

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

ANIMAL LEGAL DEFENSE FUND,

Plaintiff,

v.

HORMEL FOODS CORPORATION,

Defendant.

Case No. 2016 CA 4744 B
Judge Fern Saddler

Next Court Date: January 25, 2019
Event: Deadline to File Oppositions to
Dispositive Motions

**DEFENDANT HORMEL FOODS CORPORATION'S RESPONSE TO PLAINTIFF'S
RULE 56 STATEMENT IN SUPPORT OF PLAINTIFF'S OPPOSED MOTION FOR
SUMMARY JUDGMENT**

1. ALDF filed its Complaint on June 29, 2016. *See* Complaint.

Response: Admit.

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

Response: Hormel Foods denies paragraph 2 because it mischaracterizes the claims set forth in ALDF's Complaint. ALDF's Complaint states that ALDF brought this lawsuit as "a non-profit organization within the meaning of D.C. Code § 28-3901(a)(14)" and "§ 28-3905" seeking to enjoin Hormel Foods' advertising for its *Natural Choice*® products. (*See Compl.* ¶¶ 23,

221, 223-26.) ALDF seeks only injunctive relief and is not seeking damages in any form. (*Id.* at ¶ 23 and Prayer for Relief (page 41); *see also* Declaration of Martin Demoret in Support of Hormel Foods’ Opposed Motion for Summary Judgment (Demoret Decl.) Ex. R, Deposition of Mark Walden 30(b)(6) Witness for ALDF (“ALDF 30(b)(6) Dep.”) at 160:6-11.) Hormel Foods sales of *Natural Choice*® products are thus not at issue. ALDF is also not challenging Hormel Foods’ *Natural Choice*® Labels. (*E.g.*, *id.* at 282:1-16.) Instead, ALDF is only challenging Hormel Foods’ non-label advertising for the “Make the Natural Choice” advertising campaign. (*Id.*; *see* Compl. ¶¶ 23 and 221.)

ALDF and this Action

3. ALDF is a 501(c)(3) non-profit, public interest organization that works to protect the lives and advance the interests of animals. ALDF001358-59 (A2682-83); Declaration of Mark Walden (hereafter, “Walden Decl.”) ¶ 1.

Response: The issue of whether ALDF is a “non-profit organization” and/or a “public interest organization” is a question of law that does not require a response. However, to the extent a response is required, Hormel Foods admits that the referenced statement in paragraph 3 appears in Mr. Walden’s new Declaration. Mr. Walden’s conclusory statement that “ALDF is a 501(c)(3) non-profit, public interest organization” is not competent evidence of the alleged facts and ultimately is immaterial to the issues of whether ALDF has

established that it is a “non-profit organization” and/or a “public interest organization” as those terms are defined in §§ 28-3901(14) and (15) of the CPPA. Hormel Foods denies Mr. Walden’s declaration provides competent or sufficient evidence regarding whether ALDF meets either definition. Hormel Foods also notes that ALDF has repeatedly stated that that its organizational mission “*is to protect the lives and advance the interests of animals through the legal system.*” (E.g., Demoret Decl. Ex. A, ALDF First’s Objections and Responses to Hormel Foods’ First Set of Interrogatories, dated November 20, 2017 at 5; Demoret Decl. Ex. V, “Printout Screenshot from ALDF’s Website titled “About Us.”)

4. ALDF has approximately 750 members and supporters in the District of Columbia. ALDF’s First Supplemental Responses to Hormel’s Interrogatories Nos. 4 and 5.

Response: Hormel Foods admits that ALDF claims to have approximately 750 members and/or supporters in the District of Columbia. However, ALDF refused to produce discovery sufficient to substantiate this allegation. (See Demoret Decl. Ex. E, ALDF’s First Objections and Responses to Hormel Foods’ Second Set of Interrogatories at 18.)

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

Response: Denied as stated. Hormel Foods objects to the use of phrase “targets audiences,” as this term is vague and ambiguous. Hormel Foods served an

interrogatory on ALDF requesting that it “describe in detail all of ALDF’s ‘significant activity in the District.’ (Compl. ¶ 28.) ALDF responded that it had participated in lawsuits, submitted FOIA requests, and participated in federal regulatory comments and advocacy. ALDF also claimed that:

- “communications sent to ALDF’s member email list” reached “D.C. members.”
- Other communications “sent to ALDF’s supporters [reached] D. C. supporters.”
- ALDF press releases disseminated nationally [reach] D.C. media outlets and that ALDF’s communications department and attorneys had unspecified “communications” with “D.C.-based reports concerning ALDF’s activities and cases.”

(See Demoret Decl. Ex. E at 6-8.) Stated otherwise, ALDF appears to be claiming that, as a general matter, ALDF’s nationally-disseminated communications reach “audiences” in the District of Columbia. Hormel Foods further notes that numerous ALDF employees, including ALDF’s CEO, Stephen Wells, and its corporate designee and Chief Programs Officer, Mark Walden, acknowledged that ALDF not done any specific public education work generally and/or with respect to Hormel Foods’ *Natural Choice*® advertisements in the District of Columbia since the launch of the “Make the Natural Choice” campaign in 2015. (E.g. Demoret Opp. Dec. Ex. O, Deposition

of Stephen Wells 127:15- 129:15; Demoret Opp. Dec. Ex. A, Walden 30(b)(6) Dep. 138:18-139:23, 142:23-144:6.) Hormel Foods denies that any alleged efforts by ALDF to “target[] audiences” in the District of Columbia are material to the issue of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit.

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

Response: Denied as stated. Hormel Foods hereby fully incorporates its objections and response to paragraph 5. Hormel Foods admits that ALDF has represented that it has filed lawsuits and advocated to regulatory agencies in the District of Columbia. Hormel Foods objects to the use of the term “public outreach” because this term is vague and ambiguous. Hormel Foods does not dispute that ALDF’s nationally disseminated emails and press releases potentially reach members of the media and/or the public in the District of Columbia. Hormel Foods further notes that numerous ALDF employees, including ALDF’s CEO, Stephen Wells, and its corporate designee and Chief Programs Officer, Mark Walden, acknowledged that ALDF not done any specific public education work generally and/or with respect to Hormel Foods’ *Natural Choice*® advertisements in the District of Columbia since the launch of the “Make the Natural Choice” campaign in 2015. (*E.g.* Demoret Opp. Dec. Ex. C, Deposition of Stephen Wells 127:15-129:15; Demoret Opp. Dec. Ex. A,

Walden 30(b)(6) Dep. 138:18-139:23, 142:23-144:6.) Hormel Foods denies that any of ALDF’s legal advocacy and/or “public outreach” in the District of Columbia are material to the issue of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied. Hormel Foods objects to the use of the term “factory farming” because ALDF does not describe what it means by that term. Hormel Foods admits that ALDF’s designee and Chief Programs Officer, Mark Walden, defined “factory farming” as “large scale, homogenized, heavily confined [animal agriculture] with much use of pharmaceuticals to focus on scale of production measured in terms of speed and quantity as opposed to a more natural or bucolic approach.” (Demoret Decl. Ex. R, ALDF 30(b)(6) Dep. 84:1-9.) ALDF’s 30(b)(6) witness further testified as follows:

Q. Is part of ALDF’s mission to oppose factory farming?

ALDF’s Counsel: Objection to form.

A. No. Animal Legal Defense Fund[s] mission is to protect the lives and advance the interests of animals through the legal system. So our mission is more expansive or proactive to expand through education and outreach the interests of animals. It seems to me factory farming is more a frustration of the mission.

Q. So there's a conflict between factory farming and ALDF's mission?

ALDF's Counsel: Object to form. And I don't want to belabor the point, but I would essentially maintain my scope objections as long as we're on this topic of ALDF's understanding of what factory farming does and doesn't do, it's our understanding that Mr. Walden is testifying in his individual capacity.

A. Could you reread the question.

The Reporter: "Question: Is part of the ALDF's mission to oppose factory farming?":

A. The Animal Legal Defense Fund, to the extent that there are practices that factory farming uses that inhibit or frustrate its ability to achieve its mission, that's how I think I would characterize the Animal Legal Defense Fund's view of factory farming.

Q. So there's not a conflict between factory farming and ALDF's mission?

ALDF's Counsel: Objection to form. Mischaracterizes testimony.

A. Conflict? I would view it more as a frustration that inhibits our ability to achieve our mission.

Q. So you're saying that factory farming frustrates ALDF's mission, but is not in conflict with the mission?

ALDF's Counsel: Objection to form.

A. Let me think about that for a minute. The Animal Legal Defense Fund – I believe it's more of a frustration.

(Declaration of Martin Demoret in Support of Hormel Foods' Opposition to ALDF's Motion for Summary Judgment ("Demoret Opp. Decl.") Ex. A, ALDF 30(b)(6) Dep. 91:14-93:8.)

Hormel Foods objects to ALDF's use and characterization of the declarations referenced in paragraph 7 to contradict the prior sworn testimony of ALDF's corporate designee. Facing summary judgment, ALDF submitted declarations from five (5) witnesses. As an initial matter, ALDF did not disclose one of these witnesses (Carter Dillard) until January 8, 2019—three days before the dispositive motion deadline (and weeks after the close of all discovery). Setting aside this significant timeliness issue, Hormel Foods objects to ALDF's attempt to use these declarations to survive summary judgment because these are "sham affidavits" that should be disregarded and stricken.

D.C. Courts adopted the "sham affidavit" doctrine in *Hancock v. Bureau of Nat'l Affairs*, 645 A.2d 588 (D.C. 1994). Under the doctrine, the court "will disregard an offsetting affidavit that is submitted to withstand [or support] a motion for summary judgment when the affidavit contradicts prior deposition testimony without adequate explanation and creates only a sham issue of material fact." *Sibley v. St. Albans School*, 134 A.3d 789, 814–15 (D.C. 2016) (rejecting party's affidavit that contradicted a prior sworn affidavit) (citations omitted). "Where a party emphatically and wittingly swears to a fact, it bears a heavy burden—even in the summary judgment context—when it seeks to jettison its sworn statement." *Hancock*, 645 A.2d

at 591. ALDF's new declarations directly contradict sworn interrogatory responses and deposition testimony and ALDF made no attempt to explain these significant and uncorroborated contradictions. Courts routinely strike sham affidavits like this. *Kinser v. United Methodist Agency for the Retarded—W.N.C., Inc.*, 613 Fed. Appx. 209, 210–11 (4th Cir. 2015) (affirming the striking of two affidavits under the sham affidavit rule where the affidavits directly contradicted prior deposition testimony); *St. Paul Mercury Ins. Co. v. Capitol Sprinkler Inspection, Inc.*, 573 F. Supp. 2d 152, 160–61 (D.D.C. 2008) (disregarding a summary judgment affidavit as a 'sham affidavit' because it directly contradicted prior testimony); *Al-Sabir v. CEVA Logistics U.S., Inc.*, No. CCB-13-1592, 2014 WL 7404574, at *2 n.4 (D. Md. Dec. 29, 2014) (relying on the sham affidavit doctrine to reject an affidavit that offered a timeline that directly contradicted prior deposition testimony).

Additionally, the Court should disregard ALDF's declarations because they attempt to submit evidence on topics over which ALDF unequivocally refused discovery citing privilege. It is axiomatic that privilege cannot be used as a both a sword and a shield. *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991) (“[T]he attorney-client privilege cannot at once be used as a shield and a sword.”). Thus, the Court should disregard ALDF's declarations. *E.g., Bright Harvest Sweet Potato Co. v. H.J. Heinz Co., L.P.*, No. 1:13-CV-296-BLW, 2015 WL 1020644, at *2 (D. Idaho Mar. 9, 2015) (precluding party that objected to discovery on basis of attorney-

client privilege from introducing evidence it previously claimed was privileged); *S.E.C. v. BIH Corp.*, No. 2:10-CV-577-FTM-29, 2013 WL 6571472, at *2 (M.D. Fla. Dec. 13, 2013) (holding that it is impermissible to assert Fifth Amendment privilege in discovery and then attempt withdrawal such privilege to defend against summary judgment).

Returning to paragraph 7, the cited declarations clearly contradict the prior testimony of ALDF's corporate designee, and no explanation (much less an adequate) is provided for why ALDF is now trying to contradict this testimony through multiple affidavits offered to support ALDF's motion for summary judgment. The Court should disregard these sham affidavits and/or the statements within them that contradict prior sworn testimony provided by ALDF and/or its witnesses. Hormel Foods denies the allegations in paragraph 7 and states that the testimony of ALDF's designee speaks for itself. Hormel Foods denies that ALDF's work related to "factory farming" is material to the issues of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied as stated. ALDF's designee testified as followed:

Q. Did [ALDF's 2015] organizational plan include strategies to confront factory farming?

ALDF's Counsel: I'll object on privilege grounds and instruct the witness to answer to the extent you can without disclosing attorney-client communications.

A. I'm thinking back here. Bear with me, please. That plan did include factory farming, as we've discussed and defined it, sir.

Q. Did the plan include strategies to utilize consumer protection laws to confront factory farming?

ALDF's Counsel: Object to privilege grounds here, both attorney-client communication and attorney work product. And instruct the witness not to answer.

(ALDF 30(b)(6) Dep. 120:25-121:16 (ALDF App. 2993-94.)

Q. Did ALDF's organizational plan include using consumer protection laws to challenge factory farming in April of 2015?

A. I would think that the contents of ALDF's strategic plan would be privileged or work product?

Q. So you can't – are you refusing to tell me if the ALDF's organizational plan in April of 2015 included using consumer protection laws to challenge factory farming?

ALDF's Counsel: And I'll object on privilege grounds there and instruct the witness not to answer that question.

(Demoret Opp. Decl. Ex. A, ALDF 30(b)(6) Dep. 125:16-126:3.)

To the extent ALDF is now attempting to contradict the testimony of its designee or disclose information that it previously refused to provide based on privilege grounds, the Court should strike any such allegations as sham affidavits. *Hancock*, 645 A.2d at 591; *Sibley*, 134 A.3d at 814–15; *Bilzerian*, 926 F.2d at 1292; *Bright Harvest Sweet Potato Co.*, 2015 WL 1020644, at *2.

Returning to paragraph 8, Hormel Foods objects this statement as vague and ambiguous, particularly with respect ALDF's use of phrase "long been a primary focus area." Hormel Foods denies that the referenced paragraphs in Mr. Walden's, Mr. Dillard's or Ms. Putsche's new declarations identify what specific work that ALDF has "long" done with respect to factory farming or establish that factory farming is "a primary focus" area for ALDF. Hormel Foods admits that the cited testimony of ALDF's designee speaks for itself. Hormel Foods denies that ALDF's work related to "factory farming" is material to the issues of whether ALDF has standing to

bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied. Hormel Foods does not dispute that ALDF believes that factory farming inflicts cruelties on farm animals. Hormel Foods denies that ALDF has established that its views on factory farming are accurate. (*See generally* Hormel Foods objections and responses to paragraphs 175-393 *infra*.)

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

Response: Denied as characterized. Hormel Foods admits that ALDF has made public statements about so-called “factory farming. But Hormel Foods denies that ALDF has established that it has done so in “pursuit of its mission” and/or for the purpose of educating and/or empowering “consumers.” First, as noted above, ALDF’s witnesses admitted that ALDF has not done any presentations or other public education regarding Hormel Foods’ *Natural Choice*® products. (*E.g.* Demoret Opp. Dec. Ex. C, Deposition of Stephen

Wells 127:15-129:15; Demoret Opp. Dec. Ex. A, Walden 30(b)(6) Dep. 138:18-139:23, 142:23-144:6.) Further, with respect to the two documents referenced in paragraph 10, ALDF withheld drafts of these documents based on claims that the documents were privileged work product. Stated otherwise, ALDF is claiming that these drafts were “prepared in anticipation of litigation by or for [ALDF’s] attorney.” *In re Public Defender Service*, 831 A.2d 890, 911 (D.C. 2003) (citing *Hickman v. Taylor*, 329 U.S. 495, 509-14 (1947.)) This includes the HIMP Slaughter blog depicted in ALDF App. 2661-64) (*See* Demoret Decl. Ex. Y, ALDF Attorney Privilege Log at 4 (entry for 6/19/17 and 6/19-6/23/17 regarding “HIMP slaughter blog); Demoret Decl. Ex. Z, ALDF Custodian Privilege Log at 4 (6/30/2017 entries regarding “HIMP collaboration) 10 (6/1 – 6/20/2017 entry regarding “Drafts of ALDF HIMP blog”) and the press release depicted at ALDF App. 2641-43 (*see* Demoret Decl. Ex. Y, ALDF Attorney Privilege Log at 4 (10/13-12/2/16 and 10/14-12/5/16 entries re: “Animal Raising Claims Labeling Guidance”); Demoret Decl. Ex. Z, ALDF Custodian Privilege Log at 8 (12/1/2016 and 12/5/2016 entries regarding documents and communication re “press release on USDA animal raising claims comments.”) With respect to the HIMP Blog, ALDF’s designee testified:

Q. Did Animal Legal Defense Fund’s preparation submission or any other work on against the high-speed hog-slaughter program, otherwise known as HIMP, was any of that undertaken in anticipation of litigation against Hormel?

A. It was not.

(Demoret Opp. Dec. Ex. A, ALDF 30(b)(6) Dep. 286:15-20.)

In other words, ALDF has taken the position that the HIMP document and press release referenced in paragraph 10 were prepared in anticipation of litigation against a third-party other than Hormel Foods. ALDF's position on this undermines ALDF's allegation in paragraph 10 that it created these documents "to educate and empower consumers with truthful information." ALDF prepared them for litigation purposes. Further, the conclusory declarations ALDF offers in support of paragraph 10 do not establish the allegations in that paragraph and, in any event, contradict ALDF's positions in prior testimony and its privilege log submissions addressing why ALDF engaged in the referenced activities. These conclusory allegations in the declarations should be disregarded. Accordingly, Hormel Foods denies that allegations in paragraph 10. *Hancock*, 645 A.2d at 591; *Sibley*, 134 A.3d at 814–15. Hormel Foods denies that ALDF's work related to "factory farming" is material to the issues of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

11. ALDF works to decrease consumer demand for factory-farmed food products.

Walden Decl. ¶¶ 8, 11; Dillard Decl. ¶¶ 5-7.

Response: Denied as stated. Hormel Foods objects to paragraph 11 because the use of the terms “works” and “factory-farmed food products” is ambiguous. Hormel Foods incorporates its objections and response to paragraph 12 *infra*. Hormel Foods denies that ALDF’s alleged “work to decrease consumer demand for factory-farmed food products” is material to the issues of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Hormel Foods does not dispute that ALDF may “believe[] that empowering consumers with accurate information about factory farming conditions and practices will reduce consumer demand for factory farmed products.” Hormel Foods denies that ALDF has presented any evidence whatsoever that its work to disseminate information about so-called factory farming actually “reduces consumer demand” for so-called “factory farmed products.” For example, ALDF’s designee claimed that, if consumers knew how animals used in *Natural Choice*® products were raised, they would identify and “avail themselves to those products” that met a variety of characteristics, including “lack of artificial hormones, the – lack of the use of subtherapeutic antibiotics, no artificial ingredients, no use of GMO,

patronizing those organizations that allow the animals to be outside and not kept indoors all the time.” (Demoret Decl. Ex. A, ALDF 30(b)(6) App. 256:21-257:7.) However, when pressed, ALDF’s designee admitted that he did not know whether any such organizations existed and/or whether they sold “natural” deli meat products in the District of Columbia. (Id. at 257:7-263:7.) Nor did Mr. Walden know whether any such organizations wanted to enter the marketplace and/or whether their ability to effectively enter the marketplace would be impacted in any way if Hormel Foods’ changed its advertising for *Natural Choice*® products. (Id.) Nor did Mr. Walden know whether, if Hormel Foods changed its *Natural Choice*® advertisements, consumers would stop buying *Natural Choice*® products and/or would simply buy comparable products from a competitor who uses so-called “factory farming” production and slaughter practices. (Id.) Simply put, ALDF is speculating that its activities can or do “reduce consumer demand for factory farmed products.” Hormel Foods denies that ALDF’s alleged “work to decrease consumer demand for factory-farmed food products” is material to the issues of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Hormel Foods objects to ALDF's use and characterization of Mr. Dillard's declaration. Paragraph 8 of Mr. Dillard's declaration provides information that ALDF explicitly refused to disclose during discovery on privilege grounds. Specifically, ALDF's designee testified as follows:

Q. When did ALDF become aware of the Hormel Natural Choice advertising campaign?

ALDF's Counsel: I'm going object on privilege. And instruct the witness you're welcome to answer that to the extent that you can without disclosing attorney-client communications.

A. *I'm afraid I can't respond.*

Q. You can't respond with the date that ALDF became aware of Hormel's Natural Choice advertisements?

A. *I can't respond because it's privileged. I'm sorry. I should have been clear.*

Q. When did ALDF begin to investigate Hormel's Natural Choice advertising campaign?

ALDF's Counsel: *Again, we'll object on privilege grounds there and instruct the witness not to answer that question.*

Q. Are you taking your attorney's advice?

A. *I am, sir. Thank you for asking.*

(Demoret Opp. Decl. Ex. A, ALDF 30(b)(6) Dep. 115:22-116:13 (emphasis supplied.)

Mr. Dillard's declaration purports to provide information that ALDF refused to provide in discovery on privilege grounds. That is improper. It is axiomatic that privilege cannot be used as a both a sword and a shield. *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991) (“[T]he attorney-client privilege cannot at once be used as a shield and a sword.”). Thus, the Court should disregard ALDF's declarations. *E.g.*, *Bright Harvest Sweet Potato Co. v. H.J. Heinz Co., L.P.*, No. 1:13-CV-296-BLW, 2015 WL 1020644, at *2 (D. Idaho Mar. 9, 2015) (precluding party that objected to discovery on basis of attorney-client privilege from introducing evidence it previously claimed was privileged); *S.E.C. v. BIH Corp.*, No. 2:10-CV-577-FTM-29, 2013 WL 6571472, at *2 (M.D. Fla. Dec. 13, 2013) (holding that it is impermissible to assert Fifth Amendment privilege in discovery and then attempt withdrawal such privilege to defend against summary judgment). The Court should disregard Mr. Dillard's declaration and refuse to consider any information that ALDF withheld during discovery on privilege grounds. Subject to and without waiving any objection, Hormel Foods denies paragraph 13 and admits that the quoted testimony from ALDF's designee speaks for itself. Hormel Foods denies that the allegations in paragraph 13 are material to the issues of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 13. ALDF refused to provide the information identified in paragraph 14 during discovery and now is improperly attempting to do so via a sham affidavit provided by a witness that ALDF did not even properly disclose during discovery. It is axiomatic that privilege cannot be used as both a sword and a shield. *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991) (“[T]he attorney-client privilege cannot at once be used as a shield and a sword.”). Thus, the Court should disregard ALDF’s declarations. *E.g.*, *Bright Harvest Sweet Potato Co. v. H.J. Heinz Co., L.P.*, No. 1:13-CV-296-BLW, 2015 WL 1020644, at *2 (D. Idaho Mar. 9, 2015) (precluding party that objected to discovery on basis of attorney-client privilege from introducing evidence it previously claimed was privileged); *S.E.C. v. BIH Corp.*, No. 2:10-CV-577-FTM-29, 2013 WL 6571472, at *2 (M.D. Fla. Dec. 13, 2013) (holding that it is impermissible to assert Fifth Amendment privilege in discovery and then attempt withdrawal such privilege to defend against summary judgment). The Court should disregard Mr. Dillard’s declaration and refuse to consider any information that ALDF withheld during discovery on privilege grounds. Subject to and without waiving any objection, Hormel Foods denies paragraph 14 and admits that the quoted testimony from ALDF’s designee speaks for itself. Hormel Foods denies that the allegations in paragraph 14 are material to the issues of whether ALDF has standing to bring this lawsuit

and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 13 and 14. The referenced paragraphs from Mr. Dillard's and Mr. Walden's declarations provide information that ALDF explicitly refused to disclose during discovery on privilege grounds. Specifically, ALDF's designee testified as follows:

Q. Why did ALDF decide to file this lawsuit?

ALDF's Counsel: Object on privilege grounds. You may answer that to the extent you can without disclosing attorney-client communications.

A. I don't believe I can answer that without violating attorney-client privilege.

(Demoret Decl. Ex. A, Walden 30(b)(6) Dep. 176:1-15.) ALDF is now improperly attempting to provide the very information it refused to disclose in discovery through two sham affidavits, including one provided by the very witness who refused to supply this information on privilege grounds. It

is axiomatic that privilege cannot be used as a both a sword and a shield. *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991) (“[T]he attorney-client privilege cannot at once be used as a shield and a sword.”). Thus, the Court should disregard ALDF’s declarations. *E.g.*, *Bright Harvest Sweet Potato Co. v. H.J. Heinz Co., L.P.*, No. 1:13-CV-296-BLW, 2015 WL 1020644, at *2 (D. Idaho Mar. 9, 2015) (precluding party that objected to discovery on basis of attorney-client privilege from introducing evidence it previously claimed was privileged); *S.E.C. v. BIH Corp.*, No. 2:10-CV-577-FTM-29, 2013 WL 6571472, at *2 (M.D. Fla. Dec. 13, 2013) (holding that it is impermissible to assert Fifth Amendment privilege in discovery and then attempt withdrawal such privilege to defend against summary judgment). The Court should disregard Mr. Dillard’s and Mr. Walden’s declarations and refuse to consider any information that ALDF withheld during discovery on privilege grounds. Subject to and without waiving any objection, Hormel Foods denies paragraph 15 and admits that the quoted testimony from ALDF’s designee speaks for itself. Hormel Foods denies that the allegations in paragraph 15 are material to the issues of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Hormel Foods objects to paragraph 16. Paragraph 16 repeats conclusory and unsubstantiated statements in Mr. Walden’s and Mr. Dillard’s declarations. ALDF does not identify what “research and knowledge” it is talking about. Indeed, ALDF does not even identify a single document supporting these allegations. Hormel Foods lacks sufficient information to determine what ALDF does or does not believe on this matter and/or whether any such beliefs are founded on valid, reliable “research” or “knowledge.” Hormel Foods therefore denies paragraph 16. Hormel Foods further denies that the allegations in paragraph 16 are material to the issues of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied as stated. Hormel Foods admits that in May 2016 ALDF submitted a comment to the FDA (2016 FDA Comment) asking it to prohibit use of the “*natural*” label for products that were supposedly “incompatible with

consumer understanding of the term ‘natural.’” Hormel Foods admits that the 2016 FDA Comment referenced *Natural Choice*® as a brand that ALDF believed “should be prohibited from labeling such products ‘natural.’” (ALDF App. 2630.) Hormel Foods denies that the 2016 FDA comments mentions or criticizes any of the *Natural Choice*® advertisements. Hormel Foods denies ALDF implied suggestion that it submitted the 2016 FDA Comment due to Hormel Foods’ *Natural Choice*® Advertisements. With respect to ALDF’s 2016 FDA Comments, ALDF’s corporate designee refused (on privilege grounds) to answer questions regarding why ALDF filed the Comments and/or whether ALDF submitted the Comments because of Hormel Foods’ *Natural Choice*® advertising (Demoret Opp. Decl. Ex. A, ALDF 30(b)(6) Dep. at 129:18-131:2.) However, ALDF’s corporate designee indicated that ALDF prepared drafts of the 2016 FDA Comment (and withheld those drafts on privilege grounds) because ALDF was anticipating litigation against a third-party other than Hormel Foods. (Id. at 285:23-286:10.) Moreover, ALDF withheld numerous drafts of, and communications about the 2016 FDA Comment based on a claim that these documents were work product. (See, e.g., Demoret Decl. Ex. Y, ALDF Attorney Privilege Log at 1-2 (entries for 11/11/15-5/9/16 and 12/4-12/11/15); Demoret Decl. Ex. Z, ALDF Custodian Privilege Log at 1 (5/8/2016 entry.) Stated otherwise, ALDF’s has clearly taken the position that’s its work related to the FDA Natural Claim was taken in anticipation of litigation against a third-party other than Hormel Foods. *In re Public*

Defender Service, 831 A.2d 890, 911 (D.C. 2003) (citing *Hickman v. Taylor*, 329 U.S. 495, 509-14 (1947.)) Hormel Foods therefore denies ALDF’s characterization of the scope and purpose of its work related to submitting the 2016 FDA Comment. Hormel Foods further denies that the allegations in paragraph 17 are material to the issues of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 17. Hormel Foods denies ALDF’s characterization of 2016 FDA Comment and admits that the 2016 FDA Comment speaks for itself. Hormel Foods denies that ALDF asked FDA to “bar[] the use of the term ‘natural’ on factory farmed meat products” and further notes that the 2016 FDA comment only addressed regulation of *labels* for natural meat products, which are not at issue in this case. (See HF SUMF ¶¶ 66-67.) Hormel Foods further notes that ALDF has acknowledged that its work related to the 2016 FDA Comment was done in anticipation of litigation

against a third-party other than Hormel Foods and that ALDF otherwise refused to explain in discovery why it submitted the 2016 FDA Comment. (See Hormel Foods' objections and response to paragraph 17 *supra*.) With respect to the allegations in paragraph 18 about the role of ALDF's communications department, ALDF has explicitly claimed that the communication's department's drafts of the referenced documents are privileged work product. Demoret Decl. Ex. Z, ALDF Custodian Privilege Log at 1 (5/8/2016 entry.) Hormel Foods thus denies ALDF's characterization of the scope and purpose of its communications department's work related to submitting the 2016 FDA Comment. Hormel Foods further denies that the allegations in paragraph 18 are material to the issues of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied as characterized. Hormel Foods hereby fully incorporates its objections and response to paragraphs 17-18. ALDF has claimed that all of its staff and attorney work related to preparing, submitting and publicizing the 2016 FDA Comment is privileged work product. (See Hormel Foods'

objections and responses to paragraphs 17-18 *supra*; *see also* Demoret Decl. Ex. Y, ALDF Attorney Privilege Log at 1 (entries for 6/11/15-6/29/16, 11/11/15-5-9/16, 11/23/15-5/10/16, 12/4-12/11/15), 2 (entries for 12/18-12/21/15, 1/4-5/6/16, 1/19-2/23/16) 3 (entries for 4/26/2016, 4/26-5/9/16, and 4/28/2016.) Hormel Foods thus denies ALDF's characterization of the scope and purpose of its work related to submitting the 2016 FDA Comment. Hormel Foods further denies that the allegations in paragraph 19 are material to the issues of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

20. Starting on May 25, 2016 and continuing for several weeks thereafter, ALDF publicized an undercover investigation of a Nebraska pig breeding facility owned by The Maschhoffs. Dillard Decl. ¶¶ 11-14; Putsché Decl. ¶¶ 7-12; ALDF000537-38 (A2645, 46); ALDF000544-47 (A2653-56); ALDF000552-53 (A2658-59); ALDF000554-57 (A2661-64); ALDF030334-35 (A2748-49); ALDF030298 (A2744); ALDF043751, *available at* <https://www.youtube.com/watch?v=z5VtkAhM7Y> (video from the investigation) (A3169).

Response: Admit.

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

Response: Admit.

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

Response: Hormel Foods objects to ALDF’s use and characterization of Ms. Putsche’s declaration. Hormel Foods admits that Ms. Putsche indicated that ALDF decided to investigate the Maschhoffs before it learned that the Maschhoffs supplied pigs to Hormel Foods. (Demoret Opp. Dec. Ex. B, Putsche Dep. 150:1-11.) Hormel Foods admits that ALDF has claimed that it “identified Hormel as one of the Maschhoffs largest customers in its media related to the undercover investigation.” Hormel Foods denies that ALDF mentioned Hormel Foods’ *Natural Choice*® products or advertisements in any of its media related to the investigation that was published before this lawsuit was filed. (ALDF App. 2645-46, 2653- 56, 2658-59, 2748, 2744.) Hormel Foods further notes that paragraph 9 of Ms. Putsche’s Declaration claims that ALDF mentioned Hormel Foods in its media statements because “Hormel is a household name, and ALDF wanted to provide information to the public about the treatment and living environment of pigs raised for Hormel’s products to empower consumers to be able to use that information when making purchasing decisions.” During Ms. Putsche’s deposition, she testified as follows:

Q. Why is Hormel Foods mentioned in this sentence then?

ALDF's Counsel: Objection.

A. It is my recollection that Hormel Foods was the most common known name.

Q. Why would you pick the company with the most commonly known name?

ALDF's Counsel: Objection. I'm going to object on privilege grounds to the extent this talked about, this is going into matters discussed between attorneys and communications staff regarding the development of the press release.

Q. Are you instructing her not to answer?

A. That particular question, yes.

(Demoret Opp. Decl. Ex. B, Putsche Dep. 151:2-17.) In addition, ALDF's corporate designee refused (on privilege grounds) to answer questions regarding why ALDF conducted this investigation or whether ALDF conducted the investigation because of Hormel Foods' *Natural Choice*® advertising. Specifically, ALDF's designee testified as follows:

Q. Why did ALDF investigate the Maschhoffs?

ALDF's Counsel: Again, I'll object on privilege grounds there. And instruct the witness not to answer that question.

A. I'll take my attorney's counsel.

Q. Did ALDF investigate the Maschhoffs because of Hormel's Natural Choice advertising?

ALDF's Counsel: Objection on privilege ground and instruct the witness not to answer that question.

A. I'll follow counsel's advice.

(Demoret Opp. Decl. Ex. A, ALDF 30(b)(6) Dep. 131:13-24.) ALDF is now improperly attempting to provide the very information it refused to disclose in discovery through a sham affidavit. It is axiomatic that privilege cannot be used as both a sword and a shield. *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991) (“[T]he attorney-client privilege cannot at once be used as a shield and a sword.”). Thus, the Court should disregard ALDF's declarations. *E.g., Bright Harvest Sweet Potato Co. v. H.J. Heinz Co., L.P.*, No. 1:13-CV-296-BLW, 2015 WL 1020644, at *2 (D. Idaho Mar. 9, 2015) (precluding party that objected to discovery on basis of attorney-client privilege from introducing evidence it previously claimed was privileged); *S.E.C. v. BIH Corp.*, No. 2:10-CV-577-FTM-29, 2013 WL 6571472, at *2 (M.D. Fla. Dec. 13, 2013) (holding that it is impermissible to assert Fifth Amendment privilege in discovery and then attempt withdrawal such privilege to defend against summary judgment). The Court should disregard Ms. Putsche's declaration and refuse to consider any information

that ALDF withheld during discovery on privilege grounds. Hormel Foods further denies that the allegations in paragraph 22 are material to the issues of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 22. As noted therein, during discovery ALDF refused to explain why it identified Hormel in its media related to the Maschhoffs' investigation or even why ALDF conducted the investigation, claiming this information was privileged. ALDF is now improperly attempting to provide the very information it refused to disclose in discovery through a sham affidavit provided by the very witness who refused to supply this information on privilege grounds. It is axiomatic that privilege cannot be used as a both a sword and a shield. *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991) (“[T]he attorney-client privilege cannot at once be used as a shield and a sword.”). Thus, the Court should disregard ALDF's declarations. *E.g., Bright Harvest Sweet Potato Co. v. H.J. Heinz Co., L.P.*, No. 1:13-CV-296-BLW, 2015 WL 1020644, at *2 (D. Idaho Mar.

9, 2015) (precluding party that objected to discovery on basis of attorney-client privilege from introducing evidence it previously claimed was privileged); *S.E.C. v. BIH Corp.*, No. 2:10-CV-577-FTM-29, 2013 WL 6571472, at *2 (M.D. Fla. Dec. 13, 2013) (holding that it is impermissible to assert Fifth Amendment privilege in discovery and then attempt withdrawal such privilege to defend against summary judgment). The Court should disregard Ms. Putsche's declaration and refuse to consider any information that ALDF withheld during discovery on privilege grounds.

Hormel Foods further notes that ALDF has withheld drafts of the referenced media documents and many, many documents related to the Maschhoffs investigation on the grounds that this information is privileged work product. (*See, e.g.*, Demoret Decl. Ex. Y, ALDF Attorney Privilege log at 2 (entries dated 12/14/15-1/13/17, 12/29/15-1/17/17, 4/4-4/12/16, 4/5-10/24/17) 3 (entry dated 6/9-6/28/16) and 4 (entries dated 8/1/2016 and 1/13-1/17/17); Demoret Decl. Ex. Z at 1 (entries dated 4/22/2016, 5/27/2016 6/1/2016, 6/7-6/8/2016, 6/13/2016 and 6/13/2016), 2 (entries dated 6/15/2016 and 7/21/2016), 3 (entry dated 9/22/2016), 4 (entry dated 12/15-12/20/2016), 6 (entries dated 8/22/2017, 5/18/2016, 5/20-5/24/2016, 5/20-5/24/2016, 5/24/2016, 5/27/2016), 7 (entries dated 7/15/2016 and 8/3-8/11/2016), 8 (entries dated 8/3/2016 and 8/29/2016.) Further, ALDF's designee testified as follows:

Q. Did ALDF's undercover investigation of the Maschhoffs facility take place in anticipation of litigation against Hormel?

A. It did not.

(Demoret Opp. Dec. 286:11-14.) It follows, of course, that ALDF's work related to the Maschhoffs for which it has asserted work production privilege was done in anticipation of litigation against a third-party other than Hormel Foods. *In re Public Defender Service*, 831 A.2d 890, 911 (D.C. 2003) (citing *Hickman v. Taylor*, 329 U.S. 495, 509-14 (1947.)) This includes all of referenced media mentioned in paragraphs 22-23 (see privilege log citations *supra*.) Hormel Foods thus denies paragraph 23 and further denies that the allegations in paragraph 23 are material to the issues of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 22 and 23. ALDF has unavoidably taken the position that the Maschhoffs investigation was conducted in anticipation of litigation with

third-parties other than Hormel Foods. ALDF thus cannot rely on expenses incurred in its litigation-focused efforts against a third-party other than Hormel Foods to establish standing in this case. Hormel Foods thus disputes ALDF's characterization of the referenced documents and the purposes for which ALDF incurred the referenced expenses. Hormel Foods further denies that the allegations in paragraph 24 are material to the issues of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

25. After ALDF's public release of the undercover investigation of The Maschhoffs, ALDF continued to devote organizational resources to Hormel-related activities to publicize the Hormel supplier's cruel treatment of pigs. Putsché Decl. ¶ 10; ALDF000552-53 (A2658-59); ALDF000554-57 (A2661-64); ALDF030334-35 (A2748-49); ALDF030298-300 (A2744-46); ALDF033006-13 (A2753-60).

Response: Hormel Foods objects to paragraph 25 as vague and ambiguous, particularly with respect to the terms "Hormel-related activities" and "Hormel suppliers' cruel treatment of pigs. What ALDF appears to be saying is that that it has, from time-to-time, mentioned the Maschhoffs investigation in publications. The documents depicted in ALDF App. 2658-59 and 2744-46 are simply email blasts about the Maschhoffs investigation—ALDF appears to have withheld drafts of these documents based on a work product privilege (see privilege log citations in paragraph

24 *supra*.) ALDF App. 2661-64 is a draft of a blog on the HIMP program. This is the same document discussed in Hormel Foods' objections and response to paragraph 10 *supra*. As explained therein, ALDF withheld drafts of that document based on a work product privilege as well, and ALDF's designee confirmed that the document was created in anticipation of litigation against a third-party other than Hormel Foods. Finally, the document depicted in ALDF App. 2753-62 is a copy of ALDF's quarterly newsletter. The newsletter includes a story about the Maschhoffs investigation and mentions in passing (i.e., in a three-sentence statement) that ALDF had filed this lawsuit against Hormel Foods. Notably, ALDF also withheld drafts of and internal communications about this article based on a claim that those drafts were privileged work product. (Demoret Decl. Ex. Z, ALDF Custodian Log at 2 (entries dated 7/27/2016), and 7 (entries dated 7/15/2016, 7/25/2016, 7/29/2016, and 7/31/2016.) *In re Public Defender Service*, 831 A.2d 890, 911 (D.C. 2003) (citing *Hickman v. Taylor*, 329 U.S. 495, 509-14 (1947.)) Hormel Foods thus denies ALDF's characterization of paragraph 25 and further denies that the allegations in paragraph 25 are material to the issues of whether ALDF has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied. ALDF is using improperly attempting to use a sham affidavit to contradict positions ALDF has taken in prior discovery responses, discovery objections, and via the testimony of its corporate designee. According to ALDF's December 14, 2018 interrogatory responses, "ALDF is not claiming that Hormel Foods' Natural Choice Advertisements themselves conflict with ALDF's mission." (Demoret Decl. Ex. D at 5.) Hormel Foods' Second Amended 30(b)(6) Notice included a category asking ALDF to testify regarding "the basis for ALDF's contention that Hormel Foods' Product Claims conflict with ALDF's mission." (Demoret Decl. Ex. I at 6.) ALDF objected to this category, stating that topic was "irrelevant" because "ALDF has not contended that the Product Claims 'conflict' with its mission. Mr. Walden will be prepared to testify as to how Hormel's false and misleading Natural Choice advertisements have frustrated ALDF's mission." (Id.)

Further, during ALDF's 30(b)(6) deposition, Mr. Walden testified as follows:

Q. Is it correct that ALDF is not alleging that the product claims themselves conflict with ALDF's organizational mission?

ALDF's Counsel: Objection to form.

A. The Animal Legal Defense Fund's mission is to protect the lives of animal and advance their interests through the legal system. And going to

the core of that mission is transparency and truth in advertising and dissemination of accurate information. So to the extent there are false and misleading statements propagate that encourage reasonable customers to procure product under misleading circumstances, that increases artificially or even fraudulently, demand for product that goes through an abusive, inhumane and unsanitary process, *that does frustrate Animal Legal Defense Fund's mission.*

Q. So you're saying that it frustrates the mission, correct?

ALDF's Counsel: Objection to form.

A. The use of false and misleading information and a lack of transparency goes to the core of our mission requiring us to divert resources to address frustration of that mission.

Q. So going to my original question, ALDF is not alleging in this lawsuit that the product claims conflict with ALDF's organizational mission; correct?

ALDF's Counsel: Object to form.

A. The Animal Legal Defense Fund's mission is to advance the – to protect the lives of animals and advance their interests through the legal system. And when there is a lack of transparency or false or misleading advertising, which goes to the core of that mission, *it frustrates that mission.* So we

need to divert resources to counteract that and make sure accurate information is available to act on.

Q. So may I rely on your answer in this interrogatory as ALDF's position in this lawsuit?

A. The statement documented here in our response is accurate.

(Demoret Opp. Decl. Ex. 27:10-29:7) (emphasis supplied.) ALDF now attempts (as it must) to use a sham affidavit to try to contradict the position repeatedly taken by ALDF and its attorneys that ALDF is not claiming that Hormel Foods' *Natural Choice*® advertisements conflict with ALDF's mission.

D.C. Courts adopted the "sham affidavit" doctrine in *Hancock v. Bureau of Nat'l Affairs*, 645 A.2d 588 (D.C. 1994). Under the doctrine, the court "will disregard an offsetting affidavit that is submitted to withstand [or support] a motion for summary judgment when the affidavit contradicts prior deposition testimony without adequate explanation and creates only a sham issue of material fact." *Sibley v. St. Albans School*, 134 A.3d 789, 814–15 (D.C. 2016) (rejecting party's affidavit that contradicted a prior sworn affidavit) (citations omitted). "Where a party emphatically and wittingly swears to a fact, it bears a heavy burden—even in the summary judgment context—when it seeks to jettison its sworn statement." *Hancock*, 645 A.2d at 591. ALDF's new declarations directly contradict sworn interrogatory responses and deposition testimony and ALDF made no attempt to explain these significant and uncorroborated contradictions. Courts routinely strike

sham affidavits like this. *Kinser v. United Methodist Agency for the Retarded—W.N.C., Inc.*, 613 Fed. Appx. 209, 210–11 (4th Cir. 2015) (affirming the striking of two affidavits under the sham affidavit rule where the affidavits directly contradicted prior deposition testimony); *St. Paul Mercury Ins. Co. v. Capitol Sprinkler Inspection, Inc.*, 573 F. Supp. 2d 152, 160–61 (D.D.C. 2008) (disregarding a summary judgment affidavit as a ‘sham affidavit’ because it directly contradicted prior testimony); *Al-Sabir v. CEVA Logistics U.S., Inc.*, No. CCB-13-1592, 2014 WL 7404574, at *2 n.4 (D. Md. Dec. 29, 2014) (relying on the sham affidavit doctrine to reject an affidavit that offered a timeline that directly contradicted prior deposition testimony). Here, ALDF has provided no explanation (much less an adequate one) for why ALDF is ignoring its sworn discovery responses and the testimony of its designee and is attempting to submit a declaration (for a witness who not even disclosed until weeks after discovery ended). This is improper. The Court should strike Mr. Dillard’s declaration or ignore it and hold ALDF to position it took throughout discovery—that ALDF is not alleging that Hormel Foods’ *Natural Choice*® advertisements conflict with ALDF’s mission. Subject to and without waiving any objection, Hormel Foods denies paragraph 26 and admits that the referenced interrogatory responses and testimony speak for themselves. Hormel Foods denies that the allegations in paragraph 26 are sufficient to carry ALDF’s burden of providing that it has standing to bring this lawsuit and/or has met its burden

of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied. ALDF is using improperly attempting to use a sham affidavit to contradict positions ALDF has taken in prior discovery responses, discovery objections, and via the testimony of its corporate designee. Hormel Foods fully incorporates its objections and response to paragraph 26. ALDF has repeatedly acknowledged in sworn interrogatory responses and testimony that ALDF is not alleging that the *Natural Choice*® advertisements conflict with ALDF's mission. The Court should disregard ALDF's "sham" declarations. *Hancock*, 645 A.2d at 591; *Sibley*, 134 A.3d at 814–15. Subject to and without waiving any objection, Hormel Foods denies paragraph 27 and admits that the referenced interrogatory responses and testimony provided in paragraph 26 speak for themselves. Hormel Foods denies that the allegations in paragraph 27 are sufficient to carry ALDF's burden of providing that it has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Hormel Foods objects to paragraph 28 as vague and ambiguous, particularly with respect to the meaning of the phrase “vast organizational resources.” Hormel Foods admits that ALDF has represented that it began engaging in organizational activities related to these so-called ag-gag laws starting in 2011. (*See* Demoret Decl. Ex. B at 27-30.) Hormel Foods further notes that ALDF has stated in sworn interrogatory responses that “until the last Ag-Gag statute is struck down, ALDF has specific plans to continue its organizational Ag-Gag advocacy activities, both legal and non-legal.” (*See id.* at 34-35.) Hormel Foods denies that the allegations in paragraph 28 are sufficient to carry ALDF’s burden of providing that it has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied. Hormel Foods hereby fully incorporates its objections and responses to paragraph 28. Hormel Foods objects to paragraph 29 as vague and ambiguous, particularly with respect to the meaning of the phrases

“indispensable tool” and “mission-critical.” Hormel Foods denies that ALDF has participated or will continue to participate in so called “ag-gag” litigation because of Hormel Foods’ *Natural Choice*® advertisements. The interrogatory responses discussed in paragraph 28 speak for themselves. ALDF’s corporate designee further confirmed that “The Animal Legal Defense Fund is committed to oppose ag-gag laws when they are introduced.” (Demoret Opp. Decl. Ex. A, ALDF 30(b)(6) Dep. 196:9-14.) ALDF’s CEO, Stephen Wells, spoke in even stronger terms—stating that:

A. So you’re asking me if we win our lawsuit against Hormel over its false advertising, would we then dismiss cases aimed at laws passed by – unconstitutional laws passed by states to restrict undercover investigations, whistleblowing and gathering information at factory farms?

Q. Those are your terms, but yes, that’s what I’m asking.

A. With just that piece of information, no.

Q. Okay. Why not?

A. Because we’re talking about two separate things. I don’t – you may be conflating them for some reason I’m unaware of, but I do not.

Q. You agree that would be conflating the two things when they shouldn’t be conflated?

A. I would say we're talking about two separate lawsuits dealing with different laws.

(Demoret Opp. Dec. Ex. O, Wells Dep. 112:13-113:5 (emphasis supplied.)
ALDF's CEO was spot on. ALDF's so-called ag-gag litigation should not be conflated with this lawsuit. Hormel Foods denies that the allegations in paragraph 29 are sufficient to carry ALDF's burden of providing that it has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Hormel Foods hereby fully incorporates its responses and objections to paragraphs 10 and 25. Hormel Foods denies paragraph 30 for several reasons. First, ALDF mischaracterizes the nature of the HIMP program. The HIMP program was developed by FSIS to produce a flexible, more efficiently, fully integrated meat and poultry inspection system. FSIS, HACCP-Based Inspection Models Project, available at <https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/haccp/haccp-based-inspection-models-project/history-HIMP>. FSIS implemented this system because it expected "this system to yield

increased food-safety and other benefits to consumers, and will permit FSIS to deploy its in-plant resources more effectively.” (Id.) As the documents referenced in paragraph 30 reflect, in 2017 FSIS announced plans to expand the HIMP program. ALDF’s designee testified that ALDF is opposed to HIMP and the proposed expansion and that ALDF will likely challenge the HIMP model as currently configured until its discontinued or changed. (Demoret Opp. Decl. Ex. A, ALDF 30(b)(6) Depo. 191:3-193:10. ALDF’s designee claimed this would be true regardless of whether it prevails in this lawsuit. (Id.) This is consistent with ALDF’s statement in its interrogatory responses that it “will be compelled” to challenge HIMP if “USDA follows through with its proposed New Swine Slaughter Inspection System rule and decides to expand the high-speed hog slaughter nationwide.” (Demoret Decl. Ex. B at 33-34.) In addition, ALDF has claimed that drafts of the documents referenced in paragraph 30 are privileged work product (Demoret Decl. Ex. Y, ALDF Attorney Privilege Log at 4 (entries dated 6/19-6/23/17 and 6/19-6/20/17); Demoret Decl. Ex. Z, ALDF Custodian Privilege Log at 4 (entries dated 6/30/2017 and 6/30/2017-1/25/2018) and 10 (entries dated 5/30-6/16/2017, 6/1-6/20/2017, 6/30/2017, 2/7/2018 and 4/3-4/6/2018.) Further, ALDF’s designee testified as follows:

Q. Did Animal Legal Defense Fund’s preparation submission or any other work on advocating against the high-speed hog slaughter program, otherwise known as HIMP, was any of that undertaken in anticipation of litigation against Hormel?

A. It was not.

(Demoret Opp. Decl. Ex. A, ALDF 30(b)(6) Dep. 286:15-19.) It follows that ALDF's work related to HIMP, including the documents referenced in paragraph 30 were prepared in anticipation of litigation against a third-party other than Hormel Foods. Hormel Foods denies paragraph 30, admits that the referenced documents, interrogatory responses and testimony referenced above speak for themselves, and denies that the allegations in paragraph 30 are sufficient to carry ALDF's burden of proving that it has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied. First, Hormel Foods' objects to paragraph 31 as vague and ambiguous, particularly with respect to the terms "work," "reduce demand," "materially impeded," "hides" and "seeks to increase" are unclear in the context of this paragraph. Second, as noted above, ALDF's witnesses admitted that ALDF has not done any presentations or other public education regarding Hormel Foods' *Natural Choice*® products. (E.g. Demoret Opp. Dec. Ex. O, Deposition of Stephen Wells 127:15-129:15; Demoret Opp. Dec. Ex. A, Walden 30(b)(6) Dep. 138:18-139:23, 142:23-

144:6.) It is unclear what “work” ALDF is referencing, particularly since all of the “work” referenced in the preceding paragraphs was done in anticipation of litigation against third-parties other than Hormel Foods. Hormel Foods hereby fully incorporates its responses and objections to paragraphs 3-30. Third, ALDF has not identified a single consumer in the District of Columbia who claims to have been misled by the *Natural Choice*® products. (Demoret Decl. Ex. H at 28-29, Demoret Decl. Ex. R. ALDF 30(b)(6) Dep. 246:14-249:16.) Nor does ALDF allege in paragraph 31 that the *Natural Choice*® advertisements actually increase consumer demand for so-called “factory farmed” products. Fourth, even if Hormel Foods’ *Natural Choice*® advertising somehow “impeded” ALDF’s work, this is not the standard ALDF must meet to demonstrate standing. Instead, ALDF must show a direct conflict between Hormel Foods’ *Natural Choice*® advertising and ALDF’s mission. As set forth in detail in paragraph 10, ALDF’s designee testified that factory farming does not itself conflict with ALDF’s mission. (Demoret Opp. Decl. Ex. A, ALDF 30(b)(6) Dep. 91:14-93:8.) Nor do Hormel Foods’ *Natural Choice*® Advertisements (Demoret Opp. Decl. Ex. A, ALDF 30(b)(6) 27:10-29:7.) ALDF’s allegations in paragraph 31 are thus not material. Hormel Foods denies that the allegations in paragraph 31 are sufficient to carry ALDF’s burden of proving that it has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied. ALDF's "beliefs" are not relevant to the issue of whether ALDF has standing to bring this claim. Hormel Foods also objects to paragraph 32 as vague and ambiguous, particularly with respect to the meaning of the terms "work," "increase transparency," "risks being drowned" and "more pervasive." Further, conclusory and unsubstantiated allegations via witness declarations are not sufficient to show that ALDF's purported "work to increase transparency into factory farming and reduce consumer demand for factory farmed products [is actually] being drowned out by Hormel's more pervasive Natural Choice advertising message." Hormel Foods hereby fully incorporates its objections and response to paragraph 31. ALDF's allegations in paragraph 32 are not material. Hormel Foods denies that the allegations in paragraph 32 are sufficient to carry ALDF's burden of proving that it has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied. Hormel Foods also objects to paragraph 33 as vague and ambiguous, particularly with respect to the meaning of the terms “efforts,” “increase transparency,” “are made less effective,” “makes” and “somehow superior.” Further, conclusory and unsubstantiated allegations via witness declarations are not sufficient to show that ALDF’s purported “work to increase transparency and consumer awareness about factory farming conditions and practices” is made “less effective” by Hormel Foods’ *Natural Choice*® advertising. ALDF offers nothing in support of this characterization except that two of its employees say so. Further, ALDF has failed to establish that Hormel Foods’ *Natural Choice*® advertisements make reasonable consumers in the District of Columbia think anything about the products, much less that ALDF has established that the advertisements are false or misleading. (*See generally* paragraphs 42-174 *infra*.) ALDF’s allegations in paragraph 33 are not substantiated or material. Hormel Foods denies that the allegations in paragraph 33 are sufficient to carry ALDF’s burden of proving that it has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied as characterized. ALDF's 2016 Tax Returns indicate that ALDF obtained over \$12,195,000 in contributions and grants in 2016 and that ALDF's net assets exceeded \$11 million. (Demoret Opp. Dec. Ex. P, ALDF 2016 Tax Return at 1.) ALDF has resources available to work on and vary the number of "important" issues that it can work on at one time. ALDF is not claiming or suggesting that Hormel Foods' *Natural Choice*® advertisements monetarily damaged ALDF (e.g., that ALDF spent more on programmatic activities than it would have otherwise done.) To the contrary, ALDF's CEO stated that he did not believe that ALDF has taken any actions to counter the "Make the Natural Choice" campaign except for filing and maintaining this lawsuit. (Demoret Opp. Decl. Ex. C, Wells Dep. 137:5-22.) ALDF's summary judgment record affirms this position. ALDF's decision to file and maintain this lawsuit is a self-inflicted budgetary choice that cannot give rise to standing. *Am. Soc. for Prevention of Cruelty to Animals v. Feld Entertainment, Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011) ("an organization's diversion of resources to litigation or to investigation in anticipation of litigation is a self-inflicted budgetary choice that cannot qualify as an injury in fact for purposes of standing.") Hormel Foods denies the allegations in paragraph 34 and further denies that these allegations are sufficient to carry ALDF's burden of proving that it has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

35. ALDF has felt compelled to work on and commit organizational resources to the following activities in an effort to, in part, combat Hormel's Make the Natural Choice advertising campaign: publicizing the undercover investigation of The Maschhoffs' Nebraska pig breeding facility; researching and publicizing Hormel's relationship to The Maschhoffs; advocating to the U.S. Food and Drug Administration (FDA) and U.S. Department of Agriculture (USDA) to limit use of the term "natural" on factory farmed meat products, including Hormel Natural Choice; publicizing ALDF's advocacy to FDA and USDA to educate the public about misleading use of "natural" claims on meat products; engaging in legal and public advocacy against the high-speed pig slaughter program run in Hormel slaughterhouses, known as HIMP; and working to combat "ag-gag" laws. Walden Decl. ¶¶ 10, 13-17, 22-24; Dillard Decl. ¶¶ 9-16, 19.

Response: Hormel Foods objects to ALDF's use and characterization of the declarations of Mr. Walden and Mr. Dillard. As explained in paragraphs 8, 10, 13, 14, 15, 17, 18, 19, 22, 23, 25 and 30 above (the objections and responses to which are hereby fully incorporated), during discovery ALDF refused to disclose its reasons/motivations for engaging in many of these and and/or withheld a very significant number of documents pertaining to its activities relating to each of the four categories of activities on the grounds that this information was protected by the work product privilege. ALDF's designee also unequivocally clarified that ALDF did not engage in any of those activities in anticipation of litigation against Hormel Foods. (Demoret Opp. Decl. Ex. A, ALDF 30(b)(6) Dep. 285:23-287:1.) Thus, by asserting the work product privilege, ALDF was inescapably taking the

position that it engaged in those advocates in anticipation of litigation against a third-party other than Hormel Foods. *In re Public Defender Service*, 831 A.2d 890, 911 (D.C. 2003) (citing *Hickman v. Taylor*, 329 U.S. 495, 509-14 (1947).) “An organization’s diversion of resources to litigation or to investigation in anticipation of litigation is a self-inflicted budgetary choice that cannot qualify as an injury in fact for purposes of standing.” *Am. Soc. for Prevention of Cruelty to Animals v. Feld Entertainment, Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011). Yet that is exactly what ALDF is trying to do here. Hormel Foods denies the allegations in paragraph 35 and further denies that these allegations are sufficient to carry ALDF’s burden of providing that it has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied. Hormel Foods hereby fully incorporates its objections and responses to paragraph 34 and 35. Hormel Foods denies the allegations in paragraph 36 and further denies that these allegations are sufficient to carry ALDF’s burden of providing that it has standing to bring this lawsuit

and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied. As explained in Hormel Foods' objections and responses to paragraphs 22-25 above, which are hereby fully incorporated, during discovery ALDF refused to identify ALDF's reasons/motivations for conducting the Maschhoffs investigation. This is not surprising given that: (1) ALDF ultimately claimed that its internal communications regarding the Maschhoffs investigation and subsequent publication of it were privileged worked product; and (2) ALDF's designee acknowledged that ALDF undertook those activities in anticipation of litigation against a third party other than Hormel Foods. (*See* cited documents, testimony and privilege log notations identified in paragraphs 22-25 above.) Hormel Foods denies the allegations in paragraph 37 and further denies that these allegations are sufficient to carry ALDF's burden of proving that it has standing to bring this lawsuit and/or has met its burden of establishing that

it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied. As explained in Hormel Foods’ objections and responses to paragraphs 17-19 above, which are hereby fully incorporated, during discovery ALDF refused to identify ALDF’s reasons/motivations for submitting the 2016 FDA Comment. This is not surprising given that: (1) ALDF ultimately claimed that its internal communications regarding the 2016 FDA Comment and subsequent publication of it were privileged work product; and (2) ALDF’s designee acknowledged that ALDF undertook those activities in anticipation of litigation against a third party other than Hormel Foods. (*See* cited documents, testimony and privilege log notations identified in paragraphs 17-19 above.) Hormel Foods denies the allegations in paragraph 38 and further denies that these allegations are sufficient to carry ALDF’s burden of proving that it has standing to bring this lawsuit

and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied. As explained in Hormel Foods' objections and responses to paragraphs 10, 30 and 35 above, which are hereby fully incorporated, during discovery ALDF refused to identify ALDF's reasons/motivations for conducting its HIMP advocacy. This is not surprising given that: (1) ALDF ultimately claimed that its internal communications regarding HIMP advocacy and subsequent publication of it were privileged worked product; and (2) ALDF's designee acknowledged that ALDF undertook those activities in anticipation of litigation against a third party other than Hormel Foods. (*See* cited documents, testimony and privilege log notations identified in paragraphs 10, 30 and 35 above.) Hormel Foods denies the allegations in paragraph 39 and further denies that these allegations are sufficient to carry ALDF's burden of proving that it has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: In its interrogatory responses, ALDF identified that the only specific activity that it plans to undertake with respect the *Natural Choice*® advertisements is maintaining this lawsuit. (Demoret Decl. Ex. B at 31.) This is a self-inflicted budgetary choice “that cannot qualify as an injury in fact for purposes of standing.” *Am. Soc. for Prevention of Cruelty to Animals v. Feld Entertainment, Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011). Hormel Foods denies the allegations in paragraph 40 and further denies that these allegations are sufficient to carry ALDF’s burden of proving that it has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

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

Response: Denied. Hormel Foods hereby fully incorporates its objections and responses to paragraphs 3-40 *infra*. ALDF has failed to show that the “Make the Natural Choice” campaign caused ALDF a remediable injury. ALDF acknowledges that there is no direct conflict between Hormel Foods’ *Natural Choice*® advertising and ALDF’s mission. Further, ALDF has not diverted any resources to respond to the *Natural Choice*® advertisements except for filing and maintaining this lawsuit. *Am. Soc. for Prevention of Cruelty to Animals v. Feld Entertainment, Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011). ALDF therefore cannot establish it suffered the type of harm

required to proceed with this lawsuit. Hormel Foods denies the allegations in paragraph 41 and further denies that these allegations are sufficient to carry ALDF's burden of proving that it has standing to bring this lawsuit and/or has met its burden of establishing that it is entitled to the sole remedy that it seeks in this lawsuit (injunctive relief.)

ALDF's Allegations Regarding Hormel Foods' Make the Natural Choice Campaign

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

Response: Hormel Foods admits that its *Natural Choice*® line includes ham, turkey, chicken and beef lunch meats, breakfast meats, and other meat products, such as Canadian Bacon and pepperoni. ALDF's use of the phrase "premier brands" is ambiguous. Subject to and without waiving any objection, neither document referenced in paragraph 42 characterizes *Natural Choice*® as a "premier brand." Hormel Foods thus denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

43. Hormel explains the brand's claim that its meats are "100 percent natural with zero preservatives" "resonate[s] with many consumers," setting the line apart. Hormel, *2015 Annual Report 5* (2015), available at

<https://investor.hormelfoods.com/Cache/1001205813.PDF?O=PDF&T=&Y=&D=&FID=1001205813&iid=4068867>.

Response: ALDF mischaracterizes the referenced document, which states:

“With growing consumer demand for nutritious products, it’s no wonder *Hormel® Natural Choice®* meats continue to resonate with many consumers. *Hormel® Natural Choice®* products are 100% natural with zero preservatives and no artificial colors, or MSG, no added nitrates or nitrates*, and no gluten-containing ingredients.

* except those naturally occurring.”

(Hormel, 2015 Annual Report 5 (2015), available at http://www.annualreports.com/HostedData/AnnualReportArchive/h/NYSE_HRL_2015.pdf.) Hormel Foods thus denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Admit.

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

Response: Hormel Foods objects to ALDF’s use and characterization of the referenced documents. HORM_DC00023920 (ALDF App. 37-92) was created by PowerBox Innovation, which is an outside advertising agency that sometimes performs consumer research and other functions for Hormel Foods. Hormel Foods uses several other third-party agencies who provide research and marketing services to the company. This includes:

BBDO: BBDO is an outside marketing agency that has performed a variety of services for Hormel Foods, including, but not limited to, developing creatives that are used to make print ads for Hormel Foods products, including *Natural Choice*®. (Demoret Opp. Decl. Ex. D, Deposition of Amy Sand (Sand Dep.) 13:18-18:9, 60:12-61:9, 67:19-22, 199:15-16; Demoret Decl. Ex. E Deposition of Jeremy Zavoral (Zavoral Dep.) 15:5-13, 55:16-18; Rule 30(b)(6) Deposition of Jeremy Zavoral (Demoret Opp. Decl. Zavoral 30(b)(6) Dep.) 20:12-19. BBDO sometimes created presentations or other documents that were shared with Hormel Foods. (Demoret Opp. Decl. D, Sand. Dep. at 61:13-14 (“Well, this isn’t my document. This is something BBDO created”).) BBDO often provided its own viewpoints on various matters, and Hormel Foods sometimes did not agree to or adopt BBDO’s views or perspectives on matters. (Id. at 63:5-15, (Well, I can – BBDO has their own opinions sometimes. They’ll come in with a very strong point of view on a topic, so this is probably them telling us what they think. But it doesn’t necessarily mean I agree with it.... But this is

definitely a document they produced, and they put those words in there.”), 199:15-16 (“These are BBDO’s words and their research methodology, whatever it was.”)

Millward Brown: Millward Brown is an outside any agency that conducts consumer research for Hormel Foods. (Demoret Decl. Ex. D, Sand Dep. 165:18-20, 247:4-24; Demoret Decl. Ex. E, Zavoral Dep. 26:13-25; Zavoral 30(b)(6) Dep. 13:19-14:23.)

Cheskin: Cheskin is an consulting agency that has conducted consumer research with respect to various products in Hormel Foods product portfolio, including *Natural Choice*®.

nSight: nSight is an outside marketing company that perform various marketing services for Hormel Foods, including designing and running Hormel Foods’ website for *Natural Choice*®. Demoret Decl. Ex. E, Zavoral Dep. 84:10-85:14; Zavoral 30(b)(6) Dep. 129:21-23.)

PHD: PHD is a media buying agency that was involved in placing advertisements for Hormel Foods products, including *Natural Choice*®. (Demoret Decl. Ex. D, Sand Dep. 130:6-15; Demoret Decl. Ex. E, Zavoral Dep. 16-2-9.)

As explained below, ALDF frequently attempts to use out-of-court statements by third parties to prove the truth of the matters allegedly asserted in those statements. *Carter*, 614 A.2d at 545 n.9. Such statements are hearsay and cannot be relied upon to “prove the truth of the matter asserted therein.” *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co. v.*

McNeil Nutritionals, LLC, 242 F.R.D. 315 (discussing hearsay issues associated with third-party surveys in that plaintiff in a false advertising truth attempted to offer as evidence); *United States v. Bonds*, 608 F.3d 495, 504-06 (9th Cir. 2010) (noting that, for purposes of applying hearsay exceptions, “unlike employees, independent contractors are not ordinarily agents”); *Gomez v. Rivera Rodriguez*, 344 F.3d 103, 116 (1st Cir. 2003) (noting the proponent of the out of court statement is required to prove the existence of an agency relationship). Accordingly, to the extent ALDF attempts to rely on the alleged truth of these third-party statements, those statements are inadmissible for that purpose because they are hearsay and ALDF has not established that any relevant exception applies. Moreover, even if ALDF established some hearsay exception with respect to these third-party documents and statements (and it cannot), such documents/statements are too prejudicial to be admitted pursuant to Rule 403. ALDF points to no evidence regarding what information these third-parties relied upon to reach any conclusions or recommendations, whether such information was reliable, and/or whether Hormel Foods agreed with, endorsed or implemented any such conclusions or recommendations. *See, e.g., Athridge v. Aetna Cas. And Sur. Co.* 474 F. Supp. 2d 102, 18-09 (D.D.C. 2007) (stating that even if the court concluded that the at-issue “evidence met the requirements for admissibility under the residual hearsay exception, I would still find the evidence too prejudicial to be admitted pursuant to Rule 403); *Merisiant Co. v. McNeil Nutritionals, LLC*, 242

F.R.D. 315, 326-32 (E.D. Pa. 2007) (holding that third-party surveys offered in support of a false advertising claim were inadmissible under Rule 403 because admission of the surveys would be highly prejudicial and the probative value of the surveys were small, particularly given unresolved questions regarding whether the surveys were conducted through methodologically sound principles, the court was not presented with sufficient data and evidence to know whether the data was accurately reported or evaluated, there was no evidence that the surveys involved showing participants advertisements of the at-issue product, party proffering the surveys failed to establish any nexus between the focus and/or result of those surveys and the at-issue advertising and failed to establish that the surveys were “designed so that the responses clearly are based on the content of the advertisement and not simply on the respondent’s prior personal experience...[t]his nexus is too attenuated to be relevant to this action.”)

Returning to paragraph 45, ALDF mischaracterizes the referenced documents and testimony. Ms. Kraft’s testimony on this this issue was as follows:

Q. Is it fair to say that this ad also communicates that the products are natural?

A. It says Natural Choice and Make the Natural Choice on there, so the word natural is on the page.

Q. And the goals of those statements are to communicate that the product is natural?

Hormel Foods' Counsel: Objection; calls for speculation. Go ahead.

A. I would have to see what the research was, but if I recall correctly there was probably an attribute under the key messages about natural.

(Kraft Dep. 88:19-89:7 (ALDF App. 2902). This testimony does not support ALDF's allegations in paragraph 45. Nor does HORM_DC00023896, at 898 (ALDF App. 14), which references an endeavor titled "Project Crunchy" from July 2013 (i.e., two years before Hormel Foods launched the "Make the Natural Choice" campaign). ALDF has submitted no evidence concern what "Project Crunchy" was or whether it had anything to do with the "Make the Natural Choice" advertising campaign. ALDF also misquotes the referenced page, which states that there would be "new products driven by consumer behavior, where Natural is a motivating point of difference." Finally, as noted above, HORM_DC00023920 (ALDF App. 37-92) was not created by Hormel Foods and constitutes inadmissible hearsay. This document does not identify or state the opinions or positions of Hormel Foods. Further, this document also references "Project Crunchy," and ALDF has failed to establish any connection between "Project Crunchy" and the "Make the Natural Choice" campaign that ran two years later (and that is the sole focus of this lawsuit). But to the extent the court gives any weight to this document, the document clearly states that consumers associate "natural"

foods with “nothing artificial; less processed” and that “natural consumers” are well informed about the characteristics of the products they purchase and that they understand there are numerous tradeoffs regarding products they buy (HORM_DC0023930-31, 33, 35 (ALDF App. 47-48, 50, 52). The document does not say or say suggest that consumers associate “natural” meat products with any particular animal raising or slaughtering practices or the absence of nitrates or nitrites. Hormel Foods denies ALDF’s characterization of the referenced documents and testimony and admits that the documents and testimony speak for themselves.

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

Response: ALDF mischaracterizes Mr. Zavoral’s testimony, which was as follows:

Q. You mentioned, if I remember correctly, that USDA had approved those claims on the packaging as well as the advertising?

A. The USDA has approved the term on our packaging and we extend the – we extend the use of the word from our packaging to the advertising.

Q. Why choose to advertise the products in that way?

A. We advertise it with “natural” because we believe that’s what consumers are looking for.

A. Natural isn’t the top thing they’re looking for, taste is – but natural is something that consumers see as different and makes it unique.

(Zavoral 30(b)(6) Dep. 103:2-25, 104:13-23 (ALDF App. 3079-80.)

Hormel Foods denies ALDF’s characterization of the referenced testimony and states that the testimony speaks for itself.

47. Hormel elaborated that the “natural” claim creates “more perceived value.”
HORM_DC00139775, at 75 (A94); *see also* HORM_DC00023896, at 900 (A16).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 45. As explained therein, HORM_DC 23896 (ALDF App. 16), references an endeavor titled “Project Crunchy” from July 2013 (i.e., two years before Hormel Foods launched the “Make the Natural Choice” campaign). ALDF has not established what “Project Crunchy” was or whether it had anything to do with the “Make the Natural Choice” advertising campaign. However, to the extent the Court gives any weight to this document, it states that “accepters of natural” are motivated by a desire to “keep junk out of my body and not willing to feed my family that processed garbage.” The document does not say or suggest that “accepters of natural” purchase natural deli products due to beliefs or perceptions about

how the animals were raised, whether the products contain nitrates and/or nitrites from natural sources, or any other issues that are relevant ALDF's CPPA claim. ALDF also mischaracterizes HORM_DC00139775. This document is an email drafted by Hormel Foods' Corporate Manager of Regulatory Affairs, Mike Forbes, who stated: "[o]rganic and Natural both provide consumers with more choices and perhaps more perceived value and they are two entirely different standards/programs and need to be considered as such." (HORM_DC00139775 75 (ALDF App. 94).) Mr. Forbes further explained that "USDA's "Natural" standard specifically states that many ingredients allowed in organic products are not permitted in natural products." (Id.) Hormel Foods admits that the quoted text appears in the referenced documents. Hormel Foods otherwise denies ALDF's characterization of the referenced documents and admits that the documents speak for themselves.

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

HORM_DC00064064, at 65 (A451); HORM_DC00161464 (A454); HORM_DC00137175, at 83 (A465); HORM_DC00137154, at 57-58 (A472-73).

Response: Hormel Foods hereby incorporates its objections and response to paragraph 45. Hormel Foods objects to paragraph 48 because the facts alleged therein are not material to the parties' claims and defenses. The question presented by this case is whether Hormel Foods' advertisements from the "Make the Natural Choice" campaign are false or misleading to reasonable consumers in the District of Columbia (*See generally* Complaint.) The issue of the demographics to which the advertising campaign was intended to appeal is irrelevant to whether the *Natural Choice*® advertisements violate the CPPA. Subject to and without waiving any objection, Hormel Foods admits that HORM_DC00078337 states "Hormel® Natural Choice® will target the wellness seeker. The wellness seeker is defined as a mainstream mom, looking for better for you options. This is not a demographic but a targeted consumer defined by her motivation for Natural/Green/Healthy/Organic options." Hormel Foods' Senior Brand Manager of Marketing, Amy Sand, further elaborated on this issue as follows:

Q. When you use "wellness seeker internally, what do you understand that to mean?

A. And these are really my own verbatim terms. It's really a consumer who is looking for balance.

Q. Balance between what?

A. I like to say pro natural, pro Diet Coke.

Q. So when you say “pro natural, pro Diet Coke,” and you say – that was your response to balance. And still, what do you mean balance between?

A. Somebody who’s looking for minimally processed, no artificial ingredients. But at the same time, they’re willing to pick up a Diet Coke, which does not meet those standards. Because that’s just the balance that they live. They – ultimately consumers like products that taste good in the food industry.

(Sand Dep. 15:21 (ALDF App. 2986) (emphasis supplied.) Hormel Foods admits that the quoted text appears in the referenced document. Hormel Foods otherwise denies ALDF’s characterization of the documents and Ms. Sand’s testimony and admits that the documents and testimony speak for themselves.

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

Response: Hormel Foods objects to paragraph 49 because the facts alleged therein are not material to the parties' claims and defenses. The question presented by this case is whether Hormel Foods' advertisements from the "Make the Natural Choice" campaign are false or misleading to reasonable consumers in the District of Columbia (*See generally* Complaint.) The issue of which demographics the advertising campaign was intended to appeal to is irrelevant to whether the *Natural Choice*® advertisements violate the CPPA.

As paragraph 49 acknowledges, HORM_DC00002359 was created by BBDO. This document is inadmissible hearsay, and ALDF cannot rely on it to support the allegations in paragraph 49. *See* Hormel Foods' objections and response to paragraph 45; *see also Carter*, 614 A.2d at 545 n.9; *Athridge*, 474 F. Supp. 2d 108-09; *Merisiant Co.*, 242 F.R.D. at 326-32. The document does not state or identify Hormel Foods' opinions and positions regarding the focus and positioning of the "Make the Natural Choice" campaign. The views expressed in the document is, at most, those of BBDO. In addition, this document was created nearly one year before the "Make the Natural Choice" campaign was launched, does not even mention the "Make the Natural Choice" campaign, and appears to identify proposed strategy for a different proposed campaign (which never ran). ALDF has not established that the views and ideas expressed in this document accurately state the goals and focus of the "Make the Natural Choice" campaign. (HORM_DC00002359 (ALDF App. 491).) To the contrary, Ms. Sand testified that Hormel Foods often does not agree with or implement

BBDO's views and/or suggestions. (Demoret Opp. Decl. Ex. DSand. Dep. at 61:13-14 ("Well, this isn't my document. This is something BBDO created").) BBDO often provided its own viewpoints on various matters, and Hormel Foods often did not agree with or adopt BBDO's views, perspectives, or recommendations on matters. (Id. at 63:5-15, (Well, I can – BBDO has their own opinions sometimes. They'll come in with a very strong point of view on a topic, so this is probably them telling us what they think. But it doesn't necessarily mean I agree with it.... But this is definitely a document they produced, and they put those words in there.")), 199:15-16 ("These are BBDO's words and their research methodology, whatever it was.")

