

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

**THE HUMANE SOCIETY OF THE
UNITED STATES**

1255 23rd Street, NW, Suite 450
Washington, DC 20037

Plaintiff,

v.

Case No.: 2021 CA 003777 B

SMITHFIELD FOODS, INC.

200 Commerce Street
Smithfield, VA 23430

Serve on:

CT Corp. System, Registered Agent

4701 Cox Road, Suite 285
Glen Allen, VA 23060

Defendant.

COMPLAINT

**(Action Pursuant to the District of Columbia Consumer Protection
Procedures Act for Injunctive and Declaratory Relief)**

INTRODUCTION

1. Plaintiff the Humane Society of the United States (“HSUS”), in its own and in a representative capacity, on behalf of its members and consumers, alleges unlawful trade practices pursuant to the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901–28-3913, and files this Complaint. This action for declaratory and injunctive relief arises from Smithfield Foods, Inc.’s (“Defendant” or “Smithfield”) marketing and sale in the District of Columbia of falsely and misleadingly advertised pork products in violation of the CPPA.

2. As described herein, Defendant has been manufacturing, distributing, marketing, and selling pork using advertisements that lead consumers to believe that neither the company nor its suppliers confine pigs in narrow individual crates when, in fact, they do, and for weeks or months at a time. These long periods of solitary, severe confinement begin before a sow’s pregnancy and continue for periods of her pregnancy, and then repeat after her piglets are born such that the animals are intensively confined for roughly half their lifetimes. These crates are barely larger than the sows’ bodies and prevent the animals even from turning around. Keeping sows in such extreme confinement for extended periods of time is a cruel practice that causes physical and mental anguish. Indeed, as shown below, with nearly every instinct frustrated by this near-immobilization forced upon them, the animals will chew on the bars in front of them until the bars and the floor beneath them are bloody. As consumer awareness of these harms has grown and companies recognize them as issues that influence purchasing decisions, many in the industry, including Smithfield, are actively and loudly trying to distance themselves from the practice by advertising crate-free commitments and practices.

3. Consumer surveys, the Better Business Bureau, major food retailers and restaurant chains, and even Smithfield itself each firmly recognize that social issues—including the treatment of animals—are of significant concern to consumers and have a material bearing on consumer purchasing decisions.¹ Many consumers are willing to pay more for products that they believe come from humanely treated animals, as numerous consumer studies show.² And every time the issue has been put to voters, they have overwhelmingly voted in favor of laws requiring better treatment of breeding pigs. *See, e.g.,*

¹ *Starbucks Corporation (Free Trade Certified Coffee)*, Case #4592, Nat'l Adver. Div. Case Report, at 1 (Nov. 8, 2006) (“Advertising claims which tout that the advertiser is addressing particular social or ethical concerns can provide consumers with important information about their purchasing choices.”); McDonald’s, *Purpose & Impact Progress Summary 2020-2021* at 12, available at <https://corporate.mcdonalds.com/content/dam/gwscorp/assets/ourpurposeimpact/McDonalds PurposeImpact ProgressReport 2020 2021.pdf> (McDonald’s acknowledging: “we know that our ability to serve safe and high-quality food comes from animals that are cared for properly.”); *Sustainability*, Smithfield, <https://www.smithfieldfoods.com/Sustainability> (last visited Oct. 17, 2021) (identifying “Animal Care” as a core focus area); Smithfield, <https://www.smithfieldfoods.com/> (last visited Oct. 17, 2021) (listing “Animal Care” first among its seven pillars of sustainability). Smithfield previously posted similar information under *Identifying What Matters Most*, Smithfield, <https://www.smithfieldfoods.com/sustainability/material-topics> (version as of Feb. 16, 2021) (identifying “Animal Welfare and Management” as the first “Tier 1” issue of “material topics”).

² *See, e.g., Consumer Perceptions of Farm Animal Welfare* at 9-11, Animal Welfare Institute (2019), available at <https://awionline.org/sites/default/files/uploads/documents/fa-consumer-perceptionsoffarmwelfare-112511.pdf>; *Majority of Pork Buyers show Concern for Pig Welfare, Survey Shows*, The Harris Poll (Oct. 7, 2020) <https://tinvurl.com/rr8r5rka>; Picardy et al., *Uncommon Alternative: Consumers’ Willingness to Pay for Niche Pork Tenderloin in New England*, J. of Food Distribution Research, Vol. 51:2 (July 2020), available <https://ideas.repec.org/a/ags/lofdr/305483.html>; Glynn Tonsor, et al., *Consumer voting and demand behavior regarding swine gestation crates*, Food Policy 2009;34:492-498 (2009); Ryan, E. *Public attitudes towards housing systems for pregnant pigs*. Master’s Thesis, University of British Columbia, 2013; Glynn Tonsor, et al., *Consumer preferences for animal welfare attributes: The case of gestation crates*, J. Agri. Appl Econ 2009;41:713-730 (2009); Norwood FB and Lusk JL. *A calibrated auction-conjoint valuation method: valuing pork and eggs produced under differing animal welfare conditions*, J Envi. Econ Manag., 62: 80-94 (2011).

infra ¶ 44.

4. Capitalizing on this demand for more humanely produced products, Smithfield pledged, in 2007, to phase out gestation crates completely. Since then, the company frequently touts meeting that commitment, even though Smithfield and its suppliers still confine pigs in individual crates during gestation.



Figure 1. Image of gestation crates at a Smithfield subsidiary's breeding facility, note the blood on the bars and in front of the crates.³

5. Smithfield attempts to obfuscate its practices by using technicalities, its own misleading jargon, and hidden caveats that no reasonable consumer would understand,

³ See HSUS, *Undercover at Smithfield Foods* at 1 (2010), available at <https://www.humanesociety.org/sites/default/files/docs/2010-undercover-investigation-smithfield.pdf>.

assuming they could even find and decode this information. Such actions mislead humane-conscious consumers and commercial buyers into purchasing pork derived from cruelly confined pigs and increase consumer and corporate confusion over confinement practices on pig farms.

6. Smithfield also advertises that “all pigs are traceable to farm of origin” as part of an effort “to let consumers trace the story of [Defendant’s] products from farm to plate.”⁴ First, this claim is false because it is impossible for consumers themselves to trace any Smithfield pork product they purchase at any retailer back to any specific farm of origin. Smithfield simply does not make that information publicly available. Second, this claim is also contradicted by sworn statements the Defendant and its trade groups make in recent litigation. *See, e.g., infra* ¶¶ 122-123.

7. Accordingly, Defendant’s deceptive advertising practices constitute an unlawful trade practice and therefore violate the CPPA. *See* D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h).

8. This deceptive advertising is also unlawful under the Federal Trade Commission Act (“FTCA”), 15 U.S.C. §§ 41–58, and therefore constitutes a further unlawful trade practice under the CPPA. *See id.* § 45(a)(1); D.C. Code § 28-3904(x).

9. All such statutory violations are actionable by way of the cause of action available to organizational plaintiffs, such as the HSUS, under section 28-3905(k)(1) of the CPPA. D.C. Code § 28-3905(k)(1).

⁴ Smithfield, *2019 Sustainability Impact Report* at 63, 102, available at https://www.smithfieldfoods.com/getmedia/fd77514a-5d4c-4b51-abf0-8f6b83a34fd3/SMITHFIELD_CSR_Report_2019.pdf (“2019 Sustainability Impact Report”).

JURISDICTION AND VENUE

10. The Court has subject matter jurisdiction over statutory claims in this matter pursuant to D.C. Code § 28-3905(k)(1). The Court has personal jurisdiction over Defendant pursuant to D.C. Code §§ 13-334(a) and 13-423(a)(1), because the allegations and claims for relief herein arise from Defendant’s “doing business” and “transacting . . . business” in the District of Columbia.

11. As a result of Defendant’s purposeful and substantial advertising, marketing, distribution, and selling of pork and pork products in the District of Columbia—either through online websites and/or retail stores that are located in the District—Defendant has established sufficient contacts with the District of Columbia such that it is reasonable for Defendant to anticipate being subject to action in the courts of the District of Columbia.

12. Venue is proper in the District of Columbia pursuant to D.C. Code § 28-3905(k)(2) and because Plaintiff the HSUS is headquartered in the District of Columbia and this action relates to Defendant’s activities within the District of Columbia.

THE PARTIES

13. Plaintiff the HSUS is one of the nation’s largest animal protection organizations, with thousands of members and constituents in the District of Columbia and millions of members and constituents nationwide. The HSUS is a non-profit organization headquartered in the District of Columbia. Since 1954, the HSUS has been working to protect all animals, and the people and consumers who care for them, through education, investigation, litigation, legislation, advocacy, and field work. In particular, the HSUS works to end the cruel confinement of farm animals in restrictive cages and crates. The false and deceptive advertising described herein injures the HSUS and its members by

misleading pork consumers into financially supporting producers that cruelly confine pigs in small crates. Defendant's actions also injure the HSUS's organizational mission and its members (including those who reside in the District of Columbia) by increasing consumer confusion over pork production practices and the origins of pork products sold at retail.

14. Part of the HSUS's mission is to educate consumers about more humane options and protect consumers from being misled by deceptive claims about the treatment of animals or the conditions in which they are born, raised, or killed. As such, the HSUS engages consumers, corporations, and policy makers to spur reform in the treatment of animals raised for food and in the marketing and advertising of such practices. The HSUS has published several reports outlining the harms caused by industrialized animal agricultural. These reports are intended to educate consumers and the HSUS' members at large about those harms so that they can make informed purchasing decisions and use the information to compare against marketing claims. The HSUS supports responsible farmers by encouraging consumers to choose products not derived from cruel practices such as the extreme confinement of animals.

15. The HSUS regularly engages in actions that advance consumer protection and enhance transparency in advertising. As representative examples, in 2008, the HSUS brought a lawsuit in this court against major retailers for their false advertising of fur garments, including for selling real fur marketed as "faux." *See HSUS v. Andrew & Suzanne Co., Inc.*, 2008 CA 008285 B (D.C. Sup. 2008). Following settlements and a consent judgment resulting from this lawsuit, the HSUS monitored and enforced the companies' activities with regard to the terms of the settlements and several of the defendant retailers have since ceased their sale of fur products. Additionally, the HSUS regularly submits

complaints regarding false and deceptive practices to Attorneys General and the National Advertising Division of the Council of Better Business Bureaus. The HSUS also petitions federal, state, and local agencies tasked with consumer protection to initiate investigations, enforcement actions, and rulemakings surrounding false and deceptive practices.

16. The HSUS also regularly submits public comments on food labeling regulations, especially those that touch upon animal raising claims. *See, e.g.*, Comment from HSUS re Food Safety and Inspection Service Labeling Guideline on Documentation Needed to Substantiate Animal Raising Claims for Label Submission, 84 Fed. Reg. 71,359 (submitted Feb. 25, 2020) (referencing comments re same submitted Dec. 5, 2016); Comment from HSUS, et al., re National Organic Program (NOP); Organic Livestock and Poultry Practices—Withdrawal, 82 Fed. Reg. 59,988 (submitted Jan. 17, 2018).

17. The HSUS also engages major corporations to help educate companies about consumer expectations of humane treatment. For example, in 2016, after collaborative work with the HSUS, Perdue Farms agreed to a series of welfare reforms for its chickens in order to “[m]eet[] the demands of its consumers.”⁵ Furthermore, to inform consumers’ purchasing decisions, the HSUS produces a Food Industry Scorecard, ranking and grading companies based on their animal welfare policies and progress, including those with regard to the confinement of pigs in gestation crates.⁶ Additionally, when Smithfield was a publicly traded company on the New York Stock Exchange, the HSUS was the beneficial owner of common stock of Smithfield. As a shareholder in Smithfield, the HSUS regularly

⁵ *Breaking News: Perdue Farms Doubles Down on Changing Its Business Model for the Better*, HSUS (July 17, 2017), <https://blog.humanesociety.org/2017/07/perdue-farms-broiler-chicken-reforms.html>.

⁶ *The Food Industry Scorecard*, HSUS, <https://www.humanesociety.org/resources/food-industry-scorecard> (last visited Oct. 17, 2021).

participated in investor meetings and submitted shareholder resolutions regarding Smithfield's practices. The HSUS also submitted a demand to inspect Smithfield's records relating to the housing and care of sows.

18. Smithfield's deceptive advertising thwarts the HSUS's efforts to educate consumers, including its members and corporate partners, about gestation crate use and identification of gestation crate-free pork. This deception by Smithfield also directly impairs the HSUS and its work to engage and convince retailers, restaurants, and others to commit to abandoning supply chains that include gestation crates. When one company lies or misleads or fails to follow through in its dealings with the HSUS, other companies are less likely to deal with Plaintiff honestly, and that means a less effective campaign in terms of mission success.

19. Moreover, due to the Defendant's deceptive advertising outlined herein, the HSUS has had to divert human and financial resources to increase and supplement its corporate and consumer outreach surrounding gestation crate use and claims. But for Defendant's conduct, the HSUS would use those resources in other ways. These injuries will be redressed if the HSUS prevails in this action because Defendant's false and misleading advertisements would cease, and consumers would be spared the economic harm Defendant's deceptive conduct causes.

20. Defendant Smithfield Foods, Inc. is an international food company and a wholly owned subsidiary of the Hong Kong-based company WH Group Limited. Smithfield is incorporated in Virginia and headquartered in Smithfield, Virginia. Smithfield describes itself as "the largest pork processor in the world" and is the largest hog producer in the

United States.⁷ It sells and advertises its packaged meat products internationally and in all 50 states and the District of Columbia. Smithfield’s popular brands include Smithfield®, Eckrich®, Nathan’s Famous®, Farmland®, Armour®, Kretschmar®, John Morrell®, Cook’s®, Gwaltney®, Carando®, Margherita®, Curly’s®, Healthy Ones®, Morliny®, Krakus®, and Berlinki®.⁸ Smithfield regularly conducts business in the District of Columbia by marketing and selling its products to consumers in the District.

21. Smithfield is a vertically integrated meat company, meaning that it owns or controls the means of pork production throughout pigs’ life cycles. Smithfield controls the raising of its own pigs and has the ability to manage all aspects of the production process.

22. Upon information and belief, Smithfield owns approximately 900,000 sows (mother pigs) in the U.S. However, it raises and owns only some of the pigs that comprise its products; for the others, it relies on independent farmers and contract breeders and growers—farmers who contract with Smithfield to breed sows and raise pigs according to a process the company “maintains absolute control over every facet of.”⁹ Upon information and belief, approximately half of the sows Smithfield owns are bred and raised on Smithfield-owned farms, whereas the other half or so are raised on contract farms. An unknown number of sows not owned by Smithfield but used to produce pigs for Smithfield are bred and raised on independent farms.

⁷ *About Us*, Smithfield, <https://www.smithfieldfoods.com/About-Us> (last visited Oct. 17, 2021).

⁸ *Our Brands*, Smithfield, <https://www.smithfieldfoods.com/Our-Brands> (last visited Oct. 17, 2021); *Regional and International Brands*, Smithfield, <https://www.smithfieldfoods.com/media/Regional-and-International-Brands> (last visited Oct. 17, 2021).

⁹ Opening Brief of Smithfield at 7, Cal. Franchise Tax Bd. (June 22, 2020), *available at* <https://www.ftb.ca.gov/about-ftb/meetings/board-meetings/2021/march-2021/smithfield-opening-brief.pdf>.

	Sows on Smithfield-owned farms	Sows on contract farms	Sows on independent farms
Estimated percentage of sow population	50% of Smithfield-owned sow population (approx. 450,000)	50% of Smithfield-owned sow population (approx. 450,000)	Unknown portion of sow population from which Smithfield sources pigs to slaughter
Who owns the sows?	100% Smithfield owned	100% Smithfield owned	100% Independent farmer owned

Figure 2. Estimated percentage of sows on Smithfield-owned farms, contract farms, and independent farms.

23. In 2018, Smithfield produced 16.5 million pigs and sold about 11.7 billion pounds of fresh pork and packaged meats in the U.S. About 30%, or 5 million, of the pigs processed by Smithfield are raised on 531 company-owned farms throughout the U.S. Another 20%, or 3.3 million, of the pigs processed by Smithfield are owned by Smithfield but are raised by approximately 2,000 independent farmers under contract with Smithfield (“contract farmers”). Finally, about 50%, or 8.3 million, of the pigs processed by Smithfield are purchased from 1,160 independent farmers (“independent farmers”). In total, Smithfield sources its pigs from more than 3,200 independent farmers and 531 company-owned farms in the United States. Decl. of Robert Darrell (“Darrell Decl.”) ¶¶ 3-4, *N. Am. Meat Inst. v. Becerra*, 420 F. Supp. 3d 1014 (C.D. Cal. 2019) (No. 2:19-cv-08569-CAS (FFMx)), ECF No. 15-7.

	Smithfield-owned farms	Contract farms	Independent farms
Estimated percentage of total pig population	30% of pigs processed (approx. 5 million)	20% of pigs processed (approx. 3.3 million)	50% of pigs processed (approx. 8.3 million)
Who owns the pigs?	100% Smithfield owned	100% Smithfield owned	100% Independent farmer owned

Figure 3. Estimated percentage of pigs raised for Smithfield products in 2018

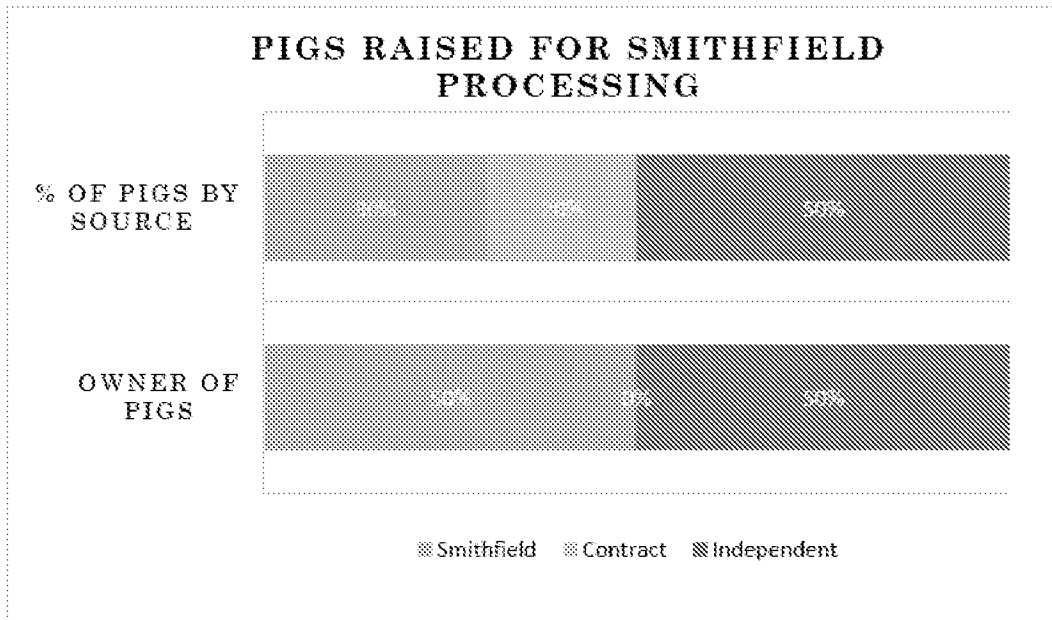


Figure 4. Graph representation of Figure 3

24. Regardless of whether the pigs are company-owned or independently owned, Smithfield “is a vertically integrated hog producer, which means [Smithfield] farms hogs on an industrial scale by controlling each stage of pork production from the raising and feeding of the livestock to slaughter and packaging for sale.” *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937, 946 n.1 (4th Cir. 2020). As Defendant recently described it, “Smithfield maintains ownership of the hog at all phases of the hog rearing process and maintains absolute control over every facet of the process.”¹⁰

LEGAL FRAMEWORK

A. District of Columbia Consumer Protection Procedures Act

25. The CPPA provides:

(A) A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.

* * *

¹⁰ Opening Brief of Smithfield, *supra* note 9, at 7.

(C) A nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

(D)

(i) Subject to sub-subparagraph (ii) of this subparagraph, a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.

(ii) An action brought under sub-subparagraph (i) of this subparagraph shall be dismissed if the court determines that the public interest organization does not have sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.

D.C. Code § 28-3905(k)(1).

