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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 NANCY STURM, Individually and on
14 Behalf of All Others Similarly Situated,

Plaintiff,

v.

15 BIG HEART PET BRANDS, INC., a
16 Delaware corporation,

17 Defendant.

) Case No.

) **CLASS ACTION COMPLAINT FOR:**

-) (1) NEGLIGENCE;
 -) (2) MISREPRESENTATION;
 -) (3) VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT;
 -) (4) VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW;
 -) (5) VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW;
 -) (6) NEGLIGENCE;
 -) (7) BREACH OF EXPRESS WARRANTY;
 -) (8) BREACH OF IMPLIED WARRANTY;
 -) (9) FRAUDULENT CONCEALMENT;
 -) AND
 -) (10) VIOLATIONS OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT.
- DEMAND FOR JURY TRIAL

1 1. Plaintiff Nancy Sturm ("Plaintiff"), individually and on behalf of all others
2 similarly situated, by and through her undersigned attorneys, bring this Class Action
3 Complaint against defendant Big Heart Pet Brands, Inc. ("Defendant"), to cause Defendant
4 to disclose its pet food sold throughout the United States is adulterated and contains
5 pentobarbital and to restore monies to the consumers and businesses who purchased the
6 Contaminated Dog Foods (as defined herein) during the time that Defendant failed to make
7 such disclosures. Plaintiff also seeks to bar Defendant from selling any dog food that
8 contains any levels of pentobarbital. Plaintiff alleges the following based upon personal
9 knowledge as well as investigation by her counsel and as to all other matters, upon
10 information and belief (Plaintiff believes that substantial evidentiary support will exist for
11 the allegations set forth herein after a reasonable opportunity for discovery).

12 **DEFENDANT'S CONTAMINATED DOG FOODS ARE ADULTERATED AS**
13 **THEY CONTAIN PENTOBARBITAL, A SUBSTANCE LARGELY USED TO**
14 **EUTHANIZE ANIMALS**

15 2. Defendant manufactures, markets, advertises, labels, distributes, and sells
16 Gravy Train Chunks in Gravy with Beef Chunks, Gravy Train Chunks in Gravy with T-
17 Bone Flavor Chunks, Gravy Train Chunks in Gravy with Chicken Chunks, Gravy Train
18 Strips in Gravy Beef Strips and Gravy Train with Lamb & Rice Chunks (the "Contaminated
19 Dog Foods").¹ The Contaminated Dog Foods contain pentobarbital, a barbiturate drug used
20 as a sedative and anesthetic for animals, rendering it adulterated under relevant federal and
21 state law. Pentobarbital is now most commonly used to euthanizing dogs and cats.²

22
23
24 ¹ Discovery may reveal additional products that also contain Pentobarbital and Plaintiff reserves
25 the right to include any such products in this action.

26 ²Petplace, "Pentobarbital for Dogs and Cats, July 16, 2015,
27 [https://www.petplace.com/article/drug-library/drug-library/library/pentobarbital-for-dogs-and-](https://www.petplace.com/article/drug-library/drug-library/library/pentobarbital-for-dogs-and-cats/)
28 [cats/](https://www.petplace.com/article/drug-library/drug-library/library/pentobarbital-for-dogs-and-cats/)

1 3. Pentobarbital is a Class II controlled substance, and there is no safe or set
2 level for pentobarbital in pet food. If it is present, the food is adulterated.³ The ingestion of
3 pentobarbital by your pet can lead to adverse health issues, including:

- 4 • Tyalism (salivation)
- 5 • Emesis (vomiting)
- 6 • Stool changes (soft to liquid stools, blood, mucus, urgency, explosive
7 nature, etc.)
- 8 • Hyporexia (decreased appetite)
- 9 • Lethargy/depression
- 10 • Neurologic abnormalities (tremor, seizure, vocalization, unusual eye
11 movements)
- 12 • Ataxia (difficulty walking)
- 13 • Collapse
- 14 • Coma
- 15 • Death⁴

16 4. Despite laws governing pet foods and providing government oversight,
17 “[p]et food manufacturers are responsible for taking appropriate steps to ensure that the
18 food they produce is safe for consumption and properly labeled including verifying the
19 identity and safety of the ingredients from suppliers.”⁵

20 5. “It is not acceptable to use animals euthanized with a chemical substance in
21 pet or other animal foods...The detection of pentobarbital in pet food renders the product
22 adulterated. It is the responsibly of the manufacturer to take the appropriate steps to ensure
23 that the food they produce is safe for consumption and properly labeled.”⁶

24 ³<http://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm>

25 ⁴The Honest Kitchen, “Pentobarbital- What Is It, How it Entered the Pet Food Supply Chain, and what You Can Do To Protect Your Canines & Felines,” (Mar. 1, 2017), available at <https://www.thehonestkitchen.com/blog/pentobarbital-entered-pet-food-supply-chain-can-protect-pet/>

26 ⁵<https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm> (last visited Feb. 5, 2018)

27 ⁶ *Id.*

1 6. Pentobarbital residue from euthanized animals will continue to be present in
2 pet food, even if it is rendered or canned at a high temperature or pressure.⁷

3 7. Pentobarbital is routinely used to euthanize animals, and the most likely way
4 it could get into dog food would be in rendered animal products. Rendered products come
5 from a process that converts animal tissues to feed ingredients, including tissues from
6 animals that were euthanized, decomposed or diseased. Pentobarbital from euthanized
7 animals survives the rendering process and could be present in the rendered feed
8 ingredients used in pet food.

9 8. It is not acceptable to use animals euthanized with a chemical substance in
10 pet food, and the detection of pentobarbital in pet food renders the product adulterated.

11 9. Historically, the FDA has not aggressively taken action under the FDCA, §
12 342 (a)(1) or (5), against the pet food companies that it found to have used non-slaughtered
13 animals and contain pentobarbital in their pet foods. Therefore, manufacturers in the pet
14 food industry, including Defendant, have continued their illegal practice of using non-
15 slaughtered animals that may contain poisonous substances, like pentobarbital, in their pet
16 foods.

17 10. It has been recently revealed that Defendant was knowingly, recklessly
18 and/or negligently selling contaminated dog food containing pentobarbital, a substance
19 largely used to euthanize animals.

20 11. On February 8, 2018, it was reported on WJLA, an ABC network affiliate in
21 Washington, D.C., that an independent investigation determined that the Contaminated
22 Dog Foods contained pentobarbital. The independent investigation utilized two
23 independent labs and both showed the inclusion of pentobarbital the Contaminated Dog
24 Foods.

