

UNITED STATES DISTRICT COURT

for the

District of Kansas

DAVID JOHNSON, ANGELINA RAINES, &
KAYLA VANWINSEN

Plaintiff(s)

v.

HILL'S PET NUTRITION, INC.,

Defendant(s)

Civil Action No. 2:19-CV-02121

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Hill's Pet Nutrition, Inc.
c/o Registered Agent
The Corporation Company, Inc.,
112 SW 7th Street, Ste. 3C, Topeka, KS 66603

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

John F. Edgar, jfe@edgarlawfirm.com
Brendan M. McNeal, bmm@edgarlawfirm.com
EDGAR LAW FIRM LLC
2600 Grand Boulevard, Ste. 440
Kansas City, MO 64108
(816) 531-0033

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 03/06/2019

CLERK OF COURT
s/Colleen Abraham
Signature of Clerk or Deputy Clerk

Civil Action No. 2:19-CV-02121

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

DAVID JOHNSON, ANGELINA RAINES,
and KAYLA VANWINSEN on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

HILL'S PET NUTRITION, INC.,

Defendant.

Case No. _____

**JURY TRIAL DEMANDED
CLASS ACTION COMPLAINT**

Plaintiffs David Johnson, Angelina Raines, and Kayla Vanwinsen ("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 Defendant's Science Diet and Prescription Diet product lines to address nutritional deficiencies and health issues. Therefore, the alleged 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 of Defendant's 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, 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

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 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&gclid=aw.ds (last accessed on February 28, 2019).

² <https://www.hillspet.com/dog-food> (last accessed on February 28, 2019).

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 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

³ <https://www.hillspet.com/about-us/quality-and-safety> (last accessed on February 28, 2019).

⁴ *Id.*

⁵ *Id.*

⁶ <https://www.hillspet.com/about-us/nutritional-philosophy> (last accessed on February 28, 2019).

dead dogs who consumed Hill's Products, Defendant's representations about quality, ingredient supply, and product manufacturing and oversight are false, misleading and deceptive.

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 28, 2019).

⁸ Pricing information obtained from: <https://www.chewy.com> (last 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 to purchase 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 Hill'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, testing and oversight, 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

⁹ <https://www.hillspet.com/dog-food> (last accessed on February 28, 2019).

20. Instead, Plaintiffs and Class Members 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, testing and oversight, 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 and toxic 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

24. Another component to Defendant's deceptive marketing and advertising

¹⁰ <https://www.hillspet.com/about-us/quality-and-safety> (last accessed on February 28, 2019).

¹¹ *Id.*

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 and that “we make our foods using only high-quality ingredients.”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. As discussed above, 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 David Johnson is a citizen of Ohio and resides in Stoutsville, Ohio. At various times within the Relevant Time Period (defined below), Plaintiff Johnson purchased Hill’s Prescription Diet k/d Canine in 13 ounce cans for his 4 year old pug named Sadie. Sadie

¹² <https://www.hillspet.com/prescription-diet/dog-food> (last accessed on February 28, 2019).

¹³ <https://www.hillspet.com/science-diet/dog-food> (last accessed on February 28, 2019).

consumed the Hill's Products, became ill from these Hill's Products, and died because of the toxic levels of vitamin D present in the Hill's Products consumed.

31. Plaintiff Angelina Raines is a citizen of Ohio and resides in Londonderry, Ohio. At various times within the Relevant Time Period (defined below), Plaintiff Raines purchased the following Hill's Products for her three dogs named Annie, Angel, and Gizmo: 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 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 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 Turkey & Barley Dog Food, 13 oz.; Hill's Science Diet Adult Chicken & Beef Entre Dog Food, 13 oz.; Hill's Science Diet Adult 7+ Chicken & Barley Entre Dog Food, 13 oz.; Hill's Science Diet Adult 7+ Turkey & Barley Entre, 13 oz.; Hill's Science Diet Adult 7+ Healthy Cuisine Braised Beef, Carrots & Peas Stew Dog Food, 12.5 oz.; and Hill's Science Diet Adult 7+ Youthful Vitality Chicken & Vegetable Stew Dog Food, 12.5 oz. Annie, Angel, and Gizmo consumed the Hill's Products and became ill from these Hill's Products due to the toxic levels of vitamin D present. Annie died because of the toxic levels of vitamin D present in the Hill's Products consumed.

32. Plaintiff Kayla Vanwinsen is a citizen of Ohio and resides in Fairfield, Ohio. At various times within the Relevant Time Period (defined below), Plaintiff Vanwinsen purchased the following Hill's Products for her dog named Loretta Lynn: Hill's Prescription Diet i/d Canine, 13 oz.; and Hill's Prescription Diet w/d Canine, 13 oz. Loretta Lynn consumed these

Hill's Products, became ill, and died because of the toxic levels of vitamin D present in the Hill's Products consumed. Plaintiff Vanwinsen incurred nearly \$3,500 in veterinary bills and expenses because of the toxic Hill's Products consumed by Loretta Lynn.

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. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant is headquartered and does business throughout this District.

CLASS ACTION ALLEGATIONS

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

The Classes and Subclasses Defined

37. Plaintiffs seek to represent a nationwide class defined as all persons in the United States 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.

38. Plaintiffs also seek to represent an Ohio Subclass defined as all persons who are Ohio residents who purchased Hill's Products during the Relevant Time Period.

39. Excluded from the Class and Ohio Subclass 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 and Subclasses Satisfy the Rule 23 Requirements

40. Members of the Class and Subclasses 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.

41. Common questions of law and fact exist as to all members of the Class and Subclass and predominate over any questions solely affecting individual members of the Class and Subclass. Among questions of law and fact common to the Class and Subclass 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 and Subclass 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.

