

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JACK BLASER, ELLEN EMBRY, JOSEPH
ESPOSITO, and JOSEPH MATTOCKS, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

HILL'S PET NUTRITION, INC.

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

IN RE: HILL'S PET NUTRITION, INC.,
DOG FOOD PRODUCTS LIABILITY
LITIGATION

MDL No. 2887

Case No. 19-md-2887-JAR-TJJ

Plaintiffs Jack Blaser, Ellen Embry, Joseph Esposito, and Joseph Mattocks ("Plaintiffs"), individually and on behalf of all others similarly situated, allege the following on information and belief, except that Plaintiffs' allegations as to their own actions are based on personal knowledge:

NATURE OF THE ACTION

1. Defendant Hill's Pet Nutrition, Inc. ("Hill's") manufacturers, markets, advertises, labels, and sells various brands of pet food, including Hill's® Prescription Diet® and Hill's Science Diet® dog foods.

2. Hill's advertises the Prescription Diet® dog food as follows: "Life is just more fun when your dog is healthy. That's why we work with your veterinarian to deliver the best nutrition-based solutions that help you recapture a normal, vibrant life together."¹

3. Hill's advertises the Science Diet® dog food as follows: "Feed your dog's best life with biology-based nutrition."² Hill's also claims the Science Diet® is "Veterinarian Recommended."³

4. Plaintiffs Embry and Mattocks purchased recalled Hill's® Prescription Diet® products as follows:

- a. Plaintiff Embry purchased Hill's® Prescription Diet® k/d® Kidney Care with Lamb canned dog food for her labradoodle dog, named Molly Brown; while
- b. Plaintiff Mattocks purchased the following Hill's® Prescription Diet® products for his two Chihuahuas, Sammy and Charlie:
 - i. Hill's® Prescription Diet® i/d Canine Chicken & Vegetable Stew 12.5 oz;
 - ii. Hill's® Prescription Diet® w/d Canine 13 oz; and
 - iii. Hill's® Prescription Diet® i/d Low Fat Canine Rice, Vegetable & Chicken Stew 12.5 oz.

5. The labels of the Hill's® Prescription Diet® dog food products advertise that they offer "Clinical Nutrition" and "Therapeutic Dog Nutrition." The labels also represent that the product "provides complete and balanced nutrition for maintenance of adult dogs and growing puppies." But those representations were false, as Hill's® Prescription Diet® formulations contained toxic levels of vitamin D.

¹ <https://www.hillspet.com/prescription-diet/dog-food>.

² <https://www.hillspet.com/science-diet/dog-food>.

³ *Id.*

6. Plaintiffs Blaser, Esposito and Mattocks purchased recalled Hill's® Science Diet® dog food products as follows:

- a. Plaintiff Blaser purchased Hill's® Science Diet® Adult 7+ Turkey & Barley Entrée 13oz canned food for his terrier, Pixie Lynn;
- b. Plaintiff Esposito purchased Hill's® Science Diet® Adult Beef & Barley Entrée canned dog Food for Toby and Max, two pit bulls he periodically cared for; and
- c. Plaintiff Mattocks purchased the following Science Diet® products for his two chihuahuas, Sammy and Charlie:
 - i. Hill's® Science Diet® Adult 7+ Beef & Barley Entrée Dog Food 13 oz.; and
 - ii. Hill's® Science Diet® Adult Chicken & Barley Entrée Dong Food 13 oz.

7. The labels of the Hill's® Science Diet® dog food products advertise that Science Diet® dog food “is formulated to meet the nutritional levels established by the AAFCO Dog Food Nutrient Profiles” But those representations were false because the recalled Hill's® Science Diet® dog food products were not formulated to meet appropriate nutritional levels. In fact, they actually contained toxic levels of Vitamin D.

8. “While vitamin D is an essential nutrient for dogs, ingestion of elevated levels can lead to potential health issues . . . such as vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and weight loss.”⁴ In greater doses, consuming elevated levels of vitamin D can lead to renal failure and death.⁵

9. Hill's admitted to the FDA that the vitamin mix that Hill's® acquired from a supplier—and ultimately incorporated into the recalled products—contained **30x the target level of Vitamin D.**

⁴ <https://www.fda.gov/Safety/Recalls/ucm630232.htm>

⁵ *Id.*

10. The supplier of the toxic vitamin mix is DSM Nutritional Products, LLC (“DSM”).⁶

11. DSM is a United States subsidiary of Royal DSM, which “is a global purpose-led, science-based company active in Nutrition, Health and Sustainable Living.”⁷ DSM purports to deliver “innovative solutions for human nutrition, animal nutrition, personal care and aroma, medical devices, green products and applications, and new mobility and connectivity.”⁸

12. Royal DSM “and its associated companies deliver annual net sales of about €10 billion with approximately 23,000 employees. The company was founded in 1902 and is listed on Euronext Amsterdam.”⁹

13. DSM operates nine bulk manufacturing and formulation sites around the world. These sites produce the majority of DSM’s nutritional ingredients, which are sold either as straight products or as premixes and vitamin concentrates.¹⁰

14. DSM operates four production sites in the US, which manufacture vitamin premixes, vitamin concentrates, and/or straight vitamin products.¹¹

15. In January 2019, Hill’s notified DSM that it was doing a recall because a dog had become ill after consuming Hill’s® Prescription Diet® canned dog food, which contained a DSM-supplied vitamin mix. That vitamin mix was identified as 2217 Canned Canine PMX (with a product code of: NP15268025, and for Lot numbers: 9100058130 and 9100058131).¹²

16. As a result, DSM initiated a recall of approximately 2,500 kg of that product on January 30, 2019.¹³

⁶ <https://www.accessdata.fda.gov/scripts/ires/index.cfm?Product=171929>

⁷ <https://www.dsm.com/corporate/about.html> (visited June 20, 2019).

⁸ *Id.*

⁹ *Id.*

¹⁰ https://www.dsm.com/content/dam/dsm/anh/en_US/documents/DSM-Pet-Industry-Handbook-and-Catalog-2017-2018-EN.PDF (“DSM Catalog”), at 10-11.

¹¹ *Id.* at 10.

¹² <https://www.accessdata.fda.gov/scripts/ires/index.cfm?Product=171929>

¹³ *Id.*

17. Immediately after, on January 31, 2019, Hill's initiated the first of three rounds of recalls of its tainted products. The first recall, covering 25 products, was announced on January 31, 2019.¹⁴ The second recall, covering an additional 8 products, was announced on March 20, 2019. Finally, Hill's expanded the second recall to include an additional lot number on May 15, 2019.

18. Hill's admits that the recall involved millions of cases of dangerously tainted products, that it released into the stream of commerce in the United States.

19. Plaintiffs purchased now recalled batches of the food, and fed it to pets, which ultimately led to some pets having to be put down due to complications relating to the consumption of the recalled food.

20. The vitamin D contamination was entirely preventable, but Defendant did not have the proper quality controls in place to identify and stop it; indeed, the FDA asserted that Hill's failed to follow some of its own internal chemical testing policies and procedures. Specifically, the FDA noted that Hill's did not implement all aspects of its food safety plan. Hill's identified vitamin premix as a high risk chemical hazard, which by Hill's own standards would have to be analyzed and within acceptable limits. However, when asked, Hill's could not provide any analytical test results for raw ingredient premixes.

21. In its video announcement concerning the recall, Hill's states it "*now ha[s] tighter quality controls in place to prevent this from happening again.*"¹⁵ However, these "tighter quality controls" are cold comfort to Plaintiffs and Class members, who have seen their dogs poisoned or killed, incurred substantial veterinarian bills, and/or paid for the dog food containing toxic levels of vitamin D that was fed to pets.

¹⁴ <https://www.hillspet.com/productlist/jan-31-press-release>

¹⁵ *Id.*

22. As a result of the highly toxic levels of vitamin D, the dog food bought by Plaintiffs is worthless. Plaintiffs and Class members were damaged by the full purchase price of the Prescription Diet® and Science Diet® dog foods that contained elevated levels of vitamin D, as well as other consequential damages including in some cases vet bills and, tragically, the loss of pets' lives.

23. Plaintiffs bring this action on behalf of themselves and all others similarly situated against Defendant for equitable relief and to recover damages and restitution for: (i) breach of express warranty, (ii) breach of the implied warranty of merchantability, (iii) violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.; (iv) fraud, (v) fraudulent omission, (vi) negligence, (vii) strict products liability, (viii) unjust enrichment,) (ix) violation of the California Consumers Legal Remedies Act (injunctive relief only), (x) violation of California's False Advertising Law, (xi) violation of California's Unfair Business Practices Law; (xii) violation of Missouri's Merchandising Practices Act; (xiii) violation of New York's General Business Law §§ 349, 350; and (xiv) violation of the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

PARTIES

24. Plaintiff Joseph Mattocks and his two chihuahuas, Sammy and Charlie, were, at all relevant times, resident in Redondo Beach, California. Although Mr. Mattocks is a college student in Pennsylvania, while he was home in Redondo Beach during his Winter break during December 2018 - January 2019, he purchased and fed to Sammy and Charlie the following recalled products: Hill's® Prescription Diet® i/d® Canine Chicken & Vegetable Stew 12.5oz; Hill's® Prescription Diet® w/d® Canine 13oz; Hill's® Science Diet® Adult 7+ Beef & Barley Entrée Dog Food 13oz; Hill's® Science Diet® Adult Chicken & Barley Entrée Dog Food 13oz; and Hill's® Prescription Diet® i/d® Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz. Plaintiff typically purchased

Hill's dog food at Petco and Petsmart, but he also occasionally purchased the product at smaller stores in either Redondo Beach or Mission Viejo. Plaintiff Mattocks would not have purchased the above-referenced dog food had he known that the food did not provide therapeutic and balanced nutrition and that it was not, in fact, properly manufactured and free from defects.