25 12. This independent seven-month investigation determined that the
26 Contaminated Dog Foods contained pentobarbital. The independent investigation utilized

27 _____
28 ⁷ *Id.*

1 two different labs and both showed that the Contaminated Dog Foods tested positive for
2 pentobarbital. In fact, it was the only brand that tested positive for pentobarbital.⁸

3 13. The report further stated that pentobarbital is not used on farm animals and
4 questioned where the pentobarbital is coming from if it is not from euthanized dogs, cats,
5 or horses. Defendant did not respond to the specific questions raised and instead stated in
6 a press release: “We launched and are conducting a thorough investigation, including
7 working closely with our suppliers, to determine the accuracy of these results and the
8 methodology used.”⁹

9
10 **REACTIONS TO THE NONDISCLOSURE AND MATERIALITY OF THE
11 PRESENCE OF PENTOBARBITAL IN THE CONTAMINATED DOG FOODS**

12 14. Shortly after the public exposure of the fact that the Contaminated Dog Foods
13 contained levels of pentobarbital, Defendant issued a statement assuring consumers,
14 including Plaintiff and the proposed class, that it was “confident in the safety of our
15 products and do not believe you [a consumer] has to take any action.” Exhibit A.

16 15. In this same statement, Defendant admitted that pentobarbital is “[] not
17 something that is added to the pet food. However, it could unintentionally be in raw
18 materials provided by the supplier. We regularly audit our suppliers and have assurances
19 from them about the quality and specifications of the materials they supply us. Raw
20 materials that include pentobarbital do not meet our specifications.” *Id.*

21 16. However, Defendant later officially withdrew certain products from the
22 marketplace and altered this press release by and removing the statements. Exhibit B.

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26 ⁸[http://wjla.com/features/7-on-your-side/fda-to-investigate-after-abc7-exposes-](http://wjla.com/features/7-on-your-side/fda-to-investigate-after-abc7-exposes-euthanasia-drug-in-dog-food)
27 [euthanasia-drug-in-dog-food](http://wjla.com/features/7-on-your-side/fda-to-investigate-after-abc7-exposes-euthanasia-drug-in-dog-food)

28 ⁹ *Id.*

1 17. Defendant further altered by the press release by removing its statement that
2 it follows the American Association Feed Official (AAFCO) standards. *Compare* Exhibit
3 A and Exhibit B.

4 18. Within days of the public revelation that the Contaminate Dog Foods contain
5 pentobarbital, Defendant voluntarily withdrew 27 products, including 10 Gravy Train wet
6 food products.¹⁰ The voluntary withdrawal included the additional brands of Kibble N’
7 Bits, Skippy and Ol’ Roy.

8 19. Defendant has yet to disclose its testing results or the name of the
9 manufacturing plant and/or supplier that it references as the suspected source of the
10 contaminated raw materials containing pentobarbital.

11 20. On February 16, 2018, the FDA issued an alert to consumers addressing the
12 voluntarily withdrawal of the 27 products by Defendant. In this alert, the FDA states: “The
13 FDA’s preliminary evaluation of the testing results of Gravy Train samples indicates
14 that the low level of pentobarbital present in the withdrawn products is unlikely to
15 pose a health risk to pets. However, pentobarbital should never be present in pet food
16 and products containing any amount of pentobarbital are considered to be
17 adulterated.”¹¹

18 21. This same alert further states: “Pentobarbital is a barbiturate drug that is
19 most commonly used in animals as a sedative, anesthetic, or for euthanasia. The
20 FDA’s preliminary evaluation of the testing results of Gravy Train samples indicates
21 that the low level of pentobarbital present in the withdrawn products is unlikely to
22 pose a health risk to pets. However, any detection of pentobarbital in pet food is a
23 violation of the Federal Food, Drug, and Cosmetic Act—simply put, pentobarbital
24 should not be in pet food. The FDA is investigating to learn the potential source and
25 route of the contamination.”

26 _____
27 ¹⁰ <http://www.gravytraindog.com/information>

28 ¹¹ <https://www.fda.gov/animalveterinary/newsevents/ucm597135.htm>

1 22. Consumers have also reacted to the news of Defendant allowing its products
2 to be sold with no disclosure of the inclusion of pentobarbital. Indeed, the social media
3 comments highlight that a reasonable consumer, like Plaintiff and the Class, had no
4 idea that they may be feeding their beloved pet adulterated food and it is something
5 they believe should have been disclosed to the public.

6 **DEFENDANT KNOWINGLY MISLEADS CONSUMERS THROUGH ITS**
7 **REPRESENTATIONS, PACKAGING, LABELS, STATEMENTS, WARRANTIES**
8 **AND SELLING THE CONTAMINATED DOG FOODS AS UNADULTERATED**

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10 23. Defendant falsely advertises the Contaminated Dog Foods as complete
11 nutrition, quality and healthy while omitting they are adulterated with Pentobarbital.

12 24. Defendant formulates, develops, manufactures, labels, distributes,
13 markets, advertises, and sells its extensive Gravy Train lines of dry and wet pet food
14 products in California and across the United States. Indeed, Defendant maintains it
15 keeps rigorous quality and supplier standards from “start to finish” and performs
16 three-tier auditing that includes, third party auditors, to ensure pure ingredients and
17 fair labor are used in its Products, including Contaminated Dog Foods. As such,
18 Defendant knew that the Contaminated Dog Foods were adulterated pet food.¹²

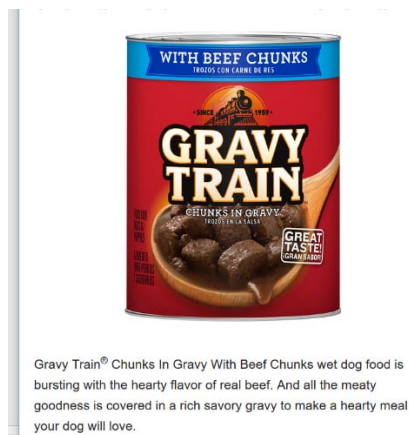
19 25. Defendant also knew the real risk that pentobarbital may appear in the
20 Contaminated Dog Foods if the manufacturing and sourcing were not properly
21 monitored. Indeed, this is not the first time that the Gravy Train line of food has been
22 determined to include pentobarbital: “Back in 2001, analyses by the FDA found
23 residue of the sedative in popular brands like Nutro, Gravy Train and Kibbles ‘n
24 Bits.”¹³

25 ¹² <http://www.bigheartpet.com/assets/CR-Policy.pdf>

26 ¹³ [https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-
27 recalled-products-to-shelter.html](https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html)

1 26. Despite this, Defendant wrongfully advertised and sold the Contaminated
2 Dog Foods without any label or warning indicating to consumers that these products
3 contained any level of Pentobarbital or that Defendant utilized animals that have been
4 euthanized as a protein or meat by-product source.

5 27. Instead, the advertising and labels intentionally omit any reference to the
6 food being adulterated:



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15 28. Defendant's claim that the Contaminated Dog Foods are "100 percent
16 complete and balanced nutrition" without any mention that the Contaminated Dog Foods
17 are in fact adulterated and contain Pentobarbital.¹⁴

18 **ABOUT THIS ITEM**

19 **Disclaimer:** While we aim to provide accurate product information, it is provided by
20 manufacturers, suppliers and others, and has not been verified by us. See our
21 [disclaimer](#).

