

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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NADINE HEMY and NANCY CONNER,	:	
<i>individually and on behalf of themselves</i>	:	
<i>and all others similarly situated,</i>	:	
	:	
Plaintiffs,	:	Civil Action No. 3:11-cv-00888-FLW-LHG
	:	
-against-	:	
	:	
PERDUE FARMS, INC.,	:	
ABC CORPORATIONS 1 through 10	:	
and JOHN DOES 1-10,	:	
	:	
Defendants.	:	
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**PLAINTIFFS’ THIRD AMENDED CLASS ACTION COMPLAINT  
AND JURY DEMAND**

Plaintiff Nadine Hemy, residing at 208 Main Street, in the Borough of Matawan, County of Monmouth and State of New Jersey, and Plaintiff Nancy Conner, residing at 61 Abbotsford Road, in the Borough of North Plainfield, County of Somerset and State of New Jersey (“Plaintiffs”), by and through their counsel, complain of the Defendants as follows:

**NATURE OF THE ACTION**

1. This is a proposed class action against: Perdue Farms, Inc. (“Perdue”), ABC Corporations 1-10 (names being fictitious and unknown but described as those corporations that assisted, marketed, supplied and/or sold chickens at retail under the “Harvestland” brand) and John Does 1-10 (names being fictitious and unknown but described as those individuals that assisted, marketed, supplied and/or sold chickens at retail under the “Harvestland” brand) (“Defendants”) for misleading consumers about the purportedly “humane” treatment of

chickens, the purported endorsement by the United States Department of Agriculture (“USDA”) of the treatment of such chickens, and the unfounded distinction between the treatment of chickens eventually marketed and sold at retail under Perdue’s “Harvestland” brand and the chicken of competitors, in violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.* (“CFA”) and common law.

2. Looking to profit from growing consumer awareness of, and concern with, the treatment of farm animals raised for meat production, Perdue engaged in a deceptive and misleading marketing scheme to promote its fresh and frozen chicken as having been raised “humanely,” as endorsed by the USDA, and as superior to the mass-produced chicken of its competitors.

3. Starting in September 2009 and continuing to the present (the “Class Period”), Perdue has prominently packaged and labeled its Harvestland brand chicken products as “Humanely Raised,” and has further indicated through its labeling that this “Humanely Raised” claim is “USDA Process Verified.”

4. These representations by Perdue are false and/or deceptive and misleading, and consumers do not receive their intended benefit of the bargain when they purchase premium-priced Harvestland brand chicken.

5. As Perdue has acknowledged, its “Humanely Raised” and “USDA Process Verified” claims are based on the National Chicken Council’s (“NCC”) Animal Welfare Guidelines and Audit Checklist for Broilers (“NCC Guidelines”). (*See* Dkt. No. 9-1, Defendant’s Memo ISO Motion to Dismiss (April 1, 2011), at 3 (stating that Perdue’s “Best Practices” for the humane treatment of its chickens “were developed using the NCC Guidelines as a jumping-off point”)).

6. The NCC is an industry trade group that exists to promote and protect the interests of the chicken industry. The NCC Guidelines essentially codify industry norms, are designed to maximize efficiency and profit, and do not ensure humane treatment. Indeed, chickens produced pursuant to those guidelines are systematically subjected to extreme pain and duress.

7. In order to encourage low production costs, the NCC Guidelines endorse and justify a system of mechanized brutality that routinely inflicts intense duress and pain on chickens, as discussed in more detail below. These practices fall far below the level of treatment that Plaintiffs and other reasonable consumers find “humane.”

8. The NCC Guidelines are followed by virtually every other mass chicken producer in the nation. Unlike Perdue, however, no other mass chicken producer makes claims on their chicken packaging for the uniqueness of its chicken based on the company’s adherence to the NCC Guidelines. Only Perdue misrepresents to consumers that its chickens are raised differently, and more humanely, than competitors’ chickens in this manner.

9. Plaintiffs and consumers were, and consumers continue to be, deceived by Perdue’s marketing claims.

10. Plaintiffs now bring this suit to end Defendants’ false, deceptive, and misleading practices and to recover the ill-gotten gains obtained by Defendants through this deception. Plaintiffs therefore seek, on behalf of themselves and the proposed Class members, declaratory and injunctive remedies, compensatory, punitive, and statutory damages, and attorneys’ fees, costs, and all other related expenses.

### **PARTIES**

11. Plaintiff Nadine Hemy is a resident of Matawan, New Jersey. On several occasions during the Class Period, Plaintiff Hemy purchased Perdue’s Harvestland products at

B.J.'s Wholesale Club, 1007 U.S. 9, Old Bridge, New Jersey 08857, based upon the label representations that the Harvestland chicken was "Humanely Raised," and that the chicken was specially endorsed by the USDA. For example, on July 26, 2010, Plaintiff Hemy purchased Harvestland chicken breasts and other Harvestland chicken products containing the "Humanely Raised," "USDA Process Verified" label. On July 13, 2010, Plaintiff Hemy purchased Harvestland boneless chicken breasts containing the "Humanely Raised," "USDA Process Verified" label. And on both May 14, 2010 and July 6, 2010, Plaintiff purchased Harvestland chicken products containing the "Humanely Raised," "USDA Process Verified" label.

12. As discussed in more detail below, Plaintiff Hemy relied upon these deceptive and misleading claims in making her decision repeatedly to purchase the Harvestland chicken, and her understanding of the meaning of the "Humanely Raised" and "USDA Process Verified" label claims was objectively reasonable.

13. As discussed in more detail below, Plaintiff Hemy suffered injury in that she would not have bought the premium-priced chicken labeled "Humanely Raised" – which was the most expensive brand of chicken at the Old Bridge, New Jersey BJ's Wholesale Club on the occasions that Plaintiff Hemy purchased it – had she known the truth that the chicken was not in fact treated humanely, or differently from most other chicken on the market, throughout the chicken's life.

14. Plaintiff Nancy Conner is a resident of North Plainfield, New Jersey. On several occasions during the Class Period, Plaintiff Conner purchased Perdue's Harvestland products at B.J.'s Wholesale Club, 1601 U.S. 22, Watchung, New Jersey 07069, based upon the representations that the Harvestland chicken was "Humanely Raised," and that the chicken was specially endorsed by the USDA. For example, on November 21, 2009, December 19, 2009,

January 2, 2010, February 2, 2010 and February 14, 2010, Plaintiff Conner purchased Harvestland chicken thighs containing the “Humanely Raised,” “USDA Process Verified” label. On March 15, 2010, Plaintiff Conner purchased Harvestland chicken thighs and Harvestland chicken drumsticks containing the “Humanely Raised,” “USDA Process Verified” label. And on February 5, 2010, Plaintiff Conner purchased Harvestland chicken products containing the “Humanely Raised,” “USDA Process Verified” label.

15. As discussed in more detail below, Plaintiff Conner relied upon these deceptive and misleading claims in making her decision repeatedly to purchase the Harvestland chicken – which was the most expensive brand of chicken at the Wachtung, New Jersey BJ’s Wholesale Club on the occasions that Plaintiff Conner purchased it – and her understanding of the meaning of the “Humanely Raised” and “USDA Process Verified” label claims was objectively reasonable.

16. As discussed in more detail below, Plaintiff Conner suffered injury in that she would not have bought the premium-priced chicken labeled “Humanely Raised,” had she known the truth that the chicken was not in fact treated humanely or differently from most other chicken on the market, throughout the chicken’s life.

17. Defendant Perdue, headquartered in Salisbury, Wicomico County, Maryland, is the third largest poultry company in the United States.

18. Perdue’s business, like most large producers in the industry, is vertically integrated, with Perdue controlling production of its chickens at each stage, including primary breeder operations, hatcheries, feed production and storage, growout operations, processing and cooking plants, transportation, and distribution centers.

19. Perdue operates facilities in fifteen (15) states, including New Jersey.

20. Perdue produces over half a billion chickens annually, and processes nearly three billion pounds of chicken each year.

21. Perdue's Harvestland brand chicken is available at retail stores throughout the Eastern United States, including in grocery stores throughout New Jersey.

