



**THE HUMANE SOCIETY
OF THE UNITED STATES**

1255 23rd Street, NW
Suite 450
Washington, DC 20037
P 202-452-1100
F 202-778-6132
humanesociety.org

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December 12, 2018

Mary K. Engle
Associate Director, Division of Advertising Practices
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue
Washington, D.C. 20580

VIA ELECTRONIC MAIL AND U.S. POSTAL SERVICE

**Re: Complaint requesting action to enjoin the dissemination of
false or deceptive advertising by Pilgrim's Pride, Corp.**

Dear Associate Director Engle,

The attached complaint is submitted by the Humane Society of the United States ("HSUS") on behalf of millions of constituents and supporters. As detailed in the complaint, Pilgrim's Pride Corporation is issuing false and misleading statements about the treatment of the broiler chickens it uses to produce its poultry products. Statements made on the company's website and its "100% Natural" claims on certain product labels indicate to consumers that Pilgrim's chickens were produced under natural and humane conditions on bucolic family farms by farmers using the highest humane standards possible. These representations are untrue—the practices used by Pilgrim's Pride suppliers, at the direction of Pilgrim's Pride, fall far below the level of animal care that a reasonable consumer would expect based on the company's representations.

As the Commission is no doubt aware, a large and growing number of consumers are keenly interested in avoiding purchasing products that are the result of inhumane treatment of animals. However, it is virtually impossible for consumers to gauge for themselves whether a humane claim is accurate because consumers do not have access to the producer's facilities. Thus, FTC oversight and enforcement are consumers' best hope for avoiding deception regarding production practices that are cruel. For these reasons and others discussed more fully in the complaint, HSUS respectfully requests that the Commission carefully consider the attached complaint and swiftly issue appropriate relief.



**THE HUMANE SOCIETY
OF THE UNITED STATES**

We, at HSUS, are prepared and willing to assist your office in any way. Please do not hesitate to contact me by phone at 202-676-2334 or email at lfox@humanesociety.org.

Sincerely,

/s/

Laura J. Fox

Peter A. Brandt

The Humane Society of the United States

1255 23rd Street, NW

Washington, D.C. 20037

Tel: 202-676-2334

lfox@humanesociety.org

BEFORE THE UNITED STATES FEDERAL TRADE COMMISSION

THE HUMANE SOCIETY OF THE UNITED STATES,
Petitioner,

PILGRIM'S PRIDE CORPORATION,
Proposed Respondent.

**COMPLAINT FOR ACTION TO STOP
FALSE OR DECEPTIVE ADVERTISING**

Laura J. Fox
D.C. Bar No. 155225
Peter A. Brandt
D.C. Bar No. 982936

THE HUMANE SOCIETY
OF THE UNITED STATES
1255 23rd Street, NW, Ste 450
Washington, DC 20037
Telephone: (202) 676-2334
Facsimile: (202) 676-2357

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EXECUTIVE SUMMARY

The Humane Society of the United States submits this complaint to request that the Federal Trade Commission investigate Pilgrim's Pride Corporation's ("Pilgrim's") false and misleading representations relating to the humane treatment of its broiler chickens. The complaint alleges that Pilgrim's falsely markets its chicken products as humanely produced. Specifically, for example, Pilgrim's claims:

- Pilgrim's is helping to ensure that our birds are raised, transported and processed as humanely as possible.
- Pilgrim's strongly supports the humane treatment of animals [and] maintains a strict animal welfare program that utilizes guidelines established by the National Chicken Council.
- [National Chicken Council] guidelines ensure that birds raised are taken care of with the highest standards starting at hatch.
- Pilgrim's technicians work with each farm family . . . to assure the best possible growout conditions for our flocks.
- [Pilgrim's] strict and comprehensive Animal Welfare Program ensures that birds are humanely raised and handled through all phases of hatching, growth, transport and slaughter.
- [Pilgrim's] chickens are raised in accordance with . . . practices that prevent or minimize fear, pain, stress and suffering throughout the production process.
- Ensuring the well-being of the chickens under our care is an uncompromising commitment at Pilgrim's.

The complaint then contrasts these statements with the following industrialized practices Pilgrim's likely employs throughout its production practices, as witnessed by HSUS' investigators, Federal inspectors, and as provided for by in the National Chicken Council guidelines that Pilgrim's has adopted. These inherently cruel factory farm practices include, but are not limited to, using birds bred to grow unnaturally fast to an unnatural size leaving them unable to stand and at severe risk of injury or death, overcrowding birds in grow houses and during transport such that many are crushed or suffocated, and slaughtering chickens on a fast moving assembly line where some birds are ineffectively stunned resulting in the scalding of some still-conscious animals.

As detailed in the complaint, these practices are starkly at odds with the humane representations Pilgrim's prominently displays on its webpages and advertisements, as well as the company's written promises that its chickens are from "Family Farms," and that many of its products are "100% Natural." A large and growing number of consumers are keenly interested in avoiding purchasing products that are the result of inhumane treatment of animals. However, as several consumer surveys bear out, no reasonable consumer can comport these practices with the statements above. Further, it is virtually impossible for consumers to gauge for themselves whether a humane claim is accurate because consumers do not have access to the producer's facilities. Thus, FTC oversight and enforcement are consumers' best hope for avoiding deception regarding production practices that are cruel. As such, HSUS requests that the FTC investigate these claims and take appropriate action to enjoin Pilgrim's Pride from continuing to make misleading claims pertaining to animal welfare.

I. INTRODUCTION

Pursuant to Sections 2.1 and 2.2 of the Federal Trade Commission (“FTC” or “Commission”) regulations, 16 C.F.R. §§ 2.1 & 2.2, Complainant The Humane Society of the United States (“HSUS”) hereby requests that the Commission investigate and commence an enforcement action against Pilgrim’s Pride Corporation (“Pilgrim’s Pride” or “Pilgrim’s”), for engaging in false or misleading advertising in violation of the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.* (“FTC Act”).

As described below, Pilgrim’s Pride has issued, and/or is continuing to issue, unlawfully false and/or misleading representations about the treatment of animals in the production of its products. Representations the company makes on its website, in its multi-media advertising, and on its labels indicate that its poultry products were produced under humane conditions. Pilgrim’s Pride advertises its chicken products as humane, including by asserting its adoption of standards set by the National Chicken Council (“NCC”), an industry trade group.¹ Pilgrim’s Pride claims that its adherence to NCC standards ensures humane conditions throughout the production process, including hatching, growth, transportation, and slaughter.² This is patently untrue.

¹ See *Family Farms*, “Animal Welfare,” PILGRIM’S, <http://www.pilgrims.com/family-farms/animal-welfare.aspx> (last visited Dec. 11, 2018) (“Pilgrim’s has adopted the science-based guidelines for animal welfare issued by the National Chicken Council.”); *Overview*, NAT’L CHICKEN COUNCIL, <https://www.nationalchickencouncil.org/about-ncc/overview/> (last visited Dec. 11, 2018) (“The National Chicken Council (NCC) is the national, non-profit trade association whose primary purpose is to serve as the advocate and voice for the U.S. broiler chicken industry in Washington, D.C.”).

² See *Family Farms*, “Animal Welfare,” PILGRIM’S, <http://www.pilgrims.com/family-farms/animal-welfare.aspx> (last visited Dec. 11, 2018) (“[National Chicken Council] guidelines are designed to promote the humane treatment and well-being of poultry throughout the production process.”).

Contrary to these claims, as detailed below, Pilgrim’s practices fall far below both the level of care represented and reasonable consumer expectations based on the company’s claims. In particular, several practices employed by Pilgrim’s Pride and acceptable under NCC standards are inherently cruel to broiler chickens.³ These include Pilgrim’s use of electrical stun baths, scalders, and its use of chickens genetically enhanced for faster growth rates (*see infra* Part IV.B). Each of these practices causes significant pain and suffering to animals no matter how carefully employed, and no reasonable consumer would consider these practices to be humane under any standard.

Yet, as explained below, the company does not merely claim it operates humanely. It repeatedly makes unsubstantiated, objective, superlative claims, representing that its practices are the *most* humane despite knowing there are more humane methods of production—methods that Pilgrim’s itself employs to produce products for its other brands.

Also, several undercover investigations—including one at a Pilgrim’s Pride slaughterhouse in Mt. Pleasant, Texas, and one at a Pilgrim’s Pride contract growing facility in Hull, Georgia—showed that products Pilgrim’s advertises as “humane” came from conditions that were anything but. The investigations showed broiler chickens raised in unnatural and cruel conditions, cramped together, and treated horrifically in the process leading to their slaughter.

The processes employed by Pilgrim’s Pride are starkly at odds with the humane

³ “Broiler chicken” refers to a chicken raised for meat consumption to be slaughtered before the age of 10–13 weeks. *See* 9 C.F.R. 381.170(a)(1)(ii).

representations the company prominently displays on its webpages and advertisements, as well as the company's textual promises on its website that its chickens are from "Family Farms," and that many of its products are "100% Natural."⁴ Consequently, consumers buying Pilgrim's Pride chicken are not getting what they paid for: chicken from family farms raised under natural and humane conditions rather than from birds perpetually locked inside in intense confinement warehouses before being violently moved into cages and cruelly trucked to slaughter. In addition to not receiving "humane" chicken products, consumers are not getting products that are produced as "humanely as possible" or that are more humane than competitors' products.⁵ Pilgrim's Pride is deceiving consumers concerned about the suffering of animals with false assurances of the animals' living conditions.

This deceptive conduct harms consumers and competitors alike, while compromising the market's responsiveness to the animal welfare concerns of consumers more broadly. Unfortunately, this kind of misbranding is likely to persist in the broiler chicken industry unless regulators remain vigilant. On their own, consumers are unable to determine that they have been deceived about the level of animal care provided because consumers do not have access to the producer's facilities, and production practices are not readily apparent in the final product. Additionally, though animal welfare is indisputably important to a significant and growing number of consumers, companies mislead consumers by omitting material facts about their use of

⁴ See *Fresh Chicken*, "All Natural," PILGRIMS.COM, <http://www.pilgrims.com/products/fresh-chicken.aspx?type=all-natural> (last visited Dec. 11, 2018); *Home Page*, PILGRIM'S, <http://www.pilgrims.com/> (last visited Dec. 11, 2018).

⁵ See *infra* note 29.

inherently cruel methods. While consumers want to make more humane choices, they generally lack technical knowledge of how companies can handle chickens more humanely throughout their lives. Pilgrim's Pride is taking advantage of this information asymmetry by omitting important facts about how birds are mistreated during life in confinement, transport to slaughter, and in the slaughter process itself. Agency intervention is needed to stop Pilgrim's Pride from continuing to deceptively exploit consumer concern for animal welfare. Accordingly, HSUS respectfully requests that the Commission take prompt action to stop Pilgrim's Pride from deceiving consumers with false claims of humane animal care.

II. PARTIES

A. The Humane Society of the United States

HSUS is the nation's largest animal protection organization with millions of members and constituents. HSUS is based in Washington, DC, and works to protect all animals through education, investigation, litigation, legislation, advocacy, and field work. HSUS campaigns to eliminate the most egregious factory farming practices, including the intensive confinement of chickens so cramped that the conditions lead to injury, illness, severe stress, and other harms.

B. Pilgrim's Pride Corporation

Pilgrim's Pride Corporation is incorporated in Delaware with a principal executive office in Greeley, Colorado. Pilgrim's Pride produces, processes, markets, and distributes fresh, frozen, and value-added chicken products. Pilgrim's Pride offers several lines of pre-packaged chicken products. The company markets these products throughout the United States at retailers such as Walmart, Sam's Club, Safeway, and

other major grocery outlets. Pilgrim's Pride headquarters are located at 1770 Promontory Circle, Greeley, Colorado 80634.

III. STANDARD OF REVIEW

The FTC is the primary federal agency charged with thwarting unfair and deceptive trade practices. 15 U.S.C. § 45(a)(2) (“The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations . . . from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.”).

Under Section 5 of the FTC Act, unlawful deception will be found “if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.”⁶ A representation is thus unlawfully deceptive if it is (1) material to a consumer's decision-making; and (2) likely to mislead the consumer.⁷

To ensure that their advertisements are not deceptive, marketers must identify all express and implied claims that the advertisement reasonably conveys. Even a claim that is literally true but nonetheless deceives or misleads consumers by its implications can be considered a deceptive practice under the FTC Act.⁸ Marketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and

⁶ FTC, Policy Statement on Deception, *appended to Cliffdale Assocs., Inc.*, 103 FTC 110, 174 (1984), available at https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptio nstmt.pdf (hereinafter “FTC Policy Statement on Deception”); see 15 U.S.C. § 45.

⁷ *Id.*

⁸ See *Kraft, Inc. v. F.T.C.*, 970 F.2d 311, 322 (7th Cir. 1992) (“[E]ven literally true statements can have misleading implications.”).

supported by a reasonable basis before they make the claims.⁹ If a particular consumer group is targeted, or likely to be affected by the advertisement, the advertisement should be examined from the perspective of a reasonable member of that group.¹⁰ Moreover, the advertisement should be evaluated as a whole, including its visual elements, to account for “crafty advertisers whose deceptive messages were conveyed by means other than, or in addition to, spoken words.”¹¹

Also, under Section 5 of the FTC Act, the Commission will find that a practice is unfair if the practice causes a substantial “unjustified consumer injury,” that is an injury not outweighed by any offsetting consumer or competitive benefits, and that could not reasonably have been avoided. 15 U.S.C. § 45(n).¹² While unjustified consumer injury alone “can be sufficient to warrant a finding of unfairness,” the Commission may also consider whether the practice “violates established public policy” and “whether it is unethical or unscrupulous.”¹³

In the context of product endorsements or certifications, there must also be disclosure of unexpected material connections related to the product endorsements.¹⁴

⁹ See 16 C.F.R. § 260.2 (citing FTC Policy Statement Regarding Advertising Substantiation, 104 FTC 839 (1984)) (hereinafter “FTC Policy Statement Regarding Advertising Substantiation”).

¹⁰ FTC, Policy Statement Regarding Advertising Substantiation, 104 FTC 839 (1984), available at <https://www.ftc.gov/public-statements/1983/03/ftc-policy-statement-regarding-advertising-substantiation> (last visited Dec. 11, 2018).

¹¹ FTC Policy Statement on Deception, *supra* note 6 (citing *Am. Home Products Corp. v. FTC*, 695 F.2d 681, 688 (3d Cir. 1982)).

¹² See also FTC, FTC Policy Statement on Unfairness, 104 F.T.C. 1070–76 (1984), appended to *International Harvester Co.*, 104 F.T.C. 949 (1984) (codified at 15 U.S.C. § 45(n)), <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness> (last visited Dec. 11, 2018).

¹³ *Id.* (citing *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 223, 244-45 n.5 (1972)).

¹⁴ See 16 C.F.R. Part 255 (Guides Concerning the Use of Endorsements and Testimonials in Advertising), <https://www.ftc.gov/sites/default/files/attachments/press->

An “unexpected material connection” is defined as “any relationship that might materially affect the weight or credibility” of the certification and that would not reasonably be expected by consumers, such as a self-certification or excessive fee.¹⁵ Failure to disclose adequately the material information constitutes a deceptive act or practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

IV. FALSE OR MISLEADING CLAIMS

A. Representations at Issue

At issue in this complaint are representations on Pilgrim’s Pride product labels and in advertisements on its websites and other media, in the form of attention-grabbing text and depictions regarding the treatment of chickens. Pilgrim’s Pride markets and advertises its chicken products throughout the U.S. and seeks to reach an extensive consumer base through its company websites. Representations on such sources target consumers concerned with animal suffering and impart messages that Pilgrim’s chickens are produced humanely. Such representations are unlawfully deceptive. In reality, Pilgrim’s Pride products come from chickens that suffer painful health conditions, are kept in inhumane conditions, and are cruelly transported to be killed by an inherently inhumane slaughter process.

Pilgrim’s Pride advertising makes clear that the company has complete control over the production of its chicken products. In a video titled, “Watch This Video to Learn

releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf.

¹⁵ *Moonlight Slumber, LLC*, No. C-4634 at 6 (FTC Dec. 11, 2017); *see also* 16 C.F.R. § 255.5.

More About Pilgrim's," the company's President and Chief Executive Officer Bill Lovette says, "In our chicken business, we use a vertical integrated supply chain so that we can assure the consumer that's buying our product that we've been in control of the process at every step of the way."¹⁶ A whistleblowing Pilgrim's Pride contract farmer confirms that while contractors like himself raise the birds, they are "not allowed to do anything with the birds unless it's approved by the company."¹⁷

1. The company website.

Misleading animal welfare representations are all over the company's website.¹⁸ Most conspicuously, on the main webpage for Pilgrim's Pride, the company promotes its 2016 and 2017 Sustainability Reports. Below is a screenshot of the Pilgrim's website (www.pilgrims.com), taken November 29, 2018 showing the Sustainability Reports being promoted. Consumers can click on a link to view and download the full 2016 Sustainability Report.¹⁹ Users can also view and download a shorter brochure regarding the Sustainability Report for both 2016 and 2017, which Pilgrim's Pride titled

¹⁶ *Home Page*, PILGRIM'S, <http://www.pilgrims.com/> (last visited Dec. 11, 2018). The video is also available on Vimeo as "Pilgrim's 30 Second Video," at <https://vimeo.com/107917405> (last visited Dec. 11, 2018). According to Vimeo, the video was posted on October 3, 2014; *see also infra* note 181 and accompany text.

¹⁷ *Infra* note 174.

¹⁸ *See, e.g., Sustainability*, PILGRIM'S, at <http://www.pilgrims.com/our-company/sustainability-report.aspx> (last visited Dec. 11, 2018) (follow links to "Pilgrim's 2017 Sustainability Report" and "Pilgrim's 2016 Sustainability Report"); *Family Farms*, "Animal Welfare," PILGRIM'S, <http://www.pilgrims.com/family-farms/animal-welfare.aspx> (last visited Dec. 11, 2018); *Family Farms*, "Raising Pilgrim's Chickens," PILGRIM'S, <http://www.pilgrims.com/family-farms/raising-pilgrims-chickens.aspx> (last visited Dec. 11, 2018).

¹⁹ *See Sustainability*, PILGRIM'S, at <http://www.pilgrims.com/our-company/sustainability-report.aspx> (last visited Dec. 11, 2018); *see also 2016 Sustainability Report*, PILGRIM'S, at <http://sustainability.pilgrims.com/index.html#p=1> (last visited Dec. 11, 2018) (hereinafter "Sustainability Report 2016") (Attachment A).

Sustainability Highlights.²⁰



The Sustainability Reports and Highlights brochures make false and misleading marketing and advertising claims related to the company's practices regarding animal welfare. These advertisements and marketing tools make representations about how Pilgrim's Pride cares for the chickens it slaughters and sells. According to the 2016 Sustainability Report, "[Pilgrim's] strict and comprehensive Animal Welfare Program ensures that birds are humanely raised and handled through all phases of hatching, growth, transport and slaughter."²¹ This is reiterated in the 2017 Sustainability Highlights, which lists "[a]nimal breeding and genetics, livestock husbandry, humane

²⁰ See 2016 Sustainability Highlights, PILGRIM'S, http://www.pilgrims.com/media/50627/Pilgrims-Sustainability-Report_Condensed-v3.pdf (hereinafter "Sustainability Highlights 2016") (Attachment B); 2017 Sustainability Highlights, PILGRIM'S, at http://www.pilgrims.com/media/56800/Pilgrims_SustainReport_2017_final.pdf (hereinafter "Sustainability Highlights 2017") (Attachment C).