ALDF also mischaracterizes HORM_DC00021462, which discusses a video that would potentially run on the *Natural Choice*® website. Ms. Sand stated that "I like showing people in the plants" but noted that she "did not want to show our product in the plant...prefer the finished product in a box (consumer friendly" and that "slicing in a mass production just feels not natural." (ALDF App. 492.) Ms. Sand did not say or suggest that a deli meat product made in a plant could not be accurately called natural. Ms. Sand's internal commentary and perspective on how she felt about a single draft video do not reflect the opinions or positions of Hormel Foods or provide competent evidence regarding whether or not *Natural Choice*® can accurately advertised as "natural" and/or whether any of the *Natural Choice*® advertisements violate the CPPA. Accordingly, Hormel Foods

denies ALDF's characterizations of the referenced documents and admits that those documents speak for themselves.

50. Hormel's first step in bringing the campaign to fruition was to redesign Natural Choice's lunchmeat packaging, so that the "main message [is] 100% natural & fresh" and connected with a "premium ... simple ... rural ... feel," particularly one that "remind[ed] [people] of farm[s]." HORM_DC00087697, at 705 (A506); *see also* Kraft Dep., at 207:21-208:11 (A2907).

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 45 and 49. HORM_DC00087697 appears to be a document created by a third-party research company called Cheskin. This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisiant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisiant Co.*, 242 F.R.D. at 326-32. Cheskin's viewpoints and recommendations are not relevant to the messaging that Hormel Foods intended to convey (or did convey) in *Natural Choice*® advertisements that Hormel Foods approved and ran publicly. In addition, HORM_DC00087687 plainly addresses consumer research conducted with respect the *labels and packaging for Natural Choice*® products. ALDF is not challenging the *Natural Choice*® labels or packaging and has insisted throughout this lawsuit that

discovery/information related to the labels and/or packaging is irrelevant to ALDF's CPPA claim. (*See* HF SUMF ¶ 67.) However, to the extent the Court considers this document, Hormel Foods notes that, according to the document, the "Main message" that participants took away from the label was that the product is "100% Natural and Fresh." The document does not say or suggest that participants understood label/packaging to be making any specific claims regarding Hormel Foods' animal raising or slaughtering practices, whether the products contained natural sources of nitrates and/or nitrites, and/or any other matters at issue in this lawsuit.

(HORM_DC00087705 (ALDF App. 506).)

The referenced testimony from Ms. Kromm merely states that Hormel Foods ultimately "went with" a package design similar to the one depicted at ALDF App. 506. She did not specifically testify that the package redesign was part of the "Make the Natural Choice" campaign. (Kraft Dep. 207:21-208:11 (ALDF App. 2907).) Hormel Foods denies ALDF's characterizations of the referenced documents and testimony and admits that those documents and testimony speak for themselves.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 45 and 50. HORM_DC00087660 was created by a third-party (Cheskin) and explains *Cheskin’s recommendations*. This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisiant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisiant Co.*, 242 F.R.D. at 326-32.

In addition, HORM_DC00087687 plainly addresses consumer research conducted with respect the *labels and packaging for Natural Choice®* products. ALDF is not challenging the *Natural Choice®* labels or packaging and has insisted throughout this lawsuit that discovery/information related to the labels and/or packaging is irrelevant to ALDF’s CPPA claim. (*See* HF SUMF ¶ 67.) Thus, the issue of whether “visuals” in the *Natural Choice®* labels/packaging communicate “farm, land, nature, rural, unprocessed,” “organic,” and a “time lived on the land or in a small town” is irrelevant to ALDF’s CPPA claim—which focuses solely on the *Natural Choice®* advertisements. Further, the referenced document does not say or suggest that the labels/packaging (much less the advertising) led participants to believe that Hormel Foods uses any particularly animal raising or slaughtering practices with the animals used in *Natural Choice®* products.

But at a more basic level, the referenced document does not say or suggest that Hormel Foods actually settled on visuals for its *Natural Choice*® labels/packaging that communicate “farm, land, nature, rural, unprocessed,” “organic,” and a “time lived on the land or in a small town.” The document merely states that Hormel Foods should use a “natural palate” for its labels/packaging that communicates these things. (HORM_DC00087660, at 74, 78 (ALDF App. 529, 33).) Hormel Foods denies ALDF’s characterizations of the referenced document and admits that the document speaks for itself.

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

Response: ALDF mischaracterizes the cited documents. HORM_DC00073376 identifies specific advertising claims that Hormel Foods identified for production innovation work over a year before the “Make the Natural Choice” campaign was launched. ALDF misrepresents what points of emphasis that Hormel Foods actually settled on for the “Make the Natural Choice” campaign. HORM_DC00010032 clarifies that “staying true to the brand’s original mission, the relaunch and advertising campaign puts emphasis on the brand’s commitment to provide consumers with 100 natural and preservative options with no artificial ingredients.” This document further notes that Hormel Foods intended to emphasize that it was able to

make “100% natural” deli meat because of the HPP process.” (Id.) Hormel Foods admits that the “Make the Natural Choice” campaign emphasized that “Hormel Natural Choice stands for 100% natural, which is defined by the USDA is no – minimally processed and no artificial preservatives.” (Demoret Opp. Decl. Ex. D, Sand Dep. 14:11-15; *see also* id. at 20:1-4 (“we wanted to talk about who we are specifically; the USDA standards of 100 percent natural, which means no artificial preservatives and minimally processed”), 189:21-24 (“I am advertising Natural Choice products as natural as deemed by the USDA, which is 100% natural, which means minimally processed and no artificial preservatives”); Demoret Opp. Decl. Ex. E, Zavoral Dep. 137:6-19 (noting that Hormel Foods includes a disclaimer in the advertisements that “natural” means “minimally processed, no artificial ingredients” because “in this situation, we are just describing what the USDA requirement is for natural and those are both no artificial ingredients, minimally processed, pretty positive things”), 140:18-21 (“Currently any advertisement that uses the natural claim has the full USDA disclaimer about it being minimally processed with no artificial ingredient”).) These claims are not controversial, as FSIS has approved use of these exact claims on all of the *Natural Choice*® labels/packaging (*See* HF SUMF ¶¶ 19-23.)

Hormel Foods denies that the “no added nitrates and/or nitrites” claims were ultimately “key claims” featured in the “Make the Natural Choice” campaign. ALDF’s own interrogatory responses states that less than 5% of

the final advertisements from the “Make the Natural Choice” campaign (i.e., the advertisements that ran in the public) contained any claims about whether the products contain “added nitrates or nitrites” and that ALDF is not challenging any advertisements that are currently running on the grounds that the advertisements make claims about nitrates and/or nitrites. (See HF SUMF ¶¶ 52-54.)

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

Response: ALDF grossly mischaracterizes the referenced document. The document references general consumer attitudes towards the *Applegate® brand* (referred to in the referenced document as “AF.”) The referenced document (ALDF App. 559) identifies attributes consumers associated with *Applegate®* products, not *Natural Choice®* (“Overall, current users think AF has...”) Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods mischaracterizes the referenced document. This document does not discuss or even mention the “Make the Natural Choice” campaign or Hormel Foods’ guidelines for what claims can be used in product

advertisements. The document correctly states that “the USDA has a guideline for a 100% natural claims. 100% natural means No Artificial Ingredients and Minimally Processed.” Hormel Foods also admits that USDA’s determination the *Natural Choice*® products can be accurately labeled as “natural” and containing “no preservatives” contributed to Hormel Foods’ conclusion that the same terms could be used to accurately describe the same products in *Natural Choice*® advertisements. (*See, e.g.,* Demoret Opp. Decl. Ex. E, Zavoral Dep. 54:5-5 (“we used the exact same language for our packaging, which is the USDA definition of natural.”); Demoret Opp. Decl. Ex. F, Zavoral 30(b)(6) Dep. 109:10-14 (“what I do know is the USDA has approved our packaging, and our packaging has a statement of ‘no preservatives’ on it, so that’s why we’re able to continue using that phrase”).) Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits the document speaks for itself.

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

Response: Admit.

56. Before the rollout of the Make the Natural Choice campaign, Hormel tested some of its initial print ads. The test results showed that based on those ads more than 55% (and up to 72%) of consumers associated Natural Choice products with being “100% Natural.” HORM_DC00049073, at 96 (A216).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 45. HORM_DC00049073 appears to be a document created by a third-party research company called Millward Brown and, at most, purports to reflect Millward Brown’s opinions and viewpoints. This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisiant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisiant Co.*, 242 F.R.D. at 326-32. However, to the extent the Court considers this document, Hormel Foods admits that, prior to the rollout of the Make the Natural Choice campaign, Millward Brown performed consumer research regarding participants’ perception of certain draft advertisements for *Natural Choice*® products that Hormel Foods ***was considering running***. Hormel Foods admits that the referenced document claims that the “key message” that participants recalled from the draft advertisements was that the product was “100% natural” and that the document states that a certain percentage of participants who identified as the key message. Hormel Foods further notes that the referenced document states that participants equated “100 % natural” with “no preservatives” and

“no chemicals.” The document does not state that any participants equated the advertisements and/or the phrase 100% natural with the types of practices used to raise or slaughter the animals used in the products and/or with the presence or absence of natural sources of nitrates or nitrites. *HORM_DC00049073*, 96 (ALDF App. 216). Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 45 and 56. This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisant Co.*, 242 F.R.D. at 326-32. However, to the extent the Court considers this document, Hormel Foods admits that, according to the referenced document, participants used the quoted terms to describe individual advertisements. But Hormel Foods denies ALDF’s characterization that participants took away the same messages from different draft advertisements. For example,

one participant who reviewed a draft advertisement entitled “Open Wide your mouth, not your pocketbook” recalled the draft advertisement as saying something “about their product being as good as the high-priced stuff at a better price.” (ALDF App. 205.) Another participant who viewed a draft advertisement entitled “Preserve Your Right to No Preservatives” recalled that that the “lists the chemicals it doesn’t contain.” (ALDF App. 208.) Another participant who viewed the same draft advertisement interpreted the advertisement as stating the product was “natural, no preservatives. It is made with natural ingredients. No chemicals. Only mother nature ingredients.” (ALDF App. 216.) This document, to the extent the Court considers it, reinforces a concept that each of the parties’ experts agreed with—one cannot reliably identify how consumers understand a particular advertisement “except with consumer research” about that advertisement. (Demoret Decl. Ex. FFFF, Dimofte Dep. 127:10-19; *see also* Demoret Decl. Ex. TTT, Maronick Dep. 13:12-19 (agreeing that he had no basis to opine on how consumers perceive any *Natural Choice*® advertisements other than the ones he specifically tested); Demoret Decl. Ex. IIII, Expert Report of Professor Ravi Dhar, and Demoret Decl. Ex. JJJJ, Dhar Dep. 57:19-20, 76:2-77:14, 243:6-21, 244:24-246:1 (explaining that consumer perception of challenged advertising claims and the materiality of those claims could only be accurately assessed consumer surveys about the *Natural Choice*® advertisements themselves.) Hormel Foods denies that HORM_DC00049073, at 85-90 and 96 (A206-10 and 16) say or suggest that

any of the *Natural Choice*® advertisements that ran publicly violate the CPPA. Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods admits that virtually every final advertisement in the "Make the Natural Choice" campaign describes the products as "natural." Hormel Foods further states that every label for *Natural Choice*® products uses the same descriptor (natural) because FSIS has determined that *Natural Choice*® products satisfy USDA's definition of a "natural" product. (*See* Hormel Foods' SUMF ¶ 22 (citing Demoret Decl. Ex. OOOO, Forbes 30(b)(6) Depo. 16:19-17:25 and Demoret Decl. Ex. RRRR, Forbes Affidavit ¶ 9.) Hormel Foods admits that the tagline "Make the Natural Choice" appeared in many of the advertisements and that the word "natural" is included in the tagline.

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

Response: Denied as stated. ALDF’s use of the word “convince” is ambiguous in the context of this paragraph. Hormel Foods thus denies ALDF’s characterization of the referenced testimony and admits that the testimony speaks for itself. Ms. Kraft further testified that label/packaging—which is depicted in many of the advertisements—“does a lot of the heavy lifting” in communicating that the product is “natural.” (Kraft Dep. 213:9-313:15 (ALDF App. 2912.) ALDF has offered no evidence that the reasonable consumers understand the term “natural” as used in the tagline “Make the Natural Choice,” to mean something different than the term “natural” as used in the *Natural Choice*® brand logo that appears on all of the *Natural Choice*® product labels/packaging.

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

Response: Admit.

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

Response: Admit.

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

Response: Denied as stated. Hormel Foods admits that Ms. Kraft testified that the three key messages that Hormel Foods wanted consumers to take away from *Natural Choice*® advertisements were: (1) taste; (2) 100% natural; and (3) no preservatives. (Kraft Dep. 296:17-21 (ALDF App. 2911).) Ms. Kraft further clarified that “taste [was] the main message we wanted to make sure people were walking away with.” (Id.)

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

Response: Hormel Foods admits that the quoted text appears in the referenced document and that the document states that 100% natural and no preservatives are key messages from the “Make the Natural Choice” campaign. Ms. Kraft further testified that the “main message” from the advertisements in the campaign was that *Natural Choice*® products taste great. (Kraft Dep. 296:17-21 (ALDF App. 2911).)

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

Response: Admit.

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

Response: Hormel Foods denies that any *Natural Choice*® ads “feature ‘supporting’ claims to color how consumers understand ‘natural’ and ‘no preservatives.’” This characterization of the advertisements is highly speculative and supported by no evidence. ALDF’s experts did not study or offer any opinions regarding whether so-called “supporting” claims in *Natural Choice*® advertisements “colored” or “influenced” how consumers understood “natural” and “no preservatives” claims in the advertisements. And ALDF’s experts further clarified that they could not offer an opinion on such “supporting” claims without studying how they were used in the advertisements. (*See* Hormel Foods’ SUMF at ¶¶ 71-75 and 118-19.) ALDF also grossly mischaracterizes the documents cited in paragraph 65. HORM_DC00125975 is a document created by a third-party called Growth

Catalysts and thus, at most, purports to identify Growth Catalyst's opinions and recommendations. This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisiant Co.*, 242 F.R.D. at 326-32. In addition, this document purports to analyze "GC's Perspective" on the graphics to be used for the **labeling/packaging of Hormel Foods' Natural Choice® products**. Growth Catalyst clearly was not commenting on strategy for the *Natural Choice®* advertisements. Further, the referenced document recommends that Hormel Foods use "**clean and simple**" graphics such graphics were "important to connect with our target (the old red graphics were not positioned correctly in our minds." (ALDF App. 657.) The referenced document plainly has nothing to do with calling *Natural Choice®* products clean and simple (in advertisements or otherwise) in order to "color" what consumers under the "natural" and "no preservatives" claims to mean. Similarly, HORM_DC00000168 shows a time limited coupon depicting a *Natural Choice®* label accompanied by the statement "we believe in making lunchmeats with no added preservatives, that everyone can enjoy. That's why all of our delicious and affordable varieties are made from **a clean and simple ingredient list.**" ALDF has provided no evidence that a single coupon's reference to a "clean and simple ingredient list" somehow influenced how consumers understand the "no

preservatives” claim in that coupon (much less in any other *Natural Choice*® advertisement). Finally, HORM_DC00000269 depicts a webpage from the old “Make the Natural Choice” website that describes the products as “simple” and “clean” and provides links where consumers can find more information about the products. Notably, ALDF does not actually provide the Court with the information accessible via those links—presumably because ALDF realizes that this information do not support the allegations set forth in paragraph 65. Tellingly, ALDF also does not direct the Court’s attention to ALDF’s interrogatory responses identifying what advertising claims are supposedly misleading. This, presumably, is because the interrogatory response identifies only a handful of advertisements and/or web pages that describe *Natural Choice*® products as “clean,” “wholesome,” “higher standards” and/or “simple” to describe *Natural Choice*® products. (See HF SUMF ¶ 55.) Hormel Foods denies ALDF’s characterization of the referenced documents and admits that these documents speak for themselves.

66. Hormel’s video commercial “Judy Communes with Nature” presents spokeswoman Judy Greer at a potluck with foragers who collected their dishes in the forest. After her tablemates describe their efforts, Ms. Greer says, “I just went to the store and bought Hormel Natural Choice lunchmeat,” and the foragers gorge themselves. Ms. Greer says, “It’s preservative free.” HORM_DC000003878, at 0:25-0:27 (A833).

Response: Hormel Foods admits that the quoted phrases are made in the referenced video. Hormel Foods generally denies ALDF’s characterization of the video and admits that the video speaks for itself.

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

Response: Hormel Foods admits that in the referenced video Ms. Greer states that the *Natural Choice*® product is preservative free and “all natural.” Hormel Foods generally denies ALDF’s characterization of the video but admits that the video speaks for itself. (See Hormel Foods’ SUMF ¶ 22 (citing Demoret Decl. Ex. OOOO, Forbes 30(b)(6) Depo. 16:19-17:25 and Demoret Decl. Ex. RRRR, Forbes Affidavit ¶ 9.)

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

Response: Hormel Foods objects to paragraph 68 because the meaning of the word “similar” is unclear in the context of this paragraph. Subject to and without waiving any objection, Hormel Foods admits that the video commercials in the “Make the Natural Choice” campaign describe *Natural Choice*® products as being “natural” and/or having “no preservatives.” As noted above, Hormel Foods’ federally-approved labels/packaging also describe the

products as “natural” and having “no preservatives. (See Hormel Foods’ SUMF ¶ 22 (citing Demoret Decl. Ex. OOOO, Forbes 30(b)(6) Depo. 16:19-17:25 and Demoret Decl. Ex. RRRR, Forbes Affidavit ¶ 9).)

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

Response: Hormel Foods denies ALDF’s characterization of the referenced documents. Both documents reference a retailer’s plan to create a “natural set” and discuss whether or not *Natural Choice*® products were a good fit for those sets. (HORM_DC00055643 (ALDF App. 839); HORM_DC00020881, at 81 (ALDF App. 841). Subject to and without waiving any objection, Hormel Foods admits that Hormel Foods encouraged retailers to include *Natural Choice*® products in their “Natural Sets” because “our opinion – our assumption is that it would make it easier for consumers to find our products.” (Demoret Opp. Decl. Ex. E, Zavoral Dep. 71:5-16.) In addition, these “Natural Sets” have nothing to do with *Natural Choice*® advertising because these sets relate to where the actual *Natural Choice*® products (contained in federally-approved labels/packaging) would appear in stores. ALDF is not challenging the packaging/labels for *Natural Choice*® products; thus Hormel Foods’ strategy regarding where the products were placed in retail locations is immaterial to ALDF’s CPPA

claim. (*See generally* Complaint.) Hormel Foods admits that the quoted statements appear in the documents. Hormel Foods otherwise denies ALDF characterization of the referenced documents and admits that the documents speak for themselves.

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

Response: Hormel Foods denies the allegations in paragraphs 70.

HORM_DC00020881 references a retailer’s plan to create natural sets and whether or not *Natural Choice*® products were a good fit for those sets. This document does not say anything about whether Hormel Foods expected “natural accepting” consumers to associate “organic” benefits with *Natural Choice*® products. Nor does this document say that Hormel Foods intended to (or has) “narratively and physically position[ed]” its brand close to “organic” products. (*Id.*) HORM_DC00049363 also does not address or relate to any efforts by Hormel Foods to “narratively and physically” position its brand close to organic products or whether Hormel Foods expected consumers (“natural accepting” or otherwise) to associate “organic” benefits with *Natural Choice*® products. Hormel Foods admits that Hormel Foods encouraged retailers to include *Natural Choice*® products in their “Natural Sets” because “our opinion – our assumption is

that it would make it easier for consumers to find our products.” (Demoret Decl. Ex. E, Zavoral Dep. 71:5-16.) Hormel Foods denies ALDF’s characterization of the referenced documents and admits the documents speak for themselves.

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

Response: Hormel Foods objects to ALDF’s use of the referenced document. This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisant Co.*, 242 F.R.D. at 326-32. Hormel Foods denies ALDF’s characterization that a presentation purportedly created by NAMI has any bearing on ALDF’s CPPA claim, including, but not limited to, how consumers interpret Hormel Foods’ *Natural Choice*® advertisements. Subject to and without waiving any objection, Hormel Foods admits that the quoted terms appear in isolation in various parts of the document. Hormel Foods denies ALDF’s characterization of the quoted text and the document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 71. This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisant Co.*, 242 F.R.D. at 326-32. Hormel Foods denies ALDF’s characterization that a presentation purportedly created by NAMI has any bearing on ALDF’s CPPA claim, including, but not limited to, how consumers interpret Hormel Foods’ *Natural Choice*® advertisements. Hormel Foods admits that the document references “fusing trending concepts [gourmet, artisanal, “craft”] + clean labeling terminology [“uncured,” “no added nitrates,” “no added hormones” “gluten free”].” Hormel Foods denies that this document has any bearing whatsoever on how consumers interpreted any of the *Natural Choice*® advertisements. Further, to the extent ALDF is claiming that this NAMI presentation reflects some kind of “industry” strategy to distort or modify consumers’ understanding of what are “natural” meat and poultry products, Hormel Foods denies this characterization of the document but would note that such a claim would undercut ALDF’s theory that Hormel Foods’ *Natural Choice*® advertisements are responsible for causing consumer

confusion regarding what are “natural” meat and poultry products and/or that requiring Hormel Foods to change its *Natural Choice*® advertising would have any meaningful impact on this alleged consumer confusion. Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods admits that it developed a brand website:

MakeTheNaturalChoice.com and that the “Our Story” page on the website included the quoted statements. Paragraph 73 mischaracterizes the context in which the quoted statements were made and omits portions of the referenced quotes and other key statements on this same webpage. For example, the webpage states “[w]e find pleasure in the simplicity of the brand and the product itself. It has integrity: safe, clean, *great taste.*” (emphasis supplied.) Moreover, the very first paragraph on this webpage states “*Our mission is to make a preservative-free and artificial-ingredient free lunch meat.*” (emphasis supplied.) In addition, each of the statements quoted in paragraph 73 contains links to additional information about the products. Hormel Foods denies that the referenced webpage violates the CPPA. Indeed, neither of ALDF’s experts evaluated the

MakeTheNaturalChoice.com website or offered any opinions regarding whether the website contained any information that was false or had a tendency to mislead consumers. (Hormel Foods SUMF ¶¶71-72, 117-18.) Hormel Foods thus denies ALDF's characterization of the referenced web page and admits that the document speaks for itself.

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

Response: Hormel Foods admits that the referenced webpage contains the quoted statement" and provides a link to another webpage providing this information. ALDF does not appear to take issue with the information provided in that link. Hormel Foods denies that the quoted statement violates the CPPA. Hormel Foods further notes that ALDF's experts did not evaluate whether quoted statement was false or misleading and expressly noted they could not offer opinions on this matter since they had not studied how consumers interpreted the statement and/or the webpage on which it appeared. (Hormel Foods SUMF ¶¶ 71-72, 117-18.)

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

Response: Denied. ALDF mischaracterizes Mr. Forbes' testimony, which was as follows:

Q. What did you mean by the simplicity of the brand and the product itself and that it has integrity and is safe and clean and has great taste? What are you trying to convey with that?

Hormel Foods' Counsel: Outside the scope. But go ahead.

A. I was just trying to convey exactly what I said. That's it.

Q. I mean, what did you mean by simplicity?

Hormel Foods' Counsel: Same objection.

A. You know, the brand, being Natural Choice, I think I was just trying to convey that it's not difficult to understand. I mean a consumer can see that brand and not have to guess what does this mean to me? It means exactly what it says. It's not some fabricated strange word that you've never heard of like some brands could be. It's two simple words put together to convey a message. (Forbes Dep. 63:4-21) (ALDF App. 2835.)

Mr. Forbes did not say or suggest that "the language on and referencing the Our Story was chosen to (or in fact did) influence how consumers understood the "natural" claim. Nor has ALDF provided any evidence regarding how the statements on the Our Story webpage supposedly influenced and/or changed what consumers understood the term "natural"

to mean as applied to the products (or that such alleged understanding was material to their decision whether or not to purchase *Natural Choice*® products. Indeed, ALDF’s experts study this issue. (Hormel Foods SUMF ¶¶71-72, 117-18.)

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

Response: Hormel Foods objects to ALDF’s use and characterization of the referenced document. This document was created by a third party (nSight). This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisant Co.*, 242 F.R.D. at 326-32. However, to the extent the Court gives any weight to this document, ALDF also mischaracterizes it. For example, the document does not state or conclude that the “Make the Natural Choice” campaign appeals to people who are interested in...where the products come from.” Instead, nSight concluded that *website “users* are interested in the background of the brand and where the products come from.” (ALDF App. 914.) Further, ALDF has not

suggested that this “background” information is false or misleading, and it is unclear how ALDF thinks that the number of visits to the “Our Story” page supports ALDF’s CPPA claim. Hormel Foods admits the referenced document states that the Our Story webpage “continues to be the most popular of the front-page content” but denies the remainder of paragraph 76. Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Admit.

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

Response: Hormel Foods denies ALDF’s characterization of the referenced document because it is incomplete. Hormel Foods admits that the quoted text appears in the referenced advertisement. Hormel Foods further states that the referenced advertisement contains other text and a large picture of the federally-approved label for the advertised product. (HORM_DC00000190 (ALDF App. 978).)

79. Another currently running advertisement has the title, “Preservatives Bad. Turkey Good” followed by the statement, “[Y]ou can still get your meat 100% NATURAL*

and right in the grocery store”, and the tagline “Make the Natural Choice.”

HORM_DC00000233 (A972).

Response: Hormel Foods denies ALDF’s characterization of the referenced document because it is incomplete. Hormel Foods admits that the referenced advertisement is currently running and that quoted text appears in the advertisement. Hormel Foods further states that referenced advertisement contains other text and a large picture of the federally-approved label and that the asterisk identified in 100% NATURAL* claim is connected to a disclaimer on the advertisement which states “Minimally processed. No artificial ingredients.” (HORM_DC00000233 (A972).) Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods denies ALDF’s characterization of the referenced document because it is incomplete. Hormel Foods admits that the referenced video commercial is currently running, that the text “100% NATURAL” appears in the commercial, and that an image of a leaf appears above the “L” in “Natural.” Hormel Foods further states that the leaf is connected to a disclaimer which statements “Minimally processed. No artificial ingredients.” Hormel Foods denies ALDF’s characterization about whether

the words and images in the commercial are “large” or “tiny.” All of the text is legible. The video speaks for itself. Hormel Foods further states that the video also prominently shows a picture of the federally-approved label for the advertised product. Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

Consumer Perception of the Make the Natural Choice Campaign.

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

Response: Hormel Foods objects to ALDF’s characterization of this document. The document references research done for other brands and does not mention or address consumers understanding of *Natural Choice*® products, much less any of the *Natural Choice*® advertisements. Indeed, the referenced document does not even identify whether the participants in the study were shown advertisements of any products and/or were asked to identify their understanding of the attributes of any particular “natural” products. The document also does not identify what consumers believe terms like “antibiotic-free” and/or “no preservatives” mean generally or in the context of any particular “natural” meat product. This document has minimal (if any) probative value to sole issue presented in this case—whether Hormel

Foods' *Natural Choice*® advertisements violate the CPPA. *See Merisiant Co. v. McNeil Nutritionals, LLC*, 242 F.R.D. 315, 326-32 (E.D. Pa. 2007) (holding that third-party surveys offered in support of a false advertising claim were inadmissible under Rule 403 because admission of the surveys would be highly prejudicial and the probative value of the surveys were small, particularly given unresolved questions regarding whether the surveys were conducted through methodologically sound principles, the court was not presented with sufficient data and evidence to know whether the data was accurately reported or evaluated, there was no evidence that the surveys involved showing participants advertisements of the at-issue product, party proffering the surveys failed to establish any nexus between the focus and/or result of those surveys and the at-issue advertising and failed to establish that the surveys were “designed so that the responses clearly are based on the content of the advertisement and not simply on the respondent’s prior personal experience...[t]his nexus is too attenuated to be relevant to this action.”)

Hormel Foods further denies that the referenced document proves (or even suggest) that consumers interpret any of the *Natural Choice*® advertisements to be saying that any and/or all *Natural Choice*® products are made from animals that are “antibiotic free” and/or “raised without antibiotics.” Hormel Foods admits that many of the *Natural Choice*® advertisements describe the products as having “no preservatives.” This advertising claim is accurate and not misleading, particularly since FSIS has

reviewed the product ingredients and concluded that the products can be accurately labeled as having “no preservatives.” (See Hormel Foods’ SUMF at ¶¶ 19-22.) Hormel Foods denies ALDF’s characterization of the referenced document and admits the document speaks for itself.

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

Response: Hormel Foods objects to ALDF’s characterization of this document. The referenced statement was made in an email by Karen Kraft, a Hormel Foods’ employee. (ALDF App. 986.) Ms. Kraft’s internal comments do not reflect or state the company’s position regarding whether consumers interpret *Natural Choice*® products and/or any of the at-issue *Natural Choice*® advertisements as being “ABF.”

Moreover, Ms. Kraft testified that the quoted reference related to research done on a research project *for a brand other than Natural Choice*®. Ms. Kraft further testified that Hormel Foods would not “look to other Hormel product studies to understanding how its [*Natural Choice*®] advertising would be perceived [because] it’s down to like the execution and you have to understand what the execution is and knowing what’s going on with another brand wouldn’t tell you anything that you could really make a decision on.” (Demoret Decl. Ex. G, Kraft Dep. 135:7-15.) Ms. Kraft further explained that the referenced study focused on consumer perception

of packaging for other brands' products and thus was not applicable to consumer perception of advertising. (*E.g.*, *id.* at 136:21-24 (“This wasn’t advertising. This was packaging that we’re doing. So it was the other claims on the package.”)) Hormel Foods denies that the referenced statement in paragraph 82 establishes or suggests that consumers understand Hormel Foods’ *Natural Choice*® advertisements to be claiming that the products are antibiotic free or raised without antibiotics. Subject to and without waiving any objection, Hormel Foods admits that the quoted statement appears in the referenced email. Hormel Foods denies ALDF’s characterization of the quoted statement and the document and admits that the document speaks for itself.

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

Response: Hormel Foods denies ALDF’s characterization of the referenced document.

The referenced statement was made in an email by Holly LaVallie, a Hormel Foods’ employee. (ALDF App. 986.) Ms. LaVallie’s internal comments do not reflect or state the company’s position regarding whether consumers interpret *Natural Choice*® products and/or any of the at-issue *Natural Choice*® advertisements as being “RWOA.” Rather, Ms. LaVallie was simply making an observation that her understanding was that some consumers, as a general matter, assume “Natural=RWA.” Such an

observation does not and cannot prove Hormel Foods' *Natural Choice*® advertisement have a tendency to mislead reasonable consumers about the products' attributes. Indeed, the referenced email does not identify what Ms. LaVallie meant by the quoted statement, what information she relied upon in making the statement and/or whether that information is reliable and gives any meaningful insights regarding how consumers understand any particular advertisement. To the contrary, each of the parties' experts agreed that one cannot reliably identify how consumers understand a particular advertisement "except with consumer research" about that advertisement. (Demoret Decl. Ex. FFFF, Dimofte Dep. 127:10-19; see also Demoret Decl. Ex. TTT, Maronick Dep. 13:12-19 (agreeing that he had no basis to opine on how consumers perceive any *Natural Choice*® advertisements other than the ones he specifically tested); Demoret Decl. Ex. IIII, Expert Report of Professor Ravi Dhar, and Demoret Decl. Ex. JJJJ, Dhar Dep. 57:19-20, 76:2-77:14, 243:6-21, 244:24-246:1 (explaining that consumer perception of challenged advertising claims and the materiality of those claims could only be accurately assessed consumer surveys about the *Natural Choice*® advertisements themselves.) Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods denies ALDF’s characterization of this document. The document references Mr. Zavoral’s talking points for a presentation planned to give at an internal meeting. Hormel Foods admits that the quoted statement appears in the email. However, the statement refers to the consumer insight study discussed in Hormel Foods’ objections and response to paragraph 82 (i.e., the study related to consumer perception of *packaging for a different brand*.) Mr. Zavoral’s internal comments about a presentation he planned to give do not reflect or state the company’s position regarding whether consumers interpret *Natural Choice*® products and/or any of the at-issue *Natural Choice*® advertisements as being “RWOA.” Moreover, ALDF did not ask Mr. Zavoral any questions about documents during any of the three times that he was deposed. In addition, Ms. Kraft further explained that the referenced study focused on consumer perception of *packaging* for other brands’ products and thus was not applicable to consumer perception of advertising. (*E.g.*, id. at 136:21-24 (“This wasn’t advertising. This was packaging that we’re doing. So it was the other claims on the package.”)) Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods disputes ALDF’s characterization of the referenced document. The document references Mr. Zavoral’s talking points for a presentation he gave at an internal meeting. Mr. Zavoral’s internal notes do not reflect or state the company’s position regarding whether consumers interpret *Natural Choice*® products and/or any of the at-issue *Natural Choice*® advertisements as being “RWOA.” However, to the extent the Court gives any weight to Mr. Zavoral’s comments, Hormel Foods notes that the comments do not support ALDF’s theories in this case—they undercut them. The document represents that the “natural” category is “shifting toward RWA” and that Hormel Foods’ competitors were more frequently making express claims that their “natural” meat was “RWA.” Mr. Zavoral’s notes identify potential concern that “consumers will begin to doubt [the] naturalness” of *Natural Choice*® products because “competitors, retailers and restaurants” were marketing their products as RWA, but Hormel Foods was not doing so with *Natural Choice*® products. HORM_DC00063053 (ALDF App. 176). Thus to the extent the Court gives this document any weight, it suggests that Mr. Zavoral believed that consumers interpreted the absence of a “raised without antibiotics” claim in *Natural Choice*® marketing materials to mean that the animals used in *Natural Choice*® products did receive antibiotics. Subject to and without raising any objections, Hormel Foods admits that the quoted text appears in the document, denies ALDF’s characterization of the quoted text and the referenced document, and admits that the document speaks for itself.

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

Response: Hormel Foods objects to ALDF's characterization of the referenced document. The document summarizes the results, but not the methodology, of a consumer study that Hormel Foods conducted regarding consumer attitudes toward the *Applegate*® brand and other brands, including *Natural Choice*®. The purpose of the study, which was dubbed "Project Bluebird, was to provide comparison points between the *Applegate*® brand and Hormel Foods' other brands. (Demoret Decl. Ex. G, Kraft Dep. 168:24-169:3 (stating that the "function of this report" was to "understand kind of the consumer perceptions of the Applegate brand from an attitudinal standpoint as we were considering purchasing them.") The study did not address specific products, much less specific *Natural Choice*® advertisements. Nor did the study measure consumer "understanding" of the term "natural" in any way. (See Demoret Decl. Ex. III, Dhar Report at ¶ 76. Further, there is no record regarding the underlying methodology, data or survey instruments—information which ALDF's own expert, Dr. Dimofte, acknowledged was necessary to evaluate whether the survey was

even conducted properly, much less that the data and conclusions are in any way applicable to consumers' understanding of Hormel Foods' *Natural Choice*® advertisements. (Demoret Decl. Ex. FFFF, Dimofte Dep. 75:20-76:2, 97:23-99:2.) Thus, the Project Bluebird Survey cannot form the basis for any reliable conclusions with respect to how reasonable consumers understand the *Natural Choice*® advertisements at issue. See *A & M Records, Inc. v. Napster*, 2000 WL 1170106, at *8 N.D. Cal. Aug. 10, 2000); *Merisiant Co. v. McNeil Nutritionals, LLC*, 242 F.R.D. 315, 326-32 (E.D. Pa. 2007) (holding that third-party surveys offered in support of a false advertising claim were inadmissible under Rule 403 because admission of the surveys would be highly prejudicial and the probative value of the surveys were small, particularly given unresolved questions regarding whether the surveys were conducted through methodologically sound principles, the court was not presented with sufficient data and evidence to know whether the data was accurately reported or evaluated, there was no evidence that the surveys involved showing participants advertisements of the at-issue product, party proffering the surveys failed to establish any nexus between the focus and/or result of those surveys and the at-issue advertising and failed to establish that the surveys were "designed so that the responses clearly are based on the content of the advertisement and not simply on the respondent's prior personal experience...[t]his nexus is too attenuated to be relevant to this action.")

ALDF also mischaracterizes the referenced document. Hormel Foods admits that the document states that, when asked to rate how important particular attributes were in “your decision to buy a natural *meat or cheese*,: some participants selected the attributes listed in paragraph 86. The document does not suggest that participants were asked to identify which natural meat or cheese products actually had any of those attributes. But of equal importance, the document states that participants ranked *each the following attributes as more important* than any that ALDF listed in paragraph 86: (1) tastes good; (2) is high quality food; (3) good value for the price; (4) Brand I trust; (5) A brand my family and I like; (6) No artificial ingredients; (7) has ingredients I understand; and (8) 100% natural. Thus, the Project Bluebird Study cannot address: (a) what attributes consumers think *Natural Choice*® products have; (b) where consumers ideas about the product attributes are coming from (e.g., product labels, advertisements, third-party labels or advertisements and/or other sources); or (c) whether consumers’ alleged beliefs regarding whether *Natural Choice*® products “were humanely raised,” “never administered antibiotics,” have “no nitrates or nitrates added” etc. meaningfully influence whether those consumers buy *Natural Choice*® products. Hormel Foods thus denies ALDF’s characterization of the Project Bluebird document and denies that this document supports ALDF CPPA claim in any way.

87. The Hormel study revealed that the “importance of each” of these attributes is even higher for consumers already inclined to purchase natural products.

HORM_DC00073833, at 54 (A576).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 86. This document is immaterial to ALDF’s CPPA claim for the reasons set forth in Hormel Foods’ objections and response to paragraph 86. Hormel Foods further objects to ALDF’s characterization of the referenced document. Hormel Food admits that the document states that “very committed and serious naturalists consumers most often agree (top-two box) with the importance of each of these attributes than natural dabblers do.” Definitions for these categories are shown at ALDF App. 558, and the document states that “very committed” and “serious” naturalists form a small percentile (25% or less) of consumers. The issue presented by ALDF’s CPPA claim is whether the Hormel Foods’ *Natural Choice*® advertisements had a tendency to mislead reasonable consumers in the District of Columbia. Thus, to the extent the Court considers the Project Bluebird document, this document reflects, if anything, that typical consumers may not place significant weight on whether “natural” meat and poultry products possess attributes such as “humanely raised,” “never administered antibiotics,” etc. (ALDF App. 576.) Hormel Foods denies ALDF’s characterization of the Project Bluebird document and denies that this document supports ALDF CPPA claim in any way.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 86 and 87. This document is immaterial to ALDF’s CPPA claim for the reasons set forth in Hormel Foods’ objections and response to paragraphs 86 and 87. Hormel Foods further notes that FSIS has reviewed the brand name *Natural Choice*® and has concluded that the brand name is not misleading and instead accurately characterizes the products. (*See* Hormel Foods’ SUMF ¶¶ 19-22.) In addition, as explained above, the referenced document indicates that participants in the Project Bluebird Study did not review any *Natural Choice*® advertisements, and in fact the survey pre-date the rollout of the “Make the Natural Choice” campaign and thus have no bearing on whether the advertisements caused or created any material consumer confusion. In addition, the document indicates that participants’ perceptions about whether the products were “humanely raised,” were antibiotic-free, etc. were “low priority” to the participants and had a minimal impact on “purchase” intent. Instead, the survey concluded that factors such as whether the product “tastes good,” “is high-quality food” and is “100% natural” were far higher priorities to participants and had a much more significant impact on purchase intent. (ALDF App. 600.) Thus, to the extent the Court gives any weight to this document (and it should not), the Project Bluebird survey results do not even support, much

less establish ALDF's CPPA claim. Hormel Foods thus denies ALDF's characterization of the Project Bluebird document and denies that this document supports ALDF CPPA claim in any way.

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

Response: Hormel Foods objects to ALDF's characterization and use of the referenced document. The document references Mr. Zavoral's talking points for a presentation he gave at an internal meeting. Mr. Zavoral's internal notes do not reflect or state the company's position regarding how consumers interpret *Natural Choice*® products and/or any of the at-issue *Natural Choice*® advertisements.

First, the referenced document indicates that the statistics mentioned in it were taken from a summary of 2015 report published by the Organic and Natural Health Association (the "NMI Report"). Notably, ALDF's expert Dimofte reviewed a summary of NMI Report and acknowledged that he did not know whether the survey was reliably conducted, what the data showed, and even what instruments were used in the survey. Dr. Dimofte thus admitted that he did not know whether this survey was properly conducted,

whether the data and conclusions were reliable, or whether the conclusions from the survey have any bearing or applicability to how consumers perceive the *Natural Choice*® advertisements. (HF SUMF ¶¶ 101-05.) Mr. Zavoral (who authored the document referenced in paragraph 89) was questioned about the referenced survey and indicated that he did not know anything about the background or reliability of the survey either. (Demoret Opp. Decl. Ex. E, Zavoral Dep. 50:15-54:8.) Nor does the referenced document itself identify any of this information either. (ALDF App. 116.) The referenced survey therefore cannot form the basis for any reliable conclusions with respect to how reasonable consumers understand the advertisements at issue. *See A & M Records, Inc. v. Napster*, 2000 WL 1170106, at *8 N.D. Cal. Aug. 10, 2000); cannot form the basis for any reliable conclusions with respect to how reasonable consumers understand the advertisements at issue. *See A & M Records, Inc. v. Napster*, 2000 WL 1170106, at *8 N.D. Cal. Aug. 10, 2000); *Merisiant Co. v. McNeil Nutritional, LLC*, 242 F.R.D. 315, 326-32 (E.D. Pa. 2007) (holding that third-party surveys offered in support of a false advertising claim were inadmissible under Rule 403 because admission of the surveys would be highly prejudicial and the probative value of the surveys were small, particularly given unresolved questions regarding whether the surveys were conducted through methodologically sound principles, the court was not presented with sufficient data and evidence to know whether the data was accurately reported or evaluated, there was no evidence that the surveys

involved showing participants advertisements of the at-issue product, party proffering the surveys failed to establish any nexus between the focus and/or result of those surveys and the at-issue advertising and failed to establish that the surveys were “designed so that the responses clearly are based on the content of the advertisement and not simply on the respondent’s prior personal experience...[t]his nexus is too attenuated to be relevant to this action.”)

Hormel Foods also objects to ALDF’s characterization of the referenced document, which specifically refers to how “important” it is for a *meat labeled as* natural to have certain characteristics. The referenced study does not say or suggest that NMI study evaluated whether consumers actually think a meat product labeled (or advertised) as natural has any of the listed attributes (much less that *Natural Choice®* products do.) Nor does the referenced document provide any basis for the statement that “many more consumers assume that Natural meat has been Humanely Raised, Free Range, or Pasture Raised.” In addition, the document does not state or suggest that consumers interpret *Natural Choice®* advertisements as saying that *Natural Choice®* products have these attributes. Hormel Foods admits that the referenced document contains the quoted language but denies ALDF’s characterization and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 89. Hormel Foods objects to ALDF’s claim that “Hormel understood “[t]here is a very wide halo around ‘Natural’ and consumers assume we have benefits beyond our product claims.” As noted above, this document only shows Mr. Zavoral’s internal notes for a presentation he gave and does not reflect or identify that Hormel “understood” or believe that consumers misinterpret any *Natural Choice*® advertisements. The document references that, in general, there may be customer confusion about what “natural” means because “when new consumers enter the Natural food categories, they are confronted with confusing claims and conflicting viewpoints.” The document further states that, because there are “competitors who blur the lines,” this leads to “consumer skepticism about “natural” on the one hand, and “a very wide around Natural” that may lead consumers to “assume we have benefits *beyond our product claims.*” Mr. Zavoral further explained that the “implication” he drew for *Natural Choice*® was that:

3. We need to have a stronger voice about what “Natural” means to Hormel Foods. FDA-no added colors, flavors or synthetic substances. USDA-No

artificial ingredients, colors, chemicals, minimally processed. (ALDF App. 116; *see* Demoret Decl. Ex. E, Zavoral Dep. 50:15-54:8.)

During his deposition, Mr. Zavoral was asked “is that an insight that you followed up on later?” He responded “actually, yeah.... One thing we started doing after that is making sure that our advertisements listed the full definition of natural within the print ad.” (Id. at 51:25-52:6.) Hormel Foods denies that the referenced document and/or the quoted text in paragraph 90 supports or establishes ALDF’s claim that the *Natural Choice*® advertisements have a tendency to mislead reasonable consumers regarding any material attributes of the products. Rather, the thrust of ALDF’s position seems to be that it is misleading to call *Natural Choice*® products “natural” because there is supposedly a “very wide halo” around that term. This claim fails on the merits because FSIS has already concluded that it is not inaccurate or misleading to describe *Natural Choice*® products as “Natural” on the label, and ALDF has provided no evidence (through the referenced document or otherwise) that consumers understand the term “natural” to mean something different on the product labels than it does in the advertisements at issue. ALDF’s CPPA claim is therefore preempted. *See Phelps v. Hormel Foods Corporation*, 244 F. Supp. 3d 1312, 1317 n.2 (S.D. Fla. 2017) (“[T]he only advertising content to which Plaintiff objects...is the use of the terms ‘Natural’ and ‘No Preservatives,’ which are claims approved by FSIS for use in describing the Products. Therefore,

Plaintiff's FDUTPA claims based on advertising and marketing are preempted.")

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 89 and 90. The referenced "NMI" Study is the same one cited in the Hormel Foods' presentation discussed in paragraph 90. This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisant Co.*, 242 F.R.D. at 326-32. To the extent that the Court considers this document, Hormel Foods admits that the quoted statement appears in the NMI Study. Hormel Foods objections to ALDF's use and characterization of the NMI Study, particularly since ALDF has not established that this survey is reliable and/or that results from a questionnaire asking participants how important certain attributes are if a "meat is to be label Natural" have any bearing on whether Hormel Foods' *Natural Choice*® advertisements violate the CPPA. Further, the NMI Study

appears to have only asked participants “importance” questions related to whether animals used in “natural” products had no added growth hormones, were antibiotic free, and/or were humanely raised, free range, and pasture raised. The surveyors apparently did not ask participants questions related to how important it was the product be minimally processed, have no artificial ingredients, be tasty, etc. At bottom, the survey does not purport to address what attributes consumers think “natural” meat and poultry products actually have, how they perceive the use of the natural descriptor in advertising generally (much less in advertisements for *Natural Choice*® products), or what attributes of such “natural” products actually influence consumers purchasing decisions. Hormel Foods thus denies ALDF’s characterization of the document and admits that the document speaks for itself.

92. The NMI study further found that of “heavy users” of natural products, 88% thought that if the product “was labeled as **Natural**, it is important for it to” have “no added growth hormones”; 74% responded the same for “antibiotics free”; 53% for “humane[ly] raised”; 51% for “free range”; and 48% for “pasture raised.” HORM_DC00044223, at 32 (emphasis in original) (A1009).

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 89, 89 and 91. This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible

pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisiant Co.*, 242 F.R.D. at 326-32. Subject to and without waiving any objection, Hormel Foods admits that the quoted language appears in NMI Study. Hormel Foods denies ALDF's characterization of the NMI Study and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 89, 89 and 91. This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisiant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisiant Co.*, 242 F.R.D. at 326-32. Subject to and without waiving any objection, Hormel Foods admits that the quoted language appears in NMI study. However, this statement is immaterial because, as ALDF acknowledges, the question posed apparently related to whether consumers "believe there is any difference" between *organic and natural labels*. ALDF is not challenging Hormel Foods' Labels and/or claiming that the Labels are misleading to consumers. Hormel Foods denies ALDF's characterization of the document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 89, 89 and 91. This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisant Co.*, 242 F.R.D. at 326-32. Subject to and without waiving any objection, Hormel Foods admits that the NMI Study contains the quoted language. However, these statements are immaterial because ALDF is not challenging Hormel Foods’ Labels and/or claiming that the Labels are misleading to consumers. Nor has ALDF submitted any evidence, for example that Hormel Foods uses GMOs or synthetic additives in the *Natural Choice*® products. Hormel Foods denies ALDF’s characterization of the document and admits that the NMI Study speaks for itself.

95. A 2017 report on the Natural Choice brand confirmed that consumers “don’t know” the USDA guidance on “natural” label claims, with “60% believ[ing] it means no

GMO's, artificial ingredients or colors, chemicals or pesticides" and "24% think[ing] it means 'good for the environment.'" HORM_DC00124268, at 96 (A1039).

Response: Hormel Foods hereby incorporates its objections and response to paragraphs 45 and 49. Hormel Foods further objects to ALDF's characterization and use of the document. This document was created by BBDO, not Hormel Foods (HORM_DC00124268 (ALDF App. 1011.)) This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisant Co.*, 242 F.R.D. at 326-32. BBDO's viewpoints and recommendations are not relevant to the messaging that Hormel Foods intended to convey (or did convey) in *Natural Choice*® advertisements that Hormel Foods approved and ran publicly. Subject to and without waiving any objection, Hormel Foods admits that quoted statements appear in the document. However, the document does not identify any source or basis for quoted statements. They simply appear on the page without substantiation. Further, ALDF mischaracterizes the referenced document in that the document does not cite to or mention "USDA guidance on 'natural' label claims." Nor does the referenced document identify whether consumers have these alleged beliefs about "natural" meat products, other types of "natural products," or both. Hormel Foods denies ALDF's characterization of the referenced document and

admits that the document speaks for itself. (HORM_DC00124268, 96 (ALDF App. 1039).)

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

Response: Hormel Foods hereby incorporates its objections and responses to paragraph 89. Hormel Foods further objects to ALDF’s characterization of this document. The document references Mr. Zavoral’s talking points for a presentation he gave at an internal meeting. Mr. Zavoral’s internal notes do not reflect or state the company’s position regarding whether consumers interpret *Natural Choice*® products and/or any of the at-issue *Natural Choice*® advertisements.

The referenced document indicates that the statistics mentioned in it were taken from a summary of the “Consumer Reports Natural Food Labels Survey (“Consumer Reports Survey.”) Notably, ALDF’s expert Dimofte reviewed the Consumer Reports Survey and acknowledged that he did not know whether the survey was reliably conducted, what the data showed, and even what instruments were used in the survey. Dr. Dimofte thus admitted that he did not know whether this survey was properly conducted, whether the data and conclusions were reliable, or whether the conclusions from the survey have any bearing or applicability to how consumers perceive the *Natural Choice*® advertisements. (See HF SUMF ¶¶ 140-41.) Mr. Zavoral

also testified that he did not know whether the Consumer Reports Survey was reliable and that he “probably found it by searching the Internet looking for free sources that I could cite to that would give us data points regarding consumer perception.” (Demoret Decl. Ex. F, Zavoral 30(b)(6) Dep. 44:4-10.) The Consumer Reports Survey therefore cannot form the basis for any reliable conclusions with respect to how reasonable consumers understand the advertisements at issue. *See A & M Records, Inc. v. Napster*, 2000 WL 1170106, at *8 N.D. Cal. Aug. 10, 2000); *Merisiant Co. v. McNeil Nutritionals, LLC*, 242 F.R.D. 315, 326-32 (E.D. Pa. 2007) (holding that third-party surveys offered in support of a false advertising claim were inadmissible under rule 403 because admission of the surveys would be highly prejudicial and the probative value of the surveys were small, particularly given unresolved questions regarding whether the surveys were conducted through methodologically sound principles, the court was not presented with sufficient data and evidence to know whether the data was accurately reported or evaluated, there was no evidence that the surveys involved showing participants advertisements of the at-issue product, party proffering the surveys failed to establish any nexus between the focus and/or result of those surveys and the at-issue advertising and failed to establish that the surveys were “designed so that the responses clearly are based on the content of the advertisement and not simply on the respondent’s prior personal experience...[t]his nexus is too attenuated to be relevant to this action.”)

Moreover, the referenced document states that the Consumer Reports Survey focused on consumers' perception of the "Natural Label on Meat and Poultry." (ALDF App. 191.) ALDF is not challenging Hormel Foods *Natural Choice*® labels and has provided no evidence that consumer surveys purporting to generally measure views on "natural" labels shed any meaningful light on how consumers understand the *Natural Choice*® advertisements. Each of the parties' experts agreed that one cannot reliably identify how consumers understand a particular advertisement "except with consumer research" about that advertisement. (Demoret Decl. Ex. FFFF, Dimofte Dep. 127:10-19; see also Demoret Decl. Ex. TTT, Maronick Dep. 13:12-19 (agreeing that he had no basis to opine on how consumers perceive any Natural Choice® advertisements other than the ones he specifically tested); Demoret Decl. Ex. IIII, Expert Report of Professor Ravi Dhar, and Demoret Decl. Ex. JJJJ, Dhar Dep. 57:19-20, 76:2-77:14, 243:6-21, 244:24-246:1 (explaining that consumer perception of challenged advertising claims and the materiality of those claims could only be accurately assessed consumer surveys about the Natural Choice® advertisements themselves.) Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

97. It summarized Consumer Reports' findings that for "meat and poultry" products, at least half of "consumers think 'NATURAL' currently means" "Animals went outdoors" (50%); 57% think 'NATURAL' means "No antibiotics/drugs"; 59% think it means

“No GMOs in feed”; and 64% think it means “No artificial growth hormones”.

HORM_DC00063021, at 68 (A191).

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 96. Hormel Foods also disputes ALDF’s characterization of the quoted statements, which are inaccurate. The document states “*Consumers think label CURRENTLY means.*” (ALDF App. 191) (emphasis supplied.) Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

98. A 2017 document summarizing the meaning of the Hormel Natural Choice brand found that consumers valued “key benefits of ‘100% natural,’ ‘antibiotic free’ and ‘preservative free,’” and had the “expectation[.]” that having a “100% natural” brand meant that the “[a]nimals [were] treated humanely.” HORM_DC00049216, at 35, 45, 47 (A1095, 1105, 1107).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 45 and 49. HORM_DC00049216 is a document created by a third-party research company called Millward Brown and, at most, purports to reflect Millward Brown’s opinions and viewpoints. This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisiant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisiant Co.*, 242 F.R.D. at 326-32.

ALDF also mischaracterizes this document, which purports to summarize Millward Brown’s research and recommendations regarding “two different brand stories” that could potentially be used for future marketing campaigns. (HORM_DC000049219 (ALDF App. 1079.) The document purports to summarize research done on those potential brand stories and participants’ reactions to those brand stories. According to the document, consumers interpreted these potential brand stories as communicating “‘100% natural,’ ‘antibiotic free’ and ‘preservative free.’” (ALDF App. 1095, 1105.) Millward Brown further identified that, if Hormel Foods wanted to “operate in [the] space of altruism/community-mindedness, [then] consumers have a lot of expectations, [including that] animals [were] treated humanely.” (ALDF App. 1107.) ALDF has not and cannot explain how third-party research regarding consumers reaction to brand stories that Hormel Foods never ran has any bearing whatsoever on how reasonable consumers interpret the *Natural Choice*® advertisements at issue. Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods objects to ALDF’s characterization and use of the referenced document. The document states that it was created by Ethan Dressen, a Consumer Products Sales Analytics Intern at Hormel Foods. The document references Mr. Dressen’s talking points for a presentation he gave at an internal meeting. Mr. Dressen’s internal notes do not reflect or state the company’s position regarding whether consumers interpret *Natural Choice*® products and/or any of the at-issue *Natural Choice*® advertisements.

Hormel Foods also objects to ALDF’s characterization of the referenced document. The document generally states that “Animal Transparency is a driving factor in meat sales.” The source identified for this statement are two “Netflix Documentaries” entitled “Food Inc.” & “What the Health.” The document then states, with no further substantiation, that “animal safety and cruelty becomes a main player in meat consumption” and that “claims including: natural, organic, free-range, GMO Free & Cage Free increase consumer conversations about animal treatment.” (ALDF App. 1205.)

Needless to say, Hormel Foods denies that this document establishes what Hormel Foods does or does not know about consumer perception of *Natural Choice*® products or *Natural Choice*® advertisements. Nor has ALDF presented any evidence suggesting that the information contained in this document or that the “Netflix Documentaries” that it cites to for support are

accurate or reliable. Hormel Foods denies ALDF's characterization of the referenced document and admits the document speaks for itself.

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

Response: Hormel Foods objects to ALDF's reliance on comments submitted by consumers because these comments are hearsay and cannot be relied upon to prove the truth of the matters asserted in the comments.

Subject to and without waiving any objection, Hormel Foods admits that it received consumer comments about *Natural Choice*® products during the time period that the *Natural Choice*® campaign has run. Hormel Foods admits that it received "thousands of consumer comments" about *Natural Choice*® products during this time period. (Demoret Decl. Ex. F, Zavoral 30(b)(6) Dep. 89:22-25.) Mr. Zavoral further testified that only "a relatively small handful of consumers about questions about those topics. Just that it's very rare to get questions about preservatives or nitrites and nitrates. Much, much more common are the questions about the expiration dates and how soon after I open it do I need to eat it are the majority of comments." (Id. at 90:1-7.) Further, Hormel Foods did not receive any comments from consumers in the District of Columbia about *Natural Choice*® advertisements and/or any of the product claims at issue ("natural," "no preservatives," "no added nitrates or nitrites," etc.) (*See*

HORM_DC000020084 (ALDF App. 1235.) Hormel Foods admits that the quoted statement appears in the referenced document, but ALDF's description of the statement is incomplete. The comment actually states: "I first want to say that we have been avid users of Hormel Natural Choice Lunch Meats for quite some time, buying between four and six packages per week. We really love that they are nitrate/nitrite free and really love the taste." (ALDF App. 1220.) This comment suggests that the consumer who submitted the comment is quite familiar with *Natural Choice*® products and frequently bought the "packages" of the products (which of course contain FSIS-required disclaimers for any "no added nitrates or nitrites" claims.) The document does not say or suggest that the consumer relied on any of the advertisements from the "Make the Natural Choice" campaign to reach the conclusion that the products are "nitrate/nitrite free." Nor could she have, because the comment itself notes that it was made in February 2015—*months before Hormel Foods even launched the "Make the Natural Choice" campaign*. Hormel Foods denies ALDF's characterization of the document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 100. Hormel Foods admits that the quoted statement appears in the document. Hormel Foods notes that the person who made the comment appears to be referring to chemical additives, as opposed to naturally occurring sources of nitrates. Hormel Foods further notes the quoted statement suggests that the person who made the comment was concerned about products that were “loaded with nitrates and chemicals.” In describing the potential levels of naturally occurring nitrates and/or nitrites in *Natural Choice*® products, Hormel Foods’ designee explained that, “we...have a product that at the end of the day that’s less than 10 ppm available nitrates, which is far less than a conventionally produced product.... *This product is probably two to 300 times less nitrate than you would get coming from a salad that you would eat and convert with your saliva to nitrate.*” (Forbes Dep. 48:23-49:19 (ALDF App. 2827-28.)

Hormel Foods respectfully suggests that the person who made the referenced comment was not confused about the products’ attributes. Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself. Hormel Food denies that ALDF has established that the person who made the comment relied on information from a *Natural Choice*® advertisement to reach any particular belief about whether products contain nitrates or nitrites.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 100 and 101. Hormel Foods admits that the quoted statement appears in the referenced documents but notes that the statement is incomplete. The person who made the comment said “We love your NC meats, my husband is allergic to nitrates, so thankful for your products that taste so good. Please keep making them.” (ALDF App. 1230.) To the extent that the Court gives this statement any weight, it reinforces Hormel Foods’ position that *Natural Choice*® products, at most, contain only natural nitrates or nitrites at extremely low levels. This comment, at most, suggests that the commenter purchased *Natural Choice*® products because of the taste and because the commenter’s husband had no allergic reaction to the products.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 100. Hormel Foods admits that the quoted statement appears in the referenced document. Hormel Food denies that ALDF has established that the person who made the comment relied on information from a *Natural Choice*®

advertisement to reach any particular belief about whether products contain nitrates, nitrites or hormones. Further, the comment does not specify which *Natural Choice*® product the commenter was referencing. It is undisputed that animals used in Hormel Foods' pork and poultry products receive no hormones. Hormel Foods hereby fully incorporates its objections to paragraph 100. Hormel Foods admits that the quoted statement appears in the referenced document. Hormel Foods also denies that ALDF has established that the person who made the comment relied on information from a *Natural Choice*® advertisement to reach any particular belief about whether products contain nitrates, nitrites or hormones.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 100.

Hormel Foods admits that the quoted statement appears in the referenced document. Hormel Foods denies that ALDF has established that the person who made the comment relied on information from a *Natural Choice*® advertisement to reach any particular belief about whether products contain preservatives. Further, the allegations in paragraph 104 are immaterial because FSIS has concluded that *Natural Choice*® products have no preservatives (HF SUMF ¶¶ 19-23.) Hormel Foods also denies that ALDF has established that person who made the comment relied on information

from a *Natural Choice*® advertisement to reach any particular belief about whether products contain nitrates, nitrites or hormones.

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

Response: Hormel Foods objects to paragraph 105 because the facts alleged therein are not material to the parties’ claims and defenses. The issue posed by ALDF’s CPPA claims is whether the *Natural Choice*® advertisements have a tendency to mislead reasonable consumers in the District of Columbia about material facts related to *Natural Choice*® products. ALDF has offered no evidence that the “segments of consumers” listed in paragraph 105 are representative of reasonable consumers in the District of Columbia. Hormel Foods also denies ALDF’s characterization of the referenced document. The date on the document is 10/13/2016, and the stated purpose of the document is to evaluate new advertising campaigns. (ALDF App. 459-60.) The document discusses several different ways that Hormel Foods could conceptualize key consumer segments that purchase *Natural Choice*® products. One of the methods identified in the document is “NaturalLink.” (ALDF App. 460.) The quoted statements in paragraph 105 identify four key segments of consumers using the NaturalLink framework. Hormel Foods admits that quoted statements appear in the referenced document. Hormel

Foods denies that the referenced document identifies the only conceptual framework that Hormel Foods uses to define segments of consumers.

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

Response: Hormel Foods hereby incorporates its objections and response to paragraph 45. The referenced document (IRI Document) appears to have been created by a third-party company called Information Resources Inc. (IRI.) The IRI Document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the IRI Document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. The IRI Document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisant Co.*, 242 F.R.D. at 326-32. ALDF also mischaracterizes the IRI Document. According to the IRI Document, each consumer segment is defined by a variety of characteristics, including passions, priorities, “what holds me back” and things product characteristics consumers in the segments find “important” and that they are “willing to pay more for.” To the extent the Court gives any weight to this document, the IRI Document, at most, provides general descriptors for characteristics of large segments of consumers. The IRI Document does not

discuss how consumers within each segment weigh the various factors that are important to them. But more importantly, the IRI Document does not purport to provide any insights regarding how consumers in any segment understand or interpret any of the *Natural Choice*® advertisements. Hormel Foods further notes that, according to the IRI Document, the characteristics “made w/all natural ingredients” and “best taste” are two of the highest priorities for these consumers with respect to “food and beverage” products. Subject to and without waiving any objection, Hormel Foods denies ALDF’s characterization of the IRI Document and admits the IRI Document speaks for itself.

With respect to paragraph 106’s citations to Ms. Kraft’s testimony, Ms. Kraft stated that the document is “written by IRI,” that the statements in the document were IRI’s statements, and that she did not know how IRI had identified the various consumer segments because “I haven’t seen the questionnaire.” (Kraft Dep. 234:6-238:20 (ALDF App. 2908-09).) Ms. Kraft’s testimony reinforces that the IRI Document is hearsay and does not state or reflect Hormel Foods’ views.

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

Response: Paragraph 107 discusses the IRI Document identified in paragraph 106.

The IRI Document is hearsay, does not state or reflect Hormel Foods’

views, and is otherwise inadmissible under Rule 403. Subject to and without waiving any objection, Hormel Foods admits that, according to the IRI Document, three of these groups chose *Natural Choice*® as the top brand they purchase when they buy Premium Natural. Hormel Foods denies that these statements in the IRI document are material in any way to ALDF's CPPA claim.

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

Response: Paragraph 108 discusses the IRI Document identified in paragraph 106. The IRI Document is hearsay, does not state or reflect Hormel Foods' views, and is otherwise inadmissible under Rule 403. Subject to and without waiving any objection, Hormel Foods admits that, according to the IRI Document, the "True Believers" segment listed *Natural Choice*® as "their second favorite brand next to Applegate. (ALDF App. 1264.) Hormel Foods denies that this statement in the IRI document is material in any way to ALDF's CPPA claim.

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

Response: Paragraph 109 discusses the IRI Document identified in paragraph 106. The IRI Document is hearsay, does not state or reflect Hormel Foods' views, and

is otherwise inadmissible under Rule 403. Subject to and without waiving any objection, Hormel Foods admits that the quoted statement appears in the IRI Document. Hormel Foods denies that this statement in the IRI document is material in any way to ALDF's CPPA claim.

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

Response: Hormel Foods denies ALDF's characterization of the referenced document.

Hormel Foods admits that the referenced document identifies information about sales of *Natural Choice*® products during the referenced time period. But Hormel Foods' designee Jeremy Zavoral testified that numerous factors likely contributed to the sales numbers. For example, Mr. Zavoral testified that "the largest of that I – is the snacking line that we launched at the beginning of that measurement period. So we launched a line of Natural Choice snacks that grew its points of distribution very fast." (Demoret Decl. Ex. H, November 28, 2018 Rule 30(b)(6) Deposition of Jeremy Zavoral (11-28-2018 Zavoral 30(b)(6) Dep. 46:15-23.) Mr. Zavoral further explained that "there's a lot of other factors that could have been impacting sales. For example, gaining a lot more distribution would have had that impact and the pricing and competitor action and some seasonality. There's so many other factors that could have impacted sales, so that's why we would like to be able to say that it's, oh, because of the TV advertisement. I mean, that would make my job way easier because my job is to try and convince

Hormel to advertise more. But she understood that, and I agree, that it's really hard to point, it was TV advertisement that made this impact. (Id. at 50:1-15.) Hormel Foods denies ALDF's characterization of the referenced document, denies that the document suggests or proves that "the Make the Natural Choice" ads produced steady increases in sales, and admits that the referenced document speaks for itself.

111. In 2017, Hormel applied for an award to recognize the Natural Choice campaign's success at increasing awareness of the Natural Choice line's "100% natural" claim by its target audience, as well as increasing total sales and household penetration.

HORM_DC00154514 *et seq.* (A1335-47).

Response: Hormel Foods admits that it applied for an Effie Award related to the "Make the Natural Choice" campaign. Hormel Foods admits that the application states that sales, awareness and household penetration increased during the campaign and that the application suggests that the campaign played a role in increasing these metrics. Hormel Foods further notes that the document points to changes in *Natural Choice*® labels/packaging, efforts in its distribution strategies and other activities as factors that contributed to these increased metrics as well. (ALDF App. 1337-38.) The application further states that the result of these various efforts was increased "brand metrics" in attributes like "is 100% natural," "tastes good," and "is a good value for the price." (Id. at 1339.) Hormel Foods denies

ALDF's characterization of the referenced document and admits that the referenced document speaks for itself.

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

Response: Hormel Foods hereby incorporates its objections and response to paragraphs 45 and 49. Hormel Foods further objects to ALDF's characterization and use of the document. This document was created by BBDO, not Hormel Foods (HORM_DC00130821 (ALDF App. 1349.) This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisiant Co.*, 242 F.R.D. at 326-32. BBDO's viewpoints and recommendations are not relevant to the messaging that Hormel Foods intended to convey (or did convey) in Natural Choice® advertisements that Hormel Foods approved and ran publicly. Subject to and without waiving any objection, Hormel Foods admits that the referenced document shows pictures of several federally-approved *Natural Choice*® Labels/Packages and states "our logo and box are a stamp of natural credibility." ALDF is not challenging Hormel Foods' Labels, and the allegations in paragraph 112 do not support ALDF's CPPA claim. The

document does not say or suggest anything about *Natural Choice*® advertisements. In addition, ALDF mischaracterizes the referenced statement. According to the document, BBDO was asked to develop “a 2-3 year media and creative strategy that supports the entire product portfolio.” (ALDF App. 1351.) In other words, BBDO was providing options for future campaign messaging, not commenting on the success or impact of the “Make the Natural Choice” campaign. Hormel Foods thus denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby incorporates its objections and response to paragraph 45. Hormel Foods further objects to ALDF’s characterization and use of the document. The referenced email document was sent by an employee of a third-party company called Growth Catalyst, not Hormel Foods. (HORM_DC00130821 (ALDF App. 1349.) This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09;

Merisiant Co., 242 F.R.D. at 326-32. Growth Catalyst’s viewpoints and recommendations are not relevant to the messaging that Hormel Foods intended to convey (or did convey) in Natural Choice® advertisements that Hormel Foods approved and ran publicly. Subject to and without waiving any objections, Hormel Foods admits that the Growth Catalyst email states that “the brand is highly regard (from users and non-users).” In a separate paragraph, the Growth Catalyst email states all playing back less processed, [having] natural ingredients, [being] wholesome, [and having] no preservatives.” (ALDF App. 1413.) Hormel Foods notes that FSIS has determined that *Natural Choice*® products are no more than minimally processed, have no artificial ingredients, have no preservatives, and are safe and wholesome. (HF SUMF ¶¶ 19-22.) Accordingly, to the extent the Court considers the referenced document, this document indicates that consumers accurately perceive what attributes *Natural Choice*® products have and that it is those attributes which are driving interest and purchase intent. (ALDF App. 1413.) Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby incorporates its objections and response to paragraph 45. Hormel Foods further objects to ALDF's characterization and use of the document. The referenced document was created by a third-party called Millward Brown. (HORM_DC00105261 (ALDF App. 1416.) This document is hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisant Co.*, 242 F.R.D. at 326-32. Millward Brown's viewpoints and recommendations are not relevant to the messaging that Hormel Foods intended to convey (or did convey) in *Natural Choice*® advertisements that Hormel Foods approved and ran publicly. Further, the document purports to provide consumer perception on potential campaigns that Hormel Foods was considering running. The document does not discuss how consumers understood or interpreted any advertisements from the *Make the Natural Choice*® campaign. (ALDF App. 1419.) The referenced testimony from Ms. Kraft discusses her understanding of consumer perception of those potential campaigns. Hormel Foods denies ALDF's characterization of the referenced document and testimony and admits that the referenced document and testimony speak for themselves.

ALDF's Allegations Regarding Hormel's "Disclaimers"

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

Response: ALDF mischaracterizes Mr. Zavoral's testimony. During his August 28, 2018 Rule 30(b)(6) Deposition, Mr. Zavoral testified that:

A. As part of the situation assessment presentations, we were shown that there was some confusion among consumers about what 'natural' means, that we follow this definition of 'natural' – which is not a Hormel definition of 'natural,' it's a USDA definition of 'natural.' So we should include those terms 'minimally processed, no artificial ingredients' wherever possible, including right in our – right in the print ads and at the bottom of the screen and in the videos.

Q. So if I understand – and correct me if I'm wrong, but if I understand what you're saying – is that based on an indication about consumer confusion as to what 'natural' means, Hormel decided to add a disclaimer to the phrase '100 percent natural' in its advertisements; is that correct?

Hormel Foods' Counsel: Outside the scope. Go ahead.

A. Based on some consumer information *that there was some confusion in the market about what 'natural' means*, we chose to make it very clear by including a disclaimer at the bottom of the print ad, yeah.

(Zavoral 30(b)(6) Dep. 36:6-37:4 (ALDF App. 3073-74); *see also* Zavoral Dep. 52:2-16 (ALDF App. 3086).)

Hormel Foods denies ALDF's characterization of the referenced testimony and admits that the testimony speaks for itself.

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

Response: Hormel Foods admits that Hormel Foods sometimes uses a leaf in place of an asterisk. Mr. Zavoral explained:

Q. On your current website, do you use asterisks?

A. Probably, I will need to take a look at it.

Q. And I guess it's a question. Do you use asterisks like the one on the keyboard to indicate that there's a disclaimer, or do you use a little leaf shape to indicate there's a disclaimer?

A. Oh, yeah. I think the new [website] refresh uses a small leaf icon.

Q. Why use a leaf instead of an asterisk?

A. The – because it felt like the leaf was a little more simple instead of a double asterisk. It felt like the leaf was more simple. We use the leaf at the bottom next to the text to the disclaimer.

(Zavoral Dep. 166;15-25 (ALDF App. 3090.) Hormel Foods denies paragraph 116 to the extent it is inconsistent with Mr. Zavoral’s testimony, which speaks for itself.

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

Response: Denied as stated. Hormel Foods admits that in the referenced advertisement the “leaf” is associated with a disclaimer stating: “Minimally processed, No Artificial Ingredients.” Hormel Foods denies any characterization by ALDF that the asterisk and/or the associated disclaimer language are illegible and/or placed in such a way that consumers would not notice the asterisk and disclaimer. HORM_DC00000233 (A972).

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

Response: Denied. ALDF mischaracterizes Mr. Forbes testimony, which was as follows:

Q. We were talking about your opinion with regards to 100 percent natural. So I am asking just the word natural without the 100 percent, does your position change?

Hormel Foods' Counsel: Same objections.

A. I believe that would be entirely up to the context in which it's used. I can't answer that now not knowing what the scenario might be.

Q. So let's say, for example, in – let's take a look at Exhibit 136. If it just said natural instead of 100 percent. So let's say 100 percent is deleted, would your view of whether a disclaimer is required change?

Hormel Foods' Counsel: Objection; outside the scope, vague. Go ahead.

A. No.

Q. How about down there when it says "Make the Natural Choice?" There's a natural without 100 percent in front and there is no disclaimer, correct?

A. Correct.

Q. And in your view should there be a disclaimer there?

Hormel Foods' Counsel: Objection; outside the scope.

A. No, I don't believe so.

Q. Why not?

A. I view that more as branding *and the claim is also clearly qualified in its most prompt place on this advertising.*

(Forbes Dep. 27:5-29:5 (ALDF app. 2817-19 (emphasis supplied.) Hormel Foods denies ALDF's characterization of Mr. Forbes' testimony and admits that the testimony speaks for itself.

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

Response: Denied. Mr. Zavoral testified that Hormel Foods had not specifically studied this issue and thus “we don’t have any evidence saying that they understand it or they don’t understand it.” (Zavoral 30(b)(6) Dep. 41:2-11 (ALDF App. 3085.) Hormel Foods denies ALDF's characterization of the referenced testimony and admits that the testimony speaks for itself. Hormel Foods further states that it is ALDF's burden to prove whether the *Natural Choice*® advertisements violate the CPPA and further notes that neither of ALDF's experts offered an opinion regarding whether “consumers would regard a small leaf as equivalent to an asterisk.”

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

Response: Hormel Foods admits that the Consumer Insights Division did not conduct consumer testing regarding the disclaimers in *Natural Choice*® advertisements. Hormel Foods further states that it is ALDF’s burden to prove whether the *Natural Choice*® advertisements violate the CPPA. ALDF’s implied suggestion that Hormel Foods was required to test the disclaimers is misplaced for the simple reason that ***FSIS has concluded that the Natural Choice® Labels are not misleading because the products satisfy USDA’s definition of “natural” and the Labels contain a disclaimer (signaled by an asterisk) that is identical to the one that appears on the Natural Choice® advertisements.*** (HF SUMF ¶¶ 26-27.)

In other words, FSIS has concluded that such disclaimers provide consumer sufficient information to understand what the “natural” claim means. ALDF has provided no evidence that there are any meaningful differences in the disclaimers included on the *Natural Choice*® Labels versus the *Natural Choice*® advertisements or that consumers interpret the disclaimer included on the *Natural Choice*® Labels differently than the disclaimer included in the *Natural Choice*® advertisements.

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

Response: Denied. Mr. Zavoral testified that he could see the disclaimer on the video ad that ALDF's counsel show to him during his deposition. (Zavoral Dep. 176:2-16 (ALDF App. 3091).)

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

Response: Denied. Ms. Kraft testified that she was able to see part of the disclaimer but that a portion of it was blurry in the version that Plaintiff's counsel showed to her during her deposition. Hormel Foods denies that this testimony establishes that typical consumers would be unable to read the disclaimer and/or that visibility of the disclaimer in this single ad renders that individual ad misleading, much less any other ones. (Kraft Dep. 115:12-117:25 (ALDF App. 2905).)

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

Response: Denied as stated. Ms. Kraft testified that she had seen the ad "probably at least 20 or more times." ALDF's counsel stated "I am going to tell you that the fact that it does contain a disclaimer." Ms. Kraft responded "Oh, at the very bottom it says, now that I remember – its says like minimally processed and something at the bottom of the last page." (Kraft Dep. Kraft Dep., at

109:15-16, 110:15- 111:7 (ALDF App. 2903-04).) Hormel Foods denies ALDF's characterization of the referenced testimony and admits that the testimony speaks for itself. Hormel Foods also denies that this testimony establishes that typical consumers would not notice and/or would be unable to read the disclaimer and/or that visibility of the disclaimer in this single ad renders that individual ad misleading, much less any other ones. (Id.)

