designed to stop. D.C. Code § 28-3901(b). Moreover, beyond misleading D.C. consumers, the campaign has undermined ALDF’s advocacy and caused it to expend resources to counteract Hormel’s falsehoods. The Court should find Hormel is violating the CPPA.

I. Facts.

a. ALDF and this action.

ALDF filed this case to enjoin Hormel’s false and misleading representations in its Make the Natural Choice campaign because those advertisements harm ALDF and undermine its work to protect animals and the public from industrial meat companies’ misinformation; ALDF does not seek damages. ALDF is a non-profit, public interest organization that works to protect the lives and advance the interest of animals. Statement of Undisputed Facts (“SUF”) ¶ 3. One of its

primary areas of focus is animals used in industrial food production (“factory farming”) because of the extreme cruelty factory farming involves. SUF ¶¶ 7-9; Walden Decl. ¶ 7; Dillard Decl. ¶ 6; A2993-94 (ALDF Dep. at 120:25-121:8).¹ One of the ways ALDF seeks to protect these animals is to decrease consumer demand for factory farmed products. SUF ¶ 10. ALDF does this by providing consumers with truthful information about the abuse, wastes, and human health risks produced by factory farming, which ALDF believes will drive consumers from the products because consumers do not wish to support these practices. SUF ¶¶ 10-12, 16; Walden Decl. ¶ 8; Dillard Decl. ¶ 5-8; Putsché Decl. ¶ 4.

In 2015, ALDF began to work against Hormel’s “Make the Natural Choice” advertising campaign because the campaign relies on the exact type of falsehoods that lead consumers to purchase factory farmed meat when they would not knowingly accept factory farms’ production methods. SUF ¶¶ 13-16; Dillard Decl. ¶ 5-8. ALDF determined Natural Choice products come from the factory farms ALDF works against, but Hormel’s campaign uses “natural” and other marketing messages to hide the truth about the products and thereby increase Natural Choice’s sales. SUF ¶¶ 13-16. As a result, ALDF engaged in regulatory advocacy to encourage FDA and USDA to limit the use of “natural” on factory farmed meat labels, calling out Natural Choice’s and others’ misleading use of the claim. SUF ¶¶ 17-19; A2627-34 (ALDF document); Dillard Decl. ¶ 8-10; Putsché Decl. ¶ 6. ALDF also developed a public relations blitz based on an undercover investigation it conducted of a Hormel pig supplier to highlight the cruel and stomach-churning manner in which the pigs who become Hormel’s products, including Natural Choice, are raised. SUF ¶¶ 20-24; A3169²; Dillard Decl. ¶ 11-14; Putsché Decl. ¶ 7-12. Because ALDF is a donor-funded organization, and thus has highly limited resources, these expenditures

¹ The Appendix filed with this Motion is cited as “AXXXX.”

² Video *available at* <https://www.youtube.com/watch?v=z5VitkAhM7Y>.

impede ALDF's ability to advance its mission in other ways, including work to develop new legal protections for animals. SUF ¶¶ 34-39; Walden Decl. ¶ 18-21; Dillard Decl. ¶ 18-20.

Yet, the Make the Natural Choice campaign has persisted. Therefore, to address the harm to itself and the consumers whose interest in animal welfare it seeks to vindicate, ALDF filed this action to enjoin Hormel's misrepresentations. Without the injunction, ALDF has and will continue to advocate against the Make the Natural Choice campaign's misuses of "natural" and other marketing claims, which will continue to distract from ALDF's other work. SUF ¶¶ 40-41.³

b. Hormel's Make the Natural Choice campaign.

Hormel's "Natural Choice" line—which consists of ham, turkey, chicken, and beef lunch meats, breakfast meats, and other meat products—[REDACTED]. SUF ¶ 42; A2 (Hormel media guide). Hormel explains the brand's claim [REDACTED]. [REDACTED]. SUF ¶ 43.

Hormel's current advertising campaign for the brand [REDACTED] with the tagline "Make the Natural Choice." SUF ¶ 44; A3 (Hormel media guide). The campaign's objective [REDACTED]. [REDACTED] SUF ¶ 45; A14 (Hormel PowerPoint).⁴ [REDACTED]. [REDACTED] SUF ¶ 46; A3079-80 (Hormel Dep. at 103:5-25, 104:13-23). [REDACTED]. [REDACTED] SUF ¶ 47; A94; A16 (Hormel documents).

The campaign targeted consumers "[REDACTED]". [REDACTED] SUF ¶ 48; A102 (Hormel document).⁵ Hormel's advertising agency

³ See, e.g., Walden Decl. ¶¶ 23-24 (detailing resources devoted to addressing inhumane, high-speed pig slaughter program run in Hormel slaughterhouses, at odds with Natural Choice representations).

⁴ See A16; A37-92 (Hormel PowerPoints); A2902 (Kraft Dep. at 88:18-89:9).

⁵ See also A104; A119; A155; A219-25; A247; A282; A104; A309; A385; A420; A451; A465; A472-73 (Hormel

explained [REDACTED]
[REDACTED]. SUF ¶ 49; A491.⁶

Hormel's [REDACTED]
[REDACTED]

[REDACTED]
SUF ¶ 50; A506 (Hormel PowerPoint).⁷ I [REDACTED]
[REDACTED]

[REDACTED] SUF ¶ 51; A529, 33 (Hormel PowerPoint).⁸
[REDACTED]

[REDACTED] SUF ¶ 52; A553 (Hormel
email).⁹ [REDACTED]

[REDACTED] SUF ¶ 53; A559 (Hormel
PowerPoint). [REDACTED]

[REDACTED]
[REDACTED]
SUF ¶ 54; A102 (Hormel document). Those guidelines allow “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.” SUF ¶ 55. As discussed in § I(d), *infra*, Hormel [REDACTED]

PowerPoints); A454 (Hormel document); A2986 (Sand Dep. at 15:1-21); A3085 (Zavoral Dep. at 16:16-17, 17:2-6); A2910 (Kraft Dep. at 278:3-7).

⁶ See also A492 (Hormel email [REDACTED])

⁷ See also A2907 (Kraft Dep. at 207:21-208:11).

⁸ ALDF is not making any claims or seeking any relief with regard to Hormel's packaging.

⁹ See also A2-3 (Hormel media guide).

[REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 56; A216 (Hormel PowerPoint).

[REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 57; A206, 16 (Hormel PowerPoint).¹⁰

Because of the tagline Hormel settled on, “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. SUF ¶ 58; A3128-54 (listing claims in ads). [REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 59; A3087 (Zavoral Dep. at 76:12-14); A2912 (Kraft Dep. at 312:18-313:24). 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. “No preservatives”-type claims appear in at least 90 advertisements. SUF ¶¶ 60-61; A3128-54 (listing claims in ads).¹¹ Additional ads make variations on the claim that no nitrates or nitrites are added. SUF ¶ 64; e.g., A623; A627; A640 (Hormel ads).

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” [REDACTED]

[REDACTED]

¹⁰ See also *id.* A207-10 (same).

¹¹ See also SUF ¶¶ 62-63; A2911 (Kraft Dep. at 296:17-21) ([REDACTED]); A2-3, 5-6 [REDACTED]).

[REDACTED]. SUF ¶ 65; A657 (Hormel PowerPoint);
e.g., A828 (Hormel ad), A831 (Hormel website).

Hormel’s video advertisements play upon these same themes. For example:

- “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.” SUF ¶ 66; A833 (Hormel ad).
- “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.” SUF ¶ 67; A835 (Hormel ad).¹²

[REDACTED]
[REDACTED]

[REDACTED] SUF ¶ 69; A839 (Hormel email), A841 (same). [REDACTED]
[REDACTED]

[REDACTED] SUF ¶ 70; A841 (Hormel email); A845 (Hormel PowerPoint). [REDACTED]
[REDACTED]

[REDACTED] SUF ¶ 71; A872, 85,
92, 95. [REDACTED]

[REDACTED] SUF ¶ 72; A885.

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.” SUF ¶ 73; A831.

