

# ConAgra's Notice of Removal

## EXHIBIT 1

STATE OF MINNESOTA  
COUNTY OF DAKOTA

DISTRICT COURT  
FIRST JUDICIAL DISTRICT  
CASE TYPE: OTHER CIVIL

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MELVIN WALLACE, SHIRLEY HARDT,  
LEWIS SIMPSON, and WILLIAM COBB,  
ERICA DAVIS-HOLDER, ROTEM  
COHEN, JULIAN WAGNER, ROSE  
WAGNER, ERIN STILWELL, MARIA  
EUGENIA SAENZ VALIENTE and  
ADAM BURNHAM individually and on  
behalf of all others similarly situated,

Court File No.

**CLASS ACTION COMPLAINT**

(Jury Trial Demanded)

Plaintiffs,

vs.

CONAGRA FOODS, INC d/b/a Hebrew  
National, a Delaware corporation.

Defendant.

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Plaintiffs Melvin Wallace, Shirley Hardt, Lewis Simpson, William Cobb, Erica Davis-Holder, Rotem Cohen, Julian Wagner, Rose Wagner, Erin Stilwell, Maria Eugenia Saenz Valiente and Adam Burnham bring this action, by and through their undersigned counsel, on behalf of themselves and all others similarly situated, based on information and belief and the investigation of counsel, except for information based on personal knowledge, and hereby allege as follows:

**I. GENERAL DESCRIPTION OF ACTION**

I. The fraudulent mislabeling of food as kosher when it is not has been a significant problem in the United States for years. It is a problem that is impossible for any reasonable consumer to detect. As explained in the *New York Times*:

"Kosher food is one of the products sold that is fraught with the potential for consumer fraud," said W. Cary Edwards, the state's Attorney General. "This is because it is essentially a 'blind' item; that is, buyers must rely on the integrity of the seller and/ or the protection of the government to prevent deception."

The crux of the problem lies in the preparation of the product. Kosher products require specialized slaughtering and sanitary procedures, which add to costs.

Most consumers pay premium prices for kosher foods and, Mr. Edwards said, can "suffer great emotional stress" after learning that what they thought was kosher was not.

"In most cases," he said, "you can't tell by looking whether foods have been prepared and maintained so that they meet kosher requirements."

\* \* \*

"The penalty was more than warranted," said Rabbi Yakov M. Dombroff, chief of the Kosher Enforcement Bureau. "They were selling nonkosher turkey and pastries as kosher for such a long period of time that they simply didn't care. That's out and out fraud."

\* \* \*

"If you include negligence," Rabbi Dombroff said, "we've cut out 75 percent of kosher fraud in New Jersey. In theory, our goal is to put ourselves out of business. That would be the ultimate, but I'm afraid that will never happen."

<http://www.nytimes.com/1988/01/03/nyregion/state-cracks-down-on-kosher-cheats.html>

(Exhibit C).

2. Plaintiffs Melvin Wallace (hereinafter "Wallace"), Shirley Hardt (hereinafter "Hardt"), Lewis Simpson (hereinafter "Simpson") William Cobb (hereinafter "Cobb"), Erica Davis-Holder (hereinafter "Davis-Holder"), Rotem Cohen (hereinafter "Cohen"), Julian Wagner (hereinafter "Julian Wagner") , Rose Wagner (hereinafter "Rose Wagner"), Erin Stilwell (hereinafter "Stilwell"), Maria Eugina Saenz Valiente (hereinafter "Saenz Valiente") and Adam Burnham (hereinafter "Burnham") bring this class action against Defendant ConAgra Foods, Inc. d/b/a Hebrew National (hereinafter referred to herein as "Defendant" or "Hebrew National") to redress Defendant's conduct deceptively and misleadingly mislabeling Hebrew National products as strictly 100% kosher, when they are not, in violation of applicable consumer protection statutes. Wallace, Hardt, Simpson, Cobb, Davis-Holder, Cohen, Julian Wagner, Rose Wagner, Stilwell, Saenz Valiente and Burnham are collectively referred to herein as the "Plaintiffs")

3. Defendant ConAgra Foods, Inc. d/b/a Hebrew National (hereinafter "Defendant" or ConAgra") is a manufacturer and distributor of kosher meat products,

including hot dogs/beef franks, salami, sausage and deli meats. <http://www.hebrewnational.com/products-promotions.jsp>. Defendant ConAgra Foods, Inc. conducts such operations through its "Hebrew National" division and under its "Hebrew National" brand.

4. Defendant markets, distributes and sells its Hebrew National branded products nationwide, in and from its principal place of business in Omaha, Nebraska. Upon information and belief, major decisions regarding the business policies challenged in this lawsuit, including but not limited to those related to the kosher certification of Hebrew National branded products, the portrayal to the public of those products as 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law*," and the pricing of those products at premium rates, are made in and from Defendant's offices in Nebraska. Those business policies and decisions emanate from Defendant's offices in Nebraska and harm Hebrew National consumers nationwide, including the named Plaintiffs and the Class here.

5. Defendant labels all of its Hebrew National products as being made from "Premium cuts of 100% Kosher Beef." See Exhibit A. Defendant marks each package of Hebrew National products with the "Triangle K" symbol and represents that: "The Triangle K symbol is a trademarked logo that signifies "kashruth" (kosher) "*as defined by the most stringent Jews who follow Orthodox Jewish Law*. It's a symbol of integrity, representing the most trusted and reliable name in strict rabbinical food certification and supervision." <http://www.hebrewnational.com/kosher-difference.jsp>. (Emphasis added). See Exhibits A and B. These representations are central to Defendant's marketing of Hebrew National products, and are displayed prominently on all Hebrew National product labels, packages, the Hebrew National website, and all Hebrew National advertisements.

6. Defendant is not a religious institution. Rather, it is a for-profit publically traded corporation with a secular purpose (NYSE: CAG). Defendant's goal and intention

is to sell as much Hebrew National products to the public as possible in order to maximize profits. Profits are maximized by selling Hebrew National products for the highest possible price while minimizing manufacturing costs and expenses. Similarly, AER and AFG are not religious institutions. Rather, they are both for-profit corporations with a secular purpose.

7. Throughout the class period, Defendant systematically mislabeled its Hebrew National food products. On each package, Defendant defines and represents all Hebrew National products sold to be 100% kosher beef "*as defined by the most stringent Jews who follow Orthodox Jewish Law.*" Exhibits A, B. In truth, however, Defendant does not strictly comply with the standard it states it does. Hebrew National products are not made from 100% kosher beef "*as defined by the most stringent Jews who follow Orthodox Jewish Law.*" The food processing plants which Defendant purchase their meat from, including those in Dakota County, Minnesota, fail to adhere to the kosher standards "*as defined by the most stringent Jews who follow Orthodox Jewish Law*" in numerous respects, as described below. As a result Defendant's representations on each package of Hebrew National products are false, deceptive and misleading. Defendant's conduct is likely to deceive reasonable consumers.

8. This lawsuit does not seek to have the Court create or define what the applicable standard for kosher meat is. Defendant does that itself by representing to the public the specific standard that it claims the Hebrew National products that it produces and it sells adhere to - namely, 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish Law.*" Exhibits A, B. Therefore, Plaintiffs' claims are based on Defendant's conduct representing to the public that its products meet a specific standard (i.e., the *strictest* standard of kashrut) but then failing to adhere to that standard in practice. The Court is only asked to hold the Defendant to the standard established by its own representations to the public. Holding Defendant to its own representations would not create a fusion of government and religious functions and would further not require

this Court to place its imprimatur on the religious views of one branch of Judaism to the exclusion of others.

9. Defendant misleads and deceives reasonable consumers, including the named Plaintiffs and other members of the Class, by portraying its products as 100% kosher “*as defined by the most stringent Jews who follow Orthodox Jewish Law.*” Defendant’s conduct harms consumers by inducing them to purchase a product at a premium price on the false premise that the product is 100% kosher “*as defined by the most stringent Jews who follow Orthodox Jewish Law.*”

10. Kosher meat products are sold at higher prices than comparable non-kosher products. Plaintiff and members of the Class who purchased Hebrew National products during the relevant time period have been damaged, *inter alia*, in that they purchased and paid a premium price for Defendant’s Hebrew National products. The products purchased are labeled and advertised as 100% kosher beef “*as defined by the most stringent Jews who follow Orthodox Jewish Law*” when, in truth, the products fail to adhere to those standards. As a result, the products did not warrant the premium price paid by unsuspecting consumers.

11. Defendant knew or should have known that the Hebrew National products it manufactured, marketed and sold were not 100% kosher “*as defined by the most stringent Jews who follow Orthodox Jewish Law.*” Defendant, its agents and/or contractors received reports that the meat being used in Hebrew National products was not 100% kosher “*as defined by the most stringent Jews who follow Orthodox Jewish Law.*” Despite this, Defendant took no or inadequate steps to further investigate, monitor and/or otherwise correct the mislabeling. Defendant failed to exercise due diligence to monitor and review the process.

12. Defendant’s deceptive and wrongful conduct is designed to mislead and deceive consumer into purchasing its Hebrew National products, at premium prices, by labeling and marketing it as 100% kosher “*as defined by the most stringent Jews who*

*follow Orthodox Jewish Law*" when, in truth, Defendant's Hebrew National products fail to adhere to these standards. As a result, Defendant violates applicable consumer protection laws, including Nebraska Consumer Protection Act and the Nebraska Uniform Deceptive Trade Practices Act - the state where the deceptive practices were approved, developed, endorsed and emanated from, harming consumers nationwide. Alternatively and/or in addition, Defendant's conduct violates the consumer protection and deceptive trade practice statutes of the states where Plaintiffs and the consumers' in the Class reside.

13. As a result of the Defendant's unlawful, unfair and misleading conduct, and other breaches, Plaintiffs, like other Class members, were deprived of the value of the goods they purchased. As a result of the Defendant's unlawful conduct, set forth below, class members were likely to be deceived. Had Plaintiffs known that the products purchased were not 100% kosher beef "*as defined by the most stringent Jews who follow Orthodox Jewish Law*" they would not have paid the premium price that they paid for it, but less or sought an alternative product. Plaintiffs detrimentally relied on Defendant's representations that it was selling 100% kosher beef "*as defined by the most stringent Jews who follow Orthodox Jewish Law*" and parted with their money as a result thereof causing financial loss and injury. Defendant has been unjustly enriched at the expense of the Class. Based on the foregoing, and as described in greater detail below, this action seeks all remedies permitted by applicable law under the causes of action alleged herein.

## II. JURISDICTION AND VENUE

14. This Court has jurisdiction over this action.

15. At all times mentioned herein, the unlawful, misleading and deceptive acts and decisions committed by Defendant were conducted in and from its principal offices in Nebraska, were approved and sanctioned in and from its principal offices in Nebraska, and/or otherwise emanated from Defendant's principal offices in Nebraska, harming

consumers nationwide, including Plaintiffs and the Class here. As a result, the Nebraska consumer protection laws referenced herein apply to Defendant's conduct with respect to each class member's transaction(s). The Nebraska consumer protection laws referenced herein. Alternatively and/or in addition, Defendant's conduct violates the consumer protection and deceptive trade practice statutes of the states where Plaintiffs consumers' in the Class reside.

16. The unfair and deceptive acts and practices referenced herein have an impact on the public interest. The public has an interest in true and accurate labeling of food products. As described within, Defendant's conduct violates that interest.

17. Defendant is subject to jurisdiction in this state and county by virtue of their extensive business dealings and transactions within the State of Minnesota and Dakota County. Defendant purposefully avails itself of the Minnesota consumer market and sells Hebrew National products in numerous locations in this state and county. Defendant's Hebrew National products are purchased by thousands of consumers in Minnesota daily.

18. Further, many of the violations at issue occurred in Minnesota, as certain suppliers of the meat Defendant ultimately uses in Hebrew National products and marks as kosher are located in Minnesota but do not supply 100% kosher meat *"as defined by the most stringent Jews who follow Orthodox Jewish Law."*

19. Nebraska has a substantial interest in having its consumer protection laws applied to the class claims at issue in this case. Defendant is based in Nebraska. Defendant conducted, approved and endorsed the misleading and deceptive activities in this state - activities which emanated from their principal places of business in Omaha to their operations in other states, harming consumers nationwide. Nebraska has a substantial interest in preventing deceptive and misleading activities from occurring within Nebraska and injuring both residents of Nebraska and residents of other states (like Plaintiffs) who were injured when Defendant's challenged activities emanated from



Nebraska to their state. Other states' interests in enforcing their consumer protection laws against Defendant do not substantially outweigh Nebraska's interests in that regard. If, however, the Court finds that is the case, the Court can create state subclasses and apply the consumer protection and deceptive trade practice statutes of the states where Plaintiffs and consumers' in the Class reside. As such, Count IV is pled in the alternative to Counts II and III.

20. Venue is proper in this county as a substantial part of the events giving rise to the claim occurred in this county. Plaintiff Wallace resides in this county and purchased Defendant's Hebrew National products in this county during the relevant class period. Defendant conducts substantial business in this state and county, has sufficient minimum contacts with this state and county, and otherwise purposefully avails itself of the markets in this state and county, through the promotion, sale, and marketing of its products in this state and county. Certain meat processing plants which supply the kosher meat at issue are located in Dakota County, Minnesota. Relevant witnesses live and/or worked at relevant times in Minnesota.

21. This action does not attempt to assert any direct claims under any state's kosher statutes or seek to have the court create any religious standard. Rather, this case is based strictly on Defendant's own representations and certifications of what it is selling to the public and the Class and the standard of kashrut (kosher) it claims its' Hebrew National products adhere to. Defendant represents and warrants that all Hebrew National products that it markets and sells are 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish Law,*" when that is not the case. Claims against a manufacturer for failure to adhere to the standard that it states it does on food labels are actionable under the laws cited below. Further, the court is not required to determine the applicable standard that Defendant claims it adheres to. Witnesses, including Rabbi Aryeh Rabbag (of Triangle K) and Rabbi Moshe Fyzakov (of AER) among others, have previously testified in Minnesota courts as to the requirements to satisfy the kosher

standards represented to be upheld by Defendant, Triangle K, and AER (i.e., 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish Law*").

22. Simply put, this case does not allege that Defendant violated any state's specific kosher laws, rules, or guidelines while falsely claiming that it had complied with such standards. Rather, this case alleges that Defendant failed to follow its own clear and self-imposed standards in practice.

### III. THE PARTIES

23. Plaintiff Melvin Wallace appears individually and on behalf of all those similarly situated as described herein. Plaintiff Wallace resides in Dakota County, Minnesota. During the class period, Wallace regularly purchased Hebrew National products weekly for his own consumption in Minnesota. The statements and Triangle K symbol signifying the product to be strictly 100% kosher appeared on the product at the time of each purchase and were seen by Plaintiff Wallace. Wallace paid for a product that was 100% kosher, but did not receive such a product. Wallace believed Defendant's representation that Hebrew National products are made from 100% kosher beef. Wallace purchased the Hebrew National products because he believed the kosher title and certification made them a higher quality product than other meat products on the market. Wallace would not have purchased Defendant's Hebrew National products at the premium price paid but for Defendant's misleading statements about the product being 100% kosher. Wallace was injured in fact and lost money as a result of Defendant's conduct of improperly labeling Hebrew National products as 100% kosher. Wallace paid a premium price for Defendant's Hebrew National products because they were labeled and represented to be strictly 100% kosher beef. Wallace overpaid because the Hebrew National products purchased were not actually 100% kosher beef, as represented.

24. Plaintiff Shirley Hardt appears individually and on behalf of all those similarly situated as described herein. Hardt resides in the Gila County, Arizona. Hardt has regularly purchased Hebrew National products for the past ten (10) years in Arizona.

Hardt purchases the Hebrew National product for her consumption. The statements and Triangle K symbol signifying the product to be strictly 100% kosher appeared on the product at the time of each purchase and were seen by Plaintiff Hardt. Hardt paid for a product that was 100% kosher, but did not receive such a product. Hardt believed Defendant's representation that Hebrew National products are made from 100% kosher beef. Hardt purchased the Hebrew National products because she believed the kosher title and certification made them a higher quality product than other meat products on the market. Hardt would not have purchased Defendant's Hebrew National products at the premium price paid but for Defendant's misleading statements about the product being strictly 100% kosher. Hardt was injured in fact and lost money as a result of Defendant's conduct of improperly labeling Hebrew National products as strictly 100% kosher. Hardt paid a premium price for Defendant's Hebrew National products because they were labeled and represented to be strictly 100% kosher beef. Hardt overpaid because the Hebrew National products purchased were not actually 100% kosher beef as represented.

25. Plaintiff Lewis Simpson appears individually and on behalf of all those similarly situated as described herein. Simpson resides in Mohave County, Arizona. Plaintiff Simpson has regularly purchased Hebrew National products for the past ten (10) years in Arizona. Simpson purchased Hebrew National products for his consumption. The statements and Triangle K symbol signifying the product to be strictly 100% kosher appeared on the product at the time of each purchase and were seen by Plaintiff Simpson. Simpson paid for a product that was 100% kosher, but did not receive such a product. Simpson believed Defendant's representation that Hebrew National products are made from strictly 100% kosher beef. Simpson purchased the Hebrew National products because he believed the kosher title and certification made them a higher quality product than other meat products on the market. Plaintiff would not have purchased Defendant's Hebrew National products at the premium price paid but for Defendant's misleading statements about the product being strictly 100% kosher. Simpson was injured in fact

and lost money as a result of Defendant's conduct of improperly labeling Hebrew National products as 100% kosher. Simpson paid a premium price for Defendant's Hebrew National products because they were labeled and represented to be strictly 100% kosher beef. Simpson overpaid because the Hebrew National products purchased were not actually 100% kosher beef, as represented.

26. Plaintiff William Cobb appears individually and on behalf of all those similarly situated as described herein. Cobb resides in Coconino County, Arizona. During the class period, Cobb purchased Hebrew National products for his own consumption in Arizona. The statements and Triangle K symbol signifying the product to be strictly 100% kosher appeared on the product at the time of each purchase and were seen by Plaintiff Cobb. Cobb paid for a product that was 100% kosher, but did not receive such a product. Cobb purchased the Hebrew National product for his consumption. Cobb believed Defendant's representation that Hebrew National products are made from 100% kosher beef. Cobb purchased the Hebrew National products because he believed the kosher title and certification made them a higher quality product than other meat products on the market. Cobb would not have purchased Defendant's Hebrew National products at the premium price paid but for Defendant's misleading statements about the product being strictly 100% kosher. Cobb was injured in fact and lost money as a result of Defendant's conduct of improperly labeling Hebrew National products as strictly 100% kosher. Cobb paid a premium price for Defendant's Hebrew National products because they were labeled and represented to be 100% kosher beef. Cobb overpaid because the Hebrew National products purchased were not actually 100% kosher beef, as represented.

27. Plaintiff Erica Davis-Holder appears individually and on behalf of all those similarly situated as described herein. Davis-Holder resides in Berwyn, Cook County, Illinois. Davis-Holder has regularly purchased Hebrew National products throughout the class period in Illinois. Davis-Holder purchases the Hebrew National product for her

consumption, often at her local Jewel grocery store. The statements and Triangle K symbol signifying the product to be strictly 100% kosher appeared on the product at the time of each purchase and were seen by Plaintiff Davis-Holder. Davis-Holder paid for a product that was 100% kosher, but did not receive such a product. Davis-Holder believed Defendant's representation that Hebrew National products are made from 100% kosher beef. Davis-Holder purchased the Hebrew National products because she believed the kosher title and certification made them a higher quality product than other meat products on the market. Davis-Holder would not have purchased Defendant's Hebrew National products at the premium price paid but for Defendant's misleading statements about the product being strictly 100% kosher. Davis-Holder was injured in fact and lost money as a result of Defendant's conduct of improperly labeling Hebrew National products as strictly 100% kosher. Davis-Holder paid a premium price (often as much as 5.99/package) for Defendant's Hebrew National products because they were labeled and represented to be strictly 100% kosher beef. Davis-Holder overpaid because the Hebrew National products purchased were not actually 100% kosher beef as represented.

