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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

LISETTE KRA, *individually and on behalf of
all others similarly situated,*

Plaintiff,

vs.

HILL'S PET NUTRITION, INC., *and*
COLGATE-PALMOLIVE COMPANY,

Defendants.

Case No. 19-cv-1444

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Lisette Kra (“Plaintiff”), individually and on behalf of all others similarly situated (the “Class,” as defined below), brings this Class Action Complaint against Hill’s Pet Nutrition, Inc., and Colgate-Palmolive Company (together, “Hill’s” or “Defendant”) due to the death of Plaintiff’s pet dog caused by ingestion of tainted and defective canned dog food. Plaintiff bases the allegations below on personal knowledge as to matters related to, and known to, her. As to all other matters, Plaintiff bases her allegations on information and belief, through investigation of her counsel. Plaintiff believes substantial evidentiary support exists for the allegations below, and she seeks a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a class action lawsuit on behalf of purchasers of Defendant’s canned dog food products that caused injury, illness, and/or death to Plaintiff’s and the Class members’ household pet dogs.

2. The canned dog food products at issue include the following products (collectively, the “Products”):

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

Product Name	SKU Number	Date Code / Lot Code
Hill's® Prescription Diet® i/d® Canine 13oz	7008	092020T30 102020T07 102020T11 112020T22 112020T23
Hill's® Prescription Diet® j/d® Canine 13oz	7009	112020T20
Hill's® Prescription Diet® k/d® Canine 13oz	7010	102020T10 102020T11
Hill's® Prescription Diet® w/d® Canine 13oz	7017	092020T30 102020T11 102020T12
Hill's® Prescription Diet® z/d® Canine 13oz	7018	102020T04 112020T22
Hill's® Prescription Diet® Metabolic + Mobility Canine Vegetable & Tuna Stew 12.5oz	10086	102020T05 102020T26
Hill's® Prescription Diet® w/d® Canine Vegetable & Chicken Stew 12.5oz	10129	102020T04 102020T21
Hill's® Prescription Diet® i/d® Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz	10423	102020T17 102020T19 112020T04
Hill's® Prescription Diet® Derm Defense® Canine Chicken & Vegetable Stew 12.5oz	10509	102020T05
Hill's® Science Diet® Adult 7+ Small & Toy Breed Chicken & Barley Entrée Dog Food 5.8oz	4969	102020T18
Hill's® Science Diet® Puppy Chicken & Barley Entrée 13oz	7036	102020T12
Hill's® Science Diet® Adult Chicken & Barley Entrée Dog Food 13oz	7037	102020T13 102020T14 112020T23 112020T24
Hill's® Science Diet® Adult Turkey & Barley Dog Food 13oz	7038	102020T06
Hill's® Science Diet® Adult Chicken & Beef Entrée Dog Food 13oz	7040	102020T13
Hill's® Science Diet® Adult Light with Liver Dog Food 13oz	7048	112020T19
Hill's® Science Diet® Adult 7+ Chicken & Barley Entrée Dog Food 13oz	7055	092020T31 102020T13
Hill's® Science Diet® Adult 7+ Beef & Barley Entrée Dog Food 13oz	7056	092020T31 112020T20 112020T24
Hill's® Science Diet® Adult 7+ Turkey & Barley Entrée 13oz	7057	112020T19
Hill's® Science Diet® Adult 7+ Healthy Cuisine Braised Beef, Carrots & Peas Stew dog food 12.5oz	10452	102020T14 102020T21

Product Name	SKU Number	Date Code / Lot Code
Hill's® Science Diet® Adult 7+ Youthful Vitality Chicken & Vegetable Stew dog food 12.5oz	10763	102020T04 102020T05 112020T11

3. Hill's is a leading North American producer of pet food products sold by retailers, veterinarians, and veterinary clinics nationwide.

4. Hill's holds itself out as a provider of high quality, elite pet food including canned dog food.

5. Hill's produces and sells hundreds of thousands of containers of canned dog food annually.

6. Defendant designed, manufactured, marketed, advertised, and warranted the canned dog food Products.

7. In conjunction with each sale, Defendant marketed, advertised, and warranted that the Products were fit for the ordinary purpose for which such goods are used, consumption by household dogs, and were free from defects.

8. Defendant produces the canned dog food Products intending that consumers will purchase the Products, regardless of the brand or label name, place of purchase, or the location where dogs actually consume them.

9. The canned dog food Products were intended to be placed in the stream of commerce and distributed, offered for sale, and sold to Plaintiff and the Class members in New York and the United States and fed to their pet dogs.

10. As a result of the defective Products, Plaintiff and the Class members have suffered damages including, but not limited to, the fact that they have incurred substantial veterinary bills, suffered injury to and/or death of their pets, and purchased and/or own canned

dog food Products that they would not otherwise have bought had they known the Products were defective.

11. Defendant knows and has admitted that the Products are defective and that they have caused injury, illness, and death to household pet dogs.

