

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF UNION)

IN CIRCUIT COURT

FIRST JUDICIAL CIRCUIT

BEEF PRODUCTS, INC., BPI)	CIV# 12 - _____
TECHNOLOGY, INC. and FREEZING)	
MACHINES, INC.,)	
)	
Plaintiffs)	
)	
vs.)	COMPLAINT AND JURY DEMAND
)	
AMERICAN BROADCASTING)	
COMPANIES, INC., ABC NEWS, INC.,)	
DIANE SAWYER, JIM AVILA,)	
DAVID KERLEY, GERALD)	
ZIRNSTEIN, CARL CUSTER, and KIT)	
FOSHEE,)	
)	
Defendants)	

TABLE OF CONTENTS

	<u>Page</u>
NATURE OF THE ACTION	1
PARTIES	10
I. Background Regarding Plaintiffs.....	10
II. Background Regarding Defendants	11
JURISDICTION & VENUE.....	13
ALLEGATIONS.....	14
I. Background on Ground Beef and LFTB.....	15
A. The Process of Making Ground Beef before LFTB.....	15
B. The Process of Producing LFTB for Ground Beef	16
C. LFTB as a Lean Beef Source for Ground Beef.....	19
D. The USDA’s Approval of LFTB and BPI’s Process	20
1. The USDA’s 1991 Approval of Fat Reduced Beef	20
2. The USDA’s 1993 Approval of Lean Finely Textured Beef	21
3. The USDA’s 2001 Approval of the Ammonium Hydroxide Process	23
E. BPI’s Commitment to Producing a Safe and Nutritious Lean Beef	24
II. BPI’s Success Prior To Defendants’ Disinformation Campaign And Interference	26
A. High Demand Fuels BPI’s Expansion	27
B. Additional Benefits of LFTB for the Environment and Consumers	27
III. ABC’s Opening Attack Against BPI and LFTB.....	28
A. April 2011 “Food Revolution” Episode on LFTB.....	28
B. AMI Informs ABC of False and Defamatory Statements.....	30
C. ABC’s Reaction to its Broadcasting of False and Defamatory Statements	31

IV.	Overview of Defendants’ Disinformation Campaign Against BPI and LFTB.....	32
A.	Defendants Convinced Consumers They Were Providing “Facts” About BPI and LFTB.....	32
1.	ABC Defendants Promoted Themselves as Reporters of “Facts”	32
2.	ABC Defendants Promoted Their “Sources” as Providers of “Facts”.....	34
3.	ABC Defendants Proclaimed They Reported “Facts” About BPI and LFTB	35
B.	Duration and Scope of Defendants’ Disinformation Campaign	36
C.	Primary Themes of Defendants’ Disinformation Campaign	36
D.	Overview of Consumer Reaction to Defendants’ Disinformation Campaign	38
E.	Overview of Defendants’ Actual Malice	40
1.	Information Provided or Made Available to the Defendants.....	40
2.	Other Facts Demonstrating Defendants Knowingly or Recklessly Published False Statements	48
3.	Defendants’ Actions Before, During, and After the Disinformation Campaign Demonstrate Their Intent to Injure BPI and LFTB	52
V.	Defendants Intentionally Maligned BPI and LFTB by Describing LFTB as “Pink Slime”	53
A.	Defendants’ Campaign to Recast and Rename LFTB as “Pink Slime”	53
B.	Defendants’ False Statements Were Intended to Create a Consumer Backlash.....	58
C.	Defendants’ Statements Were False and Defendants Acted with Actual Malice.....	59
VI.	Defendants Falsely Stated and Implied that LFTB Was Not Meat or Beef.....	62
A.	Defendants’ Campaign to Convince Consumers LFTB Was Not Meat or Beef	62

B.	Defendants’ False Statements Were Intended to Create a Consumer Backlash	66
C.	Defendants’ Statements Were False and Defendants Acted with Actual Malice.....	67
1.	Defendants Knew LFTB Is Beef and Meat.....	67
2.	Defendants Knew LFTB Was Not a Filler or Substitute	69
3.	Defendants Knew LFTB Was Not A Gelatin Made From Connective Tissues	71
VII.	Defendants Falsely Stated and Implied that LFTB Was Not Safe for Public Consumption	72
A.	Defendants’ Campaign to Convince Consumers that LFTB Was Not Safe for Consumption	73
B.	Defendants Falsely Claimed LFTB Was Not Safe for Consumption to Create Consumer Backlash.....	77
C.	Defendants’ Statements Were False and Defendants Acted with Actual Malice.....	78
1.	Defendants Knew LFTB Was a Safe Product.....	78
2.	Defendants Knew BPI’s Beef Trimmings Were Safe.....	81
3.	Defendants Knew BPI’s Ammonium Hydroxide Process Was Safe	85
4.	Defendants Knew BPI Did Not “Simmer” or “Cook” Beef Trimmings.....	88
VIII.	Defendants Falsely Stated and Implied that LFTB Was Not Nutritious	90
A.	Defendants’ Campaign to Convince Consumers LFTB Was Not Nutritious	90
B.	Defendants Falsely Claimed LFTB Was Not Nutritious to Create Consumer Backlash	95
C.	Defendants’ Statements Were False and Defendants Acted with Actual Malice.....	96
IX.	Defendants Falsely Stated and Implied that BPI Engaged in Improper Conduct with the USDA	100
A.	Defendants’ Campaign to Convince Consumers that BPI Improperly Influenced the USDA.....	100

B.	Defendants’ False Statements Were Intended to Create a Consumer Backlash	102
C.	Defendants’ Statements Were False and Defendants Acted with Actual Malice.....	103
X.	Defendants’ Disinformation Campaign Misled Consumers and Created Unwarranted Backlash Against BPI and LFTB	106
XI.	The ABC Defendants Tortiously Interfered with BPI’s Business Relationships with Its Customers.....	112
A.	BPI Had Business Relationships with Grocery Store Chains and Ground Beef Processors.....	113
B.	The ABC Defendants’ Interference with BPI’s Business Relationships.....	115
C.	The ABC Defendants’ Conduct Destroyed Many of BPI’s Business Relationships with Grocery Store Chains and Ground Beef Processors	121
1.	The ABC Defendants’ Interference with BPI’s Business Relationships with Grocery Store Chains	121
2.	The ABC Defendants’ Interference with BPI’s Business Relationships with Ground Beef Processors	125
XII.	Defendants’ Disinformation Campaign and Tortious Interference Caused Significant Damage to BPI	127
A.	Lost Actual Sales and Profits Due to Disinformation Campaign and Tortious Interference	127
B.	Lost Future Sales and Profits Due to Disinformation Campaign and Tortious Interference.....	129
C.	Lost Investments Due to Defendants’ Disinformation Campaign and Tortious Interference	130
1.	Lost Investment In Processing Facilities	130
2.	Lost Investment In Collection Equipment	130
D.	Defendants’ Misconduct Damaged BP, BPI Tech and FMI.....	131
XIII.	ABC Defendants’ Disinformation Campaign Was Widely Criticized By Beef Experts, Food Safety Organizations and Government Officials	133

COUNTS

Category One: Defamation Counts For False Statements	138
Category Two: Common Law Product Disparagement Counts For False Statements	177
Category Three: Defamation Counts For False Implications	216
Category Four: Common Law Product Disparagement Counts For False Implications	235
Category Five: Violation Of South Dakota’s Agricultural Food Products Disparagement Act.....	250
Category Six: Tortious Interference Count.....	254
PRAYER FOR RELIEF	256

Beef Products, Inc. (“BP”), BPI Technology, Inc. (“BPI Tech”), and Freezing Machines, Inc. (“FMI”) (collectively referred to as “BPI” or “Plaintiffs”) assert the following claims and allegations against Defendants American Broadcasting Companies, Inc. (“ABC”), ABC News, Inc. (“ABC News”), Diane Sawyer, Jim Avila, David Kerley, Gerald Zirnstein, Carl Custer, and Kit Foshee.¹

NATURE OF THE ACTION

1. This action is brought by BPI to recover for defamation, product and food disparagement, tortious interference with business relationships, and other wrongs committed by Defendants. Defendants knowingly and intentionally published nearly 200 false and disparaging statements regarding BPI and its product, lean finely textured beef (“LFTB”). Defendants engaged in a month-long vicious, concerted disinformation campaign against BPI, companies that produced a safe, nutritious beef that has lowered the cost of lean ground beef sold to consumers for nearly 20 years.

2. BPI is a related group of family-owned and operated companies that established themselves as the nation’s largest producer of LFTB after 30 years of hard work. Eldon and Regina Roth started BPI in 1981. After years of research and testing, Eldon Roth greatly improved upon a mechanical process for separating lean beef from beef trimmings that could not be economically separated by hand. BPI’s process produces an additional 10 to 20 pounds of lean beef (95% lean) from each bovine animal. Meat processors then use LFTB with beef trimmings and other cuts of beef to make ground beef. LFTB lowers the fat content of ground

¹ ABC, ABC News, Sawyer, Avila, and Kerley are collectively referred to as the “ABC Defendants.” Zirnstein, Custer, and Foshee are collectively referred to as the “Individual Defendants.” The ABC Defendants and the Individual Defendants are collectively referred to as the “Defendants.”

beef, lowers the cost of ground beef to consumers, and decreases the number of animals that need to be slaughtered in the United States to produce lean beef.

3. BPI's successes ultimately exceeded the Roths' expectations. The U.S. Department of Agriculture ("USDA") approved LFTB for use in ground beef in 1993. At that time, BPI sold approximately 963,000 pounds of LFTB per week. In the following decades, this small, family-owned and operated group of companies grew into a very successful enterprise. At the start of 2012, BPI sold approximately five million pounds of LFTB per week, operated four state-of-the-art processing facilities, had over 1,300 employees, and earned annual revenue over \$650 million and profits over \$115 million.

4. BPI also established itself as a leader of, and innovator in, food safety. BPI invested millions of dollars to make LFTB the safest lean beef on the market. BPI's investment in safety has been money well spent. BPI has sold over five billion pounds of LFTB since it was approved by the USDA. In more than 20 years, there has not been a single reported food-borne illness caused by LFTB. In fact, BPI has received nearly every significant food safety and innovation award the beef industry and scientific community might bestow on a beef or food producer.

5. BPI was an American success story. The Roths founded BPI and spent their lives building it. They invested and reinvested millions of dollars to expand production facilities, design and develop state-of-the-art equipment and techniques, and implement some of the most rigorous testing protocols in the industry. As a result of their labor, BPI was able to produce a lean beef that lowered the fat content of ground beef, lowered the cost of ground beef for consumers, and decreased the number of cattle slaughtered for lean beef production. BPI made a safe and nutritious product that was good for consumers, the beef industry and the environment.

6. On March 7, 2012, the Roth family's life's work, BPI's future, and the future of BPI's employees were turned upside down. On that day, ABC News, one of the most powerful news outlets in the world, began a disinformation campaign against BPI and LFTB. The month-long campaign, in which all Defendants participated, manufactured a baseless consumer backlash against BPI and LFTB. Through a series of factual misstatements, repeated continuously during the campaign, Defendants knowingly misled the public into believing that LFTB was not beef at all, but rather was an unhealthy "pink slime" "hidden" in ground beef as part of an "economic fraud" masterminded by BPI.

7. Defendants' campaign against BPI and LFTB was unparalleled in terms of its duration, its scope of false statements, and the size of the audience it reached through the ABC broadcasts and online reports. Between March 7 and April 3, 2012, ABC aired 11 broadcasts attacking BPI and LFTB. Defendants supplemented the broadcasts with 14 online reports and numerous social media postings. Over these 28 days, Defendants knowingly or recklessly made nearly 200 false, defamatory, and disparaging statements regarding BPI and LFTB.²

8. Defendants' disinformation campaign had five components. First, a key feature of the campaign against BPI and LFTB was to repeatedly characterize and describe LFTB as "pink slime," so that the phrase became a synonym for LFTB. Defendants used this false and defamatory description for LFTB 137 times during their campaign. There is not a more offensive way of describing a food product than to call it "slime," which is a noxious, repulsive, and filthy fluid not safe for human consumption. Defendants used this false description to rename LFTB in an effort to incite and inflame consumers against BPI and LFTB.

² Appendix 1 identifies the false and defamatory statements made by Defendants between March 7 and April 3, 2012.

9. Second, Defendants misled consumers into believing that LFTB is not beef, or even meat. Defendants stated LFTB is “not really beef.” Defendants stated LFTB is “not what the typical layperson would consider meat.” Defendants stated that LFTB was a mere “filler” added to ground beef to “pump up” the volume. Defendants stated that selling ground beef with LFTB amounted to an “economic fraud” because LFTB was a “substitute” for beef. These statements were intentional and knowingly false statements by Defendants. LFTB is 100% beef.

10. Third, Defendants misled consumers into believing that LFTB is not safe for public consumption. Defendants stated that LFTB was a “questionable” product added to ground beef. Defendants stated that LFTB was made from “low grade” “scraps” and “waste.” Defendants stated that the beef trimmings used by BPI to make LFTB were once used only for “dog food.” Defendants stated that ground beef made with LFTB was “suspect” because this unknown product was “lurking” and “hiding” in the ground beef. These statements were intentional and knowingly false statements by Defendants. LFTB has always been safe for public consumption, and the beef trimmings used by BPI came from USDA-inspected and approved beef.

11. Fourth, Defendants misled consumers into believing that LFTB is not nutritious. Defendants stated that this “pink slime” would not do consumers “any good.” Defendants stated that LFTB’s protein came primarily from “connective tissues,” as opposed to muscle meat. Defendants stated that LFTB was more like “gelatin” than nutritious beef. These statements were intentional and knowingly false statements by Defendants. LFTB is lean beef, made from muscle meat, and it has significant nutritional value. Defendants had no reliable, scientific basis for stating and implying anything to the contrary.

12. Fifth, Defendants misled consumers into believing that BPI had engaged in improper conduct to gain approval for LFTB from the USDA. Defendants stated that USDA scientists “objected” to the use of LFTB in ground beef. Defendants stated that USDA officials “with links to the beef industry” “overruled” the USDA scientists. Defendants stated that the USDA “labeled” LFTB as meat simply because “it was pink” in color. These statements were intentional and knowingly false statements by Defendants. BPI did not exert any improper influence over USDA officials. Instead, BPI received approval for LFTB after the product went through the same rigorous and comprehensive regulatory review as other products. The USDA’s approval was based on the merits of LFTB, and its approval was not granted over the objections of USDA scientists.

13. Defendants’ disinformation campaign was not the product of merely negligent reporting. It was based on knowing or reckless misstatements of facts. Defendants’ statements were inconsistent with information that BPI and others gave to the ABC Defendants before and during the disinformation campaign. Defendants’ statements were contradicted by the findings of the USDA, the U.S. Food and Drug Administration (“FDA”), various food safety organizations, and experts in the beef industry. And, their statements were inconsistent with the significant volume of information BPI, food safety experts and beef experts made publicly available to them. In short, Defendants knew they were making false statements about BPI and LFTB, or they acted with reckless disregard for the truth.

14. Defendants were provided, or had access to, over 60 letters, articles, press releases, reports and studies showing that their statements about BPI and LFTB were false. Defendants persisted with their disinformation campaign notwithstanding the considerable information from BPI, beef and food safety experts, and consumer rights organizations

demonstrating that their statements were not factually accurate. Defendants' persistence—which included repeating the same misstatements after receiving information showing them to be false—indicates that Defendants intended to injure BPI and to create a consumer backlash against LFTB.

15. Moreover, Defendants' disinformation campaign was only one part of their attack against BPI and LFTB. At the same time Defendants were defaming and disparaging BPI and LFTB, the ABC Defendants sought to interfere with and damage BPI's business relationships with grocery stores and ground beef processors. The ABC Defendants published and broadcast a blacklist of grocery store chains that sold "pink slime" to their customers. The ABC Defendants repeatedly called on consumers to find out if their grocery stores sold "pink slime" and repeatedly identified stores that did not promise to ban "pink slime" from their shelves. The ABC Defendants provided positive coverage for stores that dropped "pink slime" and negative coverage for the stores that did not do so.

16. The blacklist published by the ABC Defendants had a devastating impact on BPI's business relationships with grocery store chains. Based on Defendants' disinformation campaign, consumers believed that the blacklist identified stores selling ground beef containing an unhealthy, unsafe filler. Consumers believed that the blacklist identified stores participating in an "economic fraud" by labeling ground beef with "pink slime" as 100% beef. Consumers believed that the blacklist identified stores selling ground beef made with "low grade" "waste," likely to be contaminated with "excrement."

17. The ABC Defendants used the blacklist to create a so-called "grassroots movement" against grocery store chains that sold ground beef with LFTB, and they actively encouraged consumers to join that campaign. Their efforts worked. No grocery store chains

wanted to be on the blacklist. Nearly every major grocery store chain in the country that had been purchasing ground beef that included LFTB stopped doing so, even though none of them had complaints about the quality or safety of LFTB. After years of selling ground beef with LFTB, each of the grocery store chains dropped LFTB because of the consumer backlash created by Defendants' disinformation campaign. The chains could not risk being on the blacklist and losing consumers who were making decisions based on Defendants' false information about LFTB.

18. The ABC Defendants likewise interfered with and damaged BPI's business relationships with ground beef processors. Many of the largest processors in the country used LFTB in their ground beef prior to the Defendants' disinformation campaign. However, as a result of the campaign, retailers who purchased ground beef (grocery stores, restaurants, etc.) informed the processors that they could no longer purchase ground beef that included LFTB. Ground beef processors that had done business with BPI for nearly 20 years were forced to stop or significantly reduce their business with BPI. These processors did not do so based on their concerns about the quality or safety of LFTB. They did so because consumers, fed by Defendants' disinformation, were afraid to purchase ground beef that included LFTB.

19. Defendants' conduct caused significant damage to BPI. Prior to Defendants' campaign, and their interference with BPI's business relationships, BPI sold nearly five million pounds of LFTB per week, ran four processing facilities, and had over 1,300 employees. Afterwards, BPI's sales declined to less than two million pounds per week, BPI was forced to close three of its processing facilities, and BPI had to let go over 700 employees. BPI is losing more than \$20 million in revenue every month due to the Defendants' misconduct. Defendants'

defamation and tortious interference had dire financial consequences on BPI, the Roth family and their employees.

20. In this lawsuit, BPI seeks to hold Defendants responsible for the consequences of their actions. **Counts I through XVIII (1-18)** assert claims based on Defendants' false statements. Counts I through IX (1-9) assert claims for defamation, and Counts X through XVIII (10-18) assert claims for product disparagement. In these counts, BPI contends that Defendants published and republished the following types of false statements regarding BPI and LFTB:

- a. Defendants falsely stated that LFTB was "pink slime";
- b. Defendants falsely stated that LFTB was not beef or meat;
- c. Defendants falsely stated that LFTB was a "filler" added to ground beef;
- d. Defendants falsely stated that LFTB was a "substitute" for beef;
- e. Defendants falsely stated that selling ground beef that included LFTB was "economic fraud" or "food fraud";
- f. Defendants falsely stated that LFTB is made from "waste," "scraps," "low grade" beef trimmings and "low quality" beef trimmings "contaminated" with "excrement";
- g. Defendants falsely stated that LFTB is made from beef trimmings that were "once used only for dog food and cooking oil";
- h. Defendants falsely stated that LFTB is "more like gelatin" than beef; and
- i. Defendants falsely stated that LFTB's "protein comes mostly from connective tissue."

21. **Counts XIX - XXV (19-25)** assert claims based on the false implications regarding BPI and LFTB created by Defendants' statements. Counts XIX through XXIII (19-22) assert claims for defamation by implication, and Counts XXIV through XXVI (23-25) assert claims for product disparagement by implication. In these counts, BPI contends that Defendants published and republished statements that implied the following types of false facts about BPI and LFTB:

- a. Defendants falsely implied that LFTB was not beef or meat;
- b. Defendants falsely implied that LFTB was not safe for consumption;
- c. Defendants falsely implied that LFTB was not nutritious; and
- d. Defendants falsely implied that BPI engaged in improper conduct to obtain approval for LFTB from the USDA.

22. BPI also brings a claim pursuant to South Dakota's statutory protection for agricultural food products. **Count XXVI (26)** asserts a claim for violation of South Dakota's Agricultural Food Products Disparagement Act, S.D.C.L. § 20-10A-1 *et seq.* Defendants made false statements regarding BPI's process for making LFTB, the beef trimmings used by BPI to make LFTB, and the quality of LFTB. In this count, BPI contends that Defendants' false statements implied that LFTB was not safe for consumption and/or impugned the safety of LFTB.

23. Finally, BPI brings claims against the ABC Defendants based on their interference with BPI's business relationships with grocery store chains and ground beef processors. **Count XXVII (27)** asserts a claim for tortious interference. In this count, BPI contends that the ABC Defendants intentionally interfered with BPI's business relationships by among other things, engaging in the disinformation campaign against BPI and LFTB, manufacturing a consumer backlash against LFTB and grocery stores that sold ground beef containing LFTB, and blacklisting grocery stores that sold ground beef containing LFTB.

24. In this lawsuit, BPI seeks recovery of actual and consequential damages in excess of \$400 million, statutory and treble damages pursuant to South Dakota's Agricultural Food Products Disparagement Act and punitive damages. BPI will establish the exact amount of damage caused by Defendants' misconduct at trial.

PARTIES

I. Background Regarding Plaintiffs

25. Plaintiff Beef Products, Inc. (“BP”) is a Nebraska corporation with its principal place of business in Union County, South Dakota. BP is a closely held corporation that is in the business of producing, distributing and selling lean beef products, including LFTB. BP is primarily responsible for preparing and selling LFTB. BP was also involved in securing approval for LFTB from the USDA. The Roth family owns and operates BP.

26. Plaintiff BPI Technology, Inc. (“BPI Tech”) is a Delaware corporation with its principal place of business in Union County, South Dakota. BPI Tech is a closely held corporation that is in the business of developing technology and processing mechanisms for producing meat products from raw materials, including LFTB. BPI Tech provides technological support, sales and marketing services, and administrative services in connection with the sale of LFTB. BPI Tech was also involved in securing approval for LFTB from the USDA, marketing LFTB, and developing the relationships interfered with and damaged by the ABC Defendants. The Roth family owns and operates BPI Tech.

27. Plaintiff Freezing Machines, Inc. (“FMI”) is a Delaware corporation with its principal place of business in Union County, South Dakota. FMI is a closely held corporation that is in the business of developing equipment, systems, recipes and processing mechanisms used in the production of meat products, including LFTB. FMI owns the patents on the equipment used to prepare LFTB, the use of which is licensed to BP. The Roth family owns and operates FMI.

28. Defendants’ misconduct injured BP, BPI Tech and FMI. They each suffered significant loss of revenues and profits as a result of Defendants’ misconduct, which caused, among other things, a decline in LFTB sales. They each will suffer significant loss of revenues

and profits in the future due to Defendants' misconduct, which will cause, among other things, a decline in LFTB sales compared to prior years and prior forecasts. And they each suffered reputational damage as a result of Defendants' misconduct. The beef industry and food safety organization recognize BP, BPI Tech and FMI as closely associated with the production of LFTB, the product attacked by the Defendants' disinformation campaign.

29. Plaintiffs BP, BPI Tech and FMI are collectively referred to as "BPI" or "Plaintiffs" in the Complaint.

II. Background Regarding Defendants

30. Defendant ABC is a Delaware corporation with its principal place of business in New York County, New York. ABC broadcasts a variety of television shows, including World News with Diane Sawyer ("World News"), and it previously broadcast Food Revolution with Jamie Oliver. ABC knowingly or recklessly published over 150 false and disparaging statements regarding LFTB and BPI during World News, Food Revolution, and other programs.

31. Defendant ABC News is a division of ABC. ABC News is a Delaware corporation with its principal place of business in New York County, New York. ABC News produces a variety of news programs, including World News, and claims that more people get their news from ABC News than from any other source. Defendants knowingly or recklessly made over 150 false and disparaging statements regarding BPI and LFTB during news programs produced by ABC News and in online reports published by ABC News.

32. Defendant Diane Sawyer is the news anchor and host of World News. On information and belief, Sawyer is a resident of New York County, New York. ABC News and Sawyer promote her as a credible source of factual information for viewers and readers. Notwithstanding her reputation and self-promotion, Sawyer knowingly or recklessly made

multiple false and disparaging statements regarding BPI and LFTB during ABC broadcasts and in social media postings.

33. Defendant Jim Avila is a Senior National Correspondent for ABC News. On information and belief, Avila is a resident of Washington, D.C. County, Washington D.C. ABC News and Avila promote him as a credible source of factual information for viewers and readers. Notwithstanding his reputation and self-promotion, Avila knowingly or recklessly made multiple false and disparaging statements regarding BPI and LFTB during ABC broadcasts, in ABC online reports and in social media postings.

34. Defendant David Kerley is a correspondent for ABC News who regularly contributes to World News. On information and belief, Kerley is a resident of McLean, Virginia. ABC News and Kerley promote him as a credible source of factual information for viewers and readers. Notwithstanding his reputation and self-promotion, Kerley knowingly made multiple false and disparaging statements regarding BPI and LFTB during ABC broadcasts and in ABC online reports.

35. Defendant Gerald Zirnstein is a former employee of the USDA. On information and belief, Zirnstein is a resident of Lorton, Virginia. During the disinformation campaign, Zirnstein appeared on ABC broadcasts and was quoted in ABC's online reports. Zirnstein knowingly or recklessly made multiple false and disparaging statements regarding BPI and LFTB during the disinformation campaign.

36. Defendant Carl Custer is a former employee of the USDA. On information and belief, Custer is a resident of Bethesda, Maryland. During the disinformation campaign, Custer appeared on ABC broadcasts and was quoted in ABC's online reports. Custer knowingly or

recklessly made multiple false and disparaging statements regarding BPI and LFTB during the disinformation campaign.

37. Defendant Kit Foshee is a former BPI employee. On information and belief, Foshee is a resident of Alexander, Arkansas. During the disinformation campaign, Foshee appeared on ABC broadcasts and was quoted in ABC's online reports. Foshee knowingly or recklessly made multiple false and disparaging statements regarding BPI and LFTB during the disinformation campaign.

38. Defendants ABC, ABC News, Sawyer, Avila and Kerley are collectively referred to as the "ABC Defendants" in the Complaint. Zirnstein, Custer, and Foshee are collectively referred to as the "Individual Defendants" in the Complaint. The ABC Defendants and the Individual Defendants are collectively referred to as the "Defendants" in the Complaint.

JURISDICTION & VENUE

39. This Court has jurisdiction over the subject matter of this action pursuant to S.D. Codified Laws § 15-7-2. Defendants committed acts that resulted in the accrual within South Dakota of multiple tort actions, including defamation, common law product disparagement, violation of South Dakota's Agricultural Food Products Disparagement Act, and tortious interference. Defendants committed these torts against companies whose primary place of business is South Dakota and who experienced the effect of Defendants' torts in South Dakota. Federal diversity jurisdiction does not exist because BPI Tech, FMI, ABC, and ABC News are all Delaware corporations.

40. Venue is proper in Union County, South Dakota pursuant to S.D. Codified Laws § 15-5-6. Defendants are not residents of South Dakota. Union County is the principal place of business for BP, BPI Tech and FMI. Each of the Plaintiffs were injured as a result of Defendants' torts and experienced the effect of Defendants' torts in Union County.

41. Jurisdiction and venue are proper in Union County, South Dakota because Defendants intentionally committed torts against companies located in Union County, and because those companies were injured in Union County. First, Defendants knowingly made false statements regarding BPI, which have their principal places of business in Union County. Second, Defendants knowingly made false statements regarding LFTB, and BPI is closely associated with LFTB, as the largest producer of LFTB in the country. Defendants knew BPI was closely associated with LFTB, as the largest producer of LFTB in the country. Third, Defendants' false statements and tortious conduct injured BPI in Union County. BPI suffered the financial and reputational consequences of Defendants' conduct in Union County. Fourth, Defendants knew their false statements and tortious conduct would injure BPI in Union County. Fifth, Defendants' false statements were broadcast in Union County by an ABC affiliate. Sixth, the ABC Defendants contacted BPI in Union County in connection with their coverage of BPI and LFTB publications.

42. In addition to the reasons set forth above, jurisdiction and venue are proper in Union County, South Dakota for the claims against Individual Defendants based on their ongoing campaign against BPI and LFTB. The Individual Defendants made false statements about BPI and LFTB before the disinformation campaign, they made false statements about BPI and LFTB during the disinformation campaign to news organizations other than ABC, and they have made false statements about BPI and LFTB since the disinformation campaign. The Individual Defendants' ongoing campaign against BPI and LFTB demonstrates a specific intent to injure companies whose principal place of business is Union County.

ALLEGATIONS

43. Defendants' disinformation campaign (March 7, 2012 to April 3, 2012) against BPI and LFTB was unprecedented in terms of its scope, its duration, and the breadth of the

various platforms used by Defendants to spread false information. Defendants made false statements about the raw material used by BPI to make LFTB, about the process used to make LFTB, about the quality and content of LFTB, and about the ground beef made using LFTB.

I. Background on Ground Beef and LFTB

44. Meat processors have been using LFTB as a lean beef source for ground beef for nearly 20 years without a single reported incident of illness or sickness caused by LFTB. For nearly 20 years, LFTB helped to make ground beef lean and affordable for consumers.

A. The Process of Making Ground Beef before LFTB

45. Ground beef is sold in grocery stores across the country. Consumers have the option of purchasing ground beef ranging from 70% to 97% lean. The lean percentages are based on the percentage of fat included in the ground beef. Ground beef that is 70% lean contains 30% fat. Ground beef that is 97% lean contains 3% fat.

46. The USDA regulates ground beef sold in the United States. For a product to be labeled ground beef, it must “consist of chopped fresh and/or frozen beef with or without seasoning and without the addition of beef fat as such” and “shall not contain more than 30 percent fat, and shall not contain added water, phosphates, binders or extenders.” 9 C.F.R. § 319.15.

47. In general, unless specifically labeled, ground beef is not made from one cut of meat from the bovine animal. Instead, processors make ground beef by combining several different cuts of meat. The different cuts come from different parts of the animal and have different percentages of fat. The combined lean/fat ratio of the different cuts after they have been chopped together determines the lean percentage for the ground beef.

48. The process of making ground beef starts with meat cuts removed from the whole bovine animal. Typically, after the animal is slaughtered, the hide is removed, the carcass is

treated with interventions such as hot water, steam or lactic acid, and the carcass is chilled to help prevent the growth of microorganisms. The carcass is then divided into various large prime cuts of meat such as chucks, rounds, and sirloins.

49. As the carcass is divided into the large prime cuts, small pieces of higher-fat muscle meat are cut off. These pieces are commonly referred to as beef trimmings and often contain a significant portion of lean that is too difficult to remove with a knife. Beef trimmings, like the prime cuts, consist primarily of protein, fat, and moisture. The “natural fall” for a bovine animal is approximately 300 pounds of beef trimmings with an average of 50% lean meat.

50. Ground beef processors have always used beef trimmings to make ground beef. Processors typically used a combination of beef trimmings and other leaner cuts to make ground beef. The ratio of beef trimmings to other leaner cuts of beef that went into making ground beef was determined by the lean ratio the processor sought to make. In general, the lower the lean ratio (e.g., 70% lean ground beef) that the processor was making, the more beef trimmings would be used, because of their relatively higher fat content. BPI’s process added value to the beef trimmings by separating the lean from the fat, and allowing for that lean meat to be used in ground beef at a very low fat content (3% to 6%) instead of at a very high fat content of beef trimmings (50% to 70%).

B. The Process of Producing LFTB for Ground Beef

51. Beef trimmings always contained muscle meat that could be, and was, used for making ground beef. However, because ground beef cannot contain more than 30% fat, traditionally, not all of the beef trimmings could be used to produce ground beef, without the addition of other, leaner beef. As more beef trimmings were used in the ground beef, it lowered the lean ratio for the ground beef, because the ground beef processor did not separate the muscle meat in the beef trimmings from the fat, and because a sufficient supply of leaner beef was not

diverted to ground beef production (from roasts and steaks). Instead, the processor typically used as much of the beef trimmings as possible while meeting the maximum fat content for ground beef, and then found other uses to derive value out of the beef trimmings that were not used directly in ground beef. For example, those beef trimmings were used in products like pizza toppings and taco meat.

52. Processors did not remove the fat from the muscle meat because the process was too labor-intensive. The traditional method of removing fat involves cutting by hand with knives. Applying this method to beef trimmings to isolate the muscle meat is not economical. It would take a butcher too long to remove the fat from beef trimmings in relation to the financial value of the resulting product.

53. BPI began developing its method for producing lean beef from beef trimmings in the 1970s. BPI solved the cost/benefit problem by developing a mechanical process that removed the fat from the beef trimmings. This development allowed BPI to produce an additional 10 to 20 pounds of lean beef from every bovine animal.

54. The process used by BPI starts with beef trimmings. BPI receives beef trimmings directly from USDA-inspected beef packing plants. The beef trimmings are from USDA-approved and inspected beef carcasses that have been treated with interventions such as hot water, steam and lactic acid to remove pathogens that could potentially exist on the meat before they are delivered to BPI. In order to ensure the quality, consistency, and freshness of the beef trimmings, BPI further inspects the beef trimmings before they are processed.

55. Once they arrive at a BPI facility, the beef trimmings enter a de-sinewer in which cartilage, connective tissue, and other pieces that may incidentally accompany the trimmings are removed, leaving only the muscle tissue and fat. This process, combined with the process used

by beef processing plants before the beef trimmings are sent to BPI, helps ensure that the final product produced by BPI does not contain cartilage and connective tissues.

56. Because the beef trimmings have been refrigerated prior to being received by BPI, they are tempered back to about 105 degrees. This temperature is the immediate post-slaughter temperature of the beef carcass. This does not involve cooking the beef trimmings or simmering the beef trimmings. The tempering is done rapidly and evenly by using systems of BPI's design and is accomplished in such a way and at such a temperature as to maintain the protein in its fresh state.

57. After tempering, the beef trimmings are put through two different centrifuges. The centrifuges separate the lean meat from the fat on the beef trimmings. These centrifuges were designed and developed by BPI to perform this precise function and have been improved upon by BPI on multiple occasions. The centrifuges remove virtually all of the fat from the beef trimmings, leaving beef that is typically 94% to 97% lean.

58. Once the fat is removed and the lean meat is isolated, BPI introduces a very small amount (measured in parts per million) of ammonia gas (anhydrous ammonia). When the ammonia gas meets the moisture in lean meat, it forms ammonium hydroxide. Ammonium hydroxide is naturally found in beef and is used in the processing of a wide variety of food. The purposes of this step is to raise the pH of the lean meat and to help remove any potential pathogens.

59. The final step in the process is to flash-freeze the LFTB. BPI flash-freezes the lean beef in a matter of seconds using systems and machinery of BPI's own design. Flash-freezing the lean beef is yet another safety precaution, as it prevents the potential growth of pathogens while the product is in a frozen state.

60. BPI's process of producing lean beef from beef trimmings is quick. Less than 30 minutes pass from the time BPI begins processing the beef trimmings to the time BPI flash-freezes the LFTB. This is less time than it takes for bacteria to grow, which is yet another aspect of BPI's safety precautions.

C. LFTB as a Lean Beef Source for Ground Beef

61. BPI sells LFTB to processors who make ground beef. Ground beef consists of a variety of types of beef mixed and chopped together in different combinations to achieve a certain lean percentage. Processors use prime cuts of beef, beef trimmings and LFTB in different combinations to make ground beef. Processors use LFTB in the same way that they use other cuts of beef.

62. Ground beef is made by feeding the different types of beef into a meat grinder, which chops the various types of beef to a size effective for mixing. The resulting ground beef is then mixed together in a blender to achieve the desired lean-to-fat ratio. After mixing and blending, the beef is then finished ground beef. The processor can then package the product in bulk or in patties and label it for shipment to grocery stores, retailers, restaurants and others.

63. Each of the different cuts of beef used by processors are a different percentage of lean. Some of the cuts of beef are leaner than others. Processors first decide the type of ground beef they want to make (e.g., 85% lean) and then determine the types and volume of beef to use to achieve that lean percentage.

64. As a lean beef, LFTB is an important source for producing leaner ground beef. LFTB has a higher lean percentage than most other cuts of beef. As a result, using LFTB to make ground beef increases the lean percentage of the ground beef. LFTB is also less expensive on a point of lean basis (price per pound divided by the lean percentage of the meat) than comparable lean beef, which allows processors to make a lean ground beef for less.

D. The USDA's Approval of LFTB and BPI's Process

65. BPI has continuously improved and refined its process for making lean beef from beef trimmings. As a result, BPI has submitted multiple applications to the USDA over the years for different lean beef products and processes. The USDA's approval of these applications has always been based on its own judgment and review of the information and scientific data submitted by BPI.

1. The USDA's 1991 Approval of Fat Reduced Beef

66. In the 1980s, BPI's product was regulated by the USDA as "partially defatted chopped beef," which was (and is) a category of beef product made from beef trimmings produced without the benefit of BPI's innovations. Partially defatted chopped beef contains less functional protein, and is a lower-quality product, than LFTB. Specifically, the protein quality of partially defatted chopped beef is lower than that of LFTB, and, unlike LFTB, it is not nutritionally equivalent to hand-trimmed beef. There are limits on the type of food products to which partially defatted chopped beef can be added; for example, it cannot be added to hamburger or ground beef.

67. BPI recognized that it was producing a higher-quality product than its competitors' partially defatted chopped beef. BPI perfected a number of innovations in the production of lean beef, which allowed it to create a product that: (1) had high protein quality; (2) was nutritionally equivalent to hand-trimmed beef; and (3) could be added to products such as ground beef while maintaining the same quality of the end product. Because BPI's product was superior to partially defatted chopped beef, BPI realized that its product should be classified in a separate category.

68. Accordingly, beginning in 1986, BPI sought approval from the USDA to label its product differently than partially defatted chopped beef. As is often the case with such

applications, the USDA responded by seeking additional details regarding BPI's production process and the end product. The USDA also sought testing data regarding BPI's product, including tests analyzing the product's protein quality. Over the next several years, BPI provided this data and responded to various requests for information from the USDA. During this process, BPI submitted information and data to a number of different officials in the USDA's Food Safety and Inspection Service ("FSIS").

69. In 1991, after five years of review and study, the USDA approved BPI's request to label its product as "fat reduced beef." The USDA further approved the inclusion of fat reduced beef in hamburger. The 1991 approval was not for LFTB and was not for the inclusion of BPI's product in ground beef, however. That application and approval came later.

70. The USDA's decision in 1991 was based on reasoned discussion within the USDA and FSIS regarding BPI's application and on the scientific data submitted by BPI in support of its application. On information and belief, USDA officials did not "overrule" USDA scientists when approving BPI's application, and the decision was not motivated by any official's so-called "links to the beef industry."

71. The first set of approvals for fat reduced beef were stamped with approval by Sibyl Albritton, a member of the Standards and Labeling Division staff. The second set of approvals were approved with stamp from Castillo Grant, another member of the Standards and Labeling Division.

2. The USDA's 1993 Approval of Lean Finely Textured Beef

72. After receiving approval from the USDA to label its product as fat reduced beef, BPI submitted another application to the USDA. This time, BPI sought approval to label its product as "lean finely textured beef" and to include the product in ground beef with no

restrictions, given that LFTB is, in fact, beef. Over the course of several months, BPI submitted pertinent information and data requested by the USDA.

73. The USDA granted temporary approval of BPI's application in January 1993. This initial approval was temporary because the changeover to the incoming Clinton Administration was occurring that month. Certain positions within the USDA are politically appointed, and changes in the presidential administration typically lead to new personnel in those positions. To avoid any appearance of having made a politically motivated decision, the outgoing USDA personnel wanted to leave the final approval of BPI's application for the Clinton Administration.

74. In summer 1993, the USDA granted final approval. The USDA determined that BPI could label its product "lean finely textured beef" and approved LFTB as a source of lean meat for ground beef, with no requirement that it be labeled as a separate ingredient. The USDA made this determination only after concluding that LFTB is beef and, therefore, is similar to the other sources of lean beef used for ground beef.

75. Dr. H. Russell Cross, who was the Administrator of FSIS from 1992 to 1994, made the initial and final decision to approve BPI's application. Dr. Cross made these decisions based on recommendations from the various FSIS departments and on an examination of the data submitted by BPI in support of its application. Dr. Cross did not "overrule" USDA scientists when making this decision and was not motivated by any so-called "links to the beef industry."

76. The decision to approve BPI's application in 1993, both initially and finally, was not made by Jo Ann Smith, who served as the Assistant Secretary of Agriculture for the USDA's Marketing and Inspection Services from 1989 to January 1993. Indeed, Smith was no longer at the USDA when BPI received final approval for LFTB in summer 1993.

3. The USDA's 2001 Approval of the Ammonium Hydroxide Process

77. BPI was not using ammonium hydroxide as a processing aid when it obtained approval from the USDA in 1993. BPI did not need to use ammonium hydroxide to make a lean beef that was safe for public consumption, and there were no reported cases of an illness caused by LFTB. BPI could have continued to produce LFTB for ground beef without using ammonium hydroxide based on the USDA's 1993 approval.

78. However, after the 1993 approval, BPI analyzed the potential benefits of using a ammonium hydroxide as a processing aid. After years of research and study, as well as the investment of millions of dollars, BPI decided to add the ammonium hydroxide process to its procedure for making LFTB. BPI concluded that the use of ammonium hydroxide was the most effective food safety intervention for raw material and that this was yet another way to ensure that it was making the safest lean beef possible.

79. After gathering extensive data regarding the effectiveness and safety of the ammonium hydroxide process, BPI submitted an application to the USDA in March 2001 for approval of the use of ammonium hydroxide as a processing aid in the production of LFTB. In connection with the application, BPI began conveying study information to the USDA and communicating with various USDA and FSIS employees regarding the ammonium hydroxide process being developed by BPI.

80. As was the case with the fat reduced beef and LFTB applications, the USDA review process was detailed and thorough. Finally, on May 11, 2001, the USDA approved the use of ammonium hydroxide as a processing aid in the production of LFTB by issuing a "no objection" letter. BPI was not informed that anyone at the USDA (official, scientist, or other) objected to this decision.

81. The decision to approve BPI's application was not made by Jo Ann Smith, as she was no longer with the USDA. On information and belief, the USDA officials who approved the application did not "overrule" USDA scientists and were not motivated by any so-called "links to the beef industry."

E. BPI's Commitment to Producing a Safe and Nutritious Lean Beef

82. BPI has invested millions of dollars to produce the healthiest and safest lean beef possible. BPI invented state-of-the-art equipment to ensure the quality of its lean beef. BPI developed quality assurance protocols that allow it to precisely monitor the process for producing lean beef from beef trimmings. BPI also implemented safety testing protocols that are more rigorous than those recommended by regulators. This commitment to health and safety has paid off. There has not been a single reported case of an individual becoming ill or sick due to consuming LFTB.

83. BPI's commitment to safety starts with its investment and reinvestment in technology. BPI designs the majority of the specialized equipment used to produce LFTB, and it continually looks for new ways to improve its equipment to produce an even safer product. In the last five years alone, BPI spent over \$60 million on research and development. BPI spends that much money on research and development because the Roth family is passionate about food safety and the quality of the lean beef they produce.

84. BPI's commitment to quality and safety is also reflected in the design of its state-of-the-art processing facilities. All processing equipment and related infrastructure are stainless steel, to ensure the cleanest operating environment possible. The facilities use a specially designed water-based positive air system to clean the air and to stop outdoor contaminants from entering the processing area. Processing equipment, including air-carrying ductwork, incorporates automated clean-in-place ("CIP") systems. BPI's commitment to continuous

improvement is demonstrated by BPI's use, in renovations of existing plants and design of new operations, of 3/8"-thick stainless steel walls and ceilings, which are impenetrable to contaminants. All operations within the facilities are continuously monitored by an extensive network of sensors and computer-controlled systems to maintain quality, consistency and safety at all times.

85. Finally, BPI's testing protocols show its commitment to safety. The USDA recommends that beef processors, including BPI, test the beef they sell for certain pathogens like E. coli O157:H7. The USDA recommends that beef processors take 60 samples from every lot (10,000 pounds). By comparison, BPI takes 167 samples from every lot (10,000 pounds), which significantly increases the confidence level for BPI's testing. BPI also tests for more potential pathogens and adulterants than recommended by the USDA. In short, BPI's testing protocols are among the most rigorous in the beef industry and are considered industry-leading by many food safety experts. BPI's leadership in testing protocols built additional confidence in, and preference for, LFTB as a lean meat source and has been a key part of BPI's success.

86. Not surprisingly, given BPI's financial and philosophical dedication, BPI has been recognized by various organizations for its innovative approach to producing the safest and healthiest beef possible. For example:

- a. Carol Tucker-Foreman, Director of the Consumer Federation of America's Food Policy Institute: "Eldon Roth of Beef Products, Inc., who just won the Beef Industry Vision Award, has been extraordinarily creative in developing ways to protect consumers from pathogens in meat." (3/6/12 BPI Fact Sheet, Ex. 33.)
- b. International Association for Food Protection ("IAFP"): "At BPI, food safety is more than an afterthought. Food safety is a critical element in the design and construction of each BPI facility. Food safety is so vital that nearly 20 percent of the total cost to construct BPI's South Sioux City facility went directly into sanitation and food safety related items." (10/07 IAFP Article, Ex. 54.)

- c. National Meat Association (“NMA”): “Mr. Roth and his team are to be commended for their very substantial contributions to ensuring the safety of meat. They have done so openly, presented their research and technology for scrutiny by the USDA and other scientists, and have demonstrated through their back-up testing that the technology is working.” (12/31/09 NMA Statement, Ex. 55.)
- d. Nancy Donley, President and Spokesperson of STOP Foodborne Illness: “One of the many plants I visited was Beef Products, Inc. I got to know the owners, Eldon and Regina Roth, and was impressed by their complete commitment to the safety and wholesomeness of the meat products they produced. I was also impressed by the food safety culture they instilled throughout their company.” (3/17/12 Donley Article, Ex. 81.)
- e. Consumer Federation of America (“CFA”): “Eldon Roth and BPI are recognized as industry leaders in food safety. The company pioneered food safety interventions to significantly reduce the risk of the LFTB product they produced.” (3/26/12 CFA Statement, Ex. 85.)

87. As a result of their commitment to safety, in 2007, BPI received the Black Pearl Award from the International Association for Food Protection. The IAFP is an organization that provides food safety professionals worldwide with a forum to exchange information on protecting the food supply, and its regular publications include the *Journal of Food Protection* and *Food Protection Trends*. The Black Pearl, the IAFP’s most prestigious award, is given to one company each year in recognition of that company’s efforts in advancing food safety and quality through consumer programs, employee relations, educational activities, adherence to standards, and support of the goals and objectives of IAFP.

II. BPI’s Success Prior To Defendants’ Disinformation Campaign And Interference

88. BPI was an American success story. BPI obtained approval from the USDA for LFTB in 1993. At that time, BPI sold 963,000 pounds of LFTB per week. Demand for BPI’s product grew steadily. Prior to Defendants’ disinformation campaign, BPI operated four production facilities, sold approximately five million pounds of LFTB per week, and employed over 1,300 individuals. BPI produced approximately 70% of the LFTB sold in the United States.

A. High Demand Fuels BPI's Expansion

89. After BPI gained approval from the USDA, BPI began the process of working with ground beef processors and others (restaurants, grocery stores, retailers, etc.) to include LFTB in their ground beef. The sales process typically involved meetings, taste tests and microbiological testing.

90. BPI had considerable success. Prior to Defendants' disinformation campaign, BPI sold large volumes of LFTB to the largest ground beef processors in the United States, including National Beef, Tyson Fresh Meats, and American Foods Group. BPI's LFTB was used in the ground beef sold at many of the largest grocery store chains in the world, including Safeway, Walmart, Kroger, and Supervalu.

91. BPI sold over 3.7 billion pounds of LFTB between 2003 and early 2012 as a result of its commitment to producing a high-quality lean beef and its strong relationships with processors, grocery stores, retailers, and restaurants. During that period, BPI's average weekly sales exceeded 5.5 million pounds.

92. BPI's sales allowed the Company to flourish financially. BPI's gross revenue exceeded \$330 million each of the last three years. BPI's profits exceeded \$115 million each of those years. Prior to Defendants' disinformation campaign, BPI was poised to have another successful calendar year. BPI averaged gross revenue of \$8.6 million and operating profits of \$2.3 million per week prior to March 7, 2012.

B. Additional Benefits of LFTB for the Environment and Consumers

93. BPI's production of LFTB has several benefits beyond revenue and profits for BPI. BPI's process produces an additional 10 to 20 pounds of lean beef from each bovine animal, which translates into over 800 million pounds of lean beef each year. As a result, BPI's

process reduces the number of cattle slaughtered each year by increasing the lean beef produced from each animal.

94. BPI's production of LFTB also translates into environmental benefits. Cattle production has an environmental impact, including emissions from fertilizer and feed production, deforestation for pastures, manure management, and emissions from the cattle themselves. BPI's production of LFTB decreases the number of cattle that must be raised by increasing the meat produced from each animal. Fewer bovine animals means less environmental impact from cattle production.

95. BPI's production of LFTB also benefits consumers. BPI sells LFTB to ground beef processors at a relatively lower cost for lean beef (measured on a point of lean basis). The cost savings is passed along to consumers. LFTB allows grocery stores and retailers to sell lean ground beef for less. Consumers on a fixed or limited budget can, therefore, purchase leaner ground beef because LFTB lowers the cost.

III. ABC's Opening Attack Against BPI and LFTB

96. This lawsuit focuses on Defendants' false statements against BPI and LFTB between March 7, 2012 and April 3, 2012. However, ABC started its campaign against BPI and LFTB 11 months earlier. ABC's opening attack was to broadcast false and defamatory statements about LFTB during Jamie Oliver's Food Revolution. After learning that Oliver's comments about LFTB were false and defamatory, ABC elected to rebroadcast the show as opposed to issuing a retraction.

A. April 2011 "Food Revolution" Episode on LFTB

97. ABC began airing Jamie Oliver's Food Revolution in March 2010. ABC and Oliver promoted Oliver as a chef focused on providing consumers accurate information about the nutritional value of food. ABC promoted Oliver's show, Food Revolution, as a vehicle to

provide consumers factual information about food; indeed, ABC's promotional efforts suggested that viewers should change their eating habits based on the show. An ABC News online article described the show as a "campaign to curb obesity by promoting healthy cooking in homes and schools." (3/7/12 ABC News Health Blog.)

98. On April 11, 2011, ABC broadcast the season two premiere of Food Revolution, titled "Maybe L.A. Was A Big Mistake." During the show, Oliver made multiple false statements regarding the process used by BPI to produce LFTB, BPI's use of ammonium hydroxide, and the safety and nutritional value of LFTB. A transcript of the show is attached as Exhibit 1.

99. Oliver began by making false statements about the beef trimmings used by BPI to produce LFTB. Oliver stated that, in the industry, the trimmings are referred to as "shit."³ He stated that the trimmings are "inedible" because they are "outside of the meat" and are "full of anything from salmonella [to] E. Coli." (Ex. 1.)

100. Oliver continued his false statements about the beef trimmings by stating they are "not fit for human consumption." He stated that the trimmings are "sold at the cheapest form for dogs." And, he stated that dogs can eat the beef trimmings because they "have got more efficient stomachs." (*Id.*)

101. Oliver next made false statements about the centrifuge system used by BPI. BPI uses a multi-million dollar centrifuge system developed and refined by BPI over 30 years. Oliver depicted BPI's centrifuge system by placing the beef trimmings in a washing machine and setting the machine to spin.

102. Oliver then made false statements about the ammonium hydroxide process used by BPI. In BPI's process, a puff of ammonia gas is introduced (measured by parts per million) to

³ This expletive was bleeped during the broadcast.

increase the natural pH level of the meat. Oliver's demonstration of the process indicated that BPI uses household ammonia to "wash" the beef trimmings. Oliver stated that BPI washes "lean bits of beef" in a "water and ammonia solution" and falsely demonstrated this process by using large volumes of the solution. (*Id.*)

103. The objective of Oliver's false statements was to convince consumers that LFTB was an unsafe and unhealthy product. He wanted to convince consumers that LFTB was a "pink slime" made from trimmings fit only for "dogs" and that BPI made them edible only by washing the trimmings in household ammonia.

B. AMI Informs ABC of False and Defamatory Statements

104. On April 19, 2011, J. Patrick Boyle, President and CEO of the American Meat Institute ("AMI"), sent a letter to ABC informing the company that it had broadcast false and defamatory statements regarding LFTB. (4/19/11 AMI Letter, Ex. 32.) AMI is the nation's oldest and largest meat and poultry trade association. AMI is dedicated to increasing the efficiency, profitability and safety of the meat and poultry trade worldwide.

105. AMI explained to ABC that Oliver's comments about the "manufacturing of LFTB, which he dubs 'pink slime,' are false and malicious." (*Id.*) AMI then provided ABC accurate information regarding LFTB and BPI's process for producing LFTB.

106. Among other things, AMI explained that the beef trimmings used to produce LFTB are not "inedible" and are not intended for dog food. AMI explained that the same type and quality of beef trimmings used to produce LFTB are also used directly in ground beef production and for cooking operations (e.g., pizza toppings, soups, chilis). AMI further explained that the trimmings are of the same quality and wholesomeness as all other meat and trimmings taken from the bovine animal, and that the trimmings are produced under continuous inspection by USDA personnel. (*Id.*)

107. AMI then explained to ABC that the food-grade ammonium hydroxide used to produce LFTB is not similar to the household ammonia used in Oliver's depiction. AMI explained that ammonium hydroxide "is used in a variety of other processed foods, such as baked goods, gelatins and puddings, and cheeses, and can occur naturally in foods." (*Id.*)

108. Finally, AMI explained to ABC that it should consult a "USDA fact sheet" developed by the Agricultural Marketing Service for additional information. The fact sheet explained that: (1) only beef that has met the FSIS' safety inspection requirements is eligible for school lunches; (2) all ground beef products are routinely tested for safety by the National School Lunch Program; (3) the USDA has zero tolerance for Salmonella and E. coli 0157:H7 in all school-lunch beef products, including all products containing LFTB; and (4) the FSIS and FDA consider ammonium hydroxide to be "Generally Recognized As Safe" for food. (1/7/10 USDA Fact Sheet, Ex. 40.)

C. ABC's Reaction to its Broadcasting of False and Defamatory Statements

109. ABC's reaction to learning that it had broadcast false and defamatory statements about LFTB is telling. ABC did not issue an apology. ABC did not issue a retraction. ABC did not insist that Oliver correct the various false statements he presented during his show.

110. Instead, after learning that Oliver's Food Revolution episode contained multiple false and defamatory statements, ABC broadcast the episode again. On May 30, 2011, ABC ran the full episode again and thereby knowingly rebroadcast all of the false and defamatory statements made by Oliver. ABC's rebroadcast of the episode was just the beginning of its disinformation campaign against BPI and LFTB.

IV. Overview of Defendants' Disinformation Campaign Against BPI and LFTB

111. On March 7, the ABC Defendants utilized their enormous news platform to launch a disinformation campaign against BPI and LFTB. It was a prolonged attack by one of the most powerful news organizations in the world.

112. The Defendants' disinformation campaign successfully created a consumer backlash against BPI and LFTB for several reasons. First, the Defendants represented to viewers, readers and consumers that they were conveying "facts" about BPI and LFTB. Second, the Defendants' disinformation campaign lasted nearly one month and involved multiple broadcasts, reports and social media postings. Third, the Defendants emphasized five primary (and false) themes repeatedly during the disinformation campaign.

A. Defendants Convinced Consumers They Were Providing "Facts" About BPI and LFTB

113. Defendants' disinformation campaign against BPI and LFTB created a consumer backlash against BPI and LFTB. Defendants' campaign was successful because the ABC Defendants misled consumers into believing that the Defendants were providing "facts" that had been previously concealed about BPI and LFTB. Disclosing so-called "facts" about BPI and LFTB was one of the central themes of the ABC broadcasts and reports.

1. ABC Defendants Promoted Themselves as Reporters of "Facts"

114. ABC News promotes World News as the most innovative evening news program on television. It airs from 5:30 p.m. to 6:00 p.m. (Central) and averaged over seven million viewers per evening in March and April 2012. ABC News also published online reports on its website, which reaches a huge audience. ABC News' online network reaches 89 million people per month. (3/7/12 ABC News Press Release.) Through its broadcasts and online reports, ABC News reaches one of the broadest audiences of any news organization in the world.

115. ABC News reaches such a broad audience, in part, based on its self-promotion as a source for facts. ABC News claims that World News uses unparalleled resources to provide the latest information and analysis of major events from around the country and the world. ABC News also advertises that it has won a variety of journalism awards for reporting. This self-promotion led viewers and readers to believe that ABC News would provide factual information regarding BPI and LFTB.

116. Sawyer is the host and anchor of World News. ABC News and Sawyer promote her as someone viewers and consumers should believe provides facts for their consideration. ABC News advertises that Sawyer has received numerous journalism awards and describes her as “one of the most respected journalists in the world.” (Diane Sawyer Biography, ABC News.) This self-promotion led viewers and readers to believe Sawyer would provide factual information regarding BPI and LFTB.

