

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

FOOD & WATER WATCH, INC.,
a non-profit corporation,
1616 P Street NW
Suite 300,
Washington, DC 20035,

and

ORGANIC CONSUMERS
ASSOCIATION, a non-profit corporation,
6771 South Silver Hill Drive,
Finland, MN 55603,

Plaintiffs,

v.

TYSON FOODS, INC.,
2200 West Don Tyson Parkway
Springdale, AR 72762

Defendant.

2019 CA 004547 B

COMPLAINT

Plaintiffs Food & Water Watch, Inc. (“FWW”) and Organic Consumers Association (“OCA”) bring this action against Defendant Tyson Foods, Inc. (“Tyson”) and allege the following based upon personal knowledge, information, and belief. This Complaint is on behalf of FWW and OCA, their respective members, and the general public.

INTRODUCTION

1. This is a case about deceptive marketing and advertising of chicken products. The case is brought by FWW and OCA, two non-profit, public-interest organizations dedicated to

consumer protection. Plaintiffs seek no monetary damages, only an end to the deceptive marketing and advertising at issue.

2. Defendant Tyson produces chicken products, which it markets under its own name and under various other brand names.

3. Tyson makes marketing and advertising representations to convey to consumers that the Tyson brand chicken products (“the Products”)¹ are produced in an environmentally responsible way.

4. Tyson makes marketing and advertising representations conveying to consumers that it prioritizes animal welfare and that the birds used the Products are healthy and treated humanely.

5. Contrary to those representations, Tyson and its contractors systematically breed, hatch, raise, transport, and slaughter chickens in environmentally harmful and inhumane, disease-ridden factory-farm conditions that include:

- the raising and slaughter of birds in facilities contaminated with antibiotic-resistant pathogens;
- the use of toxic chemicals and the regular emission of large amounts of hazardous and nonhazardous pollutants into local waterways and airsheds;
- the routine use of anti-parasitic drugs, the injection of chicken eggs with formaldehyde, and the washing of the Products with hazardous chemical disinfectants;
- the crowding of birds by the tens of thousands into massive industrial warehouses with no access to the outdoors;
- the use of artificially selected, fast-growing, breast-heavy chicken breeds that have chronic, painful, and debilitating health conditions; and

¹ Discovery may reveal that additional Tyson brands and products should be included within the scope of the allegations in this Complaint, and Plaintiffs reserve the right to add such products.

- the abuse of chickens by Tyson contractors and employees.

6. Thus, Tyson’s marketing and advertising—which suggests that Tyson employs environmentally responsible and humane production practices—is false and misleading.

STATUTORY FRAMEWORK

7. This action is brought under the District of Columbia Consumer Protections Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*

8. The CPPA “is a comprehensive statute with an extensive regulatory framework designed to remedy *all* improper trade practices.” *Osbourne v. Capital City Mortg. Corp.*, 727 A.2d 322, 325 (D.C. 1999) (quotations omitted). “The CPPA protects consumers from those unlawful trade practices enumerated in § 28-3904, as well as practices prohibited by other statutes and common law.” *Id.* (quotations omitted).

9. The CPPA makes it a violation for “any person” to, *inter alia*:

Represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

Represent that goods or services are of a particular standard, quality, grade, style, or model, if in fact they are of another;

Misrepresent as to a material fact which has a tendency to mislead;

Fail to state a material fact if such failure tends to mislead;

Use innuendo or ambiguity as to a material fact, which has a tendency to mislead;
or

Advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h). A violation occurs regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” *Id.*

10. The CPPA “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.” *Id.* § 28-3901(c). It “shall be construed and applied liberally to promote its purpose.” *Id.*

11. The CPPA affords FWW and OCA a right to bring this action on behalf of themselves, their members, and on behalf of the general public:

A nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law in the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

Id. § 28-3905(k)(1)(C).

12. In addition, because they are public-interest organizations, FWW and OCA may bring any action that an individual consumer would be entitled to bring:

[A] public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.”

Id. § 28-3905(k)(1)(D)(i). Subparagraph (A) provides: “A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.”

13. Remedies available for any CPPA claim include “[a]n injunction against the use of the unlawful trade practice” and “[a]ny other relief which the court determines proper.” *Id.* § 28-3905(k)(2)(D), (F).

FACT ALLEGATIONS

I. Tyson’s Marketing and Advertising Represents That the Products Are Produced in an Environmentally Responsible Manner and That the Birds Used in The Products Are Treated Humanely.

14. Tyson markets the Products to consumers under multiple different Tyson brand names, including but not limited to “Tyson,” “Tyson Naturals,” and “Tyson Premium Selects.”

15. The Products at issue in this case include, but are not limited to:

- Tyson Grilled & Ready Chicken Breast Strips;
- Tyson Naturals Gluten-Free Breaded Chicken Breast Nuggets;
- Tyson Grilled & Ready Chicken Breast Fillets.

16. Tyson markets and advertises the Products in the District. It seeks to reach the District consumer base through online marketing such as Facebook, YouTube, Twitter, and its company websites, as well as through non-digital marketing channels such as television advertising.

A. Tyson Represents That the Products Are Produced in an Environmentally Responsible Manner.

17. Throughout its advertising and marketing materials, Tyson makes representations regarding its commitment to environmental stewardship and sustainability (the “Environmental Representations”).

18. For example, in a video posted on its Tyson brand website and YouTube channel, available for consumers in the District to see, a Tyson spokesperson emphasizes the importance of Tyson being “stewards of the land.”²

² Tyson® Brand, *Raising Healthy Chickens [Extended]*, YouTube (May 17, 2017), <https://www.youtube.com/watch?v=j2x5tfP7Xig> (last visited June 18, 2019).

19. Tyson's company website also touts Tyson's purported "commitment to conservation,"³ and other marketing materials highlight the company's "dedication to environmental leadership."⁴

20. The Tyson 2018 Sustainability report makes several Environmental Representations, including the claim that "[w]ater that is released [from Tyson facilities] meets EPA's Effluent Guidelines Program and is safe for the environment."⁵

21. The "Tyson Foods Environmental Policy," published in December 2018, states:

Environmental stewardship is a core value of Tyson Foods' business philosophy and commitment to sustainability. We believe protecting the environment and conserving natural resources is essential for maintaining clean air, water and land in our world. We serve as stewards of the animals, land and environment entrusted to us and we set goals to achieve environmental excellence in all company operations.⁶

22. Among the "Guiding Principles"⁷ in its Environmental Policy, Tyson states:

- "We strive to operate our business in an environmentally sustainable manner by recognizing our environmental footprint and finding feasible ways to reduce its impact."
- "We are committed to compliance with environmental laws, set ambitious standards for managing identified environmental risks and are in pursuit of setting industry leading standards."

³ *Environment*, Tyson Foods, <https://www.tysonfoods.com/sustainability/environment> (last visited June 18, 2019).

⁴ Tyson Foods, *Sustaining Our World: 2017 Sustainability Report* [hereinafter "2017 Sustainability Report"] 10, available at <https://www.tysonsustainability.com/sites/default/files/2019-05/Tyson%202017%20Sustainability%20Report.pdf>.

⁵ Tyson Foods, *Sustaining Our World Together: 2018 Sustainability Report* [hereinafter "2018 Sustainability Report"] 10, available at https://www.tysonsustainability.com/sites/default/files/2019-05/2018%20Sustainability%20Report_FULL.pdf.

⁶ *Tyson Foods Environmental Policy: A Commitment to Sustainability*, Tyson Foods (Dec. 2018), available at <https://www.tysonfoods.com/sites/default/files/2019-04/Tyson%20Environmental%20Policy.pdf>.

⁷ *Id.*

23. The Tyson 2017 Sustainability Report makes numerous Environmental Representations as well, including:

- “Reducing our environmental impact is key to our mission of raising expectations for how much good food can do.”⁸
- “Delivering on our mission requires protecting and respecting natural resources as we grow our business.”⁹
- “[O]perating our business aligned with environmental conservation is fundamental to our Core Values, one of which states that we will ‘serve as stewards of the animals, land and environment entrusted to us’.”¹⁰
- “Sustainably feeding the world means reducing our carbon footprint.”¹¹

24. One natural resource Tyson is purportedly “[a]lways keeping . . . safe” is water.¹² The 2017 Sustainability Report states, “Water is a precious, finite resource that must be used and managed responsibly from farm to finished product. . . . We aim to balance responsible water stewardship with protecting the quality and safety of our products.”¹³

25. There are many more examples of similar Environmental Representations throughout Tyson’s advertising and marketing materials.¹⁴

26. For example, on Facebook, Tyson has touted its purported commitment to “protecting the planet.”¹⁵

⁸ 2017 Sustainability Report, *supra* note 4, at 40.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 44.

¹² *See* Environment, *supra* note 3.

¹³ 2017 Sustainability Report, *supra* note 4, at 42.

¹⁴ The allegations of this Complaint are intended to encompass all such representations, past and present, in all their verbal and visual iterations.

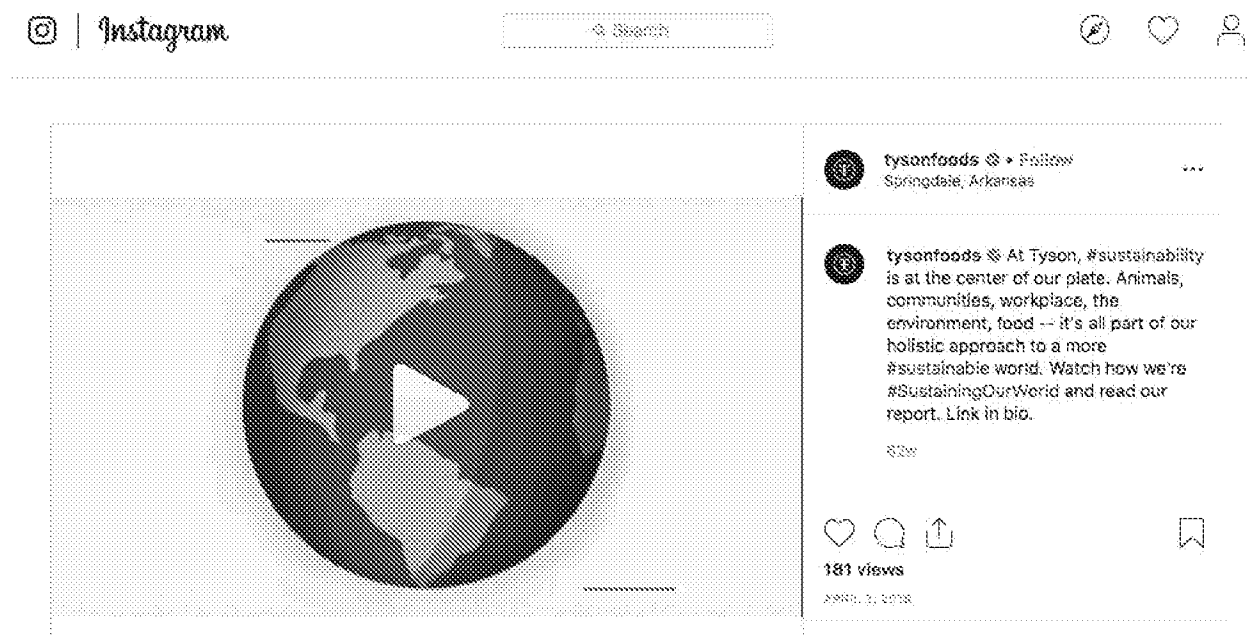
¹⁵ Tyson Foods (@TysonFoods), Facebook (April 22, 2019, 11:10 AM), <https://www.facebook.com/TysonFoods/posts/2126699084052265> (last visited June 18, 2019).



Tyson Foods is in Springdale, Arkansas.
April 22 · 🌍

We're committed to producing great #food while also protecting the planet. In honor of #EarthDay, check out how we are looking to reduce greenhouse gas emissions at every part of our value chain.
#TheFeedBlog #RaisingExpectations

27. Tyson also uses Instagram to lead consumers to believe its production practices are environmentally sustainable:¹⁶

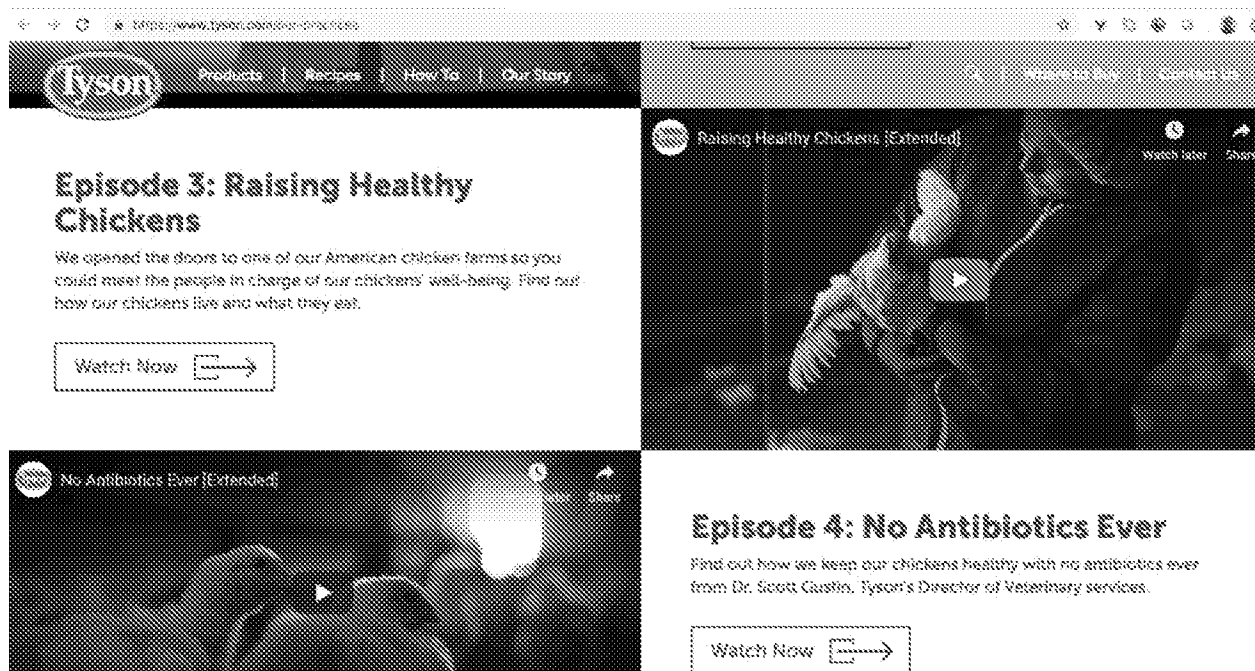


B. Tyson Represents That the Birds Used for its Products Are Healthy and Treated Humanely.

28. Throughout its advertising and marketing materials, Tyson makes representations regarding the well-being, treatment, care, handling, and living conditions of the chickens used in the Products (the “Animal Welfare Representations”).

