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8  
9 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
10 WESTERN DIVISION

11 **VALERIE WATSON,**  
12 individually and on behalf of a  
13 class of similarly situated  
individuals,

14 **PLAINTIFF,**

15  
16 V.

17 **SOLID GOLD PET, LLC**

18 **DEFENDANT**

) Case No. 2:18-cv-6479-PSG (SSx)

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

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

) **DEMAND FOR JURY TRIAL**

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- 1 • Are made of ingredients that needed to "pass strict quality control
- 2 measures" and "undergo multiple checkpoints against key health and
- 3 safety criteria as they are brought into [Defendant's] U.S. manufacturing
- 4 facilities"; and
- 5 • Offer pet parents the opportunity to give their pets great nutrition just like
- 6 they want to give to their child..."<sup>1</sup> (collectively, "Quality Claims")

7 5. The Quality Claims are repeatedly reinforced by representations  
8 plastered on product packaging, labeling, and various marketing and advertising  
9 mediums such as Defendant's website.

10 6. As a result of Defendant's Quality Claims, consumers such as Plaintiff  
11 are led to believe that Defendant's Contaminated Cat Foods are free from toxins,  
12 chemicals, or contaminants such as Bisphenol A ("BPA") and heavy metals like  
13 arsenic, mercury, lead, cadmium (collectively, "Heavy Metals")—all known to  
14 pose health risks to humans and animals.

15 7. However, Defendant's Marketing is deceptive, misleading, unfair,  
16 and/or false because, among other things, the Contaminated Cat Foods include  
17 undisclosed Heavy Metals, BPA, and/or other unnatural ingredients.

18 8. Consumers such as Plaintiff were not aware that the Contaminated Cat  
19 Foods contained Heavy Metals, BPA, and/or other unnatural ingredients. Notably,  
20 the Contaminated Cat Foods Marketing does not disclose the presence of Heavy  
21 Metals, BPA, and/or other unnatural ingredients anywhere, and instead  
22 misrepresent that the products are premium, of high quality, and subject to quality  
23 control measures and multiple checkpoints to ensure key health and safety criteria.

24 9. Consumers lack the scientific knowledge necessary to determine  
25 whether the Products do in fact contain Heavy Metals, BPA, and/or other unnatural

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<sup>1</sup> <https://www.solidgoldpet.com/interviews/>

1 ingredients and to know or to ascertain the true ingredients and quality of the  
2 Products.

3 10. No reasonable consumer seeing Defendant's Marketing would expect  
4 that the Products contain Heavy Metals, BPA, and/or other unnatural ingredients.

5 11. Reasonable consumers must and do rely on Defendant to honestly  
6 report the contents of, quality of ingredients in, and true nature of its Products.

7 12. Further, reasonable consumers, like Plaintiff, would consider the mere  
8 inclusion of Heavy Metals, BPA, and/or other unnatural ingredients in the  
9 Contaminated Cat Foods a material fact when considering what pet food to  
10 purchase.

11 13. Defendant knew or should have been aware that a consumer would be  
12 feeding the Contaminated Cat Foods multiple times each day to his or her cat,  
13 making it the main, if not only, source of food. This leads to repeated exposure of  
14 the Heavy Metals, BPA, and/or other unnatural ingredients to the cat.

15 14. Likewise, based on Defendant's supposed stringent quality control  
16 measures, it knew or should have known that the Contaminated Cat Foods  
17 contained Heavy Metals, BPA, and/or other unnatural ingredients. As such,  
18 Defendant acted negligently, recklessly, and/or intentionally with its wrongful  
19 Quality Claims Marketing and failure to disclose the BPA and Heavy Metals  
20 contained in the Contaminated Cat Foods.

21 15. Defendant intended for consumers to rely on their Marketing, and  
22 reasonable consumers did in fact so rely.

23 16. Consequently, Defendant continues to wrongfully induce consumers  
24 to purchase their Contaminated Cat Foods that are not as advertised.

25 17. Defendant's wrongful Marketing, which includes misleading,  
26 deceptive, unfair, and false Marketing and omissions, allowed it to capitalize on,  
27 and reap enormous profits from, consumers who paid the purchase price or a  
28 premium for the Products that were not sold as advertised.



**PARTIES**

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23. Plaintiff is, and at all times relevant hereto has been, a citizen of the state of California. Plaintiff purchased the following Contaminated Cat Foods for her 11-year-old cats, Gray Kitty and Orange Kitty: Solid Gold Fit as a Fiddle with Alaskan Pollock. Plaintiff purchased a 12-pound bag of the Contaminated Cat Foods on average every four to six weeks between approximately May 2014 and January 2018, from Petco, PetSmart, and chewy.com. Prior to purchasing the Contaminated Cat Foods, Plaintiff saw the product's nutritional claims on the packaging, which she relied on in deciding to purchase the Contaminated Cat Foods. Plaintiff purchased the Contaminated Cat Foods because she wanted to provide her cats with quality, natural food. Based on the false and misleading Marketing and Claims by Defendant, Plaintiff was unaware that the Contaminated Cat Foods contained any level of Heavy Metals, BPA, and/or other unnatural ingredients.

24. As the result of the Defendant's 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 Cat Foods that did not deliver what Defendant promised. She paid the premium price on the assumption that the labeling of the Contaminated Cat Foods was accurate, that there were no material omissions, and based on Defendant's representations that the Cat Foods had passed strict quality control measures, were holistic, premium nutrition, and safe for consumption. Plaintiff would not have paid this money had she known the Contaminated Cat Foods contained Heavy Metals, BPA, and/or other unnatural ingredients. Moreover, Plaintiff would not have purchased the Contaminated Cat Foods if she knew they included BPA. Plaintiff was further injured because the Contaminated Cat Foods have no or *de minimis* value based on the presence of the alleged Heavy Metals, chemicals, and toxins. Damages can be calculated through expert testimony at trial. Further, should Plaintiff encounter the Contaminated Cat

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

4 25. Defendant is incorporated in Delaware. Its corporate headquarters and  
5 principal place of business, as of April 2018, is located in Chesterfield, Missouri.

