

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

----- X

In the Matter of the Application of THE HUMANE SOCIETY OF THE UNITED STATES, INC.; THE GOVERNMENT ACCOUNTABILITY PROJECT, INC.; FARM SANCTUARY, INC.; THE NEW YORK STATE HUMANE ASSOCIATION, INC.; JOY PIERSON as proprietor of Candle Café and Candle 79; CAROLINE A. LEE; LORI KOCH; IAN SPAFFORD; DORIS BOOTH; and JESSICA GORMAN,

Index No. \_\_\_\_\_  
RJI No. \_\_\_\_\_

VERIFIED PETITION  
AND COMPLAINT

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78 of the CPLR and Declaratory Judgment,

ORAL ARGUMENT  
REQUESTED

-against-

PATRICK H. BRENNAN, as Commissioner of the New York State Department of Agriculture and Markets; the NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS; HVFG, L.L.C. (d/b/a/ “Hudson Valley Foie Gras”); BELLA POULTRY, INC.; and LA BELLE FARM, INC.

Respondents-Defendants.

----- X

Petitioners-Plaintiffs (“Petitioners”) by and through their attorneys Egert and Trakinski, appear in this combined proceeding for mandamus to compel and in the alternative to review pursuant to CPLR Article 78, as well as for declaratory judgment pursuant to CPLR section 3001, brought against Commissioner Patrick H. Brennan and the New York State Department of Agriculture and Markets (collectively the “Respondents”), as well as against certain interested persons, and allege as follows:

## **PRELIMINARY STATEMENT**

1. This case involves the failure of the Respondents to perform the clear duty enjoined upon them by law to deem and declare adulterated the food product commonly known as foie gras, which is the hypertrophied liver of a duck produced by pneumatically force-feeding the animal until its liver distends 8-12 times its normal size and becomes pathologically diseased, pursuant to New York State's Agriculture and Markets Law, which requires that "[f]ood *shall* be deemed to be adulterated . . . [i]f it is the product of a diseased animal . . . ." or "[i]f it consists in whole or in part of a diseased . . . substance . . . ." Agric. & Mkts. Law §§ 200, 200-5, 200-3; *see also* § 200-4 (requiring diseased and unwholesome products to be declared adulterated). Their failure to do so has directly resulted in hundreds of thousands of diseased and severely ill animals being slaughtered for food in the state of New York in direct contravention of state law, and a flood of adulterated food into the state's markets.

2. Alternatively, to the extent Respondents have made a decision that foie gras is not adulterated that decision was affected by an error of law, or was arbitrary and capricious. Respondents have received and reviewed over 900 pages of reliable and conclusive evidence that foie gras as sold in New York is the product of diseased and severely ill animals, and consists of a diseased substance. Respondents have no evidence whatsoever to the contrary and have therefore acted arbitrarily and capriciously, or their decision was affected by an error of law.

3. Petitioners, therefore, respectfully request that this Court 1) compel Respondents to perform the duty enjoined upon them by law to deem and declare foie gras adulterated,

or in the alternative, 2) to determine that Respondents' decision that foie gras is not adulterated is arbitrary and capricious or affected by an error of law, and 3) to issue a declaratory judgment determining that as a matter of law foie gras constitutes an adulterated food product.

### **PARTIES**

4. Petitioner-Plaintiff The Humane Society of the United States ("HSUS") is a national non-profit corporation organized pursuant to the laws of the state of Delaware. The HSUS is headquartered in Washington D.C. and maintains an office in New York. The HSUS is the largest animal protection organization in the world, with over nine million members and constituents, including more than 100,000 New York residents. HSUS's mission is to protect domestic and wild animals by actively opposing those practices, projects, plans, and events that result in harm to the health and welfare of the animals. The HSUS invests considerable resources in advocating for farm animal health and welfare in general, and humane treatment of birds raised and killed for food in particular. The HSUS regularly educates its members and constituents, through newsletters, emails, action alerts, and its website about the health and welfare perils faced by poultry and other farm animals throughout their lives. Many of the HSUS's members and constituents, including its New York members, regularly consume chicken, turkey, duck, and other poultry meat and will continue to purchase and consume poultry in the future.

5. The HSUS has been and will continue to be injured by the Respondents' failure to declare foie gras an "adulterated" food product. New York foie gras producers engage in the cruel and inhumane practice of force-feeding poultry, whereby several times a day

large amounts of grain are pumped into the ducks via metal pipes which are forced down their throats.. The purpose of this practice is to intentionally create a diseased state in the birds' livers, known as hepatic lipidosis. One of the HSUS's major campaigns involves ending the suffering of birds force-fed for foie gras production and advocating on their behalves by promoting state and municipal laws banning the sale of foie gras and/or the practice of force feeding, working with corporate retailers and restaurants to encourage them not to sell or serve foie gras, and providing information to consumers on foie gras production and the welfare of force-fed birds. The HSUS is injured by the failure to declare foie gras adulterated because it has committed substantial financial and human resources to warning its members and the public regarding the cruel, disease-inducing method by which foie gras is produced. Preventing cruelty and disease from harming birds is a specific interest of The HSUS and is an integral part of the organization's mission of protecting the health and welfare of all animals. The HSUS would not be required to devote such substantial resources to foie gras education if the Respondents would properly apply existing law by declaring foie gras to be "adulterated."

6. The HSUS has and continues to pay New York state taxes, including sales tax. As a citizen taxpayer of New York, The HSUS has an interest in eliminating Respondents' illegal expenditures. The production and sale of adulterated food is prohibited by New York law. The Respondents spend state funds and use state regulatory personnel to inspect birds raised for foie gras production, as well as to inspect the final foie gras food product. Because foie gras is per se adulterated, this constitutes an illegal expenditure of the state's general funds. The HSUS requests that the Respondents properly apply the adulteration statutes by declaring foie gras adulterated, and thereby

prevent these illegal expenditures of state revenue.

7. The HSUS brings this suit on its own behalf, for the reasons stated above, and also on behalf of its approximately 100,000 members in New York State.

8. Petitioner-Plaintiff Caroline A. Lee is a member of Petitioner-Plaintiff HSUS and a resident and taxpayer of New York State. She has resided in New York for 17 years, and currently resides at 43-60 Douglaston Parkway, Douglaston, New York 11363. She has paid and currently pays income tax and sales tax to New York.

9. As a citizen, resident, and taxpayer of New York, Ms. Lee has an interest in eliminating illegal expenditures of the Respondents. Foie gras producers in New York raise ducks for the purpose of force feeding them until their livers suffer from hepatic lipidosis, at which point the ducks are slaughtered and their livers harvested. These livers are then sold as the food product foie gras. Because the ducks are in a diseased state when they are slaughtered, and the livers themselves are diseased, foie gras is adulterated under New York law. The production and sale of adulterated food is prohibited by New York law. The Respondents spend state funds and use state regulatory personnel to inspect birds raised for foie gras production, as well as to inspect the final foie gras product. Because foie gras is per se adulterated, this constitutes an illegal expenditure of the state's general funds.

10. Ms. Lee has a special interest in the health and welfare of all animals, including animals raised for food, that has been and will continue to be injured by the Respondents. Because the Respondents have ignored their duty to ensure animal health, she has been injured because she has been forced to limit her diet and make food choices accordingly. For example, she does not eat foie gras because she is upset by the poor health and

welfare of the birds. Foie gras producers engage in the cruel and inhumane practice of force-feeding poultry, whereby a metal pipe is forced down the birds' throats and a large amount of grain is pumped into them several times a day. As someone who has worked hands-on with domestic waterfowl, Ms. Lee believes the ducks experience pain as a result of the force-feeding process and the gross increase in the size of their livers, which in turn produces substantial stress for the birds. The purpose of this practice is to intentionally create a diseased state in the birds' livers, known as hepatic lipidosis. She believes the inhumane and unhealthy treatment of these ducks is an atrocity, which is unnecessary and only employed to produce an adulterated food product. She has experienced substantial stress and anxiety knowing that this practice continues, and has dedicated her time and energy to trying to end it. She has actively lobbied to ban the sale of foie gras in New York City. The Respondents have a legal obligation to prevent adulterated food from entering the market, yet have refused to declare diseased foie gras "adulterated." By its failure to do so, birds in New York continue to be force fed until they become sick. Ms. Lee is upset and suffers harm knowing that this continues, and is constantly reminded of the unhealthy and inhumane practice every time she sees foie gras marketed by New York retailers and restaurants.

11. Ms. Lee has and will continue to volunteer her time and resources caring for and rehabilitating sick and injured animals. In furtherance of her interest in the humane treatment of domesticated animals, including poultry, she has voluntarily rescued domestic ducks that were abandoned. This experience gave her a unique appreciation for the pain and stress felt by domestic birds that are sick or injured. She has also incurred substantial costs supporting others who care for and rehabilitate injured animals,

including ducks. A substantial number of ducks are injured or killed as a result of the force feeding of birds raised for foie gras production. In the past, investigations by People for the Ethical Treatment of Animals and Gourmet Cruelty have led to the rescue of sick and dying birds from foie gras producers, including Hudson Valley Foie Gras, located in New York. These rescues have required substantial costs for emergency veterinary care, extensive rehabilitation, and in some instances, post-mortem examinations to determine the ailments the birds suffered from. These costs are a result of the Respondents' decision to ignore their duty for ensuring animal health. The pool of volunteer and financial resources available for rescuing and rehabilitating animals in New York is limited, so any resources that are spent caring for birds raised for foie gras are resources that cannot be spent on other rehabilitations. As a result, Ms. Lee has been and will continue to be harmed by the Respondents' decision. In addition, until the Respondents' declare foie gras "adulterated," there is an increased risk that she will need to volunteer her time and money to treating birds that have been rescued from foie gras production.

12. Ms. Lee consumes food products regulated by the state of New York. As a consumer, she is concerned about the safety of the food supply and is often worried about whether the government is adequately enforcing laws that protect food safety. She is particularly interested in food safety because her health has been affected by agricultural production methods. In the past, her health was negatively impacted by the use of growth hormones in animals raised for food production. As a result, she no longer consumes meat or poultry products, including foie gras, based in part on her doctor's recommendations. The legislature has established a legal presumption that all food

products from diseased animals pose a danger. As a result, she and other consumers in New York have been and are being put at risk by the Respondents' failure to declare foie gras "adulterated." This failure to properly apply existing laws has and will continue to put her at an increased food safety risk. Although she consciously avoids consuming foie gras, she is afraid that she may have unknowingly consumed adulterated foie gras in the past as a food ingredient, or may do so in the future. This is a risk as long as foie gras continues to be allowed in the market. As a result, her interest in having a safe food supply has been, is, and will continue to be injured by the Respondents' failure to declare foie gras "adulterated."