22. Perdue has approximately \$4.6 billion in sales annually.

### **SUBSTANTIVE ALLEGATIONS**

23. In recent years, consumers have become significantly more aware of and sensitive to the treatment of animals used in meat products, and to the negative environmental, social, and health impacts of industrialized chicken production in general.

24. Because of high consumer demand for more "humane" meat products and a related increase in production costs, these products often command a premium price while simultaneously taking away market share from similar products that do not make claims as to humane treatment.

25. To garner a corner of the "humane" market for itself, in September 2009 Perdue began to market and sell chicken products under its Harvestland brand in packaging and with labels that prominently advertised that its chickens are "Humanely Raised" and "USDA Process Verified." As discussed in more detail below, Perdue charged, and continues to charge, a premium price for Harvestland brand chicken it labeled as "Humanely Raised" and "USDA Process Verified."

26. As described more fully below, Perdue's "Humanely Raised" claim is false, deceptive, and misleading, and Perdue's "USDA Process Verified" claim is used by Perdue in ways that are deceptive and misleading.

**I. Practices Which Necessarily Occur Under the NCC Guidelines and Perdue's "Best Practices"**

27. The purported welfare standards upon which Perdue bases its "Humanely Raised" claim are nothing more than minimal standards developed by the industry itself – including Perdue executive Dr. Bruce Stewart Brown. These standards, on their face, necessitate inhumane treatment and further allow essentially limitless noncompliance.

28. Because Perdue's "Best Practices" are not materially different from the NCC Guidelines, Perdue's Harvestland chickens have been subjected to inhumane handling in grow-out barns, on trucks, and by being shackled in ways that can break bones and dislocate joints.

29. Because Perdue's "Best Practices" are not materially different from the NCC Guidelines, Perdue's Harvestland brand chickens are shackled by their legs, upside-down, while fully conscious as they are conveyed through processing facilities. This treatment is contemplated by, and permitted under the NCC Guidelines. Studies published in the peer reviewed journal Neuroscience suggest that upside-down leg shackling is painful for the chickens, and this pain is made worse by the fact that many meat chickens, or "broilers," suffer from abnormalities of the leg joints or bones. Moreover, hanging upside-down is a physiologically abnormal posture for chickens, and multiple studies, published in the peer reviewed journal British Poultry Science, have shown that inversion and shackling is traumatic and stressful. These studies have also shown that approximately 90% of birds flap their wings vigorously when forced into this position, which can lead to broken bones and dislocated joints.

30. Because Perdue's "Best Practices" are not materially different from the NCC guidelines, Perdue's Harvestland chickens are electrically shocked before being effectively rendered unconscious, if they are at all, by such electric "stunning." Perdue's Harvestland brand chickens are electrically shocked in "stun baths," or vats of electrified water, which takes place

after the birds have been shackled upside-down by their legs. This treatment, including the possibility that some percentage of birds will not be properly stunned, is contemplated by, and permitted under the NCC Guidelines. Scientific studies, including published peer reviewed articles in The Veterinary Record and the Journal of Agricultural Engineering Research, have shown that many birds experience painful electric shocks prior to being “stunned” due to wing-flapping at the entrance to the stunner. Moreover, studies published in journals such as Poultry Science have shown that the birds may experience electrically-induced paralysis, seizures, and cardiac arrest while still conscious.

31. Because Perdue’s “Best Practices” are not materially different from the NCC guidelines, at least some of Perdue’s Harvestland chickens have had their necks ineffectively and partially cut while fully conscious because they were ineffectively stunned as described above and these birds have endured a semi-conscious, slow bleed to death. The possibility that some percentage of birds will have their necks ineffectively cut is contemplated by, and permitted under the NCC Guidelines.

32. Because Perdue’s “Best Practices” are not materially different from the NCC guidelines, at least some of Perdue’s Harvestland chickens have been drowned and scalded alive while conscious. The possibility that some live birds will enter the “scald vat” is contemplated by the NCC Guidelines. The chickens that Perdue raises are subject to conscious drowning in scalding water after the shackled birds have moved past the neck-cutting machines during processing. Ineffective stunning and neck-cutting can allow the birds to regain consciousness while “bleeding out” and enter the “scald vat” while still alive. According to industry magazine WATT Poultry USA, in some plants the rate of this occurring is as high as 3%.



33. Because Perdue's "Best Practices" are not materially different from the NCC guidelines, Perdue's Harvestland chickens have been subjected to rough handling and crammed into stiffling hot (or painfully cold) trucks for hours as they await slaughter, with no food or water. The NCC Guidelines provide no minimum or maximum temperatures for which the chickens may be held on the trucks, and permit the holding of chickens on trucks for up to 15 hours. The chickens that Perdue raises are subject to such conditions, which sometimes lead to the death of chickens before slaughter.

34. Because Perdue's "Best Practices" are not materially different from the NCC guidelines, Perdue's Harvestland chickens have been purposely deprived of natural resting behavior, encouraging abnormal growth. The Harvestland brand chickens that Perdue raises are subject to continuous or near-continuous dim lighting in "growout" sheds, resulting in sleep deprivation. This treatment is contemplated by, and expressly permitted under the NCC Guidelines. Studies published in British Poultry Science, Avian Diseases, and World's Poultry Science Journal have found that an absence of sufficient periods of darkness per night precludes natural sleep and resting behavior of birds, exacerbates leg disorders, can cause sudden death syndrome, and increases mortality levels. Moreover, the NCC Guidelines do not require a minimum lighting intensity, and the dim, nearly continuous lighting may lead to abnormal eye development, causing uncomfortable and potentially painful eye disorders such as glaucoma and buphthalmia.

35. Because Perdue's "Best Practices" are not materially different from the NCC Guidelines, Perdue's Harvestland chickens, as minutes-old chicks, have been thrown onto the floor by huge machines during mechanical separation from their shells, with many severely injured by the process. The possibility of this happening is contemplated by, and permitted

under the NCC Guidelines. Industry advisor and welfare expert Dr. Temple Grandin has stated that this activity should constitute an automatic failure of any welfare audit, but it does not pursuant to the NCC Guidelines.

36. Because Perdue's "Best Practices" are not materially different from the NCC Guidelines, at least some of Perdue's Harvestland chickens have suffered continuously from cardiovascular problems, painful bone deformities, ruptured tendons, and lameness throughout their short lives. The Harvestland brand chickens that Perdue raises are plagued with chronic health problems because Perdue, like other major chicken producers, selectively breeds meat, or "broiler," chickens for unnaturally fast growth. Emeritus professor John Webster of the University of Bristol School of Veterinary Science has stated that "[b]roilers are the only livestock that are in chronic pain for the last 20 per cent of their lives. They don't move around, not because they are overstocked, but because it hurts their joints so much." Perdue raises chickens that spend a full fifth of their short lives in chronic pain so severe that it effectively immobilizes them. Perdue takes no steps to mitigate or remedy these health problems.

37. Because Perdue's "Best Practices" are not materially different from the NCC Guidelines, and because, as described above, these chickens frequently suffer from painful bone deformities and leg problems, at least some of Perdue's Harvestland chickens have been unable to walk more than five feet at a time and have exhibited gait defects. The chickens that Perdue raises are provided no veterinary care or relief even if they are unable to walk more than 5 feet or exhibit gait defects. That some birds will exhibit gait defects and be unable to walk more than five feet at a time and not receive veterinary care is contemplated by, and permitted under, the NCC Guidelines.

38. In short, the Harvestland chicken sold by Perdue was the product of an NCC-designed and supported production system that is, at its core, not humane, because the chickens were and are subject to one or more of the practices described above.

**II. Harvestland “Humanely Raised,” “USDA Process Verified” Chicken is Produced With the Same Processes Used Across the Mass-Produced Chicken Industry**

39. As Perdue has acknowledged, the NCC Guidelines are the basis for its “Humanely Raised” claim. (*See* Dkt. No. 9-1, Defendant’s Memo ISO Motion to Dismiss (April 1, 2011), at 3 (stating that Perdue’s “Best Practices” for the humane treatment of its chickens “were developed using the NCC Guidelines as a jumping-off point”).