28. Plaintiff Rotem Cohen appears individually and on behalf of all those similarly situated as described herein. Rotem Cohen resides in New York, New York. Davis-Holder has regularly purchased Hebrew National products throughout the class period in New York State. Cohen purchases the Hebrew National product for his consumption. The statements and Triangle K symbol signifying the product to be strictly 100% kosher appeared on the product at the time of each purchase and was seen. Cohen paid for a product that was 100% kosher, but did not receive such a product. Cohen believed Defendant's representation that Hebrew National products are made from 100% kosher beef. Cohen purchased the Hebrew National products because she believed the kosher title and certification made them a higher quality product than other meat products on the market. Cohen would not have purchased Defendant's Hebrew National products at the premium price paid but for Defendant's misleading statements about the product

being strictly 100% kosher. Cohen was injured in fact and lost money as a result of Defendant's conduct of improperly labeling Hebrew National products as strictly 100% kosher. Cohen paid a premium price for Defendant's Hebrew National products because they were labeled and represented to be strictly 100% kosher beef. Cohen overpaid because the Hebrew National products purchased were not actually 100% kosher beef as represented.

29. Plaintiffs Julian Wagner and Rose Wagner both appear individually and on behalf of all those similarly situated as described herein. Julian Wagner resides in both Bloomfield Hills, Michigan and Boca Raton, Florida. Rose Wagner resides in both Bloomfield Hills, Michigan and Boca Raton, Florida. Julian Wagner and Rose Wagner have regularly purchased Hebrew National products throughout the class period in both Michigan and Florida. Julian Wagner and Rose Wagner purchase the Hebrew National product for their consumption. The statements and Triangle K symbol signifying the product to be strictly 100% kosher appeared on the product at the time of each purchase and were seen by Julian Wagner and Rose Wagner. Julian Wagner and Rose Wagner paid for a product that was 100% kosher, but did not receive such a product. Julian Wagner and Rose Wagner believed Defendant's representation that Hebrew National products are made from 100% kosher beef. Julian Wagner and Rose Wagner purchased the Hebrew National products because they believed the kosher title and certification made them a higher quality product than other meat products on the market. Julian Wagner and Rose Wagner would not have purchased Defendant's Hebrew National products at the premium price paid but for Defendant's misleading statements about the product being strictly 100% kosher. Julian Wagner and Rose Wagner were injured in fact and lost money as a result of Defendant's conduct of improperly labeling Hebrew National products as strictly 100% kosher. Julian Wagner and Rose Wagner paid a premium price for Defendant's Hebrew National products because they were labeled and represented to be strictly 100% kosher beef. Julian Wagner and Rose Wagner overpaid

because the Hebrew National products purchased were not actually 100% kosher beef as represented.

30. Plaintiff Erin Stilwell appears individually and on behalf of all those similarly situated as described herein. Stilwell resides in Long Beach, California. Stilwell has regularly purchased Hebrew National products throughout the class period in California. Stilwell purchases the Hebrew National product for her consumption, often at her local Albertson's grocery store in Long Beach. The statements and Triangle K symbol signifying the product to be strictly 100% kosher appeared on the product at the time of each purchase and were seen by Plaintiff Stilwell. Stilwell paid for a product that was 100% kosher, but did not receive such a product. Stilwell believed Defendant's representation that Hebrew National products are made from 100% kosher beef. Stilwell purchased the Hebrew National products because she believed the kosher title and certification made them a higher quality product than other meat products on the market. Stilwell would not have purchased Defendant's Hebrew National products at the premium price paid but for Defendant's misleading statements about the product being strictly 100% kosher. Stilwell was injured in fact and lost money as a result of Defendant's conduct of improperly labeling Hebrew National products as strictly 100% kosher. Stilwell paid a premium price for Defendant's Hebrew National products because they were labeled and represented to be strictly 100% kosher beef. Stilwell overpaid because the Hebrew National products purchased were not actually 100% kosher beef as represented.

31. Plaintiff Maria Eugenia Saenz Valiente appears individually and on behalf of all those similarly situated as described herein. Saenz Valiente resides in Long Beach, California. Saenz Valiente purchased Hebrew National products during the class period in California, including in December, 2011. Saenz Valiente purchases the Hebrew National product for her consumption. The statements and Triangle K symbol signifying the product to be strictly 100% kosher appeared on the product at the time of each

purchase and were seen by Plaintiff Saenz Valiente. Saenz Valiente paid for a product that was 100% kosher, but did not receive such a product. Saenz Valiente believed Defendant's representation that Hebrew National products are made from 100% kosher beef. Saenz Valiente purchased the Hebrew National products because she believed the kosher title and certification made them a higher quality product than other meat products on the market. Saenz Valiente would not have purchased Defendant's Hebrew National products at the premium price paid but for Defendant's misleading statements about the product being strictly 100% kosher. Saenz Valiente was injured in fact and lost money as a result of Defendant's conduct of improperly labeling Hebrew National products as strictly 100% kosher. Saenz Valiente paid a premium price for Defendant's Hebrew National products because they were labeled and represented to be strictly 100% kosher beef. Saenz Valiente overpaid because the Hebrew National products purchased were not actually 100% kosher beef as represented.

32. Plaintiff Adam Burnham appears individually and on behalf of all those similarly situated as described herein. Burnham resides in Middlesex County, Massachusetts. Burnham has regularly purchased Hebrew National products throughout the class period in Massachusetts. Burnham purchased Hebrew National product for his consumption, including at Stop and Shop in January, 2012. The statements and Triangle K symbol signifying the product to be strictly 100% kosher appeared on the product at the time of each purchase and were seen by Burnham. Burnham paid for a product that was 100% kosher, but did not receive such a product. Burnham believed Defendant's representation that Hebrew National products are made from 100% kosher beef. Burnham purchased the Hebrew National products because he believed the kosher title and certification made them a higher quality product than other meat products on the market. Burnham would not have purchased Defendant's Hebrew National products at the premium price paid but for Defendant's misleading statements about the product being strictly 100% kosher. Burnham was injured in fact and lost money as a result of



Defendant's conduct of improperly labeling Hebrew National products as strictly 100% kosher. Burnham paid a premium price for Defendant's Hebrew National products because they were labeled and represented to be strictly 100% kosher beef. Burnham overpaid because the Hebrew National products purchased were not actually 100% kosher beef as represented.

33. All Plaintiffs have standing to assert the claims alleged herein on their own behalf and on behalf of the Class. All Plaintiffs were injured and overpaid because the Hebrew National products purchased were not actually 100% kosher beef as represented.

34. The Class, defined below, consists of any person in the United States who purchased any of Defendant's Hebrew National individually packaged meat products during the Class period.

35. Plaintiffs and the Class purchased Hebrew National products, which were all uniformly represented to be 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish Law*" during the class period.

36. Defendant ConAgra Foods, Inc. is a Delaware corporation, with its principal place of business at One ConAgra Drive, 1-237, Omaha, Nebraska 68102. Defendant's agent for service of process is at 380 Jackson Street #700, St. Paul Minnesota 55101. For purposes of residency, Defendant's corporate nerve center is located at One ConAgra Drive, 1-237 Omaha, Nebraska 68102. Defendant manufactures, markets, distributes, and sells Hebrew National products nationwide, including those purchased by Plaintiffs. At all times relevant to this action, including throughout the class period, Defendant conducted business in this state, advertised in this state and marketed its products, including those at issue, in this state. Defendant claims that its products are in 97 percent of American households and reported over \$12 billion in net sales for fiscal year 2010 with an operating profit of over \$1.6 billion. <http://www.conagrafoods.com/>.

#### **IV. FACTUAL ALLEGATIONS**

##### **A. ConAgra Manufactures Hebrew National Meat Products**

37. Defendant manufactures, processes, markets and sells Hebrew National meat products throughout the United States, including this state. Those products are all uniformly and systematically labeled, marketed and represented to be 100% kosher. See [www.hebrewnational.com](http://www.hebrewnational.com). The labels and representations that Hebrew National products are 100% kosher are ultimately approved by Defendant for dissemination to the public in and from Defendant's offices in Nebraska. Such acts give rise to the claims asserted herein.

38. Defendant obtains the meat to manufacture and process the Hebrew National meat products it sells from AER Services, Inc.

39. AER Services, Inc. ("AER") is a privately-held corporation based in Skokie, Illinois. AER is incorporated under the laws of Illinois.

40. AER is a company that provides kosher meat processing and inspection services, including the provision of employees who carry out slaughtering, processing, and inspection services. AER provides human resources for kosher meat processing and inspection services.

41. The president of AER is Shlomo Ben-David. Rabbi Moshe Fyzakov is the vice president of AER. Rabbi Fyzakov works out of AER offices in Denver, Colorado.

42. Upon information and belief, at relevant times, AER recruited a significant number of people that it employs to supervise and conduct the kosher meat slaughtering, processing and inspection from Israel. Upon information and belief, AER had an arrangement with a related entity, Ravenswood Budlong Congregation to obtain Israeli nationals to work at AER and AFG facilities. Upon information and belief, in recent years, due to immigration issues including potential violations, AER has experienced certain labor shortages, some which have contributed to the kosher certification problems at the AFG facilities discussed below.

43. Upon information and belief, throughout the Class period, AER has been the sole provider of kosher meat used in Hebrew National products.

40. AER does not own the physical meat processing facilities where it conducts its kosher meat processing and inspection services needed to generate the meat for the Hebrew National products that Defendant produces but rather, leases them from American Foods Group, LLC ("AFG"). AFG is the 5th largest beef processing company in the United States. <http://www.americanfoodsgroup.com/index.asp>. AER conducts its kosher meat processing and inspection services at meat processing facilities owned and/or operated by AFG, including the Dakota Premium Processing Foods Plant in South St. Paul, Minnesota, a plant in Green Bay, Wisconsin, and a plant in Gibbon, Nebraska (hereinafter collectively referred to as "AFG facilities"). *See generally*, <http://www.americanfoodsgroup.com/page.asp?pageid=12>. At times, those facilities are used and/or leased to another company to produce Islamic halal meat. <http://www.americanfoodsgroup.com/page.asp?pageid=14> ("Harvest facilities located in Long Prairie, Minnesota, South St. Paul, Minnesota, Gibbon, Nebraska and Green Bay, Wisconsin are certified for Halal slaughter.")

41. AER employs personnel in the position of "Mashigiach" at the meat processing facilities it operates, including those in South St. Paul, Green Bay and Gibbon. A Mashigiach is the person employed at the facility that is responsible for the supervision and observation of the meat packing and shipping processing to ensure compliance with Jewish dietary laws and the overall kosher process.

42. AER also employs personnel in the positions of "Shochet" and "Bodek" at the meat processing facilities it operates, including those in South St. Paul, Green Bay and Gibbon. A Shochet is a kosher butcher who performs the ritual slaughter. A Bodek is a person employed at the facility that examines the carcass to ensure it is kosher. A preliminary Bodek stands at the beginning of the carcass examination line. Another

Bodek stands at the end of the carcass examination line and makes the final decision as to a carcass' kosher status before the carcass leaves the harvest floor.

43. Defendant contracts with third-party kosher certification agency, Triangle K and Associates ("Triangle K"), Inc. to provide kosher food supervision and certification services. Triangle K is located at 224 West 86th Street, New York, New York, 10024. Triangle K is owned and /or operated by Rabbi Jchoseph H. Ralbag and Rabbi Aryeh Ralbag. <http://trianglek.org/about.html>. Rabbi Aryeh Ralberg is also the Head Kashruth Coordinator of the Triangle K kosher supervision and certification organization and in that capacity issues rabbinical rulings concerning the kosher processing activities related to the ritual slaughter, examination and supervision of the animals.

44. Kosher certifying agencies have existed in North America since the late 19th century.<sup>1</sup> Through Rabbinical supervision, they regulate the production of kosher foods such as ensuring that only kosher ingredients are used, and that equipment for processing kosher foods are exclusively used for kosher foods. Once a product is assessed and deemed kosher, each agency applies its unique symbol known as a "hechsher", certifying the product as kosher.

45. In 2003, Defendant entered into an agreement with kosher certification agency Triangle K, in which Triangle K would oversee the processing and certification of all kosher meat to be used in Defendant's Hebrew National products.

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<sup>1</sup> See generally Upton Sinclair, *The Jungle* (1906, Project Gutenberg ed. 2006) Chapter 3, page 63, available online at <<http://www.gutenberg.org/files/140/140-h/140-h.htm>> ("The visitors were taken there and shown them, all neatly hung in rows, labeled conspicuously with the tags of the government inspectors—and some, which had been killed by a special process, marked with the sign of the kosher rabbi, certifying that it was fit for sale to the orthodox. And then the visitors were taken to the other parts of the building, to see what became of each particle of the waste material that had vanished through the floor: and to the pickling rooms, and the salting rooms, the canning rooms, and the packing rooms, where choice meat was prepared for shipping in refrigerator cars, destined to be eaten in all the four corners of civilization.")

46. Defendant's website boasts that "[t]he Triangle K symbol is a trademarked logo that signifies 'kashruth' (kosher) *"as defined by the most stringent Jews who follow Orthodox Jewish Law."* It's a symbol of integrity, representing the most trusted and reliable name in strict rabbinical food certification and supervision."<sup>2</sup>

47. The Triangle K organization is responsible for the overall supervision of the kosher processing activities at multiple beef processing facilities owned by AFG, including the AFG facilities. This has been the case at all times since 2004.

48. Upon information and belief, AER is the sole slaughterer and inspector, and Triangle K the sole certifier, of all "kosher" meat used in Defendant's Hebrew National products.

49. Rabbis are supposed to supervise all of the AER slaughtering operations to ensure they were conducted according to kosher dietary laws. Often, however, kosher supervisory functions are delegated to or otherwise performed by AER personnel, such as Mashigiachs. Those Mashigiachs are to report any problems or transgressions to Rabbi Aryeh Ralberg at Triangle K and/or others, such as his sons.

50. As the manufacturer packaging and distributing the final product, however, Defendant remains ultimately responsible to consumers for untrue and misleading statements on Hebrew National product labels.

51. Upon information and belief, at all relevant times, Defendant, AER and Triangle K have had an agreement(s) whereby AER would conduct kosher slaughtering and kosher meat processing at AFG facilities, for which Triangle K was retained to provide supervision and kosher certification. In turn, AER is the sole slaughterer and inspector, and Triangle K is the sole certifier, of all kosher meat used in Hebrew National products. Only AER employees are supposed to provide the kosher slaughtering services.

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<sup>2</sup> <http://www.hebrewnational.com/kosher-difference.jsp> See also, <http://trianglek.org/index.html>

52. Upon information and belief, AFG delivers the cattle to the AFG facilities to be slaughtered, inspected and certified. The non-kosher meat that harvested is retained by AFG. The kosher meat that is harvested is sold by AFG to AER and, in turn, ultimately sold and delivered to ConAgra. ConAgra ultimately processes the meat received from AER into Hebrew National products and represents to the public (including the Class) that all such products are 100% kosher “*as defined by the most stringent Jews who follow Orthodox Jewish Law.*” Because kosher meat warrants a higher price from consumers, throughout the process AFG, AER, Triangle K and Conagra all have a common financial interest in maximizing the amount of meat harvested from any cow slaughtered that can ultimately be labeled and sold as kosher.

53. During the relevant class period, certain Mashgiachs and/or others employed by AER complained to AER and Rabbi Aryeh Rabbag that the procedures they witnessed at the AFG facilities rendered the meat being processed not kosher. Although several such complaints were made to AER, Rabbi Moshe Fyzakov, and/or Rabbi Aryeh Rabbag both entities did little or nothing to correct the transgressions. Rather, the persons making the complaints were terminated or otherwise threatened with adverse retaliation, such as job transfers to other facilities or states. In turn, non-kosher meat was delivered to ConAgra and packaged, labeled and sold to the public (including the Class here) as strictly 100% kosher.

**B. ConAgra Markets All of Its Hebrew National Products As “100% Kosher”**

54. Defendant sells numerous types of beef products under the Hebrew National brand, including Hebrew National Beef Franks. See [http://www.conagrafoodcompany.com/consumer/brands/getBrand.do?page=hebrew\\_national](http://www.conagrafoodcompany.com/consumer/brands/getBrand.do?page=hebrew_national) (listing products). Exhibit D. All of Defendant’s Hebrew National products come in packaging with a label that states the products are “MADE WITH PREMIUM CUTS OF 100% KOSHER BEEF.” See e.g., Exhibit A.

55. All of Defendant's Hebrew National products come in packaging which contain the distinctive Triangle K symbol. See e.g., Exhibit A. See [http://www.conagrafoodscompany.com/consumer/brands/getBrand.do?page=Hebrew\\_national](http://www.conagrafoodscompany.com/consumer/brands/getBrand.do?page=Hebrew_national) (listing products and labels). Exhibit D.

56. Defendant itself defines what the Triangle K symbol it places on Hebrew National packages represents. Defendant's website represents to the public: "The Triangle K symbol is a trademark logo *that signifies 'kashruth' (kosher) as defined by the most stringent Jews who follow Orthodox Jewish Law*. It's a symbol of integrity, representing the most trusted and reliable name in strict rabbinical food certification and supervision. For more than half a century, Triangle K has been committed to making kosher food products available to people around the world." <http://www.hebrewnational.com/kosher-difference.jsp>. (Emphasis added). Exhibit B.

57. In doing so, Defendant intends that consumers, like Plaintiffs, rely on its kosher certification representations and believe they are purchasing only meat products that adhere to the strictest and most stringent standards of kosher food certification and supervision. Under "The Kosher Difference" section of its website, Defendant states:

**Kosher, Shmosher—What's the Difference?**

You've heard the word kosher, but did you know it literally means "fit to eat"? For more than 100 years, Hebrew National® has followed strict dietary law, using only specific cuts of beef that meet the highest standards for quality, cleanliness, and safety—so artificial flavors, colors, fillers, and by-products simply don't make the cut.

**Go Ahead: Make My Dog**

Hebrew National proudly serves products under the kosher supervision of the internationally recognized Triangle K organization. So, not only do Hebrew National franks have only the purest ingredients, but there is rabbinical supervision of the food preparation process and packaging equipment.

**What Is Triangle K Supervision?**

***The Triangle K symbol is a trademarked logo that signifies "kashruth" (kosher) as defined by the most stringent Jews who follow Orthodox Jewish Law. It's a symbol of integrity, representing the most trusted and***

***reliable name in strict rabbinical food certification and supervision.*** For more than half a century, Triangle K has been committed to making kosher food products available to people around the world.

## KASHRUTH FOOD AND INGREDIENTS

Because chemicals and food additives make it increasingly difficult to determine the kashruth status of a product, all ingredients and equipment must pass stringent supervision. These standards are so exacting that an entire formula can be prohibited if the supervising rabbi finds in it even a single non-kosher ingredient that makes up only one-tenth of 1% of the total.

## MANUFACTURING KOSHER

While there might be slight variations from plant to plant, the requirements for the manufacture of all kosher food are based on the same fundamental principle of Jewish Dietary Laws: only kosher ingredients processed in kosher equipment.

## INVESTIGATION OF MANUFACTURING FACILITIES

First, a special supervisor, the mashgiach, or an ordained Orthodox rabbi conducts an investigation of the plant and its procedures, as well as the ingredients, equipment, and processes used in the production of the product.

If the preliminary investigation indicates acceptable ingredients and procedures, the manufacturer is informed as to the nature of rabbinical supervision required for the food product for a specific period of time. Each individual food product must be inspected and certified separately, and the certification process is ongoing; each product must be inspected every year.