26. It is a violation of District of Columbia law, and therefore an unlawful trade practice under the CPPA, “*whether or not any consumer is in fact misled, deceived or damaged thereby,*” for any person to:

(a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

* * *

(d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;

(e) misrepresent as to a material fact which has a tendency to mislead;

* * *

(f) fail to state a material fact if such failure tends to mislead;

(f-1) [u]se innuendo or ambiguity as to a material fact, which has a tendency

to mislead;

* * *

(h) advertise or offer goods . . . without the intent to sell them as advertised or offered; [or]

* * *

(x) sell consumer goods in a condition or manner not consistent with that warranted . . . by operation or requirement of *federal law*.”

Id. § 28-3904 (emphases added).

27. Additionally, “the CPPA’s extensive enforcement mechanisms apply not only to the unlawful trade practices proscribed by § 28-3904, but to all other statutory and common law prohibitions.” *Osbourne v. Capital City Mortg. Corp.*, 727 A.2d 322, 325–26 (D.C. 1999).

28. Finally, the CPPA mandates that its terms—including its “enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia”—are to “be construed and applied liberally to promote its purpose.” D.C. Code § 28-3901(c). Other stated purposes include “assur[ing] that a just mechanism exists to remedy all improper trade practices and deter the continuing use of such practices” and “promot[ing], through effective enforcement, fair business practices throughout the community.” *Id.* § 28-3901(b)(1)–(2).

B. Federal Trade Commission Act

29. Section 5(a)(1) of the FTCA provides that “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.” 15 U.S.C. § 45(a)(1).

30. Under that section, unlawful deception will be found “if there is a

representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment." *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174 (1984) (reporting the Federal Trade Commission's Policy Statement on Deception). A representation is thus unlawfully deceptive if it is (1) material to a reasonable consumer's decision-making and (2) likely to mislead the consumer. *Id.*

31. To ensure that their advertisements are not deceptive, marketers must identify all express and implied claims that the advertisement reasonably conveys. Even a claim that is literally true but nevertheless deceives or misleads consumers by its implications can be considered a deceptive practice under the FTCA. *See, e.g., Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992) ("[E]ven literally true statements can have misleading implications."). Moreover, if a particular consumer group is targeted or likely to be affected by the advertisement, the advertisement should be examined from the perspective of a reasonable member of that group. *Cliffdale Assocs., Inc.*, 103 F.T.C. at 174 (reporting the Federal Trade Commission's Policy Statement on Deception).

FACTS GIVING RISE TO PLAINTIFF'S CLAIMS FOR RELIEF

A. The Pork Industry's Use of Crates and Their Impacts on Sows

32. Industrial pork producers often keep pigs in filthy, highly concentrated, and confined conditions. Indeed, pigs are among the most extremely confined and harshly handled animals in all of agriculture. Gestation crates, like the one pictured below, are among the most extreme and inhumane confinement practices.

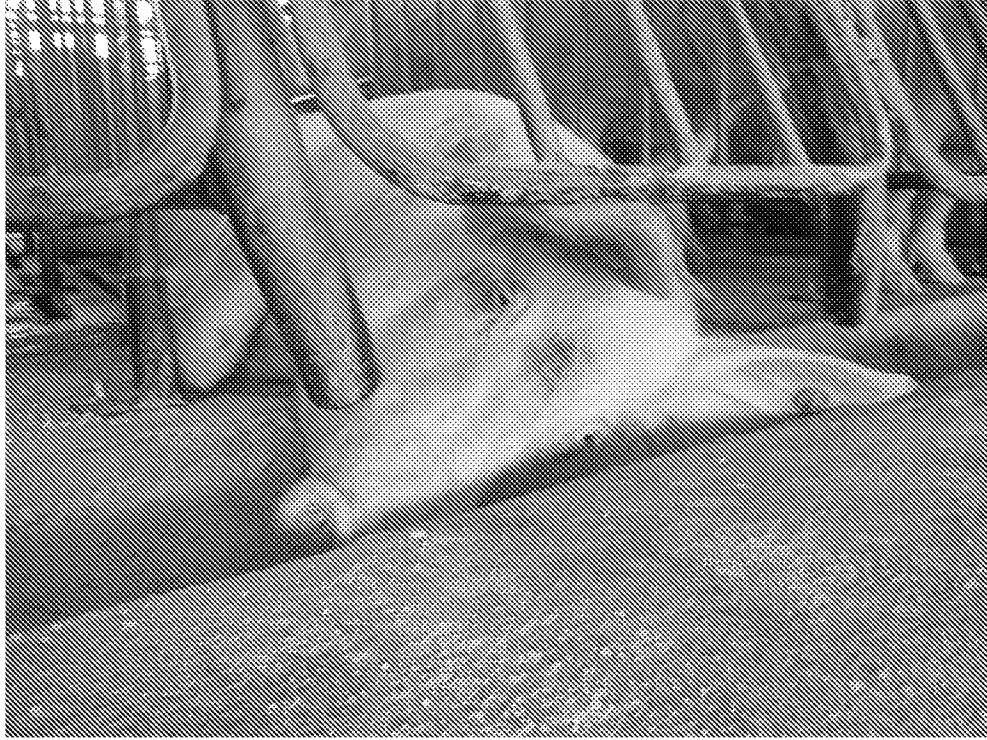


Figure 5. Image from the HSUS's 2010 investigation of a Smithfield subsidiary's breeding facility



Figure 6. Image on slide asking, "What is a Gestation Stall?" from Smithfield presentation entitled "Pen Gestation Pork Update" (July 25, 2012)

33. The discordance between the behavioral needs of pigs—including rooting, wallowing, nest-building, foraging, and segregating into natural social groups—and the life afforded to those raised industrially by meat corporations has created many animal welfare problems.

34. Some industrial pig producers exacerbate these welfare concerns by tightly confining sows in small, solitary crates for long stretches of the breeding process, moving them between gestation crates (sometimes more innocuously called “gestation stalls” or “individual stalls” by these producers) and farrowing crates (also called “farrowing stalls”) in a continuous and recurring cycle of pregnancies induced by artificial insemination.

35. The key difference between the two kinds of crates is that gestation crates are used during impregnation and while the sow is pregnant, whereas farrowing crates are typically used beginning a few days prior to giving birth and once her piglets are born, during the nursing period for approximately three to four weeks.

36. Both gestation and farrowing crates are so small and restrictive that sows are unable to turn around within them, with the only major difference being that farrowing crates have a separate area for piglets when they are not nursing.

37. This severe restriction on sows’ movement, for weeks or months at a time, increases sows’ risk of urinary-tract infections from standing in their own waste, and causes tangible physiological problems including higher resting heart rate and reduced muscle mass and bone strength, due to lack of exercise.

38. Pigs are highly intelligent, social, active animals with a complex behavioral repertoire. Because crates make expression of their behavioral needs impossible, crated sows suffer from boredom, frustration, and psychological trauma.

39. This psychological impact often manifests in abnormal behavior; crated sows exhibit stereotypies, which are characterized in the scientific literature as repeated coping attempts, frustration, and/or brain dysfunction. Stereotypic behavior is common in captive animals kept in barren, restrictive environments. Sows confined in crates engage in repetitive bar-biting and sham (or vacuum) chewing behavior (which increases over the length of their confinement) and show physiological indicators of stress (such as increasing blood cortisol concentrations,¹¹ adrenocorticotrophic hormone, and adrenaline¹²) compared to those housed in groups.

40. Farrowing crates in particular prevent sows from performing normal nesting and mothering behavior, which exacerbates the confinement's psychological impact.

41. Tight confinement of high numbers of pigs also poses disease risks, to both people and animals. As Fourth Circuit Judge Wilkinson recently penned, “[i]t is well-established that close confinement leads to the ‘increased risk of the spread of disease’ between hogs.” *McKiver*, 980 F.3d at 980 (Wilkinson, J., concurring). This is because of the well-established link between stress and reduced immunity, a general biological principle that holds true for sows experiencing confinement induced, chronic stress.¹³ New research is showing that this can affect not only the health and welfare of the mother sow, but her offspring as well. Piglets born to sows confined in gestation crates have compromised

¹¹ Ming-Yu Zhang et al., *Effects of confinement duration and parity on stereotypic behavioral and physiological responses of pregnant sows*, *Physiology & Behavior* 179:369-76 (2017), available <https://www.sciencedirect.com/science/article/pii/S0031938416310447>.

¹² Xin Liu et al., *A Comparison of the Behavior, Physiology, and Offspring Resilience of Gestating Sows When Raised in a Group Housing System and Individual Stalls*, *Animals* 11(7), 2076 (2021), available <https://doi.org/10.3390/ani11072076>.

¹³ Verena Grün et al., *Influence of Different Housing Systems on Distribution, Function and Mitogen-Response of Leukocytes in Pregnant Sows*, *Animals* 3:1123-41 (2013), available <https://www.mdpi.com/2076-2615/3/4/1123>.

disease resistance and resilience.¹⁴

42. Apart from animal welfare concerns, this kind of extreme animal confinement is a serious human public health threat.¹⁵ In general, gestation crates permit more animals to be kept together in a single production facility. Respiratory viruses spread easily among tightly confined animals, and larger herd sizes increase the likelihood that novel, more pathogenic viral strains will emerge. A 2017 review and meta-analysis found swine influenza viruses to be more prevalent with both higher pig stocking densities and greater numbers of pigs per farm.¹⁶ Experts warn that just like wet markets in Asia, “the creation of novel reassortant swine influenza viruses with zoonotic and pandemic potential could also happen in modern swine facilities in the backyard of a highly industrialized country in North America or Western Europe.”¹⁷

43. Ron Klain, President Joseph Biden’s chief of staff, described the threat such outbreaks, including of highly contagious, zoonotic influenzas, continue to pose,

¹⁴ Xin Liu et al., *A Comparison of the Behavior, Physiology, and Offspring Resilience of Gestating Sows When Raised in a Group Housing System and Individual Stalls*, *Animals* 11(7), 2076 (2021), available <https://doi.org/10.3390/ani11072076>.

¹⁵ See, e.g., Honglei Sun et al., *Prevalent Eurasian Avian-Like H1N1 Swine Influenza Virus with 2009 Pandemic Viral Genes Facilitating Human Infection*, 117 *Proc. Nat'l Acad. Sci.* 17,204, 17,204-05 (2020), available at <https://www.pnas.org/content/pnas/117/29/17204.full.pdf> (concluding that “the emergent [influenza] viruses [in densely confined pigs] pose a serious threat to human health”); Sundar S. Shrestha et al., *Estimating the Burden of 2009 Pandemic Influenza A (H1N1) in the United States (April 2009–April 2010)*, 52 *Clinical Infectious Diseases* S75, S80 (2011) (estimating that the 2009 swine flu pandemic, which likely originated from confined pigs, “caused approximately 61 million symptomatic cases, 274 000 hospitalizations, and 12 500 deaths” in the United States alone).

¹⁶ Eugénie Baudon et al., *Epidemiological features of influenza circulation in swine populations: A systematic review and meta-analysis*, *PLoS ONE* 12(6):e0179044 (2017), available <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0179044>.

¹⁷ Wenjun Ma et al., *The pig as a mixing vessel for influenza viruses: Human and veterinary implications*, *J. of Molecular and Genetic Med.* 3(1):158-66 (2009), available <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2702078/pdf/jmgm-03-158.pdf>.

I wasn't involved directly in the [2009 swine influenza] H1N1 response, but I lived through it as a White House staffer. And what I will say about it is a bunch of really talented, really great people working on it. And we did every possible thing wrong. And it's, you know, 60 million Americans got H1N1 in that period of time. And it's just purely a fortuity that this isn't one of the great mass casualty events in American history. Had nothing to do with us doing anything right. Just had to do with luck.

* * *

If anyone thinks this can't happen again they don't have to go back to 1918, they just have to go back to 2009-2010. Imagine a virus with a different lethality and you can just do the math on that.¹⁸

44. Because of these severe impacts on pigs and inherent public health risks, several states have banned the use of gestation crates on their state's farms, and some have banned the sale of products produced using them. *See, e.g.*, Cal. Health & Safety Code §§ 25990–25994 (banning both in-state use and sale); Mich. Comp. Laws § 287.746 (banning in-state use); Mass. Gen. Laws, ch. 129 App., §§ 1-1–1-11; Me. Rev. Stat. tit. 7, § 4020; 4 R.I. Gen. Laws Ann. § 4-1.1-3; Ariz. Rev. Stat. Ann. § 13-2910.07; Fla. Const. art. X, § 21; Or. Rev. Stat. § 600.150.

45. The public health and animal welfare threats along with food safety concerns have prompted many in the meat industry to implement tracing practices. Tracing an animal from the farm of origin through slaughter and the end product provides increased opportunities for the accountability and transparency that many consumers of animal products are looking for and have come to expect. This tracing information is available to industry operators that have implemented such practices, but typically not available to consumers.

¹⁸ Glenn Kessler, *In Context: What Biden Aide Ron Klain Said About the Swine Flu*, Wash. Post (Oct. 15, 2020), <https://www.washingtonpost.com/politics/2020/10/15/context-what-biden-aide-ron-klain-said-about-swine-flu/> (emphasis added).

B. Defendant’s Highly Publicized Commitment to Phase Out Crates and Its False and Misleading Claims that It Has Done So

46. In recent decades, largely driven by consumer pressures related to the serious animal welfare concerns described above, dozens of companies have publicly committed to phasing gestation crates out in their supply chains.¹⁹

47. On January 25, 2007, Smithfield Foods issued a press release announcing that it was “beginning the process of *phasing out* individual gestation stalls at all of its company-owned sow farms,” specifying that in doing so, it would be “*replacing them* with pens—or group housing—over the next 10 years.”²⁰ The press release also stated that Smithfield would “convert from gestation stalls to group housing.”

Sustainability

Smithfield Foods Makes Landmark Decision Regarding Animal Management

January 25, 2007

Share:    

— In Conjunction with its Customers, Smithfield Moves to Using Group Pens for Housing Pregnant Sows —

Figure 7. Screenshot of Smithfield’s 2007 Press Release

48. Smithfield’s announcement was widely reported and applauded by media

¹⁹ See HSUS, *Welfare Issues with Gestation Crates for Pregnant Sows 2* (2013), available at http://animalstudiesrepository.org/cgi/viewcontent.cgi?article=1027&context=hsus_reps_impacts_on_animals (listing many companies—like Burger King, Hormel Foods, Denny’s Corporation, McDonald’s, and Wendy’s—that had committed to move away from gestation crates).

²⁰ Press Release, Smithfield, Smithfield Foods Makes Landmark Decision Regarding Animal Management (Jan. 25, 2007) [hereinafter “2007 Commitment”] (emphasis added) available at <https://tinyurl.com/58cp42ca>.

outlets that praised the decision, using descriptors like “bold” and “industry-leading.”²¹

49. Larry Pope, Smithfield’s then-chief executive officer, in 2007 announced that Smithfield’s decision was made in response to the demands of its corporate customers who, Pope stated, “have made their views known on the issue of gestation stalls” and “have told us they feel group housing is a more animal-friendly form of sow housing.” 2007 Commitment, *supra* note 20.

50. In the context of discussing proposed legislation in Oregon that would ban the use of aluminum enclosures of 2 feet wide by 7 feet long to confine individual pigs, Dennis Treacy, Smithfield’s Vice President of Environmental and Corporate Affairs at the time,

²¹ See, e.g., Lauren Etter, *Smithfield to Phase out Crates: Big Pork Producer Yields to Activists, Customers on Animal-Welfare Issue*, Wall St. J. (Jan. 25, 2007), <https://www.wsj.com/articles/SB116969807556687337> (“Smithfield Foods Inc., the nation’s largest pork producer, plans to announce today that it will phase out ‘gestation crates’ at all of its company-owned sow farms over the next decade.”); *Top Hog Producer to Phase out Gestation Stalls*, Am. Veterinary Med. Ass’n (Feb. 1, 2007), <https://www.avma.org/javma-news/2007-02-15/top-hog-producer-phase-out-gestation-stalls> (“Smithfield Foods Inc., the nation’s largest hog producer and a leading processor and marketer of fresh pork and processed meats, is phasing out individual gestation stalls and replacing them with group housing over the next 10 years.”); *Smithfield Ends Use of Gestation Crates*, Pig Progress (Jan. 26, 2007), <https://www.pigprogress.net/Breeding/Housing/2007/1/Smithfield-ends-use-of-gestation-crates-PP000366W/> (“The largest US pork supplier, Virginia-based Smithfield Foods, has decided to end the use of gestation crates at all its sow farms, replacing them with group housing pens in the next ten years. Contract growers will be asked to do the same.”); Marc Kaufman, *Largest Pork Processor to Phase out Crates*, Wah. Post (Jan. 26, 2007), <https://www.washingtonpost.com/wp-dyn/content/article/2007/01/25/AR2007012501785.html>; see also Press Release, Smithfield, *Smithfield Foods Nears 2017 Goal for Conversion to Group Housing Systems for Pregnant Sows* (Jan. 4, 2017), <https://www.globenewswire.com/news-release/2017/01/04/903291/0/en/Smithfield-Foods-Nears-2017-Goal-for-Conversion-to-Group-Housing-Systems-for-Pregnant-Sows.html> (“I am proud of the progress we have made toward this bold goal,” said Kenneth M. Sullivan, president and CEO of Smithfield Foods.”); Press Release, Smithfield, *Smithfield Foods Achieves Industry-Leading Animal Care Commitment, Unveils New Virtual Reality Video of its Group Housing Systems* (Jan. 8, 2018), <https://www.3blmedia.com/News/Smithfield-Foods-Achieves-Industry-Leading-Animal-Care-Commitment-Unveils-New-Virtual-Reality>.

framed Smithfield's announcement that it would phase out individual sow gestation stalls and replace them with group pens as "occurring in response to consumer demand."²²

51. In 2007 and 2008, in various reports to shareholders and the public, Smithfield broadcasted its promise to convert from gestation crates to group housing.

52. For example, Smithfield's 2007 Annual Report stated that its decision to "phas[e] out individual gestation stalls at its sow farms and replac[e] the gestation stalls with group pens over the next ten years . . . was made as a result of the desire to be more animal friendly, as well as to address certain concerns and needs of our customers."²³ And a letter from Dennis Treacy, in Smithfield's 2007/08 Corporate Social Responsibility Report, stated, "[We] are proud to point our customers to new policies and procedures that exceed our customers' expectations. One example is our recent pledge to phase out individual stalls for pregnant sows and replace them with group housing, which is viewed by many of our customers as the more animal-friendly solution."²⁴ Smithfield's 2007/08 Corporate Social Responsibility Report repeatedly reiterated its pledge and commitment to "be gestation stall-free":

- "We began the process of replacing individual gestation stalls for pregnant sows with group housing."²⁵

²² Michelle Cole, *Bill Would Give Pigs More Room*, The Oregonian (March 15, 2007) (on file with Plaintiff).

²³ Smithfield, *Smithfield Annual Report 2007* at 12 (on file with Plaintiff); see also Smithfield, *Smithfield Corporate Social Responsibility Report 2006/07* at 12, 61, available at https://www.smithfieldfoods.com/getmedia/b3b8aa68-da74-4391-850a-6f15c76b6123/CSR_0607.pdf.

²⁴ Smithfield, *Corporate Social Responsibility Report 2007/08* at 5, available at https://www.smithfieldfoods.com/getmedia/4ba9ac24-f585-4c02-b5bd-4724fc61e880/smi_csr_0708.pdf.

²⁵ *Id.* at 3.

- “[T]hree farms to be gestation stall-free by mid-2008. . . Complete conversion within the next nine years”²⁶
- “Following a review of research, as well as discussions with and input from NGOs and company customers, Smithfield announced plans to phase out the use of sow gestation crates on hog farms and replace them with group housing.”²⁷
- “In January 2007, we announced a program to phase out individual gestation stalls at all company-owned sow farms and to replace them with group housing over the next decade. . . . [O]ur decision to switch to group housing demonstrates our responsiveness to our customers and other stakeholders, many of whom view group housing as the more animal-friendly solution.”²⁸
- “Initiated the process of converting sow farms from individual gestation crates to group sow housing, with the first market hogs from the converted farms expected in calendar year 2009.”²⁹

53. Also in 2007, Steve Brier, the Midwest Sow Production Manager at Murphy-Brown, LLC, d/b/a Smithfield Hog Production Division, a wholly-owned subsidiary of Smithfield, presented on Smithfield’s initiative to phase out individual gestation stalls and claimed the initiative was motivated by “[i]ncreased consumer demand” and to “create competitive advantages.”

²⁶ *Id.* at 9.

²⁷ *Id.* at 17.

²⁸ *Id.* at 46.

²⁹ *Id.* at 92.

