

Superior Court of the District of Columbia

CIVIL DIVISION- CIVIL ACTIONS BRANCH

INFORMATION SHEET

Organic Consumers Association,
6771 South Silver Hill Drive, Finland, MN 55603

Case Number: **2020 CA 003559 B**

vs

Date: August 12, 2020

D'Artagnan, Inc. and D'Artagnan, LLC,
600 Green Lane, Union, NJ 07083

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

Name: <i>(Please Print)</i> Kim E. Richman	Relationship to Lawsuit <input checked="" type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Self (Pro Se) <input type="checkbox"/> Other: _____
Firm Name: Richman Law Group	
Telephone No.: 718-705-4579	Six digit Unified Bar No.: 1022978

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

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

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

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

NATURE OF SUIT: <i>(Check One Box Only)</i>		
A. CONTRACTS	COLLECTION CASES	
<input type="checkbox"/> 01 Breach of Contract	<input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent	<input type="checkbox"/> 16 Under \$25,000 Consent Denied
<input type="checkbox"/> 02 Breach of Warranty	<input type="checkbox"/> 17 OVER \$25,000 Pltf. Grants Consent	<input type="checkbox"/> 18 OVER \$25,000 Consent Denied
<input type="checkbox"/> 06 Negotiable Instrument	<input type="checkbox"/> 27 Insurance/Subrogation Over \$25,000 Pltf. Grants Consent	<input type="checkbox"/> 26 Insurance/Subrogation Over \$25,000 Consent Denied
<input type="checkbox"/> 07 Personal Property	<input type="checkbox"/> 07 Insurance/Subrogation Under \$25,000 Pltf. Grants Consent	<input type="checkbox"/> 34 Insurance/Subrogation Under \$25,000 Consent Denied
<input type="checkbox"/> 13 Employment Discrimination	<input type="checkbox"/> 28 Motion to Confirm Arbitration Award (Collection Cases Only)	
<input type="checkbox"/> 15 Special Education Fees		
B. PROPERTY TORTS		
<input type="checkbox"/> 01 Automobile	<input type="checkbox"/> 03 Destruction of Private Property	<input type="checkbox"/> 05 Trespass
<input type="checkbox"/> 02 Conversion	<input type="checkbox"/> 04 Property Damage	
<input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a)		
C. PERSONAL TORTS		
<input type="checkbox"/> 01 Abuse of Process	<input type="checkbox"/> 10 Invasion of Privacy	<input type="checkbox"/> 17 Personal Injury- (Not Automobile, Not Malpractice)
<input type="checkbox"/> 02 Alienation of Affection	<input type="checkbox"/> 11 Libel and Slander	<input type="checkbox"/> 18 Wrongful Death (Not Malpractice)
<input type="checkbox"/> 03 Assault and Battery	<input type="checkbox"/> 12 Malicious Interference	<input type="checkbox"/> 19 Wrongful Eviction
<input type="checkbox"/> 04 Automobile- Personal Injury	<input type="checkbox"/> 13 Malicious Prosecution	<input type="checkbox"/> 20 Friendly Suit
<input checked="" type="checkbox"/> 05 Deceit (Misrepresentation)	<input type="checkbox"/> 14 Malpractice Legal	<input type="checkbox"/> 21 Asbestos
<input type="checkbox"/> 06 False Accusation	<input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death)	<input type="checkbox"/> 22 Toxic/Mass Torts
<input type="checkbox"/> 07 False Arrest	<input type="checkbox"/> 16 Negligence- (Not Automobile, Not Malpractice)	<input type="checkbox"/> 23 Tobacco
<input type="checkbox"/> 08 Fraud		<input type="checkbox"/> 24 Lead Paint

SEE REVERSE SIDE AND CHECK HERE IF USED

Information Sheet, Continued

C. OTHERS

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

II.

- | | | |
|--|---|--|
| <input type="checkbox"/> 03 Change of Name | <input type="checkbox"/> 15 Libel of Information | <input type="checkbox"/> 21 Petition for Subpoena
[Rule 28-I (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic | <input type="checkbox"/> 19 Enter Administrative Order as
Judgment [D.C. Code § | <input type="checkbox"/> 22 Release Mechanics Lien |
| <input type="checkbox"/> 08 Foreign Judgment/International | 2-1802.03 (h) or 32-151.9 (a)] | <input type="checkbox"/> 23 Rule 27(a)(1)
(Perpetuate Testimony) |
| <input type="checkbox"/> 13 Correction of Birth Certificate | <input type="checkbox"/> 20 Master Meter (D.C. Code § | <input type="checkbox"/> 24 Petition for Structured Settlement |
| <input type="checkbox"/> 14 Correction of Marriage
Certificate | 42-3301, et seq.) | <input type="checkbox"/> 25 Petition for Liquidation |
| <input type="checkbox"/> 26 Petition for Civil Asset Forfeiture (Vehicle) | | |
| <input type="checkbox"/> 27 Petition for Civil Asset Forfeiture (Currency) | | |
| <input type="checkbox"/> 28 Petition for Civil Asset Forfeiture (Other) | | |

D. REAL PROPERTY

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



Attorney's Signature

August 12, 2020

Date

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

ORGANIC CONSUMERS ASSOCIATION, a nonprofit corporation, 6771 South Silver Hill Drive, Finland, MN 55603,)	
)	
Plaintiff,)	2020 CA 003559 B
v.)	
D'ARTAGNAN, INC. and D'ARTAGNAN, LLC., 600 Green Lane, Union, NJ 07083)	
)	
Defendants.)	
)	

COMPLAINT

Plaintiff Organic Consumers Association (“OCA”) brings this action against Defendants D’Artagnan, Inc. and D’Artagnan, LLC (collectively, “D’Artagnan”) regarding the deceptive marketing and advertising of foie gras products as humane despite the objectively inhumane practices used in raising and slaughtering the ducks used in the products, and alleges the following based upon personal knowledge, information, and belief. This Complaint is on behalf of OCA and the general public, in the interests of consumers.

INTRODUCTION

I. Consumers are increasingly concerned about the humane treatment of animals in food production.

2. This is a consumer-protection case concerning deceptive marketing of foie gras products. The case is brought by OCA, a nonprofit, public-interest organization dedicated to consumer protection. OCA seeks no monetary damages, only an end to the deceptive marketing and advertising at issue. OCA acts on behalf of itself and the general public of the District of Columbia.

3. D'Artagnan is the largest distributor of foie gras in the United States. D'Artagnan markets and sells gourmet food products, including foie gras, under its own name.

4. D'Artagnan makes marketing and advertising representations designed to convey to D.C. consumers that the animals used in its foie gras products (“the Products”) are treated humanely.

5. Contrary to those representations, ducks used for the Products are raised in inhumane conditions that include:

- force-feeding birds using methods that result in bruising, bleeding, lesions, pain, stress, and suffering;
- force-feeding birds to such a degree that they develop brittle and broken bones, thermoregulatory disorders, respiratory disorders, liver disease, lameness, and difficulty walking;
- housing ducks in such a way that they are prevented from expressing their natural behaviors, like foraging, bathing, and preening;
- the crowding of birds in massive warehouse-like facilities with no access to the outdoors; and
- improper and painful handling of ducks at the time of slaughter, transport, and at the time of feeding, leading to distress.¹

¹ The Supreme Court of Israel has recognized that “there is no real disagreement that the practice of force-feeding causes . . . suffering.” HCJ 9232/01 Noah v. Att’y General 215 PD 262-63 (2002-2003) (Isr.), and jurisdictions around the world, including New York City, have passed laws banning the sale or production of foie gras produced by force-feeding. See Mariann Sullivan et al., *What’s Good for the Goose . . . The Israeli Supreme Court, Foie Gras and the Future of Farmed Animals in the United States*, 70 Law & Contemp. Problems 139-74 (Winter 2007), <https://scholarship.law.duke.edu/lcp/vol70/iss1/6/>; see, e.g., *India Foie Gras Import Ban Applauded*, Humane Society International (July 7, 2014), <https://www.hsi.org/news-media/india-foie-gras-import-ban070714/> (“[M]ore than a

6. Thus, D’Artagnan’s marketing and advertising—which represents that D’Artagnan employs humane production practices—is false and misleading

STATUTORY FRAMEWORK

7. This action is brought under the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*

8. The CPPA makes it a violation for “any person” to, *inter alia*:

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

Represent that goods or services are of a particular standard, quality, grade, style, or model, if in fact they are of another;

Misrepresent as to a material fact which has a tendency to mislead;

Fail to state a material fact if such failure tends to mislead;

Use innuendo or ambiguity as to a material fact, which has a tendency to mislead; or

Advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h).

