

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

<p>ORGANIC CONSUMERS ASSOCIATION, 6771 South Silver Hill Drive, Finland, MN 55603,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>FOSTER FARMS, LLC; FOSTER POULTRY FARMS, LLC; FOSTER FARMS HOLDINGS LLC; and ATLAS FRM LLC,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>Case No. <u>2024-CAB-002272</u></p> <p>COMPLAINT</p> <p><u>DEMAND FOR JURY TRIAL</u></p>
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Plaintiff Organic Consumers Association (“Plaintiff” or “OCA”) brings this action against Defendants FOSTER FARMS, LLC; FOSTER POULTRY FARMS, LLC; FOSTER FARMS HOLDINGS LLC; and ATLAS FRM LLC (collectively, “Defendants” or “Foster Farms”). OCA alleges the following based upon personal knowledge, information, belief, and the investigation of counsel. This Complaint is on behalf of OCA, the general public of the District of Columbia (“D.C.”), and D.C. consumers, and is brought under the District of Columbia Consumer Protection Procedures Act (“CPPA”).

INTRODUCTION

1. This is a consumer-protection case concerning deceptive marketing representations about chicken products produced, distributed, and marketed by Foster Farms (herein referred to as the “Products”).¹ The case is brought by OCA, a nonprofit, public-interest organization dedicated

¹ The Products include, but are not limited to, Foster Farms’ Classic Buffalo Take Out Crispy Wings; Crispy Chicken Strips, 24 oz.; Honey BBQ Glazed Wings, 22 oz.; Hot & Spicy Chicken Wings, 22 oz.; Orange Chicken, 24 oz.; Farm & Garden™ Sheet Pan Roasts Garlic Butter Chicken; Farm & Garden™ Sheet Pan Roasts Lemon Herb Chicken; Farm & Garden™ Sheet Pan Roasts Parmesan Garlic Chicken; Farm & Garden™ Sheet Pan Roasts Smokehouse Chicken; Corn Dogs Honey Crunchy 6 ct.; Corn Dogs Honey Crunch 16 ct.; Mini Corn Dogs Honey Crunchy 20 ct.; and Mini Corn Dogs Honey Crunchy 40 ct. The Products also include any additional Foster Farms

to consumer protection and education. OCA does not seek monetary damages. Instead, OCA seeks an order declaring that Foster Farms made certain representations that violate the CPPA, as well as an injunction to end the deceptive marketing and advertising practices at issue.

2. This is not a class action, and OCA will not seek class certification.

3. Founded in 1939, Foster Farms has expanded into a multi-billion dollar, 12,000-employee company with operations in California, Oregon, Washington, Colorado, Arkansas, Alabama, and Louisiana, producing a line of animal-based products sold globally.²

4. As part of its product lineup,³ Foster Farms sells products, including frozen chicken Products, in the District of Columbia. On its website, which is accessible to consumers in the District, Foster Farms represents:

- “Here’s the skinny. The chickens we raise enjoy the five freedoms. . . .⁴
 - 3. Freedom from injury, pain, or disease**
Early detection, treatment, and close monitoring by staff veterinarians
 - 4. Freedom from cages**
Our chickens can express good old-fashioned instinctive chicken behaviors
 - 5. Freedom from fear and distress**
No overcrowding, no environmental stressors, and no predators”;⁵
- “[E]very one of our chickens has the space to roam and act like a chicken whether that’s a nice morning dust bath or just pecking around”;⁶ and
- “Our animals have big barns designed to keep the environment comfortable and controlled while giving our all-natural chickens and turkeys enough room to run around, sit, scratch, roll around, scratch, and run some more.”⁷

products that fall within this definition, as revealed through discovery; Plaintiff reserves the right to amend this Complaint to add any additional Products that fall within this definition.

² *About Us*, <https://www.indeed.com/cmp/Foster-Farms/about> (last visited Mar. 28, 2024).

³ Foster Farms, *Products*, <https://www.fosterfarms.com/products/> (last visited Mar. 28, 2024).

⁴ For clarity, OCA challenges only three of Foster Farms’ “Five Freedoms” claims.

⁵ Foster Farms, *Our Responsibility*, <https://www.fosterfarms.com/our-story/responsibility/> (last visited Mar. 28, 2024) (emphasis in original).

⁶ Foster Farms, *Our Farms*, <https://www.fosterfarms.com/our-story/our-farms/> (last visited Mar. 28, 2024).

⁷ Foster Farms, *Our Story*, <https://www.fosterfarms.com/our-story/healthy/> (last visited Mar. 28, 2024).

Collectively, the foregoing representations are referred to in this Complaint as Defendants’ “Animal Welfare Representations.”⁸

5. Foster Farms’ Animal Welfare Representations lead D.C. consumers to believe that the Products are sourced from chickens who are free from injury, pain, disease, fear, and distress, and who can express natural and instinctive chicken behaviors.

6. In reality, contrary to Foster Farms’ Animal Welfare Representations, the Products are made from chickens who are industrially farmed and killed using inhumane practices that routinely subject those chickens to injury, pain, disease, fear, distress, and environmental stressors rendering those chickens unable to express their instinctive or natural chicken behaviors.

7. An expanding body of consumer-perception research, including consumer-perception research conducted by Foster Farms itself,⁹ demonstrates that claims about how chickens are raised are material to consumers and influence consumers’ decisions when they make animal-product purchasing decisions.

8. As set forth through this Complaint, Foster Farms’ marketing—which suggests that the Products are made from chickens who have freedom from injury, pain, disease, fear, and distress, as well as the ability to express their natural and instinctual chicken behaviors—is false, deceptive, and misleading to D.C. consumers in violation of the D.C. CPPA, D.C. Code Section 28-3901, *et seq.*

⁸ Discovery may reveal that additional Foster Farms representations should be included within the scope of the allegations in this Complaint, and Plaintiff reserves the right to amend this Complaint to add such representations.

⁹ See Foster Farms, *Survey: Parenthood Drives Millennial Demand for Antibiotic-Free, Organic Poultry, Meat*, <https://www.fosterfarms.com/news/survey-parenthood-drives-millennial-demand-for-antibiotic-free-organic-poultry-meat/> (last visited Mar. 28, 2024).

JURISDICTION AND VENUE

9. This Court has subject-matter jurisdiction over this action under pursuant to the District of Columbia Consumer Protection Procedures Act, D.C. Code Section 28-3901 *et seq.*, and D.C. Code Section 11-921(a).

10. Plaintiff OCA consents to this Court's jurisdiction over it by filing this Complaint. OCA seeks to represent consumers and the general public of D.C.

11. This Court has personal jurisdiction over Foster Farms pursuant to D.C. Code Section 13-423(a)(1) because the claims herein arise from Foster Farms "transacting . . . business in the District of Columbia." Foster Farms has purposefully directed its marketing practices to D.C. consumers, sells the Products throughout the District of Columbia, advertises the Products throughout the District in violation of the CPPA, and has availed itself of the benefits and protection of D.C. law. It is therefore reasonable for Foster Farms to anticipate being subject to an action in the courts of this District for violation of laws of this jurisdiction.

12. Venue is proper in this Court pursuant to the CPPA because Foster Farms directs its marketing at consumers within the District of Columbia, sells its frozen chicken Products in D.C., and advertises the Products throughout the District of Columbia, in violation of the CPPA.