¹⁶ See, e.g., Tyson Foods (tysonfoods), Instagram (April 3, 2018), <https://www.instagram.com/p/BhHNQHCnQJv/> (last visited June 18, 2019).

29. On its Tyson brand website and YouTube channel, both of which are easily accessible by D.C. consumers, Tyson invites consumers to “[f]ind out how we keep our chickens healthy”¹⁷ and provides videos to consumers who are “[c]urious about how Tyson® chickens are raised[.]”¹⁸ In a video titled “Raising Healthy Chickens,” which has been viewed more than four million times,¹⁹ a narrator comments that the birds appear “happy” and picks up one bird to demonstrate to the viewer that she is free of “breaks or bruises” and has a healthy beak, legs, and feathers. She points this out to illustrate that Tyson likes its birds “to be able to get around and still be a chicken.”²⁰



¹⁷ *Our Practices – The Truth About Tyson® Chicken*, Tyson Foods, <https://www.tyson.com/our-practices> (last visited June 18, 2019).

¹⁸ Tyson® Brand, *Raising Healthy Chickens [Extended]*, YouTube (May 17, 2017), <https://www.youtube.com/watch?v=j2x5tfP7Xig> (last visited June 18, 2019).

¹⁹ *Id.*

²⁰ *Id.*

30. In that same video, Tyson Foods Chairman John Tyson states he “care[s] about the animal” and that Tyson is “responsible for doing the best we can in a humane way.”²¹

31. A Tyson spokesperson in that same video also speaks of Tyson’s responsibility and commitment “to give these birds the highest quality of life while they’re entrusted with us.”²²

32. In another video linked on the Tyson brand website and available on its YouTube channel, a Tyson spokesperson asserts: “We’re stewards of the animals that we raise. It’s our responsibility to take care of them as humanely as possible. It’s the right thing to do.”²³ This video has been viewed approximately 1.2 million times.

33. Numerous pages within Tyson’s company website make similar claims related to the raising and treatment of the chickens that become the Products. The “Animal Welfare” pages²⁴ make Animal Welfare Representations such as:

- “Every step of our animal welfare program promotes the health, safety and well-being of the animals.”²⁵
- “The humane treatment of animals is not only the right thing to do, it’s our responsibility.”²⁶
- “No cages are used and birds can move freely within the barn. Stocking density, the number of birds within the available space in the barn, is carefully calculated to comply with national standards and to ensure that all birds can easily move to access feed and water and to express normal behavior.”²⁷

²¹ *Id.*

²² *Id.*

²³ Tyson® Brand, *No Antibiotics Ever [Extended]*, YouTube (May 21, 2017), <https://www.youtube.com/watch?v=z57ofm4t628> (last visited June 18, 2019).

²⁴ *Animal Welfare*, Tyson Foods, <https://www.tysonfoods.com/animal-welfare> (last visited June 20, 2019); *see also* Tyson Foods, *Animal Welfare*, <https://www.tysonsustainability.com/animal-welfare> (last visited June 20, 2019).

²⁵ *See* Animal Welfare, *supra* note 24.

²⁶ *Id.*

²⁷ *Animal Housing*, Tyson Foods, <https://www.tysonfoods.com/sustainability/animal-well-being/animal-housing> (last visited June 18, 2019).

- “In addition to numerous well-being benefits, careful and quiet animal handling during loading, transport, and unloading can produce meat quality benefits as well.”²⁸
- “[We] ensure safe and responsible transportation of the chicken . . . we process for our food products.”²⁹
- “100% of chickens we harvest in the United States . . . are in transport to a processing facility less than eight-hours.”³⁰

34. In Tyson’s “Commitment to Animal Well-Being,” the company declares its “commitment to serve as stewards of the animals entrusted to us” and guarantees its suppliers’ utilization of “the principles of the ‘5 Freedoms’,” which include:

- “Freedom from hunger and thirst”;
- “Freedom from discomfort”;
- “Freedom from pain, injury or disease”;
- “Freedom to express normal behavior”; and
- “Freedom from fear and distress.”³¹

35. In recent years, Tyson has begun including Animal Welfare Representations in its annual Sustainability Reports. The recently released 2018 Sustainability Report declares a

²⁸ *Transportation*, Tyson Foods, <https://www.tysonfoods.com/sustainability/animal-well-being/transportation> (last visited June 18, 2019).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Our Commitment to Animal Well-Being*, Tyson Foods (Jan. 28, 2016), available at <https://www.tysonfoods.com/sites/default/files/2018-10/Our%20Commitment%20to%20Animal%20Well%20Being%20%283244eafb-2df0-4e75-b3f2-3c340cc8f731%29.pdf>. This document is made available to consumers through multiple Tyson webpages and other resources. See e.g., *2018 Sustainability Report—Animal Welfare Approach*, Tyson Foods, <https://www.tysonsustainability.com/animal-welfare/approach> (last visited June 20, 2019) (linking to same); *2018 Sustainability Report*, *supra* note 5, at 40, available at https://www.tysonsustainability.com/sites/default/files/2019-06/TSN-002_06_20_2019_LOW.pdf (same); see also *2017 Sustainability Report*, *supra* note 4, at 29 (boasting of Tyson’s “commitment to delivering excellence in animal welfare,” including adherence to the “Five Freedoms”).

commitment to “deploy the most transparent welfare practices in food,”³² and lists animal welfare as a primary area of focus among customers and consumers.³³ In fact, the 2018 Report identifies “Animal Well-Being and Management” as one of the *most important* issues to external stakeholders and consumers, as well as to Tyson’s business.³⁴

36. The 2018 Sustainability Report devotes an entire section to Animal Welfare Representations.³⁵ Therein, Tyson makes such Representations as:

- “We’re committed to offering consumers the most humanely raised food possible”;
- “We’ve built an internal culture of caring about animals”;
- “[D]elivering excellence in animal welfare is inherent to who we are as an organization”;
- “[Animal Welfare] Specialists are embedded in the day-to-day operations at each facility, acting as a liaison between our operation teams and plant managers, as well as serving as advocates for the animals themselves.”³⁶
- “Through a robust animal welfare auditing strategy, we’re committed to ensuring that our expectations on responsible and humane care and handling of livestock and poultry are met throughout our operations and supply chains.”

37. The 2018 Report also includes links to Tyson’s “Animal Well-Being Mission Statement” and its “Animal Well-Being Policy and Commitment.”³⁷

38. Tyson’s official Mission Statement on Animal Well-Being assures consumers and other stakeholders that it “is committed to the well-being, proper handling and humane harvesting

³² 2018 Sustainability Report, *supra* note 5, at 11.

³³ *Id.* at 16; *Stakeholder Engagement*, Tyson Foods, <https://www.tysonsustainability.com/approach/stakeholder-engagement> (last visited June 20, 2019).

³⁴ 2018 Sustainability Report, *supra* note 5, at 14; *Materiality*, Tyson Foods, <https://www.tysonsustainability.com/approach/materiality-reporting> (last visited June 20, 2019).

³⁵ 2018 Sustainability Report, *supra* note 5, at 38–52.

³⁶ *Id.* at 40 (emphasis added); *Animal Welfare Approach*, Tyson Foods, <https://www.tysonsustainability.com/animal-welfare/approach> (last visited June 20, 2019).

³⁷ *Id.*

of all the animals” used in its products, calling it “an important moral and ethical obligation we owe our suppliers, customers, ourselves and, most of all, the animals we depend on for our livelihood.”³⁸ It avers that “[a]ll Tyson Foods Team Members, as well as the independent poultry, cattle and hog farmers who supply us, are expected to respect and serve as stewards of the animals we work with every day, treating them in a proper manner at all times.”³⁹

39. The 2018 Report also contains links to a series of pages specifically devoted to raising, housing, handling, transporting, and harvesting animals.⁴⁰ Each of these pages makes distinct allegations regarding Tyson’s commitment to animal welfare, including:

- “The standard animal husbandry practice that’s been used for centuries is called selective breeding, where chickens have been bred for certain performance attributes, including . . . health, skeletons, strength of legs, appropriate growth rate and the way they walk.”⁴¹
- “Procedures for [physical alterations] . . . are performed in accordance with the best animal welfare practices These procedures are closely monitored and performed by trained personnel using specialized equipment in the hatchery on day-old poultry.”⁴²
- “We work with thousands of independent farmers every day to ensure they are treating the animals responsibly and with respect, starting with where and how they are housed.”⁴³

³⁸ *Mission Statement on Animal Well-Being*, Tyson Foods, available at <https://www.tysonfoods.com/sites/default/files/2018-10/Mission%20Statement%20on%20Animal%20Well%20Being%20%28d8ac4f70-7378-45c8-be3a-f12dff2e75e0%29.pdf>.

³⁹ *Id.* (emphasis added).

⁴⁰ 2018 Sustainability Report, *supra* note 5, at 43; *Welfare in the Value Chain*, Tyson Foods, <https://www.tysonsustainability.com/animal-welfare/well-being-value-chain> (last visited June 21, 2019).

⁴¹ *Animal Welfare—Raising Animals Responsibly*, Tyson Foods, available at https://www.tysonfoods.com/sites/default/files/2019-04/Tyson_2018_CSR_Animal-Welfare_Raising.pdf.

⁴² *Id.*

⁴³ *Animal Welfare—Raising Animals in Comfort*, Tyson Foods, available at https://www.tysonfoods.com/sites/default/files/2019-04/Tyson_2018_CSR_Animal-Welfare_Housing.pdf.

- “Barns are equipped with specially designed equipment to deliver a balanced feed portion and fresh water to ensure the birds receive the correct nutritional requirements to meet growth and production needs throughout their lives.”⁴⁴
- “Proper animal handling is a moral and ethical obligation. Team members who work with live animals in our plants are trained in humane animal handling practices and instructed to report anything they believe is inappropriate to their supervisor or our compliance and ethics hotline.”⁴⁵
- “We’re committed to safe and proper handling of animals during the loading, transport and unloading process. This includes minimizing stocking densities, travel times, ensuring proper ventilation and protecting the animals from harsh weather conditions.”⁴⁶
- “Our team members are required to follow a rigorous set of guidelines that govern our transportation activities aimed at protecting animals and ensuring food quality and safety.”⁴⁷
- “In our chicken . . . plants, we use the CARE risk analysis program to manage humane handling policies and procedures. CARE provides a system for continuous improvement in these areas and has three main components. We begin by documenting each step in the animal handling process from live animal receiving through harvest. We then evaluate each step to identify potential incidents that could result in excessive excitement, discomfort or accidental injury to the animal. If an opportunity for a potential risk or incident exists, we implement changes to mitigate or minimize those risks.”⁴⁸
- “Our chicken . . . specialists were certified by the U.S. Poultry and Egg Association’s Poultry Handling and Transportation Certification Program (PHT). This training is aimed at teaching poultry transportation and catch crews best practices and methods in . . . the safe and humane handling of birds before, during, and after transport.”⁴⁹

⁴⁴ *Id.*

⁴⁵ *Animal Welfare—Harvesting Animals Responsibly*, Tyson Foods, available at https://www.tysonfoods.com/sites/default/files/2019-04/Tyson_2018_CSR_Animal-Welfare_Harvesting.pdf.

⁴⁶ *Animal Welfare—Transporting Animals Responsibly*, Tyson Foods, available at https://www.tysonfoods.com/sites/default/files/2019-04/Tyson_2018_CSR_Animal-Welfare_Transporting.pdf.

