

1 LOCKRIDGE GRINDAL NAUEN P.L.L.P.
2 REBECCA A. PETERSON (241858)
3 100 Washington Avenue South, Suite 2200
4 Minneapolis, MN 55401
5 Telephone: (612) 339-6900
6 Facsimile: (612) 339-0981
7 E-mail: rapeterson@locklaw.com

8 [Additional Counsel on Signature Page]

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

12 KATHY WILLIAMSON, MARK
13 JOHNSON, and NORMAN TODD,
14 Individually and on Behalf of All
15 Others Similarly Situated,

16 Plaintiffs,

17 v.

18 BIG HEART PET BRANDS, INC., a
19 Delaware corporation,

20 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, CALIFORNIA COMMERCIAL CODE §2313;
-) (8) BREACH OF IMPLIED WARRANTY, CALIFORNIA COMMERCIAL CODE §2314;
-) (9) FRAUDULENT CONCEALMENT
-) (10) BREACH OF EXPRESS WARRANTY, ALA. CODE §7-2-313
-) (11) BREACH OF EXPRESS WARRANTY, OHIO REV. CODE ANN. §1302.26
-) (12) BREACH OF IMPLIED WARRANTY UNDER OHIO LAW

21 DEMAND FOR JURY TRIAL

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

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

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

26
27 _____
28 ¹ Discovery may reveal additional products that also contain Pentobarbital and Plaintiffs
reserve the right to include any such products in this action.

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.² 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 • Death³

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.”⁴

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.”⁵

24 ²<http://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm>

25 ³The Honest Kitchen, “Pentobarbital- What Is It, How it Entered the Pet Food Supply
26 Chain, and what You Can Do To Protect Your Canines & Felines,” (Mar. 1, 2017),
27 available at <https://www.thehonestkitchen.com/blog/pentobarbital-entered-pet-food-supply-chain-can-protect-pet/>

28 ⁴<https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm> (last visited Feb. 5, 2018)

⁵ *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.⁶

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 Food, Drug
12 and Cosmetics Act (“FDCA”), § 342 (a)(1) or (5), against the pet food companies that it
13 found to have used non-slaughtered animals and sold pet food containing pentobarbital.
14 Therefore, manufacturers in the pet food industry, including Defendant, have continued
15 their illegal practice of using non-slaughtered animals that may contain poisonous
16 substances, like pentobarbital, in their pet foods.

17 10. It was recently revealed that Defendant was knowingly, recklessly and/or
18 negligently selling Contaminated Dog Food containing pentobarbital, a substance largely
19 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 different
23 labs and both showed that the Contaminated Dog Foods tested positive for pentobarbital.
24 In fact, it was the only brand that tested positive for pentobarbital.⁷

25
26
27 ⁶ *Id.*

28 ⁷<http://wjla.com/features/7-on-your-side/fda-to-investigate-after-abc7-exposes-euthanasia-drug-in-dog-food>

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

7 **REACTIONS TO THE NONDISCLOSURE AND MATERIALITY OF THE**
8 **PRESENCE OF PENTOBARBITAL IN THE CONTAMINATED DOG FOODS**

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

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

18 15. However, Defendant later officially withdrew certain products from the
19 marketplace and altered this press release by removing the statements. Exhibit B.

20 16. Defendant further altered the press release by removing its statement that it
21 follows the American Association Feed Official (AAFCO) standards. *Compare* Exhibit A
22 and Exhibit B.

23 17. The same press release also deleted Defendant’s previous representation that
24 it was not associated with the Evanger’s Brand, a dog food Company that recalled
25 adulterated dog food based on the presence of pentobarbital in early 2017. *Contrast* Exhibit
26 A and Exhibit B.

27
28 ⁸ *Id.*

1 18. These changes to the press release suggest that Defendant knew the
2 Contaminated Dog Foods contained pentobarbital.

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

7 20. On February 16, 2018, the FDA issued an alert to consumers addressing the
8 voluntarily withdrawal of certain products by Defendant. In this alert, the FDA states: “The
9 FDA’s preliminary evaluation of the testing results of Gravy Train samples indicates that
10 the low level of pentobarbital present in the withdrawn products is unlikely to pose a health
11 risk to pets. However, pentobarbital should never be present in pet food and products
12 containing any amount of pentobarbital are considered to be adulterated.”⁹

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

20 22. Defendant issued a press release on Feb. 23, 2018, stating that it identified
21 the source of the pentobarbital through “[t]esting done by scientists at an independent,
22 third-party microbiology laboratory.” Defendant stated that the testing found “a single,
23 minor ingredient (beef fat) was the source of the contamination.” Exhibit C.

24 23. Defendant did not identify what exactly was tested – whether it was cans of
25 the food pulled from the shelves; cans shipped directly from the manufacturing plant and/or
26 isolated samples of beef fat from the supplier. Defendant did claim the tested beef fat was

27
28 ⁹ <https://www.fda.gov/animalveterinary/newsevents/ucm597135.htm>

1 sourced from cattle from the United States. However, Defendant has offered no
2 information about how it identified this particular ingredient or whether it tested any other
3 ingredients included in the recalled pet foods. Exhibit C. Additionally, beef fat is not an
4 ingredient listed on the label of any of the Contaminated Dog Foods.¹⁰

5 24. Defendant also did not specify what animals they tested the Contaminated
6 Dog Foods for beyond cattle. When doing DNA testing, it must be determined beforehand
7 what species will be looked for (i.e. dog, cat, cattle, horse etc.). Defendant has not disclosed
8 whether its testing looked for dog, cat, or horse DNA.

9 25. In the Feb. 23, 2018, press release, Defendant admits that the “[] presence
10 [of pentobarbital] at any level is not acceptable and is not up to our quality standards.”

11 26. Defendant updated this statement on March 2, 2018, now claiming that the
12 laboratory tests confirm the contaminated animal fat was “from cow, pig and chicken and
13 no other animal of the nine types tested.” Once again, Defendant did not identify what
14 types of animals were included in that testing. Exhibit D.

