

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE**

AMANDA CHAPMAN, BETTY LEE, and
DIANE MCDANIEL, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

HILL'S PET NUTRITION, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Amanda Chapman, Betty Lee, Diane McDaniel ("Plaintiffs") bring this action, on behalf of themselves and all others similarly situated, against Hill's Pet Nutrition, Inc. ("Hill's" or "Defendant") and allege as follows:

FACTUAL ALLEGATIONS

1. Defendant, sells pet food for dogs and has worked to build a premium brand specifically targeted at ingredient-conscious pet owners.
2. Founded in 1939, Defendant claims to "make nutrition a cornerstone of veterinary medicine." Defendant sells its products through veterinary clinics (including those with on-line stores) and in leading national pet specialty chains, including PetSmart and Petco as well as online through vendors such as Amazon.
3. Veterinarians usually prescribe the Science Diet and Prescription Diet product lines to address nutritional deficiencies and health issues. Therefore, the premium ingredients present in these pet foods are an important characteristic to consumers, including the Plaintiffs and Class Members.

4. At issue in this action are certain sizes and varieties of two pet food product lines: “Science Diet” and “Prescription Diet” (collectively “Hill’s Products”).¹

Hill’s Misrepresentations

5. In its advertising, marketing material and packaging, Defendant represents that Hill’s Products provide “[n]utrition that can transform the lives of pets and comfort the pet parents and vets who care for them.”²

6. In order to better sell its Products, and to entice veterinarians to prescribe them,

¹ The products that are part of the Hill’s Pet Nutrition dog food recall include the following canned dog food products (Plaintiffs reserve the right to amend this list of affected products covered by this litigation as necessary):

- Hill’s Prescription Diet c/d Multicare Canine Chicken & Vegetable Stew 12.5 oz.
- Hill’s Prescription Diet i/d Canine Chicken & Vegetable Stew 12.5 oz.
- Hill’s Prescription Diet i/d Canine Chicken & Vegetable Stew 5.5 oz.
- Hill’s Prescription Diet z/d Canine 5.5 oz.
- Hill’s Prescription Diet g/d Canine 13 oz.
- Hill’s Prescription Diet i/d Canine 13 oz.
- Hill’s Prescription Diet j/d Canine 13 oz.
- Hill’s Prescription Diet k/d Canine 13 oz.
- Hill’s Prescription Diet w/d Canine 13 oz.
- Hill’s Prescription Diet z/d Canine 13 oz.
- Hill’s Prescription Diet Metabolic + Mobility Canine Vegetable & Tuna Stew 12.5 oz.
- Hill’s Prescription Diet w/d Canine Vegetable & Chicken Stew 12.5 oz.
- Hill’s Prescription Diet i/d Low Fat Canine Rice, Vegetable & Chicken Stew 12.5 oz.
- Hill’s Prescription Diet Derm Defense Canine Chicken & Vegetable Stew 12.5 oz.
- Hill’s Science Diet Adult 7+ Small & Toy Breed Chicken & Barley Entrée Dog Food 5.8 oz.
- Hill’s Science Diet Puppy Chicken & Barley Entrée 13 oz.
- Hill’s Science Diet Adult Chicken & Barley Entrée Dog Food 13 oz.
- Hill’s Science Diet Adult Turkey & Barley Dog Food 13 oz.
- Hill’s Science Diet Adult Chicken & Beef Entrée Dog Food 13 oz.
- Hill’s Science Diet Adult Light with Liver Dog Food 13 oz.
- Hill’s Science Diet Adult 7+ Chicken & Barley Entrée Dog Food 13 oz.
- Hill’s Science Diet Adult 7+ Beef & Barley Entrée Dog Food 13 oz.
- Hill’s Science Diet Adult 7+ Turkey & Barley Entrée 13 oz.
- Hill’s Science Diet Adult 7+ Healthy Cuisine Braised Beef, Carrots & Peas Stew Dog Food 12.5 oz.
- Hill’s Science Diet Adult 7+ Youthful Vitality Chicken & Vegetable Stew Dog Food 12.5 oz.

https://www.hillspet.com/productlist?gclid=CjwKCAiA767jBRBqEiwAGdAO98jryZUcUF6QfRg_53XY_88eysTT6230JZpMAHvfUDhMi2G6akNRoCk6AQAvD_BwE&gclsrc=aw.ds (last accessed on February 19, 2019).

