

**IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

BARRY CURTIS, JAY LAWRENCE,)
MORRIS GERSHENGORIN, MICHAEL)
SMOLYANSKY, and MARINA BARTASHNIK,)
individually and on behalf of all)
others similarly situated, and ALVIN BROWN,)
PAUL COHEN, DAMARIS GRIFFIN,)
ARLENE JOY VOMBRACK, KARA)
VOMBRACK, ABBY MICHELLE VOMBRECK,)
by her Mother and Next Friend, ARLENE JOY)
VOMBRACK, COREY SCOTT, DANETTE)
SCOTT, ANTONETTE SMITH, MOHAMED)
GUERRAOU, JAMES MORGAN, and)
KEVIN CURTIS, individually,)

Plaintiffs,

v.

VIENNA BEEF, LTD., individually and on behalf)
of a defendant class of all)
Authentic Vienna Beef Hot Dog stands,)

Defendants.

Case No. 07 CH 27980

Judge Palmer

JURY DEMANDED

2008 JUN 11 10:02 AM
 CLERK OF COURT
 COUNTY OF COOK
 JURY DEMAND
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FIRST AMENDED CLASS ACTION COMPLAINT

1. Plaintiffs Barry Curtis, Jay Lawrence, Morris Gershengorin, Michael Smolyansky, and Marina Bartashnik, both individually and on behalf of all others similarly situated, bring this action against Vienna Beef, Ltd. (“Vienna Beef”), to secure redress for Vienna Beef’s deceptive and unfair practice of marketing its natural casing products as “all beef.”

2. Plaintiffs Alvin Brown, Paul Cohen, Damaris Griffin, Arlene Joy Vombrack, Kara Vombrack, Abby Michelle Vombrack, by her mother and next friend, Arlene Joy Vombrack, Corey Scott, Danette Scott, Antonette Smith, Mohamed Guerraoui, James Morgan, and Kevin

Curtis bring this action, individually, against Vienna Beef, Ltd. ("Vienna Beef"), to secure redress for Vienna Beef's deceptive and unfair practice of marketing its natural casing products as "all beef."

Parties

3. Plaintiffs Barry Curtis, Jay Lawrence, Morris Gershengorin, Michael Smolyansky, and Marina Bartashnik, individual and a behalf of a class, and Alvin Brown, Paul Cohen, Damaris Griffin, Arlene Joy Vombrack, Kara Vombrack, Abby Michelle Vombrack, by her Mother and Next Friend, Arlene Joy Vombrack, Corey Scott, Danette Scott, Antonette Smith, Mohamed Guerraoui, James Morgan, and Kevin Curtis currently reside in this district or have purchased and consumed the Defendant's natural casing products in this district and would not have done so had they known that the natural casing products contained non-beef products, such as pork or lamb.

4. Defendant Vienna Beef is a corporation with its principal place of business located in Chicago, IL.

Jurisdiction

5. Vienna Beef is subject to this Court's jurisdiction under Illinois Code of Civil Procedure, 735 ILL. COMP. STAT. 5/2-209(a)(1) and (2), as Vienna Beef transacts business and has committed torts in Illinois as set forth herein. Vienna Beef is further subject to this Court's jurisdiction under Illinois Code of Civil Procedure, 735 ILL. COMP. STAT. 5/2-209(b)(3), as Vienna Beef does business in Illinois. On information and belief, Vienna Beef did not receive more than \$5,000,000.00 in proceeds from the sale of natural casing products during the class period.

Defendants

6. Vienna Beef is headquartered here in Chicago, Illinois and is a producer and seller of beef products, with locations throughout the United States.

7. Prior to Plaintiffs' purchases of the Vienna Beef natural casing products, Vienna Beef stated the following on its website: "Looking for an authentic Vienna Beef Hot Dog stand outside of Chicago? Then you've come to the right place! Select a state and check out or list of Authentic Beef Hot Dog stands for your state." See Exhibit A. Vienna Beef therefore cloaks its authorized sellers in authority.

8. Vienna Beef further indicated on its website that there were over 192 locations of "Authentic Vienna Hot Dog Stands" that are located throughout the United States. See Exhibit A.

9. Vienna Beef requires that certain qualifications be met before appearing on the Vienna "Dog Finder List."

Factual Allegations

"Vienna Beef," the Product Advertised as "Pure Beef" is Not "Pure Beef," But Contains Pork Intestine Casing

10. Vienna Beef has brought to market, advertised, promoted, and sold natural casing products, the key element of which being that they are "pure beef" and/or "all-beef" products.