12. On or about January 31, 2019, Defendant initiated a voluntary recall of the Products. (U.S. FOOD & DRUG ADMIN., *Hill's Pet Nutrition Voluntarily Recalls Select Canned Dog Food for Excessive Vitamin D* (Jan. 31, 2019), <https://www.fda.gov/Safety/Recalls/ucm630232.htm>.)

13. The recall involves about 675,000 cases of canned dog food. (Kate Gibson, *Pet owners report dog deaths from recalled food on social media*, WWW.CBSNEWS.COM (updated Feb. 8, 2019 11:55 AM), <https://goo.gl/G61Lgo>.)

14. Defendant knew before January 31, 2019, that the Products, or some of them, contained dangerously high levels of vitamin D.

PARTIES

15. Plaintiff Lisette Kra is a resident of Queens County, New York.

16. Hill's Pet Nutrition, Inc., is a corporation organized under the laws of Delaware. Hill's Pet Nutrition, Inc.'s principal place of business is located at 400 Southwest 8th Street, Topeka, Kansas 66603.

17. Colgate-Palmolive Company is a corporation organized under the laws of Delaware. Colgate-Palmolive Company's principal executive office is located at 300 Park Avenue, New York, New York 10022.

18. Colgate-Palmolive Company is the parent company of Hill's Pet Nutrition, Inc. Colgate-Palmolive Company exercises control over Hill's Pet Nutrition, Inc., and derived profit

from the sale of the Products.

JURISDICTION AND VENUE

Jurisdiction

19. This Court has personal jurisdiction over Defendant for reasons including but not limited to the following: Plaintiff's claims arise out of Defendant's conduct within New York, including but not limited to Defendant's conduct of selling the defective canned dog food Products to veterinarians and other consumers throughout New York, including to Plaintiff, who purchased the defective canned dog food in this district and whose losses were suffered here.

20. This Court has original subject-matter jurisdiction over this proposed class action pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (codified in scattered sections of Title 28 of the *United States Code*), under 28 U.S.C. § 1332(d), which provides for the original jurisdiction of the federal district courts over "any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and [that] is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A). Because the proposed Class that Plaintiff seeks to represent includes residents from throughout the United States, the Class necessarily includes citizens from States other than the States of which Hill's Pet Nutrition, Inc., and Colgate-Palmolive Company are citizens, i.e., Delaware, Kansas, and New York. Further, Plaintiff alleges the matter in controversy exceeds \$5,000,000.00 in the aggregate, exclusive of interest and costs. Finally, "the number of members of all proposed plaintiff classes in the aggregate" is greater than 100. *See* 28 U.S.C. § 1332(d)(5)(B).

Venue

21. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of

the events or omissions giving rise to Plaintiff's claims occurred within this district. Plaintiff purchased the Products in this district and her household pet dog consumed the Products and received resulting veterinary care in this district. Numerous other Class members also purchased the Products in this district for consumption by their pets. Defendant caused the Products to be offered for sale and sold to the public, including Plaintiff, in this district.

SUBSTANTIVE ALLEGATIONS

Defendant and the Defective Pet Food Products

22. Defendant Colgate's Form 10-K for the fiscal year ending 2018, filed with the SEC, states: "***Colgate***, through its Hill's Pet Nutrition segment . . . ***is a world leader in specialty pet nutrition products for dogs and cats with products marketed in over 80 countries and territories worldwide***" (emphasis added).

23. The "pet nutrition products" referred to by Defendant Colgate as quoted in the preceding paragraph include Hill's Science Diet and Hill's Prescription Diet products and specifically include the Products at issue in this action.

24. Defendant Colgate's Form 10-K for the fiscal year ending 2018, filed with the SEC, asserts that Colgate "manufactures and markets to a wide variety of products in the U.S. and around the world in two product segments: Oral, Personal and Home Care and Pet Nutrition."

25. The "pet nutrition" products referred to by Defendant Colgate as quoted in the preceding paragraph include Hill's Science Diet and Hill's Prescription Diet products and specifically include the Products at issue in this action.

26. Hill's holds itself out to the public as a producer of safe, nutritious, and high-quality pet food, including canned dog food.

27. Defendant's business includes manufacturing, producing, distributing, or selling dog food under various brands, including "Prescription Diet," "Science Diet," and "Ideal Balance."

28. Defendant produces hundreds of thousands of containers of canned dog food products for sale throughout the United States each year, a substantial proportion of which are sold or offered for sale in New York.

29. Hill's makes numerous express warranties about the quality of its canned dog food and its manufacturing facilities.

30. For example, Hill's encourages consumers to "trust the Hill's standard" and states that the company has a "proven commitment to quality and safety." (Hill's Pet Nutrition, Inc., *Quality & Safety*, WWW.HILLSPET.COM (2019), <https://www.hillspet.com/about-us/quality-and-safety>.)

31. Defendant's website states that "[m]ore than 220 veterinarians, food scientists, technicians and Ph.D. nutritionists at Hill's develop all of Hill's pet foods to meet the needs of your pets." (*Id.*)

32. Defendant's website claims:

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.

(*Id.*)

33. Defendant's website also claims:

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.

