

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

KELLY BONE, CHRISTINA SAWYER,
JANINE BUCKLEY, PENNY HOPSON,
PATRICK MCDONALD, ABRAHAM
MEJIA, CHERYL BARR, BRAD GETZ,
NANCY MCATEE, SARAH STROUD,
JULIE HOFFMAN, ELISA BIDUS,
CHRISTY ZISSER, JILL LANHAM,
SHERRI ANDERSON, ADA DARNELL,
CHHAMBONI SIMMONS, SCOTT
MOLSKI, AND BRADLEY MACE, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

HILL'S PET NUTRITION, INC.,
HILL'S PET NUTRITION SALES, INC.,
COLGATE-PALMOLIVE
COMPANY and JOHN DOES 1-10,

Defendants.

JURY TRIAL DEMANDED

AMENDED CLASS ACTION COMPLAINT

Plaintiffs Kelly Bone, Christina Sawyer, Janine Buckley, Penny Hopson, Patrick McDonald, Abraham Mejia, Cheryl Barr, Brad Getz, Nancy McAtee, Sarah Stroud, Julie Hoffman, Elisa Bidus, Christy Zisser, Jill Lanham, Sherri Anderson, Ada Darnell, Chhamboni Simmons, Scott Molski and Bradley Mace, bring this action, individually and on behalf of all others similarly situated, against Hill's Pet Nutrition, Inc., Hill's Pet Nutrition Sales, Inc. and Colgate-Palmolive Company (together, "Hill's" or "Defendant"), and John Does 1-10, and allege as follows:

NATURE OF THE CASE

1. Hill's manufactures, markets, warrants and sells Hill's Prescription Diet ("Prescription Diet") and Hill's Science Diet ("Science Diet") pet foods (collectively, the "Specialty Pet Foods"). These foods are specially formulated for the specific health needs of certain pets. In marketing materials and packaging for the Specialty Pet Foods, Hill's says it is providing "[n]utrition that can transform the lives of pets and comfort the pet parents and vets who care for them," and claims that it formulates its foods "with precise balance so your pet gets *all the nutrients they need — and none they don't.*"

2. Contrary to Hill's representations, however, Hill's has manufactured, sold and warranted Specialty Pet Foods containing toxic and often fatal levels of vitamin D.

3. Excessive vitamin D poses substantial and unreasonable risks to pets. As Hill's itself recognized in recalling a subset of its Specialty Pet Foods, "elevated levels of vitamin D" can cause symptoms such as "vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and weight loss," and can lead to "serious health issues in dogs including renal dysfunction and failure and death."¹

4. Many people have witnessed their pets suffer as a result of consuming the Specialty Pet Foods. The pets have required expensive veterinary treatment, and many of them have died, resulting in additional suffering, and costs, to their owners.

5. Not only has Hill's sold contaminated food, but it has dragged its feet in issuing a recall and in including all contaminated food within the scope of the recall. Hill's failure to promptly recall *every* contaminated product sold under the Prescription Diet and Science Diet lines is particularly egregious because it knew or should have known that these products contained toxic

¹ <https://www.hillspet.com/productlist> (last visited March 12, 2019).

levels of vitamin D. Not only does Hill's claim to subject its suppliers, raw materials and finished products to extensive and repeated quality testing,² but vitamin D toxicity was a known risk much earlier than January 31, 2019 when Hill's first announced its recall: in December of 2018 several other brands of dog food were recalled due to toxic levels of vitamin D found in those products, and pets eating Hill's Specialty Pet Foods began dying of vitamin D toxicity well before that.

6. The lethal nature of Hill's Specialty Pet Foods has been compounded by Hill's excessive and unwarranted delay in warning consumers and regulatory agencies of the dangers posed by those products and caused untold numbers of pet owners' significant emotional distress and financial loss.

7. Accordingly, Plaintiffs bring this class action on behalf of themselves and all other similarly situated consumers. Plaintiffs seek monetary relief and an order forcing Hill's to provide appropriate injunctive relief by ensuring that *all* potentially affected products are identified on Hill's website and removed from shelves.

JURISDICTION AND VENUE

8. This Court has subject-matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332 (a) and (d), because the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and more than two-thirds of the members of the proposed class are citizens of states different from that of Defendant. The Court also has federal question jurisdiction based on the Magnuson-Moss Warranty Act, 15 U.S.C. § 231, *et seq.*, and supplemental jurisdiction over state and common law claims based on 28 U.S.C. § 1367(a).

9. Venue is proper in this District pursuant to 28 U.S.C. §1391 because Defendant transacts business in this District, advertises in this District and has received substantial revenue

² <https://www.hillspet.com/about-us/quality-and-safety> (last visited March 12, 2019).

and profits from the sale of the Specialty Pet Foods in this District, including from Plaintiff Buckley and other members of the Class. Therefore, a substantial part of the events and/or omissions giving rise to the claims occurred, in part, within this District.

10. This Court has personal jurisdiction over Defendant because it has conducted substantial business in this District, and intentionally and purposefully placed the Specialty Pet Foods into the stream of commerce within the Eastern District of New York and throughout the United States.

PARTIES

11. Plaintiff **Kelly Bone** is a citizen of the State of Florida and currently resides in North Port, Florida.

12. Plaintiff **Christina Sawyer** is a citizen of the State of North Carolina and currently resides in Charlotte, North Carolina.

13. Plaintiff **Janine Buckley** is a citizen of the State of New York and currently resides in Staten Island, New York.

14. Plaintiff **Penny Hopson** is a citizen of the State of Alabama and currently resides in Springville, Alabama.

15. Plaintiff **Patrick McDonald** is a citizen of the State of California and currently resides in Yucaipa, California

16. Plaintiff **Abraham Mejia** is a citizen of the State of Connecticut and currently resides in Groton, Connecticut.

17. Plaintiff **Cheryl Barr** is a citizen of the State of Georgia and currently resides in Cumming, Georgia.

18. Plaintiff **Brad Getz** is a citizen of the State of Illinois and currently resides in Shelbyville, Illinois.

19. Plaintiff **Nancy McAtee** is a citizen of the State of Illinois and currently resides in Lake Zurich, Illinois.

20. Plaintiff **Sarah Stroud** is a citizen of the State of Iowa and currently resides in Keokuk, Iowa.

21. Plaintiff **Julie Hoffman** is a citizen of the State of Kansas and currently resides in Topeka, Kansas.

22. Plaintiff **Elisa Bidus** is a citizen of the State of Michigan and currently resides in Brighton, Michigan.

23. Plaintiff **Christy Zisser** is a citizen of the State of Missouri and currently resides in Frontenac, Missouri.

24. Plaintiff **Jill Lanham** is a citizen of the State of Nebraska and currently resides in Byron, Nebraska.

25. Plaintiff **Sherri Anderson** is a citizen of the State of Pennsylvania and currently resides in Harrisburg, Pennsylvania.

26. Plaintiff **Ada Darnell** is a citizen of the State of Texas and currently resides in Hockley, Texas.

27. Plaintiff **Chhamboni Simmons** is a citizen of the State of Washington and currently resides in Roy, Washington.

28. Plaintiff **Scott Molski** is a citizen of the State of Wisconsin and currently resides in Wisconsin Rapids, Wisconsin.

29. Plaintiff **Bradley Mace** is a citizen of the State of West Virginia and currently resides in Washington, West Virginia.

30. Defendant **Hill's Pet Nutrition, Inc.** is a Delaware corporation, with its principal place of business in Kansas. Hill's is located at 400 SW 8th Avenue, Topeka, Kansas 66603. Both its corporate offices and its 180-acre "Pet Nutrition Center" are located in Kansas, and Hill's states on its website that the recalled food was produced in Kansas.³

31. Defendant **Hill's Pet Nutrition Sales, Inc.** is a Delaware corporation, with its principal place of business in Kansas. Defendant Hill's Pet Nutrition Sales, Inc. is authorized by the New York Secretary of State to do business within the State of New York.

32. Defendant **Colgate-Palmolive Company** is a Delaware Corporation, with its principal place of business in New York, and the corporate parent of Hill's Pet Nutrition, Inc. and Hill's Pet Nutrition Sales, Inc. Current and former employees of Hill's have remarked and continue to remark about the high level of control exerted by Colgate-Palmolive Company over Hill's operations, including references to the "total control" of Colgate, "corporate masters" from Colgate, and becoming more "Colgate-centric" over time.

33. Plaintiffs include **John Does 1-10** as defendants because it is not clear how many persons or entities other than Hill's may bear responsibility for or have benefitted from the manufacture and sale of the contaminated Specialty Pet Foods.

COMMON FACTUAL ALLEGATIONS

Hill's and its Products

34. Hill's manufactures and sells pet food internationally, and is one of the largest suppliers of pet food in North America.

³ <https://www.hillspet.com/productlist/faq> (last visited March 12, 2019).

35. Hill's sells its pet food products, including the Specialty Pet Foods, at veterinary clinics and pet retailers across the United States, including PetSmart and Petco, as well as through online retailers like Amazon and Chewy. No matter where consumers purchase the Specialty Pet Foods, they are packaged in sealed containers with the same labeling and packaging that is displayed on the Hill's website.⁴

36. In order to better sell the Specialty Pet Foods, and to entice veterinarians to prescribe and recommend them, Hill's markets the Specialty Pet Foods as formulated and intended for pets with specific needs or illnesses, such as: age-specific dietary needs, breed-specific dietary needs, digestive issues, heart issues, liver issues, or kidney issues.

37. Hill's repeatedly emphasizes the scientific nature of its products, and claims that "everything" it does at its Pet Nutrition Center is to "ensure we have the *right nutrient level* in each and every one of our products," including "[a]nalyzing ingredients to make sure they meet our high quality standards."⁵

38. Hill's website touts the Specialty Pet Foods' performance properties, claiming that the products "[s]upport[] a healthy immune system,"⁶ "improve and lengthen quality of life,"⁷ "can be used long-term,"⁸ "[p]rotect[] vital kidney & heart function,"⁹ "[s]upport your dog's natural ability to build lean muscle daily,"¹⁰ and "meet[] the special nutritional needs of puppies and adult dogs."¹¹ Hill's repeats these claims on the Specialty Pet Foods' packaging.

⁴ See, e.g., <https://www.hillspet.com/dog-food> (last visited February 11, 2019).

⁵ <https://www.hillspet.com/about-us/nutritional-philosophy/global-pnc> (last visited March 12, 2019) (emphasis supplied).

⁶ See, e.g., <https://www.hillspet.com/dog-food/pd-id-canine-canned#> (last visited March 12, 2019).

⁷ See, e.g., <https://www.hillspet.com/dog-food/pd-kd-canine-canned> (last visited March 12, 2019).

⁸ See, e.g., <https://www.hillspet.com/dog-food/pd-id-sensitive-canine-dry#> (last visited March 12, 2019).

⁹ See, e.g., <https://www.hillspet.com/dog-food/pd-kd-canine-canned#> (last visited March 12, 2019).

¹⁰ *Id.*

¹¹ See, e.g., <https://www.hillspet.com/dog-food/pd-id-canine-chicken-and-vegetable-stew-canned> (last visited March 12, 2019).

39. Hill’s further seeks the trust of veterinarians and consumers by positioning itself as a company that understands the bond between pets and their owners, noting on its website:

More and more people are considering their dogs and cats members of the family. The psychological and physiological benefits of pets for people is well documented. For many, owning an animal is transforming into enjoying responsible pet companionship. Societies worldwide are realizing the benefits of the people-pet bond.¹²

40. Hill’s actively promotes itself as a science-based and trustworthy brand—and seeks recommendations of its foods by veterinary offices—by offering a “certification” program to veterinary staff members known as the Veterinary Nutritional Advocate (“VNA”) program. Touted by Hill’s as a “unique, on-line, educational experience, available at no cost to every member of the veterinary health care team,” the VNA program is marketed to veterinary nurses and other staff members as way to “understand, communicate and benefit from advocating proper pet nutrition.”¹³

41. Hill’s also issues a “100% Satisfaction” money-back guarantee with every Specialty Pet Foods purchase.

42. Based on the image Hill’s cultivates as a scientific company that cares about the human-pet bond, Hill’s money-back guarantee, various affirmations of fact and the purportedly “clinically proven” effectiveness of Hill’s products, consumers across the country pay a premium for the Specialty Pet Foods, believing they are tailored to the specific needs of their pets and safe for pet consumption.

¹² <https://vna.hillsvet.com/vna/vna-about.html> (last visited March 12, 2019).

¹³ *Id.*

43. Instead, many of the Specialty Pet Foods that consumers across the country have fed to their pets have proven to be toxic, causing symptoms of renal failure such as dehydration, diarrhea, loss of appetite, increased thirst, lethargy, vomiting, and often death.¹⁴

Vitamin D Toxicity

44. For an unknown but discoverable period of time, Hill's has manufactured the Specialty Pet Foods with excessive, toxic and potentially lethal levels of vitamin D.

45. Some vitamin D is necessary for pets because it helps regulate calcium and phosphorous levels, aids bone formation, and promotes nerve and muscle control.

46. Excess vitamin D, however, can cause vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, weight loss, muscle tremors, cardiac abnormalities and seizures.

47. Eventually—and sometimes quite rapidly—consumption of excessive vitamin D can cause kidney failure and death.

Excessive Vitamin D in Hill's Products and Hill's Knowledge of that Contamination

48. The experiences of Plaintiffs and other consumers demonstrate that Hill's Specialty Pet Foods have contained excessive levels of vitamin D levels—and that Hill's has known about that contamination—for some time.

49. Tainted batches of food that would eventually be recalled were available for purchase as early as June of 2017. As early as February of 2018,¹⁵ dog owners began to complain

¹⁴ See, e.g., https://www.nbcchicago.com/news/national-international/Pet-Owners-Say-Their-Dogs-Are-Sick-Dying-After-Eating-Recalled-Hills-Pet-Nutrition-Dog-Food-505379451.html?_osource=SocialFlowFB_CHBrand&fbclid=IwAR1YE1ZUss2ZVHkMlzlfqLHC9a-saet-TckbfEDEghbUj3mckLYzN (last visited March 12, 2019).

¹⁵ <https://www.consumeraffairs.com/pets/hills.html?page=2> (Feb. 25, 2018 review posted by “Carrie”).

online that Hill's Specialty Pet Foods were causing their pets to display symptoms consistent with vitamin D poisoning, such as "daily diarrhea, excessive thirst and constant food begging."¹⁶

50. As evidenced by the experiences of Plaintiffs Bone, Sawyer, and Getz, elaborated upon below, Hill's actively monitors the internet for consumer complaints about its products. In fact, in response to the initial filing of this lawsuit, Hill's told a reporter that it monitors consumer complaints.¹⁷

51. Hill's also has internal mechanisms for collecting and monitoring the types of information that should alert it to a contamination issue. Hill's has a "Consumer Review" form that pet owners can fill out when they believe that Hill's food has made their pets ill. That form—which was in use prior to the recall—seeks detailed information about the food eaten, including all of the SKU, lot and date information on the product packaging. It also seeks details about the pet, its health history and the illness it experienced.

52. As a result of online consumer complaints and its internal processes, Hill's knew or should have known of the elevated vitamin D levels in the Specialty Pet Foods by at least February of 2018.

53. Hill's also claims to have rigorous quality assurance protocols in place, processes that did or should have alerted it to the toxic levels of Vitamin D in its raw materials.

54. Hill's touts its "proven commitment to quality and safety" and claims that it "only accept[s] ingredients from suppliers whose facilities meet stringent quality standards and who are approved by Hill's," and further examines each ingredient "to ensure its safety."

¹⁶ <https://www.consumeraffairs.com/pets/hills.html> (May 21, 2018 review posted by "Mandy").

¹⁷ <https://www.cbsnews.com/news/hills-dog-food-recall-pet-food-maker-faces-mounting-legal-woes-over-dog-deaths/> (last visited March 12, 2019).

55. Similarly, Hill's claims that it "conduct[s] annual quality systems audits for all manufacturing facilities to ensure [they] meet the high standards your pet deserves" and "conduct[s] final safety checks daily on every Hill's pet food product to help ensure the safety of your pet's food."

56. Hill's further claims that "all finished products are physically inspected and tested for key nutrients prior to release to help ensure your pet gets a consistent product bag to bag."

57. As a result of the quality control procedures it should have and claims to have for its Specialty Pet Foods, Hill's learned, or should have learned, of the excessive and fatal levels of vitamin D before a single bag or can of contaminated Specialty Pet Foods was sold.¹⁸

58. Further, at some point prior to December 3, 2018, a pet food manufacturer which had received complaints about dogs suffering from vitamin D toxicity informed the FDA that it was recalling several product lines.

59. The FDA began to test products and concluded that a wide swath of dog foods sold in the United States contained potentially lethal doses of vitamin D: sometimes as much as 70 times the intended dose.

60. On December 3, 2018, the FDA issued a press release warning pet owners about potentially toxic levels of vitamin D in several brands of pet food, and noting that it was working with a common contract manufacturer of pet food to provide a comprehensive list of affected brands.

