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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

CHRISTINA GRIMM, Individually and
on Behalf of All Others Similarly
Situating,

Plaintiff,

v.

APN, INC., a Pennsylvania corporation;
and AINSWORTH PET NUTRITION,
LLC, a Delaware limited liability
company,

Defendants.

Case No. 8:17-cv-00356-JVS-JCG

SECOND AMENDED CLASS
ACTION COMPLAINT FOR:

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

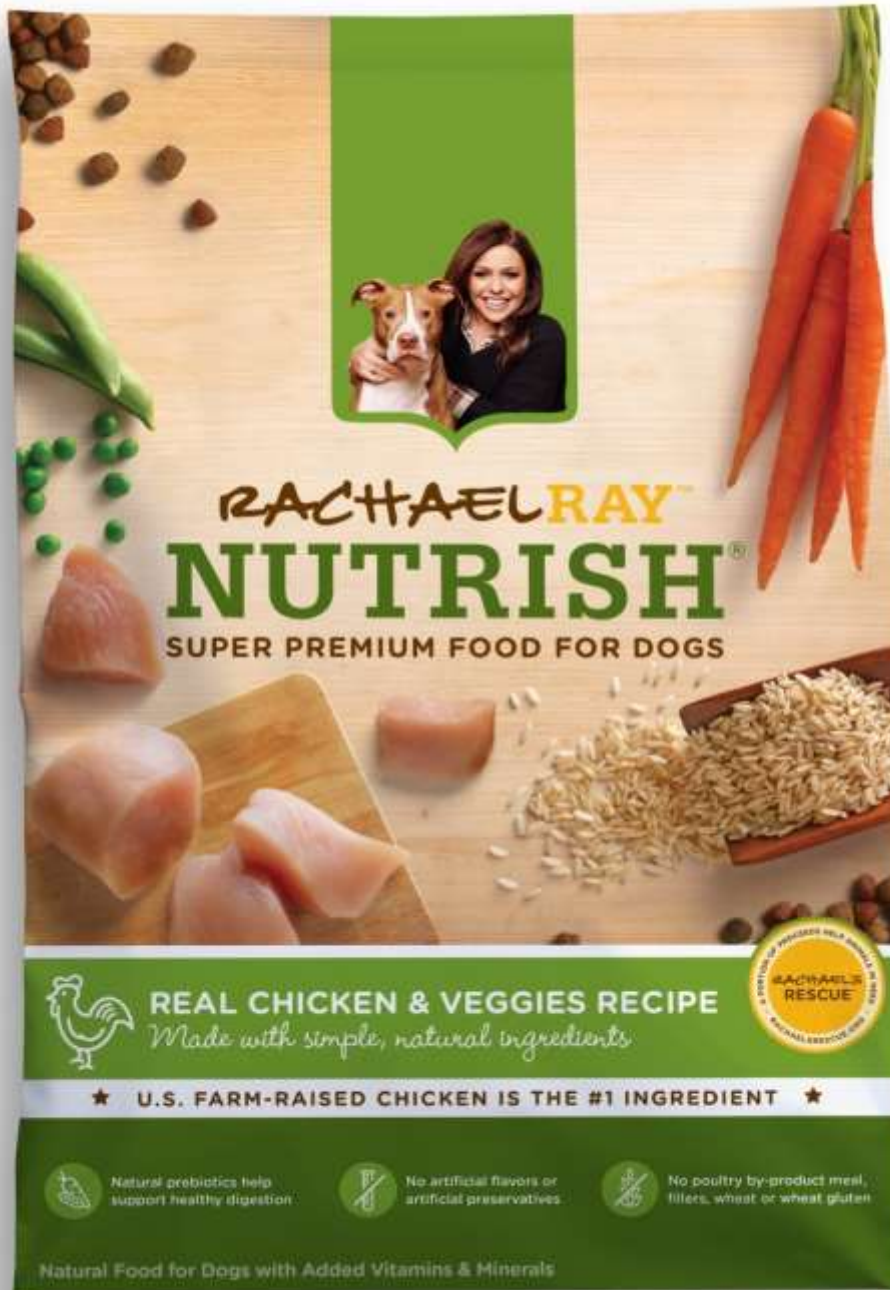
DEMAND FOR JURY TRIAL

1 Plaintiff Christina Grimm ("Plaintiff"), individually and on behalf of all
2 others similarly situated, by and through her undersigned attorneys, as and for her
3 Second Amended Class Action Complaint against defendants APN, Inc. ("APN")
4 and Ainsworth Pet Nutrition, LLC ("Ainsworth Pet Nutrition") (collectively, the
5 "Defendants"), alleges the following based upon personal knowledge as to herself
6 and her own actions, and, as to all other matters, respectfully alleges, upon
7 information and belief, as follows (Plaintiff believes that substantial evidentiary
8 support will exist for the allegations set forth herein after a reasonable opportunity
9 for discovery):

10 **NATURE OF THE ACTION**

11 1. Plaintiff, individually and on behalf of all others similarly situated, by
12 and through her undersigned attorneys, brings this class action against Defendants
13 for the deceptive practice of representing, marketing, and advertising their Rachael
14 Ray™ Nutrish® ("Nutrish") lines of dry and wet dog food products (the
15 "Products") as "natural" when many of them contain chemicals and artificial and/or
16 synthetic ingredients, which are well-known unnatural, artificial additives and
17 preservatives.

18 2. Defendants prominently claim, state, feature, represent, advertise, or
19 otherwise market on their packaging that the Products are natural and charge a
20 premium for these Products, knowing that the claimed natural make-up of the
21 Products is something an average consumer would consider as a reason for
22 choosing a more expensive dog food. For example, the package of the Rachael
23 Ray™ Nutrish® Super Premium Food for Dogs prominently states, "Made with
24 simple, natural ingredients." Additionally, the packaging prominently states, "No
25 artificial flavors or artificial preservatives," and "Natural Food for Dogs with
26 Added Vitamins & Minerals" as shown below:





3. Further, Defendants repeatedly claim, state, feature, represent, advertise, or otherwise market on Nutrish's website that the Products are natural and contain no artificial preservatives. Plaintiff purchased at least four of Defendants' Nutrish Products:

- (a) Nutrish® Super Premium Food for Dogs, Real Chicken & Veggies Recipe;
- (b) Nutrish® Super Premium Food for Dogs, Turkey, Brown Rice & Venison Recipe;
- (c) Dish™ Super Premium Food for Dogs, Chicken & Brown Rice Recipe; and
- (d) Zero Grain™ - Grain Free Food for Dogs, Salmon & Sweet Potato Recipe.

1 4. Defendants claimed, stated, featured, represented, advertised, or
2 otherwise marketed on the Nutrish website that every single one of these was
3 natural and contained no artificial preservatives.

4 5. Defendants simply disclose that there are "added vitamins and
5 minerals" with no further indication that unnatural and/or synthetic vitamins and
6 minerals are included.