13. Ms. Lee's interest in eliminating illegal expenditures, her special interests in the health and welfare of animals used in food production, and her special interest in ensuring that the food supply is protected from adulterated food, have been, are being, and will continue to be harmed, adversely affected and irreparably injured by the Respondents' failure to comply with its statutory obligation to declare foie gras an adulterated food product. She therefore has a substantial interest in the subject matter and outcome of this case.

14. Petitioner-Plaintiff Jessica Gorman is a member of Petitioner-Plaintiff HSUS and a citizen, resident and taxpayer of Albany County, New York. She resides at 5 Ten Eyck Avenue, Albany, New York 12209. She has paid and continues to pay state income taxes and sales taxes.

15. As a citizen, resident, and taxpayer of New York, Ms. Gorman has an interest in eliminating illegal expenditures of the Respondents. Foie gras producers in New York raise ducks for the purpose of force feeding them until their livers suffer from hepatic

lipidosis, at which point the ducks are slaughtered and their livers harvested. These livers are then sold as the food product foie gras. Because the ducks are in a diseased state when they are slaughtered, and the livers themselves are diseased, foie gras is adulterated under New York law. The production and sale of adulterated food is prohibited by New York law. The Respondents spend state funds and use state regulatory personnel to inspect birds raised for foie gras production, as well as to inspect the final foie gras product. Because foie gras is per se adulterated, this constitutes an illegal expenditure of the state's general funds.

16. Ms. Gorman has a special interest in healthy and humane raising of domesticated animals, including poultry, that has been and will continue to be injured by the Respondents. Because the Respondents have ignored their duty to ensure animal health, she has been injured because she has been forced to limit her diet and make food choices accordingly. Sometimes she makes food purchasing decisions based on whether the product label indicates the food was raised humanely. Because of her concern with animal health and welfare, she is unable to eat foie gras. Foie gras producers engage in the cruel and inhumane practice of force-feeding poultry, whereby a metal pipe is forced down the birds' throats and a large amount of grain is pumped into them several times a day. The purpose of this practice is to intentionally create a diseased state in the birds' livers, known as hepatic lipidosis. As someone who has volunteered her time and skills to help a local animal shelter, she is appalled by the inhumane and unhealthy treatment of these ducks, which is part of a business practice concerned only with profit. The Respondents have a legal obligation to prevent adulterated food from entering the market, yet have refused to declare foie gras "adulterated." By their failure to do so, birds in New

York continue to be force fed until they become sick. She is upset and harmed knowing that this continues, and is constantly reminded of the unhealthy and inhumane practice every time she sees foie gras marketed by New York retailers and restaurants.

17. In addition, the Respondents' failure to declare foie gras "adulterated" has injured Ms. Gorman because it prevents her from eating duck liver products. Although she refuses to eat foie gras, she would like to eat other duck liver that is not the product of force feeding, and therefore not a diseased product. However, she is afraid to eat any duck liver products because they may be the diseased product of force feeding. As a result, she is unable to eat and enjoy any form of duck liver based on her concern that she may be consuming foie gras, which is a food product from a cruelly treated, diseased animal.

18. Ms. Gorman consumes food products regulated by the state of New York, including meat products. As a consumer, she is very concerned about the safety of the food supply and she is often worried about whether the government is adequately enforcing laws that protect food safety. For example, she is very worried about many modern farming practices related to animal health, including the use of growth hormones and antibiotics in animals raised for food. The legislature has established a legal presumption that all food products from diseased animals pose a danger. As a result, Ms. Gorman and other consumers in New York have been and are being put at risk by the Respondents' failure to declare foie gras "adulterated." She was very upset when she first learned how foie gras was produced, and is especially troubled by the fact that it continues to be allowed into the market. She made the personal choice to refrain from eating it in the future.

19. The presence of adulterated foie gras in the market also virtually forecloses entry into the market of unadulterated duck liver products, which she is interested in consuming because they have a higher food quality, as they are not diseased. Because foie gras is an inhumane and diseased food product, she consciously and actively avoids eating it. However, she is afraid that she may have unknowingly consumed adulterated foie gras in the past as a food ingredient, or may do so in the future. This is a risk as long as foie gras continues to be allowed in the market. As a result, her interest in having a safe food supply has been, is, and will continue to be injured by the Respondents' failure to declare foie gras "adulterated."

20. Ms. Gorman's interest in eliminating illegal expenditures, her special interests in the health and welfare of animals used in food production, and her special interests in ensuring that the food supply is protected from adulterated food, have been, are being, and will continue to be harmed, adversely affected and irreparably injured by the Respondents' failure to comply with its statutory obligation to declare foie gras an adulterated food product. She therefore has a substantial interest in the subject matter and outcome of this case.

21. The interests of The HSUS, its named members, and its New York state-tax paying members in eliminating illegal expenditures and in the health and welfare of animals used in food production, have been, are being, and will continue to be harmed, adversely affected and irreparably injured by the Respondents' failure to comply with its statutory obligation to declare foie gras an adulterated food product. One purpose of the Agriculture and Markets Law is to protect the public safety by prohibiting food produced by diseased animals, and to thereby promote the health and welfare of animals raised for

food in New York State. Accordingly, the Respondent's violation of the Agriculture and Markets Law will continue to harm the HSUS and its members and constituents. The HSUS, therefore, has a substantial interest in the subject matter and outcome of this case.

22. Petitioner-Plaintiff the Government Accountability Project ("GAP") is a national non-profit corporation organized pursuant to the laws of the District of Columbia, headquartered in Washington D.C.. The mission of GAP is to promote government accountability and consumer activism. The organization has approximately 8,000 members, including approximately 190 New York residents. The Food Safety Program, which is part of GAP, is aimed at ending the threat to the public health caused by unsafe food and unsafe food inspection systems. To that end, GAP works to expose the flaws in the current poultry inspection systems, including Respondents' system, that allow unwholesome products to reach consumers. Many of GAP's members regularly consume chicken, turkey, duck, and other poultry meat and will continue to purchase and consume poultry in the future.

23. GAP has been and will continue to be injured by the Respondents' failure to declare foie gras an "adulterated" food product. New York foie gras producers engage in the unhealthy practice of force-feeding poultry. The purpose of this practice is to intentionally create a diseased state in the birds' livers, known as hepatic lipidosis. The development of hepatic lipidosis makes birds raised for foie gras production diseased, thereby making the resulting foie gras product adulterated. The production and sale of adulterated food is prohibited by New York law. GAP is dedicated to ensuring that state agencies properly conduct inspections pursuant to food safety laws, including adulteration laws. GAP is injured by the failure to declare foie gras "adulterated" because it has

committed substantial financial and human resources aiding whistleblowers who are interested in bringing food safety problems to light, and in warning and educating its members and the media about the failure of state government agencies to apply and enforce existing food adulteration laws. GAP has been and will continue to be injured by the Respondents because their failure to declare foie gras “adulterated” represents a state agencies’ failure to apply existing food safety laws, and thereby increases GAP’s burden.

24. GAP brings this suit on its own behalf, for the reasons state above, and also on behalf of its approximately 190 members in New York State.

25. Petitioner-Plaintiff Ian Spafford is a member of GAP and resident and taxpayer of New York State. He currently resides at 43-60 Douglaston Parkway, Douglaston, New York 11363, and has been a New York resident his entire life. He has paid state income taxes and sales taxes.

26. As a citizen, resident, and taxpayer of New York, he has an interest in eliminating illegal expenditures of the Respondents. Foie gras producers in New York raise ducks for the purpose of force feeding them until their livers suffer from hepatic lipidosis, at which point the ducks are slaughtered and their livers harvested. These livers are then sold as the food product foie gras. Because the ducks are in a diseased state when they are slaughtered, and the livers themselves are diseased, foie gras is adulterated under New York law. The production and sale of adulterated food is prohibited by New York law. He believes that the Respondents spend state funds and use state regulatory personnel to inspect birds raised for foie gras production, as well as to inspect the final foie gras product. Because foie gras is per se adulterated, this constitutes an illegal expenditure of the state’s general funds.

27. Mr. Spafford consumes food products regulated by the state of New York, including meat products. As a consumer, he is very concerned about the safety of the food supply and he is often worried about whether the government is adequately enforcing laws that protect food safety. He is especially concerned because his health has been negatively impacted by pesticides that have been used on food products. The legislature has established a legal presumption that all food products from diseased animals pose a danger. As a result, he and other consumers in New York have been and are being put at risk by the Respondents' failure to declare foie gras "adulterated." Mr. Spafford is disheartened by the knowledge that the Respondents, which are funded by taxpayer dollars, are failing to properly enforce the adulteration laws that protect the safety of the food supply. Because foie gras is an inhumane and diseased food product, he consciously and actively avoids consuming it. However, he is afraid that he may have unknowingly eaten it in the past as a food ingredient, or may do so in the future. This is a risk as long as foie gras continues to be allowed in the market. As a result, his interest in having a safe food supply has been, is, and will continue to be injured by the Respondents' failure to declare foie gras "adulterated."

28. Mr. Spafford has a special interest in the health and welfare of all animals, including animals raised for food, that has been and will continue to be injured by the Respondents' decision. Because the Respondents have ignored their duty to ensure animal health, he has been injured because he has been forced to limit his diet and make food choices accordingly. For example, he does not eat foie gras because he is upset by the poor health and welfare of the birds. Foie gras producers engage in the cruel and inhumane practice of force-feeding poultry, whereby large amounts of grain are pumped

into the ducks several times a day via a metal pipe is forced down the birds' throats. As someone who has hands-on experience with domestic farm animals, including ducks, he believes that the practice of force feeding is exceptionally cruel. The purpose of this practice is to intentionally create a diseased state in the birds' livers, known as hepatic lipidosis. Mr. Spafford is repulsed by the inhumane and unhealthy treatment of these ducks, which is unnecessary and only employed to produce an adulterated food product. The Respondents have a legal obligation to prevent adulterated food from entering the market, yet have refused to declare diseased foie gras "adulterated." By their failure to do so, birds in New York continue to be force fed until they become sick. Mr. Spafford believes it is a black mark on the State of New York that this practice has occurred, is occurring, and will continue to occur because of the Respondents' failure to properly enforce existing law. He is upset and harmed knowing that this practice continues, and is constantly reminded of the unhealthy and inhumane practice every time he sees foie gras marketed by New York retailers and restaurants.