9. A violation of the CPPA may occur regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” *Id.*

10. The CPPA “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.” *Id.* § 28-3901(c). The statute “shall be construed and applied liberally to promote its purpose.” *Id.*

dozen governments have prohibited this intensive farming practice including the UK, Czech Republic, Denmark, Finland, Germany, Italy, Luxembourg, Norway, Poland, the UK, most Austrian provinces, Turkey, Israel and the U.S. state of California.”); Nolan Hicks, *De Blasio signs bill banning foie gras in NYC by 2022*, New York Post (Nov. 25, 2019), <https://nypost.com/2019/11/25/de-blasio-signs-bill-banning-foie-gras-in-nyc-by-2022/>; Jeffery C. Mays et al., *Foie Gras, Served in 1,000 Restaurants in New York City, Is Banned*, The New York Times (Oct. 30, 2019), <https://www.nytimes.com/2019/10/30/nyregion/foie-gras-ban-nyc.html>.

11. The CPPA affords OCA a right to bring this action on behalf of itself and on behalf of the general public:

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

Id. § 28-3905(k)(1)(C).

12. In addition, because OCA is a public-interest organization, the CPPA affords OCA the right to bring any action that an individual consumer would be entitled to bring:

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

Id. § 28-3905(k)(1)(D)(i). Subparagraph (A) provides: “A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.”

13. A public-interest organization may act on behalf of the interests of consumers so long as the organization has “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” *Id.* § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, *see infra* ¶¶ 84-88, Plaintiff OCA’s mission is to advocate for and educate consumers, which it has long done within the District of Columbia, and OCA has previously represented D.C. consumers in similar actions under the CPPA. OCA thus has a sufficient nexus to D.C. consumers to adequately represent their interests.

14. This is not a class action, or an action brought on behalf of a specific consumer or consumers, but an action brought by OCA on behalf of itself and the general public, *i.e.*, D.C. consumers generally. No class certification will be requested.

15. This action does not seek damages. Instead, OCA seeks to end the unlawful conduct directed at D.C. consumers, *i.e.*, D'Artagnan's false and deceptive marketing of its Products. Remedies available under the CPPA include “[a]n injunction against the use of the unlawful trade practice.” *Id.* § 28-3905(k)(2)(D), (F). OCA also seeks declaratory relief in the form of an order holding D'Artagnan's conduct to be unlawful.

FACT ALLEGATIONS

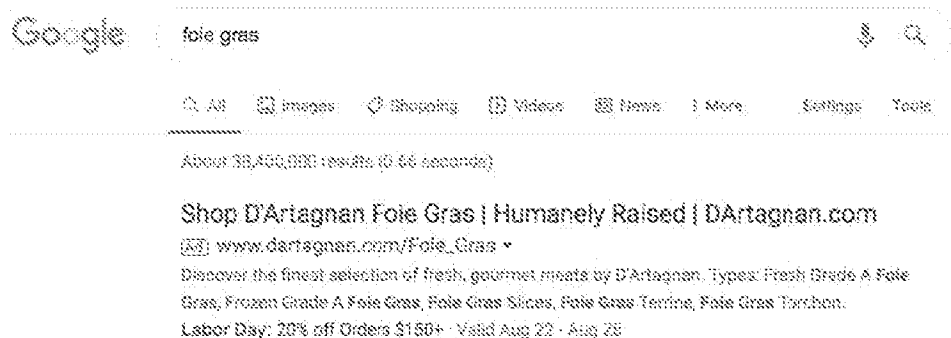
I. D'Artagnan's Marketing and Advertising Represent That the Birds Used in the Products Are Treated Humanely.

16. D'Artagnan markets and advertises the Products in the District of Columbia. It seeks to reach District consumers through search engine advertising; social media, such as Facebook and Instagram; and its company website and blog.

17. Throughout its advertising and marketing materials, D'Artagnan makes representations regarding the well-being, treatment, care, handling, and living conditions of the ducks used in the Products (the “Animal Welfare Representations”).

18. For example, D'Artagnan targets District consumers with paid search engine advertisements marketing its foie gras as “humanely raised.”²

Figure 1:



² See Figure 1 *infra*.

19. On its D’Artagnan brand website and blog, both of which are easily accessible by District consumers, D’Artagnan repeatedly represents that it uses “humane farming practices”³ and produces “humanely-raised meats.”⁴

³ See *D’Artagnan Philosophy*, D’Artagnan, <https://www.dartagnan.com/dartagnan-philosophy.html?fid=company-information> (last visited Aug. 5, 2020); *Screenshot of D’Artagnan Website from October 23, 2019*, WaybackMachine (snapped Aug. 5, 2020, 1:24 PM), <https://web.archive.org/web/20191023174200/https://www.dartagnan.com/dartagnan-corporate-gifts.html?fdid=company-information>; see also, D’Artagnan (@Dartagnanfoods), *Our Story*, Facebook (March 28, 2018), <https://www.facebook.com/pg/Dartagnanfoods/about/>.

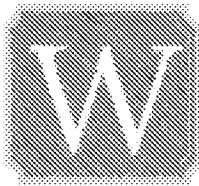
⁴ *D’Artagnan Founder: Ariane Daguin*, D’Artagnan, <https://www.dartagnan.com/dartagnan-founder-ariane-daguin.html?fdid=company-information> (last visited Aug. 5, 2020).

Figure 2:

The screenshot shows the top of the D'Artagnan website. The header includes the D'Artagnan logo, navigation links for 'Meat & Game', 'Duck & Poultry', 'Eggs, Grains & Caviar', 'Charcuterie', 'Truffles & Mushrooms', 'Pantry', 'Gifts', 'Collections', 'New', 'SALE', and 'English & Lamb'. A search bar is located on the right. Below the header, the main content area features a section titled 'ABOUT US > D'Artagnan Philosophy'. This section contains a large 'W' icon and text explaining the company's commitment to free-range, natural production and sustainable, humane farming practices. It mentions partnering with small farms and ranches that have the strictest standards and never use added antibiotics or hormones. To the right of the text are two product images: 'Mouled Magret Duck Breast' and 'D'Artagnan Polon Duck, Whole', each with a 'BUY THIS PRODUCT' button.