Smithfield Initiative

Smithfield, Va. (January 25, 2007) — “Smithfield Foods, Inc. announced today that it is beginning the process of **phasing out individual gestation stalls** at all of its company-owned sow farms and replacing them with pens—or group housing—over the next 10 years. Smithfield also will work with its contract growers regarding system conversion.”

Figure 8. Screenshot of Slide from 2007 Presentation

Why?

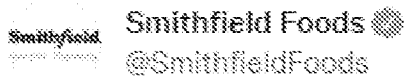
- Increased consumer demand
- Create competitive advantages
- Pressure on food industry – restaurants, etc
- State actions – referendas, legislative action
- Increased activists pressures

Figure 9. Screenshot of Slide from 2007 Presentation

54. In January 2009, Smithfield announced that it would delay its project of phasing out gestation crates. Larry Pope, Smithfield’s then CEO, personally wrote to the HSUS about Smithfield’s “decision to delay [its] previously announced plan to *eliminate*

gestation stalls.”³⁰ Mr. Pope also stated in this letter that “[t]wo years ago I pledged to our customers that we would undertake this precedent-setting take, and I am eager to see it to completion.”³¹

55. Still, in 2010, Smithfield tweeted that it “is continuing its work toward eliminating gestation stalls & converting to group housing at all of its sow farms”:



But Smithfield Foods is continuing its work toward eliminating gestation stalls & converting to group housing at all of its sow farms.

5:00 PM · Dec 18, 2010 · Hootsuite

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56. In 2011, Smithfield announced that it would re-commit to its original 2007 Commitment—after mounting pressure from the HSUS and consumers on Smithfield to honor its commitment.³³

57. In announcing its re-commitment, Smithfield’s then-chief executive officer Larry Pope said, “(Our customers) want us to do that, and we’ve heard them loud and clear. [Smithfield] is going to do what’s in the best interest . . . of [its] customers.”³⁴

³⁰ Letter from Larry Pope, CEO, Smithfield, to Wayne Pacelle, President & CEO, HSUS (Aug. 4, 2009) (emphasis added) (on file with Plaintiff).

³¹ *Id.*

³² Smithfield, Twitter (Dec. 16, 2010; 5:00 PM), <https://twitter.com/SmithfieldFoods/status/15526737857216512>.

³³ *Smithfield Recommits to 2017 Phase-out of Gestation Crates*, HSUS (Dec. 8, 2011), <https://blog.humanesociety.org/2011/12/smithfield-gestation-crates.html>.

³⁴ Michael Felberbaum, *Smithfield to Stop Using Gestation Crates for Pigs*, Fox News (Dec. 8, 2011), <https://www.foxnews.com/us/smithfield-to-stop-using-gestation-crates-for-pigs>.

58. In responding to those expressing concern over Smithfield’s plan to phase out gestation crates, Smithfield explains that “Group housing is the transition of pregnant sows from individual stalls to group pens”:



59. Smithfield’s 2012 Integrated Report explains that it has “been working on a number of issues that are important to [its] customers and to other stakeholders, such as *eliminating* the use of gestation stalls for pregnant sows on company-owned farms.”³⁶

60. On Smithfield’s 2012 earnings call, Smithfield’s then CEO, Larry Pope, stated “I talked about the 100% conversion, the pen gestation – as you know, that's now in vogue. That’s the conversation of many of our food service and retail customers. We can provide that. We have control over our feeding programs.”³⁷

61. From 2012 to 2018, Smithfield frequently reaffirmed its dedication to the 2007

³⁵ Smithfield, Twitter (Nov. 2, 2011; 2:11 PM), <https://twitter.com/SmithfieldFoods/status/131795593457704960>

³⁶ Smithfield, *Smithfield 2012 Integrated Report* at 20, available at <https://www.smithfieldfoods.com/getmedia/b76e644f-0b33-4915-a413-9054422a6ed6/smithfield-integrated-report-2012.pdf> (first alteration in original) (emphasis added).

³⁷ *Smithfield Foods’ CEO Discusses F1Q2013 Results - Earnings Call Transcript*, Seeking Alpha (Sept. 4, 2012), <https://seekingalpha.com/article/845091-smithfield-foods-ceo-discusses-f1q2013-results-earnings-call-transcript>.

Commitment, reporting on its progress towards fulfilling the pledge.³⁸

62. In a 2016 report, Smithfield praised itself using superlatives such as “the leader in animal care” and that “Smithfield plays an important role in guiding [the] industry toward even higher standards.”³⁹

63. In January 2018, Smithfield issued press releases claiming that it had successfully completed its 2007 Commitment to phase out gestation crates on its farms.⁴⁰

³⁸ See, e.g., Press Release, Smithfield, *Smithfield Foods Global Hog Production Operations Moving Toward Complete Conversion to Group Housing* (Jan. 3, 2013), available at <https://www.globenewswire.com/news-release/2013/01/03/514467/10016914/en/Smithfield-Foods-Global-Hog-Production-Operations-Moving-Toward-Complete-Conversion-to-Group-Housing.html> (noting “Smithfield made a business decision to convert to group housing for pregnant sows on all company-owned U.S. farms based on input from its customers”); Press Release, Smithfield, *Smithfield Foods Reports Significant Gain in 2014 in Conversion to Group Housing for Pregnant Sows* (Jan. 6, 2015), available at <https://www.globenewswire.com/fr/news-release/2015/01/06/695240/12889/en/Smithfield-Foods-Reports-Significant-Gain-in-2014-in-Conversion-to-Group-Housing-for-Pregnant-Sows.html> (claiming “Smithfield has transitioned 71.4% of pregnant sows on its company-owned U.S. farms”); Press Release, Smithfield, *Smithfield Foods Reports Significant Progress Toward Conversion to Group Housing Systems for Pregnant Sows* (Jan. 4, 2016), available at <https://www.globenewswire.com/news-release/2016/01/04/799189/0/en/Smithfield-Foods-Reports-Significant-Progress-Toward-Conversion-to-Group-Housing-Systems-for-Pregnant-Sows.html> (reporting “more than eight out of every ten pregnant sows on company-owned farms in the U.S. are within group housing systems”).

³⁹ See Smithfield, *2016 Sustainability Report* at 25, available at <https://www.smithfieldfoods.com/getmedia/bec6ff09-ca33-4da2-9c5d-b49287f82ce3/smithfield-2016-sustainability-report.pdf>.

⁴⁰ See Press Release, Smithfield, *Smithfield Foods Achieves Industry-Leading Animal Care Commitment, Unveils New Virtual Reality Video of Its Group Housing Systems* (Jan. 8, 2018) [hereinafter “First January 2018 Press Release”], available at <https://www.smithfieldfoods.com/press-room/2018-01-08-Smithfield-Foods-Achieves-Industry-Leading-Animal-Care-Commitment-Unveils-New-Virtual-Reality-Video-of-its-Group-Housing-Systems>; Press Release, Smithfield, *Smithfield Foods Delivers on Decade-Old Promise to Eliminate Pregnant Sow Stalls in US* (Jan. 23, 2018) [hereinafter “Second January 2018 Press Release”], available at <https://www.smithfieldfoods.com/press-room/2018-01-23-Smithfield-Foods-delivers-on-decade-old-promise-to-eliminate-pregnant-sow-stalls-in-US> (linking to https://www.pilotonline.com/business/article_01836553-38ab-51e0-8710-fb2dbc117d3d.html (click “Read the story.”)).

64. In the First January 2018 Press Release, Smithfield’s President and CEO Kenneth M. Sullivan said, “Smithfield’s leadership in animal care is reflected in today’s landmark announcement. Achieving this goal is a testament to the fact that, at Smithfield, we keep our promises. We stand committed to continue leading the industry in both animal care and transparency.”

65. The Second January 2018 Press Release states “Smithfield Foods delivers on decade-old promise to *eliminate* pregnant sow stalls in US.” (emphasis added).

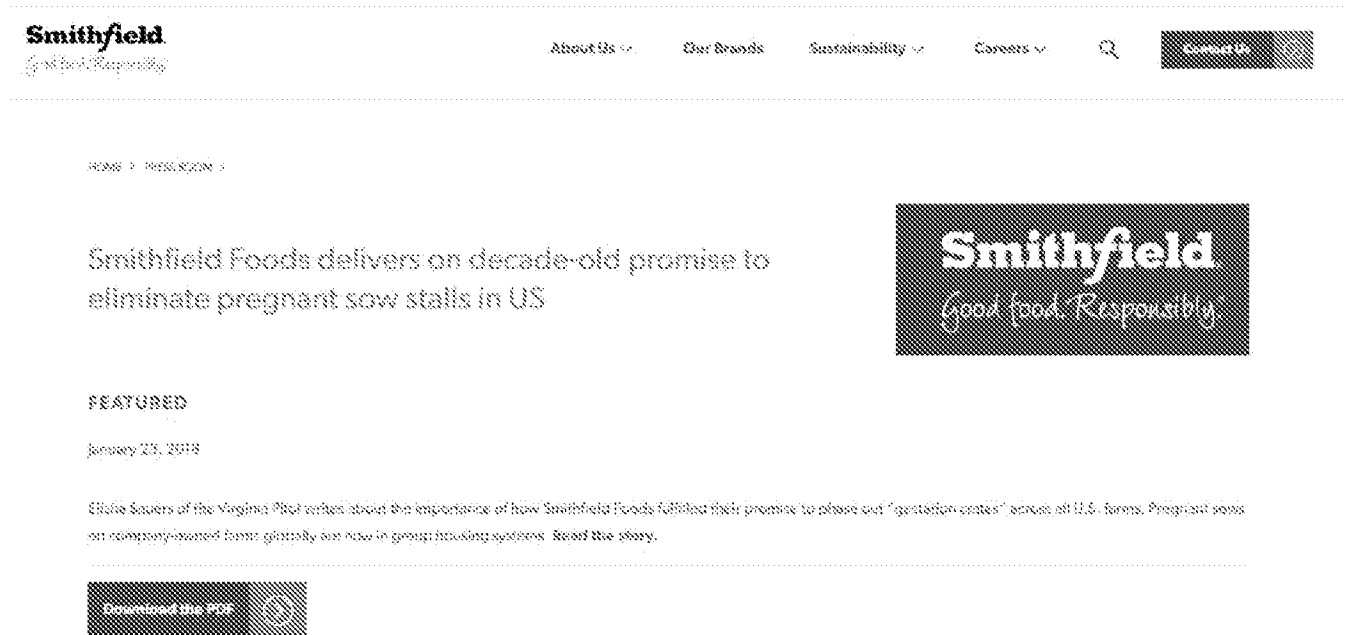


Figure 10. Screenshot of Smithfield’s Second January 2018 Press Release

66. In the article linked to in Smithfield’s Second January 2018 Press Release, Stewart Leeth, Smithfield’s Chief Sustainability Officer, confirmed Smithfield’s motivations for its original 2007 Commitment: to influence consumer belief that Smithfield is ethical in its treatment of pigs. He stated that the company “saw that many of our customers were concerned about the traditional ways in which (the pigs) were housed,

making pledges and commitments to try to source their supply from producers with open-housing systems” and that it “decided to take a leadership position.”⁴¹

67. That article notes that Smithfield “announced it has done away with the old ‘gestation crates,’ single animal enclosures so small the pigs can’t turn around.”⁴²

68. In a promotional video celebrating Smithfield’s announcement that the company has fulfilled its 2007 first-of-its-kind “commitment to group housing systems for pregnant sows,” Smithfield’s then President and CEO, Kenneth Sullivan is quoted saying, “We are **improving animal welfare standards** and meeting evolving consumer demands”:



69. Smithfield also widely publicized that it met its goal of phasing out gestation crates on its social media pages. In one video, Smithfield’s Vice President of Regulatory Affairs and Chief Sustainability Officer, Stewart Leeth, stated that the company is

⁴¹ Elisha Sauers, *Smithfield Foods Delivers on Decade-Old Promise to Eliminate Pregnant Sow Stalls in US*, *Virginian-Pilot* (Jan. 23, 2018), https://www.pilotonline.com/business/article_01836553-38ab-51e0-8710-fb2dbc117d3d.html (alteration in original).

⁴² *Id.*

⁴³ Press Release, Smithfield, *Smithfield Foods Achieves Industry-Leading Animal Care Commitment, Unveils New Virtual Reality Video of its Group Housing Systems* (Jan. 8, 2018, 0:17), <https://www.3blmedia.com/News/Smithfield-Foods-Achieves-Industry-Leading-Animal-Care-Commitment-Unveils-New-Virtual-Reality> (click “play” button over image displaying the text “Smithfield: The Leader in Group Housed Pork”).

“particularly proud in this year’s report to highlight that we met our 10-year commitment to transition all pregnant sows in company-owned farms to group housing systems, which was a \$360-million investment. We achieved our goal right on schedule.”⁴⁴ In another video, Mr. Leeth explained that “[t]raditionally sows are raised in stalls. That’s where they spend most of their life in a conventional sow farm. We just made our commitment. Every one of our sow farms is in a sow housing group setting.”⁴⁵

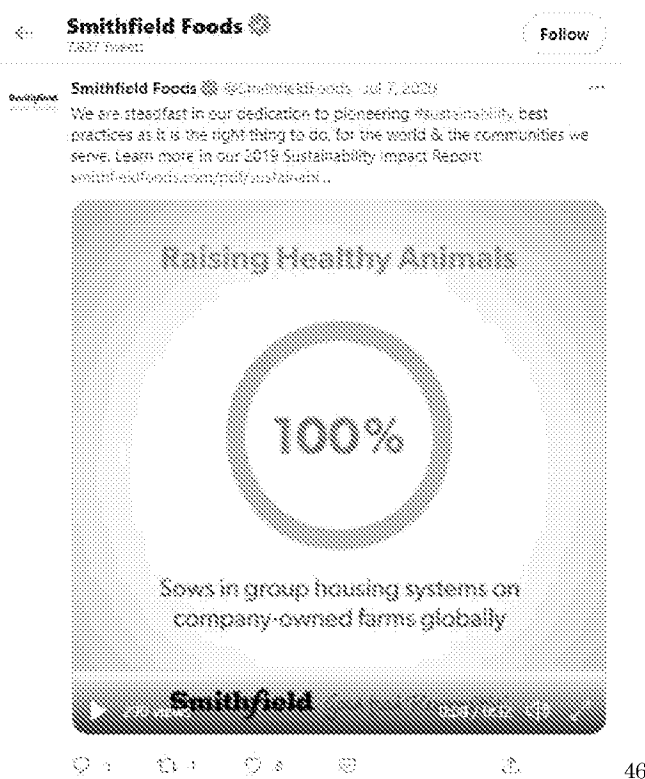


Figure 11. Screenshot of Smithfield’s Social Media Post Promoting its 2019 Sustainability Report

⁴⁴ Smithfield, *Smithfield Foods 2017 Sustainability Report: Chief Sustainability Officer Stewart Leeth*, Facebook (May 31, 2018), <https://fb.watch/4DdREnYQYk/> (quoted language at 0:32-0:46).

⁴⁵ Smithfield, *Smithfield Foods 2017 Sustainability Report: Animal Care*, Facebook (May 2, 2018), <https://fb.watch/4DeqhdKXkT/> (quoted language at 1:21-1:33).

⁴⁶ Smithfield, *2019 Sustainability Impact Report*, Twitter (July 7, 2020), <https://twitter.com/SmithfieldFoods/status/1280581927959965697> (screenshot taken at 0:08).

70. Smithfield even advertises that it received praise from the HSUS—likely referring to Plaintiff’s popular blog and/or the times the HSUS compared the company positively to Smithfield’s competitors because of its promises—to promote Smithfield’s message that it had done away with gestation crates.⁴⁷

71. Smithfield, however, deceptively fails to acknowledge or promote all the times the HSUS has criticized the company for its missteps and deficiencies.⁴⁸

⁴⁷ See *The Humane Society of the United States Praises Smithfield Move to End Confinement of Pigs in Gestation Crates*, HSUS (Jan. 25, 2007), previously available at https://www.humanesociety.org/farm/news/ournews/smithfield_phases_out_crates.html (on file with Plaintiffs); see also *Smithfield Recommits to 2017 Phase-Out of Gestation Crates*, HSUS (Dec. 8, 2011), <https://blog.humanesociety.org/2011/12/smithfield-gestation-crates.html>; *Breaking News: Smithfield Will Complete Transition to Group Housing for Sows by End of 2017*, HSUS (Jan. 4, 2017), <https://blog.humanesociety.org/2017/01/smithfield-humane-housing-sows-2017.html>; *Smithfield Makes More Progress on Gestation-Crate-Free Pledge*, HSUS (Jan. 8, 2018), <https://blog.humanesociety.org/2018/01/smithfield-makes-progress-gestation-crate-free-pledge.html>; Paul Shapiro, *Missouri Pork Producers Should Drop Inhumane Practice*, St. Louis Post-Dispatch (Jan. 8, 2015), http://www.stltoday.com/news/opinion/missouri-pork-producers-should-drop-inhumane-practice/article_f4f25176-3d29-54a8-9493-2d7582551d37.html (“many pork producers – like Smithfield and Cargill – are moving into the 21st century by abandoning th[e] archaic practice” of gestation crates); Smithfield, *2016 Sustainability Report 40*, available at <https://www.smithfieldfoods.com/getmedia/bee6ff09-ca33-4da2-9c5d-b49287f82ce3/smithfield-2016-sustainability-report.pdf> (previously stating “Our commitment has earned us praise from a variety of organizations, including the Humane Society of the United States” and now stating the report has been “updated January 1, 2018”); Smithfield, *2015 Sustainability & Financial Report* at 48, available at <https://www.smithfieldfoods.com/getmedia/e7639212-53ce-4c70-8385-4290d5ee363f/smithfield-2015-integrated-report.pdf> (“Our commitment has earned us praise from a variety of organizations, including the Humane Society of the United States.”).

⁴⁸ See *Smithfield Continues to Change Playing Field – for Pigs*, HSUS (Jan. 7, 2014), <https://blog.humanesociety.org/2014/01/smithfield-closes-gap-gestation-crates.html>; *Smithfield Profits Soar as its Sows Suffer, Despite Company’s Pledge*, HSUS (June 17, 2011), <https://blog.humanesociety.org/2011/06/smithfield-crates.html>; *HSUS Video Shows Why Smithfield Must Recommit to Crate Phase-Out Timeline*, HSUS (Dec. 15, 2010), <https://blog.humanesociety.org/2010/12/smithfield-investigation.html>.

Housing of Pregnant Sows

Our leadership in animal care is reflected in our commitment to transition all pregnant sows on company-owned farms to group housing systems by 2017.

As of December 31, 2016, 87.0 percent of our company-owned farms housed pregnant sows in group systems. We expect to be fully converted on company-owned farms in 2017, as planned when we first announced our commitment in 2007. (Individual stalls are still used for breeding and farrowing.) Our commitment has earned us praise from a variety of organizations, including the Humane Society of the United States.

Figure 12. Screenshot of Smithfield's 2015 Sustainability & Financial Report

72. Smithfield's crate-related claims are not limited to its January 2018 press releases. As a representative example, in the "Animal Housing" section of its 2018 Sustainability Report, Smithfield favorably characterizes its move from housing sows in individual crates to housing sows in group housing systems for the period of time it has self-defined as the "Gestation" period. It advertises that it has "successful[ly] transition[ed] . . . all pregnant sows on company-owned farms to group housing systems," that "[a]ll pregnant sows on company-owned farms . . . are housed in groups," and at the top of the page in larger bold letters provides: "Smithfield Foods is committed to being the industry leader in animal care practices that ensure respectful and humane treatment of animals."⁴⁹

⁴⁹ Smithfield, *Smithfield Foods Sustainability 2018* at 57, available at

73. Smithfield also claims in its 2019 Sustainability Impact Report that it has “successful[ly] transition[ed] . . . all pregnant sows on company-owned farms to group housing systems” globally.⁵⁰

Group Housing

We have transitioned all pregnant sows on company-owned farms to group housing systems globally and we recommend our U.S. contract sow farms complete the same transition by the end of 2022.

Figure 13. Screenshot taken Feb. 9, 2021 of Smithfield’s claim that it “ha[s] transitioned all pregnant sows on company-owned farms to group housing systems globally” under the bolded and large-font heading “Group Housing”

74. In its latest Sustainability Report, Smithfield claims to “[m]aintain group housing for all pregnant sows on company-owned farms globally.”⁵¹ Smithfield’s 2020 Sustainability Report also links to its “Animal Care Policy” and redirects to the following webpage: <https://www.smithfieldfoods.com/Animal-Care-Policy>.⁵² Smithfield’s Animal

<https://www.smithfieldfoods.com/getmedia/d0285530-c68c-43f2-ae99-3b028ae1fa74/smithfield-2018-sustainability-report.pdf>; *see also* Smithfield, *Smithfield Foods Achieves Industry-Leading Animal Care Commitment*, YouTube (Jan. 8, 2018), <https://www.youtube.com/watch?v=YPSzlozkt8Q> (parroting these sorts of claims in a 28-second video).

