

1 ROBBINS ARROYO LLP
2 BRIAN J. ROBBINS (190264)
3 KEVIN A. SEELY (199982)
4 STEVEN M. MCKANY (271405)
5 600 B Street, Suite 1900
6 San Diego, CA 92101
7 Telephone: (619) 525-3990
8 Facsimile: (619) 525-3991
9 E-mail: brobbins@robbinsarroyo.com
10 kseely@robbinsarroyo.com
11 smckany@robbinsarroyo.com
12

13 LOCKRIDGE GRINDAL NAUEN P.L.L.P.
14 REBECCA A. PETERSON (241858)
15 ROBERT K. SHELQUIST
16 100 Washington Avenue South, Suite 2200
17 Minneapolis, MN 55401
18 Telephone: (612) 339-6900
19 Facsimile: (612) 339-0981
20 E-mail: rkshelquist@locklaw.com
21 rapeterson@locklaw.com
22

23 Attorneys for Plaintiffs

24 SUPERIOR COURT OF THE STATE OF CALIFORNIA

25 COUNTY OF RIVERSIDE

26 GABRIELA CERVANTES and AGUSTIN)
27 CERVANTES, Individually and on Behalf)
28 of All Others Similarly Situated,)

Plaintiffs,

v.

CANIDAE CORPORATION,

Defendant.

Case No. RIC1706332

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

(1) NEGLIGENT MISREPRESENTATION;
(2) VIOLATIONS OF THE CALIFORNIA
CONSUMER LEGAL REMEDIES ACT;
(3) VIOLATIONS OF THE CALIFORNIA
FALSE ADVERTISING LAW;
(4) VIOLATIONS OF THE CALIFORNIA
UNFAIR COMPETITION LAW;
(5) BREACH OF EXPRESS WARRANTY;
AND
(6) BREACH OF IMPLIED WARRANTY.

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Riverside

9/19/2017

etoledo

By Fax

1 Plaintiffs Gabriela Cervantes and Agustin Cervantes (collectively, "Plaintiffs"),
2 individually and on behalf of all others similarly situated, by and through their undersigned
3 attorneys, as and for their Amended Class Action Complaint against CANIDAE Corporation
4 ("Defendant"), alleges the following based upon personal knowledge as to themselves and their
5 own actions, and, as to all other matters, respectfully alleges, upon information and belief, as
6 follows:

7 **NATURE OF THE ACTION**

8 1. Plaintiffs, individually and on behalf of all others similarly situated, by and
9 through their undersigned attorneys, bring this class action against Defendant for the deceptive
10 practice of marketing its CANIDAE® Grain Free PURE and CANIDAE® All Life Stages dog
11 food products (the "Products") as "natural," "pure," "simple" and "holistic" when many of them
12 contain artificial and/or synthetic ingredients, which are well-known unnatural, artificial
13 additives

14 2. On the front of all its products, Defendant claims to be a "Natural Pet Food
15 Company." Defendant charges a premium for the advertised natural ingredients. Additionally,
16 Defendant adds that its products are "natural & holistic" on the front of every CANIDAE® All
17 Life Stages products.

18 3. Defendant also prominently states that its products are "Natural Dog Food" on the
19 front of its CANIDAE® Grain Free PURE products (dry formulas). Additionally, Defendant
20 adds that these products are a "pure, simple recipe" composed of "whole foods" and contain only
21 seven to ten "simple ingredients" plus "natural flavor, vitamins, minerals, and probiotics mix" as
22 shown below:



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GRAIN FREE
PURE
sea

FRESH SALMON & OPTIMUM LEVELS OF ANIMAL PROTEIN



Grain free PURE Sea® has delicious fresh salmon as the first ingredient. In fact, just one cup of PURE Sea® provides your dog with 41 grams of protein—the same amount of protein as a 7oz salmon steak with a side of sweet potatoes and peas.

WHOLE FOODS FOR NATURALLY GREAT NUTRITION



The fresh salmon in PURE Sea® is complemented with wholesome foods including sweet potatoes and peas for naturally great—and great tasting—nutrition. And our gluten-free recipe never includes corn, wheat, soy, antibiotics, hormones, or fillers.

A PURE, SIMPLE RECIPE



An easy-to-understand list of 8 simple ingredients—straight from nature to your dog's bowl. Pure and simple.

IDEAL FOR DOGS WITH OR WITHOUT SENSITIVITIES

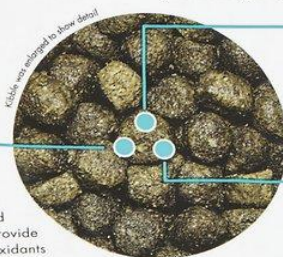


Unique animal proteins and fewer ingredients can be an ideal solution for dogs with digestive or skin and coat sensitivities. Dogs without sensitivities have the freedom to enjoy a diet with only simple ingredients and no grains.