61. The FDA stated that test samples of the dog food contained "excessive, potentially toxic amounts of vitamin D" and warned that excess vitamin D can cause "vomiting, loss of

¹⁸ <https://www.hillspet.com/about-us/quality-and-safety> (last visited March 12, 2019).

appetite, increased thirst, increased urination, excessive drooling and weight loss,” or even “kidney failure and death.”

62. Despite the FDA’s public warnings, Hill’s not only continued to manufacture, sell and warrant its Specialty Pet Foods unabated, to the detriment of consumers and their pets alike, for nearly two months after the press release was issued, but did so along with the representation that it “analyz[es] ingredients” in “each and every one of [its] products” to make sure those ingredients meet high quality standards.

63. Consumers have not only lost their pets, but have also incurred substantial expenses as a result of purchasing the Specialty Pet Foods, including but not limited to the cost of the food itself, veterinary bills for pets who have consumed the contaminated products, and costs associated with cremation and burial. Some pet owners have accrued thousands of dollars in veterinary bills and related expenses.

The Recall

64. On January 31, 2019, Hill’s announced an initial recall of canned Prescription Diet and Science Diet products. Hill’s issued a press release detailing the risk of excessive vitamin D consumption and identifying affected products.¹⁹

65. Even though a video message included with the January 31, 2019 recall represented that the SKU and lot numbers identified in the January 31, 2019 recall were “confirmed to be the only affected products in this voluntary canned dog food recall,” on February 7, 2019, Hill’s announced an expansion of the recall to include additional SKU and lot numbers of canned Specialty Pet Foods.²⁰

¹⁹ <https://www.hillspet.com/productlist> (last visited March 12, 2019).

²⁰ See, e.g., <http://www.dvm360.com/hill-s-recall-expanded-pet-owners-demand-answers> (last visited March 12, 2019).

66. To date, Hill's has not identified the cause of vitamin D toxicity beyond claiming it is "due to a supplier error" that impacted the vitamin premix.

67. Moreover, Hill's has done little to calm the fears of owners concerned about their pets' health after learning of the recall. Despite claims that it will be operating for longer hours with an increased number of staff, Hill's has failed to manage the high volume of incoming complaints. Many class members have been unable to reach Defendant's customer service representatives.

68. Some consumers who have been able to reach Hill's customer service representatives to report the illness and death of their pets have been offered only coupons redeemable for future dog food purchases.

69. Worse, Hill's is reassuring consumers that "[n]o dry foods, cat foods, or treats are affected" by the vitamin D contamination, when there is reason to believe that both dry dog foods and cat foods have been affected.

70. Dogs that consumed dry Specialty Pet Foods are exhibiting symptoms of vitamin D toxicity. For example, as set forth below, dogs belonging to Plaintiffs Barr and Zisser were sickened by dry dog food (rather than canned dog food) sold under the Hill's Prescription Diet and Science Diet brand names. They are not alone; Plaintiff Bone has heard from additional dog owners who report that their dogs exhibited symptoms consistent with vitamin D toxicity after eating dry Specialty Pet Foods.

71. Cats on Hill's diets are also exhibiting symptoms of Vitamin D toxicity. For example, in July of 2018 Plaintiff Stroud and her veterinarian reported to Hill's that all three of Stroud's cats, who were eating Hill's Prescription Diet cat foods but were of different ages and not genetically related, suddenly went into renal failure within a period of one month. Additional cat

owners have complained online and others have contacted counsel regarding symptoms consistent with vitamin D poisoning.

72. Thus, it appears that Hill's has recalled only a subset of its affected products, and may be falsely assuring wide swaths of consumers that there is no need for concern about the Hill's products they have purchased and are feeding to their pets.

73. Indeed, as of the date of filing, the recall involves about 675,000 cases of canned food, or 13.5 million cans, which is less than 4 percent of Hill's annual U.S. sales, according to the company.

74. Accordingly, pet owners will continue to feed their pets Specialty Pet Foods which Hill's has warranted as safe until Hill's recalls each and every product contaminated by high levels of vitamin D.

PLAINTIFFS' EXPERIENCES

Plaintiff Kelly Bone

75. Plaintiff Bone fed Hill's Specialty Pet Foods to her dog, Duncan, for several years. Duncan was a trained service dog and she relied upon him to alert her to seizures.

76. Bone's veterinarian recommended the special Hill's food to help Duncan with his pancreatitis. Bone decided to purchase the Specialty Pet Foods after reviewing the information reflected on the product labeling, believing the food would help Duncan with his health. Bone purchased the Specialty Pet Foods from both her veterinarian and from Chewy.com.

77. Duncan was healthy until January 7, 2019, when he began to experience drastic weight loss and foaming of the mouth. He lost half of his body weight over a period of days. The veterinarian did blood work which showed that his enzymes were elevated but not enough to kill him. Two days after the blood testing, Duncan was not getting any better and was given two rounds

of antibiotics. On the fourth day, he couldn't walk and was going into a coma. The veterinarian advised that there was nothing else to be done and that, because the dog was very uncomfortable, the only option was to put him to sleep. Duncan died on January 12, 2019. Bone is devastated by the loss of her dog.

78. Bone posted about her experience with Duncan and Hill's Specialty Food on social media. Hill's saw her post and reached out to her.

79. When Bone acquired Duncan 13 years ago, the cost of obtaining him was \$800.00, plus \$13,000 for 14 months of specialized training for her seizure condition. She anticipates that the cost of obtaining a new service dog will be in excess of that amount. In addition, she incurred veterinary bills exceeding \$600.

80. Plaintiff Bone would not have purchased the Specialty Pet Foods had she known they contained levels of vitamin D that were unreasonably dangerous to pets, including her dog Duncan, pictured below.



Plaintiff Christina Sawyer

81. Plaintiff Sawyer fed Hill's Specialty Pet Foods to her dog Taco beginning in November, 2018. Taco had pancreatitis but it was not severe, and the veterinarian said it would heal or reverse itself after Taco began the Specialty Pet Foods. Sawyer decided to purchase this

special food after reviewing the information reflected on the product labeling, believing this food would help Taco with her health.

82. In the days leading up to her death, there was a drastic change in Taco's health. She started losing weight, was thirsty all of the time, began to shake and have tremors, and was vomiting. Eventually she had trouble walking and standing. Taco died on January 24, 2019. Sawyer and her family, including her autistic daughter, are devastated by the loss of Taco.

83. Sawyer posted about her experience with Taco and Hill's Specialty Food on social media. Hill's saw her post and reached out to her.

84. Sawyer paid \$2.99 per can for the Specialty Pet Foods and purchased a total of 4 cases with 20 cans per case, totaling \$239. She incurred veterinary bills for blood work and veterinary visits after Taco started eating the Hill's Science Diet food, and also paid \$270 for Taco's cremation.

85. Plaintiff Sawyer would not have purchased the Specialty Pet Foods had she known they contained levels of vitamin D that were unreasonably dangerous to pets, including her dog Taco, pictured below.



Plaintiff Janine Buckley

86. Plaintiff Buckley fed Hill's Specialty Pet Foods to her dog Lily for several years after the recommendation from her veterinarians that it would help with her gastrointestinal issues and kidney disease. Buckley decided to purchase this special food after reviewing the information reflected on the product labeling, believing this food would help Lily with her health.

87. A few days prior to May 31, 2018, Lily began experiencing vomiting, loss of appetite, excess thirst, excess urination and episodes of drooling. This prompted Buckley to seek emergency medical attention for Lily. Lily was admitted to the animal hospital. Attempts to get Lily to eat on her own while she was in the hospital failed, so she was fed a different type of food with an esophageal feeding tube. Lily seemed to be doing better through the summer of 2018 while she was being fed different dog food.

88. In November 2018, Lily went back on the Hill's Specialty Dog Food, still being fed through her feeding tube. Buckley has now learned that this food has been included in the Hill's recall. Lily began to decline again, experiencing drooling, weakness and dark stools. She was placed on daily subcutaneous fluids to sustain her kidneys.

89. Lily had to be humanely euthanized in Buckley's arms on November 27, 2018. She continued to be fed the Hill's Specialty Food through her feeding tube until the night she died. Lily meant the world to Buckley and her loss has been the most painful loss she has ever experienced.

90. Buckley incurred several thousands of dollars in veterinary and hospital bills after Lily started eating the Hill's Science Diet food.

91. Plaintiff Buckley would not have purchased the Specialty Pet Foods had she known they contained levels of vitamin D that were unreasonably dangerous to pets, including her dog Lily, pictured below.



Plaintiff Penny Hopson

92. Plaintiff Hopson fed the Specialty Pet Foods to her dog Oscar beginning in October 2018. On or about September 29, 2018, Oscar's veterinarian recommended that Hopson feed Oscar Hill's Prescription Diet i/d canned food to help with Oscar's pancreatitis. Hopson decided to purchase the Specialty Pet Foods because of the information reflected on the product labeling.

93. Other than the manageable pancreatitis, Oscar was a healthy and energetic dog until October 2018. Oscar ate the first can of the Specialty Pet Foods Plaintiff Hopson fed to him, but Oscar was less willing to eat the second can, which was out of character for Oscar. Plaintiff Hopson also fed Oscar boiled chicken breast and rice at this time, but she resumed feeding Oscar the canned Prescription Diet i/d food a week and a half later, believing this would be better for his health.

94. Once he resumed the canned Specialty Pet Foods Oscar began to suffer from vomiting, excessive urination, extreme thirst, drooling, sweating, and lethargy. Plaintiff Hopson also noticed that Oscar seemed weaker than normal, and took Oscar to the veterinarian. The veterinarian conducted a blood test, which indicated that Oscar's blood contained very high levels of calcium, an issue Oscar had never had previously. On October 25, 2018 Oscar passed away at the veterinarian's office.

95. Plaintiff Hopson spent about \$20 on the six cans of Specialty Pet Foods she fed Oscar, and she incurred over \$300 in veterinary bills as a result of feeding him the Specialty Pet Foods. Hopson paid \$450 for Oscar, but would need to spend nearly double that for a similar dog today. Most importantly, Hopson lost a precious pet that went everywhere with her and her husband and was loved by her grandchildren as well.

96. On February 5, 2019, after learning of the recall, Hopson contacted Hill's and provided her contact information. She also posted about her experiences on social media in hopes of informing and warning other pet owners.

97. Hopson would not have purchased the Specialty Pet Foods had she known they contained levels of vitamin D that were unreasonably dangerous to pets, including her dog Oscar, pictured below.



Plaintiff Patrick McDonald

98. Plaintiff McDonald fed the Specialty Pet Foods to his dog Herbie beginning in September 2018. Plaintiff McDonald purchased the Specialty Pet Foods after reviewing the information reflected on the product labeling, believing it would help Herbie with his health.

99. Herbie was healthy until December of 2018. Herbie had fully recovered from cataract surgery ten months prior, and in September 2018 bloodwork confirmed his good health. In December 2018, McDonald began feeding Herbie primarily the Specialty Pet Foods, specifically three varieties of Hill's Science Diet for adult dogs over the age of seven.

100. Plaintiff McDonald also fed his dog Chloe the Specialty Pet Foods for the first time in December 2018, and Chloe almost immediately began suffering from vomiting, increased thirst and urination, and diarrhea. McDonald stopped feeding Chloe the food and after about a day Chloe appeared to recover.

101. Around this same time, Herbie began suffering from complete loss of appetite, excessive thirst, excessive urination, vomiting, diarrhea, and weight loss. McDonald did not suspect the Specialty Pet Foods because he had been feeding Herbie Hill's Science diet food for a while at that point. Herbie's symptoms continued, and eventually, McDonald took Herbie to see his veterinarian on December 29, 2018. After running several tests, the veterinarian informed Plaintiff McDonald that Herbie was in total renal failure. Herbie's creatinine, phosphorous, and BUN values were off the charts. The veterinarian advised McDonald to take Herbie to the nearest animal emergency hospital, which McDonald did. At the emergency hospital the veterinarians attempted to save Herbie's life, but eventually recommended that McDonald humanely euthanize Herbie. Prior to being euthanized Herbie passed on his own. Herbie died on December 31, 2018.

102. Plaintiff McDonald and his wife are devastated by the sudden loss of their beloved Herbie. Herbie was a purebred dog, and McDonald paid \$1,500 to buy Herbie. McDonald provided the finest care for Herbie, which included cataract surgery totaling over \$5,000. McDonald spent about \$25 on the Specialty Pet Foods for Herbie, over \$1,000 in veterinary visits and testing. McDonald also spent \$565 to cremate Herbie.

103. After learning of the recall, Plaintiff McDonald checked the four remaining cans of the Specialty Pet Foods in his possession and found that all four cans were part of the Hill's recall.

104. Plaintiff McDonald would not have purchased the Specialty Pet Foods had he known they contained levels of vitamin D that were unreasonably dangerous to pets, including his dog Herbie, pictured below.



Plaintiff Abraham Mejia

105. Plaintiff Mejia fed the Specialty Pet Foods to his dog Freido for four months. On or about August 18, 2018, Freido was diagnosed with diabetes and Freido's veterinarian offered multiple specialty food options, including Prescription Diet w/d canned food, to help control the diabetes. After reviewing the packaging for all the options, Mejia selected and purchased the Hill's Specialty Pet Foods because of the information reflected on the product labeling.

106. The veterinarian advised that Freido's diabetes was completely controllable and that he should live a normal, healthy life once he began treatment, including the special food. Freido improved briefly after beginning treatment, but a couple of weeks after starting the Specialty Pet Foods, Freido began to exhibit excessive thirst, weight loss, and lethargy. Plaintiff Mejia continued to feed Freido the Hill's Prescription Diet w/d food, believing it would help Freido return to normal after his diabetes diagnosis.

107. Instead, Freido's condition continued to deteriorate, and on or about December 18, 2018, Plaintiff Mejia was advised that there was nothing more to be done for him. Freido was euthanized in the veterinarian's office.

108. Plaintiff Mejia has another dog named Dutch. At some point between August 18, 2018 and December 18, 2018, Plaintiff Mejia ran out of the food that he normally fed to Dutch, and fed the Hill's Specialty Pet Foods to Dutch for a day or two. Dutch went into renal failure almost immediately, but made a full recovery after discontinuing the Specialty Pet Foods.

109. Plaintiff Mejia spent about \$200 on the Specialty Pet Foods he fed to Freido and very briefly to Dutch, and he incurred significant veterinary bills as a result of feeding them the Specialty Pet Foods, including more than \$200 for euthanasia and cremation of Freido. Most importantly, Mejia lost a family pet that was loved by him, his wife and their children.

110. On or about February 25, 2019, after learning of the recall, Mejia contacted Hill's by email and provided his contact information.

111. Mejia would not have purchased the Specialty Pet Foods had he known they contained levels of vitamin D that were unreasonably dangerous to pets, including his dog Freido, pictured below.



Plaintiff Cheryl Barr

112. Plaintiff Barr fed the Specialty Pet Foods to her dogs Muffin and Hershey for several years. Barr decided to purchase Hill's Science Diet dry dog food after reviewing the information reflected on the product labeling, believing this food would help Muffin and Hershey with their health. Muffin ate primarily the Specialty Pet Foods, while Hershey ate primarily baked chicken with the Specialty Pet Foods sprinkled into his meals.

113. Muffin was healthy until December 2018 when she began losing weight, shaking and suffering from diarrhea. During the middle of December 2018 Plaintiff Barr took Muffin and Hershey to the veterinarian. Both dogs received medicine to calm their stomachs and address the symptoms.

114. Barr continued to feed Muffin the Specialty Pet Foods because she believed that the food was helping Muffin with the very issues she was suffering from. Hershey preferred the baked chicken over the Specialty Pet Foods, and his health returned to normal.

115. Unfortunately, Muffin's health continued to deteriorate, and Barr took her to the veterinarian again. Eventually Barr took Muffin to the emergency room, and Muffin was hospitalized for ten days. The doctors conducted numerous tests and administered subcutaneous fluids. The blood work showed that Muffin's kidney levels were very high. Muffin's BUN was five times the normal level and her phosphorous levels were elevated.

116. Unaware that the Specialty Pet Foods were causing Muffin's illness, Barr began feeding Muffin Hill's canned Prescription Diet k/d food believing the food to be healthy and beneficial to Muffin. Barr continued taking Muffin to the veterinarian to receive subcutaneous fluids daily for about a month, and eventually stopped feeding Muffin the Specialty Pet Foods.

117. Fortunately, Muffin slowly showed signs of recovering while her extremely elevated BUN, phosphorous and other kidney levels slowly lowered.

118. Plaintiff Barr has spent over \$200 on the Specialty Pet Foods for Muffin and Hershey. She incurred over \$3,000 in veterinary bills for the visits, testing and hospital stays.

119. On or about February 22, Barr had to take Muffin to the veterinarian again because Muffin fell off of Barr's bed. The veterinarian had to prescribe different pain medication to make sure that it did not affect Muffin's kidneys and also prescribed different food because the medications were inhibiting Muffin's appetite. The veterinarian prescribed Hill's Prescription Diet canned i/d food. Barr was suspicious and discovered that the can the vet gave her was part of the recall, demonstrating the ongoing danger the Specialty Pet Foods present to pets nationwide.

