

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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JESSE LANGEL,)	No. 21 Civ. 10234
)	
	Plaintiff,)	
)	
	v.)	COMPLAINT AND DEMAND
)	FOR JURY TRIAL
CHIPOTLE MEXICAN GRILL, INC.)	
)	
	Defendant.)	
)	
)	
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I. INTRODUCTION

1. In the deeply controversial practice of “humanewashing,” the defendant shamelessly doubles down on advertising claims that belie any reasonable construction of logic or law.

After years of devoted patronage, influenced by the defendant’s brand advertising and product advertising, the defendant now seeks to disavow responsibility for the very marketing that directly caused the plaintiff’s injuries in this case.

The plaintiff, an individual consumer, brings this action for money damages, injunctive relief, and attorneys’ fees to remedy the defendant’s deceptive acts and practices (NYGBL § 349), false advertising (NYGBL § 350), common law negligence, and gross negligence.

II. JURISDICTION, VENUE, and PARTIES

2. On October 24, 2021, the plaintiff commenced an action by filing a Summons with Notice in the Supreme Court of the State of New York, County of New York, styled *Jesse Langel v. Chipotle Mexican Grill*, Index # 159656/21, which alleged causes of action all arising under New York State law (the “State Court Action”).

3. Service on the defendant was effected on November 1, 2021 through personal service on the New York Secretary of State pursuant to Business Corporate Law § 307.
4. On December 1, 2021, the defendant filed a Notice of Removal Pursuant to 28 U.S.C. § 1332 (Diversity of Citizenship) and 28 U.S.C. § 1446(b)(1).
5. For purposes of removal, the defendant cites 28 U.S.C. § 1446(c)(2) for the proposition that the amount placed in controversy was demanded in good faith.
6. The plaintiff, an individual consumer, is a Citizen of the State of New York.
7. The defendant alleges in its Notice of Removal that it is a corporation duly organized and existing under the laws of Delaware with its principle place of business in Newport Beach, California, thereby representing that the defendant is a Citizen of California.
8. In seeking diversity jurisdiction, the defendant alleges in its Notice of Removal (¶7) that “the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs” invoking removal under 28 U.S.C. § 1441(a).
9. Since the State Court Action was filed in New York County Supreme Court, the defendant sought removal to this court pursuant to 28 U.S.C. § 84(c) and 28 U.S.C. § 1441(a).
10. Supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367.
11. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.
12. Venue in this District is proper in that the defendants transact business here and the conduct complained of occurred here.
13. The defendant regularly does business within this district, and has engaged in a persistent course of conduct within this district.
14. The defendant has derived substantial revenue from services rendered in this judicial district and state.

15. The defendant expected or should have reasonably expected the acts alleged in this complaint would have consequences in this judicial district and state.

16. The defendant derives substantial revenue from interstate commerce.

17. The defendant has otherwise sufficiently conducted business and/or purposefully availed itself of the privileges and benefits of this judicial district and state.

18. Defendant caused transactions and occurrences alleged in this complaint to take place in this judicial district and state.

III. FACT ALLEGATIONS

A. *The Plaintiff's Previous Interactions with the Defendant's Branding, Advertising, and Products*

19. The plaintiff has purchased food products from the defendant for many, many years in areas all over New York City.

20. The plaintiff moved to the Financial District in Manhattan, New York in 2014 where he remained until April of 2021.

21. During that time period, the plaintiff purchased numerous food products from the defendant's restaurant location at 111 Fulton Street, New York, 10038.

22. During that course of that time, the plaintiff purchased steak, chicken, and carnitas meats that were stuffed inside of burritos.

23. Since approximately 2018, while the plaintiff was living in the Financial District, the plaintiff had noticed the word "Responsibly" on the defendant's bags, as in "Raised Responsibly" or "Responsibly Raised."

24. The plaintiff had acquired a puppy Chihuahua in March of 2018.

25. The plaintiff's cognitive impression of the defendant's use of "Raised Responsibly" or "Responsibly Raised" was that the defendant was making a claim as to animal welfare.

26. The plaintiff assumed that the defendant verified that the subject animals were “Raised Responsibly” or “Responsibly Raised” pursuant to trustworthy and legal standards.

27. The plaintiff assumed, based on the wording and messaging, that “Raised Responsibly” also conferred environmental benefits.

28. As worded, the plaintiff thought that it was possible that the defendant was involved with the raising of the subject animals related to the claims of “Raised Responsibly” or “Responsibly Raised.”

29. From 2018 to 2021, as a new dog owner, more sensitive to animal welfare, the plaintiff appreciated to a degree that the defendant had distinguished itself in that regard from other “fast-casual” dining establishments in the area of the defendant’s restaurant location at 111 Fulton Street, New York, 10038.

30. For example, Burger King, located at 106 Fulton Street, NY, NY 10038, situated diagonally across the street from the defendant at 111 Fulton, did not make any observable advertising claims as to animal welfare during the entire seven-year period in which the plaintiff had resided in the Financial District.

31. The plaintiff had purchased Burger King food on a number of occasions before the plaintiff had more frequently purchased food from the defendant at 111 Fulton Street.

32. Food purchased by the plaintiff from Burger King cost less than competing food options purchased from Chipotle.

33. Some other restaurants that the plaintiff frequented in the Financial District that competed for the same business as the defendant included pizza parlors, including Rosella’s Pizzeria, which also sold fresh salads located at 164 Williams Street, NY, NY 10038; and Little Italy Pizza, located at 50 Fulton Street, NY, NY 10038); and Delicatessens, including Pace Gourmet Deli located at

122 Nassau Street, NY, NY 10038; and Open Kitchen located at 123 Williams Street, NY, NY 10005).

34. The plaintiff has eaten at least one burrito from Open Kitchen, which has a Mexican serving station that assembles burritos similar to the defendant.

35. Open Kitchen is 282 feet away from the Chipotle at 111 Fulton Street. That is less than a 1-minute walk away.

36. The plaintiff has also eaten at Dos Toros Taqueria (fast-casual Mexican), located at 101 Maiden lane, New York, NY 10038, which is about a five-minute walk from the Chipotle at 111 Fulton Street.

37. None of the aforementioned competitors to the defendant had made any observable animal-raising claims in any of their marketing or advertising materials with which the plaintiff interacted.

38. The defendant's location at 111 Fulton Street, New York, NY is a busy location for that area. It sits on a corner directly across from two subway station stops—the 2/3 and the A/C.

39. From 2014 to 2021, the plaintiff worked, at all material times, within a five-to-ten minute walking distance from the defendant's location at 111 Fulton Street, New York, NY.

40. From 2014 to 2021, the plaintiff was an avid walker. During the warmer seasons, he walked approximately three to five hours per day in the Financial District in the direct vicinity of the defendant's location of 111 Fulton Street, New York, NY.

41. From 2014 to 2021, the plaintiff has seen hundreds of customers walking in and out of the Chipotle location at 111 Fulton Street, New York, NY. Of the customers exiting that location, a substantial percentage of them were carrying the defendant's brown bag on their person.

