

June 4, 2015

**Via E-Mail and First Class Mail**

Melinda M. Bolling, Interim Director  
 D.C. Department of Consumer and Regulatory Affairs  
 1100 4<sup>th</sup> St. SW  
 Washington, D.C. 20024  
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**Re: Complaint Requesting Action to Enjoin the Dissemination of False and Deceptive Advertising by Whole Foods Market**

Dear Director Bolling:

Pursuant to the Consumer Protection Procedures Act, D.C. Code § 28-3905, Complainant, People for the Ethical Treatment of Animals, Inc. (“PETA”)<sup>1</sup>, through its undersigned counsel, submits this complaint on behalf of consumers who shop at Whole Foods Market stores located in Washington, D.C., including at 1440 P St. NW (“P Street”), 2201 I St. NW (“Foggy Bottom”) and 4530 40th St. NW (“Tenleytown”), to remedy and prevent deceptive business practices by Respondent, Whole Foods Market Group, Inc.<sup>2</sup>

Looking to profit from growing consumer concerns about the treatment of animals raised for food, Respondent promotes itself as a seller of chickens, turkeys, pigs and cattle humanely raised by caring farmers who provide exceptional standards of animal welfare. However, a reasonable consumer would not associate Respondent’s welfare certifications and standards with practices such as castration without pain killers, being scalded alive while fully conscious, broken bones and hemorrhages, hot-iron branding and dehorning, starvation and dehydration, maternal deprivation, being held in intensive confinement in unnatural conditions, and suffering a lifetime of other cruelty caused by commission and omission—all of which are permitted or may still occur despite Respondent’s standards. Customers who receive their purchases wrapped in paper imprinted with the slogan “THANKS FOR CARING ABOUT ANIMALS” are unaware that they were duped by Respondent into *doing precisely that which they intended to avoid*: supporting and perpetuating cruel industry practices through their purchasing choices.

<sup>1</sup> PETA is a Virginia non-stock corporation and an animal protection charity with offices at 1536 16<sup>th</sup> St. N.W., Washington, DC.

<sup>2</sup> Whole Foods Market Group, Inc. is incorporated in Delaware and maintains its principal executive offices at 550 Bowie Street in Austin, Texas.

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PETA FOUNDATION IS AN  
 OPERATING NAME OF FOUNDATION  
 TO SUPPORT ANIMAL PROTECTION.

AFFILIATES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

Respondent's deceptive statements and omissions violate D.C. Code § 28-3904(a) and (d) (making representations about characteristics that goods do not have, and/or that goods were of a particular standard or quality, when in fact, they did not have that standard or quality); and § 28-3904(e), (f) and (f-1) (making misrepresentations as to a material fact which has a tendency to mislead; failing to state a material fact where such failure tended to mislead; and/or using innuendo or ambiguity as to a material fact which had a tendency to mislead).

There are virtually no market restraints on Respondent's deception because consumers have little access to accurate and complete information about how animals raised for food are actually treated. Consumers are unable to tell that they have been deceived by Respondent because the scope of actual industry practices is not readily apparent to them. Furthermore, consumers are unaware that most of Respondent's advertised "welfare standards" are not standards at all, but a wish-list that suppliers can violate with impunity. PETA therefore requests that the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") investigate these practices and take appropriate measures to stop Respondent from deceiving consumers with illusory standards of welfare and "humane" treatment of chickens, turkeys, cattle and pigs.

### **Respondent's Misleading Statements**

Throughout their lives, chickens, turkeys, pigs and cattle raised for meat are subjected to acute and chronic pain caused by increased production pressure which has resulted in poor to appalling husbandry practices, trauma, and rampant disease. Industry insiders warn that if this became publically known, caring consumers would refuse to buy meat products.<sup>3</sup> To distract humane-conscious consumers from the unsettling realities of today's intensive farming practices, Respondent advertises that animal products sold at its D.C. stores came from "certified" suppliers who purportedly met stringent welfare standards, who treat animals with exceptional care, and who make the animals' well-being their priority.

Notably, after Respondent was caught red-handed lying to its customers about alleged humane practices of its suppliers, the company, under pressure, recently removed a few misleading signs at its D.C. stores. As demonstrated herein, however, Respondent failed to cure the overall misleading message regarding the alleged exceptional "standards" which the Respondent purportedly "requires" from its suppliers.

For example, signage at the meat and poultry counter at Tenleytown states: "global animal PARTNERSHIP A tiered program that supports and recognizes farmers and ranchers for their emphasis on the well-being of animals," Ex. 1. The tiered program to which this statement refers is at the heart of Respondent's deceptive scheme. This is the so-called 5-Step Animal Welfare Ratings scale administered by the Global Animal Partnership program ("GAP"), an organization

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<sup>3</sup> See, e.g., C.C. Croney & R.D. Reynnells, *The Ethics of Semantics: Do We Clarify or Obfuscate Reality to Influence Perceptions of Farm Animal Production?*, 87 POULTRY SCI. 387, 387 (2008); see also, e.g., M.G.S. McKendree, C.C Croney & N.J.O. Widmar, *Effects of Demographic Factors and Information Sources on United States Consumer Perceptions of Animal Welfare*, 92 J. OF ANIMAL SCI. 3161, 3164 (2014) (noting that 14% of respondents in a survey reported reduction in pork consumption because of animal welfare and handling concerns with an average reduction of 56%).

founded by, and beholden to, Respondent.<sup>4</sup> References to the GAP certification program appear throughout D.C. stores, including, for example, labeling on packaged chicken sold at P St. and Foggy Bottom that states: “ENRICHED ENVIRONMENT,” Ex. 2-3; labeling on packaged and unpackaged beef sold at P St. states: “NO CAGES, NO CRATES, NO CROWDING,” Exs. 4-5; butcher paper used for wrapping poultry and meat purchases at Tenleytown and P St. states: “RAISED WITH CARE,” “ROOM TO MOOOOVE,” “SPACE TO WIGGLE THEIR PIG TAILS,” and “THANKS FOR CARING ABOUT ANIMALS,” Exs. 6-7; signage at the meat and poultry counter at P St. states: “ANIMALS ARE STEP RATED & TREATED HUMANELY,” Ex. 8; and signage at P St. and Foggy Bottom stating: “100+ ANIMAL WELFARE STANDARDS REQUIRED TO REACH STEP 1 OF THE 5-STEP<sup>®</sup> RATINGS,” Ex. 9.

Respondent’s statements about GAP-certified suppliers and their purported practices create the impression that all GAP suppliers are required to meet standards that exceed industry norms; that the standards ensure the humane treatment of animals from birth to slaughter; and that compliance with those standards is both verifiable and verified.<sup>5</sup> Nothing could be further from the truth.

## **I. ILLUSORY STANDARDS FAIL TO PROTECT ANIMALS FROM ABUSE**

GAP’s certification and audit procedures are largely perfunctory and fail to protect animals from the types of abuse that are common in the industry.

For example, GAP requires audits of chicken suppliers only once every 15 months.<sup>6</sup> Since chickens are typically slaughtered when they are eight weeks old, most flocks are never inspected. And there is no telling what actually happens to the animals during the 455 days when suppliers are completely unsupervised. Even when violations are uncovered during the audit, there are no serious consequences as long as suppliers promise to address the issues in the future.<sup>7</sup> Repeat offenders are treated with indulgence: “If an Operation receives the same non-

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<sup>4</sup> See Whole Foods Market, *The 5-Step<sup>®</sup> Animal Welfare Rating Standards*, <https://www.wholefoodsmarket.com/about-our-products/quality-standards/animal-welfare-standards> (last visited April 17, 2015); see generally, Global Animal Partnership, *Pilot GAP Policy Manual v1.0*, <https://glblanimalpartnership.blob.core.windows.net/other/GAP%20Policy%20Manual.pdf> [hereinafter GAP Policy Manual] (last visited May 12, 2015). GAP exists largely to promote and protect Respondent’s interests. GAP receives most of its funding from Respondent. See, e.g., Animal Charity Evaluators, *Global Animal Partnership*, <http://www.animalcharityevaluators.org/research/organizations/global-animal-partnership/> (last visited May 12, 2015). This gives new meaning to the old saying about the fox watching the hen house. See also, e.g., J. Swanson, *The Ethical Aspects of Regulating Production*, 87 POULTRY SCI. 373, 374 (2008) (noting that “Industries that desire to self-regulate have the difficult task of setting up a mechanism that will be perceived as free of conflict of interest by the public”).

<sup>5</sup> A link to the applicable standards can be found at <http://www.globalanimalpartnership.org/5-step-program/standards>. All references herein to GAP standards and requirements are from “Global Animal Partnership’s 5-Step<sup>™</sup> Animal Welfare Rating Standards” for chickens, cattle, turkeys and pigs raised for meat.

<sup>6</sup> See, e.g., GAP Policy Manual, *supra* note 4, at 5.

<sup>7</sup> Tellingly, GAP’s definition of “CORRECTIVE ACTION” does not include actually correcting the violation and bringing the operation into compliance with the applicable standard. All that is required is “an explanation of why the standard was not met, a plan to correct the issue, an explanation of how that plan will be executed and the date that it will begin.” *Id.* at 31.

conformance [as] in a previous audit but efforts to address that non-conformance have been made then, at the Certifiers discretion, it may not be considered a repeat non-conformance.”<sup>8</sup> Any violation can be expunged as long as suppliers have a “plan” to improve, irrespective of whether there will be actual compliance in the future.