117. Avila is a Senior National Correspondent for ABC News. ABC News and Avila promote him as someone viewers and consumers should believe provides facts for their consideration. ABC News advertises that Avila has won numerous journalism awards and touts Avila as “a dynamic investigative reporter” and “one of the best in the business.” ABC News describes Avila as a specialist in consumer investigations that “expose trouble in food, drug, airline and environmental safety.” (Jim Avila Biography, ABC News.) This self-promotion led viewers and readers to believe Avila would provide factual information regarding BPI and LFTB.

118. Kerley is a correspondent for ABC News who regularly contributes to World News. ABC News and Kerley promote him as someone viewers and consumers should believe provides facts for their consideration. ABC News advertises that Kerley has won two journalism

awards and describes him as a “skilled and versatile reporter.” (David Kerley Biography, ABC News.) Kerley’s reputation and self-promotion led viewers and readers to believe Kerley would provide factual information regarding BPI and LFTB.

2. ABC Defendants Promoted Their “Sources” as Providers of “Facts”

119. The ABC Defendants also used false and exaggerated descriptions of the individuals interviewed on World News to lend credibility to Defendants’ attacks against BPI and LFTB. These false descriptions created the impression that they were providing facts, not fiction.

120. The ABC Defendants promoted Zirnstein and Custer as “whistleblowers.” They used this characterization to create the impression that they were now sharing factual information regarding wrongful conduct by BPI and the USDA with consumers. Zirnstein and Custer were not whistleblowers. At no time did they bring any alleged misconduct or illegal behavior to the attention of the USDA or any other government authority. And Zirnstein and Custer did not witness any illegal or improper conduct while at the USDA in connection with BPI and LFTB.

121. The ABC Defendants promoted Foshee as the “number two” person at BPI. They used this characterization to create the impression that Foshee had factual information about BPI and LFTB. But Foshee was never the “number two” person at BPI. Foshee was a quality assurance employee at BPI who was fired by BPI because he disagreed with, and refused to follow through on, BPI’s decision to promote more rigorous safety procedures in the beef industry. In fact, Foshee lost a lawsuit he brought against BPI, and a court recently imposed a restraining order against him due to his conduct targeted towards BPI.

3. ABC Defendants Proclaimed They Reported “Facts” About BPI and LFTB

122. The ABC Defendants used their self-promoted reputations and false characterizations of their “sources” to lend credibility to Defendants’ attacks against BPI and LFTB. The ABC Defendants intended for viewers, readers and consumers to believe Defendants were providing objective, verifiable facts about LFTB and BPI.

123. Statements made by the ABC Defendants during and after their disinformation campaign further demonstrate that they intended for viewers, readers and consumers to believe they were reporting “facts” about BPI and LFTB. Avila was the lead reporter for ABC’s coverage. Avila repeatedly stated that the Defendants were conveying “facts” about BPI and LFTB that should, and could, be relied on by consumers. For example:

- a. In response to criticism that ABC’s coverage of BPI and LFTB was not accurate, Avila stated: “I deal in facts and our pieces were well researched and apparently well received.” (5/8/12, Twitter, Avila, Ex. 27.)
- b. In response to criticism that ABC’s coverage was not based on science, Avila stated: “our report based on facts no spin.” (3/7/12, Twitter, Avila, (Ex. 27.)
- c. In response to Gov. Terry Branstad (Iowa) and U.S. Rep. Steve King (Iowa) calling for a congressional hearing into the media coverage of BPI and LFTB, Avila stated: “we have nothing to hide” and claimed what the ABC Defendants reported was “not disinformation.” (James Andrews, *The Rise to Fame of ‘Pink Slime’: In the News Since 2008, Why No LFTB Backlash Until Now?*, Food Safety News (Apr. 13, 2012).)

124. Avila’s comments demonstrate that the ABC Defendants intended for viewers, readers and consumers to believe that Defendants were conveying objective, verifiable “facts” about BPI and LFTB. The ABC Defendants never qualified their statement as anything other than objective, verifiable facts.

B. Duration and Scope of Defendants' Disinformation Campaign

125. Defendants did not make false statements about LFTB and BPI on merely a single day or during a single report. This was not an isolated incident. Instead, Defendants ran multiple stories about BPI and LFTB in various forums and continued to repeat their false statements over and over again. The duration and scope of Defendants' disinformation campaign is another reason it was successful in creating a consumer backlash.

126. ABC ran 11 different broadcasts regarding BPI and LFTB between March 7 and April 3, 2012. ABC aired nine segments devoted to BPI and LFTB on World News and two segments on Good Morning America ("GMA"). ABC aired broadcasts about BPI and LFTB on March 7, March 8, March 9, March 13, March 15, March 16, March 21 (two broadcasts), March 26, March 29, and April 3, 2012. Transcripts of those broadcasts are attached as Exhibits 2 to 12.

127. ABC News also published 14 different online reports regarding BPI and LFTB during that same time period. ABC published reports about BPI and LFTB on March 7, March 8, March 9, March 14, March 15, March 16, March 21 (three reports), March 26, March 27, March 29 and April 3 (two reports). Copies of those reports are attached as Exhibits 13 to 26.

128. ABC news reporters also used social media platforms to further their campaign against BPI and LFTB. They made false statements about BPI and LFTB on their Twitter accounts and Facebook pages. Avila alone made at least 29 false statements regarding BPI and LFTB on his Twitter account during the disinformation campaign. Excerpts from Avila's, Sawyer's, and Kerley's Twitter feeds, as well as Avila's and Kerley's Facebook pages, are attached as Exhibits 27 to 31.

C. Primary Themes of Defendants' Disinformation Campaign

129. Although Defendants held themselves out as conveying “facts” regarding BPI and LFTB, many of their statements were false. Defendants’ statements were designed to convince consumers that LFTB was not beef, but rather was an unhealthy and unsafe “pink slime” that was “lurking” in the ground beef sold at certain supermarkets.

130. One of the centerpieces to Defendants’ disinformation campaign was the use of the phrase “pink slime.” Defendants referred to LFTB as “pink slime,” described LFTB as “pink slime,” discussed grocery stores selling ground beef with “pink slime,” and discussed the USDA taking action regarding “pink slime.” Defendants used the phrase “pink slime” 137 times on the ABC broadcasts, ABC online reports, and in social media postings. Defendants used the phrase “pink slime” to convey that LFTB was not beef, but rather was an unsafe and unhealthy substance added to ground beef. Contrary to Defendants’ statements, LFTB is safe and healthy beef. LFTB is not “pink slime.”

131. Consistent with the use of the phrase “pink slime” to describe LFTB, Defendants made false statements to convince consumers that LFTB is not beef, or even meat. Defendants stated that LFTB is “not really beef.” Defendants stated that LFTB is “not what the typical layperson would consider meat.” Defendants stated that LFTB was a mere “filler” added to ground beef to “pump up” the volume. Defendants stated that selling ground beef with LFTB amounted to an “economic fraud” because LFTB was a “substitute” for beef. These statements were intentional and knowingly false statements by Defendants. LFTB is 100% beef.

132. Consistent with the use of the phrase “pink slime” to describe LFTB, Defendants made false statements to persuade consumers that LFTB is not safe for consumption. Defendants stated that LFTB was a “questionable” product added to ground beef. Defendants stated that LFTB was made from “low grade” “scraps” and “waste.” Defendants stated that the

beef trimmings used by BPI to make LFTB were once used only for “dog food.” Defendants stated that ground beef made with LFTB was “suspect” because this unknown product was “lurking” and “hiding” in the ground beef. These statements were intentional and knowingly false statements by Defendants. LFTB has always been safe for consumption, and the beef trimmings used by BPI came from USDA inspected and approved beef.

133. Consistent with the use of the phrase “pink slime” to describe LFTB, Defendants made false statements to persuade consumers that LFTB is not nutritious. Defendants stated that this “pink slime” would not do consumers “any good.” Defendants stated that LFTB’s protein came primarily from “connective tissue,” as opposed to muscle meat. Defendants stated that LFTB was “more like gelatin” than nutritious beef. These statements were intentional and knowingly false statements by Defendants. LFTB is lean beef, made from muscle meat, and it has nutritional value. Defendants had no reliable, scientific basis for stating and implying anything to the contrary.

134. Finally, Defendants made false statements to persuade consumers that BPI had engaged in improper conduct to gain approval for LFTB from the USDA. Defendants stated that USDA scientists “objected” to the use of LFTB in ground beef. Defendants stated that USDA officials “with links to the beef industry” “overruled” the USDA scientists. Defendants stated that the USDA “labeled” LFTB as meat simply because “it was pink” in color. These statements were intentional and knowingly false statements by Defendants. BPI received approval for LFTB after the product went through the same rigorous and comprehensive regulatory review as other products. The USDA’s approval was based on the merits of LFTB, and its approval was not granted over the objections of USDA scientists.

D. Overview of Consumer Reaction to Defendants’ Disinformation Campaign

135. Defendants’ disinformation campaign had its intended effect—consumers reacted negatively to LFTB and demanded that grocery stores stop selling ground beef made with “pink slime.” This reaction was not based on accurate information about LFTB but on the disinformation spread by Defendants. Defendants led consumers to believe that LFTB was not beef, was not safe or healthy, and was approved by the USDA only because BPI had engaged in improper conduct.

136. One contemporaneous source for information showing consumers’ reaction to the Defendants’ disinformation campaign is the “comment” section of the online reports published by the ABC Defendants. These comments show how consumers reacted to Defendants’ statements, and the comments informed Defendants that their statements were creating false impressions in the minds of consumers regarding BPI and LFTB.

137. The comment sections show that consumers who heard and read Defendants’ statements were misled regarding BPI and LFTB. Based on Defendants’ false statements, consumers believed LFTB was “pink slime” and that BPI sold “pink slime.” Consumers also believed that LFTB was not beef, that it was a “poison” being included in ground beef, and that they could become ill if they consumed ground beef that included LFTB.

138. Consumers also believed, based on the Defendants’ false statements, that BPI’s approval from the USDA was the result of corruption. Consumers believed that the USDA and BPI had engaged in improper conduct to allow an unsafe, non-beef product to be included in ground beef.

139. In short, these consumer comments demonstrate that the Defendants’ false statements, in fact, misled consumers about BPI and LFTB; and these comments placed the ABC Defendants on further notice that the Defendants’ statements were misleading consumers. The

ABC Defendants persisted with the disinformation campaign, and they continued to make false statements about BPI and LFTB, even though they knew based on these comments that consumers were being misled.

E. Overview of Defendants' Actual Malice

140. Defendants knew their statements regarding BPI and LFTB were false, or they acted with reckless disregard for the truth when making their statements. Defendants possessed information and had access to information that showed their statements were false. Defendants also made statements for which they had no factual basis.

1. Information Provided or Made Available to the Defendants

141. BPI, beef experts, food safety experts, other journalists, and the USDA provided Defendants, and made publicly available to Defendants, information showing that their statements were false. Defendants either ignored this information, and thereby acted with reckless disregard, or published their false statements knowing they were false based on this information.⁴

142. First, before the disinformation campaign, BPI and others provided the ABC Defendants information showing that Defendants' statements regarding BPI and LFTB were false. For example, the ABC Defendants received the following:

- a. On April 19, 2011, AMI sent a letter to ABC. The letter was sent to Olivia Cohen-Cutler, ABC's Senior Vice President of Standards and Policy. The letter was sent by J. Patrick Boyle, President and CEO of AMI. (4/19/11 AMI Letter, Exhibit 32.)
- b. On March 7, 2012, BPI sent an email to ABC. The email was to Brian Hartman, Producer for ABC News. The email was from Rich Jochum, Corporate Administrator of BPI. In his email, Jochum attached a "Fact

⁴ Some of the newspapers, magazines and websites discussed below published factually inaccurate information regarding BPI and LFTB after Defendants initiated their disinformation campaign. Discussion of sources below does not indicate that the sources always provided accurate information regarding BPI and LFTB.

Sheet,” which was dated March 6, 2012. (3/6/12 BPI Fact Sheet, Exhibit 33.)

- c. On March 7, 2012, BPI sent an email to ABC. The email was to Brian Hartman, Producer for ABC News. The email was from Rich Jochum, Corporate Administrator of BPI. In his email, Jochum included a link to a video titled “Innovations in Food Safety.” (11/7/11 Innovations Video, Exhibit 34.)
- d. On March 7, 2012, BPI sent an email to ABC. The email was to Brian Hartman, Producer for ABC News. The email was from Rich Jochum, Corporate Administrator of BPI. In his email, Jochum attached a “Fact Sheet,” that included a hyperlink to an article by Chuck Jolley titled “Manipulated Public Opinion Trumps Real Science-Again.” Hartman confirmed he had reviewed the article. (1/9/12 FSN Article, Exhibit 35.)⁵
- e. On March 7, 2012, BPI sent an email to ABC. The email was to Brian Hartman, Producer for ABC News. The email was from Rich Jochum, Corporate Administrator of BPI. In his email, Jochum answered some questions from Hartman regarding JoAnn Smith, the Assistant Secretary of Agriculture from 1989 to January 1993. (3/7/12 Jochum/Hartman Email, Exhibit 36.)

143. Second, before the disinformation campaign, BPI and others referred the ABC Defendants to articles, reports and videos showing that Defendants’ statements regarding BPI and LFTB were false. For example, the ABC Defendants were referred to the following:

- a. On March 1, 2008, the National Provisioner published an interview with Carol Tucker-Foreman. Foreman is the Director of the Consumer Federation of America’s Food Policy Institute. On March 7, 2012, BPI provided ABC with a “Fact Sheet” that included a hyperlink to the interview. (3/1/08 National Provisioner Interview, Exhibit 37.)
- b. On June 12, 2008, the Washington Post published an article by Annys Shin titled “Engineering a Safer Burger.” On March 7, 2012, BPI provided ABC with a “Fact Sheet” that included a hyperlink to an article published by Meat Myth Crushers that included a hyperlink to the Washington Post article. (6/12/08 Washington Post Article, Exhibit 38.)
- c. On December 30, 2009, the International Food Information Council (“IFIC”) Foundation published an article titled “Questions and Answers

⁵ The article by Chuck Jolley was originally published by Food Safety News (“FSN”) on January 9, 2012. FSN is a website operated by the law firm Marler Clark, which represents alleged victims of food borne illnesses. Some of the information that has been published by FSN regarding BPI and LFTB is not factually accurate.

about Ammonium Hydroxide Use in Food Production.” On March 7, 2012, BPI provided ABC with a “Fact Sheet” that included a hyperlink to an article published by Meat Myth Crushers that included a hyperlink to the IFIC article. (12/30/09 IFIC Article, Exhibit 39.)

- d. On April 19, 2011, AMI sent a letter to ABC following its broadcast of the Jaime Oliver’s Food Revolution episode about LFTB. In the letter, AMI included a hyperlink to a USDA Fact Sheet regarding LFTB. AMI also published a copy of the USDA’s fact sheet on its website prior to Defendants’ disinformation campaign. (1/7/10 USDA Fact Sheet, Exhibit 40.)
- e. On January 5, 2012, Meat & Poultry published an article by Keith Nunes titled “Food Safety is not natural, pure or simple.” Nunes is the Executive Editor of Food Business News. On March 7, 2012, BPI provided ABC with a “Fact Sheet” that included a hyperlink to the article. (1/5/12 Nunes Article, Exhibit 41.)
- f. On July 14, 2011, the National Consumers League (“NCL”) issued a statement titled “Consumer advocates urge USDA to declare ‘big six’ E. coli STECs adulterants in beef.” The NCL is the nation’s oldest consumer organization, founded in 1899, and it is focused on protecting and promoting social and economic justice for consumers and workers. On March 7, 2012, BPI provided ABC with a “Fact Sheet” that included a hyperlink to the statement. (7/14/11 NCL Statement, Exhibit 42.)
- g. On July 28, 2011, Ag Web published an article by John Block titled “Meat Processing Technologies.” Block was the U.S. Secretary of Agriculture from 1981 to 1986. On March 7, 2012, BPI provided ABC with a “Fact Sheet” that included a hyperlink to the article. (7/28/11 Block Article, Exhibit 43.)
- h. On October 5, 2011, Meat Myth Crushers published an article titled “Myth: Ordinary Household Ammonia is Used to Make Some Hamburgers.” Meat Myth Crushers is a website hosted by the AMI. Materials on the website are reviewed by the members of the American Meat Science Association and other experts in the field. On March 7, 2012, BPI provided ABC with a “Fact Sheet” that included a hyperlink to the article. (10/5/11 Meat Myth Article, Exhibit 44.)
- i. On October 5, 2011, Meat Myth Crushers posted an interview of Gary Acuff titled “Myth: Ordinary Household Ammonia is Used to Make Some Hamburgers.” Acuff is a Professor and the Director of the Center for Food Safety at Texas A&M University. On March 7, 2012, BPI provided ABC with a “Fact Sheet” that included a hyperlink to the Meat Myth Crushers article that included the interview. (10/5/11 Acuff Interview, Exhibit 45.)

144. Third, before the disinformation campaign, BPI made publicly available to the Defendants information showing that their statements regarding BPI and LFTB were false. For example, in addition to the information discussed above, BPI made the following information available to the Defendants:

- a. BPI provided answers to “Frequently Asked Questions” about BPI and LFTB on its website, www.beefproducts.com, prior to March 7, 2012. (Pre-3/7/12 BPI FAQ, Exhibit 46.)
- b. BPI provided a report titled “BPI Boneless Lean Beef—Why It’s Good” on its website, www.beefproducts.com, prior to March 7, 2012. (Pre-3/7/12 LFTB Report, Exhibit 47.)
- c. On July 13, 2011, BPI posted a video titled “Beef Products Inc. New Testing For E.coli Protocols” to the channel it maintained on YouTube. (7/13/11 BPI Testing Video, Exhibit 48.)
- d. On November 7, 2011, BPI posted a video titled “Ammonia in Foods” to the channel it maintained on YouTube. (11/7/11 BPI Ammonia Video, Exhibit 49.)

145. Fourth, before the disinformation campaign, the USDA made publicly available to the Defendants information showing that their statements regarding BPI and LFTB were false. For example, the USDA made the following information available to the Defendants:

- a. In August 2005, the Food Safety and Inspection Service (“FSIS”) of the USDA published a revised manual titled “Food Standards and Labeling Policy Book.” The policy book helps manufacturers prepare labels for their products that are truthful and not misleading. (2005 FSIS Manual, Exhibit 50.)
- b. On October 31, 2006, the U.S. Food & Drug Administration (“FDA”) published a report regarding ammonium hydroxide and reiterated that ammonium hydroxide was “Generally Recognized as Safe” for food products. On April 19, 2011, AMI provided the ABC Defendants with a hyperlink to a USDA “Fact Sheet” that also included a hyperlink to this finding. (10/31/06 GRAS Review, Exhibit 51.)

146. Fifth, before the disinformation campaign, beef and food safety organizations made publicly available to the Defendants information showing that their statements regarding

BPI and LFTB were false. For example, in addition to the information discussed above, beef and food safety organizations made the following information available to the Defendants:

- a. On April 1, 2006, the National Provisioner published an article by Barbara Young titled “Magnificent Machines.” The National Provisioner is a leading technical and business journal serving the meat, poultry, pork and seafood processing industry. (4/1/06 National Provisioner Article, Exhibit 52.)
- b. On September 3, 2006, Meat & Poultry published an article by Steve Kay titled “Grinding out more business.” Meat & Poultry publishes a journal for meat and poultry processors. (9/3/06 M&P Article, Exhibit 53.)
- c. In October 2007, the International Association for Food Protection published a report in Food Protection Trends titled “Food Safety at Beef Products, Inc.” IAFP is an organization of 3,600 food safety professionals committed to advancing food safety worldwide. (10/07 IAFP Article, Exhibit 54.)
- d. On December 31, 2009, the National Meat Association (“NMA”) issued a press release about BPI and LFTB. The National Meat Association is a non-profit industry association that has served the meat industry since 1946. (12/31/09 NMA Statement, Exhibit 55.)
- e. On July 15, 2011, FSN published an article by Gretchen Goetz titled “Beef Products Inc. to Test for Non-O157 E. Coli.” FSN is a website operated by Marler Clark, a law firm that represents alleged victims of food borne disease and illness. (7/15/11 FSN Article, Exhibit 56.)
- f. On December 23, 2011, FSN published an article by Dan Flynn titled “The 2011 Food Safety News Naughty and Nice List.” (12/23/11 FSN Article, Exhibit 57.)

147. Sixth, during the disinformation campaign, BPI and others provided the ABC Defendants information showing that Defendants’ statements regarding BPI and LFTB were false. For example, the ABC Defendants received the following:

- a. On March 9, 2012, BPI’s outside counsel sent a letter to ABC. The letter was sent to Elizabeth Schorr, Executive Counsel for ABC News, and John Zucker, Vice President of Legal Affairs for ABC News. The letter was sent by Thomas Clare, Kirkland & Ellis. (3/9/12 Clare Letter, Exhibit 58.)
- b. On March 8, 2012, AMI published an article titled “Boneless Lean Beef Trimmings (BLBT) Is A Safe and Wholesome Beef Product Made By

Separating Lean Beef From Fat.” On March 9, 2012, BPI’s outside counsel sent a letter to ABC that included a hyperlink to the AMI article. (3/8/12 AMI Article, Exhibit 59.)

- c. On March 19, 2012, BPI’s outside counsel copied ABC on a letter sent to the producer of the Dr. Oz Show. The letter was sent to Barbara Simon, Producer of The Dr. Oz Show, with copies to Elizabeth Schorr, Executive Counsel for ABC News, and John Zucker, Vice President of Legal Affairs for ABC News. The letter was sent by Thomas Clare, Kirkland & Ellis. (3/19/12 Clare Letter, Exhibit 60.)
- d. On March 14, 2012, BPI posted an article on the website www.beefisbeef.com titled “Kit Foshee: A Reliable Source?” On March 19, 2012, BPI’s outside counsel copied ABC on a letter that included a hyperlink to the article. (3/14/12 BPI Article, Exhibit 61.)⁶
- e. On March 25, 2012, BPI’s outside counsel sent a letter to ABC. The letter was sent to Elizabeth Schorr, Executive Counsel for ABC News, and John Zucker, Vice President of Legal Affairs for ABC News. The letter was sent by Thomas Clare, Kirkland & Ellis. (3/25/12 Clare Letter, Exhibit 62.)
- f. On March 25, 2012, BPI’s outside counsel (Thomas Clare) sent a letter to ABC (Schorr and Zucker). With his letter, Clare included a letter from Professor Joseph Sebranek, Distinguished Professor in Agricultural and Life Sciences at Iowa State University. Professor Sebranek’s letter explained that his prior research regarding LFTB had been mischaracterized by certain media reports. (3/23/12 Sebranek Letter, Exhibit 63.)

148. Seventh, during the disinformation campaign, BPI made publicly available to the Defendants information showing that their statements regarding BPI and LFTB were false. For example, in addition to the information discussed above, BPI made the following information available to the Defendants:

- a. On March 8, 2012, BPI posted a video titled “Food Inc. Was Wrong on Portraying Lean Beef” to the channel it maintained on YouTube. (3/8/12 BPI Food Inc. Video, Exhibit 64.)

⁶ The website www.beefisbeef.com was originally launched as www.pinkslimeisamyth.com. On or about March 29, 2012, www.pinkslimeisamyth.com was relaunched as www.beefisbeef.com. The content of the site remained largely unchanged.

- b. On March 8, 2012, BPI posted a video titled “Jamie Oliver Mischaracterizes Lean Beef” to the channel it maintained on YouTube. (3/8/12 BPI Oliver Video, Exhibit 65.)
- c. On March 9, 2012, BPI posted an article on the website www.beefisbeef.com titled “Why is Ammonia Used in Some Foods.” (3/9/12 BPI Article, Exhibit 66.)
- d. On March 10, 2012, BPI posted an article on the website www.beefisbeef.com titled “Lean Beef Trimmings are Wholesome and Nutritious.” (3/10/12 BPI/Nutritious Article, Exhibit 67.)
- e. On March 10, 2012, BPI posted an article on the website www.beefisbeef.com titled “100% Beef—High Quality and Safe.” (3/10/12 BPI/Quality Article, Exhibit 68.)
- f. On March 10, 2012, BPI posted answers to “Frequently Asked Questions” on the website www.beefisbeef.com. (3/10/12 BPI FAQ, Exhibit 69.)
- g. On March 15, 2012, BPI posted an article on the website www.beefisbeef.com titled “Top 8 Myths of ‘Pink Slime.’” (3/15/12 BPI Article, Exhibit 70.)
- h. On March 15, 2012, BPI issued a press release in response to an announcement by the USDA. (3/15/12 BPI Press Release, Exhibit 71.)
- i. On March 16, 2012, BPI posted a video titled “BPI Responds to USDA Decision on Lean Beef Trimmings in Schools” to the channel it maintained on YouTube. (3/16/12 BPI USDA Video, Exhibit 72.)
- j. On March 22, 2012, BPI posted an article on the website www.beefisbeef.com titled “Support for the Safety, Quality and Nutrition of Lean Finely Textured Beef.” (3/22/12 BPI Article, Exhibit 73.)
- k. On March 23, 2012, posted a statement on the website www.beefisbeef.com in defense of BPI and LFTB. The statement was also published in the Wall Street Journal. (3/23/12 BPI Statement, Exhibit 74.)
- l. On March 28, 2012, BPI posted an article on the website beefisbeef.com titled “Get the Facts.” (3/28/12 BPI Article, Exhibit 75.)

149. Eighth, during the disinformation campaign, beef and food safety experts made publicly available to the Defendants information showing that their statements regarding BPI and

LFTB were false. For example, in addition to the information discussed above, beef and food safety experts made the following information available to the Defendants:

- a. On March 8, 2012, the NMA issued a press release titled “BPI’s Beef is Beef.” (3/8/12 NMA Press Release, Exhibit 76.)
- b. On March 9, 2012, FSN published an article by Dan Flynn titled “BPI Ground Beef Gets Support From Food Safety Leaders.” (3/9/12 FSN Article, Exhibit 77.)
- c. On March 14, 2012, BeefFacts posted an interview of Dr. Russell Cross titled “Dr. Russell Cross Talks about the Safety of ‘Pink Slime.’” Cross is a Professor and Head of the Department of Animal Sciences at Texas A&M University. Cross was the Administrator of FSIS from 1992 to 1994. The video was posted to YouTube. (3/14/12 Cross Interview, Exhibit 78.)
- d. On March 14, 2012, Drovers published a commentary by Gary Acuff and Russell Cross titled “Commentary: Ignorance, pink slime and Sarah Palin.” (3/14/12 Acuff/Cross Article, Exhibit 79.)
- e. On March 15, 2012, AMI posted a statement titled “Statement in Response [to] USDA Announcement On Lean Finely Textured Beef.” (3/15/12 AMI Statement, Exhibit 80.)
- f. On March 17, 2012, Food Safety News published an article written by Nancy Donley titled “In Defense of Food Safety Leadership.” Donley is President and Spokesperson for STOP Foodborne Illness, a national non-profit public health organization dedicated to preventing food-borne illness and death from food-borne pathogens. (3/17/12 Donley Article, Exhibit 81.)
- g. On March 20, 2012, Best Foods Facts published an interview of Dr. James Dickson titled “The Truth About ‘Pink Slime.’” Dickson is a Professor in the Department of Animal Sciences at Iowa State University. (3/20/12 Dickson Interview, Exhibit 82.)
- h. On March 21, 2012, FSN published an article by Helena Bottemiller titled “Q&A with Elisabeth Hagen, Part II: Poultry, ‘Pink Slime’ and Labeling.” The article included comments by Dr. Elisabeth Hagen, Under Secretary for Food Safety at the USDA. (3/21/12 Hagen Interview, Exhibit 83.)
- i. On March 26, 2012, AMI released a statement titled “Statement Of the American Meat Institute About Impact of ‘Pink Slime’ Scare Campaign.” (3/26/12 AMI Statement, Exhibit 84.)

- j. On March 26, 2012, the Consumer Federation of America (“CFA”) released a statement titled “Statement of Chris Waldrop, Consumer Federation of America’s Director of Food Policy on Lean Finely Textured Beef.” The CFA is an association of nearly 300 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy and education. (3/26/12 CFA Statement, Exhibit 85.)
- k. On March 28, 2012, the NCL issued a press release regarding BPI and LFTB. (3/28/12 NCL Statement, Exhibit 86.)
- l. On March 28, 2012, AMI posted an article titled “Secretary of Agriculture Tom Vilsack and Iowa Governor Defend Safety and Nutrition of Lean Finely Textured Beef in Press Conference.” (3/28/12 AMI Article, Exhibit 87.)
- m. On March 29, 2012, AMI posted a statement titled “AMI Issues Newsroom Advisory Urging Media To Stop Using Term ‘Pink Slime.’” (3/29/12 AMI Statement, Exhibit 88.)
- n. On March 29, 2012, AMI posted an article titled “Governors Defend Lean Finely Textured Beef; Tell Media ‘Dude Its (sic) Beef.’” (3/29/12 AMI Article, Exhibit 89.)
- o. On April 1, 2012, USA Today published an article by Russell Cross titled “Opposing view: LFTB is 100% beef.” (4/1/12 Cross Article, Exhibit 90.)
- p. On April 1, 2012, the WCF Courier published an article by Matthew Wilde titled “Controversy over BPI beef unfounded, experts say.” (4/1/12 WCF Courier Article, Exhibit 91.)

150. Ninth, before the disinformation campaign, the Individual Defendants had access to additional information showing that their statements regarding BPI and LFTB were false. Foshee obtained information during his employment with BPI showing his statements regarding BPI and LFTB were false. Zirnstein and Custer obtained information during their employment with the USDA showing their statements regarding BPI and LFTB were false.

2. Other Facts Demonstrating Defendants Knowingly or Recklessly Published False Statements

151. Beyond the information available to Defendants before and during their disinformation campaign, several additional facts demonstrate their actual malice. First, many of

Defendants' statements were inconsistent with decisions from the USDA and FDA. In particular, Defendants knew their statements were inconsistent with the USDA's approval of LFTB, the USDA's approval of BPI's ammonium hydroxide process, and the FDA's approval of ammonium hydroxide for use in food products.

152. Second, Defendants knew they had no factual basis for many of their statements. Several of Defendants' statements required the speaker to have conducted analysis to support and substantiate the statement. On information and belief, Defendants knew that they had not conducted and did not possess the research, analysis or testing necessary to support their statements. Defendants made the statements knowing they lacked a factual basis for the statements.

153. Third, on information and belief, the ABC Defendants intentionally avoided obtaining information from the USDA. On information and belief, the ABC Defendants did not request information from the USDA through a Freedom of Information Act ("FOIA") request prior to or during the disinformation campaign. On information and belief, the ABC Defendants did not request information from the USDA until April 12, 2012, when Brian Hartman (Producer for ABC News) made a FOIA request to the FSIS.

154. Fourth, the ABC Defendants intentionally avoided interviewing or broadcasting statements from beef and food safety experts who attempted to provide facts regarding BPI and LFTB. On information and belief, the ABC Defendants avoided these experts because the facts they offered were inconsistent with the message the ABC Defendants wanted to convey during the disinformation campaign. For example, the ABC Defendants avoided interviewing or broadcasting statements from the following individuals:

- a. ABC (Avila) interviewed David Theno, CEO of Gray Dog Partners, Inc. and former Senior Vice President of Product Quality and Food Safety for

Jack In the Box. During the interview, Theno explained that LFTB was safe and BPI's process was safe. Avila responded that Theno was not credible and abruptly ended the call. When Theno subsequently asked Avila if they were accidentally disconnected and explained that Avila was not reporting facts, Avila indicated he had intentionally hung up and did so again. ABC did not use any of the interview.

- b. AMI recommended that ABC interview Dr. Russell Cross, the Head of the Animal Science Department at Texas A&M University and the individual at the USDA who ultimately approved LFTB and its inclusion in ground beef in 1993. ABC refused to interview him.⁷
- c. AMI recommended that ABC interview Gary Acuff, a Professor of Food Microbiology and the Director of the Center for Food Safety at Texas A&M University and a recognized expert in the microbiological quality and safety of foods. ABC refused to interview him.
- d. ABC (Avila) interviewed Mark Dopp, Senior Vice President of Regulatory Affairs and General Counsel of AMI. Dopp explained that LFTB helped to lower the price for lean ground beef and that decreasing the use of LFTB would increase prices. ABC did not use any of the interview.
- e. ABC (Avila) interviewed Janet Riley, AMI's Senior Vice President of Public Affairs and Member Services. During the interview, Avila seemed dissatisfied with responses she gave and abruptly ended the call. ABC played only a small portion of her interview that did little to illuminate the issues.

155. Fifth, on information and belief, the ABC Defendants initiated the disinformation campaign against BPI and LFTB without taking the time to identify a factual foundation for the Defendants' statements. The ABC Defendants were not under any time pressure to run the stories on BPI and LFTB. The ABC Defendants elected not to take the time to confirm that their statements were accurate.

156. On information and belief, the ABC Defendants initiated the disinformation campaign at most two days after deciding to pursue a story about BPI and LFTB. Avila was the lead ABC reporter for the BPI and LFTB stories. On April 3, 2012, Avila stated that he became

⁷ The ABC Defendants included a short statement from Dr. Cross in an online report they published on March 9, 2012. Dr. Cross sent the statement to ABC.

interested in BPI and LFTB after reading an article by David Knowles on TheDaily.com which was published on March 5, 2012. (4/3/12, Twitter, Avila, Ex. 27.) ABC ran its first story about BPI and LFTB on March 7, 2012.

157. Sixth, the ABC Defendants knew the disinformation campaign was misleading consumers regarding BPI and LFTB. Consumers posted comments to the stories published by the ABC Defendants online that demonstrate the Defendants' statements were misleading consumers. The ABC Defendants continued with the disinformation campaign and continued to make false statements regarding BPI and LFTB nonetheless.

158. Seventh, the ABC Defendants knew or recklessly disregarded the fact that their "sources" for the BPI and LFTB stories were not reliable. The Individual Defendants could not serve as a reliable source regarding BPI's process or LFTB in 2012. BPI fired Foshee in 2001. He had no firsthand knowledge regarding BPI's process or LFTB after that date. On information and belief, Zirnstein and Custer last visited a BPI facility in 2002. They have no firsthand knowledge regarding BPI's process or LFTB after that date. The ABC Defendants could not have reasonably relied on information from the Individual Defendants, because of their lack of firsthand knowledge regarding BPI and LFTB in 2012.

159. Eighth, on information and belief, the ABC Defendants were motivated, in part, by the desire for higher ratings. ABC competed with NBC and CBS for evening news viewers, in general, and, in particular, for the key demographic of 25-to 54-year-old viewers. Prior to launching the disinformation campaign, for the week of February 13, 2012, ABC fell to third place among the networks for this demographic for the first time in six years. On information and belief, dropping to third place in this key demographic was of significant concern for the ABC Defendants.

160. Immediately before launching the disinformation campaign on March 7, 2012, ABC had regained second place in this key demographic, but by a very small margin over CBS. During the disinformation campaign, ABC distanced itself from CBS and started to close the gap with NBC for first place with this demographic. On information and belief, ABC hoped to increase viewership by broadcasting a “startling” investigation of BPI and LFTB.

3. Defendants’ Actions Before, During, and After the Disinformation Campaign Demonstrate Their Intent to Injure BPI and LFTB

161. The Defendants’ disinformation campaign was not an isolated incident. Several of the Defendants have engaged in a long-standing campaign against BPI and LFTB.

162. Avila continued to make false statements regarding BPI and LFTB after April 3, 2012. Avila appeared on other news outlets (including CNN), gave interviews to other news organizations, and made additional comments on his Twitter account about BPI and LFTB. In each of those forums, Avila made false statements about BPI and LFTB. Avila also continued to call LFTB “pink slime” in reports published by ABC, including as recently as September 3, 2012.

163. Zirnstein and Custer made false statements about BPI and LFTB both before and after ABC’s disinformation campaign, and during the campaign they made false statements to other media outlets as well. For example, even before ABC’s reports, Zirnstein repeatedly stated during interviews that LFTB is not beef and is fraudulent, and Custer misrepresented the USDA’s approval process and repeatedly stated that LFTB is not beef or meat. Zirnstein and Custer also both made false statements about BPI and LFTB on Facebook; in fact, Zirnstein’s Facebook page indicates that he views himself and Custer as “Batman and Robin,” “battl[ing] pink slime together.”

164. Foshee has pursued a personal vendetta against BPI since he was fired in 2001. Since that time, Foshee has self-promoted himself as a “whistleblower” and has repeatedly made false statements about BPI and LFTB to media outlets and in public speeches. For years, Foshee has given speeches in which he falsely accuses BPI of both adding “Mr. Clean” to its product and of seeking to avoid safety testing. In his speeches, Foshee has admitted that he gets personal “vindication” from holding himself out as a whistleblower. In addition, during ABC’s campaign, Foshee falsely told other media outlets that BPI’s commitment to safety is “all lies.”

165. Defendants’ actions before, during and after the disinformation campaign demonstrate that the disinformation campaign was not an accident. Defendants intended to injure BPI and its product, LFTB, during the disinformation campaign.

V. Defendants Intentionally Maligned BPI and LFTB by Describing LFTB as “Pink Slime”

166. One of the centerpieces to Defendants’ disinformation campaign was to refer to, describe and characterize LFTB as “pink slime.” Defendants used the phrase over 135 times during the campaign in various forums—ABC broadcasts, ABC online reports, Twitter, and Facebook. Defendants’ description of LFTB as “pink slime” is false, and the implication of the description is also false. Defendants used the phrase “pink slime” to imply that LFTB was not beef, but instead was an unsafe, unhealthy substance.

A. Defendants’ Campaign to Recast and Rename LFTB as “Pink Slime”

167. Defendants’ campaign to recast and rename LFTB as “pink slime” had several components. First, the ABC Defendants described nearly every report they issued during the disinformation campaign as a report about “pink slime.” The ABC Defendants’ online broadcasts and online reports were titled as follows:

- a. Segment Title: “**Pink Slime** and You” (3/7/12, World News, ABC Defendants, Ex. 2.)

- b. Segment Title: “**Pink Slime**: Tips for Checking Your Beef” (3/8/12, World News, ABC Defendants, Ex. 3.)
- c. Segment Title: ““**Pink Slime**’ Outrage: Beef Industry Responds” (3/9/12, World News, ABC Defendants, Ex. 4.)
- d. Segment Title: ““**Pink Slime**’ in School Cafeterias, Supermarkets” (3/15/12, World News, ABC Defendants, Ex. 6.)
- e. Segment Title: ““**Pink Slime**’ Taste Test” (3/16/12, World News, ABC Defendants, Ex. 7.)
- f. Segment Title: ““**Pink Slime**’: Safeway Pulls Meat Filler From Shelves” (3/21/12, Good Morning America, ABC Defendants, Ex. 8.)
- g. Segment Title: ““**Pink Slime**’ Discontinued at Safeway” (3/21/12, World News, ABC Defendants, Ex. 9.)
- h. Segment Title: ““**Pink Slime**’ Manufacturer Suspends Operations” (3/26/12, World News, ABC Defendants, Ex. 10.)
- i. Segment Title: ““**Pink Slime**’ Factory: a Look Inside” (3/29/12, World News, ABC Defendants, Ex. 11.)
- j. Segment Title: ““**Pink Slime**’ Labels on Ground Beef Packaging” (4/3/12, World News, ABC Defendants, Ex. 12.)
- k. Jim Avila: “70 Percent of Ground Beef at Supermarkets Contains ‘**Pink Slime**’” (3/7/12, ABC Online, Avila, Ex. 13.)
- l. Jim Avila: “Is **Pink Slime** in the Beef at Your Grocery Store?” (3/8/12, ABC Online, Avila, Ex. 14.)
- m. Jim Avila: “Where You Can Get ‘**Pink Slime**’-Free Beef” (3/9/12, ABC Online, Avila, Ex. 15.)
- n. Ben Forer (Production Associate): ““**Pink Slime**’ Will Be a Choice for Schools” (3/14/12, ABC Online, Ex. 16.)
- o. Jim Avila: “Schools Can Opt Out of ‘**Pink Slime**’ Beef” (3/15/12, ABC Online, Avila, Ex. 17.)
- p. Ben Forer (Production Associate): ““**Pink Slime**’ Taste Test” (3/16/12, ABC Online, Ex. 18.)
- q. Jim Avila: “Safeway to Stop Selling ‘**Pink Slime**’ Textured Beef.” (3/21/12, ABC Online, Avila, Ex. 19.)

- r. Jim Avila: “Safeway, SUPERVALU and Food Lion to Stop Selling ‘**Pink Slime**’ Beef.” (3/21/12, ABC Online, Avila, Ex. 20.)
- s. Ben Forer (Production Associate): “Where to Get ‘**Pink-Slime**’-Free Beef” (3/21/12, ABC Online, Ex. 21.)
- t. Jim Avila: “Beef Products Inc. Comeback: It’s Not ‘**Pink Slime**’; It’s Safe, Nutritious and ‘It’s Beef’” (3/27/12, ABC Online, Avila, Ex. 23.)
- u. Jim Avila: “‘Dude, It’s Beef!’: Governors Tour Plant, Reject ‘**Pink Slime**’ Label (3/29/12, ABC Online, Avila, Ex. 24.)
- v. Jim Avila: “Are LFTB or ‘**Pink Slime**’ Safety Claims Meaningful to Consumers?” (4/3/12, ABC Online, Avila, Ex. 25.)
- w. Jim Avila: “BPI Endorses USDA Voluntary Labeling of LFTB or ‘**Pink Slime**’” (4/3/12, ABC Online, Avila, Ex. 26.)

168. Second, Defendants repeatedly referred to LFTB as “pink slime” and characterized the product as “pink slime.” Defendants also referred to BPI as the “makers of pink slime.” For example, Defendants made the following statements:

- a. Jim Avila: “ABC News has learned that the woman who made the decision to okay the mix is former Undersecretary of Agriculture, JoAnn Smith, a call that led to hundreds of millions of dollars for Beef Products, Inc., **the makers of pink slime.**” (3/7/12, World News, Avila, Ex. 2.)
- b. Jim Avila: “It’s in 70 percent of the ground beef sold at supermarkets, up to 25 percent of each American hamburger patty, a **cheap filler known as pink slime.**” (3/8/12, World News, Avila, Ex. 3.)
- c. Diane Sawyer: “We are back on the case tonight. An ABC News investigation of the **filler called pink slime**, in 70 percent of the ground beef sold at supermarkets in this country.” (3/9/12, World News, Sawyer, Ex. 4.)
- d. Jim Avila: “But most Americans get their ground beef at supermarkets, and our viewers want to know if **pink slime lurks in the beef** sold here.” (3/9/12, World News, Avila, Ex. 4.)
- e. Gerald Zirnstein: “**It’s a pink slime.** It’s not fresh ground beef.” (3/21/12, World News, Zirnstein, Ex. 9.)
- f. Jim Avila: “**Pink slime is beef trimmings.** Once only used in dog food and cooking oil, the trimmings are now sprayed with ammonia so they are

safe to eat and added to most ground beef as a cheaper filler.” (3/7/12, ABC Online, Avila, Ex. 13.)

- g. Jim Avila: “The **‘pink slime’ is made by gathering waste trimmings**, simmering them at low heat so the fat separates easily from the muscle, and spinning the trimmings using a centrifuge to complete the separation. (3/7/12, ABC Online, Avila, Ex. 13.)
- h. Jim Avila: “The **‘pink slime’ does not have to appear on the label** because, over objections of its own scientists, USDA officials with links to the beef industry labeled it meat.” (3/7/12, ABC Online, Avila, Ex. 13.)
- i. Jim Avila: “**‘Pink slime,’ a cheap meat filler**, is in 70 percent of the ground beef sold at supermarkets and up to 25 percent of each American hamburger patty, by some estimates.” (3/8/12, ABC Online, Avila, Ex. 14.)

169. Third, Defendants made false statements about the common acceptance of the term “pink slime.” Defendants repeatedly told consumers that LFTB was “widely known as” or was “commonly referred to as” pink slime. For example, Defendants made the following statements:

- a. Jim Avila: “Zirnstein and his fellow USDA scientist, Carl Custer, both warned against using what the industry calls ‘lean finely textured beef,’ and is **widely known now as pink slime.**” (3/7/12, World News, Avila, Zirnstein, Custer, Ex. 2.)
- b. Diane Sawyer: “A major change at your supermarket after the World News investigation into the inexpensive filler **commonly known as pink slime.**” (3/21/12, World News, Sawyer, Ex. 9.)

170. Fourth, Defendants made false statements about the use of the term by the USDA and national supermarkets. When Defendants discussed actions taken by third parties with respect to LFTB, Defendants made it appear as if the third parties had adopted the “pink slime,” description and characterization of LFTB. For example, Defendants made the following statements:

- a. Jim Avila: “And it doesn’t have to appear on the label because, over the objections of its own scientists, **USDA officials with links to the beef industry label pink slime meat.**” (3/7/12, World News, Avila, Ex. 2.)

- b. Jim Avila: “We e-mailed the top 10 grocers in America; **Publix, Costco, HEB, and Whole Foods assured us they don’t use pink slime.**” (3/8/12, World News, Avila, Ex. 3.)
- c. Jim Avila: “These stores say **their beef contains no pink slime** at all.” (3/9/12, World News, Avila, Ex. 4.)
- d. David Kerley: “The USDA announcing that due to consumer demand, it will offer a choice to schools. They can buy patties **with or without pink slime**, also known as lean finely textured beef.” (3/15/12, World News, Kerley, Ex. 6.)
- e. Jim Avila: “When we first broke this story, the USDA told ABC News consumer pressure would have to move individual grocery stores to **change their pink slime policy.**” (3/21/12, GMA, Avila, Ex. 8.)
- f. Jim Avila: [video screen graphic behind Avila displays phrase **PINK SLIME BANNED**] “And the USDA announced last week that it will disclose to school districts which of its suppliers **use pink slime**, so administrators can decide whether to purchase it at schools.” (3/21/12, GMA, Avila, Ex. 8.)
- g. Jim Avila: “Safeway Supervalu and Food Lion now join Publix, H-E-B, Whole Foods, and Costco promising their **ground beef contains no pink slime.**” (3/21/12, World News, Avila, Ex. 9.)
- h. Jim Avila: “But BPI, its inventor and primary manufacturer, told ABC News in a letter from a lawyer today that **pink slime was USDA approved** beef and was nutritious.” (3/9/12, ABC Online, Avila, Foshee, Ex. 15.)

171. Fifth, Defendants described LFTB in a manner to reinforce the notion that LFTB is “pink slime.” Defendants stated that LFTB looks like “Play-Doh” and that it was “more like a gelatin” than beef. These false descriptions reinforced the impression that LFTB is “pink slime.” For example, Defendants made the following statements:

- a. Kit Foshee: “**It looks kind of like Play-Doh** or just something that’s pink and frozen.” (3/8/12, World News, Foshee, Ex. 3.)
- b. Jim Avila: “‘It kind of **looks like play dough,**’ said Kit Foshee, who was a corporate quality assurance manager at Beef Products, Inc., the company that makes pink slime.” (3/8/12, ABC Online, Avila, Foshee, Ex. 14.)
- c. Jim Avila: “Critics say **pink slime is more like gelatin than beef**, and less nutritious.” (3/9/12, World News, Avila, Ex. 4.)

172. Counts 1 and 10 identify all of the instances in which Defendants falsely called, described, or referred to LFTB as “pink slime,” a total of 137 false statements.

B. Defendants’ False Statements Were Intended to Create a Consumer Backlash

173. Defendants used the phrase “pink slime” to create a consumer backlash against BPI and LFTB. “Slime” is defined as: “[a] moist, soft, and slippery substance, typically regarded as repulsive” by OXFORD DICTIONARY; “[m]oist or sticky matter considered filthy or disgusting” by COLLINS DICTIONARY; “[v]ile or disgusting matter” by the AMERICAN HERITAGE DICTIONARY; “[a] viscous, glutinous, or gelatinous substance” by MERRIAM-WEBSTER DICTIONARY; and “any ropy or viscous liquid matter, especially of a foul kind” or “any moist viscous fluid, esp when noxious or unpleasant” by DICTIONARY.COM.

174. When Defendants called LFTB “pink slime,” consumers understood that Defendants were indicating that LFTB was a noxious, repulsive, and filthy fluid. There is not a more offensive way of describing a consumable product than to call it “slime.” By repeatedly referring to LFTB as “pink slime,” Defendants conveyed that LFTB was not beef but instead was an unsafe and unhealthy substance that was included in ground beef.

175. Defendants’ use of the phrase “pink slime,” standing alone, was a factual misstatement, and it created a false impression regarding LFTB. However, Defendants did not use the phrase “pink slime” in isolation. Defendants used the phrase “pink slime” at the same time they made other false and misleading statements regarding LFTB. In this context, Defendants’ use of the phrase “pink slime” contributed to the impression that LFTB was not beef, was unsafe and unhealthy, and was not nutritious.

176. Defendants also used this false description of LFTB in the context of indicating that ground beef made with LFTB should contain additional labeling. Defendants repeatedly

questioned why ground beef made with LFTB was labeled as 100% ground beef. Defendants' statements were intended to convey that ground beef with "pink slime" needed additional labeling because consumers were unknowingly consuming a non-beef substance that was unsafe and not healthy.

177. Defendants thereby set the stage for consumers to believe that BPI had engaged in an "economic fraud" and improper conduct. Defendants' statements conveyed that BPI had obtained approval from the USDA to include "pink slime" in ground beef without labeling only because USDA officials "with links to the beef industry" had overruled USDA scientists.

C. Defendants' Statements Were False and Defendants Acted with Actual Malice

178. Defendants knew that their description and characterization of LFTB as "pink slime" was false and that the factual implications created by describing LFTB as "pink slime" were false. Alternatively, Defendants acted with reckless disregard for the truth.

179. First, LFTB does not fit the factual definition of the term "slime." "Slime" is a noxious, repulsive, and filthy fluid. LFTB is not a noxious, repulsive, and filthy fluid. LFTB is 100% beef. The Individual Defendants knew LFTB was not "slime" based on their first-hand experience with the product. The ABC Defendants either knew LFTB was not "slime" or acted with reckless disregard in describing LFTB as slime because they lacked a factual basis for their statements.

180. Second, before and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that LFTB was not slime. For example, Defendants received or had access to the following information:

- a. "Some recent media reports created a troubling and inaccurate picture, particularly in their use of the colloquial term 'pink slime.'" (3/8/12 AMI Article, Ex. 59.)

- b. “Both segments presented a sensationalized, inaccurate, and highly misleading picture of [boneless lean beef trimmings (“BLBT”)] by, among other things, repeatedly referring to BLBT as ‘pink slime’ and falsely stating, both directly and by implication, that BLBT is ‘not beef.’” (3/9/12 Clare Letter, Ex. 58.)
- c. “I have personally visited their plant and the categorization of calling their product ‘pink slime’ is completely false and incendiary.” (3/17/12 Donley Article, Ex. 81.)
- d. “Using the phrases ‘pink slime’ or ‘dog food’ when referring to lean finely textured beef or any other USDA inspected trim is misleading and defamatory.” (3/19/12 Clare Letter, Ex. 60.)
- e. “Lean finely textured beef is a good description of exactly what it is. It’s beef. When people come up with these other terms, like ‘pink slime,’ it is not accurate.” (3/20/12 Dickson Interview, Ex. 82.)
- f. “The news media’s use of the term ‘pink slime’ has been inflammatory and entirely inaccurate — and has done the public a disservice.” (4/1/12 Cross Article, Ex. 90.)

181. BPI and others provided the ABC Defendants, and made available to all Defendants, multiple sources of information showing that calling and describing LFTB as “pink slime” is false. (*See, e.g.*, 3/8/12 AMI Article, Ex. 59; 3/9/12 Clare Letter, Ex. 58; 3/19/12 Clare Letter, Ex. 60; 3/22/12 BPI Article, Ex. 73; 3/23/12 BPI Statement, Ex. 74; 3/8/12 NMA Press Release, Ex. 76; 3/9/12 FSN Article, Ex. 77; 3/17/12 Donley Article, Ex. 81; 3/20/12 Dickson Interview, Ex. 82; 4/1/12 Cross Article, Ex. 90.)

182. Third, LFTB does not look like “pink slime” or “Play-Doh.” Exhibit 105 is an image of LFTB (in frozen form) that BPI provide the ABC Defendants during the disinformation campaign. Exhibit 106 is an image of LFTB (in ground form) that BPI made publicly available to the Defendants during the disinformation campaign (posted to www.beefisbeef.com on March 20, 2012). Exhibit 107 is yet another image of LFTB (in ground form). These images demonstrate that LFTB does not look like “pink slime” or “Play-Doh.” Accordingly, the ABC Defendants’ description of LFTB as “pink slime” and “Play-Doh” was knowingly false.

183. Moreover, the Individual Defendants knew LFTB did not look like “pink slime” or “Play-Doh.” Zirnstein and Custer’s description of LFTB as “pink slime” was knowingly false because, on information and belief, they observed LFTB while working at the USDA. Foshee’s description of LFTB as “Play-Doh” was knowingly false because he observed LFTB while working at BPI. Alternatively, the Individual Defendants recklessly disregarded the truth when describing LFTB as “pink slime” and “Play-Doh” because they had not observed the product as it was produced and existed in 2012.

184. Fourth, LFTB is not referred to as “pink slime” by organizations or companies within the beef industry, the USDA, or grocery stores. Organizations, companies, and agencies involved with the production, regulation, and sale of beef refer to LFTB as LFTB. These groups do not refer to LFTB as “pink slime.” Defendants knew or recklessly disregarded the fact that these groups do not describe or refer to LFTB as “pink slime.”

185. Fifth, LFTB was not “widely” or “commonly” known as “pink slime” prior to the disinformation campaign. The USDA approved LFTB in 1993. A search of Westlaw’s news database reveals that, between 1993 and March 6, 2012, the phrase “pink slime” appears in 172 articles mentioning beef, which averages to less than nine articles per year. Most of these articles have nothing to do with BPI or LFTB. Between March 7, 2012 and the filing of this Complaint, the phrase “pink slime” appears in over 4,700 articles. Defendants knew or recklessly disregarded the fact that “pink slime” was not a widely or commonly known phrase for LFTB until after they initiated the disinformation campaign.

186. Sixth, on information and belief, the ABC Defendants did not corroborate that anyone at the USDA ever referred to or called LFTB “pink slime.” On August 1, 2012, the USDA informed BPI that it could not locate a copy of any 2002 email that refers to, describes or

calls LFTB “pink slime” and indicated that no such email had been previously produced pursuant to a Freedom of Information Act (“FOIA”) request. Thus, on information and belief, the ABC Defendants repeatedly stated that individuals at the USDA referred to or called LFTB “pink slime” without reviewing any contemporaneous document confirming the claim.

187. Moreover, on information and belief, the ABC Defendants did not review any documents from the USDA pursuant to a FOIA request prior to or during the disinformation. As noted above, on information and belief, no one associated with ABC requested information from the USDA or FSIS until April 12, 2012, when Brian Hartman (Producer) submitted a FOIA request to the FSIS. Accordingly, on information and belief, the ABC Defendants stated that individuals at the USDA referred to or called LFTB “pink slime” without reviewing any information from the USDA to determine if the claim was accurate.

188. Based on this information, Defendants knew their description and characterization of LFTB as “pink slime” was false. Alternatively, Defendants acted with reckless disregard for the truth when they described and characterized LFTB as “pink slime.”

VI. Defendants Falsely Stated and Implied that LFTB Was Not Meat or Beef

189. Defendants’ description of LFTB as “pink slime” was part of their effort to persuade consumers that LFTB was not beef and was not even meat. In addition to Defendants’ frequent references to LFTB as “pink slime,” which indicated the product was something other than beef, Defendants made dozens of false statements to persuade consumers that LFTB was not beef, or even meat. Defendants made these statements with actual malice.

A. Defendants’ Campaign to Convince Consumers LFTB Was Not Meat or Beef

190. Defendants’ campaign to convince consumers that LFTB was not beef or meat had several components beyond describing LFTB as “pink slime.” First, Defendants falsely

stated that LFTB was “not beef” and was not even meat. For example, Defendants made the following statements:

- a. Gerald Zirnstein: **“It’s a pink slime. It’s not fresh ground beef.”** (3/21/12, World News, Zirnstein, Ex. 9.)
- b. Jim Avila: **“Why didn’t you consider it beef?”** Carl Custer: **“Because it was a salvage product.”** Jim Avila: “Leftovers...” Carl Custer: **“Fat that had been heated** at low temperature and the excess fat spun out.” (3/7/12, World News, Avila, Custer, Ex. 2.)
- c. Carl Custer: **“[W]e didn’t feel it was meat. It was a salvage.”** (3/21/12, World News, Custer, Ex. 9.)
- d. Jim Avila: “‘It kind of looks like play dough,’ said Kit Foshee, who was a corporate quality assurance manager at Beef Products, Inc., the company that makes pink slime. ‘It’s pink and frozen, **it’s not what the typical person would consider meat.**’” (3/8/12, ABC Online, Avila, Foshee, Ex. 14.)
- e. Jim Avila: “But Kit Foshee, who, until 2001, was a corporate quality assurance manager at BPI, the company that makes pink slime, contends **the trimmings bear little resemblance to beef.**” (3/9/12, ABC Online, Avila, Foshee, Ex. 15.)
- f. Jim Avila: “If your meat is stamped **USDA organic, it’s pure meat, no questionable filler. But everything else is suspect,** say critics, because pink slime does not have to appear on the label.” (3/8/12, World News, Avila, Ex. 3.)

