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IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2023CH00051
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

ERIN EDWARDS, individually, and)
on behalf of all others similarly situated,)

Plaintiff,)

v.)

JOHNSONVILLE LLC,)

Defendant.)

No. 2023CH00051

Jury Trial Demanded

CLASS ACTION COMPLAINT

Plaintiff ERIN EDWARDS (“Plaintiff”), individually, and on behalf of all others similarly situated, by and through counsel at Zimmerman Law Offices, P.C., brings this Class Action Complaint (“Complaint”) against Defendant JOHNSONVILLE LLC (“Defendant”), as follows:

INTRODUCTION

1. Plaintiff brings this suit on behalf of herself and a Class (defined below) of similarly situated individuals to stop Defendant from misrepresenting that its bratwurst food products (the “Brats”) contain “100% premium pork,” when, in fact, Defendant’s Brats are encased in beef collagen. In addition, Plaintiff, on behalf of herself and the proposed Class, seeks restitution and other equitable, injunctive, declaratory, and monetary relief as set forth below.

2. Pursuant to the Federal Food, Drug and Cosmetic Act (“Federal FDCA”), a food shall be considered “misbranded” if “its labeling is false or misleading in any particular.” 21 U.S.C. § 343(a)(1).

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3. Pursuant to the Illinois Food, Drug and Cosmetic Act (“Illinois FDCA”), a food is “misbranded” if “its labeling is false or misleading in any particular.” *See* 410 ILCS 620/11(a).

4. Defendant manufactures, markets, distributes, and sells the Brats. By misrepresenting the key ingredients in its Brats, Defendant engaged, and still engages in, business practices that are unlawful, unfair, and deceptive because consumers reasonably rely on Defendant’s material misrepresentations to their detriment.

PARTIES

5. Plaintiff ERIN EDWARDS is a natural person and resident and citizen of Florida.

6. Defendant JOHNSONVILLE LLC is a Delaware limited liability company with its principle place of business in Wisconsin. Defendant sells the Brats nationwide, including in Cook County and throughout the state of Illinois, and manufactures the Brats at its factory located in Illinois.

JURISDICTION AND VENUE

7. This Court has personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209(a)(1) (transaction of any business within this State), section 2-209(a)(7) (the making or performance of any contract or promise substantially connected with this State), section 2-209(b)(4) (corporation doing business within this State), and section 2-209(c) (any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States).

8. Venue is proper in this County pursuant to 735 ILCS 5/2-101, because many of the acts and transactions giving rise to this action occurred in this County. Defendant is (a) authorized to conduct business in this County and has intentionally availed itself of the laws and markets within this County through the distribution and sale in this County of the Brats at issue in this case;

(b) conducts substantial business in this County; and (c) is subject to personal jurisdiction in this County.

FACTUAL ALLEGATIONS

An Overview of Sausage Making

9. Sausage making is one of the oldest forms of food preservation known to mankind, as it is an effective way to economize and preserve meat that cannot be consumed fresh at slaughter.¹

10. Historically, “the primary ingredients of sausage were the parts of the animal carcasses that could not be used in other ways,” such as the intestines and less-desirable cuts of meat.² As such, sausages traditionally were encased in the intestines of the animal from which the sausage meat was derived.

11. In the present day, many sausages still utilize so-called “natural” casings, which are “made from the sub mucosa of the intestines of meat animals (beef, sheep, and swine).”³ However, sausages can also be made using “collagen” casings, which “are generally made from collagen derived from animal hides” (usually beef or pork hides), instead of from intestines.⁴

12. Given the traditional association between sausage meat and the material used to encase it, consumers today, by default, expect that sausages will be encased in natural casings derived from the same animal from which the sausage is made.

