

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

NICHOLAS A. USLER, JON EVANS, ANDREW
ANDRADA, HANNAH VOSSEN, NOAH TANZ,
KENNY KIERMAN, CHARLES SANKOWICH,
BURCU KARACA, and KARA GOZDE, on behalf
of themselves and a class of similarly situated
individuals,

Plaintiffs,

v.

VITAL FARMS, INC., MATTHEW O'HAYER,
RUSSELL DIEZ-CANSECO, and SCOTT
MARCUS,

Defendants.

Civil Case No.: 1:21-cv-00447

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Nicholas Usler, Jon Evans, Andrew Andrada, Hannah Vossen, Noah Tanz, Kenny Kierman, Charles Sankowich, Burcu Karaca, and Kara Gozde, individually, and on behalf of a proposed Class and/or Subclasses (the “Class” or “Plaintiffs”), by and through their undersigned counsel, and as and for their class action complaint as against Defendants hereby allege as follows:

I. SUMMARY OF CLAIMS

1. Vital Farms, Inc. (“Vital”) sells very expensive eggs, and it sells a lot of them. Consumers pay these high prices for Vital’s eggs—a commodity product—because Vital markets itself as an ethical company that treats animals in an ethical, humane, and transparent manner. But Vital’s marketing is false and misleading, and its consumers have been tricked into paying an unjustifiably high premium.

2. Similar to companies who engage in greenwashing by making false claims about the environmental impact of their products, **Vital is engaged in humane-washing by making false claims about the humane nature of its products.** While Vital provides hens access to

pasture, its business model and dictated agricultural practices are not ethical, humane, or transparent. Vital's extensive marketing claims, including those most material to consumer purchasing decisions, are false and/or half-truths designed to deceive customers into paying super-premium prices for its eggs. Vital acknowledges that it has "designed our brand and our products to appeal to customers' demand for ethically produced food," but it does so through falsehoods and misleading half-truths, which benefit Vital officers, insiders, and private equity sponsors at the expense of customers.

3. On information and belief, Vital through its farmer network: (a) obtains hens from hatcheries that kill all male chicks at birth through shockingly cruel methods; (b) removes or permits the removal of the tips of hens' highly sensitive beaks; (c) confines hens in conditions that cause them to spend most of their time indoors, rather than on a "pasture"; (d) cultivates hens to lay far more eggs than they would naturally, leading to painful health issues such as bone density loss (osteoporosis); and (e) when hens stop laying shelf-stable eggs efficiently enough—once those hens have lived around 15-20% of their natural life spans—sells those adolescent hens to pet food companies, which kill them using unquestionably inhumane industrial slaughter methods.

4. Vital is engaged in a simple, highly competitive, low margin business. It oversees farmers who run established chicken farming operations across the United States and who operate their egg businesses in accordance with Vital's purported humane and ethical business model. Vital, in its filings with the Securities & Exchange Commission ("SEC"), and in connection with its Facebook and other social medial advertising, and in each cartons of eggs it sells, describes itself as an *ethical food company*, which operates with "transparency and integrity" and which acts as "stewards of our animals." Vital, in its corporate disclosures, concedes that its massive marketing campaign where it describes itself as ethical, humane, and transparent is designed for

the purpose of selling its eggs at super-premium prices above the cost of traditional eggs and its competitors' "free range egg products":

"We have designed our brand and products to appeal to consumer demand for ethically produced foods."

* * *

"We believe consumers have grown to trust our brands because of our adherence to our values and a high level of transparency."

* * *

"We educate consumers on our ethical values ... to generate further demand."

Indeed, Vital defines its entire business model as "bringing ethically produced food to the table."

5. Through pervasive advertising and in-box marketing, Vital has created a market niche for itself, whereby it charges super-premium prices for its eggs because it has convinced consumers and others in the marketplace that its products are produced humanely and ethically, and that its humane and ethical standards are practiced consistently and transparently in its entire business. Vital's "ethical and humane" marketing campaign has enabled it to charge super-premium prices for its eggs, which are up to seven times the price of ordinary store-bought eggs.

6. Moreover, as Vital concedes, most of its consumers, in reliance upon its marketing, have been convinced to purchase only Vital eggs in order to achieve humane and ethical goals. Vital conducted its own detailed study showing that at least "31% of our consumers insist on purchasing our egg brands and would not purchase another in its place."

7. In sum, Vital is a public company—at times valued at nearly \$1,500,000,000—that is built largely upon convincing consumers and others in the marketplace that it is a uniquely ethical business following humane and ethical practices with respect to farmed animals. Its

representations in this regard not only relate to its purported treatment of farmed animals, but also to Vital's business model.

8. Vital regularly describes its "ethical decision-making model" and its practice of producing ethically-produced foods. Its representations in its ubiquitous marketing are not limited to its treatment of laying hens. Instead, Vital's representations relate also to "farm animals" generally and to Vital's business model. These representations distinguish Vital from some other free-range egg companies which purportedly treat hens "better," but do not claim to be humane companies or to treat all "farm animals" humanely. Vital does not hold itself out as only treating "hens" humanely and ethically, but rather all of the animals Vital uses, such as male chickens, consistent with its ethical goals and humane business model. In this regard, Vital states that it engages in "humane treatment of farm animals as a central tenet" and that it is a "steward for our animals."

9. Indeed, in every box of Vital eggs, customers are directed to read the "Vital Times," an in-box newsletter prepared by Vital, which shows photographs of hens outdoors on green grass and states in relevant part that: **"Our farmers are invested in animal welfare and doing things the right way. And we're invested in them. By bringing this carton home, you are too."** Likewise, it is in these inserts, found in each and every box, that Vital tells customers that its "mission" and "central tenet" is "the humane treatment of farm animals."

10. Vital's representations and its business model are based upon misrepresentations and half-truths in violation of the Deceptive Trade Practices statutes in Texas and other states and constitute fraud and fraud by omission in Texas as well. Upon information and belief, far from being humane and ethical to farmed animals, and being stewards of such farmed animals, Vital is in fact engaged in unethical and inhumane practices directly and indirectly.

11. Vital's marketing campaign and SEC registration statements prepared in connection with its initial public offering ("IPO") and secondary stock offering (which was recently effected) misrepresented that it is humane and ethical to all farmed animals and has a humane and ethical business model. It concedes that customers believe in and rely upon these representations. In fact, Vital's practices are not as advertised. Upon information and belief:

a) First, Vital's hens have their beaks "tipped," a euphemism for cutting or lasering off a portion of each hen's sensitive beak. *See* Exhibit 1.

b) Second, although Vital's hens may have "access" to grass or pasture, they are not, as advertised, "pasture raised" and do not enjoy an "outdoor lifestyle" as advertised. Instead, while hens have "access" to pastures through door slots, Vital's animal care practices ensure that many hens rarely—if ever—venture outdoors, and instead spend most of their time indoors in crowded stationary barns. *See* Exhibit 2, Exhibit 3.

c) Third, these hens' life spans are diminished by as much as 85% by being forced to lay an egg a day from the age of 17 weeks old. This artificially high rate of egg laying depletes the hens of calcium causing bone fractures, weakness and fragility, and the inability to continue laying eggs at the rate of an egg per day. Then, rather than humanely and ethically caring for these "spent" hens, Vital engages in "end-of-life practices," including sending hens to "pet food plant[s] ... pack[ed] ... into crates and ship[ped] ... in trucks hundreds of miles," after they have lived only 15-20% of their normal life span, which Vital's founder and executive chairman (O'Hayer) has acknowledged is both stressful and not humane. *See* Exhibit 4.

d) Fourth, Vital supports, by purchasing hens from hatcheries, the process of chick culling—the killing of every male chicken who hatches. The hatcheries from which Vital

purchases hens routinely engage in this practice, killing hatched male chicks with a meat grinder-like device (maceration), or by other similarly inhumane, unduly painful means. *See* Exhibit 5.

e) Fifth, Vital states in its marketing that it is financing a “solution” to the culling of male chicks by investing in a company—Ovabrite, of which Defendant O’Hayer is also the CEO—that is seeking to develop a technology to determine egg sex before the chicken is hatched. Yet Vital or its affiliate Ovabrite has in fact sued the company that promised to develop this technology, both for fraud—because that company, allegedly, never even possessed the capability to develop this technology—and for failing to even complete the “Alpha Phase” of development. *See* Exhibit 6. Consumers would be misled into thinking that Vital is better than competing egg-sellers on this issue. Rather than acknowledging that it is part of the maceration problem, Vital continues to imply, misleadingly, that it is at the forefront of attempts to end this inhumane slaughter.

12. In sum, Vital is engaged in a ubiquitous pattern of deliberate and gross misstatement of its business model and practices in order to make outsized profits and to materially benefit its insiders and private equity sponsors.

13. Vital has sold millions of eggs based upon its representations that its business is humane and ethical, when in fact it engages in or allows in its chain of commerce practices that are inhumane, unethical, outrageous, and unconscionable. Moreover, as the marketplace becomes aware of this practice, its business model is likely to collapse. As Vital itself has stated, customers believe Vital’s marketing materials that profess Vital ethically produces food. Vital’s own internal study shows that almost one-third of its customers will not purchase **any other eggs because of their desire to further the humane and ethical practices in which Vital purports to engage.**

14. Vital's misrepresentations, omissions, and half-truths are actionable under Deceptive Trade Practices statutes for each State and constitute fraud and fraud by omission in the State of Texas. This action seeks to remedy the material and substantial misrepresentations and half-truths promulgated by Vital, on behalf of consumers of various States who have purchased Vital eggs at super-premium prices for the purpose of furthering their legitimate interest in the humane and ethical treatment of farmed animals. These purchasers, all of them, have been duped. They have paid super-premium prices for eggs which are produced through a process that is objectively inhumane, unethical, outrageous, and unconscionable, while being tricked by Vital into believing that it was humane and ethical.

II. THE PARTIES

A. Plaintiffs

15. Nicholas A. Usler is a resident of the State of Michigan. He purchased Vital eggs on a regular basis because he believed that Vital employed unique humane and ethical farming practices with respect to all of the farmed animals in its supply chain, including providing them freedom from undue pain and distress, and that by purchasing such eggs, even at a super-premium price, he was furthering his own humane and ethical interests with respect to the humane and ethical treatment of farmed animals. Mr. Usler would not have paid a super-premium price for Vital eggs had he known the truth about Vital's practices. Mr. Usler reasonably relied upon misrepresentations and omissions discussed herein in purchasing Vital eggs, including the box inserts promising "humane treatment of farm animals" and showing photographs of hens outdoors on green grass, which motivated his decision to purchase Vital eggs both initially and on an ongoing basis. Mr. Usler would only consider purchasing Vital eggs in the future if Vital were to

treat farmed animals in a manner consistent with Vital's advertising, or if the eggs were sold without super-premium prices.

16. Jon Evans is a resident of the State of California. He purchased Vital eggs on a regular basis because he believed that Vital employed unique humane and ethical farming practices with respect to all of the farmed animals in its supply chain, including providing them freedom from undue pain and distress, and that by purchasing such eggs, even at a super-premium price, he was furthering his own humane and ethical interests with respect to the humane and ethical treatment of farmed animals. Mr. Evans would not have paid a super-premium price for Vital eggs had he known the truth about Vital's practices. Mr. Evans reasonably relied upon misrepresentations and omissions discussed herein in purchasing Vital eggs, including the box inserts promising "humane treatment of farm animals" and showing photographs of hens outdoors on green grass, which motivated his decision to purchase Vital eggs on an ongoing basis. Mr. Evans would only consider purchasing Vital eggs in the future if Vital were to treat farmed animals in a manner consistent with Vital's advertising.

17. Kenny Kierman is a resident of the State of California. He purchased Vital eggs on a regular basis because he believed that Vital employed unique humane and ethical farming practices with respect to all of the farmed animals in its supply chain, including providing them freedom from undue pain and distress, and that by purchasing such eggs, even at a super-premium price, he was furthering his own humane and ethical interests with respect to the humane and ethical treatment of farmed animals. Mr. Kierman would not have paid a super-premium price for Vital eggs had he known the truth about Vital's practices. Mr. Kierman reasonably relied upon misrepresentations and omissions discussed herein in purchasing Vital eggs, including the box inserts promising "humane treatment of farm animals" and showing photographs of hens outdoors

on green grass, which motivated his decision to purchase Vital eggs on an ongoing basis. Mr. Kierman would only consider purchasing Vital eggs in the future if Vital were to treat farmed animals in a manner consistent with Vital's advertising, or if the eggs were sold without super-premium prices.

18. Andrew Andrada is a resident of the State of Texas. He purchased Vital eggs on a regular basis because he believed that Vital employed unique humane and ethical farming practices with respect to all of the farmed animals in its supply chain, including providing them freedom from undue pain and distress, and that by purchasing such eggs, even at a super-premium price, he was furthering his own humane and ethical interests with respect to the humane and ethical treatment of farmed animals. Mr. Andrada would not have paid a super-premium price for Vital eggs had he known the truth about Vital's practices. Mr. Andrada reasonably relied upon misrepresentations and omissions discussed herein in purchasing Vital eggs, including the box inserts promising "humane treatment of farm animals" and showing photographs of hens outdoors on green grass, which motivated his decision to purchase Vital eggs on an ongoing basis. Mr. Andrada would only consider purchasing Vital eggs in the future if Vital were to treat farmed animals in a manner consistent with Vital's advertising, or if the eggs were sold without super-premium prices.

19. Hannah Vossen is a resident of the State of Florida. She purchased Vital eggs on a regular basis because she believed that Vital employed unique humane and ethical farming practices with respect to all of the farmed animals in its supply chain, including providing them freedom from undue pain and distress, and that by purchasing such eggs, even at a super-premium price, she was furthering her own humane and ethical interests with respect to the humane and ethical treatment of farmed animals. Ms. Vossen would not have paid a super-premium price for

Vital eggs had she known the truth about Vital's practices. Ms. Vossen reasonably relied upon misrepresentations and omissions discussed herein in purchasing Vital eggs, including social media marketing and box inserts promising "humane treatment of farm animals" and showing photographs of hens outdoors on green grass, which motivated her decision to purchase Vital eggs both initially and on an ongoing basis.

20. Noah Tanz is a resident of the State of New York. He purchased Vital eggs on a regular basis because he believed that Vital employed unique humane and ethical farming practices with respect to all of the farmed animals in its supply chain, including providing them freedom from undue pain and distress, and that by purchasing such eggs, even at a super-premium price, he was furthering his own humane and ethical interests with respect to the humane and ethical treatment of farmed animals. Mr. Tanz would not have paid a super-premium price for Vital eggs had he known the truth about Vital's practices. Mr. Tanz reasonably relied upon misrepresentations and omissions discussed herein in purchasing Vital eggs, including social media marketing and box inserts promising "humane treatment of farm animals" and showing photographs of hens outdoors on green grass, which motivated his decision to purchase Vital eggs both initially and on an ongoing basis. Mr. Tanz would only consider purchasing Vital eggs in the future if Vital were to treat farmed animals in a manner consistent with Vital's advertising, or if the eggs were sold without super-premium prices.

21. Charles Sankowich is a resident of the State of New York. He purchased Vital eggs on a regular basis because he believed that Vital employed unique humane and ethical farming practices with respect to all of the farmed animals in its supply chain, including providing them freedom from undue pain and distress, and that by purchasing such eggs, even at a super-premium price, he was furthering his own humane and ethical interests with respect to the humane

and ethical treatment of farmed animals. Mr. Sankowich would not have paid a super-premium price for Vital eggs had he known the truth about Vital's practices. Mr. Sankowich reasonably relied upon misrepresentations and omissions discussed herein in purchasing Vital eggs, including the box inserts promising "humane treatment of farm animals" and showing photographs of hens outdoors on green grass, which motivated his decision to purchase Vital eggs on an ongoing basis. Mr. Sankowich would only consider purchasing Vital eggs in the future if Vital were to treat farmed animals in a manner consistent with Vital's advertising.

22. Burcu Karaca is a resident of the State of New York. She purchased Vital eggs on a regular basis because she believed that Vital employed unique humane and ethical farming practices with respect to all of the farmed animals in its supply chain, including providing them freedom from undue pain and distress, and that by purchasing such eggs, even at a super-premium price, she was furthering her own humane and ethical interests with respect to the humane and ethical treatment of farmed animals. Ms. Karaca would not have paid a super-premium price for Vital eggs had she known the truth about Vital's practices. Ms. Karaca reasonably relied upon misrepresentations and omissions discussed herein in purchasing Vital eggs, including the box inserts promising "humane treatment of farm animals" and showing photographs of hens outdoors on green grass, which motivated her decision to purchase Vital eggs on an ongoing basis. Ms. Karaca would only consider purchasing Vital eggs in the future if Vital were to treat farmed animals in a manner consistent with Vital's advertising.

23. Kara Gozde is a resident of the State of New York. She purchased Vital eggs on a regular basis because she believed that Vital employed unique humane and ethical farming practices with respect to all of the farmed animals in its supply chain, including providing them freedom from undue pain and distress, and that by purchasing such eggs, even at a super-premium

price, she was furthering her own humane and ethical interests with respect to the humane and ethical treatment of farmed animals. Ms. Godze would not have paid a super-premium price for Vital eggs had she known the truth about Vital's practices. Ms. Godze reasonably relied upon misrepresentations and omissions discussed herein in purchasing Vital eggs, including the box inserts promising "humane treatment of farm animals" and showing photographs of hens outdoors on green grass, which motivated her decision to purchase Vital eggs on an ongoing basis. Ms. Godze would only consider purchasing Vital eggs in the future if Vital were to treat farmed animals in a manner consistent with Vital's advertising.

B. Defendants

24. Vital Farms, Inc. is a Delaware public benefit corporation, headquartered and having its principal place of business in or around Austin, Texas, which issued shares publicly pursuant to a Registration Statement filed under the Securities Act of 1933. Contemporaneous with Vital's receipt of a previous draft of this Complaint, Vital issued additional shares and/or permitted the sale of registered shares based upon its existing Registration Statement (the "Secondary Offering"). The misrepresentations contained and described herein were included in the description of Vital and its business model in its Registration Statement, its Secondary Offering Registration Statement, its public advertising, and in each box of Vital eggs.

25. Matthew O'Hayer is on information and belief a resident of the State of Texas and is the Founder and Executive Chairman of Vital. At the time of Vital's IPO, O'Hayer had an equity interest in Vital worth approximately \$500 million. On information and belief, O'Hayer exercises a high degree of control and/or influence over the advertising, marketing, and business operations of Vital—and, given its small management team, effectively exercises day-to-day control over the business and its marketing.

26. Russell Diez-Canseco is on information and belief a resident of the State of Texas and is the President, Chief Executive Officer, and a Director of Vital. On information and belief, Mr. Diez-Canseco conceived, controlled, and had supervision over Vital's marketing and advertising. Diez-Canseco, as of the effective date of the Vital's IPO, owned an equity interest in Vital worth more than \$100 million.

27. Scott Marcus is on information and belief a resident of the State of Texas and is the Chief Marketing Officer of Vital. As Chief Marketing Officer, Marcus was responsible for the false and misleading marketing materials described herein.

III. JURISDICTION AND VENUE

28. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1332(d) and 1453, because the number of proposed Class members exceeds 100, the amount in controversy exceeds the sum or value of \$5 million, exclusive of interests and costs, and some Plaintiffs and the other Class members are citizens of a different State from Defendants.

29. Venue is proper in this judicial District pursuant to 28 U.S.C. § 1391 because Vital maintains its principal place of business in this District and substantial parts of the events or omissions giving rise to the claims at issue described herein occurred in this District.

30. This Court has personal jurisdiction over each Defendant because each Defendant directly, with their respective directors, officers, employees, representatives, and/or agents participated in the acts, practices or omissions giving rise to the claims described herein in this District.

**IV. FACTS COMMON TO ALL CLAIMS FOR RELIEF
(Vital's Deceptive Acts and Practices with Respect to its
Purported Humane and Ethical Practices)**

31. The production and sale of eggs is a commodity business. It involves extremely low margins, substantial competition, and low barriers to entry. Consequently, the egg production business is, in general, not a highly profitable business. Nevertheless, Defendants, and the private equity firms who invested in and promoted Vital's IPO, schemed to create a business model which could, through material misrepresentations and omissions, sell eggs at super-premium prices and margins up to seven times those achieved through the sale of ordinary, commercial eggs.

32. Defendants are aware of and designed a scheme to take advantage of a growing population of American consumers who believe that it is important that the food industry treat all farmed animals, including chickens, humanely and ethically. These consumers are willing to spend more than they would for commodity foods if it means that the food comes from animals who are treated humanely and from processes that are humane and ethical. Defendants, well aware of this consumer trend, took advantage of it through material misrepresentations and omissions and an unconscionable business model. This business model not only involved making the misrepresentations and material omissions described herein, but also monetizing these misrepresentations through a misleading IPO and secondary issuance of Vital securities, whereby Vital insiders and private equity sponsors became fabulously wealthy.

33. Indeed, only several months ago, Defendants—riding a wave of retail support based upon Defendants' misrepresentations with respect to their purported humane, ethical, and transparent business model—were able to achieve something which seemed impossible. They were able to take public an egg business, which at the time only had approximately *\$140 million in revenue*, and was barely profitable, at a market capitalization of almost \$1.5 billion—more than 10 times its revenue.

34. Given the traditional low margin nature of the egg business and the limited growth opportunities available in the already-saturated egg market, Defendants' IPO proposition seemed farcical. Defendants realized, however, that a small segment of the American population who highly values humane and ethical treatment of animals would pay super-premium prices for their eggs, and that a business model pitched to investors, based upon this segment of the market, and the super-premium prices that these consumers might pay, could succeed. And, in fact, it did. Defendants were able to monetize the misrepresentations through an IPO in September of 2020, thereby making several of Vital's officers and equity sponsors immensely rich.

35. Shortly after the IPO, Vital's founder, Defendant O'Hayer (an egg farmer) held Vital shares worth almost half a billion dollars, a staggering amount achieved through the misleading business model upon which Vital went public. Other officers of Vital, shortly after its IPO, likewise held many millions of dollars in Vital shares.

36. Thus, Defendants' scheme was not simply designed to generate increased sales through unconscionable misrepresentations to ethical consumers, but also to make an almost unbelievable fortune from a business that is traditionally barely profitable.

