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9 Attorneys for Plaintiffs

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION

13 **JENNIFER REITMAN** and  
14 **CAROL SHOAFF,**  
15 individually and on behalf of a  
16 class of similarly situated  
17 individuals,

18 **PLAINTIFFS,**

19 V.

20 **CHAMPION PETFOODS**  
21 **USA, INC. and CHAMPION**  
22 **PETFOODS LP,**

23 **DEFENDANTS.**

Case No. 2:18-cv-01736-DOC-JPR

**SECOND AMENDED CLASS ACTION**  
**COMPLAINT FOR:**

- (1) VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT;
- (2) VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW;
- (3) VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW;
- (4) BREACH OF EXPRESS WARRANTY;
- (5) BREACH OF IMPLIED WARRANTY;
- (6) FRAUDULENT MISREPRESENTATION;
- (7) FRAUD BY OMISSION;
- (8) NEGLIGENT MISREPRESENTATION;
- and
- (9) UNJUST ENRICHMENT.

**DEMAND FOR JURY TRIAL**

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1           1.     Plaintiffs Jennifer Reitman ("Plaintiff Reitman") and Carol Shoaff  
2 ("Plaintiff Shoaff, together, "Plaintiffs"), individually and on behalf of all others  
3 similarly situated, by and through their undersigned attorneys, bring this Second  
4 Amended Class Action Complaint against Defendants Champion Petfoods USA,  
5 Inc. and Champion Petfoods LP ("Defendants"), for their negligent, reckless, and/or  
6 intentional practice of misrepresenting and failing to fully disclose the presence of  
7 heavy metals and toxins in their pet food sold throughout the United States, including  
8 California and this District. Plaintiffs seek both injunctive and monetary relief on  
9 behalf of the proposed Class (as defined herein) including requiring full disclosure  
10 of all such substances in its marketing, advertising, and labeling and restoring  
11 monies to the members of the proposed Class. Plaintiffs allege the following based  
12 upon personal knowledge as well as investigation by their counsel and as to all other  
13 matters, upon information and belief. Plaintiffs believe that substantial evidentiary  
14 support will exist for the allegations set forth herein after a reasonable opportunity  
15 for discovery.

16           **DEFENDANTS MARKET THEMSELVES AS ONLY SELLING PREMIUM**  
17           **DOG FOOD WITH THE SIMPLE MISSION OF**  
18           **"TO BE TRUSTED BY PET LOVERS"**

19           2.     Defendants manufacture, market, advertise, label, distribute, and sell  
20 pet food under the brand names Acana and Orijen throughout the United States,  
21 including in this District.

22           3.     Defendants have created a niche in the pet food market by "making  
23 biologically 'appropriate' pet food—as close to what animals would eat in nature as  
24 possible—and producing it using fresh, natural ingredients...." They then charge a  
25 premium for this purportedly higher-quality food. The founder of the company,  
26 Peter Muhlenfeld, said, "Our core family beliefs are [] entrenched in the company,  
27 and that is to make the very best food."  
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1 4. Defendants tout that "Biologically Appropriate™ ORIEN represents a  
2 new class of food, designed to nourish dogs and cats according to their evolutionary  
3 adaptation to a diet rich and diverse in fresh meat and protein[]" and that it is "trusted  
4 by pet lovers everywhere."

5 5. Defendants' packaging and labels further emphasize fresh, quality, and  
6 properly sourced ingredients and even declares its dog food has "ingredients we  
7 love":



22 6. Yet nowhere in the labeling, advertising, statements, warranties and/or  
23 packaging do Defendants disclose that the Contaminated Pet Foods (defined herein)  
24 contain levels of arsenic, mercury, lead, cadmium and/or BISPHENOL A  
25 ("BPA")—all known to pose health risks to humans and animals, including dogs:

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Product Name	arsenic ug per kg	bpa ug per kg	cadmium ug per kg	mercury ug per kg	lead ug per kg
Acana Regionals Wild Atlantic New England Fish and Fresh Greens Dry Dog Food	3256.40	32.50	113.00	51.20	249.30
Orijen Six Fish With New England Mackerel, Herring, Flounder, Redfish, Monkfish, Silver Hake Dry Dog Food	3169.80	39.50	200.50	54.90	38.70
Orijen Original Chicken, Turkey, Wild-Caught Fish, Eggs Dry Dog Food	907.60	0.00	93.20	10.80	489.80
Orijen Regional Red Angus Beef, Boar, Goat, Lamb, Pork, Mackerel Dry Dog Food	849.40	43.60	123.10	21.40	167.70

Product Name	arsenic ug per kg	bpa ug per kg	cadmium ug per kg	mercury ug per kg	lead ug per kg
Acana Regionals Meadowland with Poultry, Freshwater Fish and Eggs Dry Dog Food	846.40	82.70	37.50	8.70	489.00
Acana Regionals Appalachian Ranch with Red Meats and Freshwater Catfish Dry Dog Food	358.20	82.90	32.50	14.90	336.70
Acana Regionals Grasslands with Lamb, Trout, and Game Bird Dry Dog Food	262.80	0.00	30.60	9.60	305.00
Orijen Regional Red Angus Beef, Ranch Raised Lamb, Wild Boar, Pork, Bison Dry Dog Food	1066.50	37.70	62.10	21.70	138.50
Acana Singles Duck and Pear	523.40	102.70	30.90	15.40	537.40

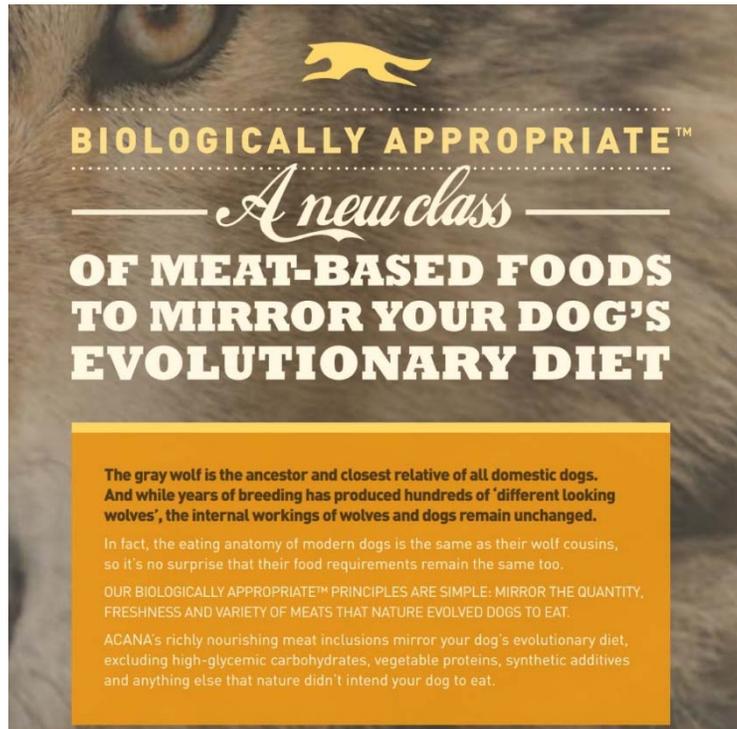
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<b>Product Name</b>	<b>arsenic ug per kg</b>	<b>bpa ug per kg</b>	<b>cadmium ug per kg</b>	<b>mercury ug per kg</b>	<b>lead ug per kg</b>
Formula Dry Dog Food					
Acana Singles Lamb and Apple Formula Dry Dog Food	401.20	73.20	35.00	3.20	423.40
Acana Heritage Free-Run Poultry Formula Dry Dog Food	292.90	62.20	27.80	3.30	290.20
Acana Heritage Freshwater Fish Formula Dry Dog Food	977.70	0.00	56.20	27.40	486.80
Orijen Tundra Freeze Dried Venison, Elk, Bison, Quail, Steelhead Trout Wet Dog Food	23.13	6.02	27.64	5.35	12.26
Orijen Adult Dog Freeze Dried Chicken, Turkey, Wild-Caught Fish, Eggs Wet Dog Food	23.21	13.41	7.74	9.45	7.33

Product Name	arsenic ug per kg	bpa ug per kg	cadmium ug per kg	mercury ug per kg	lead ug per kg
Orijen Regional Red Freeze Dried Angus Beef, Ranch Raised Lamb, Wild Boar, Pork, Bison Wet Dog Food	102.66	0.00	23.40	19.60	16.85
Orijen Six Fish Wild- Caught Regional Saltwater and Freshwater Fish Dry Dog Food	2173.90	39.70	92.20	58.80	55.10
Orijen Tundra Goat, Venison, Mutton, Bison, Arctic Char, Rabbit Dry Dog Food	1628.50	40.30	134.50	43.60	471.80
Orijen Grain Free Puppy Chicken, Turkey, Wild-Caught Fish, Eggs Dry Dog Food	791.20	32.20	87.20	12.20	490.80
Acana Singles Mackerel	1510.70	40.10	112.20	29.60	251.10