40. Multiple other sources indicate that Perdue’s program is in all relevant respects identical to the NCC guidelines:

41. In a May 28, 2010 letter from Herbert D. Frerichs, Jr., General Counsel for Perdue, to Cathy Liss, President of the Animal Welfare Institute, Perdue’s General Counsel states that “The NCC Guidelines represent the *basis for humane care in raising poultry in a commercial setting . . .* In respect to Perdue, these NCC Guidelines were the *basis for our welfare program referred to as ‘Humanely Raised.’*” (emphasis added). The letter further states that “Perdue’s practices . . . are compliant with the [NCC’s] Animal Welfare Guidelines.”

42. According to a publicly available document from the USDA’s Agricultural Marketing Service (“AMS”) entitled “Audit Section Weekly Activity,” on Dec. 17, 2008, AMS officials and Perdue representatives met to discuss Perdue’s “Humanely Raised” claim. The document states that “Perdue’s specific processes associated with the ‘Humanely Raised’ claim are based on the [NCC’s] Animal Welfare Guidelines.”

43. According to publicly available documents obtained from USDA’s AMS, on March 12, 2010, David Hermes, Regional Veterinary Services Manager at Perdue’s Cromwell,

KY complex (which processes Harvestland brand chicken) sent an email to Jack Boucher, Assistant National Supervisor of Audits for USDA AMS's Poultry Programs, explaining that Perdue was in the process of revising its "Humanely Raised" Process Verified Program ("PVP") manual to reflect recent changes in the NCC Guidelines. The email states that "[Perdue's] Humanely Raised PVP audit instrument contains the *same criteria as the NCC audit instrument* . . ." (emphasis added). Because the audit criteria for the Process Verified Program at Perdue are the same criteria used for NCC audits there can be no meaningful difference between the company's Humanely Raised PVP standards and the NCC standards.

44. According to a publicly available document received by Plaintiffs from USDA's AMS in response to a December 2011 request under the Freedom of Information Act for documents related to Perdue's "Humanely Raised" program, the audit checklist used by AMS personnel during audits of Perdue's hatcheries, grow-out farms, and slaughtering facilities is virtually identical to the audit checklist contained in the NCC Guidelines. Specifically, the document states that it is the "NCC Animal Welfare Audit Checklist 16 April 2010 edition," and that it has been "Revised for USDA, AMS Process Verified Program Audits." The document further states that it has been "Revised only to remove point values from the checklist. No points are awarded." Apart from the revision to remove point values, the audit checklist is identical to the NCC's checklist, and all of the audit criteria are identical. As this document clearly illustrates, the audit criteria for Perdue's "Humanely Raised" PVP are the exact same criteria used during audits under the NCC Guidelines, and as such there can be no meaningful difference between the company's Humanely Raised PVP standards and the NCC standards.

45. According to the NCC, it is "a full-service trade association that promotes and protects the interests of the chicken industry," NCC, Overview,

<http://www.nationalchickencouncil.org/about-ncc/overview/> (last visited Feb. 10, 2012), and “a substantial portion of NCC’s budget is used to promote the consumption of chicken and to foster a positive public image for the industry.” NCC, Structure, <http://www.nationalchickencouncil.org/about-ncc/structure/> (last visited Feb. 10, 2012). NCC member companies account for approximately ninety five percent (95%) of meat chickens produced in the United States. *Id.*

46. According to a publicly available document from USDA’s AMS entitled “AMS Weekly Activity Report” for June 2, 2009, AMS reports that Dr. Bruce Stewart Brown, Perdue’s own Senior Vice President for Food Safety and Quality, headed a small group of industry scientists and veterinarians who worked to develop recent revisions to the NCC Guidelines. The NCC Guidelines are not promulgated by a neutral third-party, and, expectedly, their primary purpose is to support the financial motivations of the chicken industry, including Perdue.

47. The NCC Guidelines do nothing more than codify industry norms, which do not ensure humane treatment of chickens and which in fact systematically subject chickens to extreme pain and duress.

48. In order to encourage low production costs, the NCC Guidelines authorize and justify a system of mechanized chicken production that routinely inflicts intense duress and pain.

49. In order to encourage low production costs, the NCC Guidelines allow significant deviation and noncompliance with their already-meager animal treatment standards. Indeed, the NCC Guidelines are riddled with huge loopholes for nonconformance. A poultry producer can still claim to be “in conformity” with the NCC Guidelines even while failing to comply with numerous of their provisions.

50. Moreover, while the audit checklist identifies certain occurrences as “major non-conformances,” none of these occurrences result in the automatic failure of an audit: the checklist simply states in vague terms that the non-conformances must be “corrected” before the audit of that particular area can move on. Major non-conformances include: live chicks in the trash at hatcheries; survival of chicks after euthanasia (i.e., live chicks suffocating in the trash); abuse of birds during catching and transportation; pre-slaughter caged holding times greater than 15 hours; live birds in the “Dead On Arrival” bins at the slaughter plant; and birds with uncut carotid arteries proceeding to the “scald vat” at the slaughter plant where they are submersed in scalding water while alive. Since all that is required even during an NCC audit is “correction” of the problem, in day-to-day practice, when chicks are found crushed but alive in the trash, or having their throats torn open by ineffective neck cutting machines while they are still conscious, these issues might be corrected temporarily, but there is nothing in the NCC Guidelines requiring systematic measures to prevent it from recurring every single day. In other words, the “standards” themselves expressly allow for massive suffering for the several billion birds handled in conformity with them every year.

51. The NCC Guidelines do not, in short, equal “humane” treatment, but are instead a codification of existing industry standards. Such standards, as discussed below, are widely understood by consumers *not* to be humane.

52. These uniform industry practices of systemized and routine cruelty expressly allowed for by the NCC Guidelines cannot justify a claim of “Humanely Raised,” and indeed no mass chicken producer before has ever, without qualification, marketed its chicken as such.

53. The NCC Guidelines are followed by virtually every other mass chicken producer in the nation. Tyson Foods, Inc. (ranked #1), Pilgrim’s Pride (ranked #2), Koch Foods (ranked

#5), Wayne Farms LLC (ranked # 6), and Foster Farms (ranked #9) all expressly state on their respective websites that their company adheres to the NCC Guidelines. Additionally, Sanderson Farms, Inc. (ranked #4) and House of Raeford Farms, Inc. (ranked #8) have publicly stated that they adhere to the NCC Guidelines.

54. The NCC's website states that the NCC Guidelines have been "widely adopted within the chicken industry." See <http://www.nationalchickencouncil.org/industry-issues/animal-welfare-for-broiler-chickens/> (last visited Feb. 12, 2012).

55. Unlike Perdue, no other mass chicken producer makes claims on its packaging for the uniqueness of its chicken based on adherence to the NCC Guidelines. Perdue alone misrepresents to consumers that its chickens are raised differently and more humanely than competitors' chickens, when this is in fact not the case.

56. As might be expected, based on the toothless NCC Guidelines, Perdue exacerbates these already-low and cruel standards by violating those very standards. Indeed, a number of major non-conformances were found during USDA AMS audits, conducted for purposes of approval into the Process Verified Program, of various Perdue facilities, including facilities used to produce chicken products ultimately marketed as "Humanely Raised." According to publicly available documents from USDA's AMS, these non-conformances include live chicks in the hatchery waste stream (at Perdue's Murfreesboro, NC hatchery on April 12, 2010, which produces Perdue brand products) and excessive pre-slaughter holding times in trucks outside processing plants (at Perdue's Accomac, VA slaughtering complex on April 16, 2010, which produces Perdue brand products). Other non-conformances observed during audits of other Perdue facilities include improper stunning of birds as they proceed to the neck-cutting machines, which means birds may have been fully conscious when their throats were

mechanically cut (at Perdue's Milford, DE slaughtering complex on April 19, 2010, which produces Perdue brand products), ineffective neck-cutting devices (at Perdue's Lewiston, NC slaughtering complex on April 12, 2010, and again at Perdue's Milford, DE slaughtering complex on April 19, 2010, which both produce Perdue brand products), and excessive ammonia levels – nearly twice what the NCC Guidelines allow - in the growout sheds (at Perdue grow-out farms associated with its Cromwell, KY complex on May 13, 2009, and again in December, 2009, which produce both Harvestland and Perdue brand products). All of these “non-conformances” occurred during *pre-scheduled, announced* audits by AMS during the “Humanely Raised” Process Verified Program approval process – audits for which Perdue had advance notice and ample time to prepare. Because each of the above non-conformances occurred at Perdue plants under the same corporate oversight, organized in the same way, using the same industry-wide processes, the same industry-wide equipment, and following the same industry-wide NCC Guidelines, it is reasonable to believe that such non-conformances occur regularly at all Perdue plants, including those used to produce Harvestland branded products.