13. Pursuant to D.C. Code Section 28-3905(k)(2), this action shall be brought in D.C. Superior Court. Following the principles of non-aggregation set forth in *Snyder v. Harris*, 394 U.S. 332, 335 (1969), federal jurisdiction is not present, and this action is not subject to removal to federal court. *See, e.g., Inst. for Truth in Mktg. v. Total Health Network Corp.*, 321 F. Supp. 3d 76, 91 (D.D.C. 2018); *Organic Consumers Ass'n v. R.C. Bigelow, Inc.*, 314 F. Supp. 3d 344, 350 (D.D.C. 2018); *Animal Legal Defense Fund v. Hormel Foods Corp.*, 249 F. Supp. 3d 53, 59 (D.D.C. 2017).

PARTIES

14. Plaintiff OCA is a national nonprofit, public-interest organization that works to advocate for consumers' rights to choose healthy and safe food options and supports corporate accountability by increasing transparency and full disclosure of potential health and environmental impacts of corporate operations.

15. OCA strives to educate and advocate on behalf of consumers of both organic and non-organic products, engages consumers in marketplace pressure campaigns, and works to advance food and farming policy through grassroots lobbying on crucial issues such as food safety, industrial agriculture, corporate accountability, and environmental sustainability.

16. OCA is incorporated and headquartered in Minnesota and operates in the District of Columbia and throughout the United States.

17. OCA is a "public interest organization" within the meaning of the CPPA, D.C. Code Section 28-3901(a)(15).

18. OCA has hundreds of thousands of supporters nationwide, including many who live and shop in the District of Columbia, including consumers who seek to purchase food products that are better for public health, animals, and the environment.

19. Defendants Foster Farms, LLC and Foster Poultry Farms, LLC are California LLCs, with their principal place of business in Livingston, California.

20. Defendant Foster Farms Holdings LLC is a California LLC with its principal place of business in Huntington Beach, California.

21. Defendant Atlas FRM LLC is a Delaware LLC that is also registered as a Connecticut LLC, with its principal place of business in Greenwich, Connecticut.

22. Foster Farms, LLC; Foster Poultry Farms, LLC; Foster Farms Holdings LLC; and Atlas FRM LLC are each a “person” and “merchant” that provides “goods” within the meaning of the CPPA, D.C. Code Sections 28-3901(a)(1), (3), and (7).

23. Collectively, Defendants process, market, and distribute chicken Products to consumers throughout the District of Columbia and nationwide.

STATUTORY BACKGROUND PURSUANT TO THE CONSUMER PROTECTION PROCEDURES ACT GIVING RISE TO PLAINTIFF’S CLAIMS

24. This action is brought under the CPPA, D.C. Code § 28-3901, *et seq.*

25. It is unlawful under the CPPA for “any person” to:

- “represent that goods or services have a source, . . . characteristics, . . . [or] benefits . . . that they do not have,” D.C. Code § 28-3904(a);
- “represent that goods or services are of a particular standard, quality, grade, style, or model, if in fact they are of another,” *id.* § 28-3904(d);
- “misrepresent as to a material fact which has a tendency to mislead,” *id.* § 28-3904(e);
- “fail to state a material fact if such failure tends to mislead,” *id.* § 28-3904(f);
- “use innuendo or ambiguity as to a material fact, which has a tendency to mislead,” *id.* § 28-3904(f-1);
- “advertise or offer goods or services . . . without the intent to sell them or without the intent to sell them as advertised or offered, *id.* § 28-3904(h); or
- “sell consumer goods in a condition or manner not consistent with that warranted . . . by operation or requirement of federal law,” *id.* § 28-3904(x).

26. A violation of the CPPA occurs when a person “engages in an unfair or deceptive trade practice,” regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” *Id.* § 28-3904.

27. 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). The statute “shall be construed and applied liberally to promote its purpose.” *Id.*

28. Under the CPPA, “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 the CPPA and the organization has a “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” D.C. Code § 28-3905(k)(1)(D)(i), (ii).

29. As set forth above, *supra* ¶¶ 14-18, OCA is a public-interest organization with a strong nexus to the interests of consumers in this case, *i.e.*, consumers’ interest in receiving truthful information about the chicken Products. OCA has worked to advocate for consumers’ rights to safe and healthful food, to support corporate accountability with respect to full disclosure of health and environmental impacts of corporate supply chains, to educate consumers and to present them with truthful information about farm animal husbandry, and to end the inhumane treatment of farmed animals. OCA has previously represented D.C. consumers in similar actions under the CPPA and has a sufficient nexus to D.C. consumers to represent their interests.

30. D.C. consumers generally are consumers who would be entitled to bring this action under the CPPA.

31. OCA may therefore bring this action on behalf of D.C. consumers.

32. This is not a class action or an action brought on behalf of any specific consumer. This is an action brought by OCA on behalf of itself, District of Columbia consumers, and the general public of D.C. OCA will not request class certification.

33. An action for injunctive and/or declaratory relief brought pursuant to Section 28-3905(k)(1)(D) on behalf of D.C. consumers is not a class action and therefore does not require class certification and is not subject to the Class Action Fairness Act.¹⁰

34. This action does not seek damages or restitution. Instead, OCA seeks to end the unlawful conduct directed at D.C. consumers by ending Foster Farms' false and deceptive marketing.

35. Remedies available under the CPPA 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 GIVING RISE TO PLAINTIFF’S CLAIM FOR RELIEF

36. Foster Farms markets the Products throughout the District of Columbia via its online marketing, which is accessible to consumers within the District.

37. Foster Farms sells its Products to consumers within the District of Columbia including at three different Harris Teeter retail locations¹¹ and seven Giant Food locations.¹² D.C.

¹⁰ See *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 190 (D.C. 2021).

¹¹ These locations are (1) Harris Teeter, 1201 First Street NE, Washington, DC 20002; (2) Harris Teeter, 1631 Kalorama Road NW, Suite 100, Washington, DC 20009; and (3) Harris Teeter, 401 M. Street SE, Washington, DC 20003. Foster Farms, *Where to Buy*, <https://www.fosterfarms.com/where-to-buy/> (last visited Mar. 28, 2024).

¹² These locations are (1) Giant Food, 1050 Brentwood Road, Washington, DC 20018; (2) Giant Food, 1345 Park Road NW, Washington, DC 20010; (3) Giant Food, 1400 7th Street NW, Washington, DC 20001; (4) Giant Food, 1535 Alabama Avenue SE, Washington, DC 20032; (5) Giant Food, 300 H Street NE, Washington, DC 20002; (6) Giant Food, 3336 Wisconsin Avenue NW, Washington, DC 20016; and (7) Giant Food, 4303 Connecticut Avenue NW, Washington, DC 20008. Giant Food, *Browse Giant Food Locations by State*, <https://stores.giantfood.com/dc/washington> (last visited Apr. 2, 2024).

consumers can also view and purchase Foster Farms Products online through Costco Wholesale, Harris Teeter, and Instacart.¹³

38. Through online advertising of the Products, accessible to consumers in the District, Foster Farms markets the Products with Animal Welfare Representations.¹⁴

39. As described herein, *infra* ¶¶ 44-58, consumer research, including research conducted by Foster Farms itself, demonstrates that Foster Farms' Animal Welfare Representations are material to D.C. consumers and lead consumers to believe that the chickens used to make the Products are humanely sourced in accordance with practices that eliminate injury, pain, disease, fear, and distress, while allowing those chickens to express natural and instinctive chicken behaviors.