25. Plaintiff Ellen Embry is, and at all relevant times mentioned herein was, a resident of St. Louis, Missouri, and a citizen of the State of Missouri, where she resided with her labradoodle, Molly Brown. Ms. Embry fed Molly Brown Hill's® Prescription Diet® k/d® Kidney Care with Lamb Canned Dog Food from 2016-2018, which she purchased at a Petco retail store in St. Louis, Missouri. Tragically, Molly Brown passed away in January 2019, due to complications associated with consuming Hill's contaminated dog food. Plaintiff Embry would not have purchased the above-referenced dog food had she known that the food did not provide therapeutic and balanced nutrition and that it was not, in fact, properly manufactured and free from defects. Upon information and belief, Molly Brown's death was a direct and proximate result of consuming the recalled dog food. As a result of Molly Brown's medical issues from eating contaminated Hill's® Prescription Diet® dog food, Plaintiff incurred medical expenses, including veterinary bills and treatments.

26. Plaintiff Joseph Esposito is, and at all relevant times mentioned herein, was a resident of Watervliet, New York, where he sometimes cared for two pit bulls named Toby and Max. Mr. Esposito purchased and fed to Toby and Max Hill's® Science Diet Adult Beef & Barley Entrée Canned Dog Food, 13oz. Plaintiff Esposito purchased the recalled products at various pet food supply stores in and around Watervliet and Glenville, New York, including at Pet Supplies Plus in Glenville. Plaintiff Esposito would not have purchased the above-referenced dog food had

he known that the food did not provide therapeutic and balanced nutrition and that it was not, in fact, properly manufactured and free from defects.

27. Plaintiff Jack Blaser is, and at all relevant times mentioned herein, was a resident of Ozawkie, Kansas, where he resided with his terrier, Pixie Lynn. Mr. Blaser fed Pixie Lynn Hill's® Science Diet® Adult 7+ Turkey & Barley Entrée 13oz, which he purchased at the Fort Leavenworth Commissary. Tragically, Pixie Lynn was put down in March 2019, due to kidney failure directly and proximately caused by Pixie Lynn's consumption of Hill's recalled dog food. Plaintiff Blaser would not have purchased the above-referenced dog food had he known that the food did not provide therapeutic and balanced nutrition and that it was not, in fact, properly manufactured and free from defects. Upon information and belief, Pixie Lynn's death was a direct and proximate result of consuming the recalled dog food. As a result of Pixie Lynn's medical issues from eating contaminated Hill's® Prescription Diet® dog food, Plaintiff Blaser incurred medical expenses, including veterinary bills and treatments.

28. Defendant Hill's Pet Nutrition, Inc. is a Delaware corporation. Its principal place of business is in Kansas, at 400 SW 8th Avenue, Topeka, Kansas, 66603.

JURISDICTION AND VENUE

29. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, Pub. L. No. 109-2 Stat. 4 ("CAFA"), which, *inter alia*, amends 28 U.S.C. § 1332, at new subsection (d), conferring federal jurisdiction over class actions where, as here: (a) there are 100 or more members in the proposed class; (b) some members of the proposed class have a different citizenship from Defendant; and (c) the claims of the proposed class members exceed the sum or value of five million dollars (\$5,000,000) in aggregate. *See* 28 U.S.C. § 1332(d)(2) and (6).

30. Venue is proper in this Court under 28 U.S.C. § 1391 because Defendant Hill's principal place of business is in this District.

31. In addition, venue is proper in this Court pursuant to an Order of the Multidistrict Litigation Panel, dated June 4, 2019, in MDL 2887, transferring to, and consolidating in, this District, for pre-trial purposes, all cases related to *In re: Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation*.

FACTS COMMON TO ALL CAUSES OF ACTION

A. Defendant Hill's Food Products

1. Hill's® Prescription Diet® Dog Food

32. Hill's formulates, develops, manufactures, labels, packages, distributes, markets, advertises, and sells Hill's® Prescription Diet® dog food at veterinary clinics and pet retailers across the United States. Regardless of where they are purchased, Prescription Diet dog foods bear the same labeling and packaging.



33. There are a number of varieties of Prescription Diet® dog food, each representing that they are targeted at a specific health condition. These conditions include, but are not limited

to, digestive care, kidney care, weight management (metabolic), urinary care, skin/food sensitivities, joint care, and aging.

34. On its website page for Prescription Diet® dog food, under the “Quality” tab, Hill’s states: “Peace of mind is priceless. That’s why only the best ingredients from the most trusted sources are the foundation for all Prescription Diet® foods.”¹⁶ Hill’s further represents under the “Quality” tab it “conduct[s] 5 million quality and safety checks per year at the facility as well as voluntary third-party inspections nearly every month to ensure that we are maintaining the highest standards.”¹⁷ But Hill’s did not have effective quality and safety controls in place to identify and stop the vitamin D contamination in its dog food products and/or Hill’s disregarded its internal quality control policies and procedures related to chemical testing.

35. Ultimately, Hill’s failed to ensure the quality and safety of its Prescription Diet® formulations, which led to them containing elevated and toxic levels of vitamin D, which is acutely harmful, and in some cases fatal, to dogs.

2. Hill’s® Science Diet® Dog Food

36. Hill’s formulates, develops, manufactures, labels, packages, distributes, markets, advertises, and sells Hill’s® Science Diet® dog food at veterinary clinics and pet retailers across the United States. Regardless of where they are purchased, Science Diet dog foods bear the same labeling and packaging.

37. Hill’s produces several varieties of Science Diet® dog food for different aged dogs, including puppy (less than one year old), ages one to six, and ages seven and up.

¹⁶ *Id.*

¹⁷ *Id.*



38. Although it does not require a prescription to purchase, each can of Science Diet® dog food claims that it is “veterinarian recommended” beneath the logo. The label also claims that the Science Diet dog food “is formulated to meet the nutritional levels established by the AAFCO Dog Food Nutrient Profiles” But that claim is false, as Hill’s® Science Diet® dog food contained highly elevated levels of vitamin D, which is harmful to dogs.

39. Indeed, Hill’s alleges on the Science Diet® dog food page that it “understands what dogs need to live a long and healthy life,” and that it developed the Science Diet dog food “with the combined expertise of 220+ vets, scientists and pet nutritionists.”¹⁸

40. Rather than providing a “long and healthy life,” Class members that used the Science Diet dog food saw their dogs become ill, or even die, as a result of consuming the food.

¹⁸ *Id.*

41. Hill's® Science Diet® formulations suffered from an identical defect as its Prescription Diet® formulations, to wit hazardous levels of vitamin D. Purchasers of Hill's® Science Diet® suffered an identical injury as users of its Prescription Diet.

3. Hill's Quality and Safety Standards

42. On the "Quality & Safety" page of its website, Defendant claims it has a "proven commitment to quality and safety," and asks consumers to "trust the Hill's standard."¹⁹ These quality and safety standards are applicable to all of Defendant's products.

43. In sourcing its ingredients, Defendant states: "Not only is each ingredient examined to ensure its safety, we also analyze each product's ingredient profile for essential nutrients to ensure your pet gets the stringent, precise formulation they need."²⁰

44. In manufacturing its products, Defendant states: "We conduct annual quality systems audits for all manufacturing facilities to ensure we meet the high standards your pet deserves. We demand compliance with current Good Manufacturing Practices (cGMP) and Hill's high[-]quality standards, so your pet's food is produced under clean and sanitary conditions."

45. As to the finished product, Defendant states: "We conduct final safety checks daily on every Hill's pet food product to help ensure the safety of your pet's food."

46. Despite these allegedly stringent quality and safety standards, Defendant's Prescription Diet® and Science Diet® dog foods became contaminated with toxic levels of vitamin D, causing harm to dogs owned by Plaintiffs and Class members.

¹⁹ <https://www.hillspet.com/about-us/quality-and-safety>.

²⁰ *Id.*

B. DSM's Products

47. DSM self-describes as one of the world's leading producers of vitamins.²¹

48. DSM is involved in all three steps of the value chain, including the production of pure active ingredients, their incorporation into sophisticated forms, and the provision of tailored premixes.

