

HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

HOLLY RYDMAN, individually and on  
behalf of a class of similarly situated  
individuals,

Plaintiff,

v.

CHAMPION PETFOODS USA, INC., a  
Delaware corporation, and CHAMPION  
PETFOODS LP, a Canadian limited  
partnership,

Defendants.

No. 2:18-CV-01578-RSM

**AMENDED CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

**I. INTRODUCTION**

1. Plaintiff Holly Rydman, individually and on behalf of all others similarly situated, by and through her undersigned attorneys, bring this Class Action Complaint against Defendants Champion Petfoods USA, Inc. and Champion Petfoods LP (“Defendants”), for their negligent, reckless, and/or intentional practice of misrepresenting, failing to test for, failing to fully disclose the presence and/or risk of inclusion in their pet food of heavy metals pentobarbital, toxins, BPA, and/or unnatural or other ingredients that do not conform to the labels, packaging, advertising, and statements throughout the United States. Plaintiff seeks both injunctive and monetary relief on behalf of the proposed Class (defined below), including requiring full disclosure of all such substances in Defendants’ marketing, advertising, and labeling; prohibiting the utilization of suppliers who are street renderers or rendering facilities that accept euthanized animals; requiring testing of all ingredients and final products for such substances; and restoring monies to the members of the proposed Class. Plaintiff alleges the

1 following based upon personal knowledge as well as investigation by her counsel and as to all  
 2 other matters, upon information and belief. Plaintiff believes that substantial evidentiary support  
 3 will exist for the allegations set forth herein after a reasonable opportunity for discovery.

4 **A. Defendants Market Themselves As Only Selling Premium Dog Food With The**  
 5 **Simple Mission Of “To Be Trusted By Pet Lovers”**

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

8 3. Defendants have created a niche in the pet food market by allegedly “making  
 9 biologically ‘appropriate’ pet food- as close to what animals would eat in nature as possible- and  
 10 producing it using fresh, natural ingredients...” They then charge a premium for this  
 11 purportedly higher-quality food. The founder of the company, Peter Muhlenfeld, said, “Our  
 12 core family beliefs are [] entrenched in the company, and that is to make the very best food.”<sup>1</sup>

13 4. Defendants tout that “Biologically Appropriate™ ORIJEN represents a new class  
 14 of food, designed to nourish dogs and cats according to their evolutionary adaptation to a diet  
 15 rich and diverse in fresh meat and protein[]” and that it is “trusted by pet lovers everywhere.”<sup>2</sup>

16 5. Defendants’ packaging and labels further emphasize fresh, quality, and properly  
 17 sourced ingredients and even declares their dog food has “ingredients we love”:

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26 <sup>1</sup> The Globe and Mail, “How once-tiny pet-food maker took a bite of the global market,” Jan. 16, 2018,  
 27 <https://www.theglobeandmail.com/report-on-business/small-business/canadian-powerhouse-export-your-dog-is-eating-it/article37605774/> (last visited Nov. 13 2018).  
<sup>2</sup> <https://www.orijen.ca/us/>



6. Yet nowhere in the labeling, advertising, statements, warranties and/or packaging do Defendants disclose that the Contaminated Pet Foods (defined herein) contain and/or have a high risk of containing heavy metals, pentobarbital, BPA, toxins and/or unnatural or other ingredients that do not conform to the labels, packaging, advertising and statements, nor do they disclose that they do not test their ingredients and final products for these contaminants.

7. Indeed, the Contaminated Pet Foods have been shown to contain the following levels of arsenic, mercury, lead, cadmium, and/or BISPHENOL A (“BPA”) — all known to pose health risks to humans and animals, including dogs:<sup>3</sup>

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

<sup>3</sup> All the below pet food collectively is referred to as the “Contaminated Dog Foods.” Discovery in this action likely will lead to the identification of additional products based on Defendants’ public acknowledgment that their foods do contain heavy metals.

1	Orijen Six Fish With	3169.80	39.50	200.50	54.90	38.70
2	New England					
3	Mackerel, Herring,					
4	Flounder, Redfish,					
5	Monkfish, Silver					
6	Hake Dry Dog Food					
7	Orijen Original	907.60	0.00	93.20	10.80	489.80
8	Chicken, Turkey,					
9	Wild-Caught Fish,					
10	Eggs Dry Dog Food					
11	Orijen Regional Red	849.40	43.60	123.10	21.40	167.70
12	Angus Beef, Boar,					
13	Goat, Lamb, Pork,					
14	Mackerel Dry Dog					
15	Food					
16	Acana Regionals	846.40	82.70	37.50	8.70	489.00
17	Meadowland with					
18	Poultry, Freshwater					
19	Fish and Eggs Dry					
20	Dog Food					
21	Acana Regionals	358.20	82.90	32.50	14.90	336.70
22	Appalachian Ranch					
23	with Red Meats and					
24	Freshwater Catfish					
25	Dry Dog Food					
26	Acana Regionals	262.80	0.00	30.60	9.60	305.00
27	Grasslands with					
	Lamb, Trout, and					
	Game Bird Dry Dog					
	Food					
	Orijen Regional Red	1066.50	37.70	62.10	21.70	138.50
	Angus Beef, Ranch					
	Raised Lamb, Wild					
	Boar, Pork, Bison					
	Dry Dog Food					
	Acana Singles Duck	523.40	102.70	30.90	15.40	537.40
	and Pear Formula					
	Dry Dog Food					
	Acana Singles Lamb	401.20	73.20	35.00	3.20	423.40
	and Apple Formula					
	Dry Dog Food					
	Acana Heritage Free-	292.90	62.20	27.80	3.30	290.20
	Run Poultry Formula					
	Dry Dog Food					

1	Acana Heritage	977.70	0.00	56.20	27.40	486.80
2	Freshwater Fish					
3	Formula Dry Dog					
4	Food					
5	Orijen Tundra Freeze	23.13	6.02	27.64	5.35	12.26
6	Dried Venison, Elk,					
7	Bison, Quail,					
8	Steelhead Trout Wet					
9	Dog Food					
10	Orijen Adult Dog	23.21	13.41	7.74	9.45	7.33
11	Freeze Dried					
12	Chicken, Turkey,					
13	Wild-Caught Fish,					
14	Eggs Wet Dog Food					
15	Orijen Regional Red	102.66	0.00	23.40	19.60	16.85
16	Freeze Dried Angus					
17	Beef, Ranch Raised					
18	Lamb, Wild Boar,					
19	Pork, Bison Wet Dog					
20	Food					
21	Orijen Six Fish Wild-	2173.90	39.70	92.20	58.80	55.10
22	Caught Regional					
23	Saltwater and					
24	Freshwater Fish Dry					
25	Dog Food					
26	Orijen Tundra Goat,	1628.50	40.30	134.50	43.60	471.80
27	Venison, Mutton,					
	Bison, Arctic Char,					
	Rabbit Dry Dog Food					
	Orijen Grain Free	791.20	32.20	87.20	12.20	490.80
	Puppy Chicken,					
	Turkey, Wild-Caught					
	Fish, Eggs Dry Dog					
	Food					
	Acana Singles	1510.70	40.10	112.20	29.60	251.10
	Mackerel and Greens					
	Formula Dry Dog					
	Food					
	Acana Heritage	384.80	58.30	24.40	6.40	1731.90
	Meats Formula Dry					
	Dog Food					
	Acana Singles Pork	373.70	57.60	25.60	4.00	329.60
	and Squash Formula					
	Dry Dog Food					

1 8. Moreover, Defendants themselves admit that all formulations of their dog and cat  
2 food in fact contain heavy metals.

3 9. Defendants do not test all of their ingredients or finished products for heavy  
4 metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients.

5 10. Yet, Defendants warrant, promise, represent, mislead, label and/or advertise that  
6 the Contaminated Pet Foods are free of heavy metals, pentobarbital, toxins, BPA, and/or  
7 unnatural or other ingredients by assuring the food represents an evolutionary diet that mirrors  
8 that of a wolf – free of anything “nature did not intend for your dog to eat.”