40. As explained herein, *infra* ¶¶ 59-109, contrary to Foster Farms' marketing, the Products are made from chickens who are raised and killed under inhumane conditions and subjected to practices that regularly give rise to injury, pain, disease, fear, and distress, such that those chickens cannot express natural or instinctive behaviors.

41. Foster Farms' advertising of the Products is thus false and misleading to D.C. consumers.

I. Foster Farms' Animal Welfare Representations Lead Consumers to Believe That the Products Are Made from Chickens Raised Humanely in Accordance with Animal Welfare Standards That Eliminate Injury, Pain, Disease, Fear, and Distress While Allowing Those Chickens to Express Natural Chicken Behaviors.

42. On its website, accessible to consumers within the District, Foster Farms advertises that the chickens used to make the Products as raised with (1) "freedom from injury pain or disease—[e]arly detection, treatment and close monitoring by staff veterinarians";¹⁵ (2) "freedom

¹³ *Id.* (through hyperlink "Buy Online" available on same webpage).

¹⁴ See *supra* ¶¶ 4-9 and accompanying text; see *supra* n.11 and accompanying text.

¹⁵ *Our Responsibility*, *supra* note 5.

from cages—[o]ur chickens can express good old-fashioned instinctive chicken behaviors”;¹⁶ (3) “freedom from fear and distress—[n]o overcrowding, no environmental stressors, and no predators”;¹⁷ (4) “space to roam and act like a chicken whether that’s a nice morning dust bath or just pecking around”;¹⁸ and (5) “big barns designed to keep the environment comfortable and controlled while giving our all-natural chickens . . . enough room to run around, sit, scratch, roll around, scratch, and run some more.”¹⁹

43. The “five freedoms” of animal welfare are well recognized as “highly influential in the animal welfare arena,” which may create the “mistaken expectation” that such freedoms are fully achievable in the livestock industry.²⁰

A. Foster Farms’ Animal Welfare Representations Create Consumer Expectations About Foster Farms’ Treatment of the Chickens Under its Care and Are Material to D.C. Consumers.

44. Survey data in the context of chicken products advertised as “humanely raised” suggest that consumers viewing Foster Farms’ Animal Welfare Representations are led to believe chickens in Foster Farms’ supply chain are raised in accordance with high animal welfare standards that eliminate injury, pain, fear, and distress.

45. For example, a 2010 survey of adult United States consumers commissioned by the Animal Welfare Institute found that, when purchasing chicken products labeled as “humanely raised,” 82% of consumers believe the chickens have enough space to move and stretch their wings

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Our Farms*, *supra* note 6.

¹⁹ *Our Story*, *supra* note 7.

²⁰ David J. Mellow, *Updating Animal Welfare Thinking: Moving Beyond the “Five Freedoms” Towards “A Life Worth Living.”* 6 *Animals* 1, 1-3 (Mar. 14, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4810049/pdf/animals-06-00021.pdf>.

freely; 79% of consumers believe the chickens were not raised in windowless sheds; and 78% of consumers believe the chickens were not bred for rapid growth causing problems like lameness.²¹

46. That same survey found that, when purchasing chicken products labeled as “humanely raised,” 75% of consumers believe that it is either “somewhat unacceptable” or “totally unacceptable” to confine those chickens indoors for their entire lives, and 83% of consumers believe is unacceptable for those chickens not to have access to fresh air or sunlight.²²

47. A 2020 survey of adult United States consumers who purchase fresh, frozen, or processed chicken products at least once per month, commissioned by the Animal Welfare Institute, found that, when purchasing chicken products labeled as “humanely raised,” 65% of consumers believe that the chickens were not confined indoors for their entire life, 71% of consumers believe that the chickens were raised without the use of growth promoters or non-therapeutic antibiotics, and 58% expect that the chickens are not bred for extreme rapid growth that allows them to be ready for slaughter as early as 42 days of age.²³

48. Consumers are increasingly concerned that animals raised for food are treated, handled, and raised humanely.²⁴

²¹ Animal Welfare Institute, *U.S. Poll on the Welfare of Chickens Raised for Meat* (2010), <https://awionline.org/sites/default/files/uploads/legacy-uploads/documents/FA-HumanelyRaisedCagedFreeSurvey-081110-1281725036-document-23248.pdf>.

²² *Id.*

²³ Animal Welfare Institute, *Survey of Consumer Attitudes About Chicken Welfare* (2020), <https://awionline.org/sites/default/files/uploads/documents/SurveyConsumerAttitudesChickenWelfare.pdf>.

²⁴ See, e.g., Rexanna Powers, et al., *Consumers' Evaluation of Animal Welfare Labels on Poultry Products*, 104 *J. Applied Communications* 1 (February 2020) (“[T]he public has expressed increasing concerns regarding the humane raising and handling of farm animals.”); *Results from a Recent Survey of American Consumers*, Lake Research Partners, at 1 (June 29, 2016), https://www.aspc.org/sites/default/files/publicmemo_aspc_labeling_fi_rev1_0629716.pdf (finding that, in an online survey of 1,000 American adult consumers, 77% of consumers say that they are concerned about the welfare of animals that are raised for human food); Marta E. Alonso, et al., *Consumers' Concerns and Perception of Farm Animal Welfare*, 10 *Animals* 385, at 2 (February 27, 2020) (“There is strong evidence of public concern over the moral implications of actual animal production systems on farm animal welfare.”).

49. A 2015 nationally representative survey conducted by Consumer Reports found that 84% of consumers say that “providing better living conditions for animals” is a key objective when shopping for food.²⁵

50. A 2016 survey published by the American Society for the Prevention of Cruelty to Animals found that 67% of consumers are likely to buy meat, eggs, and dairy products bearing a welfare certification label with meaningful standards.²⁶

51. A 2021 Power of Meat survey found that 58% of consumers care about the amount of living space animals are afforded when making meat purchasing decisions.²⁷

52. According to Foster Farms’ own survey data, “[n]early 80 percent of those surveyed noted that buying humanely raised meat and poultry is more important to them now than it was in the past.”²⁸

53. Foster Farms’ Animal Welfare Representations constitute “material fact[s] which ha[ve] a tendency to mislead” within the meaning of the CPPA. D.C. Code § 28-3904(e).

54. Foster Farms’ Animal Welfare Representations are misleading because Foster Farms’ actual practices do not comport with consumers’ expectations for what those representations mean.

55. Foster Farms’ Animal Welfare Representations are material to D.C. consumers who care about supporting humane animal farming practices for chickens raised for meat.

²⁵ *Natural Food Labels Survey: 2015 Nationally-Representative Phone Survey*, Consumer Reports National Research Center (2015), <https://www.foodpolitics.com/wp-content/uploads/Consumer-Reports-Natural-Food-Labels-Survey-Report.pdf>.

²⁶ *New Research Finds Vast Majority of Americans Concerned About Farm Animal Welfare, Confused by Food Labels and Willing to Pay More for Better Treatment*, ASPCA (July 7, 2016), <https://www.asPCA.org/about-us/press-releases/new-research-finds-vast-majority-americans-concerned-about-farm-animal>.

²⁷ Elizabeth Doughman, *10 Takeaways from the 2021 Power of Meat Report*, WATTPOultry.com (March 24, 2021), <https://www.wattagnet.com/articles/42523-10-takeaways-from-the-2021-power-of-meat-report?v=preview>.

²⁸ *Survey: Parenthood Drives Millennial Demand for Antibiotic-Free, Organic Poultry, Meat*, *supra* note 9.