⁵⁰ Smithfield, *2019 Sustainability Impact Report* at 26, 121, available at https://www.smithfieldfoods.com/getmedia/fd77514a-5d4c-4b51-abf0-8f6b83a34fd3/SMITHFIELD_CSR_Report_2019.pdf.

⁵¹ Smithfield, *2020 Sustainability Impact Report* at 19, available at <https://www.smithfieldfoods.com/getmedia/1fc9b578-4dff-4104-9706-ba0fbbc44f47/2020-Sustainability-Impact-Report.pdf>; *see also* *Animal Care*, Smithfield, <https://www.smithfieldfoods.com/sustainability/animal-care> (last visited Aug. 19, 2021).

⁵² Smithfield, *2020 Sustainability Impact Report* at 15, available at

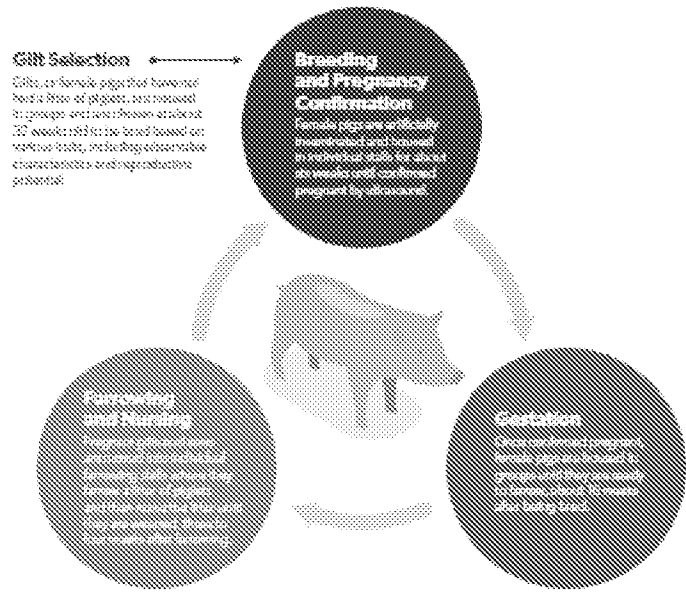
Care Policy states: “Smithfield is committed to being the industry leader in animal care practices to assure respectful and humane treatment of animals” Per this policy, Smithfield requires “[a]ll operations involved with the production or processing of live animals . . . to provide . . . [s]helter that is designed, maintained, and operated to provide a physical environment that meets the animal’s needs” as well as “[h]umane treatment of animals that ensures their well-being and complies with all applicable legal and regulatory requirements.”

75. Smithfield also notes in its 2020 Sustainability Report that “[p]igs are social beings: They like to be around other pigs and their caretakers. [Smithfield’s] open housing systems allow for social interaction between animals and room for exercise.” The report goes on to say that Smithfield “provide[s] group housing for pregnant sows during their 16-week gestation period on [its] company-owned farms globally” and that it “use[s] individual stalls for breeding to help ensure a sow’s successful conception, a practice supported by multiple scientific studies.”⁵³ Smithfield also claims to “use individual stalls during

<https://www.smithfieldfoods.com/getmedia/1fc9b578-4dff-4104-9706-ba0fbbc44f47/2020-Sustainability-Impact-Report.pdf>.

⁵³ *Id.* at 17 (emphasis in original). On the contrary, Smithfield’s own studies have “demonstrated that group pens are as good as individual gestation stalls in caring for pregnant sows.” McDonald’s Corp., *Worldwide Corporate Responsibility Report* at 23 (2008), https://corporate.mcdonalds.com/content/dam/gwscorp/nfl/scale-for-good/mcd048_2008report_v5.pdf (“McDonald’s is a recognized leader in animal welfare, including the housing of pregnant sows. Our own research has demonstrated that group pens are as good as individual gestation stalls in caring for pregnant sows, so when McDonald’s and other customers told us they believe group housing to be more comfortable for the animals, we listened.” — C. Larry Pope, President and Chief Executive Officer, Smithfield Foods, Inc.). Moreover, numerous scientific studies show that confining sows in individual stalls for a period before grouping sows is not necessary when producers use a pre-implantation mixing system. For instance, “[r]esults indicate that the EM [Early Mixing] treatment had the highest conception rate (98%) . . . The EM treatment also showed a significant reduction in the number of stillborn piglets, which may be an effect of

farrowing and weaning to protect a sow’s growing litter.” A hyperlink embedded in the text “group housing” redirects to a diagram of Smithfield’s complex explanation of its use of “individual stalls”:



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improved sow fitness and/or activity levels during early gestation. There were no other differences in production performance among the treatments.” Jennifer Brown, *Weaning sows directly into group housing: Effects on aggression, physiology and productivity* at 1, Pork Checkoff (2015), <https://porkcheckoff.org/research/weaning-sows-directly-into-group-housing-effects-on-aggression-physiology-and-productivity/>; see also Thomas Parsons, *Lessons learned from a decade of transitioning sow farms from stalls to pens* at 91, *Advances in Pork Production* Vol. 24 (2013) (finding “[b]oth ESF [(electronic sow feeding)] barns are matching or exceeding the performance of a similar stalled barn. Both of the ESF barns utilize a pre-implantation system. This supports the notion that pre-implantation group constitution is not necessarily a barrier to good production.”). As such, unlike Smithfield implies here, productivity is a non-distinguishing factor among various sow housing types. See, e.g., John J. McGlone, *Review: Updated scientific evidence on the welfare of gestating sows kept in different housing systems*, *Prof'l Animal Scientist* Vol. 29:189-198 (2013), available <https://www.depts.ttu.edu/animalwelfare/research/sowhousing/documents/Sowhousingreview2013.pdf>. The bottom line is that sow and piglet overall welfare and resilience is improved in group housing settings. See, e.g., X. Liu, et al., *A Comparison of the Behavior, Physiology, and Offspring Resilience of Gestating Sows When Raised in a Group Housing System and Individual Stalls*, *Animals* Vol. 11(7):2076 (2021), available <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8300341/>.

⁵⁴ Smithfield, *2020 Sustainability Impact Report* at 113, available at

76. Under the heading “Group Housing for Female Pigs” in its 2020 Sustainability Report, Smithfield explains how its “leadership in animal care is reflected in [its] successful transition to group housing systems globally.”⁵⁵

77. Smithfield’s Sustainability Reports are available on its website (<https://www.smithfieldfoods.com/sustainability-reports>) and are widely promoted on its social media pages.⁵⁶ Smithfield claims its 2020 Sustainability Report “provides an open and honest account to consumers and other stakeholders who want to know more about where their food is made and how it is produced.”⁵⁷

78. Nowhere do these publications, *see, e.g., supra* ¶¶ 47-77 and *infra* ¶¶ 79-83, indicate or clarify that Smithfield still uses single animal enclosures that are so small the pigs cannot turn around. Those omissions make its unqualified claims about non-crate-confinement of pregnant pigs and animal-friendly practices (*id.*) false and misleading.

79. Moreover, Smithfield repeatedly represents that it stands at the forefront of animal-friendly practices. For example, in its 2019 Sustainability Impact Report, Smithfield boasts that

[a]nimal care leadership has been central to our operational and business success for more than 20 years. As the world’s largest hog producer, we have a responsibility to prioritize the safety, comfort and health of our animals. Our leadership in animal care is also a point of pride, underpinning our culture, where the care and well-being of our 20 million+ market hogs produced annually is woven into the work we do

<https://www.smithfieldfoods.com/getmedia/1fc9b578-4dff-4104-9706-ba0fbbc44f47/2020-Sustainability-Impact-Report.pdf>.

⁵⁵ *Id.*

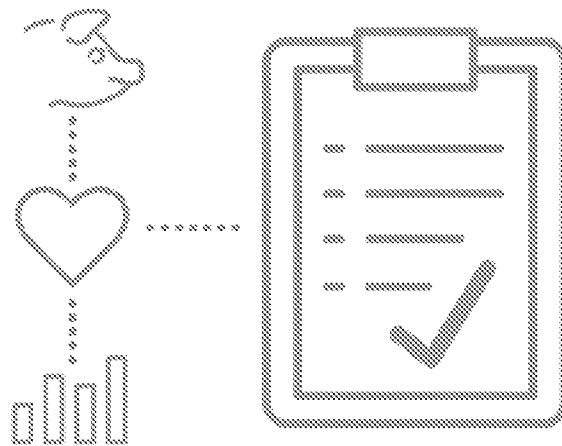
⁵⁶ *See, e.g.,* Smithfield, *2017 Sustainability Report: Animal Care*, Facebook (May 1, 2018), <https://www.facebook.com/watch/?v=1789443574412351>; Smithfield, Twitter (June 2, 2021, 11:24 AM), <https://twitter.com/SmithfieldFoods/status/1400111201510690816?s=20> (Tweet promoting 2020 Sustainability Impact Report).

⁵⁷ Smithfield, *Sustainability*, <https://www.smithfieldfoods.com/sustainability> (last visited Sept. 20, 2021).

every day.

2019 Sustainability Impact Report, *supra* note 4, at 20. Smithfield also represents it is the “leader in animal care” on several of its social media pages.⁵⁸

Smithfield Foods Is Proud to Be a Leader in Animal Care



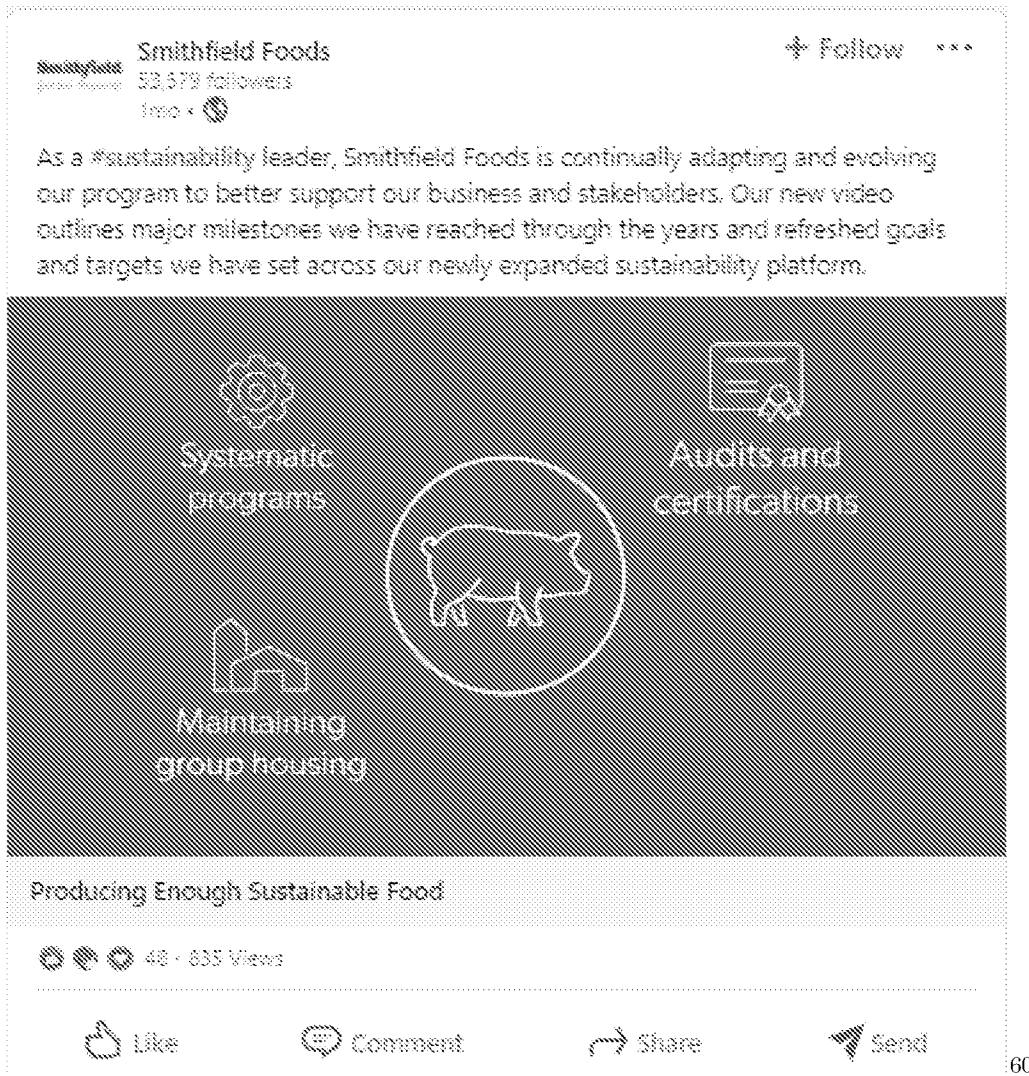
Smithfield *Good food. Responsibly.*

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80. In a recent promotional video, Smithfield claims to “keep animals safe, comfortable, and free of disease” by using “modern farms” and to “ensure the welfare of our animals” including by having “group housing on all of our company-owned farms.”

⁵⁸ *See, e.g.,* Smithfield, *Animal Care: Smithfield Foods Sustainability Report*, Facebook, <https://fb.watch/4DctauhncS/> (video saying, “We are the leader in animal care” at 1:03-1:05); Smithfield, LinkedIn, <https://www.linkedin.com/posts/smithfield-foods-we-are-committed-to-keeping-our-animals-safe-activity-6740278293305585664-WSiD>.

⁵⁹ Smithfield, Facebook (Dec. 3, 2020, 09:53 AM), <https://www.facebook.com/SmithfieldFoods/photos/a.199244063432318/3709441079079248/>.



81. Similarly, Smithfield published an interactive, cartoonish website—entitled “Sustainable from Farm to Fork”—displaying bucolic farms and ostensibly happy, smiling people without depicting any conditions inside the farms’ buildings. It allowed consumers to click on pictures of (individual) pigs that reveal claims about Smithfield’s animal-care practices. Bolded headlines in large type included “Leading the Industry in Animal Care” and “Group Housing Systems.”⁶¹ A banner falsely proclaimed, “As a leader in animal care,

⁶⁰ Smithfield, LinkedIn, <https://www.linkedin.com/posts/smithfield-foods-producing-enough-sustainable-food-activity-6825811927411785728-AvO4>.

⁶¹ See Smithfield, *Sustainable from Farm to Fork*, previously available at <https://sustainability.smithfieldfoods.com/> (version as of Feb. 9, 2021).

we ensure that our animals are safe, comfortable and healthy . . .”⁶² Smithfield’s newly revamped website makes the same or similar claims about “keeping [its] animals safe, comfortable and healthy” and that it has “world-class animal care practices.”⁶³

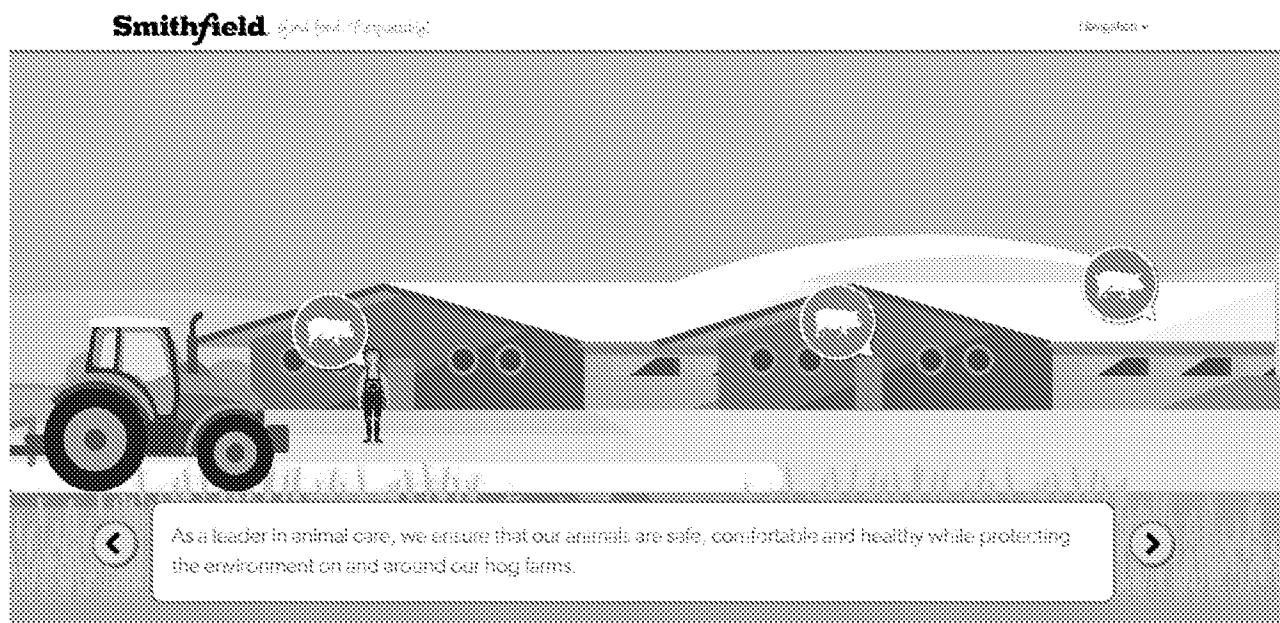


Figure 14. Screenshot from Smithfield’s “Sustainable from Farm to Fork” website claiming that Smithfield is “a leader in animal care” and that it “ensure[s] that [its] animals are safe, comfortable and healthy.”

⁶² *Id.*

⁶³ Smithfield, *Animal Care*, <https://www.smithfieldfoods.com/Animal-Care> (last visited Sept. 8, 2021).

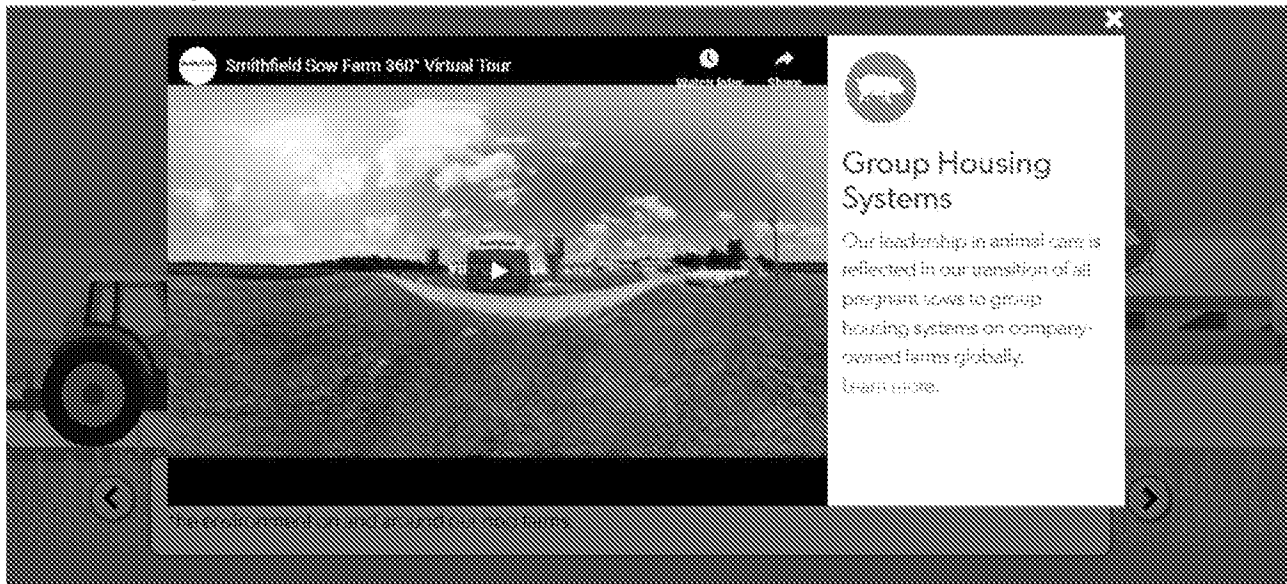


Figure 15. Screenshot from Smithfield’s “Sustainable from Farm to Fork” website highlighting (only) Smithfield’s “Group Housing Systems” in bolded and large type, again claiming “leadership in animal care,” and describing Smithfield’s supposed “transition of all pregnant sows to group housing systems on company-owned farms” without any caveats or clarifications about non-company-owned farms that raise around 50 percent of Smithfield pigs or any continued use of individual crates at company-owned facilities.