HealthPLUS SOLUTIONS™

Applied on **every** kibble **after** cooking.

CANIDAE® HealthPLUS is a powerful trio of nutrition applied after the kibble is cooked. This gives your pet health benefits in every bite! Our precise combination of micronutrients, along with our promise to always apply them after cooking, is part of our commitment to **A Healthier Today for a Longer Tomorrow™**.



Powerful Antioxidants
Our vitamins and micronutrients provide the critical antioxidants needed to help maintain a healthy immune system.

Probiotic ForLife Cultures
Our live probiotic cultures—like those found in yogurt—support healthy digestion and a strong immune system.

Healthy Omega Fatty Acids
Our blend of Omega Fatty Acids plays a key role in helping to provide optimal nutrition and a beautiful skin and coat.

8 INGREDIENTS

Fresh Salmon
Salmon Meal
Menhaden Fish Meal
Sweet Potatoes
Peas
Canola Oil
Suncured Alfalfa
Potatoes

PLUS Natural Flavor, Vitamins, Minerals, and Probiotics Mix

A HEALTHIER TODAY FOR A LONGER TOMORROW™

We all love our pets, and they love us unconditionally in return. This love drives our company to create foods and treats that are nutritious, delicious, and trustworthy. We never compromise on quality—using only carefully selected ingredients blended together in precise recipes that nourish your pet's body and spirit. From the beginning, we've been—and continue to be—a company that's grounded in and committed to honesty, ethics, integrity, and doing the very best for your pets. We began as genuine pioneers in natural and holistic pet foods, and we continue to raise the bar to create **A Healthier Today for a Longer Tomorrow™**.



We are proud to share with you our advanced research and development center and manufacturing facility in Brownwood, Texas.

Ethics
Pet Nutrition

OUR GUARANTEE TO YOU

At CANIDAE® Natural Pet Food Company, we are committed to excellence and providing our customers' pets with superior quality nutrition. If you are not completely satisfied, return the unused portion with the receipt to the place of purchase for a full refund or replacement.

Guaranteed by
CANIDAE® Corporation, San Luis Obispo, CA 93403-3610
800-398-1600 USA | 909-599-5190 Outside USA

canidae.com

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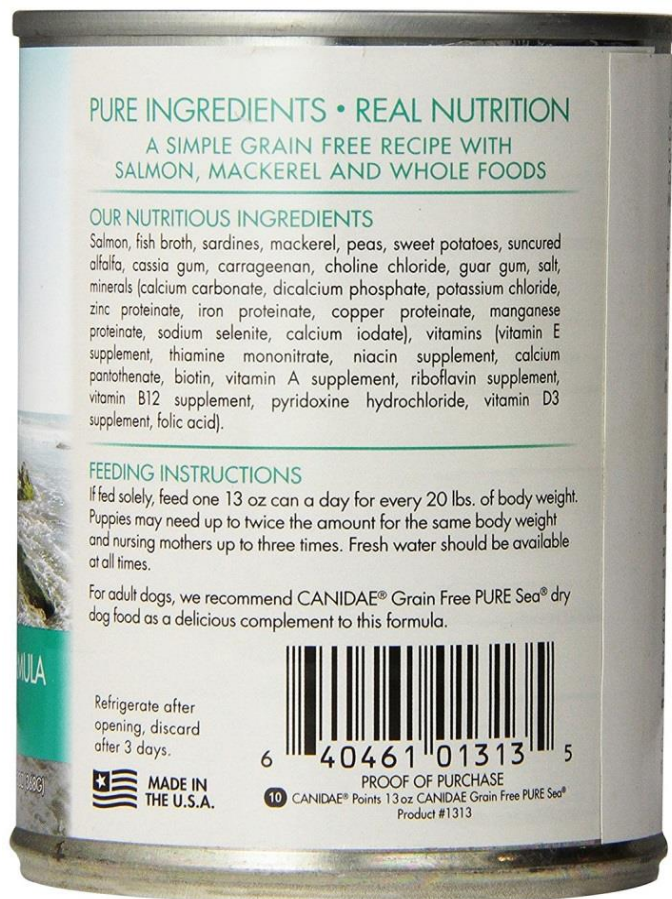
Save this proof of purchase and your receipt to participate in one of our available cost saving programs.
Visit canidae.com/upc



Scan here to read stories from real customers about why they love our food!
canidae.com/stories

MADE IN THE U.S.A.