This begs the question: what, if anything, is *required* to be a GAP certified supplier? The answer is, surprisingly little. The vast majority of standards may be violated without jeopardizing the suppliers’ certification, and as such, they are no standards at all—merely a feel-good list of items that might be in place, so to assuage consumers’ concerns. This sleight of hand is accomplished by designating violations of most standards as a “minor non-conformance,” and hoping that, eventually, there might be actual compliance.<sup>9</sup> Even the most egregious cruelties carry merely the risk that, after a 15 month grace period, a supplier might not be re-certified. For example, GAP specifies that pigs must not be thrown, kicked, hit, or dragged by any part of their body while they are on the farm. A supplier who did this, even in front of an auditor, can still be certified, at least until the next pre-announced audit 15 months later, and will be eligible for re-certification as long as the cruelty has supposedly ceased by that time. A welfare certification system that tolerates such cruelty to go unchecked and unmitigated over great lengths of time is a sham.

Furthermore, as demonstrated below, even if suppliers followed these standards perfectly and met every GAP requirement, the animals would still be subjected to a number of painful and stressful practices that caring consumers would not condone if they were fairly disclosed.

## **II. CHICKENS AND TURKEYS**

### **A. Overcrowded, Stressful and Barren Housing Conditions**

Overcrowding is one of the biggest causes of stress, sickness and death in poultry raised for food.<sup>10</sup> Not surprisingly, therefore, “consumers perceive stocking density to be one of the most

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<sup>8</sup> *Id.* at 33.

<sup>9</sup> *See id.* By way of example, for suppliers of pigs, minor non-conformances include failure to minimize distress during euthanasia (1.4.3); using unauthorized methods of euthanasia (1.4.8); using equipment that injures pigs (2.13.1); exposing pigs to toxic substances (2.13.2); exceeding the mortality rates specified for the relevant Steps (2.14); exceeding lameness rates for Steps 2 through 5+ (2.15); reducing the permissible weaning period for Steps 2 through 5+ (2.16); not meeting nutrition requirements (3.2.3); feeding moldy, mildewed, rodent-infested feed (3.3.1); unhealthy and uncomfortable indoor air quality (4.3); inadequate lighting (4.4), violating space requirements for Steps 2 through 5+ (4.5); violating space requirements for gestating sows for Steps 2 through 5+ (4.9); violating enrichment requirements for Steps 2 through 5+ (4.10); violating Steps 5 and 5+ pasture condition requirements (5.2.2); violating housing and pasture access standards (5.4, 5.5); inadequate rodent control (6.1); withholding food for more than 8 hours prior to transport (7.1.2); transporting piglets off the operation before they are weaned (7.2.3); using dirty, unsuitable or non-functioning transport and loading equipment (7.4); failing to provide water, food, shelter or medical care to pigs at the assembly yard (8.3, 8.4, 8.5); throwing, kicking and hitting pigs at the assembly yard (8.6.1); using electric prods in the assembly yard (8.6.3); and using un-trained personnel (9.4), among other things.

<sup>10</sup> *See, e.g.,* V. Tsiouris et al., *High Stocking Density as a Predisposing Factor for Necrotic Enteritis in Broiler Chicks*, 44 AVIAN PATHOLOGY 59 (2015); A. Meluzzi et al. *Effect of Less Intensive Rearing Conditions on Litter Characteristics, Growth Performance, Carcass Injuries and Meat Quality of Broilers*, 49 BRIT. POULTRY SCI. 509

important factors that influence animal welfare.”<sup>11</sup> Preying on those concerns, Respondent boasts that “NO CAGES, NO CRATES, NO CROWDING,” are allowed under GAP’s Step 1. This is deceptive, for numerous reasons.

While cages are commonly used for egg-laying hens, it is *standard practice for chickens and turkeys raised for meat to be housed without cages or crates*. Respondent’s suggestion that Step 1 is somehow an improvement over the norm is therefore misleading.

Additionally, the absence of cages and crates provides an illusory benefit because the allowable housing density for many chickens and turkeys is still so high that problems associated with caging persist. Consumers visualizing “cage free” chickens and turkeys would be shocked to learn that birds raised by Step 1 and 2-certified suppliers can be crowded into sheds at nearly the same density that is standard on factory farms. According to GAP, a seven pound chicken need only be afforded a miserly one square foot of space, and at Step 2, chickens can be crammed together at 6.5 pounds per square foot,<sup>12</sup> which is not materially better than the factory farming industry standard rate of 7.5 pounds per square foot.<sup>13</sup> The illusion of freely roaming turkeys is similarly misleading, as the GAP Step 1 requirement of one square foot per 10 pounds<sup>14</sup> is *exceeded by the industry standard* recommendation of 2.25 square feet for a 16 lb. turkey hen, and is marginally better than the recommendation of 3.5 square feet per 40 pound tom.<sup>15</sup> As of December 1, 2014, a full 72 percent of turkeys were listed under Step 1. In short, GAP’s Step 1 and 2 standards offer little or no improvement over the general industry standard, in contrast to the consumer’s expectation that birds certified under GAP enjoyed an exceptional and humane standard of welfare and that, by purchasing this meat, the consumer is doing something kind.

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(2008); I. Estevez, *Density Allowances for Broilers: Where to Set the Limits?* 86 POULTRY SCI. 1265 (2007); A.V.S. Gomes et al., *Overcrowding Stress Decreases Macrophage Activity and Increases Salmonella Enteritidis Invasion in Broiler Chickens*, 43 AVIAN PATHOLOGY 82 (2014); J. De Jonge & H. Van Trijp, *Heterogeneity in Consumer Perceptions of the Animal Friendliness of Broiler Production Systems*, 49 FOOD POL’Y 174 (2014).

<sup>11</sup> Tsiouris, *supra* note 10. Stocking density is not merely an animal welfare concern but also causes risks to human health. For example, high stocking density predisposes chickens to necrotic enteritis, an intestinal disease that may pose a threat to public health.

<sup>12</sup> Global Animal Partnership, *5-Step Animal Welfare Rating Standards for Chickens Raised for Meat*, <http://glblanimalpartnership.blob.core.windows.net/standards/Chicken%20Welfare%20Standards.pdf> [hereinafter GAP Chicken Standards] (last visited May 12, 2015).

<sup>13</sup> Most chickens come from producers who follow the National Chicken Council’s Animal Welfare Guidelines and Audit Checklist, which requires birds of average market weight to have 7.5 pounds per square foot. *See* The Humane Society of the United States, *An HSUS Report: The Welfare of Animals in the Chicken Industry* <http://www.givewell.org/files/shallow/industrial-agriculture/HSUS%20Chickens.pdf> (last visited May 12, 2015).

<sup>14</sup> Global Animal Partnership, *5-Step™ Animal Welfare Rating Pilot Standards for Turkeys*, <http://glblanimalpartnership.blob.core.windows.net/standards/Turkey%20Welfare%20Standards%20V1.1.pdf> (last visited May 12, 2015).

<sup>15</sup> Sandra G. Velleman & Nicholas B. Anthony, *The Impact of Stocking Density on Growth and Yield of Commercial Pheasants*, Midwest Poultry Consortium, <http://www.mwpoultry.org/ProjectPDFs/07-15.pdf> (last visited May 12, 2015); *see also* California Poultry Workgroup, *Animal Care Series: Turkey Care Practices*, at 7 (1998), [http://www.vetmed.ucdavis.edu/vetext/local-assets/pdfs/pdfs\\_animal\\_welfare/turkeyCarePrax.pdf](http://www.vetmed.ucdavis.edu/vetext/local-assets/pdfs/pdfs_animal_welfare/turkeyCarePrax.pdf) (last visited May 12, 2015); J.C. Voris et al., Cooperative Extension, University of California, *California Turkey Production, Poultry Fact Sheet No. 16c* (September 1997), <http://animalscience.ucdavis.edu/Avian/pfs16C.htm>.

Furthermore, no enrichment items are required for chickens and turkeys under Step 1. These birds may spend their whole lives in windowless sheds without sufficient space to move freely. With no room to engage in normal behaviors, no ability to safeguard their own welfare by asserting a ‘pecking order,’ and a barren environment without enrichment items, the birds cannot establish a territory, and can only peck at each other<sup>16</sup>—and injured birds have no ability to escape harm in such cramped quarters. Even Step 2’s euphemistic reference to an “enriched environment” is not how a reasonable consumer would understand this term. Step 2 allows a producer to pack nearly 12,000 chickens into a 10,000 square foot shed and then scatter grain on the floor, or throw in 10 bales of straw, and call it enrichment.

Respondent’s reference to “enhanced outdoor access” to describe its Step 3 certification also deceptively suggests that Steps 1 and 2 provide at least basic outdoor access, which is then “enhanced” at Step 3. While GAP acknowledges the importance of access to the outdoors, and “strongly encourage[s] operations] to provide chickens access to the outdoors from the youngest age possible and for as much of their lives as possible,”<sup>17</sup> birds raised by Step 1 and 2 suppliers may never see a ray of sunshine or breathe the outside air during their entire lives.<sup>18</sup>

Reasonable consumers would not expect that chickens and turkeys are kept in such stressful and miserly conditions, in light of Respondent’s claims of an uncrowded and enriched environment that supposedly caters to the wellbeing of the animals.