57. More importantly, even if Perdue followed the NCC Guidelines perfectly and never failed to meet every requirement, every Harvestland brand chicken produced by Perdue would have been subjected to or derived from the cruel practices sanctioned by the NCC Guidelines, such as conscious, upside-down shackling, dipping in vats of electrified water, and sleep deprivation. In addition, some portion of chickens are also subjected to further cruelty, based on disregard for the already-cruel NCC Guidelines.

58. Plaintiffs have no ability to witness Perdue's practices as described above because they all occur behind closed doors at properties the company owns or otherwise controls access



to. As such, Perdue has unique access to and control over the facts regarding day to day suffering of the birds it uses for its Harvestland chicken.

**III. The “Humanely Raised” Label Claim Deceived Plaintiffs and Plaintiffs’ Interpretation of the “Humanely Raised” Label Claim was Objectively Reasonable**

59. Plaintiff Hemy believed that that the “Humanely Raised” label claim meant that Harvestland chickens were treated humanely throughout life, including a quick and painless death. Plaintiff Hemy would not have purchased the Harvestland chicken but for the “Humanely Raised” label.

60. Plaintiff Conner believed that that the “Humanely Raised” label claim meant that Harvestland chickens were treated humanely throughout life, including a quick and painless death. Plaintiff Conner would not have purchased the Harvestland chicken but for the “Humanely Raised” label.

61. In January, 2012, Dr. Thomas Maronick, a Professor of Marketing at Towson University, conducted an online survey of New Jersey consumers who buy fresh chicken to assess their perception of the “Humanely Raised” claim. Dr. Maronick holds a Doctorate in Business Administration from the University of Kentucky and a Law Degree from the University of Baltimore School of Law. Dr. Maronick is the former in-house marketing expert for the Bureau of Consumer Protection at the Federal Trade Commission (FTC). Dr. Maronick has designed and implemented over 400 surveys for the FTC and for litigation clients.

62. In the survey (hereafter “Maronick Survey”), 209 members of an online consumer panel who lived in New Jersey were shown a Harvestland chicken label.

63. The survey results demonstrate that Plaintiffs’ interpretation of the label was objectively reasonable. According to the Maronick Survey, the overwhelming majority of

consumers believe that the manner in which Perdue treats its Harvestland brand chickens, as described above, is not consistent with its “Humanely Raised” claim.

64. Plaintiff Hemy believed that the “Humanely Raised” label claim meant that Harvestland chickens were treated humanely throughout life, and would not have purchased the Harvestland chicken if she had known that the chickens were selectively bred for extremely fast growth, causing chronic health problems, including painful bone deformities.

65. Plaintiff Conner believed that the “Humanely Raised” label claim meant that Harvestland chickens were treated humanely throughout life, and would not have purchased the Harvestland chicken if she had known that the chickens were selectively bred for extremely fast growth, causing chronic health problems, including painful bone deformities.

66. The Plaintiffs’ interpretation of the label was objectively reasonable. According to the Maronick Survey, 80% of consumers surveyed would either “definitely not” or “probably not” consider chickens to be “Humanely Raised” if the chickens were bred for extremely fast growth, causing the chickens to have chronic health problems.

67. Plaintiff Hemy believed that the “Humanely Raised” label claim meant that Harvestland chickens were treated humanely throughout life, and would not have purchased the Harvestland chicken if she had known that the chickens were kept in barns and subjected to near continuous dim lighting, preventing natural rest and sleep behaviors.

68. Plaintiff Conner believed that the “Humanely Raised” label claim meant that Harvestland chickens were treated humanely throughout life, and would not have purchased the Harvestland chicken if she had known that the chickens were kept in barns and subjected to near continuous dim lighting, preventing natural rest and sleep behaviors.

69. The Plaintiffs' interpretation of the label was objectively reasonable. According to the Maronick Survey, 84% of consumers surveyed would either "definitely not" or "probably not" consider chickens to be "Humanely Raised" if a company kept its chickens in barns and subjected them to near continuous lighting, preventing natural rest and sleep behaviors.

70. Plaintiff Hemy believed that the "Humanely Raised" label claim meant that Harvestland chickens were treated humanely throughout life, and would not have purchased the Harvestland chicken had she known that the company failed to provide veterinary care for chickens unable to walk more than five feet at a time, or exhibiting lameness or gait defects.

71. Plaintiff Conner believed that the "Humanely Raised" label claim meant that Harvestland chickens were treated humanely throughout life, and would not have purchased the Harvestland chicken had she known that the company failed to provide veterinary care for chickens unable to walk more than five feet at a time, or exhibiting lameness or gait defects.

72. The Plaintiffs' interpretation of the label was objectively reasonable. According to the Maronick Survey, 75% of consumers surveyed would either "definitely not" or "probably not" consider chickens to be "Humanely Raised" if a company failed to provide veterinary care for chickens exhibiting lameness.

73. Plaintiff Hemy believed that that the "Humanely Raised" label claim meant that Harvestland chickens were treated humanely throughout life, including that birds were handled and treated humanely when they were being transported to slaughter. Plaintiff Hemy would not have purchased the Harvestland chicken if she had known that this was not the case.

74. Plaintiff Conner believed that that the "Humanely Raised" label claim meant that Harvestland chickens were treated humanely throughout life, including that birds were handled

and treated humanely when they were being transported to slaughter. Plaintiff Conner would not have purchased the Harvestland chicken if she had known that this was not the case.

75. The Plaintiffs' interpretation of the label was objectively reasonable. According to the Maronick Survey, 86% of consumers surveyed would either "definitely not" or "probably not" consider chickens to be "Humanely Raised" if a company permitted the chickens to remain on transport trucks for long periods of time in extremely hot or cold temperatures.

76. Therefore, consumers consider treatment during the transport of the chickens to slaughter to be covered by Perdue's "Humanely Raised" claim.

77. Plaintiff Hemy believed that that the "Humanely Raised" label claim meant that Harvestland chickens were treated humanely throughout life, and would not have purchased the Harvestland chicken if she had known that, prior to being slaughtered, the chickens had been shackled upside down while fully conscious.

78. Plaintiff Conner believed that that the "Humanely Raised" label claim meant that Harvestland chickens were treated humanely throughout life, and would not have purchased the Harvestland chicken if she had known that, prior to being slaughtered, the chickens had been shackled upside down while fully conscious.

79. The Plaintiffs' interpretation of the label was objectively reasonable. According to the Maronick Survey, 81% of consumers surveyed would either "definitely not" or "probably not" consider chickens to be "Humanely Raised" if, prior to being slaughtered, a company shackled the chickens upside down by their legs while the chickens were fully conscious.

80. Therefore, consumers consider the shackling of conscious chickens prior to slaughter to be covered by Perdue's "Humanely Raised" claim.

81. Plaintiff Hemy believed that that the “Humanely Raised” label claim meant that Harvestland chickens were treated humanely throughout life, and would not have purchased the Harvestland chicken if she had known that, prior to being slaughtered, the shackled, fully conscious chickens would be dropped into a “bath” of electrified water.

82. Plaintiff Conner believed that that the “Humanely Raised” label claim meant that Harvestland chickens were treated humanely throughout life, and would not have purchased the Harvestland chicken if she had known that, prior to being slaughtered, the shackled, fully conscious chickens would be dropped into a “bath” of electrified water.