120. Plaintiff Barr would not have purchased the Specialty Pet Foods had she known they contained levels of vitamin D that were unreasonably dangerous to pets, including her dogs Muffin and Hershey.

Plaintiff Brad Getz

121. Plaintiff Getz fed the Specialty Pet Foods to both of his dogs, Oliver and Rocco, for several years.

122. Getz decided to purchase the Specialty Pet Foods after reviewing the information reflected on the product labeling, believing that the food was of the highest quality and would provide the best diet for them.

123. Oliver was healthy until December 2018, when he stopped eating, became lethargic, and began suffering from tremors, excessive thirst, and halitosis. The veterinarian did blood work which showed that Oliver was in acute kidney failure. Shocked by the sudden diagnosis, Plaintiff Getz sought the opinion of another veterinarian who examined Oliver and

found that he was suffering from chronic kidney failure. The veterinarian advised that there was nothing to be done and recommended putting Oliver to sleep. Oliver died on January 9, 2019. Getz is devastated by the loss of his dog.

124. Rocco was a healthy dog until December 2018, when he experienced vomiting, shaking, and excessive thirst, at which point Getz ceased feeding Rocco the Specialty Pet Foods. Since that point in time Rocco seems to have recovered.

125. Getz posted about the experience with Olly and the Specialty Pet Foods on social media. Hill's saw his post and reached out to him, but did not offer him remuneration.

126. Since September 2018, Getz paid in excess of \$250 for the Specialty Pet Foods, and paid far more for the Specialty Pet Foods in the preceding years. He incurred veterinary bills in excess of \$1,000 for blood work and veterinary visits because Oliver and Rocco consumed the Specialty Pet Foods, and also paid \$100 for Olly's burial.

127. Plaintiff Getz would not have purchased the Specialty Pet Foods had he known they contained levels of vitamin D that were unreasonably dangerous to pets, including his dog Oliver, pictured below.



Plaintiff Nancy McAtee

128. Plaintiff McAtee fed Hill's Specialty Pet Foods to her dog Lani Love for several years after her veterinarian prescribed the Hill's Prescription Diet i/d and k/d to assist with Lani Love's kidney health. McAtee decided to purchase the Specialty Pet Foods after reviewing the information on the product labeling.

129. Until October 25, 2018, Lani Love was healthy, her kidney counts were good given her condition, and she was as energetic as she had ever been. Beginning October 25, 2018, however, Lani Love became very lethargic, vomited, and refused to eat her food. Over the next two days, McAtee took Lani Love to the veterinarian twice, and the veterinarian found that Lani Love had internal bleeding and elevated blood counts, and was in total kidney failure. On October 27, 2018, Lani Love was humanely euthanized at the recommendation of her life-long veterinarian. The quick and unexpected end to Lani Love's life has devastated Plaintiff McAtee.

130. For roughly half of Lani Love's life, McAtee fed Lani Love primarily the Specialty Pet Foods, spending over \$500 on the Specialty Pet Foods. McAtee retained two cans of the Specialty Pet Foods, both of which are part of the Hill's recall.

131. Plaintiff McAtee spent over \$500 in veterinary bills for the various blood tests, administration of intravenous fluids, and veterinary visits Lani Love required. McAtee also paid about \$500 to cremate Lani Love.

132. McAtee would not have purchased the Specialty Pet Foods had she known they contained levels of vitamin D that were unreasonably dangerous to dogs, including her dog Lani Love, pictured below.

133. Shortly after Lani Love passed away, Plaintiff McAtee contacted the FDA to report the issues with the Specialty Pet Foods.



Plaintiff Sarah Stroud

134. Plaintiff Stroud fed dry Specialty Pet Foods to her cats Olive, Sweet Pea and Sophie for years, including Prescription Diet Feline c/d dry, and beginning in February of 2016, canned Prescription Diet c/d chicken stew. Stroud, who has a degree in animal science and became certified as a Hill's Veterinary Nutritional Advocate while working as a veterinary nurse, decided to purchase the Specialty Pet Foods because of the information reflected on the product labeling and her belief that Hill's could be counted on to provide safe, nutritious products that would be good for her cats' health.

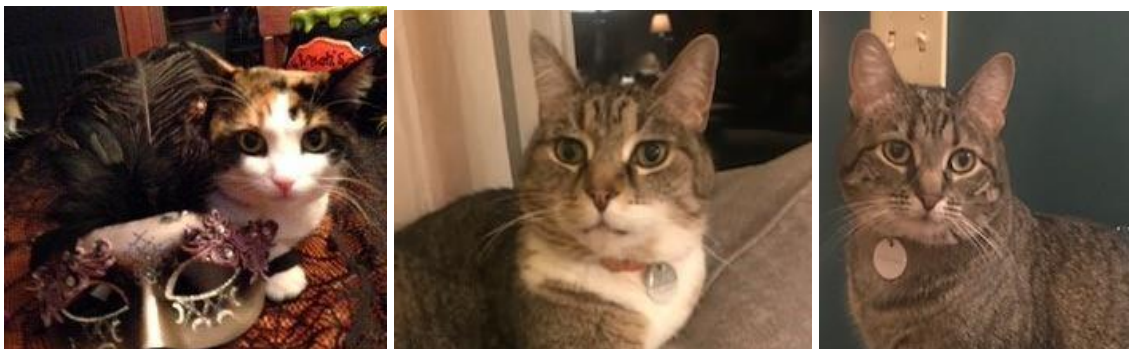
135. In June of 2018, Olive went into renal failure at the age of five, which is very young for a cat to experience kidney problems at all, much less chronic renal failure. Then, in July of 2018, Sweet Pea (then age 10) and Sophie (then age 3) also went into renal failure. Because the three cats are not genetically related, Stroud and her veterinarian became suspicious of the Hill's food and contacted Hill's to raise their concerns.

136. At the time of the second and third diagnoses of renal failure, Plaintiff Stroud had a bag and several cans of the Specialty Pet Foods in her possession. When Hill's declined her offer to send them back for testing, she had the foods tested for toxins by a university laboratory.

No toxins were found. After learning of the recall, however, Stroud checked to see whether the laboratory had tested for excess vitamin D, and it had not.

137. After the diagnoses of Sweet Pea and Sophie, Stroud also took all three cats off the Specialty Pet Foods, but the damage had been done to their kidneys. Plaintiff Stroud paid thousands of dollars in veterinary bills to stabilize her cats' health as much as possible, and continues to pay hundreds of dollars per month for supplemental fluids, appetite stimulants, vitamins, and special diets necessary to manage their health in the wake of the kidney damage. Plaintiff Stroud is emotionally devastated by her cats' illnesses and the resulting likelihood that they will die early, and has sought counseling to deal with the fact that her cats—who were always a source of relaxation—are now a source of stress. To date, she has incurred approximately \$210 in out-of-pocket costs for counseling and other mental health treatment made necessary by the sudden and serious illness of her cats.

138. Plaintiff Stroud would not have purchased the Specialty Pet Foods had she known or suspected they contained levels of vitamin D that were unreasonably dangerous to cats, including her cats Olive, Sweet Pea and Sophie, pictured below.



Plaintiff Julie Hoffman

139. Plaintiff Hoffman fed the Specialty Pet Foods to her dogs Gracie and Natasha for about a year after taking both dogs in to the veterinarian for their wellness exams. Plaintiff

Hoffman fed Gracie and Natasha the Hill's Prescription Diet canned k/d food to assist with their kidney health. Hoffman decided to purchase the Specialty Pet Foods after reviewing the information reflected on the product labeling, believing this food would help Gracie and Natasha with their health.

140. Until the beginning of December 2018 both dogs were healthy and active dogs. Around roughly the same time in December, both Gracie and Natasha became sick and were experiencing vomiting and were very lethargic. Hoffman took both in to the veterinarian, who ran several tests and scans, which displayed that both dogs' creatinine and SDMA levels were very elevated.

141. Hoffman continued to feed Gracie and Natasha the Specialty Pet Foods believing, as the label explained, that the foods would assist with Gracie and Natasha's kidney health. But their symptoms persisted and their kidney values remained high. Then, the week before December 25, 2018, Hoffman observed that Gracie had taken a turn for the worse and was still vomiting and so lethargic she was nearly unable to move. The doctors explained that Gracie was in kidney failure and that it was best to humanely euthanize her. Gracie died shortly thereafter.

142. Meanwhile, Natasha showed some signs of improving, but her symptoms continued into January and she had a seizure around that time as well. Once Hill's announced its recall on January 31, 2019, Plaintiff Hoffman ceased feeding the Specialty Pet Foods to Natasha. Natasha has now begun to slowly recover from the kidney issues caused by the contaminated foods.

143. Hoffman contacted Hill's and spoke with a representative who offered only a \$5 off coupon for future purchases.

144. Hoffman incurred significant veterinary bills for the numerous visits, tests and treatments Gracie and Natasha required. She paid over \$15,000 for both Gracie's and Natasha's

medical treatments, as well as Gracie's cremation. Additionally, Hoffman paid about \$2.80 per can of the Specialty Pet Foods and was going through about three cans a day for both dogs for over a year. Hoffman is devastated by the loss of Gracie and the near loss of Natasha.

145. Plaintiff Hoffman owns three other dogs who were never fed any of the Specialty Pet Foods, and did not suffer from any of the same symptoms or illnesses as those Gracie and Natasha experienced.

146. Plaintiff Hoffman would not have purchased the Specialty Pet Foods had she known they contained levels of vitamin D that were unreasonably dangerous to pets, including her dogs Gracie and Natasha.

Plaintiff Elisa Bidus

147. Plaintiff Bidus fed the Specialty Pet Foods to her dogs Chewy and Jasper for several years. In late December 2018 Bidus began feeding Chewy canned Hill's Prescription Diet c/d dog food. Chewy had a heart murmur and bladder stones that he had lived with for years, and Bidus decided to purchase the Specialty Pet Foods after reviewing the information reflected on the product labeling, believing this food would help Chewy with his health.

148. Until January 2019, Chewy was a healthy and playful dog, and a veterinarian visit on December 16, 2018 showed nothing wrong with Chewy besides the known issues he had been living with for years.

149. After a week of eating the Prescription Diet c/d canned dog food, Chewy became very weak and was urinating and drinking water excessively. Chewy also lost four pounds in a month. Bidus took Chewy to the veterinarian, and the veterinarian determined Chewy's kidneys were failing. Chewy was euthanized on January 15, 2019. Bidus is distraught by the thought that she fed Chewy the food that ultimately killed him.

150. Plaintiff Bidus spoke with a Hill's representative, but the representative did not offer any compensation for the defective food or the loss of her beloved dog.

151. Bidus paid about \$2.99 per can for the Specialty Pet Foods. She incurred significant veterinary bills for testing and veterinary visits after Chewy started eating the Hill's Prescription Diet canned food, and paid for Chewy's cremation.

152. Plaintiff Bidus would not have purchased the Specialty Pet Foods had she known they contained levels of vitamin D that were unreasonably dangerous to pets, including her dog Chewy.



Plaintiff Christy Zisser

153. Plaintiff Zisser began feeding the Specialty Pet Foods to her dog Greta a few years ago. Greta's veterinarian recommended the Hill's Prescription Diet i/d food to assist with Greta's kidney health, and plaintiff Zisser purchased the dry version after reviewing the information reflected on the product labeling, believing that it would help with Greta's health and specifically her kidneys.

154. In December 2018, Plaintiff Zisser began feeding Greta the canned Prescription Diet i/d instead of the dry food. Zisser's veterinarian recommended the switch because Zisser had

been softening the dry Specialty Pet Foods for Greta, and Zisser then purchased the canned version after reviewing the information reflected on the product labeling.

155. Greta was a healthy dog until the middle of December when Zisser noticed that Greta was losing weight. Greta began vomiting, was having trouble eating her food, and displayed signs that she was dehydrated. Zisser continued to feed Greta the canned Specialty Pet Foods, but Greta's problems persisted.

156. From January 11 to 13, 2019, Greta received subcutaneous fluids daily in an attempt to stop her vomiting and weight loss. On January 15, Zisser took Greta to the veterinarian for removal of the IV because she appeared to have responded well to the treatment. A few hours later, however, Greta's health took a turn for the worse. Zisser brought Greta back to the veterinarian, and there was nothing to do but put Greta down. Greta died on January 15, 2018. X-rays showed that Greta's esophagus was not enlarged, and her blood work indicated that her kidney levels were off the charts.

157. Plaintiff Zisser also owns three other dogs, Georgia, Gabe and Gunner, who she did not feed the Specialty Pet Foods to regularly. At one point in January 2018, she fed some of Greta's unused dry Prescription Diet i/d food to Gunner, who did not react well to the food and vomited as a result. Zisser ceased feeding Gunner the dry Specialty Pet Foods, and after a few days Gunner's condition returned to normal.

158. Plaintiff Zisser purchased all of the Specialty Pet Foods from her veterinarian and spent hundreds of dollars on the food. Zisser spent well over \$1,000 on veterinary visits and treatments and death related costs for Greta, since December 2018 alone.

159. Once Zisser learned of the Hill's recall she and her husband attempted to contact Hill's. She confirmed that her vet clinic did have some cans of food that were part of the Hill's

recall. Zisser posted a comment on Hill's Facebook page to notify them about Greta's suffering. Eventually, a veterinarian representing Hill's contacted her. The veterinarian did not offer any compensation or remuneration for Greta's death or Zisser's purchase of the Specialty Pet Foods.

160. Zisser would not have purchased the Specialty Pet Foods had she known they contained levels of vitamin D that were unreasonably dangerous to pets, including her dogs Greta and Gunner, pictured below with Georgia and Gabe.



Plaintiff Jill Lanham

161. Plaintiff Lanham fed the Specialty Pet Foods to her dog Lexie for Lexie's entire life. In December 2018, Lanham switched the type of Specialty Pet Foods she was feeding Lexie from dry Hill's Prescription Diet z/d food to the canned Prescription Diet z/d food.

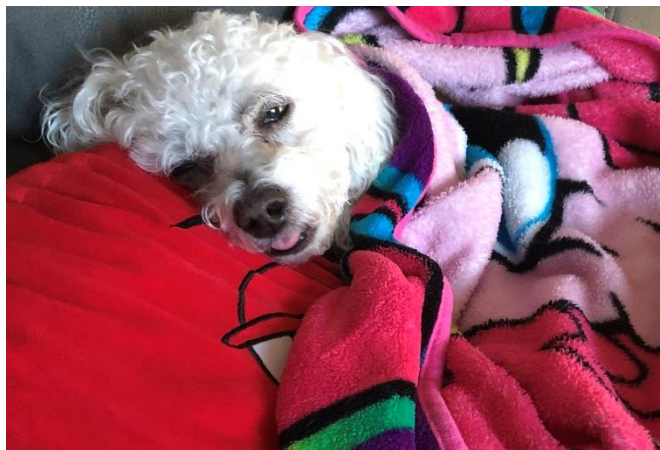
162. Lanham decided to purchase the Specialty Pet Foods after reviewing the information reflected on the product labeling, believing that it would help Lexie with her health. Lanham switched to the canned food from the dry food, believing that there was no difference between the foods and that the nutritional contents were identical.

163. Lexie was healthy until December 8, 2018, when, after about a week of consuming the canned Prescription Diet z/d food, Lexie became ill. Lexie began suffering from extreme thirst, dehydration, vomiting, lethargy, and weight loss. Plaintiff Lanham took Lexie to two veterinarians at this time because the first veterinarian could not figure out what was causing Lexie's problems, but Lexie's regular veterinarian diagnosed Lexie with chronic renal failure after conducting blood and urine tests. Lanham gave Lexie steroids to try and combat these symptoms, but Lexie continued to suffer. Eventually, the veterinarians determined there was nothing left to do but to put her down. Lexie died on January 19, 2019.

164. Lanham has since learned that the canned food she fed Lexie is included in the Hill's recall. Plaintiff Lanham contacted Hill's, but was unable to reach a representative.

165. Plaintiff Lanham incurred several hundred dollars in veterinary bills after Lexie began eating the canned Hill's Prescription Diet food.

166. Plaintiff Lanham would not have purchased the Specialty Pet Foods had she known they contained levels of vitamin D that were unreasonably dangerous to pets, including her dog Lexie, pictured below.



Plaintiff Sherri Anderson

167. Plaintiff Anderson fed the Specialty Pet Foods to her dog Daytona beginning in August 2011. Daytona was Anderson's beloved pet and family favorite.

168. Anderson's veterinarian recommended the Hill's Prescription Diet i/d and w/d canned food to assist with Daytona's glucose and weight management in October 2018. Daytona's veterinarian removed a benign mass from his tongue on October 4, 2018 and diagnosed Daytona with Diabetes on November 30, 2018. Plaintiff Anderson decided to purchase the Specialty Pet Foods after reviewing the information reflected on the product labeling, believing the food would help Daytona with his health.