## **B. Painful Lameness and Lesions**

Consumers would also be shocked to learn that moving is impossible or painful for many birds who received supposedly exceptional standards of care. GAP’s Step 1 standards allow *up to 20 percent of animals to suffer from lameness and footpad dermatitis at any point in time*. Even the highest level of Step 5+ certification accepts that one in ten birds may be lame and/or afflicted with dermatitis—despite the fact that these two conditions present “major welfare problems” for the animals.<sup>19</sup> On just one average farm of 50,000 chickens,<sup>20</sup> the GAP standards therefore

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<sup>16</sup> See, e.g., M.E. ENSMINGER POULTRY SCIENCE 338 (Interstate Publishers, Inc. 1992).

<sup>17</sup> GAP Chicken Standards, *supra* note 12, at 17.

<sup>18</sup> Raising turkeys without access to the outdoors is allowed under Steps 1 and 2, which renders this standard no different from general turkey industry practices. See, e.g., U.S. Evtl. Prot. Agency, *Poultry Production, Broilers, Turkeys, Ducks (Meat-Bird Production)*, <http://www.epa.gov/oecaagct/ag101/printpoultry.html#broiler> (last visited Oct. 23, 2014).

<sup>19</sup> See, e.g., S. Buijs et al., *Stocking Density Effects on Broiler Welfare: Identifying Sensitive Ranges for Different Indicators*, 88 POULTRY SCI. 1536, 1537 (2009); L. Waldenstedt, *Nutritional Factors of Importance for Optimal Leg Health in Broilers: A Review*, 126 ANIMAL FEED SCI. & TECH. 291 (2006); M. J. Toscano et al., *Correlation Between Broiler Lameness and Anatomical Measurements of Bone Using Radiographical Projections with Assessments of Consistency across and within Radiographs*, 92 POULTRY SCI. 2251 (2013) (lameness in broilers represents major welfare issues as birds with severe forms of the condition “are likely suffering from pain” and may have limited access to feed and water).

<sup>20</sup> See, e.g., Global Animal Partnership, *Jennaleigh Beatty of NatureRaised Farms*, <http://www.globalanimalpartnership.org/news/post/jennaleigh-beatty-of-natureraised-farms> (last visited May 15, 2015) (featuring a Step 2-rated supplier who raises “roughly 50,000 chickens per flock”).

expressly allow for a whopping 5,000 to 10,000 birds on any given day to suffer from these conditions.

Research confirms that lameness “must be painful because of associated clinical manifestations such as inflammation, spinal cord damage, or swelling of the joints.”<sup>21</sup> Lamé birds may be unable to reach food or water, and die painfully of starvation and dehydration.<sup>22</sup>

Like lameness, footpad dermatitis is a sign that animals are suffering. This condition causes lesions, ulcers and/or scabs on the feet of the animals.<sup>23</sup> But GAP considers this a minor matter: producers who exceed the total footpad dermatitis sums allowable by GAP do not lose their certification but are merely cautioned to “reduce levels in subsequent flocks.” Therefore, this so-called standard is no standard at all, since the actual number of birds with painful foot sores may well exceed the twenty percent figure.

Respondent omits to inform its customers that GAP standards not only tolerate that a substantial number of animals will be in pain, but that these standards contain loopholes and vagaries that make even these dubious thresholds wholly illusory.

### **C. Genetically Destined To Suffer**

A related cause of welfare concern is the chickens’ and turkeys’ unnatural, deliberately manipulated rapid growth rate.<sup>24</sup> This manipulation results in tendons and bones that are too weak to support the animals’ weight. Rapid growth commonly causes painful tearing of tissue, ruptured tendons, backward bending of the shin bones and pressure-induced fractures that cause pain when the animal stands and walks.<sup>25</sup> Breeding chickens for size and rapid growth can lead to various painful musculoskeletal diseases such as spondylolisthesis<sup>26</sup> and tibial dyschodroplasia,<sup>27</sup> and is the root cause of spontaneous leg fractures as the animals gain

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<sup>21</sup> See, e.g., A. Bassler et al., *Potential Risk Factors Associated with Contact Dermatitis, Lameness, Negative Emotional State, and Fear of Humans in Broiler Chicken Flocks*, 92 *POULTRY SCI.* 2811, 2812 (2013).

<sup>22</sup> See, e.g., *id.*; Toscano, *supra* note 19.

<sup>23</sup> See, e.g., R. F. Vanderhasselt et al. *Automated Assessment of Footpad Dermatitis in Broiler Chickens at the Slaughter-Line: Evaluation and Correspondence with Human Expert Scores*, 92 *POULTRY SCI.* 12 (2013); E. Shepherd & B. Fairchild, *Footpad Dermatitis in Poultry*, 89 *POULTRY SCI.* 2043 (2010); G. Hoffmann et al., *Sensor-Based Monitoring of the Prevalence and Severity of Foot Pad Dermatitis in Broiler Chickens*, 54 *BRIT. POULTRY SCI.* 553 (2013). This affects not only the wellbeing of the animals, but food safety, since these lesions serve as a portal of entry for *Staphylococcus aureus* and other dangerous microorganisms. See, e.g., *id.*

<sup>24</sup> From 1957 to 2005, broiler growth increased by over 400%, with concomitant unintended effects, including increased skeletal defects, metabolic disorders, and altered immune function. See, e.g., M. J. Zuidhof et al., *Growth, Efficiency, and Yield of Commercial Broilers from 1957, 1978, and 2005*, 93 *POULTRY SCI.* 2970 (2014).

<sup>25</sup> See, e.g., R. Julian, *Production and Growth Related Disorders and Other Metabolic Diseases of Poultry—A Review*, 169 *VETERINARY J.* 350 (2005); L. Waldenstedt, *Nutritional Factors of Importance for Optimal Leg Health in Broilers: A Review*, 126 *ANIMAL FEED SCI. & TECH.* 291 (2006).

<sup>26</sup> This condition causes pinching and damage of the spinal cord, which is usually followed by partial paralysis, causing the birds to sit on their tail with their feet extended, or fall to the side. See, e.g., Julian, *supra* note 25.

weight.<sup>28</sup> Likewise, “turkeys have been bred to grow faster and heavier but their skeletons haven’t kept pace, which causes ‘cowboy legs.’ Commonly, the turkeys have problems standing . . . and fall and are trampled on or seek refuge under feeders, leading to bruises and downgradings as well as culled or killed birds.”<sup>29</sup>

As summed up by one expert: “we must conclude that approximately one quarter of the heavy strains of broiler chicken and turkey are in chronic pain for approximately one third of their lives. . . . [T]his must constitute, in both magnitude and severity, the single most severe, systematic example of man’s inhumanity to another sentient animal.”<sup>30</sup>

Although GAP acknowledges that “[r]apid growth rate has significant impacts on the welfare, including health, of chickens” – Steps 1 and 2 utterly fail to address the genetic modifications that cause turkeys and chickens to grow at a rate that their skeletons cannot sustain. Nothing precludes Step 1 and 2 certified suppliers from breeding birds who are unable to walk. Similarly, GAP does not require Step 1 though 4 producers to breed chickens or turkeys with the ability to perch, a deeply rooted, integral, natural behavior. Far from ensuring a humane existence, these so-called standards codify and condone the cruel practice of breeding animals who are genetically predestined to suffer chronic pain and debilitating health problems.

“Caring” consumers who are the targets of Respondent’s deceptive advertising would not support such practices if they were fairly disclosed.

#### **D. Not Handled with Care**

The most common method of gathering chickens for transport is for workers to grab birds by their legs and throw or stuff them into transport crates; this is often done quickly and carelessly.<sup>31</sup> In the process, many chickens are injured, suffering dislocated and broken hips, legs, and wings, as well as internal hemorrhages. As one researcher noted (and common sense dictates), “because broken bones are very painful in humans, it seems likely broken bones in birds will be also be very painful.”<sup>32</sup>

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<sup>27</sup> Tibial dyschondroplasia is a skeletal disease associated with rapid growth in chickens. It causes the shin bone to bend backwards and/or fracture spontaneously. Birds with this disease are frequently unable or unwilling to walk. See, e.g., *id.*; A. Derkhshanfar et al., *Study of Long Effects of Administration of Aspirin (Acetylsalicylic Acid) on Bone in Broiler Chickens*, 22 COMP. CLINICAL PATHOLOGY 1201 (2013).

<sup>28</sup> Ruptured tendons, joint lesions and dislocated hips are also a common problem in heavy chickens, caused by excessive weight. Julian, *supra* note 25 (discussing bone deformities and twisted legs commonly caused by rapid growth).

<sup>29</sup> R. Smith, *Cutting Edge Poultry Researchers Doing What Birds Tell Them To Do*, FEEDSTUFFS (Sep. 9, 1991), at 22.

<sup>30</sup> JOHN WEBSTER, *ANIMAL WELFARE: A COOL EYE TOWARDS EDEN* 156 (1995).

