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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO / OAKLAND DIVISION

JOHN NAVARRETE, SUSAN TARRENCE,
JANET SCHAEFER, KELLEY O'NEILL,
CARA KAUFMANN, TESSA ELLIS, NANCY
LERNER, LISA KANNAIR, MICHAEL
YESENKO, CHAD WHEELER, HARRIET
MANOLI, DONNA FOLBAUM, KEITH HECK,
MISTIE LOGGINS, THOMAS GORHAM,
LINDA COLE, DIANE TYSON, AARON
SIZEMORE, JAMIE TURNER, LEONE
MARKHAM, SHARON JESPERSEN, SYLVIA
BARTON, LINDA FOSTER, MELODY FELD,
PATRICIA SCHMITS-WEAGLY, Individually
and on Behalf of all Others Similarly Situated,

Plaintiffs,

v.

HILL'S PET NUTRITION, INC,

Defendant.

Case No. 3:19-cv-00767-WHA

**FIRST AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

1 Plaintiffs John Navarrete, Susan Tarrence, Janet Schaefer, Kelley O'Neill, Cara Kaufmann,
 2 Tesha Ellis, Nancy Lerner, Lisa Kannair, Michael Yesenko, Chad Wheeler, Harriet Manoli, Donna
 3 Folbaum, Keith Heck, Mistie Loggins, Thomas Gorham, Linda Cole, Diane Tyson, Aaron
 4 Sizemore, Jamie Turner, Leone Markham, Sharon Jespersen, Sylvia Barton, Linda Foster, Melody
 5 Feld, Patricia Schmits-Weagly (together, "Plaintiffs"), individually and on behalf of all others
 6 similarly situated, upon personal knowledge, information, and belief allege as follows:

7 NATURE OF THE ACTION

8 1. Defendant Hill's Pet Nutrition, Inc. ("Defendant") is a large-scale manufacturer of
 9 pet nutrition products, including dog and cat food. Defendant markets, advertises, and warrants its
 10 dog food as fit for consumption by canines, with the precise balance of nutrients to meet the needs
 11 of pets, and free from defects. As alleged herein, Defendant's Recalled Products (defined below)
 12 were not fit for their stated and intended purpose.

13 2. On or about January 31, 2019, Defendant recalled select canned dog food products
 14 because the products contained excessive amounts of vitamin D. Defendant updated its list of
 15 recalled products on February 8, 2019 and again on March 20, 2019.¹ According to Defendant's
 16 website, canine consumption of excessive amounts of vitamin D can lead to serious health issues,
 17 including "vomiting, loss of appetite, increased thirst, increased urination, excessive drooling,
 18 weight loss, and joint issues." Defendant's website further states that ingestion of excessive
 19 amounts of vitamin D can be "toxic," and that "[p]rolonged and high exposure can potentially lead
 20 to calcification of soft tissues such as kidneys and resulting in renal dysfunction."

21 3. In 2018 and 2019, Plaintiffs purchased Defendant's dog food products for their pets.
 22 These pets were fed Defendant's dog food on a daily basis and exhibited symptoms consistent with
 23 vitamin D poisoning, such as loss of appetite, increased thirst, increased urination, excessive
 24 drooling, weight loss, joint issues, kidney dysfunction, and, in many cases, death. Plaintiffs incurred
 25 substantial veterinary and related medical expenses as a result of their pets' deteriorating health
 26 conditions.

27
 28 ¹ <https://www.hillspet.com/productlist> (last visited March 21, 2019)

4. This class action lawsuit is brought on behalf of Plaintiffs and other similarly situated individuals who purchased the Unsafe Products, as defined below.

5. Plaintiff Navarrette (“Plaintiff Navarrette” or “Navarrette”) is, and at all times relevant hereto has been, a citizen of the state of California. On October 1, 2018, Navarrette purchased Recalled Products for his German Sheppard, Goliath, from a PetSmart store in Concord, California. Between October 2018 and January 2019, Navarrette purchased additional Recalled Products for Goliath. Prior to purchasing the Recalled Products, Navarrette saw the nutritional claims and labels on the packaging, which he relied on in deciding to purchase the Recalled Products. At the time Navarrette purchased and fed the Recalled Products to his dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Navarrette was unaware that the Recalled Products contained excessive amounts of vitamin D. Navarrette fed the Recalled Products to his dog between approximately October 2018 and January 2019. Navarrette would not have purchased the Recalled Products or fed the Recalled Products to his dog if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

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1 7. Plaintiff Susan Tarrence (“Plaintiff Tarrence” or “Tarrence”) is a citizen of the state
2 of Arizona. Between Summer of 2018 and January 2019, Tarrence purchased Recalled Products
3 for her Havanese, Pip, in New Jersey and in Arizona. Prior to purchasing the Recalled Products,
4 Tarrence saw the nutritional claims and labels on the packaging, which she relied on in deciding to
5 purchase the Recalled Products. At the time Tarrence purchased and fed the Recalled Products to
6 her dog, due to the false and misleading claims, warranties, representations, advertisements, and
7 other marketing by Defendant, Tarrence was unaware that the Recalled Products contained
8 excessive amounts of vitamin D. Tarrence fed the Recalled Products to her dog for about six months
9 between Summer 2018 and January 2019. Tarrence would not have purchased the Recalled
10 Products or fed the Recalled Products to her dog if Defendant had disclosed that the Recalled
11 Products contained excessive amounts of vitamin D.

12 8. Plaintiff Janet Schaefer (“Plaintiff Schaefer” or “Schaefer”) is, and at all times
13 relevant hereto has been, a citizen of the state of Arizona. Between Winter of 2018 and January
14 2019, Plaintiff Schaefer purchased Recalled Products for her miniature Dachshund, Tony, and two
15 other dogs. Prior to purchasing the Recalled Products, Schaefer saw the nutritional claims and labels
16 on the packaging, which she relied on in deciding to purchase the Recalled Products. At the time
17 Schaefer purchased and fed the Recalled Products to her dogs, due to the false and misleading
18 claims, warranties, representations, advertisements, and other marketing by Defendant, Schaefer
19 was unaware that the Recalled Products contained excessive amounts of vitamin D. Schaefer fed
20 the Recalled Products to her dogs for several months between Winter 2018 and January 2019.
21 Schaefer would not have purchased the Recalled Products or fed the Recalled Products to her dogs
22 if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

23 9. Plaintiff Cara Kaufmann (“Plaintiff Kaufmann” or “Kaufmann”) is, and at all times
24 relevant hereto has been, a citizen of the state of Connecticut. On January 16, 2019, Plaintiff
25 Kauffman purchased Recalled Products for her Pomeranian, Gus. Prior to purchasing the Recalled
26 Products, Kaufmann saw the nutritional claims and labels on the packaging, which she relied on in
27 deciding to purchase the Recalled Products. At the time Kaufmann purchased and fed the Recalled
28 Products to her dog, due to the false and misleading claims, warranties, representations,

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1 advertisements, and other marketing by Defendant, Kaufmann was unaware that the Recalled
2 Products contained excessive amounts of vitamin D. Kaufmann fed the Recalled Products to her
3 dog for a few weeks in January 2019. Kaufmann would not have purchased the Recalled Products
4 or fed the Recalled Products to her dog if Defendant had disclosed that the Recalled Products
5 contained excessive amounts of vitamin D.

6 10. Plaintiff Tesha Ellis (“Plaintiff Ellis” or “Ellis”) is, and at all times relevant hereto
7 has been, a citizen of the state of Georgia. Between mid-December 2018 and January 2019, Plaintiff
8 Ellis purchased Recalled Products from Chewy.com for her Yorkiepoo, Tyson. Prior to purchasing
9 the Recalled Products, Ellis saw the nutritional claims and labels on the packaging, which she relied
10 on in deciding to purchase the Recalled Products. At the time Ellis purchased and fed the Recalled
11 Products to her dog, due to the false and misleading claims, warranties, representations,
12 advertisements, and other marketing by Defendant, Ellis was unaware that the Recalled Products
13 contained excessive amounts of vitamin D. Ellis fed the Recalled Products to her dog for a few
14 weeks between December 2018 and January 2019. Ellis would not have purchased the Recalled
15 Products or fed the Recalled Products to her dog if Defendant had disclosed that the Recalled
16 Products contained excessive amounts of vitamin D.

17 11. Plaintiff Nancy Lerner (“Plaintiff Lerner” or “Lerner”) is, and at all times relevant
18 hereto has been, a citizen of the state of Illinois. Plaintiff Lerner purchased Recalled Products from
19 the Village Animal Clinic in Carol Stream, Illinois for her black German Sheppard, Kolt, and Collie
20 German Sheppard, Titus. Prior to purchasing the Recalled Products, Lerner saw the nutritional
21 claims and labels on the packaging, which she relied on in deciding to purchase the Recalled
22 Products. At the time Lerner purchased and fed the Recalled Products to her dogs, due to the false
23 and misleading claims, warranties, representations, advertisements, and other marketing by
24 Defendant, Lerner was unaware that the Recalled Products contained excessive amounts of vitamin
25 D and fed the Recalled Products to her dogs. Lerner would not have purchased the Recalled
26 Products or fed the Recalled Products to her dogs if Defendant had disclosed that the Recalled
27 Products contained excessive amounts of vitamin D.

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12. Plaintiff Lisa Kannair (“Plaintiff Kannair” or “Kannair”) is, and at all times relevant hereto has been, a citizen of the state of Indiana. In or around November 2018, Plaintiff Kannair purchased Recalled Products from Amazon.com for her Keeshond, Dakota. Prior to purchasing the Recalled Products, Kannair saw the nutritional claims and labels on the packaging, which she relied on in deciding to purchase the Recalled Products. At the time Kannair purchased and fed the Recalled Products to her dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Kannair was unaware that the Recalled Products contained excessive amounts of vitamin D. Kannair fed the Recalled Products to her dog for several weeks between November 2018 and December 2018. Kannair would not have purchased the Recalled Products or fed the Recalled Products to her dog if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

13. Plaintiffs Michael Yesenko and Chad Wheeler (“Plaintiffs Yesenko and Wheeler” or “Yesenko and Wheeler”) are, and at all times relevant hereto have been, citizens of the state of Maryland. In Fall of 2018, Plaintiffs Yesenko and Wheeler purchased Hill’s Prescription Diet j/d 13oz cans (SKU number 7009) with Best Before dates of 09 2020 (the “j/d Cans”) from Chewy.com for their Cairn Terrier, Dixie. They also purchased Hill’s Science Diet Chicken & Beef Entrée Adult 1-6 13oz cans (SKU number 7040) with Best Before dates of 12 2020 (the “Chicken & Beef Cans”) for Dixie. Prior to purchasing the j/d Cans and the Chicken & Beef Cans, Yesenko and Wheeler saw the nutritional claims and labels on the packaging, which they relied on in deciding to purchase the j/d Cans and the Chicken & Beef Cans. At the time Yesenko and Wheeler purchased and fed the j/d Cans and the Chicken & Beef Cans to their dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Yesenko and Wheeler were unaware that the j/d Cans and the Chicken & Beef Cans contained excessive amounts of vitamin D. Yesenko and Wheeler fed the j/d Cans and the Chicken & Beef Cans to their dog for several months between Fall of 2018 and early 2019. Yesenko and Wheeler would not have purchased the j/d Cans and the Chicken & Beef Cans, nor fed the j/d Cans and Chicken & Beef Cans to their dog if Defendant had disclosed that the j/d Cans and Chicken & Beef Cans contained excessive amounts of vitamin D.