7 6. Defendants expressly claimed, featured, represented, advertised, or
8 otherwise marketed on the Products' labels and the Nutrish website that the
9 Products are "natural" and have "no artificial preservatives." However,
10 Defendants' Products contain L-Ascorbyl-2-Polyphosphate, Menadione Sodium
11 Bisulfite Complex, Thiamine Mononitrate, "natural flavors," and a variety of
12 caramel color. These ingredients are not natural and are in fact chemicals and
13 artificial and/or synthetic ingredients that are made and/or produced by humans.
14 Thus, Defendants engaged in deceptive advertising and labeling practice by
15 expressly claiming, featuring, representing, advertising, or otherwise marketing on
16 the Products' labels and website that the Products are "natural" and have "no
17 artificial preservatives," despite the presence of these chemicals and artificial
18 and/or synthetic ingredients.

19 7. Consumers such as Plaintiff were not aware that the aforementioned
20 ingredients were not natural. Product ingredients often times have complex and/or
21 scientific names regardless of whether they are natural or artificial. Further,
22 Nutrish's own label describes the food as natural without any disclosure that this is
23 limited to only certain ingredients and excludes the added vitamins and minerals.
24 As a result, consumers such as Plaintiff had no reason to doubt that Defendants'
25 Products were "natural" and have "no artificial preservatives" as advertised.

26 8. By deceptively claiming, marketing, and advertsisng the Products as
27 "natural" and having "no artificial preservatives," Defendants wrongfully
28

1 capitalized on, and reaped enormous profits from, consumers' strong preference for
2 natural food products made free of artificial preservatives.

3 9. Defendants represented, marketed, and advertised their Nutrish and
4 Dish™ products in a way that is deceptive to consumers under the consumer
5 protection laws of California. Defendants have been unjustly enriched as a result
6 of their conduct. For these reasons, Plaintiff seeks the relief set forth herein.

7 10. Plaintiff brings this proposed consumer class action on behalf of
8 herself and all other citizens of California, who, from the applicable limitations
9 period up to and including the present, purchased for consumption and not resale
10 any of Defendants' Products.

11 **JURISDICTION AND VENUE**

12 11. This Court has original jurisdiction over all causes of action asserted
13 herein under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the
14 matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest
15 and costs and more than two-thirds of the Class reside in states other than the states
16 in which Defendants are citizens.

17 12. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because
18 Plaintiff resides and suffered injury as a result of Defendants' acts in this district,
19 many of the acts and transactions giving rise to this action occurred in this district,
20 Defendants conduct substantial business in this district, Defendants have
21 intentionally availed themselves of the laws and markets of this district, and
22 Defendants are subject to personal jurisdiction in this district.

23 **THE PARTIES**

24 13. Plaintiff is, and at all times relevant hereto has been, a citizen of the
25 state of California. Plaintiff purchased Nutrish dog food as the primary food
26 source for her dog. In or around September 2016, she switched from her previous
27 dog food because Nutrish claimed that the Products were natural and had no
28 artificial preservatives. Plaintiff purchased the Products at least once per month

1 from the Target store located in Aliso Viejo, California. During that time, Plaintiff
2 was unaware that certain ingredients, including "Added Vitamins & Minerals,"
3 contained in the Products were not natural and were in fact chemicals and artificial
4 and/or synthetic ingredients. In or around February 2017, Plaintiff ceased
5 purchasing Nutrish dog food upon learning the products were not natural as
6 advertised. Plaintiff has suffered injury as a result of Defendants' actions.

7 14. As the result of Defendants' deceptive conduct as alleged herein,
8 Plaintiff was injured when she paid the purchase price or a price premium for the
9 Products that did not deliver or otherwise conform to what Defendants promised.
10 Plaintiff paid the above sum on the assumption that this was for natural pet food
11 free of artificial preservatives and would not have paid this money had she known
12 that they contained artificial preservatives and unnatural ingredients or would have
13 purchased other products, which were premium, natural, or did not contain
14 artificial preservatives. Defendants represented and promised Plaintiff natural pet
15 food free of artificial preservatives but delivered something else entirely, thereby
16 depriving her of the benefit of her bargain. Damages can be calculated through
17 expert testimony at trial. Further, should Plaintiff encounter the Products in the
18 future, she can not rely on the truthfulness of the packaging, absent corrective
19 changes to the packaging and advertising of the Products.

20 15. Defendant APN is a Pennsylvania corporation with its principal place
21 of business at 18746 Mill Street, Meadville, Pennsylvania. Defendant APN's
22 President and Chief Executive Officer is Jeff Watters. Defendant APN's Executive
23 Chairman, Sean Lang, is described as a fifth generation family member by the
24 company's website.

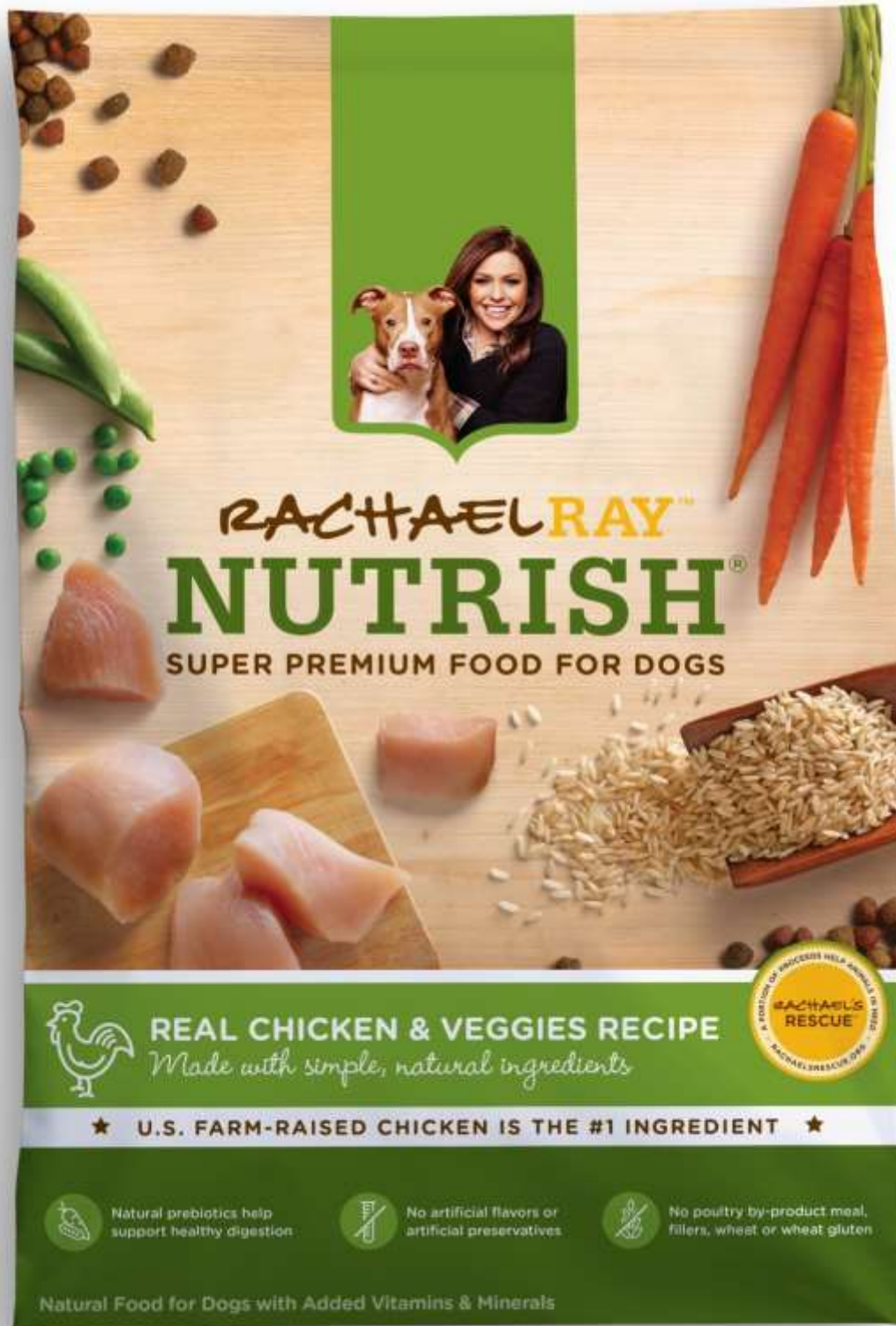
25 16. Defendant Ainsworth Pet Nutrition is a Delaware limited liability
26 company with its principal place of business at 18746 Mill Street, Meadville,
27 Pennsylvania.