13. For this reason, federal regulations promulgated by the United States Department of Agriculture (“USDA”) require sausage manufactures to clearly “identify the type of meat or poultry from which the casings were derived, if the casings are from a different type of meat or

¹ <https://www.ndsu.edu/agriculture/sites/default/files/2022-10/fn176.pdf>

² <https://www.ndsu.edu/agriculture/sites/default/files/2022-10/fn176.pdf>

³ <https://ask.usda.gov/s/article/What-are-casings-made-of>

⁴ <https://ask.usda.gov/s/article/What-are-casings-made-of>

poultry than the encased meat or poultry.” 9 C.F.R. § 317.8(b)(37). Similarly, the USDA’s regulations require that “the labels of sausages encased in regenerated collagen casings[] disclose this fact on the product label.” 9 C.F.R. § 317.8(b)(38).

Food Labeling Requirements

14. The contents and representations on food packaging are subject to extensive state and federal regulation. At the federal level, the United States Food and Drug Administration (“FDA”)—like the USDA—has promulgated hundreds of regulations regarding food labeling, pursuant to its authority under the Federal FDCA—codified as 21 U.S.C. §§ 301, *et seq.* State laws regarding food labeling largely mirror and adopt the statutory requirements of the Federal FDCA, as well as the regulatory requirements promulgated pursuant thereto by the FDA. In Illinois, these standards are set forth in the Illinois FDCA—codified as 410 ILCS 620/1, *et seq.*—and the regulations promulgated pursuant thereto.⁵

15. For example, the regulations promulgated under the FDCA state that “the labeling of a food which contains two or more ingredients may be misleading by reason (among other reasons) of the designation of such food in such labeling by a name which includes or suggests the name of one or more but not all such ingredients, even though the names of all such ingredients are stated elsewhere in the labeling.” 21 C.F.R. § 101.18(b).

Defendant’s Brats

16. Defendant manufactures, distributes, advertises, markets, and sells various types of sausages, including the Brats at issue in this case.

⁵ Since federal law is largely duplicative of state law relative to the food labeling standards discussed below, Plaintiff will refer to the Federal FDCA and the Illinois FDCA, collectively, as the “Federal Food, Drug and Cosmetic Act,” unless otherwise noted.

17. As the manufacturer of the Brats, Defendant determined, knows of, and is responsible for the ingredients contained in each package of the Brats.

18. Defendant also created, developed, reviewed, authorized, and is responsible for the textual and graphic content on the packaging of the Brats, including the representations contained thereon. Each package of the Brats contains standardized labeling created, developed, reviewed, and authorized by Defendant. As such, Defendant knows, created, developed, reviewed and is responsible for the representations contained on each package of the Brats.

19. The front of each package of the Brats prominently displays the words “MADE WITH 100% PREMIUM PORK”, as shown below:



20. This representation, in conjunction with the fact that, as noted above, sausage casings are expected to be made from the same animal from which the meat inside is derived, leads consumers to believe that the Brats are both filled and encased with pork.

21. In other words, a reasonable consumer would understand the packaging of the Brats as representing that the Brats are both filled and encased with pork and *only* pork. *E.g., Bell v. Publix Super Markets, Inc.*, 982 F.3d 468, 477 (7th Cir. 2020) (“Deceptive advertising claims should take into account all the information available to consumers and the context in which that information is provided and used” from the perspective of a “reasonable consumer” and “in touch with real consumer behavior.”).

22. Contrary to Defendant’s representation that the Brats are both filled and encased with pork (and only pork), the Brats are actually encased using beef collagen.

23. In addition to defying the commonsense proposition that a food touted as being “MADE WITH 100% PREMIUM PORK” would, in fact, only contain pork products, the Brats’ labeling renders them misbranded under the FDA’s regulations. Indeed, as noted above, 21 C.F.R. § 101.18(b) expressly acknowledges that it is misleading to tout the presence of one ingredient in a way that suggests the absence of other ingredients, “even though the names of all such ingredients are stated elsewhere in the labeling.”

24. The fact that the Brats are misbranded under state and federal law further demonstrates that the Brats’ labeling is false and misleading to reasonable consumers. *See* 21 U.S.C. § 343(a)(1); 410 ILCS 620/11(a).

25. Defendant willfully misrepresented that its Brats are both filled and encased with pork (and only pork) knowing that consumers, including Plaintiff and Class members, would reasonably rely on Defendants’ representations on the Brats’ labels.