11. Vienna Beef makes efforts to promote its natural casing products as "all-beef" in the media in order to, among other things, differentiate it from other hot dog and sausage products.

12. On information and belief, prior to Plaintiffs' purchases of the Vienna Beef natural casing products, Vienna Beef provided its authorized sellers with signage and various advertisements stating that its natural casing products are "beef," "pure beef," and/or "all-beef."

Neither this signage nor any advertisements disclosed that the natural casing products were made with pork casing.

13. Prior to Plaintiffs' purchase and consumption of the Vienna Beef natural casing products, they saw Vienna Beef's advertisement promising that Vienna Beef products were only made of "beef," "pure beef," and/or "all-beef." Plaintiffs saw such advertisements in the media and at various eating establishments that sold Vienna Beef products.

14. Plaintiffs never saw any advertisements that indicated that the natural casing products contained pork; instead, all advertisements indicated the contrary.

15. Moreover, prior to Plaintiffs' purchase of the natural casing products, Vienna Beef's website stated the following on its website:

Q: Why are Vienna Beef products different from the rest?

A: · Fresh domestic beef, never frozen
· Highest quality raw ingredients
· No fillers, artificial flavorings or binders
· Never sacrifice quality and taste

See Exhibit B.

16. In fact, prior to Plaintiffs' purchases of the natural casing products, Vienna Beef made a number of representations regarding the quality of its products on its website, including, but not limited to, the following:

At Vienna® Beef, we're extremely proud of the quality of our products. **We use only premium cuts of grain-fed domestic beef from a carefully selected group of suppliers.**

We're equally proud of how we make our products. After all, as USDA Establishment #1, we have a reputation to maintain. From the moment a shipment of USDA-inspected **beef** arrives at our Chicago plant—and even before—we adhere to the highest standards of cleanliness and food safety. At Vienna we follow the very latest governmental regulations for sanitation and food handling

practices. Our facilities are inspected before every shift, and we have a USDA inspector on site throughout our production. **You can be sure that everything we make—and the way we make it—is backed by our unwavering commitment to quality.**

See Exhibit C.

17. On its website, Vienna Beef further represented that it has sold this product to Chicagoans for over 100 years by stating: “**The same all-beef dogs Chicagoans have loved for more than 100 years.** See Exhibit D, available at http://secure.imtco.com/viennastore/shoppingV2.php?menu_level_idnum=18026.

18. Finally, prior to Plaintiffs’ purchase of the natural casing products, Vienna Beef’s web site stated:

Vienna® Beef Franks and Sausages

Link Up With Famous Vienna® Quality

All Vienna Beef franks and sausages are made from our original family recipes dating back to 1893. **We use only 100%, lean, grain-fed domestic beef and beef trimmings** with no fillers, artificial colors or flavorings. Our time-honored blend of seasonings and old-fashioned hickory smoking give all of our franks and sausages that unique, genuine Vienna flavor that folks crave.

See Exhibit E. (emphasis added)

19. Vienna Beef sells its natural casing products directly to the public both in Chicago and throughout the United States via its website. See Exhibit F.

20. Vienna Beef sells its natural casing products through a national network of 192 Authentic Vienna Beef Hot Dog stands across the country.

21. Vienna Beef also sells its natural casing products to hot dog stands displaying the Vienna Beef logo and various Vienna Beef advertisements and signage.

22. Vienna Beef directly sells these “all-beef” or “pure-beef” natural casing products through its own factory locations and web-site.

23. The Vienna Beef Café, which sells the product directly to the public, is located at 2501 North Damen Avenue, Chicago, Illinois 60647.

24. The Vienna Beef Café and other Vienna Beef resellers, including but not limited to the network of 228 Authentic Vienna Beef Hot Dog stands, sell, among other things:

Vienna Polish Sausage	Served with a small side of fries.	2.95
Vienna Spicy Polish Sausage	Served with a small side of fries.	2.95

See Exhibit G.

25. Vienna Beef also advertised that its products are different from other products on its website by stating:

Q: Why are Vienna Beef products different from the rest?

- A:
- Fresh domestic beef
 - Highest quality raw ingredients
 - No fillers, artificial flavorings or binders
 - Never sacrifice quality and taste

See Exhibit B.