<sup>31</sup> Since a supplier’s catching crew need only be observed once every 15 months, even GAP’s very low standards are virtually non-verifiable.

<sup>32</sup> M. Gentle, *Pain Issues in Poultry*, 135 APPLIED ANIMAL BEHAVIOUR SCI. 252, 255 (2011).



Nevertheless, GAP expressly allows chickens to be handled in such a cruel fashion.

GAP's Steps 1 through 4 permits workers to grab up to four chickens with each hand, and carry them by a single leg—although this practice is known to increase the likelihood that chickens will be injured and maimed.<sup>33</sup> Although the experts agree that being inverted is highly stressful, Respondent's suppliers are allowed to carry chickens upside down by their legs in all operations certified under Steps 1 through 5.

The euphemistically named practice of “beak trimming,” which actually causes a part of the beak to be amputated, “has come under great scrutiny from animal welfare advocates and the public for being a source of stress and pain to the trimmed birds.”<sup>34</sup> Nevertheless, GAP standards allow beak trimming for turkeys raised by Step 1 through 3 suppliers. This causes not only acute pain at the time of the procedure but *chronic* pain afterwards.<sup>35</sup> It can even render some birds unable to eat or drink. Certainly, a reasonable consumer would expect that “humanely” treated birds would be spared such suffering.

### **E. Untold Numbers of Birds Perish Prematurely**

Belying the impression of exceptional or leading standards of animal welfare is also the fact that GAP standards anticipate that many birds will not even survive the few weeks until slaughter. And there is no way of telling exactly how high those numbers really are.

Steps 1 through 3 allow that 0.5% of birds (7 days and older) die daily. For example, on an average farm of 50,000 chickens, over the course of the average 6-week life-span of that flock, more than 9,000 birds may perish—and this will still be within the acceptable range for suppliers certified under Steps 1 through 3. But these numbers don't even reflect the full extent of death on these farms, because they only include birds who succumbed on their own. They exclude “culled” birds who were destroyed due to sickness, or slaughtered prematurely for reasons such as lameness or failure to thrive. If these numbers were included, the death toll would be still higher.

Further rendering this key indicator of welfare meaningless is the fact that suppliers who exceed mortality thresholds will not lose their certification. As long as they have a “plan” to do better in the future, actual compliance is not required. This is hardly consistent with the image of verified welfare standards the Respondent conveys. The (literally) untold numbers of animals who perish

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<sup>33</sup> See, e.g., Julian, *supra* note 25. GAP itself strongly opposes this cruel practice: “Global Animal Partnership discourages the carrying of chickens by a single leg and urges industry to move away from this practice.”

<sup>34</sup> See, e.g., R.L. Dennis & H.W. Cheng, *Effects of Different Infrared Beak Treatment Protocols on Chicken Welfare and Physiology*, 91 *POULTRY SCI.* 1499 (2012); R.M. Marchant-Forde & H.W. Cheng, *Different Effects of Infrared and One-Half Hot Blade Beak Trimming on Beak Topography and Growth*, 89 *POULTRY SCI.* 2559 (2010); M. Gentle & D.F. Mckeegan, *Evaluation of The Effects of Infrared Beak Trimming in Broiler Breeder Chicks*, 160 *VETERINARY REC.* 145 (2007).

<sup>35</sup> GAP prohibits hot-blade beak trimming, but allows infrared beak “conditioning,” which still causes acute and chronic pain. In this procedure, chicks are placed in holders, and a hot infrared beam is aimed at the tip of the beak. The tip will slowly die off and erode away over the course of two weeks. See, e.g., Dennis & Cheng, *supra* note 34; Marchant-Forde & Cheng, *supra* note 34; Gentle & Mckeegan, *supra* note 34.

from sickness, trauma and deprivation at GAP-certified farms is irreconcilable with a reasonable consumer's interpretation of "humane" treatment and exceptional standard of care.

## F. Cruel Slaughter

Respondent's ambiguous statements that GAP-certified chickens and turkeys were humanely raised create the impression that these animals were treated humanely and were happy *throughout* their lives. This is not only demonstrably false for the reasons stated previously, but also because these animals' lives are ended in a particularly gruesome manner. GAP provides no standards for how chickens and turkeys will be treated and killed at the slaughterhouse, even though consumers would likely erroneously conclude the contrary.<sup>36</sup> *See, e.g., Henry v. Perdue Farms, Inc.*, 2013 WL 1338199 at \*10 (D.N.J. Mar. 31, 2013) (denying motion to dismiss express warranty claim where plaintiffs sufficiently pled that a reasonable consumer may have interpreted the "Humanely Raised" label to include the processes to which chickens are exposed throughout their lives).

Therefore, even if the animals were "humanely" raised—and they are not—most will suffer a frightening and painful death that caring consumers would not accept as "humane" if it were fairly disclosed.<sup>37</sup>

On the day of (or before) slaughter, birds have their feed withdrawn for up to 12 hours,<sup>38</sup> they are roughly caught and stuffed into crates or drawers, and they are then transported to the slaughterhouse.<sup>39</sup> This process of catching, crating, and transportation often causes bruising, and broken or dislocated bones.<sup>40</sup> At the slaughterhouse, the animals are hung upside down in shackles, while fully conscious, which scientists have confirmed is extremely painful and traumatic for the animals.<sup>41</sup> Many birds struggle and flap their wings trying to escape the

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<sup>36</sup> While Respondent purports to have additional undisclosed standards for "processing" animals, those standards are equally illusory. There is no evidence that failing to meet those alleged standards has any consequences. *See* Whole Foods Market, *Farm Animal & Meat Quality Standards*, <http://www.wholefoodsmarket.com/farm-animal-meat-quality-standards> (last visited May 13, 2015). As such, it is patently misleading for Respondent to refer to these desired practices as "standards," in the manner in which an ordinary consumer would understand this term.

<sup>37</sup> *See, e.g.,* E. Lamboojij et al., *Cone Restraining and Head-Only Electrical Stunning in Broilers: Effects on Physiological Responses and Meat Quality*, 93 *POULTRY SCI.* 512 (2014).

<sup>38</sup> All GAP suppliers may withhold food from turkeys and chickens for up to 12 hours before slaughter. *See also, e.g.,* C. Kop-Bozbay & N. Ocak, *Body Weight, Meat Quality and Blood Metabolite Responses to Carbohydrate Administration in the Drinking Water During Pre-Slaughter Feed Withdrawal in Broilers*, 99 *J. OF ANIMAL PHYSIOLOGY & ANIMAL NUTRITION* 290 (2015).

<sup>39</sup> Under GAP's Step 1 and 2, chickens may be held in transport containers for up to 8 hours. Turkeys may be held in transport containers for up to 8 hours under Steps 1 through 3. There are no requirements for providing water or food during this time.

<sup>40</sup> Lamboojij, *supra* note 37.

<sup>41</sup> K. Schwartzkopf-Genswein et al., *Road Transport of Cattle, Swine and Poultry in North America and its Impact on Animal Welfare, Carcass and Meat Quality: A Review*, 92 *MEAT SCI.* 227, 234-38 (2012). "[I]t has been recognized that the inverted shackling of live broilers is detrimental to their welfare." Lamboojij, *supra* note 37, at 513. "Shackling of commercial poultry involves the insertion of each leg into parallel metal slots and holding the bird inverted for a period of time before stunning and slaughter." Gentle, *Pain Issues in Poultry*, *supra* note 32, at

shackles, which causes “further distress to the bird because of the potential for broken, dislocated and bruised wings, and because it increases the chance of [electric] shocks if the bird's wings touch the water in the electric waterbath before its head does.”<sup>42</sup> Because the electric stunning procedure is known to be ineffective,<sup>43</sup> many birds remain fully conscious and feel the pain of having their throats slit and being dropped into the scalding tank where they sink to the bottom and drown and/or are scalded to death.

### III. PIGS

Industry insiders warn that “the future of pork production depends on effectively addressing the public’s concerns regarding animal welfare and health.”<sup>44</sup> Respondent creates the misleading appearance of addressing these concerns, while in truth, GAP’s 5-Step standards fail to ensure that pigs are treated humanely throughout their lives.

#### A. Lame and Under-conditioned Pigs

Body condition is a critical factor affecting the health, welfare and mortality of pigs.<sup>45</sup> In the industry, pigs are scored on a scale of 1 to 5, with 3 considered “optimum.”<sup>46</sup> The recommended industry aim is “an optimal average condition score of 3” throughout the herd.<sup>47</sup> However, pigs from GAP-certified suppliers need not exceed, or even meet, the recommended industry aim.

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254. See also, e.g., E. Dereli Fidan et al., *The Effects of Preslaughter Shackling on Some Stress Parameters, Fear, and Behavioural Traits in Broilers*, 67 VETERINARIJA IR ZOOTECHNIKA 24 (2014); J. Lines et al., *Evaluation of a Breast Support Conveyor to Improve Poultry Welfare on the Shackle Line*, 168 VETERINARY REC. 129 (2011). Shackling is standard practice not only for chickens but also for turkeys. See, e.g., National Turkey Federation, *Animal Care Best Management Practices: Slaughter Guidelines 14-15* (Nov. 2012), <http://www.eatturkey.com/sites/default/files/welfarm2012.pdf>.