26. The presence of the beef collagen in the Brats has a material bearing on consumers' decision to buy them.

27. For example, in the Hindu religion, cows are held to be the most sacred of all animals, and most Hindus do not eat beef at all. In fact, in India—which has an approximately 80% Hindu population—“a citizen can be sent to jail for killing or injuring a cow.”⁶ For the same reason, India is the only country in the world where McDonald's—the world's largest consumer of beef—does not serve beef (and instead makes its burgers with lamb meat).⁷

28. Other consumers seek to avoid eating beef in light of several scientific studies conducted over the past few decades which have associated the consumption of red meat with “increased risks of diabetes, cardiovascular disease, and certain cancers,” as well as “an elevated risk of mortality.”⁸

29. The materiality of the touted lack of beef in the Brats is also evidenced by the fact that Defendant prominently claims that the Brats are “MADE WITH 100% PREMIUM PORK.” Indeed, given the amount of resources that nationwide food producers—such as Defendant—devote to market research, the inclusion of such a claim must motivate consumers' purchasing decisions, or else it would not be included.

30. Prior to purchasing the Brats, Plaintiff and members of the Class were repeatedly exposed to, saw, read, and understood Defendant's misrepresentations and omissions regarding the Brats, including the representation that the Brats contained “100% PREMIUM PORK,” which was made on the front label of each package of the Brats.

⁶ <https://www.pbs.org/wnet/nature/holy-cow-hinduism-sacred-animal/1811/>

⁷ <https://www.washingtonpost.com/archive/politics/1996/11/04/its-lamb-burger-not-hamburger-at-beefless-mcdonalds-in-new-delhi/e22d7821-5c07-4407-bec7-4c8741c111c5/>

⁸ <https://www.nih.gov/news-events/nih-research-matters/risk-red-meat>

31. Consumers reasonably rely on Defendant’s misrepresentations and omissions that the Brats contain pork (and only pork).

32. Defendant intended that Plaintiff and members of the Class rely on the standardized representations contained on the packages of the Brats, including the representation that the Brats contained “100% PREMIUM PORK.”

33. In reliance on Defendant’s misrepresentations and omissions that the Brats contain pork (and only pork), Plaintiff and members of the Class reasonably believed that the Brats were encased in pork-derived casings.

34. Based on their reasonable belief that the Brats were encased in pork-derived casings, Plaintiff and members of the Class were willing to purchase the Brats.

35. As a result of these reasonable beliefs, Plaintiff and members of the Class purchased the Brats.

36. Had Plaintiff and Class members known the truth—*i.e.*, that the Brats were, in fact, encased in beef collagen casings—they would not have been willing to purchase them at all.

37. Given the prominent representation that the Brats contained “100% PREMIUM PORK”—which was made on the Brats’ front label—Plaintiff and members of the Class, acting as reasonable consumers, had no reason to question what type of animal the Brats’ casings were derived from, and were unaware that the Brats were encased in beef collagen casings when they purchased the Brats. *E.g., Bell*, 982 F.3d at 477 (“The reasonable consumer standard does not presume, at least as a matter of law, that reasonable consumers will test prominent front-label claims by examining the fine print on the back label.”); *Dumont v. Reily Foods Co.*, 934 F.3d 35, 40-41 (1st Cir. 2019) (a reasonable consumer could interpret the words “hazelnut crème” on coffee packaging to represent that the product contained actual hazelnuts, even though hazelnuts were

not included in ingredient list); 21 C.F.R. § 101.18(b) (noting that it is misleading to label a food in a manner “which includes or suggests the name of one or more but not all such ingredients, even though the names of all such ingredients are stated elsewhere in the labeling”).

38. As a direct and proximate result of Defendant’s misrepresentations and omissions concerning the Brats—*e.g.*, that the Brats were both filled and encased with pork (and only pork)—Plaintiff and Class members purchased the Brats.

39. Therefore, Plaintiff and Class members were harmed in the form of the monies they paid for the Brats which they would not otherwise have paid had they known the truth.

Facts Relevant to Plaintiff

40. On November 27, 2022, Plaintiff purchased one package of the Brats at a local grocery store. The retail price for this purchase was \$5.19, and Plaintiff paid that amount to purchase the Brats.

