1. I am Jack Parker. I am the President of Parker Development, Incorporated ("PDI"). I have expertise in the food industry, and I have provided expert opinion in this area previously. My business address is 180 Munsonhurst Road, Franklin, New Jersey 07416. PDI is a firm providing industry consulting, research and development, product analysis, and process development in the food, beverage, confection, spirits, and dietary supplements market segments.

Assignment

2. I have been retained by Boston Market principally to review and evaluate the claims and photographs provided by the Plaintiff, Ashley Danielle Carney, in support of the Defendant, Boston Market.

Summary of Opinions

3. I provide the following opinions with a reasonable degree of professional certainty in the field of food science. Ms. Carney's assertions are false conclusions based upon mistaken observations and so render her claims invalid. In addition, it is my opinion with a reasonable degree of professional certainty in the field of food science that her photographs do not represent a baby bird nor a case of altered food. I explain the basis of these opinions in the sections below.

Qualifications

1. I am President of Parker Development, Inc., a product/process development and regulatory affairs consulting firm to the food, beverage, confection, spirits, and dietary supplements industries. I started the company in 1992 and have worked with clients throughout the United States, North and South America, Europe, and Asia. I have worked in the industry for 38 years and my previous experience includes Vice President of Operations and Vice President of Research and Development for Globe Products, a Tyson division now owned by Pinnacle Foods Corporation - Birdseye Foods. I was also President of Scott Adams Foods, a vegetarian frozen food company that was later renamed as Natural Chef Foods. I created the company's product line in an R&D capacity and until the sale of the company continued to do so as a technical consultant and product developer. I have been a Senior Partner at Schiff and Company, a CRO

(Contract Research Organization), and worked on new drug applications (NDA, ANDA), clinical trials, medical device filings, color, flavor, food, and cosmetic additive petitions and numerous other regulatory affairs issues. I am a graduate of The College of New Jersey with a BS in Biology. I am an Institute of Food Technologists, Certified Food Scientist[1] (CFS™) and continued my education through FDA Better Process Control School, AIB (American Institute of Baking) Food Plant Microbiology, HACCP Plan Development and a wide variety of technical, regulatory and quality seminars along with other continuing educational activities. I have been a speaker at technical conferences hosted by The Institute of Food Technologists, Research Chefs Association and the National Association of College and University Food Service. I have not authored any publications in the last 10 years. I have not testified as an expert in deposition or trial for the last 4 years.

2. I have substantial experience in the evaluation of raw and prepared food products and ingredients for the purposes of reverse formulation, foreign matter detection, and manipulation.

3. PDI is being compensated at $300.00 per hour for my services through Gerson Lehrman Group (GLG) a consulting platform that connects clients with various experts in different fields.

4. I continue to review materials related to this case and reserve the right to supplement this expert report based on any additional work that I may be asked to do.

Materials Reviewed.

5. As part of this assignment, I have reviewed the amended complaint filed by the Plaintiff in this case as well as relevant associated documentation. I have reviewed various background documentation provided to me by counsel including an amended complaint,

[1] Certified Food Scientist Handbook, Institute of Food Technologists
https://www.ift.org/career-development/certification/get-your-cfs

deposition, and photographs. A complete list of the documentation reviewed by me for this report is shown in Appendix A.

Background

6. I understand that on 09/23/2017 at 9:07 pm, the Plaintiff visited a corporate Boston Market restaurant located at 271 West 23rd Street, New York, NY 10001.[2]

7. I further understand that the Plaintiff used a BOGO (buy one, get one free) coupon that she received from a prior purchase that week to purchase two three-piece meals. She ordered two legs and one thigh with each meal.[3]

8. My understanding is that the Plaintiff ate one meal that night and all seemed normal. The Plaintiff placed the second meal in the refrigerator to eat another day.[4]

9. It is my understanding that the night of Monday 09/25/17, around 10 pm, the Plaintiff warmed up and began to eat the second meal. The Plaintiff ate the two sides first, and then one of the legs, all seemed normal with the food. When the Plaintiff was ready to eat the second leg, she noticed that it looked awkward in appearance, and after looking closer, the Plaintiff believed she was served altered food by what appeared to be a rotisserie baby bird with head, beak, and eyes. The plaintiff claims a beak was visible on both sides of the protruding bone.[5]