ADULT DOG / NOURRITURE POUR CHIENS ADULTES
24 LBS NET WT 10.8 KG



4. Further, Defendant repeatedly states on its website that the CANIDAE® Grain Free PURE products have limited ingredients, whole foods, and are composed of simple recipes.

5. Defendant engaged in deceptive labeling practices by expressly representing on the Products' labels and website that the Products are "natural dog food." Additionally, the CANIDAE® Grain Free PURE products indicate that they use only "whole foods" and the Product contains only seven to ten "simple" ingredients plus "natural flavor, vitamins, minerals, and probiotics." However, Defendant's dog food products actually contain ingredients that are not "natural" such as choline chloride, dried enterococcus faecium fermentation product, dried trichoderma longibrachiatum fermentation extract, and dicalcium phosphate among others.

6. By deceptively marketing the Products as having all "natural" ingredients, Defendant wrongfully capitalized on, and reaped enormous profits from, consumers' strong preference for natural food products made free of synthetic ingredients.

7. Defendant marketed its Products in a way that is deceptive to consumers under the consumer protection laws of California. Defendant has been unjustly enriched as a result of its conduct. For these reasons, Plaintiffs seek the relief set forth herein.

8. Plaintiffs bring this proposed consumer class action individually and on behalf of all other members of the Class (as defined herein), who, from the applicable limitations period up to and including the present, purchased for consumption and not resale any of Defendant's Products.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this matter pursuant to the California Constitution, Article XI, section 10 and California Code of Civil Procedure ("C.C.P.") section 410.10, because Defendant transacted business and committed the acts alleged in California. More than two-thirds of the Class members are citizens and residents of California, the sole defendant is located in California, and Defendant has its principal place of business in and is headquartered in California; thus, this case is not subject to removal under the Class Action Fairness Act of 2005 under both the "home state exception" and the "local controversy exception." 28 U.S.C. §1332(d)(4)(A) (home state exception); 28 U.S.C. §1332 (d)(4)(B) (local

1 controversy exception).

2 10. Venue is appropriate in Riverside County because Defendant, which is
3 headquartered in Riverside County, did and is doing business in Riverside County.

4 **THE PARTIES**

5 11. Plaintiffs are, and at all times relevant hereto have been, citizens of the state of
6 California. Plaintiffs purchased CANIDAE® dog food as the primary food source for their dog,
7 a Maltese Poodle mix. Plaintiffs fed their dog a cup-size serving of CANIDAE® dog food twice
8 a day, and purchased the products every three months from the Petco store located in Chula
9 Vista, California, beginning in approximately October 2014. Plaintiffs have suffered injury as a
10 result of Defendant's actions.

11 12. Plaintiffs purchased at least two types of Defendant's Grain Free PURE products,
12 CANIDAE® Grain Free PURE Sea® Dog Dry Formula with Fresh Salmon and CANIDAE®
13 Grain Free PURE Sea® Dog Wet Formula with Salmon & Mackerel. Plaintiffs purchased
14 CANIDAE® dog food because they wanted a natural dog food product and they believed that
15 natural dog food was the healthiest option for their eleven year-old dog.

16 13. As the result of Defendant's deceptive conduct as alleged herein, Plaintiffs were
17 injured when they paid the purchase price or a price premium for the Products that did not
18 deliver what they promised. They paid the above sum on the assumption that this was for
19 natural, pure, simple, and holistic pet food free of synthetic ingredients and would not have paid
20 this money had they had known that they contained unnatural ingredients or would have
21 purchased other products, which were premium, natural, or did not contain unnatural additives.
22 Defendant promised Plaintiffs natural, pure, simple, and holistic pet food but delivered
23 something else entirely, thereby depriving them of the benefit of their bargain. Damages can be
24 calculated through expert testimony at trial. Further, should Plaintiffs encounter the Products in
25 the future, they could not rely on the truthfulness of the packaging, absent corrective changes to
26 the packaging and advertising of the Products.

27 14. Defendant formulates, develops, manufactures, labels, distributes, markets,
28 advertises, and sells the Products under the CANIDAE® dog food products brand name

1 throughout the United States. The advertising for the Products, relied upon by Plaintiffs, was
2 prepared and/or approved by Defendant and its agents, and was disseminated by Defendant and
3 its agents through advertising and labeling that contained the misrepresentations alleged herein.
4 The advertising and labeling for the Products was designed to encourage consumers to purchase
5 the Products and reasonably misled the reasonable consumer, i.e., Plaintiffs and the Class (as
6 defined herein), into purchasing the Products. Defendant owns, manufactures, and distributes the
7 Products, and created and/or authorized the unlawful, fraudulent, unfair, misleading, and/or
8 deceptive labeling and advertising for the Products.