41. Prior to purchasing the Brats, Plaintiff saw, read, and understood the information contained on the front label of the package of the Brats, including the representation that the Brats contained “100% PREMIUM PORK.”

42. In reasonable reliance on Defendant’s misrepresentations and omissions that the Brats contain pork (and only pork), Plaintiff reasonably believed that the Brats were encased in pork-derived casings.

43. Plaintiff was only willing to buy the Brats that she purchased because she believed that they were encased in pork-derived casings. Plaintiff would not have been willing to buy the Brats had she known that they were encased in beef collagen casings.

44. Based on her belief that the Brats were both filled and encased with pork (and only pork), Plaintiff purchased the Brats.

45. After purchasing the Brats, Plaintiff discovered that the Brats that she purchased were encased in beef collagen casings, contrary to Defendant's misrepresentations and omissions.

46. The Brats that Plaintiff purchased were rendered worthless, as Plaintiff is unwilling to eat pork sausages that are encased in beef collagen casings.

47. Had Plaintiff known that the Brats she purchased were encased in beef collagen casings instead of in pork-derived casings, she would not have purchased the Brats.

48. As a direct and proximate result of Defendant's misrepresentations and omissions—*i.e.*, that the Brats were both filled and encased with pork (and only pork)—Plaintiff was harmed in the form of the monies she paid for the Brats that she would not otherwise have paid had she known the truth.

49. Plaintiff brings this action on behalf of herself, and a Class of similarly situated individuals, seeking recovery of the damages they incurred as a result of Defendant's deception.

CLASS ALLEGATIONS

50. **Class Definition:** Plaintiff brings this action pursuant to 735 ILCS 5/2-801, on behalf of a nationwide class of similarly situated individuals and entities ("the Class"), defined as follows:

All persons in the United States who purchased the Brats.

Excluded from the Class are: (1) Defendant, Defendant's agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and those entities' current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

51. **Numerosity:** The Class is so numerous that joinder of individual members would be impracticable. While the exact number of Class members is presently unknown and can only

be ascertained through discovery, Plaintiff believes that there are thousands of Class members, if not more. This is based on that fact that “Johnsonville is the largest-selling sausage brand in the United States, with more than \$1 billion in annual revenue.”⁹

52. **Commonality and Predominance:** There are several questions of law and fact common to the claims of Plaintiff and members of the putative Class, which predominate over any individual issues, including:

- a. Whether the Brats are encased in beef collagen casings;
- b. Whether Defendant misrepresented to Plaintiff and Class members that the Brats are both filled and encased with pork (and only pork);
- c. Whether Defendant omitted and concealed the fact that the Brats are encased in beef collagen casings;
- d. The extent and amount of Plaintiff’s and Class members’ damages;
- e. Whether Defendant’s conduct violates the Federal FDCA;
- f. Whether Defendant’s conduct violates the Illinois FDCA;
- g. Whether Defendant’s conduct constitutes unfair or deceptive business practices under the Illinois Consumer Fraud and Deceptive Trade Practices Act;
- h. Whether Defendant violated the Consumer Fraud and Deceptive Trade Practices Acts of the fifty states and the District of Columbia; and
- i. Whether Defendant’s conduct resulted in Defendant unjustly retaining a benefit to the detriment of Plaintiff and Class members, and violated the fundamental principles of justice, equity, and good conscience.

53. **Fair and Adequate Representation:** Plaintiff’s claims are typical of the claims of the proposed Class. All claims are based on the same legal and factual issues, to wit: Defendant’s misrepresentations and omissions concerning the Brats. Plaintiff will fairly and adequately represent and protect the interests of the proposed Class, and Plaintiff does not have any interests

⁹ <https://www.jsonline.com/story/money/business/2017/06/02/jagler-the-question-answer-johnsonvilles-stayer/362202001/>

antagonistic to those of the proposed Class. Plaintiff has retained competent counsel experienced in the prosecution of this type of litigation. The questions of law and fact common to the proposed Class members predominate over any questions affecting only individual Class members.