## KOSHER LAW ENFORCEMENT

In an effort to protect kosher-observant consumers, kosher laws have been incorporated into various state codes. For example, in New York, the Kosher Law Enforcement Division (KLED) is maintained to aid its large Jewish population and protect consumers from the mislabeling and misrepresentation of food products. A division of the state's Department of Agriculture and Markets, KLED's tasks include ensuring that businesses selling any item with kosher certification—particularly meat and poultry products—adhere to the state's labeling laws. ***Rabbi Rubin stated, "We feel the consumer is to be protected. If a market section says it is kosher, it should be kosher without the buyer having to carefully check the ingredients."***

The legal protection for kosher consumers was first introduced into American law in 1915. According to Kashrus, "New York has continued its leadership role by setting standards for the development of new ways to guard against fraud and misrepresentation in the sales and distribution of kosher food." KLED laws require that meat and meat parts (including poultry) be identified as kosher through the use of tags and plumbas. The



regulations also address the procedures to be followed with respect to the required washing of meat and the method of transportation.

<http://www.hebrewnational.com/kosher-difference.jsp>.<sup>3</sup> (Emphasis added) Exhibit B.

58. Defendant assures customers that ingredients in Hebrew National products “meet a higher standard.” In this regard, Defendant attempts to gain consumer’s trust by promoting that: “We answer to a higher authority.”

#### Overview

For discriminating consumers who love premium frankfurters and deli meats, Hebrew National kosher products provide a uniquely superior taste experience because they’re made with the best quality ingredients that meet a higher standard.

Hebrew National is a leading kosher meat brand. In addition to the brand’s best-known beef franks, made with 100% pure kosher beef, Hebrew National produces a wide variety of products, including salami, bologna, knockwurst, flavored sausages, corned beef, pastrami, and franks in a blanket.

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<sup>3</sup> Likewise, Triangle K’s website provides:

Kosher Food Supervision and Certification of Manufacturers, Products and Plants Around the World

The Triangle K symbol is a patented and trademarked logo *that signifies “kashrut” as defined by the most stringent of Orthodox Jewish law*. The organization offers its rabbinical supervision and certification on any ingredient or product that meets the strictest criteria of what makes such items kosher.

The food business has become a multi-billion dollar industry. Mass production and national and international distribution has brought new pressures to bear on company profits, production quantity, ingredient complexity and product diversification. And the reliability of kosher food certification has become a key figure in the company’s bottom line profit margin and customer satisfaction.

*Triangle K is a symbol of integrity representing the most trusted and reliable name in strict rabbinical food certification and supervision*. For over a half century we have been committed to making kosher food products available to Jewish people around the world in the widest variety of food products.

The commitment of this consortium of Orthodox Jewish rabbis is, above all else, rooted in their desire to see as wide a range of food products made available to kosher Jewish consumers worldwide.

To this end, Triangle K and Associates works side by side on an individual basis with each of their clients to create reasonable and cost effective certification and supervision programs.

<http://trianglek.org/index.html>. (Emphasis added) Exhibit E.

## History

Hebrew National began in 1905 when Isadore Pinckowitz, a Romanian butcher, began making kosher sausages and frankfurters in a sixth-floor walk-up on Manhattan's Lower East Side. The Hebrew National Kosher Sausage Factory, as the company was originally called, processed kosher meats for many New York delicatessens and grocery stores. The brand quickly became a favorite among the Jewish immigrant community and beyond.

Through the years, the brand has remained true to its original commitment to quality. It emphasized this commitment, and stayed true to its roots, when the tagline "We answer to a higher authority" was introduced in 1965. This focus helped it expand beyond an ethnic brand to a provider of premium, kosher-quality, delicious products.

[http://www.conagrafoodscompany.com/consumer/brands/getBrand.do?page=hebrew\\_national](http://www.conagrafoodscompany.com/consumer/brands/getBrand.do?page=hebrew_national) (Exhibit D). See also <http://www.hebrewnational.com/history/100-years.jsp> ("In 1965, Hebrew National hot dogs launched the "We Answer to a Higher Authority" ad campaign. The slogan quickly became a symbol for quality, appealing to Jews and non-Jews alike.")

59. Defendant is aware that consumers rely on "trusted seals, standards and symbols of higher quality" when making food product shopping decisions, and further recognizes that "kosher" is among the top eight trusted marks consumers look for when making food purchases. For example, in a News Release dated May 8, 2006, ConAgra stated as follows:

***To determine what they should consider "better food," many consumers are turning to trusted seals, standards and symbols of higher quality—indeed, more than nine in 10 Americans today consider trust marks to some degree when shopping.***

A new "What's In Store" survey of consumer shopping habits commissioned by ConAgra Foods confirms this trend:

- ***Fully 95 percent of Americans say they would consider quality symbols, seals & trust marks when food shopping.***
- Four times as many survey respondents said they are more likely to consider buying foods based on trust marks today than they were a year ago, compared to only a quarter as many who said less likely.
- ***While many symbols are present in the market today, the top eight trust marks consumers look for are: WHOLE GRAINS,***

HEART-HEALTHY, ZERO GRAMS TRANS-FAT, LOW  
SODIUM, NATURAL, DIETARY GUIDELINES, ORGANIC  
& **KOSHER**.

\* \* \*

In addition to Dietary Guideline standards, market research confirms growing interest among American food shoppers for certified organic and Kosher seals that have long traditions of their own, going back thousands of years in the case of Kosher.

\* \* \*

For many, Kosher is the New Organic

The Kosher trend is also gaining momentum as more people come to understand the quality connection associated with the Kosher seal - which certifies both high-quality ingredients and processes that meet strict Kosher standards. More than one in 10 Americans in the "What's In Store" survey recognized the Kosher quality seal as something they would consider when making quality food-purchasing decisions.

For retailers, the correlation between increased consumer interest in the Kosher category and the success of the organic movement is noteworthy. Many consumers find similar appeal for product attributes in both the *Kosher and organic categories, as motivations for choosing Kosher - such as quality and purity of ingredients, and adherence to strict standards during manufacturing - are closely akin to the driving motivations behind the strong organic trend. For consumers, Kosher and organic products satisfy the need for better, higher quality foods.*

Food products such as premium Hebrew National(R) Kosher Beef franks, made with 100 percent Kosher quality beef with no artificial colors, flavors or by-products, have shown unprecedented growth and demand in recent years. The Kosher frank continues to gain mainstream market acceptance, moving from a niche product to one with national appeal. ConAgra Foods intends to position the brand to further accelerate the growing demand for Hebrew National franks, enhancing in-store marketing efforts to more clearly identify and highlight the benefits of Kosher.

ConAgra Foods, News Release, ConAgra Foods Survey – Seals & Standards of Quality Give Grocery Shoppers Confidence (May 8, 2006), [http://investor.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle\\_pf&ID=1008637&highlight=](http://investor.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle_pf&ID=1008637&highlight=) (emphasis added, footnotes omitted). Exhibit F.

60. Defendant has conducted and/or commissioned consumer surveys which confirm that consumers trust and rely on manufacturers' kosher food labels and certifications and do not want any surprises when purchasing such foods. In effort to gain the trust of its consumers, Defendant emphasizes the importance and exactness of

the strict guidelines kosher food manufacturers must follow in order to provide the quality assurance consumers seek when purchasing kosher products:

**"Hot dogs remain the top choice as summer fun food for active kids, but parents are more concerned than ever about the quality and purity of ingredients," says Tom Bartley, director of Marketing, Hebrew National. "Parents don't want any 'mystery meat' surprise inside their child's food. They don't want any ifs, ands, or butts. They want premium quality, all beef and no surprises, which is what they get with kosher. And that's why kosher foods are gaining mainstream consumer acceptance. Foods like Hebrew National's 100 percent kosher beef franks give parents quality assurance and purity of ingredients they can trust, similar to what they might find in organic foods."**

***Today, more than nine out of 10 Americans look to 'trust marks' such as kosher and organic to help them determine their best food choice when shopping. In fact, with its long history of purity, cleanliness and higher quality, kosher is now one of the top eight trust marks Americans consider when shopping for quality foods. The kosher mark on Hebrew National packaging—a triangle with a "K" in the center—is a symbol of quality, freshness and purity of ingredients the brand has been delivering to families for more than 100 years.***

#### The Kosher Difference

The Hebrew National survey gets to the meat of what Americans think about kosher and hot dogs, including:

- Changing times, changing to kosher: Among the reasons some Americans are choosing kosher now versus five years ago are the purity of kosher food (95 percent), higher-quality ingredients (92 percent) and food safety (90 percent). Great taste was noted by 80 percent of those respondents.
- Best tasting dog attributes: Seventy-nine percent say quality, 72 percent say all-beef, 68 percent say juiciness.
- Kosher tops the list: Eighty-three percent of those who purchase kosher products buy kosher hot dogs, making it the top kosher food choice among kosher users.

#### Appeal of Kosher Foods Grows

The food industry has responded to growing demand for kosher in a big way. Kosher food has blossomed to a \$9.4 billion-a-year industry whose sales climb at an annual rate of 15 percent. There are now more than 86,000 kosher-certified products.

***Part of kosher's appeal is strict guidelines kosher manufacturers must follow to ensure cleanliness, purity of ingredients and safety. Kosher food preparation is supervised by a rabbi and includes examination of ingredients as well as processing and packaging equipment. These standards are so rigorous that a food can be barred from receiving kosher***

*certification if even a single non-kosher ingredient that makes up only one-tenth of one percent of the total is found.*

[http://media.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle\\_pf&ID=1008355&highlight=F](http://media.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle_pf&ID=1008355&highlight=F) (Emphasis added) Exhibit J.

The new campaign was bolstered by a recent national survey, commissioned by ConAgra Foods, that found consumers consider “kosher” one of the top eight seals, standards and symbols they consider as signs of quality foods. ... choice, especially when it comes to meat. *‘Kosher quality is increasingly relevant for all Americans. For moms, especially, kosher is becoming the ‘new organic,’ which they can trust for purity, freshness and quality ingredients,’ says Tom Bartley, marketing director, Hebrew National.* “Our summer campaign will help remind consumers Hebrew National Franks are free of artificial colors, flavors and by-products, containing only choice cuts of 100 percent kosher-quality beef--with no ifs, ands or butts.

[http://media.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle\\_pf&ID=1008510&highlight=](http://media.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle_pf&ID=1008510&highlight=) . (Emphasis added) Exhibit I.

61. Defendant intends consumers (including class members here) to rely on and trust its kosher representations and kosher certifications. *Id.* See also, <http://media.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle&ID=1148022&highlight=>. (“You don’t have to guess what’s inside a kosher hot dog. Hebrew National hot dogs are made with premium cuts of 100 percent kosher beef and have no artificial flavors, colors, fillers or by-products with the kosher guarantee...”) Exhibit G. See also, [http://www.conagrafoodservice.com/products\\_and\\_brands/franks.do](http://www.conagrafoodservice.com/products_and_brands/franks.do) (“Premium Taste. 100% Kosher Beef. Today, more patrons are concerned about quality ingredients and the purity of the foods they eat. Hebrew National® fits the bill. A kosher frank of uncompromising quality, Hebrew National is made with 100% butcher-quality cuts of beef and contains no fillers, artificial flavors, colors or by-products. For over 100 years, Hebrew National has adhered to the highest standards of quality, cleanliness and safety for a difference you can taste. Hebrew National offers a wide variety of products from franks to deli meats and lunchmeats.”) Exhibit H.

62. Through the foregoing statements, made uniformly to the public on its website, Defendant confirms: (1.) that it represents that its Hebrew National products are

kosher “as defined by the most stringent Jews who follow Orthodox Jewish Law;” (2.) that its Hebrew National products meet the highest and strictest standards of kosher certification; (3.) that Defendant intends consumers of Hebrew National products to rely on it to deliver only 100% kosher products which adhere to the strictest and most stringent standards of kosher certification and supervision; (4.) that it expects consumers to rely on the kosher representations and certification marks placed on food labels so that they don’t have to carefully check the ingredients themselves.

63. Defendant’s conduct is likely to deceive reasonable consumers.

64. The “100% Kosher Beef” label appears uniformly on every package of Defendant’s Hebrew National products, as that statement is part of Hebrew National’s logo. See Exhibit A. The “100% Kosher Beef” label is a prominent part of Defendant’s Hebrew National logo as it is written with bright blue lettering and in all capital letters. The Triangle K certification mark also appears uniformly on every package of Defendant’s Hebrew National products. See, Exhibit A. The Hebrew National logo and Triangle K certification mark that appears on every package of Hebrew National products are intended to inform consumers that any Hebrew National product purchased is 100% kosher “as defined by the most stringent Jews who follow Orthodox Jewish Law.”

65. By consistently and systematically marketing and advertising Hebrew National products as 100% kosher, along with the Triangle K mark, throughout the Class Period, Defendant ensured that all consumers purchasing Hebrew National products would be exposed to Defendant’s claim that all products purchased were 100% kosher “as defined by the most stringent Jews who follow Orthodox Jewish Law.” As Defendant’s own surveys and studies show, over 90% of its consumers trust and rely on such kosher “trust marks” when making food purchasing decisions. See, Exhibit J (“Today, more than nine out of 10 Americans look to ‘trust marks’ such as kosher and organic to help them determine their best food choice when shopping.”)

66. The representation that all Hebrew National products are 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish Law*" is material to the average consumer that purchases such products, which is why Defendant places the kosher label and Triangle K certification mark prominently on the front of all of its Hebrew National products. The materiality of the labeling misrepresentations alleged herein is determined by an objective reasonableness standard, not a subjective standard. Reasonable consumers purchasing Hebrew National products would attach importance to Defendant's representation on Hebrew National product packages that the contents were 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law.*" Reasonable consumers making a decision as to whether to purchase Hebrew National products or another similar product would want to know whether the product chosen was actually 100% kosher or not before completing the purchase and parting with their money. See, Exhibit J ("*Today, more than nine out of 10 Americans look to 'trust marks' such as kosher and organic to help them determine their best food choice when shopping.*"). A product not labeled as 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law,*" is less likely to be purchased by consumers who buy kosher food and less likely to command a premium price (as charged here). As Defendant quotes on its website: "We feel the consumer is to be protected. If a market section says it is kosher, it should be kosher without the buyer having to carefully check the ingredients." Exhibit B. Defendant's conduct of labeling and marketing Hebrew National products as 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law,*" when they are not, creates confusion and misunderstanding in reasonable consumers seeking kosher food. As such, Defendant's conduct is misleading and deceptive.

**C. Defendant's Hebrew National Products Fail To Meet Kosher Standards of Jewish Law.**

**1. Kosher Meat Process**

67. The term "kosher" or "kashrut" is derived from the Hebrew word "Kashrus." Kashrus is the body of Jewish law dealing with what foods members of the Jewish religion can and cannot eat and how food must be prepared and eaten. Kashrus comes from the Hebrew root Kaf-Shin-Reish, meaning "clean, fit, proper, or correct." This is the same root as the more commonly known word "kosher", which describes food that conforms to the regulations of the Jewish Halakhic law framework.<sup>4</sup>

68. Traditionally, members of the Jewish religion followed the kosher standards to ensure consumption of safe and sanitary meats. However, today the exacting attention to preparation and preferred flavors of kosher meat explain why kosher products are purchased for their perceived superior quality and taste and not just for religious reasons.<sup>5</sup>

69. People of all religions purchase kosher products for their perceived superior quality and taste. In turn, kosher products are sold at a premium price compared to comparable non-kosher products.

70. Kosher laws derive from a few straightforward rules. For food to be kosher it must: (i) come from a proper source – for example only certain sources of meat and parts of the animal, (ii) be slaughtered, inspected and prepared in a specific manner – for example, animals must be slaughtered in a particular manner deemed more humane, and (iii) not be combined improperly with food that might otherwise be considered kosher. <http://www.hebrewnational.com/kosher-difference.jsp>

71. The Triangle K website provides, in relevant part:

<sup>4</sup> See <http://www.hebrewnational.com/kosher-difference.jsp>.

<sup>5</sup> See <http://www.hebrewnational.com/history/100-years.jsp>; <http://www.hebrewnational.com/history/only-in-america.jsp>; <http://www.hebrewnational.com/kosher-difference.jsp>



## Kosher Defined

Kosher means 'proper', referring to foods which are acceptable to be eaten by those of the Jewish faith who practice and observe certain dietary laws as prescribed in the Torah, the Old Testament. Such foods and food product derivative are said to fall under the laws of Kashrut. These laws come primarily from the Bible, with additional Rabbinical decrees which have been handed down through generations of time. Our purpose here however, is only to introduce the novice to a very general overview of these laws. What follows, are some of the basic laws of what is and is not considered to be kosher in the strictest sense of the term. This is only an overview. Particular questions regarding any foods should be discussed with Rabbi Rabbag or an associate of the Triangle K [Symbol], rabbinical scholars thoroughly knowledgeable in all the laws of Kashrut.

**ANIMALS:** Only the meat of certain animals are kosher. These animals can be identified as having split hooves and chewing their cud - animals such as cows and sheep. There are many kosher animals such as deer, buffalo and others, however ALL animals must be slaughtered in a very specific ritualistic manner to be certified as kosher. And only a trained professional called a "shochet" may perform the slaughter.

<http://trianglek.org/kosherdefined.html>. Exhibit E.

72. In order for meat from a mammal to be kosher, certain rules apply. Those set forth in Paragraphs 73 to 93 below, describe the basic requirements for meat to be certified as 100% kosher *"as defined by the most stringent Jews who follow Orthodox Jewish Law."*

73. **Certain animals cannot be eaten at all.** This restriction includes the flesh, organs, eggs and milk of forbidden animals. In order for meat from an animal to be kosher, the animal must have both split hooves and chew its cud – cattle and sheep are the primary mammals used in the koshering process in the United States. This complaint does not allege that this rule was broken by Defendant.

74. **Of the animals that may be eaten, they must be slaughtered in a specific manner.** As described below, the animals whose meat is used by Defendant in Hebrew National products is not consistently slaughtered in the proscribed manner required to be considered kosher. Hence, the representation on Hebrew National products that they are 100% kosher *"as defined by the most stringent Jews who follow Orthodox Jewish Law"* is inaccurate and misleading.

75. **External Inspection of the animal before the slaughter.** The first step in certifying meat as kosher begins with an external inspection of the animals to be slaughtered. The inspection of mammals before the slaughter is handled by trained kosher inspectors who are to stringently control the process of kosher meat preparation from the selection process through shipping of the meat.

76. Only healthy and clean animals can be slaughtered. Meat from sick animals, animals that were killed by other animals or animals that have died of natural causes cannot be marked kosher. Animals cannot have any missing limbs, broken bones or signs of illness. Further, unclean animals (i.e. those with dirty hides covered with mud, sand or stones) cannot be slaughtered and considered kosher. Therefore, once mammals, cattle for example, arrive at the meat processing plant, inspectors thoroughly examine the exterior of the mammal for cuts, bruises, growths, and overall cleanliness and health of the mammal. The animal must have no disease or flaws in the organs at the time of slaughter. If any defects in the mammal are discovered it must be rejected and its meat cannot be marked kosher. If the inspector does not find any defects and the mammal is considered healthy it will be slaughtered in a ritually proper manner.

77. The animals whose meat is used by Defendant in Hebrew National products is not consistently inspected in the manner required to be considered kosher. Unclean and unhealthy animals are often selected for kosher slaughter. When dirt or growths are on the animal's neck the mandatory clean cut necessary for kosher slaughter (and ultimate certification) cannot be made. Meat from unclean animals (i.e. those with dirty hides covered with mud, sand or stones) or animals with physical defects is improperly marked as kosher. This issue is more pronounced in winter and fall months when the animals tend to arrive at the plant covered in more dirt than would be the case in late spring/summer. Dirt on the animals dulls the knives or causes nicks during cutting and the slaughters cannot make the mandatory clean cut.

78. Pressure is put on the employees inspecting and slaughtering the cows to maximize kosher meat production by slaughtering unclean cows. Further, certain quotas are applied at the AFG facilities to ensure that a certain predetermined amount of the total cattle population (approx. 70-75%) brought to the AFG facility for slaughter produces kosher meat to provide Defendant. By setting artificial, pre-determined quotas, the kosher inspection process becomes defective and unreliable. Meat from cows that should not qualify for kosher certification ends up being marked kosher.