26. On its website prior to Plaintiffs’ purchases, Vienna Beef also represented that it never uses pork, lamb or mutton as follows:

Q: What methods are used to ensure product safety at Vienna Beef?

- A:
- Vienna beef uses fresh domestic, grain-fed beef (never pork, lamb, or mutton), processed from healthy animals. The USDA e-coli program is used, verifying that the animals are slaughtered correctly.

See Exhibit B.

27. On its website prior to Plaintiffs' purchases, Vienna Beef even compared its products and its products taste to kosher products, thus admitting that it is virtually impossible for a consumer to distinguish the Vienna Beef product from a kosher product:

Q: Are Vienna Beef products kosher?

A: Historically, kosher products have a flavor profile which duplicates Vienna's flavor. However, while Vienna Beef products are **beef**, they are not produced with koshered meat. Kosher refers to the ritual beef slaughter and the salting of the meat. Like kosher meat products, Vienna Beef products are manufactured under the supervision of the United States Dept. of Agriculture.

See Exhibit B.

28. Moreover, in Vienna Beef's representations of its natural casing products, it extensively discussed the fact that such products do not contain pork, let alone pork intestines.

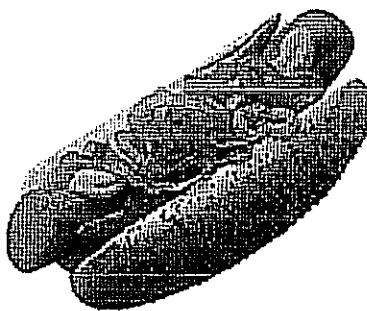
For instance, Vienna Beef stated the following on its website:

Q: How do I get ingredient statements and nutritional information on your products?

A: Products link on this website to obtain detailed product information such as ingredients, nutritionals, sizes, case pack, etc...

See Exhibit B.

29. When reviewing the Vienna Beef Polish Sausage pictured on the Vienna Beef website, the advertising stated:



The Taste That Made Chicago's Maxwell Street Famous

Plump, flavorful and loaded with snap, Vienna Beef Polish Sausages are made with our century-old family recipe featuring only fresh, domestic beef and our secret blend of spices. Hardwood hickory smoking adds the famous Vienna taste in every hearty Polish Sausage. Try it with your favorite condiments like mustard, grilled onions and pickles.

See Exhibit H.

30. The listed ingredients linked to the Vienna Beef Polish Sausage, for instance, prior to Plaintiffs' purchase and consumption of the natural casing products, stated that this product was comprised of the following:

Beef, Water, Salt, Dextrose, Corn Syrup, natural Flavorings, and Coloring, Sodium Nitrite, Extractives of Paprika.

See Exhibit H.

In Reality "Vienna Beef," Uses Pork Intestine Casings

31. After seeing Vienna Beef's advertisements, which stated that the natural casing products were all beef and omitted the fact that such products contained pork casing, Plaintiffs each purchased and consumed a Vienna Beef natural casing product. After consumption, Plaintiffs discovered that such products actually contained pork casing.

32. The material ingredient, "Pork Casing," otherwise known as pork intestine casing, is never mentioned in any retail advertising or retail ingredient list that the public would see with regard to Vienna Beef's "all-beef" or "pure-beef" natural casing products. Therefore, Vienna Beef knowingly omits informing the consumer public that Vienna Beef is using pork intestine as a casing for its natural casing Beef products.

33. Such ingredient list is not made known to consumers at the time they purchase the natural casing products from Vienna Beef and its authorized sellers.

Unknowing Consumption of Pork Intestine Casings

34. Due to Vienna Beef's material omissions regarding its natural casing products, Plaintiffs and others have been eating such products without knowing that they contained pork intestines.

35. This pork intestine casing ingredient is not advertised in any way on Vienna Beef's website or in any of its retail marketing materials directed to consumers.

36. Many of the Authentic Vienna Beef Hot Dog stands, as well as other hot dog stands, sell Vienna Beef's natural casing products to a large population with religious, moral, health, or ethical objections to the consumption of pork, including the Plaintiffs and the class members, who were unaware that Vienna Beef natural casing products contained pork intestines.

Pattern of Omission of Material Fact

37. The process through which these natural casing products are sold by Vienna Beef, the Authentic Vienna Beef Hot Dog stands, and Vienna Beef's resellers is the same. The advertising materials used by the resellers of Vienna Beef products are supplied by Vienna Beef and are materially identical in that none of them disclose that the product contains pork intestine casings.

