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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

IN DEFENSE OF ANIMALS and
FRIENDS OF THE EARTH,
on behalf of the general public,

CASE NO.:

COMPLAINT FOR UNFAIR COMPETITION AND FALSE ADVERTISING

SANDERSON FARMS, INC.

Defendant.

V.

Plaintiffs In Defense of Animals (IDA) and Friends of the Earth (FoE), by their attorneys, allege the following upon information and belief, except for those allegations pertaining to Plaintiffs, which are based on personal knowledge:

NATURE OF THE ACTION

1. This case is brought on behalf of Plaintiffs and the general public regarding Sanderson's farming practices and advertising of its Chicken Products, as listed *infra* ¶ 76 (the "Products"). Defendant Sanderson Farms, Inc. ("Sanderson") sold these Chicken Products based on misleading representations in its advertising and misleading representations regarding its practices.

2. Sanderson's advertising misleads consumers in four ways:

- a. Sanderson's advertising misleads consumers into believing that Sanderson's chickens were not given antibiotics or other pharmaceuticals;
- b. Sanderson's advertising misleads consumers into believing that the chickens were raised in a natural environment;
- c. Sanderson's advertising misleads consumers into believing that there is no evidence that the use of antibiotics and other pharmaceuticals in poultry contributes to the evolution of antibiotic-resistant bacteria; and
- d. Sanderson's advertising misleads consumers into believing that the Products do not contain any antibiotic or pharmaceutical residue.

3. However, the truth is that the feed Sanderson routinely gives to its chickens contains antibiotics and pharmaceuticals; the chickens are raised indoors in crowded and dirty industrial sheds, which is one reason why its routine use of antibiotics is necessary; there is extensive reliable evidence that the use of antibiotics in poultry contributes to antibiotic-resistant bacteria; and Sanderson's chickens have been found to contain antibiotic and/or pharmaceutical residue.

4. The ongoing coronavirus global pandemic has highlighted how unsanitary animal raising and slaughtering practices, like Sanderson's, contribute to calamitous consequences for public health. The Centers for Disease Control estimates that three out of every four new or

1 emerging infectious diseases in people come from animals.¹

2 5. Antibiotic use in poultry, such as Sanderson's routine use for every flock, has
 3 contributed to antibiotic resistance.² Resistant bacterial strains in poultry spread to humans, which
 4 causes a risk to human health, specifically to poultry workers.³ Poultry workers labor in tight
 5 conditions in slaughterhouses, which have become hotspots for coronavirus, including Sanderson
 6 slaughterhouses.⁴

7 6. The prevalence of antibiotic resistant bacteria is relevant in the battle against the
 8 coronavirus pandemic. The Director of the Antibiotic Resistance Action Center at the Milken
 9 Institute for Public Health at George Washington University⁵ has stated that antibiotic resistant
 10 bacteria "are going to be what ultimately kills a large portion of COVID-19 victims as they
 11 succumb to secondary bacterial pneumonia."⁶

12

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14 ¹ Centers for Disease Control and Prevention, available at
 https://www.cdc.gov/onehealth/basics/zoonotic-
 diseases.html#:~:text=Scientists%20estimate%20that%20more%20than,States%20and%20arou
 nd%20the%20world., last visited July 2020.

15 ² Alonso-Hernando, A., Prieto, M., Garcia-Fernandez, C., Alonso-Calleja, C., Capita, R. (2012).
 Increase over time in the prevalence of multiple antibiotic resistance among isolates of *Listeria
 monocytogenes* from poultry in Spain. *Food Control*, 23 (1), 37-41.
 https://doi.org/10.1016/j.foodcont.2011.06.006, last visited July 2020.

16 ³ Apata, D.F. (2009). Antibiotic Resistance in Poultry. *International Journal of Poultry Science*, 8
 (4), 404-408. Agada, G.O.A., Abdullahi, I.O., Aminu, M., Odugbo, M., Chollom, S.C., Kumbish,
 P.R., Okwori, A.E.J. (2014). Prevalence and antibiotic resistance profile of *Salmonella* isolates
 from commercial poultry and poultry farm handlers in Jos, Plateau State, Nigeria. *Microbiology
 Research Journal International* 4(4), 462-479. https://doi.org/10.9734/BMRJ/2014/5872.
 Silbergeld, E.K., Graham, J., and Price, L.B. (2008). Industrial food animal production,
 antimicrobial resistance, and human health. *The Annual Review of Public Health* 29, 151-169.
 10.1146/annurev.publhealth.29.020907.090904, last visited July 2020.

17 ⁴ The Bryan, Texas processing plant had 49 COVID-19 cases, as one example at one Sanderson
 location, reported by the local news, a https://www.kxxv.com/hometown/brazos-county/49-covid-
 19-cases-reported-at-sanderson-farms-in-bryan, last visited July 2020.

18 ⁵ Antibiotic Resistance Action Center, http://battlesuperbugs.com/directory/lance-price, last
 visited July 2020.

19 ⁶ Price, Lance B., Ph.D. (2020, April 22). *Superbugs: COVID-19's Coconspirators*. Medium.
 https://medium.com/gwpublichealth/superbugs-covid-19s-coconspirators-ebc20b9e0b99, last
 visited July 2020. See also Cox, M. Loman, N., Bogaert, D., O'Grady, J. (2020). Co-infections:
 potentially lethal and unexplored in COVID-19. *The Lancet*, Vol. 1 May 2020.
 https://www.thelancet.com/pdfs/journals/lanmic/PIIS2666-5247(20)30009-4.pdf.

7. Sanderson's advertising makes extensive use of the phrase "100% Natural," to emphasize and support its misleading claims, in conjunction with assorted direct falsehoods, half-truths, and selective omissions concerning the four misrepresentations described above.

8. Plaintiffs and reasonable consumers believe that “100% Natural” means that the chickens are not fed or injected with antibiotics or pharmaceuticals, and that accordingly, the chickens are not sold with antibiotics or pharmaceutical residue in them and that there is no danger of antibiotic use contributing to the development of antibiotic-resistant bacteria, and that the chickens are raised in a natural and humane environment.

9. Plaintiffs suffered injury in fact, and a loss of money or property as a result of Defendant’s conduct in advertising, marketing, and selling the Products falsely claimed to be “100% Natural,” in addition to the misrepresentations described below. Plaintiffs suffered injury in fact, and a loss of money or property, as a result Sanderson’s animal raising practices that harm and deceive the public. Sanderson has failed to remedy these harms and has earned, and continues to earn, substantial profit from selling the Products.

10. Defendant's conduct violated and continues to violate consumer protection statutes. Accordingly, Plaintiffs bring this action against Defendant on behalf of themselves and the general public. Plaintiff Friends of the Earth also brings this case on behalf of its members.

11. Plaintiffs seek injunctive relief requiring Sanderson to make corrective and clarifying statements for past and ongoing misrepresentations, to remove the misleading misrepresentations going forward, or in the alternative, to change its practices to conform with its marketing.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because Plaintiffs are citizens of a state different from Defendant. This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1337.

13. This Court has personal jurisdiction over Defendant because Defendant has sufficient minimum contacts with California, or has otherwise purposely availed itself of the markets in California through the promotion, advertising, marketing, and sale of the Products in

California to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

14. Venue is proper under 28 U.S.C. § 1331(a) because (1) Defendant does substantial business in this District; and (2) a substantial part of the events or omissions giving rise to these claims occurred in this District, and Defendant engaged in the extensive promotion, advertising, marketing, distribution, and sales of the Products at issue in this District.

15. Venue is also proper in this Court under 28 U.S.C. § 1391(e) because Plaintiff In Defense of Animals resides in the Northern District of California and Plaintiff Friends of the Earth maintains a presence in the Northern District of California.

16. Intradistrict assignment to San Francisco per Local Rule 3-5(b) and 3-2(c) is appropriate because Plaintiffs are located in or near San Francisco.

PARTIES

Plaintiffs

In Defense of Animals

17. Plaintiff In Defense of Animals is an international not-for-profit animal protection organization founded in 1983. IDA's principal place of business is located in San Rafael, California, where it is incorporated. Its mission is to rescue animals in need, foster respect for all sentient beings, and spark a revolution of compassion that liberates animals from the tyranny of systemic cruelty and exploitation. Consistent with this mission, IDA aims to inform the public about the ways in which animal agriculture impacts animal welfare.

18. IDA has more than 250,000 supporters across the globe, with over 450,000 followers on social media.

19. As a result of Sanderson's advertising, IDA diverted staff time from its core mission of ending animal exploitation to addressing Sanderson's advertising and the consumer confusion that Sanderson caused.

20. On December 6, 2016, IDA approached the Federal Trade Commission (FTC) in writing with its concerns about Sanderson's advertising.

1 21. On approximately December 21, 2016, IDA published an action alert titled “Report
 2 Sanderson Farms Deceptive Ads!” It also Tweeted the “Report Sanderson Farms Deceptive Ads!”⁷

3 22. On December 21, 2016, IDA Tweeted “Sanderson Farms is confusing the public
 4 with misdirected ‘facts’ to defend its use of #antibiotics.”⁸ That same day, IDA published a similar
 5 statement to Facebook, specifically naming Sanderson, and stating that IDA was seeking “to get
 6 these ads off air.”⁹ More than 300 people engaged with the post and it has been shared more than
 7 70 times.

8 23. In January 2017, IDA filed a formal complaint with the Better Business Bureau
 9 National Advertising Division (NAD). The complaint addressed Sanderson’s advertising on
 10 antibiotics, attached examples from Sanderson’s website, social media, and YouTube, and stated,
 11 “We believe the claims in these ads to be extremely misleading.” IDA corresponded with the NAD
 12 January through April 2017.

13 24. On February 23, 2017, IDA issued a media release stating that Sanderson “actively
 14 misleads customers” and referenced the millions of dollars spent on the advertising campaign that
 15 “loudly promoted its practice of pumping chickens with antibiotics as harmless, and smeared
 16 Chicken raised without antibiotics as a ‘trick to get you to pay more money.’” IDA invested staff
 17 time in phoning and emailing individual news outlet to promote the press release.

18 25. On February 24, 2017, IDA published an action alerts to its members regarding
 19 Sanderson titled, “What is Sanderson Farms Trying to Hide From Us?” and it stated in part,
 20 Sanderson “promotes its use of antibiotics as harmless, yet it won’t agree to a federal government
 21 study to measure the health risks.” IDA Tweeted on February 27, 2017, “Sanderson Farms
 22 promotes antibiotic use as harmless, yet won’t agree to a government study.”¹⁰ On February 27,
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 25 ⁷ The Tweet is posted online at <https://twitter.com/IDAUSA/status/813519996433350656>. The
 26 Tweet links to a Huffington Post article that was updated in April 2017, after the date of the
 27 Tweet.

28 ⁸ The Tweet is posted online at <https://twitter.com/IDAUSA/status/811809315925262336>.

29 ⁹ The Facebook post is online at

<https://www.facebook.com/indefenseofanimals/posts/10154816354922346>.

30 ¹⁰ This Tweet is posted online at <https://twitter.com/IDAUSA/status/836260037593075712>.

1 2017, IDA asked its Facebook followers to take action, specifically, “Tell Sanderson Farms that if
 2 it wants to promote the use of antibiotics as harmless and safe, that it should be open to scientific
 3 scrutiny.”¹¹ More than 400 people engaged with the post and more than 70 people shared it.

4 26. On April 22, 2017, IDA’s article in the Huffington Post stated that Sanderson was
 5 confusing the public with its Bob and Dale commercials on antibiotics. Specifically, the article
 6 stated, “Instead of cleaning up its dirty operation, Sanderson Farms is confusing and blurring the
 7 issue in hopes that consumers won’t worry about the industry’s prolific antibiotic use. Guess
 8 what? That makes Sanderson’s warning about marketing gimmicks little more than a marketing
 9 gimmick itself.”

10 27. During the NAD process, Sanderson informed the NAD that IDA used Facebook,
 11 IDA’s website and other social media outlets to notify the public that Sanderson’s advertising was
 12 deceptive and designed to confuse the public. Sanderson also informed the NAD that IDA had
 13 issued an action alert and asked the public to sign a petition to get Sanderson’s ads off the air.
 14 Sanderson told the NAD that IDA’s president had written an article that was published in the
 15 Huffington Post criticizing Sanderson’s advertising. At least some of IDA’s communications
 16 referenced the NAD process, and Sanderson requested that the NAD administratively close the
 17 complaint because of IDA’s communications to the public. In April 2017, the NAD
 18 administratively closed the complaint.

19 28. In July 2017, IDA alerted the public via a blog post and Facebook to the fact that
 20 Sanderson had been sued for false advertising by Friends of the Earth, Center for Food Safety and
 21 the Organic Consumers Association, a lawsuit to which IDA was not a party.

22 29. From July 2017 to 2019, IDA followed the *Friends of the Earth v. Sanderson*
 23 *Farms* lawsuit to determine if Sanderson would be ordered to cease its false and misleading
 24 statements to the public.

