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

13 IN RE BIG HEART PET BRANDS
14 LITIGATION

) Lead Case No. 4:18-cv-00861-JSW
)
) (Consolidated with Nos. 4:18-cv-01465; 4:18-cv-
15 01466; 4:18-cv-01099; and 4:18-cv-01663)

16 This document relates to:
17 ALL ACTIONS

) Hon. Jeffrey S. White

) **MASTER CONSOLIDATED COMPLAINT**

) **CLASS ACTION**

) **DEMAND FOR JURY TRIAL**

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

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

17 2. Defendant manufactures, markets, advertises, labels, distributes, and sells Gravy
18 Train Chunks in Gravy with Beef Chunks, Gravy Train with Beef Chunks, Gravy Train Chunks in
19 Gravy with T-Bone Flavor Chunks, Gravy Train with T-Bone Flavor Chunks, Gravy Train Chunks
20 in Gravy with Chicken Chunks, Gravy Train with Chicken Chunks, Gravy Train Strips in Gravy
21 Beef Strips, Gravy Train Chunks in Gravy with Lamb & Rice Chunks, Gravy Train Chunks in
22 Gravy Stew, Beef and Gravy Train Chicken, Liver Medley and the following Kibbles ‘n Bits®
23 products: Chef’s Choice Bistro Hearty Cuts with Real Beef, Chicken & Vegetables in Gravy;
24 Home-style Tender Slices with Real Beef, Chicken & Vegetables in Gravy; Bistro Tender Cuts
25 with Real Beef & Vegetables in Gravy; Home-style Meatballs & Pasta Dinner with Real Beef in
26 Tomato Sauce; and American Grill Burger Dinner with Real Bacon & Cheese Bits in Gravy (the
27 “Contaminated Dog Foods”).¹ The Contaminated Dog Foods contain pentobarbital, a barbiturate

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 drug used as a sedative and anesthetic for animals, rendering it adulterated under relevant federal
2 and state law. Pentobarbital is now most commonly used for euthanizing animals.

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

- 6 • Tyalism (salivation)
- 7 • Emesis (vomiting)
- 8 • Stool changes (soft to liquid stools, blood, mucus, urgency, explosive nature, etc.)
- 9 • Hyporexia (decreased appetite)
- 10 • Lethargy/depression
- 11 • Neurologic abnormalities (tremor, seizure, vocalization, unusual eye movements)
- 12 • Ataxia (difficulty walking)
- 13 • Collapse
- 14 • Coma
- 15 • Death³

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

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

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

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

27 ⁴ [https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.](https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm)
htm (last visited Apr. 27, 2018)

28 ⁵ *Id.*

1 6. Pentobarbital residue from euthanized animals will continue to be present in pet
2 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 it
4 could get into dog food would be through rendered animal products. Rendered products come
5 from a process that converts animal tissues to feed ingredients, which may include animals that
6 were euthanized, decomposed, or diseased. Pentobarbital from euthanized animals survives the
7 rendering process and could be present in the rendered feed ingredients used in pet food.

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

10 9. Historically, the FDA has not aggressively taken action under section 342(a)(1) or
11 (5) of the Food, Drug, and Cosmetics Act, 21 U.S.C. § 301, *et seq.* (“FDCA”), against the pet food
12 companies that it found to have used non-slaughtered animals and sold pet food containing
13 pentobarbital. Therefore, manufacturers in the pet food industry, including Defendant, have
14 continued their illegal practice of using non-slaughtered animals that may contain poisonous
15 substances, like pentobarbital, in their pet foods.

16 10. It was recently revealed that Defendant was knowingly, recklessly and/or
17 negligently selling Contaminated Dog Foods containing pentobarbital, a substance largely used to
18 euthanize animals.

19 11. On February 8, 2018, it was reported on WJLA, an ABC network affiliate in
20 Washington, D.C., that an independent investigation determined that the Contaminated Dog Foods
21 contained pentobarbital. The independent investigation utilized two different labs and both
22 showed that the Contaminated Dog Foods tested positive for pentobarbital. In fact, it was the only
23 brand that tested positive for pentobarbital.⁷

24 12. The report further stated that pentobarbital is not used on farm animals and
25 questioned where the pentobarbital is coming from if it is not from euthanized dogs, cats, or horses.

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 Defendant did not respond to the specific questions raised and instead stated in a press release:
2 “We launched and are conducting a thorough investigation, including working closely with our
3 suppliers, to determine the accuracy of these results and the methodology used.”⁸

4 **REACTIONS TO THE NONDISCLOSURE AND MATERIALITY OF THE PRESENCE**
5 **OF PENTOBARBITAL IN THE CONTAMINATED DOG FOODS**

6 13. Shortly after the public exposure of the fact that the Contaminated Dog Foods
7 contained levels of pentobarbital, Defendant issued a statement assuring consumers, including
8 Plaintiffs and the proposed Classes, that it was “confident in the safety of our products and do not
9 believe you [a consumer] need to take any action at this time.” Exhibit A at 1.

10 14. In this same statement, Defendant admitted that pentobarbital is “not something
11 that is added to pet food. However, it could unintentionally be in raw materials provided by a
12 supplier. We regularly audit our suppliers and have assurances from them about the quality and
13 specifications of the materials they supply us. Raw materials that include pentobarbital do not
14 meet our specifications.” Exhibit A at 2.

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

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

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

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

25 19. Within days of the public revelation that the Contaminated Dog Foods contain
26 pentobarbital, Defendant voluntarily withdrew twenty-seven products, including the Contaminated
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28 ⁸ *Id.*

1 Dog Foods. The voluntary withdrawal included the additional brands of Kibbles ‘n Bits[®], Skippy,
2 and Ol’ Roy.

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

9 21. The FDA alert further states: “Pentobarbital is a barbiturate drug that is most
10 commonly used in animals as a sedative, anesthetic, or for euthanasia. The FDA’s preliminary
11 evaluation of the testing results of Gravy Train samples indicates that the low level of pentobarbital
12 present in the withdrawn products is unlikely to pose a health risk to pets. However, any detection
13 of pentobarbital in pet food is a violation of the Federal Food, Drug, and Cosmetic Act—simply
14 put, pentobarbital should not be in pet food. The FDA is investigating to learn the potential source
15 and route of the contamination.”¹⁰

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

20 23. Defendant did not identify what exactly was tested—whether it was cans of the
21 food pulled from the shelves, cans shipped directly from the manufacturing plant, and/or isolated
22 samples of beef fat from the supplier. Defendant did claim the tested beef fat was sourced from
23 cattle from the United States. However, Defendant has offered no information about how it
24 identified this particular ingredient or whether it tested any other ingredients included in the
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27 _____
⁹ <https://www.fda.gov/animalveterinary/newsevents/ucm597135.htm>

28 ¹⁰ *Id.*

1 recalled pet foods. *See* Exhibit C. Additionally, beef fat is not an ingredient listed on the label of
2 any of the Contaminated Dog Foods.¹¹

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

7 25. In the February 23, 2018, press release, Defendant admits that the “presence [of
8 pentobarbital] at any level is not acceptable and is not up to our quality standards.” Exhibit C.

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

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

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

21 29. In addition, Defendant further edited its February 23, 2018, press release by
22 changing from a “voluntary withdrawal” of the specific products to a “class III recall.”¹²

23 30. On March 2, 2018, the FDA formally issued a recall for the Contaminated Dog
24 Foods “based ... on a test by [Defendant] confirming the presence of pentobarbital in the tallow
25

26 _____
27 ¹¹ <http://wjla.com/features/7-on-your-side/fda-investigation-continues-into-dog-food-contaminated-with-euthanasia-drug>

28 ¹² *Id.*

1 ingredient used in the affected products.”¹³ The FDA is continuing to investigate the Contaminated
2 Dog Foods.

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

8 **THE STAGGERING REALITY OF THE EXTENT OF THE CONTAMINATION**
9 **COULD HAVE BEEN PREVENTED IF DEFENDANT FOLLOWED ITS OWN**
10 **TOUTED QUALITY AND SUPPLIER STANDARDS**

11 32. In the end, *over ninety million cans* of food manufactured and distributed by
12 Defendant were recalled because of the inclusion of pentobarbital.

13 33. Moreover, the testing results showed alarmingly high levels of pentobarbital in the
14 tallow. Specifically, the current supply tested showed levels ranging from 801 ppb to 852 ppb,
15 and the retained sample from 2017 contained pentobarbital at the level of 529 ppb.

16 34. Despite this, Defendant has publicly represented that the testing showed “extremely
17 low levels of pentobarbital do not pose a threat to pet safety” but failed to disclose or acknowledge
18 the testing results that showed the high levels of pentobarbital in the tallow.

19 35. Indeed, the FDA told Defendant that its “cooperation in this matter is important *to*
20 *the protection of the general public*” when it formally advised Defendant that a recall was
21 necessary based on the “finding of pentobarbital in tallow used as an ingredient.”

22 36. Defendant claims that the source of contaminated tallow comes from one
23 supplier—JBS USA Holdings, Inc. (a subsidiary of JBS S.A.) and its rendering facility MOPAC
24 located in eastern Pennsylvania (collectively, “JBS”).

25 37. JBS knowingly works with meat by-product recycling, including animal by-
26 products not suitable for human consumption. Moreover, JBS has been plagued by investigations,
27 recalls, and other red flag situations that should have alerted Defendant it needs to confirm the

28 ¹³ <https://www.fda.gov/AnimalVeterinary/NewsEvents/ucm597135.htm>

1 safety, quality, and reputation of JBS and the products purchased from JBS for inclusion in the
2 Contaminated Dog Foods.

3 38. Indeed, examples of such red flags are:

- 4 • June 2009 – In response to an E. coli outbreak that sickened at least 23 people, JBS Swift
5 Beef Company, a Colorado firm, recalled 421,280 pounds of beef products that may have
6 been contaminated with E. coli O157:H7.
- 7 • September 2010 – The JBS unit was forced to undertake a third recall, this one for 258,000
8 pounds of cooked beef products.
- 9 • June 2013 – JBS Swift, Tyson Fresh Meat, Beef Products Inc. and several other companies
10 blamed for the 2010 death of a Minnesota man due to E. coli poisoning in a lawsuit filed
11 on January 8, 2013.
- 12 • August 2015 – Inhumane treatment in the handling and/or slaughtering of animals was
13 cited in Quarter 2 at three out of four large-volume plants where USDA meat inspectors
14 started administrative actions, either now taken or pending, that often end with short
15 suspensions. The nation’s top meat producers—Cargill Meat Solutions, JBS, and Tyson
16 Fresh Meats Inc.—own and operate seven of those large plants, where employment tops
17 500 and production levels put them among the elite high volume plants.
- 18 • April 2017 – Health authorities in Europe, China, and Brazil all temporarily pulled beef
19 from the Brazilian meat giant JBS off of grocery store shelves, in response to evidence that
20 the company was involved in a massive corruption scandal to export rotten and
21 contaminated meat.
- 22 • August 2017 – JBS USA, Inc. recalled 4,922 pounds of ground beef products produced at
23 its Lenoir, NC facility because they may be contaminated with extraneous materials,
24 according to the U.S. Department of Agriculture’s Food Safety and Inspection Service.

25 39. Yet Defendant chose to utilize JBS as a supplier even though it maintains that it
26 keeps rigorous quality and supplier standards from “start to finish” and performs three-tier auditing
27 that includes third party auditors, to ensure pure ingredients and fair labor are used in its products,
28 including the Contaminated Dog Foods. Given this rigorous auditing process, Defendant knew or
recklessly chose to ignore that the Contaminated Dog Foods were adulterated pet food as it retained
samples of the tallow that should have been tested based on the claimed practices and standards
by Defendant.¹⁴

40. Defendant also knew the real risk that pentobarbital may appear in the
Contaminated Dog Foods if the manufacturing and sourcing were not properly monitored. Indeed,

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

1 this is not the first time that the Gravy Train or Kibbles ‘n Bits® lines of food have been determined
 2 to include pentobarbital: “Back in 2001, analyses by the FDA found residue of the sedative in
 3 popular brands like Nutro, Gravy Train, and Kibbles ‘n Bits.”¹⁵

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

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

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

22 43. Here, Defendant admittedly retained samples of the tallow from JBS. These same
 23 samples showed the alarmingly high levels of pentobarbital once tested in response to the
 24 independent investigation by WJLA. Thus, Defendant either knowingly included the
 25 contaminated tallow as an ingredient in its dog food products or purposefully ignored the publicly
 26 touted testing program it has implemented “to assess the safety of quality of the ingredients” in
 27 manufacturing the Contaminated Dog Foods.

28 ¹⁵<https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html>

¹⁶ Big Heart Pet Brands, Corporate Responsibility Policy,” <http://www.bigheartpet.com/assets/CR-Policy.pdf>

¹⁷ *Id.*

1 44. Finally, Defendant highlights the strict oversight it supposedly applies across all its
2 brands, including Gravy Train and Kibbles ‘n Bits[®], to ensure high quality products “from start to
3 finish, inside and out.”¹⁸

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

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

16 45. Following the discovery of pentobarbital in the Contaminated Dog Foods,
17 Defendant’s own actions show the misleading representations concerning its supposed rigorous
18 and strict quality control. Specifically, Defendant only recently started testing “all of [its] products
19 for the presence of pentobarbital as a new quality assurance protocol.” Defendant further
20 acknowledged the lack of proper quality control and oversight by stating: “In addition, we are
21 enhancing our sourcing and supplier oversight procedures to ensure this does not occur again.”¹⁹

22 **DEFENDANT NEGLIGENTLY, RECKLESSLY, AND/OR KNOWINGLY MISLEADS**
23 **CONSUMERS THROUGH ITS REPRESENTATIONS, PACKAGING, LABELS,**
24 **STATEMENTS, WARRANTIES, AND SELLING OF THE CONTAMINATED**
25 **DOG FOODS AS UNADULTERATED**

26 46. Defendant formulates, develops, manufactures, labels, distributes, markets,
27 advertises, and sells its extensive lines of the Contaminated Dog Food products in California and
28 across the United States.