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1 14. Plaintiff Harriet Manoli (“Plaintiff Manoli” or “Manoli”) is, and at all times relevant
2 hereto has been, a citizen of the state of Massachusetts. In or around Fall of 2018, Plaintiff Manoli
3 purchased Hill’s Science Diet Adult Light with Liver Dog Food 13oz cans (SKU number 7048)
4 with Best Before date of 07 2020 (the “Adult Light and Liver Cans”) from Chewy.com for her
5 cocker spaniel, Lily. Prior to purchasing the Adult Light and Liver Cans, Manoli saw the nutritional
6 claims and labels on the packaging, which she relied on in deciding to purchase the Adult Light
7 and Liver Cans. At the time Manoli purchased and fed the Adult Light and Liver Cans to her dog,
8 due to the false and misleading claims, warranties, representations, advertisements, and other
9 marketing by Defendant, Manoli was unaware that the Adult Light and Liver Cans contained
10 excessive amounts of vitamin D and fed the Adult Light and Liver Cans to her dog. Manoli would
11 not have purchased the Adult Light and Liver Cans or fed the Adult Light and Liver Cans to her
12 dog if Defendant had disclosed that the Adult Light and Liver Cans contained excessive amounts
13 of vitamin D.

14 15. Plaintiff Donna Folbaum (“Plaintiff Folbaum” or “Folbaum”) is, and at all times
15 relevant hereto has been, a citizen of the state of Michigan. In or around early 2018 to September
16 2018, Plaintiff Folbaum purchased Recalled Products for her Poodle/Pyrenees mix, Reagan. Prior
17 to purchasing the Recalled Products, Folbaum saw the nutritional claims and labels on the
18 packaging, which she relied on in deciding to purchase the Recalled Products. At the time Folbaum
19 purchased and fed the Recalled Products to her dog, due to the false and misleading claims,
20 warranties, representations, advertisements, and other marketing by Defendant, Folbaum was
21 unaware that the Recalled Products contained excessive amounts of vitamin D. Folbaum fed the
22 Recalled Products to her dog for several months throughout 2018. Folbaum would not have
23 purchased the Recalled Products or fed the Recalled Products to her dog if Defendant had disclosed
24 that the Recalled Products contained excessive amounts of vitamin D.

25 16. Plaintiff Keith Heck (“Plaintiff Heck” or “Heck”) is, and at all times relevant hereto
26 has been, a citizen of the state of Minnesota. In 2018, Plaintiff Heck purchased Recalled Products
27 for his Labrador Retriever, Oshie, and Chihuahua, Pedro. Prior to purchasing the Recalled Products,
28 Heck saw the nutritional claims and labels on the packaging, which he relied on in deciding to

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1 purchase the Recalled Products. At the time Heck purchased and fed the Recalled Products to his
2 dog, due to the false and misleading claims, warranties, representations, advertisements, and other
3 marketing by Defendant, Heck was unaware that the Recalled Products contained excessive
4 amounts of vitamin D and fed the Recalled Products to his dogs. Heck would not have purchased
5 the Recalled Products or fed the Recalled Products to his dogs if Defendant had disclosed that the
6 Recalled Products contained excessive amounts of vitamin D.

7 17. Plaintiff Mistie Loggins (“Plaintiff Loggins” or “Loggins”) is, and at all times
8 relevant hereto has been, a citizen of the state of Nevada. In 2018, Plaintiff Loggins purchased
9 Recalled Products from Chewy.com for her Chihuahua mix, Peanut Butter Jones. Prior to
10 purchasing the Recalled Products, Loggins saw the nutritional claims and labels on the packaging,
11 which she relied on in deciding to purchase the Recalled Products. At the time Loggins purchased
12 and fed the Recalled Products to her dog, due to the false and misleading claims, warranties,
13 representations, advertisements, and other marketing by Defendant, Loggins was unaware that the
14 Recalled Products contained excessive amounts of vitamin D and fed the Recalled Products to her
15 dog. Loggins would not have purchased the Recalled Products or fed the Recalled Products to her
16 dog if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin
17 D.

18 18. Plaintiff Thomas Gorham (“Plaintiff Gorham” or “Gorham”) is, and at all times
19 relevant hereto has been, a citizen of the state of New York. Between January 2018 and October
20 2018, Plaintiff Gorham purchased Recalled Products for his Miniature Schnauzer, Zoe. Prior to
21 purchasing the Recalled Products, Gorham saw the nutritional claims and labels on the packaging,
22 which he relied on in deciding to purchase the Recalled Products. At the time Gorham purchased
23 and fed the Recalled Products to his dog, due to the false and misleading claims, warranties,
24 representations, advertisements, and other marketing by Defendant, Gorham was unaware that the
25 Recalled Products contained excessive amounts of vitamin D. Gorham fed the Recalled Products
26 to his dog for several months between January 2018 and October 2018. Gorham would not have
27 purchased the Recalled Products or fed the Recalled Products to his dog if Defendant had disclosed
28 that the Recalled Products contained excessive amounts of vitamin D.

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1 19. Plaintiff Linda Cole (“Plaintiff Cole” or “Cole”) is, and at all times relevant hereto
2 has been, a citizen of the state of North Carolina. In early January 2019, Plaintiff Cole purchased
3 Recalled Products for her Goldendoodle, Riley. Prior to purchasing the Recalled Products, Cole
4 saw the nutritional claims and labels on the packaging, which she relied on in deciding to purchase
5 the Recalled Products. At the time Cole purchased and fed the Recalled Products to her dog, due to
6 the false and misleading claims, warranties, representations, advertisements, and other marketing
7 by Defendant, Cole was unaware that the Recalled Products contained excessive amounts of
8 vitamin D. Cole fed the Recalled Products to her dog for several weeks in January 2019. Cole would
9 not have purchased the Recalled Products or fed the Recalled Products to her dog if Defendant had
10 disclosed that the Recalled Products contained excessive amounts of vitamin D.

11 20. Plaintiff Diane Tyson (“Plaintiff Tyson” or “Tyson”) is, and at all times relevant
12 hereto has been, a citizen of the state of Ohio. In 2018, Plaintiff Tyson purchased Recalled Products
13 for her Bull Mastiff–Boxer mix, Bryce. Prior to purchasing the Recalled Products, Tyson saw the
14 nutritional claims and labels on the packaging, which she relied on in deciding to purchase the
15 Recalled Products. At the time Tyson purchased and fed the Recalled Products to her dog, due to
16 the false and misleading claims, warranties, representations, advertisements, and other marketing
17 by Defendant, Tyson was unaware that the Recalled Products contained excessive amounts of
18 vitamin D and fed the Recalled Products to her dog. Tyson would not have purchased the Recalled
19 Products or fed the Recalled Products to her dog if Defendant had disclosed that the Recalled
20 Products contained excessive amounts of vitamin D.

21 21. Plaintiffs Aaron Sizemore and Jamie Turner (“Plaintiffs Sizemore and Turner” or
22 “Sizemore and Turner”) are, and at all times relevant hereto have been, citizens of the state of Ohio.
23 In or around November 2018, Plaintiffs Sizemore and Turner purchased Recalled Products from
24 the West Side Animal Clinic in Hamilton, Ohio for their Pitbull, Capone. Prior to purchasing the
25 Recalled Products, Sizemore and Turner saw the nutritional claims and labels on the packaging,
26 which they relied on in deciding to purchase the Recalled Products. At the time Sizemore and
27 Turner purchased and fed the Recalled Products to their dog, due to the false and misleading claims,
28 warranties, representations, advertisements, and other marketing by Defendant, Sizemore and

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1 Turner were unaware that the Recalled Products contained excessive amounts of vitamin D.
2 Sizemore and Turner fed the Recalled Products to their dog for several months between November
3 2018 and January 2019. Sizemore and Turner would not have purchased the Recalled Products or
4 fed the Recalled Products to their dog if Defendant had disclosed that the Recalled Products
5 contained excessive amounts of vitamin D.

6 22. Plaintiff Leone Markham (“Plaintiff Markham” or “Markham”) is, and at all times
7 relevant hereto has been, a citizen of the state of Oregon. On or around November 12, 2018, Plaintiff
8 Markham purchased Recalled Products from the Mountain View Animal Hospital in Redmond,
9 Oregon for her Boston Terrier, Penny. Markham purchased additional Recalled Products online
10 from Petco.com. Prior to purchasing the Recalled Products, Markham saw the nutritional claims
11 and labels on the packaging, which she relied on in deciding to purchase the Recalled Products. At
12 the time Markham purchased and fed the Recalled Products to her dog, due to the false and
13 misleading claims, warranties, representations, advertisements, and other marketing by Defendant,
14 Markham was unaware that the Recalled Products contained excessive amounts of vitamin D.
15 Markham fed the Recalled Products to her dog for several weeks beginning on or about November
16 12, 2018. Markham would not have purchased the Recalled Products or fed the Recalled Products
17 to her dog if Defendant had disclosed that the Recalled Products contained excessive amounts of
18 vitamin D.