6 26. Defendant formulates, develops, manufactures, packages, labels,  
7 distributes, markets, advertises, and sells the Contaminated Cat Foods throughout  
8 the United States, including in California. The Marketing for the Contaminated  
9 Cat Foods, relied upon by Plaintiff, was overseen, created, allowed, and/or  
10 authorized by Defendant and its agents, and was disseminated by Defendant and its  
11 agents through Marketing that contained the misrepresentations alleged herein.  
12 The Marketing for the Contaminated Cat Foods was designed to encourage  
13 consumers to purchase the Contaminated Cat Foods and lead reasonable  
14 consumers, *i.e.*, Plaintiff and the Class, into purchasing the Contaminated Cat  
15 Foods. Defendant negligently, recklessly, and/or intentionally oversaw, created,  
16 allowed, and/or authorized the deceptive, misleading, unfair, and/or false  
17 Marketing for the Contaminated Cat Foods.

18 27. The Contaminated Cat Foods include the following:

19 (a) Solid Gold Grain Free Fit as a Fiddle Fresh Caught Alaskan  
20 Pollock Dry Cat Food;

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(b) Solid Gold Grain Free Indigo Moon Chicken and Egg Dry Cat

Food;



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(c) Solid Gold Grain Free High Protein with Chicken Dry Cat Food;



(d) Solid Gold Blended Tuna Recipe in Gravy Wet Cat Food;



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(e) Solid Gold Mackerel and Tuna Recipe in Gravy Wet Cat Food;

and



(f) Solid Gold Sea Bream and Tuna Recipe in Gravy Wet Cat

Food.



**FACTUAL ALLEGATIONS**

**Defendant's Deceptive, Misleading, Unfair, and False Marketing of Its Contaminated Cat Foods**

28. Defendant formulates, develops, manufactures, labels, packages, distributes, markets, advertises, and sells its extensive lines of dry and wet cat food products across the United States, including the Contaminated Cat Foods.

1           29. The Contaminated Cat Foods are available at numerous retail and  
2 online outlets in the United States, including in the state of California.

3           30. The Contaminated Cat Foods are widely marketed and advertised, and  
4 Defendant employs a Vice President of Marketing, Vice President of Ecommerce  
5 Sales, and Director of Brand and Digital Marketing.

6           31. Defendant's Marketing campaign goes to great lengths to associate its  
7 pet food products, including the Contaminated Pet Foods, as being nutritious,  
8 healthy, holistic, high quality, and possessing stringent quality controls.

9           32. For instance, Defendant states that its mission is to "provide dogs and  
10 cats with the best possible food, treats and wellness supplements that allow them to  
11 live a long, healthy life."

12           33. Defendant further states that it is "holistic pet nutrition that's carefully  
13 formulated to unleash your pet's amazing nature" and uses "high-quality,  
14 purposeful ingredients."

15           34. Defendant promotes its quality control standards by stating,  
16 "Regardless of sourcing, all of our ingredients undergo multiple checkpoints  
17 against key health and safety criteria as they are brought into our U.S.  
18 manufacturing facilities...."

19           35. Further, Defendant's Marketing states its Contaminated Cat Foods are  
20 "holistic pet nutrition that's carefully formulated to unleash your pet's amazing  
21 nature" and "Always formulated for your pet's optimal nutrition [and] what goes  
22 into a Solid Gold food is just as important as what does not."

23           36. In fact, Solid Gold includes a stamp on the front of its dry food  
24 packaging proclaiming itself the "Gold standard in holistic pet nutrition":

25           37. The Defendant's official website displays the Contaminated Cat  
26 Foods, complete with descriptions and complete lists of ingredients. Defendant's  
27 website also states its "Nutrition Philosophy" is "All that's good, nothing that's not"  
28 and further touts:

1 Powerful proteins. Vitamin-rich super foods. Balanced ingredients.  
2 For over 40 years, we've traveled the world in search of the most  
3 nutritious ingredients on earth. The result: holistic pet nutrition that's  
4 carefully formulated to unleash your pet's amazing nature.

5 38. The website proclaims "Superfoods for Super Pets" that "unlock your  
6 pet's healthiest self," and explains:

7 Solid Gold has over 40 years of experience developing transformative  
8 nutrition for your pet. All of our balanced dry food recipes have 20  
9 nutrient-dense superfoods and clean, high-quality proteins. Our  
10 holistic recipes are designed to support your pet's overall health and  
11 wellbeing—including mind, body and spirit.

12 39. Defendant claims to "always have your pet's health in mind."

13 40. On Defendant's Facebook page, it describes itself as "America's first  
14 holistic pet food [with] more than 40 years of experience developing  
15 transformative nutrition for your pet." Defendant also claims, "Solid Gold led the  
16 charge in creating premium nutrition for dogs and cats."

17 41. Defendant's Marketing also continually emphasizes its supposed strict  
18 quality controls. For instance, the Marketing for the Contaminated Cat Foods  
19 states they are made with "only high quality ingredients that pass strict quality  
20 control measures." Defendant offered further assurances by representing that the  
21 ingredients utilized in the Contaminated Cat Foods had to pass "strict quality  
22 control measures" and went through "multiple checkpoints against key health and  
23 safety criteria."

24 42. Defendant also assures its customers that it "oversees the  
25 manufacturing process of products from partnering with qualified ingredient  
26 suppliers, to receipt of high quality ingredients, recipe blending, and lab testing  
27 samples from each batch that is produced."  
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1           43. Defendant specifically claims that its canned tuna products, including  
2 those listed in the Contaminated Cat Foods, also "meet our high quality and safety  
3 standards." Defendant further stated that it "perform[s] random sampling of our  
4 tuna products for mercury and have never had a positive result."

5           44. The foregoing Marketing reveals the great lengths Defendant have  
6 undertaken to portray their Contaminated Cat Foods as possessing certain  
7 characteristics concerning their composition and quality, while not disclosing that  
8 they also contain Heavy Metals, BPA, and/or other unnatural ingredients, and in  
9 fact, expressly stating the Contaminated Cat Foods do not contain anything that is  
10 *not* "good."

11 **Defendant Negligently, Recklessly, and/or Intentionally Omitted Any Mention**  
12 **of the Presence of BPA and Heavy Metals**

13           45. Defendant's Marketing wrongfully conveys to consumers that  
14 Defendant's Contaminated Cat Foods have certain superior qualities and  
15 characteristics that they do not actually possess.