22 Serve your four legged friend a deliciously hearty meal with Gravy Train
23 Chunks In Gravy with T-Bone Flavor Chunks Wet Dog Food. Each
24 mouthwatering bite has the flavor of T-Bone steak and all the meaty
25 goodness is covered in a savory gravy that dogs love. This gravy train dog
26 food offers a satisfying meal that provides 100 percent complete and
27 balanced nutrition for all life stages. Feed it to your furry friend as a reward
28 for good behavior or learning a new trick or serve it as a regular meal. Gravy
Train Chunks In Gravy with T-Bone Flavor Chunks Wet Dog Food comes in a
13.2 oz can.

¹⁴Walmart, Gravy Train T-Bone Flavor Wet Dog Food,
<https://www.walmart.com/ip/Gravy-Train-T-Bone-Flavor-Wet-Dog-Food-13-2-Oz/44465093#read-more>

1 29. Defendant’s omissions are not only material but also false, misleading, and
2 reasonably likely to deceive the public. This is true especially in light of the long-standing
3 campaign by Defendant to market all its products, including the Contaminated Dog Foods
4 and "providing safe, healthy, and high quality food” with the as healthy and safe with “the
5 purest ingredients”¹⁵

6 30. Moreover, Defendant’s Corporate Responsibility Policy says the top priority
7 is the “safety and quality” of its products: ¹⁶

8 *Pet food safety and quality. Big Heart Pet Brands top priority is the safety and quality of*
9 *our products. Our goal is to produce the finest pet food products available on the market*
10 *today. All of our products are made under a system of strict food safety and quality*
11 *controls combined with ongoing inspection and monitoring. All of our programs are*
12 *designed to exceed the Global Food Safety Initiative standards. Our products are made*
13 *with nutritious, quality ingredients that meet the applicable standards and specifications of*
14 *the U.S. Department of Agriculture (USDA), Association of American Feed Control*
15 *Officials (AAFCO) and the Food & Drug Administration (FDA). Each of our products is*
16 *processed and packaged following strict food safety and quality control procedures that*
17 *comply with the Good Manufacturing Practices established by the FDA. These procedures*
18 *ensure that the resulting food will be pure, wholesome and safe for pets.*

19 31. In this same document, Defendant claims that it has a “rigorous supplier
20 approval process” and only purchases ingredients from “reputable suppliers.” And
21 Defendant goes further to declare, that once a supplier is approved, “a comprehensive
22 testing program is in place to assess the safety and quality of the ingredients upon receipt.
23 This includes a combination of laboratory analysis and physical inspection of the
24 ingredients.”¹⁷

24 ¹⁵Big Heart Pet Brands, “Pets,” <http://www.bigheartpet.com/corporate-responsibility/pets.aspx>

25 ¹⁶Big Heart Pet Brands, “Corporate Responsibility Policy,” [http://www.bigheartpet.com/assets/CR-](http://www.bigheartpet.com/assets/CR-Policy.pdf)
26 [Policy.pdf](http://www.bigheartpet.com/assets/CR-Policy.pdf)

27 ¹⁷ *Id.*

1 32. Finally, Defendant highlights the strict oversight it supposedly applies across
2 all its brands, include Gravy Train, to ensure high quality products “from start to finish,
3 inside and out:”¹⁸

4 We apply the same expectations of quality that we
5 hold for ourselves to our suppliers. Our supplier
6 management program includes an extensive evaluation
7 of manufacturing locations and a comprehensive testing
8 program that is used to assess the safety and quality
9 of ingredients upon receipt. This program includes
10 a combination of laboratory analysis and physical
11 inspection.

12 Through rigorous commitment to the quality of our
13 products—from start to finish, inside and out—Big Heart
14 Pet Brands is able to nurture the bond between pets and
15 the people who love them.

16 33. Defendant’s advertising campaign is deceptive by using these descriptions,
17 promises, and representations because there was no label or warning indicating to
18 consumers that these products contained any level of Pentobarbital or that Defendant
19 utilized animals that have been euthanized as a protein or meat by-product source.
20 Defendant's statements, partial disclosures, and omissions are false, misleading, and crafted
21 to deceive the public as they create an image that the Contaminated Dog Foods are healthy,
22 safe, have only pure ingredients and is manufactured under rigorous standards.

23 34. Defendant chose to advertise, label, and market its Contaminated Dog Foods
24 with no disclosure that it was adulterated pet food, contained any level of Pentobarbital,
25 and instead advertised, labeled, and marketed its Products, including the Contaminated
26 Dog Foods, as pure, high quality, healthy and safe for dogs to ingest and failed to mention
27 that the Contaminated Dog Foods contain pentobarbital. The Contaminated Dog Foods
28 are available at numerous retail and online outlets.

35. In fact, Defendant made affirmative misleading representations that its
Products, including the Contaminated Dog Foods, were not adulterated or would contain

¹⁸Big Heart Pet Brands, “Corporate Responsibility Summary 2014,”
<http://www.bigheartpet.com/assets/CorporateResponsibilitySummaryBrochure2014.pdf>

1 any controlled substance, including Pentobarbital. Specifically, Defendant promises to its
2 consumers that all produces meets USDA, AAFCO and FDA standards.¹⁹

3 36. This is untrue as the Contaminated Dog Foods are adulterated, which is not
4 proper under state and federal laws and regulations. Specifically, under the FDCA, a food
5 is adulterated if it “bears or contains any poisonous or deleterious substance which may
6 render it injurious to health.” 21 U.S.C. §342. Under California law, pet food is considered
7 adulterated if “it bears or contains any poisonous or deleterious substance that may render
8 it injurious to health...” or “if damage or inferiority has been concealed in any manner.”
9 Cal. Health & Safety Code §113090(a), (h). California’s statute also provides that pet food
10 ingredients “of animal or poultry origin shall be only from animals or poultry slaughtered
11 or processed in an approved or licensed establishment... Animal or poultry classified as
12 ‘deads’ are prohibited.” Cal. Health & Safety Code §113035. Illinois likewise prohibits the
13 sale of adulterated food such as the Contaminated Dog Foods under 505 Ill. Comp. Stat.
14 Ann. 30/11.1.

15 37. The Contaminated Dog Foods are widely advertised.

16 38. The Defendant's webpage and adopted corporate policies repeatedly make
17 the misleading statements about the Contaminated Dog Foods described above, without
18 any mention of Pentobarbital, a substance largely used to euthanize animals or that
19 Defendant utilized animals that have been euthanized as a protein or meat by-product
20 source.

21 39. As a result of Defendant's omissions and misrepresentations, a reasonable
22 consumer would have no reason to suspect the presence of Pentobarbital without
23 conducting his or her own scientific tests, or reviewing third-party scientific testing of these
24 products.

25 40. Consumers have increasingly become more aware and cautious about the
26 nutritional value and ingredients in the pet food they chose to purchase.

27 _____
28 ¹⁹ <http://www.bigheartpet.com/assets/CR-Policy.pdf>

1 41. Additionally, Defendant knew that a consumer would be feeding the
2 Contaminated Dog Foods multiple times each day to his or her dog. This leads to repeated
3 exposure of the barbiturate to the dog(s).