21 11. Defendants assert that: “Virtually All Of The Nutrients In Acana Are Natural  
22 And Not Synthetic.”<sup>4</sup> Defendants make a similar claim to the Orijen Dog Foods in maintaining  
23 that the main source of any nutrient in Orijen is from a natural source.<sup>5</sup>

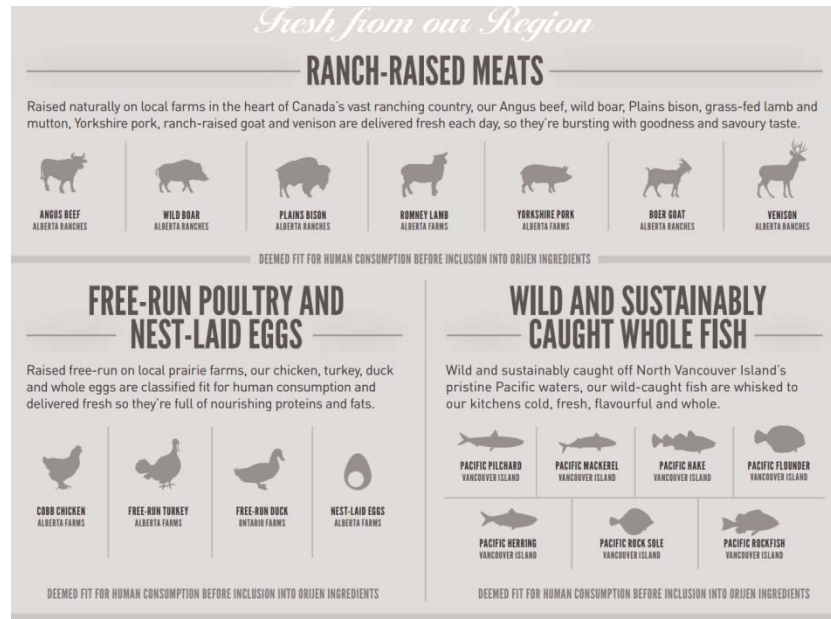
24 12. Defendants further warrant, promise, represent, advertise and declare that the  
25 Contaminated Dog Foods are made with protein, oils, and fat sources that are “Deemed fit for  
26

27 <sup>4</sup> <https://acana.com/wp-content/uploads/2015/10/DS-ACANA-Dog-Brochure-002.pdf>

<sup>5</sup> <https://www.ori jen.ca/us/foods/dog-food/dry-dog-food/tundra/> (last visited Nov. 13, 2018)



human consumption” in direct contradiction to the true nature of the contents, which include, but are not limited to, pentobarbital, toxins, BPA and/or unnatural ingredients.



13. It was recently revealed on information and belief that Defendants were knowingly, recklessly and/or negligently selling certain of the Contaminated Dog Foods from the DogStar Kitchens containing pentobarbital, a substance largely used to euthanize animals.

14. Plaintiff bring this action individually and on behalf of all other similarly situated consumers within Washington State who purchased the Contaminated Dog Foods, in order to cause the disclosure of the presence and/or risk of inclusion of heavy metals, pentobarbital, toxins, and/or unnatural or other ingredients that do not conform to the labels, packaging, advertising, and statements in the Contaminated Dog Foods, to correct the false and misleading perception Defendants have created in the minds of consumers that the Contaminated Dog Foods are high quality, safe, and healthy and to obtain redress for those who have purchased the Contaminated Dog Foods.

## II. JURISDICTION AND VENUE

15. This Court has original jurisdiction over all causes of action asserted herein under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the matter in controversy

1 exceeds the sum or value of \$5,000,000 exclusive of interest and costs and more than two-thirds  
 2 of the Class reside in states other than the states in which Defendants are citizens and in which  
 3 this case is filed, and therefore any exemptions to jurisdiction under 28 U.S.C. §1332(d) do not  
 4 apply.

5 16. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because Plaintiff  
 6 resides and suffered injury as a result of Defendants' acts in this district, many of the acts and  
 7 transactions giving rise to this action occurred in this district, Defendants conduct substantial  
 8 business in this district, Defendants have intentionally availed themselves of the laws and  
 9 markets of this district, and Defendants are subject to personal jurisdiction in this district.

### 10 **III. PARTIES**

11 17. Plaintiff Holly Rydman ("Plaintiff") is, and at all times relevant hereto has been,  
 12 a resident of the state of Washington. Plaintiff purchased the following Contaminated Dog  
 13 Foods for her 3 ½-year-old and 2-year-old French Bulldogs and 2-year-old Labrador Retriever:  
 14 Orijen Six Fish, ACANA Singles Duck and Pear, ACANA Singles Pork and Squash, ACANA  
 15 Heritage Red Meat, ACANA Regionals Grasslands, ACANA Heritage Free-Run Poultry, and  
 16 ACANA Regionals Meadowland. Plaintiff purchased the Contaminated Dog Foods once a  
 17 month on average between approximately December 2014 and February 2018, generally from  
 18 Mud Bay and Fluffy & Floyd Pet Supply. Prior to purchasing the Contaminated Dog Foods,  
 19 Plaintiff saw the nutritional claims on the packaging, which she relied on when deciding to  
 20 purchase the Contaminated Dog Foods. During that time, based on the false and misleading  
 21 claims, warranties, representations, advertisements, and other marketing by Defendants,  
 22 Plaintiff was unaware that the Contaminated Dog Foods contained and/or had a risk of  
 23 containing the disclosed levels of heavy metals, pentobarbital, toxins and/or unnatural or other  
 24 ingredients that do not conform to the labels, packaging, advertising, and statements would not  
 25 have purchased the food if that was fully disclosed. Plaintiff was injured by paying a premium  
 26 for the Contaminated Dog Foods that have no or *de minimis* value based on the presence of the  
 27 alleged heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients.



18. As the result of Defendants' negligent, reckless, and/or knowingly deceptive conduct as alleged herein, Plaintiff was injured when she paid the purchase price or a price premium for the Contaminated Dog Foods that did not deliver what was promised. She paid the premium price on the assumption that the labeling of the Contaminated Dog Foods was accurate and that it was healthy, superior quality, natural, and safe for dogs to ingest. Plaintiff would not have paid this money had she known that the Contaminated Dog Foods contained any levels of the heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients. Plaintiff was further injured because the Contaminated Dog Foods that have no or *de minimis* value based on the presence of the alleged heavy metals, chemicals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients that do not conform to the labels, packaging, advertising, and statements. Damages can be calculated through expert testimony at trial. Further, should Plaintiff encounter the Contaminated Dog Foods in the future, she could not rely on the truthfulness of the packaging, absent corrective changes to the packaging and advertising of the Contaminated Dog Foods.

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

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

21. Defendants formulate, develop, manufacture, label, distribute, market, advertise, and sell the Contaminated Dog Foods under the dog food brand names Orijen and Acana throughout the United States, including in this District, during the Class Period (defined below). The advertising, labeling, and packaging for the Contaminated Dog Foods, relied upon by

Plaintiff, was prepared, reviewed, and/or approved by Defendants and their agents, and was disseminated by Defendants and their agents through marketing, advertising, packaging, and labeling that contained the misrepresentations alleged herein. The marketing, advertising, packaging and labeling for the Contaminated Dog Foods was designed to encourage consumers to purchase the Contaminated Dog Foods and reasonably misled the reasonable consumer, i.e., Plaintiff and the Class, into purchasing the Contaminated Dog Foods. Defendants own, manufacture, and distribute the Contaminated Dog Foods, and created, allowed, negligently oversaw, and/or authorized the unlawful, fraudulent, unfair, misleading, and/or deceptive labeling and advertising for the Contaminated Dog Foods. Defendants are responsible for sourcing ingredients, manufacturing the products, and conducting all relevant quality assurance protocols, including testing, for the ingredients and finished Contaminated Dog Foods.

#### IV. FACTUAL ALLEGATIONS

##### A. The Contaminated Dog Foods

22. The Contaminated Dog Foods include the following:

- (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



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





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



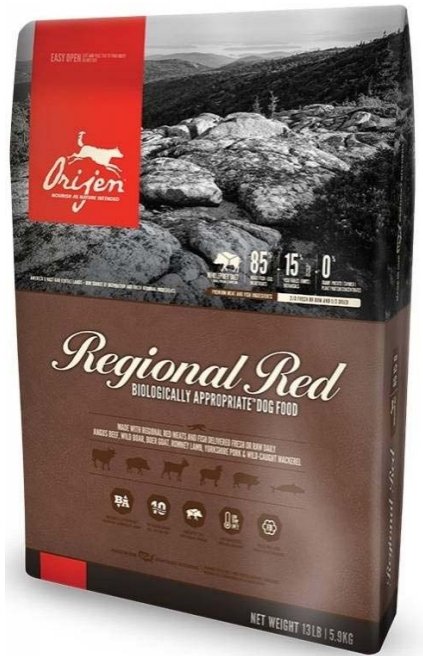
(e) Orijen Original with Fresh Free-Run Chicken and Turkey, Wild-Caught Fish and Nest-Laid Eggs



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



(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



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





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



(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



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



- (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



- (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



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



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



(u) Acana Heritage Meats Formula Dry Dog Food

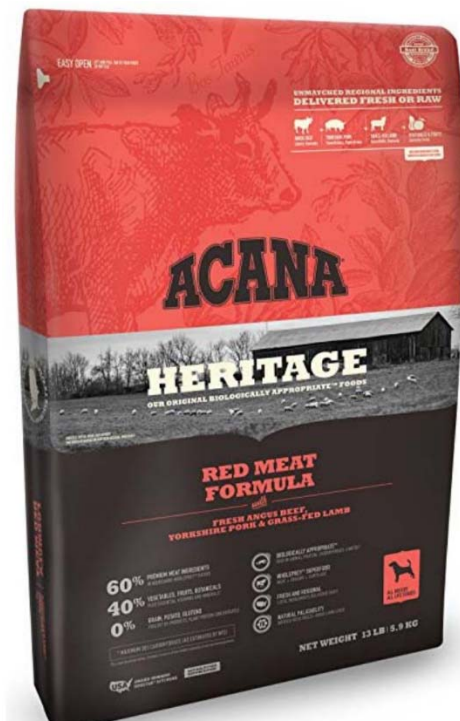




(v) Acana Singles Pork and Squash Formula Dry Dog Food



(w) Acana Heritage Red Meat Formula



**V. THE INCLUSION AND/OR RISK OF INCLUSION OF HEAVY METALS, PENTOBARBITAL, TOXINS, BPA, AND ANY OTHER CHEMICALS IN THE CONTAMINATED PET FOODS CAUSE KNOWN RISKS WHEN INGESTED**

**A. Heavy Metals**

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

24. The Contaminated Dog Foods contain arsenic, which is a carcinogen and toxin. Arsenic is a semi-metal element in the periodic table and does not degrade or disappear. It is odorless and tasteless. Arsenic occurs 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 of some of these uses, such as arsenic-based pesticides, for health and safety reasons. Some of these cancellations were based on voluntary withdrawals by producers. For example, manufacturers of arsenic-based wood preservatives voluntarily withdrew their products in 2003 due to safety concerns, and the EPA signed the cancellation order. In the Notice of Cancellation Order, the EPA stated that it “believes that reducing the potential residential exposure to a known human carcinogen is desirable.”