19 23. Plaintiff Sharon Jespersen (“Plaintiff Jespersen” or “Jespersen”) is, and at all times
20 relevant hereto has been, a citizen of the state of Pennsylvania. In or around early January 2019,
21 Plaintiff Jespersen purchased Recalled Products from Tractor Supply for her Miniature Pinscher,
22 Abby. Prior to purchasing the Recalled Products, Jespersen saw the nutritional claims and labels
23 on the packaging, which she relied on in deciding to purchase the Recalled Products. At the time
24 Jespersen purchased and fed the Recalled Products to her dog, due to the false and misleading
25 claims, warranties, representations, advertisements, and other marketing by Defendant, Jespersen
26 was unaware that the Recalled Products contained excessive amounts of vitamin D. Jespersen fed
27 the Recalled Products to her dog for several weeks in January 2019. Jespersen would not have
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1 purchased the Recalled Products or fed the Recalled Products to her dog if Defendant had disclosed
2 that the Recalled Products contained excessive amounts of vitamin D.

3 24. Plaintiff Sylvia Barton (“Plaintiff Barton” or “Barton”) is, and at all times relevant
4 hereto has been, a citizen of the state of Pennsylvania. In 2018, Plaintiff Barton purchased Recalled
5 Products from Chewy.com for her Chinese Crescent Powder Puff, Mojo. Prior to purchasing the
6 Recalled Products, Barton saw the nutritional claims and labels on the packaging, which she relied
7 on in deciding to purchase the Recalled Products. At the time Barton purchased and fed the Recalled
8 Products to her dog, due to the false and misleading claims, warranties, representations,
9 advertisements, and other marketing by Defendant, Barton was unaware that the Recalled Products
10 contained excessive amounts of vitamin D and fed the Recalled Products to her dog. Barton would
11 not have purchased the Recalled Products or fed the Recalled Products to her dog if Defendant had
12 disclosed that the Recalled Products contained excessive amounts of vitamin D.

13 25. Plaintiff Linda Foster (“Plaintiff Foster” or “Foster”) is, and at all times relevant
14 hereto has been, a citizen of the state of Pennsylvania. In or around early August 2018, Plaintiff
15 Foster purchased Hill’s Prescription Diet a/d Canine/Feline, 5.5oz cans with Best Before dates of
16 08 2020 (“Prescription Diet a/d”) for her Yorkshire Terrier, Raven. Prior to purchasing the
17 Prescription Diet a/d products, Foster saw the nutritional claims and labels on the packaging, which
18 she relied on in deciding to purchase the Prescription Diet a/d food for Raven. At the time Foster
19 purchased and fed the Prescription Diet a/d product to her dog, due to the false and misleading
20 claims, warranties, representations, advertisements, and other marketing by Defendant, Foster was
21 unaware that the Prescription Diet a/d product contained excessive amounts of vitamin D and fed
22 it to her dog. Foster would not have purchased the Prescription Diet a/d product or fed it to her dog
23 if Defendant had disclosed that the Prescription Diet a/d product contained excessive amounts of
24 vitamin D.

25 26. Plaintiff Patricia Schmits-Weagly (“Plaintiff Schmits-Weagly” or “Schnits-
26 Weagly”) is, and at all times relevant hereto has been, a citizen of the state of Texas. In or around
27 August or September 2018, Plaintiff Schmits-Weagly purchased Hill’s Science Diet Small & Toy
28 Breed Chicken & Barley Entrée, Adult 1-6, 5.8 ounce cans (SKU Number 4967) with Best Before

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1 date of 11 2020 (the “Small & Toy Breed Cans”) for her Havanese, Sir Winston Churchill. Prior to
 2 purchasing the Small & Toy Breed Cans, Schmits-Weagly saw the nutritional claims and labels on
 3 the packaging, which she relied on in deciding to purchase the Small & Toy Breed Cans. At the
 4 time Schmits-Weagly purchased and fed the Small & Toy Breed Cans to her dog, due to the false
 5 and misleading claims, warranties, representations, advertisements, and other marketing by
 6 Defendant, Schmits-Weagly was unaware that the Small & Toy Breed Cans contained excessive
 7 amounts of vitamin D and fed the Small & Toy Breed Cans to her dog. Schmits-Weagly would not
 8 have purchased the Small & Toy Breed Cans or fed the Small & Toy Breed Cans to her dog if
 9 Defendant had disclosed that the Small & Toy Breed Cans contained excessive amounts of vitamin
 10 D.

11 27. Plaintiff Melody Feld (“Plaintiff Feld” or “Feld”) is, and at all times relevant hereto
 12 has been, a citizen of the state of Texas. In 2018, Plaintiff Feld purchased from PetSmart Recalled
 13 Products for her Pomeranian, Christmas, and Miniature Schnauzer, Bailey. Prior to purchasing the
 14 Recalled Products, Feld saw the nutritional claims and labels on the packaging, which she relied
 15 on in deciding to purchase the Recalled Products. At the time Feld purchased and fed the Recalled
 16 Products to her dogs, due to the false and misleading claims, warranties, representations,
 17 advertisements, and other marketing by Defendant, Feld was unaware that the Recalled Products
 18 contained excessive amounts of vitamin D and fed the Recalled Products to her dogs. Feld would
 19 not have purchased the Recalled Products or fed the Recalled Products to her dogs if Defendant
 20 had disclosed that the Recalled Products contained excessive amounts of vitamin D.

21 28. Defendant Hill’s Pet Nutrition, Inc. is a Delaware corporation with its headquarters
 22 and principal place of business located at 400 SW, Topeka, Kansas 66603. Defendant formulates,
 23 manufactures, distributes, labels, markets, and advertises dry and canned food for dogs and cats, as
 24 well as “treats.” Defendant does business throughout the United States and the State of California,
 25 including this District.

26 JURISDICTION AND VENUE

27 29. This Court has original jurisdiction over this action pursuant to the Class Action
 28 Fairness Act, 28 U.S.C. § 1332(d), because at least one class member is a citizen of a state other

1 than that of Defendant, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of
2 interest and costs.

3 30. Venue is proper in this District under 28 U.S.C. § 1391 because Plaintiff Navarette
4 suffered injury as a result of Defendant's acts in this District, many of the acts and transactions
5 giving rise to this action occurred in this District, Defendant conducts substantial business in this
6 District, Defendant has intentionally availed itself of the laws and markets of this District, and
7 Defendant is subject to personal jurisdiction in this District.

8 **INTRADISTRICT ASSIGNMENT**

9 31. A substantial part of the acts and events giving rise to the violations of law alleged
10 herein occurred in the County of Contra Costa, and as such, this action may be properly assigned
11 to the San Francisco / Oakland division of this Court pursuant to Civil Local Rule 3-2(d).

12 **FACTUAL BACKGROUND**

13 **Defendant's Marketing of the Recalled Products**

14 32. Defendant formulates, manufactures, distributes, labels, markets, and advertises dog
15 food throughout the United States, including California.

16 33. Defendant markets its dog food as nutritionally balanced, containing the optimal
17 ingredients for a pet's health. Indeed, nutritionally balanced pet food is the cornerstone of
18 Defendant's brand and encapsulated in Defendant's company vision, as set forth on Defendant's
19 website:

20 **OUR VISION**

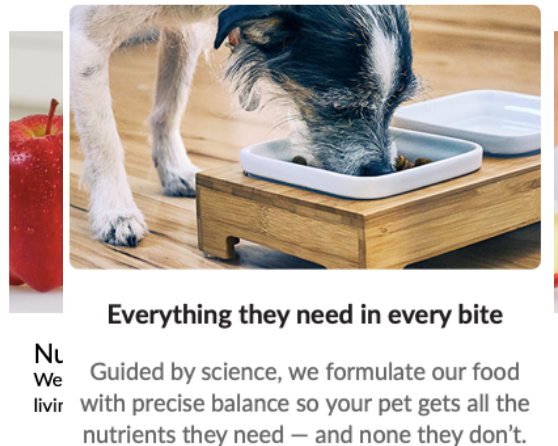
21 To make nutrition a cornerstone of
22 veterinary medicine.
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34. The marketing material on Defendant's website emphasizes the importance of nutrition to pet health and longevity:

35. Defendant further advertises on its website that it "analyz[es] nutrient levels in each of our products."

36. "Guided by science," Defendant represents on its website that it formulates its food with "precise balance so *your pet gets all the nutrients they need – and none they don't.*"



37. Defendant also touts on its website that it is "the global leader in nutritional health care for companion animals, allowing us to provide the right formulas for precisely balanced nutrition that meets the wellness and therapeutic needs of pets worldwide."

38. Defendant's marketing materials, available on its website, represent that its pet food contains the right nutrients *in the right quantities*:

Precisely Balanced: The Right Nutrients in the Right Quantities

While Hill's pet foods contain high-quality ingredients, our research proves that it's the proper balance of 50 nutrients supplied by those ingredients that is the key to optimal health for pets. Guided by our evidenced-based research, Hill's formulated its foods with a precise balance of these nutrients to meet the specific needs of pets associated with their lifestage, size or special needs.

39. In fact, Defendant's own marketing materials, available on its website, warn of the dangers of excessive nutrient intake:

The dangers of excessive or deficient nutrient intake

Too much or too little of certain nutrients (as shown in the chart below) can impact the health and well-being of pets. In fact, a wide range of common disease conditions can be made worse or even caused by consistently feeding foods with an incorrect balance of nutrients.

40. To ensure this proper nutrient intake, Defendant represents on its website that its pet food is subject to the highest safety standards.

41. According to Defendant's website, Defendant's suppliers are subject to stringent quality standards, and each ingredient is examined to ensure safety as well as analyzed to ensure it

2 INGREDIENT SUPPLY

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.



contains an "ingredient profile for essential nutrients."

42. Defendant further represents on its website that it conducts quality systems audits for all manufacturing facilities:

3 PRODUCT MANUFACTURING

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.



43. Additionally, Defendant warrants on its website that all finished products are "***tested for key nutrients prior to release***" to ensure the safety of its food:

4 FINISHED PRODUCT

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.