25 30. In 2019, IDA continued its work to educate the public regarding Sanderson’s

27 ¹¹ The Facebook post is available at
 28 <https://www.facebook.com/indefenseofanimals/photos/a.10150796907537346/10155026421652346/?type=3&theater>.

1 harmful farming practices and Sanderson's misleading communications to the public about those
 2 practices. On November 26, 2019, IDA issued an action alert to over 250,000 members and
 3 activists on IDA's email list to make its supporters aware of Sanderson's deceitful
 4 communications. The action alert stated, in part,

- 5 ● “Battle Deceptive Advertising Claims by Mega-Meat Corporations.”
- 6 ● “Sanderson Farms claims that its chicken meat is “100% natural.” However,
 7 Sanderson raises chickens inside of cramped industrial sheds and administers a
 8 slew of antibiotics and other pharmaceuticals to them prior to their terrifying
 9 slaughter. This is far from natural in any sense of the term. Please join us in holding
 10 Sanderson Farms accountable for this deceptive advertising!”

11 31. In that action alert, IDA urged its members to sign a petition regarding Sanderson.
 12 The petition web page stated, in part, “If Sanderson gets away with spreading this misleading
 13 information, it will signal to other Big Ag giants that they can do the same.” IDA collected 4,047
 14 petition signatures. The petition letter stated, in part, “I demand Sanderson Farms immediately
 15 cease all practices that are inconsistent with its “100% Natural” marketing. These practices
 16 include, but are not limited to, using antibiotics routinely, selling chicken meat with antibiotic-
 17 resistant bacteria, and confining chickens exclusively indoors in crowded conditions.”

18 32. IDA also called its supporters to “Battle Deceptive Advertising Claims by Mega
 19 #Meat Corporations,” and again specifically identified the company by Tweeting on November
 20 24, 2019, “#SandersonFarms claims that its #chicken meat is ‘100% natural.’ However, it raises
 21 #chickens inside of cramped industrial sheds with antibiotics to them prior to their terrifying
 22 slaughter.”¹² Again on November 28, 2019, IDA told its followers, “Today, the majority of animal
 23 farms rely on antibiotics . . . #SandersonFarms is no exception.”¹³ That same day, IDA also asked
 24 its Facebook followers to send a letter to Sanderson,¹⁴ and then on November 30, 2019, again

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 27 ¹² This Tweet is available online at <https://twitter.com/IDAUSA/status/1198663154785497088>.
 28 ¹³ This Tweet is available online at <https://twitter.com/IDAUSA/status/1200142451815723008>.
 ¹⁴ The Facebook post is available at
<https://www.facebook.com/indefenseofanimals/posts/10157726790392346>.

1 asked its followers to help “Battle Deceptive Advertising Claims by Mega-Meat Corporations.”¹⁵

2 33. On April 10, 2020, IDA, working with FoE and Center for Food Safety, issued a
 3 letter to Sanderson specifically raising its concerns with Sanderson’s advertising not meeting
 4 consumer expectations in numerous ways and therefore being misleading. The letter stated, in part,
 5 “We are hopeful that Sanderson will come to the table ready to discuss a global resolution of the
 6 public health, food safety, animal welfare, and consumer protection issues that have caused our
 7 organizations and our members and supporters such great concern.”

8 34. Sanderson responded on April 29, 2020. Instead of addressing any of the public
 9 health, food safety, animal welfare, and consumer protection issues, the letter stated, “Sanderson
 10 reserves its rights to pursue all available remedies should you and your organizations continue to
 11 pursue vexatious litigation based on invented assertions of injury, and Sanderson will aggressively
 12 and vigorously defend itself in any such litigation.”

13 35. After receiving Sanderson’s response, IDA continued to invest staff time in
 14 determining how best to communicate with Sanderson, despite its unwillingness to communicate,
 15 and how to pressure Sanderson to make its marketing truthful. The work culminated in an
 16 additional letter to Sanderson.

17 36. On July 9, 2020, IDA, in cooperation with FoE and Center for Food Safety, sent
 18 another letter to Sanderson to renew its concerns about Sanderson’s deceptive marketing,
 19 Sanderson’s farming practices, and the risk to public health from those farming practices in light
 20 of the coronavirus global pandemic. For example, the letter addressed antibiotic resistance on
 21 poultry products and that antibiotic resistant bacteria are anticipated to kill COVID-19 patients as
 22 they succumb to secondary bacterial pneumonia. The letter also invited Sanderson once again to
 23 come to the table to discuss a resolution.

24 37. As of this filing, Sanderson has not acknowledged receipt or responded.

25 38. IDA’s work regarding Sanderson from 2016 to present has involved the staff time

27 28 ¹⁵ The Facebook post is available at
 https://www.facebook.com/indefenseofanimals/posts/10157731947692346.

1 of IDA's Farmed Animals Campaign Director, IDA's communications team, and IDA's IT team.

2 ***Friends of the Earth***

3 39. Plaintiff Friends of the Earth is a national non-profit environmental advocacy
 4 organization founded in 1969. FoE has offices in Berkeley, California, and Washington, D.C,
 5 where it is incorporated. Its mission is to defend the environment and champion a healthy and just
 6 world. To this end, FoE promotes policies and actions that ensure the food we eat and the products
 7 we use are sustainable and safe for our health and the environment.

8 40. FoE has more than 325,000 members in all fifty states, of whom more than 56,000
 9 are in California. Additionally, FOE has more than 1.7 million activist supporters on its email list
 10 throughout the United States, with more than 190,000 in California.

11 41. FoE's "Good Food Healthy Planet" program is focused on reducing the harmful
 12 environmental, animal welfare, and public health impacts of industrial animal foods. The program
 13 helps grow the consumer market and policy support for healthier, grass-fed and organic meat and
 14 dairy, and plant-based foods. FoE's program educates the public about the impact of meat
 15 consumption and production, especially related to the issue of antibiotics and other harmful
 16 chemicals in animal products. FoE is a co-author of "Chain Reaction," an annual report and
 17 scorecard that grades America's top restaurant chains on their policies and practices regarding
 18 antibiotic use and transparency in their meat and poultry supply chains. The report also covers the
 19 use of hormones and availability of organic and grass-fed options. FoE has campaigned over the
 20 past several years to eliminate the routine use of antibiotics in animal agriculture, with a focus on
 21 changing the purchasing policies of large restaurant chains that buy large quantities of industrial
 22 meat.

23 42. FoE, which currently has ten staff based in Berkeley, California, co-authored a
 24 report in 2015 titled "Spinning Food: How Food Industry Front Groups and Covert
 25 Communications Are Shaping the Story of Food,"¹⁶ addressing the issues related to chemical-

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 28 ¹⁶ The report is available at <https://foe.org/news/2015-06-big-food-and-chemical-corporations-spend-millions-to-attack-organic/>, last visited July 2020.

1 intensive industrial agriculture. Berkeley-based FoE staff also educated the public through blog
 2 posts in 2015 titled, “Antibiotic Resistance—with a side order of fries?”¹⁷ FoE’s Berkeley staff
 3 authored “Redefining Good Food at the Nation’s Largest Casual Restaurant Company,”¹⁸ an
 4 article produced as part of the Good Food Now campaign that was partially focused on the need to
 5 change Darden Restaurant’s sourcing practices around industrial meat production and the use of
 6 antibiotics. Sanderson sells its chicken to Darden Restaurants.

7 43. In August 2015, FoE staff, particularly the Deputy Director of Food and
 8 Agriculture, became aware of Sanderson’s business practices by reading a May 2015 Wall Street
 9 Journal article titled, “Sanderson Farms CEO Resists Poultry-Industry Move to Curb Antibiotics:
 10 Chicken processor CEO Joe Sanderson calls public-health concerns over antibiotic-resistant
 11 bacteria overblown.” Given Sanderson’s recalcitrance in addressing antibiotic use concerns,
 12 Friends of the Earth made the strategic decision to address the negative effects of Sanderson’s
 13 unfair business practices and deceptive advertising by pressuring Sanderson’s institutional
 14 customers (e.g. Olive Garden, owned by Darden Restaurants, Inc. (hereinafter, “Darden”)), who
 15 are household names, and also publicly linking those institutional buyers to Sanderson. Friends of
 16 the Earth campaigned intently between 2015 and 2018 to eliminate the routine use of antibiotics in
 17 animal agriculture, with a focus on changing the purchasing policies of large restaurant chains that
 18 buy significant quantities of industrial meat, including from Sanderson. Throughout this
 19 campaign, Olive Garden, owned by Darden and supplied by Sanderson, was Friends of the Earth’s
 20 highest priority campaign target.

21 44. On August 1, 2016, Sanderson publicly announced its refusal to eliminate the
 22 routine use of antibiotics for its chickens. At the same time, Sanderson launched its “Bob and
 23 Dale” advertising campaign, telling consumers that they do not need to worry about antibiotics in
 24 their chicken products. Specifically, Sanderson claimed: “there’s only chicken in our chicken,”

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 27 ¹⁷ Blog post available at <https://foe.org/2015-09-antibiotic-resistance-with-a-side-order-of-fries/>,
 28 last visited July 2020.

18 Article available at <https://foodrevolution.org/blog/redefining-good-food-darden-restaurants/>,
 last visited July 2020.

1 and there are “no antibiotics to worry about here,” among other things.

2 45. Friends of the Earth immediately took additional steps to address Sanderson’s
 3 newest deceptive business practices, diverting resources to counteract Sanderson’s misinformation
 4 within days of the August 1, 2016 public statements. On August 3, 2016, Friends of the Earth’s
 5 Deputy Director of the Food and Agriculture Program researched, drafted, and published a blog
 6 post on antibiotics in the food supply and specifically addressed Sanderson Farms’ business
 7 practices, calling the company “recalcitrant.”¹⁹ Friends of the Earth’s antibiotics campaign had not
 8 previously publicly named Sanderson, but in order to counteract the impact of Sanderson’s
 9 unlawful, unfair, and fraudulent business practices, it diverted additional resources from its other
 10 institutional priorities to mount a direct attack on Sanderson’s business practices and promote
 11 greater consumer awareness about these practices. On August 23, 2016, Friends of the Earth sent
 12 an alert to 322,149 supporters which stated:

13 One of Darden’s suppliers is Sanderson Farms – a massive chicken
 14 corporation. While other chicken producers are taking major steps to reduce
 15 antibiotic use, Sanderson is digging in. It’s rejecting the science and
 16 refusing to do the right thing. As long as Darden continues to purchase meat
 17 from Sanderson, it’s contributing to the problem. Tell Darden to dump
 18 Sanderson Farms and other suppliers if they won’t stop contributing to one
 19 of the nation’s leading public health threats.

20 46. This direct attack on Sanderson’s advertising and business practices required
 21 investigation, research, planning, and staff time, and took these resources away from Friends of
 22 the Earth’s core educational and policy work. Due to Sanderson’s unfair business practices,
 23 Friends of the Earth spent at least \$8,900 that it would have spent to advance other programs.

24 47. Throughout August, September, and October 2016, Friends of the Earth
 25 supplemented its public statements, and blog posts, with a push on social media during the period
 26 Sanderson released its “Bob and Dale” advertising campaign and created confusion around its
 27 business practices. Friends of the Earth communicated with the public approximately a dozen
 28 times through social media to address antibiotics, farmed animals, antibiotic resistance, chickens

¹⁹ This blog post remains publicly available at <https://www.ecowatch.com/mcdonalds-chicken-now-raised-without-antibiotics-1957382218.html>, last visited July 2020.

1 in cramped conditions, and Sanderson's large institutional customer during this time. Friends of
 2 the Earth also produced evidence of its collaboration with other organizations concerned about
 3 Sanderson's practices, including researching to whom Sanderson sold its products.

4 48. In September 2017, FoE, along with Center for Food Safety, published "Chain
 5 Reaction III: How Top Restaurants Rate on Reducing Antibiotics in Their Meat Supply." In a box
 6 titled "What the Cluck?" the report addressed Sanderson:

7

8 **What the Cluck?**

9 Despite tremendous progress in the U.S. chicken
 10 industry toward eliminating the routine use of
 11 antibiotics, eleven of the top 25 restaurant chains
 12 received an "F" grade on the Chain Reaction
 13 Scorecard for the third consecutive year due to lack
 14 of a meaningful antibiotics policy. The absence of
 15 progress for some of these companies may be linked
 16 to a notorious holdout in the chicken industry that
 17 continues to misuse antibiotics—Sanderson Farms.
 18 Representatives from Sanderson Farms reported this
 19 year at an industry presentation that Darden (Olive
 20 Garden's parent company), Dairy Queen, Arby's, and
 21 Chili's—all of which received "F's" in this scorecard—
 22 are Sanderson customers.⁶¹

23 Sanderson Farms, third largest producer of
 24 chicken in the U.S., is one of the only major chicken
 25 producers that has not taken any steps away from
 26 raising animals with the routine use of antibiotics.
 27 Last year Sanderson launched a full-fledged, multi-
 28 million dollar ad campaign to defend its antibiotic
 use. The ads call their competitors' no-antibiotics
 claims "marketing gimmicks" that attempt to
 "trick" consumers into paying more money for their
 products. Sanderson also alleges that there is no
 credible science connecting the use of antibiotics
 in chicken production to antibiotic resistance in
 humans.⁶²

The report's authors urge Olive Garden, Dairy Queen,
 Arby's, and any other restaurant buying chicken from
 Sanderson Farms to take a proactive step for public
 health and source its chicken from a supplier that has
 committed or is willing to commit to a responsible
 antibiotics use policy.