25. Inorganic arsenic is highly toxic and a known cause of human cancers. The association between inorganic arsenic and cancer is well documented. As early as 1879, high rates of lung cancer in miners from the Kingdom of Saxony were attributed, in part, to inhaled arsenic. By 1992, the combination of evidence from Taiwan and elsewhere was sufficient to conclude that ingested inorganic arsenic, such as is found in contaminated drinking water and food, was likely to increase the incidence of several internal cancers. The scientific link to skin

1 and lung cancers is particularly strong and longstanding, and evidence supports conclusions that  
2 arsenic may cause liver, bladder, kidney, and colon cancers as well.

3 26. Based on the risks associated with exposure to higher levels of arsenic, both the  
4 U.S. Environmental Protection Agency (“EPA”) and U.S. Food and Drug Administration  
5 (“FDA”) have set limits concerning the allowable limit of arsenic at 10 parts per billion (“ppb”)  
6 for human consumption in apple juice (regulated by the FDA) and drinking water (regulating by  
7 the EPA).<sup>6</sup>

8 27. The Contaminated Dog Foods also contain lead, which is another carcinogen and  
9 developmental toxin known to cause health problems. Lead is a metallic substance formerly  
10 used as a pesticide in fruit orchards, but the use of such pesticides is now prohibited in the  
11 United States.

12 28. Lead poisoning can occur from ingestion of food or water containing lead. Lead,  
13 unlike many other poisons, builds up in the body over time as the person is exposed to and  
14 ingests it, resulting in a cumulative exposure which can, over time, become toxic and seriously  
15 injurious to health. Chronic exposure to lead can lead to the development of chronic poisoning,  
16 cancer, developmental and reproductive disorders, severe brain and kidney damage, and  
17 ultimately cause death.

18 29. The FDA has set standards that regulate the maximum parts per billion of lead  
19 permissible in water: bottled water cannot contain more than 5 ppb of total lead or 10 ppb of  
20 total arsenic. *See* 21 C.F.R. § 165.110(b)(4)(iii)(A).

21 30. The Contaminated Dog Foods also contain mercury, a known toxin which can  
22 damage the cardiovascular system, nervous system, kidneys, and digestive tract in dogs. The  
23 impact of the various ways humans and animals are exposed and ingest mercury has been  
24  
25

26 <sup>6</sup> The FDA has taken action based on consumer products exceeding this limit, including testing and  
27 sending warning letters to the manufacturers. *See, e.g.*, Warning Letter from FDA to Valley Processing,  
Inc. (June 2, 2016), [https://www.fda.gov/iceci/enforcementactions/warningletters](https://www.fda.gov/iceci/enforcementactions/warningletters/2016/ucm506526.htm)  
/2016/ucm506526.htm (last visited Nov. 13, 2018).

1 studied for years. In fact, in as early as 1997, the EPA issued a report to Congress that detailed  
2 the health risks to both humans and animals.<sup>7</sup>

3 31. Continued exposure to mercury can injure the inner surfaces of the digestive tract  
4 and abdominal cavity, causing lesions and inflammation. Mercury has also caused lesions in the  
5 central nervous system (spinal cord and brain), kidneys, and renal glands.<sup>8</sup>

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

8 33. Finally, the Contaminated Dog Foods contain cadmium which has been observed  
9 to cause anemia, liver disease, and nerve and brain damage in animals eating or drinking it.<sup>9</sup>  
10 The U.S. Department of Health and Human Services has determined that cadmium and  
11 cadmium compounds are known human carcinogens and the EPA has likewise determined that  
12 cadmium is a probable human carcinogen.<sup>10</sup> It has been specifically noted that “Kidney and  
13 bone effects have [] been observed in laboratory animals ingesting cadmium.”<sup>11</sup>

14 34. Indeed, the FDA has acknowledged that “exposure to [these four heavy] metals  
15 are likely to have the most significant impact on public health” and has prioritized them in  
16 connection with its heavy metals workgroup looking to reduce the risks associated with human  
17 consumption of heavy metals.<sup>12</sup>

18 35. Despite the known risks of exposure to these heavy metals, Defendants have  
19 negligently, recklessly, and/or knowingly sold the Contaminated Dog Foods without disclosing  
20 they contain levels of arsenic, mercury, cadmium, and lead to consumers like Plaintiffs. Indeed,  
21 Defendants have publicly acknowledged that consumers “have deep feelings and a sense of  
22 responsibility for the well-being of their dogs and cats.”<sup>13</sup>

23 <sup>7</sup> <https://www3.epa.gov/airtoxics/112nmerc/volume5.pdf> (last visited Nov. 13, 2018).

24 <sup>8</sup> <https://wagwalking.com/condition/mercury-poisoning> (last visited Nov. 13, 2018).

25 <sup>9</sup> <https://www.atsdr.cdc.gov/ToxProfiles/tp5-c1-b.pdf> (last visited Nov. 13, 2018).

26 <sup>10</sup> <https://www.atsdr.cdc.gov/phs/phs.asp?id=46&tid=15> (last visited Nov. 13, 2018).

27 <sup>11</sup> <https://www.atsdr.cdc.gov/ToxProfiles/tp5-c1-b.pdf> (last visited Nov. 13, 2018).

<sup>12</sup> <https://www.fda.gov/Food/FoodborneIllnessContaminants/Metals/default.htm> (last visited Nov. 13, 2018).

<sup>13</sup> <https://www.theglobeandmail.com/amp/report-on-business/small-business/canadian-powerhouse-export-your-dog-is-eating-it/article37605774/> (last visited Nov. 13, 2018).

36. Moreover, Defendants' own actions show their knowledge that a reasonable consumer would care about the inclusion of heavy metals as they have specifically addressed this concern on their website by touting they require their suppliers to "provide heavy metals and mercury test results, for which we also test our final food products."<sup>14</sup>

37. Additionally, Defendants' own actions show their knowledge that a reasonable consumer would care about the inclusion of heavy metals as they have specifically addressed this concern on their website by touting they require their suppliers to "provide heavy metals and mercury test results, for which we also test our final food products."<sup>15</sup>

#### **B. Pentobarbital**

38. Pentobarbital is a Class II controlled substance, and there is no safe or set level for it in pet food. If pentobarbital is present, the food is adulterated.<sup>16</sup> The ingestion of pentobarbital by a pet can lead to adverse health issues, including: tyalism (salivation); emesis (vomiting); stool changes (soft to liquid stools, blood, mucus, urgency, explosive nature, etc.); hyporexia (decreased appetite); lethargy/depression; neurologic abnormalities (tremor, seizure, vocalization, unusual eye movements); ataxia (difficulty walking); collapse; coma; and death.<sup>17</sup>

39. Despite laws governing pet foods and providing government oversight, "[p]et food manufacturers are responsible for taking appropriate steps to ensure that the food they produce is safe for consumption and properly labeled" including "verify[ing] the identity and safety of the ingredients they receive from suppliers."<sup>18</sup>

<sup>14</sup> <https://doodlekisses.com/forum/topics/keeping-my-dog-on-an-orijen-six-fish-diet?groupUrl=thefoodgroup> (last visited Nov. 13, 2018).

<sup>15</sup> <https://doodlekisses.com/forum/topics/keeping-my-dog-on-an-orijen-six-fish-diet?groupUrl=thefoodgroup> (last visited Nov. 13, 2018).

<sup>16</sup> <http://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm> (last visited Nov. 13, 2018).

<sup>17</sup> The Honest Kitchen, "Pentobarbital—What Is It, How It Entered the Pet Food Supply Chain, and 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/> (last visited Nov. 13, 2018).

<sup>18</sup> <https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm> (last visited Nov. 13, 2018).