38. Vienna Beef, Authentic Vienna Beef Hot Dog stands, and Vienna Beef's resellers all intentionally failed to publicly disclose on its advertising that Vienna Beef's natural casing products contain pork products.

39. In Vienna Beef's advertising, marketing materials, and website, Vienna Beef concealed the fact that its natural casing products contained pork products.

40. Plaintiffs would not have purchased such product had they known that they contained pork because, based on Vienna Beef's representations, they believed such products consisted of only beef.

41. By and through Vienna Beef's omissions, Plaintiffs have suffered damages including, but not limited to, emotional distress caused by the fact they were misled into purchasing and ingesting food that contained pork intestines. Vienna Beef, by and through its knowingly fraudulent advertising campaign, as well as the continued disinformation distributed through its website and its agents, deliberately and willfully caused harm to Plaintiffs and the members of the class in an attempt to enrich itself.

CLASS ALLEGATIONS

42. Plaintiffs Barry Curtis, Jay Lawrence, Morris Gershengorin, Michael Smolyansky, and Marina Bartashnik bring this action on behalf of:

All consumers residing in Illinois who have consumed and/or purchased any Vienna Beef natural casing Products and a) did not know that the casing on the natural casing Product consisted of pork/hog or sheep intestine and b) would not have consumed and/or purchased the Natural Casing Product if they had known the product's casing consisted of pork/hog or sheep intestine.

43. The class is so numerous that joinder of all members is impracticable. For instance, according to Vienna Beef's website, it produced over 250,000,000 hot dogs in the last year alone. *See* Vienna Beef's Website, *available at* <http://viennabeef.com/about/faq/>.

44. There are questions of law and fact common to the members of the class, which questions predominate over any questions affecting only individual class members. These questions include, but are not limited to, the following:

- a. Whether Vienna Beef engaged in a pattern or practice of selling Vienna Beef natural casing products as "all beef" or "pure beef" items without disclosing that it used pork intestines as the casing for such product;
- b. Whether Vienna Beef concealed the material fact that it was selling Vienna Beef natural casing products as "all beef" or "pure beef" items without disclosing that they used pork intestines as the casing;

- c. Whether Vienna Beef advertised and sold Vienna Beef natural casing products “all beef” or “pure beef” products and whether this was a false and/or misleading statement or representation; and
- d. Whether Vienna Beef engaged in consumer fraud, deceptive trade practices, or other unlawful acts;

45. Plaintiffs will fairly and adequately represent the members of the class. Plaintiffs have retained counsel experienced in the prosecution of class actions and consumer fraud claims.

46. A class action is appropriate for the fair and efficient adjudication of this matter in that the Defendants have inflicted similar injuries to a large number of persons through a single course of conduct and individual actions are not economical.

COUNT I – BREACH OF EXPRESS WARRANTY

47. Plaintiffs adopt and reallege all previous paragraphs of this Complaint into this Count I as if set forth fully herein.

48. Plaintiffs purchased Vienna Beef’s natural casing products at venues that posted Vienna Beef’s advertisements and signage on multiple occasions, including in December 2006.

49. Vienna Beef’s advertisements and signage stated that its products were “beef,” “pure beef,” and/or “100% beef.”

50. Vienna Beef’s advertisements and signage gave rise to an express warranty.

51. By virtue of its advertisements, website, and overall media reach, Vienna Beef, Vienna Beef hot dog stands, and other sellers of Vienna Beef products expressly warranted the Vienna Beef natural casing products as being comprised of “beef,” “all beef,” and/or “pure beef” natural casing products when they actually contained pork intestines.

52. At all relevant times there was in full force and effect the Illinois Uniform Commercial Code, 810 ILL. COMP. STAT. 5/1-101, *et seq.* (the “UCC”).

53. Section 2-313 of the UCC (810 ILL. COMP. STAT. 5/2-313) provides, in pertinent part:

Express Warranties by Affirmation, Promise, Description, and Sample.

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he has a specific intention to make a warranty.

54. The descriptions and representations that the natural casing products were "all beef" or "pure beef" or "beef" were the bases of the bargains between Plaintiffs, Plaintiffs' Class, and Vienna Beef and its resellers when Plaintiffs and the class members purchased the products.