83. The Plaintiffs’ interpretation of the label was objectively reasonable. According to the Maronick Survey, 81% of consumers surveyed would either “definitely not” or “probably not” consider chickens to be “Humanely Raised” if, prior to being slaughtered, a company shocked shackled chickens in vats of electrified water.

84. Therefore, consumers consider electric bath stunning of chickens prior to slaughter to be covered by Perdue’s “Humanely Raised” claim.

85. Plaintiff Hemy believed that that the “Humanely Raised” label claim meant that Harvestland chickens were treated humanely throughout life, and would not have purchased the Harvestland chicken if she had known that, prior to being slaughtered, it was possible that the birds could be ineffectively “stunned” by the process involving the stun bath, and that some shackled birds could be conveyed to the neck-cutting blade that kills them while fully conscious.

86. Plaintiff Hemy believed that that the “Humanely Raised” label claim meant that Harvestland chickens were treated humanely throughout life, and would not have purchased the Harvestland chicken if she had known that, prior to being slaughtered, it was possible that the

birds could be ineffectively “stunned” by the process involving the stun bath, and that some shackled birds could be conveyed to the neck-cutting blade that kills them while fully conscious.

87. The Plaintiffs’ interpretation of the label was objectively reasonable. According to the Maronick Survey, 66% of consumers would either “definitely not” or “probably not” consider chickens to be “Humanely Raised” if, prior to being slaughtered, chickens had their necks cut while fully conscious.

88. Therefore, consumers consider neck-cutting at slaughter to be covered by Perdue’s “Humanely Raised” claim.

89. Plaintiff Hemy believed that that the “Humanely Raised” label claim meant that Harvestland chickens were treated humanely throughout life, and would not have purchased the Harvestland chicken if she had known that some birds could miss the cutting blade, or be ineffectively cut by the blade, and enter a vat of scalding water while alive, and conscious.

90. Plaintiff Conner believed that that the “Humanely Raised” label claim meant that Harvestland chickens were treated humanely throughout life, and would not have purchased the Harvestland chicken if she had known the that some birds could miss the cutting blade, or be ineffectively cut by the blade, and enter a vat of scalding water while alive, and conscious.

91. The Plaintiffs’ interpretation of the label was objectively reasonable. According to the Maronick Survey, 87% of consumers would either “definitely not” or “probably not” consider chickens to be “Humanely Raised” if the chickens were drowned in scalding water while conscious.

92. Therefore, consumers consider the entering of chickens into “scald vats” during slaughter to be covered by Perdue’s “Humanely Raised” claim.

93. The term “humanely *raised*” is itself a misnomer. Merriam-Webster defines the verb “raise” to mean “to breed and bring (an animal) to maturity.” <http://www.merriam-webster.com/dictionary/raise>. However, Perdue’s chickens are killed at approximately 6 - 7 weeks old and never reach “maturity” at all. A chicken’s natural lifespan is usually 5 – 8 years, but can last up to 30 years.

94. Further basis for the reasonableness of the Plaintiffs’ interpretations that processes which occur directly prior to the death of the chickens at the slaughter plant are covered by Perdue’s “Humanely Raised” claim is found in the fact that Perdue itself specifically included slaughter and its precursors in the definition of “Humanely Raised” when it based its claim on the NCC guidelines. The Official Listing of Approved USDA Process Verified Programs makes clear that Perdue has specifically included “Processing” – industry terminology for the slaughtering process – within the scope of its “Humanely Raised” Process Verified Program.

95. Further basis for the reasonableness of the Plaintiffs’ label interpretations which involve slaughter is found in the fact that the USDA audited each step of the slaughter process at plants producing Harvestland brand chicken when it evaluated Perdue’s “Humanely Raised” claim for purposes of the Process Verified Program. Moreover, Perdue admits that its Humanely Raised PVP claim audit criteria is “the same” as the NCC audit, which includes transport conditions and handling at slaughter facilities.

96. Further basis for the reasonableness of the Plaintiffs’ label interpretations which involve slaughter is found in the fact that numerous other third-party “humane” certifications cover “slaughter” in their standards. For example, the “Certified Humane” program, administered by Humane Farm Animal Care, the “American Humane Certified” program, administered by the American Humane Association, and the “Animal Welfare Approved”

program, administered by the Animal Welfare Institute, all contain requirements for the treatment of broiler chickens during the slaughtering process that are more rigorous than the NCC Guidelines.

97. Further basis for the reasonableness of the Plaintiffs' label interpretations which involve slaughter is found in the fact that Perdue itself has previously argued for a broad definition of the term "raised." In a 2009 lawsuit against Tyson Foods, Inc. challenging that company's "raised without antibiotics" claim, and in a petition to FSIS requesting the rescission of that marketing claim, Perdue argued to the court and to USDA that what happens *before* the bird is even hatched (that is, while it is *in ovo*) and placed on a farm for raising is encompassed in the term "raising." Now, however, Perdue adopts a narrow view of the term "raising." See Second Amended Complaint, Dkt. No. 108, *Sanderson Farms, Inc., and Perdue Farms, Inc. v. Tyson Foods, Inc.*, Case No. RDB-08-CV-210 (D. Md. May 28, 2008).

**IV. Perdue's Use of the "USDA Process Verified" Label Claim Deceived Plaintiffs and Plaintiffs' Interpretation of the "USDA Process Verified" Label Claim was Objectively Reasonable**

98. Perdue's Harvestland labels prominently feature a shield that indicates that the "Humanely Raised" claim is "USDA Process Verified" immediately adjacent to the "Humanely Raised" claim.

99. Plaintiff Hemy believed that that the "USDA Process Verified" label claim, made in conjunction with the "Humanely Raised" claim, meant that Harvestland chickens were approved and endorsed as "Humanely Raised" by the USDA, acting as a neutral third party. Plaintiff Hemy would not have purchased the Harvestland chicken if she had known that this was not the case.



100. Plaintiff Conner believed that that the “USDA Process Verified” label claim, made in conjunction with the “Humanely Raised” claim, meant that Harvestland chickens were approved and endorsed as “Humanely Raised” by the USDA, acting as a neutral third party. Plaintiff Conner would not have purchased the Harvestland chicken if she had known that this was not the case.

101. The Plaintiffs’ interpretation of the label was objectively reasonable. According to the Maronick Survey, 58% of consumers believe that the USDA Process Verified shield meant that the company meets standards for the treatment of chickens developed by the USDA itself.

102. Investigation by counsel has revealed that the USDA Process Verified shield is not the product of a neutral evaluation of the treatment of Perdue’s chickens based upon third party, government standards, but rather a marketing tool used in conjunction with the USDA Agricultural Marketing Service’s (“AMS”) Process Verified Program. AMS is not a regulatory agency, but a marketing agency whose mission is to increase the sales of farmed products.

103. Under the voluntary Process Verified Program, the specific “processes” to be “verified” (in this case the treatment of Perdue’s chickens from hatchery through slaughter) are determined and defined by the company itself.

104. Once AMS verifies, via desk and on-site audits, that the company is following its voluntary, self-defined processes, the company may use the Process Verified Shield in its marketing.

105. In the context of Perdue’s “Humanely Raised” claim, the Process Verified shield simply indicates that AMS has found that Perdue, like the majority of poultry producers in the country, has implemented a program based on the NCC Guidelines at its hatcheries, growout

facilities, and slaughter plants. It does not mean AMS or any other service within USDA deems Defendants' conduct to be in fact humane.

106. Indeed, the USDA has specifically disclaimed any authority to define the term "humane" with respect to the treatment of poultry, from hatching until death, and there are no federal rules defining "humane" treatment of poultry.

**V. Perdue Deceived Plaintiffs and Consumers into Believing that Its Chicken Was Appreciably Different From, or Superior to, That of Its Competitors**

107. Based on Perdue's "Humanely Raised" and "USDA Process Verified" labels (collectively "the labels"), Plaintiff Hemy believed that Harvestland chicken was different and in material respects superior to standard mass produced industry chicken. Indeed, that is why she was willing to pay a premium price for Harvestland chicken.

108. Based on Perdue's "Humanely Raised" and "USDA Process Verified" labels, Plaintiff Conner believed that Harvestland chicken was different and in material respects superior to standard mass produced industry chicken. Indeed, that is why she was willing to pay a premium price for Harvestland chicken.