1 49. Based in part on the above injuries, FoE and Center for Food Safety filed a lawsuit
 2 against Sanderson under California’s Unfair Competition Law and False Advertising Law. After
 3 two years of litigation, the district court erroneously determined on July 31, 2019, that FoE and
 4 Center for Food Safety did not have standing and the Plaintiffs were denied an opportunity to
 5 litigate the merits of Sanderson’s false and misleading advertising. *Friends of the Earth v.*
 6 *Sanderson Farms, Inc.*, C. 17-03592, 2019 U.S. Dist. LEXIS 127964 (N.D. Cal. July 31, 2019).
 7 This decision is currently on appeal.

8 50. Sanderson’s false and misleading advertising and marketing continued. In 2019,
 9 FoE reengaged its supporters, members, and the public regarding Sanderson’s harmful farming
 10 practices and Sanderson’s misleading communications to the public about those practices. On
 11 November 26, 2019, FoE issued an action alert to 452,959 members and activists on FoE’s email
 12 list to make its supporters aware of Sanderson’s deceitful communications. The action alert stated,
 13 in part:

- 14 • “Factory farmed chicken isn’t ‘100% natural’: Tell Sanderson to stop lying to
 15 customers.”
- 16 • “The time is now to demand that Sanderson either produce chicken that meets
 17 consumer expectations for ‘100% natural’ or stop lying to consumers. There is
 18 power in numbers – can we count on your voice?”

19 51. In that action alert, FoE urged its members to sign a petition regarding Sanderson.
 20 The petition web page stated, in part, “If Sanderson gets away with spreading this misleading
 21 information, it will signal to other Big Ag giants that they can do the same.” FoE collected 7,421
 22 petition signatures. The petition letter stated, in part, “I demand Sanderson Farms immediately
 23 cease all practices that are inconsistent with its “100% Natural” marketing. These practices
 24 include, but are not limited to, using antibiotics routinely, selling chicken meat with antibiotic-
 25 resistant bacteria, and confining chickens exclusively indoors in crowded conditions.”

26 52. FoE surveyed its members regarding their chicken purchases and the factors that
 27 their members consider when choosing which chicken to purchase.

28 53. On April 10, 2020, FoE, working with IDA and Center for Food Safety, issued a

1 letter to Sanderson specifically raising its concerns with Sanderson's advertising not meeting
 2 consumer expectations in numerous ways and therefore being misleading. The letter stated, in part,
 3 "We are hopeful that Sanderson will come to the table ready to discuss a global resolution of the
 4 public health, food safety, animal welfare, and consumer protection issues that have caused our
 5 organizations and our members and supporters such great concern."

6 54. Sanderson responded on April 29, 2020. Instead of addressing any of the public
 7 health, food safety, animal welfare, and consumer protection issues, the letter stated, "Sanderson
 8 reserves its rights to pursue all available remedies should you and your organizations continue to
 9 pursue vexatious litigation based on invented assertions of injury, and Sanderson will aggressively
 10 and vigorously defend itself in any such litigation."

11 55. After receiving Sanderson's response, FoE continued to invest staff time in
 12 determining how best to communicate with Sanderson, despite its unwillingness to communicate,
 13 and how to pressure Sanderson to make its marketing truthful. The work culminated in an
 14 additional letter to Sanderson.

15 56. On July 9, 2020, FoE, in cooperation with IDA, sent another letter to Sanderson to
 16 renew its concerns about Sanderson's deceptive marketing, Sanderson's farming practices, and the
 17 risk to public health from those farming practices in light of the global pandemic. For example, the
 18 letter addressed antibiotic resistance on poultry products and that antibiotic resistant bacteria are
 19 anticipated to kill COVID-19 patients as they succumb to secondary bacterial pneumonia. The
 20 letter also invited Sanderson once again to come to the table to discuss a resolution.

21 57. As of this filing, Sanderson has not acknowledged receipt or responded.

22 58. FoE's work regarding Sanderson from 2016 to present has involved the staff time
 23 of FoE's Deputy Director of Food and Agriculture, FoE's communications team, and FoE's IT
 24 team.

25 59. Defendant's practices and advertising not only injured Plaintiffs, but they also
 26 injured FoE member, Richard Fogel.

27 60. Richard Fogel is a FoE member who resides in Redwood City, California.

28 61. Fogel is an active FoE member. In the last year, Fogel has participated in

1 approximately twenty FoE actions.

2 62. Fogel purchased Sanderson Farms Chicken Products at a Foods Co. in California
 3 for many years. He was exposed to both the newspaper advertisements and the product's label
 4 promising "100% Natural" chicken.

5 63. Fogel chose Sanderson's Products because Sanderson touted its Products as more
 6 natural than others and he understood the Products to be antibiotic free. Fogel believed that
 7 Sanderson did not use antibiotics to raise its chickens and therefore it was not possible for any
 8 antibiotic or pharmaceutical residue to remain on the product. Fogel did not know that Sanderson
 9 employs farming practices that contribute to antibiotic resistant bacteria. If he had known any of
 10 that, he would not have bought the products. He additionally understood the Sanderson Products
 11 marketed as "100% Natural" to be free from artificial ingredients and that the chickens were raised
 12 free range or range free and eating off the land. Fogel understood from Sanderson's
 13 representations that the chickens were raised humanely.

14 64. Fogel discovered Sanderson's practices did not align with its advertising and
 15 marketing in 2020.

16 **Defendant**

17 65. Defendant Sanderson Farms, Inc. is a corporation organized and existing under the
 18 laws of the State of Mississippi. Its principal place of business and headquarters are maintained at
 19 127 Flynt Road, Laurel, Mississippi. Sanderson is a publicly traded company with annual revenue
 20 routinely exceeding \$3 billion. In Fiscal Year 2019, Sanderson processed 4.6 billion pounds of
 21 chickens with sales of more than \$3.4 billion.²⁰

22 66. Sanderson sells its chicken through supermarket chains throughout the country and
 23 through other outlets.

24 67. Defendant Sanderson disseminates the false representation that the Products are
 25 "100% Natural" in a widespread national advertising campaign, including on its website, in

26
 27
 28 ²⁰ Sanderson Farms, Investor Relations website, available at <http://ir.sandersonfarms.com/>, last visited July 2020.

1 television, radio and internet commercials, in print advertising, and on trucks and billboards.

2 68. In addition, Sanderson encourages resellers and supermarket chains to use images
 3 of the Products in their print and internet advertisements in order to “promote the sale of
 4 Sanderson Farms 100% natural chicken.”²¹ The pictures below are examples of the type of
 5 advertising used in flyers in supermarkets:



27
 28 ²¹ See <https://sandersonfarms.com/corporate/media-library/product-imagery/>, last visited July 2020.

1 PRICES VALID JANUARY 7 THRU JANUARY 13, 2019
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SLICED FREE!
Hormel Always Tender
Whole Boneless Center Cut Pork Loin
179
LB.
SAVE \$1.20 LB.



100% Natural, Grade A
Sanderson Farms Boneless Skinless Fryer Breast
1.99
LB.
SAVE \$1.00 LB.
LIMIT 2 PER CUSTOMER



3 LB. BAG
Satsumas, Mandarins or Florida Honeybell Oranges
4.88



BOX TOPS FOR EDUCATION
BUY, SCAN, EARN.
Use the App or go to www.boxtops4education.com to print out a mail-in form and more details.
6.9-10.9 Oz. Select Varieties
Totino's Pizza or Pizza Rolls
10/\$10



BOX TOPS FOR EDUCATION
BUY, SCAN, EARN.
Use the App or go to www.boxtops4education.com to print out a mail-in form and more details.
4.7-8.4 Oz. Select Varieties
Hamburger, Chicken or Tuna Helper
10/\$10



2.25-3.75 Oz. Select Varieties
Nabisco Go Cups
79¢



6 Pk./.5 Liter Bottles Select Varieties
Coke Products
4/\$11
WHEN YOU BUY 4 OR 3.99 EACH

50 Oz. Tide Liquid Detergent, 20 Ct.
Tide Pods or 160 Ct.
Bounce Fabric Softener
4.99
WHEN YOU BUY ANY 5 Participating Items

12 Roll Charmin Essentials Bath Tissue or 6 Roll Bounty Paper Towels
3.99
WHEN YOU BUY ANY 5 Participating Items

2.6-3.8 Oz. Select Varieties
Old Spice or Secret Premium Deodorant
1.49
WHEN YOU BUY ANY 5 Participating Items



BUY 5, SAVE \$5

When you buy 5 participating items. All items must be purchased in a single transaction.

MIX & MATCH!

1 69. Defendant also labels the Products “100% Natural.”

2 70. Plaintiffs challenge the pictures of the Products, which include the labels, when
3 they are used for purposes of advertising in flyers, circulars, print ads or other media.

4 71. Currently, three poultry producers dominate the market, with Sanderson sitting in
5 third place.

6 72. Of the top three poultry producers, only Sanderson does not offer at least some
7 poultry that has never been exposed to antibiotics. Instead, Sanderson uses its “100% Natural”
8 claims and advertising to compete with the top two producers’ lines of antibiotic-free poultry.

9 73. Defendant Sanderson ships its Products to purchasers, resellers, and distributors in
10 California and throughout the country. Sanderson is responsible for the claims and advertisements
11 for its Products, including on its website where it specifically discusses the “100% Natural”
12 claims²² and makes the representations discussed here regarding the Products. According to
13 Sanderson’s 2019 report to its shareholders, since 2004 Sanderson has been working to gain public
14 awareness and acceptance of its product as a “natural product” an effort that Sanderson continues
15 today.²³ Sanderson also stated that it launched campaigns in fiscal 2016 and 2017 “to explain and
16 support the Company’s position regarding the judicious use of antibiotics to prevent illness and
17 treat chickens that become ill” and “to dispel many of the myths about poultry production.” These
18 efforts are designed to mislead consumers into believing that Sanderson chicken, like its more
19 expensive competitors, was raised without antibiotics.

20 74. Sanderson knows the value of antibiotic-free representations. Sanderson (and
21 competitor Perdue Farms) once brought a Lanham Act claim against Tyson Foods, Inc., a leading
22 competitor and one of the top three poultry producers in the United States, for running ads saying
23 that Tyson chicken was “raised without antibiotics.” *Sanderson Farms, Inc. v. Tyson Foods Inc.*,
24 Civ. No. 08-210 (D.Md. filed Jan 25, 2008). Sanderson argued that Tyson was, in fact, using
25 antibiotics to raise its chicken and should be enjoined from running the ads. The court granted the

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27 ²² See <https://sandersonfarms.com/our-chickens/100-natural/>, last visited July 2020.

28 ²³ This report is available at <http://ir.sandersonfarms.com/index.php/static-files/dd7be81d-df8a-4e22-b267-89cc6e9dcc89>, last visited July 2020.

1 injunction.

2 75. Sanderson is responsible for the claims and advertisements for its Products,
 3 including on its website where it specifically discusses the “100% Natural” claims²⁴ and makes
 4 the representations discussed regarding the Products.

5 **FACTUAL BACKGROUND**

6 **Sanderson Chicken Products**

7 76. Sanderson’s Chicken Products, all of which are marketed as “100% Natural”
 8 include the following:²⁵

- 9 • Clipped Chicken Tenderloins
- 10 • Boneless Skinless Chicken Thigh Fillets
- 11 • Boneless Skinless Breast Strips
- 12 • Thinly Sliced Boneless Skinless Breast Fillets
- 13 • Boneless Skinless Breast Fillets
- 14 • Best of Boneless
- 15 • Boneless Skinless Breast Chunks
- 16 • Family Pack Whole Legs
- 17 • Whole Legs
- 18 • Family Pack Wingettes
- 19 • Wingettes
- 20 • Drumsticks & Thighs Combo
- 21 • Skinless Drumsticks
- 22 • Chicken Hearts
- 23 • Value Pack Chicken Gizzards
- 24 • Skinless Split Breast

27 ²⁴ See <https://sandersonfarms.com/our-chickens/100-natural/>, last visited August 27, 2019.

28 ²⁵ Discovery may indicate that additional products should be included within the scope of this Complaint, and Plaintiffs reserve the right to add those products.