28 17. Defendants formulate, develop, manufacture, label, distribute, market,

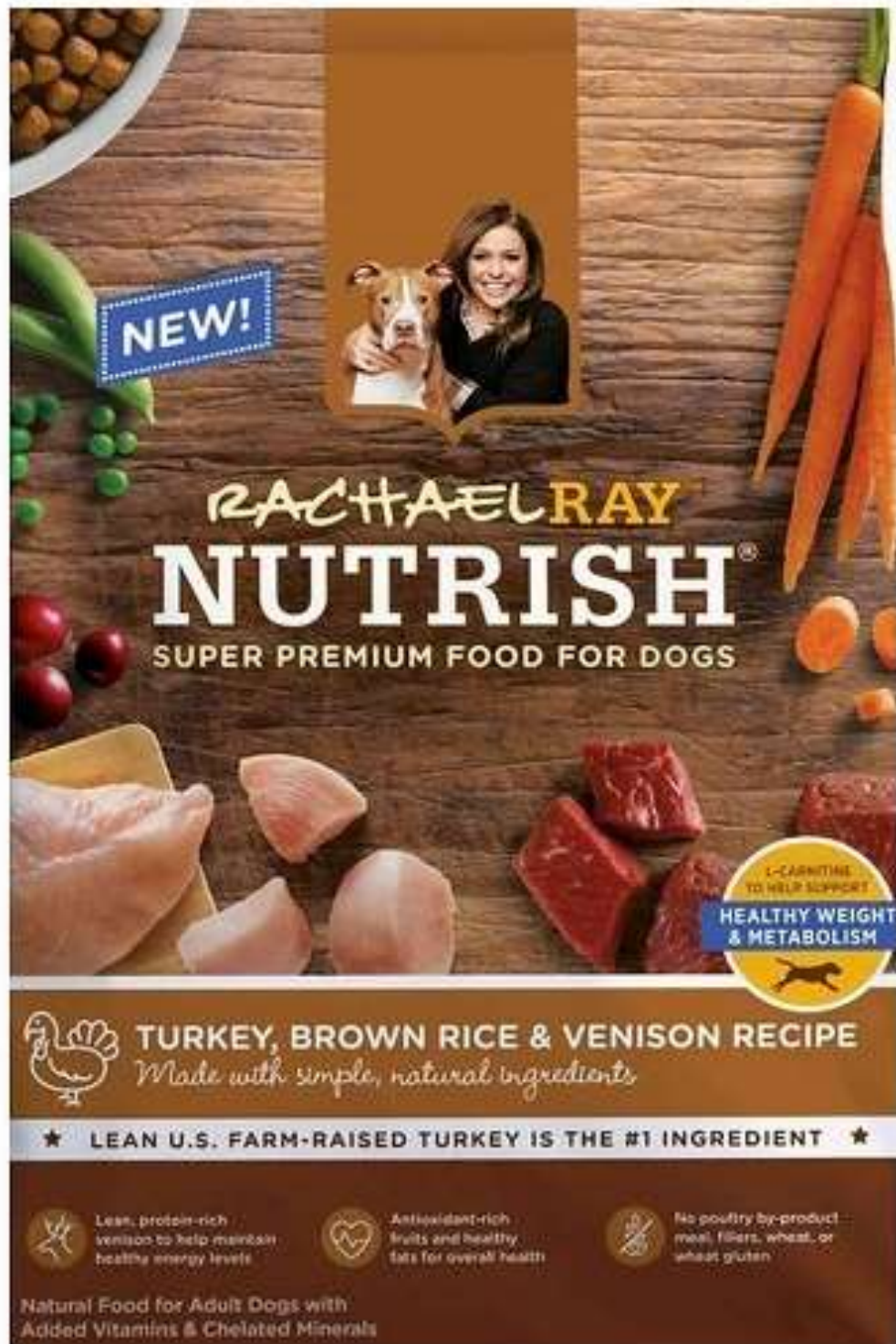
1 advertise, and sell the Products under the Rachael Ray™ Nutrish® dog food
2 products brand name throughout the United States. The advertising for the
3 Products, relied upon by Plaintiff, was prepared and/or approved by Defendants
4 and their agents, and was disseminated by Defendants and their agents through
5 advertising and labeling that contained the misrepresentations alleged herein. The
6 advertising and labeling for the Products was designed to encourage consumers to
7 purchase the Products and reasonably misled the reasonable consumer, i.e.,
8 Plaintiff and the Class (as defined herein), into purchasing the Products.
9 Defendants own, manufacture, and distribute the Products, and created and/or
10 authorized the unlawful, fraudulent, unfair, misleading, and/or deceptive labeling
11 and advertising for the Products.