49. DSM extensively touts the purported safety of its products and manufacturing processes.

50. In marketing materials, DSM specifically states that it has a global quality and safety standard for its products—including its premix—with “the goal of meeting or exceeding the expectations of the leading petfood brand owners in the market.”²²

51. DSM's purported global quality and safety standard is supposed to be based upon its “5 Q Values,” which are to take into account: Food Safety, Trusted Supply Chain, Closing the Loop, Traceability, and Sharing and Learning.²³

52. In spite of its purported global safety and quality standards, DSM utterly failed to meet even basic safety standards when it distributed its toxic vitamin premix to Hill's.

C. The Retail Product Recalls

53. Excessive consumption of vitamin D can lead to a plethora of health issues in dogs, as Hill's itself notes:

While vitamin D is an essential nutrient for dogs, ingestion of elevated levels can lead to potential health issues depending on the level of vitamin D and the length of exposure, and dogs may exhibit symptoms such as vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and weight loss. Vitamin D, when consumed at very high levels, can lead to serious health issues in dogs including renal dysfunction.²⁴

²¹ See *supra* n. 10, DSM Catalog at 4.

²² *Id.*

²³ *Id.* pp 4-5.

²⁴ <https://www.hillspet.com/productlist#press-release>.

54. On January 31, 2019, Hill's claimed it "learned of the potential for elevated vitamin D levels in some of its canned dog foods after receiving a complaint in the United States about a dog exhibiting signs of elevated vitamin D levels."²⁵ In announcing the recall, Hill's did not state when it received this complaint. However, FDA documents suggest that Hill's became aware of the complaint in December of 2018.

55. Having investigated that complaint, Hill's "confirmed elevated levels of vitamin D due to a supplier error," and recalled the following products²⁶:

Product Name	SKU Number	Date Code/Lot Code
Hill's® Prescription Diet® c/d® Multicare Canine Chicken & Vegetable Stew 12.5oz	3384	102020T10
		102020T25
Hill's® Prescription Diet® i/d® Canine Chicken & Vegetable Stew 12.5oz	3389	102020T04
		102020T10
		102020T19
		102020T20
Hill's® Prescription Diet® i/d® Canine Chicken & Vegetable Stew 5.5oz	3390	102020T11
		112020T23
		122020T07
Hill's® Prescription Diet® z/d® Canine 5.5oz	5403	102020T17
		112020T22
Hill's® Prescription Diet® g/d® Canine 13oz	7006	112020T19
		112020T20
Hill's® Prescription Diet® i/d® Canine 13oz	7008	092020T30
		102020T07
		102020T11
		112020T22
		112020T23
Hill's® Prescription Diet® j/d® Canine 13oz	7009	112020T20
Hill's® Prescription Diet® k/d® Canine 13oz	7010	102020T10
		102020T11

²⁵ <https://www.fda.gov/Safety/Recalls/ucm630232.htm>.

²⁶ *Id.*

Hill's® Prescription Diet® w/d® Canine 13oz	7017	092020T30
		102020T11
		102020T12
Hill's® Prescription Diet® z/d® Canine 13oz	7018	102020T04
		112020T22
Hill's® Prescription Diet® Metabolic + Mobility Canine Vegetable & Tuna Stew 12.5oz	10086	102020T05
		102020T26
Hill's® Prescription Diet® w/d® Canine Vegetable & Chicken Stew 12.5oz	10129	102020T04
		102020T21
Hill's® Prescription Diet® i/d® Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz	10423	102020T17
		102020T19
		112020T04
Hill's® Prescription Diet® Derm Defense® Canine Chicken & Vegetable Stew 12.5oz	10509	102020T05
Hill's® Science Diet® Adult 7+ Small & Toy Breed Chicken & Barley Entrée Dog Food 5.8oz	4969	102020T18
Hill's® Science Diet® Puppy Chicken & Barley Entrée 13oz	7036	102020T12
Hill's® Science Diet® Adult Chicken & Barley Entrée Dog Food 13oz	7037	102020T13
		102020T14
		112020T23
		112020T24
Hill's® Science Diet® Adult Turkey & Barley Dog Food 13oz	7038	102020T06
Hill's® Science Diet® Adult Chicken & Beef Entrée Dog Food 13oz	7040	102020T13
Hill's® Science Diet® Adult Light with Liver Dog Food 13oz	7048	112020T19
Hill's® Science Diet® Adult 7+ Chicken & Barley Entrée Dog Food 13oz	7055	092020T31
		102020T13
Hill's® Science Diet® Adult 7+ Beef & Barley Entrée Dog Food 13oz	7056	092020T31
		112020T20
		112020T24
Hill's® Science Diet® Adult 7+ Turkey & Barley Entrée 13oz	7057	112020T19
Hill's® Science Diet® Adult 7+ Healthy Cuisine Braised Beef, Carrots & Peas Stew dog food 12.5oz	10452	102020T14
		102020T21
Hill's® Science Diet® Adult 7+ Youthful Vitality Chicken & Vegetable Stew dog food 12.5oz	10763	102020T04
		102020T05
		112020T11

56. Contrary to Hill's voluminous representations and assurances regarding the quality of their food and quality control processes, it made an about-face in its video announcing the recall, stating it "*now ha[s] tighter quality controls in place to prevent this from happening again.*"²⁷

57. Despite receiving 85 consumer complaints by February 11, 2019, Hill's did not expand its recall until March 20, 2019. The recall was expanded in March to include both additional SKUs (covering an additional eight products), as well as additional lots of previously-recalled products. And, on May 15, 2019, Hill's once again expanded its recall, to include an additional lot of food.²⁸

58. In total, the recalls affect millions of cases of canned dog food.

D. Hill's Admits That The Vitamin Premix Used In The Recalled Dog Food Had Excessive Vitamin D Content

59. Dr. Karen Shenoy, associate director for veterinary affairs at Hill's, stated that "the company began investigating its products in early December after being contacted by a veterinarian."²⁹

60. "Dr. Shenoy said Hill's employees confirmed Jan. 28 that a vitamin mix used in Hill's foods had high vitamin D content."³⁰

61. Hill's later released a video statement from Bret Deardorff, DVM, a Hill's veterinarian, which stated that Hill's "isolated and identified the issue" to be excessive levels of vitamin D contained in the vitamin premix.³¹

²⁷ <https://www.hillspet.com/productlist#press-release>.

²⁸ https://www.hillspet.com/productlist?gclid=EAIaIQobChMIYrDyt_-l4QIVS18NCh2x8QcYEAAYASAAEgLKJ_D_BwE&gclidsrc=aw.ds

²⁹ See <https://www.avma.org/News/JAVMANews/Pages/190315d.aspx> (last visited 4/1/2019).

³⁰ *Id.*

³¹ <https://www.facebook.com/HillsPet/videos/a-message-to-pet-parents/965222620533640/> (last visited 4/1/2019).

62. Dr. Deardorff further stated that Hill’s now has “tighter quality controls in place to prevent this from happening again,”³² indicating the preventable nature of this defect.

63. In a March 12, 2019 letter to the FDA, it became apparent that Hill’s “root cause” internal investigation, of a December 2018 consumer complaint, revealed that the range of Vitamin D contained in its supplier’s Vitamin premix was 30x the target the range for Vitamin D.

CLASS ACTION ALLEGATIONS

64. Plaintiffs bring this action on behalf of themselves and on behalf of all other persons similarly situated.

65. Plaintiffs propose the following Class definition: All persons in the United States who purchased Hill’s® Prescription Diet® or Science Diet® dog food with elevated levels of vitamin D (the “Nationwide Class”).

66. Plaintiffs represent, and are members of, this proposed class. Excluded from the Nationwide Class is Defendant and any entities in which Defendant has a controlling interest, Defendant’s agents and employees, any Judge and/or Magistrate Judge to whom this action is assigned and any member of such Judges’ staffs and immediate families.

67. In addition, Plaintiffs seek to represent two warranty subclasses as follows:

- a. the “Express Warranty Subclass,” which includes all Class members except those residing in the following states: Alabama, Arkansas, Idaho, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Oregon, Rhode Island, South Dakota, Tennessee, and Texas; and

³² *Id.*

- b. the “Implied Warranty Subclass,” which includes all Class members except those residing in the following states: Alabama, Arizona, Florida, Georgia, Idaho, Kentucky, North Carolina, Ohio, Oregon, Tennessee, Washington, and Wisconsin.

68. Plaintiff Mattocks also seek to represent a Subclass of all Class Members who purchased Hill’s® Prescription Diet® or Science Diet® dog food with elevated levels of vitamin D in California (the “California Subclass”).

69. Plaintiff Embry also seeks to represent a Subclass of all Class Members who purchased Hill’s® Prescription Diet® or Science Diet® dog food with elevated levels of vitamin D in Missouri (the “Missouri Subclass”).

70. Plaintiff Esposito also seeks to represent a Subclass of all Class Members who purchased Hill’s® Prescription Diet® or Science Diet® dog food with elevated levels of vitamin D in New York (the “New York Subclass”).

71. Plaintiff Blaser also seeks to represent a Subclass of all Class Members who purchased Hill’s® Prescription Diet® or Science Diet® dog food with elevated levels of vitamin D in Kansas (the “Kansas Subclass”). The Nationwide Class and all subclasses are collectively referred to as the “Class.”