9 15. The Products, at a minimum, include:

- 10 (a) CANIDAE® Grain Free PURE Land® Dog Dry Formula with Fresh
11 Bison;
- 12 (b) CANIDAE® Grain Free PURE Sea® Dog Dry Formula with Fresh
13 Salmon;
- 14 (c) CANIDAE® Grain Free PURE Elements® Dog Dry Formula with Fresh
15 Lamb;
- 16 (d) CANIDAE® Grain Free PURE Sky® Dog Dry Formula with Fresh Duck;
- 17 (e) CANIDAE® Grain Free PURE Fields® Small Breed Adult Dog Dry
18 Formula with Fresh Chicken;
- 19 (f) CANIDAE® Grain Free PURE Foundations® Puppy Dry Formula with
20 Fresh Chicken;
- 21 (g) CANIDAE® Grain Free PURE Wild® Dog Dry Formula with Fresh Wild
22 Boar;
- 23 (h) CANIDAE® Grain Free PURE Meadow® Senior Dog Dry Formula with
24 Fresh Chicken;
- 25 (i) CANIDAE® Grain Free PURE Resolve® Weight Management Dog Dry
26 Formula with Fresh Chicken;
- 27 (j) CANIDAE® Grain Free PURE Petite Small Breed Adult Dog Dry
28 Formula with Fresh Salmon;

- 1 (k) CANIDAE® Grain Free PURE Petite Small Breed Adult Dog Dry
2 Formula with Fresh Bison;
- 3 (l) CANIDAE® Grain Free PURE Petite Small Breed Adult Dog Dry
4 Formula with Fresh Chicken;
- 5 (m) CANIDAE® Grain Free PURE Sea® Dog Wet Formula with Salmon &
6 Mackerel;
- 7 (n) CANIDAE® Grain Free PURE Land® Dog Wet Formula with Lamb;
- 8 (o) CANIDAE® Grain Free PURE Elements® Dog Wet Formula with Lamb,
9 Turkey & Chicken;
- 10 (p) CANIDAE® Grain Free PURE Foundations® Puppy Wet Formula with
11 Chicken;
- 12 (q) CANIDAE® Grain Free PURE Sky® Dog Wet Formula with Duck &
13 Turkey;
- 14 (r) CANIDAE® All Life Stages Dog Dry Food Chicken, Turkey, Lamb &
15 Fish Meals Formula;
- 16 (s) CANIDAE® All Life Stages Dog Dry Food Chicken Meal & Rice
17 Formula;
- 18 (t) CANIDAE® All Life Stages Dog Dry Food Lamb Meal & Rice Formula;
- 19 (u) CANIDAE® All Life Stages Large Breed Puppy Dry Food Duck Meal,
20 Brown Rice & Lentils Formula;
- 21 (v) CANIDAE® All Life Stages Large Breed Adult Dog Dry Food Duck
22 Meal & Brown Rice Formula;
- 23 (w) CANIDAE® All Life Stages Platinum Less Active Dog Dry Food Multi-
24 Protein Formula;
- 25 (x) CANIDAE® All Life Stages Dog Wet Food Chicken, Lamb, & Fish
26 Formula;
- 27 (y) CANIDAE® All Life Stages Dog Wet Food Chicken & Rice Formula;
- 28 (z) CANIDAE® All Life Stages Dog Wet Food Lamb & Rice Formula;

(aa) CANIDAE® All Life Stages Large Breed Puppy Wet Food Chicken, Duck & Lentils Formula;

(bb) CANIDAE® All Life Stages Platinum Less Active Dog Wet Food Chicken, Lamb & Fish Formula; and

(cc) CANIDAE® All Life Stages Large Breed Adult Dog Wet Food Chicken, Duck & Lentils Formula.

FACTUAL ALLEGATIONS

Defendant Misleadingly Markets Its Products as Natural, Pure, Simple, and Holistic

16. Defendant proclaims to be a "Natural Pet Food Company." Defendant formulates, develops, manufactures, labels, distributes, markets, advertises, and sells its extensive CANIDAE® Grain Free PURE and CANIDAE® All Life Stages products across the United States.

17. The Products are available at numerous retail and online outlets.

18. The Products are widely advertised.

19. The Products claim to be "natural." Additionally, the CANIDAE® Grain Free PURE products claim to be using only "natural," "whole," "pure," and "simple ingredients."

20. Plaintiffs purchased the Products which state on their labeling and/or on Defendant's website that they are "natural."

21. By representing that the Products contain only "natural," "pure," "simple," and "holistic" ingredients Defendant sought to capitalize on consumers' preference for less processed products with fewer additives. Consumers are willing to pay more for products with no additives.