<sup>42</sup> Lines, *supra* note 41; see also, e.g., Mohan Raj, *Welfare During Stunning and Slaughter of Poultry*, 77 POULTRY SCI. 1815 (1998); L. H. Parker et al., *Sex and Shank Diameter Affect Struggling Behaviour of Shackled Broilers*, 76 (Supp. 1) POULTRY SCI. 88 (1997); MICHAEL C. APPLEBY ET AL., POULTRY BEHAVIOUR AND WELFARE 193 (2004).

<sup>43</sup> See Raj, *supra* note 42, at 1815; see also C. Grilli et al. *Welfare Indicators During Broiler Slaughtering*, 56 BRITISH POULTRY SCI. 1 (2015); C. Johnson, *A Review of Bird Welfare During Controlled Atmosphere and Electrical Water-Bath Stunning*, 245 J. OF THE AM. VETERINARY MED. ASS’N 60 (2014) (discussing electrical water-bath stunning and that the procedure is not always sufficient to induce unconsciousness and insensibility, which creates concern for bird welfare in that birds may be fully conscious or regain consciousness when they reach the neck slitter); J. De Jonge & H. Van Trijp, *Heterogeneity in Consumer Perceptions of the Animal Friendliness of Broiler Production Systems*, 49 FOOD POLICY 174 (2014); see also Karen Davis, *The Need for Legislation and Elimination of Electric Immobilization*, United Poultry Concerns, <http://www.upc-online.org/slaughter/report.html> (last visited May 13, 2015).

<sup>44</sup> A. Kittawornrat & J.J. Zimmerman, *Toward a Better Understanding of Pig Behavior and Pig Welfare*, 12 ANIMAL HEALTH RES. REV. 25 (2011).

<sup>45</sup> See, e.g., *Condition Scoring of Sows*, The Pig Site (Mar. 24, 2009), <http://www.thepigsite.com/articles/2647/condition-scoring-of-sows/>.

<sup>46</sup> See, e.g., *id.*; C. Johnson et al., *Sow Condition Scoring Guidelines*, National Hog Farmer (Apr. 15, 2006), [http://nationalhogfarmer.com/mag/farming\\_sow\\_condition\\_scoring](http://nationalhogfarmer.com/mag/farming_sow_condition_scoring).

<sup>47</sup> See, e.g., *Condition Scoring of Sows*, *supra* note 45.

GAP is satisfied with a body condition score of only 2—which is considered “thin” and only one step shy of “emaciated.”

A reasonable consumer who paid a premium for a GAP certified product would not expect that it came from pigs with sub-optimal body condition *below* the industry target.

GAP also cavalierly accepts that a number of pigs in the herd will suffer from lameness, even though this is rightly viewed as a major welfare concern.<sup>48</sup> For Step 1 suppliers, up to 5% of the herd may be lame at any time. For Steps 2 and 3, 4% and 3% of lameness is acceptable, and for suppliers certified for Steps 4 and up, 2% of lameness is acceptable. These numbers are irreconcilable with a claim of exceptional care and humane treatment. A lame pig likely suffers from painful joint lesions that are the result of rearing and housing methods, and is unable to perform normal pig behavior.<sup>49</sup> Even if the pigs were afforded the freedom to move, that offers no benefit to pigs who find it difficult or impossible to move about due to lameness, and suffer from hunger and thirst because they cannot reach their trough.<sup>50</sup>

Rendering this standard even more illusory is the fact that suppliers may exceed the proscribed incidents of lameness—as long as they “plan” to address the issue in the future. Since compliance with this standard is not mandatory, there is simply no telling how high the number is of animals from certified suppliers who are lame and in pain from lameness.

## **B. Piglets Suffer Maternal Deprivation**

In contrast to weaning in nature, farmed animals are normally weaned abruptly by separating the young from the mother. Early weaning is a form of maternal deprivation.<sup>51</sup> In pigs, there is abundant evidence that maternal deprivation is stressful. Among other things, prematurely weaned piglets will cry in distress, try to escape to reach their mothers, and suffer a number of aberrant behaviors later in life, such as chewing pen-mates and increased aggression.<sup>52</sup> The piglets’ pronounced behavioral and physiological responses raise “an obvious welfare concern for these animals.”<sup>53</sup>

Far from bespeaking a concern for minimizing such distress, GAP’s standards codify the cruel practice of premature weaning. At Step 1, the allowable weaning age for piglets is 28 days and at

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<sup>48</sup> Katriina J.E. Willgert et al., *Risk Factors of Lameness of Sows in England*, 113 PREVENTIVE VETERINARY MED. 268 (2014); T. Jensen et al., *Quantifying the Impact of Lameness on Welfare and Profitability of Finisher Pigs Using Expert Opinions*, 149 LIVESTOCK SCI. 209 (2012).

<sup>49</sup> Willgert, *supra* note 48; L. Karriker et al., *Validation of a Lameness Model in Sows Using Physiological and Mechanical Measurements*, 91 J. OF ANIMAL SCI. 130 (2013).

<sup>50</sup> Sukumarannair Anil et al., *Effect of Lameness in Pigs*, 12 J. OF APPLIED ANIMAL WELFARE SCI. 144 (2009).

<sup>51</sup> Barbara E.H. Sumner et al., *Early Weaning Results in Less Active Behaviour, Accompanied by Lower 5-HT<sub>1A</sub> and Higher 5-HT<sub>2A</sub> Receptor mRNA Expression in Specific Brain Regions of Female Pigs*, 33 PSYCHONEUROENDOCRINOLOGY 1077 (2008).

<sup>52</sup> *Id.*; D.M. Weary et al., *Understanding Weaning Distress*, 110 APPLIED ANIMAL BEHAVIOUR SCI. 24 (2008).

<sup>53</sup> Weary, *supra* note 52, at 25.

Step 2, 35 days. Steps 3 through 4 allow weaning as young as 42 days, and Steps 5 through 5+ as young as 56 days.<sup>54</sup> Even assuming GAP actually enforced these standards, which it does not, they are hardly “humane” as that term would be understood by a reasonable consumer. To put these numbers in context: the period of time nature intended for piglets to remain with their mothers is measured in weeks, not days. Without human intervention, the shift from milk to other food sources occurs when piglets are between 12 and 17 *weeks* old, i.e., 84 days and 119 days, respectively.<sup>55</sup>

GAP’s tolerance of maternal deprivation cannot be reconciled with Respondent’s claim of humane treatment and the suppliers’ supposed “emphasis on the well-being of animals.”

### C. Castration Without Pain Killers And Other Painful Mutilations

GAP acknowledges that castration “is known to cause pain and discomfort, and operations are strongly encouraged to administer, at a minimum, local anesthetic and post-operative analgesia.”<sup>56</sup> Yet, this is merely a recommendation and Steps 1 through 4 allow piglets to be castrated without any type of anesthetics or analgesics.<sup>57</sup>

Castration involves cutting the piglet’s scrotum with the hooked blade of a surgical scalpel and pushing the testicles through the incision, then cutting or pulling them free of connecting tissue.<sup>58</sup> Research confirms what common sense tell us, i.e., that castration without pain killer is very painful for the piglets, not only during the procedure but for some period thereafter.<sup>59</sup> A botched

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<sup>54</sup> Effective June 5, 2015, if piglets are weaned before the ages specified by Steps 2 through 5+, this is considered only a minor non-conformance without practical consequences.

<sup>55</sup> A.K. Johnson et al., *How Does Weaning Age Affect the Welfare of the Nursery Pig?*, Pork Information Gateway, [www.porkgateway.org/FileLibrary/PIGLibrary/Factsheets/a6764v1-0.pdf](http://www.porkgateway.org/FileLibrary/PIGLibrary/Factsheets/a6764v1-0.pdf) (last accessed May 13, 2015); *see also*, e.g., *The NPF Way of Weaning Maximises Piglet Welfare*, Natural Pig Farming, <http://www.naturalpigfarming.com/weaning.htm> (last accessed May 13, 2015) (stating that in the wild weaning is gradual and can take as long as 13-17 weeks for piglet to be fully weaned); *see also*, e.g., Sumner, *supra* note 51.

<sup>56</sup> *See* Global Animal Partnership, *5-Step Animal Welfare Rating Standards for Pigs*, <http://gblanimalpartnership.blob.core.windows.net/standards/Pig%20Welfare%20Standards%20V2.0.pdf> (December 5, 2014) (revised set of standards for pigs, effective June 5, 2015).

<sup>57</sup> GAP’s revised standards for pigs will allow castration for piglets up to 10 days old. In addition, castration is no longer limited to a scalpel. Henceforth, any “sharp, clean instrument” will do. Using pain relief for this procedure is not typical in the United States. *See*, e.g., A. O’Connor et al., *Pain Management in the Neonatal Piglet During Routine Management Procedures. Part 2: Grading the Quality of Evidence and the Strength of Recommendations*, 15 ANIMAL HEALTH RES. REV. 39 (2014).

<sup>58</sup> A. Prunier et al., *A Review of the Welfare Consequences of Surgical Castration in Piglets and the Evaluation of Non-Surgical Methods*, 15 ANIMAL WELFARE 277 (2006); PALMER J. HOLDEN & M.E. ENSMINGER, *SWINE SCIENCE* 365-366 (7th ed. 2006); *see also* O’Connor, *supra* note 57.