² <https://www.hillspet.com/dog-food> (last accessed on February 19, 2019).

Defendant markets the Products as formulated and intended for dogs with specific needs or illnesses, such as: age-specific dietary needs, breed-specific dietary needs, digestive issues, heart issues, liver issues, or kidney issues.

7. Defendant proudly declares that “We only accept ingredients from suppliers whose facilities meet stringent quality standards and who are approved by Hill's. Not only is each ingredient examined to ensure its safety, we also analyze each product's ingredient profile for essential nutrients to ensure your pet gets the stringent, precise formulation they need.”³

8. Defendant goes on to state that “We conduct annual quality systems audits for all manufacturing facilities to ensure we meet the high standards your pet deserves. We demand compliance with current Good Manufacturing Practices (cGMP) and Hill's high quality standards, so your pet's food is produced under clean and sanitary conditions.”⁴

9. Further, Defendant declares that “We conduct final safety checks daily on every Hill's pet food product to help ensure the safety of your pet's food. Additionally, 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.”⁵

10. Defendant clearly states that its products contain the “precise balance” of nutrients needed for a healthy dog: “Guided by science, we formulate our food with precise balance so your pet gets all the nutrients they need — and none they don't.”⁶

11. The packaging for the Products include claims that the Hill's Products “[s]upport[] a healthy immune system,” “improve and lengthen quality of life,” “can be used long-term,” “[p]rotect[] vital kidney & heart function,” “[s]upport your dog's natural ability to build lean

³ <https://www.hillspet.com/about-us/quality-and-safety> (last accessed on February 19, 2019).

⁴ *Id.*

⁵ *Id.*

⁶ <https://www.hillspet.com/about-us/nutritional-philosophy> (last accessed on February 19, 2019).

muscle daily,” and “meet[] the special nutritional needs of puppies and adult dogs.”

12. As demonstrated by the recall discussed below and the thousands of sickened and dead dogs who consumed Hill’s Products, Defendant’s representations about quality, ingredient supply, and product manufacturing and oversight are false.

The Recall

13. On January 31, 2019, Defendant 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 certain affected products.

14. On February 7, 2019, Defendant announced an expansion of the recall to include additional SKU and lot numbers of canned Prescription Diet and Science diet products.

15. Hill’s claims the excessive vitamin D is “due to a supplier error.”⁷

The Price Premium

16. Defendant charges a premium price for its Products. As demonstrated by the below examples, the Hill’s Products command a substantial premium over other dog food products:⁸

Brand	Quantity	Price	Unit Price
Hill’s Pres. Diet i/d Canine Chicken & Vegetable Stew 12.5 oz.	12 cans	\$39.99	\$3.33 per can \$0.27 per ounce
Hill’s Pres. Diet w/d Canine Vegetable & Chicken Stew 12.5 oz.	12 cans	\$38.99	\$3.25 per can \$0.26 per ounce
Hill’s Science Diet Adult Chicken & Barley Entrée Dog Food 13 oz.	12 cans	\$22.20	\$1.85 per can \$0.14 per ounce
Hill’s Science Diet Adult 7+ Beef & Barley Entrée Dog Food 13 oz.	12 cans	\$22.20	\$1.85 per can \$0.14 per ounce

⁷ <https://www.fda.gov/Safety/Recalls/ucm630232.htm> (last accessed on February 19, 2019).

⁸ Pricing information obtained from: <https://www.chewy.com>, accessed on 02/15/2019.