42. Over the years, the plaintiff was consciously and subconsciously influenced by the defendant's advertising and marketing, which included its bag-advertising practices.
43. Without conducting an independent investigation, the plaintiff relied on the defendant's "responsibly" advertising claims for their truth since the plaintiff understood that the defendant was in the superior position to verify its own claims.
44. The defendant uses "Raised Responsibly" as a slogan.
45. The defendant uses "Responsibly Raised" as a slogan.
46. The defendant uses "Raised Responsibly" as a tagline.
47. The defendant uses "Responsibly Raised" as a tagline.
48. Both "Raised Responsibly" and "Responsibly Raised" are claims.
49. Both "Raised Responsibly" and "Responsibly Raised" are advertising claims.
50. Both "Raised Responsibly" and "Responsibly Raised" are assertions of fact.
51. Both "Raised Responsibly" and "Responsibly Raised" are advertising.
52. Both "Raised Responsibly" and "Responsibly Raised" are ideological advertising.
53. Both "Raised Responsibly" and "Responsibly Raised" are brand advertising.
54. Both "Raised Responsibly" and "Responsibly Raised" are image advertising.
55. Both "Raised Responsibly" and "Responsibly Raised" are informational advertising.
56. Both "Raised Responsibly" and "Responsibly Raised" are marketing communications.
57. The defendant secured trademark rights for the phrase, "Responsibly Raised."
58. The defendant secured trademark rights for the phrase "Raised Responsibly."
59. The above registered trademarks do not differentiate as to which animals or species of animals the trademark(s) apply.
60. The defendant's use of "Raised Responsibly" and "Responsibly Raised" are not applicable

to all animals it uses for meat all of the time.

61. “Raised Responsibly” is a measurable claim.

62. “Responsibly Raised” is a measurable claim.

63. In its marketing, including but not limited to its Sustainability Report (2020), the defendant, using pounds and percentages, measures its claims as to how the subject animals were/are “treated humanely,” which is a claim that constitutes part of the defendant’s definition of “Raised Responsibly,” “Responsibly Raised,” and/or “Responsibly Raised Meat.”

B. *The Point of Injury in this Case*

64. On October 19, 2021 at approximately 4:45 p.m., the plaintiff entered the defendant’s chain restaurant located at 234 5th Avenue, New York, NY 10001.

65. The plaintiff purchased a burrito containing black beans, brown rice, Sofritas (tofu made from soybean curds), fajita vegetables, Tomatillo-Red Chili Salsa, and lettuce (“the product”).

66. The plaintiff paid \$10.34.

67. The plaintiff purchased the same product (with Sofritas) from the defendant on the day before on October 18, 2021.

68. The plaintiff purchased the same product (with Sofritas) from the defendant on September 22, 2021, September 21, 2021, September 7, 2021, and September 2, 2021.

69. In and around September 2021 and October of 2021, the plaintiff has developed a stronger sense of compassion for animals, and has gained more knowledge, insight, and awareness of animal husbandry practices, as well as the health consequences of meat consumption, particularly meat overconsumption.

70. The plaintiff’s repeated purchases of the defendant’s plant protein demonstrate the plaintiff’s growing sensitivity to those issues.

71. As the plaintiff was visiting the defendant's restaurant in September and October of 2021, he felt something morally wrong with the defendant's bins filled with chopped-up animal carcasses served in an assembly line format.

72. The plaintiff has grown up with animals, including dogs, cats, hamsters, gerbils, and lizards.

73. The advertising claim forming the basis of this action is the defendant's advertising claim that its pork is "Raised Responsibly." (See Exhibit 1, attached).

74. The burrito purchase from the defendant October 19, 2021 was brought home in the brown bag that is depicted in Exhibit 1.

75. Upon pulling the burrito out of the bag on that evening of October 19, 2021, the plaintiff read and received the claims contained on Exhibit 1.

76. The word "Raised" in Exhibit 1 is the only word that is encircled in a bubble with squiggly circles.

77. To the plaintiff, the defendant's bag advertising was catchy, partly because its word art, and placement of language.

78. To the plaintiff, the word "Raised" was a noticeable word on Exhibit 1.

79. To the plaintiff, the word "Responsibly" was also a noticeable word on Exhibit 1.

80. Upon reading Exhibit 1, the plaintiff received the express and implied claims as intended by the defendant.

81. Upon reading Exhibit 1, the plaintiff also read and received the express and implied claims with new insight, which enabled him to decipher the actual probabilities of veracity of the claims with particular regard to the phrase, "Raised Responsibly."

82. By the point in time he was reading Exhibit 1, the plaintiff had been made aware of a general trend by meat advertisers to make claims as to animal husbandry practices.

83. At the point of receiving the messaging in Exhibit 1, the plaintiff was more susceptible to injury as a result of misrepresentations as to animal husbandry practices and as to animal welfare.

84. The plaintiff read and understood the defendant's "Raised Responsible" to imply a claim of humaneness of the raising of the animals at issue.

85. Upon reading Exhibit 1, the plaintiff interpreted the messaging to apply to all species of animals that the defendant uses as meat, not only the "PORK" referenced on Exhibit 1.

86. The plaintiff also interpreted the word "RESPONSIBLY" to mean not only "humanely" but also "ecologically responsible" and/or "environmentally responsible."

87. Upon information and belief, the defendant is aware of pushback from animal-welfare advocates as to use of "humanely" in animal production.

88. Upon reading the "Raised Responsibly" advertising claim on Exhibit 1, the plaintiff shortly thereafter discovered that the defendant partly defines "Raised Responsibly" as "treated humanely from birth to slaughter."

89. On page 28 of its "Sustainability Report," (2020) the defendant claims within the "Food with Integrity (FW) subheading" the following definition:

"Responsibly Raised Meats: All animals have been raised responsibly, which to us means that they're treated humanely from birth to slaughter, fed a vegetarian diet, and never given added hormones or sub-therapeutic antibiotics."

90. Over the years, the plaintiff was influenced by the defendant's aggressive animal-welfare advertising.

91. For a period of time, the defendant used to place the following phrase inside of a sketched pig on its brown bags: "NO ANIMAL CRUELTY."

92. Upon information and belief, the defendant discontinued use of the claim, “NO ANIMAL CRUELTY.”

93. Upon information and belief, the defendant previously employed Rachel Ziegler as a kitchen manager in Mechanicsburg, PA.

94. Upon information and belief, Rachel Ziegler allegedly took photographs of packaged meat purchased by the defendant from its supplier(s) one of which read, “Bell and Evans,” a local factory farm.

95. Upon information and belief, Rachel Ziegler allegedly visited the Bell and Evans factory farm and saw thousands of birds confined into a single shed, some which were starving, injured, and dead.

96. Upon information and belief, Rachel Ziegler allegedly stated “Consumers choose Chipotle because they care about animals.” “But Chipotle abuses that trust, reaping millions in profits through lies and animal cruelty.”

C. *The Defendant’s Inconsistent, Contradictory Messaging*

97. The definition of “Responsibly Raised Meats” on page 28 of its Sustainability Report (2020) unambiguously refers to “[a]ll animals” as being treated “humanely” from “birth to slaughter.”

98. On page 39 of its Sustainability Report (2020), the defendant implies that some of its “stakeholders” should develop “more humane systems”:

In 2020, 100% of our pork came from suppliers meeting our animal welfare standards, meaning they do not use sow stalls during gestation and farrowing, or routine tail docking or teeth clipping. Therapeutic antibiotic treatment for a diagnosed illness is permitted. Animals that are treated with antibiotics are excluded from slaughter until after a withdrawal period to ensure that no trace of antibiotics remains in their system. Chipotle is in ***support of the industry-wide search to find alternatives to the use of high concentration carbon dioxide stun.*** We encourage industry stakeholders to ***develop more humane systems*** and are

prepared to investigate new options as they are commercially available. [emphasis added].