15 27. Defendant has yet to disclose the name of the manufacturing plant and/or
16 supplier that it references as the suspected source of the contaminated raw materials
17 containing pentobarbital.

18 28. On March 2, 2018, Defendant further changed its statements regarding the
19 “source of contamination.” The type of animal fats the Defendant now claims are the
20 sources of pentobarbital in the Contaminated Dog Foods was expanded to include pig and
21 chicken fat and “no other animal of the nine types tested.” However, Defendant has still
22 failed to disclose the nine sources tested.

23 29. In addition, Defendant further edited its February 23, 2018, press release by
24 changing from a “voluntary withdrawal” of the specific products to a “class III recall.”¹¹

25
26
27 ¹⁰ <http://wjla.com/features/7-on-your-side/fda-investigation-continues-into-dog-food-contaminated-with-euthanasia-drug>

28 ¹¹ *Id.*

1 30. On March 2, 2018, the FDA formally issued a recall for the Contaminated
2 Dog Foods “based... on a test by [Defendant] confirming the presence of pentobarbital in
3 the tallow ingredient used in the affected products.”¹² This recall involves more than 100
4 million cans of pet food.¹³ The FDA is continuing to investigate the Contaminated Dog
5 Foods.

6 31. Consumers have also reacted to the news of Defendant allowing its products
7 to be sold with no disclosure of the inclusion of pentobarbital. Indeed, social media
8 comments highlight that a reasonable consumer, like Plaintiffs and the Classes, had no idea
9 that they may be feeding their beloved pet adulterated food and it is something they believe
10 should have been disclosed to the public.

11 **DEFENDANT NEGLIGENTLY, RECKLESSLY, AND/OR KNOWINGLY**
12 **MISLEADS CONSUMERS THROUGH ITS REPRESENTATIONS,**
13 **PACKAGING, LABELS, STATEMENTS, WARRANTIES AND SELLING THE**
14 **CONTAMINATED DOG FOODS AS UNADULTERATED**

15 32. Defendant negligently, recklessly, and/or knowingly falsely advertises that
16 the Contaminated Dog Foods are healthy and provide complete nutrition and quality while
17 omitting they are adulterated with pentobarbital.

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

25
26 _____
27 ¹² <https://www.fda.gov/AnimalVeterinary/NewsEvents/ucm597135.htm>

28 ¹³ <http://www.foodsafetynews.com/2018/03/smucker-confirms-euthinasia-drug-in-popular-dog-food-brands/#.Wp7OtXmWyUm>

¹⁴ <http://www.bigheartpet.com/assets/CR-Policy.pdf>

1 34. Defendant also knew the real risk that pentobarbital may appear in the
2 Contaminated Dog Foods if the manufacturing and sourcing were not properly monitored.
3 Indeed, this is not the first time that the Gravy Train line of food has been determined to
4 include pentobarbital: “Back in 2001, analyses by the FDA found residue of the sedative
5 in popular brands like Nutro, Gravy Train and Kibbles ‘n Bits.”¹⁵

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

10 36. Defendant also wrongfully advertised and sold the Contaminated Dog Foods
11 as complete nutrition, quality and healthy despite the presence of pentobarbital.

12 37. Instead, the advertising and labels intentionally omit any reference to the
13 food being adulterated:



21 Gravy Train® Chunks In Gravy With Beef Chunks wet dog food is
22 bursting with the hearty flavor of real beef. And all the meaty
23 goodness is covered in a rich savory gravy to make a hearty meal
24 your dog will love.

25
26
27 ¹⁵[https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-](https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html)
28 [products-to-shelter.html](https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html).

1 38. Defendant’s claim that the Contaminated Dog Foods are “100 percent
2 complete and balanced nutrition” without any mention that the Contaminated Dog Foods
3 are in fact adulterated and contain Pentobarbital.¹⁶

4 **ABOUT THIS ITEM**

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

8 Serve your four legged friend a deliciously hearty meal with Gravy Train
9 Chunks In Gravy with T-Bone Flavor Chunks Wet Dog Food. Each
10 mouthwatering bite has the flavor of T-Bone steak and all the meaty
11 goodness is covered in a savory gravy that dogs love. This gravy train dog
12 food offers a satisfying meal that provides 100 percent complete and
13 balanced nutrition for all life stages. Feed it to your furry friend as a reward
14 for good behavior or learning a new trick or serve it as a regular meal. Gravy
15 Train Chunks In Gravy with T-Bone Flavor Chunks Wet Dog Food comes in a
16 13.2 oz can.

17 39. Defendant’s omissions are material, false, misleading, and reasonably likely
18 to deceive the public. This is especially true in light of the long-standing campaign by
19 Defendant to market all its products, including the Contaminated Dog Foods as "providing
20 safe, healthy, and high-quality food” with “the purest ingredients”¹⁷

21 40. Moreover, Defendant’s Corporate Responsibility Policy says the top priority
22 is the “safety and quality” of its products: ¹⁸

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

24 ¹⁶Walmart, Gravy Train T-Bone Flavor Wet Dog Food,
25 [https://www.walmart.com/ip/Gravy-Train-T-Bone-Flavor-Wet-Dog-Food-13-2-
26 Oz/44465093#read-more](https://www.walmart.com/ip/Gravy-Train-T-Bone-Flavor-Wet-Dog-Food-13-2-Oz/44465093#read-more)

27 ¹⁷Big Heart Pet Brands, “Pets,” [http://www.bigheartpet.com/corporate-
28 responsibility/pets.aspx](http://www.bigheartpet.com/corporate-responsibility/pets.aspx)

¹⁸ Big Heart Pet Brands,
Corporate Responsibility Policy,” <http://www.bigheartpet.com/assets/CR-Policy.pdf>

1 41. In this same document, Defendant claims that it has a “rigorous supplier
2 approval process” and only purchases ingredients from “reputable suppliers.” And
3 Defendant goes further to declare, that once a supplier is approved, “a comprehensive
4 testing program is in place to assess the safety and quality of the ingredients upon receipt.
5 This includes a combination of laboratory analysis and physical inspection of the
6 ingredients.”¹⁹

7 42. Finally, Defendant highlights the strict oversight it supposedly applies across
8 all its brands, include Gravy Train, to ensure high quality products “from start to finish,
9 inside and out:”²⁰

10
11 We apply the same expectations of quality that we
12 hold for ourselves to our suppliers. Our supplier
13 management program includes an extensive evaluation
14 of manufacturing locations and a comprehensive testing
15 program that is used to assess the safety and quality
16 of ingredients upon receipt. This program includes
17 a combination of laboratory analysis and physical
18 inspection.