40. “It is not acceptable to use animals euthanized with a chemical substance in pet or other animal foods.... The detection of pentobarbital in pet food renders the product adulterated. It is the responsibility of the manufacturer to take the appropriate steps to ensure that the food they produce is safe for consumption and properly labeled.”<sup>19</sup>

41. Pentobarbital residue from euthanized animals will still be present in pet food, even if it is rendered or canned at a high temperature or pressure.<sup>20</sup>

42. Pentobarbital is routinely used to euthanize animals, and the most likely way it could get into pet food is through rendered animal products. Rendered products come from a process that converts animal tissues to feed ingredients, which may include animals that were euthanized, decomposed, or diseased.

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

44. Defendants do not adequately or regularly test their ingredients or finished products for pentobarbital.

45. It was recently revealed on information and belief that Defendants were knowingly, recklessly and/or negligently selling Contaminated Dog Foods containing pentobarbital, from the DogStar Kitchen.

### C. Bisphenol A (“BPA”)

46. The dangers of BPA in human food are recognized by the FDA, along with various states. For instance, manufacturers and wholesalers are prohibited from selling any

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*



1 children's products that contain BPA and any infant formula, baby food, or toddler food stored  
2 in containers with intentionally added BPA.

3 47. Despite these known dangers, Defendants do not consistently test their  
4 ingredients or finished products for BPA.

5 48. Certain Contaminated Dog Foods are sold by Defendants that contain levels of  
6 BPA—an industrial chemical that “is an endocrine disruptor. It's an industrial chemical that  
7 according to Medical News Today ‘. . . interferes with the production, secretion, transport,  
8 action, function and elimination of natural hormones.’”<sup>21</sup> BPA has been linked to various health  
9 issues, including reproductive disorders, heart disease, diabetes, cancer, and neurological  
10 problems.<sup>22</sup>

11 49. Despite the presence of these unnatural and potentially harmful chemicals,  
12 Defendants prominently warrant, claim, feature, represent, advertise, or otherwise market the  
13 Contaminated Dog Foods as made from “Biologically Appropriate” and “Fresh Regional  
14 Ingredients” consisting entirely of fresh meat, poultry, fish, and vegetables. Indeed, each bag  
15 prominently displays the percentage of these ingredients on the front.

## 16 **VI. DEFENDANTS FALSELY ADVERTISE THE CONTAMINATED DOG FOODS**

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

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

24  
25 <sup>21</sup>Dr. Karen Becker, *A Major Heads Up: Don't Feed This to Your Dog*, Healthy Pets (Feb. 13, 2017),  
26 <https://healthypets.mercola.com/sites/healthypets/archive/2017/02/13/dogs-canned-food-dangers.aspx>  
(last visited Nov. 13, 2018).

27 <sup>22</sup> Christian Nordquist, *Bisphenol A: How Does It Affect Our Health?* Medical News Today (May 24,  
2017), <https://www.medicalnewstoday.com/articles/221205.php> (last visited Nov. 13, 2018).

1           52. In 2016, Defendants opened DogStar® Kitchens, a 371,100 square foot  
2 production facility on 85 acres of land outside Bowling Green, Kentucky. This facility has the  
3 capacity to produce up to 220 million pounds of Acana and Orijen pet food per year. The CEO  
4 of Champion Pet Foods, Frank Burdzy, said, “The US is our fastest growing market.” Prior to  
5 this facility’s construction, Defendants’ Acana and Orijen products were exclusively  
6 manufactured in Canada. Since that facility began production, all Acana and Orijen foods sold  
7 in the United States are manufactured at the DogStar® Kitchens facility.

8           53. Defendants have represented a commitment to using fresh and local ingredients,  
9 including wild-caught fish.

10           54. Defendants have represented that its DogStar® Kitchens meet the European  
11 Union’s standard for pet food: “USA Dogstar® kitchens, ingredients, processes and foods all  
12 meet the strictest European Union standards – which are stricter those by AAFCO, the CIA or  
13 FDA. Likewise, Defendants' proclaim that Orijen is “[u]nmatched by any other pet food maker  
14 anywhere, our kitchens meet the strictest standards in the world, including the Government of  
15 Canada, and the European Union.” Indeed, Defendants own CEO has stated that “[e]ven if  
16 we’re selling in Canada or the U.S or Asia, we manufacture to the EU standard...”

17           55. However, contrary to Defendants’ assertion, they do not meet European Union  
18 standards for pet foods or human consumption.

19           56. The European Parliament and the Council of the European Union state that  
20 “[p]roducts intended for animal feed must be sound, genuine and of merchantable quality and  
21 therefore when correctly used must not represent any danger to human health, animal health or  
22 to the environment or adversely affect livestock production.” The European Parliament and the  
23 Council of the European Union provide maximum levels for undesirable substances in animal  
24 feed, such as lead, arsenic, mercury, and cadmium, and make clear that products that contain  
25 undesirable substances that exceed the specified maximum levels will be prohibited. In relevant  
26 part, subject to certain exceptions, arsenic must not exceed 2ppm (or 2000ppb). Yet, the testing  
27

1 results contained herein show that certain of Defendants products have exceeded the European  
2 Union's maximum level for arsenic in animal feed.

3 57. Defendants representation that the foods and ingredients are fit for human  
4 consumption are likewise misleading under the European Union standards.

5 58. Defendants warrant, claim, state, represent, advertise, label, and market their  
6 Contaminated Dog Foods as natural, fit for human consumption, fit for canine consumption, in  
7 compliance with relevant EU regulations and standards and made from “Biologically  
8 Appropriate” and “Fresh Regional Ingredients” consisting entirely of fresh meat, poultry, fish,  
9 and vegetables; containing “only 1 supplement – zinc;” “provid[ing] a natural source of virtually  
10 every nutrient your dog needs to thrive;” and “guaranteed to keep your dog healthy, happy and  
11 strong.” Defendants therefore had a duty to ensure that these statements were true. As such,  
12 Defendants knew or should have known that the Contaminated Dog Foods included the  
13 presence of heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients that  
14 do not conform to the labels, packaging, advertising, and statements. Likewise, by warranting,  
15 claiming, stating, featuring, representing, advertising, or otherwise marketing that Orijen and  
16 Acana foods, including the Contaminated Dog Foods, are natural, fit for human consumption, fit  
17 for canine consumption, in compliance with relevant EU regulations and standards, and made  
18 from “Biologically Appropriate” and “Fresh Regional Ingredients” consisting entirely of fresh  
19 meat, poultry, fish, and vegetables, Defendants had a duty to ensure that there were no  
20 chemicals and toxins included in the Contaminated Dog Foods. In fact, Defendants offered  
21 further assurances by representing that the quality control over the manufacturing of the  
22 Contaminated Dog Foods as a rigid process free of outsourcing.

23 59. Defendants specifically promise on their website, “[W]e prepare ACANA  
24 ourselves, in our own kitchens, where we oversee every detail of food preparation — from  
25 where our ingredients come from, to every cooking, quality and food safety process.” Similarly,  
26 Defendants promise that their “Dogstar® Kitchens have access to a myriad of specialty family  
27 farms, with whom we partner for our supply of trusted ingredients.” Finally, Defendants

1 promise “[s]tandards that rival the human food processing industry for authenticity, nutritional  
 2 integrity, and food safety.” According to the Orijen and Acana websites, Defendants “feature  
 3 state-of-the-art fresh food processing technologies.” As such, Defendants knew or should have  
 4 known that higher temperatures coupled with the type of containers used in manufacturing  
 5 create a real risk of BPA in their products.

6 60. Defendants’ website and packaging also warrant, claim, feature, represent,  
 7 advertise, or otherwise market that their products are natural. In fact, Orijen’s slogan is  
 8 “Nourish as Nature Intended” and the protein, oil, and fat sources are “fit for human  
 9 consumption.”



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20 61. In promoting their promises, warranties, claims, representations, advertisements,  
 21 or otherwise marketing that the Contaminated Dog Foods are safe and pure, Defendants provide  
 22 further assurances to their customers:

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

27 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.

62. To this end, Defendants' websites further warrant, claim, feature, represent, advertise, or otherwise market 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 Intensity Preconditioners were custom-built for DogStar®, feeding fresh meats from the Votators to Extruders at rates previously unheard of, and without high temperatures."

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

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

63. Thus, Defendants engaged in deceptive advertising and labeling practice by expressly warranting, claiming, stating, featuring, representing, advertising, or otherwise marketing on Acana and Orijen labels and related websites that the Contaminated Dog Foods are natural, fit for human consumption, fit for canine consumption, in compliance with relevant EU regulations and standards, and made from "Biologically Appropriate" and "Fresh Regional Ingredients" consisting entirely of fresh meat, poultry, fish, and vegetables when they contain the non-naturally occurring chemicals of pentobarbital and BPA.