191. Second, Defendants falsely stated that LFTB was a “filler” added to ground beef to “pump up” the volume. Defendants made these statements to falsely convey that LFTB was something other than beef that was included in ground beef. For example, Defendants made the following statements:

- a. Diane Sawyer: “Last night, a whistleblower told us about what he’s calling pink slime, **a kind of filler used to pump up the volume of meat.**” (3/8/12, World News, Sawyer, Ex. 3.)
- b. Diane Sawyer: “A major change at your supermarket after the World News investigation into the **inexpensive filler commonly known as pink slime.** We found that that **filler was added to 70 percent of the ground beef** sold in this country.” (3/21/12, World News, Sawyer, Ex. 9.)

- c. Ben Forer (Production Associate): “There is only one way to know for certain that ‘pink slime’ is not in your beef: **If your meat is stamped USDA Organic, it’s pure meat with no filler.**” (3/14/12, ABC Online, Ex. 16.)
- d. Jim Avila: “It’s in 70 percent of the ground beef sold at supermarkets, up to 25 percent of each American hamburger patty, **a cheap filler known as pink slime.**” (3/8/12, World News, Avila, Ex. 3.)
- e. Jim Avila: “**If your meat is stamped USDA organic, it’s pure meat, no questionable filler.**” (3/8/12, World News, Avila, Ex. 3.)

192. Third, Defendants falsely stated that LFTB was a “substitute” for ground beef. Defendants made these statements to convey that LFTB was something other than beef. For example, Defendants made the following statements:

- a. Gerald Zirnstein: “It’s economic fraud. It’s not – it’s not fresh ground beef. **It’s a substitute**, it’s a **cheap substitute** being added in.” (3/7/12, World News, Zirnstein, Ex. 2.)
- b. A Voice (Gerald Zirnstein): “It’s not fresh ground beef. **It’s a substitute**, it’s a **cheap substitute** being added in.” (3/21/12, GMA, Zirnstein, Ex. 9.)
- c. Jim Avila: “‘It’s economic fraud,’ [Zirnstein] told ABC News. ‘It’s not fresh ground beef. . . . It’s a cheap substitute being added in.’” (3/7/12, ABC Online, Avila, Zirnstein, Ex. 13.)

193. Fourth, Defendants falsely stated that selling ground beef containing LFTB was fraud. Defendants made these statements to convey that ground beef with LFTB was not 100% ground beef because LFTB was not beef. For example, Defendants made the following statements:

- a. Gerald Zirnstein: “It’s **economic fraud**. It’s not fresh ground beef. It’s a cheap substitute being added in.” (3/7/12, World News, Zirnstein, Ex. 2.)
- b. Jim Avila: “‘It’s **economic fraud**,’ [Zirnstein] told ABC News. ‘It’s not fresh ground beef. . . . It’s a cheap substitute being added in.’” (3/7/12, ABC Online, Avila, Zirnstein, Ex. 13.)
- c. Jim Avila: “@travarp not my word. Coined by USDA scientist who recommended agains (sic) it’s use. He called it pink slime. **And says its a food fraud.**” (3/7/12, Twitter, Avila, Ex. 27.)

194. Fifth, Defendants falsely stated that LFTB was “more like gelatin” than beef. Defendants made these statements to convey that LFTB was something other than beef. For example, Defendants made the following statements:

- a. Jim Avila: “The company calls it finely textured lean beef, flash frozen and boxed. **More like gelatin and not as nutritious as ground beef.**” (3/8/12, World News, Avila, Foshee, Ex. 3.)
- b. Jim Avila: “Critics say **pink slime is more like gelatin than beef and less nutritious.**” (3/9/12, World News, Avila, Ex. 4.)
- c. Jim Avila: “[Kit] Foshee says it is **more like gelatin and not nutritious as ground beef** because the protein comes mostly from connective tissue, not muscle meat.” (3/8/12, ABC Online, Avila, Foshee, Ex. 14.)

195. Sixth, Defendants falsely stated that LFTB’s protein came “mostly from” connective tissues. Defendants made these false statements to imply that LFTB was not like beef because its protein was not from muscle meat. For example, Defendants made the following statements:

- a. Jim Avila: “Kit Foshee, who was once number two at BPI says **that’s because the protein comes mostly from connective tissue, not muscle meat.**” (3/8/12, World News, Avila, Foshee, Ex. 3.)
- b. Jim Avila: “[Kit] Foshee says it is more like gelatin and not nutritious as ground beef because **the protein comes mostly from connective tissue, not muscle meat.**” (3/8/12, ABC Online, Avila, Foshee, Ex. 14.)
- c. Jim Avila: “ABC News joined Branstad, Perry and Kansas Gov. Sam Brownback on a tour of the facilities where beef scraps, **mostly fat and connective tissue**, are processed.” (3/29/12, ABC Online, Avila, Ex. 24.)

196. Seventh, Defendants made false statements about the USDA’s approval of LFTB. Defendants falsely stated that the USDA approved LFTB for the inclusion in ground beef simply because it was pink in color and because USDA officials had ties to the beef industry. Defendants made these statements to undermine consumers’ belief that the USDA’s approval of LFTB indicated it was beef. For example, Defendants made the following statements:

- a. Jim Avila: “And it doesn’t have to appear on the label because, over the objections of its own scientists, **USDA officials with links to the beef industry label pink slime meat.**” (3/7/12, World News, Avila, Ex. 2.)
- b. Carl Custer: “The under secretary said, ‘**it’s pink, therefore, it’s meat.**’” (3/7/12, World News, Custer, Ex. 2.)

197. Counts 2 and 11 identify all of the instances in which Defendants falsely stated that LFTB is not beef or meat, a total of 27 false statements. Counts 3 and 12 identify all of the instances in which Defendants falsely stated that LFTB is a “filler” added to ground beef, a total of 45 false statements. Counts 4 and 13 identify all of the instances in which Defendants falsely stated that LFTB is a “substitute” for beef, a total of six false statements. Counts 5 and 14 identify all of the instances in which Defendants falsely stated that selling ground beef with LFTB was fraudulent, a total of three false statements. Counts 8 and 17 identify all of the instances in which Defendants falsely stated that LFTB was “more like gelatin” than beef, a total of seven false statements. Counts 9 and 18 identify all of the instances in which Defendants falsely stated that LFTB’s protein came mostly from connective tissue, a total of four false statements.

B. Defendants’ False Statements Were Intended to Create a Consumer Backlash

198. Defendants made these various false statements regarding LFTB to convey to consumers that LFTB was not beef, or even meat. These statements were consistent with Defendants’ description of LFTB as “pink slime.” These statements indicated that LFTB was something other than beef or meat; that it instead was a noxious, repulsive, and filthy filler that was added to ground beef to pump up the volume of the meat.

199. Defendants used this false description of LFTB in the context of indicating that ground beef made with LFTB should contain additional labeling. Defendants repeatedly questioned why ground beef made with LFTB was labeled as 100% ground beef. Defendants’

statements were intended to convey that ground beef with LFTB needed additional labeling because LFTB was something other than beef.

200. Defendants thereby set the stage for consumers to believe that BPI had engaged in an “economic fraud” and improper conduct. Defendants’ statements conveyed that BPI had obtained approval from the USDA to include a non-beef product in ground beef without labeling only because USDA officials “with links to the beef industry” had overruled USDA scientists.

C. Defendants’ Statements Were False and Defendants Acted with Actual Malice

201. Defendants knew their statements indicating that LFTB was not beef or meat were false. Alternatively, Defendants acted with reckless disregard for the truth when stating and implying that LFTB was not beef or meat.

1. Defendants Knew LFTB Is Beef and Meat

202. Defendants stated and implied that LFTB was not beef and was not even meat. These statements were false. LFTB is 100% beef. Defendants received, or had access to, various sources of information showing that their statements were false.

203. First, LFTB is meat. “Meat” is the edible flesh of animals. Meat is defined as: “the flesh of an animal (especially a mammal) as food” by OXFORD DICTIONARY; “the edible part of something as distinguished from its covering” by MERRIAM-WEBSTER DICTIONARY; “[t]he flesh of animals used as food” by COLLINS DICTIONARY; and “[t]he edible flesh of animals” by the AMERICAN HERITAGE DICTIONARY. Further, federal regulations define “meat” as “[t]he part of the muscle of any cattle, sheep, swine, or goats which is skeletal or which is found in the tongue, diaphragm, heart, or esophagus, with or without the accompanying and overlying fat” 9 C.F.R. § 301.2. Defendants knew, or recklessly disregarded the fact, that LFTB satisfied these definitions of meat.

204. Second, LFTB is beef. “Beef” is meat from a bovine animal. Beef is defined as: “the flesh of an adult domestic bovine (as a steer or cow) used as food” by MERRIAM-WEBSTER DICTIONARY; “[t]he flesh of a cow, bull, or ox, used as food” by OXFORD DICTIONARY; and “[t]he flesh of a slaughtered full-grown steer, bull, ox, or cow” by the AMERICAN HERITAGE DICTIONARY. Further, federal regulations define “beef” as “meat produced from cattle, including veal,” 7 C.F.R. § 65.110, and “flesh of cattle,” *id.* § 1260.119. Defendants knew, or recklessly disregarded the fact, that LFTB satisfied these definitions of beef.

205. Third, the USDA considers LFTB to be beef. The USDA approved the use of LFTB in “100 percent” and “pure” ground beef in 1993 without additional labeling, because it concluded that LFTB was beef. (2005 FSIS Manual, Ex. 50.) Defendants knew the USDA considered LFTB to be beef and, therefore, either knew their statements to the contrary were false or acted with reckless disregard when stating LFTB was not beef.

206. Fourth, before and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that LFTB was beef. For example, Defendants received or had access to the following information:

- a. “The boneless lean beef is made from the same high quality USDA-inspected trimmings as other ground beef.” (7/28/11 Block Article, Ex. 43.)
- b. “The fact is, [LFTB] is beef.” (3/8/12 AMI Article, Ex. 59.)
- c. “Lean finely textured beef is beef.” (3/19/12 Clare Letter, Ex. 60) (emphasis in original.)
- d. “As their real names suggest, boneless lean beef trimmings are 100% USDA inspected beef.” (3/15/12 BPI Article, Ex. 70.)
- e. “Consumers need to understand that this product is meat, period.” (3/17/12 Donley Article, Ex. 81.)
- f. “Yes, lean finely textured beef is produced at a lower cost. But the bottom line is that it is beef.” (3/20/12 Dickson Interview, Ex. 82.)

- g. “[T]he fact is, the U.S. Department of Agriculture (USDA) recognizes that this product is what it is: 100% beef.” (4/1/12 Cross Article, Ex. 90.)

207. BPI and others provided the ABC Defendants, and made available to all Defendants, multiple sources of information showing that LFTB was beef. (*See, e.g.*, 11/7/11 Innovations Video, Ex. 34; 3/6/12 BPI Fact Sheet, Ex. 33; 6/12/08 Washington Post Article, Ex. 38; 7/28/11 Block Article, Ex. 43; 10/5/11 Meat Myth Article, Ex. 44; Pre-3/7/12 LFTB Report, Ex. 47; 4/1/06 National Provisioner Article, Ex. 52; 3/8/12 AMI Article, Ex. 59; 3/19/12 Clare Letter, Ex. 60; 3/10/12 BPI/Quality Article, Ex. 68; 3/15/12 BPI Article, Ex. 70; 3/15/12 BPI Press Release, Ex. 71; 3/22/12 BPI Article, Ex. 73; 3/28/12 BPI Article, Ex. 75; 3/10/12 BPI FAQ, Ex. 69; 3/9/12 FSN Article, Ex. 77; 3/17/12 Donley Article, Ex. 81; 3/20/12 Dickson Article, Ex. 82; 4/1/12 Cross Article, Ex. 90; 4/1/12 WCF Courier Article, Ex. 91.)

208. Fifth, before and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that LFTB was not separately labeled in ground beef because LFTB was beef. Defendants were informed that the USDA did not require additional labeling because it concluded LFTB was beef. (*See, e.g.*, 3/15/12 BPI Article, Ex. 70; 3/15/12 AMI Statement, Ex. 80; 3/21/12 Hagen Interview, Ex. 83.)

209. Based on this information, Defendants knew that stating or implying that LFTB is not beef was false. Alternatively, Defendants acted with reckless disregard for the truth when stating and implying that LFTB is not beef.

2. Defendants Knew LFTB Was Not a Filler or Substitute

210. Defendants stated and implied that LFTB was a “filler.” These statements were false. LFTB is not a filler. LFTB is beef. Defendants received or had access to various sources of information showing that their statements were false.

211. First, LFTB is not a “filler.” LFTB is not a filler because it is a beef product added with other beef products to make ground beef, a beef product. Meat fillers include cereals, legumes, vegetable, roots and tubers. (3/15/12 BPI Article, Ex. 70.) Other fillers include cracker meal, oatmeal, bread crumbs, nonfat dry milk, soy ingredients (untextured), milk, and whole eggs that, for example, are included in meat loaf. (2005 FSIS Manual, Ex. 50.) The Individual Defendants knew LFTB was not a filler based on their first-hand experience with the product. The ABC Defendants either knew LFTB was not a filler or acted with reckless disregard in describing LFTB as a filler because they lacked a factual basis for their statements.

212. Second, the USDA does not consider LFTB to be a filler. The USDA considers LFTB to be beef. The USDA would have required additional labeling of ground beef that included LFTB if LFTB were a filler. (2005 FSIS Manual, Ex. 50.) Defendants knew the USDA’s decision that ground beef made with LFTB did not need additional labeling meant that calling LFTB a filler was false.

213. Third, before and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that LFTB is not a filler. BPI and others repeatedly provided information to Defendants showing that calling LFTB a filler was false. (*See, e.g.*, 3/19/12 Clare Letter, Ex. 60; 3/8/12 BPI Food, Inc. Video, Ex. 64; 3/15/12 BPI Article, Ex. 70; 3/15/12 AMI Statement, Ex. 80.)

214. Fourth, LFTB is not a “substitute” for beef. Substitute is “a person or thing that takes the place or function of another.” *See* MERRIAM WEBSTER DICTIONARY; *accord* OXFORD DICTIONARY, COLLINS DICTIONARY, AMERICAN HERITAGE DICTIONARY. LFTB does not “take[] the place or function” of beef or ground beef. LFTB is 100% beef, just like the other sources for ground beef.

215. Based on this information, Defendants knew stating and implying that LFTB is a filler or substitute was false. Alternatively, Defendants acted with reckless disregard for the truth when stating and implying that LFTB is a filler or substitute for beef.

3. Defendants Knew LFTB Was Not A Gelatin Made From Connective Tissues

216. Defendants stated and implied that LFTB was more like a gelatin than meat because it was made primarily from connective tissue. These statements were false. LFTB is not a gelatin and is not made from connective tissues. LFTB is beef and is made from beef. Defendants received or had access to various sources of information showing that their statements were false.

217. First, LFTB is not gelatin. “Gelatin” is defined as: “glutinous material obtained from animal issues by boiling” by MERRIAM-WEBSTER DICTIONARY; “a virtually colorless and tasteless water-soluble protein prepared from collagen and used in food preparation as the basis of jellies” by OXFORD DICTIONARY; and “the tasteless, colorless, brittle mixture of protein extracted by boiling skin, bones, horns, etc.” by COLLINS DICTIONARY. The Individual Defendants knew LFTB was not a gelatin based on their first-hand experience with the product. The ABC Defendants either knew LFTB was not a gelatin or acted with reckless disregard in describing LFTB as a gelatin because they lacked a factual basis for their statements.

218. Second, the USDA did not consider LFTB to be gelatin. According to the FSIS, gelatin is a “binder/extender and is only permitted in a few meat and poultry products.” (2005 FSIS Manual, Ex. 50.) Gelatin is not permitted in products labeled “100 percent” or “pure” ground beef. (*Id.*) The USDA would not have permitted LFTB to be included in 100% percent or pure ground beef without additional labeling if the USDA considered LFTB to be gelatin.

Defendants knew the USDA's decision that ground beef made with LFTB did not need additional labeling meant calling LFTB a gelatin was false.

219. Third, LFTB's protein does not come "mostly from" connective tissue. BPI's process for making LFTB removes connective tissue and results in 94% to 97% lean beef. Foshee knew LFTB's protein does not come "mostly from" connective tissue based on his employment by BPI. On information and belief, Zirnstein and Custer knew LFTB's protein does not come "mostly from" connective tissue based on their employment with the USDA. The ABC Defendants knew LFTB's protein does not come "mostly from" connective tissue based on correspondence from BPI. (3/9/12 Clare Letter, Ex. 58.)

220. Moreover, on information and belief, the ABC Defendants relied on Foshee for their statements regarding LFTB consisting primarily of connective tissue and fat. BPI fired Foshee in 2001. Foshee had no knowledge of the process BPI was using in 2012 to make LFTB, 11 years after he was fired. ABC Defendants knew or recklessly disregarded the fact that Foshee lacked knowledge regarding BPI's process in 2012.

221. Based on this information, Defendants knew stating that LFTB is more like a gelatin and that its protein comes mostly from connective tissue was false. Alternatively, Defendants acted with reckless disregard for the truth when stating that LFTB is more like gelatin and that its protein comes mostly from connective tissue.

VII. Defendants Falsely Stated and Implied that LFTB Was Not Safe for Public Consumption

222. Defendants' description of LFTB as "pink slime" was part of their effort to persuade consumers that LFTB was not safe for consumption. In addition to Defendants' frequent references to LFTB as "pink slime," Defendants made dozens of false statements to

persuade consumers that LFTB was not safe for consumption. Defendants made these statements with actual malice.

A. Defendants' Campaign to Convince Consumers that LFTB Was Not Safe for Consumption

223. Defendants' campaign to convince consumers that LFTB was not safe for consumption had several components beyond describing LFTB as "pink slime." First, Defendants falsely stated that selling ground beef containing LFTB was fraud. Defendants made these statements to convey that ground beef with LFTB should include additional labeling because LFTB was not safe for consumption. For example, Defendants made the following statements:

- a. Gerald Zirnstein: "**It's economic fraud.** It's not – it's not fresh ground beef. It's a substitute, it's a cheap substitute being added in." (3/7/12, World News, Zirnstein, Ex. 2.)
- b. Jim Avila: "'**It's economic fraud,**' [Zirnstein] told ABC News. 'It's not fresh ground beef. . . . It's a cheap substitute being added in.'" (3/7/12, ABC Online, Avila, Zirnstein, Ex. 13.)
- c. Jim Avila: "Coined by USDA scientist who recommended against (sic) its use. He called it pink slime. And says its a **food fraud.**" (3/7/12, Twitter, Avila, Ex. 27.)

224. Second, Defendants made false statements regarding the beef trimmings used by BPI to produce LFTB. Defendants falsely stated that LFTB was made from "low grade" and "waste" trimmings. Defendants falsely stated the raw material used by BPI is more likely to be contaminated with "fecal matter." And Defendants falsely stated that the beef trimmings used by BPI was "inherently pathogenic." Defendants made these statements to convey that the beef used to make LFTB was not safe for consumption. For example, Defendants made the following false statements:

- a. Jim Avila: “Those **waste trimmings** are gathered, simmered at low heat to make it easier to separate fat from muscle, put in a centrifuge and spun to finish the separation.” (3/7/12, World News, Avila, Ex. 2.)
- b. Ben Forer (Production Associate): “The **low-grade trimmings** come from the parts of the cow **most susceptible to contamination**, often close to the hide, **which is highly exposed to fecal matter.**” (3/14/12, ABC Online, Ex. 16.)
- c. Jim Avila: “@travarp so u know more than microbiologists at USDA who say **scraps have more contaminants than beef cuts** our report based on fact no spin.” (3/7/12, Twitter, Avila, Ex. 27.)
- d. Jim Avila: “Safeway announces its meat counter is now free of what former USDA scientists characterize as **low quality beef scraps sanitized with ammonia gas.**” (3/21/12, World News, Avila, Ex. 9.)
- e. Jim Avila: “[Foshee] and two former USDA inspectors told ABC News the **filler commonly referred to as pink slime comes from a low grade of beef trimmings unlike what they call real ground beef.**” (3/9/12, ABC Online, Avila, Foshee, Zirnstein, and Custer, Ex. 15.)

225. Third, Defendants made false statements regarding the prior use of the beef trimmings used by BPI to produce LFTB. Defendants falsely stated that the beef trimmings used by BPI were previously used exclusively for dog food and cooking oil. Defendants made these statements to convey that LFTB was not safe for human consumption. For example, Defendants made the following false statements:

- a. Jim Avila: “The low-grade trimmings were **once only used in dog food and cooking oil.**” (3/8/12, World News, Avila, Ex. 3.)
- b. Jim Avila: “Pink slime is beef trimmings. **Once only used in dog food and cooking oil,** the trimmings are now sprayed with ammonia so they are safe to eat and added to most ground beef as a cheaper filler.” (3/7/12, ABC Online, Avila, Ex. 13.)
- c. Jim Avila: “However, the substance, critics said, is more like gelatin than meat, and before Beef Products, Inc. found a way to use it by disinfecting the trimmings with ammonia **it was sold only to dog food or cooking oil suppliers.**” (3/9/12, ABC Online, Avila, Ex. 15.)

226. Fourth, Defendants used derogatory terms to describe LFTB and ground beef that included LFTB. Defendants made these statements to convey that LFTB was an unsafe product

being “hidden” or “lurking” in ground beef. For example, Defendants made the following statements:

- a. Jim Avila: “If your meat is stamped USDA organic, it’s pure meat, no **questionable filler**. But **everything else is suspect**, say critics, because pink slime does not have to appear on the label, and the USDA is giving no indication it will force meat packers to lift the veil of secrecy any time soon.” (3/8/12, World News, Avila, Ex. 3.)
- b. Jim Avila: “But most Americans get their ground beef at supermarkets, and our viewers want to know if pink slime **lurks in the beef sold here**.” (3/9/12, World News, Avila, Ex. 4.)
- c. Jim Avila: “And the American Meat Institute insists pink slime is ‘not an additive, and so no label is necessary.’ **What’s being hidden here?**” (3/9/12, World News, Avila, Ex. 4.)
- d. Jim Avila: “If your meat is stamped USDA Organic, it’s pure meat with no filler. But critics say **everything else is suspect** because pink slime does not have to appear on the label.” (3/8/12, ABC Online, Avila, Ex. 14.)
- e. Jim Avila: “The USDA claims it can’t do anything about the **lack of labeling that hides the filler in your ground beef**.” (3/15/12, ABC Online, Avila, Ex. 17.)

227. Fifth, Defendants made false statements regarding the process used by BPI to produce LFTB from beef trimmings. Defendants falsely stated that BPI “cooks” and “simmers” beef trimmings to produce LFTB. Defendants made these statements to convey that ground beef processors were inappropriately labeling ground beef as “fresh,” because it contained a cooked product. Defendants also made these statements to convey that LFTB was warmed to the point where bacteria could grow and multiply and, therefore, using LFTB could contaminate ground beef. For example, Defendants made the following statements:

- a. Jim Avila: “The low-grade trimmings were once only used in dog food and cooking oil. But because of the company’s treatment, **simmering at low heat**, a centrifuge to separate the fat and tissue, a spritz of ammonia gas to kill the germs and a quick freeze, the USDA says it’s safe to eat.” (3/8/12, World News, Avila, Ex. 3.)

- b. David Kerley: “Parents, schools, state officials, insisting the government do something about pink slime, trimmings which are **slightly cooked**, spun down to remove fat, and sprayed with ammonia, and added back into ground beef.” (3/15/12, World News, Kerley, Ex. 6.)
- c. Jim Avila: “‘**At that temperature, you increase the level of pathogens and the level of spoilage bacteria,**’ Zirnstein told ABC News. ‘In order to turn this into a product they can potentially sell as ‘meat,’ and that’s, [in] quotations, ‘meat,’ they add ammonia.’” (3/27/12, ABC Online, Avila, Zirnstein, Ex. 23.)

228. Sixth, Defendants made false statements regarding BPI’s use of ammonium hydroxide. Defendants falsely stated that BPI “spray[s]” beef trimmings with ammonia to make them safe to eat. Defendants made these statements to convey that BPI must use a significant volume of ammonia liquid because it is using contaminated beef trimmings to produce LFTB. For example, Defendants made the following statements:

- a. Jim Avila: “Beef trimmings that were once only used in dog food and cooking oil, **now sprayed with ammonia to make them safe to eat** and then added to most ground beef as a cheaper filler. It was Zirnstein who, in a USDA memo, first coined the term pink slime and is now coming forward to say he won’t buy it.” (3/7/12, World News, Avila, Zirnstein, Ex. 2.)
- b. Jim Avila: “Those waste trimmings are gathered, simmered at low heat to make it easier to separate fat from muscle, put in a centrifuge and spun to finish the separation. Next, the mixture is sent through pipes where it is **sprayed with ammonia gas to kill bacteria.**” (3/7/12, World News, Avila, Ex. 2.)
- c. Jim Avila: “Safeway announces its meat counter is now free of what former USDA scientists characterized as **low-quality beef scraps sanitized with ammonia gas.**” (3/21/12, World News, Avila, Ex. 9.)
- d. Jim Avila: “But because of BPI’s treatment of the trimmings – simmering them in low heat, separating the fat and tissue using a centrifuge and **spraying them with ammonia gas to kill the germs** – the United States Department of Agriculture says it’s safe to eat.” (3/8/12, ABC Online, Avila, Ex. 14.)

229. Counts 5 and 14 identify all of the instances in which Defendants falsely stated that selling ground beef with LFTB was fraudulent, a total of three false statements. Counts 6

and 15 identify all of the instances in which Defendants falsely stated that LFTB is produced using “waste,” “scraps,” “low-grade” beef trimmings or “low-grade” beef trimmings, a total of 18 false statements. Counts 20 and 24 identify all of the instances in which Defendants used false and derogatory terms to describe LFTB and ground beef with LFTB, a total of seven false statements. Counts 20 and 24 identify all of the instances in which Defendants falsely stated that BPI “simmers” or “cooks” beef trimmings to produce LFTB, a total of ten false statements. Counts 20 and 24 identify all of the instances in which Defendants falsely described BPI’s use of ammonium hydroxide to produce LFTB, a total of 21 false statements.

B. Defendants Falsely Claimed LFTB Was Not Safe for Consumption to Create Consumer Backlash

230. Defendants made these various false statements regarding LFTB to convey to consumers that LFTB was not safe for consumption. These statements were consistent with Defendants’ description of LFTB as “pink slime.” These statements indicated that LFTB was a “suspect” product made from “waste” that needed to be “sprayed” with ammonia because of the risk of contamination.

231. Defendants used these false descriptions of LFTB in the context of indicating that ground beef that was made with LFTB should contain additional labeling. Defendants repeatedly questioned why ground beef made with LFTB was labeled as 100% ground beef. Defendants’ statements were intended to convey that ground beef with LFTB needed additional labeling because the use of LFTB created safety and health risks to consumers.

232. Defendants thereby set the stage for consumers to believe that BPI had engaged in an “economic fraud” and improper conduct. Defendants’ statements conveyed that BPI had obtained approval from the USDA to include an unsafe and unhealthy product in ground beef

without labeling. Defendants' statements conveyed that BPI had obtained approval only because USDA officials "with links to the beef industry" had overruled their scientists.

C. Defendants' Statements Were False and Defendants Acted with Actual Malice

233. Defendants knew their statements indicating that LFTB was not safe for consumption were false. Alternatively, Defendants acted with reckless disregard for the truth when stating and implying that LFTB was not safe for consumption.

1. Defendants Knew LFTB Was a Safe Product

234. Defendants' statements implied that LFTB was not safe for consumption and that BPI produced a non-safe product. These statements were false. LFTB is safe for consumption, and BPI produces a product safe for consumption. Defendants received or had access to various sources of information showing that their statements and the implication of their statements were false.

235. First, LFTB has not been associated with any reported health incident. (3/23/12 BPI Statement, Ex. 74; 3/10/12 BPI FAQ, Ex. 69.) BPI has sold over 5.4 billion pounds of LFTB since gaining approval from the USDA in 1993. In that time, no one has reported an illness caused by consuming LFTB, and no federal, state or local agency has reported that someone has become ill as a result of the LFTB included in ground beef. Defendants knew their statements that LFTB was not safe for consumption were inconsistent with this safety record, or they acted with reckless disregard when claiming LFTB was not safe for consumption in light of this safety record.

236. Second, BPI has received multiple awards from the beef industry and food safety organizations for its commitment to producing safe beef. Defendants knew their statements that implied LFTB was not safe for consumption were inconsistent with these awards, or they acted

with reckless disregard when claiming LFTB was not safe for consumption in light of these awards.

237. Third, before and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that LFTB is a safe beef product and is, in fact, one of the safest beef products available. For example, Defendants received or had access to the following information:

- a. “Their ground beef is as safe as you can find.” (7/28/11 Block Article, Ex. 43.)
- b. “Boneless lean beef trimmings (BLBT) is a safe, wholesome and nutritious form of beef that is made by separating lean beef from fat.” (3/8/12 AMI Article, Ex. 59.)
- c. “Lean finely textured beef is beef. It is strictly regulated and inspected by the USDA, and it has an excellent safety record.” (3/19/12 Clare Letter, Ex. 60) (emphasis in original).)
- d. “Lean Finely Textured Beef is not unsafe, deceptive or pet food. I approved the use of this product in food when I was Administrator of FSIS [USDA Food Safety and Inspection Service] because it is safe and an excellent source of nutrients . . . – Dr. Russell Cross, Professor and Head, Department of Animal Science, Texas A&M University.” (3/22/12 BPI Article, Ex. 73.)
- e. “LFTB is a safe, high quality protein product, which is very low in fat, and has a proven track record of use in USDA ground beef purchases and a wide variety of commercial beef items.” (3/8/12 NMA Press Release, Ex. 76.)
- f. “We do feel that this is safe. It’s been used for a long time. Ammonium hydroxide itself is used in a multitude of different food products. It’s not a safety concern.” (3/21/12 Hagen Interview, Ex. 83.)
- g. “We’ve said it before and we’ll say it one more time: Lean finely textured beef is a safe and nutritious beef product that has been used for two decades. It is produced according to U.S. Department of Agriculture (USDA) rules and under USDA inspection. USDA’s confidence in the product is evidenced by the fact that it buys the product for its feeding programs. Its safety and wholesomeness is further bolstered by support from leaders in the consumer and food safety communities.” (3/26/12 AMI Statement, Ex. 84.)

- h. “CFA is concerned that manufacturers of hamburger patties may replace LFTB with something that has not been processed to assure the same level of safety. We are also concerned about the potential chilling effect this recent controversy may have on companies who seek to apply innovative solutions and new technologies to enhance food safety.” (3/26/12 CFA Statement, Ex. 85.)
- i. “Food scientists and consumer organizations agree that LFTB is safe: BPI pioneered food safety interventions to significantly reduce the risk of pathogens in the meat they produced. Their use of ammonia in small amounts was used to reduce the risk of pathogenic E. coli in their product, and these levels never have posed a health risk to consumers.” (3/28/12 NCL Statement, Ex. 86.)
- j. “[Professor James] Dickson contends the 100-percent, USDA-approved beef product is just as safe, if not more so, than other beef and food products.” (4/1/12 WCF Courier Article, Ex. 91.)

238. BPI and others provided the ABC Defendants, and made available to all Defendants, multiple sources of information showing that LFTB is a safe beef product and is, in fact, one of the safest beef products available. (*See, e.g.*, 4/19/11 AMI Letter, Ex. 32; 1/9/12 FSN Article, Ex. 35; 3/6/12 BPI Fact Sheet, Ex. 33; 1/7/10 USDA Fact Sheet, Ex. 40; 7/28/11 Block Article, Ex. 43; Pre-3/7/12 LFTB Report, Ex. 47; 3/8/12 AMI Article, Ex. 59; 3/19/12 Clare Letter, Ex. 60; 3/10/12 BPI/Quality Article, Ex. 68; 3/15/12 BPI Article, Ex. 70; 3/22/12 BPI Article, Ex. 73; 3/10/12 BPI FAQ, Ex. 69; 3/8/12 NMA Press Release, Ex. 76; 3/9/12 FSN Article, Ex. 77; 3/15/12 AMI Statement, Ex. 80; 3/21/12 Hagen Interview, Ex. 83; 3/26/12 AMI Statement, Ex. 84; 3/26/12 CFA Statement, Ex. 85; 3/28/12 NCL Statement, Ex. 86; 3/29/12 AMI Statement, Ex. 88; 4/1/12 WCF Courier Article, Ex. 91.)

239. Fourth, before and during the disinformation information campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that BPI has been widely recognized by the beef industry and food safety organizations for its dedication to producing a safe beef product. (*See, e.g.*, 11/7/11 Innovations Video, Ex. 34; 3/6/12 BPI Fact Sheet, Ex. 33; 3/1/08 National Provisioner Interview, Ex. 37; 6/12/08

Washington Post Article, Ex. 38; 1/5/12 Nunes Article, Ex. 41; Pre-3/7/12 BPI FAQ, Ex. 46; 10/07 IAFP Article, Ex. 54; 12/31/09 NMA Statement, Ex. 55; 3/15/12 BPI Article, Ex. 70; 3/23/12 BPI Statement, Ex. 74; 3/8/12 NMA Press Release, Ex. 76; 3/17/12 Donley Article, Ex. 81; 3/26/12 CFA Statement, Ex. 85.)

240. Fifth, before and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that LFTB goes through rigorous testing prior to shipment. In fact, BPI and others informed Defendants that BPI's testing protocols are among the most rigorous in the beef industry. (*See, e.g.*, 3/8/12 NMA Press Release, Ex. 76; Pre-3/7/12 BPI FAQ, Ex. 46; 7/13/11 BPI Testing Video, Ex. 48; 10/07 IAFP Article, Ex. 54; 12/23/11 FSN Article, Ex. 57; 7/14/11 NCL Statement, Ex. 42; 3/26/12 CFA Statement, Ex. 85.)

241. Based on this information, Defendants knew that stating and implying that LFTB is not safe for consumption was false. Alternatively, Defendants acted with reckless disregard when stating and implying that LFTB is not safe for consumption.

2. Defendants Knew BPI's Beef Trimmings Were Safe

242. Defendants stated and implied that BPI made LFTB from beef trimmings that were "waste" and "scraps" that were not safe for public consumption. These statements were false. BPI makes LFTB from USDA-inspected beef trimmings that are safe for human consumption. BPI does not use "scraps" or "waste." Defendants received or had access to various sources of information showing that their statements were false.

243. First, before and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that BPI uses beef trimmings that come from USDA-inspected and approved beef. For example, Defendants received or had access to the following information:

- a. “The trimmings are of similar quality and wholesomeness as all other products from which they are produced and are produced under continuous inspection by USDA personnel.” (4/19/11 AMI Letter, Ex. 32.)
- b. “The boneless lean beef is made from the same high quality USDA-inspected trimmings as other ground beef.” (7/28/11 Block Article, Ex. 43.)
- c. “All of our beef trimmings come from USDA inspected, approved processing plants.” (Pre-3/7/12 BPI FAQ, Ex. 46.)
- d. “These trimmings are USDA inspected, wholesome cuts of beef that contain both fat and lean and are nearly impossible to separate using a knife.” (3/8/12 AMI Article, Ex. 59.)
- e. “‘It is meat that has come from USDA-inspected operations.’ – Dr. James Dickson, Professor, Department of Animal Sciences, Iowa State University, in an interview with The Center for Food Integrity.” (3/22/12 BPI Article, Ex. 73.)
- f. “The raw material that the company uses is not scraps destined for pet food. It is Federally-inspected high-quality beef trim.” (3/8/12 NMA Press Release, Ex. 76.)

244. BPI and others provided the ABC Defendants, and made available to all Defendants, multiple sources of information showing that BPI uses beef trimmings that are USDA-inspected and approved. (*See, e.g.*, 4/19/11 AMI Letter, Ex. 32; 3/6/12 BPI Fact Sheet, Ex. 33; 7/28/11 Block Article, Ex. 43; 10/5/11 Acuff Interview, Ex. 45; Pre-3/7/12 BPI FAQ, Ex. 46; 4/1/06 Provisioner Article, Ex. 52; 10/07 IAFP Article, Ex. 54; 3/8/12 AMI Article, Ex. 59; 3/10/12 BPI/Quality Article, Ex. 68; 3/15/12 BPI Article, Ex. 70; 3/22/12 BPI Article, Ex. 73; 3/28/12 AMI Article, Ex. 87; 3/8/12 NMA Press Release, Ex. 76; 3/15/12 AMI Statement, Ex. 80; 3/29/12 AMI Statement, Ex. 88.)

245. Second, before and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that BPI uses

beef trimmings that are edible and safe for human consumption. For example, Defendants received or had access to the following:

- a. “Inedible meat may not be used in meat products sold to people. If meat is inedible, no process can somehow make meat edible, yet that is precisely what Mr. Oliver suggests.” (4/19/11 AMI Letter, Ex. 32.)
- b. “The beef trimmings that are used to make BLBT are absolutely edible. In fact, no process can somehow make an inedible meat edible” (3/8/12 AMI Article, Ex. 59.)
- c. “The trimmings used to make lean finely textured beef are not (and were never) dog food, are not intended to become dog food, and are not unfit for human consumption.” (3/19/12 Clare Letter, Ex. 60.)
- d. “Boneless lean beef trimmings are 100% edible meat. These trimmings are simply the lean beef removed from the meat and fat that is trimmed away when beef is cut into steaks and roasts. The meat in these trimming is nearly impossible to separate with a knife so, historically, this product only could be used in cooked beef products when the fat was cooked and separated for tallow. But now there is a process that separates the fat from the fresh lean beef, and it is this fresh lean beef that can be used in ground meat foods like hamburger and sausages. No process exists that could somehow make an inedible meat edible.” (3/15/12 BPI Article, Ex. 70.)

246. BPI and others provided the ABC Defendants, and made available to all Defendants, multiple sources of information demonstrating that BPI uses beef trimmings that are edible and safe for human consumption. (*See, e.g.*, 4/19/11 AMI Letter, Ex. 32; 3/8/12 AMI Article, Ex. 59; 3/19/12 Clare Letter, Ex. 60; 3/15/12 BPI Article, Ex. 70; 3/22/12 BPI Article, Ex. 73; 3/10/12 BPI FAQ, Ex. 69; 3/9/12 FSN Article, Ex. 77; 3/28/12 AMI Article, Ex. 87; 3/6/12 BPI Fact Sheet, Ex. 33; 3/8/12 BPI Oliver Video, Ex. 65; 3/28/12 BPI Article, Ex. 75.)

247. Third, before and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that the beef trimmings used by BPI were not, and are not, used for dog food. In fact, BPI and others repeatedly informed and made available to Defendants information showing that their “dog food” statements were false. (*See, e.g.*, 4/19/11 AMI Letter, Ex. 32; 3/19/12 Clare Letter, Ex.

60; 3/8/12 BPI Oliver Video, Ex. 65; 3/22/12 BPI Article, Ex. 73; 3/10/12 BPI FAQ, Ex. 69; 3/8/12 NMA Press Release, Ex. 76; 3/14/12 Acuff/Cross Article, Ex. 79.)

248. Fourth, LFTB is not made with low-grade beef trimmings. The USDA uses a “grading” system for whole beef carcasses. The USDA does not use a “grading” system for beef trimmings.⁸ On information and belief, the Individual Defendants knew the USDA does not use a grading system for beef trimmings based on their prior experience with BPI and the USDA. The ABC Defendants either knew the USDA did not use a grading system based on their interviews with the Individual Defendants, or they acted with reckless disregard in not ascertaining whether or not the USDA uses a grading system for beef trimmings.

249. Fifth, LFTB is not made with “waste” or “scraps.” Waste is an “unusable or unwanted substance. *See* OXFORD DICTIONARY. It is material that has been “rejected as useless or worthless.” *See* DICTIONARY.COM. Scraps are “discarded waste material” *See* AMERICAN HERITAGE DICTIONARY. The beef trimming used by BPI were not useless and unwanted. The beef trimmings used by BPI are used by beef processors in a variety of products, including consumable products. Defendants knew the beef trimmings used by BPI were not “waste” or “scraps” based on the information provided the ABC Defendants (discussed above), the information that BPI and others made publicly available to the Defendants (discussed above), and the personal experience of the Individual Defendants.

250. Based on this information, Defendants knew stating or implying that the beef trimmings used by BPI were of low quality, contaminated, or not safe for consumption was false. Alternatively, Defendants acted with reckless disregard for the truth when stating or implying

⁸ The USDA rates carcasses as prime, choice, or “no roll,” which means no grade. BPI receives and uses beef trimmings of all grade levels.

that the beef trimmings used by BPI were of low quality, contaminated, or not safe for consumption.

3. Defendants Knew BPI's Ammonium Hydroxide Process Was Safe

251. Defendants stated and implied that BPI used ammonium hydroxide to disinfect the beef trimmings and implied that BPI's use of ammonium hydroxide made ground beef made with LFTB unsafe. These statements were false. Ammonium hydroxide is "generally recognized as safe" for food products by the FDA and is widely used in a variety of food products. Defendants received or had access to various sources of information showing that their statements were false.

252. First, prior to and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that BPI did not need to "sanitize" its beef trimmings to make them safe for consumption. As discussed above, the beef trimmings used by BPI come from USDA-approved beef and are safe for consumption. Thus, "[i]t [was] factually inaccurate to describe [BPI's use of ammonium hydroxide] as 'disinfecting,' which incorrectly implies that there are always bacteria present in the boneless lean beef trimmings. That is not the case." (3/19/12 Clare Letter, Ex. 60.) BPI's use of ammonium hydroxide is "one of several steps in a 'multiple hurdle' process designed to make the beef as safe as it can be for consumers." (*Id.*)

253. Second, prior to and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that ammonium hydroxide is safe. The FDA-approved ammonium hydroxide as "generally regarded as safe" ("GRAS") for food products in 1974, and the FSIS approved its use as a food safety tool in the LFTB production process in 2001. (*See, e.g.*, 10/31/06 GRAS Review, Ex. 51; 1/9/12 FSN Article, Ex. 35; 3/6/12 BPI Fact Sheet, Ex. 33; 12/30/09 IFIC Article, Ex. 39; 1/5/12 Nunes

Article, Ex. 41; 10/5/11 Meat Myth Article, Ex. 44; 3/10/12 BPI/Quality Article, Ex. 68; 3/15/12 BPI Article, Ex. 70; 3/8/12 NMA Press Release, Ex. 76.)

254. Third, prior to and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that ammonium hydroxide is used in a variety of food products. In fact, the World Health Organization lists hundreds of foods that can be processed using ammonium hydroxide, including dairy products, fruits and vegetables, baked goods, fish, and meats. (*See, e.g.*, 4/19/11 AMI Letter, Ex. 32; 1/9/12 FSN Article, Ex. 35; 3/6/12 BPI Fact Sheet, Ex. 33; 6/12/08 Washington Post Article, Ex. 38; 12/30/09 IFIC Article, Ex. 39; 1/7/10 USDA Fact Sheet, Ex. 40; 7/28/11 Block Article, Ex. 43; 11/7/11 BPI Ammonia Video, Ex. 49; 3/10/12 BPI/Quality Article, Ex. 68; 3/15/12 BPI Article, Ex. 70; 3/22/12 BPI Article, Ex. 73; 3/28/12 BPI Article, Ex. 75; 3/10/12 BPI FAQ, Ex. 69; 3/8/12 NMA Press Release, Ex. 76.)

255. Fourth, prior to and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that BPI used a controlled amount of ammonia during the production of LFTB. Defendants' description of BPI's process of using ammonium hydroxide was knowingly inaccurate. For example, Defendants received or had access to the following information:

- a. "Once the meat leaves the centrifuges, the lean beef passes through a tube the size of a pencil, where it is exposed for less than a second to a tiny amount of ammonia gas. When the gas hits the meat, it combines with water in the meat to form ammonium hydroxide and eliminates any acidity." (6/12/08 Washington Post Article, Ex. 38.)
- b. "And they use a very small amount of it. It's a very purified amount, purified product, it's been approved by FDA, and when this is added to beef it combines with water and forms ammonium hydroxide. The ammonium hydroxide is a compound that's found normally and naturally in products. It's found in our environment, it's found in our bodies, it's found in plants and animals. So when we add that, it's added to increase the pH, and when it increases the pH, it raises the alkalinity level, and

that's used to help control the presence of certain bacteria." (10/5/11 Acuff Interview, Ex. 45.)

- c. "Due to its antimicrobial benefits, BPI increases the naturally occurring levels of ammonium hydroxide in beef by a slight amount to assist in eliminating any harmful bacteria – such as E. coli – that could potentially be present." (Pre-3/7/12 BPI FAQ, Ex. 46.)
- d. "We know with regards to ammonium hydroxide that the level that we increase the natural ammonium hydroxide that's existing in the meat is extremely small. We also know unequivocally that it's safe for human consumption. We do know that it is deadly to harmful bacteria, and in this instance, that is enemy number one." (11/7/11 BPI Ammonia Video, Ex. 49.)
- e. "Q: Why is it treated with ammonium hydroxide? *Dr. Dickson*: "Using ammonium hydroxide is a very specific process that was developed by Beef Products, Inc., to make beef safer. It is used as a gas. It is not a liquid and it's not a spray. It's actually injected as a gas into the meat, while the meat is being processed. The gas actually kills a lot of the harmful bacteria that could be present. It's important to remember that meat isn't sterile. And no matter what we do, meat will never be sterile, so using this gas is a benefit to food safety and improves the safety of the lean finely textured beef." (3/20/12 Dickson Interview, Ex. 82.)

256. BPI and others provided the ABC Defendants, and made available to all Defendants, multiple sources of information showing that BPI used a controlled amount of ammonia gas during the processing of LFTB. (*See, e.g.*, 6/12/08 Washington Post Article, Ex. 38; 10/5/11 Meat Myth Article, Ex. 44; 10/5/11 Acuff Interview, Ex. 45; Pre-3/7/12 BPI FAQ, Ex. 46; 11/7/11 Ammonia Video, Ex. 49; 3/19/12 Clare Letter, Ex. 60; 3/8/12 BPI Oliver Video, Ex. 65; 3/10/12 BPI/Quality Article, Ex. 68; 3/10/12 BPI FAQ, Ex. 69; 3/9/12 FSN Article, Ex. 77; 3/20/12 Dickson Interview, Ex. 82.)

257. Fifth, prior to and during the misinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that BPI's ammonium hydroxide process is safe. In fact, food safety experts have praised BPI's use of ammonium hydroxide as an additional safety tool when processing beef. (*See, e.g.*, 1/9/12 FSN

Article, Ex. 35; 3/6/12 BPI Fact Sheet, Ex. 33; 6/12/08 Washington Post Article, Ex. 38; 11/7/11 BPI Ammonia Video, Ex. 49; 12/31/09 NMA Statement, Ex. 55; 3/8/12 AMI Article, Ex. 59; 3/15/12 BPI Article, Ex. 70; 3/23/12 BPI Statement, Ex. 74; 3/17/12 Donley Article, Ex. 81; 3/20/12 Dickson Interview, Ex. 82; 3/26/12 CFA Statement, Ex. 85; 3/28/12 NCL Statement, Ex. 86; 4/1/12 Cross Article, Ex. 90; 4/1/12 WCF Article, Ex. 91.)

258. Sixth, prior to and during the misinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that BPI's ammonium hydroxide is not similar to household ammonia. (*See, e.g.*, 4/19/11 AMI Letter, Ex. 32; 3/19/12 Clare Letter, Ex. 60; 3/20/12 Dickson Interview, Ex. 82.)

259. Seventh, on information and belief, the Individual Defendants were aware of BPI's process for using ammonium hydroxide based on their personal experience—Foshee as an employee of BPI, and Zirnstein and Custer as USDA microbiologists. Accordingly, the ABC Defendants either knew their description of BPI's process was wrong based on information they obtained from the Individual Defendants, or they acted in reckless disregard for whether their description of the process was accurate.

260. Based on this information, Defendants knew their description of the process and purpose of BPI's use of ammonium hydroxide was false. Alternatively, Defendants acted with reckless disregard when describing the process and purpose of BPI's use of ammonium hydroxide.

4. Defendants Knew BPI Did Not “Simmer” or “Cook” Beef Trimmings

261. Defendants stated that BPI “simmered” and “cooked” beef trimmings when preparing LFTB. These statements were false. BPI does not simmer or cook beef trimmings. Defendants received or had access to various sources of information showing that their statements were false.

262. First, before and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that BPI did not “simmer” or “cook” the beef trimmings. BPI tempers the beef trimmings to 100 to 105 degrees, which is the temperature of cattle prior to slaughter. For example, Defendants received or had access to the following information:

- a. “In preparing boneless lean beef trimmings (one type of lean finely textured beef), BPI separates the meat from the fat in beef trimmings by warming the trimmings to about 100 degrees Fahrenheit in equipment designed with the utmost attention to sanitation and safety.” (3/19/12 Clare Letter, Ex. 60.)
- b. “To make LFTB, the trimmings are heated to about 100F degrees” (3/10/12 BPI FAQ, Ex. 69.)
- c. “Q: How is it processed? *Dr. Dickson*: “The trimmings are brought back up to approximately 100 degrees F, which is close to the body temperature of live cattle.” (3/20/12 Dickson Interview, Ex. 82.)

263. Second, BPI does not “simmer” the beef trimmings, as that term is commonly understood. “Simmer” means to “cook (food) gently in a liquid just at or below the boiling point.” *See* AMERICAN HERITAGE DICTIONARY. BPI’s process does not involve simmering beef trimmings. On information and belief, Defendants did not have a good-faith basis for describing BPI’s process as simmering of the beef trimmings.

264. Third, BPI does not “cook” the beef trimmings as that term is commonly understood. “Cook” means to “prepare (food) for eating by applying heat.” *See* AMERICAN HERITAGE DICTIONARY. BPI’s process does not involve heating the beef trimmings to the point where they could be consumed. Instead, BPI tempers the trimmings to the pre-slaughter temperature. On information and belief, Defendants did not have a good-faith basis for describing BPI’s process as cooking of the beef trimmings.

265. Fourth, on information and belief, the Individual Defendants were aware of BPI's process for tempering beef trimmings based on their personal experience—Foshee as an employee of BPI, and Zirnstein and Custer as USDA microbiologists. Accordingly, the Individual Defendants knew the designation of BPI's process was wrong. The ABC Defendants either knew their description of BPI's process was wrong based on information they obtained from the Individual Defendants, or they acted in reckless disregard for whether their description of the process was accurate.

266. Based on this information, Defendants knew stating that BPI simmers or cooks the beef trimmings was false. Alternatively, Defendants acted with reckless disregard for the truth when stating BPI simmers or cooks the beef trimmings.

VIII. Defendants Falsely Stated and Implied that LFTB Was Not Nutritious

267. Defendants' description of LFTB as "pink slime" was part of their effort to persuade consumers that LFTB was not nutritious. In addition to Defendants' frequent references to LFTB as "pink slime," Defendants made dozens of false statements to persuade consumers that LFTB was not nutritious. Defendants made these statements with actual malice.

A. Defendants' Campaign to Convince Consumers LFTB Was Not Nutritious

268. Defendants' campaign to convince consumers that LFTB was not nutritious had several components beyond describing LFTB as "pink slime." First, Defendants falsely stated that LFTB is not beef or meat. Defendants made these statements to convey that LFTB did not provide consumers the nutritional benefit they obtain from consuming beef or meat. For example, in addition to the statements discussed above, Defendants made the following statements:

- a. Kit Foshee: "It looks kind of like Play-Doh or just something that's pink and frozen. It's not – **it's not what the typical lay person would consider meat.**" (3/8/12, World News, Foshee, Ex. 3.)

- b. Jim Avila: “**If your meat is stamped USDA organic, it’s pure meat, no questionable filler. But everything else is suspect say critics, because pink slime does not have to appear on the label,** and the USDA is giving no indication it will force meatpackers to lift the **veil of secrecy** any time soon.” (3/8/12, World News, Avila, Ex. 3.)
- c. A Voice (Gerald Zirnstein): “**It’s not fresh ground beef.** It’s a substitute, it’s a cheap substitute being added in.” (3/21/12, GMA, Zirnstein, Ex. 9.)
- d. Jim Avila: “According to Custer, **the product is not really beef, but ‘a salvage product . . . fat that had been heated at a low temperature and the excess fat spun out.’**” (3/7/12, ABC Online, Avila, Custer, Ex. 13.)
- e. Jim Avila: “Zirnstein said it is more than **an additive. He calls it ‘an adulterant.’**” (3/27/12, ABC Online, Avila, Zirnstein, Ex. 23.)
- f. Jim Avila: “@travarp no one said this **slime** is dangerous. **It’s just not what it purports to be. Meat.**” (3/7/12, Twitter, Avila, Ex. 27.)

269. Second, Defendants falsely stated that LFTB is a “filler” added to ground beef. Defendants made these statements to convey that LFTB was added to ground beef simply to “pump up” the volume of ground beef without adding nutritional value. For example, in addition to the statements discussed above, Defendants made the following statements:

- a. Jim Avila: “The scientists added that **the filler was not as nutritious as ground beef,** though the company disputed that.” (3/26/12, ABC Online, Avila, Zirnstein, Custer, Ex. 22.)
- b. Diane Sawyer: “Now, a startling ABC News investigation. A whistleblower has come forward to tell consumers about the ground beef a lot of us buy at the supermarket. Is it what we think it is or, is it **padded with a filler** the whistleblower calls pink slime?” (3/7/12, World News, Sawyer, Ex. 2.)
- c. Jim Avila: “Beef trimmings that were once only used in dog food and cooking oil, now sprayed with ammonia to make them safe to eat and then added to most ground beef as a **cheaper filler.**” (3/7/12, World News, Avila, Zirnstein, Ex. 2.)
- d. Jim Avila: “[Foshee] and two former USDA inspectors told ABC News the **filler** commonly referred to as pink slime comes from a low grade of beef trimmings unlike what they call real ground beef.” (3/9/12, ABC Online, Avila, Foshee, Zirnstein, Custer, Ex. 15.)

270. Third, Defendants falsely stated that selling ground beef with LFTB was “economic fraud” and “food fraud.” Defendants made these statements to convey that ground beef with LFTB should include additional labeling because it was nutritionally inferior to ground beef without LFTB. For example, Defendants made the following statements:

- a. Gerald Zirnstein: “**It’s economic fraud.** It’s not – it’s not fresh ground beef. It’s a substitute, it’s a cheap substitute being added in.” (3/7/12, World News, Zirnstein, Ex. 2.)
- b. Jim Avila: “‘**It’s economic fraud,**’ [Zirnstein] told ABC News. ‘It’s not fresh ground beef. . . . It’s a cheap substitute being added in.’” (3/7/12, ABC Online, Avila, Zirnstein, Ex. 13.)
- c. Jim Avila: “Coined by USDA scientist who recommended against (sic) its use. He called it pink slime. And says its a **food fraud.**” (3/7/12, Twitter, Avila, Ex. 27.)

271. Fourth, Defendants falsely stated that LFTB is “more like gelatin” than beef. Defendants made these statements to convey that LFTB was not nutritious because it was “more like gelatin” than beef. For example, Defendants made the following false statements:

- a. Jim Avila: “The company calls it finely textured lean beef, flash frozen and boxed. **More like gelatin and not as nutritious as ground beef.**” (3/8/12, World News, Avila, Foshee, Ex. 3.)
- b. Jim Avila: “Critics say **pink slime is more like gelatin than beef, and less nutritious.**” (3/9/12, World News, Foshee, Ex. 4.)
- c. Jim Avila: “Critics including former USDA scientists who called it **more gelatin than ground beef,** contend the ammonia-treated pink slime, made from low-quality scraps once used for dog food and cooking oil, **is less nutritious than pure ground beef.**” (3/21/12, World News, Avila, Ex. 9.)

272. Fifth, Defendants falsely stated that LFTB’s “protein comes comely from connective tissue, and not muscle meat.” Defendants made these statements to convey that LFTB was not nutritious because its protein did not come from muscle meat. For example, Defendants made the following statements:

- a. Jim Avila: “More like gelatin and not as nutritious as ground beef. Kit Foshee, who was once number two at BPI, says that’s because the **protein comes mostly from connective tissue, not muscle meat.**” (3/8/12, World News, Avila, Foshee, Ex. 3.)
- b. Jim Avila: “Foshee said it was **not as nutritious as ground beef** because the **protein comes mostly from connective tissue, not muscle meat.**” (3/9/12, ABC Online, Avila, Foshee, Ex. 15.)

273. Sixth, Defendants falsely stated that consuming LFTB will not do a consumer any good. Defendants made these statements to convey that LFTB did not provide consumers any nutritional benefit. For example, Defendants made the following statements:

- a. Kit Foshee: “It will fill you up, but it’s not going to do you any good.” (3/8/12, World News, Foshee, Ex. 3.)
- b. Jim Avila: “Critics, including former USDA scientists, who called it more gelatin than ground beef, contend the ammonia-treated pink slime, made from low quality scraps once used for dog food and cooking oil, is **less nutritious than pure ground beef.**” (3/21/12, GMA, Avila, Ex. 9.)
- c. Jim Avila: “The company calls the final product Finely Textured Lean Beef. It is flash frozen and boxed. Foshee says it is more like gelatin and not nutritious as ground beef because the protein comes mostly from connective tissue, not muscle meat. **[It will] fill you up, but won’t do any good,** Foshee said.” (3/8/12, ABC Online, Avila, Foshee, Ex. 14.)