37. Defendants' material misrepresentations, omissions, and unconscionable business practices include ubiquitous advertising and marketing.

38. Vital is a voracious advertiser of its egg products, using print, internet, social media, and other forms of advertising. This advertising was essential to the scheme Defendants engaged in because Defendants needed to establish themselves as uniquely humane and ethical. Indeed, they had to appear more humane and ethical than any of their competitors in order to achieve super-premium pricing for their basic commodity—eggs. Indeed, Vital has sued at least one of its competitors in the “pasture raised” egg business alleging that from time to time this egg producer

did not use pasture raised eggs. Ironically, while suing its competitor, Vital was itself relying upon false marketing and a misleading business model.

39. Among Vital's uniform, widely disseminated misrepresentations with respect to Defendants' practices and business models are the following:

- a) Photographs of hens outdoors in green grass;
- b) "Vital Farms is an ethical food company";
- c) "Our ethics are exemplified by our focus on the humane treatment of farm animals";
- d) "Vital Farms makes ethical snacking easy";
- e) "Looking for ethically produced food? You've found it.";
- f) Vital is "committed to ethical decision-making";
- g) Vital has an "ethical mission";
- h) Vital has a "mission to bring ethically produced food to the table";
- i) The "central tenet" of Vital's "mission" is "the humane treatment of farm animals";
- j) "[Vital's] farmers are invested in animal welfare and doing things the right way";
- k) Vital acts as "stewards of our animals"; and
- l) "Our ethics are exemplified by our focus on the humane treatment of farm animals."

40. Many of the same misrepresentations appeared in Vital's S-1 Registration Statement that was publicly filed with the SEC, to register Vital securities that were sold to the

investing public through some of the nation's largest brokerage firms in connection with Vital's IPO.

41. To support its false image as an ethical and humane food company, Vital went so far as to incorporate itself under Delaware law as a "public benefit corporation", which requires Vital to "balance the financial interests of [its] stockholders with the best interests of those stakeholders materially affected by our conduct, including particularly those affected by the specific benefit purposes set forth in our certificate of incorporation." Those "specific benefit purposes" include "bringing ethically produced food to the table" and "being stewards of our animals." In other words, Vital represented that it would balance the financial interests of its shareholders against the interests of its consumer stakeholders in purchasing food that was "ethically produced" from a company that acts as a steward of its animals. Given that Vital's food is not ethically produced, and that it does not act as a steward of its animals, it is clear that it tipped the scales heavily in favor of its shareholders—including the individual Defendants—and against its consumers. Vital's touting of its status as a public benefit corporation enhanced its image as a humane and ethical company in an improper and false light.

42. Vital's ubiquitous advertising made clear that its principle financial goal was tapping into the market of American consumers who believe in and would pay super-premium prices for food that is the result of humanely and ethically treated farmed animals, including all chickens. Among the marketing statements made by Vital in this regard are the following:

- a) "We have designed our brand and our products to appeal" to a "consumer movement" for "ethically produced" foods;
- b) Vital employs an "ethical decision-making model";

- c) “Consumers have grown to trust our brand because of our adherence to our values and a high level of transparency.”;
- d) “We’re on a mission to bring ethically produced food to the table”;
- e) The “central tenet” of Vital’s “mission” is “the humane treatment of farm animals”;
- f) “[Vital’s] farmers are invested in animal welfare and doing things the right way”;
- g) Vital is “committed to ethical decision-making.”;
- h) Consumers “relate to our values and trust our practices.”;
- i) “We believe consumers have grown to trust our brands because of our adherence to our values and a high level of transparency.”; and
- j) Vital uses “digitally integrated media campaigns, social media tools and other owned media channels” to “educate consumers on our ethical values” in order to “generate further demand for our products and ultimately expand our consumer base.”

Each of the above-quoted statements were included in Defendants’ extensive marketing campaigns, or in their public filings. Each involved material misrepresentations of fact and/or material omissions of fact necessary to make the statements true. This was all by design. Vital’s goal was to falsely convince American consumers that its product was worth super-premium prices.

43. The truth about Vital’s unconscionable, inhumane, and horrific chicken practices is anything but humane, ethical, and transparent. Far from being stewards of farmed animals, and on an “ethical mission,” Vital is engaged in hidden, unethical, and inhumane agricultural

practices—that, because of the unequal balance of sophistication and knowledge between Defendants and Plaintiffs, as well as other reasonable consumers, are beyond the latter’s ability to sufficiently investigate. On information and belief:

a) Defendants sell hens to be killed in an inhumane fashion as soon as they stop their artificially high egg laying rate—usually at around one and a half years old. *See* Ex. 4. Chickens can live for more than a decade. Hens kept by Defendants lay on average an egg per day (every day), for a far shorter period of 13 to 24 months. This excessive rate of egg laying depletes the hens of calcium and substantially decreases their egg production, while also causing undue pain via conditions stemming from hypocalcemia such as osteoporosis, bone fractures, weakness, paralysis, and sudden death. Rather than committing to treating these adolescent hens humanely by feeding and caring for them for their natural lives—or even taking the minimal effort to euthanize hens using less painful or error-prone methods on-farm, using an on-farm euthanasia facility or mobile euthanasia unit—Defendants instead sell them to be killed. Before their horrific journey to the slaughterhouse, many “spent” chickens are caught by workers and placed in crates which often results in bone breakage. After enduring shipment to the slaughterhouse, the hens are often dumped from the crates. Those who are properly sorted are hung upside down in shackles. Thereafter, their throats are cut open and they are dumped in boiling water for feather removal. Defendant O’Hayer himself has described this process in an interview as inhumane:

“If you send them to a pet food plant, which is the biggest use of spent hens, they pack them into crates and ship them in trucks hundreds of miles. Its stressful for them and not very humane.” Ex. 4.

There are many other gruesome ways that killing of “spent” chickens typically takes place, including suffocation by use of carbon dioxide. Defendants’ sanctioning of and commercial participation in these inhumane, unethical, and not clearly disclosed practices demonstrates the

falsity of their claims to be ethical and humane, and of the picture they paint for consumers of happy long lived hens eating grass.

b) Defendants also condone farmer beak cutting. Hens on Vital's network of farms have had their beaks "trimmed," which is an industry euphemism for reducing the sharp points of a hen's beak, often using blades or infra-red light. *See* Ex. 1.

i) Chicken beaks are particularly complex and sensitive sensory organs. The tips of the chicken beaks contain highly sensitive mechanical receptors, which are capable of feeling pain, and are used to engage in precise tactile behaviors.

ii) Beak cutting, even by infra-red light, can reduce sensory functions and disturbs instinctive foregoing behaviors. Other maladies associated with beak cutting, including routine, painful discomfort performing natural behaviors, are well documented.

iii) Beak cutting is an undue, rather than necessary, cause of pain—it can be avoided via humane flock management practices that prevent extreme density and stress—but is consistent with improving Vital's profit margin of Vital by preventing pecking and potential cannibalism by hens in crowded social groupings and in stationary barns. Beak cutting is neither humane nor ethical.

c) Vital and its farmer network financially support the killing of male newborn chickens who are massacred through one of several means at birth or very soon thereafter. Below are pictures depicting one industry-standard method by which this massacre ordinarily takes place, which is known as maceration.



i) Maceration involves dumping large numbers of recently hatched male chickens who are fully alive and capable of reaching full lives into a device resembling a commercial meat grinder, turning them into pulp. Video of this process is available at the following link: <https://youtu.be/xPbeh67VVnk>.

ii) The process is so objectionable—and unnecessary to humane husbandry of farmed animals—that several European countries have outlawed it and others are in the process of outlawing it and/or limiting its use. Nevertheless, hatcheries used by Vital actively destroy newborn male chickens. By purchasing hens from these hatcheries, Vital financially supports and helps to perpetuate this horrific practice—despite the misleading contentions of Vital and Defendant O’Hayer that they “maintain a close connection” to a “team of scientists”

developing technology that will allow farmers to determine the sex of chickens while still in the egg and thus not to hatch male chickens. This is misleading. In fact, Vital has sued the developer of this technology alleging that it lied about the efficacy of the technology and in fact defrauded Vital. *See* Ex. 6.

44. Despite Vital’s attempt to cloak itself with Environmental, Social, and Governance (“ESG”) credentials for solving the mass killing of male chicks, the truth is it has little to do with a potential solution.

A. MISREPRESENTATION AS TO “PASTURE RAISED”

45. Defendants’ primary marketing claim is that their hens are “pasture raised.”

“Sunshine? Check. Pastures? Check. Dust bathing with friends? Check, check, check. Our girls wake up ready to explore and then, after a full day, sleepy and content, they rest up to do it all over again. We watch them dash into the day with renewed excitement about simple things – a crunchy snack, a wildflower, and it gets us thinking.”

* * *

“[T]ake a lead from the girls ... Go outside. Every day.”

This claim is reinforced by photographs included with cartons of Vital eggs showing hens outdoors in lush vegetation, as well as Vital’s social media marketing. *See, e.g.*, Exhibits 7 and 8. The truth is far bleaker than the pastoral image depicted to establish Vital’s ESG credentials with consumers.

46. In fact, on information and belief, the truth is far different. *See, e.g.*, Exs. 1 and 2.

b) First, Vital, on information and belief, stocks hens indoors at extreme densities not significantly greater than the shockingly inhumane minimum indoor space allowances—ranging from 1.2 to 1.5 square feet of space depending on the layout of individual operations—permitted by Vital’s third-party certifier. *See* Ex. 3. These hens will be unable to access outdoor space without pushing past other hens, who are likely stressed and frantic from dense confinement that prevents them from engaging in natural behaviors that are key to

preventing undue physical and psychological pain, spurs distressing excessive vocalization, painful self-mutilation, and physical harm to themselves and other hens. Many hens will not succeed in, or even attempt, this unduly painful journey, and so will never or ineffectively access outdoor pastures.

c) Second, Vital hens are generally raised in large stationary barns with door openings to give “access” to the outdoors. Vital does not permit operations it partners with to use mobile coops. *See* Ex. 1. Because of Vital’s “confinement style” operations, many hens will never venture outdoors. *See id.* Vital’s depictions and marketing terms convey the false image that all hens are outdoors all day or most of the day.

d) Third, on information and belief, weather conditions during the winter months in the so-called pasture belt where Vital’s farmers operate make it difficult, if not impossible, to allow free ranging.

47. Defendants’ practice of describing Vital’s business model and practices as humane and ethical with respect to farmed animals takes advantage of consumers’ lack of knowledge, ability, experience, and capacity to a grossly unfair degree, as it is beyond the ability of Plaintiffs, as well as other reasonable consumers, to sufficiently investigate Defendants’ business model and practices given the unequal balance of sophistication and knowledge between the parties.

48. Defendants’ practice is also completely distinct from the marketing and advertising used by other companies. Many of these companies, rather than describing themselves as ethical and humane stewards of farmed animals, merely describe the fact that they treat their hens somewhat differently than large commercial farmers, who keep them caged at all times. As such, these companies’ eggs do not sell at the super-premium prices charged for Vital eggs. Vital engaged in its lies and misrepresentations to distinguish itself from direct competition so that it

would be able to charge the highest premium prices for its eggs to unsuspecting buyers who value humane and ethical treatment of farmed animals.

49. The foregoing conduct constitutes an unconscionable, intentional, knowing, and deliberate violation of Deceptive Trade Practices and warranty statutes of each of the States outlined below.

B. DEFENDANTS' DISCLOSURE CHANGES ADMIT THEIR CULPABILITY

50. Pursuant to Texas' Deceptive Trade Practices law, Plaintiffs were required to send Defendants a demand letter prior to filing suit.

51. In late 2020, Plaintiffs sent Defendants' counsel, Cooley LLP, a demand including a draft of Plaintiffs' complaint.

52. Immediately thereafter and without notice to Plaintiffs' counsel, Vital surreptitiously changed its disclosures on its website, including a revised FAQ page buried on Vital's website (<https://vitalfarms.com/faqs/>). Only *after* Plaintiffs sent their demand and draft complaint to Vital did Vital bury the following on its website:

“WHAT HAPPENS TO MALE CHICKS?

“Because male chicks will not grow to become egg laying hens, it is the industry norm for hatcheries to cull them shortly after they hatch through means deemed acceptable by the American Veterinary Medical Association. Despite industry research and testing led by universities and scientists to explore alternatives to this practice, to our knowledge, all hatcheries in the U.S. cull male chicks because a commercially viable alternative has yet to be identified.”

53. The hyperlink disclosure made only *after* Vital's receipt of Plaintiffs' draft complaint shows Vital's culpability and its failed attempt to remedy the market impact of its continuing and pervasive marketing falsehoods and half-truths.

54. The same revised website FAQ contains Vital's new disclosures regarding “What Happens When a Hen has Reached its Post Laying Life?” including:

“[W]hen retirement time comes for these laying hens, our small family farmer partners have little choice but to ‘retire’ their flock en masse either through an acceptable method of euthanasia or by selling them to pet food companies, which we believe helps make use of this precious resource.”

Vital has not otherwise changed its marketing falsehoods. Plaintiffs themselves have not viewed this buried disclosure. Nor would any consumer have any reason to do so, because Vital does not sell products direct-to-consumer on its website and this purported disclaimer is difficult to find on Vital’s website.

55. Burying these disclosures in a hyperlink on Vital’s website does not cure its ongoing misrepresentations. And it certainly does not remedy its previous misrepresentations and omissions, which led to the sale of millions and millions of high-priced eggs purchased by the Class, including Plaintiffs. It does, however, demonstrate that Vital knew its prior disclosures were false and misleading.

V. CLASS ACTION ALLEGATIONS

A. **Class Definition**

56. Plaintiffs seek to represent one nationwide class and five subclasses in this case. Each of the subclasses consists of purchasers of Vital eggs in a specific state. These States are California, Florida, Michigan, New York, and Texas (each a “State Class,” e.g., the “California State Class,” “Florida State Class,” etc., and collectively the “States Classes”). Plaintiffs also seek to represent a nationwide fraud by omission class (the “Nationwide Class,” and together with the States Classes collectively referred to herein as the “Classes”).

57. Excluded from each of the Classes are the Defendants and any entities in which the Defendants have a controlling interest and their respective officers, directors, legal representatives, employees, successors, subsidiaries, assigns, immediate family members, and heirs of such persons and entities. Also excluded from any such Class are corporate entities or similar entities

who are defined as non-protected parties under each respective State's Deceptive Trade Practices statute at issue.

B. Numerosity: Federal Rule of Civil Procedure 23(a)(1)

58. The members of the Classes defined herein are so numerous and geographically dispersed that the individual joinder of all Class members is impracticable.

59. The States Classes defined herein include thousands of members per State.

60. Members of the Classes may be notified of the pendency of this class action by judicially accepted and Court approved notice directly or via publication.

C. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3)

61. This action involves common question of law and fact that predominate over any questions of fact for any individual members of the Classes.

62. Plaintiffs' claims do not seek damages for personal injury of any nature.

63. The Classes only seek damages resulting from the overt misrepresentations and fraudulent deceptive practices related to the sale and marketing of the Vital eggs described herein, and permanent injunctive relief. Defendants themselves have conceded from their own internal study that a large percentage of their customers only purchase Vital eggs as a result of their belief that these products were (based upon uniform misrepresentations and omissions made by Defendants) a result of humane and ethical practices, when they are not. Defendants' revenue and profits are, based upon its own statements, wholly dependent upon such purported ethical and humane practices and business model. Therefore, there is commonality with respect to the injuries suffered by each member of the Classes.

64. Common questions of law and fact predominate over questions affecting individual members of the Classes, including without limitation:

a) Whether Vital knew or should have known that its misrepresentations and material omissions were false;

b) Whether Vital was violating the respective state laws outlined herein in connection with its material misrepresentations and omissions with respect to the qualities of Vital eggs and the process by which they were derived; and

c) Whether Vital made deliberate and unconscionable misrepresentations with respect to the qualities and process by which Vital eggs are produced.

D. Adequacy of Representation: Federal Rule of Civil Procedure 23(a)(4)

65. Plaintiffs are adequate representatives of the Classes because their interests align with and do not conflict with the interests of other members of the Classes whom they seek to represent.

66. Plaintiffs have retained competent, experienced counsel, who have many years of experience in complex class action litigation, including consumer litigation, to represent them, and Plaintiffs' intent is this counsel will vigorously prosecute this action.

67. The Classes' interests are fairly and adequately represented by Plaintiffs and the counsel they have selected.

E. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2)

68. The prosecution of separate actions by each individual member of the various State Classes and the Nationwide Class would create a risk of inconsistent or varying adjudications with respect to each member of the Classes that would establish incompatible standards of conduct for Defendants.

69. Such individual actions would create a risk that adjudication would be dispositive of the interests of the members of all Classes and might impair their interests.

70. Defendants have acted or refused to act on grounds generally applicable to the Classes, making final injunctive relief and declaratory relief appropriate.

F. Superiority: Federal Rules of Civil Procedure 23(b)(3)

71. A class action is superior to any other available means for a fair and efficient adjudication of this controversy and no unusual difficulties are likely to be encountered in the management of this case.

72. The damages and other financial detriments suffered by Plaintiffs and the other members of the Classes are relatively small compared to the burden and expense that would be required to individually litigate their individual claims against the Defendants, so it would be impossible for such members to individually seek redress for Defendants' unlawful and unconscionable conduct.

73. Even if members of the Classes could afford litigation, individualized litigation would create a potential for inconsistent and contradictory judgments that would dramatically increase the delay and expense to all parties and the judicial system.

74. By contrast, the class action device presents few management difficulties and provides the benefit to all parties of a single adjudication the use of comprehensive supervision by a single court and the benefit of a single final judgment.

VI. CAUSES OF ACTION

COUNT I:

**Breach of Express Warranty Under Texas Law
and the Law of the State of Residence of Each Class Representative Respectively
(On Behalf of Each State Class)**

75. Plaintiffs repeat and reallege the foregoing allegations as though fully set forth herein.

76. By directly warranting that purchasers of Vital eggs purchase and receive eggs which are produced in a humane, ethical, and transparent fashion, Defendants expressly warrant to the Plaintiffs and Class members such facts. Indeed, such facts were specifically warranted in writing to each purchaser of Vital eggs in a document denominated by Vital as “Vital Times,” a copy of which is included in each dozen egg box consumers purchased. This direct communication included as part of each sale contains the same warranties described herein, including without limitation, that: (1) Vital and its farmers “believe in ethical food”; (2) Vital and its farmers are “invested in animal welfare”; (3) Vital and its farmers are “doing the right thing”; (4) Vital’s “mission” and “central tenet” is “the humane treatment of farm animals”; and (5) hens on Vital farms can, as depicted in photographs, roam freely outdoors.

77. As described herein, Vital has misrepresented its status as an ethical and humane steward of animals. As such, it has intentionally, knowingly, and for the purpose of obtaining above market profits unconscionably breached such warranties.

78. Such warranties were also made by Vital in a nationally uniform advertising campaign, including internet, social media, and print advertising.

79. By advertising these claims, Defendants engaged in making express warranties to purchasers of Vital eggs. These were factual representations. Vital’s own marketing study demonstrate a reasonable consumer would consider them material in their purchase of Vital eggs, and all named Plaintiffs did in fact rely on them as material factors underlying their regular purchases of Vital eggs.

80. The warranties described herein were not complied with by Vital and the Defendants, and as such, Vital and the Defendants are in breach of such express warranties.

81. As a result of such foregoing breaches of express warranties, Plaintiffs and the class members have been damaged. Furthermore, they purchased Vital eggs that were sold in breach of such warranties at excess prices, so that the eggs were less valuable than what was paid for them. This is demonstrated by the fact that eggs which are not sold with such warranties sell at a substantially lower price than Vital eggs.

**COUNT II:
Common Law Fraud/Fraud By Omission Under Texas law
(On Behalf of the Nationwide Class)**

82. Plaintiffs repeat and reallege the foregoing allegations as though fully set forth herein.

83. Defendants intentionally and knowingly omitted to state material information necessary for customers to properly evaluate the statements made with respect to the qualities and characteristics of Vital eggs. Defendants have conceded this point by surreptitiously and materially changing their website hyperlinked disclosures to admit to certain inhumane and unethical practices after receiving a draft of this Complaint.

84. Plaintiffs and the Nationwide Class are presumed to have relied upon the material misrepresentations and omissions outlined above. All named Plaintiffs did in fact rely on them as material factors underlying their regular purchases of Vital eggs.

85. Defendants have conceded that Plaintiffs and the Nationwide Class relied upon their material misrepresentations and omissions because they have conducted an extensive study, which they have publicly disclosed, showing that at least 31% of their consumers are so convinced by their advertising with respect to ethical and humane treatment of all animals, that they would not purchase any egg product other than Vital eggs. That Defendants themselves have conducted such a study is a concession that their misrepresentations are both material and effective and are incorporated in the purchasing decisions of Plaintiffs and the Nationwide Class.

86. Plaintiffs and the Nationwide Class did not know and had no reason to know that the purported humane and ethical nature of the eggs sold by Vital was misrepresented and that Defendants failed to make material disclosures with respect thereto. Defendants' own studies demonstrate the effectiveness of their pervasive misrepresentations and material omissions.

87. Defendants intended that Plaintiffs and the Nationwide Class would rely upon the misrepresentations and omissions described herein.

88. Plaintiffs and the Class members have been injured as a result of Defendants' fraudulent conduct.

89. Defendants are liable to Plaintiffs and Class members for damages sustained as a result of Defendants' fraud.

**COUNT III:
Texas Deceptive Trade Practices Consumer Protection Act
(On Behalf of Plaintiff Andrada and the Texas State Class)**

90. Plaintiffs repeat and reallege the foregoing allegations as though fully set forth herein.

91. In this Count, Plaintiffs pursue a claim on behalf of all Class members pursuant to the Texas Deceptive Trade Practices-Consumer Protection Act ("TDTPA"), Texas Business & Commerce Code §§ 17.41, *et seq.*

92. The TDTPA provides relief for consumers and provides that a consumer may maintain an action for monetary damages, punitive damages, and legal fees, wherein any of a series of delineated types of misconduct are engaged in by Defendant and produce actual damages. These prohibited types of conduct are set forth in Section 17.50 of the TDTPA and include without limitation conduct engaged in by Defendants:

a) Specifically, the TDTPA prohibits and provides a private right of action as against Defendants who employ a misleading or deceptive act or practice, *or* who engage in any

unconscionable action *or* course of action, or who engage in any breach of express or implied warranty.