Other webpages linked to the “Our Story” webpage with the text, “Find out what drives our

¹² Other Make the Natural Choice commercials make similar references. SUF ¶ 68; A833; A835; A837.

commitment to higher standards and environmental sustainability.” SUF ¶ 74; A898. [REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 75; A2835 (Hormel Dep. at 63:12-21). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 76; A914 (Hormel PowerPoint).¹³

Current Make the Natural Choice ads make the same claims as prior ads:



The smaller text in the first ad states, “Thanks to our 100% natural bacon, you’ll relive the flavor of that first strip and preserve the memory—without the added preservatives.” SUF ¶¶ 77-78; A978. The second ad states, “you can still get your meat 100% NATURAL* and right in the grocery store.” SUF ¶ 79; A972. Hormel’s current video commercial features large text saying “100% NATURAL.” SUF ¶ 80; A837.¹⁴

c. The Natural Choice campaign successfully communicated to consumers that Natural Choice products have a broad range of positive attributes.

Following the first year of the campaign, [REDACTED]

[REDACTED]

¹³ See also A931; A968 (Hormel PowerPoints).

¹⁴ As discussed more below, in this ad Hormel placed a tiny image of a leaf above the “L” in “Natural.” SUF ¶ 80.

[REDACTED] SUF ¶ 81; A982. [REDACTED]

[REDACTED] SUF ¶¶ 82-85.¹⁵

In another Hormel-commissioned study [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 86; A576. [REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 87; A576. [REDACTED]

[REDACTED] SUF ¶ 88; A597.

A [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 89; A116;

A2987 (Sand Dep. at 171:12-22, 172:1-3). [REDACTED]

[REDACTED]

[REDACTED]. SUF ¶ 90; A116.

Hormel confirmed these findings with third-party research. [REDACTED]

[REDACTED]

¹⁵ A986 (email [REDACTED]
[REDACTED] ; A989 ([REDACTED]
[REDACTED]); A994 ([REDACTED]
[REDACTED]); A176 [REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 91; A998

(Hormel email attaching NMI study); A1002 (NMI study). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 92; A1009. [REDACTED]

[REDACTED]

[REDACTED] SUF ¶¶ 93-94; A1002.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 95; A1039.

[REDACTED]

[REDACTED] SUF ¶ 96; A191. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 97; A191.

A [REDACTED]

[REDACTED]

SUF ¶ 98; A1095, 105. [REDACTED]

[REDACTED] SUF ¶ 98; A1107.

[REDACTED]

[REDACTED]

[REDACTED]

SUF ¶ 99; A1204-05. [REDACTED]

[REDACTED] SUF ¶ 99; A1205.

[REDACTED]

[REDACTED]

[REDACTED]. SUF ¶¶ 100-04. A few representative responses include:

- [REDACTED] "SUF ¶ 100; A1220.
- [REDACTED] SUF ¶ 101; A1229.
- [REDACTED] SUF ¶ 102; A1230.
- [REDACTED] SUF ¶ 103; A1236 at 2281-Q
- [REDACTED] SUF ¶ 104; A1236 at 2451-Q.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 105; A466.¹⁶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 106; A1244-47; A2908-09 (Kraft Dep. at 234: 21-25; 236:11-15; 238:14-20).

[REDACTED]

[REDACTED] SUF ¶ 107; A1260-62, 64. [REDACTED]

[REDACTED]

[REDACTED]” SUF ¶ 108; A1259-64. [REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 109; A1253.

[REDACTED] SUF ¶ 110;

A1295-97 (Hormel PowerPoint). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 111; A1335-47 (Hormel document). [REDACTED]

[REDACTED] SUF ¶ 112; A1355, 59, 64-67

(Hormel PowerPoint).¹⁷ [REDACTED]

[REDACTED]

d. Hormel acted on its evidence of misled consumers.

Given the overwhelming evidence [REDACTED]

[REDACTED]

¹⁶ See also A473 (Hormel-commissioned consumer research PowerPoint); A1241-42 (Hormel sales data presentation).

¹⁷ See also, e.g., SUF ¶¶ 113-14; A1413-14 ([REDACTED]
[REDACTED]; A2910 (Kraft Dep. at 279:20-280:5).

[REDACTED]
[REDACTED]
[REDACTED] SUF ¶ 115; A3073 (Hormel Dep. at 36:3-9); A3086 (Zavoral Dep. 52:2-16). [REDACTED] SUF ¶ 116; A3090 (Zavoral Dep. at 166:15-20). 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.” SUF ¶ 117; *e.g.*, A972. [REDACTED]

[REDACTED] SUF ¶ 118; A2817-18 (Hormel Dep. at 27:23-28:4). [REDACTED]
[REDACTED]

[REDACTED] SUF ¶ 119; A3076 (Hormel Dep. 41:2-11); ([REDACTED])
SUF ¶ 120; A2913 (Kraft Dep. 314:14-315:6); or ([REDACTED]),
SUF ¶ 121; A3091 (Zavoral Dep. at 176:12-16).¹⁸

e. Hormel’s reports that consumers have broad expectations of “natural” meat that inform their purchases and are confirmed by third-party research.

Hormel’s analysis is confirmed by third-party research finding that consumers’ purchases of “natural” meat are motivated by broad expectations about what “natural” means. One study examined consumers’ perception of pork and found that 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.” SUF ¶ 124; A2669. Moreover, consumers associate natural with “less bad stuff,” including fewer chemicals and “risks” to the animal. SUF ¶ 125; A2670. “Several participants focused on the connection between all-natural and livestock raised

¹⁸ A [REDACTED] SUF ¶ 122; A2905 (116:2-23).
[REDACTED] SUF ¶ 123; A2903, 04, 05 (109:15-16, 110:15-111:7, 117:18-20).

free range.” SUF ¶ 126; A2670. People “also associated the term with the idea that the pigs from which these products were produced would be small-farm raised, fed natural foods, and/or fed organic foods.” SUF ¶ 127; A2670. A 2016 survey for ASPCA concluded: 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.” SUF ¶ 128; A2677-78.

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. SUF ¶ 129; A3095-110. When told 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. SUF ¶ 130; A3095, 110.¹⁹

f. ALDF’s experts confirm these consumer perceptions.

i. Dr. Dimofte’s literature review

Dr. Claudiu Dimofte, a tenured 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, conducted a literature review of what academic researchers conclude “natural” marketing communicates to consumers. SUF ¶¶ 132-34; Dimofte Decl. ¶¶ 2, 9-10. He explains that research repeatedly finds consumers seek out products labeled “natural” because they innately “assign positive attributes to brands that make natural claims.” SUF ¶ 135; Dimofte Decl. ¶ 13. These positive attributes include the absence of additives, but also extend to how the product is made. SUF ¶¶ 136-39; Dimofte Decl. ¶¶ 13-14. One study indicated consumers associate “natural” with the absence of “pollution[] or human intervention” in production. SUF ¶ 137; Dimofte Decl. ¶ 14. Another concluded consumers purchase “natural” goods because

¹⁹ Connected with Hormel’s preservative-free type claims, a 2016 Consumer Reports survey examined consumer perception of “no nitrates” labels. SUF ¶ 131; A2607, 18. It 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].” SUF ¶ 131; A2618.

they believe “natural” means the company “engages in socially responsible corporate behavior.”
SUF ¶ 139; Dimofte Decl. ¶ 14.

Further, Dr. Dimofte explains that advertising, [REDACTED] [REDACTED] is a powerful tool to link products to these understandings of “natural.” Because a natural claim is likely to be interpreted as differentiating the product from “non-natural” products, the claim will trigger the consumer to think through “their broad network of semantic associations with the term natural to understand the product, pushing consumers to associate the product with an expansive set of attributes. SUF ¶¶ 140-43; Dimofte Decl. ¶¶ 26, 29. Indeed, the literature acknowledges terms that have broad associations, such as “natural,” “invite” these types of inferences. SUF ¶ 144; Dimofte Decl. ¶ 29.

Those associations are difficult to dislodge. For instance, the academic research demonstrates “government-mandated disclaimers” fail to alter consumers’ understandings because consumers reject evidence that conflicts with their existing associations. SUF ¶¶ 145-47; Dimofte Decl. ¶¶ 30-31. Further, once an association is made, a consumer is less likely to seek out additional information. SUF ¶¶ 144-47; Dimofte Decl. ¶¶ 30-31. This is particularly true with natural claims because such claims imply the seller has “superior” “values,” causing consumers to view the producing company as more “trustworthy.” SUF ¶¶ 148-50; Dimofte Decl. ¶ 32.