274. Seventh, Defendants falsely stated that BPI makes LFTB from “waste,” “scraps,” “low quality” beef trimmings and “low grade” beef trimmings. Defendants made these statements to convey that BPI produces LFTB from inferior raw materials that do not have nutritional value. For example, in addition to the statements discussed above, Defendants made the following statements:

- a. Jim Avila: “That’s the final product that starts with **low grade beef trimmings** spun in machines and spritzed with ammonia.” (3/9/12, World News, Avila, Ex. 4.)
- b. Jim Avila: “Critics, including former USDA scientists, who called it more gelatin than ground beef, contend the ammonia-treated pink slime, **made from low quality scraps** once used for dog food and cooking oil, is less nutritious than pure ground beef.” (3/21/12, GMA, Avila, Ex. 9.)

- c. Jim Avila: “The **low-grade trimmings** come from the **parts of the cow most susceptible to contamination**, often close to the hide, which is **highly exposed to fecal matter**.” (3/9/12, ABC Online, Avila, Ex. 15.)
- d. Travis Arp: “saying it has bacteria on it (false) and needs ammonia (false)...makes out as dangerous...I’ve been in BPI, seen 1st hand.” Jim Avila: “@travarp so have these guys and trust them. **The trimmings have carcass remains as well which contain higher levels of bacteria**. Good night.” (3/7/12, Twitter, Avila, Ex. 27.)

275. Eighth, Defendants falsely stated that the beef trimmings used by BPI were previously used exclusively for dog food and cooking oil. Defendants made these statements to convey that BPI uses inferior raw materials to produce LFTB that do not have nutritional value. For example, Defendants made the following false statements:

- a. Jim Avila: “The low-grade trimmings were **once only used in dog food and cooking oil**.” (3/8/12, World News, Avila, Ex. 3.)
- b. Jim Avila: “Pink slime is beef trimmings. **Once only used in dog food and cooking oil**, the trimmings are now sprayed with ammonia so they are safe to eat and added to most ground beef as a cheaper filler.” (3/7/12, ABC Online, Avila, Ex. 13.)
- c. Jim Avila: “However, the substance, critics said, is more like gelatin than meat, and before Beef Products, Inc. found a way to use it by disinfecting the trimmings with ammonia **it was sold only to dog food or cooking oil suppliers**.” (3/9/12, ABC Online, Avila, Ex. 15.)

276. Counts 2 and 11 identify all of the instances in which Defendants falsely stated that LFTB is not beef or meat, a total of 27 false statements. Counts 3 and 12 identify all of the instances in which Defendants falsely stated that LFTB is a “filler” added to ground beef, a total of 45 false statements. Counts 5 and 14 identify all of the instances in which Defendants falsely stated that selling ground beef with LFTB was fraudulent, a total of three false statements. Counts 8 and 17 identify all of the instances in which Defendants falsely stated that LFTB was “more like gelatin” than beef, a total of seven false statements. Counts 9 and 18 identify all of the instances in which Defendants falsely stated that LFTB’s protein came mostly from

connective tissue, a total of four false statements. Counts 21 and 25 identify all of the instances in which Defendants' falsely stated that consuming LFTB would not benefit consumers, a total of two false statements. Counts 6 and 15 identify all of the instances in which Defendants falsely stated that LFTB is produced using "waste," "scraps," "low-grade" beef trimmings or "low-grade" beef trimmings, a total of 18 false statements. Counts 7 and 16 identify all of the instances in which Defendants falsely stated that the beef trimmings used by BPI to produce LFTB was "once used only for dog food and cooking oil," a total of six false statements.

B. Defendants Falsely Claimed LFTB Was Not Nutritious to Create Consumer Backlash

277. Defendants made these various false statements regarding LFTB to convey to consumers that LFTB was not nutritious. These statements were consistent with Defendants' description of LFTB as "pink slime." These statements indicated that LFTB was a "filler" with limited, if any, nutritional value because its protein came from "connective tissues," as opposed to muscle meat.

278. Defendants used this false description of LFTB in the context of indicating that ground beef that was made with LFTB should contain additional labeling. Defendants repeatedly questioned why ground beef made with LFTB was labeled as 100% ground beef. Defendants' statements were intended to convey that ground beef with LFTB needed additional labeling because it did not have the same nutritional value as the beef used to make ground beef.

279. Defendants thereby set the stage for consumers to believe that BPI had engaged in an "economic fraud" and improper conduct. Defendants' statements conveyed that BPI had obtained approval from the USDA to include a non-nutritious product in ground beef without labeling. Defendants' statements conveyed that BPI had obtained approval only because USDA officials "with ties to the beef industry" had overruled their scientists.

C. Defendants' Statements Were False and Defendants Acted with Actual Malice

280. Defendants knew their statements indicating that LFTB was not nutritious were false. Alternatively, Defendants acted with reckless disregard for the truth when stating and implying that LFTB was not nutritious.

281. First, LFTB's nutritional value is equal to, if not better than, ground beef without LFTB. Attached as Exhibit 67 is a comparison of the nutritional value of LFTB and ground beef (90/10) without LFTB. LFTB is an excellent source of protein, zinc, iron and B-vitamins. LFTB compares favorably to ground beef (90/10) without LFTB with respect to these nutrients.

282. Second, before and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that LFTB's nutritional value was comparable to ground beef (90/10) without LFTB. For example, Defendants received or had access to the following information:

- a. "As the attached side-by-side comparison clearly demonstrates, BPI's BLBT product has *substantially identical* nutritional value as the USDA ground beef, 90% lean and 10% fat. The publicly available information on this side-by-side comparison specifically rebuts one of the false themes of the segment — and the specific false statements by quoted above — that BLBT is somehow not as nutritious as other ground beef products." (3/9/12 Clare Letter, Ex. 58 (emphasis in original).)
- b. "Any claim that lean finely textured beef is less nutritious than other ground beef is false." (3/19/12 Clare Letter, Ex. 60.)
- c. "As these product labels show, 90% lean beef trimmings and 90% lean ground beef have substantially identical nutritional value." (3/10/12 BPI/Nutritious Article, Ex. 67.)
- d. "When you compare the nutrition analysis of this lean beef with 90% lean/10% fat ground beef, they are virtually identical." (3/15/12 BPI Article, Ex. 70.)
- e. "A side-by-side comparison of nutrition labels for 90% lean/10% fat ground beef demonstrates this lean beef has substantially identical nutritional value as 90% lean ground beef." (3/15/12 BPI Article, Ex. 70.)

- f. “Lean beef trimmings are nutritious, substantially identical to 90% lean ground beef.” (3/28/12 BPI Article, Ex. 75.)
- g. “LFTB also is nutritionally equivalent to ground beef and regulated and inspected by USDA.” (3/29/12 AMI Statement, Ex. 88.)
- h. “Nutritionists say LFTB is just as healthy, if not more so, than other ground beef because it’s so lean—95 percent, on average.” (4/1/12 WCF Courier Article, Ex. 91.)
- i. “The nutrition educator said LFTB has the same or more vitamins and minerals than hamburger without it. For example, vitamin B-6, niacin and iron are greater in 95-percent lean burger than 70 percent. And, Steffensmeier said LFTB is lower in saturated fat.” (4/1/12 WCF Courier Article, Ex. 91.)

283. Third, before and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that LFTB was a nutritious beef product. For example, Defendants received or had access to the following information:

- a. “Boneless lean beef trimmings (BLBT) is a safe, wholesome and nutritious form of beef that is made by separating lean beef from fat When these trimmings are processed, the process separates the fat away and the end result is nutritious, lean beef.” – American Meat Institute President J. Patrick Boyle (3/8/12 AMI Article, Ex. 59.)
- b. “Producing BLBT ensures that lean, nutritious, safe beef is not wasted in a world where red meat protein supplies are decreasing while global demand is increasing as population and income increases.” – American Meat Institute President J. Patrick Boyle (3/8/12 AMI Article, Ex. 59.)
- c. “I approved the use of this product in food when I was Administrator of FSIS [USDA Food Safety and Inspection Service] because it is safe and an excellent source of nutrients’ – Dr. Russell Cross, Professor and Head, Department of Animal Science, Texas A&M University.” (3/22/12 BPI Article, Ex. 73.)
- d. “LFTB products prevent the waste of valuable, lean, nutritious, safe, beef by using technology to do what hands cannot.” (3/10/12 BPI FAQ, Ex. 69.)
- e. “The American Meat Institute (AMI) says boneless lean beef trimming (BLBT) are safe, wholesome and nutritious and calls the process similar to separating cream from milk.” (3/9/12 FSN Article, Ex. 77.)

- f. “We’ve said it before and we’ll say it one more time: Lean finely textured beef is a safe and nutritious beef product that has been used for two decades.” – American Meat Institute President J. Patrick Boyle (3/26/12 AMI Statement, Ex. 84.)

284. BPI and others provided the ABC Defendants, and made available to all Defendants, multiple sources of information showing that LFTB was a nutritious beef product. (*See, e.g.*, 4/19/11 AMI Letter, Ex. 32; 3/8/12 AMI Article, Ex. 59; 3/19/12 Clare Letter, Ex. 60; 3/15/12 BPI Press Release, Ex. 71; 3/16/12 BPI/USDA Video, Ex. 72; 3/22/12 BPI Article, Ex. 73; 3/10/12 BPI FAQ, Ex. 69; 3/8/12 NMA Press Release, Ex. 76; 3/9/12 FSN Article, Ex. 77; 3/26/12 AMI Statement, Ex. 84.)

285. Fourth, before and during the disinformation campaign, BPI and others provided the ABC Defendants, and made available to all Defendants, information showing that using LFTB to make ground beef was beneficial to consumers. LFTB allows ground beef processors to sell lean ground beef without compromising protein. For example, Defendants received or had access to the following information:

- a. “Well -- these products then are treated so that we can separate the fat from the lean, and when we have just lean product. We can use that to add back to ground beef or something else to make sure we have an accurate representation of the lean and fat levels when we sell it to the consumer.” (10/5/11 Acuff Interview, Ex. 45.)
- b. “In reality, the BLBT production process simply removes fat and makes the remaining beef more lean and suited to a variety of beef products that satisfy consumers’ desire for leaner foods.” – American Meat Institute President J. Patrick Boyle (3/8/12 AMI Article, Ex. 59.)
- c. “LFTB is a safe, high quality protein product, which is very low in fat, and has a proven track record of use in USDA ground beef purchases and a wide variety of commercial beef items.” (3/8/12 NMA Press Release, Ex. 76.)

286. Fifth, the ABC Defendants were informed that using LFTB to make ground beef did not compromise the nutritional quality of the ground beef. On March 25, 2012, BPI’s

outside counsel sent the ABC Defendants a copy of a letter written by Professor Joseph Sebranek. (3/23/12 Sebranek Letter, Ex. 63.) In that letter, Sebranek explained: “[O]ur research is potentially being misinterpreted by some in the media as suggesting that LFTB has a deleterious effect on the nutritional quality of ground beef.” (*Id.*) “There is nothing in our study that would suggest any measurable nutritional difference between ground beef and ground beef produced with LFTB because we did not evaluate nutritional differences or digestibility effects.” (*Id.*)

287. Sixth, LFTB is not gelatin. “Gelatin” is defined as: “[g]lutinous material obtained from animal issues by boiling” by MERRIAM-WEBSTER DICTIONARY; “a virtually colorless and tasteless water-soluble protein prepared from collagen and used in food preparation as the basis of jellies” by OXFORD DICTIONARY; and “the tasteless, colorless, brittle mixture of protein extracted by boiling skin, bones, horns, etc.” by COLLINS DICTIONARY. The Individual Defendants knew LFTB was not a gelatin based on their first-hand experience with the product. The ABC Defendants either knew LFTB was not a gelatin, or they acted with reckless disregard in describing LFTB as a “gelatin” because they lacked a factual basis for their statements.

288. Seventh, the USDA did not consider LFTB to be gelatin. According to the FSIS, gelatin is a “binder/extender and is only permitted in a few meat and poultry products.” (2005 FSIS Manual, Ex. 50.) Gelatin is not permitted in products labeled “100 percent” or “pure” ground beef. (*Id.*) The USDA would not have permitted LFTB to be included in 100% percent and pure ground beef without additional labeling if the USDA considered LFTB to be gelatin. Defendants knew the USDA’s decision that ground beef made with LFTB did not need additional labeling meant calling LFTB a “gelatin” was false.

289. Eighth, LFTB's protein does not come "mostly from" connective tissue. BPI's process for making LFTB removes connective tissue and results in 94% to 97% lean beef. Foshee knew LFTB's protein does not come "mostly from" connective tissue based on his employment by BPI. On information and belief, Zirnstein and Custer knew LFTB's protein does not come "mostly from" connective tissue based on their employment with the USDA. The ABC Defendants knew LFTB's protein does not come "mostly from" connective tissue based on correspondence from BPI. (3/19/12 Clare Letter, Ex. 60.)

290. Based on this information, Defendants knew stating or implying that LFTB lacked nutritional value was false. Alternatively, Defendants acted with reckless disregard when stating or implying LFTB lacked nutritional value.

IX. Defendants Falsely Stated and Implied that BPI Engaged in Improper Conduct with the USDA

291. The next step in Defendants' campaign was to falsely imply that BPI had done something nefarious or improper to gain USDA approval of LFTB. Defendants' goal was to convince consumers that the only reason the USDA allowed LFTB in ground beef was because of BPI's improper influence over a USDA official. Defendants made their statements regarding the USDA's approval of LFTB with actual malice.

A. Defendants' Campaign to Convince Consumers that BPI Improperly Influenced the USDA

292. Defendants made multiple false statements about the USDA's approval of LFTB. First, ABC Defendants falsely referred to Zirnstein and Custer as "whistleblowers" who were revealing shocking facts regarding the USDA's approval of LFTB. The clear implication of these statements was that the USDA's approval of LFTB was somehow illegal or improper. For example, Defendants made the following false statements:

- a. Diane Sawyer: “Now, **a startling ABC News investigation. A whistleblower** has come forward to tell consumers about the ground beef a lot of us buy at the supermarket. Is it what we think it is or is it padded with a filler the **whistleblower** calls pink slime?” (3/7/12, World News, Sawyer, Ex. 2.)
- b. Jim Avila: “Gerald Zirnstein grinds his own hamburger these days. Why? Because this **former USDA scientist now whistleblower**, knows that 70 percent of the ground beef we buy at the supermarket contains something he calls pink slime.” (3/7/12, World News, Avila, Zirnstein, Ex. 2.)
- c. Diane Sawyer: “Now, the latest on that ABC News investigation into what is in the ground beef you buy at the supermarket. Last night, **a whistleblower told us about what he’s calling pink slime**, a kind of filler used to pump up the volume of meat.” (3/8/12, World News, Sawyer, Ex. 3.)

293. Second, Defendants repeatedly and falsely stated that the USDA approved LFTB over the objections of USDA scientists and that the scientists were “overruled” by officials with “ties to the beef industry.” Again, the clear implication of these statements was that the USDA’s approval of LFTB was improper or illegitimate and that BPI had wrongly secured such approval. For example, the Defendants made the following false statements:

- a. Jim Avila: “**Zirnstein and his fellow USDA scientist, Carl Custer, both warned against** using what the industry calls lean finely textured beef, and is widely known now as pink slime. **But their government bosses overruled them.**” (3/7/12, World News, Avila, Zirnstein, Custer, Ex. 2.)
- b. Jim Avila: “And it doesn’t have to appear on the label because, **over the objections of its own scientists, USDA officials with links to the beef industry label pink slime, meat.**” (3/7/12, World News, Avila, Ex. 2.)
- c. Jim Avila: “**Two former USDA scientists who reviewed the product and recommended against its use** say it’s just not the same as ground beef.” Gerald Zirnstein: “It’s not fresh ground beef. It’s a substitute, it’s a cheap substitute being added in.” (3/26/12, World News, Avila, Zirnstein, Ex. 10.)

294. Third, Defendants falsely stated that Assistant Secretary of Agriculture Jo Ann Smith unilaterally made the decision to approve LFTB without a valid basis for doing so. The

clear implication was that, without Smith's involvement, LFTB would not have been approved by the USDA. For example, Defendants made the following statements:

- a. Carl Custer: "The under secretary said 'it's pink, therefore, it's meat.'" (3/7/12, World News, Custer, Ex. 2.)
- b. Jim Avila: "ABC News has learned that **the woman who made the decision to okay the mix is former Undersecretary of Agriculture, Joann Smith**, a call that led to hundreds of millions of dollars for Beef Products, Inc., the makers of pink slime. When Smith stepped down from USDA, BPI's principal supplier appointed her to the board of directors, where she made at least 1.2 million dollars over 17 years." (3/7/12, World News, Avila, Ex. 2.)
- c. Jim Avila: "**The mother of pink slime. USDA official w/ ties to beef industry-allowed in all ground beef-stores, schools everywhere.**" (3/7/12, Twitter, Avila, Ex. 27.)

295. Fourth, Defendants falsely stated and implied that the USDA's approval of LFTB amounted to fraud. For example, the Defendants made the following statements:

- a. Gerald Zirnstein: "**It's economic fraud.** It's not fresh ground beef. It's a substitute, it's a cheap substitute being added in." (3/7/12, World News, Zirnstein, Ex. 2.)
- b. Jim Avila: "@travarp not my word. Coined by USDA scientist who recommended agains (sic) it's use. He called it pink slime. **And says its a food fraud.**" (3/7/12, Twitter, Avila, Ex. 27.)

296. Count 22 identifies all of the instances in which Defendants made false statements that implied that BPI engaged in improper conduct to obtain approval from the USDA for LFTB, a total of 21 false statements.

B. Defendants' False Statements Were Intended to Create a Consumer Backlash

297. Defendants made these false statements to convey to consumers that the only possible way for BPI to gain USDA approval of LFTB was to improperly influence the approval process, and that only someone with improper ties to the beef industry would have approved

LFTB. Defendants painted a negative picture of BPI by suggesting that BPI engaged in improper tactics to secure approval.

298. Defendants' false statements also contributed to their efforts to mislead consumers about LFTB. The USDA's approval of LFTB and of the use of ammonium hydroxide constitutes independent collaboration that LFTB is beef and that BPI's use of ammonium hydroxide is safe. Defendants undermined this independent collaboration, which made consumers more likely to believe Defendants' false statements that LFTB was not beef and was not safe for consumption.

C. Defendants' Statements Were False and Defendants Acted with Actual Malice

299. Defendants' statements misrepresented the process regarding the USDA's approval of LFTB. Defendants knew that these statements were false, or, alternatively, they acted with reckless disregard for their falsity.

300. First, Zirnstein and Custer were not "whistleblowers." "Whistleblower" is defined as: "a person who informs on someone engaged in illegal activity" by OXFORD DICTIONARY; "a person who reports or informs on a wrongdoer" by COLLINS DICTIONARY; and "one who reveals wrongdoing within an organization to the public or to those in positions of authority" by AMERICAN HERITAGE DICTIONARY. Zirnstein and Custer were not "whistleblowers." Zirnstein and Custer did not uncover any illegal or improper conduct at the USDA or by BPI. The USDA's approval of LFTB is a matter of public record, and no misconduct occurred during the approval of LFTB.

301. Second, Jo Ann Smith did not approve LFTB. LFTB was approved in summer 1993, and the use of ammonium hydroxide was approved in 2001. Jo Ann Smith was not at the USDA when it approved LFTB for inclusion in ground beef or approved the use of ammonium

hydroxide. She left in January 1993. Custer and Zirnshtein knew Jo Ann Smith was not involved in these decisions based on their employment at the USDA. The ABC Defendants interviewed Zirnshtein and Custer and therefore either knew Smith was not involved or acted with reckless disregard when claiming she was involved.

302. Moreover, all Defendants had access to information showing that Smith was not involved in the approval of LFTB. Dr. Russell Cross approved LFTB in summer 1993, and he has publicly acknowledged on multiple occasions that he approved LFTB. (*See, e.g.*, 3/22/12 BPI Article, Ex. 73; 3/14/12 Acuff/Cross Article, Ex. 79.) Additionally, Smith's employment period at the USDA is a matter of public record. Defendants needed to do no more than compare her employment period with the approval date of LFTB to realize that she could not have approved the product.

303. Third, USDA officials did not "overrule" USDA scientists when approving LFTB. Dr. Cross would not have approved LFTB if the FSIS' microbiology department had recommended against approving BPI's product. Dr. Cross approved the product because it was safe and was an excellent source of nutrients. (3/14/12 Acuff/Cross Article, Ex. 79.) Zirnshtein and Custer knew the USDA would not have approved LFTB had the microbiology department objected, based on their experience with the USDA. The ABC Defendants interviewed Zirnshtein and Custer and therefore either knew the USDA would not have approved LFTB over such objections or acted with reckless disregard when claiming the USDA approved LFTB over objections.

304. Fourth, USDA officials were not influenced by "links to the beef industry" when approving LFTB or the use of ammonium hydroxide. BPI received approval for LFTB and the use of ammonium hydroxide after an extensive review process by the USDA, similar to the

approval process for any other product. BPI did not receive any special treatment from the USDA. Zirnstein and Custer knew USDA officials were not influenced by alleged ties to the beef industry, based on their experience with the USDA. The ABC Defendants interviewed Zirnstein and Custer and therefore either knew the USDA officials were not influenced by alleged ties to the beef industry or acted with reckless disregard when implying the officials were influenced by the alleged ties.

305. Moreover, Defendants had access to information showing that an official “with links to the beef industry” did not unilaterally make the decision to approve LFTB. David Theno explained that “any USDA decision was not made by any one person but by multiple layers of people over time in a typical government decision-making mode.” (*See* 3/9/12 FSN Article, Ex. 77.) And the ABC Defendants were told by BPI that it did not arrange to have Jo Ann Smith hired as a director at IBP. (*See* 3/7/12 Jochum/Hartman Email, Ex. 36.)

306. Fifth, USDA officials did not approve LFTB because it was pink in color. Dr. Cross did not approve LFTB based on its color. On information and belief, Joann Smith did not approve fat reduced beef based on its color. Custer knew USDA officials did not make their decisions regarding LFTB and fat reduced beef based on its color, due to his employment with the USDA. The ABC Defendants interviewed Custer and therefore either knew the USDA officials did not make their decision based on color or acted with reckless disregard when stating to the contrary.

307. Sixth, USDA scientists did not consider LFTB to be “pink slime” when it was approved by the USDA. On information and belief, no one within the USDA called or characterized LFTB as pink slime when it was approved in 1993, or when ammonium hydroxide was approved in 2001. Zirnstein was not involved in the USDA’s approvals in 1991, 1993, or

2001, so he could not possibly have raised any objection during those approval processes regarding “pink slime.” On information and belief, Custer and Zirnshtein knew no USDA scientists considered LFTB to be “pink slime” when it was approved, based on their employment with the USDA. The ABC Defendants interviewed Zirnshtein and Custer and therefore either knew USDA scientists did not refer to LFTB as “pink slime” or acted with reckless disregard when claiming they did.

308. Seventh, on information and belief, the ABC Defendants did not obtain information from the USDA to determine the accuracy of any claims regarding the USDA’s approval of LFTB. The ABC Defendants could have requested information from the USDA pursuant to a FOIA request. On information and belief, ABC did not request any information from the USDA pursuant to a FOIA request before or during the disinformation campaign. On information and belief, ABC first requested information from the USDA on April 12, 2012, pursuant to a FOIA request issued by Brian Hartman, Producer for ABC News.

309. Based on this information, Defendants knew their statements regarding the USDA’s approval of LFTB were false. Alternatively, Defendants acted with reckless disregard for the truth when discussing and characterizing the USDA’s approval of LFTB.

X. Defendants’ Disinformation Campaign Misled Consumers and Created Unwarranted Backlash Against BPI and LFTB

310. Defendants’ disinformation campaign was intended to create a consumer backlash against BPI and LFTB. As discussed above, the disinformation campaign focused on convincing consumers that LFTB (1) was not beef, (2) was unsafe and (3) was not nutritious. Defendants sought to persuade consumers that BPI sold an unhealthy “pink slime,” made from contaminated scraps, that was “hidden” in their ground beef. Defendants’ disinformation campaign worked. Consumers believed Defendants’ false statements.

311. One source of contemporaneous information regarding consumers' reaction to Defendants' false statements are the "comments" posted by individuals who reviewed Defendants' online broadcasts and postings. These comments confirm that that consumers were misled by Defendants' false statements. Among other things, discussed below, Defendant's false statements led consumers to believe that BPI product was "pink slime" and that "pink slime" was a product being included in ground beef.

312. First, Defendants' false statements led consumers to believe that LFTB was not beef. Appendix 3 lists some of the comments posted to Defendants' online broadcasts and reports by consumers that demonstrate they believed, based on Defendants' statements, that LFTB was not beef or meat. For example, consumers made the following comments:

- a. "Jello is not marketed as nutritious food. I don't think you understand the issue here. **There are labels thrown around saying '100% Ground Beef', when its not.** This meat is from the connective tissue that even most animals leave behind because they know better." (3/9/12, ABC Online, comment posted 3/10/12, Ex. 15.)
- b. "**'Its beef.'.... No its not...** its beef [that has] been treated with chemicals. Fine if you want to call it Beef label it right as Beef with Ammonia. Ammonia didn't come off that cow MAKING it not 100% beef so it should have a label at the least saying its been added." (3/9/12, ABC Online, comment posted 3/14/12, Ex. 15.)
- c. "Yeah, right. It's the fatty leftover sprayed with ammonia. **I really do not see this as 100% beef.** I'm no fool to fall for the beef industry's words that this is beef. It's not!" (3/26/12, ABC Online, comment posted 3/27/12, Ex. 22.)
- d. "100% ground beef is just that with no additives or fillers. Anything introduced drives down the percentage of beef. Just because it comes from a cow does not make it beef. Is milk considered beef? **Why is Ammonia considered beef?**" (3/26/12, ABC Online, comment posted 3/27/12, Ex. 22.)
- e. "**It is NOT GROUND BEEF!** It is spun to remove fat, doused with ammonia and has the consistency of gelatin, not ground steak! It's a CHEAP filler using scraps that used to be put in dog food! Label it filler and people wanting a cheap substitute may buy it, but don't try and hide it

in my ground beef and not tell me!” (3/26/12, ABC Online, comment posted 3/27/12, Ex. 22.)

- f. “All this whole case boils down to deceptive marketing practices. **‘Pink Slime’ is NOT fresh ground beef**, it is SCRAPS, stuff that is usually discarded or fed to animals. If scraps is what the customer wants to buy to make hamburgers, then that customer should buy a few pounds of scraps. But, if the customer wants ground beef, then that’s what the customer should get.” (3/26/12, ABC Online, comment posted 3/29/12, Ex. 22.)
- g. “Won’t eat the stuff. **It’s NOT pure beef**. So happy that the media broke the truth out for all Americans!” (3/27/12, ABC Online, comment posted 3/30/12, Ex. 23.)

313. Second, Defendants’ false statements led consumers to believe that LFTB was not safe for consumption. Appendix 4 lists some of the comments posted to Defendants’ online broadcasts and reports by consumers that demonstrate they believed, based on Defendants’ statements, that LFTB was unsafe and not nutritious. For example, consumers made the following comments:

- a. “What part of ‘ammonia treated’ and ‘connective tissues’ says ‘edible and safe’ to you?” (3/9/12, ABC Online, comment posted 3/15/12, Ex. 15.)
- b. “Remember, this isn’t just scrap cuts that don’t look presentable for sale. These are parts of the animal which, in their normal state, are **ILLEGAL for human consumption!** Why? Because we’re talking intestines, filled with all kinds of bacteria (e-coli, salmonella, etc). Some company figured out a way to sanitize the by-product with ammonia gas and convinced the USDA that it was now OK for people to consume. Prior to this, it went into DOG FOOD.” (3/21/12, ABC Online, comment posted 3/21/12, Ex. 19.)
- c. “It’s ammonia-treated and it’s low-grade beef trimmings. **WHO WANTS TO EAT THAT?!?!?!? Cancer stew, anyone?** Heart-attack on a bun has taken a whole new connotation.” (3/26/12, ABC Online, comment posted 3/27/12, Ex. 23.)
- d. “**I wouldn’t feed it to my dog!** It’s utterly disgusting and repulsive to think that we have eaten this slime for years and not known it. I, for one, don’t want tendons, connective tissue, and who knows what else in my ground beef, not to mention having to treat it with ammonia to make it ‘safe.’” (3/26/12, ABC Online, comment posted 3/27/12, Ex. 22.)

- e. “very lean beef, safe beef.—**ammonia is a poison.** We really don’t know what these low doses of poison, continually being put in our bodies really does, do we? you cannot say that eating ammonia over and over is safe. Folks want to eat meat, not low doses of poison and risk that there is some harmful effect that constant ingestion of ammonia does. there is really not hard to understand.” (3/26/12, ABC Online, comment posted 3/27/12, Ex. 22.)

314. Third, Defendants’ false statements led consumers to believe that LFTB was not nutritious. Appendix 5 lists some of the comments posted to Defendants’ online broadcasts and reports by consumers that demonstrate they believed, based on Defendants’ statements, that LFTB was not nutritious. For example, consumers made the following comments:

- a. “No wonder I’m obese” (3/7/12, ABC Online, comment posted 3/7/12, Ex. 13.)
- b. “**This extra fat laden slime is packing on fat calories.** A person thinks they have purchased a fresh ground beef and they get this extra fat. We need a LAW....if the pink slime is in the package, it should be on the label. I wonder if this may be contributing to our nations obesity epidemic.” (3/7/12, ABC Online, comment posted 3/7/12, Ex. 13.)
- c. “Besides the ick factor, **this pink slime doesn’t really have nutritive value,** so we are all getting ripped off.” (3/8/12, ABC Online, comment posted 3/8/12, Ex. 14.)
- d. “The pink slime has NO nutritional value.” (3/8/12, ABC Online, comment posted 3/9/12, Ex. 14.)
- e. “So, Organic Meat may cost more, but it is more nutritious (since **fillers contain far less absorbable nutrients, if any**) and so you can EAT LESS of it to get what your body needs.” (3/8/12, ABC Online, comment posted 3/10/12, Ex. 14.)
- f. “**There is a big difference between edible and nutritious!** Pink slime is really yucky scraps of gristle in disguise!” (3/14/12, ABC Online, comment posted 3/14/12, Ex. 16.)
- g. “I eat organs but I would never chose (sic) to eat pink slime. You use the whole cow by taking parts that aren’t really food and do something else with them like make glue. Also, paper is edible. **Many insects eaten throughout the world are way more nutritious than this stuff** (and most meats) yet we aren’t feeding people insects (which is a pity).” (3/14/12, ABC Online, comment posted 3/14/12, Ex. 16.)

- h. “Pink slime has much less nutritional value than muscle.” (3/27/12, ABC Online, comment posted 3/27/12, Ex. 23.)
- i. “If you want to add additives to meat add vegetables or soy product and label it. At least vegetables and soy have some nutritional value.” (3/27/12, ABC Online, comment posted 3/28/12, Ex. 23.)
- j. “if obesity is such a health epidemic why are they allowing companies to hurt there (sic) own people by feeding the **same swill other countries wouldn’t feed there (sic) animals?**” (3/8/12, ABC Online, comment posted 3/30/12, Ex. 14.)
- k. “Edible and nutritious are two different things.” (3/29/12, ABC Online, comment posted 3/30/12, Ex. 24.)
- l. “**Pink slime is not as nutritious as regular beef.** Kids need good food, not chemicals and ingredients that have less nutrition than good food has. Too many kids are not getting enough protein, yet they are fed ‘food’ that is deficient in protein, in the name of ‘saving money’. As a mental health professional working with kids, many of whom have ADHD, I am concerned that maybe some of ADHD is caused/made worse by insufficient protein in the kids’ food.” (3/27/12, ABC Online, comment posted 5/12/12, Ex. 23.)

315. Fourth, Defendants’ false statements led consumers to believe that BPI was engaging in economic fraud by selling LFTB and had engaged in improper conduct to obtain approval from the USDA. Appendix 6 lists some of the comments posted to Defendants’ online broadcasts and reports by consumers that demonstrate they believed, based on Defendants’ statements, that BPI had engaged in improper conduct. For example, consumers made the following comments:

- a. “I think everyone should boycott ground beef until it is made LAW that this information is in writing! **It is FRAUD to include cheap nasty pink gunk within the weight they go by when we pay for meat!**” (3/9/12, ABC Online, comment posted 3/9/12, Ex. 15.)
- b. “Consumers around the world need to wake up to **this blatant fraud.** This product has been around since 1970, and its about time that they get what they deserve for their deception.” (3/9/12, ABC Online, comment posted 3/10/12, Ex. 15.)

- c. “I feel that if we’re paying for ground beef we shouldn’t be paying for ‘pink slime’ or the added ammonia.” (3/21/12, ABC Online, comment posted 3/21/12, Ex. 19.)
- d. **“Pink slime is definitely deceptive** – consumers didn’t know this disgusting filler was in our ground beef. This needs to be disclosed on the packaging so consumers can make a choice – they can keep their ammonia enhanced pink slime. I sure would like to see these people that allowed this to happen eat the pink slime – bet they don’t. Thanks ABC for breaking this story.” (3/21/12, ABC Online, comment posted 3/21/12, Ex. 19.)
- e. “What kind of people run the meat industries that they have no problem scrapping meat trimmings off the floor and treating it with poisonous chemicals to feed to the American public.” (3/21/12, ABC Online, comment posted 3/22/12, Ex. 20.)
- f. “I am tired of hearing that pink slime does not have to be disclosed on a label because it is all beef. Give me a break, even dog food discloses by-products and fillers. The labels tell us which products are free of by-products and fillers. Is it too much to ask the same of our food? **Not disclosing that by-products and fillers are in ground beef is deceptive to say the least.**” (3/21/12, ABC Online, comment posted 3/22/12, Ex. 20.)
- g. **“I hope that woman who got so rich off of the backs of our good vs rotten food gets what’s coming to her.** And that’s not more money People being brought (sic) off should be punished.” (3/7/12, ABC Online, comment posted 3/8/12, Ex. 13.)
- h. “The USDA is who not only allowed this, but intentionally hid the practice from the public by calling it ‘meat’ and not allowing ‘pink slime’ to be put on the label.” (3/7/12, ABC Online, comment posted 3/8/12, Ex. 13.)
- i. **“Joanne Smith should be brought up on charges** for approving the labeling of beef by products as beef. She is getting a hefty kick back on the backs of the American people.” (3/7/12, ABC Online, comment posted 3/9/12, Ex. 13.)
- j. “that’s what’s wrong with corporate america. money buys influence and the public is **helpless to overcome the corruption** by those who throw cash around. our country has gone to the dogs with all this crony capitalism.” (3/7/12, ABC Online, comment posted 3/9/12, Ex. 13.)
- k. “That pink slime is in our food is disgusting, but I think there is a bigger issue here. We need to look in to **how the USDA can get away with hiding the fact that pink slime is in our food** without having it

disclosed. Is the USDA looking out for the public or is it just in there to protect slimy companies like BPI that makes this junk? I think there is more slime we need to remove and that is the slime in the USDA that let this be completely hidden from the American public.” (3/9/12, ABC Online, comment posted 3/10/12, Ex. 15.)

- l. “I wish I could get such bonus cash each year on top of my salary. Get it folks?? that’s 70k/year of pocket money for shutting one’s mouth, closing one’s eyes. And it’s been going on for 17 years. Lucky her.” (3/7/12, ABC Online, comment posted 3/7/12, Ex. 13.)
- m. “Don’t buy off the head of the FDA with a cushy job to avoid labeling it!” (3/26/12, ABC Online, comment posted 3/27/12, Ex. 22.)
- n. “Consumers have a right to know what they are purchasing and **the USDA apparently conspired with BPI and the beef processing industry to keep this product off the label.**” (3/29/12, ABC Online, comment posted 3/31/12, Ex. 24.)

316. These comments are significant in two respects. First, these comments provide contemporaneous evidence that Defendants’ statements misled consumers. Defendants’ statements led consumers to form factually incorrect conclusions regarding BPI and LFTB.

317. Second, these comments demonstrate that Defendants knew or should have known their statements were leading consumers to reach factually incorrect conclusions regarding BPI and LFTB. Defendants persisted with their disinformation campaign notwithstanding this knowledge. Defendants’ persistence is further evidence that Defendants acted with actual malice.

XI. The ABC Defendants Tortiously Interfered with BPI’s Business Relationships with Its Customers

318. The ABC Defendants’ disinformation campaign created a baseless consumer backlash questioning the safety, quality, and nutrition of LFTB. This backlash had a devastating impact on BPI’s existing and prospective relationships with grocery store chains and ground beef processors. However, the ABC Defendants did not stop at broadcasting disinformation about LFTB. They also intentionally manufactured a “grassroots” movement against LFTB to force

major grocery store chains to stop selling ground beef made with LFTB. They even went so far as to repeatedly publicize a blacklist of grocery store chains that carried ground beef with LFTB, to force the chains into dropping the product.

319. These efforts by the ABC Defendants were successful. The nation's largest grocery store chains decided to stop selling ground beef made with LFTB in direct response to the consumer concern created by the ABC Defendants' disinformation campaign, the manufactured "grassroots" movement, and the publicized blacklist. As a result, ground beef processors stopped or significantly curtailed their orders of LFTB from BPI, and BPI lost a significant amount of its LFTB business.

320. Appendix 2 identifies some of the statements made by the ABC Defendants as part of their effort to create a consumer backlash against BPI, LFTB, and grocery stores selling ground beef that included LFTB. These statements are in addition to the nearly 200 false statements Defendants made about BPI and LFTB that independently creates a consumer backlash.

321. Appendix 7 identifies some of the comments posted by consumers in response to the ABC Defendants' statements. These comments demonstrate that the ABC Defendants' statements created a "grassroots" movement and that this movement was triggered by factually incorrect information about LFTB. These comments also provided notice to the ABC Defendants that their statements were causing consumers to pressure grocery stores to stop selling ground beef that included LFTB and that this pressure was being exerted based on factually incorrect information about LFTB.

A. BPI Had Business Relationships with Grocery Store Chains and Ground Beef Processors

322. Ground beef processors purchase LFTB from BPI and then use it along with other beef to make ground beef, often based on specifications from grocery store chains. These specifications provide for whether the ground beef purchased should include LFTB, and if so, in what amount. The processors then sell their ground beef to grocery store chains. BPI had long-standing business relationships with both the ground beef processors and grocery store chains. BPI and its sales force spent hundreds of hours and millions of dollars developing these relationships over the years.

323. For years, and after extensive testing of LFTB, BPI and its sales force negotiated and developed strong business relationships with several of the top 10 national grocery store chains, so that the chains' ground beef specifications included LFTB. BPI's relationships with these grocery stores have been vital to BPI's success, because processors make ground beef to satisfy the specifications of the grocery stores. This means that a processor is required to order and use LFTB when one of its grocery store customers decides to include LFTB in its specifications. Once a chain makes this decision, BPI can reasonably anticipate a continuous and regular stream of orders from ground beef processors who supply that chain.

324. Prior to the ABC Defendants' news coverage, BPI sold LFTB to ground beef processors who supplied Safeway, Walmart, Sam's Club, Kroger, Supervalu, and other large grocery store chains. The ABC Defendants knew that grocery store chains used BPI's LFTB. For example, Defendant Avila told viewers, "It's in 70 percent of the ground beef sold at supermarkets, up to 25 percent of each American hamburger patty, a cheap filler known as pink slime." (3/8/12, World News, Avila, Ex. 3.)

325. BPI also spent years developing strong relationships with ground beef processors. Ground beef processors sell ground beef and other beef products to grocery stores, restaurants,

and schools and other institutions. Some of the processors' customers have specifications that are required to be followed when producing the ground beef they receive, while other customers do not have contractual specifications beyond the lean percentage of the meat they are to receive. Ground beef processors engage in extensive testing prior to making changes to the process used to make their ground beef. Over the last 20 years, BPI has worked with processors to demonstrate that the use of LFTB in ground beef results in better-tasting ground beef and does not compromise either the nutritional value or safety of the ground beef.

326. BPI's relationship with the ground beef processors has been critical to BPI's success. Ground beef processors typically do not change their process for making ground beef—value is placed on consistently generating ground beef of the same quality, taste and texture. Accordingly, once a ground beef processor decides to start using LFTB with other beef to make its ground beef, BPI can reasonably anticipate a continuous and regular stream of orders from that processor. Prior to the ABC Defendants' disinformation campaign, BPI sold large volumes of LFTB to National Beef, Tyson Fresh Meats, and American Foods Group, among others. These are some of the largest and most successful ground beef processors in the world.

B. The ABC Defendants' Interference with BPI's Business Relationships

327. The ABC Defendants' disinformation campaign, as well as their other efforts, interfered with BPI's business relationships with grocery store chains and ground beef processors. They intentionally made false and disparaging statements about BPI's LFTB. They created a blacklist of grocery store chains carrying ground beef with LFTB designed to put pressure on those chains to pull the product. They manufactured a consumer "grassroots" movement to put additional pressure on grocery store chains to pull the product. As a result, major grocery store chains decided to stop selling ground beef with LFTB.

328. First, the ABC Defendants' disinformation campaign created a significant consumer backlash against LFTB and BPI. Through this campaign, the ABC Defendants knowingly misled consumers into believing that LFTB was not beef, but instead was an unhealthy and unsafe "pink slime" filler that was being hidden in their ground beef.

329. The campaign was effective: Consumers became concerned, and this concern became the linchpin to the ABC Defendants' further efforts to destroy demand for BPI's product and BP's business relationships with existing and prospective customers. For example, during the third nightly news broadcast, Sawyer stated that ABC was flooded with emails from concerned viewers, and she cited viewer questions regarding what grocery stores sell ground beef with LFTB following ABC's "investigation." (3/9/12, World News, Sawyer, Ex. 4.) The ABC Defendants continued to encourage this consumer concern about the quality and safety of BPI's product as they carried on the disinformation campaign against LFTB.

330. Second, the ABC Defendants developed and broadcast a blacklist of the top grocery store chains in the country, to call out those stores that sold ground beef with LFTB or that had not announced whether or not they sold it. For example:

- a. On March 8, 2012, during ABC's second broadcast regarding LFTB, Avila stated that ABC had "e-mailed the top 10 grocers in America." He reported that "Publix, Costco, HEB, and Whole Foods assured us they don't use pink slime," but that ABC had received "[n]o word yet from the rest. But know this. If your meat is stamped USDA organic, it's pure meat, no questionable filler. But everything else is suspect say critics, because pink slime does not have to appear on the label, and the USDA is giving no indication it will force meatpackers to lift the veil of secrecy any time soon." (3/8/12, World News, Avila, Ex. 3.)
- b. On March 9, 2012, Avila stated that viewers wanted to know if "pink slime lurks in the beef" at supermarkets, and that ABC had asked America's top 10 grocers. He reported, "So for the second day in a row, we asked America's top ten grocers and Whole Foods [whether they carry ground beef containing LFTB.]" ABC then broadcast pictures to specifically identify those grocers who did not respond or comment, those who said they used the product, and one who said it was reviewing its

policy. For example, over a graphic listing Walmart, Food Lion, Fred Meyer, and Supervalu, Avila said, “These companies either didn’t respond or had no comment.” He continued: “The owners of Stop&Shop and Giant say they use the product. Safeway would only say the government says the filler is safe but they’re reviewing their own policy.” Over a graphic with the names of Costco, Publix, H-E-B and Whole Foods, Avila said: “These stores say their beef contains no pink slime at all.” (3/9/12, World News, Avila, Ex. 4.)

- c. On March 9, 2012, in an online article titled “Where You Can Get ‘Pink-Slime’-Free Beef,” Avila wrote that ABC News emailed the top 10 grocery chains in America and seven responded. He reported that Costco, Publix, Top Markets and Whole Foods do not use “pink slime.” (3/9/12, ABC Online, Avila, Ex. 15.)

331. As ABC’s coverage continued in March, the ABC Defendants repeatedly gave credit to those grocery store chains that did not sell ground beef made with LFTB. ABC touted those chains who promised that their ground beef did not contain LFTB, knowing that it would negatively impact those grocery store chains who continued to carry ground beef with LFTB.

332. The context of the statements and graphics used by the ABC Defendants is critical. The ABC Defendants did not identify these grocery store chains in isolation. The ABC Defendants put up the names of the top 10 chains while at the same time falsely portraying LFTB as an unhealthy and unsafe “pink slime” that was being hidden in ground beef. The clear, yet false, implication of the ABC Defendants’ coverage was that some of these grocery store chains were selling consumers something other than 100% ground beef, and, more specifically, that they were selling consumers ground beef that included an unsafe, “suspect,” and “questionable” product.

333. The ABC Defendants contrasted these grocery store chains who did not use LFTB with those who did and those who had not responded or commented. The ABC Defendants gave consumers the impression that some chains sold ground beef that was safe, healthy and 100%

ground beef, while others sold ground beef that had an unhealthy and unsafe “pink slime” “lurking” in it.

334. The ABC Defendants knew that their blacklist would force many of the chains to decide to stop selling ground beef with LFTB. It did. Major grocery store chains decided to stop selling ground beef with LFTB during the course of ABC’s news broadcasts because of consumer concern—concern about the quality and safety of the LFTB created by the false and disparaging statements about the product made by the ABC Defendants.

335. Third, the ABC Defendants manufactured a so-called “grassroots” consumer movement against national grocery store chains that sold ground beef made with LFTB. The ABC Defendants repeatedly made statements to put consumer pressure on the chains to stop selling ground beef with LFTB, and they highlighted supposed mounting consumer concern about which grocery store chains were hiding that they carried ground beef with LFTB. For example:

- a. On March 8, 2012, after Avila stated that “the USDA is giving no indication it will force meatpackers to lift the veil of secrecy any time soon,” Sawyer asked viewers to “let us know what your supermarkets say when you ask them about what’s in the meat.” (3/8/12, World News, Avila and Sawyer, Ex. 3.)
- b. On March 9, 2012, Sawyer stated: “You have flooded us with e-mails about your attempts to get direct answers from your supermarkets, which ones allow it, which ones don’t.” Avila later stated: “[M]ost Americans get their ground beef at supermarkets, and our viewers want to know if pink slime lurks in the beef sold here.” (3/9/12, World News, Sawyer and Avila, Ex. 4.)
- c. On March 15, 2012, Kerley stated: “[T]housands of you posted questions” regarding which retail chains carry ground beef with LFTB. ABC then showed people asking, “Which retail chains carry it?” and “Which brands are not putting pink slime in their beef products?” (3/15/12, World News, Kerley, Ex. 6.)
- d. On March 16, 2012, David Muir stated: “For more than a week now, you know we’ve been reporting here on pink slime, that filler used in your

ground beef. It sparked a grass roots movement, so many of you concerned about the ground beef in your grocery store. An army of concerned viewers taking your questions straight to your butcher.” Kerley ended the segment by stating that there would be “more questions for butchers around the country.” (3/16/12, World News, Ex. 7.)

- e. On March 21, 2012, Sawyer stated: “We found that that filler [pink slime] was added to 70 percent of the ground beef sold in this country. Consumers reacted across America and you took your questions straight to the meat departments of the stores where you shop. Well tonight, some big supermarket chains are signaling they heard you, loud and clear. The nation’s second largest chain, Safeway; the third largest, Supervalu and the Food Lion chain, all announcing they will stop selling beef with pink slime.” (3/21/12, World News, Sawyer, Ex. 9.)

336. As if to give viewers instructions for how to pressure their local grocery stores, ABC repeatedly sent reporters or representatives out to the supermarkets. For example:

- a. On March 8, 2012, Avila reported that ABC “sent out ABC News producers to stores across the country to the meat sections to see if [LFTB is] in the ground beef they sell. Most couldn’t tell us for sure.” During that broadcast, two ABC producers discussed the results of such visits. One producer stated, “There’s no way to know even from labels and from the butchers here whether or not it contains that pink slime.” The other reported that the “guy at the meat counter said that he had been getting the same question all day long.” (3/8/12, World News, Avila, Ex. 3.)
- b. On March 16, 2012, Kerley reported that ABC “sent Melissa Baines, a mother of three, to her local store on the hunt for beef with so called pink slime.” Melissa Baines found “[n]othing [at her local store] about the ingredients or if it has that pink slime in it.” She then asked her butcher “[a]bout the pink slime in the meat.” He responded: “We don’t use it.” (3/16/12, World News, Kerley, Ex. 7.)
- c. On March 21, 2012, Avila said: “Two weeks ago, I went into this Safeway and asked if its ground beef contained what the meat industry calls [LFTB] that a USDA scientist first termed pink slime. So the butcher here at Safeway says he has no idea if the ground beef there has pink slime in it. Corporate headquarters later told us yes, its meat does contain it. But they were reviewing the policy. Fast forward to today. Safeway announces its meat counter is now free of what former USDA scientists characterize as low quality beef scraps sanitized with ammonia gas.” (3/21/12, World News, Avila, Ex. 9.)

337. The purpose of the ABC Defendants' actions was to grow the so-called "grassroots" movement against LFTB that they created themselves. The ABC Defendants knew that consumer pressure would force many of the chains to decide to stop selling ground beef with LFTB. Indeed, the "grassroots" movement created by the Defendants' disinformation campaign was successful. The major grocery store chains had little choice but to respond to the consumer backlash, and they did so by cancelling or suspending future orders of ground beef made with LFTB.

338. ABC was quick to report these decisions. On March 21, 2012, ABC broadcast "breaking news" that its "exposure" and "investigation" of LFTB had produced a major response from the second-largest grocery chain in America. At that time, ABC reported that Safeway would no longer sell ground beef with LFTB because of considerable consumer concern. (3/21/12, Good Morning America, Avila, Ex. 8.; 3/21/12 World News, Sawyer and Avila, Ex. 9.)

339. After ABC publicized Safeway's decisions during its morning show on March 21, two other national grocery chains, Supervalu and Food Lion, followed suit that same day. Both of these chains announced they would no longer sell ground beef made with LFTB. In the following days, other grocery store chains followed suit, including Kroger, the largest grocery store chain in the country.

340. None of these grocery store chains stated that they had concerns regarding the quality or safety of LFTB, and many noted that the USDA and food industry experts agree that LFTB is safe and nutritious. All of the stores had decided, before the disinformation campaign, that ground beef made with LFTB was a better product. However, due entirely to Defendants' false statements and the ABC Defendants' conduct, these grocery store chains were forced to abandon a product they considered safe and nutritious.

C. The ABC Defendants' Conduct Destroyed Many of BPI's Business Relationships with Grocery Store Chains and Ground Beef Processors

341. The ABC Defendants' disinformation campaign, its broadcast of a blacklist targeting grocery store chains carrying ground beef with LFTB, and its efforts to drive consumers to pressure grocery stores to stop selling LFTB had the desired effect. The misconduct of the ABC Defendants drove down demand for LFTB and interfered with well-established business relationships between BPI and grocery store chains and ground beef processors.

342. This intentional interference by the ABC Defendants adversely impacted BPI's sales, revenues, and profits from those business relationships. This interference led to a cumulative reduction in BPI's weekly sales from nearly 5 million pounds to approximately 1.6 million pounds, as well as to a commensurate reduction in BPI's revenues and profits.

1. The ABC Defendants' Interference with BPI's Business Relationships with Grocery Store Chains

343. The ABC Defendants' conduct adversely impacted BPI's business relationships with major grocery store chains across the country, which previously purchased significant amounts of ground beef containing LFTB. BPI spent significant time and money developing relationships with these grocery store chains prior to the ABC Defendants' misconduct and reasonably anticipated that these relationships would continue into the future.

344. Prior to the ABC Defendants' misconduct, BPI had spent significant time and money developing business relationships with many of the top 10 grocery chains in the country, including Safeway, Supervalu, Food Lion, Kroger and Walmart. BPI likewise spent significant time and money developing business relationships with other grocery store chains, including ALDI, BI-LO, Winn-Dixie, Giant Eagle, Save Mart and Stop & Shop.

345. BPI's relationship with these grocery store chains included, but was not limited to, the grocery stores selling ground beef that included LFTB, which allowed the grocery stores to sell lean ground beef to their customers at lower prices. Each of these grocery stores purchased ground beef that included LFTB from ground beef processors. The processors who provided the ground beef, in turn, purchased LFTB from BPI.

346. BPI's business relationships with these grocery stores were long-standing. Prior to the ABC Defendants' misconduct, BPI sold a significant volume of LFTB each week to processors who made ground beef for these grocery stores. For several years, BPI had sold a steady and predictable volume of LFTB for these grocery stores. BPI reasonably anticipated that it would continue to sell a significant volume of LFTB each week to processors who made ground beef for these grocery stores.

347. The ABC Defendants interfered with BPI's relationships with these grocery stores through the disinformation campaign and through their efforts to drive consumers to pressure grocery stores to stop selling LFTB. In addition, the ABC Defendants interfered with BPI's relationships with Safeway, Supervalu, Food Lion, Kroger and Walmart by including them in the blacklist campaign. The ABC Defendants specifically targeted these top-10 grocery store chains in their broadcasts and online reports.

348. The ABC Defendants' misconduct resulted in the termination of BPI's relationship with these grocery store chains. As a result of the ABC Defendants' misconduct, each of these grocery stores stopped purchasing ground beef that included LFTB. The grocery stores announced that their decisions were driven by the consumer backlash created by the Defendants' disinformation campaign. For example, grocery stores made the following announcements:

- a. Food Lion: “Food Lion has made the decision to no longer carry fresh ground beef products that contain lean finely textured beef (LFTB) or boneless lean beef trimmings (BLBT) **as a result of current consumer preferences and feedback** While we understand that both the USDA and food industry experts agree that LFTB and BLBT are safe and nutritious, Food Lion is committed to offering high-quality, wholesome products for our customers based on their preferences.” (3/21/12 ABC Online, Ex. 21.)
- b. Safeway: “While the USDA and food industry experts agree that lean, finely textured beef is safe and wholesome, **recent news stories have caused considerable consumer concern about this product**. Safeway will no longer purchase ground beef containing lean, finely textured beef.” (3/21/12 ABC Online, Ex. 21.)
- c. Supervalu: “Effective today, SUPERVALU has made the decision to no longer purchase fresh ground beef containing finely textured beef for any of our traditional retail stores While it’s important to remember there are no food safety concerns with products containing finely textured beef, **this decision was made due to ongoing customer concerns over these products**.” (3/21/12 ABC Online, Ex. 21.)
- d. Walmart: “As a result of customer and member feedback, Walmart and Sam’s Club will begin offering fresh ground beef that does not contain lean finely textured beef (LFTB) While the USDA and experts agree that beef containing LFTB is safe and nutritious, **we are committed to listening to our customers** and providing the quality products they want at prices they can afford.” (3/21/12 Walmart Press Release, Ex. 92.)
- e. Kroger: “Our customers have expressed their concerns that the use of lean finely textured beef— while fully approved by the USDA for safety and quality—is something they do not want in their ground beef. **We highly value customer feedback, and the recent flood of news stories has diminished their confidence in the product**. As a result, Kroger will no longer purchase ground beef containing lean finely textured beef.” (3/22/12 Kroger Press Release, Ex. 93.)
- f. BI-LO and Winn Dixie: “**Customer reaction in response to recent reports on lean finely textured beef** have put into question the USDA-approved process. Today BI-LO and Winn-Dixie announce we will no longer purchase fresh ground beef containing lean finely textured beef.” (3/22/12 BI-LO/Winn Dixie Press Release, Ex. 94.)
- g. Giant Eagle: “While Boneless Lean Beef Trim (BLBT) is USDA and FDA approved and has been considered safe and nutritious for more than 20 years, **recent media attention on BLBT has prompted questions, confusion, and a decline in consumer confidence in the product**. After

careful review of feedback from our customers, Giant Eagle has decided that effective immediately the company will no longer source fresh ground beef containing BLBT.” (3/22/12 Giant Eagle Press Release, Ex. 95.)

- h. Stop & Shop: “Stop & Shop today announced that it will no longer purchase fresh ground beef containing Finely Textured Beef. While the US Department of Agriculture has indicated this product is safe for consumption and complies with all applicable standards for lean beef, **many of our customers have voiced concern regarding Finely Textured Beef.**” (3/22/12 Stop & Shop Press Release, Ex. 96.)
- i. ALDI: “We also are committed to listening to our customers, and over the last week, **customers have been telling us that they do not want ground beef made with lean finely textured beef (LFTB).** That’s why ALDI has decided that, we no longer will purchase ground beef made with this ingredient.” (3/23/12 ALDI Press Release, Ex. 97.)
- j. Save Mart: “Save Mart Supermarkets will remove Lean Finely Trimmed Beef from all its ground meat products in all Save Mart, Lucky, S-Mart Foods, FoodMaxx, and Maxx Value Foods stores. Though Lean Finely Trimmed Beef is known to be a safe process endorsed by the USDA, **we want to be responsive to increasing consumer concerns.**” (3/27/12 Save Mart Press Release, Ex. 98.)

349. All of these grocery stores chains publicly announced that they were no longer going to sell ground beef containing LFTB, and were thereby suspended their relationships with BPI, based on the consumer backlash manufactured by Defendants’ disinformation campaign. None of the grocery stores indicated that their decisions related to the quality, safety or nutritional value of ground beef containing LFTB.