ALDF's Allegations Concerning Third-Party Research on Consumer Perception

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

Response: Hormel Foods objects to ALDF's characterization and use of the referenced document. Hormel Foods did not create this document. This document is plainly hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. Indeed, the document purports to summarize the results of two focus groups conducted with a total of fifteen participants (ALDF App. 2668.) The document's representations and summary regarding what these fifteen participants said is therefore hearsay within hearsay and should be excluded. *See Merisant Co.*, 242 F.R.D. at 331-32. This document is also inadmissible

pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisiant Co.*, 242 F.R.D. at 326-32. The document references research conducted in 2009 related to consumer's general "understanding of labels." (ALDF App. 2668.) The study indicates that the participants potentially were not actually shown pictures of "natural" or "organic" meat labels and were instead asked general questions like "what does the term "all-natural" bring to mind?" and "if you saw a label or sticker on a food package that said "all-natural" what does that mean to you?" (ALDF App. 2672-73.) The study does not suggest that participants were asked questions about their understanding of advertising for meat and poultry products. (Id.) Nor were they shown any labels for *Natural Choice*® products or asked any questions about *Natural Choice*® products. Further, the participants shared their views on the various questions asked, and the study suggests these views in turn influenced the views expressed by other participants. (ALDF App. 2671-72.) Numerous courts have observed that "the very nature of a focus group seems to, some extent, to limits its ability to identify the message an advertisement [or label] conveys to an *individual consumer*.... Because the participants in a focus group freely voice their opinions, the opinion of a participant can be shaped by those of the others. Thus, a participant who may have derived no false message from an advertisement viewed outside the context of the focus group might well change his opinion about the message conveyed by the advertisement after considering the views expressed by other participants." *Scotts Co. v. United Indus. Corp.*, 315 F.

3d 264, 277 (4th Cir. 2002) (emphasis added) (internal citation omitted); see also *Merisant Co.*, 242 F.R.D. at 331-32. Courts have thus excluded this kind of survey evidence as “unreliable” and of little “probative value” under Rule 403. *E.g. Merisant Co.*, 242 F.R.D. at 331-32. The Court should do so here as well. ALDF also mischaracterizes the referenced document, which represents that the focus group participants “perceived the use of the term ‘all-natural’ on pork packaging as a gimmick or marketing ploy,” and that the participants were “skeptical of its meaning or claims on packaging label.” Hormel Foods admits that the referenced document states that the 15 focus group participants generally drew connections between “all-natural” pork labels and characteristics like “no hormones,” “no antibiotics,” chemical “additives,” and animal welfare issues. The study does not quantify for these perceptions or identify where the perceptions came (such as, for example, food labels that pair “all-natural” claims with express claims about antibiotics, hormones, animal welfare, etc.) (Id. at 2680-81.) In addition, the study notes that when participants were shown the USDA definition of “natural” (i.e., the same definition included in the disclaimers on *Natural Choice*® labels and advertisements), they had no difficulty understanding this definition or its implications regarding the characteristics of the product label. Further, the study theorized that any confusion the focus group participants had regarding what the “all natural” label meant was likely caused by producers coupling express “production/process claims...with the term all-natural). It is undisputed that none of the *Natural*

Choice® advertisements make any express production claims such as raised without antibiotics, humanely raised, grass-fed, free range, etc. (See HF SUMF ¶ 56.) Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 124. Hormel Foods did not create this document. This document is plainly hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisant Co.*, 242 F.R.D. at 326-32. Hormel Foods admits that the quoted words appear in the referenced document but denies ALDF’s characterization of the document. The study states that “participants also revealed that they do not understand why particular additives are bad for them.” (ALDF App. 2672.) According to the study, the participants also never “qualified or quantified these perceived risks” regarding chemicals “additives, hormones and antibiotics.” (Id.) Nor does the study define or explain what participants meant by “bad stuff.” In addition, the “risks” participants apparently identified to animals (which, in this study, was focused solely on pigs) were “hopefully it’s not had

hormones shot into it to make it fatter.” (Id. at 270.) It is undisputed that federal law prohibits the use of hormones in hog production and that pigs used in *Natural Choice*® products. Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 124. Hormel Foods did not create this document. This document is plainly hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisant Co.*, 242 F.R.D. at 326-32. Subject to and without waiving any objection, Hormel Foods admits that the quoted statement appears in the referenced document. However, ALDF mischaracterizes this statement in the context of the document. The survey notes that an unidentified number of participants in one of the focus groups discussed a potential “connection between all-natural and livestock raised free range.” (ALDF App. 2670.) The study claims that one of the participants raised this idea because “I think of Martha Stewart and the free range turkeys.” According to the document, the participants stated that they

“hoped” that the products “would be small-farm raised, fed natural foods and/fed organic foods,” as contrasted “within a feeding tube in one end and a IV on the other side. Filling it full of things just to keep it alive long enough to get to slaughter.” (Id.) The document does not address what the participants’ beliefs were regarding whether pigs used in “all-natural” products were “pasture-raised” or fed any specific diet, nor did it address, for example, whether the participants believed pigs should be raised outdoors in cold climates and/or to protect them from predators. (Id.) Hormel Foods denies ALDF’s characterization of the referenced document and admits the referenced document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 124. Hormel Foods did not create this document. This document is plainly hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisant Co.*, 242 F.R.D. at 326-32. Subject to and without waiving any objection, Hormel Foods admits that the quoted statement appears in the referenced document. This statement is double

hearsay, as it appears to reflect the author's perceptions of what the participants said and/or meant by what they said. According to the document, the participants stated that they "hoped" that the products "would be small-farm raised, fed natural foods and/fed organic foods," as contrasted "within a feeding tube in one end and a IV on the other side. Filling it full of things just to keep it alive long enough to get to slaughter." (Id.) The document does not address what the participants' beliefs were regarding whether pigs used in "all-natural" products were "pasture-raised" or fed any specific diet, nor did it address, for example, whether the participants believed pigs should be raised outdoors in cold climates and/or to protect them from predators. (Id.) Hormel Foods denies ALDF's characterization of the referenced document and admits the referenced document speaks for itself.

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

Response: Hormel Foods objects to ALDF's characterization and use of the referenced document. Hormel Foods did not create this document. This document is plainly hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. Indeed, the document purports to provide a bullet point summary of

the results of a survey purportedly conducted by the “American Society for the Prevention of Cruelty to Animals regarding “*labeling of meat, eggs and dairy products.*” (ALDF App. 2677.) The document’s representations and summary regarding what survey participants supposedly said is therefore hearsay within hearsay and should be excluded. *See Merisant Co.*, 242 F.R.D. at 331-32. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisiant Co.*, 242 F.R.D. at 326-32. The document references research conducted in 2009 related to participants general “understanding of labels.” (ALDF App. 2668.) The document indicates that the participants were not actually shown pictures of “natural” meat labels and clearly does not say or suggest that consumers were asked any questions about Hormel Foods, *Natural Choice*® labels, *Natural Choice*® advertisements or *Natural Choice*® products. Nor does the document describe who actually administered the survey, the survey administrator’s qualifications, what specific questions were asked of consumers or how the questions were asked. The survey instrument is not provided. Nor is any of the underlying data. Nor does the document state that the participants were drawn for a nationally representative sample. *Merisant Co.*, 242 F.R.D. at 331-32. Courts have thus excluded this kind of survey evidence as “unreliable” and of little “probative value” under Rule 403. *E.g. Merisant Co.*, 242 F.R.D. at 331-32; *Sugar Ass’n, Inc. v. McNeil-PPC, Inc.*, 2008 WL 4755611, at *3-4 (C.D. Ca. Jan. 7, 2008) (Respondents’ failure to demonstrate that the CSPI Survey was conducted in

accordance with methodologically sound survey principles warrants exclusion of the survey.) The Court should do so here as well. Subject to and without waiving any objection, Hormel Foods admits that the quoted statement appears in the document. ALDF is not challenging Hormel Foods' *Natural Choice*® Labels or packaging. Thus, the reference to what consumers supposedly believe—in the abstract—about what the “natural” on a food label indicates about animal welfare is irrelevant. Further, the document does not purport to identify what “quality” of life that animals on the farm typically have or what the meant by agreeing to a statement that the “animal had a better than average quality of life.” (ALDF App. 2677-78.) Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods objects to ALDF's characterization and use of the referenced document. Hormel Foods did not create this document. This document is plainly hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. The document's representations and summary regarding what

survey participants supposedly said is therefore hearsay within hearsay and should be excluded. *See Merisant Co.*, 242 F.R.D. at 331-32. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisiant Co.*, 242 F.R.D. at 326-32. Hormel Foods' expert, Ravi Dhar, was shown this document during his deposition. Dr. Dhar stated that he was not familiar with it, had not reviewed methodology or data of the document, and thus could not say whether it was reliable generally. (Demoret Decl. Ex. JJJJ, Dhar Dep. 299-303:22.) The document itself states that its focus was limited to consumer perception "***steak labeled as natural.***" (ALDF App. 3095.) The document indicates that consumers were not shown real labels of steak products and instead were asked questions about their perceptions of labels in the abstract or were shown labels that had not been approved by USDA. (ALDF App. 3097-99.) The labels did not include any specific statements about product ingredients or the USDA-required disclaimer language for "natural." The study does not identify or discuss *Natural Choice*® products, labels or advertisements in any way. The study thus plainly has no bearing on how consumers perceive any particular *Natural Choice*® advertisements or the *Natural Choice*® campaign as a whole. (Id.) Subject to and without waiving any objection, Hormel Foods admits that the study concluded that participants were not willing to pay more for a "12-ounce USDA Choice boneless ribeye steak" if they were informed of and/or familiar with the USDA definition of "natural." Hormel Foods denies ALDF's characterization that the survey

concluded that consumers were, as a general matter, unwilling to pay more for “natural meat” if they know that USDA defines natural as “minimally processed, no artificial ingredients.” Nor does the study say or suggest that its findings and conclusions were applicable to different categories of meat products, such as lunch meat, particularly given that it stands to reason that many USDA Choice steak products are, as a general matter, minimally processed and have no artificial ingredients. The manner in which conventional lunch meat products are processed is different. (*See* HF SUMF ¶ 15 (explaining that “most packaged deli meat products cannot be labeled ‘natural’ because they contain chemical preservatives necessary to extend the products’ ‘shelf life.’”) As the *Merisant Co.* court put it “This nexus is too attenuated to be relevant to this action.” *Merisant Co.*, 242 F.R.D. at 331-32. Hormel Foods admits that the referenced document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 129. Hormel Foods objects to ALDF’s characterization and use of the referenced document. Hormel Foods did not create this document. This document is plainly hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9;

see also Merisant Co., 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. The document's representations and summary regarding what survey participants supposedly said is therefore hearsay within hearsay and should be excluded. *See Merisant Co.*, 242 F.R.D. at 331-32. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisiant Co.*, 242 F.R.D. at 326-32. Subject to and without waiving any objection, Hormel Foods admits that the study concluded that participants were not willing to pay more for a "12-ounce USDA Choice boneless ribeye steak" if they were informed of and/or familiar with the USDA definition of "natural." Hormel Foods denies ALDF's characterization that the survey concluded that consumers were, as a general matter, unwilling to pay more for "natural meat" if they know that USDA defines natural as "minimally processed, no artificial ingredients." Nor does the study say or suggest that its findings and conclusions were applicable to different categories of meat products, such as lunch meat, particularly given that it stands to reason that many USDA Choice steak products are, as a general matter, minimally processed and have no artificial ingredients. The manner in which conventional lunch meat products are processed is different. (*See* HF SUMF ¶ 15 (explaining that "most packaged deli meat products cannot be labeled 'natural' because they contain chemical preservatives necessary to extend the products' 'shelf life.'")) As the *Merisant Co.* court put it "This nexus is too attenuated to be relevant to this

action.” *Merisant Co.*, 242 F.R.D. at 331-32. Hormel Foods admits that the referenced document speaks for itself.

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

Response: Hormel Foods objects to ALDF’s characterization and use of the referenced document. Hormel Foods did not create this document. This document is plainly hearsay, and ALDF cannot rely on it to prove the truth of any matters asserted in the document. *Carter*, 614 A.2d at 545 n.9; *see also Merisant Co.*, 242 F.R.D. 315; *Bonds*, 608 F.3d at 504-06; *Gomez*, 344 F.3d at 116. Indeed, the document purports to provide a bullet point summary of the results of a survey purportedly conducted by the Consumer Report® National Research Center (“Consumer Reports”) about a “Food Labels Survey.” ALDF App. 2607.) The document’s representations and summary regarding what survey participants supposedly said is therefore hearsay within hearsay and should be excluded. *See Merisant Co.*, 242 F.R.D. at 331-32. This document is also inadmissible pursuant to Rule 403. *Athridge*, 474 F. Supp. 2d 108-09; *Merisiant Co.*, 242 F.R.D. at 326-32. The document references research conducted related to participants’ general “understanding of labels.” (ALDF App. 2606-07.) The document indicates that the participants were not actually shown pictures of “natural” meat

labels and clearly does not say or suggest that consumers were asked any questions about Hormel Foods, *Natural Choice*® labels, *Natural Choice*® advertisements or *Natural Choice*® products. The document does not indicate that consumers were asked any questions about their understanding advertisements for meat or poultry products (Id.) Nor does the document describe what specific questions were asked of consumers or how the questions were asked. The survey instrument is not provided. Nor is any of the underlying data. *Merisant Co.*, 242 F.R.D. at 331-32. Courts have thus excluded this kind of survey evidence as “unreliable” and of little “probative value” under Rule 403. *E.g. Merisant Co.*, 242 F.R.D. at 331-32; *Sugar Ass’n, Inc. v. McNeil-PPC, Inc.*, 2008 WL 4755611, at *3-4 (C.D. Ca. Jan. 7, 2008) (Respondents’ failure to demonstrate that the CSPI Survey was conducted in accordance with methodologically sound survey principles warrants exclusion of the survey.) The Court should do so here as well. Indeed, ALDF’s expert, Dr. Dimofte, acknowledged that he had reviewed this same document and that, based on the document, he could not offer an opinion on whether the survey was properly conducted, whether the data was accurately reported and/or whether the author’s descriptions of and conclusions about the data were reliable. (*See* HF SUMF ¶¶ 147-43.) Further, Dr. Dimofte admitted that he could not evaluate these matters without having access to the questionnaire, instruments, data or underlying methodology of the survey (Id.) ALDF has plainly failed to establish that the Consumer Reports Survey provides any reliable information regarding

ALDF's CPPA claim, and it would be highly prejudicial for the Court to admit and/or rely on this survey.

Hormel Foods also objects to ALDF's characterization of the quoted text in the Consumer Reports Survey. The document suggests that participants were asked, in the abstract, what they thought a "no nitrates" label meant. Hormel Foods *Natural Choice*® Labels. (ALDF App. 2618.) The document does not say or suggest that participants were confused about "nitrates" claims on USDA-approved labels and/or in advertisements for meat and poultry products. Further, the study does not indicate whether participants explained what they thought "nitrates" were and/or whether, for example, the survey used leading questions that prompted participants to make distinctions about chemical versus natural sources of nitrates that they would not otherwise have identified or even thought about. Hormel Foods denies that the referenced document says or suggests that consumers were confused by the handful of *Natural Choice*® advertisements that referred to the products as having "no added nitrates or nitrites" and/or that any such alleged confusion was material to reasonable consumers in the District of Columbia. As the *Merisant Co.* court put it "This nexus is too attenuated to be relevant to this action." *Merisant Co.*, 242 F.R.D. at 331-32. Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

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

Response: Admit.

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

Response: Denied as stated. ALDF submitted a “Declaration” from Dr. Dimofte that contradicts and recharacterizes prior statements made in his report and during his deposition. Paragraph 133 is one such example. Dr. Dimofte stated in his report that he was retained to “provide an expert opinion regarding the extent to which the alleged misleading advertising campaign pursued by [Hormel Foods] for its ‘Natural Choice’ branded products would impact the purchase behavior *of its target consumer population.*” (HF SUMF ¶ 116 (quoting Demoret Decl. Ex. EEEE, Dimofte Report at 5).) Dr. Dimofte now appears to be changing the scope of his analysis to include “consumers” generally. Further, Dr. Dimofte testified that he *only* studied the term “natural,” that he was offering no opinion on any other advertising term, and that he in fact “is not aware of what other terms are” used in

Natural Choice® advertisements. Paragraph 133 thus plainly contradicts Dr. Dimofte’s prior statements and sworn testimony regarding the scope of his “analysis.”

D.C. courts “will disregard an offsetting affidavit that is submitted to withstand a motion for summary judgment when the affidavit contradicts prior deposition testimony without adequate explanation and creates only a sham issue of material fact.” *Destefano v. Children’s Nat’l Med. Ctr.*, 121 A.3d 59, 70 (D.C. 2015); *see also Hinch v. Lucy Webb Hayes Nat’l Training Sch.*, 814 A.2d 926, 930 (D.C. 2003).

Dr. Dimofte was asked during his deposition “is there anything you feel you need to add to [your] report? Dr. Dimofte responded “I don’t believe so. I just want to have a discussion about this report.” Dr. Dimofte was further asked “none of your opinions expressed in this report have changed since you’ve issued it correct?” Dr. Dimofte responded “No. Correct.” (Demoret Decl. Ex. FFFF, Dimofte Dep. 12:4-17.) Dr. Dimofte’s new Declaration provides no explanation regarding why he is submitting new, recharacterized and contradictory statements via his Declaration. The Court should disregard Dr. Dimofte’s newly submitted Declaration and rely upon what Dr. Dimofte said in his report and deposition. But at a minimum, the Court should disregard new or contradictory statements offered in the Declaration, including the statement referenced in paragraph 133.

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

Response: Hormel Foods fully incorporates its objections and response to paragraph 133. Hormel Foods admits that Dr. Dimofte’s declaration states that his literature review used research methodology employed in scholarly marketing science. This purported “fact” is disputed. Dr. Dimofte’s literature review was not formal, transparent or reproducible. Further, he did not review the data, methodology, questionnaires or survey methodologies for any of the consumer surveys he purportedly relied upon, and there is no evidence that his “word cloud” analysis was reliable and/or a generally accepted research methodology “employed in scholarly marketing science. (Demoret Decl. Ex. FFFF, Dimofte Dep. 71:15-72:30; Demoret Decl. Ex. IIII, Dhar Report ¶¶ 17, 18, 65.) Dr. Dimofte’s research methodologies fall far short of the “high standard [that] must be met for an expert’s testimony based primarily or fully on literature review to be properly admitted in court under *Daubert*. *Burton v. CSX Transp., Inc.*, 269 S.W.3d 1, 7 (Ky. 2008); *see also General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997); *Doe v. Ortho-Clinical Diagnostics, Inc.*, 289 F.3d 600, 606-07 (9th Cir. 2002); *Lipitor Mktg., Sales Practices & Prod. Liab. Lit.*, 174 F. Supp. 3d 911, 929 (D.S.C. 2016); *Burst v. Shell Oil Co.*, 2015 WL 3755953, at *16 (E.D. La. June 16, 2015.) Dr. Dimofte’s opinions should be excluded because he did not use a reliable methodology to perform his literature review. But, at a minimum, there is a fact dispute regarding whether his methodology was reliable. Hormel Foods therefore denies paragraph 134.

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

Response: Hormel Foods fully incorporates its objections and response to paragraphs 133 and 134. Hormel Foods admits that Dr. Dimofte’s declaration states that, from his literature review, he concluded the academic research “consistently finds that consumers seek out products labeled ‘natural’ because consumers innately assign positive attributes to brands that make natural claims.” Hormel Foods disputes, however, that the literature review was methodologically valid or reliable, that the information Dr. Dimofte relied up can be properly and reliably used to reach any valid conclusions about whether *Natural Choice*® advertisements are false and/or have a tendency to mislead consumers regarding material facts, that Dr. Dimofte used scientifically valid methods to reach his conclusions and/or that the information in the sources that he relied upon actually support any of his specific conclusions about reasonable consumers’ perceptions of *Natural Choice*® advertising. (See Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80) Dr. Dimofte’s literature review was not formal, transparent or reproducible. Further, he did not review the data, methodology, questionnaires or survey methodologies for any of the consumer surveys he purportedly relied upon, and there is no evidence that his “word cloud” analysis was reliable and/or a generally accepted research methodology “employed in scholarly marketing science.” (Demoret Decl. Ex. FFFF,

Dimofte Dep. 71:15-72:30; Demoret Decl. Ex. III, Dhar Report ¶¶ 17, 18, 65.) Hormel Foods' expert, Dr. Ravi Dhar, opined that Dr. Dimofte's methodologies, literature, word cloud and the conclusions he reached from them were critically flawed and wholly unreliable. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) ALDF's Motion for Summary Judgment does not dispute or even mention Dr. Dhar's opinions on these issues. Dr. Dimofte's research methodologies and conclusions fall far short of the "high standard [that] must be met for an expert's testimony based primarily or fully on literature review to be properly admitted in court under *Daubert. Burton v. CSX Transp., Inc.*, 269 S.W.3d 1, 7 (Ky. 2008); see also *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997); *Doe v. Ortho-Clinical Diagnostics, Inc.*, 289 F.3d 600, 606-07 (9th Cir. 2002); *Lipitor Mktg., Sales Practices & Prod. Liab. Lit.*, 174 F. Supp. 3d 911, 929 (D.S.C. 2016); *Burst v. Shell Oil Co.*, 2015 WL 3755953, at *16 (E.D. La. June 16, 2015.) Dr. Dimofte's opinions should be excluded because he did not use a reliable methodology to perform his literature review. But, at a minimum, there is a fact dispute regarding whether his methodologies and/or any conclusions he drew from his literature review are reliable and admissible. Hormel Foods therefore denies paragraph 135.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133 and 135. Subject to and without waiving any objection, Hormel Foods admits that Dr. Dimofte’s Declaration that the “academic research consistently finds that that consumers seek out products *labeled “natural”* because consumers innately assign positive attributes to brands that make natural claims.” Hormel Foods admits that the quoted text appears in paragraph 13 of Dimofte’s new declaration. Hormel Foods denies that the referenced opinion is based upon and/or the product of a reliable methodology or that the conclusion itself is reliable and/or admissible. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

Hormel Foods also denies that Dr. Dimofte’s statements in paragraph 13 of his new Declaration or any of the literature referenced therein support, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The opinion referenced in paragraph 136 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the opinion referenced in paragraph 136 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

137. One reliable academic study examined a representative sample of adults from the United States and Western Europe and concluded “consumers largely define ‘natural’ to mean the absence of negative product features, such as ‘additives, pollution, or human

intervention.” Dimofte Decl. ¶ 14 (quoting Rozin et al. (2012); attached to Dr. Dimofte’s declaration).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135 and 136. Hormel Foods denies that Dr. Dimofte’s Declaration says or establishes that the referenced study is “reliable.” Further, Hormel Foods’ expert, Dr. Dhar, reviewed the referenced study and noted that it did not “address packaged deli meats” and that any conclusions from this study “cannot be reliably extrapolated to how consumers understand or perceive *Natural Choice*® advertisements.” (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 68-69.) Subject to and without waiving any objection, Hormel Foods admits the statement in paragraph 137 appears in paragraph 14 of Dr. Dimofte’s new Declaration. Hormel Foods denies that the referenced opinion is based upon and/or the product of a reliable methodology or that the conclusion itself is reliable and/or admissible. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) Hormel Foods also denies that Dr. Dimofte’s statements in paragraph 14 of his new Declaration support, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The opinion referenced in paragraph 137 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the opinion referenced in paragraph 137 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Dimofte Decl. ¶ 14.

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135 and 136. Hormel Foods denies that Dr. Dimofte’s Declaration says or establishes that the referenced study is “reliable.” Further, Hormel Foods’ expert, Dr. Dhar, reviewed the referenced study and noted that it did not address meat products at all and that any conclusions from this study “cannot be reliably extrapolated to how consumers understand or perceive *Natural Choice*® advertisements.” (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 68-69.) Subject to and without waiving any objection, Hormel Foods admits the statement in paragraph 138 appears in paragraph 14 of Dr. Dimofte’s new Declaration. Hormel Foods denies that the referenced opinion is based upon and/or the product of a reliable methodology or that the conclusion itself is reliable and/or admissible. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) Hormel Foods also denies that Dr. Dimofte’s statements in paragraph 14 of his new Declaration support, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The opinion referenced in paragraph 138 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to

do so. But, at a minimum, the opinion referenced in paragraph 138 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135 and 136. Hormel Foods denies that Dr. Dimofte’s Declaration says or establishes that the referenced study is “reliable.” Further, Hormel Foods’ expert, Dr. Dhar, reviewed the referenced study and noted that it did not address meat products at all and that any conclusions from this study “cannot be reliably extrapolated to how consumers understand or perceive *Natural Choice*® advertisements.” (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 68-69.) Subject to and without waiving any objection, Hormel Foods admits the statement in paragraph 139 appears in paragraph 14 of Dr. Dimofte’s new Declaration. Hormel Foods denies that the referenced opinion is based upon and/or the product of a reliable methodology or that the conclusion itself is reliable and/or admissible. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) Hormel Foods also denies that Dr. Dimofte’s statements in paragraph 14 of his new Declaration support, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

The opinion referenced in paragraph 139 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the opinion referenced in paragraph 139 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Response: Denied. ALDF mischaracterizes the referenced paragraphs of Dr.

Dimofte's new Declaration, which state "[A]s the literature explains, consumers' reaction to natural claims is entirely logical. Consumers generally process advertising claims using schematic processing. In other words, advertising claims activate related knowledge." (Dimofte Dec. ¶¶ 22-23.) Hormel Foods further denies that the statements in paragraphs 22-23 of Dr. Dimofte's new Declaration are based upon and/or the product of a reliable methodology or that the conclusions themselves are reliable and/or admissible. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) Indeed, Dr. Dhar reviewed the articles referenced in paragraphs 22-23 and noted that neither address food products at all and that any conclusions from these articles "cannot be reliably extrapolated to how consumers understand or perceive *Natural Choice*® advertisements." (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 68-69.) Foods also denies that Dr. Dimofte's statements

in paragraphs 22-23 of his new Declaration support, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The opinion referenced in paragraph 140 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the opinion referenced in paragraph 140 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135 and 136. Hormel Foods admits that the statement referenced in paragraph 141 is made in paragraph 29 of Dr. Dimofte’s new Declaration. Hormel Foods denies that the referenced opinion is based upon and/or the product of a reliable methodology or that the conclusion itself is reliable and/or admissible. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) Dr. Dimofte’s new Declaration cites no support whatsoever for the referenced opinion. (Dimofte Decl. ¶ 29.) Further, the only citation provided in paragraph 29 (which is linked to a different statement in paragraph 29) does not address or study advertising of “natural’ and/or “non-natural” products (much less meat products or deli meat). Dr. Dhar

noted this and opined that this study cannot be reliably extrapolated to how consumers understand or perceive *Natural Choice*® advertisements.”

(Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 68-69.) Hormel Foods also denies that Dr. Dimofte’s statements in paragraph 29 of his new Declaration support, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts.

(Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The opinion referenced in paragraph 141 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the opinion referenced in paragraph 141 is disputed.

(Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Dimofte Decl. ¶ 29.

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135 and 136. Hormel Foods admits that the statement referenced in paragraph 142 is made in paragraph 29 of Dr. Dimofte’s new Declaration. Hormel Foods denies that the referenced opinion is based upon and/or the product of a reliable methodology or that the conclusion itself is reliable and/or admissible. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The only citation provided in paragraph 29 does not address or study advertising of “natural’ and/or “non-natural” products (much less meat

products or deli meat). Dr. Dhar noted this and opined that this study cannot be reliably extrapolated to how consumers understand or perceive *Natural Choice*® advertisements.” (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 68-69.) Hormel Foods also denies that Dr. Dimofte’s statements in paragraph 29 of his new Declaration support, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The opinion referenced in paragraph 142 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the opinion referenced in paragraph 142 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135 and 136. Hormel Foods admits that the statement referenced in paragraph 143 is made in paragraph 29 of Dr. Dimofte’s new Declaration. Hormel Foods denies that the referenced opinion is based upon and/or the product of a reliable methodology or that the conclusion itself is reliable and/or admissible. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The only citation provided in support of this opinion is an

article that does not purport to study consumer perception of “natural” meat products. Dr. Dhar noted this and opined that this study cannot be reliably extrapolated to how consumers understand or perceive *Natural Choice*® advertisements.” (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 68-69.) Hormel Foods also denies that Dr. Dimofte’s statements in paragraph 26 of his new Declaration support, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The opinion referenced in paragraph 143 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the opinion referenced in paragraph 143 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135 and 136. Hormel Foods admits that the quoted language referenced in paragraph 144 is made in paragraph 29 of Dr. Dimofte’s new Declaration. Hormel Foods denies that the referenced opinion is based upon and/or the product of a reliable methodology or that the conclusion itself is reliable and/or admissible. (Demoret Decl. Ex.

EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The only citation provided in paragraph 29 does not address or study advertising of “natural’ and/or “non-natural” products (much less meat products or deli meat). Dr. Dhar noted this and opined that this study cannot be reliably extrapolated to how consumers understand or perceive *Natural Choice*® advertisements.”

(Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 68-69.) Hormel Foods also denies that Dr. Dimofte’s statements in paragraph 29 of his new Declaration support, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts.

(Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The opinion referenced in paragraph 144 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the opinion referenced in paragraph 144 is disputed.

(Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135 and 136. ALDF also mischaracterizes paragraph 30 of Dr. Dimofte’s Declaration, which states:

“Once advertising primes a consumer to create a ‘natural’ halo around a product, subsequent conflicting information—such as a disclaimer on a

package—often does not change the consumer’s view of the product. Advertising sets up a consumer’s product expectations, which lower consumer’s scrutiny of product packaging at retail.” (Dimofte Decl. ¶ 30.)

Hormel Foods denies that the opinions stated in paragraph 30 of Dr. Dimofte’s Declaration are based upon and/or the product of a reliable methodology or that the conclusion itself is reliable and/or admissible. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) Dr. Dimofte cites to three sources in support of the opinions in paragraph 30. None of these sources discuss or even mention the concept of a “natural halo” or even discuss “natural” products at all. The Foxman article referenced in paragraph 30 of the Declaration researched disclaimers used in an advertisement for cameras. The Green article referenced in paragraph 30 of the Declaration researched disclaimers used in an ad for an orthodontist. And the Hoch article researched use of disclaimers for sportshirts and paper towels. Dr. Dimofte’s suggestion that these articles somehow establish that advertising a meat product as “natural” creates a “natural halo” and/or that consumers will not pay attention to or read disclaimers in those advertisements and/or the product label at the point of sale completely unfounded. Dr. Dhar noted this and opined that these studies cannot be reliably extrapolated to how consumers understand or perceive *Natural Choice*® advertisements.” (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 68-69.) Hormel Foods also denies that Dr. Dimofte’s statements in paragraph 30 of his new Declaration support, much less establish, that the *Natural*

Choice® advertisements are false or mislead reasonable consumers regarding any material facts. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The opinions referenced (incorrectly in paragraph 145 and/or in paragraph 30 of Dimofte’s new Declaration are unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the statement referenced in paragraph 145 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135, 136 and 145. Hormel Foods denies that Dr. Dimofte’s Declaration says or establishes that the referenced study is “reliable.” Further, Hormel Foods’ expert, Dr. Dhar, reviewed the referenced study and noted that it did not address food products at all and that any conclusions from this study “cannot be reliably extrapolated to how consumers understand or perceive *Natural Choice*® advertisements.” (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 68-69.) Rather, as explained in Hormel Foods’ response to paragraph 145, this study evaluated consumer perception of a disclaimer related to cameras. (Id.) The suggestion that a study about cameras somehow establishes whether reasonable consumers review or understand disclaimers in Hormel Foods’ *Natural Choice*® advertisements

(or *Natural Choice*®) is completely unfounded. Hormel Foods admits that paragraph 31 of Dr. Dimofte’s Declaration contains the quoted language. Hormel Foods denies that Dr. Dimofte’s statements in paragraph 31 of his new Declaration support, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The opinion referenced in paragraph 146 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the statement referenced in paragraph 146 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135 and 146. Hormel Foods denies that Dr. Dimofte’s Declaration says or establishes that the referenced study is “reliable.” Indeed, the referenced study does not discuss or evaluate consumers views of “natural” products at all, much less “natural” deli meat products. Further, Hormel Foods’ expert, Dr. Dhar, noted this and concluded that the referenced study “cannot be reliably extrapolated to how consumers understand or perceive *Natural Choice*® advertisements.” (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 68-69.) Hormel Foods admits that paragraph

31 of Dr. Dimofte’s Declaration contains the quoted language. Hormel Foods denies that Dr. Dimofte’s statements in paragraph 31 of his new Declaration support, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The opinion referenced in paragraph 147 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the statement referenced in paragraph 148 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135 and 136. Hormel Foods admits that the quoted language referenced in paragraph 148 appears in paragraph 32 of Dr. Dimofte’s new Declaration. Hormel Foods denies that the referenced opinion is based upon and/or the product of a reliable methodology or that the conclusion itself is reliable and/or admissible. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) Dr. Dimofte cites to one article in support of paragraph 32 of his New Declaration. This article does not discuss or mention consumers perception of “natural” meat products. Indeed, the only discussion the article provides regarding “natural” claims is identifying another s evaluating consumer perception of “vanilla ice cream

labelled “natural.” (See Fernqvist & Ekelund (2014) at 13; attached to Dr. Dimofte’s declaration). Hormel Foods’ expert, Dr. Dhar, reviewed the referenced study and concluded that it “cannot be reliably extrapolated to how consumers understand or perceive *Natural Choice*® advertisements.” (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 68-69.) Hormel Foods denies that Dr. Dimofte’s statements in paragraph 32 of his new Declaration support, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The opinion referenced in paragraph 148 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the statement referenced in paragraph 148 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135, 136 and 148. Hormel Foods admits that the quoted language referenced in paragraph 148 appears in paragraph 32 of Dr. Dimofte’s new Declaration. Hormel Foods denies that the referenced opinion is based upon and/or the product of a reliable methodology or that the conclusion itself is reliable and/or admissible. (Demoret Decl. Ex.

EEEE, Dhar Report at ¶¶ 17-18, 67-80.) Dr. Dimofte provides no citations in support of this statement. Indeed, as explained in Hormel Foods' response to paragraph 148, Dr. Dimofte only cites one article in paragraph 32 of his declaration (in support of a different concept), and this article does not say or conclude that "consumer expectations are particularly hard to change where the advertising implies values that the consumer views as superior and trustworthy" or the like. (*See generally* Fernqvist & Ekelund (2014) at 13; attached to Dr. Dimofte's declaration). As explained above, Hormel Foods' expert, Dr. Dhar, reviewed the referenced study and concluded that it "cannot be reliably extrapolated to how consumers understand or perceive *Natural Choice*® advertisements." (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 68-69.) Hormel Foods denies that Dr. Dimofte's statements in paragraph 32 of his new Declaration support, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The opinion referenced in paragraph 149 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the statement referenced in paragraph 149 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135, 136, 148 and 149. Hormel Foods admits that the quoted language referenced in paragraph 150 appears in paragraph 32 of Dr. Dimofte’s new Declaration. Hormel Foods denies that the referenced opinion is based upon and/or the product of a reliable methodology or that the conclusion itself is reliable and/or admissible. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The quoted article states that “studies focusing on ‘production method’ show that consumers tend to trust traditional and natural production methods more than methods associated with modernity and industry.” (Fernqvist & Ekelund (2014) at 17; attached to Dr. Dimofte’s declaration.) The article does not say or suggest that calling a meat product (or any other kind of food product) “natural” signals that the product was made through any particular production method. Instead, the article suggests that referencing “specific geographic origins” and calling the product “traditional” are signals that may generate expectations about production methods. But notably, the article cites no support for these statements. Nor does it identify or suggest what consumers think “traditional and natural production methods” are generally, or in the context of production of meat products or deli meat products. (Id.) As explained above, Hormel Foods’ expert, Dr. Dhar, reviewed the same study cited in paragraph 32 of Dimofte’s Declaration concluded that it “cannot be reliably extrapolated to how consumers understand or perceive *Natural Choice*® advertisements.” (Demoret Decl. Ex. EEEE, Dhar Report

at ¶¶ 68-69.) Hormel Foods denies that Dr. Dimofte’s statements in paragraph 32 of his new Declaration support, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The opinion referenced in paragraph 150 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the statement referenced in paragraph 149 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 133, 135, 136, 148, 149 and 150. Hormel Foods objects to ALDF’s characterization of the referenced paragraphs of Dr. Dimofte’s new Declaration. Hormel Foods objects to ALDF’s use of the phrases “take advantage” and “these features,” as it is unclear what ALDF’s means by “take advantage” and “these features.” Rather, Paragraph 151 appears to be a conclusory characterization of two Hormel Foods documents, and no information is provided explaining what “features” Hormel Foods is supposedly taking advantage of and/or what statements in the referenced documents that Dr. Dimofte is relying on to reach this conclusion. Dr.

Dimofte's conclusory characterization of documents is not a proper subject for expert testimony and should be disregarded. Subject to and without waiving any objection, Hormel Foods denies that the "Make the Natural Choice" campaign is designed to "take advantage" of whatever unspecified "features" that Dr. Dimofte is referring to. Further, Hormel Foods' notes that Dr. Dhar reviewed the internal Hormel Foods documents that Dr. Dimofte relied upon and concluded that they do not support Dr. Dhar's opinions. (Demoret Decl. Ex. EEEE, Dhar Report ¶¶ 18, 63, 70 and 75-76.) Hormel Foods denies that the statement in paragraph 151 supports, much less establishes, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) The opinion referenced in paragraph 151 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the statement referenced in paragraph 151 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 133, 135, 136, 148, 149, 150 and 151. Hormel Foods admits that

paragraph 35 of Dr. Dimofte’s new Declaration alleges that Hormel Foods “has worked to differentiate its Natural Choice products using the natural food positioning.” ALDF mischaracterizes the remainder of paragraph 35 of the new Declaration, which alleges that “[t]he products’ name, slogan, and advertisements consistently prime Hormel’s target consumers with the ‘natural’ construct, thus advertising their broad scheme of natural product benefits.” This opinion contradicts Dr. Dimofte’s prior testimony.

Specifically, Dr. Dimofte testified as follows:

Q. In paragraph 71 you say that the “Make the Natural Choice” campaign consistently primes its target consumers with the natural construct. Do you see that?

A. Yes.

Q. How does the “Make the Natural Choice” campaign consistently prime consumers with the natural construct?

A. Well, in two immediate and obvious ways is in the name of the brand itself, Natural Choice, and the tagline for the entire campaign is “Make the Natural Choice.”

Q. Did you do any analysis to study how consumers perceive the brand name Natural Choice?

A. I did not do any research on the – that involved data collection.

Q. On what?

A. Data collection.

Q. Whether it involved data collection or not, did you do any analysis on how consumers understand the specific term – the specific brand name Natural Choice?

A. *There's no other way to understand that except with consumer research.*

Q. A similar question. Did you do anything to understand how consumers understand the tagline “Make the Natural Choice”?

A. *The answer is the same*

(Demoret Decl. Ex. FFFF, Dimofte Dep. 126:17-127:19.)

In other words, Dr. Dimofte testified that he could not understand how consumers understand the brand name *Natural Choice*® or the tagline “Make the Natural Choice” without doing consumer research. And he did not do any such consumer research. (Id.) Thus, by his own admission, Dr. Dimofte has no basis to opine that the brand name, tagline, or the advertisements (as he did not conduct any consumer research on them either) somehow “prime” consumers to view *Natural Choice*® products in any particular way. (Id.) Thus, Dr. Dimofte has no basis for the opinions stated in paragraphs 35 or 36 of his new Declaration. Dr. Dhar reached this

exact conclusion, noting that neither the literature nor the Hormel Foods documents that Dr. Dimofte said, suggested, or supported Dr. Dimofte’s opinion that Hormel Foods *Natural Choice*® advertisements primed consumers to perceive some vaguely defined “halo” around the *Natural Choice*® products. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) Hormel Foods denies that the statements in paragraph 152 supports, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts. The opinion referenced in paragraph 152 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the statement referenced in paragraph 152 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135, 136, 148, 149, 150, 151 and 152. As explained in paragraph 152, Dr. Dimofte admitted that he did not evaluate consumer perception of the brand, tagline, or any specific *Natural Choice*® advertisements and that “*there’s no other way to understand [consumer perception of these things] except with consumer research.*” (Demoret Decl. Ex. FFFF, Dimofte Dep. 126:17-127:1; Demoret Decl. Ex. EEE,

Dimofte Report at ¶ 18 and Appendix C.) Thus, by his own admission, Dr. Dimofte has no basis to opine that the brand name, tagline, or the advertisements somehow “prime” consumers to view *Natural Choice*® products in any particular way. (Id.) Dr. Dhar reached this exact conclusion, noting that neither the literature nor the Hormel Foods documents that Dr. Dimofte said, suggested, or supported Dr. Dimofte’s opinion that Hormel Foods *Natural Choice*® advertisements primed consumers to perceive some vaguely defined “halo” around the *Natural Choice*® products. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) Hormel Foods denies that the statements in paragraph 153 supports, much less establish, that the *Natural Choice*® advertisements are false or mislead reasonable consumers regarding any material facts. The opinion referenced in paragraph 153 is unreliable, inadmissible and should be excluded, and Hormel Foods has separately moved the Court to do so. But, at a minimum, the statement referenced in paragraph 153 is disputed. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135, 136, 148, 149, 150, 151, 152 and 153. Hormel Foods admits that the quoted language in paragraph 154 appears in paragraph 37

of Dr. Dimofte's new Declaration. Hormel Foods notes that Dr. Dimofte does not specify what "negative" claims he is talking about. Nor could he.

During his deposition, Dr. Dimofte testified as follows:

Q. Is your opinion limited to the term and the variations of the term "natural."? So within that I'd include natural, 100 percent natural, all natural, those various formulations of "natural."

A. That is the focus of this report.

Q. Your opinion is limited to Hormel's use of the term "natural"; correct?

A. That's a correct way to look at things.

Q. You are not offering an opinion on how consumers perceive other terms used in Hormel's marketing?

A. *I'm not aware of what other terms are there, I guess, but the focus is specifically "natural."*

Q. You're not offering an opinion on consumer perception or consumer purchase behavior related to terms other than "natural"; is that correct?

A. Or "natural related," like you described.

Q. And by “natural related” you mean like “100 percent natural”?

A. “All natural,” similar concepts, yes.

(Demoret Decl Ex. FFFF, Dimofte Dep. 51:25-52:4, 52:17-25, 53:5-11.)

Given that Dr. Dimofte does not know what “negative” claims appears in Hormel Foods’ *Natural Choice*® advertising and had no opinion about consumer perception of any of these terms, it is clear that Dr. Dimofte cannot draw any reliable connections between such “negative” claims and how consumers perceive the *Natural Choice*® advertisements (particularly since he did not study consumer perception of the *Natural Choice*® advertisements either.) Subject to and without waiving any objections, Hormel Foods admits that the *Natural Choice*® advertisements speak for themselves.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 133, 135, 136, 148, 149, 150, 151, 152, 153 and 154. ALDF mischaracterizes paragraph 37 of Dr. Dimofte’s new Declaration. Hormel Foods admits quoted statement appears in paragraph 37 of the Declaration. However, Dr. Dimofte does not state that he reached this conclusion “based on his literature review and work.” He simply makes the statement with no reference to any supporting authority. But regardless, Dr. Dimofte testified

that he was not aware of what terms are used in *Natural Choice*® advertisements besides “natural” and variations of the term (see quoted testimony in Hormel Foods’ response to paragraph 155 *supra*.) Dr. Dimofte thus can offer no reliable opinion regarding what other terms are used in *Natural Choice*® advertisements and/or how the use of those terms and/or any other features of the advertisements do or do not influence consumers’ understanding of the advertisements. Hormel Foods denies that Dr. Dimofte’s Declaration, Report or testimony establish or even identify what specific “characteristics” that consumers associate with *Natural Choice*® products and/or how consumers actually perceive or interpret any of the *Natural Choice*® advertisements. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) But a minimum, the allegations in paragraph 155 are disputed. (Id.).

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 133, 135, 136, 148, 149, 150, 151, 152, 153, 154 and 155. Hormel Foods admits that the quoted language appears in paragraph 37 of Dr. Dimofte’s new Declaration. Hormel Foods denies that paragraph accurately characterizes Dr. Dimofte’s statements in paragraph 37 of the Declaration. Dr. Dimofte did not state that Hormel Foods’ claims *cause*

consumers to “connect the product with their broad schematic associations with ‘natural.’” Dr. Dimofte instead said that these (unidentified) negative claims “*prime*” this kind of response. Stated otherwise, Dr. Dimofte is, at most, suggesting that using “negative” claims might have this impact, but he does not opine on whether other features in the advertisements (such as, for example, disclaimer language) might influence the impact of this so-called priming. But regardless, Dr. Dimofte admitted that he did not know what particular claims besides “natural” are made in any particular *Natural Choice*® advertisements, and he thus can offer no reliable opinions regarding what other terms are used in *Natural Choice*® advertisements and/or how the use of those terms and/or any other features of the advertisements do or do not influence consumers’ understanding of the advertisements. Hormel Foods disputes that Dr. Dimofte’s Declaration, Report or testimony establish or even identify what specific “characteristics” that consumers associate with *Natural Choice*® products and/or how consumers actually perceive or interpret any of the *Natural Choice*® advertisements. (Demoret Decl. Ex. EEEE, Dhar Report at ¶¶ 17-18, 67-80.) But a minimum, the allegations in paragraph 156 are disputed. (Id.).

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

Response: Admit.

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

Response: Admit.

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

Response: Admit.

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

Response: Denied as stated. Hormel Foods admits that Dr. Maronick's report, which was served on September 26, 2018, states that he "design[ed] and implement[ed] a survey of consumers residing in the Washington, D.C. metropolitan area, including adjacent countries in Maryland and Virginia, who have purchased or considered purchasing Hormel's Natural Choice deli

meats in the last two months.” (Demoret Decl. Ex. SSS, Maronick Report, at 3.) Dr. Maronick’s report further stated that he intended the survey to “determine [participants’] perceptions of claims or slogans such as “no preservatives,” “100% Natural,” and “Make the Natural Choice,” with and without disclaimers.” (Id.) Paragraph 6 of Dr. Maronick’s new Declaration defines the scope and purpose of his research in the same way that his Report does. Paragraph 106 thus potentially mischaracterizes the scope and purpose of Dr. Maronick’s research, particularly given the vague use of the phrase “claims or slogans associated with Hormel Natural Choice.”

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

Response: Hormel Foods denies paragraph 161 as characterized. ALDF’s of the term “advertisements” is vague, particularly prior statements that Dr. Maronick made in his report and during his deposition. Dr. Maronick claims that he reviewed only thirteen *Natural Choice*® print advertisements and three video advertisements. (Demoret Decl. Ex. TTT, Maronick Dep. 40:11-21; Demoret Decl. Ex. XXX, Maronick Dep. Ex. 4.) Further, Dr. Maronick only tested two of those print advertisements and one of those video advertisements with consumers. (Demoret Decl. Ex. YYY, Maronick Dep. Ex. 5.) Dr. Maronick did not review or study any aspect of Hormel Foods’ website with consumers. (Demoret Decl. Ex. TTT, Maronick Dep.

38:11-16.) Dr. Maronick testified that he did not have a basis to opine on how consumers perceive any *Natural Choice*® advertisements other than the ones he tested with consumers. (Demoret Decl. Ex. TTT, Maronick Dep. 136:12-19.) Thus, to the extent Dr. Maronick is now claiming that all of the advertisements from the “Make the Natural Choice” campaign (or any that he did not specifically test with consumers) “communicate that the products are “natural” and free of preservatives, this conclusion set forth in Dr. Maronick’s new Declaration contradicts his prior opinions and testimony and should be excluded. Specifically, D.C. courts “will disregard an offsetting affidavit that is submitted to withstand a motion for summary judgment when the affidavit contradicts prior deposition testimony without adequate explanation and creates only a sham issue of material fact.” *Destefano v. Children’s Nat’l Med. Ctr.*, 121 A.3d 59, 70 (D.C. 2015); *see also Hinch v. Lucy Webb Hayes Nat’l Training Sch.*, 814 A.2d 926, 930 (D.C. 2003).

Subject to and without waiving any objection, Hormel Foods does not generally dispute that Dr. Maronick concluded that the *Natural Choice*® advertisements that he tested with survey participants communicated that the product was “natural” and had “no preservatives.”

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

Maronick Decl. ¶ 17.

Response: Hormel Foods admits that the information provided in paragraph 162 accurately describes certain statements made in paragraph 17 of Dr. Maronick’s new Declaration. But paragraph 17 of Dr. Maronick’s declaration conflicts with information provided in Dr. Maronick’s report. Specifically, paragraph 17 of the Declaration states that Table 8 of Dr. Maronick’s report summarizes consumers verbatim responses to the survey question about what the “Preserve Your Right to No Preservatives” ad said or suggested about the product. But Dr. Maronick’s Report states that this information is actually summarized in Table 2 of the Report. According to Table 2 of Dr. Maronick’s Report, participants verbatim responses to this question were as follows:

- All Natural; 100% Natural – 33.0%
- No Preservatives – 38.0%
- No added preservatives – 11.0%
- No specific (listed) chemicals – 2%
- Natural ingredients – 13%
- Natural flavors – 5%
- Healthy; Healthier – 12%
- A Natural Choice – 6%

- Look natural – 1%
- Miscellaneous – 10%

Hormel Foods denies that paragraph 162 accurately and/or fully characterizes consumers’ verbatim interpretations of the referenced advertisement. Hormel Foods denies that consumers’ verbatim interpretation of the referenced advertisement support ALDF’s claim that Hormel Foods’ *Natural Choice*® advertisements violate the CPPA. (Demoret Decl. Ex. EEEE, Dhar Report ¶¶ 31-40.)

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

Response: Hormel Food admits that paragraph 163 accurately describes paragraph 18 of Dr. Maronick’s new Declaration. Hormel Foods admits that paragraph 163 accurately describes certain information provided in Table 8 of Dr. Maronick’s report, which summarizes consumers verbatim responses to the survey question about what the “100% Natural Ham” ad (with the disclaimer that appeared in the publicly ran version of the ad) said or suggested about the product. Hormel Foods denies that paragraph 163 fully describes consumers’ verbatim responses to this question, which were as follows:

- All natural; 100% natural – 59.2%

- No artificial ingredients – 16.3%
- No preservatives – 2%
- Minimally processed – 5.1%
- Organic – 2%
- Healthy/Good for you – 14%
- Taste mention – 29.6%
- Right/Natural choice – 4.1%
- Miscellaneous – 3.1%

Hormel Foods denies that consumers’ verbatim interpretation of the referenced advertisement support ALDF’s claim that Hormel Foods’ Natural Choice® advertisements violate the CPPA. (Demoret Decl. Ex. EEEE, Dhar Report ¶¶ 31-40.)

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

Response: Hormel Food admits that paragraph 164 accurately describes paragraph 18 of Dr. Maronick’s new Declaration. Hormel Foods admits that paragraph 164 accurately describes certain information provided in Table 8 of Dr.

Maronick’s report, which summarizes consumers’ verbatim responses to the survey question about what the “100% Natural Ham” ad (with the disclaimer that appeared in the publicly ran version of the ad) said or suggested about the product. Hormel Foods denies that paragraph 164 fully describes consumers’ verbatim responses to this question, which were as follows:

- All natural; 100% natural – 64.3%
- No artificial ingredients – 11.2%
- No preservatives – 3.1%
- Organic – 2%
- Healthy/Good for you – 10.2%
- Taste mention – 33.7%
- Right/Natural choice – 3.1%
- Quality mention – 3.1%
- Miscellaneous – 4.1%

Hormel Foods denies that consumers’ verbatim interpretation of the referenced advertisement support ALDF’s claim that Hormel Foods’ Natural

Choice® advertisements violate the CPPA. (Demoret Decl. Ex. EEEE, Dhar Report ¶¶ 31-40.)

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

Response: Denied. Dr. Maronick's survey, and the conclusions he purportedly drew from it, suffer from numerous fundamental and disqualifying flaws, including that: (1) Dr. Maronick's survey did not utilize a proper control group, so it is impossible to connect the survey results to the allegedly misleading advertisements; (2) Dr. Maronick's closed-ended questions are improper, suggestive and leading, as demonstrated by the answers to his open-ended questions (including those discussed in Hormel Foods' responses to paragraphs 162-64 *supra*), which contradict his opinions; and (3) Dr. Maronick's survey is not representative of the Washington, D.C. area. (*See* Demoret Decl. Ex. Ex. EEEE, Dhar Report ¶¶ 17, 23-61.) Courts consider a variety of factors to determine whether a consumer survey is admissible. (*See* Motion to Exclude Testimony of Dr. Maronick at 13 (citing cases).) Key factors bearing on admissibility and validity of a survey include whether the population was properly chosen and defined; the sample chosen was representative of that population; the data were analyzed in accordance with accepted statistical principles; the questions asked were clear and not leading; and the process was conducted so as to ensure objectivity. Manual Complex Lit § 11.493; *see also Leelanau Wine Cellars,*

Ltd. V. Black & Red, Inc., 452 F. Supp. 2d 772, 778 (W.D. Mich. 2006); *Avocados Plus, Inc. v. Johanns*, 412 F. Supp. 2d 45, 57 (D.D.C. 2006.)

Moreover, if a court concludes that a survey is “flawed to a point that its probative value is substantially outweighed by [its] potential for unfair prejudice and confusion,” the survey and corresponding opinions should be excluded.” *Vista Food Exchange, Inc. v. Vistar Corp.*, 2005 WL 2371958, at *7 (E.D.N.Y. Sept. 27, 2005). The Court should not “respond reflexively to every [survey] criticism by saying it merely ‘goes to the weight’ of the survey rather than to its admissibility. If the flaws in the proposed survey are too great, the court may find that the probative value of the survey is substantially outweighed by the prejudice, waste of time, and confusion[.]” *Simon Prop. Grp. L.P v. my Simon, Inc.*, 104 F. Supp. 2d 1033, 1039 (S.D. Ind. 2000.) Instead, courts can and should scrutinize surveys because “serious flaws in a survey will make any reliance on that survey unreasonable.” *Scott v. Fetzer Co. v. House of Vaccums Inc.*, 381 F.3d 477, 488 (5th Cir. 2004); *United States v. H & R Block, Inc.*, 831 F. Supp. 2d 27, 32 (D.D.C. 2011.) Hormel Foods has moved to exclude Dr. Maronick’s survey in its entirety or, in the alternative, that Dr. Maronick only be allowed to testify about respondents’ answers to his open-ended questions (such as those discussed in paragraphs 262-64 *supra*.) The Court should exclude Dr. Maronick’s opinions and/or give them no weight for purposes of summary judgment.

Hormel Foods admits that paragraph 165 accurately describes statements in paragraphs 9, 20 and 21 of Dr. Dimofte’s new Declaration. But Hormel Foods denies those allegations by Dr. Maronick and generally denies that Maronick’s survey shows that “consumers associate ‘natural’ with other factors they feel are important in their purchase decision.” First, this statement is highly ambiguous, particularly with respect to the words “shows” and “associate.” Second, the survey data referenced in paragraphs 20 and 21 of Dr. Maronick’s Declaration is the product of highly suggestive, improperly leading, and methodologically flawed closed-ended questions. As explained in Hormel Foods’ Motion to Exclude, these flaws are extensive and warrant exclusion of Dr. Maronick’s opinions generally and certainly those set forth in paragraphs 9, 20 and 21 of his Declaration. (*See* Motion to Exclude at 17-19.) In addition, Dr. Dhar opined that Dr. Maronick’s closed-ended questions suffer from significant and fatal methodological flaws that render the data and any conclusions that Dr. Maronick tries to draw from it unreliable and, ultimately, irrelevant. ALDF has not challenged Dr. Dhar’s opinions or testimony, nor did it even mention them in its summary judgment briefing or its statement of facts. Accordingly, at a minimum, Dr. Dhar’s opinions and testimony created a factual dispute regarding whether “Dr. Maronick’s survey...showed that consumers associate “natural” with other factors they feel are important in their purchase decision.” (*See* Demoret Decl. Ex. Ex. EEEE, Dhar Report ¶¶ 17, 23-61.) Accordingly, Hormel Foods denies paragraph 165 in its

entirety and denies that the allegations referenced therein suggest, much less establish, that Hormel Foods *Natural Choice*® advertisements violate the CPPA.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 165. Hormel Foods has moved to exclude Dr. Maronick's survey in its entirety or, in the alternative, that Dr. Maronick only be allowed to testify about respondents' answers to his open-ended questions (such as those discussed in paragraphs 262-64 *supra*.) The Court should exclude Dr. Maronick's opinions and/or give them no weight for purposes of summary judgment. (*See* Motion to Exclude at 17-19.) Hormel Foods also denies paragraph 166 and generally denies that Dr. Maronick's "survey showed consumers associate with "natural" and are important to their purchasing decision include that the animals were raised without antibiotics, raised with access to pasture, and humanely raised." First, this statement is highly ambiguous, particularly with respect to the words "showed" and "associate." Second, the survey data referenced in paragraphs 20 and 21 of Dr. Maronick's Declaration is the product of highly suggestive, improperly leading, and methodologically flawed closed-ended questions. As explained in Hormel Foods' Motion to Exclude, these flaws are extensive and warrant

exclusion of Dr. Maronick's opinions generally and certainly those set forth in paragraphs 20 and 21 of his Declaration. (*See* Motion to Exclude at 17-19.) In addition, Dr. Dhar opined that Dr. Maronick's closed-ended questions suffer from significant and fatal methodological flaws that render the data and any conclusions that Dr. Maronick tries to draw from it unreliable and, ultimately, irrelevant. ALDF has not challenged Dr. Dhar's opinions or testimony, nor did it even mention them in its summary judgment briefing or its statement of facts. Accordingly, at a minimum, Dr. Dhar's opinions and testimony created a factual dispute regarding whether Dr. Maronick's survey showed that consumers associate "natural" with other factors and are important to their purchasing decision including that the animals were raised without antibiotics, raised with access to pasture, and humanely raised." (*See* Demoret Decl. Ex. Ex. EEEE, Dhar Report ¶¶ 17, 23-61.) Accordingly, Hormel Foods denies paragraph 166 in its entirety and denies that the allegations referenced therein suggest, much less establish, that Hormel Foods *Natural Choice*® advertisements violate the CPPA.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 165 and 166. Hormel Foods has moved to exclude Dr. Maronick's survey in its entirety or, in the alternative, requested that Dr.

Maronick only be allowed to testify about respondents' answers to his open-ended questions (such as those discussed in paragraphs 262-64 *supra.*) The Court should exclude Dr. Maronick's opinions and/or give them no weight for purposes of summary judgment. (*See* Motion to Exclude at 17-19.) Hormel Foods also denies paragraph 167 and generally denies that Dr. Maronick's survey "showed that 'no preservatives' reinforces the 'natural' claims in Hormel's Natural Choice branding and advertising." This statement is highly ambiguous, particularly with respect to the words "showed" and "reinforces." In addition, Dr. Maronick did not use a proper control group, so it is impossible to connect the survey results to any of the allegedly misleading advertising statements. (*See* Motion to Exclude at 5, 15-16; Demoret Decl. Ex. EEEE, Dhar Report ¶¶ 45-48.) Dr. Maronick's failure to use a proper control has subjected him to exclusion and criticism in other cases. *See, e.g., Scotts Co., LLC v. Pennington Seed, Inc.*, 2014 WL 12591406, at *8 (E.D. Va. Feb. 26, 2014); *ALS Enters. V. Robinson Outdoor Prods., LLC*, 2016 WL 426066, at *2 (W.D. Mich. May 13, 2016.) The same should be true here. Stated otherwise, the failure to use a control group precludes Dr. Maronick from opining that the "no preservatives" claim reinforces the "natural" claims in any of the three ads that he showed participants, much less in advertisements and/or branding materials that Dr. Dimofte did not show participants. But, at a minimum, Dr. Dhar opined that Dr. Maronick's failure to use a control precludes him from drawing reliable, valid conclusions regarding what impact, if any, particular

advertising claims had on participants' understandings of the ads they were shown. ALDF has not challenged Dr. Dhar's opinions or testimony, nor did it even mention them in its summary judgment briefing or its statement of facts. Accordingly, at a minimum, Dr. Dhar's opinions and testimony create a factual dispute regarding whether Dr. Maronick's survey showed that "no preservatives" reinforces the "natural" claims in Hormel's Natural Choice branding and advertising." (See Demoret Decl. Ex. Ex. EEEE, Dhar Report ¶¶ 17, 23-61.) Accordingly, Hormel Foods denies paragraph 167 in its entirety and denies that the allegations referenced therein suggest, much less establish, that Hormel Foods *Natural Choice*® advertisements violate the CPPA.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 165. Hormel Foods has moved the Court to exclude Dr. Maronick's opinions in their entirety or, in the alternative, to only allow Dr. Maronick to testify about respondents' answers to his open-ended questions (such as those discussed in paragraphs 262-64 *supra*.) The Court should exclude Dr. Maronick's opinions and/or give them no weight for purposes of summary judgment. (See Motion to Exclude at 17-19.) Hormel Foods also denies paragraph 168 and generally denies that "75.8% of people

shown the ‘Preserve Your Right to No Preservatives’ print advertisement perceived the phrase ‘no preservatives’ to suggest that the advertised deli meat product is ‘all natural.’” First, this statement is ambiguous, particularly with respect to the words “perceived” and “suggest.” Second, the survey data referenced in paragraph 26 of Dr. Maronick’s Declaration is the product of highly suggestive, improperly leading, and methodologically flawed closed-ended questions. As explained in Hormel Foods’ Motion to Exclude, these flaws are extensive and warrant exclusion of Dr. Maronick’s opinions generally and certainly those set forth in paragraph 26 of his Declaration. (*See* Motion to Exclude at 17-19.) In addition, Dr. Dhar opined that Dr. Maronick’s closed-ended questions suffer from significant and fatal methodological flaws that render the data and any conclusions that Dr. Maronick tries to draw from them unreliable and, ultimately, irrelevant. ALDF has not challenged Dr. Dhar’s opinions or testimony, nor did it even mention them in its summary judgment briefing or its statement of facts. Accordingly, at a minimum, Dr. Dhar’s opinions and testimony created a factual dispute regarding whether Dr. Maronick’s survey showed that a significant number of respondents shown the “Preserve Your Right to No Preservatives” print advertisement perceived the phrase “no preservatives” to suggest that the advertised deli meat product is “all natural.” (*See* Demoret Decl. Ex. Ex. EEEE, Dhar Report ¶¶ 17, 23-61.) Accordingly, Hormel Foods denies paragraph 168 in its entirety and denies that the

allegations referenced therein suggest, much less establish, that Hormel Foods *Natural Choice*® advertisements violate the CPPA.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 165. Hormel Foods has moved the Court to exclude Dr. Maronick’s opinions in their entirety or, in the alternative, to only allow Dr. Maronick to testify about respondents’ answers to his open-ended questions (such as those discussed in paragraphs 262-64 *supra*.) The Court should exclude Dr. Maronick’s opinions and/or give them no weight for purposes of summary judgment. (*See* Motion to Exclude at 17-19.) Hormel Foods also denies paragraph 169 and generally denies that the survey showed that “53.9% of respondents stated that they understood the ‘no preservatives’ claim to mean the products ‘are nitrate &/or nitrite free.’ First, this statement is ambiguous, particularly with respect to the words “showed” and “understood.” Second, there is no evidence that participants understood what the phrase “nitrate &/or nitrite-free meant as used in the survey, and Dr. Maronick in fact admitted that he did not even know what nitrates and nitrites are. (Demoret Decl. Ex. TTT, Maronick Dep. 48, 54:8-15.) Third, the survey data referenced in paragraph 27 of Dr. Maronick’s Declaration is the product of highly suggestive, improperly leading, and methodologically flawed closed-ended questions. As explained in Hormel Foods’ Motion to

Exclude, these flaws are extensive and warrant exclusion of Dr. Maronick's opinions generally and certainly those set forth in paragraph 26 of his Declaration. (*See* Motion to Exclude at 17-19.) In addition, Dr. Dhar opined that Dr. Maronick's closed-ended questions suffer from significant and fatal methodological flaws that render the data and any conclusions that Dr. Maronick tries to draw from them unreliable and, ultimately, irrelevant. ALDF has not challenged Dr. Dhar's opinions or testimony, nor did it even mention them in its summary judgment briefing or its statement of facts. Fourth, when asked to provide verbatim responses regarding what they understood the "No Preservatives" claim to mean, no participants mentioned nitrates and/or nitrites. (*See* Demoret Decl. Ex. SSS, Maronick Report at 7, Table 3.) Accordingly, at a minimum, Dr. Maronick's own survey and data and Dr. Dhar's opinions and testimony created a factual dispute regarding whether Dr. Maronick's survey showed that a significant number of respondents "understood the 'no preservatives' claim and/or the "Preserve Your Right to No Preservatives ad" to mean the products 'are nitrate &/or nitrite free.'" (*See* Demoret Decl. Ex. Ex. EEEE, Dhar Report ¶¶ 17, 23-61.) Accordingly, Hormel Foods denies paragraph 169 in its entirety and denies that the allegations referenced therein suggest, much less establish, that Hormel Foods *Natural Choice*® advertisements violate the CPPA.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 165. Hormel Foods has moved the Court to exclude Dr. Maronick’s opinions in their entirety or, in the alternative, to only allow Dr. Maronick to testify about respondents’ answers to his open-ended questions (such as those discussed in paragraphs 262-64 *supra*.) The Court should exclude Dr. Maronick’s opinions and/or give them no weight for purposes of summary judgment. (*See* Motion to Exclude at 17-19.) Hormel Foods also denies paragraph 170 and generally denies that the survey showed that “29.7% of respondents shown the “Preserve Your Right to No Preservatives” ad...understood “no preservatives” to mean “No antibiotics were used when raising the animals.”” First, this statement is ambiguous, particularly with respect to the word “understood.” Second, the survey data referenced in paragraph 28 of Dr. Maronick’s Declaration is the product of highly suggestive, improperly leading, and methodologically flawed closed-ended questions. As explained in Hormel Foods’ Motion to Exclude, these flaws are extensive and warrant exclusion of Dr. Maronick’s opinions generally and certainly those set forth in paragraph 26 of his Declaration. (*See* Motion to Exclude at 17-19.) In addition, Dr. Dhar opined that Dr. Maronick’s closed-ended questions suffer from significant and fatal methodological flaws that render the data and any conclusions that Dr. Maronick tries to draw from them unreliable and, ultimately, irrelevant. ALDF has not challenged Dr. Dhar’s opinions or testimony, nor did it even mention them in its summary judgment briefing or its statement of facts.

Third, when asked to provide verbatim responses regarding what they understood the “No Preservatives” claim to mean, no participants mentioned antibiotics. (See Demoret Decl. Ex. SSS, Maronick Report at 7, Table 3.) Accordingly, at a minimum, Dr. Maronick’s own survey and data and Dr. Dhar’s opinions and testimony created a factual dispute regarding whether Dr. Maronick’s survey showed that a significant number of respondents “understood the ‘no preservatives’ claim and/or the “Preserve Your Right to No Preservatives ad” to be saying anything about antibiotic use.” (See Demoret Decl. Ex. Ex. EEEE, Dhar Report ¶¶ 17, 23-61.) Accordingly, Hormel Foods denies paragraph 1170 in its entirety and denies that the allegations referenced therein suggest, much less establish, that Hormel Foods *Natural Choice*® advertisements violate the CPPA.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 165. Hormel Foods has moved the Court to exclude Dr. Maronick’s opinions in their entirety or, in the alternative, to only allow Dr. Maronick to testify about respondents’ answers to his open-ended questions (such as those discussed in paragraphs 262-64 *supra*.) The Court should exclude Dr. Maronick’s opinions and/or give them no weight for purposes of summary judgment. (See Motion to Exclude at 17-19.) Hormel Foods

also denies paragraph 172 and generally denies that the survey showed that “[m]ore than 70% respondents shown the ‘Preserve Your Right to No Preservatives’ ad characterized both of these qualities as important or very important to their purchasing decision.” First, this statement is ambiguous, particularly with respect to the words “characterized,” “important,” “very important” and “purchasing decision.” Second, the survey data referenced in paragraph 298 of Dr. Maronick’s Declaration is the product of highly suggestive, improperly leading, and methodologically flawed closed-ended questions. As explained in Hormel Foods’ Motion to Exclude, these flaws are extensive and warrant exclusion of Dr. Maronick’s opinions generally and certainly those set forth in paragraph 29 of his Declaration. (*See* Motion to Exclude at 17-19.) In addition, Dr. Dhar opined that Dr. Maronick’s closed-ended questions suffer from significant and fatal methodological flaws that render the data and any conclusions that Dr. Maronick tries to draw from them unreliable and, ultimately, irrelevant. ALDF has not challenged Dr. Dhar’s opinions or testimony, nor did it even mention them in its summary judgment briefing or its statement of facts. Third, when asked to provide verbatim responses regarding what they understood the “No Preservatives” claim to mean, no participants mentioned antibiotics or nitrates. (*See* Demoret Decl. Ex. SSS, Maronick Report at 7, Table 3.) Dr. Maronick fails to address or explain how the referenced advertisements and/or the “no preservatives” claim could mislead consumers about nitrate/nitrite and/or antibiotic-related characteristics about the product when

participants did not think of these issues until they were improperly suggested to participants via Dr. Maronick's closed-ended questions. Accordingly, at a minimum, Dr. Maronick's own survey and data and Dr. Dhar's opinions and testimony created a factual dispute regarding whether Dr. Maronick's survey showed that a significant number of respondents understood the 'no preservatives' claim and/or the "Preserve Your Right to No Preservatives ad" to be saying anything about antibiotic use and/or nitrates/nitrites" and/or whether beliefs about these characteristics were "important" or "very important" to participants' "purchasing decision." (See Demoret Decl. Ex. Ex. EEEE, Dhar Report ¶¶ 17, 23-61.) Accordingly, Hormel Foods denies paragraph 171 in its entirety and denies that the allegations referenced therein suggest, much less establish, that Hormel Foods *Natural Choice*® advertisements violate the CPPA.

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

Response: Admit.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 165. Hormel Foods has moved the Court to exclude Dr. Maronick’s opinions in their entirety or, in the alternative, to only allow Dr. Maronick to testify about respondents’ answers to his open-ended questions (such as those discussed in paragraphs 262-64 *supra*.) The Court should exclude Dr. Maronick’s opinions and/or give them no weight for purposes of summary judgment. (*See* Motion to Exclude at 17-19.) Subject to and without waiving any objection, Hormel Foods admits that Dr. Maronick concluded that there were no statistically significant differences in how consumers shown the advertisement with and without this disclaimer described their perception of the ad or described their understanding of the “100% Natural” claim within it. Hormel Foods denies, however, that Dr. Maronick’s conclusion or survey data suggest that the “100 Natural Ham” ad was misleading regardless of whether the disclaimer language was included. Specifically, when asked to provide their verbatim understanding of the “100% Natural Ham” ad generally and their understanding of the “100% natural” claim in that ad, participants overwhelmingly responded that the product had “no additives/chemicals,” “no preservatives,” and “all-natural ingredients” and “no artificial flavors/colors.” (*See* Demoret Decl. Ex. SSS, Maronick Report at 12-13, Tables 8-9.) In other words, the dominant takeaway participants had from this advertisement was that the product was minimally processed, contained no artificial ingredients, and had no preservatives—claims which, according to FSIS, accurately describe

the referenced product in a non-misleading way (*See* HF SUMF ¶¶ 19-30.) Thus, to the extent Dr. Maronick’s data regarding the disclaimer is given any weight, it establishes that consumers accurately understand the advertisements and the “100 natural” claim, regardless of whether a disclaimer is provided. However, at a minimum, Dr. Maronick’s own survey and data and Dr. Dhar’s opinions and testimony created a factual dispute regarding whether Dr. Maronick’s survey showed that the disclaimers have no “statistically significant impact” on how consumers understand the “100% Natural Ham ad,” much less any other ads that Dr. Maronick did not test with consumers. (*See* Demoret Decl. Ex. Ex. EEEE, Dhar Report ¶¶ 17, 23-61.) Accordingly, Hormel Foods that the allegations in paragraph 173 suggest, much less establish, that Hormel Foods *Natural Choice*® advertisements violate the CPPA.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 165 and 173. Hormel Foods has moved the Court to exclude Dr. Maronick’s opinions in their entirety or, in the alternative, to only allow Dr. Maronick to testify about respondents’ answers to his open-ended questions (such as those discussed in paragraphs 262-64 *supra*.) The Court should exclude Dr. Maronick’s opinions and/or give them no weight for purposes of summary judgment. (*See* Motion to Exclude at 17-19.) Hormel Foods

further notes that the survey data referenced in paragraph 21 of Dr. Maronick's Declaration is the product of highly suggestive, improperly leading, and methodologically flawed closed-ended questions. As explained in Hormel Foods' Motion to Exclude, these flaws are extensive and warrant exclusion of Dr. Maronick's opinions generally and certainly those set forth in paragraph 21 of his Declaration. (See Motion to Exclude at 17-19.) In addition, Dr. Dhar opined that Dr. Maronick's closed-ended questions suffer from significant and fatal methodological flaws that render the data and any conclusions that Dr. Maronick tries to draw from them unreliable and, ultimately, irrelevant. ALDF has not challenged Dr. Dhar's opinions or testimony, nor did it even mention them in its summary judgment briefing or its statement of facts. Accordingly, at a minimum, Dr. Dhar's opinions and testimony created a factual dispute regarding whether the data and conclusions set forth in paragraph 21 of Dr. Maronick's Declaration are valid or reliable. (See Demoret Decl. Ex. Ex. EEEE, Dhar Report ¶¶ 17, 23-61.) Accordingly, Hormel Foods denies paragraph 174 in its entirety and denies that the allegations referenced therein suggest, much less establish, that Hormel Foods *Natural Choice*® advertisements violate the CPPA.

ALDF's Allegations Regarding the Breeds of Animals Used for the Natural Choice Products

175. Hormel exclusively sources chicken for the Natural Choice products from Wayne Farms and believes all the chickens it uses in the products are "jumbo" chickens.

Deposition of John Hilgers, Rule 30(b)(6) Witness for Hormel (hereafter, "Hilgers Dep."), at 41:2-7, 42:4-7 (A2873-74).

Response: Hormel Foods admits that it exclusively sources chickens for *Natural Choice*® products from Wayne Farms and that these chickens are classified as "jumbo" chickens under industry standards. (See Hilgers Dep. 41:2-42:25) (App. 2873-74.) Mr. Hilgers further clarified that, since the "Make the Natural Choice" campaign was launched, Hormel Foods has sourced chickens from a single Wayne Farms facility located in Danville, Arkansas. (See Demoret Opp. Decl. Ex. I, Hilgers Dep. at 39:4-41:7.)

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

Response: [REDACTED]
[REDACTED]. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Demoret Opp. Dec. Ex. J, Wayne Farms
30(b)(6) Dep. at 70:8-16.) [REDACTED]
[REDACTED]."
(Id. at 69:6-11.) [REDACTED]
[REDACTED]

“ [REDACTED] Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

177. [REDACTED]

[REDACTED]. Wayne Farms 30(b)(6) Dep., at 173:22- 175:25 (A3054).

Response: Hormel Foods objects to paragraph 177 because the alleged facts stated therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements include any claims regarding the manner or practices used to breed the animals used in the products, (or animal welfare practices generally), what beliefs reasonable consumers have about how animals used in *Natural Choice*® products are bred, and/or whether reasonable consumers’ beliefs about these breeding practices are material to their decision to purchase these products. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. (Wayne Farms 30(b)(6) Dep. 172:22-173:4 (ALDF App. 3053-54).) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED].” (Id. at
173:19-25 (ALDF App. 3054).) [REDACTED]

[REDACTED]
[REDACTED]. (Id. at 175:7-24 (ALDF App. 3056).)

Hormel Foods otherwise ALDF’s characterization of the referenced
testimony and admits that the testimony speaks for itself.

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

Response: Hormel Foods objects to paragraph 178 because the alleged facts stated therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements include any claims regarding the manner or practices used to breed the animals used in the products, (or animal welfare practices generally), what beliefs reasonable consumers have about how animals used in *Natural Choice*® products are bred, and/or whether reasonable consumers’ beliefs about these breeding practices are material to their decision to purchase these products. Subject to and without waiving

any objection, Hormel Foods admits that the deposition excerpts ALDF cites contain the quoted language.