16           46. For instance, consumers such as Plaintiff are reasonably led to believe  
17 the Contaminated Cat Foods do not contain Heavy Metals, BPA, and/or other  
18 unnatural ingredients based on Defendant's Quality Claims Marketing portraying  
19 the Contaminated Cat Foods as holistic, nutritious, healthy, high quality, "carefully  
20 formulated," and possessing stringent quality controls.

21           47. However, although Defendant misleadingly led consumers to believe  
22 their Contaminated Cat Foods do not contain Heavy Metals, BPA, and/or other  
23 unnatural ingredients through their Marketing and omissions, Defendant's Products  
24 do in fact contain undisclosed Heavy Metals, BPA, and/or other unnatural  
25 ingredients, the presence of which are material to reasonable consumers, and  
26 wholly contradict Defendant's Quality Claims and Claims that the Cat Foods are  
27 carefully formulated and do not contain anything that's not good for pets.

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1           48. For example, the specific product types purchased by Plaintiff were  
 2 tested and found to contain undisclosed Heavy Metals and/or BPA at the following  
 3 levels:

Product Name	arsenic ug per kg	bpa ug per kg	cadmium ug per kg	mercury ug per kg	lead ug per kg
Solid Gold Grain Free Fit as a Fiddle Fresh Caught Alaskan Pollock Dry Cat Food	402.30	151.60	49.80	6.30	76.50
Solid Gold Grain Free Indigo Moon Chicken and Egg Dry Cat Food	124.00	102.60	26.50	2.90	64.90
Solid Gold Grain Free, High Protein With Chicken Dry Cat Food	42.70	169.70	24.20	2.70	108.60
Solid Gold Blended Tuna Recipe in Gravy Wet Cat Food	1661.20	118.50	23.60	30.20	0.00
Solid Gold Mackerel and Tuna Recipe in Gravy Wet Cat Food	1527.30	0.00	31.20	41.60	4.80
Solid Gold Sea Bream and Tuna Recipe in Gravy Wet Cat Food	1112.00	0.00	18.10	53.30	0.00

24           49. Defendant's Marketing wrongfully fails to disclose to consumers the  
 25 presence of Heavy Metals, BPA, and/or other unnatural ingredients in Defendant's  
 26 Contaminated Cat Foods.

27           50. As a result of Defendant's deceptive, misleading, unfair, and false  
 28 Marketing and omissions, a reasonable consumer would have no reason to suspect

1 the presence of Heavy Metals, BPA, and/or other unnatural ingredients in the  
2 Contaminated Cat Foods without conducting his or her own scientific tests, or  
3 reviewing third party scientific testing of these products.

4 51. Reasonable consumers must and do rely on Defendant to report  
5 honestly what the Products contain.

6 52. Based on Defendant's Quality Claims, including its supposed stringent  
7 quality controls and assurances, it had a duty to ensure the Contaminated Cat  
8 Foods Marketing was not deceptive, misleading, unfair, and false.

9 53. Likewise, based on Defendant's supposed stringent quality controls  
10 and assurances, Defendant knew or should have known the Contaminated Cat  
11 Foods possessed Heavy Metals, BPA, and/or other unnatural ingredients.

12 54. Defendant intended for consumers to rely on their representations, and  
13 reasonable consumers did in fact so rely.

14 55. Defendant acted negligently, recklessly, and/or intentionally with its  
15 deceptive, misleading, unfair, and false Marketing and omissions.

16 56. Based on its deceptive, misleading, unfair, and false Marketing,  
17 Defendant charges a premium, knowing that the Quality Claims are something an  
18 average consumer would consider as a reason in picking a more expensive cat  
19 food. Through Defendant's deceptive, misleading, unfair, and false Marketing of  
20 the Contaminated Cat Foods as possessing the Quality Claims, it wrongfully  
21 capitalized on, and reaped enormous profits from, consumers' strong preference for  
22 pet food with such qualities.

23 **The Pet Food Industry, Including Defendant, Knows that the Average**  
24 **Consumer Cares and Considers What They Are Feeding Their Pet**

25 57. Consumers are becoming increasingly concerned with what they feed  
26 their pets.

27 58. The pet food industry has been reporting on the humanization of both  
28 pets and pet food for years.

1           59. A recent survey done by a pet food giant showed that "95 percent [of  
2 pet owners] agreed they saw their canine as part of the family." And 73 percent of  
3 them responded they would make sure their "pet gets food before they do."<sup>2</sup>

4           60. But this is nothing new, a 2017 survey reported the same results: "In  
5 the US, 95% of pet owners consider their pets to be part of the family—up 7 points  
6 from 2007, according to a survey by Harris Poll."<sup>3</sup>

7           61. Indeed, based on this, it was reported that "there isn't much people  
8 won't do for their pets, and this sentiment has only strengthened over the past few  
9 years, especially for pet food. Pet food accounts for 76% of the pet care category,  
10 representing a significant opportunity for pet companies."<sup>4</sup>

11           62. And, pet owners want "pet food options that address the same health  
12 concerns currently influencing human food production, such as unnatural  
13 preservatives and genetically modified ingredients—and they're serious about these  
14 preferences."<sup>5</sup>

15           Treating pets like one of the family continues to be a popular trend  
16 among pet owners; however, today, their purchases are more and  
17 more functionally driven as health becomes a top priority.

18           63. Defendant's Marketing uses this shift in paradigm of pet owners of  
19 humanization of pet food and viewing pets as family: "Solid Gold is a group of  
20 animal lovers, explorers, and nutritionists who want to give their pets the best. Our  
21 pets give so much to us so we've made it our mission to return the favor by giving  
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23 \_\_\_\_\_  
24 <sup>2</sup> <https://people.com/pets/study-women-prefer-dogs-to-partner/>

25 <sup>3</sup> <https://www.petfoodindustry.com/articles/5695-report---say-pets-are-part-of-the-family>

26 <sup>4</sup> *Id.*

27 <sup>5</sup> "<http://www.nielsen.com/us/en/insights/reports/2016/the-humanization-of-pet-food.html>  
28

1 them what they deserve—premium, holistic, natural products that allow these  
2 amazing animals to look and feel great while they live life to the fullest."<sup>6</sup>

3 Our mission is to create the kind of nutrition that will change pets'  
4 lives in mind, body, and spirit. That's why, for over 40 years, we've  
5 scoured the earth looking for simple, natural ingredients that unleash  
6 the very best in your pet, which we call their "inner gold!" We are  
7 interested in much more than just a healthy, natural diet— we strive to  
8 provide a way of life that allows each pet to fulfill their destiny, while  
9 looking and feeling great! There's nothing more satisfying than seeing  
10 your pet happy inside and out.