169. Besides the issues mentioned above, Daytona was a healthy and lively dog until about November 30, 2018, when he began suffer from vomiting, shaking, excessive thirst and urination, and weight loss. Plaintiff Anderson also took Daytona to the veterinarian five times in December 2018. The veterinarian took blood tests, and Daytona's BUN was over five times higher than normal level and other kidney and pancreatic levels were higher than the normal and healthy level. Multiple veterinarians examined Daytona and his bloodwork, and none of them were able to determine the reason for the extremely elevated levels.

170. Only three weeks after Daytona first began eating the Specialty Pet Foods, his veterinarians diagnosed him with acute kidney failure because his BUN, creatinine, phosphorous and LIPA levels were extremely elevated. The veterinarians recommended that Plaintiff Anderson euthanize Daytona because there was no treatment available for his kidney failure. Daytona died on December 26, 2018. Anderson and her family are devastated by the loss of their beloved family member.

171. Plaintiff Anderson paid over \$300 dollars for the Specialty Pet Foods she fed Daytona. She also spent approximately \$1,000 in veterinary bills as a result of the harm the Specialty Pet Foods caused to Daytona.

172. On or about February 12, 2019, Anderson spoke with a Hill's representative about her experiences, but she refused the coupon Hill's offered her. Around the same time, Anderson also submitted a safety report about the Specialty Pet Foods to the FDA.

173. Plaintiff Anderson would not have purchased the Specialty Pet Foods had she known they contained levels of vitamin D that were unreasonably dangerous to pets, including her dog Daytona, pictured below.



Plaintiff Ada Darnell

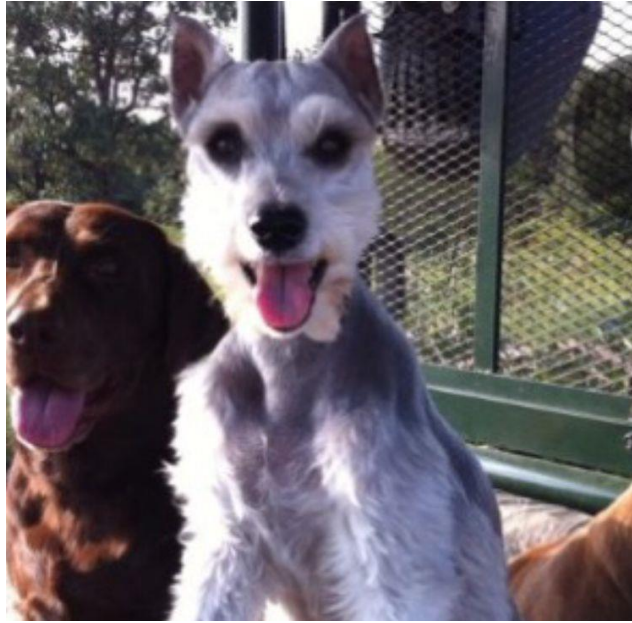
174. Plaintiff Darnell fed the Specialty Pet Foods to her dog Wesley for several years. Wesley's veterinarian prescribed the food to assist with his weight and glucose management, and Plaintiff Darnell decided to purchase the dry and canned Hill's Prescription Diet w/d food after reviewing the information reflected on the product labeling, believing it would help with his health.

175. Wesley was healthy and his weight and glucose were under control until December 2018 when his health took a drastic turn for the worse and he began displaying symptoms consistent with excessive vitamin D consumption. Darnell noticed that Wesley had lost his appetite and was very lethargic. Additionally, Darnell witnessed that Wesley was constipated, excessively thirsty, and weaker than normal. About a day or two later, on December 19, 2018, Wesley began whimpering and moaning, and he passed away in the middle of the night before Darnell was able to take him to a veterinarian.

176. Darnell later determined that at least three of the cans of the food she fed Wesley were part of the Hill's recall. On February 7, 2019 she contacted Hill's, but she was only able to briefly explain her claim and was then placed on hold. Darnell sat on hold for about an hour before ending the call. She finally spoke with a veterinarian representing Hill's on February 11, 2019, but the veterinarian offered no compensation or remuneration to Darnell.

177. Plaintiff Darnell spent money on the Specialty Pet Foods and incurred costs as a result of Wesley's death, which was caused by the harmful effects of the Specialty Pet Foods.

178. Plaintiff Darnell would not have purchased the Specialty Pet Foods had she known they contained levels of vitamin D that were unreasonably dangerous to pets, including her dog Wesley, pictured below.



Plaintiff Chhamboni Simmons

179. Plaintiff Simmons fed the Specialty Pet Foods to her dog Kane beginning in September 2018 to help relieve Kane's allergies. Kane's veterinarian prescribed the Hill's Prescription Diet z/d food at that time. Plaintiff Simmons purchased the Specialty Pet Foods after reviewing the product labeling, believing she was feeding Kane the best food she could buy to address his allergies.

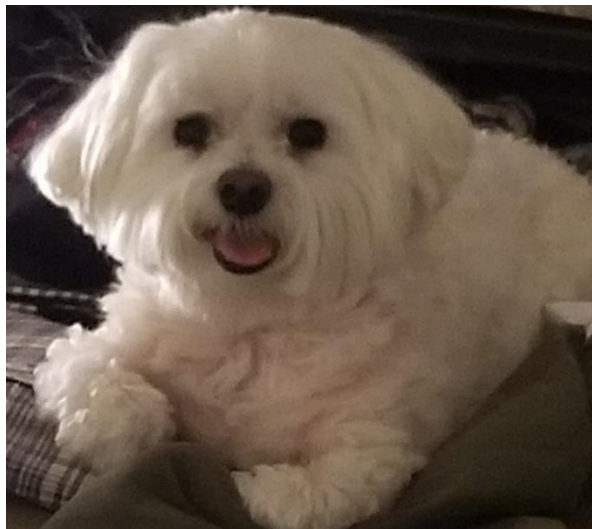
180. Kane was healthy until December 2018, when he began suffering from diarrhea for about a week. Then he began vomiting and drinking excessive amounts of water. During December 2018, Plaintiff Simmons took Kane to the veterinarian at least three times before ultimately hospitalizing Kane.

181. The various veterinarians that treated Kane ran multiple tests during the visits and hospitalization. During this time Kane was vomiting and regurgitating meals every single day, and veterinarians implanted a feeding tube as a result. Finally, on the doctors' recommendation, Simmons agreed it was best to put Kane to sleep. Kane died on January 26, 2019.

182. Simmons was determined to provide the best care for Kane. She paid over \$100 for the Specialty Pet Foods. She also paid about \$16,000 worth of veterinary bills for the tests, visits and hospital stay that Kane needed, as well as costs incurred because of Kane's death.

183. When Simmons acquired Kane in December 2007, she paid \$1,000 plus the fees she paid for Kane's approval as a therapy dog to treat Plaintiff Simmons' PTSD. Simmons served 24 years in the United States Army, and Kane has acted as a therapy dog for Simmons. Kane allowed Simmons to forego costly medication to treat her PTSD, and since Kane's passing she has had to resume the medications. Simmons anticipates that the cost of obtaining another dog and having her doctors certify the dog as a therapy dog would in excess of what she paid to do the same with Kane.

184. After the Hill's recall, Simmons discovered that the cans of food she had fed Kane were part of the recall. Plaintiff Simmons would not have purchased the Specialty Pet Foods had she known they contained levels of vitamin D that were unreasonably dangerous to pets, including her dog Kane, pictured below.



Plaintiff Bradley Mace

185. Plaintiff Mace began feeding the Specialty Pet Foods to his dog Luna in September 2018, at the recommendation of Mace's veterinarian. Mace took Luna to the veterinarian at that time because Luna had lost weight and had a sensitive stomach. The veterinarian determined that Luna was experiencing some problems with her liver. The veterinarian put Luna on medication and recommended Hill's Specialty Pet Foods to help her put on weight. Mace decided to purchase the Specialty Pet Foods because of the information reflected on the product labeling, believing that the food would help Luna to gain weight and be gentle on her stomach.

186. Luna's liver levels did return to a range within normal, but she did not gain the weight back. Mace, therefore, continued feeding her the Specialty Dog Food, believing that it would help his dog. Luna did not eat the full recommended amount of canned food, so Mace also fed Luna dry food.

187. In November, Luna started to shake. Mace thought it was because she was cold as a result of the weight loss so he Luna wore a sweater in an effort to keep her warm. Next, Luna developed a chemical-smelling bad breath, and then diarrhea.

188. In early to mid-January, Luna became excessively thirsty. She started having trouble walking and was lethargic. Mace took her to the veterinarian. Luna's bloodwork showed that she was in renal failure and her pancreas was also failing. She also had ulcers in her mouth brought on by the kidney problems, which caused green discharge from her nose.

189. On February 1, 2019, the veterinarian told Mace that there was nothing to be done for Luna, and Mace decided euthanasia was the kindest option to help Luna with her suffering. At this time, Mace did not know, nor did the veterinarian mention, that there was a recall of the

specialty dog food. When Mace asked the veterinarian what had caused Luna's health deterioration, the veterinarian said he did not know.

190. After Luna's death, Mace learned of the recall of the Specialty Dog Food. He contacted his veterinarian who told him that the vitamin D in the food could have been the cause of Luna's health problems, but that at the time of the office visits, they had no reason to suspect vitamin D poisoning and thus did not test for it.

191. Mace spent approximately \$1,000 on veterinary bills and Specialty Pet Foods purchased during the visits. Mace and his family members are devastated from watching their beloved pet suffer and die.

192. Mace would not have purchased the Specialty Pet Foods had he known they contained levels of vitamin D that were unreasonably dangerous to pets, including his dog Luna, pictured below.



Plaintiff Scott Molski

193. Plaintiff Molski began feeding the Specialty Pet Foods to his dog Sawyer in October 2018, at the recommendation of Sawyer's veterinarian. Molski took Sawyer to the veterinarian at that time because Sawyer was experiencing diarrhea. Molski decided to purchase

the Specialty Pet Foods because of the information reflected on the product labeling, believing that the food would help Sawyer with the diarrhea.

194. The Specialty Pet Foods appeared to resolve Sawyer's brief bout of diarrhea, but two weeks later the issue occurred again and the veterinarian recommended a switch from Hill's Prescription Diet i/d to the w/d food. Plaintiff Molski made the switch because of the information and benefits listed on the product label.

195. Previously, in August 2018 Sawyer's blood was tested and there was nothing of concern. Other than the minor diarrhea issue, Sawyer was a healthy dog until about November 13, 2018. Sawyer stopped eating his food, lost 18 pounds, and was drinking nearly two gallons of water. When Sawyer's blood was tested again in November, the liver levels were off the charts.

196. Molski took Sawyer to the emergency hospital on November 20 where he spent 5 days. The doctors placed a feeding tube and ceased use of the Specialty Pet Foods, but the damage to Sawyer was already done.

197. After a few veterinary visits and additional tests, on December 15, the veterinarians advised Molski that Sawyer's liver levels were off the charts, and that there was nothing left to do for Sawyer. Molski understood it was time to put Sawyer down, and Sawyer died on December 15, 2018.

198. Plaintiff Molski spent over \$300 on both canned and dry versions of the Specialty Dog Food. Plaintiff Molski returned about \$140 worth of the leftover Specialty Pet Foods he retained after Sawyer died, but before Hill's announced the recall. Molski spent approximately \$10,000 on veterinary visits, treatments, and the hospital stay for Sawyer. Most importantly, Molski lost a precious pet beloved by his family.

199. Molski would not have purchased the Specialty Pet Foods had he known they contained levels of vitamin D that were unreasonably dangerous to pets, including his dog Sawyer.

CLASS ACTION ALLEGATIONS

200. This action is brought and may be maintained under Federal Rule of Civil Procedure 23 as a class action.

201. Plaintiffs seek to represent the following Classes:

Nationwide Class: All persons in the United States who purchased Hill's Prescription Diet or Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

Alabama Subclass: All persons in the State of Alabama who purchased Hill's Prescription Diet or Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

California Subclass: All persons in the State of California who purchased Hill's Prescription Diet or Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

Connecticut Subclass: All persons in the State of Connecticut who purchased Hill's Prescription Diet or Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

Florida Subclass: All persons in the State of Florida who purchased Hill's Prescription Diet or Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

Georgia Subclass: All persons in the State of Georgia who purchased Hill's Prescription Diet or Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

Illinois Subclass: All persons in the State of Illinois who purchased Hill's Prescription Diet or Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

Iowa Subclass: All persons in the State of Iowa who purchased Hill's Prescription Diet or Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

Kansas Subclass: All persons in the State of Kansas who purchased Hill's Prescription Diet or Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

Michigan Subclass: All persons in the State of Michigan who purchased Hill's Prescription Diet or Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

Missouri Subclass: All persons in the State of Missouri who purchased Hill's Prescription Diet or Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

Nebraska Subclass: All persons in the State of Nebraska who purchased Hill's Prescription Diet or Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

New York Subclass: All persons in the State of New York who purchased Hill's Prescription Diet and Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

North Carolina Subclass: All persons in the State of North Carolina who purchased Hill's Prescription Diet and Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

Pennsylvania Subclass: All persons in the State of Pennsylvania who purchased Hill's Prescription Diet and Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

Texas Subclass: All persons in the State of Texas who purchased Hill's Prescription Diet and Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

Washington Subclass: All persons in the State of Washington who purchased Hill's Prescription Diet and Science Diet dog food with levels of vitamin D higher than called for by the product's specifications;

West Virginia Subclass: All persons in the State of West Virginia who purchased Hill's Prescription Diet and Science Diet dog food with levels of vitamin D higher than called for by the product's specifications; and

Wisconsin Subclass: All persons in the State of Wisconsin who purchased Hill's Prescription Diet and Science Diet dog food with levels of vitamin D higher than called for by the product's specifications.

202. The Nationwide Class and the state Subclasses shall be collectively referred to herein as the “Class.” Excluded from the Class are: (1) Defendant, and any entity in which Defendant has a controlling interest or which has a controlling interest in Defendant; (2) Defendant’s legal representatives, assigns and successors; and (3) the judge(s) to whom this case is assigned and his or her spouse.

203. Plaintiffs and members of the Class seek relief under Rule 23(b)(2). The injunctive relief is a significant reason for bringing this case and, on its own, justifies the prosecution of this litigation. Plaintiffs and members of the Class also seek relief under Rule 23 (b)(3) and/or (c)(4).

204. **Numerosity**: Hill’s has manufactured and sold the Specialty Pet Foods to tens of thousands of consumers. As of the date of filing, Hill’s has recalled 675,000 cases—or 13.5 million cans—of Specialty Pet Foods. Members of the Class are thus too numerous to join in a single action. Moreover, members of the Class may be identified through retailer sales records, veterinary practice sales records, and self-identification processes, and may then be notified of the pendency of this action by mail or electronic mail (which can be supplemented by published notice if deemed necessary or appropriate by the Court).

205. **Commonality and Predominance**: Common questions of law and fact exist as to all proposed members of the Class and predominate over questions affecting only individual members of the Class. These common questions include:

- a. Whether Hill’s intentionally, recklessly or negligently authorized injurious pet food to enter the market;
- b. Whether Hill’s failed to properly test its Specialty Pet Foods before placing them into the stream of commerce;

- c. Whether the packaging and labeling of the Specialty Pet Foods deceptively represents the Specialty Pet Foods as wholesome, nutritious, and fit for canine consumption;
- d. Whether the packaging and labeling of the Specialty Pet Foods adequately discloses the significant health risks described above, including, but not limited to, dehydration, diarrhea, loss of appetite, increased thirst, lethargy, vomiting, renal failure, and death;
- e. Whether the Specialty Pet Foods are unfit for their intended use;
- f. Whether Hill's intentionally, recklessly or negligently delayed in instituting a recall of the Specialty Pet Foods;
- g. Whether the recall is adequate and properly notifies potentially affected consumers;
- h. Whether the alleged conduct constituted unlawful, unfair, or fraudulent business practices in violation of the state consumer fraud statutes invoked below;
- i. Whether Hill's has been unjustly enriched as a result of its the alleged conduct;
- j. Whether Hill's violated an implied or express warranty to Plaintiffs and the Class;
- k. Whether Plaintiff and members of the Class have sustained damages as a result of the alleged conduct, and, if so, the appropriate measure of damages; and
- l. Whether Plaintiff and members of the Class are entitled to punitive damages, and, if so, in what amount.

206. **Typicality**: Plaintiffs' claims are typical of the claims of the proposed classes. Plaintiffs and the members of the proposed classes all purchased the Specialty Pet Foods, giving rise to substantially the same claims.

207. **Adequacy**: Plaintiffs are adequate representatives of the proposed classes because their interests do not conflict with the interests of the members of the classes they seek to represent. Plaintiffs have retained counsel competent and experienced in complex class action litigation, and will prosecute this action vigorously on class members' behalf.