Dr. Dimofte explains Hormel’s Make the Natural Choice campaign is designed to take advantage of these false impressions of its natural claim. SUF ¶ 151; Dimofte Decl. ¶¶ 34-41. He notes that Hormel “consistently primes [its] target consumers with the ‘natural’ construct” to “activat[e] the[] broad scheme of natural product benefits.” SUF ¶¶ 152-53; Dimofte Decl. ¶¶ 35-36. Moreover, the campaign also “describe[s] its product in terms of its lack of negative ingredients or additives.” SUF ¶ 154; Dimofte Decl. ¶ 37. Because consumers “associate[]” the

lack of additives with natural, these claims further prime consumers to think of the products as “natural” and connect them with broad associations. SUF ¶¶ 155-56; Dimofte Decl. ¶ 37.

ii. Dr. Maronick’s consumer survey.

Dr. Thomas Maronick served as the in-house expert for the Federal Trade Commission on marketing issues, including evaluating the “design and implementation of all consumer research” considered by the agency for seventeen years, and is now an Emeritus Professor of Marketing at Towson University. SUF ¶¶ 157-59; Maronick Decl. ¶¶ 2-3. He conducted a survey of Natural Choice lunchmeat consumers in the D.C. area to determine how they understand Natural Choice advertisements. SUF ¶ 160; Maronick Decl. ¶ 6.

Dr. Maronick found consumers interpret Hormel’s “100% Natural” claim to “communicate the products are ‘natural.’” SUF ¶ 161-64; Maronick Decl. ¶¶ 8-9, 16-18. That is, Hormel’s ads prime consumers to associate its Natural Choice products with being natural, which then connects the products to the consumers’ understandings of what natural means. Further, Dr. Maronick’s survey reveals that the natural claim and its associations are material to consumers’ purchasing decisions. SUF ¶ 165-66; Maronick Decl. ¶¶ 9, 20-21. These material associations include consumers’ beliefs that the animals were “raised without antibiotics,” “raised with pasture access,” and “humanely raised,” all of which Dr. Maronick found are important to their purchasing decisions. SUF ¶ 166; Maronick Decl. ¶¶ 9, 20-21.

In addition, Dr. Maronick’s survey also examined how consumers understand Hormel’s claim that Natural Choice products have “no preservatives.” He found that the “no preservatives” claim reinforces the natural claim. SUF ¶¶ 167-68; Maronick Decl. ¶¶ 25-26. Moreover, Dr. Maronick found consumers viewed Hormel’s “no preservatives” claim to mean the product did not have a variety of other attributes; namely, the product did not have nitrates or nitrites and that the animals were raised without antibiotics. SUF ¶¶ 169-70; Maronick Decl. ¶¶ 27-28. Further,

consumers indicated the “no preservatives” claim, and the qualities it suggests, were important to their purchasing decisions. SUF ¶ 171; Maronick Decl. ¶ 29.

Finally, Dr. Maronick conducted a controlled study to examine whether Hormel’s “disclaimers” in its ads have any impact on consumers’ perception of the products. SUF ¶ 172; Maronick Decl. ¶ 13. Dr. Maronick found no “statistically significant difference[]” in how consumers perceive Hormel’s “100% Natural” claim based on the absence or presence of the “disclaimer.” SUF ¶ 173-74; Maronick Decl. ¶¶ 21, 24.

g. Hormel’s production methods are entirely inconsistent with the expectations its Make the Natural Choice advertisements create.

- i. Natural Choice products are not produced in a meaningfully different way from Hormel’s other products, and even contain nitrates and nitrites, preservatives.*

Although the Make the Natural Choice campaign is designed to suggest Hormel uses “artisanal” production methods with “higher standards” that are “simple,” “clean,” and “wholesome,” § I(b), *supra*, that is far from the case. [REDACTED]

[REDACTED]

[REDACTED] *id.*, Hormel actually employs production methods dependent on the industrial techniques and preservatives consumers think Hormel does not use.

[REDACTED]

[REDACTED] SUF ¶¶ 175-76; A2873-74 (Hormel Dep. at 41:2-7, 42:4-7); A3022-24 (Wayne Farms Dep. at 67:21-68:6, 69:3-17). [REDACTED]

[REDACTED] SUF ¶ 177; A3054 (Wayne Farms Dep. at 173:22-25). [REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 178; A2930 (Hormel Dep. at 78:16-79:2).²⁰

²⁰ See also SUF ¶ 179-80; A1462 ([REDACTED]).

Hormel describes [REDACTED]

SUF ¶ 181; A1476 (Hormel document).²¹ [REDACTED]

[REDACTED].²² [REDACTED]

[REDACTED]²³ [REDACTED]

[REDACTED]. SUF

¶ 195; A1635 (Hormel document).²⁴ [REDACTED]

[REDACTED]

[REDACTED] SUF ¶¶ 196-97; A3037 (Wayne Farms Dep. at 142:6-22).

Unsurprisingly then, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. SUF ¶¶ 206-10; A2851-56 (Gilbertson Dep. at 199:15-221:11); A1655-1742, A1744, A1746 (Hormel documents); A3051 (Wayne Farms Dep. at 166:2-23). Below are images of animals Hormel has deemed acceptable for use:

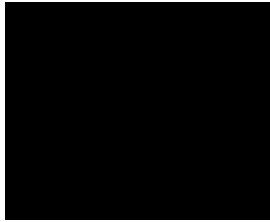
²¹ See also, e.g., SUF ¶ 182; A1480 [REDACTED].

See, e.g., SUF ¶¶ 183-94; A1483, A1492, A1495, A1497, A1501, A1506, A1512, A1517, A1521, A1526, A1530, A1533, A1536, A1541-42, A1546, A1553, A1555, A1559, A1561, A1587, A1590 (Hormel documents); A2943 (Hormel Dep. at 111:8-17).

²³ See, e.g., SUF ¶¶ 183, 188, 189, 191, 192; A1483, A1533, A1541, A1546 (Hormel documents); [REDACTED]. See, e.g., SUF ¶¶ 199-200; A2962 (Hormel Dep. at 155:13-160:18); A1593; A1601; A1613; A1624 (Hormel documents). Hormel's turkey processing facility, which produces turkey for Natural Choice, was recently linked to an outbreak of multidrug resistant pathogens that have resulted in at least one human fatality. SUF ¶¶ 201-02; *Limited Jennie-O Ground Turkey Product Recall*, Jennie-O, <https://www.jennieo.com/content/ground-turkey-recall> (last visited Jan. 9, 2019); *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>.

²⁴ [REDACTED]. See SUF ¶ 203; A3048 (Wayne Farms Dep. at 156:1-22); *Shrewd Moves: Like a Chess Match, Anticoccidial Rotation is a Game of Strategy at Wayne Farms*, Poultry Heath Today, <https://poultryhealthtoday.com/shrewd-moves-like-chess-match-anticoccidial-rotation-game-strategy-wayne-farms/> (last visited Jan. 9, 2019).

[REDACTED] SUF ¶ 204; A2957-59 (Hormel Dep. at 147:14-149:1); A1639, A1641, A1647-48 (Hormel documents).



SUF ¶¶ 211-14; A1664 (), 75 () (cropped); *see also* A2786-89 (Hormel Bollum Dep. at 84:25-85:18; 86:14-87:22) (confirming same).

. SUF ¶ 215; A2844 (Gilbertson Dep. at 62:10-18); A1775 (QPP document).



SUF ¶¶ 217-18; A2888-89 (Hormel Dep. at 118:19-119:19);

. *See* SUF ¶ 230; A1873-75

(Hormel document).

. *See* SUF ¶¶ 224-25; A3112-

13.

. SUF ¶¶ 224-25; A3112-13.



SUF ¶¶ 220-21; A3122-23 (Hormel’s response to Request for Admission No. 1);

A2779 (Hormel Dep. at 60:10-15) (“

”).²⁵

Hormel’s low-grade production methods do not only impact the animals, but also the end products.

²⁵ . SUF ¶ 222; A2796 (Bollum. at 42:21-43:8).