99. The defendant's messaging is contradictory. On page 28, the defendant declares that "all animals have been treated humanely from birth to slaughter." On page 39, however, it tells us "more humane systems" are "encouraged."

100. The defendant admits that some systems are not humane enough.

101. Factual questions exist in the minds of reasonable consumers acting reasonably whether or not "all animals" used by the defendant have been treated humanely.

102. On page 39, above, the defendant admits that "Chipotle is in support of the industry-wide search to find alternatives to the use of high concentration carbon dioxide stun."

103. High concentration carbon dioxide stunning of pigs involves grouping pigs into chambers and gassing them into unconsciousness using high concentrations of carbon dioxide (CO₂). Thereafter, the pigs are "stuck" with a knife, just below the point of the breast bone, severing arteries and veins, while the pigs die from exsanguination (blood loss).

104. High concentration carbon dioxide stun is a controversial practice because some pigs recover consciousness before being "stuck" and bled to death.

105. Recovering consciousness before exsanguination results in miserable deaths for pigs because some pigs take a long time to lose brain function, and therefore consciously feel the effects of bleeding to death.

106. Some pigs attempt to retreat and escape as they are being gassed into unconsciousness.

107. CO₂ stunning is not conducive to animal welfare as showed by varying behavioral changes in pigs.

108. The defendant admits that high concentration carbon dioxide stunning is not humane, or not humane enough.

109. The defendant implies in its Sustainability Report (2020) that high concentration carbon dioxide stun is not humane.

110. The defendant began producing its Sustainability Reports after proposals were filed by investor-shareholders, Trillium Asset Management and Domini Social Investments.

D. *The Defendant's Pig-Welfare Advertising Omits Critical Information*

111. Again, page 39 of the Defendant's Sustainability Report (2020):

In 2020, 100% of our pork came from suppliers meeting our animal welfare standards, meaning they do not use sow stalls during gestation and farrowing, or routine tail docking or teeth clipping. Therapeutic antibiotic treatment for a diagnosed illness is permitted. Animals that are treated with antibiotics are excluded from slaughter until after a withdrawal period to ensure that no trace of antibiotics remains in their system. Chipotle is in support of the industry-wide search to find alternatives to the use of high concentration carbon dioxide stun. We encourage industry stakeholders to develop more humane systems and are prepared to investigate new options as they are commercially available.

112. By inference, the defendant still condones some tail docking and teeth clipping.

113. Tail docking is the removal of part of the pigs' tail in order to reduce the risk of tail biting in older pigs.

114. Tail biting is painful and can lead to serious injury.

115. Tail docking is often a symptom of physical or mental stress.

116. Interested groups, such as National Hog Farmer allegedly, "indicate that raising pigs without tail docking in a confinement housing system increases the incidence of tail biting and tail damage, resulting in higher morbidity, reduced value and compromised welfare of pigs."

117. The opinion of National Hog Farmer suggests that the pigs suffer either way—with or without tail docking—in confinement housing systems, where a percentage of the defendant's pigs have lived.

118. Teeth clipping of piglets involves cutting their teeth off close to the gums.

119. In the defendant's Sustainability Report (2020), the defendant mentions nothing about the painful practice of using nose rings on pigs.

120. Nose rings involve placing a metal ring that pierces through the most sensitive part of a pig's body, the snout, to reduce rooting, damage to landscaping, and reduce escape attempts.

121. A pig's nature drives them to root and explore with their snout. Pigs root for a variety of reasons. They use their snout to search for food, to dig down the cool moist dirt on a hot day, for comfort, amusement, and boredom. Pigs ingest essential minerals from the soil when they root, as well as finding other food sources.

122. A pig's health and welfare depend on their ability to root.

123. Rooting is considered to be a behavioral need of pigs.

124. The defendant does not address any other factors that relate directly to pig welfare including, overcrowding; barren environments; bare concrete flooring; poor air quality, lack of individual care, selective breeding problems, unnatural feed, feed additives, inhumane handling, on-farm killing, transport, downed pigs,

125. Upon information and belief, the defendant permits its suppliers to castrate piglets.

126. Upon information and belief, the defendant does not pay for any veterinary care relating to treatment and pain management associated with its suppliers' castration of piglets.

127. The plaintiff received the defendant's "PORK Raised Responsibly" as consistent with the defendant's intent that it was referring to "all animals" subject to that claim.

E. *Language Construction Defects in the Defendant's Advertising*

128. The defendant's use of the word "Raised" as in "Raised Responsibly" implies as possessory interest over the animals to which the claims apply.

129. The defendant's use of the word "Raised" as in "Raised Responsibly" implies a level of control over the animal-raising process that fail to meet the expectations of reasonable consumers acting reasonably.

130. Since the defendant uses animal welfare as one of its most-prominent marketing inducements throughout its marketing strategy, reasonable consumers would believe that the defendant is able to measure and verify that *all* (or substantially all) of the animals raised were "Responsibly Raised" in a way that meets all of the defendant's sub-definitions. But it cannot since it sells "conventionally raised" meats some of the time depending on supply shortages.

131. Regardless of the defendant's marketing, animal production is inherently inhumane and cannot be humanized.

132. The defendant carefully selected the words "all animals" and "treated humanely."

133. The defendant's definition of "humanely" conflicts with the literal definitions of "humane" and "humanely" as defined in the Merriam-Webster dictionary: "marked by compassion, sympathy, or consideration for humans or animals."

134. The defendant's definition of "Humanely" conflicts with the literal definitions of "humane" and "humanely" as defined in Oxford Languages dictionary: having or showing compassion or benevolence.

135. The defendant's definition of "humanely" alters and restricts the literal definitions of "humane" and "humanely" as defined in dictionaries, Merriam-Webster and Oxford Languages.

136. The defendant's use of "all" as in "all animals" are "treated humanely from birth until slaughter" is an establishment claim.

137. An establishment claim is a claim that contains express or implied statements regarding the amount of support the advertiser has for the product claim.

138. The word “all” means “every single one,” according to Oxford Languages.

139. The defendant’s use of “all” as in “all animals” are “treated humanely from birth until slaughter” is an absolute claim.

140. The defendant’s use of “all” as in “all animals” are “treated humanely from birth until slaughter” suggests that it possessed scientific proof establishing that all of the subject animals experienced humane treatment from birth to slaughter.

141. To substantiate its animal-welfare advertising claims, the defendant must have already possessed evidence sufficient to satisfy the relevant scientific community of the truths of its claims.

142. Upon information and belief, adequate and sufficiently reliable tests do not establish the defendant’s express claims and implied claims that “all animals” are “treated humanely from birth until slaughter.”

143. The defendant’s interchanging between “responsibly raised” to “responsibly sourced” is likely to confuse the reasonably consumer acting reasonably as to the origin of the animals at issue.