- b) Plaintiffs and the Class members allege multiple violations of the TDTPA:
 - i) First, Defendants' persistent use of unconscionable and grossly unfair acts and practices in connection with their continued misrepresentations and material omissions with respect to the marketing of Vital eggs; and
 - ii) Second, as described above, a breach of express warranties made by Vital to customers through advertising, marketing, and through direct written communication in connection with each sale.

93. As described in the TDTPA, a false, misleading or deceptive act or practice includes: (a) "representing that goods or services have ... characteristics ... or qualities which they do not have ... and representing that goods or services are for a particular standard, quality, or grade, or that goods are for a particular style or model..." Defendants' conduct specifically violates both of these provisions describing false, misleading, or deceptive acts or practices as well as being unconscionable and in violation of the TDTPA, and a breach of express warranty in violation of the TDTPA.

94. The above-described deceptive acts and practices are unconscionable and a breach of express warranty by Defendants. Because of the unequal balance of sophistication and knowledge between Defendants and Plaintiffs, as well as other reasonable consumers, these acts and practices are beyond the latter's ability to sufficiently investigate. These acts and practices caused substantial injury to Plaintiffs and Class members and continue to do so. Plaintiffs and Class members had no reasonable means to avoid such injury. The substantial injury incurred by

Plaintiffs and the Class members is not outweighed by any other public interest. Defendants' only apparent objective in connection with their misrepresentations and material omissions was profit.

95. Defendants knew that their business practices are unlawful, unfair, and deceptive. Defendants' actions in engaging in the above-named deceptive acts, practices, unconscionable conduct, and breaches of warranty are knowing, willful, wanton, and reckless.

96. As a direct result of Defendants' acts and practices, Plaintiffs and Class members have suffered an ascertainable loss of money or property as described herein, including, but not limited to, for the Class, the loss of money paid for Vital eggs sold at super-premium prices.

97. Plaintiffs and Class members seek declaratory relief, injunctive relief, treble damages, and attorneys' fees under the TDTA.

98. Plaintiffs and the Class members are in compliance with Article 17.50 of the TDTA and have provided written notice of Plaintiffs' specific complaints as described herein and the amount of their actual damages and expenses to Defendants more than sixty (60) days prior to the filing of this lawsuit.

**COUNT IV:
California Unfair Competition Law
(On Behalf of Plaintiffs Evans and Kierman
and the California State Class)**

99. Plaintiffs repeat and reallege the foregoing allegations as though fully set forth herein.

100. Defendants, operating directly or indirectly in California, with the intent of selling personal property or performing services, made untrue or misleading statements about such property and/or services which they knew, or with the exercise of reasonable care should have known were untrue and misleading in violation of California Business and Professions Code § 17500 and the California Consumers Legal Remedies Act. Similarly, Defendants made false or

misleading advertising and marketing claims as described herein in violation of California Business and Professions Code §17508. Further, Defendants misrepresented the character and nature of their business in violation California Business and Professions Code §17505.

101. As a direct and proximate result of these practices, Plaintiffs and the California State Class seek to represent individuals who suffered injuries to legally protected interests, as described herein, including, but not limited to the loss of monies paid for the purchase of Vital products sold at super-premium prices.

102. The above-described unfair and deceptive practices and acts by Vital were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to Plaintiffs and the California State Class they seek to represent. These injuries could not have been avoided by the Plaintiffs. Defendants' misrepresentations and material omissions are within the common law or statutory or other established concepts of unfairness and unconscionability.

103. Defendants knew or should have known that their practices were unfair and deceptive. Defendants' actions engaging in the above-named unfair practices and deceptive acts were knowing and willful and/or wanton and reckless with respect to the rights of the California State Class members.

104. Plaintiffs and the California State Class they seek to represent seek monetary damages and injunctive relief and join together to stop Defendants from continuing their unfair and deceptive acts. The amount of such damages will be determined at trial on behalf of the California State Class.

105. The California State Class also seeks reasonable attorneys' fees and costs and other just and proper relief as is available under California Business and Professions Code §17500, *et. seq.* and California Code of Civil Procedure § 1021.5.

**COUNT V:
Florida Unfair and Deceptive Trade Practices
(On Behalf of Plaintiff Vossen and the Florida State Class)**

106. Plaintiffs repeat and reallege the foregoing allegations as though fully set forth herein.

107. Defendants, operating directly or indirectly in Florida, engaged in unconscionable, unfair, and deceptive acts and practices in the conduct of commerce in violation of Florida Statutes § 501.204(1). These include, but are not limited to, the allegations of misconduct and deceptive acts and practices set forth herein.

108. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff and Florida State Class have suffered an ascertainable loss of money or property, real or personal, as described above, including, but not limited to, for the Florida State Class the loss of money paid for Vital eggs and products sold at super-premium prices.

109. The above unfair and deceptive practices and acts engaged in by Defendants were immoral, unethical, unprecedented, and unscrupulous, because these acts caused substantial injury.

110. Defendants knew or should have known that their business practices are unlawful, unfair, deceptive, and unconscionable. Defendants' actions in engaging in the above-named deceptive acts and practices were knowing, willful, wanton, and reckless with respect to the rights of Florida residents.

111. Plaintiff and members of the Florida State Class seek actual damages under Florida Statutes § 501.211(2) and attorneys' fees under Florida Statutes § 501.2105(1) to be proven at trial.

112. Plaintiff and the Florida State Subclass also seek an order enjoining Defendants' unfair, unlawful and/or deceptive practices, declaratory relief, and other just and proper relief available under Florida laws.

**COUNT VI:
Michigan Consumer Protection Act
(On Behalf of Plaintiff Usler and the Michigan State Class)**

113. Plaintiffs repeat and reallege the foregoing allegations as though fully set forth herein.

114. Defendants, operating directly or indirectly in Michigan, engaged in unconscionable, unfair, and deceptive acts and practices in the conduct of commerce in violation of the Michigan Consumer Protection Act, Act 331 of 1976 § 445.903, *et seq.* These include, but are not limited to, the allegations of misconduct and deceptive acts and practices set forth herein, including causing a probability of confusion or misunderstanding as to the source, sponsorship, approval or certification of their goods or services, representing that their goods or services have approval, characteristics, uses, or benefits; that they did not and causing a probability of confusion or misunderstanding as to the rights, obligations, or remedies of the parties to the relevant transaction, and failing to reveal material facts the omission of which tended to mislead or deceive Michigan consumers and which facts could not have reasonably been known by such consumers upon them entering in to the consumer transaction at issue.

115. The Michigan State Class consists of residents in the State of Michigan who are asserting claims as against Defendants in this action.

116. Defendants failed to reveal facts that are material to the transaction in light of the misrepresentations and facts made in a positive manner by them in violation of Mich. Comp. Laws Ann. § 445.903(1).

117. As a direct and proximate result of these practices, Plaintiff and the Michigan State Class suffered injuries to legally protected interests as described herein, including, but not limited to, the loss of money paid for Vital eggs sold at super-premium prices.

118. The above unfair and deceptive acts and practices by Defendants were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to Plaintiff and the Michigan State Class because they could not reasonably avoid them.

119. Defendants knew or should have known that their practices are unfair and deceptive. Defendants' actions in engaging in the above-named unfair practices and acts were knowing and willful and/or wanton or reckless. Plaintiff and the Michigan State Class seek injunctive relief to enjoin Defendants from continuing their unfair and deceptive acts, monetary relief, actual damages in the amount to be determined at trial, statutory damages in the amount of \$250 for each Class member, and other just and proper relief as is available under Mich. Comp. Laws Ann. § 445.911.

**COUNT VII:
New York Business Laws Section 349 and Section 350-A
(On Behalf of Plaintiff Tanz, Sankowich, Karaca,
and Gozde and the New York State Class)**

120. The Plaintiffs repeat and reallege the foregoing allegations as though fully set forth herein.

121. Defendants, operating directly or indirectly in New York, engaged in unfair, deceptive, and unlawful acts and practices and false advertising in the conduct of commerce in violation of New York General Business Law §§ 349(a) and 350-a as described herein.

122. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff and the New York State Class suffered an ascertainable loss of money or property as described above, including, but not limited to, the monies paid for Vital eggs sold at super-premium prices.

123. The described unfair and deceptive acts and practices by Defendants are immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to Plaintiff and the New York State Class which they could not reasonably avoid.

124. Defendants knew or should have known that their business practices are unlawful, unfair, and deceptive in that their advertising and marketing was misleading in material respects. Defendants' actions in engaging in the above-named deceptive acts and practices were knowing and willful and/or wanton and reckless with regard to the rights of Plaintiff and the New York State Class.

125. Plaintiff and the New York State Class seek relief under New York General Business Law §§ 349(h) and 350-e(3), including, but not limited to, actual damages, treble damages, statutory damages, injunctive relief, and attorneys' fees and costs.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the members of all Classes defined herein, respectfully request that the Court enter judgment in their favor as and against Defendants, jointly and severally, as follows:

A. That the Court certify this action as a class action maintainable pursuant to Rule 23 of the Federal Rules of Civil Procedure and declare that Plaintiffs are proper class representatives and appoint Plaintiffs' attorneys as class counsel;

B. That the Court grant permanent injunctive relief to prohibit Defendants from continuing to engage in the unlawful acts, omissions, and practices described herein;

C. That the Court award Plaintiffs and the Classes compensatory, consequential, and general damages in an amount to be determined at trial;

D. That the Court order disgorgement and restitution of all earnings, profits, compensation, and benefits received by Defendants as a result of their unlawful acts, misrepresentations, omissions, and practices;

E. That the Court award statutory damages, treble damages, punitive damages and exemplary damages to the extent permitted under applicable law;

F. That the unlawful acts in the Complaint be adjudged and decreed to be unlawful, and deceptive business practices in violation of the laws in California, Florida, Michigan, New York, and Texas;

G. That Plaintiffs be granted the declaratory relief sought herein;

H. That the Court award to Plaintiffs the costs and disbursement of this action, along with reasonable attorneys' fees, including fees and expenses;

I. That the Court award pre- and post-judgment interests at the maximum legal rate; and

J. That the Court award such other relief as it deems just and proper.

Dated: May 20, 2021

Respectfully submitted,

EDMUNDSON SHELTON WEISS PLLC

By: /s/ Jesse Z. Weiss

Jesse Z. Weiss (SBN: 24013728)

Ryan Shelton (SBN: 24037484)

317 Grace Lane, Suite 210

Austin, Texas 78746

Telephone: (512) 596-3058

Facsimile: (512) 532-6637

Email: jesse@eswpllc.com

ryan@eswpllc.com

BLACKNER STONE & ASSOCS.

Richard L. Stone (*pro hac vice pending*)
609 South Beach Road
Jupiter Island, Florida 33469
Telephone: (561) 804-9569
Email: rstonesq@rstonesq.com

PETA FOUNDATION

Asher Smith (*pro hac vice pending*)
1536 16th Street, NW
Washington, DC 20036
Telephone: (202) 483-7382
Email: AsherS@petaf.org

Attorneys for Plaintiffs

EXHIBIT 1

1:21-cv-00447

What are “pasture-raised eggs,” really?

by [Joe Fassler](#)
05.18.2016, 2:22pm

Environment

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[Joe Fassler](#)

Everyone likes the sound of giving chickens meaningful outdoor access. But selling millions of eggs while keeping the barn doors open is harder than it sounds.

EXHIBIT 1

I. Super-sizing “pasture-raised”

California’s Proposition 2, a [2008 ballot measure](#) banning the most extreme forms of livestock confinement within the state, says nothing about cages. It only requires that certain animals be allowed to “lie down, stand up, fully extend their limbs and turn around freely.” But the measure put chicken cages in the news, and that may have inadvertently sparked a cage-free revolution.

In September, 2015, nine months after the law went into full effect, McDonald’s made a watershed announcement: it pledged to overhaul its egg supply chain, committing to go 100 percent cage-free by 2025. Since then, similar pledges have become a corporate trend. The list of converts has grown to include large multinationals (Nestle, Unilever, General Mills), fast food chains (Burger King, Taco Bell, Wendy’s), and major retailers (Walmart, Target, Kroger). Denny’s even publicized its commitment in a [commercial](#), “The Chicken Comes Before the Egg,” that featured hens pondering the unexpected gift of extra space. “We can do *anything*,” one lucky bird thinks out loud.

But arguments have been made that [the changeover furthers an existing consumer misperception](#). “Cage-free” evokes happy hens in a verdant meadow, pecking at bugs, flapping their wings, enjoying the sun and air. In the past few months, numerous media outlets have pointed out that the emerging standards fall far short of the pastoral ideal. (See [here](#), [here](#), and [here](#).) The vast majority of cage-free laying chickens—even the ones whose eggs are labeled “organic,” or “free-range”—are housed in giant, windowless warehouses with only nominal access to the outdoors, and often as little as a single square foot of space per bird.

So here’s the truth for consumers. The real-life pastoral ideal? It’s not available in most grocery stores, anyway. Why? Because the bugs-and-meadow model is really hard to scale. Farmers might be able to make it work with a few hundred hens—enough to supply farm stands, greenmarkets, maybe even local restaurants and a health food store or two. And many

small-scale egg farmers don't want to outgrow their local, less formal economy in the first place. Those who do tend to fail.

It looks romantic, but none of that matters to the chickens.

And yet, two companies have been quietly experimenting with how to scale and modernize an approach to egg production that your great-grandparents would have recognized. In a few short years, Austin-based [Vital Farms](#), and [Handsome Brook Farm](#), headquartered in upstate New York, have proven that you can open the barn doors and still sell millions of eggs. They're no longer questioning whether great scale is compatible with the great outdoors. Now the question is whether their vision for "pasture-raised" will dethrone "cage-free."

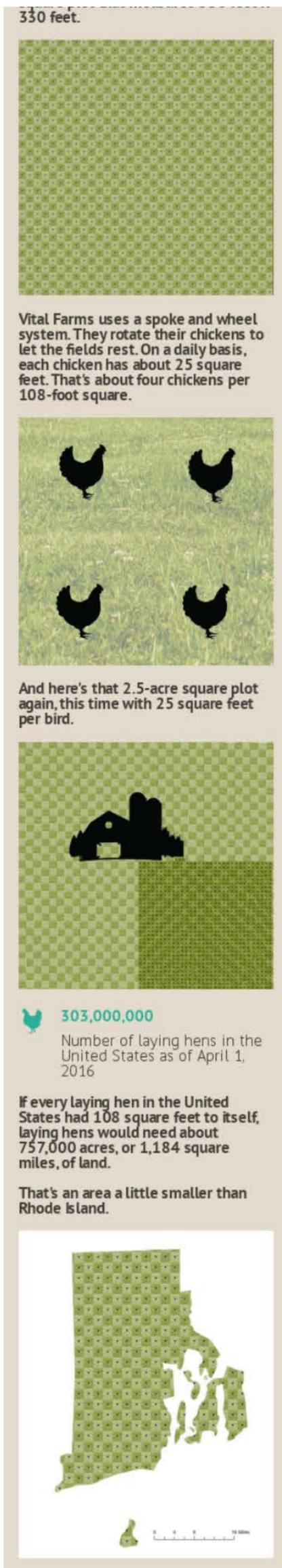
The original: Vital Farms

Though "cage-free" sounds old-timey, it's a fairly recent phenomenon. In 2004, when Whole Foods Markets started declaring it would only sell "cage-free" eggs, it created demand for a product that didn't exist in a literal sense. Call it putting the cage before the chicken. The term was misused, strictly speaking, but it was good enough to be a catalyst to direct attention to a real issue.

"When they put signs in all their stores, the most incredible thing was that it begged a question that people didn't even know to ask," says Matt O'Hayer, founder and CEO of Vital Farms. "What the hell's a cage? Chickens live in *cages*? It was shocking to the consumer to even see that announcement."

Two years later, O'Hayer and his wife, Catherine Stewart, decided they'd try to start a farm that tapped into growing consumer interest in the daily lives of hens. They started with 20 pastured Rhode Island Reds and, with the help of sales at farmers' markets and to local restaurants, scaled to a flock of several hundred. Vital was quickly discovered by Whole Foods foragers, eventually landing a contract with the chain's Midwest region toward the end of 2008.





The Counter

“Sometimes we were still washing eggs by hand when the truck pulled up because we were short,” O’Hayer says. “We’d get the truck driver a cup of coffee, and run out to the pasture to see if we could grab the last 30 eggs we needed to finish up the order.”

Vital Farms used the mobile chicken coops popularized by closed-loop farmer Joel Salatin, whose model was portrayed by Michael Pollan in *The Omnivore’s Dilemma*. Small henhouses are pulled around the field by tractor, ensuring that no part of the pasture gets overgrazed (or over-fertilized with manure). This approach was never meant to support commercial-scale egg production. It was intended to support integrated farming: chickens earn their keep by pecking apart cow patties, eating harmful cattle parasites, and helping to fertilize the grass cattle herds live on. The eggs are just a bonus.

When egg production is the point, the shortcomings become obvious. The units are heavy, and dragging them by tractor is hard on the pasture. Chickens like to lay their eggs under the coops, where they’re hard to collect. The mobile units are tough to heat and cool, leaving flocks vulnerable to weather. They’re also difficult to light—commercial scale facilities use artificial light to mimic endless summer, so that hens won’t notice the shorter days of winter and stop laying. Then there’s the fact that the chickens are more exposed to roving predators like owls and foxes. Free-roaming hens might look good, but the fact is that sometimes they’re going to get eaten.

“Probably every producer I’ve talked to has mentioned [predation] as a major challenge,” says Richard Blatchford, a specialist in poultry production at the University of California. Many smaller farms he’s studied routinely lose up to one-third of their birds this way. Even minor losses can spook the flock, causing production to plummet.

The better model came about almost by chance. In 2009, with demand growing from Whole Foods, Vital Farms partnered with an Arkansas farmer who already had a chicken barn and was skeptical of the mobile units. He and O’Hayer settled on a new “spoke and wheel” approach. Instead of rotating the coops, they kept the barn stationary and rotated the grass.

It works like this: A single barn large enough for 2,500 to 5,000 chickens sits in the middle of a pasture. For every 1,000 birds, there's two-and-a-half acres of open space—or roughly 108 square feet per hen, the European standard for eggs labeled “free-range organic.” Recently grazed portions of the field are fenced off. (60 days is enough time for the grass to grow back and any parasites in the chicken manure to die.) This means that when Vital Farms hens leave the barn each morning, every bird has access to about 25 square feet of fresh pasture. The barns are built to USDA standards and are easy to heat, cool, and seal against predators.

“Our first barn doubled our production overnight. And our third barn probably tripled it,” O’Hayer says. “Mortality just fell through the floor, and lay rates went way up.”

In time, O’Hayer says, production rates came close to the levels seen in conventional facilities (between 7.8 and 9.5 eggs per hen every 10 days.) And so Vital Farms started to find others to contract with, one barn at a time—mostly Amish and Mennonite farmers, who are experienced with animals, are interested in lower-tech methods, and quickly spread news about a good opportunity by word of mouth.

In 2012, *Inc.* magazine called Vital Farms the fastest-growing food business in the United States. In 2013, it came in second. Today, the company contracts with a network of about 100 farms in states below the Mason-Dixon line, where warmer temperatures make year-round outdoor access possible. That adds up to more than 1.5 million eggs a week, according to the *Washington Post*—sold in more than 5,000 stores and counting, not just Whole Foods but Kroger, Costco, Safeway, and other more affordably-priced chains.

Eventually, Vital Farms stopped allowing partners to use the mobile coop approach.

“It sounds good, it looks good, it looks romantic, but none of that matters to the chickens,” he says. “What matters to the chickens is how safe they are, and we found we cannot properly take care of them with the mobile units.”

The vertical integrator: Handsome Brook Farm

EXHIBIT 1

Since O'Hayer got into the egg business, a new player has entered the pasture-raised market—and it's thinking just as big. Handsome Brook Farm's vertically-integrated adaptation of the familiar wheel-and-spoke approach includes centralized infrastructure and a more hands-on relationship with producers. It's a strategy the company says creates new opportunities, efficiencies, and economies of scale.



Pasture-raised chickens at Handsome Brook Farm

Joe Fassler

In 2007, two MBAs, Betsy and Bryan Babcock, sold their healthcare business and retired to a B & B in upstate Franklin, New York. They encouraged guests to collect their own breakfast eggs from six backyard chickens, and the results were such a hit that they began to suspect they'd stumbled on a business opportunity. They scaled up their flock to 20 hens and made weekly deliveries to the Hannaford Brothers grocery in nearby Oneonta. "We made a label and we called it 'pasture-raised,' Betsy says. "We thought if we sold 12 dozen a week, we were doing really well."

Soon they were selling 100 dozen a week through several Hannaford stores, supplementing their own production with eggs from friends and neighbors with backyard coops.

Then came the call from Fresh Direct, one of the east coast's major online grocers.

"For us, that was a big leap in volume," Babcock explains. "One hundred dozen a week, versus 1,000 dozen a week, is a very different scale."

Handsome Brook gravitated to the same approach developed by Vital Farms. But the Babcocks decided to be deeply involved in their network of supplier farms, providing them with strategic oversight, supplies, and distribution. The result has been a rapid, nationwide expansion over the course of just three years. Handsome Brook is currently in 5,000 stores in 41 states; the company has scaled from 25 farms in 2015 to about 75 today, with operations in New York, North Carolina, Virginia, Maryland, Pennsylvania, and Kentucky. Babcock projects that she'll have contracts with 200 farms by the end of the year. She thinks the rapid growth is a sign that, ultimately, "pasture-raised" is going to be the new "cage-free."

At the same time, Handsome Brook is actively working to lower costs by centralizing infrastructure, starting with the company-owned feed mill, which allows Handsome Brook to buy grain in 20,000 ton shipments. It pays in advance for the whole year at a hefty discount. That adds up to major savings for Handsome Brook farmers, whose competitors pay full price on the spot market, plus added delivery charges.

“Their line is: ‘chickens don’t like to go outdoors.’ Well, that’s

EXHIBIT 1

hooey.”

In the early days, when Handsome Brook was buying commercial feed, the birds weren't doing as well as expected. Babcock says it's because feed tends to be filled with cheap corn, which makes the birds gain too much weight. Handsome Brook makes a proprietary feed in 30 different “rations,” blending corn, soy, grain, and alfalfa, giving farmers a way to respond to the health needs of their flock.