⁴⁷ *Id.*

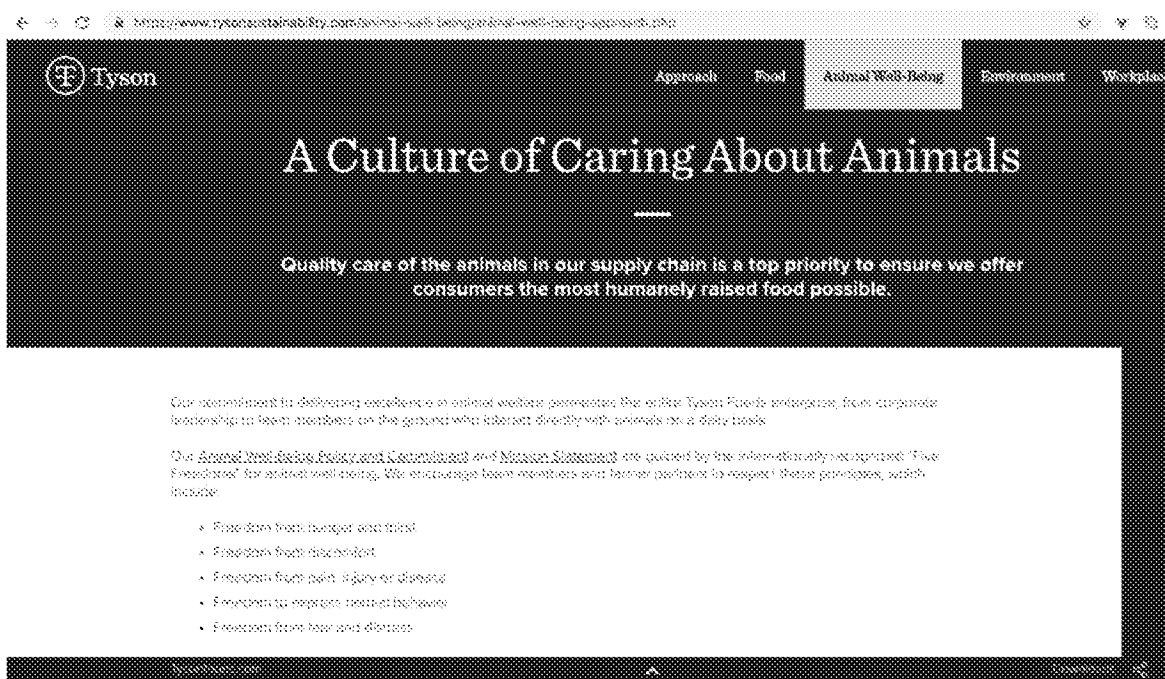
⁴⁸ *Animal Welfare—Handling Animals Responsibly*, Tyson Foods, https://www.tysonfoods.com/sites/default/files/2019-04/TSN-002_2018CSR_ANIMAL-WELFARE_Handling.pdf.

⁴⁹ *Id.*

40. In myriad ways, the message Tyson conveys to consumers is clear: that “there is a very strong commitment to animal welfare at Tyson Foods” and that the birds raised for the Products are healthy and treated humanely.⁵⁰

41. Tyson’s Sustainability Report from the previous year, 2017, similarly makes representations about how Tyson cares for the chickens it slaughters and sells.⁵¹ The 2017 Report asserts that “specialists monitor animal well-being at U.S. farms where our chickens are raised. In this role, specialists help farmers comply with animal welfare policies and regulations and support adherence to the Five Freedoms principles.”⁵²

42. More generally, the 2017 Report boasts, “Quality care of the animals in our supply chain is a top priority to ensure we offer consumers the most humanely raised food possible.”⁵³



⁵⁰ Karen Christensen, *Our Commitment to Animal Care*, Tyson—The Feed Blog (April 12, 2018), <https://www.tysonfoods.com/the-feed-blog/our-commitment-animal-care> (last visited June 18, 2019); *see also* 2017 Sustainability Report, *supra* note 4, at 29.

⁵¹ 2017 Sustainability Report, *supra* note 4.

⁵² *Id.* at 30.

⁵³ *Id.* at 29.

43. The 2017 Report also states, “Team members in positions that require live animal handling also must complete rigorous animal welfare training before working with live animals. Our animal well-being specialists ensure that this training is delivered, updated and customized to each position — from catch crews and livestock haulers to team members in breeding houses and those who handle live animals at plants.”⁵⁴

44. Finally, Tyson’s brand website assures consumers that its chicken plants “comply with the United States Department of Agriculture’s Food Safety and Inspection Service Poultry Products Inspection Act [and] the National Chicken Council Animal Welfare Guidelines . . . which, similar to the Humane Slaughter Act, are designed to ensure the humane harvest of poultry”⁵⁵

45. There are many more examples of similar Animal Welfare Representations throughout Tyson’s advertising and marketing materials.⁵⁶

II. Tyson’s Advertising and Marketing Misrepresents the Reality of Its Practices in Producing the Products.

46. Contrary to Tyson’s representations, Tyson regularly fails to comply with environmental laws and is the second largest polluter in the United States.

47. Contrary to Tyson’s representations, the chickens who become the Products are, as a matter of standard business practices, raised and handled in disease-ridden and inhumane conditions, from hatching through slaughter.

⁵⁴ *Id.*

⁵⁵ *Humane Handling*, Tyson Foods, <https://www.tysonfoods.com/sustainability/animal-well-being/humane-handling> (last visited June 18, 2019).

⁵⁶ The allegations of this Complaint are intended to encompass all such representations, past and present, in all their verbal and visual iterations.

48. Tyson's practices related to environmental stewardship and animal welfare are contrary to how a reasonable consumer would understand Tyson's marketing and advertising claims regarding such issues.

A. Contrary to the Advertising and Marketing, the Products Are Not Produced in an Environmentally Sustainable Manner.

49. Tyson chicken operations take a tremendous toll on the environment. The company has a long history of noncompliance with environmental laws and continues to pollute air and waterways at staggering levels.

50. According to a 2017 report from Mighty Earth, an international environmental NGO, the U.S. Environmental Protection Agency's Toxic Release Inventory (TRI) catalogues 104 million pounds of pollutants released directly into waterways by Tyson between 2010 and 2014, making Tyson the second largest polluter in the United States.⁵⁷

51. Among agribusinesses, Tyson is the largest water polluter in the United States. According to a 2016 report by Environment America, a federation of state-based environmental advocacy groups, in 2014 alone Tyson dumped more than 20 million pounds of toxic pollutants directly into our nation's waterways.⁵⁸

⁵⁷ See Lucia von Reusner, *Mystery Meat II: The Industry Behind the Quiet Destruction of the American Heartland*, Mighty Earth, <http://www.mightyearth.org/wp-content/uploads/2017/08/Meat-Pollution-in-America.pdf>, at 9.

⁵⁸ John Rumpler, *Corporate Agribusiness and the Fouling of America's Waterways*, Environment America 16 (June 2016), <https://environmentamerica.org/sites/environment/files/reports/CorpAgFoulingWaterways2016-web.pdf> ("Table 3. Tyson Facilities' Direct Pollution into Waterways Reported in TRI" (pollution data from 2014")).

Facility	City	State	Toxic discharge pounds
Tyson Fresh Meats Inc. WWTP	DeSoto City	NE	4,426,970
Tyson Fresh Meats Inc. - Joslin II	Hillsdale	IL	2,065,975
Tyson Farms Inc. - Carthage MS Processing Plant	Carthage	MS	1,523,806
Tyson Fresh Meats Inc.	Columbus Junction	IA	1,811,690
Tyson Fresh Meats Inc.	Lexington	NE	1,539,622
Tyson Poultry Inc. - Broken Bow Processing Plant	Broken Bow	OK	1,218,685
Tyson Farms Inc. - Blountsville Processing Plant	Blountsville	AL	1,183,681
Tyson Chicken Inc. - Hope Processing Plant	Hope	AK	901,899
Tyson Poultry Inc. - Processing Plant	Sedalia	MI	898,632
Tyson Farms Inc.	Buena Vista	GA	834,389
Tyson Poultry Inc. - Nashville Processing Plant	Nashville	AK	679,239
Tyson Foods Inc. - Center TX Processing	Center	TX	615,811

Facility	City	State	Toxic discharge pounds
Tyson Farms Inc.	Forest	MS	482,791
Tyson Chicken Inc. - Noel Complex	Noel	MI	321,694
Tyson Poultry Inc.	Dardanelle	AK	279,366
Tyson Poultry Inc. - New Holland Complex	New Holland	PA	266,189
Tyson Farms Inc. - Processing	Shelbyville	TN	206,084
Tyson Farms Inc. - Union City Processing	Union City	TN	197,862
Tyson Farms Inc.	Harmony	NC	151,310
Tyson Poultry Inc.	Waldron	AK	145,259
Tyson Poultry Inc.	Scranton	AK	131,809
Tyson Poultry Inc. - Processing Plant	Cumming	GA	125,280
Tyson Fresh Meats Inc.	Perry	IA	107,025
Tyson Poultry Inc.	Texarkana	AK	93,503
Tyson Poultry Inc. - Grannis Processing Plant	Grannis	AK	88,429
Tyson Farms Inc. - Processing Facility	Glen Allen	VA	58,478
Tyson Farms Inc. - Temperanceville	Temperanceville	VA	44,066

52. Tyson is the only meat company with major meat processing facilities in every state identified by the United States Geological Survey (USGS) as a major source of pollution to the Gulf of Mexico.⁵⁹

53. For instance, in 2017, Tyson's chicken slaughter plant in Sedalia, Missouri emitted more than 920,000 pounds of air and water pollutants.⁶⁰

⁵⁹ Lucia von Reusner, *supra* note 57 at 11.

⁶⁰ U.S. Env'tl. Protection Agency, *Detailed Facility Report: TYSON POULTRY, INC. SEDALIA, MO, PROCESSING PLANT, 19571 MENELEE, SEDALIA, MO 65301* [hereinafter "Detailed Facility Report: Tyson-Sedalia"], ECHO, <https://echo.epa.gov/detailed-facility-report?fid=110028676966> (last visited June 18, 2019).

54. This facility has a long history of recurrent noncompliance with the Clean Water Act, including “significant” violations as recent as February 2019.⁶¹

55. In recent years, Tyson’s Sedalia plant has exceeded effluent limits for chlorine (by as much as 606%) and fecal coliform (by as much as 8,800%), year after year.⁶²

56. The Sedalia facility also has very high air-emissions numbers. For example, in 2017 it released 39,837 pounds of ammonia (more than triple its ammonia emissions the previous year).⁶³ That same year the facility emitted 5,493 pounds of hydrogen sulfide and 876,323 pounds of nitrate compounds (up from 729,221 pounds in 2016).

57. The slaughterhouse’s aggregate greenhouse-gas emissions total was 58,391 metric tons of carbon dioxide in 2017. This is the equivalent of driving more than 12,600 vehicles for one year, or driving 144.5 million miles.⁶⁴

58. This facility has also repeatedly failed to submit environmental reports required by law under the Clean Water Act. The failure to submit a report is, in and of itself, a violation of the Act.⁶⁵ Those reports include Discharge Monitoring Reports, Biosolids Monitoring Reports, Operation & Maintenance Reports, and Status/Progress Reports—all essential documentation to allow the Environmental Protection Agency to monitor the facility’s compliance with federal laws, which, when actually documented, has been abysmal.⁶⁶

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Greenhouse Gas Emissions from a Typical Passenger Vehicle*, U.S. Env’tl. Protection Agency, <https://www.epa.gov/greenvehicles/greenhouse-gas-emissions-typical-passenger-vehicle> (last visited June 18, 2019).

⁶⁵ Plaintiffs do not seek relief for Tyson’s violations of environmental law—Plaintiffs refer to these violations as evidence that the Environmental Representations are false and misleading.

⁶⁶ *Detailed Facility Report: Tyson–Sedalia*, *supra* note 60.

59. This pollution from Tyson's Sedalia facility has a disproportionate impact on vulnerable populations. The EPA notes that, within three miles of the Sedalia slaughter plant, 47% of the population lives below the poverty level.⁶⁷

60. The Sedalia facility is not an outlier. Another Tyson facility that slaughters chickens for the Products released 10,976 pounds of ammonia in 2014 (the year of most recent reporting data available on EPA's ECHO website).⁶⁸ Ammonia (NH₃) is a common toxicant derived from wastes and fertilizers.⁶⁹ It can enter the aquatic environment via direct means such as effluent discharges and the excretion of nitrogenous wastes from animals, and indirect means such as nitrogen fixation, air deposition, and runoff from agricultural lands.⁷⁰ It causes direct toxic effects on aquatic life and is responsible for large-scale fish kills.⁷¹

61. A June 14, 2019 article reports that the Tyson Farms Inc. River Valley Ingredients plant in Cullman, Alabama, recently released up to 800,000 gallons of E. coli-contaminated wastewater into a local river, causing "countless" number of fish kills.⁷² The article also notes that this same plant killed 40,000 fish in a 2016 acid spill.⁷³

⁶⁷ *Id.*

⁶⁸ U.S. Env'tl. Protection Agency, *Detailed Facility Report: TYSON FOODS - CHICK-N-QUICK / TYSON DISTRIBUTION CENTER, 400 W OLRICH ST, ROGERS, AR 72756*, ECHO, <https://echo.epa.gov/detailed-facility-report?fid=110007229267> (last visited June 18, 2019).

⁶⁹ U.S. Env'tl. Protection Agency, *Ammonia*, CADDIS Vol. 2, <https://www.epa.gov/caddis-vol2/ammonia> (last visited June 18, 2019).

⁷⁰ *Aquatic Life Criteria – Ammonia*, U.S Env'tl. Protection Agency, <https://www.epa.gov/wqc/aquatic-life-criteria-ammonia> (last visited June 19, 2019).

⁷¹ *Id.*

⁷² Associated Press, *Tyson Farms spill spreads E. coli, kills fish in Alabama*, WHNT News (June 14, 2019, 5:36 AM), <https://whnt.com/2019/06/14/tyson-farms-spill-spreads-e-coli-kills-fish-in-alabama/> (last visited June 19, 2019).

⁷³ *Id.*

62. Again, marginalized populations suffer from this pollution the most: 45% of all persons living within a three-mile radius of that facility live below the poverty level.⁷⁴

63. Four days later, on June 14, 2019, a chemical spill outside of Tyson's Springdale, Arkansas plant resulted in respiratory and burn injuries requiring the hospitalization of five workers, one of whom was reported to be in critical condition following the spill.⁷⁵ The chemical involved, Oxyphresh22, is a liquid peroxyacetic acid "wash" used to remove harmful pathogens from meat and poultry during processing.⁷⁶ It is known to be toxic to aquatic animals with long-lasting effects, and can cause severe skin burns and eye damage in humans.⁷⁷

64. The list of environmental violations by Tyson is ongoing and prevalent. From 2013 to 2015 the company was guilty of more than 300 wastewater Clean Water Act permit exceedances at its US processing plants according to its own reporting.⁷⁸

⁷⁴ U.S. Env't Protection Agency, *Detailed Facility Report: TYSON FARMS INC, 2011 OLD HANCEVILLE HIGHWAY, CULLMAN, AL 35055*, ECHO, <https://echo.epa.gov/detailed-facility-report?fid=110000366274> (last visited June 19, 2019).