ABOUT US >

D'Artagnan Philosophy

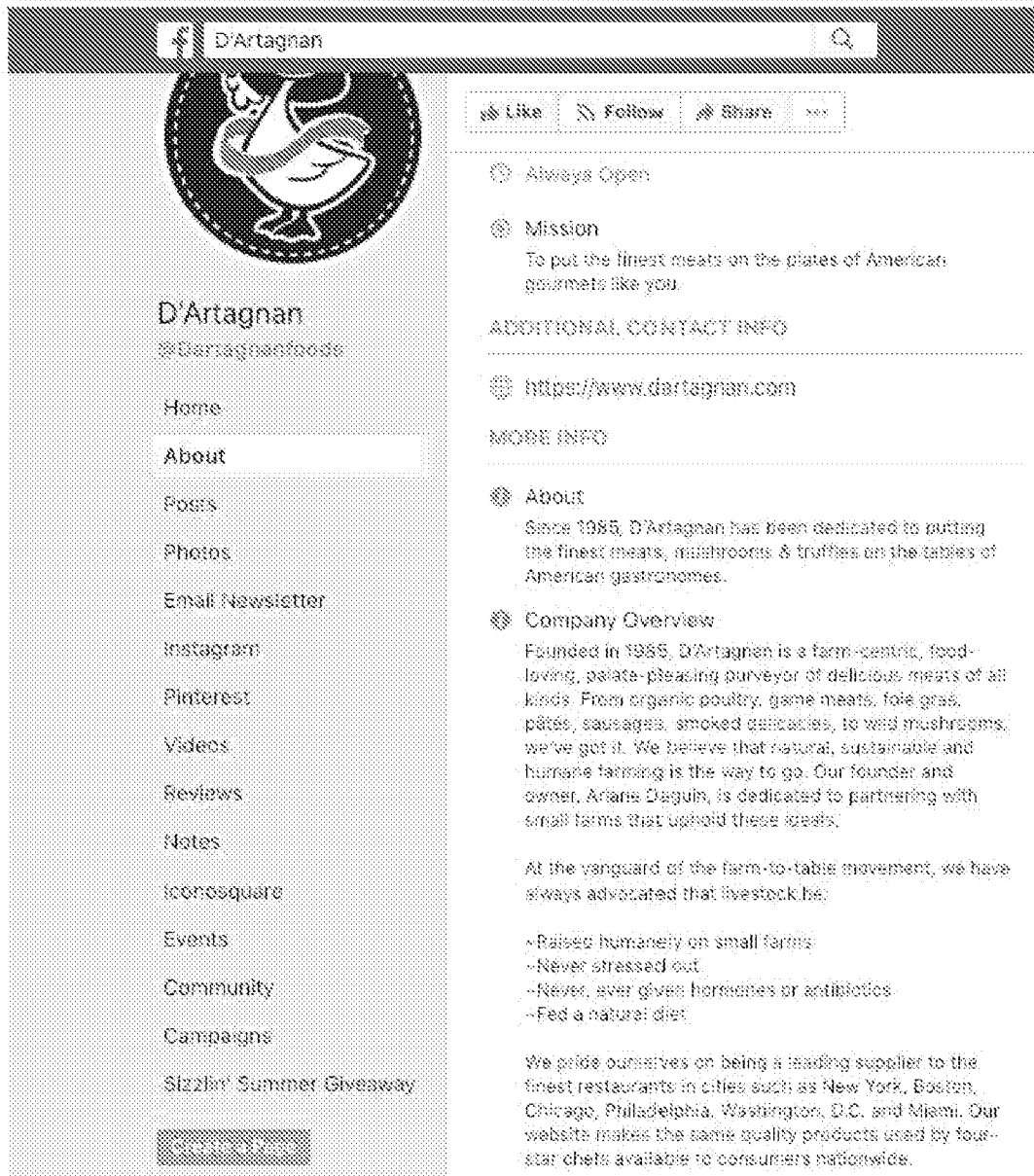


We believe food raised right tastes better. Before such buzz words existed, and for more than 30 years, D'Artagnan has been committed to free-range, natural production and sustainable, humane farming practices.

We partner with small farms and ranches that have the strictest standards; to never use added antibiotics or hormones, and sign affidavits to that effect.

20. According to the “About” section of the official D’Artagnan Facebook page, the company represents that “natural, sustainable and humane farming is the way to go,”⁵ and notes that it has “always advocated that livestock be . . . [r]aised humanely on small farms.”⁶

Figure 3:



⁵ D’Artagnan (@Dartagnanfoods), *About*, Facebook, <https://www.facebook.com/pg/Dartagnanfoods/about/>.

⁶ *Id.*

21. Founder, CEO, and owner Ariane Daguin has also made a number of publicly available statements on the company's practices. These statements appear in national news publications that are available to D.C. consumers who seek more information about the Products. Further, the articles in which these statements are made are all promoted on the D'Artagnan website.⁷ Some have also been shared on Facebook via the official D'Artagnan page⁸ and blog.⁹ In one such article, Daguin is quoted as saying: "There isn't one thing we have that hasn't been humanely raised."¹⁰

22. D'Artagnan elaborates upon its claims of "humane" treatment with other representations, including that animals used for its products:

- "feel no stress" and are raised in "low-stress" conditions;¹¹

⁷ *D'Artagnan In the News*, D'Artagnan, <https://www.dartagnan.com/dartagnan-in-the-news.html> (last visited Aug. 5, 2020).

⁸ See D'Artagnan (@Dartagnanfoods), Facebook (June 21, 2019), https://www.facebook.com/Dartagnanfoods/posts/10156106654076946?_tn_=-R; D'Artagnan (@Dartagnanfoods), Facebook (June 23, 2019), https://www.facebook.com/Dartagnanfoods/posts/10156111546751946?_tn_=-R; D'Artagnan (@Dartagnanfoods), Facebook (May 14, 2010), <https://www.facebook.com/Dartagnanfoods/posts/an-article-on-cnn-today-covers-the-continuing-saga-of-foie-gras-which-dartagnan-/117216124982838/>.

⁹ See D'Artagnan, *What One Writer Found at a Foie Gras Farm*, Center of the Plate: D'Artagnan Blog (Aug. 11, 2018), <https://center-of-the-plate.com/2018/08/11/what-one-writer-found-at-a-foie-gras-farm/>.

¹⁰ Gabrielle Saulsbery, *Ducky idea leads to meaty business*, NJBIZ (February 19, 2018, 2:55 PM) <https://njbiz.com/ducky-idea-leads-to-meaty-business/>.

¹¹ See *Mousse of Duck Foie Gras*, D'Artagnan, <https://www.dartagnan.com/mousse-of-duck-foie-gras/product/PTEFG020.html> (last visited Aug. 5, 2020); *Hudson Valley Grade-A Duck Foie Gras*, D'Artagnan, https://www.dartagnan.com/hudson-valley-grade-a-duck-foie-gras/product/FDUF002-1.html?cgid=foie-gras&dwvar_FDUF002-1_freshFrozenWeight=fresh-FDUF002#start=1 (last visited Aug. 5, 2020); *Foie Gras Cubes*, D'Artagnan, https://www.dartagnan.com/foie-gras-cubes/product/ZDUF008-1.html?cgid=foie-gras&dwvar_ZDUF008-1_freshFrozenWeight=frozen-ZDUF008#start=7 (last visited Aug. 5, 2020); *Grade-A Duck Foie Gras Slices*, D'Artagnan, https://www.dartagnan.com/grade-a-duck-foie-gras-slices/product/FDUF007-1.html?cgid=foie-gras&dwvar_FDUF007-1_freshWeight=frozen-FDUF007#start=5 (last visited Aug. 5, 2020); *Individually Quick Frozen Foie Gras Medallions*, D'Artagnan, https://www.dartagnan.com/individually-quick-frozen-foie-gras-medallions/product/ZDUF001-1.html?cgid=foie-gras&dwvar_ZDUF001-1_freshFrozenWeight=frozen-ZDUF001#start=4 (last visited Aug. 5, 2020).

- are “free-range,”¹² “never caged”¹³ and have “space to roam”;¹⁴
- are allowed to exhibit “natural behaviors,”¹⁵ follow “natural instincts,”¹⁶ and eat a “natural diet”;¹⁷ and
- are fed through “hand-feeding.”¹⁸

23. D’Artagnan makes several representations on its website and Facebook page that ducks used for its foie gras products are raised in a “low-stress” environment.¹⁹ This exact language, including the statement that “every measure is taken to ensure the ducks feel no stress,”²⁰ is included on multiple pages that advertise foie gras products on the D’Artagnan website.²¹ Multiple pages include identical statements attesting to the “low-stress open barns” in which ducks used for D’Artagnan foie gras are raised.²²

¹² See Screenshot of D’Artagnan Website from October 23, 2019, *supra* note 3; D’Artagnan (@Dartagnanfoods), *Our Story*, *supra* note 3.

¹³ See, *Foie Gras Cubes*, *supra* note 11; *Grade-A Duck Foie Gras Slices*, *supra* note 11; *Individually Quick Frozen Foie Gras Medallions*, *supra* note 11; *Hudson Valley Grade-A Duck Foie Gras*, *supra* note 11; *Mousse of Duck Foie Gras*, *supra* note 11.

¹⁴ *D’Artagnan Story*, D’Artagnan, <https://www.dartagnan.com/dartagnan-story.html> (last visited Aug. 12, 2020).

¹⁵ *Id.*

¹⁶ *Mousse of Duck Foie Gras*, *supra* note 11.

¹⁷ *About*, *supra* note 5.

¹⁸ *Hudson Valley Grade-A Duck Foie Gras*, *supra* note 11.