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

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

¹⁹ <http://www.gravytraindog.com/information>

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

5 49. Defendant also wrongfully advertised and sold the Contaminated Dog Foods as
6 complete nutrition, quality, and healthy despite the presence of pentobarbital.

7 50. Instead, the advertising and labels intentionally omit any reference to the food being
8 adulterated:

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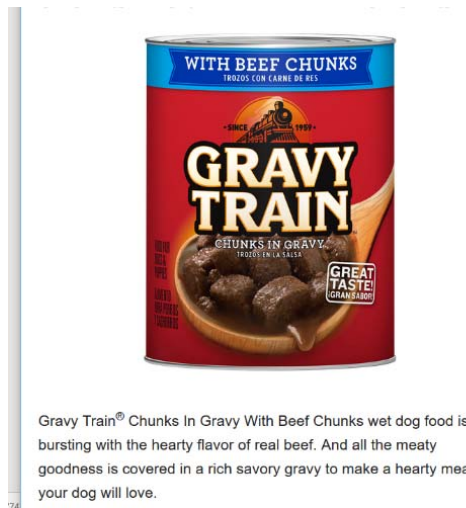
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51. Defendant’s claim that the Contaminated Dog Foods are “100 percent complete and balanced nutrition” without any mention that the Contaminated Dog Foods are in fact adulterated and contain Pentobarbital.²⁰

²⁰ Walmart, Gravy Train T-Bone Flavor Wet Dog Food, <https://www.walmart.com/ip/Gravy-Train-T-Bone-Flavor-Wet-Dog-Food-13-2-Oz/44465093#read-more>

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ABOUT THIS ITEM

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

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

52. Defendant’s omissions are material, false, misleading, and reasonably likely to deceive the public. This is especially true in light of the long-standing campaign by Defendant to market all its products, including the Contaminated Dog Foods as “providing safe, healthy, and high-quality food” with “the purest ingredients.”²¹

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

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

²¹Big Heart Pet Brands, “Pets,” <http://www.bigheartpet.com/corporate-responsibility/pets.aspx>

1 55. In fact, Defendant made affirmative misleading representations that its products,
2 including the Contaminated Dog Foods, were not adulterated or would contain any controlled
3 substance, including pentobarbital. Specifically, Defendant promises to its consumers that all
4 products meet USDA, AAFCO and FDA standards.²²

5 56. This is untrue because the Contaminated Dog Foods are adulterated, which is not
6 proper under state and federal laws and regulations. Specifically, under the FDCA, a food is
7 adulterated if it “bears or contains any poisonous or deleterious substance which may render it
8 injurious to health.” 21 U.S.C. § 342. Under California law, pet food is considered adulterated if
9 “it bears or contains any poisonous or deleterious substance that may render it injurious to health”
10 or “if damage or inferiority has been concealed in any manner.” Cal. Health & Safety Code §
11 113090(a), (h). California’s statute also provides that pet food ingredients “of animal or poultry
12 origin shall be only from animals or poultry slaughtered or processed in an approved or licensed
13 establishment.... Animal or poultry classified as ‘deads’ are prohibited.” Cal. Health & Safety
14 Code § 113035. Other relevant states likewise prohibit the sale of adulterated pet food. Ohio Rev.
15 Code Ann. § 923.41, *et seq.*; Ala. Code § 2-21-23; Fla. Stat. § 500.10; Ga. Code Ann. § 2-13-11;
16 505 Ill. Comp. Stat. Ann. 30/11.1; Tex. Agric. Code Ann. § 141.002, *et seq.*; Tenn. Code Ann. §
17 44-6-103, *et seq.*; W. Va. Code § 19-14-10, *et seq.*

18 57. The Contaminated Dog Foods are widely advertised.

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

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

26
27
28 ²² <http://www.bigheartpet.com/assets/CR-Policy.pdf>

1 60. Consumers have increasingly become more aware and cautious about the
2 nutritional value and ingredients in the pet food they chose to purchase.

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

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

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

23 **JURISDICTION AND VENUE**

24 64. This Court has original jurisdiction over all causes of action asserted herein under
25 the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), because the matter in controversy exceeds
26 the sum or value of \$5,000,000 exclusive of interest and costs and more than two-thirds of the
27 Classes reside in states other than the states in which Defendant is a citizen and in which this case
28 is filed, and none of the exemptions to jurisdiction under 28 U.S.C. § 1332(d) apply.

1 65. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because Plaintiffs
2 suffered injury as a result of Defendant’s acts in this district, many of the acts and transactions
3 giving rise to this action occurred in this district, Defendant conducts substantial business in this
4 district, Defendant has intentionally availed itself of the laws and markets of this district, and
5 Defendant is subject to personal jurisdiction in this district.

6 **INTRADISTRICT ASSIGNMENT**

7 66. A substantial portion of the transactions and wrongdoings which gave rise to the
8 claims in this action occurred in the County of Marin, and as such, this action is properly assigned
9 to the San Francisco division of this Court.

10 **THE PARTIES**

11 67. Plaintiff Maclain Mullins (“Plaintiff Mullins”) is, and at all times relevant hereto
12 has been, a citizen of the State of Kentucky. Plaintiff Mullins purchased certain lines of the
13 Contaminated Dog Foods (including Gravy Train Chunks in Gravy and Chunks in Gravy with
14 Beef Chunks) and fed it to his boxer named Cawood. Plaintiff Mullins started purchasing the
15 Contaminated Dog Foods in or around January 2009 approximately ten to twenty times a year and
16 continued to purchase until approximately January 2015. Plaintiff Mullins also fed Cawood Gravy
17 Train dry food. Plaintiff Mullins primarily purchased the Contaminated Dog Foods from
18 Heartland Kroger in Lexington, Kentucky. During that time, based on the false and misleading
19 claims, warranties, representations, advertisements, and other marketing by Defendant, Plaintiff
20 Mullins was unaware that the Contaminated Dog Foods contained any level of pentobarbital, a
21 substance largely used to euthanize animals.

22 68. As the result of Defendant's deceptive and negligent conduct as alleged herein,
23 Plaintiff Mullins was injured when he purchased the Contaminated Dog Foods that did not deliver
24 what it promised and did business with a company he would not have if he knew that the
25 Contaminated Dog Foods contained any level of pentobarbital or that Defendant utilized animals
26 that have been euthanized as a protein source. He purchased the adulterated Contaminated Dog
27 Foods on the assumption that the labeling of the Contaminated Dog Foods was accurate and that
28 it was unadulterated, pure, high quality, healthy, and safe for dogs to ingest and did not include

1 euthanized animals as a protein source. Further, should Plaintiff Mullins encounter the
2 Contaminated Dog Foods in the future, he could not rely on the truthfulness of the packaging,
3 absent corrective changes to the packaging and advertising of the Contaminated Dog Foods.

4 69. Plaintiff Thomas Roupe (“Plaintiff Roupe”) is, and at all times relevant hereto has
5 been, a citizen of the State of Georgia. Plaintiff Roupe purchased certain lines of the Contaminated
6 Dog Foods (including Gravy Train Chunks in Gravy with Beef Chunks and Gravy Train Chunks
7 in Gravy with Turkey Chunks) and fed the Contaminated Dog Foods to his two-year old dog,
8 Prince. Plaintiff Roupe believed the Gravy Train foods he fed his dog were safe and healthy, and
9 trusted in Defendant’s representations about the safety of its products when purchasing the
10 Contaminated Dog Foods.

11 70. Plaintiff Roupe has been purchasing the Contaminated Dog Foods since
12 approximately March 2016, and his last purchase was on approximately February 16, 2018.
13 Plaintiff Roupe no longer purchases the Contaminated Dog Foods after learning of the presence of
14 pentobarbital. Plaintiff Roupe primarily purchased the Contaminated Dog Foods from his local
15 Walmart and Piggly Wiggly. During that time, based on the false and misleading claims,
16 warranties, representations, advertisements, and other marketing by Defendant, Plaintiff Roupe
17 was unaware that the Contaminated Dog Foods contained any level of pentobarbital, a substance
18 largely used to euthanize animals. Plaintiff Roupe was injured by purchasing the Contaminated
19 Dog Foods that had no value or *de minimis* value as they were adulterated.

20 71. As the result of Defendant's deceptive and negligent conduct alleged herein,
21 Plaintiff Roupe was injured when he purchased the Contaminated Dog Foods, which did not
22 deliver what Defendant promised and had no value or *de minimis* value as they were adulterated.
23 Plaintiff Roupe was further injured as he did business with a company he would not have if he
24 knew that the Contaminated Dog Foods contained any level of pentobarbital or that Defendant
25 utilized euthanized animals as a protein source. He purchased the adulterated Contaminated Dog
26 Foods on the assumption that the labeling of the Contaminated Dog Foods was accurate and that
27 it was unadulterated, pure, high quality, healthy, and safe for dogs to ingest and did not include
28 euthanized animals as a protein source. Further, should Plaintiff Roupe encounter the

1 Contaminated Dog Foods in the future, he could not rely on the truthfulness of the packaging,
2 absent corrective changes to the packaging and advertising of the Contaminated Dog Foods.

3 72. Plaintiff Neil Sebastiano (“Plaintiff Sebastiano”) is, and at all times relevant hereto
4 has been, a citizen of the State of Florida. Plaintiff Sebastiano purchased certain lines of the
5 Contaminated Dog Foods (including Gravy Train Chunks in Gravy with Beef Chunks and Gravy
6 Train Strips in Gravy with Beef Strips) and fed the Contaminated Dog Foods to his dog, Samson,
7 a rottweiler-shepherd mix. Plaintiff Sebastiano trusted Defendant’s representations about the
8 safety and quality of its products when he purchased the Contaminated Dog Foods.

9 73. Beginning in approximately June 2015, Plaintiff Sebastiano generally purchased
10 ten-twelve cans of the Contaminated Dog Foods each month from his local Walmart in Spring
11 Hill, Florida. His last purchase was approximately November 1, 2017. In August 2017, Plaintiff
12 Sebastiano’s dog became weak and confused, began vomiting, had blood in his stool, lost weight,
13 no longer wanted to eat, and had trouble standing and walking. At only seven and a half years old,
14 Samson died, on December 4, 2017.

15 74. During the time Plaintiff Sebastiano purchased the Contaminated Dog Foods, and
16 because of the false and misleading claims, warranties, representations, advertisements, and other
17 marketing by Defendant, Plaintiff Sebastiano was unaware that the Contaminated Dog Foods
18 contained any level of pentobarbital, a substance largely used to euthanize animals. Plaintiff
19 Sebastiano was injured by purchasing the Contaminated Dog Foods that had no value or *de minimis*
20 value because they were adulterated.

21 75. As the result of Defendant's deceptive and negligent conduct alleged herein,
22 Plaintiff Sebastiano was injured when he purchased the Contaminated Dog Foods, which did not
23 deliver what Defendant promised and had no value or *de minimis* value as they were adulterated.
24 Plaintiff Sebastiano was further injured as he did business with a company he would not have if
25 he knew the Contaminated Dog Foods contained any level of pentobarbital or that Defendant
26 utilized euthanized animals as a protein source. He purchased the adulterated Contaminated Dog
27 Foods on the assumption that the labeling of the Contaminated Dog Foods was accurate and that
28 it was unadulterated, pure, high quality, healthy, and safe for dogs to ingest and did not include

1 euthanized animals as a protein source. Further, should Plaintiff Sebastiano encounter the
2 Contaminated Dog Foods in the future, he could not rely on the truthfulness of the packaging,
3 absent corrective changes to the packaging and advertising of the Contaminated Dog Foods.

4 76. Plaintiff Nancy Sturm (“Plaintiff Sturm”) is, and at all times relevant hereto has
5 been, a citizen of the State of Illinois. Plaintiff Sturm purchased certain lines of the Contaminated
6 Dog Foods (including Gravy Train Chunks in Gravy with Beef Chunks and Gravy Train Chunks
7 in Gravy with Lamb and Rice Chunks) and fed the Contaminated Dog Foods to her six rescue
8 dogs: Angel, a seventeen-year-old boxer/beagle mix; Penny, a ten-year-old terrier mix; Sugar and
9 Boots, who are six-year-old sisters that are black lab and golden retriever mixes; Dottie, a four-
10 year-old Australian shepherd and bluetick coonhound mix; and Maggie a 9 month old mixed breed
11 puppy. Plaintiff Sturm considers her rescue dogs to be a part of her family and trusted in Defendant
12 when purchasing the Contaminated Dog Foods.