⁷⁵ *Five Injured After Cleaning Agent Spill at Tyson Foods Plant in Springdale*, KFSM 5News (June 18, 2019, 10:38 AM), <https://5newsonline.com/2019/06/18/emergency-responders-answering-hazmat-call-at-tyson-in-springdale/> (last visited June 24, 2019).

⁷⁶ *Injured Tyson Workers Released from Hospital After Chemical Spill*, KFSM 5News (June 19, 2019, 1:17 PM), <https://5newsonline.com/2019/06/19/hospital-workers-injured-in-tyson-chemical-spill-showing-improvements/> (updated June 21, 2019, 5:01 PM; last visited June 24, 2019); U.S. Food Safety Inspection Service, *List of Approved On-Line Reprocessing (OLR) Antimicrobial Systems for Poultry* 11 (updated June 2019), available at <https://www.fsis.usda.gov/wps/wcm/connect/4788a166-513f-432c-9e00-f3bcec646558/OLR-OFLR-Tables.pdf?MOD=AJPERES..>

⁷⁷ CMS Technology, *Oxyphresh 22 Safety Data Sheet* 1–2 (May 9, 2017) (available online via MSDSONline, <https://chemmanagement.ehs.com/9/msdsonline-search>).

⁷⁸ Rumpler, *supra* note 58, at 15 ("Table 2: Tyson's Self-Reported Environmental Compliance").

Environmental Compliance	FY2013 Excludes Hillshire	FY2014 Excludes Hillshire	FY2015 Includes Hillshire
Wastewater Permit Exceedances	56	134	117
Notices of Violation (NOV's)	11	40	29
Penalties Per Fiscal Year	\$3,952,808	\$354,267	\$403,809
Supplemental Environmental Project Amount Per Fiscal Year	\$300,000	\$19,284	\$220,000
Total Reportable Chemical Releases	21	21	11

65. In 2017, Tyson pleaded guilty in federal court to two criminal charges of violating the Clean Water Act. The crimes stemmed from discharges at its chicken slaughter and processing facility in Monett, Missouri.⁷⁹ A highly acidic substance known as Alimet was released from the feed mill and made it into the local municipal wastewater treatment plant, where it killed bacteria the city used to reduce ammonia in discharges into Clear Creek from the plant.⁸⁰ As a result, approximately 108,000 fish were killed by high ammonia levels. The federal judge fined Tyson \$2 million and sentenced the company to two years of probation.

66. Tyson's environmentally degrading practices do not end there. Tyson is a regular emitter of peracetic acid, a chemical that USDA whistleblowers have alleged is extremely harmful to workers and can cause lung damage, emotional disturbances, and even death.⁸¹ In concentrated form, peracetic acid is an environmental hazard capable of killing plant and animal life on the ground and in waterways.⁸²

⁷⁹ U.S. Dept. of Justice, *Tyson Poultry Pleads Guilty to Clean Water Act Violations in Connection with Discharge of Acidic Feed Supplement* (Sept. 27, 2017), <https://www.justice.gov/opa/pr/tyson-poultry-pleads-guilty-clean-water-act-violations-connection-discharge-acidic-feed> (last visited June 19, 2019).

⁸⁰ *Id.*

⁸¹ Eyal Press, *Something in the Air*, The Intercept (July 19, 2018, 5:00 AM), <https://theintercept.com/2018/07/19/moroni-utah-turkey-farm-workers-norbest/> (last visited June 19, 2019).

⁸² Terry McAninch, *Uses and Hazardous Properties of Peracetic Acid*, Birko Corp. Resources Blog (April 17, 2014), <https://www.birkocorp.com/resources/blog/uses-and-hazardous-properties-of-peracetic-acid/> (last visited June 19, 2019).

67. Such chemical disinfectants are used to sanitize Tyson’s meat products, which are routinely contaminated with pathogens like *Salmonella* and *Campylobacter*.

68. Letters from USDA to Tyson show that the USDA Food Safety Inspection Service has, on multiple occasions, detected pathogens such as *Salmonella* and *Campylobacter* resistant to multiple critical and highly important antibiotics on Tyson chicken meat samples.⁸³

69. Multiple studies have found that antibiotic resistant pathogens are not neutralized by the treatment of waste/wastewater from poultry slaughter plants and that these pathogens pose threats to the environment.

70. One study published in the Journal of Environmental Health found that “wastewater treatment processes are unable to inactivate [antibiotic resistant] bacteria and thus will result in dissemination of resistant *E. coli* into the environment.”⁸⁴

71. This study further found that “[r]esistance rates of *E. coli* to nearly all of the tested antibiotics were higher in the strains obtained from the six slaughterhouses that handled conventional [chickens] than in the two slaughterhouses that handled free-range [chickens].”⁸⁵

72. A 2016 study focused on *Salmonella* determined that the “presence of multiresistant *Salmonella* strains in wastewater” was linked to a poultry slaughter plant and found that these strains “usually end up in the marine environment and may have a significant risk on the public health.”⁸⁶

⁸³ These USDA reports indicate several of these multidrug-resistant pathogens are commonly associated with human illness.

⁸⁴ P.M. da Costa et al., *Antimicrobial Resistance in Escherichia Coli Isolated in Wastewater and Sludge from Poultry Slaughterhouse Wastewater Plants*, 70 J. Env’l Health 40, 40 (2008) available at <https://www.ncbi.nlm.nih.gov/pubmed/18348391>.

⁸⁵ *Id.*

⁸⁶ Abdellah El Boulani et al., *Salmonella in Wastewater: Identification, Antibiotic Resistance and the Impact on the Marine Environment*, in Current Topics in Salmonella and Salmonellosis (Mihai Mares ed., 2017), available at <https://www.intechopen.com/books/current-topics-in->

73. Tyson's practices in the production of the Products are contrary to how a reasonable consumer would understand the Environmental Representations.

B. Contrary to Tyson's Advertising and Marketing, Chickens Raised for the Products Are Treated Inhumanely, in Disease-Ridden Facilities.

74. Contrary to Tyson's advertising that the company "ensure[s] optimal animal husbandry, nutrition, sanitation and housing practices that support animal health and well-being" "at [e]very [s]tep" in the production chain,⁸⁷ investigations spanning more than a decade, and numerous federal inspections, have documented ongoing horrific abuse of chickens in the production of Tyson products.

75. Nearly a dozen undercover investigations between 2005 and 2017 at Tyson slaughterhouses and contract growing facilities, as well as inspections by the USDA Food Safety and Inspection Service (FSIS), reveal a pattern of practices involving systemic animal cruelty, inhumane treatment, and abuse.

1. Factory Farming of Broiler Chickens Involves Inhumane Raising and Slaughter Practices.

76. Broiler chicken production and slaughter activities can be divided into ten stages: (1) breeding; (2) hatching; (3) growing; (4) catching at the contract growing facility; (5) transportation to the slaughterhouse; and (6) pre-slaughter handling, (7) stunning, (8) neck cutting, (9) scalding, and (10) picking at the slaughterhouse.

77. During the first phase, breeder chickens are raised to lay eggs that will become the chickens ultimately harvested for meat. While the chickens used in Tyson's products are slaughtered at just a few weeks old, most breeder chickens are kept much longer—until egg

salmonella-and-salmonellosis/salmonella-in-wastewater-identification-antibiotic-resistance-and-the-impact-on-the-marine-environment.

⁸⁷ 2017 Sustainability Report, *supra* note 4, at 30.

production declines around 65-70 weeks of age.⁸⁸ To mitigate the mating problems, diminished egg production, illness, injuries, and premature death caused by fast-growing breeds' genetic predisposition to rapid obesity, breeder birds are kept in a state of perpetual starvation for much of this time.⁸⁹ Typically, this semi-starvation is accomplished by providing a significantly reduced amount (25-50% of the birds' normal diet) of feed or by restricting feed access to once every two days.⁹⁰ Tyson has also been documented using "nose bones," the practice of shoving a plastic rod into roosters' nostrils, for this purpose.⁹¹

78. The practice of extremely restricting food intake in chickens causes aggressive behavior, stress, frustration, and chronic hunger.⁹² To prevent aggressive pecking and scratching, the birds' toes and beaks are trimmed.⁹³ The eXtension Foundation, an educational non-profit organization funded by the USDA, describes toe trimming as a painful "amputation of the ends of

⁸⁸ U.S. Dept. of Agriculture APHIS, *Poultry Industry Manual: Foreign Animal Disease Preparedness and Response Plan (FAD PReP)/National Animal Health Emergency Management System (NAHEMS) Guidelines* 12 (March 2013), available at https://www.aphis.usda.gov/animal_health/emergency_management/downloads/documents_manuals/poultry_ind_manual.pdf (last visited June 24, 2019).

⁸⁹ Ingrid C. De Jong & Marinus M. van Krimpen, *Feeding Broiler Breeder Flocks in Relation to Bird Welfare Aspects*, 70 *World's Poultry Sci. J.* (2014).

⁹⁰ Cobb-Vantress, *Breeder Management Guide* 14-15 (2016), available at <https://www.cobb-vantress.com/assets/Cobb-Files/6d9f01c40c/breeder-management-guideBEE76F35761727C48CB222ED86A53AF1D3F5E3D9538726BA.pdf>.

⁹¹ *Tyson Exposed: New COK Video Uncovers Rampant Violence & Cruelty to Birds*, Compassion Over Killing, <http://cok.net/inv/tyson/> (last visited June 19, 2019).

⁹² De Jong & van Krimpen, *supra* note 89.

⁹³ *Humane Handling*, *supra* note 55; Cobb-Vantress, *supra* note 90, at 3; *see also* Tyson Foods, *Cobb - Hatchery Processing Labor PR01*, LinkedIn, <https://www.linkedin.com/jobs/view/cobb-hatchery-processing-labor-pr01-at-tyson-foods-1241170253/> (last visited June 21, 2019) (listing beak-treatment and toe-trimming among job duties).

a bird's toes.”⁹⁴ Academic research of toe trimming suggests that the procedure causes lifelong negative impacts on animal welfare.⁹⁵

79. During stage two, the eggs produced by the breeder chickens are transported to a hatchery and placed in an incubator.⁹⁶ Much of this process is automated.⁹⁷

80. Before the chicks hatch, the eggs are injected with a solution containing formaldehyde and menthol, for sanitation purposes.⁹⁸

81. Tyson hatcheries supply chicks to the company's broiler breeder farms in addition to its broiler farms. Tyson uses rotating grinders, called macerators, to grind up unwanted day-old chicks at the hatchery.⁹⁹

⁹⁴ eXtension, *Toe Trimming of Turkeys or Chickens in Small and Backyard Poultry Flocks* (Nov. 12, 2012), <https://articles.extension.org/pages/66246/toe-trimming-of-turkeys-or-chickens-in-small-and-backyard-poultry-flocks> (last visited June 19, 2019).

⁹⁵ J. Fournier et al., *The Effect of Toe Trimming on Behavior, Mobility, Toe Length and Other Indicators of Welfare in Tom Turkeys*, 94 *Poultry Sci.* 1446, 1446 (2015), available at <https://academic.oup.com/ps/article/94/7/1446/1552824> (“[T]urkey behavior both early and late in the production cycle were suggestive of pain and balance effects; both indicators of reduced welfare as a result of toe trimming”).

⁹⁶ Shelby Watkins, *Chicken Facts: An Egg's Journey Through a Hatchery*, Tyson—The Feed Blog (Sept. 4, 2018), <https://www.tysonfoods.com/the-feed-blog/chicken-facts-journey-egg-through-hatchery> (last visited June 19, 2019).

⁹⁷ Tyson Foods, *Tyson Sustainability Report – Tyson Incubation Center*, YouTube (Apr. 3 2018), <https://www.youtube.com/watch?v=2QG7U9GfZ-Q> (last visited June 21, 2019).

⁹⁸ Tenn. Dep't of Env't & Conservation, *Memorandum* (May 9, 2018), available at http://environment-online.tn.gov:8080/pls/enf_reports/apex_util.count_click?p_url=BGAPC.GET_DOCUMENTS?p_file=475183431983977045&p_cat=DOCS&p_id=475183431983977045&p_user=APEX_PU BLIC_USER&p_workspace=19833722515258996.

⁹⁹ See e.g., Tyson Foods, *Cobb-Hatchery Processing*, LinkedIn, <https://www.linkedin.com/jobs/view/cobb-hatchery-processing-at-tyson-foods-1223586347/> (last visited June 19, 2019) (“Essential Duties and Responsibilities: . . . Operate macerator”); Tyson, *Cobb - Hatchery Processing Labor PR01 in Cleveland, Georgia*, DirectEmployers Assn., <https://tyson.dejobs.org/cleveland-ga/cobb-hatchery-processing-labor-pr01/D036068A8B60463BAF27E3A68E0213C8/job/> (last visited June 19, 2018) (“Essential Duties and Responsibilities: . . . Operate macerator”).

82. Within 24 hours of hatching, chicks are packed into plastic pallets and transported to Tyson broiler farms where they are dumped or thrown, often with force, from several feet in the air onto the floor below. Videos of this process show chicks slamming onto the ground, into each other, and into hard metal and plastic feeding apparatuses.¹⁰⁰

83. These grow houses are generally large, windowless, rectangular buildings, hundreds of feet long, with litter-(manure)-covered dirt floors. Each house holds approximately 20,000–25,000 birds at a time,¹⁰¹ resulting in a maximum of 0.8 square feet of space per bird. The chickens never step foot outside.