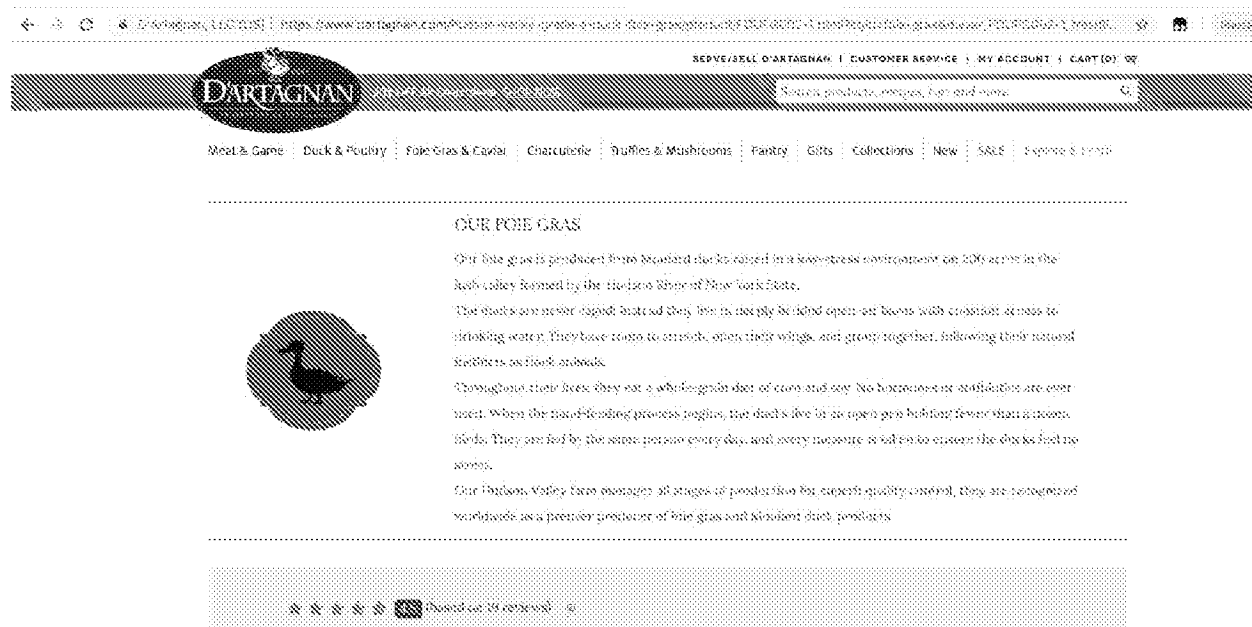
¹⁹ See, e.g., *Mousse of Duck Foie Gras*, *supra* note 11.

²⁰ *Id.*

²¹ See *Foie Gras*, D’Artagnan, <https://www.dartagnan.com/buy/foie-gras/> (last visited Oct. 23, 2019).

²² See *Hudson Valley Grade-A Duck Foie Gras*, *supra* note 11; *Foie Gras Cubes*, *supra* note 11; *Grade-A Duck Foie Gras Slices*, *supra* note 11; D’Artagnan, *Individually Quick Frozen Foie Gras Medallions*, *supra* note 11.

Figure 4:



OUR FOIE GRAS

Our foie gras is produced from Moulard ducks raised in a low-stress environment on 200 acres in the lush valley formed by the Hudson River of New York State.

24. Furthermore, on the “About” page of the official D’Artagnan Facebook account, D’Artagnan claims: “We have always advocated that livestock be . . . [n]ever stressed out.”²³

25. D’Artagnan makes additional representations that lead consumers to believe that the animals used in its Products are provided with ample space to move freely. This includes D’Artagnan’s claims that it is “committed to free range”²⁴ practices and that it requires its suppliers to provide animals with “space to roam,”²⁵ in addition to a number of specific claims about the allegedly expansive environment provided for ducks used in the Products.

²³ See *About*, *supra* note 5.

²⁴ *D’Artagnan Philosophy*, *supra* note 3.

²⁵ See *D’Artagnan Story*, *supra* note 14.

Figure 5:

The screenshot shows the D'Artagnan website interface. At the top, there is a navigation bar with the D'Artagnan logo and links for 'NEW! 2013 D'ARTAGNAN', 'CUSTOMER SERVICE', 'MY ACCOUNT', and 'CART (0)'.

The main content area features a large image of a piece of foie gras on a wooden surface. To the right of the image, the product title is 'Hudson Valley Grade-A Duck Foie Gras', followed by a star rating and the price '\$129.99'. Below the price, there is a quantity selector set to '1' and an 'ADD TO CART' button.

Underneath the product image and price, there is a 'DESCRIPTION' section. The text in this section reads: 'Our Grade-A foie gras comes from Moulard ducks, raised in low-stress open barns on a farm in New York State, recognized as a premier producer of high-quality foie gras. The ducks are never caged, and no antibiotics or hormones are administered. This foie gras a favorite among our chef clientele for its naturally sweet taste and silky texture.'

26. According to D'Artagnan's website, the ducks are "never caged; instead they live in . . . open-air barns with . . . room to stretch, open their wings, and group together."²⁶ D'Artagnan

²⁶ *Mousse of Duck Foie Gras*, *supra* note 11.

further suggests that ducks enjoy access to a vast bucolic landscape, noting that the ducks are raised “on 200 acres in the lush valley formed by the Hudson River.”²⁷

27. D’Artagnan leads consumers to believe that spacious “open-air” farms allow the ducks used in the Products to “follow their natural instincts” throughout their lives.²⁸ This narrative that the ducks are raised in a “natural” environment is supported by marketing claims on other D’Artagnan webpages along with the claim that D’Artagnan suppliers must adhere to high animal welfare standards that “allow animals their natural behaviors.”²⁹

28. D’Artagnan makes additional claims that animals used in its products are fed in ways that are natural and appropriate for each animal. For example, the website claims that its suppliers must “feed animals a clean, natural, and appropriate diet.”³⁰

29. Specifically, D’Artagnan uses the term “hand-feeding” to describe how ducks used for the Products are fed.³¹

II. Contrary to D’Artagnan’s Animal Welfare Representations, Ducks Raised for the Products Are Treated Inhumanely.

30. Contrary to D’Artagnan’s Animal Welfare Representations, the ducks used for the Products are: (1) routinely force-fed in an inhumane manner than causes extreme suffering and disease and (2) raised, fed, handled, and slaughtered in inhumane, crowded, and stressful conditions of confinement that prevent the expression of their natural behaviors.

31. As explained *infra* in Section A, numerous veterinarians, scientists, and government-appointed research bodies have determined that the force-feeding practices utilized by D’Artagnan foie gras suppliers are severely harmful and cause painful liver disease in ducks.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See *D’Artagnan Story*, *supra* note 14.

³⁰ *Id.*

³¹ See *Hudson Valley Grade-A Duck Foie Gras*, *supra* note 11.

32. As explained *infra* in Section B, videos produced by one of D’Artagnan’s own foie gras suppliers, as well as multiple undercover investigations, reveal crowded conditions and ongoing mistreatment of ducks raised for the Products.³²

33. This reality of D’Artagnan’s production practices is inconsistent with how a reasonable consumer would understand D’Artagnan’s Animal Welfare Representations.

A. D’Artagnan Foie Gras Suppliers Use an Inhumane Force-Feeding Procedure That Is Widely Condemned by Animal Welfare Experts.

34. Contrary to D’Artagnan’s representations, there is nothing humane, natural, or appropriate about how ducks used for the Products are fed. Although D’Artagnan misleadingly describes it as “hand-feeding” (which suggests a gentle and consensual process), its suppliers use³³ a brutal and dangerous procedure referred to by veterinarians as “force-feeding.” For the force-feeding procedure used by D’Artagnan’s suppliers, a long metal tube (known as a “gavage tube”) is forcibly inserted into the ducks’ throats, and an unnaturally large quantity of corn and/or grain is literally funneled into the birds’ stomachs.³⁴

³² Mercy For Animals (@mercyforanimals), *Amazon Cruelty – Mercy For Animals Exposes Suffering Behind Foie Gras*, YouTube (Aug. 30, 2013), https://m.youtube.com/watch?v=9ECEf0_nQcI; Animal Outlook (@Animal Outlook), *COK Goes Undercover Inside Hudson Valley Foie Gras*, YouTube (Dec. 16, 2008), <https://www.youtube.com/watch?v=XNJDZm1bgVA>; People for the Ethical Treatment of Animals (@PETA (People for the Ethical Treatment of Animals)), *Kate Winslet Exposes Foie Gras Cruelty*, YouTube (Mar. 16, 2015), <https://www.youtube.com/watch?v=DyOu-GVtgPQ>; People for the Ethical Treatment of Animals (@PETA (People for the Ethical Treatment of Animals)), *Ducks Cruelly Force-Fed for Foie Gras*, YouTube (May 8, 2013), https://www.youtube.com/watch?v=uW2uiw-p_js; Animal Protection and Rescue League (@aprlvideo), *Foie Gras: A Decade of Cruelty Exposed*, YouTube (Dec. 23, 2011), <https://www.youtube.com/watch?v=B-EDBdGU5fA>; Hudson Valley Foie Gras (@Hudson Valley Foie Gras), *Hudson Valley Foie Gras*, YouTube (Nov. 2, 2013), https://www.youtube.com/watch?v=-uOGxd_fCSk.

³³ Erin Mosbaugh, *Debunking Foie Gras, America’s Most Controversial Luxury Ingredient*, FIRST WE FEAST (Apr. 23, 2014), <https://firstwefeast.com/eat/everything-you-need-to-know-about-foie-gras/>.

³⁴ The Humane Society of the U.S., *An HSUS Report: The Welfare of Animals in the Foie Gras Industry 1* (2012), <https://www.humanesociety.org/sites/default/files/docs/hsus-report-welfare-foie-gras-industry.pdf> [hereinafter *An HSUS Report*].