64. Based on these false representations, Defendants charge a premium, knowing that the claimed natural make-up of the Contaminated Dog Foods (as well as all of the other alleged false and/or misleading representations discussed herein) is something an average consumer would consider as a reason in picking a more expensive dog food. By negligently and/or deceptively representing, marketing, and advertising the Contaminated Dog Foods as natural, fit for human consumption, fit for canine consumption, in compliance with relevant EU regulations and standards, and made from "Biologically Appropriate" and "Fresh Regional Ingredients" consisting entirely of fresh meat, poultry, fish, and vegetables, Defendants

wrongfully capitalized on, and reaped enormous profits from, consumers' strong preference for natural pet food products. Moreover, Defendants were improperly selling adulterated dog food that should not have been on the shelves at all as any level of pentobarbital is not acceptable in pet food.

65. Additionally, Defendants knew or should have known that their ingredients, and thus final products, could contain materials such as heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients, yet they did not test all ingredients and finished products, including the Contaminated Dog Foods, for such materials.

66. The Contaminated Dog Foods are available at numerous retail and online outlets in the United States, including Washington.

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

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

### **AWARD-WINNING FOODS AND TREATS**

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

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

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# AWARD-WINNING BIOLOGICALLY APPROPRIATE™

OUR MISSION IS CLEAR AND STRONG

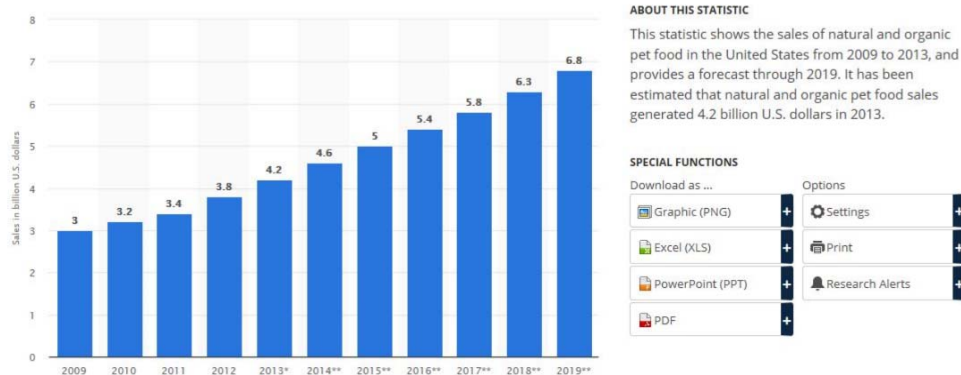
We make **Biologically Appropriate™** dog and cat foods from **Fresh Regional Ingredients** and we make them from start to finish in our very own **award-winning kitchens**.

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 ranched, 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.

69. Defendants' websites repeat the false and misleading claims, warranties, representations, advertisements, and other marketing about the Contaminated Dog Foods' benefits, quality, purity, and natural make-up, without any mention of the heavy metals, pentobarbital, toxins, and/or unnatural or other ingredients that do not conform to the labels, packaging, advertising, and statements they contain. This is not surprising given that natural pet food sales represent over \$5.5 billion in the United States and have consistently risen over the years.<sup>23</sup>

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



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

<sup>23</sup> Statista, *Natural and Organic Pet Food Sales in the U.S. from 2009 to 2019*, The Statistics Portal (accessed Oct. 25, 2017). <https://www.statista.com/statistics/548957/us-sales-of-natural-and-organic-pet-food/>

1 According to Frank Burdzy, President and Chief Executive Officer of Champion  
 2 Petfoods, "Our No. 1 mandate is BAFRINO – biologically appropriate, fresh  
 3 regional ingredients, never outsourced." Burdzy continued, "We build  
 4 relationships with our suppliers and farms and fisheries. We are trusted by pet  
 5 owners."<sup>24</sup>

6 71. As a result of Defendants' omissions, a reasonable consumer would have no  
 7 reason to suspect the presence of heavy metals, pentobarbital, toxins, BPA, and/or unnatural or  
 8 other ingredients that do not conform to the labels, packaging, advertising, and statements in the  
 9 Contaminated Dog Foods without conducting his or her own scientific tests, or reviewing third-  
 10 party scientific testing of these products.

11 72. However, after conducting third-party scientific testing, it is clear that the  
 12 Contaminated Dog Foods do in fact contain levels of heavy metals, pentobarbital, and/or BPA.

13 73. Defendants have wrongfully and misleadingly advertised and sold the  
 14 Contaminated Dog Foods without any label or warning indicating to consumers that these  
 15 products contain heavy metals, pentobarbital, toxins, and/or unnatural or other ingredients, or  
 16 that these toxins can over time accumulate in the dog's body to the point where poisoning,  
 17 injury, and/or disease can occur.

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

25 <sup>24</sup> Mason, C., *Champion Petfoods DogStar Kitchens holds housewarming*, BOWLING GREEN DAILY NEWS  
 26 (Jan. 5, 2016) available at [http://www.bgdailynews.com/news/champion-petfoods-dogstar-kitchens-  
 27 holds-housewarming/article\\_bf34275d-2242-5f3f-a9cc-14174235acc1.html?utm\\_medium=social&utm\\_source=email&utm\\_campaign=user-share](http://www.bgdailynews.com/news/champion-petfoods-dogstar-kitchens-holds-housewarming/article_bf34275d-2242-5f3f-a9cc-14174235acc1.html?utm_medium=social&utm_source=email&utm_campaign=user-share) (last accessed  
 March 1, 2018).

1           75.     Moreover, Defendants devote significant web and packaging space to the  
2 marketing of their DogStar® Kitchens, which they tell consumers “are the most advanced pet  
3 food kitchens on earth, with standards that rival the human food processing industry.”

4           76.     Defendants state on their website that the Orijen pet foods “feature[] unmatched  
5 and unique inclusions of meat, naturally providing everything your dog or cat needs to thrive.”  
6 Defendants further promise on the products’ packaging and on its website that its Orijen and  
7 Acana foods are “guaranteed” to “keep your dog happy, healthy, and strong.”

8           77.     Using such descriptions and promises makes Defendants’ advertising campaign  
9 deceptive based on presence of heavy metals, pentobarbital, toxins, BPA, and/or unnatural or  
10 other ingredients in the Contaminated Dog Foods. Reasonable consumers, like Plaintiffs, would  
11 consider the mere presence of heavy metals in the Contaminated Dog Foods a material fact in  
12 considering what pet food to purchase. Defendants’ above-referenced statements,  
13 representations, partial disclosures, and omissions are false, misleading, and crafted to deceive  
14 the public as they create an image that the Contaminated Dog Foods are healthy, safe, and free  
15 of contaminants. Moreover, Defendants knew or should have reasonably expected that the  
16 presence of heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients in  
17 their Contaminated Dog Foods is something an average consumer would consider in purchasing  
18 dog food. Defendants’ representations and omissions are false, misleading, and reasonably  
19 likely to deceive the public.

20           78.     Moreover, reasonable consumers, such as Plaintiffs and other members of the  
21 Class (as defined herein), would have no reason to not believe and/or anticipate that the  
22 Contaminated Dog Foods are “Biologically Appropriate” foods that use “Fresh Regional  
23 Ingredients” consisting only of meat, poultry, fish, and vegetables. Non-disclosure and/or  
24 concealment of the toxins in the Contaminated Dog Foods coupled with the misrepresentations  
25 alleged herein by Defendants suggesting that the food provides complete health and is safe is  
26 intended to and does, in fact, cause consumers to purchase a product Plaintiffs and members of  
27 the Class would not have bought if the true quality and ingredients were disclosed. As a result

1 of these false or misleading statements and omissions, Defendants have generated substantial  
2 sales of the Contaminated Dog Foods.

3 79. The expectations of reasonable consumers and deception of these consumers by  
4 Defendants' advertising, misrepresentations, packaging, labeling is further highlighted by the  
5 public reaction to the allegations in this lawsuit as reported by various websites.

6 **VII. DEFENDANTS' STATEMENTS AND OMISSIONS**  
7 **VIOLATE WASHINGTON LAWS**

8 80. Washington laws are designed to ensure that a company's claims about its  
9 products are truthful and accurate. Defendants violated these state laws by negligently,  
10 recklessly, and/or intentionally incorrectly claiming that the Contaminated Dog Foods are pure,  
11 healthy, and safe for consumption and by not accurately detailing that the products contain the  
12 toxic heavy metals. pentobarbital, toxins, and/or unnatural or other ingredients that do not  
13 conform to the labels, packaging, advertising, and statements. Defendants misrepresented that  
14 the Contaminated Dog Foods are natural, fit for human consumption, fit for canine  
15 consumption, in compliance with relevant EU regulations and standards and made from  
16 "Biologically Appropriate" and "Fresh Regional Ingredients" consisting entirely of fresh meat,  
17 poultry, fish, and vegetables; "feature[] unmatched and unique inclusions of meat, naturally  
18 providing everything your dog or cat needs to thrive;" and are "guaranteed" to "keep your dog  
19 happy, healthy, and strong."

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

23 82. Defendants have engaged in this long-term advertising campaign to convince  
24 potential customers that the Contaminated Dog Foods were pure, healthy, safe for consumption,  
25 and did not contain harmful ingredients such as arsenic and lead. Likewise, Defendants have  
26 engaged in this long-term advertising campaign to convince potential customers that the  
27



Contaminated Dog Foods are natural, pure, and safe despite the presence of pentobarbital and/or BPA in the food.