84. In these facilities, the animals are so numerous and disease is so prevalent that, once a day, the grower walks through the house to “euthanize” birds that are sick, injured, or growing too slowly, and to remove dead birds. Tyson uses the “cervical dislocation” method of “euthanizing” sick, weak, and/or small birds.¹⁰² This risky and inhumane method entails pulling a bird’s head and yanking the neck to cause extensive damage to the spinal cord and brainstem, and to cut off blood flow to the brain. Studies suggest that because of the manual nature of the process, there is a “high variability” in the welfare outcomes of this procedure and “animals may be conscious for a significant period post-application.” Furthermore, “accidental decapitation” is a common outcome of this inhumane procedure.¹⁰³

¹⁰⁰ *New COK Video Uncovers Chicken Industry Horrors*, Compassion Over Killing, <http://cok.net/inv/tyson2/> (last visited June 19, 2019).

¹⁰¹ Nat’l Chicken Council, *Cage-Free: What Does Cage-Free Mean? Is It Better to Buy Cage-Free Chicken?*, Chicken Check In, <https://www.chickencheck.in/faq/cage-free-chicken/> (last visited June 19, 2019).

¹⁰² WATT Global Media, *Best Practices for Poultry Handling*, WATT PoultryUSA 35 (April 2019), <http://www.wattpoultryusa-digital.com/201904/index.php#/38> (last visited June 21, 2019).

¹⁰³ Jessica Martin et al., *On Farm Evaluation of a Novel Mechanical Cervical Dislocation Device for Poultry*, 8 *Animals* 10, 11 (2018).

85. Tyson uses breeds of chicken called the “Cobb 500” and “Cobb 700.”¹⁰⁴ The “Cobb 500” is marketed as having the “best growth rate” and the “lowest cost” among commercially available chicken breeds.¹⁰⁵ The Cobb 700 is marketed as having the “[h]ighest meat yield” and the “highest eviscerated and breast meat yield with the best live production efficiency” among commercially available chicken breeds.¹⁰⁶

86. Many broiler chickens, including those who end up as Tyson chicken products, have been selectively bred for rapid growth to market weight. An average broiler chicken in 1920 reached 2.2 pounds in 16 weeks. In 2017, Tyson broilers could reach “6 to 8 pounds” at “less than 10 weeks old.”¹⁰⁷

87. The faster growth is a severe welfare problem, causing leg disorders, ruptured tendons, weakened immune systems, and other painful conditions. Several studies have shown, for example, that the fast-growing Cobb breeds used by Tyson are prone to skeletal deformities and associated health conditions.¹⁰⁸

¹⁰⁴ Simon M. Shane, *Cobb-Vantress Awards*, Chick-News.com (June 25, 2018), http://www.chick-news.com/View_Single_Post.aspx?Site_Copy_ID=73985 (last visited June 19, 2019); Danny Wade, *Tyson Hatchery Work Begins*, Gibson Cnty. News (July 31, 2018), <https://www.milanmirrorexchange.com/2018/07/31/tyson-hatchery-work-begins/> (last visited June 19, 2019).

¹⁰⁵ Cobb, *Cobb500*, <https://www.cobb-vantress.com/products/cobb-500> (last visited June 19, 2019).

¹⁰⁶ Cobb, *Cobb700*, <https://www.cobb-vantress.com/products/cobb-700> (last visited June 19, 2019).

¹⁰⁷ *Investor Fact Book – Fiscal Year 2017*, Tyson Foods 19 (April 25, 2018), available at [http://q4live.s22.clientfiles.s3-website-us-east-1.amazonaws.com/104708849/files/doc_factbook/Tyson-Foods-FY17-Fact-Book-\(rev-042518\).pdf](http://q4live.s22.clientfiles.s3-website-us-east-1.amazonaws.com/104708849/files/doc_factbook/Tyson-Foods-FY17-Fact-Book-(rev-042518).pdf).

¹⁰⁸ See, e.g., É. Gocsik et al., *Exploring the Economic Potential of Reducing Broiler Lameness*, 85 *Brit. Poultry Sci.* 337 (2017); I. Dinev et al., *Comparative Clinical and Morphological Studies on the Incidence of Tibial Dyschondroplasia as a Cause of Lameness in Three Commercial Lines of Broiler Chickens*, 21 *J. Applied Poultry Research* 637 (2012).

88. According to University of Bristol professor emeritus John Webster, fast-growing “broiler” chickens spend the last 20% of their lives in chronic pain.¹⁰⁹ They do not move around much, because movement of their joints is simply too painful.¹¹⁰

89. Once Tyson determines that the chickens have reached the size it wants for slaughter, it sends human “catching crews” or mechanized “catchers” into the grow houses to grab the chickens and put them into pallets of cages, which are also called “drawers.” This process is extraordinarily frightening for the birds, who scramble desperately to get away from the catchers.

90. A forklift driver transports the pallets of cages into the grow houses for loading and then out to the transport trucks. Due to the dense stocking capacity of the grow houses, birds are regularly run over by the forklift, causing severe injuries that do not always result in immediate death.

91. The human catchers grab the birds by the legs and carry them upside down by their ankles—multiple birds in each hand—and push them into the cages.

92. The transport cages are not tall enough for the birds to stand upright, and the birds are packed into the cages so densely they cannot spread their wings or move around.

93. Trucks then transport the caged broiler chickens to the slaughterhouse. The birds are exposed to the ambient weather—sometimes including extreme heat, extreme cold, rain, snow, or gusting winds.

94. Death during transportation is a common occurrence, and FSIS refers to birds who die during transportation as “dead-on-arrivals,” or “DOAs.”

¹⁰⁹ James Erlichman, *The Meat Factory*, *The Guardian* (Oct. 1991).

¹¹⁰ *Id.*

95. Tyson slaughterhouses use the following slaughter process. First, workers use a forklift to remove the chickens and their cages from the transportation trucks and move them to a slaughter line. Workers dump the chickens onto a conveyor belt and segregate DOAs from live birds, tossing the DOAs into bins. After segregation, workers strap the birds into metal shackles attached to an overhead line, leaving the live birds to hang upside down by their legs.

96. Once the chickens are shackled, the mechanized line drags them through an electrified vat of water, which is supposed to “stun” the birds, *i.e.*, render them unconscious. Multiple animal welfare scientists have concluded that the stunning process merely paralyzes the birds but does *not* render them “insensible to pain,” which has been considered a hallmark of humane slaughter.¹¹¹

97. According to one former Tyson slaughterhouse worker, the birds “try everything in their power to get away from the killing machine and to get away from you. They have been stunned, so their muscles don’t work, but their eyes do, and you can tell by them looking at you, they’re scared to death.”¹¹²

98. The line continues on to “cutting,” via the “kill blade.” If the process works correctly, the sharp blade cuts open each chicken’s neck and blood drains out. If the kill blade misses a chicken, at least one “back-up killer” employee works the line to cut that bird’s neck.

¹¹¹ Nico Pitney, *Scientists Believe the Chickens We Eat Are Being Slaughtered While Conscious*, Huffington Post (Oct. 28, 2016), https://www.huffingtonpost.com/entry/chickens-slaughtered-conscious_us_580e3d35e4b000d0b157bf98 (last visited June 19, 2019); *see also* Sara J. Shields & A.B. Raj, *A Critical Review of Electrical Water-Bath Stun Systems for Poultry Slaughter and Recent Developments in Alternative Technologies*, 13 J. Applied Animal Welfare Sci. 281 (2010), available at <https://www.ncbi.nlm.nih.gov/pubmed/20865613>.

¹¹² United Poultry Concerns, *Poultry Slaughter: The Need for Legislation* (2011), available at https://www.upc-online.org/slaughter/poultry_slaughter.pdf.

Physical death is meant to occur from exsanguination (bleeding out), also called “bleeding” for short.

99. The chickens then proceed down the line to the “scalders,” a scalding-hot tank of water used to loosen feathers from carcasses.

100. FSIS regulations require that the slaughter “will result in thorough bleeding of the carcasses and ensure that breathing has stopped prior to scalding.” 9 C.F.R. § 381.65(b). In reality, chickens regularly miss the neck blade on a slaughterhouse line, enter the scald tank fully conscious, and boil alive in the scalders. The USDA calls these birds “cadavers.” In industry vernacular, they are “red birds,” because their still-beating hearts pump blood to the surface of their scalded flesh.

101. Slaughterhouses are generally subject to a maximum line speed limitation of 140 birds per minute, or over two birds per second. Yet some slaughterhouses, including numerous Tyson plants, have waivers that allow for increased speeds of up to 175 birds per minute. These fast line speeds lead to handling errors along the slaughter line, as well as an inability to observe and correct instances where birds miss the stun bath and/or neck blade and continue to the scalders still alive.

2. A 2017 Investigation Revealed Inhumane Treatment of Tyson Chickens.

102. Nearly a dozen undercover investigations in as many years have uncovered tremendous and systematic cruelty inflicted intentionally upon chickens raised for Tyson products.

103. In 2017, the nonprofit organization Compassion Over Killing (COK) conducted an investigation at a Tyson contract broiler growing facility.¹¹³

¹¹³ *New COK Video Uncovers Chicken Industry Horrors*, *supra* note 100.

104. During that investigation, a COK undercover investigator worked inside Tyson contractor “Atlantic Farm,” a Temperanceville, Virginia facility with more than 225,000 birds inside filthy warehouses.¹¹⁴

105. The COK investigator witnessed and contemporaneously video-recorded workers at the facility violently kicking, slamming, and throwing live birds. The video shows one worker impaling live chicks with a metal nail at the end of a pipe, as well as workers killing sick or injured birds by stepping on them. Birds were run over and crushed to death by forklifts, and workers pile sick or injured birds on top of each other in buckets, often with dead birds, and left them to suffer and die.¹¹⁵

106. The investigator also observed and recorded birds unable to walk because of painful leg injuries or deformities related to rapid growth.¹¹⁶



¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*





3. Prior Investigations Confirm Systemic Mistreatment of Tyson's Chickens.

107. In 2016, COK investigated four Tyson broiler breeder facilities.¹¹⁷ The investigator observed and video-recorded Tyson workers punching and kicking live birds, shoving and

¹¹⁷ *Tyson Exposed*, *supra* note 91.

slamming birds into transport cages, and swinging birds by their wings and throwing them across the sheds. Videos also reveal birds crushed to death by transport crates and run over by forklifts.¹¹⁸

108. The COK investigator documented a Tyson supervisor suffocating animals by standing on their heads and instructing workers to do the same.



¹¹⁸ *Id.*



109. Also in 2016, the nonprofit organization Mercy For Animals (MFA) conducted a separate undercover investigation of another Tyson contractor, Palmetto Farms, in Lewisburg, Tennessee.¹¹⁹ That investigation revealed thousands of chickens suffering from untreated injuries, illnesses, and debilitating leg deformities.¹²⁰

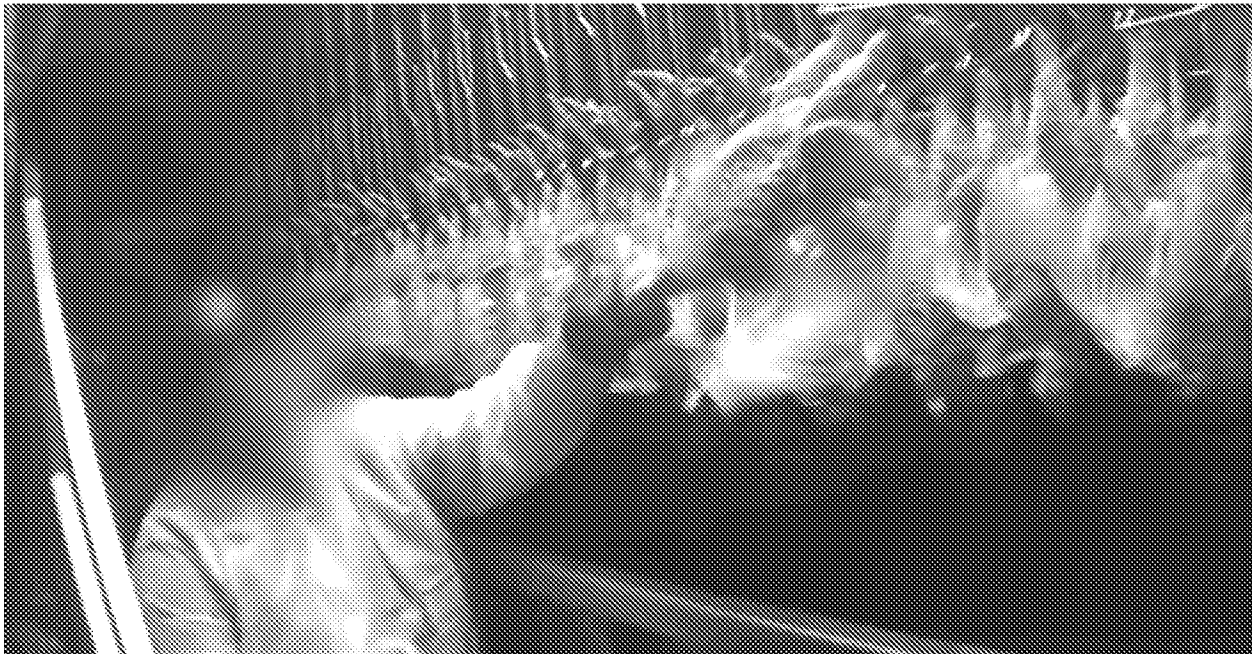
¹¹⁹ *Tyson Tortures Animals*, Mercy for Animals, <http://www.tysontorturesanimals.com/> (last visited June 19, 2019).