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

Response: Hormel Foods objects to paragraph 179 because ALDF has not provided proper foundation regarding what the referenced document is, who created it, or whether this is a draft or a final copy of the document. Hormel Foods also objects to paragraph 179 because the alleged facts contained therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements include any claims regarding the manner or practices used to breed the animals used in the products, (or animal welfare practices generally), what beliefs reasonable consumers have about how animals used in *Natural Choice*® products are bred, and/or whether reasonable consumers’ beliefs about these breeding practices are material to their decision to purchase these products. Subject to and without waiving any objection, Hormel Foods admits that the quoted language appears in the document.

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

Response: Hormel Foods objects to paragraph 180 because ALDF has not provided proper foundation regarding what the referenced document is, who created it, or whether this is a draft or a final copy of the document. Hormel Foods also objects to paragraph 180 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding the manner or practices used to breed the animals used in the products, (or animal welfare practices generally), what beliefs reasonable consumers have about how animals used in *Natural Choice*® products are bred, and/or whether reasonable consumers' beliefs about these breeding practices are material to their decision to purchase these products. ALDF also has not established that matters related to the "Hormel Redbox" have anything to do with how *Natural Choice*® products are produced. Subject to and without waiving any objection, Hormel Foods admits that the quoted language appears in the document. Hormel Foods further notes the document states that "improvements" have been made to "[m]aternal qualities: litter size, birth weight, milking ability, docility." (ALDF App. 1462.) Hormel Food otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

ALDF's Allegations Regarding Pathogens and Animal Health at Hormel Facilities

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

HORM_DC00140087 (A1476).

Response: Hormel Foods objects to paragraph 181 because ALDF has not provided proper foundation regarding what the referenced document is, or whether this is a draft or a final copy of the document. Hormel Foods also objects to paragraph 181 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Hormel Foods also disputes ALDF's characterization of the document at issue. The document appears to describe a field trial protocol that Jennie-O Turkey Store (JOTS) planned to conduct, and the quotations in paragraph 181 refer other "trials" and "protocols" that JOTS had previously run to simulate "commercial field challenges." The document does not purport to provide any statements on the general

conditions in which turkeys used in *Natural Choice*® products are raised. (HORM_DC00140087 (ALDF App. 1476).) Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

182. An anonymous Jennie-O employee report from December 2017 documented an “ongoing issue” where “dead turkeys and severely injured turkeys” were “ignored for days”; the caller “was concerned about the bio-security issue raised with dead turkeys in the area with live ones.” HORM_DC00162980 (A1480).

Response: Hormel Foods objects to paragraph 182 because ALDF has not provided proper foundation regarding what the referenced document is, who created it, or whether this is a draft or a final copy of the document. The document indicates that it was created by “NAVEX global,” and that the creator of the document “neither warrants, vouches for, nor authenticates the reliability of the allegations provided in this report.” (ALDF App. 1481.) The document and the statements referenced therein are hearsay and cannot be relied upon to assert the truth of the matters referenced in the document. Hormel Foods also objects to paragraph 182 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable

consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Hormel Foods also disputes ALDF's characterization of the document at issue. The document states that "this incident has been thoroughly investigated and it was determined that appropriate resulting actions were implemented by the local management prior to the caller's report to include a review by our Animal Care Review Board." (ALDF App. 1481.) Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods objects to paragraph 183 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF claims that the "Make the Natural Choice" campaign, which began in May 2015, misled consumers regarding certain attributes of *Natural Choice*® products. The document referenced in paragraph 183 contains emails sent in August-September of 2014—nearly one year before the "Make the Natural Choice" campaign was launched. The document thus has no bearing on whether the advertisements at issue have a tendency to mislead consumers about the attributes of *Natural Choice*® products that they purchased in May 2015 or beyond. In addition, ALDF has not submitted competent and admissible

evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Further, to the extent ALDF included paragraph 183 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1 ("The Food Safety and Inspection Service (FSIS) is the public health agency in the U.S. Department of Agriculture responsible for ensuring that the Nation's commercial supply of meat, poultry and egg products is safe, wholesome, and correctly labeled and packaged.... Only inspected and passed meat and meat food products (those bearing a mark of inspection) may be used in the preparation of products sold (including meals) at retail stores or restaurants."), available at:

<https://www.fsis.usda.gov/wps/wcm/connect/e6658a9c-915f-4283-beaf-a827b35e906a/Fed-Food-Inspect-Requirements.pdf?MOD=AJPERES>

Hormel Foods also disputes ALDF's characterization of the document at issue. Dr. Kromm noted there were "disease challenges that the Perham area experiences on a regular basis. There are routinely issues with, Or, Erysipelas, and cholera on a variety of farms in Perham." Dr. Kromm did

not state that these disease issues “routinely” occurred on farms used to raise birds for the Products but instead stated that these issues were common in that geographic area. Moreover, the clear purpose of the email exchange was to ensure that Hormel Foods was following “a good procedure” to minimize disease issues specific to the geographic territory in question. (ALDF App. 1485-86.) Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods objects to paragraph 184 because the alleged facts contained therein are not material to the parties’ claims or defenses. Three of the referenced documents (HORM_DC00116758 (A1492); HORM_DC00116760 (A1495) and HORM_DC00111246 (A1501)) either have no date listed or were clearly created years before the “Make the Natural Choice” campaign was launched and thus have no bearing on whether the advertisements at issue have a tendency to mislead consumers about the attributes of *Natural Choice*® products that they purchased in May 2015 or beyond. Further, the material referenced in each of these documents appears to have been created by third parties and is hearsay. In addition, ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements include any claims

regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that isolated instances of positive tests for *Staphylococcus aureus* (or similar positive testing for other types of diseases) render Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 184 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1 ("The Food Safety and Inspection Service (FSIS) is the public health agency in the U.S. Department of Agriculture responsible for ensuring that the Nation's commercial supply of meat, poultry and egg products is safe, wholesome, and correctly labeled and packaged.... Only inspected and passed meat and meat food products (those bearing a mark of inspection) may be used in the preparation of products sold (including meals) at retail stores or restaurants."), available at: <https://www.fsis.usda.gov/wps/wcm/connect/e6658a9c-915f-4283-beaf-a827b35e906a/Fed-Food-Inspect-Requirements.pdf?MOD=AJPERES>

Hormel Foods otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby incorporates its objections and response to paragraph 184 in full. Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods objects to paragraph 186 because the alleged facts contained therein are not material to the parties' claims or defenses. The referenced document was clearly created years before the "Make the Natural Choice" campaign was launched and thus the information contained therein can have no bearing on whether the advertisements at issue had a tendency to mislead consumers about the attributes of *Natural Choice*® products that they purchased in May 2015 or beyond. In addition, ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals

used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that an isolated instance where “the ammonia is intense and there is a large amount of fecal build-around drinkers” at one farm (in 2013) render Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 186 to support ALDF's argument that *Natural Choice*® products are not “safe” or “wholesome,” these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1, available at: <https://www.fsis.usda.gov/wps/wcm/connect/e6658a9c-915f-4283-beaf-a827b35e906a/Fed-Food-Inspect-Requirements.pdf?MOD=AJPERES> Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods objects to paragraph 187 because the alleged facts contained therein are not material to the parties' claims or defenses. Several of the referenced documents (HORM_DC00110895 (A1506), HORM_DC00110961 (A1512), HORM_DC00112056 (A1517), HORM_DC00116586 (A1530) and HORM_DC00116600 (A1533)) either have no date listed or were clearly created years before the "Make the Natural Choice" campaign was launched and thus have no bearing on whether the advertisements at issue have a tendency to mislead consumers about the attributes of *Natural Choice*® products that they purchased in May 2015 or beyond. In addition, ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that isolated instances of positive tests for E.coli (or similar positive testing for other types of diseases) render Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 187 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also*

FSIS, Summary of Federal Inspection Requirements for Meat Products at 1, available at: <https://www.fsis.usda.gov/wps/wcm/connect/e6658a9c-915f-4283-beaf-a827b35e906a/Fed-Food-Inspect-Requirements.pdf?MOD=AJPERES>.

Hormel Foods also disputes ALDF's characterization that the referenced documents support an allegation that there have been E.Coli outbreaks in *Natural Choice*® products. At most, the referenced documents suggest that, over the course of several years, there have been isolated instances of E.Coli detected in bird flocks. The documents further establish that Hormel Foods' testing and audit procedures identified the occurrences and ensured that they were dealt with safely and appropriately. See HORM_DC00110895 (ALDF App. 1506); HORM_DC00110510 (ALDF App. 1590); HORM_DC00110961 (ALDF App. 1512); HORM_DC00112056 (ALDF App. 1517); HORM_DC00157910-12 (ALDF ApP. 1521, 23); HORM_DC00116586 (ALDF App. 1530); HORM_DC00116600 (ALDF App. 1533); HORM_DC00145591 (ALDF App. 1526). Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods objects to paragraph 188 because the alleged facts contained therein are not material to the parties' claims or defenses. There is no date listed on either document, and ALDF has not otherwise provided this information. The documents thus may predate the launch of the "Make the Natural Choice" advertising campaign. In addition, ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that isolated instances of E.Coli that were resistant to one or more antibiotics render Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 188 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. Subject to and without waiving any objection, Hormel Foods admits that one of the documents (HORM_DC00116600 (ALDF App. 1533)) references detection of E.Coli that was resistant to multiple antibiotics. Hormel Foods otherwise

denies ALDF's characterization of the referenced document and admits that the documented speaks for themselves.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 188. Subject to and without waiving any objection, Hormel Foods admits that the quoted language in paragraph number 189 appears in HORM_DC00116600 (ALDF App. 1533).

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

Response: Hormel Foods objects to paragraph 190 because the alleged facts contained therein are not material to the parties' claims or defenses. The document was clearly created well before the "Make the Natural Choice" campaign was launched and thus has no bearing on whether the advertisements at issue had a tendency to mislead consumers about the attributes of *Natural Choice*® products that they purchased in May 2015 or beyond. In addition, ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised,

and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that isolated instances of positive tests for salmonella render Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 190 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. Hormel Foods also objects to paragraph 190 because it mischaracterizes the referenced document. Subject to and without waiving any objection, Hormel Foods admits that the document states "no flocks have been 100% negative in all samples." Hormel Foods denies ALDF's characterization of the referenced document and/or any suggestion by ALDF that the document establishes or supports any claim that the products are unsafe or that any of the *Natural Choice*® advertisements violate the CPPA. (HORM_DC00116566 (ALDF App. 1536).) Hormel Foods also disputes the suggestion by ALDF that the document supports any claim or inference ***that Natural Choice*® products contain any specific pathogens**. Hormel Foods' 30(b)(6) designee explained, for example:

Q. Does detection of salmonella or camylobacter in one of these tests mean that there's a risk to human health?

ALDF's counsel: Objection; leading the witness.

A. Not necessarily. Detection is just that. It doesn't give you an indication of how much of the organism is actually there. And just like with your common cold virus or anything else, there has to be a certain level of organism in there for it to actually be a potentially humane health issue, and you don't get that information from just a positive or negative test.

Q. This question I'm focused specifically on the Natural Choice products. What steps, if any, are taken later in the process after slaughter to address salmonella or [other pathogens]?

ALDF's counsel: Objection, leading the witness.

A. In addition to the ones we've discussed, specifically on the various bird washes and antimicrobial interventions, for the Natural Choice product, there would also be high-pressure pasteurization occurring as a final mitigation step.

A. Can I go back? I forgot one – one other really basic thing on the salmonella piece is that this is raw product. Obviously, by the time it comes Natural Choice product, it's cooked and HPP'd. So that whole "cooked" piece is something important to call out as well.

(Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) [REDACTED]

[REDACTED]:

[REDACTED]

[REDACTED]

[REDACTED]?

[REDACTED].

[REDACTED]?

[REDACTED]

[REDACTED]

[REDACTED].

(Demoret Decl. Ex. J, Wayne Farms 30(b)(6) Dep. 220:11-23.) [REDACTED]

[REDACTED]

[REDACTED]

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

HORM_DC00113426-27 (A1541-2).

Response: Hormel Foods hereby incorporates its objections to paragraph 188 and 190 in full. Subject to and without waiving any objection, Hormel Foods admits that the quoted language in paragraph 191 appears in HORM_DC00113426-

27 (ALDF App. 1541-42); *but see also* quoted text in paragraph 190 of Ms. Kromm's testimony explaining numerous interventions used to ensure that *Natural Choice*® products are safe (Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) Hormel Foods denies ALDF's characterization of the referenced documents, denies that the documents support any references that instances of antibiotic resistant bacteria are typical at facilities where animals used for *Natural Choice*® products are raised, and denies that the information referenced in the document supports ALDF's claim that any of the *Natural Choice*® advertisements are false or misleading under the CPPA. Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 190. Hormel Foods also objects to paragraph 192 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal slaughtering practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*®

products are slaughtered, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that an isolated positive test for a strain of salmonella that was resistant to certain antibiotics render Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 192 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. Hormel Foods also disputes paragraph 192 to the extent ALDF characterizes the document as providing evidence that birds containing antibiotic-resistant strains of salmonella are routinely (or ever) used in *Natural Choice*® products or that the referenced documents suggest that *Natural Choice*® products pose some health risk to consumers or the general public. Subject to and without waiving any objection, Hormel Foods admits that HORM_DC00111767 (App. 1550) identifies test results relating to antimicrobial resistance levels of a salmonella specimen found in the intestine of a turkey and that some of the antimicrobics listed in this document are identified in a document that states "FSIS provides information to establishments on antimicrobial drugs to which isolates are found to be resistant using the National Antimicrobial Resistance Monitoring System (NARMS) panel [and classified] based on

importance of the drug to human medicine.” *See also* quoted text in paragraph 190 of Ms. Kromm explaining numerous interventions used to ensure that *Natural Choice*® products are safe (Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) Hormel Foods denies ALDF’s characterization of the referenced documents and admits that the documents speaks for themselves.

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

Response: Hormel Foods hereby fully incorporates its responses and objections to paragraphs 190 and 192. Hormel Foods also objects to paragraph 193 because the alleged facts contained therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers’ beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that isolated instances of positive tests for avian influenza at facilities that raise animals used in *Natural Choice*® products render Hormel Foods’ *Natural Choice*® advertisements false or misleading to reasonable consumers in any material

respect. Further, to the extent ALDF included paragraph 193 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. Hormel Foods also disputes ALDF's characterization of the documents and the testimony of Ms. Kromm. Neither document referenced in paragraph 193 references "avian influenza." Further, Ms. Kromm testified that: (1) Hormel Foods has protocols in place to prevent avian influenza, including ones pertaining to "vehicle traffic, people traffic and wild bird access;" (2) population density does not contribute to the contraction or spread of avian influenza; and (3) the USDA is directly involved in dealing with instances where avian influenza is detected in a bird. (Demoret Opp. Decl. Ex. K, Kromm Dep. at 105:24-111:17. *See also* quoted text in paragraph 190 of Ms. Kromm's testimony explaining numerous interventions used to ensure that *Natural Choice*® products are safe (Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) Hormel Foods denies ALDF's characterization of the referenced documents and testimony and admits that the documents and testimony speak for themselves.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 190, 192 and 193. Hormel Foods further objects to paragraph 194 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that isolated instances of positive tests for "pathogens" at facilities that raise animals used in *Natural Choice*® products render Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 194 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. Hormel Foods also disputes ALDF's characterization of the documents and the testimony of Ms. Kromm. Neither document states that "potentially deadly pathogens" were detected at facilities that raise animals for *Natural Choice*® products. *See also* quoted text in paragraph 190 of Ms. Kromm's testimony explaining

numerous interventions used to ensure that *Natural Choice*® products are safe (Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) Hormel Foods denies ALDF’s characterization of the referenced documents and admits that the documents speak for themselves.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 190, 192 and 193. Hormel Foods further objects to paragraph 195 because the alleged facts contained therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers’ beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that the matters referenced in HORM_DC00141373 (ALDF App. 1635) render Hormel Foods’ *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 195 to support ALDF’s argument that *Natural Choice*® products are not “safe” or “wholesome,” these claims are preempted by the

misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. Subject to and without waiving any objection, Hormel Foods admits that the quoted language appears in the document and that the document makes the reference that “Bordatella titers are high, everyone needs to work on cleaning lines better.” (HORM_DC00141373 (ALDF App. 1635-36).) *See also* quoted text in paragraph 190 of Ms. Kromm testimony explaining numerous interventions used to ensure that *Natural Choice*® products are safe (Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

196. [REDACTED]

[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 190, 192 and 193. Hormel Foods further objects to paragraph 196 because the alleged facts contained therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers’

beliefs about these issues are material to their decision to purchase *Natural Choice*® products. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

Further, to the extent ALDF included paragraph 196 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. Hormel Foods also disputes ALDF's characterization of the cited deposition testimony. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Hormel

Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

197. [REDACTED]

[REDACTED]

[REDACTED]).

Response: Hormel Foods fully incorporates by reference its objections to paragraphs

190, 192, 193 and 196. [REDACTED]

[REDACTED]. The testimony

proceeded as follows:

Q. [REDACTED]?

A. [REDACTED]

Q. [REDACTED]?

A. [REDACTED].

Q. [REDACTED]?

A. [REDACTED]

[REDACTED].

[REDACTED]

[REDACTED].

(Wayne Farms 30(b)(6) Dep., at 142:6-22, 143:1-7 (ALDF App. 3037-

38).) Hormel Foods denies ALDF's characterization of the referenced

testimony and admits that the testimony speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 190, 192 and 193. Hormel Foods further objects to paragraph 198 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence isolated instances of bacteria at processing facilities renders Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 198 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. ALDF also mischaracterizes the documents in

question by suggesting that animals that tested positive for the referenced types of bacteria were actually used in *Natural Choice*® products. None of the referenced documents say or suggest that any bacteria was found in *Natural Choice*® products. Rather, the documents are reports issued by the FSIS regarding sample results for samples taken in processing facilities as part of FSIS's pathogen and residue verification testing programs. Paragraph 198 thus plainly mischaracterizes these documents. *See also* quoted text in paragraph 190 of Ms. Kromm's testimony explaining numerous interventions used to ensure that *Natural Choice*® products are safe (Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) Hormel Foods denies ALDF's characterization of the referenced documents and admits that the documents speak for themselves.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 190, 192 and 193. Hormel Foods further objects to paragraph 199 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs

reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence isolated instances of bacteria at processing facilities renders Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 199 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. Subject to and without waiving any objection, Hormel Foods admits that Hormel Foods' 30(b)(6) designee agreed with the quoted statement in paragraph 199. (Kromm Dep., at 155:13-160:18 (A2962). *But see also* quoted text in paragraph 190 of Ms. Kromm's testimony explaining numerous interventions used to ensure that *Natural Choice*® products are safe (Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) Hormel Foods denies ALDF's characterization of the referenced testimony and admits that the testimony speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraphs 190, 192, 193 and 198. Subject to and without waiving any objections, Hormel Foods admits that the referenced documents identify isolated instances over a period of multiple years where USDA detected pathogens in samples that were found to be resistant to one or more “critical drugs.”

HORM_DC00166176 (A1593); HORM_DC00166296 (A1601); HORM_DC00166208 (A1613); HORM_DC00166236 (A1624); *see also* quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) Hormel Foods otherwise denies ALDF’s characterization of the referenced documents and admits that the documents speaks for themselves.

201. Recently, a multidrug-resistant salmonella strain detected in Jennie-O products was linked to an outbreak that resulted in multiple hospitalizations and one death. *See, Limited Jennie- O Ground Turkey Product Recall*, Jennie-O, <https://www.jennio.com/content/ground-turkey-recall>; *Jennie-O Turkey Store Sales, Inc. Recalls Raw Ground Turkey Products due to Possible Salmonella Reading Contamination*, United States Department of Agriculture Food Safety and Inspection Service, <https://www.fsis.usda.gov/wps/portal/fsis/topics/recalls-and-public-health-alerts/recall-case-archive/archive/2018/recall-124-2018-release>; *Outbreak of Multidrug-Resistant Salmonella Infections Linked to Raw Turkey Products*, Centers for Disease Control, <https://www.cdc.gov/salmonella/reading-07-18/index.html>.

Response: Hormel Foods objects to paragraph 201 because the alleged facts contained therein are not material to the parties’ claims or defenses. The recall

referenced in paragraph 201 clearly was not for *Natural Choice*® products. ALDF does not contend, nor do the referenced webpages suggest that, there was a recall for *Natural Choice*® products. Nor has ALDF offered any evidence suggesting that a product recall for a different product produced by JOTS renders Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 201 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. Hormel Foods disputes ALDF's characterization that the cited webpages state or suggest that the products at issue caused any hospitalizations or deaths. Rather, the CDC webpage addressing the outbreak notes that "a single, common supplier of raw turkey products or of live turkeys has not been identified that could account for the whole outbreak. *Outbreak of Multidrug-Resistant Salmonella Infections Linked to Raw Turkey Products*, Centers for Disease Control, <https://www.cdc.gov/salmonella/reading-07-18/index.html>. *See also* quoted text in paragraph 190 of Ms. Kromm's testimony explaining numerous interventions used to ensure that *Natural Choice*® products are safe (Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) Hormel Foods otherwise denies ALDF's characterization of the referenced documents and admits that the documents speak for themselves.

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

Response: Hormel Foods hereby fully incorporates its responses and objections to paragraphs 190, 192, 193 and 201 above in full. Subject to and without waiving any objection, Hormel Foods admits there was a recall of certain JOTS raw turkey ground turkey products. Hormel Foods denies that the recall was for a *Natural Choice*® products. See *also* quoted text in paragraph 190 of Ms. Kromm’s testimony explaining numerous interventions used to ensure that *Natural Choice*® products are safe (Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

203. [REDACTED]
[REDACTED]
[REDACTED]; *Shrewd Moves: Like a Chess Match, Anticoccidial Rotation is a Game of Strategy at Wayne Farms*, Poultry Health Today, <https://poultryhealthtoday.com/shrewd-moves-like-chess-match-anticoccidial-rotation-game-strategy-wayne-farms/>.

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 190, 192 and 193. Hormel Foods further objects to paragraph 203 because the alleged facts contained therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements

include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

Further, to the extent ALDF included paragraph 203 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. In addition, the FDCA grants FDA broad authority to protect the public from drugs that may be unsafe, including drugs that are administered to animals raised for human consumption, and from adulterated foodstuffs. *See* 21 U.S.C. § 301 *et seq.* FDA's Center for Veterinary Medicine ("CVM") must specifically approve any animal drug for a specific use, before it may be administered, and also calculates the tolerance levels and so-called "withdrawal times" such that the amount of the drug present (if any) in slaughtered animals is safe for human consumption. 21 U.S.C. § 360b; 21 C.F.R. §§ 558.55-558.680. Hormel Foods also disputes ALDF's characterization of the cited deposition testimony. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]) The referenced website appears to be hearsay and cannot be used to establish the truth of any information referenced therein. *Carter v. United States*, 614 A.2d 542, 545 n. 9 (D.C. 1992) (noting that “the definition of hearsay in [Fed R. Evid.] 801(c) is consistent with well-settled lawsuit in the District of Columbia and elsewhere”). *See also* quoted text in paragraph 190 of Ms. Kromm’s testimony explaining numerous interventions used to ensure that *Natural Choice*® products are safe (Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) Hormel Foods denies ALDF’s characterization of the referenced documents, [REDACTED]

[REDACTED]

[REDACTED], and denies that the information referenced in the document supports ALDF’s claim that any of the *Natural Choice*® advertisements are false or misleading under the CPPA. Hormel Foods denies ALDF’s characterization of the referenced document and testimony and admits that the referenced document and testimony speak for themselves.

204. Hormel routinely uses “Termin-8,” a mix of formaldehyde and propionic acid, in feed for turkeys to “disinfect” the bacteria in the feed. Kromm Dep., at 147:14-149:1

(A2957-59); HORM_DC00144855-56 (A1639); HORM_DC00113425 (A1641);
HORM_DC00140462 (A1647-48).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 203. Hormel Foods further objects to paragraph 204 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that the use of Termine-8 to address potential bacteria contamination in feed before it is presented to turkeys renders the *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 204 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. In addition, the FDCA grants FDA broad authority to protect the public from drugs that may be unsafe, including drugs that are administered to animals raised for human consumption, and from adulterated foodstuffs. *See* 21 U.S.C. § 301 et seq.;

see also 21 U.S.C. § 360b; 21 C.F.R. §§ 558.55-558.680. Subject to and without waiving any objection, Hormel Foods admits that Hormel Foods’ designee testified that “Termin-8 is a feed disinfectant that we use to try and address any bacteria contamination of the feed before it gets presented to the turkeys” and that Termin-8 is “a combination of formaldehyde and propionic acid.” *See also* quoted text in paragraph 190 of Ms. Kromm’s testimony explaining numerous interventions used to ensure that *Natural Choice*® products are safe (Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) Hormel Foods denies ALDF’s characterization of the referenced documents and admits that the documents speaks for themselves.

205. [REDACTED]
[REDACTED]
[REDACTED]).

Response: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Hormel Foods otherwise denies ALDF’s characterization of the referenced testimony and admits that the testimony speaks for itself.

206. [REDACTED]

[REDACTED]

[REDACTED]. HORM_DC00006776-863 (A1655-1742); [REDACTED]

[REDACTED]).

Response: Hormel Foods objects to paragraph 206 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that the matters set forth in paragraph 206 render the *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 206 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1.

[REDACTED]

[REDACTED]

referenced document and testimony supports ALDF's claim that any of the *Natural Choice*® advertisements are false or misleading under the CPPA.

207. Gilbertson explained that many of the images in a "Hormel Foods Swine Segregation Training" document (HORM_DC00006776 *et seq.*) accurately represent animals that pass through its slaughterhouses and, if they pass postmortem inspection, can make their way into Natural Choice products. HORM_DC00006776-863 (A1655-1742).

Response: Hormel Foods incorporates its objections and responses to paragraph 206 in full. Hormel Foods further objects to ALDF's characterization of Mr. Gilbertson's testimony. Indeed, paragraph 207 *does not cite deposition testimony from Mr. Gilbertson*. See also quoted text in paragraph 190 of Ms. Kromm's testimony explaining numerous interventions used to ensure that *Natural Choice*® products are safe (Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) Hormel Foods denies ALDF's characterization of the referenced documents and admits that the documents speaks for themselves.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 206. Hormel Foods further objects to paragraph 208 because the alleged facts contained therein are not material to the parties' claims or

defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that the matters set forth in paragraph 208 render the *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 208 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1.

Hormel Foods disputes ALDF's characterization of HORM_DC00006959. The decision matrix referenced by ALDF applies when the hog is not "expressing pain and/or suffering." The document notes that possible causes of particular behaviors include "simple bone fracture," "blindness" and/or "dislocation/torn tendons and ligaments." According to the document, these hogs are to be treated by "segregate and/or Rest." Further, the document instructs to "offer to USDA for ante-mortem inspection." Stated otherwise, the document instructs employees to treat these hogs appropriately, to offer the animal to USDA for inspection, and that USDA

makes the final call on whether the animal can be used in a food product. HORM_DC00006959 (A1744). *See also* quoted text in paragraph 190 of Ms. Kromm’s testimony explaining numerous interventions used to ensure that *Natural Choice*® products are safe (Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods incorporates its objections and response to paragraph 208 in full. Subject to and without waiving any objection, Hormel Foods admits that the quoted language is used to describe “full blown PSS.”

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 206. Hormel Foods further objects to paragraph 210 because the alleged facts contained therein are not material to the parties’ claims or defenses. The referenced document was created well before the “Make the Natural Choice” campaign was launched and thus the information contained therein can have no bearing on whether the advertisements at issue allegedly

misled consumers about the attributes of *Natural Choice*® products that they purchased in May 2015 or beyond. In addition, ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal slaughtering practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are slaughtered, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that an isolated document referencing "hanging pieces of broken bone [in a] pelvic cavity" and related bruising render Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 210 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1, available at:

<https://www.fsis.usda.gov/wps/wcm/connect/e6658a9c-915f-4283-beaf-a827b35e906a/Fed-Food-Inspect-Requirements.pdf?MOD=AJPERES>.

Hormel Foods also disputes ALDF's characterization of the document. The document references a single instance where the inspection observed "hanging pieces of broken bone from the pelvic cavity [that] need to be removed." (HORM_DC00007693 (ALDF App. 1746).) *See also* quoted

text in paragraph 190 of Ms. Kromm’s deposition explaining numerous interventions used to ensure that *Natural Choice*® products are safe (Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 206 and 210. Hormel Foods further objects to paragraph 211 because the alleged facts contained therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements include any claims regarding animal slaughtering practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are slaughtered, and/or whether reasonable consumers’ beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Further, to the extent ALDF included paragraph 211 to support ALDF’s argument that *Natural Choice*® products are not “safe” or “wholesome,” these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1, available at: <https://www.fsis.usda.gov/wps/wcm/connect/e6658a9c-915f-4283-beaf-a827b35e906a/Fed-Food-Inspect-Requirements.pdf?MOD=AJPERES>.

Subject to and without waiving any objection, Hormel Foods admits that
HORM_00006785 depicts a pig with a “Medium Head Abscess.”

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

Response: Hormel Foods hereby fully incorporates its objections to paragraphs 206,
210 and 211. Subject to and without waiving any objection, Hormel Foods
admits that HORM_00006796 depicts a pig with a “Small Belly Rupture.”

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph, 206,
210 and 211. ALDF also mischaracterizes the testimony of Hormel Foods’
designee. Hormel Foods’ designee testified as follows:

Q. And who is making the decision of which hogs are acceptable for
Hormel to bring into its harvest plants? Is that the employees in the
alleyways that you’re describing?

A. These protocols would be put in place. A combination of discussion
with the FSIS inspector, with the USDA involvement. Some of it is past
history, with knowing that a certain pig with a certain ailment – that there’s

certain issues with that. So there's, again, history, expertise, and USDA oversight would all be included in that.

(Bollum 30(b)(6) Dep. 86:23-87:8 (ALDF App. 2788-89.)

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 206, 210, 211 and 213. Hormel Foods acknowledges that Mr. Bollum testified as follows:

Q. And the issue date here states April 2015. Are you aware whether this training has been updated since April 2018 – or 2015?

A. I don't know for sure that it has. I'm reasonably sure it has because it's part of the annual training every year. So there may be some new pictures, new additions, maybe some pictures taken out, but the general gist of the training is – is consistent.

(Bollum 30(b)(6) Dep. 86:14-22) (ALDF App. 2788.)

215. [REDACTED]

[REDACTED]

[REDACTED]

Response: Hormel Foods objects to paragraph 215 because the alleged facts contained therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements include any claims regarding animal slaughtering practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are slaughtered, and/or whether reasonable consumers’ beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that the matters set forth in paragraph 215 render the *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 215 to support ALDF’s argument that *Natural Choice*® products are not “safe” or “wholesome,” these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1.

ALDF mischaracterizes the documents cited in paragraph 215. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] See also quoted text in paragraph 190 of Ms.

Kromm's deposition explaining numerous interventions used to ensure that *Natural Choice*® products are safe (Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.) Hormel Foods denies ALDF's characterization of the referenced documents and testimony and admits that the document and testimony speaks for itself.

216. [REDACTED]
[REDACTED]
[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 206, 210 and 211. Hormel Foods further objects to paragraph 216 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising or slaughtering practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised or slaughtered, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that the matters set forth in paragraph 216 render the *Natural Choice*® advertisements false or misleading to reasonable consumers in any

material respect. Further, to the extent ALDF included paragraph 216 to support ALDF’s argument that *Natural Choice*® products are not “safe” or “wholesome,” these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1.

[REDACTED]

[REDACTED]:

[REDACTED]

[REDACTED]?

[REDACTED]

[REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]) *See also* quoted text in

paragraph 190 of Ms. Kromm’s testimony explaining numerous

interventions used to ensure that *Natural Choice*® products are safe
(Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7.)

ALDF's Allegations Regarding Production Practices for Natural Choice Products Compared to Other Products

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

Response: Hormel Foods hereby fully incorporates its responses and objections to paragraphs 206, 210 and 211. Hormel Foods further objects to paragraph 217 because the alleged facts contained therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers’ beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that the matters set forth in paragraph 217 render the *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, Mr. Hilgers’ 30(b)(6) testimony was limited in scope to Hormel Foods’ sourcing of beef products and did not address animal raising practices for other kinds of *Natural Choice*® products (or Hormel Foods’ “beliefs” about available

animal raising certifications for non-beef products). (See Hilgers Rule 30(b)(6) Dep at 118-120 (ALDF App. 2887-89).) ALDF has not identified any evidence regarding what reasonable consumers in the District of Columbia understand the term “higher standards” to mean as used in any Hormel Foods’ advertisements and/or webpages. ALDF’s experts admitted that they did not address this issue. ALDF has submitted no other evidence on this issue. Nor has ALDF offered competent evidence that reasonable consumers understand any of the *Natural Choice*® Advertisements to include representations regarding Hormel Foods’ animal welfare practices or that Hormel Foods uses any particular industry and/or third-party certifications with respect to the animal welfare practices utilized with animals that are used in *Natural Choice*® products. Further, evidence suggesting there are various humane handling certification options available does not suggest or prove that reasonable consumers would not believe that Hormel Foods’ animal welfare practices are inhumane. Subject to and without waiving any objections, Hormel Foods admits that Mr. Hilgers testified as follows:

Q. [T]he GAP Step 1 Certified Humane standard is considered a higher standard than other standards, correct?

A. Yes, I believe that to be true, yes.

(Hilgers 30(b)(6) Dep. 118:23-119:1 (ALDF App. 2888-89).) Hormel Foods denies ALDF's characterization of the referenced testimony and admits that the testimony speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraphs 206, 210, 211 and 217. In addition, ALDF mischaracterizes the testimony at issue. The cited excerpt reads as follows:

Q. So in procuring meat, particularly beef for natural choice, you could acquire more humanely raised products than what you do currently acquire, is that correct?

Hormel's Counsel: Objection; outside the scope, calls for speculation.

A. There is other certifications we could procure out, yes, GAP or Certified Humane.

(Hilgers 30(b)(6) Dep. 119:12-19 (ALDF App. 2889).) Hormel Foods denies ALDF's characterization of the referenced testimony and admits that the testimony speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraphs 206, 210, 211 and 217. Further, ALDF mischaracterizes Hormel Foods’ response to RFA 3, which states that “an animal may be used to make a *Natural Choice*® Product and to make another of Hormel Foods’ meat and poultry products, in compliance with state and federal laws and regulations.” (ALDF App. 3123.)

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

Response: Hormel Foods hereby fully incorporates its objections to paragraphs 206, 210, 211 and 217. Further, ALDF mischaracterizes Hormel Foods’ response to RFA 1, which states that “animals used to make *Natural Choice* products are conventionally raised alongside animals that may be used in some other Hormel Foods meat and poultry products in compliance with state and federal laws and regulations..” (ALDF App. 3121-22.)

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

Response: Hormel Foods hereby fully incorporates its objections to paragraphs 206, 210, 211 and 217. Subject to and without waiving any objections, Hormel Foods admits that Mr. Bollum agreed with the statement by Plaintiff’s counsel that there is “no separate manner in which the pigs raised for Hormel Natural Choice products are versus any other of Hormel’s products, so Spam or any other lunch meat or bacon product.” (Bollum 30(b)(6) Dep. 60:10-15 (A2779).)

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

Response: Hormel Foods objects to paragraph 222 because the alleged facts contained therein are not material to the parties’ claims or defenses. Applegate’s production practices are not at issue in this lawsuit. (*See generally* Complaint.) ALDF also mischaracterizes the testimony of Mr. Bollum, who testified as follows:

Q. Do you have any involvement in the oversight of the Applegate supply chain?

A. No.

Q. Is Applegate treated as a wholly separate entity within Hormel?

Hormel Foods' Counsel: Objection; calls for legal conclusion, speculation, go ahead.

A. Yeah. Applegate is a separate entity, and I don't – I'm not involved with that at all.

Q. So you have no responsibility with regard to procurement for Applegate?

A. Correct.

Bollum Dep. 42;21-43:8 (ALDF App. 2796.)

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

Response: Admit.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 206, 210, 211 and 217. Hormel Foods further objects to paragraph 224 because the alleged facts contained therein are not material to the parties' claims or defenses. The question posed by this case is whether

Hormel Foods' *Natural Choice*® advertisements violate the CPPA. (*See* Complaint.) The issue of whether Hormel Foods has used the terms “natural” or “organic” on a purchase order to Rabe’s is immaterial to this analysis, particularly since FSIS has determined that *Natural Choice*® products meet the USDA’s standard for “natural” meat products and thus can be accurately described as “natural.” Hormel Foods also disputes that the document referenced in paragraph 224 is admissible to prove the factual allegation asserted in paragraph 224. The referenced document appears to be an informal letter sent by Rabe’s counsel. This letter is clearly “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted therein.” *Carter*, 614 A.2d at 545 n.9. Such a statement is hearsay and cannot be relied upon to “prove the truth of the matter asserted therein.” *Id.* Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 224.

226. Hormel-owned Applegate’s website currently explains that cattle used in Applegate beef products are “100% grass-fed and pasture-raised,” and contrasts these practices

with “typical industry” practices, which is says are “based on practices outlined by National Cattlemen's Beef Association.” *Applegate Humanely Raised vs Typical Industry Practices*, Applegate, <https://applegate.com/mission/animal-welfare>.

Response: Hormel Foods hereby fully incorporates its objections to paragraphs 206, 210, 211, 217 and 222. Hormel Foods further objects to paragraph 226 because the alleged facts contained therein are not material to the parties’ claims or defenses. Applegate’s animal raising practices are not at issue in this lawsuit. (*See generally* Complaint.) Further, ALDF has not identified any *Natural Choice*® advertisements which claim that the animals used in *Natural Choice*® products are “grass-fed [and/or] pasture-raised.” (*See* HF SUMF ¶¶ 55-56.) Nor has ALDF presented evidence that the matters set forth in paragraph 226 render the *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. In addition, the referenced document appears to be a webpage from Applegate’s® website. This website is clearly “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted therein.” *Carter*, 614 A.2d at 545 n.9. Such a statement is hearsay and cannot be relied upon to “prove the truth of the matter asserted therein.” *Id.*; *see also* paragraph 222 above (claiming that Applegate is treated as a separate entity from Hormel Foods); *Big Apple BMW, Inc. v. BMW, N.A., Inc.*, 974 F.2d 1358, 1373 (3d Cir. 1992) (noting that statement of subsidiary may not be attributed to the parent company absent a showing that “the parent dominates the activities of the

subsidiary.”) Subject to and without waiving any objection, Hormel Foods admits that the quoted language appears on the referenced webpage but denies that this is a statement by Hormel Foods, that the document supports any inference that consumers have any particular knowledge or beliefs regarding conventional industry practices for raising cattle or that the use of conventional industry practices to raise the animals used in *Natural Choice*® products means that any of the *Natural Choice*® advertisements violate the CPPA. Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraphs 206, 210, 211, 217, 222 and 226. Subject to and without waiving any objection, Hormel Foods admits that the quoted language appears on the referenced webpage but denies that this is a statement by Hormel Foods, that the document supports any inference that consumers have any particular knowledge or beliefs regarding conventional industry practices for raising cattle or that the use of conventional industry practices to raise the animals used in *Natural Choice*® products means that any of the *Natural Choice*®

advertisements violate the CPPA. Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 206, 210, 211 and 217. Hormel Foods objects to paragraph 228 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that the matters set forth in paragraph 228 render the *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Hormel Foods also disputes ALDF's characterization of the referenced document, particularly since the document does not identify or mention Hormel Foods' *Natural Choice*® products. The document therefore cannot support the allegations in paragraph 228.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 206, 210, 211, 217 and 228. Hormel Foods also disputes ALDF’s characterization of the document. The document identifies “Animal Raising Classification.” The document does not state that discontinuing use of antibiotics would “enhance” animal welfare. To the contrary, Hormel Foods’ witnesses testified that antibiotics are used for purposes of treating sick animals, and ALDF has provided no evidence that withholding such treatment for sick animals would “enhance” the animal’s welfare. (*See* Bollum Dep. 83:5-14 (ALDF App. 2804); Demoret Decl. Ex. K, Kromm Dep. 201:6-15 (“Therapeutic antibiotics we do choose to use when animals get sick because it’s in the best interests of maintaining the welfare of those animals. We don’t withhold treatment of an effective medication just because. So it’s my responsibility as a veterinarian and – to make sure that we do our best to maintain the welfare of those animals, and in some cases that means using an appropriate medication to treat them when they’re sick”).) The document also does not reference “animal welfare certifications.” Hormel Foods admits that the term “enhanced” appears in the document. Hormel Foods denies ALDF’s characterization of the document, denies that the document supports any inference that consumers have any particular knowledge or beliefs regarding conventional industry

practices for the types of animals that are used in the products or that the use of conventional industry practices to raise the animals used in *Natural Choice*® products means that any of the *Natural Choice*® advertisements violate the CPPA. Hormel Foods admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 206, 210, 211, 217 and 228. Hormel Foods denies ALDF’s characterization of the document, denies that the document supports any inference that consumers have any particular knowledge or beliefs regarding conventional industry practices for the types of animals that are used in the products or that the use of conventional industry practices to raise the animals used in *Natural Choice*® products means that any of the *Natural Choice*® advertisements violate the CPPA. Hormel Foods admits that the document speaks for itself.

ALDF’s Allegations Regarding Fecal Matter and Pathogens at Hormel Slaughter Plants

231. On January 19, 2018, the USDA’s Food Safety and Inspection Service (“FSIS”) issued a noncompliance record to a Hormel slaughter plant which noted, “The establishment

management is not preventing carcasses with fecal material from entering the chiller.”

HORM_DC00008386 (A1880).

Response: Hormel Foods objects to paragraph 231 because the alleged facts contained therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements include any claims regarding animal slaughtering practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are slaughtered, and/or whether reasonable consumers’ beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that isolated instances of fecal material being found in raw meat and/or carcasses at a facility render Hormel Foods’ *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 231 to support ALDF’s argument that *Natural Choice*® products are not “safe” or “wholesome,” these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. Hormel Foods also disputes paragraph 231 to the extent ALDF characterizes the document as providing evidence that *Natural Choice*® products routinely (or ever) contain fecal material or otherwise pose some health risk to consumer or the general public. *See also* quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret

Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7 for examples of ways that Hormel Foods ensures that *Natural Choice*® products are safe from consumption. Subject to and without waiving any objection, Hormel Foods admits that the quoted text appears in HORM_DC00008386 (A1880). Hormel Foods denies ALDF's characterization of the quoted text, denies that the referenced documents accurately characterized Hormel Foods' standard policies and procedures for preparing carcasses to enter the chiller, denies the document supports any claim by ALDF that consumers have any particular knowledge or beliefs regarding the processes used to slaughter animals used in *Natural Choice*® products or such knowledge or beliefs are material to consumers decision to purchase *Natural Choice*® products and/or that the information contained in the document supports ALDF's claim that any of the *Natural Choice*® advertisements violate the CPPA.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 231.

Subject to and without waiving any objection, Hormel Foods admits that the quoted statements appear in HORM_DC00008612 (A1877). *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret

Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7 for examples of ways that Hormel Foods ensures that *Natural Choice*® products are safe from consumption. Hormel Foods denies ALDF's characterization of the quoted text, denies that the referenced documents accurately characterized Hormel Foods' standard policies and procedures for preparing carcasses to enter the chiller, denies the document supports any claim by ALDF that consumers have any particular knowledge or beliefs regarding the processes used to slaughter animals used in *Natural Choice*® products or such knowledge or beliefs are material to consumers decision to purchase *Natural Choice*® products and/or that the information contained in the document supports ALDF's claim that any of the *Natural Choice*® advertisements violate the CPPA. Hormel Foods admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 231.

Subject to and without waiving any objection, Hormel Foods admits that referenced document states "I found a mound of fecal contamination approximately 1/4" in diameter" on a "carcass." (HORM_DC00166428 (A1889).) *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7 for examples of ways that Hormel Foods ensures that *Natural*

Choice® products are safe from consumption. Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 231.

Hormel Foods further disputes ALDF's characterization of the referenced document. The document indicates that the noncompliance was caused by a “performance issue” of a single employee, that the employee had been retrained after the first instance occurred, and that “this preventative measure was ineffective and caused another failure.” The document does not state or suggest that either occurrence was caused by a defect in Hormel Foods' processes or training procedures. HORM_DC00166428 (A1889). *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7 for examples of ways that Hormel Foods ensures that *Natural Choice*® products are safe from consumption. Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 231.

Subject to and without waiving any objection, Hormel Foods admits that the quoted language appears in the referenced document. HORM_DC00007574 (A1892). *But see also* quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7 for examples of ways that Hormel Foods ensures that *Natural Choice*® products are safe from consumption. Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 231.

Hormel Foods further notes that the referenced document was created well before the “Make the Natural Choice” campaign was launched and thus has no bearing on the parties’ claims or defenses. Subject to and without

waving any objection, Hormel Foods admits that the referenced document contains the quoted language. *HORM_DC00166700 (A1895)*. *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7 for examples of ways that Hormel Foods ensures that *Natural Choice*® products are safe from consumption. Hormel Foods otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 231.

Hormel Foods also disputes ALDF's characterization of the document. The document states that "several 'bad' lots of hogs along with inexperienced gutters and the chain speed" caused a temporary increase in "fecal contamination." The document does not say or suggest that chain speed increases the risk of fecal contamination as a general matter.

HORM_DC00007698 (A1898). *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7 for examples of ways that Hormel Foods ensures that *Natural Choice*® products are safe from consumption. Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 231.

Hormel Foods also disputes ALDF's characterization of the document.

ALDF identifies no foundation for what this document is or that it shows a "Jennie-O turkey with air sac and fecal contamination."

HORM_DC00111325 (A1901). Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 231.

Hormel Foods further objects to paragraph 239 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal slaughtering practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are slaughtered, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that the alleged opinions of a "former

USDA inspector” render Hormel Foods’ *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect.

Further, to the extent ALDF included paragraph 231 to support ALDF’s argument that *Natural Choice*® products are not “safe” or “wholesome,” these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1.

In addition, the referenced “Affidavit” is clearly “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted therein.” *Carter*, 614 A.2d at 545 n.9. Such a statement is hearsay and cannot be relied upon to “prove the truth of the matter asserted therein.” *Id.* ALDF has identified no foundation that this document is genuine. The document has no handwritten signature, and the “Notary Signature” is blank. ALDF has not provided adequate foundation that the “Affidavit” is genuine or reliable. Further, the date provided on the “Affidavit” is September 28, 2014. In other words, the affidavit purports to discuss matters that occurred well before the “Make the Natural Choice” campaign was launched and therefore can have no bearing whatsoever on whether Hormel Foods’ advertisements from the “Make the Natural Choice” campaign violate the CPPA. Hormel Foods therefore denies the allegations in paragraph 239. Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 239.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 231. Hormel Foods further objects to paragraph 241 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal slaughtering practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are slaughtered, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that isolated instances of positive tests for salmonella render Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 241 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and

adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. Hormel Foods also objects to paragraph 241 because it mischaracterizes the referenced document, which states that salmonella was detected on 2/5 “intact cuts” of pork that were sampled. HORM_DC00166218, at 19 (A1614). Hormel Foods also disputes the suggestion by ALDF that the document supports any claim or inference *that Natural Choice® products contain any specific pathogens*. *See also* quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice®* products are safe.) Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 241. Hormel Foods also objects to paragraph 242 because it mischaracterizes the referenced document, which states that salmonella was detected on 5/12 “intact cuts” of pork that were sampled. HORM_DC00166208, at 09 (A1938). Hormel Foods also disputes the suggestion by ALDF that the document supports any claim or inference *that*

Natural Choice® products contain any specific pathogens. See also quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice®* products are safe.) Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 241. Hormel Foods also disputes the suggestion by ALDF that the referenced document supports any claim or inference *that Natural Choice® products contain any specific pathogens. See also* quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice®* products are safe.) Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 241. Hormel Foods also disputes the suggestion by ALDF that the referenced documents support any claim or inference *that Natural Choice® products contain any specific pathogens*. See also quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice®* products are safe.) Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

ALDF's Allegations Regarding Chemical Disinfectants Applied to Carcasses that Become the Products

245. [REDACTED]

[REDACTED]

Response: Hormel Foods objects to paragraph 245 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice®* advertisements include any claims regarding animal slaughtering practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice®* products are slaughtered, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice®* products. [REDACTED]

contained in the document supports ALDF's claim that any of the *Natural Choice*® advertisements violate the CPPA.

246. [REDACTED]

[REDACTED]);
see also Hilgers Dep., at 94:2-17 (A2880).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 245. Subject to and without waiving any objection, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]). *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) Hormel Foods denies ALDF's characterization of the referenced testimony, denies the that the referenced testimony supports any claim by ALDF that consumers have any particular knowledge or beliefs regarding the processes used to clean meat and poultry products that are used in *Natural Choice*® products or that such knowledge or beliefs are material to consumers decision to purchase *Natural Choice*® products. Hormel Foods further denies that the information contained in the document supports ALDF's claim that any of the *Natural Choice*® advertisements violate the CPPA.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 245. Subject to and without waiving any objection, Hormel Foods acknowledges that JOTS uses peracetic acid as one intervention to remove fecal matter from carcasses to ensure the meat products made from these carcasses are safe. Kromm Dep., at 176:9-177:21 (ALDF App. 2975-76). *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7 (identifying interventions used to ensure that *Natural Choice*® products are safe.) Hormel Foods denies ALDF's characterization of the referenced testimony, denies that the referenced testimony supports any claim by ALDF that consumers have any particular knowledge or beliefs regarding the processes used to clean meat and poultry products that are used in *Natural Choice*® products or that such knowledge or beliefs are material to consumers decision to purchase *Natural Choice*® products. Hormel Foods further denies that the information contained in the document supports ALDF's claim that any of the *Natural Choice*® advertisements violate the CPPA.

ALDF's Allegations Regarding Use of Nitrates and Nitrites in the Natural Choice Products

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

Response: Hormel Foods admits that it uses celery juice powder or cultured celery juice powder as an ingredient in certain *Natural Choice*® deli meats, including some ham, chicken and turkey deli meats. *HORM_DC00009079*, at 80-86 (A1958-64). Hormel Foods objects to paragraph 248 because it is unclear what the term “adds” means in this context of this paragraph. As the referenced document reflects, the ingredient lists for *Natural Choice*® products (both on the product label and on the “makethenaturalchoice.com” website) explicitly list the ingredients used in the *Natural Choice*® products, including, where applicable, celery juice powder or cultured celery juice powder. (*Id.*) Hormel Foods admits that the referenced document speaks for itself.

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

Response: Paragraph 249 mischaracterizes Mr. Forbes’ testimony. Mr. Forbes testified that “celery itself is high in natural nitrates.” (*Forbes Dep.* 31:25-32:3 (ALDF App. 2821-22).) Mr. Forbes did not testify that Hormel Foods adds celery juice powder or cultured celery juice powder to *Natural Choice*®

products because they are high in nitrates. Instead, Mr. Forbes clarified that “consumers associate ham with a pink color and kind of cured flavor, if you will. That’s what the cultured celery powder will assist in bringing to this product.” (Forbes Dep. 31:5-14 (ALDF App. 2821).) Mr. Forbes did not testify that Hormel Foods adds celery juice powder with “the intent to introduce some nitrate.” (Demoret Opp. Decl. Ex. L, Forbes Dep. 49:20-50:7.) Mr. Forbes further testified:

A. “Now in the natural system because we use HPP to stabilize the integrity of our products, we don’t necessarily need to think about any type of preservation from the addition of any other ingredient. So we go in at a much lower rate because it’s wasteful to put in more. So we may go into, say, this ham item at even let’s say 50-60 parts per million nitrates, very low level. And that will then allow us to achieve that cured color and cultured flavor. But to remember to do that, going through the process that transaction keeps happening and you eventually have nitric oxide, which makes myoglobin to give you those colors. That’s a gas. It’s going away. So we may have a product that at the end of the day that’s less than 10 ppm available nitrates, which is far less than a conventionally produced product.... *This product is probably two to 300 times less nitrate than you would get coming from a salad that you would eat and convert with your saliva to nitrate.*” (Forbes Dep. 48:23-49:19 (ALDF App. 2827-28.)

Hormel Foods thus denies ALDF’s characterization of Mr. Forbes’ testimony and admits that the referenced testimony speaks for itself.

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

Response: Admit.

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

Response: Denied. See Hormel Foods' objections and response to paragraph 249 for explanation of why Hormel Foods uses cultured celery juice powder as an ingredient in certain *Natural Choice*® products. Hormel Foods denies that Mr. Forbes testified that Hormel Foods adds cultured celery juice powder to the products in order to add nitrates and admits that the testimony referenced in paragraph 251 and in Hormel Foods' response to paragraph 249 speaks for itself.

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

Response: Hormel Foods objects to paragraph 252 because the allegations contained therein are not material to the parties' claims and defenses. ALDF is seeking only injunctive relief. (*See* Complaint – Prayer for Relief.) ALDF is not claiming that any of the *Natural Choice*® advertisements currently running make any statements about nitrates or nitrites and/or advertise the

products as being “nitrate-free” or “nitrite-free.” Nor does ALDF claim that it is challenging any past advertisements because they claim that *Natural Choice*® products are “nitrate free” and/or “nitrite free.” (See HF SUMF ¶¶ 52-53.) In addition, as explained above, although Mr. Forbes testified that some *Natural Choice*® products potentially contain detectable levels of nitrates or nitrites, he further testified that the nitrates/nitrites came from natural sources and that the levels of such nitrates/nitrites are far lower than the level on nitrates/nitrites in a salad. (Forbes Dep. 48:23-49:19 (ALDF App. 2827-28.) Hormel Foods denies ALDF’s characterization of Mr. Forbes testimony and admits that the testimony referenced paragraph 252 and in Hormel Foods’ response to paragraph 249 speaks for itself.

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

Response: Hormel Foods objects to paragraph 253 because the alleged facts contained therein are not material to the parties’ claims or defenses. Hormel Foods does not add “celery juice” or any other substance to *Natural Choice*® products for purposes of having a preservative effect on the products. Instead, Hormel Foods uses the HPP process to ensure the integrity of the *Natural Choice*® products. This is why FSIS has approved use of the

phrase “No Preservatives” on the *Natural Choice*® labels and packaging.
(See HF SUMF ¶¶ 29-30.)

The web page ALDF cites (which was posted by a third party on Hormel Foods’ old website for *Natural Choice*® products” notes that some “food manufacturers” use celery juice to preserve meat. HORM_DC00070944, at 45 (ALDF App. 1979-80). The web pages does not state that Hormel Foods uses this substance (or any other one) in *Natural Choice*® products to preserve the product. (Id.) Rather, Mike Forbes testified that, where celery juice powder or cultured celery juice powder are used as ingredients in a *Natural Choice*® products, the amount of these ingredients used are far too low to have any preservative effect on the products. (See Forbes Dep. 39:17-40:22, 48:1-49:24 (ALDF App. 2825-28).) Hormel Foods denies ALDF’s characterization of the referenced document and denies that celery juice is added to *Natural Choice*® products to act as a meat preserver.

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

Response: Hormel Foods objects to paragraph 254 because the alleged facts contained therein are not material to the parties’ claims or defenses. ALDF has not provided proper foundation regarding what this document is, who drafted it, or the context of the quoted statement in paragraph 254. However, the document appears to be addressing “Ham USDA water classification” and

whether the use of celery powder as an ingredient potentially influenced what claims Hormel Foods could make on the label of a single *Natural Choice*® product regarding percent of natural juices in the product. ALDF, of course, has not explained what USDA approval of “water classification” claims has to do with ALDF’s claims in this lawsuit. The document does not support any claim by ALDF that any of the at-issue claims in Hormel Foods’ *Natural Choice*® advertisements violate the CPPA. Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

ALDF’s Allegations Regarding the Use of Antibiotics in Animal Production and on Meat

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

Response: Hormel Foods objects to paragraph 255 because the alleged facts contained therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers’ beliefs about these issues are material to their

decision to purchase *Natural Choice*® products. Further, ALDF does not allege that any *Natural Choice*® advertisements include express claims regarding whether animals used in the products are ever given antibiotics or for what purposes. Further, to the extent ALDF included paragraph 255 to support ALDF’s argument that *Natural Choice*® products are not “safe” or “wholesome,” these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. In addition, the FDCA grants FDA broad authority to protect the public from drugs that may be unsafe, including drugs that are administered to animals raised for human consumption, and from adulterated foodstuffs. *See* 21 U.S.C. § 301 et seq.; *see also* 21 U.S.C. § 360b; 21 C.F.R. §§ 558.55-558.680. ALDF also has not provided proper foundation regarding the contents of the referenced document or who created it. Hormel Foods also disputes ALDF’s characterization of the document. The section of the document where the quoted language is found relates to “*myths and facts regarding antibiotics*” (emphasis supplied.) The referenced myth is that “antibiotics are given to cover up for unsanitary conditions.” The document responds to this “myth” by noting that “animals are provided a holistic health management system that includes clean water, nutritious feed, housing, vaccines, bio-security, and veterinary care. Any large number of animals or humans leads to more risk for disease, so they are given antibiotic medication to treat the sick animals and prevent the

most common diseases.” HORM_DC00054564, at 72 (ALDF App. 1994.) The document further states that “antibiotics are administered and tracked under the direction of a veterinarian” and that failure to give antibiotics to a sick animal can unnecessarily increase the animal’s suffering.” (Id.) In addition, the document notes that “all antibiotics have passed through the animal by the time that it is harvested [and] any meat that is cooked to the appropriate temperature will kill the bacteria” in the meat. (Id.) *See also* quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

256. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 255. Subject to and without waiving any objection, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]).) Hormel Foods denies ALDF's characterization of the referenced testimony and admits that the testimony speaks for itself.

257. [REDACTED]

[REDACTED] (A3044).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 255. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] In addition, ALDF has not provided proper foundation regarding HORM_DC00116067 (ALDF App. 2108) and, in any event, the date on the document is October 12, 2010, which is well outside the relevant time frame for this action. Nor does this document state that Virginiamycin was administered to animals used in *Natural Choice*® products for purposes of growth promoting effects. *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) Hormel Foods denies

ALDF's characterization of the referenced document and admits that the document speaks for itself.

258. [REDACTED]
[REDACTED]
[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255.

Subject to and without waiving any objection, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].) *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.)

259. [REDACTED]
[REDACTED]
[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255.

Subject to and without waiving any objection, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (ALDF App. 3043-

44.) *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.)

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255. Subject to and without waiving any objection, Hormel Foods admits that some turkeys used in *Natural Choice*® received antibiotics “at some point in [the turkey’s] life.” (Kromm Dep., at 168:20-169:20 (ALDF App. 2971-72).) *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.)

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255. Subject to and without waiving any objection, Hormel Foods admits that some turkeys raised by JOTS are given bacitracin “for feed efficiency and

growth promotion.” (Kromm Dep., at 167:3-11 (A2970).) *See also* quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.)

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255.

Subject to and without waiving any objection, Hormel Foods admits that Ms. Kromm made the quoted statement. (Kromm Dep., at 166:3-11 (ALDF App. 2969).) *See also* quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.)

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255.

Subject to and without waiving any objection, Hormel Foods admits that some turkeys that are used in *Natural Choice*® products are given either lasalocoid or monensin. (Kromm Dep. 187:2-20 (ALDF App. 2979).) *See also* quoted text in paragraph 190 from Hormel Foods’

30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.)

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255.

Subject to and without waiving any objection, Hormel Foods admits that some pigs that are used in *Natural Choice*® products receive antibiotics.

See also quoted text in paragraph 190 from Hormel Foods’ 30(b)(6)

deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7)

(identifying interventions used to ensure that *Natural Choice*® products are safe.)

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255.

Subject to and without waiving any objection, Hormel Foods acknowledges

that its designee testified that he believed “industry guidelines...allow for antibiotic use for disease prevention in raising beef” and that he believed

that “the feedlots that supply Rabe’s that supply *Natural Choice*® use antibiotics” for that purpose. (Hilgers Dep.105:12- 20, 125:18-126:5

(ALDF App. 2884, 2892). *See also* quoted text in paragraph 190 from

Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.)

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255.

Hormel Foods also disputes ALDF’s characterization of the document. The document does not say that carcasses or parts of animals used in *Natural Choice*® products may contain antibiotic or other drug residues.

(HORM_DC00111274 (ALDF App. 2038).) Further, Hormel Foods disputes ALDF’s characterization that this document suggests *that Hormel Foods’ Natural Choice*® products contain antibiotic and/or other drug residues. (See quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe).) Hormel Foods further notes that the document in question was created in 2014—well before the “Make the Natural Choice” campaign was launched and thus has no bearing on whether any of the *Natural Choice*® advertisements from the “Make that Natural Choice” campaign violate the CPPA. Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255 and 266 and its response to paragraph 266. Hormel Foods further notes that the document in question was created in 2014—well before the “Make the Natural Choice” campaign was launched and thus has no bearing on whether any of the *Natural Choice*® advertisements from the “Make that Natural Choice” campaign violate the CPPA. Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255. Subject to and without waiving any objection, Hormel Foods admits that the quoted language appears in the referenced document. The referenced document further states that the withdrawal decision was made after

“review[ing] the matter with USDA/FSIS.” (HORM_DC00022758 (ALDF App. 2000).) *See also* quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255.

Subject to and without waiving any objection, Hormel Foods admits that the referenced document discusses a single instance where a positive sample was detected at a producer’s facility. The document further notes that Hormel Foods immediately implemented a detection and prevention protocol, including “saml[ing] this producer 5 times.”

(HORM_DC00022758 (ALDF App. 2000).) Hormel Foods also utilizes numerous other intervention to ensure that *Natural Choice*® products are safe. (*See* quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are

safe.) Hormel Foods otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255.

Hormel Foods admits that the document states that tulathromycin was “detected but not quantified” and the sample was “Non-Violative.” (HORM_DC00069131 (ALDF App. 2017); *see also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) Hormel Foods otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255.

Hormel Foods also objects to ALDF's characterization of this document. The document does indicate that between 2008-2015 there were thirteen samples that testified positive for residue. The document also states that 8,897 negative samples, meaning that only 0.14% of the samples taken were positive. (HORM_DC00005533 (ALDF App. 2019); *see also* quoted text in

paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) Hormel Foods denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255 and its response to paragraph 271 (showing that only 0.14% of samples taken from 2008-2015 tested positive for residue.) *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) Subject to and without waiving any objection, Hormel Foods admits that the referenced document identifies an isolated sample that showed a "presumptive positive" for sulfonamide and tetracycline. Hormel Foods otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255 and its response to paragraph 271 (showing that only 0.14% of samples taken from 2008-2015 tested positive for residue.) *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) Hormel Foods also denies ALDF's characterization of HORM_DC00166176-79, which states "20 samples were collected under the directed sampling program and sent to the lab; of the samples sent to the lab, one animal was found to have a total of one violative residue (Penicillin) present." (HORM_DC00166178 (ALDF App. 1595.) This document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255. *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) Subject to and without waiving any objection, Hormel Foods admits that the referenced document discusses screenings that JOTS was conducting due to detection of sulfadimethoxine residue. (HORM_DC00140788 (ALDF App. 2029).) Hormel Foods otherwise

denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255.

See also quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) Subject to and without waiving any objection, Hormel Foods admits that the referenced document identifies detection of a "Non-Violative" residue in a carcass and further notes that "the carcass and all parts were condemned and discarded by the establishment." HORM_DC00007728 (ALDF App. 2021). Hormel Foods otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255.

See also quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7)

(identifying interventions used to ensure that *Natural Choice*® products are safe.) In addition, HORM_DC00116129-31 references matters that took place years before the “Make the Natural Choice” campaign was launched and thus has no bearing on whether any of the *Natural Choice*® advertisements from the “Make the Natural Choice” campaign violate the CPPA. Subject to and without waiving any objection, Hormel Foods admits that the referenced document identifies a single instance in 2013 where a single sample of turkey meat tested positive for residues of chlortetracycline. (HORM_DC00116129-31 (ALDF App. 2023-25).) Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255.

See also quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) In addition, HORM_DC00116134 references matters that took place years before the “Make the Natural Choice” campaign was launched and thus has no bearing on whether any of the *Natural Choice*® advertisements from the “Make the Natural Choice” campaign violate the CPPA. Subject to and without waiving any objection, Hormel Foods admits that the referenced

document identifies a single instance where trace levels of penicillin residue was identified in a sample of turkey meat. (HORM_DC00116134 (ALDF App. 2032).) Hormel Foods otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255.

See also quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) In addition, HORM_DC00116136 references matters that took place years before the "Make the Natural Choice" campaign was launched and thus has no bearing on whether any of the *Natural Choice*® advertisements from the "Make the Natural Choice" campaign violate the CPPA. Subject to and without waiving any objection, Hormel Foods admits that the referenced document identifies a single instance where trace levels of penicillin and chlortetracycline residues were identified in a sample of turkey meat. HORM_DC00116136 (ALDF App. 2035).) Hormel Foods otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections to paragraph 255.

See also quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) ALDF also mischaracterizes the referenced document. The email references a conference call that Dr. Kromm attended related to antibiotic use in animals. Dr. Kromm expressed skepticism regarding the scientific support for there being any linkage between antibiotic use in animals and development antibiotic resistance in humans. Dr. Kromm stated that “we’re slowly losing the battle of public perception” and needed to think through ways to “adapt” to public perception. In August 2018, Dr. Kromm testified that a “majority of the turkeys” at JOTS facilities “potentially ending up in Natural Choice could come in contact with an antibiotic. Those antibiotics that they most commonly come in contact are of, according to FDA, minimal threat to human health. The other piece of that pie could be therapeutic antibiotics. *Therapeutic antibiotics we do choose to use when animals get sick because it’s in the best interests of maintaining the welfare of those animals. We don’t withhold treatment of an effective medication just because.* So it’s my responsibility as a veterinarian and – to make sure that we do our best to maintain the welfare of those animals, and

in some cases that means using appropriate medication to treat them when they're sick.” (Demoret Decl. Ex. K, Kromm Dep. 200:12-201:16) (emphasis supplied.) It is unclear whether ALDF is suggesting that Hormel Foods should let sick animals suffer in order to align with some unspecified “public perception” of when antibiotics should be used in animals. But regardless, ALDF has provided no evidence that reasonable consumers actually desire and/or think that any of the *Natural Choice*® advertisements says that animals used in *Natural Choice*® products are never given antibiotics. Further, the referenced email contains Dr. Kromm’s internal notes, thoughts and opinions. These do not reflect the position of Hormel Foods, nor has ALDF established that they even reflect Dr. Kromm’s current views on the referenced topic. Hormel Foods therefore denies ALDF’s characterization of the referenced document, denies that the referenced document says or suggests that reasonable consumers interpret any *Natural Choice*® advertisements as saying or suggesting anything about whether the animals used in the products ever receive antibiotics for any reason, and denies that the referenced documents supports ALDF’s claim that any of the *Natural Choice*® advertisements violate the CPPA.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 255 and 279. Hormel Foods admits that the attached document

references a working group that Hormel Foods formed with the intent of discussing, understanding and addressing public perception of antibiotic use in meat production. HORM_DC00134622 (ALDF App. 2044). ALDF has not demonstrated that forming the working group and/or any activities of that working group render Hormel Foods' *Natural Choice*® advertisements false or misleading in any respect. Indeed, ALDF deposed two individuals identified as members of this working group (Michelle Kromm and Corry Bollum) and did not ask them any questions about it. Hormel Foods therefore denies ALDF's characterization of the referenced document, denies that the referenced document says or suggests that reasonable consumers interpret any *Natural Choice*® advertisements as saying or suggesting anything about whether the animals used in the products ever receive antibiotics for any reason, and denies that the referenced documents supports ALDF's claim that any of the *Natural Choice*® advertisements violate the CPPA. Hormel Foods thus denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

ALDF's Allegations Regarding Use of Other Pharmaceuticals in Animal Production

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

Response: Hormel Foods objects to paragraph 281 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not

submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Further, ALDF does not allege that any *Natural Choice*® advertisements include express claims regarding whether animals used in the products are ever given hormones. Further, to the extent ALDF included paragraph 281 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. In addition, the FDCA grants FDA broad authority to protect the public from drugs that may be unsafe, including drugs that are administered to animals raised for human consumption, and from adulterated foodstuffs. *See* 21 U.S.C. § 301 et seq.; *see also* 21 U.S.C. § 360b; 21 C.F.R. §§ 558.55-558.680. Further, federal law prohibits use of hormones in pork or poultry. *See generally* FSIS, Meat and Poultry Labeling Terms, available at <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>. Thus, any allegations related to use of hormones in animals used in *Natural Choice*® products could only

possibly relate to *Natural Choice*® beef products. (Id.) Subject to and without waiving any objection, Hormel Foods acknowledges that some cattle that used in *Natural Choice*® beef products receive hormones. (Hilgers Dep., at 129:11-130:12 (ALDF App. 2896-97).) *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.)

282. A

Response:

.) *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) Hormel Foods admits that the document speaks for itself.

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

Response: Hormel Foods objects to paragraph 283 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Further, ALDF does not allege that any *Natural Choice*® advertisements include express claims regarding whether animals used in the products receive GMO feed. Further, to the extent ALDF included paragraph 283 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. Subject to and without waiving any objection, Hormel Foods admits that it will accept birds that receive ingredients containing GMOs (such as corn soybean meal) at some point in their lives for use in *Natural Choice*® products. (Hilgers Dep. 21:4-22:5; 51:6-15 (ALDF App. 2866-67, 77); *see also* Bollum Dep. 110:6-16 (ALDF App. 2807) (noting that "the majority of the corn and soybean meal that is out there is genetically modified – what we genetically

modify. So the industry would not be able to feed all of the pigs if they weren't utilizing that.... The organic livestock would be different.... I think there was 20,00 head harvested that were of organic origin. So it's a very small portion of the industry.") Hormel Foods otherwise denies ALDF's characterization of the referenced testimony and admits that the testimony speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 283. Further, ALDF mischaracterizes Mr. Hilgers testimony. Mr. Hilgers testified that "I don't know for certain" whether cattle used in *Natural Choice*® products receive "GMO feed." Hilgers Dep. 106:6-10 (ALDF App. 2885). Hormel Foods denies ALDF's characterization of the referenced testimony and admits that the testimony speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 283. Hormel Foods otherwise denies ALDF's characterization of the referenced testimony and admits that the testimony speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 283. Hormel Foods admits that Mr. Bollum’s testimony speaks for itself.

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

Response: Hormel Foods objects to paragraph 287 because the alleged facts contained therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers’ beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Further, ALDF does not allege that any *Natural Choice*® advertisements include express claims regarding whether animals used in the products ever receive ractopamine. Further, to the extent ALDF included paragraph 287 to support ALDF’s argument that *Natural Choice*® products are not “safe” or “wholesome,” these claims are preempted by the misbranding and adulteration provisions

of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. In addition, the FDCA grants FDA broad authority to protect the public from drugs that may be unsafe, including drugs that are administered to animals raised for human consumption, and from adulterated foodstuffs. *See* 21 U.S.C. § 301 et seq.; *see also* 21 U.S.C. § 360b; 21 C.F.R. §§ 558.55-558.680. Further, CVM specifically approved the use of ractopamine for a variety of reasons, including to control for certain diseases. 21 CFR § 558.500. Subject to and without waiving any objection, Hormel Foods admits that the referenced document states that “ractopamine is used in hog feed. Ractopamine is water soluble, meaning that it can’t be stored in the animal’s body for any length of time and is eliminated quickly. The FDA constantly monitors approved products to assure there are no side effects in humans or animals.” (HORM_DC00021428, at 34 (ALDF App. 2060).) Subject to and without waiving any objection, Hormel Foods admits that some animals used in *Natural Choice*® products receive ractopamine.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 287. Hormel Foods further notes that HORM_D00134387-88 references matters that took place years before the “Make the Natural Choice” campaign was launched and thus has no bearing on whether any of

the *Natural Choice*® advertisements from the “Make the Natural Choice” campaign violate the CPPA. Subject to and without waiving any objection, Hormel Foods admits that HORM_DC00100033 states that “The pork supply for Hormel Foods comes from more than 500 family farms. Many of these farms do use Ractopamine, approved as safe for use by the U.S. Food and Drug Administration (FDA). This supplement has been used by the hog farming industry for many years to produce leaner [and more efficient or sustainable] pork. The supplement, which is widely used in the United States, is part of a healthy, balanced diet for growing hogs. Both the FDA and the UN’s World Health Organization, comprised of over 180 countries, have approved and verified the safety of this feed additive.”

(HORM_DC00100033 (ALDF App. 2062.) Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 287 and 288. Subject to and without waiving any objection, Hormel Foods admits that Ractopamine is a beta agonist and “is a feed ingredient that allows the pig to be more efficient so that you put less input

into that pig. Thus, it's more sustainable. Thus, it reduces the carbon footprint." Bollum Dep. 105:5-8; 108:3-6 (ALDF App. 2805-06).

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 287, 288 and 289. Subject to and without waiving any objection, Hormel Foods admits that the referenced document identifies a single instance where a pig carcass tested positive for ractopamine at level of 0.4 parts per billion. HORM_DC00099911-21 (ALDF App. 2105-06). *See also* quoted text in paragraph 190 from Hormel Foods' 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) Hormel Foods otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 287 and 288. Subject to and without waiving any objection, Hormel Foods admits that the referenced document contains a statement by Mr. Bollum that "what we are hearing if there is ractopamine fed in that mill

to any pigs or cattle, it most likely will come back as positive as the sample testing is so very sensitive.” (HORM_DC00099911 (ALDF App. 2105).
See also quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 287 and 288. Hormel Foods further objects to paragraph 292 because the alleged facts contained therein are not material to the parties’ claims or defenses. *Applegate’s*® animal raising practices are not at issue in this lawsuit. (*See generally* Complaint.) Further, ALDF has not identify any *Natural Choice*® advertisements which claim that the animals used in *Natural Choice*® products are not given ractopamine. (*See* HF SUMF ¶¶49-56.) Nor has ALDF presented evidence that the matters set forth in paragraph 292 render the *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. In addition, the referenced document appears to be a webpage from *Applegate’s*® website. This website is clearly “a statement, other than one made by the declarant

while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted therein.” *Carter*, 614 A.2d at 545 n.9. Such a statement is hearsay and cannot be relied upon to “prove the truth of the matter asserted therein.” *Id.*; *see also* paragraph 222 above (claiming that Applegate is treated as a separate entity from Hormel Foods); *Big Apple BMW, Inc. v. BMW, N.A., Inc.*, 974 F.2d 1358, 1373 (3d Cir. 1992) (noting that statement of subsidiary may not be attributed to the parent company absent a showing that “the parent dominates the activities of the subsidiary.”) Subject to and without waiving objection, Hormel Foods denies that the webpage states that use of ractopamine is not “natural” or that products made from animals that are given ractopamine cannot be accurately labeled or advertised as being “natural.” Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

293. [REDACTED]

[REDACTED]
[REDACTED]); *see also* HORM_DC00116067 (A2108); Kromm Dep., at 167:3-11 (admitting use of antibiotics in turkey feed for feed efficiency and growth promotion purposes) (A2970).

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 255-63 above. [REDACTED]

[REDACTED]. Hormel Foods admits that Dr. Kromm testified that a majority of turkeys used in *Natural Choice*® are administered antibiotics at some point in time in their lives. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]) Hormel Foods admits that Dr. Kromm testified that JOTS gives bacitracin to turkeys for “feed efficiency and growth promotion.” (Demoret Opp. Decl. Ex. K, Kromm Dep. 167:3-7.) Hormel Foods denies that the referenced testimony says or suggests that reasonable consumers interpret any *Natural Choice*® advertisements as saying or suggesting anything about whether the animals used in the products ever receive antibiotics for any reason, and denies that the referenced testimony supports ALDF’s claim that any of the *Natural Choice*® advertisements violate the CPPA.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 195 (which discusses the same document). ALDF mischaracterizes this document, which references a water treatment plan used at a single farm in 2017. (HORM_DC00141373, 75 (ALDF App.

1635, 37).) This document does not identify or discuss water treatment plans used at other facilities. (Id.)

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

Response: Hormel Foods objects to paragraph 295 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that discussed in the referenced documents render Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. Further, to the extent ALDF included paragraph 295 to support ALDF's argument that *Natural Choice*® products are not "safe" or "wholesome," these claims are preempted by the misbranding and adulteration provisions of the FMIA and the PPIA. 21 U.S.C. § 602, 21 U.S.C. § 451; *see also* FSIS, Summary of Federal Inspection Requirements for Meat Products at 1. ALDF also

mischaracterizes the referenced documents. As set forth in HORM_DC00006305, the use of oxytocin is one approved intervention “to assist animals experiencing difficulty farrowing.” Further, this document states that use of oxytocin is permitted only under appropriate supervision and as the final intervention after others have proved unsuccessful (Id. (ALDF App. 2112) (listing the use of oxytocin as 10th intervention to be used).) Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods fully incorporates its responses and objections to paragraphs 255-63, 281, 287 and 295. Subject to and without waiving any objection, Hormel Foods acknowledges that the referenced documents identify that Dexamethazone may be used to “treat various health conditions.” *See also* quoted text in paragraph 190 from Hormel Foods’ 30(b)(6) deposition and Demoret Opp. Decl. Ex. K, Kromm Dep. 198:19-200:7) (identifying interventions used to ensure that *Natural Choice*® products are safe.) Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

297. [REDACTED]
[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections to paragraph 203.