And Handsome Brook employs a director of live operations, who oversees two veterinarians and a team of four full-time field technicians who inspect partner farms, checking bird health, housing conditions, cleanliness, water consumption, and production.

The next step toward total integration is coming soon: a hatchery. “We strongly believe that control over the pullet raising process is essential to insure quality, animal welfare, and productivity,” Babcock says, in an e-mail. The company is also building its own packing facility in Virginia, which it projects will result in major savings, for both Handsome Brook and its farmers.

“When we came into being, the large commercial producers—the Egglan’s Bests and the Organic Valleys—sort of laughed it off,” she says. “They said, ‘This is a fad, no one’s going to do it.’ Their line is: *chickens don’t like to go outdoors*. Well, that’s hooey.”

II. Pasture-raised vs. the pastoral ideal

What does commercial-scale pasture-raised actually look like in practice? In April, I drove out to one of the Handsome Brook partner farms in Lititz, Pennsylvania to see for myself.

The operation is so small that I drive past it by mistake. As I double back, a man waves to me from the driveway. It's Broc Turner, Handsome Brook's director of live operations. He's a poultry expert who worked for Perdue Chicken for many years and, for a

time, was personal assistant to Frank himself. Turner says he never thought putting hens outside was possible, but now he wouldn't go back.

We put on hairnets and fasten big plastic socks around our boots. Then we walk out back.



Joe Fassler

The barn is a converted hoop house, the kind typically used for growing vegetables. Turner says that the farmer built it that way so that, if chickens didn't work out, he could go back to growing produce. We pass through the front door into a small packing room where several hundred eggs are stacked in packing crates next to a large sorting machine, then into the large room where the birds have spent the night.



Joe Fassler

I hear them first: an endless ocean of gobbles and coos. And then I'm faced with 2,500 brown chickens. For a minute I stand there, awed. It's visually overwhelming to witness so many identical creatures, all Hyline/ISA Brown crosses, all with the same bright red comb, looking at me with the same yellow eyes. To walk through the barn is to part a shallow, brown sea. Their bodies dodge gently away from our feet with each step.

EXHIBIT 1

The birds hop up and down from raised perches, where six additional square inches of space are allotted per bird. The perches lead to rows of nesting boxes, and the eggs drop down onto a long, hidden conveyor belt. The hens certainly aren't confined. They have plenty of space to move around. But especially around the feeders, it's a little like the chicken equivalent of maneuvering through a crowded subway car at rush hour.



H. Claire Brown

Joe Fassler

The hens don't look distressed, either. Their coats are glossy. The barn is well-lit and ventilated, and the air is pleasant to breathe. I've stood outside conventional laying barns where the stench of animals and ammonia can make your eyes water. Turner says the Handsome Brook houses have a mortality rate of less than 1 percent, far lower than the 5 to 10 percent you see in conventional houses. Still, the sheer number of birds provokes a visceral, gut-level response: It *feels* commercial-scale. You start to sense the enormous effort it takes to stock all those grocery store shelves. But industrial? Not exactly. There's something going on here that's different. It's big and busy and efficient without feeling inhumane.



EXHIBIT 1

Joe Fassler

And it's just for the night. Every morning at 11, the hens go out.

The company's commitment to providing daily outdoor access is, of course, its mission and main selling point—though we don't just have to take their word for it. In order to stay [American Humane Certified](#) for [a pasture-raised product](#), each farm undergoes an annual inspection to ensure birds have 108 square feet of pasture apiece. I'm not present to see the doors roll open, but I come back in the afternoon to see what that looks like.

Large portions of the flock hesitate in the entryways, seemingly not sure whether they want to leave the safety of the barn, the water, and the feed. As I walk through the field, the hens follow me through the meadow and peck inquisitively at my boots. I notice their beaks are nicked at the end; they have been clipped early in life, the mark of a commercial-grade hen. But it does seem nice to be a Handsome Brook chicken. The pasture is lush and green and there is more than enough space. The birds wander all over, pecking through the grass. There's even a brook running through it, with a little wooden bridge. It looks, actually, like something you'd see on the front of an egg carton.

When applied to eggs, the label terms “organic,” “cage-free” and “free-range” cynically evoke a pastoral vision that masks an uncomfortable truth. At the farm in Lititz, at least, the marketing and reality seem far less dissonant. That's not to say the “pasture-raised” label tells the full story. Vital Farms and Handsome Brook use routine industry practices I suspect many consumers would find objectionable, if they only knew: their chicks come from suppliers that mass cull the males; they trim the hens' beaks; they sell spent hens for meat after a brief life. But can you blame producers for the confusion?



Joe Fassler

Until people understand that scale means tradeoffs, that convenience and affordability come with costs of a different sort, they'll always be willingly misled.

The question, then, isn't whether Handsome Brook farms look like *Little House on the Prairie*. The question is which tradeoffs can you live with? I'm standing in a pasture with several hundred basically happy hens. It seems like a luxury to be able to buy a dozen of these eggs for around six bucks at a Costco. Maybe that's good enough.

- [Farms](#)
- [Grocery](#)
- [Innovation](#)
- [Labeling](#)

Also tagged [cage free](#), [eggs](#), [handsome brook farms](#), [poultry](#), [vital farms](#)



Joe Fassler is The Counter's deputy editor. His reporting has been included in *The Best American Food Writing* and twice nominated for a James Beard Media Award. A 2019 - 2020 Ted Scripps Fellow in Environmental Journalism at the University of Colorado, Boulder, he's the author of two books: a novel, *The Sky Was Ours* (forthcoming from Penguin Books), and *Light the Dark: Creativity, Inspiration, and the Artistic Process*.

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Fact and friction in American food

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EXHIBIT 2

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Shop the 2021 Spring Chicken Savings Event (<https://sevensons.net/2021-sevensons-pasture-raised-chicken-sale>) thru May 23rd.

The Surprising Truth Behind "Pasture-Raised" Eggs



What it takes to raise a *true* pasture-raised egg...

Did you know that we rotate thousands of hens across millions of square feet of pasture each year? Matter of fact the hens in this video are rotated across 2 million square feet of pasture each year. This may sound like a big job *but* that's only the beginning...

[?](#) Help

EXHIBIT 2

Each and everyday we also have to move all the shelters that house the nesters, feeders and waters - all this weighing up to 5,000 pounds per shelter. As we move the hens we also have to setup portable electric netting in order to ensure hens are protected from ground predators.

This means we setup and take down thousands of feet of portable fencing each season. To supply hens with fresh water we've went to the effort of installing over 4 miles of underground waterline throughout our pastures. We also have to travel out to the pasture to collect thousands of eggs (<https://sevensons.net/blog/an-inside-look-at-how-we-gather-850-eggs-every-day>) each afternoon. It takes a lot of infrastructure, planning and people to make this happen.

This video actually shows you our daily pasture move:



So why do we go to all this effort?

For us raising hens on pasture is more about the holistic purpose of improving our land and keeping our pastures healthy. As the birds move about they cleanse the pasture by eating bugs and reducing pests and parasites while at the same time these hens are fertilizing our land.

As the hens scratch in the pasture they provide opportunity for new plant species to grow which helps promote the plant diversity that a healthy pasture needs. This constant rotation also provides the birds with a fresh salad bar of food each day as well as clean healthy living space. This all results in fertile soils, healthy plants, healthy hens and the very best eggs! This is how we define a *true* pasture-raised egg (<https://sevensons.net/store/pasture-raised-eggs>).

But there's something you should know...

As more consumers have begun to recognize the superiority of pasture-raised eggs, this has attracted large brands with large scale contract producers. These brands are cutting corners while still labeling their eggs as "pasture-raised" and charging you a premium to buy them. How are they getting by with this?

Basically these large scale producers are building large permanent "confinement style" chicken houses (30,000 birds per barn) in the middle of a pasture field. These massive barns have doors that theoretically allow access to the pasture. These brands will boast that each of their birds get access to 100 square feet of pasture space per bird.



(<https://sevensons.net/register>)

While this sounds great, the truth is that only a certain percentage of birds will even go outside the building each day. If and when the hens actually do go outside, they will typically only roam a limited distance from the barn. So while the hens technically have "access" to pasture, ultimately very little of the pasture is actually utilized.

Don't be fooled when brands claim up to 100 square feet of pasture per hen. At Seven Sons we know from experience that if we only provide our hens with 100 square feet of pasture space per bird, our pastures would be eaten and trampled down by the chickens.

Since our hens actually utilize the pasture, we have to provide them with a minimum of *200 square feet per bird* just to keep the pasture growing healthy. The fact that these large sale operations actually still have standing pasture surrounding their buildings is proof that their hens simply are not utilizing a very high percentage of the pasture.

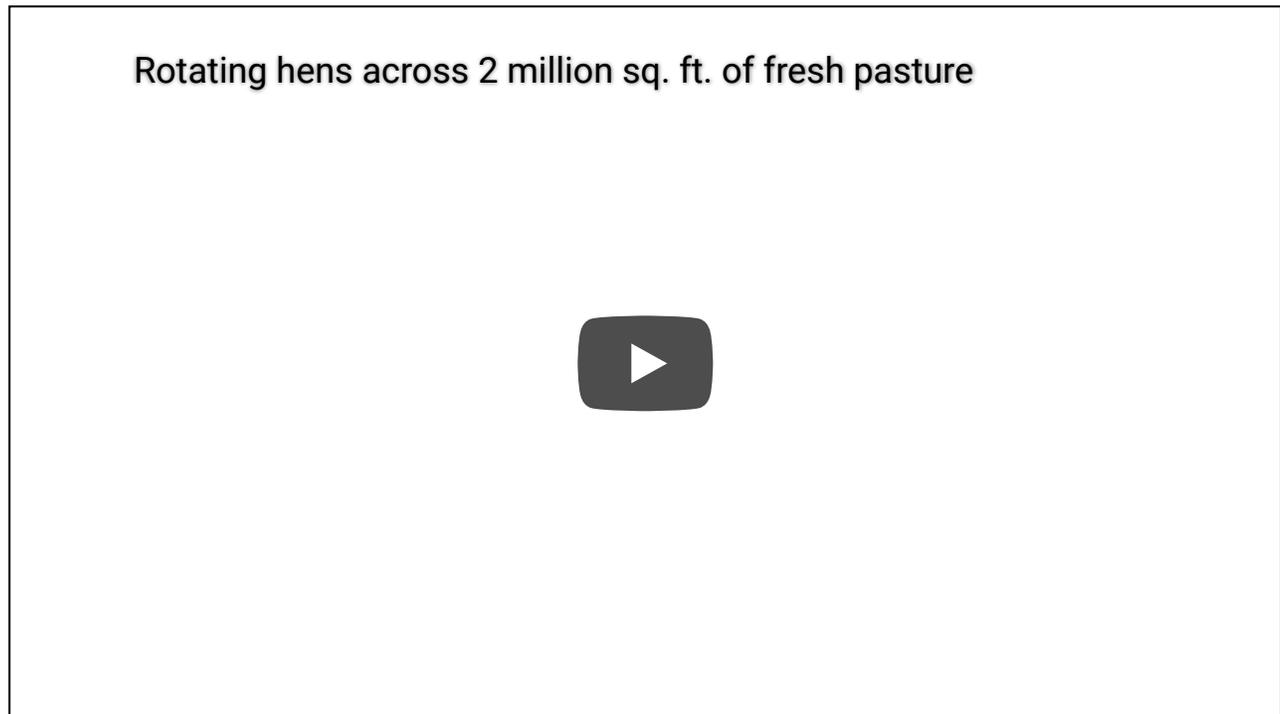
These large nationwide brands now have "pasture-raised" stocked on shelves in almost all upscale supermarkets.

To know if you're getting the real thing always ask these 2 questions:

1. Are the hens rotated daily to fresh pasture whenever possible?
2. Is each hen provided a minimum of 200 square feet of rotated pasture space?

If you cannot get a straight answer to either question, then you probably are not buying true pasture-raised eggs. We encourage you to purchase from local and regional farms where you can visit and see for yourself how your eggs are raised.

Take a look at this short video to see exactly how our hens are raised:



Thanks for reading. If you'd like to learn more about how our 100% pasture-raised beef, pork and other food is raised please take our FREE online farm tour by clicking below:



(<https://sevensons.net/tour>)

Blaine Hitzfield

EXHIBIT 3

1:21-cv-00447



Humane Farm Animal Care
Animal Care Standards
January 1, 2018 Standards

EGG LAYING HENS

EGG LAYING HENS

HFAC Standards for Production of Egg Laying Hens

HUMANE FARM ANIMAL CARE

Humane Farm Animal Care is a non-profit charity whose mission is to improve the lives of farm animals by providing viable, credible, duly monitored standards for humane food production and assuring consumers that certified products meet these standards.

Humane Farm Animal Care is approved by a consortium of Animal Protection Organizations, Individuals, and Foundations, such as the American Society for the Prevention of Cruelty to Animals and the Humane Society of the United States.

The Humane Farm Animal Care Standards have been developed to provide the only approved standards for the rearing, handling, transport and slaughter of Laying Hens for use in the Certified Humane® program. These standards incorporate scientific research, veterinary advice, and the practical experience of farmers. The standards are based on the Royal Society for the Prevention of Cruelty to Animals (RSPCA) guidelines, current scientific information and other practical standards and guidelines recognized for the proper care of animals.

Animal welfare is improved when livestock managers adhere to the following:

- Access to wholesome and nutritious feed
- Appropriate environmental design
- Caring and responsible planning and management
- Skilled, knowledgeable, and conscientious animal care
- Considerate handling, transport, and slaughter

HFAC Standards for Production of Egg Laying Hens

HUMANE FARM ANIMAL CARE'S SCIENTIFIC COMMITTEE

Leading animal scientists, veterinarians, and producers work with Humane Farm Animal Care to develop the *Animal Care Standards* for humane farming and continue to work with Humane Farm Animal Care to continually review new information pertaining to improving the lives of farm animals.

<i>Kenneth E. Anderson, PhD</i>	North Carolina State University, USA
<i>Michael Appleby, PhD</i>	World Animal Protection, USA
<i>Richard Blatchford, PhD</i>	University of California, Davis, USA
<i>Elisabetta Canali, PhD</i>	Università degli Studi, Milan, Italy
<i>Sylvie Cloutier, PhD</i>	Associate Director of Assessment, Canadian Council on Animal Care, Ottawa, Canada
<i>Brenda Coe, PhD</i>	Pennsylvania State University, USA
<i>Hans Coetzee, PhD</i>	Iowa State University, USA
<i>Luiz Dematte, DVM, PhD</i>	Industrial Director of Korin Ltd, and General Coordinator of Mokiti Okada Foundation, Brazil
<i>Inma Estéves, PhD</i>	Research Professor, Neiker-Tecnalia University, Spain
<i>Anne Fanatico, PhD</i>	Appalachian State University, USA
<i>Valentina Ferrante, PhD</i>	University of Milan, Italy
<i>Trent Gilbery, MS</i>	North Dakota State University, USA
<i>Alan Goldberg, PhD</i>	The Johns Hopkins University, USA
<i>Temple Grandin, PhD</i>	Colorado State University, USA
<i>Thomas G. Hartsock, PhD</i>	University of Maryland, USA
<i>Jörg Hartung, DVM</i>	Institute of Animal Hygiene, Welfare and Farm Animal Behavior University of Veterinary Medicine, Hanover, Germany
<i>Brittany Howell, PhD</i>	Fort Hays State University, USA
<i>Pam Hullinger, DVM, MPVM</i>	University of California Lawrence Livermore National Laboratory, USA
<i>Joy Mench, PhD</i>	University of California, Davis, USA
<i>Suzanne Millman, PhD</i>	Iowa State University College of Veterinary Medicine, USA

HFAC Standards for Production of Egg Laying Hens

Malcolm Mitchell, PhD	SRUC, Scotland's Rural College, Scotland
Priya Motupalli, PhD	IKEA Food Global Sustainable Sourcing Specialist, Sweden
Ruth Newberry, PhD	Associate Professor, Norwegian University of Life Sciences; Adjunct Professor, Washington State University, USA
Abdullah Ozen, PhD	Professor, Firat University, Elazig, Turkey
Edmond Pajor, PhD	University of Calgary, Alberta, Canada
Jose Peralta, PhD, DVM	Western University of Health Science, College of Veterinary Medicine, Pomona California, USA
Rosangela Poletto, DVM, PhD	Professor, Instituto Federal do Rio Grande do Sul, Brazil
Martin Potter, PhD	Animal Welfare Consultant, Member of FAWT, UK and Advising Member of EIG, UK
Mohan Raj, PhD	Honorary Visiting Fellow, School of Veterinary Sciences, Bristol University, Bristol, UK
Jean-Loup Rault, PhD	Institute of Animal Husbandry and Animal Welfare at Vetmeduni, Vienna, Austria
J.K. Shearer, PhD	Iowa State University, USA
Marilyn M. Simunich, DVM	Director, Animal Health Laboratory, Division of Animal Industries, Idaho State Dept. of Agriculture, USA
Carolyn Stull, PhD	Chairman, Scientific Committee University of California, Davis, USA
Janice Swanson, PhD	Michigan State University, USA
William VanDresser, DVM	Retired Extension Veterinarian, USA
Andreia De Paula Vieira, DVM, PhD	Animal Welfare Scientist, Universidade de São Paulo, Brazil
Daniel M. Weary, PhD	Professor and NSERC Industrial Research Chair, Animal Welfare Program, University of British Columbia, Canada
Julia Wrathall, PhD	Director, Farm Animals Division, RSPCA, West Sussex, UK
Adroaldo Zanella, PhD	Professor, Dept. Medicina Veterinária Preventiva e Saúde Animal / FMVZ Universidade de São Paulo, Pirassununga/SP, Brazil

HFAC Standards for Production of Egg Laying Hens

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PART 1: INTRODUCTION

A. The Certified Humane Label

The Certified Humane® program was developed to certify products from animals of farms that adhere to these standards. Upon satisfactory application and inspection, farmers and ranchers will be certified and may use the Certified Humane Raised and Handled® logo. Program participants are inspected and monitored by *Humane Farm Animal Care* annually. Charges levied are to cover inspections and program costs which include promotional materials which help promote the products of the producers that are Certified Humane®.

B. Guide to the Use of the Animal Care Standards

- The broad objectives of the standards are described at the beginning of each section. These objectives must be met.
- The numbered requirements are the standards, all of which must be complied with.
- These standards are written to cover facilities in varying geographic and temperature regions and facilities utilizing different systems. Therefore, not all sections in these standards will apply to each facility.
- Boxed sections provide additional information or may highlight areas where the standards will be reviewed in the future.
- Farmers must also comply with any local, state or federal mandates for egg and poultry production that affect the environment or safety of their product, as well as the Veterinary Practices Act in their state.

PART 2: FEED AND WATER

OBJECTIVES: *Hens must have access to fresh water and a diet to maintain full health and promote a positive state of well-being. Feed and water must be distributed in such a way that birds can eat and drink without undue competition.*

A. Feed

FW 1: Wholesome, nutritious feed

Hens must be fed a wholesome diet that is:

- a. Appropriate to their age, stage of production and species; as recommended by the latest report of the National Research Council (NRC) and recommended for their geographic area.
- b. Fed to them in sufficient quantity to maintain good health; and
- c. Formulated to satisfy their nutritional needs.
- d. Hens must have daily access to coarse calcium, to aid with bone strength and shell quality.

FW 2: Free access to feed

- a. Hens must have free access to nutritious feed throughout each day, except when required by the attending veterinarian.
- b. Withdrawal of feed to induce a molt is not permitted.

FW 3: Feed records

- a. Producers must have a written record of the feed ingredients and nutrient content of each feed used, as declared by the feed manufacturer/supplier.
- b. Producers must make feed records available to *Humane Farm Animal Care* during inspection and at other times, upon request.

FW 4: Substances prohibited in feed

- a. No feedstuffs containing mammalian or avian-derived protein are permitted with the exception of eggs. Animal by- products are prohibited in feed.
- b. The use of growth promoters is prohibited.
- c. Antibiotics and coccidiostats may only be administered for therapeutic reasons (disease treatment) and only under direction of a veterinarian.

FW 5: Fresh feed

Feed must not be allowed to remain in feeders in a contaminated or stale condition.

FW 6: Easy availability of feed

To ensure that feed is easily available to hens, producers must provide each hen with at least:

- a. 2.0 in. (5 cm) of (actual) linear track (**for double sided**)
- b. 4.0 in. (10 cm) of linear track for (**for single sided**) or
- c. 1.5 in. (4 cm) of perimeter space for **circular feeders**.

FW 7: Positioning feed and water stations

- a. Hens must not have to travel more than 8 yards (7.3 meters) in the house to reach feed and water, including in systems of more than one level.
- b. Particular attention must be given to the provision and distribution of feed and water in the recovery/hospital areas frequented by subordinate and injured hens.

B. Water

FW 8: Water supply

- a. Hens must have continuous access to an adequate supply of clean, fresh drinking water at all times.
- b. Provisions must be made for supplying fresh water when temperatures are below freezing.

Water intake drops when the drinking water temperature rises above 80 F (27 C) or drops below 60 F (16 C). Reduced water intake lowers feed intake, which can lead to inadequate intake of important nutrients. Water temperatures above 100 F (38 C) and below 50 F (10 C) are not recommended.

FW 9: Number of drinkers that must be provided is as follows:

1. Bell: 1 per 100 hens
2. Nipple: 1 per 12 hens
3. Troughs are to be used with ½” per bird (1.27 cm)

FW 10: Placement and design of drinkers

To reduce water spillage and prevent consequent problems with litter management, drinkers must:

- a. Be placed at an optimum height for the size and age of the birds;
- b. Be of an appropriate design, and
- c. Be checked and maintained regularly.

FW 11: Emergency water supply

A method for providing clean, fresh water for a period of at least 24 hours during a shut off of the main water supply must be available on-site.