### **VIII. PLAINTIFFS' RELIANCE WAS REASONABLE AND FORESEEN BY DEFENDANTS**

83. Plaintiff reasonably relied on Defendants' own claims, warranties, representations, advertisements, and other marketing concerning the particular qualities and benefits of the Contaminated Dog Foods.

84. Plaintiff also relied upon Defendants' false and/or misleading representations alleged herein, including the websites and/or the Contaminated Dog Foods' labels and packaging in making her purchasing decisions.

85. Any reasonable consumer would consider the labeling of a product (as well as the other false and/or misleading representations alleged herein) when deciding whether to purchase. Here, Plaintiff relied on certain of the various specific statements and misrepresentations by Defendants that the Contaminated Dog Foods were natural, fit for human consumption, fit for canine consumption, in compliance with relevant EU regulations and made from "Biologically Appropriate" and "Fresh Regional Ingredients" consisting entirely of fresh meat, poultry, fish, and vegetables; "feature[ing] unmatched and unique inclusions of meat, naturally providing everything your dog or cat needs to thrive;" and were "guaranteed" to "keep your dog happy, healthy, and strong" with no disclosure of the inclusion of heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients that do not conform to the labels, packaging, advertising, and statements.

### **IX. DEFENDANTS' KNOWLEDGE AND NOTICE OF THEIR BREACHES OF THEIR EXPRESS AND IMPLIED WARRANTIES**

86. Defendants had sufficient notice of their breaches of express and implied warranties. Defendants have, and had, exclusive knowledge of the physical and chemical makeup of the Contaminated Dog Foods. Defendants also had exclusive knowledge of their suppliers and whether any were rendering facilities that supplied ingredients at risk for containing pentobarbital. Defendants have publicly stated on their website that they require their

1 suppliers to “provide heavy metals and mercury test results, for which we also test our final food  
2 products.”<sup>25</sup> As such, they have had test results that show the inclusion of heavy metals in the  
3 Contaminated Dog Foods.

4 87. Defendants have publicly stated on their website that they require their suppliers  
5 “provide heavy metals and mercury test results, for which we also test our final food products.”  
6 As such, they have had testing results showing the inclusion of heavy metals in the  
7 Contaminated Dog Foods.

8 88. Additionally, Defendants received notice of the contaminants in their products,  
9 including the Contaminated Dog Foods, through the Clean Label Project, which found higher  
10 levels of heavy metals in their products. In fact, Defendants actually responded to the Clean  
11 Label Project’s findings. Defendants spoke with the Clean Label Project by phone regarding its  
12 findings and methodology, which showed that Orijen pet foods have high levels of heavy metals  
13 compared to other pet foods. The Clean Label Project informed Defendants that it compared  
14 Orijen pet foods to competitors’ products and gave them a one-star rating, meaning their  
15 products contained higher levels of contaminants than other products on the market.<sup>26</sup>  
16 Defendants’ direct contact with the Clean Label Project demonstrates their knowledge about the  
17 Contaminated Dog Foods.

18 89. Defendants also issued a white paper in defense of the Clean Label Project  
19 findings that acknowledges their products contain heavy metals.<sup>27</sup> In that same White Paper,  
20 Defendants stated “[w]e systematically test ORIJEN and ACANA products for heavy metals  
21 (arsenic, cadmium, lead and mercury) at two third-party laboratories.”

22 90. The White Paper discussed the sources of arsenic, cadmium, lead and mercury,  
23 and what Defendants contend to be acceptable levels of those heavy metals in pet food.  
24

25 <sup>25</sup> [https://doodlekisses.com/forum/topics/keeping-my-dog-on-an-orijen-six-fish-](https://doodlekisses.com/forum/topics/keeping-my-dog-on-an-orijen-six-fish-diet?groupUrl=thefoodgroup)  
26 [diet?groupUrl=thefoodgroup](https://doodlekisses.com/forum/topics/keeping-my-dog-on-an-orijen-six-fish-diet?groupUrl=thefoodgroup) (last visited Nov. 13, 2018).

26 <sup>26</sup> Clean Label Project, “Orijen: Why Aren’t You Listening to Your Customers?”  
27 <http://www.cleanlabelproject.org/orijen-customers/> (last visited Nov. 13, 2018).

27 <sup>27</sup> [http://www.championpetfoods.com/wp-content/themes/champion-petfoods/res/research/Champion-](http://www.championpetfoods.com/wp-content/themes/champion-petfoods/res/research/Champion-Petfoods-White-Paper-Heavy-Metals.pdf)  
[Petfoods-White-Paper-Heavy-Metals.pdf](http://www.championpetfoods.com/wp-content/themes/champion-petfoods/res/research/Champion-Petfoods-White-Paper-Heavy-Metals.pdf) (last visited Nov. 13, 2018).

1           91. Defendants did not widely disseminate this White Paper or direct consumers to  
2 this White Paper. Moreover, Defendants did not change their packaging or labeling to include a  
3 disclaimer that the Contaminated Dog Foods contain any levels of the heavy metals or include a  
4 copy of the White Paper findings on the packaging or labeling. Finally, there is no disclosure as  
5 to whether the Contaminated Dog Foods tested were manufactured in the United States or  
6 Canada.

7           92. Defendants likewise had knowledge of the potential risk and inclusion of  
8 pentobarbital and BPA in their Contaminated Dog Foods. Defendants have publicly stated they  
9 ask their suppliers if the packaging contains BPA while at the same time admitting that they in  
10 fact do not perform any tests to confirm that the Contaminated Dog Foods are BPA free.  
11 Moreover, Defendants no longer boast about “exceeding” regulations when asked if the  
12 Contaminated Pet Foods are BPA free.

13           93. Defendants also misrepresented the sourcing of their ingredients with respect to  
14 the presence of, or risk of presence of, pentobarbital.

15           94. Defendants were or should have been aware of a recall by pet food company  
16 Evangers because its food contained pentobarbital.

17           **X. PRIVACY EXISTS WITH PLAINTIFF AND THE PROPOSED CLASS**

18           95. Defendants knew that consumers such as Plaintiff and the proposed Class would  
19 be the end purchasers of the Contaminated Dog Foods and the target of their advertising and  
20 statements.

21           96. Defendants intended that the warranties, advertising, labeling, statements, and  
22 representations would be considered by the end purchasers of the Contaminated Dog Foods,  
23 including Plaintiff and the proposed Class.

24           97. Defendants directly marketed to Plaintiff and the proposed Class through  
25 statements on their website, labeling, advertising, and packaging.

26           98. Plaintiff and the proposed Class are the intended beneficiaries of the expressed  
27 and implied warranties.

**XI. CLASS ACTION ALLEGATIONS**

99. Plaintiff bring this action individually and on behalf of the following Class pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:

All persons who reside in the State of Washington who, from July 1, 2013, to the present, purchased the Contaminated Dog Foods in the State of Washington for household or business use, and not for resale (the “Class”).

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

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

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

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

- (a) whether Defendants owed a duty of care to Plaintiff and the Class;
- (b) whether Defendants knew or should have known that the Contaminated Dog Foods contained heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients that do not conform to the labels, packaging, advertising, and statements;
- (c) whether Defendants failed to test for the presence of heavy metals heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients that do not conform to the labels, packaging, advertising, and statements;
- (d) whether Defendants wrongfully represented and continue to represent that the Contaminated Dog Foods are natural, fit for human consumption, fit for canine consumption, in compliance with relevant EU regulations and standards, 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, pentobarbital, toxins, BPA, and/or unnatural or other ingredients that do not conform to the labels, packaging, advertising, and statements;
- (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 , pentobarbital, toxins, BPA, and/or unnatural or other ingredients that do not conform to the labels, packaging, advertising, and statements as a material fact in purchasing pet food;
- (m) whether Defendants had knowledge that those representations were false, deceptive, and misleading;
- (n) whether Defendants continue to disseminate those representations despite knowledge that the representations are false, deceptive, and misleading;
- (o) whether a representation that a product is healthy, superior quality, nutritious and safe for consumption and does not contain arsenic heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients that do not conform to the labels, packaging, advertising, and statements is material to a reasonable consumer;
- (p) whether Defendants' representations and descriptions on the labeling of the Contaminated Dog Foods are likely to mislead, deceive, confuse, or confound consumers acting reasonably;
- (q) whether Defendants violated various state laws, including Washington;
- (r) whether Defendants breached their express warranties;
- (s) whether Defendants breached their implied warranties;
- (t) whether Defendants engaged in unfair trade practices;
- (u) whether Defendants' conduct was negligent;
- (v) whether Defendants' conduct was fraudulent;

- (w) whether Defendants made negligent and/or fraudulent misrepresentations and/or omissions;
- (x) whether Plaintiff and the members of the Class are entitled to actual, statutory, and punitive damages; and
- (y) whether Plaintiff and members of the Class are entitled to declaratory and injunctive relief.

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

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

106. Plaintiff will fairly and adequately represent and protect the interests of the Class, have no interest incompatible with the interests of the Class, and have retained counsel competent and experienced in class action, consumer protection, and false advertising litigation.