Ms. Carney's Assertions are Mistaken Observations and Consequently Not Valid

10. Ms. Carney's observations are mistaken and suffer from several flaws, each of which raise serious questions about the validity of her assertions when taken in combination. In reviewing Ms. Carney's statements and the photographic evidence provided, it is my opinion provided with a reasonable degree of professional certainty in the field of food science, that they fail to indicate that this is either a baby bird, or a case of altered food

[2] Amended Complaint, Index No. 18-CV-00713 (LGS) p. 2 Bullet 1
[3] Amended Complaint, Index No. 18-CV-00713 (LGS) p. 2 Bullet 3
[4] Amended Complaint, Index No. 18-CV-00713 (LGS) p. 2 Bullet 6
[5] Amended Complaint, Index No. 18-CV-00713 (LGS) p. 2 Bullet 7

(tampering) and that they are instead, the normal attributes of a cooked chicken leg suitable for a meal.

a. The photographs are of a chicken leg, commonly called a drumstick.

b. The photographs of what is indicated to be a head is a chicken joint with cartilage and skin. This joint is located at the end of a chicken leg or drumstick and a normal part of a chicken used for a meal and fit for its intended ordinary purpose.

c. The photographs of what is mistakenly indicated to be a beak is of a broken chicken leg or drumstick bone (tibia or tibiotarsus). This bone is a normal part of a chicken leg or drumstick and suitable for a meal and fit for its intended ordinary purpose.

d. The photographs of what are mistakenly indicated to be eyes are the outer surfaces of a chicken joint. This joint is a normal part of a chicken leg or drumstick and suitable for a meal and fit for its intended ordinary purpose.

e. The photographs are of a chicken leg or drumstick that have not been manipulated to look like a baby bird and are a normal part of a chicken leg or drumstick suitable for a meal and fit for its intended ordinary purpose.

Each of these points are discussed below.

11. <u>The photographs are of a chicken leg or drumstick.</u> It is my opinion provided with a reasonable degree of professional certainty in the field of food science that the images provided are of a normal cooked chicken leg or drumstick suitable for a meal and fit for its intended ordinary purpose. See Photographs, Appendix C. The chicken leg is characterized by a single visible bone running through the mass, which is consistent with a chicken leg or drumstick bone (tibia or tibiotarsus)[6]. See Diagram 1, Appendix D

[6] The tibiotarsus is the large bone between the femur and the tarsometatarsus in the leg of a bird. It is the fusion of the proximal part of the tarsus with the tibia.

12. The plastic plate in **Photo C-6** depicts a chicken thigh and a leg. The Plaintiff consumed the other leg leaving only the remaining thigh and leg. The muscle meat of the leg is solid in nature and is without an internal body cavity that would be expected if this were a baby bird or chick. There are no signs of juvenile wings or joints that would indicate the item pictured is a baby bird. **Photos C-1** and **C-2** clearly shows no body cavity, no juvenile wings nor any other body structure indicating this is a baby bird. See Photographs, Appendix C

13. A baby bird or a bird of any kind would have multiple bones, including but not limited to; clavicle (wishbone), sternum (keel), ribs, wings, vertebrae, etc. These images show a single bone running through the entire mass that is consistent with a normal chicken leg or drumstick suitable for a meal and fit for its intended ordinary purpose. See Diagram 1 Appendix D

14. In my opinion provided with a reasonable degree of professional certainty in the field of food science that the photographs of what is indicated to be a head is a chicken leg or drumstick joint[7] with cartilage. This is a normal part of a chicken leg or drumstick suitable for a meal and fit for its intended ordinary purpose. The photographs are consistent with a chicken joint that is located at the distal end of the tibia (or tibiotarsus). The mating surfaces form a joint allowing articulation. See Diagrams 2,3,4,5 Appendix D

15. The head of a chicken or baby bird does not have protrusions around the eye orbits. There are cavities or depressions where the eye would sit inside the skull. These photographs show the opposite and could not be a baby bird. See Diagram 1 and Diagram 6 No. 5 Appendix C

[7] This joint may be referred to by several names; tarsal joint, intertarsal joint, tibiotarsal joint, condyle joint, hock joint, ankle and is the joint visible at the end of a chicken leg or drumstick.