4 42. A reasonable consumer, such as Plaintiff and other members of the Class (as
5 defined herein), would have no reason to expect and anticipate that the Contaminated Dog
6 Foods are made up of anything other than pure ingredients from reputable suppliers and
7 that quality is the top priority as promised by Defendant. Non-disclosure and concealment
8 of any level of Pentobarbital or utilization of animals that have been euthanized as a protein
9 or meat by-product source in the Contaminated Dog Foods coupled with the partial
10 disclosures and/or misrepresentations that the food is pure, quality, healthy and safe by
11 Defendant is intended to and does, in fact, cause consumers to purchase a product Plaintiff
12 and Class members would not have bought the Contaminated Dog Foods at all if the true
13 quality and ingredients were disclosed, including that the fact the Contaminated Dog Foods
14 are adulterated. As a result of these false statements, omissions, and concealment,
15 Defendant has generated substantial sales of the Contaminated Dog Foods.

16 43. Plaintiff brings this action individually and on behalf of all other similarly
17 situated consumers within the United States who purchased the Contaminated Dog Foods,
18 in order to cause the disclosure of the inclusion of Pentobarbital and/or the utilization of
19 euthanized animals as a protein or meat by-product source in the Contaminated Dog Foods,
20 to correct the false and misleading perception Defendant has created in the minds of
21 consumers that the Contaminated Dog Foods are high quality, safe, and healthy and to
22 obtain redress for those who have purchased the Contaminated Dog Foods.

23 **JURISDICTION AND VENUE**

24 44. This Court has original jurisdiction over all causes of action asserted herein
25 under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the matter in
26 controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs and
27 more than two-thirds of the Class reside in states other than the states in which Defendant
28

1 is a citizen and in which this case is filed, and therefore any exemptions to jurisdiction
2 under 28 U.S.C. §1332(d) do not apply.

3 45. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because Plaintiff
4 suffered injury as a result of Defendant's acts in this district, many of the acts and
5 transactions giving rise to this action occurred in this district, Defendant conducts
6 substantial business in this district, Defendant has intentionally availed themselves of the
7 laws and markets of this district, and Defendant is subject to personal jurisdiction in this
8 district.

9 **INTRADISTRICT ASSIGNMENT**

10 46. A substantial portion of the transactions and wrongdoings which gave rise to
11 the claims in this action occurred in the County of Marin, and as such, this action is properly
12 assigned to the San Francisco division of this Court.

13 **THE PARTIES**

14 47. Plaintiff Nancy Sturm ("Plaintiff") is, and at all times relevant hereto has
15 been, a citizen of the State of Illinois. Plaintiff purchased certain lines of the Contaminated
16 Dog Foods (including Gravy Train Chunks in Gravy with Beef Chunks and Gravy Train
17 Chunks in Gravy with Lamb and Rice Chunks) and fed the Contaminated Dog Foods to
18 her six rescue dogs: Angel, a 17 year old boxer/beagle mix; Penny, a 10 year old terrier
19 mix; Sugar and Boots, who are 6 year old sisters that are black lab and golden retriever
20 mixes; Dottie, a 4 year old Australian shepherd and bluetick coonhound mix; and Maggie
21 a 9 month old mix breed puppy. Plaintiff Sturm considers her rescue dogs as part of her
22 family and trusted in Defendant when purchasing the Contaminated Dog Foods.

23 48. Plaintiff has been purchasing the Contaminated Dog Foods for over five
24 years and her last purchase was approximately February 1, 2018. Plaintiff no longer
25 purchases the Contaminated Dog Foods after learning of the inclusion of pentobarbital.
26 Plaintiff primarily purchased the Contaminated Dog Foods from her local Walmart.
27 During that time, based on the false and misleading claims, warranties, representations,
28 advertisements and other marketing by Defendant, Plaintiff was unaware that the

1 Contaminated Dog Foods contained any level of Pentobarbital, a substance largely used to
2 euthanize animals. Plaintiff was injured by purchasing the Contaminated Dog Foods that
3 had no value or *de minimis* value as they were adulterated.

4 49. As the result of Defendant's deceptive and negligent conduct alleged herein,
5 Plaintiff was injured when she purchased the Contaminated Dog Foods, which did not
6 deliver what Defendant promised and had no value or *de minimis* value as they were
7 adulterated. Plaintiff was further injured as she did business with a Company she would
8 not have if she knew that the Contaminated Dog Foods contained any level of pentobarbital
9 or that Defendant utilized animals that have been euthanized as a protein source. She
10 purchased the adulterated Contaminated Dog Foods on the assumption that the labeling of
11 the Contaminated Dog Foods was accurate and that it was unadulterated, pure, high quality,
12 healthy and safe for dogs to ingest and did not include euthanized animals as a protein
13 source. Further, should Plaintiff encounter the Contaminated Dog Foods in the future, she
14 could not rely on the truthfulness of the packaging, absent corrective changes to the
15 packaging and advertising of the Contaminated Dog Foods.

16 50. Defendant Big Heart Pet Brands, Inc, is a subsidiary of J.M. Smucker
17 Company and its headquarters are located at One Maritime Plaza, San Francisco,
18 California. Defendant manufactures, formulates, produces, distributes, labels, markets,
19 advertises, and sells the Contaminated Dog Foods under the Gravy Train dog food brand
20 name throughout the United States. The advertising for the Contaminated Dog Foods,
21 relied upon by Plaintiff, was prepared and/or approved by Defendant and their agents, and
22 was disseminated by Defendant and its agents through advertising and labeling that
23 contained the misrepresentations and omissions alleged herein. The advertising and
24 labeling for the Contaminated Dog Foods was designed to encourage consumers to
25 purchase the Contaminated Dog Foods and reasonably misled the reasonable consumer,
26 i.e., Plaintiff and the Class, into purchasing the Contaminated Dog Foods. Defendant owns,
27 manufactures, and distributes the Contaminated Dog Foods, and created and/or authorized
28

1 the unlawful, fraudulent, unfair, misleading, and/or deceptive labeling and advertising for
2 the Contaminated Dog Foods.

3 51. The Contaminated Dog Foods, at a minimum, include:

4 (a) Gravy Train Chunks in Gravy with Beef Chunks:



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13 (b) Gravy Train with Beef Chunks:



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(c) Gravy Train with T-Bone Flavor Chunks:



(d) Gravy Train Chunks in Gravy with T-Bone Flavor Chunks:



(e) Gravy Train With Chicken Chunks:



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(f) Gravy Train Strips in Gravy With Beef Strips:



(g) Gravy Train Chunks in Gravy with Lamb and Rice Chunks:



(h) Gravy Train Chicken, Beef & Liver Medley:



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2 (i) Gravy Train Chunks in Gravy Stew:
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11 **DEFENDANT'S STATEMENTS AND**
12 **OMISSIONS VIOLATE CALIFORNIA AND ILLINOIS LAWS**

13 52. California and Illinois laws are designed to ensure that a company's claims
14 about its products are truthful and accurate. Defendant violated California and Illinois laws
15 by incorrectly claiming that the Contaminated Dog Foods are nourishing, pure, healthy,
16 quality, and safe and offers 100 percent complete and balanced nutrition with the purest
17 ingredients while meeting all relevant federal regulations when in fact the Contaminated
18 Dog Foods are adulterated and contain a controlled substance that is not nourishing,
19 healthy, quality or pure and causes the product not to meet the so-called rigorous supplier
20 standards utilized by Defendant. Indeed, Defendant chose to omit that the Contaminated
21 Dog Foods were adulterated, contained Pentobarbital and/or that Defendant utilized
22 animals that have been euthanized as a protein source in the Contaminated Dog Foods.