²¹ Sustainability Report 2016 at 122 (emphasis added).

handling and transportation” under Pilgrim’s sustainability program for its animal welfare priorities.²² In addition, Pilgrim’s Pride states that its “chickens are raised in accordance with the ‘Five Freedoms,’²³ including practices that prevent or minimize fear, pain, stress and suffering throughout the production process.”²⁴ As explained below and as the undercover investigations show (*infra* Parts IV.B.1-2), these assertions are patently false for likely each bird produced at Pilgrim’s Pride facilities due to the inherent cruelties imbedded in the practices used. Such cruelties are involved throughout the entire process from growth through slaughter.

The 2016 Sustainability Report also states, “Our family farm partners protect our chickens from weather, safeguard them from predators and disease and ensure their health and well-being through proper care and appropriate human interaction.”²⁵ Similarly, both the 2016 and 2017 Sustainability Highlights brochures explain, under the large bolded heading “Our Chickens,” that: “Ensuring the well-being of the chickens under our care is an uncompromising commitment at Pilgrim’s,” and, “[a]t Pilgrim’s, our values dictate that we implement humane animal welfare practices for one simple reason: it is the right thing to do.”²⁶

Several other pages within the website provide additional advertising claims related to the raising and treatment of the chickens that become Pilgrim’s Pride

²² Sustainability Highlights 2017 at 8.

²³ The “Five Freedoms,” which Pilgrim’s claims to have adopted, include: “1. Freedom to express natural behavior; 2. Freedom from injury and disease; 3. Freedom from discomfort; 4 Freedom from thirst and hunger; [and] 5. Freedom from fear and distress.” Sustainability Report 2016 at 122.

²⁴ Sustainability Report 2016 at 122 (emphasis added).

²⁵ Sustainability Report 2016 at 131 (emphasis added).

²⁶ Sustainability Highlights 2016 at 6; Sustainability Highlights 2017 at 22 (emphasis added).

products. For example, Pilgrim's Pride states on its Frequently Asked Questions webpage, in response to the question, "What is Pilgrim's view on the humane treatment of animals?":

Pilgrim's strongly supports the humane treatment of animals [and] maintains a strict animal welfare program that utilizes guidelines established by the National Chicken Council.... These guidelines ensure that birds raised are taken care of with the highest standards starting at hatch. Humane treatment is practiced during the processing of the bird as well.²⁷

In addition, the same website announces on its dedicated "Animal Welfare" webpage, "Employees or growers who violated the Pilgrim's animal welfare policy and associated procedures will be subject to disciplinary action," and that "[a]ll of our complexes are audited on a regular basis to ensure full compliance with [National Chicken Council] humane treatment guidelines."²⁸ Thus, according to Pilgrim's Pride, "Pilgrim's is helping to ensure that our birds are raised, transported and processed as humanely as possible."²⁹ On the same webpage, Pilgrim's Pride explains, "[A]ll Pilgrim's employees who handle live birds are required to complete animal-welfare training on an annual basis."³⁰ The 2017 Sustainability Highlights brochure also states, "100% of our team members and family farm partners have been trained according to our animal welfare program."³¹

²⁷ *Frequently Asked Questions*, PILGRIM'S, at <http://pilgrims.com/contact-us/faq.aspx> (last visited Dec. 11, 2018) (emphasis added).

²⁸ *Family Farms*, "Animal Welfare," PILGRIM'S, at <http://pilgrims.com/family-farms/animal-welfare.aspx> (last visited Dec. 11, 2018).

²⁹ *Id.* (emphasis added).

³⁰ *Id.*

³¹ Sustainability Highlights 2017 at 22 (emphasis added); *see also* Sustainability Highlights 2016 at 6 ("100% of our team members and family farm partners have been

Pilgrim's Pride bolsters its humane representations by using phrasing such as "natural" and "family farms" on its website to describe many of its products and their origin. As explained below, many of the product labels contain "100% Natural" representations, which also appear on the company's website.³² In a video on its website and appearing under a statement that "Pilgrim's technicians work with each farm family . . . to assure the best possible growout conditions for our flocks," a Pilgrim's Service Tech explains that Pilgrim's Pride birds are "100% Natural."³³

Pilgrim's Pride also heavily promotes its products as being from "family farms,"³⁴ likely because consumers expect family run farms to be operated with care and see them as the antithesis of factory farms.³⁵ Indeed, Pilgrim's latest marketing

trained according to our Animal Welfare Program.").

³² *Fresh Chicken*, "All Natural," PILGRIM'S, <http://www.pilgrims.com/products/fresh-chicken.aspx?type=all-natural> (last visited Dec. 11, 2018).

³³ *Family Farms*, "Raising Pilgrim's Chickens," PILGRIM'S, <http://www.pilgrims.com/family-farms/raising-pilgrims-chickens.aspx> (last visited Dec. 11, 2018) (emphasis added).

³⁴ *See id.* It is highly unlikely that reasonable consumers' impressions of what constitutes a family farm aligns with the practices of Pilgrim's Pride's producers. While USDA defines "family farm," its definition does not take acreage size, number of animals, or production methods into account and even includes operations where the family may not own the land, or even farm it. *See* <https://nifa.usda.gov/family-farms>. The definition is not meant to be a labeling standard, but instead USDA defines what a family farm is for a consistent technical term in research and policy, which includes farm subsidies. *See* USDA, NIFA, *Family & Small Farm Program*, <https://nifa.usda.gov/program/family-small-farm-program> (last visited Dec. 11, 2018). It would not be appropriate for Pilgrim's Pride to rely on this definition as a standard in another context such as for communicating to consumers in advertisements or labeling. *See ALDF v. Hormel Foods Corp.*, No. 2016 CA 004744 B (DC Sup. Sept. 20, 2017). This would be the "kind of technical and esoteric message" no ordinary consumer would expect was intended by such label. *Federation of Homemakers v. Butz*, 466 F.2d 462, 466, 151 U.S.App.D.C. 291, 295 (C.A.D.C., 1972).

³⁵ In a study regarding perceptions of animal welfare in farming, "almost three-quarters (74%) believe the welfare of animals is better protected on family farms than on large, corporate farms." Rebecca J. Vogt et al., Center for Applied Rural Innovation, University of Nebraska, Lincoln, *Animal Welfare: Perceptions of Nonmetropolitan*

campaign is designed to promote its contractors as family farmers and appeal to this consumer bias.³⁶ The website also links to promotional videos said to depict the chicken industry.³⁷ However, as described below, the industry standards employed by Pilgrim's are far from the bucolic family farm care consumers would reasonably expect based on these representations (*see infra* Parts IV.B.1, V.B).

Nebraskans i (Jul 2011), available at <http://govdocs.nebraska.gov/epubs/U2031/B075-2011.pdf>. As stated in an industry editorial, “[M]odern agriculture is not what consumers believe or what they want to believe. Most think family farms are small, independent, diversified, and producing food for their local area This is one of the reasons they are willing to pay more for organic food products, mistakenly believing these are produced by smaller, independent family farms.” Gary Truitt, *Closing The Gap Between Producers and Consumers*, HOOSIER AG TODAY (Mar. 3, 2013) <https://www.hoosieragtoday.com/closing-the-gap-between-producers-and-consumers/>.

³⁶ See *Pilgrim's Pride to Promote Identity of Growers*, CHICK-NEWS (Aug. 23, 2018), http://www.chick-news.com/Share.aspx?Site_Copy_ID=74446 (“In an outreach to consumers, Pilgrim's Pride will promote the identity of growers producing chicken under the Just Bare™ Brand. The campaign will launch across TV, online and audio to promote Just Bare™ chicken. Appropriate visual and audio will feature individual contract growers in an attempt to defuse the image of industrialized production by highlighting the contribution of family farms. Advertising agency Gravity developed the campaign in a response to their perception of consumers expressing an interest in the source of their chicken.”); see also USDA, NIFA, *Family Farm Forum*, p. 2 (2010) <http://www.ngfn.org/resources/networknews/may-2010/Family%20Farm%20Forum%20-%20Agriculture%20of%20the%20Middle.pdf>

(“Consumer surveys indicate that a growing number of food buyers . . . prefer to purchase food that has been grown locally or regionally on family-scaled farms or ranches.”); Marcus Glassman, *Hungry for Information: Polling Americans on Their Trust in the Food System*, THE CHICAGO COUNCIL ON GLOBAL AFFAIRS (Oct. 2015) at 2, available

<https://www.thechicagocouncil.org/sites/default/files/Science%20and%20Food%20Flash%20Poll%20Brief.pdf> (a consumer survey that found “When it comes to the food [consumers] buy,” “From a family farm” was deemed either “somewhat important” to “very important” by 60% of respondents.).

³⁷ See *Family Farms*, “Raising Pilgrim's Chickens,” PILGRIM'S, <http://www.pilgrims.com/family-farms/raising-pilgrims-chickens.aspx> (last visited Dec. 11, 2018) (“To learn more about the chicken industry, please go to www.chickencheck.in.”).



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2. The product packaging.

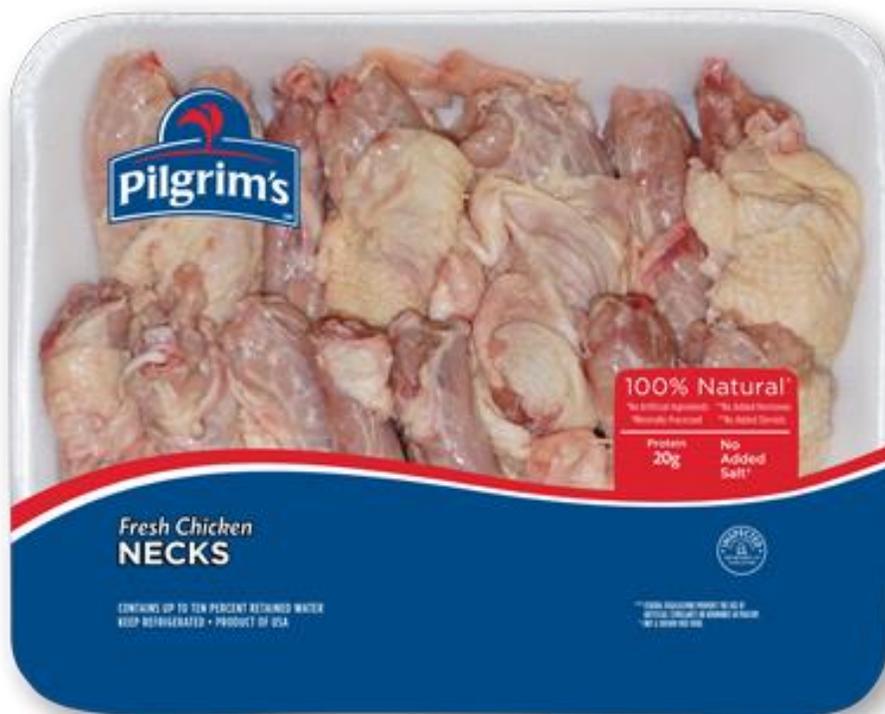
On the front of the packaging of many Pilgrim's Pride products found for sale in grocery stores and online marketplaces, as well as on packaging depicted on the company's webpage, is a claim that the product is "100% Natural," as seen in the below examples.



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³⁸ Home Page, PILGRIM'S, <http://www.pilgrims.com/> (last visited Dec. 11, 2018).

³⁹ Fresh Chicken, "All Natural," PILGRIM'S, <http://www.pilgrims.com/products/fresh->



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As discussed in more detail below (*see infra* Part V.B.2), the “100% Natural” claim on the package conveys to a reasonable consumer that chickens are raised outdoors in a natural environment by caring families and that the birds are raised and slaughtered in a humane and sanitary manner.⁴¹ No words on the label contradict such

chicken.aspx?type=all-natural (enhanced by 250%) (last visited Dec. 11, 2018).

⁴⁰ *Id.*; Google Image, *available* <https://goo.gl/images/DP7iqo> (last visited Dec. 11, 2018).

⁴¹ As with the term “family farm,” it is highly unlikely that reasonable consumers’ impressions of what constitutes a “natural” chicken product aligns with the practices of Pilgrim’s Pride’s producers. While a FSIS policy book defines the term, neither FDA nor USDA formally define “natural.” *See* USDA, FSIS, *Meat and Poultry Labeling Terms*, <https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/food-labeling/meat-and-poultry-labeling-terms/meat-and-poultry-labeling-terms/> (last visited Dec. 11, 2018) (“Natural: A product containing no artificial ingredient or added color and is only minimally processed. Minimal processing means that the product was processed in a manner that does not fundamentally alter the product. The label must include a statement explaining the meaning of the term natural (such as ‘no artificial ingredients; minimally processed’)”). Again, this would be the “kind of technical and esoteric message” no ordinary consumer

reasonable expectations or attempt to correct this false depiction. As further described below (*infra* Part V.B.2), consumers are thus misled by the representations on the package to believe that Pilgrim's adheres to better animal welfare standards than it actually does.

The combined effect of the visual, video, and textual representations employed by Pilgrim's Pride in these advertisements, its webpages, and its product labels, gives the consumer every reason to believe that the chicken products were produced by chickens living in humane conditions and natural environment, and that those humane conditions existed during transport and slaughter as well.⁴² It defies logic to suppose that a reasonable consumer would see these representations and believe that Pilgrim's chickens were produced in an environment not even remotely like the representations on the label or the company's website.

B. Practices at Issue

Contrary to the "humane," "natural," and "family farm" representations on Pilgrim's products, website, and other advertising, the company's products very likely come from chickens inhumanely treated throughout the production process, including growth, transport, and slaughter. Because of Pilgrim's conduct and/or directives, its chickens, as a matter of standard business practices, appear to be treated in inherently unnatural, cruel, and inhumane manners throughout their entire lives. As detailed

would expect was intended by such label. *Federation of Homemakers v. Butz*, 466 F.2d 462, 466, 151 U.S.App.D.C. 291, 295 (C.A.D.C., 1972); *see also infra* Part V.B.2.

⁴² *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976), *cert denied*, 430 U.S. 983 (1977); *accord Horizon Corp.*, 97 F.T.C. 464, 1981 WL 389410, at *269 (in determining whether a representation is deceptive, the Commission is not confined to analyzing "isolated words and phrases").

below, Pilgrim’s practices related to animal welfare are contrary to how a reasonable consumer would understand its advertising claims regarding such issues.

Additionally, undercover investigations spanning more than a decade and recent federal inspections have documented horrific abuse of chickens in the production of Pilgrim’s Pride products. Undercover investigations in 2004, 2014, and 2017 at Pilgrim’s Pride slaughterhouses and contract growing facilities, as well as whistleblower reports and inspections by the U.S. Department of Agriculture’s (“USDA”) Food Safety Inspection Service (“FSIS”), reveal a pattern of practices involving systemic animal cruelty, inhumane treatment, and abuse.

1. Inherently cruel practices of broiler chicken raising and slaughter.

Broiler chicken production and slaughter activities can be divided into at least eight stages: (1) hatching and growing (2) catching at the contract growing facility, (3) transportation to the slaughterhouse, (4) pre-slaughter handling, (5) attempted stunning, (6) attempted neck cutting, (7) scalding then plucking, and (8) dismemberment. Contrary to Pilgrim’s Pride advertising that the company “ensures that birds are humanely raised and handled through all phases of hatching, growth, transport, and slaughter,”⁴³ many of the standardized practices Pilgrim’s Pride uses at each stage of production are inherently cruel and are likely to cause pain and suffering to each chicken produced.

Factory farming, as practiced by Pilgrim’s Pride and its suppliers, involves crowding unnaturally fast-growing and extraordinarily large chickens into warehouses, where they never go outdoors (*see infra* Part IV.B.1.a). When these birds reach

⁴³ *Supra* note 21.

slaughter weight, after approximately six weeks, they are then roughly caught by the legs and shoved into tightly packed cages to be transported to slaughter (*see infra* Part IV.B.1.b). Their journey is fundamentally cruel. The tightly caged birds suffer from injuries inflicted during catching, feed and water deprivation, and possible temperature extremes (*see infra* Part IV.B.1.b). Such exposure, coupled with the stress and physical injuries that may occur during catching and caging, frequently kill birds en route to slaughter (*see infra* Part IV.B.1.b). Chickens are slaughtered on an assembly line, where the goal is speed, not welfare, resulting in some still-conscious animals being scalded while still conscious, among other cruelties (*see infra* Part IV.B.1.c). As described below, these factory farm processes appear to be widely employed by Pilgrim's Pride. The company's use of these practices squarely contradicts its humane, natural, and family farm claims.

a. Growing birds too fast and too big, overcrowding them, and using unnatural light cycles are inherently cruel growing practices used by Pilgrim's Pride.

Pilgrim's Pride controls every aspect of how its birds are grown, from hatching to slaughter, including the systems of production it directs its contract growers to employ.⁴⁴ The company owns the newborn chicks it delivers to contract growing facilities and supplies all the feed.⁴⁵ For about six to seven weeks after delivery of the chicks, the birds remain and "grow" in the same "house" of the contract growing facility to which they were delivered. Broiler grow-out houses are generally large rectangular

⁴⁴ *See supra* notes 16-17 and accompanying text.

⁴⁵ *Family Farms*, "Raising Pilgrim's Chickens," PILGRIM'S, <http://www.pilgrims.com/family-farms/raising-pilgrims-chickens.aspx> (last visited Dec. 11, 2018).

warehouse-like buildings with litter (a substance designed to absorb some wet feces) and covered dirt floors. They are usually windowless, and almost always lack outdoor access.⁴⁶ These long, crowded, and waste-filled housing structures are acceptable under NCC guidelines (the standards Pilgrim's Pride has adopted and which it claims assure humane treatment) and, as the investigations described below show (*see infra* Part IV.B.2.a), Pilgrim's Pride mandates confinement of chickens in grow-out houses of this type, never letting the birds outside.⁴⁷

Obviously, providing outdoor access so that chickens are grown in a more natural environment would do more to "assure the best possible growout conditions."⁴⁸ An outdoor environment or at least outdoor access is what consumers expect when the product is labeled natural.⁴⁹ Outdoor access is beneficial to the wellbeing of the birds because, among other things, it provides more space to move freely, which can reduce

⁴⁶ See discussions *infra* pp. 21-24, 46-49.

⁴⁷ See *infra* Parts IV.B.1-2; see also *National Chicken Council Animal Welfare Guidelines and Audit Checklist For Broilers* 9-10 (Feb. 2017), available https://www.nationalchickencouncil.org/wp-content/uploads/2018/07/NCC-Animal-Welfare-Guidelines_Broilers_July2018.pdf (hereinafter "NCC Standards") (Attachment D).

⁴⁸ Compare *supra* note 33; see also Spain CV, Freund D, Mohan-Gibbons H, Meadow RG, Beacham L. (2018). *Are They Buying It? United States Consumers' Changing Attitudes toward More Humanely Raised Meat, Eggs, and Dairy* 2. ANIMALS (Basel). 8(8):128, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6116027/> (hereinafter "Spain, et al., *Are They Buying It?*") ("The US National Chicken Council whose member corporations represent approximately 95% of broiler chickens raised (i.e., young chickens raised for meat) reports that these animals are all raised entirely indoors in 'growout houses' with no outdoor access").