11 64. In fact, CEO and President Bob Rubin touts: "At Solid Gold we  
12 firmly believe pets are part of the family. And so we want to make sure we are  
13 offering pet parents the opportunity to give their pets great nutrition just like they  
14 want to give to their child...."<sup>7</sup>

15 65. Thus, consumers are willing to pay a premium for their pet food if  
16 their pet food is of superior quality, as Defendant advertised.

17 **The Inclusion of Heavy Metals, BPA, and/or Other Unnatural Ingredients Is**  
18 **Material to a Reasonable Consumer Based on the Inherent and Known Risks**  
19 **of Consumption and/or Exposure**

20 66. Whether a pet food contains Heavy Metals, BPA, and/or other  
21 unnatural ingredients is material to a reasonable consumer when making  
22 purchasing decisions.

23 67. Consumption and/or Exposure to Heavy Metals, BPA, and/or other  
24 unnatural ingredients carry known risks.

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27 <sup>6</sup> <https://www.solidgoldpet.com/about/>

28 <sup>7</sup> <https://www.solidgoldpet.com/interviews/>

1           68. For instance, based on the risks associated with exposure to higher  
2 levels of arsenic, both the U.S. Environmental Protection Agency ("EPA") and  
3 U.S. Food and Drug Administration ("FDA") have set limits concerning the  
4 allowable limit of arsenic at 10 parts per billion ("ppb") for human consumption in  
5 apple juice (regulated by the FDA) and drinking water (regulating by the EPA).  
6 Moreover, the FDA is considering limiting the action level for arsenic in rice  
7 cereal for infants to 100 ppb.<sup>8</sup>

8           69. Arsenic is deadly to cats in doses of just one to twelve milligrams per  
9 pound of body weight. Additionally, drinking water with levels greater than  
10 0.25ppm is considered potentially toxic, especially to large animals.

11           70. Arsenic poisoning can be caused by acute and/or repeated exposure to  
12 the toxin over a long period of time. Arsenic toxicity can affect the gastrointestinal  
13 and cardiovascular systems, as well as lead to circulatory collapse.

14           71. Lead is another carcinogen and toxin known to cause health problems.  
15 Exposure to lead in food can build up over time and has been scientifically  
16 demonstrated to lead to the development of chronic poisoning, cancer,  
17 developmental disorders, and to affect normal cell metabolism as well as cause  
18 serious injuries to the central nervous and gastrointestinal systems.

19           72. Mercury can cause damage to the kidneys and neurological,  
20 cardiovascular, and nervous systems in cats. Exposure to mercury can also  
21 interfere with metabolic activity, leading to tissue necrosis and degeneration.  
22 Continued exposure to mercury can also injure the inner surfaces of the digestive  
23 tract and abdominal cavity.<sup>9</sup>

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24 <sup>8</sup> FDA, Draft Guidance for Industry: Inorganic Arsenic in Rice Cereals for Infants:  
25 Action Level (Apr. 2016), <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/UCM493152.pdf>.

26  
27 <sup>9</sup> Defendant has specifically addressed concerns regarding the presence of mercury  
28 in its products, stating that it performs random testing of its tuna products for  
mercury and has "never had a positive result."

1           73. Cadmium is extremely toxic and has toxic biological effects at  
2 concentrations smaller than almost any commonly found mineral. Exposure to  
3 cadmium has been observed to cause anemia, liver disease, and nerve or brain  
4 damage in animals eating or drinking it. The U.S. Department of Health and  
5 Human Services has determined that cadmium and cadmium compounds are  
6 known human carcinogens and the EPA has likewise determined that cadmium is a  
7 probable human carcinogen.

8           74. Finally, BPA, an industrial chemical that is an endocrine disruptor,  
9 has been linked to various health issues, including reproductive disorders, heart  
10 disease, diabetes, cancer, and neurological problems. The dangers of BPA in  
11 human food are recognized by the FDA, as well as by the state of California. For  
12 instance, manufacturers and wholesalers are prohibited from selling any children's  
13 products that contain BPA and any infant formula, baby food, or toddler food  
14 stored in containers with intentionally-added BPA.

15           75. Based on the foregoing, reasonable consumers, like Plaintiff, would  
16 consider the mere inclusion of Heavy Metals, BPA, and/or other unnatural  
17 ingredients in the Contaminated Cat Foods a material fact when considering what  
18 pet food to purchase.

19           76. Despite the known risks of exposure to Heavy Metals, BPA, and/or  
20 other unnatural ingredients, Defendant negligently, recklessly, and/or knowingly  
21 sold the Contaminated Cat Foods without disclosing they contain Heavy Metals,  
22 BPA, and/or other unnatural ingredients.

23           77. Additionally, Defendant knew or should have been aware that a  
24 consumer would be feeding the Contaminated Cat Foods multiple times each day  
25 to his or her cat, making it the main, if not only, source of food. This leads to  
26 repeated exposure of the Heavy Metals, BPA, and/or other unnatural ingredients to  
27 the cat.

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1           78. Defendant has wrongfully and misleadingly advertised and sold the  
2 Contaminated Cat Foods without any label or warning indicating to consumers that  
3 these products contain Heavy Metals, BPA, and/or other unnatural ingredients, or  
4 that these toxins can accumulate over time in the cat's body to the point where  
5 poisoning, injury, and/or disease can occur.

6           79. Defendant's omissions are material, false, misleading, and reasonably  
7 likely to deceive the public. This is true especially in light of the long-standing  
8 campaign by Defendant to market the Contaminated Cat Foods as holistic and  
9 natural in order to induce consumers, such as Plaintiff, to purchase the products.

10           80. For instance, Defendant markets the Contaminated Cat Foods as  
11 "holistic" and "premium nutrition," using "only the best quality ingredients on  
12 earth," both on the products' packaging and on Defendant's website.