35. Force-feeding leads to myriad health issues from the feeding itself, including neck, throat, and lung damage from the insertion of the gavage tube, as well as broken bones and wings from handling birds that struggle to avoid force-feeding.³⁵

36. Additional health issues arise from the unnatural quantity of food and inappropriate diet, including hepatic lipidosis (“fatty liver disease”);³⁶ liver swelling that causes difficulty breathing and impairs the functioning of other vital organs; nutritional deficiencies that lead to broken bones, lameness, and various other illnesses; and higher mortality rates.³⁷

37. The following statements from numerous veterinarians, scientists, and government-appointed research bodies confirm that force-feeding birds for foie gras causes significant pain, suffering, and distress:

- “Substantial scientific evidence suggests that force-feeding can cause pain and injury from feeding tube insertion, fear and stress during capture and handling, gait abnormality due to distended livers, pathologies in liver function, and increased mortality. Force-feeding birds to produce foie gras is detrimental to their welfare.”³⁸
- “This practice causes unacceptable suffering to these animals. . . . It causes pain during and as a consequence of the force feeding, feelings of malaise as the body struggles to cope with extreme nutrient imbalance, and distress due to the forceful handling. The most extreme distress is caused by loss of control of the birds’ most basic homeostatic regulation mechanism as their hunger control system is over-ridden.”³⁹
- “In my opinion, the force feeding of ducks and geese, for the production of foie gras is a cruel and inhumane practice that should be banned.”⁴⁰

³⁵ *Id.*

³⁶ Consuming foie gras has been connected to the severe, dangerous human health condition amyloidosis, in which abnormal proteins build up in the heart, kidneys, liver, or other organs. Consuming the diseased liver of geese or ducks has been connected to amyloidosis in humans. See Alan Solomon et al., *Amyloidogenic potential of foie gras*, 104 Proc. of the Nat’l Acad. of Sci. 10998 (June 26, 2007), www.pnas.org/cgi/doi/10.1073/pnas.0700848104.

³⁷ *An HSUS Report, supra* note 34.

³⁸ *Id.*

³⁹ *Id.* at 6-7 (Statement of Christine Nicol, Animal welfare scientist and Professor of Animal Welfare at the School of Veterinary Science at the University of Bristol).

⁴⁰ The Humane Society of the U.S., *Scientists and Experts on Force-Feeding for Foie Gras Production and Duck and Goose Welfare*, 4, https://thehill.com/sites/default/files/HSUS__ForceFeedingForFoieGrasProductionandDuckandGooseWelfare_0.pdf

- “The practice of force feeding a duck to produce a fatty liver is inherently cruel.”⁴¹
- “The Scientific Committee on Animal Health and Animal Welfare concludes that force feeding, as currently practiced, is detrimental to the welfare of the birds.”⁴²
- “Animals in this condition would experience constant pain. . . . I consider the production of foie gras to be inhumane as it deliberately harms the duck. . . .”⁴³
- “[T]he short tortured lives of ducks raised for Foie Gras is well outside the norm of farm practice.”⁴⁴
- “[T]here is absolutely no doubt, that force-feeding subjects them to physiological and behavioural suffering which dramatically reduces their well-being.”⁴⁵

38. According to these experts, there are myriad injuries and illnesses that result from the force-feeding process itself. Birds are often left with “pain and injury from handling caused by the tubing of the force-feeding funnel; trauma caused by injecting a high-temperature corn mash; bruising or perforation of the esophagus when the pipe is inserted; hemorrhaging and inflammation of the neck resulting from too forcible an introduction of the pipe to the throat; or asphyxia caused by food improperly forced into the trachea.”⁴⁶

39. Inspections at D’Artagnan supplier Hudson Valley Foie Gras⁴⁷ confirm that D’Artagnan foie gras is no exception. Upon inspection, one veterinarian determined that multiple ducks had “died of aspiration pneumonia, a painful condition resulting from food being pushed into the birds’ lungs during the force-feeding process.”⁴⁸ In necropsy reports conducted on duck

[hereinafter *Scientists and Experts on Force-Feeding*] (Statement of Ian J.H. Duncan, Emeritus Chair in Animal Welfare, University of Guelph, Ontario, Canada).

⁴¹ *Id.* (Statement of Lynn R. Dustin, Veterinarian, Bay Area Bird Hospital, San Francisco, California).

⁴² *Id.* at 6 (Statement of the European Union Scientific Committee on Animal Health and Animal Welfare).

⁴³ *Id.* at 7 (Statement of Tatty M. Hodge, Veterinarian, East Greenbush, New York).

⁴⁴ *Id.* at 8 (Statement of Ward B. Stone, Wildlife Pathologist, New York State Department of Environmental Conservation, Wildlife Pathology Unit, Delmar, New York).

⁴⁵ *Id.* (Statement of Christine Van Berchem, Veterinarian, Brussels, Belgium and René Zayan, Professor of Ethology, Université Catholique de Louvain, Louvain-la-Neuve, Belgium).

⁴⁶ *An HSUS Report, supra* note 34, at 3.

⁴⁷ *An HSUS Report, supra* note 34.

⁴⁸ *Id.* at 5.

corpses, further evidence was found that ducks were “severely congested, demonstrated signs of bronchiolitis and aspiration pneumonia, and had food material in their lungs.”⁴⁹

40. Further detrimental health effects of force-feeding include “pathological”⁵⁰ impairment of liver function, major nutritional deficiencies, breathing issues from enlarged livers, difficulty walking from injuries and enlarged livers, skin disorders and lesions, skeletal disorders and broken bones, difficulty regulating body temperature, exhaustion, and general feelings of malaise, among many other health issues.⁵¹

41. Fatty liver disease is a very common result of force-feeding. Statements from multiple scientists, veterinarians, and government-appointed research bodies demonstrate that hepatic lipidosis is detrimental to the health and welfare of ducks, and it is a direct result of force-feeding practices:

- “Force feeding quickly results in birds that are obese and in a pathological state, called hepatic lipidosis or fatty liver disease. There is no doubt, that in this pathological state, the birds will feel very ill.”⁵²
- “[N]o normal animal has steatosis of the liver to the extent which occurs in all force fed birds. During the force feeding period, liver function is impaired.”⁵³
- “At the end of force-feeding, the liver is indeed a diseased organ. The bird is killed before collapsing on its own.”⁵⁴

⁴⁹ *Id.* (Taken from necropsy reports written on December 27, 2002 and January 24, 2003 by Anne Kincaid, DVM, Antech Diagnostics, Lake Success, New York).

⁵⁰ See *An HSUS Report*, *supra* note 34, at 2-3; see also *Scientists and Experts on Force-Feeding*, *supra* note 40, at 1, 4-8.

⁵¹ See *An HSUS Report*, *supra* note 34; see also *Scientists and Experts on Force-Feeding*, *supra* note 40.

⁵² *An HSUS Report*, *supra* note 34, at 2.

⁵³ *Id.*

⁵⁴ *Id.*

42. D'Artagnan's suppliers subject ducks to unnatural diets, both in terms of quantity and nutritional content. Ducks are "natural omnivores," yet they are fed "nutritionally incomplete" corn-based diets.⁵⁵

43. Statements from numerous scientists, veterinarians, and government-appointed research bodies confirm that this diet is "unnatural" and results in a separate set of health and welfare issues including skin disorders,⁵⁶ lethargy,⁵⁷ and fragile, deformed, and broken bones.⁵⁸

44. One analysis reported that "[d]uring the force-feeding period, the frequency of fractures to the humeral (wing) bones repeatedly reaches 54%."⁵⁹

45. Inadequate dietary conditions have been specifically documented at D'Artagnan supplier Hudson Valley Foie Gras. According to one report, "A chemical analysis of the corn mash used at Hudson Valley Foie Gras in New York established the feed did not meet the nutrient requirements of ducks, being 'too low in protein and too high in trace minerals.'"⁶⁰

⁵⁵ See *An HSUS Report*, *supra* note 34, at 2 (Statement from Yvan Beck Veterinarian, Brussels, Belgium that "The food given to palmipeds [waterfowl] does not cover the physiological needs of this species. It is an unbalanced diet, designed to artificially cause hepatic lipidosis.").

⁵⁶ See *An HSUS Report*, *supra* note 34, at 4 ("Bone and skin disorders linked to the nutritional deficiencies in the diet of force-fed birds may exacerbate the problem [of bumblefoot]." and Statement from Greg Harrison, Diplomate of the American Board of Veterinary Practitioners and the European College of Avian Medicine and Surgery that "[Nutritional] imbalances also lead to a skin disorder known as hyperkeratosis (thinning, flaking, excess callus formation, slow healing).").