23 53. Defendant's marketing and advertising campaign has been sufficiently
24 lengthy in duration, and widespread in dissemination.

25 54. Defendant has engaged in this long-term advertising campaign to convince
26 potential customers that the Contaminated Dog Foods are pure, quality, healthy, and safe
27 for consumption and offer 100 percent complete and balanced nutrition with the purest
28 ingredients.

**PLAINTIFF'S RELIANCE WAS
REASONABLE AND FORESEEN BY DEFENDANT**

1
2 55. Plaintiff reasonably relied on Defendant's own statements,
3 misrepresentations, omissions and advertising concerning the particular qualities and
4 benefits of the Contaminated Dog Foods.

5 56. Plaintiff read and relied upon the labels of the Contaminated Dog Foods in
6 making her purchasing decisions.

7 57. A reasonable consumer would consider the labeling of a product when
8 deciding whether to purchase. Here, Plaintiff relied on the specific statements and
9 misrepresentations by Defendant, who did not disclose that the Contaminated Dog Foods
10 were adulterated or contained Pentobarbital, a substance largely used to euthanize animals.

11 **DEFENDANT'S KNOWLEDGE AND NOTICE OF THEIR BREACHES**
12 **OF ITS EXPRESS AND IMPLIED WARRANTIES**

13 58. Defendant has received sufficient notice of its breaches of express and
14 implied warranties. Defendant has, and had, exclusive knowledge of the physical and
15 chemical make-up of the Contaminated Dog Foods.

16 59. Defendant also had notice of the real risk that pentobarbital may appear in
17 the Contaminated Dog Foods if the manufacturing and sourcing were not properly
18 monitored. Indeed, this is not the first time that the Gravy Train line of food has been
19 determined to include pentobarbital.²⁰

20 **PRIVITY EXISTS WITH PLAINTIFFS AND THE PROPOSED CLASS**

21 60. Defendant knew that consumers such as Plaintiff and the proposed Class
22 would be the end purchasers of the Contaminated Dog Foods and the targets of its
23 advertising and statements.

24
25 ²⁰ [https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-
26 recalled-products-to-shelter.html](https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html)

1 61. Defendant intended that the advertising, labeling, statements, and
2 representations would be considered by the end purchasers of the Contaminated Dog
3 Foods, including Plaintiff and the proposed Class.

4 62. Defendant directly marketed to Plaintiff and the proposed Class through
5 statements on its website, labeling, advertising, and packaging.

6 63. Plaintiff and the proposed Class are the intended beneficiaries of the
7 expressed and implied warranties.

8 **CLASS ACTION ALLEGATIONS**

9 64. Plaintiff brings this action individually and on behalf of the following Class
10 pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:

11 All persons who are citizens of the United States who, from
12 February 1, 2008 to the present, purchased the Contaminated
13 Dog Foods for household or business use, and not for resale
(the "Class").

14 65. Plaintiff also brings this action individually and on behalf of the following
15 Subclass pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil
16 Procedure:

17 All persons who are citizens of the Illinois who, from February
18 1, 2008 to the present, purchased the Contaminated Dog Foods
19 for household or business use, and not for resale (the
20 "Subclass").

21 66. Excluded from the Class and Subclass (collectively "Classes") are the
22 Defendant, any parent companies, subsidiaries, and/or affiliates, officers, directors, legal
23 representatives, employees, co-conspirators, all governmental entities, and any judge,
24 justice, or judicial officer presiding over this matter.

25 67. This action is brought and may be properly maintained as a class action.
26 There is a well-defined community of interests in this litigation and the members of the
27 Classes are easily ascertainable.

1 68. The members in the proposed Classes are so numerous that individual joinder
2 of all members is impracticable, and the disposition of the claims of all Class members in
3 a single action will provide substantial benefits to the parties and Court.

4 69. Questions of law and fact common to Plaintiffs and the Classes include, but
5 are not limited to, the following:

6 (a) whether Defendant owed a duty of care to the Classes;

7 (b) whether Defendant knew or should have known that the Contaminated
8 Dog Foods were adulterated or contained Pentobarbital;

9 (c) whether Defendant represented and continues to represent that the
10 Contaminated Dog Foods are healthy, quality, pure and safe;

11 (d) whether Defendant represented and continues to represent that the
12 Contaminated Dog Foods are manufactured in compliance with all governing regulations;

13 (e) whether Defendant failed to state that the Contaminated Dog Foods
14 are in fact adulterated under Federal and California law;

15 (f) whether Defendant's representations and omissions in advertising
16 and/or labeling are false, deceptive, and misleading;

17 (g) whether those representations and omissions are likely to deceive a
18 reasonable consumer;

19 (h) whether Defendant had knowledge that those representations and
20 omissions were false, deceptive, and misleading;

21 (i) whether Defendant continues to disseminate those representations and
22 omissions despite knowledge that the representations are false, deceptive, and misleading;

23 (j) whether a representation that a product is healthy, pure, quality and
24 nutritious coupled with omissions that the Contaminated Dog Foods were adulterated or
25 contained Pentobarbital is material to a reasonable consumer;

26 (k) whether Defendant violated California Business & Professions Code
27 sections 17200, *et seq.*;

28

1 (l) whether Defendant violated California Business & Professions Code
2 sections 17500, *et seq.*;

3 (m) whether Defendant violated California Civil Code sections 1750, *et*
4 *seq.*;

5 (n) whether Defendant's fraudulently concealed from the Classes that the
6 Contaminated Dog Foods were adulterated;

7 (o) whether Defendant violated Illinois Consumer Fraud and Deceptive
8 Business Practices Act;

9 (p) whether Defendant's conduct was negligent per se under applicable
10 law;

11 (q) whether Plaintiff and the members of the Classes are entitled to actual,
12 statutory, and punitive damages; and

13 (r) whether Plaintiff and members of the Classes are entitled to
14 declaratory and injunctive relief.

15 70. Defendant engaged in a common course of conduct giving rise to the legal
16 rights sought to be enforced by Plaintiff individually and on behalf of the other members
17 of the Classes. Identical statutory violations and business practices and harms are involved.
18 Individual questions, if any, are not prevalent in comparison to the numerous common
19 questions that dominate this action.

20 71. Plaintiff's claims are typical of Class and Subclass members' claims in that
21 they are based on the same underlying facts, events, and circumstances relating to
22 Defendant's conduct.

23 72. Plaintiff will fairly and adequately represent and protect the interests of the
24 Classes, have no interests incompatible with the interests of the Classes, and have retained
25 counsel competent and experienced in class action, consumer protection, and false
26 advertising litigation.