⁴⁹ See Spain, et al., *Are They Buying It?* ("a 2015 Consumer Reports study found that consumers believed that a natural label indicates that animals went outdoors when there are no such requirements for this label"); Consumer Reports Consumer Reports National Research Center: Natural Food Labels Survey, CONSUMER REPORTS, available http://www.consumerreports.org/content/dam/cro/magazine-articles/2016/March/Consumer_Reports_Natural_Food_Labels_Survey_2015.pdf; see also *infra* notes 257, 260 and accompany text.

the stress of overcrowding and allows chickens to express natural behaviors like foraging, scratching, and perching in fresh air and natural sunlight.⁵⁰ Such conditions are not required by NCC standards, but they are required by other humane guidelines such as those from Global Animal Partnership (“GAP”) Step 3 and Humane Farm Animal Care (“HFAC”) standards for free-range or pasture raised chickens.⁵¹

1. Poor air quality and sanitation

Inside the grow-out houses, air quality, harsh from dust and ammonia pollution, can affect the health of the birds. Birds can be harmed by ammonia from the decomposing waste on which they are forced to spend their lives. These conditions can cause respiratory problems, stress, viral and bacterial infections, structural damage to the lungs, ocular abnormalities, eye lesions, and in severe cases, blindness.⁵²

⁵⁰ Anne Fanatico, *Alternative Poultry Production Systems and Outdoor Access*, ATTRA (2006), at 14, available <https://ucanr.edu/sites/placernevadasmallfarms/files/102336.pdf>.

⁵¹ Compare NCC Standards 9-10, with *Global Animal Partnership’s 5-Step® Animal Welfare Rating Standards for Chickens Raised for Meat v3.1* 25-26, GLOBAL ANIMAL PARTNERSHIP (Apr. 2018) <https://globalanimalpartnership.org/wp-content/uploads/2018/04/GAP-Standard-for-Meat-Chickens-v3.1-20180403.pdf> (hereinafter “GAP Standards”) and *Humane Farm Animal Care Animal Care Standards: Chickens* 10, CERTIFIED HUMANE (Aug. 2014), <https://certifiedhumane.org/wp-content/uploads/Std14.Chickens.2A-3.pdf> (hereinafter “HFAC Standards”).

⁵² Casey W. Ritz, et al., *Litter Quality and Broiler Performance*, UGA Extension Bulletin 1267 (Aug. 2017), available https://secure.caes.uga.edu/extension/publications/files/pdf/B%201267_5.PDF; Miles DM, Miller WW, Branton SL, Maslin WR, and Lott BD. (2006). *Ocular responses to ammonia in broiler chickens*. AVIAN DISEASES 50(1):45-9, p. 47; Olanrewaju HA, Miller WW, Maslin WR, et al. (2007). *Interactive effects of ammonia and light intensity on ocular, fear and leg health in broiler chickens*. INT’L J. OF POULTRY SCI. 6(10):762-9, p. 767; Al-Mashhadani EH and Beck MM. (1985). *Effect of atmospheric ammonia on the surface ultrastructure of the lung and trachea of broiler chicks*. POULTRY SCI. 64:2056-61, pp. 2058-60; Berg CC. (1998). *Foot-pad dermatitis in broilers and turkeys: prevalence, risk factors and prevention*. Doctor’s dissertation. Department of Animal

The floors in these buildings are layered with litter, which deteriorates and is not often removed.⁵³ As noted below (*see infra* Part IV.B.2.b), a Pilgrim’s contract grower turned whistleblower explains that the birds live in grow houses where the floor is covered in feces and states “there’s bloody poop laying all over the floor. Consumers do not know anything about their food or they would be disgusted, and they wouldn’t eat chicken at all.”⁵⁴ Moreover, HSUS’ investigator reported that the birds living in the grow-out house at Plainview Farm were living in their own waste, and the buildings reeked of ammonia (*see discussion infra* p. 48).

The accumulation of moisture in the litter flooring can also cause hock and foot pad lesions.⁵⁵ These conditions can be deadly. Excessive ammonia levels in the litter and air can increase mortality levels.⁵⁶ Once a day, the typical contract grower walks through the house to remove dead birds and cull birds that are injured, non-ambulatory, or are otherwise ill. This, too, is a practice witnessed at Pilgrim’s Pride facilities by an HSUS investigator who was tasked with the walk-through and removal

Environment and Health, SLU. *Acta Universitatis agriculturae Sueciae. Veterinaria* 36, p. 16; Wathes CM. (1998). *Aerial emissions from poultry production*. *WORLD’S POULTRY SCI. J.* 54:241-51, pp. 248-49; Muirhead S. (1992). *Ammonia control essential to maintenance of poultry health*. *FEEDSTUFFS*, April 13, p. 11; Kristensen HH and Wathes CM. (2000). *Ammonia and poultry welfare: a review*. *WORLD’S POULTRY SCI. J.* 56:235-45, p. 241.

⁵³ *See, e.g., Transporting to Processing and Getting Ready For The Next Flock*, at 1:05, CHICKEN CHECK IN, <https://www.chickencheck.in/day-in-the-life/>, also available <https://youtu.be/N34PBtqBj9k> (discussing conditioning the litter in the houses).

⁵⁴ CompassionUSA, *Factory Farmers Expose Diseased Chickens*, at 2:18, YOUTUBE (Apr. 16, 2016), <https://youtu.be/ZVfHcXUUn-s>.

⁵⁵ Mark W. Dunlop, et. al., (2016). *The multidimensional causal factors of ‘wet litter’ in chicken-meat production*, *SCI. OF THE TOTAL ENVIRONMENT*. 562:766–776, pp. 767, 773-74.

⁵⁶ Miles DM, Branton SL, and Lott BD. (2004). *Atmospheric ammonia is detrimental to the performance of modern commercial broilers*. *POULTRY SCI.* 83(10):1650-4, pp. 1651-52, 1654.

of dead, dying and injured birds at Pilgrim’s Plainview Farm contract grow house (*see* discussion *infra* p. 49).

These practices are far from the “best possible.”⁵⁷ For instance, GAP standards require a “Litter Quality Assessment” to be conducted for each flock between 15-20 days of age litter.⁵⁸ This helps to ensure the problems discussed above, like those associated with ammonia-soaked litter, do not occur or persist.⁵⁹ Cleaning the litter more often and letting chickens have more access to the outdoors would also help reduce these problems and as such would provide better “possible” conditions for the birds.

2. *Overcrowding*

Many birds die or are injured in these houses, partly as a result of overcrowding. The birds, including those at Pilgrim’s Pride facilities (*see* discussion *infra* pp. 48-49), are so tightly stocked in barns that each bird has roughly 100 square inches of space to maneuver.⁶⁰ A stocking density this high is inherently inhumane because it prevents birds from engaging in natural movement and affects their health and welfare as a whole.⁶¹ Research shows this stocking density contributes to a “greater mortality [rate]

⁵⁷ *See supra* note 33.

⁵⁸ GAP Standards at 21, 49-50.

⁵⁹ *See* HFAC Standards at 6 (explaining that “Hock and foot pad burns are caused by contact with litter which is both wet and contains a high level of ammonia from feces.”) ⁶⁰ *See* NCC Standards 11-12 (standard D5 on “Flock Husbandry” allows for up to 9 lbs. (of live chickens) per square foot); *see also* discussion *infra* pp. 48-49.

⁶¹ Shields, S. and Greger, M. (2013). *Animal Welfare and Food Safety Aspects of Confining Broiler Chickens to Cages*, ANIMALS, pp. 389-90; *see also* Hall, A.L. (2001). *The effect of stocking density on the welfare and behaviour of broiler chickens reared commercially*. ANIMAL WELFARE, 10, 23–40, pp 34-37; S. Buijs, L. Keeling, S. Rettenbacher, E. Van Poucke, and F. A. M. Tuytens (2009). *Stocking density effects on broiler welfare: Identifying sensitive ranges for different indicators*, POULTRY SCI., Vol. 88, Issue 8, 1 August 2009, Pages 1536–1543, p. 1536, <https://doi.org/10.3382/ps.2009-00007>; *see also* Sanotra GS, Lawson LG, Vestergaard KS, and Thomsen MG. (2001). *Influence of stocking density on tonic immobility, lameness, and tibial dyschondroplasia*

. . . , a higher incidence of leg problems, more contact dermatitis, increased carcass bruising, disrupted resting behaviour, and decreased locomotion and ground pecking.”⁶² Overcrowding also causes stress, reduces immunity, and decreases the birds’ ability to fight infection and disease.⁶³

As discussed below, an HSUS investigator at a Pilgrim’s Pride contract grow house witnessed the horrors of overstocking. This investigator described the buildings as so overcrowded that the birds could barely move (*see discussion infra* pp. 48-49). Pilgrim’s Pride apparently only requires its contract growers to meet the NCC guidelines for stocking density. As such, the level of crowding Pilgrim’s appears to allow does not meet an acceptable animal welfare standard and is inconsistent with what consumers would reasonably consider “humane” treatment (*see discussion infra* pp. 62, 71-73).

The practice of stocking birds so tightly as to only provide them 100 square inches of space is far from ideal and is absolutely not the most humane option possible. For instance, when it comes to egg laying hens, California voters just passed an initiative that requires egg-laying hens to have at least one square foot of space, which is 44% more space than Pilgrim’s NCC standards provide for broilers, which are typically bigger birds; and the people of Massachusetts passed an initiative that gave

in broilers. J. OF APPLIED ANIMAL WELFARE SCI. 4(1):71-87, pp. 85-86.

⁶² Shields, S. and Greger, M. (2013). *Animal Welfare and Food Safety Aspects of Confining Broiler Chickens to Cages*, ANIMALS, pp 389-90, p. 390.

⁶³ Gomes, A. V. S., Quinteiro-Filhoa, W. M., Ribeiroa, A., Ferraz-de-Paulaa, V., Pinheiroa, M. L. Baskevillia, E., Akaminea, A. T., Astolfi-Ferreirab C. S., Ferreirab A. J. P. and J. Palermo-Netoa. (2014). *Overcrowding stress decreases macrophage activity and increases Salmonella Enteritidis invasion in broiler chickens*, AVIAN PATHOLOGY, 43(1):82-90.

birds even more space: 1.5 square feet.⁶⁴ The same space requirements are also used by other humane standards for broilers, for instance even the lowest standards of GAP require a full square foot for birds that are 6.5 pounds; though, this standard will soon be capped at 6 pounds like the HFAC standards.⁶⁵

3. Rapid growth

Problems associated with the miserly amount of space each bird is allowed are exacerbated by the birds' unnaturally rapid weight gain. With few exceptions, nearly all commercially raised broiler chickens, including those that end up as Pilgrim's Pride products (as described below), have been selectively bred for rapid growth to market weight (*see, e.g.*, discussions *infra* pp. 30, 49, 52). This growth rate is the outcome of decades of selective breeding in the meat chicken industry. An average broiler chicken in 1920 reached 2.2 pounds in 16 weeks.⁶⁶ In 2017, the average market weight for Pilgrim's Pride chickens after 6-7 weeks was 5.72 pounds.⁶⁷

⁶⁴ California Attorney General, "Initiative 17-0026," (Aug. 29, 2017) *available* https://www.oag.ca.gov/system/files/initiatives/pdfs/17-0026%20%28Animal%20Cruelty%29_0.pdf; MA ST 129 App. § 1-5 ("Fully extending the animal's limbs' means . . . having access to at least 1.5 square feet of usable floor space per hen").

⁶⁵ *See* GAP Standards at 22; *see also* HFAC Standards at 16 ("Stocking density . . . allowance must not exceed 6 lbs./ft²"); *compare supra* note 60.

⁶⁶ Aho PW. 2002. Introduction to the US chicken meat industry. In: Bell DD and Weaver WD Jr (eds.), *Commercial Chicken Meat and Egg Production*, 5th Edition (Norwell, MA: Kluwer Academic Publishers); *see also* *U.S. Broiler Performance*, NAT'L CHICKEN COUNCIL, <https://www.nationalchickencouncil.org/about-the-industry/statistics/u-s-broiler-performance/> (last visited Dec. 11, 2018) (indicating the market weight for a bird in 1925 was 2.5 pounds at 112 days).

⁶⁷ Watt Poultry USA (March 2018), p. 27 <http://www.wattpoultryusa-digital.com/201803/index.php#/34> (last visited Dec. 11, 2018).

This unnaturally fast rate of growth causes severe welfare problems and is inherently cruel. Accordingly, using fast growing birds, as Pilgrim's Pride appears to do, is inherently cruel. So much so that a Pilgrim's Pride contract grower turned whistleblower explained that it would be the primary practice he would change. (*See infra* Part IV.B.2.b). He explained, "you're growing this bird so fast, its heart and its frame cannot sustain this bird . . . and then, ok, that bird dies."⁶⁸ The European Union's Scientific Committee on Animal Health and Animal Welfare ("SCAHAW") seems to agree that rapid growth is of paramount concern. SCAHAW "concluded, in their scientific report on the welfare of broilers, that fast growth was not only responsible for most of the welfare problems seen in broilers, but also for the most severe."⁶⁹

According to University of Bristol professor emeritus John Webster, fast-growing broiler chickens are the only farm animals that are in chronic pain for the last 20% of their lives because of this growth rate.⁷⁰ These chickens are plagued with health problems. Faster growth causes leg disorders, cardiovascular problems, twisted and bowed bone deformities, ruptured tendons, lameness, and other painful conditions, particularly near the end of the growing cycle, when the birds are at their heaviest.⁷¹

⁶⁸ CompassionUSA, *Factory Farmers Expose Diseased Chickens* at 3:05, YOUTUBE (Apr. 16, 2016), <https://youtu.be/ZVfHcXUUn-s>.

⁶⁹ Cooper MD and Wrathall JHM. (2010). *Assurance schemes as a tool to tackle genetic welfare problems in farm animals: broilers*. ANIMAL WELFARE, 19 (Supplement):51-6 at 52.

⁷⁰ Greger M. (2012). *The Welfare of Transgenic Farm Animals*, in *Biotechnology*, Sammour, R.H, INTECHOPEN, DOI: 10.5772/29260 *available* <https://www.intechopen.com/books/biotechnology-molecular-studies-and-novel-applications-for-improved-quality-of-human-life/the-welfare-of-transgenic-farm-animals>.

⁷¹ *See* Boersma S. (2001). *Managing rapid growth rate in broilers*, WORLD POULTRY, 17(8):20-1; Julian RJ. (2004). *Evaluating the impact of metabolic disorders on the welfare of broilers*. In: Weeks CA and Butterworth A (eds.), *Measuring and Auditing*

Other metabolic diseases include heart failure and ascites, a condition caused by insufficient heart and lung capacity.⁷² Because of this abnormal growth rate that Pilgrim's chose to make a part of its business plan, its chickens suffer continuously, and, for many, the suffering worsens with each passing day.

Moreover, in the last few weeks of their lives, some birds are so injured or are in such chronic pain that they cannot even stand up and are thus forced to lie down on the feces covered floor of the windowless metal building they are crammed into. If not found and culled by the producer, these birds will die from lack of access to feed and water. Even the birds that are able to walk are still mostly sedentary because moving under all the extra weight is difficult and probably painful.⁷³ Consequently, because Pilgrim's

Broiler Welfare (Wallingford, U.K.: CABI Publishing, pp. 51-9); Havenstein GB, Ferket PR, Scheideler SE, and Larson BT. (1994). *Growth, livability, and feed conversion of 1957 vs 1991 broilers when fed "typical" 1957 and 1991 broiler diets*. POULTRY SCI., 73(12):1785-94; Bessei W. (2006). *Welfare of broilers: a review*. WORLD'S POULTRY SCI. J. 62(3):455-66; Rauw WM, Kanis E, Noordhuizen-Stassen EN, and Grommers FJ. (1998). *Undesirable side effects of selection for high production efficiency in farm animals: a review*. LIVESTOCK PRODUCTION SCI., 56(1):15-33; Li Z, Nestor KE, and Saif YM. (2001). *A summary of the effect of selection for increased body weight in turkeys on the immune system*. In: Eastridge ML (ed.), *Research and Reviews: Poultry* (Wooster, OH) The Ohio State University Agricultural Research and Development Center, pp. 21-8.

⁷² Because it is regularly found during chicken slaughter an FSIS directive requires inspection for ascitic fluid, and condemnation of the birds it is found in (removal from the human food supply) and such condemnations must be recorded. See FSIS PHIS Directive 6100.3 (Apr. 11, 2011).

⁷³ See *supra* note 70; see also Bizeray D, Leterrier C, Constantin, P, Picard M and Faure JM. (2000). *Early locomotor behaviour in genetic stocks of chickens with different growth rates*, APPLIED ANIMAL BEHAVIOUR SCI., 68:231-42; McGeown D, Danbury TC, Waterman-Pearson AE, and Kestin SC. (1999). *Effect of carprofen on lameness in broiler chickens*, THE VETERINARY RECORD, 144:668-71; Nääs IA, Paz ICLA, Baracho MS, et al., (2009). *Impact of lameness on broiler well-being*. J. OF APPLIED POULTRY RESEARCH, 18:432-9; Caplen G, Hothersall B, Murrell JC, Nicol CJ, Waterman-Pearson AE, et al. (2012). *Kinematic analysis quantifies gait abnormalities associated with lameness in broiler chickens and identifies evolutionary gait differences*. PLoS ONE 7(7): e40800.

Pride appears to use broiler chicken genetic lines that are selectively bred for unnaturally fast growth (*see* discussions *infra* pp. 29, 49, 52), the chickens that it raises spend a full fifth of their short lives in chronic pain—sometimes so severe that it effectively immobilizes them. (*See infra* Part IV.B.2.b). This genetic manipulation is thus far from natural. It is inherently and severely cruel and is directly contrary to the natural and humane claims Pilgrim’s Pride makes.

Fast growth is not the “highest standard” or the most humane system “possible,” as Pilgrim’s claims.⁷⁴ There exist slower growing strains of birds that exhibit far fewer animal welfare problems than their fast-growing counterparts.⁷⁵ And other humane standards, such as GAP’s, limit the rate of growth to curb the health problems associated with rapid growth.⁷⁶ The NCC standards do not even mention growth rate and thus cannot possibly “assure the best possible growout conditions for [Pilgrim’s] flocks.”⁷⁷

4. Unnatural light and dark cycles

Lighting practices, designed to keep the broilers awake, and eating longer, have further impacts on the health and welfare of the birds. Broiler chickens have enormous appetites and feed over 50 times in a 24-hour period, and they spend about 3% of their day drinking.⁷⁸ To promote more eating and thus enhance growth rates, lights may be

⁷⁴ *Supra* notes 27, 29

⁷⁵ *See* Cooper MD and Wrathall JHM. (2010). *Assurance schemes as a tool to tackle genetic welfare problems in farm animals: broilers*. ANIMAL WELFARE, 19 (Supplement):51-6.

⁷⁶ GAP Standards at 39-40; HFAC standards also acknowledge rapid growth causes health problems. *See* HFAC Standards at 2, 18, 36.

⁷⁷ *Compare id. with supra* note 33.

⁷⁸ C.A. Weeks et al., (2000). *The behavior of broiler chickens and its modification by*

kept on in facilities for 20 hours a day.⁷⁹ This unnatural light cycle is extremely detrimental to the birds' welfare. Chickens receiving only four hours of darkness do not rest long enough for the sleep needed to correct growth that would otherwise reduce bone abnormalities.⁸⁰ The practice of keeping the lights on for 20 hours a day also leads to higher mortality rates.⁸¹ Moreover, this lighting practice is not the most humane way "possible" to raise chickens.⁸² Humane standards other than those adopted by Pilgrim's require longer, more natural periods of darkness. For instance, HFAC standards require "[a] minimum period of 6 continuous hours of darkness in every 24-hour cycle."⁸³

5. *Lack of environmental enrichments*

Chickens in Pilgrim's facilities are not provided environmental enrichments as evidenced by the investigations discussed below (*see infra* Part IV.B.2) and the lack of any mention of them in the NCC standards that Pilgrim's Pride has adopted.⁸⁴

lameness, APPLIED ANIMAL BEHAVIOUR SCI., 67: 111.