13           81. Defendant further states that it is "holistic pet nutrition that's carefully  
14 formulated to unleash your pet's amazing nature" and uses "high-quality,  
15 purposeful ingredients."

16           82. Defendant promotes its quality control standards by stating,  
17 "Regardless of sourcing, all of our ingredients undergo multiple checkpoints  
18 against key health and safety criteria as they are brought into our U.S.  
19 manufacturing facilities...."

20           83. Defendant has specifically addressed concerns regarding the presence  
21 of mercury in its products, stating that it performs random testing of its tuna  
22 products for mercury and has "never had a positive result."<sup>10</sup>

23           84. Defendant's above-referenced statements, representations, partial  
24 disclosures, and omissions are crafted to create an image that the Contaminated Cat  
25 Foods are healthy, safe, high quality, undergo rigorous testing, and are free of  
26 Heavy Metals, BPA, and/or other unnatural ingredients. Thus, the use of such

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28 <sup>10</sup> <https://www.solidgoldpet.com/faq/>

1 representations, descriptions, and promises makes Defendant's marketing campaign  
2 deceptive based on the presence of Heavy Metals, BPA, and/or other unnatural  
3 ingredients in the Contaminated Cat Foods.

4 85. Reasonable consumers, like Plaintiff, would consider the mere  
5 inclusion of Heavy Metals in the Contaminated Cat Foods a material fact when  
6 considering what pet food to purchase.

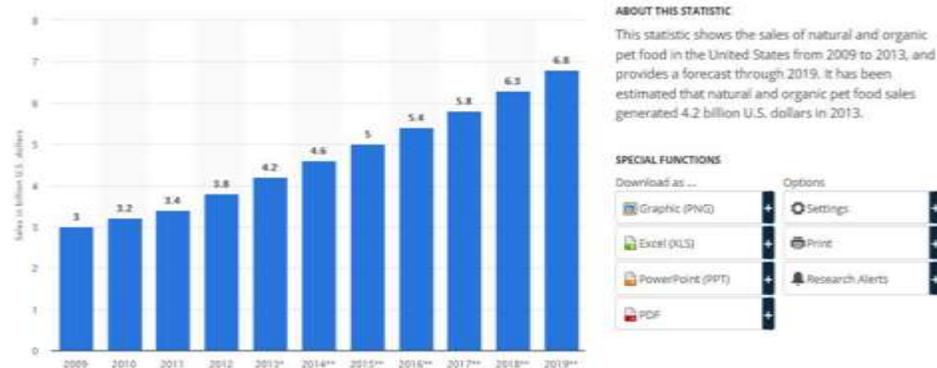
7 86. Moreover, a reasonable consumer, such as Plaintiff and other  
8 members of the Class would have no reason to not believe Defendant's claims that  
9 the Contaminated Cat Foods are carefully formulated, holistic, premium nutrition,  
10 and made of "only the best quality ingredients." Defendant's non-disclosure and/or  
11 concealment of the Heavy Metals, BPA, and/or other unnatural ingredients in the  
12 Contaminated Cat Foods coupled with the misrepresentations alleged herein that  
13 were intended to and do, in fact, cause consumers, like Plaintiff and the members  
14 of the Class, to purchase a product they would not have bought if the true quality  
15 and ingredients were disclosed or pay a premium for such cat food.

16 87. Defendant's wrongful Marketing, which includes misleading,  
17 deceptive, unfair, and false representations and omissions, allowed it to capitalize  
18 on, and reap enormous profits from, consumers who paid the purchase price or a  
19 premium for the Products that were not as advertised, and that in fact included  
20 Heavy Metals, BPA, and/or other unnatural ingredients.

21 88. This is not surprising given that, for example, natural pet food sales  
22 represent over \$5.5 billion in the United States and have consistently risen over the  
23 years:

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



### **Plaintiff's Reliance Was Reasonable and Foreseen by Defendant**

89. When making her purchasing decisions, Plaintiff reasonably relied on Defendant's misleading, deceptive, unfair, and false Quality Claims on the Marketing of the Contaminated Cat Foods.

90. Any reasonable consumer would consider the Marketing of a product when deciding whether to purchase a product, such as the Quality Claims relied on by Plaintiff when purchasing the Contaminated Cat Foods.

91. Defendant's Marketing campaign has been sufficiently lengthy in duration and widespread in dissemination that it would be unrealistic to require Plaintiff to plead reliance upon each advertised misrepresentation.

92. The use of Defendant's Quality Claims makes its marketing campaign deceptive, misleading, unfair, and false based on the presence of BPA and Heavy Metals in the Contaminated Cat Foods. Defendant's above-referenced Marketing and omissions are crafted to deceive the public by creating an image that the Contaminated Cat Foods are nutritious, healthy, high quality, possess stringent quality standards, and are free of Heavy Metals, BPA, and/or other unnatural ingredients.

93. Moreover, a reasonable consumer, such as Plaintiff and other members of the Class, would have no reason to not believe Defendant's Quality Claims. Non-disclosure and/or concealment of the Heavy Metals, BPA, and/or other unnatural ingredients in the Contaminated Cat Foods coupled with the

1 deceptive, misleading, unfair, and false Marketing alleged herein by Defendant is  
2 intended to and does, in fact, cause consumers, like Plaintiff and the members of  
3 the Class, to purchase a product they would not have bought if the true quality and  
4 ingredients were disclosed.

5 **Defendant's Knowledge and Notice of Its Breaches of Express and**  
6 **Implied Warranties**

7 94. Defendant had sufficient notice of its breaches of express and implied  
8 warranties.

9 95. Defendant has, and had, exclusive knowledge of the physical and  
10 chemical makeup of the Contaminated Cat Foods.

11 96. Additionally, Defendant received notice and/or should have been  
12 aware of the contaminants in its cat food, including the Contaminated Cat Foods,  
13 through various news articles and media releases, which found levels of heavy  
14 metals and byproduct contaminants in Defendant's cat food products.

15 **Privity Exists with Plaintiff and the Proposed Class**

16 97. Defendant knew that consumers such as Plaintiff and the Class would  
17 be the end purchasers of the Contaminated Cat Foods and the target of its  
18 advertising and statements.

19 98. Defendant intended that its Marketing would be considered by the end  
20 purchasers of the Contaminated Cat Foods, including Plaintiff and the Class.