(*Id.*)

34. Hill's intended for dog owners to believe its statements and trust that its canned dog food is of first-rate quality.

35. Hill's has a documented history of marketing through the veterinary community. (See Tara Parker-Pope, *Colgate Gives Doctors Treats for Plugging Its Food Brands*, [www.WSJ.COM](http://www.wsj.com) (updated Nov. 3, 1997 9:06 a.m. ET), <https://www.wsj.com/articles/SB878509979865406000>.)

36. Due to consumer perception the Defendant's pet food products are of high quality, they are priced at a premium compared to other pet food products. (*See id.*)

37. As stated above, on or about January 31, 2019, Defendant initiated a voluntary recall of the Products. (U.S. FOOD & DRUG ADMIN., *Hill's Pet Nutrition Voluntarily Recalls Select Canned Dog Food for Excessive Vitamin D* (Jan. 31, 2019), <https://www.fda.gov/Safety/Recalls/ucm630232.htm>.)

38. Notices of the recall posted to Defendant's Facebook and Twitter pages were overwhelmed with replies from distressed pet owners, many of whom claimed their dogs had gotten extremely sick or died after consuming the food. (Michael Brice-Saddler, *A dog food company recalled its products, but these grieving pet owners say it's too late*, [WASHINGTONPOST.COM](http://www.washingtonpost.com) (Feb. 4, 2019), <https://goo.gl/bfbcx2>.) Some of the distressed pet owners said their vets had prescribed Defendant's Products to them. (*Id.*) Others said they had paid thousands in medical bills as a result of the accompanying illness. (*Id.*; see also Hill's Pet Nutrition, [FACEBOOK.COM](https://www.facebook.com/hills.petnutrition) (Jan. 31, 2019 8:42 AM), <https://goo.gl/t2J9X2>; Hill's Pet Nutrition,

TWITTER.COM (Jan. 31. 2019 8:43 AM), <https://twitter.com/HillsPet.>)

39. The defective canned dog food Products contain elevated levels of vitamin D.
40. Excessive vitamin D intake can poison dogs and cause them to experience serious health issues and death.
41. Excessive vitamin D intake by a dog increases calcium, which is harmful to dogs' kidneys.
42. Symptoms of excessive vitamin D intake by a dog may include:
 - vomiting,
 - weakness,
 - depression,
 - loss of appetite,
 - increased thirst (polydipsia),
 - increased urination (polyuria),
 - dark tarry feces containing blood,
 - blood in vomit,
 - loss of weight,
 - constipation,
 - seizures,
 - muscle tremors,
 - abdominal pain,
 - excessive drooling, and
 - joint issues.
43. Vitamin D toxicity is an emergency that requires immediate treatment and hospitalization.
44. Treating dogs with vitamin D toxicity is an expensive and laborious process often involving prolonged hospitalization.
45. Because Defendant's recall involves about 675,000 cases of canned dog food, Plaintiff believes Defendant has sold hundreds of thousands of defective Products nationwide.
46. Defendant manufactured, marketed, advertised, warranted, and sold, either directly or through its authorized distribution channels, the Products that caused Plaintiff's and

the Class members' damages. Plaintiff and the Class members have been or will be forced to pay for damage caused by the defect in the Products.

Factual Allegations Related to Plaintiff

47. Plaintiff's dog Angel Cake, a white miniature schnauzer, was born on December 27, 2005. Plaintiff purchased her as a pet when she was around three months old for around \$900.

48. Angel Cake began eating Hill's Science Diet routinely when she was young.

49. Plaintiff took Angel Cake to the veterinarian for check-ups routinely throughout her life, including having her blood drawn regularly.

50. Angel Cake suffered from kidney impairments when she was around 10 years old. Plaintiff routinely fed her Hill's Prescription Diet k/d (kidney diet) canned or dry dog food.

51. In or around 2016, Angel Cake was diagnosed with chronic kidney disease. Angel Cake continued to routinely eat Hill's Prescription Diet k/d.

52. In December 2018 and January 2019, Plaintiff was continuing to feed Angel Cake Hill's Prescription Diet k/d.

53. On December 28, 2018, Plaintiff took Angel Cake to see her veterinarian because she had been vomiting and had nausea. Angel Cake was abnormally thin at this time and was experiencing weakness. Additionally, Angel Cake's gait was impaired, and she had difficulty walking on her back leg. The veterinarian prescribed her codeine for pain.

54. On January 4, 2019, Plaintiff took Angel Cake back to her veterinarian. She still had nausea and was vomiting, and she still was very thin and seeming weak. Her veterinarian drew blood to do blood work.

55. On or about January 5, 2019, Angel Cake developed loose stool, which

progressed over the next day or so to liquid diarrhea, which had a bloody odor.