82. On the current version of Smithfield’s website, Smithfield continues to promote its group housing system noting that “Pigs are social beings [and] like to be around other pigs”:



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64 Smithfield, *Sustainability*, <https://www.smithfieldfoods.com/sustainability> (last visited Oct. 17, 2021).

83. Again, on the current version of Smithfield’s website, Smithfield advertises its group housing systems, which only and at best provides a murky description of that system if the consumer were to click on “read the case study:”



84. None of the headings or accompanying text on these websites indicate any use of individual crates that are so small the pigs cannot turn around. That omission renders this text false and misleading.

85. Smithfield also does not disclose in each of its announcements and publications what it means by company-owned farms when discussing eliminating gestation crates. That omission renders those claims, including but not limited to its group housing commitments, *see, e.g., supra* ¶¶ 55-77, 80-83, misleading.

86. In 2014, Smithfield made a separate commitment to have its contract growers convert to group housing systems by 2022.⁶⁵ The company continues to advertise that it is

⁶⁵ Smithfield, *Sustainability*, <https://www.smithfieldfoods.com/sustainability> (last visited Oct. 17, 2021) (scroll through “Company Spotlights” to 9 of 22).

⁶⁶ *See Smithfield Foods Recommends Its Contract Growers Convert to Group Housing for Pregnant Sow*, Globe Newswire (Jan. 7, 2014), <https://www.globenewswire.com/news-release/2014/01/07/600779/10063123/en/Smithfield-Foods-Recommends-Its-Contract-Growers-Convert-to-Group-Housing-for-Pregnant-Sows.html>.

on track to have its U.S. contract growers convert to group housing systems for pregnant sows by 2022.⁶⁷

87. Both the 2007 and 2014 commitments received widespread attention. For example, Smithfield's commitments, in part, led to the creation of a website (<https://cratefreefuture.com/>) that provides the quotes and sources for over 60 global retailers, including Smithfield, who have mandated an end to gestation crate use in their supply chains. Also, in promoting its 2015 Sustainability Report, Smithfield highlights that it is “[f]irst to commit to providing group housing for pregnant sows on company-owned and contract farms.”⁶⁸

88. Smithfield has long publicized to investors that its transition to group housing separates it from competitors. In an investor presentation Smithfield describes group housing as a “unique selling proposition for products and brands” and explains there is a “growing consumer focus on animal care” leading “customers purchasing group housed . . . products at a premium.”⁶⁹ In an earnings call, Smithfield's then-President and CEO, Larry Pope, responded to an investor's question about shareholder value by explaining “I talked about the 100% conversion, the pen gestation. As you know, that's now in vogue. That's the conversation of many of our food service and retail customers. We can provide that . . . We

⁶⁷ Smithfield, *2020 Sustainability Impact Report* at 19, available at <https://www.smithfieldfoods.com/getmedia/1fc9b578-4dff-4104-9706-ba0fbbc44f47/2020-Sustainability-Impact-Report.pdf>.

⁶⁸ Smithfield, *Smithfield Foods Issues First Installment of 2015 Sustainability and Financial Report*, Globe Newswire (June 15, 2016), <https://www.globenewswire.com/en/news-release/2016/06/15/848838/12889/en/Smithfield-Foods-Issues-First-Installment-of-2015-Sustainability-and-Financial-Report.html>.

⁶⁹ Smithfield, *Investor Presentation* at 12-13 (April 1-3, 2013), <https://www.sec.gov/Archives/edgar/data/91388/000009138813000011/aprilinvestorpresentation.htm>.

can control that and we can sell that through . . . I think, we're going to prove these [sic] live hog production business can really be a strong asset.”⁷⁰

89. Moreover, Smithfield claims to “ensure” animals are “safe,” “comfortable,” and “healthy.” But the untold reality is that long-term crate immobilization is inherently unsafe, uncomfortable, and unhealthy for the confined animals, as explained above. Pigs have an average lifespan of 15 to 20 years whereas the average breeding sow is killed at around 3-5 years – if she survives that long. Many do not. Smithfield expects a significant percentage of pigs to die at these facilities. For instance, “[t]he hogs at [a Smithfield contract facility] faced a . . . significant[] mortality rate of around seven percent.” *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937, 980-81 (4th Cir. 2020) (Wilkinson, J., concurring) (internal quotations and citations omitted). Descriptors like “safe,” “comfortable,” and “healthy” are false or deceptive when applied, as here, to a company-controlled facility where nearly one in ten animals dies from conditions over which Smithfield maintains complete control.

⁷⁰ *Smithfield Foods' CEO Discusses F1Q2013 Results - Earnings Call Transcript*, Seeking Alpha (Sept. 4, 2012), <https://seekingalpha.com/article/845091-smithfield-foods-ceo-discusses-f1q2013-results-earnings-call-transcript>.



Figure 16. Image from the HSUS's 2010 investigation of a Smithfield subsidiary's sow facility. See supra note 3. Some piglets are born prematurely while the mother is still in her gestation crate, Some fall through the slats into the feces and urine below.



Figure 17. Image from the HSUS's 2010 investigation of a Smithfield subsidiary's sow facility. See supra note 3. A lame pig that was taken outside to be killed was dragged, still moving and breathing, into a dumpster where the HSUS investigator finds her at the end of the day – still alive, with dead animals piled on top of her.

C. **The Reality of Defendant's Continued Use of Crates**

90. Notwithstanding its celebration of purportedly “phasing out” gestation crates, “eliminating” them, and “replacing” them with or “converting” them to group housing in order to satisfy humane-conscious consumers and companies, astoundingly, in private communication with the HSUS the company claims, “Smithfield has been entirely transparent about the status of its group housing efforts and *continued use of gestation crates* during some portions of a sow’s life.”⁷¹ Indeed, despite all the referenced assertions above to the contrary, Smithfield continues to house its sows in restrictive, individual crates that do not even allow pigs to turn around *during gestation*.

91. In 2010, an undercover investigation by the HSUS revealed that Murphy-Brown, a Smithfield subsidiary, kept more than 1000 sows in gestation crates at just *one* breeding facility in Waverly, Virginia.⁷² Pictures from the investigation show pigs engaging in harmful stereotypies that evince stress, including biting cage bars to the point of bleeding from their mouths—a consequence of gestation crate use.⁷³

⁷¹ Letter from Tennille Checkovich, Deputy General Counsel, Smithfield to Laura Fox, Staff Attorney, HSUS (Sept. 30, 2021) (emphasis added) (on file with Plaintiff).

⁷² See *Undercover at Smithfield Foods* at 1, HSUS (2010), <https://www.humanesociety.org/sites/default/files/docs/2010-undercover-investigation-smithfield.pdf>.

⁷³ See *id.*



Figure 18. Image from the HSUS's 2010 investigation of a Smithfield subsidiary's breeding facility (caption in original)



Figure 19. Image from the HSUS's 2010 investigation of a Smithfield subsidiary's breeding facility

92. In April 2012, an undercover investigator for HSUS worked at Wyoming Premium Farms' (WPF) sow and piglet factory in Wheatland, Wyoming, which at the time sold animals to Smithfield. In addition to the suffering endured by female pigs forced to spend almost all of their lives in tiny gestation crates, unable to even turn around, the

investigator also documented many other egregious abuses, including mother pigs being punched and repeatedly kicked as they were forced back to the breeding area to be re-impregnated then crammed back into gestation crates, newborn piglets falling into shallow pits filled with urine and manure, sustaining ammonia burns on their bodies, and pregnant pigs with severe rectal and uterine prolapses who were not provided proper treatment.

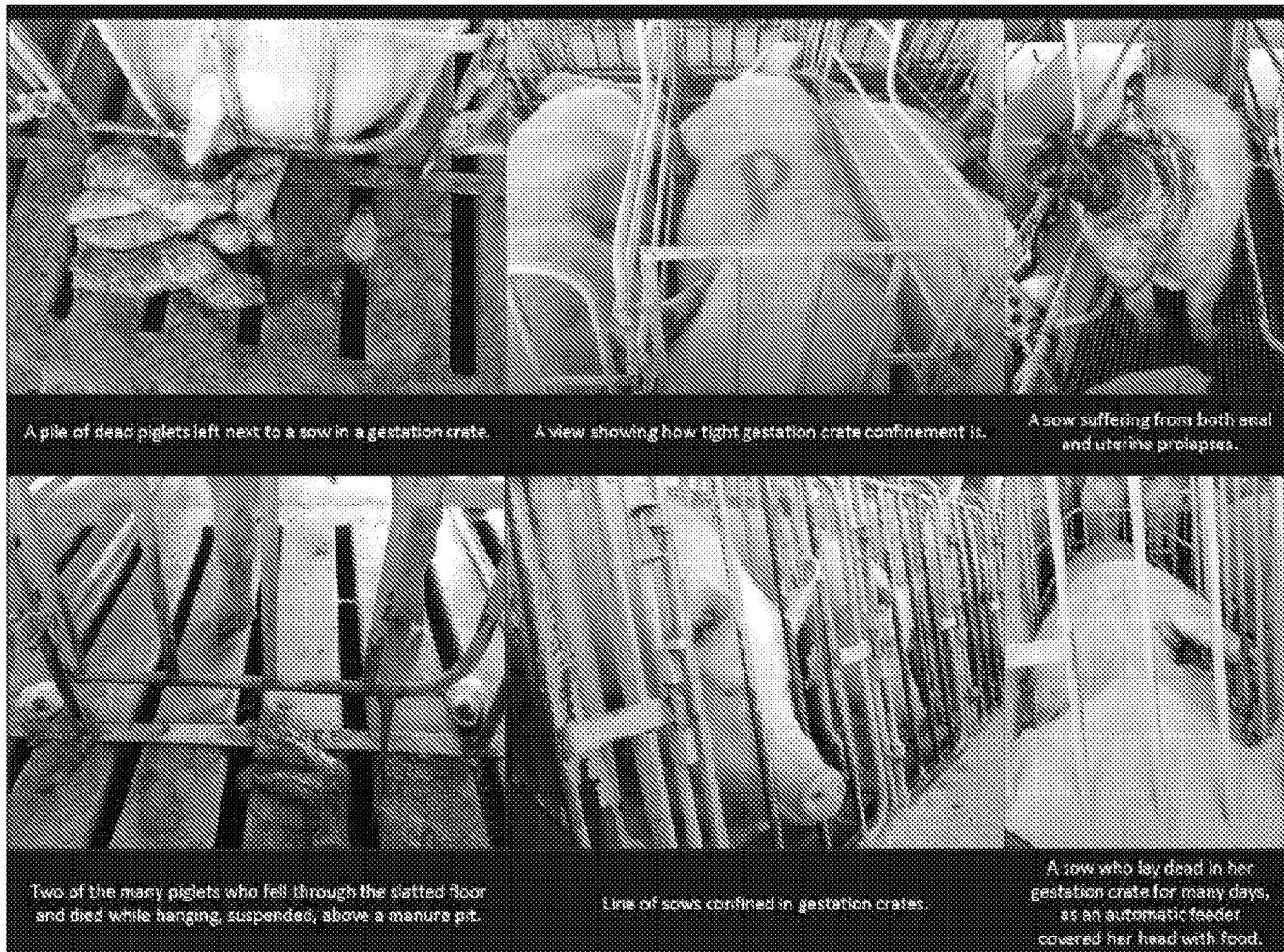


Figure 20. Picture from HSUS' report on its 2012 investigation of a Smithfield contract or independent farmer's facility (captions in the original)

93. At the time Plaintiff HSUS went public with its WPF's investigation, it chose not to call attention to Smithfield's connection with this facility because of the relationship HSUS thought it had with Smithfield and in reliance on Smithfield's continued promises

to make animal welfare improvements. Instead, HSUS sent its findings directly to Smithfield to inform Smithfield of these abuses in its supply chain and as “further evidence regarding the importance of developing a gestation crate phase-out plan for [its] contractors.”⁷⁴

94. Smithfield’s use of individual crates continued after that investigation and even after it falsely announced it met its 2007 Commitment.

95. For example, reporting on a 2017 investigation revealed use of individual crates at a Smithfield-owned Milford, Utah facility, even as Smithfield’s self-imposed deadline to phase out gestation crates was rapidly approaching.⁷⁵



Figure 21. Screen capture of video and commentary from the reported 2017 investigation of a Smithfield facility (overlying caption in the original)

96. A third investigation released in 2018, reportedly confirmed widespread use

⁷⁴ Letter from Paul Shapiro, HSUS, to Dennis Treacy, Smithfield (May 8, 2012) (on file with Plaintiff).

⁷⁵ See *Press Kit: Investigation Exposes Piles of Dead Piglets Rotting in Mother’s Feces at Smithfield*, Direct Action Everywhere (July 6, 2017), <https://www.legacydirectactioneverywhere.com/press-costcos-bloody-secret>.

of individual crates at several Smithfield-owned facilities in North Carolina, including *after* Smithfield's First and Second January 2018 announcements.⁷⁶

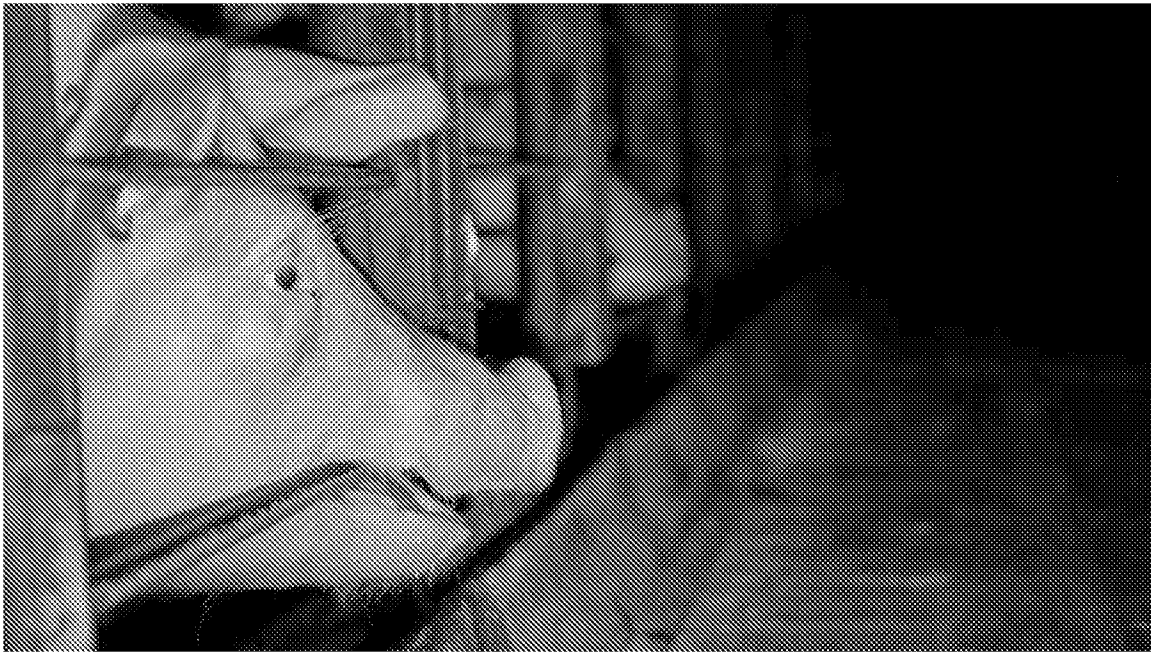


Figure 22. Photo from the reported 2018 investigation of a Smithfield facility showing a pig exhibiting the stereotypy of biting her cage's bar.

97. On an internal slideshow posted in late-2016—approaching Smithfield's internal deadline for converting away from gestation crates—Smithfield's Director of Production Research admitted that the company's sows lived in *multiple* individual stalls for *months* out of a year.⁷⁷

⁷⁶ See Dylan Matthews, *America's largest pork producer pledged to make its meat more humane. An investigation says it didn't*, Vox (May 8, 2018), <https://www.vox.com/science-and-health/2018/5/8/17318936/smithfield-foods-pork-pig-humane-animal-abuse-animal-welfare>.

⁷⁷ See Ashley DeDecker, *The Smithfield Experience: Comparing ESF and Trough Feeding for Group Housed Sows*, Slideshare 27 (Dec. 22, 2016), <https://www.slideshare.net/trufflemedia/dr-ashley-dedecker-the-smithfield-experience-comparing-electronic-sow-feeding-and-trough-feeding-for-grouped-housed-sows> (showing on slide 27 that Smithfield's sows live in “[i]ndividual stall[s] for 35–42 days” during breeding and in “[i]ndividual farrowing stall[s] for 30 days” during lactation—meaning these sows are crated for roughly 180 to 200 days out of each year).

98. The crates that Smithfield still uses pose the exact welfare concerns that motivated consumers and companies to demand phasing out gestation crates, and that Smithfield acknowledged multiple times as the rationale underlying its 2007 Commitment.

99. Instead of meeting its 2007 Commitment, Smithfield devised its own cyclical system for confining breeding sows on its farms and devised its own deceptive jargon for each step in the process. Smithfield defines the first phase in its sow breeding process as “Breeding & Pregnancy Confirmation,” the second as “Gestation,” and the third as “Farrowing & Nursing.” In each phase, Smithfield advertises that sows are housed in different housing systems within different barns on its farms.

100. By Smithfield’s own definitions, “gestation crates” or “individual gestation stalls” are not used at any point in this process. That is not because Smithfield does not use gestation crates/individual stalls during their impregnation, pregnancy and breeding cycles, but rather because it has decided to rename this unpopular (and illegal in some states) practice as something else and has arbitrarily defined for itself only a mere *segment* of a sow’s actual pregnancy and biological gestation period as the entire “Gestation” period for purposes of advertising. Smithfield avoids describing the crates it uses during the first six weeks of pregnancy and the last week of pregnancy through birth and weaning as “gestation crates” or “gestation stalls,” even though they are *the same confinement devices* and impose *the exact same harms* and are often used at *the exact same period of pregnancy* as what they themselves and the pork industry has called for decades “gestation crates” or “gestation stalls.” As a result, a reasonable consumer would not realize that Smithfield has renamed these practices and uses self-serving descriptions of its conduct to falsely claim to have met its public pledge to “eliminate” those very practices. As a result, Smithfield

obfuscates its actual housing practices. This arrangement allows Smithfield to misleadingly peddle cruelly produced products while patting itself on the back for supposedly avoiding those same cruel practices they praised themselves for eliminating.

101. Smithfield buries any explanations of its arbitrary and renamed cyclical housing system in small text beneath headlines like “Group Housing Systems for Pregnant Sows”—all of which could only be informative only if the consumer 1) understands what “farrowing stalls” are, as defined by Smithfield, but Smithfield never adequately describes what these are, and 2) knows how long the typical breeding, gestation, and weening times are, which again the Defendant fails to disclose. *See, e.g., supra* ¶¶ 72-75, 82-83; *2019 Sustainability Impact Report, supra* note 4, at 26.

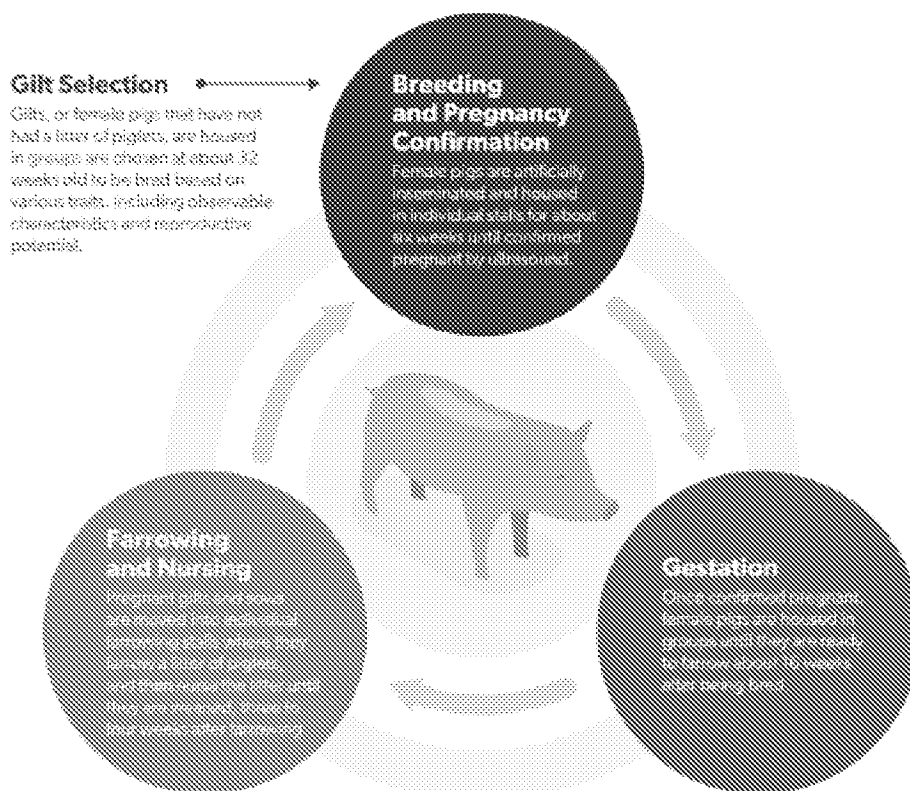


Figure 23. Screenshot taken Feb. 10, 2021 of Smithfield’s complex explanation of its use of individual crates, featuring a prominent single uncrated pig and only tiny text on a busy diagram for the actual explanation. Nearly identical to the diagram published in Smithfield’s 2020 Sustainability Report. See supra ¶ 75.