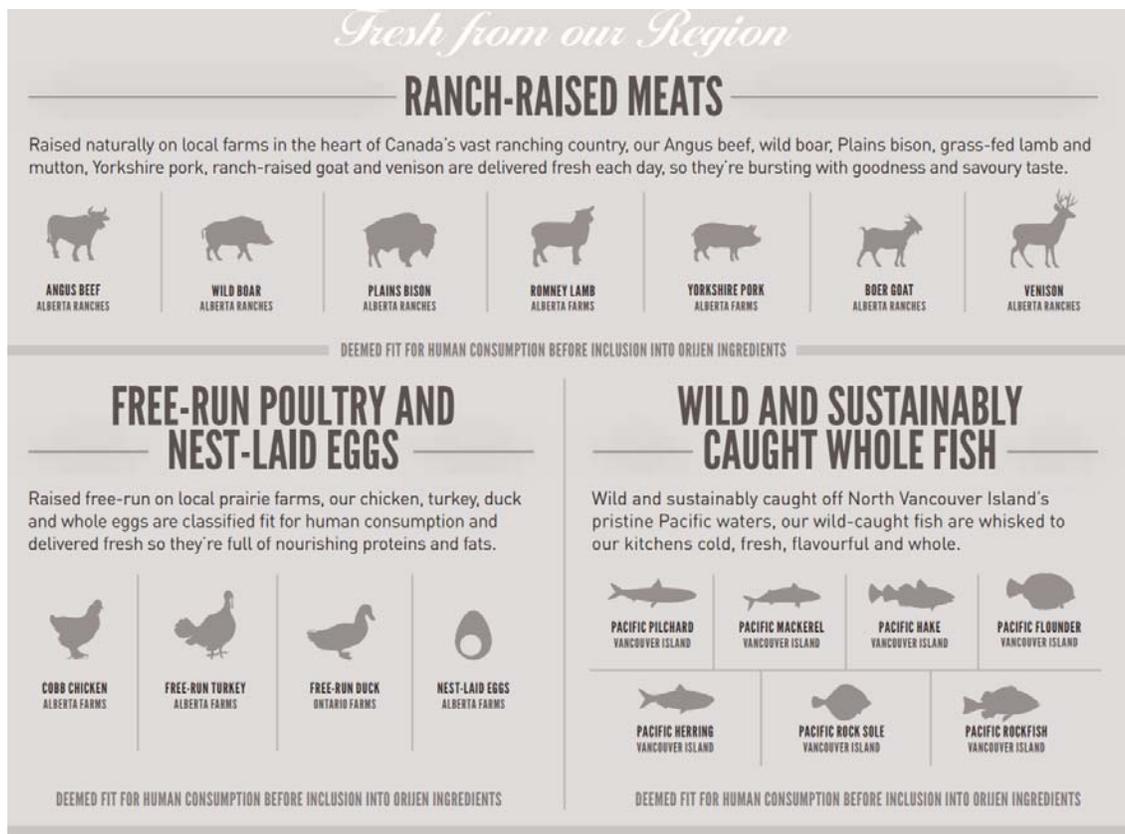
Product Name and Greens Formula Dry Dog Food	arsenic ug per kg	bpa ug per kg	cadmium ug per kg	mercury ug per kg	lead ug per kg
Acana Heritage Meats Formula Dry Dog Food	384.80	58.30	24.40	6.40	1731.90
Acana Singles Pork and Squash Formula Dry Dog Food	373.70	57.60	25.60	4.00	329.60

7. Defendants warrant, promise, represent, label and/or advertise that the Contaminated Pet Foods are free of any heavy metals and/or chemicals like BPA by assuring the food represents an evolutionary diet that mirrors that of a wolf—free of anything "nature did not intend for your dog to eat":



1 8. Defendants assert that: "Virtually All Of The Nutrients In Acana Are  
2 Natural And Not Synthetic." Defendants make a similar claim to the Orijen Dog  
3 Foods in maintaining that that the main source of any nutrient in Orijen is from a  
4 natural source.

5 9. Defendants further warrant, promise, represent, advertise, and declare  
6 that the Contaminated Dog Foods (as defined herein) are made with protein sources  
7 that are "Deemed fit for human consumption":



22 **THE INCLUSION OF HEAVY METALS, BPA, AND ANY OTHER**  
23 **CHEMICALS AT ANY LEVEL WOULD BE MATERIAL TO A**  
24 **REASONABLE CONSUMER BASED ON THE INHERENT AND KNOWN**  
25 **RISKS OF CONSUMPTION AND/OR EXPOSURE**

26 **Heavy Metals**

27 10. Based on the risks associated with exposure to higher levels of arsenic,  
28 both the U.S. Environmental Protection Agency ("EPA") and U.S. Food and Drug  
Administration ("FDA") have set limits concerning the allowable limit of arsenic at

1 10 parts per billion ("ppb") for human consumption in apple juice (regulated by the  
2 FDA) and drinking water (regulated by the EPA).

3 11. Moreover, the FDA is considering limiting the action level for arsenic  
4 in rice cereals for infants to 100 ppb.

5 12. The Contaminated Dog Foods also contain lead, which is another  
6 carcinogen and developmental toxin known to cause health problems. Exposure to  
7 lead in food builds up over time. Buildup can and has been scientifically  
8 demonstrated to lead to the development of chronic poisoning, cancer,  
9 developmental, and reproductive disorders, as well as serious injuries to the nervous  
10 system and other organs and body systems.

11 13. The Contaminated Dog Foods also contain mercury, which can cause  
12 damage to the cardiovascular system, nervous system, kidneys, and digestive tract  
13 in dogs. Continued exposure can also injure the inner surfaces of the digestive tract  
14 and abdominal cavity, causing lesions and inflammation. There have also been  
15 reports of lesions in the central nervous system (spinal cord and brain), kidneys, and  
16 renal glands.

17 14. Finally, the Contaminated Dog Foods contain cadmium which has been  
18 observed to cause anemia, liver disease, and nerve or brain damage in animals eating  
19 or drinking cadmium. The U.S. Department of Health and Human Services has  
20 determined that cadmium and cadmium compounds are known human carcinogens  
21 and the EPA has likewise determined that cadmium is a probable human carcinogen.

22 15. Indeed, the FDA has acknowledged that "exposure to [these four heavy]  
23 metals are likely to have the most significant impact on public health" and has  
24 prioritized them in connection with its heavy metals workgroup looking to reduce  
25 the risks associated with human consumption of heavy metals.

26 16. Despite the known risks of exposure to these heavy metals, Defendants  
27 have negligently, recklessly, and/or knowingly sold the Contaminated Dog Foods  
28 without disclosing they contain levels of arsenic, mercury, cadmium, and lead to

1 consumers like Plaintiffs. Indeed, Defendants have publicly acknowledged that  
2 consumers "have deep feelings and a sense of responsibility for the well-being of  
3 their dogs and cats."

4 17. Additionally, Defendants knew or should have been aware that a  
5 consumer would be feeding the Contaminated Dog Foods multiple times each day  
6 to his or her dog, making it the main, if not only, source of food for the dog. This  
7 leads to repeated exposure of the heavy metals to the dog.

8 18. Defendants have wrongfully and misleadingly advertised and sold the  
9 Contaminated Dog Foods without any label or warning indicating to consumers that  
10 these products contain heavy metals, or that these toxins can over time accumulate  
11 in the dog's body to the point where poisoning, injury, and/or disease can occur.

12 19. Defendants' omissions are material, false, misleading, and reasonably  
13 likely to deceive the public. This is true especially in light of the long-standing  
14 campaign by Defendants to market the Contaminated Dog Foods as healthy and safe  
15 to induce consumers, such as Plaintiffs, to purchase the products. For instance,  
16 Defendants market the Contaminated Dog Foods as "Biologically Appropriate,"  
17 using "Fresh Regional Ingredients" comprised of 100 percent meat, poultry, fish,  
18 and/or vegetables, both on the products' packaging and on Defendants' websites.

19 20. Moreover, Defendants devote significant web and packaging space to  
20 the marketing of their DogStar® Kitchens, which they tell consumers "are the most  
21 advanced pet food kitchens on earth, with standards that rival the human food  
22 processing industry."

23 21. Defendants state on their website that the Orijen pet foods "feature[]  
24 unmatched and unique inclusions of meat, naturally providing everything your dog  
25 or cat needs to thrive." Defendants further promise on the products' packaging and  
26 on its website that its Orijen and Acana foods are "guaranteed" to "keep your dog  
27 happy, healthy, and strong."  
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1           22. Using such descriptions and promises makes Defendants' advertising  
2 campaign deceptive based on the presence of heavy metals in the Contaminated Dog  
3 Foods. Reasonable consumers, like Plaintiffs, would consider the mere inclusion of  
4 heavy metals in the Contaminated Dog Foods as a material fact in considering what  
5 pet food to purchase. Defendants' above-referenced statements, representations,  
6 partial disclosures, and omissions are false, misleading, and crafted to deceive the  
7 public as they create an image that the Contaminated Dog Foods are healthy, safe,  
8 and free of contaminants such as arsenic and lead. Moreover, Defendants knew or  
9 should have reasonably expected that the presence of heavy metals in its  
10 Contaminated Dog Foods is something an average consumer would consider in  
11 purchasing dog food. Defendants' representations and omissions are false,  
12 misleading, and reasonably likely to deceive the public.

13           23. Moreover, a reasonable consumer, such as Plaintiffs and other members  
14 of the Class would have no reason to not believe and/or anticipate that the  
15 Contaminated Dog Foods are "Biologically Appropriate" foods that use "Fresh  
16 Regional Ingredients" consisting only of meat, poultry, fish, and vegetables. Non-  
17 disclosure and/or concealment of the toxins in the Contaminated Dog Foods coupled  
18 with the misrepresentations alleged herein by Defendants suggesting that the food  
19 provides complete health and is safe is intended to and does, in fact, cause consumers  
20 to purchase a product Plaintiffs and members of the Class would not have bought if  
21 the true quality and ingredients were disclosed. As a result of these false or  
22 misleading statements and omissions, Defendants have generated substantial sales  
23 of the Contaminated Dog Foods.

24           24. The expectations of reasonable consumers and deception of these  
25 consumers by Defendants' advertising, misrepresentations, packaging, and labeling  
26 is further highlighted by the public reaction to this lawsuit as reported by various  
27 websites.