⁷⁹ NCC Standards 12 ("birds are provided with a minimum four hours of darkness every 24 hours. The four hours of darkness may be provided in increments of one, two, or four hours."); Gordon SH. (1994). *Effects of daylength and increasing daylength programmes on broiler welfare and performance*. WORLD'S POULTRY SCI. J., 50:269-82 ("Continuous or near continuous daylengths . . . allow uniform access to feed . . . for maximum feed intake and growth by exploiting the birds' feeding behaviour.").

⁸⁰ Malleau AE, Duncan IJH, Widowski TM, and Atkinson JL. (2007). *The importance of rest in young domestic fowl*. APPLIED ANIMAL BEHAVIOUR SCI., 106:52-69; Gordon SH. (1994). *Effects of daylength and increasing daylength programmes on broiler welfare and performance*. WORLD'S POULTRY SCI. J., 50:269-82; Moller AP, Sanotra GS, Vestergaard KS (1999). *Developmental instability and light regime in chickens*. APPLIED ANIMAL BEHAVIOUR SCI., 62: 57-71.

⁸¹ Gordon SH and Tucker SA. (1995). *Effect of daylength on broiler welfare*. BRITISH POULTRY SCI., 36(5):844-5; Gordon SH and Tucker SA. (1997). *Effect of light programme on broiler mortality, leg health and performance*. BRITISH POULTRY SCI., 38 (Supplement): S6-7.

⁸² Compare *supra* note 29.

⁸³ HFAC Standards at 6.

⁸⁴ See generally NCC Standards; see also *supra* note 1.

According to GAP standards, “[e]nvironmental enrichments are materials that are provided to chickens to add complexity to their environment and encourage the expression of natural behavior (such as pecking, scratching, exploration and play behavior).”⁸⁵ Environmental enrichments are important to the birds’ health.⁸⁶ Not providing these enrichments is clearly in direct conflict with Pilgrim’s claim that the birds are “raised . . . as humanely as possible” in accordance with the “highest standards.”⁸⁷ Other animal welfare standards, such as GAP’s, require enrichments.⁸⁸

The five growing practices just described are allowed by the NCC’s purported “humane” standards that Pilgrim’s Pride has adopted, and because Pilgrim’s has admittedly adopted these standards, they are likely used on each of their hundreds of millions of birds.⁸⁹ As a result, it is likely that a very large percentage of Pilgrim’s Pride birds suffer additional discomfort from living in polluted and overcrowded conditions, having weakened skeletal structures and worsened leg problems from being grown unnaturally fast,⁹⁰ and lacking outdoor access and environmental enrichments (*see supra* Parts IV.B.1.a.1-5). Indeed, many of these practices have been witnessed by investigators or described by whistleblowers at Pilgrim’s Pride facilities (*see infra* Part

⁸⁵ GAP Standards at 2, 53-69.

⁸⁶ *See, e.g.*, Balog JM, Bayyari GR, Rath NC, Huff WE, and Anthony NB. (1997). *Effect of intermittent activity on broiler production parameters*. POULTRY SCI., 76:6-12; Ventura BA, Siewerdt F, and Estevez I. (2012). *Access to barrier perches improves behavior repertoire in broilers*. PLoS ONE 7(1):e29826. www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0029826.

⁸⁷ *Supra* notes 27, 29.

⁸⁸ *See supra* note 86.

⁸⁹ *See supra* note 1; *see also, e.g., infra* note 125.

⁹⁰ Knowles TG, Kestin SC, Haslam SM, et al. (2008). *Leg disorders in broiler chickens: prevalence, risk factors and prevention*. PLoS ONE 3(2):e1545. doi:10.1371/journal.pone.0001545, [available www.plosone.org/article/info:doi/10.1371/journal.pone.0001545](http://www.plosone.org/article/info:doi/10.1371/journal.pone.0001545).

IV.B.2). Thus, every bird produced in Pilgrim’s Pride facilities likely is exposed to and at risk of enduring the cruelties inherent in these practices.

b. Transport at Pilgrim’s Pride facilities involves catching birds and packing them into stacked, cramped cages—practices that cause the animals pain and stress.

1. Catching

Once Pilgrim’s Pride determines that the chickens have reached slaughter weight, it sends “catching crews” into the contract growing facility houses to grab the chickens, as many as five per hand, and load the birds into stacked cages, which are also called “drawers.” (*see infra* Part IV.B.2.a). Indeed, HSUS’ investigator noted catching crews arrived when the birds were 50 days old, and crew members were encouraged to catch as many birds by the legs as possible (*see infra* Part IV.B.2.a). Chickens are typically caught by the legs and held upside down as they are swung into cages (*see, e.g., infra* Part IV.B.2.). This is extremely stressful for the birds because “[h]anging upside down is a physiologically abnormal posture for chickens.”⁹¹ Injuries commonly occur during this process as the birds are quickly crammed into cages and caught in the closing drawers. Common injuries include wing and leg fractures, dislocated limbs, and detachment of the growth plates between bones.⁹²

Pilgrim’s could turn to other welfare standards to find practices that would allow them to catch birds more humanely. For instance, HFAC standards require that a crew

⁹¹ Shields, Sara J. and Raj, A. B. M. (2010). *A Critical Review of Electrical Water-Bath Stun Systems for Poultry Slaughter and Recent Developments in Alternative Technologies*, J. OF APPLIED ANIMAL WELFARE SCI., 13: 4, at 283.

⁹² Käthe Elise Kittelsen, et al. (2018). *An Evaluation of Two Different Broiler Catching Methods*, ANIMALS, 8, 141.

member “be made responsible for supervising, monitoring, and maintaining high Animal Care Standards throughout the [catching process] and loading of birds onto the transport vehicle” and explain that “[s]ufficient time must be made available to ensure birds are handled with care.”⁹³ GAP standards limit the numbers of chickens that can be caught to two to four chickens depending on the level of certification, and the most animal-welfare-protective GAP level requires “[e]ach chicken [to] be caught by the body with both hands and carried upright.”⁹⁴ Four chickens per hand is half the amount HSUS’ investigator witnessed crew members catching at a Pilgrim’s facility (*see* discussion *infra* p. 52) and less than the five to ten birds per hand allowed by NCC standards.⁹⁵ Moreover, Pilgrim’s catching practices are nowhere near the “highest standards” possible given, for example, GAP standards, which in some cases mandate that chickens are picked up individually and carried upright.⁹⁶

2. Overcrowding

Once the cages are full, they are loaded onto trucks and stacked on top of each other. Trucks then transport the caged broiler chickens to the slaughterhouse. The company’s website obscurely depicts this with a photo taken from a distance that precludes seeing conditions inside transport cages:

⁹³ HFAC Standards at 23.

⁹⁴ GAP Standards at 28.

⁹⁵ NCC Standards at 13.

⁹⁶ *Compare supra* note 27.



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Pilgrim’s Pride describes this mode of transport as “helping to ensure that our birds are . . . transported . . . as humanely as possible,” however most consumers do not possess the knowledge to evaluate how this method compares to other more humane methods.⁹⁸ For instance, Animal Welfare Approved (“AWA”) standards prohibit overcrowding during transport⁹⁹ and “[d]uring transport, all birds must be protected from harm and thermal stress.”¹⁰⁰ Pilgrim’s Pride materially omits information relevant to other transport options and the harms associated with its chosen method, including overcrowding. Most consumers would not expect a mode of transport that causes injuries to, and the death of, many birds due to very tight confinement to be the option that treats the birds “as humanely as possible.”¹⁰¹ (*See infra* Part V.B).

⁹⁷ *Family Farms*, “Animal Welfare,” PILGRIM’S, <http://www.pilgrims.com/family-farms/animal-welfare.aspx> (last visited Dec. 11, 2018).

⁹⁸ *Id.* (emphasis added).

⁹⁹ *Meat Chicken Standards* 13.0.7, A GREENER WORLD (2018), <https://agreenerworld.org/certifications/animal-welfare-approved/standards/meat-chicken-standards/> (last visited Dec. 11, 2018) (hereinafter “AWA Standards”).

¹⁰⁰ *Id.* at 13.0.10; *see also* GAP Standards at 29 (“All chickens must be able to sit on the floor of the container at the same time”), 30 (“vehicles must be managed to provide for the thermal comfort of chickens at all times”).

¹⁰¹ *Supra* note 29.

Because it is so commonplace, FSIS has developed terminology to describe birds that die during transportation, “dead-on-arrivals,” or “DOAs.”¹⁰² These birds often die from being crushed, suffocated, or from other injuries or disease.¹⁰³ These fatal outcomes are made more likely because the birds are stressed from the growing practices described in the previous section (*see supra* Part IV.B.1.a). Based on the photo above, news coverage, and investigator reports, it appears every bird Pilgrim’s Pride produces is transported to slaughter in the same rough and cruel manner described above. This cannot be reconciled with the company’s humane claims.

c. Slaughter practices such as shackling, stunning, and scalding are inherently inhumane and appear to be standard practices used by Pilgrim’s Pride.

As confirmed by undercover investigations, whistleblowers, and USDA inspectors (*see infra* Part IV.B.2), as well as the NCC standards Pilgrim’s claims to have adopted, Pilgrim’s Pride slaughterhouses appear to use the following slaughter processes.

1. Live kill line and shackling

First, workers use a forklift, as depicted below, to remove the chickens and their cages from the transportation trucks and move them to a slaughter line, in what is commonly called a “live hang room.”

¹⁰² 9 CFR § 381.71.

¹⁰³ See Ritz CW, Webster AB, and Czarick M III. (2005). *Evaluation of hot weather thermal environment and incidence of mortality associated with broiler live haul*. J. OF APPLIED POULTRY RESEARCH, 14(3):594-602; Nijdam E, Zailan ARM, van Eck JHH, Decuypere E, and Stegeman JA. (2006). *Pathological features in dead on arrival broilers with special reference to heart disorders*. POULTRY SCI., 85:1303-8.



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Chickens are dumped onto a conveyor belt, which is painful for birds given, especially, their poor leg health (*see supra* Part IV.B.1.a), and workers segregate DOAs from live birds, tossing the DOAs into bins. After segregation, workers hang the birds in metal shackles attached to an overhead line, leaving the live birds to hang upside down by their legs while fully conscious as they are conveyed through processing facilities.

¹⁰⁴ Chattanooga Times Free Press, *John Murphy plans apartments next to Pilgrim's Pride in Chattanooga*, YOUTUBE (July 7, 2017), <https://www.youtube.com/watch?v=quuE3dgx-CM>; *see also Chattanooga's Pilgrim's Pride One Of Worst Poultry Slaughterhouses In State*, CHATTANOOGA TIMES FREE PRESS (Nov. 24, 2014), <https://www.timesfreepress.com/news/local/story/2014/nov/24/chattanoogas-pilgrims-pride-one-of-worst-poultry/275334/>; Ellis Smith, *Pilgrim's Pride Pushes Back On Planners*, CHATTANOOGA TIMES FREE PRESS (July 22, 2012), <https://www.timesfreepress.com/news/business/aroundregion/story/2012/jul/22/pilgrims-pride-pushes-back-on-planners/83075/>; Tom Wilemon, *Group: Tennessee Poultry Plants Racked Up Citations*, TENNESSEAN (Nov. 22, 2014), <https://www.tennessean.com/story/news/2014/11/22/group-tennessee-poultry-plants-racked-citations/19396657/>.

Again, this hanging is painful for the birds due especially to their weakened or injured legs and the rough manner in which they are hung.¹⁰⁵

Additionally, during this live hang process, workers sometimes subject birds to additional abuses. For instance, a 2004 investigation showed workers at a Pilgrim's slaughterhouse "stomping on chickens, kicking them, [] violently slamming them against floors and walls, . . . rip[ping] the animals' beaks off, twist[ing] their heads off, sp[itting] tobacco into their eyes and mouths, spray-paint[ing] their faces, and squeez[ing] their bodies so hard that the birds expelled feces."¹⁰⁶

A study published in the peer-reviewed journal *Neuroscience* indicates that upside-down leg shackling is painful for the chickens, and this pain is made worse by the fact that many broilers suffer from abnormalities of the leg joints or bones.¹⁰⁷ Moreover, as stated above, hanging upside-down is a physiologically abnormal posture for chickens, and multiple studies, published in the peer-reviewed journal *British Poultry Science*, have shown that inversion and shackling is traumatic and stressful.¹⁰⁸ These studies have also shown that approximately 90% of birds flap their wings vigorously when forced into this position, which can lead to broken bones and dislocated

¹⁰⁵ See text accompanying *infra* note 163.

¹⁰⁶ *Thousands of Chickens Tortured by KFC Supplier*, KENTUCKY FRIED CRUELTY, <http://www.kentuckyfriedcruelty.com/u-pilgrimspride.asp> (last visited Dec. 11, 2018); see also text accompanying *infra* note 182.

¹⁰⁷ See Gentle, M. J., & Tilston, V. L. (2000). *Nociceptors in the legs of poultry: Implications for potential pain in pre-slaughter shackling*. ANIMAL WELFARE, 9, 227–236.

¹⁰⁸ See, e.g., Debut, M., Berri, C., Arnould, C., Guemené, D., Santé-Lhoutellier, V., Sellier, N., ... Le Bihan-Duval, E. (2005). *Behavioural and physiological responses of three chicken breeds to pre-slaughter shackling and acute heat stress*. BRITISH POULTRY SCI., 46, 527–535.

joints.¹⁰⁹ As such, shackling birds in such a manner is inhumane. Because it was witnessed by an HSUS investigator and others at Pilgrim’s slaughterhouses, this is yet another cruelty Pilgrim’s Pride likely inflicts on every bird the company slaughters (*see infra* Part IV.B.2.). The practice of shackling birds in the manner just described is also far from the most “humane[] . . . possible.”¹¹⁰ Other humane standards have stricter requirements when it comes to shackling, including, but not limited to, requiring birds be hung without causing unnecessary pain and suffering, rendering birds unconscious via a Controlled Atmosphere Stunning (“CAS”) System prior to shackling,¹¹¹ limiting the time the birds are suspended, and restricting line speed (*see infra* Part IV.B.1.c.5).¹¹²

2. *Stun baths*

Once shackled, the mechanized line drags each chicken through an electrified vat of water called a stun bath—this electrified bath is supposed to “stun” the birds, *i.e.*, render them unconscious. It appears all Pilgrim’s Pride chickens are electrically shocked by such electric “stunning,” as this practice has been witnessed by several slaughterhouse investigators (*see infra* Parts IV.B.2.a, c) and is allowed under the NCC guidelines Pilgrim’s has adopted.¹¹³ However, even when used correctly, the stun bath

¹⁰⁹ Shields, Sara J. and Raj, A. B. M. (2010). *A Critical Review of Electrical Water-Bath Stun Systems for Poultry Slaughter and Recent Developments in Alternative Technologies*, J. OF APPLIED ANIMAL WELFARE SCI., 13: 4, at 283; Kannan, G., Heath, J. L., Wabeck, C. J., & Mench, J. A. (1997). *Shackling of broilers: Effects on stress responses and breast meat quality*. BRITISH POULTRY SCI., 38, 323–332.

¹¹⁰ *Supra* note 29.

¹¹¹ *See infra* note 127 and accompanying text.

¹¹² *See, e.g.*, HFAC at 30; *compare* NCC Standards at 16-17.

¹¹³ NCC Standards 16-17.

is fundamentally flawed in that it may never truly render birds insensible to pain.¹¹⁴ The most obvious failure is that some birds miss the stun bath altogether and thus cannot possibly be stunned.¹¹⁵ Of those that do make contact with the stun bath, scientific studies have shown that some birds experience painful electric shocks prior to being “stunned” due to wing-flapping at the entrance to the stunner.¹¹⁶ Moreover, studies published in journals such as *Poultry Science* have shown that the birds may experience electrically-induced paralysis, seizures, and cardiac arrest while still conscious.¹¹⁷

Many of these problems are likely a result of the use of low amperage during this process. Most U.S. slaughter facilities fail to use sufficient amperage in their stun baths and refuse to increase the voltage because low voltages “prevent meat damage.”¹¹⁸ In the European Union (“EU”), amperage must be high enough to render the birds unconscious.¹¹⁹ Yet, in the United States there are no federal regulations that prescribe

¹¹⁴ See Pl. Mtn. for S.J., *Dr. Ellen Levine, et al., v. Mike Johanns*, 2007 WL 2887836 (N.D.Cal.), Declaration of Dr. Mohan Raj (“Raj Decl.”) ¶¶ 19-24 (Exh. 1) (Attachment E).

¹¹⁵ *AVMA Guidelines for the Humane Slaughter of Animals* 21, AMERICAN VETERINARY MED. ASS’N (2016), <https://www.avma.org/KB/Resources/Reference/AnimalWelfare/Documents/Humane-Slaughter-Guidelines.pdf> (hereinafter “AVMA Guidelines”) (“One of the most common problems is birds missing the stunner water bath because they are extremely small or stunted and are mixed in with market-ready birds. These birds are too short to have direct contact with the water bath.”).

¹¹⁶ Shields, Sara J. and Raj, A. B. M. (2010). *A Critical Review of Electrical Water-Bath Stun Systems for Poultry Slaughter and Recent Developments in Alternative Technologies*, J. OF APPLIED ANIMAL WELFARE SCI., 13: 4, at 284; AVMA Guidelines at 21.

¹¹⁷ See Pl. Mot. for S.J., *Dr. Ellen Levine, et al., v. Mike Johanns*, 2007 WL 2887836 (N.D.Cal.), Declaration of Dr. Mohan Raj (“Raj Decl.”) ¶ 21 (Exh. 1).

¹¹⁸ AVMA Guidelines at 21.

¹¹⁹ OIE Terrestrial Animal Health Code, Chapter 7.5, Article 7.5.7, Stunning methods, 3. Electrical stunning.

specific amperages for the electric stunning of poultry, and the NCC standards that Pilgrim's has adopted do not set minimum or specific amperage requirements.¹²⁰ This is highly problematic because the birds may not receive an electrical shock sufficient to render them unconscious, and the low amperage can lead to a "rapid return to consciousness after stunning."¹²¹

This treatment, including the possibility that some birds will not be properly stunned, whether it be due to low amperage or failure to make contact with the bath, is contemplated by and permitted under the NCC Guidelines.¹²² In fact, NCC standards only set a goal of having 99% of the birds effectively stunned, and no corrective action is required until the percentage of effectively-stunned birds drops below 98%.¹²³ Two percent of the total number of birds Pilgrim's slaughters every week is well over a half a million birds.¹²⁴ This means every year Pilgrim's could fail to stun roughly thirty one million birds, subjecting each one to horrific pain and torment, without risking even a corrective action under the NCC guidelines.¹²⁵ Consequently, stun baths inherently

¹²⁰ See generally NCC Standards.

¹²¹ AVMA Guidelines at 21.

¹²² See NCC Standards at 17. ("The goal is to have at least 99% of the birds effectively stunned which renders the bird insensible to pain... Corrective action must be initiated if the percentage of effectively-stunned birds is below 98%"). One percent of the weekly slaughter count of Pilgrim's Pride birds is still on average over 300,000 chickens, which does not trigger any corrective action under the NCC standards. See *id.*; Watt Poultry USA (March 2018), p. 30 <http://www.wattpoultryusa-digital.com/201803/index.php#/38> (1% of 30.28 million head is 302,800).