21 99. Defendant directly marketed to Plaintiff and the Class through  
22 statements on its packaging, labeling, marketing, and advertising.

23 100. Plaintiff and the proposed Class are the intended beneficiaries of the  
24 expressed and implied warranties.

25 **CLASS ACTION ALLEGATIONS**

26 101. Plaintiff brings this action individually and on behalf of the following  
27 Class pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil  
28 Procedure:

1 All persons who are citizens of the State of California who, from  
2 August 1, 2013, to the present, purchased the Contaminated Cat Foods  
3 for household or business use, and not for resale (the "Class").

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

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

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

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

17 (a) whether Defendant owed a duty of care to Plaintiff and the  
18 Class;

19 (b) whether Defendant knew or should have known that the  
20 Contaminated Cat Foods contained Heavy Metals, BPA, and/or other unnatural  
21 ingredients;

22 (c) whether Defendant wrongfully represented and continues to  
23 represent that the Contaminated Cat Foods possess the Quality Claims;

24 (d) whether Defendant wrongfully failed to state that the  
25 Contaminated Cat Foods contained Heavy Metals, BPA, and/or other unnatural  
26 ingredients;

27 (e) whether Defendant's Quality Claims on its Marketing are  
28 deceptive, misleading, unfair, and/or false;

1 (f) whether Defendant's Quality Claims are likely to deceive a  
2 reasonable consumer;

3 (g) whether a reasonable consumer would consider the presence of  
4 Heavy Metals, BPA, and/or other unnatural ingredients as a material fact in  
5 purchasing pet food;

6 (h) whether Defendant knew or should have known its Quality  
7 Claims are deceptive, misleading, unfair, and/or false;

8 (i) whether Defendant continues to disseminate the Quality Claims  
9 despite knowledge that the Quality Claims are deceptive, misleading, unfair, and/or  
10 false;

11 (j) whether Defendant's wrongful conduct alleged herein was  
12 negligent, reckless, and/or intentional;

13 (k) whether a representation that a product does not contain arsenic  
14 and/or lead is material to a reasonable consumer;

15 (l) whether Defendant violated California law;

16 (m) whether Defendant breached their express warranties;

17 (n) whether Defendant breached their implied warranties;

18 (o) whether Defendant engaged in unfair trade practices;

19 (p) whether Defendant engaged in false advertising;

20 (q) whether Defendant made negligent, reckless, and false  
21 misrepresentations and omissions;

22 (r) whether Plaintiff and the members of the Class are entitled to  
23 actual, statutory, and punitive damages; and

24 (s) whether Plaintiff and members of the Class are entitled to  
25 declaratory and injunctive relief.

26 106. Defendant engaged in a common course of conduct giving rise to the  
27 legal rights sought to be enforced by Plaintiff individually and on behalf of the  
28 other members of the Class. Identical statutory violations and business practices

1 and harms are involved. Individual questions, if any, are not prevalent in  
2 comparison to the numerous common questions that dominate this action.

3 107. Plaintiff's claims are typical of those of the members of the Class in  
4 that they are based on the same underlying facts, events, and circumstances  
5 relating to Defendant's conduct.

6 108. Plaintiff will fairly and adequately represent and protect the interests  
7 of the Class, has no interests incompatible with the interests of the Class, and has  
8 retained counsel competent and experienced in class action, consumer protection,  
9 and false advertising litigation.

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

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

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

17 **CLAIMS FOR RELIEF**

18 **COUNT I**

19 **Violations of California's Consumer Legal Remedies Act, California Civil**  
20 **Code §§1750, *Et Seq.*, Against Defendant on Behalf of the Class**

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

23 113. Plaintiff and each Class member is a "consumer," as that term is  
24 defined in California Civil Code section 1761(d).

25 114. The Contaminated Cat Foods are "goods," as that term is defined in  
26 California Civil Code section 1761(a).

27 115. Defendant is a "person" as that term is defined in California Civil  
28 Code section 1761(c).

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

4           117. Defendant's conduct alleged herein violates the following provisions  
5 of 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 the Contaminated Cat Foods with  
8 Quality Claims and failing to disclose the presence of Heavy Metals, BPA, and/or  
9 other unnatural ingredients in the Contaminated Cat Foods;

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

13                   (c) California Civil Code section 1770(a)(9), by negligently,  
14 recklessly, and/or intentionally advertising the Contaminated Cat Foods with intent  
15 not to sell them as advertised; and

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

19           118. As a direct and proximate result of these violations, Plaintiff and the  
20 Class have been harmed, and that harm will continue unless Defendant is enjoined  
21 from using the misleading marketing, advertising, and labeling described herein in  
22 any manner in connection with the sale of the Contaminated Cat Foods.

23           119. On August 28, 2018, counsel for Plaintiff and the Class sent  
24 Defendant written notice (via U.S. certified mail, return receipt requested) that its  
25 conduct is in violation of the CLRA concerning the Heavy Metals and BPA  
26 omissions.

27           120. Defendant 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 Plaintiff's notification. In accordance with CLRA section 1782(b), Plaintiff and the  
2 Class are entitled, under CLRA section 1780, to recover and obtain the following  
3 relief for Defendant's violations of CLRA sections 1770(a)(5), (7), (9), and (16):

- 4 (a) actual damages under CLRA section 1780(a)(1);
- 5 (b) restitution of property under CLRA section 1780(a)(3);
- 6 (c) punitive damages under CLRA section 1780(a)(4) and because  
7 Defendant has engaged in fraud, malice, or oppression; and
- 8 (d) any other relief the Court deems proper under CLRA section  
9 1780(a)(5).

10 121. Plaintiff seeks an award of attorneys' fees pursuant to, inter alia,  
11 California Civil Code section 1780(e) and California Code of Civil Procedure  
12 section 1021.5.

## 13 COUNT II

### 14 **Violations of California False Advertising Law, California Business 15 & Professions Code §§17500, *Et Seq.*, Against Defendant on 16 Behalf of the Class**

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

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

22 124. Defendant's representations that the Contaminated Cat Foods possess  
23 the Quality Claims in conjunction with the Products containing undisclosed Heavy  
24 Metals, BPA, and/or other unnatural ingredients are untrue or misleading and  
25 likely to deceive the public.