22. Unsurprisingly, Defendant has an interest in labeling its Products as "natural" despite the presence of choline chloride, dried enterococcus faecium fermentation product, dried trichoderma longibrachiatum fermentation extract, and dicalcium phosphate as this would allow them to charge a premium for its Products and give them an advantage over its competitors that use artificial ingredients and do not market as "natural."

1 **DEFENDANT'S "NATURAL," "PURE," "SIMPLE," AND/OR "HOLISTIC"**
2 **MISREPRESENTATION VIOLATES CALIFORNIA LAWS**

3 23. California law is designed to ensure that a company's claims about its products are
4 truthful and accurate. Defendant violated California law by incorrectly claiming that the
5 Products are natural, pure, simple, and/or holistic.

6 24. Defendant's marketing and advertising campaign has been sufficiently lengthy in
7 duration, and widespread in dissemination, that it would be unrealistic to require Plaintiffs to
8 plead relying upon each advertised misrepresentation.

9 25. Defendant has engaged in this long-term advertising campaign to convince
10 potential customers that the Products lack unnatural ingredients.

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

12 26. Plaintiffs reasonably relied on Defendant's own statements, misrepresentations,
13 and advertising concerning the particular qualities and benefits of the Products.

14 27. Plaintiffs read and relied upon the labels on the Products in making their
15 purchasing decisions, along with viewing the statements, misrepresentations, and advertising on
16 Defendant's website and elsewhere on the Internet.

17 28. A reasonable consumer would consider the labeling of a product when deciding
18 whether to purchase. Here, Plaintiffs relied on the specific statements and misrepresentations by
19 Defendant that the Products were natural, pure, simple, and holistic and did not contain artificial
20 preservatives. Thus Plaintiffs would not have purchased the Defendant's Products had they been
21 aware that Defendant's products contained several unnatural additives.

22 **DEFENDANT'S KNOWLEDGE AND NOTICE OF ITS BREACHES**
23 **OF ITS EXPRESS AND IMPLIED WARRANTIES**

24 29. Defendant has sufficient notice of its breaches of its express and implied
25 warranties. Defendant has, and had, exclusive knowledge of the physical and chemical make-up
26 of the Products.

27 30. Defendant chose to improperly include a small print reference to its website
28 www.CANIDAE.com for further explanation of the term natural, further showing its knowledge

1 of the misleading statements. The direct link brings a consumer to a page that fails to state
2 anything about "what natural means" to Defendant.

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

4 31. Defendant knew that consumers such as Plaintiffs and the proposed Class (as
5 defined herein) would be the end purchasers of the Products and the target of its advertising and
6 statements.

7 32. Defendant intended that its statements and representations would be considered
8 by the end purchasers of the Products, including Plaintiffs and the proposed Class.

9 33. Defendant directly marketed to Plaintiffs and the proposed Class through
10 statements on its website, labeling, advertising, and packaging.

11 34. Plaintiffs and the proposed Class are the intended beneficiaries of the expressed
12 and implied warranties.

13 **CLASS ACTION ALLEGATIONS**

14 35. Plaintiffs bring this action individually and on behalf of the following class
15 pursuant to C.C.P. section 382, California Civil Code section 1781, and other applicable law:

16 All California citizens who, from September 30, 2011 to the present, purchased
17 the Products for household use, and not for resale (the "Class").

18 36. Excluded from the Class are the Defendant, any of its parent companies,
19 subsidiaries, and/or affiliates, officers, directors, legal representatives, employees, co-
20 conspirators, all governmental entities, and any judge, justice, or judicial officer presiding over
21 this matter.

22 37. This action is brought and may be properly maintained as a class action. There is
23 a well-defined community of interests in this litigation and the members of the Class are easily
24 ascertainable.

25 38. The members in the proposed Class are so numerous that individual joinder of all
26 members is impracticable, and the disposition of the claims of all Class members in a single
27 action will provide substantial benefits to the parties and Court.
28

1 39. Questions of law and fact common to Plaintiffs and the Class include, but are not
2 limited to, the following:

3 (a) whether Defendant owed a duty of care to the Class;

4 (b) whether Defendant represented and continues to represent that the
5 Products are natural, pure, simple, and holistic and do not contain artificial preservatives;

6 (c) whether Defendant's representations in advertising and/or labeling are
7 false, deceptive, and misleading;

8 (d) whether those representations are likely to deceive a reasonable consumer;

9 (e) whether Defendant had knowledge that those representations were false,
10 deceptive, and misleading;

11 (f) whether Defendant continues to disseminate those representations despite
12 knowledge that the representations are false, deceptive, and misleading;

13 (g) whether a representation that a product is natural, pure, simple, and
14 holistic and does not contain artificial/synthetic ingredients is material to a reasonable consumer;