- 1 • Family Pack Chicken Tenderloins
- 2 • Chicken Tenderloins
- 3 • Family Pack Boneless, Skinless Chicken Breast Fillets with Rib Meat
- 4 • Skinless Thighs
- 5 • Family Pack Thighs
- 6 • Thighs
- 7 • Value Pack Thighs
- 8 • Value Pack Leg Quarters
- 9 • Value Pack Wings
- 10 • Value Pack Drumsticks
- 11 • Value Pack Split Breasts
- 12 • Chicken Necks
- 13 • Wing Drumettes
- 14 • Family Pack Drumsticks
- 15 • Family Pack Thighs
- 16 • Family Pack Leg Quarters
- 17 • Whole Roasting Chicken
- 18 • Pick of the Chicken
- 19 • Family Pack Wings
- 20 • Family Pack Split Breasts
- 21 • Livers Chicken Gizzards
- 22 • Stripped Back Portions
- 23 • Wings
- 24 • Thighs
- 25 • Drumsticks
- 26 • Split Breasts
- 27 • Whole Cut-Up Chicken with Giblets and Neck
- 28 • Whole Frying Chicken (Whole Young Chicken).

1 77. An example of Sanderson's Chicken Products is reproduced here:²⁶



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10 78. The Chicken Products are available for purchase under the Sanderson Farms brand
11 at retail locations throughout California at stores such as Albertsons, Vons, Food 4 Less, Foods
12 Co, and WinCo Foods,²⁷ and nationally with the Sanderson Farms logo in stores such as Wal-
13 Mart, Kroger and some Kroger-owned chains, Safeway, and Sam's Club.

14 79. Sanderson markets and advertises its Chicken Products nationally, and seeks to
15 reach consumers through commercials on television, print advertising, radio advertising, email
16 newsletters, billboard advertising, and online marketing such as Facebook, YouTube, Instagram,
17 Pinterest and its own website.

18 **Sanderson's Extensive National False and Misleading Advertising,
19 Including Its "100% Natural" Representations**

20 80. In an extensive national advertising campaign, Sanderson misleads consumers into
21 believing its chickens are not raised with pharmaceuticals or antibiotics; that the chickens are
22

23
24 ²⁶ Plaintiffs challenge (1) the advertising of these products including the label used as advertising,
25 for example, in flyers sent out by grocery stores and markets in keeping with Sanderson's
26 advertising guidelines. Sanderson encourages resellers to use images like the one in ¶ 77 in their
27 print and internet advertisements in order to "promote the sale of Sanderson Farms 100% natural
chicken." See <https://sandersonfarms.com/corporate/media-library/product-imagery/>, last visited
July 2020. Accordingly, Sanderson is responsible for the content of the flyers and circulars.
Plaintiffs also challenge (2) the product labels as false and misleading.

28 ²⁷ Sanderson Farms, "Find A Store," <http://www.sandersonfarms.com/store-finder/>, last visited
July 2020.

1 raised in a natural environment; that the use of antibiotics in poultry cannot promote the evolution
 2 of antibiotic-resistant bacteria; and that the Products cannot possibly have any antibiotic or
 3 pharmaceutical residue when sold.

4 81. In addition to specific false and misleading statements described below, Sanderson
 5 uses the phrase “100% Natural” in different contexts throughout its advertising to bolster these
 6 misrepresentations. Sanderson repeatedly makes false “100% Natural” representations in various
 7 media—television, website, social media, print magazines, radio advertising, billboards, trucks,
 8 etc.—when in fact its chicken production process and resulting products do not meet reasonable
 9 consumer expectations for products advertised as “100% Natural.”

10 82. The use of the term “natural,” let alone “100% Natural,” is a powerful statement
 11 that is important to consumers.

12 83. A 2015 Consumer Reports²⁸ survey found that 62% of consumers purchase
 13 “natural” products, and that 87% of those purchasers are willing to pay more for products called
 14 “natural” that meet their expectations as to what “natural” means.²⁹ A 2016 survey found the
 15 number of consumers who purchase “natural” products to be as high as 73%.³⁰

16 84. According to surveys by Consumer Reports, the meaning of the term “natural,”

18 28 Consumer Reports, founded in 1936, is “an independent, nonprofit member organization that
 19 works side by side with consumers for truth, transparency, and fairness in the marketplace.” It has
 20 six million members and tests tens of thousands of products annually to provide consumers with
 21 product reviews. Consumer Reports, “About Us”, available at
<https://www.consumerreports.org/cro/about-us/what-we-do/index.html>, last visited July 2020. CR
 22 has a Survey Research department that conducts more than one hundred surveys per year. Its
 23 surveys are not commissioned or financed by industry. Available at
<https://www.consumerreports.org/cro/about-us/what-we-do/research-and-testing/index.html>, last
 24 visited July 2020. In October 2018, CR published a front page story on its monthly magazine
 25 titled, “What’s Really in Your Meat?” Available at <https://www.consumerreports.org/food-safety/are-banned-drugs-in-your-meat/>, last visited July 2020. The article title for the online version is “Are Banned Drugs in Your Meat ?”.

26 29 Consumer Reports National Research Center, “Natural Food Labels Survey” (2015), at 2,
 27 previously available at http://greenerchoices.org/wp-content/uploads/2016/08/2016_CRFoodLabelsSurvey.pdf, last visited August 30, 2019.

28 30 Consumer Reports National Research Center, “Food Labels Survey” (2016), at 5, available at
<https://advocacy.consumerreports.org/wp-content/uploads/2018/10/2018-Natural-and-Antibiotics-Labels-Survey-Public-Report-1.pdf>, last visited July 2020).

1 even isolated from Sanderson's many other specific misrepresentations, conveys a message
 2 entirely at odds with the reality of Sanderson's practices. For example, 88% of consumers expect
 3 that meat with a "natural" label meant that the meat "came from an animal whose diet was natural
 4 and free of chemicals, drugs and other artificial ingredients."³¹

5 85. Further, 50% of consumers believe use of the term "natural" means that the animals
 6 went outdoors,³² and 83% expect that the "natural" label means the animal was raised in a natural
 7 environment.³³

8 86. Friends of the Earth commissioned a consumer survey in 2019 specific to
 9 Sanderson's advertising. Survey respondents viewed one of Sanderson's video commercials and
 10 then were asked what they understood about Sanderson. Over half, 51%, of survey respondents
 11 understood Sanderson to be communicating in the video commercial that it **never** uses antibiotics
 12 with its chickens, directly contrary to Sanderson's routine use in every flock.

13 87. Other survey respondents viewed Sanderson's website. After viewing Sanderson's
 14 "100% Natural" representations on the website accompanied by the "with nothing added"
 15 statement, 61% believed that Sanderson **never** uses antibiotics, directly contrary to Sanderson's
 16 routine use in every flock.

17 **Allegations Concerning the Misrepresentation That the Chickens Are Not Raised
 18 With Antibiotics Or Pharmaceuticals**

19 88. Sanderson misleads consumers into believing its chickens are raised without
 20 antibiotics or pharmaceuticals. Its carefully crafted message makes constant use of the "100%
 21 Natural" representation in conjunction with advertising that attacks competitors who use the term
 22 "raised without antibiotics." Sanderson says that "raised without antibiotics" is a meaningless
 23 statement because, Sanderson says, "all chickens must be cleared of antibiotics when they leave

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 25 ³¹ Consumer Reports National Research Center, "Food Labeling Poll" (2007), at 15, not available
 26 online.

27 ³² Consumer Reports National Research Center, "Natural Food Labels Survey" (2015), at 4, not
 28 available online.

³³ Consumer Reports National Research Center, "Food Labeling Poll" (2007), at 15, not available
 online.

1 the farm.” The message is that all chickens, including Sanderson’s, are the same because they do
 2 not have any antibiotics.

3 89. The likely reason Sanderson embarked on this antibiotics ad campaign, in lieu of
 4 labeling the Chicken Products with antibiotics language, is because the United States Department
 5 of Agriculture (USDA) would not let Sanderson use the phrase “raised without antibiotics” on its
 6 packaging like its competitors do, because Sanderson routinely feeds antibiotics to its chickens. In
 7 order to use the phrase “raised without antibiotics” on the label, the USDA requires that the source
 8 animals were not given antibiotics in their feed, water or by injection. Poultry producers must
 9 apply for and obtain permission to make claims on their labels regarding antibiotics.

10 90. Since Sanderson cannot lawfully label its chickens with antibiotics language like its
 11 competitors do, Sanderson instead avoids this this prohibition by trying to trick consumers with its
 12 unregulated ad campaign into believing that its chickens are the same as those of its competitors.

13 91. The phrase “raised without antibiotics” is important to consumers. A 2007
 14 Consumer Reports survey found that six out of ten Americans would pay more for meat/poultry
 15 with the ‘raised without antibiotics’ label and 89% of consumers say all meat companies should be
 16 required to disclose the amount and type of antibiotics used.³⁴

17 92. As a result, in an end run around government regulation, Sanderson tries to trick
 18 consumers into believing that no chicken contains antibiotics and the “raised without antibiotics”
 19 statement on the packaging of its competitors is meaningless verbiage and that its chickens are the
 20 same as those bearing the “raised without antibiotics” statement.

21 93. This message is hammered home in several television and web commercials.

22 94. In a “Bob and Dale” television commercial called “The Truth About Chicken:
 23 Supermarket,” Sanderson states that by federal law all chickens must be cleared of antibiotics
 24 when they leave the farm and makes the point that all chickens in the supermarket are free of
 25 antibiotics, including Sanderson’s. This commercial has over 90 million impressions on television

27 28 ³⁴ Consumer Reports National Research Center, “Natural and Antibiotics Labels Survey” (2018),
 available at <https://advocacy.consumerreports.org/wp-content/uploads/2018/10/2018-Natural-and-Antibiotics-Labels-Survey-Public-Report-1.pdf> (last visited July 2020).

1 and over six million views on YouTube and Facebook.

2 95. Sanderson misleads consumers by stating: “Some chicken companies try to get you
3 to spend more money by using labels like ‘raised without antibiotics.’ At Sanderson Farms, we
4 don’t believe in gimmicks like that.” The commercial then shows a person piling a variety of
5 chicken brands, selected while blindfolded, into a cart and saying, “no antibiotics to worry about
6 here.”

7 96. This statement is misleading because the message the commercial conveys is that
8 no chicken (including Sanderson’s) contains antibiotics, and that the phrase “raised without
9 antibiotics” is a “gimmick.” Sanderson places itself on the same plane as its competitors who do
10 not raise chickens with antibiotics. In reality, Sanderson uses antibiotics, while some of its key
11 competitors do not.



12 97. The thirty-second commercial ends by showing the above panel for four seconds.

13 98. In another “Bob and Dale” commercial, “The Truth About Chicken: Mr. Floppy
14 Arms” Sanderson makes the same points, calling its competitors’ statement “raised without
15 antibiotics”: “full of hot air and doesn’t say much”; “a trick to get you to pay more money” and “a
16 marketing gimmick.” The thirty-second commercial ends with the same “100% Natural” panel
17 and has over 100 million impressions on television.

18 99. In “Marketing Guru,” Bob and Dale ridicule a Madison Avenue ad executive who
19 “likes to use the phrase ‘raised without antibiotics.’” Bob and Dale state that the phrase was
20 invented to make chicken sound safer but is meaningless. The thirty-second commercial ends with
21 the same “100% Natural” panel and has over 80 million impressions on television.

22 100. In the commercial “Truth About Chicken: Labels,” Sanderson calls the claim that
23

1 competitors' chickens are raised without antibiotics a ruse to "trick people and charge higher
 2 prices" and "marketing speak." Sanderson then says it feeds its chickens a healthy, balanced diet
 3 full of vitamins and "animal protein like they naturally eat" and notes that "labels can be
 4 misleading." Sanderson does not disclose that it uses either antibiotics or pharmaceuticals in the
 5 feed.

6 101. The deception regarding pharmaceutical use, including antibiotics, is also made in
 7 at least one 2016 video³⁵ titled, "How We Grow Our Chicken." In the video a Corporate
 8 Veterinarian describes Sanderson's hatchery process and states, "This single combined injection
 9 under the shell is the only time we inject antibiotics, leaving little opportunity for resistance to
 10 develop and no residues in the grown broilers weeks later when they go to market." Sanderson
 11 continues, "At no point are Sanderson Farms broilers ever injected with anything and there are
 12 never any antibiotic residues in our broilers when they go to market."

13 102. This representation is misleading for several reasons: First, although Sanderson is
 14 careful to limit its statement to "injections," Sanderson operates its own feed mills, and routinely
 15 adds pharmaceuticals and antibiotics to the chickens' feed.

16 103. Second, Sanderson contradicts itself regarding whether Sanderson injects broiler
 17 chickens or not, by stating that it injects antibiotics into the shells of the chickens' eggs, but not
 18 the chickens themselves.

19 104. Sanderson gives the impression that the chickens are raised without using synthetic
 20 feed or injections by playing on the nuances in regulated and unregulated terms such as "no
 21 antibiotics ever," "raised without antibiotics," and Sanderson's claim of being "cleared" of
 22 antibiotics.