79. AER employees who object and/or refuse to slaughter dirty cows have been reprimanded and subject to retaliatory measures such as threats to transfer them to other positions, to work in other AFG facilities in other states, or termination. AER employees who failed to comply with the artificial quotas were also subject to such reprimand. Other AER employees objecting to the slaughter of dirty cows have been offered financial incentives "to look the other way" and not say anything about the violation of kosher laws. Hence, by reason of the foregoing, the representation on Hebrew National products that they are 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish Law*" is inaccurate and misleading.

80. **Method of the Slaughter.** Kosher slaughtering is known as shechitah, and the person who is to perform the slaughtering is called a shochet. The method of the kosher slaughter must be a quick, deep, stroke across the throat with a perfectly sharp blade with no nicks or unevenness. The method of kosher slaughtering was developed to ensure that minimal pain and suffering is caused to the animal. To ensure the knives are sharp, the shochet is trained to run his hand a requisite number of times along the blade after each slaughter to examine the sharpness of the blade and ensure that it is free of nicks. Additionally the blade used must be washed after each slaughter. This process of inspecting the knife's blade and washing it must be done after each slaughter. If done properly, the slaughtering method is painless, causes unconsciousness within a few seconds and is widely recognized as the most humane method of slaughter possible.

81. The animals whose meat is used by Defendant in Hebrew National products is not consistently slaughtered in the foregoing manner, as required to be considered kosher. For instance, the knives used often have nicks and due to time, quota pressures and labor shortage pressures are often not inspected properly. Further, unclean animals are slaughtered preventing the mandatory clean cut. Additionally, to speed the process, animals can be killed by using an air compressor gun with a hollow bolt piston immediately after the animal's throat is cut.<sup>6</sup> Hence, the representation on Hebrew National products that they are 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish Law*" is inaccurate and misleading.

82. **Post-slaughter inspection of the animal's organs.** After the mammal is slaughtered the carcass and organs must be inspected again to confirm that the mammal has no medical condition or defect that would have caused the mammal to die of its own accord within a year, which would make the meat non-kosher.

83. The mammals' lungs, in particular, must be checked individually for any tears, perforations or imperfections. If any imperfections are discovered postmortem, the meat must be considered non-kosher.

84. To detect imperfections and perforations, lung checkers working at the AFG facilities supplying Defendant kosher meat are supposed to take the lungs out of the

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<sup>6</sup> See generally Luigi Viola, M.D., et al. "Suicide with a Butcher's Bolt," J. Forensic Sci., May 2004, Vol. 49, No. 3 ("The captive bolt pistol is an atypical firearm exclusively produced and used for butchery of breeding animals...") and WIKIPEDIA, "Captive Bolt Pistol", available online at <[http://en.wikipedia.org/wiki/Captive\\_bolt\\_pistol](http://en.wikipedia.org/wiki/Captive_bolt_pistol)> ("A captive bolt pistol (also variously known as a cattle gun, stunbolt gun, bolt gun, or stunner) is a device used for stunning animals prior to slaughter. The principle behind captive bolt stunning is a forceful strike on the forehead using a bolt to induce unconsciousness. The bolt may or may not destroy part of the brain. The bolt itself is a heavy rod made of non-rusting alloys, such as stainless steel. It is held in position inside the barrel of the stunner by means of rubber washers. The bolt is usually not visible in a stunner in good condition. The bolt is actuated by a trigger pull and is propelled forward by compressed air or by the discharge of a blank round ignited by a firing pin. After striking a shallow but forceful blow on the forehead of the animal, spring tension causes the bolt to recoil back into the barrel. The use of penetrating captive bolts has been discontinued in the commercial arena. The captive bolt pistol was invented in 1903 by Dr. Hugo Heiss, former director of a slaughterhouse in Straubing, Germany.").

cow carcass, fill them with air using an air compressor and inspect the appearance of the lungs. Then the lungs are to be filled or submerged in water to see if bubbles come up.

85. The organs of animals whose meat is used by Defendant in Hebrew National products is not consistently inspected after the slaughter in the foregoing manner, as required to be considered kosher. The required procedure of filling the lungs with air was rarely followed at AFG facilities supplying Defendant kosher meat. This was only done on rare occasions, such as during plant inspections. Hence, by reason of the foregoing the representation on Hebrew National products that they are 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish Law*" is inaccurate and misleading.

86. **Removal of blood and washing.** To be kosher the blood must be promptly removed from the flesh of kosher animals. The first step in this process occurs at the time of slaughter. As discussed above, the method of slaughter allows for the rapid draining of most of the animal's blood. After the slaughtering of the mammal, the remaining blood then must be removed, either by broiling or soaking and salting. For the meat to be considered kosher, this process must be complete within 72 hours after slaughter and before the meat is frozen or ground.

87. Removing the excess blood by soaking and salting is a detailed process. First the meat must go through a preliminary washing in order to remove all visible blood. Second the meat must go through a soaking – immersion of the meat in room temperature water for at least half an hour. After soaking the meat must be washed again to assure all visible blood is removed. Then both sides of the meat must be thoroughly salted. To be kosher, meat must not be consumed unless it has been salted, which is the final step in the kosher processing of meat. The meat must be washed at least once every 72 hours before the final salting to remain kosher. If the meat is cooked in any manner before the salting process occurs, it renders the meat non-kosher. After being salted the

piece of meat must rest for at least one hour. After the meat has lain in salt for the adequate time, the meat must be washed three separate times to remove all excess salt.

88. The blood of animals whose meat is used by Defendant in Hebrew National products is not consistently drained of blood and adequately washed after the slaughter in the foregoing manner, as required to be considered kosher. Meat processed at the AFG facilities is often inadequately washed, or if washed, washed with hot water which cooks part of the meat, rendering it non-kosher. Further meat often sits in the loading area or in large transport cartons (called combos) for more than three days without being adequately washed. Often only the top portion of the meat held in the large (approx. 2000 pound) combos is sprayed with water, preventing all meat in the combo from being thoroughly and adequately washed within the three day window. Hence, by reason of the foregoing, the representation on Hebrew National products that they are 100% kosher *"as defined by the most stringent Jews who follow Orthodox Jewish Law"* is inaccurate and misleading.

89. **Forbidden fats and nerves.** There are portions of otherwise kosher mammals that are forbidden to be marked as kosher. This includes the sciatic nerve and its attached blood vessels, some forbidden stomach fats, a fat known as cholel which surround the vital organs and liver, and also as discussed the blood. Because the sciatic nerve is difficult to remove and the greater number of blood vessel in the hind quarter of many animals, kosher butchers only use the top half of the mammal. The back / hind portion of the cow cannot be used and marked kosher unless the sciatic nerve is removed - a costly and time consuming process not undertaken by kosher meat processors in the United States, including AER and Defendant. Defendant depicts this on its website through a diagram showing that only the front half of the cow is used for kosher meat. <http://www.hebrewnational.com/kosher-difference.jsp>. Exhibit B.

90. **Persons performing the slaughter.** To be kosher, the persons performing the animal's slaughter must be Jewish. Further, kosher slaughterers must be certified by a Rabbi stating that the individual is sufficiently trained and proficient in kosher

slaughtering or checking processes. The animals whose meat is used by Defendant in Hebrew National products are not consistently slaughtered in accordance with these rules, as required to be considered kosher. For instance, certain employees have observed AER managers placing new names of employees on old certificates that had previously been issued to other slaughterers. Hence, by reason of the foregoing, the representation on Hebrew National products that they are 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish Law*" is inaccurate and misleading.

91. **Segregation of Kosher meat.** To retain its kosher status, kosher meat must be segregated and cannot be mixed with non-kosher meat. In this regard, kosher meat must be properly tagged, so it can be identified at all times. This has not been consistently done with the meat Defendant uses in Hebrew National products. Hence, by reason of the foregoing the representation on Hebrew National products that they are 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish Law*" is inaccurate and misleading.

92. Many of the transgressions noted above which confirm that meat at issue was not being slaughtered, inspected and processed in accordance with kosher laws were reported to Rabbi Aryeh Ralberg, Rabbi Moshe Fyazakov and AER managers by certain AER employees, working at the AFG plants (Mashigiashs) during the relevant time period.

93. Further, because of these transgressions and the unreliability of the kosher certifications on meat regularly processed at AFG facilities for sale to Defendant, AER workers at certain AFG facilities, including the South St. Paul, Minnesota facility, who actually kept kosher, would not consume Hebrew National products. Instead, workers were permitted to have specific cows slaughtered, marked and segregated in a more exact fashion for their families' personal consumption. The plant offered these workers the opportunity to purchase this meat. Thus, specifically selected cows would be slaughtered and checked in strict accordance with all kosher laws, unlike the cows that were routinely

slaughtered for sale to Defendant and use in Hebrew National products. That meat would be then specially marked and segregated so AER's observant employees would know it was actually kosher meat. Such practices show that the meat slaughtered and processed according to less stringent standards and delivered to Defendant, cannot be 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish Law.*" In truth, the most stringent standards were only applied on the more limited portions of meat slaughtered for the personal use of these observant AER employees and not employed on the meat ultimately used in Hebrew National products.

## **VI. INJURY AND DAMAGE**

94. Each Plaintiff and each class member purchased Hebrew National products during the Class period that were packaged and labeled as 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish Law,*" when they were not. The statements and kosher certification symbols made by Defendant on each package of Hebrew National products purchased were false because the meat used in the products failed to strictly comply with the kosher rules, as described above. Each Plaintiff and each class member saw the statements and symbols stating that the Hebrew National products were 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish Law*" both at the time of purchase and when the products were used. The statements and symbols are displayed prominently on the front of each Hebrew National product package and form part of the product logo so that any purchaser could not avoid seeing it. Exhibit A. Defendant's packaging and kosher certification symbols stating that the Hebrew National products were 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish Law*" have remained constant throughout the Class period and have not changed in any material way. The statements and symbols are uniform on each Hebrew National package. The statements and symbols were material to Plaintiffs and the class because reasonable consumers would want to know that a product met the standard the manufacturer represented it to be and which justified the premium price



being charged before paying for the product. The statements and symbols that a product 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish Law,*" means something to reasonable consumers purchasing Hebrew National products, otherwise Defendant would not use it. Defendant's surveys show that over 90% of consumers trust and rely on "trustmarks" such as "kosher" when making food purchasing decisions. Defendant's conduct is likely to deceive reasonable consumers.

95. Plaintiffs and the members of the Class suffered injury, incurred damage and financial loss as a result of Defendant's conduct complained of herein. Among other things, Plaintiffs and the Class paid a premium price for the Hebrew National products purchased believing them to be 100% strictly kosher, when they weren't. Like other class members, had Plaintiffs known that the product purchased did not meet the represented standard they would not have paid the premium price that they paid for it, but less, and/or purchased a substitute product that was actually kosher. By failing to provide kosher products, but a lesser product that should not have been labeled as 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law*" Defendant injured Plaintiff and the members of the Class, caused them damage and caused them to incur out of pocket financial loss.

## V. CLASS ACTION ALLEGATIONS

96. This action is brought as a class action pursuant to Minn. R. Civ. P. 23 and any other applicable laws or rules of civil procedure.

97. **Class Definition:** The Class sought to be represented in this action is defined as follows:

All persons in the United States who purchased any individual package(s) of Defendant's Hebrew National meat products during the Class Period (hereinafter, the "Class").

The Class Period dates back the length of the longest applicable statute of limitations for any claim asserted, from the date this action was originally filed and continues through the present and the date of judgment. The limitations period for claims

under Counts II and III is four years from the date this action was originally filed and continues through the present and the date of judgment. Excluded from the Class are: (a) any officers, directors or employees of the Defendant; (b) any judge assigned to hear this case (or spouse or family member of any assigned judge); (c) any employee of the Court; (d) any juror selected to hear this case; and, (e) any of the legal counsel for any party. Alternatively, to the extent necessary, the Court can define subclasses consisting of residents of each state who purchased any of Defendant's Hebrew National meat products during the applicable Class Period for that state (i.e, the length of the longest applicable statute of limitations for any claim asserted). The limitations period for claims under Count IV is the length of the statute of limitations for each consumer protection statute cited, from the date this action was originally filed and continues through the present and the date of judgment.

98. **Numerosity of the Class.** Plaintiffs and members of the Class are so numerous that joinder of all members individually, in one action or otherwise, is impractical based on Defendant's national marketing and advertising campaigns that target consumers across the country. Tens of thousands of consumers purchased Defendant's Hebrew National meat products during the class period. Defendant's sales of Hebrew National products are reported in its 10K filings with the SEC, its annual reports, and other documents. Those reports show that the total sales of Hebrew National products during the Class period were so great that joinder of each purchaser's claim would be impractical.

99. **Common Questions of Fact and Law Exist and Predominate over Individual Issues.** There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. These common questions of law and fact exist as to all members of the class and predominate over the questions affecting only individual members of the class. These common legal and factual questions include without limitation:

- a. Whether the meat packaged and sold in Hebrew National products is actually 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law*?"
- b. Whether Defendant's conduct marketing, labeling and selling Hebrew National products as 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law*" had the tendency to mislead reasonable consumers?
- c. Whether reasonable consumers would consider the statements on Hebrew National packages that the products were actually 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law*" to be an important factor when making a purchasing decision?
- d. Whether Defendant violated Nebraska Revised Statute Section 59-1602 et seq.?
- e. Whether Defendant violated Nebraska Revised Statute Section 87-302 et seq.?
- f. Whether Defendant violated other applicable state consumer protection and unfair and deceptive trade practice laws, cited in Count IV?;
- g. Whether Defendant breached its duties to the class to properly label food products and was negligent?;
- h. Whether Plaintiffs and Class Members sustained injury resulting from Defendant's conduct and, if so, the proper measure of damages, restitution, equitable, or other relief, and the amount and nature of such relief.

100. Applying Nebraska law to the nationwide class comports with due process as Nebraska has a significant contact or significant aggregation of contacts to the claims asserted by each member of the plaintiff class, contacts creating state interests, in order to ensure that choice of Nebraska law is not arbitrary or unfair. Nebraska has a significant interest in preventing deceptive and misleading conduct from occurring in Nebraska and

emanating to other states. Defendant has had significant contact or at least a significant aggregation of contacts with Nebraska relating to the claims of this case by maintaining corporate headquarters in Nebraska during the class period and selling the allegedly misrepresented / misbranded products in Nebraska. The decisions to mislabel Hebrew National products was made, approved or endorsed by Defendant's executives and managers, in and from their headquarters Nebraska. Those decisions and deceptive practices, emanated from Nebraska, to other states, harming all class members.

101. Alternatively, the Court can create subclasses consisting of all persons in the Class who purchased Hebrew National products in each state at any time during the Class Period. As such, Count IV is pled in the alternative to Counts II and III.

102. **Typicality.** Plaintiffs' claims are typical of the claims of members of the Class, as the claims of Plaintiff and all Class Members arise from Defendant's wrongful conduct, as alleged more fully herein. Like all other class members, Plaintiffs purchased Hebrew National products during the class period containing the same labels. Each product sold to all class members was uniformly depicted that it was 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law.*" Plaintiffs assert common legal claims on behalf of the entire Class based on the inaccuracy of those common labels and packages. The relief sought is common, unitary, and class-wide in nature.

103. **Adequacy of Representation.** The named Plaintiffs are adequate representatives of the Class on whose behalf this action is prosecuted. Plaintiffs' interests do not conflict with the interests of the Class. Plaintiffs have retained competent counsel with experience in class action litigation and will prosecute this action vigorously. As a result, Plaintiffs can fairly and adequately represent and protect the interests of the class in that there are no conflicts between his interests and the interests of other class members, this action is not collusive, the named Plaintiffs and their counsel have the

necessary resources to litigate this action, and counsel has the experience and ability required to prosecute this case as a class action.

104. **Predominance of Common Questions.** The proposed Class has a well defined community of interest in the questions of fact and law to be litigated. The common questions of law and fact are predominant with respect to the liability issues, relief issues and anticipated affirmative defenses. The named Plaintiffs have claims typical of the class members. Plaintiffs and all class members purchased Hebrew National products with the same representations, labels and "trust marks." The same meat processing and kosher certification services used on one class member's Hebrew National product were used on other class members' Hebrew National products. No class member has any ability to detect the propriety of these services and accuracy of the kosher certifications made. All Class Members share a common interest in receiving a cash remedy as compensation for Defendant's wrongful conduct and stopping the unreliable kosher certification services described above.

105. The question of whether Defendant materially misrepresented that their Hebrew National products were 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law*" is common to all class members and predominates over all class members' claims. The applicable standard is objective not subjective. Materiality is established if a reasonable person would attach importance to its existence or non existence in determining his/her choice of action in the transaction in question.

106. Individual reliance is not an element of any claim asserted herein. Alternatively, to the extent reliance is found to be an element of any claim asserted herein, plaintiffs will provide sufficient, uniform evidence to satisfy any such burden, through common, circumstantial evidence, including consumer surveys, consumer reaction tests market research, and/or expert testimony. The surveys referenced above, which Defendant conducted, *inter alia*, show that Hebrew National consumers in the Class rely on kosher "trust marks" in making their food purchasing decisions and expect

them to be truthful. ("Today, more than nine out of ten Americans look to "trust marks" such as kosher and organic to help them determine their best food choice when shopping.") Exhibit J.

107. **Superiority of Class Adjudication.** The certification of a class in this action is superior to the litigation of a multitude of cases by members of the putative class. Class adjudication will conserve judicial resources and will avoid the possibility of inconsistent rulings. Moreover, there are class members who are unlikely to join or bring an action due to, among other reasons, their reluctance to sue Defendant and/or their inability to afford a separate action. Equity dictates that all persons who stand to benefit from the relief sought herein should be subject to the lawsuit and hence subject to an order spreading the costs of the litigation among the Class Members in relationship to the benefits received. The damages, restitution and other potential recovery for each individual member of the Class are modest, relative to the substantial burden and expense of individual prosecution of these claims. Given the amount of the individual class members' claims, few, if any, Class Members could afford to seek legal redress individually for the wrongs complained of herein. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

108. In the alternative, the above-referenced class may be certified because:

- a. The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual class members' claims which would establish incompatible standards of conduct for Defendant;

- b. The prosecution of separate actions by individual members of the Class would create a risk of adjudications which would as a practical matter be dispositive of the interests of other members of the class who are not parties to the adjudications, or which would substantially impair or impede the ability of other class members to protect their interests; and,
- c. Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final and injunctive relief with respect to the Class.

### **COUNT I**

#### **NEGLIGENCE**

##### **(on Behalf of the Class)**

109. Plaintiffs fully incorporate by reference herein all of the above paragraphs, as though fully set forth herein.

110. As demonstrated above, Defendant purchases meat that has been certified as “kosher” by the Triangle K organization. Triangle K certifies the meat that is processed and prepared by AER employees at AFG facilities and ultimately used by Defendant in the Hebrew National products sold to the class. Defendant adopts Triangle K’s kosher certifications and represents those certifications as its own on the label of each Hebrew National product sold, in its advertisements, website and other representations to the public. In truth, the meat does not adhere to the kosher standards and is therefore improperly, certified and labeled as 100% kosher according to the strictest standards of kashrut. As such, Defendant is using improperly certified kosher meat in its Hebrew National products.

111. Defendant is not compelled to sell Hebrew National products in this way. Defendant is not compelled to contract with AER, AFG or Triangle K, or accept those parties’ certifications. Defendant independently makes the decision to sell, market and label Hebrew National products to the public in this way in order to maximize its profits.

112. Defendant owed a duty to the class to take care to properly and accurately label the Hebrew National food products it sold. Defendant knew or should have known that consumers of food marked as kosher have special needs, concerns and desires and hence, preciseness and exactness in any kosher slaughtering and certification was required, otherwise those consumers would be injured and damaged.