72. **Numerosity.** The members of the Class are geographically dispersed throughout the United States and are so numerous that individual joinder is impracticable. Upon information and belief, Plaintiffs reasonably estimate there are hundreds of thousands of members in the Class. Plaintiffs do not know the exact number of members in the proposed Class, but reasonably believe, based on the scale of Hill’s business and the number of recalled cases of cans, that the Class is so numerous that individual joinder would be impracticable.

73. The disposition of the claims in a class action will provide substantial benefit to the parties and the Court in avoiding a multiplicity of identical suits. Members of the proposed Class can be identified easily through records maintained by Defendant Hill's and retailers. Thus, Class members may be identified and notified of the pendency of this action by U.S. Mail, electronic mail, and/or published notice, as is customarily done in consumer class actions.

74. **Existence and predominance of common questions of law and fact.** There are well defined, nearly identical, questions of law and fact affecting all parties. The questions of law and fact involving the class claims predominate over questions which may affect individual members of the proposed Class. Those common question of law and fact include, but are not limited to, the following:

- a. Whether Defendant owed a duty of care to Plaintiffs and the Class;
- b. Whether the Prescription Diet® and Science Diet® dog foods that contained hazardous and excessive levels of vitamin D are adulterated and unfit for their intended purpose;
- c. Whether Defendant knew or should have known that DSM's vitamin premix, and therefore Hill's® Prescription Diet® and Science Diet® dog foods, contained excessive levels of vitamin D and other ingredients that do not conform to the products' labels, packaging, and advertising, and Defendant's statements about its products' quality and safety;
- d. Whether Defendant recklessly, intentionally, and/or fraudulently failed to test for the presence of excessive vitamin D or other ingredients that do not conform to the products' labels, packaging, and advertising, and Defendant's statements about the products' quality and safety;

- e. Whether Defendant wrongfully represented and continue to represent that the DSM vitamin premix, and the Hill's® Prescription Diet® and Science Diet® dog foods are suitable for consumption by dogs, healthy, nutritious, clinically approved, subject to strict quality control measures, and/or unadulterated;
- f. Whether Defendant wrongfully represented and continue to represent that the manufacturing of the DSM Vitamin premix and the Hill's® Prescription Diet® and Science Diet® dog foods are subjected to rigorous quality and safety standards;
- g. Whether Defendant wrongfully failed to state that the DSM vitamin premix and the Hill's® Prescription Diet® and Science Diet® dog foods contained (or had a risk or probability of containing) excessive levels of vitamin D and/or unnatural or other ingredients that do not conform to the labels, packaging, advertising, and statements;
- h. Whether Defendant's representations in advertising, statements, packaging and/or labeling is false, deceptive, and misleading;
- i. Whether Defendant's representations regarding the DSM vitamin premix and the Hill's® Prescription Diet® and Science Diet® products are likely to deceive a reasonable consumer;
- j. Whether a reasonable consumer would consider the excessive vitamin D or other ingredients that do not conform to the labels, packaging, advertising, and statements as a material fact in purchasing pet food;
- k. Whether Defendant had knowledge that its representations were false, deceptive, and misleading;
- l. Whether Defendant continues to disseminate those representations despite knowledge that the representations are false, deceptive, and misleading;

- m. Whether a representation that a product is suitable for consumption by dogs, healthy, nutritious, premium, clinically approved, subject to strict quality control measures, and/or unadulterated is material to a reasonable consumer;
- n. Whether Hill's representations and descriptions on the labeling of the Prescription Diet® and Science Diet® dog foods are likely to mislead, deceive, confuse, or confound consumers acting reasonably;
- o. Whether Defendant's conduct was negligent;
- p. Whether Defendant's conduct was fraudulent;
- q. Whether Defendant made negligent and/or fraudulent misrepresentations and/or omissions;
- r. Whether Defendant is liable for damages, and the amount of such damages; and
- s. Whether Defendant should be enjoined from engaging in such conduct in the future.

75. **Typicality.** Plaintiffs assert claims that are typical of each member of the Class because they are each people who purchased at least one can of either Hill's® Prescription Diet® or Science Diet® dog food that contained elevated levels of vitamin D, without the knowledge that said can contained toxic levels of vitamin D, and have suffered damages as a result. These damages include the purchase price of the recalled dog food, as well as consequential damages relating to consumption of the recalled dog food, such as veterinarian bills and injury or death to dogs. Plaintiffs will fairly and adequately represent and protect the interests of the proposed Class, and have no interests which are antagonistic to any member of the proposed Class.

76. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained counsel experienced in handling complex consumer class action litigation—including prior experience in pet-food labeling class actions— and

Plaintiffs intend to vigorously prosecute this action on behalf of the Class. Further, Plaintiffs have no interests that are antagonistic to those of the Class.

77. **Superiority.** A class action is the superior method for the fair and efficient adjudication of this controversy. Class-wide relief is essential to compel Defendant to comply with industry quality control and safety standards and deter such a tragedy from happening again. The interest of the members of the proposed Class in individually controlling the prosecution of separate claims against Defendant is small because the damages in an individual action for most Plaintiffs are relatively small. Management of these claims as a class action is likely to present significantly fewer difficulties than would be present if the many class members sought to bring individual actions, because each consumer was harmed in an identical manner. Given the relatively small dollar amount of each individual claim, it would be highly impracticable, if not virtually impossible, for the Class members, on an individual basis, to obtain effective redress for the wrongs committed against them. Further, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class-action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances.

78. In the alternative, the Class may also be certified because:

- a. the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudication with respect to individual Class members that would establish incompatible standards of conduct for the Defendant;
- b. the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and/or
- c. Defendant has acted or refused to act on grounds generally applicable to the Class as a whole, thereby making appropriate final declaratory and/or injunctive relief with respect to the members of the Class as a whole.

COUNT I
Breach Of Express Warranty
(On Behalf Of The Express Warranty Subclass)

79. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if fully stated herein.

80. Plaintiffs bring this cause of action on behalf of themselves and a Express Warranty Subclass containing all members of the Nationwide Class, except for Class members residing in the following states: Alabama, Arkansas, Idaho, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Oregon, Rhode Island, South Dakota, Tennessee, and Texas.

81. Plaintiffs, and each member of the Express Warranty Subclass, formed a contract with Hill's at the time Plaintiffs and other Class members purchased the Prescription Diet® and Science Diet® dog food that contained toxic levels of vitamin D. The terms of the contract include the promises and affirmations of fact made by Hill's on the dog food's packaging and through

marketing and advertising. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between Plaintiffs and the members of the Class, and Hill's.

82. Specifically, Hill's expressly warranted, advertised, and represented to Plaintiffs and the Express Warranty Subclass that its Prescription Diet® and Science Diet® dog foods were:

- a. Safe for consumption by dogs;
- b. Made with the highest quality control and safety standards;
- c. Made with ingredients that are "examined to ensure [their] safety . . . [and] ensure your pet gets the stringent, precise formulation they need";
- d. That the Prescription Diet® products provided "Therapeutic Dog Nutrition";
- e. That the Prescription Diet® products "provides complete and balanced nutrition for maintenance of adult dogs and growing puppies";
- f. That the Science Diet® products were "formulated to meet the nutritional levels established by the AAFCO Dog Food Nutrient Profiles . . .";
- g. Recommended by or developed in cooperation with veterinarians and other medical professionals; and
- h. Will assist with a variety of medical conditions in dogs, or generally help dogs "live a long and healthy life."

83. Hill's made these express warranties regarding its Prescription Diet® and Science Diet® dog foods' quality, ingredients, and fitness for consumption in writing through its website, advertisements, marketing materials and on the Prescription Diet® and Science Diet® dog foods' packaging and labels.

84. Hill's advertisements, warranties, and representations were made in connection with the sale of the Prescription Diet® and Science Diet® dog foods to Plaintiffs and the Class, and were the basis of the bargain between Hill's and Plaintiffs and the members of the Express Warranty Subclass.

85. Hill's advertisements, warranties, and representations were made to induce Plaintiffs and the Express Warranty Subclass members to purchase the Prescription Diet® and Science Diet® dog foods. Hill's Prescription Diet® and Science Diet® dog foods do not conform to its advertisements, warranties, and representations in that they:

- a. Were sold with hazardous, elevated levels of vitamin D despite being advertised as safe for consumption and providing balanced nutrition;
- b. Were not made under high quality control and safety standards;
- c. Did not bestow upon dogs the "precise formulation" dogs need because the dog foods contained hazardous levels of vitamin D;
- d. Did not meet AAFCO guidelines because they contained hazardous levels of vitamin D;
- e. Did not offer therapeutic or balanced nutrition because the dog foods contained hazardous levels of vitamin D which is acutely harmful to dogs; and
- f. Harmed and even killed dogs, rather than treating medical conditions or generally helping dogs "live a long and healthy life."

86. As a direct and proximate result of Hill's conduct, Plaintiffs and the Express Warranty Subclass members suffered actual damages in that they purchased Prescription Diet® and Science Diet® dog foods that were worthless. Plaintiffs and the Express Warranty Subclass would not have purchased the food at all had they known of the risk and/or presence of excessive

levels of vitamin D that rendered the products hazardous and unsafe for Plaintiffs' and the Express Warranty Subclass's pets to consume.