13 77. Plaintiff Sturm has been purchasing the Contaminated Dog Foods for over five
14 years and her last purchase was approximately February 1, 2018. Plaintiff Sturm no longer
15 purchases the Contaminated Dog Foods after learning of the inclusion of pentobarbital. Plaintiff
16 Sturm primarily purchased the Contaminated Dog Foods from her local Walmart. During that
17 time, based on the false and misleading claims, warranties, representations, advertisements, and
18 other marketing by Defendant, Plaintiff Sturm was unaware that the Contaminated Dog Foods
19 contained any level of pentobarbital, a substance largely used to euthanize animals. Plaintiff Sturm
20 was injured by purchasing the Contaminated Dog Foods that had no value or *de minimis* value as
21 they were adulterated.

22 78. As the result of Defendant's deceptive and negligent conduct alleged herein,
23 Plaintiff Sturm was injured when she purchased the Contaminated Dog Foods, which did not
24 deliver what Defendant promised and had no value or *de minimis* value as they were adulterated.
25 Plaintiff Sturm was further injured as she did business with a Company she would not have if she
26 knew that the Contaminated Dog Foods contained any level of pentobarbital or that Defendant
27 utilized animals that have been euthanized as a protein source. She purchased the adulterated
28 Contaminated Dog Foods on the assumption that the labeling of the Contaminated Dog Foods was

1 accurate and that it was unadulterated, pure, high quality, healthy and safe for dogs to ingest and
2 did not include euthanized animals as a protein source. Further, should Plaintiff Sturm encounter
3 the Contaminated Dog Foods in the future, she could not rely on the truthfulness of the packaging,
4 absent corrective changes to the packaging and advertising of the Contaminated Dog Foods.

5 79. Plaintiff Mark Johnson (“Plaintiff Johnson”) is, and at all times relevant hereto has
6 been, a citizen of the State of California. Plaintiff Johnson purchased the Contaminated Dog Foods
7 (including Gravy Train Chunks in Gravy with Beef Chunks and Gravy Train Chunks in Gravy
8 with T-Bone Flavor Chunks) and fed the Contaminated Dog Foods to his thirteen border collie and
9 Australian sheppard mixes he used as herding dogs for his cattle. Plaintiff Johnson had seven
10 males and six female dogs that ranged from ten months to approximately seven years old. Plaintiff
11 Johnson purchased the Contaminated Dog Foods as supplemental food or as a reward for the dogs
12 who herd anywhere from 10 to 100 head of cattle. Plaintiff Johnson believed that the Gravy Train
13 foods he fed his dogs were safe and unadulterated and also trusted in Defendant’s representations
14 about the safety of its products when purchasing the Contaminated Dog Foods. Devastatingly,
15 Plaintiff Johnson lost all thirteen dogs, including one pregnant female, on January 14 and 15, 2018.
16 At that time, all of his dogs were showing symptoms of kidney failure so the veterinarian
17 recommended that all thirteen be put down. All of the dogs were fed the Contaminated Dog Foods
18 at the same time and all were sick within hours after eating the Contaminated Dog Foods. They
19 subsequently all died within two days of eating the Contaminated Dog Foods.

20 80. Plaintiff Johnson has been purchasing the Contaminated Dog Foods since
21 approximately January 2015, and his last purchase was in approximately February 2018. Plaintiff
22 Johnson no longer purchases the Contaminated Dog Foods after learning of the presence of
23 pentobarbital. Typically, Plaintiff Johnson purchased five cases of the Contaminated Dog Foods
24 weekly, primarily from his local Walmart and Big Lots. During that time, based on the false and
25 misleading claims, warranties, representations, advertisements, and other marketing by Defendant,
26 Plaintiff Johnson was unaware that the Contaminated Dog Foods contained any level of
27 pentobarbital, a substance largely used to euthanize animals. Plaintiff Johnson was injured by
28

1 purchasing the Contaminated Dog Foods that had no value or *de minimis* value as they were
2 adulterated. Plaintiff Johnson was further injured by incurring vet bills.

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

14 82. Plaintiff Kathy Williamson (“Plaintiff Williamson”) is, and at all times relevant
15 hereto has been, a citizen of the State of Ohio. Plaintiff Williamson purchased certain lines of the
16 Contaminated Dog Foods (including Gravy Train Chunks in Gravy with Beef Chunks and Kibbles
17 ‘n Bits Bistro Tender Cuts with Real Beef & Vegetables in Gravy) and fed the Contaminated Dog
18 Foods to her two Great Danes, Nova and Sadie. Sadie passed away on Wednesday, September 7,
19 2016, and Nova passed away on Sunday, January 22, 2017. Plaintiff Williamson believed the
20 Gravy Train foods she fed her dog were safe and healthy, and trusted in Defendant’s
21 representations about the safety of its products when purchasing the Contaminated Dog Foods.

22 83. Plaintiff Williamson has been purchasing the Contaminated Dog Foods since
23 approximately August 2016, and her last purchase was in approximately December 2016. Plaintiff
24 Williamson no longer purchases the Contaminated Dog Foods after learning of the presence of
25 pentobarbital. Plaintiff Williamson primarily purchased the Contaminated Dog Foods from her
26 local Walmart. During that time, based on the false and misleading claims, warranties,
27 representations, advertisements, and other marketing by Defendant, Plaintiff Williamson was
28 unaware that the Contaminated Dog Foods contained any level of pentobarbital, a substance

1 largely used to euthanize animals. Plaintiff Williamson was injured by purchasing the
2 Contaminated Dog Foods that had no value or *de minimis* value as they were adulterated.

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

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

22 86. Plaintiff Todd has been purchasing the Contaminated Dog Foods since
23 approximately 2008, and his last purchase was in approximately September 2017. Plaintiff Todd
24 no longer purchases the Contaminated Dog Foods after learning of the presence of pentobarbital.
25 Plaintiff Todd primarily purchased the Contaminated Dog Foods from Food Outlet in Millbrook,
26 Alabama. During that time, based on the false and misleading claims, warranties, representations,
27 advertisements, and other marketing by Defendant, Plaintiff Todd was unaware that the
28 Contaminated Dog Foods contained any level of pentobarbital, a substance largely used to

1 euthanize animals. Plaintiff Todd was injured by purchasing the Contaminated Dog Foods that
2 had no value or *de minimis* value as they were adulterated.

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

14 88. Plaintiff Betty Christian ("Plaintiff Christian") is, and at all times relevant hereto
15 has been, a citizen of the State of Tennessee. Plaintiff Christian purchased certain lines of the
16 Contaminated Dog Foods (including Gravy Train Chunks in Gravy with Chicken Chunks) and fed
17 the Contaminated Dog Foods to her dogs, Rusty, a 15 year-old Australian Shepherd, and Smokey,
18 a one-year old Catahoula Leopard-Plot mix. Plaintiff Christian trusted Defendant's
19 representations about the safety and quality of its products when she purchased the Contaminated
20 Dog Foods.

21 89. Plaintiff Christian has purchased the Contaminated Dog Foods on a monthly basis
22 for at least 15 years. She generally purchased the Contaminated Dog Foods from her local
23 Walmart and Food City. Her last purchase was approximately January 4, 2018. In February 2018,
24 Smokey became sick and was unable to move, began vomiting, lost control of her bowels, and was
25 bleeding from her rectum. Plaintiff Christian brought her to the veterinarian, where she stayed for
26 four days before returning home. After a month-long course of medication, Smokey has recovered.

27 90. During the time Plaintiff Christian purchased the Contaminated Dog Foods, and
28 because of the false and misleading claims, warranties, representations, advertisements, and other

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

14 91. Plaintiff Aubrey Thomas (“Plaintiff Thomas”) is, and at all times relevant hereto
15 has been, a citizen of the state of West Virginia. Plaintiff Thomas purchased certain lines of the
16 Contaminated Dog Foods (including Gravy Train Chunks in Gravy with Chicken Chunks and
17 Gravy Train Meaty Ground Dinner with Chicken) and fed the Contaminated Dog Foods to his dog,
18 Mia, a one-and-a-half year-old pit bull-lab mix. Plaintiff Thomas trusted Defendant’s
19 representations about the safety and quality of its products when he purchased the Contaminated
20 Dog Foods.

21 92. Beginning in November 2016, Plaintiff Thomas generally purchased twelve cans
22 of the Contaminated Dog Foods a couple of times each month from his local Walmart in
23 Fayetteville, West Virginia. His last purchase was in February 2018. Throughout the time that
24 Plaintiff Thomas fed the Contaminated Dog Foods to Mia, she was sick and vomiting several
25 times.

26 93. During the time Plaintiff Thomas purchased the Contaminated Dog Foods, and
27 because of the false and misleading claims, warranties, representations, advertisements, and other
28 marketing by Defendant, he was unaware that the Contaminated Dog Foods contained any level

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

13 94. Plaintiff Joyce Brown (“Plaintiff Brown”) is, and at all times relevant hereto has
14 been, a citizen of the State of Texas. Plaintiff Brown purchased certain lines of the Contaminated
15 Dog Foods (including Gravy Train Chunks in Gravy with Beef Chunks) and occasionally mixed
16 the wet food with Gravy Train dry food. She rescues stray dogs and has fed all of them the
17 Contaminated Dog Foods. Several of her dogs have died over the course of the class period,
18 including: Speedy, a two-year-old Chihuahua mix who died in December 2016; Humpty, an eight-
19 or nine-year-old lab-chow mix who died in November 2017; Elly Mae, a ten-year-old lab-chow
20 mix who died in December 2017; Sara, an eight-year-old lab who died in October 2017; Red, an
21 eight-year-old lab who died November 2017; Mary, a nine-year-old lab-chow mix who died in
22 August 2017; Duke, a seven-year-old Great Pyrenees who died in August 2017. Plaintiff Brown
23 trusted Defendant’s representations about the safety and quality of its products when she purchased
24 the Contaminated Dog Foods.

25 95. Plaintiff Brown has purchased the Contaminated Dog Foods every two days for the
26 past fifteen years and her last purchase was in February 2018. She generally purchased the
27 Contaminated Dog Foods from her local Kroger, Walmart, and Family Dollar Stores. Her last
28 purchase of the Contaminated Dog Food was in February 2018.

1 96. During the time Plaintiff Brown purchased the Contaminated Dog Foods, and
2 because of the false and misleading claims, warranties, representations, advertisements, and other
3 marketing by Defendant, she was unaware that the Contaminated Dog Foods contained any level
4 of pentobarbital, a substance largely used to euthanize animals. As the result of Defendant's
5 deceptive and negligent conduct alleged herein, Plaintiff Brown was injured when she purchased
6 the Contaminated Dog Foods, which did not deliver what Defendant promised and had no value
7 or *de minimis* value because they were adulterated. Plaintiff Brown was further injured as she did
8 business with a company she would not have if she knew the Contaminated Dog Foods contained
9 any level of pentobarbital or that Defendant utilized euthanized animals as a protein source. She
10 purchased the adulterated Contaminated Dog Foods on the assumption that the labeling of the
11 Contaminated Dog Foods was accurate and that it was unadulterated, pure, healthy, and safe for
12 dogs to ingest and did not include pentobarbital or euthanized animals as a protein source. Further,
13 should Plaintiff Brown encounter the Contaminated Dog Foods in the future, she could not rely on
14 the truthfulness of the packaging, absent corrective changes to the packaging and advertising of
15 the Contaminated Dog Foods.

16 97. Plaintiff Roberta Mayo (“Plaintiff Mayo”) is, and at all times relevant hereto has
17 been, a citizen of the State of Washington. Plaintiff Mayo purchased the Contaminated Dog Foods
18 (including Gravy Train with Chicken Chunks and Gravy Train with Beef Chunks) and fed the
19 Contaminated Dog Foods to her dogs, including Cocheese (a lab mix), Glory B (a chocolate lab
20 mix), and Blade (an Alaskan husky mix). Most recently, Glory B passed away on or around
21 February 2, 2018, two days after she consumed a can of Gravy Train with Chicken Chunks on or
22 around January 31, 2018. On February 5, 2018, Plaintiff Mayo's cat, Midnight, also passed away
23 after having accidentally ingested some of the Contaminated Dog Food fed to Glory B on January
24 31st. Plaintiff Mayo believed that the Gravy Train foods she fed her dogs were safe, quality
25 products and trusted in Defendant’s representations about the safety of its products when
26 purchasing the Contaminated Dog Foods.

27 98. Plaintiff Mayo began purchasing the Contaminated Dog Foods on occasion for her
28 dogs in or around February 2015, and her last purchase was in or around January 29, 2018, when

1 she purchased two cans of Gravy Train with Chicken Chunks. Plaintiff Mayo no longer purchases
2 the Contaminated Dog Foods after learning of the presence of pentobarbital. Plaintiff Mayo
3 purchased the Contaminated Dog Foods from Safeway in Woodland, Washington, Walmart in
4 Woodland, Washington, and WinCo Foods in Longview, Washington. During that time, based on
5 the false and misleading claims, warranties, representations, advertisements, and other marketing
6 by Defendant, Plaintiff Mayo was unaware that the Contaminated Dog Foods contained any level
7 of pentobarbital, a substance largely used to euthanize animals. Plaintiff Mayo was injured by
8 purchasing the Contaminated Dog Foods that had no value or *de minimis* value as they were
9 adulterated.