Purina ONE SmartBlend Classic Ground Beef and Brown Rice Adult 13 oz.	12 cans	\$12.67	\$1.06 per can \$0.08 per ounce
Iams ProActive Health Adult Chicken and Whole Grain Rice Pate 13 oz.	12 cans	\$16.80	\$1.40 per can \$0.11 per ounce
Nature's Recipe Easy-to-Digest Chicken, Rice & Barley Recipe Cuts in Gravy Stew 13.2 oz.	12 cans	\$13.99	\$1.17 per can \$0.09 per ounce
Purina Dog Chow High Protein Chicken Classic Ground Canned Dog Food 13 oz.	12 cans	\$12.60	\$1.05 per can \$0.08 per ounce

17. The presence of toxic levels of vitamin D in the Products leading to a high probability of endangering the health of the dogs and ultimately resulting in many sick and dead dogs indicates that the Hill's Products' value to the consumers is diminished, and consequently, the Products are worth substantially less than the premium prices paid for them

18. As a result of Defendant's misrepresentations, deceptive conduct and unfair practices, Plaintiffs and class members suffered actual damages and economic losses because they overpaid for the Hill's Products not knowing that the Hill's Products had an adverse effect on their pets' health.

19. Consumers are willing to pay a premium for Defendant's Products because these foods are represented to be specifically formulated for the particular health needs of dogs and to meet certain ingredient supply, quality, and manufacturing standards. In its advertising, marketing material and packaging, Defendant represents, among other things, that Hill's Products provide "[n]utrition that can transform the lives of pets and comfort the pet parents and vets who

care for them.”⁹

20. Instead, consumers paid a premium for a product that sickened or killed thousands of dogs. And, all Class Members despite having paid a premium price for supposedly healthy dog food marketed to be specifically formulated to address certain health concerns and to meet certain ingredient supply, quality, and manufacturing standards, did not receive what they paid for. Pet owners purchased the Hill’s Products and paid the pricing premium because of the positive benefits to their dog’s health, as claimed by Defendant. Instead of receiving this positive health benefits, these consumers were subject to expensive veterinary bills and related costs as they tried to address the illnesses caused by the excessive vitamin D levels in the Hill’s Products.

21. As a result of Defendant’s deceptive conduct and/or unfair practices, Plaintiffs and Class Members suffered actual damages and/or economic losses.

Additional Advertising and Marketing Misrepresentations

22. As described above and below, Defendant has engaged in an extensive, nationwide, uniform marketing and advertising campaign replete with misrepresentations and false statements concerning the nutritional advantage of the Science Diet and Prescription Diet product lines.

23. Describing the quality of Hill’s Products, Defendant’s website¹⁰ states a “commitment to quality” with more than 220 veterinarians, food scientists, technicians and Ph.D. nutritionists developing all of Hill’s pet foods. Defendant also states that ingredients are accepted only from suppliers whose facilities meet stringent quality standards and who are approved by Defendant. Each ingredient is supposedly examined to ensure its safety.¹¹

⁹ <https://www.hillspet.com/dog-food> (last accessed on February 19, 2019).

¹⁰ <https://www.hillspet.com/about-us/quality-and-safety> (Last visited on February 12, 2019).

¹¹ *Id.*

24. Another component to Defendant's deceptive marketing and advertising campaign for its Prescription Diet product line is its alliance with veterinarians¹² which emphasizes a "unique position to find a solution" to dietary and health issues that dogs may face.

25. Additionally, Defendant claims that its Science Diet product line would feed "your dog's best life" with biology based nutrition.¹³

Defendant's Misrepresentations and Omissions are Material to Consumers

26. Although pet foods vary in the quality of ingredients, formula, manufacturing processes and inspection quality, and nutritional value, premium or ultra-premium pet foods, like Hill's Products, typically have higher standards with respect to each of these important variables.