The Recalled Products

44. On January 31, 2019, Defendant announced a recall of canned dog food products (the “Recalled Products”) because they contained “potentially elevated levels of vitamin D.” The list of Recalled Products was updated by Defendant on February 8, 2019, and again on March 20, 2019 to include additional products. As of March 21, 2019, Defendant’s list of Recalled Products includes:

<u>Product Name</u>	<u>SKU</u>	<u>Date/Lot Code</u>
Hill's® Prescription Diet® k/d® Kidney Care with Lamb Canned Dog Food, 13oz, 12-pack	2697	102020T25
Hill's® Science Diet® Adult Perfect Weight Chicken & Vegetable Entrée dog food 12 x 12.8oz cans	2975	092020T28
Hill's® Prescription Diet® c/d® Multicare Urinary Care Chicken & Vegetable Stew Canned Dog Food, 5.5oz, 24-pack	3388	102020T18
Hill's® Prescription Diet® i/d® Low Fat Canine Rice, Vegetable & Chicken Stew 24 x 5.5oz cans	3391	092020T27
Hill's® Prescription Diet® r/d® Canine 12 x 12.3oz cans	7014	092020T28 102020T27 102020T28
Hill's® Science Diet® Adult Beef & Barley Entrée Canned Dog Food, 13oz, 12-pack	7039	092020T31 102020T21
Hill's® Science Diet® Adult 7+ Healthy Cuisine Roasted Chicken, Carrots & Spinach Stew dog food 12 x 12.5oz cans	10449	092020T28
Hill's® Science Diet® Healthy Cuisine Adult Braised Beef, Carrots & Peas Stew Canned Dog Food, 12.5oz, 12-pack	10451	102020T28
Hill's® Prescription Diet® c/d® Multicare Canine Chicken & Vegetable Stew 12.5oz	3384	092020T29 102020T10 102020T25
Hill's® Prescription Diet® i/d® Canine Chicken & Vegetable Stew 12.5oz	3389	092020T28 102020T24 102020T25 102020T04 102020T10 102020T19 102020T20
Hill's® Prescription Diet® i/d® Canine Chicken & Vegetable Stew 5.5oz	3390	102020T11 112020T23 122020T07

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<u>Product Name</u>	<u>SKU</u>	<u>Date/Lot Code</u>
Hill's® Prescription Diet® z/d® Canine 5.5oz	5403	102020T17 112020T22
Hill's® Prescription Diet® g/d® Canine 13oz	7006	092020T22 112020T19 112020T20
Hill's® Prescription Diet® i/d® Canine 13oz	7008	092020T21 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	102020T24 102020T25 112020T09 112020T10 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	112020T11 112020T05 102020T04 102020T21
Hill's® Prescription Diet® i/d® Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz	10423	092020T27 092020T28 092020T24 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

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<u>Product Name</u>	<u>SKU</u>	<u>Date/Lot Code</u>
Hill's® Science Diet® Puppy Chicken & Barley Entrée 13oz	7036	102020T12
		092020T22
		102020T13
Hill's® Science Diet® Adult Chicken & Barley Entrée Dog Food 13oz	7037	102020T14
		112020T23
		112020T24
Hill's® Science Diet® Adult Turkey & Barley Dog Food 13oz	7038	102020T06
		112020T10
Hill's® Science Diet® Adult Chicken & Beef Entrée Dog Food 13oz	7040	112020T11
		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
		102020T28
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
		102020T28
Hill's® Science Diet® Adult 7+ Healthy Cuisine Braised Beef, Carrots & Peas Stew dog food 12.5oz	10452	102020T14
		102020T21
		102020T04
Hill's® Science Diet® Adult 7+ Youthful Vitality Chicken & Vegetable Stew dog food 12.5oz	10763	102020T05
		112020T11

45. Canine consumption of excessive amounts of vitamin D can lead to serious health issues, including vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, weight loss, and joint issues. Prolonged and high exposure can lead to calcification of soft tissues, renal dysfunction, and cause death.

46. Defendant reportedly learned of the excessive amounts of vitamin D contained in the Recalled Products following a complaint in the United States about a dog exhibiting signs of elevated vitamin D levels. According to Defendant, “[o]ur investigation confirmed elevated levels

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of vitamin D due to a supplier error.”²

47. It is estimated that Defendant’s recall encompasses 13.5 million dog food cans (or 675,000 cases).³

48. Numerous pet owners have reported that their dogs became seriously ill and/or died following consumption of the Recalled Products.⁴

49. Thus far, Defendant claims that canned dog products not appearing on the recall list are safe and that “[n]o dry foods, cat foods, or treats are affected” by the “supplier error.”⁵ However, numerous pet owners have reported that their dogs became seriously ill and/or died following consumption of Defendant’s other products, not subject to the recall.⁶

50. As alleged below, Plaintiffs Yesenko and Wheeler fed the j/d Cans and the Chicken and Beef Cans to their Cairn Terrier, Dixie, who exhibited symptoms consistent with vitamin D poisoning and tested positive for significantly elevated vitamin D levels. Plaintiff Manoli fed the Adult Light and Liver Cans to her Cocker Spaniel, Lily, who exhibited symptoms consistent with vitamin D poisoning. Plaintiff Foster fed the Prescription Diet a/d cans to her Yorkshire Terrier, Raven, who exhibited symptoms consistent with vitamin D poisoning. Plaintiff Patricia Schmits-Weagly fed Small & Toy Breed Cans to her Havanese, Sir Winston Churchill, who exhibited symptoms consistent with vitamin D poisoning and tested positive for significantly elevated vitamin D levels. The Recalled Products, together with the j/d Cans, the Chicken & Beef Cans, the Adult Light and Liver Cans, Prescription Diet a/d, and the Small & Toy Breed Cans, are herein referred to as the “Unsafe Products.”

² <https://www.fda.gov/safety/recalls/ucm630232.htm> (last visited March 21, 2019)

³ <https://www.cbsnews.com/news/hills-dog-food-recall-expanded-for-possibly-toxic-vitamin-d-levels/> (last visited March 21, 2019).

⁴ See <https://www.usatoday.com/story/money/business/2019/02/05/dog-food-recall-hills-pet-nutrition-vitamin-d-levels-may-toxic/2775371002/> (last visited March 21, 2019).

⁵ <https://www.hillspet.com/productlist> (last visited March 21, 2019).

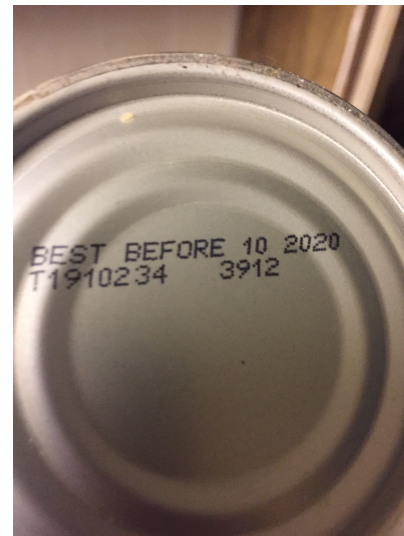
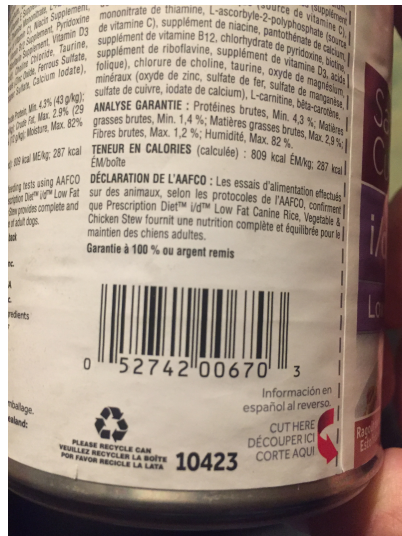
⁶ See, e.g., Defendant’s Facebook page where more than seventy pet owners have claimed that their dogs became ill and/or died following consumption of Defendant’s non-recalled products.

Factual Allegations Related to Plaintiff Navarrete

51. On October 1, 2018, Plaintiff Navarrete purchased twelve cans of Hill's Prescription Diet Digestive Care i/d Low Fat Rice, Vegetable & Chicken Stew 12.5oz from a PetSmart store located in Concord, California for Goliath, his German Sheppard. From October 2018 to approximately January 2019, Navarrete purchased additional cans of Hill's Prescription Diet Digestive Care i/d Low Fat Rice, Vegetable & Chicken Stew 12.5oz from PetSmart and fed the food to Goliath. The front of the can of Hill's Prescription Diet Digestive Care i/d Low Fat Rice, Vegetable & Chicken Stew 12.5oz includes the following language regarding the nutrition of the product: "CLINICAL NUTRITION" and "THERAPEUTIC DOG NUTRITION."



52. The cans purchased by Navarrete contain SKU Number 10423 and Lot Code/Date Code 102020T19 and are thus included in the Recalled Products.



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53. Navarrete purchased the Recalled Products following a consultation with a veterinary professional. The Recalled Products were prescribed for Goliath.

54. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Navarrete believed the Recalled Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for his dog.

55. At the time Navarrete purchased and fed the Recalled Products to his dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Navarrete was unaware that the Recalled Products contained excessive amounts of vitamin D.

56. Plaintiff fed the Recalled Products to his dog between October 2018 and January 2019.

57. Beginning in or about late December 2018, Navarrete's dog became very ill and exhibited symptoms such as vomiting and lethargy. Navarrete took Goliath to a local emergency veterinary hospital, who assessed the severity of Goliath's health condition and referred him to UC Davis Veterinary Medical Teaching Hospital. As a result, Navarrete incurred substantial veterinary bills.

58. Goliath died on or about February 26, 2019.

59. Navarrete would not have purchased the Recalled Products or fed the Recalled Products to Goliath if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

60. Prior to the recall, Defendant never warned Navarrete that the Recalled Foods could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiff Kelley O'Neill

61. Throughout 2018, Plaintiff O'Neill purchased Hill's Prescription Diet z/d Canine 13oz cans from her local veterinary hospital for her four dogs, including a doodle mix, Bailey, and two Maltese dogs, Peanut and Sugar. The front of the can of Hill's Prescription Diet z/d Canine 13oz includes the following language regarding the nutrition of the product: "CLINICAL NUTRITION" and "THERAPEUTIC DOG NUTRITION."

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62. The cans purchased by O'Neill contain SKU Numbers that are subject to Defendant's recall and are thus included in the Recalled Products.

63. O'Neill purchased the Recalled Products following a consultation with a veterinary professional.

64. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, O'Neill believed the Recalled Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for her dog.

65. At the time O'Neill purchased and fed the Recalled Products to her dogs, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, O'Neill was unaware that the Recalled Products contained excessive amounts of vitamin D.

66. Plaintiff O'Neill fed the Recalled Products to her dogs over a several-month period in 2018.

67. Beginning in early 2018, three of O'Neill's dogs, Peanut, Bailey, and Sugar, became very ill and exhibited symptoms such as vomiting. Sugar further exhibited a complete loss of appetite and weight loss. Bailey also showed weight loss and exhibited signs of liver damage.