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

23 43. Following the discovery of pentobarbital in the Contaminated Dog Foods,
24 Defendant’s own actions show the misleading representations concerning its supposed
25 rigorous and strict quality control. Specifically, Defendant only recently started testing “all
26 of our products for the presence of pentobarbital as a new quality assurance protocol.”
27 Defendant further acknowledged the lack of proper quality control and oversight by stating:
28 “In addition, we are enhancing our sourcing and supplier oversight procedures to ensure
this does not occur again.”²¹

25 _____
26 ¹⁹ *Id.*

27 ²⁰Big Heart Pet Brands, “Corporate Responsibility Summary
28 2014,”<http://www.bigheartpet.com/assets/CorporateResponsibilitySummaryBrochure2014.pdf>

²¹ <http://www.gravytraindog.com/information>

1 44. Defendant’s advertising campaign is false, misleading, and/or deceptive by
2 using these descriptions, promises, and representations because there was no label or
3 warning indicating to consumers that these products contained any level of pentobarbital
4 or that Defendant utilized euthanized animals as a protein or meat by-product source.
5 Defendant's statements, partial disclosures, and omissions are false, misleading, and crafted
6 to deceive the public as they create an image that the Contaminated Dog Foods are healthy,
7 safe, have only pure ingredients and are manufactured under rigorous standards.

8 45. Defendant chose to advertise, label, and market its Contaminated Dog Foods
9 with no disclosure that it was adulterated pet food, contained any level of pentobarbital,
10 and defendant instead advertised, labeled, and marketed its Products, including the
11 Contaminated Dog Foods, as pure, high quality, healthy and safe for dogs to ingest and
12 failed to mention that the Contaminated Dog Foods contain pentobarbital. The
13 Contaminated Dog Foods are available at numerous retail and online outlets.

14 46. In fact, Defendant made affirmative misleading representations that its
15 Products, including the Contaminated Dog Foods, were not adulterated or would contain
16 any controlled substance, including Pentobarbital. Specifically, Defendant promises to its
17 consumers that all produces meets USDA, AAFCO and FDA standards.²²

18 47. This is untrue because the Contaminated Dog Foods are adulterated, which
19 is not proper under state and federal laws and regulations. Specifically, under the FDCA, a
20 food is adulterated if it “bears or contains any poisonous or deleterious substance which
21 may render it injurious to health.” 21 U.S.C. §342. Under California law, pet food is
22 considered adulterated if “it bears or contains any poisonous or deleterious substance that
23 may render it injurious to health...” or “if damage or inferiority has been concealed in any
24 manner.” Cal. Health & Safety Code §113090(a), (h). California’s statute also provides
25 that pet food ingredients “of animal or poultry origin shall be only from animals or poultry
26 slaughtered or processed in an approved or licensed establishment... Animal or poultry
27

28 ²² <http://www.bigheartpet.com/assets/CR-Policy.pdf>

1 classified as ‘deads’ are prohibited.” Cal. Health & Safety Code §113035. Ohio and
2 Alabama likewise prohibit the sale of adulterated pet food under Ohio Code §923.41, *et*
3 *seq.* and Ala. Code §2-21-23.

4 48. The Contaminated Dog Foods are widely advertised.

5 49. Defendant's webpage and adopted corporate policies repeatedly make the
6 false, misleading, and/or deceptive statements, described above, about the Contaminated
7 Dog Foods without any mention of pentobarbital, or that Defendant utilized euthanized
8 animals as a protein or meat by-product source.

9 50. As a result of Defendant's omissions and misrepresentations, a reasonable
10 consumer would have no reason to suspect the presence of pentobarbital without
11 conducting his or her own scientific tests, or reviewing third-party scientific testing of these
12 products.

13 51. Consumers have increasingly become more aware and cautious about the
14 nutritional value and ingredients in the pet food they chose to purchase.

15 52. Additionally, Defendant knew that a consumer would be feeding the
16 Contaminated Dog Foods multiple times each day to his or her dog, leading to repeated
17 exposure of the barbiturate to the dog(s).

18 53. A reasonable consumer, such as Plaintiffs and other members of the Classes
19 would have no reason to expect and anticipate that the Contaminated Dog Foods are made
20 up of anything other than pure ingredients from reputable suppliers or that quality and
21 safety is not the top priority as promised by Defendant. Defendant’s non-disclosure and
22 concealment of any level of pentobarbital or utilization of euthanized animals as a protein
23 or meat by-product source in the Contaminated Dog Foods coupled with partial disclosures
24 and/or misrepresentations that the food is pure, quality, healthy and safe by Defendant is
25 intended to and does, in fact, cause consumers to purchase a product they would not have
26 bought at all if the true quality and ingredients were disclosed. As a result of these false
27 statements, omissions, and concealment, Defendant has generated substantial sales of the
28 Contaminated Dog Foods.

1 54. Plaintiffs bring this action individually and on behalf of all other similarly
2 situated consumers within the United States who purchased the Contaminated Dog Foods,
3 in order to cause the disclosure of the inclusion of pentobarbital and/or the utilization of
4 euthanized animals as a protein or meat by-product source in the Contaminated Dog Foods,
5 to correct the false and misleading perception Defendant has created in the minds of
6 consumers that the Contaminated Dog Foods are high quality, safe, and healthy and to
7 obtain redress for those who have purchased the Contaminated Dog Foods.