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1           25. Plaintiffs bring this action individually and on behalf of all other  
2 similarly situated consumers within California who purchased the Contaminated  
3 Dog Foods in order to cause the disclosure of the presence of heavy metals that pose  
4 a known risk to both humans and animals in the Contaminated Dog Foods, to correct  
5 the false and misleading perception Defendants have created in the minds of  
6 consumers that the Contaminated Dog Foods are high quality, safe, and healthy, and  
7 to obtain redress for those who have purchased the Contaminated Dog Foods.

8 **BPA**

9           26. The dangers of BPA in human food are recognized by the FDA, along  
10 with various states. For instance, manufacturers and wholesalers are prohibited from  
11 selling any children's products that contain BPA and any infant formula, baby food,  
12 or toddler food stored in containers with intentionally added BPA.

13           27. Still, certain Contaminated Dog Foods are sold by Defendants that  
14 contain levels of BPA—an industrial chemical that "is an endocrine disruptor. It's  
15 an industrial chemical that according to Medical News Today 'interferes with the  
16 production, secretion, transport, action, function and elimination of natural  
17 hormones.'" BPA has been linked to various health issues, including reproductive  
18 disorders, heart disease, diabetes, cancer, and neurological problems.

19           28. Despite the presence of this harmful chemical, Defendants prominently  
20 warrant, claim, feature, represent, advertise, or otherwise market the Contaminated  
21 Dog Foods as made from "Biologically Appropriate" and "Fresh Regional  
22 Ingredients" consisting entirely of fresh meat, poultry, fish, and vegetables. Indeed,  
23 each bag prominently displays the percentage of these ingredients on the front.

24           29. Defendants' website and packaging also warrants, claims, features,  
25 represents, advertises, or otherwise markets that its products are natural. In fact,  
26 Orijen's slogan is "Nourish as Nature Intended."

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30. In promoting their promise, warranty, claim, representation, advertisement, or otherwise marketing that the Contaminated Dog Foods are safe and pure, Defendants further assure its customers:

Equipped with state-of-the-art fresh food processing technologies, our DogStar® kitchens feature 25,000 square feet of cooler space, capable of holding over 500,000 pounds of fresh local meats, fish and poultry, plus fresh whole local fruits and vegetables.

Unmatched by any pet food maker, our ingredients are deemed fit for human consumption when they arrive at our kitchens fresh, bursting with goodness, and typically within 48 hours from when they were harvested.

31. To this end, Defendants' websites further warrants, claims, features, represents, advertises, or otherwise markets that the Contaminated Dog Foods are manufactured in such a way that would prevent BPA forming by closely monitoring temperatures and quality:

- "[O]ur unique Votator Heat Exchangers bring chilled fresh ingredients to room temperature without introducing water or steam, which enables us to add even more fresh meats into our foods."
- "Referred to as 'the most significant preconditioning development for extrusion cooking in the last 20 years,' our High

1 Intensity Preconditioners were custom-built for DogStar®,  
2 feeding fresh meats from the Votators to Extruders at rates  
3 previously unheard of, and without high temperatures."

- 4 • "At the heart of our kitchens is a twin thermal extruder which is  
5 fed fresh ingredients from our High Intensity Preconditioner.

6 The first of its kind in North America, it took 11 months to build,  
7 and features custom steam injection to enable very high fresh  
8 meat inclusions and a gentle cooking process which helps further  
9 reduce the carbohydrates in our foods and preserves their natural  
10 goodness."

11 32. Thus, Defendants engaged in deceptive advertising and labeling  
12 practice by expressly warranting, claiming, stating, featuring, representing,  
13 advertising, or otherwise marketing on Acana and Orijen labels and related websites  
14 that the Contaminated Dog Foods are natural, fit for human consumption, fit for  
15 canine consumption, and made from "Biologically Appropriate" and "Fresh  
16 Regional Ingredients" consisting entirely of fresh meat, poultry, fish, and vegetables  
17 when they contain the non-naturally occurring chemical BPA.

18 33. Based on these false representations, Defendants charge a premium,  
19 knowing that the claimed natural make-up of the Contaminated Dog Foods (as well  
20 as all of the other alleged false and/or misleading representations discussed herein)  
21 is something an average consumer would consider as a reason in picking a more  
22 expensive dog food. By negligently and/or deceptively representing, marketing, and  
23 advertising the Contaminated Dog Foods as natural, fit for human consumption, fit  
24 for canine consumption, natural, and made from "Biologically Appropriate" and  
25 "Fresh Regional Ingredients" consisting entirely of fresh meat, poultry, fish, and  
26 vegetables, Defendants wrongfully capitalized on, and reaped enormous profits  
27 from, consumers' strong preference for natural pet food products.

28 34. Plaintiffs bring this action individually and on behalf of all other  
similarly situated consumers within California who purchased the Contaminated  
Dog Foods, in order to cause the disclosure of the presence of BPA that poses a  
known risk to both humans and animals in the Contaminated Dog Foods, to correct

1 the false and misleading perception Defendants have created in the minds of  
2 consumers that the Contaminated Dog Foods are high quality, safe, and healthy, and  
3 to obtain redress for those who have purchased the Contaminated Dog Foods.

4 **JURISDICTION AND VENUE**

5 35. This Court has original jurisdiction over all causes of action asserted  
6 herein under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the  
7 matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest  
8 and costs and all members of the Class reside in California, which is a state other  
9 than the state(s) in which Defendants are citizens and the state in which this case is  
10 filed, and therefore any discretionary exemptions to jurisdiction under 28 U.S.C.  
11 §1332(d)(3) do not apply. Moreover, the "local controversy exemption to  
12 jurisdiction under 28 U.S.C. §1332(d)(4) does not apply because Plaintiff Reitman  
13 asserted the same factual allegations against Defendants on behalf of the Class  
14 within the three-year period preceding this pleading.

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

21 **PARTIES**

22 37. Plaintiff Reitman is, and at all times relevant hereto has been, a citizen  
23 of the state of California. Plaintiff Reitman purchased the following Contaminated  
24 Dog Foods for her two dogs, a German shepherd mix named Goliath and a Husky  
25 mix named Laska: Orijen Six Fish With New England Mackerel, Herring, Flounder,  
26 Redfish, Monkfish, Silver Hake Dry Dog Food, Acana Singles Lamb and Apple  
27 Formula Dry Dog Food, Acana Singles Duck and Pear Formula Dry Dog Food and  
28 Acana Regionals Grasslands with Lamb, Trout, and Game Bird Dry Dog Food.

1 Plaintiff Reitman purchased the largest bag available of the Contaminated Dog  
2 Foods once per month on average between January 2012 and approximately July  
3 2016. In 2016, Plaintiff Reitman began cooking for her dogs because Goliath was  
4 getting sick from the dog food she was feeding them. Since this change, Goliath has  
5 not been sick. She would generally buy the dog food at Bruno's in Venice,  
6 California. Prior to purchasing the Contaminated Dog Foods, Plaintiff Reitman saw  
7 the products the nutritional claims on the packaging, which she relied on in deciding  
8 to purchase the Contaminated Dog Foods. During that time, based on the false and  
9 misleading claims, warranties, representations, advertisements, and other marketing  
10 by Defendants, Plaintiff Reitman was unaware that the Contaminated Dog Foods  
11 contained any level of heavy metals, chemicals, or toxins and would not have  
12 purchased the food if that was fully disclosed. Plaintiff Reitman was injured by  
13 paying a premium for the Contaminated Dog Foods that have no or *de minimis* value  
14 based on the presence of the alleged heavy metals, chemicals, and toxins.

15 38. Plaintiff Shoaff is, and at all times relevant hereto has been, a citizen of  
16 the state of California. Plaintiff Shoaff purchased the following Contaminated Dog  
17 Foods for her dog, Danny, a collie who passed away in July 2018 at the age of  
18 twelve: Acana Singles Lamb and Apple Kibble and Orijen products. Plaintiff Shoaff  
19 purchased the Contaminated Dog Foods from 2013 through approximately April  
20 2018. Plaintiff generally purchased the Contaminated Dog Foods at Animal  
21 Connection in Burligame, CA and Pet Food Express in Burligame, CA. Prior to  
22 purchasing the Contaminated Dog Foods, Plaintiff Shoaff saw the nutritional claims  
23 on the packaging, which she relied on in deciding to purchase the Contaminated Dog  
24 Foods. During that time, based on the false and misleading claims, warranties,  
25 representations, advertisements, and other marketing by Defendants, Plaintiff Shoaff  
26 was unaware that the Contaminated Dog Foods contained any level of heavy metals,  
27 chemicals, or toxins and would not have purchased the food if that was fully  
28 disclosed. Plaintiff Shoaff was injured by paying a premium for the Contaminated

1 Dog Foods that have no or *de minimis* value based on the presence of the alleged  
2 heavy metals, chemicals, and toxins.

3 39. As the result of Defendants' negligent, reckless, and/or knowingly  
4 deceptive conduct as alleged herein, Plaintiffs were injured when they paid the  
5 purchase price or a price premium for the Contaminated Dog Foods that did not  
6 deliver what was promised. They paid the premium price on the assumption that the  
7 labeling of the Contaminated Dog Foods was accurate and that it was healthy,  
8 superior quality, natural, and safe for dogs to ingest. Plaintiffs would not have paid  
9 this money had they known that the Contaminated Dog Foods contained any levels  
10 of the heavy metals, chemicals, and/or toxins. Plaintiffs were further injured because  
11 the Contaminated Dog Foods have no or *de minimis* value based on the presence of  
12 the alleged heavy metals, chemicals, and toxins. Damages can be calculated through  
13 expert testimony at trial. Further, should Plaintiffs encounter the Contaminated Dog  
14 Foods in the future, they could not rely on the truthfulness of the packaging, absent  
15 corrective changes to the packaging and advertising of the Contaminated Dog Foods.