⁵⁷ See *An HSUS Report*, *supra* note 34, at 6-7 (Statement from Christine Nicol, Animal welfare scientist and Professor of Animal Welfare at the School of Veterinary Science at the University of Bristol that "This practice causes unacceptable suffering to these animals.... feelings of malaise as the body struggles to cope with extreme nutrient imbalance ... The most extreme distress is caused by loss of control of the birds' most basic homeostatic regulation mechanism as their hunger control system is over-ridden [*sic*].").

⁵⁸ See *An HSUS Report*, *supra* note 34, at 4 (Statement from Greg Harrison, Diplomate of the American Board of Veterinary Practitioners and the European College of Avian Medicine and Surgery that "The lack of sufficient protein, vitamins and minerals (calcium) leads the young birds' rapidly growing bones to be structurally flawed (osteodystrophy). This leads to bending and breaking (rickets)."); *Scientists and Experts on Force-Feeding*, *supra* note 40, at 2 (Statement from Yvan Beck Veterinarian, Brussels, Belgium that "Deterioration of the musculoskeletal system resulting in fractures of bones is common [in force-fed ducks], in part because immobilization of animals in cages, nutritional imbalance of portions (deficiency in proteins and in minerals), hormonal disturbance and excessive weight which all affect bone growth.").

⁵⁹ See *An HSUS Report*, *supra* note 34, at 4.

⁶⁰ *Id.* at 2.

46. Breathing issues are also a common issue among force-fed ducks. According to a report published by the European Food Safety Authority’s Panel on Animal Health and Welfare (formerly the European Union Scientific Committee on Animal Health and Animal Welfare (“SCAHAW”)),⁶¹ force-feeding causes overheating and panting due to excessive heat “generated by their forced over-consumption of grain.”⁶² Additionally, veterinary experts and research pathologists have concluded that force-fed birds’ massively overgrown livers put pressure on their lungs and affect respiration.⁶³

47. Difficulty walking and lameness are also common health and welfare detriments of force-feeding ducks for foie gras production. SCAHAW’s report notes that force-feeding causes “severely impaired” walking ability due to “expanded livers,” excess weight, and rapid growth.⁶⁴ Another research study on liver disease in birds used in foie gras production found that “some of the birds who died had such difficulty walking that they could not access drinking water.”⁶⁵

48. Illnesses and injury can compound into a “painful condition” called bumblefoot, which is exacerbated by poor nutrition and “can progress into the joint of the foot causing pain and difficulty walking.”⁶⁶

49. A whole host of other illnesses can arise from the force-feeding practices.⁶⁷

⁶¹ *Id.* at 5; National Advertising Division, *Case No. 4959, D’Artagnan, Inc. Foie Gras Case Report* (Jan. 16, 2009) (“the SCAHAW report ... is the most comprehensive, objective and reliable review of foie gras production utilizing both scientific data and observations of actual foie gras production condition.”).

⁶² *Id.*

⁶³ *See Scientists and Experts on Force-Feeding*, *supra* note 40, at 2, 6-7.

⁶⁴ *See An HSUS Report*, *supra* note 34, at 4.

⁶⁵ *Id.* at 5.

⁶⁶ *Id.* at 4.

⁶⁷ *See An HSUS Report*, *supra* note 34, at 4-5 (“anoxemia, due to insufficient aeration; toxemia, which is an intoxication of the blood; cirrhosis of the liver; candidosis, which is provoked by a yeast which profits from esophageal inflammations (due to the feeding tube, for example); feeding tube injuries, caused by clumsiness, which can go as far as the bursting of the crop; ‘blue thigh,’ due to internal muscular hemorrhages provoked by a deficiency in vitamin K and poor manipulation of the animals.”), 5 (“diseases suffered by force-fed ducks and geese include ‘[i]njuries; bowel obstruction; indigestion; tympanism; parasitism; amidostimosis; epomidiostimosis; spirurosis; enteritis; intestinal indigestion; fibrosis of the liver; hypoglycemic coma; bronchial obstruction.”).

50. Analyses from multiple reports reflect the unnaturalness of the gavage process, as compared to natural eating habits of migratory birds, who consume large quantities of food prior to migration. Specifically, expert veterinarians have concluded: “There is however no comparison between what nature planned . . . and the extreme result which is imposed by force-feeding on the organism.”⁶⁸ Experts have further concluded that no duck species “gorge to the extent of causing illness or making themselves incapable of breathing or walking, which results from force feeding.”⁶⁹

51. Moreover, despite D’Artagnan’s claims that its ducks are raised in “low-stress” environments and “feel no stress,” severe distress is inevitably caused by the force-feeding of ducks used in foie gras production and the injuries and disease that accompany it. According to the SCAHAW research study, birds routinely try to escape and avoid force-feeding, indicating their “aversion” to the procedure.⁷⁰

52. As a result of the numerous ailments and injuries caused by force-feeding, ducks used for foie gras production suffer mortality rates that are 10 to 20 times higher during the force-feeding period,⁷¹ which the SCAHAW report notes is “lethal when the procedures are continued.”⁷²

B. Video Evidence Confirms Systematic Mistreatment of Ducks in D’Artagnan’s Supply Chain.

53. Videos posted by D’Artagnan’s own supplier demonstrate that ducks used for the Products are raised in inhumane and overcrowded conditions.

⁶⁸ See *Scientists and Experts on Force-Feeding*, *supra* note 40, at 2.

⁶⁹ *Id.* at 4.

⁷⁰ *Id.*

⁷¹ *Id.* at 1.

⁷² See *An HSUS Report*, *supra* note 34, at 5.

54. Despite D'Artagnan's claims that ducks used for the Products have "room to stretch" in "low-stress" "open-air" barns,⁷³ videos filmed by Hudson Valley Foie Gras itself reveal that the birds are raised in densely-packed, warehouse-like facilities that provide no access to the outdoors.⁷⁴

55. None of the footage promoted by Hudson Valley Foie Gras⁷⁵ shows that its ducks have meaningful "space to roam"⁷⁶ or that it adheres to a "commitment to . . . free-range"⁷⁷ practices. Furthermore, the footage does not reflect "a low-stress environment on 200 acres in the lush valley of the Hudson River."⁷⁸

Figure 6:



⁷³ Hudson Valley, *Hudson Valley Foie Gras: Episode 3: The Practices - Part 1*, Vimeo (Aug. 9, 2015, 9:11 PM), <https://vimeo.com/135827595>.

⁷⁴ See *supra* note 32.

⁷⁵ See Hudson Valley Foie Gras (@Hudson Valley Foie Gras), *Hudson Valley Foie Gras*, *supra* note 32; Hudson Valley, *Hudson Valley Foie Gras: Episode 3: The Practices - Part 1*, *supra* note 73.

⁷⁶ *D'Artagnan Story*, *supra* note 14.

⁷⁷ Screenshot of *D'Artagnan Website from October 23, 2019*, *supra* note 3.

⁷⁸ *Mousse of Duck Foie Gras*, *supra* note 11.

⁷⁹ Hudson Valley, *Hudson Valley Foie Gras: Episode 3: The Practices - Part 1*, *supra* note 73.

56. To the contrary, this footage reveals conditions that prevent ducks from expressing their natural, instinctual behaviors. In nature, ducks would “spend much of their time foraging and maintaining their plumage by bathing and preening,” but they are unable to do so when “housed at high densities,” as is the case at D’Artagnan’s suppliers.⁸⁰ Ducks used for the Products are unable to bathe and preen properly because they are not provided with access to water in which to swim. Foraging is an important instinctual behavior that is prevented during the force-feeding period because ducks are force-fed rather than allowed to forage for food.⁸¹ Researchers agree that “[t]he absence of opportunities to engage in such instinctual behavior is likely to cause frustration and stress.”⁸²

57. Moreover, despite D’Artagnan’s representations that ducks used for the Products are “never caged,” the reality is that ducks *are* crammed into crowded cages in groups, as shown below.

⁸⁰ See *An HSUS Report*, *supra* note 34, at 5-6.

⁸¹ See *id.*; see also *Scientists and Experts on Force-Feeding*, *supra* note 40, at 4.

⁸² See *An HSUS Report*, *supra* note 34, at 6.

Figure 7:



58. Multiple undercover investigations of Hudson Valley Foie Gras provide further evidence of inhumane treatment of the ducks used for the Products.