144. In some places in its sustainability report, the defendant interchanges the phrase “responsibly raised” with “responsibly sourced.” For example, on page 42, Farmer, Vincent Breton claims:

“[f]rom the way we grow our grains, to our animal welfare standards, the Chipotle team is committed to working hand in hand with duBreton to provide their customers with *responsibly sourced* pork, raised with the highest level of animal welfare standards and respect.” [emphasis added].

145. When receiving the defendant’s marketing and advertising messaging as alleged in this complaint, the plaintiff was not necessarily comparing the messaging to industry standards or to competitors; Rather the plaintiff had assessed whether the claims were true or false under definitions and standards commonly used and understood by consumers.

146. Over the years, the plaintiff assumed that the defendant was meaningfully regulated in the truthfulness of its advertising.

147. The fact that the defendant is a publicly traded company added to the plaintiff's belief that defendant was and is meaningfully regulated in the truthfulness of its advertising.

148. Upon information and belief, the consuming public, or a significant percentage thereof, believes that the defendant is meaningfully regulated in the truthfulness of its advertising.

148. The plaintiff was part of a particular group, targeted by the defendant, who would likely be affected by the advertising claims, which is why the defendant made the claim to the plaintiff.

149. The advertising claim(s) at issue must be examined from the perspective of a reasonable member of the targeted group that contained the plaintiff.

150. Upon information and belief, the defendant fails to adequately define or substantiate the perceptively measurable claims that its animals (including pigs) are "raised responsibly."

151. The claim "raised responsibly" contains targeted, express claims that are aimed at particular consumers who have particular beliefs and values, especially with regard to animal welfare, which is a growing concern.

152. The defendant uses the slogan "raised responsibly" to persuade consumers into believing they are supporting a company whose practices align with their values.

F. *The Certified Humane® Claim and Certified Humane®'s Subsequent Denial of the Defendant's Sweeping Claims*

153. On the defendant's website,¹ (See Exhibit 2, attached—a screenshot taken on October 20, 2021), the defendant asserts, among other things: "158.4 Million Pounds of Certified Humane™ Pork, Chicken and Beef."

¹ <https://www.chipotle.com/about-us/sustainability>

154. Exhibit 2 does not clarify what it means by “158.4 Million Pounds of Certified Humane™ Pork, Chicken and Beef.”

155. The plaintiff was confused and misled by what the defendant meant by “158.4 Million Pounds of Certified Humane™ Pork, Chicken and Beef.”

156. On October 20, 2021, the plaintiff spoke to a staff member at Certified Humane®, a 501(c) non-profit organization, who denied the defendant’s apparent claims that it is Certified Humane™; or that Certified Humane® made any inspection at any Chipotle location, or made any inspection at the defendant’s suppliers’ location(s) to sufficient to justify, support, or verify the defendant’s claim that it used “158.4 MILLION pounds of Certified Humane™ Pork, Chicken, and Beef.”

157. The defendant’s publicly-filed 2019 Annual Report and Proxy Statement (10K) omits any representation that its meats are Certified Humane™ or Certified Humane®.

158. The plaintiff’s use of Certified Humane™ in its marketing and advertising while omitting it in its 10K raises several issues of fact as to the completeness and accuracy of its claims relevant to this action.

159. Any misrepresentation by the defendant as to animal-welfare certification amounts to misbranding under state and federal law.

G. *The Defendant’s Certified Humane™ Claims are Advertising Claims*

160. The defendant’s statement on Exhibit 2, “154.8 MILLION POUNDS OF CERTIFIED HUMANE™, PORK, CHICKEN, AND BEEF” is an advertising claim.

161. The defendant’s statement on Exhibit 2, “154.8 MILLION POUNDS OF CERTIFIED HUMANE™, PORK, CHICKEN, AND BEEF” is brand advertising.

162. The defendant’s statement on Exhibit 2, “154.8 MILLION POUNDS OF CERTIFIED HUMANE™, PORK, CHICKEN, AND BEEF” is ideological advertising.

163. On Exhibit 2, through the use of “154.8 MILLION POUNDS OF CERTIFIED HUMANE™, PORK, CHICKEN, AND BEEF,” the defendant seeks to link its meat products and its brand to improved animal welfare in the minds of its consumers.

164. On Exhibit 2, through the use of “154.8 MILLION POUNDS OF CERTIFIED HUMANE™, PORK, CHICKEN, AND BEEF,” the defendant does not separate, by percentages or otherwise, amongst the animals which are “CERTIFIED HUMANE™, PORK, CHICKEN, AND BEEF.”

165. On Exhibit 2, through the use of “154.8 MILLION POUNDS OF CERTIFIED HUMANE™, PORK, CHICKEN, AND BEEF,” the defendant does not separate, by percentages or otherwise, as to which animal species was or is CERTIFIED HUMANE™, PORK, CHICKEN, AND BEEF” as identifiable or connected to any store or geographic region.

166. The defendant’s statement on Exhibit 2, “24.8 MILLION POUNDS OF GLOBAL ANIMAL PARTNERSHIP™” (G.A.P. Step 1) CERTIFIED PORK AND BEEF” is brand advertising.

167. Certification as to animal-welfare treatment is advertising.

168. Page 43 of the defendant’s Sustainability Report (2020):

In 2020, 100% of our pork carried an additional welfare certification to meet or exceed our requirements.

Furthermore, 72% of our pork was either Certified Humane or Global Animal Partnership (GAP) Certified— a 23% increase from our 2018 Sustainability Report. Additionally, 25% of our pork was Red Tractor and RSPCA Assured.

169. The preceding allegation contains measurable claims.

170. By ascribing percentages to the purported percentages of pork with welfare certifications attached, the defendant measures what it means by “treated humanely from birth until slaughter,” a sub-definition of “Responsibly Raised Meat.”

171. By using specific definitions and measurements to define “Raised Responsibly,” “Responsibly Raised,” and “Responsibly Raised Meat,” these slogans cannot be considered puffery, which is by definition objectively unverifiable.

172. Certified Humane®, American Humane Certified, and Global Animal Partnership (Step 1) do not guarantee that all animals are treated humanely from birth to slaughter.

173. Certified Humane®, American Humane Certified, and Global Animal Partnership (Step 1) do not require that animals be raised on pasture; They do not provide for sufficient exercise and socialization; They do not require the animals to breed with healthy enough genetics to engage in natural behavior throughout their lifespan; They do not guarantee natural weaning periods; and they do not prohibit culling (slaughter) of newborn male chicks.

174. On page 25 of its Sustainability Report (2020), the defendant claims that last year it bought 7.8 million pounds of GAP (Step 1) and 7.7 million pounds totaling 15.5 pounds. Yet, on page 37, it claims it purchased 11, 837, 641 pounds of pork.

175. The defendant admits that most farms lose money. On page 31 of its Sustainability Report, the defendant admits that 56% of farms lost money last year and that 40X more farms were lost in recent years than gained.

H. *Consumer Surveys Show they are Materially Influenced by “Humanely” Advertising Claims*

176. American consumers increasingly identify the welfare and protection of food animals as a major area of concern as a major area of concern, both politically and as criteria for food selection.²

² The welfare and protection of animals raised for food was seen as very or somewhat important by 79 percent of respondents to a survey managed by the Humane Research Council. Humane Research Council, Animal Tracker – Wave 112 (2008), available at <http://www.humaneresearch.org/content/animal-tracker-wave-1-june-2008>. 73 percent responded that they would support a law requiring that farm animals, including, pigs, cows, and chickens, be provided with enough space to behave naturally.