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

21 100. Plaintiff Jack Collins ("Plaintiff Collins") is, and at all times relevant hereto has
22 been, a citizen of the State of Maryland. Plaintiff Collins purchased the Contaminated Dog Foods
23 (including Gravy Train with Beef Chunks; Kibbles 'n Bits Chef's Choice Homestyle Tender Slices
24 with Real Beef, Chicken & Vegetables in Gravy, Kibbles 'n Bits Chef's Choice American Grill
25 Burger Dinner with Real Bacon & Cheese Bits in Gravy, and Kibbles 'n Bits Chef's Choice Bistro
26 Tender Cuts with Real Beef & Vegetables in Gravy) and fed the Contaminated Dog Foods to his
27 miniature poodle, Duffy. Duffy passed away in February 2018, soon after consuming a can of
28 Gravy Train. Plaintiff Collins believed that the Gravy Train and Kibbles 'n Bits dog food he fed

1 his dog were safe, quality products and trusted in Defendant's representations about the safety of
2 its products when purchasing the Contaminated Dog Foods.

3 101. Plaintiff Collins began purchasing the Contaminated Dog Foods in or around May
4 2016, and his last purchase was in or around February 2018. Plaintiff purchased a case containing
5 twelve cans of the Contaminated Dog Foods approximately every two to three weeks. Plaintiff
6 Collins no longer purchases the Contaminated Dog Foods after learning of the presence of
7 pentobarbital. Plaintiff Collins purchased the Contaminated Dog Foods from Walmart in
8 Waynesboro, Pennsylvania. During that time, based on the false and misleading claims,
9 warranties, representations, advertisements, and other marketing by Defendant, Plaintiff Collins
10 was unaware that the Contaminated Dog Foods contained any level of pentobarbital, a substance
11 largely used to euthanize animals. Plaintiff Collins was injured by purchasing the Contaminated
12 Dog Foods that had no value or *de minimis* value as they were adulterated.

13 102. As the result of Defendant's deceptive and negligent conduct alleged herein,
14 Plaintiff Collins was injured when he purchased the Contaminated Dog Foods, which did not
15 deliver what Defendant promised and had no value or *de minimis* value as they were adulterated.
16 Plaintiff Collins was further injured as he did business with a company he would not have if he
17 knew that the Contaminated Dog Foods contained any level of pentobarbital or that Defendant
18 utilized euthanized animals as a protein source. He purchased the adulterated Contaminated Dog
19 Foods on the assumption that the labeling of the Contaminated Dog Foods was accurate and that
20 it was unadulterated, pure, healthy, and safe for dogs to ingest and did not include euthanized
21 animals as a protein source. Further, should Plaintiff Collins encounter the Contaminated Dog
22 Foods in the future, he could not rely on the truthfulness of the packaging, absent corrective
23 changes to the packaging and advertising of the Contaminated Dog Foods.

24 103. Defendant Big Heart Pet Brands, Inc. is a subsidiary of J.M. Smucker Company
25 and its headquarters are located at One Maritime Plaza, San Francisco, California. Defendant
26 manufactures, formulates, produces, distributes, labels, markets, advertises, and sells the
27 Contaminated Dog Foods under the Gravy Train dog food brand name throughout the United
28 States. The advertising for the Contaminated Dog Foods, relied upon by Plaintiffs was prepared

1 and/or approved by Defendant and their agents in the State of California, and was disseminated by
2 Defendant and its agents from the State of California and throughout the United States, through
3 advertising and labeling that contained the misrepresentations and omissions alleged herein. The
4 advertising and labeling for the Contaminated Dog Foods was designed to encourage consumers
5 to purchase the Contaminated Dog Foods and reasonably misled the reasonable consumer, i.e.,
6 Plaintiffs and the Classes, into purchasing the Contaminated Dog Foods. Defendant owns,
7 manufactures, and distributes the Contaminated Dog Foods, and created and/or authorized the
8 unlawful, fraudulent, unfair, misleading, and/or deceptive labeling and advertising for the
9 Contaminated Dog Foods in the State of California.

10 104. The Contaminated Dog Foods, at a minimum, include:

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



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(b) Gravy Train with Beef Chunks:



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



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



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(e) Gravy Train With Chicken Chunks:



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



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



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



(i) Gravy Train Chunks in Gravy Stew:



(j) Chef's Choice Bistro Hearty Cuts with Real Beef, Chicken & Vegetables in Gravy:



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(k) Home-style Tender Slices with Real Beef, Chicken & Vegetables in Gravy:



(l) Bistro Tender Cuts with Real Beef & Vegetables in Gravy:



(m) Home-style Meatballs & Pasta Dinner with Real Beef in Tomato Sauce:



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2 (n) American Grill Burger Dinner with Real Bacon & Cheese Bits in Gravy:



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

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

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

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

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

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2 108. Plaintiffs reasonably relied on Defendant's own false statements,
3 misrepresentations, and omissions concerning the particular qualities and benefits of the
4 Contaminated Dog Foods.

5 109. Plaintiffs read and relied upon the labels of the Contaminated Dog Foods in making
6 their purchasing decisions.

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

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

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

16 112. Defendant also had notice of the real risk that pentobarbital may appear in the
17 Contaminated Dog Foods if the manufacturing and sourcing were not properly monitored. Indeed,
18 this is not the first time that Defendant's Gravy Train or Kibbles 'n Bits[®] lines of food have been
19 found to contain pentobarbital.²³

PRIVITY EXISTS WITH PLAINTIFFS AND THE PROPOSED CLASSES

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

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27 ²³ <https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html>

1 114. Defendant intended that the advertising, labeling, statements, and representations
2 would be considered throughout the United States by end purchasers of the Contaminated Dog
3 Foods, including Plaintiffs and the proposed Classes.

4 115. Defendant directed the advertising, labeling, statements, representations, and
5 warranties of the Contaminated Dog Foods from the State of California to end purchasers
6 throughout the United States, including Plaintiffs and the proposed Classes.

7 116. Defendant directly marketed, from the State of California, to Plaintiffs and the
8 proposed Classes through statements on its website, labeling, advertising, and packaging
9 throughout the United States.

10 117. Plaintiffs and the proposed Classes are the intended beneficiaries of the expressed
11 and implied warranties.

12 **CLASS ACTION ALLEGATIONS**

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

15 All persons who are citizens of the United States who, from
16 February 1, 2008 to the present, purchased the Contaminated Dog
17 Foods for household or business use, and not for resale (the
18 “Class”).

19 119. Plaintiffs also bring this action individually and on behalf of the following
20 Subclasses pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:

21 All persons who are citizens of California who, from February 1,
22 2008 to the present, purchased the Contaminated Dog Foods for
23 household or business use, and not for resale (the “California
24 Subclass”).

25 All persons who are citizens of Ohio who, from February 1, 2008 to
26 the present, purchased the Contaminated Dog Foods for household
27 or business use, and not for resale (the “Ohio Subclass”).

28 All persons who are citizens of Alabama who, from February 1,
2008 to the present, purchased the Contaminated Dog Foods for
household or business use, and not for resale (the “Alabama
Subclass”).

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All persons who are citizens of Georgia who, from February 1, 2008 to the present, purchased the Contaminated Dog Foods for household or business use, and not for resale (the “Georgia Subclass”).

All persons who are citizens of Florida who, from February 1, 2008, to the present, purchased the Contaminated Dog Foods for household or business use, and not for resale (the “Florida Subclass”).

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

All persons who are citizens of Tennessee who, from February 1, 2008 to the present, purchased the Contaminated Dog Foods for household or business use, and not for resale (the “Tennessee Subclass”).

All persons who are citizens of West Virginia who, from February 1, 2008 to the present, purchased the Contaminated Dog Foods for household or business use, and not for resale (the “West Virginia Subclass”).

All persons who are citizens of Texas who, from February 1, 2008 to the present, purchased the Contaminated Dog Foods for household or business use, and not for resale (the “Texas Subclass”).

All persons who are citizens of Washington who, from February 1, 2008 to the present, purchased the Contaminated Dog Foods for household or business use, and not for resale (the “Washington Subclass”).

All persons who are citizens of Maryland who, from February 1, 2008 to the present, purchased the Contaminated Dog Foods for household or business use, and not for resale (the “Maryland Subclass”).

120. Excluded from the Class and Subclasses (collectively “Classes”) are the Defendant, any parent companies, subsidiaries, and/or affiliates, officers, directors, legal representatives, and/or employees; co-conspirators, all governmental entities, and any judge, justice, or judicial officer presiding over this matter.

1 221. This action is brought and may be properly maintained as a Class action. There is
2 a well-defined community of interests in this litigation and the members of the Classes are easily
3 ascertainable.

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

7 223. Questions of law and fact common to Plaintiffs and the Classes include, but are not
8 limited to, the following:

- 9 (a) whether Defendant owed a duty of care to the Classes;
- 10 (b) whether Defendant knew or should have known that the Contaminated Dog
11 Foods were adulterated or contained pentobarbital;
- 12 (c) whether Defendant wrongfully represented and continues to represent that
13 the Contaminated Dog Foods are healthy, quality, pure, and safe;
- 14 (d) whether Defendant wrongfully represented, and continues to represent, that
15 the Contaminated Dog Foods are manufactured in compliance with all governing regulations;
- 16 (e) whether Defendant wrongfully failed to state that the Contaminated Dog
17 Foods are in fact adulterated under federal and relevant state laws;
- 18 (f) whether Defendant's representations and omissions in advertising and/or
19 labeling are false, deceptive, and misleading;
- 20 (g) whether those representations and omissions are likely to deceive a
21 reasonable consumer;
- 22 (h) whether Defendant had knowledge that those representations and omissions
23 were false, deceptive, and misleading;
- 24 (i) whether Defendant continues to disseminate those representations and
25 omissions despite knowledge that the representations are false, deceptive, and misleading;
- 26 (j) whether a representation that a product is healthy, pure, quality and
27 nutritious coupled with omissions that the Contaminated Dog Foods were adulterated or contained
28 pentobarbital is material to a reasonable consumer;

1 (k) whether Defendant violated sections 17200, *et seq.* of the California
2 Business & Professions Code;

3 (l) whether Defendant violated sections 17500, *et seq.* of the California
4 Business & Professions Code;

5 (m) whether Defendant violated sections 1750, *et seq.* of the California Civil
6 Code;

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

9 (o) whether Defendant breached its express and implied warranties;

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

11 (q) whether Defendant's conduct violated applicable state laws;

12 (r) whether Defendant knowingly and/or recklessly utilized JBS as a supplier
13 for ingredients for the Contaminated Dog Foods;

14 (s) whether Plaintiffs and the members of the Classes are entitled to actual,
15 statutory, and punitive damages; and

16 (t) whether Plaintiffs and members of the Classes are entitled to declaratory
17 and injunctive relief.

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

23 125. Plaintiffs' claims are typical of each Class and Subclass members' claims in that
24 they are based on the same underlying facts, events, and circumstances relating to Defendant's
25 conduct.

26 126. Plaintiffs will fairly and adequately represent and protect the interests of the
27 Classes, has no interests incompatible with the interests of the Classes, and have retained counsel
28 competent and experienced in class action, consumer protection, and false advertising litigation.

1 127. Class treatment is superior to other options for resolution of the controversy
2 because the relief sought for each Class and Subclass member is small such that, absent
3 representative litigation, it would be infeasible for members of the Class and Subclass to redress
4 the wrongs done to them individually.

5 128. Questions of law and fact common to the Classes predominate over any questions
6 affecting only individual members of the Class and Subclasses.

7 129. As a result of the foregoing, Class treatment is appropriate.

8 **COUNT I**

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

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

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

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

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

22 134. Defendant breached its duty to Plaintiffs and the Classes by providing false,
23 misleading, partial disclosures, and/or deceptive information regarding the true nature, quality, and
24 ingredients of the Contaminated Dog Foods.

25 135. Plaintiffs and the Classes reasonably and justifiably relied upon the information
26 supplied to them by the Defendant. As a result, Plaintiffs and the Classes purchased the
27 Contaminated Dog Foods that, being adulterated, should not have been sold at all.

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1 136. Defendant failed to use reasonable care in its communications and representations
2 to Plaintiffs and Classes.

3 137. By virtue of Defendant's negligent misrepresentations, Plaintiffs and the Classes
4 have been damaged in an amount to be proven at trial or alternatively, seek rescission and
5 disgorgement under this Count.

6 **COUNT II**

7 **(Violations of California's Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750,**
8 ***et seq.*, Against Defendant on Behalf of the Classes)**

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

11 139. Plaintiffs and each proposed Class member are a “consumer,” as that term is
12 defined in section 1761(d) of the California Civil Code.

13 140. The Contaminated Dog Foods are “goods,” as that term is defined in section
14 1761(a) of the California Civil Code.

15 141. Defendant is a “person” as that term is defined in section 1761(c) of the California
16 Civil Code.

17 142. Plaintiffs and each proposed Class member's purchase of Defendant's products
18 constituted a “transaction,” as that term is defined in section 1761(e) of the California Civil Code

19 143. Defendant’s conduct alleged herein violates the following provisions of California's
20 Consumers Legal Remedies Act (the “CLRA”):

21 (a) California Civil Code section 1770(a)(5), by representing that the
22 Contaminated Dog Foods are pure, quality, healthy and safe for consumption and by failing to
23 disclose that the Contaminated Dog Foods were in fact adulterated with pentobarbital

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

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

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

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

8 145. On February 14, 2018, February 22, 2018, March 14, 2018, and March 21, 2018,
9 counsel for Plaintiffs Mullins, Sturm, Roupe, Sebastiano, Johnson, Williamson, Todd and the
10 Class sent Defendant written notices (via U.S. certified mail, return receipt requested) that its
11 conduct is in violation of the CLRA concerning the aforementioned representations and
12 pentobarbital.