350. After these grocery stores announced they would no longer sell ground beef containing LFTB, the ground beef processors who supplied these grocery store chains ceased or significantly reduced their orders of LFTB from BPI. The ABC Defendants’ conduct thus interfered with BPI’s business relationship with these grocery store chains and their ground beef suppliers. BPI has lost and will lose millions of dollars as a result of losing its relationships with these grocery store chains.

351. The ABC Defendants knew or should have known that their conduct would adversely interfere with BPI's relationships with these grocery stores. The ABC Defendants engaged in a disinformation campaign that lasted 28 days. The ABC Defendants specifically targeted grocery stores selling ground beef containing LFTB during their broadcasts and online reports. And, the ABC Defendants knew their statements about BPI and LFTB were creating a consumer backlash against LFTB, BPI, and grocery stores selling ground beef that included LFTB.

2. The ABC Defendants' Interference with BPI's Business Relationships with Ground Beef Processors

352. The ABC Defendants' conduct adversely impacted BPI's business relationships with major ground beef processors across the country, which previously produced significant amounts of ground beef containing LFTB. BPI spent significant time and money developing relationships with these ground beef processors prior to the ABC Defendants' misconduct and reasonably anticipated that these relationships would continue into the future.

353. Prior to the ABC Defendants' misconduct, BPI had spent significant time and money developing business relationships with many of the top ground beef processors in the country, including Tyson Fresh Meats, National Beef, American Foods Group, Schenk Packing, FPL Foods, Cherry Meat Packers, and AFA Foods. BPI's relationships with these processors included, but were not limited to, selling the processors LFTB to use when making ground beef. Purchasing LFTB from BPI allowed the processors to sell ground beef to grocery stores and restaurants at lower prices.

354. BPI's business relationships with these ground beef processors were long-standing. Prior to the ABC Defendants' misconduct, BPI sold a significant volume of LFTB each week to processors who made ground beef for many of the largest grocery stores and

restaurants in the country. For several years, BPI had sold a steady and predictable volume of LFTB to these ground beef processors. BPI reasonably anticipated that it would continue to sell a significant volume of LFTB each week to these processors.

355. The ABC Defendants interfered with BPI's relationships with these ground beef processors through the disinformation campaign, through their efforts to drive consumers to pressure grocery stores to stop selling LFTB, and by creating a blacklist listing grocery stores that sold ground beef made with LFTB.

356. The ABC Defendants' misconduct resulted in the termination, or significant reduction, of BPI's relationship with these ground beef processors. As a result of the ABC Defendants' misconduct, many of the largest grocery stores and restaurants in the country stopped purchasing ground beef that included LFTB. The grocery stores and restaurants who stopped purchasing ground beef that included LFTB were driven by the consumer backlash created by Defendants' disinformation campaign. None of the grocery stores and restaurants that stopped purchasing ground beef that included LFTB did so based on concerns with the quality, safety or nutritional value of ground beef containing LFTB.

357. After grocery stores and restaurants decided they would no longer sell ground beef containing LFTB, the ground beef processors who supplied these grocery stores and restaurants ceased or significantly reduced their orders of LFTB from BPI. The ABC Defendants' conduct thus interfered with BPI's business relationship with these ground beef processors. BPI has lost and will lose millions of dollars as a result of losing its relationships with these ground beef processors.

358. The ABC Defendants knew or should have known that their conduct would adversely interfere with BPI's relationships with these ground beef processors. The ABC

Defendants engaged in a disinformation campaign that lasted 28 days. The ABC Defendants specifically targeted grocery stores selling ground beef containing LFTB during their broadcasts and online reports. And the ABC Defendants knew their statements about BPI and LFTB were creating a consumer backlash against LFTB, BPI, and grocery stores and restaurants selling ground beef that included LFTB.

XII. Defendants' Disinformation Campaign and Tortious Interference Caused Significant Damage to BPI

359. Defendants' disinformation campaign and tortious interference had a devastating impact on BPI. BPI is an award-winning company that has spent millions of dollars to produce a safe and healthy lean beef. Defendants' disinformation campaign cast BPI as a company that engaged in "economic fraud" and used its improper influence with the USDA to get an unsafe and unhealthy "pink slime" into ground beef. The ABC Defendants then added to that damage by blacklisting grocery stores that sold ground beef with LFTB and manufacturing a consumer backlash. Defendants' disinformation campaign and tortious interference caused the following injuries.

A. Lost Actual Sales and Profits Due to Disinformation Campaign and Tortious Interference

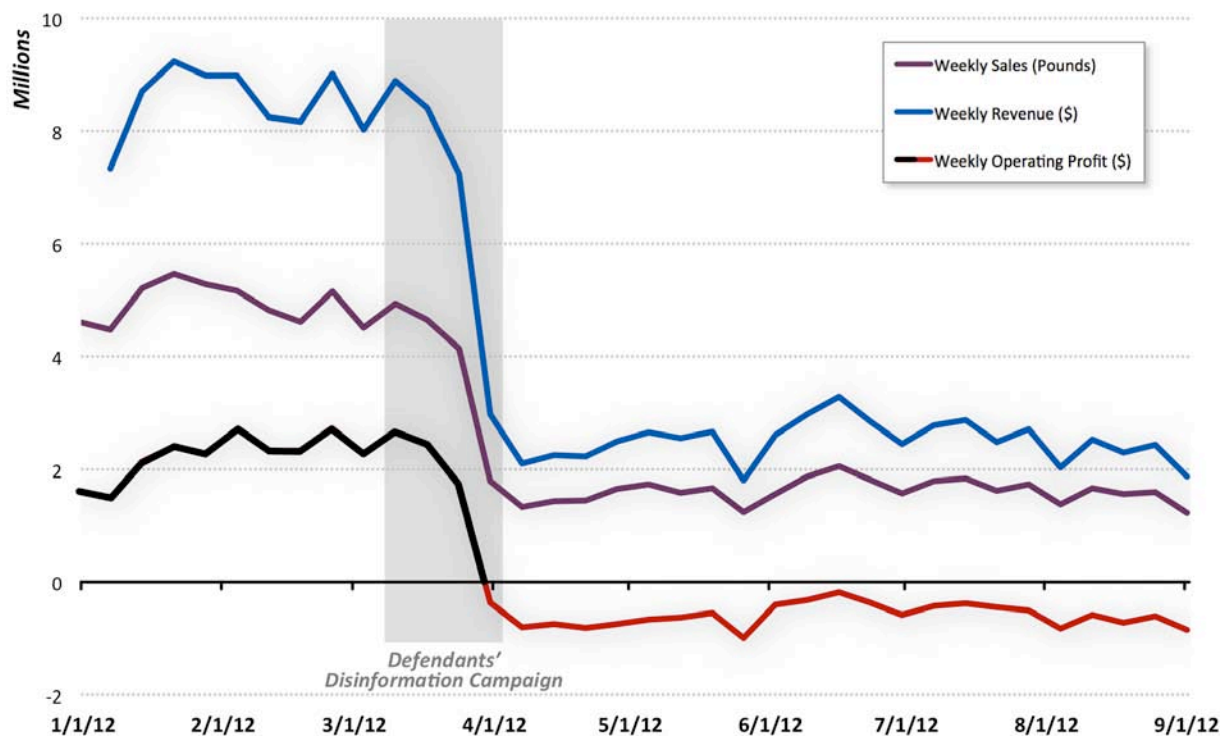
360. In 2012, prior to Defendants' disinformation campaign and tortious interference, Defendants sold an average of nearly five million pounds of LFTB per week. Defendants' gross revenue averaged \$8.6 million per week and operating profit averaged \$2.3 million per week. For the week of March 4, 2012, before the disinformation campaign started, BPI sold 4.9 million pounds of LFTB, its gross revenue for the week was \$8.9 million, and its operating profits were \$2.7 million.

361. BPI's sales of LFTB immediately plummeted following Defendants' disinformation campaign and tortious interference. For the week of March 25, 2012, after

Defendants' campaign succeeded in pressuring grocery store chains to stop purchasing ground beef containing LFTB, BPI sold less than 1.8 million pounds of LFTB, a decline of 3.1 million pounds, or 63%. BPI's revenue was \$3 million for the week, down \$5.9 million, or 66%. BPI suffered an operating loss of \$368,000 for the week, down \$3.1 million from its previous operating profits. BPI's sales fell even further in the following weeks.

362. The below chart shows BPI's actual sales, gross revenue and profits from the week of January 1, 2012 to the week ending September 1, 2012. Defendants' disinformation campaign started on March 7, 2012. Over the 26-week period after the disinformation campaign, BPI's actual sales have declined by approximately 80 million pounds (cumulative). Their gross revenue has declined by approximately \$140 million. Their profits have declined by approximately \$70 million.

Figure 1:



B. Lost Future Sales and Profits Due to Disinformation Campaign and Tortious Interference

363. Defendants' disinformation campaign and tortious interference will have a lingering impact on BPI. BPI's future sales and profits will be less than anticipated, as BPI struggles to correct Defendants' false and disparaging statements. BPI's future revenues, gross margins and profits will all be less in the years to come due to the consumer backlash created by Defendants' disinformation campaign and the ABC Defendants' tortious interference.

364. Prior to Defendants' disinformation campaign and tortious interference, BPI sold, on average, nearly five million pounds of LFTB per week, which resulted in an average revenue of \$8.6 million and an average operating profit of \$2.7 million. BPI anticipated these numbers to go up during 2012 and beyond, based on the historically strong customer acceptance of LFTB. BPI's sales force was capturing greater market share for BPI from existing users of LFTB, introducing LFTB to new customers, and re-introducing LFTB to customers that had been previously curtailed.

365. Defendants' disinformation campaign and tortious interference radically changed the business landscape for BPI and LFTB. After Defendants' misconduct, BPI has sold an average of 1.6 million pounds of LFTB per week, which resulted in an average revenue of \$2.6 million and an average operating loss of \$583,000. BPI continues to invest resources to recapture lost sales, but Defendants' disinformation campaign and tortious interference make that a very difficult task.

366. BPI conservatively estimates that Defendants' disinformation campaign and tortious interference will cost it over \$400 million in profits over the next five years. This estimate is based on the difference between BPI's anticipated performance prior to Defendants' misconduct and its anticipated performance after Defendants' misconduct. This is a conservative

estimate, and BPI will introduce evidence at trial to quantify its actual and future lost profits due to Defendants' misconduct.

C. Lost Investments Due to Defendants' Disinformation Campaign and Tortious Interference

367. Defendants' disinformation campaign and tortious interference has also cost BPI over \$180 million in lost investments. As demand for lean beef increased, BPI spent millions to build and equip processing facilities and to install equipment at beef manufacturing plants to process beef trimmings. BPI was forced to close three of its four processing facilities as a result of Defendants' conduct. BPI was likewise required to suspend use of equipment at the beef processing plants.

1. Lost Investment In Processing Facilities

368. Prior to Defendant's disinformation campaign and tortious interference, BPI operated four state-of-the-art processing facilities. These facilities were located in Amarillo, TX, Garden City, KS, Waterloo, IA, and South Sioux City, NE.

369. BPI spent millions of dollars to design, build and equip these processing facilities. The buildings and equipment were built with careful consideration for safety, from the stainless steel walls to the advanced air filtration systems to the purpose-built centrifuges. The equipment within the facilities is specially designed by BPI for use in making LFTB. The equipment is one-of-a-kind and is largely single-purpose.

370. Defendants' disinformation campaign and tortious interference caused a consumer backlash that significantly reduced demand for LFTB. As a result of the decline in demand for LFTB, BPI was forced to close three of its four processing facilities in May 2012. BPI lost the value of its investment in those three processing facilities as a result of the closures.

2. Lost Investment In Collection Equipment

371. BPI uses beef trimmings from beef processing plants to make LFTB. BPI has collection equipment at certain processing plants to help gather the beef trimmings used to make LFTB. Prior to Defendants' disinformation campaign, BPI had collection equipment at plants located in Greeley, CO, Grand Island, NE, Joslin, IL, and Pasco, WA.

372. BPI spent millions of dollars to design and build the equipment it had located at the processing plants. The equipment was used exclusively for the collection of beef trimmings for supply to BPI processing operations. BPI invested money in this equipment based, in part, on the high demand for LFTB. BPI was able to expedite the delivery of beef trimmings by placing its own equipment at the beef processing plants.

373. Defendants' disinformation campaign and tortious interference caused a consumer backlash that significantly reduced demand for LFTB. The reduced demand for LFTB meant BPI did not need the same volume of beef trimmings from beef processing plants. As a result, BPI ceased operations at the processing plants located in Greeley, CO, Grand Island, NE, Joslin, IL and Pasco, WA. BPI lost the value of its investment in that collection equipment as a result of suspending operations at those plants.

D. Defendants' Misconduct Damaged BP, BPI Tech and FMI

374. BP and BPI Tech are related companies, both in practice and for purposes of the preparation of consolidated, audited financial statements. BP and BPI Tech are related through common ownership and management. FMI is an affiliated company for purposes of the preparation of BP/BPI Tech's consolidated financial statements, based on common ownership. BP, BPI Tech and FMI were directly and proximately injured by Defendants' disinformation campaign and the ABC Defendants' tortious interference.

375. BP suffered damages as a result of the decline in LFTB sales caused by Defendants' disinformation campaign and the ABC Defendants' tortious interference. BP

suffered lost revenue and lost profits as a result of the decline in LFTB sales caused by Defendants' misconduct. BP also suffered lost investment damages as a result of no longer using facilities and equipment it expended funds to construct.

376. BPI Tech suffered damages as a result of the decline in LFTB sales caused by Defendants' disinformation campaign and the ABC Defendants' tortious interference. Based on a contract between BP and BPI Tech, BPI Tech receives approximately 50% of the revenues generated from the sales of LFTB. This is to compensate BPI Tech for the various services it provides to BP in connection with the sale of LFTB. Accordingly, BPI Tech suffered lost revenue and lost profits as a result of the decline in LFTB sales caused by Defendants' misconduct. BPI Tech is a direct pecuniary beneficiary of BP's sale of LFTB.

377. FMI suffered damages as a result of the decline in LFTB sales caused by Defendants' disinformation campaign and the ABC Defendants' tortious interference. Based on a contract between BP and FMI, FMI is paid a fee for each pound of LFTB processed using equipment and technology that relies upon FMI intellectual property. This is to compensate FMI for use of the licenses it owns for the equipment used to produce LFTB. Accordingly, FMI suffered lost revenue and lost profits as a result of the decline in LFTB production caused by Defendants' misconduct. FMI is a direct pecuniary beneficiary of BP's sale of LFTB.

378. BP, BPI Tech and FMI also suffered reputational damage with grocery stores and ground beef processors as a result of Defendants' disinformation campaign. BP and BPI Tech spent significant time and money developing relationships with grocery store chains and ground beef processors. BP and BPI Tech's relationships with these grocery store chains and ground beef processors extend back several years. Defendants' disinformation campaign and the ABC Defendants' tortious interference damaged the relationships developed and maintained by BP

and BPI Tech. Defendants' disinformation campaign and the ABC Defendants' tortious interference also made it more difficult for BP and BPI Tech to recover lost relationships and develop new relationships with grocery stores and ground beef processors.

379. BP, BPI Tech and FMI suffered further reputational damage within the beef industry and food safety organizations. The Defendants' disinformation campaign included false statements that attacked the honesty and integrity of the Roth family. The Roth family owns and operates BP, BPI Tech and FMI. By attacking the Roth family, the Defendants' disinformation campaign harmed the professional reputations of BP, BPI Tech and FMI; and, thereby, damaged their ability to conduct business going forward.

XIII. ABC Defendants' Disinformation Campaign Was Widely Criticized By Beef Experts, Food Safety Organizations and Government Officials

380. The ABC Defendants have repeatedly taken credit for the impact of its coverage of BPI and LFTB. At the start, Sawyer described ABC's coverage as a "startling ABC News investigation." (3/7/12, World News, Sawyer, Ex. 2.) ABC subsequently announced that its investigation of "pink slime" had "sparked a grassroots movement." (3/16/12, World News, Ex. 7.) ABC boasted that "Jim Avila has been on this story from the very beginning." (3/21/12, World News, Ex. 9.) ABC even took credit for the longevity of its coverage, with Sawyer introducing one broadcast by describing "[t]he story we've been reporting over the past weeks." (3/29/12, World News, Sawyer, Ex. 11.)

381. Whenever major events developed during the disinformation campaign, ABC took credit for those events. On March 21, 2012, Sawyer introduced ABC's coverage by announcing that there was "[a] major change at your supermarket **after the World News investigation** into the inexpensive filler commonly known as pink slime." (3/21/12, World News, Sawyer, Ex. 9.) On March 26, 2012, when announcing that BPI was closing down three

plants, Sawyer proclaimed that there was a “major development tonight after **our investigation** of that filler critics call pink slime.” (3/26/12, World News, Sawyer, Ex. 10.)

382. Even after ABC ceased its nightly campaign against BPI and LFTB, the ABC Defendants continued to take credit for the results of its coverage. On May 3, 2012, Nancy Huehnergath of the New York State Healthy Eating Alliance commented that ABC’s coverage contributed to creating a “perfect storm” against BPI. In response, Avila stated that he “[h]ope[s] it’s not [the] last perfect storm.” (5/3/12, Twitter, Avila, Ex. 27.) He then went on to plug his next series of stories about the meat industry.

383. Others have not shared the ABC Defendants’ enthusiasm for what Defendants accomplished during the disinformation campaign. ABC’s coverage of BPI and LFTB has been criticized by various groups and individuals. For example, beef and food safety experts have made the following comments about ABC’s coverage of BPI and LFTB:

- a. “ABC World News ran a story yesterday focused on the claims of two disgruntled scientists formerly with USDA. These men deride Lean Finely-Textured Beef (LFTB) as nothing but ‘pink slime.’ **However, there’s nothing that is scientific or factual about their claims.**” (3/8/12 NMA Press Release, Ex. 76.)
- b. “[David Theno] was among those who emerged Thursday wondering how boneless lean beef trimmings by South Dakota-based Beef Products Inc. (BPI) could be so maligned by name-calling. **‘It is so far off base, it’s just incredible,’** Theno told Food Safety News.” (3/9/12 FSN Article, Ex. 77.)
- c. “On Wednesday, ABC World News Tonight reported that 70 percent of the hamburger sold in America contains the BPI ingredient as a ‘filler,’ **which the network incorrectly said is not meat.**” (3/9/12 FSN Article, Ex. 77.)
- d. “Today the news is all about Lean Fine-Textured Beef (LFTB) or ‘pink slime’ as ABC has boldly labeled it. To hear Diane Sawyer describe it, ABC News has completed an exhaustive ‘investigation’ to protect you from exposure to something that is presented as another vile and devious plot of the beef industry **Never mind that the information**

provided was false and misleading.” (3/14/12 Acuff/Cross Article, Ex. 79.)

- e. “Congratulations, ABC World News. Your relentless coverage and **uninformed criticism** of a safe and wholesome beef product has now delivered a hook for yet another nightly news broadcast.” – American Meat Institute President J. Patrick Boyle (3/26/12 AMI Statement, Ex. 84.)
- f. “Lean finely textured beef has been processed for two decades, blended into ground beef at very low levels to enhance the leanness of ground beef and safely consumed. But **the frenzy of misinformation** that has swirled during the last several weeks gives new meaning to Winston Churchill’s great quote, ‘A lie gets half way around the world before the truth has a chance to get its pants on.’” – American Meat Institute President J. Patrick Boyle (3/26/12 AMI Statement, Ex. 84.)
- g. “From NCL’s standpoint, the record must be corrected. The public has been **ill-served by faulty information** about this product that was based on conclusions of those who are not experts in food safety.” (3/28/12 NCL Statement, Ex. 86.)
- h. “‘Basically, **it’s a good (product) getting a bad rap** right now,’ said Joe Cordray, an Iowa State University animal science professor and meat safety expert.” (4/1/12 WCF Courier Article, Ex. 91.)
- i. “Unfortunately, the debate over lean, finely textured beef (LFTB) has been **grossly distorted by careless and deliberate disinformation**, which has spread like wildfire. The news media’s use of the term ‘pink slime’ has been inflammatory and entirely inaccurate—and has done the public a disservice.” (4/21/12 Cross Article, Ex. 90.)
- j. “The petition was created only one day before Jim Avila of ABC News began a series of stories attacking BPI. The series, **which has been widely discredited and accused of unfairly smearing BPI by propagating misleading information**, drew an average audience of more than 7.5 million viewers. The story is most remarkable in that its traction has been so reliant upon the use of duplicitous information and dysphemisms like ‘pink slime.’” (June/July 2012 Food Quality Article, Ex. 99.)

384. Beef and food safety experts are not alone in criticizing the disinformation campaign pursued by the Defendants. Several governors and members of Congress have likewise spoken out against ABC’s coverage of BPI and LFTB. For example:

- a. Representative Tim Huelskamp (Kansas): “I rise today to join my colleagues in expressing my frustration with **ABC News’ muckraking ‘journalism’** that has forced the closure of a plant employing more than 200 people in my district.” (3/29/12 Huelskamp Statement, Ex. 100.)
- b. Governor Sam Brownback (Kansas): “You know, as Governor Branstad was saying, we’re trying to get people to eat better and now what is going to happen because of this **unmerited, unwarranted food scare**, and that’s what this is, is unmerited, it is unwarranted and it’s a food scare.” (3/29/12 Brownback Statement, Ex. 101.)
- c. Representative Steven King (Iowa): “Over the past several weeks, a great deal of disinformation has been disseminated to the public regarding the high quality lean, finely textured beef (LFTB) that is produced by companies like Beef Products Incorporated (BPI) and used by meat processors across the marketplace. Given the **tremendous amount of simply incorrect information** that has been released to the public about LFTB, it is no surprise that some consumers have begun to question the quality of this product. However, we understand the truth: LFTB is 100-percent beef, safe, and cost-effective.” (4/18/12 King/Vilsack Letter, Ex. 102.)

385. The impact of the Defendants’ disinformation campaign on BPI has also not been overlooked by beef and food safety experts. Several of these organizations have publicly stated that ABC’s coverage caused the decline in demand for LFTB, the subsequent loss of business for BPI, and the layoff of hundreds of employees. (*See, e.g.*, 3/26/12 AMI Statement, Ex. 84; 3/28/12 NCL Statement, Ex. 86.)

386. Representative Huelskamp perhaps captured the impact of ABC’s coverage best when he made the following statement: “What we have before us is a perfect example of mainstream media completely disconnected from reality. In a quest for accolades and attention, reporters, talking heads, and morning talk show hosts at ABC have made it their intention to drive Beef Products, Inc. (BPI) out of business. And they may have succeeded.” (3/29/12 Huelskamp Statement, Ex. 100.)

387. The impact of the Defendants’ disinformation campaign extends beyond BPI. In the end, the decline in demand for LFTB caused by Defendants’ disinformation campaign will

hurt the very individuals who were misled by Defendants—consumers. LFTB is a lean beef that processors were using to produce a more affordable lean ground beef. The price of lean ground beef will likely go up as a result of the “backlash” against LFTB created by the Defendants’ disinformation campaign. (5/10/12 Plain Interview, Ex. 103; 4/24/12 Beef Magazine Article, Ex. 104.)

**CATEGORY ONE: DEFAMATION COUNTS FOR FALSE STATEMENTS
(COUNTS I-IX)**

COUNT I (1)

**Defamation Against ABC, ABC News, Sawyer, Avila, Kerley, And Zirnstein
For False Statements That LFTB Is “Pink Slime”**

388. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

389. On March 7, 2012, and continuing through April 3, 2012, Defendants ABC, ABC News, Sawyer, Avila, Kerley, and Zirnstein published and/or republished multiple false statements that called, described, or referred to LFTB as “pink slime.” Defendants called, described, or referred to LFTB as “pink slime” 137 times during the disinformation campaign.

390. First, Defendants ABC and ABC News published false statements in segment titles and online report titles that called, described, or referred to LFTB as “pink slime.” These false statements include but are not limited to:

- a. Segment Title: “**Pink Slime** and You” (3/7/12, World News)
- b. Segment Title: “**Pink Slime**: Tips for Checking Your Beef” (3/8/12, World News)
- c. Segment Title: “**‘Pink Slime’** Outrage: Beef Industry Responds” (3/9/12, World News)
- d. Segment Title: “**‘Pink Slime’** in School Cafeterias, Supermarkets” (3/15/12, World News)
- e. Segment Title: “**‘Pink Slime’** Taste Test” (3/16/12, World News)
- f. Segment Title: “**‘Pink Slime’**: Safeway Pulls Meat Filler From Shelves” (3/21/12, Good Morning America)
- g. Segment Title: “**‘Pink Slime’** Discontinued at Safeway” (3/21/12, World News)
- h. Segment Title: “**‘Pink Slime’** Manufacturer Suspends Operations” (3/26/12, World News)

- i. Segment Title: “**‘Pink Slime’** Factory: a Look Inside” (3/29/12, World News)
- j. Segment Title: “**‘Pink Slime’** Labels on Ground Beef Packaging” (4/3/12, World News)
- k. Online Report Title: “70 Percent of Ground Beef at Supermarkets Contains **‘Pink Slime’**” (3/7/12, ABC Online)
- l. Online Report Title: “Is **Pink Slime** in the Beef at Your Grocery Store?” (3/8/12, ABC Online)
- m. Online Report Title: “Where You Can Get **‘Pink-Slime’**-Free Beef” (3/9/12, ABC Online)
- n. Online Report Title: “**‘Pink Slime’** Will Be a Choice for Schools” (3/14/12, ABC Online)
- o. Online Report Title: “Schools Can Opt Out of **‘Pink Slime’** Beef” (3/15/12, ABC Online)
- p. Online Report Title: “**‘Pink Slime’** Taste Test” (3/16/12, ABC Online)
- q. Online Report Title: “Safeway to Stop Selling **‘Pink Slime’** Textured Beef” (3/21/12, ABC Online)
- r. Online Report Title: “Safeway, SUPERVALU and Food Lion to Stop Selling **‘Pink Slime’** Beef” (3/21/12, ABC Online)
- s. Online Report Title: “Where to Get **‘Pink-Slime’**-Free Beef” (3/21/12, ABC Online)
- t. Online Report Title: “‘Dude, It’s Beef!’: Governors Tour Plant, Reject **‘Pink Slime’** Label” (3/29/12, ABC Online)
- u. Online Report Title: “Are LFTB or **‘Pink slime’** Safety Claims Meaningful to Consumers?” (4/3/12, ABC Online)
- v. Online Report Title: “BPI Endorses USDA Voluntary Labeling of LFTB or **‘Pink Slime’**” (4/3/12, ABC Online)

391. Second, Defendants ABC, ABC News, Sawyer, Avila, Kerley, and Zirnstein published false statements during news broadcasts, in online reports, and in social media positions that called, described, or referred to LFTB as “pink slime.” These false statements include but are not limited to:

- a. Jim Avila: “It’s in 70 percent of the ground beef sold at supermarkets, up to 25 percent of each American hamburger patty, a cheap filler known as **pink slime**.” (3/8/12, World News, Avila)
- b. Candace Smith (Consumer): “There’s no way to know even from labels and from the butchers here whether or not it contains that **pink slime**.” (3/8/12, World News)
- c. Jim Avila: “We e-mailed the top ten grocers in America. Publix, Costco, H-E-B, and Whole Foods assured us they don’t use **pink slime**. No word yet from the rest. But know this. If your meat is stamped USDA organic, it’s pure meat, no questionable filler. But everything else is suspect say critics, because **pink slime** does not have to appear on the label, and the USDA is giving no indication it will force meatpackers to lift the veil of secrecy any time soon.” (3/8/12, World News, Avila)
- d. Diane Sawyer: “We are back on the case tonight. An ABC News investigation of the filler called **pink slime** in 70 percent of the ground beef sold at supermarkets in this country.” (3/9/12, World News, Sawyer)
- e. Jim Avila: “But most Americans get their ground beef at supermarkets, and our viewers want to know if **pink slime** lurks in the beef sold here.” Amber Neeley (Consumer): “What 30 percent of meat doesn’t contain **pink slime**?” (3/9/12, World News, Avila)
- f. Jim Avila: “Safeway would only say the government says the filler is safe, but they’re reviewing their own policy. These stores say their beef contains no **pink slime** at all.” (3/9/12, World News, Avila)
- g. Jim Avila: “Critics say **pink slime** is more like gelatin than beef and less nutritious. But BPI, its inventor and primary manufacturer, tells ABC News in a letter from its lawyer today it is ‘USDA-approved beef’ and is ‘nutritious,’ and the American Meat Institute insists **pink slime** is ‘not an additive, so no label is necessary.’ What’s being hidden here?” (3/9/12, World News, Avila)
- h. Robin Roberts (Anchor): “**Pink slime**, before you go, because that’s been getting in the news a lot, and it’s processed meat mixed with ammonia that we are seeing in supermarkets more and more.” (3/13/12, Good Morning America)
- i. Anchor: “World News getting answers, as you know, for the last week here. Diane and the team reporting on that pink slime in ground beef, that **filler** used to pump up the meat.” (3/15/12, World News)
- j. David Kerley: “Thousands of you posted questions.” A Voice: “Which retail chains carry it?” David Kerley: “Demanding answers.” A Voice:

“Which brands are not putting **pink slime** in their beef products?” (3/15/12, World News, Kerley)

- k. David Kerley: “Parents, schools, state officials, insisting the government do something about **pink slime**, trimmings which are slightly cooked, spun down to remove fat, and sprayed with ammonia, and added back into ground beef. Today, action. The USDA announcing that due to consumer demand, it will offer a choice to schools. They can buy patties with or without **pink slime**, also known as lean, finely textured beef.” (3/15/12, World News, Kerley)
- l. David Kerley: “With 70 percent of the supermarket ground beef containing **pink slime** and only two chains admitting they use it, how are you to know what’s in your beef? For a week ABC News and Jim Avila have asked the beef industry that question.” (3/15/12, World News, Kerley)
- m. David Muir (Anchor): “For more than a week now, you know we’ve been reporting here on **pink slime**, that filler used in your ground beef.” (3/16/12, World News)
- n. David Kerley: “We sent Melissa Baines, a mother of three, to her local store on the hunt for beef with so called **pink slime**.” Melissa Baines (Consumer): “Nothing about the ingredients or if it has that **pink slime** in it.” David Kerley: “So she asked her butcher.” Melissa Baines (Consumer): “About the **pink slime** in the meat?” Butcher: “We don’t use it.” (3/16/12, World News, Kerley)
- o. David Kerley: “J.M. Hirsch is the food editor for the Associated Press and a cookbook author who wanted to know, is there a difference between meat with and without the **pink slime**?” (3/16/12, World News, Kerley)
- p. Josh Elliot (Anchor): “We begin now with that breaking news about **pink slime**, the filler used to pump up meat.” (3/21/12, World News)
- q. Jim Avila: “When we first broke this story, the USDA told ABC News consumer pressure would have to move individual grocery stores to change their **pink slime** policy. And it looks like that may be happening.” (3/21/12, GMA, Avila)
- r. Jim Avila: “Critics, including former USDA scientists, who called it more gelatin than ground beef, contend the ammonia-treated **pink slime**, made from low quality scraps once used for dog food and cooking oil, is less nutritious than pure ground beef.” (3/21/12, GMA, Avila)
- s. Jim Avila: “70 percent of all store bought ground beef contained **pink slime**, but since ABC News exposed its widespread use, many grocery stores have told shoppers their meat counters are free of the mixture.

Safeway now joins Publix, H-E-B, Whole Foods and Costco, promising their ground beef is additive free. No **pink slime**.” (3/21/12, GMA, Avila)

- t. Jim Avila: [video screen graphic behind Avila displays phrase **PINK SLIME BANNED**] “And the USDA announced last week that it will disclose to school districts which of its suppliers use **pink slime** so administrators can decide whether to purchase it at schools.” (3/21/12, World News, Avila)
- u. Diana Sawyer: “The nation’s second largest chain, Safeway; the third largest Supervalu and the Food Lion chain, all announcing they will stop selling beef with **pink slime**.” (3/21/12, World News, Sawyer)
- v. Jim Avila: “So the butcher here at Safeway says he has no idea if the ground beef there has **pink slime** in it.” (3/21/12, World News, Avila)
- w. Gerald Zirnstein: “It’s a **pink slime**. It’s not fresh ground beef.” (3/21/12, World News, Zirnstein)
- x. Jim Avila: “Safeway, Supervalu and Food Lion now join Publix, H-E-B, Whole Foods, and Costco, promising their ground beef contains no **pink slime**. What’s next? Now, Kroger is providing answers to shoppers who ask which of its beef is **pink slime** free And finally tonight, an answer from corporate Walmart headquarters. They say they do use **pink slime** in their meat, but soon will offer customers an option.” (3/21/12, World News, Avila)
- y. Diane Sawyer: “So Jim, let me understand what Kroger is saying. For the first time, they are going to answer your question if you ask at the butcher counter what has **pink slime** in it and what doesn’t?” Jim Avila: “Absolutely. They say that the butcher has a list now and he will tell you which of the meats have **pink slime** in it.” (3/21/12, World News, Avila, Sawyer)
- z. Jim Avila: “An emotional day that ended with the governors chomping down on BPI provided burgers, complete with LFTB they are trying to protect, the **pink slime** critics want clearly identified at their supermarkets.” (3/29/12, World News, Avila)
- aa. Jim Avila: “But BPI, now bowing to consumer pressure and endorsing a huge move by the USDA; voluntary labeling of LFTB or **pink slime**” (4/3/12, World News, Avila)
- bb. Jim Avila: “BPI’s surprising reversal? The maker of LFTB, or **pink slime**, signed on to the USDA labeling move, saying it will ‘pave the way for BPI’s lean beef to reestablish its place in the market.’ And Cargill, one of the nation’s largest ground beef producers, today asked the USDA for

permission to give it the option to label its ground beef as containing a similar **filler**.” (4/3/12, World News, Avila)

- cc. Jim Avila: “‘**Pink slime**’ is beef trimmings. Once only used in dog food and cooking oil, the trimmings are now sprayed with ammonia so they are safe to eat and added to most ground beef as a cheaper filler.” (3/7/12, ABC Online, Avila)
- dd. Jim Avila: “The ‘**pink slime**’ is made by gathering waste trimmings, simmering them at a low heat so the fat separates easily from the muscle, and spinning the trimmings using a centrifuge to complete the separation. Next, the mixture is sent through pipes where it is sprayed with ammonia gas to kill bacteria.” (3/7/12, ABC Online, Avila)
- ee. Jim Avila: “The ‘**pink slime**’ does not have to appear on the label because, over the objections of its own scientists, USDA officials with links to the beef industry labeled it meat.” (3/7/12, ABC Online, Avila)
- ff. Jim Avila: “ABC News has learned the woman who made the decision to OK the mix is a former undersecretary of agriculture, Joann Smith. It was a call that led to hundreds of millions of dollars for Beef Products, Inc., the makers of **pink slime**.” (3/7/12, ABC Online, Avila)
- gg. Jim Avila: “‘**Pink slime**,’ a cheap meat filler, is in 70 percent of the ground beef sold at supermarkets and up to 25 percent of each American hamburger patty, by some estimates.” (3/8/12, ABC Online, Avila)
- hh. Jim Avila: “‘It kind of looks like play dough,’ said Kit Foshee, who was a corporate quality assurance manager at Beef Products, Inc., the company that makes **pink slime**. ‘It’s pink and frozen, it’s not what the typical person would consider meat.’” (3/8/12, ABC Online, Avila, Foshee)
- ii. Jim Avila: “Many, like Dale Rittenhouse, wanted to know where beef with **pink slime** was sold. ‘What stores use **pink slime**?’ Rittenhouse wrote.” (3/8/12, ABC Online, Avila)
- jj. Jim Avila: “A viewer, Miles Herbert, wanted to know, ‘Is there any evidence that organic meat contains this **pink slim (sic)**?’ It turns out there isn’t. If your meat is stamped USDA Organic, it’s pure meat with no filler. But critics say everything else is suspect because **pink slime** does not have to appear on the label. And the USDA is giving no indication it will force meat packers to lift the veil of secrecy any time soon.” (3/8/12, ABC Online, Avila)
- kk. Jim Avila: “But Kit Foshee, who, until 2001, was a corporate quality assurance manager at BPI, the company that makes **pink slime**, contends the trimmings bear little resemblance to beef.” (3/9/12, ABC Online, Avila)

- ll. Jim Avila: “The company calls the product ‘Finely Textured Lean Beef.’ Foshee said it was not as nutritious as ground beef because the protein comes mostly from connective tissue, not muscle meat. But BPI, its inventor and primary manufacturer, told ABC News in a letter from a lawyer today that **pink slime** was USDA approved beef and was nutritious.” (3/9/12, ABC Online, Avila)
- mm. Jim Avila: “Many, like Dale Rittenhouse, wanted to know where beef with **pink slime** was sold. ‘What stores use **pink slime**?’ Rittenhouse wrote. So ABC News producers traveled across the country to the meat section of grocery stores to see if it’s in the ground beef they sell. At most stores it was impossible to tell for sure whether the beef contained **pink slime**.” (3/9/12, ABC Online, Avila)
- nn. Ben Forer (Production Associate): “‘It kind of looks like play dough,’ said Kit Foshee, who, until 2001, was a corporate quality assurance manager at Beef Products, Inc., the company that makes ‘**pink slime**.’ ‘It’s pink and frozen, it’s not what the typical person would consider meat.’” (3/14/12, ABC Online, Foshee)
- oo. Ben Forer (Production Associate): “There is only one way to know for certain that ‘**pink slime**’ is not in your beef: If your meat is stamped USDA Organic, it’s pure meat with no filler. Otherwise, you can’t know from the packaging because ‘**pink slime**’ does not have to appear on the label. And the USDA is giving no indication it will force meat packers to lift the veil of secrecy any time soon.” (3/14/12, ABC Online)
- pp. Jim Avila: “But what about grocery stores, where 70 percent of the beef sold contains ‘**pink slime**’? The USDA claims it can’t do anything about the lack of labeling that hides the filler in your ground beef.” (3/15/12, ABC Online, Avila)
- qq. Jim Avila: “[C]ritics, including former USDA scientists, contend the ammonia treated ‘**pink slime**’ — made from low quality scraps once used for dog food and cooking oil — is less nutritious than pure ground beef.” (3/21/12, ABC Online, Avila)
- rr. Jim Avila: “Seventy percent of all store bought ground beef contained ‘**pink slime**,’ but since ABC News exposed its widespread use many grocery stores have told shoppers their meat counters are free of the mixture.” (3/21/12, ABC Online, Avila)
- ss. Jim Avila: “In response to our coverage, ABC News has been flooded with questions from concerned viewers about **pink slime**. Many wanted to know whether it was in ground turkey or chicken, it is not. **Pink slime** is only being added to beef products, primarily ground beef, but it is also in some processed meats.” (3/21/12, ABC Online, Avila)

- tt. Jim Avila: “Viewer, Miles Herbert, wanted to know, ‘Is there any evidence that organic meat contains this **pink slime**?’” (3/21/12, ABC Online, Avila)
- uu. Jim Avila: “Otherwise, you can’t know from the packaging because **pink slime** does not have to appear on the label.” (3/21/12, ABC Online, Avila)
- vv. Ben Forer (Production Associate): “Costco told ABC News it does not use ‘**pink slime**.’” (3/21/12, ABC Online)
- ww. Ben Forer (Production Associate): “[Publix has] never allowed the use of LFTB (**pink slime**) in our meat.” (3/21/12, ABC Online)
- xx. Ben Forer (Production Associate): “Tops Markets told ABC News it does not use ‘**pink slime**.’” (3/21/12, ABC Online)
- yy. Ben Forer (Production Associate): “‘Going forward, [Gerrity’s Supermarkets has] informed our suppliers that we will not purchase any fresh beef from them unless they certify that there is no **pink slime** present.’” (3/21/12, ABC Online)
- zz. Jim Avila: “After two weeks of no comments, Beef Products Inc., the maker of ‘lean, finely textured beef,’ a product now known by the critics’ term for it, ‘**pink slime**,’ came out swinging today during a news conference to announce the temporary closing of several facilities.” (3/26/12, ABC Online, Avila)
- aaa. Jim Avila: “The mother of **pink slime**. USDA official w/ ties to beef industry-allowed in all ground beef-stores, schools everywhere. Tnite. @ABCWorldNews.” (3/7/12, Twitter, Avila)
- bbb. Jim Avila: “**Pink Slime** and You -- @JimAvilaABC investigates the widespread use of this specially treated filler meat.” (3/7/12, Twitter, Avila)
- ccc. Jim Avila: “@travarp no one said this slime is dangerous. It’s just not what it purports to be. Meat. And if it’s in ground beef it should be labeled.” Travis Arp: “that’s the thing, it isn’t ‘slime’ at all. Its small pieces of lean beef. You thaw it, and it looks like any other trimming.” Jim Avila: “@travarp not my word. Coined by USDA scientist who recommended against (sic) its use. He called it **pink slime**. And says it’s a food fraud.” (3/7/12, Twitter, Avila)
- ddd. Jim Avila: “How can u be sure u r not eating **pink slime**?” (3/8/12, Twitter, Avila)

- eee. Diane Sawyer: “So much buzz: @JimAvilaABC investigates ‘**pink slime**’ in 70% of ground beef –abcn.ws/xeO72F Tackling your Qs tonight on @ABCWorldNews.” (3/8/12, Twitter, Sawyer)
- fff. Jim Avila: “Tracking **pink slime**, who uses it & how to stay away from it. Asking meat institute, if they are so proud of it, show it to us @ABCWorldNews.” (3/9/12, Twitter, Avila)
- ggg. Jim Avila: “Good news USDA says schools to be told which ground beef has **pink slime** bad news groceries still don’t have to tell USDA says u have to ask.” (3/14/12, Twitter, Avila)
- hhh. Jim Avila: “Partial [#PinkSlime](#) victory. [@USDA](#) will provide schools with a choice to order product either with or without Lean Finely Textured Beef.” (3/15/12, Twitter, Avila)
- iii. Jim Avila: “Partial **pink slime** victory, USDA takes action. “Due to customer demand, the department will be adjusting... <http://fb.me/1sjhl5zu8>.” (3/15/12, Twitter, Avila)
- jjj. Jim Avila: “Finished taping a segment with [@andersoncooper](#) for his talk show on [#PinkSlime](#) along with [@thelunchtray](#). Stay tuned for air date [@ABC](#).” (3/15/12, Twitter, Avila)
- kkk. David Kerley: “@chucktodd asked me who I picked in March Madness. I was too busy working **Pink Slime** to make picks.” (3/16/12, Twitter, Kerley)
- lll. Jim Avila: “As I asked meat institute and bpi, if **pink slime** is good for you, and safe, why not market it as such. Label it, disclose it, don’t hide it.” (3/17/12, Twitter, Avila)
- mmm. Jim Avila: “Safeway, country’s second largest grocery store bows to consumer pressure and eliminates [#pinkslime](#) from all 1400 stores.” (3/20/12, Twitter, Avila)
- nnn. Jim Avila: “Safeway drops **pink slime**, who is next and why has wal-mart refused to comment on whether its ground beef contains... <http://fb.me/CBn5wUIs>.” (3/21/12, Twitter, Avila)
- ooo. Jim Avila: “[@Safeway](#) drops [#Pinkslime](#). Why has [@Walmart](#) refused to comment whether its ground beef contains controversial filler. Tonight [@ABCWorldNews](#).” (3/21/12, Twitter, Avila)
- ppp. Jim Avila: “Fast and furious Store after store dropping **pink slime**. Not just Safeway. Complete list tonight on [@ABCWorldNews](#).” (3/21/12, Twitter, Avila)

- qqq. Jim Avila: “@brentkobayashi interestingly enough before **pink slime** USDA inspectors called it Solyent (sic) pink.” (3/21/12, Twitter, Avila)
- rrr. Jim Avila: “@thelunchtray will Walmart change it’s (sic) policy. Right now only saying will offer choice of **pink slime** free but hasn’t said how we will know.” (3/22/12, Twitter, Avila)
- sss. Jim Avila: “[#pinkslime](#) makers close 3 plants after consumer concern cuts demand. Blame social media and abc. Surprised by public reaction to label it.” (3/26/12, Twitter, Avila)
- ttt. Jim Avila: “**Pink slime** maker says safe and nutritious. Critics disagree.” (3/27/12, Twitter, Avila)
- uuu. Jim Avila: “I’ll be on [@Anderson](#) tmrw chatting w/ [@AndersonCooper](#) about the latest in my [#pinkslime](#) investigation.” (3/28/12, Twitter, Avila)
- vvv. Jim Avila: “I’m inside plant where Beef Products Inc **makes what critics call #pinkslime**.” (3/29/12, Twitter, Avila)
- www. Jim Avila: “I went inside the plant where the ground beef ‘**pink slime**’ **filler** is made.” (3/31/12, Twitter, Avila)
- xxx. Jim Avila: “**Pink slime** certainly in public consciousness [#pinkslime](#).” (4/3/12, Twitter, Avila)
- yyy. Jim Avila: “Finishing touches on huge **pink slime** decision by USDA, now you’ll know whats in it & hear what maker has to say about it [@ABCWorldNews](#) tnite.” (4/3/12, Twitter, Avila)
- zzz. Jim Avila: “Partial **pink slime** victory, USDA takes action.” (3/15/12, Facebook, Avila)
- aaaa. David Kerley: “A bit of World News action. **Pink Slime** and the USDA takes action, but maybe not as much as many of you wanted.” (3/16/12, Facebook, Kerley)
- bbbb. Jim Avila: “Safeway drops **pink slime**, who is next and why has wal-mart refused to comment on whether its ground beef contains the controversial filler?” (3/21/12, Facebook, Avila)
- cccc. Jim Avila: “Finishing touches on huge **pink slime** decision by USDA, now you will know whats in it....” (4/3/12, Facebook, Avila)

392. Third, Defendants ABC, ABC News, Sawyer, and Avila republished false statements by others during news broadcasts and in online reports that called, described, or referred to LFTB as “pink slime.” These false statements include but are not limited to:

- a. Diane Sawyer: “Now, a startling ABC News investigation. A whistleblower has come forward to tell consumers about the ground beef a lot of us buy at the supermarket. Is it what we think it is or, is it padded with a filler **the whistleblower calls pink slime**”? (3/7/12, World News, Sawyer)
- b. Jim Avila: “Gerald Zirnstein grinds his own hamburger these days. Why? Because this former USDA scientist and, now whistleblower, knows that 70 percent of the ground beef we buy at the supermarket contains **something he calls pink slime**. Beef trimmings that were once only used in dog food and cooking oil, now sprayed with ammonia to make them safe to eat and then added to most ground beef as a cheaper filler. It was Zirnstein who, in a USDA memo, **first coined the term pink slime** and is now coming forward to say he won’t buy it.” (3/7/12, World News, Avila)
- c. Jim Avila: “And it doesn’t have to appear on the label because, over the objections of its own scientists, **USDA officials with links to the beef industry label pink slime** meat.” (3/7/12, World News, Avila)
- d. Diane Sawyer: “Last night, a whistleblower told us about **what he’s calling pink slime**, a kind of filler used to pump up the volume of meat. Our report sparked an avalanche of e-mails from you, and today we ask ABC’s Senior National Correspondent Jim Avila to tackle some of them, including your number one question, how to tell if there’s **pink slime** in your dinner.” (3/8/12, World News, Sawyer)
- e. Emily Anderson (Consumer): “Which grocery stores near me do or don’t sell ground beef that contains ammonia treated **pink slime**?” (3/8/12, World News)
- f. Nicole Carpentiere (Consumer): “How can consumers find out which retailers do use this **pink slime**?” (3/8/12, World News)
- g. Jim Avila: “America’s second-largest grocery chain, Safeway with 1,400 stores, announced overnight it will no longer sell what the meat industry calls lean finely textured beef, **nicknamed pink slime by USDA scientists**.” (3/21/12, GMA, Avila)
- h. Jim Avila: “Two weeks ago, I went into this Safeway and asked if its ground beef contained what the meat industry calls lean finely textured

beef that **a USDA scientist first termed pink slime**. So the butcher here at Safeway says he has no idea if the ground beef there has **pink slime** in it. Corporate headquarters later told us yes, its meat does contain it. But they were reviewing the policy. Fast-forward to today. Safeway announces its meat counter is now free of what former USDA scientists characterize as low quality beef scraps sanitized with ammonia gas.” (3/21/12, World News, Avila)

- i. Diane Sawyer: “A major development tonight after our investigation of that filler **critics call pink slime**, in 70 percent of the ground beef sold at supermarkets.” (3/26/12, World News, Sawyer)
- j. Diane Sawyer: “It involves that meat filler in some ground beef that **critics have called pink slime**.” (3/29/12, World News, Sawyer)
- k. Jim Avila: “This is the pristine meatpacking plant that produces the controversial ground beef filler **first called pink slime by a now former USDA scientist** who toured here a decade ago. Beef Products, Inc. calls it lean finely textured beef or LFTB (sic) and today allowed me to tag along with three meat state governors, Rick Perry of Texas, Sam Brownback of Kansas, Terry Branstad of Iowa on a walkthrough to see first the beef scraps that go up a conveyor belt, then the huge centrifuges of gleaming metal that spin it around, separating the fat from the rest.” (3/29/12, World News, Avila)
- l. Jim Avila: “And Diane, clearly we are here in the middle of meat country, the Missouri river is behind me there over my shoulder, and the meat industry here is hurting and they’re worried because beef sales are, in fact, down all over the country, and they are determined to return **what critics call pink slime** to America’s grocery stores.” (3/29/12, World News, Avila)
- m. Diane Sawyer: “The government responds and takes big action on the filler **critics have called pink slime**.” (4/3/12, World News, Sawyer)
- n. Jim Avila: “30,000 hamburgers on the grill at the BPI picnic rally at Sioux City, Iowa. All loaded with LFTB, or **pink slime as known by critics**. But now what was hidden in these burgers and nearly all ground beef for nearly 20 years may finally be revealed on the package label. The makers of the filler, not backing down on their safety claims.” (4/3/12, World News, Avila)
- o. Jim Avila: “Gerald Zirnstein grinds his own hamburger these days. Why? Because this former United States Department of Agriculture scientist and, now, whistleblower, knows that 70 percent of the ground beef we buy at the supermarket contains **something he calls ‘pink slime’**.” (3/7/12, ABC Online, Avila)

- p. Jim Avila: “Beef Products Inc., maker of the ground beef filler **USDA scientists nicknamed ‘pink slime,’** . . .” (3/27/12, ABC Online, Avila)
- q. Jim Avila: “**Gerald Zirnstein, the former USDA microbiologist who first used the term ‘pink slime’** and recommended against its inclusion in ground beef, said the first problem is that the BPI process begins with warming the meat scraps just enough so they don’t cook but are easier to separate in a centrifuge.” (3/27/12, ABC Online, Avila)
- r. Jim Avila: “‘Ammonia does two things most people don’t realize,’ Zirnstein said. ‘In high levels, it does more than just kill the ... pathogens. It also fixes the color of the meat. So the red meat stays pink.’ **Zirnstein said that is why he coined the phrase, ‘pink slime.’**” (3/27/12, ABC Online, Avila, Zirnstein)
- s. Jim Avila: “Governors from three meat-producing states today defended Beef Products Inc., the company that makes lean finely textured beef, which **now-former USDA scientists nicknamed ‘pink slime,’** after a walk through the company’s plant accompanied by ABC News.” (3/29/12, ABC Online, Avila)
- t. Jim Avila: “Until recently, the lean finely textured beef, **known to critics as ‘pink slime,’** was added to America’s fast food, school lunches and 70 percent of all ground beef sold at grocery stores.” (3/29/12, ABC Online, Avila)
- u. Jim Avila: “BPI, maker of Lean Finely Textured Beef or **‘pink slime,’ as critics call it,** is bowing to consumer pressure and endorsing a huge move by the U.S. Department of Agriculture — the voluntary labeling of LFTB.” (4/3/12, ABC Online, Avila)
- v. Jim Avila: “The makers of Lean Finely Textured Beef, **called ‘pink slime’ by critics,** insist their product is not just a cheaper filler added to fresh ground beef, they say it makes beef safer.” (4/3/12, ABC Online, Avila)

393. On information and belief, Defendant Zirnstein originally published the false statement that LFTB is “pink slime” to the ABC Defendants. Zirnstein provided his express or implied consent to the ABC Defendants to republish his statement, and it was reasonably foreseeable that they would republish his statement.

394. Fourth, Defendants ABC, ABC News, and Avila published false statements during news broadcasts and in online reports that noted BPI's product is commonly or widely known or referred to as "pink slime." These false statements include but are not limited to:

- a. Jim Avila: "Zirnstien and his fellow USDA scientist, Carl Custer, both warned against using what the industry calls lean finely textured beef and is **widely known now as pink slime**. But their government bosses overruled them." (3/7/12, World News, Avila)
- b. Jim Avila: "Applestone says he wouldn't sell or serve his family hamburger mixed with lean finely textured beef, **commonly known as pink slime**, something that's in 70 percent of American ground beef. This picture of the material was sent to ABC News by its maker today. That's the final product that starts with low grade beef trimmings spun in machines and spritzed with ammonia." (3/9/12, World News, Avila)
- c. Diane Sawyer: "A major change at your supermarket after the World News investigation into the inexpensive filler **commonly known as pink slime**. We found that that filler was added to 70 percent of the ground beef sold in this country." (3/21/12, World News, Avila)
- d. Jim Avila: "After two weeks of no on-camera comments as most of America's top grocery stores took what the meat industry calls lean finely textured beef, **widely known as pink slime** off their shelves. Beef Products Inc., its maker, came out swinging today, suspending operations at three out of its four plants, promising to pay all its workers for 60 days while it launches a public relations program designed to restore confidence in its product." (3/26/12, World News, Avila)
- e. Jim Avila: "Zirnstien and his fellow USDA scientist, Carl Custer, both warned against using what the industry calls 'lean finely textured beef,' **widely known as 'pink slime,'** but their government bosses overruled them." (3/7/12, ABC Online, Avila)
- f. Jim Avila: "After an ABC News investigation detailing the use of a cheap meat filler, finely textured lean beef, **commonly called pink slime**, which is in 70 percent of the ground beef sold at supermarkets, J. Patrick Boyle, president of the American Meat Institute, defended the practice as a way to safely use what otherwise would be wasted." (3/9/12, ABC Online, Avila)
- g. Jim Avila: "[Foshee] and two former USDA inspectors told ABC News the filler **commonly referred to as pink slime** comes from a low grade of beef trimmings unlike what they call real ground beef. Foshee said that he was fired by BPI after complaining about the process used to make the

filler, and the company's claims about it. Since then, he has spoken out against the product." (3/9/12, ABC Online, Avila, Foshee, Zirnstein, Custer)

- h. Ben Forer (Production Associate): "ABC News has learned that tomorrow the U.S. Department of Agriculture will announce that starting this fall, schools will be able to choose whether or not they buy hamburger that contains lean finely textured beef **known as 'pink slime.'** The announcement comes one week after ABC News reported on the beef filler **commonly known as 'pink slime,'** which is found in 70 percent of the ground beef sold at supermarkets." (3/14/12, ABC Online)
- i. Jim Avila: "So now school districts which buy beef from the U.S. Department of Agriculture will be told which ground beef is made with up to 25 percent of the highly processed 'lean finely textured beef' which is made from low grade beef scraps spritzed with ammonia gas now **commonly known as 'pink slime.'**" (3/15/12, ABC Online, Avila)
- j. Ben Forer (Production Associate): "Since an ABC News investigation last week, cheap meat filler, finely textured lean beef, **commonly called pink slime,** has been a hot topic for consumers." (3/16/12, ABC Online)
- k. Jim Avila: "Safeway, America's second largest supermarket chain, has announced it will no longer sell what the meat industry calls 'lean finely textured beef' and the **public has come to call 'pink slime.'** (3/21/12, ABC Online, Avila)
- l. Jim Avila: "Safeway, SUPERVALU and Food Lion announced today that they will no longer carry what the meat industry calls 'lean finely textured beef,' something the **public has come to know as 'pink slime.'** (3/21/12, ABC Online, Avila)

395. All of these statements were false because LFTB is not pink slime, which is a noxious, repulsive, and filthy fluid. These statements were unprivileged, and defamatory because they exposed BPI and its product, LFTB, to hatred, contempt, ridicule, obloquy, caused LFTB and BPI to be shunned or avoided, and/or injured BPI's business.

396. Each of these Defendants acted with actual malice. Each Defendant knew that their defamatory statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant's actual

malice include but are not limited to those pled in paragraphs 151-165, 178-188, 201-221, 233-266, and 280-290.

397. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these defamatory statements during their broadcasts and publications.

398. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, Sawyer, Avila, and Kerley retract these defamatory statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

399. As a direct result of each of these Defendants' defamatory statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT II (2)
Defamation Against ABC, ABC News, Avila, Zirnstein, Custer And Foshee
For False Statements That LFTB Is Not Beef Or Meat

400. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

401. On March 7, 2012, and continuing through April 3, 2012, Defendants ABC, ABC News, Avila, Zirnstein, Custer, and Foshee published and/or republished multiple false statements that LFTB is not beef or meat.