15 (h) whether Defendant's representations that it is a natural pet food company
16 and its claims that the Products are natural and contain only a few simple ingredients are likely to
17 mislead, deceive, confuse, or confound consumers acting reasonably;

18 (i) whether Defendant violated California Business & Professions Code
19 sections 17200, *et seq.*;

20 (j) whether Defendant violated California Business & Professions Code
21 sections 17500, *et seq.*;

22 (k) whether Defendant violated California Civil Code sections 1750, *et seq.*;

23 (l) whether Defendant violated California Health & Safety Code sections
24 113090 and 113095;

25 (m) whether a reasonable consumer would rely on the misleading
26 advertisements and labeling;

27 (n) whether Plaintiffs and the members of the Class are entitled to actual,
28 statutory, and punitive damages; and

1 (o) whether Plaintiffs and members of the Class are entitled to declaratory and
2 injunctive relief.

3 40. Defendant engaged in a common course of conduct giving rise to the legal rights
4 sought to be enforced by Plaintiffs individually and on behalf of the other members of the Class.
5 Identical statutory violations and business practices and harms are involved. Individual
6 questions, if any, are not prevalent in comparison to the numerous common questions that
7 dominate this action.

8 41. Plaintiffs' claims are typical of Class members' claims in that they are based on
9 the same underlying facts, events, and circumstances relating to Defendant's conduct.

10 42. Plaintiffs will fairly and adequately represent and protect the interests of the
11 Class, have no interests incompatible with the interests of the Class, and have retained counsel
12 competent and experienced in class action, consumer protection, and false advertising litigation.

13 43. Class treatment is superior to other options for resolution of the controversy
14 because the relief sought for each Class member is small such that, absent representative
15 litigation, it would be infeasible for Class members to redress the wrongs done to them.

16 44. Questions of law and fact common to the Class predominate over any questions
17 affecting only individual Class members.

18 45. As a result of the foregoing, Class treatment is appropriate.

19 **FIRST CAUSE OF ACTION**

20 **Against Defendant for Negligent Misrepresentation**

21 46. Plaintiffs incorporate by reference and reallege each and every allegation
22 contained above, as though fully set forth herein.

23 47. Plaintiffs reasonably placed their trust and reliance in Defendant that the Products
24 marketed and advertised to them and the Class were natural, pure, simple, and holistic and did
25 not contain artificial ingredients.

26 48. Because of the relationship between the parties, the Defendant owed a duty to use
27 reasonable care to impart correct and reliable disclosures concerning the use of unnatural
28 ingredients in making the Products or, based upon its superior knowledge, having spoken, to say

1 enough to not be misleading.

2 49. Defendant breached its duty to Plaintiffs and the Class by providing false,
3 misleading, and/or deceptive information regarding the nature of the Products.

4 50. Plaintiffs and the Class reasonably and justifiably relied upon the information
5 supplied to them by the Defendant. As a result, Plaintiffs and the Class purchased the Products
6 at a premium.

7 51. Defendant failed to use reasonable care in its communications and representations
8 to Plaintiffs and Class.

9 52. By virtue of Defendant's negligent misrepresentations, Plaintiffs and the Class
10 have been damaged in an amount to be proven at trial or alternatively, seek rescission and
11 disgorgement under this cause of action.

12 **SECOND CAUSE OF ACTION**

13 **Against Defendant for Violations of California's Consumer**
14 **Legal Remedies Act, California Civil Code §§1750, *Et Seq.***

15 53. Plaintiffs incorporate by reference and reallege each and every allegation
16 contained above, as though fully set forth herein.

17 54. Plaintiffs and each proposed Class member is a "consumer," as that term is
18 defined in California Civil Code section 1761(d).

19 55. The Products are "goods," as that term is defined in California Civil Code section
20 1761(a).

21 56. Each Defendant is a "person" as that term is defined in California Civil Code
22 section 1761(c).

23 57. Plaintiffs and each proposed Class member's purchase of Defendant's Products
24 constituted a "transaction," as that term is defined in California Civil Code section 1761(e).

25 58. Defendant's conduct alleged herein violates the following provisions of
26 California's Consumer Legal Remedies Act (the "CLRA"):

27 (a) California Civil Code section 1770(a)(5), by representing that the Products
28 are natural, pure, simple, and holistic dog food;

1 (b) California Civil Code section 1770(a)(7), by representing that the Products
2 were of a particular standard, quality, or grade, when they were of another;

3 (c) California Civil Code section 1770(a)(9), by advertising the Products with
4 intent not to sell them as advertised; and

5 (d) California Civil Code section 1770(a)(16), by representing that the
6 Products have been supplied in accordance with previous representations when they have not.