68. O'Neill took all three dogs to several veterinary hospitals and specialists, including emergency services, to address the severity of the dogs' health conditions. As a result, O'Neill incurred substantial veterinary bills.

69. In April or May of 2018, Peanut ultimately passed away as a result of kidney failure and an infection in his saliva gland. In July or August of 2018, Bailey passed away of canine immune-mediated hemolytic anemia. In October or November of 2018, Sugar passed away of inflammatory bowel disease.

70. O'Neill would not have purchased the Recalled Products or fed the Recalled Products to any of her dogs if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

71. Prior to the recall, Defendant never warned O'Neill that the Recalled Foods could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiff Susan Tarrence

72. Between Summer of 2018 and January 2019, Plaintiff Tarrence purchased Hill's Prescription Diet i/d Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz cans from her veterinarian in New Jersey and her local Petco store for her Havanese, Pip. Tarrence also purchased additional cans of the Hill's Prescription Diet i/d Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz in Arizona through Chewy.com. The front of the can of Hill's Prescription Diet i/d Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz includes the following language regarding the nutrition of the product: "CLINICAL NUTRITION" and "THERAPEUTIC DOG NUTRITION." See ¶ 48, *supra*.

73. The cans purchased by Tarrence contain SKU Numbers that are subject to Defendant's recall and are thus included in the Recalled Products.

74. Tarrence purchased the Recalled Products following a consultation with a veterinary professional. The Recalled Products were prescribed for Pip.

75. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Tarrence believed the Recalled Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for her dog.

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76. At the time Tarrence purchased and fed the Recalled Products to her dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Tarrence was unaware that the Recalled Products contained excessive amounts of vitamin D.

77. Plaintiff Tarrence fed the Recalled Products to her dog for about six months between Summer 2018 and January 2019.

78. During that time, Pip became very ill and exhibited symptoms such as urinary and incontinence issues. Pip also became deaf during this period. Tarrence took Pip to her veterinarian several times to address the severity of her dog's health condition. As a result, Tarrence incurred substantial veterinary bills.

79. At the end of January 2019, Chewy.com sent Tarrence a notice regarding the subject recall. Tarrence discontinued feeding Pip the Recalled Products, and Pip's symptoms resolved approximately one week thereafter.

80. Tarrence would not have purchased the Recalled Products or fed the Recalled Products to her dog if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

81. Prior to the recall, Defendant never warned Tarrence that the Recalled Foods could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiff Janet Schaefer

82. Between Winter of 2018 and January 2019, Plaintiff Schaefer purchased Hill's Science Diet Adult Chicken & Beef Entrée Dog Food 13oz cans for her miniature Dachshund, Tony, and two other dogs. The product web page for the Hill's Science Diet Adult Chicken & Beef Entrée Dog Food 13oz can includes the following language under "Key Benefits": "Clinically **proven nutrition** that can transform your pet's life."⁷

⁷ Product webpage, *Hill's® Science Diet® Adult Chicken & Beef Entrée Dog Food*, <https://www.hillspet.com/dog-food/sd-adult-chicken-and-beef-entree-dog-food-canned#> (last visited Mar. 20, 2019) (emphasis in original).

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1 83. Based on Defendant's false and misleading claims, warranties, representations,
2 advertisements, and other marketing, Schaefer believed the Recalled Products were nutritionally
3 appropriate and contained the proper amounts of vitamins and nutritional content for her dogs.

4 84. At the time Schaefer purchased and fed the Recalled Products to her dogs, due to
5 the false and misleading claims, warranties, representations, advertisements, and other marketing
6 by Defendant, Schaefer was unaware that the Recalled Products contained excessive amounts of
7 vitamin D.

8 85. Plaintiff Schaefer fed the Recalled Products to her dogs for about two to three
9 months from Winter of 2018 until the January 31, 2019 recall.

10 86. During that time, Tony became very ill and exhibited symptoms such as vomiting,
11 diarrhea, loss of appetite, weight loss, and lethargy. Schaefer took Tony to her veterinarian several
12 times to address the severity of her dog's health condition. As a result, Schaefer incurred substantial
13 veterinary bills.

14 87. Since the recall, Schaefer has discontinued feeding her dogs the Recalled Products,
15 but Tony's symptoms have not resolved.

16 88. Schaefer would not have purchased the Recalled Products or fed the Recalled
17 Products to her dogs if Defendant had disclosed that the Recalled Products contained excessive
18 amounts of vitamin D.

19 89. Prior to the recall, Defendant never warned Schaefer that the Recalled Foods could
20 cause pets to have severe health problems (and, worse, potentially die).

21 **Factual Allegations Related to Plaintiff Cara Kaufmann**

22 90. On January 16, 2019, Plaintiff Kaufmann purchased Hill's Prescription Diet z/d
23 Canine 13oz for her Pomeranian, Gus. The front of the can of Hill's Prescription Diet z/d Canine
24 13oz includes the following language regarding the nutrition of the product: "CLINICAL
25 NUTRITION" and "THERAPEUTIC DOG NUTRITION." See ¶ 58, *supra*.

26 91. The cans purchased by Kaufmann contain SKU Numbers that are subject to
27 Defendant's recall and are thus included in the Recalled Products.
28

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92. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Kaufmann believed the Recalled Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for her dog.

93. At the time Kaufmann purchased and fed the Recalled Products to her dogs, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Kaufmann was unaware that the Recalled Products contained excessive amounts of vitamin D.

94. Plaintiff Kaufmann fed the Recalled Products to her dog for a few weeks in January 2019.

95. In late January 2019, Gus became very ill and exhibited symptoms such as vomiting, loss of appetite, increased thirst, and increased urination. Kaufmann took Gus to the emergency veterinarian to assess the severity of her dog's health condition and learned that Gus was in renal failure. Gus has since received follow-up veterinary care, and as a result, Kaufmann incurred substantial veterinary bills.

96. Since the recall, Kaufmann has stopped feeding her dog the Recalled Products, but Gus has continued to exhibit residual symptoms, including loss of appetite and increased thirst.

97. Kaufmann would not have purchased the Recalled Products or fed the Recalled Products to her dog if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

98. Prior to the recall, Defendant never warned Kaufmann that the Recalled Foods could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiff Tesha Ellis

99. Between mid-December 2018 and January 2019, Plaintiff Ellis purchased Hill's Prescription Diet w/d Canine Vegetable & Chicken Stew 12.5oz cans from Chewy.com for her Yorkiepoo, Tyson. The front of the can of Hill's Prescription Diet w/d Canine Vegetable & Chicken Stew 12.5oz includes the following language regarding the nutrition of the product: "CLINICAL NUTRITION" and "THERAPEUTIC DOG NUTRITION."

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100. The cans purchased by Ellis contain SKU Numbers that are subject to Defendant's recall and are thus included in the Recalled Products.

101. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Ellis believed the Recalled Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for her dog.

102. At the time Ellis purchased and fed the Recalled Products to her dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Ellis was unaware that the Recalled Products contained excessive amounts of vitamin D.

103. Plaintiff Ellis fed the Recalled Products to her dog for several weeks between December 2018 and January 2019.

104. In or around mid-January 2019, Tyson became very ill and exhibited symptoms such as vomiting, loss of appetite, weight loss, increased thirst, and excessive urination. Ellis took Tyson to a veterinarian to address the severity of her dog's health condition. As a result, Ellis incurred substantial veterinary bills. Tyson's symptoms lasted until January 27, 2017 when he died.

1 105. Ellis would not have purchased the Recalled Products or fed the Recalled Products
2 to her dog if Defendant had disclosed that the Recalled Products contained excessive amounts of
3 vitamin D.

4 106. Prior to the recall, Defendant never warned Ellis that the Recalled Foods could cause
5 pets to have severe health problems (and, worse, potentially die).

6 **Factual Allegations Related to Plaintiff Nancy Lerner**

7 107. Throughout 2018, Plaintiff Lerner purchased Hill's Prescription Diet i/d 13oz cans
8 from the Village Animal Clinic in Carol Stream, Illinois for her black German Sheppard, Kolt, and
9 Collie German Sheppard, Titus.

10 108. The cans purchased by Lerner contain SKU Numbers that are subject to Defendant's
11 recall and are thus included in the Recalled Products.

12 109. Lerner purchased the Recalled Products following a consultation with a veterinary
13 professional.

14 110. Based on Defendant's false and misleading claims, warranties, representations,
15 advertisements, and other marketing, Lerner believed the Recalled Products were nutritionally
16 appropriate and contained the proper amounts of vitamins and nutritional content for her dogs.

17 111. At the time Lerner purchased and fed the Recalled Products to her dogs, due to the
18 false and misleading claims, warranties, representations, advertisements, and other marketing by
19 Defendant, Lerner was unaware that the Recalled Products contained excessive amounts of vitamin
20 D and fed the Recalled Products to her dogs for a sustained period.

21 112. One of Lerner's dogs, Kolt, became very ill after eating the Recalled Products and
22 exhibited symptoms such as vomiting, diarrhea, increased thirst, and excessive urination.

23 113. Lerner would not have purchased the Recalled Products or fed the Recalled Products
24 to her dogs if Defendant had disclosed that the Recalled Products contained excessive amounts of
25 vitamin D.

26 114. Prior to the recall, Defendant never warned Lerner that the Recalled Foods could
27 cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiff Lisa Kannair

115. In or around November 2018, Plaintiff Kannair purchased from Amazon.com Hill's Science Diet Adult 7+ Youthful Vitality Chicken & Vegetable Stew 12.5oz cans, Hill's Prescription Diet w/d Canine 13oz cans, and Hill's Prescription Diet i/d Low Fat Canine Rice, Vegetable & Chicken Stew 12.5 oz cans for her Keeshond, Dakota. The product web page for the Hill's Science Diet Adult 7+ Youthful Vitality Chicken & Vegetable Stew 12.5oz cans includes the following language under "Key Benefits": "Clinically **proven nutrition** that can transform your pet's life."⁸ The front of the can of Hill's Prescription Diet w/d Canine 13oz includes the following language regarding the nutrition of the product: "CLINICAL NUTRITION" and "THERAPEUTIC DOG NUTRITION." See ¶ 96, *supra*. Likewise, the front of the can of Hill's Prescription Diet i/d Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz includes the same language. See ¶ 48, *supra*.

116. The cans purchased by Kannair contain lot numbers that are subject to Defendant's recall and are thus included in the Recalled Products.

117. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Kannair believed the Recalled Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for her dog.

118. At the time Kannair purchased and fed the Recalled Products to her dogs, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Kannair was unaware that the Recalled Products contained excessive amounts of vitamin D.

119. Kannair fed the Recalled Products to her dog for several weeks between November 2018 and December 2018.

120. Towards the end of 2018, Dakota became very ill and exhibited symptoms such as vomiting, loss of appetite, weight loss, increased thirst, increased urination, excessive drooling,

⁸ Product webpage, *Hill's® Science Diet® Youthful Vitality Adult 7+ Chicken & Vegetable Stew Dog Food*, <https://www.hillspet.com/dog-food/sd-youthful-vitality-adult-7-plus-chicken-and-vegetable-stew-dog-food-canned> (last visited Mar. 20, 2019) (emphasis in original).

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joint issues, and lethargy. Kannair took Dakota to three different veterinarians to address the severity of her dog's health condition. As a result, Ellis incurred substantial veterinary bills.

121. Kaniar would not have purchased the Recalled Products or fed the Recalled Products to her dog if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

122. Prior to the recall, Defendant never warned Kannair that the Recalled Foods could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiffs Michael Yesenko and Chad Wheeler

123. In Fall of 2018, Plaintiffs Yesenko and Wheeler purchased Hill's Prescription Diet j/d 13oz cans and Hill's Science Diet Chicken & Beef Entrée Adult 1-6 13oz cans for their Cairn Terrier, Dixie. The front of the can of Prescription Diet j/d 13oz includes the following language regarding the nutrition of the product: "CLINICAL NUTRITION" and "THERAPEUTIC DOG NUTRITION."



The product web page for the Hill's Science Diet Chicken & Beef Entrée Adult 1-6 13oz cans includes the following language under "Key Benefits": "Clinically **proven nutrition** that can transform your pet's life."⁹

124. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Yesenko and Wheeler believed the Unsafe Cans were

⁹ Product webpage, *Hill's® Science Diet® Adult Chicken & Beef Entrée Dog Food*, <https://www.hillspet.com/dog-food/sd-adult-chicken-and-beef-entree-dog-food-canned> (last visited Mar. 20, 2019) (emphasis in original).

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1 nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for
 2 their dog.

3 125. At the time Yesenko and Wheeler purchased and fed the Unsafe Cans to their dog,
 4 due to the false and misleading claims, warranties, representations, advertisements, and other
 5 marketing by Defendant, Yesenko and Wheeler were unaware that the Unsafe Cans contained
 6 excessive amounts of vitamin D.

7 126. Yesenko and Wheeler fed the Unsafe Cans to their dog Dixie for several months
 8 between Fall of 2018 and early 2019.

9 127. Beginning in or around October 2018, Dixie became very ill and exhibited
 10 symptoms such as vomiting, excessive thirst, increased urination, excessive drooling, and
 11 decreased appetite. Yesenko and Wheeler took Dixie to a veterinarian to address the severity of
 12 their dog's health condition, which showed that Dixie suffered from acute renal failure and had
 13 *vitamin D levels that were significantly higher than normal*. As a result, Yesenko and Wheeler
 14 incurred substantial veterinary bills. Dixie died away on March 12, 2019.

15 128. Yesenko and Wheeler would not have purchased the Unsafe Products or fed the
 16 Unsafe Products to their dog if Defendant had disclosed that the Unsafe Products contained
 17 excessive amounts of vitamin D.

18 129. Defendant never warned Yesenko and Wheeler that the Unsafe Products could cause
 19 pets to have severe health problems (and, worse, potentially die).

20 **Factual Allegations Related to Plaintiff Harriet Manoli**

21 130. In or around Fall of 2018, Plaintiff Manoli purchased Hill's Science Diet Adult Light
 22 with Liver Dog Food 13oz cans from Chewy.com for her cocker spaniel, Lily. The product web
 23 page for the Hill's Science Diet Adult Light with Liver Dog Food 13oz cans includes the following
 24 language under "Key Benefits": "Clinically **proven nutrition** that can transform your pet's life."¹⁰

25
 26
 27 ¹⁰ Product webpage, *Hill's ® Science Diet ® Adult Light with Liver Dog Food*,
 28 <https://www.hillspet.co.nz/dog-food/sd-adult-light-with-liver-dog-food-canned> (last visited Mar.
 20, 2019) (emphasis in original).

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131. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Manoli believed the Unsafe Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for her dog.

132. At the time Manoli purchased and fed the Unsafe Products to her dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Manoli was unaware that the Unsafe Products contained excessive amounts of vitamin D and fed the Unsafe Products to her dog.

133. On November 20, 2018, Lily became very ill and exhibited symptoms such as vomiting, loss of appetite, increased urination, weight loss, and joint issues. Manoli took Lily to a veterinarian, including emergency services, to address the severity of her dog's health condition. The medical results showed that Lily's kidneys were failing, and her phosphorous levels were very high. As a result, Manoli incurred substantial veterinary bills. Lily's symptoms continued for seven weeks until she died on January 6, 2019.

134. Manoli would not have purchased the Unsafe Products or fed the Unsafe Products to her dog if Defendant had disclosed that the Unsafe Products contained excessive amounts of vitamin D.

135. Defendant never warned Manoli that the Unsafe Products could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiff Donna Folbaum

136. Between July 2018 to September 2018, Plaintiff Folbaum purchased Hill's Prescription Diet w/d Canine 13oz cans for her Poodle/Pyrenees mix, Reagan. The front of the can of Hill's Prescription Diet w/d Canine 13oz includes the following language regarding the nutrition of the product: "CLINICAL NUTRITION" and "THERAPEUTIC DOG NUTRITION." *See* ¶ 96, *supra*.

137. The cans purchased by Folbaum contain SKU Numbers that are subject to Defendant's recall and are thus included in the Recalled Products.

138. Folbaum purchased the Recalled Products following a consultation with a veterinary professional. The Recalled Products were prescribed for Reagan.

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139. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Folbaum believed the Recalled Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for her dog.

140. At the time Folbaum purchased and fed the Recalled Products to her dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Folbaum was unaware that the Recalled Products contained excessive amounts of vitamin D.

141. Folbaum fed the Recalled Products to her dog for several months throughout 2018.

142. On or around November 5, 2018, Reagan became very ill and exhibited symptoms such as vomiting, loss of appetite, increased thirst, weight loss, and bloody diarrhea. Folbaum took Reagan to her veterinarian several times, including an emergency specialty animal hospital, to address the severity of her dog's health condition. The medical results showed that Reagan had significantly high ALT levels, indicating liver damage. As a result, Folbaum incurred substantial veterinary bills.

143. Folbaum would not have purchased the Recalled Products or fed the Recalled Products to her dog if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

144. Prior to the recall, Defendant never warned Folbaum that the Recalled Foods could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiff Keith Heck

145. In 2018, Plaintiff Heck purchased Hill's Science Diet Adult 7+ Beef & Barley Entrée Dog Food 13oz cans from his local pet food warehouse for his Labrador Retriever, Oshie, and Chihuahua, Pedro. The product web page for the Hill's Science Diet Adult 7+ Beef & Barley Entrée Dog Food 13oz cans includes the following language under "Key Benefits": "Clinically **proven nutrition** that can transform your pet's life."¹¹

¹¹ Product webpage, *Hill's ® Science Diet ® Adult 7+ Beef & Barley Entrée Dog Food*, <https://www.hillspet.com/dog-food/sd-adult-7-plus-beef-and-barley-entree-dog-food-canned> (last visited Mar. 20, 2019) (emphasis in original).

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146. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Heck believed the Recalled Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for his dogs.

147. At the time Heck purchased and fed the Recalled Products to his dogs, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Heck was unaware that the Recalled Products contained excessive amounts of vitamin D and fed the Recalled Products to his dogs.

148. In or around November 2018, Oshie became very ill and exhibited symptoms such as loss of appetite, increased thirst, increased urination, excessive drooling, and kidney dysfunction. Heck took Oshie to a veterinarian to assess the severity of his dog's health condition. The medical results showed elevated creatinine levels. Heck incurred substantial veterinary bills.

149. Heck would not have purchased the Recalled Products or fed the Recalled Products to his dogs if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

150. Prior to the recall, Defendant never warned Heck that the Recalled Foods could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiff Mistie Loggins

151. In 2018, Plaintiff Loggins purchased Hill's Prescription Diet w/d Canine Vegetable & Chicken Stew 12.5oz cans from Chewy.com for her Chihuahua mix, Peanut Butter Jones. The front of the can of Hill's Prescription Diet w/d Canine Vegetable & Chicken Stew 12.5oz includes the following language regarding the nutrition of the product: "CLINICAL NUTRITION" and "THERAPEUTIC DOG NUTRITION." See ¶ 96, *supra*.

152. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Loggins believed the Recalled Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for her dog.

153. At the time Loggins purchased and fed the Recalled Products to her dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by

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1 Defendant, Loggins was unaware that the Recalled Products contained excessive amounts of
 2 vitamin D and fed the Recalled Products to her dog.

3 154. On December 2, 2018, Peanut Butter Jones became very ill and exhibited symptoms
 4 such as loss of appetite, increased thirst, increased urination, excessive drooling, weight loss, joint
 5 issues, and kidney dysfunction. Loggins took her dog to a veterinarian, including emergency
 6 services, to assess the severity of her dog's health condition. Within a day, Peanut Butter Jones died
 7 due to kidney failure. As a result, Loggins incurred substantial veterinary bills.

8 155. Loggins would not have purchased the Recalled Products or fed the Recalled
 9 Products to her dog if Defendant had disclosed that the Recalled Products contained excessive
 10 amounts of vitamin D.

11 156. Prior to the recall, Defendant never warned Loggins that the Recalled Foods could
 12 cause pets to have severe health problems (and, worse, potentially die).

13 **Factual Allegations Related to Plaintiff Thomas Gorham**

14 157. Between January 2018 and October 2018, Plaintiff Gorham purchased Hill's
 15 Prescription Diet i/d Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz cans from his
 16 veterinarian at Belrose Animal Hospital for his Miniature Schnauzer, Zoe. The front of the can of
 17 Hill's Prescription Diet i/d Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz includes the
 18 following language regarding the nutrition of the product: "CLINICAL NUTRITION" and
 19 "THERAPEUTIC DOG NUTRITION." See ¶ 48, *supra*.