87. As a result of Hill's breach of its express warranties, Plaintiffs and the Express Warranty Subclass members are entitled to actual damages for the price of Prescription Diet® and Science Diet® dog food cans they purchased and medical expenses related to the treatment of their dogs.

88. Plaintiffs and the Express Warranty Subclass are also entitled to, and do seek injunctive relief ensuring Hill's complies with all proper quality and safety standards going forward.

89. Plaintiffs and the Express Warranty Subclass are also entitled to an award of attorneys' fees and costs.

90. Upon information and belief, prior to filing this action, Hill's was placed on notice that it had breached express warranties, by being served with a pre-suit notice letter that complied in all respects with U.C.C. §§ 2-313, 2-607, in a related matter. That pre-suit letter advised Hill's that it breached express warranties and demanded that it cease and desist from such breaches and make full restitution by refunding the monies received therefrom.

COUNT II
Breach Of The Implied Warranty Of Merchantability
(On Behalf of The Implied Warranty Subclass)

91. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if fully stated herein.

92. Plaintiffs bring this cause of action on behalf of themselves and an Implied Warranty Subclass, containing all members of the Nationwide Class, except for Class Members who reside in the following states: Alabama, Arizona, Florida, Georgia, Idaho, Kentucky, North Carolina, Ohio, Oregon, Tennessee, Washington, and Wisconsin.

93. Hill's is a merchant engaging in the sale of goods to Plaintiffs and the Implied Warranty Subclass.

94. There was a sale of goods from Hill's to Plaintiffs and members of the Implied Warranty Subclass.

95. At all times mentioned herein, Hill's manufactured and supplied the Prescription Diet® and Science Diet® dog foods.

96. Hill's breached the warranty implied in the contract for the sale of the Prescription Diet® and Science Diet® dog foods because the products could not pass without objection in the trade under the contract description, the goods were not of fair average quality within the description, and the goods were unfit for their intended and ordinary purpose because they contained toxic levels of vitamin D. As such, Plaintiffs and the Implied Warranty Subclass members did not receive the goods as impliedly warranted by Hill's to be merchantable.

97. Plaintiff and the Class did not alter the Prescription Diet® and Science Diet® dog foods they purchased.

98. The Prescription Diet® and Science Diet® dog foods were defective when they left the exclusive control of Hill's.

99. Hill's knew the food would be purchased and used without any additional testing by Plaintiffs and the members of the Implied Warranty Subclass.

100. The food was defectively manufactured and unfit for its intended purpose because of the hazardous levels of vitamin D included in the Prescription Diet® and Science Diet® dog foods. As such, Plaintiffs and the Implied Warranty Subclass members did not receive the goods as warranted.

101. As a direct and proximate result of Hill's conduct, Plaintiffs and the Implied Warranty Subclass suffered harm because: (a) they would not have purchased the Prescription and Science Diet dog foods on the same terms had they known the food contained harmful levels of vitamin D; and (b) the Prescription Diet and Science Diet dog foods do not have the characteristics, ingredients, uses, or benefits as promised by Hill's.

102. As a result of Hill's breach of implied warranties, Plaintiffs and the Implied Warranty Subclass are entitled to actual damages for the price of Prescription Diet® and Science Diet® dog food cans they purchased, and medical expenses related to the treatment of their dogs.

103. Plaintiffs and the Implied Warranty Subclass are also entitled to, and do seek injunctive relief ensuring Hill's complies with all proper quality and safety standards going forward.

104. Plaintiffs and the Implied Warranty Subclass are entitled to an award of attorneys' fees and costs.

COUNT III
Violation Of The Magnuson-Moss Warranty Act
15 U.S.C. § 2301, *et seq.*
(On Behalf Of The Nationwide Class)

105. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if fully stated herein.

106. Plaintiffs bring this cause of action on behalf of themselves and all members of the Nationwide Class

107. Hill's Prescription Diet® and Science Diet® dog foods are "consumer products" as defined in 15 U.S.C. § 2301(1)

108. Plaintiffs and members of the Nationwide Class are "consumers" as defined in 15 U.S.C. § 2301(3).

109. Hill's is a "supplier" and "warrantor" as defined in 15 U.S.C. § 2301(4)-(5).

110. In connection with the sale of the Prescription Diet® and Science Diet® dog foods, Hill's issued written warranties as defined in 15 U.S.C. § 2301(6) by representing that the dog foods were:

- a. Safe for consumption by dogs;
- b. Made with the highest quality control and safety standards;
- c. Made with ingredients that are "examined to ensure [their] safety . . . [and] ensure your pet gets the stringent, precise formulation they need";
- d. That the Prescription Diet® provided "Therapeutic Dog Nutrition";
- e. That the Prescription Diet® "provides complete and balanced nutrition for maintenance of adult dogs and growing puppies";
- f. That the Science Diet® products met AAFCO guidelines;

- g. Recommended by or developed in cooperation with veterinarians and other medical professionals; and
- h. Will assist with a variety of medical conditions in dogs, or generally help dogs “live a long and healthy life.”

111. Hill’s made these express warranties regarding its Prescription Diet® and Science Diet® dog foods’ quality, ingredients, and fitness for consumption in writing through its website, advertisements, marketing materials and on the Prescription Diet® and Science Diet® dog foods’ packaging and labels.

112. Hill’s® Prescription Diet® and Science Diet® dog foods do not conform to Hill’s advertisements, warranties, and representations in that they:

- a. Were sold with hazardous, elevated levels of vitamin D despite being advertised as safe for consumption and providing balanced nutrition;
- b. Were not made under high quality control and safety standards;
- c. Did not bestow upon dogs the “precise formulation” dogs need because the dog foods contained hazardous levels of vitamin D;
- d. Did not meet AAFCO guidelines;
- e. Did not offer therapeutic or balanced nutrition because the dog foods contained hazardous levels of vitamin D which is acutely harmful to dogs; and
- f. Harmed and even killed dogs, rather than treating medical conditions or generally helping dogs “live a long and healthy life.”

113. As a direct and proximate result of Hill’s conduct, Plaintiffs and Nationwide Class members suffered harm by purchasing the Prescription Diet® and Science Diet® dog foods that

contained elevated levels of vitamin D. This harm includes the purchase price of the food, harm to their pets, veterinary care, funeral arrangements, and emotional distress.

114. Relief offered by Hill's through a recall is inadequate to resolve the breach because Plaintiffs and members of the Nationwide Class already purchased this dog food, and many class members' dogs have been harmed by ingesting the defective dog food.

115. Alternative dispute resolution is not feasible due to the minimal value of the products individually and the number of claims.

116. The amount in controversy exceeds \$50,000 (excluding interests and costs).

117. As a result of Hill's violations of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*, Plaintiffs and Nationwide Class members are entitled to actual damages for the price of Prescription Diet® and Science Diet® dog food cans they purchased and medical expenses related to the treatment of their dogs.

118. Plaintiffs and the Nationwide Class members are entitled to an award of attorneys' fees and costs.

COUNT IV
Negligence
(On Behalf Of The Nationwide Class)

119. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if fully stated herein.

120. Plaintiffs bring this cause of action on behalf of themselves and all members of the Nationwide Class.

121. Defendant owed a duty to Plaintiffs and the Nationwide Class to exercise reasonable care in the formulation, testing, manufacturing, marketing, distribution, and sale of the

DSM vitamin mix and the Hill's Prescription Diet® and Science Diet® dog foods that incorporated the toxic vitamin mix.

122. Defendant breached its duty to Plaintiffs and the Nationwide Class by formulating, failing to test, manufacturing, advertising, marketing, distributing, and selling Prescription Diet® and Science Diet® dog food to Plaintiffs and the Nationwide Class that contained hazardous levels of vitamin D from the DSM vitamin premix, despite Defendant's representations that said dog food was safe, nutritious, beneficial, and made under high quality and safety standards.

123. Defendant knew or should have known that the DSM vitamin premix and the Hill's® Prescription Diet® and Science Diet® dog foods contained hazardous levels of vitamin D.

124. As a direct and proximate result of Defendant's conduct, Plaintiffs and the Nationwide Class have suffered actual damages in that they purchased Prescription Diet® and Science Diet® dog foods that were worthless, and were forced to incur medical expenses treating their dogs that ingested toxic levels of vitamin D.

125. As a result of Defendant's negligence, Plaintiffs and the Nationwide Class are entitled to actual damages for the price of Prescription Diet® and Science Diet® dog food cans they purchased and medical expenses related to the treatment of their dogs.

126. Plaintiffs and the Nationwide Class are also entitled to an award of attorneys' fees and costs.

COUNT V
Strict Products Liability – Manufacturing Defect
(On Behalf Of The Nationwide Class)

127. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if fully stated herein.

128. Plaintiffs bring this cause of action on behalf of themselves and all members of the Nationwide Class.

129. The hazardous levels of vitamin D contained in Defendant's vitamin premix and Prescription Diet® and Science Diet® dog foods was a mishap in the manufacturing process which led to the food containing extremely elevated levels of vitamin D, which caused harm to Plaintiffs and Nationwide Class members, and in some cases caused injury to Plaintiffs' and Nationwide Class members' dogs.