23 105. One YouTube viewer expressed confusion by commenting, "'is the only time we
 24 use antibiotics'. I thought you guys said all Chickens in the US are supposedly antibiotic free or
 25 that you guys don't use them?"³⁶

26
 27 ³⁵ Available at https://www.youtube.com/watch?time_continue=275&v=Fghbb4lYaiU (last visited
 28 July 2020).

³⁶ *Id.*

1 106. Consumer surveys support the allegation that Sanderson's use of the ubiquitous
 2 "100% Natural" representation misleads reasonable consumers into believing the chickens are
 3 raised without antibiotics.

4 107. Consumer Reports has performed several surveys on food marketing, including
 5 in 2007,³⁷ 2008,³⁸ 2015,³⁹ 2016,⁴⁰ and 2018.⁴¹

6 108. The 2015 survey found that when "natural" is used to describe meat and poultry:
 7 a. 57% of consumers think that no antibiotics or other drugs were used;
 8 b. 61% of consumers think that the animals' feed contained no artificial
 9 ingredients or colors and 59% think that there were no GMOs in the feed;
 10 c. 88% of consumers expect that meat with a "natural" label meant that the meat
 11 "came from an animal whose diet was natural and free of chemicals, drugs and
 12 other artificial ingredients."⁴²

13 109. Sanderson's other main competitors have product lines that are brought to market
 14 wholly without antibiotics and Sanderson's advertising misleads consumers into believing that
 15 Sanderson follows the same practices.

16 110. Sanderson makes the same misrepresentation on its website. It has represented its
 17 chicken as "100% Natural" on the homepage of its website and states that its chicken is "nothing

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 21 ³⁷ Consumer Reports National Research Center, "Food Labeling Poll" (2007), not available online.
 22 ³⁸ Consumer Reports National Research Center, "Food-Labeling Poll 2008" (2008), available at
 23 <http://4bgr3aepis44c9bxt1ulxsyq.wpengine.netdna-cdn.com/wp-content/uploads/2015/02/foodpoll2008.pdf>, last visited July 2020.

24 ³⁹ Consumer Reports National Research Center, "Natural Food Labels Survey" (2015), available
 25 at <https://foodpolitics.com/wp-content/uploads/Consumer-Reports-Natural-Food-Labels-Survey-Report.pdf>, last visited July 2020.

26 ⁴⁰ Consumer Reports National Research Center, "Food Labels Survey" (2016), previously
 27 available at http://greenerchoices.org/wp-content/uploads/2016/08/2016_CRFoodLabelsSurvey.pdf, last visited August 30, 2019.

28 ⁴¹ Consumer Reports National Research Center, "Natural and Antibiotics Labels Survey" (2018),
 29 available at <https://advocacy.consumerreports.org/wp-content/uploads/2018/10/2018-Natural-and-Antibiotics-Labels-Survey-Public-Report-1.pdf>, last visited July 2020.

30 ⁴² Consumer Reports National Research Center, "Food Labeling Poll" (2007), at 15, not available
 31 online.

1 but the safest, most wholesome poultry, with nothing added.”⁴³ A similar statement and
 2 accompanying graphic persists elsewhere on Sanderson’s website.⁴⁴

3
 4 **100%**
 5 **Natural**

6 We believe that delicious, quality chicken should be able
 7 to stand on its own. Always. At Sanderson Farms, we
 8 pride ourselves in delivering nothing but the safest, most
 9 wholesome poultry, with nothing added. So you know
 10 what you’re getting every time.

11 **Learn More >**

12 111. The “Learn More” button on the homepage took consumers to a webpage devoted
 13 to its “100% Natural” representation.⁴⁵

14 112. This page stated “There’s Only Chicken In Our Chicken. Seriously.”⁴⁶ and “No
 15 Additives Or Artificial Ingredients. Not Ever.”⁴⁷



18
 19 **No Additives**
 20 **Or Artificial**
 21 **Ingredients.**
 22 **Not Ever.**

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 26 ⁴³ See <https://sandersonfarms.com/>, last visited August 29, 2019.

27 ⁴⁴ See <https://sandersonfarms.com/our-chickens/natural-protein/>, last visited July 2020.

28 ⁴⁵ See <https://sandersonfarms.com/our-chickens/100-natural/>, last visited August 29, 2019.

⁴⁶ See <https://sandersonfarms.com/our-chickens/100-natural/>, last visited August 30, 2018.

⁴⁷ *Id.*

1 113. Sanderson did not disclose its use of antibiotics or pharmaceuticals in the feed
 2 given to its chickens on the “Learn More” page and still does not disclose its routine use.

3 114. Elsewhere on its website, Sanderson also makes the following statements to further
 4 mislead consumers into thinking that Sanderson does not routinely use pharmaceuticals in raising
 5 the chickens:

- 6 • “That means no additives, no unpronounceable ingredients, nothing extra. Just
 7 100% natural chicken that’s healthy and a treat for your taste buds.”⁴⁸
- 8 • “100% Natural. We firmly stand behind our commitment to keep things the
 9 way nature intended.”⁴⁹
- 10 • “The Myth: The myth is, only chicken raised without antibiotics are safe to eat.
 11 The Truth: The truth is, none of the chicken you buy in the grocery store
 12 contains antibiotics. By federal law, all chickens must be clear of antibiotics
 13 before they leave the farm.”⁵⁰

24 48 See at <https://sandersonfarms.com/our-chickens/100-natural/>, last visited August 30, 2019. Since
 25 plaintiffs originally sued Sanderson for false advertising and unfair competition, Sanderson has
 26 updated its website and the address above routes to <https://sandersonfarms.com/our-chickens/natural-protein/>, last visited July 2020. This updated website continues to make the
 27 identical or similar statements as of this filing.

28 49 See at <https://sandersonfarms.com/?s=subscribe>, last visited July 2020.

50 See <https://sandersonfarms.com/chicken-myths/#2nd>,
 last visited July 2020.

1 115. In a video on its website, Sanderson touts the nutritional value of the chickens'
 2 "corn and soy-based diets"⁵¹ but omits any mention of pharmaceuticals and antibiotics.



13 116. In addition, Sanderson maintains on its website⁵² a "Christmas TV Commercial"
 14 linked to YouTube using the same "100% Natural" tagline.

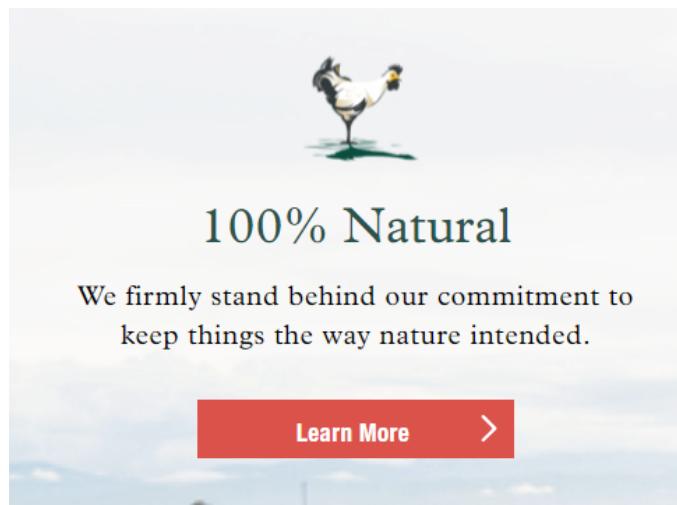


25 Merry Christmas and Happy Holidays from Sanderson Farms!

27 ⁵¹ See https://www.youtube.com/watch?time_continue=80&v=Fghbb4lYaiU, last visited July
 28 2020.

⁵² See <https://sandersonfarms.com/corporate/media-library/brand-assets/>, last visited July 2020.

1 117. Sanderson also represents that the Products are “100% Natural” on its current
 2 newsletter subscription webpage and further adds that: “We firmly stand behind our commitment
 3 to keep things the way nature intended.”⁵³



13 118. Sanderson further emphasizes its representation of “100% Natural” message
 14 by sending a monthly 100% Natural Newsletter to over 600,000 annual readers across 42 different
 15 states.⁵⁴ Sanderson has continued to publish this newsletter in 2020.⁵⁵

16 119. Sanderson advertises the Products as “100% Natural” in print magazines across the
 17 country.

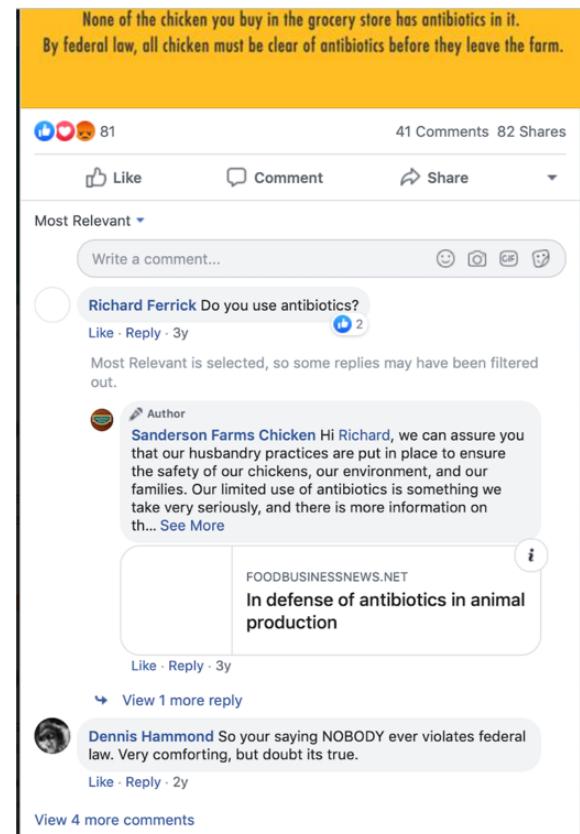
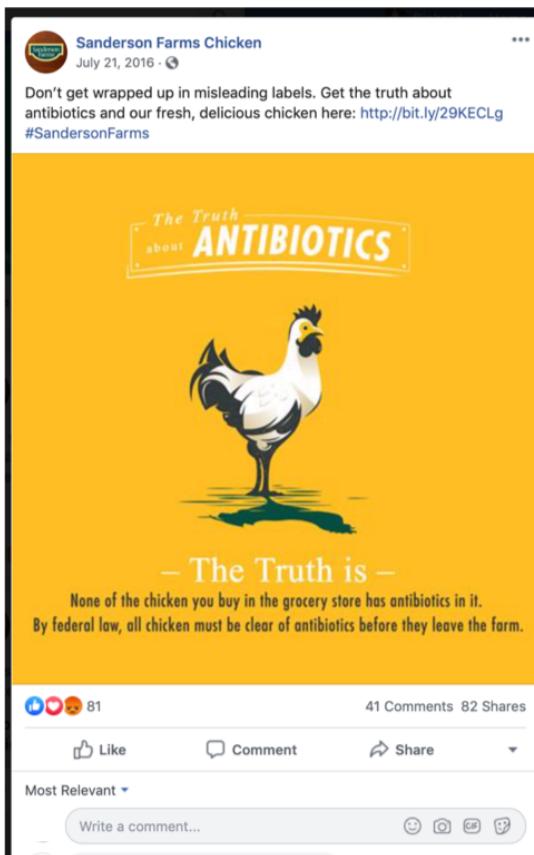
18 120. Sanderson advertises itself as “100% Natural” via radio.

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121. Sanderson Farms trucks advertise “100% Natural” on the sides:



122. In another Facebook post Sanderson also refers to its “limited use” instead of informing the public of its routine use of antibiotics:



123. All of these statements were made within the applicable statute of limitations, and
many continue as of this filing.

Allegations Concerning the Misrepresentation That the Chickens Are Raised Outdoors In A Natural Environment

124. Sanderson's representations would mislead a reasonable consumer into believing its chickens were raised in a natural environment and in a humane manner.

125. In addition to the “100% Natural” claims discussed *supra*, Sanderson, addressing animal welfare on its website, represents that “At Sanderson Farms, we believe in raising our chickens humanely to ensure their safety, nutrition, and overall health.”



Our Birds Come First

At Sanderson Farms, we believe in raising our chickens humanely to ensure their safety, nutrition, and overall health.

126. Sanderson reinforces this claim and the general false impression of high animal welfare standards with recent TV commercials of chickens being given pricey gifts from humans and chickens dining in restaurants, a TV commercial titled “Old MacGimmick,”⁵⁶ and in the past, images of chickens playing volleyball and sipping lemonade.

127. On its website, Sanderson states that “The truth is, none of the chicken you buy in a store is raised in a cage. Chickens are raised in spacious, climate-controlled houses where they are free to eat, drink, and walk around all they want.”⁵⁷

128. The houses are also described as “a comfortable, cage-free environment” where

⁵⁶ See <https://www.ispot.tv/ad/w10S/sanderson-farms-old-macgimmick?autoplay=1>, last visited July 2020.

⁵⁷ See <https://sandersonfarms.com/chicken-myths/#4th>, last visited July 2020.