16. The photographs of what is indicated to be a beak is a broken tibia (tibiotarsus). In **Photos C-3 and C-4** the bone is broken and forms two, "V-shaped" spaces on the end of the tibia (tibiotarsus). The opposite end of the break has formed inverted "V-shaped" protrusion that formed as a result of that break and would fit back together if manipulated or "set." The broken surfaces will clearly mate back together indicating that is in not a beak. See Photographs, Appendix C

17. In my opinion provided with a reasonable degree of professional certainty in the field of food science, the bone break occurred due to a combination of, "trussing,"[8] or tying with string, cooking in the rotisserie oven, and handling. It is widely known that chicken bones break and splinter easily when cooked. As the chicken is held at an elevated temperature in the ovens, the bone darkened, and the marrow leaked and boiled out over time forming a void.

18. The photographs of what is indicated to be eyes are the outer surfaces of a chicken joint. The point at which the bone is broken, the distal end, is rotated back, exposing the break below the joint, thus pushing the joint upwards. The skin and cartilage that cover the joint have shrunk and rendered upon cooking, thus tightening over the joint, forming pronounced bulges that the Plaintiff mistakenly believes are eyes. See Diagram 6 No. 5 Appendix C

19. This is not possible for two main reasons. First, is that eyes are filled with vitreous humor that is mainly comprised of water. That water would evaporate in the cooking process, resulting in a depression in the skull.

20. Second is that the eye orbit of a chicken is a depression or cavity of substantial size in comparison to the skull. As the skin tightened during cooking a flat surface or depression would have formed exposing that orbit as a depression, and not a protrusion.

[8] Trussing a chicken helps ensure that the whole bird cooks evenly and that the wings and legs do not burn. When a chicken is not trussed, the breast cavity can stay open allowing too much hot air to circulate inside of it. That hot air dries out the breast meat before the thighs and legs are properly cooked.

Additionally, skin would not be present over an eye and so this depression or cavity would have been pronounced.

21. The photographs are of a chicken leg or drumstick that have not been manipulated to look like a baby bird. Considering the points made in the previous comments, it is my opinion based on a reasonable degree of professional certainty that the photographs are not of a food that has been manipulated in any way to appear like a baby bird. See Photographs, Appendix C

Conclusions

Based on my review, as discussed in this report, it is my opinion provided with a reasonable degree of professional certainty in the field of food science that Ms. Carney's claims are mistaken and render her claims invalid. The photographs provided are of a normal cooked chicken leg or drumstick that has a broken bone. Everything presented to me indicates that this is a chicken leg or drumstick suitable as a meal and fit for its intended ordinary purpose.

I declare under penalty of perjury that the foregoing is true and correct, and if called as a witness would testify competently thereto.