55. Vienna Beef failed to deliver on the basis of the bargain between it, the Plaintiffs, and the class members as the natural casing products sold by Vienna Beef are not all beef or pure beef, but instead, contains pig intestine casing.

56. There was a defect in the products warranted because they were not in fact all beef or pure beef.

57. Vienna Beef was notified of its breach via a notice of revocation letter.

58. However, in this case, it would be impossible for Vienna Beef to repair or replace the products because the products were already consumed.

59. Plaintiffs would not have purchased the natural casing products had they been advised that such natural casing products actually contained pig intestines.

60. Plaintiffs made a demand on Vienna Beef revoking acceptance, individually and on behalf of all others similarly situated, and demanded Vienna Beef to refund the entire purchase price to the class.

61. Vienna Beef's failure to refund the entire purchase price to Plaintiffs and the members of the class has caused Plaintiffs and the class members damage in the full amount of the purchase price.

Wherefore, Plaintiffs Barry Curtis, Jay Lawrence, Morris Gershengorin, Michael Smolyansky, and Marina Bartashnik, individual and a behalf of a class, and Alvin Brown, Paul Cohen, Damaris Griffin, Arlene Joy Vombrack, Kara Vombrack, Abby Michelle Vombrack, by her Mother and Next Friend, Arlene Joy Vombrack, Corey Scott, Danette Scott, Antonette Smith, Mohamed Guerraoui, James Morgan, and Kevin Curtis, individually, request that the Court enter judgment in their favor and against Vienna Beef and a Defendant class of its Authentic Vienna Beef Hot Dog stands and enter an order for:

- A) Certifying this action as a Class Action with Plaintiffs as Class representatives and Plaintiffs' counsel as Class Counsel;
- B) Awarding Plaintiffs and the members of the class damages as appropriate for Vienna Beef's breach of express warranty;
- C) Litigation expenses and costs of suit;
- D) Any other relief this Court deems equitable and just.

COUNT II – UNIFORM COMMERCIAL CODE
NONCONFORMITY OF GOODS

62. Plaintiffs adopt and reallege all previous paragraphs of this Complaint into this Count II as if set forth fully herein.

63. Section 2-301 of the UCC provides that the seller is obligated to transfer and deliver the contracted goods in accordance with the contract. According to the UCC's Official Comments under §2-301, in order 'to determine what is in 'accordance with the contract' under this Article usage of trade, course of dealing and performance, and the general background of circumstances must be given due consideration in conjunction with the lay meaning of the words used to define the scope of the conditions and duties." 810 ILL. COMP. STAT. 5/2-301, *Official Comments*.

64. "Contract" is defined under UCC § 1-201(11) as the total legal obligation which results from the parties' agreement as affected by the UCC and other applicable rules of law. 810 ILL. COMP. STAT. 5/1-301.

65. "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing and usage of trade or course of performance as provided in the UCC. 810 ILL. COMP. STAT. 5/1-201(3).

66. Under the conditions that Plaintiffs and the members of the class purchased Vienna Beef's natural casing products as set forth herein, the general background and implication from the circumstances was (and continues to be) that such product contained only beef.

67. Vienna Beef failed to sell Plaintiffs and members of the class pure beef natural casing products, and thus, Vienna Beef failed to transfer or deliver conforming goods as required by the UCC.

68. Vienna Beef's breach proximately caused damage to Plaintiffs and the members of the class.

Wherefore, Plaintiffs Barry Curtis, Jay Lawrence, Morris Gershengorin, Michael Smolyansky, and Marina Bartashnik, individual and a behalf of a class, and Alvin Brown, Paul Cohen, Damaris Griffin, Arlene Joy Vombrack, Kara Vombrack, Abby Michelle Vombrack, by her Mother and Next Friend, Arlene Joy Vombrack, Corey Scott, Danette Scott, Antonette Smith, Mohamed Guerraoui, James Morgan, and Kevin Curtis, individually, request that the Court enter judgment in their favor and against Vienna Beef and a Defendant class of its Authentic Vienna Beef Hot Dog stands and enter an order for:

- A) Actual and punitive damages;
- B) An injunction restraining future non-disclosures;
- C) Restitution, disgorgement, and other equitable monetary relief;
- D) Litigation expenses and costs of suit; and
- E) Any other relief this court deems equitable and just.

COUNT III- CONSUMER FRAUD
FOR ACTUAL DAMAGES AND INJUNCTIVE RELIEF

69. Plaintiffs adopt and reallege all previous paragraphs of this Complaint into this Count III as if set forth fully herein.