PART 3: ENVIRONMENT

OBJECTIVES: *The environment in which hens are kept must take into account their welfare needs and be designed to protect them from physical and thermal discomfort, fear, and distress, and allow them to perform their natural behavior. All Cages type systems such as battery cages, furnished or enriched cages, as well as aviary systems that are designed to confine birds such as lock back cages that would be open during the day but closed at night, are prohibited. In aviary systems, all hens must have access to all levels of the housing system at all times.*

A. Buildings

E 1: Records of features of facilities that promote animal welfare

A notice containing a checklist of the key points relating to welfare for each building in which birds are housed, must be available to the HFAC inspector and be amended accordingly. This must include:

- a. Total floor area available to the birds; (**does not include nest boxes or elevated perches**)
- b. Total number of birds placed in the house, at the initiation of the flock (initial housing transfer);
- c. Total number of drinkers and total number of feeders or total linear feeder space;
- d. Target air quality and temperature parameters;
- e. Acceptable lighting levels and regimens; and
- f. Emergency procedures (i.e. actions in the case of fire, flood, or failure of automatic equipment, and when temperatures move outside acceptable limits).

E 2: Facility design

To ensure that there are no sharp edges or protrusions likely to cause injury or distress to the birds, the interior portions of the building, including the floor, to which the hens have access, must be:

- a. Carefully designed and constructed; and
- b. Well maintained.

E 3: Preventing contact with toxic substances in buildings

Hens must not come into contact with smoke, fumes, paints, wood preservatives, disinfectants or any other substances that are toxic to them.

E 4: Electrical installations

All electrical installations at main voltage must be:

- a. Inaccessible to the hens;
- b. Well insulated;
- c. Safeguarded from rodents;
- d. Properly grounded; and
- e. Tested regularly for stray voltage.

E 5: Design of housing and equipment

Housing and equipment must be designed so that all the hens can be clearly seen by caretakers.

Claws that have grown too long are more prone to physical damage and may diminish the welfare of the hen. Humane Farm Animal Care recommends that abrasive strips be made available, for example, attached to the front feeders if hens' claws are not adequately worn

E.6 Birds must not have access to the droppings pit.

The structure and inside of the droppings pit (where present) must be checked:

- a. At least once daily and
- b. A Record made of this check and
- c. A record made of any birds found, removed and action taken to prevent further access to this area.

E 7: Nearby environs

- a. The area immediately surrounding the outside of the house must be kept clean and tidy and must not offer shelter to wild birds or rodents.
- b. If the area immediately surrounding the house is covered with vegetation, the plants must be kept short and well managed.

B. Floor and litter

E 8: Design of floors

Hen house flooring must allow for effective cleaning and disinfection, preventing significant buildup of parasites and pathogens. Concrete floors are preferable to dirt floors because they can be more effectively cleaned and disinfected.

E 9: Litter

- a. Hens must be kept on, or have daily access to, well maintained loose substrate/litter.
- b. The substrate/litter must:
 1. Be of a suitable material and particle size;
 2. Be of good quality;
 3. Be managed to maintain it in a dry, friable (not caked) condition;
 4. Be a sufficient depth for dilution of feces – birds' feet and plumage should be free of excessive fecal contamination;
 5. Allow birds to dust bathe; and
 6. Be topped up daily, if necessary, with fresh litter.
- c. Replacement Pullets must have continuous access to litter.

Hens generally perform dust bathing behavior later in the day, while egg-laying behaviors are generally performed in the morning. Potential problems with hens laying eggs in the substrate can be avoided by:

- 1) Restricting access to the substrate only to the afternoon portion of the day (e.g., by use of a lid),
- 2) Increasing the lighting above the substrate, to encourage dust bathing and discourage egg-laying.

E 10: Size of litter area

- a. The area of substrate/litter provided must be sufficient to allow the birds to:
 1. Dust bathe; and
 2. Forage freely.
- b. For housing systems which include a completely slatted or grid floor, the opportunity to forage and dust bathe must be provided by **suitable** substrate (litter) areas distributed throughout the system of a size that allows multiple hens to dust bathe simultaneously.
- c. When hens are enclosed in a house, whether barn raised or free range when housed indoors seasonally, a minimum of 15% available floor space must be suitable substrate.

Dust bathing is one of the "comfort behaviors" that hens use to keep their feathers clean and in good condition. The hen works the material (for example, wood shavings or sand) through her feathers using movements of her legs and wings, and then shakes the dust out. Maintaining good feather condition is important because it helps to protect the hen from injury and maintain her body temperature.

E 11: Uncontaminated litter

- a. Litter must not be allowed to become wet, infested with mites, and insects, or otherwise harmfully contaminated.
- b. Litter that is wet or otherwise contaminated must not be introduced into hen housing.
- c. Wet litter resulting from accidental flooding must be replaced immediately and corrective action recorded.

E 12: Litter Storage

Fresh litter must be stored indoors in a clean vermin proof area.

E 13: Understanding the importance of litter

- a. Caretakers must be aware of the welfare problems associated with poor litter management.
- b. Caretakers must understand the factors that affect litter condition e.g. moisture, nitrogen content, ventilation, stocking density and caked litter.

E 14: Electrical wires are prohibited on the litter, or across the litter

If used for training purposes they can be used only along sidewalls of the houses in the scratch area but only for training purposes and must be removed or disconnected once birds reach 25 weeks of age.

C. Lighting

E 15: Light period

Within each period of 24 hours, the lighting system in the hen house must provide:

- a. A minimum period of 8 hours of continuous artificial light and/or daylight; and
- b. A minimum period of 6 hours of continuous darkness or the natural period of darkness, if less.

E 16: Recording light periods

Lighting patterns/ programs in all houses must be recorded and records must be made available to *Humane Farm Animal Care* during the inspection and at other times, upon request.

E 17: Light intensity

- a. Daytime light levels whether fixed or portable, in the house must allow birds to see and be inspected without difficulty at any time.
- b. Patches of high intensity artificial or natural light should be avoided within a house.
- c. Reduction of overall light levels to control cannibalism must only be used as a last resort.
- d. Monochromatic light (e.g., red light) is not permitted
- e. If artificial light is used, it should be switched off in a stepped or gradual manner. Use of dimmers is encouraged. This allows the hens to prepare for darkness, encourages roost use and minimizes injuries.

Varied lighting within the environment can help encourage certain desired behaviors to take place. For example, by increasing the levels of light over the litter area, birds can be encouraged to forage and dust bathe. Also, light level over perches can facilitate daytime rest but sufficient light is needed for navigating on and off perches. Darkness inside nests may help to reduce the risk of cannibalism.

In some housing systems and some bird strains, there is a risk of hysteria and piling when the house suddenly becomes dark. Humane Farm Animal Care recommends a gradual decrease in lighting, to allow the hens to prepare for darkness.

D. Space allowance

E 18: Sufficient freedom of movement.

- a. All hens must have sufficient freedom of movement to be able, without difficulty, to stand normally, turn around, and stretch their legs and wings.
- b. They must also have sufficient space to be able to perch or sit quietly without repeated disturbance to other birds.

E 19: Stocking density

The floor space allowances do not include nests/nest boxes and elevated perches. The non-elevated perches that are integrated into perforated floors are part of the floor space.

One of the following conditions must be met:

- a. In a single level, all-litter house, a minimum of 1.5 sq. ft. (0.14 sq. m) per hen must be allocated to allow normal behavior and dilute the feces.
- b. In a house with litter and a raised slatted area, with feeders, drinkers, and perching/roosting areas over a droppings pit/belt, to where hens must not access, the minimum space allowance is 1.2 sq. ft. (0.11 sq. m) per hen.
- c. In a multi-tier house with feeders and drinkers on overhead perches/platforms, and in which the overhead perches/platforms provide sufficient space for at least 55% of the hens to perch (considering 15cm/hen of linear perch space) a minimum of 1 sq. ft. (0.09 sq. m) of available space per hen must be provided.
- d. In Pasture Raised systems providing mobile housing with fully perforated flooring, the minimum indoor space requirement is 1 sq. ft. (0.09 sq. m) per hen.

E 20: Replacement Pullet Stocking Density:

- a. Birds must not be stocked at a density any greater than 20 kg/m at 16 wks. of age
- b. It must not be likely to exceed 20 kg/m considering that:
 1. An adequate amount of space should be provided for each bird and the number of birds placed in the brooder should be adjusted according to the age at which the birds will be transferred to the laying hen unit, in order to provide sufficient space for older birds. As a guide, no more than 20% of the pullets should have live weights in excess of plus or minus 10% of the mean weight.
 2. The following guidelines should be used when determining the number of birds/m² to the rearing site:

Age of Pullets (weeks) No. of Pullets/m²/ sq. ft. (1/m²= 10.76 sq. ft.)

15 weeks:	15 birds/ 11 sq. ft. or .73 sq. ft./pullet
16 weeks:	14 birds/11 sq. ft. or .78 sq. ft./pullet
17 weeks:	13 birds/11 sq. ft. or .85/sq. ft./ pullet
18 weeks:	12 birds/11 sq. ft. or .92/sq. ft. pullet

E 21: Records of space allowance

To ensure that the maximum housing density is not exceeded:

- a. A plan of every house must be available to the inspector that indicates
 1. The total floor area available to the hens;
 2. The space allowance; and
 3. Maximum number of birds permitted within the house (as E1);
- b. Records must be kept that enable the space allowance to be verified easily by the producer/inspector at any time. These must include:
 1. Records of the number of birds initially housed and the current number of birds ;
 2. The daily mortality; and
 3. Number culled, with possible causes if known

- c. Replacement Pullets must be moved into the layer house prior to the onset of lay, around 16 to 18 weeks of age.

E. Air quality and thermal environment

E 22: Air quality

Provisions must be made to ensure that aerial contaminants do not reach a concentration at which they are noticeably unpleasant to a human observer.

E 23: Ventilation

- a. Ventilation systems, whether natural or mechanical, must be designed to maintain air quality parameters under all foreseeable climatic conditions.
- b. The ammonia concentration at bird height should be no more than 10 ppm and must not exceed 25 ppm except during brief periods of severe inclement weather when ventilation is affected.
- c. Ammonia concentrations at bird levels should be recorded at least once every week and these records made available to *Humane Farm Animal Care* during inspection and at other times, upon request.

When feasible, other air quality measures (e.g., carbon dioxide, carbon monoxide) should also be automatically or manually recorded at regular intervals, and the records made available to the Humane Farm Animal Care during the inspection and at other times, upon request.

- *Hydrogen sulfide should generally be less than 0.5 ppm and should not exceed 2.5 ppm.*
- *Carbon dioxide should generally be less than 3000 ppm and should not exceed 5000 ppm.*
- *Carbon monoxide should generally be less than 10 ppm and should not exceed 50 ppm.*
- *Dust should generally be less than 1.7 mg/m³ (for respirable dust) and 3.4 mg/m³ (for total dust) and should not exceed 5 mg/m³ (for respirable dust) and 15 mg/m³ (for total dust), averaged over an 8 hour period.*

E 24: Thermal conditions

- a. Provisions must be made to ensure that hens have access to a thermally comfortable environment at all times, so that heat/cold stress does not occur.
- b. Daily records of maximum and minimum temperatures must be kept for each house and be made available to the Inspector.
- c. In the event of feather loss, sufficient feed must be provided in cold weather to enable hens to eat more to compensate for greater heat loss.

F. Nest boxes

E 25: Number of nest boxes

One of the following conditions must be met:

- a. Individual nest boxes must be provided at not less than one nest per 5 hens.
- b. All community nest systems must provide an overall minimum nesting area of 9 sq ft (0.8 sq. m) per 100 birds.

E 26: Floor substrate in nest boxes

- a. Nest boxes must have a floor substrate that encourages nesting behavior. Substrates include loose shavings, rice hulls, hay or straw, or plastic astroturf net pads. This does not include plastic grate in the nest box area.
- b. Nest substrate must be replenished weekly (more or less often depending on the type of material) and replaced/cleaned as needed to maintain a healthy environment.

Providing floor substrate, such as loose litter, in nest boxes from before the start of lay may encourage the pullets to use the nest boxes.

G. Perches

E 27: Perches – are required at all times each day

Perches must be accessible to birds both in the night and the daytime.

- a. Replacement pullets must have access to perches, starting before 4 weeks of age so they are prepared for introduction to the laying environment.
- b. Perches must be provided at not less than 3” (7.5 cm) per replacement pullet.
- c. Perches must be provided at not less than 6” (15 m) per hen. This can include the alighting rail immediately in front of the nest boxes.

E 28: Types of perches

- a. At least 20% of the linear perch space must be elevated above the adjacent floor space (elevated perching space) to allow hens avoiding aggressors, but low enough to prevent mainly leg injury. Only perches located more than 16” (41cm) and less than 3.3 ft. (1 m) above the adjacent floor can be calculated as part of the elevated perching space. Elevated perches must be at least 8” (20 cm) from any wall or ceiling, and allow hens to dismount at an angle of no more than 45 degrees. They must be sufficiently stable to minimize the risk of injury to hens.
- b. Perforated floors can be considered as perching space when they have perches incorporated within the floor structure or attached on top of the floor, which meet the standards of E.29 The minimum space between incorporated perches must be 12 inches (30 cm) to allow birds to easily roost simultaneously.

E 29: Design of perches

- a. There must be a gap of no less than 0.5 in (1.3 cm) on either side of any perch to allow hens to grip the perches without risk of trapping their claws.
- b. Hens must be able to wrap their toes around the perch and balance evenly in a relaxed posture for an extended period. Perches must be at least 1.0" (2.54 cm) wide at the top (rounded perches must have a diameter of not less 1.0" (2.54 cm) and not greater than 3" (7.6 cm)), have no sharp edges, be capped at the ends if hollow, be of a non-slip material, and be reasonably clean and dry.
- c. Perches must be positioned to minimize dirtying of any hens below and, when possible, must be over a droppings pit or manure belt.

Flattened, oval or mushroom-shaped perches reduce pressure on the foot pad compared to round perches, thereby reducing the risk of bumblefoot.

H. Multi-Tier systems

E 30: Inspection

The overall design of the system must allow for proper inspection of the birds at all levels and enable immediate access to any sick, injured, trapped or dead birds which require removal.

E 31: Personnel access

Where birds are on tiers above head height, there must be facilities provided (e.g. ladders or trolleys) to ensure that personnel involved with the catching or inspection process are able to safely and securely access all tiers.

E 32: Movement between tiers

Each tier must allow the birds to move easily between the different tiers and ensure that the birds can gain access to the entire floor area including the area under the tiers.

E 33: System Design

Elevated tiers must be equipped with manure belts or must be located to reduce soiling of hens below.

E 34: System Doors

- a. Training Period: Doors on the system can be closed for no longer than 7 days after birds are moved into the barn. This is only for birds to become accustomed to their new housing system.
- b. After Training Period: After the training period all doors of the system must either be removed from the barn or secured open. A suitable method of securing the doors open could include zip tying the doors open by attaching to the tier above.
- c. Doors must only be closed after the training period for catching birds at the end of the flock. The doors may be closed for no more than 12 hours prior to catching.

- d. When available from manufacturer, door closing/opening record log must be made available to the HFAC inspector during the inspection or upon request by the office at any other time.

E 35: Floor substrate in nest boxes

Nest boxes must have a floor substrate that encourages nesting behavior. Examples include loose shavings, hay or straw or plastic "astroturf" nest pads. This does not include a plastic grate in the nest box area.

E 36: Litter Access

Birds must have access to the entire litter area as soon as the doors are open after the training period.

PART 4: PASTURE RAISED AND FREE RANGE STANDARDS

OBJECTIVES: *The Animal Care Standards for Laying Hens do not require that hens have access to outdoors, or be raised on range. This may have advantages for welfare and is encouraged. Where laying hens have access to range or the outdoors, the following definitions and standards must be met.*

Pasture Raised: *is a management system where adult birds are kept on pasture 12 months of the year, in an outside area that is mainly covered with living vegetation. The birds have access to the pasture through exits from fixed or mobile houses, and covered verandas if present. They are kept indoors at night for protection from predators but it is prohibited to keep them continually indoors 24 hours per day without access to pasture for more than 14 consecutive days. The minimum outdoor space requirement is 2.5 acres (1 hectare) per 1000 birds to meet the Animal Care Standards for Pasture Raised.*

Seasonal Pasture Raised: *Seasonally pastured hens must be outdoors for all months of the year that pasture is exposed and available for the hens and the outside temperature will not constitute a welfare concern. Hens may only be kept continually indoors 24 hours per day without access to pasture if the outside temperature is below freezing (32F or 0 C) and or accumulated precipitation is prohibiting the hen's ability to move freely on the pasture. The space allowance for Pasture Raised must be the same and all other standards in this guide must be met.*

Free Range: *is a management system in which adult birds are kept in houses with daily access to an uncovered outdoor area weather permitting. The minimum outdoor space requirement is 2 square feet (0.19 square meters) per bird to meet the Animal Care Standards for Free Range. All other standards must be met.*

A. Pasture Raised systems

The following standards are requirements in addition to the other applicable standards in this manual.

R 1: Pasture area

- a. Must consist mainly of living vegetation. Coarse grit must be available to aid digestion of vegetation.
- b. The pasture must be designed and actively managed to:
 1. Encourage birds outside, away from the popholes, and to use the area fully;

2. Prevent and/or minimize heavily degraded, muddy/sodden, or worn areas;
 3. Minimize any build-up of agents (e.g., parasites, bacteria, viruses) that may cause disease;
 4. Prevent hens from coming into contact with any toxic substances.
- c. The minimum outdoor space requirement is 2.5 acres (1 hectare)/1000 birds. Land used for cropping (except grass or hay) is not accepted as part of the Pasture Raised space allowance and must be excluded from space calculations.
 - d. The maximum distance that a hen has to walk from the perimeter fence of the pasture to the nearest door into a fixed or mobile house must be no more than 400 yards (366 m).
 - e. The pasture must be rotated periodically to prevent the land from becoming contaminated and or denuded, and to allow it to recover from use. A written rotational grazing plan must be in place. The written rotational grazing plan must be submitted with the application.
 - f. Water temperature must not be less than 50° F (10 C) or greater than 100° F (38 C).
 - g. Birds must be outdoors 12 months per year, every day for a minimum of 6 hours per day. In an emergency, the hens may be confined in fixed or mobile housing 24 hours per day for no more than 14 consecutive days.
 - h. Shade, cover and dust bathing areas
 1. There must be sufficient well-drained, shaded areas for hens to rest outdoors without crowding together.
 2. Cover, such as shrubs, trees or artificial structures, must be distributed throughout the pasture to reduce the fear reactions of hens to overhead predators and to encourage use of the pasture.
 3. The pasture area must include patches with loose substrate suitable for dust bathing.

A pasture management plan must be developed, implemented and updated annually. The plan is to include: pasture rotation; how to prevent and/or manage heavily poached/muddy/worn areas; how to minimize any build-up of parasites or diseases; provision and appropriate distribution of natural and artificial shade/shelters and cover; and drainage improvements to prevent poached areas from developing.

R 2: Housing

- a. All birds raised on pasture must have access to fixed or mobile housing that keeps them dry and protects them from wind and from predators.
- b. Hens must have sufficient exit areas appropriately distributed around the housing (i.e. each exit area must allow the passage of more than one hen at a time).
- c. Exits must be at least 18' (46 cm) high and 21" (53 cm) wide.
- d. Because hens are motivated to perch at night and it may be necessary to close hens indoors at night to protect them from predators or severe weather, it must be possible to place the required perch space (E27-E29) in the indoor housing.

- e. The housing must meet the standards in other parts of this manual. In the event that hens must be shut indoors for more than 24 hours, if any special provisions are needed to meet the standards, they must be described in a written emergency plan.

In mobile housing nest box space may differ from E25, provided there are no floor eggs and no competition for nest box space and the birds' welfare is not otherwise affected.

B. Seasonal Pasture

- 1. All of the pasture standards must be met.**
- 2. When the birds are kept indoors due to weather, there must be records kept of the days the birds are indoors and the temperature during those days. These records must be available to the HFAC Auditor.**

C. Free Range systems

The following standards are for the respective bird rearing system in addition to the other applicable standards in this manual.

R 3: Range area

- a. The outdoor area to which birds have access must:
 - 1. Consist of ground covered by living vegetation, where possible. Ground coverings such as gravel, straw, mulch or sand are examples of materials to be used when vegetation is not possible. Coarse grit must be available to aid digestion of vegetation.
 - 2. Be designed and actively managed in ways that minimize the risk of the range becoming damaged, contaminated, or sodden;
 - 3. Be managed to avoid build-up of agents (e.g., parasites, bacteria, viruses) that may cause disease.
 - 4. Prevent hens from coming into contact with any toxic substances or plants
- b. The minimum amount of uncovered outdoor area required is 2 sq. ft. per hen. (0.19 sq. m) Land used for cropping (except grass or hay) is not accepted as part of the Free Range space allowance and must be excluded from space calculations.
- c. The maximum distance that a hen has to walk from the perimeter fence of the outdoor area to the nearest door into the house must be no more than 400 yards (366 m).

- d. Rotational grazing or other disease control measures must be applied to reduce the risk of build-up of parasites or pathogens on the range. There must be a written parasite control plan for birds with outdoor access.
- e. Outdoor access must be provided for a minimum of 6 hours per day during the daytime, except during inclement weather or for veterinary or emergency reasons.
- f. Shade and cover
 - 1. There must be sufficient well-drained, shaded areas for all hens to rest outdoors without crowding together.
 - 2. Cover, such as shrubs, trees or artificial structures, must be distributed throughout the range to reduce the fear reactions of hens to overhead predators and to encourage use of the range.

A range management plan must be developed, implemented and updated annually. The plan is to include: range rotation; how to prevent and/or manage heavily poached/muddy/worn areas; how to minimize any build-up of parasites or diseases; provision and appropriate distribution of natural and artificial shade/shelters and cover; and drainage.

R 4: Housing

- a. All birds must have access to housing that keeps them dry, protects them from wind and from predators, and meets the requirements in the other parts of this manual.
- b. Hens must have sufficient exit areas appropriately distributed around the building (i.e. at least one exit every 50 feet (15 m) along one side of the house) to ensure that all hens have ready access to the outdoor area. Each exit area must allow the passage of more than one hen at a time.
- c. Exits must be at least 18” (46 cm) high and 21” (53 cm) wide.

PART 5: MANAGEMENT

OBJECTIVES: Empathy and responsible management are vital to ensure good animal welfare. Managers and caretakers must be thoroughly trained, skilled and competent in animal husbandry and welfare, and have a good working knowledge of their system and the laying hens under their care.