Date: July 27, 2020

Jack Parker
JACK PARKER, CFS

APPENDIX A

LIST OF DOCUMENTATION REVIEWED

DOCUMENTS AND PHOTOGRAPHS

June 3, 2020 EBT of Ashley Carney Full

Carney Deposition Exhibits

Second Amended Complaints

Boston Market Receipt

PHOTOGRAPHS

Photo C-1

Photo C-2

Photo C-3

Photo C-4

Photo C-5

Photo C-6

APPENDIX C

PHOTOGRAPHS

APPENDIX D

DIAGRAMS AND IMAGES

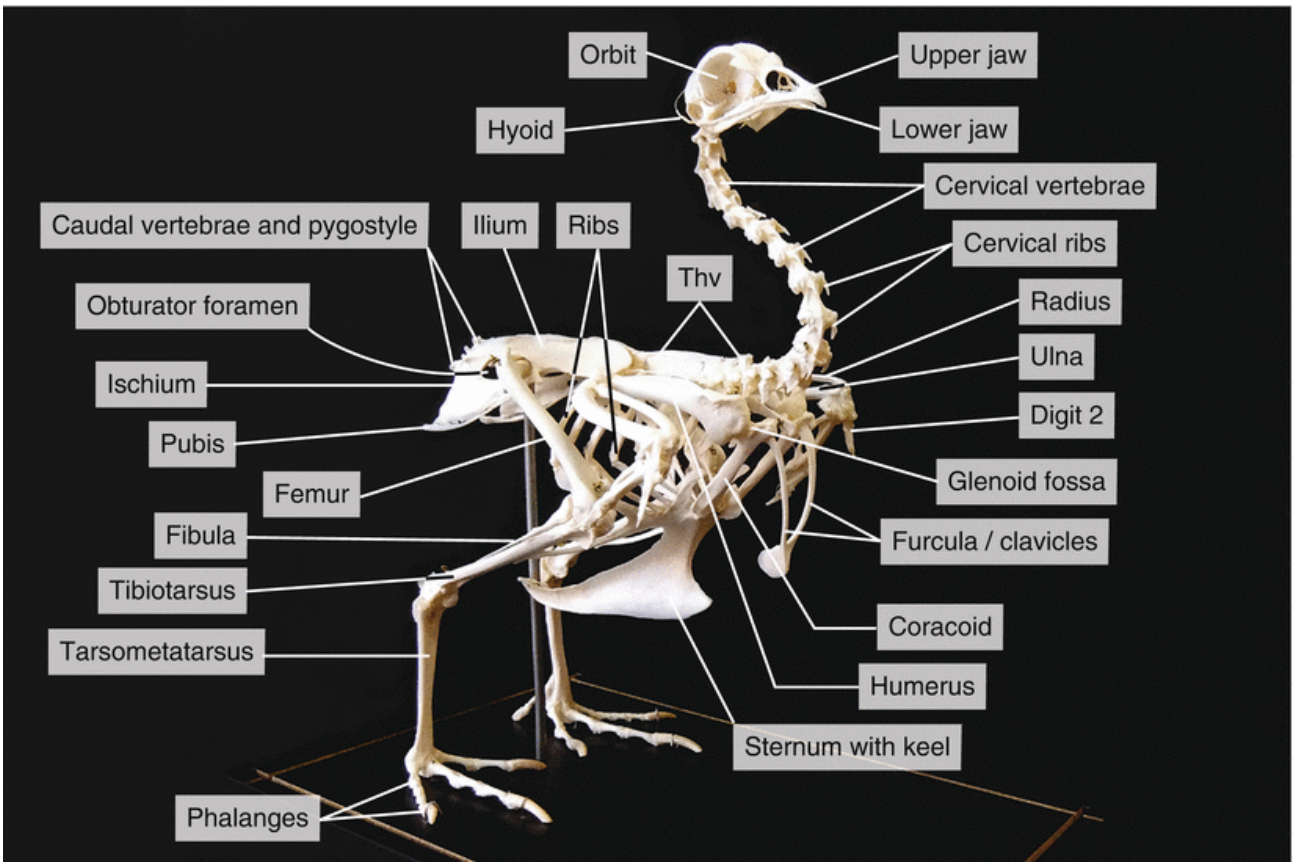

DIAGRAM 1
Source: Springer, Cham
Dissection of a Chicken (Gallus domesticus), Lőw P., Molnár K., Kriska G. (2016) Dissection of a Chicken (*Gallus domesticus*). In: Atlas of Animal Anatomy and Histology. Springer, Cham