27 73. Class treatment is superior to other options for resolution of the controversy
28 because the relief sought for each Class and Subclass member is small such that, absent

1 representative litigation, it would be infeasible for Class and Subclass members to redress
2 the wrongs done to them.

3 74. Questions of law and fact common to the Classes predominate over any
4 questions affecting only individual Class and Subclass members.

5 75. As a result of the foregoing, class treatment is appropriate.

6 **COUNT I**

7 **(Negligent Misrepresentation Against Defendant on Behalf of the Class)**

8 76. Plaintiff incorporates by reference and realleges each and every allegation
9 contained above, as though fully set forth herein.

10 77. Plaintiff reasonably placed her trust and reliance in Defendant's
11 representations that the Contaminated Dog Foods are healthy, safe, pure, high quality, and
12 that it was not adulterated with substances such as Pentobarbital.

13 78. Plaintiff reasonably placed her trust and reliance in Defendant to disclose if
14 the Contaminated Dog Foods were adulterated, contained Pentobarbital or utilized
15 euthanized animals as a protein or meat by-product source.

16 79. Because of the relationship between the parties, Defendant owed a duty to
17 use reasonable care to impart correct and reliable disclosures concerning the true nature,
18 quality and ingredients of the Contaminated Dog Foods or, based upon its superior
19 knowledge, having spoken, to say enough to not be misleading.

20 80. Defendant breached its duty to Plaintiff and the Class by providing false,
21 misleading, partial disclosures and/or deceptive information regarding the true nature,
22 quality and ingredients of the Contaminated Dog Foods.

23 81. Plaintiff and the Class reasonably and justifiably relied upon the information
24 supplied to them by the Defendant. As a result, Plaintiff and the Class purchased the
25 Contaminated Dog Foods that should not have been sold at all as it was adulterated.

26 82. Defendant failed to use reasonable care in its communications and
27 representations to Plaintiff and Class.

28

1 83. By virtue of Defendant's negligent misrepresentations, Plaintiff and the Class
2 have been damaged in an amount to be proven at trial or alternatively, seek rescission and
3 disgorgement under this Count.

4 **COUNT II**

5 **(Violations of California's Consumer Legal Remedies Act, California Civil Code**
6 **§§1750, *Et Seq.*, Against Defendant on Behalf of the Class)**

7 84. Plaintiff incorporates by reference and realleges each and every allegation
8 contained above, as though fully set forth herein.

9 85. Plaintiff and each proposed Class member is a "consumer," as that term is
10 defined in California Civil Code section 1761(d).

11 86. The Contaminated Dog Foods are "goods," as that term is defined in
12 California Civil Code section 1761(a).

13 87. Defendant is a "person" as that term is defined in California Civil Code
14 section 1761(c).

15 88. Plaintiff and each proposed Class member's purchase of Defendant's
16 products constituted a "transaction," as that term is defined in California Civil Code section
17 1761(e).

18 89. Defendant's conduct alleged herein violates the following provisions of
19 California's Consumer Legal Remedies Act (the "CLRA"):

20 90. California Civil Code section 1770(a)(5), by representing that the
21 Contaminated Dog Foods are pure, quality, healthy and safe for consumption and by failing
22 to make any mention that the Contaminated Dog Foods were in fact adulterated by
23 containing the controlled substance of Pentobarbital

24 91. California Civil Code section 1770(a)(7), by representing that the
25 Contaminated Dog Foods were of a particular standard, quality, or grade, when they were
26 in fact adulterated and not fit for consumption;

27 (a) California Civil Code section 1770(a)(9), by advertising the
28 Contaminated Dog Foods with intent not to sell them as advertised; and

1 (b) California Civil Code section 1770(a)(16), by representing that the
2 Contaminated Dog Foods have been supplied in accordance with previous representations
3 when they have not.

4 92. As a direct and proximate result of these violations, Plaintiff and the Class
5 have been harmed, and that harm will continue unless Defendant is enjoined from using
6 the misleading marketing described herein in any manner in connection with the
7 advertising and sale of the Contaminated Dog Foods.

8 93. Plaintiff seeks an award of attorney's fees pursuant to, inter alia, California
9 Civil Code section 1780(e) and California Code of Civil Procedure section 1021.5.

10 **COUNT III**

11 **(Violations of California False Advertising Law, California Business**
12 **& Professions Code §§17500, *Et Seq.*, Against Defendant on Behalf of the Class)**

13 94. Plaintiff incorporates by reference and realleges each and every allegation
14 contained above, as though fully set forth herein.

15 95. California's False Advertising Law prohibits any statement in connection
16 with the sale of goods "which is untrue or misleading." Cal. Bus. & Prof. Code §17500.

17 96. As set forth herein, Defendant's claims that the Contaminated Dog Foods are
18 healthy and safe for consumption are literally false and likely to deceive the public.

19 97. Defendant's claims that the Contaminated Dog Foods are pure, quality,
20 healthy and safe for consumption are untrue or misleading because these claims fail to
21 disclose that the Contaminated Dog Foods were in fact adulterated by containing the
22 controlled substance of Pentobarbital.

23 98. Defendant's claim that the Contaminated Dog Foods are 100 percent
24 complete and balanced nutrition are untrue or misleading because it fails to disclose that
25 the Contaminated Dog Foods were in fact adulterated by containing the controlled
26 substance of Pentobarbital.

1 99. Defendant knew, or reasonably should have known, that the claims were
2 untrue or misleading.

3 100. Defendant's conduct is ongoing and continuing, such that prospective
4 injunctive relief is necessary, especially given Plaintiff's desire to purchase these products
5 in the future if they can be assured that, so long as the Contaminated Dog Foods are, as
6 properly unadulterated pet food and meets the advertising claims.

7 101. Plaintiff and members of the Class are entitled to injunctive and equitable
8 relief, and restitution in the amount they spent on the Contaminated Dog Foods.

9 **COUNT IV**

10 **(Violations of the Unfair Competition Law, California Business**
11 **& Professions Code §§17200, *Et Seq.*, Against Defendant on Behalf of the Class)**

12 102. Plaintiffs incorporates by reference and realleges each and every allegation
13 contained above, as though fully set forth herein.

14 103. The Unfair Competition Law prohibits any "unlawful, unfair or fraudulent
15 business act or practice." Cal. Bus. & Prof. Code §17200.

16 **Fraudulent**

17 104. Defendant's statements that the Contaminated Dog Foods are pure, quality
18 healthy, safe and are 100 percent complete and balance nutrition are literally false and
19 likely to deceive the public, as is Defendant's failing to make any mention that the
20 Contaminated Dog Foods are adulterated and contain Pentobarbital.