Subject to and without waiving any objection, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]). Hormel Foods otherwise denies
ALDF's characterization of the referenced testimony and admits that the
testimony speaks for itself.

298. [REDACTED]
[REDACTED]
[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections and response to
paragraphs 295 and 297. [REDACTED]

[REDACTED]
[REDACTED]:
Q. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] .) Hormel

Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

ALDF’s Allegations Regarding the Facilities Used to Raise Animals for the Natural Choice Products

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

Response: Hormel Foods objects to paragraph 299 because the alleged facts contained therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised (including whether the animals are cage-free and/or pasture-raised) and/or whether reasonable consumers’ beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented

evidence that the matters discussed in the referenced documents render Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. ALDF also mischaracterizes Mr. Bollum's testimony. Specifically, Mr. Bollum testified that "the majority of pigs that we harvest would be in from inside, confined, safe from weather, because we are located in cold temperatures, it's a much better environment for the pigs." (Bollum Dep. 73:3-6 (ALDF App. 2801).) Hormel Foods denies that the referenced testimony says or suggests that reasonable consumers interpret any *Natural Choice*® advertisements as saying or suggesting anything about whether the pigs used for *Natural Choice*® are raised indoors (due to cold weather or otherwise) or that reasonable consumers hold any particular beliefs about whether pigs used in *Natural Choice*® products are raised indoors or that reasons that the animals are or might be raised indoors. Hormel Foods denies that the referenced testimony supports ALDF's claim that any of the *Natural Choice*® advertisements violate the CPPA. Hormel Foods otherwise denies ALDF's characterization of the referenced testimony and admits that the testimony speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. ALDF also mischaracterizes the referenced testimony. Mr.

Bollum was asked what percentage of pigs used in *Natural Choice*® products “would have come from pigs that have been raised in an outdoor-type production system, like a hoop barn as you discussed?” Mr. Bollum responded “Yeah, I don’t [know]. It would be a fairly small percent. I don’t know what the exact number is.” (Bollum 30(b)(6) Dep., at 61:15-62:2 (A2780-81).) Hormel Foods denies that the referenced testimony says or suggests that reasonable consumers interpret any *Natural Choice*® advertisements as saying or suggesting anything about whether the pigs used for *Natural Choice*® are raised indoors (due to cold weather or otherwise) or that reasonable consumers hold any particular beliefs about whether pigs used in *Natural Choice*® products are raised indoors or that reasons that the animals are or might be raised indoors. Hormel Foods denies that the referenced testimony supports ALDF’s claim that any of the *Natural Choice*® advertisements violate the CPPA.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. Hormel Foods further notes that ALDF has failed to provide adequate foundation for this document, such as who prepared it, whose “animal welfare” information it purports to depict, whether this is a final copy of the document, or whether the information contained therein is

accurate. Subject to and without waiving any objection, see quoted testimony from Mr. Bollum cited in Hormel Foods' response to paragraph 299, which explains Hormel Foods' practices with respect to the majority of the pigs that it harvests. (Bollum Dep. 73:3-6 (ALDF App. 2801).) Hormel Foods otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. Subject to and without waiving any objection, Hormel Foods admits that Ms. Kromm testified that JOTS does not purposefully provide turkeys access to the outdoors. (Kromm Dep., at 97:15-98:5; 99:3-25 (ALDF App. 2935-37).) In addition to the weather-related concerns noted by Mr. Bollum (see quoted testimony included with paragraph 299 above), Ms. Kromm noted that keeping the birds confined indoors protects them from predators. (Demoret Decl. Ex. K, Kromm Dep. 195:24-196:3.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. Subject to and without waiving any objection, Hormel Foods admits that its designee testified that he believed that industry guidelines would “allow for the use of feedlots to raise beef for the Natural Choice line.” (Hilgers Dep. 106:11-14 (ALDF App. 2885).)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. Subject to and without waiving any objection, Hormel Foods admits that it’s designee agreed that some chicken farms can be described as “a building that’s about the length of a football field” and that can hold “more than 20,000 chickens in one of those buildings.” (Hilgers Dep., at 34:13-22 (ALDF App. 2870)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. ALDF also mischaracterizes Mr. Hilgers testimony. Mr. Hilgers was asked whether common industry practices that it expects suppliers to meet or exceed allow for “chickens [to] never go outdoors or see natural light.” Mr. Hilgers did not testify regarding whether some

chickens used in *Natural Choice*® products have access to the outdoors. (Hilgers Dep. 12:1-5 (ALDF App. 2863).) Hormel Foods otherwise denies ALDF's characterization of the referenced testimony and admits that the testimony speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. Subject to and without waiving any objection, [REDACTED]
[REDACTED]
[REDACTED].

307. [REDACTED]
[REDACTED].

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Q. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]?

A. [REDACTED]
[REDACTED].

Q. [REDACTED]

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

Q. [REDACTED]
[REDACTED]?

A. [REDACTED].

Q. [REDACTED]
[REDACTED]

A. [REDACTED].

Q. [REDACTED]

[REDACTED]

[REDACTED]?”

A. [REDACTED]

[REDACTED]

[REDACTED].

Q. [REDACTED]

[REDACTED]?

A. [REDACTED].

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]?

A. [REDACTED]

[REDACTED]

[REDACTED] Hormel Foods otherwise denies

ALDF’s characterization of the referenced testimony and admits that the

testimony speaks for itself.

308. [REDACTED]
[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. Subject to and without waiving any objection, [REDACTED]
[REDACTED]
[REDACTED].

309. [REDACTED]
[REDACTED]

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. [REDACTED]
[REDACTED]
[REDACTED].

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. Subject to and without waiving any objection, Hormel Foods does not dispute paragraph 310.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. ALDF also mischaracterizes Mr. Bollum's testimony, and thus Hormel Foods denies paragraph 311. Hormel Foods further responds that, during his deposition, Mr. Bollum was shown the Animal Welfare Video Assessment Form referenced in paragraph 312 below. Mr. Bollum's testimony was follows:

A. Again, like a lot of these videos, you can't tell if it's been staged or not staged or if the person that is – the activist that is in there taking the video actually did the incorrect procedure, but...

Q. Do you have any reason to believe that the practices in this video were staged?

A. It's always a concern.

Q. For the observation of piglets crushed in crates the observation score is one and states, "This can occur in all production types. Crates have helped eliminate some potential of piglet crushing." From your understanding was there any – anything unusual about the piglets being crushed in the crates as depicted in this video?

A. Not that I remember.

(See Demoret Decl. Ex. M, Bollum Dep. 53:21-54:10.) Hormel Foods otherwise denies ALDF's characterization of the referenced testimony and admits that the testimony speaks for itself.

312. An Animal Welfare Video Assessment Form Hormel used to assess a video made public by Mercy for Animals, of a sow farm owned by The Maschhoffs, classified "piglet crushing" as a "normal acceptable practice[] for [the] production system".

HORM_DC00005022-23 (A2146-47).

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 299 and 312. ALDF mischaracterizes the referenced document and Mr. Bollum's testimony about it (see quoted deposition testimony in paragraph 311 above.) The referenced document does not state that "piglet crushing" is a "normal, acceptable practice." Such an interpretation of this document is ridiculous. Instead, the form states that "piglets crushed in crates" "can occur in all production types" and that use of crates can "help eliminate some potential of piglet crushing." HORM_DC00005023 (ALDF App. 2147.) In other words, there is a risk of piglets being crushed in any type of hog production, and the practice of using farrowing crates is an acceptable practice, in part, because it reduces the risk of piglet crushing. (Id.; *see also* Demoret Opp. Decl. Ex. M, Bollum Dep. 33:19-22, 61:1-10 (describing purpose of using certain types of crates in hog production).) Hormel Foods denies that the document states that "piglet crushing [is] a

normal acceptable practice for the production system.” Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. Subject to and without waiving any objection, Hormel Foods does not dispute that *HORM_DC00110502*, at 507 (ALDF App. 2142) depicts a JOTS facility.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. Subject to and without waiving any objection, Hormel Foods admits that its designee testified that the average size of a full-grown turkey is approximately 41 pounds and that the density requirements at JOTS facilities is “around three square feet per bird.” Ms. Kromm further testified that “sometimes we don’t have a 1-to-ratio in bird space to finish space...our barns aren’t cookie-cutter so it’s the same ratio every time.” (*Kromm Dep.* 63:9-64:1, 126:3-8 (ALDF App. 2922-23, 2949.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. ALDF mischaracterizes Ms. Kromm’s testimony, which was as follows:

Q. It says from “piling against the fence.” What does “piling” mean? What does that mean?

A. Piling is when birds get startled or scared from – usually in these cases from a loud noise, typically. They’ll all tend to move away from whatever the source of the noise is and pile, like, kind of stack on top of each other.

Q. When they pile on each other, how do they die? Is it by suffocation or some other means?

A. With – piling is probably a combination of suffocation and then euthanasia of birds that wouldn’t have recovered on their own.

A. Piling is often a function of a loud noise or a bright light that one of the turkeys aren’t used to seeing. So for example, during a thunderstorm,

a grower would go out and turn the lights on in the barn if it's at night, so the birds don't detect the change in light.

Q. Earlier today you looked at a document that was an animal welfare meeting minute document that mentioned piling, a piling incident. Do you recall that?

A. I do, yes.

Q. Why was that piling incident specifically mentioned?

A. So –

ALDF's Counsel: Objection; leading the witness?

Q. The intent there is to bring those issues to the forefront so if there's a root cause, it can be identified and then the information can be shared with the rest of the farms in the system so they can all have an awareness, and if appropriate, put whatever mitigation strategy into place to help defray future issues of the piling.

(See Demoret Opp. Decl. Ex. K, Kromm Dep. 133:2-8, 134:6-10, 195:5-15, 196:4-19.) Subject to and without waiving any objection, Hormel Foods admits that Dr. Kromm testified as follows:

Q. Two to four times a year there would be a mortality of 2,000 or more birds?

A. Something like that, approximately. (Kromm Dep. 134:3-5 (ALDF App. 2954.)

316. Around 89 percent of all sows used to produce piglets for Hormel's products live in crates for their entire lives. Bollum (indv.) Dep., at 65:2-7 (A2800).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. ALDF mischaracterizes the cited testimony. Mr. Bollum was what percent of Hormel Foods' sows were "group sow housed." Mr. Bollum responded that approximately 11 percent "or slightly higher than that" were group housed. The cited testimony does not support ALDF contention that "89 percent of all sows used to produce piglets for Hormel's products live in crates for their entire lives. Bollum Dep. 64:15-65:7 (ALDF App. 2800). Hormel Foods therefore denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

317. For the approximately 11 percent of sows in Hormel's supply chain that are "loose sow housed"—not exclusively confined in crates—the pigs are confined in crates for 38% of their lives rather than their whole lives. Bollum (indv.) Dep., at 33:4-22 (A2795); 65:2-7 (A2800); Bollum 30(b)(6) Dep., at 58:9-25 (A2778-79); HORM_DC00157269, at 83 (A2163).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. Hormel Foods disputes that the referenced document and testimony supports the allegations paragraph 317. Hormel Foods therefore denies ALDF's characterization of the referenced document.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. Hormel Foods disputes ALDF's characterization of the cited document and testimony. Mr. Bollum did not testify that Hormel Foods never used "loose sow housed"-derived pork in *Natural Choice*® products. Mr. Bollum did testify that "we do have couple of food service customers that pay a premium for that loose sow housed product." (*See generally* record citations in paragraph 318.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. In addition the referenced document (which has a date of "10/1/14" was clearly created well before the "Make the Natural Choice" campaign was launched and thus the information contained therein can have

no bearing on whether the advertisements at issue allegedly misled consumers about the attributes of Natural Choice® products that they purchased in May 2015 or beyond. (HORM_DC00005280 (ALDF App. 2188).) Hormel Foods otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 299. In addition, the referenced document was created well before the "Make the Natural Choice" campaign was launched and thus the information contained therein can have no bearing on whether the advertisements at issue allegedly misled consumers about the attributes of Natural Choice® products that they purchased in May 2015 or beyond. (HORM_DC157272 (ALDF App. 2152).) In addition, the allegations in paragraph 320 are not supported by the referenced document. Hormel Foods otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 299 and 316-20. In addition, HORM_DC00134489 simply states that the referenced sows were moved to a group sow housing gestation pen during a portion of their pregnancies and are then moved into a farrowing crate with the referenced dimensions. (*See generally* citations in paragraph 321.) Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 299. In addition the referenced document (which has a date of “May 5, 2014” was clearly created well before the “Make the Natural Choice” campaign was launched and thus the information contained therein can have no bearing on whether the advertisements at issue allegedly misled consumers about the attributes of Natural Choice® products that they purchased in May 2015 or beyond. Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 299. Hormel Foods disputes ALDF’s characterizations of the cited document and testimony. *HORM_DC00085675* (ALDF App. 2093) discusses group housing and the referenced deposition testimony identifies the various ways pregnant sows are housed through their pregnancies, including use of farrowing and gestation crates and group/pen housing. (Id.; *see* *Bollum Dep. 33:4-22* (ALDF App. 2795).) The referenced testimony and document speak for themselves.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 299. ALDF also mischaracterizes Mr. Bollum’s testimony. Mr. Bollum agreed that the 2014 “Farm Animal Care and Treatment Specifications” manual required that “a minimum of 90 percent of swine in individual stalls can lie down in full lateral recumbency; animals in individual stalls should not be placed at risk of injury by an adjacent animal or injury from rubbing the pen.” (*Demoret Opp. Decl. Ex. M, Bollum Dep. 62:8-63:14.*) Mr. Bollum did not testify regarding whether there were specific instances at Hormel Foods’ facilities where sows were unable to fully lie down on their sides and/or how frequently this actually occurred. (Id.) Hormel Foods otherwise denies ALDF’s characterization of the referenced testimony and admits that the testimony speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 299. In addition, the referenced document was created well before the “Make the Natural Choice” campaign was launched and thus the information contained therein can have no bearing on whether the advertisements at issue allegedly misled consumers about the attributes of Natural Choice® products that they purchased in May 2015 or beyond. (HORM_DC157272 (ALDF App. 2152).) ALDF also mischaracterizes the referenced document. Hormel Foods therefore denies ALDF’s characterization of the referenced document but admits the document lists “Pros” and “Cons” of “crates” as follows:

Crates-Pro

- AASV (American Association of Swine Vets) approved
- AVMA (American Veterinary Medical Association) approved
- Better asset utilization
- Control of individual sow feed intake

- Prevent social stress
- Control of manure

Crates-Cons

- Public perception is bad
- Sows can not turn around
- Sows can not socially interact

(HORM_DC00157281-82 (ALDF App. 2161-62).) Hormel Foods otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 299. In addition, the referenced document was created well before the "Make the Natural Choice" campaign was launched and thus the information contained therein can have no bearing on whether the advertisements at issue allegedly misled consumers about the attributes of Natural Choice® products that they purchased in May 2015 or beyond. (HORM_DC157272 (ALDF App. 2152).) Subject to and without waiving any objection, Hormel Foods admits that the referenced document contains

the statement: “1.) Do Nothing – Risk of losing customers.” Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 299. ALDF mischaracterizes HORM_DC00100640. The referenced document (which appears to be a draft) contains the following statement:

“While a gestation crate provides optimum safety for piglets from being smothered by the mother and reduces the impact of aggressive behaviors seen in group-sow housing, many individuals believe a gestation crate-free environment is more humane. IS THIS ACCURATE?”

HORM_DC00100640 (ALDF App. 2444).) In other words, the document does not definitely state that individuals have specific beliefs about whether group-sow housing is more humane and further identifies the safety features offered by use of gestation crates. Moreover, this document does not say or suggest that Hormel Foods’ *Natural Choice*® advertisements cause or create

confusion regarding whether gestation crates were used with the animals used to make *Natural Choice*® products.

ALDF has not established that the remaining documents cited in paragraph 327 were created or endorsed by Hormel Foods. HORM_DC00066137 indicates that the document was created by another company (Smithfield). ALDF certainly has not established that this document was created by Hormel Foods' digital engagement team. Rather, this document is clearly "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted therein." *Carter*, 614 A.2d at 545 n.9. Such a statement is hearsay and cannot be relied upon to "prove the truth of the matter asserted therein." *Id.*; *see also* paragraph 222 above (claiming that Applegate is treated as a separate entity from Hormel Foods); *Big Apple BMW, Inc. v. BMW, N.A., Inc.*, 974 F.2d 1358, 1373 (3d Cir. 1992). Hormel Foods otherwise denies ALDF's characterization of the referenced documents and admits that the documents speaks for themselves

ALDF's Allegations Regarding Inhumane Acts and Practices Used on Animals Raised for Hormel or Slaughtered at Hormel Plants

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 299. Hormel Foods further objects to paragraph 328 because the alleged facts contained therein are not material to the parties' claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal raising practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are raised (including whether the animals are cage-free and/or pasture-raised) and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that discussed in the referenced documents render Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. USDA oversees the humane slaughter of animals. The Humane Methods of Livestock Slaughter Act ("HMSA") and its implementing regulations dictate specifications for livestock pens, driveways and ramps; prescribe humane methods of driving and handling livestock prior to slaughter; and detail allowable methods of slaughter. *See* 7 U.S.C. §§ 1901-1907 (HMSA); 9 CFR § 313 (implementing HMSA); *see also* 21 U.S.C. §§ 603, 610 (FMIA); 21 U.S.C. § 453(g)(5) (PPIA); 9 CFR § 381.65(b) (USDA regulations for poultry slaughter). HMSA has been incorporated into the FMIA and FSIS oversees slaughterhouses and related facilities to ensure that animals are processed in accordance with the law. *See* 21 U.S.C. § 610(b); 21 U.S.C. § 601(m); 21

U.S.C. § 453(g). Further, FSIS engages in a continuous inspection regime by which inspectors are present in each facility where the slaughter or processing of meat and poultry takes place. Inspectors examine the live animals and conduct a carcass-by-carcass post mortem inspection. 21 U.S.C. § 603; 21 U.S.C. § 455; 9 CFR §§ 309-310. FSIS inspectors also have the authority to suspend inspection. 9 CFR § 500.3. ALDF also mischaracterizes the referenced document. The document references concerns with a single Hormel Foods employee and notes that the incidents were well documented because Hormel Foods “make[s] sure to try and document in detail anytime we notice something out of compliance.” (HORM_00085232 (ALDF App. 2259.) The document does not say or suggest that Hormel Foods has or had a culture of tolerating “abusive employees at Hormel slaughter plants.” (Id.) Hormel Foods denies that the referenced document supports ALDF’s allegation that Hormel Foods has or had a culture of tolerating “abusive employees at Hormel slaughter plants.” Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 299 and 328. ALDF also mischaracterizes the referenced

document. The Hormel Foods employee who drafted the email stated that he had audited “Two Maschhoff Farms.... Very clear these two farms were run by good people and a good manager, and they are not abusing their animals.” The email further stated that there may be problems at a single farm that “My opinion would be that Maschhoff has a big culture challenge regarding animal care issues, not at the slat level as much as mid-level and up.” (HORM_DC00100409 (ALDF App. 2262).) Hormel Foods denies ALDF’s characterization of the referenced document and denies that the document says or suggests that Hormel Foods has or had a culture of tolerating animal abuse by its suppliers.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 299, 328 and 329. Subject to and without waiving objection, Hormel Foods admits that it continues to buy pigs from the Maschhoffs.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 299 and 328. ALDF also mischaracterizes the referenced document. The letter does state that the recipient was “observed lifting a

non-ambulatory pig by the ears.” What ALDF omits, however, is that the letter also states “according to Hormel’s Animal Handling Policy for Livestock Transportation Vendors, which you had signed prior to unloading, it states that pigs will be unloaded from trucks in such a way that they are exposed to minimum of stress, discomfort, and excitement. Also, it expressly prohibits any action that causes unnecessary pain and suffering to animals, including situations on trucks.” Further, because of this incident, the recipient was notified that he was “immediately being put on a 6 month probation period that runs from 5/07/2017 to 11/07/2017. During this period, your actions will fall under much greater scrutiny. Any welfare violation during this time period will result in further disciplinary actions up to or including the termination of your privilege to deliver hogs to Hormel Foods.... Hormel Foods expects all hogs to be treated humanely at all times.” (HORM_DC00067740 (ALDF App. 2308).) Thus, to the extent this document has any relevance, it demonstrates that Hormel Foods takes animal welfare issues very seriously and takes prompt, firm actions if its animals are not treated humanely. (Id.) Hormel Foods otherwise denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 331. Subject to and without waiving any objection, Hormel Foods admits that the quoted statements appear in the referenced document. Hormel Foods otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

333. On October 25, 2016, Hormel Manager of Animal Welfare Eric Hogle wrote in an email [REDACTED]

[REDACTED]

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 299, 328 and 331. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. This reflects a good faith effort by Hormel Foods to

ensure that potential animal welfare issues were caught and appropriately

corrected. [REDACTED]

[REDACTED]

[REDACTED] Hormel Foods

denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

HORM_DC00100125 (A2310).

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 299, 328, 331 and 333. In addition, the referenced document was created well before the "Make the Natural Choice" campaign was launched and thus the information contained therein can have no bearing on whether the advertisements at issue have a tendency to mislead consumers about the attributes of *Natural Choice*® products that they purchased in May 2015 or beyond. In addition, ALDF mischaracterizes the document. Specifically, the letter states: (1) a Hormel Foods employee intervened and stopped the incident; (2) Hormel Foods "cannot allow any egregious act on our premises;" (3) because of the incident, the recipient's "rights to deliver any hogs to any Hormel Foods establishment for any producer [were immediately] terminated;" and (4) "Hormel Foods expects all hogs to be treated humanely at all times." Thus, once again, this document contradicts ALDF's insinuations that Hormel Foods tolerates and/or cultivates a culture of animal abuse. This document reflects that the opposite is true. (HORM_DC00100125 (ALDF App. 2310).) Hormel Foods denies ALDF's

characterization of the referenced document and admits that the document speaks for itself.

335. [REDACTED]
[REDACTED].

Response: Admit. Hormel Foods further responds that witness Corey Bollum testified during his July 31, 2018 deposition [REDACTED]
[REDACTED]
[REDACTED] (Demoret Decl. Ex. M, Bollum Dep. 140:9-142:19.)

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

Response: Admit.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299, 328, 331, 333 and 334. Subject to and without waiving any objection, Hormel Foods admits that [REDACTED]
[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■

343. [REDACTED]

[REDACTED]

[REDACTED]

Response: [REDACTED]

344. [REDACTED]

[REDACTED].

Response: [REDACTED]
[REDACTED]
[REDACTED].

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

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299 and 328. Hormel Foods objects to ALDF's use of the word appendages, as this term is vague and ambiguous. Hormel Foods denies

ALDF's allegation that Hormel or its suppliers amputate the animals' appendages, without any anesthetic. "ALDF also mischaracterizes Mr. Bollum's testimony which was as follows:

Q. Is it your understanding that tail docking and castration are performed without anesthesia?

A. The common industry practice and approved by AVMA of tail docking and castration would be done without anesthesia.

Q. So it would be reasonable to assume that Natural Choice pork was sourced from piglets that had their tails docked and had been castrated without anesthesia. Is that your understanding?

A. Since that's common industry practice, yes.

(Bollum 30(b)(6) Dep. 50:18-22, 51:4-8 (ALDF App. 2773-74); *see also* Bollum Dep. 46:11-14 (ALDF App. 2797).) Hormel Foods admits that it performs tail docking and castration of pigs in its facilities pursuant and follows industry standards and applicable law in so doing. (Id.) Hormel Foods otherwise denies ALDF's characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299 and 328. ALDF also mischaracterizes the referenced document. The document is a processing protocol for Mountain Prairie LLC (a Hormel Foods subsidiary) dated December 16, 2016. The protocol addresses the “Key Process: Processing Piglets – Farrowing.” The stated objective of the process is “to protect and maintain the health in all piglets.” Steps 6 and 7 of the protocol state: (Dock tails no more than ½ inch in length (Use of the width of the side cutters as reference.) Spray with iodine. Dip tail dockers in disinfectant solution between each piglet.” (HORM_DC00006319 (ALDF App. 1997).) Hormel Foods employee Cory Bollum testified that all processing practices used by Hormel Foods’ farms and suppliers meet or exceed “industry practices.” (Demoret Opp. Decl. Ex. M, Bollum Dep. 43:24-44:5; Demoret Opp. Decl. Ex. N, Bollum 30(b)(6) Dep. 48:23-50:1.) Hormel Foods denies ALDF’s characterization of the referenced document and admits that the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299, 328, 345 and 346. ALDF also mischaracterizes the referenced document, which provides specific instructions regarding how the castration process occurs to minimize the risk of injury to the piglet.

HORM_DC00006319 (ALDF App. 1997). Hormel Foods denies ALDF's characterization of the referenced documents and admits that the document speaks for itself. Hormel Foods further admits that it performs tail docking and castration of pigs in its facilities and follows industry standards and applicable law in so doing.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299, 328 and 345-47. Hormel Foods denies ALDF's characterization of the referenced documents and admits that the document speaks for itself. Hormel Foods further admits that it performs tail docking and castration of pigs in its facilities and follows industry standards and applicable law in so doing.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299, 328 and 345-47. ALDF has not established proper foundation for this document, including when it was prepared, who wrote it, and whether this is a draft or final version of the document. The document is not admissible to prove the truth of the matters discussed therein. *Carter*,

614 A.2d at 545 n.9. Further, ALDF mischaracterizes the document, which appears to reference a proposed study to assess whether and to what degree tail docking causes short, medium and long-term pain issues in pigs. (HORM_DC00100118 (ALDF App. 2317).) Hormel Foods denies ALDF's characterization of the referenced documents and admits that the document speaks for itself. Hormel Foods further admits that it performs tail docking and castration of pigs in its facilities and follows industry standards and applicable law in so doing.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299 and 328. In addition, HORM_DC00139737 appears to be an email sent by a third party other than Hormel Foods. As used in paragraph 350, this is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted therein." *Carter*, 614 A.2d at 545 n.9. ALDF thus cannot rely on that document to support the allegations in paragraph 350. (Id.) Further, HORM_DC00134504 does not state that Hormel Foods' corporate customers were concerned about tail docking or castration practices. HORM_DC00134504 (ALDF App. 2314). Hormel Foods thus denies paragraph 350.

351. For example, because of the pain Hormel's methods can cause, Walmart has demanded Hormel only perform castration with "proper pain management" procedures.

HORM_DC00139737 (A2319).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299, 328 and 350. As explained in paragraph 350, this document is hearsay and cannot be used to prove the allegations in paragraph 351. However, ALDF grossly mischaracterizes this document. The document does not: (1) mention Hormel Foods or any of its "methods"; (2) take a position on whether those "methods" cause undue pain; or (3) state that Wal-Mart "demanded" or "required" its suppliers to do anything. HORM_DC00139737 (ALDF App. 2319). Hormel Foods thus denies paragraph 351.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299, 328 and 345. Subject to and without waiving any objection, Hormel Foods admits that in January 2017, Hormel Foods asked a veterinarian to make comments on an undercover video that showed footage of tail docking and castration. (HORM_DC00134504 (ALDF App. 2314).)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299, 328 and 345. Subject to and without waiving any objection, Hormel Foods admits that the referenced document contains the quoted statement.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299, 328 and 345. ALDF also provides an incomplete statement of the veterinarian's response. Specifically, the veterinarian responded that he was "not comfortable stepping out and commenting on standard practices where local anesthesia is not used. I just can't come up with way to make it really sound OK, *even though we have no labeled pain control drugs.*" Hormel Foods denies that the veterinarian said or suggested that industry practices for tail docking and castration are inhumane. Instead, the veterinarian simply stated that he was reluctant to make a case for these practices in terms of public relations. Hormel Foods denies ALDF's characterization of the referenced document and admits that the document

speaks for itself. Hormel Foods further admits that it performs tail docking and castration of pigs in its facilities and follows industry standards and applicable law in so doing.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299 and 328. Hormel Foods does not dispute that ALDF created and released the referenced video in May 2016. But this video is clearly “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted therein.” *Carter*, 614 A.2d at 545 n.9. The video is hearsay and cannot be relied upon to “prove the truth of the matter asserted therein.” (Id.) ALDF has not established that the referenced video contains true and accurate footage of the Maschhoffs’ pig breeding facility. Indeed, as Mr. Bollum noted during his deposition: “a lot of these videos, you can’t tell if it’s been staged or not stages or if the person that is – the activist that is in there taking the video actually did the incorrect procedure.” (Demoret Opp. Decl. Ex. M, 53:21-54:10.) ALDF refused to provide substantial information about the video in discovery on the grounds that such information is

privileged. ALDF has refused to identify who took the footage and/or produce all of the footage this individual took that was not included in the video that ALDF published. Simply put, ALDF has not established that the referenced footage accurately depicts conditions at the Maschhoffs facility. Hormel Foods denies ALDF's characterization of the referenced footage and denies that ALDF has established that the conditions depicted in the video are characteristic of the prior or current practices used by Hormel Foods and/or any of its suppliers.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299, 328 and 355. Hormel Foods denies ALDF's characterization of the referenced footage and denies that ALDF has established that the conditions depicted in the video are characteristic of the prior or current practices used by Hormel Foods and/or any of its suppliers.

357. If not performed with adequate force and precision, the blunt force trauma method of euthanasia can fail to immediately kill the piglet, allowing the animal to slowly die.

HORM_DC00099528 (A2428); ALDF043751 (at 0:58-1:17) (showing piglets conscious and moving minutes after being “euthanized” through blunt force trauma) (A3169).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299, 328 and 355. ALDF also mischaracterizes HORM_DC00099528, which states “the caretaker appeared to apply the euthanasia (manual blunt force trauma) with resolve and the appropriate location of the pig’s head. It is difficult to tell from the video if the caretaker immediately checked to ensure that the animal was rendered insensible and dead. This should be done immediately after euthanasia is applied and the animal should not be left until death is confirmed.” *See generally* HORM_DC00099528 (ALDF App. 2428) (analyzing video depicted in ALDF043751 and identifying countermeasures and corrective actions that the Maschhoffs and/or Hormel Foods took.) Hormel Foods denies ALDF’s characterization of the referenced footage and denies that ALDF has established that the conditions depicted in the video are characteristic of the prior or current practices used by Hormel Foods and/or any of its suppliers.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 328, 355 and 357. Hormel Foods denies ALDF’s characterization of the referenced footage and denies that ALDF has

established that the conditions depicted in the video are characteristic of the prior or current practices used by Hormel Foods and/or any of its suppliers.

359. Applegate's website currently states "piglets have their tails cut and teeth trimmed because overcrowded conditions lead to pigs gnawing on each others' tails. We make sure pigs have enough space and the proper environment so that this practice is not necessary." *Applegate Humanely Raised vs Typical Industry Practices*, Applegate, <https://applegate.com/mission/animal-welfare>.

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 226, 299 and 345. The referenced website clearly "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted therein." *Carter*, 614 A.2d at 545 n.9. Such a statement is hearsay and cannot be relied upon to "prove the truth of the matter asserted therein." *Id.*; *see also* paragraph 222 above (claiming that Applegate is treated as a separate entity from Hormel Foods); *Big Apple BMW, Inc. v. BMW, N.A., Inc.*, 974 F.2d 1358, 1373 (3d Cir. 1992) (noting that statement of subsidiary may not be attributed to the parent company absent a showing that "the parent dominates the activities of the subsidiary.")

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299 and 345. ALDF also mischaracterizes Ms. Kromm’s testimony. Ms. Kromm did not testify that JOTS trims half an inch from the turkeys’ beaks. Instead, she testified as follows:

Q. How long is an average turkey beak without trimming?

A. I’m bad with lengths too, to make it all that much more complicated. Probably somewhere around three inches, maybe, roughly.

Q. How short is a – is the average turkey produced for Natural Choice products? How short is that turkey’s beak after beak conditioning?

A. After beak conditioning? Can you clarify what “after” means?

Q. So a full-sized turkey.

A. Okay. Two and a half inches, maybe.

(Kromm Dep. 67:13-68:7 (ALDF App. 2925-26).) Stated otherwise, Ms. Kromm did not testify that Hormel Foods trims half an inch off of the turkeys’ beak. (Id.) Ms. Kromm did testify that JOTS turkeys receive “toe treatments” and defined this procedure as “the process in which the nailed is treated with some infrared light to reduce the growth of the nail on the turkey.” Ms. Kromm further explained that no part of the toe is removed in

this process. (See Demoret Decl. Ex. K, Kromm Dep. 121:22-122:11.)
Hormel Foods denies ALDF's characterization of the referenced testimony
and further states that JOTS performs the procedure referenced in paragraph
360 in compliance with industry standards and applicable law.

361. [REDACTED]

[REDACTED]

[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections and response to
paragraphs 299 and 345. ALDF mischaracterizes the referenced deposition
testimony. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Hormel

Foods denies ALDF's characterization of the referenced testimony and
admits that the referenced testimony speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299 and 345. In addition, the referenced document is clearly “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted therein.” *Carter*, 614 A.2d at 545 n.9. Such a statement is hearsay and cannot be relied upon to “prove the truth of the matter asserted therein.” ALDF also mischaracterizes the referenced document, which does not affirmatively state or conclude that beak trimming causes significant acute or chronic pain for birds. In addition, the document does state “beak trimming is carried out for the very good reason of preventing or controlling feather pecking and cannibalism, which can cause great suffering. *The evidence suggests that it is not possible to control feather pecking completely by keeping hens in other, more extensive environments.*” (ALDF004601, at 8-10 (ALDF App. 2726, 33-35) (emphasis supplied). Stated otherwise, to the extent the Court considers the referenced document, this document stands for the principle that beak trimming is used to prevent “great suffering” in poultry. (Id.) Hormel Foods denies ALDF’s characterization of the referenced document and admits that the referenced document speaks for itself.

363. Applegate’s website notes that, “In other systems, turkeys often have toenails trimmed or ‘conditioned,’ to prevent the birds from harming each other. By providing more space, Applegate farmers lessen the chances of the birds scratching each other – eliminating

the need for any toe-nail alterations.” *Applegate Humanely Raised vs Typical Industry Practices*, Applegate, <https://applegate.com/mission/animal-welfare>.

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 226, 299, 345 and 361. The reference to *Applegate’s*® website clearly “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted therein.” *Carter*, 614 A.2d at 545 n.9. Such a statement is hearsay and cannot be relied upon to “prove the truth of the matter asserted therein.” *Id.*; *see also* paragraph 222 above (claiming that Applegate is treated as a separate entity from Hormel Foods); *Big Apple BMW, Inc. v. BMW, N.A., Inc.*, 974 F.2d 1358, 1373 (3d Cir. 1992) (noting that statement of subsidiary may not be attributed to the parent company absent a showing that “the parent dominates the activities of the subsidiary.”)

ALDF’s Allegations Regarding Euthanasia Practices at Facilities that Raise Animals for Use in the Products

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 299. Hormel Foods further objects to paragraph 364 because the alleged facts contained therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that

Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal euthanizing practices, what beliefs reasonable consumers have about the conditions in which animals are euthanized (including the methods by which animals are euthanized) and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that anything discussed in the referenced documents render Hormel Foods' *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. USDA oversees the humane slaughter of animals. The Humane Methods of Livestock Slaughter Act ("HMSA") and its implementing regulations dictate specifications for livestock pens, driveways and ramps; prescribe humane methods of driving and handling livestock prior to slaughter; and detail allowable methods of slaughter. *See* 7 U.S.C. §§ 1901-1907 (HMSA); 9 CFR § 313 (implementing HMSA); *see also* 21 U.S.C. §§ 603, 610 (FMIA); 21 U.S.C. § 453(g)(5) (PPIA); 9 CFR § 381.65(b) (USDA regulations for poultry slaughter). HMSA has been incorporated into the FMIA and FSIS oversees slaughterhouses and related facilities to ensure that animals are processed in accordance with the law. *See* 21 U.S.C. § 610(b); 21 U.S.C. § 601(m); 21 U.S.C. § 453(g). Further, FSIS engages in a continuous inspection regime by which inspectors are present in each facility where the slaughter or processing of meat and poultry takes place. Inspectors examine the live animals and conduct a carcass-by-carcass post mortem inspection. 21 U.S.C. § 603; 21 U.S.C. §

455; 9 CFR §§ 309-310. In addition, ALDF has not provided adequate foundation that HORM_DC00004592 (which is an undated JOTS Animal Care Statement with an issue date of “3-2012”) accurately identifies the methods of euthanizing animals that are used in facilities of Hormel Foods and/or its suppliers. Hormel Foods’ designee testified that the standard methods of euthanizing used by JOTS are “cervical dislocation or the use of a captive bolt.” (Demoret Decl Ex. K, Kromm Dep. 102:4-14.” Hormel Foods designee further testified that “there’s certainly different methods that are approved by AVMA, and why they would be euthanized is they’re injured or hurt and so –need to be—for the welfare of the animal needs to be euthanized. And so there are several methods approved.” (Demoret Decl. Ex. N, Bollum 30(b)(6) Dep. 54:14-55:7.)

ALDF’s Appendix also includes the 2013 AVMA Guidelines for Euthanasia of Animals. (ALDF App. 2325 (AVMA Guidelines).) The AVMA Guidelines define euthanasia as “ending the life of an animal in a way that minimizes or eliminates pain and distress.” (ALDF App. 2330.) The AVMA Guidelines further explain that “acceptable [euthanasia] methods are those that consistently produce a humane death when used as the sole means of euthanasia.” The AVMA Guidelines state that each of the methods of euthanasia identified in paragraph 364 are “acceptable,” particularly if the persons performing these methods of euthanasia are properly trained and/or proper procedures are followed. (ALDF App. 2350, 2630, 2362, 2365.)

Hormel Foods admits that it euthanizes animals humanely and in compliance with industry practices and applicable law. (Id.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299 and 364. ALDF also mischaracterizes the referenced document, which states: “Euthanasia is a humane death that occurs *with a minimum of pain, fear and distress to an animal*” and that the approved “*methods minimize pain and distress.*” (HORM_DC00004592 (ALF App. 2322) (emphasis supplied.) Hormel Foods denies ALDF’s characterization of the referenced document and admits the document speaks for itself.

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299 and 364. ALDF’s description of Mr. Bollum’s testimony was incomplete. Mr. Bollum testified as follows:

Q. Does Hormel have any policy with regard to the use of manual blunt force trauma as a method of euthanasia for suckling pigs?

A. We have a recommendation.

Q. What is the recommendation.

A. To not use blunt force trauma.

Q. To the best of your knowledge some suppliers that currently provide hogs to Hormel continue to use manual blunt force trauma as a method of euthanizing piglets?

A. Yes.

(Bollum Dep. 50:3-51:9 (ALDF App. 3173-74.) Mr. Bollum further testified that use of blunt force trauma as a method of euthanasia is “ASV approved” and a legitimate, humane method of euthanasia. Hormel Foods admits that it euthanizes animals humanely and in compliance with industry practices and applicable law (*see* paragraph 364 *supra*.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299 and 364. ALDF’s reference to page 95 of the AVMA manual is irrelevant, as it pertains to the use and methods for use of manual blunt force trauma as a “method of euthanasia for small juvenile marine animals.” (ALDF App. 2408.) Hormel Foods admits that the referenced document speaks for itself. Hormel Foods admits that it euthanizes animals humanely and in compliance with industry practices and applicable law (*see* paragraph 364 *supra*.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299, 328, 355 and 364. Hormel Foods denies ALDF’s characterization of the referenced document and video and admits that they speak for themselves. Hormel Foods admits that it euthanizes animals humanely and in compliance with industry practices and applicable law (*see* paragraph 364 *supra.*)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 364. ALDF provides an incomplete and potentially inaccurate description of the referenced document, which describes cervical dislocation as follows:

“Cervical disarticulation (dislocation)

- Stretching/rotation movement to sever the brain from the spinal column and carotid arteries
- Causes rapid unconsciousness and then death

- Mechanically assisted (using back section of scissors) or by hand

(HORM_DC00004518 (ALDF App. 2436).) The same document further notes that the cervical dislocation method may only be used with turkeys 0-13 weeks of age and the person performing the euthanasia is to verify that immediate death occurs (Id. at 4519-20 (ALDF App. 2437-38).) Hormel Foods admits that it euthanizes animals humanely and in compliance with industry practices and applicable law (*see id.* and paragraph 364 *supra.*)

370. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299 and 364. [REDACTED]

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

[REDACTED]

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299 and 364. Subject to and without waiving any objection, Hormel Foods admits that its designee made the quoted statement in paragraph 371. Hormel Foods admits that it euthanizes animals humanely and in compliance with industry practices and applicable law (*see* paragraph 364 and 369 *supra.*)

372. [REDACTED]
[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299 and 364. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]) Hormel Foods denies ALDF's characterization of the referenced testimony and admits that the testimony speaks for itself.

373. [REDACTED]

[REDACTED]

[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraphs 299 and 364. [REDACTED]

[REDACTED] Hormel Foods

further states that the AVMA Guidelines that ALDF submitted with its Appendix describe maceration as follows:

“Maceration, via use of a specially designed mechanical apparatus having rotating blades or projections causes immediate fragmentation and death of poultry up to 72 hours old and embryonated eggs. A review of the use of commercially available maceration for euthanasia of chicks, poults, and pipped eggs indicates that death by maceration in poultry up to 72 hours old occurs immediately with minimal pain and distress.”

(ALDF App. 2365.) Hormel Foods denies ALDF's characterization of the referenced testimony and admits that the referenced testimony speaks for itself.

ALDF's Allegations Regarding Practices and Conditions at Plants that Slaughter Animals for Use in the Products

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

Response: Hormel Foods objects to paragraph 374 because the alleged facts contained therein are not material to the parties’ claims or defenses. ALDF has not submitted competent and admissible evidence that Hormel Foods’ *Natural Choice*® advertisements include any claims regarding animal slaughtering practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are slaughtered and/or whether reasonable consumers’ beliefs about these issues are material to their decision to purchase *Natural Choice*® products. Nor has ALDF presented evidence that anything discussed in the referenced documents render Hormel Foods’ *Natural Choice*® advertisements false or misleading to reasonable consumers in any material respect. USDA oversees the humane slaughter of animals. The Humane Methods of Livestock Slaughter Act (“HMSA”) and its implementing regulations dictate specifications for livestock pens, driveways and ramps; prescribe humane methods of driving and handling livestock prior to slaughter; and detail allowable methods of slaughter. *See* 7 U.S.C. §§ 1901-1907 (HMSA); 9 CFR § 313 (implementing HMSA); *see also* 21 U.S.C. §§ 603, 610 (FMIA); 21 U.S.C. § 453(g)(5) (PPIA); 9 CFR § 381.65(b) (USDA regulations for poultry slaughter). HMSA has been incorporated into the FMIA and FSIS oversees

slaughterhouses and related facilities to ensure that animals are processed in accordance with the law. *See* 21 U.S.C. § 610(b); 21 U.S.C. § 601(m); 21 U.S.C. § 453(g). Further, FSIS engages in a continuous inspection regime by which inspectors are present in each facility where the slaughter or processing of meat and poultry takes place. Inspectors examine the live animals and conduct a carcass-by-carcass post mortem inspection. 21 U.S.C. § 603; 21 U.S.C. § 455; 9 CFR §§ 309-310. FSIS inspectors also have the authority to suspend inspection. 9 CFR § 500.3. Subject to and without waiving any objections, Hormel Foods acknowledges that referenced documents mention that “the trend of cadavers was discussed in a weekly meeting” and that Hormel Foods responded that “we will be disciplining employees for cadavers on both shifts.” (HORM_DC00166381 (ALDF App. 2499), HORM_DC00166384 (ALDF App. 2501).) Hormel Foods otherwise denies ALDF’s characterization of the referenced document and states that the document speaks for itself. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (*See* paragraph 374 *supra*.)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 374. Hormel Foods admits that the quoted text appears in the

referenced document. Hormel Foods otherwise denies ALDF's characterization of the referenced document and states that the document speaks for itself. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (*See* paragraph 374 *supra.*)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 374. Hormel Foods further notes that ALDF App. 2501 does not support the allegations in paragraph 375. The document is a "Report of Good Commercial Practices Correlation Visit" by a USDA inspector. ALDF App. 2501 states that: (1) this was a "routine visit;" (2) that the establishment "Utilize[d] Good Commercial Practices to Implement a Systematic Approach to Handling Live Poultry;" (3) and that No Follow Up Actions were recommended. (HORM_DC00008015 (ALDF App. 2503).) Hormel Foods admits that the quoted text appears in the referenced document. Hormel Foods otherwise denies ALDF's characterization of the referenced document and states that the document speaks for itself. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (*See* paragraph 374 *supra.*)

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

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 374. ALDF also mischaracterizes the referenced document. The document does not define the term “cadaver.” Nor does it state that the USDA observed 42 cadavers per shift. Instead, the document states that “on average we condemn 5.2 birds per shift while the circuit average is 3.4 birds per shift, but we range from 2 per shift to 42 per shift.” (WF000429 (ALDF App. 2515).) Hormel Foods admits that the quoted text appears in the referenced document. Hormel Foods otherwise denies ALDF’s characterization of the referenced document and states that the document speaks for itself. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (*See* paragraph 374 *supra.*)

378. [REDACTED]
[REDACTED]
[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections and response to paragraph 374. [REDACTED]
[REDACTED]”

[REDACTED]
[REDACTED]
379. [REDACTED]
[REDACTED]
[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 374 and 378.

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 374. In addition, the document references a report published by the Animal Welfare Institute (AWI) purporting to summarize documents that AWI obtained from USDA via a Freedom of Information Act (FOIA) request. The referenced AWI summary is clearly “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted therein.” *Carter*, 614 A.2d at 545 n.9. Such a statement is hearsay and cannot be relied upon to “prove the truth of the matter asserted therein.” *Id.* ALDF has not offered any

competent, admissible evidence to support the allegations in paragraph 380, and Hormel Foods denies them. Nor has ALDF offered any competent evidence that the AWI document provides an accurate summary. Hormel Foods therefore denies ALDF's characterization of the referenced document and states that the document speaks for itself. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (*See* paragraph 374 *supra.*)

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 374. Subject to and without waiving any objection, Hormel Foods admits that HORM_DC00005208 (ALDF App. 2532) identifies a single instance of a humane handling violation a USDA inspector classified as "egregious." Hormel Foods otherwise denies ALDF's characterization of the referenced document and states that the document speaks for itself. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (*See* paragraph 374 *supra.*)

382. [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 374. Subject to and without waiving any objection, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (ALDF App. 2536.) Hormel Foods admits [REDACTED]
[REDACTED]
[REDACTED]. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (*See* paragraph 374 *supra.*)

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 374. Subject to and without waiving any objection, Hormel Foods admits that the referenced states that a pig was administered multiple shots with a captive bolt gun in order to render it unconscious and that a notice of suspension was subsequently issued. (HORM_DC00102311-12

(ALDF App. 2538-39).) Hormel Foods otherwise denies ALDF's characterization of the referenced document and states that the document speaks for itself. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (*See* paragraph 374 *supra*.)

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 374. In addition, the referenced document (HORM_DC00134403) was clearly created years before the "Make the Natural Choice" campaign was launched and thus the information contained therein can have no bearing on whether the advertisements at issue allegedly misled consumers about the attributes of *Natural Choice*® products that they purchased in May 2015 or beyond. In addition, ALDF has not submitted competent and admissible evidence that Hormel Foods' *Natural Choice*® advertisements include any claims regarding animal slaughtering practices, what beliefs reasonable consumers have about the conditions in which animals used in *Natural Choice*® products are slaughtered, and/or whether reasonable consumers' beliefs about these issues are material to their decision to purchase *Natural Choice*® products. ALDF also grossly mischaracterizes the referenced documents, which show that the referenced

pig slaughter plants passed the third-party audits with a very high score (in the high 90s). Hormel Foods denies ALDF's characterization of the referenced document and states that the document speaks for themselves. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (See paragraph 374 *supra*.)

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 374 and 384. ALDF also mischaracterizes the referenced document, which shows that Hormel Foods passed the referenced audit with a score of 99% and that no corrective action was needed following the audit. (HORM_DC00037316 (ALDF App. 2542).) Hormel Foods admits the quoted text appears in the document. Hormel Foods otherwise denies ALDF's characterization of the referenced documents and states that the documents speak for themselves. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (See paragraph 374 *supra*.)

386. [REDACTED]
[REDACTED]
[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 374. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Hormel Foods denies ALDF’s characterization of

the referenced testimony and admits that the testimony speaks for itself.

Hormel Foods admits that the quoted text appears in the referenced

document. Hormel Foods further admits that the slaughtering practices of

Hormel Foods and its suppliers comply with industry standards and

applicable law (*See* paragraph 374 *supra*.)

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraph 374. ALDF has also failed to establish appropriate foundation for this document, including who created it (e.g., Hormel Foods or a third-party), when it was created, or for what purpose. ALDF thus has failed to establish that the document is admissible or that the content is material to the parties’ claims and defenses. Nor does the document say or suggest that

other stunning methods are inhumane. *See also* 7 U.S.C. § 1902 (“No method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane. Either of the following two methods of slaughtering and handling are hereby found to be humane: (a) in the case of cattle, calves...swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective....”) Further, Hormel Foods’ designee testified that the QPP plant has “moved to a CO₂ stunning system” for many of the animals processed in that facility. (Demoret Decl. Ex. N, Bollum 30(b)(6) Dep.111:3-22.) Hormel Foods admits that the quoted text appears in the referenced document. Hormel Foods otherwise denies ALDF’s characterization of the referenced document and states that the document speaks for itself. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (*See* paragraph 374 *supra*.)

388. This document further noted that it is “Hormel against the world” when it comes to its failure to use gas stunning, since all of its competitors converted to gas stunning.

HORM_DC00100696 (A2574).

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 374 and 387. ALDF mischaracterizes the document, which simply references a trend with large slaughter facilities that had converted or

planned to convert to CO₂ stunning. Hormel Foods admits that the quoted text appears in the referenced document. Hormel Foods otherwise denies ALDF's characterization of the referenced document and states that the document speaks for itself. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (*See* paragraph 374 *supra.*)

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 374 and 387. ALDF also mischaracterizes the document, which states “The hog industry is transitioning from electrical stunning to group CO₂ stunning (Public perception of what is ‘right’”).
(HORM_DC00100696 (ALDF App. 2574).) Hormel Foods admits that the quoted text appears in the referenced document. Hormel Foods otherwise denies ALDF's characterization of the referenced document and states that the document speaks for itself. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (*See* paragraph 374 *supra.*)

390. [REDACTED]

[REDACTED]

[REDACTED]

(A2845).

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 374 and 387. [REDACTED]

[REDACTED]

[REDACTED]:

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Hormel

Foods otherwise denies ALDF's characterization of the referenced testimony and states that the testimony speaks for itself. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (*See paragraph 374 supra.*)

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 374, 387 and 390. The referenced document does not say or suggest that one of Hormel Foods’ pig slaughterhouses currently uses an electrical stunning system. (HORM_DC00100702 (ALDF App. 2580).) *See also* Demoret Decl. Ex. M, Bollum Dep. 163:1-3.) Hormel Foods no longer owns the other plant referenced at ALDF App. 2580 (Fremont, Nebraska) <https://www.hormelfoods.com/newsroom/press-releases/hormel-foods-finalizes-sale-of-fremont-neb-processing-facility/>. Hormel Foods otherwise denies ALDF’s characterization of the referenced document and states that the document speaks for itself. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (*See* paragraph 374 *supra*.)

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

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 374, 387 and 390. ALDF also mischaracterizes the referenced document, which is an email containing draft “Cheesecake factory written responses” by JOTS. The cited draft response that ALDF appears to be referencing in paragraph 392 is as follows:

“We are committed to working with our suppliers to ensure humane slaughtering practices, such as controlled atmosphere stunning (CAS), are the preferred harvest method. We also support tools such as live video

monitoring to ensure humane processing. The welfare guidelines established by the NTF allow for variation in stunning method and focus on the outcome of the bird being unconscious at the time of slaughter.” (HORM_ DC00112596-97 (ALDF App. 2603-04).) Hormel Foods otherwise denies ALDF’s characterization of the referenced document and states that the document speaks for itself. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its suppliers comply with industry standards and applicable law (*See* paragraph 374 *supra*.)

393. [REDACTED]

[REDACTED]

[REDACTED]).

Response: Hormel Foods hereby fully incorporates its objections and responses to paragraphs 374, 387 and 390. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Hormel

Foods otherwise denies ALDF’s characterization of the referenced testimony and states that the testimony speaks for itself. Hormel Foods further admits that the slaughtering practices of Hormel Foods and its

suppliers comply with industry standards and applicable law (*See* paragraph 374 *supra.*)

Dated: January 25, 2019

Respectfully submitted,

/s/ Miranda L. Berge

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

ANIMAL LEGAL DEFENSE FUND,

Plaintiff,

v.

HORMEL FOODS CORPORATION,

Defendant.

Case No. 2016 CA 4744 B
Judge Fern Saddler

Next Court Date: January 25, 2019
Event: Deadline for Oppositions to
Dispositive Motions

**AFFIDAVIT OF MARTIN DEMORET
IN SUPPORT OF HORMEL FOODS CORPORATION'S OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY**

1. I am an attorney licensed to practice in the States of Iowa and Nebraska. I am admitted to practice before this Court *pro hac vice*. I practice law with the law firm Faegre Baker Daniels LLP. I represent Hormel Foods Corporation ("Hormel Foods") in this case. I have personal knowledge of the facts set forth below, and if called as a witness, could testify competently to the following facts.

2. Attached hereto as Exhibit A is a true and correct copy of excerpts of the deposition of ALDF Rule 30(b)(6) designee Mark Walden on August 2, 2018.

3. Attached hereto as Exhibit B is a true and correct copy of excerpts of the deposition of Elizabeth Putsche on July 19, 2018.

4. Attached hereto as Exhibit C is a true and correct copy of excerpts of deposition of Stephen Wells on November 30, 2018.

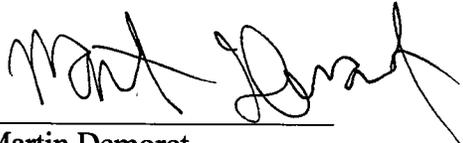
5. Attached hereto as Exhibit D is a true and correct copy of excerpts of the deposition of Amy Sand on July 26, 2018.

6. Attached hereto as Exhibit E is a true and correct copy of excerpts of the deposition of Jeremy Zavoral on July 27, 2018.
7. Attached hereto as Exhibit F is a true and correct copy of excerpts of the deposition of Hormel Foods Corporation Rule 30(b)(6) designee Jeremy Zavoral on August 22, 2018.
8. Attached hereto as Exhibit G is a true and correct copy of excerpts of the deposition of Karen Kraft on August 30, 2018.
9. Attached hereto as Exhibit H is a true and correct copy of excerpts of the deposition of Hormel Foods Corporation Rule 30(b)(6) designee Jeremy Zavoral on November 28, 2018.
10. Attached hereto as Exhibit I is a true and correct copy of excerpts of the deposition of Hormel Foods Corporation Rule 30(b)(6) designee John Hilgers on November 28, 2018.
11. Attached hereto as Exhibit J is a true and correct copy of excerpts of the deposition of Wayne Farms LLC Rule 30(b)(6) designee Bryan Miller on November 30, 2018.
12. Attached hereto as Exhibit K is a true and correct copy of excerpts of the deposition of Michelle Kromm on August 20, 2018.
13. Attached hereto as Exhibit L is a true and correct copy of excerpts of the deposition of Hormel Foods Corporation Rule 30(b)(6) designee Michael Forbes on August 23, 2018.
14. Attached hereto as Exhibit M is a true and correct copy of excerpts of the deposition of Cory Bollum on July 31, 2018.
15. Attached hereto as Exhibit N is a true and correct copy of excerpts of the deposition of Hormel Foods Corporation Rule 30(b)(6) designee Cory Bollum on August 21, 2018.

16. Attached hereto as Exhibit O is a true and correct copy of Exhibit 62 from the deposition of Mark Walden on August 3, 2018.

17. Further affiant sayeth not.

Dated: January 25, 2019



Martin Demoret

SWORN AND SUBSCRIBED THIS TWENTY FIFTH DAY OF JANUARY 2019.


Notary Public



Exhibit A

1 A. Yes, I believe so.

2 Q. Is it correct that ALDF is not alleging that
3 the product claims themselves conflict with ALDF's
4 organizational mission?

5 MR. LOBDELL: Objection to form. Calls for a
6 legal conclusion.

7 THE WITNESS: If you could please repeat the
8 question. I'm sorry.

9 BY MR. DEMORET:

10 Q. Is it correct that ALDF is not alleging that
11 the product claims themselves conflict with ALDF's
12 organizational mission?

13 MR. LOBDELL: Objection to form.

14 THE WITNESS: The Animal Legal Defense Fund's
15 mission is to protect the lives of animals and advance
16 their interests through the legal system. And going to
17 the core of that mission is transparency and truth in
18 advertising and dissemination of accurate information.

19 So to the extent that there are false and
20 misleading statements propagated that encourage
21 reasonable consumers to procure product under misleading
22 circumstances, that increases artificially, or even
23 fraudulently, demand for product that goes through an
24 abusive, inhumane, and unsanitary process, that does
25 frustrate the Animal Legal Defense Fund's mission.

1 BY MR. DEMORET:

2 Q. So you're saying that it frustrates the
3 mission; correct?

4 MR. LOBDELL: Objection to form.

5 THE WITNESS: The use of false and misleading
6 information and a lack of transparency goes to the core
7 of our mission requiring us to divert resources to
8 address the frustration of that mission.

9 MR. LOBDELL: If I may, Counsel, I just want to
10 make sure that Mr. Walden has an opportunity to finish
11 his response. There's been a couple times that he may
12 have been cut off.

13 MR. DEMORET: Understood. I apologize for
14 that.

15 THE WITNESS: No problem.

16 BY MR. DEMORET:

17 Q. So going to my original question, ALDF is not
18 alleging in this lawsuit that the product claims
19 conflict with ALDF's organizational mission; correct?

20 MR. LOBDELL: Object to form.

21 THE WITNESS: The Animal Legal Defense Fund's
22 mission is to advance the -- to protect the lives of
23 animals and advance their interests through the legal
24 system. And when there is a lack of transparency or
25 false or misleading advertising, which goes to the core

1 of that mission, it frustrates that mission. So we need
2 to divert resources to counteract that and make sure
3 accurate information is available for individuals to act
4 on.

5 BY MR. DEMORET:

6 Q. So may I rely on your answer in this
7 interrogatory as ALDF's position in this lawsuit?

8 A. The statement documented here in our response
9 is accurate.

10 Q. Okay. Would you please go to page 49.
11 Interrogatory Number 32, it requests ALDF to "Identify
12 each individual likely to have discoverable information,
13 along with the subjects of that information, that you
14 may use to support your claims."

15 And would you please review quickly the list of
16 people ALDF identified?

17 A. On page 50?

18 Q. Yes.

19 A. One moment, please. And on to page 51?

20 Q. Correct.

21 A. Okay.

22 Q. Would agree that you were the only person
23 employed by ALDF who is listed in ALDF's response to
24 Interrogatory 32?

25 A. I am the only Animal Legal Defense Fund

1 his capacity at this point for those, I believe, past
2 three question.

3 MR. DEMORET: Understood.

4 BY MR. DEMORET:

5 Q. Is ALDF opposed to factory farming?

6 MR. LOBDELL: Objection to form.

7 THE WITNESS: To the extent that factory
8 farming poses -- is inconsistent with our mission
9 statement, yes.

10 BY MR. DEMORET:

11 Q. And is factory farming inconsistent with your
12 mission statement?

13 A. I believe it is, yes.

14 Q. Is part of the ALDF's mission to oppose factory
15 farming?

16 MR. LOBDELL: Objection to form.

17 THE WITNESS: No. An Animal Legal Defense Fund
18 mission is to protect the lives and advance the
19 interests of animals through the legal system. So our
20 mission is more expansive or proactive to expand through
21 education and outreach the interests of animals. It
22 seems to me factory farming is more of a frustration of
23 mission.

24 BY MR. DEMORET:

25 Q. So there's conflict between factory farming and

1 ALDF's mission?

2 MR. LOBDELL: Object to the form.

3 And I don't want to belabor the point, but I
4 would essentially maintain my scope objections as long
5 as we're on this topic of ALDF's understanding of what
6 factory farming does and doesn't do, it's our
7 understanding that Mr. Walden is testifying in his
8 individual capacity.

9 THE WITNESS: Could you reread the question.

10 THE REPORTER: "Question: Is part of the
11 ALDF's mission to oppose factory farming?"

12 THE WITNESS: The Animal Legal Defense Fund, to
13 the extent that there are practices that factory farming
14 uses that inhibit or frustrate its ability to achieve
15 its mission, that's how I think how I would characterize
16 the Animal Legal Defense Fund's view of factory farming.

17 BY MR. DEMORET:

18 Q. So there's not a conflict between factory
19 farming and ALDF's mission?

20 MR. LOBDELL: Objection to form.
21 Mischaracterizes testimony.

22 THE WITNESS: Conflict? I would view it more
23 as a frustration of the mission that inhibits our
24 ability to achieve our mission.

25 ////

1 BY MR. DEMORET:

2 Q. So you're saying that factory farming
3 frustrates ALDF's mission, but is not in conflict with
4 the mission?

5 MR. LOBDELL: Objection to the form.

6 THE WITNESS: Let me think about that for a
7 minute. The Animal Legal Defense Fund -- I believe it's
8 more of a frustration.

9 BY MR. DEMORET:

10 Q. Do you know how many factory farming operations
11 there are in the United States right now?

12 A. I remember viewing a recent map of the number
13 of factory farm across the United States. But, I,
14 unfortunately do not remember the specific number.

15 Q. Do you think it's more than a thousand?

16 A. I would be speculating. I would not want to do
17 that.

18 Q. Do you think it's more than 500?

19 MR. LOBDELL: Objection to form.

20 THE WITNESS: Again, I'd prefer not to
21 speculate. I'm sorry.

22 BY MR. DEMORET:

23 Q. So sitting here today as ALDF's representative
24 you do not know how many factory farms there are in the
25 United States; correct?

1 It's protected attorney work product. I'm going to
2 instruct the witness to not answer the question.

3 MR. DEMORET: I'm not asking opinion. I'm
4 asking if ALDF has done that investigation.

5 MR. LOBDELL: I will continue to object on
6 privilege grounds as attorney work product and protected
7 and instruct the witness not to answer that question.

8 MR. DEMORET: Okay.

9 BY MR. DEMORET:

10 Q. Do you know how many meat products in the
11 marketplace are currently being advertised or labeled as
12 being natural?

13 MR. LOBDELL: Objection to form.

14 THE WITNESS: I do not.

15 BY MR. DEMORET:

16 Q. Do you know how many food companies are selling
17 meat products in the District of Columbia that are
18 labeled or advertised as being natural?

19 MR. LOBDELL: Objection to form.

20 THE WITNESS: I do not.

21 BY MR. DEMORET:

22 Q. When did ALDF become aware of the Hormel
23 Natural Choice advertising campaign?

24 MR. LOBDELL: I'm going to object on privilege.
25 And instruct the witness you're welcome to answer that

1 to the extent that you can without disclosing
2 attorney-client communications.

3 THE WITNESS: I'm afraid I can't respond.

4 BY MR. DEMORET:

5 Q. You can't respond with the date that ALDF
6 became aware of Hormel Natural Choice advertisements?

7 A. I can't respond because it's privileged. I'm
8 sorry. I should have been clear.

9 Q. When did ALDF begin to investigate Hormel's
10 Natural Choice advertising campaign?

11 MR. LOBDELL: Again, we'll object on privilege
12 grounds there and instruct the witness not to answer
13 that question.

14 BY MR. DEMORET:

15 Q. Are you taking your attorney's advice?

16 A. I am, sir. Thank you for asking.

17 Q. Has ALDF engaged in work in the District of
18 Columbia related to false advertising of meat products
19 or poultry products?

20 MR. LOBDELL: Objection to form.

21 THE WITNESS: The Animal Legal Defense Fund has
22 filed numerous rulemaking petitions and comments to
23 government agencies headquartered, I believe, in
24 Washington, D.C. that pertain to false and misleading
25 advertising around meat and poultry products.

1 Approaches"?

2 A. I do.

3 Q. Did you see down in the third prong, one of the
4 direct approaches listed is consumer protection?

5 A. I do see that.

6 Q. Is Chris Berry stating that ALDF in April of
7 2015 had a plan to use consumer protection laws to
8 confront factory farming?

9 MR. LOBDELL: Objection on privilege grounds,
10 attorney work product.

11 I'm going to instruct the witness to not answer
12 that questions.

13 Also point out that the document speaks for
14 itself.

15 BY MR. DEMORET:

16 Q. Did the ALDF organizational plan include using
17 consumer protection laws to challenge factory farming in
18 April of 2015?

19 A. I would think that the contents of the Animal
20 Legal Defense Fund's strategic plan would be privileged
21 or work product.

22 Q. So you can't -- are you refusing to tell me if
23 the ALDF's organizational plan in April of 2015 included
24 using consumer laws to challenge factory farming?

25 MR. LOBDELL: And I'll object on privilege

1 grounds there.

2 And instruct the witness to not answer that
3 question.

4 BY MR. DEMORET:

5 Q. Would you go back to Exhibit 4, please.

6 A. I have Exhibit 4.

7 Q. Start at page 5, please.

8 A. Page 5?

9 Q. Yes.

10 A. One moment, please. I am at page 5.

11 Q. This Interrogatory 3 states, "Identify all of
12 your organizational activities related to advocating for
13 truth in meat and poultry advertising, including
14 advertising claims unrelated to animal welfare."

15 Did I read that correctly?

16 A. Yes, you did. And, yes, I do see that.

17 Q. Okay. I'd like you to go to ALDF's first
18 supplemental response, which is located on page 6.

19 A. I'm on page 6.

20 Q. Okay. Do you see where it states, "By way of
21 example, but not of limitation, ALDF has conducted the
22 following work related to advocating for truth in meat
23 and poultry advertising"?

24 A. I see that statement.

25 Q. Are you familiar with the contents of the

1 Q. I'm sorry. I will ask them. And I will
2 provide your attorney the opportunity to make
3 objections.

4 Are you on page 14?

5 A. I am. If it's not too disruptive, is this
6 still under the first deposition --

7 (Simultaneous speakers.)

8 (Reporter interruption.)

9 THE WITNESS: I was merely wanting to verify
10 that page 14, the material there is still housed under
11 Animal Legal Defense Fund's Supplemental Response to
12 Interrogatory Number 3 -- which I've now checked. And
13 it is -- just so I know where I am oriented. So I
14 apologize, Kathryn.

15 MR. DEMORET: And I apologize for interrupting.
16 That was on me.

17 BY MR. DEMORET:

18 Q. The second bullet point on page 14, do you see
19 that?

20 A. I do.

21 Q. It state, "In May of 2016, together with the
22 Center for Biological Diversity, ALDF attorneys
23 submitted comments to the FDA calling for regulation of
24 the term 'natural' on labels, and specifically asking
25 the agency, in tandem with USDA, to 'define the term

1 "natural" as used in meat and poultry products because
2 of the importance of the term 'natural' to consumers, as
3 well as clear evidence that consumers have been misled
4 by use of the term in product labeling."

5 Did I read that correctly?

6 A. I believe you did.

7 Q. Why did the ALDF file the comments with the
8 Center For Biological Diversity related to the request
9 for the FDA to regulate the term "natural" on meat
10 products?

11 MR. LOBDELL: Again, I'll object on privilege
12 grounds.

13 And instruct the witness to not answer or to
14 answer to the extent that you can without discussing
15 attorney-client communications.

16 THE WITNESS: I'm afraid I'm not able to answer
17 given that admonition.

18 BY MR. DEMORET:

19 Q. Did ALDF submit these comments because of
20 Hormel's Natural Choice advertising?

21 MR. LOBDELL: Again, I'll object on privilege
22 grounds.

23 Same admonition, that you may answer that
24 question to the extent you can without disclosing
25 attorney-client communications.

1 THE WITNESS: I'm afraid I won't be able to
2 answer without disclosing attorney-client conversations.

3 BY MR. DEMORET:

4 Q. Okay. Could you go to page 15, please.

5 A. I'm on page 15.

6 Q. You see the first bullet point references, In
7 May 2016 released an undercover investigation by ALDF a
8 Nebraska-based pig breeding owned and operated by the
9 Maschoffs, a major supplier to Hormel Foods, showing
10 cruelty and neglect of pigs.

11 Did I read that correctly?

12 A. You did. And I see that.

13 Q. Why did ALDF investigate the Maschoffs?

14 MR. LOBDELL: Again, I'll object on privileged
15 grounds there.

16 And instruct the witness to not answer that
17 question.

18 THE WITNESS: I'll take my attorney's counsel.

19 BY MR. DEMORET:

20 Q. Did ALDF investigate the Maschoffs because of
21 Hormel's Natural Choice advertising?

22 MR. LOBDELL: Objection on privilege grounds
23 and instruct the witness to not answer that question.

24 THE WITNESS: I'll follow counsel's advice.

25 ////

1 BY MR. DEMORET:

2 Q. Moving to the presentation attributed to
3 Ms. Howell, have you spoken to her about the
4 presentation attributed to her?

5 MR. LOBDELL: Same objection on privilege
6 grounds. You're welcome to answer to the extent that it
7 goes to whether or not a conversation took place.

8 THE WITNESS: And, again, I do not recollect a
9 conversation with Ms. Howell on that topic.

10 BY MR. DEMORET:

11 Q. Mr. Dillard's presentation, have you spoken him
12 to about the presentation attributed to him?

13 MR. LOBDELL: Same privilege objection there.

14 THE WITNESS: I'm just checking. I do not
15 recollect a conversation with Mr. Dillard on this
16 presentation.

17 BY MR. DEMORET:

18 Q. Sitting here as the ALDF designee, are you
19 aware of any presentations provided by ALDF's attorneys
20 that have discussed this lawsuit?

21 A. I am not aware of any presentations by Animal
22 Legal Defense Fund attorneys referencing this lawsuit.

23 Q. Are you aware of any presentations provided by
24 Animal Legal Defense Fund attorneys referencing Hormel's
25 Make the Natural Choice advertising campaign?

1 correct?

2 A. I believe that's accurate, since I'm not aware
3 of the mechanism that would put them into our direct
4 mail or electronic mail database if they weren't a
5 supporter or a member. So I think that's an accurate
6 statement.

7 Q. How many members does ALDF have in the District
8 of Columbia?

9 A. The Animal Legal Defense Fund has 750 members
10 in the District of Columbia.

11 Q. How many supporters?

12 A. The Animal Legal Defense Fund has, I believe,
13 408 supporters in the District of Columbia.

14 Q. And, just so I'm clear, are all supporters
15 considered members?

16 A. I believe that is a safe assumption. I believe
17 the Venn diagram would include them.

18 Q. You're a lawyer; correct? Is that right?

19 A. I have legal training, yes.

20 Q. So you remember the logic tests?

21 A. Yes.

22 Q. Taking us back. Sorry about that.

23 Has ALDF done any public education relating to
24 Hormel's Make the Natural Choice campaign in D.C.
25 besides sending mailings, blasts, newsletters to members

1 and supporters?

2 MR. LOBDELL: Objection to form.

3 THE WITNESS: The Animal Legal Defense Fund
4 generally provides that sort of outreach and educational
5 information to all of its members. So to the extent
6 that it is distributed to all members and supporters,
7 that would necessarily include those members and
8 supporters located in the District of Columbia.

9 BY MR. DEMORET:

10 Q. Has it done any education outreach to the
11 people in the District of Columbia who are not members
12 and supporters of ALDF?

13 MR. LOBDELL: Objection to form.

14 THE WITNESS: To the extent that we have
15 chapters and colleges and universities in the District
16 of Columbia, to the extent that we participate in
17 conferences and other events in the District of Columbia
18 that may include nonmembers and nonsupporters, the
19 answer would be yes.

20 BY MR. DEMORET:

21 Q. Have you done any educational efforts outside
22 of ALDF's members and supporters related to the Make the
23 Natural Choice campaign in D.C.

24 A. I don't believe so.

25 Q. Why not?

1 MR. LOBDELL: I'll object on privilege grounds.

2 If you're able to answer that question, go
3 ahead without discussing attorney-client communications.

4 THE WITNESS: Let me think my way through this.
5 I don't believe I can answer. It would be speculative
6 beyond attorney-client privilege.

7 BY MR. DEMORET:

8 Q. And I believe we covered this earlier, so I
9 apologize if this is repetitive. ALDF is not aware of
10 any person in the District of Columbia who purchased
11 Natural Choice products; correct?

12 MR. LOBDELL: Objection to form.

13 THE WITNESS: I would -- I believe that's in
14 request for admission of documents, probably high 40s, I
15 think. I'm going from memory. It may be worthwhile to
16 refresh to ensure accuracy. But my recollection
17 is -- my recollection is -- I'd like to refresh myself
18 on the request for admissions, if you don't mind. I
19 apologize.

20 BY MR. DEMORET:

21 Q. Are you speaking of the request for admissions
22 that we discussed earlier?

23 A. Yeah.

24 Q. So I can rely on your answers to those?

25 A. Yes.

1 BY MR. DEMORET:

2 Q. Okay. Thank you for that.

3 Why did ALDF decide to emphasize Hormel in its
4 publication of the Maschoffs investigation?

5 MR. LOBDELL: Objection on privileged grounds.

6 I'll instruct the witness to not answer that
7 question.

8 BY MR. DEMORET:

9 Q. Are you taking his advice?

10 A. I'm afraid I am.

11 Q. Okay. Why did ALDF decide to file this
12 lawsuit?

13 MR. LOBDELL: Object on privilege grounds.

14 You may answer that to the extent you can
15 without disclosing attorney-client communications.

16 THE WITNESS: I don't believe I can answer that
17 without violating attorney-client privilege.

18 BY MR. DEMORET:

19 Q. When did you publish the Maschoffs
20 investigation initially, approximately?

21 MR. LOBDELL: Objection to form.

22 THE WITNESS: The initial press release of the
23 undercover investigation I believe was May 25 or 26,
24 2016.

25 ////

1 the producer, that the HIMP model is not appropriate.

2 BY MR. DEMORET:

3 Q. So will ALDF continue to challenge the HIMP
4 model as currently configured until it's discontinued or
5 changed?

6 MR. LOBDELL: Objection to form.

7 THE WITNESS: I think as mentioned in
8 Interrogatory Number 5, the Animal Legal Defense Fund
9 will continue to engage in activities to address
10 HIMP -- and its potential successor, NSIS, to address
11 the issues we've identified and others have identified.

12 BY MR. DEMORET:

13 Q. Will ALDF stop challenging HIMP if Hormel stops
14 its Make the Natural Choice campaign?

15 MR. LOBDELL: Objection to form.

16 THE WITNESS: So that's a bit speculative.
17 It's hard for me to imagine -- it's hard for me to
18 hypothesize what the pork producing landscape would look
19 like if one of the major producers chose not to avail
20 itself of that production capability.

21 BY MR. DEMORET:

22 Q. I'm not sure that answers my question, though.
23 If Hormel stopped the Natural Choice campaign,
24 would ALDF be okay with HIMP as currently configured?

25 MR. LOBDELL: Objection to form.

1 THE WITNESS: The Animal Legal Defense Fund
2 would not be -- would have the same concerns and issues
3 around the HIMP process that it has now. And we would
4 continue to -- and then it becomes a discussion
5 around -- this is the speculative nature where I'm a
6 little tentative. Then it becomes where the Animal
7 Legal Defense Fund applies its limited resources to
8 proactively advance its mission. So that's my only
9 hesitation.

10 BY MR. DEMORET:

11 Q. Sitting here today could you state affirmatively
12 that if Hormel stopped the Make the Natural Choice
13 campaign ALDF would stop challenging HIMP as it's
14 currently configured?

15 MR. LOBDELL: Objection to form.

16 THE WITNESS: Could you -- I'm sorry. I missed
17 it.

18 BY MR. DEMORET:

19 Q. Sitting here today could you affirmatively
20 state that if Hormel stopped its Make the Natural
21 Choice Campaign, that ALDF would stop challenging HIMP?