402. First, Defendants ABC, ABC News, Avila, Zirnstein, and Custer published false statements during news broadcasts, in online reports, and in social media postings that LFTB is not beef or meat. These false statements include but are not limited to:

- a. Gerald Zirnstein: "It's economic fraud. It's **not – it's not fresh ground beef**. It's a substitute, it's a cheap substitute being added in." (3/7/12, World News, Zirnstein)
- b. Jim Avila: "**Why didn't you consider it beef?**" Carl Custer: "**Because it was a salvage product.**" (3/7/12, World News, Avila, Custer)

- c. Kit Foshee: “It looks kind of like Play-Doh or just something that’s pink and frozen. **It’s not – it’s not what the typical lay person would consider meat.**” (3/8/12, World News, Foshee)
- d. Jim Avila: “But know this. If your meat is stamped USDA organic, **it’s pure meat, no questionable filler.**” (3/8/12, World News, Avila)
- e. A Voice (Gerald Zirnstein): “**It’s not fresh ground beef. It’s a substitute, it’s a cheap substitute being added in.**” (3/21/12, GMA, Zirnstein)
- f. A Voice (Gerald Zirnstein): “**It’s a pink slime. It’s not fresh ground beef.**” (3/21/12, World News, Zirnstein)
- g. Carl Custer: “Because **we didn’t feel it was meat. It was a salvage.**” (3/21/12, World News, Custer)
- h. Gerald Zirnstein: “**It’s not fresh ground beef. It’s a substitute, it’s a cheap substitute being added in.**” (3/26/12, World News, Zirnstein)
- i. Jim Avila: “If your meat is stamped USDA Organic, **it’s pure meat with no filler.** But critics say everything else is suspect because pink slime does not have to appear on the label.” (3/8/12, ABC Online, Avila)
- j. Ben Forer (Production Associate): “There is only one way to know for certain that ‘pink slime’ is not in your beef: **If your meat is stamped USDA Organic, it’s pure meat with no filler.** Otherwise, you can’t know from the packaging because ‘pink slime’ does not have to appear on the label.” (3/14/12, ABC Online)
- k. Jim Avila: “Viewer, Miles Herbert, wanted to know, ‘Is there any evidence that organic meat contains this pink slime?’ It turns out there isn’t. **If your meat is stamped USDA Organic, it’s pure meat with no filler.**” (3/21/12, ABC Online, Avila)
- l. Jim Avila: “didn’t say it’s unsafe. Said it is safe **but not grouse (sic) beef.** Eating cardboard is safe too.” (3/8/12, Twitter, Avila)
- m. Jim Avila: “**It is not the same as ground beef;** the company concedes consumers would not recognize it as hamburger. In fact, it has the consistency of a ‘meat jello’ according to a former USDA microbiologist who studied the material.” (4/3/12, ABC Online, Avila, Zirnstein or Custer)
- n. Jim Avila: “@travarp no one said this slime is dangerous. **It’s just not what it purports to be. Meat.** And if it’s in ground beef it should be labeled.” Travis Arp: “that’s the thing, it isn’t ‘slime’ at all. Its small pieces of lean beef. You thaw it, and it looks like any other trimming.”

Jim Avila: “@travarp not my word. Coined by USDA scientist who recommended against (sic) its use. He called it pink slime. And says its a food fraud.” (3/7/12, Twitter, Avila)

403. Second, Defendants ABC, ABC News, and Avila republished false statements during news broadcasts and in online reports that LFTB is not beef or meat. These false statements include but are not limited to:

- a. Jim Avila: “**Two former USDA scientists** who reviewed the product and recommended against its use **say it’s just not the same as ground beef.**” (3/26/12, World News, Avila)
- b. Jim Avila: “‘It’s economic fraud,’ [Gerald Zirnstein] told ABC News. **‘It’s not fresh ground beef.** . . . It’s a cheap substitute being added in.’” (3/7/12, ABC Online, Avila, Zirnstein)
- c. Jim Avila: “According to Custer, **the product is not really beef, but a ‘salvage product** . . . fat that had been heated at a low temperature and the excess fat spun out.’” (3/7/12, ABC Online, Avila, Custer)
- d. Jim Avila: “‘It kind of looks like play dough,’ said **Kit Foshee**, who was a corporate quality assurance manager at Beef Products, Inc., the company that makes **pink slime**. ‘It’s pink and frozen, **it’s not what the typical person would consider meat.**’” (3/8/12, ABC Online, Avila, Foshee)
- e. Jim Avila: “But **Kit Foshee**, who, until 2001, was a corporate quality assurance manager at BPI, the company that makes pink slime, contends the trimmings bear little resemblance to beef. ‘It kind of looks like Play-Doh,’ he said. ‘It’s pink and frozen. **It’s not what the typical person would consider meat.**’” (3/9/12, ABC Online, Avila, Foshee)
- f. Jim Avila: “[**Kit Foshee**] and **two former USDA inspectors** told ABC News the filler commonly referred to as pink slime comes from a low grade of beef trimmings **unlike what they call real ground beef**. Foshee said that he was fired by BPI after complaining about the process used to make the filler, and the company’s claims about it. Since then, he has spoken out against the product.” (3/9/12, ABC Online, Avila, Foshee, Zirnstein, Custer)
- g. Ben Forer (Production Associate): “‘It kind of looks like play dough,’ said **Kit Foshee**, who, until 2001, was a corporate quality assurance manager at Beef Products, Inc., the company that makes ‘pink slime.’ ‘It’s pink and frozen, **it’s not what the typical person would consider meat.**’” (3/14/12, ABC Online, Foshee)

- h. Jim Avila: “**It’s not fresh ground beef.** It’s a cheap substitute being added in,’ **microbiologist Gerald Zirnstein said.**” (3/21/12, ABC Online, Avila, Zirnstein)
- i. Jim Avila: “**Two former scientists with the U.S. Department of Agriculture** who reviewed the product advised against using it in ground beef and **told ABC News that it was not the same as ground beef.**” (3/26/12, ABC Online, Avila, Custer, Zirnstein)
- j. Jim Avila: “**It’s not fresh ground beef.** It’s a cheap substitute being added in,’ **microbiologist Gerald Zirnstein said.**” (3/26/12, ABC Online, Avila, Zirnstein)
- k. Jim Avila: “Critics say BPI, which has won food safety awards for its ammoniating process, **overstates the product’s similarity to fresh ground beef,** because of the process it goes through to separate the meat from the fat and to kill bacteria.” (3/27/12, ABC Online, Avila)
- l. Jim Avila: ““Because the ammonia fixes the color into a pink color, **it can, quote, ‘pass’ as red meat, but it’s a low-quality product going into the ground beef.**”” (3/27/12, ABC Online, Avila, Zirnstein)
- m. Jim Avila: ““At that temperature, you increase the level of pathogens and the level of spoilage bacteria,’ Zirnstein told ABC News. **‘In order to turn this into a product they can potentially sell as ‘meat,’ and that’s, [in] quotations, ‘meat,’** they add ammonia.”” (3/27/12, ABC Online, Avila, Zirnstein)

404. On information and belief, Defendants Zirnstein, Custer, and Foshee originally published the false statements that LFTB is not beef or meat to the ABC Defendants. Each of these Defendants provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

405. These statements were false because LFTB is beef and it is meat. These statements were unprivileged, and defamatory because they exposed BPI and its product, LFTB, to hatred, contempt, ridicule, obloquy, caused LFTB and BPI to be shunned or avoided, and/or injured BPI’s business.

406. Each of these Defendants acted with actual malice. Each Defendant knew these defamatory statements were false, or recklessly disregarded their falsity, when they broadcast,

published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165, 201-221, and 280-290.

407. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these defamatory statements during their broadcasts and publications.

408. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their defamatory statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

409. As a direct result of these Defendants' defamatory statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT III (3)
Defamation Against ABC, ABC News, Sawyer, Avila, Kerley, Zirnstein, And Custer
For False Statements That LFTB Is A "Filler" Added To Ground Beef

410. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

411. On March 7, 2012, and continuing through April 3, 2012, Defendants ABC, ABC News, Sawyer, Avila, Kerley, Zirnstein, and Custer published and/or republished multiple false statements that called, described, or referred to LFTB as a "filler" added to ground beef.

412. First, Defendants ABC and ABC News published a false statement in an online segment title that called, described, or referred to LFTB as a "filler" added to ground beef. The segment title was as follows: "'Pink Slime': Safeway Pulls Meat **Filler** From Shelves" (3/21/12, Good Morning America/ABC Online).

413. Second, Defendants ABC, ABC News, Sawyer, Avila, and Kerley published false statements during news broadcasts, in online reports and in social media postings that called,

described, or referred to LFTB as a “filler” added to ground beef. These false statements include but are not limited to:

- a. Diane Sawyer: “A whistleblower has come forward to tell consumers about the ground beef a lot of us buy at the supermarket. Is it what we think it is? Or, is it padded with a **filler** the whistleblower calls pink slime?” (3/7/12, World News, Sawyer)
- b. Jim Avila: “Beef trimmings that were once only used in dog food and cooking oil, now sprayed with ammonia to make them safe to eat and then added to most ground beef as a cheaper **filler**.” (3/7/12, World News, Avila)
- c. Diane Sawyer: “Last night, a whistleblower told us about what he’s calling pink slime, a kind of **filler** used to pump up the volume of meat.” (3/8/12, World News, Sawyer)
- d. Jim Avila: “It’s in 70 percent of the ground beef sold at supermarkets, up to 25 percent of each American hamburger patty, a cheap **filler** known as pink slime.” (3/8/12, World News, Avila)
- e. Jim Avila: “If your meat is stamped USDA organic, it’s pure meat, no questionable **filler**.” (3/8/12, World News, Avila)
- f. Diane Sawyer: “We are back on the case tonight. An ABC News investigation of the **filler** called pink slime, in 70 percent of the ground beef sold at supermarkets in this country.” (3/9/12, World News, Sawyer)
- g. Jim Avila: “Safeway would only say the government says the **filler** is safe but they’re reviewing their own policy.” (3/9/12, World News, Avila)
- h. Anchor: “World News getting answers, as you know, for the last week here. Diane and the team reporting on that pink slime in ground beef, that **filler** used to pump up the meat.” (3/15/12, World News)
- i. David Muir (Anchor): “For more than a week now, you know we’ve been reporting here on pink slime, that **filler** used in your ground beef.” (3/16/12, World News)
- j. David Kerley: “Don’t use what the industry calls lean, finely textured beef, an inexpensive **filler** made with processed beef trimmings spritzed with ammonia.” (3/16/12, World News, Kerley)
- k. Josh Elliot (Anchor): “We begin now with that breaking news about pink slime, the **filler** used to pump up meat.” (3/21/12, World News)

- l. Diane Sawyer: “A major change at your supermarket after the World News investigation into the inexpensive **filler** commonly known as pink slime. We found that that **filler** was added to 70 percent of the ground beef sold in this country.” (3/21/12, World News, Sawyer)
- m. Diane Sawyer: “Since this is a lower cost **filler**, any of these supermarkets promising to keep the price the same or are they going to raise the price?” (3/21/12, World News, Sawyer)
- n. Diane Sawyer: “All right. And we got a lot of e-mails. I know that you’ve been reading them too, people asking is this **filler** in ground turkey is it in chicken, any other product you could find?” (3/21/12, World News, Sawyer)
- o. Diane Sawyer: “A major development tonight after our investigation of that **filler** critics call pink slime, in 70 percent of the ground beef sold at supermarkets.” (3/26/12, World News, Sawyer)
- p. Diane Sawyer: “It involves that meat **filler** in some ground beef that critics have called pink slime.” (3/29/12, World News, Sawyer)
- q. Jim Avila: “This is the pristine meatpacking plant that produces the controversial ground beef **filler** first called pink slime by a now former USDA scientist who toured here a decade ago. Beef Products, Inc. calls it lean finely textured beef or LFTB (sic) and today allowed me to tag along with three meat state governors, Rick Perry of Texas, Sam Brownback of Kansas, Terry Branstad of Iowa on a walkthrough to see first the beef scraps that go up a conveyor belt, then the huge centrifuges of gleaming metal that spin it around, separating the fat from the rest.” (3/29/12, World News, Avila)
- r. Diane Sawyer: “The government responds and takes big action on the **filler** critics have called pink slime.” (4/3/12, World News, Sawyer)
- s. Jim Avila: “30,000 hamburgers on the grill at the BPI picnic rally at Sioux City, Iowa. All loaded with LFTB, or pink slime as known by critics. But now what was hidden in these burgers and nearly all ground beef for nearly 20 years may finally be revealed on the package label. The makers of the **filler**, not backing down on their safety claims.” (4/3/12, World News, Avila)
- t. Jim Avila: “BPI’s surprising reversal? The maker of LFTB, or pink slime, signed on to the USDA labeling move, saying it will ‘pave the way for BPI’s lean beef to reestablish its place in the market.’ And Cargill, one of the nation’s largest ground beef producers, today asked the USDA for permission to give it the option to label its ground beef as containing a similar **filler**.” (4/3/12, World News, Avila)

- u. Jim Avila: “Since the first of the year, McDonald’s and other fast food stores have dropped LFTB. The USDA has identified which products contain the **filler** for school districts, grocery stores have pulled it from shelves, and now for the first time, what is inside the beef will be labeled on the outside. Jim Avila, ABC News, Washington.” (4/3/12, World News, Avila)
- v. Jim Avila: “‘Pink slime’ is beef trimmings. Once only used in dog food and cooking oil, the trimmings are now sprayed with ammonia so they are safe to eat and added to most ground beef as a cheaper **filler**.” (3/7/12, ABC Online, Avila)
- w. Jim Avila: “‘Pink slime,’ a cheap meat **filler**, is in 70 percent of the ground beef sold at supermarkets and up to 25 percent of each American hamburger patty, by some estimates.” (3/8/12, ABC Online, Avila)
- x. Jim Avila: “A viewer, Miles Herbert, wanted to know, ‘Is there any evidence that organic meat contains this pink slim (sic)?’ It turns out there isn’t. If your meat is stamped USDA Organic, it’s pure meat with no **filler**. But critics say everything else is suspect because pink slime does not have to appear on the label. And the USDA is giving no indication it will force meat packers to lift the veil of secrecy any time soon.” (3/8/12, ABC Online, Avila)
- y. Jim Avila: “After an ABC News investigation detailing the use of a cheap meat **filler**, finely textured lean beef, commonly called pink slime, which is in 70 percent of the ground beef sold at supermarkets, J. Patrick Boyle, president of the American Meat Institute, defended the practice as a way to safely use what otherwise would be wasted.” (3/9/12, ABC Online, Avila)
- z. Jim Avila: “[Foshee] and two former USDA inspectors told ABC News the **filler** commonly referred to as pink slime comes from a low grade of beef trimmings unlike what they call real ground beef. Foshee said that he was fired by BPI after complaining about the process used to make the **filler**, and the company’s claims about it. Since then, he has spoken out against the product.” (3/9/12, ABC Online, Avila, Foshee, Zirnstein, Custer)
- aa. Ben Forer (Production Associate): “ABC News has learned that tomorrow the U.S. Department of Agriculture will announce that starting this fall, schools will be able to choose whether or not they buy hamburger that contains lean finely textured beef known as ‘pink slime.’ The announcement comes one week after ABC News reported on the beef **filler** commonly known as ‘pink slime,’ which is found in 70 percent of the ground beef sold at supermarkets.” (3/14/12, ABC Online)

- bb. Ben Forer (Production Associate): “There is only one way to know for certain that ‘pink slime’ is not in your beef: If your meat is stamped USDA Organic, it’s pure meat with no **filler**. Otherwise, you can’t know from the packaging because ‘pink slime’ does not have to appear on the label.” (3/14/12, ABC Online)
- cc. Ben Forer (Production Associate): “Foshee said he was fired by BPI after complaining about the process used to make the **filler**, and the company’s claims about it. Since then, he has spoken out against the product.” (3/14/12, ABC Online)
- dd. Ben Forer (Production Associate): “At most stores it was impossible to tell for sure whether the beef contained the **filler**.” (3/14/12, ABC Online)
- ee. Jim Avila: “But what about grocery stores, where 70 percent of the beef sold contains ‘pink slime’? The USDA claims it can’t do anything about the lack of labeling that hides the **filler** in your ground beef.” (3/15/12, ABC Online, Avila)
- ff. Ben Forer (Production Associate): “Since an ABC News investigation last week, cheap meat **filler**, finely textured lean beef, commonly called pink slime, has been a hot topic for consumers.” (3/16/12, ABC Online)
- gg. Jim Avila: “Safeway says in a statement ‘considerable consumer concern’ led to its decision even though the chain believes its beef with the controversial **filler** in it is safe.” (3/21/12, ABC Online, Avila)
- hh. Jim Avila: “Viewer, Miles Herbert, wanted to know, ‘Is there any evidence that organic meat contains this pink slime?’ It turns out there isn’t. If your meat is stamped USDA Organic, it’s pure meat with no **filler**.” (3/21/12, ABC Online, Avila)
- ii. Jim Avila: “The scientists added that the **filler** was not as nutritious as ground beef, though the company disputed that.” (3/26/12, ABC Online, Avila, Zirnstein, Custer)
- jj. Jim Avila: “Beef Products Inc., maker of the ground beef **filler** USDA scientists nicknamed ‘pink slime,’” (3/27/12, ABC Online, Avila)
- kk. Jim Avila: “Stung by consumer reaction to the process used by BPI, grocery stores pulled beef containing the **filler** off the shelves and BPI closed three of its four plants for lack of demand.” (3/29/12, ABC Online, Avila)
- ll. Jim Avila: “The makers of Lean Finely Textured Beef, called ‘pink slime’ by critics, insist their product is not just a cheaper **filler** added to fresh ground beef, they say it makes beef safer.” (4/3/12, ABC Online, Avila)

- mm. Jim Avila: “Since the first of the year, McDonalds and other fast food stores have dropped LFTB, the USDA has identified which products contain the **filler** for school districts, grocery stores have pulled it from shelves, and now — for the first time — what is inside the beef will be labeled on the outside.” (4/3/12, ABC Online, Avila)
- nn. Jim Avila: “Pink Slime and You -- @JimAvilaABC investigates the widespread use of this specially treated **filler** meat.” (3/7/12, Twitter, Avila)
- oo. Jim Avila: “I went inside the plant where the ground beef ‘pink slime’ **filler** is made.” (3/31/12, Twitter, Avila)
- pp. Jim Avila: “Safeway drops pink slime, who is next and why has wal-mart refused to comment on whether its ground beef contains the controversial **filler**?” (3/21/12, Facebook, Avila)

414. Third, Defendants ABC, ABC News, and Avila republished false statements during news broadcasts and in online reports that called, described, or referred to LFTB as a “filler” added to ground beef. These false statements include but are not limited to:

- a. Bettina Elias Siegel (Consumer): “It disturbs me that the USDA made a decision that this **filler**, up to 15 percent, doesn’t have to be disclosed.” (3/21/12, World News)
- b. Jim Avila: “Siegel commended the stores that have taken action, but is still concerned. ‘It disturbs me that USDA made a decision that this **filler**, up to 15 percent doesn’t have to be disclosed,’ she told ABC News. ‘Therefore the consumer is at the mercy of each retailer’s decision.’” (3/21/12, ABC Online, Avila)

415. These statements were false because LFTB is not a filler added to ground beef. It is beef. These statements were unprivileged, and defamatory because they exposed BPI and its product, LFTB, to hatred, contempt, ridicule, obloquy, caused LFTB and BPI to be shunned or avoided, and/or injured BPI’s business.

416. Each of these Defendants acted with actual malice. Each Defendant knew these defamatory statements were false, or recklessly disregarded their falsity, when they broadcast,

published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165, 201-221, and 280-290.

417. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these defamatory statements during their broadcasts and publications.

418. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their defamatory statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

419. As a direct result of these Defendants' defamatory statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT IV (4)
Defamation Against ABC, ABC News, Avila And Zirnstein
For False Statements That LFTB Is A "Substitute" For Beef

420. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

421. On March 7, 2012, and continuing through March 26, 2012, Defendants ABC, ABC News, Avila, and Zirnstein published and/or republished multiple false statements that called, described, or referred to LFTB as a "substitute" for beef.

422. First, Defendants ABC, ABC News, and Zirnstein published false statements during news broadcasts that called, described, or referred to LFTB as a "substitute" for beef. These false statements include but are not limited to:

- a. Gerald Zirnstein: "It's economic fraud. It's not – it's not fresh ground beef. It's a substitute, it's a cheap substitute being added in." (3/7/12, World News, Zirnstein)
- b. A Voice (Gerald Zirnstein): "It's not fresh ground beef. It's a substitute, it's a cheap substitute being added in." (3/21/12, GMA, Zirnstein)
- c. Gerald Zirnstein: "It's not fresh ground beef. It's a substitute, it's a cheap substitute being added in." (3/26/12, World News, Zirnstein)

423. Second, Defendants ABC, ABC News, and Avila republished false statements in online reports that called, described, or referred to BPI's product LFTB as a "substitute" for beef.

These false statements include but are not limited to:

- a. Jim Avila: "'It's economic fraud,' [Zirnstein] told ABC News. 'It's not fresh ground beef. . . . It's a cheap substitute being added in.'" (3/7/12, ABC Online, Avila)
- b. Jim Avila: "'It's not fresh ground beef. It's a cheap substitute being added in,' microbiologist Gerald Zirnstein said.'" (3/21/12, ABC Online, Avila)
- c. Jim Avila: "'It's not fresh ground beef. It's a cheap substitute being added in,' microbiologist Gerald Zirnstein said.'" (3/26/12, ABC Online, Avila)

424. On information and belief, Defendant Zirnstein originally published the false statements that called or referred to BPI's product LFTB as a "substitute" for beef. Zirnstein provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

425. These statements were false because LFTB is not a substitute for beef. It is beef. These statements were unprivileged, and defamatory because they exposed BPI and its product, LFTB, to hatred, contempt, ridicule, obloquy, caused LFTB and BPI to be shunned or avoided, and/or injured BPI's business.

426. Each of these Defendants acted with actual malice. Each Defendant knew these defamatory statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165 and 201-221.

427. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these defamatory statements during their broadcasts and publications.

428. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their defamatory statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

429. As a direct result of these Defendants' defamatory statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT V (5)
Defamation Against ABC, ABC News, Avila, And Zirnstein
For False Statements That LFTB Is An "Economic Fraud" Or "Food Fraud"

430. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

431. On March 7, 2012, Defendants ABC, ABC News, Avila, and Zirnstein published and/or republished multiple false statements asserting that selling ground beef with LFTB was an "economic fraud" or "food fraud."

432. First, Defendant Zirnstein published a false statement during a news broadcast asserting that selling ground beef with LFTB was an "economic fraud." For example, Defendant Zirnstein published the following statement: "It's economic fraud. It's not fresh ground beef. It's a cheap substitute being added in." (3/7/12, World News, Zirnstein)

433. Second, Defendants ABC, ABC News, and Avila republished false statements in an online report and social media posting asserting that selling ground beef with LFTB was an "economic fraud" or "food fraud." These false statements include but are not limited to:

- a. Jim Avila: "'It's **economic fraud**,' [Zirnstein] told ABC News. 'It's not fresh ground beef. . . . It's a cheap substitute being added in.'" (3/7/12, ABC Online, Avila, Zirnstein)
- b. Jim Avila: "@travarp no one said this slime is dangerous. It's just not what it purports to be. Meat. And if it's in ground beef it should be labeled." Travis Arp: "that's the thing, it isn't 'slime' at all. Its small pieces of lean beef. You thaw it, and it looks like any other trimming." Jim Avila: "@travarp not my word. Coined by USDA scientist who

recommended against (sic) its use. He called it pink slime. And says its a **food fraud.**” (3/7/12, Twitter, Avila)

434. On information and belief, Defendant Zirnstein originally published the false statements that called or referred to BPI’s product LFTB as an “economic fraud” or “food fraud.” Zirnstein provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

435. These statements were false because BPI has not engaged in any fraud, and selling ground beef with LFTB is not fraud. LFTB is beef and BPI obtained approval from the USDA to include LFTB in ground beef without additional labeling. These statements were unprivileged, and defamatory because they exposed BPI and its product, LFTB, to hatred, contempt, ridicule, obloquy, caused LFTB and BPI to be shunned or avoided, and/or injured BPI’s business.

436. Each of these Defendants acted with actual malice. Each Defendant knew these defamatory statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant’s actual malice include but are not limited to those pled in paragraphs 151-165, 201-221, 233-266, 280-290, and 299-309.

437. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these defamatory statements during their broadcasts and publications.

438. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their defamatory statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

439. As a direct result of these Defendants’ defamatory statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT VI (6)
Defamation Against ABC, ABC News, Avila, Zirnstein And Custer
For False Statements Describing LFTB As Being Produced From
“Waste,” “Low-Quality” Or “Low-Grade” Trimmings Or “Scraps”

440. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

441. On March 7, 2012, and continuing through March 31, 2012, Defendants ABC, ABC News, Avila, Zirnstein, and Custer published and/or republished multiple false statements that described LFTB as being produced from “waste,” “low-quality” or “low-grade” trimmings or “scraps.”

442. First, Defendants ABC, ABC News, and Avila published false statements during news broadcasts, in online reports, and in social media postings that described LFTB as being produced from “waste,” “low-quality,” or “low-grade” trimmings or “scraps.” These false statements include but are not limited to:

- a. Jim Avila: “Those **waste trimmings** are gathered, simmered at low heat to make it easier to separate fat from muscle, put in a centrifuge and spun to finish the separation. Next, the mixture is sent through pipes where it’s sprayed with ammonia gas to kill bacteria” (3/7/12, World News, Avila)
- b. Jim Avila: “The last known glimpse, six years ago, the movie Food, Inc. was given a tour of the factory. The **low-grade trimmings** were once only used in dog food and cooking oil” (3/8/12, World News, Avila)
- c. Jim Avila: “This picture of the material was sent to ABC News by its maker today. That’s the final product that starts with **low grade beef trimmings** spun in machines and spritzed with ammonia.” (3/9/12, World News, Avila)
- d. Jim Avila: “Critics, including former USDA scientists, who called it more gelatin than ground beef, contend the ammonia-treated pink slime, made from **low quality scraps** once used for dog food and cooking oil, is less nutritious than pure ground beef.” (3/21/12, GMA, Avila)

- e. Jim Avila: “Critics say the process, which uses ammonia gas to make meat **scraps** safe for consumption, should be on the label if the product is put in packages of ground beef.” (3/26/12, World News, Avila)
- f. Jim Avila: “The ‘pink slime’ is made by gathering **waste trimmings**, simmering them at a low heat so the fat separates easily from the muscle, and spinning the trimmings using a centrifuge to complete the separation. Next, the mixture is sent through pipes where it is sprayed with ammonia gas to kill bacteria.” (3/7/12, ABC Online, Avila)
- g. Jim Avila: “As seen in the movie Food Inc., the **low-grade trimmings** come from the most contaminated parts of the cow and were once only used in dog food and cooking oil.” (3/8/12, ABC Online, Avila)
- h. Jim Avila: “The **low-grade trimmings** come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter.” (3/9/12, ABC Online, Avila)
- i. Ben Forer (Production Associate): “The **low-grade trimmings** come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter.” (3/14/12, ABC Online)
- j. Jim Avila: “So now school districts which buy beef from the U.S. Department of Agriculture will be told which ground beef is made with up to 25 percent of the highly processed ‘lean finely textured beef’ which is made from **low grade** beef **scraps** spritzed with ammonia gas now commonly known as ‘pink slime.’” (3/15/12, ABC Online, Avila)
- k. Jim Avila: “The **low-grade trimmings** come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter.” (3/21/12, ABC Online, Avila)
- l. Jim Avila: “[C]ritics, including former USDA scientists, contend the ammonia treated ‘pink slime’ — made from **low quality scraps** once used for dog food and cooking oil — is less nutritious than pure ground beef.” (3/21/12, ABC Online, Avila)
- m. Jim Avila: “The **low-grade trimmings** used to produce lean, finely textured beef come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter.” (3/26/12, ABC Online, Avila)
- n. Jim Avila: ““Because the ammonia fixes the color into a pink color, it can, quote, ‘pass’ as red meat, but it’s a **low-quality** product going into the ground beef.”” (3/27/12, ABC Online, Avila, Zirnstein)

- o. Jim Avila: “ABC News joined Branstad, Perry and Kansas Gov. Sam Brownback on a tour of the facilities where beef **scraps**, mostly fat and connective tissue, are processed.” (3/29/12, ABC Online, Avila)
- p. Jim Avila: “@travarp so u know more than microbiologists at USDA who say **scraps** have more contaminants than beef cuts our report based on fact no spin.” (3/7/12, Twitter, Avila)
- q. Jim Avila: “@Dianne93101 USDA does not allow organ meat in ground beef. So no it is not in ltb (sic). It’s **scraps** from close to hide, connective tissue.” (3/31/12, Twitter, Avila)
- r. Jim Avila: “@travarp so have these guys and trust them. **The trimmings have carcass remains as well which contain higher levels of bacteria.** Good night.” (3/7/12, Twitter, Avila)

443. Second, Defendants ABC, ABC News, and Avila republished false statements in a news broadcast and an online report that described LFTB as being produced from “low-quality beef scraps” or “low grade” beef trimmings. For example, Defendant Avila republished the following false statement: “Safeway announces its meat counter is now free of what former USDA scientists characterized as low-quality beef scraps sanitized with ammonia gas.” (3/21/12, World News, Avila) Avila also republished the following false statement: [Foshee] and two former USDA inspectors told ABC News the filler commonly referred to as pink slime comes from a low grade of beef trimmings unlike what they call real ground beef. (3/9/12, ABC Online, Avila).

444. On information and belief, Defendants Zirnstein and Custer originally published the false statements that described BPI’s product LFTB as being produced from “low-quality beef scraps.” Each of these Defendants provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

445. These statements were false because LFTB is made from beef trimmings that come from USDA-inspected and approved beef. LFTB is not made from waste, scraps, low-

grade beef trimmings, or low-quality beef trimmings. These statements were unprivileged, and defamatory because they exposed BPI and its product, LFTB, to hatred, contempt, ridicule, obloquy, caused LFTB and BPI to be shunned or avoided, and/or injured BPI's business.

446. Each of these Defendants acted with actual malice. Each Defendant knew these defamatory statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 233-266 and 280-290.

447. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these defamatory statements during their broadcasts and publications.

448. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their defamatory statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

449. As a direct result of these Defendants' defamatory statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT VII (7)
Defamation Against ABC, ABC News And Avila
For False Statements That Beef Trimmings Used To Make LFTB
Were "Once Only Used In Dog Food And Cooking Oil"

450. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

451. On March 7, 2012, and March 8, 2012, Defendants ABC, ABC News, and Avila published multiple false statements that the beef trimmings used to make LFTB were "once only used in dog food and cooking oil" during news broadcasts, in online reports and in social media postings. These false statements include but are not limited to:

- a. Jim Avila: “Beef trimmings that were **once only used in dog food and cooking oil**, now sprayed with ammonia to make them safe to eat and then added to most ground beef as a cheaper filler. It was Zirnstein who, in a USDA memo, first coined the term pink slime and is now coming forward to say he won’t buy it.” (3/7/12, World News, Avila, Zirnstein)
- b. Jim Avila: “The low-grade trimmings were **once only used in dog food and cooking oil**, but because of the company’s treatment, simmering at low heat, a centrifuge to separate the fat and tissue, a spritz of ammonia gas to kill the germs and a quick freeze, the USDA says it’s safe to eat. That’s the final product there. The company calls it finely textured lean beef, flash frozen and boxed.” (3/8/12, World News, Avila)
- c. Jim Avila: “‘Pink slime’ is beef trimmings. **Once only used in dog food and cooking oil**, the trimmings are now sprayed with ammonia so they are safe to eat and added to most ground beef as a cheaper filler.” (3/7/12, ABC Online, Avila)
- d. Jim Avila: “As seen in the movie Food Inc., the low-grade trimmings come from the most contaminated parts of the cow and were **once only used in dog food and cooking oil**.” (3/8/12, ABC Online, Avila)
- e. Jim Avila: “However, the substance, critics said, is more like gelatin than meat, and before Beef Products, Inc. found a way to use it by disinfecting the trimmings with ammonia it was **sold only to dog food or cooking oil suppliers**.” (3/9/12, ABC Online, Avila)
- f. Ben Forer (Production Associate): “[T]he substance, critics said, is more like gelatin than meat, and before BPI found a way to use it by disinfecting the trimmings with ammonia, it was **sold only to dog food or cooking oil suppliers**.” (3/14/12, ABC Online)

452. These statements were false because the beef trimmings used to make LFTB were not “once only used in dog food and cooking oil.” These statements were unprivileged, and defamatory because they exposed BPI and its product, LFTB, to hatred, contempt, ridicule, obloquy, caused LFTB and BPI to be shunned or avoided, and/or injured BPI’s business.

453. Each of these Defendants acted with actual malice. Each Defendant knew these defamatory statements were false, or recklessly disregarded their falsity, when they broadcast and published them. The allegations related to each Defendant’s actual malice include but are not limited to those pled in paragraphs 151-165, 233-265, 280-290.

454. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these defamatory statements during their broadcasts and publications.

455. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their defamatory statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

456. As a direct result of these Defendants' defamatory statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT VIII (8)
Defamation Against ABC, ABC News, Avila, Zirnstein, Custer, And Foshee
For False Statements That LFTB Is "More Like Gelatin" Than Beef

457. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

458. On March 8, 2012, and continuing through March 21, 2012, Defendants ABC, ABC News, Avila, Zirnstein, Custer, and Foshee published and/or republished multiple false statements that called, described, or referred to LFTB as "more like gelatin" than beef.

459. First, Defendants ABC, ABC News, and Avila published a false statement during a news broadcast that called, described, or referred to LFTB as "more like gelatin" than beef. For example, Avila made the following false statement: "That's the final product there. The company calls it finely textured lean beef, flash-frozen and boxed. More like gelatin and not as nutritious as ground beef." (3/8/12, World News, Avila)

460. Second, Defendants ABC, ABC News, and Avila republished false statements during news broadcasts and in online reports that called, described, or referred to LFTB as "more like gelatin" than beef. These false statements include but are not limited to:

- a. Jim Avila: **"Critics say pink slime is more like gelatin than beef** and less nutritious." (3/9/12, World News, Avila)

- b. Jim Avila: “**Critics, including former USDA scientists, who called it more gelatin than ground beef**, contend the ammonia-treated pink slime, made from low quality scraps once used for dog food and cooking oil, is less nutritious than pure ground beef.” (3/21/12, GMA, Avila)
- c. Jim Avila: “The company calls the final product ‘Finely Textured Lean Beef.’ It is flash frozen and boxed. **Foshee says it is more like gelatin** and not nutritious as ground beef because the protein comes mostly from connective tissue, not muscle meat. ‘[It will] fill you up, but won’t do you any good,’ Foshee said.” (3/8/12, ABC Online, Avila, Foshee)
- d. Jim Avila: “**However, the substance, critics said, is more like gelatin than meat**, and before Beef Products, Inc. found a way to use it by disinfecting the trimmings with ammonia it was sold only to dog food or cooking oil suppliers.” (3/9/12, ABC Online, Avila)
- e. Ben Forer (Production Associate): “[T]he substance, critics said, is **more like gelatin than meat**, and before BPI found a way to use it by disinfecting the trimmings with ammonia, it was sold only to dog food or cooking oil suppliers.” (3/14/12, ABC Online)
- f. Jim Avila: “In fact, **it has the consistency of a ‘meat jello’** according to a former USDA microbiologist who studied the material.” (4/3/12, ABC Online, Avila, Zirnstein or Custer)

461. On information and belief, Defendants Zirnstein, Custer, and Foshee originally published the false statements that called, described, or referred to BPI’s product LFTB as “more gelatin than ground beef” or “more like gelatin” than beef. Each of these Defendants provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

462. These statements were false because LFTB is not gelatin. LFTB is beef. These statements were unprivileged, and defamatory because they exposed BPI and its product, LFTB, to hatred, contempt, ridicule, obloquy, caused LFTB and BPI to be shunned or avoided, and/or injured BPI’s business.

463. Each of these Defendants acted with actual malice. Each Defendant knew these defamatory statements were false, or recklessly disregarded their falsity, when they broadcast,

published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165, 201-221, and 280-290.

464. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these defamatory statements during their broadcasts and publications.

465. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their defamatory statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

466. As a direct result of these Defendants' defamatory statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT IX (9)
Defamation Against ABC, ABC News, Avila And Foshee
For False Statements That LFTB's "Protein Comes Mostly From Connective Tissue"

467. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

468. On March 8, 2012, and March 9, 2012, Defendants ABC, ABC News, and Avila republished false statements during news broadcasts and in an online report that LFTB's "protein comes mostly from connective tissue, and not muscle meat." These false statements include but are not limited to:

- a. Jim Avila: "The company calls it finely textured lean beef, flash frozen and boxed. More like gelatin and not as nutritious as ground beef. Kit Foshee, who was once number two at BPI, says that's because the **protein comes mostly from connective tissue, not muscle meat.**" (3/8/12, World News, Avila)
- b. Jim Avila: "The company calls the final product 'Finely Textured Lean Beef.' It is flash frozen and boxed. Foshee says it is more like gelatin and not nutritious as ground beef because the **protein comes mostly from connective tissue, not muscle meat.**" (3/8/12, ABC Online, Avila)
- c. Jim Avila: "The company calls the product 'Finely Textured Lean Beef.' Foshee said it was not as nutritious as ground beef because **the protein**

comes mostly from connective tissue, not muscle meat.” (3/9/12, ABC Online, Avila)

- d. Jim Avila: “ABC News joined Branstad, Perry and Kansas Gov. Sam Brownback on a tour of the facilities where **beef scraps, mostly fat and connective tissue**, are processed.” (3/29/12, ABC Online, Avila)

469. On information and belief, Defendant Foshee originally published the false statement that BPI’s product LFTB’s “protein comes mostly from connective tissue, and not muscle meat.” Foshee provided his express or implied consent to the ABC Defendants to republish his statement, and it was reasonably foreseeable that they would republish his statement.

470. These statements were false because LFTB’s protein does not come “mostly from connective tissue.” LFTB’s protein comes “mostly from” muscle meat. These statements were unprivileged, and defamatory because they exposed BPI and its product, LFTB, to hatred, contempt, ridicule, obloquy, caused LFTB and BPI to be shunned or avoided, and/or injured BPI’s business.

471. Each of these Defendants acted with actual malice. Each Defendant knew these defamatory statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant’s actual malice include but are not limited to those pled in paragraphs 151-165, 201-221, and 280-290.

472. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these defamatory statements during their broadcasts and publications.

473. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their defamatory statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

474. As a direct result of these Defendants' defamatory statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

**CATEGORY TWO: COMMON LAW PRODUCT DISPARAGEMENT COUNTS
FOR FALSE STATEMENTS
(COUNTS X-XVIII)**

COUNT X (10)

**Product Disparagement Against ABC, ABC News, Sawyer, Avila, Kerley, and Zirnstein
For False Statements That LFTB Is “Pink Slime”**

475. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

476. On March 7, 2012, and continuing through April 3, 2012, Defendants ABC, ABC News, Sawyer, Avila, Kerley, and Zirnstein published and/or republished multiple false statements that called, described, or referred to LFTB as “pink slime.” Defendants called, described, or referred to LFTB as “pink slime” 137 times during the disinformation campaign.

477. First, Defendants ABC and ABC News published false statements in segment titles and online report titles that called, described, or referred to LFTB as “pink slime.” These false statements include but are not limited to:

- a. Segment Title: “**Pink Slime** and You” (3/7/12, World News)
- b. Segment Title: “**Pink Slime**: Tips for Checking Your Beef” (3/8/12, World News)
- c. Segment Title: “**‘Pink Slime’** Outrage: Beef Industry Responds” (3/9/12, World News)
- d. Segment Title: “**‘Pink Slime’** in School Cafeterias, Supermarkets” (3/15/12, World News)
- e. Segment Title: “**‘Pink Slime’** Taste Test” (3/16/12, World News)
- f. Segment Title: “**‘Pink Slime’**: Safeway Pulls Meat Filler From Shelves” (3/21/12, Good Morning America)
- g. Segment Title: “**‘Pink Slime’** Discontinued at Safeway” (3/21/12, World News)
- h. Segment Title: “**‘Pink Slime’** Manufacturer Suspends Operations” (3/26/12, World News)

- i. Segment Title: “**‘Pink Slime’** Factory: a Look Inside” (3/29/12, World News)
- j. Segment Title: “**‘Pink Slime’** Labels on Ground Beef Packaging” (4/3/12, World News)
- k. Online Report Title: “70 Percent of Ground Beef at Supermarkets Contains **‘Pink Slime’**” (3/7/12, ABC Online)
- l. Online Report Title: “Is **Pink Slime** in the Beef at Your Grocery Store?” (3/8/12, ABC Online)
- m. Online Report Title: “Where You Can Get **‘Pink-Slime’**-Free Beef” (3/9/12, ABC Online)
- n. Online Report Title: “**‘Pink Slime’** Will Be a Choice for Schools” (3/14/12, ABC Online)
- o. Online Report Title: “Schools Can Opt Out of **‘Pink Slime’** Beef” (3/15/12, ABC Online)
- p. Online Report Title: “**‘Pink Slime’** Taste Test” (3/16/12, ABC Online)
- q. Online Report Title: “Safeway to Stop Selling **‘Pink Slime’** Textured Beef” (3/21/12, ABC Online)
- r. Online Report Title: “Safeway, SUPERVALU and Food Lion to Stop Selling **‘Pink Slime’** Beef” (3/21/12, ABC Online)
- s. Online Report Title: “Where to Get **‘Pink-Slime’**-Free Beef” (3/21/12, ABC Online)
- t. Online Report Title: “‘Dude, It’s Beef!’: Governors Tour Plant, Reject **‘Pink Slime’** Label” (3/29/12, ABC Online)
- u. Online Report Title: “Are LFTB or **‘Pink slime’** Safety Claims Meaningful to Consumers?” (4/3/12, ABC Online)
- v. Online Report Title: “BPI Endorses USDA Voluntary Labeling of LFTB or **‘Pink Slime’**” (4/3/12, ABC Online)

478. Second, Defendants ABC, ABC News, Sawyer, Avila, Kerley and Zirnstein published false statements during news broadcasts, in online reports and in social media positions that called, described, or referred to LFTB as “pink slime.” These false statements include but are not limited to:

- a. Jim Avila: “It’s in 70 percent of the ground beef sold at supermarkets, up to 25 percent of each American hamburger patty, a cheap filler known as **pink slime**.” (3/8/12, World News, Avila)
- b. Candace Smith (Consumer): “There’s no way to know even from labels and from the butchers here whether or not it contains that **pink slime**.” (3/8/12, World News)
- c. Jim Avila: “We e-mailed the top ten grocers in America. Publix, Costco, H-E-B, and Whole Foods assured us they don’t use **pink slime**. No word yet from the rest. But know this. If your meat is stamped USDA organic, it’s pure meat, no questionable filler. But everything else is suspect say critics, because **pink slime** does not have to appear on the label, and the USDA is giving no indication it will force meatpackers to lift the veil of secrecy any time soon.” (3/8/12, World News, Avila)
- d. Diane Sawyer: “We are back on the case tonight. An ABC News investigation of the filler called **pink slime** in 70 percent of the ground beef sold at supermarkets in this country.” (3/9/12, World News, Sawyer)
- e. Jim Avila: “But most Americans get their ground beef at supermarkets, and our viewers want to know if **pink slime** lurks in the beef sold here.” Amber Neeley (Consumer): “What 30 percent of meat doesn’t contain **pink slime**?” (3/9/12, World News, Avila)
- f. Jim Avila: “Safeway would only say the government says the filler is safe, but they’re reviewing their own policy. These stores say their beef contains no **pink slime** at all.” (3/9/12, World News, Avila)
- g. Jim Avila: “Critics say **pink slime** is more like gelatin than beef and less nutritious. But BPI, its inventor and primary manufacturer, tells ABC News in a letter from its lawyer today it is ‘USDA-approved beef’ and is ‘nutritious,’ and the American Meat Institute insists **pink slime** is ‘not an additive, so no label is necessary.’ What’s being hidden here?” (3/9/12, World News, Avila)
- h. Robin Roberts (Anchor): “**Pink slime**, before you go, because that’s been getting in the news a lot, and it’s processed meat mixed with ammonia that we are seeing in supermarkets more and more.” (3/13/12, Good Morning America)
- i. Anchor: “World News getting answers, as you know, for the last week here. Diane and the team reporting on that pink slime in ground beef, that **filler** used to pump up the meat.” (3/15/12, World News)
- j. David Kerley: “Thousands of you posted questions.” A Voice: “Which retail chains carry it?” David Kerley: “Demanding answers.” A Voice:

“Which brands are not putting **pink slime** in their beef products?” (3/15/12, World News, Kerley)

- k. David Kerley: “Parents, schools, state officials, insisting the government do something about **pink slime**, trimmings which are slightly cooked, spun down to remove fat, and sprayed with ammonia, and added back into ground beef. Today, action. The USDA announcing that due to consumer demand, it will offer a choice to schools. They can buy patties with or without **pink slime**, also known as lean, finely textured beef.” (3/15/12, World News, Kerley)
- l. David Kerley: “With 70 percent of the supermarket ground beef containing **pink slime** and only two chains admitting they use it, how are you to know what’s in your beef? For a week ABC News and Jim Avila have asked the beef industry that question.” (3/15/12, World News, Kerley)
- m. David Muir (Anchor): “For more than a week now, you know we’ve been reporting here on **pink slime**, that filler used in your ground beef.” (3/16/12, World News)
- n. David Kerley: “We sent Melissa Baines, a mother of three, to her local store on the hunt for beef with so called **pink slime**.” Melissa Baines (Consumer): “Nothing about the ingredients or if it has that **pink slime** in it.” David Kerley: “So she asked her butcher.” Melissa Baines (Consumer): “About the **pink slime** in the meat?” Butcher: “We don’t use it.” (3/16/12, World News, Kerley)
- o. David Kerley: “J.M. Hirsch is the food editor for the Associated Press and a cookbook author who wanted to know, is there a difference between meat with and without the **pink slime**?” (3/16/12, World News, Kerley)
- p. Josh Elliot (Anchor): “We begin now with that breaking news about **pink slime**, the filler used to pump up meat.” (3/21/12, World News)
- q. Jim Avila: “When we first broke this story, the USDA told ABC News consumer pressure would have to move individual grocery stores to change their **pink slime** policy. And it looks like that may be happening.” (3/21/12, GMA, Avila)
- r. Jim Avila: “Critics, including former USDA scientists, who called it more gelatin than ground beef, contend the ammonia-treated **pink slime**, made from low quality scraps once used for dog food and cooking oil, is less nutritious than pure ground beef.” (3/21/12, GMA, Avila)
- s. Jim Avila: “70 percent of all store bought ground beef contained **pink slime**, but since ABC News exposed its widespread use, many grocery stores have told shoppers their meat counters are free of the mixture.

Safeway now joins Publix, H-E-B, Whole Foods and Costco, promising their ground beef is additive free. No **pink slime**.” (3/21/12, GMA, Avila)

- t. Jim Avila: [video screen graphic behind Avila displays phrase **PINK SLIME BANNED**] “And the USDA announced last week that it will disclose to school districts which of its suppliers use **pink slime** so administrators can decide whether to purchase it at schools.” (3/21/12, World News, Avila)
- u. Diana Sawyer: “The nation’s second largest chain, Safeway; the third largest Supervalu and the Food Lion chain, all announcing they will stop selling beef with **pink slime**.” (3/21/12, World News, Sawyer)
- v. Jim Avila: “So the butcher here at Safeway says he has no idea if the ground beef there has **pink slime** in it.” (3/21/12, World News, Avila)
- w. Gerald Zirnstein: “It’s a **pink slime**. It’s not fresh ground beef.” (3/21/12, World News, Zirnstein)
- x. Jim Avila: “Safeway, Supervalu and Food Lion now join Publix, H-E-B, Whole Foods, and Costco, promising their ground beef contains no **pink slime**. What’s next? Now, Kroger is providing answers to shoppers who ask which of its beef is **pink slime** free And finally tonight, an answer from corporate Walmart headquarters. They say they do use **pink slime** in their meat, but soon will offer customers an option.” (3/21/12, World News, Avila)
- y. Diane Sawyer: “So Jim, let me understand what Kroger is saying. For the first time, they are going to answer your question if you ask at the butcher counter what has **pink slime** in it and what doesn’t?” Jim Avila: “Absolutely. They say that the butcher has a list now and he will tell you which of the meats have **pink slime** in it.” (3/21/12, World News, Avila, Sawyer)
- z. Jim Avila: “An emotional day that ended with the governors chomping down on BPI provided burgers, complete with LFTB they are trying to protect, the **pink slime** critics want clearly identified at their supermarkets.” (3/29/12, World News, Avila)
- aa. Jim Avila: “But BPI, now bowing to consumer pressure and endorsing a huge move by the USDA; voluntary labeling of LFTB or **pink slime**” (4/3/12, World News, Avila)
- bb. Jim Avila: “BPI’s surprising reversal? The maker of LFTB, or **pink slime**, signed on to the USDA labeling move, saying it will ‘pave the way for BPI’s lean beef to reestablish its place in the market.’ And Cargill, one of the nation’s largest ground beef producers, today asked the USDA for

permission to give it the option to label its ground beef as containing a similar **filler**.” (4/3/12, World News, Avila)

- cc. Jim Avila: “‘**Pink slime**’ is beef trimmings. Once only used in dog food and cooking oil, the trimmings are now sprayed with ammonia so they are safe to eat and added to most ground beef as a cheaper filler.” (3/7/12, ABC Online, Avila)
- dd. Jim Avila: “The ‘**pink slime**’ is made by gathering waste trimmings, simmering them at a low heat so the fat separates easily from the muscle, and spinning the trimmings using a centrifuge to complete the separation. Next, the mixture is sent through pipes where it is sprayed with ammonia gas to kill bacteria.” (3/7/12, ABC Online, Avila)
- ee. Jim Avila: “The ‘**pink slime**’ does not have to appear on the label because, over the objections of its own scientists, USDA officials with links to the beef industry labeled it meat.” (3/7/12, ABC Online, Avila)
- ff. Jim Avila: “ABC News has learned the woman who made the decision to OK the mix is a former undersecretary of agriculture, Joann Smith. It was a call that led to hundreds of millions of dollars for Beef Products, Inc., the makers of **pink slime**.” (3/7/12, ABC Online, Avila)
- gg. Jim Avila: “‘**Pink slime**,’ a cheap meat filler, is in 70 percent of the ground beef sold at supermarkets and up to 25 percent of each American hamburger patty, by some estimates.” (3/8/12, ABC Online, Avila)
- hh. Jim Avila: “‘It kind of looks like play dough,’ said Kit Foshee, who was a corporate quality assurance manager at Beef Products, Inc., the company that makes **pink slime**. ‘It’s pink and frozen, it’s not what the typical person would consider meat.’” (3/8/12, ABC Online, Avila, Foshee)
- ii. Jim Avila: “Many, like Dale Rittenhouse, wanted to know where beef with **pink slime** was sold. ‘What stores use **pink slime**?’ Rittenhouse wrote.” (3/8/12, ABC Online, Avila)
- jj. Jim Avila: “A viewer, Miles Herbert, wanted to know, ‘Is there any evidence that organic meat contains this **pink slim (sic)**?’ It turns out there isn’t. If your meat is stamped USDA Organic, it’s pure meat with no filler. But critics say everything else is suspect because **pink slime** does not have to appear on the label. And the USDA is giving no indication it will force meat packers to lift the veil of secrecy any time soon.” (3/8/12, ABC Online, Avila)
- kk. Jim Avila: “But Kit Foshee, who, until 2001, was a corporate quality assurance manager at BPI, the company that makes **pink slime**, contends the trimmings bear little resemblance to beef.” (3/9/12, ABC Online, Avila)

- ll. Jim Avila: “The company calls the product ‘Finely Textured Lean Beef.’ Foshee said it was not as nutritious as ground beef because the protein comes mostly from connective tissue, not muscle meat. But BPI, its inventor and primary manufacturer, told ABC News in a letter from a lawyer today that **pink slime** was USDA approved beef and was nutritious.” (3/9/12, ABC Online, Avila)
- mm. Jim Avila: “Many, like Dale Rittenhouse, wanted to know where beef with **pink slime** was sold. ‘What stores use **pink slime**?’ Rittenhouse wrote. So ABC News producers traveled across the country to the meat section of grocery stores to see if it’s in the ground beef they sell. At most stores it was impossible to tell for sure whether the beef contained **pink slime**.” (3/9/12, ABC Online, Avila)
- nn. Ben Forer (Production Associate): “‘It kind of looks like play dough,’ said Kit Foshee, who, until 2001, was a corporate quality assurance manager at Beef Products, Inc., the company that makes ‘**pink slime**.’ ‘It’s pink and frozen, it’s not what the typical person would consider meat.’” (3/14/12, ABC Online, Foshee)
- oo. Ben Forer (Production Associate): “There is only one way to know for certain that ‘**pink slime**’ is not in your beef: If your meat is stamped USDA Organic, it’s pure meat with no filler. Otherwise, you can’t know from the packaging because ‘**pink slime**’ does not have to appear on the label. And the USDA is giving no indication it will force meat packers to lift the veil of secrecy any time soon.” (3/14/12, ABC Online)
- pp. Jim Avila: “But what about grocery stores, where 70 percent of the beef sold contains ‘**pink slime**’? The USDA claims it can’t do anything about the lack of labeling that hides the filler in your ground beef.” (3/15/12, ABC Online, Avila)
- qq. Jim Avila: “[C]ritics, including former USDA scientists, contend the ammonia treated ‘**pink slime**’ — made from low quality scraps once used for dog food and cooking oil — is less nutritious than pure ground beef.” (3/21/12, ABC Online, Avila)
- rr. Jim Avila: “Seventy percent of all store bought ground beef contained ‘**pink slime**,’ but since ABC News exposed its widespread use many grocery stores have told shoppers their meat counters are free of the mixture.” (3/21/12, ABC Online, Avila)
- ss. Jim Avila: “In response to our coverage, ABC News has been flooded with questions from concerned viewers about **pink slime**. Many wanted to know whether it was in ground turkey or chicken, it is not. **Pink slime** is only being added to beef products, primarily ground beef, but it is also in some processed meats.” (3/21/12, ABC Online, Avila)

- tt. Jim Avila: “Viewer, Miles Herbert, wanted to know, ‘Is there any evidence that organic meat contains this **pink slime**?’” (3/21/12, ABC Online, Avila)
- uu. Jim Avila: “Otherwise, you can’t know from the packaging because **pink slime** does not have to appear on the label.” (3/21/12, ABC Online, Avila)
- vv. Ben Forer (Production Associate): “Costco told ABC News it does not use ‘**pink slime**.’” (3/21/12, ABC Online)
- ww. Ben Forer (Production Associate): “[Publix has] never allowed the use of LFTB (**pink slime**) in our meat.” (3/21/12, ABC Online)
- xx. Ben Forer (Production Associate): “Tops Markets told ABC News it does not use ‘**pink slime**.’” (3/21/12, ABC Online)
- yy. Ben Forer (Production Associate): “‘Going forward, [Gerrity’s Supermarkets has] informed our suppliers that we will not purchase any fresh beef from them unless they certify that there is no **pink slime** present.’” (3/21/12, ABC Online)
- zz. Jim Avila: “After two weeks of no comments, Beef Products Inc., the maker of ‘lean, finely textured beef,’ a product now known by the critics’ term for it, ‘**pink slime**,’ came out swinging today during a news conference to announce the temporary closing of several facilities.” (3/26/12, ABC Online, Avila)
- aaa. Jim Avila: “The mother of **pink slime**. USDA official w/ ties to beef industry-allowed in all ground beef-stores, schools everywhere. Tnite. @ABCWorldNews.” (3/7/12, Twitter, Avila)
- bbb. Jim Avila: “**Pink Slime** and You -- @JimAvilaABC investigates the widespread use of this specially treated filler meat.” (3/7/12, Twitter, Avila)
- ccc. Jim Avila: “@travarp no one said this slime is dangerous. It’s just not what it purports to be. Meat. And if it’s in ground beef it should be labeled.” Travis Arp: “that’s the thing, it isn’t ‘slime’ at all. Its small pieces of lean beef. You thaw it, and it looks like any other trimming.” Jim Avila: “@travarp not my word. Coined by USDA scientist who recommended against (sic) its use. He called it **pink slime**. And says it’s a food fraud.” (3/7/12, Twitter, Avila)
- ddd. Jim Avila: “How can u be sure u r not eating **pink slime**?” (3/8/12, Twitter, Avila)