[REDACTED]

[REDACTED].²⁶ A USDA inspector who oversaw one of Hormel’s slaughterhouses issued a public statement that “I don’t think [the products from this plant are] wholesome or safe to consume.” SUF ¶¶ 239-40; A2623-23 (ALDF document); A1910 (Hormel document). [REDACTED]

[REDACTED] SUF ¶ 144; A1916, 1603 (Hormel documents), [REDACTED]

[REDACTED].²⁷ [REDACTED]

[REDACTED] SUF ¶¶ 245-47; A2846 (Gilbertson Dep. at 98:10-23); A2880 (Hormel Dep. at 94:2-17); A3060 (Wayne Farms Dep. at 202:2-12); A2975-76 (Hormel Dep. at 176:14-177:21).

In addition—even though in connection with its natural claims Hormel expressly advertises Natural Choice as containing “no added nitrates or nitrites” and having “no preservatives”—[REDACTED]

[REDACTED] See SUF ¶ 248; A1958-64 (Hormel documents). [REDACTED]

[REDACTED] SUF ¶ 249; A2822, 28-29 (Hormel Dep. at 32:1-10; 49:20-50:7). [REDACTED]

[REDACTED] SUF ¶ 250; A2821-22, 28-29 (Hormel Dep. at 31:15-32:3, 49:20-50:7).

[REDACTED]. SUF ¶ 251; A2821-22 (Hormel Dep. 31:1-14, 32:4-10). [REDACTED]

[REDACTED]. SUF ¶ 252; A2829, 32 (Hormel Dep. at 50:8-18, 53:10-18); *see also* A1976 (Hormel document).

²⁶ *See, e.g.*, SUF ¶¶ 231-37; A1877, A1880, A1883, A1886, A1889, A1892, A1895, A1898, A1903 (Hormel documents); *see also, e.g.*, SUF ¶ 238; A1901 (photograph of [REDACTED]).

²⁷ *See, e.g.*, SUF ¶¶ 241-43; A1614, A1938, A1948 (Hormel documents).

[REDACTED] As Hormel explains on its website, “when [celery] juice is used in concentrated form, it becomes an excellent meat preserver.” SUF ¶ 253; A1979-80; A2825 (Hormel Dep. at 39:5-7). [REDACTED]

[REDACTED]. SUF ¶ 254; A1983 (Hormel document).

While, through the Make the Natural Choice campaign, Hormel hoped consumers would see “natural” as differentiating the products, Hormel did nothing to distinguish the animals that became the products and the end products have the substances Hormel claims they do not.

ii. Natural Choice animals are also administered antibiotics.

[REDACTED] § I(c), *supra*, Hormel, [REDACTED]

[REDACTED]. SUF ¶ 255; A1994. [REDACTED]

[REDACTED] SUF ¶¶ 256, 258-59; A3040-47 (Wayne Farms Dep. at 148:16-149: 7; 149:9-12; 150:3-20, 151:16-155:25). [REDACTED]

[REDACTED] SUF ¶¶ 260, 263; A2971-72, A2979 (Hormel Dep. at 168:20-169:20, 187:2-20). A [REDACTED]

SUF ¶ 264; A1997. [REDACTED]

[REDACTED]. SUF ¶ 265; A2884, A2892 (Hormel Dep. at 105:12-20; 125:18-126:5).

[REDACTED]

[REDACTED] .²⁸ [REDACTED]

[REDACTED] . SUF ¶ 267; A2038.

[REDACTED]

[REDACTED]

[REDACTED] . SUF ¶ 279; A2041. [REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 280; A2044. [REDACTED]

[REDACTED]

iii. Natural Choice animals are grown using a variety of products like hormones and GMO-feed.

Beyond consumers' concern regarding antibiotic use, [REDACTED]

[REDACTED]

[REDACTED] § I(c), *supra*. Yet, not only are Natural Choice animals provided these items, Hormel administers a variety of other equivalent pharmaceuticals as well.

[REDACTED] . SUF ¶¶ 281-82; A2049 (supplier document); A2896-97 (Hormel Dep. at 129:11-130:12).

[REDACTED] . SUF ¶¶ 283-84; A2866-67, 77, 85 (Hormel Dep. at 21:4-22:5; 51:6-15, 106:6-10) (stating so for chicken and beef). [REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 286; A2806-07 (Bollum Dep. at 109:22-110:9); A2783 (Hormel Dep. at 64:2-20).

Yet, Hormel does not stop there. [REDACTED]

[REDACTED] SUF ¶¶ 287-88; A2060 (Hormel

²⁸ See, e.g., SUF ¶¶ 268-78; A2000; A1593-96; A2006; A2012; A2017; A2019; A2021; A2023-25; A2029; A2032; A2035.

PowerPoint); A2062; A2065-66 (Hormel emails). [REDACTED]
[REDACTED] SUF ¶ 289; A2805, 06 (Bollum Dep. at 105:5-8; 108:3-4);
A2091 (Hormel PowerPoint). Hormel’s own Applegate brand explains that it does not allow this
drug because it is banned in 160 countries and “[w]e don’t believe it’s natural.” SUF ¶ 292.²⁹

[REDACTED]
[REDACTED]
[REDACTED] SUF ¶ 291; A2105 (Hormel email).

[REDACTED]
[REDACTED]. SUF ¶ 293; A3040-42, 44 (Wayne Farms Dep. at 148:25-149:7;
149:9-12; 150:5-7, 152:9-15); see A2108 (Hormel document); A2970 (Hormel Dep. at 167:3-11)
(admitting use [REDACTED]).³⁰

Natural Choice is wholly inconsistent with consumers’ well-established expectations the
animals would not be grown through chemical manipulation and using GMOs.

iv. Natural Choice animals are trapped indoors and in cages.

Based on Hormel’s ads, consumers expect Natural Choice animals to at least have had
access to the outdoors, and likely pasture. § I(c), *supra*. Again, this is anything but the case.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

²⁹ <https://applegate.com/mission/animal-welfare> (emphasis added).

³⁰ [REDACTED] SUF ¶¶ 295-96; A2110; A2112; A2115.
[REDACTED] UF ¶ 297; A3027-29 (Wayne Farms Dep. at 119:25-121:14).
[REDACTED] SUF ¶ 298; A3029 (121:8-22).

[REDACTED] SUF ¶¶ 304-05; A2863, A2870 (Hormel Dep. at 12:1-5; 34:13-22).³¹ [REDACTED]

[REDACTED]. SUF ¶ 302; A2935-37 (Hormel Dep. at 97:15-98:5;

99:3-25); *see also* A2130-31 (Hormel document). Below is an image of this housing:



SUF ¶ 313; A2142 (Hormel document). [REDACTED]

[REDACTED] SUF ¶¶ 299-300; A2801 (Bollum Dep. at 70:3-15; 72:22-73:6); A2780-81 (Hormel Dep. at 61:15-62:2).³²

[REDACTED]
[REDACTED]

[REDACTED] SUF ¶¶ 308-10; A3032-34 (Wayne Farms Dep. at 133:13-135:10). [REDACTED]

[REDACTED] SUF ¶ 314; A2927, A2949 (Hormel Dep. at 63:9-12; 126:3-8).³³
[REDACTED]

[REDACTED] SUF ¶ 311; A2798 (Bollum Dep. at 54:4-10).³⁴ [REDACTED]

[REDACTED] SUF ¶ 315; A2952-54 (Hormel Dep. at 132:23-133:8, 133:23-134:10).

³¹ *See also* SUF ¶¶ 306-07; A3013-16 (58:24-61:2) (Wayne Farms Dep. [REDACTED]); A3016-17 (61:15-24; 62:7-18) (Wayne Farms Dep. [REDACTED]).

See also SUF ¶ 301; A2144 ([REDACTED]).

Applegate acknowledges that cows raised under “Typical Industry Practices”—[REDACTED]—do not have sufficient “room to graze and roam” because they live “on feed lots or in barns” with as little as 40 square feet of space each. SUF ¶ 227; <https://applegate.com/mission/animal-welfare>; *accord* SUF ¶ 303; A2885 (Hormel Dep. at 106:11-14).

³⁴ *See* SUF ¶ 312; A2146-47 (Hormel [REDACTED]).