22 MR. LOBDELL: Objection to form.

23 THE WITNESS: That's a complicated question.
24 Let me see if I can make sure I'm understanding it.

25 If the Hormel Corporation stopped advertising

1 it's Natural Choice product line would we then continue
2 or --

3 BY MR. DEMORET:

4 Q. Would you stop challenging HIMP?

5 MR. LOBDELL: Objection to form.

6 THE WITNESS: Let me just play this through.

7 To the extent that HIMP continues to engage in
8 and be a process that causes the issues that we've
9 identified, I believe, the Animal Legal Defense Fund
10 would continue to advocate against HIMP and NSIS.

11 MR. DEMORET: How long have we been going?

12 THE WITNESS: I was just going to ask if I
13 could take a break.

14 THE VIDEOGRAPHER: Off the record at 3:37 p.m.
15 (Recess.)

16 THE VIDEOGRAPHER: We are back on the record at
17 3:55 p.m.

18 BY MR. DEMORET:

19 Q. Mr. Walden, would you please go to page 27 of
20 the ALDF interrogatory responses.

21 A. I'm on page 27.

22 Q. And we're still covering ALDF's First
23 Supplemental Interrogatory Response Number 4.

24 A. Yes.

25 Q. And this is relating to ALDF's ag-gag

1 But I believe there is a document in the record, I
2 believe, that discusses ag-gag that has all those states
3 listed on a timeline.

4 Q. There's not an ag-gag law in Nebraska; correct?

5 MR. LOBDELL: Objection to form.

6 THE WITNESS: To my knowledge there is not an
7 ag-gag law in the state of Nebraska.

8 BY MR. DEMORET:

9 Q. Would ALDF continue to challenge ag-gag laws
10 until they're all off the books?

11 MR. LOBDELL: Objection to form.

12 THE WITNESS: The Animal Legal Defense Fund is
13 committed to oppose ag-gag laws when they are
14 introduced.

15 BY MR. DEMORET:

16 Q. Okay. Go to page 29, please.

17 A. I am on page 29.

18 Q. The final bullet point at the very bottom
19 references a direct mail appeal related to ag-gag?

20 A. Payments to communicate -- such as the August
21 2017 payment of over 32,000 for a direct mail appeal?

22 Q. Yes. I'm sorry. I cut off.

23 A. No. I do see that.

24 Q. Do you know how much money ALDF made off that
25 appeal?

1 the products in question. And that economic harm
2 impacts consumers because there's less competition in
3 the marketplace.

4 There's a third more moral or ethical harm for
5 a consumer who is interested in patronizing and
6 supporting companies and products that espouse and share
7 the values that he or she believes in, and they are
8 being misled. The Animal Legal Defense Fund has its
9 mission frustrated. And that's what we've talked about
10 in the past. So those, I think, are the reasons why it
11 matters, not to mention the overarching, which we've
12 also talked about, general public policy desire to
13 ensure that -- that misrepresentation is not appropriate
14 or correct or legal.

15 Q. Generally misrepresented?

16 A. Generally, yes.

17 Q. If consumers in D.C. have not purchased Hormel
18 Natural Choice products, what would they have purchased
19 instead?

20 MR. LOBDELL: Objection to form.

21 THE WITNESS: Well, the reasonable consumers
22 who are interested in the kind of attributes that we've
23 talked about that they perceive the natural products to
24 have, the lack of artificial hormones, the -- the lack
25 of the use subtherapeutic antibiotics, no artificial

1 ingredients, no use of GMO, patronizing those
2 organizations that allow the animals to be outside and
3 not be kept indoors all the time, those consumers would
4 avail themselves to those products.

5 BY MR. DEMORET:

6 Q. Which products are you referring to
7 specifically?

8 MR. LOBDELL: Objection to the form.

9 I also wonder, Counsel, if you can remind what
10 topic we are in here at this point now that we're
11 talking about the -- you probably are just ahead of me.

12 MR. DEMORET: We're looking at how this
13 frustrates the ALDF's mission. And that's clearly a
14 topic.

15 MR. LOBDELL: How does this relate to the
16 existence or nonexistence of the products and their
17 relation to the claims in this case is what I'm curious
18 about.

19 BY MR. DEMORET:

20 Q. Yeah, and my question gets at if the ALDF's
21 mission is harmed by people buying Hormel's products, if
22 they stopped buying Hormel's products, what would they
23 buy? Would that fix the frustration of the ALDF's
24 mission?

25 MR. LOBDELL: I'll object to form there.

1 THE WITNESS: So that would alleviate one
2 source of frustration to the Animal Legal Defense Fund's
3 mission.

4 BY MR. DEMORET:

5 Q. But do you know who they would be buying
6 products from instead of Hormel?

7 MR. LOBDELL: Objection to form.

8 THE WITNESS: Well, as we discussed earlier,
9 we've spent our time focused on those organizations that
10 are misrepresenting the claims, not those that abide by
11 the claims. I think I also referenced earlier today
12 Panorama Meats that was mentioned in the "natural"
13 comments that were produced as a producer of natural
14 products, that was referenced in that.

15 I would also point out that the very
16 misrepresentation that enables an organization to
17 unfairly leverage a cost structure to forestall other
18 competitors from coming in is clearly also, as we've
19 talked about, a potential harm, that would potentially
20 preclude other organizations from coming in.

21 BY MR. DEMORET:

22 Q. Is Hormel the only one that was doing that?

23 MR. LOBDELL: Objection to form.

24 THE WITNESS: Or focus has been on Hormel and
25 Natural Choice products.

1 BY MR. DEMORET:

2 Q. But I'm asking if you know whether Hormel Foods
3 is the only company allegedly doing that?

4 MR. LOBDELL: Objection to form.

5 THE WITNESS: We talked earlier about Tyson,
6 for example, also, while not necessarily using "natural"
7 as a specific term, uses phraseology and words and
8 images to connote that sense of welfare for animals and
9 providing them with a better or best environment. So
10 there's an example, I believe, of another provider.

11 BY MR. DEMORET:

12 Q. Are there others besides Hormel and Tyson from
13 ALDF's view?

14 MR. LOBDELL: Objection to form.

15 THE WITNESS: Those are the primary examples
16 where the Animal Legal Defense Fund has expanded the
17 time and effort to research to have an informed opinion.
18 So I'll stay to those two.

19 BY MR. DEMORET:

20 Q. Is it possible that if Hormel stopped
21 advertising Natural Choice that that would just drag
22 consumers to other meat producers who are improperly
23 using the term "natural" to describe their products?

24 MR. LOBDELL: Objection to form.

25 THE WITNESS: I think we're in the area of

1 speculation. And we could also speculate that that
2 could also open the marketplace for those providers that
3 genuinely provide product that could be considered
4 natural.

5 BY MR. DEMORET:

6 Q. Which products are you referencing?

7 MR. LOBDELL: Objection to form.

8 THE WITNESS: Meat and poultry products.

9 BY MR. DEMORET:

10 Q. Specific companies you're referencing?

11 A. No. I think we're both speculating. I'm
12 speculating that the economic model could forestall
13 competitors from coming in. That was my point. Sorry.

14 Q. Aren't you also speculating that if Hormel
15 stopped selling Natural Choice products that the
16 marketplace would open to competitors that you would
17 consider more humane?

18 MR. LOBDELL: Objection to form.

19 Mischaracterizes past testimony.

20 THE WITNESS: Could you please repeat the
21 question. I'm sorry.

22 BY MR. DEMORET:

23 Q. Do you know specific companies in the
24 marketplace who, for example, produce products that
25 would meet all of the definitions of "natural" that you

1 provided in your second supplemental response to
2 Interrogatory Number 9?

3 MR. LOBDELL: Objection to form.

4 THE WITNESS: Again, I think we've
5 covered --I've answered this by pointing out that we
6 focused on those organizations that -- Tyson or Hormel,
7 who do not abide by the "natural" term.

8 And I have also mentioned in the comments for
9 the Natural Paper that was jointly done by the Animal
10 Legal Defense Fund and the Center For Biological
11 Diversity that there is an organization referenced
12 there, Panorama Meats that, I believe, likely fills the
13 majority, if not all of the terms referenced in
14 Interrogatory Number 9.

15 BY MR. DEMORET:

16 Q. Do you know where Panorama sells products?

17 A. I do not.

18 Q. So you don't know if they sell in D.C.?

19 MR. LOBDELL: Objection to form.

20 THE WITNESS: I do not know if they sell in
21 D.C.

22 BY MR. DEMORET:

23 Q. And that's the only one you're aware of sitting
24 here today who you believe satisfies all of these
25 definitions of "natural" provided in your interrogatory

1 response?

2 MR. LOBDELL: Objection to form.

3 THE WITNESS: I believe the Animal Legal
4 Defense Fund is focused on those organization that are
5 subverting the terminology in their advertising. And we
6 haven't devoted our limited resources to identify those
7 that more -- that provide the product in a
8 nonmisrepresentational way.

9 BY MR. DEMORET:

10 Q. But you told me a few minutes ago that ALDF is
11 claiming there's economic harm to competitors of Hormel
12 Natural Choice products. So what competitors are you
13 talking about?

14 MR. LOBDELL: Objection to form.

15 THE WITNESS: I believe what I said was
16 that -- you had asked for harms. So I gave one for
17 consumer. I gave one at an economic level that the free
18 market economy would be impacted if legitimate
19 competitors were forestalled from coming in because
20 other entities were using a cost structure that was not
21 representative of the products that were being produced.

22 BY MR. DEMORET:

23 Q. But you're not aware of any specific entities
24 that have been foreclosed from coming into the market
25 because of Hormel's Natural Choice advertising; correct?

1 MR. LOBDELL: Objection. Form. Asked and
2 answered.

3 THE WITNESS: The Animal Legal Defense Fund has
4 focused on those organizations that have not lived up to
5 the natural representation, and instead have
6 misrepresented, through advertising, what that means.

7 MR. LOBDELL: May I quickly just ask what we're
8 at for time?

9 THE VIDEOGRAPHER: Six hour and 27 minutes.

10 MR. LOBDELL: Okay. Thank you.

11 BY MR. DEMORET:

12 Q. Are there any other harms that ALDF is alleging
13 was caused by Hormel's Make the Natural Choice
14 advertising?

15 MR. LOBDELL: Objection to form.

16 THE WITNESS: Well, I think the Animal Legal
17 Defense Fund would reference the rulemaking petition on
18 antibiotics and how when the subtherapeutic use of
19 antibiotics in the industrial production of livestock
20 and meat results in the creation of pathogens resistant
21 to antibiotics, that that directly goes to public health
22 and public safety. So I think that would be an example.

23 I believe in the -- also in the antibiotics
24 rulemaking petition environmental impacts of CAFO,
25 Concentrated Animal Feeding Organization, is referenced,

1 Q. Not the labeling?

2 A. I apologize. I'm sorry.

3 Q. That's okay. I just want to be sure we were
4 clear on that.

5 A. My fault. Sorry.

6 Q. I was going to think this case had changed
7 significantly if it weren't --

8 MR. LOBDELL: And I do want to just point out
9 for the record, you made a head nod for your response to
10 last question. I just want to make sure you responded.

11 THE WITNESS: I apologize. I replied
12 indifferently.

13 MR. DEMORET: I will cease questioning for the
14 time being to reserve time for your rebuttal.

15 MR. LOBDELL: Can we take a five-minute break?

16 MR. DEMORET: Yes.

17 THE VIDEOGRAPHER: We are off the record at
18 6:08 p.m.

19 (Recess.)

20 THE VIDEOGRAPHER: We are back on the record at
21 6:16 p.m.

22 EXAMINATION BY MR. LOBDELL

23 Q. Mr. Walden, I just have a few quick questions
24 for you.

25 You spoke earlier about ALDF's work on various

1 efforts such as comments to the FDA regarding the use of
2 the term "Natural," comments to agencies regarding the
3 HIMP program, et cetera. And I'll ask you a couple
4 questions about those activities.

5 Did ALDF prepare and submit comments to the FDA
6 regarding the use of the term "natural" in preparation
7 for its litigation, it's eventual litigation against
8 Hormel, or was it a separate effort that ALDF was
9 undertaking?

10 A. My recollection was it was a separate effort.

11 Q. Did ALDF's undercover investigation of the
12 Maschoffs facility take place in anticipation of
13 litigation against Hormel?

14 A. It did not.

15 Q. Did Animal Legal Defense Fund's preparation
16 submission or any other work on advocating against the
17 high-speed hog slaughter program, otherwise known as
18 HIMP, was any of that undertaken in anticipation of
19 ligation against Hormel?

20 A. It was not.

21 Q. And was any of ALDFs work to combat what we
22 have called "ag-gag laws" here today, any of the
23 advocacy surrounding that and the associated
24 transparency of the market, was any of that work done in
25 anticipation of litigation against Hormel?

1 A. It was not.

2 Q. Thank you. Those are my only questions.

3 MR. DEMORET: I have no follow-up to that.

4 THE VIDEOGRAPHER: This is the end of today's
5 deposition of Mr. Mark Walden. We are off the record
6 at --

7 MR. LOBDELL: And I apologize. I have a few
8 thing for the record, if I could just really quickly.

9 THE VIDEOGRAPHER: Go ahead.

10 MR. LOBDELL: I just want to note that ALDF
11 reserves signatures. We reserve the right to make any
12 part of this deposition confidential or highly
13 confidential under the protective order in this case.
14 And I want to note for the record that ALDF considers
15 this deposition closed at this time.

16 THE VIDEOGRAPHER: This is the end of today's
17 deposition of Mr. Mark Walden. We are off the record at
18 6:18 p.m. Thank you.

19 THE REPORTER: Copy order for Animal Defense?
20 Do you want to order a copy?

21 MR. LOBDELL: Yes. Not an expedite, I don't
22 believe. But, yes.

23 (Whereupon, the deposition of MARK WALDEN,
24 concluded at 6:18 p.m.)

25 ---o0o---

1 STATE OF CALIFORNIA) ss
2 COUNTY OF SANTA CLARA)

3 I, Kathryn Charpentier, a Certified Shorthand
4 Reporter, do hereby certify:

5 That prior to being examined, the witness named in
6 the foregoing proceedings was by me duly affirmed to
7 testify truthfully;

8 That said proceedings were taken before me at the
9 time and place therein stated and was thereafter
10 transcribed into typewriting under my direction and
11 supervision;

12 I further certify that I am neither counsel for,
13 nor related to, any party to said proceedings, nor in
14 anywise interested in the outcome thereof.

15 In witness whereof, I have hereunto subscribed my
16 name.

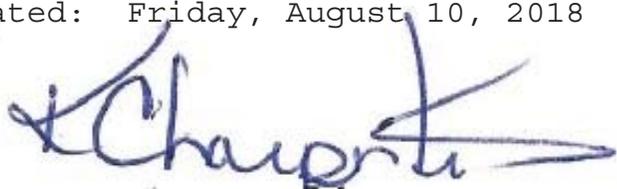
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19 Dated: Friday, August 10, 2018

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KATHRYN CHARPENTIER, CSR NO. 13319

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Exhibit B

1 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

2 CIVIL DIVISION

3 ANIMAL LEGAL DEFENSE FUND,

4 A non-profit corporation, 170 East

5 Cotati Avenue, Cotati, CA 94931

6 Plaintiff

CASE NO:

7 Vs.

2016 CA 004744 B

8 HORMEL FOODS CORPORATION,

9 1 Hormel Place, Austin, MN 55912

10 Defendant

11

12 The Videotape Deposition of:

13 ELIZABETH ANN PUTSCHE

14 A Witness, called for examination by Counsel For
15 Defendant, pursuant to Notice, held at 1050 K Street,
16 Suite 400, Washington, D.C., on Thursday, July 19,
17 2018, scheduled to commence at 9:00 a.m., before Chris
18 Fox, Notary Public, when were present on behalf of the
19 respective parties:

20

21

22

23

24 Job # MP 183742

25 Pages: 1 - 213

1 BY MR. DEMORET:

2 Q. Okay. Why is Hormel Foods mentioned in this
3 sentence then?

4 MS. EBERLY: Objection.

5 THE WITNESS: It is my recollection that
6 Hormel Foods was the most commonly known name.

7 BY MR. DEMORET:

8 Q. Why would you pick company with the most
9 commonly known name?

10 MS. EBERLY: Objection. I'm going to object
11 on privilege grounds to the extent this talked
12 about, this is going into matters discussed
13 between attorneys and communications staff
14 regarding the development of the press release.

15 MR. DEMORET: Are you instructing her not to
16 answer?

17 MS. EBERLY: That particular question, yes.

18 BY MR. DEMORET:

19 Q. Do you typically, in news releases, try to
20 identify commonly known names of companies?

21 MS. EBERLY: Objection.

22 THE WITNESS: In providing information to the
23 public for education purposes, we want the
24 information to be as relatable as possible, and
25 for people to identify how it may be impacting the

<http://www.yeslaw.net/help>

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CERTIFICATE OF SHORTHAND REPORTER

NOTARY PUBLIC

I, CHRISTINE FOX, Certified Court Reporter, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.



CHRISTINE FOX

Notary Public in and for the
District of Columbia

My commission expires:
June 25, 2023

Exhibit C

1 off the top of my head.

2 Q. Are you going to dismiss those cases if you win
3 this lawsuit?

4 MR. LOBDELL: Objection to form. Calls for
5 speculation.

6 THE WITNESS: I don't understand your question.

7 BY MR. DEMORET:

8 Q. If you win this lawsuit, will that end the need
9 to challenge these Ag-Gag laws?

10 A. So if you're --

11 MR. LOBDELL: I'll object to form again. Calls
12 for speculation.

13 THE WITNESS: So you're asking me if we win our
14 lawsuit against Hormel over its false advertising, would
15 we then dismiss cases aimed at laws passed by --
16 unconstitutional laws passed by states to restrict
17 undercover investigations, whistleblowing and gathering
18 information on factory farms?

19 BY MR. DEMORET:

20 Q. Those are your terms, but yes, that's what I'm
21 asking.

22 A. With just that piece of information, no.

23 Q. Okay. Why not?

24 A. Because we're talking about two separate
25 things. I don't -- you may be conflating them for some

1 reason I'm unaware of, but I do not.

2 Q. You agree that would be conflating the two
3 things when they shouldn't be conflated?

4 A. I would say we're talking about two separate
5 lawsuits dealing with different laws.

6 Q. Got it. So you didn't file those Ag-Gag
7 lawsuits because of Hormel's Natural Choice advertising,
8 right?

9 A. Sorry.

10 Q. You didn't file Ag-Gag lawsuits because of
11 Hormel's Natural Choice advertising, correct?

12 A. I don't know what all of the information we
13 gathered to file our Ag-Gag lawsuit was, so I can't say
14 one way or the other personally.

15 Q. Understood. When did you start filing Ag-Gag
16 lawsuits?

17 A. If I remember correctly, we filed our first
18 Ag-Gag lawsuit I want to say in 2014, but I'm not
19 entirely sure.

20 Q. Okay. Got it. Thank you. Do you recall in or
21 around 2016 ALDF filing a comment with the FDA regarding
22 the term "natural" to describe food products?

23 A. I do not recall it off the top of my head, no.

24 Q. Gotcha. Are you familiar with the term HIMP,
25 H-I-M-P?

1 animals at facilities. That's the broad answer to your
2 question of why would we do these kinds of
3 investigation.

4 BY MR. DEMORET:

5 Q. If you win this lawsuit, are you going to stop
6 doing those investigations?

7 MR. LOBDELL: Objection to form. Calls for
8 speculation. You may answer.

9 THE WITNESS: The short answer is no.

10 MR. DEMORET: Okay. What time are we at?

11 THE VIDEOGRAPHER: You have about a half an
12 hour left.

13 MR. DEMORET: Thank you.

14 BY MR. DEMORET:

15 Q. Are you aware of any specific educational
16 campaigns or outreach that ALDF has done in the District
17 of Columbia?

18 A. Not specifically, no.

19 Q. Okay. Who would be the best person to speak to
20 that at ALDF?

21 A. Speak to what?

22 Q. Whether ALDF has done specific educational
23 outreach activities in the District of Columbia.

24 A. That's a broad category of things that could
25 touch on any one of or all of our program work. So it

1 would be contextual.

2 Q. Are you aware of any specific programmatic
3 activities that were targeted at the District of
4 Columbia?

5 A. I'm not aware of any, no.

6 Q. Okay. Do you have an office in the District of
7 Columbia?

8 A. We do not.

9 Q. Do you have any employees who live in the
10 District of Columbia currently?

11 A. We have staffers who are in the area. I just
12 don't recall whether they are in the district per se.

13 Q. Okay. They work from home?

14 A. I believe they do, yeah. It's not -- there's
15 no office there.

16 Q. Okay. Are you aware of any presentations that
17 any ALDF employees have given in the District of
18 Columbia in the last five years?

19 A. Presentations? Do you mean that to be really
20 broad like -- can you define what you mean by
21 presentation?

22 Q. Like at a conference, for example.

23 A. In the last five years, a specific recollection
24 is I did a small event for supporters of ALDF. We
25 invited them and I spoke to them about ALDF's work

1 generally. That was, I think, this year. I think
2 earlier this year.

3 Q. July? Does that sound right?

4 A. That sounds about right, yeah.

5 Q. Okay.

6 A. I do a lot of events, so they tend to bleed
7 together and I forget which happened when. Other than
8 that, within the last five years I can't speak
9 specifically but it's possible that, you know, we have
10 attorneys and staffers who go and speak at conferences
11 on a regular basis all over the place. So I can't name
12 any specifically but I would say it's likely.

13 Q. At the event you spoke at in or around July of
14 this year, did you talk about this lawsuit?

15 A. No.

16 Q. You mentioned earlier ALDF has a written
17 strategic organizational plan. Is that a fair way to
18 characterize?

19 A. Yes.

20 Q. Okay. Does that include any specific plans to
21 engage in organizational activities in DC specific?

22 A. No.

23 Q. In any other jurisdictions such as California?

24 A. I should clarify. Referring specifically to
25 the strategic plan, I do not recall anything specific to

1 harm because a part of our mission is to protect the
2 lives of animals as we've talked about. So that is
3 ultimately a harm to animals that we feel compelled to
4 address.

5 Q. What has the ALDF done to address it besides
6 filing this lawsuit?

7 A. What do you mean by "it"?

8 Q. The effect of Hormel's Natural Choice
9 advertising on consumers.

10 A. Other than by filing this lawsuit. Okay.
11 Sorry. Let me clarify. You're asking me what else have
12 we done specific to Hormel's Natural Choice other than
13 filing this lawsuit?

14 Q. Natural Choice advertising.

15 A. Advertising.

16 Q. Yes, sir.

17 A. Okay.

18 MR. LOBDELL: I'll just object to form to the
19 extent that this is calling for a legal conclusion, but
20 please do answer.

21 THE WITNESS: I think -- as far as I know, I'm
22 not aware of any others.

23 MR. DEMORET: Okay. I'll reserve the rest of
24 my time. Do you have any questions?

25 MR. LOBDELL: Can we go off the record for just

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REPORTER'S CERTIFICATE

I, Beverly A. Hedberg, a Certified Shorthand Reporter, do hereby certify that before the taking of the foregoing deposition, the witness was duly sworn by me to testify to the truth, the whole truth, and nothing but the truth in the above-entitled matter; and that the foregoing is a full, true and correct transcript of the proceedings had at the taking of said deposition.

I further certify that I am not of counsel or an attorney for either or any of the parties in the above-mentioned cause, or in any way interested in the outcome of said cause.

I hereby affix my signature this 5th day of December, 2018.



Beverly A. Hedberg
CCRR, CSR No. 4256

Exhibit D

Amy Sand
7/26/2018

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No. 2016 CA 004744 B

ANIMAL LEGAL DEFENSE FUND, a
non-profit corporation, 170 East
Cotati Avenue, Cotati, CA 94931

Plaintiff,

vs.

HORMEL FOODS CORPORATION,
1 Hormel Place, Austin, MN 55912,

Defendant.

VIDEO DEPOSITION TRANSCRIPT OF

AMY SAND

July 26, 2018

at

Faegre Baker Daniels
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402

Reporter: Jane T. Doby
Registered Merit Reporter
Doby Professional Reporting, Inc.
DobyReporting.com
952.943.1587

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Amy Sand
7/26/2018

1 Q -- how -- how you get to a Natural Choice
2 print advertisement.

3 A Print advertisement?

4 Q Yes.

5 MR. YOUNG: I'll object as vague and
6 compound.

7 But go ahead.

8 A I'm sorry. Can you say the question one
9 more time?

10 BY MS. NICHOLLS:

11 Q Sure.

12 A I apologize.

13 Q No. So I'm asking you to describe the
14 process from start to finish for a Natural Choice
15 print ad. So development, alterations, and approval,
16 and then finally running. So what is -- what is the
17 process for that?

18 A So how do we develop a print ad?

19 Q Yes.

20 A You work with an agency to develop a
21 creative, and then you put it into a print
22 publication.

23 Q And how long does that process usually
24 take?

25 A It can vary. I can only speak from my own

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Amy Sand
7/26/2018

1 experience, but it takes -- oh. I guess it -- three
2 months. I mean, that's a guess. I really haven't
3 thought about it that much, to be honest with you.

4 Q Okay. And when you work with -- you
5 mentioned agencies.

6 A Uh-huh.

7 Q When you work with those agencies, what
8 information do you give them?

9 A What product we're talking about, and what
10 our brand positioning is.

11 Q What do you mean by "brand positioning"?

12 A What does our brand stand for. So, for
13 example, "Hormel Natural Choice" stands for
14 100 percent natural, which by the USDA is no --
15 minimally processed and no artificial preservatives.

16 Q Anything else that you would tell an
17 outside agency about Hormel Natural Choice to help
18 them develop an ad?

19 A I guess a picture of our photo, colors we
20 would like them to use.

21 Q Do you tell them who your target audience
22 is?

23 A I would say every market does have a
24 consumer target audience, but it's very -- but, yes,
25 to answer your question, yes, we do.

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Amy Sand
7/26/2018

1 Q And what is your targeted audience for
2 Natural Choice products?

3 A We call them the wellness seeker. And that
4 is just a subjective name that we use internally.

5 Q When you use "wellness seeker" internally,
6 what do you understand that to mean?

7 A And these are really my own verbatim terms.
8 It's really a consumer who is looking for balance.

9 Q Balance between what?

10 A I like to say pro natural, pro Diet Coke.

11 Q So when you say "pro natural, pro Diet
12 Coke," and you say -- that was your response to
13 balance. And still, what do you mean, balance
14 between?

15 A Somebody who's looking for minimally
16 processed, no artificial ingredients. But at the
17 same time, they're willing to pick up a Diet Coke,
18 which does not meet those standards. Because that's
19 just the balance that they live. They -- ultimately
20 consumers like products that taste good in the food
21 industry.

22 Q Okay. So going back to develop -- to
23 the --

24 A Sure.

25 Q -- our development process for the ad. So

Amy Sand
7/26/2018

1 are these -- that -- is that the type of information
2 you'd convey to the ad agency?

3 A What type of information?

4 Q That your target audience is a wellness
5 seeker, and that -- and what that means to you.

6 A Sure. Yes.

7 Q And then what happens next, after you've
8 conveyed that information to the agency?

9 A They will start to develop creative.

10 Q What is creative? Sorry. Again, this is a
11 marketing term I'm not familiar with. What does
12 developing a creative mean in this context?

13 A So if -- if the -- your question is about
14 print ad. They'll start to develop ways that a print
15 ad would come to life. What it would look like; what
16 the headline is; how our package looks; what the
17 colors that they would use. Those type of things.

18 Q Okay. And then what happens next?

19 A They will share with us the creative, and
20 we will discuss if we like the creative or not.

21 Q Do you make suggested changes to the
22 creative, if appropriate?

23 A Yes. We all do within the organization.

24 Q What do you -- who is "all"? So who -- who
25 within the organization do you mean by "all"?

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Amy Sand
7/26/2018

1 A Well, I -- I do, my team does, and my
2 managers do.

3 Q Okay. And who, just to make sure that I
4 understand, who would be considered to be on your
5 team?

6 A Again, Jeremy Zavoral, Andrew Quinn, Lisa
7 Austin, Sam Balaski, and Swen.

8 Q Does Holly LaVallie have any role?

9 A She's moved on to a different role.

10 Q Was she part of your team previously?

11 A She was.

12 Q When was that?

13 A Oh. I don't know. Over the last six
14 years.

15 Q So going back to the print ad process.

16 A Uh-huh.

17 Q After you've gotten a chance, you and your
18 team have gotten a chance to weigh in, who has the
19 ultimate say in whether the ad will go forward?

20 A Our vice president.

21 Q So that would be Swen?

22 A Yes.

23 Q Does he just -- just, I'm curious. Does he
24 typically take your advice or does he -- does he --
25 or is he more of a micromanager on approvals?

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Amy Sand
7/26/2018

1 MR. YOUNG: Objection. Vague.

2 But go ahead.

3 A He could go either way.

4 BY MS. NICHOLLS:

5 Q And once an ad is approved, what -- what is
6 the next stage in the process of getting that ad
7 placed?

8 A Once it's approved, then we push it out to
9 the publications in the marketplace.

10 Q How do you -- how does the pushout process
11 work?

12 A I'm not really familiar with the detail,
13 but it's kind of like a magic box. Yeah. There --
14 there's people that basically purchase the print. I
15 don't -- I really don't understand it. But we know
16 the publications we're going to be going into, and it
17 magically happens.

18 Q And how do you decide which publications it
19 goes into?

20 A You know, it's really broad reach. What
21 publications have a good publication reach within the
22 United States. Yeah.

23 Q And by "good publication reach," do you
24 mean -- what do you mean by "good reach"?

25 A I don't know the details of all the

Amy Sand
7/26/2018

1 categories that we play in. So we wanted to talk
2 about who we are specifically; the USDA standards of
3 100 percent natural, which means no artificial
4 preservatives and minimally processed.

5 Q And what were the -- so given that that was
6 the need, what were the goals of the campaign? When
7 I refer to "the campaign," I mean the "Make the
8 Natural Choice" campaign.

9 A You know, it's been a while, but the goals
10 then, I think, were just to -- trying to break
11 through to more consumers in the United States.

12 Q And what were your -- what was your
13 strategy for achieving that goal?

14 A Having a print campaign that looked tasty
15 to consumers and really clarified who we were in the
16 category.

17 Q And to be clear, what do you mean by --
18 what do you consider to be your category?

19 A Lunchmeat.

20 Q Okay. To be clear, you mean all of
21 lunchmeat and not just the natural lunchmeat?

22 A Well, I'm only responsible for Natural
23 Choice lunchmeat.

24 Q Okay. But I'm trying to understand --

25 A Yeah.

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Amy Sand
7/26/2018

1 Do -- does all of the consumer research go
2 through the consumer insights department at Hormel?

3 A My research does, yes.

4 Q And by "your research," is that all of the
5 Natural Choice research?

6 A Yes.

7 TELEPHONE ATTENDEE: Hello?

8 MR. YOUNG: Hello?

9 I'll just say, someone on the phone: I
10 think maybe you were not on mute. Just so you know.

11 BY MS. NICHOLLS:

12 Q Okay. I'd like to go on, then, to what's
13 been marked as Exhibit 5.

14 A Okay.

15 Q Do you recognize this document?

16 A I recognize BBDO.

17 Q What's BBDO?

18 A I don't know what it stands for, but it is
19 our marketing agency.

20 Q And that's outside of Hormel; correct?

21 A It is outside.

22 Q So when we spoke earlier this morning about
23 the agency creating creatives, as I think -- I think
24 I'm using the right terminology. If I'm not, please
25 correct me. You were referring to BBDO?

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Amy Sand
7/26/2018

1 A I was, yes.

2 Q Have you -- so you said you recognize BBDO.
3 Is this -- do you recognize the rest of this
4 document?

5 A Well, it's from 2014, which is four years
6 ago. In general, it looks like a document they would
7 have shared with us, but I don't particularly
8 remember it.

9 Q Okay. And what -- what is it?

10 A Well, it looks like it's a working session
11 for Hormel Natural Choice.

12 Q What do you mean by "working session"?

13 A Well, this isn't my document. This is
14 something that BBDO created. But we were probably
15 doing a working session.

16 Q I mean, again, what do you mean by "working
17 session"?

18 A Probably talking about the topics on the
19 slides that are in this deck.

20 Q Would this have been an in-person meeting
21 or over the phone?

22 A I don't remember exactly. Probably in
23 person.

24 Q Do you typically meet in person with BBDO?

25 A Yeah, we do. We usually do.

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Amy Sand
7/26/2018

1 claims."

2 Do you recall any criticisms and natural
3 washing claims of Natural Choice products?

4 A No.

5 Q Do you have any idea what BBDO is referring
6 to here?

7 A Well, I can -- BBDO has their own opinions
8 sometimes. They'll come in with a very strong point
9 of view on a topic.

10 So this is probably them telling us what
11 they think. But it doesn't necessarily mean that I
12 agree with it.

13 Q Okay.

14 A But this is definitely a document that they
15 produced, and they put those words there.

16 Q Do you recall what, you know, if you talked
17 about it, what -- what they communicated to you about
18 natural washing claims?

19 A I probably discounted it pretty quickly.

20 Q Why?

21 A It's not an area that we explored, I think.

22 Q Why not?

23 A I don't know.

24 Q Around this time in 2014, putting the
25 document to the side, did you have any concerns --

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Amy Sand
7/26/2018

1 BY MS. NICHOLLS:

2 Q Okay. So the first page, just to make
3 sure, have this correct, is an email from Olivia
4 Plaine to you. Is that correct?

5 A It is. Yep.

6 Q And it references an attachment called --
7 labeled "Natural" -- "Hormel Natural Choice_Message
8 Matrix Version 2."

9 Is that correct?

10 A That is correct.

11 Q And is the pages three and following of
12 this document, is that the referenced attachment?

13 A It appears it is, yes.

14 Q Okay. So this is -- this is a document
15 that you have seen before?

16 A Yeah. This has been a while, but I do
17 remember this document.

18 Q Okay. What is this document?

19 A This was a document created by BBDO to lay
20 out across the print, which we talked about earlier,
21 the video and the online banners, what we would be
22 talking about.

23 Q So is this a part of -- was this created as
24 a part of the development of the "Make the Natural
25 Choice" campaign?

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Amy Sand
7/26/2018

1 A Okay.

2 BY MS. NICHOLLS:

3 Q And is this email an email from you?

4 A Yes, it is.

5 Q And the email references a document that is
6 attached entitled "HNC Brand Meaning Purpose Qual
7 Research." Is that correct?

8 A Correct.

9 Q And is the rest of this document a -- is
10 that the attachment?

11 A Yes.

12 Q So you've seen this document before?

13 A I have.

14 Q What is it?

15 A It's the Hormel Natural Choice brand
16 meaning qualitative research conducted by Kantar
17 Millward Brown.

18 Q Who is Kantar Millward Brown?

19 A Another third-party agency that does
20 research.

21 Q All right. And what -- so what is this?
22 Is this a discussion of more research? What is --
23 what's contained in these slides?

24 A It looks like it's a qualit- -- how did I
25 say it? Qualitative? I always get qualitative and

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Amy Sand
7/26/2018

1 A It doesn't trouble me.

2 Q Why doesn't it trouble you? I mean, I'm
3 just -- so if 57 percent of consumers think that
4 natural currently means no antibiotics or drugs were
5 used, and that's not true of Hormel Natural Choice
6 products, is that -- does that give you any
7 hesitation about advertising the products as natural?

8 MR. YOUNG: Calls for a legal conclusion
9 and speculation.

10 Go ahead.

11 A No, because I'm -- I'm not saying that in
12 my advertisement.

13 BY MS. NICHOLLS:

14 Q But you are saying -- you're saying that
15 the product is natural, correct?

16 A According to the USDA guidelines, I am
17 saying it's natural in those realms.

18 Q Let me ask what I think should be a pretty
19 straightforward question. Are you advertising
20 Natural Choice products as natural?

21 A I am advertising Natural Choice products as
22 natural as deemed by the USDA, which is 100 percent
23 natural, which means minimally processed and no
24 artificial preservatives.

25 Q I'm going to ask a yes-or-no question. Are

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Amy Sand
7/26/2018

1 description of the wellness seeker?

2 A Yes.

3 Q Okay. And then I next wanted to look at --
4 I wanted to look at what is -- it looks like slide
5 29, and the Bates number ends in 296.

6 A Okay.

7 Q Okay. The heading is a little vague, if
8 you go back a couple of slides to 26. It says, "How
9 the consumer sees 'Natural.'" Correct?

10 A Yes.

11 Q Okay. And then slide 21 says, "Yet most
12 still don't know what it means." Correct?

13 MR. YOUNG: Was that 29?

14 MS. NICHOLLS: Sorry. 29. Thank you.

15 A These are BBDO's words and their research
16 methodology, whatever that was.

17 BY MS. NICHOLLS:

18 Q Okay.

19 A Yeah.

20 Q Okay. So you've seen this document before.
21 Yes?

22 A Yeah. I think I was in this meeting, yep.

23 Q Did you discuss that consumers -- this --
24 this statement by BBDO, that most consumers don't
25 know what "natural" means?

Amy Sand
7/26/2018

1 the best I can with sales data.

2 Q And do you use any consumer data to measure
3 whether your ads were successful?

4 A We do do some Millward Brown research with
5 consumers.

6 Q Okay.

7 A But it's directional, at best. They
8 disclaim that from the very beginning of the report.

9 Q By "directional" --

10 A They say it's directional. Is it engaging.
11 Right? And it -- but if it's engaging, that doesn't
12 mean the consumer is going to really purchase the
13 product. Right? That's where the -- the science is
14 hard to kind of relate the two together.

15 Q Okay. So by "directional," I just want to
16 make sure I understand. So what do you mean when you
17 say "directional"?

18 A It doesn't mean that the consumer who said,
19 "Yeah, this advertisement is engaging," it doesn't
20 mean they're actually going to go to the store and
21 buy the product.

22 Q And so do you -- is Millward Brown another
23 agency that consumer insights --

24 A Yep.

25 Q -- uses? Okay.

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Amy Sand
7/26/2018

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REPORTER'S CERTIFICATE

I, Jane T. Doby, Registered Merit Reporter, a Notary Public in and for the County of Hennepin, State of Minnesota, certify that the foregoing is a true record of the testimony given by AMY SAND, who was first duly sworn by me, having been taken on July 26, 2018, at Faegre Baker Daniels, 2200 Wells Fargo Center, 90 S. Seventh Street, Minneapolis, Minnesota, in my presence and reduced to writing in accordance with my stenographic and computerized notes made at said time and place;

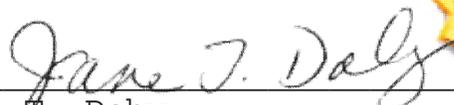
I further certify that I am not a relative or employee or attorney or counsel of any of the parties or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That the witness DID request an opportunity to review the transcript.

WITNESS MY HAND AND SEAL this 7th day
August, 2018.



Jane T. Doby
Registered Merit Reporter
Notary Public
Hennepin County, Minnesota

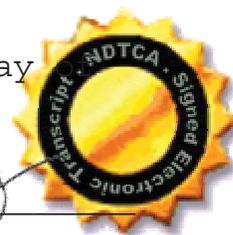


Exhibit E

Jeremy Zavoral
7/27/2018

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No. 2016 CA 004744

ANIMAL LEGAL DEFENSE FUND,
on behalf of the general public,

Plaintiff,

vs.

HORMEL FOODS CORPORATION,

Defendant.

VIDEO DEPOSITION TRANSCRIPT OF

JEREMY ZAVORAL

July 27, 2018

at

Faegre Baker Daniels
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Reporter: Lynzie Zempel
Doby Professional Reporting, Inc.
DobyReporting.com

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Jeremy Zavoral
7/27/2018

1 MR. YOUNG: Objection; foundation. But go
2 ahead.

3 A I don't know.

4 BY MS. NICHOLLS:

5 Q You mentioned that the ad agency works on creative,
6 what does that mean? I am not in marketing or
7 advertising, so forgive me.

8 A That means they take the key message we want to deliver
9 and they translate that into something that consumers
10 can actually see.

11 Q Okay. And then when they develop something, who gives
12 BBDO feedback on what they develop?

13 A That's typically Amy and I gave feedback.

14 Q Who approves it?

15 MR. YOUNG: Objection; vague as to approves.
16 But go ahead.

17 A Typically myself, Amy, and our vice president of
18 marketing will all get into alignment on the certain
19 creative and we give them the approval.

20 BY MS. NICHOLLS:

21 Q Who is the vice president that you referring to?

22 A That's Swen Neufeldt.

23 Q Okay. So I asked the question with regard to
24 development and with regard to print ads. Is the
25 process similar with other types of advertisements?

Jeremy Zavoral
7/27/2018

1 Q It references an attachment, correct?

2 A Yes.

3 Q And is the rest of the document the attachment
4 referenced in the email?

5 A I am going to assume that's what -- we didn't get the
6 files mixed up so, yeah.

7 Q Okay. Does it appear to be?

8 A Yeah. It would make sense in the context of her email
9 that she would be sending this.

10 Q Okay. Have you seen this document before?

11 A Yeah, I reviewed it.

12 Q Okay. What is it?

13 A This is a -- what do they call these? -- the research
14 report from some consumer research, basically focus
15 groups, that were done to try to determine the
16 messaging for Natural Choice.

17 Q Okay. And who did the research?

18 A Well, it -- the report was titled -- it has Millward
19 Brown at the bottom. They are a -- so I'm going to
20 assume it was Millward Brown who was the running
21 research.

22 Q What is Millward Brown?

23 A They are an agency that does consumer reporting. So
24 typically they provide advertising tracking studies
25 showing how well the advertising is doing.

Jeremy Zavoral
7/27/2018

1 which is that there are different definitions of
2 natural which leads the consumer to confusion.

3 Q Okay. What's the information in the green box?

4 A It says, "If meat was labeled as natural it is
5 important for it to be" -- and then it's listing out
6 several claims.

7 Q All right. And where is that information coming from?

8 A The -- it's cited from the 2015 Organic and Natural
9 Health Association.

10 Q Is that the study that -- is that Exhibit 28?

11 A It might be.

12 Q Do you want to take a look to confirm?

13 A Yeah. So it looks like it came from this -- from this
14 report, yeah.

15 Q Okay. And so just to look at these various lines, for
16 example, so looking at what's in the green box on page
17 11 of Exhibit 27. It says 72 percent is next to the
18 phrase antibiotic free, what does that mean?

19 A From the -- interpreting it from this other report that
20 you provided if means that if meat is labeled as
21 natural it's important that -- let me back up. That
22 72 percent of these consumers in this study agreed that
23 if meat is labeled as natural it is important for it to
24 be antibiotic free.

25 Q Okay. And what were you trying to tell your audience

Jeremy Zavoral
7/27/2018

1 by including this slide in the presence presentation?

2 A I was trying to tell the audience that there's a lot of
3 different consumer ideas of what claims should be
4 included as a part of the natural product and since
5 there is so many different ideas about it that there's
6 some confusion out there.

7 Q Okay. Looking down to the notes where the paragraph
8 beginning, "The implications for Natural Choice." Do
9 you see that?

10 A Yes.

11 Q Point number one under that is, "There's a very wide
12 halo around" -- quote, "'natural' and consumers assume
13 we have benefits beyond our product claims." What does
14 that mean?

15 A It means that consumers -- it mean's that when
16 consumers see a natural claim that some of them assume
17 that there are other benefits to the product beyond
18 what we actually claim.

19 Q Okay. And what is the -- you said the "implication for
20 Natural Choice," so what is -- how is that an
21 implication for Natural Choice?

22 A It's actually the third bullet is the real implication,
23 which is that "We need to have a stronger voice about
24 what natural means to Hormel Foods."

25 Q And is that insight that you followed up on later?

Jeremy Zavoral
7/27/2018

1 A Actually, yeah.

2 Q Okay. And what did you do about that? What was the
3 following action?

4 A One thing we started doing after that is making sure
5 that our advertisements listed the full definition of
6 natural within the print ad.

7 Q Did you change -- other than listing the full
8 definition -- well, actually let's back up. Where did
9 the full definition appear on the advertisements?

10 A At the bottom of the advertisement.

11 Q Okay. In the main text of the advertisement did this
12 change the way that you advertised your products in the
13 main text?

14 A Yes.

15 Q How so?

16 A We put an asterisk next to natural in the main text.

17 Q Other than the asterisks did you make any changes in
18 the main text to the advertisement?

19 A Well, an asterisks in a headline of a print ad is a
20 pretty big deal. So, yeah, that's the big change that
21 we made.

22 Q Were there any other changes to the text of the main
23 text of the advisement other than the asterisks?

24 A No. I -- there were no other changes to -- beyond
25 putting a giant asterisks in our title of our

Jeremy Zavoral
7/27/2018

1 advertisements with the full definition of natural at
2 the bottom, we didn't make any other changes.

3 Q In the paragraph above that in the note there's a
4 paragraph beginning "Adding to this confusion," under
5 that paragraph there's a reference to a lawsuit. Is
6 that this lawsuit?

7 A No.

8 Q It's not. What lawsuit is it?

9 A I had read about a lawsuit involving a Kroger store
10 brand.

11 Q Was it the Simple Truth brand?

12 A Yes.

13 Q Going back for a second to the asterisks and the
14 language at bottom of your ad, how did you decide where
15 in the ad to convey that information?

16 A How did we decide where in the ad to convey the
17 information? BBDO created the ads. So they decided
18 where to put and then we put it through legal claims
19 review and they approved that location.

20 Q Did you have any comments or suggestions to BBDO about
21 where to put it?

22 A We might have but I don't remember. I don't remember
23 the conversations that we had about it.

24 Q How did you decide what to include in the content of
25 the -- is it fair to call the additional text a

Jeremy Zavoral
7/27/2018

1 disclaimer?

2 A Sure.

3 Q Okay. How did you decide what the context of the
4 disclaimer was?

5 A We used the same exact same language for our packaging,
6 which is the USDA definition of natural.

7 Q How do you decide how big the disclaimer is?

8 A Again, BBDO created the disclaimer size and it went
9 through label claims review. If it was too small our
10 legal claims review would have flagged that and asked
11 to make them larger. But I don't remember there being
12 any issues with size of the font.

13 MS. NICHOLLS: Okay. So we are going on
14 to -- what are we up to here? Is this 29?

15 THE COURT REPORTER: Yes.

16 (Exhibit 29 was marked for identification.)

17 BY MS. NICHOLLS:

18 Q Okay. Once again we have an email with another
19 document. This is an email from you, correct?

20 A That's right.

21 Q And is the document entitled "Natural Choice Lunchmeat
22 Situation Assessment," is that the attachment to the
23 email?

24 A Yes.

25 Q Okay. Have you seen this document before?

Jeremy Zavoral
7/27/2018

1 Q Why?

2 A Well, she had -- she had a much longer presentation and
3 I asked her to summarize it into just one slide. So I
4 could use it in the appendix of my presentation in the
5 case the topic came up.

6 Q Did the topic come up?

7 A No.

8 Q It did not. Did all of the members in the audience
9 receive a copy of the presentation?

10 A I don't know for sure.

11 Q Did they -- was there another situation assessment
12 document that was a different format than the slide
13 presentation?

14 A You know, I don't know for sure either. We make
15 several version of these. I am just going to let you
16 know the one that I emailed out from this email, this
17 would have been -- you know what, the reality is that I
18 emailed this out after the presentation. There's --
19 sometimes I dropped the slides from it if I don't want
20 it to be shared with the outside agency partners if
21 it's sensitive data or information. So this may not
22 have been the version that was presented.

23 Q But would the version -- did you present this slide as
24 part of the presentation?

25 A Slide?

Jeremy Zavoral
7/27/2018

1 Q Okay. I was just trying to understand what --

2 A Sorry. It become a math equation for me and I
3 struggled.

4 Q It wasn't supposed to be a math quiz. I want to go to
5 a discussion of natural sets. What's a natural set?

6 A In what -- natural set in what context?

7 Q In the context of a display in a grocery store.

8 A So these would be sets in a grocery store where they
9 would put a collection of natural products together.

10 Q And is that a good thing for your product?

11 A Yeah. We had -- yeah -- that's -- that's something
12 that we would encourage retailers to do.

13 Q And why is that?

14 A Makes it easier -- well, our opinion -- our assumption
15 is that it would make it easier for consumers to find
16 our products.

17 Q Have you -- has the Hormel Natural Choice team been
18 working to encourage retailers to include -- to create
19 natural sets and include Natural Choice products within
20 it?

21 A Yeah. That had been one of our tactics.

22 Q And why? Did that come out of a consumer insight?

23 A I don't remember. I don't remember if that came from a
24 consumer insight or if that was from another source
25 that -- that was a good move for our brand. I don't

Jeremy Zavoral
7/27/2018

1 read through them and make sure that those align with
2 what we were hoping the article would look like. And
3 then so after the claims review board, we approve and
4 then it gets sent back to the agency. The agency let's
5 the blogger know that they are approved to go live with
6 it.

7 Q And so when you refer to the agency, are you talking
8 about BBDO or are you talking about PHD? What agency
9 is that?

10 A Yeah. I believe we ran these kind of prompt-a-posts
11 with two different agencies, with PHD and with another
12 Nsight -- another agency called Nsight, who just
13 recently change their name to Epsilon.

14 Q So those are the same agencies?

15 A Nsight and Epsilon are the same thing. At the time of
16 these they were called Nsight.

17 Q And Nsight that's the one that's spelled N-S-I-G-H-T?

18 A Correct.

19 Q And so generally what -- what are those -- what do
20 those -- what does Nsight/Epsilon do? What is their
21 role in the process?

22 A What --

23 Q What does Hormel hire them to do?

24 A Yeah. They are hired -- they do a lot of different
25 things. We call them shopper marketing where they are

Jeremy Zavoral
7/27/2018

1 a little more direct to consumer kind of marketing. So
2 when we want to do an FSI, for example, it's Nsight who
3 does the creative for that FSI and buys the space.
4 They would also do in-store advertising or in some
5 cases they did some blogger partnership things where
6 they were contacting the blogger themselves. There's a
7 lot of overlap between what the agencies do. They all
8 can do everything. And so we try to pick and choose
9 which agencies are going to the do best work at the
10 most efficient cost.

11 Q Sure. Okay.

12 A I'm sorry. I want to make sure that it's clear, Nsight
13 had also designed our old website. They didn't do the
14 new one.

15 Q Who did the new one?

16 A Internal Hormel. I wasn't involved at all in the
17 development of the new website. I think they -- I
18 think they used a third party to help them actually get
19 it set up called Zooka.

20 Q Zooka.

21 A Zooka.

22 Q How do you spell it?

23 A Z-O-O-K-A. I only know about that because sometimes
24 they would copy me on an email that wasn't really
25 supposed to be sent to me. We had somebody else doing

Jeremy Zavoral
7/27/2018

1 A I don't know. The advertising agency decided where to
2 put it. I don't know why they chose to put it there.

3 BY MS. NICHOLLS:

4 Q Do you agree with their decision to put it at the
5 bottom?

6 A You know, I have had conversations with them about
7 other placements for that disclaimer -- for that
8 natural disclaimer since, in my opinion, consumers are
9 skeptical of disclaimers and if they see text at the
10 bottom, they think it might be something negative. But
11 in this situation, we are just describing what the USDA
12 requirement is for natural and those are both no
13 artificial ingredients, minimally processed, pretty
14 positive things. I have talked with them about maybe
15 placing in other locations. But they have -- in the
16 end the decision was to keep it where it was because
17 that's not the main message we are trying to get
18 across. We are trying to get across that it tastes
19 great.

20 BY MS. NICHOLLS:

21 Q Is the fact that it -- that the products don't contain
22 any artificial ingredients and are minimally processed
23 a secondary message you are hoping to get across to
24 consumers?

25 A For some of the advertisements, yeah. For some of the

Jeremy Zavoral
7/27/2018

1 companies. So I think that the copy at the very bottom
2 of the page tends to get read more than romance copy,
3 the fun stuff that the advertising agency wrote.

4 MS. NICHOLLS: We can take a break.

5 THE VIDEOGRAPHER: Off the video record at
6 2:09 p.m.

7 (A brief break was taken.)

8 THE VIDEOGRAPHER: This is file number 5. We
9 are on the record at 2:23 p.m.

10 BY MS. NICHOLLS:

11 Q All right. So I want to talk a little bit more about
12 the disclaimers that we talking about so far. So is it
13 -- am I understanding your testimony correctly in that
14 when your advertisements make a natural claim there
15 must be a disclaimer about what that mean?

16 MR. YOUNG: Objection; misstates testimony.
17 But go ahead.

18 A Yeah. Currently any advertisement that uses the
19 natural claim has the full USDA disclaimer about it
20 being minimally processed with no artificial
21 ingredients.

22 BY MS. NICHOLLS:

23 Q And how -- and is the reproduction of the package
24 sufficient?

25 MR. YOUNG: Objection; vague as to

Jeremy Zavoral
7/27/2018

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REPORTER'S CERTIFICATE

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I, Lynzie Zempel, a Notary Public in and for the County of Hennepin, State of Minnesota, certify that the foregoing is a true record of the testimony given by JEREMY ZAVORAL, who was first duly sworn by me, having been taken on July 27, 2018, at Faegre Baker Daniels, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402 in my presence and reduced to writing in accordance with my stenographic and computerized notes made at said time and place;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That the witness did request an opportunity to review the transcript.

WITNESS MY HAND AND SEAL this 8th day of August, 2018.



Lynzie Zempel
Notary Public
Hennepin County, Minnesota



Exhibit F

Jeremy Zavoral
8/22/2018

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No. 2016 CA 004744 B

ANIMAL LEGAL DEFENSE FUND,

Plaintiff,

vs.

HORMEL FOODS CORPORATION,

Defendant.

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RULE 30(b)(6) DEPOSITION TRANSCRIPT OF
HORMEL CORPORATION

Testimony of Jeremy Zavoral

August 22, 2018

at

Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402

Reporter: Jennifer L. Sharp
Doby Professional Reporting, Inc.
DobyReporting.com
952.943.1587

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Jeremy Zavoral
8/22/2018

1 definition of "natural" on it of being minimally
2 processed, no artificial ingredients, and the other
3 brand of bacon probably doesn't.

4 BY MS. NICHOLLS:

5 Q To your knowledge, is there any difference in
6 the way that the animals raised for those two
7 products -- or the animals that make up those two
8 products are slaughtered?

9 MR. YOUNG: Objection; outside the scope. Go
10 ahead.

11 A I don't know.

12 BY MS. NICHOLLS:

13 Q Are you aware of any consumer data or studies
14 showing that consumers are looking for particular
15 attributes in products?

16 A Yes.

17 Q What are those attributes?

18 MR. YOUNG: Objection; vague. Go ahead.

19 A There's consumer research that shows that by
20 far the number one attribute consumers are looking for
21 is a product that tastes good. Among other points, it
22 being a brand they trust and that's high quality.

23 BY MS. NICHOLLS:

24 Q When you refer to the consumer data, do you
25 have an example of what that is?

Jeremy Zavoral
8/22/2018

1 A Yeah, I'm thinking specifically of a report
2 that -- it's actually a report that we have gotten
3 every -- once a year from Millward Brown, which is an
4 outside consultant agency that conducts those studies
5 for us.

6 Q What are those annual reports called?

7 A I call them the Millward Brown reports. I'm
8 sure they have a very clear term for them, and maybe
9 when we look at -- if we happen to look at some of the
10 documents, we'll notice what they actually call them.

11 Q What else -- can you describe those reports a
12 little bit? What else are in those reports?

13 A Those reports -- they're reports that are
14 telling us mostly -- they're like campaign tracking.
15 Oh, maybe that's what they call them, campaign
16 tracking. It gives us an idea of if our advertisements
17 are having any positive impact on changing or
18 addressing consumer needs or delivering a message.

19 As part of those reports, they also are
20 asking consumers -- in a survey they conduct, asking
21 consumers what are important qualities within lunch
22 meats, and that's when we see the ranking of importance
23 of different attributes of products.

24 Q So I'm going to take a look at this. We
25 don't have to enter this as an exhibit. It was

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Jeremy Zavoral
8/22/2018

1 determine what is important to consumers?

2 A Yeah, I think that's fair to say. This is
3 another data point to get a good gauge.

4 Q And who conducted this survey?

5 A Decision Analyst, which is a consumer
6 research agency.

7 Q And was this something that was commissioned
8 or paid for or done at the behest of Hormel?

9 A Yeah, that's right.

10 Q And who would have been the person that was
11 in contact with Decision Analyst about developing the
12 survey?

13 A I don't know who that would have been when
14 this was done. I can give you a guess. It may have
15 been Karen Kraft. It might have been Ellen Kohl. I
16 don't know. This was done before I got there.

17 Q Okay. And what does -- so you have seen this
18 data before. What does that -- what do you do with
19 this data?

20 A Well, what I specifically did with it was --
21 when I was first starting on the Natural Choice lunch
22 meat business, is I looked at that and said, That's
23 interesting that consumers think that it's important
24 for the product to taste good, is again the number one,
25 and high quality. And that natural, while it seems to

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Jeremy Zavoral
8/22/2018

1 from the prior advertising strategy?

2 MR. YOUNG: Outside the scope, but go ahead.

3 A No. In general, brands at Hormel will
4 change, the campaign messaging and campaign execution,
5 pretty regularly, fairly regularly. I mean, every
6 couple years there will be a new campaign. And so they
7 may have felt the previous campaign was reaching its
8 point of -- actually, "burnout" is a term within the
9 industry. That it may have been reaching its point of
10 burnout, and so it was time for a fresh, new campaign.

11 BY MS. NICHOLLS:

12 Q Who was involved in developing the "Make the
13 Natural Choice" campaign in 2014 and 2015?

14 A That was Amy Sand, Steve Venenga. Really Amy
15 Sand was the hands-on, day to day, and Steve was
16 providing approvals along the way. The campaign itself
17 was developed by BBDO, the outside advertising agency.
18 They developed the overall campaign -- execution of the
19 campaign.

20 Q At that time had Hormel been accused of
21 natural washing or green washing?

22 MR. YOUNG: Objection; vague, outside the
23 scope.

24 A I don't know.

25 BY MS. NICHOLLS:

Jeremy Zavoral
8/22/2018

1 red oval.

2 BY MS. NICHOLLS:

3 Q What is the source?

4 A It's the "Consumer Reports Natural Foods
5 Labels Survey of 2015."

6 Q And are you familiar with that survey?

7 A Actually, no. This was some secondary data.
8 I probably found it by searching the Internet looking
9 for free sources that I could cite that would give us
10 data points regarding consumer perceptions.

11 Q Is this one of the -- when you referred to
12 consumer data regarding the confusion around what
13 "natural" means, is this one of the sources you're
14 referring to?

15 A Yes, this is one of many points that --
16 sources of data that is used to make that statement
17 that there's some confusion about "natural" in the
18 market.

19 Q And so to be clear, we're talking about the
20 2015 Consumer Reports Natural Food Labels Survey,
21 correct?

22 A Yeah, that's the one.

23 Q So let me show you a different -- another
24 exhibit. So this is a --

25 MS. NICHOLLS: These two go together, so

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Jeremy Zavoral
8/22/2018

1 they work.

2 BY MS. NICHOLLS:

3 Q Sure. I want to take a look at what we'll
4 call Exhibit 127.

5 (Exhibit 127 was marked for identification.)

6 BY MS. NICHOLLS:

7 Q Have you seen this document before?

8 A This particular one, maybe. I reviewed -- I
9 had an Excel spreadsheet of all of these, and I did a
10 search for certain keywords to prepare for today. So
11 if some of those keywords came up, I would have seen
12 part of this, but --

13 Q What keywords did you search for?

14 A I was searching for keywords that were from
15 the 30(b)(6) notice. I just wanted to see if there
16 were any themes or any statements here that I could be
17 prepared for -- to answer.

18 So yeah, there were terms like "natural" and
19 "preservatives" and "nitrites." Also, "wholesome" and
20 "high standards," things like that. I wanted to see
21 how often consumers mentioned those.

22 Q So what did you learn doing that search as to
23 how often consumers mentioned those things?

24 MR. YOUNG: Objection; vague, but go ahead.

25 A There were thousands of consumer comments,

Jeremy Zavoral
8/22/2018

1 and only relatively a handful of consumers asked
2 questions about those topics. Just that it's very rare
3 to get questions about preservatives or nitrites and
4 nitrates. Much, much more common are the questions
5 about the expiration dates and how soon after I open it
6 do I need to eat it, are the majority of the comments.

7 BY MS. NICHOLLS:

8 Q Typically what -- to your recollection, what
9 were consumers typically asking about when they were
10 asking about preservatives?

11 A I remember seeing some comments from -- maybe
12 one or two comments from consumers where they were
13 asking does the product really not have preservatives;
14 asking about the salt, if salt was considered a
15 preservative. I remember seeing a question or two
16 about that.

17 Q Do you have access -- or did you review the
18 responses to those consumer inquiries?

19 A No. Actually, the responses to all of the
20 inquiries, none of those are recorded.

21 Q With regard to nitrates and nitrites, what is
22 your recollection about what people asked about?

23 A I don't remember seeing any questions
24 directly about nitrates or nitrites that -- when I
25 searched for -- most of the hits on it in the database

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Jeremy Zavoral
8/22/2018

1 Q What is the basis for making the
2 preservatives claims?

3 A Do you mean like why do we make the
4 preservative claims?

5 Q Or rather, sort of -- what about the product
6 enables you to make those claims, in your view?

7 A From my point of view, we're able to make the
8 claim because the USDA has given us approval to use it.
9 I think we have established I know very little about
10 the specific ingredients that go into it, but what I do
11 know is the USDA has approved our packaging, and our
12 packaging has the statement of "no preservatives" on
13 it, so that's why we're able to continue using that
14 phrase.

15 Q I mean, to be clear, has USDA ever approved
16 or disapproved the use of a preservatives claim in an
17 advertisement -- in one of your advertisements?

18 A No, I'm not aware of the USDA receiving our
19 advertisements. But I know that they reviewed our
20 packaging, and in our -- on our packaging, it says "no
21 preservatives."

22 Q What are you intending to convey to consumers
23 by making the preservatives claims in advertising?

24 MR. YOUNG: Objection; vague, outside the
25 scope. Go ahead.

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Jeremy Zavoral
8/22/2018

1 STATE OF MINNESOTA)

)

2 COUNTY OF HENNEPIN)

3 REPORTER'S CERTIFICATE

4

I, Jennifer L. Sharp, Court Reporter, a Notary Public in and for the County of Hennepin, State of Minnesota, certify that the foregoing is a true record of the testimony given by JEREMY ZAVORAL, who was first duly sworn by me, having been taken on August 22, 2018, at Faegre Baker Daniels LLP, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, Minnesota, in my presence and reduced to writing in accordance with my stenographic and computerized notes made at said time and place;

10 I further certify that I am not a relative or employee or attorney or counsel of any of the parties or a relative or employee of such attorney or counsel;

12 That I am not financially interested in the action and have no contract with the parties, attorneys or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

15 That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

17 That the witness DID request an opportunity to review the transcript.

19 WITNESS MY HAND AND SEAL this 7th day of
September, 2018.

Jennifer L. Sharp

Jennifer L. Sharp
Court Reporter
Notary Public
Hennepin County, Minnesota



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Exhibit G

Karen Kraft
8/30/2018

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No. 2016 CA 004744

ANIMAL LEGAL DEFENSE FUND,
on behalf of the general public,

Plaintiff,

vs.

HORMEL FOODS CORPORATION,

Defendant.

VIDEO DEPOSITION TRANSCRIPT OF

KAREN KRAFT

August 30, 2018

at

Faegre Baker Daniels
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Reporter: Lynzie Zempel
Doby Professional Reporting, Inc.
DobyReporting.com

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Karen Kraft
8/30/2018

1 looking -- he was going to be talking about the topic
2 of antibiotic free at this voice of the consumer
3 meeting with sale reps, and so he was just trying to
4 find out any information we had on the topic and he had
5 heard about the Farmer John project.

6 BY MR. MURASKIN:

7 Q Would Natural Choice look to other Hormel product
8 studies to understand how its advertising would be
9 perceived?

10 MR. YOUNG: Objection; calls for speculation.

11 A I don't think so because advertising is -- it's down to
12 like the execution and you have to understand what the
13 execution is and knowing what's going on with another
14 brand wouldn't tell you anything really that you could
15 make a decision on.

16 BY MR. MURASKIN:

17 Q Okay. Well, explain to me the last sentence in your
18 email which says, "Additionally, 'All Natural' is
19 considered an umbrella which many people think includes
20 ABF already." Do you see that sentence?

21 A Yes.

22 Q What does that sentence mean?

23 A In the focus groups that we had done for Farmer John
24 and the Farmer John study when they saw the phrase all
25 natural on the California Naturals package after they

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Karen Kraft
8/30/2018

1 had seen the antibiotic free package and it was after
2 they saw that they said, well, this one says all
3 natural so I'd assume it was antibiotic free but they
4 hadn't antibiotics before seeing the package that had
5 antibiotic free on it.

6 Q And that's what ABF stands for is antibiotic free?

7 A Yes.

8 Q Is that generally what you mean by an umbrella? An
9 umbrella concept is like the term has multiple meanings
10 under it?

11 A Yes.

12 Q What other meanings under all natural are there besides
13 potentially antibiotic free?

14 MR. YOUNG: Objection; calls for speculation.

15 A I can't recall specifically but it was the other claims
16 like no preservatives, minimally processed, claims like
17 that.

18 BY MR. YOUNG:

19 Q So other claims made in the advertising got associated
20 with all natural. Is that the right understanding?

21 A This wasn't advertising. This was packaging that we
22 were doing. So it was other claims on the package.

23 Q But the other claims on the package that got associated
24 with the phrase all natural?

25 A Yes.

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Karen Kraft
8/30/2018

1 Q And did you share the report with people outside the
2 Project Bluebird team?

3 A Not until after we purchased Applegate.

4 Q And can you tell me -- after you purchased Applegate,
5 who was this shared with?

6 A I believe it was shared with the Natural Choice
7 marketing team as well.

8 Q When would that have been?

9 A It would have been right after the acquisition so probably
10 sometime later in 2015.

11 Q But before this date this was not shared with the
12 Natural Choice team?

13 A There may have been one or two members of the Natural
14 Choice team that were part of Project Bluebird. I can
15 think of one person that was -- I think she was the
16 senior brand manager at the time so she would have seen
17 this.

18 Q Who was that?

19 A I think -- well, she's Holly LaVallie now but she was
20 Holly Drennan then.

21 Q Do you know anyone else who was on both the Natural
22 Choice team and Project Bluebird?

23 A I can't remember.

24 Q And you a little bit sort of described this. But what
25 is the function of this report?

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Karen Kraft
8/30/2018

1 A This was to understand kind of the consumer perceptions
2 of the Applegate brand from an attitudinal standpoint
3 as we were considering purchasing them.

4 Q And what -- can you describe what the word attitudinal
5 means?

6 A Well, there's kind of two ways you can measure a --
7 what a -- how consumers perceive brands. One is simply
8 by just looking at the sales number, what is selling
9 and what is not. And then the other is more from an
10 attitudinal standpoint where it's -- what do they
11 believe about the brand? Do they like it? Do they not
12 like it? What attributes do they associate about how
13 aware are they of the brand.

14 Q And you described to me earlier that when you did
15 research for Applegate you also examined what
16 associations people have with Natural Choice. Would
17 this have been as part of Project Bluebird?

18 A Yes, this is the study I was thinking of.

19 Q Are all the elements of that research contained within
20 this PowerPoint or are there other aspects that
21 wouldn't be contained in here?

22 Mr. YOUNG: Objection; vague. But go ahead.

23 A In terms of the results, the results are all in this
24 PowerPoint.

25 BY MR. MURASKIN:

Karen Kraft
8/30/2018

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REPORTER'S CERTIFICATE

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I, Lynzie Zempel, a Notary Public in and for the County of Hennepin, State of Minnesota, certify that the foregoing is a true record of the testimony given by KAREN KRAFT, who was first duly sworn by me, having been taken on August 30, 2018, at Faegre Baker Daniels, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402 in my presence and reduced to writing in accordance with my stenographic and computerized notes made at said time and place;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That the witness did request an opportunity to review the transcript.

WITNESS MY HAND AND SEAL this 11th day
September, 2018.

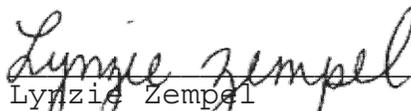

Lynzie Zempel
Notary Public
Hennepin County, Minnesota



Exhibit H

Jeremy Zavoral
11/28/2018

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No. 2016 CA 004744 B

ANIMAL LEGAL DEFENSE FUND,
Plaintiff,

vs.

HORMEL FOODS CORPORATION,
Defendant.

CONFIDENTIAL

RULE 30(b)(6) VIDEOTAPED DEPOSITION OF HORMEL FOODS
CORPORATION

Testimony of Jeremy Zavoral

November 28, 2018

at

Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402

Reporter: Jennifer L. Sharp
Doby Professional Reporting, Inc.
DobyReporting.com
952.943.1587

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Jeremy Zavoral
11/28/2018

1 A Yeah. Within this chart, Natural Choice
2 seems to be growing its points of distribution at a
3 faster rate than its competitors.

4 Q If you flip to the next page, it's a chart
5 with the same competitors. Am I correct in reading
6 it's the same thing? That it's outperforming by
7 percent of household buying; is that right?

8 A Yeah, or household penetration or percent of
9 households buying, yeah. The way this chart is showing
10 the data, it's that Natural Choice is growing its
11 household penetration or percent of households buying
12 at a faster rate than those chosen competitors.

13 Q And the time lines here are between 2017 and
14 2018 in both charts.

15 What accounts for Natural Choice
16 outperforming its competitors during that period?

17 MR. YOUNG: Objection; calls for speculation,
18 but go ahead.

19 A The largest driver of that I -- is the
20 snacking line that we launched at the beginning of that
21 measurement period. So we launched a line of Natural
22 Choice snacks that grew its points of distribution very
23 fast.

24 BY MR. MURASKIN:

25 Q Why has that resulted in increased household

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Jeremy Zavoral
11/28/2018

1 A Yeah, she was trying to make that link, but
2 she didn't explicitly say that on the slide, because
3 she understands as well that it's -- there are a lot of
4 other factors that could have been impacting sales.
5 For example, gaining a lot more distribution would have
6 had that impact and the pricing and competitor action
7 and some seasonality.

8 There's so many other factors that could have
9 impacted sales, so that's why we would like to be able
10 to say that it's, oh, because of the TV advertisement.
11 I mean, that would make my job way easier because my
12 job is to try and convince Hormel to advertise more.
13 But she understood that, and I agree, that it's really
14 hard to pinpoint, it was TV advertisements that made
15 this impact.

16 BY MR. MURASKIN:

17 Q Sure, but that's what this slide is
18 attempting to show?

19 A Yeah, that's what the -- the slide is
20 attempting to show, hmm, we're seeing some correlation
21 here.

22 Q Okay. Can you turn to page -684?

23 MR. YOUNG: When you get to a convenient
24 point, we have been going about an hour. I could use a
25 break.

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Jeremy Zavoral
11/28/2018

1 STATE OF MINNESOTA)
)
2 COUNTY OF HENNEPIN)

3 REPORTER'S CERTIFICATE
4

5 I, Jennifer L. Sharp, Court Reporter, a Notary
6 Public in and for the County of Hennepin, State of
7 Minnesota, certify that the foregoing is a true record
8 of the testimony given by JEREMY ZAVORAL, who was first
9 duly sworn by me, having been taken on November 28,
10 2018, at Faegre Baker Daniels LLP, 2200 Wells Fargo
11 Center, 90 South Seventh Street, Minneapolis,
12 Minnesota, in my presence and reduced to writing in
13 accordance with my stenographic and computerized notes
14 made at said time and place;

15 I further certify that I am not a relative or
16 employee or attorney or counsel of any of the parties
17 or a relative or employee of such attorney or counsel;

18 That I am not financially interested in the action
19 and have no contract with the parties, attorneys or
20 persons with an interest in the action that affects or
21 has a substantial tendency to affect my impartiality;

22 That the cost of the original has been charged to
23 the party who noticed the deposition, and that all
24 parties who ordered copies have been charged at the
25 same rate for such copies;

That the witness DID request an opportunity to
review the transcript.

WITNESS MY HAND AND SEAL this 14th day
December, 2018.

Jennifer L. Sharp

Jennifer L. Sharp
Court Reporter
Notary Public
Hennepin County, Minnesota

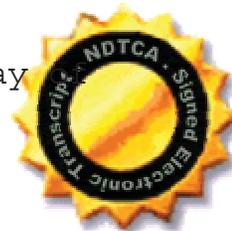


Exhibit I

John Hilgers
11/28/2018

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No. 2016 CA 004744 B

ANIMAL LEGAL DEFENSE FUND,
Plaintiff,

vs.

HORMEL FOODS CORPORATION,
Defendant.

CONFIDENTIAL

RULE 30(b)(6) VIDEOTAPED DEPOSITION OF HORMEL FOODS
CORPORATION

Testimony of John Hilgers

November 28, 2018

at

Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402

Reporter: Jennifer L. Sharp
Doby Professional Reporting, Inc.
DobyReporting.com
952.943.1587

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John Hilgers
11/28/2018

1 Q I was asking generally and I was going to
2 move, but I'll start -- let's rephrase for Natural
3 Choice.

4 For Natural Choice chicken, does Hormel
5 source chicken from all of Wayne Farms' locations or
6 just some subset thereof?

7 A They do not source from all locations, no.

8 Q What locations do you source from for Natural
9 Choice?

10 A We are bringing in product from their
11 Danville, Arkansas, location.

12 Q Any others?

13 A They have a backup facility should
14 something -- if they have a storm there or, you know,
15 something happens where they can't provide product
16 there. To the best of my knowledge, it hasn't been
17 utilized.

18 Q What is the backup facility?

19 A To the best of my knowledge, it's Dobson,
20 North Carolina.

21 Q So Danville, Arkansas, and Dobson, North
22 Carolina, are the two facilities from which you can
23 potentially receive chicken for Natural Choice; is that
24 correct?

25 A Correct.

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John Hilgers
11/28/2018

1 Q How do you ensure that you only receive
2 chicken from those two facilities?

3 MR. YOUNG: Objection; assumes facts. Go
4 ahead.

5 A When the product comes into the plant, it has
6 an establishment number of what facility it came from
7 and they verify that.

8 BY MR. MURASKIN:

9 Q And they do this for all of Natural Choice
10 products?

11 A They do for the chicken and beef, which is
12 what I handle. I would assume it would be the same
13 case for ham or turkey.

14 Q Have you ever altered what facilities from
15 Wayne Farms you source chicken from for Natural Choice?
16 Let me rephrase the question.

17 Have you ever changed the facilities that you
18 use at Wayne Farms to get chicken for Natural Choice
19 beyond -- so that they're not Danville or Dobson?

20 A No.

21 Q So Danville and Dobson have been used to
22 source chicken for Natural Choice at least since 2015
23 and maybe before; is that correct?

24 A When I started in my role in 2015, we have
25 been utilizing Danville, and my understanding is that

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John Hilgers
11/28/2018

1 it had been used prior to that as well, yes.

2 Q Okay. What other companies does Hormel
3 source chicken from besides Wayne Farms for the Natural
4 Choice line?

5 A Specifically for Natural Choice, no one.

6 Q So Wayne Farms is the only supplier?

7 A Correct.

8 Q Are there specific breeds you purchase from
9 Wayne Farms for Natural Choice?

10 A No.

11 Q So you take -- is the Danville facility
12 associated with particular types of breeds, or do they
13 breed all different types of birds?

14 A My understanding is it's all the same, though
15 I do not know for certainty. That would be something
16 they could answer from a breeding standpoint.

17 Q But there are -- but Danville supplies both
18 the regular- and jumbo-sized birds; is that right?

19 MR. YOUNG: I'm sorry. I'll just object.
20 Vague as to whether for Natural Choice or not, but go
21 ahead.

22 BY MR. MURASKIN:

23 Q So let me try and be clear from the get-go.
24 I'm really interested in what is supplied to the
25 Natural Choice line. I'm going to try and make that

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John Hilgers
11/28/2018

1 STATE OF MINNESOTA)
)
2 COUNTY OF HENNEPIN)

3 REPORTER'S CERTIFICATE
4

5 I, Jennifer L. Sharp, Court Reporter, a Notary
6 Public in and for the County of Hennepin, State of
7 Minnesota, certify that the foregoing is a true record
8 of the testimony given by JOHN HILGERS, who was first
9 duly sworn by me, having been taken on November 28,
10 2018, at Faegre Baker Daniels LLP, 2200 Wells Fargo
11 Center, 90 South Seventh Street, Minneapolis,
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review the transcript.

WITNESS MY HAND AND SEAL this 14th day of
December, 2018.

Jennifer L. Sharp

Jennifer L. Sharp
Court Reporter
Notary Public
Hennepin County, Minnesota



Exhibit J

Document filed under seal pursuant to
Protective Order dated October 16, 2017.