56. Consumers are increasingly concerned that chickens raised for food are treated, handled, and raised humanely.²⁹

57. D.C. consumers are unable directly to discover how chickens in Foster Farms' supply chain are raised, handled, treated, and killed, and thus, must rely on companies' animal welfare claims made on product labels or other advertising mediums when making animal-based food purchasing decisions.³⁰

58. Foster Farms' Animal Welfare Representations—which provide D.C. consumers with the impression that the Products are made from chickens who have freedom from injury, pain, disease, fear, and distress, as well as the ability to express their natural and instinctual chicken behaviors—“misrepresent . . . material fact[s] which ha[ve] the tendency to mislead.” D.C. Code § 28-3904(e).

B. Contrary to Foster Farms' Animal Welfare Representations, the Products Are Made from Chickens Who Are Unable to Express Natural or Instinctive Chicken Behaviors and Do Not Have Room to Roam or Run.

59. Foster Farms' Animal Welfare Representations lead consumers to believe that the Products are sourced from chickens who can express natural or instinctive chicken behaviors, have space to roam and act like chickens, and have “enough room to run around.” But contrary to these

²⁹ A survey conducted by the National Chicken Council, an industry trade group, found that 46.8% of consumers value animal welfare when deciding to purchase chicken products. See Jayson L. Lusk, *Consumer Beliefs, Knowledge, and Willingness-to-Pay for Sustainability Related Poultry Production Practices Broiler Survey Report*, National Chicken Council, at 21 (Jan. 2, 2018), https://www.nationalchickencouncil.org/wp-content/uploads/2018/04/Report_broiler_Final.pdf. Globally, consumers are concerned about the moral implications of animal production systems on farm animal welfare and have increasingly demanded ethical production and refused to purchase products that do not meet their animal welfare concerns. See Marta E. Alonso, et al., *Consumers' Concerns and Perceptions of Farm Animal Welfare*, 10 *Animals* (Basel) 1, 2 (Feb. 27, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7143148/pdf/animals-10-00385.pdf>.

³⁰ Rexanna Powers, et al., *supra* note 24, at 2-3 (“[A] mere two percent of the American population is directly involved in agricultural production. Most members of the non-agriculture population are not knowledgeable about the procedures and practice standards of food or fiber production; neither have they known substantially about the complexities involved in sustaining a viable agriculture system For most consumers, it is improbable to track the sources of their food products and to understand whether the producers have complied with appropriate animal welfare standards.”).

representations, Foster Farms chickens who end up in the Products spend their lives in conditions of extreme confinement that prevent the expression of natural behaviors.

60. Many chickens raised for meat—including those used to produce the Products—are conventionally raised in barren environments at high stocking densities,³¹ and thus are particularly susceptible to lameness, a painful condition that prevents those chickens from moving normally, accessing resources such as food and water, escaping aversive encounters with other chickens, or expressing natural behaviors such as dust bathing, foraging, walking, and preening.³²

61. Many corporations in the chicken industry, including Foster Farms, breed chickens used for meat for excessive weight gain and fast growth. This results in the chicken's inability to feel satiated, thus experiencing chronic hunger; legs that are unable to support the chicken's weight, leading to the inability to move and painful movement; and premature death from heart attacks.³³

62. Excessive weight gain from such breeding, along with poor litter management and high stocking density, cause chickens raised for meat in this manner to be uniquely prone to contact

³¹ Alaeldein M. Abudabos, et al., *Influence of Stocking Density on Welfare Indices of Broilers*, 12 Italian J. Animal Sci., at 213 (April 2013) (“High [stocking density] markedly increased broilers stress and jeopardize[s] their welfare.”).

³² E.G. Granquist, et al., *Lameness and its Relationship with Health and Production Measures in Broiler Chickens*, 13 Animal 2365, at 1-2 (March 2019) (“19% of the birds showed moderate-to-severe lameness.”) (“Lameness is associated with pain, therefore representing an important welfare concern . . . studies have shown that lame birds prefer food with analgesic, and lame broilers increase their activity when given analgesics . . . lame birds may have more difficulties reaching resources in the house such as food and water . . . difficulties in escaping aversive encounters, and in performing behaviors such as dust bathing, foraging, walking, and preening.”).

³³ *The Dirt on Humanewashing*, Farm Forward (Dec. 2020), <https://www.farmforward.com/publications/the-dirt-on-humanewashing/>.

footpad dermatitis,³⁴ a painful condition where the chicken’s skin becomes inflamed, causing lesions and deep ulcers.³⁵

63. The indoor space that Foster Farms allocates to its chickens is minimal—less than one square foot per bird, or about the size of a sheet of standard printer paper—³⁶which does not give its chickens room to express natural chicken behaviors, roam, run, or even turn around.³⁷

64. Video footage of an undercover investigation conducted by Mercy For Animals (“MFA”), a nonprofit organization which strives to end farmed animal exploitation and construct a just and sustainable food system, into the Foster Farms “growout” facility in Fresno County, California, *infra* ¶¶ 100-104, demonstrates that Foster Farms chickens are raised under conditions of extreme confinement and high-stocking density.³⁸ As described *supra* ¶¶ 59-63, these conditions

³⁴ S.M. Haslam, et al., *Factors Affecting the Prevalence of Foot Pad Dermatitis, Hock Burn and Breast Burn in Broiler Chicken*, 48 *British Poultry Sci.* 264 (2007) (estimating that, at slaughter age, 65% of chickens raised for meat suffer from contact dermatitis, while 41% of chickens at this age suffer from “severe hock burn.”). *See, e.g.*, Nathan Freeman, et al., *Remedying Contact Dermatitis in Broiler Chickens with Novel Flooring Treatments*, 10 *Animals* 1761 (2020); W. Bessei, *Welfare of Broilers: A Review*, 62 *World’s Poultry Sci. J.* 455 (“High moisture content of the litter enhances microbial activity, which in turn leads to increase of temperature and ammonia in broiler houses, and thus, high incidence of contact dermatitis.”).