8 JURISDICTION AND VENUE

9 55. This Court has original jurisdiction over all causes of action asserted herein
10 under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the matter in
11 controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs and
12 more than two-thirds of the Class reside in states other than the states in which Defendant
13 is a citizen and in which this case is filed, and none of the exemptions to jurisdiction under
14 28 U.S.C. §1332(d) do not apply.

15 56. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because Plaintiffs
16 suffered injury as a result of Defendant's acts in this district, many of the acts and
17 transactions giving rise to this action occurred in this district, Defendant conducts
18 substantial business in this district, Defendant has intentionally availed itself of the laws
19 and markets of this district, and Defendant is subject to personal jurisdiction in this district.

20 INTRADISTRICT ASSIGNMENT

21 57. A substantial portion of the transactions and wrongdoings which gave rise to
22 the claims in this action occurred in the County of Marin, and as such, this action is properly
23 assigned to the San Francisco division of this Court.

24 THE PARTIES

25 58. Plaintiff Mark Johnson ("Plaintiff") is, and at all times relevant hereto has
26 been, a citizen of the State of California. Plaintiff purchased the Contaminated Dog Foods
27 (including Gravy Train Chunks in Gravy with Beef Chunks and Gravy Train Chunks in
28 Gravy with T-Bone Flavor Chunks) and fed the Contaminated Dog Foods to his thirteen

1 Border Collie and Australian Sheppard mixes he used as herding dogs for his cattle.
2 Plaintiff Johnson had seven males and six female dogs that ranged from 10 months to
3 approximately seven years old. Plaintiff Johnson purchased the Contaminated Dog Foods
4 as supplemental food or as a reward for the dogs who herd anywhere from 10 to 100 head
5 of cattle. Plaintiff Johnson believed that the Gravy Train foods he fed his dogs were safe
6 and unadulterated and also trusted in Defendant's representations about the safety of its
7 products when purchasing the Contaminated Dog Foods. Devastatingly, Plaintiff Johnson
8 lost all thirteen dogs, including one pregnant female, on January 14 and 15, 2018. At that
9 time, all of his dogs were showing symptoms of kidney failure so the veterinarian
10 recommended that all thirteen be put down. All of the dogs were fed the Contaminated
11 Dog Foods at the same time and all were sick within hours after eating the Contaminated
12 Dog Foods. They subsequently all died within 2 days of eating the Contaminated Dog
13 Foods.

14 59. Plaintiff Johnson has been purchasing the Contaminated Dog Foods since
15 approximately January 2015, and his last purchase was on approximately February 2018.
16 Plaintiff no longer purchases the Contaminated Dog Foods after learning of the presence
17 of pentobarbital. Typically, Plaintiff Johnson purchased five cases of the Contaminated
18 Dog Foods weekly primarily from his local Walmart and Big Lots. During that time, based
19 on the false and misleading claims, warranties, representations, advertisements and other
20 marketing by Defendant, Plaintiff Johnson was unaware that the Contaminated Dog Foods
21 contained any level of pentobarbital, a substance largely used to euthanize animals.
22 Plaintiff was injured by purchasing the Contaminated Dog Foods that had no value or *de*
23 *minimis* value as they were adulterated. Plaintiff was further injured by incurring vet bills.

24 60. As the result of Defendant's deceptive and negligent conduct alleged herein,
25 Plaintiff Johnson was injured when he purchased the Contaminated Dog Foods, which did
26 not deliver what Defendant promised and had no value or *de minimis* value as they were
27 adulterated. Plaintiff Johnson was further injured as he did business with a company he
28 would not have if he knew that the Contaminated Dog Foods contained any level of

1 pentobarbital or that Defendant utilized euthanized animals as a protein source. He
2 purchased the adulterated Contaminated Dog Foods on the assumption that the labeling of
3 the Contaminated Dog Foods was accurate and that it was unadulterated, pure, healthy and
4 safe for dogs to ingest and did not include euthanized animals as a protein source. Further,
5 should Plaintiff Johnson encounter the Contaminated Dog Foods in the future, he could not
6 rely on the truthfulness of the packaging, absent corrective changes to the packaging and
7 advertising of the Contaminated Dog Foods.

8 61. Plaintiff Kathy Williamson is, and at all times relevant hereto has been, a
9 citizen of the State of Ohio. Plaintiff purchased certain lines of the Contaminated Dog
10 Foods (including Gravy Train Chunks in Gravy with Beef Chunks) and fed the
11 Contaminated Dog Foods to her two Great Danes, Nova and Sadie. Sadie passed away on
12 Wednesday September 7, 2016, and Nova passed away on Sunday January 22,
13 2017. Plaintiff Williamson believed the Gravy Train foods she fed her dog were safe and
14 healthy, and trusted in Defendant's representations about the safety of its products when
15 purchasing the Contaminated Dog Foods.

16 62. Plaintiff has been purchasing the Contaminated Dog since approximately
17 August 2016, and her last purchase was in approximately December 2016. Plaintiff
18 Williamson no longer purchases the Contaminated Dog Foods after learning of the
19 presence of pentobarbital. Plaintiff Williamson primarily purchased the Contaminated Dog
20 Foods from her local Walmart. During that time, based on the false and misleading claims,
21 warranties, representations, advertisements and other marketing by Defendant, Plaintiff
22 Williamson was unaware that the Contaminated Dog Foods contained any level of
23 pentobarbital, a substance largely used to euthanize animals. Plaintiff Williamson was
24 injured by purchasing the Contaminated Dog Foods that had no value or *de minimis* value
25 as they were adulterated.

26 63. As the result of Defendant's deceptive and negligent conduct alleged herein,
27 Plaintiff Williamson was injured when she purchased the Contaminated Dog Foods, which
28 did not deliver what Defendant promised and had no value or *de minimis* value as they

1 were adulterated. Plaintiff was further injured as she did business with a company she
2 would not have if she knew that the Contaminated Dog Foods contained any level of
3 pentobarbital or that Defendant utilized euthanized animals as a protein source. She
4 purchased the adulterated Contaminated Dog Foods on the assumption that the labeling of
5 the Contaminated Dog Foods was accurate and that it was unadulterated, pure, high quality,
6 healthy and safe for dogs to ingest and did not include euthanized animals as a protein
7 source. Further, should Plaintiff Williamson encounter the Contaminated Dog Foods in
8 the future, she could not rely on the truthfulness of the packaging, absent corrective
9 changes to the packaging and advertising of the Contaminated Dog Foods.