¹²³ *Id.*

¹²⁴ See *id.*

¹²⁵ See *id.* (600,000 birds per week (roughly 2% of Pilgrim's average weekly slaughter) multiplied by 52 weeks in a year equals 31,200,000 birds per year).

cause unnecessary pain and suffering to broiler chickens, and the use of these stun baths is another practice that appears to be uniformly employed by Pilgrim’s Pride.¹²⁶

Moreover, as evidenced by the EU requirements, using higher amperage would be more humane. In fact, not using these faulty stun baths entirely would be the even more humane option. Pilgrim’s Pride has even adopted a different, more humane process for some of its other brands known as a Controlled Atmosphere Stunning (“CAS”) System.¹²⁷ The CAS system is a practice supported by animal welfare proponents because, among other reasons, it is 100% effective at rendering birds insensible, as opposed to the cruel stun baths that leave many birds conscious to suffer from kill blades and scalders (*see infra* Parts IV.B.1.c.3, 4). Consequently, Pilgrim’s claims that its birds are “processed as humanely as possible” and that it meets the “highest standards” for welfare are knowingly false.¹²⁸

3. Kill blade

As described below, Pilgrim’s process involves the use of a kill blade just like those standardly used by industrialized chicken slaughter operations. (*see infra* Parts IV.B.2.a, c). Once stunning is attempted, the slaughter line continues on to “cutting,” via the “kill blade.” In cases when the kill blade misses the chickens, at least one “back-up killer” employee works the line to cut the necks of any missed chicken. Chickens are

¹²⁶ See Pl. Mtn. for S.J., *Dr. Ellen Levine, et al., v. Mike Johanns*, 2007 WL 2887836 (N.D.Cal.), Declaration of Dr. Mohan Raj (“Raj Decl.”) ¶¶ 15, 19, 27 (Exh. 1); *see also* Shields, Sara J. and Raj, A. B. M. (2010). *A Critical Review of Electrical Water-Bath Stun Systems for Poultry Slaughter and Recent Developments in Alternative Technologies*, *J. of Applied Animal Welfare Sc.*, 13: 4, 281 - 299.

¹²⁷ *Cargill To Install Controlled Atmosphere Stunning System*, CHICK-NEWS (Apr. 2, 2018), http://www.chick-news.com/Share.aspx?Site_Copy_ID=43385.

¹²⁸ *See supra* notes 27, 29.

supposed to die from exsanguination, also called “bleeding out.” But, again, NCC standards only suggest that companies aspire to effectively cut 99% of the birds and the standards only call for corrective action if that rate drops below 98%.¹²⁹ However, even FSIS regulations state that all birds must be properly bled out such that ineffective killing would be a violation of law.¹³⁰ No reasonable consumer would consider a practice humane if it violates federal law aimed at ensuring a quick death.

If the process up to this point and the kill blade all work correctly, the sharp blade will cut open the unconscious chickens’ necks and blood will drain out. However, as noted (*see supra* Part IV.B.1.c.1, 2), the process leading up to this is seriously flawed. Because birds enter the stun bath conscious, many may be able to lift or otherwise move their heads in such a way as to miss the stun bath entirely. As a result, when they reach the kill blade, they are still fully conscious and mobile, and able to move in such a way again as to miss the blade. This happens with such frequency that poultry slaughterhouses employ a position known as a “back-up killer” – a person who stands at the point in the process where the chickens emerge after the kill blade. The back-up killer then manually slices the neck of any bird that has managed to miss the blade.¹³¹

Undercover investigators and federal inspectors have observed the use of kill blades in Pilgrim’s plants, including instances when the kill blades malfunctioned,

¹²⁹ *See* NCC Standards at 17 (“The goal is to have at least 99% of the birds effectively cut by the automatic knife to induce bleed-out. Corrective action must be initiated if the percentage of effectively cut birds is below 98%.”).

¹³⁰ 9 C.F.R. § 381.65 (“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”); *see also* discussion *infra* pp. 57-8.

¹³¹ *See* NCC Standards at 17 (“There must be backup personnel after the automatic knife to induce bleed-out in any birds not effectively killed by the equipment”).

causing the harms just described (*see infra* Parts IV.B.2.a, c). HFAC, AWA, and NCC standards require monitoring of the system, but NCC is the only standard that requires less than 100% of the birds be effectively cut.¹³² Further, unlike other standards, NCC requires no additional safeguards, such as minimizing the time between stunning and neck cutting.¹³³ Thus, Pilgrim’s Pride’s claimed adherence to the “highest standard” and the most humane slaughter system “possible” are demonstrably false.¹³⁴

4. *Scalder*

Following the kill blade, the chickens proceed down the line to the “scalder,” a scalding hot tank of water used to loosen feathers from carcasses. Pilgrim’s use of scalders appears to be consistent with the norm for industrialized chicken slaughtering operations.¹³⁵ FSIS regulations require that slaughter “result in thorough bleeding of the carcasses and ensure that breathing has stopped prior to scalding.” 9 C.F.R. § 381.65(b). As just described, chickens regularly miss the electrified water of the stun bath or are under-stunned, and if they also miss the kill blade, they can enter the scald tank fully conscious and drown in scalding hot water.¹³⁶ Because this is so commonplace, the government has defined this problem in federal regulations and there is an industry shorthand for birds that die in this manner. The USDA calls these

¹³² *See supra* note 129.

¹³³ *Compare* HFAC Standards at 34-35, *Slaughter Guidelines for Poultry* 4.6, A GREENER WORLD, <https://agreenerworld.org/certifications/animal-welfare-approved/standards/slaughter-guidelines-for-poultry/> (last visited Dec. 11, 2018); AWA Standards at 16.1.15 *with supra* note 129.

¹³⁴ *Supra* notes 27, 29.

¹³⁵ FSIS Inspection, NR# ODA4621012414N-1 (Jan. 14, 2016); *see also* NCC Standards at 17.

¹³⁶ *See supra* notes 115, 121, 129.

birds “cadavers.” 9 C.F.R. § 381.90. As FSIS explains, “[t]he evidence of bright red cadaver birds means that the birds will [sic] were breathing prior to entering the scald vat.”¹³⁷ In industry vernacular, they are “red birds.”¹³⁸

Pilgrim’s uses a scalding system that has been found to malfunction occasionally. For instance, on January 14, 2016 at a Pilgrim’s Pride slaughterhouse in Carrolton, Georgia, a federal inspector found dozens of cadavers and noted that the kill blade was not properly functioning, in violation of 9 CFR § 381.65(b). That regulation requires birds to be “be slaughtered . . . in a manner that will result in thorough bleeding of the carcasses and ensure that breathing has stopped prior to scalding.”¹³⁹

NCC standards state that all birds must be dead before entering the scald, ¹⁴⁰ but certain practices increase the likelihood that the birds will indeed be dead before reaching the scald. For instance, the use of a CAS system would increase the likelihood that birds will be rendered unconscious and effectively killed before entering the scald.¹⁴¹ Also, proper monitoring supported by slower line speed, as discussed next, would reduce the instances of “red birds,” birds that are scalded alive.¹⁴² Pilgrim’s,

¹³⁷ FSIS, Poultry Postmortem Inspection 12-16-2014 at 6, *available at* https://www.fsis.usda.gov/wps/wcm/connect/6042f608-c881-4da8-98eb-ed943972151d/PSIT_PostMortem.pdf?MOD=AJPERES (last visited Dec. 11, 2018).

¹³⁸ National Chicken Council, *National Chicken Council Animal Welfare Guidelines and Audit Checklist* (April 5, 2005) at 7, *available at* <http://www.uspoultry.org/positionpapers/docs/animalwelfare.pdf> (“All birds should be dead before entering the scald. An uncut ‘red bird’ after the picker is a sign of system malfunction.”).

¹³⁹ FSIS Inspection, NR# ODA4621012414N-1 (Jan. 14, 2016).

¹⁴⁰ NCC Standards at 17.

¹⁴¹ See discussion *supra* p. 39.

¹⁴² See *supra* note 138; Animal Welfare Institute, *The Welfare of Birds at Slaughter in the United States* 9 (2016), <https://awionline.org/sites/default/files/products/FA-Poultry-Slaughter-Report-2016.pdf> (“Large number of birds drowned in the scald tank as a result of the increased

however, does not use a CAS system for most of its brands and has been cited several times for birds entering the scalders alive; as such, Pilgrim's does not utilize the "highest standards" or process its chickens "as humanely as possible."¹⁴³

5. *Line speed*

Problems along this slaughter process may be worsened as a result of the speed of the line. Slaughterhouses are generally subject to a maximum line speed limitation of 140 birds per minute, or approximately two birds per second, 9 C.F.R. § 381.69(a), and some plants participating in a waiver program operate at 175 birds per minute (about three birds every second).¹⁴⁴ Five of the original plants operating with a line speed waiver are Pilgrim's facilities, including a Pilgrim's Pride plant in Moorefield, West Virginia.¹⁴⁵ The increased speed leads to handling errors along the slaughter line, causing injuries to workers and the birds,¹⁴⁶ as well as an inability to observe and

speed of the line to compensate for another line being down (Pilgrim's Pride [P383], 4/8/2011").

¹⁴³ See *supra* notes 27, 29; see also *infra* Part IV.B.3.

¹⁴⁴ See Modernization of Poultry Slaughter Inspection, 79 Fed. Reg. 49566, 49570 (Aug. 21, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2014-08-21/pdf/2014-18526.pdf>.

¹⁴⁵ See FSIS, Poultry Line Speed Waivers, available at https://www.fsis.usda.gov/wps/wcm/connect/188bf583-45c9-4837-9205-37e0eb1ba243/Waiver_Table.pdf?MOD=AJPERES (listing M810 P810, Pilgrim's Pride Corp.). There appear to be five other Pilgrim's Pride plants operating at increased line speed. *Id.* (listing P192, Pilgrim's Pride Corp.; P177, Pilgrim's Pride Corp.; P206, Pilgrim's Pride Corp.; P584, Pilgrim's Pride Corp.).

¹⁴⁶ See *Severe Injury Reports*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <https://www.osha.gov/severeinjury/index.html> (last visited Dec. 11, 2018) (OSHA data show that Pilgrim's Moorefield, WV plant, which appears to have line speed waiver, had five severe injury reports in a three-year period); see also Animal Welfare Institute, *The Welfare of Birds at Slaughter in the United States* 12 (2016), available at <https://awionline.org/sites/default/files/products/FA-Poultry-Slaughter-Report-2016.pdf>; U.K. Department for Environment, Food and Rural Affairs (DEFRA), *The Welfare of Poultry at Slaughter or Killing* 30 (2007), available at

correct instances where birds miss the stun bath and kill blade and continue to the scald tank still alive, which is a risk factor for fecal contamination.¹⁴⁷ This is because birds who enter the scald tank while still alive will expel waste, which then covers the carcasses of other birds.

Despite the problems associated with increased line speed, NCC recently petitioned USDA asking the Department to completely remove the top-speed limit on poultry slaughter line speeds for establishments that received a waiver from FSIS.¹⁴⁸ USDA initially denied the petition.¹⁴⁹ However, recently, USDA decided to relax its

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/485659/pb13539-welfare-poultry-slaughter.pdf; Temple Grandin, *Improving Animal Welfare: A Practical Approach* 125 (Temple Grandin ed., 2010) (“The author has observed that rough shackling is a major cause of bruised drumsticks. The people doing the shackling squeeze the legs too hard when they put the birds on the shackles. An understaffed shackle line where people have to hurry is one cause of bruised legs.”).

¹⁴⁷ See USDA FSIS, *Improvements for Poultry Slaughter Inspection Technical Report 7* (2008), available at [https://www.fsis.usda.gov/wps/wcm/connect/86695053-e060-4a56-81cd-](https://www.fsis.usda.gov/wps/wcm/connect/86695053-e060-4a56-81cd-90e4aa5440fe/Poultry_Slaughter_Tech_Report.pdf?MOD=AJPERES)

[90e4aa5440fe/Poultry_Slaughter_Tech_Report.pdf?MOD=AJPERES](https://www.fsis.usda.gov/wps/wcm/connect/86695053-e060-4a56-81cd-90e4aa5440fe/Poultry_Slaughter_Tech_Report.pdf?MOD=AJPERES) (“[C]ross-contamination can also occur during scalding from microorganisms present on the external and internal surfaces of the carcass and in the scalding water.”); Marc Linder, *I Gave My Employer a Chicken That Had No Bone: Joint Firm-State Responsibility for Line-Speed-Related Occupational Injuries*, 46 CASE WESTERN RESERVE L. REV. 33, 93 (1995) (describing incidences of live chickens entering the scalding tank expelling waste), available at <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2088&context=caselrev>.

¹⁴⁸ NCC, Petition to Permit Waivers of the Maximum Line Speed Rates for Young Chicken Slaughter Establishments under the New Poultry Inspection System and Salmonella Initiative Program (Sept. 1, 2017), available at <https://www.fsis.usda.gov/wps/wcm/connect/7734f5cf-05d9-4f89-a7eb-6d85037ad2a7/17-05-Petition-National-Chicken-Council-09012017.pdf?MOD=AJPERES>.

¹⁴⁹ Letter to NCC from USDA (Jan. 29, 2018), available at <https://www.fsis.usda.gov/wps/wcm/connect/235092cf-e3c0-4285-9560-e60cf6956df8/17-05-FSIS-Response-Letter-01292018.pdf?MOD=AJPERES>

waiver criteria and accept new applications to participate in an increased line speed program,¹⁵⁰ and a Pilgrim’s Pride facility in Sanford, NC is among those that have been approved—a decision that was opposed by poultry worker and consumer safety advocates.¹⁵¹ Given the lax criteria adopted by USDA to receive a line speed waiver, it is likely more Pilgrim’s Pride plants, in addition to the six plants now already operating at a line speed of up to 175 birds per minute, will be given waivers to operate at an increased line speed.¹⁵² Animal welfare at such facilities will very likely suffer.¹⁵³ Moreover, this line speed falls far short of the “highest” animal welfare standard that Pilgrim’s claims to use.¹⁵⁴ Animal Welfare Approved standards, for instance, require that “[w]here shackle lines are used the line speed must not exceed 35 birds per minute.”¹⁵⁵

The slaughter practices discussed above cause pain and suffering to animals. Based on its adherence to the NCC standards, revelations of the investigations and whistleblower accounts, as well as USDA inspections (*see infra* Parts IV.B.2, 3), it appears that Pilgrim’s Pride very likely utilizes these methods in the slaughtering of

¹⁵⁰ See Petition to Permit Waivers of Maximum Line Speeds for Young Chicken Establishments Operating Under the New Poultry Inspection System; Criteria for Consideration of Waiver Requests for Young Chicken Establishments to Operate at Line Speeds of Up to 175 Birds Per Minute, 83 Fed Reg. 49048 (Sept. 28, 2018), available at <https://www.gpo.gov/fdsys/granule/FR-2018-09-28/2018-21143>.

¹⁵¹ See *id.*; see also Letter to FSIS from A Better Balance, et al. (July 31, 2018), available <https://s27147.pcdn.co/wp-content/uploads/Letter-to-FSIS-Opposing-Pilgrims-Pride-NC-Poultry-Line-Speed-Waiver-Request.pdf>.

¹⁵² See 83 Fed. Reg. 49048, 49050; see also *id.*

¹⁵³ See *supra* notes 146-147.

¹⁵⁴ See *supra* note 27.

¹⁵⁵ *Slaughter Guidelines for Poultry* 3.1.9, A GREENER WORLD, <https://agreenerworld.org/certifications/animal-welfare-approved/standards/slaughter-guidelines-for-poultry/> (last visited Dec. 11, 2018).

all of its birds under the Pilgrim's Pride brand. Therefore, if even just one of the practices just described is employed, it is likely that every single one of the birds at Pilgrim's Pride slaughter facilities undergoes a process that most consumers would never describe as consistent with the company's objective, superlative humane claims (for which the company has no substantiation (*see infra* Part V.B)).¹⁵⁶ Moreover, these practices are far from the "best" or "as humane[] as possible" standards Pilgrim's claims them to be.

2. Undercover investigations showing a pattern and practice of inhumane treatment.

a. HSUS Investigations.

HSUS performed investigations at a Pilgrim's Pride slaughterhouse and at a Pilgrim's Pride contract growing facility in 2017.¹⁵⁷ The investigations revealed that chickens raised and slaughtered for Pilgrim's Pride food products suffer continuous abuse and cruelty. An HSUS undercover investigator worked at the Pilgrim's Pride slaughterhouse in Mt. Pleasant, Texas in May 2017.¹⁵⁸ The investigator worked in the live hang room where workers take live birds from a conveyor belt and hang them upside down in metal leg shackles attached to a fast-moving overhead slaughter line,¹⁵⁹ which, as discussed above, causes severe stress on the animals (*see supra* Part

¹⁵⁶ See *Objective Superlative Claims*, BETTER BUSINESS BUREAU, https://www.bbb.org/code-of-advertising/#Objective_Superlative_Claims (last visited Dec. 11, 2018); see also *F.T.C. v. Nat'l Urological Group, Inc.*, 645 F. Supp. 2d 1167, 1206 (N.D. Ga. 2008).

¹⁵⁷ See *Undercover at Pilgrim's Pride: A Humane Society of the United States investigation*, HSUS (2017), available at <http://blog.humanesociety.org/wp-content/uploads/2017/06/HSUS-undercover-report-pilgrims-pride.pdf> (Attachment F).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

IV.B.1.c.1). Despite Pilgrim's Pride's claim that all "employees who handle live birds are required to complete animal-welfare training,"¹⁶⁰ the investigator received zero animal welfare training during a full week of orientation.¹⁶¹ In fact, during the orientation, animal welfare was never mentioned.¹⁶²

While working on the live hang line, the investigator witnessed and contemporaneously documented with video:

birds being punched as they were immobilized in shackles, being violently slammed into shackles with unnecessary force, and being carelessly pitched into shackles from an inappropriate distance. The investigator also witnessed a worker repeatedly shackle and unshackle chickens—a violent act of cruelty that would cause extreme pain.¹⁶³

Shackling, as described above, is an inherently inhumane practice (*see supra* Part IV.B.1.c.1). The violent handling of these birds coupled with the repeated shackling and unshackling actions causes extreme pain.

In June 2017, an HSUS undercover investigator worked in Hull, Georgia at a Plainview Chicken Farm facility that was raising chickens under contract for Pilgrim's Pride.¹⁶⁴ The facility housed approximately 126,000 chickens in six large-scale

¹⁶⁰ *Supra* note 30.

¹⁶¹ *Supra* note 157.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.* Pilgrim's Pride reportedly terminated its contract with this facility, however, it is highly unlikely these abuses were isolated to this producer, as similar problems have been found in the other investigations and inspection reports, and because Pilgrim's claims to control virtually every aspect of its contract growers' operations. *See* Oscar Rousseau, *Pilgrim's Pride Ends Farmer Contract After Animal Cruelty Claim*, GLOBAL MEAT NEWS (June 28, 2017, 11:34 GMT), <https://www.globalmeatnews.com/Article/2017/06/28/Chicken-giant-ends-farmer-contract-after-animal-cruelty-claim>. Even if these are discrete instances of cruelty as the company has reportedly claimed, the inherent cruelties explained in Part IV.B.1 appear to be widespread among Pilgrim's Pride facilities such that this termination has

industrial chicken growing “houses,” like those described above (*see supra* Part IV.B.1.a.2).¹⁶⁵ The investigator witnessed, and contemporaneously documented with video, chickens living in extremely cramped conditions.¹⁶⁶ The practice of overcrowding birds is inhumane (*see supra* Part IV.B.1.a.2) but, as shown below, it appears to be a standard practice at Pilgrim’s Pride grow houses. Chickens at this facility were packed in densely populated windowless warehouse-like growing sheds. These 40 feet by 500 feet structures housed as many as 24,000 birds. That afforded each bird less than one square foot of space. The birds lived in their own waste, and the buildings reeked of ammonia, a toxin that can cause severe suffering and at high levels can kill birds (*see supra* Part IV.B.1.a.1).¹⁶⁷ The buildings were so overcrowded that the birds could barely move.

done nothing to mitigate these inherent problems and match consumer expectations to company practices and representations. See Jessica Schladebeck, *Humane Society Investigation Uncovers Alleged Animal Cruelty at Pilgrim’s Pride Chicken Farm, Slaughterhouse*, DAILY NEWS (June 28, 2017, 8:31 AM), <http://www.nydailynews.com/news/national/pilgrim-pride-accused-animal-cruelty-slaughterhouse-farm-article-1.3281617> (“Ensuring the well-being of the chickens under our care is an uncompromising commitment at Pilgrim’s. This isolated incident of unacceptable behavior does not reflect our approach to animal welfare or the approach of the more than 4,000 family farm partners who interact with our chickens daily.”).