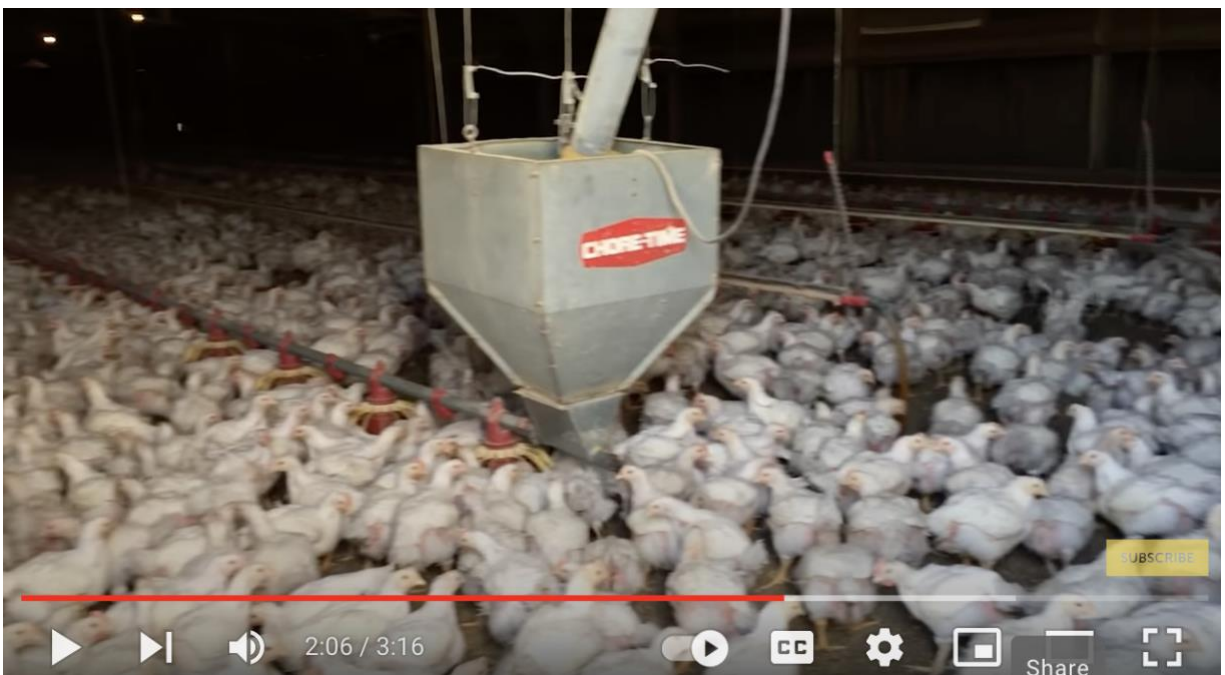
³⁵ Anna C.M. van den Oever, et al., *High Levels of Contact Dermatitis and Decreased Mobility in Broiler Breeders, But Neither Have a Relationship with Floor Eggs*, 99 *Poultry Sci.* 3355 (2020) (“Contact dermatitis is likely a painful condition, which is associated with health and performance problems.”); Sarge Bilgili, *Factors Contributing to Foot-Pad Dermatitis in Broilers*, *WATT Poultry* (June 17, 2009), <https://www.wattagnet.com/articles/289-factors-contributing-to-foot-pad-dermatitis-in-broilers> (“The lesions are superficial in mild cases but progress into deep ulcers when the dermatitis progresses, resulting in pain and discomfort to the bird.”).

³⁶ Foster Farms is purportedly certified by American Humane Certified, a third-party farmed animal care certification program, which sets minimum standards for space allocations for chickens raised for their meat, which Foster Farms must abide by in order to maintain its purported certification. Plaintiff is not challenging American Humane Certified’s certification scheme or alleging that Foster Farm’s Animal Welfare Representations should be read as comporting with a given certification scheme. But since Foster Farms has agreed to comply with American Humane Certified’s certification requirements, some of those requirements are referenced within this Complaint to demonstrate how Foster Farms’ Animal Welfare representations, which are independent of its certification status, are misleading to D.C. consumers.

³⁷ *Seal: American Humane Certified*, <https://www.consumerreports.org/food-labels/seals-and-claims/american-humane-certified> (last visited Apr. 2, 2024); American Humane, *Animal Welfare Standards for Broiler Chickens*, at 19 (May 2019), <https://www.americanhumane.org/app/uploads/2021/08/Broiler-Chickens-Full-Standards.pdf> (“Space allowances for broilers must be at least 1 square foot for each 7.0 pounds of bird weight.”).

³⁸ Mercy for Animals, *WATCH: Shocking Animal Abuse Exposed at “American Humane Certified” Foster Farms Slaughterhouse*, YouTube, at 2:05-2:20, (June 17, 2015), https://www.youtube.com/watch?v=vBZW2FKs8qs&ab_channel=mercyforanimals [hereinafter *WATCH: Shocking Animal Abuse Exposed at “American Humane Certified Foster Farms Slaughterhouse*].

“lead to a limitation of behavioral expression.”³⁹ Examples from this footage showing such confinement are included below:



³⁹ A.B. Riber, et al., *Review of Environmental Enrichment for Broiler Chickens*, 97 *Animal Well-Being & Behavior* 378 (2018).



65. The high stocking density and confinement that Foster Farms chickens are raised under decreases movement, rest, and natural preening behaviors, and increases fear levels, *i.e.*, chickens raised in high stocking conditions exhibit fewer natural and instinctual chicken behaviors.⁴⁰ In contrast, chickens raised under lower stocking densities exhibit more natural chicken behaviors like increased movement, play behavior, preening, and foraging.⁴¹

66. As shown in the above images from the MFA undercover investigation, Foster Farms chickens are raised in windowless sheds and never have access to the outdoors.⁴²

67. The above images further show that Foster Farms facilities do not contain any environmental or structural enrichments,⁴³ *e.g.*, elevated resting places, panels, barriers, bales of

⁴⁰ See Jerine A.J. van der Eijk, et al., *Reducing Stocking Density Benefits Behaviour of Fast-and Slower-Growing Broilers*, 257 *Applied Animal Behaviour Sci.* 105754 (December 2022).

⁴¹ *Id.* (“Reducing stocking density positively affected performance of comfort, foraging, and play behaviors.”).

⁴² The allegations in this Complaint do not concern Foster Farms Products made from chickens in its “free-range” line, who might have access to the outdoors under limited circumstances.

⁴³ Notably, American Humane Certified, under which Foster Farms is certified, only recommends, but does not require, such enrichments for a producer to qualify for certification. American Humane, *supra* note 37, at 94 (“The producer *is strongly encouraged* to provide environmental enrichments to the broilers, such as straw bales, ramps, . . . short perches, etc.”) (emphasis added).

straw, or covered verandas,⁴⁴ which would allow Foster Farms chickens to express natural behaviors like foraging, nesting, pecking, or perching.⁴⁵

68. Environmental enrichments have the purpose of “satisfying behavioral needs and/or stimulating the [chickens] to an increased level of activity” and allowing chickens to “perform more of species-specific behavioral repertoire and accommodate a larger range of behavioral choices.”⁴⁶

69. Thus, Foster Farms’ marketing of the Products, which leads consumers to believe the Products are made from chickens who can express natural or instinctive chicken behaviors, “ha[ve] the space to roam and act like a chicken,” and have “enough room to run around, sit, scratch, roll around, scratch, and run some more” is false and misleading.

70. Foster Farms’ Animal Welfare Representations lead consumers to believe that the Products are humanely sourced in accordance with animal welfare standards that eliminate injury, pain, disease, fear, and distress. But contrary to these representations, the Products are made from chickens industrially farmed using inhumane practices that regularly subject those chickens to injury, pain, disease, fear, and distress.

71. The conditions under which chickens are raised in conventional industrial poultry production, the method employed by Foster Farms, subject those chickens to injury, pain, disease, fear, and distress.

C. Contrary to Foster Farms’ Animal Welfare Representations, the Products Are Made from Chickens Industrially Farmed Using Inhumane Practices That Subject Those Chickens to Injury, Pain, Disease, Fear, and Distress.

⁴⁴ A.B. Riber, et al., *supra* note 39.

⁴⁵ *WATCH: Shocking Animal Abuse Exposed at “American Humane Certified” Foster Farms Slaughterhouse*, *supra* note 38.

⁴⁶ A.B. Riber, et al., *supra* note 39.

72. In addition to the egregious everyday conditions described in Section B in which Foster Farms chickens are raised, Foster Farms fails to curb the intentional mistreatment of chickens in its facilities.

73. Records of United States Department of Agriculture (“USDA”) Food Safety and Inspection Service (“FSIS”) inspections conducted pursuant to the Poultry Products Inspection Regulations, which require that birds be slaughtered in accordance with good commercial practices (“GCP”),⁴⁷ show that Foster Farms has a history of treating chickens inhumanely.