177. The public is willing to pay more for food that is labeled “Humanely Raised.” A 2007 survey by Public Opinion Strategies found that 58 percent of consumers would spend an additional 10 percent or more for meat, poultry, eggs, or dairy products labeled “Humanely Raised.”³

178. Beginning in the mid-2000’s, consumer preference for food from humanely treated animals created a market for products with holistic animal welfare and environmental label claims such as “Humanely Raised,” “Humanely Handled,” and “Sustainably Farmed,” along with a variety of other claims.⁴

179. A majority of consumers agree that food producers should not be allowed to use the claim “humanely raised” on their product labels unless the producers exceed minimum industry animal care standards.⁵

³ Frequently Asked Questions, American Humane Certified, <http://www.humaneheartland.org/faqs> (last visited Mar. 1, 2014). Additionally, consumer surveys by the Animal Agriculture Alliance in 1993, 1998, and 2004 demonstrated that American shoppers are willing to pay more for food labeled “humanely raised.” In 2004, 31 percent of respondents were willing to pay 5 percent more and 23 percent were willing to pay 10 percent more. Animal Agric. Alliance & Nat’l Corn Growers Ass’n, Consumer Attitudes about Animal Welfare: 2004 National Public Opinion Survey 13(2004).

⁴ The Kroger Co.’s Simple Truth line of products, launched in 2012, includes an unverified “humane” claim on its natural chicken. The company disclosed recently that sales of the Simple Truth line have grown at an “astonishing pace.” K. Nunes, Kroger’s Simple Truth Simply Astonishing, MeatPoultry.com (Mar. 7, 2014).

⁵ 1 Survey of Consumer Attitudes About Chicken Welfare, ANIMAL WELFARE INST. (Oct. 2020) <https://awionline.org/sites/default/files/uploads/documents/SurveyConsumerAttitudesChickenWelfare.pdf>. This perception of the claim has remained consistent for the past 10 years: Survey of Consumer Attitudes About Animal Raising Claims on Food (Part II), Animal Welfare Inst. (Oct. 2018) <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-survey-on-animal-raising-claims-Oct-2018.pdf> (82% of meat, poultry, egg or dairy purchasers agree); Survey of Animal Raising Claims Used on Meat Packaging, ANIMAL WELFARE INST. (Oct. 2013) (88% of frequent meat or poultry product purchasers agree) <https://awionline.org/sites/default/files/uploads/documents/fa-meatlabelingpoll-041714.pdf>; U.S. Poll on the Welfare of Chickens Raised for Meat, ANIMAL WELFARE INST. 2 (Apr. 2010) [20](https://awionline.org/sites/default/files/uploads/legacy-uploads/documents/FA-</p></div><div data-bbox=)

180. Food labels are theoretically used to help consumers make educated purchasing decisions.

181. If consumers do not know the meaning of label claims—and have no ability to access that information—an educated consumer base does not exist and companies like the defendant are able to mislead them.

182. The defendant’s attempts at sanitizing reality with its deceptive advertising amounts to “humanewashing.”

183. Humanewashing attempts to use false and misleading advertising directed at consumers who have some degree of concern about animal welfare, particularly the humaneness of the treatment it receives pre-slaughter and during slaughter. The concept is similar to “greenwashing” (creating the false impression through misleading advertising that a company’s products are more environmentally sound).

184. Humanewashing attempts to divert, distract, and detach consumers from the realities of modern-day meat agriculture and farming.

185. Since consumers are becoming increasingly aware of those realities—and demonstrating more awareness and compassion in their purchasing choices—companies like the defendant attempt to paint a different picture of the lives of the animals than what occurs in real life.

I. *The Defendant’s Admission of the Power of its Marketing Efforts*

186. The follow appears on page 103 of the Defendant’s Sustainability Report (2020):

MARKETING & COMMUNICATIONS

We know how powerful, effective, and influential marketing can be. We’re committed to using marketing responsibly and ensuring total transparency on what it is we are doing. We hope our marketing helps us continue to drive change and Cultivate A Better World. ***Our marketing program and philosophy is a model***

HumanelyRaisedCagedFreeSurvey081110-1281725036-document-23248.pdf (77% of frequent chicken purchasers agree).

designed to generate higher consumer awareness and drive guests into our restaurants. Our ultimate marketing mission is to make Chipotle not just a food brand, but a *purpose-driven lifestyle brand*. We want our brand to be more visible, more engaging, and more relevant in culture. [emphasis added].

187. The defendant succeeded in driving the plaintiff into the defendant's stores based on its intentional marketing philosophies.

188. The plaintiff, to an appreciable degree, relied on the veracity of the defendant's animal-welfare claims and sustainability messaging when deciding to purchase both its meat and non-meat products.

189. Upon information and belief, based on the consumer surveys cited herein, reasonable consumers acting reasonably were and are influenced by the defendant's intentional marketing strategies to "drive guests" into its "restaurants."

J. *The Defendant Changes its Advertising Claim from "Responsibly Raised" to "Conventionally Raised" Depending on Market Conditions.*

190. On page 2 of the defendant's 2019 Annual Report (10K):

"In all of our Chipotle restaurants, we endeavor to serve only meats that are raised in accordance with criteria we have established in an effort to improve sustainability and promote animal welfare, and without the use of non-therapeutic antibiotics or added hormones. We brand these meats as "Responsibly Raised®." One of our primary goals is for all of Chipotle restaurants to serve meats raised to our standards, but we have and expect to continue to face challenges in doing so. For example, some of our restaurants periodically serve *conventionally raised* chicken or beef due to *supply constraints* for our Responsibly Raised brand meats or stop serving one or more menu items due to additional supply constraints. When we become aware of such an issue, we clearly and specifically disclose this *temporary change on signage* in each affected restaurant so that guests can adjust their orders if they choose to do so." [emphasis added].

191. In other words, after years of indoctrinating the consuming public with its widespread marketing messaging ("conditioning" the market) about holding suppliers to its self-created animal-welfare standards, it simply pulls and adjusts that messaging for the time period in which shortages occur.

192. During such shortages, it serves “conventionally raised” meat while allegedly notifying its consumers, by signage, of the contradictory messaging.

193. By the time the typical consumer sees this change from “responsibly raised” meat to “conventionally raised,” the damage is done; The consumer was already lured into the store to consume the defendant’s meat products—whether raised “responsibly” or “conventionally.”

194. The defendant does not meaningfully define “conventionally raised.”

195. Upon information and belief, none the defendant’s animal-welfare promises that apply to its “Responsibly Raised” meat is also promised to apply to the “conventionally raised” meat served during said “supply constraints.”

196. The defendant’s switching meats from “Responsibly Raised” to “Conventionally Raised” is a type of bait-and-switch practice that is actionable under all theories alleged in this complaint.

197. Since the defendant admits that its “Responsibly Raised” or “Raised Responsibly” slogans apply only part of the time, by definition the claims are false part of the time.

198. Since the defendant admits that its “Responsibly Raised” or “Raised Responsibly” slogans apply only part of the time, by definition the claims are misleading and deceptive part of the time.

199. In the context of Animal Welfare, the defendant holds itself out as being a market leader.

200. The defendant’s limited efforts to make the lives of some animals only less inhumane do not transform all of its practices, and its suppliers’ practices, into humane practices.