56. On or about January 5 or 6, 2019, Angel Cake stopped eating.

57. On January 7, 2019, Plaintiff took Angel Cake to a veterinary hospital for emergency care. Angel Cake was in acute kidney failure. Among other problems, she had not eaten anything for the past 24 to 36 hours, had been lethargic for the past 24 hours, was weak, had diarrhea, was dehydrated, had azotemia, and had high blood pressure. Angel Cake's blood work showed that her calcium level and phosphorus level were high, reflecting kidney failure. High calcium and high phosphorus levels are associated with consumption of elevated levels of vitamin D. The doctor at the veterinary hospital advised that Angel Cake should be hospitalized and said Plaintiff should consider humane euthanasia. Plaintiff elected to proceed with hospitalization and diagnostics.

58. The veterinary hospital then admitted Angel Cake for around 24 hours. The cost to Plaintiff was around \$5,000.

59. The veterinary hospital was able to bring Angel Cake back to a functioning level. However, her phosphorus levels were still somewhat elevated, and she still had a small amount of diarrhea. The hospital discharged Angel Cake on January 9, 2019, because she was no longer in acute kidney failure. The hospital gave Plaintiff medications for Angel Cake including a phosphorus binder (aluminum hydroxide), anti-nausea medication, blood pressure medication, and an antibiotic to treat a possible kidney infection. The hospital told Plaintiff to feed her Defendant's Prescription Diet k/d product and to return in a week.

60. On January 16, 2019, Plaintiff brought Angel Cake back to the veterinary hospital. She had started eating better in around the last 48 hours, and her lab values had improved. Her blood pressure was normal, so the hospital told her to stop taking the blood

pressure medication. Significantly, however, Angel Cake's phosphorus was still elevated. The hospital advised Plaintiff to continue feeding Angel Cake the Prescription Diet k/d product, to continue with medications including an increased dose of the phosphorus binder (aluminum hydroxide), and to return in one week.

61. At around 4:00 a.m. on January 23, 2019, Plaintiff awoke to find Angel Cake unresponsive, and she had vomited. She was not breathing, and Plaintiff did not find a pulse. Plaintiff took her to emergency care at the veterinary hospital. The hospital performed non-invasive CPR on Angel Cake but was not able to resuscitate her, and she passed away on January 23, 2019.

62. As set forth above, on or about January 31, 2019, Defendant announced the recall of the canned dog food Products.

63. Plaintiff first became aware of the recall on February 22, 2019.

64. Prior to the recall, Defendant never warned Plaintiff or any other Class members that the Products would cause their dogs to have health problems.

65. Prior to the recall, Defendant never warned veterinarians that the Products would cause dogs to have health problems.

66. The Food and Drug Administration has posted recalls for dog food with elevated, or potentially elevated, levels of vitamin D from at least eight other brands, since early November, 2018. (Kate Gibson, *Pet owners report dog deaths from recalled food on social media*, www.CBSNEWS.COM (updated Feb. 8, 2019 11:55 AM), <https://goo.gl/G61Lgo>.)

67. The eight other brands share a common contract manufacturer with Defendant. (*Id.*)

68. Defendant knew or should have known about the risks of injury, illness, or death

posed by the defective Products before Plaintiff fed the Products to her dog.

69. As a result of their purchases of the Products, as set forth above, Plaintiff and the Class members have suffered and will suffer damages, including consequential and incidental damages, such as the loss and disability of their household pets; costs of purchasing the defective Products; costs of replacing the defective Products with a safe pet food (including sales tax or similar taxes); incidental transaction costs associated with purchasing safe, non-contaminated pet food and/or in securing a refund for the Product; and all costs associated with obtaining veterinary care for pets who ingested the defective Product including in some instances, the cost of euthanizing their pets.

CLASS ACTION ALLEGATIONS

70. Pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, Plaintiff brings this action on behalf of a proposed class defined as follows:

The Injunctive Relief Class. All persons in the United States who purchased, or incurred damages by using, the Products.

Plaintiff asks the Court to adjudicate only liability, declaratory relief, and injunctive relief through the Injunctive Relief Class. The Injunctive Relief Class does not seek any form of monetary relief.

Excluded from the Injunctive Relief Class are: (a) Defendant, Defendant's board members, executive-level officers, and attorneys, and immediately family members of any of the foregoing persons; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court staff; and (d) any person that timely and properly excludes himself or herself from the Class in accordance with Court-approved procedures.

71. Additionally, pursuant to Rule 23(a) and (b)(3), Plaintiff brings this action on behalf of a proposed class defined as follows:

The Monetary Relief Class. All persons in the United States who purchased, or incurred damages by using, the Products.

Plaintiff asks the Court to adjudicate all remedies through the Monetary Relief

Class.

Excluded from the Monetary Relief Class are: (a) Defendant, Defendant's board members, executive-level officers, and attorneys, and immediately family members of any of the foregoing persons; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court staff; and (d) any person that timely and properly excludes himself or herself from the Class in accordance with Court-approved procedures.

72. Additionally, pursuant to Rule 23(a) and (b)(3), Plaintiff brings this action on behalf of a proposed subclass defined as follows:

The New York Subclass. All persons in New York who purchased, or incurred damages by using, the Products.

Plaintiff asks the Court to adjudicate all remedies through the New York Subclass.