54. **Appropriate Method for Fair and Efficient Adjudication:** A class action can best secure the economies of time, effort and expense, and promote uniformity. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually. Individual actions are not economically feasible and it is unlikely that individual members of the Class will prosecute separate actions. The trial and the litigation of Plaintiff's claims are manageable.

COUNT I
(On Behalf of Plaintiff and the Class)
Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act
(815 ILCS 505/1, *et seq.*)

55. Plaintiff repeats and re-alleges the allegations of the paragraphs 1-54 with the same force and effect as though fully set forth herein.

56. The Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS 505/1, *et seq.*, provides protection to consumers by mandating fair competition in commercial markets for goods and services.

57. The ICFA prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act". 815 ILCS 505/2.

58. The ICFA applies to Defendant's acts as described herein because it applies to transactions involving the sale of goods or services to consumers.

59. Defendant is such a "person," as defined by 815 ILCS 505/1(c).

60. Plaintiff and each member of the Class are "consumers," as defined by 815 ILCS 505/1(e), because they purchased the Brats.

61. The Brats are "merchandise," as defined by 815 ILCS 505/1(b).

62. Defendant made, and continues to make, false and fraudulent statements, and misrepresented, concealed, and omitted material facts, regarding the Brats, including the misrepresentation that the Brats are both filled and encased with pork (and only pork)—*i.e.*, the Brats are "made with 100% premium pork"—and the omission that the Brats are encased in beef collagen casings.

63. Defendant's misrepresentations and omissions regarding the Brats, and Defendant's concealment of the fact that the Brats are encased in beef collagen casings, constitute deceptive and unfair acts or practices prohibited by the ICFA.

64. Defendant's aforementioned misrepresentations and omissions possess the tendency or capacity to mislead and create the likelihood of consumer confusion. *Unique Concepts, Inc. v. Manuel*, 669 F. Supp. 185, 191 (N.D. Ill. 1987).

65. Defendant's aforementioned misrepresentations and omissions were used or employed in the conduct of trade or commerce, namely, the marketing, sale, and distribution of Brats to Plaintiff and the Class.

66. Defendant's aforementioned misrepresentations and omissions are unfair business practices because they offend public policy and/or cause substantial injury to consumers. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 417–18 (2002).

67. Defendant's aforementioned conduct is deceptive and unlawful because it violated section 343(a)(i) of the FDCA and section 620/11(a) of the Illinois FDCA.

68. Defendant intended that Plaintiff and Class members rely on the aforementioned false statements, misrepresentations, and omissions of material fact in purchasing the Brats.

69. Plaintiff and Class members reasonably relied on Defendant's misrepresentations and omissions when they purchased the Brats.

70. Acting as reasonable consumers, had Plaintiff and Class members been aware of the true facts regarding the Brats and the use of beef collagen casings, they would have declined to purchase the Brats.

71. Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for the Brats under the belief that the Brats were both filled and encased with pork (and only pork), as opposed to beef collagen casings.

72. Acting as reasonable consumers, Plaintiff and Class members could not have avoided the injuries suffered by purchasing the Brats because a reasonable consumer would believe that a sausage product prominently labeled on the front of the package as being "100% PREMIUM PORK" is both filled and encased with pork (and only pork). *E.g.*, *Bell*, 982 F.3d at 477; *Dumont*, 934 F.3d at 40-41; 21 C.F.R. § 101.18(b).

73. As a direct and proximate result of Defendant's unfair and deceptive acts and practices, Plaintiff and members of the Class suffered damages by purchasing the Brats because they would not have purchased the Brats had they known the truth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ERIN EDWARDS, individually, and on behalf of the Class, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Awarding Plaintiff and the Class damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff and the Class attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT II
(On Behalf of Plaintiff and the Class)
Violation of the Consumer Fraud and Deceptive Trade Practices Acts of the Various States and District of Columbia

74. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-54 with the same force and effect as though fully set forth herein.