16 40. Defendant Champion Petfoods USA Inc. ("Champion USA") is  
17 incorporated in Delaware. Its headquarters and principal place of business, as of  
18 March 2016, is located at 12871 Bowling Green Road, Auburn, KY 42206. Since  
19 that time, all Contaminated Pet Foods sold in the United States and California are  
20 manufactured, sourced, and sold by Champion USA.

21 41. Defendant Champion Petfoods LP ("Champion Canada") is a Canadian  
22 limited partnership with its headquarters and principal place of business located at  
23 11403-186 St NW, Edmonton, Alberta T5S 2W6. Defendant Champion Canada  
24 wholly owns, operates, and/or controls Defendant Champion USA. Prior to March  
25 2016, all Contaminated Pet Foods sold in the United States and California were  
26 manufactured, sourced and sold by Champion Canada.

27 42. Defendants formulate, develop, manufacture, label, distribute, market,  
28 advertise, and sell the Contaminated Dog Foods under the dog food brand names

1 Orijen and Acana throughout the United States, including in California and this  
2 District, during the Class Period (defined below). The advertising, labeling, and  
3 packaging for the Contaminated Dog Foods, relied upon by Plaintiffs, was prepared,  
4 reviewed, and/or approved by Defendants and their agents, and was disseminated by  
5 Defendants and their agents through marketing, advertising, packaging, and labeling  
6 that contained the misrepresentations alleged herein. The marketing, advertising,  
7 packaging, and labeling for the Contaminated Dog Foods was designed to encourage  
8 consumers to purchase the Contaminated Dog Foods and reasonably misled the  
9 reasonable consumer, *i.e.*, Plaintiffs and the Class, into purchasing the Contaminated  
10 Dog Foods. Defendants own, manufacture, and distribute the Contaminated Dog  
11 Foods, and created, allowed, negligently oversaw, and/or authorized the unlawful,  
12 fraudulent, unfair, misleading, and/or deceptive labeling and advertising for the  
13 Contaminated Dog Foods.

14 **FACTUAL ALLEGATIONS**

15 **The Contaminated Dog Foods**

16 43. The Contaminated Dog Foods include the following:  
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(a) Acana Regionals Appalachian Ranch with Ranch-Raised Red Meats & Freshwater Catfish;



(b) Acana Regionals Grasslands with Grass-Fed Kentucky Lamb, Freshwater Trout & Game Bird;



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(c) Acana Regionals Meadowland with Free-Run Poultry, Freshwater Fish, and Nest-Laid Eggs;



(d) Acana Regionals Wild Atlantic with Wild New England Fish & Fresh Kentucky Greens;



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(e) Orijen Original with Fresh Free-Run Chicken and Turkey, Wild-Caught Fish and Nest-Laid Eggs;

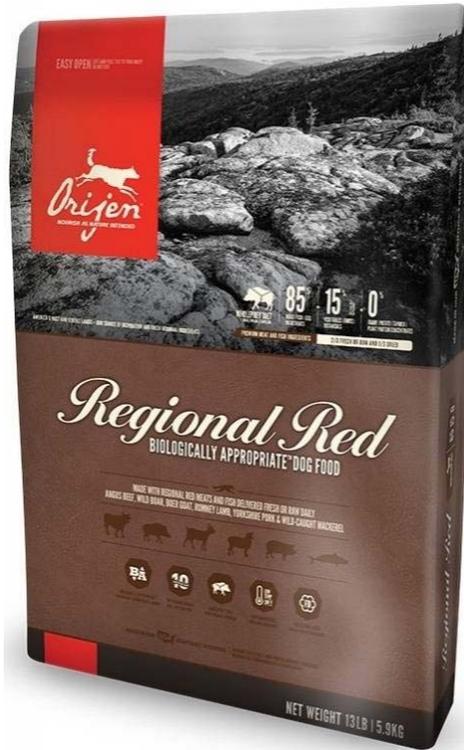


(f) Orijen Regional Red with Angus Beef, Wild Boar, Boer Goat, Romney Lamb, Yorkshire Pork & Wild Mackerel;



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(g) Orijen Regional Red Angus Beef, Ranch Raised Lamb, Wild Boar, Pork, Bison Dry Dog Food;



(h) Orijen Six Fish with New England Mackerel, Herring, Flounder, Redfish, Monkfish and Silver Hake;



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(i) Acana Singles Duck and Pear Formula Dry Dog Food;

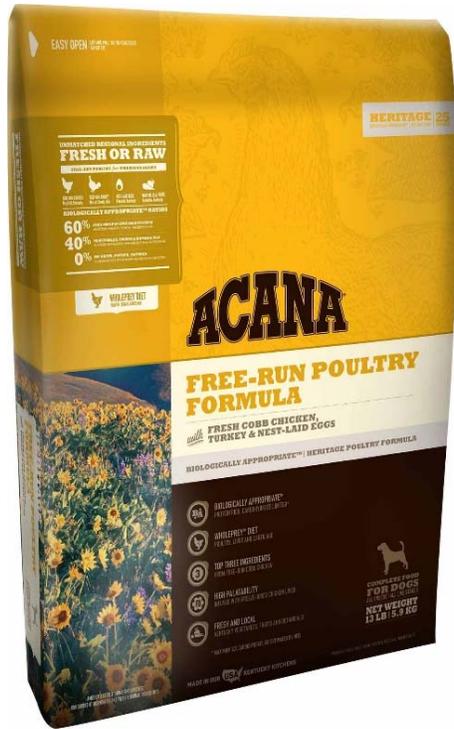


(j) Acana Singles Lamb and Apple Formula Dry Dog Food;



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(k) Acana Heritage Free-Run Poultry Formula Dry Dog Food;



(l) Acana Heritage Freshwater Fish Formula Dry Dog Food;



(m) Orijen Tundra Freeze Dried Venison, Elk, Bison, Quail, Steelhead Trout Wet Dog Food;



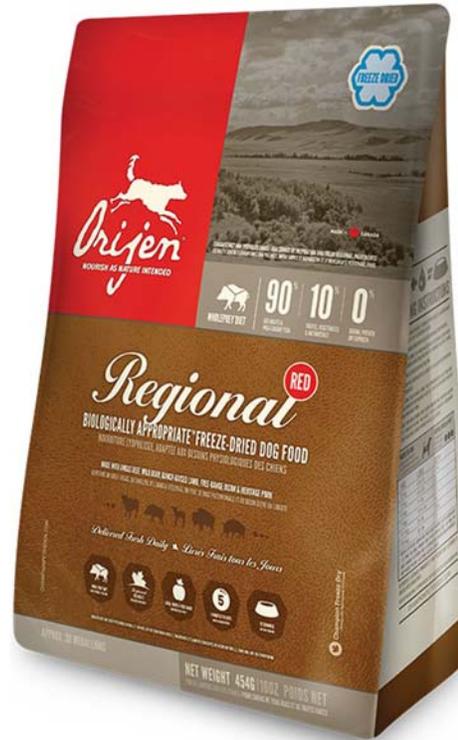
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(n) Orijen Adult Dog Freeze Dried Chicken, Turkey, Wild Caught Fish, Eggs Wet Dog Food;



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- (o) Orijen Regional Red Freeze Dried Angus Beef, Ranch Raised Lamb, Wild Boar, Pork, Bison Wet Dog Food;



- (p) Orijen Regional Red Angus Beef, Ranch Raised Lamb, Wild Boar, Pork, Bison Dry Dog Food;



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(q) Orijen Six Fish Wild-Caught Regional Saltwater and Freshwater Fish Dry Dog Food;



(r) Orijen Tundra Goat, Venison, Mutton, Bison, Arctic Char, Rabbit Dry Dog Food;



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(s) Orijen Grain Free Puppy Chicken, Turkey, Wild-Caught Fish, Eggs Dry Dog Food;



(t) Acana Singles Mackerel and Greens Formula Dry Dog Food;



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(u) Acana Heritage Meats Formula Dry Dog Food; and



(v) Acana Singles Pork and Squash Formula Dry Dog Food.



**Heavy Metals Create Known Risks When Ingested**

44. Toxins like arsenic, mercury, cadmium and lead can cause serious illness to humans and animals. A company should be vigilant to take all reasonable steps to avoid causing family pets to ingest these toxins.

45. Arsenic is a semi-metal element in the periodic table. It is odorless and tasteless. Arsenic occurs naturally in the environment as an element of the earth's crust; it is found in rocks, soil, water, air, plants, and animals. Arsenic is combined with other elements such as oxygen, chlorine, and sulfur to form inorganic arsenic compounds. Historically, arsenic compounds were used in many industries, including: (i) as a preservative in pressure-treated lumber; (ii) as a preservative in animal hides; (iii) as an additive to lead and copper for hardening; (iv) in glass manufacturing; (v) in pesticides; (vi) in animal agriculture; and (vii) as arsine gas to enhance junctions in semiconductors. The United States has canceled the approvals

1 of some of these uses, such as arsenic-based pesticides, for health and safety reasons.  
2 Some of these cancellations were based on voluntary withdrawals by producers. For  
3 example, manufacturers of arsenic-based wood preservatives voluntarily withdrew  
4 their products in 2003 due to safety concerns, and the EPA signed the cancellation  
5 order. In the Notice of Cancellation Order, the EPA stated that it "believes that  
6 reducing the potential residential exposure to a known human carcinogen is  
7 desirable." Arsenic is an element—it does not degrade or disappear.