1 “our chickens live in a spacious, climate-controlled environment with unlimited access to food and
 2 water. The only time our chickens are caged is for their safety when they’re being transported
 3 from the farm to the processing plant.”⁵⁸

4 129. According to a 2016 Consumer Reports survey,⁵⁹ a significant portion of
 5 consumers would be misled by Sanderson’s statements regarding how it treats its birds.
 6 Specifically, 82% of consumers think that a “humanely raised” representation, such as the one
 7 Sanderson makes on its website, *supra* ¶ 125, means that the farm was inspected to verify this
 8 claim, 77% think the animals had adequate living space, 68% think the animals went outdoors,
 9 and 65% think the animals were raised in houses with clean air.⁶⁰

10 130. In addition, in 2007 Consumer Reports Natural Research Center reported that when
 11 the word “natural” is used to describe poultry, let alone Sanderson’s claim of “100% Natural,”
 12 50% of consumers think that the animals went outdoors,⁶¹ and 83% expect the “natural” label
 13 meant that the animal was raised in a natural environment.⁶²

14 131. Sanderson’s statements on how it treats its chickens are false and misleading
 15 because in reality, Sanderson’s chickens are raised in crowded industrial sheds (that also
 16 contribute to the growth of antibiotic resistant bacteria), and the chickens are raised in intensive
 17 confinement, only indoors,⁶³ where they never get sunlight except when they are transported for
 18 slaughter.

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 20 _____
 21 ⁵⁸ See <https://sandersonfarms.com/our-chickens/animal-welfare/>, last visited July 2020.

22 ⁵⁹ Food Labels Survey (2016), previously available at http://greenerchoices.org/wp-content/uploads/2016/08/2016_CRFoodLabelsSurvey.pdf, last visited September 3, 2019.

23 ⁶⁰ *Id.* at 16.

24 ⁶¹ Consumer Reports National Research Center, “Natural Food Labels Survey” (2015), at 4, previously available at <http://4bgr3aepis44c9bxt1ulxsyq.wpengine.netdna-cdn.com/wp-content/uploads/2015/02/foodpoll2008.pdf>, last visited August 30, 2019.

25 ⁶² Consumer Reports National Research Center, “Food Labeling Poll” (2007), at 15, not available online.

26 ⁶³ The industry standard, including Sanderson, is indoors. “Almost all the chickens eaten in the
 27 United States, and increasingly in the rest of the world, have been raised for decades in this
 28 manner: always indoors, always under artificial light, always eating only what the farmer
 supplies.” Maryn McKenna, “Big Chicken,” (2017), available at
<https://itunes.apple.com/us/book/big-chicken/id1217089199?mt=11>.

1 132. As for the crowding and stocking density inside chicken sheds, an industry guide
 2 recommended 1.097 to 1.180 square feet per bird. The industry standard for a grow-out house is
 3 20,000 birds or more, with eight-tenths of a square foot per bird.⁶⁴ Sanderson reported that it lost
 4 2.1 million birds in Hurricane Florence who were housed in 70 grow-out sheds; that is
 5 approximately 30,000 birds per shed,⁶⁵ even more than the 25,000 to 27,000 birds per shed
 6 identified by Sanderson's veterinary staff. A reasonable consumer would not think that industrial
 7 sheds with approximately 25,000 to 30,000 birds with approximately one square foot per bird is
 8 "natural."

9 133. Sanderson also subjects its birds to cruel, inhumane treatment. A 2016 investigation
 10 at the Kinston, N.C. hatchery farm has revealed the horrific conditions in which Sanderson's
 11 chicks are left to die.⁶⁶ The Animal Welfare Institute, based on the USDA inspection records,
 12 determined that the Sanderson chicken plant in Collins, Mississippi, was one of the nine worst
 13 chicken plants of three hundred surveyed for animal cruelty.⁶⁷ AWI also found that two Sanderson
 14 plants have been cited at least 20 times for not complying with humane handling standards⁶⁸ (the
 15 Palestine, Texas facility had 20 humane handling reports in 2015-2016, and the Kinston, North
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 18 64 National Chicken Council, "Animal Welfare for Broiler Chickens," available at
 19 <https://www.nationalchickencouncil.org/industry-issues/animal-welfare-for-broiler-chickens/#one>,
 20 last visited July 2020.

21 65 Mother Jones, "These Photos of Submerged North Carolina Livestock Farms Are Devastating,"
 22 <https://www.motherjones.com/food/2018/09/these-photos-of-submerged-north-carolina-livestock-farms-are-devastating/>, last visited July 2020; *see also* <https://sandersonfarms.com/press-releases/sanderson-farms-inc-provides-update-hurricane-florence-damage/>, last visited July 2020/.

23 66 PETA, "Chicks Dropped Live Into Mincer at Chicken Supplier of Kroger, Arby's," available at
 24 <https://investigations.peta.org/?s=arby%27s>
 and <https://www.peta.org/media/news-releases/exposed-chicks-left-suffer-die-chicken-meat-supplier-kroger-arbys/>, last visited July 2020.

25 67 *See* Animals 24-7, "Pilgrim's Pride & Case Farms have "worst chicken plants for animal
 26 cruelty," say Animal Welfare Institute & Farm Sanctuary," available at
 27 <https://www.animals24-7.org/2014/11/22/pilgrims-pride-case-farms-have-worst-chicken-plants-for-animal-cruelty-say-animal-welfare-institute-farm-sanctuary/>, last visited July 2020.

28 68 Animal Welfare Institute, "New Report Exposes Pattern of Animal Mistreatment in Some US
 Poultry Plants," available at <https://awionline.org/press-releases/new-report-exposes-pattern-animal-mistreatment-some-us-poultry-plants>, last visited July 2020.

1 Carolina facility had 22 reports for 2011-2014).⁶⁹ The Palestine violations included, among others,
 2 excessive use of force, improper sorting of “DOAs and live birds” and birds drowning in the scald
 3 tank. In 2016, a USDA inspector determined the plant’s slaughtering process was “out of control”
 4 for the scald tank violations and noted that similar incidents had taken place before.⁷⁰

5 **Allegations Concerning the Misrepresentation That There Is No Evidence the Use of
 6 Antibiotics in Poultry Contributes to The Evolution of Antibiotic-Resistant Bacteria**

7 134. Based on Sanderson’s advertising, a reasonable consumer would believe
 8 Sanderson’s “100% Natural” claim means that its chickens were raised in a manner that does not
 9 contribute to the development of antibiotic-resistant bacteria.

10 135. As described *supra* ¶¶ 88-123, Sanderson goes to great lengths to conceal the fact
 11 that it uses pharmaceuticals and antibiotics in the feed.

12 136. Coupled with the numerous representations that its chickens are “100% Natural,”
 13 and its repeated statements to the effect that “raised without antibiotics” is a marketing gimmick to
 14 which no attention need be paid in the comedic Bob and Dale commercials, *supra* ¶¶ 94-99,
 15 Sanderson seeks to convince consumers that their concerns about the evolution of antibiotic-
 16 resistant bacteria are something to be laughed off.

17 137. However, this is an important issue to consumers. According to the 2016 Consumer
 18 Reports survey, 65% of consumers are concerned that feeding antibiotics or other drugs to animals
 19 leads to antibiotic resistant bacteria,⁷¹ and the 2018 survey showed that 77% of consumers were
 20 concerned that feeding antibiotics to farm animals would make drugs less effective for humans.⁷²
 21 Of those, 43% were either “extremely” or “very” concerned.

22
 23 ⁶⁹ Animal Welfare Institute, “The Welfare of Birds At Slaughter In The United States - 2017
 24 Update”, at 9, available at <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-Welfare-of-Birds-at-Slaughter-Update.pdf>, last visited July 2020.

25 ⁷⁰ *Id.*

26 ⁷¹ Consumer Reports National Research Center, “Food Labels Survey” (2016), at 10, previously
 27 available at http://greenerchoices.org/wp-content/uploads/2016/08/2016_CRFoodLabelsSurvey.pdf, last visited July 2020.

28 ⁷² Consumer Reports National Research Center, “Natural and Antibiotics Labels Survey” (2018),
 available at <https://advocacy.consumerreports.org/wp-content/uploads/2018/10/2018-Natural-and-Antibiotics-Labels-Survey-Public-Report-1.pdf>, last visited July 2020.

1 138. Sanderson further downplays the risk of the spread of antibiotic-resistant bacteria
 2 by telling consumers “no antibiotics to worry about here,” and “the truth is, none of the chicken
 3 you buy in the grocery store contains antibiotics. By federal law, all chickens must be clear of
 4 antibiotics before they leave the farm.”⁷³

5 139. Sanderson’s misrepresentations about the risks of the evolution of antibiotic-
 6 resistant bacteria stemming from agricultural use of antibiotics have been so egregious that a
 7 neutral third party, the Council of Better Business Bureaus, National Advertising Division (NAD),
 8 concluded on August 11, 2017 that key claims in Sanderson’s advertising are misleading and that
 9 Sanderson should stop making those claims:

10 NAD also determined that given the lack of any consensus in the scientific
 11 community over the safety of consuming meat from animals raised using
 12 antibiotics the advertiser [Sanderson] should discontinue from its advertising
 13 language that characterizes the ‘raised without antibiotics’ labels on competitive
 14 chicken producers’ products as a ‘marketing gimmick,’ ‘just a trick to get you to
 15 pay more money,’ a claim that is ‘full of hot air and doesn’t say much,’ ‘a phrase
 16 [that marketers] invented to make chicken sound safer … and it doesn’t mean
 17 much’ and similar language.⁷⁴

18 140. However, Sanderson doubles down on its efforts to minimize the importance of “no
 19 antibiotics” statements which are valuable to consumers, but which Sanderson is not lawfully
 20 allowed to use.

21 141. Sanderson contends, “...we are aware of no credible scientific research that
 22 supports the notion that the use of antibiotics that are important to human medicine when treating
 23 chickens contributes to the development of human bacterial infections that are resistant to
 24

25 ⁷³ This statement appeared on the homepage of Sanderson’s website, available at
 26 <https://sandersonfarms.com/>, last visited August 30, 2019; on the hyperlink “Truth About Chicken”
 27 that appeared right below the statement, to debunk “myths” about antibiotics, still available at
 28 <https://sandersonfarms.com/chicken-myths/#2nd>, last visited July 2020; and in a video “How We
 29 Grow Our Chicken,” available at <https://sandersonfarms.com/our-chickens/animal-welfare/>, last
 30 visited July 2020. The grow-out video appears to have been revised in December 2019. Similar
 31 statements are repeated by Sanderson in its Bob and Dale TV advertisements.

32 ⁷⁴ Advertising Self-Regulatory Council, Press Release, available at
 33 <http://www.asrcreviews.org/nad-recommends-sanderson-farms-discontinue-claims-about-tricks-gimmicks-finds-company-can-support-certain-claims-referencing-federal-law/>, last visited July
 34 2020.

1 treatment....”⁷⁵

2 142. Contrary to Sanderson’s assertion of “no credible evidence” many studies from
 3 credible sources have concluded that the use of antibiotics in livestock risks rendering those
 4 antibiotics less useful to humans:

5 a. The World Health Organization’s 2014 report, titled Antimicrobial Resistance:
 6 Global Report on Surveillance, stated, “[t]he classes of antibiotics used in food-
 7 producing animals and in human drugs are mostly the same, thereby increasing
 8 the risk of emergence and spread of resistant bacteria, including those capable
 9 of causing infections in both animals and humans. Food-producing animals are
 10 reservoirs of pathogens with the potential to transfer resistance to humans.”⁷⁶

11 b. The Centers for Disease Control and Prevention (CDC), U.S. Department of
 12 Health and Human Services, summarized the threat to public health posed by
 13 antibiotic use in agricultural operations, such as Sanderson Farms:
 14 Antibiotics are widely used in food-producing animals, and according to data
 15 published by FDA, there are more kilograms of antibiotics sold in the United
 16 States for food-producing animals than for people [hyperlink omitted]. This use
 17 contributes to the emergence of antibiotic-resistant bacteria in food-producing
 18 animals. Resistant bacteria in food-producing animals are of particular concern
 19 because these animals serve as carriers. Resistant bacteria can contaminate the
 20 foods that come from those animals, and people who consume these foods can
 21 develop antibiotic-resistant infections. Antibiotics must be used judiciously in
 22 humans and animals because both uses contribute to not only the emergence,
 23 but also the persistence and spread of antibiotic-resistant bacteria.⁷⁷

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25 ⁷⁵ See <https://sandersonfarms.com/policy-on-animal-welfare-and-antibiotic-use/>, last visited July
 26 2020.

27 ⁷⁶ World Health Organization, Antimicrobial Resistance: Global Report on Surveillance at 59,
 28 available at http://apps.who.int/iris/bitstream/10665/112642/1/9789241564748_eng.pdf?ua=1, last
 visited July 2020 (internal citations omitted).