27. Hill's Pet Nutrition Prescription Diet and Science Diet product lines are typically sold through a veterinarian's office and provide tailored nutritional care to help with conditions including obesity, digestive problems, skin sensitivities, kidney problems, aging joints, diabetes, liver problems, heart health, and more.

28. Hill's Products emphasize nutritional value for the dogs consuming them. Pet owners generally buy them to address a health issue or nutritional deficiency that their dog may be experiencing – and pay a premium price to do so.

29. Accordingly, Defendant's ultra-premium pet foods are higher priced with larger mark-ups.

PARTIES

30. Plaintiff Amanda Chapman is a citizen of Tennessee and resides in McMinnville, Tennessee. At various times within the Relevant Time Period (defined below), Plaintiff Chapman purchased the following Hill's Products: Hill's Science Diet Adult Chicken & Barley

¹² <https://www.hillspet.com/prescription-diet/dog-food> (Last visited on February 12, 2019).

¹³ <https://www.hillspet.com/science-diet/dog-food> (Last visited on February 12, 2019)/

Entrée Dog Food 13 oz., Hill's Science Diet Adult Turkey & Barley Dog Food 13 oz., Hill's Science Diet Adult Chicken & Beef Entrée Dog Food 13 oz., Hill's Science Diet Adult Light with Liver Dog Food 13 oz.

31. Plaintiff Betty Lee is a citizen of Tennessee and resides in Knoxville, Tennessee. At various times within the Relevant Time Period (defined below), Plaintiff Lee purchased the following Hill's Products: Hill's Science Diet Adult Chicken & Barley Entrée Dog Food 13 oz. and Hill's Science Diet Adult Turkey & Barley Dog Food 13 oz.

32. Plaintiff Diane McDaniel is a citizen of Tennessee and resides in Morristown, Tennessee. At various times within the Relevant Time Period (defined below), Plaintiff McDaniel purchased the following Hill's Products: Hill's Science Diet Adult Chicken & Barley Entrée Dog Food 13 oz.

33. Defendant Hill's Pet Nutrition is a Kansas corporation with its corporate headquarters located at 400 South West 8th Street, Topeka, Kansas 66603. Defendant markets, advertises, distributes and sells various pet food products nationwide, including the Hill's Products covered by this action.

JURISDICTION AND VENUE

34. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Defendant.

35. The Court can exercise supplemental jurisdiction over the Class's state law claims under 28 U.S.C. § 1367.

36. The Court can exercise personal jurisdiction over Defendant because it has regular

and systematic contacts with the state of Tennessee, in which it does business and places the Defendant's Products in the stream of commerce.

37. This Court is a proper venue for this action, pursuant to 28 U.S.C. § 1391(b)(1), because Defendant is subject to personal jurisdiction in this District, the sale of Plaintiff Diane McDaniel's Hill's Products occurred in this District, and such sale gave rise to this action.

CLASS ACTION ALLEGATIONS

38. Plaintiffs bring this action on behalf of themselves and all other similarly situated persons pursuant to Fed. R. Civ. P. 23.

The Classes Defined

39. Plaintiffs seek to represent a class defined as all persons in the State of Tennessee who purchased Hill's Products during the Relevant Time Period. "Relevant Time Period" means the time period beginning with the earliest date that the Hill's Products contained abnormally high levels of vitamin D.

40. Excluded from the Class are Defendant, any entity in which Defendant has a controlling interest, and its legal representatives, officers, directors, employees, assigns and successors; persons and entities that purchased Hill's Products for resale; the Judge to whom this case is assigned and any member of the Judge's staff or immediate family; and Class Counsel.

The Classes Satisfies the Rule 23 Requirements

41. Members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is presently unknown, and can only be ascertained through appropriate discovery, Plaintiffs believe the members of the Class exceed thousands of persons, if not hundreds of thousands.