8         46. Inorganic arsenic is a known cause of human cancer. The association  
9 between inorganic arsenic and cancer is well documented. As early as 1879, high  
10 rates of lung cancer in miners from the Kingdom of Saxony were attributed, in part,  
11 to inhaled arsenic. By 1992, the combination of evidence from Taiwan and  
12 elsewhere was sufficient to conclude that ingested inorganic arsenic, such as is found  
13 in contaminated drinking water and food, was likely to increase the incidence of  
14 several internal cancers. The scientific link to skin and lung cancers is particularly  
15 strong and longstanding, and evidence supports conclusions that arsenic may cause  
16 liver, bladder, kidney, and colon cancers as well.

17         47. Lead is a metallic substance formerly used as a pesticide in fruit  
18 orchards, but the use of such pesticides is now prohibited in the United States. Lead,  
19 unlike many other poisons, builds up in the body over time as the person is exposed  
20 to and ingests it, resulting in a cumulative exposure which can, over time, become  
21 toxic and seriously injurious to health. Lead poisoning can occur from ingestion of  
22 food or water containing lead. Acute or chronic exposure to material amounts of  
23 lead can lead to severe brain and kidney damage, among other issues, and ultimately  
24 cause death.

25         48. The FDA has set standards that regulate the maximum ppb of lead  
26 permissible in water: bottled water cannot contain more than 5 ppb of total lead or  
27 10 ppb of total arsenic. *See* 21 C.F.R. §165.110(b)(4)(iii)(A).

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1 49. Mercury is a known toxin that creates health risks to both humans and  
2 animals. The impact of the various ways humans and animals are exposed and ingest  
3 mercury has been studied for years. In fact, in as early as 1997, the EPA issued a  
4 report to Congress that detailed the health risks to both humans and animals.

5 50. Based on the toxicity and risks of mercury, regulations have been  
6 enacted at both the Federal and state level.

7 51. Cadmium is likewise a known toxin that creates risk when ingested by  
8 animals or humans. It has been specifically noted that "Kidney and bone effects  
9 have [] been observed in laboratory animals ingesting cadmium. Anemia, liver  
10 disease, and nerve or brain damage have been observed in animals eating or drinking  
11 cadmium."

12 **Defendants Falsely Advertise the Contaminated Dog Foods as Nutritious,**  
13 **Superior Quality, Pure, and Healthy While Omitting Any Mention of the**  
14 **Heavy Metals, as Well as Claim the Foods Are Natural, Pure, and Safe**  
15 **Despite the Inclusion of the Industrial Chemical BPA**

16 52. Defendants formulate, develop, manufacture, label, package, distribute,  
17 market, advertise, and sell their extensive Acana and Orijen lines of dry and freeze-  
18 dried pet food products in California and across the United States, including the  
19 Contaminated Dog Foods.

20 53. Defendants tout themselves as "a leader and innovator in making pet  
21 foods, Champion works to our own standards. These are our standards, not USDA,  
22 not FDA, not CFIA. These agencies set minimum standards which we exceed  
23 exponentially. Why? Because our Mission and our Values dictate that we do, and  
24 that's what pet lovers expect from us."

25 54. In 2016, Defendants opened DogStar<sup>®</sup> Kitchens, a 371,100 square foot  
26 production facility on 85 acres of land outside Bowling Green, KY. This facility has  
27 the capacity to produce up to 220 million pounds of Acana and Orijen pet food per  
28 year. The CEO of Champion Pet Foods, Frank Burdzy, said, "The US is our fastest  
growing market." Prior to this facility's construction, Defendants' Acana and Orijen

1 products were exclusively manufactured in Canada. Since that facility began  
2 production, all Acana and Orijen foods sold in California and across the United  
3 States are manufactured at the DogStar® Kitchens facility.

4 55. Defendants have represented that its DogStar® Kitchens meet the  
5 European Union's standard for pet food ingredients processing. They have also  
6 represented a commitment to using fresh and local ingredients, including wild-  
7 caught fish.

8 56. Defendants warrant, claim, state, represent, advertise, label, and market  
9 their Contaminated Dog Foods as natural, fit for human consumption, fit for canine  
10 consumption, and made from "Biologically Appropriate" and "Fresh Regional  
11 Ingredients" consisting entirely of fresh meat, poultry, fish, and vegetables;  
12 containing "only 1 supplement – zinc"; "provid[ing] a natural source of virtually  
13 every nutrient your dog needs to thrive"; and "guaranteed to keep your dog healthy,  
14 happy and strong." Defendants therefore had a duty to ensure that these statements  
15 were true. As such, Defendants knew or should have known that the Contaminated  
16 Dog Foods included the presence of heavy metals and/or BPA.

17 57. Likewise, by warranting, claiming, stating, featuring, representing,  
18 advertising, or otherwise marketing that Orijen and Acana foods, including the  
19 Contaminated Dog Foods, are natural, fit for human consumption, fit for canine  
20 consumption, and made from "Biologically Appropriate" and "Fresh Regional  
21 Ingredients" consisting entirely of fresh meat, poultry, fish, and vegetables,  
22 Defendants had a known duty to ensure that there were no chemicals included in the  
23 Contaminated Dog Foods. In fact, Defendants offered further assurances by  
24 representing that the quality control over the manufacturing of the Contaminated  
25 Dog Foods as a rigid process free of outsourcing.

26 58. Defendants specifically promise on their website, "[W]e prepare  
27 ACANA ourselves, in our own kitchens, where we oversee every detail of food  
28 preparation—from where our ingredients come from, to every cooking, quality and

1 food safety process." Similarly, Defendants promise that their "Dogstar® Kitchens  
2 have access to a myriad of specialty family farms, with whom we partner for our  
3 supply of trusted ingredients." Finally, Defendants promise "[s]tandards that rival  
4 the human food processing industry for authenticity, nutritional integrity, and food  
5 safety." According to the Orijen and Acana websites, Defendants "feature state-of-  
6 the-art fresh food processing technologies." As such, Defendants knew or should  
7 have known that higher temperatures coupled with the type of containers used in  
8 manufacturing create a real risk of BPA in their products.

9 59. The Contaminated Dog Foods are available at numerous retail and  
10 online outlets in the United States, including California.

11 60. The Contaminated Dog Foods are widely advertised, and Defendants  
12 employ a Chief Marketing Officer, a Vice President for Customer Engagement, and  
13 a Director of Marketing in both the United States and Canada.

14 61. The official websites for Acana and Orijen display the Contaminated  
15 Dog Foods; descriptions and full lists of ingredients for the Contaminated Dog Foods  
16 include the following promises:

17 **AWARD-WINNING FOODS AND TREATS**

18 Biologically Appropriate™ ORIJEN represents a new class of food, designed to nourish dogs and cats according to their  
19 evolutionary adaptation to a diet rich and diverse in fresh meat and protein.

20 ORIJEN features unmatched inclusions of fresh free-run poultry, whole nest-laid eggs, whole wild-caught fish and ranch-  
21 raised meats – farmed or fished in our region by people we know and trust, and delivered to our kitchens daily so they're  
22 brimming with goodness.

Trusted by pet lovers everywhere, award-winning ORIJEN foods and treats are guaranteed to keep your cherished dogs  
and cats happy, healthy and strong!

23 **AWARD-WINNING BIOLOGICALLY**  
24 **APPROPRIATE™**

25 OUR MISSION IS CLEAR AND STRONG

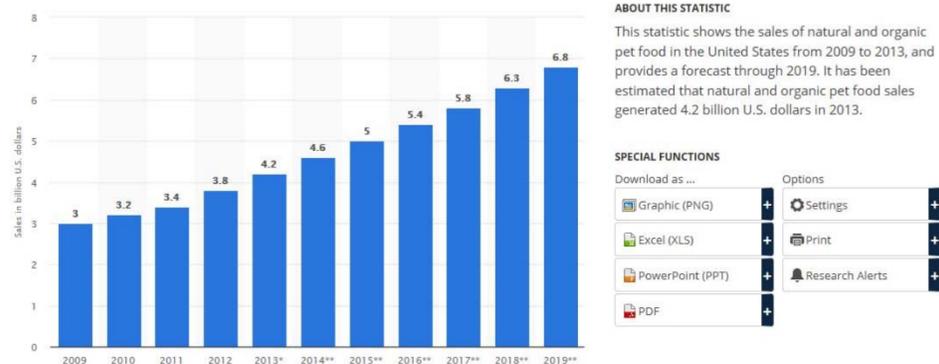
26 We make Biologically Appropriate™ dog and cat foods from Fresh Regional Ingredients and we make them from start  
27 to finish in our very own award-winning kitchens.

28 Our mission represents a new standard in pet food, designed to nourish your dog and cat in two ways. First, according to  
its natural evolution to a meat and protein-rich diet. Second, using meats, poultry, eggs and fish that are sustainably  
ranch, farmed or fished by local suppliers and delivered to our kitchens fresh each day.

We think you'll love **ACANA**. More importantly, we think your dogs and cats will too.

1 62. Defendants' websites repeat the false and misleading claims,  
 2 warranties, representations, advertisements, and other marketing about the  
 3 Contaminated Dog Foods benefits, quality, purity, and natural make-up, without any  
 4 mention of the heavy metals and/or BPA they contain. This is not surprising given  
 5 that natural pet food sales represent over \$5.5 billion in the United States and have  
 6 consistently risen over the years.

7  
 8 **Natural and organic pet food sales in the United States from 2009 to 2019 (in billion U.S. dollars)**



16 63. Moreover, Defendants have themselves acknowledged the importance  
 17 of quality dog food to the reasonable consumer:

18 "Our No. 1 mandate is BAFRINO – biologically appropriate, fresh  
 19 regional ingredients, never outsourced," said Frank Burdzy, president  
 20 and chief executive officer of Champion Petfoods in Canada, in an  
 21 interview with the Daily News Monday prior to housewarming  
 22 activities outside and inside the kitchens.