Further still, [REDACTED]

[REDACTED]. SUF ¶¶ 316, 318;

A2798-80 (Bollum Dep. at 57:13-17; 58:22-59:7; 65:2-7); A2778-79 (Hormel Dep. Dep. at 59:13-60:6); A2163 (Hormel PowerPoint). [REDACTED]

[REDACTED]. SUF ¶¶ 320-21; A2163 (Hormel PowerPoint). [REDACTED]. SUF ¶ 324; A2800

(Bollum Dep. at 62:23-63:14). [REDACTED]

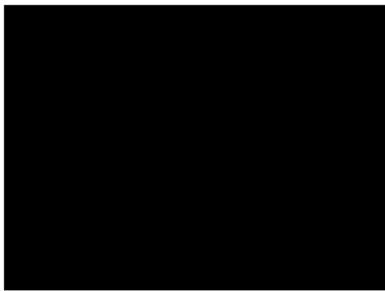
[REDACTED]. SUF ¶ 325; A2162 (Hormel PowerPoint). [REDACTED]

[REDACTED]. SUF ¶ 321; A2163 (Hormel PowerPoint); A3171. [REDACTED]

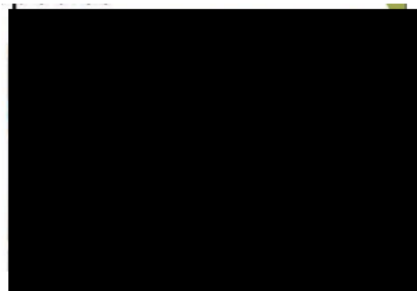
[REDACTED] SUF

¶¶ 321, 323; A2163 (Hormel PowerPoint); A2795 (Bollum Dep. at 33:4-22); A2777 (Hormel Dep. at 58:9-25); A2093 (Hormel PowerPoint).

The images below [REDACTED]:



SUF ¶ 319; A2200 ([REDACTED])



SUF ¶ 322; A2239 ([REDACTED]).

v. Natural Choice animals are abused.

Finally, while the studies show consumers take Hormel's natural claim to mean the animals were treated humanely, § I(c), *supra*, [REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 328; A2258. A

[REDACTED]

[REDACTED], SUF ¶ 329; A2262, yet [REDACTED]

[REDACTED] SUF ¶ 330; A2808 (Bollum Dep. at 157:10-15). [REDACTED]

[REDACTED] „³⁵

Indeed, mistreatment of animals is built into Hormel’s policies and procedures. [REDACTED]

[REDACTED]

[REDACTED]. *See, e.g.*, SUF ¶ 345; A2797 (Bollum Dep. at 46:11-14); A2774 (Hormel Dep. at 51:4-8). [REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 353; A2314.

[REDACTED]

[REDACTED]. SUF ¶¶ 346-47, 358; A1997; A3169 (showing botched castration of piglet, causing intestinal rupture).³⁶ [REDACTED]

[REDACTED]

[REDACTED] SUF ¶ 349; A2317.

[REDACTED]

[REDACTED]. SUF ¶ 351; A2319. As

[REDACTED], SUF ¶ 353; A2314;

[REDACTED], SUF ¶ 345; A2797

(Bollum Dep. at 46:11-14); A2774 (Hormel Dep. at 51:4-8).

³⁵ *See, e.g.*, SUF ¶¶ 331, 333-34, 337-44; A2284; A2287; A2290; A2293; A2296; A2299; A2302 ([REDACTED]); A2305 (email

[REDACTED]; A2308 ([REDACTED]); A2310 ([REDACTED]).

Video available at <https://aldf.org/article/investigation-reveals-cruelty-and-neglect-at-hormel-foods-pig-supplier/>.

[REDACTED]

[REDACTED]. SUF ¶¶ 360-61; A2925-26, 46 (Hormel Dep. at 67:13-68:7; 123:2-8); A3005, 09-10 (Wayne Farms Dep. at 43:14-25; 50:25-51:3). This produces acute pain and could be avoided altogether, SUF ¶ 362; A2732-35 (article), as Hormel’s Applegate brand’s website explains. SUF ¶ 363.³⁷ [REDACTED]

[REDACTED] *E.g.*, SUF ¶¶ 364-65; A2322; A2867 (Hormel Dep. at 22:6-24).

[REDACTED] SUF ¶¶ 366-67; A2408 (manual); A3173-74 (Bollum at 50:3-51:18). [REDACTED]

[REDACTED] SUF ¶ 368; A2428 (Hormel document); A3169 (showing piglet conscious and moving minutes after being “euthanized”).³⁸ [REDACTED]

[REDACTED] SUF ¶¶ 369-71; A2436; A2940 (Hormel Dep. at 104:4-20); A3018 (Wayne Farms Dep. at 63:4-15). [REDACTED]

[REDACTED] SUF ¶¶ 372-73; A3019-20 (Wayne Farms Dep. at 64:3-65:12).

[REDACTED] SUF ¶ 326; A2183. [REDACTED]

³⁷ <https://applegate.com/mission/animal-welfare>.

³⁸ Video available at <https://www.youtube.com/watch?v=z5VitkAhM7Y>.

SUF ¶ 327; A2440.³⁹ Indeed, an ALDF investigation of Hormel's largest pork supplier revealed sows severely injure themselves trying to escape the crates. SUF ¶¶ 355-56; A3169.⁴⁰

[REDACTED]

[REDACTED] SUF ¶ 380; A2529 (Hormel email). [REDACTED]

[REDACTED] SUF ¶ 381; A2532 (USDA document).⁴²

[REDACTED] SUF ¶ 390; A2845 (Gilbertson Dep. at 66:20-25). Likewise,

[REDACTED] SUF ¶ 389; A2574, A2581.

[REDACTED]

³⁹ See also SUF ¶ 327; A2464, 66, 77, 81 [REDACTED].

Video available at <https://www.youtube.com/watch?v=z5VitkAhM7Y>.

⁴¹ See, e.g., SUF ¶¶ 374-79; A2499 ([REDACTED]); A2501 [REDACTED]; A2503 (stating substantially the same); A2515 (U [REDACTED]; A3063-64, 66 (Wayne Farms Dep. at 215:4-14, 212:12-213:23) ([REDACTED]).

See, e.g., SUF ¶¶ 338, 381-85; A2536 ([REDACTED] s); A2538-49 ([REDACTED]; A2542; A2290; A2531; A2547 ([REDACTED]; A2572 (substantially same); see also SUF ¶ 386; A2849, A2850 (Gilbertson Dep. at 167:20-168:22, 170:3-7) ([REDACTED]).

[REDACTED]. SUF ¶ 391; A2803 (Bollum Dep. at 79:19-80:3).

[REDACTED] SUF ¶ 392; A2603-04, [REDACTED]

[REDACTED] SUF ¶ 393; A3057-58 (Wayne Farms Dep. at 176:20-177:1).

II. Standard of Review.

“[O]n a motion for summary judgment, a party must demonstrate that there is no genuine issue of material fact and that it is entitled to judgment.” *Bartel v. Bank of Am. Corp.*, 193 A.3d 767, 770 (D.C. 2018) (cleaned up) “[F]or there to be a genuine dispute, the evidence must be such that a reasonable jury could return a verdict for the nonmoving party,” “assuming that the jury would credit [the nonmoving party’s] statement and draw reasonable inferences in [their] favor.” *Sibley v. St. Albans Sch.*, 134 A.3d 789, 809 (D.C. 2016) (quotation marks omitted).

III. Argument.

a. ALDF has standing to bring these claims.

i. *The CPPA expressly empowers ALDF to proceed.*

The CPPA provides for organizations like ALDF to bring suit on behalf of the general public to “enforce[] [the] right to truthful information from merchants.” D.C. Code § 28-3901(c). The Act provides that “[a] nonprofit organization may, on behalf of itself or any of its members...and on behalf of the general public, bring an action seeking relief from the use of a trade practice [.]” *Id.* § 28-3905(k)(1)(C).⁴³ The Act further empowers a “public interest organization[,]...on behalf of the interests of a consumer or a class of consumers, [to] bring an action seeking relief from the use by any person of a trade practice...if the consumer or class could bring an action.” *Id.* at § 28-3905(k)(1)(D). A “public interest organization” is defined as “a nonprofit organization that is organized and operating, in whole or in part, for the purpose of

⁴³ A “nonprofit organization” is defined as “a person who ... [i]s not an individual; and [i]s neither organized nor operating, in whole or in significant part, for profit.” D.C. Code § 28-3901(a)(14).

promoting interests or rights of consumers.” *Id.* at § 28-3901(a)(15).