12 18. The Products, at a minimum, include:
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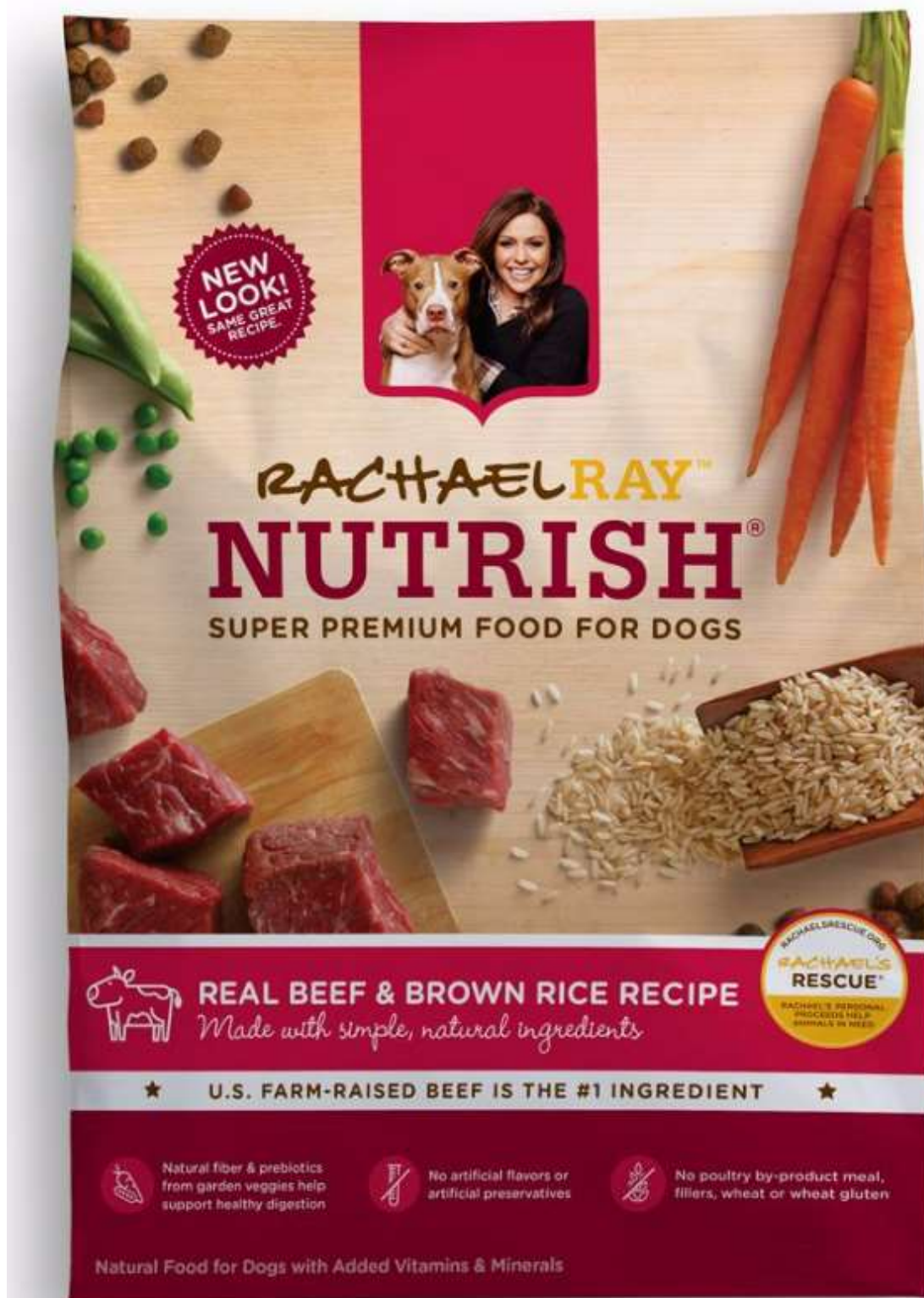
(a) Nutrish® Super Premium Food for Dogs, Real Chicken & Veggies Recipe;



(b) Nutrish® Super Premium Food for Dogs, Turkey, Brown Rice
& Venison Recipe;



(c) Nutrish® Super Premium Food for Dogs, Real Beef & Brown Rice Recipe;



(d) Dish™ Super Premium Food for Dogs, Chicken & Brown Rice Recipe;



(e) Dish™ Super Premium Food for Dogs, Beef & Brown Rice Recipe;



(f) Zero Grain™ - Grain Free Food for Dogs, Salmon & Sweet Potato Recipe;



(g) Zero Grain™ - Grain Free Food for Dogs, Turkey & Potato Recipe;



(h) Zero Grain™ - Grain Free Food for Dogs, Beef, Potato & Bison Recipe;



(i) Just 6® Food for Dogs, Lamb Meal & Brown Rice Recipe;



(j) Nutrish® Wet Food for Dogs, Savory Lamb Stew;



(k) Nutrish® Wet Food for Dogs, Chick Paw Pie™;



(l) Nutrish® Wet Food for Dogs, Rustic Duck Stew;



(m) Nutrish® Wet Food for Dogs, Beef Stroganwoof;



(n) Nutrish® Wet Food for Dogs, Chicken Muttballs with Pasta;



(o) Nutrish® Wet Food for Dogs, Hearty Beef Stew;