113. Defendant has conducted and/or commissioned consumer surveys which confirm that consumers trust and rely on manufacturers' kosher food labels and certifications and do not want any surprises when purchasing such foods. In an effort to gain the trust of its consumers, Defendant emphasizes the importance and exactness of the strict guidelines kosher food manufacturers must follow in order to provide the quality assurance consumers seek when purchasing kosher products. These surveys, among other things, made it reasonably foreseeable to Defendant that consumers in the Class would be injured and damaged if the Hebrew National products were mislabeled as strictly 100% kosher.

114. Defendant knew or should have been aware of the routine violations of kosher law that occur within AFG facilities. Reports of violations in the processing of kosher meat were made to Defendant and/or its agents (Triangle K). However, Defendant failed to monitor, supervise and correct these practices, and hence, continuously used that meat in Hebrew National products, and continuously represented every Hebrew National product as 100% kosher *"as defined by the most stringent Jews who follow Orthodox Jewish law."*

115. The utmost care should have been taken in selecting, supervising and retaining any entity (such as AER and Triangle K), participating in the kosher certification process. Defendant failed to exercise this due care.

116. Defendant knew that consumers relied on its kosher certifications and trust marks. Defendant knew that consumers of kosher food had no ability to check ingredients or otherwise check the propriety of the slaughtering and manufacturing



process on their own, and hence would be relying on Defendant to only label and sell foods as 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law*," if the product actually satisfied that standard.

117. It was reasonably foreseeable that if Defendant failed to take care to ensure all meat labeled and sold as 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law*," in fact satisfied that standard and had accurate labeling, consumers would be injured and incur damage. Among other things, the surveys Defendant conducted or commissioned informed it that Hebrew National consumers rely on food manufacture's "trust marks," such as "kosher," when making food purchasing decisions.

118. Defendant failed to take reasonable care to ensure that it accurately labeled the Hebrew National products it sold.

119. Defendant's labeling and advertising its Hebrew National products as 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law*" robbed consumers of the ability to make an informed decision because the packaging of Hebrew National gives the false impression that the product adheres to that standard. Defendant knew that consumers buying its products had no ability to independently confirm and verify whether the Hebrew National products purchased actually met the stated standard.

120. Reasonable consumers, like Plaintiffs, would have no reason to demand products that have been processed correctly according to the kosher dietary standards, as Defendant's labeling and advertising of its Hebrew National products represents to consumers that they are getting 100% kosher products processed according to the most stringent and strictest kosher dietary standards.

121. Defendant's advertising, marketing, and labeling its Hebrew National products as 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law*" is false and misleading, as the meat purchased by Defendant and eventually used in the producing of its Hebrew National products does not adhere to that standards.

122. Plaintiffs, like any reasonable consumer, were unaware of the fact that Hebrew National products were not 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law.*" Reasonable consumers are not in an adequate position to supervise the kosher dietary standards followed at the facilities that slaughter, process and certify kosher foods. Reasonable consumers rely on companies like Defendant to be honest in their manufacturing, labeling, advertising, and packaging. This is particularly true when Defendant's advertisements and packages brand Hebrew National products as 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law.*"

123. The mislabeling representations described herein were material. The materiality of the mislabeling representation as alleged herein is determined by an objective reasonableness standard, not a subjective standard. Reasonable consumers purchasing Hebrew National products would attach importance to Defendant's representation that Hebrew National products are 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law.*" Reasonable consumers making a decision whether to purchase Hebrew National products or another product would want to know whether the product chosen was actually "kosher" and met the stated standard or not before completing the purchase and parting with their money. Such certifications are material even to consumers who do not regularly keep kosher as the products still carry a premium price that they would not otherwise demand but for the strict 100% kosher certification provided on each Hebrew National product label. If Defendant did not believe it were material to its customers, they would have never bothered to put any kosher certification on the food labels.

124. It was reasonably foreseeable to Defendant that if it failed to provide 100% kosher meat products while representing that they were, that consumers purchasing the products would suffer injury, loss and damage. This is clear from the statements Defendant makes on its own website and press releases, as well as from the above-referenced customer surveys conducted.

125. As a direct and proximate result of the aforementioned acts, Defendant received and continues to hold money belonging to Plaintiffs and other consumers in the Class who were led to purchase the above-described products at premium prices by the acts of Defendant. Each class member overpaid by purchasing a product at a premium price that but for the kosher certification contained on each label would have demanded a lesser price. Plaintiffs and the Class, thus, suffered injury in fact and loss of money as a result of Defendant's conduct.

126. As a result of the foregoing, Plaintiffs seek damages and an injunction that requires that Defendant immediately cease the unlawful business acts and practices as alleged herein, and to enjoin Defendant from continuing to engage in any such acts and practices in the future. There is a public benefit involved in enjoining such conduct and providing the relief requested. Unless enjoined, the Hebrew National products will continue to be mislabeled as 100% kosher, and members of the public (including the Class) will continue to purchase Hebrew National products at artificially high premium prices and consumer products they are led to believe are 100% kosher, which in truth are not. As a result of the above-stated conduct, on behalf of the Class, Plaintiffs seek damages, restitution, disgorgement of ill-gotten gains, attorneys' fees, and all other remedies and relief that may be permitted by law and equity.

#### **COUNT II**

#### **VIOLATION OF NEBRASKA UNIFORM DECEPTIVE TRADE PRACTICES ACT, NEB. REV. STAT. § 87-301, *ET SEQ.* (on Behalf of the Class)**

127. Plaintiffs fully incorporate by reference herein all of the above paragraphs, as though fully set forth herein.

128. Throughout the Class Period, Defendant engaged in a public advertising and marketing campaign representing its Hebrew National products as made from "100% Kosher Beef."

129. Defendant's public advertising and marketing campaign further represent that Hebrew National has followed "strict dietary law, using only specific cuts of beef that meet the highest standard of quality..." and that such standards are determined by "the most stringent Jews who follow Orthodox Jewish Law."

130. The beef used in Defendant's Hebrew National products is in fact not 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law,*" as the facilities Defendant purchase the beef from do not strictly adhere to kosher dietary standards in its processing of the beef, as represented.

131. Defendant's Hebrew National products are in fact not kosher per strict kosher dietary laws.

132. By engaging in the actions, misrepresentations, and misconduct set forth in this complaint, Defendant violated and continues to violate Nebraska Revised Statute § 87-302(5), by representing that its Hebrew National products are made from cuts of 100% kosher beef "*as defined by the most stringent Jews who follow Orthodox Jewish law,*" when said products are not kosher according to those standards.

133. By engaging in the actions, misrepresentations, and misconduct set forth in this complaint, Defendant violated and continues to violate Nebraska Revised Statute § 87-302(7), by representing that Hebrew National products are of a particular standard, quality, or grade, when in fact that are of another.

134. By engaging in the actions, misrepresentations, and misconduct set forth in this complaint, Defendant violated and continues to violate Nebraska Revised Statute § 87-302(9), by advertising Hebrew National products with intent not to sell them as advertised.

135. By engaging in the actions, misrepresentations, and misconduct set forth in this complaint, Defendant violated and continues to violate Nebraska Revised Statute § 87-302(15), by using any scheme or device to defraud by means of obtaining money or property by knowingly false or fraudulent pretenses, representations, or promises.

136. Defendant's advertisements, labels and marketing representations are misleading, untrue, and likely to deceive the public.

137. Defendant engaged in its marketing and advertising campaign with intent to directly induce customers to purchase its Hebrew National products based on false claims.

138. In making and disseminating the statements alleged herein, Defendant knew or should have known that the statements on Hebrew National products packages were untrue or misleading.

139. Plaintiffs believed Defendant's representation that Hebrew National products are made from "100% Kosher Beef" *"as defined by the most stringent Jews who follow Orthodox Jewish law."* Plaintiffs would not have purchased Hebrew National products at the premium price they did, but for Defendant's misleading statements about the product being strictly 100% kosher. Plaintiffs were injured in fact and lost money as a result of Defendant's conduct improperly describing Hebrew National products as kosher. Plaintiffs paid for a "100% Kosher" product, but did not receive a product that was "100% Kosher." Plaintiffs received a product that was derived from meat that was not processed strictly according to the kosher standards stated, and therefore was not kosher.

140. Plaintiffs and Class Members seek injunctive and declaratory relief, enjoining Defendant from continuing to disseminate its untrue and misleading statements, as well as the cost of bringing this action (including reasonable attorneys' fees and costs), and any other relief allowed by law and deemed just and equitable in the circumstances.

**COUNT III**  
**VIOLATION OF NEBRASKA CONSUMER PROTECTION ACT,**  
**NEB. REV. STAT. § 59-1601 ET. SEQ.**  
**(on Behalf of the Class)**

141. Plaintiffs fully incorporate by reference herein all of the above paragraphs, as though fully set forth herein.

142. The circumstances giving rise to Plaintiffs' allegations include Defendant's corporate policies regarding the sale and marketing of Hebrew National products.

143. By engaging in the acts and practices described above, Defendant committed one or more acts of "unfair competition" within the meaning of Nebraska Revised Statute § 59-1602.

144. Defendant's unlawful, unfair, and/or fraudulent practices include making false and/or misleading representations that Hebrew National products are made from "100% Kosher Beef" certified according to the strict dietary kosher laws under the supervision of the most stringent Jews who follow Orthodox Jewish Law.

145. Such action is unlawful, unfair, and/or fraudulent in that Defendant knew or should have known that such actions were likely to and did deceive the public, including Plaintiffs and other Class Members.

146. Plaintiffs believed Defendant's representation that Hebrew National products are made from "100% Kosher Beef" *"as defined by the most stringent Jews who follow Orthodox Jewish law."* Plaintiffs would not have purchased Hebrew National products at the premium price they did, but for Defendant's misleading statements about the product being strictly 100% kosher. Plaintiffs were injured in fact and lost money as a result of Defendant's conduct improperly describing Hebrew National products as kosher. Plaintiffs paid for a "100% Kosher" product, but did not receive a product that was "100% Kosher." Plaintiffs received a product that was derived from meat that was

not processed strictly according to the kosher standards stated, and therefore was not kosher and did not warrant the premium price charged.

147. By reason of the foregoing, Plaintiffs and Class Members seek damages, declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, and injunctive relief, as well as the cost of bringing this action (including reasonable attorneys' fees and costs), and any other relief allowed by law and deemed just and equitable in the circumstances.

#### **COUNT IV**

#### **VIOLATION OF STATE CONSUMER PROTECTION LAWS**

**(on Behalf of the Class)**

148. Plaintiffs fully incorporate by reference herein all of the above paragraphs, as though fully set forth herein.

149. This Count is set forth in the alternative to, Counts II and III above. To the extent the Court deems necessary, the Court can certify state subclasses with the named plaintiff from each state appointed as the representative of the respective state subclass.

150. Each of the Plaintiffs and proposed Class members is a consumer, purchaser, or other person entitled to the protection of the consumer protection laws of the state in which they reside and purchased Hebrew National products.

151. The consumer protection laws of the state in which each of the Plaintiffs and proposed Class members resides and purchased Hebrew National products declares that unfair or deceptive acts or practices in the conduct of trade or commerce are unlawful.

152. All states have enacted statutes designed to protect consumers against unfair, deceptive, fraudulent, and unconscionable trade and business practices, and/or false advertising. Those statutes further allow consumers to bring private and/or class actions. These statutes are:

(a) The Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.69

("CFA"); the Minnesota Unlawful Trade Practices Act, Minn. Stat. § 325D.13 ("UTPA"); and the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.44 ("UDTPA");

- (b) Ariz. Rev. Stat. § 44-1522 *et seq.*;
- (c) California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*; and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
- (d) Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- (e) Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/2, *et seq.* and Illinois Deceptive Trade Practices Act, 815 ILCS § 510/2, *et seq.*;
- (f) New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law § 349, *et seq.*;
- (g) Michigan Consumer Protection Act, Mich. Comp. Laws § 445.901 *et seq.*;
- (h) Massachusetts Consumer Protection Act, Mass. Ge. Laws Ann Ch. 93A § 1 *et seq.*

152. Hebrew National products constitute products to which these consumer protection statutes apply.

153. Proof of individual reliance or individual injury on the part of absent Class members is not required to establish a basis for relief under these consumer protection statutes.

154. To the extent required, the Plaintiffs have provided Defendant notice under each of the above listed statutes and/or limited their claims.

155. In the conduct of trade or commerce regarding the marketing and sale of Hebrew National products, Defendant engaged in unfair and deceptive acts or practices by representing that Hebrew National products are 100% kosher "as defined by the most



*stringent Jews who follow Orthodox Jewish law,*" including through product labels, print advertisements, in-store advertisements and/or Internet based advertisements, as described herein—when, in fact, they are not.

156. Defendant marks each package of Hebrew National products (hot dogs/beef franks, salami, sausage, deli meats etc.) with the "Triangle K" symbol and represents that: "The Triangle K symbol is a trademarked logo that signifies "kashruth" (kosher) "as defined by the most stringent Jews who follow Orthodox Jewish Law. Each class member is exposed to these uniform statements at the time of purchase.

157. Defendant's representations and advertisements of Hebrew National products are 100% kosher "as defined by the most stringent Jews who follow Orthodox Jewish law," when they were not, were deceptive, misleading, unfair and likely to deceive consumers, including the Plaintiffs and members of the Class.

158. Defendant violated the foregoing laws by, among other things:

- a. representing that Hebrew National meat products (hot dogs/beef franks, salami, sausage, deli meats etc.) are strictly 100% kosher;
- b. representing that Hebrew National meat products are of a particular style when in fact they are not;
- c. advertising Hebrew National meat products with intent not to sell them as advertised; and
- d. misrepresenting that a subject of a transaction has been supplied in accordance with a previous representation when it has not.

159. Defendant knew or should have known that its representations and advertisements of Hebrew National products are 100% kosher "as defined by the most stringent Jews who follow Orthodox Jewish law" were untrue or misleading.

160. Defendant intended class members to rely on its labeling and representations that Hebrew National products are 100% kosher "as defined by the most stringent Jews who follow Orthodox Jewish law." Defendant used or employed such

deceptive and unlawful acts or practices with the intent that the Plaintiffs and other members of the Class would rely thereon or otherwise be deceived.

161. Plaintiffs and other members of the Class relied on Defendant's representation that Hebrew National products are 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law.*" By way of this misrepresentation Plaintiffs and other members of the Class were deceived or likely to be deceived.

162. Plaintiffs and other members of the Class would not have purchased the Hebrew National at the premium prices they paid, or would not have purchased such products at all, had they known the truth and are thus entitled to a full or partial refund as allowed under each of the several state laws alleged herein.

163. Further, as a result of Defendant's misrepresentations, as alleged herein, Plaintiffs and other members of the Class did not receive the benefit of their bargain in purchasing Hebrew National products. As a result of Defendant's conduct, Plaintiffs and other members of the Class were damaged in an amount to be proven at trial.

164. Plaintiffs and other members of the Class are entitled to actual compensatory and for statutory damages (if any of the above-referenced statutes allow damages to be claimed), as well as injunctive relief, attorneys' fees and legal expenses under the various state laws implicated by this Claim.<sup>7</sup>

165. With respect to California class members. Pursuant to CLRA §1782, Plaintiffs Stilwell and Saenz Valiente provided written notice to Defendant of the asserted violations of CLRA §1770 and demanded that Defendant rectify the conduct described above. Plaintiffs Stilwell and Saenz Valiente mailed said notice to Defendant via certified mail, return receipt requested, on April 26, 2012. Defendant received said notice on April 30, 2012 (USPS Certified Mail Confirmation No. 7010 3090 0001 6315

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<sup>7</sup> Plaintiffs only seek damages under the above-referenced consumer protection statutes that allow damages to be claimed. In states where the above-referenced consumer protection statutes do not allow damages to be claimed, but only injunctive and/or other relief, Plaintiffs and the Class limit their claims to only seek the permissible relief.

2530). See Exhibit K. As such, as of May 30, 2012, more than thirty days will have elapsed since Defendant received notice of Plaintiffs' claims under the CLRA. This notice and demand notified Defendant of their above-mentioned violations of the CLRA which harmed Plaintiffs Stilwell and Saenz Valiente and the members of the Class of consumers that they represent, and demanded that Defendant cease engaging in and remedy the violations. Therefore, at this time, under this count, Plaintiffs Stilwell and Saenz Valiente and the Class members from California alone seek only injunctive and other equitable relief pursuant to Civil Code §1780(a) and (d), an award costs and attorneys' fees, and any other relief which the Court deems proper and as may be permitted by law. If Defendant fails to give or agree to give within a reasonable time (30 days) from Defendant's receipt of the §1782 notice, a sufficient remedy as set forth in Civil Code section 1782(c) for the above-mentioned violations of law, Plaintiff will amend this complaint to also assert a claim for monetary damages for California class members under this count.

#### **COUNT V**

#### **BREACH OF EXPRESS and/or IMPLIED WARRANTY**

#### **(on Behalf of the Class)**

166. Plaintiffs fully incorporate by reference herein all of the above paragraphs, as though fully set forth herein.

167. Plaintiffs, and each Class Member, formed an express and/or implied contract with Defendant at the time Plaintiffs and other Class Members purchased Hebrew National products. The terms of the contract include the promises and affirmations of fact made by Defendant on Hebrew National's packaging and through marketing and advertising, as described above. This marketing and advertising constitutes express (and/or implied) warranties and became part of the basis of the bargain, and are part of the standardized contract between Plaintiffs and the members of the Class and Defendant.

168. Defendant purports through its labels and advertising to create express (and/or implied) warranties of Hebrew National products being made strictly from 100% kosher beef by making the affirmation of fact, and promising, that Hebrew National products are made from "100% Kosher Beef" *"as defined by the most stringent Jews who follow Orthodox Jewish law."*

169. In addition or in the alternative to the formation of an express (and/or implied) contract, Defendant made each of the above-described representations to induce Plaintiffs and the Class to rely on such representations and each did so rely (and should be presumed to have relied) on Defendant's 100% kosher representation as a material fact in the decision to purchase Hebrew National products.

170. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiffs and the Class, when they purchased the product and used it as directed.

171. Despite express warranties about the "100% Kosher" nature of Hebrew National products, Hebrew National products are made from beef that is not 100% kosher and are, in fact, not 100% kosher products.

172. The Hebrew National products that Plaintiff and the class bought did not conform to the warranty.

173. Defendant breached express (and/or implied) warranties about Hebrew National products and their qualities, because the product does not conform to Defendant's affirmations and promises that Hebrew National products are made from 100% kosher beef. As a result of Defendant's breach of express warranty, Plaintiffs and the Class were harmed in the amount of the purchase price of Hebrew National products.

174. Neb. Rev. State. § 2-313 provides:

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.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(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 have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

175. Defendant breached Neb. Rev. State. § 2-313 in and from Nebraska, as (1) Defendant made a warranty, express or implied, that Hebrew National products purchased were strictly 100% kosher in and from its offices in Nebraska; (2) the Hebrew National products purchased did not comply with the warranty; (3) injury was caused, proximately and in fact, by the non-compliance of the goods; and (4) Plaintiff and the Class were damaged as they overpaid for the Hebrew National products purchased, paying a premium price. The Hebrew National products purchased have an impaired value.

176. As Plaintiffs and the Class were persons that Defendant could expect to act upon the representations and warranties it made, direct privity is not required.<sup>8</sup> The

<sup>8</sup> See, e.g., *Koperski v. Hushker Dodge, Inc.*, 302 N.W.2d 655, 664 (Neb. 1981). Generally, if an action is based on defendant's express representation made to the plaintiff in advertising or otherwise, plaintiff need not be in privity with defendant to recover under breach of express warranty; the only limitation is that plaintiff must be a party whom defendant could expect to act on the representation.; *Asher v. Coca Cola Bottling Co.*, 112 N.W. 2d 252, 255-56 (Neb. 1961) ("It is no longer an element to be established in an action upon an implied warranty that food products are wholesome and fit for public consumption where they are shown to be in the same condition as when they left the control of the manufacturer."); *Peterson v. N. American Plant Breeders*, 354 N.W.2d 625, 631 (Neb. 1984)

Hebrew National products at issue were intended for ultimate distribution to, sale to and use / consumption by consumers in the Class, such as Plaintiffs. Further, Nebraska breach of warranty laws can apply uniformly to transactions with out of state consumers, such as Plaintiffs and the Class here as significant aspects of Defendant's actions complained of herein occurred in and from Nebraska.<sup>9</sup>

177. Additionally, and/or in the alternative Defendant violated other state express warranty laws including Cal. Com. Code. § 4-2-313 and N.Y. U.C.C. Law § 2-313.