70. At all relevant times, there was in full force and effect the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILL. COMP. STAT. 505/1, *et seq.* ("ICFA").

71. Section 2 of the Consumer Fraud Act, 815 ILL. COMP. STAT. 505/2, provides, in pertinent part:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared

unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act. (footnotes omitted)

72. Plaintiffs and the class members are Illinois consumers of Vienna Beef natural casing products.

73. Prior to Plaintiffs' purchase and consumption of the Vienna Beef natural casing products, Vienna Beef represented to Plaintiffs and the class members, in its advertisements, signage, and on its website, that its natural casing products were comprised of only "beef," "all beef," and/or "pure beef."

74. Vienna Beef's statements of material facts regarding the ingredients of the natural casing products were made to induce Plaintiffs and the class members to purchase its products.

75. After seeing such advertisements, Plaintiffs purchased and consumed such products. All Plaintiffs purchased and consumed such products on several occasions.

76. However, Vienna Beef's representations contained in its signage and various other advertisement methods were false as its natural casing products contained pork intestines.

77. Vienna Beef therefore engaged in an unfair and deceptive practice, in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, by material omissions of fact regarding its sale of Vienna Beef natural casing products, which it sells as "all beef" or "pure beef" products when they actually contained pork intestine casings.

78. Vienna Beef engaged in its deceptive and unfair conduct in the course of trade and commerce.

79. Vienna Beef knew its statements of material fact to be false when it made such representations in both its advertisements and on its website to Plaintiffs and the class members.

80. Upon information and belief, Vienna Beef's marketing and advertising decisions that resulted in the deceptive omissions concerning Vienna natural casing products being sold as "all beef" or "pure beef" products took place at Vienna Beef's corporate headquarters located at 2501 North Damen Avenue, Chicago, IL 60647.

81. Vienna Beef and its "Authentic Vienna Beef Hot Dog stands" intended that Plaintiffs and class members rely on and be affected by their deceptive and unfair acts and practices.

82. As a proximate result of Vienna Beef's and its Authentic Vienna Beef Hot Dog stands' wrongful conduct, Plaintiffs and the class members sustained actual damages. For instance, Plaintiffs would not have purchased the natural casing products had they known that such product contained pork intestines.

83. Vienna Beef's conduct was intentionally fraudulent and knowingly done in that it knew that the natural casing products contained pork intestine casing but represented to the public that the product was 100% beef without disclosing the pork intestine casings. This warrants the imposition of substantial punitive damages.

Wherefore, Plaintiffs Barry Curtis, Jay Lawrence, Morris Gershengorin, Michael Smolyansky, and Marina Bartashnik, individual and a behalf of a class, and Alvin Brown, Paul Cohen, Damaris Griffin, Arlene Joy Vombrack, Kara Vombrack, Abby Michelle Vombrack, by her Mother and Next Friend, Arlene Joy Vombrack, Corey Scott, Danette Scott, Antonette Smith, Mohamed Guerraoui, James Morgan, and Kevin Curtis, individually, request that the Court enter judgment in their favor and against Vienna Beef and a Defendant class of its Authentic Vienna Beef Hot Dog stands and enter an order for:

- A) Actual and punitive damages;

- B) An injunction restraining future non-disclosures;
- C) Restitution, disgorgement, and other equitable monetary relief;
- D) Attorney's fees, litigation expenses and costs of suit; and
- E) Any other relief this court deems equitable and just.

COUNT IV – CONSUMER FRAUD (UNFAIRNESS)
FOR ACTUAL DAMAGES AND INJUNCTIVE RELIEF

84. Plaintiffs adopt and reallege all previous paragraphs of this Complaint into this Count IV as if set forth fully herein.

85. At all relevant times, there was in full force and effect the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILL. COMP. STAT. 505/1, *et seq.* (the "Consumer Fraud Act").

86. The Illinois Consumer Fraud Act, 815 ILL. COMP. STAT. 505/2, states in relevant part that:

. . . unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce are hereby declared unlawful

87. Vienna Beef acted unfairly in its representations on its website and in its signage and other advertisements regarding the contents of its natural casing products. More specifically, Vienna Beef unfairly omitted that such products contained pork intestines.