K. *The Defendant Causes Repeated Pathogenic Outbreaks*

201. Just last year, the defendant paid a \$25 million dollar fine and entered into a Deferred Prosecution Agreement to resolve criminal charges that its adulterated food sickened approximately 1,100 people from 2015-2018.

202. In that action, the Justice Department charged the defendant with two counts of violating the Federal Food, Drug, and Cosmetic Act by adulterating food while held for sale after shipment in interstate commerce.

203. Below are some of the outbreaks caused by the defendant. The numbers of people infected are approximate figures.

- March 2008 hepatitis outbreak (22 people infected in California)
- April 2008 norovirus outbreak (400 people infected in Ohio)
- July 2015 E. coli outbreak (5 people infected in Oregon)
- August 2015 norovirus outbreak (207 people infected in California)
- August 2015 Salmonella outbreak (64 people infected in Salmonella)
- October 2015 E. coli outbreak (52 people infected in Oregon)
- November 2015 E. coli cases (5 people infected in Kansas, Oklahoma, Oregon, and Washington).
- December 2015 norovirus outbreak (141 people infected in Massachusetts)
- July 2017 norovirus outbreak (130 people infected in Virginia)
- July 2018 Clostridium perfringens outbreak (700 people infected in Ohio)(This foodborne outbreak has been called the worst incident to date that can be traced to a single restaurant location)

204. The defendant's advertising claims relate directly to consumer safety.

205. Animal mishandling, animal mistreatment, and adulteration impact the health of the animals, which can impact the health of the humans who consume those animals.

206. Farming practices "from birth to slaughter" are matters of public safety.

207. News of the above pathogenic outbreaks affected the defendant's stock prices on certain occasions.

208. Upon information and belief, the defendant engages in its marketing strategies in part to allay consumer and investor concerns about the health and wellness of its meat products.

209. The defendant owes general duties to its consumers and to its investors to advertise truthfully and to disclose relevant product information since its products directly relate to consumer safety.

FIRST CLAIM FOR RELIEF
(NYGBL § 349)
(Deceptive acts and practices unlawful)

210. The plaintiff repeats, realleges and incorporates by reference the foregoing paragraphs.

211. NYGBL § 349 declares unlawful and deceptive acts or practices in the conduct of any business, trade, or commerce, or in the furnishing any service in the State of New York.

212. A plaintiff who brings an action under the statute must prove three elements: first, that the challenged act or practice was consumer-oriented; second, that it was misleading in a material way; and third, that the plaintiff suffered injury as a result of the deceptive act.

213. NYGBL § 349 is directed at wrongs against the consuming public, and it allows a private right of action by any person who has been injured by a violation of the statute.

214. In addition to the right of action granted to the attorney general, any person who has been injured by reason of any violation of the prohibition against deceptive trade practices may bring an action “in his or her own name to enjoin such unlawful act or practice, an action to recover his or her damages, or both such actions.”

215. The defendant’s acts and practices are directed entirely at the consuming public and the consumer marketplace.

216. For purposes of NYGBL § 349, deceptive or misleading representations or omissions are defined objectively as those likely to mislead a reasonable consumer acting reasonably under the circumstances.

217. NYGBL § 349 is meant to empower consumers, especially the disadvantaged, to even the playing field of their disputes with better funded and superiorly situated fraudulent businesses.

218. “New York law provides remedies, including private rights of action, for misbranding food under consumer protection laws, such as GBL § 349, which broadly prohibits use of ‘deceptive

acts or practices' in business dealings in New York." *Koenig v Boulder Brands, Inc.*, 995 F Supp 2d 274, 280-81 (SDNY 2014).

219. NYGBL § 349 is focused on a seller's deception and its subsequent impact on consumer decision-making—not the consumer's ultimate use of the product.

220. NYGBL § 349 requires a plaintiff to show that the act complained of was likely to mislead a reasonable consumer acting reasonably under the circumstances.

221. A party need not necessarily be a "consumer" or a natural person to avail itself of the statutory remedy, so long as it can show that it suffered a detriment or injury as a result of the defendant's acts or practices, and that the defendant's conduct affects the public interest, or is consumer-oriented conduct having a broad impact on consumers at large.

222. A reasonably person acting reasonably would have been materially misled by the defendant's advertising claims.

223. Reliance is not an element of a claim under the statute, nor is intent to defraud.

224. The defendant's practice of humanewashing, selling misbranded meat, falsely and deceptively advertising, manipulating commonly used definitions, and bait-and-switch practices have the capacity and tendency to deceive and mislead a significant percentage of consumers in a material way because the practice induces consumer purchases by manipulating public trust and vulnerabilities.

225. The defendant's extensive and deceptive marketing scheme across its product lines continues to a) reduce transparency of the real treatment of animals during the animal-production process; b) produce invisibility in its suppliers' treatment of animals in animal production; c) alters and maintains false and misleading perceptions, beliefs and schemas relating to the real treatment

of animals in animal production; and d) engages in “psychic numbing” to disconnect consumers from the realities of what takes place on farms and in animal production.

226. The plaintiff acted and acts deceptively by making the representations about its suppliers’ husbandry practices over which the defendant lacks sufficient verification process.

227. “The animal abuses—that are alleged to occur belie and render false, deceptive, and misleading the defendant’s advertising claims—take place behind closed doors while 93% of the population opposes the suffering of animals raised for food, and 90% oppose factory farming when asked their opinion, according to a Global Stewards public opinion survey,” *U.S. Public Opinion Survey Results on the Environment, Trade, and Campaign Finance Reform*.

228. The plaintiff acted and acts deceptively by making the representations about its suppliers’ husbandry practices when it lacks sufficient control over those practices, especially during shortages when the defendant sells “conventionally raised” meat.

229. The defendant’s advertising claims, considered in their totality, are not fairly balanced to enable reasonable consumers to make informed choices.

230. The defendants’ attempt at “humanewashing,” which diverts, distracts, and detaches consumers from the realities of modern-day meat agriculture and farming, is a deceptive act and practice.

231. The defendant’s usage of “Raised Responsibly” and “Responsibly Raised” 100% of the time when it can only apply some of the time was and is deceptive and misleading in a material way because reasonable consumers would be misled into believing that acceptable standards apply all the time, especially in light of the defendant’s own declaration that “all animals” are “treated humanely from birth to slaughter.”

232. As a result of these violations of NYGBL § 349, the plaintiff is entitled to recover actual damages, three times the actual damages up to \$1,000, an injunction in the proper court, costs and reasonable attorneys' fees pursuant to NYGBL § 349(h).

Injunctive Relief Warranted under NYGBL § 349(h) and NYGBL § 350

233. The New York State legislature amended both NYGBL §§ 349 and 350 to add a private right of action for money damages, *injunctive relief* and reasonable attorneys' fees.

234. The statute reads in relevant part:

General Business Law § 349 Deceptive acts and practices unlawful

...

(h) In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

235. The defendant operates approximately 181 restaurants in New York.

236. In those restaurants, it uses the deceptive advertising claim "Raised Responsibly" on its ubiquitous, brown bags that the plaintiff now consciously witnesses around New York City.

237. Each time the plaintiff sees an unwitting consumer carry that bag with that advertising claim, he experiences a repeated emotional insult consistent with what is described above.