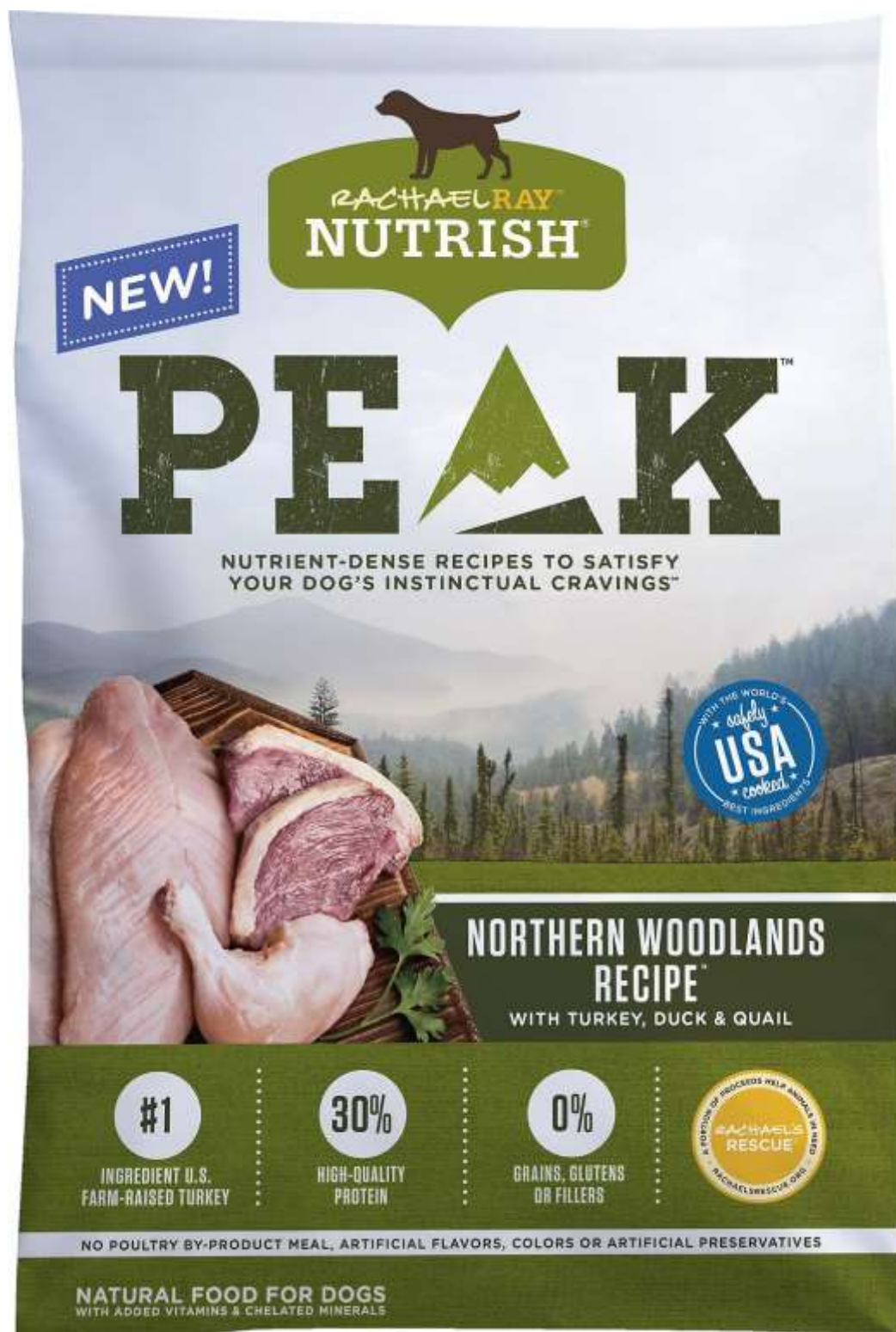
(p) Nutrish® Wet Food for Dogs, Variety Pack;



(q) Nutrish® PEAK Ultra Premium Food for Dogs, Open Range Recipe™ with Beef, Venison & Lamb; and



(r) Nutrish® PEAK Ultra Premium Food for Dogs, Northern Woodlands Recipe™ with Turkey, Duck & Quail.



FACTUAL ALLEGATIONS

Defendants Misleadingly Market Their Products as Natural and Free of Artificial Preservatives

19. Defendants formulate, develop, manufacture, label, distribute, market, advertise, and sell their extensive Rachael Ray™ Nutrish® lines of dry and wet pet food products across the United States.

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

21. In addition to the "natural" and "no artificial preservatives" claims on the front of each Product, the official Nutrish website displays the Products' descriptions and full lists of ingredients for most of the Products. The Products' webpages again and again make Defendants' "natural" and "no artificial preservatives" misrepresentations. For instance, Nutrish's website states the following regarding its dry and wet lines of dog food:

Inspired by recipes from Rachael's kitchen, every Rachael Ray™ Nutrish® Super Premium Dry Food for Dogs is made with natural ingredients like real meat and wholesome veggies with added vitamins & minerals. There's never any poultry by-product meal, artificial flavors or artificial preservatives. They're just simple good-for-your-dog recipes that taste great.

...

The first, natural wet food for dogs from Rachael Ray. Each delicious entrée is inspired by recipes from Rachael's kitchen and made with simple ingredients like tender meat and wholesome veggies. There's never any corn, wheat or soy and no artificial fillers or flavors — just essential vitamins and minerals for a nutritious, delicious food your dog will love.

Likewise, the Frequently Asked Questions section of Nutrish's website makes repeated representations regarding the "natural" qualities of its products, such as the following:

Are there artificial flavors in Nutrish Natural Wet Food for Dogs?

1 No, our Wet Food for Dogs is a natural product with added vitamins
2 and minerals. We do not add any artificial flavors. Instead, our recipes
3 are made with simple, natural ingredients that are naturally delicious.

4 22. Plaintiff purchased the Products, which repeatedly claim, state,
5 feature, represent, or otherwise market on their labeling and/or on Defendants'
6 website that they were "natural" and contain "no artificial preservatives."

7 23. Defendants have also engaged in a multi-million dollar advertising
8 campaign that has utilized, among other things, television, print, digital, and even a
9 food truck.¹ Much like Nutrish's website and the Products' labels, many of these
10 advertisements explicitly claim, feature, state, represent, advertise, or otherwise
11 market that Nutrish's Products are "natural" and/or contain no "artificial
12 preservatives." For instance, the announcer in a 2015 Nutrish commercial
13 proclaims that Nutrish dog food contains "simple, natural ingredients."² Similarly,
14 a Nutrish commercial from 2016 also states that Nutrish dog food contains
15 "simple, natural ingredients."³ The following advertisement for Nutrish® Wet
16 Food for Dogs, Beef Stroganwoof also discusses the products "natural" qualities:
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20 ¹ Tanya Gazdik, *Rachael Ray's Nutrish Pet Food Launches \$40 Million Campaign*
21 *Media Post* (May 6, 2016), [http://www.mediapost.com/publications/article/](http://www.mediapost.com/publications/article/275164/rachael-rays-nutrish-pet-food-launches-40-millio.html)
22 [275164/rachael-rays-nutrish-pet-food-launches-40-millio.html](http://www.mediapost.com/publications/article/275164/rachael-rays-nutrish-pet-food-launches-40-millio.html); Elizabeth Olson, *A*
23 *Rachael Ray Food Truck for the Dogs* *N.Y. Times* (Oct. 17, 2012),
24 [http://www.nytimes.com/2012/10/18/business/media/rachael-ray-promotes-nutrish](http://www.nytimes.com/2012/10/18/business/media/rachael-ray-promotes-nutrish-dog-food-with-a-truck.html)
25 [-dog-food-with-a-truck.html](http://www.nytimes.com/2012/10/18/business/media/rachael-ray-promotes-nutrish-dog-food-with-a-truck.html); Felicia Greiff, *Rachael Ray's Nutrish Set to Double*
26 *Ad Spend This Year* *Advert Age* (Mar. 19, 2015), [http://adage.com/](http://adage.com/article/advertising/rachael-ray-s-nutrish-set-double-ad-spend-year/297674/)
27 [article/advertising/rachael-ray-s-nutrish-set-double-ad-spend-year/297674/](http://adage.com/article/advertising/rachael-ray-s-nutrish-set-double-ad-spend-year/297674/).