7 59. As a direct and proximate result of these violations, Plaintiffs and the Class have
8 been harmed, and that harm will continue unless Defendant is enjoined from using the
9 misleading marketing described herein in any manner in connection with the advertising and sale
10 of the Products.

11 60. CLRA section 1782(d) codifies Plaintiffs' right to amend without leave of court to
12 include a request for damages.

13 61. On May 15, 2017, counsel for Plaintiffs and the proposed Class provided
14 Defendant with written notice (via U.S. certified mail, return receipt requested) that its conduct is
15 in violation of the CLRA.

16 62. Defendant failed to provide appropriate relief for its violations of CLRA sections
17 1770(a)(5), (7), (9) and (16) within thirty days of receipt of Plaintiffs' notification. In
18 accordance with CLRA section 1782(b), Plaintiffs and the Class are entitled, under CLRA
19 section 1780, to recover and obtain the following relief for Defendant's violations of CLRA
20 sections 1770(a)(5), (7), (9) and (16):

21 (a) actual damages under CLRA section 1780(a)(1);

22 (b) restitution of property under CLRA section 1780(a)(3);

23 (c) punitive damages under CLRA section 1780(a)(4) and because Defendants
24 have engaged in fraud, malice or oppression; and

25 (d) any other relief the Court deems proper under CLRA section 1780(a)(5).

26 63. Plaintiffs seek an award of attorney's fees pursuant to, inter alia, California Civil
27 Code section 1780(e) and C.C.P. section 1021.5.

1 **THIRD CAUSE OF ACTION**

2 **Against Defendant for Violations of California False Advertising Law,**
3 **California Business & Professions Code §§17500, *Et Seq.***

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

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

8 66. As set forth herein, Defendant's claim that the Products are natural, pure, simple,
9 and holistic is literally false and likely to deceive the public.

10 67. Defendant's claim that the Products are natural, pure, simple, and holistic is untrue
11 or misleading.

12 68. Defendant knew, or reasonably should have known, that the claim is untrue or
13 misleading.

14 69. Defendant's conduct is ongoing and continuing, such that prospective injunctive
15 relief is necessary, especially given Plaintiffs' desire to purchase these Products in the future if
16 they can be assured that Products being advertised as "natural dog food" are in fact natural.

17 70. Plaintiffs and members of the Class are entitled to injunctive and equitable relief,
18 and restitution in the amount they spent on the Products.

19 **FOURTH CAUSE OF ACTION**

20 **Against Defendant for Violations of the Unfair Competition Law,**
21 **California Business & Professions Code §§17200, *Et Seq.***

22 71. Plaintiffs incorporate by reference and reallege each and every allegation
23 contained above, as though fully set forth herein.

24 72. The Unfair Competition Law prohibits any "unlawful, unfair or fraudulent
25 business act or practice." Cal. Bus. & Prof. Code §17200.

26 **Fraudulent**

27 73. Defendant's statements that the Products are natural, pure, simple, and holistic are
28 literally false and likely to deceive the public.

1 **Unlawful**

2 74. As alleged herein, Defendant has advertised the Products with false or misleading
3 claims, such that Defendant's actions as alleged herein violate at least the following laws:

- 4 • The CLRA, California Business & Professions Code sections 1750, *et seq.*; and
5 • The False Advertising Law, California Business & Professions Code sections
6 17500, *et seq.*

7 **Unfair**

8 75. Defendant's conduct with respect to the labeling, advertising, marketing, and sale
9 of the Products is unfair because Defendant's conduct was immoral, unethical, unscrupulous, or
10 substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the
11 gravity of the harm to its victims.

12 76. Defendant's conduct with respect to the labeling, advertising, marketing, and sale
13 of the Products is also unfair because it violates public policy as declared by specific
14 constitutional, statutory, or regulatory provisions, including, but not limited to, the False
15 Advertising Law and the CLRA.

16 77. Defendant's conduct with respect to the labeling, advertising, marketing, and sale
17 of the Products is also unfair because the consumer injury is substantial, not outweighed by
18 benefits to consumers or competition, and not one consumers, themselves, can reasonably avoid.

19 78. In accordance with California Business & Professions Code section 17203,
20 Plaintiffs seek an order enjoining Defendant from continuing to conduct business through
21 fraudulent or unlawful acts and practices and to commence a corrective advertising campaign.
22 Defendant's conduct is ongoing and continuing, such that prospective injunctive relief is
23 necessary.

24 79. On behalf of themselves and the Class, Plaintiffs also seek an order for the
25 restitution of all monies from the sale the Products, which were unjustly acquired through acts of
26 fraudulent, unfair, or unlawful competition.