29. Mr. Spafford has volunteered his time and resources in various ways to rescuing, caring for, and rehabilitating sick and injured animals, including domestic ducks. He has also incurred substantial costs supporting the care and rehabilitation of domestic ducks that have been injured by human activities. A substantial number of ducks are injured or killed as a result of the force feeding of birds raised for foie gras production. In the past, investigations by People for the Ethical Treatment of Animals and Gourmet Cruelty have led to the rescue of sick and dying birds from foie gras producers, including Respondent-Defendant Hudson Valley Foie Gras, located in New York. These rescues have required substantial costs for emergency veterinary care, extensive rehabilitation, and in some

instances, post-mortem examinations to determine the ailments the birds suffered from. These costs are a result of the Respondents' decision to ignore their duty to ensure animal health. The pool of volunteer and financial resources available for rescuing and rehabilitating animals in New York is limited so any resources that are spent caring for birds raised for foie gras are resources that cannot be spent on other rehabilitations. As a result, Mr. Spafford has been and will continue to be harmed by the Respondents' decision. In addition, until the Respondents declare foie gras "adulterated," there is an increased risk that he will need to volunteer his time and money to treating birds that have been rescued from foie gras production.

30. Mr. Spafford's interest in eliminating illegal expenditures, his special interests in the health and welfare of animals used in food production, and his special interest in ensuring that the food supply is protected from adulterated food, have been, are being, and will continue to be harmed, adversely affected and irreparably injured by the Respondents' failure to comply with its statutory obligation to declare foie gras an adulterated food product. He therefore has a substantial interest in the subject matter and outcome of this case.

31. The interests of GAP, its named member, and its New York state-tax paying members in government accountability and food safety have been, are being, and will continue to be harmed, adversely affected and irreparably injured by the Respondents' failure to comply with its statutory obligation to declare foie gras an adulterated food product. The purpose of the Agriculture and Markets Law is to protect the public safety by prohibiting food produced by diseased animals, and thus to promote the health and welfare of animals raised for food in New York State. Accordingly, the Respondents'

violation of the Agriculture and Markets Law will continue to harm the GAP and its members. GAP, therefore, has a substantial interest in the subject matter and outcome of this case.

32. Petitioner-Plaintiff Farm Sanctuary is a national non-profit corporation organized pursuant to the laws of the state of Delaware, with its principal place of business in Watkins Glen, New York. Farm Sanctuary is a farm animal rescue and protection organization dedicated to ending the suffering of animals used in food. The organization has over 100,000 members and supporters, including approximately 26,000 New York residents. Farm Sanctuary invests considerable resources advocating for farm animal health and welfare, educating its members, visitors, and the public about farm animal issues, and rescuing farm animals from cruelty. Many of Farm Sanctuary's members regularly consume chicken, turkey, duck, and other poultry meat and will continue to purchase and consume poultry in the future.

33. Farm Sanctuary has been and will continue to be injured by the Respondents' failure to declare foie gras an "adulterated" food product. New York foie gras producers engage in the cruel and inhumane practice of force-feeding poultry, whereby large amounts of grain are pumped into the ducks several times a day via a metal pipe forced down the birds' throats.. The purpose of this practice is to intentionally create a diseased state in the birds' livers, known as hepatic lipidosis. Farm Sanctuary is injured by the failure to declare foie gras adulterated because it has committed substantial financial and human resources advocating against and educating the public about the cruel, disease-inducing method by which foie gras is produced. Its "No Foie Gras" campaign has included sending mailings and e-alerts, lobbying, and advertising on the issue.

Preventing cruelty and disease from harming birds is a specific interest of Farm Sanctuary and is an integral part of the organization's mission of protecting the health and welfare of farm animals. Farm Sanctuary would not be required to devote such substantial resources to foie gras education if the Respondents would properly apply existing law by declaring foie gras to be "adulterated."

34. Farm Sanctuary is further injured by the Respondents' failure to declare foie gras "adulterated" because it incurs special costs rescuing and caring for animals raised for food production, including domestic birds. Farm Sanctuary maintains two farm shelters to provide lifelong care and rehabilitation to farm animals rescued from cruelty and neglect, including a 175 acre shelter in upstate New York. Throughout the last 20 years, Farm Sanctuary has played a significant role in hundreds of rescues, providing rehabilitation and permanent sanctuary to abused farm animals from cruelty cases across the U.S. The cost of these rescues has been substantial. Birds raised for food production have been a significant focus of Farm Sanctuary's rescue operations. A significant number of ducks are injured or killed as a result of the force feeding process. In the past, investigators from other organizations, including People for the Ethical Treatment of Animals and Gourmet Cruelty, have rescued sick and dying birds from foie gras producers, including Respondent-Defendant HVFG, LLC located in New York. These rescues have required substantial expenditures for emergency veterinary care, extensive rehabilitation, and in some instances, post-mortem examinations to determine the ailments the birds suffered from. Farm Sanctuary employees have in the past received in their personal capacity abandoned ducks that have come from the foie gras production process, have been aesthetically and emotionally injured by being exposed to the

suffering of these animals, and have spent time, effort, and money to care for the animals that would otherwise have gone to Farm Sanctuary. The substantial costs that have been incurred to care for birds raised for foie gras production are a result of the Respondents' decision to ignore their duty of ensuring animal health. The pool of volunteer and financial resources available for rescuing and rehabilitating animals in New York is limited, so any resources that are spent caring for birds raised for foie gras are resources that cannot be spent on other rehabilitations. As a result, Farm Sanctuary has been and will continue to be harmed by the Respondents' decision. In addition, until the Respondents declare foie gras "adulterated," there is an increased risk that Farm Sanctuary will need to devote time and money to treating birds that have been rescued from foie gras production.

35. Farm Sanctuary has and continues to pay New York state taxes, including sales tax. As a citizen taxpayer of New York, Farm Sanctuary has an interest in eliminating illegal expenditures of the Respondents. The production and sale of adulterated food is prohibited by New York law. The Respondents spend state funds and use state regulatory personnel to inspect birds raised for foie gras production, as well as to inspect the final foie gras food product. Because foie gras is per se adulterated, this constitutes an illegal expenditure of the state's general funds.

36. Farm Sanctuary brings this suit on its own behalf, for the reasons stated above, and also on behalf of its approximately 26,000 New York members and supporters.

37. Kristin Sheffield is a Farm Sanctuary member and resident and taxpayer of New York State. She resides at 446 Central Park West, Apt. 4C, New York, New York 10025. She has paid and continues to pay state income taxes and sales taxes.

38. As a citizen, resident, and taxpayer of New York, Ms. Sheffield has an interest in eliminating illegal expenditures of the Respondents. Foie gras producers in New York raise ducks for the purpose of force feeding them until their livers suffer from hepatic lipidosis, at which point the ducks are slaughtered and their livers harvested. These livers are then sold as the food product foie gras. Because the ducks are in a diseased state when they are slaughtered, and the livers themselves are diseased, foie gras is adulterated under New York law. The production and sale of adulterated food is prohibited by New York law. She believes that the Respondents spend state funds and use state regulatory personnel to inspect birds raised for foie gras production, as well as to inspect the final foie gras product. Because foie gras is per se adulterated, this constitutes an illegal expenditure of the state's general funds.

39. Ms. Sheffield has a special interest in healthy and humane raising of domesticated animals, including poultry, that has been and will continue to be injured by the Respondents. Because the Respondents have ignored their duties to ensure animal health, she has been injured because she has been forced to limit her diet and make food choices accordingly. For example, Ms. Sheffield does not consume veal because she has concerns about the way calves are treated to produce the food. She also regularly tries to ensure that the animal products she consumes were raised humanely, and has incurred increased costs purchasing more humane food options, such as free-range eggs. Because of her concern with animal health and welfare, she is unable to eat foie gras. Foie gras producers engage in the cruel and inhumane practice of force-feeding poultry, whereby large amounts of grain are pumped into the ducks several times a day via a metal pipe which is forced down the birds' throats.. Ms. Sheffield first learned about this process

during her studies as an undergraduate, and has seen pictures of the birds subjected to force feeding. As a pet owner with experience with animals, Ms. Sheffield believes that these animals feel fear and pain. The purpose of this practice is to intentionally create a diseased state in the birds' livers, known as hepatic lipidosis. She is repulsed by the inhumane and unhealthy treatment of these ducks, which is unnecessary, done solely for profit, and only employed to produce an adulterated food product. The Respondents have a legal obligation to prevent adulterated food from entering the market, yet it has refused to declare diseased foie gras "adulterated." By its failure to do so, birds in New York continue to be force fed until they become sick. Ms. Sheffield is upset and harmed knowing that this continues, and is constantly reminded of the unhealthy and inhumane practice every time she sees foie gras marketed by New York retailers and restaurants.

40. In addition, the Respondents' failure to declare foie gras "adulterated" has injured Ms. Sheffield because it prevents her from consuming any duck liver products. Although she refuses to eat foie gras, she would like to eat other duck liver that is not the product of force feeding, and therefore not a diseased product. However, Ms. Sheffield is afraid to eat any duck liver products because they may be the diseased product of force feeding. As a result, she is unable to eat and enjoy any form of duck liver based on her concern that she may be consuming foie gras, which is a food product from a cruelly treated, diseased animal.

41. Ms. Sheffield consumes food products regulated by the state of New York, including meat products. As a consumer, she is very concerned about the safety of the food supply and is often worried about whether the government is adequately enforcing laws that protect food safety. The legislature has established a legal presumption that all

food products from diseased animals pose a danger. As a result, she and other consumers in New York have been and are being put at risk by the Respondents' failure to declare foie gras "adulterated." The force feeding process, which deliberately induces a diseased state in the birds, is not a natural process and its unhealthy effects are apparent in the birds. She has eaten and enjoyed foie gras in the past, before she became aware of the method by which it is produced. When she learned that foie gras was the product of a diseased animal, she became very upset and decided to refrain from eating it in the future. The presence of adulterated foie gras in the market also virtually forecloses entry into the market of unadulterated duck liver products, which she is interested in consuming because they have a higher food quality, as they are not diseased. Because foie gras is an inhumane and diseased food product, Ms. Sheffield consciously and actively avoids consuming it. However, she is afraid that she may have unknowingly consumed adulterated foie gras in the past as a food ingredient, or may do so in the future. This is a risk as long as foie gras continues to be allowed in the market. As a result, her interest in having a safe food supply has been, is, and will continue to be injured by the Respondents' failure to declare foie gras "adulterated."