75. Plaintiff brings this Count individually, and on behalf of all similarly situated residents of each of the 50 states and the District of Columbia for violations of the respective statutory consumer protection laws, as follows:

- a. the Alabama Deceptive Trade Practices Act, Ala.Code 1975, § 8-19-1, *et seq.*;
- b. the Alaska Unfair Trade Practices and Consumer Protection Act, AS § 45.50.471, *et seq.*;
- c. the Arizona Consumer Fraud Act, A.R.S §§ 44-1521, *et seq.*;
- d. the Arkansas Deceptive Trade Practices Act, Ark.Code §§ 4-88-101, *et seq.*;
- e. the California Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.* and 17500 *et seq.*;
- f. the California Consumers Legal Remedies Act, Civil Code § 1750, *et seq.*;

- g. the Colorado Consumer Protection Act, C.R.S.A. §6-1-101, *et seq.*;
- h. the Connecticut Unfair Trade Practices Act, C.G.S.A. § 42-110, *et seq.*;
- i. the Delaware Consumer Fraud Act, 6 Del. C. § 2513, *et seq.*;
- j. the D.C. Consumer Protection Procedures Act, DC Code § 28-3901, *et seq.*;
- k. the Florida Deceptive and Unfair Trade Practices Act, FSA § 501.201, *et seq.*;
- l. the Georgia Fair Business Practices Act, OCGA § 10-1-390, *et seq.*;
- m. the Hawaii Unfair Competition Law, H.R.S. § 480-1, *et seq.*;
- n. the Idaho Consumer Protection Act, I.C. § 48-601, *et seq.*;
- o. the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 501/1 *et seq.*;
- p. the Indiana Deceptive Consumer Sales Act, IN ST § 24-5-0.5-2, *et seq.*;
- q. The Iowa Private Right of Action for Consumer Frauds Act, Iowa Code Ann. § 714H.1, *et seq.*;
- r. the Kansas Consumer Protection Act, K.S.A. § 50-623, *et seq.*;
- s. the Kentucky Consumer Protection Act, KRS 367.110, *et seq.*;
- t. the Louisiana Unfair Trade Practices and Consumer Protection Law, LSA-R.S. 51:1401, *et seq.*;
- u. the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 205-A, *et seq.*;
- v. the Maryland Consumer Protection Act, MD Code, Commercial Law, § 13-301, *et seq.*;
- w. the Massachusetts Regulation of Business Practices for Consumers Protection Act, M.G.L.A. 93A, *et seq.*;
- x. the Michigan Consumer Protection Act, M.C.L.A. 445.901, *et seq.*;
- y. the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.*;
- z. the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1, *et seq.*;
- aa. the Missouri Merchandising Practices Act, V.A.M.S. § 407, *et seq.*;

- bb. the Montana Unfair Trade Practices and Consumer Protection Act of 1973, Mont. Code Ann. § 30-14-101, *et seq.*;
- cc. the Nebraska Consumer Protection Act, Neb.Rev.St. §§ 59-1601, *et seq.*;
- dd. the Nevada Deceptive Trade Practices Act, N.R.S. 41.600, *et seq.*;
- ee. the New Hampshire Regulation of Business Practices for Consumer Protection, N.H.Rev.Stat. § 358-A:1, *et seq.*;
- ff. the New Jersey Consumer Fraud Act, N.J.S.A. 56:8, *et seq.*;
- gg. the New Mexico Unfair Practices Act, N.M.S.A. §§ 57-12-1, *et seq.*;
- hh. the New York Consumer Protection from Deceptive Acts and Practices, N.Y. GBL (McKinney) § 349, *et seq.*;
- ii. the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen Stat. § 75-1.1, *et seq.*;
- jj. the North Dakota Consumer Fraud Act, N.D. Cent.Code Chapter 51-15, *et seq.*;
- kk. the Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.*;
- ll. the Oklahoma Consumer Protection Act, 15 O.S.2001, §§ 751, *et seq.*;
- mm. the Oregon Unlawful Trade Practices Act, ORS 646.605, *et seq.*;
- nn. the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*;
- oo. the Rhode Island Deceptive Trade Practices Act, G.L.1956 § 6-13.1-5.2(B), *et seq.*;
- pp. the South Carolina Unfair Trade Practices Act, SC Code 1976, §§ 39-5-10, *et seq.*;
- qq. the South Dakota Deceptive Trade Practices and Consumer Protection Act, SDCL § 37-24-1, *et seq.*;
- rr. the Tennessee Consumer Protection Act, T.C.A. § 47-18-101, *et seq.*;
- ss. the Texas Deceptive Trade Practices-Consumer Protection Act, V.T.C.A., Bus. & C. § 17.41, *et seq.*;
- tt. the Utah Consumer Sales Practices Act, UT ST § 13-11-1, *et seq.*;
- uu. the Vermont Consumer Fraud Act, 9 V.S.A. § 2451, *et seq.*;