130. Due to the hazardous levels of vitamin D, the products were not reasonably safe as marketed because the food was toxic to dogs, and caused significant harm, even death. Indeed, the defect prompted multiple recalls, underscoring that the defective products was both unsafe and unusable.

131. Plaintiffs and Nationwide Class members used the products for their intended purpose and did not alter the product in any way.

132. Plaintiffs and Nationwide Class members could not have discovered the defect by exercising reasonable care, and therefore Plaintiffs and Nationwide Class members could not have avoided the injury by exercising ordinary care.

133. Plaintiffs and Nationwide Class members suffered harm by purchasing the Prescription Diet® and Science Diet® dog foods that incorporated DSM's vitamin premix, which

contained elevated levels of vitamin D. This harm includes the purchase price of the food, harm to their pets, veterinary care, funeral arrangements, and emotional distress.

134. Because the manufacturing defects in the vitamin premix and Prescription Diet® and Science Diet® formulas caused harm to Plaintiffs and Class members, Defendant is strictly liable for the same.

COUNT VI
Unjust Enrichment
(On Behalf Of The Nationwide Class)

135. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if fully stated herein.

136. Plaintiffs bring this cause of action on behalf of themselves and all members of the Nationwide Class.

137. Hill's received substantial monetary benefit from Plaintiffs and members of the Nationwide Class through the purchase of Prescription Diet® and Science Diet® dog foods.

138. Hill's knowingly and willingly accepted and enjoyed these benefits.

139. Hill's knew or should have known that Plaintiffs and members of the Nationwide Class paid for Prescription Diet® and Science Diet® dog foods with the expectation that said dog foods would be safe, nutritious, beneficial, and made under high quality and safety standards.

140. Hill's Prescription Diet® and Science Diet® dog foods were in fact not safe, nutritious, beneficial, or made under high quality and safety standards.

141. Hill's acceptance and retention of Plaintiffs' and the Nationwide Class's money was inequitable.

142. In retaining the monetary benefit paid to it for the defective dog food, Hill's has been unjustly enriched.

143. As a result of Hill's negligence, Plaintiffs and the Nationwide Class are entitled to actual damages for the price of Prescription Diet® and Science Diet® dog food cans they purchased.

144. Plaintiffs and the Nationwide Class are also entitled to an award of attorneys' fees and costs.

COUNT VII
Violation Of The California's Consumers Legal Remedies Act
Cal. Civ. Code §§ 1750, *et seq.*
(On Behalf Of The California Subclass – Injunctive Relief Only)

145. Plaintiff Mattocks incorporates by reference the foregoing paragraphs of this Complaint as if fully stated herein.

146. Plaintiff Mattocks brings this cause of action on behalf of himself and all members of the California Subclass.

147. Plaintiff Mattocks and members of the California Subclass are "consumers" within the meaning of Cal. Civ. Code § 1761(d).

148. The Prescription Diet® and Science Diet® dog foods are "goods" within the meaning of Cal. Civ. Code § 1761(a).

149. The purchases of Prescription Diet® and Science Diet® dog foods by Plaintiff and members of the California Subclass are "transactions" within the meaning of Cal. Civ. Code § 1761(e).

150. Hill's is a "person" within the meaning of Cal. Civ. Code § 1761(e).

151. Hill's represented to Plaintiff Mattocks and the California Subclass that their Prescription Diet® and Science Diet® dog foods were:

- a. Safe for consumption by dogs;
- b. Made with the highest quality control and safety standards;

- c. Made with ingredients that are “examined to ensure [their] safety . . . [and] ensure your pet gets the stringent, precise formulation they need”;
- d. That the Prescription Diet® provided “Therapeutic Dog Nutrition”;
- e. That the Prescription Diet® “provides complete and balanced nutrition for maintenance of adult dogs and growing puppies”;
- f. That the Science Diet® products were “formulated to meet the nutritional levels established by the AAFCO Dog Food Nutrient Profiles . . .”;
- g. Recommended by or developed in cooperation with veterinarians and other medical professionals; and
- h. Will assist with a variety of medical conditions in dogs, or generally help dogs “live a long and healthy life.”

152. Hill’s representations about the Prescription Diet® and Science Diet® dog foods were false in that they:

- a. Were sold with hazardous, elevated levels of vitamin D despite being advertised as safe for consumption and providing balanced nutrition;
- b. Were not made under high quality control and safety standards;
- c. Did not bestow upon dogs the “precise formulation” dogs need because the dog foods contained hazardous levels of vitamin D;
- d. Did not meet AAFCO nutritional guidelines;
- e. Did not offer therapeutic or balanced nutrition because the dog foods contained hazardous levels of vitamin D which is acutely harmful to dogs; and
- f. Harmed and even killed dogs, rather than treating medical conditions or generally helping dogs “live a long and healthy life.”

153. These misrepresentations constitute “unfair or deceptive acts or practices” that are prohibited by the California Consumers Legal Remedies Act (“CLRA”). Cal. Civ. Code §§ 1770(a)(5); 1770 (a)(7); 1770(a)(9); 1770(a)(16).

154. Further, Hill’s concealed from and failed to disclose to Plaintiff Mattocks and the California Subclass that their Prescription Diet® and Science Diet® dog foods do not conform to the products’ labels, packaging, advertising, and statements in that they contained hazardous levels of vitamin D.

155. Hill’s had a duty to disclose to Plaintiff Mattocks and members of the California Subclass the true quality, characteristics, ingredients, nutrient levels, and suitability of the Prescription Diet® and Science Diet® dog foods because:

- a. Hill’s was in a superior position to know the true nature of their products;
- b. Hill’s was in a superior position to know the actual quality of ingredients, nutrient levels, characteristics, and suitability of Prescription Diet® and Science Diet® dog foods; and
- c. Hill’s knew that Plaintiff Mattocks and members of the California Subclass could not reasonably have been expected to learn or discover that the Prescription Diet® and Science Diet® dog foods were misrepresented in the packaging, labels, advertising, and websites prior to purchasing the Prescription Diet® and Science Diet® dog foods.

156. The facts concealed or not disclosed by Hill’s to Plaintiff Mattocks and members of the California Subclass were material in that a reasonable consumer would have considered them important when deciding whether to purchase the Prescription Diet® and Science Diet® dog foods.

157. The facts concealed or not disclosed by Hill's to Plaintiff Mattocks and the California Subclass were material in that the Prescription Diet® and Science Diet® dog foods were advertised as safe, nutritious, and made under high quality and safety control standards, when in fact the dog foods were not.

158. Plaintiff Mattocks and the California Subclass members' reliance on these omissions was reasonable given Hill's advertising, representations, warranties, and general promotions of their Prescription Diet and Science Diet dog foods.

159. Plaintiff Mattocks and members of the California Subclass did not know that Hill's was concealing or otherwise omitting material facts.

160. As a direct and proximate result of Hill's violations, Plaintiff Mattocks and the California Subclass are also entitled to injunctive relief ensuring Hill's complies with all proper quality and safety standards going forward.

161. Upon information and belief, prior to filing this action, a CLRA notice letter was sent to Hill's that complies in all respects with California Civil Code §1782(a), placing Hill's on notice that it is in violation of the CLRA, and demanding that it cease and desist from such violations and make full restitution by refunding the monies received therefrom.

COUNT VIII
Violation Of California's False Advertising Law
Cal. Bus. & Prof. Code §§ 17500, *et seq.*
(On Behalf Of The California Subclass)

162. Plaintiff Mattocks incorporates by reference the foregoing paragraphs of this Complaint as if fully stated herein.

163. Plaintiff Mattocks brings this cause of action on behalf of himself and all members of the California Subclass.

164. Hill's represented to Plaintiff Mattocks and the California Subclass that its Prescription Diet® and Science Diet® dog foods are:

- a. Safe for consumption by dogs;
- b. Made with the highest quality control and safety standards;
- c. Made with ingredients that are “examined to ensure [their] safety . . . [and] ensure your pet gets the stringent, precise formulation they need”;
- d. That the Prescription Diet® provided “Therapeutic Dog Nutrition”;
- e. That the Prescription Diet® “provides complete and balanced nutrition for maintenance of adult dogs and growing puppies”;
- f. That the Science Diet® products were “formulated to meet the nutritional levels established by the AAFCO Dog Food Nutrient Profiles . . .”;
- g. Recommended by or developed in cooperation with veterinarians and other medical professionals; and
- h. Will assist with a variety of medical conditions in dogs, or generally help dogs “live a long and healthy life.”

165. Hill's representations about the Prescription Diet® and Science Diet® dog foods were “untrue and misleading” within the meaning of California False Advertising Law (“CFAL”), Cal. Bus. & Prof. Code § 17500, in that the dog foods:

- a. Were sold with hazardous, elevated levels of vitamin D despite being advertised as safe for consumption and providing balanced nutrition;
- b. Were not made under high quality control and safety standards;
- c. Did not bestow upon dogs the “precise formulation” dogs need because the dog foods contained hazardous levels of vitamin D;

- d. Did not meet AAFCO nutrient profiles;
- e. Did not offer therapeutic or balanced nutrition because the dog foods contained hazardous levels of vitamin D which is acutely harmful to dogs; and
- f. Harmed and even killed dogs, rather than treating medical conditions or generally helping dogs “live a long and healthy life.”