238. Without enjoining the defendant from using that deceptive claim on those bags, millions of New Yorkers will continue to be irreparably deceived and misled on matters of important public interest — animal welfare, public health, and environmental soundness.

239. The advertising claim will also continue to mislead consumers—like it did the plaintiff—into believing they are supporting a company whose practices align with their values.

240. The plaintiff is a consumer typically targeted by its advertising practices.

241. The plaintiff physically witnesses the falsely advertised products attempts, which are aimed at convincing him and the community of facts that are harmful, unlawful, threatening, recurring, and imminent.

242. The defendant's false advertising claims represent negative externalities similar to environmental pollutants and nuisances.

243. The consuming public at large—which includes the plaintiff—need not actually be “consumers” as restrictively defined in other contexts in order to suffer injury and future injury for purposes of seeking an injunction.

244. The consuming public at large—which includes the plaintiff—need not justifiably rely on the advertising claims to be actionable for purposes of seeking an injunction.

245. The consuming public at large—which includes the plaintiff—will suffer future detriment and injury by witnessing the false and injurious advertising claims.

246. Without injunctive relief, the advertising claims will continue to mislead consumers into believing they are supporting a company whose practices align with their values.

247. If allowed to continue without injunctive relief, the defendant's advertising claims will continue to reduce transparency and influence consumer decisions in ways that are contrary to public interest.

248. If allowed to continue without injunctive relief, millions of New Yorkers will continue to be irreparably deceived and misled on matters of important public interest such as animal welfare, public health, and ecological soundness.

249. New York State has a strong public interest in truthful advertising in the area of animal-welfare advertising.

250. The public interest of New York State outweighs the defendant's commercial need to publish its untruthful advertising.

SECOND CLAIM FOR RELIEF
(NYGBL § 350)
(False advertising unlawful)

251. The plaintiff repeats, realleges and incorporates by reference the foregoing paragraphs.

252. False advertising in the conduct of any business, trade, or commerce or in the furnishing of any service is unlawful.

253. The statute applies to virtually all economic activity, and New York courts apply the statute broadly.

254. The term "false advertising" means advertising, including labeling, of a commodity, or of the kind, character, terms, or conditions of any employment opportunity if such advertising is misleading in a material respect. NYGBL § 350-a (False advertising).

255. As alleged in the negligence and gross negligence causes of action below, the defendant owed a statutory duty to the plaintiff under Agriculture and Markets Law § 199-a et seq. to not "produce, process, pack, transport, possess, sell, offer or expose for sale" any "article of food," which is "misbranded."

256. Under Agriculture and Markets Law § 201, "Food shall be deemed to be misbranded" if "[i]f its labeling is false or misleading in any particular..."

257. Furthermore, under Agriculture and Markets Law § 202-a,⁶ the use of an advertisement concerning a food or a food product is prohibited if the advertisement is false or misleading in any particular.

⁶ 1. Agriculture and Markets Law § 202-a (False advertising): "An advertisement concerning a food or food product shall not be false or misleading in any particular."

258. The term "advertisement" under the Agriculture and Markets Law, means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of a food or food product.⁷

259. The defendant's claims on Exhibit 1 and on its website and on its Sustainability Reports are "advertisements" as defined by Agriculture and Markets Law § 198.

260. In determining whether any advertising is misleading, there must be taken into account (among other things) not only representations made by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity which the advertising relates, under the conditions prescribed in said advertisement, or under such conditions as are customary or usual.

261. The defendant's violations of both state and federal laws and regulations, which are violations of its statutory standards of care, represents *per se* false advertising.

262. The defendant's violations of both state and federal laws and regulations, which are violations of its statutory standards of care, represents substantial evidence of false advertising.

263. The above statutory standards of care were designed to promote consumer choice, which the defendant is depriving through its false and misleading advertising.

264. The defendant's advertising claims directly violate the statutes' purposes, and continue to cause direct harm to the group that the standards were designed to protect.

⁷ Agriculture and Markets Law § 198 Definitions

265. The defendant's usage of "Raised Responsibly" and "Responsibly Raised" 100% of the time when it can only apply some of the time was and is false and misleading in a material way because reasonable consumers would be misled into believing the definitions apply all the time, especially in light of the defendant's own declaration that "all animals" are "treated humanely from birth to slaughter."

266. The defendant uses its false representations to convince consumers that a growing concern—animal inhumaneness—is not real in its suppliers' animal-production facilities when such animal inhumaneness is real.

267. The defendant uses its false representations to psychologically distort, distance, and detach consumers from reality to induce sales for profit.

268. Since the defendant's commercial advertising claims are false and misleading, they deserve no First-Amendment protection.

269. As a result of these violations of NYGBL § 350, the plaintiff is entitled to enjoin the defendant's unlawful advertising, or recover actual damages or \$500, which is greater, or both, the court may award reasonable attorney's fees to the prevailing plaintiff. Additionally, the court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages, up to \$10,000.00, if the court finds that the defendant willfully or knowingly violated the statute.

THIRD CLAIM FOR RELIEF
(Negligence)

270. The defendant owed a statutory duty to the plaintiff under Agriculture and Markets Law § 199-a et seq. to not "produce, process, pack, transport, possess, sell, offer or expose for sale" any "article of food," which is "misbranded."

271. Under Agriculture and Markets Law § 201, “Food shall be deemed to be misbranded”... “[i]f its labeling is false or misleading in any particular.”

272. Agriculture and Markets Law § 199-a et seq. is a statutory scheme aimed at protecting the plaintiff who is in a distinct class of persons of consumers who would likely be induced, directly or indirectly, to purchase the defendant’s food product.

273. Agriculture and Markets Law § 199-a et seq. prohibiting sale of misbranded food was enacted within scope of police power of state to safeguard public against misrepresentation or deception in its sale. Carey v. Standard Brands, Inc., 1959, 16 Misc.2d 874, 189 N.Y.S.2d 1019.

274. Agriculture and Markets Law § 199-a et seq. has two general purposes: 1) the prevention of the manufacture and sale of food which is injurious or deleterious; and 2) the safeguarding of the public against misrepresentation or deception.

275. The plaintiff was within the scope of statutory protection under Agriculture and Markets Law §§ 199-a et seq. and 201 et seq.

276. Liability of damages for violation of Agriculture and Markets Law § 199-a, which is for the general benefit of public, is based upon negligence. Salzano v. First Nat. Stores 268 A.D. 993, 51 N.Y.S.2d 645 (2 Dept. 1944).

277. Violation of this article relating to sale of adulterated food is “*negligence per se*”. Catalanello v. Cudahy Packing Co., 1941, 27 N.Y.S.2d 637, affirmed 264 A.D. 723, 34 N.Y.S.2d 37, appeal denied 264 A.D. 779, 35 N.Y.S.2d 726.

278. Agriculture and Markets Law § 200 et seq. dealing with adulteration or misbranded food creates an absolute duty of manufacturer or seller for benefit of general public and privity of contract is not essential. See Alphin v. La Salle Diners, 197 Misc. 415, 98 N.Y.S.2d 511 (1950).

279. The Justice Department charged the defendant with two counts of violating the Federal Food, Drug, and Cosmetic Act by adulterating food while held for sale after shipment in interstate commerce. The defendant paid a \$25 million fine and entered into a Deferred Prosecution Agreement to resolve those charges.