20 158. The cans purchased by Gorham contain SKU Numbers that are subject to
 21 Defendant's recall and are thus included in the Recalled Products.

22 159. Gorham purchased the Recalled Products following a consultation with a veterinary
 23 professional. The Recalled Products were prescribed for Zoe.

24 160. Based on Defendant's false and misleading claims, warranties, representations,
 25 advertisements, and other marketing, Gorham believed the Recalled Products were nutritionally
 26 appropriate and contained the proper amounts of vitamins and nutritional content for his dog.

27 161. At the time Gorham purchased and fed the Recalled Products to his dog, due to the
 28 false and misleading claims, warranties, representations, advertisements, and other marketing by

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Defendant, Gorham was unaware that the Recalled Products contained excessive amounts of vitamin D.

162. Plaintiff Gorham fed the Recalled Products to his dog for approximately ten months between January 2018 and October 2018.

163. Beginning in or around October 2018, Zoe became very ill and exhibited symptoms such as vomiting, excessive urination, loss of appetite, increased thirst, weight loss, and difficulty standing. Gorham took Zoe to a veterinarian several times to assess the severity of his dog's health condition. The medical results showed that Zoe suffered from renal failure. Zoe's condition rapidly deteriorated over the span of three months, and she died on January 30, 2018, the day before Defendant's recall announcement. Gorham incurred substantial veterinary bills.

164. Gorham would not have purchased the Recalled Products or fed the Recalled Products to his dog if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

165. Prior to the recall, Defendant never warned Gorham that the Recalled Foods could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiff Linda Cole

166. In early 2019, Plaintiff Cole purchased Hill's Prescription Diet k/d Canine 13oz cans from her veterinarian and her local PetSmart for her Goldendoodle, Riley. The front of the can of



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Hill's Prescription Diet k/d Canine 13oz includes the following language regarding the nutrition of the product: "CLINICAL NUTRITION" and "THERAPEUTIC DOG NUTRITION."

167. Cole purchased the Recalled Products following a consultation with a veterinary professional. The Recalled Products were prescribed for Riley.

168. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Cole believed the Recalled Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for her dog.

169. At the time Cole purchased and fed the Recalled Products to her dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Cole was unaware that the Recalled Products contained excessive amounts of vitamin D.

170. Plaintiff Cole fed the Recalled Products to her dog over a several-week period in January 2019.

171. Beginning in or around late January 2019, Riley became very ill and exhibited symptoms such as vomiting, loss of appetite, weight loss, increased thirst, and difficulty walking. Cole took Riley to a veterinarian to assess the severity of her dog's health condition. Riley's condition rapidly deteriorated over the span of several days, and he died on January 31, 2019. Cole incurred substantial veterinary bills.

172. Cole would not have purchased the Recalled Products or fed the Recalled Products her dog if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

173. Prior to the recall, Defendant never warned Cole that the Recalled Foods could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiff Diane Tyson

174. In 2018, Plaintiff Tyson purchased Hill's Science Diet Adult Chicken & Beef Entrée Dog Food 13oz cans for her Bull Mastiff-Boxer Mix, Bryce. The product web page for the Hill's

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Science Diet Adult Chicken & Beef Entrée Dog Food 13oz can includes the following language under “Key Benefits”: “Clinically **proven nutrition** that can transform your pet’s life.”¹²

175. The cans purchased by Tyson are included in the Recalled Products.

176. Based on Defendant’s false and misleading claims, warranties, representations, advertisements, and other marketing, Tyson believed the Recalled Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for her dog.

177. At the time Tyson purchased and fed the Recalled Products to her dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Tyson was unaware that the Recalled Products contained excessive amounts of vitamin D and fed the Recalled Products to her dog.

178. Beginning in or around December 2018, Bryce became very ill and exhibited symptoms such as vomiting, loss of appetite, weight loss, excessive urination, increased thirst, excessive drooling, and renal failure. Tyson took Bryce to a veterinarian numerous times to assess the severity of her dog’s health condition. Bryce’s symptoms persisted for several weeks until he died on January 13, 2019. Tyson incurred substantial veterinary bills.

179. Tyson would not have purchased the Recalled Products or fed the Recalled Products to her dog if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

180. Prior to the recall, Defendant never warned Tyson that the Recalled Foods could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiffs Aaron Sizemore and Jamie Turner

181. In or around November 2018, Plaintiffs Sizemore and Turner purchased Hill's Prescription Diet k/d Canine 13oz cans from West Side Animal Clinic in Hamilton, Ohio for their Pitbull, Capone. The front of the can of Hill's Prescription Diet k/d Canine 13oz includes the

¹² Product webpage, *Hill's ® Science Diet ® Adult Chicken & Beef Entrée Dog Food*, <https://www.hillspet.com/dog-food/sd-adult-chicken-and-beef-entree-dog-food-canned#> (last visited Mar. 20, 2019) (emphasis in original).

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1 following language regarding the nutrition of the product: “CLINICAL NUTRITION” and
2 “THERAPEUTIC DOG NUTRITION.” *See* ¶ 166, *supra*.

3 182. Based on Defendant’s false and misleading claims, warranties, representations,
4 advertisements, and other marketing, Sizemore and Turner believed the Recalled Products were
5 nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for
6 their dog.

7 183. At the time Sizemore and Turner purchased and fed the Recalled Products to their
8 dog, due to the false and misleading claims, warranties, representations, advertisements, and other
9 marketing by Defendant, Sizemore and Turner were unaware that the Recalled Products contained
10 excessive amounts of vitamin D and fed the Recalled Products to their dog.

11 184. Beginning in early January 2019, Capone became very ill and exhibited symptoms
12 such as vomiting, loss of appetite, weight loss, increased thirst, and increased urination. Sizemore
13 and Turner took Capone to a veterinarian several times to assess the severity of their dog’s health
14 condition. Medical tests showed that Capone suffered from kidney damage and had significantly
15 elevated levels of creatinine. Capone’s symptoms persisted for several weeks until he was
16 euthanized on January 12, 2019. Sizemore and Turner incurred substantial veterinary bills.

17 185. Sizemore and Turner would not have purchased the Recalled Products or fed the
18 Recalled Products to their dog if Defendant had disclosed that the Recalled Products contained
19 excessive amounts of vitamin D.

20 186. Prior to the recall, Defendant never warned Sizemore and Turner that the Recalled
21 Foods could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiff Leonne Markham

187. On or around November 12, 2018, Plaintiff Markham purchased Hill's Prescription Diet g/d Canine 13oz cans from the Mountain View Animal Hospital in Redmond, Oregon for her Boston Terrier, Penny. Markham purchased additional Recalled Products online from Petco.com. The front of the can of Hill's Prescription Diet g/d Canine 13oz includes the following language regarding the nutrition of the product: "CLINICAL NUTRITION" and "THERAPEUTIC DOG NUTRITION."



188. The cans purchased by Markham contain SKU Numbers that are subject to Defendant's recall and are included in the Recalled Products.

189. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Markham believed the Recalled Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for her dog.

190. At the time Markham purchased and fed the Recalled Products to her dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Markham was unaware that the Recalled Products contained excessive amounts of vitamin D and fed the Recalled Products to her dog.

191. Beginning in or around later November 2018, Penny became very ill and exhibited symptoms such as vomiting, excessive thirst, diarrhea, excessive urination, weight loss, and kidney dysfunction. Markham took Penny to two different veterinary offices, including overnight

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1 veterinary monitoring services, to assess the severity of her dog's health condition. As a result,
 2 Markham incurred substantial veterinary bills, which are ongoing.

3 192. Markham would not have purchased the Recalled Products or fed the Recalled
 4 Products to her dog if Defendant had disclosed that the Recalled Products contained excessive
 5 amounts of vitamin D.

6 193. Prior to the recall, Defendant never warned Markham that the Recalled Foods could
 7 cause pets to have severe health problems (and, worse, potentially die).

8 **Factual Allegations Related to Plaintiff Sharon Jespersen**

9 194. In or around early January 2019, Plaintiff Jespersen purchased Hill's Science Diet
 10 Adult 7+ Beef & Barley Entrée Dog Food 13oz cans from Tractor Supply for her Miniature
 11 Pinscher, Abby. The product web page for the Hill's Science Diet Adult 7+ Beef & Barley Entrée
 12 Dog Food 13oz cans includes the following language under "Key Benefits": "Clinically **proven**
 13 **nutrition** that can transform your pet's life."¹³

14 195. The cans purchased by Jespersen contain SKU Numbers that are subject to
 15 Defendant's recall and are thus included in the Recalled Products.

16 196. Based on Defendant's false and misleading claims, warranties, representations,
 17 advertisements, and other marketing, Jespersen believed the Recalled Products were nutritionally
 18 appropriate and contained the proper amounts of vitamins and nutritional content for her dog.

19 197. At the time Jespersen purchased and fed the Recalled Products to her dog, due to
 20 the false and misleading claims, warranties, representations, advertisements, and other marketing
 21 by Defendant, Jespersen was unaware that the Recalled Products contained excessive amounts of
 22 vitamin D and fed the Recalled Products to her dog.

23 198. On or around January 28, 2019, Abby became very ill and exhibited symptoms such
 24 as vomiting, excessive urination, loss of appetite, increased thirst, lethargy, and weight loss. A few
 25 weeks later, Abby died.

26
 27 ¹³ Product webpage, *Hill's ® Science Diet ® Adult 7+ Beef & Barley Entrée Dog Food*,
 28 <https://www.hillspet.com/dog-food/sd-adult-7-plus-beef-and-barley-entree-dog-food-canned> (last
 visited Mar. 20, 2019) (emphasis in original).

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199. Jespersen would not have purchased the Recalled Products or fed the Recalled Products to her dog if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

200. Prior to the recall, Defendant never warned Jespersen that the Recalled Foods could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiff Sylvia Barton

201. 2018, Plaintiff Barton purchased Hill's Prescription Diet k/d Canine 13oz cans from Chewy.com for her Chinese Crescent Powder Puff, Mojo. The front of the can of Hill's Prescription Diet k/d Canine 13oz includes the following language regarding the nutrition of the product: "CLINICAL NUTRITION" and "THERAPEUTIC DOG NUTRITION." See ¶ 166, *supra*.

202. The cans purchased by Barton contain SKU Numbers that are subject to Defendant's recall and are thus included in the Recalled Products.

203. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Barton believed the Recalled Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for her dog.