13 146. Defendant failed to provide appropriate relief for its violations of CLRA sections
14 1770(a)(5), (7), (9), and (16) within thirty days of receipt of Plaintiffs' notifications. In accordance
15 with CLRA section 1782(b), Plaintiffs and the Class is entitled, under CLRA section 1780, to
16 recover and obtain the following relief for Defendant's violations of CLRA sections 1770(a)(5),(7),
17 (9) and (16):

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

23 147. Plaintiffs seek an award of attorneys' fees pursuant to, inter alia, section 1780(e) of
24 the California Civil Code and section 1021.5 of the California Code of Civil Procedure.

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COUNT III

(Violations of California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, et seq., Against Defendant on Behalf of the Classes)

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

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

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

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

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

153. Defendant knew, or reasonably should have known, that the claims were untrue or misleading.

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

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

COUNT IV

(Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq., Against Defendant on Behalf of the Classes)

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

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

Fraudulent

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

Unlawful

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

- the CLRA, Cal. Civ. Code §§ 1750, *et seq.*; and
- the FAL, Cal. Bus. & Prof. Code §§ 17500, *et seq.*

Unfair

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

161. Defendant’s conduct with respect to the labeling, advertising, marketing, and sale of the Contaminated Dog Foods is also unfair because it violates public policy as declared by specific constitutional, statutory, or regulatory provisions, including, but not limited to, the FAL and the CLRA.

1 162. Defendant's conduct with respect to the labeling, advertising, marketing, and sale
2 of the Contaminated Dog Foods is also unfair because the consumer injury is substantial, not
3 outweighed by benefits to consumers or competition, and not one consumers, themselves, can
4 reasonably avoid.

5 163. In accordance with section 17203 of the California Business & Professions Code,
6 Plaintiffs seek an order enjoining Defendant from continuing to conduct business through
7 fraudulent or unlawful acts and practices and to commence a corrective advertising campaign.
8 Defendant's conduct is ongoing and continuing, such that prospective injunctive relief is
9 necessary.

10 164. On behalf of himself and the Classes, Plaintiffs also seek an order for the restitution
11 of all monies from the sale the Contaminated Dog Foods, which were unjustly acquired through
12 acts of fraudulent, unfair, or unlawful competition.

13 **COUNT V**

14 **(Negligence Against Defendant on Behalf of the Classes)**

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

17 166. Defendant's conduct is negligent per se.

18 167. As set forth above and below, Defendant violated its statutory duties under
19 California's CLRA and FAL by falsely representing that the Contaminated Dog Foods are pure,
20 quality, healthy, nutritious, and safe for consumption while at the same time failing to disclose that
21 the Contaminated Dog Foods contained the controlled substance of pentobarbital.

22 168. As set forth above, Defendant also violated its statutory duties under Federal,
23 various state laws by selling adulterated pet food to Plaintiffs and members of the Classes.

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

3 170. Defendant's violations of these statutes were a substantial factor in the harm
4 suffered by Plaintiffs and the Classes, including purchasing a product with *de minimis* value.

5 171. By virtue of Defendant's negligence, Plaintiffs and the Classes have been damaged
6 in an amount to be proven at trial or alternatively, seek rescission and disgorgement under this
7 Count.

8 **COUNT VI**

9 **(Breach of Express Warranty, Cal. Com. Code § 2313,
10 Against Defendant on Behalf of the Classes)**

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

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

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

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

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

22 177. On the basis of these express warranties, Defendant sold the Contaminated Dog
23 Foods to Plaintiffs and the Classes.

24 178. Defendant knowingly breached the express warranties by selling the Contaminated
25 Dog Foods which are adulterated and contain pentobarbital.

26 179. 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 protein or meat by-product source in the
28 Contaminated Dog Foods.

1 180. Privity exists because Defendant expressly warranted to Plaintiffs and the Classes
2 that the Contaminated Dog Foods were unadulterated, pure, quality, healthy, and safe for
3 consumption and provided 100 percent complete and balanced nutrition.

4 181. Plaintiffs and the Classes reasonably relied on the express warranties by Defendant.

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

8 183. Plaintiffs on behalf of themselves and the Classes, seek actual damages for
9 Defendant's breach of warranty.

10 **COUNT VII**

11 **(Breach of Implied Warranty, Cal. Com. Code**
12 **§ 2314, Against Defendant on Behalf of the Classes)**

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

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

20 186. Defendant is a merchant engaging in the sale of goods to Plaintiffs and the Classes.

21 187. There was a sale of goods from Defendant to Plaintiffs and the Classes.

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

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

27 190. Privity exists because Defendant impliedly warranted to Plaintiffs and the Classes
28 that the Contaminated Dog Foods were unadulterated and fit for their ordinary purpose

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

4 192. Plaintiffs, on behalf of themselves and the Classes, seek actual damages for
5 Defendant's breach of warranty.

6 **COUNT VIII**

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

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

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

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

16 196. Defendant has concealed material facts from Plaintiffs and the other Class
17 Members, including but not limited to:

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

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

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

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

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

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

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

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

22 **COUNT IX**

23 **(Violations of Georgia Uniform Deceptive Trade Practices Act, Ga. Code Ann. §10-1-370,**
24 ***et seq.*, Against Defendant on Behalf of the Georgia Subclass)**

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

27 205. The conduct described in this Complaint constitutes a violation of the Georgia
28 Uniform Deceptive Trade Practices Act, Ga. Code Ann. §10-1-370 *et seq.* (hereinafter “UDTPA”).

1 206. Defendant engaged in deceptive trade practices in violation of the UDTPA when it
2 claimed that the Contaminated Dog Foods were pure, quality, healthy, and safe for consumption.
3 These claims are untrue or misleading because they fail to disclose that the Contaminated Dog
4 Foods were in fact adulterated with pentobarbital and instead claimed that the Contaminated Dog
5 Foods provide 100 percent complete and balanced nutrition.

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

9 208. Defendant's conduct and omissions described herein repeatedly occurred in
10 Defendant's trade or business and were capable of deceiving a substantial portion of the consuming
11 public.

12 209. The facts concealed or not disclosed by Defendant are material facts in that Plaintiff
13 and any reasonable consumer would have considered those facts important in deciding whether to
14 purchase the Contaminated Dog Foods. Had Plaintiff Roupe and the Georgia Subclass known that
15 the Contaminated Dog Foods were in fact adulterated with pentobarbital they would not have
16 purchased the Contaminated Dog Foods.

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

23 211. Defendant's unlawful conduct is continuing.

24 212. As a direct and proximate result of the deceptive, misleading, unfair and
25 unconscionable practices of the Defendant set forth above, Plaintiff and Georgia Subclass
26 Members are entitled to injunctive relief, attorney's fees and costs as set forth in section 10-1-373
27 of the Georgia Code.

28

COUNT X

(Violations of Georgia’s False Advertising Law, Ga. Code Ann. § 10-1-420 *et seq.*, Against Defendant on Behalf of the Georgia Subclass)

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

214. Georgia’s False Advertising Law prohibits the sale of merchandise advertised “with intent, design or purpose not to sell ... upon the terms stated therein or otherwise communicated ...” Ga. Code Ann. § 10-1-420(a).

215. Georgia’s False Advertising Law also prohibits advertising that is “untrue or fraudulent and which is known or which by the exercise or reasonable case should be known to be untrue or fraudulent.” Ga. Code Ann. § 10-1-421(a).

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

217. Defendant’s claims that the Contaminated Dog Foods are pure, quality, healthy, and safe for consumption are untrue or misleading because these claims fail to disclose that the Contaminated Dog Foods were in fact adulterated with pentobarbital.

218. Defendant’s claim that the Contaminated Dog Foods are 100 percent complete and balanced nutrition are untrue or misleading because it fails to disclose that the Contaminated Dog Foods were in fact adulterated with pentobarbital.

219. Defendant knew, or reasonably should have known, that the claims were untrue or misleading.

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

221. Plaintiff Roupe and members of the Georgia Subclass are entitled to injunctive and equitable relief pursuant to section 10-1-423 of the Georgia Code.

COUNT XI

(Violations of Florida Deceptive and Unfair Trade Practices Act, Fl. Stat. §§ 501.201-501.23, Against Defendant on Behalf of the Florida Subclass)

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

223. This is an action for relief under the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fl. Stat. §§ 501.201-501.23.

224. The purpose of the FDUTPA is “[t]o protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.202(2).

225. Plaintiff Sebastiano and each proposed Class member are “consumers,” as defined by section 501.203(7) of the Florida Statutes.

226. Section 501.203(8) of the Florida Statutes defines “trade or commerce” as “the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. ‘Trade or commerce’ shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity.” Fl. Stat. § 501.203(8). The advertising, soliciting, providing, offering, or distribution of the Contaminated Dog Foods to Plaintiff Sebastiano and the Florida Subclass is “trade or commerce” within the meaning of section 501.203(8) of the Florida Statutes.

227. Section 501.204(1) of the Florida Statutes provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” Fl. Stat. § 501.204(1).

228. Defendant engaged in unfair competition and unfair, unlawful, or fraudulent business practices by claiming the Contaminated Dog Foods were pure, quality, healthy, and safe for consumption and by knowingly, intentionally, and/or negligently concealing from Plaintiff Sebastiano and the Florida Subclass the fact that the Contaminated Dog Foods were adulterated

1 with pentobarbital, which was not readily discoverable. Defendant should have disclosed such
2 information because it was in a superior position to know the facts regarding the true make-up and
3 quality of the Contaminated Dog Foods. Plaintiff Sebastiano and the Florida Subclass could not
4 reasonably be expected to learn or discover the true facts regarding the make-up and/or quality of
5 the Contaminated Dog Foods.

6 229. The Defendant's unconscionable, illegal, unfair, and deceptive acts and practices
7 violate the provisions of the FDUTPA.

8 230. As a direct and proximate result of Defendant's acts and omissions, Plaintiff
9 Sebastiano and the Florida Subclass have suffered or will suffer damages for which they are
10 entitled to relief pursuant to section 501.211(2) of the Florida Statutes and which include, without
11 limitation, a full refund for the Contaminated Dog Foods they purchased, all of which constitute
12 cognizable damages under sections 501.201, *et seq.* of the FDITPA.

13 231. Plaintiff Sebastiano and the Florida Subclass are entitled to recover their reasonable
14 attorneys' fees pursuant to section 501.2105 of the Florida Statutes upon prevailing in this matter.

15 **COUNT XII**

16 **(Breach of Express Warranty, Fla. Stat. § 672.313,**
17 **Against Defendant on Behalf of the Florida Subclass)**

18 232. Plaintiff Sebastiano incorporates by reference and realleges each and every
19 allegation contained above, as though fully set forth herein.

20 233. As set forth herein, Defendant made express representations to Plaintiff Sebastiano
21 and the Florida Subclass that the Contaminated Dog Foods are pure, quality, healthy, safe for
22 consumption, and provide 100 percent complete and balanced nutrition.

23 234. Defendant also made express representations to Plaintiff Sebastiano and the Florida
24 Subclass that the Contaminated Dog Foods meet all applicable regulations, including that they are
25 not adulterated dog food, by allowing their sale in various stores throughout the United States.

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

28

1 These claims are untrue or misleading because they fail to disclose that the Contaminated Dog
2 Foods were in fact adulterated by the controlled substance of pentobarbital and instead claimed
3 that the Contaminated Dog Foods provide 100 percent complete and balanced nutrition.

4 257. Defendant either knew or should have known its Contaminated Dog Foods were
5 adulterated and were not as warranted and represented on the labeling, packaging, advertising,
6 statements, and public sales of the Contaminated Dog Foods.

7 258. Defendant's conduct and omissions described herein repeatedly occurred in
8 Defendant's trade or business and were capable of deceiving a substantial portion of the consuming
9 public.

10 259. The facts concealed or not disclosed by Defendant are material facts in that Plaintiff
11 Sturm and any reasonable consumer would have considered those facts important in deciding
12 whether to purchase the Contaminated Dog Foods. Had Plaintiff Sturm and the Illinois Subclass
13 known that the Contaminated Dog Foods were in fact adulterated by containing the controlled
14 substance of pentobarbital they would not have purchased the Contaminated Dog Foods.

15 260. Defendant intended that Plaintiff Sturm and the Illinois Subclass would rely on the
16 deception in purchasing the Contaminated Dog Foods, unaware of the undisclosed material facts.
17 Defendant knew that Plaintiff Sturm and the Illinois Subclass would rely on its packaging, labels,
18 advertisements, statements, and other public sales of the Contaminated Dog Foods as an
19 unadulterated. This conduct constitutes consumer fraud within the meaning of the various
20 consumer protection statutes.

21 261. Defendant's unlawful conduct is continuing.

22 262. As a direct and proximate result of the deceptive, misleading, unfair, and
23 unconscionable practices of the Defendant set forth above, Plaintiff Sturm and Illinois Subclass
24 members are entitled to actual damages, compensatory damages, penalties, attorneys' fees and
25 costs as set forth in section 10a of the ICFA.