109. The Plaintiffs' interpretation of the label was objectively reasonable. According to the Maronick Survey, 53% of consumers believe that the USDA endorses brands of chicken with the labels, 78% of consumers believe that brands of chicken with the label are "better than others on the market," and 52% of consumers believe that brands of chicken with the labels are higher quality than brands without.

110. Further basis for the reasonableness of the Plaintiffs' label interpretation is provided by the Maronick Survey and an April 2010 poll conducted by the Animal Welfare Institute. Both surveys indicate that consumers believe that chickens produced in industrial conditions are not treated humanely.

111. Further basis for the reasonableness of the Plaintiffs' label interpretation is the fact that Perdue, in response to consumer research it conducted, removed an identical "Humanely Raised" labeling claim from its Perdue brand products after only a few months on the market. A May 28, 2010 letter to Cathy Liss, President of the Animal Welfare Institute, from Herbert D. Frerichs, Jr., General Counsel for Perdue states that:

Since the USDA Process Verified Program is new, Perdue recently completed extensive consumer research to validate the importance and clarity of the individual claims, including "humanely raised." As a result of this research, Perdue has decided to revise the Perdue-branded label and will therefore be making changes to the consumer information it provides. These changes to the Perdue-branded label are currently in process, and we trust the changes will alleviate AWI's concerns.

112. Further basis for the reasonableness of the Plaintiffs' label interpretation is provided by the fact that internet message boards and blogs are awash in postings about the perceived desirability of Harvestland chicken. For example, one enthusiastic post states:

I have tried the chicken at Apple Family Farm and it was really good. The breast [sic] are pretty big and pre-sealed in plastic. I didn't care too much for their beef, though I might try it again in the future. I was going to get some chicken from Goose the Market, but discovered that *Walmart is back selling Harvestland chicken breast by the box. You get about seven breast (I rate them small to medium size, but the box is priced by the weight anyways) per box. They are said to be free-range chickens* and their price was a bit cheaper than Goose the Market. I'm not sure if Apple Family Farm is still raising chickens or not (emphasis added).

<http://www.city-data.com/forum/indianapolis/1291951-organic-local-produce-sources.html>(last visited Feb. 8, 2012).

113. Another post states:

Roasted Chicken is one of my husband's favorite meals. It is an easy, frugal meal (especially when you use the leftover bones to make chicken broth!), and I try to make it at least twice a month for him. We usually buy our chickens at the farmer's market. When they aren't available there I use Harvestland chicken from the grocery store. It is very good chicken, *and I believe that it is farmed*

*more responsibly than most grocery store conventional chicken. So if you can't find locally raised, pastured chickens, I would recommend trying the Harvestland brand from the grocery store.*

<http://thepurposedheart.com/juicy-roasted-chicken-with-gravy/> (last visited Feb. 8, 2012) (emphasis added).

114. A comment to the above posting states:

I also use the natural free-range brands like Murray or Harvestland. Our local supermarket, Publix, sells their own organic brand which is quite good and typically cheaper. I make chicken salad with the leftover meat. That will be next week's post.

*Id.*

115. Another posting states:

At my local Walmart which is very small and conservative, they sell Harvestland chicken which I would recommend over Tyson any day. It is not much more expensive but it is more humane and healthier!

<http://www.mothing.com/community/t/1330412/if-your-only-choice-is-conventional-meat-poultry-which-one-is-best> (last visited Feb. 8, 2012).

116. In fact, as discussed above, Perdue's chicken differs in no material way from other poultry industry mass-produced chicken.

#### **VI. Perdue Wronged Plaintiffs and Consumers By Charging Premium Prices for Chicken that Was Handled in a Substantially Identical Manner to Standard Mass Produced Poultry Industry Chicken**

117. As discussed above, in all relevant respects Perdue treats its chickens in the same manner as other large chicken producers, as all use the NCC Guidelines.

118. Because a consumer pays more for Harvestland products marketed as "Humanely Raised" and even though the birds that become such products are treated in all relevant respects identically to the vast majority of other chicken products which lack a "humane" label, Perdue perpetrates a fraud on its consumers.

119. Plaintiffs and other consumers paid premium prices for Harvestland chicken.

120. The Harvestland brand chicken was the most expensive brand of chicken at the Old Bridge, New Jersey, BJ's Wholesale Club on the occasions that Plaintiff Hemy purchased it.

121. The Harvestland brand chicken was the most expensive brand of chicken at the Watchung, New Jersey BJ's Wholesale Club on the occasions that Plaintiff Conner purchased it.

122. According to publicly available pricing data compiled by the USDA's AMS, Harvestland brand chicken was, for the most part, more expensive than comparable brands of mass-produced chicken in New Jersey grocery stores in 2010.

123. Plaintiffs and other consumers would not have purchased Harvestland chicken at premium prices, but for the false and misleading humane marketing claims made by Perdue.

124. Plaintiffs and other consumers have been damaged in the amount of the difference between the price of Harvestland chicken and the actual retail value of standard, mass-produced chicken not marketed as "Humanely Raised."

125. In January 2012, representatives for Plaintiffs surveyed grocery stores in New Jersey that carried Harvestland brand chicken products. In almost every instance, Harvestland was more expensive than the other brands – which (with the exception of the generic brand) also contained labeling claims such as "all vegetarian diets," "no animal by-products," and "no hormones and steroids added." Each of the Perdue brand chicken products, which, in every instance cost considerably less than the Harvestland brand chicken products, also carried the "Process Verified" shield and claims of "vegetarian fed," and "no animal by-products." Unlike the Harvestland brand products, however, none of these other brands made humane claims on their labels.

126. Plaintiffs' price research indicates that, on average, in New Jersey, Harvestland chicken sells for a premium of approximately 59% per pound over other brands of mass-produced chicken products that are not marketed as "Humanely Raised."

127. On May 14, 2010, Plaintiff Hemy spent \$9.99 on Harvestland chicken. Because she actually received only standard, mass produced chicken, she was damaged in the amount of approximately 59%, or \$5.89 on that purchase. She was similarly damaged for every other one of her purchases of Harvestland chicken, including a purchase of \$9.99 on July 6, 2010; a purchase of \$11.61 on July 13, 2010; a purchase of \$12.77 on July 26, 2010; and two purchases of \$9.99 each, also on July 26, 2010.

128. On November 21, 2009, Plaintiff Conner spent \$9.76 for Harvestland chicken. Because she actually received only standard, mass produced chicken, she was damaged in the amount of approximately 59%, or \$5.75 on that purchase. She was similarly damaged for every other one of her purchases of Harvestland chicken, including a purchase of \$8.40 on December 19, 2009; a purchase of \$8.68 also on December 19, 2009; a purchase of \$8.45 on January 2, 2010; a purchase of \$9.04 on February 2, 2010; a purchase of \$9.51 also on February 2, 2010; a purchase of \$12.58 on February 5, 2010; a purchase of \$9.43 on February 14, 2010; a purchase of \$8.31 on March 15, 2010; and a purchase of \$4.60, also on March 15, 2010.

### **CLASS ALLEGATIONS**

129. Plaintiffs bring this lawsuit on behalf of themselves and the proposed class members under F.R.C.P. 23(a) and (b). The proposed Class consists of:

All persons who purchased any Harvestland product labeled "Humanely Raised" and/or "USDA Process Verified" during the period September 2009 to present in the State of New Jersey (the "Class").

130. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint.

131. Specifically excluded from the Class are officers and directors of the Defendants, members of the immediate families of the officers and directors of the Defendants, and their legal representatives, heirs, successors or assigns and any entity in which they have or have had a controlling interest.

132. At this time, Plaintiffs do not know the exact number of Class members; however, given the immense sales volume of Harvestland chicken products, Plaintiffs believe that Class members are so numerous that joinder of all members of the Class is impracticable.

133. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

(a) Whether Perdue labeled, marketed, advertised and/or sold its Harvestland chicken products to Plaintiffs and those similarly situated using false, misleading and/or deceptive statements or representations, including statements or representations concerning the humane treatment of animals used in the production of such products; the purported endorsement by the USDA of products derived from such chickens; and the unfounded distinction between chicken products marketed and sold at retail under the “Harvestland” brand and the chicken of competitors;

(b) Whether Perdue misrepresented material facts in connection with the sales of its chicken products;

(c) Whether Perdue participated in and pursued the common course of conduct complained of herein;

(d) Whether Perdue's marketing, labeling, and/or selling of its Harvestland and Perdue products as "Humanely Raised" and "USDA Process Verified" constitutes a deceptive act or practice in the conduct of business, trade, or commerce in New Jersey; and

(e) Whether Perdue breached an express warranty.

134. Plaintiffs' claims are typical of those of the Class because Plaintiffs, like all members of the Class, purchased a Harvestland product bearing the "Humanely Raised" and "USDA Process Verified" packaging or label in a typical consumer setting and sustained damages from Defendants' wrongful conduct.

135. Plaintiffs will adequately protect the interests of the Class and have retained counsel who are experienced in litigating complex class actions. Plaintiffs have no interests that conflict with those of the Class.

136. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

137. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

138. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendants. For example, one court might enjoin Defendants from performing the challenged acts, whereas another might not. Additionally, individual actions may be dispositive of the interests of the Class, although certain Class members are not parties to such actions.



139. Defendants' conduct is generally applicable to the Class as a whole and Plaintiffs seek, inter alia, equitable remedies with respect to the Class as a whole. As such, Defendants' systematic policies and practices make injunctive and declaratory relief with respect to the Class as a whole appropriate.

### COUNT I

#### **(Violation of the New Jersey Consumer Fraud Act, N.J. STAT. ANN. § 56:8-1 *et seq.*)**

140. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth verbatim and at length herein.

141. Perdue's marketing of its chicken products as "Humanely Raised" and "USDA Process Verified" constitutes a deceptive and misleading act in violation of the New Jersey Consumer Fraud Act, N.J.S.A. §56:8-1 *et seq.*

142. As set forth above, the packaging and labeling of Perdue's chicken products as "Humanely Raised" is false, deceptive and misleading because they cause consumers to believe that Perdue's products are different from those of its competitors in that the animals it uses are treated humanely throughout their entire lives.

143. Perdue's "Humanely Raised" chickens are not treated humanely or differently from Perdue's other chickens, and are not treated in any material respects differently from chickens of other major producers.

144. As set forth above, the packaging and labeling of Perdue's chicken products as "USDA Process Verified," in conjunction with the "Humanely Raised" labeling claim, is false, deceptive and misleading because it causes consumers to believe that the manner in which Perdue treats its chickens is independently evaluated and approved by the USDA.

145. Perdue's "Humanely Raised" chickens are not so endorsed or verified by the USDA.

146. Perdue designed the false, deceptive, and misleading packaging and labeling with intent to sell, distribute and increase the consumption of its Harvestland brand products.

147. Defendants' violation of the New Jersey Consumer Fraud Act caused Plaintiffs and putative Class members to suffer ascertainable losses. Specifically, Perdue's false, deceptive and misleading packaging, labeling, and advertising caused consumers to purchase, and pay a premium for, Perdue's products believing they were "Humanely Raised" and "USDA Process Verified" when, in fact, they were not and are not treated differently from Perdue's other chickens or differently in any material respects from chickens of other major producers.

WHEREFORE, plaintiffs, NADINE HEMY and NANCY CONNER, demand judgment on this Count against the Defendants, PERDUE FARMS, INC., ABC CORPORATIONS 1 through 10 (names being fictitious and unknown but described as those corporations that assisted, marketed, supplied and/or sold chickens at retail under either the "Perdue" or "Harvestland" brands) and JOHN DOES 1-10 (names being fictitious and unknown but described as those individuals that assisted, marketed, supplied and/or sold chickens at retail under the "Harvestland" brands) as follows:

- A. Declaring this action to be a proper class action pursuant to F.R.C.P. 23 of a class of all persons who purchased Harvestland products packaged, labeled, or advertised as "Humanely Raised" and "USDA Process Verified," during the putative Class Period and appointing Plaintiffs as representatives for the Class and their counsel as Class Counsel;
- B. Enjoining Defendants from pursuing the acts and practices complained of herein;
- C. Declaring that Perdue's marketing of its products as "Humanely Raised" and "USDA Process Verified" is fraudulent, deceptive, and/or misleading, or declaring that such marketing constitutes negligent misrepresentation;

D. Awarding Plaintiffs and the members of the Class damages, trebled as authorized by the New Jersey Consumer Fraud Act;

E. Ordering Defendants to pay restitution to Plaintiffs and members of the Class an amount that is the equivalent to the amount acquired by means of any unfair, deceptive, fraudulent, unconscionable, or negligent act employed by Defendants as referenced in this Complaint, or any other amount authorized by statute;

F. Ordering Defendants to disgorge any ill-gotten benefits received from Plaintiffs and members of the Class as a result of Defendants' false, deceptive or misleading packaging, labeling, and advertising of its "Humanely Raised" and "USDA Process Verified" products or as a result of Defendants' negligent misrepresentations of its products.

G. Awarding reasonable costs and attorneys' fees, pursuant to the New Jersey Consumer Fraud Act;

H. Awarding applicable pre-judgment or post-judgment interest; and

I. Awarding such other and further relief as the Court may deem necessary or appropriate.

**COUNT II**  
**(Fraud in the Inducement)**

148. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth verbatim and at length herein.

149. Perdue has marketed and sold chicken products under its Harvestland brand with packaging and labeling prominently displaying claims that the chickens were "Humanely Raised" and that such treatment was evaluated and approved by the USDA. These claims are false and were known to be false when made, and constitute fraud.

150. The elements of common law fraud include the following: 1) the Defendants made a material misrepresentation of a presently existing or past fact; 2) the Defendants made the misrepresentation with knowledge or belief that it was false; 3) the Defendants made the misrepresentation with the intent that the plaintiff rely upon the fact; 4) the plaintiff reasonably relied on the fact; and 5) as a result of the reliance, the plaintiff suffered damages.

151. Perdue represented, marketed, and sold its chicken products as “Humanely Raised” when, in fact, they were not. Perdue knew its “Humanely Raised” claim to be false regarding the products it so labeled. Perdue knew or had reason to know that a growing number of consumers are concerned with the treatment of animals raised for food and are willing to pay a premium for food products they perceive to be humane, and/or verified by a third party to be humane.

152. Perdue knew or believed that Plaintiffs and reasonable consumers would not consider the manner in which its chickens are raised and slaughtered to be “humane.” Perdue was fully aware of the practices by which it raises and slaughters its chickens, and knew that these practices were no different than those of other major chicken producers in the United States or different from how Perdue handled its other chickens. Perdue knew that reasonable consumers, concerned with the manner in which farm animals are often treated by large producers, seek out products distinguished as “humane” because they consider those products to be different than, and preferable to, products without that distinction.

153. Perdue intended that consumers rely on the claim that its chickens were “Humanely Raised” and/or “USDA Process Verified” and that such claim would induce consumers to buy their products for a premium price. Perdue deliberately led consumers, including Plaintiffs and the putative Class, to believe falsely that the products they were

purchasing were raised “humanely” and therefore differently, than competitors’ products or their own other products.

154. Plaintiffs and the putative Class relied on Perdue’s claims that its chickens were “Humanely Raised.” Plaintiffs’ and the putative Class’ reliance was reasonable on its face, particularly given the appearance and labeling of the products, including the presence of the USDA Process Verified Shield.

155. Perdue’s fraudulent conduct damaged Plaintiffs and the putative Class in the amount of the difference between the price of Harvestland chicken and the actual retail value of standard, mass-produced chicken not marketed as “Humanely Raised.” Plaintiffs and the putative Class suffered damages because they were deceived into buying and paying a premium for chicken products that they believed to be humanely raised, and therefore different from the majority of similar products on the market, when in fact they were not. Neither Plaintiffs nor any putative Class member would have purchased Perdue’s products at a premium price had they known the truth.