102. Many of these limited explanations from Smithfield’s newest Sustainability website and report were not available for its 2018 Sustainability Report’s website, so any consumer who saw the prior versions would not even have that much information.

103. Reasonable consumers are unlikely to understand exactly when and how Smithfield actually crates its pigs.

104. Moreover, even when Smithfield uses the “group housing” that it boasts about and highlights so much, such housing does not uniformly afford pigs enough space to comply with some state laws setting humane standards for sow confinement. For example, a California law known as Proposition 12 requires a minimum of twenty-four square feet of space per pig as a minimum for humane confinement, but a Smithfield executive admitted in late 2019 that much of its group housing does not comply with even that minimum requirement. *See* Darrell Decl. ¶ 4 (conceding that some “new Smithfield group housing environments” “do not satisfy the 24 square foot requirement of Proposition 12”). This again demonstrates that Smithfield is not “ensuring” the “comfort” of pigs.

105. Moreover, apart from Smithfield’s obfuscations related to its company-owned farms’ continued use and duration of individual crates, Smithfield’s *contract* and *independent* farmers commonly use individual crates, including *what even Smithfield agrees are “gestation crates”*—crates used beyond Smithfield’s arbitrarily renamed and shortened “Gestation” period.

106. Indeed, in mid-2018—after Smithfield’s January 2018 announcements—a Smithfield executive revealed (in a court proceeding that consumers are highly unlikely to come across) that only about *fifty percent* of Smithfield’s farms—across its company-owned farms and its contract growers—had done away with *what Smithfield agrees are* gestation

crates. *See* Transcript of Testimony of Terry Coffey at 146, *Artis v. Murphy-Brown, LLC*, No. 7:14-CV-237-BR (E.D. Va. Sept. 17, 2018) (“Smithfield ha[s] made a commitment to convert away from that style sow housing [involving gestation crates] into group housing, and so we are doing that and have achieved about 50 percent of the sows. All the sows that are in company-owned farms have been converted and sows that are in contract farms are being converted.”).

107. In another court proceeding, it was revealed that one of Smithfield’s contract farmers raises approximately 13,500 market pigs per year from 600 sows, which are confined in two breeding and gestation barns. Ninety percent of this farmers’ pigs are sold to Smithfield. He does not want to convert to a crate free system, and Smithfield has not offered to cover any conversion costs nor does Smithfield’s contract with this farmer dictate which type of housing must be used, which seemingly contradicts Smithfield’s assertions that it “maintains absolute control over every facet of the process.”⁷⁸ *See* Decl. of Todd Hays at 84, *Nat’l Pork Producers Council v. Ross*, No. 3:19-cv-02324-W-AHG (S.D. Cal. Dec. 5, 2019) (establishing that this pig farmer who sells most of his pigs to Smithfield uses both “farrowing stalls” and “gestation stalls that are approximately 24 inches by 8 feet long, where they remain throughout gestation”).

108. In the same court proceeding, another pig producer who has “around 10,000 sows” who “produce approximately 225,000 hogs on an annual basis” houses these “sows solely in individual stalls the measure 23 inches by 7 feet, or in farrowing stalls” and sells “roughly 80% of [his] product under marking contracts to Smithfield Foods.” *See* Decl. of Phil Borgic at 49, *Nat’l Pork Producers Council v. Ross*, No. 3:19-cv-02324-W-AHG (S.D.

⁷⁸ Opening Brief of Smithfield, *supra* note 9, at 7.

Cal. Dec. 5, 2019). This producer claims to have an eight-year contract with Smithfield. *Id.* at 49-50.

109. An independent farmer who sells many of his pigs to Smithfield stated in a declaration that “[t]he second I can get rid of my pens and move entirely back to individual stalls, I will.” *See* Decl. of Greg Maher at 103-04, *Nat’l Pork Producers Council v. Ross*, No. 3:19-cv-02324-W-AHG (S.D. Cal. Dec. 5, 2019).

110. According to Dallas Hockman, Vice President of Industry Relations of the National Pork Producers Council—a trade group that Smithfield is a member of⁷⁹—“NPPC estimates that approximately 72% of commercial sows in the U.S. are housed in individual pens throughout gestation. Of the remaining 28% of commercial sows which are in group housing, either new construction or conversion of old facilities, nearly all of these farms house sows in individual breeding pens for 30 to 45 days after breeding until they are confirmed pregnant.” Decl. of Dallas Hockman at 4, *Nat’l Pork Producers Council v. Ross*, No. 3:19-cv-02324-W-AHG (S.D. Cal. Dec. 5, 2019).

111. All of these statements (*see, e.g.*, ¶¶ 104-110) taken together substantiate Plaintiff’s belief that Smithfield is continuing to use gestation crates and has been and continues to mislead consumers about its successful elimination of such crates and that the company is on track to eliminate crates from its supply chain by 2022.

112. Moreover, upon information and belief, Smithfield has been inflating the percentage of company-owned sows in gestation crate-free housing by selling company-owned sows to contactors (thus pumping up the percentage of company-owned sows housed

⁷⁹ Smithfield, *2020 Sustainability Impact Report* at 105, available at <https://www.smithfieldfoods.com/getmedia/1fc9b578-4dff-4104-9706-ba0fbbc44f47/2020-Sustainability-Impact-Report.pdf>.

in groups, without converting housing for those sows). For instance, in 2010 Smithfield reduced its U.S. herd by 13%.⁸⁰ Whereas nationally, in 2010, sow herds in the U.S. only dropped a total of less than 1%.⁸¹ It is believed that this portion of Smithfield's herd population was sold to Prestage, a company that apparently sells exclusively to Smithfield.⁸² Around the same time, Smithfield advertised on its website that it plans to have 30 percent of its company-owned sows in gestation crate-free housing by the end of the year.⁸³

113. Smithfield's announcement of its commitment to phase out gestation crates also roughly coincided with an alleged, unlawful attempt to reduce its sow population in coordination with other industry actors, thereby lowering the overall amount of pork produced and allegedly allowing the pork producing members of the alleged cartel to raise and fix the price of pork in a way that generated increased income for these producers.⁸⁴

⁸⁰ Smithfield, *Smithfield Foods Reports Fourth Quarter and Full Year Results*, Globe Newswire (June 17, 2010), available at <https://www.globenewswire.com/en/news-release/2010/06/17/423382/12889/en/Smithfield-Foods-Reports-Fourth-Quarter-and-Full-Year-Results.html>.

⁸¹ Betsy Freese, *Pork Powerhouses 2010: Back In Black*, Successful Farming (Sept. 14, 2010), <https://www.agriculture.com/livestock/hogs/pk-powerhouses-2010-back-in-black-283-ar9801>.

⁸² See *Smithfield Divests Oklahoma Operations to Prestage Farms*, National Hog Farmer (Jan. 31, 2011), <https://www.nationalhogfarmer.com/news/smithfield-divests-oklahoma-operations-0131/>; Dale Miller, *Prestage Pride*, National Hog Farmer (June 15, 2001), <https://www.nationalhogfarmer.com/mag/farming-prestage-pride>.

⁸³ Smithfield, *Smithfield 2011 Annual Report* at 25, available at https://smithfieldfoods.com/getmedia/5ced56cb-e6b3-4798-bff0-057934f77be8/smi_csr_11.pdf (“By the end of calendar year 2011, we expect that nearly 30 percent of company-owned sows will be in group housing facilities.”)

⁸⁴ See Complaint, *In Re Pork Antitrust Litigation*, 2020 WL 880387 (D.Minn. Jan. 14, 2020) (lawsuit alleging Smithfield and its competitors “entered into a conspiracy from at least 2009 to the present to fix, raise, maintain, and stabilize the price of pork”); see also Eli Hoff, *Data service sued for facilitating anti-competitive behavior*, Fox59 (Aug. 7, 2021), <https://fox59.com/news/data-service-sued-for-facilitating-anti-competitive-behavior/>

114. In July of 2021, Smithfield and plaintiffs in a Minnesota putative class action proposed a settlement that required Smithfield to pay plaintiffs \$83,000,000. In so proposing, Smithfield denied any wrongdoing and liability. As a Smithfield executive recently testified, one way to give confined sows more room includes reducing the total number of sows at any given facility. *See* Darrell Decl. ¶ 10. Thus, on information and belief, Smithfield’s crate free commitment in 2007 may have been intended as a cover story to provide a lawful explanation as to why the company and its competitors were reducing its sow population, when in fact that reduction may have been part of the alleged unlawful output reduction scheme. Consequently, not only are Smithfield’s customers being deceived about the raising and tracing practices of the company—attributes that consumers of pork are willing to pay more for, but they also may have paid more for Smithfield products because of the alleged price fixing conspiracy.

D. Defendant’s Claims that its Products are Traceable to the Farm of Origin

115. For its 2018 Sustainability Report, Smithfield launched an interactive website, which received national attention.⁸⁵ On this site, Smithfield made claims to keep a close eye on where its pigs come from and go. Smithfield acknowledges that “[c]onsumers want to know where their food comes from and how it is made” and claims to “take pride

(reporting “Wholesale and retail price data from the USDA reflects a rise and stabilization in consumer prices since early 2008, when the conspiracy is alleged to have started affecting the market, particularly in pork. After remaining relatively stable between 2000 and 2008, pork retail prices shot up almost 50% from January 2008 to a then-record high in September 2014. After that peak, retail prices remained high, always at least 25% higher than 2008 levels.”).

⁸⁵ Lisa Lupo, *Smithfield Foods Launches Interactive Farm-to-Table Virtual Tour*, Quality Assurance & Food Safety (May 28, 2019), <https://www.qualityassurancemag.com/article/smithfield-food-launches-interactive-farm-to-table-virtual-tour/>.

in our ongoing commitment to transparency from farm to facility to fork.”⁸⁶



Figure 24. Screenshot of Smithfield’s 2018 website claiming that “[c]onsumers want to know where their food comes from and how it is made” and that Smithfield “take[s] pride in our ongoing commitment to transparency from farm to facility to fork.”

116. In its 2019 Sustainability Report, Smithfield claims that it “can trace our entire value chain, from farm to facility to store.”⁸⁷ In this context, Smithfield insists that “all pigs are traceable to farm of origin and are raised in the United States.”⁸⁸

117. In its latest Sustainability Report, Smithfield defines “traceability” as “[t]he ability to trace [its] hogs back to the farm of origin.”⁸⁹ Smithfield explains that “[t]hanks to [its] vertically integrated research, [it] can literally trace the genetic lines across [its] entire

⁸⁶ Smithfield, *Sustainable from Farm to Fork*, previously available at <https://sustainability.smithfieldfoods.com/> (version as of Feb. 10, 2021).

⁸⁷ Smithfield, *2019 Smithfield Sustainability Report* 7, available at https://www.smithfieldfoods.com/getmedia/fd77514a-5d4c-4b51-abf0-8f6b83a34fd3/SMITHFIELD_CSR_Report_2019.pdf.

⁸⁸ *Id.* at 102.

⁸⁹ Smithfield, *2020 Sustainability Impact Report* 119, available at <https://www.smithfieldfoods.com/getmedia/1fc9b578-4dff-4104-9706-ba0fbbc44f47/2020-Sustainability-Impact-Report.pdf>.

pork chain, from breeding to farms to the final product.”⁹⁰ According to Smithfield, its “vertically integrated supply chain provid[es] an unparalleled level of traceability...”⁹¹

118. The 2020 Sustainability Report goes on to explain that “100% of [Smithfield’s] facilities participate in the U.S. Department of Agriculture’s Process Verified Program (PVP), which validates [its] program including [the] company’s requirement that all pigs are traceable to farm of origin and are raised in the United States.”⁹² This “PVP certification provides [Smithfield’s] customers and consumers farm-to-table assurance in the animal welfare and safety of their food supply.”⁹³

119. A case study authored by Datu Research, with contributions from Environmental Defense Fund and Smithfield Foods, notes that “[c]onsumers themselves are demanding change in food business practices. The importance of transparency and food traceability is now at an all-time high. Many consumers are no longer satisfied to purchase a product that they like; they also want to know that it was responsibly produced.”⁹⁴ In this report, Stewart Leeth, Smithfield’s Vice president of regulatory affairs and chief sustainability officer, is quoted saying “Today’s consumers want to know where their food is coming from and that it’s being made in a responsible, sustainable way.”⁹⁵

120. Smithfield has been making traceability claims like this since at least 2015. In its 2015 Sustainability & Financial Report Smithfield states: “All hogs that we process,

⁹⁰ *Id.* at 111.

⁹¹ *Id.* at 50.

⁹² *Id.* at 77.

⁹³ *Id.* at 15.

⁹⁴ *Shared Value: How Smithfield Foods creates environmental and business benefits through supply chain partnerships* at 6, Datu Research (2018), <https://www.edf.org/sites/default/files/content/smithfield-case-study.pdf>.

⁹⁵ *Id.* at 7.

whether company-owned or not, are traceable to farm of origin, including nursery and finishing. Records are maintained to support this.”⁹⁶

E. The Reality of Defendant’s Lack of Product Tracing Abilities and the Impossibility of Consumers Tracing Smithfield Pork to Its Farm of Origin

121. Upon information and belief, consumer tracing of Smithfield’s products is impossible because Defendant is the only source for that type of information and does not disclose that information.

122. In a 2019 declaration submitted under penalty of perjury before a federal district court in California, a Smithfield executive claimed that to comply with Proposition 12,

Smithfield would have no choice but to segregate pigs that are the offspring of Proposition 12 compliant breeding sows from the offspring of sows that are not, and to create an entirely separate category of whole pork products. This will cause significant disruption to the Smithfield supply chain, resulting in increased cost and decreased efficiency.

Darrell Decl. ¶ 14 (emphasis added). This declaration was used in support of a lawsuit brought by the North American Meat Institute, of which Smithfield is a member, challenging Proposition 12—a California law that bans the use of some of the most extreme and cruel forms of farm animal confinement, such as gestation crates, and prohibits the sale of certain cruelly produced products within the state. Cal. Health & Safety Code § 25990 *et seq.*

123. Smithfield is also a member of the National Pork Producers Council (“NPPC”) and does business with other producers that are NPPC members. In a NPPC lawsuit,

⁹⁶ Smithfield, *2015 Sustainability & Financial Report* at 30, available at <https://www.smithfieldfoods.com/getmedia/e7639212-53ce-4c70-8385-4290d5ee363f/smithfield-2015-integrated-report.pdf>.

supported with declarations from several Smithfield contract growers, NPPC claims that “tracing throughout the complex pork-production chain is not possible.” Plfs’ Reply Br., *NPPC, et al., v. Ross, et al.*, Doc. 53, Case No. 20-55631 at 6 (9th Cir Jan. 1, 2021). NPPC argues the “the infeasibility of tracing pigs and pork cuts back to a particular sow.” *Id.* at 42. NPPC goes on to claim that “because of the impracticality of tracing a single cut of pork back to a particular sow housed in a particular manner from six months of age on, farmers everywhere will be required to conform their operations to comply with Proposition 12 for all of their sows.” *Id.* at 15. NPPC explains that “pork is a particularly difficult product to trace throughout the supply chain” and “after pork comes out of a packing house, it become [sic] very difficult to ascertain where pork product came from,” *Id.* at 31. In its most recent filing, a petition for a writ of certiorari before the U.S. Supreme Court, NPPC explains that “[t]he pork production process is segmented,” which “makes it impossible to trace every cut of pork back to a particular sow housed in a particular way.” Petition, *NPPC, et al., v. Ross, et al.*, Case No. 21-468 at 7 (U.S. Sept. 27, 2021). In its petition, NPPC also explains that “[p]ork product packages may also combine meat from different pigs . . . Rarely is the whole pig sold. As a result, it is not possible to trace every pork product that comes out of a packing facility back to a particular sow housed a particular way.” *Id.* at 11.

124. Plaintiff the HSUS expended additional time and resources to examine Defendant’s traceability claims by drafting and submitting a Freedom of Information request to the U.S. Department of Agriculture’s (USDA) Agricultural Marketing Service (AMS) for records relating to Smithfield Foods, Inc.’s Product Verified Program (PVP) claim for PVP Certificate No. PV9100BDA.

125. AMS’ “Process Verified Program is a verification service that offers applicants

a unique way to market their products to customers using clearly defined, implemented, and transparent process points.”⁹⁷ While Smithfield’s traceability claims are not made in the context of its PVP certificate, the program could help illuminate how and whether Smithfield’s traceability claims are accurate and might have helped Plaintiff trace the products.

126. The HSUS reviewed the responsive records provided by AMS. These efforts, however, did not result in allowing Plaintiff to trace Smithfield’s products to the farms of origin. Plaintiff is currently pursuing an appeal of AMS’s response to obtain additional records.

127. The HSUS also obtained the ear tag identification numbers of several pigs that came through a Smithfield contract facility. With these ear tag identification numbers, the HSUS was able to trace the animal to a relative location where the animal was likely from but the precise location could not be verified nor could the identification number be used to trace the animal to where he was born—the farm are origin—or where the animal went for processing and to market.

128. Given the allegations in the lawsuits, discussed *supra* ¶¶ 122-123, the sworn testimony of those familiar with Smithfield’s practices, a review of Smithfield’s PVP records, and tracking ear tag identification numbers, Plaintiff has reason to believe Smithfield’s traceability claims, as described above, are false or misleading.

F. Reasonable Consumers’ Understanding of Defendant’s Claims

129. Reasonable consumers have understood Smithfield’s 2007 Commitment, 2018

⁹⁷ *Process Verified Program*, USDA, <https://www.ams.usda.gov/services/auditing/process-verified-programs> (last visited Oct. 17, 2021).

announcement that it “fulfilled” the commitment, and subsequent advertisements related to pig housing to mean something quite different from Smithfield’s actual practices. As evinced by consumer survey data, descriptions on popular websites indicating the common usage of relevant terms, and media reports covering Smithfield’s releases, reasonable consumers would understand Smithfield’s claims to mean that it no longer “confines mother pigs to fenced-in areas barely larger than their bodies, where they lack any room to turn around.” Matthews, *supra* note 76.

130. In January 2021, Dr. Claudiu Dimofte, a Professor of Marketing at San Diego State University, conducted an online survey of U.S. consumers, including consumers in the D.C. metro area, who buy pork products to assess their perception of gestation crate claims, like those described above. Dr. Dimofte holds a Doctorate in Marketing from the University of Washington and a Master of Business Administration from the University of South Carolina.

131. In the survey (hereafter “Dimofte Survey”), 298 members of an online consumer panel were asked a series of questions about their pork purchasing activities and their perception of the claims and behaviors at issue here and as described above.

132. The Dimofte Survey results demonstrate that Plaintiff’s interpretation of Smithfield’s gestation crate claims is consistent with consumer reaction to Smithfield’s claims and objectively reasonable. According to the Dimofte Survey, the overwhelming majority of consumers believe that the manner in which Smithfield treats its sows, as described above, is unacceptable. The Dimofte Survey also showed that consumers would find it commendable if a company were to stop using gestation crates and such behavior would positively influence a consumer’s decision to buy meat from that company.

133. Relevant to Smithfield’s behavior and claims as described above, the Dimofte Survey asked respondents to “[c]onsider a leading pork producer that has announced the adoption of a new meat producing policy in its company-owned farms after a certain date and imagine later finding yourself in a grocery store, looking to purchase a pork product from the respective producer, manufactured after that date.” Over a third of respondents answered that they would “definitely expect” that the product was made in accordance with the new policy and the overwhelming majority (over 70%) had at least some expectation that the product conformed with the advertised policy.