As a non-profit organization seeking injunctive relief to stop Hormel’s ongoing false and misleading advertising, ALDF’s claims plainly fall under D.C. Code § 28-3905(k)(1)(C). Moreover, ALDF pursues its mission, in part, by working to empower consumers with truthful information about how animal products are produced. *SUF* ¶ 10; *Walden Decl.* ¶ 8; *Dillard Decl.* ¶¶ 5-7. Therefore, its efforts to protect D.C. consumers from Hormel’s alleged unlawful misinformation campaign brings this case within § 28-3905(k)(1)(D).

D.C. courts have consistently held CPPA plaintiffs have standing to proceed “derived solely from a violation or an invasion of [their] statutory legal rights created by the CPPA.” *Grayson v. AT & T Corp.*, 15 A.3d 219, 248-49 (D.C.), amended, 140 A.3d 1155 (D.C. 2011); *Floyd v. Bank of Am. Corp.*, 70 A.3d 246, 253 (D.C. 2013).

Thus, D.C. courts have quickly dismissed standing challenges to non-profit organizations like ALDF bringing actions under §§ 28–3905(k)(1)(C) and (D) to protect themselves and the general public from misleading claims. *See, e.g., Nat’l Consumers League v. Bimbo Bakeries USA*, 2015 D.C. Super. LEXIS 5, at *11-15 (D.C. Sup. Ct., Apr. 2, 2015) (finding organization had standing under *Grayson* by virtue of being a non-profit organization alleging violation of the CPPA); *Nat’l Consumers League v. Gerber Prods. Co.*, 2015 D.C. Super. LEXIS 10, *16-18 (D.C. Sup. Ct., Aug. 5, 2015) (following *Bimbo* in finding organization had standing under subsection (k)(1)(C) because “the [DCCPPA] allows for non-profit organizational standing to the fullest extent” (internal citation omitted)). Indeed, this is how the CPPA was designed to function, with the statute declaring it should be “applied liberally to promote its purpose[s]” to “(1) assure that a just mechanism exists to remedy all improper trade practices and deter the continuing use of such practices; (2) promote, through effective enforcement, fair business

practices throughout the community; and (3) educate consumers to demand high standards and seek proper redress of grievances.” D.C. Code § 28-3901(b)-(c).

ii. ALDF also may proceed because Hormel’s false and misleading advertising injures ALDF.

Were the above not sufficient (and many D.C. courts have held it is), ALDF separately has standing because Hormel’s alleged illegal conduct under the CPPA has injured and continues to injure ALDF in addition to the consumers it is seeking to protect. Organizations like ALDF have standing to pursue CPPA claims when, as here, the defendant’s conduct impedes the organization’s activities, drains its resources, and conflicts with the organization’s mission. *Organic Consumers Ass’n v. Hain Celestial Grp., Inc.*, 285 F. Supp. 3d 100, 102-03 (D.D.C. 2018). For example, where an organization’s programs advocating against genetically modified ingredients were “perceptibly impaired” by the defendant’s misleading labeling, “creating a need to counteract the [defendant’s] assertedly illegal practices, and requiring still more programmatic efforts[,]” the plaintiff organization had standing to proceed with its CPPA claims. *Id.* (internal citations and quotations omitted). Here, as in *Hain Celestial*, ALDF’s advocacy against factory farming has been “perceptively impaired” by Hormel’s Natural Choice campaign and ALDF has been forced to use significant programmatic resources to counteract Hormel’s alleged unlawful practices. SUF ¶¶ 15, 17-25, 28-30; Walden Decl. ¶¶ 10, 13-17, 22-24; Dillard Decl. ¶¶ 8-16, 19. *See also Equal Rights Ctr. v. Props. Int’l*, 110 A.3d 599, 603-04 (D.C. 2015).

Judge Kravitz held that ALDF adequately plead standing because ALDF “alleged that Hormel’s advertising activities conflict with ALDF’s mission, which includes consumer education and advocacy, and that ALDF has expended and will continue to expend resources in response to Hormel’s advertising beyond the costs of the present litigation.” Order Denying Def.’s Mot. to Dismiss, at 7-8. These allegations have now been borne out by record evidence.

1. *Hormel's illegal conduct has frustrated ALDF's mission and impeded its activities.*

Hormel's misleading Natural Choice marketing conflicts with and frustrates ALDF's mission. *D.C. Appleseed Ctr. for Law & Justice, Inc. v. D.C. Dep't of Ins.*, 54 A.3d 1188, 1209-10 (D.C. 2012) (finding conflict between defendant's order allowing charitable healthcare provider to maintain unnecessary surplus, and plaintiff's mission "to improve access to health care for D.C. residents"). ALDF's mission includes fighting factory farming. SUF ¶ 7; Walden Decl. ¶¶ 7-10; Dillard Decl. ¶¶ 4, 7. ALDF engages in a wide array of work to further this goal, chiefly by empowering consumers with truthful information to decrease demand for factory-farmed products. SUF ¶¶ 10-12; Walden Decl. ¶¶ 8, 11; Dillard Decl. ¶¶ 5-7. ALDF's mission thus conflicts with and is frustrated by Hormel's misleading advertising of its Natural Choice products as "natural," without "preservatives," and the like, which inflate consumer demand for these factory-farmed products and disguise that they come from the very operations ALDF advocates against. SUF ¶¶ 26-27; Walden Decl. ¶ 10; Dillard Decl. ¶¶ 5-8. ALDF's messages now must compete with Hormel's vastly more pervasive, misleading ads about the "naturalness" and other "higher standards" attributable to its factory-farmed products, which threatens to drown out ALDF's public advocacy. SUF ¶¶ 32-33; Dillard Decl. ¶¶ 5-8; Putsché Decl. ¶ 4.

ALDF's work to promote transparency in industrial animal agriculture, and to achieve greater protections for farmed animals, including by dampening consumer demand through transparency, is impeded by Hormel's false and misleading ads portraying its industrial products as pastoral and premium. SUF ¶¶ 26-27, 31-33; Walden Decl. ¶ 11; Dillard Decl. ¶¶ 5-8; *see also Hain Celestial*, 285 F. Supp. 3d at 102-03 (plaintiff organization's advocacy against GMOs impaired by defendant's alleged misleading marketing of foods containing them); *D.C. Appleseed*, 54 A.3d at 1208 (injury to organization's activities where defendant's action "would

undo the dogged and concrete work that Appleseed has undertaken over a number of years”).

2. *Hormel’s illegal conduct diverts and drains ALDF’s resources.*

Hormel’s misleading advertising of its Natural Choice products has drained ALDF’s resources, as ALDF was compelled to engage in activities to combat it. *Cf.* Walden Decl. ¶ 13; Dillard Decl. ¶¶ 7-8. An organization is injured where it “devotes significant additional resources” to its ongoing projects because of illegal conduct, *D.C. Appleseed*, 54 A.3d at 1208, and where an organization engages in “more programmatic efforts” to counteract illegal conduct, *Hain Celestial*, 285 F. Supp. 3d at 102-03. ALDF has done both in response to Hormel.

As part of ALDF’s ongoing efforts to provide the public information regarding factory farmed meat and counteract false advertising and labeling, ALDF dedicated a wealth of resources to counteract Hormel’s misleading messages. SUF ¶¶ 15, 17-25, 28-30, 35. This included developing regulatory and public advocacy relating to Hormel’s and others’ misleading natural claims⁴⁴ and, most prominently, an undercover investigation of a Hormel pig supplier, run by “The Maschhoffs,” revealing to consumers the cruel and unnatural facilities from which Hormel’s products originate. Dillard Decl. ¶¶ 9-13; Walden Decl. ¶ 13; Putsché Decl. ¶¶ 6-12.⁴⁵ ALDF specifically focused on Hormel in its public communications about the investigation because Hormel is a household name and was one of The Maschhoffs’ largest customers, and ALDF wanted to provide the public with information about the treatment and environments of pigs raised for Hormel to inform consumers’ purchasing decisions. SUF ¶ 23; Putsché Decl. ¶ 9. After the release of the investigation, ALDF continued devoting resources to Hormel-related activities to publicize Hormel’s cruel treatment of pigs. SUF ¶ 25; Putsché Decl. ¶ 10.