59. A 2013 investigation conducted by nonprofit organization Mercy For Animals (“MFA”) revealed further abuses at Hudson Valley Foie Gras’s farms.⁸⁴

60. MFA’s investigation video shows blood-covered ducks awaiting slaughter in small cages, ducks being roughly grabbed by their wings and throats and pulled toward the gavage by handlers, and ducks being grabbed by their wings, shackled upside down, and having their throats slit for slaughter. Further abuses include ducks being crammed into transport crates ahead of slaughter and roughly yanked from cages.⁸⁵

⁸³ Hudson Valley Foie Gras (@Hudson.Valley.Foie.Gras), *Hudson Valley Foie Gras*, *supra* note 32.

⁸⁴ Mercy For Animals (@mercyforanimals), *Amazon Cruelty – Mercy For Animals Exposes Suffering Behind Foie Gras*, *supra* note 32.

⁸⁵ *Id.*

61. During the MFA investigation, ducks can be seen in dark, windowless, and crowded sheds. The video shows birds panting and struggling to breathe. A worker is filmed saying the following in Spanish following a force-feeding: “Sometimes the duck doesn’t get up and it dies. There have been times that 20 ducks were killed. When the duck starts doing this, they sometimes die right here.” The bodies of ducks who die before reaching slaughter are left in open garbage cans in plain view of the other birds still being raised and force-fed.⁸⁶

62. Nonprofit organization People for the Ethical Treatment of Animals (“PETA”) also conducted undercover investigations into Hudson Valley Foie Gras farms. They report the following on their website:

- “A PETA investigation at Hudson Valley Foie Gras in New York (previously called ‘Commonwealth Enterprises’) found that a single worker was expected to force-feed 500 birds three times each day. The pace meant that they often treated the birds roughly and left them injured and suffering. So many ducks died from ruptured organs resulting from overfeeding that workers who killed fewer than 50 birds per month were given a bonus. A worker told a PETA investigator that he could feel tumor-like lumps, caused by force-feeding, in some ducks’ throats. One duck had a maggot-ridden neck wound so severe that water spilled out of it when he drank.”
- “Another PETA investigation at Hudson Valley in 2013 documented that prior to the force-feeding period, young ducks were crammed by the thousands into huge warehouse-like sheds in conditions that are virtually identical to those for ‘broiler’ chickens and turkeys on factory farms. Ducks who were being force-fed were confined, up to a dozen at a time, to a pen measuring just 4 feet by 6 feet. PETA’s investigator saw workers drag ducks by their necks along the wire floor and pin them between their legs before ramming the metal force-feeding tubes down their throats.”⁸⁷

63. A 2008 investigation conducted by nonprofit organization Animal Outlook (formerly known as Compassion Over Killing) revealed systematic abuse at Hudson Valley Foie

⁸⁶ *Id.*

⁸⁷ People for the Ethical Treatment of Animals, *Foie Gras: Cruelty to Ducks and Geese*, <https://www.peta.org/issues/animals-used-for-food/factory-farming/ducks-geese/foie-gras/> (last visited Aug. 12, 2020).

Gras's Ferndale, New York farm. During a scheduled tour of the farm, an investigator filmed birds during the force-feeding and slaughter processes.⁸⁸

64. In Animal Outlook's video, ducks are seen being pulled by their wings by handlers during the feeding process in order to bring them closer to the gavage tube. Ducks are shown huddling in a corner of their pens while others were being force-fed. Footage shows a duck bleeding from their neck while in a cage awaiting slaughter. Multiple ducks are shown in cages ahead of slaughter. Workers hold ducks by their wings before shackling them upside down for slaughter.⁸⁹

III. D'Artagnan's Animal Welfare Representations Are Materially Misleading to D.C. Consumers.

65. Consumers care about animal welfare. Many consumers are willing to pay more for products that they believe come from humanely treated animals, as several consumer studies have documented.

66. For example, a 2015 Consumer Reports survey found that consumers deem it important that food not be produced via standard factory-farm methods. For example, 84% of food shoppers said that it was "important" or "very important" to provide better living conditions for animals.⁹⁰

67. According to a 2013 survey conducted by the American Humane Association, 89% of consumers were very concerned about farm animal welfare, and 74% stated that they were willing to pay more for humanely raised meat products.⁹¹

⁸⁸ *COK Goes Undercover Inside Hudson Valley Foie Gras*, *supra* note 32.

⁸⁹ *Id.*

⁹⁰ Consumer Reports National Research Center, *Natural Food Labels Survey: 2015 Nationally-Representative Phone Survey* at 7 (2015), http://article.images.consumerreports.org/prod/content/dam/cro/magazinearticles/2016/March/Consumer_Reports_Natural_Food_Labels_Survey_2015.pdf.

⁹¹ Am. Humane Ass'n, *Humane Heartland Farm Animal Welfare Survey* (2013), <https://www.americanhumane.org/app/uploads/2013/08/humane-heartland-farm-animals-survey-results.pdf>.

68. A 2018 study published in the journal *Animals* found that consumers are willing to pay more for chicken products from humanely treated birds and further notes that consumers are willing to pay more for “free-range” products.⁹²

69. There is ample evidence that these consumers’ concerns apply specifically to ducks raised for foie gras.

70. A 2004 Zogby poll found that 77% of U.S. adults believe the practice of force-feeding ducks and geese should be banned.⁹³

71. In 2019, a statewide ban on the sale of force-fed foie gras products in California went into effect.⁹⁴ A 2013 decision by the U.S. Court of Appeals for the Ninth Circuit determined that the law was passed because the State believed the practice was “cruel to animals.”⁹⁵

72. There is also substantial evidence that D’Artagnan’s Animal Welfare Representations are misleading to consumers.

73. For example, a 2016 Consumer Reports survey found that a majority of consumers believed the following about animal products marketed as “humanely raised”:

- the animals had adequate living space (77%);
- the animals went outdoors (68%);
- the animals were raised without cages (57%);
- the animals were slaughtered humanely (71%); and

⁹² C. Victor Spain et al., *Are They Buying It? United States Consumers’ Changing Attitudes Toward More Humanely Raised Meat, Eggs, and Dairy*, 8 *Animals* 128 (2018).

⁹³ See *An HSUS Report*, *supra* note 34, at 7.

⁹⁴ City News Service, *California foie gras ban goes into effect after Supreme Court rejects challenge*, Los Angeles Times (Jan. 7, 2019, 5:05 PM), <https://www.latimes.com/business/la-fi-foie-gras-prohibition-court-ruling-20190107-story.html>.

⁹⁵ *Ass’n des Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 952 (9th Cir. 2013).

- the farm was inspected to verify this claim (82%).⁹⁶

74. Given that (1) the ducks used for the Products do not have outdoor access or adequate living space; (2) they are confined in group cages during force-feeding; and (3) they are raised and slaughtered inhumanely, D'Artagnan's Animal Welfare Representations are clearly misleading to consumers.

75. Furthermore, while D'Artagnan's website claims that their farms "adhere to strict standards and share our commitment to . . . humane farming practices,"⁹⁷ the National Advertising Division of the Better Business Bureau has previously determined that reasonable consumers would be misled by such statements because there is no regulation of oversight standards regarding the "day-to-day animal husbandry practices for foie gras production."⁹⁸ This is further evidence that D'Artagnan's "humane" claims are false and misleading, in light of consumer expectations that meaningful inspections will take place at farms that raise animals for such products.

76. D'Artagnan's suppliers' practices are so clearly inhumane that its main supplier has been unwilling to stand by its own prior claims of "humane" treatment. Following the filing of a lawsuit against Hudson Valley Foie Gras, the company removed the word "humane" from its website.⁹⁹

77. D'Artagnan's other Animal Welfare Representations, in addition to its "humane" claims, are also false and misleading.

78. For example, the first definition for "open-air" in Merriam-Webster dictionary is "outdoor" and the second definition is "the space where air is unconfined *especially*:"

⁹⁶ Consumer Reports National Research Center, *Food Labels Survey: 2016 Nationally-Representative Phone Survey* at 2 (2016), https://www.ftc.gov/system/files/documents/public_events/975753/cr_intro_and_2016_food_survey.pdf.

⁹⁷ *Screenshot of D'Artagnan Website from October 23, 2019*, *supra* note 3.

⁹⁸ National Advertising Division, *supra* note 61.

⁹⁹ *Foie Gras*, Animal Legal Defense Fund, <https://aldf.org/issue/foie-gras/> (last visited Aug. 5, 2020).

OUTDOORS.”¹⁰⁰ As set forth above, D’Artagnan’s suppliers’ purportedly “open-air” facilities are actually dark, warehouse-like sheds that provide no access to the outdoors.