<sup>59</sup> EFSA Scientific Panel on Animal Health and Welfare, *Opinion of the Scientific Panel on Animal Health and Welfare on a Request from the Commission Related to Welfare Aspects of the Castration of Piglets*, 91 THE EFSA JOURNAL 1 (2004); E. Von Borell et al., *Animal Welfare Implications of Surgical Castration and its Alternatives in Pigs*, 3 ANIMAL 1488 (2009); American Veterinary Medical Association, *Welfare Implications of Swine Castration*, (May 25, 2013); O’Connor, *supra* note 57. Even attempts to alleviate pain by nitrous oxide or other methods so far has proven unsuccessful. *See*, e.g. M. A. Sutherland et al., *Physiology and Behavior of Pigs Before and After*

procedure can also cause “ruptures”—resulting in the piglets’ intestines spilling out from the opening where their testicles were removed during castration. In addition, ear tagging is permitted at all steps, and ear notching is permitted at steps 1-4. Likewise, septum rings are permitted at steps 1-4.

Again, common sense dictates that cutting off testicles, punching holes in ears, and inserting wires or steel rings through the septum is painful to pigs. Respondent’s statements praising its suppliers for their supposed “emphasis on the well-being of animals” are irreconcilable with the fact that those suppliers are not required to (and typically don’t) provide pain relief to mitigate the indisputable pain and suffering that their practices cause to the animals.

#### **D. Countless Premature Deaths**

When pigs die prematurely before slaughter, it is a sign of poor pig welfare.<sup>60</sup> The acceptable numbers of dead pigs and piglets at GAP-certified farms contrast starkly with Respondent’s assurances of humane treatment and standard of care. GAP euphemistically states that it is “the goal” that no more than 10% of piglets die before weaning,<sup>61</sup> that no more than 2% of (non-breeding) pigs die post-weaning; and that no more of 3% of adult breeding pigs die annually.<sup>62</sup> GAP suggests that “[f]armers should be working toward this goal.”

Suggesting that farmers should work toward lowering the numbers of pigs and piglets that die under their care is not a standard but a loophole. It provides no assurances whatsoever and, except to the unwitting consumer, speaks volumes about the poor conditions at farms and about GAP’s toothless welfare standards, where substantial numbers of untimely deaths are not viewed as a reason for sufficient concern to deny GAP certification.

#### **E. Suffering Caused by Transportation and Slaughter**

Transportation of animals raised for food has gained increasing attention from the public “because of both perceived and real effects on animal welfare as well as food safety[.]”<sup>63</sup> The World Organization for Animal Health (OIE) has recognized the importance of continuing good animal welfare during transport.<sup>64</sup> Welfare concerns include “the potential for the animals to experience stress, injury, fatigue, mortality and morbidity that may be due to limited access to

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*Castration: Effects of Two Topical Anesthetics*, 4 ANIMAL 2071 (2010); J.L. Rault & D. C. Lay, *Nitrous Oxide by Itself is Insufficient to Relieve Pain Due to Castration in Piglets*, 89 J. OF ANIMAL SCI. 3318 (2011).

<sup>60</sup> See, e.g., A. Kilbride et al., *Risks Associated with Prewaning Mortality in 855 Litters on 39 Commercial Outdoor Pig Farms in England*, 117 PREVENTIVE VETERINARY MED. 189 (2014).

<sup>61</sup> These numbers do not include still-born piglets.

<sup>62</sup> These figures do not include pigs who are euthanized or sent to slaughter prematurely. Therefore, the number of pigs who perish before their expected time may be higher—although there is no telling just how high.

<sup>63</sup> Schwartzkopf-Genswein, *supra* note 41, at 228; see also P. Brandt & M.D. Aaslyng, *Welfare Measurements of Finishing Pigs on the Day of Slaughter: A Review*, 103 MEAT SCI. 13 (2015).

<sup>64</sup> Schwartzkopf-Genswein, *supra* note 41, at 228.

feed and water during the transportation process, exposure to variable climatic conditions, exposure to noise, vibrations and toxins as well as poor handling, and mixing with unfamiliar animals.”<sup>65</sup> Field trials conducted in the U.S. from 2000 to 2007 revealed that of all pigs marketed, 0.25% died during transport and an additional 0.44% could not walk when they arrived at the slaughterhouse.<sup>66</sup>

Despite these concerns, pigs from Step 1 suppliers may be confined in transport for up to 14 hours and for up to 8 hours by suppliers certified under Steps 2 through 5. Effective June 5, 2015, pigs from Step 1 through 5 suppliers may be confined in transport for up to 16 hours. There is no requirement that pigs be given food or water during that time, and it is almost unknown to hear of any supplier who does provide either. These conditions cause hunger, thirst and exhaustion, and sometimes even death.<sup>67</sup> No reasonable consumer would associate these practices with “caring” and “humane” handling.

More abuse awaits the pigs when they arrive at the abattoir. The most common methods used for slaughter of pigs are electrical stunning and gas stunning. Pigs are often forced into the killing chamber with electric shock prods that increase their fear and trauma.<sup>68</sup> Although the purpose of stunning is to induce a grand mal seizure that renders the pigs insensible to pain until they are dead, it is not always effective.<sup>69</sup> Some pigs are fully conscious when they are hoisted on a rail by a hind leg, their carotid artery or jugular vein is cut, and they slowly bleed to death.<sup>70</sup> Animal scientist Temple Grandin describes that fully conscious animals, suspended upside-down in this manner, will arch their backs in an attempt to lift their heads.

This is the stuff that nightmares are made of—not the “humane” practices caring consumers expect when they purchase Respondent’s products.<sup>71</sup> Were Whole Foods to show a picture of this process, rather than a drawing of a happy pig, caring consumers would not make a purchase.

#### **IV. CATTLE**

GAP’s purported “standards” for cattle are equally misleading and largely illusory.

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<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 232.

<sup>67</sup> Brandt, *supra* note 63.

<sup>68</sup> *Id.* at 15.

<sup>69</sup> AMERICAN MEAT INSTITUTE, RECOMMENDED ANIMAL HANDLING GUIDELINES AND AUDIT GUIDE (July 2013).

<sup>70</sup> *Id.*

<sup>71</sup> Effective June 5, 2015, GAP includes slaughter “standards” for pigs, requiring all animals to be stunned and rendered insensible prior to slaughter. However, these “standards” are largely illusory, because violations are considered only a minor non-conformance.

## A. Lame, Under-Conditioned Cattle

It is industry practice to assess the health and welfare of cattle by scoring the animals on a scale from 1 to 9.<sup>72</sup> A score of 5 is considered “moderate,” 6 is considered “good condition,” and 7 “very good condition.” Reasonable consumers would conclude that meat for which they are paid a premium came from animals in good or very good condition. They would be mistaken. GAP certified animals do not even need to meet the “moderate” threshold. A body condition score of 4 (considered “borderline” by the industry)<sup>73</sup> suffices. A cow with her bones sticking out and bordering on sickly is a far cry from the image of exceptional care and wellbeing the Respondent conveys to consumers.

There is also a good chance that the animals on GAP-certified farms have difficulty getting around, or can only do so with great pain—as is common on non-certified factory farms. Lameness is considered to be the most obvious clinical symptom of impaired animal welfare.<sup>74</sup> GAP pays lip-service to this concern by specifying that “[l]ameness levels must not exceed 2% of the herd at one time.” However, exceeding this threshold is deemed a “minor nonconformance.” Therefore, even repeated violations of this threshold are no cause for denying certification to a supplier. As such, this is a meaningless benchmark that provides no insights into how many animals may actually be too sick to even make use of the alleged “ROOM TO MOOOOVE.”

## B. Painful Castration, Dehorning and Branding

Castration of bull calves causes acute and chronic pain, which increases in severity with the age of the calf at the time of the procedure. Calves who are castrated beyond the age of two months take almost sixty days to heal.<sup>75</sup> GAP recognizes that “[i]deally, castration should occur prior to 7 days.” However, GAP’s standards fall woefully short of this ideal. Calves may be castrated at any age, if it is done by a veterinarian. Ranch hands are allowed to castrate calves until they are six months old under Step 1, and three months old under Steps 2 through 4—far beyond the 7 day age that GAP considers desirable and that would mitigate the most egregious suffering.<sup>76</sup>

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<sup>72</sup> Dan E. Eversole et al., Virginia Cooperative Extension, Body Condition Scoring Beef Cows, [https://pubs.ext.vt.edu/400/400-795/400-795\\_pdf.pdf](https://pubs.ext.vt.edu/400/400-795/400-795_pdf.pdf).

<sup>73</sup> Johnny Rossi & Timothy W. Wilson, University of Georgia Cooperative Extension, Body Condition Scoring Beef Cows, at 2 (2006), [http://extension.uga.edu/publications/files/pdf/B%201308\\_3.pdf](http://extension.uga.edu/publications/files/pdf/B%201308_3.pdf).

<sup>74</sup> See, e.g., L.A.F. Silva et al., *A Clinical Trial to Assess the Use of Sodium Hypochlorite and Oxytetracycline on the Healing of Digital Dermatitis Lesions in Cattle*, 46 CAN. VETERINARY J. 345 (2005).