A. Managers

M 1: Understanding the standards

Managers must ensure that all:

- a. Caretakers have a copy of the current *Animal Care Standards for Egg Laying Hens*;
- b. They and the caretakers are familiar with the standards; and
- c. They and the caretakers understand their content.

M 2: Management and record keeping activities

Managers must:

- a. Develop and implement a suitable training program for caretakers, with regular updates and opportunities for continuing professional development;
- b. Be able to demonstrate that staff with responsibility for animal care has the relevant and necessary skill to perform their duties. When deficiencies are noted, managers must provide appropriate training to ensure that all caretakers have the required skills.
- c. Develop and implement plans and precautions to prevent/cope with emergencies such as fire, flood, breakdown of environmental control or interruption of supplies (e.g. food, water, electricity);
 1. Provide an Emergency Action Notice Plan next to a telephone, highlighting the procedures to be followed by those discovering an emergency (e.g. fire, flood, power failure);
 2. Post emergency contact numbers by phones and entrances to buildings.
- d. Ensure that the Animal Health Plan (see H1) is:
 1. Implemented;
 2. Regularly updated; and
 3. That the required data are recorded appropriately.
- e. Maintain and make available to the *Humane Farm Animal Care* inspector records of production data and use of medications and vaccines. These records must be dated and include documentation on:
 1. Incoming and outgoing birds;
 2. Egg production;
 3. Mortality (reasons should be stated, if known);
 4. Culling (reasons should be stated and recorded separately from mortality);
 5. Feed consumption;
 6. Water consumption (if possible, water meters should be fitted in each hen house);
 7. Maximum and minimum temperatures;

8. Ventilation (including settings and any necessary changes); and
9. Ammonia levels.

M 3: Abilities of caretakers

Managers must take into account the abilities of the caretakers when deciding on space allowances in present systems and when considering expanding the unit or installing more complex equipment.

M 4: Complaints to Operators

- a. To be certified, an Operation must maintain systems for receiving, responding to, and documenting complaints alleging the Operations' failure to comply with *Humane Farm Animal Care* standards(ISO §15).
- b. Whenever an Operator receives a complaint, the Operator must:
 1. Take appropriate action to respond to the complaint, and
 2. Correct any deficiency in the products or services that affect their compliance with the requirements for certification.
- c. Written records must be retained by the Operation for a minimum of 3 years from the date of the records' creation. Records must contain information documenting:
 1. All complaints received (written or verbal),
 2. The actions taken by the operator to respond to the complaint.
- d. These records must be made available to *Humane Farm Animal Care* upon request. *Humane Farm Animal Care* will review these records at least annually, during the Operation's annual inspection.
- e. Operators must notify *Humane Farm Animal Care* if an adverse ruling (such as suspension or revocation of certification, fine, or sanction) related to the Operation's humane management practices is levied against the Operation by another certifier or by a governmental program which regulates the industry.

B. Caretakers

M 5: Mitigating problems

- a. Caretakers must know the normal behavior of laying hens and understand the signs that indicate good health and welfare.
- b. Caretakers should be able to recognize impending trouble in its earliest stages, as this may enable them to identify the cause and correct matters promptly.
- c. When an outbreak of abnormal animal behavior occurs, it must be tackled promptly by appropriate changes in the system of management.

M 6: Awareness of welfare problems

- a. Caretakers must be aware of welfare problems, such as those associated with poor litter management (e.g. burnt hocks, footpad lesions and breast blisters).
- b. Caretakers must understand the factors that affect litter condition (e.g. moisture, ammonia build up in the house, nitrogen content, ventilation and stocking density)

- c. Caretakers must understand the risk of broken bones (e.g. bone fragility, hen age, catching, nutrition, bad landings when jumping from elevated structures).

M 7: Training

- a. Prior to being given responsibility for the welfare of livestock, caretakers must be properly trained and be competent to:
 - 1. Recognize signs of common diseases and know when a veterinarian should be consulted so that appropriate treatment may be initiated;
 - 2. Recognize signs of normal behavior, abnormal behavior and fear;
 - 3. Understand the environmental requirements for hens;
 - 4. Handle hens in a positive and compassionate manner; and
 - 5. Euthanize hens when necessary.
- b. This training should be documented. The competence of caretakers must be verified.

M 8: Compassionate treatment

- a. Caretakers must be able to demonstrate competence in handling animals in a positive and compassionate manner.
- b. Caretakers must also be able to demonstrate their proficiency in procedures that have the potential to cause suffering (e.g., euthanasia).

C. Inspection

M 9: Monitoring

- a. All hens must be inspected at least twice a day using a procedure that will identify all birds that are sick, injured, trapped, or behaving abnormally.
- b. Any welfare problems seen during an inspection by the caretakers must be dealt with appropriately and without delay.

Welfare problems of sufficient severity that these should have been noticed and dealt with by the caretaker on previous daily inspections will be taken by the Humane Farm Animal Care Inspector as evidence of negligence of duties by the caretaker.

M 10: Records of ill, injured, and dead birds

- a. On completion of inspection, records must be kept of sick, injured and dead birds.
- b. The records must:
 - 1. Be made available to *Humane Farm Animal Care* during the inspection and at other times, upon request;
 - 2. Be signed by the farm worker doing inspections;
 - 3. Contain the time of inspection;
 - 4. Note the causes of illness and injury, when known; and
 - 5. Record the reasons for culling.

M 11: Quiet handling

Work routines and practices must be developed, and when necessary modified, to ensure that hens do not become fearful and are not frightened in avoidable ways. For example, all movement throughout the unit must be slow and deliberate both to alleviate fear and reduce possible injury and overcrowding/suffocation to the birds.

D. Equipment

M 12: Equipment

- a. Caretakers must inspect the equipment, including the automatic equipment, upon which laying hens depend at least once daily to check that there is no defect.
- b. When a defect is found (whether on inspection or at any other time):
 1. The defect must be fixed promptly.
 2. If this is impractical, such measures as are required to safeguard the hens from suffering unnecessary pain or distress as a result of the defect and must promptly be taken and maintained until the defect is fixed.

M 13: Automatic ventilation systems

Automatic ventilation systems must contain:

- a. An alarm that will give adequate warning of the failure of the ventilation system to function properly (and the alarm must operate even if the principal electricity supply to it has failed);
- b. Additional equipment or means of ventilation (whether automatic or not) which, in the event of failure of the normal/primary ventilation system, will provide adequate ventilation so as to prevent the birds from suffering unnecessary distress as a result of the failure.

M 14: Auxiliary power supply

- a. For houses with electrical equipment critical for maintaining bird welfare, an auxiliary power supply, capable of providing instant start and power supply to critical electrical equipment within the house for a 24-hour period, must be located on site or promptly rented.
- b. The power supply must be checked at the frequency recommended by the manufacturer, and these checks must be documented.

M 15: Using equipment

Caretakers must be able to:

- a. Demonstrate their ability to operate the equipment competently (e.g. heaters, lighting, ventilation, flaps/fans);
- b. Demonstrate their ability to carry out routine maintenance;
- c. Recognize common signs of malfunction; and
- d. Demonstrate knowledge of action to be carried out in event of failures.

E. Pests and predators

M 16: Protection from pests and predators

Humane precautions must be taken to protect laying hens from predators and pests.

Specifically:

- a. The entry of wild birds into hen houses must be prevented with netting or similar material over roof ventilation ducts, windows, etc.;
- b. Predators, including dogs and cats, must not be permitted in hen houses. **There must be the ability to enclose the birds into a predator-proof area at night.**
- c. Vegetation and debris directly outside a hen house that may provide harborage for pests must be removed. It is recommended that an additional physical barrier, such as gravel, be placed around the perimeter of the house to deter rodents and soil-borne parasites.

Outdoor access areas may be enclosed with an electronet fence with a mesh size that is small enough to keep predators out. It is recommended that birds are kept in a building at night.

M 17: Monitoring for rodent and fly activity

- a. Monitoring for rodents must be conducted and recorded, and when monitoring indicates unacceptable rodent activity within a hen house, appropriate methods of rodent control must be used.
- b. Monitoring of flies must be conducted, and when monitoring indicates unacceptable fly activity within a hen house, an appropriate method of fly control must be used.

F. Cleaning and disinfection

M 18: Cleaning and disinfecting before restocking

Premises and equipment must be thoroughly disinfected and cleansed before restocking with pullets or layers.

PART 6: HEALTH

OBJECTIVES: *Hens must be protected from pain, injury and disease. The environment in which hens are housed must be conducive to good health. All producers must develop a health plan in consultation with a veterinarian.*

A. Health Care Practices

H 1: Animal Health Plan

- a. An Animal Health Plan (AHP) must be drawn up and regularly updated in consultation with a veterinarian.
- b. The AHP must include:
 1. Details of any vaccinations;
 2. Information on treatments and other aspects of flock health;
 3. Causes of morbidity and mortality including culling.
 4. Tolerance limits on overall flock performance;
 5. Biosecurity provisions; and
 6. Cleaning and disinfection policy.

H 2: Addressing food safety

A recognized Quality Assurance Program for the control of organisms that cause food safety concerns must be adopted and followed.

H 3: Preventing recurring injuries

- a. There must be no recurring injuries attributable to physical features of the housing environment, either indoors or outdoors where it applies or to handling procedures
 1. Recurring injuries are those seen on a number of birds, with sufficient similarity to suggest that they have a common cause.
 2. Injury is described as damage severe enough for the formation of granular scar tissue or defective bones or joints, and to an extent significantly greater than would be caused by minor accidental bumps or scratches.
- b. Attention must be paid to foot pad lesions and claw wear.
- c. If such injuries are found, a program of preventive action must be specified.

H 4: Flock performance data

- a. Flock performance data must be continuously monitored for indicators of disease or production disorders.
- b. If any flock performance parameters fall outside the tolerance limits identified in the AHP, a program of action must be developed to remedy the problem.
- c. Particular attention must be paid to such conditions as:
 1. Cannibalism;
 2. Significant feather loss;
 3. Fowl mite infestation;
 4. Bone fractures and keel bone deformation; and
 5. Trapping.

H 5: Care of sick and injured animals

Sick hens, and any hens suffering from injury such as open wounds or fractures, or from prolapse of the vent, must be:

- a. Segregated; and
- b. Treated without delay; or
- c. If necessary, humanely killed.

H 6: Physical alterations

In cage-free housing systems of laying hens, there is a risk of outbreaks of cannibalism. The pain and suffering of the hens that are being pecked to death is appalling and may quickly affect a considerable proportion of the flock.

The need for beak trimming is being constantly reassessed and will be thoroughly reviewed in the light of research currently being carried out.

Producers will be required to phase out beak trimming/ tipping as soon as the causes of cannibalism and ways of preventing it have been identified. .

Humane Farm Animal Care is also aware that alternative methods of beak trimming, such as infrared technology, may offer potential welfare improvements, for example a reduction in the pain caused during the procedure, as well as improving the accuracy with which the procedure is performed. HFAC will review the findings of the latest research on this technique to ensure that only the most appropriate methods are used.

- a. Debeaking (severe beak trimming) is not permitted. See appendix 2
- b. In flocks that are susceptible to outbreaks of cannibalism, the beaks of hens may be trimmed at 10 days of age or younger as a preventive measure.
 1. Only trained and competent operators using approved equipment must do beak trimming.
 2. Only the tip of the upper mandible may be removed in order to limit the hens' capability to tear at flesh without inhibiting feeding, ground pecking or preening.
 3. The lower mandible may be "stopped" (e.g. heat treated) without any beak being removed to avoid distortion of beak formation in later life.
- c. Toe clipping, dubbing, caponization, and other surgical alterations are not permitted.

H 7: Prohibition of appliances to stop cannibalism

Artificial appliances (such as blinkers attached to the beak or nostrils, or contact lenses) designed to stop cannibalism must not be used.

H 8: Selecting birds for good health

During selection of birds, care must be taken to avoid genetic strains with undesirable traits, particularly aggressiveness, broodiness, bone fragility, hysteria, cannibalism, and tendency to feather peck.

H 9: The use of genetically modified and/or cloned laying hens and their offspring are prohibited.

H 10: Prohibition of induced molting by feed withdrawal

Withdrawal of feed to induce hens to molt is prohibited.

B. Emergency euthanasia

H 11: Euthanasia

- a. Each farm must have provisions for prompt humane emergency euthanasia for sick or injured hens, using on-farm methods carried out by a named, trained, competent member of the staff, or a veterinarian.
- b. If there is any doubt as to how to proceed, the veterinarian must be called at an early stage to advise whether treatment is possible or whether euthanasia is required to prevent suffering.
- c. If a bird is in severe pain that is uncontrollable, then the bird must be promptly euthanized.
- d. The following methods of emergency euthanasia are permitted:
 1. Hand held electrical stunning, immediately followed by neck cutting;
 2. Cervical dislocation; to be used in an emergency or for killing a very small number of birds. Cervical dislocation must involve stretching the neck to sever the spinal cord and cause extensive damage to the major blood vessels. Equipment that crushes the neck including killing pliers or burdizzos is neither quick nor humane and must not be used;
 3. Carbon dioxide or a mixture of carbon dioxide and argon, delivered in an appropriate container at acceptable concentrations.

H 12: Carcass disposal

- a. Following a euthanasia procedure, birds must be carefully examined to ensure that they are dead.
- b. All carcasses must be disposed of through outlets or using methods according to state and local laws.
- c. Off-farm carcass disposal:
 1. Carcasses must be disposed of through approved outlets in accordance with state and local laws.
 2. A record must be kept of the name of the outlet through which all such carcasses are disposed.
- d. On farm carcass disposal:
 1. If carcasses are disposed of on farm, a record of the method of disposal must be maintained.

PART 7: TRANSPORTATION

OBJECTIVES: Animal transport systems must be designed and managed to ensure hens are not caused unnecessary distress or discomfort. The transport and handling of hens must be kept to an absolute minimum. Personnel involved in transport must be thoroughly trained and competent to carry out the tasks required of them.

T1: Depopulation

1. Depopulation action plan (DAP) must be drawn up by the producer/farm manager for each house prior to depopulation.

It must be reviewed and signed after each depopulation by both the producer/farm manager or named supervisor and the catching team leader.

2. The DAP must include: building design, catching plan, transport arrangements and post-depopulation records.
3. These records must be made available to the HFAC auditor.
4. Catching teams must never put speed of operation before hen welfare.
5. Hens must have access to water up to the time that the catching team begins to catch the first birds.

The aim of the Certified Humane® program is to adopt a birth through slaughter policy. We recognize that at this time this is not always possible, since many laying hen producers send their hens to different places, not all of those to slaughter. Some are sold to live market. Unless slaughter plant is audited, meat cannot be sold under the Certified Humane logo.

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Appendix 1



Scientific Outreach Newsletter #1

Managing cannibalism in laying hen flocks

We have received questions from some egg producers on our program about the issue of cannibalism. After consultation with the laying hen specialists on our Scientific Committee, most especially Dr. Ruth Newberry, we are happy to provide you with the following information in an effort to help you manage cannibalism in your flocks. Most of these recommendations are incorporated within existing HFAC Animal Care Standards for Laying Hens. However, further background information is given here.

Cannibalism

Cannibalism is the act of consuming tissues of other members of the same species and is a common problem in poultry. In laying hens, cannibalism may be directed towards different tissues, from eggs to feathers. The most serious concern for welfare comes from the cannibalistic pecking and tearing of skin, and internal organs of birds. Severe pecking of the tail feathers results in blood, which stimulates further pecking. Accidental injuries which cause bleeding can also stimulate cannibalistic behavior. Cloacal cannibalism (vent pecking) is the most severe and fatal form, where pecks at the cloaca can proceed to the removal and consumption of intestines. This form of the behavior generally occurs after the onset of lay.

In commercial practice, pecking and cannibalism is primarily controlled by beak trimming, and often also reduced lighting programs within the houses. Unfortunately, there are adverse welfare consequences associated with both of these practices:

Beak Trimming

In an effort to reduce or eliminate cannibalism, some producers have their birds beak re-trimmed at 5 – 7 weeks old because early beak trimming (less than 10 days of age) can result in some re-growth of the beaks.

Beak trimming causes additional pain when performed after 10 days of age.

For this reason, HFAC animal care standards do not permit this practice to be carried out on birds older than 10 days.

Although beak trimming reduces the opportunity for birds to cause injuries to flock-mates, it does not eliminate the motivation to peck at other birds.

Lighting

Birds need good visibility to be able to feather-peck, and cannibalism increases with light intensity.

Using reduced light to control cannibalism, by rearing chicks in permanently dim or monochromatic lighting, or fitting hens with colored contact lenses or goggles, is questionable because vision impairment has been associated with eye disorders, elevated mortality and reduced productivity.

Also, when birds are kept in dim light, it is necessary to raise the light intensity for daily bird and equipment inspection, and this routine may trigger cannibalism.

Cannibalism is notoriously unpredictable and has been reported in all types of housing systems, including barns, aviaries and free-range systems. However, research has identified several risk-factors affecting both the motivation and the opportunity of birds to perform cannibalism.

Current research is working towards identifying genetic strains of birds less prone to exhibit cannibalistic behavior; however, the practical outcome of these studies is not likely to be seen on farms for some time. **Control of behavior** is likely to be most effective, in combination with **housing design features and husbandry techniques**.

The following are some suggestions based on scientific research on how to reduce or eliminate cannibalism in your flocks. Please note that a number of these factors are designed to be **preventative** and should be integrated into husbandry practices, wherever possible:

1. **Delay the onset of first lay until hens are at least 20 weeks old.**
 - In flocks exhibiting cannibalism, the increase in mortality due to cannibalism typically starts around the time of sexual maturation. Delaying the start of lay until after 20 weeks of age can reduce the risk of cannibalism.
2. **Provide attractive foraging materials.**
 - Birds deprived of litter for the first 4 weeks after hatching may show increased cannibalism as adults.
 - Rearing pullets without litter, or on poor foraging litter types such as wood shavings, increases the risk of feather pecking and cannibalism.
 - Pecking at flock-mates may represent misdirected ground pecking behavior that occurs in the absence of adequate ground pecking substrate.
 - Keep litter dry. The use of hanging bell drinkers over litter, which can result in wet litter conditions making the litter less attractive as a foraging material, has been correlated with increased cannibalism.
 - Less cannibalism occurs when chicks are given long-cut straw bundled in sheaths rather than short-cropped straw, and polystyrene blocks rather than polystyrene beads.

3. Meet nutritional requirements

- Cannibalism has been correlated with nutritional deficiencies, including minerals, protein, and energy, especially with regard to a low-sodium diet. As rations change with each stage of production, ensure that nutritional content is maintained at an adequate level. Any factor that reduces feed intake (e.g., hot weather, reduced water intake, novelty due to a change in diet or environment, feed contamination, introduction of new birds, presence of predators or other fear-inducing stimuli, illness) can increase the risk of nutritional deficiencies.

4. Provide feed in small-particle form

- Considerably less cannibalism occurs when hens are fed an unpelleted (mash) diet rather than a pelleted diet, or crumbles rather than large pellets (possibly because it takes hens longer to consume an equivalent amount of feed in small-particle form).
- Lower mortality due to cannibalism has been observed in hens fed a diet high in insoluble fiber than in those fed a commercial diet (possibly because the birds spend longer feeding to meet their energy needs.)
-
- Phase feeding involves changes from nutrient-dense diets to more dilute diets as hens age. If the dilute diets are less preferred, this could explain why frequent diet changes are correlated with increased cloacal cannibalism in commercial flocks.

5. Minimize opportunities for birds to learn cannibalistic behavior

- Housing should be designed in such a way that prevents accidental bleeding injuries, and any injured or dead birds should be immediately removed from the flock.

6. Allow sufficient access to all resources for all birds

- Victims tend to have lower body weights than other birds in the flock. There has been a reported correlation between inadequate feeder space and cannibalism which may result from lack of uniformity of growth among the flock.
- Cannibals are attracted to victims that appear less fit than other hens as a result of lower body weight, disease, bleeding injury, trapping, or damaged plumage.
- Risk of cannibalism is lower in flocks with high body weight uniformity, body condition, health, and plumage quality.

7. Provide perches that are high enough to provide refuge from birds on the floor

- Provision of perches reduces the risk of cannibalism, both during rearing and in adulthood. Access to perches by 4 weeks of age results in a reduced risk of cloacal cannibalism in adult hens.
- Perches provide hens with an opportunity to avoid or escape cannibalistic attacks.
- Effectiveness of perches as refuges is increased if hens are reared with perches from an early age.
- Training of birds to ensure perch use is also recommended.
- To be effective, perches should be 16 inches or above from the floor to prevent birds on the floor from reaching up and pecking the perching birds. However,

perches should not be so high that hens are injured when landing after jumping off perches.

8. Provide nests to minimize visibility of the cloaca during egg laying

- Provide nests that are enclosed and relatively dark rather than open or provided with supplementary lighting.
- If the cloaca is exposed and visible during oviposition, it can be an attractive stimulus for birds to peck at.

The information in this document is excerpted from Chapter 22 "Cannibalism" by R.C. Newberry in "Welfare of the Laying Hen" (Ed. G.C. Perry), published by CAB International 2004. The full PDF version of this chapter, including all scientific references of studies mentioned is available to producers on request.

Appendix 2

Beak Trim Score – Brown Birds

0	<ul style="list-style-type: none"> • No beak trim 		
1	<ul style="list-style-type: none"> • Infrared beak trim at hatchery only • Beak trim just visible • Upper and lower beaks even 		
2	<ul style="list-style-type: none"> • More than 3/4 beak remains • Upper and lower beaks even 		
3	<ul style="list-style-type: none"> • More than 1/2 beak remains • Difference between upper and lower beaks minor 		
4	<ul style="list-style-type: none"> • Between 1/2 and 1/4 of beak remains • Food compaction in nares • Imbalance between beaks • Minor neuroma 		
5	<ul style="list-style-type: none"> • Less than 1/4 beak remaining • Major difference between upper and lower beaks - 1/2 length • Major neuroma like a pea • Major splitting, cracking 		

Procedure: Score 20 birds per house and calculate average score
 At 4 or 5, just one criteria listed is sufficient to score that level. To score 1, 2 or 3 all criteria must be met. Scores of 2.25 or better are acceptable. Scores of 3 or higher must prompt urgent corrective action with the beak trimmer.