74. On September 29, 2021, the USDA issued a Memorandum of Information concerning conditions at Foster Farms’ Livingston, California slaughtering facility, following the release of video footage of this facility by Direct Action Everywhere (“DxE”), a grassroots nonprofit organization seeking to create cultural, political, and social change for animals. *See infra* ¶¶ 105-106. The Memorandum of Information identified “poor practices/possible ‘mistreatment’” shown in DxE’s footage warranting the letter, namely (1) employees roughly throwing chickens from the floor onto the shackle table; (2) employees not euthanizing each chicken before tossing that bird into the “dead on arrival” (“DOA”) bin; (3) live chickens identified in the DOA bin; and (4) at least one chicken hung by the neck in a shackle, though the industry practice is to shackle chickens upside down by their feet. U.S. Dep’t Agric., Memorandum of Information (Sept. 29, 2021).

⁴⁷ 9 C.F.R. § 381.65(b) provides: “Poultry must be slaughtered in accordance with good commercial practices in a manner that will result in thorough bleeding of the carcasses and ensure that breathing has stopped prior to scalding.” FSIS has issued a Directive to inspection program personnel on how to verify compliance with GCP, *FSIS DIRECTIVE 6110.1 VERIFICATION OF POULTRY GOOD COMMERCIAL PRACTICES*, found at https://www.fsis.usda.gov/sites/default/files/media_file/2020-07/6110.1.pdf (July 3, 2018). According to FSIS, “Compliance with these requirements helps ensure that poultry are treated humanely. In general, poultry should be handled in a manner that prevents needless injury and suffering in order to produce a commercially marketable product.” *Id.* at 1. Under the Poultry Products Inspection Act, products made from a bird “which has died otherwise than by slaughter” are deemed to be “adulterated.” 21 U.S.C. § 453(g)(5); *see also* 9 C.F.R. § 381.90 (“Carcasses of poultry showing evidence of having died from causes other than slaughter shall be condemned.”).

75. In January 2021, at the Foster Farms slaughterhouse in Kelso, Washington, a USDA FSIS inspector observed a conscious chicken who was “fully awake, blinking, and conscious” about to enter the scalding,⁴⁸ while the employee responsible for ensuring that live chickens do not enter the scalding failed to take measures to stop the slaughter line. Also in January 2021, an inspector observed a number of chickens who were shackled only by one leg. The non-shackled leg on one of the inappropriately shackled chickens was “completely incised and [] dangling by a thread of . . . skin.” The inspectors report noted that this failure “resulted in needless injury and trauma to birds prior to slaughter.” U.S. Dep’t Agric., MOIs in Response to FOIA 2021-262, at 27-28 (2021).

76. In October 2020, a USDA FSIS inspector at the Foster Farms plant in Livingston, California observed “approximately 100 [live and dead] birds piled up on the ground This pile was approximately [three] feet high and [six] feet wide,” exposing the live, conscious birds to the additional distress of being trapped under the bodies of dead birds. U.S. Dep’t Agric., MOIs in Response to FOIA 2021-118, at 44 (2021).

77. In September 2020, a USDA FSIS inspector found a live, conscious chicken that was still moving at the bottom of a condemn barrel of chicken carcasses at the Foster Farms Livingston, California slaughterhouse. The inspector noted that “dead carcasses had been stacked on top of it, essentially leaving the live bird in the bottom of the condemn barrel to suffocate.” U.S. Dep’t Agric., MOIs in Response to FOIA 2021-108, at 13 (2021).

78. In August 2020, at the Foster Farms slaughterhouse in Livingston, California, a USDA FSIS inspector observed a live, conscious chicken whose “eyes were blinking and [whose]

⁴⁸ The “scalding” is a tank of scalding hot water used in poultry production to loosen feathers from the skin of the chickens.

head was lifted up while moving around” enter the scalding. U.S. Dep’t Agric., MOI in Response to FOIA 2021-108, at 12 (2021).

79. In August 2020, at the Foster Farms slaughterhouse in Farmerville, Louisiana, a USDA FSIS inspector observed chickens crushed to death by the chain and sprocket turning the unloading belt at the unloading dock. U.S. Dep’t Agric., MOI in Response to FOIA 2021-108, at 38 (2021).

80. In July 2020, a USDA FSIS inspector at the Foster Farms Kelso, Washington slaughterhouse observed “a live bird [] pinned between the steel frame of the dump chutes and the steel frame of the cage module.” The inspector observed that the chicken “endured needless sustained pain.” The employee then tilted the cage back down, thereby “repeating injury and pain” to the pinned chicken. U.S. Dep’t Agric., MOIs in Response to FOIA 2020-471, at 113 (2020).

81. In July 2020, a USDA FSIS inspector at the Foster Farms Kelso, Washington slaughterhouse found a chicken lying on a steel chute with a wing and leg crushed between the chute frame and a cage module frame, which are pieces of equipment used to move birds through the slaughterhouse production process. The inspector noted that “instead of humanely extracting the bird, he caused the next cage module to slide into place, re-crushing” that chicken. The inspector further documented, “This issue of re-traumatizing pinned birds has occurred on repeated occasions within the last ninety days and has been documented both in weekly meetings [] and a GCP MOI.” U.S. Dep’t Agric., MOIs in Response to FOIA 2020-471, at 114 (2020). Similar incidents of birds trapped within the machinery occurred at this same slaughterhouse in September and October 2020. U.S. Dep’t Agric., MOIs in Response to FOIA 2021-108, at 67 (2021); U.S. Dep’t Agric., MOIs in Response to FOIA 2021-118, at 45 (2021).

82. In March 2020, a USDA FSIS inspector observed a back-up cutter functioning incorrectly at Foster Farms in Farmerville, Louisiana, resulting in four identified chicken cadavers with discoloration “indicative of not [having] been bled out,” which suggests that the chickens entered the scalding tank alive. On a separate inspection, an inspector observed a live chicken “gasping with its head dipped on a [*sic*] standing water on the floor of the live hang room.” The inspector also found a live chicken incorrectly sorted inside a condemned chicken vat with ten dead chickens. U.S. Dep’t Agric., Good Commercial Practice MOIs for a District(s), Response to FOIA 2020-260, at 1-2 (2020).

83. In December 2019, a USDA FSIS inspector documented a Foster Farms employee at the Farmerville, Louisiana plant throwing live chickens onto the hang belt and forcibly jerking a live chicken by the leg using a metal hook. U.S. Dep’t Agric., MOIs in Response to FOIA 2020-126, at 1, 37 (2019).

84. In December 2019, a USDA FSIS inspector at the Foster Farms Kelso, Washington slaughterhouse observed a “live bird pass[] the third step still alive and alert—prior to entering the first of several boiling scalding tanks—[the inspector] briefly stopped the line.” U.S. Dep’t Agric., MOIs in Response to FOIA 2020-126, at 61 (2019); *see also* U.S. Dep’t Agric., MOIs in Response to FOIA 2020-471, at 112 (2020).

85. In November 2019, a USDA FSIS inspector observed many cadavers and “a live bird with its eyes blinking and looking around as it entered the scalding” at the Foster Farms Livingston, California slaughter and processing plants. U.S. Dep’t Agric., Noncompliance Reports in Response to FOIA 2020-126, at 14-15 (2020). Within a few days, the inspector also reported: “While observing the birds for proper cuts and signs of consciousness, I observed two birds on

Line 2 blinking, turning their heads and flapping their wings.” U.S. Dep’t Agric., Noncompliance Reports in Response to FOIA 2020-126, at 16-17 (2020).