42. Ms. Sheffield's interest in eliminating illegal expenditures, her special interests in the health and welfare of animals used in food production, and her special interests in ensuring that the food supply is protected from adulterated food, have been, are being, and will continue to be harmed, adversely affected and irreparably injured by the Respondents' failure to comply with its statutory obligation to declare foie gras an adulterated food product. She therefore has a substantial interest in the subject matter and outcome of this case.

43. Cecilia Culverhouse is a Farm Sanctuary member and resident and taxpayer of New York State. She currently resides at 5 Cornelia Street, Apt. 5C, New York, New York 10014. Beginning December 15, 2006, she will reside at 196 W. 10<sup>th</sup> Street, Apt. 3B, New York, New York 10014. She has been a resident of New York for 9 years. She has paid state income taxes and sales taxes.

44. As a citizen, resident, and taxpayer of New York, Ms. Culverhouse has an interest in eliminating illegal expenditures of the Respondents. Foie gras producers in New York raise ducks for the purpose of force feeding them until their livers suffer from hepatic lipidosis, at which point the ducks are slaughtered and their livers harvested. These livers are then sold as the food product foie gras. Because the ducks are in a diseased state when they are slaughtered, and the livers themselves are diseased, foie gras is adulterated under New York law. The production and sale of adulterated food is prohibited by New York law. She believes that the Respondents spend state funds and use state regulatory personnel to inspect birds raised for foie gras production, as well as to inspect the final foie gras product. Because foie gras is per se adulterated, this constitutes an illegal expenditure of the state's general funds.

45. Ms. Culverhouse has a special interest in healthy and humane raising of domesticated animals, including poultry, that has been and will continue to be injured by the Respondents. Besides being a member of Farm Sanctuary, she has also contributed to the issue of animal health and welfare as a member of the Student Animal Legal Defense Fund of Forham Law School, an animal rights student organization. Because the Respondents have ignored their duties to ensure animal health, she has been injured because she has been forced to limit her diet and make food choices accordingly. For

example, she does not eat foie gras, and only rarely consumes other meat products because she is upset by the poor health and welfare of the animals which are raised for these foods. Foie gras producers engage in the cruel and inhumane practice of force-feeding poultry, whereby large amounts of grain are pumped into the ducks several times a day via a metal pipe forced down the birds' throats. The purpose of this practice is to intentionally create a diseased state in the birds' livers, known as hepatic lipidosis. Ms. Culverhouse feels that this process is morally offensive, because even though the animals have relatively short lives and will be slaughtered, they have the right to a good quality of life free from injury and prolonged pain. Force feeding to induce hepatic lipidosis is unnecessary and only employed to produce an adulterated food product. The Respondents have a legal obligation to prevent adulterated food from entering the market, yet they have refused to declare diseased foie gras "adulterated." By their failure to do so, birds in New York continue to be force fed until they become sick. Ms. Culverhouse is upset and harmed knowing that this continues, and is constantly reminded of the unhealthy and inhumane process every time she sees foie gras marketed by New York retailers and restaurants.

46. Ms. Culverhouse consumes food products regulated by the state of New York, and on occasion consumes meat. As a consumer, she is very concerned about the safety of the food supply and is often worried about whether the government is adequately enforcing laws that protect food safety. For example, she grew up consuming milk from cows treated with antibiotics, and she now has concerns that this may have caused her harm, particularly to her immune system. She regularly buys organic products, which are more expensive than other products, because she believes these products to be safer. The

legislature has established a legal presumption that all food products from diseased animals pose a danger. As a result, she and other consumers in New York have been and are being put at risk by the Respondents' failure to declare foie gras "adulterated." This failure to properly apply existing laws has and will continue to put her at an increased food safety risk. Because foie gras is an inhumane and diseased food product, Ms. Culver consciously and actively avoids consuming it. However, she is afraid that she may have unknowingly consumed adulterated foie gras in the past as a food ingredient, or may do so in the future. This is a risk as long as foie gras continues to be allowed in the market. As a result, her interest in having a safe food supply has been, is, and will continue to be injured by the Respondents' failure to declare foie gras "adulterated."

47. Ms. Culverhouse's interest in eliminating illegal expenditures, her special interests in the health and welfare of animals used in food production, and her special interests in ensuring that the food supply is protected from adulterated food, have been, are being, and will continue to be harmed, adversely affected and irreparably injured by the Respondents' failure to comply with its statutory obligation to declare foie gras an adulterated food product. She therefore has a substantial interest in the subject matter and outcome of this case.

48. The interests of Farm Sanctuary, its named members, and its New York state-tax paying members in eliminating illegal expenditures and in the health and welfare of animals used in food production, have been, are being, and will continue to be harmed, adversely affected and irreparably injured by the Respondents' failure to comply with its statutory obligation to declare foie gras an adulterated food product. One purpose of the Agriculture and Markets Law is to protect the public safety by prohibiting food produced

by diseased animals, and to thereby promote the health and welfare of animals raised for food in New York State. Accordingly, the Respondents' violation of the Agriculture and Markets Law will continue to harm Farm Sanctuary and its members. Farm Sanctuary, therefore, has a substantial interest in the subject matter and outcome of this case.

49. Petitioner-Plaintiff New York State Humane Association ("NYSHA") is a non-profit corporation, incorporated in 1925 and based in New York, with approximately 1,800 members, approximately 1,700 of whom are New York residents. NYSHA's mission is to reduce animal suffering and to encourage compassion to all animals. It invests considerable resources providing training and education services regarding the enforcement of animal cruelty laws to state law enforcement agencies and member humane societies that operate within the state of New York. Many of NYSHA's members regularly consume chicken, turkey, duck, and other poultry meat and will continue to purchase and consume poultry in the future.

50. NYSHA has been and will continue to be injured by the Respondents' failure to declare foie gras an "adulterated" food product. New York foie gras producers engage in the cruel and inhumane practice of force-feeding poultry, whereby a metal pipe is forced down the birds' throats and a large amount of grain is pumped into them several times a day. The purpose of this practice is to intentionally create a diseased state in the birds' livers, known as hepatic lipidosis. NYSHA is injured by the failure to declare foie gras "adulterated" because it has committed substantial financial and human resources to warning its members about cruel and unhealthy farming practices and assisting local humane agencies with animal cruelty enforcement. NYSHA conducts several workshops each year on various animal cruelty issues, including topics related to identifying and

addressing farm animal health and welfare problems. It also provides advice to local humane societies on animal cruelty law and the practical aspects of enforcement. The organization also volunteers to provide assistance to state law enforcement and humane societies conducting investigations and removing sick and injured animals. NYSHA also regularly publishes a newsletter for its members, which covers various farm animal issues, including recently an article on foie gras. Preventing cruelty and disease from harming birds is a specific interest of NYSHA and is an integral part of the organization's mission of protecting the health and welfare of all animals. NYSHA would not be required to devote its resources to foie gras education, and its overall burden for supporting farm animal health and welfare would be smaller, if the Respondents would properly apply existing law by declaring foie gras to be "adulterated."

51. NYSHA is further injured by the Respondents' failure to declare foie gras "adulterated" because it incurs costs rescuing and caring for animals that are sick and have been treated inhumanely. At various times, NYSHA has served as a coordinating agency that oversees the disposition of large numbers of animals rescued from unacceptable living conditions. It has covered the costs of assisting in removing and placing animals during animal cruelty enforcement actions, and will continue to do so in the future. A substantial number of ducks are injured or killed as a result of the force feeding process. In the past, investigations by other organizations, including People for the Ethical Treatment of Animals and Gourmet Cruelty, have led to the rescue of sick and dying birds from foie gras producers, including Respondent-Defendant HVFG, LLC located in New York. These rescues have required substantial costs for emergency veterinary care, extensive rehabilitation, and in some instances, post-mortem

examinations to determine the ailments the birds suffered from. The substantial costs that have been incurred to care for birds raised for foie gras production are a result of the Respondents' decision to ignore its duties of ensuring animal health. The pool of volunteer and financial resources available for rescuing and rehabilitating animals in New York is limited, so any resources that are spent caring for birds raised for foie gras are resources that cannot be spent on other rehabilitations. As a result, NYSHA has been and will continue to be harmed by the Respondents' decision. In addition, until the Respondents declare foie gras "adulterated," there is an increased risk that NYSHA will need to volunteer its time and money to treating birds that have been rescued from foie gras production.

52. NYSHA has and continues to pay New York state taxes. As a citizen taxpayer of New York, NYSHA has an interest in eliminating illegal expenditures of the Respondents. The production and sale of adulterated food is prohibited by New York law. Respondents spend state funds and use state regulatory personnel to inspect birds raised for foie gras production, as well as to inspect the final foie gras product. Because foie gras is per se adulterated, this constitutes an illegal expenditure of the state's general funds.

53. NYSHA brings this suit on its own behalf, for the reasons stated above, and also on behalf of its approximately 1,700 New York members.

54. Dr. Holly Cheever is a NYSHA member and resident and taxpayer of New York State. She resides at 665 Clipp Road, Voorheesville, New York 12186. She has paid and continues to pay state income taxes and sales taxes.

55. As a citizen, resident, and taxpayer of New York, Dr. Cheever has an interest in

eliminating illegal expenditures of the Respondents. Foie gras producers in New York raise ducks for the purpose of force feeding them until their livers suffer from hepatic lipidosis, at which point the ducks are slaughtered and their livers harvested. These livers are then sold as the food product foie gras. Because the ducks are in a diseased state when they are slaughtered, and the livers themselves are diseased, foie gras is adulterated under New York law. The production and sale of adulterated food is prohibited by New York law. Dr. Cheever believes that the Respondents spend state funds and use state regulatory personnel to inspect birds raised for foie gras production, as well as to inspect the final foie gras product. Because foie gras is per se adulterated, this constitutes an illegal expenditure of the state's general funds.

56. As a veterinarian with substantial experience with waterfowl, Dr. Cheever has a special interest in animal health and welfare. She is licensed in New York and her practice cares for companion animals and wildlife, including both domestic and wild waterfowl. She has assisted local law officers across the state in animal cruelty case investigations and she teaches law officers, humane peace officers, and animal control officers on animal cruelty. This has given Dr. Cheever extensive experience with animals that are sick or injured, including the pain that is experienced by the animals. Because of her unique experience and interest in animal health and welfare, Dr. Cheever is deeply upset knowing that birds in New York are deliberately force fed, which causes them to suffer and also intentionally makes them sick.