166. Hill’s knew or reasonably should have known its representations were untrue and misleading.

167. Plaintiff Mattocks and the California Subclass members would like to purchase Prescription Diet® and Science Diet® dog foods in the future if they can be assured that these dog foods are safe for consumption, made with high quality and safety controls, and provide the benefits the dog foods claim to.

168. As a result of Hill’s violations of CFAL, Plaintiff Mattocks and the California Subclass are entitled to actual damages for the price of Prescription Diet® and Science Diet® dog food cans they purchased and medical expenses related to the treatment of their dogs.

169. Plaintiff Mattocks and the California Subclass are also entitled to, and do seek injunctive relief ensuring Hill’s complies with all proper quality and safety standards going forward.

COUNT IX
Violation of California’s Unfair Business Practices Law
Cal. Bus. & Prof. Code §§ 17200, *et seq.*
(On Behalf Of The California Subclass)

170. Plaintiff Mattocks incorporates by reference the foregoing paragraphs of this Complaint as if fully stated herein.

171. Plaintiff Mattocks brings this cause of action on behalf of himself and all members of the California Subclass.

172. Hill’s represented to Plaintiff Mattocks and the California Subclass that its Prescription Diet® and Science Diet® dog foods were:

- a. Safe for consumption by dogs;
- b. Made with the highest quality control and safety standards;
- c. Made with ingredients that are “examined to ensure [their] safety . . . [and] ensure your pet gets the stringent, precise formulation they need”;
- d. That the Prescription Diet® provided “Therapeutic Dog Nutrition”;
- e. That the Prescription Diet® “provides complete and balanced nutrition for maintenance of adult dogs and growing puppies”;
- f. That the Science Diet® products were “formulated to meet the nutritional levels established by the AAFCO Dog Food Nutrient Profiles . . .”;
- g. Recommended by or developed in cooperation with veterinarians and other medical professionals; and
- h. Will assist with a variety of medical conditions in dogs, or generally help dogs “live a long and healthy life.”

173. Hill’s representations about the Prescription Diet® and Science Diet® dog foods were false in that the dog foods:

- a. Were sold with hazardous, elevated levels of vitamin D despite being advertised as safe for consumption and providing balanced nutrition;
- b. Were not made under high quality control and safety standards;
- c. Did not bestow upon dogs the “precise formulation” dogs need because the dog foods contained hazardous levels of vitamin D;
- d. Were not formulated to meet the nutritional levels established by the AAFCO;

- e. Did not offer therapeutic or balanced nutrition because the dog foods contained hazardous levels of vitamin D which is acutely harmful to dogs; and
- f. Harmed and even killed dogs, rather than treating medical conditions or generally helping dogs “live a long and healthy life.”

174. Such fraudulent, deceptive, untrue, and misleading representations constitute “unfair competition” within the meaning of California Unfair Business Practices Law (“CUBPL”), Cal. Bus. & Prof. Code § 17200.

175. As a direct and proximate result of Hill’s unfair competitive practices, Plaintiff Mattocks and the California Subclass have suffered actual damages in that they purchased Prescription Diet® and Science Diet® dog foods that were worthless. Plaintiff Mattocks and members of the California Subclass would not have purchased the Prescription Diet® and Science Diet® dog foods at all had they known of the risk and/or presence of excessive levels of vitamin D that rendered the products hazardous.

176. As a result of Hill’s violations of CUBPL, Plaintiff Mattocks and the California Subclass are entitled to actual damages for the price of Prescription Diet and Science Diet dog food cans they purchased and medical expenses related to the treatment of their dogs.

177. Plaintiff Mattocks and the California Subclass are also entitled to, and do seek, injunctive relief pursuant to CUBPL § 17203 ensuring Hill’s complies with all proper quality and safety standards going forward.

COUNT X
Violation Of Missouri's Merchandising Practices Act ("MMPA")
Mo. Rev. Stat. §§ 407.020, et seq.
(On Behalf of the Missouri Subclass)

178. Plaintiff Embry incorporates by reference the foregoing paragraphs of this Complaint as if fully stated herein.

179. Plaintiff Embry brings this cause of action on behalf of herself and all members of the Missouri Subclass.

180. The Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.020 (West 2010), provides, in part, as follows:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce ... in or from the state of Missouri, is declared to be an unlawful practice ... Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

181. The Missouri Merchandising Practices Act further provides for a civil action to recover damages in Mo. Rev. Stat. § 407.025.1, as follows:

Any person who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 407.020, may bring a private civil action in either the circuit court of the county in which the seller or lessor resides or in which the transaction complained of took place, to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary or proper.

182. Defendant's respective business practices in advertising, marketing, packaging, labeling and sales of the Hill's® Prescription Diet® and Science Diet® were false and misleading,

and concealed and omitted material facts in connection with the sale of Prescription Diet® and Science Diet® products.

183. In connection with the sales of Prescription Diet® and Science Diet® dog food products, Defendant represented to Plaintiff Embry and the Missouri Subclass that Prescription Diet® and Science Diet® dog foods (including all its ingredient components) were:

- a. Safe for consumption by dogs;
- b. Made with the highest quality control and safety standards;
- c. Made with ingredients that are “examined to ensure [their] safety . . . [and] ensure your pet gets the stringent, precise formulation they need”;
- d. That the Prescription Diet® provided “Therapeutic Dog Nutrition”;
- e. That the Prescription Diet® “provides complete and balanced nutrition for maintenance of adult dogs and growing puppies”;
- f. That the Science Diet® products were “formulated to meet the nutritional levels established by the AAFCO Dog Food Nutrient Profiles . . .”;
- g. Recommended by or developed in cooperation with veterinarians and other medical professionals; and
- h. Will assist with a variety of medical conditions in dogs, or generally help dogs “live a long and healthy life.”

184. Defendant’s representations about the Prescription Diet® and Science Diet® dog foods were false in that the dog foods:

- a. Were sold with hazardous, elevated levels of vitamin D despite being advertised as safe for consumption and providing balanced nutrition;
- b. Were not made under high quality control and safety standards;

- c. Did not bestow upon dogs the “precise formulation” dogs need because the dog foods contained hazardous levels of vitamin D;
- d. Were not formulated to meet the nutritional levels established by the AAFCO;
- e. Did not offer therapeutic or balanced nutrition because the dog foods contained hazardous levels of vitamin D which is acutely harmful to dogs; and
- f. Harmed and even killed dogs, rather than treating medical conditions or generally helping dogs “live a long and healthy life.”

185. Plaintiffs and members of the Missouri Subclass purchased Prescription Diet® and Science Diet® dog food products, and such purchases were primarily for personal, family, or household purposes.

186. Defendant’s concealment, suppression, misrepresentations and/or omission as set forth in this Complaint are material in that they relate to matters which are important to consumers, or are likely to affect the purchasing decisions or conduct of consumers, including Plaintiff Embry and members of the Missouri Subclass.

187. As a result of the purchase of Prescription Diet® and Science Diet® dog food products, Plaintiff Embry and the members of the Missouri Subclass sustained ascertainable loss and damage in that, among other things, the actual value of the products on the dates they were sold to Plaintiff was worthless, such that their value was less than they would have been on those dates, had the products been as represented by Defendant.

188. Plaintiff Embry and the members of the Missouri Subclass are entitled to recover their actual damages, attorneys’ fees, and injunctive or other equitable relief, pursuant to Missouri law, including Mo. Rev. Stat. § 407.025.

189. Further, Defendant's unlawful conduct set forth in this Complaint was and is outrageous because of Defendant's evil motive or reckless indifference to and conscious disregard of the rights of Plaintiff Embry and members of the Missouri Subclass, and therefore warrants an award of punitive damages to deter Defendant, and others in similar circumstances, from committing such actions in the future.

COUNT XI
Violation of New York's Deceptive Trade Practices Act ("GBL")
New York Gen. Bus. Law § 349
(On Behalf of the New York Subclass)

190. Plaintiff Esposito incorporates by reference the allegations contained in all preceding paragraphs of this Complaint.

191. Plaintiff Esposito brings this claim individually and on behalf of the members of the proposed New York Subclass against Hill's.

192. New York's General Business Law § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce.

193. In its sale of goods throughout the State of New York, Hill's conducts business and trade within the meaning and intendment of New York's General Business Law § 349.

194. Plaintiff Esposito and members of the New York Subclass are consumers who purchased products from Hill's for their personal use.

195. By the acts and conduct alleged herein, Hill's has engaged in deceptive, unfair, and misleading acts and practices, which include, without limitation, misrepresenting that the Prescription Diet® and Science Diet®: (i) provided therapeutic and balanced nutrition; (ii) was formulated in accordance with AAFCO nutritional guidelines; and (iii) are generally recognized as safe for consumption by dogs.

196. Hill's directed the foregoing deceptive acts and practices at consumers, including Plaintiff and members of the New York subclass.

197. Hill's deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the characteristics and quality of the dog food manufactured, distributed, and sold by Hill's to induce consumers to purchase the same.