- eee. Diane Sawyer: “So much buzz: @JimAvilaABC investigates ‘**pink slime**’ in 70% of ground beef –abcn.ws/xeO72F Tackling your Qs tonight on @ABCWorldNews.” (3/8/12, Twitter, Sawyer)
- fff. Jim Avila: “Tracking **pink slime**, who uses it & how to stay away from it. Asking meat institute, if they are so proud of it, show it to us @ABCWorldNews.” (3/9/12, Twitter, Avila)
- ggg. Jim Avila: “Good news USDA says schools to be told which ground beef has **pink slime** bad news groceries still don’t have to tell USDA says u have to ask.” (3/14/12, Twitter, Avila)
- hhh. Jim Avila: “Partial [#PinkSlime](#) victory. [@USDA](#) will provide schools with a choice to order product either with or without Lean Finely Textured Beef.” (3/15/12, Twitter, Avila)
- iii. Jim Avila: “Partial **pink slime** victory, USDA takes action. “Due to customer demand, the department will be adjusting... <http://fb.me/1sjhl5zu8>.” (3/15/12, Twitter, Avila)
- jjj. Jim Avila: “Finished taping a segment with [@andersoncooper](#) for his talk show on [#PinkSlime](#) along with [@thelunchtray](#). Stay tuned for air date [@ABC](#).” (3/15/12, Twitter, Avila)
- kkk. David Kerley: “@chucktodd asked me who I picked in March Madness. I was too busy working **Pink Slime** to make picks.” (3/16/12, Twitter, Kerley)
- lll. Jim Avila: “As I asked meat institute and bpi, if **pink slime** is good for you, and safe, why not market it as such. Label it, disclose it, don’t hide it.” (3/17/12, Twitter, Avila)
- mmm. Jim Avila: “Safeway, country’s second largest grocery store bows to consumer pressure and eliminates [#pinkslime](#) from all 1400 stores.” (3/20/12, Twitter, Avila)
- nnn. Jim Avila: “Safeway drops **pink slime**, who is next and why has wal-mart refused to comment on whether its ground beef contains... <http://fb.me/CBn5wUIs>.” (3/21/12, Twitter, Avila)
- ooo. Jim Avila: “[@Safeway](#) drops [#Pinkslime](#). Why has [@Walmart](#) refused to comment whether its ground beef contains controversial filler. Tonight [@ABCWorldNews](#).” (3/21/12, Twitter, Avila)
- ppp. Jim Avila: “Fast and furious Store after store dropping **pink slime**. Not just Safeway. Complete list tonight on [@ABCWorldNews](#).” (3/21/12, Twitter, Avila)

- qqq. Jim Avila: “@brentkobayashi interestingly enough before **pink slime** USDA inspectors called it Solyent (sic) pink.” (3/21/12, Twitter, Avila)
- rrr. Jim Avila: “@thelunchtray will Walmart change it’s (sic) policy. Right now only saying will offer choice of **pink slime** free but hasn’t said how we will know.” (3/22/12, Twitter, Avila)
- sss. Jim Avila: “[#pinkslime](#) makers close 3 plants after consumer concern cuts demand. Blame social media and abc. Surprised by public reaction to label it.” (3/26/12, Twitter, Avila)
- ttt. Jim Avila: “**Pink slime** maker says safe and nutritious. Critics disagree.” (3/27/12, Twitter, Avila)
- uuu. Jim Avila: “I’ll be on [@Anderson](#) tmrw chatting w/ [@AndersonCooper](#) about the latest in my [#pinkslime](#) investigation.” (3/28/12, Twitter, Avila)
- vvv. Jim Avila: “I’m inside plant where Beef Products Inc **makes what critics call #pinkslime.**” (3/29/12, Twitter, Avila)
- www. Jim Avila: “I went inside the plant where the ground beef ‘**pink slime**’ **filler** is made.” (3/31/12, Twitter, Avila)
- xxx. Jim Avila: “**Pink slime** certainly in public consciousness [#pinkslime.](#)” (4/3/12, Twitter, Avila)
- yyy. Jim Avila: “Finishing touches on huge **pink slime** decision by USDA, now you’ll know whats in it & hear what maker has to say about it [@ABCWorldNews](#) tnite.” (4/3/12, Twitter, Avila)
- zzz. Jim Avila: “Partial **pink slime** victory, USDA takes action.” (3/15/12, Facebook, Avila)
- aaaa. David Kerley: “A bit of World News action. **Pink Slime** and the USDA takes action, but maybe not as much as many of you wanted.” (3/16/12, Facebook, Kerley)
- bbbb. Jim Avila: “Safeway drops **pink slime**, who is next and why has wal-mart refused to comment on whether its ground beef contains the controversial filler?” (3/21/12, Facebook, Avila)
- cccc. Jim Avila: “Finishing touches on huge **pink slime** decision by USDA, now you will know whats in it....” (4/3/12, Facebook, Avila)

479. Third, Defendants ABC, ABC News, Sawyer, and Avila republished false statements by others during news broadcasts and in online reports that called, described, or referred to LFTB as “pink slime.” These false statements include but are not limited to:

- a. Diane Sawyer: “Now, a startling ABC News investigation. A whistleblower has come forward to tell consumers about the ground beef a lot of us buy at the supermarket. Is it what we think it is or, is it padded with a filler **the whistleblower calls pink slime**”? (3/7/12, World News, Sawyer)
- b. Jim Avila: “Gerald Zirnstein grinds his own hamburger these days. Why? Because this former USDA scientist and, now whistleblower, knows that 70 percent of the ground beef we buy at the supermarket contains **something he calls pink slime**. Beef trimmings that were once only used in dog food and cooking oil, now sprayed with ammonia to make them safe to eat and then added to most ground beef as a cheaper filler. It was Zirnstein who, in a USDA memo, **first coined the term pink slime** and is now coming forward to say he won’t buy it.” (3/7/12, World News, Avila)
- c. Jim Avila: “And it doesn’t have to appear on the label because, over the objections of its own scientists, **USDA officials with links to the beef industry label pink slime** meat.” (3/7/12, World News, Avila)
- d. Diane Sawyer: “Last night, a whistleblower told us about **what he’s calling pink slime**, a kind of filler used to pump up the volume of meat. Our report sparked an avalanche of e-mails from you, and today we ask ABC’s Senior National Correspondent Jim Avila to tackle some of them, including your number one question, how to tell if there’s **pink slime** in your dinner.” (3/8/12, World News, Sawyer)
- e. Emily Anderson (Consumer): “Which grocery stores near me do or don’t sell ground beef that contains ammonia treated **pink slime**?” (3/8/12, World News)
- f. Nicole Carpentiere (Consumer): “How can consumers find out which retailers do use this **pink slime**?” (3/8/12, World News)
- g. Jim Avila: “America’s second-largest grocery chain, Safeway with 1,400 stores, announced overnight it will no longer sell what the meat industry calls lean finely textured beef, **nicknamed pink slime by USDA scientists**.” (3/21/12, GMA, Avila)
- h. Jim Avila: “Two weeks ago, I went into this Safeway and asked if its ground beef contained what the meat industry calls lean finely textured

beef that **a USDA scientist first termed pink slime**. So the butcher here at Safeway says he has no idea if the ground beef there has **pink slime** in it. Corporate headquarters later told us yes, its meat does contain it. But they were reviewing the policy. Fast-forward to today. Safeway announces its meat counter is now free of what former USDA scientists characterize as low quality beef scraps sanitized with ammonia gas.” (3/21/12, World News, Avila)

- i. Diane Sawyer: “A major development tonight after our investigation of that filler **critics call pink slime**, in 70 percent of the ground beef sold at supermarkets.” (3/26/12, World News, Sawyer)
- j. Diane Sawyer: “It involves that meat filler in some ground beef that **critics have called pink slime**.” (3/29/12, World News, Sawyer)
- k. Jim Avila: “This is the pristine meatpacking plant that produces the controversial ground beef filler **first called pink slime by a now former USDA scientist** who toured here a decade ago. Beef Products, Inc. calls it lean finely textured beef or LFTB (sic) and today allowed me to tag along with three meat state governors, Rick Perry of Texas, Sam Brownback of Kansas, Terry Branstad of Iowa on a walkthrough to see first the beef scraps that go up a conveyor belt, then the huge centrifuges of gleaming metal that spin it around, separating the fat from the rest.” (3/29/12, World News, Avila)
- l. Jim Avila: “And Diane, clearly we are here in the middle of meat country, the Missouri river is behind me there over my shoulder, and the meat industry here is hurting and they’re worried because beef sales are, in fact, down all over the country, and they are determined to return **what critics call pink slime** to America’s grocery stores.” (3/29/12, World News, Avila)
- m. Diane Sawyer: “The government responds and takes big action on the filler **critics have called pink slime**.” (4/3/12, World News, Sawyer)
- n. Jim Avila: “30,000 hamburgers on the grill at the BPI picnic rally at Sioux City, Iowa. All loaded with LFTB, or **pink slime as known by critics**. But now what was hidden in these burgers and nearly all ground beef for nearly 20 years may finally be revealed on the package label. The makers of the filler, not backing down on their safety claims.” (4/3/12, World News, Avila)
- o. Jim Avila: “Gerald Zirnstein grinds his own hamburger these days. Why? Because this former United States Department of Agriculture scientist and, now, whistleblower, knows that 70 percent of the ground beef we buy at the supermarket contains **something he calls ‘pink slime.’**” (3/7/12, ABC Online, Avila)

- p. Jim Avila: “Beef Products Inc., maker of the ground beef filler **USDA scientists nicknamed ‘pink slime,’** . . .” (3/27/12, ABC Online, Avila)
- q. Jim Avila: “**Gerald Zirnstein, the former USDA microbiologist who first used the term ‘pink slime’** and recommended against its inclusion in ground beef, said the first problem is that the BPI process begins with warming the meat scraps just enough so they don’t cook but are easier to separate in a centrifuge.” (3/27/12, ABC Online, Avila)
- r. Jim Avila: ““Ammonia does two things most people don’t realize,’ Zirnstein said. ‘In high levels, it does more than just kill the ... pathogens. It also fixes the color of the meat. So the red meat stays pink.’ **Zirnstein said that is why he coined the phrase, ‘pink slime.’**” (3/27/12, ABC Online, Avila, Zirnstein)
- s. Jim Avila: “Governors from three meat-producing states today defended Beef Products Inc., the company that makes lean finely textured beef, which **now-former USDA scientists nicknamed ‘pink slime,’** after a walk through the company’s plant accompanied by ABC News.” (3/29/12, ABC Online, Avila)
- t. Jim Avila: “Until recently, the lean finely textured beef, **known to critics as ‘pink slime,’** was added to America’s fast food, school lunches and 70 percent of all ground beef sold at grocery stores.” (3/29/12, ABC Online, Avila)
- u. Jim Avila: “BPI, maker of Lean Finely Textured Beef or **‘pink slime,’ as critics call it,** is bowing to consumer pressure and endorsing a huge move by the U.S. Department of Agriculture — the voluntary labeling of LFTB.” (4/3/12, ABC Online, Avila)
- v. Jim Avila: “The makers of Lean Finely Textured Beef, **called ‘pink slime’ by critics,** insist their product is not just a cheaper filler added to fresh ground beef, they say it makes beef safer.” (4/3/12, ABC Online, Avila)

480. On information and belief, Defendant Zirnstein originally published the false statement that LFTB is “pink slime” to the ABC Defendants. Zirnstein provided his express or implied consent to the ABC Defendants to republish his statement, and it was reasonably foreseeable that they would republish his statement.

481. Fourth, Defendants ABC, ABC News, and Avila published false statements during news broadcasts and in online reports that noted BPI's product is commonly or widely known or referred to as "pink slime." These false statements include but are not limited to:

- a. Jim Avila: "Zirnstien and his fellow USDA scientist, Carl Custer, both warned against using what the industry calls lean finely textured beef and is **widely known now as pink slime**. But their government bosses overruled them." (3/7/12, World News, Avila)
- b. Jim Avila: "Applestone says he wouldn't sell or serve his family hamburger mixed with lean finely textured beef, **commonly known as pink slime**, something that's in 70 percent of American ground beef. This picture of the material was sent to ABC News by its maker today. That's the final product that starts with low grade beef trimmings spun in machines and spritzed with ammonia." (3/9/12, World News, Avila)
- c. Diane Sawyer: "A major change at your supermarket after the World News investigation into the inexpensive filler **commonly known as pink slime**. We found that that filler was added to 70 percent of the ground beef sold in this country." (3/21/12, World News, Sawyer)
- d. Jim Avila: "After two weeks of no on-camera comments as most of America's top grocery stores took what the meat industry calls lean finely textured beef, **widely known as pink slime** off their shelves. Beef Products Inc., its maker, came out swinging today, suspending operations at three out of its four plants, promising to pay all its workers for 60 days while it launches a public relations program designed to restore confidence in its product." (3/26/12, World News, Avila)
- e. Jim Avila: "Zirnstien and his fellow USDA scientist, Carl Custer, both warned against using what the industry calls 'lean finely textured beef,' **widely known as 'pink slime,'** but their government bosses overruled them." (3/7/12, ABC Online, Avila)
- f. Jim Avila: "After an ABC News investigation detailing the use of a cheap meat filler, finely textured lean beef, **commonly called pink slime**, which is in 70 percent of the ground beef sold at supermarkets, J. Patrick Boyle, president of the American Meat Institute, defended the practice as a way to safely use what otherwise would be wasted." (3/9/12, ABC Online, Avila)
- g. Jim Avila: "[Foshee] and two former USDA inspectors told ABC News the filler **commonly referred to as pink slime** comes from a low grade of beef trimmings unlike what they call real ground beef. Foshee said that he was fired by BPI after complaining about the process used to make the

filler, and the company's claims about it. Since then, he has spoken out against the product." (3/9/12, ABC Online, Avila, Foshee, Zirnstein, Custer)

- h. Ben Forer (Production Associate): "ABC News has learned that tomorrow the U.S. Department of Agriculture will announce that starting this fall, schools will be able to choose whether or not they buy hamburger that contains lean finely textured beef **known as 'pink slime.'** The announcement comes one week after ABC News reported on the beef filler **commonly known as 'pink slime,'** which is found in 70 percent of the ground beef sold at supermarkets." (3/14/12, ABC Online)
- i. Jim Avila: "So now school districts which buy beef from the U.S. Department of Agriculture will be told which ground beef is made with up to 25 percent of the highly processed 'lean finely textured beef' which is made from low grade beef scraps spritzed with ammonia gas now **commonly known as 'pink slime.'**" (3/15/12, ABC Online, Avila)
- j. Ben Forer (Production Associate): "Since an ABC News investigation last week, cheap meat filler, finely textured lean beef, **commonly called pink slime,** has been a hot topic for consumers." (3/16/12, ABC Online)
- k. Jim Avila: "Safeway, America's second largest supermarket chain, has announced it will no longer sell what the meat industry calls 'lean finely textured beef' and the **public has come to call 'pink slime.'** (3/21/12, ABC Online, Avila)
- l. Jim Avila: "Safeway, SUPERVALU and Food Lion announced today that they will no longer carry what the meat industry calls 'lean finely textured beef,' something the **public has come to know as 'pink slime.'** (3/21/12, ABC Online, Avila)

482. All of these statements were false because LFTB is not pink slime, which is a noxious, repulsive, and filthy fluid. These statements were disparaging to BPI and its product, LFTB, and affected the marketability of LFTB.

483. Each of these Defendants acted with actual malice. Each Defendant knew that their disparaging statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165, 178-188, 201-221, 233-266, and 280-290.

484. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these disparaging statements during their broadcasts and publications.

485. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, Sawyer, Avila, and Kerley retract these disparaging statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

486. As a direct result of each of these Defendants' disparaging statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XI (11)
Product Disparagement Against ABC, ABC News, Avila, Zirnstein, Custer, and Foshee
For False Statements That LFTB Is Not Beef Or Meat

487. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

488. On March 7, 2012, and continuing through April 3, 2012, Defendants ABC, ABC News, Avila, Zirnstein, Custer, and Foshee published and/or republished multiple false statements that LFTB is not beef or meat.

489. First, Defendants ABC, ABC News, Avila, Zirnstein, and Custer published false statements during news broadcasts, in online reports, and in social media postings that LFTB is not beef or meat. These false statements include but are not limited to:

- a. Gerald Zirnstein: "It's economic fraud. It's **not – it's not fresh ground beef.** It's a substitute, it's a cheap substitute being added in." (3/7/12, World News, Zirnstein)
- b. Jim Avila: "**Why didn't you consider it beef?**" Carl Custer: "**Because it was a salvage product.**" (3/7/12, World News, Avila, Custer)
- c. Kit Foshee: "It looks kind of like Play-Doh or just something that's pink and frozen. **It's not – it's not what the typical lay person would consider meat.**" (3/8/12, World News, Foshee)

- d. Jim Avila: “But know this. If your meat is stamped USDA organic, **it’s pure meat, no questionable filler.**” (3/8/12, World News, Avila)
- e. A Voice (Gerald Zirnstein): “**It’s not fresh ground beef. It’s a substitute, it’s a cheap substitute being added in.**” (3/21/12, GMA, Zirnstein)
- f. A Voice (Gerald Zirnstein): “**It’s a pink slime. It’s not fresh ground beef.**” (3/21/12, World News, Zirnstein)
- g. Carl Custer: “Because **we didn’t feel it was meat. It was a salvage.**” (3/21/12, World News, Custer)
- h. Gerald Zirnstein: “**It’s not fresh ground beef. It’s a substitute, it’s a cheap substitute being added in.**” (3/26/12, World News, Zirnstein)
- i. Jim Avila: “If your meat is stamped USDA Organic, **it’s pure meat with no filler.** But critics say everything else is suspect because pink slime does not have to appear on the label.” (3/8/12, ABC Online, Avila)
- j. Ben Forer (Production Associate): “There is only one way to know for certain that ‘pink slime’ is not in your beef: **If your meat is stamped USDA Organic, it’s pure meat with no filler.** Otherwise, you can’t know from the packaging because “pink slime” does not have to appear on the label.” (3/14/12, ABC Online)
- k. Jim Avila: “Viewer, Miles Herbert, wanted to know, ‘Is there any evidence that organic meat contains this pink slime?’ It turns out there isn’t. **If your meat is stamped USDA Organic, it’s pure meat with no filler.**” (3/21/12, ABC Online, Avila)
- l. Jim Avila: “didn’t say it’s unsafe. Said it is safe **but not grous (sic) beef.** Eating cardboard is safe too.” (3/8/12, Twitter, Avila)
- m. Jim Avila: “**It is not the same as ground beef;** the company concedes consumers would not recognize it as hamburger. In fact, it has the consistency of a ‘meat jello’ according to a former USDA microbiologist who studied the material.” (4/3/12, ABC Online, Avila, Zirnstein or Custer)
- n. Jim Avila: “@travarp no one said this slime is dangerous. **It’s just not what it purports to be.** Meat. And if it’s in ground beef it should be labeled.” Travis Arp: “that’s the thing, it isn’t ‘slime’ at all. Its small pieces of lean beef. You thaw it, and it looks like any other trimming.” Jim Avila: “@travarp not my word. Coined by USDA scientist who recommended against (sic) its use. He called it pink slime. And says its a food fraud.” (3/7/12, Twitter, Avila)

490. Second, Defendants ABC, ABC News, and Avila republished false statements during news broadcasts and in online reports that LFTB is not beef or meat. These false statements include but are not limited to:

- a. Jim Avila: “**Two former USDA scientists** who reviewed the product and recommended against its use **say it’s just not the same as ground beef.**” (3/26/12, World News, Avila)
- b. Jim Avila: “‘It’s economic fraud,’ [Gerald Zirnstein] told ABC News. **‘It’s not fresh ground beef. . . . It’s a cheap substitute being added in.’**” (3/7/12, ABC Online, Avila, Zirnstein)
- c. Jim Avila: “According to Custer, **the product is not really beef, but a ‘salvage product . . . fat that had been heated at a low temperature and the excess fat spun out.’**” (3/7/12, ABC Online, Avila, Custer)
- d. Jim Avila: “‘It kind of looks like play dough,’ said **Kit Foshee**, who was a corporate quality assurance manager at Beef Products, Inc., the company that makes **pink slime**. ‘It’s pink and frozen, **it’s not what the typical person would consider meat.**’” (3/8/12, ABC Online, Avila, Foshee)
- e. Jim Avila: “But **Kit Foshee**, who, until 2001, was a corporate quality assurance manager at BPI, the company that makes pink slime, contends the trimmings bear little resemblance to beef. ‘It kind of looks like Play-Doh,’ he said. ‘It’s pink and frozen. **It’s not what the typical person would consider meat.**’” (3/9/12, ABC Online, Avila, Foshee)
- f. Jim Avila: “[**Kit Foshee**] and **two former USDA inspectors** told ABC News the filler commonly referred to as pink slime comes from a low grade of beef trimmings **unlike what they call real ground beef**. Foshee said that he was fired by BPI after complaining about the process used to make the filler, and the company’s claims about it. Since then, he has spoken out against the product.” (3/9/12, ABC Online, Avila, Foshee, Zirnstein, Custer)
- g. Ben Forer (Production Associate): “‘It kind of looks like play dough,’ said **Kit Foshee**, who, until 2001, was a corporate quality assurance manager at Beef Products, Inc., the company that makes ‘pink slime.’ ‘It’s pink and frozen, **it’s not what the typical person would consider meat.**’” (3/14/12, ABC Online, Foshee)
- h. Jim Avila: “‘**It’s not fresh ground beef**. It’s a cheap substitute being added in,’ **microbiologist Gerald Zirnstein said.**” (3/21/12, ABC Online, Avila, Zirnstein)

- i. Jim Avila: **“Two former scientists with the U.S. Department of Agriculture** who reviewed the product advised against using it in ground beef and **told ABC News that it was not the same as ground beef.”** (3/26/12, ABC Online, Avila, Custer, Zirnstein)
- j. Jim Avila: **“It’s not fresh ground beef.** It’s a cheap substitute being added in,’ **microbiologist Gerald Zirnstein said.”** (3/26/12, ABC Online, Avila, Zirnstein)
- k. Jim Avila: “Critics say BPI, which has won food safety awards for its ammoniating process, **overstates the product’s similarity to fresh ground beef,** because of the process it goes through to separate the meat from the fat and to kill bacteria.” (3/27/12, ABC Online, Avila)
- l. Jim Avila: **“Because the ammonia fixes the color into a pink color, it can, quote, ‘pass’ as red meat, but it’s a low-quality product going into the ground beef.”** (3/27/12, ABC Online, Avila, Zirnstein)
- m. Jim Avila: **“At that temperature, you increase the level of pathogens and the level of spoilage bacteria,’ Zirnstein told ABC News. ‘In order to turn this into a product they can potentially sell as ‘meat,’ and that’s, [in] quotations, ‘meat,’ they add ammonia.”** (3/27/12, ABC Online, Avila, Zirnstein)

491. On information and belief, Defendants Zirnstein, Custer, and Foshee originally published the false statements that LFTB is not beef or meat to the ABC Defendants. Each of these Defendants provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

492. These statements were false because LFTB is beef and it is meat. These statements were disparaging to BPI and its product, LFTB, and affected the marketability of LFTB.

493. Each of these Defendants acted with actual malice. Each Defendant knew these disparaging statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant’s actual malice include but are not limited to those pled in paragraphs 151-165, 201-221, and 280-290.

494. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these disparaging statements during their broadcasts and publications.

495. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their disparaging statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

496. As a direct result of these Defendants' disparaging statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XII (12)
Product Disparagement Against
ABC, ABC News, Sawyer, Avila, Kerley, Zirnstein, And Custer
For False Statements That LFTB Is A "Filler" Added To Ground Beef

497. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

498. On March 7, 2012, and continuing through April 3, 2012, Defendants ABC, ABC News, Sawyer, Avila, Kerley, Zirnstein, and Custer published and/or republished multiple false statements that called, described, or referred to LFTB as a "filler" added to ground beef.

499. First, Defendants ABC and ABC News published a false statement in an online segment title that called, described, or referred to LFTB as a "filler" added to ground beef. The segment title was as follows: "'Pink Slime': Safeway Pulls Meat **Filler** From Shelves" (3/21/12, Good Morning America/ABC Online).

500. Second, Defendants ABC, ABC News, Sawyer, Avila, and Kerley published false statements during news broadcasts, in online reports, and in social media postings that called,

described, or referred to LFTB as a “filler” added to ground beef. These false statements include but are not limited to:

- a. Diane Sawyer: “A whistleblower has come forward to tell consumers about the ground beef a lot of us buy at the supermarket. Is it what we think it is? Or, is it padded with a **filler** the whistleblower calls pink slime?” (3/7/12, World News, Sawyer)
- b. Jim Avila: “Beef trimmings that were once only used in dog food and cooking oil, now sprayed with ammonia to make them safe to eat and then added to most ground beef as a cheaper **filler**.” (3/7/12, World News, Avila)
- c. Diane Sawyer: “Last night, a whistleblower told us about what he’s calling pink slime, a kind of **filler** used to pump up the volume of meat.” (3/8/12, World News, Sawyer)
- d. Jim Avila: “It’s in 70 percent of the ground beef sold at supermarkets, up to 25 percent of each American hamburger patty, a cheap **filler** known as pink slime.” (3/8/12, World News, Avila)
- e. Jim Avila: “If your meat is stamped USDA organic, it’s pure meat, no questionable **filler**.” (3/8/12, World News, Avila)
- f. Diane Sawyer: “We are back on the case tonight. An ABC News investigation of the **filler** called pink slime, in 70 percent of the ground beef sold at supermarkets in this country.” (3/9/12, World News, Sawyer)
- g. Jim Avila: “Safeway would only say the government says the **filler** is safe but they’re reviewing their own policy.” (3/9/12, World News, Avila)
- h. Anchor: “World News getting answers, as you know, for the last week here. Diane and the team reporting on that pink slime in ground beef, that **filler** used to pump up the meat.” (3/15/12, World News)
- i. David Muir (Anchor): “For more than a week now, you know we’ve been reporting here on pink slime, that **filler** used in your ground beef.” (3/16/12, World News)
- j. David Kerley: “Don’t use what the industry calls lean, finely textured beef, an inexpensive **filler** made with processed beef trimmings spritzed with ammonia.” (3/16/12, World News, Kerley)
- k. Josh Elliot (Anchor): “We begin now with that breaking news about pink slime, the **filler** used to pump up meat.” (3/21/12, World News)

- l. Diane Sawyer: “A major change at your supermarket after the World News investigation into the inexpensive **filler** commonly known as pink slime. We found that that **filler** was added to 70 percent of the ground beef sold in this country.” (3/21/12, World News, Avila)
- m. Diane Sawyer: “Since this is a lower cost **filler**, any of these supermarkets promising to keep the price the same or are they going to raise the price?” (3/21/12, World News, Sawyer)
- n. Diane Sawyer: “All right. And we got a lot of e-mails. I know that you’ve been reading them too, people asking is this **filler** in ground turkey is it in chicken, any other product you could find?” (3/21/12, World News, Sawyer)
- o. Diane Sawyer: “A major development tonight after our investigation of that **filler** critics call pink slime, in 70 percent of the ground beef sold at supermarkets.” (3/26/12, World News, Sawyer)
- p. Diane Sawyer: “It involves that meat **filler** in some ground beef that critics have called pink slime.” (3/29/12, World News, Sawyer)
- q. Jim Avila: “This is the pristine meatpacking plant that produces the controversial ground beef **filler** first called pink slime by a now former USDA scientist who toured here a decade ago. Beef Products, Inc. calls it lean finely textured beef or LFTB (sic) and today allowed me to tag along with three meat state governors, Rick Perry of Texas, Sam Brownback of Kansas, Terry Branstad of Iowa on a walkthrough to see first the beef scraps that go up a conveyor belt, then the huge centrifuges of gleaming metal that spin it around, separating the fat from the rest.” (3/29/12, World News, Avila)
- r. Diane Sawyer: “The government responds and takes big action on the **filler** critics have called pink slime.” (4/3/12, World News, Sawyer)
- s. Jim Avila: “30,000 hamburgers on the grill at the BPI picnic rally at Sioux City, Iowa. All loaded with LFTB, or pink slime as known by critics. But now what was hidden in these burgers and nearly all ground beef for nearly 20 years may finally be revealed on the package label. The makers of the **filler**, not backing down on their safety claims.” (4/3/12, World News, Avila)
- t. Jim Avila: “BPI’s surprising reversal? The maker of LFTB, or pink slime, signed on to the USDA labeling move, saying it will ‘pave the way for BPI’s lean beef to reestablish its place in the market.’ And Cargill, one of the nation’s largest ground beef producers, today asked the USDA for permission to give it the option to label its ground beef as containing a similar **filler**.” (4/3/12, World News, Avila)

- u. Jim Avila: “Since the first of the year, McDonald’s and other fast food stores have dropped LFTB. The USDA has identified which products contain the **filler** for school districts, grocery stores have pulled it from shelves, and now for the first time, what is inside the beef will be labeled on the outside. Jim Avila, ABC News, Washington.” (4/3/12, World News, Avila)
- v. Jim Avila: “‘Pink slime’ is beef trimmings. Once only used in dog food and cooking oil, the trimmings are now sprayed with ammonia so they are safe to eat and added to most ground beef as a cheaper **filler**.” (3/7/12, ABC Online, Avila)
- w. Jim Avila: “‘Pink slime,’ a cheap meat **filler**, is in 70 percent of the ground beef sold at supermarkets and up to 25 percent of each American hamburger patty, by some estimates.” (3/8/12, ABC Online, Avila)
- x. Jim Avila: “A viewer, Miles Herbert, wanted to know, ‘Is there any evidence that organic meat contains this pink slim (sic)?’ It turns out there isn’t. If your meat is stamped USDA Organic, it’s pure meat with no **filler**. But critics say everything else is suspect because pink slime does not have to appear on the label. And the USDA is giving no indication it will force meat packers to lift the veil of secrecy any time soon.” (3/8/12, ABC Online, Avila)
- y. Jim Avila: “After an ABC News investigation detailing the use of a cheap meat **filler**, finely textured lean beef, commonly called pink slime, which is in 70 percent of the ground beef sold at supermarkets, J. Patrick Boyle, president of the American Meat Institute, defended the practice as a way to safely use what otherwise would be wasted.” (3/9/12, ABC Online, Avila)
- z. Jim Avila: “[Foshee] and two former USDA inspectors told ABC News the **filler** commonly referred to as pink slime comes from a low grade of beef trimmings unlike what they call real ground beef. Foshee said that he was fired by BPI after complaining about the process used to make the **filler**, and the company’s claims about it. Since then, he has spoken out against the product.” (3/9/12, ABC Online, Avila, Foshee, Zirnstein, Custer)
- aa. Ben Forer (Production Associate): “ABC News has learned that tomorrow the U.S. Department of Agriculture will announce that starting this fall, schools will be able to choose whether or not they buy hamburger that contains lean finely textured beef known as ‘pink slime.’ The announcement comes one week after ABC News reported on the beef **filler** commonly known as ‘pink slime,’ which is found in 70 percent of the ground beef sold at supermarkets.” (3/14/12, ABC Online)

- bb. Ben Forer (Production Associate): “There is only one way to know for certain that ‘pink slime’ is not in your beef: If your meat is stamped USDA Organic, it’s pure meat with no **filler**. Otherwise, you can’t know from the packaging because ‘pink slime’ does not have to appear on the label.” (3/14/12, ABC Online)
- cc. Ben Forer (Production Associate): “Foshee said he was fired by BPI after complaining about the process used to make the **filler**, and the company’s claims about it. Since then, he has spoken out against the product.” (3/14/12, ABC Online)
- dd. Ben Forer (Production Associate): “At most stores it was impossible to tell for sure whether the beef contained the **filler**.” (3/14/12, ABC Online)
- ee. Jim Avila: “But what about grocery stores, where 70 percent of the beef sold contains ‘pink slime’? The USDA claims it can’t do anything about the lack of labeling that hides the **filler** in your ground beef.” (3/15/12, ABC Online, Avila)
- ff. Ben Forer (Production Associate): “Since an ABC News investigation last week, cheap meat **filler**, finely textured lean beef, commonly called pink slime, has been a hot topic for consumers.” (3/16/12, ABC Online)
- gg. Jim Avila: “Safeway says in a statement ‘considerable consumer concern’ led to its decision even though the chain believes its beef with the controversial **filler** in it is safe.” (3/21/12, ABC Online, Avila)
- hh. Jim Avila: “Viewer, Miles Herbert, wanted to know, ‘Is there any evidence that organic meat contains this pink slime?’ It turns out there isn’t. If your meat is stamped USDA Organic, it’s pure meat with no **filler**.” (3/21/12, ABC Online, Avila)
- ii. Jim Avila: “The scientists added that the **filler** was not as nutritious as ground beef, though the company disputed that.” (3/26/12, ABC Online, Avila, Zirnstein, Custer)
- jj. Jim Avila: “Beef Products Inc., maker of the ground beef **filler** USDA scientists nicknamed ‘pink slime,’” (3/27/12, ABC Online, Avila)
- kk. Jim Avila: “Stung by consumer reaction to the process used by BPI, grocery stores pulled beef containing the **filler** off the shelves and BPI closed three of its four plants for lack of demand.” (3/29/12, ABC Online, Avila)
- ll. Jim Avila: “The makers of Lean Finely Textured Beef, called ‘pink slime’ by critics, insist their product is not just a cheaper **filler** added to fresh ground beef, they say it makes beef safer.” (4/3/12, ABC Online, Avila)

- mm. Jim Avila: “Since the first of the year, McDonalds and other fast food stores have dropped LFTB, the USDA has identified which products contain the **filler** for school districts, grocery stores have pulled it from shelves, and now — for the first time — what is inside the beef will be labeled on the outside.” (4/3/12, ABC Online, Avila)
- nn. Jim Avila: “Pink Slime and You -- @JimAvilaABC investigates the widespread use of this specially treated **filler** meat.” (3/7/12, Twitter, Avila)
- oo. Jim Avila: “I went inside the plant where the ground beef ‘pink slime’ **filler** is made.” (3/31/12, Twitter, Avila)
- pp. Jim Avila: “Safeway drops pink slime, who is next and why has wal-mart refused to comment on whether its ground beef contains the controversial **filler**?” (3/21/12, Facebook, Avila)

501. Third, Defendants ABC, ABC News, and Avila republished false statements during news broadcasts and in online reports that called, described, or referred to LFTB as a “filler” added to ground beef. These false statements include but are not limited to:

- a. Bettina Elias Siegel (Consumer): “It disturbs me that the USDA made a decision that this **filler**, up to 15 percent, doesn’t have to be disclosed.” (3/21/12, World News)
- b. Jim Avila: “Siegel commended the stores that have taken action, but is still concerned. ‘It disturbs me that USDA made a decision that this **filler**, up to 15 percent doesn’t have to be disclosed,’ she told ABC News. ‘Therefore the consumer is at the mercy of each retailer’s decision.’” (3/21/12, ABC Online, Avila)

502. These statements were false because LFTB is not a filler added to ground beef. It is beef. These statements were disparaging to BPI and its product, LFTB, and affected the marketability of LFTB.

503. Each of these Defendants acted with actual malice. Each Defendant knew these disparaging statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant’s actual malice include but are not limited to those pled in paragraphs 151-165, 201-221, and 280-290.

504. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these disparaging statements during their broadcasts and publications.

505. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their disparaging statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

506. As a direct result of these Defendants' disparaging statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XIII (13)
Product Disparagement Against ABC, ABC News, Avila And Zirnstein
For False Statements That LFTB Is A "Substitute" For Beef

507. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

508. On March 7, 2012, and continuing through March 26, 2012, Defendants ABC, ABC News, Avila, and Zirnstein published and/or republished multiple false statements that called, described, or referred to LFTB as a "substitute" for beef.

509. First, Defendants ABC, ABC News, and Zirnstein published false statements during news broadcasts that called, described, or referred to LFTB as a "substitute" for beef.

These false statements include but are not limited to:

- a. Gerald Zirnstein: "It's economic fraud. It's not – it's not fresh ground beef. It's a substitute, it's a cheap substitute being added in." (3/7/12, World News, Zirnstein)
- b. A Voice (Gerald Zirnstein): "It's not fresh ground beef. It's a substitute, it's a cheap substitute being added in." (3/21/12, GMA, Zirnstein)
- c. Gerald Zirnstein: "It's not fresh ground beef. It's a substitute, it's a cheap substitute being added in." (3/26/12, World News, Zirnstein)

510. Second, Defendants ABC, ABC News, and Avila republished false statements in online reports that called, described, or referred to BPI's product LFTB as a "substitute" for beef. These false statements include but are not limited to:

- a. Jim Avila: "'It's economic fraud,' [Zirnstien] told ABC News. 'It's not fresh ground beef. . . . It's a cheap substitute being added in.'" (3/7/12, ABC Online, Avila)
- b. Jim Avila: "'It's not fresh ground beef. It's a cheap substitute being added in,' microbiologist Gerald Zirnstien said.'" (3/21/12, ABC Online, Avila)
- c. Jim Avila: "'It's not fresh ground beef. It's a cheap substitute being added in,' microbiologist Gerald Zirnstien said.'" (3/26/12, ABC Online, Avila)

511. On information and belief, Defendant Zirnstien originally published the false statements that called or referred to BPI's product LFTB as a "substitute" for beef. Zirnstien provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

512. These statements were false because LFTB is not a substitute for beef. It is beef. These statements were disparaging to BPI and its product LFTB and affected the marketability of LFTB.

513. Each of these Defendants acted with actual malice. Each Defendant knew these disparaging statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165 and 201-221.

514. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these disparaging statements during their broadcasts and publications.

515. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their disparaging statements in a

comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

516. As a direct result of these Defendants' disparaging statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XIV (14)
Product Disparagement Against ABC, ABC News, Avila, And Zirnstein
For False Statements That LFTB Is An "Economic Fraud" Or "Food Fraud"

517. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

518. On March 7, 2012, Defendants ABC, ABC News, Avila, and Zirnstein published and/or republished multiple false statements asserting that selling ground beef with LFTB was an "economic fraud" or "food fraud."

519. First, Defendant Zirnstein published a false statement during a news broadcast asserting that selling ground beef with LFTB was an "economic fraud." For example, Defendant Zirnstein published the following statement: "It's economic fraud. It's not fresh ground beef. It's a cheap substitute being added in." (3/7/12, World News, Zirnstein)

520. Second, Defendants ABC, ABC News, and Avila republished false statements in an online report and social media posting asserting that selling ground beef with LFTB was an "economic fraud" or "food fraud." These false statements include but are not limited to:

- a. Jim Avila: "'It's **economic fraud**,' [Zirnstein] told ABC News. 'It's not fresh ground beef. . . . It's a cheap substitute being added in.'" (3/7/12, ABC Online, Avila, Zirnstein)
- b. Jim Avila: "@travarp no one said this slime is dangerous. It's just not what it purports to be. Meat. And if it's in ground beef it should be labeled." Travis Arp: "that's the thing, it isn't 'slime' at all. Its small pieces of lean beef. You thaw it, and it looks like any other trimming." Jim Avila: "@travarp not my word. Coined by USDA scientist who recommended against (sic) its use. He called it pink slime. And says its a **food fraud**." (3/7/12, Twitter, Avila)

521. On information and belief, Defendant Zirnstein originally published the false statements that called or referred to BPI's product LFTB as an "economic fraud" or "food fraud." Zirnstein provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

522. These statements were false because BPI has not engaged in any fraud, and selling ground beef with LFTB is not fraud. LFTB is beef and BPI obtained approval from the USDA to include LFTB in ground beef without additional labeling. These statements were disparaging to BPI and its product, LFTB, and affected the marketability of LFTB.

523. Each of these Defendants acted with actual malice. Each Defendant knew these disparaging statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165, 178-188, 201-221, 233-266, 280-290, and 298-308.

524. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these disparaging statements during their broadcasts and publications.

525. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their disparaging statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

526. As a direct result of these Defendants' disparaging statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XV (15)
Product Disparagement Against ABC, ABC News, Avila, Zirnstein, And Custer
For False Statements Describing LFTB As Being Produced From
“Waste,” “Low-Quality” Or “Low-Grade” Trimmings Or “Scraps”

527. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

528. On March 7, 2012, and continuing through March 31, 2012, Defendants ABC, ABC News, Avila, Zirnstein, and Custer published and/or republished multiple false statements that described LFTB as being produced from “waste,” “low-quality” or “low-grade” trimmings or “scraps.”

529. First, Defendants ABC, ABC News, and Avila published false statements during news broadcasts, in online reports, and in social media postings that described LFTB as being produced from “waste,” “low-quality” or “low-grade” trimmings or “scraps.” These false statements include but are not limited to:

- a. Jim Avila: “Those **waste trimmings** are gathered, simmered at low heat to make it easier to separate fat from muscle, put in a centrifuge and spun to finish the separation. Next, the mixture is sent through pipes where it’s sprayed with ammonia gas to kill bacteria” (3/7/12, World News, Avila)
- b. Jim Avila: “The last known glimpse, six years ago, the movie Food, Inc. was given a tour of the factory. The **low-grade trimmings** were once only used in dog food and cooking oil” (3/8/12, World News, Avila)
- c. Jim Avila: “This picture of the material was sent to ABC News by its maker today. That’s the final product that starts with **low grade beef trimmings** spun in machines and spritzed with ammonia.” (3/9/12, World News, Avila)
- d. Jim Avila: “Critics, including former USDA scientists, who called it more gelatin than ground beef, contend the ammonia-treated pink slime, made from **low quality scraps** once used for dog food and cooking oil, is less nutritious than pure ground beef.” (3/21/12, GMA, Avila)

- e. Jim Avila: “Critics say the process, which uses ammonia gas to make meat **scraps** safe for consumption, should be on the label if the product is put in packages of ground beef.” (3/26/12, World News, Avila)
- f. Jim Avila: “The ‘pink slime’ is made by gathering **waste trimmings**, simmering them at a low heat so the fat separates easily from the muscle, and spinning the trimmings using a centrifuge to complete the separation. Next, the mixture is sent through pipes where it is sprayed with ammonia gas to kill bacteria.” (3/7/12, ABC Online, Avila)
- g. Jim Avila: “As seen in the movie Food Inc., the **low-grade trimmings** come from the most contaminated parts of the cow and were once only used in dog food and cooking oil.” (3/8/12, ABC Online, Avila)
- h. Jim Avila: “The **low-grade trimmings** come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter.” (3/9/12, ABC Online, Avila)
- i. Ben Forer (Production Associate): “The **low-grade trimmings** come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter.” (3/14/12, ABC Online)
- j. Jim Avila: “So now school districts which buy beef from the U.S. Department of Agriculture will be told which ground beef is made with up to 25 percent of the highly processed ‘lean finely textured beef’ which is made from **low grade** beef **scraps** spritzed with ammonia gas now commonly known as ‘pink slime.’” (3/15/12, ABC Online, Avila)
- k. Jim Avila: “The **low-grade trimmings** come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter.” (3/21/12, ABC Online, Avila)
- l. Jim Avila: “[C]ritics, including former USDA scientists, contend the ammonia treated ‘pink slime’ — made from **low quality scraps** once used for dog food and cooking oil — is less nutritious than pure ground beef.” (3/21/12, ABC Online, Avila)
- m. Jim Avila: “The **low-grade trimmings** used to produce lean, finely textured beef come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter.” (3/26/12, ABC Online, Avila)
- n. Jim Avila: ““Because the ammonia fixes the color into a pink color, it can, quote, ‘pass’ as red meat, but it’s a **low-quality** product going into the ground beef.”” (3/27/12, ABC Online, Avila, Zirnstein)

- o. Jim Avila: “ABC News joined Branstad, Perry and Kansas Gov. Sam Brownback on a tour of the facilities where beef **scraps**, mostly fat and connective tissue, are processed.” (3/29/12, ABC Online, Avila)
- p. Jim Avila: “@travarp so u know more than microbiologists at USDA who say **scraps** have more contaminants than beef cuts our report based on fact no spin.” (3/7/12, Twitter, Avila)
- q. Jim Avila: “@Dianne93101 USDA does not allow organ meat in ground beef. So no it is not in ltbf (sic). It’s **scraps** from close to hide, connective tissue.” (3/31/12, Twitter, Avila)
- r. Jim Avila: “@travarp so have these guys and trust them. **The trimmings have carcass remains as well which contain higher levels of bacteria.** Good night.” (3/7/12, Twitter, Avila)

530. Second, Defendants ABC, ABC News, and Avila republished false statements in a news broadcast and an online report that described LFTB as being produced from “low-quality beef scraps” or “low grade” beef trimmings. For example, Defendant Avila republished the following false statement: “Safeway announces its meat counter is now free of what former USDA scientists characterized as low-quality beef scraps sanitized with ammonia gas.” (3/21/12, World News, Avila) Avila also republished the following false statement: [Foshee] and two former USDA inspectors told ABC News the filler commonly referred to as pink slime comes from a low grade of beef trimmings unlike what they call real ground beef. (3/9/12, ABC Online, Avila).

531. On information and belief, Defendants Zirnstein and Custer originally published the false statements that described LFTB as being produced from “low-quality beef scraps.” Each of these Defendants provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

532. These statements were false because LFTB is made from beef trimmings that come from USDA-inspected and approved beef. LFTB is not made from waste, scraps, low-

grade beef trimmings, or low-quality beef trimmings. These statements were disparaging to BPI and its product LFTB and affected the marketability of LFTB.

533. Each of these Defendants acted with actual malice. Each Defendant knew these disparaging statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165, 233-266, and 280-290.

534. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these disparaging statements during their broadcasts and publications.

535. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their disparaging statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

536. As a direct result of these Defendants' disparaging statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XVI (16)
Product Disparagement Against ABC, ABC News And Avila
For False Statements That Beef Trimmings Used To Make LFTB
Were "Once Only Used In Dog Food And Cooking Oil"

537. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

538. On March 7, 2012 and March 8, 2012, Defendants ABC, ABC News, and Avila published multiple false statements that the beef trimmings used to make LFTB were "once only used in dog food and cooking oil" during news broadcasts, in online reports, and in social media postings. These false statements include but are not limited to:

- a. Jim Avila: “Beef trimmings that were **once only used in dog food and cooking oil**, now sprayed with ammonia to make them safe to eat and then added to most ground beef as a cheaper filler. It was Zirnstein who, in a USDA memo, first coined the term pink slime and is now coming forward to say he won’t buy it.” (3/7/12, World News, Avila, Zirnstein)
- b. Jim Avila: “The low-grade trimmings were **once only used in dog food and cooking oil**, but because of the company’s treatment, simmering at low heat, a centrifuge to separate the fat and tissue, a spritz of ammonia gas to kill the germs and a quick freeze, the USDA says it’s safe to eat. That’s the final product there. The company calls it finely textured lean beef, flash frozen and boxed.” (3/8/12, World News, Avila)
- c. Jim Avila: “‘Pink slime’ is beef trimmings. **Once only used in dog food and cooking oil**, the trimmings are now sprayed with ammonia so they are safe to eat and added to most ground beef as a cheaper filler.” (3/7/12, ABC Online, Avila)
- d. Jim Avila: “As seen in the movie Food Inc., the low-grade trimmings come from the most contaminated parts of the cow and were **once only used in dog food and cooking oil**.” (3/8/12, ABC Online, Avila)
- e. Jim Avila: “However, the substance, critics said, is more like gelatin than meat, and before Beef Products, Inc. found a way to use it by disinfecting the trimmings with ammonia it was **sold only to dog food or cooking oil suppliers**.” (3/9/12, ABC Online, Avila)
- f. Ben Forer (Production Associate): “[T]he substance, critics said, is more like gelatin than meat, and before BPI found a way to use it by disinfecting the trimmings with ammonia, it was **sold only to dog food or cooking oil suppliers**.” (3/14/12, ABC Online)

539. These statements were false because the beef trimmings used to make LFTB were not “once only used in dog food and cooking oil.” These statements were disparaging to BPI and its product, LFTB, and affected the marketability of LFTB.

540. Each of these Defendants acted with actual malice. Each Defendant knew these disparaging statements were false, or recklessly disregarded their falsity, when they broadcast and published them. The allegations related to each Defendant’s actual malice include but are not limited to those pled in paragraphs 151-165, 233-266, and 280-290.

541. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these disparaging statements during their broadcasts and publications.

542. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their disparaging statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

543. As a direct result of these Defendants' disparaging statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XVII (17)
Product Disparagement Against ABC, ABC News, Avila, Zirnstein, Custer, And Foshee
For False Statements That LFTB Is "More Like Gelatin" Than Beef

544. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

545. On March 8, 2012, and continuing through March 21, 2012, Defendants ABC, ABC News, Avila, Zirnstein, Custer, and Foshee published and/or republished multiple false statements that called, described, or referred to LFTB as "more like gelatin" than beef.

546. First, Defendants ABC, ABC News, and Avila published a false statement during a news broadcast that called, described, or referred to LFTB as "more like gelatin" than beef. For example, Avila made the following false statement: "That's the final product there. The company calls it finely textured lean beef, flash-frozen and boxed. More like gelatin and not as nutritious as ground beef." (3/8/12, World News, Avila)

547. Second, Defendants ABC, ABC News, and Avila republished false statements during news broadcasts and in online reports that called, described, or referred to LFTB as "more like gelatin" than beef. These false statements include but are not limited to:

- a. Jim Avila: “**Critics say pink slime is more like gelatin than beef** and less nutritious.” (3/9/12, World News, Avila)
- b. Jim Avila: “**Critics, including former USDA scientists, who called it more gelatin than ground beef**, contend the ammonia-treated pink slime, made from low quality scraps once used for dog food and cooking oil, is less nutritious than pure ground beef.” (3/21/12, GMA, Avila)
- c. Jim Avila: “The company calls the final product ‘Finely Textured Lean Beef.’ It is flash frozen and boxed. **Foshee says it is more like gelatin** and not nutritious as ground beef because the protein comes mostly from connective tissue, not muscle meat. ‘[It will] fill you up, but won’t do you any good,’ Foshee said.” (3/8/12, ABC Online, Avila, Foshee)
- d. Jim Avila: “**However, the substance, critics said, is more like gelatin than meat**, and before Beef Products, Inc. found a way to use it by disinfecting the trimmings with ammonia it was sold only to dog food or cooking oil suppliers.” (3/9/12, ABC Online, Avila)
- e. Ben Forer (Production Associate): “[T]he substance, critics said, is **more like gelatin than meat**, and before BPI found a way to use it by disinfecting the trimmings with ammonia, it was sold only to dog food or cooking oil suppliers.” (3/14/12, ABC Online)
- f. Jim Avila: “In fact, **it has the consistency of a ‘meat jello’** according to a former USDA microbiologist who studied the material.” (4/3/12, ABC Online, Avila, Zirnstein or Custer)

548. On information and belief, Defendants Zirnstein, Custer, and Foshee originally published the false statements that called, described, or referred to BPI’s product LFTB as “more gelatin than ground beef” or “more like gelatin” than beef. Each of these Defendants provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

549. These statements were false because LFTB is not gelatin. LFTB is beef. These statements were disparaging to BPI and its product, LFTB, and affected the marketability of LFTB.

550. Each of these Defendants acted with actual malice. Each Defendant knew these disparaging statements were false, or recklessly disregarded their falsity, when they broadcast,

published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165, 201-221, and 280-290.

551. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these disparaging statements during their broadcasts and publications.

552. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their disparaging statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

553. As a direct result of these Defendants' disparaging statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XVIII (18)
Product Disparagement Against ABC, ABC News, Avila And Foshee
For False Statements That LFTB's "Protein Comes Mostly From Connective Tissue"

554. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

555. On March 8, 2012, and March 9, 2012, Defendants ABC, ABC News, and Avila republished false statements during news broadcasts and in an online report that LFTB's "protein comes mostly from connective tissue, and not muscle meat." These false statements include but are not limited to:

- a. Jim Avila: "The company calls it finely textured lean beef, flash frozen and boxed. More like gelatin and not as nutritious as ground beef. Kit Foshee, who was once number two at BPI, says that's because the **protein comes mostly from connective tissue, not muscle meat.**" (3/8/12, World News, Avila)
- b. Jim Avila: "The company calls the final product 'Finely Textured Lean Beef.' It is flash frozen and boxed. Foshee says it is more like gelatin and not nutritious as ground beef because the **protein comes mostly from connective tissue, not muscle meat.**" (3/8/12, ABC Online, Avila)

- c. Jim Avila: “The company calls the product ‘Finely Textured Lean Beef.’ Foshee said it was not as nutritious as ground beef because **the protein comes mostly from connective tissue, not muscle meat.**” (3/9/12, ABC Online, Avila)
- d. Jim Avila: “ABC News joined Branstad, Perry and Kansas Gov. Sam Brownback on a tour of the facilities where **beef scraps, mostly fat and connective tissue,** are processed.” (3/29/12, ABC Online, Avila)

556. On information and belief, Defendant Foshee originally published the false statement that BPI’s product LFTB’s “protein comes mostly from connective tissue, and not muscle meat.” Foshee provided his express or implied consent to the ABC Defendants to republish his statement, and it was reasonably foreseeable that they would republish his statement.

557. These statements were false because LFTB’s protein does not come “mostly from connective tissue.” LFTB’s protein comes “mostly from” muscle meat. These statements were disparaging to BPI and its product, LFTB, and affected the marketability of LFTB.

558. Each of these Defendants acted with actual malice. Each Defendant knew these disparaging statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant’s actual malice include but are not limited to those pled in paragraphs 151-165, 201-221, and 280-290.

559. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these disparaging statements during their broadcasts and publications.

560. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their disparaging statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

561. As a direct result of these Defendants' disparaging statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

**CATEGORY THREE: DEFAMATION COUNTS FOR FALSE IMPLICATIONS
(COUNTS XIX-XXII)**

COUNT XIX (19)

**Defamation Against ABC, ABC News, Sawyer, Avila, Kerley, Zirnstein, Custer, And
Foshee For False Implication That LFTB Is Not Beef Or Not Meat**

562. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

563. On March 7, 2012, and continuing through April 3, 2012, Defendants ABC, ABC News, Sawyer, Avila, Kerley, Zirnstein, Custer, and Foshee published and/or republished multiple statements that implied that LFTB was not beef and not even meat during news broadcasts, in online reports, and in social media postings. Defendants' statements that implied that LFTB was not beef and not even meat fall into the following eight categories.

564. First, Defendants called, described, or referred to LFTB as "pink slime." These statements are listed in Count 1 and Count 10, and are incorporated by reference. Defendants' statements implied that LFTB was not beef or meat, but instead was a noxious, repulsive, and filthy fluid.

565. Second, Defendants stated that LFTB is not beef and not meat. These statements are listed in Count 2 and Count 11, and are incorporated by reference. Defendants' statements implied that LFTB was not beef or meat.

566. Third, Defendants stated that LFTB was a "filler" added to ground beef. These statements are listed in Count 3 and Count 12, and are incorporated by reference. Defendants' statements implied that LFTB was different than the other sources of lean beef for ground beef because it was not beef or meat.

567. Fourth, Defendants stated that LFTB was a "substitute" for beef. These statements are listed in Count 4 and Count 13, and are incorporated by reference. Defendants'

statements implied that LFTB was different than the other sources of lean beef for ground beef because it was not beef or meat.

568. Fifth, Defendants stated that selling ground beef with LFTB was “economic fraud” and “food fraud.” These statements are listed in Count 5 and Count 14, and are incorporated by reference. Defendants’ statements implied that selling ground beef with fraud was “fraud” because LFTB was not beef or meat.

569. Sixth, Defendants stated that LFTB was “more like gelatin” than beef. These statements are listed in Count 8 and Count 17, and are incorporated by reference. Defendants statements implied that LFTB was not beef or meat, but instead was a gelatin.

570. Seventh, Defendants stated that LFTB’s “protein comes mostly from connective tissue, and not muscle meat.” These statements are listed in Count 9 and Count 18, and are incorporated by reference. Defendants’ statements implied that LFTB was not beef because its protein did not come from muscle meat.

571. Eighth, on March 7, 2012, and continuing through April 3, 2012, Defendants ABC and ABC News published, and republished the above statements in segments during World News broadcasts where each segment was defamatory in and of itself because the totality of the segment created the false impression that BPI’s product LFTB was not beef or meat based on the way Defendants ABC and ABC News covered, portrayed, and juxtaposed information regarding LFTB.

572. On information and belief, Defendants Zirnstein, Custer, and Foshee originally published various false statements regarding LFTB in the categories above to the ABC Defendants. Each of these Defendants provided his express or implied consent to the ABC

Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

573. These statements were false by implication because LFTB is beef and it is meat. These statements and their implications, each individually and taken as a whole, were unprivileged, and defamatory because they exposed BPI and its product, LFTB, to hatred, contempt, ridicule, obloquy, caused LFTB and BPI to be shunned or avoided, and/or injured BPI's business.

574. Each of these Defendants acted with actual malice. Each Defendant knew these defamatory statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165, 178-188, and 201-221.

575. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these defamatory statements during their broadcasts and publications.

576. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their defamatory statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

577. As a direct result of these Defendants' defamatory statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XX (20)
Defamation Against ABC, ABC News, Sawyer, Avila, Zirnstein, And Foshee
For False Implication That LFTB Is Not Safe For Public Consumption

578. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

579. On March 7, 2012, and continuing through April 3, 2012, Defendants ABC , ABC News, Sawyer, Avila, Kerley, Zirnstein, and Foshee published and/or republished multiple statements that implied that BPI's product LFTB was not safe for public consumption during news broadcasts, in online reports, and in social media postings. Defendants' statements that implied that LFTB was not safe for public consumption fall into the following eight categories.

580. First, Defendants called, described, or referred to LFTB as "pink slime." These statements are listed in Count 1 and Count 10, and are incorporated by reference. Defendants' statements implied that LFTB was not safe for public consumption because it was a noxious, repulsive, and filthy fluid.

581. Second, Defendants stated that selling ground beef with LFTB was "economic fraud" and "food fraud." These statements are listed in Count 5 and Count 14, and are incorporated by reference. Defendants' statements implied that selling ground beef with fraud was "fraud" because LFTB was not safe for public consumption.