<sup>75</sup> See, e.g., K.J. Stafford et al., *Effects of Local Anaesthesia or Local Anaesthesia Plus a Non-Steroidal Anti-Inflammatory Drug on the Acute Cortisol Response of Calves to Five Different Methods of Castration*, 73 RES. IN VETERINARY SCI. 61 (2002).

<sup>76</sup> Under Step 1, calves may be castrated with “compression using rings” until they are three months old, and with “high tension bands” between the ages of three to six months. Surgery and a burdizzo castration clamp are permissible methods of castration anytime until the calf is six months old. Steps 2 through 4 allow ranch hands to castrate calves until they are three months old, by using compression using rings, surgery and burdizzo castration clamp.



Permitted methods include cutting off the testes and interrupting the blood supply by crushing the spermatic cords with a clamp or placing a rubber ring or latex band on the neck of the scrotum. Presumably, the reader requires no further description or scientific study to conclude that this must be extremely painful.<sup>77</sup> And yet, GAP does not even require suppliers to provide any form of pain relief whatsoever during or after these procedures.<sup>78</sup>

Another painful procedure is the disbudding of calves with a hot iron. Although Respondent's butcher paper claims that "No de-horning [is] allowed," disbudding is indeed a form of de-horning and *is* allowed by Step 1 through 4 suppliers. The semantic distinction between de-horning and disbudding is meaningless for consumers who would reasonably conclude that calves will be spared the painful procedure of having their horn tissue cut or seared off, no matter what the procedure is called.<sup>79</sup>

GAP permits disbudding with a hot iron, and there is ample scientific evidence that the hot iron procedure is extremely painful.<sup>80</sup> As the name indicates, an iron is heated to red hot, then pressed against the horn bud for about 20 seconds, destroying the horn-producing cells. During the procedure it is common to cinch the calf's nostrils so that every move causes great pain and the calf must then attempt to withstand the pain of disbudding in order to avoid the pain of the nostril cinch. A veterinarian's website dedicated to answering questions about dehorning links to a video of a calf being disbudded with a hot iron with the emphatic warning: "**Caution: Graphic Content.**"<sup>81</sup>

Notably, while farmers can breed for naturally hornless cattle, GAP does not require suppliers to use this common industry practice in Steps 1-4. Also, GAP has confirmed that suppliers need not

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<sup>77</sup> More detailed descriptions of these procedures and their painful effects can be found in many peer reviewed publications. *See, e.g.*, D. Boesch et al., *Burdizzo Castration of Calves Less Than 1-Week Old With and Without Local Anaesthesia: Short-Term Behavioural Responses and Plasma Cortisol Levels*, 114 APPLIED ANIMAL BEHAVIOUR SCI. 330 (2008); Wanyong Pang et al., *Temporal Patterns of Inflammatory Gene Expression in Local Tissues After Banding or Burdizzo Castration in Cattle*, 5(36) BMC VETERINARY RES. (Jan. 2009); K. Stafford, *Alleviating the Pain Caused by the Castration of Cattle*, 173 VETERINARY J. 245 (2007); S. Ting et al., *Effect of Ketoprofen, Lidocaine Local Anesthesia, and Combined Xylazine and Lidocaine Caudal Epidural Anesthesia During Castration of Beef Cattle on Stress Responses, Immunity, Growth, and Behavior*, 81 J. OF ANIMAL SCI. 1281 (2003).

<sup>78</sup> To put GAP's supposed welfare standards for castration into perspective, veterinary law in Great Britain states that pain must be prevented once the calf reaches the age of 2 months. In Germany, pain relief is mandatory for calves over 4 weeks. Prevention of pain during castration is mandatory in Switzerland and Austria. *See* Boesch, *supra* note 77.

<sup>79</sup> Furthermore, although disbudding at birth or during the first week is recommended by many veterinarians and industry organizations, to limit distress, GAP allows calves to be disbudded until they are six weeks old. *See, e.g.*, Frequently Asked Questions, Dehorning, <http://www.dehorning.com/faqs/> (last visited May 13, 2015); K. Burns, *Policy Addresses Welfare Issues Of Cattle Castration, Dehorning*, 232 J. OF THE AM. VETERINARY MED. ASS'N 1437 (2008).

<sup>80</sup> Hokkanen, A. et al., *Perceptions and Practices of Finnish Dairy Producers on Disbudding Pain in Calves*, 98 Journal of Dairy Science 823 (2015); Burns, *supra* note 79; Jonathan Long, *Easing Disbudding Stress*, 146 Farmers Weekly, Apr. 2007, at 54.

<sup>81</sup> *Hot-Iron Disbudding*, Dehorning, <http://www.dehorning.com/dehorning-methods/hot-iron-disbudding/> (last visited May 13, 2015).

provide any pain relief during or after the hot iron procedure, since it prohibits the off-label use of drugs and “there are no analgesic drugs specifically approved in the United States for alleviating pain in cattle”—even though federal law allows veterinarians to prescribe or administer drugs off-label where an animal may suffer without treatment.

Hot iron branding is also permitted under Steps 1 through 4—even though GAP acknowledges that “[h]ot iron branding is extremely painful for the animals.”<sup>82</sup> Less painful methods are available but not required by GAP.

Leaving it up to farmers to decide whether they will use more or fewer painful procedures, and whether they will or will not provide pain relief for their animals, makes GAP certified farmers no better than any non-certified factory farmer. Conscientious consumers would presumably not purchase (or pay a premium for) GAP certified products, if that fact were fairly disclosed.<sup>83</sup>

### C. Suffering Caused by Transportation and Slaughter

Contrary to the belief of a reasonable consumer that GAP certification guarantees the animals a swift and painless death at the slaughterhouse, a deeply stressful and painful death awaits many cows, no matter how highly they were ranked on GAP’s vaunted “welfare” scale.<sup>84</sup> When stun guns fail to work properly or are applied incorrectly, it is not uncommon for plant workers to cut off a cow’s feet, ears, and udder while she is fully conscious. Moving and blinking her eyes, she is hacked to pieces on the assembly line.<sup>85</sup>

It is the height of cynicism and deception for Respondent to hand over the meat from such animals wrapped in butcher paper with the words “thanks for caring about animals.”

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<sup>82</sup> Global Animal Partnership, *5-Step Animal Welfare Rating Standards for Beef Cattle*, <http://glblanimalpartnership.blob.core.windows.net/standards/Beef%20Cattle%20Welfare%20Standards.pdf> (last visited May 15, 2015); see also, e.g., C.B. Tucker et al., *Effect of a Cooling Gel on Pain Sensitivity and Healing of Hot-Iron Cattle Brands*, 92 J. OF ANIMAL SCI. 5666 (2012) (“Hot-iron branding is painful for cattle.”).

<sup>83</sup> In a survey conducted by American Humane Association, the proprietor of a misleading “humane certified” label, 92.6 percent of respondents found it “very important” to buy “humanely raised products,” 75.7 percent would “pay more for humanely raised products.” AMERICAN HUMANE ASSOCIATION, 2014 HUMANE HEARTLAND FARM ANIMAL WELFARE SURVEY (2014), <http://www.americanhumane.org/humane-heartland/2014-humane-heartland-farm-survey.pdf>.

<sup>84</sup> See generally, J.K. Probst et al., *Relationship Between Stress-Related Exsanguination Blood Variables, Vocalisation, and Stressors Imposed on Cattle Between Lairage and Stunning Box Under Conventional Abattoir Conditions*, 164 LIVESTOCK SCI. 154 (2014).

<sup>85</sup> According to a report of the United States Accounting Office, between January 2001 and March 2003, the “most prevalent noncompliance” documented in U.S. slaughter facilities “was the ineffective stunning of animals, in many cases resulting in a conscious animal reaching slaughter.” See LAWRENCE J. DYCKMAN & MARIA CRISTINA GOBIN, U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-04-247, HUMANE METHODS OF SLAUGHTER ACT: USDA HAS ADDRESSED SOME PROBLEMS BUT STILL FACES ENFORCEMENT CHALLENGES (2004). One-fourth of non-compliance incidents at slaughter facilities were for ineffective stunning—a violation that USDA characterizes as “actual inhumane treatment.” Over 67 percent of the ineffective stunning violations resulted in conscious animals being hoisted, cut and bled out. *Id.* One government inspector observed six conscious animals being slaughtered during a period of 5 minutes, but took no enforcement action. *Id.*; see also, e.g., N. Purcell, *Cruel Intimacies and Risky Relationships: Accounting for Suffering in Industrial Livestock Production*, 19 SOCIETY & ANIMALS 59 (2011).

## V. CONCLUSION

Many (and an ever-increasing number of) consumers are concerned enough about animal welfare to alter their purchasing habits on the basis of representations such as those made by Respondent at its D.C. stores.<sup>86</sup> Respondent assuages consumer skepticism about whether (or where) to buy meat products by misleading claims of humane treatment and exceptional standards of care ensured by GAP's 5-Step certifications—when, in fact, the opposite is true.<sup>87</sup>

Notably, this is not the first time the Respondent's misleading advertising has been exposed, and DCRA should therefore be justifiably skeptical of Respondent's credibility. For example, a recent investigation reported on the conditions in which rabbits used for meat sold by Respondent's stores are raised and killed. Contrary to Respondent's statements to the public that these rabbits are restricted by "no crates, cages or tethers," and "food and water are always available," government inspections found that rabbits were crated overnight in such cold weather that they had no access to water because it would freeze, and others were found "dead in the yard" or "dead on arrival" before they were slaughtered.<sup>88</sup> As is the case with the GAP-standards for chickens, turkeys, pigs and cattle at issue here, Respondent's message to consumers differs starkly from the actual practices, in which overcrowding, rough handling, and other cruel practices are unfortunately still the norm.