42. Common questions of law and fact exist as to all members of the Class and

predominate over any questions solely affecting individual members of the Class. Among questions of law and fact common to the Class and are:

- a. Whether Hill's Products contain excessive levels of vitamin D;
 - b. Whether Hill's Products contain excessive vitamin D at levels high enough to injure and kill dogs;
 - c. Whether Defendant's labeling, advertising, and marketing is false;
 - d. Whether Defendant's labeling, advertising, and marketing is misleading;
 - e. Whether Defendant's labeling, advertising, and marketing is deceptive;
 - f. Whether Defendant breached warranties by making the representations above;
 - g. Whether Defendant was unjustly enriched by making the representations and omissions above;
 - h. Whether Defendant's actions as described above violated the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.;
 - i. Whether the Hill's Products' value to Class Members is diminished, and consequently, the Products are worth substantially less than the premium prices paid for them because of the toxic level of vitamin D; and
 - j. Whether Defendant's actions as described above violated various state consumer protection statutes.
43. Plaintiffs' claims are typical of the claims of Class and because
44. Plaintiffs and each member of the Class purchased Hill's Products, and suffered damages and a loss of money as a result of that purchase.
45. Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the Class members they seek to represent, they have retained

competent counsel experienced in prosecuting class actions, and they intend to prosecute this action vigorously. The interests of the Class members will be fairly and adequately protected by Plaintiffs and their counsel.

46. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by the individual members of the Class may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this class action.

47. Certification pursuant to Fed. R. Civ. 23(b)(1) is appropriate because prosecuting separate actions by or against individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

48. Certification pursuant to Fed. R. Civ. 23(b)(2) is appropriate because Defendant has acted or refused to act on grounds that apply generally to the Class so that final injunctive relief or corresponding declaratory relief is appropriate as to the Class as a whole.

CLAIM I
VIOLATION OF MAGNUSON-MOSS WARRANTY ACT
(15 U.S.C. § 2301, et seq.)

47. Plaintiffs and Class members repeat and reallege and incorporate by reference each allegation set forth above and further alleges as follows.

48. Plaintiffs bring this Count I individually and on behalf of the members of the Class against Defendant.

49. Hill's Products are consumer products as defined in 15 U.S.C. § 2301(1).

50. Plaintiffs and Class members are consumers as defined in 15 U.S.C. § 2301(3).

51. Plaintiffs purchased Hill's Products costing more than \$5 and their individual claims are greater than \$25 as required by 15 U.S.C. § 2302(e) and 15 U.S.C. § 2310(d)(3)(A).

52. Defendant is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

53. In connection with the sale of Hill's Products, Defendant issued written warranties as defined in 15 U.S.C. § 2301(6), which warranted that the products, among other things, "[s]upport[] a healthy immune system," "improve and lengthen quality of life," "can be used long-term," "[p]rotect[] vital kidney & heart function," "[s]upport your dog's natural ability to build lean muscle daily," and "meet[] the special nutritional needs of puppies and adult dogs." Additional written warranties as defined in 15 U.S.C. § 2301(6) issued by Defendant in connection with the sale of the Hill's Products were that "We only accept ingredients from suppliers whose facilities meet stringent quality standards," and that "each ingredient [is] examined to ensure its safety."

54. Defendant breached these written warranties because the Hill's Products contained excessive and toxic levels of vitamin D harmful to pet health.

55. By reason of Defendant's breach of the written warranties, Defendant violated the statutory rights due Plaintiffs and Class Members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*, thereby damaging Plaintiffs and Class Members.

56. Within a reasonable time after Plaintiffs knew or should have known of such failure to conform, Plaintiffs gave Defendant notice thereof.

CLAIM II
BREACH OF EXPRESS WARRANTY

57. Plaintiffs repeat and reallege each and every allegation above, as if set forth in full herein.

58. Defendant sold, and Plaintiffs and members of the Class purchased Hill's Products.

59. Defendant represented in its marketing, advertising, and promotion of Hill's Products that those products "[s]upport[] a healthy immune system," "improve and lengthen quality of life," "can be used long-term," "[p]rotect[] vital kidney & heart function," "[s]upport your dog's natural ability to build lean muscle daily," and "meet[] the special nutritional needs of puppies and adult dogs." Defendant also represented that "We only accept ingredients from suppliers whose facilities meet stringent quality standards," and that "each ingredient [is] examined to ensure its safety."