⁴⁴ Between the winter of 2015 and May 2016, ALDF devoted resources to draft and publicize comments to the Food and Drug Administration calling for regulation to stop the misleading use of “natural” on the labels of industrially raised meat and poultry products, specifically highlighting Hormel’s Natural Choice products’ “100% Natural” claim as misleading. SUF ¶¶ 17-19; Dillard Decl. ¶¶ 9-10; Putsché Decl. ¶ 6; A2627-34; A2767; A2769.

⁴⁵ See also Dillard Decl. ¶ 14 (documenting attorney time devoted to this work); Putsché Decl. ¶¶ 5, 7-8, 11 (documenting communications time and expenses devoted to this work).

ALDF also simultaneously poured *more* resources into its programmatic work by increasing its efforts to oppose Ag-Gag laws that snuff out undercover investigations of industrial agriculture—an indispensable tool, made all the more important by the need to hold companies like Hormel accountable to the public for their conduct and misleading advertising. SUF ¶¶ 28-29; Walden Decl. ¶¶ 14-17; *see also Molovinsky v. Fair Emp’t Council of Greater Wash., Inc.*, 683 A.2d 142, 147 (D.C. 1996) (finding standing when organization was required to increase counseling of discrimination victims and educational efforts “to counteract the negative message, sent to the public by” defendant’s sexual harassment).

Because of ALDF’s limited resources, these funds dedicated to Hormel-related work could not be spent on numerous other mission-driven projects to gain new protections or statuses for animals. SUF ¶¶ 36-39; Walden Decl. ¶¶ 18-19; Dillard Decl. ¶¶ 18-20; Putsché Decl. ¶¶ 13-14; *see also Equal Rights Ctr.*, 110 A.3d at 605 (organization’s commitment of “scarce resources...to counteract...discriminatory conduct” demonstrated standing). Had ALDF not been compelled to commit its resources to counteract Hormel’s misleading marketing, it could have pursued numerous other organizational efforts to further its mission. SUF ¶¶ 37-39; Walden Decl. ¶¶ 19-20; Dillard Decl. ¶¶ 17-19; Putsché Decl. ¶¶ 13-14 (detailing lost opportunities including new legal protections for Florida Black Bear and advocacy for dogs trapped in cars).

3. Unless Hormel stops, ALDF will continue to be harmed.

ALDF and the animals and consumers it seeks to protect will continue to be harmed if the Make the Natural Choice campaign is left unchecked. SUF ¶¶ 40-41 Walden Decl. ¶¶ 22-24 (explaining how Hormel’s misleading ads continue to harm ALDF’s mission-driven work). Without an injunction against the campaign, ALDF has been and will continue to be compelled to devote resources to counteract Hormel’s ads. For example, ALDF has engaged in legal and public advocacy against the inhumane, high-speed pig slaughter pilot program run in Hormel’s

slaughter plants, in part based on the fact that it is at odds with Hormel’s representations Natural Choice. SUF ¶ 39; Walden Decl. ¶¶ 23-24; *see also D.C. Appleseed*, 54 A.3d at 1208 (standing when unlawful conduct, left unchallenged, would force organization to continue devoting resources to advocacy). ALDF will continue to engage in advocacy such as this so long as Hormel’s false and misleading advertising exists to inflate demand for factory farmed products. SUF ¶¶ 40-41; Walden Decl. ¶ 23. If Hormel were to cease its Natural Choice advertising campaign, however, ALDF would not be forced to spend these same resources, and could focus them elsewhere to advance its mission in other ways. SUF ¶¶ 40-41; Walden Decl. ¶ 25.

b. The Make the Natural Choice campaign violates the CPPA.

The record establishes beyond any genuine dispute of material fact that the Make the Natural Choice campaign violates D.C. Code § 28-3904(a), (d), (e), (f) & (f-1).⁴⁶ To establish a violation of these provisions, ALDF neither needs to demonstrate a contractual relationship, nor an exchange of money, nor that any particular consumer was “misled, deceived or damaged.” D.C. Code § 28-3904 (preamble); *see also Byrd v. Jackson*, 902 A.2d 778, 781 (D.C. 2006). To resolve whether there is “an alleged unfair trade practice,” the question is solely whether the practice would mislead a “reasonable consumer” in a way that violates the CPPA. *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 442 (D.C. 2013) (cleaned up).

A plaintiff must prove the elements of its CPPA claims to the “same burden of proof as [an equivalent] common law claim.” *Osbourne v. Capital City Mortg. Corp.*, 727 A.2d 322, 325 (D.C. 1999). The Court of Appeals specifically disavowed the pleading and proof standard of common law fraud. *Saucier*, 64 A.3d at 442, 444; *see also Ft. Lincoln Civic Ass’n v. Fort Lincoln New Town Corp.*, 944 A.2d 1055, 1073 n.20 (D.C. 2008). Thus, here, where ALDF need

⁴⁶ ALDF also alleges a claim under D.C. Code § 28-3904(h), and will pursue that claim at trial if necessary, but to ease the Court resolving the merits on summary judgment ALDF does not present that claim here.

not prove scienter to prove the claims, the applicable standard is proof by a preponderance of the evidence. *Jackson ex rel. Smith v. Byrd*, 2004 WL 3130653, at *12 & n.54. (D.C. Super. Ct. May 11, 2004), *aff'd sub nom. Byrd v. Jackson*, 902 A.2d 778 (D.C. 2006).

i. Hormel's natural claims mislead consumers about the source, characteristics, ingredients, benefits, standard, quality, grade, or style of Natural Choice products, violating D.C. Code § 28-3904 (a), (d).

Under D.C. Code § 28-3904(a), (d) an entity violates the CPPA if it “represents that goods or services” have a “source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not,” or the “goods or services” are of a “standard, quality, grade, style, or model” they are not. Applying these terms should be a “straightforward task” based on the plain text. *Velcoff v. MedStar Health, Inc.*, 186 A.3d 823, 827 (D.C. 2018). Once any such falsehood is shown, a violation is proven.

The evidence establishes Hormel’s natural claims communicate Natural Choice products are: (1) “premium” products, produced using “artisanal” production methods and do not contain preservatives, nitrates, or nitrites; (2) produced using animals raised without antibiotics; (3) produced using animals grown without hormones, GMO-feed or the like; (4) produced using animals that had access to the outdoors; and (5) produced using animals who were treated humanely. None of this is true. In other words, Hormel portrays Natural Choice has having certain sources, characteristics, ingredients, benefits, standards, qualities, grades, and styles the products do not, violating D.C. Code § 28-3904(a), (d).

1. “Natural” represents certain sources, characteristics, ingredients, benefits, standards, qualities, grades, and styles.

According to Hormel, [REDACTED]

[REDACTED]. *See, e.g.*, SUF ¶ 45; A14 (Hormel PowerPoint); A2902 (Kraft Dep. at 88:18-89:9). [REDACTED]

[REDACTED] *See, e.g.*, SUF ¶¶ 48, 106; A102 (Hormel

document); A104 (Hormel PowerPoint); A491 (Hormel PowerPoint). [REDACTED]
[REDACTED]
[REDACTED]. See, e.g., SUF ¶¶ 81-85, 89,
99; A982; A986; A989; A994; (Hormel emails); A176; A116; A1205 (Hormel PowerPoints).

[REDACTED]
[REDACTED]
[REDACTED]. See, e.g., SUF ¶ 86; A576 ([REDACTED])
[REDACTED]
[REDACTED]
[REDACTED]); SUF ¶ 92; A1009 ([REDACTED])
[REDACTED]; SUF ¶ 97; A191 (similar); see also § I(c), *supra* (providing additional support).

This consumer data is further confirmed by third party research and ALDF’s experts, who also establish “natural” is linked to consumers’ belief that the products do not have nitrates, nitrites, or preservatives. §§ I(e), (f), *supra*; see also *Friends of the Earth v. Sanderson Farms, Inc.*, No. 17-cv-03592, Order Denying Motion to Dismiss, A3160-65 (C.D. Cal. Dec. 3, 2018) (plaintiffs pled that “natural” claim was misleading in light of company’s antibiotic use, animals did not go outdoors, and synthetic pharmaceuticals were used in raising the animals).

2. *Natural Choice products lack these sources, characteristics, ingredients, benefits, standards, qualities, grades, and styles.*

Far from being different and “premium,” Natural Choice is produced “conventionally,” not as a consumer would expect “natural” products to be made. [REDACTED]

[REDACTED]
[REDACTED]. [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. § I(g)(i), *supra*.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. § I(g)(ii), *supra*.