178. As a result of the foregoing, Plaintiffs and other members of the Class are entitled to damages, as well as injunctive relief, attorneys' fees and legal expenses and all other relief deemed just and equitable in the circumstances.

#### **COUNT VI**

#### **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY AND IMPLIED WARRANTY OF FITNESS**

**(on Behalf of the Class)**

179. Plaintiffs fully incorporate by reference herein all of the above paragraphs, as though fully set forth herein.

180. Plaintiffs, and each Class Member, formed an implied contract with Defendant at the time Plaintiffs and other Class Members purchased Hebrew National products that the products purchased were both merchantable and fit.

181. The terms of the contract include the promises and affirmations of fact made by Defendant on Hebrew National's labels, packaging and through marketing and advertising, as described above. This marketing and advertising constitutes an implied warranty and became part of the basis of the bargain, and are part of the standardized contract between Plaintiffs and the members of the Class and Defendant.

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<sup>9</sup> See, e.g., *Mann v. Weyerhaeuser*, 703 F.2d 272 (1983).

182. Defendant purports through its labeling, packaging and advertising to create implied warranties of Hebrew National products being made from strictly 100% kosher beef by making the affirmation of fact, and promising, that Hebrew National products are made from "100% Kosher Beef" *"as defined by the most stringent Jews who follow Orthodox Jewish law."*

183. In doing so, Defendant provides an implied warranty that the Hebrew National products sold are merchantable as "100% Kosher Beef" *"as defined by the most stringent Jews who follow Orthodox Jewish law."*

184. Additionally, in doing so, Defendant provides an implied warranty that the Hebrew National products sold are fit to be sold as "100% Kosher Beef" *"as defined by the most stringent Jews who follow Orthodox Jewish law."*

185. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiffs and the Class, when they purchased the product and used it as directed.

186. Despite the implied warranties about the merchantability and fitness of Hebrew National products as being "100% Kosher Beef" *"as defined by the most stringent Jews who follow Orthodox Jewish law."* the Hebrew National products sold Plaintiffs and the Class are not made from beef that is strictly 100% kosher. Hence, the Hebrew National products sold the class are not merchantable or fit to be sold as the products they are represented to be.

187. Neb. Rev. State 2-314, provides:

Implied warranty; merchantability; usage of trade

(1) Unless excluded or modified (section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (section 2-316) other implied warranties may arise from course of dealing or usage of trade.

188. Neb. Rev. Stat. 2-315, provides:

2-315. Implied warranty; fitness for particular purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

189. Defendant is a seller or merchant within the meaning of the above- statutes.

190. Defendant violated Neb. Rev. Stat. 2-314 and Neb. Rev. Stat. 2-315.

191. Defendant breached implied warranties of merchantability and fitness about Hebrew National products and their qualities, because the Hebrew National products it sold in and from Nebraska do not conform to Defendant's affirmations and promises that Hebrew National products are made strictly from 100% kosher beef "*as defined by the most stringent Jews who follow Orthodox Jewish law.*"

192. The Hebrew National products purchased by Plaintiff and the Class were not merchantable as they were not 100% kosher "*as defined by the most stringent Jews who follow Orthodox Jewish law.*" The Hebrew National products purchased by Plaintiff and the class were not merchantable as they did not conform to the promises or affirmations on the products label. The Hebrew National products purchased by Plaintiff and the Class were not merchantable as they did not comply with the quality represented and described. The Hebrew National products purchased by Plaintiff and the Class were



not fit for the ordinary purposes for which goods marked and sold as strictly 100% kosher goods are used.

193. As Plaintiffs and the Class were persons that Defendant could expect to act upon the representations and warranties it made, direct privity is not required. The Hebrew National products at issue were intended for ultimate distribution to, sale to and use / consumption by consumers in the Class, such as Plaintiffs. Further, Nebraska breach of warranty laws can apply uniformly to transactions with out of state consumers, such as Plaintiffs and the Class here as significant aspects of Defendant's actions complained of herein occurred in and from Nebraska.

194. Additionally, and/or in the alternative Defendant violated other state express warranty laws including Cal. Com. Code. §4-2-314, §4-2-315 and N.Y. U.C.C. Law §2-314.

195. As a result of Defendant's breach of the implied warranties of merchantability and fitness, Plaintiffs and the Class were harmed in the amount of the purchase price of Hebrew National products. Plaintiffs and other members of the Class are entitled to damages, as well as injunctive relief, attorneys' fees and legal expenses and all other relief deemed just and equitable in the circumstances.

#### **IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of those similarly situated in the Class, pray for relief and judgment against Defendant, as follows:

A. that this Court certify the Class and appoint the named Plaintiffs and the undersigned counsel to represent them in this litigation;

B. that this Court enter judgment in favor of Plaintiffs and the Class, and against Defendant under the legal theories alleged herein;

C. that this Court award damages to Plaintiffs and the Class on all Counts that allow damages;

D. that this Court award restitution to Plaintiffs and the Class;

- E. that this Court award attorneys' fees, expenses, and costs of this suit;
- F. that this Court award Plaintiffs and the Class pre-judgment and post-judgment interest at the maximum rate allowable by law; and
- G. that this Court award all further relief as it deems equitable, just and proper.

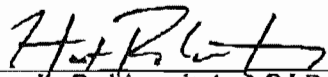
**JURY TRIAL DEMANDED**

Plaintiffs seek a trial by jury for all appropriate issues on each and every cause of action in this Complaint

Respectfully submitted,

Dated: 5/17/12

By:

  
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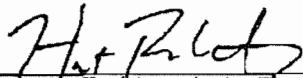
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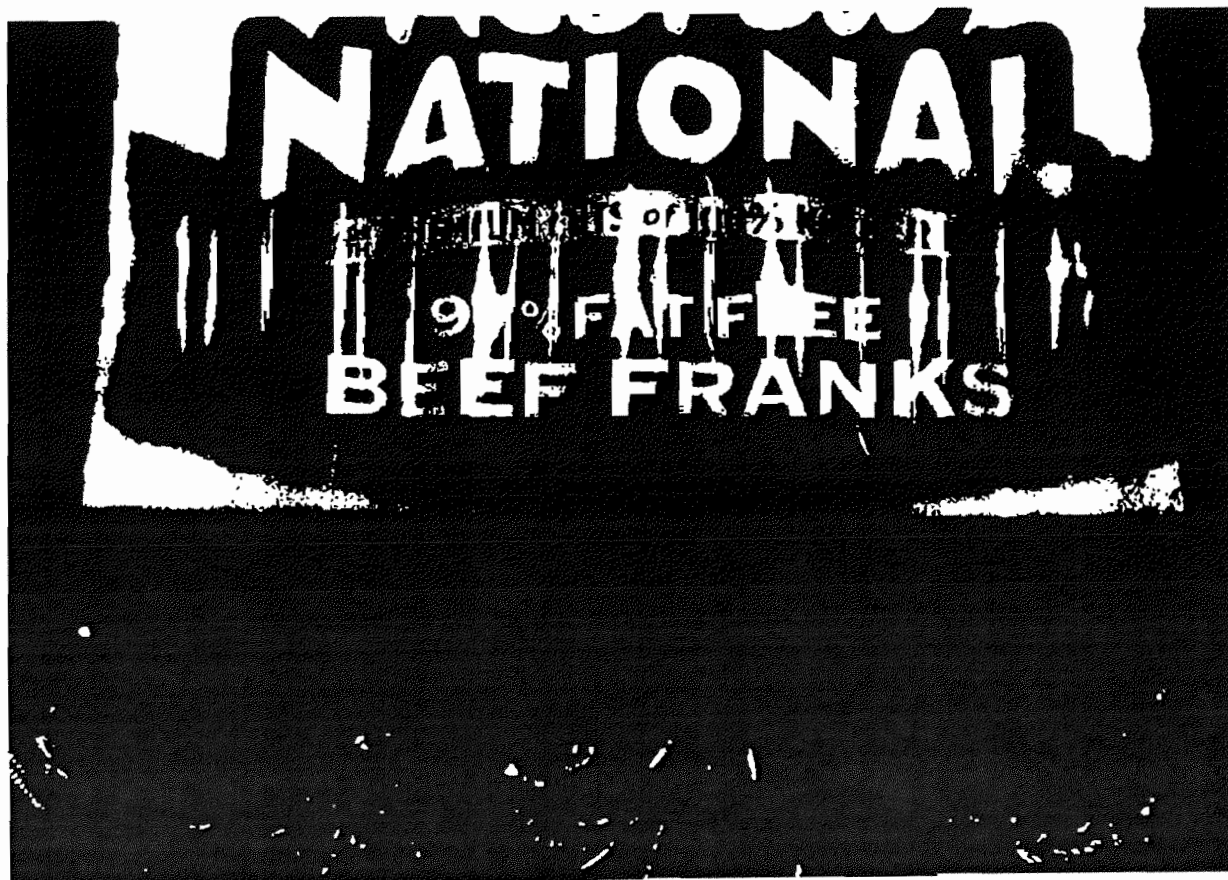
***Attorney for Plaintiffs***

**ACKNOWLEDGMENT**

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211 to the party against whom the allegations in these pleadings are asserted.

  
\_\_\_\_\_  
Hart L. Robinovitch, Esq.

# EXHIBIT A

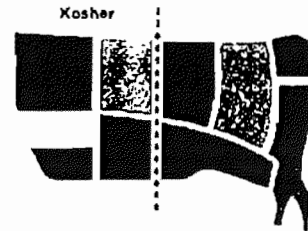


# EXHIBIT B

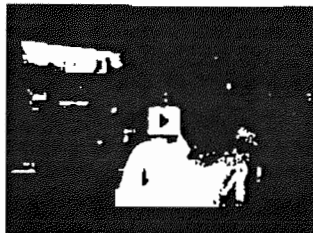


## Kosher, Shmosher—What's the Difference?

You've heard the word kosher, but did you know it literally means "fit to eat"? For more than 100 years, Hebrew National® has followed strict dietary law, using only specific cuts of beef that meet the highest standards for quality, cleanliness, and safety—so artificial flavors, colors, fillers, and by-products simply don't make the cut.



Our devoted fans can taste the kosher difference.



Join Our Fans on 

This TV spot will maximize your enjoyment.



Taste the Kosher Difference Today



### Go Ahead: Make My Dog

Hebrew National proudly serves products under the kosher supervision of the internationally recognized Triangle K organization. So, not only do Hebrew National franks have only the purest ingredients, but there is rabbinical supervision of the food preparation process and packaging equipment.

#### What Is Triangle K Supervision?

The Triangle K symbol is a trademarked logo that signifies "kashruth" (kosher) as defined by the most stringent Jews who follow Orthodox Jewish Law. It's a symbol of integrity, representing the most trusted and reliable name in strict rabbinical food certification and supervision. For more than half a century, Triangle K has been committed to making kosher food products available to people around the world.

#### KASHRUTH FOOD AND INGREDIENTS

Because chemicals and food additives make it increasingly difficult to determine the kashruth status of a product, all ingredients and equipment must pass stringent supervision. These standards are so exacting that an entire formula can be prohibited if the supervising rabbi finds in it even a single non-kosher ingredient that makes up only one-tenth of 1% of the total.

#### MANUFACTURING KOSHER

While there might be slight variations from plant to plant, the requirements for the manufacture of all kosher food are based on the same fundamental principle of Jewish Dietary Laws: only kosher ingredients processed in kosher equipment.

#### INVESTIGATION OF MANUFACTURING FACILITIES

First, a special supervisor, the mashgiach, or an ordained Orthodox rabbi conducts an investigation of the plant and its procedures, as well as the ingredients, equipment, and processes used in the production of the product.

If the preliminary investigation indicates acceptable ingredients and procedures, the manufacturer is informed as to the nature of rabbinical supervision required for the food product for a specific period of time. Each individual food product must be inspected and certified separately, and the certification process is ongoing; each product must be inspected every year.

### KOSHER LAW ENFORCEMENT

In an effort to protect kosher-observant consumers, kosher laws have been incorporated into various state codes. For example, in New York, the Kosher Law Enforcement Division (KLED) is maintained to aid its large Jewish population and protect consumers from the mislabeling and misrepresentation of food products. A division of the state's Department of Agriculture and Markets, KLED's tasks include ensuring that businesses selling any item with kosher certification—particularly meat and poultry products—adhere to the state's labeling laws. Rabbi Rubin stated, "We feel the consumer is to be protected. If a market section says it is kosher, it should be kosher without the buyer having to carefully check the ingredients."

The legal protection for kosher consumers was first introduced into American law in 1915. According to Kassinis, "New York has continued its leadership role by setting standards for the development of new ways to guard against fraud and misrepresentation in the sales and distribution of kosher food." KLED laws require that meat and meat parts (including poultry) be identified as kosher through the use of tags and phylacteries. The regulations also address the procedures to be followed with respect to the required washing of meat and the method of transportation.

Collapse

| PRODUCTS & PROMOTIONS  | RECIPES & TIPS  | THE KOSHER DIFFERENCE                 | OUR FAME   | OUR STORY  |
|--|---|---------------------------------------|--|--|
| <a href="#">New Products</a><br><a href="#">Cookbooks</a><br><a href="#">Kosher Recipes</a><br><a href="#">Kosher Meat</a> | <a href="#">Recipes</a><br><a href="#">Cooking Tips</a><br><a href="#">Kosher Recipes</a> | <a href="#">The Kosher Difference</a> | <a href="#">The Kosher Difference</a><br><a href="#">Kosher Meat</a><br><a href="#">Kosher Recipes</a> | <a href="#">Our Story</a><br><a href="#">Kosher Meat</a><br><a href="#">Kosher Recipes</a> |

[Kosher Meat](#) [Kosher Recipes](#) [Kosher Meat](#) [Kosher Recipes](#) [Kosher Meat](#) [Kosher Recipes](#) [Kosher Meat](#) [Kosher Recipes](#) [Kosher Meat](#) [Kosher Recipes](#)

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# EXHIBIT C

The New York Times

## Archives

## STATE CRACKS DOWN ON KOSHER CHEATS

By MICHAEL D. DOLAN  
Published January 03, 1988

THE state's Division of Consumer Affairs is sending a clear message to kosher food dealers that they face stiff penalties.

In a recent action, the Tannin Brook Country Club in Cresskill was fined a record \$10,000 for serving non-kosher foods as kosher.

The fine, imposed after an investigation by the division's Kosher Enforcement Bureau, was the largest ever levied by the state for noncompliance with kosher regulations. It stemmed from revised rules that went into effect last November and broadened the bureau's authority.

"Kosher food is one of the products sold that is fraught with the potential for consumer fraud," said W. Cary Edwards, the state's Attorney General. "This is because it is essentially a 'blind' item: that is, buyers must rely on the integrity of the seller and/or the protection of the government to prevent deception."

The crux of the problem lies in the preparation of the product. Kosher products require specialized slaughtering and sanitary procedures, which add to costs.

Most consumers pay premium prices for kosher foods and, Mr. Edwards said, can "suffer great emotional stress" after learning that what they thought was kosher was not.

"In most cases," he said, "you can't tell by looking whether foods have been prepared and maintained so that they meet kosher requirements."

Before the Tannin Brook decision, fines for kosher fraud ranged from \$500 to \$5,000, Mr. Edwards said.

In addition to the \$10,000 fine, Tannin Brook agreed to pay \$1,244.50 in investigative costs to the state.

Also, the owners signed a consent order promising to fully comply with the state's kosher regulations, such as maintaining separate cooking and preparation implements for all kosher meat and other food products and storing wines certified as kosher only in a kosher area.

Robert F. Gallo, the attorney for Tannin Brook, said he wanted "to clear up the impression that the Tannin Brook Club was serving its mass restaurant that were not kosher."

"That never happened," he said, adding that the violations had occurred only in "isolated incidents" and that the club's owners had "never attempted to purposely defraud" consumers.

"The people was never deceived," said Rabbi Yakov M. Dombroff, chief of the Kosher Enforcement Bureau. "They were selling non-kosher meat and produce as kosher for such a long period of time that they simply didn't care. That's our real fraud."

Rabbi Dombroff said that the Tannin Brook case was the first in which the bureau had received an "open admission of kosher fraud."

"The people that we catch will usually agree to paying the fine that we impose," he said. "But they will never admit to or deny responsibility on our agency."

The bureau was opened in 1984 and operates out of the Division of Consumer Affairs under the authority of the State Consumer Fraud Act.

After undergoing various problems of trying to enforce soft and unclear regulations for kosher fraud, the bureau sought legislative support to strengthen its authority.

Last November, revised regulations granted it full authority to inspect New Jersey-based manufacturers of kosher foods, along with the kosher butcher shops, delicatessens, caterers, hotels and restaurants that were previously included in the bureau's jurisdiction.

The addition of the manufacturers expands from 150 to 400 the number of businesses that could be inspected.

"Our regulations have broader authority, more-stringent penalties and the best structure of any state," Mr. Edwards said after the reworked requirements for the sale of kosher products went into effect.

Moreover, he said, the new rules carry "high thresholds of fines and penalties," including some of up to \$2,000 for each individual violation, full refunds to buyers and possible closing down of a continued violator's business.

Other changes include a provision giving inspectors the right to enter the premises of all dealers in kosher foods, not just those who sell only meat and poultry.

Bureau inspectors also now have the authority to tag evidence they believe will be needed for an investigation and to order kosher food dealers not to disturb the evidence.

Advertising requirements were also altered. The bureau now governs the use of kosher food symbols, which signify that a product has been prepared under the supervision of a recognized kosher authority.

Also, consumers must be given information, such as whether meat has been soaked and salted and the dates of packaging, to enable them to keep track of the process so that meats can be maintained according to kosher standards.

In restaurants, kosher meat and dairy products must now be totally separated, and clearly labeled utensils must be provided for each. Kosher meats must be properly deveined and, except for liver, washed within 72 hours of slaughter and each subsequent 72-hour period until it is salted.

"If you include negligence," Rabbi Donbroff said, "we've cut out 75 percent of kosher fraud in New Jersey. In theory, our goal is to put ourselves out of business. That would be the ultimate, but I'm afraid that will never happen."

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# EXHIBIT D



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PRODUCTS

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HEBREW NATIONAL

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## Hebrew National

### Overview

For discriminating consumers who love premium frankfurters and deli meats, Hebrew National kosher products provide a uniquely superior taste experience because they're made with the best quality ingredients that meet a higher standard.

Hebrew National is a leading kosher meat brand. In addition to the brand's most-known beef franks, kosher corned beef, kosher kishka, Hebrew National produces a wide variety of products, including salami, bologna, kishka kornel, flavored sausages, corned beef, pastrami, and more in a blanket.

### History

Hebrew National began in 1908 when Eugene Pinchowitz, a Romanian butcher, began making kosher sausages and frankfurters in a sixth-floor walk-up on Manhattan's Lower East Side. The Hebrew National Kosher Sausage Factory, as the company was originally called, provided kosher meats for many New York delicatessens and grocery stores. The brand quickly became a favorite among the Jewish immigrant community and beyond.

Through the years, the brand has remained true to its original commitment to quality. It emphasized this commitment, and stayed true to its roots, when the English "V" was added to its higher authority seal introduced in 1960. This logo helped it expand beyond an ethnic brand to a provider of premium, kosher quality, delicious products.