Excluded from the New York Subclass Class are: (a) Defendant, Defendant's board members, executive-level officers, and attorneys, and immediately family members of any of the foregoing persons; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court staff; and (d) any person that timely and properly excludes himself or herself from the Class in accordance with Court-approved procedures.

73. Collectively, the Injunctive Relief Class, the Monetary Relief Class, and the New York Subclass are the "Class."

74. Plaintiff reserves the right to alter the Class definitions as she deems necessary at any time to the full extent that the Federal Rules of Civil Procedure, the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, and applicable precedent allow.

75. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of the claims on a class-wide basis using the same evidence as individual Class members would use to prove those elements in individual actions alleging the same claims.

76. Numerosity; Rule 23(a)(1): The size of the Class is so large that joinder of all Class members is impracticable. Due to the nature of Defendant's business and the size of recent recall (about 675,000 cases of the Products), Plaintiff believes there are hundreds or thousands of Class members geographically dispersed throughout the United States.

77. Existence and Predominance of Common Questions of Law and Fact; Rule 23(a)(2), (b)(3): There are questions of law and fact common to the Class. These questions predominate over any questions affect only individual Class members. Common legal and factual questions include but are not limited to:

- a. whether Defendant sold pet food Products that were recalled or subject to a recall;
- b. whether Defendant advertised, represented, or held itself out as producing or manufacturing pet food Products that were safe for pets to consume;
- c. whether Defendant expressly warranted the Products;
- d. whether Defendant purported to disclaim any express warranty;
- e. whether Defendant purported to disclaim any implied warranty;
- f. whether any limitation on warranty fails to meet its essential purpose;
- g. whether Defendant intended for Plaintiff, the Class members, and others to purchase the Products;
- h. whether Defendant intended or foresaw that Plaintiff, the Class members, and others would feed the Products to their pets;
- i. whether Defendant recalled the pet food Products;
- j. whether and in what manner Defendant was negligent in manufacturing or processing the Products;
- k. whether using the Products as intended (to feed pets) resulted in injury or damages to the Class members;
- l. whether Defendant's negligence proximately caused loss, injury, or damages to the Class members;

- m. whether the Class members suffered direct losses or damages;
- n. whether the Class members suffered indirect losses or damages;
- o. whether the Class members are entitled to actual or other forms of damages and other monetary relief; and
- p. whether the Class members are entitled to equitable relief, including but not limited to injunctive relief and equitable restitution.

78. Defendant engaged in a common course of conduct in contravention of the laws Plaintiff seeks to enforce individually and on behalf of the Class members. Similar or identical violations of law, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action. Moreover, the common questions will yield common answers that will substantially advance the resolution of the case.

79. Typicality; Rule 23(a)(3): Plaintiff's claims are typical of the claims of the Class members because Defendant injured all Class members through the uniform misconduct described herein; all Class members suffered injury due to Defendant's defective canned dog food Products; and Plaintiff seeks the same relief as the Class members.

80. Furthermore, there are no defenses available to Defendant that are unique to Plaintiff.

81. Adequacy of Representation; Rule 23(a)(4): Plaintiff is a fair and adequate representative of the Class because Plaintiff's interests do not conflict with the Class members' interests. Plaintiff will prosecute this action vigorously and is highly motivated to seek redress against Defendant. Furthermore, Plaintiff has selected competent counsel that are experienced in class action and other complex litigation. Plaintiff and her counsel are committed to prosecuting this action vigorously on behalf of the Class and have the resources to do so.

82. Injunctive or Declaratory Relief; Rule 23(b)(2): The requirements for maintaining a class action pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

83. Superiority; Rule 23(b)(3): The class action mechanism is superior to other available means for the fair and efficient adjudication of this controversy for reasons including but not limited to the following:

- a. The damages individual Class members suffered are small compared to the burden and expense of individual prosecution of the complex and extensive litigation needed to address Defendant's conduct.
- b. Further, it would be virtually impossible for the Class members individually to redress effectively the wrongs done to them. Even if Class members themselves could afford such individual litigation, the court system could not. Individualized litigation would unnecessarily increase the delay and expense to all parties and to the court system and presents a potential for inconsistent or contradictory rulings and judgments. By contrast, the class action device presents far fewer management difficulties, allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.
- c. The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for Defendant.
- d. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications or that would substantively impair or impede their ability to protect their interests.

84. Notice: Plaintiff and her counsel anticipate that notice to the proposed Class will be effectuated through recognized, Court-approved notice dissemination methods, which may include United States mail, electronic mail, Internet postings, and/or published notice.

CLAIMS

COUNT I: Breach of Implied Warranty on Behalf of the Class

85. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

86. Plaintiff brings this claim for breach of implied warranty against Defendant on behalf of the Class, all of whom were reasonably foreseeable users of the Products.

87. Defendant manufactured, marketed, sold, and distributed the Products.

88. At the time Defendant marketed, sold, and distributed the Products, Defendant knew of the purpose for which the Products were intended and impliedly warranted that the Products were of merchantable quality and safe and fit for such use.