60. The Hill's Products did not conform to Defendant's representations and warranties in that they contained excessive and toxic levels of vitamin D harmful to pet health.

61. Within a reasonable time after Plaintiffs knew or should have known of such failure to conform, Plaintiffs gave Defendant notice thereof.

62. As a direct and proximate result of Defendant's breaches of its express warranty and failure of the Hill's Products to conform, Plaintiffs and members of the Class have been damaged in that they did not receive the product as specifically warranted and/or paid a premium for the product and incurred veterinary expenses to treat their ill pets.

CLAIM III
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

63. Plaintiffs repeat and reallege each and every allegation above, as if set forth in full herein.

64. Defendant sold and Plaintiffs and members of the Class purchased Hill's Products.

65. When sold by Defendant, the Hill's Products were not merchantable, did not pass without objection in the trade under the label description, were not of fair average quality within that description, were not fit for the ordinary purposes for which such goods are used, and did not conform to the promises or affirmations of fact made on the container or label because of the excessive and toxic levels of vitamin D.

66. Within a reasonable time after Plaintiffs knew or should have known that the product was not fit for such purpose and/or was not otherwise merchantable as set forth above, Plaintiffs gave Defendant notice thereof.

67. As a direct result of the Hill's Products being unfit for such purpose and/or otherwise not merchantable, Plaintiffs and the members of the Class were damaged in that they did not receive the product as warranted and/or paid a premium for the product and incurred veterinary expenses to treat their ill pets.

CLAIM IV
UNJUST ENRICHMENT

68. Plaintiffs repeat the allegations of the foregoing paragraphs, as if fully set forth herein.

69. Plaintiffs conferred benefits on Defendant by purchasing Hill's Products at a premium price.

70. Defendant has knowledge of such benefits.

71. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiffs and Class members' purchases of Hill's Products. Retention of those moneys under these circumstances is unjust and inequitable because Defendant falsely and misleadingly represented, among other things, that its Hill's Products "[s]upport[] a healthy immune system," "improve and lengthen quality of life," "can be used long-term," "[p]rotect[] vital kidney & heart function," "[s]upport your dog's natural ability to build lean muscle daily," "meet[] the special nutritional needs of puppies and adult dogs," contains "ingredients from suppliers whose facilities meet stringent quality standards," and that "each ingredient [is] examined to ensure its safety" when, in fact, the Hill's Products contained excessive levels of vitamin D harmful to pet health, which caused injuries to Plaintiffs and members of the Class because they would not have purchased (or paid a price premium) for Hill's Products had the true facts been known.

72. Because Defendant's retention of the non-gratuitous benefits conferred on it by

73. Plaintiffs and Class Members is unjust and inequitable, Defendant must pay restitution to Plaintiffs and Class Members for its unjust enrichment, as ordered by the Court.

CLAIM V
VIOLATIONS OF TENNESSEE CONSUMER PROTECTION ACT OF 1977
(Tenn. Code Ann. § 47-18-101, *et seq.*)

74. All paragraphs of this complaint are incorporated herein as if fully restated.

75. At all times relevant herein, Defendants were engaged in commerce in the State of Tennessee.

76. The conduct of Defendants as set forth herein is unethical, oppressive, unscrupulous, and substantially injurious to the consumers Tennessee; and has the capacity and tendency to deceive the average consumer.

77. Plaintiffs and the Tennessee State Class members are "natural persons" and "consumers" within the meaning of Tenn. Code § 47-18-103(2).

49. Defendant is engaged in “trade” or “commerce” or “consumer transactions” within the meaning Tenn. Code § 47-18-103(9).