57. Dr. Cheever has witnessed the force feeding process on several occasions, has been to the Hudson Valley Foie Gras facility in New York three times, and has seen several videotapes from the facility. Foie gras producers engage in the cruel and

inhumane practice of force-feeding poultry, whereby large amounts of grain are pumped into the ducks several times a day via a metal pipe forced down the birds' throats. The purpose of this practice is to intentionally create a diseased state in the birds' livers, known as hepatic lipidosis. Dr. Cheever's first encounter with foie gras production occurred in 1991-1992, when she was involved in an animal cruelty investigation against Commonwealth Enterprises in New York, which was the predecessor to Respondent-Defendant Hudson Valley Foie Gras. On January 24, 1997, she was invited to visit Respondent-Defendant Hudson Valley Foie Gras because the company was attempting to negotiate a contract with Whole Foods Market. During the inspection, she was able to visit many production areas, including the force feeding room. Dr. Cheever was shocked and horrified by what she witnessed. The newer arrival birds still had intact feathers and normal gaits, but several of the older birds were so bloated and metabolically imbalanced by the hepatic lipidosis of their livers as to be unable to walk. Instead, they dragged themselves across their cages by their wings. It was clear to her that the birds were suffering: their struggles to escape from their human handlers, the filthy and tattered condition of their feathers, and the lameness in so many of the older, metabolically ill birds were all obvious signs of cruelty. Dr. Cheever also inspected the processing area, where she observed livers with hepatic lipidosis that were abnormally pale, soft, and enlarged several times beyond the normal size of even a migrating duck's liver. Dr. Cheever was very upset when she witnessed these conditions, and lost her appetite as a result of what she saw and the overwhelming stench of the facility. She was further upset because she knew that when she visited the facility, the management was probably trying to impress her, as they were trying to meet the standards of Whole Foods Market.

Therefore, Dr. Cheever presumed she was witnessing the facility in the best possible light.

58. On November 19, 2005, Dr. Cheever was again invited to visit Hudson Valley Foie Gras, located in New York, as part of a group of professional invitees to tour the facilities. This time the facility appeared very different, as she witnessed two female workers slowly and gently feeding the birds. Dr. Cheever did not see any of the older birds, and only witnessed one bird having respiratory difficulties. She was very upset because she believed this exhibition to be staged in order to deceive those who were visiting the facility about what truly happens on a daily basis. For example, based on her calculations of what she witnessed, the facility could only have produced about 300 birds per week, while in reality it produces approximately 6,000. Dr. Cheever further believes that this was a staged presentation because of videotape footage she received prior to her tour. The videotapes, which were filmed not long before her visit, showed conditions similar to those she witnessed in 1997. Therefore there is little doubt in Dr. Cheever's mind that birds continue to be force fed in an incredibly inhumane manner for the purpose of deliberately inducing a diseased state.

59. Dr. Cheever has suffered a tremendous amount of personal stress witnessing the conditions at Respondent-Defendant Hudson Valley Foie Gras and unsuccessfully struggling to end the practice of force feeding. This injury has been a direct result of the Respondents' failure to declare foie gras "adulterated" and thereby prevent force feeding. She finds it deeply upsetting that in this era practices are implemented to intentionally produce a horrendous metabolic disease. Since she first encountered the foie gras industry in 1991, Dr. Cheever has endured substantial stress. As a veterinarian, she has

been trained, is ethically obligated, and feels it is her duty to relieve, treat, and prevent animal disease and suffering. During the inspections and watching the video footage, Dr. Cheever has known that she is witnessing animals in severe distress in violation of the law, but she has been unable to stop it. Dr. Cheever has tried in many ways to stop the practice of force feeding, including testifying before various bodies about foie gras production, but these have been largely unsuccessful. In addition to losing her appetite when conducting inspections in person, her stress over the continuation of the force feeding process has manifested itself in other ways. For example, Dr. Cheever has lost sleep on several occasions from the anxiety she feels at being unable to prevent or alleviate the sickness and suffering that arises from force feeding. Until the Respondents declare foie gras to be adulterated, she will continue to feel high levels of stress. In addition, as long as force feeding continues, she will continue to conduct inspections and provide her expert opinion on birds raised for foie gras production. The Respondents have a legal obligation to prevent adulterated food from entering the market, yet they have refused to declare diseased foie gras “adulterated.” By their failure to do so, birds in New York continue to be force fed until they become sick. Dr. Cheever has suffered a great deal of mental anguish knowing that this continues, and she is constantly reminded of the unhealthy and inhumane process every time she hears about foie gras or is called upon to inspect a facility that raises birds for foie gras production.

60. Dr. Cheever has devoted a considerable amount of time to inspecting birds raised for foie gras and watching video footage of foie gras facilities. Each time she has visited Hudson Valley Foie Gras she has driven about two hours each direction, and spent several hours at the site. While Dr. Cheever has sometimes been modestly compensated,

the majority of her inspection work has been done on a volunteer basis. Every time she receives video footage, she spends a few hours watching the tape, developing her veterinary opinion, and completing the relevant documents. Again, this is work she does on a volunteer basis. The costs of her time and effort are a result of the Respondents' decision to ignore its duty for ensuring animal health. Until the Respondents declare foie gras to be "adulterated," Dr. Cheever will continue to be harmed because she is compelled to volunteer her time and energy to offering expert opinions on foie gras production.

61. Dr. Cheever's special interests in the health and welfare of animals raised for foie gras production, and her interest in eliminating illegal expenditures, have been, are being, and will continue to be harmed, adversely affected and irreparably injured by the Respondents' failure to comply with their statutory obligation to declare foie gras an adulterated food product. She therefore has a substantial interest in the subject matter and outcome of this case.

62. The interests of NYSHA and its members in eliminating illegal expenditures and in the health and welfare of animals used in food production, have been, are being, and will continue to be harmed, adversely affected and irreparably injured by the Respondents' failure to comply with their statutory obligation to declare foie gras an adulterated food product. One purpose of the Agriculture and Markets Law is to protect the public safety by prohibiting food produced by diseased animals, and to thereby promote the health and welfare of animals raised for food in New York State.

Accordingly, the Respondents' violation of the Agriculture and Markets Law will continue to harm NYSHA and its members. NYSHA, therefore, has a substantial interest

in the subject matter and outcome of this case.

63. Petitioner-Plaintiff Joy Pierson is a resident and taxpayer of New York State. She resides at 343 East 74<sup>th</sup> Street, New York, New York 10021, and has paid and continues to pay state income tax and sales tax. She is the proprietor of two restaurants, Candle 79 and Candle Café. Candle 79 is located at 154 East 79<sup>th</sup> Street, New York, New York 10021. The Candle Café is located at 1307 Third Avenue, New York, New York 10021.

64. As a citizen, resident, and taxpayer of New York, she has an interest in eliminating illegal expenditures of the Respondents. Foie gras producers in New York raise ducks for the purpose of force-feeding them until their livers suffer from hepatic lipidosis, at which point the ducks are slaughtered and their livers harvested. These livers are then sold as the food product foie gras. Because the ducks are in a diseased state when they are slaughtered, and the livers themselves are diseased, foie gras is adulterated under New York law. The production and sale of adulterated food is prohibited by New York law. She believes that the Respondents spend state funds and use state regulatory personnel to inspect birds raised for foie gras production, as well as to inspect the final foie gras product. Because foie gras is per se adulterated, this constitutes an illegal expenditure of the state's general funds.

65. Ms. Pierson, Candle 79, and Candle Café have been and are being injured by the Respondents' failure to declare foie gras "adulterated" and remove it from the market. She owns and operates Candle 79 and the Candle Café, which are both located in New York City. The restaurants serve expensive specialty gourmet items, but they do not serve foie gras. With these options, Candle 79 and the Candle Café cater especially to consumers who are looking for a unique and sophisticated gourmet menu. As part of the

substantial and diverse food service industry in New York, the restaurants are constantly in competition with other New York City restaurants for customers. While Candle 79 and Candle Café are in competition with all New York City area restaurants, they are especially in direct competition with those restaurants that serve foie gras. This is because foie gras is considered a delicacy; therefore restaurants that serve foie gras also share the market niche for consumers looking for a unique and sophisticated gourmet menu. Because Candle 79 and Candle Café must compete with restaurants that serve foie gras, due to the Respondents' failure to declare foie gras "adulterated," her restaurants and Ms. Pierson personally suffer loss of revenue.

66. Ms. Pierson, Candle 79, and Candle Café, as part of New York's food service industry, are put at grave risk by the presence of adulterated foie gras in the market. The legislature has established a legal presumption that all food products from diseased animals pose a danger. As a result, restaurants and the New York food industry have been and are being put at risk by the Respondents' failure to declare foie gras "adulterated." She believes it is a disservice to the residents of New York that any diseased food product, including foie gras, is on the market. The business success of Candle 79 and Candle Café is dependent on New York's reputation for food safety. Even though she does not serve foie gras, the very existence of a diseased product in the food supply, which the Respondents have failed to prohibit, damages the reputation of New York food safety and thus puts her and her businesses at an increased risk of injury. As the public becomes better informed about the fact that foie gras is the product of a diseased animal, by articles such as the one published in the New York Times on June 22, 2006 on foie gras, the reputation of New York's food industry is placed in ever-increasing

peril. Therefore, she and the restaurants are injured by the Respondents' continued failure to properly enforce food adulteration laws.

67. Ms. Pierson's interest in eliminating illegal expenditures, her special interest as the proprietor of restaurants in direct competition with adulterated foie gras products, and her special interest as a restaurant proprietor in ensuring that food safety and the reputation for food safety are protected, have been, are being, and will continue to be harmed, adversely affected and irreparably injured by the Respondents' failure to comply with their statutory obligation to declare foie gras an adulterated food product. The purpose of the Agriculture and Markets Law is to protect the public safety by prohibiting food produced by diseased animals, and to thereby promote the health of animals raised for food in New York State. Accordingly, the Respondents' violation of the Agriculture and Markets Law will continue to harm Ms. Pierson, Candle 79, and Candle Café. She therefore has a substantial interest in the subject.

68. Petitioner-Plaintiff Lori Koch is a resident and taxpayer of New York State, and has resided in the state for 31 years. She resides at 49 Wilson Avenue, Amity Harbor, New York 11701. She has paid and continues to pay state income taxes and sales taxes.

69. As a citizen, resident, and taxpayer of New York, she has an interest in eliminating illegal expenditures of the Respondents. Foie gras producers in New York raise ducks for the purpose of force-feeding them until their livers suffer from hepatic lipidosis, at which point the ducks are slaughtered and their livers harvested. These livers are then sold as the food product foie gras. Because the ducks are in a diseased state when they are slaughtered, and the livers themselves are diseased, foie gras is adulterated under New York law. The production and sale of adulterated food is prohibited by New

York law. Ms. Koch believes that the Respondents spend state funds and use state regulatory personnel to inspect birds raised for foie gras production, as well as to inspect the final foie gras food product. Because foie gras is per se adulterated, this constitutes an illegal expenditure of the state's general funds.