86. In November 2019, a USDA FSIS inspector took regulatory control of the Foster Farms Kelso, Washington slaughterhouse, stopping the evisceration line after observing “a small bird that was alive and fully alert” about to enter the boiling scalding tanks. U.S. Dep’t Agric., MOIs in Response to FOIA 2020-126, at 57 (2020). That same month at this plant, an inspector observed a Foster Farms employee “using a high-pressure water hose to spray the live chickens with water . . . as a movement facilitator” and noted that “[s]praying live birds with a high-pressure water hose for the purposes of hastening the live birds[’] movement is not consistent with Good Commercial Practice[s].” U.S. Dep’t Agric., MOIs in Response to FOIA 2020-126, at 59-60 (2020).

87. In September 2019, a USDA FSIS inspector observed “live young chickens mistreated before slaughter” at the Foster Farms Kelso, Washington slaughterhouse, and documented their “damaged skulls [] and blood engorged head[s] and neck[s].” U.S. Dep’t Agric., MOI in Response to FOIA 2020-04, at 80 (2019). Following that, “numerous birds were observed missing the automatic knife machine below their heads” in the live hang room, where live birds are taken from conveyers and hung in shackles. U.S. Dep’t Agric., MOI in Response to FOIA 2020-04, at 81-82 (2020).

88. In August 2019, a USDA FSIS inspector “observed an event” at the Foster Farms slaughter plant in Kelso, Washington that was “not consistent with good commercial practices of poultry.” A live chicken was observed “tripping and flapping . . . in apparent injury from being pinched between the heavy steel module and steel louvre” of a “dump chute” by which birds are moved through the factory-like process used to slaughter and prepare live birds for poultry product

production. A Foster Farms employee “left the bird struggling while he began to load [more birds] into place.” The employee re-trapped the bird, and the inspector was forced to “[take] regulatory control,” stopping the operation until they could locate a supervisor to release the trapped bird “[s]o that the bird would not be further traumatized by being re-mashed.” By that time another Foster Farms employee had already dumped the next cage module of birds onto the line “re-dump[ing] and [] presumably re-traumatiz[ing]” that chicken. U.S. Dep’t Agric., MOI in Response to FOIA 2020-04, at 1-2 (2019).

89. In October 2018, a USDA FSIS inspector documented “egregious, deliberate mistreatment of poultry” at the Foster Farms Kelso, Washington slaughter plant after observing an employee further “smash” a crushed, pinned bird rather than humanely removing it from where it was trapped between a steel cage module and dump chute. When finally removed, the injured chicken was “covered in a dark liquid, limp and moving slowly.” U.S. Dep’t of Agric., MOIs in Response to FOIA 2019-142, at 126-28 (2019).

90. In September 2018, a USDA FSIS inspector observed chickens whose heads and necks were engorged with blood, evidencing that they had not been slaughtered prior to entering the scalding. The inspector documented an “ongoing pattern of birds dying otherwise than slaughter” at Foster Farms, documented four previous times that year at the same establishment. Based on these findings, Foster Farms was issued a Noncompliance Report. U.S. Dep’t of Agric., Noncompliance Reports in Response to FOIA 2019-18, at 16 (2018).

91. In April 2018, a USDA FSIS inspector observed “a live, conscious bird which had not been stunned or cut” about to enter the scalding at the Foster Farms Kelso, Washington slaughter plant. The inspector noted that “without FSIS intervention it is reasonable to conclude this bird would have entered the scalding alive,” a circumstance specifically proscribed by the Poultry

Products Inspection Regulations.⁴⁹ U.S. Dep’t of Agric., Memorandums of Interview (MOIs) for 04C05 from 10/01/2017-12/31/2017, FOIA 2019-297, at 371 (2018).

92. In November 2017, a USDA FSIS inspector found live birds in a “crowded and piled-up condition” with “birds piling on top of other birds” in the live hang area of the Livingston, California Plant 1 which was left unattended while personnel were on a 30-minute break. U.S. Dep’t of Agric., Memorandums of Interview (MOIs) for 04C05 from 10/01/2017 – 12/31/2017, FOIA 2019-297, at 2 (2018).

93. Undercover investigations of Foster Farms’ chicken facilities reveal chickens in Foster Farms’ supply chain who routinely suffer from injury, pain, disease, fear, and distress.

94. Animal Equality, an animal protection organization that works to end cruelty to farmed animals, conducted an undercover investigation of Foster Farms’ Ellenwood chicken hatchery at 1307 Ellenwood Road, Waterford, California and documented severe mistreatment of Foster Farms’ chickens.⁵⁰

95. Animal Equality’s investigation of the Ellenwood Hatchery lasted several months and “revealed *thousands of instances* of animal cruelty against baby chicks.” *Animal Equality v. Foster Poultry Farms*, et al., No. CV-22-002477, at ¶ 28 (Cal. Super. Ct. June 7, 2022).

96. Specifically, Animal Equality’s undercover investigator recorded, (1) “chicks scalded to death after being trapped in trays going through the washing machine[’s] hot high-pressure water”; (2) “chicks [] found drowning in water and chemical foam on the [hatchery’s] floors underneath [] conveyer belts”; (3) “injured birds [] regularly left in trays for hours before being dumped into a chute leading to a grinder”; (4) an instance where “up to 5,000 eggs with

⁴⁹ 9 C.F.R. § 381.65(b).

⁵⁰ *Undercover Investigation Inside a Major U.S. Hatchery*, Animal Equality, <https://animalequality.org/action/baby-chicks-factory-farms> (last visited Apr. 2, 2024).

developed, live chicks inside were crushed”; (5) “live chicks [] dumped into the grinding chute and suffocated under broken shells;”⁵¹ and (5) “injured birds being dismembered by hatchery workers with shovels.”⁵²

97. Foster Farms “admit[s] that [subjecting the injured chicks to slow and painful deaths by dismemberment via shovels] [is] their standard procedure for disposing of injured chicks in such circumstances.” *Animal Equality v. Foster Poultry Farms, et al.*, No. CV-22-002477, at ¶ 31(c) (Cal. Super. Ct. June 7, 2022).

98. Animal Equality’s investigator “documented [Foster Farms employees] deposit, as a matter of procedure each day, dozens (and some days even hundreds) of injured birds in boxes on the floor to languish with severe injuries for hours without being euthanized.” *Id.* at ¶ 31(d).

99. As such, chicks born and raised at the Foster Farms Ellenwood Hatchery in Waterford, California hatchery are regularly subjected to inhumane conditions and routinely suffer from injury, pain, disease, fear, and distress.

100. These abuses are longstanding at Foster Farms facilities. Between March and June 2015, MFA conducted undercover investigations of several Foster Farms chicken facilities.⁵³

101. An MFA investigator at a Foster Farms growout facility in Fresno County, California recorded (1) “workers carelessly throwing baby chicks on the ground” resulting in

⁵¹ *Id.*

⁵² *Animal Equality Files Lawsuit Against California-Based Foster Farms Over Cruel Practices in Hatchery*, Animal Equality (Aug. 15, 2022), <https://animalequality.org/press-release/animal-equality-files-lawsuit-against-foster-farms/>.