¹²⁰ *Id.*





110. In 2015, another MFA investigation documented extreme cruelty at a Tyson chicken slaughterhouse in Carthage, Mississippi.¹²¹ In the video, birds are shackled upside-down and have their throats slit open and their heads ripped off, all while still alive and fully conscious. The workers repeatedly throw birds against the shackles and against birds already hung up; when the thrown birds tumble back down to the conveyor belt, the workers pick them up and do it again.¹²²



111. According to MFA’s website, “Each time our investigators go behind the scenes at a randomly selected Tyson Foods chicken factory farm or slaughterhouse they emerge with horrific images of animal abuse.”¹²³

112. These abuses extend as far back as 2005 and 2007, when investigations by the nonprofit organization People for the Ethical Treatment of Animals (PETA) of Tyson chicken

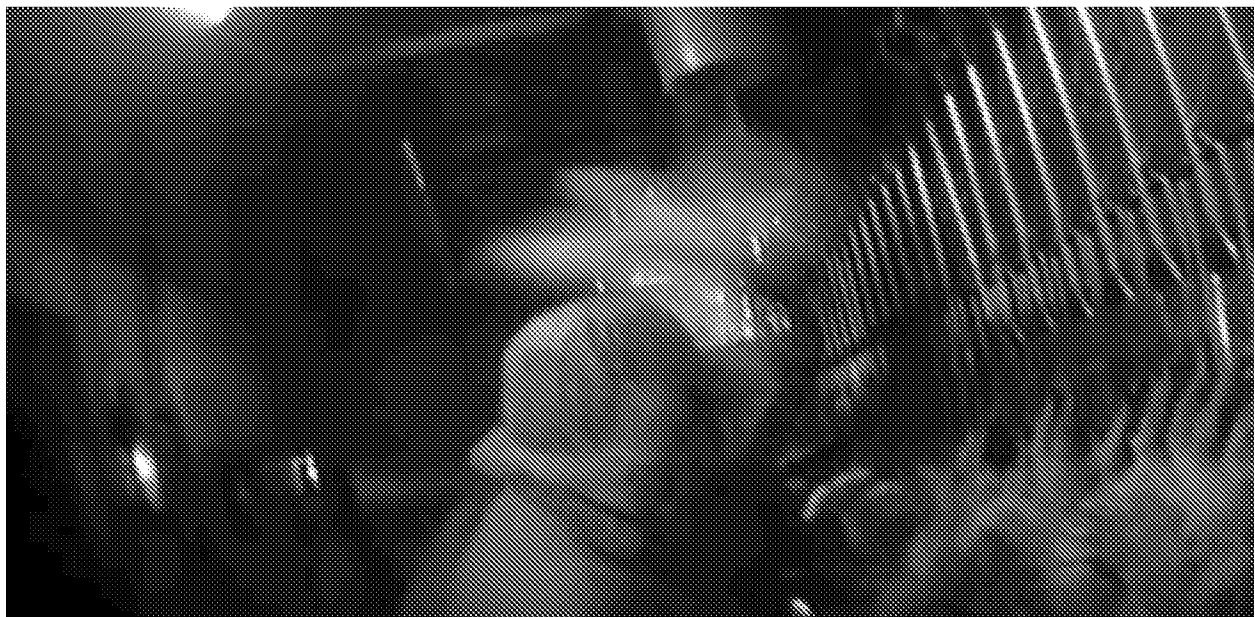
¹²¹ Mercy For Animals, *Watch: Tyson Caught on Hidden Camera Ripping Heads Off Live Animals*, YouTube (Oct. 27, 2015), <https://www.youtube.com/watch?v=0L2mGC4zezM> (last visited June 19, 2019).

¹²² *Id.*

¹²³ *Tyson Tortures Animals*, *supra* note 119.

slaughter plants¹²⁴ revealed sickening cruelty to the birds. Supervisors at multiple facilities either were directly involved in the abuse or were made aware of it by the investigator, but they did not stop it.¹²⁵

113. In addition to the cuts and broken limbs inflicted upon live chickens at nearly every slaughterhouse, the PETA investigators documented workers—sometimes standing 4 to 6 feet away from the conveyor belt—violently throwing birds at the shackles. Some animals slammed into the shackles and fell onto birds on the conveyor belt below, at which point workers sometimes repeated the abuse.¹²⁶



114. One PETA investigator filmed a Tyson supervisor telling him that it was acceptable to rip the heads off live birds who had been improperly shackled by the head.¹²⁷

¹²⁴ *Tortured by Tyson*, People for the Ethical Treatment of Animals, <https://www.peta.org/videos/tortured-by-tyson/> (last visited June 19, 2019).

¹²⁵ *Exposed: Tyson Workers Torturing Birds, Urinating on Slaughter Line*, People for the Ethical Treatment of Animals, <https://support.peta.org/page/1843/action/1> (last visited June 19, 2019).

¹²⁶ *Id.*

¹²⁷ *Id.*

115. Other realities PETA caught on film included birds dying when their heads and legs became trapped under a door at the end of the conveyor belt that transported live birds to be hung. Other footage shows the killing-machine blade regularly cutting birds' bodies instead of their throats, thus failing to render them unconscious before being dunked into scalding hot water. In every case, Tyson supervisors were aware of these problems but did nothing to stop it.¹²⁸

116. In response to the 2007 investigation, a Tyson spokesperson said the company was conducting an ongoing internal investigation and stated some of the conduct shown in the PETA video "warranted corrective action."¹²⁹

117. Notwithstanding Tyson's verbal condemnation of animal cruelty, the systematic abuse of Tyson's chickens has continued, as shown by the subsequent undercover investigations detailed above.¹³⁰

4. Federal Inspections of Tyson Facilities Confirm Inhumane Treatment of Chickens.

118. In addition to the undercover investigations, federal inspections in the past several years have identified cruel and abusive practices at Tyson slaughter plants.

119. FSIS inspectors "are to issue an NR"—a Noncompliance Record—"when an ongoing pattern or trend develops where birds are not being slaughtered in a manner that results in thorough bleeding of the carcasses, that results in birds entering the scalding before their breathing has stopped, or that otherwise involves their being handled in a way that results in their

¹²⁸ *Id.*

¹²⁹ Joey Berlin, *PETA on Tyson*, Emporia Gazette (Feb. 20, 2008), http://www.emporiagazette.com/business/article_ae2bc3a5-f888-541d-8ea6-a8d473cbb7ab.html (last visited June 21, 2019).

¹³⁰ See also Jennifer L. Schally, *Legitimizing Corporate Harm: The Discourse of Contemporary Agribusiness* 27–64 (utilizing critical discourse analysis to illuminate how Tyson presents itself as a good corporate citizen by drawing on and aligning with larger cultural discourses while continuing the same harmful practices it pretends to condemn).

dying otherwise than by slaughter.” FSIS Notice 44-16, at 1 (Jun. 27, 2016). In addition, mistreatment MOIs—*i.e.*, a Memoranda of Interview—“are primarily issued when, based on findings by the [inspector], the establishment is mistreating birds before or during shackling or elsewhere in the slaughter operation, up until the kill step, but the mistreatment does not demonstrate that the establishment’s process is out of control.” *Id.* at 3.

120. As documented by federal inspections, inhumane handling and operation of slaughterhouse machinery causes immense suffering at Tyson facilities. For example, in January 2017 at Tyson’s Broken Bow plant, an auditor observed dead birds with broken backs, pelvises, and/or thigh joints and severe bruising, raising concern that the birds were being handled so violently that their broken bones were severing blood vessels and causing them to bleed to death prior to slaughter. After a number of similar instances were documented the same week, auditors expressed concern that “the aggressive mishandling of live chickens is still occurring.”

121. The MOI corresponding to that inspection noted “this type of handling is reflective of failing to follow the National Chicken Council’s Guidelines for Good Commercial Practices [GCPs] as well as Tyson’s policies for properly handling of live chickens.” This demonstrates that—contrary to its representations—Tyson fails even to comply with the bare minimum requirements set by federal regulations, national industry standards, and its own company policies.

122. In two incidents during March 2016 at the company’s New Holland plant in Pennsylvania, an auditor documented five severely bruised chicken carcasses, with one bird’s hip joint completely dislocated and another with injuries indicating significant blunt trauma to the breast area. The inspector noted that these, too, were repeat incidents.

123. Another common occurrence at Tyson slaughter plants is the presence of live birds among piles of DOAs. As one inspector noted after observing numerous live chickens amongst a

dead pile at Tyson's Pine Bluff, Arkansas, plant, "The accumulation of the DOAs on the live chickens is an animal welfare issue" and is "[in]consistent with good commercial practices." It was the second time in less than a month that inspectors documented such an occurrence at the Pine Bluff plant, where it had been the subject of MOIs numerous times before.

124. Nor is this impermissible co-mingling of living and dead birds unique to Pine Bluff. The problem is systemic, with numerous documented incidents at Tyson facilities in Sedalia, Wilkesboro, Corydon, Clarksville, and elsewhere.

125. Auditors have also observed and issued NRs for chickens entering scald tanks alive and conscious. In January 2017 at Tyson's Carthage, Texas plant, an auditor observed a number of dead birds, with heads intact and insufficient neck cuts, who were bright red in color, indicating they had been alive when entering the scalding tank.

126. Similarly, in August 2017, an inspector documented "problems with the stunner" at Tyson's slaughter facility in Pine Bluff, Arkansas, resulting in numerous birds entering the scalding tank while still fully conscious. When the inspector requested a reduction in line speed for both kill lines (to allow the backup killers sufficient time to do the work of the inoperative stunner), the request to slow down the line was refused .

127. The Pine Bluff plant is not an anomaly. The scalding of live, fully conscious birds is rampant at Tyson facilities, as indicated in various USDA records. In November 2018, after observing evidence of numerous chickens being scalded alive at Tyson's slaughterhouse in Nashville, Arkansas, a USDA inspector inquired with the plant manager as to how equipment was being monitored for proper operation. The plant manager replied that "the operation of the equipment is monitored through evaluation of number of cadavers [birds who had not properly bled-out]" noticed by plant personnel. In other words, this plant permitted *some* scalding of live

birds, and only felt that “equipment adjustment” was necessary upon observing a substantial number of birds becoming “cadavers” after going through the scalding tank.

128. At Tyson’s slaughterhouse in Sedalia, Missouri, an inspector documented so many birds scalded alive in a short period of time that the resulting GCP MOIs refer to the slaughter process as “mistreatment.”

129. Additionally, USDA inspectors documented birds in the process of being scalded alive at Tyson plants in Sedalia, Missouri, Springdale, Arkansas, Temperanceville, Virginia, Center, Texas., Glen Allen, Virginia, and Corydon, Indiana.

130. In November 2018, an inspector documented Tyson slaughterhouse workers in Center, Texas using dull knives to cut birds’ throats, often requiring multiple cuts to induce bleed-out. This, the investigator noted, leads to “needless injury and suffering.”

131. Earlier that same month, at a Tyson plant in Monett, Missouri, an inspector documented 30 chickens killed by “a combination of drowning and/or electrocution.” Neither constitutes “proper slaughter processing and humane handling.”

132. On multiple occasions in November 2018, an inspector at Tyson’s Robards, Kentucky slaughter plant documented numerous birds “cut across the face” rather than across the neck, causing improper and incomplete exsanguination. The inspector called this a “mistreatment of live birds” and noted, “Without the intervention of USDA personnel, this unacceptable cutting of the birds’ faces may have continued the rest of each night.” Prior attempts to get Tyson workers to correct the problem were ineffective.

133. Conditions were so egregious at Tyson’s Corydon, Indiana slaughter plant that a USDA inspector issued a Noncompliance Record (NR). “[C]hickens with no knife cut on the neck [were] entering the scalding tank” in part because “smaller birds were actually missing the stunner

and the kill machine,” and “the 2 back-up killers were not able to keep up with the number of birds that had missed the kill machine.” The NR concluded “the slaughter process was out of control.”

134. Similar mistreatment was the subject of multiple NRs issued at Tyson’s Center, Texas, slaughterhouse. One NR noted “that 5 birds with intact head and neck entered the evisceration floor and therefore entered the scalding vat still breathing (cadavers) within approximately 1 hour, which represents a process out of control.” Another documented dozens of birds—“to[o] many to count”—that had entered the scalding without being properly rendered unconscious. Yet *two other* NRs at this same plant noted birds with “uncut necks and no other signs of bleeding out,” which “indicate[s] the birds entered the scalding vat still breathing.”

135. An NR issued at Tyson’s slaughter plant in Monett, Missouri, likewise documented “high percentages” of birds being scalded alive. This NR describes two such birds “breathing rhythmically” and “flapping their wings” as they entered the scalding tank to boil alive.

136. In addition to violent handling and scald tank violations, inspection records demonstrate that the transportation and unloading of chickens at Tyson facilities often results in immense pain and suffering. In June 2016, an auditor witnessed thousands of dead birds throughout the Monroe, North Carolina facility’s live-hang area, stating, “it appeared many had dermatitis and the stress of catching and transport combined with the warm morning may have led to this situation.” Throughout the rest of the month and into July, several similar incidents were documented at this location, indicating “a concerning pattern” to auditors.

137. Similar violations by Tyson personnel have been documented elsewhere, such as an ongoing pattern of dead birds at Tyson’s Glen Allen plant in April 2017, apparently the result of the chickens having been left over from the night shift and exposed to the elements “for approximately 12-24 hours” with no food or water. The MOI described the birds as “very

depressed and cold looking” and noted, “[T]his seems to be a constant finding when there are chickens left over from the night shift that did not get slaughtered.”

138. Similarly, at the company’s New Holland plant in January 2017, an inspector witnessed 742 DOA birds during a single shift. Upon closer examination, the inspector concluded that the birds had been suffering from “severe air sacculitis pathology,” a respiratory disease often caused by *E. coli* infection in chickens,¹³¹ and had died after being held overnight in contravention of established management practices.

139. The pattern continues. In November 2018, an inspector at Tyson’s Springdale, Arkansas, slaughter plant “observed that up to approximately 25% of the birds on the trailers were DOA, apparently due [to] hypothermia.”

140. Inspection records have also documented birds packed too densely into cages at Tyson facilities, causing many to suffocate and die. In August 2017, approximately 335 dead birds arrived at Tyson’s Clarksville plant, among “several other birds with purple colored combs and waddles that were struggling to breathe . . . or had skin abrasions and were bleeding because they were pressed against the sides and side of the cage.”