198. By reason of this conduct, Hill's engaged in deceptive conduct in violation of New York's General Business Law.

199. Hill's actions are the direct, foreseeable, and proximate cause of the damages that Plaintiff and members of the New York Subclass have sustained from having paid for and consumed Hill's products.

200. As a result of Hill's violations, Plaintiff Esposito and members of the New York Subclass have suffered damages because: (a) they would not have purchased Hill's Prescription Diet® and Science Diet® dog food on the same terms if they knew that the products contained hazardous levels of vitamin D, and are not generally recognized as safe for consumption by dogs; and (b) Hill's Prescription Diet® and Science Diet® dog food products do not have the characteristics, ingredients, uses, or benefits promised.

201. On behalf of himself and other members of the New York Subclass, Plaintiff Esposito seeks to recover his actual damages or fifty dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

COUNT XII
False Advertising
Violation of New York's Gen. Bus. Law § 350
(On Behalf of the New York Subclass)

202. Plaintiff Esposito incorporates by reference the allegations contained in all preceding paragraphs of this Complaint.

203. Plaintiff Esposito brings this claim individually and on behalf of the members of the proposed New York Subclass against Hill's.

204. Based on the foregoing, Hill's engaged in consumer-oriented conduct that is deceptive or misleading in a material way which constitutes false advertising in violation of Section 350 of the New York GBL.

205. Hill's false, misleading, and deceptive statements and representations of fact, including but not limited to, that Hill's® Prescription Diet® and Science Diet® dog food was safe and did not contain hazardous levels of vitamin D ("the Misrepresentations"), were and are directed to consumers, including Plaintiff and the New York Subclass.

206. Hill's false, misleading, and deceptive statements and representations of fact, including but not limited to the Misrepresentations, were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

207. Hill's false, misleading, and deceptive statements and representations of fact, including but not limited to the Misrepresentations, have resulted in consumer injury or harm to the public interest.

208. Plaintiff Esposito and members of the New York Subclass have been injured because: (a) they would not have purchased Hill's® Prescription Diet® and Science Diet® dog food if they had known that the food contained hazardous levels of vitamin D; and (b) Hill's® Prescription Diet® and Science Diet® formulations do not have the characteristics, uses, or benefits as promised, namely because the food contains hazardous levels of vitamin D. As a result, Plaintiff and members of the New York Subclass have been damaged in the full amount of the purchase price of the food, as well as any and all consequential damages resulting from consumption of the food.

209. As a result of Hill's false, misleading, and deceptive statements and representations of fact, including but not limited to the Misrepresentations, Plaintiff Esposito and New York Subclass members have suffered and will continue to suffer economic injury.

210. Plaintiff Esposito and members of the New York Subclass suffered an ascertainable loss caused by Hill's Misrepresentations because they paid more for Hill's® Prescription Diet® and Science Diet® dog food than they would have had they known the truth about Defendant's dog food.

211. On behalf of himself and other members of the New York Subclass, Plaintiff Esposito seeks to enjoin the unlawful acts and practices described herein, to recover his actual damages or five hundred dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

COUNT XIII
Violation of Kansas' Consumer Protection Act ("KCPA")
K.S.A. 50-623, *et seq.*
(On Behalf of the Kansas Subclass)

212. Plaintiff Blaser incorporates by reference the allegations contained in all preceding paragraphs of this Complaint.

213. Plaintiff Blaser brings this claim individually and on behalf of the members of the proposed Kansas Subclass against Hill's.

214. Plaintiff and the members of the Kansas Subclass are "consumers," within the meaning of K.S.A. 50-624(b).

215. Hill's is a "supplier" under the Kansas Consumer Protection Act ("Kansas CPA"), K.S.A. 50-624(l).

216. Each sale of Hill's® Prescription Diet® and Science Diet® dog food to Plaintiff and a Kansas Subclass member was a "consumer transaction" within the meaning of K.S.A. 50-624(c).

217. Hill's actions as set forth herein occurred in the conduct of trade or commerce.

218. The Kansas CPA states "[n]o supplier shall engage in any deceptive act or practice in connection with a consumer transaction," K.S.A. 50-626(a), and that deceptive acts or practices include, but are not limited to: (1) knowingly making representations or with reason to know that "(A) Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have"; and "(D) property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation"; "(2) the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact"; and "(3) the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact." The Kansas CPA also provides that "[n]o supplier shall engage in any unconscionable act or practice in connection with a consumer transaction." K.S.A. 50-627(a).

219. In the course of its business, Hill's failed to disclose and actively concealed the dangers and risks posed by the hazardous levels of vitamin D in its Prescription Diet® and Science Diet® dog foods, and otherwise engaged in activities with a tendency or capacity to deceive. Accordingly, Hill's engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including: representing that its Prescription Diet® and Science Diet® dog foods have characteristics, uses, benefits, and qualities which they do not have; representing that they are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact

could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

220. Hill's has known of the defect in its Prescription Diet® and Science Diet® formulations, and has failed to disclose and actively concealed the dangers and risks posed by the dog food.

221. By failing to disclose and by actively concealing the defect in its Prescription Diet® and Science Diet® formulations, by marketing them as safe, reliable, and of high quality, and by presenting themselves as reputable manufacturers that value safety, Hill's engaged in unfair or deceptive business practices in violation of the Kansas CPA. Hill's deliberately withheld the information about the hazardous levels of vitamin D in the affected products, in order to ensure that consumers would purchase its contaminated dog food.

222. In the course of Hill's business, it willfully failed to disclose and actively concealed the dangerous risks posed by the serious defect discussed above. Hill's compounded the deception by repeatedly asserting its Prescription Diet® and Science Diet® formulations were safe, reliable, and of high quality, and by claiming to be reputable manufacturers that value safety.

223. Hill's unfair or deceptive acts or practices, including these concealments, omissions, and suppressions of material facts, had a tendency or capacity to mislead, tended to create a false impression in consumers, were likely to and did in fact deceive reasonable consumers, including the members of the Class, about the true safety and reliability of Hill's® Prescription Diet® and Science Diet® dog food, the quality of Hill's brand, and the true value of the affected dog food.

224. Hill's intentionally and knowingly misrepresented material facts regarding its Prescription Diet® and Science Diet® dog food with an intent to mislead Plaintiff and the members of the Kansas Subclass.

225. Hill's knew or should have known that its conduct violated the Kansas CPA.

226. Hill's owed Plaintiff Blaser and the members of the Kansas Subclass a duty to disclose the lack of safety of its Prescription Diet® and Science Diet® dog food because Hill's:

- a. possessed exclusive knowledge of the dangers and risks posed by the foregoing;
- b. intentionally concealed the foregoing from the Class; and/or
- c. made incomplete representations about the safety and reliability of the foregoing generally, while purposefully withholding material facts from the Class that contradicted these representations.

227. The members of the Class suffered ascertainable loss caused by Hill's misrepresentations and its failure to disclose material information. Had Plaintiff Blaser and the Kansas Subclass been aware of the defect that existed in its Prescription Diet® and Science Diet® formulations, and Hill's complete disregard for safety, Plaintiff Blaser and the members of the Kansas Subclass either would not have purchased them at all. Plaintiff and the members of the Kansas Subclass had no way of discerning that Hill's representations were false and misleading, or otherwise learning the facts that Hill's had concealed or failed to disclose.

228. Pursuant to K.S.A. 50-634, Plaintiff and the members of the Kansas Subclass seek monetary relief against Hill's measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$10,000 for each Kansas Subclass member, in addition to treble damages.

229. Plaintiff and the Kansas Subclass also seek declaratory relief, punitive damages, an order enjoining Hill's unfair, unlawful, and/or deceptive practices, and reasonable attorneys' fees and costs, as well as any other just and proper relief available under K.S.A. 50-623, et seq.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court grant Plaintiffs' and all members of the proposed Classes the following relief against Defendant:

- a. Injunctive relief requiring Defendant to comply with all proper quality and safety standards when manufacturing their dog food and/or dog food ingredients in the future before continuing to sell a vitamin premix and/or Prescription Diet® and Science Diet® canned dog food;
- b. An award of damages to Plaintiffs and all members of the Nationwide Class and all Subclasses, reimbursing them for the hazardous and worthless cans of Prescription Diet® and Science Diet® dog food they purchased, and/or any statutory damages available;
- c. An award of damages to Plaintiffs and all members of the Nationwide Class and Subclasses reimbursing them for various veterinary expenses caused by Defendant's hazardous dog food and/or vitamin premix;
- d. An award of punitive damages to Plaintiffs and all members of the Nationwide Class and Subclasses;
- e. An award of attorneys' fees and costs to counsel for Plaintiffs and the Nationwide Class and Subclasses;
- f. An order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing appropriate classes, finding that Plaintiffs are

proper representatives of the classes, and appointing the lawyers and law firms representing Plaintiffs as counsel for the class; and

g. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.

DESIGNATION OF PLACE OF TRIAL

Pursuant to Local Rule 40.2, trial of this matter should be tried in Kansas City, Kansas.

Dated: June 26, 2019

Respectfully submitted,

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