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

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

109. As a result of the foregoing, class treatment is appropriate.

## XII. CLAIMS FOR RELIEF

### COUNT I

#### **Breach of Express Warranty, RCW § 62A.2-313, against Defendant on Behalf of Plaintiff and the Class**

110. Plaintiff incorporates by reference and realleges each and every allegation contained in the preceding paragraphs, as though fully set forth herein.

111. Defendants marketed and sold their Contaminated Dog Foods in to the stream of commerce with the intent that they would be purchased by Plaintiff and members of the Class.

112. Defendants expressly warranted, advertised, and represented to Plaintiff and members of the Class that their Contaminated Foods are:

- (a) natural, fit for human consumption, fit for canine consumption, in compliance with relevant EU regulations 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;”
- (e) “guaranteed to keep your dog healthy, happy and strong”; and
- (f) produced and manufactured under standards that comply with European Union regulations and standards.

113. Defendants made these express warranties regarding the Contaminated Dog Foods’ quality, ingredients, and fitness for consumption in writing through their website, advertisements, and marketing materials and on the Contaminated Dog Foods’ packaging and labels. These express warranties became part of the basis of the bargain Plaintiff and the Class entered in to upon purchasing the Contaminated Dog Foods.

114. Defendants’ advertisements, warranties, and representations were made in connection with the sale of the Contaminated Dog Foods to Plaintiff and the Class. Plaintiff and the Class relied on Defendants’ advertisements, warranties, and representations regarding the Contaminated Dog Foods when deciding whether to purchase Defendants’ products.

115. Defendants’ Contaminated Dog Foods do not conform to Defendants’ advertisements, warranties and representations in that they:

- (a) Are not natural or safe for consumption by humans or canines;
- (b) Contain levels of various heavy metals;
- (c) Contain levels of BPA; and
- (d) Fall below European Union standards for animal feed and/or are not certified as European Union-compliant in the United States.

116. Defendants were on notice of this breach as they were aware of the included heavy metals and/or BPA in the Contaminated Dog Foods and based on the public investigation by the Clean Label Product that showed their products contain heavy metals and/or BPA.

117. Privity exists because Defendants expressly warranted to Plaintiff and the Class that the Contaminated Dog Foods were natural, suitable for consumption, and guaranteed to keep their dogs healthy, happy, and strong.

118. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class have suffered actual damages in that they purchased Contaminated Dog Foods that are worth less than the price they paid and that they would not have purchased at all had they known of the presence of heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients.

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

## **COUNT II**

### **Breach of Implied Warranty of Merchantability, RCW § 62A.2-314, against Defendant on Behalf of Plaintiff and the Washington Class**

120. Plaintiff incorporates by reference and realleges each and every allegation contained in the preceding paragraphs, as though fully set forth herein.

121. Defendants are merchants engaging in the sale of goods to Plaintiff and the Class.

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

123. At all times mentioned herein, Defendants manufactured or supplied the Contaminated Dog Foods. Prior to the time the Contaminated Dog Foods were purchased by Plaintiff and the members of the Class, Defendants impliedly warranted to them that the Contaminated Dog Foods were of merchantable quality and conformed to the promises and affirmations of fact made on the Contaminated Dog Foods' containers and labels, including that the food was:



- (a) natural, fit for human consumption, fit for canine consumption, in compliance with relevant EU regulations 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.”

124. Plaintiff and the Class relied on Defendants’ promises and affirmations of fact when they purchased the Contaminated Dog Foods.

125. The Contaminated Dog Foods were not fit for their ordinary use, consumption by dogs, as they contained heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients at material levels to a reasonable consumer.

126. The Contaminated Dog Foods that Defendants delivered to Plaintiff and the Class did not conform to Defendants’ affirmations of fact because they contained heavy metals.

127. The Contaminated Dog Foods that Defendants delivered to Plaintiff and the Class also did not conform to affirmations of fact that they were natural because they contained the industrial chemical BPA and the toxin pentobarbital.

128. Defendants breached the implied warranties by selling the Contaminated Dog Foods that failed to conform to the promises or affirmations of fact made on the container or label as each product contained heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients.

129. Defendants were on notice of this breach as they were aware of the heavy metals, and BPA included in the Contaminated Dog Foods and their ingredients, and based on the public investigation by the Clean Label Product that showed their products contain heavy metals and BPA.

130. Privity exists because Defendants impliedly warranted to Plaintiff and the Class through the warranting, packaging, advertising, marketing, and labeling that the Contaminated

1 Dog Foods are healthy, natural, and suitable for consumption and by failing to mention the  
 2 presence of heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients.

3 131. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class  
 4 have suffered actual damages in that they have purchased Contaminated Dog Foods that were  
 5 worth less than the price they paid and that they would not have purchased at all had they  
 6 known of the presence of heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other  
 7 ingredients.

8 132. Plaintiff and the Class seek actual damages, injunctive and declaratory relief,  
 9 attorneys' fees, costs, and any other just and proper relief available thereunder for Defendants'  
 10 failure to deliver goods conforming to their implied warranties and resulting breach.

### 11 **COUNT III**

#### 12 **Negligent Misrepresentation against Defendants on Behalf of Plaintiff and the Class**

13 133. Plaintiff incorporates by reference and realleges each and every allegation  
 14 contained in the preceding paragraphs, as though fully set forth herein.

15 134. Defendants had a duty to Plaintiff and the Class to exercise reasonable and  
 16 ordinary care in the formulation, testing, formulation, manufacture, marketing, distribution, and  
 17 sale of the Contaminated Dog Foods.

18 135. Defendants breached their duty to Plaintiff and the Class by formulating, testing,  
 19 manufacturing, advertising, marketing, distributing, and selling products to Plaintiff that did not  
 20 have the ingredients, qualities, characteristics, and suitability for consumption as advertised by  
 21 Defendants and by failing to communicate accurate information about the Contaminated Dog  
 22 Foods' ingredients, qualities, characteristics, and suitability for consumption to Plaintiffs and  
 23 the Class.

24 136. Defendants falsely represented to Plaintiffs and the Class that their Contaminate  
 25 Dog Foods are:

- 26 (a) natural, fit for human consumption, fit for canine consumption, in compliance  
 27 with relevant EU regulations 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.”

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

138. Plaintiffs and the Class did in fact rely on those misrepresentations and purchased the Contaminated Dog Foods to their detriment. Given the negligent manner in which Defendants advertised, represented, and otherwise promoted the Contaminated Dog Foods, Plaintiffs and the Class’ reliance on Defendants’ misrepresentations was justifiable.

139. Defendants knew or should have known that the ingredients, qualities, and characteristics of the Contaminated Dog Foods were not as advertised or suitable for their intended use, consumption by dogs, and were otherwise not as warranted and represented by Defendants. Specifically, Defendants knew or should have known that: (1) the certain of the Contaminated Dog Foods were not natural because they contained levels of the BPA; (2) the Contaminated Dog Foods were not nutritious, superior quality, pure, natural, healthy and safe for consumption because they contained levels of heavy metals; and (3) the Contaminated Dog Foods were adulterated, or at risk of being adulterated, by pentobarbital.

140. Consumers, like Plaintiffs and members of the Class, would consider the presence of heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients to be material when determining which dog food to purchase.

141. Plaintiff and the Class did in fact rely on these misrepresentations and purchased the Contaminated Dog Foods to their detriment. Given the negligent manner in which Defendants advertised, represented and otherwise promoted the Contaminated Dog Foods, Plaintiff and the Class’ reliance on Defendants’ misrepresentations was justifiable.

142. As a direct and proximate result of Defendants’ conduct, Plaintiff and the Class have suffered actual damages in that they purchased Contaminated Dog Foods that were worth

1 less than the price they paid and that they would not have purchased at all had they known they  
2 contained heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients.

3 143. Plaintiff and the Class seek actual damages, injunctive and declaratory relief,  
4 attorneys' fees, costs, and any other just and proper relief available.

5 **COUNT IV**  
6 **Fraudulent Misrepresentation against Defendants on Behalf of Plaintiff and the Class**

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

9 145. Defendants falsely represented to Plaintiff and the Class that their Contaminated  
10 Dog Foods are:

- 11 (a) natural, fit for human consumption, fit for canine consumption, in compliance  
12 with relevant EU regulations and standards and made from "Biologically  
13 Appropriate" and "Fresh Regional Ingredients" consisting entirely of fresh  
14 meat, poultry, fish, and vegetables;
- 15 (b) contain "only 1 supplement – zinc;"
- 16 (c) nutritious, superior quality, pure, natural, healthy and safe for consumption;
- 17 (d) "provid[e] a natural source of virtually every nutrient your dog needs to thrive;"
- 18 (e) "guaranteed to keep your dog healthy, happy and strong"; and
- 19 (f) compliant with European Union standards for animal feed.

20 146. These false representations were material to Plaintiff and the Class.

21 147. Defendants intentionally and knowingly made these misrepresentations to induce  
22 Plaintiff and the Class to purchase their Contaminated Dog Foods.