[REDACTED]

[REDACTED]

[REDACTED]. § I(g)(ii), *supra*.

[REDACTED]

[REDACTED]

[REDACTED]. § I(g)(iv), *supra*.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. § I(g)(v), *supra*.

[REDACTED]

[REDACTED]

[REDACTED]. SUF ¶¶ 50, 57, 66; A506 (Hormel PowerPoint); A205, A216 (same);

A833 (Hormel ad). [REDACTED]

would regard the false impressions left by its Make the Natural Choice campaign “as important,” an independent basis to find the falsehoods material. § I(b), (c), *supra*; *see also Beck*, 994 F. Supp. 2d at 95-96 (summary judgment where defendants’ employees “should have known” “the potential for confusion among consumers”). In Hormel’s words, [REDACTED]

[REDACTED]
[REDACTED] A116 (Hormel PowerPoint).

Hormel’s natural claim created false impressions about numerous “material facts,” violating D.C. Code § 28-3904(e), (f), (f-1).

iii. Hormel has failed to correct its falsehoods.

Hormel has failed to counteract the false impressions it knows its natural claims are generating. *Cf. Beck*, 994 F. Supp. 2d at 96 (summary judgment granted where [the defendant] did not make an “explicit disclosure” that was “sufficient” so consumers would not be misled). [REDACTED]

[REDACTED]

[REDACTED] § I(d), *supra*. [REDACTED]

[REDACTED] SUF ¶ 118; A2818 (Hormel Dep. at 28:4-9)—including its tagline, [REDACTED]

[REDACTED] SUF ¶¶ 119-23; A3091 (Zavoral Dep. at 176:12-13);

A2912 (Kraft Dep. at 312:18-313:24). Further, [REDACTED] whether its new “disclaimers”—[REDACTED]

[REDACTED] and ALDF’s experts demonstrate they are not. § I(f), *supra*.

iv. Hormel’s “no preservatives,” and “no added nitrates/nitrites” claims violate D.C. Code § 28-3904(a), (d), (e), (f), (f-1).

Hormel’s additional claims that Natural Choice products have “no preservatives” or “no added nitrates/nitrites” violates the same CPPA provisions. [REDACTED]

[REDACTED]. § I(g)(i), *supra*.

Unsurprisingly, ALDF's expert found that D.C. consumers understand Hormel's preservative-free type claims to mean the absence of nitrates, nitrites, and preservatives, which was important to their purchasing decision. SUF ¶¶ 169, 171; Maronick Decl. ¶¶ 8, 27, 29. This is consistent with a 2016 Consumer Reports survey that found that 63% of consumers "think a 'no nitrates' label means no nitrates at all." SUF ¶ 131; A2607, 18. [REDACTED]

[REDACTED].
See, e.g., SUF ¶¶ 100-04; A1220 (Hormel consumer feedback); A1229-30 (same); A1236 at 2281-Q, 2451-Q (Hormel spreadsheet). Hormel has made no effort whatsoever to amend its claims to make clear the truth about its products. It is plain Hormel's claims that Natural Choice products lack preservatives, nitrates and/or nitrites mislead reasonable consumers about what is in the product, violating D.C. Code § 28-3904(a)-(b), and that these claims were material, thus also violating D.C. Code § 28-3904(e), (f), (f-1).

IV. Conclusion.

For the foregoing reasons, the Court should find that ALDF has standing and has shown Hormel's Make the Natural Choice campaign violates the statute, only leaving for further briefing the proper scope of the injunctive relief to stop Hormel's unlawful conduct.

Date: January 11, 2019

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CERTIFICATE OF SERVICE

I, Leah Nicholls, hereby certify that on January 11, 2019, I caused a true and correct copy of the foregoing Motion to be served on counsel of record via CaseFileXpress.

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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. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

46. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

48. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

49. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

50. [REDACTED]

[REDACTED]

[REDACTED]

51. [REDACTED]

[REDACTED]

52. [REDACTED]

[REDACTED]

53. [REDACTED]

[REDACTED]

54. [REDACTED]

[REDACTED]

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. [REDACTED]

[REDACTED]

[REDACTED]

57. [REDACTED]

[REDACTED]

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. [REDACTED]

[REDACTED]

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. [REDACTED]

[REDACTED]

63. [REDACTED]

64. Additional ads in the Make the Natural Champaign 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. [REDACTED]

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. [REDACTED]

70. [REDACTED]

71. [REDACTED]

72. [REDACTED]

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. [REDACTED]

76. [REDACTED]

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. [REDACTED]

[REDACTED]

[REDACTED]

82. [REDACTED]

[REDACTED]

[REDACTED]

83. [REDACTED]

[REDACTED]

[REDACTED]

84. [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

87. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

90. [REDACTED]

[REDACTED]

[REDACTED]

91. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

93. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

95. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

97. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

100. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

104. [Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

112. [REDACTED]

[REDACTED]

[REDACTED]

113. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Hormel's "Disclaimers"

115. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

116. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

118. [REDACTED]

[REDACTED]

119. [REDACTED]

[REDACTED]

120. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

123. [REDACTED]

[REDACTED]

[REDACTED]

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. [REDACTED]

130. [REDACTED]

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. [REDACTED]

176. [REDACTED]

[Redacted]

177. [Redacted]

[Redacted]

178. [Redacted]

[Redacted]

179. [Redacted]

[Redacted]

[Redacted]

[Redacted]

Pathogens and Animal Health at Hormel Facilities

181. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

186. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

188. [REDACTED]

[REDACTED]

[REDACTED]

189. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

192. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

196. [REDACTED]

[REDACTED]

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. [REDACTED]

204. [REDACTED]

206. [REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

210. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

214. [Redacted]

[Redacted]

[Redacted]

215. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Production Practices for Natural Choice Products Compared to Other Products

217. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

220. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

222. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 is 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. [REDACTED]

[REDACTED]

229. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fecal Matter and Pathogens at Hormel Slaughter Plants

231. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

233. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

235. [REDACTED]

[REDACTED]

237. [REDACTED]

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. [REDACTED]

242. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Chemical Disinfectants Applied to Carcasses that Become the Products

245. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Use of Nitrates and Nitrites in the Natural Choice Products

248. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

250. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

254. [REDACTED]

[REDACTED]

[REDACTED]

Use of Antibiotics in Animal Production and on Meat

255. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

257. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

260. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

263. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

266. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

268. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

270. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

273. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

277. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Use of Other Pharmaceuticals in Animal Production

281. [REDACTED]

[REDACTED]

282. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

286. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

289. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

291. [REDACTED]

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. [REDACTED]

[REDACTED]

295. [REDACTED]

[REDACTED]

297. [REDACTED]

298. [REDACTED]

[REDACTED]

[REDACTED]

The Facilities Used to Raise Animals for the Natural Choice Products

299. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

303. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

306. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

310. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

314. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

317. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

320. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

322. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

326. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

Plants

328. [REDACTED]

[REDACTED]

[REDACTED]

329. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

332. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

336. [REDACTED]

[REDACTED]

[REDACTED]

337. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

342. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

345. [REDACTED]

[REDACTED]

[REDACTED]

346. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

350. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

353. [REDACTED]

[REDACTED]

[REDACTED]

354. [REDACTED]

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. [REDACTED]

[REDACTED] 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. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

367. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

370. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

373. [REDACTED]

[REDACTED]

[REDACTED]

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

374. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

377. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

380. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

381. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

384. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

388. [REDACTED]

[REDACTED]

[REDACTED]

389. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

392. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Date: January 11, 2019

Respectfully Submitted,
/s/ David Muraskin

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Counsel for Plaintiff

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.

Respectfully submitted,

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ANIMAL LEGAL DEFENSE FUND,
Plaintiff,
v.
HORMEL FOODS CORPORATION,
Defendant.

Case No. 2016 CA 004744

Judge Fern Flanagan Saddler

[PROPOSED] ORDER

Upon consideration of Plaintiff Animal Legal Defense Fund’s Motion for Summary Judgment as to Liability, on this _____ day of April, 2019, it is:

ORDERED, that the Plaintiff’s motion is GRANTED, and it is further,

ORDERED, that Plaintiff shall have until May __, 2019, in which to file its Motion Regarding the Scope of Injunctive Relief.

Date

Saddler, J.