141. At the company’s Center plant in April 2018, several birds were packed together, multiple layers deep, on the live hang table, while others struggled to breathe underneath piles of dead birds, feathers, and dirt.

142. The suffering caused by the sheer densities at which Tyson chickens are transported and processed cannot be overstated. At the Pine Bluff plant, an inspector observed a pile of mingled live and dead birds that reached approximately 3 feet high. In the resulting GCP MOI, the

¹³¹ *Airsacculitis: Inflammation of the Mucous Membrane of the Air Sacs of Birds*, Zoetis, <https://www.zoetisus.com/conditions/poultry/airsacculitis.aspx> (last visited June 19, 2019).

inspector noted, “These birds are large birds and average a weight of 7.36 pounds A pile of this size can kill a bird caught underneath, and birds who are having trouble breathing would be easily killed from the weight or unable to breath[e]. . . . This is not a good commercial practice.”

143. In October through December 2018 alone, inspectors documented co-mingling of live and dead birds in piles at Tyson slaughterhouses in Sedalia, Missouri; Waldron, Arkansas; Carthage, Mississippi; Clarksville, Arkansas; Springdale, Arkansas; Vienna, Georgia; Corydon, Indiana; and New Holland, Pennsylvania.

144. Tyson’s inhumane and unsanitary industrial production practices necessitate the use of antimicrobial drugs and other chemicals.

145. Tyson reports using anti-parasitic drugs to prevent infections common to inhumane and unsanitary factory-farm conditions.¹³²

146. The routine use of hazardous chemicals and antimicrobial drugs is necessary in order for factory-farming companies like Tyson to raise chickens in extreme conditions of confinement—densely populated flocks, in large warehouses, with limited fresh air and no access to sunlight. Chickens raised in *healthy* conditions with plenty of room to roam and dustbathe according to their natural instincts do not require the routine administration of antimicrobial drugs.

147. As further evidence of the unsanitary and inhumane conditions at Tyson chicken facilities, letters from USDA to Tyson show that the Food Safety Inspection Service has, on

¹³² Scott J. Gustin, *Raising Healthy Birds Without Antibiotics* 37 (Oct. 19, 2017), available at http://www.syndicat-national-accoueurs.com/media/1_171006_gustin_french_abf___052460800_1559_23102017.pdf (Tyson presentation at the 2017 *Assemblée Générale Publique du SNA* in Paris, France).

multiple occasions, detected pathogens such as *Salmonella* and *Campylobacter* resistant to multiple critical and highly important antibiotics on Tyson chicken meat samples.¹³³

III. Tyson's Environmental and Animal Welfare Representations Are Material to Consumers.

148. Surveys suggest that consumers are willing to pay more for environmentally responsible poultry products and/or products from animals raised humanely. Surveys also demonstrate that representations about animal welfare and environmental responsibility are material to consumers in their purchasing decisions, a fact that Tyson has acknowledged.¹³⁴

149. Consumers care about animal welfare. Many consumers are willing to pay more for products that they believe come from humanely treated animals, as several consumer studies have documented. A 2015 Consumer Reports survey found that consumers deem it important that food not be produced via standard factory-farm methods. For example, 84% of food shoppers said that it was “important” or “very important” to provide better living conditions for animals.¹³⁵

150. According to a 2013 survey conducted by the American Humane Association, 89% of consumers were very concerned about farm animal welfare, and 74% stated that they were willing to pay more for humanely raised meat products.¹³⁶

¹³³ These USDA reports indicate several of these multidrug-resistant pathogens are commonly associated with human illness.

¹³⁴ See Leigh Ann Johnson, *Transparency in Sustainability: Key to Connecting with Consumers*, Nat'l Provisioner (Mar. 10, 2016), <https://www.provisioneronline.com/articles/103026-transparency-in-sustainability-key-to-connecting-with-consumers> (last visited June 19, 2019).

¹³⁵ Consumer Reports, Natural Food Labels Survey (2015).

¹³⁶ Am. Humane Ass'n, *Humane Heartland Farm Animal Welfare Survey* (2013), available at <https://www.americanhumane.org/app/uploads/2013/08/humane-heartland-farm-animals-survey-results.pdf>.

151. A 2018 study published in the journal *Animals* found that the weighted average of consumers' marginal willingness to pay for products from humanely treated animals was \$0.96 for one pound of chicken breast (a 48% premium).¹³⁷

152. Consumers also care about environmental stewardship. A 2015 Nielsen global survey of 30,000 consumers found that 66% of respondents were willing to pay more for products from companies "committed to positive social and environmental impact."¹³⁸

153. A 2017 international study by Unilever found that 33% of global consumers are "choosing to buy from brands they believe are doing social or environmental good." The study further found that 78% of shoppers in the U.S. "say they feel better when they buy products that are sustainably produced."¹³⁹

154. A 2017 survey of U.S. consumers, based on approximately 25,000 in-person interviews, found that 56% of consumers were willing to pay more to use "environment-friendly ('green') products."¹⁴⁰

155. Tyson is aware that these representations are material to consumers.

156. In 2016, Tyson's Director of Sustainable Food Strategy wrote that "consumers look to food manufacturers to provide transparency about policies, practices and performance for six

¹³⁷ C. Victor Spain et al., *Are They Buying It? United States Consumers' Changing Attitudes Toward More Humanely Raised Meat, Eggs, and Dairy*, 8 *Animals* 128 (2018).

¹³⁸ Nielsen Company, *The Sustainability Imperative: New Insights on Consumer Expectations* 8 (2015), available at <https://www.nielsen.com/content/dam/nielsen-global/co/docs/Reports/2015/global-sustainability-report.pdf>.

¹³⁹ *Report Shows a Third of Consumers Prefer Sustainable Brands*, Unilever (May 1, 2017), <https://www.unilever.com/news/press-releases/2017/report-shows-a-third-of-consumers-prefer-sustainable-brands.html> (last visited June 19, 2019).

¹⁴⁰ David Stanton, *In US, Willingness to Pay More for Environment-Friendly Products Grows*, Growth from Knowledge (Apr. 17, 2017), <https://www.gfk.com/en-us/insights/press-release/in-us-willingness-to-pay-more-for-environment-friendly-products-grows/> (last visited June 19, 2019).

key aspects of food production. These aspects are the impact of food on health, animal well-being, food safety, labor and human rights, environmental impact and business ethics.”¹⁴¹

PARTIES

157. Defendant Tyson Foods, Inc. is incorporated in Delaware and has its principal executive office in Springdale, Arkansas. Tyson produces, processes, markets, and distributes fresh, frozen, and value-added chicken products, as well as several lines of pre-packaged chicken products.

158. Tyson’s chicken products are available in a wide variety of national supermarket chains, regional stores, and other retail outlets. Several of these retailers have stores within and/or adjacent to the District, making their products available to District consumers.

159. Plaintiff Food & Water Watch (“FWW”) is a national nonprofit, public-interest organization that champions healthy food and clean water for all by standing up to corporations that put profits before people and advocating for a democracy that improves people’s lives and protects the environment. FWW is headquartered in the District of Columbia and has more than one million members and supporters nationwide, including consumers who seek to purchase food products that are better for animals, the environment, and public health. FWW operates for the purpose of promoting the interests and rights of these consumers. Factory farming is one of FWW’s priority issues, and FWW is engaged in numerous campaigns to hold the industrial agribusiness accountable for its adverse impacts on rural communities, animals, and the environment. Through grassroots organizing, policy advocacy, research, communications, and litigation, FWW works to increase transparency about how factory farms operate, where they are located, and the pollutants

¹⁴¹ Johnson, *supra* note 134.

they emit into communities and waterways, as well as towards reducing that pollution and improving regulation of animal agribusinesses.

160. On May 3, 2019, FWW bought Tyson Naturals Gluten-free Breaded Chicken Breast Nuggets, Tyson Grilled and Ready Breast Fillets, and Tyson Grilled and Ready Breast Fillets at Safeway and Harris Teeter stores in the District.

161. FWW purchased the Products in order to evaluate Tyson's marketing and advertising claims regarding environmental stewardship and humane treatment. The packaging identified the products as coming from FSIS establishment numbers P13556 and P27505A, slaughter plants and processing plants in Sedalia, Missouri and Gainesville, Georgia, respectively.

162. Tyson's misleading advertising has directly decreased the effectiveness of FWW's educational efforts regarding industrial chicken production and its efforts to promote genuinely sustainable/humane agriculture. Tyson's conduct has also necessitated increased educational efforts to counteract this deceptive marketing.

163. As a result of Tyson's legal violations, FWW has suffered injury-in-fact and has lost money or property. Specifically, FWW has expended its resources to counteract Tyson's misrepresentations. For years, FWW diverted resources from its other efforts in order to conduct research on Tyson's agricultural practices and to educate consumers about its inhumane and unsustainable industrial practices. For example, as recently as September 18, 2018, FWW published a blog post specifically challenging Tyson's dangerously rapid and unsanitary industrial slaughter practices.¹⁴² FWW has also published posts on its website and social media to educate consumers about "claims that make it difficult to differentiate between food produced by

¹⁴² *Privatized Inspection Plants Still Turning Out More Contaminated Chicken*, Food & Water Watch (Sept. 18, 2018), <https://www.foodandwaterwatch.org/news/privatized-inspection-plants-still-turning-out-more-contaminated-chicken> (last visited June 19, 2019).

sustainable farmers using humane practices, and corporate agribusinesses greenwashing their products.”¹⁴³

164. Plaintiff Organic Consumers Association (“OCA”) is a 501(c)(3) non-profit, public-interest organization that deals with crucial issues of truth in advertising, accurate food labeling, food safety, children’s health, corporate accountability, and environmental sustainability.

165. OCA performs work throughout the United States, including in the District. Some of OCA’s staff, including its political director, reside and work in or near the District. OCA has members who reside in the District.

166. OCA formed in 1998 in the wake of backlash by consumers against the U.S. Department of Agriculture’s proposed national regulations for organic food. In its public education, network-building, and mobilization activities, OCA works with a broad range of public interest organizations to challenge industrial agriculture and corporate globalization, and to inspire consumers to “Buy Local, Organic, and Fair Made.” OCA focuses on promoting the views and interests of the United States’ estimated 50 million organic and socially responsible consumers. Its media team provides background information, interviews, and story ideas to media producers and journalists on a daily basis.

167. OCA represents and advances the rights and interests of consumers by educating consumers on food safety, industrial agriculture, genetic engineering, corporate accountability, and environmental sustainability issues. OCA uses funds it raises to protect the environment by promoting regenerating organic and/or sustainable agriculture. For example, OCA engages in

¹⁴³ *Understanding Food Labels*, Food & Water Watch (July 12, 2018), <https://www.foodandwaterwatch.org/about/live-healthy/consumer-labels> (last visited June 19, 2019); *How Much Do Labels Really Tell You?*, Food & Water Watch (May 28, 2013), <https://www.foodandwaterwatch.org/insight/how-much-do-labels-really-tell-you> (last visited June 19, 2019).

extensive efforts to educate consumers about the realities of industrial poultry production. OCA also uses its funds and member base to pressure food companies to adopt honest labeling practices to benefit consumers.

168. Tyson's misleading advertising has directly decreased the effectiveness of OCA's educational efforts regarding industrial chicken production and its efforts to promote genuinely sustainable/humane agriculture. Tyson's conduct has also necessitated increased educational efforts to counteract this deceptive marketing.

169. As a result of Tyson's legal violations, OCA has suffered injury in fact and has lost money or property. Specifically, OCA has expended its resources to counteract Tyson's misrepresentations. For years, OCA expended its resources to address efforts in order to conduct research on Tyson's agricultural practices and to educate consumers that, contrary to its representations, its products are neither environmentally sustainable nor humane. For example, OCA has published dozens of posts on its website and social media to educate consumers about Tyson's practices.¹⁴⁴

170. On March 19, 2019, OCA bought Tyson Grilled & Ready Breast Strips and Tyson Naturals Gluten-free Breaded Chicken Breast Nuggets at a Walmart and Safeway in the District.

¹⁴⁴ See, e.g., Katherine Paul, *From 'Sea to Shining Sea,' Industrial Ag Fouls America's Waterways*, Organic Consumers Ass'n, (Mar. 21, 2018), <https://www.organicconsumers.org/essays/sea-shining-sea-industrial-ag-fouls-americas-waterways> (last visited June 19, 2019); Martha Rosenberg & Ronnie Cummins, *Time to Drive Factory Farmed Food off the Market*, Organic Consumers Ass'n (Sept. 7, 2016) <https://www.organicconsumers.org/essays/time-drive-factory-farmed-food-market> (last visited June 19, 2019); *Watch Out, Tyson*, Organic Consumers Ass'n, <https://www.organicconsumers.org/newsletter/organic-bytes-477-wallets-stuffed-full-monsanto-cash/watch-out-tyson> (last visited June 19, 2019); Organic Consumers Ass'n (@organicconsumers), Facebook (Sept. 1, 2016), <https://www.facebook.com/organicconsumers/posts/10154161916049934> (last visited June 19, 2019).

171. On June 18, 2019, OCA bought Tyson Grilled & Ready Breast Fillets at a Safeway in the District.

172. OCA purchased the Products in order to evaluate Tyson's marketing and advertising claims regarding humane treatment and environmental stewardship. The packaging identified the products as coming from FSIS establishment numbers P13556 and P27505A, slaughter plants and processing plants in Sedalia, Missouri; Gainesville, Georgia, respectively.

JURISDICTION AND VENUE

173. This Court has personal jurisdiction over the parties in this case.

174. FWW and OCA each have a presence in the District and consent to this Court having personal jurisdiction over their respective organizations.

175. This Court has personal jurisdiction over Tyson because Tyson has purposefully directed its conduct to the District and has availed itself of the benefits and protections of District of Columbia law.