29 ⁷⁷ Antibiotic Resistance Threats in the United States (2013), at 36-37, available at

- c. According to the President’s Council of Advisors on Science and Technology and its Report to the President on Combatting Antibiotic Resistance, “[s]ubstantial evidence demonstrates that use of antibiotics in animal agriculture promotes the development of antibiotic-resistant microbes in animals and that retail meat can be a source of microbes, including antibiotic-resistant microbes.”⁷⁸
- d. A 2017 review of the research to date concludes, “taken together, the data support what the scientific community, national governments, and international organizations such as the World Health Organization, the Food and Agricultural Organization of the United Nations, and the World Organization for the Health of Animals (OIE) have long recognized: antimicrobial use on farms clearly contributes to the emergence of resistance and poses a human public health risk.”⁷⁹
- e. Approximately 70% of all medically important antibiotics sold in the United States are for livestock use.⁸⁰
- f. An estimated 35,000 deaths and more than 2.8 million antibiotic-resistant

<https://www.cdc.gov/drugresistance/pdf/ar-threats-2013-508.pdf>, last visited July 2020. The report also contains a glossary of terms related to antibiotic resistance.

⁷⁸ Report to the President on Combatting Antibiotic Resistance, Executive Office of the President of the United States (September 2014), at 50, available at https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_carb_report_sept2014.pdf, last visited July 2020.

⁷⁹ Hoelzer et al., BMC Veterinary Research (2017) 13:211, “Antimicrobial drug use in food-producing animals and associated human health risks: what, and how strong, is the evidence?,” at 35, available at https://link.springer.com/epdf/10.1186/s12917-017-1131-3?author_access_token=CbmcKjS4XscxgMn92-6rm_BpE1tBhCbnbw3BuzI2RMGFJmV0iy8Y06YFc2zc-R5jN1X3crDybEToB_CzXCpRozpkwGnxg9ydolzETVy02VGkppjTRq1V0MGiTqrqtB8g2U114wU4Fb9RacLAHWYIA%3D%3D, last visited July 2020..

⁸⁰ The Pew Charitable Trusts, *Antibiotics and Animal Agriculture: A Primer* (February 2018) https://www.pewtrusts.org/-/media/assets/2018/02/arp_antibiotics_and_animal_agriculture_a_primer.pdf, last visited July 2020.

1 infections occur in the U.S. each year, as estimated in 2019 by the CDC.⁸¹ This
 2 is an increase in deaths and infections previously reported by the CDC in 2013.
 3

4 g. Children experience the ill-effects of antibiotic overuse in agriculture, most
 5 especially children younger than 5 years who become infected with antibiotic
 6 resistant bacteria.⁸²

7 143. Because Sanderson is aware of the studies cited above, Sanderson is aware of
 8 further research on the elevated risk of poultry workers carrying bacteria that is resistant to the
 9 same antibiotics that Sanderson admits to using.

10 144. Indeed, “credible evidence” of antibiotic-resistant bacteria has been found on
 11 Sanderson’s own chicken,⁸³ and this is consistent with the scientific research on antibiotic use in
 12 poultry. Sanderson’s routine use for every flock contributes to antibiotic resistance and this
 13 resistance poses a threat to public health during the pandemic, see *supra* ¶¶ 3-5.

14 **Allegations Concerning the Misrepresentation That the Products Do Not, and
 15 Cannot, Contain Unnatural Residues**

16 145. A reasonable consumer believes that Sanderson’s “100% Natural” representation
 17 means that the Products do not and cannot contain residues, such as pharmaceutical or biological
 18 residues.

19 146. Specifically, Sanderson represents itself as “100% Natural” in multiple media and
 20 Sanderson asserts “no antibiotics to worry about here” in TV advertisements. On its website and
 21 other advertisements, Sanderson states: “There’s Only Chicken In Our Chicken. Seriously.”⁸⁴ See

22
 23 ⁸¹ Center for Disease Control, Antibiotic Resistance Threats in the United States, 2019, available
 24 at <https://www.cdc.gov/drugresistance/biggest-threats.html#:~:text=According%20to%20the%20report%2C%20more,people%20die%20as%20a%20result.>, last visited July 2020.

25 ⁸² American Academy of Pediatrics, Technical Report (December 2015), “Nontherapeutic Use of
 26 Antimicrobial Agents in Animal Agriculture: Implications for Pediatrics,” at e1673, available at
<https://pediatrics.aappublications.org/content/pediatrics/136/6/e1670.full.pdf>, last July 2020.

27 ⁸³ National Resources Defense Council, *Sanderson Farms: Spreading Deception & Antibiotic
 28 Resistance*, available at <https://www.nrdc.org/experts/sanderson-farms-spreading-deception-antibiotic-resistance>, last visited July 2020.

29 ⁸⁴ See <https://sandersonfarms.com/our-chickens/100-natural/>, last visited July 2020.

1 *e.g. supra ¶ 95.*

2 147. Sanderson also misrepresents to consumers the level of protection that they can
 3 expect from the federal law regarding antibiotic residues. In one of the Bob and Dale TV
 4 advertisements,⁸⁵ Sanderson says, “The thing is, by federal law, all chickens must be cleared of
 5 antibiotics before they leave the farm . . . No antibiotics to worry about here.” This statement is
 6 misleading because it omits the fact that USDA’s own process allows for chickens with
 7 scientifically detectable antibiotic residues to be sold to consumers, as long as the detected
 8 residues stay below the regulatory “tolerance.”

9 148. Sanderson’s representations regarding its chicken being free of residues are
 10 misleading because Sanderson’s own laboratory testing indicates that the pharmaceuticals
 11 Sanderson administers remain in some of the chickens after they leave the grow-out facilities and
 12 arrive at processing plants to be slaughtered. The pharmaceuticals that Sanderson administers
 13 include, but are not necessarily limited to, bacitracin, gentamicin, lincomycin, monensin, narasin,
 14 oxytetracycline, penicillin, rofenaid (Rofenaid is a brand name; the drug is sulfadimethoxine
 15 ormetprim), salinomycin, and virginiamycin.⁸⁶

16 149. Sanderson conducts its own laboratory testing for the residues of pharmaceuticals
 17 that Sanderson administers, and Sanderson’s own testing indicates positive results for the
 18 pharmaceuticals that Sanderson administers to its flocks at various stages of their lives. These
 19 positive pharmaceutical results include, but are not necessarily limited to, decoquinate, monensin,
 20 narasin, nicarbazin, and salinomycin. Discovery may reveal additional residues.

21 150. Sanderson also uses anhydrous ammonia as a refrigerant to freeze processed
 22 chickens, as observed by the Fifth Circuit Court of Appeals in finding against Sanderson regarding
 23 Occupational Health and Safety Administration violations.⁸⁷

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 25
 26 ⁸⁵ See <https://www.ispot.tv/brands/A1Z/sanderson-farms>, last visited July 2020).

27 ⁸⁶ Order, *Friends of the Earth et al. v. Sanderson Farms, Inc.*, No. 3:17-cv-03592 (RS), Dkt. 94
 (N.D. Cal. Aug. 27, 2018).

28 ⁸⁷ *Sanderson Farms, Inc. (Production Division) v. Occupational Safety and Health Review Comm.*, No. 19-60592 (5th Cir. July 9, 2020).

Allegations Concerning the Reach and Scope of Sanderson's Misrepresentations

151. Sanderson began its “100% Natural” marketing campaign at least as far back as 2014. In its “I Believe” series of commercials which were released on YouTube, Sanderson concluded by wishing viewers “Happy Fourth of July” “Happy Thanksgiving” “Merry Christmas and Happy Holidays” with a voiceover “And we mean that 100%.” along with the logo and “100% Natural”:



152. The “Bob and Dale” commercials began airing in 2016.⁸⁸ They were broadcast in markets where Sanderson chicken was sold and were also put online.

153. The term “impressions” is used to measure how many times a commercial has been seen.

154. The Bob and Dale commercial "Labels" had 41,961,833 broadcast impressions.

155. The Bob and Dale commercial "Cooking Show" had 56,953,090 broadcast impressions.

⁸⁸ The numbers were captured during the campaign on June 9, 2017 and have undoubtedly increased since then. Current numbers are not publicly available.

1 156. The Bob and Dale commercial “Supermarket” had 108,214,520 broadcast
 2 impressions.

3 157. The Bob and Dale commercial “Marketing Guru” had 89,745,934 impressions.

4 158. The Bob and Dale commercial “Floppy Arms” had 116,413,306 broadcast
 5 impressions.

6 159. The Bob and Dale commercials were also seen millions of times online.

7 160. The Bob and Dale commercial “Labels” had 1,675,972 views on YouTube and
 8 32,000 on Facebook.

9 161. The Bob and Dale commercial “Cooking Show” had 310,223 views on YouTube
 10 and 2.5 million views on Facebook.

11 162. The Bob and Dale commercial “Supermarket” had 2,137,612 views on YouTube
 12 and 4 million views on Facebook.

13 163. The Bob and Dale commercial “Marketing Guru” had 1,021,876 views on
 14 YouTube and 711,000 views on Facebook.

15 164. The Bob and Dale commercial “Floppy Arms” had 753,431 views on YouTube and
 16 2.4 million views on Facebook.

“Bob and Dale” Commercial	Broadcast Impressions	YouTube Views	Facebook Views
Truth About Chicken – Labels Commercial	41,961,833	1,675,972	32,000
The Truth About Chicken - Marketing Guru Commercial:	89,745,934	1,021,876	711,000
The Truth About Chicken - Mr. Floppy Arms Commercial	116,413,306	753,431	2,400,000
The Truth About Chicken – Supermarket Commercial	108,214,520	2,137,612	4,000,000
Truth About Chicken - Cooking Show Commercial	56,953,090	310,223	2,900,000
TOTAL	332,518,683	5,899,114	10,043,000

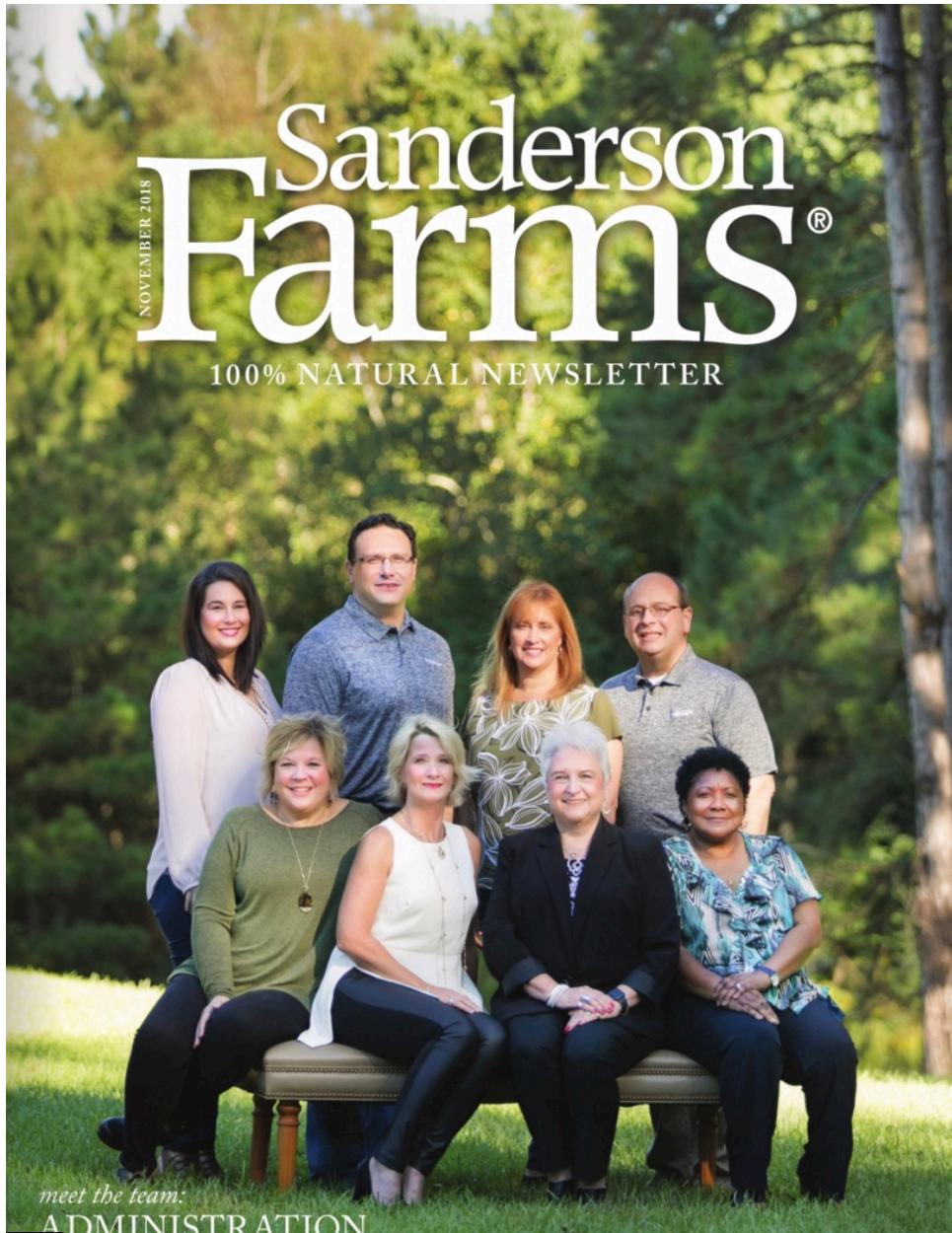
1 165. The Bob and Dale commercials aired in 2016 and 2017 on widespread television
2 shows like *College Basketball* on CBS, *48 Hours* on CBS and *Sunday Morning* on CBS.
3

4 166. Sanderson's print advertising also reached a wide audience.