208. **Superiority**: A class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each member of the Class, while meaningful on an individual basis, is not great enough to make the prosecution of individual actions economically feasible. Even if members themselves could afford such individualized litigation, the court system could not. In addition to the burden and expense of managing many actions arising from this issue, individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the legal and factual issues of the case. By contrast, a class action presents far fewer management difficulties and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

209. In the alternative, the proposed classes may be certified because:

- a. The prosecution of separate actions by the individual members of the proposed class would create a risk of inconsistent adjudications, which could establish incompatible standards of conduct for Hill's;
- b. The prosecution of individual actions could result in adjudications, which, as a practical matter, would be dispositive of the interests of non-party class

members or which would substantially impair their ability to protect their interests; and

- c. Hill's has acted or refused to act on grounds generally applicable to the proposed classes, thereby making appropriate final and injunctive relief with respect to the members of the proposed classes as a whole.

210. Hill's benefited from the sale of the Specialty Pet Foods to Plaintiffs and the Class. The benefit can be identified from sales records and such monies can be restored to Plaintiffs and the Class.

CAUSES OF ACTION

Count I

Negligence

(By All Plaintiffs on Behalf of the Nationwide Class)

211. Plaintiffs reallege the paragraphs above as if fully set forth herein.

212. Defendant owed a duty to Plaintiffs and the Class to provide pet food that was safe and suitable for pet consumption.

213. Through its failure to exercise due care, Defendant was negligent in manufacturing, distributing, marketing, warranting and selling Specialty Pet Foods to Plaintiffs and the Class.

214. Defendant failed to implement adequate quality control and adequate testing of the Specialty Pet Foods that it introduced into the stream of commerce for sale to Plaintiffs and the Class and for consumption by their pets.

215. Defendant knew, or should have known, that its Specialty Pet Foods presents an unreasonable and unacceptable risk of injury or death to pets, and would result in foreseeable and avoidable damage.

216. Defendant's negligence proximately caused losses and damages to Plaintiffs and the Class, as described above.

Count II
Breach of Express Warranty
(By All Plaintiffs on Behalf of the Nationwide Class)

217. Plaintiffs reallege the paragraphs above as if fully set forth herein.

218. Defendant expressly warranted that the Specialty Pet Foods were suitable and safe for pet consumption.

219. Defendant affirmatively misrepresented the qualities and benefits of the Specialty Pet Foods as detailed above. Defendant expressly warranted the Specialty Pet Foods as particularly healthy food tailored to the specific needs of Plaintiffs' and the Class' pets including, but not limited to, age-specific dietary needs, breed-specific dietary needs, digestive issues, heart issues, liver issues, or kidney issues.

220. Hill's also promises its customers a full refund if they are not satisfied with the Specialty Pet Foods.

221. However, the Specialty Pet Foods were not safe for pets to consume and caused pets to become ill and/or die. The unsafe nature of the Specialty Pet Foods constitutes a breach of the express warranties Defendant made.

222. The Specialty Pet Foods were sold in sealed packaging, and the defects existed when the products left Hill's control. When it designed, manufactured, and sold the Specialty Pet Foods, Hill's knew the purpose for which the Specialty Pet Foods were intended, *i.e.* that the Specialty Pet Foods would be consumed by pets.

223. Plaintiffs and the Class were induced by Defendant's marketing, advertising, promotion and labeling of the pet food as suitable "food" to rely upon such express warranty, and,

in fact, relied upon the express warranty in purchasing the Specialty Pet Foods and feeding them to their pets.

224. As a proximate result of the aforementioned wrongful conduct and breach, Plaintiffs and the Class have suffered damage in an amount to be proven at trial, including the cost of the Specialty Pet Foods. Hill's has actual or constructive notice of such damages, which may fairly and reasonably be considered as arising naturally from the breach or may reasonably be supposed to have been in the contemplation of the parties at the time they made warranties as to the Specialty Pet Foods, and the probable result of the breach of such warranties.

Count III
Breach of Implied Warranty
(By All Plaintiffs on Behalf of the Nationwide Class)

225. Plaintiffs reallege the paragraphs above as if fully set forth herein.

226. Defendant is a merchant under sections 2-104 and 2-314 of the Uniform Commercial Code.

227. Through its marketing, advertising, promotion, packaging and labeling of its Prescription Diet and Science Diet dog food, Defendant impliedly warranted that the Specialty Pet Foods were fit for the ordinary purpose for which they were intended, which was to safely nourish pets and particularly address the specific needs of Plaintiffs' and the Class' pets including, but not limited to, age-specific dietary needs, breed-specific dietary needs, digestive issues, heart issues, liver issues, or kidney issues, pursuant to section 2-314 of the Uniform Commercial Code.

228. Through their marketing, advertising, promotion and labeling, Defendant knew that Plaintiffs and the Class would purchase the Specialty Pet Foods for the ordinary purpose of providing nourishment to their pets.

229. Defendant manufactured, distributed, marketed, advertised, promoted and sold its dog food for the ordinary purpose for which it was purchased by Plaintiff and the Class.

230. The Specialty Pet Foods were sold in sealed packaging, and the defects alleged existed when the products left Defendant's control.

231. Plaintiffs and the Class relied upon Defendant's representations and warranties, and purchased and used Defendant's dog food for the ordinary purpose for which it was sold.

232. Defendant's Specialty Pet Foods purchased by Plaintiffs and the Class were unfit for their ordinary purpose when sold because they presented an unreasonable risk of illness or death to pets. Defendant has accordingly breached the implied warranty of merchantability by selling the unfit dog food.

233. Plaintiffs and the Class were damaged as a proximate result of Defendant's breach of warranty.

Count IV
Violations of the Magnuson-Moss Warranty Act
15 U.S.C. § 231, *et seq.*
(By All Plaintiffs on Behalf of the Nationwide Class)

234. Plaintiffs reallege the paragraphs above as if fully set forth herein.

235. Plaintiffs and the other members of the Class are "consumers" within the meaning of 15 U.S.C. § 2301(3).

236. Defendant is a "supplier" and "warrantor" within the meanings of 15 U.S.C. § 2301(4)-(5).

237. Hill's Prescription Diet and Science Diet dog food products are "consumer products" within the meaning of 15 U.S.C. § 2301(1).

238. Defendant's written descriptions created through its marketing, advertising, promotion, packaging and labeling of the Specialty Pet Foods, as well as the 100% satisfaction

guaranty, created a “written warranty” as to the Prescription Diet and Science Diet canned dog food products. There was an implied warranty for the sale of such products within the meaning of the Act, as described above.

239. For the reasons detailed above, Defendant breached this implied warranty, as the Prescription Diet and Science Diet canned dog food was not fit for its intended use and were harmful and toxic to pets.

240. The Specialty Pet Foods were sold in sealed packaging, and the defects alleged existed when the products left Defendant’s control.

241. Defendant’s breach of implied and express warranties has deprived Plaintiffs and class members of the benefit of their bargain.

242. Defendant knew of the defects yet failed to remedy these breaches, damaging Plaintiffs and the Class. In addition, any relief offered by Defendant through its recall of the Specialty Pet Foods is wholly inadequate under the circumstances. Any requirement that Plaintiffs resort to any informal dispute settlement procedure or afford Defendant a reasonably opportunity to cure the breach of warranty described above is excused or alternatively, has been satisfied.

243. The amount in controversy of Plaintiffs’ individual claims meets or exceeds the sum or value of \$25. In addition, the amount in controversy meets or exceeds the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit.

244. As a direct and proximate cause of Defendant’s breach, Plaintiffs and the Class sustained damages and other losses in an amount to be determined at trial. Plaintiffs and the other members of the Class are entitled to recover damages, specific performance, costs, attorneys’ fees, and other appropriate relief.

Count V
Violation of the Alabama Deceptive Trade Practices Act
Ala. Code § 8-19-1, et seq.
(By Plaintiff Hopson on Behalf of the Alabama Subclass)

245. Plaintiffs reallege the paragraphs above as if fully set forth herein.

246. The Alabama Deceptive Trade Practices Act (“ADTPA”) prohibits deceptive acts or practices in the conduct of any trade or commerce. Ala. Code § 8-19-5.

247. The ADTPA provides a private right of action for any person injured by reason of any act or practices declared unlawful by the ADTPA. Ala. Code § 8-19-10(a).

248. Plaintiff and the Class are “Consumers” as defined in Alabama Code section 8-19-3(2). Defendant is a “Person” as defined in the Alabama Code section 8-19-3(5).

249. Defendant’s acts and practices complained of herein were performed in the course of Defendant’s business and thus occurred in or affected “trade” and “commerce,” as defined in Alabama Code section 8-19-3(8).

250. In the course of Defendant’s business, it manufactured, distributed, marketed, and sold the Specialty Pet Foods to the public even though the Specialty Pet Foods were not fit for their intended use and were harmful and toxic to pets. Defendant failed to disclose material facts concerning the Specialty Pet Foods’ content at the point of sale and otherwise. Accordingly, Defendant engaged in both unfair and deceptive practices in violation of the NCUDTPA.

251. Defendant’s conduct alleged herein constitutes unfair, unlawful, unconscionable, and deceptive acts in violation of the ADTPA, including, but not necessarily limited to, the following sections:

a. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

- b. Causing confusion or misunderstanding as to the affiliation, connection, or association with, or certification by another;
- c. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have;
- d. Representing that goods are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- e. Advertising goods with intent not to sell them as advertised;
- f. Intentionally misrepresenting that a warranty or guarantee confers or involves certain rights or remedies; and
- g. Engaging in unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce.

252. A causal relationship exists between Defendant's unlawful conduct and the ascertainable losses suffered by Plaintiff and the Alabama Subclass. Had Plaintiff and the Alabama Subclass known about the defective nature of the Specialty Pet Foods, they would not have purchased the Specialty Pet Foods, they would not have fed their pets the Specialty Pet Foods, their pets would not have suffered the resulting medical conditions or would not have died, and they would have avoided the expensive medical treatment and other costs associated therewith.

253. Pursuant to Alabama Code section 8-19-10(a), Plaintiff and the Alabama Subclass request that the Court grant attorneys' fees and treble damages.

Count VI
Violation of the California Business and Professions Code
Cal. Bus. & Prof. Code, § 17200, et seq.
(By Plaintiff McDonald on Behalf of the California Subclass)

254. Plaintiffs reallege the paragraphs above as if fully set forth herein.

255. Defendant has violated and continues to violate California's Unfair Competition Law, which prohibits unlawful, unfair, and fraudulent business acts or practices. Cal. Bus. & Prof. Code § 17200, *et seq.*

256. Defendant's acts and practices, as alleged in this complaint, constitute unlawful, unfair, and fraudulent business practices, in violation of the Unfair Competition Law. In particular, Defendant manufactured, distributed, marketed, and sold the Specialty Pet Foods to the public even though the Specialty Pet Foods are not safe for consumption and are harmful and toxic to pets. Defendant failed to disclose material facts concerning the contents of the Specialty Pet Foods at the point of sale and otherwise.

257. Defendant's business acts and practices are unlawful in that they violate the California Consumer Legal Remedies Act, for the reasons set forth in this complaint. Cal. Civ. Code § 1750, *et seq.*

258. Defendant's acts and practices also constitute fraudulent practices because they have deceived Plaintiffs and are likely to deceive a reasonable consumer. As described above, Defendant knowingly misrepresents and conceals material facts related to the contents of the Specialty Pet Foods. Had Defendant not misrepresented and concealed these facts, Plaintiffs, class members, and reasonable consumers would not have purchased the Specialty Pet Foods or would have paid significantly less for them.

259. Defendant's conduct also constitutes unfair business practices for at least the following reasons:

a. The gravity of harm to Plaintiff and the California Subclass from Defendant's acts and practices far outweighs any legitimate utility of that conduct;

b. Defendant's conduct is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff and the California Subclass; and

c. Defendant's conduct undermines and violates the stated policies underlying the Consumers Legal Remedies Act—to protect consumers against unfair and sharp business practices and to promote a basic level of honesty and reliability in the marketplace.

260. As a direct and proximate result of Defendant's business practices, Plaintiff and the California Subclass suffered injury in fact and lost money or property, by paying for the Specialty Pet Foods and paying for the veterinary care and other costs arising from the illness and/or death of their pets. Defendant's contaminated products were worthless and thus damages are the purchase price of the products as well as the associated veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods. Plaintiffs and the California Subclass are entitled to equitable relief, restitution, statutory damages, attorneys' fees, and other relief as the court may deem necessary.

261. Defendant's continued marketing, distribution, and sale of the Specialty Pet Foods will continue to harm California residents, unless Defendant is enjoined from its continued sale. Thus, Plaintiffs and the members of the California Subclass are entitled to injunctive relief,

Count VII
Violation of California Consumers Legal Remedies Act ("CLRA")
Cal. Civ. Code § 1750, et seq.
(By Plaintiff McDonald on behalf of the California Subclass)

262. Plaintiffs reallege the paragraphs above as if fully set forth herein.

263. Defendant is a "person" within the meaning of California Civil Code sections 1761(c) and 1770, and have provided "goods" within the meaning of California Civil Code sections 1761(b) and 1770.

264. Plaintiff and the California Subclass are “consumers” within the meaning of California Civil Code sections 1761(d) and 1770, and have engaged in a “transaction” within the meaning of California Civil Code sections 1761(e) and 1770.

265. Defendant engaged in unfair and deceptive acts in violation of the CLRA by the practices described above. Defendant’s acts and practices were intended to result and did result in the sale of the Specialty Pet Foods and violate section 1770 of the CLRA for at least the following reasons:

h. Defendant misrepresented the source, sponsorship, approval or certification of the Specialty Pet Foods;

i. Defendant represented the Specialty Pet Foods had characteristics, uses, and benefits which it does not have;

j. Defendant represented that the Specialty Pet Foods is of a particular standard, quality, and grade when it is not;

k. Defendant represented that transactions involving the Specialty Pet Foods conferred or involved rights, remedies, and obligations which they do not;

l. Defendant represented that the Specialty Pet Foods had been supplied in accordance with a previous representation when it has not; and

m. Defendant marketed and advertised the Specialty Pet Foods with the intent not to sell them as advertised.

266. As described above, Defendant manufactured, distributed, marketed, and sold the Specialty Pet Foods to the Class while misrepresenting and concealing material facts about the Specialty Pet Foods, including representing that the Specialty Pet Foods were safe for

consumption, when in reality they were harmful and toxic to pets. Defendant failed to disclose material facts concerning the contents of the Specialty Pet Foods at the point of sale and otherwise.

267. The facts Defendant misrepresented, and concealed or failed to disclose, to Plaintiff and the California Subclass are material in that a reasonable consumer would have considered them important in deciding whether to purchase the Specialty Pet Foods or pay a lesser price or purchase a different product. Had Plaintiff and the California Subclass known of the true nature of the Specialty Pet Foods, they would not have purchased the Specialty Pet Foods, would have paid less for them, or would have avoided paying for the veterinary care and other costs arising from the illness and/or death of their pets.

268. Under California Civil Code section 1780, subdivision (a), Plaintiff and the California Subclass seek injunctive relief and any other relief that the Court deems proper.

269. Plaintiffs assert that notice to Defendant would be futile in light of the facts alleged above.

Count VIII
Violation of the Song-Beverly Consumer Warranty Act
Cal. Civ. Code § 1790, et seq.
(By Plaintiff McDonald on Behalf of the California Subclass)

270. Plaintiffs and the Class reallege the paragraphs above as if fully set forth herein.

271. The Specialty Pet Foods are “consumer goods” and Plaintiff and the California Subclass are “buyers” within the meaning of California Civil Code section 1791. Each defendant is also a “manufacturer,” “distributor,” or “retail seller” under California Civil Code section 1791.

272. The implied warranty of merchantability included with the sale of the Specialty Dog Foods means that Defendant warranted that its products (a) were fit for the ordinary purpose for which the Specialty Pet Foods would be used, and (b) conformed to the promises or affirmations of fact made on the container or label.

273. The Specialty Pet Foods would not pass without objection in the market for dog food because it was harmful and toxic to pets, which also makes it unfit for the ordinary purpose for which the Specialty Pet Foods are used.

274. The Specialty Pet Foods is not adequately labeled because its labeling fails to disclose its harmful and toxic nature to pets, and does not advise Plaintiff and the California Subclass of the existence of the contamination and harmful and toxic nature prior to experiencing the harmful effects firsthand.

275. Defendant's actions have deprived Plaintiff and the California Subclass of the benefit of their bargains and have caused the Specialty Pet Foods to be worthless and therefore of no value to Plaintiff and the California Subclass, despite their significant payments for the Specialty Pet Foods.

276. As a direct and proximate result of Defendant's breach of implied warranty, members of the proposed class received goods whose condition substantially impairs their value. Plaintiff and the California Subclass have been damaged by the diminished value of the Specialty Pet Foods.

277. Under California Civil Code sections 1791.1(d) and 1794, Plaintiff and the California Subclass are entitled to damages and other legal and equitable relief, including, at their election, the right to revoke acceptance of the Specialty Pet Foods or the overpayment or diminution in the value of the Specialty Pet Foods. They are also entitled to the associated veterinary and death-related costs, the value of the pets they lost, and all incidental and consequential damages resulting from Defendant's breach, as well as reasonable attorneys' fees and costs.