26 263. Defendant's deceptive, misleading, unfair and unconscionable practices set forth
27 above were done willfully, wantonly, and maliciously, entitling Plaintiff Sturm and Illinois
28 Subclass members to an award of punitive damages.

COUNT XV

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

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4 264. Plaintiff Todd incorporates by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

6 265. As set forth herein, Defendant made express representations to Plaintiff Todd and
7 the Alabama Subclass that the Contaminated Dog Foods are pure, quality, healthy, and safe for
8 consumption and provide 100 percent complete and balanced nutrition. Defendant intended these
9 express representations to benefit Plaintiff Todd and the Alabama Subclass, as purchasers of the
10 Contaminated Dog Foods.

11 266. Defendant also made express representations to Plaintiff Todd and the Alabama
12 Subclass that the Contaminated Dog Foods meet all applicable regulations, including that they are
13 not adulterated dog food by allowing their sale in various stores throughout the United States.

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

16 268. There was a sale of goods from Defendant to Plaintiff Todd and the Alabama
17 Subclass members.

18 269. On the basis of these express warranties, Defendant sold to Plaintiff Todd and the
19 Alabama Subclass the Contaminated Dog Foods.

20 270. Defendant knowingly breached the express warranties by selling the Contaminated
21 Dog Foods which are adulterated and contain pentobarbital.

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

25 272. Privity exists because Defendant expressly warranted to Plaintiff Todd and the
26 Alabama Subclass that the Contaminated Dog Foods were pure, quality, healthy, and safe for
27 consumption and provided 100 percent complete and balanced nutrition and unadulterated.
28

1 282. Defendant knowingly breached the express warranties by selling the Contaminated
2 Dog Foods which are defective because they are adulterated and contain pentobarbital.

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

6 284. Privity exists because Defendant expressly warranted to Plaintiff Williamson and
7 the Ohio Subclass that the Contaminated Dog Foods were pure, quality, healthy, and safe for
8 consumption and provided 100 percent complete and balanced nutrition and unadulterated.

9 285. Plaintiff Williamson and the Ohio Subclass reasonably relied on the express
10 warranties by Defendant.

11 286. As a result of Defendant's breaches of its express warranties, Plaintiff Williamson
12 and the Ohio Subclass sustained damages as they paid money for the Contaminated Dog Foods
13 that were not what Defendant represented and in fact not properly sold under applicable regulations
14 and law.

15 287. Plaintiff Williamson, on behalf of herself and the Ohio Subclass, seeks actual
16 damages for Defendant's breach of warranty.

17 **COUNT XVII**

18 **(Breach of Implied Warranty Against Defendant on Behalf of the Ohio Subclass)**

19 288. Plaintiff Williamson incorporates by reference and realleges each and every
20 allegation contained above, as though fully set forth herein.

21 289. As set forth herein, the Contaminated Dog Foods are not fit for the ordinary
22 purposes as they were adulterated or similarly contaminated under section 923.48 of the Ohio
23 Statute (prohibiting pet food that contains any “poisonous or deleterious substance”), as alleged
24 herein. Ohio Rev. Code Ann. § 923.48(A).

25 290. The Contaminated Dog Foods were adulterated at the time Defendant sold the
26 products to Plaintiff Williamson and the Ohio Subclass.

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

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

4 293. Defendant impliedly warranted to Plaintiff Williamson and the Ohio Subclass that
5 the Contaminated Dog Foods were unadulterated and fit for their ordinary purpose

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

9 295. Plaintiff Williamson, on behalf of herself and the Ohio Subclass, seeks actual
10 damages for Defendant's breach of warranty.

11 **COUNT XVIII**

12 **(Breach of Express Warranty, Tenn. Code Ann. § 47-2-313, Against Defendant**
13 **on Behalf of the Tennessee Subclass)**

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

16 297. As set forth herein, Defendant made express representations to Plaintiff Christian
17 and the Tennessee Subclass that the Contaminated Dog Foods are pure, quality, healthy, and safe
18 for consumption, made of wholesome ingredients, and are 100 percent complete and balanced
19 nutrition.

20 298. Defendant also made express representations to Plaintiff Christian and the
21 Tennessee Subclass that the Contaminated Dog Foods meet all applicable regulations, including
22 that they are not adulterated dog food, by allowing their sale in various stores throughout the
23 United States.

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

26 300. There was a sale of goods from Defendant to Plaintiff Christian and the Tennessee
27 Subclass.

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1 310. There was a sale of goods from Defendant to Plaintiff Christian and the members
2 of the Tennessee Subclass.

3 311. At all times mentioned herein, Defendant manufactured or supplied the
4 Contaminated Dog Foods, and prior to the time the Contaminated Dog Foods were purchased by
5 Plaintiff Christian and the members of the Tennessee Subclass, Defendant impliedly warranted to
6 them that the Contaminated Dog Foods were of merchantable quality, fit for their ordinary purpose
7 (consumption by dogs), and conformed to the promises and affirmations made by Defendant
8 regarding the Contaminated Dog Foods, including that the food was pure, quality, healthy, and
9 safe for consumption, made of wholesome ingredients, and were 100 percent complete and
10 balanced nutrition.

11 312. Defendant knew Plaintiff Christian and the members of the Tennessee Subclass
12 purchased the Contaminated Dog Foods as food for their dogs.

13 313. Defendant marketed its Contaminated Dog Foods with the intent and reasonable
14 expectation that Plaintiff Christian and the members of the Tennessee Subclass would justifiably
15 rely on their representations and affirmations regarding the Contaminated Dog Foods.

16 314. Plaintiff Christian and the members of the Tennessee Subclass relied on
17 Defendant's representations and affirmations with respect to the Contaminated Dog Foods'
18 quality, ingredients, and fitness for consumption when deciding what dog food to purchase.

19 315. Because the Contaminated Dog Foods contain pentobarbital, they were not fit for
20 their ordinary purpose, consumption by dogs, and did not conform to the Defendant's
21 representations and affirmations of fact when Plaintiff Christian and the members of the Tennessee
22 Subclass purchased the Contaminated Dog Foods.

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

26 317. As a result of Defendant's conduct, Plaintiff Christian and the members of the
27 Tennessee Subclass have suffered actual damages in that they purchased Contaminated Dog Foods
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1 that were not what Defendant represented and that they would not have purchased at all had they
2 known of the presence of pentobarbital.

3 318. Plaintiff Christian, on behalf of herself and the Tennessee Subclass, seeks actual
4 damages for Defendant's breach of warranty.

5 **COUNT XX**

6 **(Negligent Misrepresentation Against Defendant on Behalf of the Tennessee Subclass)**

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

9 320. Defendant represented to Plaintiff Christian and the Tennessee Subclass that the
10 Contaminated Dog Foods are pure, quality, healthy, and safe for consumption, made of wholesome
11 ingredients, and are 100 percent complete and balanced nutrition.

12 321. Defendant failed to use reasonable care in its communications, marketing, and
13 representations it made to Plaintiff Christian and the members of the Tennessee Subclass.

14 322. Plaintiff Christian and the members of the Tennessee Subclass reasonably placed
15 their trust and justifiable reliance in Defendant's representations that the Contaminated Dog Foods
16 are healthy, safe, pure, high quality, and that they were not adulterated with substances such as
17 pentobarbital.

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

22 324. Defendant breached its duty to Plaintiff Christian and the Tennessee Subclass by
23 providing false, misleading, partial disclosures, and/or deceptive information regarding the true
24 nature, quality, and ingredients of the Contaminated Dog Foods.

25 325. As a direct and proximate result of Defendant's conduct, Plaintiff Christian and the
26 Tennessee Subclass have suffered actual damages because they purchased Contaminated Dog
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1 Foods that were not what Defendant represented and that they would not have purchased at all had
2 they known of the presence of pentobarbital.

3 326. Plaintiff Christian, on behalf of herself and the Tennessee Subclass, seeks actual
4 damages for Defendant's breach of warranty.

5 **COUNT XXI**

6 **(Negligence Against Defendant on Behalf of the Tennessee Subclass)**

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

9 328. Because of the relationship between the parties, Defendant owed a duty to use
10 reasonable care to impart correct and reliable disclosures concerning the true nature, quality, and
11 ingredients of the Contaminated Dog Foods, or based upon its superior knowledge, to say enough
12 to not be misleading.

13 329. Defendant's conduct was below the relevant standard of care when it represented
14 to Plaintiff Christian and the Tennessee Subclass that the Contaminated Dog Foods are pure,
15 quality, healthy, safe for consumption, made of wholesome ingredients, and are 100 percent
16 complete and balanced nutrition when such representations were false, misleading, or deceptive
17 because the Contaminated Dog Foods are adulterated and contain pentobarbital.

18 330. Plaintiff Christian and the Tennessee Subclass placed their trust and justifiable
19 reliance in Defendant's representations that the Contaminated Dog Foods are pure, quality,
20 healthy, safe for consumption, made of wholesome ingredients, and are 100 percent complete and
21 balanced nutrition.

22 331. As a direct and proximate result of Defendant's conduct, Plaintiff Christian and the
23 Tennessee Subclass have suffered actual damages because they purchased Contaminated Dog
24 Foods that were not what Defendant represented and that they would not have purchased at all had
25 they known of the presence of pentobarbital.

26 332. By virtue of Defendant's negligence, Plaintiff Christian and the Tennessee Subclass
27 have been damaged in an amount to be proven at trial or, alternatively, seek rescission and
28 disgorgement under this Count.

COUNT XXII

(Fraud Against Defendant on Behalf of the Tennessee Subclass)

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3 333. Plaintiff Christian incorporates by reference and realleges each and every allegation
4 contained above, as though fully set forth herein.

5 334. Defendant represented to Plaintiff Christian and the Tennessee Subclass that the
6 Contaminated Dog Foods are pure, quality, healthy, and safe for consumption, made of wholesome
7 ingredients, and are 100 percent complete and balanced nutrition.

8 335. In making such representations to Plaintiff Christian and the Tennessee Subclass,
9 Defendant provided false, misleading, partial disclosures, and/or deceptive information regarding
10 the true nature, quality, and ingredients of the Contaminated Dog Foods.

11 336. At all times relevant herein, Defendant made misrepresentations of material fact to
12 Plaintiff Christian and members of the Tennessee Subclass as a means of concealing the true nature
13 and quality of the Contaminated Dog Foods, claiming it was pure, nutritious, healthy, and quality
14 with no disclosure that the Contaminated Dog Foods were adulterated and contained pentobarbital.

15 337. Defendant made such representations to Plaintiff Christian and the Tennessee
16 Subclass recklessly, as it knew its representations about the Contaminated Dog Foods were false
17 because the Contaminated Dog Foods are adulterated and contain pentobarbital.

18 338. Plaintiff Christian and the Tennessee Subclass reasonably placed their trust and
19 justifiable reliance in Defendant's representations that the Contaminated Dog Foods are healthy,
20 safe, pure, high quality, and that they were not adulterated with substances such as pentobarbital.
21 Given the deceptive manner in which Defendant advertised, represented, and otherwise promoted
22 the Contaminated Dog Foods, Plaintiff Christian and the Tennessee Subclass's reliance on
23 Defendant's misrepresentations was justifiable.

24 339. As a direct and proximate result of Defendant's conduct, Plaintiff Christian and the
25 Tennessee Subclass have suffered damages because they purchased Contaminated Dog Foods that
26 were not what Defendant represented and that they would not have purchased at all had they known
27 of the presence of pentobarbital.

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1 371. Defendant made such representations to Plaintiff Thomas and the West Virginia
2 Subclass recklessly, as it knew its representations about the Contaminated Dog Foods were false
3 because the Contaminated Dog Foods contain pentobarbital.

4 372. As a direct and proximate result of Defendant's conduct, Plaintiff Thomas and the
5 West Virginia Subclass have suffered damages because they purchased Contaminated Dog Foods
6 that were not what Defendant represented and that should not have been sold at all because they
7 were adulterated.

8 373. By virtue of Defendant's fraud, Plaintiff Thomas and the West Virginia Subclass
9 have been damaged in an amount to be proven at trial or alternatively, seek rescission and
10 disgorgement under this Count.

11 **COUNT XXVII**

12 **(Violation of West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-**
13 **106(a), Against Defendant on Behalf of the West Virginia Subclass)**

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

16 375. Plaintiff Thomas is a resident of the State of West Virginia.

17 376. Plaintiff Thomas and the members of the West Virginia Subclass are "person[s]"
18 as defined by section 46A-1-102(31) of the West Virginia Code.

19 377. Defendant is a "person" as that term is defined in section 46A-1-102(31) of the
20 West Virginia Code.

21 378. The Contaminated Dog Foods are "goods" as that term is defined in section 46A-
22 1-102(21) of the West Virginia Code.

23 379. There was a sale of goods from Defendant to Plaintiff Thomas and the members of
24 the West Virginia Subclass.

25 380. Defendant knowingly acted, used, and employed unfair and deceptive
26 misrepresentations, statements, and practices in connection with its sale of the Contaminated Dog
27 Foods. Specifically, Defendant represented that its Contaminated Dog Foods were pure, quality,
28 healthy, safe, made of wholesome ingredients, and were 100 percent and balanced nutrition, which

1 are false and misleading because the Contaminated Dog Foods are adulterated and contain
2 pentobarbital.

3 381. Defendant knew or should have known that such material representations of fact
4 were false or misleading or would have the tendency to be misleading.