22 "We build relationships with our suppliers and farms and fisheries. We  
 23 are trusted by pet owners," Burdzy said.

24 64. As a result of Defendants' omissions, a reasonable consumer would  
 25 have no reason to suspect the presence of heavy metals and/or BPA in the  
 26 Contaminated Dog Foods without conducting his or her own scientific tests, or  
 27 reviewing third-party scientific testing of these products.

1           65.    However, after conducting third-party scientific testing, it is clear that  
2 the Contaminated Dog Foods does in fact contain levels both heavy metals and/or  
3 BPA.

4 **Defendants' Statements and Omissions Violate California Laws**

5           66.    California laws are designed to ensure that a company's claims about  
6 its products are truthful and accurate. Defendants violated these state laws by  
7 negligently, recklessly, and/or intentionally incorrectly claiming that the  
8 Contaminated Dog Foods are pure, healthy, and safe for consumption and by not  
9 accurately detailing that the products contain the toxic heavy metals and/or BPA.  
10 Defendants misrepresented that the Contaminated Dog Foods are natural, fit for  
11 human consumption, fit for canine consumption, and made from "Biologically  
12 Appropriate" and "Fresh Regional Ingredients" consisting entirely of fresh meat,  
13 poultry, fish, and vegetables; "feature[] unmatched and unique inclusions of meat,  
14 naturally providing everything your dog or cat needs to thrive"; and are "guaranteed"  
15 to "keep your dog happy, healthy, and strong."

16           67.    Defendants' marketing and advertising campaign has been sufficiently  
17 lengthy in duration, and widespread in dissemination, that it would be unrealistic to  
18 require Plaintiffs to plead reliance upon each advertised misrepresentation.

19           68.    Defendants have engaged in this long-term advertising campaign to  
20 convince potential customers that the Contaminated Dog Foods were pure, healthy,  
21 safe for consumption, and did not contain harmful ingredients such as arsenic and  
22 lead. Likewise, Defendants have engaged in this long-term advertising campaign to  
23 convince potential customers that the Contaminated Dog Foods are natural, pure,  
24 and safe despite the presence of BPA in the food.

25 **Plaintiffs' Reliance Was Reasonable and Foreseen by Defendants**

26           69.    Plaintiffs reasonably relied on Defendants' own claims, warranties,  
27 representations, advertisements, and other marketing concerning the particular  
28 qualities and benefits of the Contaminated Dog Foods.

1           70. Plaintiffs relied upon Defendants' false and/or misleading  
2 representations alleged herein, including the websites and the Contaminated Dog  
3 Foods' labels and packaging in making their purchasing decisions.

4           71. Any reasonable consumer would consider the labeling of a product (as  
5 well as the other false and/or misleading representations alleged herein) when  
6 deciding whether to purchase. Here, Plaintiffs relied on the specific statements and  
7 misrepresentations by Defendants that the Contaminated Dog Foods were natural,  
8 fit for human consumption, fit for canine consumption, and made from "Biologically  
9 Appropriate" and "Fresh Regional Ingredients" consisting entirely of fresh meat,  
10 poultry, fish, and vegetables; "featur[ing] unmatched and unique inclusions of meat,  
11 naturally providing everything your dog or cat needs to thrive"; and were  
12 "guaranteed" to "keep your dog happy, healthy, and strong" with no disclosure of  
13 the inclusion of heavy metals, including arsenic or lead, and BPA.

14 **Defendants' Knowledge and Notice of Their Breaches of Their Express**  
15 **and Implied Warranties**

16           72. Defendants had sufficient notice of their breaches of express and  
17 implied warranties. Defendants have, and had, exclusive knowledge of the physical  
18 and chemical makeup of the Contaminated Dog Foods.

19           73. Additionally, Defendants received notice of the contaminants in their  
20 dog and cat food, including the Contaminated Dog Foods, through the Clean Label  
21 Project, which found higher levels of heavy metals in its dog and cat food products.  
22 In fact, Defendants actually responded to the Clean Label Project's findings.  
23 Defendants spoke with the Clean Label Project by phone regarding its findings and  
24 methodology, which showed that Orijen pet foods have high levels of heavy metals  
25 compared to other pet foods. The Clean Label Project informed Defendants that it  
26 compared Orijen pet foods to competitors' products and gave them a one-star rating,  
27 meaning they contained higher levels of contaminants than other products on the  
28

1 market. Defendants' direct contact with the Clean Label Project demonstrates its  
2 knowledge about the Contaminated Dog Foods.

3 74. Defendants also issued a white paper in defense of the Clean Label  
4 Project findings that acknowledges that their products contain heavy metals. In that  
5 same White Paper, Defendants state "[w]e systematically test ORIJEN and ACANA  
6 products for heavy metals (arsenic, cadmium, lead and mercury) at two third-party  
7 laboratories."

8 75. The White Paper discusses the sources of arsenic, cadmium, lead, and  
9 mercury, and what Defendants contend to be acceptable levels of those heavy metals  
10 in pet food.

11 76. Defendants did not widely disseminate this White Paper or direct  
12 consumers to this White Paper. Moreover, Defendants did not change their  
13 packaging or labeling to include a disclaimer that the Contaminated Dog Foods  
14 contain any levels of the heavy metals or include a copy of the White Paper findings  
15 on the packaging or labeling. Finally, there is no disclosure as to whether the  
16 Contaminated Dog Foods tested were manufactured in the United States or Canada.

17 77. Defendants likewise had knowledge of the potential risk and inclusion  
18 of BPA in their Contaminated Dog Foods. Defendants have publicly stated they ask  
19 their suppliers if the packaging contains BPA while at the same time admitting that  
20 they in fact do not perform any tests to confirm that the Contaminated Dog Foods  
21 are BPA free. Moreover, Defendants no longer boast about "exceeding" regulations  
22 when asked if the Contaminated Pet Foods are BPA free.

23 **Privity Exists with Plaintiffs and the Proposed Class**

24 78. Defendants knew that consumers such as Plaintiffs and the proposed  
25 Class would be the end purchasers of the Contaminated Dog Foods and the target of  
26 their advertising and statements.

27

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1 79. Defendants intended that the warranties, advertising, labeling,  
2 statements, and representations would be considered by the end purchasers of the  
3 Contaminated Dog Foods, including Plaintiffs and the proposed Class.

4 80. Defendants directly marketed to Plaintiffs and the proposed Class  
5 through statements on their website, labeling, advertising, and packaging.

6 81. Plaintiffs and the proposed Class are the intended beneficiaries of the  
7 expressed and implied warranties.

8 **CLASS ACTION ALLEGATIONS**

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

12 All persons who are citizens of the State of California who, from July  
13 1, 2013, to the present, purchased the Contaminated Dog Foods for  
household or business use, and not for resale (the "Class");

14 83. Excluded from the Class are the Defendants, any parent companies,  
15 subsidiaries, and/or affiliates, officers, directors, legal representatives, employees,  
16 co-conspirators, all governmental entities, and any judge, justice, or judicial officer  
17 presiding over this matter.

18 84. This action is brought and may be properly maintained as a class action.  
19 There is a well-defined community of interests in this litigation and the members of  
20 the Class are easily ascertainable.

21 85. The members in the proposed Class are so numerous that individual  
22 joinder of all members is impracticable, and the disposition of the claims of all Class  
23 members in a single action will provide substantial benefits to the parties and Court.

24 86. Questions of law and fact common to Plaintiffs and the Class include,  
25 but are not limited to, the following:

- 26 (a) whether Defendants owed a duty of care to Plaintiffs and the  
27 Class;

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- (b) whether Defendants knew or should have known that the Contaminated Dog Foods contained heavy metals;
- (c) whether Defendants knew or should have known that the Contaminated Dog Foods contained BPA;
- (d) whether Defendants wrongfully represented and continue to represent that the Contaminated Dog Foods are natural, fit for human consumption, fit for canine consumption, and made from "Biologically Appropriate" and "Fresh Regional Ingredients" consisting entirely of fresh meat, poultry, fish, and vegetables;
- (e) whether Defendants wrongfully represented and continue to represent that the Contaminated Dog Foods are healthy, superior quality, nutritious, and safe for consumption;
- (f) whether Defendants wrongfully represented and continue to represent that the Contaminated Dog Foods are natural;
- (g) whether Defendants wrongfully represented and continue to represent that the Contaminated Dog Foods are pure and safe;
- (h) whether Defendants wrongfully represented and continue to represent that the manufacturing of the Contaminated Dog Foods is subjected to rigorous standards, including temperature;
- (i) whether Defendants wrongfully failed to state that the Contaminated Dog Foods contained heavy metals and/or BPA;
- (j) whether Defendants' representations in advertising, warranties, packaging, and/or labeling are false, deceptive, and misleading;
- (k) whether those representations are likely to deceive a reasonable consumer;
- (l) whether a reasonable consumer would consider the presence of heavy metals and/or BPA as a material fact in purchasing pet food;

- 1 (m) whether Defendants had knowledge that those representations  
2 were false, deceptive, and misleading;
- 3 (n) whether Defendants continue to disseminate those  
4 representations despite knowledge that the representations are  
5 false, deceptive, and misleading;
- 6 (o) whether a representation that a product is healthy, superior  
7 quality, nutritious and safe for consumption and does not  
8 contain arsenic, cadmium, and/or lead is material to a reasonable  
9 consumer;
- 10 (p) whether Defendants' representations and descriptions on the  
11 labeling of the Contaminated Dog Foods are likely to mislead,  
12 deceive, confuse, or confound consumers acting reasonably;
- 13 (q) whether Defendants violated various California laws;
- 14 (r) whether Defendants breached their express warranties;
- 15 (s) whether Defendants breached their implied warranties;
- 16 (t) whether Defendants engaged in unfair trade practices;
- 17 (u) whether Defendants engaged in false advertising;
- 18 (v) whether Defendants made negligent and/or fraudulent  
19 misrepresentations and/or omissions;
- 20 (w) whether Plaintiffs and the members of the Class are entitled to  
21 actual, statutory, and punitive damages; and
- 22 (x) whether Plaintiffs and members of the Class are entitled to  
23 declaratory and injunctive relief.