Count IX
Violation of the Connecticut Unfair Trade Practices Act
Conn. Gen. Stat. Ann § 42-110a, *et seq.*
(By Plaintiff Mejia on Behalf of the Connecticut Subclass)

278. Plaintiffs reallege the paragraphs above as if fully set forth herein.

279. This claim arises under the Connecticut Unfair Trade Practices Act (“CUTPA”), § 42-110a *et seq.*

280. The CUTPA provides that “[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Conn. Gen. Stat. Ann. § 42-110b(a). The CUTPA further provides a private right of action.

281. Plaintiff, the Connecticut Subclass and Defendant are “persons” within the meaning of the CUTPA. Conn. Gen. Stat. Ann. § 42-110a(3).

282. Defendant engaged in “trade or commerce” when it manufactured, marketed, distributed and sold the Specialty Pet Foods to Plaintiff and the Connecticut Subclass.

283. The CUTPA incorporates by reference the Federal Trade Commission’s interpretations of the terms “deceptive” and “unfair.” The FTC has found that a “deceptive act or practice” encompasses “a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment.”

284. Defendant manufactured, distributed, marketed, and sold the Specialty Pet Foods to the public even though the Specialty Pet Foods were not fit for their intended use and were harmful and toxic to pets. Defendant failed to disclose material facts concerning the Specialty Pet Foods content at the point of sale and otherwise.

285. Defendant also misrepresented that the Specialty Pet Foods were particularly healthy food and beneficial to the specific needs of Plaintiff and the Connecticut Subclass’ pets

including, but not limited to, age-specific dietary needs, breed-specific dietary needs, digestive issues, heart issues, liver issues, or kidney issues.

286. Defendant's misrepresentations, omission, deceptive acts, and unfair practices, as described herein, would deceive an objectively reasonable consumer.

287. As a direct and proximate result of Defendant's misrepresentations, omissions, deceptive acts, and unfair practices, Plaintiff and the Connecticut Subclass suffered actual damages by paying for the Specialty Pet Foods and paying for veterinary care and other costs arising from the illness and/or death of their pets. Defendant's products were worthless and thus damages are the purchase price of the products as well as the associated veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods.

288. In addition to actual damages, Plaintiff and the Connecticut Subclass are entitled to compensatory damages, equitable and declaratory relief, punitive damages, costs and reasonably attorneys' fees.

289. A copy of this Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection of the State of Connecticut in accordance with the CUTPA. Conn. Gen. Stat. Ann. § 42-110g(c).

Count X
Violations of the Florida Deceptive and Unfair Trade Practices Act
Fla. Stat. 501.201-.213, *et seq.*
(By Plaintiff Bone on Behalf of the Florida Subclass)

290. Plaintiffs reallege the paragraphs above as if fully set forth herein.

291. Defendant has violated and continues to violate Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. 501.201-.213, *et seq.* (the "FDUTPA").

292. The FDUTPA protects “the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. 501.202(2).

293. Plaintiff is a consumer within the meaning of Fla. Stat. § 501.203(7).

294. Defendant engaged in trade and commerce within the meaning of Fla. Stat. § 501.203(8).

295. The FDUTPA incorporates by reference the Federal Trade Commission’s interpretations of the terms “deceptive” and “unfair.” The FTC has found that a “deceptive act or practice” encompasses “a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment.”

296. Defendant manufactured, distributed, marketed, and sold the Specialty Pet Foods to the public even though the Specialty Pet Foods were not fit for their intended use and were harmful and toxic to pets. Defendant failed to disclose material facts concerning the Specialty Pet Foods’ content at the point of sale and otherwise.

297. Defendant also misrepresented that the Specialty Pet Foods were particularly healthy food and beneficial to the specific needs of Plaintiffs’ and the Class’ pets including, but not limited to, age-specific dietary needs, breed-specific dietary needs, digestive issues, heart issues, liver issues, or kidney issues.

298. Defendant’s misrepresentations, omissions, deceptive acts, and unfair practices, as described herein, would deceive an objectively reasonable consumer.

299. As a result of Defendant’s misrepresentations, omissions, deceptive acts, and unfair practices, Plaintiff Bone and the members of the Florida Subclass suffered actual damages by paying for the Specialty Pet Foods and paying for veterinary care and other costs arising from the

illness and/or death of their pets. Defendant's products were worthless and thus damages are the purchase price of the products as well as the associated veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods.

300. In addition to actual damages, Plaintiff Bone and the Florida Subclass are entitled to declaratory and injunctive relief as well as reasonable attorney's fees and costs pursuant to Fla. Stat. § 501.201, *et seq.*

Count XI
Violation of the Georgia Fair Business Practices Act
Ga. Code § 10-1-390, *et seq.*
(By Plaintiff Barr on Behalf of the Georgia Class)

301. Plaintiffs reallege the paragraphs above as if fully set forth herein.

302. Plaintiff and the members of the Georgia Subclass are "consumers" under Georgia Code section 10-1-392(6).

303. Plaintiff, all members of the Georgia Subclass, and Defendant are "Persons" under Georgia Code section 10-1-392(24).

304. Plaintiff's and the Class' purchase of the contaminated Specialty Pet Foods constituted "consumer transactions" as defined under Georgia Code section 10-1-392(a)(10).

305. Georgia's Fair Business Practices Act ("GFBPA") prohibits, unfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce. Ga. Code § 10-1-393(a). Unfair or deceptive acts include "[r]epresenting that goods or services are of a particular standard, quality, or grade or that goods are of a particular style or model, if they are of another." Ga. Code § 10-1-393(b)(7). Defendant manufactured, distributed, marketed, and sold the Specialty Pet Foods even though the Specialty Pet Foods were not fit for

their intended use and were harmful and toxic to pets. Defendant failed to disclose material facts concerning the Specialty Pet Foods' content at the point of sale and otherwise.

306. Defendant also misrepresented that the Specialty Pet Foods were particularly healthy food and beneficial to the specific needs of Plaintiffs' and the Class' pets including, but not limited to, age-specific dietary needs, breed-specific dietary needs, digestive issues, heart issues, liver issues, or kidney issues.

307. Defendant continues to market and sell the Specialty Pet Foods to consumers throughout the state of Georgia. Thus, Defendant's practices have, and will continue to have, an impact on the consumer marketplace.

308. As a direct and proximate result of Defendant's business practices, Plaintiff and the members of the Georgia Subclass suffered injury in fact and lost money or property, by paying for the Specialty Pet Foods and paying for veterinary care and other costs arising from the illness and/or death of their pets. Defendant's contaminated products were worthless and thus damages are the purchase price of the products as well as the associated veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods. Plaintiff and the Georgia Class are entitled to damages, statutory damages, and attorneys' fees and costs.

309. Pursuant to Georgia Code section 10-1-399, Plaintiff and the Georgia Subclass seek, in addition to equitable relief, actual and statutory damages, attorneys' fees and expenses, treble damages, and punitive damages as permitted under the GFBPA.

310. Defendant's violations present a continuing risk to Plaintiff, the Georgia Subclass and to the general public. Defendant's unlawful acts and practices complained of herein affect the public interest.

311. Plaintiff asserts that notice to Defendant would be futile in light of the facts alleged above.

Count XII
Violation of the Georgia Uniform Deceptive Trade Practices Act
Ga. Code § 10-1-370, *et seq.*
(By Plaintiff Barr on Behalf of the Georgia Class)

312. Plaintiffs reallege the paragraphs above as if fully set forth herein.

313. Defendant, Plaintiff and members of the Class are “persons” within the meaning of Georgia’s Uniform Deceptive Trade Practices Act (“GUDTPA”). Ga. Code § 10-1-371(5).

314. The GUDTPA prohibits “deceptive trade practices” which include the “misrepresentation of standard, quality, or grade of goods and services,” engaging in any other conduct which similarly creates a likelihood of confusion or misunderstanding,” and “representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, or benefits that they do not have,” and “[a]dvertising goods or services with intent not to sell them as advertised.” Ga. Code § 10-1-732.

315. Defendant, in the course of its business, misrepresented the contents and health benefits of the Specialty Pet Foods with respect to the safety thereof, willfully failed to disclose the vitamin D contamination in the Specialty Pet Foods as described above, and affirmatively asserting that the Specialty Pet Foods were particularly healthy food and beneficial to the specific needs of Plaintiff and the Georgia Subclass’ pets including, but not limited to, age-specific dietary needs, breed-specific dietary needs, digestive issues, heart issues, liver issues, or kidney issues. were not fit for their intended use and were harmful and toxic to pets.

316. By failing to disclose the contamination of the Specialty Pet Foods to Plaintiff and the Georgia Subclass, Defendant engaged in deceptive trade practices in violation of the GUDTPA, because Defendant represented that the Specialty Pet Foods had characteristics and benefits that

they do not have, and represented that the Specialty Pet Foods were of a particular standard, quality, or grade when they were of another. *See* Ga. Code §§ 10-1-372(2), (3),(5), (7), and (9).

317. Defendant's unfair and deceptive acts or practices occurred repeatedly in the course of its trade or business, were material, were capable of deceiving a substantial proportion of the purchasing public, and as a result, caused economic harm to consumers who purchased the Specialty Pet Foods.

318. Defendant should have disclosed the true nature of the Specialty Pet Foods because it knew of the contamination and, by virtue of their manufacturing, producing, testing, and warranting of the Specialty Pet Foods, it was in a superior position to Plaintiff and the Georgia Subclass, and Plaintiff and the Georgia Subclass members could not reasonably be expected to learn of or discover the contamination until their pets became ill or died. Plaintiff and the Georgia Subclass relied on Hill's representations that the Specialty Pet Foods were healthy, safe for consumption, and free of harmful contaminants. Defendant, by the conduct, statements, and omissions described above, also knowingly and intentionally concealed from Plaintiff and the Georgia Subclass that the Specialty Pet Foods were not fit for their intended purpose and were harmful to pets.

319. The facts Defendant concealed from Plaintiff and the Georgia Subclass are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase food for their pets. Moreover, a reasonable consumer would consider excessive and dangerous quantities of vitamin D to be an undesirable quality, as Plaintiff and the Georgia Subclass do. Had Plaintiff and the Georgia Subclass known that the Specialty Pet Foods contained a harmful contaminant, they would not have purchased the food, would have paid less for the food,

would have avoided the extensive veterinary bills and costs associated with their dog's sickness or death, or would still be enjoying the company and pleasure of owning their dog.

320. These acts and practices have deceived Plaintiff and are likely to, and did, deceive the public. In misrepresenting the contents and benefits of the Specialty Pet Foods, and failing to disclose the contamination of the Specialty Pet Foods and suppressing material facts from Plaintiff and Class members, Defendant violated the GUDTPA and injured Plaintiff and the Georgia Subclass.

321. The injuries suffered by Plaintiff and the Georgia Subclass are greatly outweighed by any potential countervailing benefit to consumers or to competition, and are not injuring that plaintiff and the Class should have reasonably avoided.

322. Defendant's violations present a continuing risk to Plaintiff and to the general public. Hill's unlawful acts and practices complained of herein affect the public interest.

323. Pursuant to Georgia Code section 10-1-373, Plaintiff and the Georgia Subclass seek costs, attorneys' fees, and any other just and proper relief available under applicable law.

Count XIII

Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act 815 Ill. Stat. § 505/1, *et seq.* (By Plaintiffs Getz and McAtee on Behalf of the Illinois Subclass)

324. Plaintiffs reallege the paragraphs above as if fully set forth herein.

325. The Specialty Pet Foods manufactured, marketed and sold by Defendant are "merchandise" as defined in 815 Ill. Stat. § 505/1(b).

326. Plaintiffs, the members of the Illinois Subclass, and Defendant are "person[s]" as defined in 815 Ill. Stat. § 505/1(c).

327. As defined in 815 Ill. Stat. § 505/1(f), "trade" and "commerce" are the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real,

personal or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.

328. In the course of the distribution, marketing, and/or sale of the Specialty Pet Foods, Defendant engaged in trade and commerce.

329. The Consumer Fraud Act, 815 Ill. Stat. § 505/2, prohibits engagement in unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact.

330. Defendant marketed, distributed, advertised, and sold the Specialty Pet Foods even though the Specialty Pet Foods were not fit for their intended and marketed use and were harmful and toxic to pets.

331. Defendant marketed and represented the Specialty Pet Foods as safe for consumption, when in reality they were harmful and toxic to pets. Defendant failed to disclose material facts concerning the contents of the Specialty Pet Foods at the point of sale and otherwise.

332. As a direct and proximate result of the Defendant's business practices, Plaintiffs and the members of the Illinois Subclass suffered injury in fact and lost money or property by paying for contaminated Specialty Pet Foods, losing their pets, and paying for the veterinary care and other costs arising from the illness and/or death of their pets. Defendant's contaminated products were worthless and thus damages are the purchase price of the products as well as the associated veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods. Plaintiffs and the members of the Illinois

Subclass are entitled to equitable relief, restitution, statutory damages, attorneys' fees, and other relief as the court may deem appropriate.

Count XIV
Violation of the Illinois Uniform Deceptive Trade Practices Act
815 Ill. Stat. § 510/2, *et seq.*
(By Plaintiffs Getz and McAtee on Behalf of the Illinois Subclass)

333. Plaintiffs reallege the paragraphs above as if set forth fully herein.

334. Defendant manufactures, markets, distributes and sells the Specialty Pet Foods at retailers and veterinary clinics throughout the State of Illinois.

335. Pursuant to the Deceptive Trade Practices Act, "a person engages in a deceptive trade practice when" they "represent[] that goods or services have . . . characteristics, . . . uses, benefits, or quantities that they do not have." 815 Ill. Stat. § 510/2(a)(5). Defendant marketed, distributed, advertised, and sold the Specialty Pet Foods even though the Specialty Pet Foods were not fit for their intended and marketed use and were harmful and toxic to pets.

336. Defendant marketed and represented the Specialty Pet Foods as safe for consumption, when in reality they were harmful and toxic to pets. Defendant failed to disclose material facts concerning the contents of the Specialty Pet Foods at the point of sale and otherwise.

337. As a direct and proximate result of the Defendant's business practices, Plaintiffs and the members of the Illinois Subclass suffered injury in fact and lost money or property by paying for the Specialty Pet Foods and paying for the veterinary care and other costs arising from the illness and/or death of their pets. Defendant's contaminated products were worthless and thus damages are the purchase price of the products as well as the associated veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods. Plaintiffs and the members of the Illinois Subclass are entitled to equitable

relief, restitution, statutory damages, attorneys' fees, and other relief as the court may deem necessary.

338. Defendant's continued marketing, distribution, and sale of the Specialty Pet Foods will continue to harm Illinois residents, unless Defendant is enjoined from its continued sale. Thus, Plaintiffs and the members of the Illinois Subclass are entitled to injunctive relief, attorneys' fees, and other relief as the court may deem necessary.

Count XV
Violation of the Kansas Consumer Protection Act
Kan. Stat. § 50-623, et seq.
(By Plaintiff Hoffman on Behalf of the Kansas Subclass)

339. Plaintiffs reallege the paragraphs above as is fully set forth herein.

340. The Kansas Consumer Protection Act ("KCPA") is designed "to protect consumers from suppliers who commit deceptive and unconscionable practices." Kan. Stat. § 50-623(b). The KCPA expressly allows for class actions on behalf of consumers who have suffered a loss as a result of a violation of the Act. Kan. Stat. § 50-634.

341. Plaintiff Hoffman and the Kansas Subclass are "consumer[s]" as the term is defined in the KCPA. Kan. Stat. § 50-624(b).

342. Defendant is a "supplier" as the term is defined in the KCPA. Kan. Stat. § 50-624(l).

343. When Plaintiff and the Kansas Subclass purchased the Specialty Pet Foods from Defendant, and Defendant manufactured, marketed, distributed and sold the Specialty Pet Foods they engaged in a "consumer transaction" as the term is defined in the KCPA. Kan. Stat. § 50-624(c).

344. The KPA prohibits the use of any deceptive or unconscionable act or practice in connection with a consumer transaction. Kan. Stat. §§ 50-626 and 50-627.

345. Defendant's acts and practices, as alleged in this complaint, constitute deceptive, unfair, fraudulent, misleading, and unconscionable acts and practices. In particular, Defendant manufactured, distributed, marketed, and sold the Specialty Pet Foods to the public even though the Specialty Pet Foods were not fit for their intended use and were harmful and toxic to pets. Defendant failed to disclose material facts concerning the Specialty Pet Foods' content at the point of sale and otherwise.

346. Defendant concealed, suppressed, or omitted material facts with the intent that Plaintiffs and class members rely upon such concealment, suppression, or omission. Defendant's acts and practices are objectively deceptive and thus likely to deceive a reasonable consumer. As described above, Defendant knowingly concealed and failed to disclose at the point of sale or otherwise that the Specialty Pet Foods were harmful and toxic to pets. Had Defendant disclosed this fact, Plaintiff, class members, and reasonable consumers would not have purchased the Specialty Pet Foods.