1 **FIFTH CAUSE OF ACTION**

2 **Against Defendant for Breach of Express Warranty,**
3 **California Commercial Code §2313**

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

6 81. As set forth herein, Defendant made express representations to Plaintiffs and the
7 Class that the Products were natural, pure, simple, and/or holistic dog food.

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

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

11 84. On the basis of these express warranties, Defendant sold to Plaintiffs and the
12 Class the Products.

13 85. Defendant knowingly breached the express warranties by including one or more
14 unnatural ingredients in the Products.

15 86. Defendant was on notice of this breach as it was aware of the included unnatural
16 ingredients in the Products.

17 87. Privity exists because Defendant expressly warranted to Plaintiffs and the Class
18 that the Products did not contain preservatives through the marketing and labeling.

19 88. Plaintiffs and the Class reasonably relied on the express warranties by Defendant.

20 89. As a result of Defendant's breaches of its express warranties, Plaintiffs and the
21 Class sustained damages as they paid money for the Products that were not what Defendant
22 represented.

23 90. Plaintiffs, on behalf of themselves and the Class, seek actual damages for
24 Defendant's breach of express warranty.

25 **SIXTH CAUSE OF ACTION**

26 **Against Defendant for Breach of Implied Warranty, California Commercial Code §2314**

27 91. Plaintiffs incorporate by reference and reallege each and every allegation
28 contained above, as though fully set forth herein.

92. As set forth herein, Defendant made affirmations of fact on the Products' labels to Plaintiffs and the Class that the Products were natural, pure, simple, and holistic dog food.

93. The Products did not conform to these affirmations and promises as they contained unnatural ingredients and artificial preservatives.

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

95. Defendant is a merchant engaging in the sale of goods to Plaintiffs and the Class.

96. There was a sale of goods from Defendant to Plaintiffs and the Class members.

97. Defendant breached the implied warranties by selling the Products that failed to conform to the promises or affirmations of fact made on the container or label as each Product contained one or more unnatural ingredients.

98. Defendant was on notice of this breach as it was aware of the unnatural ingredients included in the Products.

99. Privity exists because Defendant expressly warranted to Plaintiffs and the Class that the Products were natural, pure, simple, and holistic through the advertising, marketing, and labeling.

100. As a result of Defendant's breaches of its implied warranties of merchantability, Plaintiffs and the Class sustained damages as they paid money for the Products that were not what Defendant represented.

101. Plaintiffs, on behalf of themselves and the Class, seek actual damages for Defendant's breach of implied warranty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, prays for judgment against the Defendant as to each and every cause of action, including:

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

B. An order enjoining Defendant from selling the Products in any manner implying that they are natural, pure, simple, and holistic;

1 C. An order requiring Defendant to engage in a corrective advertising campaign and
2 engage in any further necessary affirmative injunctive relief, such as recalling existing products;

3 D. An order awarding declaratory relief, and any further retrospective or prospective
4 injunctive relief permitted by law or equity, including enjoining Defendant from continuing the
5 unlawful practices alleged herein, and injunctive relief to remedy Defendant's past conduct;

6 E. An order requiring Defendants to pay restitution, disgorgement, and/or
7 constructive trust on all of the inequitable payments and profits Defendants retained from
8 Plaintiff and the members of the Class, including under CLRA section 1780(a)(2), in an amount
9 to be determined by this Court but at least \$5,000,000;

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

12 G. An order requiring Defendant to pay all actual and statutory damages permitted
13 under the causes of action alleged herein, including under CLRA section 1780(a)(1), in an
14 amount to be determined by this Court but at least \$5,000,000;

15 H. An order requiring Defendant to pay punitive damages on any cause of action so
16 allowable, including under CLRA section 1780(a)(4) and because Defendants have engaged in
17 fraud, malice, or oppression;

18 I. An order awarding attorneys' fees and costs to Plaintiffs and the Class; and

19 J. An order providing for all other such equitable relief as may be just and proper,
20 including under CLRA section 1780(a)(5).

21 **JURY DEMAND**

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

23 Dated: September 19, 2017

ROBBINS ARROYO LLP
BRIAN J. ROBBINS
KEVIN A. SEELY
STEVEN M. MCKANY

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25
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27 STEVEN M. MCKANY

28 600 B Street, Suite 1900
San Diego, CA 92101

Telephone: (619) 525-3990
Facsimile: (619) 525-3991
E-mail: brobbins@robbinsarroyo.com
kseely@robbinsarroyo.com
smckany@robbinsarroyo.com

LOCKRIDGE GRINDAL NAUEN P.L.L.P.
ROBERT K. SHELQUIST
REBECCA A. PETERSON
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Telephone: (612) 339-6900
Facsimile: (612) 339-0981
E-mail: rkshelquist@locklaw.com
rapeterson@locklaw.com

Attorneys for Plaintiffs

1206831