26 125. Defendant knew, or reasonably should have known, that all of the  
27 Quality Claims are untrue or misleading.

28 126. Defendant's conduct is ongoing and continuing, such that prospective  
injunctive relief is necessary, especially given Plaintiff's desire to purchase these

1 products in the future if she can be assured that the Contaminated Cat Foods are as  
2 advertised and do not contain such high levels of Heavy Metals, BPA, and/or other  
3 unnatural ingredients.

4 127. Plaintiff and members of the Class are entitled to injunctive and  
5 equitable relief and restitution in the amount they spent on the Contaminated Cat  
6 Foods.

7 **COUNT III**

8 **Violations of the Unfair Competition Law, California Business &**  
9 **Professions Code §§17200, *Et Seq.*, Against Defendant**  
10 **on Behalf of the California Class**

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

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

15 **Fraudulent**

16 130. Defendant's Quality Claims for the Contaminated Cat Foods are  
17 literally false and likely to deceive the public, as is Defendant's failure to disclose  
18 the presence of Heavy Metals and BPA in the Contaminated Cat Foods.

19 **Unlawful**

20 131. As alleged herein, Defendant has marketed, advertised, and labeled  
21 the Contaminated Cat Foods with deceptive, misleading, or false claims, such that  
22 Defendant's actions as alleged herein violate at least the following laws:

- 23 • The CLRA, California Business & Professions Code sections 1750, *et*  
24 *seq.*; and
- 25 • The False Advertising Law, California Business & Professions Code  
26 sections 17500, *et seq.*

27 **Unfair**

28 132. Defendant's conduct with respect to the Marketing of the  
Contaminated Cat Foods is unfair because Defendant's conduct was immoral,

1 unethical, unscrupulous, or substantially injurious to consumers, and the utility of  
2 its conduct, if any, does not outweigh the gravity of the harm to its victims.

3 133. Defendant's conduct with respect to the Marketing of the  
4 Contaminated Cat Foods is also unfair because it violates public policy as declared  
5 by specific constitutional, statutory, or regulatory provisions, including, but not  
6 limited to, the False Advertising Law and the CLRA.

7 134. Defendant's conduct with respect to the Marketing of the  
8 Contaminated Cat Foods is also unfair because the consumer injury is substantial,  
9 not outweighed by benefits to consumers or competition, and not one consumers,  
10 themselves, can reasonably avoid.

11 135. In accordance with California Business & Professions Code section  
12 17203, Plaintiff seeks an order enjoining Defendant from continuing to conduct  
13 business through fraudulent or unlawful acts and practices and to commence a  
14 corrective advertising campaign. Defendant's conduct is ongoing and continuing,  
15 such that prospective injunctive relief is necessary.

16 136. On behalf of herself and the Class, Plaintiff also seeks an order for the  
17 restitution of all monies from the sale the Contaminated Cat Foods, which were  
18 unjustly acquired through acts of fraudulent, unfair, or unlawful competition.

19 **COUNT IV**

20 **Breach of Express Warranty Against Defendant on Behalf of the Class**

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

23 138. Defendant labeled, packaged, marketed, advertised, and sold its  
24 Contaminated Cat Foods into the stream of commerce with the intent that the  
25 Contaminated Cat Foods would be purchased by Plaintiff and the Class.

26 139. Defendant expressly warranted to Plaintiff and the Class that their  
27 Contaminated Cat Foods possess the Quality Claims.

28

1           140. Defendant made these express warranties regarding the Contaminated  
2 Cat Foods' quality and ingredients in writing through the Marketing.

3           141. These express warranties became part of the basis of the bargain  
4 Plaintiff and the Class entered into upon purchasing the Contaminated Cat Foods.

5           142. Defendant's express warranties were made in connection with the sale  
6 of the Contaminated Cat Foods to Plaintiff and the Class. Plaintiff and the Class  
7 relied on Defendant's express warranties when deciding whether to purchase the  
8 Contaminated Cat Foods.

9           143. Defendant's Contaminated Cat Foods do not conform to Defendant's  
10 express warranties because they contain Heavy Metals and BPA, and thus are not  
11 holistic, made from "only the best quality ingredients," "designed to support ...  
12 pet's overall health and well-being," premium, high quality, made of ingredients  
13 that undergo strict quality control measures, as nutritious as food one would give to  
14 a child, containing "nothing that's not" "good," and carefully formulated.

15           144. Defendant was on notice of its breach because it was aware the  
16 Contaminated Cat Foods could or did contain Heavy Metals and BPA and had  
17 exclusive knowledge of the make-up of the Contaminated Cat Foods and the  
18 source of all its packaging and cans.

19           145. Privity exists because Defendant expressly warranted to Plaintiff and  
20 the Class that the Contaminated Cat Foods possessed the Quality Claims.

21           146. As a direct and proximate result of Defendant's conduct, Plaintiff and  
22 the Class have suffered actual damages in that they purchased Contaminated Cat  
23 Food that is worth less than the price they paid and that they would have not have  
24 purchased at all had they known of the presence of Heavy Metals, BPA, and/or  
25 other unnatural ingredients.

26           147. Plaintiff and the Class seek actual damages, injunctive and declaratory  
27 relief, attorneys' fees, costs, and any other just and proper relief available  
28

1 thereunder for Defendant's failure to deliver goods conforming to its express  
2 warranties and resulting breach.

3 **COUNT V**

4 **Breach of Implied Warranty of Merchantability**  
5 **Against Defendant on Behalf of the Class**

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

8 149. Defendant is a merchant engaging in the sale of goods to Plaintiff and  
9 the Class.

10 150. There was a sale of goods from Defendant to Plaintiff and the  
11 members of the Class.

12 151. At all times mentioned herein, Defendant manufactured or supplied  
13 the Contaminated Cat Foods.

14 152. Prior to the time the Contaminated Cat Foods were purchased by  
15 Plaintiff and the Class, Defendant impliedly warranted to them that the  
16 Contaminated Cat Foods conformed to the promises and affirmations of fact made  
17 on the Contaminated Cat Foods' containers and labels, including possessing the  
18 Quality Claims.

19 153. For instance, the Contaminated Cat Foods possessed affirmations of  
20 fact on the labels representing that they were pure, healthy, and safe for  
21 consumption and consequently did not contain Heavy Metals.