582. Third, Defendants stated that LFTB was being produced from "waste," "low-quality" or "low-grade" trimmings or "scraps." These statements are listed in Count 6 and Count 15, and are incorporated by reference. Defendants' statements implied that LFTB was not safe for public consumption because it was made with inferior and contaminated beef trimmings.

583. Fourth, Defendants stated that the beef trimmings used to produce LFTB were "once only used in dog food and cooking oil." These statements are listed in Count 7 and Count 16, and are incorporated by reference. Defendants' statement implied that LFTB was not safe for public consumption because it was made with inferior and contaminated beef trimmings.

584. Fifth, Defendants used derogatory terms to describe LFTB and ground beef made with LFTB. Defendants' statements implied that LFTB was an unsafe product being included in ground beef. These statements include but are not limited to:

- a. Kit Foshee: "It will fill you up, but **it's not going to do you any good.**" (3/8/12, World News, Foshee)
- b. Jim Avila: "But most Americans get their ground beef at supermarkets, and our viewers want to know if **pink slime lurks in the beef** sold here." Amber Neeley (Consumer): "What 30 percent of meat doesn't contain pink slime?" (3/9/12, World News, Avila)
- c. Jim Avila: "Critics say pink slime is more like gelatin than beef and less nutritious. But BPI, its inventor and primary manufacturer, tells ABC News in a letter from its lawyer today it is 'USDA approved beef' and is 'nutritious,' and the American Meat Institute insists pink slime is 'not an additive, and so no label is necessary.' **What's being hidden here?**" (3/9/12, World News, Avila)
- d. Jim Avila: "30,000 hamburgers on the grill at the BPI picnic rally at Sioux City, Iowa. All loaded with LFTB, or pink slime as known by critics. But **now what was hidden in these burgers** and nearly all ground beef for nearly 20 years may finally be revealed on the package label." (4/3/12, World News, Avila)
- e. Jim Avila: "A viewer, Miles Herbert, wanted to know, 'Is there any evidence that organic meat contains this pink slim (sic)?' It turns out there isn't. If your meat is stamped USDA Organic, it's pure meat with no filler. **But critics say everything else is suspect** because pink slime does not have to appear on the label. **And the USDA is giving no indication it will force meat packers to lift the veil of secrecy any time soon.**" (3/8/12, ABC Online, Avila)
- f. Jim Avila: "The low-grade trimmings used to produce lean, finely textured beef **come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter.** But because of the treatment of the trimmings – after they have been simmered in low heat, separating fat and tissue using a centrifuge, they are sprayed with ammonia gas to kill germs – the USDA says it's safe to eat." (3/26/12, ABC Online, Avila)
- g. Jim Avila: "Zirnstein said it is more than an additive. He calls it '**an adulterant.**'" (3/27/12, ABC Online, Avila, Zirnstein)

585. Sixth, Defendants published false statements regarding the process used by BPI to temper beef trimmings when producing LFTB. Defendants falsely stated that LFTB cooked or simmered the beef trimmings. Defendants' statements implied that ground beef with LFTB was not safe for public consumption because a cooked product was being added to fresh ground beef. Defendants' statements also implied that using LFTB could contaminate fresh ground beef. These statements include but are not limited to:

- a. Jim Avila: "Those waste trimmings are gathered, **simmered at low heat** to make it easier to separate fat from muscle, put in a centrifuge and spun to finish the separation. Next, the mixture is sent through pipes where it is sprayed with ammonia gas to kill bacteria" (3/7/12, World News, Avila)
- b. Jim Avila: "The last known glimpse, six years ago, the movie Food, Inc. was given a tour of the factory. The low-grade trimmings were once only used in dog food and cooking oil, but because of the company's treatment, **simmering at low heat**, a centrifuge to separate the fat and tissue, a spritz of ammonia gas to kill the germs and a quick freeze, the USDA says it's safe to eat." (3/8/12, World News, Avila)
- c. David Kerley: "Parents, schools, state officials, insisting the government do something about pink slime, **trimmings which are slightly cooked**, spun down to remove fat, and sprayed with ammonia, and added back into ground beef." (3/15/12, World News, Kerley)
- d. Jim Avila: "The 'pink slime' is made by gathering waste trimmings, **simmering them at a low heat** so the fat separates easily from the muscle, and spinning the trimmings using a centrifuge to complete the separation. Next, the mixture is sent through the pipes where it is sprayed with ammonia gas to kill bacteria." (3/7/12, ABC Online, Avila)
- e. Jim Avila: "As seen in the movie Food Inc., the low-grade trimmings come from the most contaminated parts of the cow and were once only used in dog food and cooking oil. But because of BPI's treatment of the trimmings – **simmering them in low heat**, separating fat and tissue using a centrifuge and spraying them with ammonia gas to kill germs – the United States Department of Agriculture says it's safe to eat." (3/8/12, ABC Online, Avila)
- f. Jim Avila: "The low-grade trimmings come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of BPI's treatment of the trimmings

– **simmering them in low heat**, separating the fat and tissue using a centrifuge and spraying them with ammonia gas to kill the germs – the United States Department of Agriculture says it’s safe to eat.” (3/9/12, ABC Online, Avila)

- g. Ben Forer (Production Associate): “The low-grade trimmings come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of BPI’s treatment of the trimmings – **simmering them in low heat**, separating the fat and tissue using a centrifuge and spraying them with ammonia gas to kill the germs – the United States Department of Agriculture says it’s safe to eat.” (3/14/12, ABC Online)
- h. Jim Avila: “The low-grade trimmings come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of the treatment of the trimmings — **simmering them in low heat**, separating fat and tissue using a centrifuge, and spraying them with ammonia gas to kill germs — the United States Department of Agriculture says it’s safe to eat.” (3/21/12, ABC Online, Avila)
- i. Jim Avila: “The low-grade trimmings used to produce lean, finely textured beef come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of the treatment of the trimmings – after they have been **simmered in low heat**, separating fat and tissue using a centrifuge, they are sprayed with ammonia gas to kill germs – the USDA says it’s safe to eat.” (3/26/12, ABC Online, Avila)
- j. Jim Avila: “‘**At that temperature, you increase the level of pathogens and the level of spoilage bacteria,**’ Zirnstein told ABC News. ‘In order to turn this into a product they can potentially sell as ‘meat,’ and that’s, [in] quotations, ‘meat,’ they add ammonia.’” (3/27/12, ABC Online, Avila, Zirnstein)

586. Seventh, Defendants published false statements regarding BPI’s use of ammonium hydroxide. Defendants made false statements regarding the method, volume and purpose of BPI’s ammonium hydroxide process. Defendants’ statements implied that the beef trimmings used to produce LFTB were contaminated and not safe for public consumption. These statements include but are not limited to:

- a. Jim Avila: “Those waste trimmings are gathered, simmered at low heat to make it easier to separate fat from muscle, put in a centrifuge and spun to

finish the separation. Next, the mixture is sent through pipes where it is **sprayed with ammonia gas** to kill bacteria” (3/7/12, World News, Avila)

- b. Jim Avila: “The last known glimpse, six years ago, the movie Food, Inc. was given a tour of the factory. The low-grade trimmings were once only used in dog food and cooking oil, but because of the company’s treatment, simmering at low heat, a centrifuge to separate the fat and tissue, **a spritz of ammonia gas to kill the germs and a quick freeze, the USDA says it’s safe to eat.**” (3/8/12, World News, Avila)
- c. Jim Avila: “Corporate headquarters later told us yes, its meat does contain it. But they were reviewing the policy. Fast-forward to today. Safeway announces its meat counter is now free of what former USDA scientists characterize as **low quality beef scraps sanitized with ammonia gas.**” (3/21/12, World News, Avila)
- d. Jim Avila: “Critics say **the process, which uses ammonia gas to make meat scraps safe for consumption,** should be on the label if the product is put in packages of ground beef.” (3/26/12, World News, Avila)
- e. Jim Avila: “‘Pink slime’ is beef trimmings. Once only used in dog food and cooking oil, **the trimmings are now sprayed with ammonia so they are safe to eat** and added to most ground beef as a cheaper filler.” (3/7/12, ABC Online, Avila)
- f. Jim Avila: “The ‘pink slime’ is made by gathering waste trimmings, simmering them at a low heat so the fat separates easily from the muscle, and spinning the trimmings using a centrifuge to complete the separation. Next, the mixture is sent through the pipes where it is **sprayed with ammonia gas** to kill bacteria.” (3/7/12, ABC Online, Avila)
- g. Jim Avila: “As seen in the movie Food Inc., **the low-grade trimmings come from the most contaminated parts of the cow** and were once only used in dog food and cooking oil. But because of BPI’s treatment of the trimmings – simmering them in low heat, separating fat and tissue using a centrifuge and **spraying them with ammonia gas to kill germs** – the United States Department of Agriculture says it’s safe to eat.” (3/8/12, ABC Online, Avila)
- h. Jim Avila: “However, the substance, critics said, is more like gelatin than meat, and before Beef Products, Inc. found a way to use it by **disinfecting the trimmings with ammonia** it was sold only to dog food or cooking oil suppliers.” (3/9/12, ABC Online, Avila)
- i. Jim Avila: “The low-grade trimmings come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of BPI’s treatment of the trimmings

- simmering them in low heat, separating the fat and tissue using a centrifuge and **spraying them with ammonia gas to kill the germs** – the United States Department of Agriculture says it’s safe to eat.” (3/9/12, ABC Online, Avila)
- j. Ben Forer (Production Associate): “[T]he substance, critics said, is more like gelatin than meat, and before BPI found a way to use it by **disinfecting the trimmings with ammonia**, it was sold only to dog food or cooking oil suppliers.” (3/14/12, ABC Online)
- k. Ben Forer (Production Associate): “The low-grade trimmings come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of BPI’s treatment of the trimmings – simmering them in low heat, separating the fat and tissue using a centrifuge and **spraying them with ammonia gas to kill the germs** – the United States Department of Agriculture says it’s safe to eat.” (3/14/12, ABC Online)
- l. Jim Avila: “The low-grade trimmings come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of the treatment of the trimmings — simmering them in low heat, separating fat and tissue using a centrifuge, and **spraying them with ammonia gas to kill germs** — the United States Department of Agriculture says it’s safe to eat.” (3/21/12, ABC Online, Avila)
- m. Jim Avila: “The low-grade trimmings used to produce lean, finely textured beef come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of the treatment of the trimmings – after they have been simmered in low heat, separating fat and tissue using a centrifuge, they are **sprayed with ammonia gas to kill germs** – the USDA says it’s safe to eat.” (3/26/12, ABC Online, Avila)
- n. Jim Avila: “Critics say BPI, which has won food safety awards for its ammoniating process, overstates the product’s similarity to fresh ground beef, because of the process it goes through to separate the meat from the fat and **to kill bacteria**.” (3/27/12, ABC Online, Avila)
- o. Jim Avila: “‘**Ammonia** does two things most people don’t realize,’ Zirnstein said. ‘**In high levels**, it does more than just kill the ... pathogens. It also fixes the color of the meat. So the red meat stays pink.’ Zirnstein said that is why he coined the phrase, ‘pink slime.’” (3/27/12, ABC Online, Avila, Zirnstein)
- p. Jim Avila: “‘At that temperature, you increase the level of pathogens and the level of spoilage bacteria,’ Zirnstein told ABC News. ‘**In order to**

turn this into a product they can potentially sell as ‘meat,’ and that’s, [in] quotations, ‘meat,’ they add ammonia.” (3/27/12, ABC Online, Avila)

- q. Jim Avila: “‘If that ammonia wasn’t there, if it wasn’t **added to kill the bacteria**, it would also come in as a gray product and you’d have gray slime,’ [Zirnstein] said. ‘Gray slime!’” (3/27/12, ABC Online, Avila)
- r. Jim Avila: “‘**Because the ammonia fixes the color into a pink color, it can, quote, ‘pass’ as red meat**, but it’s a low-quality product going into the ground beef.’” (3/27/12, ABC Online, Avila, Zirnstein)
- s. Jim Avila: “@travarp so u know more than microbiologists at USDA who say **scraps have more contaminants than beef cuts** our report based on fact no spin.” (3/7/12, Twitter, Avila)
- t. Jim Avila: “@travarp **cyanide is in human body. Amount [of ammonia hydroxide] is what counts**. U r arguing with scientists who are already doctors. Not studying to be.” (3/7/12, Twitter, Avila)
- u. Jim Avila: “@travarp so have these guys and trust them. **The trimmings have carcass remains as well which contain higher levels of bacteria**. Good night.” (3/7/12, Twitter, Avila)

587. Eighth, on March 7, 2012, and continuing through April 3, 2012, Defendants ABC and ABC News published, and republished the above statements in segments during World News broadcasts where each segment was defamatory in and of itself because the totality of the segment created the false impression that BPI’s product, LFTB, was not safe for public consumption based on the way Defendants ABC and ABC News covered, portrayed, and juxtaposed information regarding LFTB.

588. On information and belief, Defendants Zirnstein and Foshee originally published various false statements regarding LFTB in the categories above to the ABC Defendants. Each of these Defendants provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

589. These statements were false by implication because LFTB is safe for public consumption. These statements and their implications, each individually and taken as a whole,

were unprivileged, and defamatory because they exposed BPI and its product, LFTB, to hatred, contempt, ridicule, obloquy, caused LFTB and BPI to be shunned or avoided, and/or injured BPI's business.

590. Each of these Defendants acted with actual malice. Each Defendant knew these defamatory statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165, 178-188, and 233-266.

591. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these defamatory statements during their broadcasts and publications.

592. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their defamatory statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

593. As a direct result of these Defendants' defamatory statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XXI (21)
Defamation Against ABC, ABC News, Sawyer, Avila, Zirnstein, Custer, And Foshee
For False Implication That LFTB Is Not Nutritious

594. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

595. On March 7, 2012, and continuing through April 3, 2012, Defendants ABC, ABC News, Sawyer, Avila, Kerley, Zirnstein, Custer, and Foshee published and/or republished multiple statements that implied that BPI's product LFTB was not nutritious during news broadcasts, in online reports, and in social media postings. Defendants' statements that implied that LFTB was not nutritious fall into the following ten categories.

596. First, Defendants called, described, or referred to LFTB as “pink slime.” These statements are listed in Count 1 and Count 10, and are incorporated by reference. Defendants’ statements implied that LFTB was not nutritious because it was a noxious, repulsive, and filthy fluid.

597. Second, Defendants stated that LFTB is not beef and not meat. These statements are listed in Count 2 and Count 11, and are incorporated by reference. Defendants’ statements implied that LFTB was not nutritious because it was not beef or meat.

598. Third, Defendants stated that LFTB was a “filler” added to ground beef. These statements are listed in Count 3 and Count 12, and are incorporated by reference. Defendants’ statements implied that LFTB was added to ground beef simply to “pump up” the volume of ground beef without adding nutritional value.

599. Fourth, Defendants stated that selling ground beef with LFTB was “economic fraud” and “food fraud.” These statements are listed in Count 5 and Count 14, and are incorporated by reference. Defendants made these statements to convey that ground beef with LFTB should include additional labeling because it was nutritionally inferior to ground beef without LFTB.

600. Fifth, Defendants falsely stated that LFTB is “more like gelatin” than beef. These statements are listed in Count 8 and Count 17, and are incorporated by reference. Defendants made these statements to convey that LFTB was not nutritious because it was “more like gelatin” than beef.

601. Sixth, Defendants falsely stated that LFTB’s “protein comes mostly from connective tissue, and not muscle meat.” These statements are listed in Count 9 and Count 17, and are incorporated by reference. Defendants made these statements to convey that LFTB was

not nutritious because its protein did not come from muscle meat. For example, Defendants made the following statements:

602. Seventh, Defendants falsely stated that consuming LFTB will not do a consumer any good. Defendants made these statements to convey that LFTB did not provide consumers any nutritional benefit. These statements include but are not limited to:

- a. Kit Foshee: “It will fill you up, but **it’s not going to do you any good.**” (3/8/12, World News, Foshee)
- b. Jim Avila: “The company calls the final product ‘Finely Textured Lean Beef.’ It is flash frozen and boxed. Foshee says its more like gelatin and not nutritious as ground beef because the protein comes mostly from connective tissue, not muscle meat. **‘[It will] fill you up, but won’t do you any good,’** Foshee said.” (3/8/12, ABC Online, Avila, Foshee)

603. Eighth, Defendants falsely stated that BPI makes LFTB from “waste,” “scraps,” “low quality” beef trimmings and “low grade” beef trimmings. These statements are listed in Count 6 and Count 15, and are incorporated by reference. Defendants made these statements to convey that BPI uses inferior raw materials to produce LFTB that do not have nutritional value.

604. Ninth, Defendants falsely stated that the beef trimmings used by BPI to make LFTB were “once used only for dog food and cooking oil.” These statements are listed in Count 7 and Count 16, and are incorporated by reference. Defendants made these statement to convey that BPI uses inferior raw materials to produce LFTB that do not have nutritional value.

605. Tenth, on March 7, 2012, and continuing through April 3, 2012, Defendants ABC and ABC News published, and republished the above statements in segments during World News broadcasts where each segment was defamatory in and of itself because the totality of the segment created the false impression that BPI’s product, LFTB, was not nutritious based on the way Defendants ABC and ABC News covered, portrayed, and juxtaposed information regarding LFTB.

606. On information and belief, Defendants Zirnstein, Custer, and Foshee originally published various false statements regarding LFTB in the categories above to the ABC Defendants. Each of these Defendants provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

607. These statements were false by implication because LFTB is nutritious. LFTB is lean beef, its protein comes “mostly from” muscle meat, and it has nutritional value. These statements and their implications, each individually and taken as a whole, were unprivileged, and defamatory because they exposed BPI and its product, LFTB, to hatred, contempt, ridicule, obloquy, caused LFTB and BPI to be shunned or avoided, and/or injured BPI’s business.

608. Each of these Defendants acted with actual malice. Each Defendant knew these defamatory statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant’s actual malice include but are not limited to those pled in paragraphs 151-165, 178-188, and 280-290.

609. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these defamatory statements during their broadcasts and publications.

610. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, Sawyer, Avila and Kerley retract their defamatory statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

611. As a direct result of these Defendants’ defamatory statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XXII (22)
Defamation Against ABC, ABC News, Sawyer, Avila, Zirnstein, And Custer

For False Implication That BPI Engaged In Improper Conduct

612. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

613. On March 7, 2012, and continuing through April 3, 2012, Defendants ABC , ABC News, Sawyer, Avila, Kerley, Zirnstein, Custer, and Foshee published and/or republished multiple statements that implied that BPI engaged in improper conduct to gain approval for LFTB from the USDA. Defendants' statements that implied that BPI engaged in improper conduct to gain approval for LFTB from the USDA fall into the following five categories.

614. First, Defendants published statements during news broadcasts that referred to Zirnstein and Custer as "whistleblowers" who were revealing shocking facts regarding the USDA's approval of LFTB. These statements include but are not limited to:

- a. Diane Sawyer: "Now, a startling ABC News investigation. A **whistleblower** has come forward to tell consumers about the ground beef a lot of us buy at the supermarket. Is it what we think it is or, is it padded with a filler the whistleblower calls pink slime?" (3/7/12, World News, Sawyer)
- b. Jim Avila: "Gerald Zirnstein grinds his own hamburger these days. Why? **Because this former USDA scientist and, now whistleblower**, knows that 70 percent of the ground beef we buy at the supermarket contains something he calls pink slime. Beef trimmings that were once only used in dog food and cooking oil, now sprayed with ammonia to make them safe to eat and then added to most ground beef as a cheaper filler. It was Zirnstein who, in an USDA memo, first coined the term pink slime and is now coming forward to say he won't buy it." (3/7/12, World News, Avila, Zirnstein)
- c. Diane Sawyer: "Last night, a **whistleblower** told us about what he's calling pink slime, a kind of filler used to pump up the volume of meat. Our report sparked an avalanche of e-mails from you, and today we ask ABC's Senior National Correspondent Jim Avila to tackle some of them, including your number one question, how to tell if there is pink slime in your dinner." (3/8/12, World News, Sawyer)
- d. Jim Avila: "Gerald Zirnstein grinds his own hamburger these days. Why? **Because this former United States Department of Agriculture scientist**

and, now, whistleblower, knows that 70 percent of the ground beef we buy at the supermarket contains something he calls ‘pink slime.’” (3/7/12, ABC Online, Avila)

615. Second, Defendants published statements during news broadcasts that the USDA approved LFTB over the objections of USDA scientists and that the scientists were “overruled” by officials with “ties to the beef industry.” These statements include but are not limited to:

- a. Jim Avila: **“Zirnstien and his fellow USDA scientist, Carl Custer, both warned against using** what the industry calls lean finely textured beef and is widely known now as pink slime. But their **government bosses overruled them.”** (3/7/12, World News, Avila, Zirnstien, Custer)
- b. Jim Avila: **“And it doesn’t have to appear on the label because, over objections of its own scientists, USDA officials with links to the beef industry label pink slime meat.”** (3/7/12, World News, Avila)
- c. Jim Avila: **“Two former USDA scientists who reviewed the product and recommended against its use** say it’s not just the same as ground beef. Gerald Zirnstien: It’s not fresh ground beef. It’s a substitute, it’s a cheap substitute being added in.” (3/26/12, World News, Avila, Zirnstien)
- d. Jim Avila: **“Zirnstien and his fellow USDA scientist, Carl Custer, both warned against using** what the industry calls ‘lean finely textured beef,’ widely known as ‘pink slime,’ but their **government bosses overruled them.”** (3/7/12, ABC Online, Avila, Custer, Zirnstien)
- e. Jim Avila: **“The ‘pink slime’ does not have to appear on the label because, over the objections of its own scientists, USDA officials with links to the beef industry labeled it meat.”** (3/7/12, ABC Online, Avila)
- f. Jim Avila: **“Two former scientists with the U.S. Department of Agriculture who reviewed the product advised against using** it in ground beef and told ABC News that it was not the same as ground beef.” (3/26/12, ABC Online, Avila, Custer, Zirnstien)
- g. Jim Avila: **“Gerald Zirnstien, the former USDA microbiologist who first used the term ‘pink slime’ and recommended against its inclusion in ground beef,** said the first problem is that the BPI process begins with warming the meat scraps just enough so they don’t cook but are easier to separate in a centrifuge.” (3/27/12, ABC Online, Avila)
- h. Jim Avila: **“@travarp no one said this slime is dangerous. It’s just not what it purports to be. Meat. And if it’s in ground beef it should be labeled.”** Travis Arp: **“that’s the thing, it isn’t ‘slime’ at all. Its small pieces of lean beef. You thaw it, and it looks like any other trimming.”**

Jim Avila: “@travarp not my word. **Coined by USDA scientist who recommended agains (sic) it’s use.** He called it pink slime. And says its a food fraud.” (3/7/12, Twitter, Avila)

616. Third, Defendants published statements during news broadcasts that Assistant Secretary of Agriculture Jo Ann Smith unilaterally made the decision to approve LFTB. They further stated that Smith had no valid basis for doing so. These statements include but are not limited to:

- a. Carl Custer: “**The under secretary said** it’s pink, therefore, it’s meat.” (3/7/12, World News, Custer)
- b. Jim Avila: “**ABC News has learned the woman who made the decision to okay the mix is former Undersecretary of Agriculture, Joann Smith,** a call that led to hundred of millions of dollars for Beef Products Inc., the makers of pink slime. **When Smith stepped down from USDA, BPI’s principal major supplier appointed her to the board of directors, where she made at least 1.2 million dollars over 17 years.** She did not return our calls for comment. BPI said it had nothing to do with her appointment, and the USDA says while legal then, under current ethics rules she could not have immediately joined that board.” (3/7/12, World News, Avila)
- c. Jim Avila: “**ABC News has learned the woman who made the decision to OK the mix is a former undersecretary of agriculture, Joann Smith.** It was a call that led to hundreds of millions of dollars for Beef Products, Inc., the makers of pink slime.” (3/7/12, ABC Online, Avila)
- d. Jim Avila: “**When Smith stepped down from the USDA in 1993, BPI’s major supplier appointed her to its board of directors, where she made at least \$1.2 million over 17 years.**” (3/7/12, ABC Online, Avila)
- e. Jim Avila: “The USDA said while her appointment was legal at the time, under current ethics rules Smith could not have immediately joined the board.” (3/7/12, ABC Online, Avila)
- f. Jim Avila: “**The mother of pink slime. USDA official w/ ties to beef industry-allowed in all ground beef-stores, schools everywhere.** Tnite. @ABCWorldNews.” (3/7/12, Twitter, Avila)
- g. Jim Avila: “@NicholasARoth correct **bob Peterson, good friend of Roth and BPI was ceo when USDA undersecretary was put on board after ftlb (sic) she approved.**” (4/1/12, Twitter, Avila)

617. Fourth, Defendants published and/or republished statements during a news broadcast and in an online report and tweet that the USDA's approval of LFTB amounted to fraud. These statements include but are not limited to:

- a. Gerald Zirnstein: "It's **economic fraud**. It's not -- it's not fresh ground beef. It's a substitute, it's a cheap substitute being added in." (3/7/12, World News, Zirnstein)
- b. Jim Avila: "'It's **economic fraud**,' [Zirnstein] told ABC News. 'It's not fresh ground beef . . . It's a cheap substitute being added in.'" (3/7/12, ABC Online, Avila, Zirnstein)
- c. Jim Avila: "@travarp no one said this slime is dangerous. It's just not what it purports to be. Meat. And if it's in ground beef it should be labeled." Travis Arp: "that's the thing, it isn't 'slime' at all. Its small pieces of lean beef. You thaw it, and it looks like any other trimming." Jim Avila: "@travarp not my word. Coined by USDA scientist who recommended agains (sic) it's use. He called it pink slime. And says its a **food fraud**." (3/7/12, Twitter, Avila)

618. Fifth, on March 7, 2012, and continuing through April 3, 2012, Defendants ABC and ABC News published, and republished the above statements in segments during World News broadcasts where each segment was defamatory in and of itself because the totality of the segment created the false impression that BPI engaged in improper conduct in gaining approval for LFTB from the USDA based on the way Defendants ABC and ABC News covered, portrayed, and juxtaposed information regarding LFTB.

619. On information and belief, Defendants Zirnstein and Custer originally published various false statements regarding LFTB in the categories above to the ABC Defendants. Each of these Defendants provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

620. All of these statements implied that the USDA's approval of LFTB was somehow illegal or improper, BPI had wrongly secured such approval, and that without Jo Ann Smith's involvement, LFTB would not have been approved by the USDA. These statements were false

by implication because BPI received approval for LFTB after the product went through the same review as other products. The USDA's approval was based on the merits of LFTB, not any improper influence by BPI. These statements and their implications, each individually and taken as a whole, were unprivileged, and defamatory because they exposed BPI and its product, LFTB, to hatred, contempt, ridicule, obloquy, caused LFTB and BPI to be shunned or avoided, and/or injured BPI's business.

621. Each of these Defendants acted with actual malice. Each Defendant knew these defamatory statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165, 178-188, and 299-309.

622. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these defamatory statements during their broadcasts and publications.

623. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their defamatory statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

624. As a direct result of these Defendants' defamatory statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

**CATEGORY FOUR: COMMON LAW PRODUCT DISPARAGEMENT COUNTS
FOR FALSE IMPLICATIONS
(COUNTS XXIII-XXV)**

COUNT XXIII (23)

**Product Disparagement Against ABC, ABC News, Sawyer, Avila, Kerley, Zirnstein,
Custer, And Foshee For False Implication That LFTB is Not Beef Or Not Meat**

625. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

626. On March 7, 2012, and continuing through April 3, 2012, Defendants ABC, ABC News, Sawyer, Avila, Kerley, Zirnstein, Custer, and Foshee published and/or republished multiple statements that implied that LFTB was not beef and not even meat during news broadcasts, in online reports and in social media postings. Defendants' statements that implied that LFTB was not beef and not even meat fall into the following eight categories.

627. First, Defendants called, described, or referred to LFTB as "pink slime." These statements are listed in Count 1 and Count 10, and are incorporated by reference. Defendants' statements implied that LFTB was not beef or meat, but instead was a noxious, repulsive, and filthy fluid.

628. Second, Defendants stated that LFTB is not beef and not meat. These statements are listed in Count 2 and Count 11, and are incorporated by reference. Defendants' statements implied that LFTB was not beef or meat.

629. Third, Defendants stated that LFTB was a "filler" added to ground beef. These statements are listed in Count 3 and Count 12, and are incorporated by reference. Defendants' statements implied that LFTB was different than the other sources of lean beef for ground beef because it was not beef or meat.

630. Fourth, Defendants stated that LFTB was a “substitute” for beef. These statements are listed in Count 4 and Count 13, and are incorporated by reference. Defendants’ statements implied that LFTB was different than the other sources of lean beef for ground beef because it was not beef or meat.

631. Fifth, Defendants stated that selling ground beef with LFTB was “economic fraud” and “food fraud.” These statements are listed in Count 5 and Count 14, and are incorporated by reference. Defendants’ statements implied that selling ground beef with fraud was “fraud” because LFTB was not beef or meat.

632. Sixth, Defendants stated that LFTB was “more like gelatin” than beef. These statements are listed in Count 8 and Count 17, and are incorporated by reference. Defendants statements implied that LFTB was not beef or meat, but instead was a gelatin.

633. Seventh, Defendants stated that LFTB’s “protein comes mostly from connective tissue, and not muscle meat.” These statements are listed in Count 9 and Count 18, and are incorporated by reference. Defendants’ statements implied that LFTB was not beef because its protein did not come from muscle meat.

634. Eighth, on March 7, 2012, and continuing through April 3, 2012, Defendants ABC and ABC News published, and republished the above statements in segments during World News broadcasts where each segment was defamatory in and of itself because the totality of the segment created the false impression that BPI’s product, LFTB, was not beef or meat based on the way Defendants ABC and ABC News covered, portrayed, and juxtaposed information regarding LFTB.

635. On information and belief, Defendants Zirnstein, Custer, and Foshee originally published various false statements regarding LFTB in the categories above to the ABC

Defendants. Each of these Defendants provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

636. These statements were false by implication because LFTB is beef and it is meat. These statements and their implications, each individually and taken as a whole, were disparaging to BPI and its product, LFTB, and affected the marketability of LFTB.

637. Each of these Defendants acted with actual malice. Each Defendant knew these disparaging statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165, 178-186, and 201-221.

638. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these disparaging statements during their broadcasts and publications.

639. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their disparaging statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

640. As a direct result of these Defendants' disparaging statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XXIV (24)
Product Disparagement Against ABC, ABC News, Sawyer, Avila, Zirnstien, And Foshee
For False Implication That LFTB Is Not Safe For Public Consumption

641. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

642. On March 7, 2012, and continuing through April 3, 2012, Defendants ABC, ABC News, Sawyer, Avila, Kerley, Zirnstein and Foshee published and/or republished multiple statements that implied that BPI's product, LFTB, was not safe for public consumption during news broadcasts, in online reports, and in social media postings. Defendants' statements that implied that LFTB was not safe for public consumption fall into the following eight categories.

643. First, Defendants called, described, or referred to LFTB as "pink slime." These statements are listed in Count 1 and Count 10, and are incorporated by reference. Defendants' statements implied that LFTB was not safe for public consumption because it was a noxious, repulsive, and filthy fluid.

644. Second, Defendants stated that selling ground beef with LFTB was "economic fraud" and "food fraud." These statements are listed in Count 5 and Count 14, and are incorporated by reference. Defendants' statements implied that selling ground beef with fraud was "fraud" because LFTB was not safe for public consumption.

645. Third, Defendants stated that LFTB was being produced from "waste," "low-quality" or "low-grade" trimmings or "scraps." These statements are listed in Count 6 and Count 15, and are incorporated by reference. Defendants' statements implied that LFTB was not safe for public consumption because it was made with inferior and contaminated beef trimmings.

646. Fourth, Defendants stated that the beef trimmings used to produce LFTB were "once only used in dog food and cooking oil." These statements are listed in Count 7 and Count 16, and are incorporated by reference. Defendants' statement implied that LFTB was not safe for public consumption because it was made with inferior and contaminated beef trimmings.

647. Fifth, Defendants used derogatory terms to describe LFTB and ground beef made with LFTB. Defendants' statements implied that LFTB was an unsafe product being included in ground beef. These statements include but are not limited to:

- a. Kit Foshee: "It will fill you up, but **it's not going to do you any good.**" (3/8/12, World News, Foshee)
- b. Jim Avila: "But most Americans get their ground beef at supermarkets, and our viewers want to know if **pink slime lurks in the beef** sold here." Amber Neeley (Consumer): "What 30 percent of meat doesn't contain pink slime?" (3/9/12, World News, Avila)
- c. Jim Avila: "Critics say pink slime is more like gelatin than beef and less nutritious. But BPI, its inventor and primary manufacturer, tells ABC News in a letter from its lawyer today it is 'USDA approved beef' and is 'nutritious,' and the American Meat Institute insists pink slime is 'not an additive, and so no label is necessary.' **What's being hidden here?**" (3/9/12, World News, Avila)
- d. Jim Avila: "30,000 hamburgers on the grill at the BPI picnic rally at Sioux City, Iowa. All loaded with LFTB, or pink slime as known by critics. But **now what was hidden in these burgers** and nearly all ground beef for nearly 20 years may finally be revealed on the package label." (4/3/12, World News, Avila)
- e. Jim Avila: "A viewer, Miles Herbert, wanted to know, 'Is there any evidence that organic meat contains this pink slim (sic)?' It turns out there isn't. If your meat is stamped USDA Organic, it's pure meat with no filler. **But critics say everything else is suspect** because pink slime does not have to appear on the label. **And the USDA is giving no indication it will force meat packers to lift the veil of secrecy any time soon.**" (3/8/12, ABC Online, Avila)
- f. Jim Avila: "The low-grade trimmings used to produce lean, finely textured beef **come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter.** But because of the treatment of the trimmings – after they have been simmered in low heat, separating fat and tissue using a centrifuge, they are sprayed with ammonia gas to kill germs – the USDA says it's safe to eat." (3/26/12, ABC Online, Avila)
- g. Jim Avila: "Zirnstein said it is more than an additive. He calls it '**an adulterant.**'" (3/27/12, ABC Online, Avila, Zirnstein)

648. Sixth, Defendants published false statements regarding the process used by BPI to temper beef trimmings when producing LFTB. Defendants falsely stated that LFTB cooked or simmered the beef trimmings. Defendants' statements implied that ground beef with LFTB was not safe for public consumption because a cooked product was being added to fresh ground beef. Defendants' statements also implied that using LFTB could contaminate fresh ground beef. These statements include but are not limited to:

- a. Jim Avila: "Those waste trimmings are gathered, **simmered at low heat** to make it easier to separate fat from muscle, put in a centrifuge and spun to finish the separation. Next, the mixture is sent through pipes where it is sprayed with ammonia gas to kill bacteria" (3/7/12, World News, Avila)
- b. Jim Avila: "The last known glimpse, six years ago, the movie Food, Inc. was given a tour of the factory. The low-grade trimmings were once only used in dog food and cooking oil, but because of the company's treatment, **simmering at low heat**, a centrifuge to separate the fat and tissue, a spritz of ammonia gas to kill the germs and a quick freeze, the USDA says it's safe to eat." (3/8/12, World News, Avila)
- c. David Kerley: "Parents, schools, state officials, insisting the government do something about pink slime, **trimmings which are slightly cooked**, spun down to remove fat, and sprayed with ammonia, and added back into ground beef." (3/15/12, World News, Kerley)
- d. Jim Avila: "The 'pink slime' is made by gathering waste trimmings, **simmering them at a low heat** so the fat separates easily from the muscle, and spinning the trimmings using a centrifuge to complete the separation. Next, the mixture is sent through the pipes where it is sprayed with ammonia gas to kill bacteria." (3/7/12, ABC Online, Avila)
- e. Jim Avila: "As seen in the movie Food Inc., the low-grade trimmings come from the most contaminated parts of the cow and were once only used in dog food and cooking oil. But because of BPI's treatment of the trimmings – **simmering them in low heat**, separating fat and tissue using a centrifuge and spraying them with ammonia gas to kill germs – the United States Department of Agriculture says it's safe to eat." (3/8/12, ABC Online, Avila)
- f. Jim Avila: "The low-grade trimmings come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of BPI's treatment of the trimmings

– **simmering them in low heat**, separating the fat and tissue using a centrifuge and spraying them with ammonia gas to kill the germs – the United States Department of Agriculture says it’s safe to eat.” (3/9/12, ABC Online, Avila)

- g. Ben Forer (Production Associate): “The low-grade trimmings come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of BPI’s treatment of the trimmings – **simmering them in low heat**, separating the fat and tissue using a centrifuge and spraying them with ammonia gas to kill the germs – the United States Department of Agriculture says it’s safe to eat.” (3/14/12, ABC Online)
- h. Jim Avila: “The low-grade trimmings come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of the treatment of the trimmings — **simmering them in low heat**, separating fat and tissue using a centrifuge, and spraying them with ammonia gas to kill germs — the United States Department of Agriculture says it’s safe to eat.” (3/21/12, ABC Online, Avila)
- i. Jim Avila: “The low-grade trimmings used to produce lean, finely textured beef come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of the treatment of the trimmings – after they have been **simmered in low heat**, separating fat and tissue using a centrifuge, they are sprayed with ammonia gas to kill germs – the USDA says it’s safe to eat.” (3/26/12, ABC Online, Avila)
- j. Jim Avila: “‘**At that temperature, you increase the level of pathogens and the level of spoilage bacteria,**’ Zirnstein told ABC News. ‘In order to turn this into a product they can potentially sell as ‘meat,’ and that’s, [in] quotations, ‘meat,’ they add ammonia.’” (3/27/12, ABC Online, Avila, Zirnstein)

649. Seventh, Defendants’ published false statements regarding BPI’s use of ammonium hydroxide. Defendants made false statements regarding the method, volume and purpose of BPI’s ammonium hydroxide process. Defendants’ statements implied that the beef trimmings used to produce LFTB were contaminated and not safe for public consumption. These statements include but are not limited to:

- a. Jim Avila: “Those waste trimmings are gathered, simmered at low heat to make it easier to separate fat from muscle, put in a centrifuge and spun to

finish the separation. Next, the mixture is sent through pipes where it is **sprayed with ammonia gas** to kill bacteria” (3/7/12, World News, Avila)

- b. Jim Avila: “The last known glimpse, six years ago, the movie Food, Inc. was given a tour of the factory. The low-grade trimmings were once only used in dog food and cooking oil, but because of the company’s treatment, simmering at low heat, a centrifuge to separate the fat and tissue, **a spritz of ammonia gas to kill the germs and a quick freeze, the USDA says it’s safe to eat.**” (3/8/12, World News, Avila)
- c. Jim Avila: “Corporate headquarters later told us yes, its meat does contain it. But they were reviewing the policy. Fast-forward to today. Safeway announces its meat counter is now free of what former USDA scientists characterize as **low quality beef scraps sanitized with ammonia gas.**” (3/21/12, World News, Avila)
- d. Jim Avila: “Critics say **the process, which uses ammonia gas to make meat scraps safe for consumption,** should be on the label if the product is put in packages of ground beef.” (3/26/12, World News, Avila)
- e. Jim Avila: “‘Pink slime’ is beef trimmings. Once only used in dog food and cooking oil, **the trimmings are now sprayed with ammonia so they are safe to eat** and added to most ground beef as a cheaper filler.” (3/7/12, ABC Online, Avila)
- f. Jim Avila: “The ‘pink slime’ is made by gathering waste trimmings, simmering them at a low heat so the fat separates easily from the muscle, and spinning the trimmings using a centrifuge to complete the separation. Next, the mixture is sent through the pipes where it is **sprayed with ammonia gas** to kill bacteria.” (3/7/12, ABC Online, Avila)
- g. Jim Avila: “As seen in the movie Food Inc., **the low-grade trimmings come from the most contaminated parts of the cow** and were once only used in dog food and cooking oil. But because of BPI’s treatment of the trimmings – simmering them in low heat, separating fat and tissue using a centrifuge and **spraying them with ammonia gas to kill germs** – the United States Department of Agriculture says it’s safe to eat.” (3/8/12, ABC Online, Avila)
- h. Jim Avila: “However, the substance, critics said, is more like gelatin than meat, and before Beef Products, Inc. found a way to use it by **disinfecting the trimmings with ammonia** it was sold only to dog food or cooking oil suppliers.” (3/9/12, ABC Online, Avila)
- i. Jim Avila: “The low-grade trimmings come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of BPI’s treatment of the trimmings

– simmering them in low heat, separating the fat and tissue using a centrifuge and **spraying them with ammonia gas to kill the germs** – the United States Department of Agriculture says it’s safe to eat.” (3/9/12, ABC Online, Avila)

- j. Ben Forer (Production Associate): “[T]he substance, critics said, is more like gelatin than meat, and before BPI found a way to use it by **disinfecting the trimmings with ammonia**, it was sold only to dog food or cooking oil suppliers.” (3/14/12, ABC Online)
- k. Ben Forer (Production Associate): “The low-grade trimmings come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of BPI’s treatment of the trimmings – simmering them in low heat, separating the fat and tissue using a centrifuge and **spraying them with ammonia gas to kill the germs** – the United States Department of Agriculture says it’s safe to eat.” (3/14/12, ABC Online)
- l. Jim Avila: “The low-grade trimmings come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of the treatment of the trimmings — simmering them in low heat, separating fat and tissue using a centrifuge, and **spraying them with ammonia gas to kill germs** — the United States Department of Agriculture says it’s safe to eat.” (3/21/12, ABC Online, Avila)
- m. Jim Avila: “The low-grade trimmings used to produce lean, finely textured beef come from the parts of the cow most susceptible to contamination, often close to the hide, which is highly exposed to fecal matter. But because of the treatment of the trimmings – after they have been simmered in low heat, separating fat and tissue using a centrifuge, they are **sprayed with ammonia gas to kill germs** – the USDA says it’s safe to eat.” (3/26/12, ABC Online, Avila)
- n. Jim Avila: “Critics say BPI, which has won food safety awards for its ammoniating process, overstates the product’s similarity to fresh ground beef, because of the process it goes through to separate the meat from the fat and **to kill bacteria**.” (3/27/12, ABC Online, Avila)
- o. Jim Avila: “‘**Ammonia** does two things most people don’t realize,’ Zirnstein said. ‘**In high levels**, it does more than just kill the ... pathogens. It also fixes the color of the meat. So the red meat stays pink.’ Zirnstein said that is why he coined the phrase, ‘pink slime.’” (3/27/12, ABC Online, Avila, Zirnstein)
- p. Jim Avila: “‘At that temperature, you increase the level of pathogens and the level of spoilage bacteria,’ Zirnstein told ABC News. ‘**In order to**

turn this into a product they can potentially sell as ‘meat,’ and that’s, [in] quotations, ‘meat,’ they add ammonia.” (3/27/12, ABC Online, Avila)

- q. Jim Avila: “‘If that ammonia wasn’t there, if it wasn’t **added to kill the bacteria**, it would also come in as a gray product and you’d have gray slime,’ [Zirnstein] said. ‘Gray slime!’” (3/27/12, ABC Online, Avila)
- r. Jim Avila: “‘**Because the ammonia fixes the color into a pink color, it can, quote, ‘pass’ as red meat**, but it’s a low-quality product going into the ground beef.’” (3/27/12, ABC Online, Avila, Zirnstein)
- s. Jim Avila: “@travarp so u know more than microbiologists at USDA who say **scraps have more contaminants than beef cuts** our report based on fact no spin.” (3/7/12, Twitter, Avila)
- t. Jim Avila: “@travarp **cyanide is in human body. Amount [of ammonia hydroxide] is what counts**. U r arguing with scientists who are already doctors. Not studying to be.” (3/7/12, Twitter, Avila)
- u. Jim Avila: “@travarp so have these guys and trust them. **The trimmings have carcass remains as well which contain higher levels of bacteria**. Good night.” (3/7/12, Twitter, Avila)

650. Eighth, on March 7, 2012, and continuing through April 3, 2012, Defendants ABC and ABC News published, and republished the above statements in segments during World News broadcasts where each segment was defamatory in and of itself because the totality of the segment created the false impression that BPI’s product, LFTB, was not safe for public consumption based on the way Defendants ABC and ABC News covered, portrayed, and juxtaposed information regarding LFTB.

651. On information and belief, Defendants Zirnstein and Foshee originally published various false statements regarding LFTB in the categories above to the ABC Defendants. Each of these Defendants provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

652. These statements were false by implication because LFTB is safe for public consumption. These statements and their implications, each individually and taken as a whole, were disparaging to BPI and its product, LFTB, and affected the marketability of LFTB.

653. Each of these Defendants acted with actual malice. Each Defendant knew these disparaging statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165, 178-188, and 233-266.

654. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these disparaging statements during their broadcasts and publications.

655. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their disparaging statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

656. As a direct result of these Defendants' disparaging statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XXV (25)

Product Disparagement Against ABC, ABC News, Sawyer, Avila, Zirnstein, Custer, And Foshee For False Implication That LFTB Is Not Nutritious

657. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

658. On March 7, 2012, and continuing through April 3, 2012, Defendants ABC , ABC News, Sawyer, Avila, Kerley, Zirnstein, Custer, and Foshee published and/or republished multiple statements that implied that BPI's product LFTB was not nutritious during news

broadcasts, in online reports, and in social media postings. Defendants' statements that implied that LFTB was not nutritious fall into the following ten categories.

659. First, Defendants called, described, or referred to LFTB as "pink slime." These statements are listed in Count 1 and Count 10, and are incorporated by reference. Defendants' statements implied that LFTB was not nutritious because it was a noxious, repulsive, and filthy fluid.

660. Second, Defendants stated that LFTB is not beef and not meat. These statements are listed in Count 2 and Count 11, and are incorporated by reference. Defendants' statements implied that LFTB was not nutritious because it was not beef or meat.

661. Third, Defendants stated that LFTB was a "filler" added to ground beef. These statements are listed in Count 3 and Count 12, and are incorporated by reference. Defendants' statements implied that LFTB was added to ground beef simply to "pump up" the volume of ground beef without adding nutritional value.

662. Fourth, Defendants stated that selling ground beef with LFTB was "economic fraud" and "food fraud." These statements are listed in Count 5 and Count 14, and are incorporated by reference. Defendants made these statements to convey that ground beef with LFTB should include additional labeling because it was nutritionally inferior to ground beef without LFTB.

663. Fifth, Defendants falsely stated that LFTB is "more like gelatin" than beef. These statements are listed in Count 8 and Count 17, and are incorporated by reference. Defendants made these statements to convey that LFTB was not nutritious because it was "more like gelatin" than beef.

664. Sixth, Defendants falsely stated that LFTB's "protein comes comely from connective tissue, and not muscle meat." These statements are listed in Count 9 and Count 18, and are incorporated by reference. Defendants made these statements to convey that LFTB was not nutritious because its protein did not come from muscle meat. For example, Defendants made the following statements:

665. Seventh, Defendants falsely stated that consuming LFTB will not do a consumer any good. Defendants made these statements to convey that LFTB did not provide consumers any nutritional benefit. These statements include but are not limited to:

- a. Kit Foshee: "It will fill you up, but **it's not going to do you any good.**" (3/8/12, World News, Foshee)
- b. Jim Avila: "The company calls the final product 'Finely Textured Lean Beef.' It is flash frozen and boxed. Foshee says its more like gelatin and not nutritious as ground beef because the protein comes mostly from connective tissue, not muscle meat. '**[It will] fill you up, but won't do you any good,**' Foshee said." (3/8/12, ABC Online, Avila, Foshee)

666. Eighth, Defendants falsely stated that BPI makes LFTB from "waste," "scraps," "low quality" beef trimmings and "low grade" beef trimmings. These statements are listed in Count 6 and Count 15. Defendants made these statements to convey that BPI uses inferior raw materials to produce LFTB that do not have nutritional value.

667. Ninth, Defendants falsely stated that the beef trimmings used by BPI to produce LFTB were "once used only for dog food and cooking oil." These statements are listed in Count 7 and Count 16. Defendants made these statements to convey that BPI uses inferior raw materials to produce LFTB that do not have nutritional value.

668. Tenth, on March 7, 2012, and continuing through April 3, 2012, Defendants ABC and ABC News published, and republished the above statements in segments during World News broadcasts where each segment was defamatory in and of itself because the totality of the

segment created the false impression that BPI's product, LFTB, was not nutritious based on the way Defendants ABC and ABC News covered, portrayed, and juxtaposed information regarding LFTB.

669. On information and belief, Defendants Zirnstein, Custer, and Foshee originally published various false statements regarding LFTB in the categories above to the ABC Defendants. Each of these Defendants provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

670. These statements were false by implication because LFTB is nutritious. LFTB is lean beef, its protein comes "mostly from" muscle meat, and it has nutritional value. These statements and their implications, each individually and taken as a whole, were disparaging to BPI and its product, LFTB, and affected the marketability of LFTB.

671. Each of these Defendants acted with actual malice. Each Defendant knew these disparaging statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165, 178-188, and 280-290.

672. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these disparaging statements during their broadcasts and publications.

673. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, Sawyer, Avila, and Kerley retract their disparaging statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

674. As a direct result of these Defendants' disparaging statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

**CATEGORY FIVE: VIOLATION OF SOUTH DAKOTA'S
AGRICULTURAL FOOD PRODUCTS DISPARAGEMENT ACT
(COUNT XXVI)**

COUNT XXVI (26)

**Violation of Agricultural Food Products Disparagement Act (S.D.C.L. § 20-10A-1 *et seq.*)
Against ABC, ABC News, Sawyer, Avila, Kerley, Zirnstein, And Foshee
For False Implication That LFTB Is Not Safe For Public Consumption**

675. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

676. BPI produces LFTB, which is an agricultural food product. LFTB, similar to other beef products, is sold or distributed in a form that will perish or decay beyond marketability within a period of time.

677. On March 7, 2012, and continuing through April 3, 2012, Defendants ABC, ABC News, Sawyer, Avila, Kerley, Zirnstein, and Foshee published and/or republished multiple statements that implied that BPI's product LFTB was not safe for public consumption during news broadcasts, in online reports, and in social media postings. Defendants' statements that implied that LFTB was not safe for public consumption fall into the following eight categories.

678. First, Defendants called, described, or referred to LFTB as "pink slime." These statements are listed in Count 1 and Count 10, and are incorporated by reference. Defendants' statements implied that LFTB was not safe for public consumption because it was a noxious, repulsive, and filthy fluid.

679. Second, Defendants stated that selling ground beef with LFTB was "economic fraud" and "food fraud." These statements are listed in Count 5 and Count 14, and are incorporated by reference. Defendants' statements implied that selling ground beef with fraud was "fraud" because LFTB was not safe for public consumption.

680. Third, Defendants stated that LFTB was being produced from “waste,” “low-quality” or “low-grade” trimmings or “scraps.” These statements are listed in Count 6 and Count 15, and are incorporated by reference. Defendants’ statements implied that LFTB was not safe for public consumption because it was made with inferior and contaminated beef trimmings.

681. Fourth, Defendants stated that the beef trimmings used to produce LFTB were “once only used in dog food and cooking oil.” These statements are listed in Count 7 and Count 16, and are incorporated by reference. Defendants’ statement implied that LFTB was not safe for public consumption because it was made with inferior and contaminated beef trimmings.

682. Fifth, Defendants used derogatory terms to describe LFTB and ground beef made with LFTB. These statements are listed in Count 20 and Count 24, and are incorporated by reference. Defendants’ statements implied that LFTB was an unsafe product being included in ground beef.

683. Sixth, Defendants published false statements regarding the process used by BPI to temper beef trimmings when producing LFTB. Defendants falsely stated that LFTB cooked or simmered the beef trimmings. These statements are listed in Count 20 and Count 24, and are incorporated by reference. Defendants’ statements implied that ground beef with LFTB was not safe for public consumption because a cooked product was being added to fresh ground beef. Defendants’ statements also implied that using LFTB could contaminate fresh ground beef.

684. Seventh, Defendants published false statements regarding BPI’s use of ammonium hydroxide. Defendants made false statements regarding the method, volume, and purpose of BPI’s ammonium hydroxide process. These statements are listed in Count 20 and Count 24, and are incorporated by reference. Defendants’ statements implied that the beef trimmings used to produce LFTB were contaminated and not safe for public consumption.

685. Eighth, on March 7, 2012, and continuing through April 3, 2012, Defendants ABC and ABC News published and republished the above statements in segments during World News broadcasts where each segment was defamatory in and of itself because the totality of the segment created the false impression that BPI's product, LFTB, was not safe for public consumption based on the way Defendants ABC and ABC News covered, portrayed, and juxtaposed information regarding LFTB.

686. On information and belief, Defendants Zirnstein and Foshee originally published various false statements regarding LFTB in the categories above to the ABC Defendants. Each of these Defendants provided his express or implied consent to the ABC Defendants to republish his statements, and it was reasonably foreseeable that they would republish his statements.

687. These statements were false by implication because LFTB is safe for public consumption. These statements and their implications, each individually and taken as a whole, were disparaging to BPI and its product, LFTB.

688. Each of these Defendants acted with actual malice. Each Defendant knew these disparaging statements were false, or recklessly disregarded their falsity, when they broadcast, published, and republished them. The allegations related to each Defendant's actual malice include but are not limited to those pled in paragraphs 151-165, 178-188, and 233-266.

689. Defendants ABC and ABC News also failed to exercise due care to prevent the publication or utterance of these disparaging statements during their broadcasts and publications.

690. Three days prior to filing this complaint, BPI provided notice to and demanded that Defendants ABC, ABC News, and Avila retract their disparaging statements in a comparable time, place, and manner in which they broadcast and published them, and they failed to do so.

691. As a direct result of these Defendants' disparaging statements, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

**CATEGORY SIX: TORTIOUS INTERFERENCE COUNT
(COUNT XXVII)**

COUNT XXVII (27)

Tortious Interference Against ABC, ABC News, Sawyer, Avila, and Kerley

692. BPI realleges and incorporates by reference the allegations in paragraphs 1 to 387 as if stated herein.

693. BPI had existing and prospective business relationships with grocery store chains and ground beef processors. These business relationships were well-established as ground beef with BPI's product LFTB had been selling in the largest grocery store chains for over 10 years. BPI's relationships included, but were not limited to, the following grocery store chains: Safeway, Supervalu, Food Lion, Kroger, Wal-Mart, Aldi, BI-LO and Winn Dixie, Giant Eagle, Save Mart, Stop & Shop, and Wegmans. BPI's relationships included, but were not limited to, the following ground beef processors: Tyson Fresh Meats, National Beef, American Foods Group, Schenk Packing, FPL Foods, Cherry Meat Packers, and AFA Foods.

694. The ABC Defendants knew that national grocery store chains sold ground beef with BPI's product, LFTB, and therefore knew that BPI had business relationships with those chains and the ground beef processors who made false statements about those chains. The ABC Defendants then intentionally and unjustifiably interfered with BPI's existing and prospective business relationships with these grocery store chains and ground beef processors.

695. First, the ABC Defendants engaged in a disinformation campaign during its news reports on March 7, 2012, and continuing through April 3, 2012, with actual malice where they falsely stated and implied that LFTB was "pink slime"; that LFTB was not beef and not even meat; that LFTB was not safe for public consumption; that LFTB was not nutritious; and that BPI engaged in improper conduct to gain approval for LFTB from the USDA. This

disinformation campaign created a consumer backlash against LFTB and BPI, and against those grocery store chains carrying ground beef with LFTB, which the ABC Defendants continued to provoke.

696. Second, the ABC Defendants manufactured a consumer “grassroots” movement against LFTB to force major grocery store chains to stop selling ground beef made with LFTB based on consumer concern.

697. Third, the ABC Defendants repeatedly broadcast and publicized a blacklist of grocery store chains that carried ground beef with LFTB to force the chains to stop selling ground beef with LFTB.

698. Grocery store chains decided to stop selling LFTB in direct response to the consumer concern created by the conduct of the ABC Defendants—their disinformation campaign, manufactured “grassroots” movement, and publicized blacklist. As a result, ground beef processors stopped or significantly curtailed their orders of LFTB from BPI, and BPI lost a significant amount of its LFTB business. The ground beef processors would not have cancelled future orders for LFTB but for the interference by the ABC Defendants. Their conduct thus interfered with BPI’s existing and prospective business relationships with grocery store chains and ground beef processors.

699. As a direct result of the ABC Defendants’ tortious interference with BPI’s existing and prospective business relationships, BPI has suffered actual and consequential damages in an amount that will be proven at trial.

PRAYER FOR RELIEF

700. For the foregoing reasons, BPI prays for judgment against Defendants ABC, ABC News, Sawyer, Avila, Kerley, Zirnstein, Custer, and Foshee for each of the counts raised herein.

701. BPI requests a judgment against all of these Defendants for:

- a. Actual and consequential damages in an amount excess of \$400 million.
BPI will prove the exact amount of damages at trial.
- b. Statutory damages, including treble damages pursuant to South Dakota's Agricultural Food Products Disparagement Act (S.D. Codified Laws § 20-10A-2 and -3).
- c. Punitive damages.
- d. Reasonable and necessary attorneys' fees.
- e. Costs of the suit.
- f. Prejudgment and post-judgment interest at the highest lawful rates.
- g. Other and further relief this Court deems appropriate.

JURY DEMAND

BPI requests a trial by jury on all matters raised herein.

Dated: September 13, 2012

By: Counsel for Plaintiffs

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