- vv. the Virginia Consumer Protection Act of 1977, VA ST § 59.1-196, *et seq.*;
- ww. the Washington Consumer Protection Act, RCWA 19.86.010, *et seq.*;
- xx. the West Virginia Consumer Credit And Protection Act, W.Va.Code § 46A-1-101, *et seq.*;
- yy. the Wisconsin Deceptive Trade Practices Act, WIS.STAT. § 100.18, *et seq.*; and
- zz. the Wyoming Consumer Protection Act, WY ST § 40-12-101, *et seq.*

76. The Brats are a consumer good.

77. Defendant made, and continues to make, false and fraudulent statements, and misrepresented, concealed, and omitted material facts, regarding the Brats, including the misrepresentation that the Brats are both filled and encased with pork (and only pork)—*i.e.*, the Brats are “made with 100% premium pork”—and the omission that the Brats are encased in beef collagen casings.

78. Defendant’s misrepresentations and omissions regarding the Brats, and Defendant’s concealment of the fact that the Brats are encased in beef collagen casings, constitute deceptive and unfair acts or practices in trade or commerce.

79. Defendant’s aforementioned misrepresentations and omissions possess the tendency or capacity to mislead and create the likelihood of consumer confusion.

80. Defendant’s aforementioned misrepresentations and omissions were used or employed in the conduct of trade or commerce, namely, the marketing, sale, and distribution of Brats to Plaintiff and the Class.

81. Defendant’s aforementioned misrepresentations and omissions are unfair business practices because they offend public policy and/or cause substantial injury to consumers.

82. Defendant’s aforementioned conduct is deceptive and unlawful because it violated section 343(a)(i) of the FDCA.

83. Defendant intended that Plaintiff and Class members rely on the aforementioned false statements, misrepresentations, and omissions of material fact in purchasing the Brats.

84. Plaintiff and Class members reasonably relied on Defendant's misrepresentations and omissions when they purchased the Brats.

85. Acting as reasonable consumers, had Plaintiff and Class members been aware of the true facts regarding the Brats and the use of beef collagen casings, they would have declined to purchase the Brats.

86. Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for the Brats under the belief that the Brats were both filled and encased with pork (and only pork), as opposed to beef collagen casings.

87. Acting as reasonable consumers, Plaintiff and Class members could not have avoided the injuries suffered by purchasing the Brats because a reasonable consumer would believe that a sausage product prominently labeled on the front of the package as being "100% PREMIUM PORK" is both filled and encased with pork (and only pork). *E.g.*, *Bell*, 982 F.3d at 477; *Dumont*, 934 F.3d at 40-41; 21 C.F.R. § 101.18(b).

88. As a direct and proximate result of Defendant's unfair and deceptive acts and practices, Plaintiff and members of the Class suffered damages by purchasing the Brats because they would not have purchased the Brats had they known the truth

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ERIN EDWARDS, individually, and on behalf of the Class, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, and certifying the Class defined herein;

- B. Designating Plaintiff as representative of the Class and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Awarding Plaintiff and the Class damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff and the Class attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT III
(On Behalf of Plaintiff and the Class)
Unjust Enrichment

89. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-54 with the same force and effect as though fully set forth herein.

90. When a specific contract does not govern the relationship of the parties, and, therefore, no adequate remedy at law is applicable, an equitable remedy under a theory of unjust enrichment is available. *See, e.g., Guinn v. Hoskins Chevrolet*, 361 Ill.App.3d 575, 604 (1st Dist. 2005) (internal citations omitted).