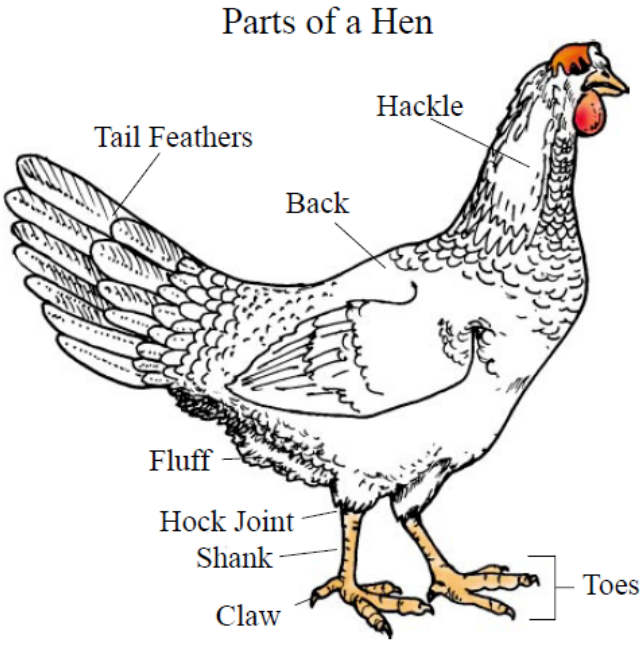

DIAGRAM 2
Source: External Anatomy of Chickens, University of Illinois

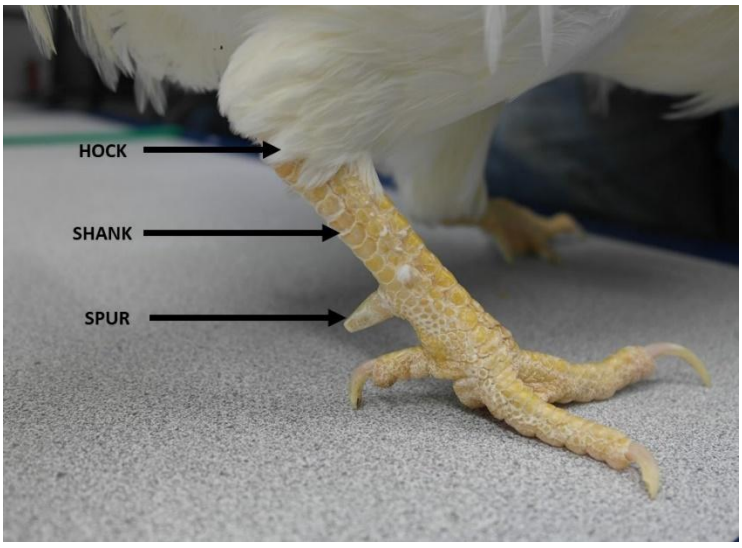

DIAGRAM 3
Source: External Anatomy of Chickens, University of Illinois

DIAGRAM 4
Source: Shutterstock

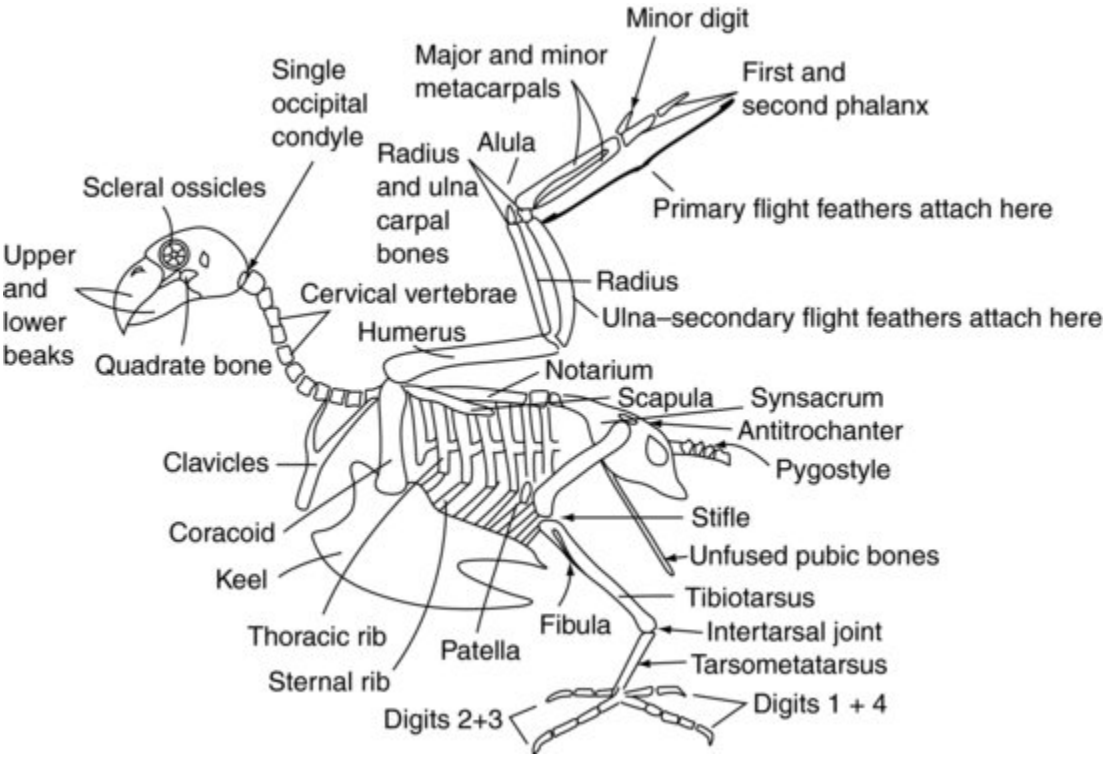

DIAGRAM 5
Source: https://veteriankey.com/basic-avian-anatomy-and-physiology/#c9-fig-0002-1