¹⁶⁵ *See supra* note 157.

¹⁶⁶ *Id.*

¹⁶⁷ *See* Casey W. Ritz, *et al.*, *Litter Quality and Broiler Performance*, UGA Extension Bulletin 1267 at 2 (2017), https://secure.caes.uga.edu/extension/publications/files/pdf/B%201267_5.PDF.



In addition to this extreme overcrowding, the investigator observed lame, limping, injured, and dead birds. Part of the investigator's job involved walking the barns and removing dead chickens; these chickens were then thrown into a large hole. As discussed above, such overcrowding of birds is a common cause of suffering (*see supra* Part IV.B.1.a.2).

Injury also occurs because of the fast-growing genetics for which Pilgrim's suppliers have bred. As described above (*see supra* Part IV.B.1.a.3), birds raised for Pilgrim's Pride products grow extremely large very quickly—so fast that they reach slaughter weight at only 50 days old. Indeed, the investigator at Plainview Farm was told the birds are grown for seven weeks and caught at 50 days, and HSUS' investigator worked during this period and observed that the birds were 50 days old at the time of catching. As explained above, this means the birds' growth rate was extremely unnatural and caused the birds severe suffering and increased risk of injury, disease, and death (*see supra* Part IV.B.1.a.3). Again, because Pilgrim's Pride appears to uniformly use an unnatural, genetically altered strain of chicken where the emphasis is on rapid growth and weight gain, many chickens that become the company's chicken

products suffer physically.¹⁶⁸ Some of the birds at Pilgrim’s Plainview Farm suffered from crippling leg deformities so severe that the animals were unable to walk and could not reach their food or water. As noted above, leg deformities from extreme weight gain are common ailments associated with Pilgrim’s companywide practice of using fast growth genetic lines (*see supra* Part IV.B.1.a.3). As depicted in the still frame from the HSUS investigation below, some of these birds suffer from “Sudden Death Syndrome” or “flip-over disease,” which is exacerbated by rapid growth.¹⁶⁹



The investigator witnessed the owner of the facility, a Pilgrim’s contract grower, bludgeoning chickens with a metal rod to cause debilitating physical harm, making the birds easier to catch and kill. The owner also grabbed chickens by the neck and swung them in a circular manner in a crude attempt to kill them. This method, called “wind-milling,” is not an effective euthanasia method because it does not cause enough

¹⁶⁸ See, e.g., CompassionUSA, *Factory Farmers Expose Diseased Chickens*, YOUTUBE (Apr. 16, 2016), <https://youtu.be/ZVfHcXUUn-s>.

¹⁶⁹ Siddiqui, M. F. M. F., Patil, M.S., Khan, K.M., and Khan, L.A., (2009). *Sudden Death Syndrome – An Overview*. VETERINARY WORLD, 2(11):444-447 available at <http://www.veterinaryworld.org/Vol.2/November/Sudden%20Death%20Syndrome%20%E2%80%93%20An%20Overview.pdf>.

physiological damage to the brain stem to lead to rapid unconsciousness. The chickens swung by their necks in a circle likely endured prolonged suffering prior to death. Birds were also subject to violent handling by the owner who, as shown in the below still frame, grabbed chickens by the neck and threw them across the chicken house.¹⁷⁰



While the investigator was removing plastic tubing in the chicken houses, he observed three dead chickens fall out. The owner stated that sometimes when the birds are younger and smaller, they get stuck inside the plastic tubing. A water leak also soaked litter in a crowded barn, creating unhealthy living conditions for the birds. Proper litter management is a key component of good animal husbandry and litter quality affects poultry health and comfort. For example, too much moisture in the litter can increase skin irritation, including increased incidences of blisters, burns, and scabby areas (*see supra* Part IV.B.1.a.1).¹⁷¹

¹⁷⁰ *See supra* note 157.

¹⁷¹ *See* Casey W. Ritz, et al., *Litter Quality and Broiler Performance*, UGA Extension Bulletin 1267 at 1 (2017), available at https://secure.caes.uga.edu/extension/publications/files/pdf/B%201267_5.PDF; *see also supra* Part IV.B.1.a.1.

Pilgrim's Pride manually catches its birds. When birds reach slaughter weight, again at the age of only 50 days, contract "catching crews" arrive to catch the birds and transfer them into transport cages to be loaded onto a truck and hauled to the slaughterhouse. The seven-person catching crew at this Hull, Georgia Pilgrim's Pride contract growing facility cleared four barns—each designed to house 24,000 birds—in a single day. Because of the sheer number of animals needed to be caught within a short time period, the catching crew subjected the chickens to violent and aggressive catching and handling. Manual catching often seriously compromises welfare, and yet it appears to be a prevalent practice at Pilgrim's Pride facilities. As explained above, birds caught in this manner experience stress and fear, and can suffer from bruises, broken bones, dislocated joints, and other injuries (*see supra* Part IV.B.1.b.1). At this growing facility, each crew member was expected to grab, in each hand, as many chickens by the legs as possible and transfer them into transport cages. As shown below, crew members violently grabbed birds and shoved or threw them all at once into metal transport cages, without regard for the birds' fear, distress, or suffering.



The investigator noted that each crewmember is generally expected to pick up around eight birds at a time. However, even NCC suggests this is too many to safely catch at one time. In a recent video linked on Pilgrim's website, NCC shows how it

believes proper catching should be done and states that “only five birds at most are carried at [a] time” during this process.¹⁷² Yet, despite this, it seems catchers at Pilgrim’s Pride are expected to pick up more birds to expedite the process. Moreover, contrary to NCC’s other claim in the video that “[c]arrying chickens by the legs prevents injury,” many birds are injured in this process, as explained in detail above (*see supra* Part IV.B.1.b.1).¹⁷³



b. Whistleblower accounts.

In 2016, the year prior to HSUS’ investigations, farmers contracted by Pilgrim’s Pride blew the whistle about the practices employed at their farms, which mirror those discussed above.¹⁷⁴ In a video posted on YouTube, Eric Hedrick, a contract grower for

¹⁷² *Transporting Chickens to Processing*, CHICKEN CHECK IN, <https://www.chickencheck.in/day-in-the-life/chicken-transport-processing/> (last visited Dec. 11, 2018) (Chicken Check In is run by NCC) *compare* NCC Standards at 13; *see also Family Farms*, “Raising Pilgrim’s Chickens,” PILGRIM’S, <http://www.pilgrims.com/family-farms/raising-pilgrims-chickens.aspx> (last visited Dec. 11, 2018) (“To learn more about the chicken industry, please go to www.chickencheck.in”).

¹⁷³ *Transporting Chickens to Processing*, CHICKEN CHECK IN, <https://www.chickencheck.in/day-in-the-life/chicken-transport-processing/> (last visited Dec. 11, 2018).

¹⁷⁴ CompassionUSA, *Factory Farmers Expose Diseased Chickens*, YOUTUBE (Apr. 16, 2016), <https://youtu.be/ZVfHcXUUn-s>.

Pilgrim's Pride, explains that he is "not allowed to do anything with the birds unless it's approved by the company."¹⁷⁵ He also explains how some of the birds grow so fast that they just cannot move much, and their legs sprawl out because their legs cannot support their weight.¹⁷⁶ He explains, "you're growing this bird so fast, its heart and its frame cannot sustain this bird . . . and then, ok, that bird dies."¹⁷⁷ Because of this, the primary concern Mike Weaver, also a whistleblowing Pilgrim's Pride contract farmer, would address to help the birds is their genetics.¹⁷⁸

Another Pilgrim's Pride contract farmer who also appears in the video, Rachel Hedrick, shows how her birds live in grow houses where the floor is covered in feces and states "there's bloody poop laying all over the floor. Consumers do not know anything about their food or they would be disgusted. They wouldn't eat chicken at all."¹⁷⁹ As discussed above, these filthy conditions are most likely a result of overcrowding and immobility—birds are packed together and are so unnaturally large there is little opportunity or even ability to move away from excrement (*see supra* Part IV.B.1.a.2, 3). This is a welfare concern for the animals and also a health concern for workers and consumers.

Recently, Eric Hedrick sued Pilgrim's Pride for fraud and breach of contract, among other claims.¹⁸⁰ The lawsuit alleges Pilgrim's Pride controls at least 98% of the

¹⁷⁵ *Id.* at 1:41.

¹⁷⁶ *Id.* at 2:40.

¹⁷⁷ *Id.* at 3:05; *see also* discussion *supra* Part IV. B.1.a.3.

¹⁷⁸ CompassionUSA, *Factory Farmers Expose Diseased Chickens* at 3:44, YOUTUBE (Apr. 16, 2016), <https://youtu.be/ZVfHcXUUn-s>.

¹⁷⁹ *Id.* at 2:16.

¹⁸⁰ *See Triple R Ranch, LLC, and Eric Hedrick v. Pilgrim's Pride Corp.*, No. 2:18-cv-00109 (N.D.W.V. Oct. 25, 2018).

grow house operation including “the type and condition of the houses required on a grower’s farm,” “the genetics of the birds,” “the lighting of the poultry houses the birds are grown in,” “the ‘catch crew’ which picks up the birds for processing,” and “the transporting of the birds to the processing plant.”¹⁸¹

c. Other investigations.

These are not the first instances of documented cruelty at Pilgrim’s Pride facilities. In July 2004, People for the Ethical Treatment of Animals released the results of an undercover investigation into a Pilgrim’s Pride slaughterhouse in Moorefield, West Virginia. Video footage taken at the slaughterhouse shows Pilgrim’s Pride workers jumping up and down on live chickens causing the birds to explode, drop-kicking birds, punting birds as if they were footballs, and violently slamming live chickens against a wall. Workers also ripped chickens’ beaks off, twisted their heads off, sprayed paint into their faces and squeezed birds so hard that their bodies expelled feces.¹⁸²

Ten years later, in early 2014, Compassion Over Killing conducted an undercover investigation at a Pilgrim’s Pride contract growing facility in Harnett County, North Carolina. The investigation found systemic cruel treatment of chickens. Abusive practices documented included: birds suffering from painful leg deformities so

¹⁸¹ Complaint at 5-6, *Triple R Ranch, LLC, and Eric Hedrick v. Pilgrim’s Pride Corp.*, No. 2:18-cv-00109 (N.D.W.V. Oct. 25, 2018).

¹⁸² See Donald G. McNeil, Jr., *KFC Supplier Accused of Animal Cruelty*, N.Y. TIMES (July 20, 2004), <https://www.nytimes.com/2004/07/20/business/kfc-supplier-accused-of-animal-cruelty.html>; see also, *Thousands of Chickens Tortured by KFC Supplier*, KENTUCKY FRIED CRUELTY, <http://www.kentuckyfriedcruelty.com/u-pilgrimspride.asp> (last visited Dec. 11, 2018).

severe they were unable to walk; sick and injured birds being thrown; unwanted birds stuffed into buckets while still alive, surrounded by dead and decaying corpses; and unwanted birds buried alive in outdoor pits with dead and decaying corpses, where they were left to suffer and die from starvation, dehydration, or possibly suffocation.¹⁸³ A screenshot from the investigation is below.



After release of the Compassion Over Killing investigation, in June 2014, Pilgrim’s Pride majority shareholder JBS USA issued a statement saying it was looking into the “startling images of birds being mistreated[.]”¹⁸⁴ The statement continued, “[t]he actions in the video are unacceptable,” and “[t]he proper treatment of animals, whether under our direct care or under the care of our contract growers, is one of our core beliefs. We will not tolerate the abuse of animals.”¹⁸⁵ Notwithstanding this verbal condemnation of animal cruelty, the assurances about Pilgrim’s Pride’s commitment to

¹⁸³ See *Buried Alive: COK Investigation Uncovers Shocking Cruelty to Chickens at NC Factory Farm*, COMPASSION OVER KILLING, <http://cok.net/inv/pilgrims/> (last visited Dec. 11, 2018).

¹⁸⁴ Steve Lynn, *Pilgrim’s Pride Investigating Alleged Chicken Abuse*, BIZWEST (June 30, 2014), <https://bizwest.com/pilgrims-pride-investigating-alleged-chicken-abuse-2/>.

¹⁸⁵ *Id.*

“the proper treatment of animals” now ring hollow, especially following revelations of animal cruelty again in 2017, in addition to claims made by whistleblower farmers contracted by Pilgrim’s Pride in 2016.¹⁸⁶ Moreover, Pilgrim’s Pride appears to have done nothing to address the far more widespread, systemic cruelties (fast growing birds, un-natural light and dark cycles, and cruel transport and slaughter methods) that seem to be intrinsic to its standardized production and slaughter practices (*see supra* Part IV.B.1). In short, not only does the company “tolerate the abuse of animals,” it mandates it by operating in a fashion that it knows to be seriously damaging to the welfare of each one of the hundreds of millions of birds it controls from hatching through killing.

3. Federal inspections showing a pattern and practice of inhumane treatment.

In addition to the undercover investigations and whistleblower accounts, federal inspections during the past several years have identified cruel and abusive practices at many Pilgrim’s Pride slaughter plants.

FSIS instructs that its inspectors “are to issue an NR,”—*i.e.*, a Noncompliance Record—“when an ongoing pattern or trend develops where birds are not being

¹⁸⁶ Pilgrim’s may have taken steps after these investigations to “suspend the delivery of birds to the farm and provide proper notice of contract termination to the grower” and “to reinforce [its] commitment to animal welfare throughout [its] supply chain and in [its] production processes,”—a response similar to the one that was issued in past years. Tiffany McCall, *Undercover Video Shows Alleged Abuse at Local Chicken Farm*, 11 ALIVE (July 6, 2017, 5:56 AM EDT), <https://www.11alive.com/article/news/local/undercover-video-shows-alleged-abuse-at-local-chicken-farm/85-454342073>. But, as seen from the aftermath of the 2014 response, including the subsequent revelations of abuses continuing at Pilgrim’s Pride facilities, this is a meaningless response and Pilgrim’s promises and responsive actions do not result in lasting change. Furthermore, these actions do nothing to address the systemic animal welfare problems inherent to Pilgrim’s production and slaughter practices (*see supra* Part IV.B.1).

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 dying otherwise than by slaughter.” FSIS Notice 44-16, at 1 (June 27, 2016). In addition, mistreatment MOIs—*i.e.*, a Memoranda of Interviews—“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.

Transportation and unloading of the chickens caused immense pain and suffering several times at Pilgrim’s Pride slaughterhouses, including:

- On March 22, 2016, at the Hickory, North Carolina slaughterhouse, an inspector found four chickens crushed and trapped beneath three different trailer tires, and a fifth bird crushed and flattened further underneath a truck over a grate. The inspector noted in a MOI, “The issue of loose birds and poor cage status has been documented and addressed in weekly meeting minutes with the establishment on previous occasions.”

Upon the chickens’ arrival at the slaughterhouses, inspectors have found Pilgrim’s Pride inhumanely suffocating birds in DOA piles several times, including:

- On April 26, 2016, at the Sumter, South Carolina slaughterhouse, an inspector saw three live birds under the DOA pile of approximately 50 to 60 birds.

Inspectors have also observed numerous instances of inhumane handling and operation of the slaughterhouse machinery, including:

- On May 13, 2016, at the Live Oak, Florida slaughterhouse, inspectors noticed “multiple birds coming with broken legs and bruises.” At least four birds “had broken legs with fresh blood running all the way down to the back.” The MOI stated that the most likely cause of the broken legs was how the employees were shackling the birds.

Inspectors have observed chickens at Pilgrim’s Pride slaughterhouses dying from drowning or electrocution in the stun baths at Pilgrim’s Pride slaughterhouses.

For example:

- FSIS issued an NR to Pilgrim’s Pride concerning an inspection of the Lufkin, Texas slaughterhouse on January 6, 2016. That day, an inspector observed that a slaughter line “had been down in excess of 5 minutes, however the stunner had not been emptied or lowered to allow the birds the ability to breathe.” After employees restarted the line to get the birds out of the water, the chickens “were examined and noticed as having no signs of life.” According to the inspector, in late December 2015, FSIS had written the Lufkin establishment an NR for leaving a bird in the stunner too long, thus drowning the bird.

Birds also likely experience prolonged and possibly painful electrical shock while left drowning in the stunner, given the low current setting used in most U.S. slaughter facilities.¹⁸⁷ This situation is completely at odds with the humane claims Pilgrim’s Pride makes and could not reasonably be considered representative of the birds being “processed as humanely as possible.”¹⁸⁸

Inspectors also observed—and issued both MOIs and NRs for—violations in which chickens entered the scald tanks alive and conscious, becoming “cadavers.” During this six-month period in 2016, inspectors noted over a dozen instances of chickens entering the scalders alive—a rate of more than twice per month. The inspectors’ observations include:

- On April 28, 2016, at the Marshville, North Carolina slaughterhouse, an inspector saw “a live bird enter the scalders” that “was fully alert, had its head up, was looking around and vocalizing, and breathing in a normal rhythmic manner as it entered the scald tank.”

¹⁸⁷ See *supra* Part IV.B.1.c.2.

¹⁸⁸ *Supra* note 29.

V. ANALYSIS OF REPRESENTATIONS UNDER THE FEDERAL TRADE COMMISSION ACT

For a representation to be unlawfully deceptive under Section 5 of the FTC Act, it must be both “material” and “deceptive.”¹⁸⁹ As described below, Pilgrim’s Pride representations about the chickens that it sells satisfy both elements.

A. Pilgrim’s Pride Representations Are Material

Materiality is established when the deception “is likely to affect the consumer’s conduct or decision with regard to a product or service.”¹⁹⁰ Here, Pilgrim’s Pride directs its humane advertisements and natural labels at those consumers most likely to find these representations material and be misled by them: conscientious consumers inclined to purchase products from chickens that were humanely raised. It is beyond dispute that consumers care deeply about the welfare of animals raised for food, and that consumers rely on representations like those made by Pilgrim’s Pride to identify animal products that they consider to be ethically produced. The FTC, the Better Business Bureau, and even the poultry industry have each firmly recognized that social issues, including the treatment of animals, are of significant concern to consumers and have an important bearing on consumer purchasing decisions.¹⁹¹

¹⁸⁹ FTC Policy Statement on Deception, *supra* note 6.