89. Plaintiff and the Class members reasonably relied upon the skill, superior knowledge, and judgment of Defendant as to whether the Products were of merchantable quality and safe and fit for their intended use.

90. Plaintiff and the Class members could not have known about the risks associated with the Products until after ingestion by their pets.

91. Contrary to Defendant's implied warranty, the Products were not of merchantable quality and were not safe or fit for their intended use.

92. As a direct and proximate result of Defendant's breach of implied warranty, Plaintiff and the Class members suffered damages as alleged herein.

93. Therefore, Plaintiff prays for relief as set forth below.

COUNT II: Breach of Express Warranty on Behalf of the Class

94. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

95. Plaintiff brings this claim for breach of express warranty against Defendant on behalf of the Class.

96. Defendant expressly warranted to Plaintiff and the Class members that the Products were safe for consumption by pets.

97. The Products did not conform to these express representations because the Products are not safe and cause serious side effects in dogs, including illness and death.

98. As a direct and proximate result of Defendant's breaches of its express warranties to Plaintiff and the Class members, and as the direct and legal result of the defect condition of the Products as manufactured and/or supplied by Defendant, and other wrongdoing of Defendant described herein, Plaintiff and the Class members suffered damages.

99. Therefore, Plaintiff prays for relief as set forth below.

COUNT III: Negligence on Behalf of the Class

100. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

101. Plaintiff brings this claim for negligence against Defendant on behalf of the Class.

102. Plaintiff and the Class, as dog owners, were within the foreseeable zone of risk of injury or other losses in the event Defendant's Products were defective or contaminated or otherwise negligently formulated, manufactured, or produced, which risks Defendant knew or should have known.

103. Defendant owed Plaintiff and the Class members a duty to offer only safe, non-contaminated products for consumption by Plaintiff's and the Class members' household pets.

104. Through its failure to exercise due care, Defendant breached this duty by producing, processing, manufacturing, and offering for sale the Products in a defective condition

that was unhealthy and injurious to Plaintiff's and the Class members' pets.

105. Additionally, Defendant breached its duty of care to Plaintiff and the Class members by failing to use sufficient quality control, perform adequate testing, proper manufacturing, production, or processing, and by failing to take sufficient measures to prevent the Products from being offered for sale, sold, or fed to pets.

106. Defendant knew, or in the exercise of reasonable care should have known, that the Products presented an unacceptable risk of harm to the pets of Plaintiff and the Class members and would result in damage that was foreseeable and reasonably avoidable.

107. As a direct and proximate result of Defendant's negligence, Plaintiff and the Class members have suffered loss and damages.

108. Therefore, Plaintiff prays for relief as set forth below.

**COUNT IV: Strict Product Liability on Behalf of the Class
(Design Defect)**

109. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

110. Plaintiff brings this claim for strict product liability design defect against Defendant on behalf of the Class.

111. Defendant is the producer, manufacturer, and/or distributor of the Products.

112. Defendant's Products left Defendant's possession in an unreasonably dangerous condition.

113. Defendant's products reached Plaintiff and the Class members without substantial change in condition, as expected.

114. The Products, which, among other potential defects, contained toxic levels of vitamin D, were in an unreasonably dangerous condition because (a) they failed to perform as

safely as an ordinary consumer would expect when used as intended or when used in a manner reasonably foreseeable to Defendant; and (b) because the foreseeable risks of using the Products outweighed the benefits of their use.

115. Plaintiff and the Class members used the products as intended and in a manner reasonably foreseeable to Defendant.

116. As the direct and foreseeable result of the defective condition of the Products as produced, manufactured, and/or distributed by Defendant, Plaintiff and the Class members suffered damages.

117. Therefore, Plaintiff prays for relief as set forth below.

**COUNT V: Strict Product Liability on Behalf of the Class
(Manufacturing Defect)**

118. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

119. Plaintiff brings this claim for strict product liability (manufacturing defect) against Defendant on behalf of the Class.

120. Defendant is the producer, manufacturer, and/or distributor of the Products.

121. Defendant's Products left Defendant's possession in an unreasonably dangerous condition.

122. Defendant's products reached Plaintiff and the Class members without substantial change in condition, as expected.

123. The Products were unreasonably dangerous because they were different from their intended design and failed to perform as safely as the intended design would have performed.

124. The Products failed to perform as safely as their intended design because, among other potential defects, the Products contained toxic levels of vitamin D.

125. Plaintiff and the Class members used the products as intended and in a manner reasonably foreseeable to Defendant.

126. As the direct and foreseeable result of the defective condition of the Products as manufactured, Plaintiff and the Class members suffered damages.

127. Therefore, Plaintiff prays for relief as set forth below.

**COUNT VI: Strict Product Liability on Behalf of the Class
(Failure to Warn)**

128. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

129. Plaintiff brings this claim for strict product liability against Defendant on behalf of the Class.

130. Defendant is the producer, manufacturer, and/or distributor of the Products.

131. The foreseeable risks of harm from the Products could have been reduced or avoided had Defendant provided reasonable and timely instructions or warnings.