79. Moreover, despite D’Artagnan’s representations that ducks used for the Products are “never caged,” the densely packed wire-sided enclosures (*see* Figure 7 *supra*) used by its suppliers during force-feeding conform to the definition of “cage” used by multiple dictionaries. For example, Merriam-Webster defines a “cage” as “a box or enclosure having some openwork for confining or carrying animals (such as birds).”¹⁰¹ The Oxford English dictionary defines “cage” as “a structure of bars or wires in which birds or other animals are confined.”¹⁰² Cambridge Dictionary defines “cage” as “a structure shaped like a box but with bars or wires as its sides, for keeping pets or for housing animals.”¹⁰³

80. Similarly, D’Artagnan’s claims that its suppliers provide a “low-stress” environment and allow “natural” behaviors are demonstrably false in light of the scientific evidence to the contrary set forth above.

81. Thus, reasonable consumers are misled by D’Artagnan’s Animal Welfare Representations, which suggest that ducks raised for the Products are raised “humanely” in “low stress,” “open-air” conditions where they can express “natural behaviors.”

¹⁰⁰ *Open-air*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/open-air> (last visited Aug. 5, 2020).

¹⁰¹ *Cage*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/cage?src=search-dict-hed> (last visited Aug. 5, 2020).

¹⁰² *Cage*, Lexico, <https://www.lexico.com/en/definition/cage> (last visited Aug. 5, 2020). (“Lexico.com is a new collaboration between Dictionary.com and Oxford University Press (OUP) to help users worldwide with everyday language challenges. Lexico is powered by Oxford’s free English and Spanish dictionaries”).

¹⁰³ *Cage*, Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/cage> (last visited Aug. 5, 2020).

PARTIES

82. Defendants D'Artagnan, Inc. and D'Artagnan, LLC are incorporated in New Jersey and have their principal executive offices in Union, New Jersey. D'Artagnan produces, processes, markets, and distributes foie gras products, as well as other products.

83. D'Artagnan's foie gras Products are marketed to and available to be shipped to District consumers. The Products are also available to District consumers at restaurants and retailers in the District and surrounding areas.

84. Plaintiff Organic Consumers Association is a 501(c)(3) nonprofit, public-interest organization that deals with crucial issues of truth in advertising, accurate food labeling, food safety, children's health, corporate accountability, and environmental sustainability.

85. OCA performs work throughout the United States, including in the District. Some of OCA's staff, including its political director, reside and work in or near the District. OCA has members who reside in the District and has represented District consumers in a variety of actions.

86. OCA formed in 1998 in the wake of backlash by consumers against the U.S. Department of Agriculture's proposed national regulations for organic food. In its public education, network-building, and mobilization activities, OCA works with a broad range of public-interest organizations to challenge industrial agriculture and corporate globalization, and to inspire consumers to "Buy Local, Organic, and Fair Made." OCA focuses on promoting the views and interests of consumers, including the United States' estimated 50 million organic and socially responsible consumers. OCA's media team provides background information, interviews, and story ideas to media producers and journalists on a regular basis.

87. OCA represents and advances the rights and interests of consumers by educating consumers on food safety, industrial agriculture, genetic engineering, corporate accountability, and

environmental sustainability issues. OCA uses funds it raises to protect the environment by promoting regenerative, organic, and/or sustainable agriculture.

88. As part of this work, OCA has engaged in efforts to educate consumers about the realities of foie gras, which OCA argues should never be labeled “organic” because force-feeding an animal for the purpose of enlarging its liver beyond normal size is inconsistent with the principles of organic agriculture.¹⁰⁴ OCA also uses its funds and member base to pressure food companies to adopt honest labeling practices to benefit consumers. OCA’s website, publications, public education, research, network building, and mobilization activities provide an important service to consumers and community activists every month.

89. On July 2, 2019, OCA purchased a D’Artagnan brand foie gras product through D’Artagnan’s website and had the product shipped to an address within the District.

90. OCA purchased the Product in order to evaluate it by lab testing. Testing conducted for OCA at Cornell University Animal Health Diagnostic Center confirmed that the Products are made from the livers of ducks that suffer from “severe hepatic lipidosis,” commonly known as fatty liver disease.

JURISDICTION

91. This Court has personal jurisdiction over the parties in this case. OCA consents to this Court having personal jurisdiction over the organization.

92. This Court has personal jurisdiction over D’Artagnan because D’Artagnan has purposefully directed its conduct to the District and has availed itself of the benefits and protections of District of Columbia law.

¹⁰⁴ *Tests Confirm: If You’re Eating This So-Called ‘Delicacy,’ You’re Eating a Diseased Liver*, Organic Consumers Association (Sept. 23, 2019), <https://www.organicconsumers.org/blog/tests-confirm-if-youre-eating-this-delicacy-youre-eating-diseased-liver> (“The producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals.”).

93. This Court has subject-matter jurisdiction over this action under the CPPA, D.C. Code § 28-3901, *et seq.*

CAUSE OF ACTION

Violations of the District of Columbia Consumer Protection Procedures Act

94. OCA incorporates by reference all the allegations of the preceding paragraphs of this Complaint.

95. OCA is a nonprofit, public-interest organization that brings these claims in its individual and representative capacities, on its own behalf, and on behalf of affected consumers and the general public. *See* D.C. Code § 28-3905(k)(1)(C), (D)(i).

96. Through § 28-3905(k)(1)(C), the CPPA allows for nonprofit organizational standing to the fullest extent recognized by the D.C. Court of Appeals in its past and future decisions addressing the limits of Constitutional standing under Article III.

97. Through § 28-3905(k)(1)(D)(i), the CPPA explicitly allows for public-interest organizational standing even beyond that which is afforded pursuant to § 28-3905(k)(1)(C) and allows a public-interest organization to stand in the shoes of a consumer to seek relief from any violation of the CPPA.

98. D'Artagnan is a "person" and a merchant that provides "goods" within the meaning of the CPPA. *See id.* § 28-3901(a)(1), (3), (7).

99. D'Artagnan has advertised and marketed the Products with phrases such as "humanely raised" and "focused on the welfare of the animals" when, in fact, D'Artagnan's foie gras products do not come from ducks who are treated "humanely." Thus, D'Artagnan has violated the CPPA by "represent[ing] that goods . . . have a source . . . [or] characteristics . . . that they do not have"; "represent[ing] that goods . . . are of a particular standard, quality, grade, style, or model,

if in fact they are of another”; “misrepresent[ing] as to a material fact which has a tendency to mislead”; “fail[ing] to state a material fact if such failure tends to mislead”; “us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead”; and “advertis[ing] . . . goods . . . without the intent to sell them as advertised.” *See id.* § 28-3904(a), (d), (e), (f), (f-1), (h).

JURY TRIAL DEMAND

100. Plaintiff OCA hereby demands a trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiff OCA prays for judgment against D’Artagnan and requests the following relief:

- a. A declaration that D’Artagnan’s conduct is in violation of the CPPA;
 - b. An order enjoining D’Artagnan’s conduct found to be in violation of the CPPA;
- and
- c. An order granting Plaintiff costs and disbursements, including reasonable attorneys’ fees and expert fees, and prejudgment interest at the maximum rate allowable by law.



Kim E. Richman (D.C. Bar No. 1022978)
krichman@richmanlawgroup.com
Jay Shooster
jshooster@richmanlawgroup.com
8 W. 126th Street
New York, NY 10027
(718) 705-4579 (phone)
(718) 228-8522 (fax)

Counsel for Plaintiff



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

ORGANIC CONSUMERS ASSOCIATION

Vs.
D'ARTAGNAN, INC. et al

C.A. No. 2020 CA 003559 B

INITIAL ORDER AND ADDENDUM

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

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge’s name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the summons, the complaint, and this Initial Order and Addendum. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in Super. Ct. Civ. R. 4(m).

(3) Within 21 days of service as described above, except as otherwise noted in Super. Ct. Civ. R. 12, each defendant must respond to the complaint by filing an answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in Super. Ct. Civ. R. 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an initial scheduling and settlement conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients **prior** to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than seven business days before the scheduling conference date.

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

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

Chief Judge Robert E. Morin

Case Assigned to: Judge HIRAM E PUIG-LUGO

Date: August 13, 2020

Initial Conference: 9:30 am, Friday, November 13, 2020

Location: Courtroom 302

500 Indiana Avenue N.W.

WASHINGTON, DC 20001

ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES

In accordance with the Medical Malpractice Proceedings Act of 2006, D.C. Code § 16-2801, et seq. (2007 Winter Supp.), "[a]fter an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC." D.C. Code § 16-2821.

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

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

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

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

Chief Judge Robert E. Morin