¹⁹⁰ *Id.*

¹⁹¹ *Starbucks Corporation (Free Trade Certified Coffee)*, Report #4592, NAD CASE REPORTS, at 1 (Nov. 8, 2006) (“Advertising claims which tout that the advertiser is addressing particular social or ethical concerns can provide consumers with important information about their purchasing choices.”); JBS, *Annual and Sustainability Report 2017* 8 (2017) (“We have focused on understanding consumer trends and demands. For example, we are the world’s largest producer of natural, organic chicken”), available at <http://jbss.foinvest.com.br/enu/s-7-enu-2018.html>; see also Context Mktg., *Ethical Food: A Research Report on the Ethical Claims That Matter Most to Food Shoppers and How Ethical Concerns Influence Food Purchases* 4, 6 (2010) (sixty-nine percent of

Many consumers are willing to pay more for products that they believe come from humanely treated animals, as several consumer studies have documented.¹⁹² A consumer survey conducted in June 2018 by NCC noted that “Consumers are significantly more concerned this year about chicken purchase considerations than in any other year” and “how chickens are raised” is among those considerations.¹⁹³ Another recent consumer survey found that nearly 95% of consumers are very concerned about farm animals.¹⁹⁴ That same survey found that about 76% of consumers were very willing to pay more for humanely raised animal food products.¹⁹⁵ Likewise, a 2010 survey found that 57% of consumers were willing to pay more “for food that promises to be produced according to higher ethical standards.”¹⁹⁶ Conversely, consumers avoid buying or would pay less for products that are produced in ways they

consumers will pay more for “food produced to higher ethical standards,” and 91 percent of consumers include animal welfare in their criteria for whether something is ethically produced),
available at <https://web.archive.org/web/20130928195843/http://contextmarketing.com/sources/feb28-2010/ethicalfoodreport.pdf>.

¹⁹² See Animal Welfare Institute, *Consumer Perceptions of Farm Animal Welfare* 9-10, *available at* https://awionline.org/sites/default/files/uploads/documents/fa-consumer_perceptionsoffarmwelfare_-112511.pdf.

¹⁹³ *US Chicken Consumption Report*, NATIONAL CHICKEN COUNCIL 6, 17 (July 2018), *accessible at National Chicken Council Forges New Ground in Food Transparency with Launch of Immersive Virtual Reality Experience*, PR NEWSWIRE (July 25, 2018), <https://www.prnewswire.com/news-releases/national-chicken-council-forges-new-ground-in-food-transparency-with-launch-of-immersive-virtual-reality-experience-300686019.html> (view “*Survey Methodology” section, click “here” where it says “Click here to access a full copy of the report”).

¹⁹⁴ American Humane Certified, *2014 Humane Heartland Farm Animal Welfare Survey* 3, (2014), *available at* <https://www.americanhumane.org/app/uploads/2016/08/2014-humane-heartland-farm-survey.pdf>.

¹⁹⁵ *Id.*

¹⁹⁶ See Animal Welfare Institute, *Consumer Perceptions of Farm Animal Welfare* 10, *available at* https://awionline.org/sites/default/files/uploads/documents/fa-consumer_perceptionsoffarmwelfare_-112511.pdf.

believe are inhumane. Welfare representations are, therefore, material to consumers.

Additionally, a 2015 Consumer Reports National Research Center survey of about 1,000 U.S. food shoppers found that 62% purchase “natural” products and that 87% of those “natural” purchasers are willing to pay more for “natural” products that meet the purchasers’ expectations as to what “natural” means.¹⁹⁷ “For the overwhelming majority of food shoppers, [a] key objective[] [is] . . . providing better living conditions for animals (84%).”¹⁹⁸ When it comes to animals’ living conditions, half of respondents thought the “natural” label meant that the animals went outdoors while nearly 70% thought that the “natural” label *should* mean this.¹⁹⁹ The 2016 Consumer Reports survey found the number of consumers who purchase “natural” products to be as high as 73%.²⁰⁰ The term “natural” is, therefore, also material to consumers.

Pilgrim’s Pride acknowledges consumer desires for products derived from chickens living in high-welfare conditions and raised naturally and responsibly. The company has been aware for over a decade that animal welfare is a material concern to consumers. In response to the 2004 investigation by PETA, the market responded to the horrific acts revealed in the investigation. Pilgrim’s Pride shares fell by 10.4%. Food Quality News reported, “This can be seen as proof that both customers and consumers

¹⁹⁷ Consumer Reports National Research Center, *Natural Food Labels Survey: 2015 Nationally-Representative Phone Survey* 7 (2015), available at https://www.consumerreports.org/content/dam/cro/magazine-articles/2016/March/Consumer_Reports_Natural_Food_Labels_Survey_2015.pdf.

¹⁹⁸ *Id.* at 2.

¹⁹⁹ *Id.* at 4.

²⁰⁰ Consumer Reports National Research Center, *Food Labels Survey: 2016 Nationally-Representative Phone Survey* 2 (2016), available at https://www.ftc.gov/system/files/documents/public_events/975753/cr_intro_and_2016_food_survey.pdf.

have been so horrified by the allegations of cruelty—which centered around a video taken by an undercover animal rights activist—that they are choosing to purchase products elsewhere.”²⁰¹

To alleviate consumer concerns, Pilgrim’s Pride president at the time, O.B. Goolsby, said the company was making changes to ensure that such abuses did not happen again. Goolsby stated that the company had ordered managers at each of its slaughterhouses to take time out to educate workers about the company’s animal welfare policies, and employees who handled live birds would have to sign a document acknowledging the company’s “zero-tolerance” policy for animal cruelty.²⁰² This policy was clearly an empty gesture given the subsequent acts of cruelty and lack of welfare training (*see discussion supra* p. 47 (noting “the [HSUS] investigator received zero animal welfare training”)), and also given the inherent cruelties built into Pilgrim’s business model, from genetics, through raising, transport and inherently cruel slaughter practices (*see supra* Part IV.B.1). Thus, given its president’s statements after PETA’s 2004 investigation, it is clear that Pilgrim’s Pride understands that animal welfare is a material concern to its customer base.

²⁰¹ Anthony Fletcher, *Pilgrim’s Pride Pays Price for Poultry Plant Scandal*, FOOD QUALITY NEWS (Jul. 20, 2004, 14:44 GMT), <http://www.foodqualitynews.com/Industry-news/Pilgrim-s-Pride-pays-price-for-poultry-plant-scandal>.

²⁰² *See* Associated Press, *KFC Supplier Suspends Worker After Video*, FOX NEWS (Jul. 21, 2004, last updated July 14, 2015), <http://www.foxnews.com/story/2004/07/21/kfc-supplier-suspends-worker-after-video.html>; *see also* *Frequently Asked Questions, “Animal Care & Welfare,” JUST BARE CHICKEN*, <https://www.justbarechicken.com/frequently-asked-questions> (last visited Dec. 11, 2017) (“Pilgrim’s, the company behind the Just BARE brand, recognizes our ethical obligation to the health and humane care of our chickens—and we take that responsibility very seriously . . . Pilgrim’s has zero tolerance for any deliberate abuse or mistreatment of our chickens.”); *see also supra* note 30.

This is at least as true now as it was back in 2004. As stated in Pilgrim’s Pride 2016 Sustainability Report, “We endeavor to meet changing consumer expectations while maintaining our high standards for food safety, animal welfare, environmental stewardship, social responsibility, and economic viability. Consumer expectations continue to evolve, including increased interest in antibiotic-free and free-range poultry production systems.”²⁰³ The 2016 Sustainability Report also observes, “it may be increasingly popular to leverage the inherent ethical obligation of proper animal husbandry as a marketing tool.”²⁰⁴

Indeed, likely to accommodate these consumer concerns, Pilgrim’s Pride has implemented a traceback program, which identifies where the chicken originated, and advertises that its chicken is humanely and naturally produced by family farms from hatching through slaughter.²⁰⁵ The company also recently acquired new brands, Just BARE and Gold’n Plump (together “GNP”), to expand its organic and humane product options to provide for the growing consumer demand for these products.²⁰⁶ The acquisition of these brands comes at a time when consumer demand for more humanely

²⁰³ 2016 Sustainability Report at 70.

²⁰⁴ *Id.* at 121.

²⁰⁵ *See Fresh Trace*, PILGRIM’S, <http://www.pilgrims.com/products/fresh-trace.aspx> (last visited Dec. 11, 2018); *see also supra* note 33.

²⁰⁶ *Pilgrim’s Pride Strengthens Branded Portfolio with Agreement to Purchase GNP Company*, GLOBE NEWSWIRE (Nov. 29, 2016), https://www.sec.gov/Archives/edgar/data/802481/000080248116000081/gnp_pressrelease.htm, *also available* <http://ir.pilgrims.com/news-releases/news-release-details/pilgrims-pride-strengthens-branded-portfolio-agreement-purchase> (last visited Dec. 11, 2018) (“The addition of the GNP Company’s portfolio of Just BARE® Certified Organic and Natural/American Humane Certified™/No-Antibiotics-Ever (NAE) product lines to Pilgrim’s existing NAE and organic production capabilities, further positions Pilgrim’s as a leading provider of high quality products in the fastest growing chicken segments.”).

raised, all natural chicken is growing.²⁰⁷

These brands help to meet this growing demand for humanely raised chicken because contractors for these brands supposedly use practices that have greater animal welfare benefits than the inherently cruel practices employed by Pilgrim's in the production of its other brands (*see supra* Part IV.B.1). For instance, GNP is reportedly an early adopter of a Controlled Atmosphere Stunning ("CAS") System, a more humane way of rendering birds insensible.²⁰⁸ Consequently, as explained above (*see discussion supra* p. 39), not only does Pilgrim's know that the CAS system is more humane, it also knows that its statements that all of the company's birds are "processed as humanely as possible" and that it meets the "highest standards" for welfare with respect to all of its products are false.²⁰⁹ Furthermore, Pilgrim's Pride understands that animal welfare representations are material to consumers, and it appears to be actively deceiving humane-conscientious consumers.

B. Pilgrim's Pride Representations Are Likely to Mislead

Many consumers will find Pilgrim's words and representations misleading if the facts of Pilgrim's processes are illuminated. As a threshold matter, advertisers are responsible for *all* reasonable consumer interpretations, so it does not matter that the

²⁰⁷ *Gold'n Plump® Launches New Attributes For All Natural Line And Tool To Help Define New Label Claims*, GOLD'N PLUMP (July 12, 2016), <https://www.goldnplump.com/news-room/goldn-plump-launches-new-attributes-all-natural-line-and-tool-help-define-new-label-claims> (discussing consumer survey results of Gold'n Plump Chicken Labels Insights Study, conducted online by Qualtrics March-April 2016).

²⁰⁸ *Cargill To Install Controlled Atmosphere Stunning System*, CHICK-NEWS (Apr. 2, 2018), http://www.chick-news.com/Share.aspx?Site_Copy_ID=43385.

²⁰⁹ *See supra* notes 27, 29.

company's representations may convey differing meanings to different consumers.²¹⁰ "To be considered reasonable, the interpretation or reaction does not have to be the only one."²¹¹ Instead, "[w]hen a seller's representation conveys more than one meaning to reasonable consumers, one of which is false, the seller is liable for the misleading interpretation."²¹² When a particular consumer group is targeted, or likely to be affected by the advertisement, the advertisement should be examined from the perspective of a reasonable member of that group.²¹³ Here, Pilgrim's Pride labeling and advertising representations target consumers most likely to be misled: consumers who are concerned about the welfare of farm animals and who look to product labels to identify goods that are produced more humanely. Many such consumers, and the general public more broadly, will reasonably interpret Pilgrim's Pride representations as saying just that.

1. Deceptive advertisements and website representations.

The Pilgrim's Pride website is rife with misleading content. Pilgrim's website has designated webpages devoted to explaining its "Animal Welfare" practices and "Family Farm" connections. On these webpages, Pilgrim's Pride claims that its "technicians work with each farm family . . . to assure the best possible growout conditions for our flocks"²¹⁴ and acknowledges that the first step in "Caring for

²¹⁰ See FTC Policy Statement on Deception, *supra* note 6, at 2-3.

²¹¹ FTC Policy Statement on Deception, *supra* note 6, at 3.

²¹² *Id.*

²¹³ *Id.* at 1, 2-3.

²¹⁴ *Family Farms*, "Raising Pilgrim's Chickens," PILGRIM'S, <http://www.pilgrims.com/family-farms/raising-pilgrims-chickens.aspx> (emphasis added) (last visited Dec. 11, 2018).

[Pilgrim’s] Customers” is “Caring for [Pilgrim’s] Chickens.”²¹⁵ The website also hosts the company’s Sustainability Reports, which say that Pilgrim’s Pride produces chicken raised on “family farms” following a “strict and comprehensive Animal Welfare Program.”²¹⁶

These statements and Pilgrim’s unqualified claim that it has “zero tolerance for any deliberate abuse or mistreatment” are especially concerning as they completely conflict with the inherently cruel practices the company uses from hatching through neck-cutting, and the cruel actions seen time and time again in undercover investigations and USDA inspections (*see supra* Parts IV.B.1-2).²¹⁷ Pilgrim’s comprehensive welfare and family farm promises mislead consumers because consumers expect family-run farms to operate with the level of care equivalent to what Pilgrim’s Pride advertises as being the “best possible” comprehensive welfare practices, and that such farms are the antithesis of factory farms.²¹⁸ Pilgrim’s facilities, however, as discussed above, utilize factory farm practices and employ practices that do nothing

²¹⁵ *Family Farms*, “Animal Welfare,” PILGRIM’S, <http://www.pilgrims.com/family-farms/animal-welfare.aspx> (last visited Dec. 11, 2018).

²¹⁶ *Supra* note 21 and text accompanying.

²¹⁷ *See id.*; *supra* note 202, *Frequently Asked Questions*, JUST BARE CHICKEN.

²¹⁸ *Supra* note 33. In a study regarding perceptions of animal welfare in farming, “almost three-quarters (74%) believe the welfare of animals is better protected on family farms than on large, corporate farms.” Rebecca J. Vogt et al., Center for Applied Rural Innovation, University of Nebraska, Lincoln, *Animal Welfare: Perceptions of Nonmetropolitan Nebraskans* i (Jul 2011), available at <http://govdocs.nebraska.gov/epubs/U2031/B075-2011.pdf>. As stated in an industry editorial, “[M]odern agriculture is not what consumers believe or what they want to believe. Most think family farms are small, independent, diversified, and producing food for their local area. . . . This is one of the reasons they are willing to pay more for organic food products, mistakenly believing these are produced by smaller, independent family farms.” Gary Truitt, *Closing The Gap Between Producers and Consumers*, HOOSIER AG TODAY (Mar. 3, 2013) <https://www.hoosieragtoday.com/closing-the-gap-between-producers-and-consumers/>.

to promote welfare (*see supra* Part IV.B.1). As such, Pilgrim’s Pride humane animal welfare and family farm claims are deceptive.²¹⁹

No reasonable consumer reading Pilgrim’s humane claims, such that its “strict and comprehensive Animal Welfare Program ensures that birds are humanely raised and handled through all phases of hatching, growth, transport and slaughter,” would assume the company, from all appearances, uniformly uses inherently cruel practices in its growing and slaughter of chickens.²²⁰ Nor would any reasonable consumer assume that the vast majority of Pilgrim’s products, being represented as produced “as humanely as possible,” are no better (and in many cases are worse) from a welfare perspective than other available chicken products.²²¹

As discussed above (*see supra* Part IV.B.1), these unquestionably inhumane practices include, but are not limited to, using birds bred to grow unnaturally fast to an unnatural size, sometimes leaving them unable to stand and often at severe risk of injury or death, overcrowding birds in grow houses and during transport such that many are crushed to death or suffocated, and failing to render chickens unconscious thus causing chickens to be cut or scalded while still conscious. No reasonable consumer would find that these practices comport with Pilgrim’s statements that its “practices . . . prevent or minimize fear, pain, stress and suffering throughout the production process” and that it has an “uncompromising commitment” to “[e]nsuring the well-being

²¹⁹ *See generally* FTC Policy Statement on Deception, *supra* note 6, at 2 (a claim is deceptive if it is important to a consumer's purchasing decision to and is likely to mislead consumers acting reasonably under the circumstances).

²²⁰ Sustainability Report 2016 at 122 (emphasis added); *compare supra* Parts IV.A.1, 2.

²²¹ *Supra* note 29.

of the chickens under [Pilgrim’s] care.”²²² Shackling birds upside-down by their legs (*see supra* Part IV.B.1.c.1) and scalding fully conscious chickens (*see supra* Part IV.B.1.c.4) are just a few of Pilgrim’s practices that cause birds the fear, pain, stress, and suffering that Pilgrim’s disclaims, and demonstrate the humane treatment of animals in its care is compromised (*see supra* Parts IV.B.2, 3). The company is free to choose not to “prevent” or even “minimize” these harms by adopting alternative practices.²²³ But, it is not free to mandate cruel practices in lieu of more humane alternatives (about which it is well aware) and then deceive consumers by claiming to operate in the most humane fashion possible.

Also on Pilgrim’s website are overtly misleading claims that the NCC guidelines it employs “are designed to promote the humane treatment and well-being of poultry throughout the production process.”²²⁴ Pilgrim’s Pride relies on the NCC for its welfare guidelines, even though the NCC is an industry trade group, not an animal welfare organization. The NCC exists to promote and protect the interests of the chicken industry. The NCC’s standards merely codify industry standards for factory farming and do not meet consumer expectations for “humane” treatment of animals. Indeed, NCC explains that it “is a non-profit trade association headquartered in Washington, D.C. that represents chicken producer-processors, the companies that produce and process chickens raised for meat,” and “[m]ember companies of the council account for more than 95 percent of the chicken sold in the United States.”²²⁵ With over 95 percent

²²² Sustainability Report 2016 at 121-22 (emphasis added); Sustainability Highlights 2017 at 22 (emphasis added).

²²³ Compare *supra* note 27.

²²⁴ *Supra* note 2.

²²⁵ *National Chicken Council Forges New Ground in Food Transparency with Launch*

of the market, the humane standards that Pilgrim’s advertises are meaningless differentiators and should not be used in product marketing to suggest that a product benefit is being conferred on consumers.²²⁶

NCC is also the group that recently petitioned FSIS to remove all line speed limits on poultry slaughter—allowing an already incredibly fast and cruel process to get even worse. NCC’s apparent complete disregard for animal welfare and food and worker safety does not inspire confidence in the organization’s so-called “humane” standards that Pilgrim’s Pride claims “ensure that birds raised are taken care of with the highest standards starting at hatch.”²²⁷ Pilgrim’s reliance on these standards to support its humane claims is thus unfair and deceptive.²²⁸

It is further deceptive because NCC guidelines mandate and explicitly allow for practices that no reasonable consumer would consider “humane.” As explained in detail above, NCC standards are severely deficient for protecting animal welfare. For instance, NCC standards allow the use of stun baths,²²⁹ beak-trimming,²³⁰ maceration

of Immersive Virtual Reality Experience, PR NEWSWIRE (July 25, 2018, 6:00 PM ET), <https://www.prnewswire.com/news-releases/national-chicken-council-forges-new-ground-in-food-transparency-with-launch-of-immersive-virtual-reality-experience-300686019.html>.

²²⁶ See Petition from Tyson Foods, Inc. to USDA (Mar. 18, 2011) (complaining about its competitor, Perdue, for “tout[ing] its raising practices as though they are unique from and superior to the practices of its competitors” even though “Perdue raises broiler chickens in the same manner as its competitors”), *available at* https://www.fsis.usda.gov/wps/wcm/connect/0291205f-8e6e-4f23-a2a2-713708afcb16/Petition_Tyson_031811.pdf?MOD=AJPERES.

²²⁷ See *supra* text accompany notes 27, 146-52; see also *supra* Part IV.B.1.c.5.

²²⁸ See, e.g., *supra* notes 1, 51, 60, 65, 84, 95, 113, 120, 129 and accompanying text.

²²⁹ See NCC Standard at 16-17.

²³⁰ *Id.* at 7-8.

of live chicks,²³¹ cramped conditions,²³² and other inhumane practices, such as genetically manipulating the growth rate of the birds to grow unnaturally and rapidly large,²³³ keeping birds awake for 20 hours a day,²³⁴ and scalding conscious birds to defeather them.²³⁵ Pilgrim's Pride fails to explain that the NCC "Animal Welfare" standards, on their face, allow inhumane treatment—a material omission.²³⁶ Because of the inherent problems associated with practices permitted under the NCC standards, Pilgrim's chickens have been subjected to inhumane handling in grow houses, on trucks, and by being shackled in ways that can break bones and dislocate joints (*see supra* Part IV.B.1).