21 **Unlawful**

22 105. As alleged herein, Defendant has sold advertised the adulterated
23 Contaminated Dog Foods with false or misleading claims, such that Defendant's actions as
24 alleged herein violate at least the following laws:

- 25 • The CLRA, California Business & Professions Code sections 1750, *et seq.*;
26 and

1 • The False Advertising Law, California Business & Professions Code
2 sections 17500, *et seq.*

3 **Unfair**

4 106. Defendant's conduct with respect to the labeling, advertising, marketing, and
5 sale of the Contaminated Dog Foods is unfair because Defendant's conduct was immoral,
6 unethical, unscrupulous, or substantially injurious to consumers and the utility of its
7 conduct, if any, does not outweigh the gravity of the harm to its victims.

8 107. Defendant's conduct with respect to the labeling, advertising, marketing, and
9 sale of the Contaminated Dog Foods is also unfair because it violates public policy as
10 declared by specific constitutional, statutory, or regulatory provisions, including, but not
11 limited to, the False Advertising Law and the CLRA.

12 108. Defendant's conduct with respect to the labeling, advertising, marketing, and
13 sale of the Contaminated Dog Foods is also unfair because the consumer injury is
14 substantial, not outweighed by benefits to consumers or competition, and not one
15 consumers, themselves, can reasonably avoid.

16 109. In accordance with California Business & Professions Code section 17203,
17 Plaintiff seeks an order enjoining Defendant from continuing to conduct business through
18 fraudulent or unlawful acts and practices and to commence a corrective advertising
19 campaign. Defendant's conduct is ongoing and continuing, such that prospective
20 injunctive relief is necessary.

21 110. On behalf of herself and the Class, Plaintiff also seeks an order for the
22 restitution of all monies from the sale the Contaminated Dog Foods, which were unjustly
23 acquired through acts of fraudulent, unfair, or unlawful competition.

24 **COUNT V**

25 **(Negligence, Against Defendant on Behalf of the Classes)**

26 111. Plaintiff incorporates by reference and realleges each and every allegation
27 contained above, as though fully set forth herein.
28

1 112. Defendant's conduct is negligent per se under California and Illinois law.

2 113. As set forth above, Defendant violated its statutory duties under California's
3 CLRA and FLA and the Illinois Consumer Fraud and Deceptive Business Practices Act by
4 falsely representing that the Contaminated Dog Foods are pure, quality, healthy, nutritious
5 and safe for consumption while at the same time failing to disclose that the Contaminated
6 Dog Foods contained the controlled substance of pentobarbital.

7 114. As set forth above, Defendant also violated its statutory duties under Federal,
8 California and Illinois law by selling adulterated pet food to Plaintiff and members of the
9 Classes.

10 115. Defendant failed to exercise due care when it sold the Contaminated Dog
11 Foods to Plaintiff and the Class Members based on: (1) its exclusive knowledge of the
12 ingredients, content and sourcing materials of the Contaminated Dog Foods; (2) failing to
13 properly audit and monitor any third-party supplier as publicly represented to Plaintiffs and
14 the Classes; and (3) allowing the inclusion of a controlled substance in the Contaminated
15 Dog Foods when it had previously tested positive for this exact same drug- pentobarbital.

16 116. Defendant's violations of these statutes were a substantial factor in the harm
17 suffered by Plaintiff and the Classes, including purchasing a product with *de minimis* value.

18 117. By virtue of Defendant's negligence, Plaintiff and the Classes have been
19 damaged in an amount to be proven at trial or alternatively, seek rescission and
20 disgorgement under this Count.

21 **COUNT VI**

22 **(Breach of Express Warranty, California Commercial Code §2313,**
23 **Against Defendant on Behalf of the Class)**

24 118. Plaintiff incorporates by reference and realleges each and every allegation
25 contained above, as though fully set forth herein.

26 119. As set forth herein, Defendant made express representations to Plaintiff and
27 the Class that the Contaminated Dog Foods are pure, quality, healthy and safe for
28 consumption and are 100 percent complete and balanced nutrition.

1 120. Defendant also made express representations to Plaintiff and the Class that
2 the Contaminated Dog Foods meet all applicable regulations, including that they are not
3 adulterated dog food by allowing their sale in various stores throughout the United States.

4 121. These promises became part of the basis of the bargain between the parties
5 and thus constituted express warranties.

6 122. There was a sale of goods from Defendant to Plaintiff and the Class members.

7 123. On the basis of these express warranties, Defendant sold to Plaintiff and the
8 Class the Contaminated Dog Foods.

9 124. Defendant knowingly breached the express warranties by selling the
10 Contaminated Dog Foods which are adulterated and contain Pentobarbital.

11 125. Defendant was on notice of this breach as it was aware of the presence of
12 pentobarbital and/or the use of euthanized animals as a protein or meat by-product source
13 in the Contaminated Dog Foods.

14 126. Privity exists because Defendant expressly warranted to Plaintiff and the
15 Class that the Contaminated Dog Foods were pure, quality, healthy and safe for
16 consumption and provided 100 percent complete and balanced nutrition and unadulterated.

17 127. Plaintiff and the Class reasonably relied on the express warranties by
18 Defendant.

19 128. As a result of Defendant's breaches of its express warranties, Plaintiff and the
20 Class sustained damages as they paid money for the Contaminated Dog Foods that were
21 not what Defendant represented and in fact not properly sold under applicable regulations
22 and law

23 129. Plaintiff on behalf of herself and the Class, seeks actual damages for
24 Defendant's breach of warranty.

25
26
27
28

COUNT VII

(Breach of Implied Warranty, California Commercial Code §2314, Against Defendant on Behalf of the Class)

130. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

131. As set forth herein, the Contaminated Dog Foods are not fit for the ordinary purposes as they were adulterated or similarly contaminated under California Health & Safety Code §§ 113075 and 113090 (prohibiting “manufacture” of pet food that is “adulterated” because it contains “poisonous or deleterious substance[s]”) and 113095 (prohibiting “false or misleading” labeling) as alleged herein.

132. Defendant is a merchant engaging in the sale of goods to Plaintiff and the Class.

133. There was a sale of goods from Defendant to Plaintiff and the Class members.

134. Defendant breached the implied warranties by selling the Contaminated Dog Foods were not fit for their ordinary purpose as adulterated dog food that contains pentobarbital.

135. Defendant was on notice of this breach as it was aware of the presence of pentobarbital and/or the use of euthanized animals as a protein or meat by-product source in the Contaminated Dog Foods.

136. Privity exists because Defendant impliedly warranted to Plaintiff and the Class that the Contaminated Dog Foods unadulterated and fit for their ordinary purpose

137. As a result of Defendant's breach of its implied warranties of merchantability, Plaintiff and the Class sustained damages as they paid money for the Contaminated Dog Foods that were not what Defendant represented.

138. Plaintiff, on behalf of herself and the Class, seeks actual damages for Defendant's breach of warranty.

COUNT VIII

(Fraudulent Concealment Against Defendant on Behalf of the Class)

139. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

140. As alleged more fully herein, at the time Defendant sold the Contaminated Dog Foods to Plaintiff and Class Members, it knew it was adulterated with pentobarbital.

141. At all times relevant herein, Defendant made misrepresentations of material fact to Plaintiff and the other Class Members as a means of concealing the true nature and quality of the Contaminated Dog Foods, claiming it possessed pure, nutritious, healthy, and pure quality with no disclosure that the Contaminated Dog Foods were adulterated and pentobarbital.