91. Unjust enrichment “is a condition that may be brought about by unlawful or improper conduct as defined by law[.]” *See, e.g., Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 25 (quoting *Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill.App.3d 1017, 1024 (3rd Dist. 2009); *Alliance Acceptance Co. v. Yale Insurance Agency, Inc.*, 271 Ill.App.3d 483, 492 (1st Dist. 1995)).

92. To prevail on a claim of unjust enrichment, a plaintiff must prove: (1) “that the defendant has unjustly retained a benefit to the plaintiff’s detriment,” and (2) “that defendant’s retention of the benefit violates the fundamental principles of justice, equity, and good

conscience.” *See, e.g., Cleary v. Philip Morris Inc.*, 656 F.3d 511, 518 (7th Cir.2011) (quoting *HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc.*, 131 Ill.2d 145, 160 (1989)).

93. Defendant made, and continues to make, false and fraudulent statements, and misrepresented, concealed, and omitted material facts, regarding the Brats, including the misrepresentation that the Brats are both filled and encased with pork (and only pork)—*i.e.*, the Brats are made with “100% premium pork”—and the omission that the Brats are encased in beef collagen casings.

94. Because Defendant is responsible for and controls the manufacturing, marketing, distribution, and sale of the Brats, Defendant knew that its misrepresentations and omissions regarding the Brats were false.

95. Defendant knew that Plaintiff and Class members would rely on its misrepresentations and omissions concerning the Brats. Defendant also knew that Plaintiff and Class members would only be willing to purchase the Brats if they believed they were both filled and encased with pork (and only pork).

96. Plaintiff and Class members reasonably relied on Defendant’s misrepresentations and omissions when they purchased the Brats.

97. Acting as reasonable consumers, Plaintiff and Class members could not have avoided the injuries suffered by purchasing the Brats because a reasonable consumer would believe that a sausage product prominently labeled on the front of the package as being “100% PREMIUM PORK” is both filled and encased with pork (and only pork). *E.g., Bell*, 982 F.3d at 477; *Dumont*, 934 F.3d at 40-41; 21 C.F.R. § 101.18(b).

98. Acting as reasonable consumers, had Plaintiff and Class members been aware of the true facts regarding the Brats and the use of beef collagen casings, they would have declined to purchase the Brats.

99. Plaintiff and Class members conferred a benefit on Defendant—*i.e.*, the money that they paid for the Brats under the belief that the Brats were both filled and encased with pork (and only pork).

100. Defendant acquired and retained money belonging to Plaintiff and the Class as a result of its wrongful conduct—*i.e.*, misrepresenting that the Brats were both filled and encased with pork (and only pork), and concealing the fact that the Brats are encased in beef collagen casings. Defendant profited at the expense of Plaintiff and Class members in connection with each individual sale of the Brats because Plaintiff and Class members paid money for products that they would otherwise not have purchased had they known the truth.

101. Defendant has unjustly received and retained a benefit at the expense of Plaintiff and the Class because Defendant unlawfully acquired its profits from selling Brats it knew did not comport with Plaintiff's and the Class members' expectations, as derived from the misrepresentations and omissions on the Brats' packaging.

102. Defendant's retention of that benefit violates the fundamental principles of justice, equity, and good conscience because Defendant misled Plaintiff and the Class into falsely believing that the Brats were both filled and encased with pork (and only pork), in order to unjustly receive and retain a benefit.

103. Under the principles of equity, Defendant should not be allowed to keep the money belonging to Plaintiff and the members of the Class because Defendant has unjustly received it as a result of Defendant's unlawful actions described herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ERIN EDWARDS, individually, and on behalf of the Class, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Ordering disgorgement of any of Defendant’s ill-gotten gains and awarding those amounts to Plaintiff and the Class members as compensatory damages;
- E. Awarding Plaintiff and the Class attorneys’ fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all counts so triable.

Plaintiff ERIN EDWARDS, individually, and on behalf of all others similarly situated,

By: s/ Thomas A. Zimmerman, Jr.

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