28 ² [https://www.ispot.tv/ad/7eCS/rachael-ray-nutrish-if-pets-could-make-their-food-](https://www.ispot.tv/ad/7eCS/rachael-ray-nutrish-if-pets-could-make-their-food-ft-rachael-ray)
[ft-rachael-ray](https://www.ispot.tv/ad/7eCS/rachael-ray-nutrish-if-pets-could-make-their-food-ft-rachael-ray)

³ <https://www.ispot.tv/ad/AfDQ/rachael-ray-nutrish-zero-grain-grocery-store>



24. Plaintiff saw the same or similar communications, representations, commercials, or advertising when determining to purchase Nutrish Products. Further, Plaintiff also saw in-store communications, representations, or advertisements, such as coupons and/or deal advertisements placed by the Products, when determining to purchase the Products.

25. By claiming, featuring, representing, advertising, or otherwise marketing that the Products are "natural" and have "no artificial preservatives," Defendants sought to capitalize on consumers' preference for less processed products with fewer additives. Defendants also capitalized on their knowledge that consumers are willing to and did pay more for products with no additives.

26. Unsurprisingly, Defendants have an interest in claiming, representing, advertising, marketing, and labeling their Products as "natural" and free of artificial preservatives despite the presence of L-Ascorbyl-2-Polyphosphate, Menadione Sodium Bisulfite Complex, Thiamine Mononitrate, "natural flavors," and a variety of caramel color, as this would allow them to charge a premium for their Products and give them an advantage over their competitors that use artificial preservatives and do not market as "natural" and an unfair advantage against natural brands which actually meet what is claimed, stated, featured, advertised, and marketed.

L-Ascorbyl-2-Polyphosphate, Menadione Sodium Bisulfite Complex, Thiamine Mononitrate, "Natural Flavors," and Caramel Colors Are Unnatural Ingredients

27. Defendants' Products state, represent, claim, feature, and market to be natural, yet they contain chemicals and artificial and/or synthetic ingredients, including L-Ascorbyl-2-Polyphosphate, Menadione Sodium Bisulfite Complex, Thiamine Mononitrate, "natural flavors," and caramel color. However, L-Ascorbyl-2-Polyphosphate, Menadione Sodium Bisulfite Complex, Thiamine Mononitrate, "natural flavors," and caramel color are not naturally occurring, and are instead chemicals and artificial and/or synthetic ingredients that are made and/or produced by humans. Although the FDA has not engaged in rulemaking to establish a formal definition for the term "natural" for use with human or pet food, the agency has considered the term "natural" to mean that nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in that food. Thus, Defendants engaged in deceptive labeling practice by expressly representing on the Products' labels and website that the Products are "natural" and have "no artificial preservatives" despite the presence of these chemicals and artificial and/or synthetic ingredients.

28. Caramel color is also an artificial ingredient, and therefore unnatural.

29. While Defendants' claimed otherwise in the response to Plaintiff's Consumer Legal Remedies Act letter, caramel color is present in Defendants' Products:⁴

Chicken Paw Pie: Chicken Broth, Chicken, Dried Egg Product, Pea Protein, Ground Tapioca, Sweet Potatoes, Green Beans, Pineapple, Tricalcium Phosphate, Natural Flavor, Guar Gum, Salt, Potassium Chloride, Choline Chloride, Taurine, L-Ascorbyl-2-Polyphosphate (Source of Vitamin C), ***Caramel (color)***, Zinc Proteinate, Vitamin E Supplement, Iron Proteinate, Niacin, Copper Proteinate, Calcium Pantothenate, Thiamine Mononitrate, Manganese Proteinate, Riboflavin, Pyridoxine Hydrochloride, Vitamin A Acetate, Calcium Iodate, Folic Acid, Biotin, Vitamin D3 Supplement, Vitamin B12 Supplement.

Hearty Beef Stew: Beef Broth, Beef, Dried Egg Product, Chicken, Pea Protein, Natural Flavors, Ground Tapioca, Potatoes, Carrots, Green Peas, Tricalcium Phosphate, Guar Gum, Salt, ***Caramel (color)***, Potassium Chloride, Choline Chloride, Taurine, L-Ascorbyl-2-Polyphosphate (Source of Vitamin C), Zinc Proteinate, Vitamin E Supplement, Iron Proteinate, Niacin, Copper Proteinate, Calcium Pantothenate, Thiamine Mononitrate, Manganese Proteinate, Riboflavin, Pyridoxine Hydrochloride, Vitamin A Acetate, Calcium Iodate, Folic Acid, Biotin, Vitamin D3 Supplement, Vitamin B12 Supplement.

Savory Lamb Stew: Lamb Broth, Lamb, Dried Egg Product, Chicken, Pea Protein, Ground Tapioca, Natural Flavors, Carrots, Brown Rice, Tricalcium Phosphate, Guar Gum, Salt, Spinach, Potassium Chloride, ***Caramel (color)***, Choline Chloride, Taurine, L-Ascorbyl-2-Polyphosphate (Source of Vitamin C), Zinc Proteinate, Vitamin E Supplement, Iron Proteinate, Niacin, Copper Proteinate, Calcium Pantothenate, Thiamine Mononitrate, Manganese Proteinate, Riboflavin, Pyridoxine Hydrochloride, Vitamin A Acetate, Calcium Iodate, Folic Acid, Biotin, Vitamin D3 Supplement, Vitamin B12 Supplement.

⁴ Chewy, <https://www.chewy.com/rachael-ray-nutrish-naturally/dp/128026> (last visited Oct. 2, 2017).



30. Nutrish's Product labels state, claim, represent, and describe the food as natural without any disclosure that this is limited to only certain ingredients and that the disclosure excludes the added vitamins and minerals. As a result, consumers such as Plaintiff were unaware that certain ingredients, including "Added Vitamins & Minerals," contained in the Products were not natural.

**DEFENDANTS' "NATURAL" MISREPRESENTATION
VIOLATES CALIFORNIA LAWS**

31. California law is designed to ensure that a company's claims about its products are truthful and accurate. Defendants violated California law by incorrectly claiming that the Products are natural.

32. Defendants' marketing and advertising campaign has been sufficiently lengthy in duration, and widespread in dissemination, that it would be unrealistic to require Plaintiff to plead relying upon each advertised misrepresentation.

33. Defendants have engaged in this long-term advertising campaign to convince potential customers that the Products lack unnatural ingredients.

**DEFENDANTS' "NO ARTIFICIAL PRESERVATIVES"
MISREPRESENTATION VIOLATES CALIFORNIA LAWS**

34. California law is designed to ensure that a company's claims about its products are truthful and accurate. Defendants violated California law by incorrectly claiming that the Products contain "no artificial preservatives."

35. Defendants' marketing and advertising campaign has been sufficiently lengthy in duration, and widespread in dissemination, that it would be unrealistic to require Plaintiff to plead relying upon each advertised misrepresentation.

36. Defendants have engaged in this long-term advertising campaign to convince potential customers that the Products lack artificial preservatives.

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

37. Plaintiff reasonably relied on Defendants' own statements, misrepresentations, and advertising concerning the particular qualities and benefits of the Products.