Beak Trim Score – White Birds

<p>0</p>	<ul style="list-style-type: none"> • No beak trim (Also notice the facial, beak and comb color of this bird raised outdoors) 		
<p>1</p>	<ul style="list-style-type: none"> • Infrared beak trim at hatchery only • Beak trim just visible • Upper and lower beaks even 		
<p>2</p>	<ul style="list-style-type: none"> • More than 3/4 beak remains • Upper and lower beaks even 		
<p>3</p>	<ul style="list-style-type: none"> • More than 1/2 beak remains • Difference between upper and lower beaks minor 		
<p>4</p>	<ul style="list-style-type: none"> • Between 1/2 and 1/4 of beak remains • Food compaction in nares • Imbalance between beaks • Minor neuroma 		
<p>5</p>	<ul style="list-style-type: none"> • Less than 1/4 beak remaining • Major difference between upper and lower beaks - 1/2 length • Major neuroma like a pea • Major splitting, cracking or 		

Procedure: Score 20 birds per house and calculate average score
 Scores of 2.25 or better are acceptable. Scores of 3 or higher must prompt
 urgent corrective action with the beak trimmer.

Appendix 3

Perches



Appendix 4 Housing Options

Pasture: 108 sq. ft./bird
outdoors all year around



Free Range min.2 sq. ft./hen
outdoors - weather
permitting.



Cage-free system on raised
slats – 1.2 sq ft./bird



Cage free/barn raised 1.5 sq.
ft./bird



Barn raised birds in front of nest box



Barn Raised - aviary system/multi-tier 1.0 sq. ft./bird



Barn Raised Birds in winter garden



Winter garden exit





Humane Farm Animal Care
Animal Care Standards
January 1, 2018 Standards

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EXHIBIT 4

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This article exists as part of the online archive for HuffPost Australia, which closed in 2021.

FOOD & DRINK

Here's What Farms Do To Hens Who Are Too Old To Lay Eggs

By

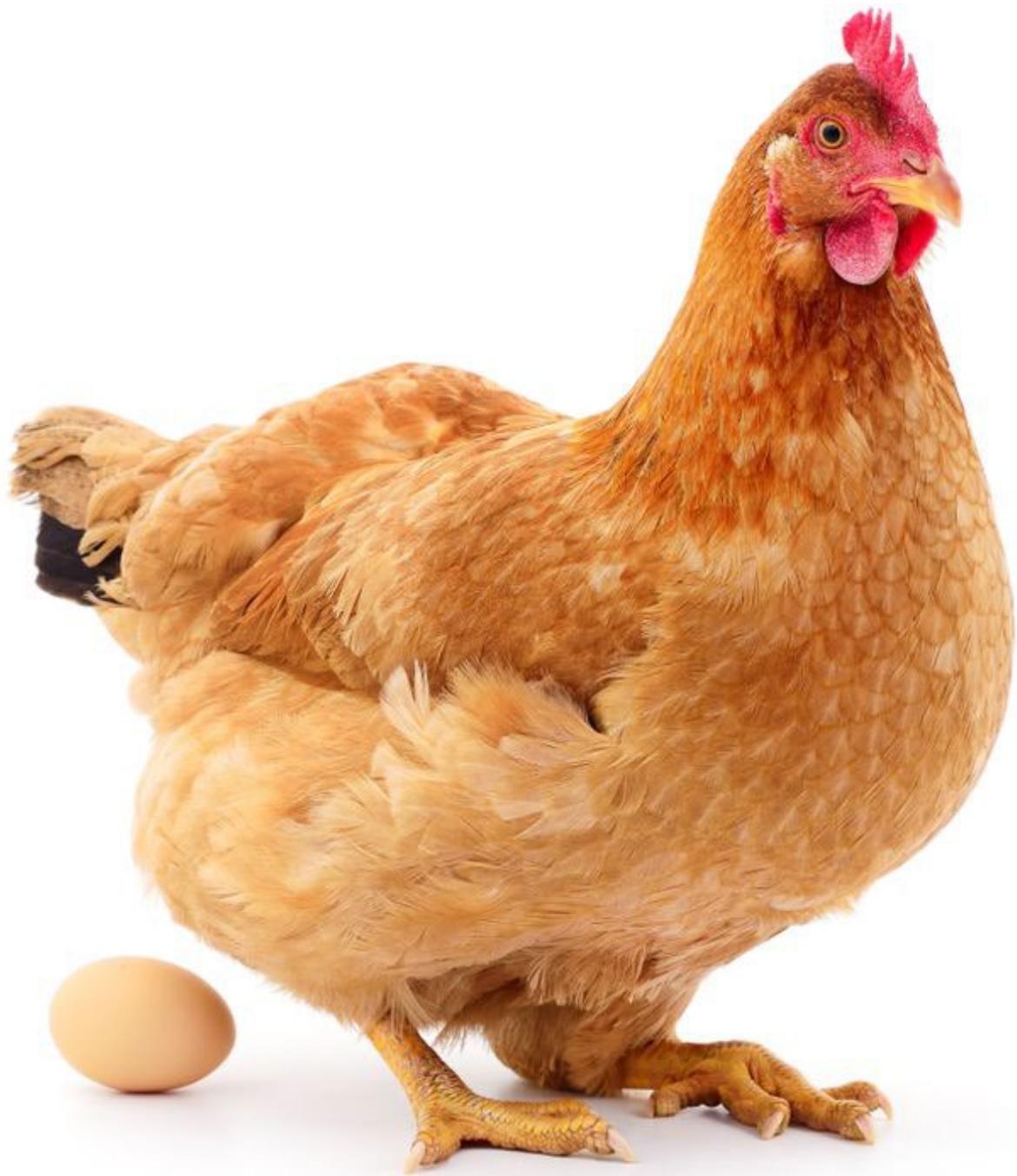
Julie R. Thomson

26/09/2017 01:08am AEST | Updated May 15, 2018



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EXHIBIT 4



TSEKHMISTER VIA GETTY IMAGES

Do we eat the chickens that lay our eggs? It's not a dumb question to ask, and the answer might surprise you.

Unless you've raised backyard chickens, we're willing to bet that the

EXHIBIT 4

average egg consumer doesn't know that hens stop laying eggs pretty early on in their lives. Chickens live eight years on average, but hens only productively lay eggs in the first two, maybe three years of their lives. And on the commercial level, it's closer to two years, and sometimes less.

When hens are productively laying eggs, they'll lay one egg about every 22 hours. As they get older, this becomes less and less frequent. So when you're a commercial egg farmer, **what do you do with the thousands of hens taking up barn space that aren't really laying eggs anymore?**

Jesse Laflamme, CEO of Pete and Gerry's Organic Eggs (which raises certified humane eggs from small family farms), explained one way that non-humane egg factories deal with the situation.

"What typically happens is they just gas them with CO₂, and asphyxiate them. Then they put them into trucks or dumpsters and they're landfilled, or they render them," Laflamme told HuffPost. Laflamme said he couldn't speak to what exactly happens when the chickens are rendered, but that it's basically "where they turn the hens into oils and other products that are used in various industries."

This sounds horrific, but Matt O'Hayer, CEO of Vital Farms (which also raises certified humane eggs) and a long-time vegetarian, said he thinks it's actually one of the more humane ways currently used to deal with this problem. "If you euthanize them on the farm at night, their life is over quickly," he said.

Another common solution to the problem of "spent hens," as they're called in the industry, is to turn them into pet food. O'Hayer says it's the most common solution, but not a very humane one.

"If you send them to a pet food plant, which is the biggest use of spent

hens, they pack them into crates and ship them in trucks hundreds of miles. It's stressful for them and it's not very humane," O'Hayer said.

But O'Hayer said that this is sometimes the solution for his hens at Vital Farms. "Most of our flocks are sold live by our family farmers to local families or to pet food companies," he explained. "In the rare instance in which a flock must be depopulated on-farm, contractors are employed by the farmer, who typically use CO2, which is currently the most humane method."

Non-humane certified large-scale egg factories contacted by HuffPost were not willing to comment on these practices. They can house anywhere from 250,000 to 500,000 egg-laying hens at once, according to Laflamme. The hens are all generally the same age, so they typically stop laying around the same time. Essentially, when the chickens no longer lay eggs, the farmers are out of business until they can get new hens.

And then the process repeats.

Not all egg farmers engage in the practice of gassing and dumping their spent hens. Pete and Gerry's Organic Eggs outlines on their website how they treat the end of laying and life for their hens. Pete and Gerry's process their egg-laying hens for meat once they slow down their egg production, which is rare. For many, this solution feels more ethical than euthanizing and dumping.

The reason it's not common to eat spent hens is two-fold.

First, egg-laying hens aren't quite as tender as hens raised for meat. That's because they're older and their muscles have done a lot more work. They taste gamier and their meat is tougher. According to O'Hayer, a chicken that's raised for meat is only 40 days old, where an egg-laying chicken is on average around 560 days old. And he said that

EXHIBIT 4

between 40-56 days there's a huge difference in flavor, so tack on an additional 500 and the difference is even greater.

Second, egg-laying hens and broiler hens (another term for meat hens) don't taste like the same bird. While they both come from the same chicken breed, throughout the years they've been bred to either be more productive egg layers, or to produce more meat. "The broiler hen vs. egg-laying hen is a crazy agricultural thing that has happened over the last 100 years," said Laflamme. In fact, the meat from Pete and Gerry's birds doesn't make it to the supermarket shelves because it's sold at ethnic food markets, where the flavor of a gamier bird is desired.

So while you're probably not eating the chickens that laid your eggs, chances are those chickens didn't exactly roam green pastures and die a natural death in their final days.

Suggest a correction

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CHICKEN

EGGS

FARMING



Julie R. Thomson

Food writer

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EXHIBIT 4

EXHIBIT 5

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EXHIBIT 5



EXHIBIT 5



EXHIBIT 5

EXHIBIT 6

1:21-cv-00447

of the technology development. In addition to monies paid under the contracts, Ovabrite also invested an additional \$400,000, plus personnel time, into the project.

5. Despite accepting the contractual investment from Ovabrite, Novatrans failed to complete the Alpha Phase of the technology development.

6. Despite failing to complete the Alpha Phase of the technology development, Novatrans demanded additional money from Ovabrite in order to continue with the technology development under the contract.

7. Upon information and belief, Novatrans also violated the exclusivity of the agreements by entering into a similar arrangement for the development of egg sexing technology with at least one competitor of Ovabrite.

8. Upon information and belief, Novatrans also used, and continues to use, for its own profit and purposes, confidential information and intellectual property gained from Ovabrite under the parties' agreements.

9. Upon information and belief, Novatrans never possessed the capability, and was aware that it did not possess the capability, to develop the egg sexing technology contemplated under the parties' agreements.

10. Ovabrite brings this action to enjoin Novatrans' actions, to recoup the money it expended under the parties' agreements, to recover for the losses it has suffered from Novatrans' misuse of confidential information and intellectual property, and to hold Novatrans accountable for violation of exclusivity of the parties' agreements.

The Parties

11. Plaintiff Ovabrite's principal place of business is at 3913 Todd Lane, Suite 501, Austin, Texas 78744. Ovabrite is incorporated under Delaware law, with its registered office at 1679 S. DuPont Highway, Suite 100, Dover, Delaware 19901.

12. Upon information and belief, Defendant Novatrans is a privately held company incorporated in Switzerland, with its principal office at Le Vernets 2, CH-2035 Corcelles, Switzerland, and operates through a research and development center at Ramat Yam 60, Herzliya, Israel.

Jurisdiction

13. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as this action arises under federal law, specifically, the Defend Trade Secrets Act ("DTSA"), 18 U.S.C. § 1836, *et seq.* This Court also has subject matter jurisdiction pursuant to 28 U.S.C.A. § 1332, as this action is between citizens of a State and citizens or subjects of a foreign state and the amount in controversy exceeds \$75,000 exclusive of interest and costs. This Court has supplemental jurisdiction over any Texas state law claims under principles of pendent and ancillary jurisdiction pursuant to 28 U.S.C. § 1367.

14. This Court has personal jurisdiction over the parties in this case. Plaintiff Ovabrite maintains its principal place of business in Texas and, by the filing of this lawsuit, has consented to this Court's jurisdiction. Defendant Novatrans, a foreign corporation, has purposely availed itself of the jurisdiction of this Court by entering into a contract with a Texas resident, subject to Texas law, which sets the non-exclusionary choice of forum as Texas, and the performance of which by Plaintiff Ovabrite will occur in Texas. In the alternative, upon information and belief, Novatrans does not maintain a physical office anywhere in the United States, and this Court

acquires personal jurisdiction over Novatrans pursuant to Fed R. Civ. P. 4(k)(2), as this permits jurisdiction by service on a federal claim.

Venue

15. The dispute between the parties arises from a Master Joint Development and Product Distribution Agreement (“MJDPDA”), which sets Austin, Texas as the venue for any dispute arising under the agreement.

16. Venue is proper in this district pursuant to the provisions of the MJDPDA between the parties and pursuant to 28 U.S.C.A. § 1391(b) because one or more of the acts complained of took place in this district.

Facts

17. Plaintiff Ovabrite is engaged in the egg production industry.

18. Defendant Novatrans purports to provide goods and services, including the development of new technologies, using terahertz (THz) frequencies for spectrometry testing.

19. On or about March 7, 2016, Vital Farms, Inc. (“Vital Farms” or “VF”), a predecessor entity to Plaintiff Ovabrite, entered into a Mutual Non-Disclosure Agreement (“NDA”) with Defendant Novatrans, pursuant to which Vital Farms and Novatrans could exchange information in contemplation of entering a business agreement for THz technology development and application. The NDA included the obligation to not disclose confidential information to any third party.

20. On or about March 16, 2016, Vital Farms and Novatrans entered an Option Agreement contemplating an exclusive business relationship between the parties.

21. The Option Agreement's "Exclusivity Period" was defined to mean an initial period of fifteen (15) days, and then extension by various means, including by Vital Farms' funding the Alpha Phase.

22. Vital Farms did in fact exercise its option to fund the Alpha Phase of the technology development, thereby extending the Exclusivity Period for four-and-a-half (4.5) months or until completion of the Alpha Phase, whichever was later.

23. On information and belief, and as set forth in greater detail below, the Alpha Phase of the technology development was never completed, and therefore the Exclusivity Period remains in effect.

24. On or about May 5, 2016, Vital Farms entered into the MJDPDA with Defendant Novatrans, as contemplated by the earlier agreements.

25. The purpose of the MJDPDA was to develop and use THz spectrometry technology for the purposes of analyzing poultry eggs, including to determine rapidly the sex and fertility of a chicken prior to hatching. The technology was to be known as "TeraEgg Technology."

26. The MJDPDA contemplated that the agreement between Ovabrite and Novatrans for the development of the covered technology should continue to be exclusive.

27. The MJDPDA included a confidentiality clause, prohibiting disclosure of confidential information to any third party.

28. Pursuant to the MJDPDA, Vital Farms paid Defendant Novatrans for completion of the Alpha Phase.

29. Pursuant to the MJDPDA, Vital Farms would invest additional monies only upon completion of the Alpha Phase, whereupon the parties could continue to the Beta Phase of the project.

30. On or about December 23, 2016, Vital Farms executed an Assignment and Assumption Agreement, wherein all rights and obligations in and to the MJDPDA were assigned and transferred from Vital Farms to a successor entity, Ovabrite, with the approval of Defendant Novatrans. Plaintiff Ovabrite therefore is the owner of rights and obligations under the MJDPDA.

31. Despite receiving the payment from Plaintiff Ovabrite's predecessor (Vital Farms), Defendant Novatrans failed to bring the Alpha Phase to successful completion.

32. Upon information and belief, Defendant Novatrans has failed and refused to take the commercially reasonable steps necessary to bring the Alpha Phase to completion, despite the fact that it had been paid to do so.

33. Contrary to the terms of the MJDPDA, Defendant Novatrans has not demonstrated that its proposed technology is effective for the purposes contemplated in the agreement, and has otherwise failed to comply with the terms of the MJDPDA, including by changing the distances and procedures involved in testing methodologies, and using a methodology that establishes milestone achievement, and failing to send blind studies to Ovabrite.

34. Upon information and belief, Defendant Novatrans has not used rigorous scientific methodologies, has not utilized blind studies, and has not documented all testing procedures, data, and media to share with Ovabrite, as required by the MJDPDA.

35. Upon information and belief, despite failing to accomplish the enumerated objectives of the Alpha Phase, Defendant Novatrans declared the Alpha Phase complete and demanded additional investment from Plaintiff Ovabrite in order to begin the Beta Phase. That is, without completing proof of concept, Defendant Novatrans requested additional payments for

steps contemplated within the Alpha Phase and not subject to additional payment by Ovabrite, contrary to the demands made by Defendant Novatrans.

36. In addition to the amount paid in order for Defendant Novatrans to effect successful completion of the Alpha Phase, Plaintiff Ovabrite has had to spend more than \$400,000 in additional money, not including the time for its personnel, in attempting to salvage the TeraEgg Technology project as set forth in the MJDPDA.

37. Within the course of the parties' relationship, Ovabrite has contributed its own intellectual property, such as a standardized membrane evacuated test chamber, as enhancements and improvements to the technology contemplated by the MJDPDA. Ovabrite has provided these contributions to Novatrans pursuant to the parties' agreements.

38. Defendant Novatrans has not performed its obligations pursuant to the MJDPDA. Upon information and belief, Defendant Novatrans has neither the intention nor the ability to perform its obligations pursuant to the MJDPDA.

39. Once it became apparent that Defendant Novatrans had not performed, and was not going to perform, its obligations under the MJDPDA, Ovabrite suggested a "separation agreement," whereby the parties would walk away from the MJDPDA, and each party could use certain intellectual property developed under the agreement for its own respective industries, *e.g.*, Defendant Novatrans would not use THz technology in the poultry industry, the industry in which Ovabrite operates.

40. Defendant Novatrans refused to enter the proposed separation agreement.

41. Instead, upon information and belief, Defendant Novatrans is conducting, or intends to conduct, business in the poultry industry using confidential information and intellectual property contributed by Plaintiff Ovabrite, to the harm and detriment of Plaintiff Ovabrite.

42. Upon information and belief, Defendant Novatrans, in violation of the parties' agreements, has utilized its confidential information and intellectual property gained from Plaintiff Ovabrite, including but not limited to knowledge regarding Plaintiff Ovabrite's business plans, to offer, manufacture, and sell Novatrans products and services to competitors of Plaintiff Ovabrite.

43. Upon information and belief, Defendant Novatrans has entered into a business relationship with another company whose business is in the technology of egg handling and processing.

44. Upon information and belief, the business relationship between Defendant Novatrans and this other egg technology company relates to the same technology development as the Option Agreement and the MJDPDA, in violation of the exclusivity of both agreements.

45. Upon information and belief, Defendant Novatrans' relationship with this other egg technology company has led to disclosure of proprietary and confidential information and/or the use of intellectual property generated by Ovabrite.

46. Upon information and belief, Defendant Novatrans continues to use, for its own business purposes, intellectual property contributed and owned by Ovabrite.

47. Upon information and belief, Defendant Novatrans continues to use, for its own business purposes, confidential information and trade secrets belonging to Ovabrite.

CAUSES OF ACTION

COUNT I

MISAPPROPRIATION OF TRADE SECRETS UNDER DEFEND TRADE SECRETS ACT (18 U.S.C. § 1836)

48. Plaintiff Ovabrite hereby realleges the foregoing paragraphs as if fully set forth herein.

49. In the course of its relationship with Defendant Novatrans, Plaintiff Ovabrite provided confidential and propriety information, including business models, to Defendant Novatrans, and also contributed intellectual property toward the development of the TeraEgg Technology, including Ovabrite's trade secrets.

50. In the course of its business, Plaintiff Ovabrite has developed proprietary information regarding the egg industry, including information regarding opportunities connected to egg sexing. This information constitutes trade secrets.

51. Plaintiff Ovabrite enjoys the right, by reason of its ownership of the trade secrets, to use and enjoy the trade secrets.

52. The parties' agreements, as set forth herein, oblige Defendant Novatrans to maintain confidentiality of Ovabrite's trade secrets.

53. Ovabrite's trade secrets were not known outside of the parties and would be difficult to be properly acquired and/or duplicated by third parties without disclosure.

54. Plaintiff Ovabrite undertook reasonable methods to maintain the secrecy of its confidential trade information by entering into agreements for the protection of that information, and by not disclosing the information to parties not bound by those agreements.

55. Defendant Novatrans obtained the trade secrets and intellectual property pursuant to its contractual agreements with Vital Farms and its successor, Plaintiff Ovabrite.

56. Upon information and belief, despite Defendant Novatrans' duty to maintain the confidence of Plaintiff Ovabrite's trade secrets, Defendant Novatrans knowingly and willfully made the information available to others, including another egg technology company.

57. Defendant Novatrans' unlawful disclosure and use of the trade secrets through, *inter alia*, its relationship with another egg technology company constitutes a breach of confidence and directly and proximately causes damage to Plaintiff Ovabrite.

58. Each of these trade secrets was used and/or intended to be used in interstate commerce.

59. Each of the trade secrets mentioned herein derives independent economic value, actual and/or potential, from not being generally known to, or readily ascertainable through proper means by, another person or corporation who can obtain economic value from the disclosure or use of the information. The trade secrets are of substantial economic value and have conferred a competitive advantage on Defendant Novatrans.

60. Upon information and belief, Defendant Novatrans knowingly and willfully misappropriated Plaintiff Ovabrite's trade secrets and continues to do so to the present. Plaintiff Ovabrite is entitled to recover damages and reasonable attorneys' fees and costs under 18 U.S.C. § 1836(b)(3).

COUNT II

MISAPPROPRIATION OF TRADE SECRETS UNDER TEXAS UNIFORM TRADE SECRETS ACT (TEX. CIV. PRAC. & REM. CODE § 134A et seq)

61. Plaintiff hereby realleges the foregoing paragraphs as if fully set forth herein.

62. In the course of its relationship with Defendant Novatrans, Plaintiff Ovabrite provided confidential and propriety information, including business models, to Defendant Novatrans, and also contributed intellectual property toward the development of TeraEgg Technology, including Ovabrite's trade secrets.

63. In the course of its business, Plaintiff Ovabrite has developed proprietary information regarding the egg industry, including information regarding opportunities connected to egg sexing. This information constitutes trade secrets.

64. Plaintiff Ovabrite enjoys the right, by reason of its ownership of the trade secrets, to use and enjoy the trade secrets.