280. The defendant's breach of its duty under Agriculture and Markets Law § 199-a et seq. did in fact induce the plaintiff to purchase the product.

281. The defendant's breach of its duty under Agriculture and Markets Law § 199-a et. seq. was a substantial factor in causing the plaintiff's injuries, which were proximately caused by the defendant's breach.

282. The defendant owed a statutory duty to the plaintiff under Agriculture and Markets Law § 202-a et. seq., to not use false and misleading advertising claim(s) if they were likely to induce, directly or indirectly, the purchase of its food product advertised Exhibit 1.

283. The defendant breached that duty by using the advertising claims as set forth in this complaint.

284. Agriculture and Markets Law § 202-a et. seq. is a statutory scheme aimed at protecting the plaintiff who is in a distinct class of persons of consumers who would likely be induced, directly or indirectly, to purchase the defendant's food product.

285. The plaintiff was within the scope of statutory protection under Agriculture and Markets Law § 202-a et. seq.

286. The breach of Agriculture and Markets Law § 202-a et. seq. carries civil penalties.

287. The defendant's breach of its duty under Agriculture and Markets Law § 202-a et. seq. represents negligence *per se*.

288. The defendant's breach of its duty under Agriculture and Markets Law § 202-a et. seq. represents evidence of negligence.

290. The defendant's breach of its duty under Agriculture and Markets Law § 202-a et. seq. did in fact induce the plaintiff to purchase the product.

291. The defendant's breach of its duty under Agriculture and Markets Law § 202-a et. seq. was a substantial factor in causing the plaintiff's injuries, which were proximately caused by the defendant's breach.

293. The defendant owed statutory duties to the plaintiff under NYGBL §§ 349 and 350 as alleged.

294. Both NYGBL §§ 349 and 350 are statutory schemes aimed at protecting the plaintiff who is in a distinct class of persons of consumers who would likely be deceived by the defendant's acts, omissions, and false advertising.

295. The defendant's breach of its duties under NYGBL §§ 349 and 350 materially misled the plaintiff to purchase the product.

296. NYGBL §§ 349 and 350 both carry private causes of action and civil penalties.

297. The defendant's breach of its duties under NYGBL §§ 349 and 350 represents negligence *per se*.

298. The defendant's breach of its duties under NYGBL §§ 349 and 350 represents evidence of negligence.

299. The defendant's breach of its duties under NYGBL §§ 349 and 350 were a substantial factor in causing the plaintiff's injuries, which were proximately caused by the defendant's breaches.

FOURTH CLAIM FOR RELIEF
(**Gross Negligence/Willful Misconduct**)

300. The plaintiff repeats, realleges and incorporates by reference the foregoing paragraphs.

301. The defendant's conduct rises to the level of gross negligence and willful misconduct because of the repeated, high-volume, and intentional nature of its broad marketing scheme, which is aimed at the public generally.

302. The defendant's calculated intent to violate and subvert state and federal laws, regulations, and guidance in order to exploit consumer vulnerabilities reflects a higher level of culpability than ordinary negligence.

303. The defendant's false and misleading mislabeling and misbranding practices, in violation of state and federal laws, regulations, and guidance represents an intentional failure to perform a manifest duty to the public.

304. The defendant possesses superior knowledge of the facts and practices that it knows to be the opposite of, or a material departure from, what it advertises.

305. The defendant uses deception and deceit to lure in consumers who hold heightened concerns about animal humanness in the animal-production process, and then betrays those same customers by selling them products containing false and misleading promises.

306. Upon information and belief, the defendant factors into its business model matters like this case in order to sell its offending products to millions of consumers who lack sufficient awareness to contest the defendant's affirmative misrepresentations.

307. The defendant exhibits a wanton and heedless indifference to the consequences of deceiving millions of New York consumers into believing that their hard-earned money supports a cause that aligns with their values.

308. The defendant's intentional "humanewashing" continues to a) reduce transparency of the real treatment of animals during the animal-production process; b) produce invisibility in its

suppliers' treatment of the subject animals in the meat-production process; c) alters and maintains false and misleading perceptions, beliefs and schemas relating to the real treatment of the subject animals; and d) engages in "psychic numbing" to disconnect consumers from the realities of what takes place animal-production facilities, some of which are CAFOs.

309. The defendant intentionally, recklessly, and wantonly commits these acts repeatedly knowing that this conduct would probably result in injury or damage.

310. The defendant's misrepresentations are particularly egregious during a time of multiple public-health crises related to meat consumption, including heightened rates of cancer, heart disease, and diabetes, combined with the Coronavirus Pandemic, a zootonic pathogen.

311. A separate and distinct injury occurs at each sale and at each viewing of the defendant's products that contain the false and misleading claims as alleged herein.

312. Pecuniary injuries to consumers include prices and premiums paid for the products.

313. Non-pecuniary injuries to consumers also included those experienced by the plaintiff as alleged below.

314. All injuries were and are proximately caused by the defendant's acts and omissions as alleged herein.

The Plaintiff's Injuries and Damages

315. The plaintiff repeats, realleges and incorporates by reference the foregoing paragraphs.

316. The point of emotional impact and injury occurred when the plaintiff read, and was confronted by, Exhibit 1. At that moment, the plaintiff gained sudden insight into the defendant's acts and practices.

317. Following decades of exposure to the defendant's advertising representations, the plaintiff was caused to feel shock, guilt, helplessness, shame, indignation, mental anguish, anger, betrayal,

stress, frustration, torment, and outrage, which have led to sleep disturbances, difficulty concentrating, irritation, and disruption to emotional well-being.

318. The plaintiff felt particularly aggrieved given the defendant's intentional scheme to betray and deceive him, consciously and subconsciously into giving credence to the defendant's advertising claims, which are factually impossible, and therefore false, misleading, and deceptive.

319. The defendant is responsible for the injuries it causes as well as the aggravation of any pre-existing injuries.

320. The defendant is responsible for any aggravated injuries regardless if the plaintiff had a heightened susceptibility to the defendant's acts and omissions.

321. The price that the plaintiff paid for the product represents a financial injury.

322. The premium that the plaintiff paid, or the price above what the defendant's competitors (some of who are alleged in this complaint) charge without committing the acts and omissions alleged, represents a financial injury.

323. The plaintiff, an actively practicing attorney, is taking time away from his law practice to research, investigate, and draft litigation documents related to this action *pro se*.

324. But-for the defendant's acts and practices, the plaintiff's injuries would not have occurred.

325. The plaintiff respectfully requests the recovery of reasonable attorney's fees related to that lost time under NYGBL § 349(h).

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a trial by jury as to all issues so triable.

WHEREFORE, the plaintiff demands judgment against the defendant:

1. For the sum of \$150,000.00 plus interest from October 19, 2021, plus costs and disbursements;

2. Enjoining and restraining the defendant, its agents, servants and employees, and any other person acting in its name and stead, permanently from distributing, marketing, selling, and offering for sale in the State of New York the products referred to, and labeled as “Raised Responsibly” or “Responsibly Raised” as alleged in this complaint while and as long as the labeling of said products occurs;
3. Reasonable attorneys’ fees under NYGBL § 349(h) to be determined at a hearing; and
4. For such further and other relief as may be just.

Dated: December 29, 2021

Defendant’s address:

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