347. Defendant's conduct, which included deception, fraud, false pretenses, and the knowing concealment, suppression, or omission of material facts, caused and resulted in injury in fact and ascertainable loss of money or property to Plaintiff and the Kansas Subclass members, which injury was foreseeable to Defendant. Among other things, Plaintiff and Kansas Subclass members paid for the Specialty Pet Foods and paid for the veterinary care and other costs arising from the illness and/or death of their pets. Defendant's contaminated products were worthless and thus damages are the purchase price of the products as well as the associated veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods. Plaintiff and the Kansas Subclass are entitled to legal and equitable relief against Defendant, including damages, consequential damages, and specific performance.

348. Plaintiff and the Kansas Subclass seek an order enjoining Defendant from the deceptive and unconscionable business practices alleged herein.

349. Pursuant to Kansas Statutes sections 50-636 and 634(e), Plaintiff and the Kansas Subclass request that the Court grant them the statutory civil penalties and attorneys' fees, and any other equitable relief it deems necessary or proper.

Count XVI
Violation of the Michigan Consumer Protection Act
Mich. Comp. Laws § 445.901, *et seq.*
(By Plaintiff Bidus on Behalf of the Michigan Subclass)

350. Plaintiffs reallege the paragraphs above as if fully set forth herein.

351. The Michigan Consumer Protection Act ("MCPA") is designed to provide a remedy for consumers who are injured by deceptive business practices. The MCPA expressly allows for class actions on behalf of consumers who have suffered a loss as a result of a violation of the Act. Mich. Comp. Laws § 445.911(3).

352. Plaintiff Bidus, Michigan Subclass members, and Defendant fall within the definition of "person" under the MCPA.

353. Defendant's conduct alleged herein constitutes unfair, unlawful, unconscionable, and deceptive acts in violation of the MCPA, including, but not necessarily limited to, the following sections:

a. § 445.903(n): causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction;

b. § 445.903(s): 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;

c. § 445.903(bb): 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

d. § 445.903(cc): failing to reveal facts which are material to the transaction in light of representations of fact made in a positive manner.

354. Defendant's conduct also constitutes unfair business practices for at least the following reasons:

a. The gravity of harm to Plaintiff and the proposed class members from Defendant's acts and practices far outweighs any legitimate utility of that conduct;

b. Defendant's conduct is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff and the members of the proposed class; and

c. Defendant's conduct undermines and violates the stated policies underlying the MCPA—to protect consumers against unfair and sharp business practices and to promote a basic level of honesty and reliability in the marketplace.

355. Specifically, as alleged herein, Defendant knowingly made (or should have known it was making) misrepresentations about the quality, characteristics, benefits, contents and safety of the Specialty Pet Foods.

356. Defendant concealed, omitted, and failed to disclose the truth about the Specialty Pet Foods in order to make sales and increase profits.

357. Because of Defendant's violation of the MCPA, Plaintiff and the Michigan Subclass were injured by paying for the Specialty Pet Foods and paying for veterinary care and other costs arising from the illness and/or death of their pets. Defendant's products were worthless and thus damages are the purchase price of the products as well as the associated veterinary and

death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods. These injuries are the direct and natural consequence of Defendant's misrepresentations and omissions.

358. As a direct and proximate result of Defendant's business practices, Plaintiff and the Michigan Subclass suffered injury in fact and lost money or property, because they purchased and paid for products that they otherwise would not have.

359. Plaintiff and the Michigan Subclass are entitled to an injunction and other equitable relief, including restitutionary disgorgement of all profits accruing to Defendant, because of its unfair and deceptive practices, and such other orders as may be necessary to prevent the future use of these practices. Mich. Comp. Laws Ann. § 445.911.

Count XVII
Violation of the Missouri Merchandising Practices Act
Mo. Rev. Stat. § 407.010, *et seq.*
(By Plaintiff Zisser on Behalf of the Missouri Subclass)

360. Plaintiffs reallege the paragraphs above as if fully set forth herein.

361. The Missouri Merchandising practices Act ("MMPA") prohibits "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." Mo. Rev. Stat. § 407.020.

362. Defendant's actions, as set forth above, occurred in connection with the "sale" or "advertisement" of any "merchandise" in "trade" or "commerce," as those terms are defined in Missouri Revised Statute section 407.010.

363. Plaintiff and the Missouri Subclass are “persons” who purchased “merchandise” in “trade” or “commerce” when they purchased the Specialty Pet Foods for personal, family, and household purposes, as those terms are defined in Missouri Revised Statute section 407.010.

364. Defendant’s acts and practices, as alleged in this complaint, constitute deceptive, unfair, fraudulent, and misleading acts and practices. In particular, Defendant manufactured, distributed, marketed, and sold the Specialty Pet Foods to the public even though the Specialty Pet Foods were not fit for their intended use and were harmful and toxic to pets. Defendant failed to disclose material facts concerning the Specialty Pet Foods’ content at the point of sale and otherwise.

365. Defendant concealed, suppressed, or omitted material facts with the intent that Plaintiff and the Missouri Subclass members rely upon such concealment, suppression, or omission. Defendant’s acts and practices are objectively deceptive and thus likely to deceive a reasonable consumer. As described above, Defendant knowingly concealed and failed to disclose at the point of sale or otherwise that the Specialty Pet Foods were harmful and toxic to pets. Had Defendant disclosed this fact, Plaintiff, class members, and reasonable consumers would not have purchased the Specialty Pet Foods.

366. Defendant’s conduct, which included deception, fraud, false pretenses, and the knowing concealment, suppression, or omission of material facts, caused and resulted in injury in fact and ascertainable loss of money or property to Plaintiff and the Missouri Subclass members, which injury was foreseeable to Defendant. Among other things, Plaintiff and the Missouri Subclass members paid for the Specialty Pet Foods and paid for the veterinary care and other costs arising from the illness and/or death of their pets. Defendant’s contaminated products were worthless and thus damages are the purchase price of the products as well as the associated

veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods. Plaintiff and the Missouri Subclass are entitled to legal and equitable relief against Defendant, including damages, consequential damages, and specific performance.

367. Plaintiff and the Missouri Subclass seek an order enjoining Defendant from the unlawful business practices alleged herein.

368. Pursuant to Missouri Revised Statutes section 407.025, Plaintiff and the Missouri Subclass request that the Court grant punitive damages and attorneys' fees, and any other equitable relief it deems necessary or proper.

Count XVIII
Violation of the Nebraska Consumer Protection Act
Neb. Rev. Stat. § 59-1601, et seq.
(By Plaintiff Lanham on behalf of the Nebraska Subclass)

369. Plaintiffs reallege the paragraphs above as if fully set forth herein.

370. The Nebraska Consumer Protection Act ("NCPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." Neb. Rev. Stat. § 59-1602.

371. Plaintiff, the members of the Nebraska Subclass, and Defendant are "person[s]" as defined in Nebraska Revised Statute section 59-1601(1).

372. Defendant engaged in "trade or commerce," as those terms are defined in Nebraska Revised Statute section 59-1601(2), when it manufactured, marketed, distributed and sold the Specialty Pet Foods to Plaintiffs, the Class and the public.

373. Defendant's acts and practices, as alleged in this complaint, constitute deceptive, unfair, fraudulent, and misleading acts and practices. In particular, Defendant manufactured, distributed, marketed, and sold the Specialty Pet Foods to the public even though the Specialty Pet Foods were not fit for their intended use and were harmful and toxic to pets. Defendant failed to

disclose material facts concerning the Specialty Pet Foods' content at the point of sale and otherwise.

374. Defendant marketed and represented the Specialty Pet Foods as safe for consumption, when in reality they were harmful and toxic to pets. Defendant failed to disclose material facts concerning the contents of the Specialty Pet Foods at the point of sale and otherwise.

375. Defendant's acts and practices have deceived Plaintiff and are likely to, and did, deceive the public. In misrepresenting the attributes and contents of the Specialty Pet Foods, and failing to disclose that the Specialty Pet Foods were harmful and toxic to pets, Defendant violated the NCPA and injured Plaintiffs and the Class. Defendant's misrepresentations, omissions and acts of concealment pertained to information that was material to Plaintiff and the Nebraska Subclass, as it would have been to all reasonable consumers.

376. The injuries suffered by Plaintiff and the Nebraska Subclass are greatly outweighed by any potential countervailing benefit to consumers or to competition, and are not injuries that Plaintiff and the Nebraska Subclass should have reasonably avoided.

377. As a direct and proximate result of the Defendant's business practices, Plaintiff and the members of the Nebraska Subclass suffered injury in fact and lost money or property by paying for the Specialty Pet Foods and paying for the veterinary care and other costs arising from the illness and/or death of their pets. Defendant's contaminated products were worthless and thus damages are the purchase price of the products as well as the associated veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods. Plaintiff and the members of the Nebraska Subclass are entitled to equitable relief, restitution, statutory damages, attorneys' fees, and other relief as the court may deem necessary.

Count XIX
Violation of the Nebraska Uniform Deceptive Trade Practices Act
Neb. Rev. Stat. § 87-301, et seq.
(By Plaintiff Lanham on Behalf of the Nebraska Subclass)

378. Plaintiffs reallege the paragraphs above as if fully set forth herein.

379. Defendant manufactures, markets, distributes and sells the Specialty Pet Foods at retailers and veterinary clinics throughout the State of Nebraska.

380. Pursuant to the Deceptive Trade Practices Act, “a person engages in a deceptive trade practice when” they “represent[] that goods or services have . . . characteristics, . . . uses, benefits, or quantities that they do not have.” Neb. Rev. Stat. § 87-302(5). Defendant marketed, distributed, advertised, and sold the Specialty Pet Foods even though the Specialty Pet Foods were not fit for their intended and marketed use and were harmful and toxic to pets.

381. Defendant marketed and represented the Specialty Pet Foods as safe for consumption, when in reality they were harmful and toxic to pets. Defendant failed to disclose material facts concerning the contents of the Specialty Pet Foods at the point of sale and otherwise.

382. As a direct and proximate result of the Defendant’s business practices, Plaintiff and the members of the Nebraska Subclass suffered injury in fact and lost money or property by paying for the Specialty Pet Foods and paying for the veterinary care and other costs arising from the illness and/or death of their pets. Defendant’s contaminated products were worthless and thus damages are the purchase price of the products as well as the associated veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods. Plaintiff and the members of the Nebraska Subclass are entitled to equitable relief, restitution, statutory damages, attorneys’ fees, and other relief as the court may deem necessary.

383. Defendant's continued marketing, distribution, and sale of the Specialty Pet Foods will continue to harm Nebraska residents, unless Defendant is enjoined from its continued sale. Thus, Plaintiff and the members of the Nebraska Subclass are entitled to injunctive relief, attorneys' fees, and other relief as the court may deem necessary.

Count XX
Violation of N.Y. Gen. Bus. Law § 349
(By Plaintiff Buckley on Behalf of the New York Subclass)

384. Plaintiffs reallege the paragraphs above as if fully set forth herein.

385. Plaintiff Buckley and members of the New York Subclass are "persons" within the meaning of N.Y. Gen. Bus. § 349(h).

386. Defendant is a "person, firm, corporation or association or agent or employee thereof" within the meaning of N.Y. Gen. Bus. § 349(b).

387. Under N.Y. Gen. Bus. § 349, "[d]eceptive acts and practices in the conduct of any business, trade or commerce or in the furnishing of any service" are unlawful. N.Y. Gen. Bus. § 349(a).

388. Defendant engaged in deceptive acts and practices in the conduct of business, trade, and commerce by manufacturing, distributing, marketing, and selling the Specialty Pet Foods to the Class while misrepresenting and concealing material facts about the contents of the Specialty Pet Foods, including representing that the Specialty Pet Foods were safe for consumption and particularly health foods and beneficial to the specific needs of Plaintiff's and the Class' pets, when in reality they were harmful and toxic to pets.

389. Defendant had exclusive knowledge of the fact that the Specialty Pet Foods were not fit for their intended purpose and were not safe for consumption. Defendant failed to disclose

these facts despite having a duty to disclose this material information to Plaintiff and the New York Subclass.

390. Plaintiff and the New York Subclass members were unaware, and did not have reasonable means of discovering, the material facts that Defendant both misrepresented and failed to disclose.

391. Defendant's failure to disclose material facts concerning the contents of the Specialty Pet Foods was misleading in a material respect because a reasonable consumer acting reasonably under the circumstances would have been misled by Defendant's conduct.

392. These acts and practices were consumer-oriented because they had a broad impact on consumers at large, affecting all purchasers of the Specialty Pet Foods.

393. As a direct and proximate result of Defendant's unlawful methods, acts, and practices, Plaintiff Buckley and the New York Subclass were injured because, among other reasons, they purchased the Specialty Pet Foods. Had Plaintiff Buckley and the New York Subclass known about the defective nature of the Specialty Pet Foods, they would not have purchased the Specialty Pet Foods, they would not have fed their pets the Specialty Pet Foods, their pets would not have suffered the resulting medical conditions or would not have died, and they would have avoided the expensive medical treatment associated therewith.

394. As a direct, foreseeable and proximate result of Defendant's misrepresentations, omissions, deceptive acts, and practices, Plaintiff Buckley and the members of the New York Subclass suffered actual damages by paying for the Specialty Pet Foods and paying for veterinary care and other costs arising from the illness and/or death of their pets. Defendant's products were worthless and thus damages are the purchase price of the products as well as the associated

veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods.

395. Defendant's acts and practices were willful and knowing.

396. Plaintiff Buckley and the New York Subclass are entitled to injunctive relief, recovery of actual damages or fifty dollars per violation (whichever is greater), treble damages up to one thousand dollars, and their reasonable costs and attorneys' fees. *See*, N.Y. Gen. Bus. § 349(h).

397. Plaintiff Buckley and New York Subclass members who were sixty-five years of age or older at the time of Defendant's violations of N.Y. Gen. Bus. § 349 are entitled to pursue additional claims and remedies against Defendant pursuant to N.Y. Gen. Bus. § 349-c to redress Defendant's violations of N.Y. Gen. Bus. § 349 (a) perpetrated against one or more elderly persons.

Count XXI
Violation of the N.Y. Gen. Bus. Law § 350
(By Plaintiff Buckley on Behalf of the New York Subclass)

398. Plaintiffs reallege the paragraphs above as if fully set forth herein.

399. Plaintiff Buckley and members of the New York Subclass are "persons" within the meaning of N.Y. Gen. Bus. § 350-e.

400. Under New York law, "[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful." N.Y. Gen. Bus. § 350.

401. Defendant engaged in false advertising in the conduct of business, trade, and commerce by manufacturing, distributing, marketing, and selling the Specialty Pet Foods to the Class while misrepresenting and concealing material facts about the contents of the Specialty Pet Foods, including representing that the Specialty Pet Foods were safe for consumption and

particularly health foods and beneficial to the specific needs of Plaintiff's and the New York Subclass' pets, when in reality they were harmful and toxic to pets.

402. Defendant had exclusive knowledge of the fact that the Specialty Pet Foods were not fit for their intended purpose and were not safe for consumption. Defendant failed to disclose these facts despite having a duty to disclose this material information to Plaintiff and the New York Subclass.

403. Plaintiff and the New York Subclass members were unaware, and did not have reasonable means of discovering, the material facts that Defendant both misrepresented and failed to disclose.

404. Defendant's failure to disclose material facts concerning the contents of the Specialty Pet Foods, and misrepresentations concerning the efficacy and performance properties thereof, were misleading in a material respect because a reasonable consumer acting reasonably under the circumstances would have been misled by Defendant's conduct.

405. These acts and practices were consumer-oriented because they had a broad impact on consumers at large, affecting all purchasers of the Specialty Pet Foods.

406. As a direct and proximate result of Defendant's unlawful methods, acts, and practices, Plaintiff Buckley and the New York Subclass were injured because, among other reasons, they purchased the Specialty Pet Foods. Had Plaintiff Buckley and the New York Subclass known about the defective nature of the Specialty Pet Foods, they would not have purchased the Specialty Pet Foods, they would not have fed their pets the Specialty Pet Foods, their pets would not have suffered the resulting medical conditions or would not have died, and they would have avoided the expensive medical treatment associated therewith.

407. As a result of Defendant's misrepresentations, omissions, deceptive acts, and unfair practices, Plaintiff Buckley and the members of the New York Subclass suffered actual damages by paying for the Specialty Pet Foods and paying for veterinary care and other costs arising from the illness and/or death of their pets. Defendant's products were worthless and thus damages are the purchase price of the products as well as the associated veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods.

408. Defendant's acts and practices were willful and knowing.

409. Plaintiff and the New York Subclass are entitled to injunctive relief, recovery of actual damages or five hundred dollars per violation (whichever is greater), treble damages up to ten thousand dollars, and their reasonable costs and attorneys' fees. *See*, N.Y. Gen. Bus. § 350-e(3).

Count XXII

Violation of the North Carolina Unfair and Deceptive Trade Practices Act

N.C. Gen. Stat. §75-1.1 et seq.

(By Plaintiff Sawyer on Behalf of the North Carolina Subclass)

410. Plaintiffs reallege the paragraphs above as if fully set forth herein.

411. The North Carolina Unfair and Deceptive Trade Practices Act ("NCUDTPA") prohibits "Unfair methods of competition...and unfair or deceptive acts or practices in or affecting commerce..." N.C. Gen. Stat. § 75-1.1(a).