38. Plaintiff read and relied upon the labels on the Products in making her purchasing decisions, along with viewing the statements, misrepresentations, and advertising on Defendants' website and elsewhere on the Internet.

39. A reasonable consumer would consider the labeling of a product when

1 deciding whether to purchase. Here, Plaintiff relied on the specific statements and
2 misrepresentations by Defendants that the Products were natural and did not
3 contain artificial preservatives.

4 **DEFENDANTS' KNOWLEDGE AND NOTICE OF THEIR BREACHES**
5 **OF THEIR EXPRESS AND IMPLIED WARRANTIES**

6 40. Defendants had sufficient notice of their breaches of their express and
7 implied warranties. Defendants had, and have, exclusive knowledge of the
8 physical and chemical make-up of the Products.

9 **PRIVITY EXISTS WITH PLAINTIFF AND THE PROPOSED CLASS**

10 41. Defendants knew that consumers such as Plaintiff and the proposed
11 Class (as defined herein) would be the end purchasers of the Products and the
12 target of their advertising and statements.

13 42. Defendants intended that their statements and representations would
14 be considered by the end purchasers of the Products, including Plaintiff and the
15 proposed Class.

16 43. Defendants directly marketed to Plaintiff and the proposed Class
17 through statements on their website, labeling, advertising, and packaging.

18 44. Plaintiff and the proposed Class are the intended beneficiaries of the
19 expressed and implied warranties.

20 **CLASS ACTION ALLEGATIONS**

21 45. Plaintiff brings this action individually and on behalf of the following
22 class pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil
23 Procedure:

24 All California citizens who, from February 4, 2010 to the present,
25 purchased the Products for household use, and not for resale (the
26 "Class").

27 46. Excluded from the Class are the Defendants, any of their parent
28 companies, subsidiaries, and/or affiliates, officers, directors, legal representatives,

1 employees, co-conspirators, all governmental entities, and any judge, justice, or
2 judicial officer presiding over this matter.

3 47. This action is brought and may be properly maintained as a class
4 action. There is a well-defined community of interests in this litigation and the
5 members of the Class are easily ascertainable.

6 48. The members in the proposed Class are so numerous that individual
7 joinder of all members is impracticable, and the disposition of the claims of all
8 Class members in a single action will provide substantial benefits to the parties and
9 Court.

10 49. Questions of law and fact common to Plaintiff and the Class include,
11 but are not limited to, the following:

12 (a) whether Defendants owed a duty of care to the Class;

13 (b) whether Defendants represented and continue to represent that
14 the Products are natural and do not contain artificial preservatives;

15 (c) whether Defendants' representations in advertising and/or
16 labeling are false, deceptive, and misleading;

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

19 (e) whether Defendants had knowledge that those representations
20 were false, deceptive, and misleading;

21 (f) whether Defendants continue to disseminate those
22 representations despite knowledge that the representations are false, deceptive, and
23 misleading;

24 (g) whether a representation that a product is natural and does not
25 contain artificial preservatives is material to a reasonable consumer;

26 (h) whether Defendants' representations and claims that the
27 Products are natural and do not contain artificial preservatives are likely to
28 mislead, deceive, confuse, or confound consumers acting reasonably;

1 (i) whether Defendants violated California Business & Professions
2 Code sections 17200, *et seq.*;

3 (j) whether Defendants violated California Business & Professions
4 Code sections 17500, *et seq.*;

5 (k) whether Defendants violated California Civil Code sections
6 1750, *et seq.*;

7 (l) whether Plaintiff and the members of the Class are entitled to
8 actual, statutory, and punitive damages; and

9 (m) whether Plaintiff and members of the Class are entitled to
10 declaratory and injunctive relief.

11 50. Defendants engaged in a common course of conduct giving rise to the
12 legal rights sought to be enforced by Plaintiff individually and on behalf of the
13 other members of the Class. Identical statutory violations and business practices
14 and harms are involved. Individual questions, if any, are not prevalent in
15 comparison to the numerous common questions that dominate this action.

16 51. Plaintiff's claims are typical of Class members' claims in that they are
17 based on the same underlying facts, events, and circumstances relating to
18 Defendants' conduct.

19 52. Plaintiff will fairly and adequately represent and protect the interests
20 of the Class, has no interests incompatible with the interests of the Class, and has
21 retained counsel competent and experienced in class action, consumer protection,
22 and false advertising litigation.

23 53. Class treatment is superior to other options for resolution of the
24 controversy because the relief sought for each Class member is small such that,
25 absent representative litigation, it would be infeasible for Class members to redress
26 the wrongs done to them.

27 54. Questions of law and fact common to the Class predominate over any
28 questions affecting only individual Class members.

1 excludes the added vitamins and minerals. Further, Defendants utilized a
2 misleading and deceptive multi-million dollar advertising campaign, which
3 included television advertisements, labels, and packaging, that prominently
4 declared that the Products are natural, knowing that the claimed natural make-up of
5 its Products is something an average consumer would consider in purchasing dog
6 food. Plaintiff reviewed and relied on this widespread advertising in purchasing
7 the Products.

8 62. Defendants' conduct alleged herein violates the following provisions
9 of California's Consumer Legal Remedies Act (the "CLRA"):

10 (a) California Civil Code section 1770(a)(5), by representing that
11 the Products are natural and contain no artificial preservatives;

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

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

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

20 63. As a direct and proximate result of these violations, Plaintiff and the
21 Class have been harmed, and that harm will continue unless Defendants are
22 enjoined from using the misleading marketing described herein in any manner in
23 connection with the advertising and sale of the Products.

24 64. On January 3, 2017, counsel for Plaintiff and the proposed Class
25 provided Defendants with written notice (via U.S. certified mail, return receipt
26 requested) that their conduct is in violation of the CLRA. On January 9, 2017,
27 Defendants received Plaintiff's CLRA letter. Defendants responded on February 2,
28 2017.

65. Defendants failed to provide appropriate relief for their violations of CLRA sections 1770(a)(5), (7), (9) and (16) within thirty days of receipt of Plaintiff's notification. In accordance with CLRA section 1782(b), Plaintiff and the Class are entitled, under CLRA section 1780, to recover and obtain the following relief for Defendants' violations of CLRA sections 1770(a)(5),(7), (9) and (16):

- (a) actual damages under CLRA section 1780(a)(1);
- (b) restitution of property under CLRA section 1780(a)(3);
- (c) punitive damages under CLRA section 1780(a)(4) and because Defendants have engaged in fraud, malice or oppression; and
- (d) any other relief the Court deems proper under CLRA section 1780(a)(5).