Exhibit K

Michelle Kromm
8/20/2018

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No. 2016 CA 004744 B

ANIMAL LEGAL DEFENSE FUND,

Plaintiff,

vs.

HORMEL FOODS CORPORATION,

Defendant.

CONFIDENTIAL

Rule 30(b)(6) DEPOSITION TRANSCRIPT OF

HORMEL CORPORATION

Testimony of Michelle Kromm

August 20, 2018

at

Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402

Reporter: Jennifer L. Sharp
Doby Professional Reporting, Inc.
DobyReporting.com
952.943.1587

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Michelle Kromm
8/20/2018

1 produced for Natural Choice products can visualize the
2 outside at some point in his or her life?

3 A Yes.

4 Q Does Jennie-O have standards for killing
5 turkeys in grow houses? I think the term I have seen
6 used in the documents is "euthanasia," but --
7 "euthanizing." But does Jennie-O have standards for
8 euthanizing turkeys in grow houses?

9 A Yes.

10 Q What are the approved methodologies for
11 euthanasia?

12 A It's a little bit age dependent, but in
13 general, cervical dislocation or the use of a captive
14 bolt.

15 Q Does Jennie-O allow for euthanasia of the
16 smaller or weaker birds?

17 A Yes.

18 Q Does Jennie-O allow for the euthanasia of
19 smaller and weaker birds without any other illness
20 symptom?

21 A My hesitation is that if they're smaller or
22 weaker, typically they got that way due to a
23 health-related challenge. So to try to piece the two
24 apart is a little difficult.

25 Can you ask the question one more time,

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Michelle Kromm
8/20/2018

1 potentially be some other member of the Jennie-O staff
2 that's appropriately trained to do so.

3 Q How often -- does Jennie-O have standards for
4 how often the birds at a grower house must be reviewed
5 for euthanasia, how often someone must go through a
6 grower house to make culling decisions on the birds?

7 A I believe our standard is -- I believe again
8 that it's supposed to be part of the daily routine.

9 Q So at over 700 grow-out houses and in daily
10 routine, is it more likely than not that the person who
11 is doing the euthanasia is the contract grower?

12 MR. YOUNG: Objection; calls for speculation,
13 outside the scope.

14 A As part of the daily expectation, yes.

15 BY MR. LUTZ:

16 Q How are these contract growers trained for
17 euthanasia?

18 A They are -- we review annually the euthanasia
19 training that clarifies when to perform euthanasia as
20 well as what techniques are appropriate at what age.

21 Q Does Jennie-O have standards in place to
22 prevent against avian flu?

23 A Can you repeat that question?

24 Q Does Jennie-O have standards in place to
25 prevent against the contraction or spread of avian flu?

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Michelle Kromm
8/20/2018

1 A Maybe clarify "standards" a little bit.

2 Q Sure. Protocols.

3 A Yes.

4 Q What are the protocols?

5 A Protocols specific to avian influenza?

6 Q Mm-hmm.

7 A There are kind of a series of steps to
8 protect the birds from disease, in general, none of
9 which are necessarily specific to avian influenza, so
10 protocols on vehicle traffic, people traffic, wild bird
11 access. What else?

12 Q Are there density limitations to avoid the
13 spread of avian influenza?

14 MR. YOUNG: Objection; speculation, outside
15 the scope. Go ahead.

16 A Can you clarify "density"?

17 BY MR. LUTZ:

18 Q Do any protocols concern density?

19 A With regards to avian influenza?

20 MR. YOUNG: Same objections.

21 A No.

22 BY MR. LUTZ:

23 Q Does Jennie-O believe the high stocking
24 density contributes to the spread of avian influenza?

25 MR. YOUNG: Outside the scope. Go ahead.

Michelle Kromm
8/20/2018

1 A Can you clarify what you mean by "stocking
2 density"?

3 BY MR. LUTZ:

4 Q The numbers of birds placed into a house.

5 A No.

6 Q How does Jennie-O -- if there's a diagnosis
7 of high-path avian influenza in a certain broiler
8 facility, how does -- what is the protocol for dealing
9 with those birds?

10 MR. YOUNG: Objection to "broiler facility,"
11 outside the scope. Go ahead.

12 A Can you clarify "protocol" a little bit?

13 BY MR. LUTZ:

14 Q You told me that Jennie-O has protocols for
15 avoiding or reducing the risk of avian influenza. If
16 there's a diagnosis of high-path avian influenza, what
17 is -- at a grow-out facility, what is Jennie-O's
18 response?

19 A With particulars to -- response to --

20 Q What do you do with the birds?

21 A To the birds? It's a bit of a broad question
22 and a complicated -- a little bit of a complicated
23 answer because high-path influenza is considered a
24 foreign animal disease and so therefore it's not really
25 Jennie-O in isolation making decisions. The

Michelle Kromm
8/20/2018

1 disposition of those birds is actually -- more so the
2 USDA that would make the determination on what to do
3 with those birds, hopefully in partnership with
4 Jennie-O. But at the end of the day, when it's a
5 foreign animal disease, USDA gets to tell Jennie-O or
6 any other poultry producer what the appropriate course
7 of action is.

8 Q Is it always depopulation?

9 MR. YOUNG: Objection; outside the scope.

10 A For high-path -- for a diagnosis --

11 BY MR. LUTZ:

12 Q Mm-hmm.

13 A -- confirmed diagnosis of high-path
14 influenza, yes.

15 Q What methods of depopulation -- how does
16 Jennie-O depopulate its birds?

17 MR. YOUNG: Objection; outside the scope,
18 calls for speculation, assumes facts.

19 A Again, it wouldn't be typically Jennie-O
20 depopulating our birds. It typically would be USDA --
21 third-party contractor or potentially USDA employees --
22 that would actually be depopulating the birds.

23 BY MR. LUTZ:

24 Q Is it correct that the USDA has a number of
25 approved methods of depopulation?

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Michelle Kromm
8/20/2018

1 A Correct.

2 Q And of those methods, who makes the decision
3 of which method to use for depopulation?

4 MR. YOUNG: Objection; outside the scope. Go
5 ahead.

6 A Who would pick the method? Who would make
7 the final decision? Again, it's typically not in
8 isolation. Usually it would be -- in the state of
9 Minnesota, it would be the Board of Animal Health, most
10 likely, in partnership with the USDA, would determine
11 basically what euthanasia technique is going to be able
12 to be deployed the quickest. Jennie-O would most
13 likely have a seat at the table but wouldn't really
14 have an active say in the two most common approved
15 methods, that being foam depopulation and CO2,
16 whole-house CO2.

17 BY MR. LUTZ:

18 Q Can you describe -- what is the second one,
19 "something" CO2?

20 A Whole-house CO2.

21 Q How does that work?

22 MR. YOUNG: Outside the scope. Go ahead.

23 A Very similar to controlled atmospheric
24 stunning except you basically stun them, and then once
25 they're unconscious, bring them down to euthanasia

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Michelle Kromm
8/20/2018

1 level.

2 BY MR. LUTZ:

3 Q After depopulation, what are the grow houses
4 required to do to restock their flocks?

5 MR. YOUNG: Same objection.

6 A So the grow-out houses, based on -- basically
7 have to go through an agreed-upon plan with USDA that
8 spells out basically the different steps that would be
9 required from C&D requirements all the way through
10 restocking that facility.

11 (Exhibit 92 was marked for identification.)

12 BY MR. LUTZ:

13 Q In front of you is an exhibit marked
14 Exhibit 92. This is titled "Fiscal Year '17 Consumer
15 Engagement Team Talking Points Update."

16 Are you familiar with this document?

17 A Yes, I have some familiarity with it.

18 Q On page 2, under the heading "Avian
19 Influenza," in the second bullet point down, it says
20 "No birds diagnosed with HPAI are allowed to enter the
21 food chain."

22 Are birds diagnosed with low-path avian
23 influenza allowed to enter the food chain?

24 MR. YOUNG: Objection; outside the scope,
25 calls for speculation. Go ahead.

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Michelle Kromm
8/20/2018

1 A Define -- can you clarify "diagnose" a little
2 bit?

3 BY MR. LUTZ:

4 Q What do you think diagnosed means in this
5 document?

6 A There would be a laboratory report with a
7 confirmation of an influenza finding.

8 Q Using that definition for low-path avian
9 influenza -- for a diagnosis of low-path avian
10 influenza, are birds that have been diagnosed with
11 low-path influenza allowed to eventually be sold as
12 Natural Choice products?

13 MR. YOUNG: Objection; outside the scope. Go
14 ahead.

15 A I don't know if they would necessarily be
16 sold as Natural Choice products, but they would be
17 allowed to come into the food chain, yes.

18 MR. LUTZ: Are we -- I don't know how long
19 we've been going. Is this a --

20 MR. YOUNG: We can take a break, sure.

21 MR. LUTZ: Do you mind if we do that?

22 MR. YOUNG: Yeah, that's fine.

23 (Recess was taken.)

24 THE WITNESS: One clarification I want to
25 make on the question around low-path influenza and the

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Michelle Kromm
8/20/2018

1 A Mm-hmm.

2 Q Thank you.

3 Does Jennie-O see more dead on arrivals
4 coming from breeder facilities than grow-out
5 facilities?

6 MR. YOUNG: Objection; outside the scope. Go
7 ahead.

8 A Can you ask the question one more time?

9 BY MR. LUTZ:

10 Q In comparing breeder facilities and grow-out
11 facilities, do you see a higher percentage of dead on
12 arrivals coming from one over the other?

13 MR. YOUNG: Same objection.

14 A Yeah, my hesitation is that you don't know --
15 I don't know what the numbers actually are, off the top
16 of my head, so I'm trying to think through over a
17 period of time what potentially the differences would
18 be. I really -- I don't know what the trends are,
19 going through the different -- comparing the two.

20 BY MR. LUTZ:

21 Q Let's switch topics here.

22 You briefly discussed toe clipping or
23 de-toeing. Can you briefly describe what that is?

24 A Toe treatment? Toe treatment is the process
25 in which the nailbed is treated with some infrared

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Michelle Kromm
8/20/2018

1 light to reduce the growth of the nail on the turkey.

2 Q Is anything removed?

3 A Can you clarify maybe the scope of the
4 question?

5 Q You said -- the way you described it was
6 using infrared light to reduce the growth.

7 Is any part of the toe actually removed?

8 A No. In the process of the toe treatment,
9 you're saying?

10 Q Mm-hmm.

11 A No.

12 Q Is anesthesia used?

13 A No.

14 Q Are turkeys -- are Jennie-O turkeys
15 desnooded?

16 A For Jennie-O turkeys, no.

17 Q Are any turkeys destined for Natural Choice
18 desnooded?

19 A I don't believe so.

20 Q Are any turkeys destined for Natural Choice
21 products caponized?

22 A No.

23 Q Are any turkeys destined for Natural Choice
24 products dewattled?

25 A I would have to say no. I don't even know

Michelle Kromm
8/20/2018

1 loss would indicate a mortality of 2,000 birds.

2 Q It says "from piling against fence." What
3 does "piling" mean? What does that mean?

4 A Piling is when birds get startled or scared
5 from -- usually in these cases from a loud noise,
6 typically. They'll all tend to move away from whatever
7 the source of noise is and pile, like kind of stack on
8 top of each other.

9 Q Does Jennie-O view the death of 2,000 birds
10 to be a serious welfare incident?

11 A Yes.

12 Q Is that unusual, a mortality of 2,000?

13 A A mortality of 2,000 birds on a given
14 incident, yes, absolutely.

15 Q What was Jennie-O's response to this loss?

16 A There's not enough specific information here
17 for me to be able to answer that question.

18 Q Do you remember this happening?

19 A This specific incident, no.

20 Q But you just said this was unusual. It
21 doesn't stick out in your mind?

22 A No.

23 Q How many times a month is there a loss of
24 about 2,000 birds or more?

25 A Maybe two to four times a year, potentially.

Michelle Kromm
8/20/2018

1 Something that's not -- that would be welfare-related
2 like this is.

3 Q Two to four times a year there would be a
4 mortality of 2,000 or more birds?

5 A Something like that, approximately.

6 Q When they pile on each other, how do they
7 die? Is it by suffocation or some other means?

8 A With -- a piling is probably a combination of
9 suffocation and then euthanasia of birds that wouldn't
10 have recovered on their own.

11 Q So if this happens two to four times a year,
12 that would mean in the past two years -- we're about
13 two years out now, eight events -- eight or so events,
14 and you don't remember what Jennie-O's response was for
15 this incident?

16 MR. YOUNG: Objection; asked and answered.

17 A There's not enough information here for me to
18 be able to recall.

19 BY MR. LUTZ:

20 Q What type of response would -- what would you
21 envision would have occurred? Or to put it another
22 way, what does Jennie-O's -- are there any Jennie-O
23 policies or standards for how to respond to a mortality
24 event this large?

25 A There's an investigation form that would be

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Michelle Kromm
8/20/2018

1 turkeys, there's little to no residue. It's cast off
2 by then, so the turkeys aren't eating formaldehyde.

3 BY MR. LUTZ:

4 Q So there's no formaldehyde left in the feed
5 before the turkeys eat?

6 A Correct. Very marginal -- or miniscule. I
7 shouldn't say marginal. Very miniscule, if any.

8 Q Okay. If we can return to Exhibit 94, this
9 is the October 2017 Intellimetrics report.

10 Can you turn to page 5 on it? Halfway down
11 the second section of rows is the word "cadaver."

12 Is that an industry term, or is that a term
13 that Jennie-O uses?

14 A Can you clarify "use"?

15 Q Do you know what cadaver means?

16 A Yes, but I don't know if that's the same
17 meaning for everybody.

18 Q What does it mean to you? What does the word
19 "cadaver" mean to you?

20 A Cadaver to me means a bird that -- in this
21 context, slaughter -- is that a bird that has died of
22 other means than slaughter, which I think is close to
23 the FSIS definition.

24 Q Are these also called "red birds"? Have you
25 heard that term before?

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Michelle Kromm
8/20/2018

1 A I have heard that term, but I wouldn't
2 necessarily put them in the same context.

3 Q Well, how are -- what are ways in which a
4 bird can die by other means than slaughter?

5 MR. YOUNG: Objection; vague, outside the
6 scope. Go ahead.

7 A I'm sorry. What was the question?

8 BY MR. LUTZ:

9 Q You said cadaver means to die by another
10 means than slaughter, a bird that dies by another means
11 than slaughter. Within the confines of the
12 slaughterhouse -- or when a cadaver is identified, what
13 are the ways in which that bird could have died?

14 A So primarily it would be birds that would --
15 have not been bled out enough that there would be the
16 risk of them basically going through the scalding and
17 the scalding being the cause of death versus bleeding
18 out from slaughter.

19 Q How does the scalding kill them?

20 A I would assume it would be -- potentially be
21 either a drowning from breathing in the water and/or
22 maybe the temperature itself. I'm not a hundred
23 percent sure.

24 Q What is the temperature of scalding?

25 A I believe somewhere around 180 degrees, but

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Michelle Kromm
8/20/2018

1 A Yes, there would be that potential.

2 BY MR. LUTZ:

3 Q What is bacitracin -- why does Jennie-O give
4 bacitracin to turkeys? For what reason does Jennie-O
5 give bacitracin to turkeys?

6 A We would be utilizing it for feed efficiency
7 and growth promotion.

8 Q How is it applied?

9 A Clarify "applied."

10 Q How do you give it to the turkeys?

11 A It's mixed into the feed.

12 Q Is it mixed -- you said there are various
13 formulas of feed for Jennie-O turkeys destined for
14 Natural Choice products.

15 Does every version of this formula have
16 bacitracin in it?

17 A No, not necessarily.

18 Q Would it be correct to say that every turkey
19 that is destined for a Natural Choice product has
20 received bacitracin?

21 A Ask the question one more time.

22 Q Would it be correct to say that every turkey
23 destined for a Natural Choice product has received
24 bacitracin at one point in his or her life?

25 A Clarify the scope of the time period in which

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1 term, by disrupting or changing up their sleep cycle
2 maybe for a day or two to try and disorient them to
3 stop that pecking behavior, are a few examples of what
4 we might do.

5 Q You testified about -- was it called piling
6 earlier today? Do you recall that?

7 A Yes.

8 Q What steps, if any, does Jennie-O take to
9 prevent or discourage piling?

10 A So piling is often a function of a loud noise
11 or a bright light that the turkeys aren't used to
12 seeing. So for example, during a thunderstorm, a
13 grower would go out and turn the lights on in the barn,
14 if it's at night, so the birds don't detect the change
15 in lighting. If it's a feed delivery at night,
16 sometimes the headlights can cause the birds to all
17 come towards the light kind of like mosquitos or other
18 bugs, which isn't a very good analogy. So when the
19 truck is on the farm, if there's a risk of having any
20 light actually going into the barn, we would ask the
21 driver potentially to turn off the headlights to make
22 sure that the birds aren't again moving toward the
23 light.

24 Predation can also potentially be an issue,
25 so making sure the barns are in good maintenance to

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8/20/2018

1 prevent any predators from actually getting into the
2 facility, because if a predator gets into a facility,
3 the birds will try to scatter as well.

4 Q Earlier today you looked at a document that
5 was an animal welfare meeting minute document that
6 mentioned piling, a piling incident. Do you recall
7 that?

8 A I do, yes.

9 Q Why was that piling incident specifically
10 mentioned?

11 A So --

12 MR. LUTZ: Objection; leading the witness.

13 A The intent there is to bring those issues to
14 the forefront so if there's a root cause, it can be
15 identified and then that information can be shared with
16 the rest of the farms in the system so they can all
17 have an awareness, and if appropriate, put whatever
18 mitigation strategy into place to help defray future
19 issues of the piling.

20 BY MR. YOUNG:

21 Q So earlier today you talked a bit about the
22 type of feed that the turkeys receive. Do you recall
23 that?

24 A Yes.

25 Q Is it industry standard for turkeys to

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8/20/2018

1 cut appropriately enough, deep enough, or whatever the
2 situation may be, there is somebody to correct that
3 issue. Also, somebody -- if there's enough failures of
4 the auto blade or the auto knife, somebody there to
5 stop the line or to seek help to fix whatever the
6 underlying issue might be.

7 BY MR. YOUNG:

8 Q How often do -- at the Jennie-O slaughter
9 plants, how often do turkeys die from scalding?

10 A It's a pretty rare occasion.

11 Q So earlier today we looked at Exhibit 99,
12 which is one of these quarterly letters from the USDA.
13 Do you recall that?

14 A Yes.

15 Q And you testified about the detection of
16 either salmonella or campylobacter in turkeys. Do you
17 recall that?

18 A Yes.

19 Q Does the detection of salmonella or
20 campylobacter in one of these tests mean that there's a
21 risk to human health?

22 MR. LUTZ: Objection; leading the witness.

23 A Not necessarily. Detection is just that. It
24 doesn't give you an indication of how much of the
25 organism is actually there. And just like with your

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1 common cold virus or anything else, there has to be a
2 certain level of organism there for it to actually be a
3 potential human health issue, and you don't get that
4 information from just a positive or negative test.

5 BY MR. YOUNG:

6 Q This question I'm focused specifically on the
7 Natural Choice products. What steps, if any, are taken
8 later in the process after slaughter to address
9 salmonella or campylobacter?

10 MR. LUTZ: Objection; leading the witness.

11 A In addition to the ones we discussed,
12 specifically on the various bird washes and
13 antimicrobial interventions, for the Natural Choice
14 product, there would also be high-pressure
15 pasteurization occurring as a final mitigation step.

16 BY MR. YOUNG:

17 Q Earlier today you testified about the use of
18 antibiotics in turkeys that are used in Natural Choice
19 products. Do you recall that?

20 A Yes.

21 Q And you, if I'm recalling correctly, said
22 that a very high percentage of turkeys used in Natural
23 Choice products receive antibiotics, correct?

24 A Correct.

25 Q Do you think that's a problem?

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8/20/2018

1 A Can I go back? I forgot one -- one other
2 really basic thing on the salmonella piece is that this
3 is raw product. Obviously by the time it becomes
4 Natural Choice product, it's cooked and HPP'd.

5 So that whole "cooked" piece I think is
6 something important to call out as well. So yeah,
7 probably should clarify that one.

8 And on the antibiotic piece, could you ask me
9 the last part of the question, please?

10 Q Do you think it's a problem that most of the
11 turkeys that are used in Natural Choice products
12 receive antibiotics?

13 MR. LUTZ: Objection; leading the witness.

14 A I think when you use the term "antibiotics,"
15 it's a big umbrella of a variety of things. And like I
16 mentioned earlier, a portion of those are not
17 considered medically important by FDA primarily because
18 using those, FDA has determined it doesn't have an
19 immediate threat to human health.

20 The ionophores and the bacitracin that I
21 specifically talked about, which would be the ones that
22 turkeys would most commonly come in contact with, meet
23 that nonmedically important classification.

24 So although it is true that under the broad
25 umbrella of antibiotics a good portion of the turkeys,

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8/20/2018

1 a majority of the turkeys, potentially ending up in
2 Natural Choice could come in contact with an
3 antibiotic. Those antibiotics that they would most
4 commonly come in contact are of, according to FDA,
5 minimal threat to human health.

6 The other piece of that pie could be
7 therapeutic antibiotics. Therapeutic antibiotics we do
8 choose to use when animals get sick because it's in the
9 best interests of maintaining the welfare of those
10 animals. We don't withhold treatment of an effective
11 medication just because. So it's my responsibility as
12 a veterinarian and -- to make sure that we do our best
13 to maintain the welfare of those animals, and in some
14 cases that means using an appropriate medication to
15 treat them when they're sick.

16 BY MR. YOUNG:

17 Q I would like to direct your attention to
18 Exhibit 100, which is the e-mail with the subject line
19 "Re: Britz placement."

20 Do you recall that document?

21 A Yes.

22 Q Was the only basis for Hormel's -- strike
23 that.

24 Was the only basis for Jennie-O's
25 recommendation about density making it easier to

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8/20/2018

1 STATE OF MINNESOTA)

)

2 COUNTY OF HENNEPIN)

3 REPORTER'S CERTIFICATE

4

I, Jennifer L. Sharp, Court Reporter, a Notary Public in and for the County of Hennepin, State of Minnesota, certify that the foregoing is a true record of the testimony given by MICHELLE KROMM, DVM, who was first duly sworn by me, having been taken on August 20, 2018, at Faegre Baker Daniels LLP, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, Minnesota, in my presence and reduced to writing in accordance with my stenographic and computerized notes made at said time and place;

10 I further certify that I am not a relative or employee or attorney or counsel of any of the parties or a relative or employee of such attorney or counsel;

12 That I am not financially interested in the action and have no contract with the parties, attorneys or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

15 That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

17 That the witness DID request an opportunity to review the transcript.

19 WITNESS MY HAND AND SEAL this 4th day of
September, 2018.

Jennifer L. Sharp

Jennifer L. Sharp
Court Reporter
Notary Public
Hennepin County, Minnesota



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Exhibit L

Michael Forbes
8/23/2018

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No. 2016 CA 004744

ANIMAL LEGAL DEFENSE FUND,
on behalf of the general public,

Plaintiff,

vs.

HORMEL FOODS CORPORATION,

Defendant.

30(b)(6) Deposition Transcript of
Hormel Foods Corporation

By: Michael Forbes, its Designee

August 23, 2018

at

Faegre Baker Daniels
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Reporter: Lynzie Zempel
Doby Professional Reporting, Inc.
DobyReporting.com

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Michael Forbes
8/23/2018

1 preservation from the addition of any other ingredient.
2 So we go in at a much lower rate because it's wasteful
3 to put in more. So we may go into to, say, this ham
4 item at even let's say 50 to 60 parts per million
5 nitrates level, very low level. And that will then
6 allow us to achieve that cured color and cultured
7 flavor. But to remember to do that, going through the
8 process that transaction keeps happening and you
9 eventually have nitric oxide, which makes myoglobin to
10 give you those colors. That's a gas. It's going away.
11 So we may have a product that at the end of the day
12 that's less than 10 PPM available nitrates, which is
13 far less than a conventionally produced product. And I
14 would tell you probably two to three times less than a
15 nice salad. Lettuce, kale, chard, all of those, are so
16 high in nitrates -- naturally occurring nitrates. This
17 product is probably two to 300 times less nitrate than
18 you would get coming from a salad that you would eat
19 and convert with your saliva to nitrate.

20 Q Am I understanding correctly that when you are adding
21 the celery that purpose of adding the celery juice
22 powder or the -- whether you are doing it in a solution
23 or whether it's already been cultured, is to get some
24 level of nitrates into the product?

25 A It can depending upon the formulation. If we --

Michael Forbes
8/23/2018

1 remember you have to go through the conversion process
2 to get the cured color. If we add the celery juice
3 powder then, yes, the intent is to introduce some
4 nitrate that convert to achieve this -- that end
5 result. If we introduce cultured celery juice powder
6 and introduce it at the nitrite state not the nitrate
7 state.

8 Q If we were to test the end product would we find the
9 presence of nitrates?

10 MR. YOUNG: Outside the scope, calls for
11 speculation. Go ahead.

12 A I would expect that -- understanding how chemistry
13 works -- it depends on when you test that product. If
14 we make it today, I would expect that you would be able
15 to detect nitrate, yes. If you make -- if you test it
16 in 20 days, 30 days, 60 days, it is going to diminish.
17 So then it becomes the limitation of your test method
18 if you -- whether you can find it or not.

19 MS. NICHOLLS: Let's go to another exhibit.
20 This will be 140.

21 (Exhibit 140 was marked for identification.)

22 BY MS. NICHOLLS:

23 Q Have you seen this document before?

24 A Yes, I believe I have.

25 Q All right. So the first page is an email. The top of

Michael Forbes
8/23/2018

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REPORTER'S CERTIFICATE

I, Lynzie Zempel, a Notary Public in and for the County of Hennepin, State of Minnesota, certify that the foregoing is a true record of the testimony given by MICHAEL FORBES, who was first duly sworn by me, having been taken on August 23, 2018, at Faegre Baker Daniels, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402 in my presence and reduced to writing in accordance with my stenographic and computerized notes made at said time and place;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That the witness did request an opportunity to review the transcript.

WITNESS MY HAND AND SEAL this 4th day of September, 2018.

Lynzie Zempel
Lynzie Zempel
Notary Public
Hennepin County, Minnesota



Exhibit M

Cory Bollum
7/31/2018

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No. 2016 CA 004744

ANIMAL LEGAL DEFENSE FUND,
on behalf of the general public,

Plaintiff,

vs.

HORMEL FOODS CORPORATION,

Defendant.

VIDEO DEPOSITION TRANSCRIPT OF

CORY BOLLUM

July 31, 2018

at

Faegre Baker Daniels
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Reporter: Lynzie Zempel
Doby Professional Reporting, Inc.
DobyReporting.com

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Cory Bollum
7/31/2018

1 (A brief break was taken.)

2 THE VIDEOGRAPHER: This is video recording
3 number 2 the continuing video deposition of Cory
4 Bollum. Back on the video record at approximately
5 10:25 a.m.

6 MS. EBERLY: Mr. Bollum, I am going to hand
7 you Exhibit 48.

8 (Exhibit 48 was marked for identification.)

9 BY MS. EBERLY:

10 Q Let me know when you are finished reading the document
11 or reviewing it.

12 A I guess, I'm not sure what this is.

13 Q So this is the defendant Hormel Food's Corporation's
14 responses and objections to plaintiff's first set of
15 interrogatories. Could you go to page 10. The second
16 or first full paragraph says in part, "Hormel Foods
17 states that the following individuals provided
18 substantive factual information on which these answers
19 are based." And it lists you as the first person.

20 Do you recall providing information to
21 support Hormel's responses to these interrogatories?

22 A I don't remember exactly that but I get -- I don't
23 remember specifically that, no.

24 Q Do you remember the subject matter of the information
25 that you provided?

Cory Bollum
7/31/2018

1 MR. YOUNG: Objection; calls for legal
2 conclusion, speculation. Go ahead.

3 A Yeah. Applegate is a separate entity, and I don't -- I
4 am not involved with that at all.

5 BY MS. EBERLY:

6 Q So you have no responsibility with regard to
7 procurement for Applegate?

8 A Correct.

9 Q Can you described how piglets raised to supply Hormel
10 Foods are processed?

11 MR. YOUNG: Objection; vague as to processed.
12 But go ahead.

13 THE WITNESS: Define processed.

14 BY MS. EBERLY:

15 Q Are there a series of practices that are typically used
16 or employed on piglets at or near their birth as a
17 matter of course such as castration or tail docking, et
18 cetera?

19 MR. YOUNG: Objection; vague. But go ahead.

20 A Again, processed is how you define it. The producers
21 that are supplying us products, supplying pigs
22 certainly do process those pigs in their operations.

23 BY MS. EBERLY:

24 Q Can you describe that processing? Does Hormel have
25 specifications as to the processes of the piglets?

Cory Bollum
7/31/2018

1 A Processing is define in PQA standards and the PQA
2 requirements. Those expectations -- and so how every
3 individual producer, every individual operation there
4 may be some differences but certainly industry
5 practices.

6 MS. EBERLY: This is 50.

7 MR. YOUNG: Correct.

8 (Exhibit 50 was marked for identification.)

9 BY MS. EBERLY:

10 Q Let me know when you have reviewed this document.

11 A Okay.

12 Q Are you familiar with this document?

13 A Again, it looks like it's part of our quality
14 management system on our sow farm.

15 Q What is Mountain Prairie?

16 A Mountain Prairie is our sow farm that we own in
17 Colorado.

18 Q And is that -- that's a facility owed by Hormel? It's
19 not part of Pigs for Farmer John?

20 A Pigs for Farmer John is a separate entity and has
21 changed ownership there. So as we look at Mountain
22 Prairie today, it's a sow farm that we own and operate
23 in Colorado.

24 Q Can you look at the reissue date of this processing
25 protocol of December 16, 2016. Are you aware of

Cory Bollum
7/31/2018

1 was demonstrated in this undercover video?

2 A Yeah. It's -- again, it's -- I don't remember -- the
3 exactly, but per the observation scoring it's a normal
4 acceptable practice for the production system.

5 Q And the last one, piglet treatment. The comments are,
6 "No evidence of untreated pigs or if/when euthanasia or
7 stunning occurred." Do you understand that to refer to
8 euthanasia of piglets by manual blunt force trauma?

9 A If I remember right this facility had CO2 units
10 installed so there was no blunt force trauma.

11 Q With regard to tail docking the observation score is
12 two and the comment says, "Common conventional
13 practice. Length of dock in video may have been
14 short." So from your understanding was the practice
15 that needed improvement the manner in which the tail
16 was docked, the length of the tail, not the docking
17 itself or the use or lack of use of euthanasia or any
18 anesthesia?

19 MR. YOUNG: Objection; compound, document
20 speaks for itself. But go ahead.

21 A Again, like a lot of these videos, you can't tell if
22 it's been staged or not staged or if the person that
23 is -- the activist that is in there taking video
24 actually did the incorrect procedure, but...

25 BY MS. EBERLY:

Cory Bollum
7/31/2018

1 Q Do you have reason to believe that practices in this
2 video were staged?

3 A It's always a concern.

4 Q For the observation of piglets crushed in crates the
5 observation score is one and states, "This can occur in
6 all production types. Crates help eliminate some
7 potential of piglet crushing." From your understanding
8 was there any -- anything unusual about the piglets
9 being crushed in the crates as depicted in this video?

10 A Not that I remember.

11 Q And at the bottom of the document it states "Additional
12 comments: Overall video was an attack on common
13 industry practices and not on animal welfare and
14 abuse." Would you agree with that statement?

15 A What I remember of it, yes.

16 Q Would I be correct in understanding that as the close
17 of 2017, last year, Hormel had transitioned its
18 company-owned pig operations to loose sow housing?

19 MR. YOUNG: Objection; vague as to company
20 owned. Go ahead.

21 A I don't remember the specific timeline of our Mountain
22 Prairie sow operation, but I believe that sounds right.

23 BY MS. EBERLY:

24 Q Did Hormel own any other sow operations in 2017 from
25 either the beginning of the year to the end of the

Cory Bollum
7/31/2018

1 recumbency?

2 MR. YOUNG: Objection; vague as to
3 nonconformance. But go ahead.

4 A Again, I think Farm Animal Care and Treatment Specs
5 makes it pretty specific and makes it pretty clear.

6 BY MS. EBERLY:

7 Q So just so I'm understanding the auditing process, if
8 an auditor went to a housing facility and say that 90
9 percent of the animals could lie down in full lateral
10 recumbency in their stalls but 10 percent could not,
11 there would be no marking down of points or no
12 nonconformance with the specifications. Is that your
13 understanding?

14 A Yes.

15 Q And the second bullet there states, "A minimum of 90
16 percent of the swine in stalls and crates can lie down
17 without their heads resting on a raised feeder while
18 their posterior touches the back crate/stall bar." So
19 again would I be correct in understanding that an
20 auditor viewing swine and gestation crate stalls if
21 10 percent of them could not lay down without resting
22 their head on a feeder that would not pose an issue for
23 the audit, there wouldn't be any points marked down?

24 A Correct.

25 MS. EBERLY: This is 55.

Cory Bollum
7/31/2018

1 Manzanita did here. But if a sow farm passed the
2 audit, would they be able to continue to deliver pigs
3 to Hormel's facility? Yes.

4 Q And would it be possible for those pigs to be used in
5 Hormel's various pork products including Natural
6 Choice?

7 A If the pigs were brought to one of our facilities where
8 we harvested, they could go into our products.

9 Q I would like to talk a little bit about video
10 monitoring. Can you describe what Arrowsight is?

11 A Arrowsight is a third-party video monitoring company.

12 Q Does Hormel have a relationship with Arrowsight?

13 A Yes.

14 Q What is that relationship?

15 A We've hired Arrowsight to audit in the plants. And so
16 they do random at different times of day, different
17 times where they are auditing cameras that are in our
18 plants.

19 Q So where these cameras that were already in the plants
20 that Arrowsight is now viewing footage of or were these
21 cameras that were installed in the plants for the
22 purposes of conducting Arrowsight monitoring?

23 A I'm not sure I -- I'm not sure I know the complete
24 answer to that -- the specific answer to that. We did
25 have some cameras in the plant prior to bringing

Cory Bollum
7/31/2018

1 Arrowsight in. Certainly, we added a multitude of
2 cameras and the cameras we have continue to update as
3 well as the camera technology continues to get better.

4 Q And are -- is the video monitoring done in all areas of
5 the plants -- if this is done in both plants?

6 A So the Arrowsight service is done anywhere where we
7 have live pigs. And then as we get into the harvest
8 side, there's a few cameras in strategic places there
9 as well.

10 Q And is the footage just rolling all of the time and
11 being collected throughout operations or is it only
12 turned on for a specific period of time?

13 A Well, the cameras are on all the time and Arrowsight
14 randomly selects when they audit.

15 Q What period of time do they select to audit?

16 MR. YOUNG: Objection; foundation. Go ahead.

17 A I am not sure I know when they -- I mean, I don't know
18 when they audit at all. So, I mean, they are auditing
19 at random times of the day. And so I have no idea when
20 they audited or anything.

21 BY MS. EBERLY:

22 Q Sure. Sorry I was referring to the duration. So what
23 time period are they capturing?

24 A Again, not sure. It could be anytime the cameras are,
25 anytime protection is going. We have a contract that

Cory Bollum
7/31/2018

1 set number of minutes, I don't know what that number is
2 offhand, but it's a specific number of -- I think it's
3 minutes per month.

4 Q And are individuals at Arrowsight reviewing that
5 footage and providing feedback to Hormel?

6 A Yeah. Arrowsight, again, is a third party that is
7 reviewing that, taking audit, and then if there's
8 anything that they think may be a concern, then that
9 gets forwarded to us.

10 Q And what is there -- has Hormel provided Arrowsight any
11 guidance about matters that it should flag or matters
12 that would be of concern to Hormel?

13 A Yeah. I mean, we have worked with Arrowsight to look
14 at specific things and there may be specific things in
15 this part of the plant versus others. And so there's,
16 say, a continued working relationship there.

17 Q Does Hormel conduct any similar video monitoring of
18 other suppliers or other entities within its supply
19 chain?

20 A Make that a little more clear.

21 Q So we will divide them out. Does Hormel conduct any
22 video monitoring of the farms that supply its pig for
23 its product?

24 A We don't do any video monitoring of our suppliers, of
25 your independent suppliers, but there are many

Cory Bollum
7/31/2018

1 Q Am I correct in understanding that the Austin,
2 Minnesota, slaughter plant has install a CO2 machine
3 for stunning hogs?

4 A Yes.

5 Q The second -- or the last sentence rather of this third
6 bullet point reads, "Carcass discharge from CO2 their
7 biggest challenge which will not be issue for us with
8 two lines." Can you explain what is meant by carcass
9 discharge?

10 A So doing this off of memory. When we went to the Maple
11 Leaf facility many of these operations that harvesting
12 double shift and number of pigs, they have two CO2
13 units so they will dump alternatively onto a belt and
14 the Maple Leaf system did that. So both systems were
15 back to back and one dumped and then the other one
16 dumped onto the same belt. But if they had problems
17 with that belt, they couldn't run. And so what we did
18 after seeing that was looked at making two separate
19 belts, two separate systems so at least if one was
20 having any issue or concerns you could at least
21 continue to run the other Butina CO2 unit so that it
22 wasn't completely put -- so you couldn't operate. So
23 again just went around and looked at some different
24 facilities and had some good intel that was one of
25 them.

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Cory Bollum
7/31/2018

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REPORTER'S CERTIFICATE

I, Lynzie Zempel, a Notary Public in and for the County of Hennepin, State of Minnesota, certify that the foregoing is a true record of the testimony given by CORY BOLLUM, who was first duly sworn by me, having been taken on July 31, 2018, at Faegre Baker Daniels, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402 in my presence and reduced to writing in accordance with my stenographic and computerized notes made at said time and place;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That the witness did request an opportunity to review the transcript.

WITNESS MY HAND AND SEAL this 13th day
August, 2018.

Lynzie Zempel
Lynzie Zempel
Notary Public
Hennepin County, Minnesota



Exhibit N

Corwyn Bollum
8/21/2018

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Case No. 2016 CA 004744 B

ANIMAL LEGAL DEFENSE FUND,

Plaintiff,

vs.

HORMEL FOODS CORPORATION,

Defendant.

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RULE 30(b)(6) DEPOSITION TRANSCRIPT OF

HORMEL CORPORATION

Testimony of Corwyn Bollum

August 21, 2018

at

Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402

Reporter: Jennifer L. Sharp
Doby Professional Reporting, Inc.
DobyReporting.com
952.943.1587

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Corwyn Bollum
8/21/2018

1 A Training and -- and regulations, rules, and
2 training of that, no.

3 Q And was the discussion all related to -- to
4 slaughter, so the operations at the Austin and Fremont
5 plants, or did you have any discussion with him related
6 to husbandry at the suppliers -- at Hormel's pig
7 suppliers?

8 A No. It was basically training as far as
9 training to the workers, the employees in the plants,
10 training for transporters that are bringing pigs into
11 the plants. Those types of things.

12 Q So I think you may recall from your last
13 deposition we spent some time discussing the raising of
14 mother pigs and breeding of piglets and some of the
15 standards used in breeding facilities. I would like to
16 go back to that and revisit a few of those topics.

17 I believe you testified in July that it's
18 standard industry practice for piglets to receive some
19 sort of processing early after birth, including docks
20 of the tail, castration. Do you recall that testimony?

21 A Yeah, I mean, vaguely. There's -- that was a
22 long paragraph you read there.

23 Q Do you know whether tail docking of piglets
24 is a standard industry practice in the pork industry?

25 MR. YOUNG: Objection; outside the scope. Go

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1 ahead.

2 A Yeah, tail docking would be considered a
3 standard industry practice.

4 BY MS. EBERLY:

5 Q Is castration a standard industry practice?

6 MR. YOUNG: Outside the scope. Go ahead.

7 A Castration would be considered a standard
8 industry practice.

9 BY MS. EBERLY:

10 Q And when I'm describing or asking you about
11 these standard industry practices, is -- does -- is the
12 pork that Hormel uses for its Natural Choice products
13 raised according to standard industry practices, as you
14 understand them?

15 MR. YOUNG: Objection; vague, but go ahead.

16 A Repeat that again.

17 BY MS. EBERLY:

18 Q So when Hormel is sourcing pork for Natural
19 Choice products, is there anything -- any reason that
20 the piglets raised for use in those products would not
21 have been -- would not have had their tails docked or
22 would not have been castrated in the usual manner?

23 MR. YOUNG: Objection; vague, but go ahead.

24 A Castration and tail docking would be common
25 industry practice, so that would be -- those pigs could

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1 go into Natural Choice.

2 BY MS. EBERLY:

3 Q Is teeth clipping also a common processing
4 procedure for newborn piglets?

5 MR. YOUNG: Objection; outside the scope. Go
6 ahead.

7 A Needle teeth clipping is -- would be
8 considered a standard industry practice; however, some
9 producers do not do it. Some people do. Years ago it
10 was a common swine industry practice. I would say as
11 time has gone on, it's probably become less and less,
12 but there are producers that still use them.

13 BY MS. EBERLY:

14 Q Can you state what percentage of your
15 suppliers are still using teeth clipping?

16 A I don't know what percentage of them are
17 using it or not.

18 Q Is it your understanding that tail docking
19 and castration are performed without anesthesia?

20 A The common industry practice and approved by
21 AVMA of tail docking and castration would be done
22 without anesthesia.

23 Q So it would be reasonable to assume that pork
24 used in Natural Choice products could have been sourced
25 from piglets that received -- that had their tails

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1 BY MS. EBERLY:

2 Q So there's no standard processing protocol
3 that Hormel sends to suppliers that states, You need to
4 follow this?

5 A Because we're buying pigs from independent
6 producers, we don't give a standard protocol on how
7 they treat their baby pigs on a sow farm.

8 Q Can you state anything more specific about
9 what the antibiotic would be that would be injected
10 into a newborn piglet as of December of 2016?

11 A I don't know what the specific antibiotic
12 was. Again, these are protocols that are recommended
13 by the veterinarian, so --

14 Q So I believe last time we spoke, we discussed
15 euthanasia methods of newborn piglets that have to be
16 killed because they aren't -- not useful in production,
17 and we discussed the method of manual blunt force
18 trauma, and I recall you stated something to the effect
19 that Hormel was encouraging suppliers to discontinue
20 the use of manual blunt force trauma to euthanize baby
21 piglets. Is that correct?

22 A Let's go back to your earlier comment, "not
23 useful to production."

24 Q Sure.

25 Perhaps we can back up and you can explain

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1 under what circumstances baby piglets would be -- would
2 be euthanized by whatever method.

3 A So there's certainly different methods that
4 are approved by AVMA, and why they would be euthanized
5 is they're injured or hurt and so -- need to be -- for
6 the welfare of the animal need to be euthanized. And
7 so there are several methods that are approved.

8 Q Does Hormel have any policy with regard -- or
9 do you know whether your suppliers euthanize runts, so
10 very small piglets, as a matter of course?

11 A Define "runts."

12 Q Piglets that are very small and unlikely to
13 meet the specifications that Hormel has set out in
14 terms of what it's looking for for finished pigs.

15 A Again, I don't want to speak for every
16 independent producer that is out there, but general
17 practice would not be to euthanize a pig just because
18 it's small.

19 Q So last time we spoke, I asked if Hormel had
20 any policy with regard to manual blunt force trauma as
21 a method of euthanasia, and you stated that Hormel has
22 a recommendation not to use blunt force trauma. Do you
23 recall that?

24 A Yes.

25 Q And I asked how that recommendation had been

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1 the cameras?

2 A I don't remember exactly when, but I'm going
3 to say in -- it's probably been five years,
4 approximately, but I don't remember exactly.

5 Q About how often does Arrowsight alert Hormel
6 to an issue at the plant that needs attention?

7 MR. YOUNG: Objection; vague. Go ahead.

8 A I think those -- it varies greatly. There's
9 times where you get very few, and there's times where
10 there are things that trigger an alert. Sometimes the
11 alerts have -- are based off of motion or something
12 else, and so it -- in a lot of cases, they're really
13 not anything, but there's varying degrees of how often.

14 BY MS. EBERLY:

15 Q Would it be like an average of five times a
16 week or fifty times a week or one time a week?

17 A I couldn't even begin to tell you how often.

18 Q And what form do those alerts take? Is it an
19 e-mail sent to people at Hormel?

20 A The alerts get sent to the attention of Tim
21 Toliver.

22 Q Anyone else?

23 A Not that I'm aware of.

24 Q Does he forward them on to anyone else at
25 Hormel, or does he address or resolve them without

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1 necessarily involving anyone else?

2 MR. YOUNG: Objection; foundation.

3 A As far as -- again, as far as I know, he
4 takes care of them and handles them.

5 BY MS. EBERLY:

6 Q Do you recall Mr. Toliver looping you into
7 any issue that was detected by an Arrowsight alert?

8 A There are times where he'll forward something
9 that he saw or something, and so on occasion I'll get
10 looped in, but not terribly often.

11 Q Under what circumstances would he loop you
12 in?

13 A If there's an additional question or anything
14 that he has a question about.

15 Q Do you recall that happening in the last
16 couple months?

17 A No.

18 MS. EBERLY: Should we take a short break?

19 MR. YOUNG: Sure.

20 (Recess was taken.)

21 BY MS. EBERLY:

22 Q So I believe during your first deposition you
23 mentioned that Silliker is another third-party auditor
24 that Hormel uses. Can you describe Hormel's
25 relationship with Silliker?

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1 section, it says -- the third paragraph down says
2 "Should we look into small CO2 chamber for off line
3 euthanasia?" I recall in the last deposition you
4 testified the QPP plant has since moved from -- moved
5 to a CO2 stunning system.

6 Is CO2 stunning also used now for euthanasia
7 of slow hogs, or is captive bolt still the method used?

8 MR. YOUNG: Objection; compound, go ahead.

9 A Several questions there. You're correct. In
10 QPP, we have made the transition from electric stun to
11 CO2 stun.

12 As stated in this whole meeting -- meeting
13 minutes, you can see the corrective actions taken, how
14 we stun slow pigs. After that incident, we moved to
15 stunning the slow pigs electrically rather than with
16 captive bolt. And currently the slows at QPP are still
17 stunned electrically.

18 BY MS. EBERLY:

19 Q To the best of your knowledge, the actions
20 described in this corrective action paragraph is the
21 protocol that QPP follows now for the stunning in
22 euthanasia of slow hogs?

23 A Yeah, just -- again, briefly reading over the
24 corrective actions here, I think this is a great
25 example of some of those slow pigs maybe aren't as slow

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1 STATE OF MINNESOTA)

)

2 COUNTY OF HENNEPIN)

3 REPORTER'S CERTIFICATE

4

5 I, Jennifer L. Sharp, Court Reporter, a Notary
6 Public in and for the County of Hennepin, State of
7 Minnesota, certify that the foregoing is a true record
8 of the testimony given by CORWYN BOLLUM, who was first
9 duly sworn by me, having been taken on August 21, 2018,
10 at Faegre Baker Daniels LLP, 2200 Wells Fargo Center,
11 90 South Seventh Street, Minneapolis, Minnesota, in my
12 presence and reduced to writing in accordance with my
13 stenographic and computerized notes made at said time
14 and place;

15 I further certify that I am not a relative or
16 employee or attorney or counsel of any of the parties
17 or a relative or employee of such attorney or counsel;

18 That I am not financially interested in the action
19 and have no contract with the parties, attorneys or
20 persons with an interest in the action that affects or
21 has a substantial tendency to affect my impartiality;

22 That the cost of the original has been charged to
23 the party who noticed the deposition, and that all
24 parties who ordered copies have been charged at the
25 same rate for such copies;

That the witness DID request an opportunity to
review the transcript.

WITNESS MY HAND AND SEAL this 5th day
September, 2018.

Jennifer L. Sharp

Jennifer L. Sharp
Court Reporter
Notary Public
Hennepin County, Minnesota



Exhibit O

Return of Organization Exempt From Income Tax
Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

2016

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

▶ Do not enter social security numbers on this form as it may be made public.
▶ Information about Form 990 and its instructions is at www.irs.gov/form990.

A For the 2016 calendar year, or tax year beginning , 2016, and ending ,

B Check if applicable:
 Address change
 Name change
 Initial return
 Final return/terminated
 Amended return
 Application pending

C Animal Legal Defense Fund, Inc.
525 East Cotati Avenue
Cotati, CA 94931

D Employer identification number
94-2681680

E Telephone number
707-795-2533

G Gross receipts \$ 12,537,438.

F Name and address of principal officer: Sarah H. Luick
Same As C Above

H(a) Is this a group return for subordinates? Yes No
H(b) Are all subordinates included? Yes No
 If 'No,' attach a list. (see instructions)

I Tax-exempt status 501(c)(3) () (insert no.) 4947(a)(1) or 527

J Website: www.aldf.org

K Form of organization: Corporation Trust Association Other ▶

L Year of formation: 1979 **M** State of legal domicile: CA

Part I Summary

Activities & Governance	1 Briefly describe the organization's mission or most significant activities: <u>The Animal Legal Defense Fund's mission is to protect the lives and advance the interests of animals through the legal system. ALDF accomplishes this mission by: filing high-impact lawsuits to protect animals from harm; providing free assistance to prosecutors [continued pg. 2]</u>		
	2 Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its net assets.		
	3 Number of voting members of the governing body (Part VI, line 1a)	3	11
	4 Number of independent voting members of the governing body (Part VI, line 1b)	4	11
	5 Total number of individuals employed in calendar year 2016 (Part V, line 2a)	5	51
	6 Total number of volunteers (estimate if necessary)	6	1,700
	7a Total unrelated business revenue from Part VIII, column (C), line 12	7a	0.
b Net unrelated business taxable income from Form 990-T, line 34	7b	0.	
Revenue	8 Contributions and grants (Part VIII, line 1h)	Prior Year	Current Year
	9 Program service revenue (Part VIII, line 2g)	10,935,550.	12,195,039.
	10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)	32,965.	89,527.
	11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	77,324.	100,149.
	12 Total revenue - add lines 8 through 11 (must equal Part VIII, column (A), line 12)	69,106.	130,981.
Expenses	13 Grants and similar amounts paid (Part IX, column (A), lines 1-3)	11,114,945.	12,515,696.
	14 Benefits paid to or for members (Part IX, column (A), line 4)	693,671.	660,996.
	15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10)	3,501,088.	3,737,053.
	16a Professional fundraising fees (Part IX, column (A), line 11e)	119,750.	141,315.
	b Total fundraising expenses (Part IX, column (D), line 25) ▶ 1,507,457.		
	17 Other expenses (Part IX, column (A), lines 11a-11d, 11f-24e)	7,302,260.	8,308,386.
	18 Total expenses. Add lines 13-17 (must equal Part IX, column (A), line 25)	11,616,769.	12,847,750.
19 Revenue less expenses. Subtract line 18 from line 12	-501,824.	-332,054.	
Net Assets or Fund Balances	20 Total assets (Part X, line 16)	Beginning of Current Year	End of Year
	21 Total liabilities (Part X, line 26)	12,120,246.	11,868,803.
	22 Net assets or fund balances. Subtract line 21 from line 20	733,868.	753,302.
		11,386,378.	11,115,501.

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here

Signature of officer: Stephen Wells Date: _____
 Type or print name and title: Executive Director

Paid Preparer Use Only

Print/Type preparer's name: Douglas W. Regalia Preparer's signature: Douglas W. Regalia Date: _____
 Check if self-employed PTIN: P00186389
 Firm's name: Regalia & Associates, CPAs
 Firm's address: 103 Town & Country Dr., Ste. K Danville, CA 94526
 Firm's EIN: 68-0260103
 Phone no.: (925) 314-0390

Deposition Exhibit
 8/31/8
 62
 Walden

May the IRS discuss this return with the preparer shown above? (see instructions) Yes No

Part III Statement of Program Service Accomplishments

Check if Schedule O contains a response or note to any line in this Part III. [X]

1 Briefly describe the organization's mission: nationwide to assure that animal abusers are punished for their crimes; supporting tough animal protection legislation; and providing resources and opportunities to law students and professionals to advance the emerging field of animal law. [cont. Sch O]

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? [] Yes [X] No

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? [] Yes [X] No

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses.

4a (Code:) (Expenses \$ 9,629,749. including grants of \$) (Revenue \$)
Litigation Program
ALDF's Litigation program file cutting-edge lawsuits to end the abuse of animals, including companion animals, wildlife, and those abused in industries like factory farming, laboratories, and the entertainment industry.

4b (Code:) (Expenses \$ 660,996. including grants of \$ 660,996.) (Revenue \$)
ALDF Grants and Scholarship Programs
As part of ALDF's Animal Law Program, ALDF makes grants available to various organizations, law centers, individuals and student chapters of ALDF at law schools across the country and in Canada to support the efforts to inform, educate, and take action for animal protection laws.

4c (Code:) (Expenses \$ including grants of \$) (Revenue \$)
Criminal Justice Program
Through our Criminal Justice Program, ALDF is able to increase prosecution and conviction rates for animal cruelty. The program provides critical resources to prosecutors and enforcement agencies.

4d Other program services (Describe in Schedule O.) See Schedule O
(Expenses \$ including grants of \$) (Revenue \$)

4e Total program service expenses 10,290,745.

Part IV Checklist of Required Schedules

	Yes	No
1 Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? <i>If 'Yes,' complete Schedule A.</i>	X	
2 Is the organization required to complete <i>Schedule B, Schedule of Contributors</i> (see instructions)?	X	
3 Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? <i>If 'Yes,' complete Schedule C, Part I.</i>		X
4 Section 501(c)(3) organizations. Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? <i>If 'Yes,' complete Schedule C, Part II.</i>	X	
5 Is the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization that receives membership dues, assessments, or similar amounts as defined in Revenue Procedure 98-19? <i>If 'Yes,' complete Schedule C, Part III.</i>		X
6 Did the organization maintain any donor advised funds or any similar funds or accounts for which donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? <i>If 'Yes,' complete Schedule D, Part I.</i>		X
7 Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas, or historic structures? <i>If 'Yes,' complete Schedule D, Part II.</i>		X
8 Did the organization maintain collections of works of art, historical treasures, or other similar assets? <i>If 'Yes,' complete Schedule D, Part III.</i>		X
9 Did the organization report an amount in Part X, line 21, for escrow or custodial account liability, serve as a custodian for amounts not listed in Part X; or provide credit counseling, debt management, credit repair, or debt negotiation services? <i>If 'Yes,' complete Schedule D, Part IV.</i>		X
10 Did the organization, directly or through a related organization, hold assets in temporarily restricted endowments, permanent endowments, or quasi-endowments? <i>If 'Yes,' complete Schedule D, Part V.</i>		X
11 If the organization's answer to any of the following questions is 'Yes', then complete Schedule D, Parts VI, VII, VIII, IX, or X as applicable.		
a Did the organization report an amount for land, buildings, and equipment in Part X, line 10? <i>If 'Yes,' complete Schedule D, Part VI.</i>	X	
b Did the organization report an amount for investments — other securities in Part X, line 12 that is 5% or more of its total assets reported in Part X, line 16? <i>If 'Yes,' complete Schedule D, Part VII.</i>	X	
c Did the organization report an amount for investments — program related in Part X, line 13 that is 5% or more of its total assets reported in Part X, line 16? <i>If 'Yes,' complete Schedule D, Part VIII.</i>		X
d Did the organization report an amount for other assets in Part X, line 15 that is 5% or more of its total assets reported in Part X, line 16? <i>If 'Yes,' complete Schedule D, Part IX.</i>		X
e Did the organization report an amount for other liabilities in Part X, line 25? <i>If 'Yes,' complete Schedule D, Part X.</i>	X	
f Did the organization's separate or consolidated financial statements for the tax year include a footnote that addresses the organization's liability for uncertain tax positions under FIN 48 (ASC 740)? <i>If 'Yes,' complete Schedule D, Part X.</i>	X	
12a Did the organization obtain separate, independent audited financial statements for the tax year? <i>If 'Yes,' complete Schedule D, Parts XI and XII.</i>	X	
b Was the organization included in consolidated, independent audited financial statements for the tax year? <i>If 'Yes,' and if the organization answered 'No' to line 12a, then completing Schedule D, Parts XI and XII is optional.</i>		X
13 Is the organization a school described in section 170(b)(1)(A)(ii)? <i>If 'Yes,' complete Schedule E.</i>		X
14a Did the organization maintain an office, employees, or agents outside of the United States?		X
b Did the organization have aggregate revenues or expenses of more than \$10,000 from grantmaking, fundraising, business, investment, and program service activities outside the United States, or aggregate foreign investments valued at \$100,000 or more? <i>If 'Yes,' complete Schedule F, Parts I and IV.</i>		X
15 Did the organization report on Part IX, column (A), line 3, more than \$5,000 of grants or other assistance to or for any foreign organization? <i>If 'Yes,' complete Schedule F, Parts II and IV.</i>		X
16 Did the organization report on Part IX, column (A), line 3, more than \$5,000 of aggregate grants or other assistance to or for foreign individuals? <i>If 'Yes,' complete Schedule F, Parts III and IV.</i>		X
17 Did the organization report a total of more than \$15,000 of expenses for professional fundraising services on Part IX, column (A), lines 6 and 11e? <i>If 'Yes,' complete Schedule G, Part I (see instructions).</i>	X	
18 Did the organization report more than \$15,000 total of fundraising event gross income and contributions on Part VIII, lines 1c and 8a? <i>If 'Yes,' complete Schedule G, Part II.</i>		X
19 Did the organization report more than \$15,000 of gross income from gaming activities on Part VIII, line 9a? <i>If 'Yes,' complete Schedule G, Part III.</i>		X

Part IV Checklist of Required Schedules (continued)

	Yes	No
20a Did the organization operate one or more hospital facilities? <i>If 'Yes,' complete Schedule H.</i>		X
b If 'Yes' to line 20a, did the organization attach a copy of its audited financial statements to this return?		
21 Did the organization report more than \$5,000 of grants or other assistance to any domestic organization or domestic government on Part IX, column (A), line 1? <i>If 'Yes,' complete Schedule I, Parts I and II.</i>	X	
22 Did the organization report more than \$5,000 of grants or other assistance to or for domestic individuals on Part IX, column (A), line 2? <i>If 'Yes,' complete Schedule I, Parts I and III.</i>	X	
23 Did the organization answer 'Yes' to Part VII, Section A, line 3, 4, or 5 about compensation of the organization's current and former officers, directors, trustees, key employees, and highest compensated employees? <i>If 'Yes,' complete Schedule J.</i>	X	
24a Did the organization have a tax-exempt bond issue with an outstanding principal amount of more than \$100,000 as of the last day of the year, that was issued after December 31, 2002? <i>If 'Yes,' answer lines 24b through 24d and complete Schedule K. If 'No,' go to line 25a.</i>		X
b Did the organization invest any proceeds of tax-exempt bonds beyond a temporary period exception?		
c Did the organization maintain an escrow account other than a refunding escrow at any time during the year to defease any tax-exempt bonds?		
d Did the organization act as an 'on behalf of' issuer for bonds outstanding at any time during the year?		
25a Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations. Did the organization engage in an excess benefit transaction with a disqualified person during the year? <i>If 'Yes,' complete Schedule L, Part I.</i>		X
b Is the organization aware that it engaged in an excess benefit transaction with a disqualified person in a prior year, and that the transaction has not been reported on any of the organization's prior Forms 990 or 990-EZ? <i>If 'Yes,' complete Schedule L, Part I.</i>		X
26 Did the organization report any amount on Part X, line 5, 6, or 22 for receivables from or payables to any current or former officers, directors, trustees, key employees, highest compensated employees, or disqualified persons? <i>If 'Yes,' complete Schedule L, Part II.</i>		X
27 Did the organization provide a grant or other assistance to an officer, director, trustee, key employee, substantial contributor or employee thereof, a grant selection committee member, or to a 35% controlled entity or family member of any of these persons? <i>If 'Yes,' complete Schedule L, Part III.</i>		X
28 Was the organization a party to a business transaction with one of the following parties (see Schedule L, Part IV instructions for applicable filing thresholds, conditions, and exceptions):		
a A current or former officer, director, trustee, or key employee? <i>If 'Yes,' complete Schedule L, Part IV.</i>		X
b A family member of a current or former officer, director, trustee, or key employee? <i>If 'Yes,' complete Schedule L, Part IV.</i>		X
c An entity of which a current or former officer, director, trustee, or key employee (or a family member thereof) was an officer, director, trustee, or direct or indirect owner? <i>If 'Yes,' complete Schedule L, Part IV.</i>		X
29 Did the organization receive more than \$25,000 in non-cash contributions? <i>If 'Yes,' complete Schedule M.</i>	X	
30 Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions? <i>If 'Yes,' complete Schedule M.</i>		X
31 Did the organization liquidate, terminate, or dissolve and cease operations? <i>If 'Yes,' complete Schedule N, Part I.</i>		X
32 Did the organization sell, exchange, dispose of, or transfer more than 25% of its net assets? <i>If 'Yes,' complete Schedule N, Part II.</i>		X
33 Did the organization own 100% of an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? <i>If 'Yes,' complete Schedule R, Part I.</i>		X
34 Was the organization related to any tax-exempt or taxable entity? <i>If 'Yes,' complete Schedule R, Part II, III, or IV, and Part V, line 1.</i>		X
35a Did the organization have a controlled entity within the meaning of section 512(b)(13)?		X
b If 'Yes' to line 35a, did the organization receive any payment from or engage in any transaction with a controlled entity within the meaning of section 512(b)(13)? <i>If 'Yes,' complete Schedule R, Part V, line 2.</i>		
36 Section 501(c)(3) organizations. Did the organization make any transfers to an exempt non-charitable related organization? <i>If 'Yes,' complete Schedule R, Part V, line 2.</i>		X
37 Did the organization conduct more than 5% of its activities through an entity that is not a related organization and that is treated as a partnership for federal income tax purposes? <i>If 'Yes,' complete Schedule R, Part VI.</i>		X
38 Did the organization complete Schedule O and provide explanations in Schedule O for Part VI, lines 11b and 19? Note. All Form 990 filers are required to complete Schedule O.	X	

BAA

Part V Statements Regarding Other IRS Filings and Tax Compliance

Check if Schedule O contains a response or note to any line in this Part V. []

Table with columns for question number, description, sub-part, amount, and Yes/No checkboxes. Includes questions 1a-1c, 2a-2b, 3a-3b, 4a-4b, 5a-5c, 6a-6b, 7a-7h, 8, 9a-9b, 10a-10b, 11a-11b, 12a-12b, 13a-13c, 14a-14b.

Part VI Governance, Management, and Disclosure For each 'Yes' response to lines 2 through 7b below, and for a 'No' response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions.

Check if Schedule O contains a response or note to any line in this Part VI X

Section A. Governing Body and Management

		Yes	No
1 a	Enter the number of voting members of the governing body at the end of the tax year If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain in Schedule O. See Sch. O		
1 b	Enter the number of voting members included in line 1a, above, who are independent		
2	Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?		X
3	Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, or trustees, or key employees to a management company or other person?		X
4	Did the organization make any significant changes to its governing documents since the prior Form 990 was filed?		X
5	Did the organization become aware during the year of a significant diversion of the organization's assets?		X
6	Did the organization have members or stockholders?		X
7 a	Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body?		X
7 b	Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body?		X
8	Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:		
8 a	The governing body?	X	
8 b	Each committee with authority to act on behalf of the governing body?	X	
9	Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If 'Yes,' provide the names and addresses in Schedule O.		X

Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Code.)

		Yes	No
10 a	Did the organization have local chapters, branches, or affiliates?	X	
10 b	If 'Yes,' did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?	X	
11 a	Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?	X	
11 b	Describe in Schedule O the process, if any, used by the organization to review this Form 990. See Schedule O		
12 a	Did the organization have a written conflict of interest policy? If 'No,' go to line 13.	X	
12 b	Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?	X	
12 c	Did the organization regularly and consistently monitor and enforce compliance with the policy? If 'Yes,' describe in Schedule O how this was done. See Schedule O	X	
13	Did the organization have a written whistleblower policy?	X	
14	Did the organization have a written document retention and destruction policy?	X	
15	Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?		
15 a	The organization's CEO, Executive Director, or top management official . . . See Schedule O	X	
15 b	Other officers or key employees of the organization . . . See Schedule O If 'Yes' to line 15a or 15b, describe the process in Schedule O (see instructions).	X	
16 a	Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?		X
16 b	If 'Yes,' did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?		

Section C. Disclosure

- 17 List the states with which a copy of this Form 990 is required to be filed ▶ **See Schedule O**
- 18 Section 6104 requires an organization to make its Forms 1023 (or 1024 if applicable), 990, and 990-T (Section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.
 Own website Another's website Upon request Other (explain in Schedule O)
- 19 Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year. **See Schedule O**
- 20 State the name, address, and telephone number of the person who possesses the organization's books and records: ▶
Stephen Wells 525 E. Cotati Avenue Cotati CA 94931 707-795-2533

Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Check if Schedule O contains a response or note to any line in this Part VII.

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1 a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.
- List all of the organization's **current** key employees, if any. See instructions for definition of 'key employee.'
- List the organization's five **current** highest compensated employees (other than an officer, director, trustee, or key employee) who received reportable compensation (Box 5 of Form W-2 and/or Box 7 of Form 1099-MISC) of more than \$100,000 from the organization and any related organizations.
- List all of the organization's **former** officers, key employees, and highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.
- List all of the organization's **former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than \$10,000 of reportable compensation from the organization and any related organizations.

List persons in the following order: individual trustees or directors; institutional trustees; officers; key employees; highest compensated employees; and former such persons.

Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and Title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(1) Sarah H. Luick Chair	4 0	X		X				0.	0.	0.
(2) Wendy Morgan Vice Chair	4 0	X		X				0.	0.	0.
(3) Lisa A. Brewer Secretary	4 0	X		X				0.	0.	0.
(4) James M. Rockenbach Treasurer	4 0	X		X				0.	0.	0.
(5) Andrea Arden Director	4 0	X						0.	0.	0.
(6) David N. Cassuto Director	4 0	X						0.	0.	0.
(7) Stacey M. Evans Director	4 0	X						0.	0.	0.
(8) Morgan C. Mulford Director	4 0	X						0.	0.	0.
(9) Beatrice Nemlaha Director	4 0	X						0.	0.	0.
(10) Victoria Stack Director	4 0	X						0.	0.	0.
(11) Stephanie Walter Director	4 0	X						0.	0.	0.
(12) Joyce Tischler Founder	40 0			X				140,633.	0.	11,368.
(13) Stephen Wells Chief Exec Ofcr	40 0			X				189,298.	0.	17,274.
(14) Pamela Hart Director of ALP	40 0					X		123,916.	0.	13,461.

Part VII Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees (continued)

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(15) Carter Dillard Dir of Litigation	40 0					X	125,925.	0.	11,175.	
(16) Vaughn Maurice Development Dir	40 0					X	120,960.	0.	12,106.	
(17) Nicole Roth Deputy Director	40 0					X	130,650.	0.	8,680.	
(18) Patricia Jones Communications Dir	40 0					X	118,018.	0.	6,431.	
(19)										
(20)										
(21)										
(22)										
(23)										
(24)										
(25)										
1 b Sub-total							949,400.	0.	80,495.	
c Total from continuation sheets to Part VII, Section A							0.	0.	0.	
d Total (add lines 1b and 1c)							949,400.	0.	80,495.	

2 Total number of individuals (including but not limited to those listed above) who received more than \$100,000 of reportable compensation from the organization **10**

	Yes	No
3 Did the organization list any former officer, director, or trustee, key employee, or highest compensated employee on line 1a? <i>If 'Yes,' complete Schedule J for such individual.</i>		X
4 For any individual listed on line 1a, is the sum of reportable compensation and other compensation from the organization and related organizations greater than \$150,000? <i>If 'Yes,' complete Schedule J for such individual.</i>	X	
5 Did any person listed on line 1a receive or accrue compensation from any unrelated organization or individual for services rendered to the organization? <i>If 'Yes,' complete Schedule J for such person.</i>		X

Section B. Independent Contractors

1 Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

(A) Name and business address	(B) Description of services	(C) Compensation
Donor Point Marketing 649 N Horners Lane Rockville, MD 20850	Marketing/Mailing	585,218.

2 Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 of compensation from the organization **1**

Part VIII Statement of Revenue

Check if Schedule O contains a response or note to any line in this Part VIII

		(A) Total revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under sections 512-514	
Contributions, Gifts, Grants and Other Similar Amounts	1 a Federated campaigns	1 a				
	b Membership dues	1 b				
	c Fundraising events	1 c				
	d Related organizations	1 d				
	e Government grants (contributions)	1 e				
	f All other contributions, gifts, grants, and similar amounts not included above. ...	1 f 12,195,039.				
	g Noncash contributions included in lines 1a-1f: \$	4,073,467.				
	h Total. Add lines 1a-1f. ▶	12,195,039.				
Program Service Revenue	Business Code					
	2 a <u>Conferences</u>		89,527.	89,527.		
	b					
	c					
	d					
	e					
	f All other program service revenue					
g Total. Add lines 2a-2f. ▶		89,527.				
Other Revenue	3 Investment income (including dividends, interest and other similar amounts)	▶	100,149.		100,149.	
	4 Income from investment of tax-exempt bond proceeds ..	▶				
	5 Royalties	▶				
	6 a Gross rents	(i) Real				
		(ii) Personal				
		b Less: rental expenses				
		c Rental income or (loss)				
	d Net rental income or (loss)	▶				
	7 a Gross amount from sales of assets other than inventory	(i) Securities				
		(ii) Other				
		b Less: cost or other basis and sales expenses				
		c Gain or (loss)				
	d Net gain or (loss)	▶				
	8 a Gross income from fundraising events (not including .. \$ of contributions reported on line 1c). See Part IV, line 18	a				
	b Less: direct expenses	b				
c Net income or (loss) from fundraising events	▶					
9 a Gross income from gaming activities. See Part IV, line 19	a					
	b Less: direct expenses	b				
	c Net income or (loss) from gaming activities	▶				
10 a Gross sales of inventory, less returns and allowances	a	57,539.				
	b Less: cost of goods sold	b	21,742.			
	c Net income or (loss) from sales of inventory	▶	35,797.	35,797.		
Miscellaneous Revenue		Business Code				
11 a <u>Other Income</u>		95,184.	95,184.			
b						
c						
d All other revenue						
e Total. Add lines 11a-11d. ▶		95,184.				
12 Total revenue. See instructions. ▶		12,515,696.	220,508.	0.	100,149.	

Part IX Statement of Functional Expenses

Section 501(c)(3) and 501(c)(4) organizations must complete all columns. All other organizations must complete column (A).

Check if Schedule O contains a response or note to any line in this Part IX.

Do not include amounts reported on lines 6b, 7b, 8b, 9b, and 10b of Part VIII.	(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1 Grants and other assistance to domestic organizations and domestic governments. See Part IV, line 21.	640,996.	640,996.		
2 Grants and other assistance to domestic individuals. See Part IV, line 22.	20,000.	20,000.		
3 Grants and other assistance to foreign organizations, foreign governments, and foreign individuals. See Part IV, lines 15 and 16.				
4 Benefits paid to or for members.				
5 Compensation of current officers, directors, trustees, and key employees.	329,931.	240,987.	36,759.	52,185.
6 Compensation not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B).	0.	0.	0.	0.
7 Other salaries and wages.	2,812,122.	2,054,019.	313,308.	444,795.
8 Pension plan accruals and contributions (include section 401(k) and 403(b) employer contributions).	104,182.	76,096.	11,607.	16,479.
9 Other employee benefits.	235,285.	171,856.	26,214.	37,215.
10 Payroll taxes.	255,533.	186,645.	28,470.	40,418.
11 Fees for services (non-employees):				
a Management.				
b Legal.	619,854.	619,854.		
c Accounting.	34,274.		34,274.	
d Lobbying.				
e Professional fundraising services. See Part IV, line 17.	141,315.			141,315.
f Investment management fees.				
g Other. (If line 11g amount exceeds 10% of line 25, column (A) amount, list line 11g expenses on Schedule O.)	538,150.	411,012.	96,902.	30,236.
12 Advertising and promotion.	70,726.	39,510.	2,038.	29,178.
13 Office expenses.	34,749.	3,807.	27,117.	3,825.
14 Information technology.	71,802.	26,719.	45,030.	53.
15 Royalties.				
16 Occupancy.	86,731.	81,884.	4,847.	
17 Travel.	475,930.	267,025.	103,677.	105,228.
18 Payments of travel or entertainment expenses for any federal, state, or local public officials.				
19 Conferences, conventions, and meetings.	33,967.	20,284.	5,123.	8,560.
20 Interest.				
21 Payments to affiliates.				
22 Depreciation, depletion, and amortization.	101,489.	24,539.	76,950.	
23 Insurance.	19,856.	13,987.	5,869.	
24 Other expenses. Itemize expenses not covered above (List miscellaneous expenses in line 24e. If line 24e amount exceeds 10% of line 25, column (A) amount, list line 24e expenses on Schedule O.)				
a <u>Legal fees - pro bono</u>	4,073,467.	4,073,467.		
b <u>Postage and Shipping</u>	636,912.	460,026.	33,673.	143,213.
c <u>Printing and Publications</u>	634,693.	474,918.	6,014.	153,761.
d <u>Mailing Costs</u>	223,142.	171,485.		51,657.
e All other expenses.	652,644.	211,629.	191,676.	249,339.
25 Total functional expenses. Add lines 1 through 24e.	12,847,750.	10,290,745.	1,049,548.	1,507,457.
26 Joint costs. Complete this line only if the organization reported in column (B) joint costs from a combined educational campaign and fundraising solicitation. Check here <input checked="" type="checkbox"/> if following SOP 98-2 (ASC 958-720).	1,654,901.	1,234,607.	39,687.	380,607.

Part X Balance Sheet

Check if Schedule O contains a response or note to any line in this Part X.

		(A) Beginning of year		(B) End of year
Assets	1	Cash – non-interest-bearing	3,791,367.	1 2,486,635.
	2	Savings and temporary cash investments	1,500,000.	2 755,193.
	3	Pledges and grants receivable, net	250,599.	3 286,840.
	4	Accounts receivable, net		4
	5	Loans and other receivables from current and former officers, directors, trustees, key employees, and highest compensated employees. Complete Part II of Schedule L		5
	6	Loans and other receivables from other disqualified persons (as defined under section 4958(f)(1)), persons described in section 4958(c)(3)(B), and contributing employers and sponsoring organizations of section 501(c)(9) voluntary employees' beneficiary organizations (see instructions). Complete Part II of Schedule L		6
	7	Notes and loans receivable, net		7
	8	Inventories for sale or use	7,531.	8 16,759.
	9	Prepaid expenses and deferred charges	40,235.	9 69,258.
	10a	Land, buildings, and equipment: cost or other basis. Complete Part VI of Schedule D	10a 3,202,752.	
	10b	Less: accumulated depreciation	10b 610,443.	
			1,923,673.	10c 2,592,309.
	11	Investments – publicly traded securities		11
	12	Investments – other securities. See Part IV, line 11	4,606,841.	12 5,661,809.
	13	Investments – program-related. See Part IV, line 11		13
	14	Intangible assets		14
15	Other assets. See Part IV, line 11		15	
16	Total assets. Add lines 1 through 15 (must equal line 34)	12,120,246.	16 11,868,803.	
Liabilities	17	Accounts payable and accrued expenses	397,053.	17 469,778.
	18	Grants payable		18
	19	Deferred revenue		19
	20	Tax-exempt bond liabilities		20
	21	Escrow or custodial account liability. Complete Part IV of Schedule D		21
	22	Loans and other payables to current and former officers, directors, trustees, key employees, highest compensated employees, and disqualified persons. Complete Part II of Schedule L		22
	23	Secured mortgages and notes payable to unrelated third parties		23
	24	Unsecured notes and loans payable to unrelated third parties		24
	25	Other liabilities (including federal income tax, payables to related third parties, and other liabilities not included on lines 17-24). Complete Part X of Schedule D	336,815.	25 283,524.
	26	Total liabilities. Add lines 17 through 25	733,868.	26 753,302.
Net Assets or Fund Balances	Organizations that follow SFAS 117 (ASC 958), check here <input checked="" type="checkbox"/> and complete lines 27 through 29, and lines 33 and 34.			
	27	Unrestricted net assets	11,377,350.	27 10,744,501.
	28	Temporarily restricted net assets	9,028.	28 371,000.
	29	Permanently restricted net assets		29
	Organizations that do not follow SFAS 117 (ASC 958), check here <input type="checkbox"/> and complete lines 30 through 34.			
	30	Capital stock or trust principal, or current funds		30
	31	Paid-in or capital surplus, or land, building, or equipment fund		31
	32	Retained earnings, endowment, accumulated income, or other funds		32
33	Total net assets or fund balances.	11,386,378.	33 11,115,501.	
34	Total liabilities and net assets/fund balances.	12,120,246.	34 11,868,803.	