412. The NCUDTPA provides a private right of action for any person injured "by reason of any act or thing done by any other person, firm or corporation in violation of" the NCUDTPA. N.C. Gen. Stat. § 75-16.

413. Defendant's acts and practices complained of herein were performed in the course of Defendant's trade or business and thus occurred in or affected "commerce," as defined in N.C. Gen. Stat. § 75-1.1(b).

414. In the course of Defendant's business, it manufactured, distributed, marketed, and sold the Specialty Pet Foods to the public even though the Specialty Pet Foods were not fit for their intended use and were harmful and toxic to pets. Defendant failed to disclose material facts concerning the Specialty Pet Foods' content at the point of sale and otherwise. Accordingly, Defendant engaged in both unfair and deceptive practices in violation of the NCUDTPA.

415. A causal relationship exists between Defendant's unlawful conduct and the ascertainable losses suffered by Plaintiff Sawyer and the North Carolina Subclass. Had Plaintiff Sawyer and the North Carolina Subclass known about the defective nature of the Specialty Pet Foods, they would not have purchased the Specialty Pet Foods, they would not have fed their pets the Specialty Pet Foods, their pets would not have suffered the resulting medical conditions or would not have died, and they would have avoided the expensive medical treatment associated therewith.

416. Defendant acted with willful and conscious disregard of the rights and property of others, subjecting Plaintiff Sawyer and the North Carolina Subclass to cruel and unjust hardship as a result, such that an award of punitive damages is appropriate.

417. Pursuant to N.C. Gen. Stat. § 75-16, Plaintiff Sawyer and the North Carolina Subclass request that the Court grant treble damages.

Count XXIII
Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law
73 Pa. Stat. Ann. § 201-1, et seq.
(By Plaintiff Anderson on Behalf of the Pennsylvania Subclass)

418. Plaintiffs reallege the paragraphs above as if fully set forth herein.

419. The Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”) protects consumers against "unfair or deceptive acts or practices" in connection with the sale or advertisement of any merchandise. 73 PS. § 201-1 *et seq.*

420. Defendant engaged in unfair, unlawful, and deceptive acts in trade and commerce which have the capacity and tendency to deceive and did deceive Plaintiff and the Pennsylvania Subclass and damaged Plaintiff and the Pennsylvania Subclass.

421. The Specialty Pet Foods were purchased by Plaintiff and the Pennsylvania Subclass for personal, family and/or household purposes.

422. Defendant engaged in deceptive acts and practices in the conduct of business, trade, and commerce by manufacturing, distributing, marketing, and selling the Specialty Pet Foods to the Class while misrepresenting and concealing material facts about the Specialty Pet Foods, including knowingly representing the Specialty Pet Foods as safe for consumption, when in reality they were harmful and toxic to pets. Defendant failed to disclose material facts concerning the contents of the Specialty Pet Foods at the point of sale and otherwise.

423. Defendant engaged in deceptive acts and practices in the conduct of business, trade, and commerce by selling the Specialty Pet Foods when it had knowledge that the Specialty Pet Foods were harmful and toxic to pets. Defendant failed to disclose these facts despite having a duty to disclose this material information to Plaintiff and the Pennsylvania Subclass.

424. Defendant’s failure to disclose material facts concerning the contents of the Specialty Pet Foods and their harmful and toxic nature was misleading in a material respect because a reasonable consumer acting reasonably under the circumstances would have been misled by Defendant’s conduct.

425. The facts that Defendant failed to disclose were material, and Defendant's failure to disclose such facts tended to mislead or deceive Plaintiff and the Class. Defendant should have revealed the facts that were material to the transaction in light of the representations of fact made in a positive matter. Defendant's failure to disclose the facts constitutes an unfair and deceptive act or practice.

426. Defendant failed to give Plaintiff and the Pennsylvania Subclass adequate warnings and notices regarding the contamination and harmful and toxic nature of the Specialty Pet Foods despite the fact that Defendant knew or should have known of the contamination, with the intent that Plaintiff and the Pennsylvania Subclass would rely upon Defendant's failure to disclose the defect when purchasing the Specialty Pet Foods. Thus, Defendant's knew of the harmful and toxic nature of the Specialty Pet Foods and yet continued to sell and distribute them to Plaintiff and the Pennsylvania Subclass and concealed its known contamination from them.

427. Defendant's acts and practices were unfair in that they caused or were likely to cause substantial injury to Plaintiff and the Pennsylvania Subclass which was not reasonably avoidable by Plaintiff and the Pennsylvania Subclass and not outweighed by countervailing benefits to consumers or to competition.

428. Plaintiff and the Pennsylvania Subclass relied to their detriment on the misrepresentations made by Defendant as described above.

429. As a direct and proximate result of these unfair, deceptive and unconscionable commercial practices, Plaintiff and the Pennsylvania Subclass have suffered a loss and were injured. Plaintiff and the Pennsylvania Subclass were injured, among other reasons, by paying for the Specialty Pet Foods and paying for the veterinary care and other costs arising from the illness and/or death of their pets. Defendant's contaminated products were worthless and thus damages

are the purchase price of the products as well as the associated veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods.

430. If Plaintiff and the Pennsylvania Subclass knew about the true nature of the Specialty Pet Foods, they would not have purchased it.

431. Defendant is engaging in or about to engage in the conduct described herein and will continue to do so unless restrained.

432. Plaintiff and the Pennsylvania Subclass are entitled, pursuant to the UTPCPL, to recover actual damages, equitable and injunctive relief and attorneys' fees.

Count XXIV
Violation of the Texas Deceptive Trade Practices-Consumer Protection Act
Tex. Bus. & Com. Code Ann. § 17.41, et seq.
(By Plaintiff Darnell on Behalf of the Texas Subclass)

433. Plaintiffs reallege the paragraphs above as if fully set forth herein.

434. Texas' Deceptive Trade Practices-Consumer Protection Act, Texas Business & Commerce Code Annotate section 17.41, et seq. ("TDTPCPA") prohibits "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce." Tex. Bus. & Comm. Code Ann. § 17.46(a).

435. The actions of Defendant, as set forth above, occurred in the conduct of trade or commerce.

436. Defendant engaged in deceptive acts and practices in the conduct of business, trade, and commerce by manufacturing, distributing, marketing, and selling the Specialty Pet Foods to the Texas Subclass while misrepresenting and concealing material facts about the Specialty Pet Foods, including knowingly representing the Specialty Pet Foods as safe for consumption, when

in reality they were harmful and toxic to pets. Defendant failed to disclose material facts concerning the contents of the Specialty Pet Foods at the point of sale and otherwise.

437. Defendant also misrepresented that the Specialty Pet Foods were particularly healthy food and beneficial to the specific needs of Plaintiff's and the Texas Subclass' pets including, but not limited to, age-specific dietary needs, breed-specific dietary needs, digestive issues, heart issues, liver issues, or kidney issues.

438. Defendant's misrepresentations, omission, deceptive acts, and unfair practices, as described herein, would deceive an objectively reasonable consumer.

439. As a direct and proximate result of Defendant's misrepresentations, omissions, deceptive acts, and unfair practices, Plaintiff Darnell and the members of the Texas Subclass suffered actual damages by paying for the Specialty Pet Foods and paying for veterinary care and other costs arising from the illness and/or death of their pets. Defendant's products were worthless and thus damages are the purchase price of the products as well as the associated veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods.

440. Plaintiff asserts that notice to Defendant would be futile in light of the facts alleged above.

441. Pursuant to Texas Business & Commerce Code Annotated section 17.50(b) and (d), Plaintiff requests that the court award treble damages, attorneys' fees and costs, and any other relief the Court deems proper.

Count XXV
Violation of the Washington Consumer Protection Act
RCW § 19.86.010, et seq.
(By Plaintiff Simmons on behalf of the Washington Subclass)

442. Plaintiffs reallege the paragraphs above as if fully set forth herein.

443. Washington's Consumer Protection Act ("WCPA") prohibits [u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce..." RCW § 19.86.020.

444. The actions of Defendant, as set forth above, occurred in the conduct of trade or commerce.

445. Defendant, in the course of its business, manufactured, distributed, marketed, and sold the Specialty Pet Foods to the public even though the Specialty Pet Foods were not fit for their intended use and were harmful and toxic to pets. Defendant failed to disclose material facts concerning the Specialty Pet Foods' content at the point of sale and otherwise.

446. Defendant also misrepresented that the Specialty Pet Foods were particularly healthy food and beneficial to the specific needs of Plaintiff's and the Washington Subclass' pets including, but not limited to, age-specific dietary needs, breed-specific dietary needs, digestive issues, heart issues, liver issues, or kidney issues.

447. Defendant's acts and practices have deceived Plaintiff\ and are likely to, and did, deceive the public. In misrepresenting the attributes and contents of the Specialty Pet Foods, and failing to disclose that the Specialty Pet Foods were harmful and toxic to pets, Defendant violated the WCPA and injured Plaintiff and the Washington Subclass. Defendant's misrepresentations, omissions and acts of concealment pertained to information that was material to Plaintiff and the Washington Subclass, as it would have been to all reasonable consumers.

448. The injuries suffered by Plaintiff and the Washington Subclass are greatly outweighed by any potential countervailing benefit to consumers or to competition, and are not injuring that Plaintiff and the Washington Subclass should have reasonably avoided.

449. As a direct and proximate result of Defendant's misrepresentations, omissions, deceptive acts, and unfair practices, Plaintiff Simmons and the members of the Washington Subclass suffered actual damages by paying for the Specialty Pet Foods and paying for veterinary care and other costs arising from the illness and/or death of their pets. Defendant's products were worthless and thus damages are the purchase price of the products as well as the associated veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods.

450. Pursuant to Revised Code of Washington section 19.86.090, Plaintiff requests that the Court award treble damages, attorneys' fees and costs, and such other relief it deems appropriate.

Count XXVI
Violation of the West Virginia Consumer Credit and Protection Act
W. Va. Code § 46A-6-101, *et seq.*
(By Plaintiff Mace on Behalf of the West Virginia Subclass)

451. Plaintiffs reallege the paragraphs above as if fully set forth herein.

452. This claim arises under the West Virginia Consumer Credit and Protection Act ("WVCCPA"). W. Va. Code § 46A-6-101, *et seq.*

453. The WVCCPA provides that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." W. Va. Code § 46A-6-104. The WVCCPA further provides a private right of action. W. Va. Code § 46A-6-106.

454. Plaintiff and the West Virginia Subclass are "consumers" within the meaning of West Virginia Code section 46A-6-102(2).

455. Defendant engaged in “trade” or “commerce” when it manufactured, marketed, distributed and sold the Specialty Pet Foods to Plaintiff and the West Virginia Subclass, as those terms are described in West Virginia Code section 46A-6-102(6).

456. The WVCCPA is intended to be construed in accordance with the Federal Trade Commission Act. W. Va. § 46A-6-101(1). The FTC has found that a “deceptive act or practice” encompasses “a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment.”

457. Defendant manufactured, distributed, marketed, and sold the Specialty Pet Foods to the public even though the Specialty Pet Foods were not fit for their intended use and were harmful and toxic to pets. Defendant failed to disclose material facts concerning the Specialty Pet Foods content at the point of sale and otherwise.

458. Defendant also misrepresented that the Specialty Pet Foods were particularly healthy food and beneficial to the specific needs of Plaintiff’s and the West Virginia Subclass’ pets including, but not limited to, age-specific dietary needs, breed-specific dietary needs, digestive issues, heart issues, liver issues, or kidney issues.

459. Defendant’s misrepresentations, omissions, deceptive acts, and unfair practices, as described herein, would deceive an objectively reasonable consumer, and Plaintiff and the West Virginia Subclass relied upon Defendant’s misrepresentations, omissions, deceptive acts, and unfair practices.

460. As a direct and proximate result of Defendant’s misrepresentations, omissions, deceptive acts, and unfair practices, Plaintiff and the West Virginia Subclass suffered actual damages by paying for the Specialty Pet Foods and paying for veterinary care and other costs arising from the illness and/or death of their pets. Defendant’s products were worthless and thus

damages are the purchase price of the products as well as the associated veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods.

461. In addition to actual damages, Plaintiff and the West Virginia Subclass are entitled to compensatory damages, equitable and declaratory relief, costs and reasonably attorneys' fees.

462. Plaintiff asserts that notice to Defendant would be futile in light of the facts alleged above.

Count XXVII
Violations of the Wisconsin Deceptive Trade Practices Act
Wis. Stat. § 100.18, et seq.
(By Plaintiff Molski on Behalf of the Wisconsin Subclass)

463. Plaintiffs reallege the paragraphs above as if fully set forth herein.

464. The Wisconsin Deceptive Trade Practices Act ("WDTPA") prohibits deceptive and misleading advertising. Wis. Stat. § 100.18(1).

465. Within the meaning of the WDTPA, Defendant advertised the Specialty Pet Foods to Plaintiff and the Wisconsin Subclass by manufacturing, distributing, marketing, and selling the Specialty Pet Foods to consumers.

466. In the course of Defendant's business, it manufactured, distributed, marketed, and sold the Specialty Pet Foods to the public even though the Specialty Pet Foods were not fit for their intended use and were harmful and toxic to pets.

467. Defendant also misrepresented that the Specialty Pet Foods were particularly healthy food and beneficial to the specific needs of Plaintiff's and the Wisconsin Subclass' pets including, but not limited to, age-specific dietary needs, breed-specific dietary needs, digestive issues, heart issues, liver issues, or kidney issues.

468. Defendant should have disclosed the true nature of the Specialty Pet Foods because it knew of the contamination and, by virtue of their manufacturing, producing, testing, and warranting of the Specialty Pet Foods, it was in a superior position to Plaintiff and the Wisconsin Subclass, and Plaintiff and the Wisconsin Subclass members could not reasonably be expected to learn of or discover the contamination until their pets became ill or died. Plaintiff and the Wisconsin Subclass relied on Hill's representations that the Specialty Pet Foods were healthy, safe for consumption, and free of harmful contaminants. Defendant, by the conduct, statements, and omissions described above, also knowingly and intentionally concealed from Plaintiff and the Wisconsin Subclass that the Specialty Pet Foods were not fit for their intended purpose and were harmful to pets.

469. As a direct and proximate result of Defendant's business practices, Plaintiff and the Wisconsin Subclass suffered injury in fact and lost money or property, by paying for the Specialty Pet Foods and paying for the veterinary care and other costs arising from the illness and/or death of their pets. Defendant's contaminated products were worthless and thus damages are the purchase price of the products as well as the associated veterinary and death-related costs, the value of the pets they lost, and other costs incurred as a result of consumption of the Specialty Pet Foods. Plaintiff and the Wisconsin Subclass are entitled to equitable relief, restitution, statutory damages, and other relief as the court may deem necessary.

470. Pursuant to Wisconsin Statute section 100.18(11)(b)(2), Plaintiff and the Wisconsin Subclass seek an order awarding them attorneys' fees and costs.

Count XXVIII
Unjust Enrichment
(By All Plaintiffs on Behalf of the Nationwide Class)

471. Plaintiffs reallege the paragraphs above as if fully set forth herein.

472. Defendant has received, and continues to receive, a benefit at the expense of Plaintiffs and members of the Class. Defendant is aware of this benefit.

473. As described above, Defendant produced, marketed, distributed and sold the Specialty Pet Foods as specially formulated to the specific needs or illnesses of pets when in actuality the food endangers the lives of pets.

474. Defendant has charged and collected from consumers, including Plaintiffs and members of the Class, money for dog food that endangers the lives of pets. Defendant thus has received benefits that they have unjustly retained at the expense of Plaintiffs and members of the Class.

475. As a direct and proximate result of Defendant's unlawful acts and conduct, Plaintiffs and members of the Class were deprived of the use of their monies that was unlawfully charged and collected by Defendant, and are therefore entitled to restoration of their monies.

476. It would be inequitable and unjust for Defendant to retain these wrongfully obtained profits.

477. Defendant's retention of these wrongfully obtained profits would violate the fundamental principles of justice, equity, and good conscience.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter a judgment awarding the following relief:

- A. an order certifying the proposed Classes, appointing Plaintiffs as representatives of the Classes, and appointing Plaintiffs' counsel to represent the Classes;
- B. an order awarding Plaintiffs and the Classes their actual damages, treble damages, and/or any other form of monetary relief provided by law;
- C. an order awarding Plaintiffs and the Classes restitution, disgorgement, or other equitable relief as the Court deems proper;

- D. an order enjoining Defendant from its unlawful conduct;
- E. an order requiring Defendant to take action to ensure that *all* potentially affected products are identified on Hill's website and removed from shelves;
- F. an order awarding the pre-judgment and post-judgment interest as allowed under the law;
- G. an order awarding Plaintiffs and the Classes reasonable attorneys' fees and costs of suit, including expert witness fees; and
- H. an order awarding such other and further relief as this Court may deem just and proper.

JURY DEMAND

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

Dated: March 13, 2019

Respectfully submitted,

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