132. Defendant's failure to provide reasonable and timely instructions or warnings rendered the Products unreasonably dangerous.

133. As the direct and foreseeable result of the Defendant's failure to provide reasonable and timely instructions or warnings, thus rendering the Products defective, Plaintiff and the Class members suffered damages.

134. Therefore, Plaintiff prays for relief as set forth below.

COUNT VII: Negligent Failure to Warn On Behalf of the Class

135. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

136. Plaintiff brings this claim for negligence against Defendant on behalf of the Class.

137. At all times relevant to this Complaint, Plaintiff and the Class members, as dog owners, were within the foreseeable zone of risk of injury or other losses if Defendant failed to give appropriate warnings of the particular risks of using the Products, which risks Defendant knew or should have known.

138. Defendant owed Plaintiff and the Class members a duty to give appropriate warnings of the particular risks of using the Products, which risks Defendant knew or should have known.

139. Defendant breached this duty by failing to warn of the risks particular to the Products, including the risk of toxicity to Plaintiff's and the Class members' pets.

140. As the direct and foreseeable result of the Defendant's negligent failure to give these appropriate warnings, Plaintiff and the Class members suffered damages.

141. Therefore, Plaintiff prays for relief as set forth below.

COUNT VIII: Violation of Consumer Protection Statutes On Behalf of the Class

142. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

143. Plaintiff brings this claim for deceptive acts and practices in violation of various states' consumer protection statutes against Defendant on behalf of the Class.

144. Defendants have engaged in deceptive acts and unfair practices that have caused actual damages to Plaintiff and the Class members.

145. New York General Business Law section 349 prohibits "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in [the State of New York]." N.Y. GEN. BUS. LAW § 349.

146. Defendant has violated section 349 by engaging in the deceptive acts and

practices described above and incorporated into this count, which are unconscionable and injurious to consumers, and which include Defendant's failure to properly test and inspect the Products before releasing them into the stream of commerce and Defendant's failure to provide adequate, appropriate or timely warnings of the dangers posed by the Products.

147. An objectively reasonable consumer acting reasonably in the circumstances would have been deceived by Defendant's acts and practices.

148. Plaintiff and the Class members have sustained actual damages as a result of Defendant's deceptive acts and practices, which violate New York General Business Law section 349. Damages include at least those identified in ¶ 69 above.

149. Plaintiff and the Class members demand damages, attorneys' fees and costs, and any other equitable and legal relief to which they may be entitled. The amount of such damages is to be determined at trial, but will not be less than \$50.00 per incident. N.Y. GEN. BUS. LAW § 349(h).

150. Plaintiff's claims under New York General Business Law section 349 are representative of similar claims available to non-New York Subclass members under the laws of other states, which also are amenable to further sub-class treatment, particularly where the counterpart laws require no showing of reliance or employ an objective reliance standard. Such laws may include, but are not limited to: Ala. Code §§ 8-19-1 et seq.; Alaska Stat. § 45.50.471; Ariz. Rev. Stat. Ann. §§ 44-1521 et seq.; Ark. Code Ann. § 4-8-01, et seq.; Cal. Civil Code §§ 1770 et seq. and Cal. Bus. & Prof. Code §§ 17200 et seq.; Colo. Rev. Stat. §§ 6-1-05 et seq.; Conn. Gen. Stat. Ann. §§ 42-110a et seq.; Del. Code Ann. Tit. 6 §§ 2511 et seq. & 2531 et seq.; D.C. Code Ann. §§ 28-3901 et seq.; Fla. Stat. §§ 501.201 et seq.; Ga. Code Ann. §§ 10-1-372 and 10-1-420; Haw. Rev. Stat. §§ 480-1 et seq.; Idaho Code §§ 48-601 et seq.; 815 Ill. Comp.

Stat. 505/1 et seq.; Ind. Code Ann. 24-5-0.5-3; Iowa Code § 714.16; Kan. Stat. Ann. §§ 50-623 et seq.; Ky. Rev. Stat. Ann. § 367.170; La. R.S. §§ 1401 et seq.; Me. Rev. Stat. Ann tit. 5, §§ 205-A et seq.; Md. Code Ann., Com. Law §§ 13-301 et seq.; Mass. Ge. Laws ch. 93A, §§ 1 et seq.; Mich. Comp. Laws Ann. §§ 445.901 et seq.; Minn. Stat. §§ 325D.44 et seq.; Miss. Code Ann. §§ 75-24-1 et seq.; Mo. Ann. Stat. §§ 407.010 et seq.; Mont. Code Ann. §§ 30-14-101 et seq.; Neb. Rev. Stat. Ann. §§ 59-1601 et seq.; Nev. Rev. Stat. Ann. §§ 598.0903 et seq.; N.H. Rev. Stat. Ann. §§ 358-A:1 et seq.; N.J. Stat. Ann. §§ 56:8-1 et seq.; N.M. Stat. Ann. §§ 57-12-1 et seq.; N.C. Gen. Stat. §§ 75-1 et seq.; N.D. Cent. Code §§ 51-12-01 et seq. and 51-15-01 et seq.; Ohio Rev. Code Ann. §§ 1345.01 et seq.; Okla Stat. Ann. Tit. 15, §§ 751 et seq.; Or. Rev. Stat. §§ 646.605 et seq.; 73 Pa. Cons. Stat. §§ 201-1 et seq.; R.I. Gen. Laws §§ 6-13.1-1 et seq.; S.C. Code Ann. §§ 39-5-10 et seq.; S.D. Codified Laws §§ 37-24-1 et seq.; Tenn. Code Ann. § 47-18-109(a)(1); Tex. Bus. & Com. Code Ann. §§ 17.41 et seq.; Utah Code Ann. §§ 13-11-1 et seq.; Vt. Stat. Ann. Tit. 9, §§ 2453 et seq.; Va. Code Ann. §§ 59.1-196 et seq.; Wash Rev. Code Ann. §§ 19.86.010 et seq.; W. Va. Code 46A-6-101 et seq.; Wis. Stat. Ann. § 100.18; and Wyo. Stat. Ann. §§ 40-12-101 et seq.