⁵³ Letter from Mary K. Engle, Associate Director Division of Advertising Practices to William H. Stallings, Mayer Brown LLP (Apr. 28, 2016), available at https://www.ftc.gov/system/files/documents/closing_letters/nid/160428fosterfarmscltr.pdf (referencing “concerns . . . in light of the documented animal abuse” but declining to recommend enforcement after Foster Farms implemented a video monitoring and auditing system at the subject facilities).

severe injury or death; (2) birds crushed by transport trucks; and (3) “chickens bred to grow so unnaturally fast they often suffer painful leg deformities and other injuries.”⁵⁴

102. An MFA investigator at the Foster Farms slaughtering facility in Fresno County, California recorded: (1) “workers throwing, punching, and tormenting animals before violently slamming them into shackles”; (2) “birds scalded alive in hot water feather-removal tanks”; (3) workers pulling out feathers of birds “just for fun”; (4) birds “missing the kill blade” and going through the slaughter process⁵⁵ fully conscious and thus able to feel pain.⁵⁶ Additionally, “slaughter lines regularly malfunctioned, leaving birds to hang upside down in their shackles . . . up to 45 minutes at a time.”⁵⁷

103. Following the release of the MFA footage described in ¶¶ 100-102, Foster Farms suspended five workers and the Fresno County, California Sheriff’s office initiated an investigation into the alleged animal abuse at the Fresno, California Foster Farms slaughter plant.⁵⁸ The Fresno County District Attorney ultimately filed criminal animal cruelty charges against one former Foster Farms worker, who was convicted of misdemeanor animal cruelty.⁵⁹

⁵⁴ “Humane” Meat Scam! MFA Files False Advertising Complaint Against Foster Farms and AHA, Mercy for Animals, <https://mercyforanimals.org/blog/humane-meat-scam-mfa-files-false-advertising/> (last visited Apr. 2, 2024); WATCH: Shocking Animal Abuse Exposed at “American Humane Certified” Foster Farms Slaughterhouse, *supra* note 38.

⁵⁵ The common industry slaughter process for chickens includes shackling chickens upside down and then moving them through the slaughter line, where they are stunned, typically by electrical stunning, slaughtered with a cut to the throat, de-feathered in a scalding vat of water, and then sent to the “eviscerating” line to remove internal organs and feet. *Processing: How are chickens slaughtered and processed for meat?*, Chicken Check In, <https://www.chickencheck.in/faq/how-chickens-slaughtered-processed/> (last visited Apr. 2, 2024).

⁵⁶ “Humane” Meat Scam! MFA Files False Advertising Complaint Against Foster Farms and AHA, *supra* note 54; WATCH: Shocking Animal Abuse Exposed at “American Humane Certified” Foster Farms Slaughterhouse, *supra* note 38.

⁵⁷ Vandhana Bala, *Letter to USDA FSIS Administrator, Mercy For Animals Poultry Slaughter Investigations* (Apr. 4, 2016), https://www.fsis.usda.gov/sites/default/files/media_file/2020-08/13-08-Petition-Support-040416.pdf

⁵⁸ Helen Regan, *Foster Farms Suspends Five Employees After Graphic Video Uncovers Animal Abuse*, Time (June 17, 2015), <https://time.com/3925835/foster-farms-mercy-for-animals-abuse-chickens-investigation-graphic-video/>.

⁵⁹ County of Fresno, *District Attorney Files Animal Cruelty Charge Against Former Foster Farms Employee Gabriel Cevallos* (Mar. 4, 2016), <https://www.fresnocountyca.gov/files/sharedassets/county/district-attorney/press-releases/2016/030416-district-attorney-f.pdf>.

104. As evidenced by later investigations, there is no sign of action or changes taken by Foster Farms as a result of the MFA investigations and subsequent charges filed in California.

105. In 2021, DxE conducted an undercover investigation of a Foster Farms slaughtering facility in Livingston, California. The DxE videographer entered the Livingston slaughtering facility and set up miniature infrared cameras to record footage over several weeks.⁶⁰ DxE states that “the documented footage [shows] a violation of California code outlawing animal cruelty . . . and the company’s own policy to raise chickens free from hunger, discomfort, pain, cages, and distress.”⁶¹

106. The DxE investigator at the slaughterhouse recorded (1) workers mixing up “condemned” chickens, *i.e.* chickens deemed unfit for slaughter and requiring “disposal,” with stressed chickens seeking escape who were suitable for slaughter and the reverse, condemned chickens mistakenly put back for slaughter; (2) workers forcefully throwing conscious chickens against the shackles; (3) workers forcefully throwing condemned chickens, who are still conscious, on the floor; (4) chickens left to drown and suffocate underneath other chickens; (5) a condemned chicken conscious and struggling on the floor for over twenty minutes; (6) a chicken whose head was trapped under the fence after a worker threw them on the floor; (7) chickens inadequately stunned and going to slaughter fully conscious; (8) chickens who were strangled after experiencing improper stunning and slaughter; and (8) facilities so dirty that disposal bins were crawling with maggots.⁶²

⁶⁰ Sara Sirota, *Chickens Severely Mistreated at “Humane” California Slaughterhouse, New Video Alleges*, Intercept (Sept. 29, 2021), <https://theintercept.com/2021/09/29/animal-cruelty-chickens-foster-farms-humane/>.

⁶¹ *Id.*

⁶² Direct Action Everywhere, *Inside Foster Farms Slaughterhouse*, YouTube, https://www.youtube.com/watch?v=qWdJst8f7Sk&ab_channel=DirectActionEverywhere-DxE (last visited Mar. 28, 2024).

107. These undercover investigations show that Foster Farms' chickens are regularly subjected to inhumane conditions and routinely suffer from injury, pain, disease, fear, and distress.

108. Even absent the specific instances of egregious animal abuse and mistreatment described herein, Foster Farms' routine and everyday practices of animal husbandry, as described *supra* ¶¶ 59-71, do not live up to its animal welfare representations and promises made to consumers.

109. The chickens that Foster Farms uses to make its Products do, in fact, experience injury, pain, disease, fear, and distress during their short lives at Foster Farms facilities.

110. Thus, Foster Farms' marketing of the Products, which leads consumers to believe that the Products are made from chickens who have freedom from injury, pain, disease, fear, and distress, is false and misleading.

CAUSE OF ACTION

111. OCA reincorporates and realleges all of the preceding allegations of this Complaint.

112. Foster Farms advertises and markets its chicken Products with the Animal Welfare Representations, which mislead or tend to mislead reasonable D.C. consumers into believing that the Products are sourced from chickens who "enjoy" freedom from injury, pain, disease, fear, and distress, can express natural or instinctive chicken behaviors, have space to roam and act like chickens, and have "enough room to run around." In reality, the Products are made from chickens industrially farmed and killed using inhumane practices that subject those chickens to injury, pain, disease, fear, and distress, and Foster Farms chickens spend their lives in conditions of extreme confinement that prevent the expression of natural behaviors.

113. Foster Farms' marketing practices therefore violate 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, if in fact they are of another,” “misrepresent[ing] as to a material fact which has a tendency 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.” D.C. Code §§ 28-3904 (a), (d), (e), (f-1), (h).

PRAYER FOR RELIEF

WHEREFORE, OCA respectfully prays for judgment against Foster Farms and requests that the Court:

(a) declare that Foster Farms’ marketing of its chicken Products, as described above, violates the CPPA;

(b) order Foster Farms to cease the misleading and deceptive marketing practices described above unless and until it changes its animal husbandry practices to comport with its marketing as understood by consumers;

(c) award Plaintiff its costs and disbursements, including reasonable attorneys’ fees and expert fees, and prejudgment interest at the maximum rate allowable by law; and

(d) award Plaintiff such other and further relief as the Court may deem just and proper.

DATED: April 10, 2024

Respectfully submitted,

/s/ Kim E. Richman

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