Kosher franks and more at  
[HebrewNational.com](http://HebrewNational.com)

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Results 1 - 11 of 25  
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#### 97% Fat Free Beef Franks

Nutrition Information

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#### Beef Bologna

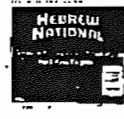
Nutrition Information



#### Beef Franks

Nutrition Information

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#### Beef Knockwurst

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#### Beef Polish Sausage

Nutrition Information

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#### Beef Salami

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#### Bologna - Beef Chubs

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Franks - 97% Fat Free



Franks - Beef Family Pack

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Franks - Bun Length

Nutrition Information



Franks - Reduced Fat Beef



Franks in a Blanket

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HN BEEF SALAMI 12/8Z

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Jumbo Beef Franks

Nutrition Information

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Lean Beef Bologna

Nutrition Information

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Lean Beef Salami

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Quarter Pound Beef Franks

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Reduced Fat Beef Frank



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Salami - Beef Chubs



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Salami - Lean Beef Chubs



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Product Name: Hebrew National Kosher Premium Beef Chubs  
Product Description: Hebrew National Kosher Premium Beef Chubs



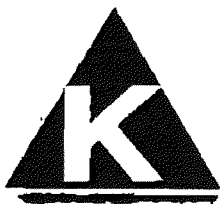
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Foods

# EXHIBIT E




## Triangle K | Kosher Food Supervision and Certification


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### Kosher Food Supervision and Certification of Manufacturers, Products and Plants Around the World

The Triangle  symbol is a patented and trademarked logo that signifies "kashrut" as defined by the most stringent of Orthodox Jewish law. The organization offers its rabbinical supervision and certification on any ingredient or product that meets the strictest criteria of what makes such items kosher.

The food business has become a multi-billion dollar industry. Mass production and national and international distribution has brought new pressures to bear on company profits, production quantity, ingredient complexity and product diversification. And the reliability of Kosher food certification has become a key figure in the company's bottom line profit margin and customer satisfaction.

Triangle  is a symbol of integrity representing the most trusted and reliable name in strict rabbinical food certification and supervision. For over a half century we have been committed to making kosher food products available to Jewish people around the world in the widest variety of food products.

The commitment of this consortium of Orthodox Jewish rabbis is, above all else, rooted in their desire to see as wide a range of food products made available to kosher Jewish consumers worldwide.

To this end, Triangle  and Associates works side by side on an individual basis with each of their clients to create reasonable and cost effective certification and supervision programs.

# EXHIBIT F


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## News Release

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### ConAgra Foods Survey - Seals & Standards of Quality Give Grocery Shoppers Confidence

Consumers Increasingly Seek Trust Marks as Signs of Better Food; Consumer Trend towards Trust Marks: Organic and Kosher Trust Marks "Seal the Deal" More Than Ever

CHICAGO--(BUSINESS WIRE)--May 8, 2006-- "What's In Store" FMI consumer survey shows few know Dietary Guidelines, but they know whole grains

In the beginning there was Kosher. Then came Organic. Now MyPyramid.com. As fad diets and quick fixes fall from favor, more Americans are seeking ways to improve their eating habits with balanced, sensible solutions. But deciphering the right food choices isn't always easy, and too-busy lives and confusing nutrition information can leave people scratching their heads in the grocery aisles. To determine what they should consider "better food," many consumers are turning to trusted seals, standards and symbols of higher quality - indeed, more than nine in 10 Americans today consider trust marks to some degree when shopping.

A new "What's In Store" survey of consumer shopping habits commissioned by ConAgra Foods confirms this trend(a):

- Fully 95 percent of Americans say they would consider quality symbols, seals & trust marks when food shopping.
- Four times as many survey respondents said they are more likely to consider buying foods based on trust marks today than they were a year ago, compared to only a quarter as many who said less likely.
- While many symbols are present in the market today, the top eight trust marks consumers look for are: WHOLE GRAINS, HEART-HEALTHY, ZERO GRAMS TRANS-FAT, LOW SODIUM, NATURAL, DIETARY GUIDELINES, ORGANIC & KOSHER.

"Consumers are telling us they're looking for food choices that are more nutritious, along with great-tasting and convenient, but they want help in identifying what's good for them," said Debbie Carosella, vice president, Strategic Marketing, ConAgra Foods Consumer Foods. "We're trying to help by working with retailers to simplify people's shopping experience, and by putting appropriate quality seals on products meeting specific standards related to the new Dietary Guidelines - such as 'heart-healthy' for Healthy Choice, and 'made with 100 percent whole grains, 0g trans fat' on Orville Redenbacher's and ACT II popcorn.

"Interestingly, we're also seeing more mainstream shoppers ask for the quality, freshness and purity assurance they get from the Kosher seal on our Hebrew National(R) products and certified organic seals on our Hunt's(R) Organic canned tomatoes, Orville Redenbacher's(R) Organic Butter popcorn and now PAM(R) Organic cooking spray," said Carosella.

#### New Dietary Guidelines

The increased attention consumers are paying toward quality seals comes one year after the release of the new U.S. Dietary Guidelines and MyPyramid food guide, which outlines a more personalized approach for healthful eating. While more individually tailored, the redesigned MyPyramid - which removes many of the standard "do's & don'ts" of fad diets and has multiple nutrition profiles to match different individual nutrition needs - is more challenging for some consumers, heightening demand for other easy ways to identify foods that are good for you.

But while the new Dietary Guidelines may not be as cut and dry as the previous recommendations for healthful eating, its individual standards are gaining considerable currency among consumers looking for seals, standards to guide their search for good-for-you, good-to-eat foods. The "What's In Store" consumer survey bears this out:

- While only 30 percent of Americans said they would consider the Dietary Guidelines when shopping for more healthful foods, almost double that number (54 percent) said they'd look for an indication that the food was a 'whole grain,' which is one of the top Dietary Guideline recommendations.
- The survey reflected consumer recognition of other key tenets of the Guidelines recommendations, such as eating for heart health (50 percent), reducing or eliminating trans fat (43 percent) and minimizing sodium (40 percent). So while many Americans may not know the Dietary Guidelines per se, they do seek ways to follow key standards advocated for good health.

Food companies such as ConAgra Foods have responded to consumers' need to easily identify healthful foods by flagging the nutritional benefits on packaging. Flags denoting whole-grain servings and zero grams of trans fat can be found on packaging for the new Healthy Choice Flour with Ultragrain(R) and Orville Redenbacher's and ACT II popcorn. The new Guidelines have also increased relevance for products such as the Healthy Choice line that helps consumers meet good nutrition recommendations for lean proteins, lower sodium and increased vegetables.

#### Organic Remains Front and Center

In addition to Dietary Guideline standards, market research confirms growing interest among American food shoppers for certified organic and Kosher seals that have long traditions of their own, going back thousands of years in the case of Kosher. For organic, a survey commissioned by Hunt's Organic(1) reports that nearly one in four Americans find organic labeling helpful, especially if certified by the USDA, in providing an additional assurance of quality and peace of mind when making choices to purchase "good foods" to serve their families.

The trend to consume organic products is clearly going mainstream, and retailers can expect more consumers to look for the trusted "certified organic" seal in the years to come. Indeed, sales in the organic canned tomato category have doubled in the last four years. According to the Organic Trade Association, the overall organic food industry was worth \$10.4 billion in 2003, and the market has grown 17 to 21 percent each year since 1997(2).

To meet growing consumer demand for organic, ConAgra Foods is offering organic varieties for top brand favorites:

- PAM(R) Organic - This July, PAM cooking spray is introducing PAM Organic, a certified organic cooking spray available in two varieties - PAM Organic Canola Oil and PAM Organic Olive Oil.
- Hunt's(R) Organic - Hunt's rolled out six new organic canned tomato products nationwide in January 2006, including diced, crushed and whole tomatoes, as well as two pasta sauces in traditional and roasted garlic.
- Orville Redenbacher's(R) Smart Pop!(R) Organic Popcorn - Orville Redenbacher's(R) rolled out a certified Organic Butter and Smart Pop!(R) Organic Butter to stores nationwide in January-March 2006.

#### For many, Kosher is the New Organic

The Kosher trend is also gaining momentum as more people come to understand the quality connection associated with the Kosher seal - which certifies both high-quality ingredients and processes that meet strict Kosher standards. More than one in 10 Americans in the "What's In Store" survey recognized the Kosher quality seal as something they would consider when making quality food-purchasing decisions.

For retailers, the correlation between increased consumer interest in the Kosher category and the success of the organic movement is noteworthy. Many consumers find similar appeal for product attributes in both the Kosher and organic categories, as motivations for choosing Kosher - such as quality and purity of ingredients, and adherence to strict standards during manufacturing - are closely akin to the driving motivations behind the strong organic trend. For consumers, Kosher and organic products satisfy the need for better, higher quality foods.

Food products such as premium Hebrew National(R) Kosher Beef franks, made with 100 percent Kosher quality beef with no artificial colors, flavors or by-products, have shown unprecedented growth and demand in recent years. The Kosher frank continues to gain mainstream market acceptance, moving from a niche product to one with national appeal. ConAgra Foods intends to position the brand to further accelerate the

growing demand for Hebrew National franks, enhancing in-store marketing efforts to more clearly identify and highlight the benefits of Kosher.

About ConAgra Foods

ConAgra Foods Inc. (NYSE:CAG) is one of North America's largest packaged food companies, serving grocery retailers, as well as restaurants and other foodservice establishments. Popular ConAgra Foods consumer brands include: Banquet, Chef Boyardee, Egg Beaters, Healthy Choice, Hebrew National, Hunt's, Marie Callender's, Orville Redenbacher's, PAM, and many others. For more information, visit [www.conagrafoods.com](http://www.conagrafoods.com).

(a) The survey was conducted by Ipsos U.S. Express on behalf of ConAgra Foods among a nationally representative sample of 1,023 American adults from April 25-27, 2006. The margin of error is +/- 3 percentage points.

(1) Survey conducted by Greenfield Online for Hunt's Organic with a representative sample of 1,130 Americans in December 2005, +/- 3 percent margin of error.

(2) Organic Trade Association

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SOURCE:

ConAgra Foods Inc.

# EXHIBIT G

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## News Release

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### **Hebrew National(R), the Leading Brand of Kosher Beef Hot Dogs, and Grilling Guru Elizabeth Karmel Team up to Help Families Upgrade Their Summer Cookouts**

Hebrew National Kosher Crew Will Upgrade the Hot Dog Experience in Cities Nationwide; Sweepstakes Offers \$25,000 Ultimate Backyard Upgrade

OMAHA, Neb.--(BUSINESS WIRE)--May 20, 2008--More women are cooking on outdoor grills than ever before, and recent research shows that during the grilling season, women use the grill more frequently than men - with 66 percent of women grilling twice a week compared to 57 percent of men.(1) Hot dogs are one of the most popular items for grilling, and Hebrew National(R), the leading brand of kosher hot dogs and other products, has teamed with grilling expert Elizabeth Karmel to help women and their families upgrade their hot dog and grilling experience.

Throughout the summer, Hebrew National and Karmel will offer tips, discount coupons, prizes and advice on using premium quality products to help families create great summer cookouts. Hebrew National also will award one lucky winner a backyard upgrade worth \$25,000.

#### **Girls at the Grill and Expert Tips**

Women have always taken the lead in preparing meals in the kitchen, and now more and more women are manning the grill outside. As a woman devoted to outdoor cooking, Karmel, author of the award-winning cookbook *Taming the Flame: Secrets for Hot-and-Quick Grilling and Low-and-Slow BBQ* notes that the first factor in a great grilling experience is quality. "Buy the best quality ingredients and let the heat of the grill work its magic," said Karmel. "When you want to satisfy that classic backyard hot dog craving--kosher, such as Hebrew National, is the best choice because they have the highest quality ingredients." If you follow Karmel's rule of thumb, your friends and family will applaud you meal after meal.

Some of Karmel's top tips for "Girls at the Grill" include:

- Use the best quality ingredients, from garden fresh produce to bakery buns to the meat you select.
- Purchase premium meats such as Hebrew National Franks, which are made from only premium cuts of 100 percent pure kosher beef. Hebrew National wins time after time in national taste tests.
- The key to making hot dogs that are perfectly caramelized on the outside and done on the inside is to control the heat! The best hot dogs are cooked on medium to medium-low heat.
- Adorn your hot dogs with more than just ketchup and mustard. Add a theme to your condiment table with a "Putting on the Dog" Bar--fill the ramekins with favorite toppings from the All-American hot dog capitals: New York, LA, Chicago, Boston and Cincinnati, to name the majors!

#### **Watch for Hebrew National Kosher Crew Visits This Summer**

You don't have to guess what's inside a kosher hot dog. Hebrew National hot dogs are made with premium cuts of 100 percent kosher beef and have no artificial flavors, colors, fillers or by-products with the kosher guarantee. To help more families enjoy premium quality at their cookouts, Hebrew National is sending Kosher Crew teams to upgrade residents' summer experiences in Baltimore, Cincinnati, Phoenix, and Tampa, Fla. this grilling season. Kosher Crew teams will appear at select events and festivals in these cities during July and August to give away premium prize packages featuring Hebrew National gear and coupons. Check [www.hebrewnational.com](http://www.hebrewnational.com) during the summer for updates on Kosher Crew appearance dates and locations.

#### **Online Sweepstakes Will Give Away Daily Prizes and a \$25,000 Ultimate Backyard Upgrade**

Quality food isn't the only way to upgrade a cookout. Hebrew National also is launching the "Ultimate Backyard Upgrade" sweepstakes, which will give away five daily prizes worth \$100 and one lucky grand prize winner will receive an ultimate backyard upgrade worth \$25,000. Consumers can enter the sweepstakes or find official rules by visiting [www.hebrewnational.com](http://www.hebrewnational.com) beginning July 14 - Sept. 7, 2008.

"Hot dogs are a summertime favorite. Hebrew National has an award-winning taste that the whole family will enjoy and mom can feel good about serving, because Hebrew National is committed to providing premium quality kosher products," said Reggie Moore, vice president of marketing for Hebrew National. "Our Kosher Crews and 'Ultimate Backyard Upgrade' sweepstakes are designed to bring the Hebrew National experience to as many consumers as possible throughout the summer and will show that kosher means quality."

#### ABOUT HEBREW NATIONAL

Hebrew National, a brand of ConAgra(R) Foods, Inc., began in 1905 when Isadore Pinckowitz sold frankfurters in New York City under the Hebrew National name. Aside from hot dogs alone, Hebrew National makes additional premium kosher products including deli meats, specialty items like Franks in a Blanket and Cocktail Franks, breakfast sausages, sides and condiments. ConAgra Foods is one of North America's largest packaged-food companies with a strong presence in consumer grocery as well as restaurant and foodservice establishments. For more information, please visit [www.hebrewnational.com](http://www.hebrewnational.com) or [www.conagrafoods.com](http://www.conagrafoods.com).

#### ABOUT CONAGRA FOODS

ConAgra Foods Inc. (NYSE: CAG) is one of North America's leading packaged food companies, serving grocery retailers, as well as restaurants and other foodservice establishments. Popular ConAgra Foods consumer brands include: Banquet, Chef Boyardee, Egg Beaters, Healthy Choice, Hebrew National, Hunt's, Marie Callender's, Orville Redenbacher's, PAM, and many others. For more information, please visit us at [www.conagrafoods.com](http://www.conagrafoods.com).

(1) Propane Education & Research Council (PERC) survey, January 2007.

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SOURCE: ConAgra Foods Inc.



# EXHIBIT H



From morning rush to close\*

Products and Brands

Recipes

Ideas for Success

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## Franks

Customers notice quality, and our Hebrew National® kosher franks set the standard for the foodservice industry.



### Premium Taste. 100% Kosher Beef.

Today, more patrons are concerned about quality ingredients and the purity of the foods they eat. Hebrew National® fits the bill. A kosher frank of uncompromising quality, Hebrew National is made with 100% butcher-quality cuts of beef and contain no fillers, artificial flavors, colors or by-products. For over 100 years, Hebrew National has adhered to the highest standards quality, cleanliness and safety for a difference you can taste.

Hebrew National offers a wide variety of products from franks to deli meats and lunchmeats.

[See All Hebrew National Products](#)

# EXHIBIT I


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## News Release

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### Hebrew National Launches Summer Campaign to Underscore Appeal of Kosher Quality as Valued Trustmark for Mainstream Americans

As more Americans view kosher as 'new organic,' brand moves to satisfy growing consumer demand for premium kosher all-beef franks as standard of quality & taste

OMAHA, Neb., Jun 15, 2006 (BUSINESS WIRE) -- In the beginning there was kosher, and the food it certified was good. Though its mission and meaning--literally "fit to eat"--date back more than 3,000 years, kosher's commitment to food quality standards and pure ingredients has never been more relevant to consumers. Today, the appeal of kosher quality, especially for moms, is going mainstream with a passion. Indeed, for many Americans, kosher is the "new organic." This summer, with research confirming its growing appeal and relevance, Hebrew National(R) is launching a major marketing campaign to satisfy surging demand for its premium kosher all-beef franks among mainstream American shoppers, who are discovering anew kosher's value as a "trustmark" for great-tasting, good-for-you, quality food.

The new campaign was bolstered by a recent national survey, commissioned by ConAgra Foods, that found consumers consider "kosher" one of the top eight seals, standards and symbols they consider as signs of quality foods. Moms in particular pay close attention to the quality of foods while shopping for their families and look to these "trustmarks" to help identify their best food choice, especially when it comes to meat.

"Kosher quality is increasingly relevant for all Americans. For moms, especially, kosher is becoming the 'new organic,' which they can trust for purity, freshness and quality ingredients," says Tom Bartley, marketing director, Hebrew National. "Our summer campaign will help remind consumers Hebrew National Franks are free of artificial colors, flavors and by-products, containing only choice cuts of 100 percent kosher-quality beef--with no ifs, ands or butts."

New advertising highlights kosher difference--no ifs, ands or butts

To highlight the growing popularity of kosher quality, Hebrew National is introducing new TV and online advertisements this week that communicate the kosher difference of its franks in a mainstream, fun way. The multi-million dollar campaign, the first major body of work developed by the new oneseven agency, differs from traditional food marketing ads by delivering an informative message with an irreverent humor that entertains viewers. Like many cutting-edge TV spots today, the ads feature colorful, progressive graphics, versus live action, to show how kosher beef relies on choice cuts of meat from the front part of cattle, guaranteeing "no ifs, ands or butts."

Hebrew National--whose franks sell in nearly half the nation's 30 major league ballparks with the recent addition of four parks--also has created marketing programs to remind fans they're eating a Hebrew National and what's the difference. For instance, for the first time in recent history Boston's Fenway Frank is joined by a branded hot dog, the "monstrous" nine-inch Hebrew National Frank. Special promotions also will give fans a chance to upgrade their experience at the ballpark with better seats and gear, as they upgrade their eating experience with Hebrew National.

In Detroit's Comerica Park, Tigers' fans will get a chance to recognize and reward the skills of their favorite hot dog hawkers as they judge Hebrew National(R)'s first-ever "Higher Authority Hawker Challenge," which is combing the stands at Comerica Park this summer to identify Detroit's all-time best hot dog hawkers. In the competition at Comerica Field, Tigers' food hawkers will display their own kind of yell for the hearts and votes of Detroit fans. In a nail-biting showdown that pairs passion with poise, hawkers will take to the stands to flaunt their distinctive hawking style during an audition to become a finalist and member of the 'Hawker Hall of Fame.' The standard hawker cry "get yer hot dog" won't be enough to get past the infield for first-place Detroit Tigers' fans, nor will it cut the mustard for hawking premium Hebrew National franks, which are made from 100 percent kosher quality beef with no fillers.

Beyond baseball, the summer grilling season is underway and several food experts, including Grill Master Rick Browne, popular host of Barbecue America on PBS, have appeared on morning TV and radio shows around the country promoting the benefits of choosing top-quality, premium foods such as kosher hot dogs. Hebrew National also is working with retailers to make it easier for shoppers to find the premium franks by merchandising the product with upgraded, highly visible racking systems and coolers urging consumers to "Get Yer Hebrew National" at grocery stores.