5 382. Defendant marketed and sold its Contaminated Dog Foods with the intent and
6 reasonable expectation that Plaintiff Thomas and the West Virginia Subclass would justifiably rely
7 on their representations and affirmations regarding the Contaminated Dog Foods.

8 383. Plaintiff Thomas and the members of the West Virginia Subclass relied on, and
9 were deceived by, Defendant's representations and affirmations with respect to the Contaminated
10 Dog Foods' quality, ingredients, and fitness for consumption when deciding what dog food to
11 purchase.

12 384. As a direct and proximate result of Defendant's conduct, Plaintiff Thomas and the
13 West Virginia Subclass have suffered damages because they purchased Contaminated Dog Foods
14 that were not what Defendant represented and that they would not have purchased at all had they
15 known of the presence of pentobarbital.

16 385. Plaintiff Thomas and the members of the West Virginia Subclass are entitled to the
17 greater of their actual damages and the statutory amount of \$200. W. Va. Code § 46A-6-106(a).

18 **COUNT XXVIII**

19 **(Breach of Express Warranty, Tex. Bus. & Com. Code § 2.313(a), Against**
20 **Defendant on Behalf of the Texas Subclass)**

21 386. Plaintiff Brown incorporates by reference and realleges each and every allegation
22 contained above, as though fully set forth herein.

23 387. As set forth herein, Defendant made express representations to Plaintiff Brown and
24 the Texas Subclass that the Contaminated Dog Foods are pure, quality, healthy, and safe for
25 consumption, made of wholesome ingredients, and are 100 percent complete and balanced
26 nutrition.

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

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

6 390. Defendant's representations and warranties were made in connection with the sale
7 of the Contaminated Dog Foods to Plaintiff Brown and the Texas Subclass, who relied on
8 Defendant's representations and warranties regarding the Contaminated Dog Foods when deciding
9 whether to purchase the Defendant's products.

10 391. Defendant knowingly breached the express warranties to Plaintiff Brown and the
11 Texas Subclass by selling them Contaminated Dog Foods that did not conform to Defendant's
12 representations and affirmations because they are adulterated and contain pentobarbital.

13 392. As a direct and proximate result of Defendant's conduct, Plaintiff Brown and the
14 Texas Subclass suffered actual damages in that they purchased Contaminated Dog Foods that were
15 not what Defendant represented and that they would not have purchased at all had they known of
16 the presence of pentobarbital.

17 393. Plaintiff Brown and the members of the Texas Subclass reasonably placed their
18 trust and justifiable reliance in Defendant's representations that the Contaminated Dog Foods are
19 healthy, safe, pure, high quality, and that they were not adulterated with substances such as
20 pentobarbital.

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

24 395. Plaintiff Brown, on behalf of herself and the Texas Subclass, seeks actual damages
25 for Defendant's breach of warranty.

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COUNT XXIX

**(Breach of Implied Warranty of Merchantability, Tex. Bus. & Com. Code § 2.314,
Against Defendant on Behalf of the Texas Subclass)**

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3 396. Plaintiff Brown incorporates by reference and realleges each and every allegation
4 contained above, as though fully set forth herein.

5
6 397. Defendant is a merchant engaging in the sale of goods, such as the Contaminated
7 Dog Foods, to Plaintiff Brown and the Texas Subclass.

8 398. There was a sale of goods from Defendant to Plaintiff Brown and the members of
9 the Texas Subclass.

10 399. At all times mentioned herein, Defendant manufactured or supplied the
11 Contaminated Dog Foods, and prior to the time the Contaminated Dog Foods were purchased by
12 Plaintiff Brown and the members of the Texas Subclass, Defendant impliedly warranted to them
13 that the Contaminated Dog Foods were of merchantable quality, fit for their ordinary purpose
14 (consumption by dogs), and conformed to the promises and affirmations made by Defendant
15 regarding the Contaminated Dog Foods, including that the food was pure, quality, healthy, and
16 safe for consumption, made of wholesome ingredients, and were 100 percent complete and
17 balanced nutrition.

18 400. Because the Contaminated Dog Foods contain pentobarbital, they are not fit for
19 their ordinary purpose, consumption by dogs, and did not conform to the Defendant's
20 representations and affirmations of fact when Plaintiff Brown and the Texas Subclass purchased
21 the Contaminated Dog Foods.

22 401. Defendant marked its Contaminated Dog Foods with the intent and reasonable
23 expectation that Plaintiff Brown and the members of the Texas Subclass would justifiably rely on
24 its representations and affirmations regarding the Contaminated Dog Foods.

25 402. Plaintiff Brown and the members of the Texas Subclass relied on Defendant's
26 representations and affirmations with respect to the Contaminated Dog Foods' quality, ingredients,
27 and fitness for consumption when deciding what dog food to purchase.

28

1 (a) Md. Code Ann Com. Law § 13-301(1), providing false or misleading oral
2 or written statement, visual description, or other representation of any kind which has the capacity,
3 tendency, or effect of deceiving or misleading consumers;

4 (b) Md. Code Ann Com. Law § 13-301(2), representing that: (i) the
5 Contaminated Dog Foods have a sponsorship, approval, accessory, characteristic, ingredient, use,
6 or benefit which they do not have; (ii) Defendant has sponsorship, approval, status, affiliation, or
7 connection which it does not have; or (iii) the Contaminated Dog Foods are of a particular standard,
8 quality, grade, style, or model which they are not;

9 (c) Md. Code Ann Com. Law § 13-301(3), failing to state a material fact if the
10 failure deceives or tends to deceive;

11 (d) Md. Code Ann Com. Law § 13-301(5), advertising or offering consumer
12 goods without the intent to sell them as advertised or offered; and

13 (e) Md. Code Ann Com. Law § 13-301(9), deception, fraud, false pretense,
14 false premise, misrepresentation, or knowing concealment, suppression, or omission of material
15 fact with the intent that Plaintiff Collins and the Maryland Subclass rely on the same in connection
16 with: (i) the promotion or sale of the Contaminated Dog Foods.

17 427. The unconscionable, illegal, unfair, and deceptive acts and practices of Defendant
18 impacts public interest and violate the MCPA.

19 428. As a direct and proximate result of Defendant's conduct, Plaintiff Collins and the
20 Maryland Subclass have been damaged in an amount to be proven at trial, which shall include, but
21 is not limited to, all compensatory damages, incidental and consequential damages, attorneys' fees,
22 costs, injunctive relief, and other damages allowed by law.

23 **COUNT XXXII**

24 **(Fraudulent Misrepresentation against Defendant on Behalf of**
25 **the Maryland Subclass)**

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

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1 430. As alleged more fully herein, at the time Defendant sold the Contaminated Dog
2 Foods to Plaintiff Collins and Maryland Subclass Members, it knew it was adulterated with
3 pentobarbital.

4 431. At all times relevant herein, Defendant made misrepresentations of material fact to
5 Plaintiff Collins and Maryland Subclass Members as a means of concealing the true nature and
6 quality of the Contaminated Dog Foods, claiming it was pure, nutritious, healthy, and pure quality
7 with no disclosure that the Contaminated Dog Foods were adulterated and contain pentobarbital.

8 432. Defendant falsely represented to and/or concealed material facts from Plaintiff
9 Collins and Maryland Subclass Members, including, but not limited to:

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

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

21 434. Plaintiff Collins and members of the Maryland Subclass would have acted
22 differently had Defendant disclosed this information to them and allowed them to make a fully-
23 informed decision before they purchased the Contaminated Dog Foods.

24 435. These false representations were material to Plaintiff Collins and the Maryland
25 Subclass.

26 436. Defendant intentionally and knowingly made these misrepresentations to induce
27 Plaintiff Collins and the Maryland Subclass to purchase its Contaminated Dog Foods.

28

1 444. Defendant breached its duty to Plaintiff Collins and the Maryland Subclass by
2 providing false, misleading, partial disclosures, and/or deceptive information regarding the true
3 nature, quality, and ingredients of the Contaminated Dog Foods that were purchased by Plaintiff
4 Collins and the Maryland Subclass.

5 445. Defendant knew or should have known that the ingredients, qualities, and
6 characteristics of the Contaminated Dog Foods were not as advertised or suitable for their intended
7 use, consumption by dogs, and was otherwise not as warranted and represented by Defendant.
8 Specifically, Defendant knew or should have known that: (1) certain of the Contaminated Dog
9 Foods were adulterated with pentobarbital; (2) the Contaminated Dog Foods were not, among
10 other things, safe, healthy, quality, and providing “100 percent complete and balanced nutrition”;
11 and (3) the Contaminated Dog Foods were otherwise not as warranted and represented by
12 Defendant.

13 446. Defendant knew or should have known that its false, misleading, partial disclosures,
14 and/or deceptive information regarding the true nature, quality, and ingredients of the
15 Contaminated Dog Foods would induce Plaintiff Collins and the Maryland Subclass to purchase
16 the Contaminated Dog Foods and incur loss and/or injury.

17 447. Defendant was negligent in communicating the false information, and therefore
18 failed to exercise reasonable care or competence.

19 448. Plaintiff Collins and the Maryland Subclass reasonably placed their trust and
20 justifiable reliance in Defendant’s representations that the Contaminated Dog Foods are healthy,
21 safe, pure, quality, and that they were not adulterated with substances such as pentobarbital. Given
22 the deceptive manner in which Defendant advertised, represented, and otherwise promoted the
23 Contaminated Dog Foods, Plaintiff Collins and the Maryland Subclass’s reliance on Defendant’s
24 misrepresentations was justifiable when making their purchases.

25 449. As a result of Defendant’s conduct, Plaintiff Collins and the members of the
26 Maryland Subclass have suffered damages in that they purchased Contaminated Dog Foods that
27 were not what Defendant represented and that they would not have purchased at all had they known
28 of the presence of pentobarbital.

1 450. Plaintiff Collins and the Maryland Subclass seek actual damages, injunctive and
2 declaratory relief, attorneys' fees, costs, and any other just and proper relief available.

3 **COUNT XXXIV**

4 **(Breach of Express Warranty, Md. Code Com. Law § 2-313,**
5 **against Defendant on Behalf of the Maryland Subclass)**

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

8 452. Defendant marketed and sold its Contaminated Dog Foods into the stream of
9 commerce with the intent that the Contaminated Dog Foods would be purchased by Plaintiff
10 Collins and the Maryland Subclass.

11 453. As set forth herein, Defendant made express representations to Plaintiff Collins and
12 the Maryland Subclass that the Contaminated Dog Foods are pure, quality, healthy, safe for
13 consumption, and provide 100 percent complete and balanced nutrition.

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

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

19 456. There was a sale of goods, the Contaminated Dog Foods, from Defendant to
20 Plaintiff Collins and the Maryland Subclass members.

21 457. On the basis of these express warranties, Defendant sold the Contaminated Dog
22 Foods to Plaintiff Collins and the Maryland Subclass.

23 458. Defendant knowingly breached the express warranties by selling Contaminated
24 Dog Foods that were adulterated and contained pentobarbital.

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

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1 460. Plaintiff Collins and the Maryland Subclass relied on Defendant's express
2 warranties regarding the Contaminated Dog Foods in deciding whether to purchase Defendant's
3 products.

4 461. Privity exists because Defendant expressly warranted to Plaintiff Collins and the
5 Maryland Subclass that the Contaminated Dog Foods were pure, quality, healthy, safe for
6 consumption, unadulterated, and provided 100 percent complete and balanced nutrition.

7 462. Defendant's express warranties extend to Plaintiff Collins and the Maryland
8 Subclass, who are users of the Contaminated Dog Foods and/or persons affected thereby and it is
9 reasonable to expect that they may use and/or be affected by the Contaminated Dog Foods and be
10 injured by the breach of the warranty.

11 463. As a direct and proximate result of Defendant's conduct, Plaintiff Collins and the
12 Maryland Subclass sustained damages as they paid money for Contaminated Dog Foods that were
13 not what Defendant represented and were sold in violation of applicable regulations and laws.

14 464. Plaintiff Collins and the Maryland Subclass seek actual damages, injunctive and
15 declaratory relief, attorneys' fees, costs, and any other just and proper relief available thereunder
16 for Defendant's failure to deliver goods conforming to their express warranties and resulting
17 breach.

18 **COUNT XXXV**

19 **(Breach of Implied Warranty of Merchantability, Md. Code Ann. Com. Law § 2-314,
20 Against Defendant on Behalf of the Maryland Subclass)**

21 465. Plaintiff Collins incorporates by reference and realleges each and every allegation
22 contained above, as though fully set forth herein.

23 466. Defendant is a merchant engaging in the sale of goods to Plaintiff Collins and the
24 Maryland Subclass.

25 467. There was a sale of goods from Defendant to Plaintiff Collins and members of the
26 Maryland Subclass.

27 468. The purchased product was unfit for its ordinary purpose. At all times mentioned
28 herein, Defendant manufactured or supplied the Contaminated Dog Foods, and prior to the time
the Contaminated Dog Foods were purchased by Plaintiff Collins and the Maryland Subclass,

1 Defendant impliedly warranted to them that the Contaminated Dog Foods were of merchantable
2 quality, fit for their ordinary purpose (consumption by dogs), and conformed to the promises and
3 affirmations made by Defendant regarding the Contaminated Dog Foods, including that the food
4 was pure, quality, healthy, and safe for consumption, made of wholesome ingredients, and were
5 100 percent complete and balanced nutrition.