151. Therefore, Plaintiff prays for relief as set forth below.

**COUNT IX: Violation of New York General Business Law section 350
On Behalf of the New York Subclass**

152. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

153. Plaintiff brings this claim for violation of New York General Business Law section 350 on behalf of the New York Subclass.

154. New York General Business Law section 350 prohibits “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in [the State of

New York].” N.Y. GEN. BUS. LAW § 350.

155. New York General Business Law section 350-a defines “false advertising” as “advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of any employment opportunity if such advertising is misleading in a material respect.” N.Y. GEN. BUS. LAW § 350-a(1).

156. Section 350-a also provides that advertising can be false by omission, as it further states that “[i]n determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual.” *Id.*

157. Defendant’s marketing and advertising of the Products, as alleged herein, are “misleading in a material respect,” and thus “false advertising,” for reasons including that Defendant made material omissions in that it failed to provide adequate, appropriate or timely warnings of the dangers posed by the Products.

158. An objectively reasonable consumer acting reasonably in the circumstances would have been deceived by Defendant’s acts and practices.

159. Plaintiff and the New York Subclass members have sustained actual damages as a result of Defendant’s false and misleading advertising, which violates New York General Business Law section 350. Damages include at least those identified in ¶ 69 above.

160. Plaintiff and the New York Subclass members demand damages, attorneys’ fees and costs, and any other equitable and legal relief to which they may be entitled. The amount of

such damages is to be determined at trial, but will not be less than \$500.00 per incident. N.Y. GEN. BUS. LAW § 350-e(3).

161. Therefore, Plaintiff prays for relief as set forth below.

COUNT X: Unjust Enrichment On Behalf of the Class

162. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

163. Plaintiff brings this claim for unjust enrichment against Defendant on behalf of the Class.

164. As a direct, proximate, and foreseeable result of Defendant's acts and otherwise wrongful conduct, Plaintiff and the Class members conferred a benefit on Defendant and consequently suffered damages. Defendant profited and benefited from the sale of the Products, even as the Products caused Plaintiff and the Class members to incur damages.

165. Defendant voluntarily accepted and retained these profits and benefits, derived from Plaintiff and the Class members, with full knowledge and awareness that as a result of Defendant's wrongdoing, consumers including Plaintiff and the Class members were not receiving Products of the quality, nature, fitness, or value that had been represented by Defendant or that reasonable consumers expected. Plaintiff and the Class members purchased pet food that they expected would be safe and healthy for their pets and instead have now had to endure the serious injury, illness, hospitalization, and/or death of their beloved pets.

166. Defendant continues to possess monies paid by Plaintiff and the Class members to which Defendant is not entitled.

167. Under the circumstances it would be inequitable for Defendants to retain the benefits conferred upon it and Defendant's retention of these benefits violates fundamental

principles of justice, equity, and good conscience.

168. Plaintiff and the Class members hereby seek the disgorgement and restitution of Defendant's wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed appropriate by the Court, and such other relief as the Court deems just and proper to remedy Defendant's unjust enrichment.

169. Therefore, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the members of the Class, respectfully requests the Court to enter an Order:

A. certifying the proposed Class under Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3), as set forth above;

B. declaring that Defendant is financially responsible for notifying the Class members of the pendency of this suit;

C. declaring that Defendant has committed the violations of law alleged herein;

D. providing for any and all injunctive relief the Court deems appropriate;

E. awarding monetary damages, including but not limited to any compensatory, incidental, or consequential damages in an amount that the Court or jury will determine, in accordance with applicable law;

F. providing for any and all equitable monetary relief the Court deems appropriate;

G. awarding punitive or exemplary damages in accordance with proof and in an amount consistent with applicable precedent;

H. awarding Plaintiff her reasonable costs and expenses of suit, including attorneys' fees;

- I. awarding pre- and post-judgment interest to the extent the law allows; and
- J. providing such further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all claims so triable.

Date: March 12, 2019

Respectfully submitted,

By: /s/ Michael R. Reese

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