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

COUNT II

(Violations of California False Advertising Law, California Business & Professions Code §§17500, *Et Seq.*, Against Defendants)

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

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

69. Plaintiff started purchasing Nutrish dog food in or around September 2016 because of Defendants' advertisements and labels that represented that the Products were natural and contained no artificial preservatives. Plaintiff purchased the Products at least once per month from approximately September 2016 through February 2017. The type of products she bought varied between Nutrish® Super

1 Premium Food for Dogs, Real Chicken & Veggies Recipe; Nutrish® Super
2 Premium Food for Dogs, Turkey, Brown Rice & Venison Recipe; Dish™ Super
3 Premium Food for Dogs, Chicken & Brown Rice Recipe; and Zero Grain™ - Grain
4 Free Food for Dogs, Salmon & Sweet Potato Recipe. During that time, Plaintiff
5 was unaware that certain ingredients, including "Added Vitamins & Minerals,"
6 contained in the Products were not natural and were in fact chemicals and artificial
7 and/or synthetic ingredients. Indeed, Nutrish's own label describes the food as
8 natural without any disclosure that this is limited to only certain ingredients and
9 excludes the added vitamins and minerals. Further, Defendants utilized a
10 misleading and deceptive multi-million dollar advertising campaign, which
11 included television advertisements, labels, and packaging, that prominently
12 declared that the Products are natural, knowing that the claimed natural make-up of
13 its Products is something an average consumer would consider in purchasing dog
14 food. Plaintiff reviewed and relied on this widespread advertising in purchasing
15 the Products.

16 70. As set forth herein, Defendants' claims that the Products are natural
17 and do not contain artificial preservatives are literally false and likely to deceive
18 the public.

19 71. Defendants' claims that the Products are natural and do not contain
20 artificial preservatives are untrue or misleading.

21 72. Defendants knew, or reasonably should have known, that the claims
22 were untrue or misleading.

23 73. Defendants' conduct is ongoing and continuing, such that prospective
24 injunctive relief is necessary, especially given Plaintiff's desire to purchase these
25 Products in the future if she can be assured that, so long as the Products are
26 advertised as natural and without artificial preservatives truly are natural and do
27 not contain any artificial preservatives.
28

74. Plaintiff and members of the Class are entitled to injunctive and equitable relief, and restitution in the amount they spent on the Products.

COUNT III

(Violations of the Unfair Competition Law, California Business & Professions Code §§17200, *Et Seq.*, Against Defendants)

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

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

77. Plaintiff started purchasing Nutrish dog food in or around September 2016 because of Defendants' advertisements and labels that represented that the Products were natural and contained no artificial preservatives. Plaintiff purchased the Products at least once per month from approximately September 2016 through February 2017. The type of products she bought varied between Nutrish® Super Premium Food for Dogs, Real Chicken & Veggies Recipe; Nutrish® Super Premium Food for Dogs, Turkey, Brown Rice & Venison Recipe; Dish™ Super Premium Food for Dogs, Chicken & Brown Rice Recipe; and Zero Grain™ - Grain Free Food for Dogs, Salmon & Sweet Potato Recipe. During that time, Plaintiff was unaware that certain ingredients, including "Added Vitamins & Minerals," contained in the Products were not natural and were in fact chemicals and artificial and/or synthetic ingredients. Indeed, Nutrish's own label describes the food as natural without any disclosure that this is limited to only certain ingredients and excludes the added vitamins and minerals. Further, Defendants utilized a misleading and deceptive multi-million dollar advertising campaign, which included television advertisements, labels, and packaging, that prominently declared that the Products are natural, knowing that the claimed natural make-up of its Products is something an average consumer would consider in purchasing dog

1 food. Plaintiff reviewed and relied on this widespread advertising in purchasing
2 the Products.

3 **Fraudulent**

4 78. Defendants' statements that the Products are natural and do not
5 contain artificial preservatives are literally false and likely to deceive the public.

6 **Unlawful**

7 79. As alleged herein, Defendants have advertised the Products with false
8 or misleading claims, such that Defendants' actions as alleged herein violate at
9 least the following laws:

- 10 • The CLRA, California Business & Professions Code sections 1750, *et*
11 *seq.*; and
- 12 • The False Advertising Law, California Business & Professions Code
13 sections 17500, *et seq.*

14 **Unfair**

15 80. Defendants' conduct with respect to the labeling, advertising,
16 marketing, and sale of the Products is unfair because Defendants' conduct was
17 immoral, unethical, unscrupulous, or substantially injurious to consumers and the
18 utility of their conduct, if any, does not outweigh the gravity of the harm to their
19 victims.

20 81. Defendants' conduct with respect to the labeling, advertising,
21 marketing, and sale of the Products is also unfair because it violates public policy
22 as declared by specific constitutional, statutory, or regulatory provisions, including,
23 but not limited to, the False Advertising Law and the CLRA.

24 82. Defendants' conduct with respect to the labeling, advertising,
25 marketing, and sale of the Products is also unfair because the consumer injury is
26 substantial, not outweighed by benefits to consumers or competition, and not one
27 consumers, themselves, can reasonably avoid.

28

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

84. On behalf of herself and the Class, Plaintiff also seeks an order for the restitution of all monies from the sale the Products, which were unjustly acquired through acts of fraudulent, unfair, or unlawful competition.

COUNT IV

**(Breach of Express Warranty,
California Commercial Code §2313, Against Defendants)**

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

86. As set forth herein, Defendants made express representations to Plaintiff and the Class that the Products were natural and did not contain artificial preservatives.

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

88. There was a sale of goods from Defendants to Plaintiff and the Class members.

89. On the basis of these express warranties, Defendants sold to Plaintiff and the Class the Products.

90. Defendants knowingly breached the express warranties by including one or more unnatural ingredients in the Products.

91. Defendants knowingly breached the express warranties by including one or more artificial preservatives in the Products.

92. Defendants were on notice of this breach as they were aware of the included unnatural ingredients and artificial preservatives in the Products.

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

5 E. An order requiring Defendants to pay restitution to restore all funds
6 acquired by means of any act or practice declared by this Court to be an unlawful,
7 unfair, or fraudulent business act or practice, untrue or misleading advertising, or a
8 violation of the Unfair Competition Law, False Advertising Law, or CLRA, plus
9 pre- and post-judgment interest thereon;

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

13 G. An order requiring Defendants to pay all actual and statutory damages
14 permitted under the causes of action alleged herein, including under CLRA section
15 1780(a)(1), in an amount to be determined by this Court but at least \$5,000,000;

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

19 I. An order awarding attorneys' fees and costs to Plaintiff and the Class;
20 and

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

23 **JURY DEMAND**

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

25 Dated: October 2, 2017

ROBBINS ARROYO LLP
BRIAN J. ROBBINS
KEVIN A. SEELY
STEVEN McKANY
LEONID KANDINOV

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/s/*Steven M. McKany*
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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2017, I authorized the electronic filing of the foregoing SECOND AMENDED CLASS ACTION COMPLAINT with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List for this action.

/s/ Steven M. McKany

Mailing Information for a Case 8:17-cv-00356-JVS-JCG Christina Grimm v. APN, Inc. et al

Electronic Mail Notice List

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)