65. The parties' agreements, as set forth herein, oblige Defendant Novatrans to maintain confidentiality of Ovabrite's trade secrets.

66. Ovabrite's trade secrets were not known outside of the parties and would be difficult to be properly acquired and/or duplicated by third parties without disclosure.

67. Plaintiff Ovabrite undertook reasonable methods to maintain the secrecy of its confidential trade information by entering into agreements for the protection of that information, and by not disclosing the information to parties not bound by those agreements.

68. Defendant Novatrans obtained the trade secrets and intellectual property pursuant to its contractual agreements with Vital Farms and its successor, Plaintiff Ovabrite.

69. Upon information and belief, despite Defendant Novatrans' duty to maintain the confidence of Plaintiff Ovabrite's trade secrets, Defendant Novatrans knowingly and willfully made the information available to others, including another egg technology company.

70. Defendant Novatrans' unlawful disclosure and use of the trade secrets through, *inter alia*, its relationship with another egg technology company constitutes a breach of confidence and directly and proximately causes damage to Plaintiff Ovabrite.

71. Each of the trade secrets mentioned herein derives independent economic value, actual and/or potential, from not being generally known to, or readily ascertainable through proper means by, another person or corporation who can obtain economic value from the disclosure or

use of the information. The trade secrets are of substantial economic value and have conferred a competitive advantage on Defendant Novatrans.

72. Upon information and belief, Defendant knowingly and willfully misappropriated Plaintiff Ovabrite's trade secrets and continues to do so to the present. Plaintiff Ovabrite is entitled to recover damages and reasonable attorneys' fees and costs under Tex. Civ. Prac. & Rem. Code § 134A *et seq.*

COUNT III

UNFAIR BUSINESS PRACTICES AND MISAPPROPRIATION OF BUSINESS AND/OR TRADE VALUE

73. Plaintiff hereby realleges the foregoing paragraphs as if fully set forth herein.

74. Plaintiff Ovabrite's proprietary and confidential information, including patentable and/or copyrightable information and materials created by Plaintiff Ovabrite, constitute tangible and/or intangible business assets and/or trade value.

75. Defendant Novatrans has attempted to appropriate, and/or has appropriated, Plaintiff Ovabrite's tangible and/or intangible business assets and/or trade values by the means set forth in the incorporated paragraphs above.

76. Defendant Novatrans' appropriation of Plaintiff Ovabrite's tangible and/or intangible business assets and/or trade values has directly and proximately caused harm to the commercial relations of Plaintiff Ovabrite in excess of the jurisdictional limits of this Court.

77. Alternatively, the actions of Defendant Novatrans constitute unfair business practices that have directly and proximately caused damages to Ovabrite and/or harm to its commercial relations.

COUNT IV

UNFAIR COMPETITION (MISAPPROPRIATION)

78. Plaintiff hereby realleges the foregoing paragraphs as if fully set forth herein.

79. Plaintiff Ovabrite has invested extensive time, labor, skill, money, and resources in the design, development, and/ or creation of certain information, business materials, ideas, improvements or enhancements.

80. Defendant Novatrans has willfully copied and/or appropriated Plaintiff Ovabrite's information, materials, ideas, improvements and/or enhancements, in competition with Ovabrite, or in conjunction with Plaintiff Ovabrite's competitors, which has thereby enabled Defendant Novatrans and/or Plaintiff Ovabrite's competitors to gain a special advantage.

81. Defendant Novatrans' misappropriation of such information, materials, ideas, improvements and/or enhancements has commercially damaged Ovabrite in excess of the jurisdictional limits of this Court.

82. Defendant Novatrans' actions constitute unfair competition and misappropriation actionable under the common law of the State of Texas.

COUNT V

**TORTIOUS INTERFERENCE WITH
BUSINESS/CONTRACTUAL RELATIONS**

83. Plaintiff hereby realleges the foregoing paragraphs as if fully set forth herein.

84. Defendant Novatrans has used, or intends to use, the information, materials, ideas, improvements, and/or enhancements created or provided by Plaintiff Ovabrite in order to offer Novatrans' services to competitors to Plaintiff in the poultry industry (*i.e.*, to present to others Plaintiff Ovabrite's ideas for THz technology for determining the sex of a chicken prior to hatching).

85. Defendant Novatrans' actions constitute, or would constitute unless enjoined, tortious interference with business and/or contractual relations under the common law of the state of Texas.

COUNT VI

CONVERSION

86. Plaintiff hereby realleges the foregoing paragraphs as if fully set forth herein.

87. Defendant Novatrans has wrongfully exercised dominion or control over, and/or wrongfully took, misappropriated, or converted Plaintiff Ovabrite's personal property (*i.e.*, information, materials, ideas, improvements and/or enhancements created by Plaintiff Ovabrite or provided by Plaintiff Ovabrite to Defendant Novatrans) in denial of, or inconsistent with, Plaintiff Ovabrite's rights in such property, to the detriment and damage of Plaintiff Ovabrite in excess of the jurisdictional limits of this Court.

COUNT VII

BREACH OF CONTRACT

88. Plaintiff hereby repeats the allegations of the foregoing paragraphs as if fully set forth herein.

89. Plaintiff Ovabrite is the assignee of all rights in and to a valid written contract signed by Vital Farms and Defendant.

90. Plaintiff Ovabrite has performed its obligations pursuant to the terms of the MJDPDA.

91. Defendant Novatrans has breached the MJDPDA by not performing or fulfilling its obligations under the MJDPDA, thereby resulting in monetary harm to Plaintiff Ovabrite in excess of the jurisdictional limits of this Court.

92. Upon information and belief, Defendant Novatrans has failed to complete the Alpha Phase as provided by the MJDPDA but nevertheless has demanded additional payments from Plaintiff Ovabrite.

93. Upon information and belief, Defendant Novatrans has violated the exclusivity of the agreements between Plaintiff Ovabrite, as successor to Vital Farms, and Defendant Novatrans, including by entering into a business relationship with another egg technology company regarding the use of THz spectrometry technology for egg sexing.

94. Upon information and belief, Defendant Novatrans has used Ovabrite's confidential information and intellectual property in violation of the MJDPDA.

COUNT VIII

FRAUD

95. Plaintiff hereby repeats the allegations of the foregoing paragraphs as if fully set forth herein.

96. Defendant Novatrans made one or more material representations that were false, *e.g.*, regarding its ability to test for egg fertility or sex as per the terms of the MJDPDA. Defendant Novatrans knew its representations were false, or it made such representations recklessly, and as a positive assertion (*e.g.*, regarding its willingness and ability to perform) without any knowledge of its truth.

97. Defendant Novatrans intended to induce Plaintiff Ovabrite to act upon the false or reckless representations.

98. Plaintiff Ovabrite relied on the false and/or reckless representations of Defendant Novatrans, which caused injury and harm to Ovabrite in excess of the jurisdictional limits of this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ovabrite prays for judgment against Defendant Novatrans, and for relief, including:

- A. Upon proper application, a preliminary and/or permanent injunction enjoining Defendant Novatrans against continuation of the illegal acts recited above.
- B. An accounting for and an award of the profits earned by Defendant Novatrans as a result of its illegal acts and the damages suffered by Plaintiff Ovabrite as a result.
- C. An award of damages for Defendant Novatrans' violations outlined above.
- D. An award of treble damages and an award of punitive or exemplary damages.
- E. An award of costs and reasonable attorneys' fees.
- F. An award or pre- and post-judgment interest.
- G. All other relief as the Court may deem just.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff Ovabrite hereby demands a jury trial on all issues so triable in this action.

DATED: December 5, 2018

Respectfully submitted,

/s/ Dwayne K. Goetzel

Dwayne K. Goetzel
Texas Bar No. 08059500
Ryan T. Beard
Texas Bar No. 24012264
Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C.
1120 S. Capital of Texas Hwy.
Building 2, Suite 300
Austin, Texas 78746
T: (512) 853-8800
F: (512) 853-8801

**ATTORNEYS FOR PLAINTIFF
OVABRITE, INC.**

EXHIBIT 7

1:21-cv-00447

Vital Times

NATIONAL EDITION

VOL 13 • ISSUE 1

5 Cluckin' Great Tips From the Girls on Grass Blast Those Winter Blahs

For our hens, every day is a new opportunity to dash outside and take in all the world has to offer. (Literally! Our girls are voracious eaters, and you can bet they relish every tasty morsel they find in our pastures.)

Even in the winter, Vital Farms hens are boundlessly curious, spending full days outside hunting, foraging and exploring. And while our girls are lucky enough to be surrounded by feathered friends (no social distancing required in the safe bubble of a family farm), when they need some me-time, they have plenty of pasture to enjoy solo.

Honestly? Some days we're a little jealous.

When we're missing our own flock or normal routine, we try to take a lead from the girls.

Here's what they've taught us:

1. Greet each new day with enthusiasm (even the gloomy ones).
2. Go outside. Every day.
3. Embrace a little dust. (You don't have to bathe in it, but...)
4. Eat fresh food.
5. Get a good night's sleep.

And if all else fails, spend a few minutes watching girls on grass at vitalfarms.com/farm. Happy hens never fail to brighten our days!



EXHIBIT 7

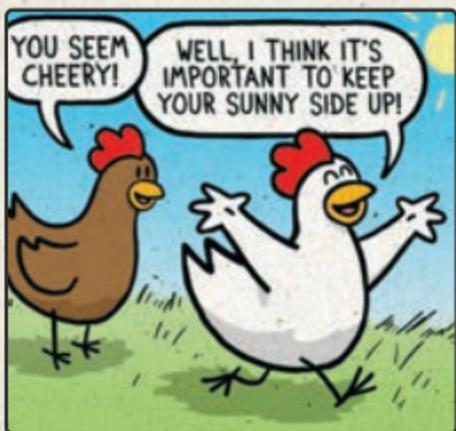
Naturally Hygge Hens

Without ever stockpiling cuddly blankets or chunky candles, our hens instinctively practice the Danish art of hygge all winter long. Their pasture-raised lifestyle means crisp days spent together enjoying the simple things – tasty grasses, crunchy critters and warm sunshine. As evening falls they rest in the safety and comfort of the barn. Days with friends and cozy nights with not a screen in sight? For hygge inspiration, look no further than the farm on the end of your carton!

Bird of the Month



Mellow Marcy takes a moment to enjoy a warm pasture sunset before tucking in for the night.



OUR MISSION is to bring ethically produced food to the table by coordinating a collection of family farms to operate with a well-defined set of agricultural practices that accentuates the humane treatment of farm animals as the central tenet. _____

Do you love cooking with our pasture-raised eggs? Show off your Vital Farms creation on social and tag us!

EXHIBIT 7    @VitalFarms

Vital Times

NATIONAL EDITION

VOL 12 • ISSUE 11

Merry – Early! – and Bright Farm Holidays Start at Sun-up

If you know kiddos who can't stay in bed even one more minute, you understand what it's like to holiday with a flock of happy hens! At dawn our girls are ready to get outside, and our farmers are there to help them greet the new day, every day. As the hens do what they love best, farming families across the pasture belt do too.

Kitchens warm with the heat from buttery baking, and frying pans sizzle with farm-



fresh eggs. Kids and grandkids pull on rubber boots and run beside pastures, watching the hens enjoy a field of holiday treats. And the warmth extends from farm to community, with some farm families sharing the love by donating eggs to charities, churches and first responders.

When we asked farmers to tell us about their holiday traditions, they laughed. Their holidays were a lot like a normal day, they said – early rising, good eating, time with family, tucking the girls in for the night. In other words, a good day's work made merry – and magical.

This holiday season, our farmers wish you and your family the joy of a simple, meaningful holiday. And we invite you to share the love with your community.

EXHIBIT 7

Give a Little!

Bird of the Month

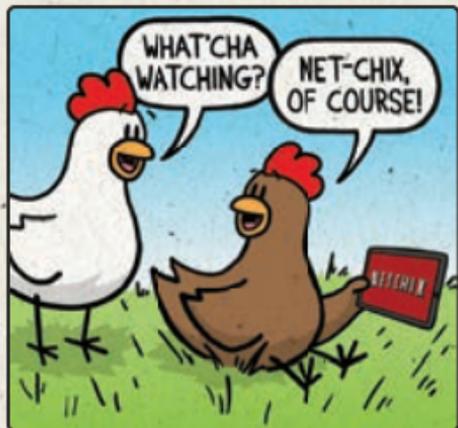


Though the holidays may look different this year, brightening someone's day can be as simple as eggs, butter and your favorite recipe. This year, we invite you to **#BakeltForward** in your hometown or wherever you may be. Choose a recipe, bake a batch and gift it. It's that simple! We know a homemade cookie can't replace a warm hug, but we hope it can make the absence of one just a little bit sweeter.



Dynamic Deb is always ready for her close-up!

OUR MISSION is to bring ethically produced food to the table by coordinating a collection of family farms to operate with a well-defined set of agricultural practices that accentuates the humane treatment of farm animals as the central tenet. _____



Do you love cooking with our pasture-raised eggs? Show off your Vital Farms creation on social and tag us!

EXHIBIT 7    @VitalFarms

Vital Times

NATIONAL EDITION

VOL 12 • ISSUE 10

Girls on Grass – and Gratitude

Taking Time to Give Thanks

For Vital Farms hens, 2020 has been awesome. Sunshine? Check. Pastures? Check. Dust bathing with friends? Check, check, check. Our girls wake up ready to explore and then, after a full day, sleepy and content, they rest up to do it all over again. We watch them dash into the day with renewed excitement about simple things – a crunchy snack, a wildflower – and it gets us thinking.

What are we thankful for in this crazy, crazy year? It's pretty simple. *You*.

You wrote thank yous – more than 5,000! – to celebrate the work of farmers and crew. You invested in our company and our vision. You inspired our front line to keep working through long days and nights. You motivated us to pack more eggs than we

thought possible! You downloaded activity guides and taught your kids about animal welfare. You shared your baking with your neighbors. You grocery shopped for those who couldn't safely do so. You stuck with us. *And* you made it possible for our girls to enjoy the simple pleasures that make life meaningful.

We hope this season brings you quiet moments of thankfulness and simple pleasures all your own!



Healthy & Happy

Research suggests that gratitude not only makes us feel better mentally and emotionally, it can improve our physical health as well. More restful sleep, healthier hearts, fewer aches and pains and a stronger immune system are all benefits researchers have seen accompany daily gratitude practices.¹ Sound good? Start your own practice! It can be as simple as mentally thanking people, but the effects of a written thank you (or an especially thankful Vital Times?) can last even longer – up to one month for the sender!



Talented Tiffany dances in the shade, making the most of a beautiful day.

OUR MISSION is to bring ethically produced food to the table by coordinating a collection of family farms to operate with a well-defined set of agricultural practices that accentuates the humane treatment of farm animals as the central tenet. _____

Do you love cooking with our pasture-raised eggs? Show off your Vital Farms creation on social and tag us!

   **@VitalFarms**

EXHIBIT 7

¹Source: greatergood.berkeley.edu/article/item/is_gratitude_good_for_your_health
health.harvard.edu/healthbeat/giving-thanks-can-make-you-happier

Vital Times

NATIONAL EDITION

VOL 12 • ISSUE 9

Friends to Farmers, Help to Hens

Vital Support from Vital Farms

Our farmers don't choose the Vital Farms life because it's easy. They choose it because they believe in ethical food. And because they want to build a business their whole family can help with, and be proud of.

Their personal commitment deserves our personal support. After all, working with Vital Farms means working day-in, day-out to elevate industry standards, give every girl a healthy, happy outdoor lifestyle and deliver perfectly pasture-raised eggs. So we've created a team just for them!

Our farmer support team helps our farmers do good – and their businesses do well. They safely meet on front porches, socially distanced around dining tables or in the pastures on a

regular basis. They check on the girls and make sure our high standards are being met, but they also connect farmers with advice and information to help keep flocks and farms healthy and thriving.

It's pretty simple. Our farmers are invested in animal welfare and doing things the right way. And we're invested in them. By bringing this carton home, you are too. Thank you for helping us take care of the families who take care of our girls.



EXHIBIT 7

Photo taken pre-COVID-19

Feeling Cooped Up?

Unlike our hens, too many of us are spending too much time stuck inside staring at screens. When we're feeling peckish, we take a tip from our girls and go outside. Even 10-15 minutes of fresh air and sunshine can help humans concentrate better, heal faster and feel happier. And the Vitamin D we can absorb on a sunny day may even help protect against depression, cancer, heart attacks and stroke. Turns out what's good for the girls is good for us too!



Sophisticated Susan occasionally enjoys a little "me time" away from the rest of the flock.

OUR MISSION is to bring ethically produced food to the table by coordinating a collection of family farms to operate with a well-defined set of agricultural practices that accentuates the humane treatment of farm animals as the central tenet. _____

Do you love cooking with our pasture-raised eggs? Show off your Vital Farms creation on social and tag us!

EXHIBIT 7    @VitalFarms

Vital Times

NATIONAL EDITION

VOL 12 • ISSUE 8

Introducing Bough Family Farm

While Trevor spent his youngest years growing up on a dairy farm, he thought farming was behind him. Only after watching documentaries about food production did he and his wife Kelly begin to think their interest in animal welfare could lead to a whole new life.

And then his dad got interested too!



The two generations attended a Vital Farms Farmers Meeting. They bought some land. They did a lot of learning. And then they started Bough Family Farm. Trevor left a career in mechanical engineering behind, and today he and Kelly, their kids and his parents all help out.

Trevor loves that the farm is a family effort and the chance for his kids to learn first-hand how food is made and how to properly care for animals. Every day he's driven by the goal his family has shared since the beginning - for people to see their farm and know it's one of the best. Now that you've heard their story, visit vitalfarms.com/farm

to type in BFF and see Bough Family Farm for yourself!

Seeing Double?

Eat enough eggs, and you're bound to come across a double yolk. Some Vital Farms fans have seen multiple double yolkers, and a few very lucky folks have found a dozen double yolkers in one carton! That's most likely because the eggs came from the same young flock, and when younger hens start laying, it takes them a while to perfect the process. Double yolkers happen when two eggs merge together into one big egg, so you're more likely to find them in jumbo cartons. Let us know next time you get a doubly delicious surprise!



Vibrant Vivian inspects the corners of her pasture for any tasty hidden treasures.

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EXHIBIT 7    @VitalFarms

EXHIBIT 8

1:21-cv-00447

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.. Pasture-Raised Eggs, Butter & Ghee..

.. From Happy #GirlsOnGrass..

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vitalfarms Our feathered ladies scampering in the shade on this spring Monday

1w



suellennyc Thank you to produce such a high quality product! And also to treat the animals how it suppose to be!



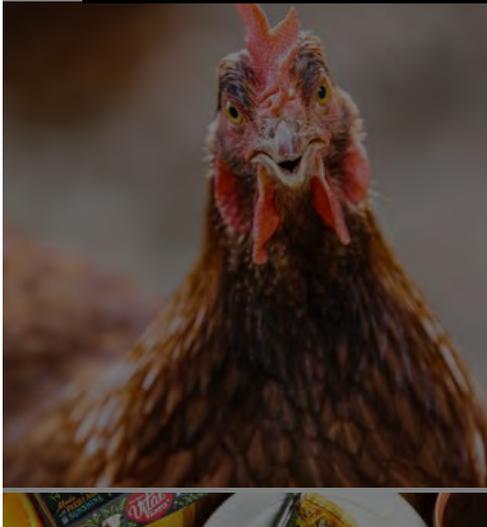
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MAY 10



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"I hope that people who eat Vital Farms eggs know how much time, stress, and care is put into every single egg they're eating. Farmers are putting so much work and care into raising their animals."

- TANNER PACE, VALLEY VIEW FARM

EXHIBIT 3

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vitalfarms Just a little bit of pasture hide-n-seek for your Thursday ..

2w



christianjamesmadsen



2w Reply



jenniferwindomyoung LOVE



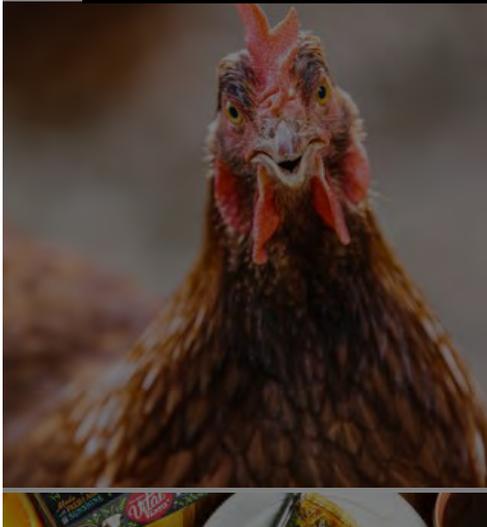
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- TANNER PACE, VALLEY VIEW FARM

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Happy #EarthDay! ..
One of our favorite aspects of nature is a pasture full of happy girls who have plenty of space to roam and explore .. what about you? ..

Want to celebrate #EarthDay Vital Farms style? Tap our story to see all the ways eggshells can be repurposed, take a virtual field trip to our small family farms, download



4,161 views

APRIL 22



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"I hope that people who eat Vital Farms eggs know how much time, stress, and care is put into every single egg they're eating. Farmers are putting so much work and care into raising their animals."

- TANNER PACE, VALLEY VIEW FARM

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vitalfarms If you know anything about us - you know we're pretty partial to the girls of Vital Farms. So we'd be remiss if we missed the chance to celebrate them a little egg-stra all month long during [#NationalChickenMonth](#) .. But we've got even better news - we want you to celebrate with us! Starting tomorrow, and continuing throughout the month of



4,427 views

AUGUST 31, 2020



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vitalfarms About every 21 days, we move the girls to a new part of the pasture. This gives the land time to regenerate – which gives the girls fresh greenery and critters to forage on. With 8 paddocks (or parts of the pasture), the girls are able to enjoy all nature has to offer year-round.

...
Today on story, we're chatting with Murray Schrock from Cedar Gap



590 likes

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vitalfarms While we only have a few Summer Fridays left this year, every day feels like a Summer Friday for our feathered friends! With room to roam, grass to graze, and plenty of sunshine to soak up year-round, our girls know the meaning of work-life balance and Vital Farms knows the meaning of pasture-raised. At Vital Farms, pasture-raised is more than a label on the carton. We hold



470 likes

AUGUST 16, 2019



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