70. As a veterinary technician, Ms. Koch has a special interest in animal health and welfare. Her job as a veterinary technician requires her to work with sick and injured animals in a number of ways, including monitoring anesthesia and other veterinary procedures, restraining animals, and providing home care when necessary. This has given her extensive experience with animals that are sick or injured, including the pain that is experienced by the animals. Because of her interest in animal health and welfare, she is deeply upset knowing that birds in New York are deliberately force fed, which causes them to suffer and also intentionally makes them sick.

71. Ms. Koch also volunteers her time and resources caring for and rehabilitating sick and injured animals. She voluntarily cares for and rehabilitates many kinds of animals, including wildlife and domestic animals. She has experience caring for ducks as well, including wild and domestic species. In addition to donating her time for these activities, she has also incurred substantial costs caring for and rehabilitating the animals. A substantial number of ducks are injured or killed as a result of the force feeding of birds raised for foie gras production. In the past, investigations by People for the Ethical Treatment of Animals and Gourmet Cruelty have led to the rescue of sick and dying birds from foie gras producers, including Respondent-Defendant HVFG, LLC, located in New York. These rescues have required substantial costs for emergency veterinary care, extensive rehabilitation, and in some instances, post-mortem examinations to determine

the ailments the birds suffered from. These costs are a result of the Respondents' decision to ignore its duties of ensuring animal health. The pool of volunteer and financial resources available for rescuing and rehabilitating animals in New York is limited, so any resources that are spent caring for birds raised for foie gras are resources that cannot be spent on other rehabilitations. As a result, Ms. Koch has been and will continue to be harmed by the Respondents' decision. In addition, until the Respondents declare foie gras "adulterated," there is an increased risk that she will need to volunteer her time and money to treating birds that have been rescued from foie gras production.

72. As a veterinary technician and volunteer animal rehabilitator, Ms. Koch has a unique interest in the healthy and humane raising of domesticated animals, including poultry. Her experiences with animals have given her a unique insight into the pain and suffering that animals endure when they are unhealthy or treated inhumanely. Because the Respondents ignore their duties to ensure animal health, Ms. Koch has been injured because she has been forced to limit her diet and make food choices accordingly. For example, she does not eat foie gras, nor does she eat other food products that she believes to be an unhealthy and inhumane product, such as eggs from caged hens, lamb, and veal. Foie gras producers engage in the cruel and inhumane practice of force-feeding poultry, whereby large amounts of grain are pumped into the ducks several times a day via a metal pipe forced down the birds' throats. The purpose of this practice is to intentionally create a diseased state in the birds' livers, known as hepatic lipidosis. Ms. Koch is very upset about the inhumane and unhealthy treatment of these ducks in New York, which is disgusting and unnatural, as well as unnecessary and only employed to produce an adulterated food product. The Respondents have a legal obligation to prevent adulterated

food from entering the market, yet have refused to declare diseased foie gras “adulterated.” By their failure to do so, birds in New York continue to be force fed until they become sick. Ms. Koch is upset and harmed knowing that this continues, and is constantly reminded of the unhealthy and inhumane process every time she sees foie gras marketed by New York retailers and restaurants.

73. Ms. Koch consumes food products regulated by the state of New York, including meat products. As a consumer, she is very concerned about the safety of the food supply and is often worried about whether the government is adequately enforcing laws that protect food safety. The legislature has established a legal presumption that all food products from diseased animals pose a danger. As a result, she and other consumers in New York have been and are being put at risk by the Respondents’ failure to declare foie gras “adulterated.” This failure to properly apply existing law has and will continue to put her at an increased food safety risk. Because foie gras is an inhumane and diseased food product, Ms. Koch consciously and actively avoids consuming it. However, she is afraid that she may have unknowingly consumed adulterated foie gras in the past as a food ingredient, or may do so in the future. This is a risk to her as long as foie gras continues to be allowed into the market. As a result, her interest in having a safe food supply has been, is, and will continue to be injured by the Respondents’ failure to declare foie gras “adulterated.”

74. Ms. Koch’s interest in eliminating illegal expenditures, her special interests in the health and welfare of animals used in food production, and her special interests in ensuring that the food supply is protected from adulterated food, have been, are being, and will continue to be harmed, adversely affected and irreparably injured by the

Respondents' failure to comply with its statutory obligation to declare foie gras an adulterated food product. The purpose of the Agriculture and Markets Law is to protect the public safety by prohibiting food produced by diseased animals, and to thereby promote the health of animals raised for food in New York State. Accordingly, the Respondents' violation of the Agriculture and Markets Law will continue to harm her. She therefore has a substantial interest in the subject matter and outcome of this case.

75. Petitioner-Plaintiff Doris Booth is a resident and taxpayer of New York State. She has been a resident of New York for 69 years, and currently resides at P.O. Box 129, Thompsonville, New York 12784. She has paid and continues to pay state income taxes and sales taxes in New York.

76. As a citizen, resident, and taxpayer of New York, Ms. Booth has an interest in eliminating illegal expenditures of Respondents. Foie gras producers in New York raise ducks for the purpose of force-feeding them until their livers suffer from hepatic lipidosis, at which point the ducks are slaughtered and their livers harvested. These livers are then sold as the food product foie gras. Because the ducks are in a diseased state when they are slaughtered, and the livers themselves are diseased, foie gras is adulterated under New York law. The production and sale of adulterated food is prohibited by New York law. Ms. Booth believes that the Respondents spend state funds and use state regulatory personnel to inspect birds raised for foie gras production, as well as to inspect the final foie gras food product. Because foie gras is per se adulterated, this constitutes an illegal expenditure of the state's general funds.

77. Ms. Booth has a special interest in the healthy and humane raising of domesticated animals, including poultry, that has been and will continue to be injured by

the Respondents. Because the Respondents have ignored their duty to ensure animal health, she has been injured because she has been forced to limit her diet and make food choices accordingly. Because of her concern with animal health and welfare, she is unable to eat foie gras. Foie gras producers engage in the cruel and inhumane practice of force-feeding poultry, whereby large amounts of grain are pumped into the ducks several times a day via a metal pipe forced down the birds' throats. As someone with extensive experience caring for sick and injured birds, she believes that force-feeding is very painful for the birds. The purpose of this practice is to intentionally create a diseased state in the birds' livers, known as hepatic lipidosis. She feels personally injured by the knowledge that birds raised for foie gras suffer from an illness, and that this unnecessary production of an adulterated food product is regularly employed by Respondent-Defendant HVFG, LLC whose facility is located near her home in Sullivan County. Ms. Booth is so upset by the force feeding practice that is used at the facility that she avoids driving by it, and instead uses alternate routes so that she does not have to see the facility and be reminded of the unhealthy and inhumane condition of the birds. The Respondents have a legal obligation to prevent adulterated food from entering the market, yet have refused to declare foie gras "adulterated." By their failure to do so, birds in New York continue to be force fed until they become sick. She is upset and harmed knowing that this continues, and is constantly reminded of the unhealthy and inhumane practice every time she sees foie gras marketed by New York retailers and restaurants.

78. For the past 17 years, Ms. Booth has volunteered her time and resources caring for and rehabilitating birds. She has a New York state license as a wildlife rehabilitator, as well as a federal permit. She has cared for and continues to care for many types of wild

birds, as well as domesticated birds, including ducks and geese. She has spent considerable time and financial resources caring for these animals, and therefore has a special interest in the prevention of injury and disease in New York's birds. A substantial number of ducks are injured or killed as a result of the force feeding of birds raised for foie gras production. In the past, investigations by People for the Ethical Treatment of Animals and Gourmet Cruelty have led to the rescue of sick and dying birds from foie gras producers. These rescues have required substantial costs for emergency veterinary care, extensive rehabilitation, and in some instances, post-mortem examinations to determine the ailments the birds suffered from. These costs are a result of the Respondents' decision to ignore their duty for ensuring animal health. The pool of volunteer and financial resources available for rescuing and rehabilitating animals in New York is limited, so any resources that are spent caring for birds raised for foie gras are resources that cannot be spent on other rehabilitations. As a result, Ms. Booth has been and will continue to be harmed by the Respondents' decision. In addition, until the Respondents declare foie gras "adulterated," there is an increased risk that she will need to volunteer her time and money to treating birds that have been rescued from foie gras production.

79. Ms. Booth consumes food products regulated by the state of New York including meat products. As a consumer, she is very concerned about the safety of the food supply and is often worried about whether the government is adequately enforcing laws that protect food safety, particularly in light of the recent media attention that has been given to various food safety problems, including food recalls, throughout the country. The legislature has established a legal presumption that all food products from diseased

animals pose a danger. As a result, she and other consumers in New York have been and are being put at risk by the Respondents' failure to declare foie gras "adulterated." She is very upset by the failure to properly apply existing law, which has and will continue to put her at an increased food safety risk. Because foie gras is an inhumane and diseased food product, Ms. Booth consciously and actively avoids consuming it. However, she is afraid that she may have unknowingly eaten adulterated foie gras in the past as a food ingredient, or may do so in the future. This is a risk as long as foie gras continues to be allowed in to the market. As a result, her interest in having a safe food supply has been, is, and will continue to be injured by the Respondents' failure to declare foie gras "adulterated."

80. Ms. Booth's interest in eliminating illegal expenditures, her special interests in the health and welfare of animals used in food production, and her special interest in ensuring that the food supply is protected from adulterated food, have been, are being, and will continue to be harmed, adversely affected and irreparably injured by the Respondents' failure to comply with their statutory obligation to declare foie gras an adulterated food product. The purpose of the Agriculture and Markets Law is to protect the public safety by prohibiting food produced by diseased animals, and to thereby promote the health of animals raised for food in New York State. Accordingly, the Respondents' violation of the Agriculture and Markets Law will continue to harm her. She therefore has a substantial interest in the subject matter and outcome of this case.

81. Respondent-Defendant Patrick H. Brennan is the current Commissioner of the New York State Department of Agriculture and Markets, and responsible for the determinations described herein. Mr. Brennan is named in his official capacity only. His

office is located in Albany, New York.