42. Plaintiffs' claims are typical of the claims of Class and the Subclass because Plaintiffs and each member of the Class and Subclass purchased Hill's Products, and suffered damages and a loss of money as a result of that purchase.

43. Plaintiffs are adequate representatives of the Class and the Subclass because their interests do not conflict with the interests of the Class and Subclass 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 and the Subclass members will be fairly and adequately protected by Plaintiffs and their counsel.

44. 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 and Subclass may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class and Subclass to individually redress these wrongs. There will be no difficulty in the management of this class action.

45. 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 and subclass 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.

46. 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 and Subclass so that final injunctive relief or corresponding declaratory relief is appropriate as to the Class and Subclass as a whole.

COUNT 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 during the Relevant Time Period 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 include, but are not limited to, 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 and/or Class Members gave Defendant notice thereof.

COUNT 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 during the Relevant Time Period.

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, among other things, 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 and/or Class Members gave Defendant notice thereof. Further, Defendant knew and had knowledge of the fact that its Hill's Products failed to conform to these representations and warranties well before Plaintiff and the Class Members.

62. As a direct and proximate result of Defendant's breach of these express warranties 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 caused by these breaches.

COUNT 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 Hill's Products were not fit for such purpose and/or was not otherwise merchantable as set forth above, Plaintiffs and/or Class Members gave Defendant notice thereof. Further,

Defendant knew and had knowledge of the fact that its Hill's Products failed to conform to these representations and warranties well before Plaintiff and the Class Members

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.

COUNT 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 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.

COUNT V

VIOLATION OF THE OHIO CONSUMER SALES PRACTICES ACT

(Ohio Revised Code § 1345.01 et seq.)

73. Plaintiffs and the Ohio Subclass Members hereby reallege and incorporate by reference each allegation set forth above as if fully set forth herein and further allege as follows:

74. Plaintiffs assert this Count on behalf of themselves and the Ohio Subclass.

75. The Ohio Consumer Sales Practices Act, O.R.C. § 1345.02 ("Act"), prohibits unfair or deceptive acts or practices in connection with a consumer transaction. For example, the Act prohibits suppliers from representing that goods have characteristics or uses or benefits which they do not have. The Act also prohibits suppliers from representing that their products or goods are of a particular standard, quality, or grade they are not; that the products or goods have been supplied in accordance with a previous representation, if it has not; and that the transaction involves a warranty, rights, remedies, or obligations if that representation is false. Defendant's actions as described throughout this Complaint violate each of these provisions. The Ohio Consumer Sales Practices Act, O.R.C. § 1345.03, also prohibits unconscionable acts or practices in connection with a consumer transaction which includes the circumstances at issue here where Defendant has knowingly taken advantage of the inability of consumers reasonably to protect their interests because of the consumers' ignorance of the toxic levels of vitamin D present in the Hill's Products and because Defendant knowingly made misleading statement of opinion on which Plaintiffs were likely to rely to their detriment as discussed throughout this Complaint.

76. Defendant is a “supplier” as that term is defined in O.R.C. § 1345.01(C).

77. Plaintiffs and the Ohio Subclass members are “consumers” as that term is defined in O.R.C. § 1345.01(D).

78. Defendant’s conduct alleged above constitutes unfair, deceptive, and unconscionable acts and practices in connection with a consumer transaction in violation of O.R.C. § 1345.02 and § 1345.03. The unfair, deceptive, and unconscionable acts and practices occurred before, during, and after the transactions and include, but are not limited to, misrepresenting that 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,” contain “ingredients from suppliers whose facilities meet stringent quality standards,” and that “each ingredient [is] examined to ensure its safety.”

79. Defendant’s conduct as alleged above constitutes an act or practice previously declared to be deceptive or unconscionable by rule adopted under division (B)(2) of section 1345.05 and previously determined by Ohio courts to violate Ohio’s Consumer Sales Practices Act and was committed after the decisions containing these determinations were made available for public inspection under division (A)(3) of O.R.C. § 1345.05. The applicable rule and Ohio court opinions include, but are not limited to: OAC 109:4-3-16; *Cordray v. Dannon Co.*, PIF No. 10002917 (Dec. 22, 2010); *Brown v. Hartman*, PIF No. 10000070 (Nov. 15, 1982); and *In re United Egg Producers*, PIF No. 10002495 (October 12, 2006).

80. These misrepresentations constitutes the use by Defendant of unconscionable commercial practices, deception, and misrepresentation and, thus constitutes multiple, separate violations of Ohio Revised Code § 1345.01 et seq.

81. Defendant’s conduct caused damages to Plaintiffs and the Ohio Subclass

Members as alleged herein because they would not have purchased Hill's Products, or would not have purchased Hill's Products on the same terms, had they known that the products in fact contained excessive vitamin D; (b) they paid a price premium for Hill's Products based on Defendant's false, deceptive, and misleading statements; and (c) Hill's Products did not have the characteristics and benefits promised because they contained excessive and toxic levels of vitamin D.

82. Accordingly, Plaintiffs and the Ohio Subclass Members suffered damages and are entitled to recover damages and attorneys' fees pursuant to Ohio Revised Code § 1345.09.

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 nationwide Class and Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Subclass and Plaintiffs' attorneys as Class Counsel to represent the Class and Subclass 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 nationwide Class, and the Subclass on all counts asserted herein;
- d. For compensatory (including but not limited to emotional distress), 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 and Subclass their reasonable attorneys' fees and expenses and costs of suit.

JURY TRIAL DEMANDED

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

DESIGNATION OF PLACE OF TRIAL

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

Dated: March 6, 2019

Respectfully submitted,

/s/ John F. Edgar

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