10 64. Plaintiff Norman Todd is, and at all times relevant hereto has been, a citizen
11 of the State of Alabama. Plaintiff Todd purchased certain lines of the Contaminated Dog
12 Foods (including Gravy Train Chunks in Gravy with Beef Chunks) and fed the
13 Contaminated Dog Foods to his American pit bull, Tito. Tito passed away on November
14 18, 2017. Plaintiff Todd believed the Gravy Train foods he fed his dog were safe and
15 healthy, and trusted in Defendant's representations about the safety of its products when
16 purchasing the Contaminated Dog Foods.

17 65. Plaintiff Todd has been purchasing the Contaminated Dog Foods since
18 approximately 2008, and his last purchase was in approximately September 2017. Plaintiff
19 Todd no longer purchases the Contaminated Dog Foods after learning of the presence of
20 pentobarbital. Plaintiff Todd primarily purchased the Contaminated Dog Foods from Food
21 Outlet in Millbrook, AL. During that time, based on the false and misleading claims,
22 warranties, representations, advertisements and other marketing by Defendant, Plaintiff
23 Todd was unaware that the Contaminated Dog Foods contained any level of pentobarbital,
24 a substance largely used to euthanize animals. Plaintiff Todd was injured by purchasing
25 the Contaminated Dog Foods that had no value or *de minimis* value as they were
26 adulterated.

27 66. As the result of Defendant's deceptive and negligent conduct alleged herein,
28 Plaintiff Todd was injured when he purchased the Contaminated Dog Foods, which did not

1 deliver what Defendant promised and had no value or *de minimis* value as they were
2 adulterated. Plaintiff Todd was further injured as he did business with a company he would
3 not have if he knew that the Contaminated Dog Foods contained any level of pentobarbital
4 or that Defendant utilized euthanized animals as a protein source. He purchased the
5 adulterated Contaminated Dog Foods on the assumption that the labeling of the
6 Contaminated Dog Foods was accurate and that it was unadulterated, pure, high quality,
7 healthy and safe for dogs to ingest and did not include euthanized animals as a protein
8 source. Further, should Plaintiff Todd encounter the Contaminated Dog Foods in the
9 future, he could not rely on the truthfulness of the packaging, absent corrective changes to
10 the packaging and advertising of the Contaminated Dog Foods.

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

26 68. The Contaminated Dog Foods, at a minimum, include:
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

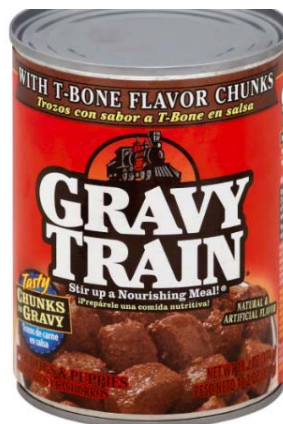
(a) Gravy Train Chunks in Gravy with Beef Chunks:



(b) Gravy Train with Beef Chunks:



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



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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



(e) Gravy Train With Chicken Chunks:



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



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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



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



(i) Gravy Train Chunks in Gravy Stew:



**DEFENDANT'S STATEMENTS AND
OMISSIONS VIOLATE RELEVANT STATE LAWS**

1
2
3 69. California, Ohio and Alabama laws are designed to ensure that a company's
4 claims about its products are truthful and accurate. Defendant violated California, Ohio
5 and Alabama laws by incorrectly, negligently, deceptively, and fraudulently claiming that
6 the Contaminated Dog Foods are nourishing, pure, healthy, quality, and safe and offers 100
7 percent complete and balanced nutrition with the purest ingredients while meeting all
8 relevant federal regulations when in fact the Contaminated Dog Foods are adulterated and
9 contain a controlled substance that is not nourishing, healthy, quality or pure and causes
10 the product not to meet the so-called rigorous supplier standards utilized by Defendant.
11 Indeed, Defendant negligently, recklessly and/or intentionally chose to omit that the
12 Contaminated Dog Foods were adulterated, contained pentobarbital and/or that Defendant
13 utilized euthanized animals as a protein source in the Contaminated Dog Foods.

14 70. Defendant's marketing and advertising campaign has been sufficiently
15 lengthy in duration, and widespread in dissemination.

16 71. Defendant has engaged in this long-term advertising campaign to convince
17 potential customers that the Contaminated Dog Foods are pure, quality, healthy, and safe
18 for consumption and offer 100 percent complete and balanced nutrition with the purest
19 ingredients.

**PLAINTIFFS' RELIANCE WAS
REASONABLE AND FORESEEN BY DEFENDANT**

20
21 72. Plaintiffs reasonably relied on Defendant's own false statements,
22 misrepresentations and omissions concerning the particular qualities and benefits of the
23 Contaminated Dog Foods.

24 73. Plaintiffs read and relied upon the labels of the Contaminated Dog Foods in
25 making his purchasing decisions.

26 74. A reasonable consumer would consider the labeling of a product when
27 deciding whether to purchase the product. Here, Plaintiffs relied on the specific false
28

1 statements and misrepresentations by Defendant, who did not disclose that the
2 Contaminated Dog Foods were adulterated or contained pentobarbital, a substance largely
3 used to euthanize animals.

4 **DEFENDANT'S KNOWLEDGE AND NOTICE OF BREACHES**
5 **OF ITS EXPRESS AND IMPLIED WARRANTIES**

6 75. Defendant has received sufficient notice of its breaches of express and
7 implied warranties. Defendant has, and had, exclusive knowledge of the physical and
8 chemical make-up of the Contaminated Dog Foods.