50. The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits “unfair or deceptive acts or practices affecting the conduct of any trade or commerce.” Tenn. Code § 47-18-104.

78. Defendant’s false, misleading and deceptive statements and representations of fact that were and are directed to consumers.

79. Defendant’s false, misleading and deceptive statements and representations of fact were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

80. Defendant’s false, misleading and deceptive statements and representations of fact have resulted in consumer injury or harm to the public interest.

81. Plaintiffs and the Class have been injured because: (a) they would not have purchased Hill’s Products had they known that the products in fact contained excessive levels of vitamin D; (b) they paid a price premium for Hill’s Products based on Defendant’s false and misleading statements; and (c) the Hill’s Products did not have the characteristics and benefits promised because they contained excessive vitamin D.

82. As a result of Defendant’s false, misleading and deceptive statements and representations of fact Plaintiffs have suffered economic injuries.

83. Plaintiffs and the Class suffered an ascertainable loss caused by Defendant’s misrepresentations because they paid more for Hill’s Products than they would have had they known the truth about the product.

84. The above-described conduct violated Tenn. Code § 47-18-104, including:

- a. Causing likelihood of confusion or of misunderstanding as to the approval or certification of the goods;
- b. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have;
- c. Representing 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; and
- d. Advertising goods or services with intent not to sell them as advertised;
- e. Engaging in other conduct which created a likelihood of confusion or of misunderstanding.

85. Defendant intended to mislead Plaintiffs and Class members and induce them to rely on its misrepresentations and omissions.

86. As a result, Plaintiffs have been damaged in an amount to be proven at trial, but not less than either the purchase price of the Hill's Products or the difference in value between Hill's Products as advertised and Hill's Products as actually sold.

87. Plaintiffs and members of the Class suffered actual injury as a result of Defendants' unfair actions.

88. Pursuant to Tenn. Code §§ 47-18-109, 47-18-109, and 47-18-109(a)(3), Plaintiffs and Class Members seek all monetary and non-monetary relief allowed by law, including actual damages, restitution, injunctive relief, punitive damages, and reasonable attorneys' fees and costs, and any other just and proper relief proscribed by the Tennessee Consumer Protection Act.

89. Plaintiffs and each member of the Class have been damaged and are entitled to recover treble damages and attorneys' fees incurred in this action.

RELIEF DEMANDED

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek a judgment against Defendant, as follows:

- a. For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Plaintiffs' attorneys as Class Counsel to represent the Class members;
- b. For an order declaring that Defendant's conduct violates the statutes referenced herein;
- c. For an order finding in favor of Plaintiffs, the Class on all counts asserted herein;
- d. For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;
- g. For injunctive relief as pleaded or as the Court may deem proper; and
- h. For an order awarding Plaintiffs and the Class their reasonable attorneys' fees and expenses and costs of suit.

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on all claims so triable.

Dated: February 27, 2019

Respectfully submitted,

By: s/Gregory F. Coleman
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

AMANDA CHAPMAN, BETTY LEE, and
DIANE MCDANIEL

(b) County of Residence of First Listed Plaintiff Warren County, TN
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Gregory F. Coleman
GREG COLEMAN LAW PC
First Tennessee Plaza, 800 S. Gay Street, Ste. 1100,
Knoxville, TN 37929, Tel: (865) 247-0080

DEFENDANTS

HILL'S PET NUTRITION, INC.

County of Residence of First Listed Defendant Shawnee County, KS
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | ☒ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☒ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g))	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 490 Securities/Commodities/Exchange ☒ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	
		LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act		
		IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. §§ 231, et seq.

Brief description of cause:

Magnuson-Moss Warranty Act, Unjust Enrichment, State Statutes for selling and warranting tainted pet food

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/27/2019

SIGNATURE OF ATTORNEY OF RECORD

s/Gregory F. Coleman

FOR OFFICE USE ONLY

RECEIPT #

Case 3:19-cv-00070

Document 1-1

Filed 02/27/19

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