Consumers do not find these practices humane, as further explained herein. What consumers expect humane to mean may vary, but unquestionably no reasonable consumer would see the way in which Pilgrim's Pride raises and slaughters chickens to be consistent with its "humane" claims. For instance, no reasonable consumer would expect the practices explained above (*see supra* Part IV.B.1) to comport with Pilgrim's claim that its "chickens are raised in accordance with . . . practices that prevent or minimize fear, pain, stress and suffering throughout the production process."²³⁷

As recent surveys confirm, overwhelming majorities of American consumers are very concerned about the treatment of the farm animals that become food. For instance, in a consumer survey, 80% of consumers said they would either "definitely not" or

²³¹ *Id.* at 7-8.

²³² *Id.* at 12; *see also supra* Part IV.B.1.a.2.

²³³ *See supra* note 77 and accompanying text.

²³⁴ NCC Standard at 12.

²³⁵ *See id.* at 17.

²³⁶ *See generally* NCC Standards; FTC Policy Statement on Deception, *supra* note 6.

²³⁷ Sustainability Report 2016 at 122 (emphasis added).

“probably not” consider chickens to be “Humanely Raised” if the chickens were bred for extremely fast growth, causing the chickens to have chronic health problems.²³⁸ As explained above, Pilgrim’s Pride does just that yet still advertises its chicken as humane. In the same survey, 84% of consumers surveyed would either “definitely not” or “probably not” consider chickens to be “Humanely Raised” if a company kept its chickens in barns and subjected them to near continuous lighting, preventing natural rest and sleep behaviors.²³⁹ Again, as explained above, the NCC standards only require 4 hours of darkness in a 24-hour period and Pilgrim’s Pride very likely follows this standard across the board.²⁴⁰ 84% of respondents in a more recent survey believe farms should raise animals with sufficient space and not confine animals so tightly that they can barely move.²⁴¹ Also, 81% of consumers surveyed would either “definitely not” or “probably not” consider chickens to be “Humanely Raised” if, prior to being slaughtered, a company shocked shackled chickens in vats of electrified water, which as described above are practices standard in Pilgrim’s Pride production (*see supra* Parts IV.B.1.c.1, 2).²⁴²

As if these standards were not already lax, NCC’s producer-friendly enforcement system allows producers to commit a number of egregious violations without the risk of censure. Under the NCC certification program, “growout operations” need only meet 86% of an audit to receive certification.²⁴³ Consequently, a facility that grows chickens

²³⁸ Thomas J. Maronick, DBA, JD, *Harvestland Label Survey* (2012) (on file with Complainant).

²³⁹ *Id.*

²⁴⁰ *See supra* Part IV.B.1.a.4; NCC Standards at 12.

²⁴¹ Spain, et al., *Are They Buying It?*

²⁴² *Supra* note 238.

²⁴³ NCC Standards at 19.

can completely fail *all* of its “Nutrition and Feeding” obligations—including ensuring that “all feeding and drinking systems are in proper operation and easily accessible by all birds”—and still pass its audit to receive NCC certification. Thus, because Pilgrim’s asserts it has adopted NCC standards, its claim that it is certified according to the “strict” guidelines of a “comprehensive Animal Welfare Program” is misleading.²⁴⁴ No reasonable consumer believes that 20,000 chickens packed in a windowless warehouse with no working feed and drink dispensers is being cared for under “guidelines” that “ensure that birds raised are taken care of with the highest standards.”²⁴⁵

Additionally, consumers find it “important to know that animal-welfare assessments are conducted by an independent third party or the federal government (and not only the industry producer).”²⁴⁶ This is likely why the company leads consumers to believe that its chicken has been endorsed or certified by an independent third party, NCC and the Professional Animal Auditor Certification Organization (“PAACO”).²⁴⁷ Indeed, as noted above, Pilgrim’s Pride advertises, “[a]ll of our complexes are audited on a regular basis to ensure full compliance with [National Chicken Council] humane treatment guidelines.”²⁴⁸ Yet, Pilgrim’s Pride does not explain that

²⁴⁴ *Supra* notes 1, 21, 27.

²⁴⁵ *Frequently Asked Questions*, PILGRIM’S, at <http://pilgrims.com/contact-us/faq.aspx> (last visited Dec. 11, 2018) (emphasis added).

²⁴⁶ Spain, et al., *Are They Buying It?*

²⁴⁷ See *Family Farms*, “Animal Welfare,” PILGRIM’S, <http://pilgrims.com/family-farms/animal-welfare.aspx> (last visited Dec. 11, 2018) (“All of our complexes are audited on a regular basis to ensure full compliance with these humane treatment guidelines.”); see also 2017 Sustainability Highlights at 22 (“In the U.S., animal welfare audits are conducted at all Pilgrim’s production facilities and a sub-set of family farms at least once a year by third-party auditors who are part of the Professional Animal Auditor Certification Organization (PAACO)”).

²⁴⁸ *Family Farms*, “Animal Welfare,” PILGRIM’S, at <http://pilgrims.com/family-farms/animal-welfare.aspx> (last visited Dec. 11, 2018).

the NCC is an industry trade group, representing the vast majority of factory farming poultry producers, or that PAACO is associated with NCC and trains in-house company auditors rather than providing its own independent audits.²⁴⁹ In fact, it appears PAACO trains and appoints Pilgrim's Pride employees to be auditors of the PAACO certified NCC standards.²⁵⁰ As such, this appears to be a self-auditing scheme, even though consumers would reasonably view the NCC program as an independent one based on Pilgrim's representations about the program.²⁵¹ Although these facts are material to consumers, as noted above (*see supra* Part V.A), Pilgrim's does not disclose them at all, let alone prominently as required.²⁵²

²⁴⁹ See *Overview*, NAT'L CHICKEN COUNCIL, <https://www.nationalchickencouncil.org/about-ncc/overview> (last visited Dec. 11, 2018) ("The National Chicken Council (NCC) is the national, non-profit trade association whose primary purpose is to serve as the advocate and voice for the U.S. broiler chicken industry in Washington, D.C."); *Animal Welfare for Broiler Chickens*, NAT'L CHICKEN COUNCIL, <https://www.nationalchickencouncil.org/industry-issues/animal-welfare-for-broiler-chickens/> (last visited Dec. 11, 2018) ("The Professional Animal Auditor Certification Organization (PAACO) trains auditors to the NCC program, and use of PAACO-trained auditors is recommended"); *America's Largest Chicken Association Rolls Out Industry-Wide Standards for Broiler Chicken Welfare*, NAT'L CHICKEN COUNCIL (Sept. 6, 2017), <https://www.nationalchickencouncil.org/americas-largest-chicken-association-rolls-industry-wide-standards-broiler-chicken-welfare/>.

²⁵⁰ *Certified Auditors Directory*, ANIMAL AUDITORS <https://www.animalauditor.org/auditors.php> (last visited Dec. 11, 2018) (identifying several people affiliated with Pilgrim's in PAACO's Certified Auditor's Directory); *National Chicken Council Animal Care Guidelines Certified by Independent Audit Certification Organization*, NAT'L CHICKEN COUNCIL (July 10, 2018), <https://www.nationalchickencouncil.org/national-chicken-council-animal-care-guidelines-certified-by-independent-audit-certification-organization/> ("the National Chicken Council's (NCC) broiler and broiler breeder welfare guidelines have been certified by the Professional Animal Auditor Certification Organization (PAACO)").

²⁵¹ See, e.g., 16 CFR Part 255 (Guides Concerning the Use of Endorsements and Testimonials in Advertising), <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf>.

²⁵² *Id.*

Pilgrim's Pride further fails to disclose its close, controlling ties to the NCC standards and its welfare audits. For instance, "Pilgrim's was selected by the National Chicken Council as a key leader in the formation of the U.S. Roundtable for Sustainable Poultry and Eggs," showing that the company, along with other poultry producers, has significant influence, if not total control over establishing NCC standards.²⁵³ Thus, NCC is not as impartial as Pilgrim's Pride leads consumers to believe. This self-regulating framework is a material connection that Pilgrim's should conspicuously disclose to consumers in advertisements and on its website.²⁵⁴ Pilgrim's Pride's failure to do so is deceptive.

2. Misleading "100% Natural" label representations.

Each of the statements described above contributes to the false impression that Pilgrim's Pride chickens come from sources that protect animal welfare and public health, or at least from producers who exceed the industry baseline for animal

²⁵³ JBS USA, *USA 2017 Sustainability Report* 16 (2017), available at <https://sustainability.jbssa.com/JBS-USA-2017-SUSTAINABILITY-REPORT.pdf>; see also JBS, *Annual and Sustainability Report 2017* 149 JBS (2017) ("Pilgrim's Pride Corporation has its own Animal Welfare Program. Developed by a Corporate Committee focusing specifically on this issue, the program is revised annually to ensure poultry wellbeing is respected at all stages of the process, including hatching, growth, transportation and slaughter. The practices adopted in the US reflect guidelines published by the National Chicken Council (NCC)", available at <http://jbss.infoinvest.com.br/enu/s-7-enu-2018.html>; Petition from Tyson Foods, Inc. to USDA (Mar. 18, 2011) ("Tyson, and most of Perdue's competitors [which would include Pilgrim's Pride], are members of NCC, were involved in formulating and also adhere to NCC's Animal Welfare Guidelines").

²⁵⁴ See *Moonlight Slumber, LLC*, No. C-4634 at 5-6 (FTC Dec. 11, 2017), *supra* note 15; see also 16 C.F.R. § 255.5; Enforcement Policy Statement on Deceptively Formatted Advertisements, FTC at 9, available at https://www.ftc.gov/system/files/documents/public_statements/896923/151222deceptiv_eenforcement.pdf.

treatment. This is particularly true when the website is viewed in conjunction with the company's "100% Natural" claim that appears on Pilgrim's packaging and on its website.²⁵⁵ Pilgrim's Pride product labels claiming the product is "100% Natural" are misleading. This claim is deceptive because no reasonable consumer would consider the practices described above, such as growing birds at unnatural growth rates, overcrowding, and using irregular light and dark frequencies, as in concert with the "100% Natural" representations of Pilgrim's Pride.²⁵⁶

The "100% Natural" label implies that chickens at suppliers for Pilgrim's Pride products are humanely and naturally raised. Surely, no reasonable consumer would see the "100% Natural" claims and think of a complex of factory farms owned by Pilgrim's Pride, one of the largest and most geographically widespread poultry-producing corporations in the nation, where chickens are confined in cramped, filthy warehouses and never see the light of day.²⁵⁷ In fact, most consumers believe that a "natural"

²⁵⁵ See, e.g., *supra* note 39.

²⁵⁶ Animal Welfare Institute, *Consumer Perceptions of Farm Animal Welfare* 7-8, available at https://awionline.org/sites/default/files/uploads/documents/fa-consumer_perceptionsoffarmwelfare_-112511.pdf (last visited Dec. 11, 2018) ("When asked to identify their top three reasons for purchasing 'natural' or 'organic' meat, 38% of respondents to an online poll conducted by the American Meat Institute and the Food Marketing Institute chose 'better health and treatment of the animal.'") (citing *Top 3 Reasons for Purchasing Natural or Organic Meat, Beyond the Farm Gate*, WHOLE FOODS MARKET, Issue 4, June 2010); see generally FTC Policy Statement on Deception, *supra* note 6, at 2 (a claim is deceptive if it is important to a consumer's purchasing decision to and is likely to mislead consumers acting reasonably under the circumstances).

²⁵⁷ See Spain, et al., *Are They Buying It?* ("a 2015 Consumer Reports study found that consumers believed that a natural label indicates that animals went outdoors when there are no such requirements for this label"); Consumer Reports National Research Center, *Natural Food Labels Survey: 2015 Nationally-Representative Phone Survey 4* (2015), available at http://www.consumerreports.org/content/dam/cro/magazine-articles/2016/March/Consumer_Reports_Natural_Food_Labels_Survey_2015.pdf ("While half think that the natural label on meat and poultry currently means that the

representation should mean the animal was raised in a natural environment with access to the outdoors and was treated humanely.²⁵⁸ And yet, no words on the label contradict these reasonable expectations or attempt to correct this false depiction. Pilgrim's Pride materially omits the fact that the chickens it labels as "100% Natural" live their entire life indoors and that their growth rate is unnaturally genetically enhanced, causing pain and discomfort.²⁵⁹

Contrary to Pilgrim's claim that its chicken is "100% Natural," Pilgrim's Pride uses an unnatural, genetically altered strain of chicken to promote rapid growth and weight gain, such that many chickens that become the company's chicken products suffer physically. As explained above, this practice is far from natural (*see supra* Part IV.B.1.a.3); it is inherently cruel and goes against reasonable consumers' expectations of what "natural" and "humane" represent. Thus, Pilgrim's label is misleading.

Indeed, in a case brought by consumer advocates challenging the "100% Natural" claims of Sanderson Farms, another large poultry producer, as false and misleading under California consumer protection laws, the U.S District Court of Northern California recently found:

With regard to the raising and treatment of chickens, Plaintiffs rely on surveys indicating that at least half of consumers understand "natural" to mean the animal roamed outdoors. Therefore, since Sanderson's chickens allegedly are kept indoors, and none of the advertisements bearing the "100% Natural" slogan disclaim the fact that the chickens never go outside, Plaintiffs have sufficiently plead (sic) that Sanderson actually raises its chickens in conditions that are contrary to what Sanderson leads consumers to believe. Defendant's argument that it never depicts its chickens going

animals went outdoors, nearly 7 out of 10 think that this label should mean this.").

²⁵⁸ Consumer Reports National Research Center, *Food Labeling Poll 2008* 15 (Nov. 11, 2008), available at <http://4bgr3aepis44c9bxt1ulxysyq.wpengine.netdna-cdn.com/wp-content/uploads/2015/02/foodpoll2008.pdf> (examining a "Naturally Raised" meat label).

²⁵⁹ *See supra* Parts IV.B.1.a,2-3, IV.B.2.

outdoors and therefore cannot mislead is underwhelming. Plaintiffs have sufficiently plead (sic) that a reasonable consumer understands the use of “natural” to mean a host of expectations, including the fair inference that the animal was allowed to move outdoors. When Sanderson employs such terminology, its silence does not foreclose the claim of potential consumer confusion. Again, Plaintiffs have alleged with requisite particularity that Sanderson’s actions are different from what it leads consumers to believe.²⁶⁰

It would have been easy for Pilgrim’s Pride to select a label that more accurately represents the conditions on its production facilities—or at least one that does not address the conditions at all. Instead, knowing that reasonable consumers may rely on its label’s claims, Pilgrim’s Pride made the “100% Natural” representation a focal point of its label, a representation that imparts a materially false impression of the company’s standards regarding the treatment of animals.

C. Lack of Market Restraints on Deception of Production Methods and Conditions

The Commission has stated that where a product or service is easily evaluated by consumers, the likelihood of deception is low because sellers would want to encourage repeat business.²⁶¹ Here, in contrast, the method of producing broiler chickens, rather than the final product of the poultry itself, is the subject of controversy, and the method of production is nearly impossible for consumers to directly evaluate. Thus, in order to take advantage of consumer preferences for a method of production

²⁶⁰ Order Denying Mot. to Dismiss, *Friends of the Earth et al. v. Sanderson Farms, Inc.*, No. 3:17CV03592 (Dec. 3, 2018) at 8-9 (internal citations omitted).

²⁶¹ FTC Policy Statement on Deception, *supra* note 6, at 5.

that consumers cannot determine on their own, and to ensure repeat purchasers, a poultry seller is likely to be *more* deceptive about its manufacturing methods.²⁶²

Just as, for example, a company that produces apparel under sweatshop conditions would want to hide its method of production from its customers, so too does Pilgrim's Pride have strong incentives to cover up the actual conditions under which its chickens are kept. In neither case can the consumer examine the production process simply by examining the product purchased. The sweatshop company, then, would have strong incentives, were it able to get away with it, to disseminate advertisements featuring a state-of-the-art facility with "happy" workers in lush surroundings to hide its darker reality and avoid dissuading consumers from repeat purchases.²⁶³ Similarly,

²⁶² See, e.g., Muris, Chairman, FTC, *Aspen Summit: Cyberspace and the American Dream, Remarks at the Progress & Freedom Found*, 2003 WL 21979851, at *3 (Aug. 19, 2003) ("Sometimes robust competition alone will not punish or deter seller dishonesty or renegeing. For products called 'credence goods,' consumers cannot readily use their own experiences to assess whether the seller's quality claims are true. Typical consumers know whether a food product 'tastes great;' they cannot judge whether consuming the same product reduces the risk of cancer or whether the cost of a car repair included items not necessary to restore the vehicle to its full capacity For credence goods, the market may not identify and discipline a deceptive seller because the product's qualities are so difficult to measure. Moreover, a product market with special attributes - consumers cannot determine quality before purchase, higher quality products cost more to produce than lower quality products, and firms cannot credibly guarantee quality - may become a 'lemons market' in which only low-quality products are sold"); Azcuenaga, Commissioner, FTC, *Advertising Regulation and the Free Market, Remarks at the Int'l Cong. of Adver. & Free Market*, 1995 WL 307748, at *8 (May 11, 1995) ("Because of their lack of susceptibility to consumer assessment, [credence goods] are subject to more intense scrutiny by the FTC").

²⁶³ See Jens Hainmueller et al., *Consumer Demand for the Fair Trade: Evidence from a Multistore Field Experiment*, 97 REV. ECON. & STAT. 242, 243 (2015), available at <https://web.stanford.edu/~jhain/Paper/REST2015.pdf> (explaining that consumers are willing to pay more for garments certified as not being made in a sweatshop); see generally David J. Doorey, *Who Made That?: Influencing Foreign Labour Practices Through Reflexive Domestic Disclosure Regulation*, 43 OSGOODE HALL L. J. 353, 372-76 (2005), available at <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?referer=https://scholar.go>

the reality of broiler chickens under Pilgrim's control is one of intensive confinement, unnatural surroundings and a lifetime of cruelty by commission and omission. As such, there are strong incentives for chicken producers and sellers such as Pilgrim's Pride to mislead consumers about these conditions in order to prevent repeat purchasers from being dissuaded.

There are virtually no market restraints on the likelihood of deception in this instance because consumers are unable to tell upon receiving and consuming the product that they have been deceived. Production practices are not readily apparent in the final product. The result is that repeat purchasers may continue to be deceived if Pilgrim's Pride continues to deceive them as described above.

The choice of Pilgrim's Pride to remain silent about the miserable lives of the chickens that it uses for its products is questionable, but its affirmative and unqualified misrepresentations about the conditions of the chickens is unethical, deceptive, and unlawful.

VI. RELIEF REQUESTED

The actions described above constitute unlawful conduct, unfair methods of competition, and unfair and deceptive practices under the FTC Act, 15 U.S.C. § 41 *et seq.* Accordingly, HSUS respectfully requests that the Commission investigate the issues discussed above and take appropriate action to enjoin Pilgrim's Pride from continuing to issue misleading claims pertaining to animal welfare, public health, and food safety.

ogle.com/&httpsredir=1&article=1325&context=ohlj (discussing corporate costs of vague disclosure versus the marketplace benefits of concrete disclosure).

Respectfully submitted December 12, 2018,

/s/

Laura J. Fox
D.C. Bar No. 155225
Peter A. Brandt
D.C. Bar No. 982936

THE HUMANE SOCIETY OF THE UNITED STATES
1255 23rd St. NW, Ste. 450
Washington, DC 20037
Telephone: (202) 676-2334