9 76. Defendant also had notice of the real risk that pentobarbital may appear in
10 the Contaminated Dog Foods if the manufacturing and sourcing were not properly
11 monitored. Indeed, this is not the first time that Defendant's Gravy Train line of food has
12 been found to contain pentobarbital.²³

13 **PRIVITY EXISTS WITH PLAINTIFFS AND THE PROPOSED CLASSES**

14 77. Defendant knew that consumers such as Plaintiffs and the proposed Classes
15 would be the end purchasers of the Contaminated Dog Foods and the targets of its
16 advertising and statements.

17 78. Defendant intended that the advertising, labeling, statements, and
18 representations would be considered throughout the United States by end purchasers of the
19 Contaminated Dog Foods, including Plaintiffs and the proposed Classes.

20 79. Defendant directed the advertising, labeling, statements, representations, and
21 warranties of the Contaminated Dog Foods from the State of California to end purchasers
22 throughout the United States, including Plaintiffs and the proposed Classes.

23 80. Defendant directly marketed, from the State of California, to Plaintiffs and
24 the proposed Classes through statements on its website, labeling, advertising, and
25 packaging.

26 _____
27 ²³ [https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-](https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html)
28 [products-to-shelter.html](https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html)

1 81. Plaintiffs and the proposed Classes are the intended beneficiaries of the
2 expressed and implied warranties.

3 **CLASS ACTION ALLEGATIONS**

4 82. Plaintiffs bring this action individually and on behalf of the following Class
5 pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:

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

9 83. Plaintiffs also bring this action individually and on behalf of the following
10 SubClasses pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil
11 Procedure:

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

15 All persons who are citizens of the Ohio who, from February
16 1, 2008 to the present, purchased the Contaminated Dog Foods
17 for household or business use, and not for resale (the "Ohio
SubClass").

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

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

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

1 86. 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 87. 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 wrongfully represented and continues to represent
10 that the Contaminated Dog Foods are healthy, quality, pure and safe;

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

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

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

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

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

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

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

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

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 breached its express and implied warranties;

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

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

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

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

19 89. Plaintiffs' claims are typical of Class and SubClass members' claims in that
20 they are based on the same underlying facts, events, and circumstances relating to
21 Defendant's conduct.

22 90. Plaintiffs will fairly and adequately represent and protect the interests of the
23 Classes, has no interests incompatible with the interests of the Classes, and have retained
24 counsel competent and experienced in Class action, consumer protection, and false
25 advertising litigation.

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

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

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

5 93. As a result of the foregoing, Class treatment is appropriate.

6 **COUNT I**

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

8 94. Plaintiffs incorporate by reference and reallege each and every allegation
9 contained above, as though fully set forth herein.

10 95. Plaintiffs reasonably placed their trust and reliance in Defendant's
11 representations that the Contaminated Dog Foods are healthy, safe, pure, high quality, and
12 not adulterated with substances such as pentobarbital.

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

16 97. 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 98. Defendant breached its duty to Plaintiffs and the Classes 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 99. Plaintiffs and the Classes reasonably and justifiably relied upon the
24 information supplied to them by the Defendant. As a result, Plaintiffs and the Classes
25 purchased the Contaminated Dog Foods that, being adulterated, should not have been sold
26 at all.

27 100. Defendant failed to use reasonable care in its communications and
28 representations to Plaintiffs and Classes.

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.

4 110. As a direct and proximate result of these violations, Plaintiffs and the Classes
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.

8 111. Plaintiffs 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 Classes)**

13 112. Plaintiffs incorporate by reference and reallege each and every allegation
14 contained above, as though fully set forth herein.

15 113. 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.

17 114. 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.

19 115. 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.

23 116. Defendant's claim that the Contaminated Dog Foods provide 100 percent
24 complete and balanced nutrition are untrue or misleading because Defendant fails to
25 disclose that the Contaminated Dog Foods were in fact adulterated with pentobarbital.

26 117. Defendant knew, or reasonably should have known, that the claims were
27 untrue or misleading.

28

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

5 119. Plaintiffs and members of the Classes are entitled to injunctive and equitable
6 relief, and restitution in the amount they spent on the Contaminated Dog Foods.

7 **COUNT IV**

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

10 120. Plaintiffs incorporate by reference and reallege each and every allegation
11 contained above, as though fully set forth herein.

12 121. The Unfair Competition Law prohibits any "unlawful, unfair or fraudulent
13 business act or practice." Cal. Bus. & Prof. Code §17200.

14 **Fraudulent**

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

19 **Unlawful**

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

- 23 • The CLRA, California Business & Professions Code sections 1750, *et seq.*;
24 and
25 • The False Advertising Law, California Business & Professions Code
26 sections 17500, *et seq.*

1 **Unfair**

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

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

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

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

19 128. On behalf of himself and the Classes, Plaintiffs also seeks an order for the
20 restitution of all monies from the sale the Contaminated Dog Foods, which were unjustly
21 acquired through acts of fraudulent, unfair, or unlawful competition.

22 **COUNT V**

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

24 129. Plaintiffs incorporate by reference and reallege each and every allegation
25 contained above, as though fully set forth herein.

26 130. Defendant's conduct is negligent per se under California, Ohio and Alabama
27 law.
28

1 137. As set forth herein, Defendant made express representations to Plaintiffs and
2 the Classes that the Contaminated Dog Foods are pure, quality, healthy and safe for
3 consumption and provide 100 percent complete and balanced nutrition.

4 138. Defendant also made express representations to Plaintiffs and the Classes
5 that the Contaminated Dog Foods comply with all applicable regulations, including that
6 they are not adulterated by allowing their sale in various stores throughout the United
7 States.

8 139. These promises became part of the basis of the bargain between the parties
9 and thus constituted express warranties.

10 140. There was a sale of goods from Defendant to Plaintiffs and the Class
11 members.

12 141. On the basis of these express warranties, Defendant sold the Contaminated
13 Dog Foods to Plaintiffs and the Classes.

14 142. Defendant knowingly breached the express warranties by selling the
15 Contaminated Dog Foods which are adulterated and contain pentobarbital.