88. Such unfair actions occurred in the course of trade and commerce.

89. Vienna Beef's unfair conduct of misdisclosure and/or lack of disclosure over the contents of its natural casing products violates both state and federal laws that require Vienna

Beef to be truthful in its representations regarding its products. *See, e.g.*, 815 ILL. COMP. STAT. 505/2, 15 U.S.C. §§ 45, 52.

90. Vienna Beef's unfair conduct is unethical, immoral, and unscrupulous as Vienna Beef misleads consumers and omits material facts to consumers as to the contents of its natural casing products.

91. Vienna Beef's unfair conduct related to the contents of its natural casing products proximately caused the Plaintiffs and the class members substantial damage in that, among other things, they were lied to about the ingredients of the product they purchased and consumed.

Wherefore, Plaintiffs Barry Curtis, Jay Lawrence, Morris Gershengorin, Michael Smolyansky, and Marina Bartashnik, individual and a behalf of a class, and Alvin Brown, Paul Cohen, Damaris Griffin, Arlene Joy Vombrack, Kara Vombrack, Abby Michelle Vombrack, by her Mother and Next Friend, Arlene Joy Vombrack, Corey Scott, Danette Scott, Antonette Smith, Mohamed Guerraoui, James Morgan, and Kevin Curtis, individually, request that the Court enter judgment in their favor and against Vienna Beef and a Defendant class of its Authentic Vienna Beef Hot Dog stands and enter an order for:

- A) Actual and punitive damages;
- B) An injunction restraining future non-disclosures and compelling Vienna Beef to affirmatively disclose to the public, in a widespread fashion, that its natural casing products contain pork, or products other than beef;
- C) Restitution, disgorgement, and other equitable monetary relief;
- D) Attorney's fees, litigation expenses and costs of suit; and
- E) Any other relief this court deems equitable and just.

COUNT V – UNJUST ENRICHMENT

92. Plaintiffs adopt and reallege all previous paragraphs of this Complaint into this Count V as if set forth fully herein.

93. A party is unjustly enriched when it retains a benefit to the detriment of another party against fundamental principals of justice, equity, and good conscience.

94. Vienna Beef represented to a class of consumers that its natural casing products contained only beef. Vienna Beef made such representations in order to increase the sales of its products.

95. Vienna Beef's representation was false in that natural casing products do not consist of all beef and in fact, contain pork intestines.

96. Consumers are shown an advertising campaign that does not inform them that such product contains pork intestines.

97. Vienna Beef has reaped millions of dollars in profits as a result of its collection of money from consumers based on its false advertising campaign. That Vienna Beef amassed such earnings, and retains such benefit to the detriment of Plaintiffs and the class members, violates the fundamental principles of justice, equity, and good conscience.

98. Vienna Beef has been and continues to be unjustly enriched through its above-described conduct.

99. Vienna Beef should be required to disgorge the monies it has unjustly obtained to the detriment of Plaintiffs and the class members.

Wherefore, Plaintiffs Barry Curtis, Jay Lawrence, Morris Gershengorin, Michael Smolyansky, and Marina Bartashnik, individual and a behalf of a class, and Alvin Brown, Paul Cohen, Damaris Griffin, Arlene Joy Vombrack, Kara Vombrack, Abby Michelle Vombrack, by her Mother and Next Friend, Arlene Joy Vombrack, Corey Scott, Danette Scott, Antonette

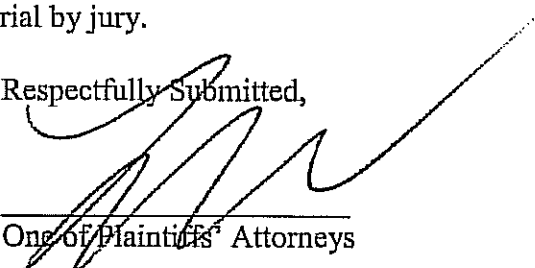
Smith, Mohamed Guerraoui, James Morgan, and Kevin Curtis, individually, request that the Court enter judgment in their favor and against Vienna Beef and a Defendant class of its Authentic Vienna Beef Hot Dog stands and enter an order for:

- A) An order that Vienna Beef disgorge all monies unjustly enriched through its false representations regarding the ingredients of its natural casing products for the benefit of Plaintiffs and the class members;
- B) Such other relief as is appropriate.

JURY DEMAND

Plaintiffs demand trial by jury.

Respectfully Submitted,



One of Plaintiffs' Attorneys

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Stacy M. Bardo
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