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Form 990 (2016)

Part XI Reconciliation of Net Assets

Check if Schedule O contains a response or note to any line in this Part XI

1	Total revenue (must equal Part VIII, column (A), line 12)	1	12,515,696.
2	Total expenses (must equal Part IX, column (A), line 25)	2	12,847,750.
3	Revenue less expenses. Subtract line 2 from line 1	3	-332,054.
4	Net assets or fund balances at beginning of year (must equal Part X, line 33, column (A))	4	11,386,378.
5	Net unrealized gains (losses) on investments	5	
6	Donated services and use of facilities	6	
7	Investment expenses	7	
8	Prior period adjustments	8	
9	Other changes in net assets or fund balances (explain in Schedule O) See Schedule O	9	61,177.
10	Net assets or fund balances at end of year. Combine lines 3 through 9 (must equal Part X, line 33, column (B))	10	11,115,501.

Part XII Financial Statements and Reporting

Check if Schedule O contains a response or note to any line in this Part XII

		Yes	No
1	Accounting method used to prepare the Form 990: <input type="checkbox"/> Cash <input checked="" type="checkbox"/> Accrual <input type="checkbox"/> Other _____		
If the organization changed its method of accounting from a prior year or checked 'Other,' explain in Schedule O.			
2a	Were the organization's financial statements compiled or reviewed by an independent accountant?		X
If 'Yes,' check a box below to indicate whether the financial statements for the year were compiled or reviewed on a separate basis, consolidated basis, or both:			
<input type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input type="checkbox"/> Both consolidated and separate basis			
2b	Were the organization's financial statements audited by an independent accountant?	X	
If 'Yes,' check a box below to indicate whether the financial statements for the year were audited on a separate basis, consolidated basis, or both:			
<input checked="" type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input type="checkbox"/> Both consolidated and separate basis			
2c	If 'Yes' to line 2a or 2b, does the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant?	X	
If the organization changed either its oversight process or selection process during the tax year, explain in Schedule O.			
3a	As a result of a federal award, was the organization required to undergo an audit or audits as set forth in the Single Audit Act and OMB Circular A-133?		X
3b	If 'Yes,' did the organization undergo the required audit or audits? If the organization did not undergo the required audit or audits, explain why in Schedule O and describe any steps taken to undergo such audits		

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Form 990 (2016)

SCHEDULE A
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Public Charity Status and Public Support

Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.
▶ Attach to Form 990 or Form 990-EZ.
▶ Information about Schedule A (Form 990 or 990-EZ) and its instructions is at www.irs.gov/form990.

OMB No. 1545-0047

2016

Open to Public Inspection

Name of the organization: **Animal Legal Defense Fund, Inc.** Employer identification number: **94-2681680**

Part I Reason for Public Charity Status (All organizations must complete this part.) See instructions.

The organization is not a private foundation because it is: (For lines 1 through 12, check only one box.)

- 1 A church, convention of churches, or association of churches described in **section 170(b)(1)(A)(i)**.
- 2 A school described in **section 170(b)(1)(A)(ii)**. (Attach Schedule E (Form 990 or 990-EZ).)
- 3 A hospital or a cooperative hospital service organization described in **section 170(b)(1)(A)(iii)**.
- 4 A medical research organization operated in conjunction with a hospital described in **section 170(b)(1)(A)(iii)**. Enter the hospital's name, city, and state: _____
- 5 An organization operated for the benefit of a college or university owned or operated by a governmental unit described in **section 170(b)(1)(A)(iv)**. (Complete Part II.)
- 6 A federal, state, or local government or governmental unit described in **section 170(b)(1)(A)(v)**.
- 7 An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in **section 170(b)(1)(A)(vi)**. (Complete Part II.)
- 8 A community trust described in **section 170(b)(1)(A)(vi)**. (Complete Part II.)
- 9 An agricultural research organization described in **section 170(b)(1)(A)(ix)** operated in conjunction with a land-grant college or university or a non-land-grant college of agriculture (see instructions). Enter the name, city, and state of the college or university: _____
- 10 An organization that normally receives: (1) more than 33-1/3% of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions—subject to certain exceptions, and (2) no more than 33-1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See **section 509(a)(2)**. (Complete Part III.)
- 11 An organization organized and operated exclusively to test for public safety. See **section 509(a)(4)**.
- 12 An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in **section 509(a)(1)** or **section 509(a)(2)**. See **section 509(a)(3)**. Check the box in lines 12a through 12d that describes the type of supporting organization and complete lines 12e, 12f, and 12g.
 - a **Type I.** A supporting organization operated, supervised, or controlled by its supported organization(s), typically by giving the supported organization(s) the power to regularly appoint or elect a majority of the directors or trustees of the supporting organization. **You must complete Part IV, Sections A and B.**
 - b **Type II.** A supporting organization supervised or controlled in connection with its supported organization(s), by having control or management of the supporting organization vested in the same persons that control or manage the supported organization(s). **You must complete Part IV, Sections A and C.**
 - c **Type III functionally integrated.** A supporting organization operated in connection with, and functionally integrated with, its supported organization(s) (see instructions). **You must complete Part IV, Sections A, D, and E.**
 - d **Type III non-functionally integrated.** A supporting organization operated in connection with its supported organization(s) that is not functionally integrated. The organization generally must satisfy a distribution requirement and an attentiveness requirement (see instructions). **You must complete Part IV, Sections A and D, and Part V.**
 - e Check this box if the organization received a written determination from the IRS that it is a Type I, Type II, Type III functionally integrated, or Type III non-functionally integrated supporting organization.
 - f Enter the number of supported organizations: _____
 - g Provide the following information about the supported organization(s).

	(i) Name of supported organization	(ii) EIN	(iii) Type of organization (described on lines 1-10 above (see instructions))	(iv) Is the organization listed in your governing document?		(v) Amount of monetary support (see instructions)	(vi) Amount of other support (see instructions)
				Yes	No		
(A)							
(B)							
(C)							
(D)							
(E)							
Total							

Part II Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)

(Complete only if you checked the box on line 5, 7, or 8 of Part I or if the organization failed to qualify under Part III. If the organization fails to qualify under the tests listed below, please complete Part III.)

Section A. Public Support

Calendar year (or fiscal year beginning in) ▶	(a) 2012	(b) 2013	(c) 2014	(d) 2015	(e) 2016	(f) Total
1 Gifts, grants, contributions, and membership fees received. (Do not include any 'unusual grants'.)	5,759,329.	8,293,474.	13221733.	11243799.	13389372.	51,907,707.
2 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf.						0.
3 The value of services or facilities furnished by a governmental unit to the organization without charge.						0.
4 Total. Add lines 1 through 3.	5,759,329.	8,293,474.	13221733.	11243799.	13389372.	51,907,707.
5 The portion of total contributions by each person (other than a governmental unit or publicly supported organization) included on line 1 that exceeds 2% of the amount shown on line 11, column (f).						4,044,455.
6 Public support. Subtract line 5 from line 4.						47,863,252.

Section B. Total Support

Calendar year (or fiscal year beginning in) ▶	(a) 2012	(b) 2013	(c) 2014	(d) 2015	(e) 2016	(f) Total
7 Amounts from line 4.	5,759,329.	8,293,474.	13221733.	11243799.	13389372.	51,907,707.
8 Gross income from interest, dividends, payments received on securities loans, rents, royalties and income from similar sources.	106,442.	80,432.	119,772.	77,324.	100,149.	484,119.
9 Net income from unrelated business activities, whether or not the business is regularly carried on.						0.
10 Other income. Do not include gain or loss from the sale of capital assets (Explain in Part VI.) See Part VI.	71,044.	72,810.	61,735.	28,017.		233,606.
11 Total support. Add lines 7 through 10.						52,625,432.
12 Gross receipts from related activities, etc. (see instructions).					12	234,760.
13 First five years. If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and stop here .						<input type="checkbox"/>

Section C. Computation of Public Support Percentage

14 Public support percentage for 2016 (line 6, column (f) divided by line 11, column (f)).	14	90.95 %
15 Public support percentage from 2015 Schedule A, Part II, line 14.	15	88.63 %
16a 33-1/3% support test—2016. If the organization did not check the box on line 13, and line 14 is 33-1/3% or more, check this box and stop here. The organization qualifies as a publicly supported organization.	<input checked="" type="checkbox"/>	
b 33-1/3% support test—2015. If the organization did not check a box on line 13 or 16a, and line 15 is 33-1/3% or more, check this box and stop here. The organization qualifies as a publicly supported organization.	<input type="checkbox"/>	
17a 10%-facts-and-circumstances test—2016. If the organization did not check a box on line 13, 16a, or 16b, and line 14 is 10% or more, and if the organization meets the 'facts-and-circumstances' test, check this box and stop here. Explain in Part VI how the organization meets the 'facts-and-circumstances' test. The organization qualifies as a publicly supported organization.	<input type="checkbox"/>	
b 10%-facts-and-circumstances test—2015. If the organization did not check a box on line 13, 16a, 16b, or 17a, and line 15 is 10% or more, and if the organization meets the 'facts-and-circumstances' test, check this box and stop here. Explain in Part VI how the organization meets the 'facts-and-circumstances' test. The organization qualifies as a publicly supported organization.	<input type="checkbox"/>	
18 Private foundation. If the organization did not check a box on line 13, 16a, 16b, 17a, or 17b, check this box and see instructions.	<input type="checkbox"/>	

Part III Support Schedule for Organizations Described in Section 509(a)(2)

(Complete only if you checked the box on line 10 of Part I or if the organization failed to qualify under Part II. If the organization fails to qualify under the tests listed below, please complete Part II.)

Section A. Public Support

Calendar year (or fiscal year beginning in) ▶	(a) 2012	(b) 2013	(c) 2014	(d) 2015	(e) 2016	(f) Total
1 Gifts, grants, contributions, and membership fees received. (Do not include any 'unusual grants'.)						
2 Gross receipts from admissions, merchandise sold or services performed, or facilities furnished in any activity that is related to the organization's tax-exempt purpose.						
3 Gross receipts from activities that are not an unrelated trade or business under section 513.						
4 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf.						
5 The value of services or facilities furnished by a governmental unit to the organization without charge.						
6 Total. Add lines 1 through 5.						
7a Amounts included on lines 1, 2, and 3 received from disqualified persons.						
b Amounts included on lines 2 and 3 received from other than disqualified persons that exceed the greater of \$5,000 or 1% of the amount on line 13 for the year.						
c Add lines 7a and 7b.						
8 Public support. (Subtract line 7c from line 6.)						

Section B. Total Support

Calendar year (or fiscal year beginning in) ▶	(a) 2012	(b) 2013	(c) 2014	(d) 2015	(e) 2016	(f) Total
9 Amounts from line 6.						
10a Gross income from interest, dividends, payments received on securities loans, rents, royalties and income from similar sources.						
b Unrelated business taxable income (less section 511 taxes) from businesses acquired after June 30, 1975.						
c Add lines 10a and 10b.						
11 Net income from unrelated business activities not included in line 10b, whether or not the business is regularly carried on.						
12 Other income. Do not include gain or loss from the sale of capital assets (Explain in Part VI.)						
13 Total support. (Add lines 9, 10c, 11, and 12.)						

14 First five years. If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and **stop here**.

Section C. Computation of Public Support Percentage

15 Public support percentage for 2016 (line 8, column (f) divided by line 13, column (f)).	15	%
16 Public support percentage from 2015 Schedule A, Part III, line 15.	16	%

Section D. Computation of Investment Income Percentage

17 Investment income percentage for 2016 (line 10c, column (f) divided by line 13, column (f)).	17	%
18 Investment income percentage from 2015 Schedule A, Part III, line 17.	18	%

19a 33-1/3% support tests—2016. If the organization did not check the box on line 14, and line 15 is more than 33-1/3%, and line 17 is not more than 33-1/3%, check this box and **stop here**. The organization qualifies as a publicly supported organization.

b 33-1/3% support tests—2015. If the organization did not check a box on line 14 or line 19a, and line 16 is more than 33-1/3%, and line 18 is not more than 33-1/3%, check this box and **stop here**. The organization qualifies as a publicly supported organization.

20 Private foundation. If the organization did not check a box on line 14, 19a, or 19b, check this box and see instructions.

Part IV Supporting Organizations

(Complete only if you checked a box in line 12 on Part I. If you checked 12a of Part I, complete Sections A and B. If you checked 12b of Part I, complete Sections A and C. If you checked 12c of Part I, complete Sections A, D, and E. If you checked 12d of Part I, complete Sections A and D, and complete Part V.)

Section A. All Supporting Organizations

	Yes	No
1 Are all of the organization's supported organizations listed by name in the organization's governing documents? If 'No,' describe in Part VI how the supported organizations are designated. If designated by class or purpose, describe the designation. If historic and continuing relationship, explain.		
2 Did the organization have any supported organization that does not have an IRS determination of status under section 509(a)(1) or (2)? If 'Yes,' explain in Part VI how the organization determined that the supported organization was described in section 509(a)(1) or (2).		
3a Did the organization have a supported organization described in section 501(c)(4), (5), or (6)? If 'Yes,' answer (b) and (c) below.		
b Did the organization confirm that each supported organization qualified under section 501(c)(4), (5), or (6) and satisfied the public support tests under section 509(a)(2)? If 'Yes,' describe in Part VI when and how the organization made the determination.		
c Did the organization ensure that all support to such organizations was used exclusively for section 170(c)(2)(B) purposes? If 'Yes,' explain in Part VI what controls the organization put in place to ensure such use.		
4a Was any supported organization not organized in the United States ('foreign supported organization')? If 'Yes' and if you checked 12a or 12b in Part I, answer (b) and (c) below.		
b Did the organization have ultimate control and discretion in deciding whether to make grants to the foreign supported organization? If 'Yes,' describe in Part VI how the organization had such control and discretion despite being controlled or supervised by or in connection with its supported organizations.		
c Did the organization support any foreign supported organization that does not have an IRS determination under sections 501(c)(3) and 509(a)(1) or (2)? If 'Yes,' explain in Part VI what controls the organization used to ensure that all support to the foreign supported organization was used exclusively for section 170(c)(2)(B) purposes.		
5a Did the organization add, substitute, or remove any supported organizations during the tax year? If 'Yes,' answer (b) and (c) below (if applicable). Also, provide detail in Part VI , including (i) the names and EIN numbers of the supported organizations added, substituted, or removed; (ii) the reasons for each such action; (iii) the authority under the organization's organizing document authorizing such action; and (iv) how the action was accomplished (such as by amendment to the organizing document).		
b Type I or Type II only. Was any added or substituted supported organization part of a class already designated in the organization's organizing document?		
c Substitutions only. Was the substitution the result of an event beyond the organization's control?		
6 Did the organization provide support (whether in the form of grants or the provision of services or facilities) to anyone other than (i) its supported organizations, (ii) individuals that are part of the charitable class benefited by one or more of its supported organizations, or (iii) other supporting organizations that also support or benefit one or more of the filing organization's supported organizations? If 'Yes,' provide detail in Part VI .		
7 Did the organization provide a grant, loan, compensation, or other similar payment to a substantial contributor (defined in section 4958(c)(3)(C)), a family member of a substantial contributor, or a 35% controlled entity with regard to a substantial contributor? If 'Yes,' complete Part I of Schedule L (Form 990 or 990-EZ).		
8 Did the organization make a loan to a disqualified person (as defined in section 4958) not described in line 7? If 'Yes,' complete Part I of Schedule L (Form 990 or 990-EZ).		
9a Was the organization controlled directly or indirectly at any time during the tax year by one or more disqualified persons as defined in section 4946 (other than foundation managers and organizations described in section 509(a)(1) or (2))? If 'Yes,' provide detail in Part VI .		
b Did one or more disqualified persons (as defined in line 9a) hold a controlling interest in any entity in which the supporting organization had an interest? If 'Yes,' provide detail in Part VI .		
c Did a disqualified person (as defined in line 9a) have an ownership interest in, or derive any personal benefit from, assets in which the supporting organization also had an interest? If 'Yes,' provide detail in Part VI .		
10a Was the organization subject to the excess business holdings rules of section 4943 because of section 4943(f) (regarding certain Type II supporting organizations, and all Type III non-functionally integrated supporting organizations)? If 'Yes,' answer 10b below.		
b Did the organization have any excess business holdings in the tax year? (Use Schedule C, Form 4720, to determine whether the organization had excess business holdings.)		

Part IV Supporting Organizations (continued)

	Yes	No
11 Has the organization accepted a gift or contribution from any of the following persons?		
a A person who directly or indirectly controls, either alone or together with persons described in (b) and (c) below, the governing body of a supported organization?	11a	
b A family member of a person described in (a) above?	11b	
c A 35% controlled entity of a person described in (a) or (b) above? If 'Yes' to a, b, or c, provide detail in Part VI .	11c	

Section B. Type I Supporting Organizations

	Yes	No
1 Did the directors, trustees, or membership of one or more supported organizations have the power to regularly appoint or elect at least a majority of the organization's directors or trustees at all times during the tax year? If 'No,' describe in Part VI how the supported organization(s) effectively operated, supervised, or controlled the organization's activities. If the organization had more than one supported organization, describe how the powers to appoint and/or remove directors or trustees were allocated among the supported organizations and what conditions or restrictions, if any, applied to such powers during the tax year.	1	
2 Did the organization operate for the benefit of any supported organization other than the supported organization(s) that operated, supervised, or controlled the supporting organization? If 'Yes,' explain in Part VI how providing such benefit carried out the purposes of the supported organization(s) that operated, supervised, or controlled the supporting organization.	2	

Section C. Type II Supporting Organizations

	Yes	No
1 Were a majority of the organization's directors or trustees during the tax year also a majority of the directors or trustees of each of the organization's supported organization(s)? If 'No,' describe in Part VI how control or management of the supporting organization was vested in the same persons that controlled or managed the supported organization(s).	1	

Section D. All Type III Supporting Organizations

	Yes	No
1 Did the organization provide to each of its supported organizations, by the last day of the fifth month of the organization's tax year, (i) a written notice describing the type and amount of support provided during the prior tax year, (ii) a copy of the Form 990 that was most recently filed as of the date of notification, and (iii) copies of the organization's governing documents in effect on the date of notification, to the extent not previously provided?	1	
2 Were any of the organization's officers, directors, or trustees either (i) appointed or elected by the supported organization(s) or (ii) serving on the governing body of a supported organization? If 'No,' explain in Part VI how the organization maintained a close and continuous working relationship with the supported organization(s).	2	
3 By reason of the relationship described in (2), did the organization's supported organizations have a significant voice in the organization's investment policies and in directing the use of the organization's income or assets at all times during the tax year? If 'Yes,' describe in Part VI the role the organization's supported organizations played in this regard.	3	

Section E. Type III Functionally Integrated Supporting Organizations

1 Check the box next to the method that the organization used to satisfy the Integral Part Test during the year (see instructions).		
a <input type="checkbox"/> The organization satisfied the Activities Test. Complete line 2 below.		
b <input type="checkbox"/> The organization is the parent of each of its supported organizations. Complete line 3 below.		
c <input type="checkbox"/> The organization supported a governmental entity. Describe in Part VI how you supported a government entity (see instructions).		
2 Activities Test. Answer (a) and (b) below.		
a Did substantially all of the organization's activities during the tax year directly further the exempt purposes of the supported organization(s) to which the organization was responsive? If 'Yes,' then in Part VI identify those supported organizations and explain how these activities directly furthered their exempt purposes, how the organization was responsive to those supported organizations, and how the organization determined that these activities constituted substantially all of its activities.	2a	
b Did the activities described in (a) constitute activities that, but for the organization's involvement, one or more of the organization's supported organization(s) would have been engaged in? If 'Yes,' explain in Part VI the reasons for the organization's position that its supported organization(s) would have engaged in these activities but for the organization's involvement.	2b	
3 Parent of Supported Organizations. Answer (a) and (b) below.		
a Did the organization have the power to regularly appoint or elect a majority of the officers, directors, or trustees of each of the supported organizations? Provide details in Part VI .	3a	
b Did the organization exercise a substantial degree of direction over the policies, programs, and activities of each of its supported organizations? If 'Yes,' describe in Part VI the role played by the organization in this regard.	3b	

Part V Type III Non-Functionally Integrated 509(a)(3) Supporting Organizations

1 Check here if the organization satisfied the Integral Part Test as a qualifying trust on Nov. 20, 1970 (explain in Part VI). **See instructions.** All other Type III non-functionally integrated supporting organizations must complete Sections A through E.

Section A – Adjusted Net Income		(A) Prior Year	(B) Current Year (optional)
1	Net short-term capital gain	1	
2	Recoveries of prior-year distributions	2	
3	Other gross income (see instructions)	3	
4	Add lines 1 through 3.	4	
5	Depreciation and depletion	5	
6	Portion of operating expenses paid or incurred for production or collection of gross income or for management, conservation, or maintenance of property held for production of income (see instructions)	6	
7	Other expenses (see instructions)	7	
8	Adjusted Net Income (subtract lines 5, 6, and 7 from line 4).	8	

Section B – Minimum Asset Amount		(A) Prior Year	(B) Current Year (optional)
1	Aggregate fair market value of all non-exempt-use assets (see instructions for short tax year or assets held for part of year):		
a	Average monthly value of securities	1a	
b	Average monthly cash balances	1b	
c	Fair market value of other non-exempt-use assets	1c	
d	Total (add lines 1a, 1b, and 1c)	1d	
e	Discount claimed for blockage or other factors (explain in detail in Part VI):		
2	Acquisition indebtedness applicable to non-exempt-use assets	2	
3	Subtract line 2 from line 1d.	3	
4	Cash deemed held for exempt use. Enter 1-1/2% of line 3 (for greater amount, see instructions).	4	
5	Net value of non-exempt-use assets (subtract line 4 from line 3)	5	
6	Multiply line 5 by .035.	6	
7	Recoveries of prior-year distributions	7	
8	Minimum Asset Amount (add line 7 to line 6)	8	

Section C – Distributable Amount			Current Year
1	Adjusted net income for prior year (from Section A, line 8, Column A)	1	
2	Enter 85% of line 1.	2	
3	Minimum asset amount for prior year (from Section B, line 8, Column A)	3	
4	Enter greater of line 2 or line 3.	4	
5	Income tax imposed in prior year	5	
6	Distributable Amount. Subtract line 5 from line 4, unless subject to emergency temporary reduction (see instructions).	6	

7 Check here if the current year is the organization's first as a non-functionally integrated Type III supporting organization (see instructions).

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Schedule A (Form 990 or 990-EZ) 2016

Part V Type III Non-Functionally Integrated 509(a)(3) Supporting Organizations (continued)

Section D – Distributions	Current Year
1 Amounts paid to supported organizations to accomplish exempt purposes	
2 Amounts paid to perform activity that directly furthers exempt purposes of supported organizations, in excess of income from activity	
3 Administrative expenses paid to accomplish exempt purposes of supported organizations	
4 Amounts paid to acquire exempt-use assets	
5 Qualified set-aside amounts (prior IRS approval required)	
6 Other distributions (describe in Part VI). See instructions.	
7 Total annual distributions. Add lines 1 through 6.	
8 Distributions to attentive supported organizations to which the organization is responsive (provide details in Part VI). See instructions.	
9 Distributable amount for 2016 from Section C, line 6	
10 Line 8 amount divided by Line 9 amount	

Section E – Distribution Allocations (see instructions)	(i) Excess Distributions	(ii) Underdistributions Pre-2016	(iii) Distributable Amount for 2016
1 Distributable amount for 2016 from Section C, line 6			
2 Underdistributions, if any, for years prior to 2016 (reasonable cause required – explain in Part VI). See instructions.			
3 Excess distributions carryover, if any, to 2016:			
a			
b			
c From 2013			
d From 2014			
e From 2015			
f Total of lines 3a through e			
g Applied to underdistributions of prior years			
h Applied to 2016 distributable amount			
i Carryover from 2011 not applied (see instructions)			
j Remainder. Subtract lines 3g, 3h, and 3i from 3f.			
4 Distributions for 2016 from Section D, line 7: \$			
a Applied to underdistributions of prior years			
b Applied to 2016 distributable amount			
c Remainder. Subtract lines 4a and 4b from 4.			
5 Remaining underdistributions for years prior to 2016, if any. Subtract lines 3g and 4a from line 2. For result greater than zero, explain in Part VI. See instructions.			
6 Remaining underdistributions for 2016. Subtract lines 3h and 4b from line 1. For result greater than zero, explain in Part VI. See instructions.			
7 Excess distributions carryover to 2017. Add lines 3j and 4c.			
8 Breakdown of line 7:			
a			
b Excess from 2013			
c Excess from 2014			
d Excess from 2015			
e Excess from 2016			

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Schedule A (Form 990 or 990-EZ) 2016

Part VI Supplemental Information. Provide the explanations required by Part II, line 10; Part II, line 17a or 17b; Part III, line 12; Part IV, Section A, lines 1, 2, 3b, 3c, 4b, 4c, 5a, 6, 9a, 9b, 9c, 11a, 11b, and 11c; Part IV, Section B, lines 1 and 2; Part IV, Section C, line 1; Part IV, Section D, lines 2 and 3; Part IV, Section E, lines 1c, 2a, 2b, 3a, and 3b; Part V, line 1; Part V, Section B, line 1e; Part V, Section D, lines 5, 6, and 8; and Part V, Section E, lines 2, 5, and 6. Also complete this part for any additional information. (See instructions.)

Part II, Line 10 - Other Income

Nature and Source	2016	2015	2014	2013	2012
OTHER		\$ 28,017.	\$ 61,735.	\$ 72,810.	\$ 71,044.
Total	\$ 0.	\$ 28,017.	\$ 61,735.	\$ 72,810.	\$ 71,044.

SCHEDULE C
(Form 990 or 990-EZ)

Political Campaign and Lobbying Activities

OMB No. 1545-0047

For Organizations Exempt From Income Tax Under section 501(c) and section 527

2016

▶ **Complete if the organization is described below.** ▶ Attach to Form 990 or Form 990-EZ.
▶ Information about Schedule C (Form 990 or 990-EZ) and its instructions is at www.irs.gov/form990.

Department of the Treasury
Internal Revenue Service

Open to Public Inspection

If the organization answered 'Yes,' on Form 990, Part IV, line 3, or Form 990-EZ, Part V, line 46 (Political Campaign Activities), then

- Section 501(c)(3) organizations: Complete Parts I-A and B. Do not complete Part I-C.
- Section 501(c) (other than section 501(c)(3)) organizations: Complete Parts I-A and C below. Do not complete Part I-B.
- Section 527 organizations: Complete Part I-A only.

If the organization answered 'Yes,' on Form 990, Part IV, line 4, or Form 990-EZ, Part VI, line 47 (Lobbying Activities), then

- Section 501(c)(3) organizations that have filed Form 5768 (election under section 501(h)): Complete Part II-A. Do not complete Part II-B.
- Section 501(c)(3) organizations that have NOT filed Form 5768 (election under section 501(h)): Complete Part II-B. Do not complete Part II-A.

If the organization answered 'Yes,' on Form 990, Part IV, line 5 (Proxy Tax) (see separate instructions) or Form 990-EZ, Part V, line 35c (Proxy Tax) (see separate instructions), then

- Section 501(c)(4), (5), or (6) organizations: Complete Part III.

Name of organization Animal Legal Defense Fund, Inc.	Employer identification number 94-2681680
--	---

Part I-A Complete if the organization is exempt under section 501(c) or is a section 527 organization.

- 1 Provide a description of the organization's direct and indirect political campaign activities in Part IV. (see instructions for definition of 'political campaign activities')
- 2 Political campaign activity expenditures (see instructions) ▶ \$ _____
- 3 Volunteer hours for political campaign activities (see instructions) _____

Part I-B Complete if the organization is exempt under section 501(c)(3).

- 1 Enter the amount of any excise tax incurred by the organization under section 4955 ▶ \$ _____ 0.
- 2 Enter the amount of any excise tax incurred by organization managers under section 4955 ▶ \$ _____ 0.
- 3 If the organization incurred a section 4955 tax, did it file Form 4720 for this year? Yes No
- 4a Was a correction made? Yes No
- b If 'Yes,' describe in Part IV.

Part I-C Complete if the organization is exempt under section 501(c), except section 501(c)(3).

- 1 Enter the amount directly expended by the filing organization for section 527 exempt function activities. ▶ \$ _____
- 2 Enter the amount of the filing organization's funds contributed to other organizations for section 527 exempt function activities. ▶ \$ _____
- 3 Total exempt function expenditures. Add lines 1 and 2. Enter here and on Form 1120-POL, line 17b. ▶ \$ _____
- 4 Did the filing organization file Form 1120-POL for this year? Yes No
- 5 Enter the names, addresses and employer identification number (EIN) of all section 527 political organizations to which the filing organization made payments. For each organization listed, enter the amount paid from the filing organization's funds. Also enter the amount of political contributions received that were promptly and directly delivered to a separate political organization, such as a separate segregated fund or a political action committee (PAC). If additional space is needed, provide information in Part IV.

(a) Name	(b) Address	(c) EIN	(d) Amount paid from filing organization's funds. If none, enter -0-	(e) Amount of political contributions received and promptly and directly delivered to a separate political organization. If none, enter -0-
(1)	-----			
(2)	-----			
(3)	-----			
(4)	-----			
(5)	-----			
(6)	-----			

Part II-A Complete if the organization is exempt under section 501(c)(3) and filed Form 5768 (election under section 501(h)).

- A** Check if the filing organization belongs to an affiliated group (and list in Part IV each affiliated group member's name, address, EIN, expenses, and share of excess lobbying expenditures).
- B** Check if the filing organization checked box A and 'limited control' provisions apply.

Limits on Lobbying Expenditures (The term 'expenditures' means amounts paid or incurred.)		(a) Filing organization's totals	(b) Affiliated group totals												
1 a	Total lobbying expenditures to influence public opinion (grass roots lobbying)														
b	Total lobbying expenditures to influence a legislative body (direct lobbying)	37,500.													
c	Total lobbying expenditures (add lines 1a and 1b)	37,500.	0.												
d	Other exempt purpose expenditures	9,873,416.													
e	Total exempt purpose expenditures (add lines 1c and 1d)	9,910,916.	0.												
f	Lobbying nontaxable amount. Enter the amount from the following table in both columns.	645,546.													
<table border="1"> <thead> <tr> <th>If the amount on line 1e, column (a) or (b) is</th> <th>The lobbying nontaxable amount is</th> </tr> </thead> <tbody> <tr> <td>Not over \$500,000</td> <td>20% of the amount on line 1e.</td> </tr> <tr> <td>Over \$500,000 but not over \$1,000,000</td> <td>\$100,000 plus 15% of the excess over \$500,000.</td> </tr> <tr> <td>Over \$1,000,000 but not over \$1,500,000</td> <td>\$175,000 plus 10% of the excess over \$1,000,000.</td> </tr> <tr> <td>Over \$1,500,000 but not over \$17,000,000</td> <td>\$225,000 plus 5% of the excess over \$1,500,000.</td> </tr> <tr> <td>Over \$17,000,000</td> <td>\$1,000,000.</td> </tr> </tbody> </table>		If the amount on line 1e, column (a) or (b) is	The lobbying nontaxable amount is	Not over \$500,000	20% of the amount on line 1e.	Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000.	Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000.	Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000.	Over \$17,000,000	\$1,000,000.		
If the amount on line 1e, column (a) or (b) is	The lobbying nontaxable amount is														
Not over \$500,000	20% of the amount on line 1e.														
Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000.														
Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000.														
Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000.														
Over \$17,000,000	\$1,000,000.														
g	Grassroots nontaxable amount (enter 25% of line 1f)	161,387.	0.												
h	Subtract line 1g from line 1a. If zero or less, enter -0-	0.	0.												
i	Subtract line 1f from line 1c. If zero or less, enter -0-	0.	0.												
j	If there is an amount other than zero on either line 1h or line 1i, did the organization file Form 4720 reporting section 4911 tax for this year?														
		<input type="checkbox"/> Yes	<input type="checkbox"/> No												

4-Year Averaging Period Under section 501(h)
(Some organizations that made a section 501(h) election do not have to complete all of the five columns below. See the separate instructions for lines 2a through 2f.)

Lobbying Expenditures During 4-Year Averaging Period

Calendar year (or fiscal year beginning in)	(a) 2013	(b) 2014	(c) 2015	(d) 2016	(e) Total
2a Lobbying nontaxable amount	527,645.	592,645.	730,838.	645,546.	2,496,674.
b Lobbying ceiling amount (150% of line 2a, column (e))					3,745,011.
c Total lobbying expenditures	7,500.	7,500.	7,500.	37,500.	60,000.
d Grassroots nontaxable amount	131,911.	148,051.	182,710.	161,387.	624,059.
e Grassroots ceiling amount (150% of line 2d, column (e))					936,089.
f Grassroots lobbying expenditures	7,500.	7,500.	7,500.		22,500.

BAA

Schedule C (Form 990 or 990-EZ) 2016

Part II-B Complete if the organization is exempt under section 501(c)(3) and has NOT filed Form 5768 (election under section 501(h)).

	(a)		(b)
	Yes	No	Amount
<i>For each 'Yes' response on lines 1a through 1i below, provide in Part IV a detailed description of the lobbying activity.</i>			
1 During the year, did the filing organization attempt to influence foreign, national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of:			
a Volunteers?			
b Paid staff or management (include compensation in expenses reported on lines 1c through 1i)?			
c Media advertisements?			
d Mailings to members, legislators, or the public?			
e Publications, or published or broadcast statements?			
f Grants to other organizations for lobbying purposes?			
g Direct contact with legislators, their staffs, government officials, or a legislative body?			
h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any similar means?			
i Other activities?			
j Total. Add lines 1c through 1i			
2a Did the activities in line 1 cause the organization to be not described in section 501(c)(3)?			
b If 'Yes,' enter the amount of any tax incurred under section 4912			
c If 'Yes,' enter the amount of any tax incurred by organization managers under section 4912			
d If the filing organization incurred a section 4912 tax, did it file Form 4720 for this year?			

Part III-A Complete if the organization is exempt under section 501(c)(4), section 501(c)(5), or section 501(c)(6).

	Yes	No
1 Were substantially all (90% or more) dues received nondeductible by members?	1	
2 Did the organization make only in-house lobbying expenditures of \$2,000 or less?	2	
3 Did the organization agree to carry over lobbying and political campaign activity expenditures from the prior year?	3	

Part III-B Complete if the organization is exempt under section 501(c)(4), section 501(c)(5), or section 501(c)(6) and if either (a) BOTH Part III-A, lines 1 and 2, are answered 'No,' OR (b) Part III-A, line 3, is answered 'Yes.'

1 Dues, assessments and similar amounts from members	1	
2 Section 162(e) nondeductible lobbying and political expenditures (do not include amounts of political expenses for which the section 527(f) tax was paid).		
a Current year	2a	
b Carryover from last year	2b	
c Total	2c	
3 Aggregate amount reported in section 6033(e)(1)(A) notices of nondeductible section 162(e) dues	3	
4 If notices were sent and the amount on line 2c exceeds the amount on line 3, what portion of the excess does the organization agree to carryover to the reasonable estimate of nondeductible lobbying and political expenditure next year?	4	
5 Taxable amount of lobbying and political expenditures (see instructions)	5	

Part IV Supplemental Information

Provide the descriptions required for Part I-A, line 1; Part I-B, line 4; Part I-C, line 5; Part II-A (affiliated group list); Part II-A, lines 1 and 2 (see instructions); and Part II-B, line 1. Also, complete this part for any additional information.

**SCHEDULE D
(Form 990)**

Department of the Treasury
Internal Revenue Service

Supplemental Financial Statements

▶ Complete if the organization answered 'Yes' on Form 990, Part IV, line 6, 7, 8, 9, 10, 11a, 11b, 11c, 11d, 11e, 11f, 12a, or 12b.
▶ Attach to Form 990.

▶ Information about Schedule D (Form 990) and its instructions is at www.irs.gov/form990.

OMB No. 1545-0047

2016

Open to Public Inspection

Name of the organization

Employer identification number

Animal Legal Defense Fund, Inc.

94-2681680

Part I Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts.

Complete if the organization answered 'Yes' on Form 990, Part IV, line 6.

	(a) Donor advised funds	(b) Funds and other accounts
1 Total number at end of year		
2 Aggregate value of contributions to (during year)		
3 Aggregate value of grants from (during year)		
4 Aggregate value at end of year		
5 Did the organization inform all donors and donor advisors in writing that the assets held in donor advised funds are the organization's property, subject to the organization's exclusive legal control?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6 Did the organization inform all grantees, donors, and donor advisors in writing that grant funds can be used only for charitable purposes and not for the benefit of the donor or donor advisor, or for any other purpose conferring impermissible private benefit?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Part II Conservation Easements.

Complete if the organization answered 'Yes' on Form 990, Part IV, line 7.

1 Purpose(s) of conservation easements held by the organization (check all that apply).

<input type="checkbox"/> Preservation of land for public use (e.g., recreation or education)	<input type="checkbox"/> Preservation of a historically important land area
<input type="checkbox"/> Protection of natural habitat	<input type="checkbox"/> Preservation of a certified historic structure
<input type="checkbox"/> Preservation of open space	

2 Complete lines 2a through 2d if the organization held a qualified conservation contribution in the form of a conservation easement on the last day of the tax year.

	Held at the End of the Tax Year
a Total number of conservation easements	2 a
b Total acreage restricted by conservation easements	2 b
c Number of conservation easements on a certified historic structure included in (a)	2 c
d Number of conservation easements included in (c) acquired after 8/17/06, and not on a historic structure listed in the National Register	2 d

3 Number of conservation easements modified, transferred, released, extinguished, or terminated by the organization during the tax year ▶ _____

4 Number of states where property subject to conservation easement is located ▶ _____

5 Does the organization have a written policy regarding the periodic monitoring, inspection, handling of violations, and enforcement of the conservation easements it holds? Yes No

6 Staff and volunteer hours devoted to monitoring, inspecting, handling of violations, and enforcing conservation easements during the year ▶ _____

7 Amount of expenses incurred in monitoring, inspecting, handling of violations, and enforcing conservation easements during the year ▶ \$ _____

8 Does each conservation easement reported on line 2(d) above satisfy the requirements of section 170(h)(4)(B)(i) and section 170(h)(4)(B)(ii)? Yes No

9 In Part XIII, describe how the organization reports conservation easements in its revenue and expense statement, and balance sheet, and include, if applicable, the text of the footnote to the organization's financial statements that describes the organization's accounting for conservation easements.

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets.

Complete if the organization answered 'Yes' on Form 990, Part IV, line 8.

1 a If the organization elected, as permitted under SFAS 116 (ASC 958), not to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide, in Part XIII, the text of the footnote to its financial statements that describes these items.

b If the organization elected, as permitted under SFAS 116 (ASC 958), to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide the following amounts relating to these items:

(i) Revenue included on Form 990, Part VIII, line 1 ▶ \$ _____

(ii) Assets included in Form 990, Part X ▶ \$ _____

2 If the organization received or held works of art, historical treasures, or other similar assets for financial gain, provide the following amounts required to be reported under SFAS 116 (ASC 958) relating to these items:

a Revenue included on Form 990, Part VIII, line 1 ▶ \$ _____

b Assets included in Form 990, Part X ▶ \$ _____

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets (continued)

- 3 Using the organization's acquisition, accession, and other records, check any of the following that are a significant use of its collection items (check all that apply):
- a Public exhibition
 - b Scholarly research
 - c Preservation for future generations
 - d Loan or exchange programs
 - e Other _____
- 4 Provide a description of the organization's collections and explain how they further the organization's exempt purpose in Part XIII.
- 5 During the year, did the organization solicit or receive donations of art, historical treasures, or other similar assets to be sold to raise funds rather than to be maintained as part of the organization's collection? Yes No

Part IV Escrow and Custodial Arrangements. Complete if the organization answered 'Yes' on Form 990, Part IV, line 9, or reported an amount on Form 990, Part X, line 21.

- 1 a Is the organization an agent, trustee, custodian or other intermediary for contributions or other assets not included on Form 990, Part X? Yes No
- b If 'Yes,' explain the arrangement in Part XIII and complete the following table:
- | | Amount |
|---------------------------------|--------|
| c Beginning balance | 1 c |
| d Additions during the year | 1 d |
| e Distributions during the year | 1 e |
| f Ending balance | 1 f |
- 2 a Did the organization include an amount on Form 990, Part X, line 21, for escrow or custodial account liability? Yes No
- b If 'Yes,' explain the arrangement in Part XIII. Check here if the explanation has been provided on Part XIII.

Part V Endowment Funds. Complete if the organization answered 'Yes' on Form 990, Part IV, line 10.

	(a) Current year	(b) Prior year	(c) Two years back	(d) Three years back	(e) Four years back
1 a Beginning of year balance					
b Contributions					
c Net investment earnings, gains, and losses					
d Grants or scholarships					
e Other expenditures for facilities and programs					
f Administrative expenses					
g End of year balance					

- 2 Provide the estimated percentage of the current year end balance (line 1g, column (a)) held as:
- a Board designated or quasi-endowment _____ %
 - b Permanent endowment _____ %
 - c Temporarily restricted endowment _____ %
- The percentages on lines 2a, 2b, and 2c should equal 100%.
- 3 a Are there endowment funds not in the possession of the organization that are held and administered for the organization by:
- | | Yes | No |
|--|--------|----|
| (i) unrelated organizations | 3a(i) | |
| (ii) related organizations | 3a(ii) | |
| b If 'Yes' on line 3a(ii), are the related organizations listed as required on Schedule R? | 3b | |
- 4 Describe in Part XIII the intended uses of the organization's endowment funds.

Part VI Land, Buildings, and Equipment.

Complete if the organization answered 'Yes' on Form 990, Part IV, line 11a. See Form 990, Part X, line 10.

Description of property	(a) Cost or other basis (investment)	(b) Cost or other basis (other)	(c) Accumulated depreciation	(d) Book value
1 a Land		368,288.		368,288.
b Buildings		2,518,084.	420,738.	2,097,346.
c Leasehold improvements				
d Equipment				
e Other		316,380.	189,705.	126,675.
Total. Add lines 1a through 1e. (Column (d) must equal Form 990, Part X, column (B), line 10c.)				2,592,309.

Part VII Investments – Other Securities.

Complete if the organization answered 'Yes' on Form 990, Part IV, line 11b. See Form 990, Part X, line 12.

(a) Description of security or category (including name of security)	(b) Book value	(c) Method of valuation: Cost or end-of-year market value
(1) Financial derivatives		
(2) Closely-held equity interests		
(3) Other Bonds	694,376.	End of Year Market Value
(A) Mutual funds/Bonds/ETFs	597,564.	End of Year Market Value
(B) Securities and corporate stocks	1,681,970.	End of Year Market Value
(C) Money market deposits	1,084,884.	End of Year Market Value
(D) Real Estate Investment Trust	41,603.	End of Year Market Value
(E) Certificate of Deposits	1,511,838.	End of Year Market Value
(F) Alternative Investments	49,574.	End of Year Market Value
(G)		
(H)		
(I)		
Total. (Column (b) must equal Form 990, Part X, column (B) line 12.)	5,661,809.	

Part VIII Investments – Program Related.

N/A

Complete if the organization answered 'Yes' on Form 990, Part IV, line 11c. See Form 990, Part X, line 13.

(a) Description of investment	(b) Book value	(c) Method of valuation: Cost or end-of-year market value
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		
(7)		
(8)		
(9)		
(10)		
Total. (Column (b) must equal Form 990, Part X, column (B) line 13.)		

Part IX Other Assets.

N/A

Complete if the organization answered 'Yes' on Form 990, Part IV, line 11d. See Form 990, Part X, line 15.

(a) Description	(b) Book value
(1)	
(2)	
(3)	
(4)	
(5)	
(6)	
(7)	
(8)	
(9)	
(10)	
Total. (Column (b) must equal Form 990, Part X, column (B) line 15.)	

Part X Other Liabilities.

Complete if the organization answered 'Yes' on Form 990, Part IV, line 11e or 11f. See Form 990, Part X, line 25

(a) Description of liability	(b) Book value
(1) Federal income taxes	
(2) Accrued payroll liabilities	283,524.
(3)	
(4)	
(5)	
(6)	
(7)	
(8)	
(9)	
(10)	
(11)	
Total. (Column (b) must equal Form 990, Part X, column (B) line 25.)	283,524.

2. Liability for uncertain tax positions. In Part XIII, provide the text of the footnote to the organization's financial statements that reports the organization's liability for uncertain tax positions under FIN 48 (ASC 740). Check here if the text of the footnote has been provided in Part XIII. See Part XIII

Part XI Reconciliation of Revenue per Audited Financial Statements With Revenue per Return.

Complete if the organization answered 'Yes' on Form 990, Part IV, line 12a.

1	Total revenue, gains, and other support per audited financial statements		1	12,199,724.
2	Amounts included on line 1 but not on Form 990, Part VIII, line 12:			
	a Net unrealized gains (losses) on investments	2a		
	b Donated services and use of facilities	2b		
	c Recoveries of prior year grants	2c		
	d Other (Describe in Part XIII.) See Part XIII	2d	1,304,028.	
	e Add lines 2a through 2d		2e	1,304,028.
3	Subtract line 2e from line 1		3	10,895,696.
4	Amounts included on Form 990, Part VIII, line 12, but not on line 1:			
	a Investment expenses not included on Form 990, Part VIII, line 7b	4a		
	b Other (Describe in Part XIII.) See Part XIII	4b	1,620,000.	
	c Add lines 4a and 4b		4c	1,620,000.
5	Total revenue. Add lines 3 and 4c. (This must equal Form 990, Part I, line 12.)		5	12,515,696.

Part XII Reconciliation of Expenses per Audited Financial Statements With Expenses per Return.

Complete if the organization answered 'Yes' on Form 990, Part IV, line 12a.

1	Total expenses and losses per audited financial statements		1	12,847,750.
2	Amounts included on line 1 but not on Form 990, Part IX, line 25:			
	a Donated services and use of facilities	2a		
	b Prior year adjustments	2b		
	c Other losses	2c		
	d Other (Describe in Part XIII.)	2d		
	e Add lines 2a through 2d		2e	
3	Subtract line 2e from line 1		3	12,847,750.
4	Amounts included on Form 990, Part IX, line 25, but not on line 1:			
	a Investment expenses not included on Form 990, Part VIII, line 7b	4a		
	b Other (Describe in Part XIII.)	4b		
	c Add lines 4a and 4b		4c	
5	Total expenses. Add lines 3 and 4c. (This must equal Form 990, Part I, line 18.)		5	12,847,750.

Part XIII Supplemental Information.

Provide the descriptions required for Part II, lines 3, 5, and 9; Part III, lines 1a and 4; Part IV, lines 1b and 2b; Part V, line 4; Part X, line 2; Part XI, lines 2d and 4b; and Part XII, lines 2d and 4b. Also complete this part to provide any additional information.

Part X - FIN 48 Footnote

Income Taxes

Financial statement presentation follows the recommendations of ASC 740, Income Taxes. Under ASC 740, the Agency is required to report information regarding its exposure to various tax positions taken by the Agency and requires a two-step process that separates recognition from measurement. The first step is determining whether a tax position has met the recognition threshold; the second step is measuring a tax position that meets the recognition threshold. Management believes

Part XIII Supplemental Information (continued)**Part X - FIN 48 Footnote (continued)**

that it has adequately evaluated its current tax positions and has concluded that as of December 31, 2016, the Agency does not have any uncertain tax positions for which a reserve or an accrual for a tax liability would be necessary.

The Agency has received notification from the Internal Revenue Service and the State of California that it qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and Section 23701d of the California Revenue and Taxation Code. The exemptions are subject to periodic review by the federal and state taxing authorities and management is confident that the Agency continues to satisfy all federal and state statutes in order to qualify for continued tax exemption status. The Agency may periodically receive unrelated business income (such as sublease rental income) requiring the Agency to file separate tax returns under federal and state statutes. Under such conditions, the Agency calculates, accrues and remits the applicable taxes.

Schedule D, Part XI, Line 2d
Other Revenue Included In F/S But Not Included On Form 990

Net assets released from restriction.....	\$ 1,304,028.
Total	<u>\$ 1,304,028.</u>

Schedule D, Part XI, Line 4b
Other Revenue Included On Form 990 But Not Included In F/S

Temporarily restricted contributions.....	\$ 1,620,000.
Total	<u>\$ 1,620,000.</u>

SCHEDULE G
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Supplemental Information Regarding Fundraising or Gaming Activities

Complete if the organization answered 'Yes' on Form 990, Part IV, line 17, 18, or 19, or if the organization entered more than \$15,000 on Form 990-EZ, line 6a.

▶ Attach to Form 990 or Form 990-EZ.

▶ Information about Schedule G (Form 990 or 990-EZ) and its instructions is at www.irs.gov/form990.

OMB No. 1545-0047

2016

Open to Public Inspection

Name of the organization

Animal Legal Defense Fund, Inc.

Employer identification number

94-2681680

Part I Fundraising Activities. Complete if the organization answered 'Yes' on Form 990, Part IV, line 17. Form 990-EZ filers are not required to complete this part.

1 Indicate whether the organization raised funds through any of the following activities. Check all that apply.

- a Mail solicitations
- b Internet and email solicitations
- c Phone solicitations
- d In-person solicitations
- e Solicitation of non-government grants
- f Solicitation of government grants
- g Special fundraising events

2a Did the organization have a written or oral agreement with any individual (including officers, directors, trustees, or key employees listed in Form 990, Part VII) or entity in connection with professional fundraising services? Yes No

b If 'Yes,' list the 10 highest paid individuals or entities (fundraisers) pursuant to agreements under which the fundraiser is to be compensated at least \$5,000 by the organization.

(i) Name and address of individual or entity (fundraiser)	(ii) Activity	(iii) Did fundraiser have custody or control of contributions?		(iv) Gross receipts from activity	(v) Amount paid to (or retained by) fundraiser listed in column (i)	(vi) Amount paid to (or retained by) organization
		Yes	No			
1 Donor Point Marketing 649 North Horners Lane #C Rockville MD 20850	Direct Mail		X	1,910,743.	90,000.	1,820,743.
2 RKD Alpha Dog 8001 S. 13th Street Lincoln NE 68512	On-Line		X		51,315.	
3						
4						
5						
6						
7						
8						
9						
10						
Total				1,910,743.	141,315.	1,820,743.

3 List all states in which the organization is registered or licensed to solicit contributions or has been notified it is exempt from registration or licensing.

AL AK CA CO CT FL GA HI IL KS KY LA ME MD MA MI MN MS MO NH NM NY NC ND OH OK OR PA
RI SC TN UT VA WA

Part II Fundraising Events. Complete if the organization answered 'Yes' on Form 990, Part IV, line 18, or reported more than \$15,000 of fundraising event contributions and gross income on Form 990-EZ, lines 1 and 6b. List events with gross receipts greater than \$5,000.

REVENUE		(a) Event #1	(b) Event #2	(c) Other events	(d) Total events	
		(event type)	(event type)	None (total number)	(add column (a) through column (c))	
REVENUE	1	Gross receipts				
	2	Less: Contributions				
	3	Gross income (line 1 minus line 2)				
DIRECT EXPENSES	4	Cash prizes				
	5	Noncash prizes				
	6	Rent/facility costs				
	7	Food and beverages				
	8	Entertainment				
	9	Other direct expenses				
	10	Direct expense summary. Add lines 4 through 9 in column (d)				
	11	Net income summary. Subtract line 10 from line 3, column (d)				

Part III Gaming. Complete if the organization answered 'Yes' on Form 990, Part IV, line 19, or reported more than \$15,000 on Form 990-EZ, line 6a.

REVENUE		(a) Bingo	(b) Pull tabs/instant bingo/progressive bingo	(c) Other gaming	(d) Total gaming	
					(add column (a) through column (c))	
REVENUE	1	Gross revenue				
DIRECT EXPENSES	2	Cash prizes				
	3	Noncash prizes				
	4	Rent/facility costs				
	5	Other direct expenses				
	6	Volunteer labor	<input type="checkbox"/> Yes _____ % <input type="checkbox"/> No	<input type="checkbox"/> Yes _____ % <input type="checkbox"/> No	<input type="checkbox"/> Yes _____ % <input type="checkbox"/> No	
	7	Direct expense summary. Add lines 2 through 5 in column (d)				
	8	Net gaming income summary. Subtract line 7 from line 1, column (d)				

9 Enter the state(s) in which the organization conducts gaming activities: _____
 a Is the organization licensed to conduct gaming activities in each of these states? Yes No

b If 'No,' explain: _____

10a Were any of the organization's gaming licenses revoked, suspended or terminated during the tax year? Yes No

b If 'Yes,' explain: _____

- 11 Does the organization conduct gaming activities with nonmembers? Yes No
- 12 Is the organization a grantor, beneficiary or trustee of a trust, or a member of a partnership or other entity formed to administer charitable gaming? Yes No

13 Indicate the percentage of gaming activity conducted in:

a The organization's facility.	13a	%
b An outside facility.	13b	%

14 Enter the name and address of the person who prepares the organization's gaming/special events books and records:

Name ▶ -----

Address ▶ -----

- 15a Does the organization have a contract with a third party from whom the organization receives gaming revenue? Yes No
- b If 'Yes,' enter the amount of gaming revenue received by the organization ▶ \$ _____ and the amount of gaming revenue retained by the third party ▶ \$ _____.
- c If 'Yes,' enter name and address of the third party:

Name ▶ -----

Address ▶ -----

16 Gaming manager information:

Name ▶ -----

Gaming manager compensation ▶ \$ _____

Description of services provided ▶ -----

Director/officer Employee Independent contractor

- 17 Mandatory distributions
- a Is the organization required under state law to make charitable distributions from the gaming proceeds to retain the state gaming license? Yes No
- b Enter the amount of distributions required under state law to be distributed to other exempt organizations or spent in the organization's own exempt activities during the tax year ▶ \$ _____

Part IV Supplemental Information. Provide the explanations required by Part I, line 2b, columns (iii) and (v); and Part III, lines 9, 9b, 10b, 15b, 15c, 16, and 17b, as applicable. Also provide any additional information. See instructions

SCHEDULE I
(Form 990)

Department of the Treasury
Internal Revenue Service

**Grants and Other Assistance to Organizations,
Governments, and Individuals in the United States**

Complete if the organization answered 'Yes' on Form 990, Part IV, line 21 or 22.
▶ Attach to Form 990.

▶ Information about Schedule I (Form 990) and its instructions is at www.irs.gov/form990.

OMB No. 1545-0047

2016

Open to Public
Inspection

Name of the organization

Animal Legal Defense Fund, Inc.

Employer identification number

94-2681680

Part I General Information on Grants and Assistance

- 1 Does the organization maintain records to substantiate the amount of the grants or assistance, the grantees' eligibility for the grants or assistance, and the selection criteria used to award the grants or assistance? Yes No
- 2 Describe in Part IV the organization's procedures for monitoring the use of grant funds in the United States.

Part II Grants and Other Assistance to Domestic Organizations and Domestic Governments. Complete if the organization answered 'Yes' on Form 990, Part IV, line 21, for any recipient that received more than \$5,000. Part II can be duplicated if additional space is needed.

1 (a) Name and address of organization or government	(b) EIN	(c) IRC section (if applicable)	(d) Amount of cash grant	(e) Amount of non-cash assistance	(f) Method of valuation (book, FMV, appraisal, other)	(g) Description of non-cash assistance	(h) Purpose of grant or assistance
<u>(1) Center for Animal Law Studies</u> <u>Lewis & Clark Law School</u> <u>Terwilliger Portland, OR 9721</u>	<u>93-0386858</u>	<u>501c3</u>	<u>356,675.</u>	<u>0.</u>			<u>Animal Protection</u>
<u>(2) Texas Humane Legislation Netw</u> <u>P.O. BOX 685283</u> <u>Austin, TX 78768</u>	<u>75-2236932</u>	<u>501c3</u>	<u>10,000.</u>	<u>0.</u>			<u>Animal Protection</u>
<u>(3) Benton County District Atty</u> <u>120 NW 4th Street</u> <u>Corvallis, OR 97330</u>		<u>Govt Org</u>	<u>105,000.</u>	<u>0.</u>			<u>Animal Protection</u>
<u>(4) Assn of Prosecuting Attorneys</u> <u>1615 L Street NW, Suite 1100</u> <u>Washington, DC 20036</u>	<u>26-3117485</u>	<u>501c3</u>	<u>66,000.</u>	<u>0.</u>			<u>Animal Protection</u>
<u>(5) Project Chimps</u> <u>2031 Lowery Road</u> <u>Morganton, GA 30560</u>	<u>47-1439557</u>	<u>501c3</u>	<u>65,000.</u>	<u>0.</u>			<u>Animal Protection</u>
<u>(6)</u> -----							
<u>(7)</u> -----							
<u>(8)</u> -----							

2 Enter total number of section 501(c)(3) and government organizations listed in the line 1 table. ▶ 5

3 Enter total number of other organizations listed in the line 1 table. ▶ 0

BAA For Paperwork Reduction Act Notice, see the Instructions for Form 990.

TEEA3901L 11/03/16

Schedule I (Form 990) (2016)

Part III Grants and Other Assistance to Domestic Individuals. Complete if the organization answered 'Yes' on Form 990, Part IV, line 22. Part III can be duplicated if additional space is needed.

(a) Type of grant or assistance	(b) Number of recipients	(c) Amount of cash grant	(d) Amount of noncash assistance	(e) Method of valuation (book, FMV, appraisal, other)	(f) Description of noncash assistance
1 Scholarships	4	20,000.			
2					
3					
4					
5					
6					
7					

Part IV Supplemental Information. Provide the information required in Part I, line 2; Part III, column (b); and any other additional information.

Part IV - Additional Supplemental Information

Center for Animal Law Studies

Lewis & Clark Law School

10015 SW Terwilliger Blvd

Portland, OR 97219

Type of Entity: 501c3

FEIN: 93-0386858

Amount of grants funded in 2015: 435,000

Purpose: The Center for Animal Law Studies is a collaboration between the Animal

Legal Defense Fund and Lewis and Clark Law School. It is an academic and scholarly

Animal Law program dedicated to:

Part IV - Additional Supplemental Information (continued)

- 1) Training future leaders for careers in Animal Law and public policy;
- 2) Conducting high-quality, independent legal research that advances the field of Animal Law;
- 3) Developing innovative recommendations and legal strategies relating to Animal Law within administrative, legislative, litigation and other settings;
- 4) Creating a scholarly environment where students, regardless of particular point of view, feel included and respected; and
- 5) Ensuring that the interests of animals are always considered as the field develops

SCHEDULE J
(Form 990)

Compensation Information

OMB No. 1545-0047

For certain Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

2016

- ▶ Complete if the organization answered 'Yes' on Form 990, Part IV, line 23.
- ▶ Attach to Form 990.

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

▶ Information about Schedule J (Form 990) and its instructions is at www.irs.gov/form990.

Name of the organization

Employer identification number

Animal Legal Defense Fund, Inc.

94-2681680

Part I Questions Regarding Compensation

1 a Check the appropriate box(es) if the organization provided any of the following to or for a person listed on Form 990, Part VII, Section A, line 1a. Complete Part III to provide any relevant information regarding these items.

- | | |
|--|---|
| <input type="checkbox"/> First-class or charter travel | <input type="checkbox"/> Housing allowance or residence for personal use |
| <input type="checkbox"/> Travel for companions | <input type="checkbox"/> Payments for business use of personal residence |
| <input type="checkbox"/> Tax indemnification and gross-up payments | <input type="checkbox"/> Health or social club dues or initiation fees |
| <input type="checkbox"/> Discretionary spending account | <input type="checkbox"/> Personal services (such as, maid, chauffeur, chef) |

b If any of the boxes on line 1a are checked, did the organization follow a written policy regarding payment or reimbursement or provision of all of the expenses described above? If 'No,' complete Part III to explain.

2 Did the organization require substantiation prior to reimbursing or allowing expenses incurred by all directors, trustees, and officers, including the CEO/Executive Director, regarding the items checked in line 1a?

3 Indicate which, if any, of the following the filing organization used to establish the compensation of the organization's CEO/Executive Director. Check all that apply. Do not check any boxes for methods used by a related organization to establish compensation of the CEO/Executive Director, but explain in Part III.

- | | |
|--|--|
| <input type="checkbox"/> Compensation committee | <input type="checkbox"/> Written employment contract |
| <input type="checkbox"/> Independent compensation consultant | <input type="checkbox"/> Compensation survey or study |
| <input type="checkbox"/> Form 990 of other organizations | <input type="checkbox"/> Approval by the board or compensation committee |

4 During the year, did any person listed on Form 990, Part VII, Section A, line 1a, with respect to the filing organization or a related organization:

- a** Receive a severance payment or change-of-control payment? **4 a** Yes No
- b** Participate in, or receive payment from, a supplemental nonqualified retirement plan? **4 b** Yes No
- c** Participate in, or receive payment from, an equity-based compensation arrangement? **4 c** Yes No
- If 'Yes' to any of lines 4a-c, list the persons and provide the applicable amounts for each item in Part III.

Only section 501(c)(3), 501(c)(4), and 501(c)(29) organizations must complete lines 5-9.

5 For persons listed on Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the revenues of:

- a** The organization? **5 a** Yes No
- b** Any related organization? **5 b** Yes No
- If 'Yes' on line 5a or 5b, describe in Part III.

6 For persons listed on Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the net earnings of:

- a** The organization? **6 a** Yes No
- b** Any related organization? **6 b** Yes No
- If 'Yes' on line 6a or 6b, describe in Part III.

7 For persons listed on Form 990, Part VII, Section A, line 1a, did the organization provide any nonfixed payments not described on lines 5 and 6? If 'Yes,' describe in Part III. **7** Yes No

8 Were any amounts reported on Form 990, Part VII, paid or accrued pursuant to a contract that was subject to the initial contract exception described in Regulations section 53.4958-4(a)(3)? If 'Yes,' describe in Part III. **8** Yes No

9 If 'Yes' on line 8, did the organization also follow the rebuttable presumption procedure described in Regulations section 53.4958-6(c)? **9** Yes No

BAA For Paperwork Reduction Act Notice, see the Instructions for Form 990.

Schedule J (Form 990) 2016

Part II Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees. Use duplicate copies if additional space is needed.

For each individual whose compensation must be reported on Schedule J, report compensation from the organization on row (i) and from related organizations, described in the instructions, on row (ii). Do not list any individuals that are not listed on Form 990, Part VII.

Note: The sum of columns (B)(i)-(iii) for each listed individual must equal the total amount of Form 990, Part VII, Section A, line 1a, applicable column (D) and (E) amounts for that individual.

(A) Name and Title	(B) Breakdown of W-2 and/or 1099-MISC compensation			(C) Retirement and other deferred compensation	(D) Nontaxable benefits	(E) Total of columns(B)(i)-(D)	(F) Compensation in column (B) reported as deferred on prior Form 990
	(i) Base compensation	(ii) Bonus & incentive compensation	(iii) Other reportable compensation				
Joyce Tischler	(i) 140,633.	0.	0.	0.	11,368.	152,001.	0.
1 Founder	(ii) 0.	0.	0.	0.	0.	0.	0.
Stephen Wells	(i) 189,298.	0.	0.	0.	17,274.	206,572.	0.
2 Chief Exec Ofcr	(ii) 0.	0.	0.	0.	0.	0.	0.
3	(i) -----						
	(ii) -----						
4	(i) -----						
	(ii) -----						
5	(i) -----						
	(ii) -----						
6	(i) -----						
	(ii) -----						
7	(i) -----						
	(ii) -----						
8	(i) -----						
	(ii) -----						
9	(i) -----						
	(ii) -----						
10	(i) -----						
	(ii) -----						
11	(i) -----						
	(ii) -----						
12	(i) -----						
	(ii) -----						
13	(i) -----						
	(ii) -----						
14	(i) -----						
	(ii) -----						
15	(i) -----						
	(ii) -----						
16	(i) -----						
	(ii) -----						

Part III Supplemental Information

Provide the information, explanation, or descriptions required for Part I, lines 1a, 1b, 3, 4a, 4b, 4c, 5a, 5b, 6a, 6b, 7, and 8, and for Part II. Also complete this part for any additional information.

**SCHEDULE M
(Form 990)**

Noncash Contributions

OMB No. 1545-0047

2016

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

- ▶ Complete if the organizations answered 'Yes' on Form 990, Part IV, lines 29 or 30.
- ▶ Attach to Form 990.
- ▶ Information about Schedule M (Form 990) and its instructions is at www.irs.gov/form990.

Name of the organization

Employer identification number

Animal Legal Defense Fund, Inc.

94-2681680

Part I Types of Property

	(a) Check if applicable	(b) Number of contributions or items contributed	(c) Noncash contribution amounts reported on Form 990, Part VIII, line 1g	(d) Method of determining noncash contribution amounts
1 Art – Works of art.....				
2 Art – Historical treasures.....				
3 Art – Fractional interests.....				
4 Books and publications.....				
5 Clothing and household goods.....				
6 Cars and other vehicles.....				
7 Boats and planes.....				
8 Intellectual property.....				
9 Securities – Publicly traded.....				
10 Securities – Closely held stock.....				
11 Securities – Partnership, LLC, or trust interests..				
12 Securities – Miscellaneous.....				
13 Qualified conservation contribution – Historic structures.....				
14 Qualified conservation contribution – Other.....				
15 Real estate – Residential.....				
16 Real estate – Commercial.....				
17 Real estate – Other.....				
18 Collectibles.....				
19 Food inventory.....				
20 Drugs and medical supplies.....				
21 Taxidermy.....				
22 Historical artifacts.....				
23 Scientific specimens.....				
24 Archeological artifacts.....				
25 Other ▶ (Pro-bono legal.....)	X	12	4,073,467.	FMV
26 Other ▶ (.....)				
27 Other ▶ (.....)				
28 Other ▶ (.....)				

29 Number of Forms 8283 received by the organization during the tax year for contributions for which the organization completed Form 8283, Part IV, Donee Acknowledgement..... **29**

	Yes	No
30a During the year, did the organization receive by contribution any property reported in Part I, lines 1 through 28, that it must hold for at least three years from the date of the initial contribution, and which isn't required to be used for exempt purposes for the entire holding period?.....		X
b If 'Yes,' describe the arrangement in Part II.		
31 Does the organization have a gift acceptance policy that requires the review of any nonstandard contributions?.....		X
32a Does the organization hire or use third parties or related organizations to solicit, process, or sell noncash contributions?.....		X
b If 'Yes,' describe in Part II.		
33 If the organization didn't report an amount in column (c) for a type of property for which column (a) is checked, describe in Part II.		

BAA For Paperwork Reduction Act Notice, see the Instructions for Form 990.

Schedule M (Form 990) (2016)

Part II Supplemental Information. Provide the information required by Part I, lines 30b, 32b, and 33, and whether the organization is reporting in Part I, column (b), the number of contributions, the number of items received, or a combination of both. Also complete this part for any additional information.

SCHEDULE O
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Supplemental Information to Form 990 or 990-EZ

Complete to provide information for responses to specific questions on
Form 990 or 990-EZ or to provide any additional information.
▶ Attach to Form 990 or 990-EZ.

▶ Information about Schedule O (Form 990 or 990-EZ) and its instructions is
at www.irs.gov/form990.

OMB No. 1545-0047

2016

Open to Public
Inspection

Name of the organization

Animal Legal Defense Fund, Inc.

Employer identification number

94-2681680

Form 990 - Explanation of Amended Return

Subsequent to filing the original tax return, management determined that previously recorded balances included with accounts and grants receivable and temporarily restricted net assets were inadvertently overstated. Accordingly, these accounts were adjusted and restated to the correct values as of December 31, 2016.

Additionally, management evaluated the apportionment of joint costs and determined that a more meaningful and accurate allocation model was required. This amended return reflects these corrections.

Form 990, Part III, Line 4d - Other Program Services Description

Animal Law Program

ALDF's Animal Law Program works closely with law students and law professionals to advance the emerging field of animal law. The Animal Law Program collaborates with students, faculty, and school administrations to facilitate the development of animal law courses at law schools and assists law students in forming student animal law groups, such as Student Animal Legal Defense Fund (SALDF) chapters. The Animal Law Program also assists bar association members interested in forming animal law bar sections or committees. As more and more law students and attorneys advocate for the voiceless, ALDF is one step closer to fulfilling our mission.

Form 990, Part III, Line 1

Continuation of "Statement of Program Service Accomplishments"

For more than three decades, the Animal Legal Defense Fund (aldf.org) has been fighting to protect the lives and advance the interests of animals through the legal system. Founded in 1979 by attorneys active in shaping the emerging field of animal law, ALDF has blazed the trail for stronger enforcement of anti-cruelty laws and more humane treatment of animals in every corner of American life. Today, ALDF's

Name of the organization Animal Legal Defense Fund, Inc.	Employer identification number 94-2681680
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Form 990, Part III, Line 4d - Other Program Services Description

groundbreaking efforts to push the U.S. legal system to end the suffering of abused animals are supported by thousands of dedicated attorneys and more than 250,000 members and supporters.

Every day, ALDF works to protect animals by:

- * Filing groundbreaking lawsuits to stop animal abuse and expand the boundaries of animal law.
- * Providing free legal assistance to prosecutors handling cruelty cases.
- * Working to strengthen state anti-cruelty statutes.
- * Encouraging the federal government to enforce existing animal protection laws.
- * Nurturing the future of animal law through Student Animal Legal Defense Fund chapters and our Animal Law Program.
- * Providing public education through seminars, workshops, and other outreach efforts.

Recent legal battles include: winning a case declaring the Idaho Ag-Gag law unconstitutional; strengthening laws governing the treatment of puppy mill dogs; winning freedom for animals held in abysmal conditions at roadside zoos; and demanding additional protections for orcas, like Lolita, forced to perform in aquariums.

In addition to our national headquarters in the San Francisco Bay Area, the Animal Legal Defense Fund maintains offices in Los Angeles and Portland, Oregon.

Pro Bono Program

ALDF's Pro Bono Program collaborates with ALDF's Litigation and Criminal Justice Program to assign appropriate pro bono counsel to ALDF projects and cases. It also works with interested attorneys and law firms to create a robust pro bono network dedicated to helping animals. The program also provides support to professors

Name of the organization

Employer identification number

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94-2681680

Form 990, Part III, Line 4d - Other Program Services Description

interested in teaching animal law and helps law students transitioning into the legal profession get involved in animal law.

Form 990, Part VI, Line 1a - Explanation of Delegated Broad Authority to Committee

In accordance with common practice in the nonprofit community, the Board delegates certain matters to the Executive Committee, which is empowered to act between Board meetings if necessary, and sometimes with specifically delegated authority to act in particular areas on behalf of the full Board. The composition of Executive Committee includes the Organization's Board officers and other designated officials.

Form 990, Part VI, Line 11b - Form 990 Review Process

Form 990 is prepared by an outside tax professional. The form is then reviewed by the Organization's management, a member of the Board of Directors, and the Executive Director. This group of individuals then discusses the contents of the return with the outside tax professional. After a full review (with modifications where necessary), the final version of the tax return is provided to all members of the Organization's voting body. A representative of management authorizes the final Form 990 which is then e-filed with the Internal Revenue Service.

Form 990, Part VI, Line 12c - Explanation of Monitoring and Enforcement of Conflicts

Members of the Board of Directors review all potential conflicts of interest at least annually. All personnel and board members are required to disclose (in writing) potential conflicts and any related party affiliations. Loans between the Organization and members of management and the Board are strictly prohibited. The Organization seeks full transparency on all relationships. Any potential conflicts (in fact or appearance) are discussed openly and resolved in accordance with the Organization's policies and procedures.

Name of the organization

Employer identification number

Animal Legal Defense Fund, Inc.

94-2681680

Form 990, Part VI, Line 15a - Compensation Review & Approval Process - CEO & Top Management

Members of the Board of Directors review the compensation of all high-level personnel periodically in accordance with IRS rules and regulations. Efforts are made to secure compensation data from industry sources in order to determine competitiveness and appropriateness of salaries. Every effort is made to ensure that the process is thorough and transparent in accordance with IRS guidelines and the Organization's policies and procedures.

Form 990, Part VI, Line 15b - Compensation Review & Approval Process - Officers & Key Employees

Compensation of other high-level personnel and key employees is reviewed periodically by members of management. Efforts are made to secure compensation data from industry sources in order to determine competitiveness and appropriateness of salaries and all related benefits. All decisions are then documented in personnel files.

Form 990, Part VI, Line 17 - List of States which this Return is Filed

AK AL AR CA CO CT FL GA HI IL KS KY LA ME MD MA MI MN MS MO NC NH NJ NM NY ND OH
OK OR PA RI SC TN UT VA WA WI WV

Form 990, Part VI, Line 19 - Other Organization Documents Publicly Available

All of the organization's governing documents, financial statements and other legal filings are maintained in a secure environment and held available for inspection by tax authorities and the general public. Tax returns are posted annually to www.guidestar.org (where they are available for viewing as electronic copies) and are also available for a physical inspection at the Organization's office in Cotati, California.

**Form 990, Part XI, Line 9
Other Changes In Net Assets Or Fund Balances**

Change in present value of long-term pledges.....	\$	-51,500.
Unrealized gains on investments.....		112,677.
	Total \$	<u>61,177.</u>

Client 96001

Animal Legal Defense Fund, Inc.

94-2681680

7/12/18

03:03PM

**Rental Income Worksheet
Form 990**

Commercial Office Building

Gross Rental Income.....	\$	0.
Expenses		
Total Expenses.....	\$	0.
Net Rental Income or Loss		<u>\$ 0.</u>

Computation of Cost of Goods Sold (Form 990)

1. Inventory at start of year.....	7,531.
2. Purchases.....	30,970.
3. Cost of labor.....	0.
4. Additional 263A costs.....	0.
5. Other costs.....	0.
6. Total (Add lines 1 through 5).....	<u>38,501.</u>
7. Inventory at end of year.....	<u>16,759.</u>
8. Cost of goods sold (Subtract line 7 from line 6).....	<u>21,742.</u>

**Form 990, Part III, Line 4e
Program Services Totals**

	Program Services Total	Form 990	Source
Total Expenses	10,290,745.	10,290,745.	Part IX, Line 25, Col. B
Grants	660,996.	660,996.	Part IX, Lines 1-3, Col. B
Revenue	0.	89,527.	Part VIII, Line 2, Col. A

**Form 990, Part IX, Line 11g
Other Fees For Services**

	(A) Total	(B) Program Services	(C) Management & General	(D) Fund- raising
Consultants	538,150.	411,012.	96,902.	30,236.
Total	<u>\$ 538,150.</u>	<u>\$ 411,012.</u>	<u>\$ 96,902.</u>	<u>\$ 30,236.</u>

Client 96001

Animal Legal Defense Fund, Inc.

94-2681680

7/12/18

03:02PM

Form 990, Part IX, Line 24e
Other Expenses

	(A) Total	(B) Program Services	(C) Management & General	(D) Fundraising
Awards	3,109.	3,109.		
Bank charges/Merchant Fees	71,690.		71,690.	
Books	8,437.	7,419.	941.	77.
Dues and subscriptions	101,535.	51,906.	21,083.	28,546.
Equipment/Maintenance/Rental	78,757.	9,768.	37,359.	31,630.
File Maintenance	67,613.			67,613.
Mailing List Fees	160,035.	128,060.		31,975.
Moving and relocation	14,295.	5,636.	8,659.	
Outside Services	77,945.			77,945.
Publications and research	5,731.	5,731.		
Repairs and Maintenance	25,135.		25,135.	
State Charities Registration	11,553.			11,553.
Taxes and Licenses	18,691.		18,691.	
Utilities	8,118.		8,118.	
Total	\$ 652,644.	\$ 211,629.	\$ 191,676.	\$ 249,339.

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

ANIMAL LEGAL DEFENSE FUND,

Plaintiff,

v.

HORMEL FOODS CORPORATION,

Defendant.

Case No. 2016 CA 4744 B
Judge Fern Saddler

Next Court Date: January 25, 2019
Event: Deadline to File Oppositions to
Dispositive Motions

**[Proposed] ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

Upon consideration of Animal Legal Defense Fund's Motion for Summary Judgment as to Liability, Hormel Foods Corporation's opposition thereto, and any additional arguments or evidence presented by the parties, for the reasons stated in Defendant's opposition, the Court **DENIES** Plaintiff's motion for summary judgment.

DONE and ORDERED in Chambers this ____ day of _____, 2019.

Judge Fern Saddler
Superior Court of the District of Columbia

Copies to:

Tracy D. Rezvani
Kim E. Richman
David S. Muraskin
Leah Nicholls
Kelsey Eberly
Daniel Lutz
E. Desmond Hogan
Miranda L. Berge
Allison M. Holt
Brian R. Richichi
Jacob Bylund
Tyler Young
Martin Demoret

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