6 469. Defendant marketed its Contaminated Dog Foods with the intent, knowledge, and
7 reasonable expectation that Plaintiff Collins and the Maryland Subclass would justifiably rely on
8 its representations and affirmations regarding the Contaminated Dog Foods.

9 470. Plaintiff Collins and the Maryland Subclass justifiably relied on Defendant's
10 representations and affirmations with respect to the Contaminated Dog Foods' quality, ingredients,
11 and fitness for consumption when deciding what dog food to purchase.

12 471. Because the Contaminated Dog Foods contain pentobarbital, they were not fit for
13 their ordinary purpose, consumption by dogs, and did not conform to the Defendant's
14 representations and affirmations of fact when Plaintiff Collins and the members of the Maryland
15 Subclass purchased the Contaminated Dog Foods.

16 472. 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 in the
18 Contaminated Dog Foods.

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

22 474. Defendant's implied warranties extend to Plaintiff Collins and the Maryland
23 Subclass, who are users of the Contaminated Dog Foods and/or persons affected thereby and it is
24 reasonable to expect that they may use and/or be affected by the Contaminated Dog Foods and be
25 injured by the breach of the warranty.

26 475. As a direct and proximate result of Defendant's conduct, Plaintiff Collins and the
27 Maryland Subclass sustained damages as they paid money for Contaminated Dog Foods that were
28 not what Defendant represented and were sold in violation of applicable regulations and laws.

1 476. Plaintiff Collins and the Maryland Subclass seek actual damages, injunctive and
2 declaratory relief, attorneys' fees, costs, and any other just and proper relief available thereunder
3 for Defendant's failure to deliver goods conforming to its implied warranties and resulting breach.

4 **COUNT XXXVI**

5 **(Violations of Washington's Unfair Business Practices and Consumer Protection Act,**
6 **Wash. Rev. Code §§ 19.86.010, *et seq.*, against Defendant on Behalf of the**
7 **Washington Subclass)**

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

10 478. This is an action for relief under the Washington Unfair Business Practices and
11 Consumer Protection Act, Wash. Rev. Code §§ 19.86.010, *et seq.* ("WCPA").

12 479. Defendant, Plaintiff Mayo and each Washington Subclass member are each a
13 "person," as that term is defined in section 19.86.010(1) of the Revised Code of Washington.

14 480. Defendant engaged in "trade" or "commerce" under Washington Code section §
15 19.86.010(2)

16 481. The WCPA states that "[u]nfair methods of competition and unfair or deceptive
17 acts or practices in the conduct of any trade or commerce are hereby declared unlawful." Wash.
18 Rev. Code § 19.86.020.

19 482. Defendant engaged in unfair competition and unfair, unlawful, or fraudulent
20 business practices by making material representations that the Contaminated Dog Foods were pure,
21 quality, healthy, and safe for consumption and by knowingly, intentionally, and/or negligently
22 concealing from Plaintiff Mayo and the Washington Subclass the fact that the Contaminated Dog
23 Foods were adulterated with pentobarbital, which was not readily discoverable. Defendant should
24 have disclosed such information because it was in a superior position to know the facts regarding
25 the true make-up and quality of the Contaminated Dog Foods. Plaintiff Mayo and the Washington
26 Subclass could not reasonably be expected to learn or discover the true facts regarding the make-
27 up and/or quality of the Contaminated Dog Foods.

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

9 491. Plaintiff Mayo and members of the Washington Subclass would have acted
10 differently had Defendant disclosed this information to them and allowed them to make a fully-
11 informed decision before they purchased the Contaminated Dog Foods.

12 492. These false representations were material to Plaintiff Mayo and the Washington
13 Subclass.

14 493. Defendant intentionally and knowingly made these misrepresentations to induce
15 Plaintiff Mayo and the Washington Subclass to purchase its Contaminated Dog Foods.

16 494. Defendant knew that its representations about the Contaminated Dog Foods were
17 false in that the Contaminated Dog Foods were adulterated with pentobarbital. Defendant allowed
18 its packaging, labels, advertisements, promotional materials, and website to intentionally mislead
19 consumers, such as Plaintiff Mayo and the Washington Subclass.

20 495. Plaintiff Mayo and the Washington Subclass were ignorant of the falsity of the
21 representations made by Defendant about the Contaminated Dog Foods.

22 496. Plaintiff Mayo and the Washington Subclass did in fact rely on the truth of these
23 misrepresentations and purchased the Contaminated Dog Foods to their detriment. Given the
24 deceptive manner in which Defendant advertised, represented, and otherwise promoted the
25 Contaminated Dog Foods, Plaintiff Mayo and the Washington Subclass's reliance on Defendant's
26 misrepresentations was justifiable.

27 497. As a direct and proximate result of Defendant's concealment and suppression of
28 material facts, Plaintiff Mayo and the Washington Subclass have sustained damage by, among

1 other things, paying for Contaminated Dog Foods that were adulterated and unlawfully sold to
2 consumers, rendering the Contaminated Dog Foods of zero or *de minimis* value.

3 498. Plaintiff Mayo and the Washington Subclass seek actual damages, injunctive and
4 declaratory relief, attorneys' fees, costs, and any other just and proper relief allowed by law.

5 **COUNT XXXVIII**

6 **(Negligent Misrepresentation against Defendant on Behalf of**
7 **the Washington Subclass)**

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

10 500. Because of the relationship between the parties, Defendant owed a duty to use
11 reasonable care to impart correct and reliable disclosures concerning the true nature, quality, and
12 ingredients of the Contaminated Dog Foods, or based upon its superior knowledge, to say enough
13 to not be misleading to Plaintiff Mayo and the Washington Subclass.

14 501. Defendant breached its duty to Plaintiff Mayo and the Washington Subclass by
15 providing false, misleading, partial disclosures, and/or deceptive information regarding the true
16 nature, quality, and ingredients of the Contaminated Dog Foods that were purchased by Plaintiff
17 Mayo and the Washington Subclass.

18 502. Defendant knew or should have known that the ingredients, qualities, and
19 characteristics of the Contaminated Dog Foods were not as advertised or suitable for their intended
20 use, consumption by dogs, and was otherwise not as warranted and represented by Defendant.
21 Specifically, Defendant knew or should have known that: (i) certain of the Contaminated Dog
22 Foods were adulterated with pentobarbital; (ii) the Contaminated Dog Foods were not, among
23 other things, safe, healthy, quality, and providing "100 percent complete and balanced nutrition";
24 and (iii) the Contaminated Dog Foods were otherwise not as warranted and represented by
25 Defendant.

26 503. Defendant knew or should have known that its false, misleading, partial disclosures,
27 and/or deceptive information regarding the true nature, quality, and ingredients of the
28

1 Contaminated Dog Foods would induce Plaintiff Mayo and the Washington Subclass to purchase
2 the Contaminated Dog Foods.

3 504. Defendant was negligent in communicating the false information, and therefore
4 failed to exercise reasonable care or competence.

5 505. Plaintiff Mayo and the Washington Subclass reasonably placed their trust and
6 justifiable reliance in Defendant's representations that the Contaminated Dog Foods are healthy,
7 safe, pure, quality, and that they were not adulterated with substances such as pentobarbital. Given
8 the deceptive manner in which Defendant advertised, represented, and otherwise promoted the
9 Contaminated Dog Foods, Plaintiff Mayo and the Washington Subclass's reliance on Defendant's
10 misrepresentations was justifiable.

11 506. As a result of Defendant's conduct, Plaintiff Mayo and the members of the
12 Washington Subclass have suffered damages in that they purchased Contaminated Dog Foods that
13 were not what Defendant represented and that they would not have purchased at all had they known
14 of the presence of pentobarbital.

15 507. Plaintiff Mayo and the Washington Subclass seek actual damages, injunctive and
16 declaratory relief, attorneys' fees, costs, and any other just and proper relief available.

17 **COUNT XXXIX**

18 **(Breach of Express Warranty, Wash. Rev. Code § 62A.2-313,**
19 **Against Defendant on Behalf of the Washington Subclass)**

20 508. Plaintiff Mayo incorporates by reference and realleges each and every allegation
21 contained above, as though fully set forth herein.

22 509. Defendant marketed and sold its Contaminated Dog Foods into the stream of
23 commerce with the intent that the Contaminated Dog Foods would be purchased by Plaintiff Mayo
24 and the Washington Subclass.

25 510. As set forth herein, Defendant made express representations to Plaintiff Mayo and
26 the Washington Subclass that the Contaminated Dog Foods are pure, quality, healthy, safe for
27 consumption, and provide 100 percent complete and balanced nutrition.

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

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

6 513. There was a sale of goods, the Contaminated Dog Foods, from Defendant to
7 Plaintiff Mayo and the Washington Subclass members.

8 514. On the basis of these express warranties, Defendant sold the Contaminated Dog
9 Foods to Plaintiff Mayo and the Washington Subclass.

10 515. Defendant knowingly breached the express warranties by selling Contaminated
11 Dog Foods that were adulterated and contained pentobarbital.

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

15 517. Plaintiff Mayo and the Washington Subclass relied on Defendant's express
16 warranties regarding the Contaminated Dog Foods in deciding whether to purchase Defendant's
17 products.

18 518. Privity exists because Defendant fraudulently and/or deceitfully expressly
19 warranted to Plaintiff Mayo and the Washington Subclass that the Contaminated Dog Foods were
20 pure, quality, healthy, safe for consumption, unadulterated, and provided 100 percent complete
21 and balanced nutrition.

22 519. As a direct and proximate result of Defendant's conduct, Plaintiff Mayo and the
23 Washington Subclass sustained damages as they paid money for Contaminated Dog Foods that
24 were not what Defendant represented and were sold in violation of applicable regulations and laws.

25 520. Plaintiff Mayo and the Washington Subclass seek actual damages, injunctive and
26 declaratory relief, attorneys' fees, costs, and any other just and proper relief available thereunder
27 for Defendant's failure to deliver goods conforming to their express warranties and resulting
28 breach.

COUNT XL

**(Breach of Implied Warranty of Merchantability, Wash. Rev. Code § 62A.2-314,
Against Defendant on Behalf of the Washington Subclass)**

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3 521. Plaintiff Mayo incorporates by reference and realleges each and every allegation
4 contained above, as though fully set forth herein.

5 522. Defendant is a merchant engaging in the sale of goods to Plaintiff Mayo and the
6 Washington Subclass.

7 523. There was a sale of goods from Defendant to Plaintiff Mayo and members of the
8 Washington Subclass.

9 524. The purchased product was unfit for its ordinary purpose. At all times mentioned
10 herein, Defendant manufactured or supplied the Contaminated Dog Foods, and prior to the time
11 the Contaminated Dog Foods were purchased by Plaintiff Mayo and the Washington Subclass,
12 Defendant impliedly warranted to them that the Contaminated Dog Foods were of merchantable
13 quality, fit for their ordinary purpose (consumption by dogs), and conformed to the promises and
14 affirmations made by Defendant regarding the Contaminated Dog Foods, including that the food
15 was pure, quality, healthy, and safe for consumption, made of wholesome ingredients, and were
16 100 percent complete and balanced nutrition.

17 525. Defendant marketed its Contaminated Dog Foods with the intent and reasonable
18 expectation that Plaintiff Mayo and the Washington Subclass would justifiably rely on its
19 representations and affirmations regarding the Contaminated Dog Foods.

20 526. Plaintiff Mayo and the Washington Subclass justifiably relied on Defendant's
21 representations and affirmations with respect to the Contaminated Dog Foods' quality, ingredients,
22 and fitness for consumption when deciding what dog food to purchase.

23 527. Because the Contaminated Dog Foods contain pentobarbital, they were not fit for
24 their ordinary purpose, consumption by dogs, and did not conform to the Defendant's
25 representations and affirmations of fact when Plaintiff Mayo and the members of the Washington
26 Subclass purchased the Contaminated Dog Foods.

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

4 529. Privity exists because Defendant fraudulently and/or deceitfully expressly
5 warranted to Plaintiff Mayo and the Washington Subclass that the Contaminated Dog Foods were
6 pure, quality, healthy, safe for consumption, unadulterated, and provided 100 percent complete
7 and balanced nutrition.

8 530. As a direct and proximate result of Defendant's conduct, Plaintiff Mayo and the
9 Washington Subclass sustained damages as they paid money for Contaminated Dog Foods that
10 were not what Defendant represented and were sold in violation of applicable regulations and laws.

11 531. Plaintiff Mayo and the Washington Subclass seek actual damages, injunctive and
12 declaratory relief, attorneys' fees, costs, and any other just and proper relief available thereunder
13 for Defendant's failure to deliver goods conforming to its implied warranties and resulting breach.

14 **PRAYER FOR RELIEF**

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

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

19 B. An order enjoining Defendant from selling the Contaminated Dog Foods until
20 pentobarbital is removed;

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

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

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

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1 F. An order requiring Defendant to pay restitution to restore all funds acquired by
2 means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business
3 act or practice, untrue or misleading advertising, or a violation of California’s Unfair Competition
4 Law, FAL, CLRA, or any state law violation alleged herein, plus pre- and post-judgment interest
5 thereon;

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

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

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

11 J. An order awarding attorneys' fees and costs to Plaintiffs, the Class, and the
12 Subclasses; and

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

14 **JURY DEMAND**

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

16 Dated: May 1, 2018

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

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18
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Plaintiffs' Executive Committee