82. Respondent-Defendant New York State Department of Agriculture and Markets is a State agency that, among its duties, executes the laws of the state and the rules of the Department, relative to agriculture, horticulture, farm, fruit, and dairy products, aquaculture, and the production, processing, transportation, storage, marketing and distributing of food, and expends funds doing so. See Agriculture and Markets Law § 16 (1). The Department is located at 10B Airline Drive, Albany, New York.

83. Respondents have full access to all places of business, factories, farms, buildings, carriages, cars, and vessels used in the production, manufacture, storage, sale, or transportation of any article or product with respect to which any authority is conferred on the department by the Agriculture and Markets Law. Agric. & Mkts. Law § 20.

84. Respondents may examine and open any package or container of any kind containing or believed to contain any article or product, which may be manufactured, sold or exposed for sale in violation of Agriculture and Markets Law, or of the rules of the Department, and may inspect the contents therein, and take therefrom samples for analysis. Agric. & Mkts. Law § 20.

85. Respondents can and do establish and promulgate official definitions and standards for the grading or classifying, packing, and labeling of farm products. Agric. & Mkts. Law §§ 16(15), 16(16), 16(25), 18(4), 156-c, 156-f.

86. Respondents can and do inspect and determine the grade or condition of farm products at shipping points and receiving centers, provide for the issuance of certificates of such inspections, and enter into co-operative arrangements with state and federal marketing agencies for joint inspections. Agric. & Mkts. Law § 16(25).

87. Respondents can and do seize and destroy unwholesome food exposed for sale on the markets of this state, including the products of diseased animals. Agric. & Mkts. Law § 16(27).

88. Respondents can and do conduct extensive on-the-farm disease inspections, “directed at improving animal health and promoting a safe and wholesome food supply.” Agric. & Mkts. Law §§ 16(41), 72.

89. Respondents can and do fully regulate the slaughter, possession, and sale of diseased animal products. Agric. & Mkts. Law § 96-d.

90. Respondents can and do fully enforce compliance with statutes, rules, and regulations dealing with the sale of poultry and poultry products. Agric. & Mkts. Law § 96-z-35.

91. Respondents can and do regulate the manufacture, production, processing, packing, transportation, exposure, offer, possession, and holding of adulterated food for sale; the sale, dispensing, and giving of any such article; and the supplying or applying of any such articles in the conduct of any food establishment. Agric. & Mkts. Law § 199, 199-a, 202-b.

92. For all of the activities described in paragraphs 82-91, Respondents expend significant state funds, exercising their authority in thousands of individual cases per year.

93. Upon information and belief, Respondents expend significant state funds conducting extensive on-the-farm disease inspections of those farms which produce ducks and the foie gras derived therefrom, as well as on the inspection of foie gras as a food and farm product at various points throughout the markets of this state.

94. Respondent-Defendant HVFG LLC (d/b/a/ “Hudson Valley Foie Gras”) is a

corporation authorized to do business in New York with its principal place of business located in Ferndale, New York. HVFG or its subsidiaries is engaged in the factory farming, slaughter, and distribution of over 250,000 ducks annually as a vertically integrated organization producing and distributing foie gras, and is therefore an interested party in this matter.

95. Respondent-Defendant Bella Poultry, Inc. is a corporation authorized to do business in New York with its principal place of business located in Ferndale, New York. Bella Poultry or its subsidiaries is engaged in the factory farming, slaughter, and distribution of over 10,000 ducks annually as a facility producing and distributing foie gras, and is therefore an interested party in this matter.

96. Respondent-Defendant La Belle Farm, Inc. is a corporation authorized to do business in New York with its principal place of business located in Ferndale, New York. La Belle Farm or its subsidiaries is engaged in the factory farming, slaughter, and distribution of over 10,000 ducks annually as a facility producing and distributing foie gras, and is therefore an interested party in this matter.

97. On information and belief, no other necessary parties or interested persons exist or should have been joined to this matter.

#### **JURISDICTION AND VENUE**

98. Jurisdiction is conferred on this Court by CPLR sections 7804(b) and 3001, as well as the New York Administrative Procedure Act sections 204 and 205.

99. Venue is proper in this Court pursuant to CPLR sections 505 and 506, as the county in which the determinations complained of herein were made, and because Defendants-Respondents Patrick H Brennan and the New York States Department of

Agriculture and Markets maintain their principle offices here.

### **APPLICABLE SUBSTANTIVE STATUTES**

100. Agriculture and Markets Law section 200 states that:

Food *shall* be deemed to be adulterated:

3. If it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food . . . .

5. If it is the product of a diseased animal or of an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse.

Ag. & Mkts. Law §§ 200, 200-3, 200-5 (emphasis added); *see also* § 200-4 (requiring diseased and unwholesome products to be declared adulterated).

101. Agriculture and Markets Law Article 5-D, which refers specifically to the sale of poultry and poultry products, refers in turn to Agriculture and Markets Law section 200 in order to define which products shall be deemed adulterated. Ag. & Mkts. Law § 96-z-21.

### **STATEMENT OF FACTS**

#### **Procedural history**

102. On or about June 21, 2006, each and every Petitioner to the instant action filed, by and through their attorneys Egert and Trakinski, a Petition for a Declaratory Ruling, pursuant to APA section 204 and 1 NYCRR section 368.1, with the Respondents. *See* Petition for a Declaratory Ruling (“Petition”), attached hereto as Appendix A.

103. The Petition expressly sought a declaratory ruling deeming foie gras an adulterated food product, for the extensive reasons provided therein.

104. As discussed in the Petition, and as used herein, the term “foie gras” refers to the liver of a duck or goose that has been specially fattened, that is, produced using a high volume of any specialized diet delivered by force feeding or “gavage,” as well as any

product produced therefrom, including but not limited to “whole goose foie gras,” “whole duck foie gras,” “goose foie gras,” “duck foie gras,” “block of duck foie gras,” “parfait of goose foie gras,” “parfait of duck foie gras,” “pate of goose liver,” “pate of duck liver,” “galantine of goose liver,” “galantine of duck liver,” “puree of goose liver,” and “puree of duck liver.”

105. The Petition included 62 exhibits, including video and photographic evidence, affidavits based on witnesses’ personal knowledge, expert opinion affidavits from veterinarians, animal scientists, avian veterinarians, and avian pathologists, analyses of recent and historical samples taken from New York farms and markets, almost a dozen peer-reviewed and published studies, articles, and chapters, as well as admissions of the essential facts underlying the Petition by a New York state wildlife pathologist.

106. On or about July 12, 2006, Petitioners received from Respondents a letter acknowledging that the Petition had been received. *See* letter of Joan A. Kehoe, Counsel for Respondents, dated June 29, 2006, attached hereto as Appendix B.

107. On information and belief, other information and evidence was submitted to the Respondents in support of the Petition, which along with the Petition and all of its exhibits became part of the administrative record which Respondents are now obligated to provide certified and in full and pursuant to CPLR 7804(e) in order to allow this Court a complete review of the issues before it.

108. On or about July 26, 2006, Petitioners received from Respondents a final decision and determination refusing to grant the Petition, which was comprised of three sentences explaining the same. *See* letter of Patrick H. Brennan, dated July 19, 2006, attached hereto as Appendix C.

109. Petitioners have commenced this proceeding within four months of the final decision of the Respondents as described in paragraph 108, which final decision and determination is properly the subject matter of this proceeding.

**Factual Background on the Production and Sale of Foie Gras in New York State**

110. According to Respondent-Defendant HVFG, LLC, which slaughters approximately 250,000 ducks annually, foie gras is the fattened liver of a waterfowl produced by a special feeding process. By its own admission, foie gras livers can weigh upwards of two pounds. This is approximately 8-10 times the normal weight for a duck's liver.

111. In addition to HVFG, LLC, Respondent-Defendant La Belle Farm, Inc. and Respondent-Defendant Bella Poultry, Inc., also produce and sell foie gras.

112. Records in the possession of the Respondents and other state agencies confirm the production of foie gras in the state as described above, by each of the Respondents-Defendants, and describe the special feeding process used to produce it as "forced feeding."

113. Upon information and belief, the feeding process usually consists of mechanical, pneumatic force-feeding of the subject animals three times a day for a thirty-day period, after which the animal is slaughtered.

**Analysis of Foie Gras Production and the Induction of Disease**

114. In 1998, the European Union Scientific Committee on Animal Health and Animal Welfare ("Committee"), an official and permanent committee of the European Commission, adopted a 93-page official report on the production of foie gras in which it determined that "disease is by definition a pathological state where the causal factors are

often clearly identified and the clinical signs well defined,” and then concluded that “because normal liver function is seriously impaired in birds with the hypertrophied liver which occurs at the end of force feeding this level of steatosis *should* be considered pathological.” See Appendix A, p. 9 (referring to p. 41 of the report cited therein).

115. The Committee determined that “[i]f birds with good welfare and a large, but not pathologically changed, liver are produced, a high fat content pâté would have to be produced by the addition of fat.” See Appendix A, p. 9 (referring to p. 57 of the report cited therein).

116. The Committee determined that “[t]he mortality rate in force fed birds varies from 2% to 4% in the two week force feeding period compared with around 0.2% in comparable ducks.” See Appendix A, p. 10 (referring to p. 62 of the report cited therein).

117. In addition to intentionally inducing pathological liver disease, foie gras production causes a physiological process whereby various metabolites appear in the blood that are usually stopped by the liver (ammonium, mercaptans, short-chain antigens) and that may then reach the central nervous system (particularly sensitive to these compounds) and trigger central nervous troubles such as circling movements, epileptiform crisis, and increase of the intracranial pressure accompanied by migraines, and finally stupor, coma and death.

118. Petitioner-Plaintiff the New York State Humane Association, Inc. an organization comprised of and representing official state humane law enforcement entities throughout the state, refers in official publications to the production of foie gras at the New York state facilities of Respondent-Defendant HVFG, LLC, Respondent-Defendant La Belle Farm, Inc. and Respondent-Defendant Bella Poultry, Inc., stating that “foie gras is made

by force feeding ducks . . . for a period of two to four weeks to produce a liver that is so infiltrated with fat as to be grossly distended and is in failure.” *See* Appendix A, pp. 10-11.

### **Examination of Animals Used in New York Foie Gras Production**

119. In 1991, Dr. Ward Stone, New York State Wildlife Pathologist employed by the New York State Department of Environmental Conservation, performed necropsies on two ducks obtained from the foie gras production process in New York State and concluded that the process “creates a diseased condition in each duck,” and asked that the process be halted.

120. In 1991, Dr. Wendy Thacher, DVM, provided a report with similar conclusions to that described in paragraph 119, based on necropsies of other ducks taken from the foie gras production process which were performed at the New York State College of Veterinary Medicine, and noted various secondary infections and illnesses attributable to the production process.