142. Defendant has concealed material facts from Plaintiff and the other Class Members, including but not limited to:

- (a) the true nature and quality of the Contaminated Dog Foods;
- (b) the inclusion of pentobarbital in the Contaminated Dog Foods;
- and
- (c) that the Contaminated Dog Foods were not lawfully sold as labelled and packaged as they were adulterated.

143. Defendant had a duty to disclose these facts, regardless of the existence of privity, by virtue of (a) Defendant's exclusive knowledge about the true nature and ingredients of the Contaminated Dog Foods; (b) Defendant's awareness that Plaintiff and members of the proposed class were not reasonably likely to discover these facts; (c) Defendant's active concealment of those facts from Plaintiff and the proposed (by, among other things, making the false representations described above); and (d) Defendant's statutory and common-law obligations to disclose material information to the consumers as alleged herein.

1 144. Plaintiff and members of the Class would have acted differently had
2 Defendant disclosed this information to them and allowed them to make a fully-
3 informed decision before they purchased the Contaminated Dog Foods.

4 145. The facts Defendant has concealed from Plaintiff and the Class are material
5 and uniform in nature.

6 146. Defendant made misrepresentations of material fact in an effort to conceal
7 the actual nutritional value, true nature and ingredients of the Contaminated Dog Foods
8 and to prevent Class Members from becoming aware of the nutritional value, true nature
9 and ingredients of the Contaminated Dog Foods. Plaintiff and the Class would have relied
10 on the disclosure of inclusion of pentobarbital in the Contaminated Dog Foods

11 147. As a proximate result of Defendant's concealment and suppression of
12 material facts, Plaintiff and the Class have sustained damage by, among other things,
13 paying for the Contaminated Dog Foods that were adulterated and unlawfully sold to
14 consumers, rendering the Contaminated Dog Foods having zero or *de minimis* value.

15 148. Plaintiff, on behalf of herself and the Class, seeks actual damages for
16 Defendant's fraudulent concealment.

17 149. Because Defendant engaged in the conduct alleged herein deliberately and
18 with intent, Plaintiff and the Class are entitled to an award of punitive damages, the total
19 amount of which shall be proven at trial.

20 **COUNT IX**

21 **(Violations of Illinois Consumer Fraud and Deceptive Business Practices Act, 815**
22 **Ill. Comp. Stat. 505/1 *et seq* Against Defendant on Behalf of the Subclass)**

23 150. Plaintiff incorporates by reference and realleges each and every
24 allegation contained above, as though fully set forth herein.

25 151. The conduct described in this Complaint constitutes a violation of the Illinois
26 Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1 *et seq*.

1 152. Defendant engaged in unfair or deceptive practices in violation of Illinois’
2 Consumer Fraud and Deceptive Business Practices Act 815 Ill. Comp. Stat. 505/1 *et seq.*
3 (2008) (hereinafter, “ICFA”) when it claimed that the Contaminated Dog Foods were pure,
4 quality, healthy and safe for consumption. These claims are untrue or misleading because
5 they fail to disclose that the Contaminated Dog Foods were in fact adulterated by the
6 controlled substance of pentobarbital and instead claimed that the Contaminated Dog
7 Foods provide 100 percent complete and balanced nutrition..

8 153. Defendant either knew or should have known its Contaminated Dog Foods
9 were adulterated and were not as warranted and represented on the labeling, packaging,
10 advertising, statements and public sales of the Contaminated Dog Foods.

11 154. Defendant’s conduct and omissions described herein repeatedly occurred in
12 Defendant’s trade or business and were capable of deceiving a substantial portion of the
13 consuming public.

14 155. The facts concealed or not disclosed by Defendant are material facts in that
15 Plaintiff and any reasonable consumer would have considered those facts important in
16 deciding whether to purchase the Contaminated Dog Foods. Had Plaintiff and the Subclass
17 known that the Contaminated Dog Foods were in fact adulterated by containing the
18 controlled substance of pentobarbital they would not have purchased the Contaminated
19 Dog Foods.

20 156. Defendant intended that Plaintiffs and the Subclass would rely on the
21 deception in purchasing the Contaminated Dog Foods, unaware of the undisclosed material
22 facts. Defendant knew that Plaintiffs and the Subclass would rely on its packaging, labels,
23 advertisements, statements and other public sales of the Contaminated Dog Foods as an
24 unadulterated. This conduct constitutes consumer fraud within the meaning of the various
25 consumer protection statutes.

26 157. Defendant’s unlawful conduct is continuing.

27 158. As a direct and proximate result of the deceptive, misleading, unfair and
28 unconscionable practices of the Defendant set forth above, Plaintiff and Subclass Members

1 are entitled to actual damages, compensatory damages, penalties, attorney's fees and costs
2 as set forth in Section 10a of the ICFA.

3 159. Defendant's deceptive, misleading, unfair and unconscionable practices set
4 forth above were done willfully, wantonly and maliciously entitling Plaintiff and Subclass
5 members to an award of punitive damages.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,
8 pray for judgment against the Defendant as to each and every count, including:

9 A. An order declaring this action to be a proper class action, appointing
10 Plaintiffs and their counsel to represent the Classes, and requiring Defendant to bear the
11 costs of class notice;

12 B. An order enjoining Defendant from selling the Contaminated Dog Foods
13 until Pentobarbital is removed;

14 C. An order enjoining Defendant from selling the Contaminated Dog Foods in
15 any manner;

16 D. An order requiring Defendant to engage in a corrective advertising campaign
17 and engage in any further necessary affirmative injunctive relief, such as recalling existing
18 products;

19 E. An order awarding declaratory relief, and any further retrospective or
20 prospective injunctive relief permitted by law or equity, including enjoining Defendant
21 from continuing the unlawful practices alleged herein, and injunctive relief to remedy
22 Defendant's past conduct;

23 F. An order requiring Defendant to pay restitution to restore all funds acquired
24 by means of any act or practice declared by this Court to be an unlawful, unfair, or
25 fraudulent business act or practice, untrue or misleading advertising, or a violation of the
26 Unfair Competition Law, False Advertising Law, or CLRA, plus pre- and post-judgment
27 interest thereon;

28

1 G. An order requiring Defendant to disgorge or return all monies, revenues, and
2 profits obtained by means of any wrongful or unlawful act or practice;

3 H. An order requiring Defendant to pay all actual and statutory damages
4 permitted under the counts alleged herein;

5 I. An order requiring Defendant to pay punitive damages on any count so
6 allowable;

7 J. An order awarding attorneys' fees and costs to Plaintiff, the Class, and the
8 Class; and

9 K. An order providing for all other such equitable relief as may be just and
10 proper.

11 **JURY DEMAND**

12 Plaintiff hereby demands a trial by jury on all issues so triable.

13 Dated: February 21, 2018

14 LOCKRIDGE GRINDAL NAUEN P.L.L.P.
15 ROBERT K. SHELQUIST
16 REBECCA A. PETERSON (241858)

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