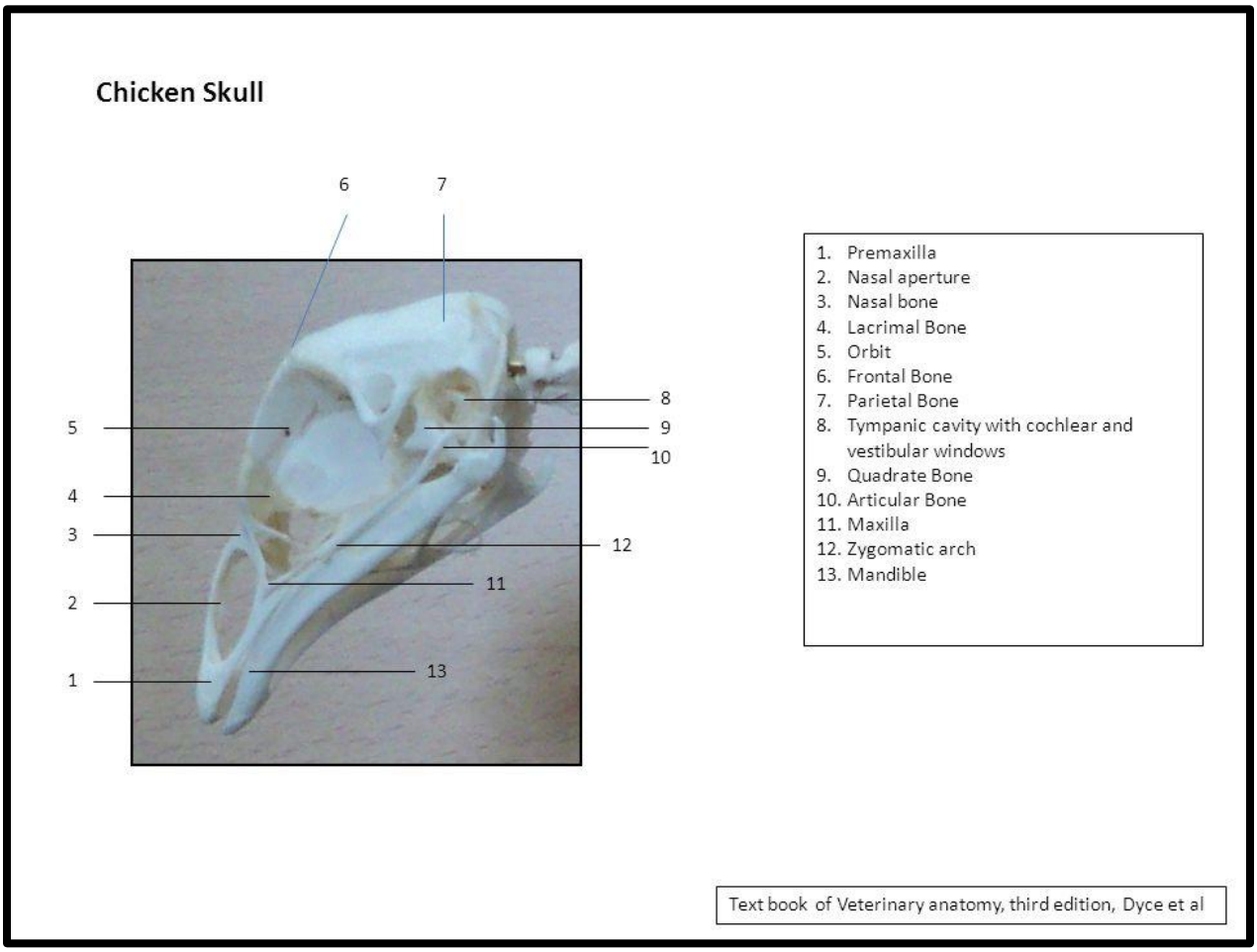

DIAGRAM 6
Source: Textbook of Veterinary Anatomy, third edition, Dyce et al