176. This Court has subject-matter jurisdiction over this action under the CPPA, D.C. Code § 28-3901, *et seq.*

177. Venue is proper in this Court because Tyson aims its marketing and advertising at consumers within the District. Tyson internet advertising is accessible in the District. Tyson chicken products can be, and are, purchased in the District by District consumers.

CAUSE OF ACTION

Violations of the District of Columbia Consumer Protection Procedures Act

178. FWW and OCA incorporate by reference all the allegations of the preceding paragraphs of this Complaint.

179. FWW and OCA are non-profit, public-interest organizations that bring these claims in their individual and representative capacities, on their own behalves, on behalf of their members, and on behalf of affected consumers and the general public. *See* D.C. Code § 28-3905(k)(1)(C), (D)(i).

180. Through § 28-3905(k)(1)(C), the DC CPPA allows for non-profit organizational standing to the fullest extent recognized by the D.C. Court of Appeals in its past and future decisions addressing the limits of Constitutional standing under Article III.

181. Through § 28-3905(k)(1)(D)(i), the DC CPPA explicitly allows for public interest organizational standing even beyond that which is afforded pursuant to § 28-3905(k)(1)(C) and allows a public-interest organization to stand in the shoes of a consumer to seek relief from any violation of the CPPA.

182. Tyson is a “person” and a merchant that provides “goods” within the meaning of the CPPA. *See id.* § 28-3901(a)(1), (3), (7).

183. Tyson has advertised and marketed the Products with terms such as “environmental stewardship,” “sustainability,” “protecting and respecting natural resources,” “committed to compliance with environmental laws,” and “safe for the environment”—when, in fact, Tyson is second largest polluter in the United States and routinely emits hazardous pollutants in violation of environmental laws. Thus, Tyson has violated the CPPA by “represent[ing] that goods . . . have a source . . . [or] characteristics . . . that they do not have”; “represent[ing] that goods . . . are of a particular standard, quality, grade, style, or model, in in fact they are of another”; “misrepresent[ing] as to a material fact which has a tendency to mislead”; “fail[ing] to state a material fact if such failure tends to mislead”; “us[ing] innuendo or ambiguity as to a material fact,

which has a tendency to mislead”; and “advertis[ing] . . . goods . . . without the intent to sell them as advertised.” *See id.* § 28-3904(a), (d), (e), (f), (f-1), (h).

184. Tyson has also advertised and marketed the Products as a humane choice, from chickens who had been given “the highest quality of life,” free from pain, injury, disease, discomfort, fear, distress, hunger, or thirst (the “Five Freedoms”). Tyson touts its “commitment to delivering excellence in animal welfare,” and claims the chickens in the Products are raised in conditions where they “can move freely” and “express normal behavior.” These are just a few examples; Tyson has made numerous other variations of humane treatment representations—when, in fact, the chicken products come from chickens who are raised, handled, transported and slaughtered through routinely abusive and inhumane conditions and practices. Thus, Tyson has violated the CPPA by “represent[ing] that goods . . . have a source . . . [or] characteristics . . . that they do not have”; “represent[ing] that goods . . . are of a particular standard, quality, grade, style, or model, in in fact they are of another”; “misrepresent[ing] as to a material fact which has a tendency to mislead”; “fail[ing] to state a material fact if such failure tends to mislead”; “us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead”; and “advertis[ing] . . . goods . . . without the intent to sell them as advertised.” *See id.* § 28-3904(a), (d), (e), (f), (f-1), (h).

JURY TRIAL DEMAND

185. Plaintiffs hereby demand a trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiffs FWW and OCA pray for judgment against Tyson and request the following relief:

- a. A declaration that Tyson’s conduct is in violation of the CPPA;

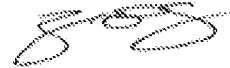
- b. An order enjoining Tyson's conduct found to be in violation of the CPPA, as well as requiring corrective advertising;
- c. An order granting Plaintiff costs and disbursements, including reasonable attorneys' fees and expert fees, and prejudgment interest at the maximum rate allowable by law; and
- d. Any such further relief as this Court may deem to be just and proper.

RICHMAN LAW GROUP



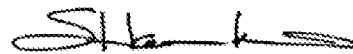
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FOOD & WATER WATCH



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1616 P Street NW, Suite 300
Washington, DC 20036
sedwards@fwwatch.org

ANIMAL EQUALITY



Sarah Hanneken (*Pro Hac Vice forthcoming*)
Animal Equality
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Los Angeles, CA 90069
sarabh@animalequality.org

Counsel for Plaintiffs

Superior Court of the District of Columbia

CIVIL DIVISION- CIVIL ACTIONS BRANCH

FOOD & WATER WATCH, INC., INFORMATION SHEET

and ORGANIC CONSUMERS ASSOCIATION

Case Number: **2019 CA 004547 B**

vs

Date: July 10, 2019

TYSON FOODS, INC

☐ One of the defendants is being sued
in their official capacity.

Name: (Please Print) Kim Richman	Relationship to Lawsuit
Firm Name: Richman Law Group	<input checked="" type="checkbox"/> Attorney for Plaintiff
Telephone No.: 7187054579 Six digit Unified Bar No.: 1022978	<input type="checkbox"/> Self (Pro Se)
	<input type="checkbox"/> Other: _____

TYPE OF CASE: ☐ Non-Jury ☐ 6 Person Jury ☒ 12 Person Jury
Demand: \$ _____ Other: _____

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: _____ Judge: _____ Calendar #: _____

Case No.: _____ Judge: _____ Calendar#: _____

NATURE OF SUIT: (Check One Box Only)

A. CONTRACTS

COLLECTION CASES

- | | | |
|---|---|---|
| <input type="checkbox"/> 01 Breach of Contract | <input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 16 Under \$25,000 Consent Denied |
| <input type="checkbox"/> 02 Breach of Warranty | <input type="checkbox"/> 17 OVER \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 18 OVER \$25,000 Consent Denied |
| <input type="checkbox"/> 06 Negotiable Instrument | <input type="checkbox"/> 27 Insurance/Subrogation | <input type="checkbox"/> 26 Insurance/Subrogation |
| <input type="checkbox"/> 07 Personal Property | Over \$25,000 Pltf. Grants Consent | Over \$25,000 Consent Denied |
| <input type="checkbox"/> 13 Employment Discrimination | <input type="checkbox"/> 07 Insurance/Subrogation | <input type="checkbox"/> 34 Insurance/Subrogation |
| <input type="checkbox"/> 15 Special Education Fees | Under \$25,000 Pltf. Grants Consent | Under \$25,000 Consent Denied |
| | <input type="checkbox"/> 28 Motion to Confirm Arbitration | |
| | Award (Collection Cases Only) | |

B. PROPERTY TORTS

- | | | |
|---|---|--------------------------------------|
| <input type="checkbox"/> 01 Automobile | <input type="checkbox"/> 03 Destruction of Private Property | <input type="checkbox"/> 05 Trespass |
| <input type="checkbox"/> 02 Conversion | <input type="checkbox"/> 04 Property Damage | |
| <input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a) | | |

C. PERSONAL TORTS

- | | | |
|---|--|--|
| <input type="checkbox"/> 01 Abuse of Process | <input type="checkbox"/> 10 Invasion of Privacy | <input type="checkbox"/> 17 Personal Injury- (Not Automobile, Not Malpractice) |
| <input type="checkbox"/> 02 Alienation of Affection | <input type="checkbox"/> 11 Libel and Slander | <input type="checkbox"/> 18 Wrongful Death (Not Malpractice) |
| <input type="checkbox"/> 03 Assault and Battery | <input type="checkbox"/> 12 Malicious Interference | <input type="checkbox"/> 19 Wrongful Eviction |
| <input type="checkbox"/> 04 Automobile- Personal Injury | <input type="checkbox"/> 13 Malicious Prosecution | <input type="checkbox"/> 20 Friendly Suit |
| <input checked="" type="checkbox"/> 05 Deceit (Misrepresentation) | <input type="checkbox"/> 14 Malpractice Legal | <input type="checkbox"/> 21 Asbestos |
| <input type="checkbox"/> 06 False Accusation | <input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death) | <input type="checkbox"/> 22 Toxic/Mass Torts |
| <input type="checkbox"/> 07 False Arrest | <input type="checkbox"/> 16 Negligence- (Not Automobile, Not Malpractice) | <input type="checkbox"/> 23 Tobacco |
| <input type="checkbox"/> 08 Fraud | | <input type="checkbox"/> 24 Lead Paint |

SEE REVERSE SIDE AND CHECK HERE IF USED

Information Sheet, Continued

C. OTHERS

- | | |
|---|---|
| <input type="checkbox"/> 01 Accounting | <input type="checkbox"/> 17 Merit Personnel Act (OEA) |
| <input type="checkbox"/> 02 Att. Before Judgment | (D.C. Code Title 1, Chapter 6) |
| <input type="checkbox"/> 05 Ejectment | <input type="checkbox"/> 18 Product Liability |
| <input type="checkbox"/> 09 Special Writ/Warrants
(DC Code § 11-941) | <input type="checkbox"/> 24 Application to Confirm, Modify,
Vacate Arbitration Award (DC Code § 16-4401) |
| <input type="checkbox"/> 10 Traffic Adjudication | <input type="checkbox"/> 29 Merit Personnel Act (OHR) |
| <input type="checkbox"/> 11 Writ of Replevin | <input type="checkbox"/> 31 Housing Code Regulations |
| <input type="checkbox"/> 12 Enforce Mechanics Lien | <input type="checkbox"/> 32 Qui Tam |
| <input type="checkbox"/> 16 Declaratory Judgment | <input type="checkbox"/> 33 Whistleblower |

II.

- | | | |
|--|---|--|
| <input type="checkbox"/> 03 Change of Name | <input type="checkbox"/> 15 Libel of Information | <input type="checkbox"/> 21 Petition for Subpoena
[Rule 28-I (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic | <input type="checkbox"/> 19 Enter Administrative Order as
Judgment [D.C. Code § | <input type="checkbox"/> 22 Release Mechanics Lien |
| <input type="checkbox"/> 08 Foreign Judgment/International | 2-1802.03 (h) or 32-151 9 (a)] | <input type="checkbox"/> 23 Rule 27(a)(1)
(Perpetuate Testimony) |
| <input type="checkbox"/> 13 Correction of Birth Certificate | <input type="checkbox"/> 20 Master Meter (D.C. Code § | <input type="checkbox"/> 24 Petition for Structured Settlement |
| <input type="checkbox"/> 14 Correction of Marriage
Certificate | 42-3301, et seq.) | <input type="checkbox"/> 25 Petition for Liquidation |
| <input type="checkbox"/> 26 Petition for Civil Asset Forfeiture (Vehicle) | | |
| <input type="checkbox"/> 27 Petition for Civil Asset Forfeiture (Currency) | | |
| <input type="checkbox"/> 28 Petition for Civil Asset Forfeiture (Other) | | |

D. REAL PROPERTY

- | | |
|--|--|
| <input type="checkbox"/> 09 Real Property-Real Estate | <input type="checkbox"/> 08 Quiet Title |
| <input type="checkbox"/> 12 Specific Performance | <input type="checkbox"/> 25 Liens: Tax / Water Consent Granted |
| <input type="checkbox"/> 04 Condemnation (Eminent Domain) | <input type="checkbox"/> 30 Liens: Tax / Water Consent Denied |
| <input type="checkbox"/> 10 Mortgage Foreclosure/Judicial Sale | <input type="checkbox"/> 31 Tax Lien Bid Off Certificate Consent Granted |
| <input type="checkbox"/> 11 Petition for Civil Asset Forfeiture (RP) | |



Attorney's Signature

July 10, 2019

Date



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
Civil Actions Branch
500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001
Telephone: (202) 879-1133 • Website: www.dccourts.gov

ORGANIC CONSUMERS ASSOCIATION et al

Vs.

C.A. No. 2019 CA 004547 B

TYSON FOODS, INC.

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure (“Super. Ct. Civ. R.”) 40-I, it is hereby **ORDERED** as follows:

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge’s name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the summons, the complaint, and this Initial Order and Addendum. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in Super. Ct. Civ. R. 4(m).

(3) Within 21 days of service as described above, except as otherwise noted in Super. Ct. Civ. R. 12, each defendant must respond to the complaint by filing an answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in Super. Ct. Civ. R. 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an initial scheduling and settlement conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients **prior** to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than seven business days before the scheduling conference date.

No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each judge’s Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court’s website <http://www.dccourts.gov/>.

Chief Judge Robert E. Morin

Case Assigned to: Judge WILLIAM M JACKSON

Date: July 11, 2019

Initial Conference: 9:30 am, Friday, October 18, 2019

Location: Courtroom 219

500 Indiana Avenue N.W.

WASHINGTON, DC 20001

ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES

In accordance with the Medical Malpractice Proceedings Act of 2006, D.C. Code § 16-2801, et seq. (2007 Winter Supp.), "[a]fter an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC." D.C. Code § 16-2821.

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at <https://www.dccourts.gov/pa/>. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. D.C. Code § 16-2825 Two separate Early Mediation Forms are available. Both forms may be obtained at www.dccourts.gov/medmalmediation. One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Both forms also are available in the Multi-Door Dispute Resolution Office, Suite 2900, 410 E Street, N.W. Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to earlymedmal@dcsc.gov. *Pro se* Plaintiffs who elect not to eFile may file by hand in the Multi-Door Dispute Resolution Office.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at www.dccourts.gov/medmalmediation/mediatorprofiles. All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following persons are required by statute to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case. D.C. Code § 16-2824.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code § 16-2826. Any Plaintiff who is *pro se* may elect to file the report by hand with the Civil Actions Branch. The forms to be used for early mediation reports are available at www.dccourts.gov/medmalmediation.

Chief Judge Robert E. Morin