According to the ConAgra Foods-commissioned consumer survey, more than 95 percent of Americans look to trusted seals such as kosher, organic and whole grain when shopping for their family. Kosher food is a \$9.4 billion-a-year industry growing by 15 percent a year. This year's Kosherfest, the world's biggest kosher trade show, attracted the highest number of buyers in its 17-year history.

It is the close supervision and strict regulation that guarantees quality and cleanliness of kosher foods. The food-preparation process is supervised by a rabbi and includes the examination of ingredients as well as processing and packaging equipment. These standards are so rigorous that food can be barred from receiving kosher certification if even a single non-kosher ingredient that makes up only one-tenth of one percent of the total is found. The kosher certification of Hebrew National Franks guarantees they are prepared at the highest level of quality. For more information about Hebrew National Franks and the kosher food-preparation process visit [www.HebrewNational.com](http://www.HebrewNational.com).

The Hebrew National brand is a registered trademark of ConAgra Brands, Inc.

#### About ConAgra Foods

ConAgra Foods Inc. (NYSE:CAG) is one of North America's largest packaged food companies, serving grocery retailers, as well as restaurants and other foodservice establishments. Popular ConAgra Foods consumer brands include: Banquet, Chef Boyardee, Egg Beaters, Healthy Choice, Hebrew National, Hunt's, Marie Callender's, Orville Redenbacher's, PAM and many others. For more information, visit [www.conagrafoods.com](http://www.conagrafoods.com).

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## EXHIBIT J

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## News Release

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### **Let's Be Frank - When Buying Hot Dogs, Parents Want 'Fun Food' They Can Trust, Not a 'Mystery Meat' Surprise**

Survey finds parents want assurance of 'no surprises' they get from quality, purity of kosher, much like organic; key factor in growing appeal of Hebrew National premium kosher beef franks for mainstream consumers

OMAHA, Neb., June 28, 2006 — A surprise inside is the last thing you want in your child's food. This summer, the all-American hot dog continues to top most lists of family-favorite fun foods for kids<sup>1</sup>. But America's love for the hot dog is not unconditional. In a recent national survey, commissioned by Hebrew National®, fully 77 percent of parents cited 'no fillers or artificial ingredients' as the single most important quality they look for when buying hot dogs for their kids<sup>2</sup>. Indeed, quality and pure ingredients were cited as the two top reasons for kosher's appeal among those who are more likely to choose kosher foods now versus five years ago.

Today, a growing number of mainstream Americans are choosing both organic and kosher foods for similar qualities -- their quality, freshness and purity of ingredients. Among kosher foods, kosher beef franks are leading the charge,<sup>3</sup> making Hebrew National's Premium Kosher All-Beef Franks the perfect solution for parents looking for a 'mystery-free' frank this summer. Hebrew National's kosher beef franks contain only the finest cuts of 100 percent kosher beef, with no 'surprise' ingredients like artificial colors, flavors, fillers and by-products.

"Hot dogs remain the top choice as summer fun food for active kids<sup>4</sup>, but parents are more concerned than ever about the quality and purity of ingredients," says Tom Bartley, director of Marketing, Hebrew National. "Parents don't want any 'mystery meat' surprise inside their child's food. They don't want any ifs, ands, or butts. They want premium quality, all beef and no surprises, which is what they get with kosher. And that's why kosher foods are gaining mainstream consumer acceptance. Foods like Hebrew National's 100 percent kosher beef franks give parents quality assurance and purity of ingredients they can trust, similar to what they might find in organic foods."

Today, more than nine out of 10 Americans look to 'trust marks' such as kosher and organic to help them determine their best food choice when shopping<sup>5</sup>. In fact, with its long history of purity, cleanliness and higher quality, kosher is now one of the top eight trust marks Americans consider when shopping for quality foods<sup>6</sup>. The kosher mark on Hebrew National packaging—a triangle with a "K" in the center—is a symbol of quality, freshness and purity of ingredients the brand has been delivering to families for more than 100 years.

#### The Kosher Difference

The Hebrew National survey gets to the meat of what Americans think about kosher and hot dogs, including:

- Changing times, changing to kosher: Among the reasons some Americans are choosing kosher now versus five years ago are the purity of kosher food (95 percent), higher-quality ingredients (92 percent) and food safety (90 percent). Great taste was noted by 80 percent of those respondents.
- Best tasting dog attributes: Seventy-nine percent say quality, 72 percent say all-beef, 68 percent say juiciness.
- Kosher tops the list: Eighty-three percent of those who purchase kosher products buy kosher hot dogs, making it the top kosher food choice among kosher users.

#### Appeal of Kosher Foods Grows

The food industry has responded to growing demand for kosher in a big way. Kosher food has blossomed to a \$9.4 billion-a-year industry whose sales climb at an annual rate of 15 percent<sup>7</sup>. There are now more than 86,000 kosher-certified products<sup>8</sup>.

Part of kosher's appeal is strict guidelines kosher manufacturers must follow to ensure cleanliness, purity of ingredients and safety. Kosher food preparation is supervised by a rabbi and includes examination of ingredients as well as processing and packaging equipment. These standards are so rigorous that a food can be barred from receiving kosher certification if even a single non-kosher ingredient that makes up only one-tenth of one percent of the total is found.

This summer, as Americans of all ages devour an estimated seven billion hot dogs from the grill<sup>9</sup>, at the ballpark and elsewhere, Hebrew National, with more than a century of experience making quality kosher foods, is communicating with consumers about the quality assurance they get with kosher beef franks. For more information about Hebrew National Franks including information on kosher food-preparation and recipes, visit [www.HebrewNational.com](http://www.HebrewNational.com).

#### About ConAgra Foods

ConAgra Foods Inc. (NYSE:CAG) is one of North America's largest packaged food companies, serving grocery retailers, as well as restaurants and other foodservice establishments. Popular ConAgra Foods consumer brands include: Banquet, Chef Boyardee, Egg Beaters, Healthy Choice, Hebrew National, Hunt's, Marie Callender's, Orville Redenbacher's, PAM and many others. For more information, visit [www.conagrafoods.com](http://www.conagrafoods.com).

The survey on shoppers' attitudes about kosher and hot dogs was conducted by Synovate on behalf of Hebrew National with a nationally representative sample of 1,000 American adults in June 2005. The margin of error is +/- 3 %s.

- 1 National Hot Dog and Sausage Council ([www.hot-dog.org](http://www.hot-dog.org))
- 2 Synovate "Hot dog/kosher" Survey, June 2005
- 3 Synovate "Hot dog/kosher" Survey, June 2005
- 4 National Hot Dog and Sausage Council ([www.hot-dog.org](http://www.hot-dog.org))
- 5 What's In Store Survey conducted by Ipsos U.S. Express on behalf of ConAgra Foods with a representative sample of 1,023 American adults in April 2006. The margin of error is +/-3 percentage points.
- 6 "What's In Store" Survey, April 2006
- 7 "The Kosher Food Market" Mintel Report, October 2005
- 8 Kosherfest ([www.kosherfest.com](http://www.kosherfest.com))
- 9 National Hot Dog and Sausage Council ([www.hot-dog.org](http://www.hot-dog.org))

For more information, please contact:

Regina DeMars  
(402) 595-6727  
[Regina.Demars@conagrafoods.com](mailto:Regina.Demars@conagrafoods.com)  
Katie Trotsky  
(312) 228-6846  
[Katie.Trotsky@ketchum.com](mailto:Katie.Trotsky@ketchum.com)  
[www.hebrewnational.com](http://www.hebrewnational.com)  
[www.conagrafoods.com](http://www.conagrafoods.com)



# EXHIBIT K



CALEB LH MARKER  
DIRECT: (562) 216-7387  
C.MARKER@RIDOUTLYONLAW.COM

April 26, 2012

*Via Certified Mail  
Return Receipt Requested*

Conagra Foods, Inc.  
One Conagra Drive 1-237  
Omaha, NE 68102

Registered Agent:  
THE PRENTICE-HALL CORPORATION  
SYSTEM, INC.  
2710 GATEWAY OAKS DR STE 150N  
SACRAMENTO CA 95833

RE: ***PRELIMINARY NOTICE AND DEMAND FOR CORRECTIVE ACTION  
PURSUANT TO CALIFORNIA CIVIL CODE §1782***

To Whom It May Concern:

1. We represent Erin Stilwell and Maria Eugina Saenz Valiente who are both residents of the state of California. Both Ms. Stilwell and Ms. Saenz Valiente purchased Hebrew National meat products in California on several occasions within the last 3 years believing that the products were strictly 100% Kosher, as labeled. Conagra marks each package of Hebrew National products (hot dogs/beef franks, salami, sausage, deli meats etc.) with the "Triangle K" symbol and represents that: "The Triangle K symbol is a trademarked logo that signifies "kashruth" (kosher) *"as defined by the most stringent Jews who follow Orthodox Jewish Law. It's a symbol of integrity, representing the most trusted and reliable name in strict rabbinical food certification and supervision."* <http://www.hebrewnational.com/kosher-difference.jsp>. (Emphasis added).

2. Both Ms. Stilwell and Ms. Saenz Valiente paid a premium price for the Hebrew National meat products purchased, believing representations on the product label that the product was strictly 100% kosher.

3. Conagra represents and warrants that all individually packaged Hebrew National meat products that it markets and sells are 100% kosher "as defined by the most stringent Jews who follow Orthodox Jewish Law," when that is not the case. Both Ms. Stilwell and Ms. Saenz Valiente received Hebrew National products that were not 100% kosher. Conagra does not strictly comply with the standard it states it does on each package. Hebrew National products are not made from 100% kosher beef "as defined by the most stringent Jews who follow Orthodox Jewish Law." The food processing plants which Defendant purchase and/or otherwise obtain the meat used in Hebrew National products, including those in Minnesota, Wisconsin and Nebraska, fail to adhere to the kosher standards "as defined by the most stringent Jews who follow Orthodox Jewish Law" in numerous respects. As a result Defendant's representations on each package of Hebrew National products are false, deceptive and misleading.

4. This letter serves as a preliminary notice and demand for corrective action pursuant to the provisions of California Civil Code § 1782, on behalf of Ms. Stilwell and Ms. Saenz Valiente as well as a class of similarly situated consumers who purchased individually packaged Hebrew National meat products manufactured, marketed and/or sold by Defendant within the last 4 years. (the "Class").

5. This demand is submitted not only on behalf of Ms. Stilwell and Ms. Saenz Valiente but also the entire Class of persons in California who, during the past four (4) years, purchased individually packaged Hebrew National meat products (hot dogs/beef franks, salami, sausage, deli meats etc.).

6. We are informed and believe that Conagra has violated provisions of the California Civil Code § 1750, et seq. and California Business and Professions Code § 17200, et seq., among other laws.

7. We are informed and believe that Conagra engages in deceptive and unlawful business conduct towards its customers including, but not limited to, false advertising practices and general mislabeling/misbranding of their Hebrew National products as 100% kosher.

8. We are informed and believe that Conagra violated the CLRA by, among other things:

- a. representing that Hebrew National meat products (hot dogs/beef franks, salami, sausage, deli meats etc.) are strictly 100% kosher, in violation of Civil Code § 1770(a)(5);
- b. representing that Hebrew National meat products are of a particular style when in fact it is not, in violation of Civil Code § 1770(a)(7);

- c. advertising Hebrew National meat products with intent not to sell it as advertised, in violation of Civil Code § 1770(a)(9); and
- d. misrepresenting that a subject of a transaction has been supplied in accordance with a previous representation when it has not, in violation of Civil Code § 1770(a)(16).

9. As the result of these legal violations, Ms. Stilwell and Ms. Saenz Valiente and other consumers in the Class were deprived of the value of goods they bargained for, suffered injury and sustained pecuniary loss. Like other class members, Ms. Stilwell and Ms. Saenz Valiente overpaid for the products purchased by paying a premium price for supposedly 100% kosher meat that was not warranted.

10. We hereby demand that Conagra immediately: (1) cease and desist from all of the above-described practices; and (2) completely disgorge and pay monetary damages equal to the total amount of monies paid for Hebrew National meat products by Ms. Stilwell and Ms. Saenz Valiente and other consumers in the Class, together with interest thereon calculated at the highest applicable legal rate, to Ms. Stilwell, Ms. Saenz Valiente and all other consumers who were affected by this conduct. This demand is made by Ms. Stilwell and Ms. Saenz Valiente on a collective basis on behalf of both herself and the Class of all similarly situated residents in California. California Civil Code §1782(c) requires that Conagra identify and provide the remedies demanded to all consumers similarly situated.

11. Please comply with this demand within 30 days from your receipt of this letter. If we do not hear from you within this time period with confirmation that all action demanded in paragraph 8 above has been fully complied with, we will assume that you will not take the corrective action requested.


12. This letter also serves as a demand that you preserve and maintain any and all relevant records pending the resolution of this matter including any such records that are stored electronically. Such records include, but are not limited to all records showing the identity of all of your customers, the amounts of monies paid by said customers, and all other documents relating to the above referenced information.

13. If you contend that any of the facts or information and belief contained in this letter is inaccurate in any respect, please provide us with all your contentions and all supporting documents/materials immediately upon your receipt of this letter, but in no event later than thirty (30) days from the date of receipt.

Should you have any questions or concerns, please feel free to contact me (562) 216-7387 or by e-mail at [c.marker@ridoutlyonlaw.com](mailto:c.marker@ridoutlyonlaw.com).

Very truly yours,

RIDOUT & LYON, LLP



Caleb Marker  
Attorney at Law

CLM/js

cc: Client

STATE OF MINNESOTA

COUNTY OF DAKOTA

DISTRICT COURT

FIRST JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

MELVIN WALLACE, SHIRLEY HARDT,  
LEWIS SIMPSON, and WILLIAM COBB,  
ERICA DAVIS-HOLDER, ROTEM  
COHEN, JULIAN WAGNER, ROSE  
WAGNER, ERIN STILWELL, MARIA  
EUGENIA SAENZ VALIENTE and  
ADAM BURNHAM individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

CONAGRA FOODS, INC d/b/a Hebrew  
National, a Delaware corporation.

Defendant.

Court File No.

**SUMMONS**

**THIS SUMMONS IS DIRECTED TO: ConAgra Foods, Inc. d/b/a Hebrew National.**

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this summons a written response called an Answer within 20 days of the date on which you received this summons. You must send a copy of your Answer to the person who signed this summons located at:

Hart L. Robinovitch  
ZIMMERMAN REED, PLLP  
14646 N. Kierland Blvd., Suite 145  
Scottsdale, AZ 85254

Christopher J. Kuhlman  
KUHLMAN LAW, PLLC  
333 Washington Ave. N., Suite 300  
Minneapolis, MN 55401

Anne T. Regan  
ZIMMERMAN REED, PLLP  
1100 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402  
Christopher P. Ridout  
Caleb LH Marker  
RIDOUT & LYON, LLP  
555 East Ocean Blvd., Suite 500  
Long Beach, CA 90802

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not

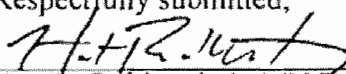
be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint. If you do not want to contest the claims stated in the complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written answer to protect your rights or you may lose the case.**

6. **ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: 5/17/12

Respectfully submitted,  
By:   
Hart L. Robinovitch, MN Bar No. 240515  
ZIMMERMAN REED, PLLP  
14646 N. Kierland Blvd., Suite 145  
Scottsdale, AZ 85254  
(480) 348-6400  
(480) 348-6415 Facsimile

Anne T. Regan, MN Bar No. 333852  
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Christopher P. Ridout, CA Bar No. 143931  
Caleb LH Marker, CA Bar No. 269721  
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555 East Ocean Blvd., Suite 500  
Long Beach, CA 90802  
(562) 216-7382  
(562) 216-7385 Facsimile

*Attorneys for Plaintiffs*

STATE OF MINNESOTA  
COUNTY OF DAKOTA

DISTRICT COURT  
FIRST JUDICIAL DISTRICT  
CASE TYPE: OTHER CIVIL

MELVIN WALLACE, et al.,  
Plaintiff,

Court File No.

vs.

**CERTIFICATE OF  
REPRESENTATION AND PARTIES**

CONAGRA FOODS, INC d/b/a Hebrew  
National, a Delaware corporation.

Defendant.

**ALL LAWYERS/PRO SE PARTIES INVOLVED IN THIS CASE**

**LAWYERS FOR PLAINTIFFS MELVIN  
WALLACE, SHIRLEY HARDT, LEWIS  
SIMPSON, WILLIAM COBB, ERICA  
DAVIS-HOLDER, ROTEM COHEN,  
JULIAN WAGNER, ROSE WAGNER,  
ERIN STILWELL, MARIA EUGENIA  
SAENZ VALIENTE and ADAM  
BURNHAM:**

**LAWYERS FOR DEFENDANT:**  
Unknown.

**DEFENDANT:**

**CONAGRA FOODS, INC.**  
One ConAgra Drive, I-237  
Omaha, Nebraska 68102

**ZIMMERMAN REED, PLLP**  
Hart L. Robinovitch, MN Bar No. 240515  
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Minneapolis, MN 55401  
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(612) 435-9835 Facsimile

(continued to next page)



**RIDOUT & LYON, LLP**

Christopher P. Ridout, CA Bar No. 143931

Caleb LH Marker, CA Bar No. 269721

555 East Ocean Blvd., Suite 500

Long Beach, CA 90802

(562) 216-7382

(562) 216-7385 Facsimile

Date: 5/17/12

  
\_\_\_\_\_  
Hart L. Robinovitch, Filing Attorney



CORPORATION SERVICE COMPANY

## Notice of Service of Process

TWS / ALL  
Transmittal Number: 9929374  
Date Processed: 05/20/2012

**Primary Contact:** Leo A. Knowles, 1-370  
Conagra Foods, Inc.  
One Conagra Drive  
Omaha, NE 68102-5001

**Copy of transmittal only provided to:** Sherry Benton 1-370  
Stefanie Nelsen  
Melanie McIntyre - MS 1-370

---

|                                  |  |
|----------------------------------|--|
| <b>Entity:</b>                   | ConAgra Foods, Inc.<br>Entity ID Number 0246636            |
| <b>Entity Served:</b>            | Conagra Foods, Inc. dba Hebrew National                    |
| <b>Title of Action:</b>          | Melvin Wallace vs. Conagra Foods, Inc. dba Hebrew National |
| <b>Document(s) Type:</b>         | Summons/Complaint  |
| <b>Nature of Action:</b>         | Other  |
| <b>Court/Agency:</b>             | Dakota County District Court, Minnesota                    |
| <b>Case/Reference No:</b>        | Not Shown  |
| <b>Jurisdiction Served:</b>      | Minnesota  |
| <b>Date Served on CSC:</b>       | 05/18/2012   |
| <b>Answer or Appearance Due:</b> | 20 Days  |
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| <b>Sender Information:</b>       | Hart L Robinovitch<br>480-348-6400                         |

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*CSC is SAS70 Type II certified for its Litigation Management System.*

2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | [sop@cscinfo.com](mailto:sop@cscinfo.com)

Registered Agent:  
 THE PRENTICE-HALL CORPORATION SYSTEM, INC.  
 2710 GATEWAY OAKS DR STE 150N  
 SACRAMENTO CA 95833



7010 3090 0001 6315 2530



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**RL RIDOUT+LYON LLP**  
 Attorneys at Law  
 555 E. Ocean Blvd.  
 Suite 500  
 Long Beach CA 90802

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 Ste. 150N  
 Sacramento, CA*

2. Article Number  
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*Billie Lee / Shilwell v. Canagya Family Inc.*  
*CCLA Demand Letter*

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| Canara Foods, Inc. The Pentia Hall Corp. |                                |
| Street, Apt. No.,<br>or PO Box No.       | 2710 Gateway Oaks Dr. Ste. 100 |
| City, State, ZIP+4                       | Sacramento, CA 95833           |

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Conagra Foods, Inc.  
Prentice Hall Corporation System, Inc.  
2710 Gateway Oaks Drive  
Ste. 150N  
Sacramento, CA

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