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

19 144. Privity exists because Defendant expressly warranted to Plaintiffs and the
20 Classes that the Contaminated Dog Foods were unadulterated, pure, quality, healthy and
21 safe for consumption and provided 100 percent complete and balanced nutrition.

22 145. Plaintiffs and the Classes reasonably relied on the express warranties by
23 Defendant.

24 146. As a result of Defendant's breaches of its express warranties, Plaintiffs and
25 the Classes sustained damages when they paid money for the Contaminated Dog Foods
26 that were not what Defendant represented and were not properly sold under applicable
27 regulations and law.

28

1 147. Plaintiffs on behalf of themselves and the Classes, seek actual damages for
2 Defendant's breach of warranty.

3 **COUNT VII**

4 **(Breach of Implied Warranty, California Commercial Code**
5 **§2314, Against Defendant on Behalf of the Classes)**

6 148. Plaintiffs incorporate by reference and reallege each and every allegation
7 contained above, as though fully set forth herein.

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

13 150. Defendant is a merchant engaging in the sale of goods to Plaintiffs and the
14 Classes.

15 151. There was a sale of goods from Defendant to Plaintiffs and the Classes.

16 152. Defendant breached the implied warranties by selling the Contaminated Dog
17 Foods that were not fit for their ordinary purpose as adulterated dog food containing
18 pentobarbital.

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

22 154. Privity exists because Defendant impliedly warranted to Plaintiffs and the
23 Classes that the Contaminated Dog Foods were unadulterated and fit for their ordinary
24 purpose

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

28

1 156. Plaintiffs, on behalf of themselves and the Classes, seek actual damages for
2 Defendant's breach of warranty.

3 **COUNT VIII**

4 **(Fraudulent Concealment Against Defendant on Behalf of the Classes)**

5 157. Plaintiffs incorporate by reference and reallege each and every allegation
6 contained above, as though fully set forth herein.

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

9 159. At all times relevant herein, Defendant made misrepresentations of material
10 fact to Plaintiffs and the other Class Members as a means of concealing the true nature and
11 quality of the Contaminated Dog Foods, claiming it was pure, nutritious, healthy, and pure
12 quality with no disclosure that the Contaminated Dog Foods were adulterated and
13 pentobarbital.

14 160. Defendant has concealed material facts from Plaintiffs and the other Class
15 Members, including but not limited to:

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

21 161. Defendant had a duty to disclose these facts, regardless of the existence of
22 privity, by virtue of (a) Defendant's exclusive knowledge as to the true nature and
23 ingredients of the Contaminated Dog Foods; (b) Defendant's awareness that Plaintiffs and
24 members of the proposed Classes were not reasonably likely to discover these facts; (c)
25 Defendant's active concealment of those facts from Plaintiffs and the proposed Classes
26 (by, among other things, making the false representations described above); and (d)
27
28

1 Defendant's statutory and common-law obligations to disclose material information to the
2 consumers as alleged herein.

3 162. Plaintiffs and members of the Classes would have acted differently had
4 Defendant disclosed this information to them and allowed them to make a fully-informed
5 decision before they purchased the Contaminated Dog Foods.

6 163. The facts Defendant concealed from Plaintiffs and the Classes are material
7 and uniform in nature.

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

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

17 166. Plaintiffs, on behalf of themselves and the Classes, seek actual damages for
18 Defendant's fraudulent concealment.

19 167. Because Defendant engaged in the conduct alleged herein deliberately and
20 with intent, Plaintiffs and the Classes are entitled to an award of punitive damages, the total
21 amount of which shall be proven at trial.

22 **COUNT IX**

23 **(Breach of Express Warranty, Ala. Code §7-2-313,**
24 **Against Defendant on Behalf of the Alabama SubClass)**

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

27 169. As set forth herein, Defendant made express representations to Plaintiff Todd
28 and the Alabama SubClass that the Contaminated Dog Foods are pure, quality, healthy and

1 safe for consumption and provide 100 percent complete and balanced nutrition. Defendant
2 intended these express representations to benefit Plaintiff Todd and the Alabama SubClass,
3 as purchasers of the Contaminated Dog Foods.

4 170. Defendant also made express representations to Plaintiff Todd and the
5 Alabama SubClass that the Contaminated Dog Foods meet all applicable regulations,
6 including that they are not adulterated dog food by allowing their sale in various stores
7 throughout the United States.

8 171. These promises became part of the basis of the bargain between the parties
9 and thus constituted express warranties.

10 172. There was a sale of goods from Defendant to Plaintiff Todd and the Alabama
11 SubClass members.

12 173. On the basis of these express warranties, Defendant sold to Plaintiff Todd
13 and the Alabama SubClass the Contaminated Dog Foods.

14 174. Defendant knowingly breached the express warranties by selling the
15 Contaminated Dog Foods which are adulterated and contain pentobarbital.

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

19 176. Privity exists because Defendant expressly warranted to Plaintiff Todd and
20 the Alabama SubClass that the Contaminated Dog Foods were pure, quality, healthy and
21 safe for consumption and provided 100 percent complete and balanced nutrition and
22 unadulterated.

23 177. Plaintiff Todd and the Alabama SubClass reasonably relied on the express
24 warranties by Defendant.

25 178. As a result of Defendant's breaches of its express warranties, Plaintiff Todd
26 and the Alabama SubClass sustained damages as they paid money for the Contaminated
27 Dog Foods that were not what Defendant represented and in fact not properly sold under
28 applicable regulations and law.

1 179. Plaintiff Todd, on behalf of himself and the Alabama SubClass, seeks actual
2 damages for Defendant's breach of warranty.

3 **COUNT X**
4 **(Breach of Express Warranty, Ohio Rev. Code Ann. §1302.26,**
5 **Against Defendant on Behalf of the Ohio SubClass)**

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

8 181. As set forth herein, Defendant made express representations to Plaintiff
9 Williamson and the Ohio SubClass that the Contaminated Dog Foods are pure, quality,
10 healthy and safe for consumption and provide 100 percent complete and balanced nutrition.
11 Defendant intended these express representations to benefit Plaintiff Williamson and the
12 Ohio SubClass, as purchasers of the Contaminated Dog Foods.