134. Regarding animal treatment and traceability (the ability to trace a product from a store to the farm of origin where the animals were born and raised), most respondents of the Dimofte Survey indicated that these are important to extremely important attributes to consider when deciding to purchase pork products. Over 80% of respondents said that a pork producer's claim of humane animal treatment would make them at least somewhat more likely to choose its pork products. Over 70% of respondents said that they would be at least somewhat more likely to choose a pork product from a producer that claimed to allow consumers to trace its products to the farm of origin. Accordingly, Smithfield’s tracing claims, *see e.g., supra* ¶¶ 115-120, are material to the company’s consumers.

135. A curious consumer doing internet searches of popular, commonly accessed reference websites would get a clear understanding that the terms “gestation crate” and “gestation stall” are all-encompassing terms that broadly refer to the equipment that is used at any point, not just at specific points in time, on farms to confine sows in restrictive, individual spaces that prevent them from turning around. *See, e.g., Gestation Crate,*

Wikipedia, https://en.wikipedia.org/wiki/Gestation_crate (last visited Oct. 17, 2021) (noting generally that “[a] gestation crate” is “also known as a sow stall” without limiting the definition to precise time periods during pregnancy as Smithfield does).

136. Tellingly, as of the date of this complaint, searching Wikipedia for the terms “farrowing crate” or “sow stall” automatically redirects the searcher to the “gestation crate” entry, implying that the term “gestation crate” broadly covers all sow confinement crates or stalls. Wikipedia does not recognize, and has no article for, the Smithfield term “individual stall.” Moreover, a search for “farrowing stall,” “gestation stall,” or “individual sow stall” recommends the entry on “gestation crates.”

137. No reasonable interpretation accessible on any popular website supports Smithfield’s arbitrary definitions of which timeframe within a sow’s life and pregnancy counts as “gestation” and which counts as “farrowing.” Yet Smithfield’s representations could be construed as true only if one comprehends and accepts the company’s inadequately explained, arbitrary, and nonsensical line-drawings. *See, e.g., supra* ¶¶ 78, 100-103.

138. Reasonable consumers accustomed to the decades-old definitions of “gestation crates” evinced by these websites (*see, e.g., supra* ¶¶ 135-136) would be *misled* by the claims.

139. Smithfield’s consistent emphasis on its supposedly superlative “leader[ship] in animal care” and its pigs’ exceptional “comfort[]” and “well-being” contribute to consumers’ false perception that whatever confinement practices Smithfield uses present few if any animal-welfare concerns.⁹⁸ Smithfield’s claims regarding its animal care

⁹⁸ Smithfield, *Animal Care Highlights and Achievements*, <https://www.smithfieldfoods.com/animal-care> (last visited Sept. 8, 2021); Smithfield,

leadership and the comfort and well-being of the pigs it turns into meat products speak directly to animal welfare concerns that are material to consumers.

140. Moreover, because Smithfield consistently fails to clarify that many, if not most, of its contract growers and independent farmers still use what even Smithfield agrees are gestation crates, no reasonable consumer encountering Smithfield's representations would understand the reality that *about half* of its pork still comes from pigs kept in those crates. No reasonable consumer would understand from Smithfield's descriptions about implementing group housing and meeting its 2007 Commitment that any given Smithfield pork product has about a fifty-fifty chance of coming from a facility that crates sows for their entire lives. Additionally, no reasonable consumer would understand from Smithfield's descriptions of its group housing system that its sows on company-owned farms are confined to crates for about half of their lives. The representations and omissions described in this paragraph are misleading as to Smithfield's animal welfare practices and policies, and as such, are misleading regarding material facts.

141. Relevant to Smithfield's behavior and claims as described above, the Dimofte Survey confirms that if a company claimed to have eliminated gestation crates but in fact only eliminated the practice for half of its pigs, consumers would find that to be misleading, unethical, reprehensible and it would negatively impact their buying decisions—the overwhelming majority (76%) responded that it would have “some” to an “extremely negative” influence on their decision to buy meat from that company.

Animal Care Policy, <https://www.smithfieldfoods.com/Animal-Care-Policy> (last visited Sept. 8, 2021).

G. Harm to District of Columbia Consumers, Plaintiff, and Plaintiff's Members

142. The HSUS is a prominent animal welfare organization that is committed to advancing the humane treatment of animals and ensuring that claims of humane treatment are truthful. Smithfield is using the HSUS's name to mislead consumers by deceptively claiming the HSUS is praising Defendant. While Smithfield has removed its mention of the HSUS from its 2016 Sustainability Report, it maintains this claim in its 2015 Sustainability & Financial Report, reproduced in Figure 12, which remains available online. Defendant and the trade associations it belongs to are also still perpetuating these claims in other outlets. *See, e.g.*, Declaration of Robert Darrell ("Smithfield's [group housing] program has been praised by well-known animal rights organizations").

143. Of course, the HSUS only praised Smithfield because it claimed it would "eliminate" gestation crates and that it was on track to achieve this promise. Had Plaintiff known then that Smithfield would use its pledge and the HSUS's qualified support to deceive its consumers in the ways described above, no praise would have been given. Moreover, the HSUS is certainly not continuing to praise Smithfield, as Defendant's publications would lead consumers to believe.

144. By using the HSUS's name in this deceptive manner, Smithfield is coopting the HSUS brand and diluting the organization's credibility.

145. Plaintiff has purchased Defendant's pork products that are advertised and sold to residents and consumers in the District of Columbia through retail stores that are located in the District of Columbia.

146. Plaintiff has used Establishment Numbers—found on stamps that by law are placed on all commercially sold pork products—to trace Defendant's pork products back to

the slaughter facilities that produced them.

147. Plaintiff examined the outside packaging, the inside packaging, and the product to search for other identifying markers that would allow Plaintiff to trace the product to the farm of origin. The following identification numbers were found on the outside of the packaging: LOT 1140526B EST8028; 0341875; EST 413; 1044960. One of the products contained a recipe and cooking instructions on the inside of the package, but no identification markers were found on the inside of the packaging. The receipt for these products also contained no identifying information that would allow a consumer to trace the product to the farm of origin.

148. “EST8028” could stand for USDA establishment number M8028, which is a Smithfield Packaged Meat Corp. facility in Middlesboro, Kentucky. “EST 413” could indicate USDA establishment number M413, which is a Smithfield Fresh Meats Corp. facility in Clinton, North Carolina. These facilities are processing facilities where pigs come to be slaughtered and packaged. These facilities are not at the location of where the pigs were raised or born. Pigs are often transported up to 100 miles from a finishing facility to a processing facility and are often born at a sow facility that is miles away from the finishing facility where they are raised. Since many farms supply pigs to these facilities, tracing the product farther back to the farm of origin is not possible with this limited information.

149. Plaintiff also consulted staff for internal knowledge and staff expertise regarding which pig-growing facilities are likely to supply those slaughter facilities to attempt to trace the pork further back to the growing facilities of origin.

150. From these processes, Plaintiff has determined that Defendant’s pork

products sold in the District of Columbia cannot be traced to the products' origin nor can consumers determine such products' farm of origin, or whether they originate from pigs confined in restrictive individual crates.

151. As discussed above, this finding stands in sharp contrast to the reasonable consumer's expectations when she or he buys Defendant's products.

152. On information and belief, based on representations made by Defendant in its advertising, consumers in the District of Columbia believe that Defendant's pork products come from mother pigs—or the offspring of the mother pigs—raised without the use of restrictive individual crates and that these products can be traced to their farm of origin. But in reality, many if not most of the mother pigs in Smithfield's supply chain—on Smithfield-owned farms and on contract and independent farms—are, in fact, kept in such crates for weeks at a time, including during pregnancy, and cannot be readily traced to farms of origin.

153. On information and belief, consumers in the District of Columbia have purchased pork—in reasonable reliance on Defendant's deceptive advertising—that they otherwise would not have purchased.

154. Abundant evidence shows that consumers consider animal welfare when making purchasing decisions and are often willing to switch to humane products. For example, even Smithfield has publicly acknowledged that it would capture a greater market share by shifting to more humane housing practices.

155. Consumer surveys corroborate this belief. The Dimofte Survey results show that consumers consider a company's animal treatment an important factor when looking to buy a pork product and poor animal treatment would negatively impact a consumer's

likelihood of buying that product. In another representative example, an academic survey of hundreds of American and Canadian consumers found widespread public opposition to the use of individual crates for sows.⁹⁹ Another survey conducted by professors at Kansas State University and Michigan State University on labeling of animal welfare practices, found that 61.7% of survey respondents favored mandatory labeling of pork produced on farms using gestation crates.¹⁰⁰ Another survey found 77% of consumers are concerned about the welfare of animals raised for food.¹⁰¹ These surveys support Smithfield's own conclusion that sow confinement practices and animal welfare generally are material to the company's consumers. *See supra* note 1.

156. Defendant's advertising—particularly with respect to its crate practices—is directed at and targets the specific class of consumers who are deeply concerned with the welfare of animals, such as Plaintiff's members, and who specifically attempt to buy products that are produced in a way that does not negatively impact animal welfare, and, as such, they are more vulnerable and susceptible to being misled by Smithfield's representations.

157. Consumers are unable to tell upon purchasing Defendant's pork products that they have been deceived because it is impossible, for consumers to reliably trace Smithfield

⁹⁹ *See* E. B. Ryan et al., *Public Attitudes to Housing Systems for Pregnant Pigs*, 10 PLoS ONE 1, 10 (2015), available <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0141878>.

¹⁰⁰ Glynn Tonsor and Christopher Wolf, *Mandatory Labeling of Animal Welfare Attributes* at 3, Kansas State University, Department of Agricultural Economics (July 2011), available at <http://www.agmanager.info/livestock/marketing/animalwelfare/AW-Labeling-FactSheet-07-19-11.pdf>.

¹⁰¹ *New Research Finds Vast Majority of Americans Concerned about Farm Animal Welfare*, ASPCA (Jul 7, 2016), <https://www.asPCA.org/about-us/press-releases/new-research-finds-vast-majority-americans-concerned-about-farm-animal>.

pork products to the facilities that bred the producing pigs. Defendant neither makes this information available to the public nor endorses any other source of such information. A reasonable consumer would expect the opposite given Smithfield's claim of "commitment to transparency from farm to facility to fork" and that "all pigs are traceable to farm of origin." As Smithfield acknowledges, "[c]onsumers want to know where their food comes from."

158. As a result, consumers—especially humane-conscious consumers, such as Plaintiff's members—will continue to be deceived and induced to purchase Defendant's pork as long as Defendant's false advertisements continue.

159. Most consumers, including Plaintiff's members, do not find out that they have been deceived by falsely or misleadingly advertised pork until they learn (if they ever do) about Smithfield's practices from third-party sources, such as advocacy groups like Plaintiff or the media.

160. On information and belief, District of Columbia residents and consumers have been and will continue to be injured by Defendant's conduct because they purchase pork that Defendant manufactures, distributes, sells, and advertises in a way that leads them to believe the products can be traced to the farms of origin and the production process uses no gestation crates when, in fact, Defendant's tracing abilities are misrepresented, consumers cannot trace for themselves Smithfield's products to the farm of origin, and Smithfield's sows and its suppliers' sows are routinely confined in individual stalls for weeks at a time, including during pregnancy. As such, consumers have suffered and will continue to suffer actual and present economic damage as a result of Defendant's actions because they have expended funds to purchase pork that they otherwise would not have

purchased.

161. Because more than six million sows are kept in gestation crates in the U.S. to produce 125 million pigs that are killed annually in pork slaughter facilities, the HSUS works to end the confinement of farm animals in restrictive enclosures like gestation crates by educating consumers and businesses on such inhumane practices and the availability of alternatives. Defendant's actions impair and frustrate the HSUS's ability to pursue its goals because Defendant's deceptive advertising requires the HSUS to divert its limited organizational and programmatic resources to combat Defendant's misleading actions by informing the public, other companies, and its members about the cruel origins of Defendant's pork products.

162. The HSUS has engaged in investigations and research into Smithfield's business practices in order to assess the veracity of Smithfield's claims regarding its use of crates. The HSUS has also engaged in campaigns to inform the public and major buyers, including food distributors, restaurants, and grocery store chains, about the reality of Smithfield's practices.

163. Such investigations, research, and public education have required and will continue to require substantial time and other resources.

164. These resources would otherwise be spent on programmatic and advocacy activities to prevent other cruelty to animals, in furtherance of the HSUS's goals. The HSUS's injuries will be redressed if the HSUS prevails in this action, because if Defendant ceases its deceptive advertising, then the HSUS will not be required to divert its resources to combat such misleading advertising by having to ascertain and inform the public and others about the actual confinement used on Defendant's producing farms.

165. Additionally, the HSUS's members are particularly susceptible to being misled by Defendant's deceptive advertising because they are deeply concerned with the welfare of animals and seek out products that are produced in a way that does not negatively impact welfare. The HSUS members who seek out humane pork and who live in the District of Columbia have been, and will continue to be, injured by Defendant's actions, as described above, until Defendant improves its practices or ceases to make false or deceptive claims about these practices.

PLAINTIFF'S CLAIMS FOR RELIEF

COUNT 1 – Violations of the D.C. Consumer Protection Procedures Act Based on Misrepresentations and Failure to State a Material Fact

166. Plaintiff incorporates by reference all the preceding paragraphs as if fully set forth herein.

167. Plaintiff brings Claim One in its individual and representative capacity against Defendant on Plaintiff's own behalf, on behalf of its members, and on behalf of affected consumers and the general public, pursuant to section 28-3905(k)(1)(D) of the CPPA, which provides that "a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District." D.C. Code § 28-3905(k)(1)(D)(i); *see also id.* § 28-3901(a)(2) (defining "consumer" as "a person who, other than for purposes of resale, does or would purchase . . . or receive consumer goods or services"); *id.* § 28-3901(a)(1) (defining "person" to include "association" or "any other organization"). Plaintiff is a public interest organization, as defined in D.C. Code § 28-3901(a)(15) as "a nonprofit organization that is organized and operating, in whole or in

part, for the purpose of promoting interests or rights of consumers” and has a sufficient nexus to the interests involved of the consumer or class to adequately represent those interests. *See* D.C. Code § 28-3905(k)(1)(D)(ii).

168. Plaintiff also brings Claim One pursuant to section 28-3905(k)(1)(C) of the CPPA, which provides that

[a] nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

Id. § 28-3905(k)(1)(C). Plaintiff is a nonprofit organization within the meaning of D.C. Code § 28-3901(a)(14). In attempting to trace Defendant’s pork products sold in the District of Columbia back to their facilities of origin and determine those facilities’ crating practices, Plaintiff “test[ed] or evaluate[d] qualities” pertaining to the Defendant’s products that the average consumer in the District cannot readily ascertain for themselves. *Id.* Plaintiff’s testing involved identifying information found on product packaging, examining the product and its packaging’s inner contents, researching industry information and identification numbers including establishment numbers and ear tag premises identification numbers, and referring to organizational knowledge and staff expertise.

169. Defendant leads consumers to believe that they and the company can trace its products back to the farm of origin, which, upon information and belief, appears to be false. Defendant also leads consumers to believe that the company has eliminated its use of gestation crates, which, upon information and belief, appears to be false. By falsely and misleadingly advertising pork products as (a) traceable to the farms of origin and (b) derived from pigs that Smithfield ensures are safe, comfortable, and healthy; and (c) as

originating from facilities that do not use gestation crates when they are, in fact, derived from facilities that use such devices, Defendant has “represent[ed] that goods or services have a source, . . . characteristics, . . . [or] benefits . . . that they do not have,” “represent[ed] that goods or services are of particular standard [or] quality . . . if in fact they are of another,” “misrepresent[ed] as to a material fact which has a tendency to mislead,” “fail[ed] to state a material fact if such failure tends to mislead,” “[u]se[d] innuendo or ambiguity as to a material fact, which has a tendency to mislead,” and “advertise[d] or offer[ed] goods . . . without the intent to sell them as advertised or offered.” *Id.* § 28-3904(a), (d), (e), (f), (f-1), (h).

170. These unlawful trade practices have caused and will continue to cause Plaintiff and consumers in the District injuries as described above.

COUNT 2 – Violations of the D.C. Consumer Protection Procedures Act Based on Violations of the Federal Trade Commission Act

171. Plaintiff hereby incorporates by reference all the preceding paragraphs as if fully set forth herein.

172. Plaintiff brings Claim Two in its individual and representative capacity against Defendant on Plaintiff’s own behalf, on behalf of its members, and on behalf of affected consumers and the general public, pursuant to section 28-3905(k)(1)(D) of the CPPA, which provides that “a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District.” D.C. Code § 28-3905(k)(1)(D)(i); *see also id.* § 28-3901(a)(2) (defining “consumer” as “a person who, other than for purposes of resale, does or would purchase . . . or receive consumer goods or

services”); *id.* § 28-3901(a)(1) (defining “person” to include “association” or “any other organization”). Plaintiff is a public interest organization, as defined in D.C. Code § 28-3901(a)(15) as “a nonprofit organization that is organized and operating, in whole or in part, for the purpose of promoting interests or rights of consumers” and has a sufficient nexus to the interests involved of the consumer or class to adequately represent those interests. *See* D.C. Code § 28-3905(k)(1)(D)(ii).

173. Plaintiff also brings Claim Two pursuant to section 28-3905(k)(1)(C) of the CPPA, which provides that

[a] nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

Id. § 28-3905(k)(1)(C). In attempting to trace Defendant’s pork products sold in the District of Columbia back to their facilities of origin and determine those facilities’ crating practices, Plaintiff “test[ed] or evaluate[d] qualities” pertaining to the Defendant’s products that the average consumer in the District cannot readily ascertain for themselves. *Id.* Plaintiff’s testing involved identifying information found on product packaging, examining the product and its packaging’s inner contents, researching industry information and identification numbers including establishment numbers and ear tag premises identification numbers, and referring to organizational knowledge and staff expertise. *Id.*

174. It is unlawful under the CPPA to “sell consumer goods in a condition or manner not consistent with that warranted by . . . operation or requirement of federal law.” *Id.* § 28-3904(x).

175. The FTCA prohibits false or deceptive advertising. Per section 5(a)(1) of the

FTCA, “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.” 15 U.S.C. § 45(a)(1).

176. Defendant sells pork products that are falsely and deceptively advertised. Defendant leads reasonable consumers to believe that its products come from pigs raised only in facilities without restrictive individual crates during pregnancy, when in fact the company routinely uses such crates to breed and raise pigs, including during pregnancy and sources pigs from farms that likewise use such crates. Defendant also leads consumers to believe that they and the company can trace its products back to the farm of origin, which upon information and belief, appears to be false. Defendant also claims to ensure its pork is derived from pigs that Smithfield ensures are safe, comfortable, and healthy, which is false and misleading. These representations and omissions are unlawfully deceptive because they are (1) material to a reasonable consumer’s decision-making and (2) likely to mislead the consumer. Therefore, Defendant’s products are sold using “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.” *Id.*

177. Accordingly, Defendant has violated the CPPA because it is unlawful to “sell consumer goods in a condition or manner not consistent with that warranted by . . . operation or requirement of federal law.” D.C. Code § 28- 3904(x).

178. These unlawful trade practices have caused and will continue to cause Plaintiff and consumers in the District injuries as described above.

RELIEF REQUESTED

WHEREFORE, Plaintiff, individually and in its representative capacity, requests

judgment and the following relief:

A. Declaratory judgment that each and every one of Defendant's acts alleged above violates the D.C. Consumer Protection Procedures Act, D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h), (x);

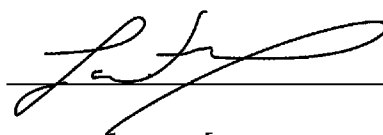
B. All appropriate injunctive relief, including an Order that Defendants permanently cease and desist from unlawful trade practices, namely the producing, distributing, selling, and marketing of falsely and misleadingly advertised pork products, *id.* § 28-3905(k)(2)(D);

C. An order granting Plaintiff costs and disbursements, including reasonable attorneys' fees and expert fees, and prejudgment interest at the maximum rate allowable by law, *id.* § 28-3905(k)(2)(B); and

D. Such other relief as the Court deems proper, *id.* § 28-3905(k)(2)(F).

Respectfully submitted,

Dated: October 18, 2021



Laura J. Fox [D.C. Bar No. 155225]
Peter A. Brandt [D.C. Bar No. 982936]
Jonathan R. Lovvorn [D.C. Bar No. 461163]
THE HUMANE SOCIETY OF THE UNITED STATES
1255 23rd Street, NW, Ste 450
Washington, DC 20037
Telephone: (202) 452-1100
Facsimile: (202) 778-6132
lfox@humanesociety.org
pbrandt@humanesociety.org
ilovvorn@humanesociety.org

*Counsel for Plaintiff The Humane Society of the
United States*

Superior Court of the District of Columbia

CIVIL DIVISION- CIVIL ACTIONS BRANCH

INFORMATION SHEET

THE HUMANE SOCIETY OF THE UNITED STATES
1255 23rd St., NW, Ste 450, Washington DC 20037, _____

Case Number: **2021 CA 003777 B**

vs
SMITHFIELD FOODS, INC.,
200 Commerce St., Smithfield, VA 23430. _____

Date: October 18, 2021

One of the defendants is being sued
in their official capacity.