24 87. Defendants engaged in a common course of conduct giving rise to the  
25 legal rights sought to be enforced by Plaintiffs individually and on behalf of the other  
26 members of the Class. Identical statutory violations and business practices and  
27 harms are involved. Individual questions, if any, are not prevalent in comparison to  
28 the numerous common questions that dominate this action.



1 97. Plaintiffs and each proposed Class member's purchase of Defendants'  
2 products constituted a "transaction," as that term is defined in California Civil Code  
3 section 1761(e).

4 98. Defendants' conduct alleged herein violates the following provisions of  
5 California's Consumer Legal Remedies Act (the "CLRA"):

6 (a) California Civil Code section 1770(a)(5), by negligently,  
7 recklessly, and/or intentionally representing that the  
8 Contaminated Dog Foods are nutritious, superior quality, pure,  
9 natural, healthy and safe for consumption and by failing to  
10 make any mention of the heavy metals and or BPA in the  
11 Contaminated Dog Foods;

12 (b) California Civil Code section 1770(a)(7), by negligently,  
13 recklessly, and/or intentionally representing that the  
14 Contaminated Dog Foods were of a particular standard, quality,  
15 or grade, when they were of another;

16 (c) California Civil Code section 1770(a)(9), by negligently,  
17 recklessly, and/or intentionally advertising the Contaminated  
18 Dog Foods with intent not to sell them as advertised; and

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

22 99. On March 7, 2018, counsel for Plaintiff Reitman and the Class sent  
23 Defendants written notice (via U.S. certified mail, return receipt requested) that they  
24 are in violation of the CLRA by selling the Contaminated Pet Foods containing  
25 substances including arsenic, lead, mercury, cadmium, and BPA while claiming,  
26 among other things, that the Contaminated Pet Foods are "biologically appropriate."

27 100. Defendants failed to provide appropriate relief for their violations of  
28 CLRA sections 1770(a)(5), (7), (9), and (16) within thirty days of receipt of

1 Plaintiffs' March 7, 2018, notification. In accordance with CLRA section 1782(b),  
2 Plaintiffs and the Class are entitled, under CLRA section 1780, to recover and obtain  
3 the following relief for Defendants' violations of CLRA sections 1770(a)(5), (7), (9),  
4 and (16):

- 5 (a) Actual damages under CLRA section 1780(a)(1);
- 6 (b) Restitution of property under CLRA section 1780(a)(3);
- 7 (c) Punitive damages under CLRA section 1780(a)(4) and because  
8 Defendants have engaged in fraud, malice, or oppression; and
- 9 (d) Any other relief the Court deems proper under CLRA section  
10 1780(a)(5).

11 101. As a direct and proximate result of these violations, Plaintiffs and the  
12 Class have been harmed, and that harm will continue unless Defendants are enjoined  
13 from using the misleading marketing described herein in any manner in connection  
14 with the advertising and sale of the Contaminated Dog Foods.

15 102. Plaintiffs seek an award of attorneys' fees pursuant to, inter alia,  
16 California Civil Code section 1780(e) and California Code of Civil Procedure  
17 section 1021.5.

18 **COUNT II**

19 **Violations of California False Advertising Law, California Business**  
20 **& Professions Code §§17500, *Et Seq.*, Against Defendants on**  
21 **Behalf of the Class**

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

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

27 105. As set forth herein, Defendants' claims that the Contaminated Dog  
28 Foods are nutritious, superior quality, pure, natural, healthy and safe for  
consumption are literally false and likely to deceive the public.

1 106. Defendants' claims that the Contaminated Dog Foods are nutritious, of  
2 superior quality, pure, natural, healthy, and safe for consumption are untrue or  
3 misleading, as is failing to make any mention of heavy metals and/or BPA in the  
4 Contaminated Dog Foods.

5 107. Defendants knew, or reasonably should have known, that all these  
6 claims were untrue or misleading.

7 108. Defendants' conduct is ongoing and continuing, such that prospective  
8 injunctive relief is necessary, especially given Plaintiffs' desire to purchase these  
9 products in the future if they can be assured that, so long as the Contaminated Dog  
10 Foods are, as advertised, nutritious, superior quality, pure, natural, healthy, and safe  
11 for consumption and do not contain the heavy metals and/or BPA.

12 109. Plaintiffs and members of the Class are entitled to injunctive and  
13 equitable relief, and restitution in the amount they spent on the Contaminated Dog  
14 Foods.

15 **COUNT III**

16 **Violations of the Unfair Competition Law, California Business**  
17 **& Professions Code §§17200, *Et Seq.*, Against Defendants on**  
18 **Behalf of the Class**

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

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

23 **Fraudulent**

24 112. Defendants' statements that the Contaminated Dog Foods are nutritious,  
25 superior quality, pure, natural, healthy, and safe for consumption are literally false  
26 and likely to deceive the public, as is Defendants' failing to make any mention of  
27 heavy metals and/or BPA in the Contaminated Dog Foods.

28

1 **Unlawful**

2 113. As alleged herein, Defendants have advertised the Contaminated Dog  
3 Foods with false or misleading claims, such that Defendants' actions as alleged  
4 herein violate at least the following laws:

- 5 • The CLRA, California Business & Professions Code sections 1750, *et*  
6 *seq.*; and
- 7 • The False Advertising Law, California Business & Professions Code  
8 sections 17500, *et seq.* (the "FAL").

9 **Unfair**

10 114. Defendants' conduct with respect to the labeling, packaging,  
11 advertising, marketing, and sale of the Contaminated Dog Foods is unfair because  
12 Defendants' conduct was immoral, unethical, unscrupulous, or substantially  
13 injurious to consumers and the utility of its conduct, if any, does not outweigh the  
14 gravity of the harm to its victims.

15 115. Defendants' conduct with respect to the labeling, packaging,  
16 advertising, marketing, and sale of the Contaminated Dog Foods is also unfair  
17 because it violates public policy as declared by specific constitutional, statutory, or  
18 regulatory provisions, including, but not limited to, the FAL and the CLRA.

19 116. Defendants' conduct with respect to the labeling, packaging,  
20 advertising, marketing, and sale of the Contaminated Dog Foods is also unfair  
21 because the consumer injury is substantial, not outweighed by benefits to consumers  
22 or competition, and not one consumers, themselves, can reasonably avoid.

23 117. In accordance with California Business & Professions Code section  
24 17203, Plaintiffs seek an order enjoining Defendants from continuing to conduct  
25 business through fraudulent or unlawful acts and practices and to commence a  
26 corrective advertising campaign. Defendants' conduct is ongoing and continuing,  
27 such that prospective injunctive relief is necessary.

28

1 118. On behalf of themselves and the Class, Plaintiffs also seek an order for  
2 the restitution of all monies from the sale the Contaminated Dog Foods, which were  
3 unjustly acquired through acts of fraudulent, unfair, or unlawful competition.

4 **COUNT IV**

5 **Breach of Express Warranty Against Defendants on Behalf of the Class**

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

8 120. Defendants marketed and sold their Contaminated Dog Foods into the  
9 stream of commerce with the intent that the Contaminated Dog Foods would be  
10 purchased by Plaintiffs and the Class.

11 121. Defendants expressly warranted, advertised, and represented to  
12 Plaintiffs and the Class that their Contaminated Dog Foods are:

- 13 (a) natural, fit for human consumption, fit for canine consumption,  
14 and made from "Biologically Appropriate" and "Fresh Regional  
15 Ingredients" consisting entirely of fresh meat, poultry, fish, and  
16 vegetables;
- 17 (b) contain "only 1 supplement – zinc";
- 18 (c) nutritious, superior quality, pure, natural, healthy and safe for  
19 consumption;
- 20 (d) "provid[e] a natural source of virtually every nutrient your dog  
21 needs to thrive;" and
- 22 (e) "guaranteed to keep your dog healthy, happy and strong."

23 122. Defendants made these express warranties regarding the Contaminated  
24 Dog Foods' quality, ingredients, and fitness for consumption in writing through their  
25 website, advertisements, and marketing materials and on the Contaminated Dog  
26 Foods' packaging and labels. These express warranties became part of the basis of  
27 the bargain Plaintiffs and the Class entered into upon purchasing the Contaminated  
28 Dog Foods.

1           123. Defendants' advertisements, warranties, and representations were made  
2 in connection with the sale of the Contaminated Dog Foods to Plaintiffs and the  
3 Class. Plaintiffs and the Class relied on Defendants' advertisements, warranties, and  
4 representations regarding the Contaminated Dog Foods in decided whether to  
5 purchase Defendants' products.

6           124. Defendants' Contaminated Dog Foods do not conform to Defendants'  
7 advertisements, warranties, and representations in that they:

- 8                   (a) are not natural or suitable for consumption by humans or canines;  
9                   (b) contain levels of various heavy metals; and  
10                   (c) contain levels of BPA.

11           125. Defendants were on notice of this breach as they were aware of the  
12 included heavy metals and/or BPA in the Contaminated Dog Foods and based on the  
13 public investigation by the Clean Label Product that showed their dog food products  
14 as unhealthy.