WHEREFORE, plaintiffs, NADINE HEMY and NANCY CONNER, demand judgment on this Count against the Defendants, PERDUE FARMS, INC., ABC CORPORATIONS 1 through 10 (names being fictitious and unknown but described as those corporations that assisted, marketed, supplied and/or sold chickens at retail under either the “Perdue” or “Harvestland” brands) and JOHN DOES 1-10 (names being fictitious and unknown but described as those individuals that assisted, marketed, supplied and/or sold chickens at retail under either the “Perdue” or “Harvestland” brands) as follows:

- A. Declaring this action to be a proper class action pursuant to F.R.C.P. 23 of a class of all persons who purchased Harvestland products packaged or labeled as “Humanely

- Raised,” and/or “USDA Process Verified” during the putative Class Period and appointing Plaintiffs as representatives for the Class and their counsel as Class Counsel;
- B. Enjoining Defendants from pursuing the acts and practices complained of herein;
- C. Declaring that Perdue’s marketing of its products as “Humanely Raised” and/or “USDA Process Verified” is fraudulent, deceptive, and/or misleading, or declaring that such marketing constitutes negligent misrepresentation;
- D. Ordering Defendants to pay restitution to Plaintiffs and members of the Class an amount that is the equivalent to the amount acquired by means of any unfair, deceptive, fraudulent, unconscionable, or negligent act employed by Defendants as referenced in this Complaint:
- E. Ordering Defendants to disgorge any ill-gotten benefits received from Plaintiffs and members of the Class as a result of Perdue’s false, deceptive or misleading packaging, labeling, and advertising of its “Humanely Raised” products or as a result of Perdue’s negligent misrepresentation of its products as “Humanely Raised”;
- F. Awarding reasonable costs and attorneys’ fees;
- G. Awarding applicable pre-judgment or post-judgment interest; and
- H. Awarding such other and further relief as the Court may deem necessary or appropriate.

**COUNT III**  
**(Negligent Misrepresentation)**

156. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth verbatim and at length herein.

157. Perdue represented, marketed, and sold its chicken products as “Humanely Raised” and/or “USDA Process Verified.” If not deliberately fraudulent, and in the alternative to that theory, these claims constitute negligent misrepresentations.

158. Perdue made the false or deceptive claims without reasonable grounds for believing them to be true.

159. Plaintiffs and the Class relied on Perdue’s misrepresentations of fact when they purchased Perdue’s chicken products. Plaintiffs’ and the putative Class’ reliance was reasonable on its face, particularly given the appearance and labeling of the products, including the presence of the USDA Process Verified Shield.

160. Plaintiffs and the putative Class suffered damages in the amount of the difference between the price of Harvestland chicken and the actual retail value of standard, mass-produced chicken not marketed as “Humanely Raised.” Plaintiffs and the putative Class suffered damages because they were deceived into buying and paying a premium for chicken products that they believed to be humanely raised and/or verified and approved as humanely raised by the USDA, when in fact they were not. Neither Plaintiffs nor any putative Class member would have purchased Perdue’s products at a premium price had they known the truth.

WHEREFORE, plaintiffs, NADINE HEMY and NANCY CONNER, demand judgment on this Count against the Defendants, PERDUE FARMS, INC., ABC CORPORATIONS 1 through 10 (names being fictitious and unknown but described as those corporations that assisted, marketed, supplied and/or sold chickens at retail under the “Harvestland” brand) and JOHN DOES 1-10 (names being fictitious and unknown but described as those individuals that assisted, marketed, supplied and/or sold chickens at retail under the “Harvestland” brand) as follows:

- A. Declaring this action to be a proper class action pursuant to F.R.C.P. 23 of a class of all persons who purchased Harvestland products packaged or labeled as “Humanely Raised” and/or “USDA Process Verified” during the putative Class Period and appointing Plaintiffs as representatives for the Class and their counsel as Class Counsel;
- B. Enjoining Defendants from pursuing the acts and practices complained of herein;
- C. Declaring that Perdue’s marketing of its products as “Humanely Raised” and/or “USDA Process Verified” is fraudulent, deceptive, and/or misleading, or declaring that such marketing constitutes negligent misrepresentation;
- D. Ordering Defendants to pay restitution to Plaintiffs and members of the Class an amount that is the equivalent to the amount acquired by means of any negligent act employed by Defendants as referenced in this Complaint, or any other amount authorized by statute;
- E. Ordering Defendants to disgorge any ill-gotten benefits received from Plaintiffs and members of the Class as a result of Perdue’s false, deceptive or misleading packaging or labeling of its “Humanely Raised” and/or “USDA Process Verified” products or as a result of Perdue’s negligent misrepresentation of its products as “Humanely Raised” and/or “USDA Process Verified.”
- F. Awarding reasonable costs and attorneys’ fees;
- G. Awarding applicable pre-judgment or post-judgment interest; and
- H. Awarding such other and further relief as the Court may deem necessary or appropriate.



**COUNT IV  
(Breach of Express Warranty)**

161. Plaintiffs reallege and incorporate by reference the allegations contained in the paragraphs above as it fully set forth here.

162. Plaintiffs, and each member of the Class, formed a contract with Perdue at the time Plaintiff and the other members of the putative Class purchased Harvestland chicken products with a “Humanely Raised” and/or “USDA Process Verified” label. The terms of that contract include the promises and affirmation of fact made by Perdue on its product labels. This product labeling constitutes express warranties, became part of the basis of the bargain, and is part of a standardized contract between Plaintiff and the members of the putative Class on the one hand, and Perdue on the other.

163. All conditions precedent to Perdue’s liability under this contract have been performed by Plaintiff and the Class.

164. Perdue breached the terms of this contract, including the express warranties, with Plaintiff and the putative Class by not providing the product as described on the labeling.

165. As a result of Perdue’s breach of its contract and warranties, Plaintiffs and the putative Class have been damaged in the amount of the difference between the price of Harvestland chicken and the actual retail value of standard, mass-produced chicken not marketed as “Humanely Raised.”

WHEREFORE, plaintiffs, NADINE HEMY and NANCY CONNER, demand judgment on this Count against the Defendants, PERDUE FARMS, INC., ABC CORPORATIONS 1 through 10 (names being fictitious and unknown but described as those corporations that assisted, marketed, supplied and/or sold chickens at retail under “Harvestland” brand) and JOHN DOES 1-10 (names being fictitious and unknown but described as those

individuals that assisted, marketed, supplied and/or sold chickens at retail under “Harvestland” brand) as follows:

- A. Declaring this action to be a proper class action pursuant to F.R.C.P. 23 of a class of all persons who purchased Harvestland products packaged, labeled, or advertised as “Humanely Raised” and/or “USDA Process Verified” during the putative Class Period and appointing Plaintiffs as representatives for the Class and their counsel as Class Counsel;
- B. Enjoining Perdue from pursuing the acts and practices complained of herein;
- C. Declaring that Perdue’s marketing of its products as “Humanely Raised” and/or “USDA Process Verified” is fraudulent, deceptive, and/or misleading, or declaring that such marketing constitutes negligent misrepresentation;
- D. Ordering Perdue to pay restitution to Plaintiffs and members of the Class an amount that is the equivalent to the amount acquired by means of any unfair, deceptive, fraudulent, unconscionable, or negligent act employed by Perdue as referenced in this Complaint, or any other amount authorized by statute;
- E. Ordering Perdue to disgorge any ill-gotten benefits received from Plaintiffs and members of the Class as a result of Defendants’ false, deceptive or misleading packaging, labeling, and advertising of its “Humanely Raised” and/or “USDA Process Verified” products or as a result of Perdue’s negligent misrepresentation of its products as “Humanely Raised” and/or “USDA Process Verified”;
- F. Awarding reasonable costs and attorneys’ fees;
- G. Awarding applicable pre-judgment or post-judgment interest; and

H. Awarding such other and further relief as the Court may deem necessary or appropriate.

**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury of six.

LAW OFFICES OF DAVID M. WACKSMAN  
Attorney for Plaintiff and the Proposed Class

BY: s/ David M. Wacksman  
David M. Wacksman

DATED: April 27, 2012

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