5 167. For example, in 2018, Sanderson Farms also placed a print ad stating that its
6 chicken was "All Natural" in *Southern Living*, a national magazine which, according to its 2019
7 media guide, has print reach of 16,081,000 and a digital reach of 7.3 million unique users.⁸⁹

8 168. Sanderson Farms also publishes a monthly magazine, the *Sanderson Farms 100%
9 Natural Newsletter*, which as of 2018, had a circulation of 600,000 across 42 states, which has the
10 "100% Natural" claim as part of every title on the front of the magazine:
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26 89 Southern Living, 2019 Media Kit, available online at
27 https://www.southernliving.com/sites/default/files/sl_2019_mediakit_final_lores.pdf, last visited
28 July, 2020.



169. The *Sanderson Farms 100% Natural Newsletter* is sufficiently prominent that it
20 won numerous public relations awards including a Gold ADDY award.⁹⁰ The ADDY awards are

27 ⁹⁰ Sanderson Farms press release May 7, 2018, available at <https://sandersonfarms.com/press-releases/sanderson-farms-awarded-twenty-public-relations-advertising-awards/>, last visited July 28 2020.

1 the “advertising industry’s largest and most representative competition.”⁹¹

2 170. Sanderson also won several public relations awards for its *Sanderson Farms*
 3 *Corporate Responsibility Report*, including one the Southern Public Relations Association of
 4 Mississippi Judge’s Choice Award and an award from the Southern Public Relations Federation.⁹²

5 171. In addition, the “100% Natural” representation, in the form of pictures of the
 6 products such as those in ¶ 77 *supra*, has appeared in millions of copies of flyers and circulars
 7 where Sanderson Chicken is sold.

8 172. Such pictures have appeared in flyers and circulars for major supermarket chains
 9 that sell Sanderson chicken, including Wal-Mart, Sam’s Club, Kroger (which owns much of Food
 10 4 Less and other regional chains), Safeway, H-E-B (340 stores in Texas), Albertson’s (400 stores
 11 in the United States), Von’s (200 stores in California and Nevada), Food 4 Less (337 stores in the
 12 United States), and Harris Teeter (230 stores in the United States). Sanderson chicken is sold in
 13 thousands of stores in the United States.

14 173. Every retail package of Sanderson chicken bears the phrase “100% Natural.” The
 15 labels represent an enormous and widespread “100% Natural” message to consumers, which is the
 16 message Sanderson encourages retailers to use in their ad circulars.⁹³

17 174. In Sanderson’s 2019 annual report filed with the SEC,⁹⁴ it noted that its efforts to
 18 distinguish itself in the market as a “natural” brand went back to 2004:

19 The Registrant has achieved a high level of public awareness and acceptance of

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 21 ⁹¹ American Advertising Federation website, available at
 22 https://www.aaf.org/AAFMemberR/Press_Room/2011/ADDY_Winners.aspx?WebsiteKey=4a2b61a4-ccf6-4069-b7fb-9bea5afaf2f1, last visited July 2020.

23 ⁹² Sanderson Farms press release May 7, 2018. available at <https://sandersonfarms.com/press-releases/sanderson-farms-awarded-twenty-public-relations-advertising-awards/>, last visited July 2020.

24 ⁹³ Sanderson maintains product imagery at the following address
 25 <https://sandersonfarms.com/corporate/media-library/product-imagery/>, last visited July 2020.
 26 There Sanderson states: “To help you advertise Sanderson Farms products at the retail level,
 27 we’ve created a database of professional images for use in print and Internet advertisements to
 28 promote the sale of Sanderson Farms *100% natural chicken.*”(emphasis added).

⁹⁴ Sanderson Farms 2019 Annual Report to Shareholders, available at
<http://ir.sandersonfarms.com/index.php/static-files/dd7be81d-df8a-4e22-b267-89cc6e9dcc89>, last visited July 2020.

1 its products in its core markets. Brand awareness is an important element of the
 2 Registrant's marketing philosophy, and it intends to continue brand name
 3 merchandising of its products. During calendar 2004, the Company launched an
 4 advertising campaign designed to distinguish the Company's fresh chicken
 5 products from competitors' products. The campaign noted that the Company's
 6 product is a natural product free from salt, water and other additives that some
 7 competitors inject into their fresh chicken. The Company continues to use various
 8 media to communicate this message today.

9 Sanderson also described its recent campaigns to promote itself as a "natural" brand:
 10 During fiscal 2016, the Company launched a multi-media advertising campaign
 11 designed to explain and support the Company's position regarding the judicious
 12 use of antibiotics to prevent illness and treat chickens that become ill. During
 13 fiscal 2017, the Company launched a multi-media advertising campaign designed
 14 to dispel many of the myths about poultry production. The Company regularly
 15 evaluates the success of this campaign and, while not currently advertising
 16 aggressively on television, expects to continue to use the campaign in other
 17 media, at least for the near term.

18

19 **CAUSES OF ACTION**

20

21 **FIRST CAUSE OF ACTION**

22

23 **Violation of the Unfair Competition Law,
 24 Cal. Bus. & Prof. Code § 17200, *et seq.***

25 175. The allegations made in all preceding paragraphs are re-alleged and incorporated
 26 by reference herein.

27 176. Sanderson engaged in unlawful, unfair, and/or fraudulent conduct under the
 28 California UCL, California Business & Professions Code § 17200, *et seq.*, by advertising and
 labeling its Chicken Products as "100% Natural," plus other representations listed above, when in
 fact, Sanderson knows that the process by which it creates its Chicken Products and the resulting
 product itself does not meet reasonable consumer expectations for a product marketed as "100%
 Natural."

177. Sanderson's conduct is unlawful because it violates the Poultry Products Inspection
 Act, 21 U.S.C. § 451 *et seq.*, which prohibits labeling that is false or misleading in any particular,
 § 453(h) and its implementing regulations, including 9 C.F.R. § 381.129(a), requiring that, "No

1 poultry product . . . shall have any false or misleading labeling . . .” Sanderson’s conduct is
 2 unlawful because it violates the Federal Trade Commission Act, 15 U.S.C. § 45, which prohibits
 3 unfair or deceptive acts or practices affecting commerce, and prohibits any false advertisements
 4 related to food, § 52. Sanderson’s conduct is unlawful because it violates the Magnuson-Moss
 5 Warranty Act, 15 U.S.C. § 2301, which prohibits a food supplier from making false, fraudulent or
 6 misleading representations to consumers regarding consumer products. Sanderson’s conduct is
 7 unlawful because it violates the California False Advertising Law, California Business &
 8 Professions Code § 17500 *et seq.*, described more fully in the Second Claim for Relief below.
 9 Sanderson’s conduct is unlawful because it violates express warranty law, Cal. Comm. Code §
 10 2313, which prohibits Sanderson from making any affirmation of fact or promise to a buyer for
 11 goods when the goods do not conform to the description provided. Sanderson’s conduct is
 12 unlawful because it violates the California Consumers Legal Remedies Act, Cal. Civ. Code § 1750
 13 *et seq.*, which prohibits representing that the Products have characteristics, uses or benefit that
 14 they do not have; representing that the products are of a particular standard, quality, or grade when
 15 they are not; advertising the products with the intent not to sell them as advertised. Sanderson’s
 16 conduct is unlawful because it violates the California Meat and Poultry Inspection Act
 17 (“CMPIA”), Cal. Food & Agr. Code § 1 *et seq.*, which imposes and enforces requirements “equal
 18 to those imposed and enforced under the . . . Poultry Products Inspection Act.” Cal. Food & Agr.
 19 Code § 18692. Like the PPIA, California’s poultry regulations deem misbranded any poultry
 20 product with labeling that is “false or misleading in any particular.” Cal. Food & Agr. Code §
 21 18781.

22 178. Sanderson’s conduct is unfair in that it offends established public policy and/or is
 23 immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to Plaintiffs,
 24 Plaintiffs’ members, and California consumers. The harm to Plaintiffs arising from Sanderson’s
 25 conduct outweighs any legitimate benefit Sanderson derived from the conduct. Sanderson’s
 26 conduct undermines and violates the stated spirit and policies underlying the FAL and other legal
 27 regulations as alleged herein. Sanderson’s conduct is unfair because it routinely uses
 28 pharmaceuticals, including antibiotics, to all birds in a flock, throughout the majority of their lives,

1 which sometimes results in residues remaining in the product. Sanderson's conduct is unfair
 2 because of its routine use of multiple antibiotics, thus contributing to the growth of antibiotic-
 3 resistant bacteria. Sanderson's conduct is unfair because it confines birds in crowded sheds in
 4 inhumane conditions and Sanderson's plants have been cited for excessive use of force.

5 179. Sanderson's advertising actions and practices with regard to the food product and
 6 process constitute fraudulent business practices in violation of the UCL because, among other
 7 things, they are likely to deceive reasonable consumers. For example, Sanderson marketed its
 8 chicken products as "100% Natural" when in fact it is not. As a direct and proximate result of
 9 Sanderson's violations, Plaintiffs suffered injury in fact because they were forced to divert
 10 substantial organizational resources away from their core missions. Sanderson's unlawful
 11 encouragement of such practices have frustrated Plaintiffs' efforts to promote transparency in the
 12 food system.

13 180. Plaintiffs seek (a) injunctive relief in the form of an order requiring Sanderson to
 14 cease the acts of unfair competition alleged here and to correct its advertising, promotion, and
 15 marketing campaigns; (b) the payment of Plaintiffs' attorneys' fees and costs pursuant to, inter
 16 alia, California Code of Civil Procedure Section 1021.5.; and (c) interest at the highest rate
 17 allowable by law.

18 181. Plaintiffs do not seek to impose, directly by themselves or indirectly through any
 19 state agency, requirements with regard to the premises, facilities or operations that are in addition
 20 to, or different than, the requirements of the Poultry Products Inspection Act (PPIA), 21 U.S.C. §
 21 451 et seq.

22 182. Plaintiffs do not seek to impose, directly by themselves or through any state
 23 agency, requirements with regard to marking, labeling, packaging or ingredient requirements
 24 found by the USDA Secretary to unduly interfere with the free flow of poultry products in
 25 commerce that are in addition to, or different than, the PPIA.

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SECOND CAUSE OF ACTION

Violation of the False Advertising Law, Cal. Bus. & Prof. Code § 17500 et seq.

183. The allegations made in all preceding paragraphs are re-alleged and incorporated by reference herein.

184. Sanderson publicly disseminated untrue or misleading advertising, or intended not to sell the Chicken Products as advertised, in violation of California FAL, California Business & Professions Code § 17500, *et seq.*, by advertising its Chicken Products as “100% Natural,” plus other representations listed above, when in fact, Sanderson knew, or in the exercise of reasonable care should have known, that the process by which it creates its Chicken Products and the product itself does not meet reasonable consumer expectations for a product marketed as “100% Natural.”

185. As a direct and proximate result of Sanderson's violations, Plaintiffs suffered injury in fact because they were forced to divert substantial organizational resources away from their core missions. Sanderson's unlawful practices have frustrated Plaintiffs' efforts to promote transparency in the food system on behalf of the general public.

186. Plaintiffs seek (a) injunctive relief in the form of an order requiring Sanderson to cease the acts of unfair competition alleged here and to correct its advertising, promotion, and marketing campaigns; (b) the payment of Plaintiffs' attorneys' fees and costs pursuant to, inter alia, California Code of Civil Procedure Section 1021.5.; and (c) interest at the highest rate allowable by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, their members, and the general public, pray for judgment as follows:

- A. Declare that Sanderson violated the UCL and the FAL;
- B. Order an award of injunctive relief as permitted by law or equity, including enjoining Sanderson from continuing the unlawful practices as set forth here, and ordering Sanderson to engage in a corrective advertising campaign;

1 C. Order Sanderson to pay fees and litigation costs, including a reasonable allowance
2 for fees for Plaintiffs' attorneys and experts, and reimbursement of Plaintiffs'
3 expenses, pursuant to California Code of Civil Procedure Section 1021.5, the
4 common-law private-attorney-general doctrine, or any other available statute or
5 doctrine;

6 D. Order Sanderson to pay both pre- and post-judgment interest on any amounts
7 awarded; and

8 E. Order such other and further relief as may be just and proper.

9
10 Dated: July 31, 2020

11
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