13 182. Defendant also made express representations to Plaintiff Williamson and the
14 Ohio SubClass that the Contaminated Dog Foods meet all applicable regulations, including
15 that they are not adulterated dog food by allowing their sale in various stores throughout
16 the United States.

17 183. These promises became part of the basis of the bargain between the parties
18 and thus constituted express warranties.

19 184. There was a sale of goods from Defendant Plaintiff Williamson and the Ohio
20 SubClass members.

21 185. On the basis of these express warranties, Defendant sold to Plaintiff
22 Williamson and the Ohio SubClass the Contaminated Dog Foods.

23 186. Defendant knowingly breached the express warranties by selling the
24 Contaminated Dog Foods which are defective because they are adulterated and contain
25 pentobarbital.

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

1 188. Privity exists because Defendant expressly warranted to Plaintiff Williamson
2 and the Ohio SubClass that the Contaminated Dog Foods were pure, quality, healthy and
3 safe for consumption and provided 100 percent complete and balanced nutrition and
4 unadulterated.

5 189. Plaintiff Williamson and the Ohio SubClass reasonably relied on the express
6 warranties by Defendant.

7 190. As a result of Defendant's breaches of its express warranties, Plaintiff
8 Williamson and the Ohio SubClass sustained damages as they paid money for the
9 Contaminated Dog Foods that were not what Defendant represented and in fact not
10 properly sold under applicable regulations and law.

11 191. Plaintiff Williamson, on behalf of herself and the Ohio SubClass, seeks
12 actual damages for Defendant's breach of warranty.

13 **COUNT XI**

14 **(Breach of Implied Warranty Against Defendant on Behalf of the Ohio SubClass)**

15 192. Plaintiff Williamson incorporates by reference and realleges each and every
16 allegation contained above, as though fully set forth herein.

17 193. As set forth herein, the Contaminated Dog Foods are not fit for the ordinary
18 purposes as they were adulterated or similarly contaminated under Ohio statute §923.48
19 (prohibiting pet food that contains any “poisonous or deleterious substance”) as alleged
20 herein.

21 194. The Contaminated Dog Foods were adulterated at the time Defendant sold
22 the products to Plaintiff Williamson and the Ohio SubClass.

23 195. Defendant breached the implied warranties by selling the Contaminated Dog
24 Foods that were not fit for their ordinary purpose as adulterated dog food containing
25 pentobarbital.

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

1 197. Defendant impliedly warranted to Plaintiff Williamson and the Ohio
2 SubClass that the Contaminated Dog Foods were unadulterated and fit for their ordinary
3 purpose

4 198. As a result of Defendant's breach of its implied warranties of merchantability,
5 Plaintiff Williamson and the Ohio SubClass sustained damages as they paid money for the
6 Contaminated Dog Foods that were not what Defendant represented.

7 199. Plaintiff Williamson, on behalf of herself and the Ohio SubClass, seeks
8 actual damages for Defendant's breach of warranty.

9 **PRAYER FOR RELIEF**

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

12 A. An order declaring this action to be a proper Class action, appointing
13 Plaintiffs and their counsel to represent the Classes, and requiring Defendant to bear the
14 costs of Class notice;

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

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

19 D. An order requiring Defendant to engage in a corrective advertising campaign
20 and engage in any further necessary affirmative corrective action, such as recalling existing
21 products;

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

26 F. An order requiring Defendant to pay restitution to restore all funds acquired
27 by means of any act or practice declared by this Court to be an unlawful, unfair, or
28 fraudulent business act or practice, untrue or misleading advertising, or a violation of

1 California's Unfair Competition Law, False Advertising Law, or CLRA, plus pre- and post-
2 judgment interest thereon;

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

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

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

9 J. An order awarding attorneys' fees and costs to Plaintiffs, the Class, and the
10 SubClasses; and

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

13
14 **JURY DEMAND**

15 Plaintiffs hereby demand a trial by jury on all issues so triable.

16 Dated: March 16, 2018

17 LOCKRIDGE GRINDAL NAUEN P.L.L.P.
18 ROBERT K. SHELQUIST
REBECCA A. PETERSON (241858)

19 */s/ Rebecca Peterson*
20 _____
REBECCA A. PETERSON

21 100 Washington Avenue South, Suite 2200
22 Minneapolis, MN 55401
23 Telephone: (612) 339-6900
24 Facsimile: (612) 339-0981
E-mail: rkshelquist@locklaw.com
rapeterson@locklaw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ROBBINS ARROYO LLP
KEVIN A. SEELY (199982)
STEVEN M. MCKANY (271405)
600 B Street, Suite 1900
San Diego, CA 92101
Telephone: (619) 525-3990
Facsimile: (619) 525-3991
E-mail: kseely@robbinsarroyo.com
smckany@robbinsarroyo.com

GUSTAFSON GLUEK, PLLC
DANIEL E. GUSTAFSON
KARLA M. GLUEK
JOSEPH C. BOURNE (308196)
RAINA C. BORRELLI
Canadian Pacific Plaza
120 South 6th Street, Suite 2600
Minneapolis, MN 55402
Telephone: (612) 333-8844
Facsimile: (612) 339-6622
E-mail: dgustafson@gustafsongluek.com
kgluek@gustafsongluek.com
jbourne@gustafsongluek.com
rborrelli@gustafsongluek.com

CUNEO GILBERT & LADUCA, LLP
CHARLES LADUCA
KATHERINE VAN DYCK
4725 Wisconsin Ave NW, Suite 200
Washington, DC 20016
Telephone: 202-789-3960
Facsimile: 202-789-1813
E-mail: kvandyck@cuneolaw.com
charles@cuneolaw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LITE DEPALMA GREENBERG, LLC
JOSEPH DEPALMA
SUSANA CRUZ HODGE
570 Broad Street, Suite 1201
Newark, NJ 07102
Telephone: (973) 623-3000
E-mail: jdepalma@litedepalma.com
scruzhodge@litedepalma.com

Attorneys for Plaintiffs