121. In 1992 Dr. Tatty Hodge and Dr. Mark Lerman provided a report with similar conclusions to that described in paragraph 119 based on their personal visits to the foie gras production facility and their viewing of hundreds of animals used in the production process—many or most of whom exhibited symptoms consistent with the diseases and illnesses noted in paragraph 120.

122. In 2002 and 2003, necropsies performed on birds used by Respondent-Defendant HVFG, LLC in its foie gras production process confirmed that the animals suffered from severe hepatic lipidosis, and other related illnesses such as pneumonia.

123. Video and photos taken in 2002 and 2003 at the facility used by Respondent-

Defendant HVFG, LLC in its foie gras production process shows animals exhibiting the symptoms of such illnesses, consistent with literature analyzing foie gras production and its impact on animal health.

124. In 2005, necropsies performed on several ducks used in Respondent-Defendant HVFG, LLC's foie gras production process and performed at Cornell University by New York State Wildlife Pathologist Dr. Ward Stone, show ducks suffering from hepatic lipidosis, pneumonia, secondary infections, and other maladies attributable to the production process. It was determined that the disease and related illnesses caused the death of the animals. An analysis of feed actually used in the production process confirms that, consistent with peer-reviewed published literature on the subject, such feed is nutritionally inadequate and a contributing factor to the disease.

125. Video and photos taken in 2005 at the facility used by Respondent-Defendant HVFG, LLC shows dozens of birds exhibiting the symptoms of pathological disease, in addition to the corpses of those that likely died as a result.

126. In 2005, a statement regarding foie gras production was adopted by over 1,600 licensed veterinarians. Among other findings, the veterinarians stated that:

Necropsies performed on birds from foie gras producers show lesions, including but not limited to: hepatic lipidosis; esophageal trauma secondary to insertion of the feeding pipes (granulomas, fungal and bacterial infections, ruptured esophagi); also fractured limbs, crop impaction, aspiration pneumonia, and ruptured livers. In many cases since the food is observed to be spilling out of their esophagi, mouths, and nares, pathologists have determined that the birds died during the force feeding process.

*See Appendix A, p. 13.*

**Expert Opinions Regarding Foie Gras and Specific Animals Used in New York Foie Gras Production**

127. Dr. Yvan Beck, DVM, one of the foremost specialists in the world on foie gras production, and upon whom the European Union Scientific Committee on Animal Health and Animal Welfare relied in part in its 1998 report, describes the foie gras production process stating that

The direct consequence of a chronic accumulation of lipids in the hepatic cell (steatosis) is the progressive appearance of secondary necrotic phenomena which, at the end of their evolution, will cause a generalized fibrosis of this organ. All the liver diseases causing a fibrosis interfere with the hepatic vascularization and are at the origin of vascular anastomoses. These shunts bypass the hepatocyte, an intermediary between the splanchnic circulation and the portal system. They also cause the manifestations of hepatic encephalopathy described.

*See Appendix A, p. 13*

128. Dr. Beck recently reviewed clinical evidence collected specifically regarding foie gras production in New York state, and determined that such evidence was consistent with his general findings described in paragraph 127.

129. Dr. Greg Harrison, DVM, DABVP, DECAMS, a leading author and recognized expert in avian medicine, having analyzed various necropsies and other clinical evidence collected specifically regarding foie gras production in New York state, and relying on treatises and recently published studies, states that the evidence indicates

various forms of what is generally known as hepatic lipidosis, a disease indicated by yellow discoloration and hepatomegaly (enlargement) of the liver due to fatty degeneration and subsequent impairment of the parenchymal cells, which can eventually lead to liver failure and death of birds diagnosed with it. Put simply, the cellular changes associated with hepatic lipidosis alter the ability of the liver to function normally, resulting in impaired animal health and if left untreated, death.

*See Appendix A, p. 14.*

130. Dr. Robert E. Schmidt, DVM, PhD, DACVP, a board-certified veterinary pathologist, avian medicine expert, and author of several authoritative texts on avian

pathology, concludes that “[h]epatic lipidosis can be accompanied by various clinical signs including anorexia, depression, diarrhea, biliverdinuria, obesity, poor feathering, dyspnea, and abdominal enlargement, and via impairment of the liver’s function, may lead to hepatic encephalopathy, with clinical signs of seizures, ataxia, and muscle tremors.” *See* Appendix A, pp. 14-15.

131. In addition to relying on various published studies, and an examination of the various necropsies and other clinical evidence collected specifically regarding foie gras production in New York state, Dr. Schmidt personally examined samples of livers from birds used in foie gras production at the facilities of Respondent-Defendant HVFG, LLC, Respondent-Defendant La Belle Farm, Inc., and Respondent-Defendant Bella Poultry, Inc., and determined that:

all of the liver samples showed abnormal hepatocytes (liver cells), representing a pathological condition, which would impair cellular functions, and which in turn can lead to clinical illness. This condition, known as hepatic lipidosis or hepatic steatosis, is well documented in published literature, and recognized as a metabolic disease.

*See* Appendix A, p. 15.

132. The specific conclusion described in paragraph 131 regarding disease and its relation to the foie gras production process is consistent with the opinion of leading avian veterinarians, avian pathologists, and leading animal welfare experts.

### **The Respondents’ Basis for Contravening this Evidence and Denying the Petition**

133. The Respondents provided no basis whatsoever to contravene the fact that foie gras is adulterated food, i.e. the product of a diseased animal, consisting in whole or in part of a diseased substance. *See* letter of Patrick H. Brennan, dated July 19, 2006, attached hereto as Appendix C.

### **STATEMENT OF CLAIMS**

134. Petitioners have no adequate remedy at law and no prior application has been made for the relief requested herein.

**AS AND FOR A FIRST CAUSE OF ACTION**

135. Petitioners repeat and reallege paragraphs 1 through 134 as if fully set forth.

136. Agriculture and Markets Law section 200 states that:

Food *shall* be deemed to be adulterated:

5. If it is the product of a diseased animal or of an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse.

Ag. & Mkts. Law §§ 200, 200-5 (emphasis added);

137. Because it is uncontroverted and uncontested that foie gras as produced and sold in New York is the product of diseased and severely ill animals, Respondents, by refusing to deem and declare it adulterated, failed to perform a duty enjoined upon them by law.

138. Because it is uncontroverted and uncontested that foie gras as produced and sold in New York is the product of diseased and severely ill animals, and because Respondents received and reviewed over 900 pages of reliable and conclusive evidence of this and provided no evidence whatsoever to the contrary, Respondents, by refusing to deem and declare it adulterated, acted arbitrarily and capriciously, or their decision was affected by an error of law.

**AS AND FOR A SECOND CAUSE OF ACTION**

139. Petitioners repeat and reallege paragraphs 1 through 134 as if fully set forth.

140. Agriculture and Markets Law section 200 states that:

Food *shall* be deemed to be adulterated:

3. If it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food . . . .

Ag. & Mkts. Law §§ 200, 200-3 (emphasis added); *see also* § 200-4 (requiring diseased and unwholesome products to be declared adulterated).

141. Because it is uncontroverted and uncontested that foie gras as sold in New York consists in whole or in part of a diseased substance, Respondents, by refusing to deem and declare it adulterated, failed to perform a duty enjoined upon them by law.

142. Because it is uncontroverted and uncontested that foie gras as sold in New York foie gras as sold in New York consists in whole or in part of a diseased substance and because Respondents received and reviewed over 900 pages of reliable and conclusive evidence of this and provided no evidence whatsoever to the contrary, Respondents, by refusing to deem and declare it adulterated, acted arbitrarily and capriciously, or their decision was affected by an error of law.

#### **AS AND FOR A THIRD CAUSE OF ACTION**

143. Petitioners repeat and reallege paragraphs 1 through 134 as if fully set forth.

144. The failure of the Respondents to properly construe, interpret, or determine the applicability of express provisions of New York Agriculture and Markets Law to the production of foie gras, constitutes the effective nullification of that law, which was intended to be applied broadly for the exclusive benefit of the public, and an abdication of the statutory duty entrusted to Respondents.

145. This failure has directly resulted in hundreds of thousands of diseased and severely ill animals being slaughtered for food in the state of New York in direct contravention of state law, and a flood of adulterated food into the state's markets.

146. This failure has also injured, and will continued to injure, the specific and legally cognizable protected interests of the Petitioners as described in paragraphs 4-80.

147. As such, the Respondents' failure should be declared unlawful and invalid as a matter of law.

#### **REQUEST FOR DISCOVERY PURSUANT TO CPLR 408**

148. Petitioners repeat and reallege paragraphs 1 through 134 as if fully set forth.

149. Pursuant to CPLR section 408, Petitioners request permission to take discovery on the issues relevant to whether the foie gras sold in New York state constitutes adulterated food. Discovery is necessary for the Court to determine whether the Respondents have refused to perform a duty enjoined upon them by law, or whether they acted arbitrarily and capriciously, or affected by an error of law.

150. All information currently in the administrative record was procured by Petitioners and obtained from public sources, and may not fully inform the court regarding facts relevant or dispositive to this matter.

151. This limited discovery will provide the Court and the parties with relevant information necessary for a determination of the proceeding and will be subject to the Court's supervision under CPLR 408.

#### **REQUEST FOR RELIEF**

WHEREFORE, Petitioners respectfully request relief as follows:

1. That this Court enter an order and judgment pursuant to Article 78 of the CPLR directing Respondents to perform the duty enjoined upon them by law to deem and declare foie gras adulterated, or in the alternative;

2. Determining that Respondents' decision that foie gras is not adulterated is arbitrary and capricious or affected by an error of law, annulling such decision, and ordering that Petitioners' Petition for a Declaratory Ruling be granted.

3. That this Court enter an order and judgment determining and declaring that as a matter of law foie gras constitutes an adulterated food product and that Respondents failed their obligation to deem and declare it as such.

4. That this Court enter an order and judgment awarding Petitioners reasonable attorneys' fees, costs, and disbursements pursuant to The New York Equal Access to Justice Act, CPLR Article 86, and such other and further relief that the Court deems just and proper. No prior application for the relief requested herein has heretofore been made.

Dated: New York, New York  
November 14, 2006

EGERT and TRAKINSKI

By:

\_\_\_\_\_  
Amy Trakinski  
Leonard Egert  
165 West 91<sup>st</sup> Street, #16B  
New York, NY 10024  
212-334-6858  
212-579-7315 (fax)

Attorneys for Petitioners