Name: (Please Print) <u>Laura Fox</u>	Relationship to Lawsuit
Firm Name: <u>The Humane Society of the United States</u>	<input checked="" type="checkbox"/> Attorney for Plaintiff
Telephone No.: <u>202-941-9857</u> Six digit Unified Bar No.: <u>155225</u>	<input type="checkbox"/> Self (Pro Se)
	<input type="checkbox"/> Other: _____

TYPE OF CASE: Non-Jury 6 Person Jury 12 Person Jury
Demand: \$ _____ Other: Declaratory and Injunctive

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: _____ Judge: _____ Calendar #: _____

Case No.: _____ Judge: _____ Calendar#: _____

NATURE OF SUIT: (Check One Box Only)

A. CONTRACTS

COLLECTION CASES

- | | | |
|-------------------------------------------------------|-----------------------------------------------------------------|-----------------------------------------------------------|
| <input type="checkbox"/> 01 Breach of Contract | <input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 16 Under \$25,000 Consent Denied |
| <input type="checkbox"/> 02 Breach of Warranty | <input type="checkbox"/> 17 OVER \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 18 OVER \$25,000 Consent Denied |
| <input type="checkbox"/> 06 Negotiable Instrument | <input type="checkbox"/> 27 Insurance/Subrogation | <input type="checkbox"/> 26 Insurance/Subrogation |
| <input type="checkbox"/> 07 Personal Property | Over \$25,000 Pltf. Grants Consent | Over \$25,000 Consent Denied |
| <input type="checkbox"/> 13 Employment Discrimination | <input type="checkbox"/> 07 Insurance/Subrogation | <input type="checkbox"/> 34 Insurance/Subrogation |
| <input type="checkbox"/> 15 Special Education Fees | Under \$25,000 Pltf. Grants Consent | Under \$25,000 Consent Denied |
| | <input type="checkbox"/> 28 Motion to Confirm Arbitration | |
| | Award (Collection Cases Only) | |

B. PROPERTY TORTS

- | | | |
|-----------------------------------------------------------------|-------------------------------------------------------------|--------------------------------------|
| <input type="checkbox"/> 01 Automobile | <input type="checkbox"/> 03 Destruction of Private Property | <input type="checkbox"/> 05 Trespass |
| <input type="checkbox"/> 02 Conversion | <input type="checkbox"/> 04 Property Damage | |
| <input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a) | | |

C. PERSONAL TORTS

- | | | |
|-------------------------------------------------------------------|----------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| <input type="checkbox"/> 01 Abuse of Process | <input type="checkbox"/> 10 Invasion of Privacy | <input type="checkbox"/> 17 Personal Injury- (Not Automobile, Not Malpractice) |
| <input type="checkbox"/> 02 Alienation of Affection | <input type="checkbox"/> 11 Libel and Slander | <input type="checkbox"/> 18 Wrongful Death (Not Malpractice) |
| <input type="checkbox"/> 03 Assault and Battery | <input type="checkbox"/> 12 Malicious Interference | <input type="checkbox"/> 19 Wrongful Eviction |
| <input type="checkbox"/> 04 Automobile- Personal Injury | <input type="checkbox"/> 13 Malicious Prosecution | <input type="checkbox"/> 20 Friendly Suit |
| <input checked="" type="checkbox"/> 05 Deceit (Misrepresentation) | <input type="checkbox"/> 14 Malpractice Legal | <input type="checkbox"/> 21 Asbestos |
| <input type="checkbox"/> 06 False Accusation | <input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death) | <input type="checkbox"/> 22 Toxic/Mass Torts |
| <input type="checkbox"/> 07 False Arrest | <input type="checkbox"/> 16 Negligence- (Not Automobile, Not Malpractice) | <input type="checkbox"/> 23 Tobacco |
| <input type="checkbox"/> 08 Fraud | | <input type="checkbox"/> 24 Lead Paint |

SEE REVERSE SIDE AND CHECK HERE IF USED

Information Sheet, Continued

C. OTHERS

- | | |
|-------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 01 Accounting | <input type="checkbox"/> 17 Merit Personnel Act (OEA) |
| <input type="checkbox"/> 02 Att. Before Judgment | (D.C. Code Title 1, Chapter 6) |
| <input type="checkbox"/> 05 Ejectment | <input type="checkbox"/> 18 Product Liability |
| <input type="checkbox"/> 09 Special Writ/Warrants
(DC Code § 11-941) | <input type="checkbox"/> 24 Application to Confirm, Modify,
Vacate Arbitration Award (DC Code § 16-4401) |
| <input type="checkbox"/> 10 Traffic Adjudication | <input type="checkbox"/> 29 Merit Personnel Act (OHR) |
| <input type="checkbox"/> 11 Writ of Replevin | <input type="checkbox"/> 31 Housing Code Regulations |
| <input type="checkbox"/> 12 Enforce Mechanics Lien | <input type="checkbox"/> 32 Qui Tam |
| <input type="checkbox"/> 16 Declaratory Judgment | <input type="checkbox"/> 33 Whistleblower |

II.

- | | | |
|----------------------------------------------------------------------------|-------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| <input type="checkbox"/> 03 Change of Name | <input type="checkbox"/> 15 Libel of Information | <input type="checkbox"/> 21 Petition for Subpoena
[Rule 28-I (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic | <input type="checkbox"/> 19 Enter Administrative Order as
Judgment [D.C. Code § | <input type="checkbox"/> 22 Release Mechanics Lien |
| <input type="checkbox"/> 08 Foreign Judgment/International | 2-1802.03 (h) or 32-151 9 (a)] | <input type="checkbox"/> 23 Rule 27(a)(1)
(Perpetuate Testimony) |
| <input type="checkbox"/> 13 Correction of Birth Certificate | <input type="checkbox"/> 20 Master Meter (D.C. Code § | <input type="checkbox"/> 24 Petition for Structured Settlement |
| <input type="checkbox"/> 14 Correction of Marriage
Certificate | 42-3301, et seq.) | <input type="checkbox"/> 25 Petition for Liquidation |
| <input type="checkbox"/> 26 Petition for Civil Asset Forfeiture (Vehicle) | | |
| <input type="checkbox"/> 27 Petition for Civil Asset Forfeiture (Currency) | | |
| <input type="checkbox"/> 28 Petition for Civil Asset Forfeiture (Other) | | |

D. REAL PROPERTY

- | | |
|----------------------------------------------------------------------|--------------------------------------------------------------------------|
| <input type="checkbox"/> 09 Real Property-Real Estate | <input type="checkbox"/> 08 Quiet Title |
| <input type="checkbox"/> 12 Specific Performance | <input type="checkbox"/> 25 Liens: Tax / Water Consent Granted |
| <input type="checkbox"/> 04 Condemnation (Eminent Domain) | <input type="checkbox"/> 30 Liens: Tax / Water Consent Denied |
| <input type="checkbox"/> 10 Mortgage Foreclosure/Judicial Sale | <input type="checkbox"/> 31 Tax Lien Bid Off Certificate Consent Granted |
| <input type="checkbox"/> 11 Petition for Civil Asset Forfeiture (RP) | |



Attorney's Signature

October 18, 2021

Date



Superior Court of the District of Columbia
 CIVIL DIVISION
 Civil Actions Branch
 500 Indiana Avenue, N.W., Suite 5000 Washington, D.C. 20001
 Telephone: (202) 879-1133 Website: www.dccourts.gov

The Humane Society of the United States

 Plaintiff

vs.

Case Number **2021 CA 003777 B**

Smithfield Foods, Inc.

 Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty one (21) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Suite 5000 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within seven (7) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Laura J. Fox

 Name of Plaintiff's Attorney

The Humane Society of the United States

 Address
 1255 23rd St, NW, Ste 450, Washington, DC 20037

 202-941-9857

 Telephone

如需翻译, 请打电话 (202) 879-4828

Veillez appeler au (202) 879-4828 pour une traduction

Đề có một bài dịch, hãy gọi (202) 879-4828

번역을 원하 시면, (202) 879-4828 로 전화주세요. የአጭር ትርጉም ለማግኘት (202) 879-4828 ይደውሉ

Clerk of the Court

By _____
 Deputy Clerk

Date **10/19/2021**

IMPORTANT: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (202-628-1161) or the Neighborhood Legal Services (202-279-5100) for help or come to Suite 5000 at 500 Indiana Avenue, N.W., for more information concerning places where you may ask for such help.

See reverse side for Spanish translation
 Veá al dorso la traducción al español



**TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA
DIVISIÓN CIVIL**

Sección de Acciones Civiles
500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001
Teléfono: (202) 879-1133 Sitio web: www.dccourts.gov

The Humane Society of the United States

Demandante

contra

Numero de Caso: _____

Smithfield Foods, Inc.

Demandado

CITATORIO

Al susodicho Demandado:

Por la presente se le cita a comparecer y se le requiere entregar una Contestación a la Demanda adjunta, sea en persona o por medio de un abogado, en el plazo de veintiún (21) días contados después que usted haya recibido este citatorio, excluyendo el día mismo de la entrega del citatorio. Si usted está siendo demandado en calidad de oficial o agente del Gobierno de los Estados Unidos de Norteamérica o del Gobierno del Distrito de Columbia, tiene usted sesenta (60) días, contados después que usted haya recibido este citatorio, para entregar su Contestación. Tiene que enviarle por correo una copia de su Contestación al abogado de la parte demandante. El nombre y dirección del abogado aparecen al final de este documento. Si el demandado no tiene abogado, tiene que enviarle al demandante una copia de la Contestación por correo a la dirección que aparece en este Citatorio.

A usted también se le requiere presentar la Contestación original al Tribunal en la Oficina 5000, sito en 500 Indiana Avenue, N.W., entre las 8:30 a.m. y 5:00 p.m., de lunes a viernes o entre las 9:00 a.m. y las 12:00 del mediodía los sábados. Usted puede presentar la Contestación original ante el Juez ya sea antes que usted le entregue al demandante una copia de la Contestación o en el plazo de siete (7) días de haberle hecho la entrega al demandante. Si usted incumple con presentar una Contestación, podría dictarse un fallo en rebeldía contra usted para que se haga efectivo el desagravio que se busca en la demanda.

Laura J. Fox
Nombre del abogado del Demandante

SECRETARIO DEL TRIBUNAL

The Humane Society of the United States
Dirección
1255 23rd St, NW, Ste 450, Washington, DC 20037

Por: _____
Subsecretario

202-941-9857
Teléfono

Fecha _____

如需翻译, 请打电话 (202) 879-4828 Veuillez appeler au (202) 879-4828 pour une traduction Dê có môt bài dịch, hãy gọi (202) 879-4828
 如需翻译, 请打电话 (202) 879-4828 電話查詢請打 (202) 879-4828 የአማርኛ ትርጉም ለማግኘት (202) 879-4828 ይጻውሩ

IMPORTANTE: SI USTED INCUMPLE CON PRESENTAR UNA CONTESTACIÓN EN EL PLAZO ANTES MENCIONADO O, SI LUEGO DE CONTESTAR, USTED NO COMPARECE CUANDO LE AVISE EL JUZGADO, PODRÍA DICTARSE UN FALLO EN REBELDÍA CONTRA USTED PARA QUE SE LE COBRE LOS DAÑOS Y PERJUICIOS U OTRO DESAGRAVIO QUE SE BUSQUE EN LA DEMANDA. SI ESTO OCURRE, PODRÍA RETENÉRSELE SUS INGRESOS, O PODRÍA TOMÁRSELE SUS BIENES PERSONALES O BIENES RAÍCES Y SER VENDIDOS PARA PAGAR EL FALLO. SI USTED PRETENDE OPONERSE A ESTA ACCIÓN, NO DEJE DE CONTESTAR LA DEMANDA DENTRO DEL PLAZO EXIGIDO.

Si desea conversar con un abogado y le parece que no puede pagarle a uno, llame pronto a una de nuestras oficinas del Legal Aid Society (202-628-1161) o el Neighborhood Legal Services (202-279-5100) para pedir ayuda o venga a la Oficina 5000 del 500 Indiana Avenue, N.W., para informarse sobre otros lugares donde puede pedir ayuda al respecto.

Vea al dorso el original en inglés
See reverse side for English original



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION Civil Actions Branch
 500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001
 Telephone: (202) 879-1133 • Website: www.dccourts.gov

THE HUMANE SOCIETY OF THE UNITED STATES

Vs.

C.A. No. 2021 CA 003777 B

SMITHFIELD FOODS, INC.

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure ("Super. Ct. Civ. R.") 40-1, it is hereby ORDERED as follows:

(1) This case is assigned to the judge and calendar designated below. All future filings in this case shall bear the calendar number and the judge's name beneath the case number in the caption.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of service on each defendant of copies of (a) the summons, (b) the complaint, and (c) this Initial Order and Addendum. The court will dismiss the claims against any defendant for whom such proof of service has not been filed by this deadline, unless the court extended the time for service under Rule 4(m).

(3) Within 21 days of service (unless otherwise provided in Rule 12), each defendant must respond to the complaint by filing an answer or other responsive pleading. The court may enter a default and a default judgment against any defendant who does not meet this deadline, unless the court extended the deadline under Rule 55(a).

(4) At the time stated below, all counsel and unrepresented parties shall participate in a remote hearing to establish a schedule and discuss the possibilities of settlement. Counsel shall discuss with their clients **before** the hearing whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this hearing.**

(5) If the date or time is inconvenient for any party or counsel, the Civil Actions Branch may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. To reschedule the hearing, a party or lawyer may call the Branch at (202) 879-1133. Any such request must be made at least seven business days before the scheduled date.

No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each judge's Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court's website <http://www.dccourts.gov/>.

Chief Judge Anita M. Josey-Herring

Case Assigned to: Judge JOSE M LOPEZ

Date: October 19, 2021

Initial Conference: **REMOTE HEARING - DO NOT COME TO COURTHOUSE**
SEE REMOTE HEARING INSTRUCTIONS ATTACHED TO INITIAL ORDER

9:30 am, Friday, January 21, 2022

Location: Courtroom 212

500 Indiana Avenue N.W.

WASHINGTON, DC 20001

ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES

D.C. Code § 16-2821, which part of the Medical Malpractice Proceedings Act of 2006, provides, "[a]fter action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ('ISSC'), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC."

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at <https://www.dccourts.gov/pa/>. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. D.C. Code § 16-2825 Two separate Early Mediation Forms are available. Both forms may be obtained at www.dccourts.gov/medmalmediation. One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to earlymedmal@dcsc.gov. Unrepresented plaintiffs who elect not to eFile must either mail the form to the Multi-Door Dispute Resolution Office at, Suite 2900, 410 E Street, N.W., Washington, DC 20001, or deliver if in person if the Office is open for in-person visits.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at www.dccourts.gov/medmalmediation/mediatorprofiles. All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following people are required by D.C. Code § 16-2824 to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code § 16-2826. Any Plaintiff who is unrepresented may mail the form to the Civil Actions Branch at [address] or deliver it in person if the Branch is open for in-person visits. The forms to be used for early mediation reports are available at www.dccourts.gov/medmalmediation.

Chief Judge Anita M. Josey-Herring

Civil Remote Hearing Instructions for Participants

The following instructions are for participants who are scheduled to have cases heard before a Civil Judge in a **Remote Courtroom**

Option 1: (AUDIO ONLY/Dial-in by Phone):

Toll 1 (844) 992-4762 or (202) 860-2110, enter the Meeting ID from the attachment followed by #, press again to enter session.

- *Please call in no sooner than 5 minutes before your scheduled hearing time. Once you have joined the session, please place your phone on mute until directed otherwise. If you should happen to get disconnected from the call, please call back in using the phone number and access number provided and the courtroom clerk will mute your call until the appropriate time.*

If you select **Option 2** or **Option 3** use the *Audio Alternative*

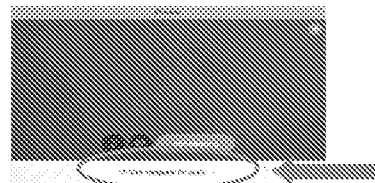
Option 2: (LAPTOP/ DESKTOP USERS 1):

Open Web Browser in Google Chrome and copy and paste following address from the next page:
<https://dccourts.webex.com/meet/XXXXXXXX>

Option 3: (LAPTOP/ DESKTOP USERS 2):

Open Web Browser in Google Chrome and copy and paste following address
<https://dccourts.webex.com> Select **Join**, enter the Meeting ID from the next page

AUDIO ALTERNATIVE: Instead of automatically using **USE COMPUTER FOR AUDIO**, select **CALL-IN** and follow the **CALL-IN** prompt window. Use a cell phone or desk phone. You will be heard clearer if you **do not** place your phone on **SPEAKER**. It is very important that you enter the **ACCESS ID #** so that your audio is matched with your video.



Option 4: (Ipad/SMART PHONE/TABLET):

- Go to App Store, Download WebEx App (Cisco WebEx Meetings)
- Sign into the App with your Name and Email Address
- Select Join Meeting
- Enter address from the next page: <https://dccourts.webex.com/meet/XXXXXXXX>
- Click join and make sure your microphone is muted and your video is unmuted (if you need to be seen). If you only need to speak and do not need to be seen, use the audio only option.
- When you are ready click "Join Meeting". If the host has not yet started the meeting, you will be placed in the lobby until the meeting begins.

For Technical Questions or issues Call: (202) 879-1928, Option #2

Superior Court of the District of Columbia
Public Access for Remote Court Hearings
(Effective August 24, 2020)

The current telephone numbers for all remote hearings are: 202-860-2110 (local) or 844-992-4726 (toll free). After dialing the number, enter the WebEx Meeting ID as shown below for the courtroom. Please click a WebEx Direct URL link below to join the hearing online.

Audio and video recording; taking pictures of remote hearings; and sharing the live or recorded remote hearing by rebroadcasting, live-streaming or otherwise are not allowed

Division	Courtroom	Types of Hearings Scheduled in Courtroom	Public Access via WebEx	
			WebEx Direct URL	WebEx Meeting ID
Auditor Master	206	Auditor Master Hearings	https://dccourts.webex.com/meet/ctbaudmaster	129 648 5606
Civil	100	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb100	129 846 4145
	205	Foreclosure Matters	https://dccourts.webex.com/meet/ctb205	129 814 7399
	212	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb212	129 440 9070
	214	Title 47 Tax Liens; and Foreclosure Hearings	https://dccourts.webex.com/meet/ctb214	129 942 2620
	219	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb219	129 315 2924
	221	Civil 1 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb221	129 493 5162
	318	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb318	129 801 7169
	320	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb320	129 226 9879

400	Judge in Chambers Matters including Temporary Restraining Orders, Preliminary Injunctions and Name Changes	https://dcourts.webex.com/meet/ctb400	129 339 7379
415	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dcourts.webex.com/meet/ctb415	129 314 3475
516		https://dcourts.webex.com/meet/ctb516	129 776 4396
517		https://dcourts.webex.com/meet/ctb517	129 911 6415
518		https://dcourts.webex.com/meet/ctb518	129 685 3445
519		https://dcourts.webex.com/meet/ctb519	129 705 0412
JM-4		https://dcourts.webex.com/meet/ctbjm4	129 797 7557
A-47	Housing Conditions Matters	https://dcourts.webex.com/meet/ctba47	129 906 2065
B-52	Debt Collection and Landlord and Tenant Trials	https://dcourts.webex.com/meet/ctbb52	129 793 4102
B-53	Landlord and Tenant Matters including Lease Violation Hearings and Post Judgment Motions	https://dcourts.webex.com/meet/ctbb53	129 913 3728
B-109	Landlord and Tenant Matters	https://dcourts.webex.com/meet/ctbb109	129 127 9276
B-119	Small Claims Hearings and Trials	https://dcourts.webex.com/meet/ctbb119	129 230 4882