23 148. Defendants knew that their representations about the Contaminated Dog Foods  
24 were false in that the Contaminated Dog Foods contain levels of heavy metals, pentobarbital,  
25 toxins, BPA, and/or unnatural or other ingredients. Defendants allowed their packaging, labels,  
26 advertisements, promotional materials, and websites to intentionally mislead consumers, such as  
27 Plaintiff and the Class.

149. Plaintiff and the Class were ignorant of the falsity of the representations made by  
Defendants about the Contaminated Dog Foods.



150. Plaintiff and the Class did in fact rely on the truth of these misrepresentations and purchased the Contaminated Dog Foods to their detriment. Given the deceptive manner in which Defendants advertised, represented and otherwise promoted the Contaminated Dog Foods, Plaintiff and the Class' reliance on Defendants' misrepresentations was justifiable.

151. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class have suffered actual damages in that they have purchased Contaminated Dog Foods that is worth less than the price they paid and that they would not have purchased at all had they known of the presence of heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients.

152. Plaintiff and the Class seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the laws.

**COUNT V**  
**Violations of Washington's Unfair Business Practices and Consumer Protection Act,**  
**RCW § 19.86.010, *Et Seq.*, against Defendants**  
**on Behalf of Plaintiff and the Class**

153. Plaintiff incorporates by reference and realleges each and every allegation contained in the preceding paragraphs, as though fully set forth herein.

154. This is an action for relief under the Washington Unfair Business Practices and Consumer Protection Act, RCW § 19.86.010, *et seq.* (the "CPA").

155. Defendants, Plaintiff, and each Class member are each a "person," as that term is defined in RCW § 19.86.010(1).

156. Defendants are engaged in "trade" or "commerce" under RCW § 19.86.010(2).

157. The CPA states that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." RCW § 19.86.020.

158. Defendants have engaged in unfair competition and unfair, unlawful, deceptive or fraudulent business practices by the practices described above, and by knowingly, intentionally and/or negligently concealing from Plaintiff and the Class the fact that the

Contaminated Dog Foods contained heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients, which was not readily discoverable. Defendants should have disclosed this information because it was in a superior position to know the true facts related true make-up and ingredients of the Contaminated Dog Foods, and Plaintiff and the Class could not reasonably be expected to learn or discover the true facts related to nutritional make-up, ingredients and/or quality of the Contaminated Dog Foods.

159. The unconscionable, illegal, unfair and deceptive acts and practices of Defendants adversely impact the public interest, have injured Plaintiff and members of the Class and have the capacity to injure other persons, in violation of the CPA.

160. Pursuant to RCW § 19.86.095, Plaintiff will serve the Washington Attorney General with a copy of this amended complaint as Plaintiff and the Class members seek injunctive relief.

161. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, attorneys' fees, costs, treble damages, and other damages allowed by law.

#### **COUNT VI**

#### **Fraudulent Omission against Defendants on Behalf of Plaintiff and the Class**

162. Plaintiff incorporates by reference and realleges each and every allegation contained in the preceding paragraphs, as though fully set forth herein.

163. Defendants concealed from and failed to disclose to Plaintiff and the Class that their Contaminated Dog Foods contained heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients.

164. Defendants were under a duty to disclose to Plaintiff and members of the Class the true quality, characteristics, ingredients, and suitability for consumption of the Contaminated Dog Foods because: (1) Defendants were in a superior position to know the true state of facts about their product; (2) Defendants were in a superior position to know the actual ingredients,

1 characteristics, and suitability of the Contaminated Dog Foods; and (3) Defendants knew that  
2 Plaintiff and the Class could not reasonably have been expected to learn or discover that the  
3 Contaminated Dog Foods were misrepresented in the packaging, labels, advertising, and website  
4 prior to purchasing the Contaminated Dog Foods.

5 165. The facts concealed or not disclosed by Defendants to Plaintiff and the Class are  
6 material in that a reasonable consumer would have considered them important when deciding  
7 whether to purchase the Contaminated Dog Foods.

8 166. Plaintiff and the Class justifiably relied on the omissions of Defendants to their  
9 detriment. The detriment is evident from the true quality, characteristics, and ingredients of the  
10 Contaminated Dog Foods, which is inferior than advertised and represented by Defendants.

11 167. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class  
12 have suffered actual damages in that they have purchased Contaminated Dog Foods that is  
13 worth less than the price they paid and that they would not have purchased at all had they  
14 known of the presence of heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other  
15 ingredients.

16 168. Plaintiff and the Class seek actual damages, injunctive and declaratory relief,  
17 attorneys' fees, costs, and any other just and proper relief available under the laws.

#### 18 **COUNT VII**

#### 19 **Unjust Enrichment against Defendants on Behalf of Plaintiff and the Class**

20 169. Plaintiff incorporates by reference and realleges each and every allegation  
21 contained in the preceding paragraphs, as though fully set forth herein.

22 170. Substantial benefits have been conferred on Defendants by Plaintiff and the Class  
23 through the purchase of the Contaminated Dog Foods. Defendants knowingly and willingly  
24 accepted and enjoyed these benefits.

25 171. Defendants either knew or should have known that the payments rendered by  
26 Plaintiff were given and received with the expectation that the Contaminated Dog Foods would  
27 have the qualities, characteristics, ingredients, and suitability for consumption represented and

1 warranted by Defendants. As such, it would be inequitable for Defendants to retain the benefit  
2 of the payments under these circumstances.

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

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

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

### 10 **COUNT VIII**

#### 11 **Negligent Misrepresentation against Defendants on Behalf of Plaintiff and the Class**

12 175. Plaintiff incorporates by reference and realleges each and every allegation  
13 contained in the preceding paragraphs, as though fully set forth herein.

14 176. Because of the relationship between the parties, Defendants owed a duty to use  
15 reasonable care to impart correct and reliable disclosures concerning the true nature, quality, and  
16 ingredients of the Contaminated Dog Foods, or based upon its superior knowledge, to say  
17 enough to not be misleading to Plaintiff and the Class.

18 177. Defendants breached its duty to Plaintiff and the Class by providing false,  
19 misleading, partial disclosures, and/or deceptive information regarding the true nature, quality,  
20 and ingredients of the Contaminated Dog Foods that were purchased by Plaintiff and the Class

21 178. Defendants knew or should have known that the ingredients, qualities, and  
22 characteristics of the Contaminated Dog Foods were not as advertised or suitable for their  
23 intended use, consumption by dogs, and was otherwise not as warranted and represented by  
24 Defendants. Specifically, Defendants knew or should have known that: (i) certain of the  
25 Contaminated Dog Foods were adulterated with pentobarbital; (ii) the Contaminated Dog Foods  
26 were not, among other things, safe, healthy, quality, and

- 27 • were not natural, fit for human consumption, fit for canine consumption, in compliance with relevant EU regulations and standards and made from



“Biologically Appropriate” and “Fresh Regional Ingredients” consisting entirely of fresh meat, poultry, fish, and vegetables;

- did not contain “only 1 supplement – zinc;”
- were not nutritious, superior quality, pure, natural, healthy and safe for consumption;
- did not “provid[e] a natural source of virtually every nutrient your dog needs to thrive;”
- were not guaranteed to keep your dog healthy, happy and strong”; and
- were compliant with European Union standards for animal feed;

and (iii) the Contaminated Dog Foods were otherwise not as warranted and represented by Defendant.

179. Defendant knew or should have known that its false, misleading, partial disclosures, and/or deceptive information regarding the true nature, quality, and ingredients of the Contaminated Dog Foods would induce Plaintiff and the Class to purchase the Contaminated Dog Foods.

180. Plaintiff and the Class reasonably placed their trust and justifiable reliance in Defendants’ representations that the Contaminated Dog Foods are healthy, safe, pure, quality, and that they were not adulterated with substances such as pentobarbital. Given the deceptive manner in which Defendants advertised, represented, and otherwise promoted the Contaminated Dog Foods, Plaintiff and the Washington Class’s reliance on Defendants’ misrepresentations was justifiable.

181. As a result of Defendants’ conduct, Plaintiff and the members of the Class have suffered damages in that they purchased Contaminated Dog Foods that were not what Defendants represented and that they would not have purchased at all had they known of the presence of pentobarbital.

182. Plaintiff and the Class seek actual damages, injunctive and declaratory relief, attorneys’ fees, costs, and any other just and proper relief available.

**XIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, pray for judgment against Defendants as to each and every count, including:

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

B. An order enjoining Defendants from selling the Contaminated Dog Foods until the levels of heavy metals, pentobarbital, toxins, BPA, and/or unnatural or other ingredients are removed or full disclosure of the presence of such appear on all labels, packaging and advertising;

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

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

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

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

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

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

I. An order requiring Defendants to pay treble damages pursuant to the Washington CPA;

J. An order requiring Defendants to pay punitive damages on any count so allowable;

K. An order awarding attorneys' fees and costs, including the costs of pre-suit investigation, to Plaintiff and the Class; and

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

#### XIV. JURY DEMAND

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

DATED: November 14, 2018.

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