22 154. Likewise, the Contaminated Cat Foods possessed affirmations of fact  
23 on the labels that that Contaminated Cat Foods were natural cat food and therefore  
24 did not contain unnatural substances such as BPA.

25 155. Plaintiff and the Class were the intended beneficiaries of these  
26 promises and affirmations of fact and relied on same when they purchased the  
27 Contaminated Cat Foods. This intention is made evident by Defendant's  
28 Marketing, which is directed to "pet parents" and other consumers.

1           156. The Contaminated Cat Foods did not conform to Defendant's  
2 affirmations of fact and promises, the Quality Claims, because they contained  
3 Heavy Metals, BPA, and/or other unnatural ingredients.

4           157. Defendant breached its implied warranties by selling the  
5 Contaminated Cat Foods that contained Heavy Metals, BPA, and/or other  
6 unnatural ingredients and therefore failed to conform to the promises or  
7 affirmations of fact made on their containers or labels.

8           158. Defendant was on notice of this breach because it was aware of the  
9 real risk for inclusion of Heavy Metals, BPA, and/or other unnatural ingredients  
10 and had exclusive knowledge of the make-up of the Contaminated Cat Foods and  
11 the source of all its packaging and cans.

12           159. Privity exists because Defendant impliedly warranted to Plaintiff and  
13 the Class through Marketing that the Contaminated Cat Foods possess the Quality  
14 Claims and by failing to disclose the presence of Heavy Metals, BPA, and/or other  
15 unnatural ingredients.

16           160. As a direct and proximate result of Defendant's conduct, Plaintiff and  
17 the Class suffered actual damages in that they purchased Contaminated Cat Food  
18 that is worth less than the price they paid and that they would have not have  
19 purchased at all had they known of the presence of Heavy Metals, BPA, and/or  
20 other unnatural ingredients.

21           161. Plaintiff and the Class seek actual damages, injunctive and declaratory  
22 relief, attorneys' fees, costs, and any other just and proper relief available  
23 thereunder for Defendant's failure to deliver goods conforming to its implied  
24 warranties and resulting breach.

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1 **COUNT VI**

2 **Fraudulent Misrepresentation Against Defendant on**  
3 **Behalf of the Class**

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

6 163. Defendant made false representations to Plaintiff and the Class about  
7 the Contaminated Cat Foods being holistic, made from "only the best quality  
8 ingredients," "designed to support ... pet's overall health and well-being,"  
9 premium, high quality, made of ingredients that undergo strict quality control  
10 measures, as nutritious as food one would give to a child, containing "nothing  
11 that's not" "good," and carefully formulated.

12 164. Defendant knew its representations about the Contaminated Cat Foods  
13 were false because it knew the Contaminated Cat Foods contained levels of Heavy  
14 Metals, BPA, and/or other unnatural ingredients.

15 165. Defendant intentionally and knowingly made these false  
16 misrepresentations to induce Plaintiff and the Class to purchase its Contaminated  
17 Cat Foods.

18 166. Plaintiff and the Class did in fact rely on these misrepresentations and  
19 purchased the Contaminated Cat Foods to their detriment. Given the deceptive  
20 manner in which Defendant advertised, represented, and otherwise promoted the  
21 Contaminated Cat Foods, Plaintiff and the Class's reliance on Defendant's  
22 misrepresentations was justifiable.

23 167. As a direct and proximate result of Defendant's conduct, Plaintiff and  
24 the Class suffered actual damages by purchasing Contaminated Cat Food that is  
25 worth less than the price they paid and that they would have not have purchased at  
26 all had they known of the presence of Heavy Metals, BPA, and/or other unnatural  
27 ingredients.

28



1 174. Plaintiff and the Class justifiably relied on Defendant's omissions to  
2 their detriment. Such detriment is evident from the true quality, characteristics,  
3 and ingredients of the Contaminated Cat Foods, which is inferior than advertised  
4 and represented by Defendant.

5 175. As a direct and proximate result of Defendant's conduct, Plaintiff and  
6 the Class suffered actual damages in that they purchased Contaminated Cat Food  
7 that is worth less than the price they paid and that they would have not have  
8 purchased at all had they known of the presence of Heavy Metals, BPA, and /or  
9 other unnatural ingredients.

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

13 **COUNT VIII**

14 **Negligent Misrepresentation Against Defendant on**  
15 **Behalf of the Class**

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

18 178. Defendant had a duty to Plaintiff and the Class to exercise reasonable  
19 and ordinary care in the Marketing of the Contaminated Cat Foods.

20 179. Defendant breached its duty to Plaintiff and the Class by Marketing  
21 products to Plaintiff and the Class that did not have the ingredients, qualities, and  
22 characteristics that Defendant represented and by failing to promptly remove the  
23 Contaminated Cat Foods from the marketplace or to take other appropriate  
24 remedial action.

25 180. Defendant knew or should have known that the ingredients, qualities,  
26 and characteristics of the Contaminated Cat Foods were not as advertised.  
27 Specifically, Defendant knew or should have known that the Contaminated Cat  
28

1 Foods did not possess the Quality Claims because they contained levels of Heavy  
2 Metals, BPA, and/or other unnatural ingredients.

3 181. As a direct and proximate result of Defendant's conduct, Plaintiff and  
4 the Class have suffered actual damages in that they purchased Contaminated Cat  
5 Food that is worth less than the price they paid and that they would have not have  
6 purchased at all had they known of the presence of Heavy Metals, BPA, and/or  
7 unnatural ingredients.

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

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, individually and on behalf of all others similarly  
12 situated, pray for judgment against the Defendant as to each and every count,  
13 including:

14 A. An order declaring this action to be a proper class action, appointing  
15 Plaintiff and her counsel to represent the Class, and requiring Defendant to bear the  
16 costs of class notice;

17 B. An order enjoining Defendant from selling the Contaminated Cat  
18 Foods until the levels of heavy metals and BPA are removed or full disclosure of  
19 the presence of such appear on Marketing;

20 C. An order enjoining Defendant from selling the Contaminated Cat  
21 Foods in any manner containing, suggesting, or implying the Quality Claims;

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

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

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

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

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

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

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

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

16 **JURY DEMAND**

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

18  
19  
20 Dated: November 30, 2018

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21  
22  
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