15           126. Privity exists because Defendants expressly warranted to Plaintiffs and  
16 the Class that the Contaminated Dog Foods were natural, suitable for consumption,  
17 and contained only meat, poultry, fish, and/or vegetables, and guaranteed to keep  
18 dogs healthy, happy, and strong.

19           127. As a direct and proximate result of Defendants' conduct, Plaintiffs and  
20 the Class have suffered actual damages in that they have purchased Contaminated  
21 Dog Foods that is worth less than the price they paid and that they would not have  
22 purchased at all had they known of the presence of heavy metals and/or BPA.

23           128. Plaintiffs and the Class seek actual damages, injunctive and declaratory  
24 relief, attorneys' fees, costs, and any other just and proper relief available thereunder  
25 for Defendants' failure to deliver goods conforming to their express warranties and  
26 resulting breach.

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**COUNT V**

**Breach of Implied Warranty of Merchantability  
Against Defendants on Behalf of the Class**

1  
2  
3  
4 129. Plaintiffs incorporate by reference and reallege each and every  
5 allegation contained above, as though fully set forth herein.

6 130. Defendants are merchants engaging in the sale of goods to Plaintiffs  
7 and the Class.

8 131. There was a sale of goods from Defendants to Plaintiffs and the  
9 members of the Class.

10 132. At all times mentioned herein, Defendants manufactured or supplied  
11 the Contaminated Dog Foods, and prior to the time the Contaminated Dog Foods  
12 were purchased by Plaintiffs and the Class, Defendants impliedly warranted to them  
13 that the Contaminated Dog Foods were of merchantable quality, fit for their ordinary  
14 use (consumption by dogs), and conformed to the promises and affirmations of fact  
15 made on the Contaminated Dog Foods' containers and labels, including that the food  
16 was:

- 17 (a) natural, fit for human consumption, fit for canine consumption,  
18 and made from "Biologically Appropriate" and "Fresh Regional  
19 Ingredients" consisting entirely of fresh meat, poultry, fish, and  
20 vegetables;  
21 (b) contain "only 1 supplement – zinc";  
22 (c) nutritious, superior quality, pure, natural, healthy and safe for  
23 consumption;  
24 (d) "provid[e] a natural source of virtually every nutrient your dog  
25 needs to thrive"; and  
26 (e) "guaranteed to keep your dog healthy, happy and strong."

27 133. Plaintiffs and the Class relied on Defendants' promises and affirmations  
28 of fact when they purchased the Contaminated Dog Foods.

1           134. The Contaminated Dog Foods were not fit for their ordinary use,  
2 consumption by dogs, and did not conform to Defendants' affirmations of fact and  
3 promises as they contained heavy metals and/or BPA at material levels to a  
4 reasonable consumer.

5           135. The Contaminated Dog Foods that Defendants delivered to Plaintiffs  
6 and the Class also did not conform to affirmations of fact that they were natural  
7 because they contained the industrial chemical BPA.

8           136. Defendants breached the implied warranties by selling the  
9 Contaminated Dog Foods that failed to conform to the promises or affirmations of  
10 fact made on the container or label as each product contained heavy metals and/or  
11 BPA.

12           137. Defendants were on notice of this breach as they were aware of the  
13 heavy metals and/or BPA included in the Contaminated Dog Foods and CORE  
14 Ocean, and based on the public investigation by the Clean Label Product that showed  
15 their dog food products as unhealthy.

16           138. Privity exists because Defendants impliedly warranted to Plaintiffs and  
17 the Class through the warranting, packaging, advertising, marketing, and labeling  
18 that the Contaminated Dog Foods healthy, natural, and suitable for consumption and  
19 by failing to make any mention of heavy metals or BPA.

20           139. As a direct and proximate result of Defendants' conduct, Plaintiffs and  
21 the Class have suffered actual damages in that they have purchased Contaminated  
22 Dog Foods that is worth less than the price they paid and that they would not have  
23 purchased at all had they known of the presence of heavy metals and/or BPA.

24           140. Plaintiffs and the Class seek actual damages, injunctive and declaratory  
25 relief, attorneys' fees, costs, and any other just and proper relief available thereunder  
26 for Defendants' failure to deliver goods conforming to their implied warranties and  
27 resulting breach.

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**COUNT VI**

**Fraudulent Misrepresentation Against Defendants on Behalf of the Class**

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

142. Defendants falsely represented to Plaintiffs and the Class that their Contaminated Dog Foods are:

- (a) natural, fit for human consumption, fit for canine consumption, and made from "Biologically Appropriate" and "Fresh Regional Ingredients" consisting entirely of fresh meat, poultry, fish, and vegetables;
- (b) contain "only 1 supplement – zinc"
- (c) nutritious, superior quality, pure, natural, healthy and safe for consumption;
- (d) "provid[e] a natural source of virtually every nutrient your dog needs to thrive"; and
- (e) "guaranteed to keep your dog healthy, happy and strong."

143. Defendants intentionally and knowingly made these misrepresentations to induce Plaintiffs and the Class to purchase their Contaminated Dog Foods.

144. Defendants knew that their representations about the Contaminated Dog Foods were false in that the Contaminated Dog Foods contain levels of heavy metals and/or BPA as well as chemical ingredients. Defendants allowed their packaging, labels, advertisements, promotional materials, and website to intentionally mislead consumers, such as Plaintiffs and the Class.

145. Plaintiffs and the Class did in fact rely on these misrepresentations and purchased the Contaminated Dog Foods to their detriment. Given the deceptive manner in which Defendants advertised, represented and otherwise promoted the

1 Contaminated Dog Foods, Plaintiffs and the Class' reliance on Defendants'  
2 misrepresentations was justifiable.

3 146. As a direct and proximate result of Defendants' conduct, Plaintiffs and  
4 the Class have suffered actual damages in that they have purchased Contaminated  
5 Dog Foods that is worth less than the price they paid and that they would not have  
6 purchased at all had they known of the presence of heavy metals and/or BPA.

7 147. Plaintiffs and the Class seek actual damages, injunctive and declaratory  
8 relief, attorneys' fees, costs, and any other just and proper relief available under the  
9 laws.

## 10 COUNT VII

### 11 **Fraud by Omission Against Defendants on Behalf of the Class**

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

14 149. Defendants concealed from and failed to disclose to Plaintiffs and the  
15 Class that their Contaminated Dog Foods contained heavy metals and/or BPA.

16 150. Defendants further concealed from and failed to disclose to Plaintiffs  
17 and the Class that their Contaminated Dog Foods contained chemical ingredients.

18 151. Defendants were under a duty to disclose to Plaintiffs and members of  
19 the Class the true quality, characteristics, ingredients, and suitability of the  
20 Contaminated Dog Foods because: (1) Defendants were in a superior position to  
21 know the true state of facts about their product; (2) Defendants were in a superior  
22 position to know the actual ingredients, characteristics, and suitability of the  
23 Contaminated Dog Foods; and (3) Defendants knew that Plaintiffs and the Class  
24 could not reasonably have been expected to learn or discover that the Contaminated  
25 Dog Foods were misrepresented in the packaging, labels, advertising, and website  
26 prior to purchasing the Contaminated Dog Foods.

27

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1 would be inequitable for Defendants to retain the benefit of the payments under these  
2 circumstances.

3 165. Defendants' acceptance and retention of these benefits under the  
4 circumstances alleged herein make it inequitable for Defendants to retain the  
5 benefits without payment of the value to Plaintiffs and the Class.

6 166. Plaintiffs and the Class are entitled to recover from Defendants all  
7 amounts wrongfully collected and improperly retained by Defendants, plus interest  
8 thereon.

9 167. Plaintiffs and the Class seek actual damages, injunctive and declaratory  
10 relief, attorneys' fees, costs, and any other just and proper relief available under the  
11 laws.

12 **PRAYER FOR RELIEF**

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

17 A. An order declaring this action to be a proper class action, appointing  
18 Plaintiffs and their counsel to represent the Class, and requiring Defendants to bear  
19 the costs of class notice;  
20

21 B. An order enjoining Defendants from selling the Contaminated Dog  
22 Foods until the levels of heavy metals and/or BPA are removed or full disclosure of  
23 the presence of such appear on all labels, packaging, and advertising;  
24

25 C. An order enjoining Defendants from selling the Contaminated Dog  
26 Foods in any manner suggesting or implying that they are healthy, natural, and safe  
27 for consumption;  
28

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

4  
5 E. An order awarding declaratory relief, and any further retrospective or  
6 prospective injunctive relief permitted by law or equity, including enjoining  
7 Defendants from continuing the unlawful practices alleged herein, and injunctive  
8 relief to remedy Defendants' past conduct;

9  
10 F. An order requiring Defendants to pay restitution to restore all funds  
11 acquired by means of any act or practice declared by this Court to be an unlawful,  
12 unfair, or fraudulent business act or practice, untrue or misleading advertising, or a  
13 violation of California law, plus pre- and post-judgment interest thereon;

14  
15 G. An order requiring Defendants to disgorge or return all monies,  
16 revenues, and profits obtained by means of any wrongful or unlawful act or practice;

17  
18 H. An order requiring Defendants to pay all actual and statutory damages  
19 permitted under the counts alleged herein;

20  
21 I. An order requiring Defendants to pay punitive damages on any count  
22 so allowable;

23  
24 J. An order awarding attorneys' fees and costs, including the costs of pre-  
25 suit investigation, to Plaintiffs and the Class; and

26  
27 K. An order providing for all other such equitable relief as may be just and  
28 proper.

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**JURY DEMAND**

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

Dated: October 16, 2018

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

*/s/ Rebecca Peterson*

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