Respondent is free to say nothing at all about how the animals whose meat is sold at its D.C. stores were raised and slaughtered. But choosing to remain silent about the tortured lives these animals have led and how they have been killed is one thing; telling consumers that they were treated humanely and with care is something else altogether. It is unethical, deceptive, and unlawful.

\* \* \*

PETA respectfully requests that DCRA conduct an investigation and take swift and effective enforcement action against Respondent's deceptive trade practices. PETA is available to assist in any way and to provide copies of the peer-reviewed research studies and other documentation cited herein. Please do not hesitate to contact me should you have any questions.

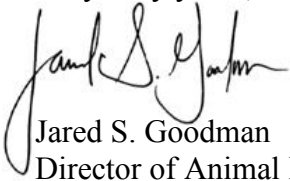
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<sup>86</sup> See, e.g., M. Walker et al., *Animal Welfare Science: Recent Publication Trends and Future Research Priorities*, 27 INT'L J. OF COMP. PSYCHOLOGY 80 (2014); AM. HUMANE ASS'N, 2014 HUMANE HEARTLAND FARM ANIMAL WELFARE SURVEY (2014), <http://www.americanhumane.org/humane-heartland/2014-humane-heartland-farm-survey.pdf>; Press Release, ASPCA, Treat My Chicken Right: ASPCA Survey Shows Consumers Want More Humanely Raised Chicken, Feel it Leads to Safer Chicken Products (Sep. 2, 2014), available at <http://www.aspc.org/about-us/press-releases/treat-my-chicken-right-aspc-survey-shows-consumers-want-more-humanely>; M.G. McKenree et al., *Bioethics Symposium II: Current Factors Influencing Perceptions of Animals and Their Welfare*, 92 J. OF ANIMAL SCI. 1821 (2014).

<sup>87</sup> D. Dentoni et al., *Brand Information Mitigating Negative Shocks on Animal Welfare: Is it More Effective to "Distract" Consumers or Make Them Aware?*, 13 INT'L FOOD & AGRIBUSINESS MGMT. REV. 17 (2010).

<sup>88</sup> Vicky Nguyen et al., *USDA Inspections Offer Glimpse into the Supply Chain for Whole Foods' New Rabbit Meat Pilot Program*, NBC Bay Area (May 21, 2015), available at <http://www.nbcbayarea.com/investigations/USDA-Inspections-Offer-Glimpse-into-the-Supply-Chain-for-Whole-Foods-New-Rabbit-Meat-Pilot-Program-304500531.html>.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jared S. Goodman". The signature is fluid and cursive, with the first name "Jared" being the most prominent.

Jared S. Goodman  
Director of Animal Law  
202-540-2204  
jaredg@petaf.org

cc: Jeffrey S. Kerr, General Counsel and Senior Vice President of Corporate Affairs,  
PETA Foundation

Exhibit 1



Exhibit 2



Exhibit 3



Exhibit 4

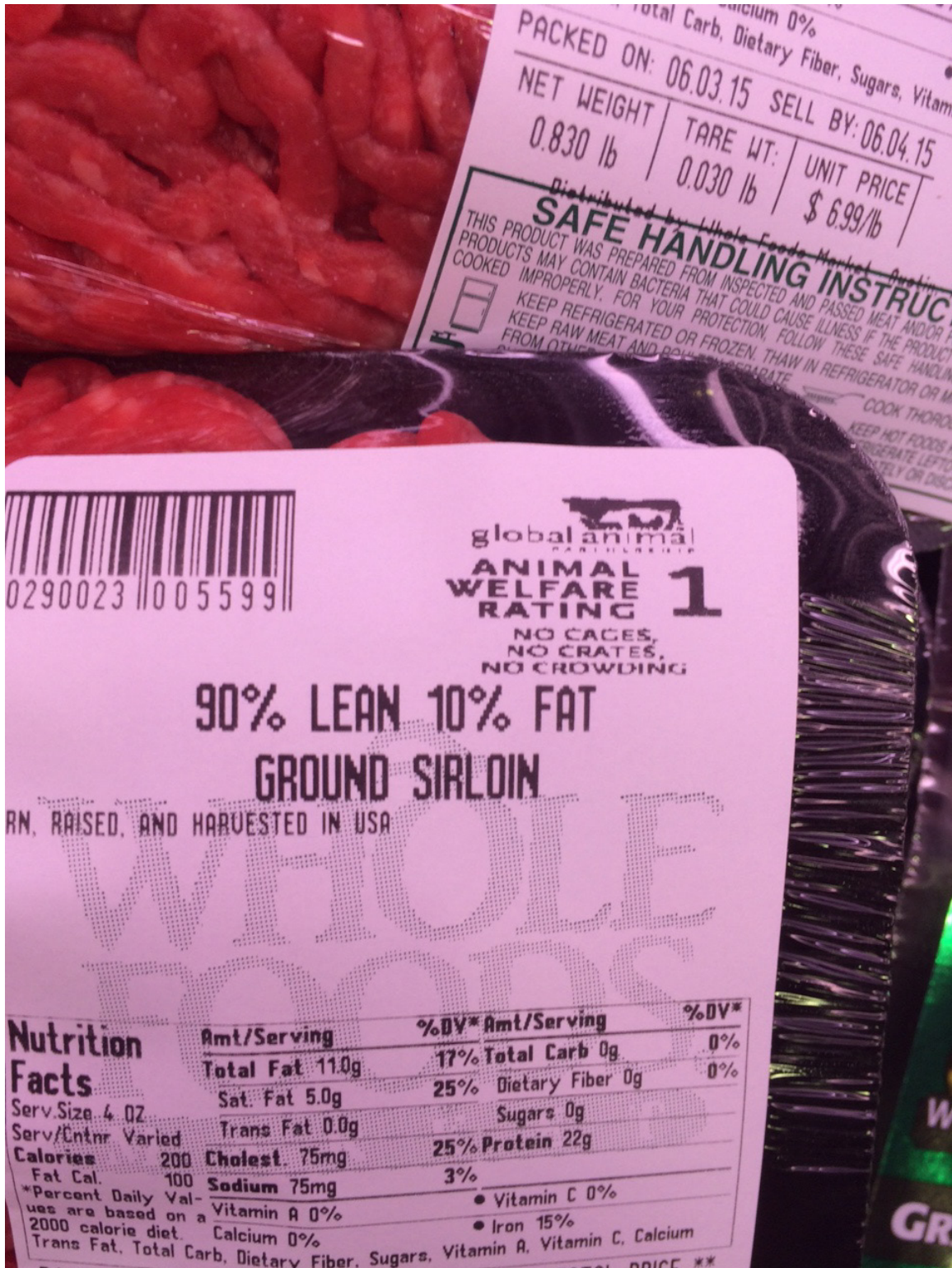




Exhibit 5

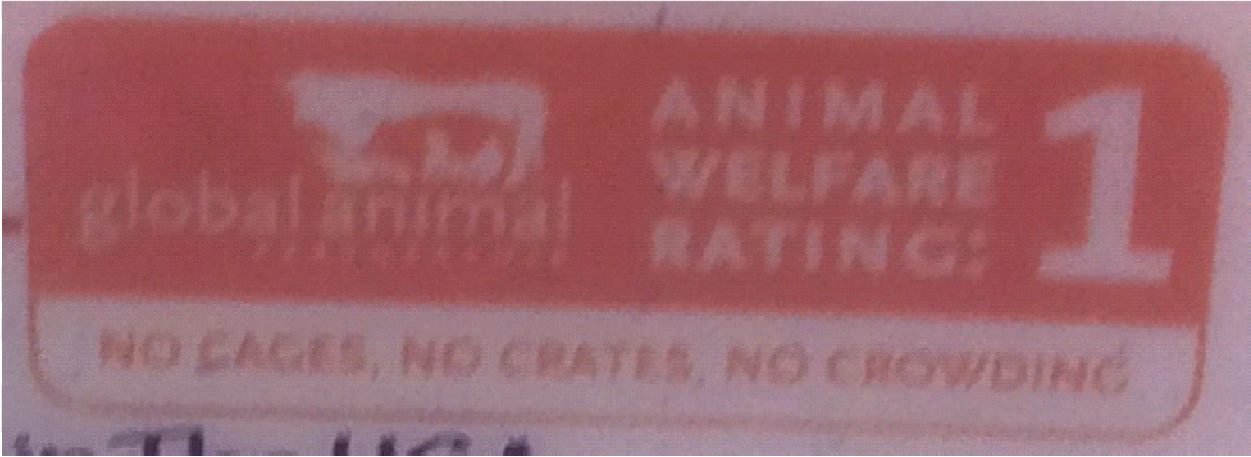


Exhibit 6



Exhibit 7



Exhibit 8



Exhibit 9