204. At the time Barton purchased and fed the Recalled Products to her dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Barton was unaware that the Recalled Products contained excessive amounts of vitamin D and fed the Recalled Products to her dog.

205. On or around mid-September 2018, Mojo became very ill and exhibited symptoms such as excessive thirst, increased urination, loss of appetite, vomiting, weight loss, and joint issues. Barton took Mojo to the veterinarian on numerous occasions, including hospitalization, to assess the severity of her dog's health condition. As a result, Barton incurred substantial veterinary bills.

206. Barton would not have purchased the Recalled Products or fed the Recalled Products to her dog if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

207. Prior to the recall, Defendant never warned Barton that the Recalled Foods could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Linda Foster

208. In or around early August 2018, Plaintiff Linda Foster purchased Hill's Prescription Diet a/d Canine/Feline, 5.5oz cans ("Prescription Diet a/d") for her Yorkshire Terrier, Raven. The front of the can of Hill's Prescription Diet a/d Canine/Feline, 5.5oz includes the following language regarding the nutrition of the product: "CLINICAL NUTRITION" and "THERAPEUTIC DOG NUTRITION."



209. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Foster believed the Prescription Diet a/d products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for her dog.

210. At the time Foster purchased and fed the Prescription Diet a/d product to her dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Foster was unaware that the Prescription Diet a/d products contained excessive amounts of vitamin D and fed it to her dog.

211. Shortly after in August 2018, Raven became very ill and exhibited symptoms such as excessive thirst, frequent urination, decreased appetite, significant weight loss, and seizures. Raven's symptoms persisted until she died on August 30, 2018.

212. Foster would not have purchased the Prescription Diet a/d product or fed the Prescription Diet a/d product to her dog if Defendant had disclosed that it contained excessive amounts of vitamin D.

213. Defendant never warned Foster that the Prescription Diet a/d product could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiff Patricia Schmits-Weagly

214. In or around August or September 2018, Plaintiff Schmits-Weagly purchased Hill's Science Diet Small & Toy Breed Chicken & Barley Entrée, 5.8oz cans for her Havanese, Sir Winston Churchill. The product web page for the Hill's Science Diet Small & Toy Breed Chicken & Barley Entrée, 5.8oz cans includes the following language under "Key Benefits": "Clinically **proven nutrition** that can transform your pet's life."¹⁴

215. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Schmits-Weagly believed the Unsafe Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for her dog.

216. At the time Schmits-Weagly purchased and fed the Unsafe Products to her dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Schmits-Weagly was unaware that the Unsafe Products contained excessive amounts of vitamin D and fed the Unsafe Products to her dog.

217. On or around October or November 2018, Sir Winston Churchill became very ill and exhibited symptoms such as vomiting, excessive thirst, decreased appetite, and lethargy. Schmits-Weagly took Sir Winston Churchill to the veterinarian to assess the severity of her dog's health condition. *The medical results showed that Sir Winston Churchill had significantly elevated Vitamin D levels.* As a result, Schmits-Weagly incurred substantial veterinary bills.

218. Schmits-Weagly would not have purchased the Unsafe Products or fed the Unsafe Products to her dog if Defendant had disclosed that the Unsafe Products contained excessive amounts of vitamin D.

¹⁴ Product webpage, Hill's ® Science Diet ® Adult Small & Toy Breed Chicken & Barley Entrée Dog Food, <https://www.hillspet.com/dog-food/sd-adult-small-and-toy-breed-chicken-barley-entree-dog-food-canned#accordion-content-054167331-0> (last visited Mar. 20, 2019) (emphasis in original).

219. Defendant never warned Schmits-Weagly that the Unsafe Products could cause pets to have severe health problems (and, worse, potentially die).

Factual Allegations Related to Plaintiff Melody Feld

220. In 2018, Plaintiff Feld purchased from PetSmart Hill's Prescription Diet w/d Canine 13oz cans and Hill's Prescription Diet Metabolic + Mobility Canine Vegetable & Tuna Stew 12.5oz cans for her Pomeranian, Christmas. Feld also purchased Hill's Prescription Diet k/d Canine 13oz cans for her Miniature Schnauzer, Bailey. The front of the can of all three food products that Feld purchased for her dogs includes the following language regarding the nutrition of the product: "CLINICAL NUTRITION" and "THERAPEUTIC DOG NUTRITION." See ¶¶ 96, 166, *supra*.



221. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Feld believed the Recalled Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for her dogs.

222. At the time Feld purchased and fed the Recalled Products to her dogs, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Feld was unaware that the Recalled Products contained excessive amounts of vitamin D and fed the Recalled Products to her dogs.

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223. On or around Summer of 2018, Christmas became very ill and exhibited symptoms such as vomiting and diarrhea. Feld took Christmas to the veterinarian to assess the severity of her dogs' health conditions. The medical results showed that Christmas suffered from kidney and bladder stones, as well as elevated liver function tests. Bailey's test results also exhibited signs of liver damage and mitral valve disease. Feld incurred substantial veterinary bills.

224. Feld would not have purchased the Recalled Products or fed the Recalled Products to her dogs if Defendant had disclosed that the Recalled Products contained excessive amounts of vitamin D.

225. Prior to the recall, Defendant never warned Feld that the Recalled Foods could cause pets to have severe health problems (and, worse, potentially die).

CLASS ACTION ALLEGATIONS

226. Plaintiffs brings this action pursuant to Federal Rule of Civil Procedures 23(b)(2) and 23(b)(3) on behalf of himself and a class of similarly situated individuals defined as follows:

All persons in the United States who purchased the Unsafe Products (the "Nationwide Class").

227. Within the Nationwide Class, there are sixteen subclasses defined as (the "Subclasses"):

All persons in the State of Arizona who purchased the Unsafe Products (the "Arizona Class")

All persons in the State of California who purchased the Unsafe Products (the "California Class")

All persons in the State of Connecticut who purchased the Unsafe Products (the "Connecticut Class")

All persons in the State of Georgia who purchased the Unsafe Products (the "Georgia Class")

All persons in the State of Illinois who purchased the Unsafe Products (the "Illinois Class")

All persons in the State of Indiana who purchased the Unsafe Products (the "Indiana Class")

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All persons in the State of Maryland who purchased the Unsafe Products (the “Maryland Class”)

All persons in the State of Michigan who purchased the Unsafe Products (the “Michigan Class”)

All persons in the State of Minnesota who purchased the Unsafe Products (the “Minnesota Class”)

All persons in the State of Nevada who purchased the Unsafe Products (the “Nevada Class”)

All persons in the State of New Jersey who purchased the Unsafe Products (the “New Jersey Class”)

All persons in the State of New York who purchased the Unsafe Products (the “New York Class”)

All persons in the State of North Carolina who purchased the Unsafe Products (the “North Carolina Class”)

All persons in the State of Ohio who purchased the Unsafe Products (the “Ohio Class”)

All persons in the State of Oregon who purchased the Unsafe Products (the “Oregon Class”)

All persons in the State of Pennsylvania who purchased the Unsafe Products (the “Pennsylvania Class”)

228. Within the California Class, there is one subclass for purposes of Plaintiff Navarrete and O’Neill’s claims under the Song-Beverly Consumer Warranty Act and the Consumer Legal Remedies Act (the “California Subclass”). The proposed California Subclass is defined as follows:

All persons in the State of California who purchased the Unsafe Products for personal, family, or household purposes.

229. Excluded from the Nationwide Class and Subclasses are governmental entities, Defendant, any entity in which Defendant has a controlling interest, and Defendant’s officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Nationwide Class and Subclasses are any judges, justices, or

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judicial officers presiding over this matter and the members of their immediate families and judicial staff. This action is brought and may be properly maintained as a class action pursuant to Federal Rule of Civil Procedures 23(b)(2) and 23(b)(3), and satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of these rules.

230. ***Numerosity Under Rule 23(a)(1).*** The Nationwide Class and Subclasses are so numerous that the individual joinder of all members is impracticable, and the disposition of the claims of all Nationwide Class and Subclass members in a single action will provide substantial benefits to the parties and the Court.

231. ***Commonality Under Rule 23(a)(2).*** Common legal and factual questions exist that predominate over any questions affecting only individual Nationwide Class and Subclass members. These common questions, which do not vary among Nationwide Class or Subclass members and which may be determined without reference to any Nationwide Class or Subclass member's individual circumstances, include, but are not limited to:

a) Whether Defendant owed a duty of care to the Nationwide Class and Subclasses;

b) Whether Defendant knew or should have known that the Unsafe Products contained excessive amounts of vitamin D;

c) Whether Defendant advertised, represented, or marketed, or continues to advertise, represent, or market, Unsafe Products as nutritious, healthy, and safe for canine consumption;

d) Whether Defendant's representations and omissions in advertising and/or labelling are false, deceptive, and misleading;

e) Whether Defendant's representations and omissions in advertising and/or labelling are likely to deceive a reasonable consumer;

f) Whether Defendant had knowledge that its representations and omissions in advertising and/or labelling were false, deceptive, and misleading;

g) Whether a representation that a product is nutritious, healthy, and safe for consumption coupled with omissions that the Recalled Products contained excessive amounts of vitamin D is material to a reasonable consumer;

h) Whether Defendant engaged in unlawful, fraudulent, or unfair business practices;

i) Whether Plaintiffs and the members of the Nationwide Class or Subclasses are entitled to actual, statutory, and punitive damages; and

j) Whether Plaintiffs and members of the Nationwide Class or Subclasses are entitled to declaratory and injunctive relief.

232. **Typicality Under Rule 23(a)(3).** Plaintiffs' claims are typical of the Nationwide Class and Subclass members' claims. Defendant's course of conduct caused Plaintiffs and the Nationwide Class and Subclass members the same harm, damages, and losses as a result of Defendant's uniformly unlawful conduct. Likewise, Plaintiffs and other Nationwide Class and Subclass members must prove the same facts in order to establish the same claims.

233. **Adequacy of Representation Under Rule 23(a)(4).** Plaintiffs are Nationwide Class and Subclass representatives because they are Nationwide Class and Subclass members and their interests do not conflict with the interests of the Nationwide Class or Subclass. Plaintiffs have retained counsel competent and experienced in complex litigation and consumer protection class action matters such as this action, and Plaintiffs and their counsel intend to vigorously prosecute this action for the Nationwide Class's and Subclass's benefit and have the resources to do so. Plaintiffs and their counsel have no interests adverse to those of the other members of the Nationwide Class or Subclass.

234. **Superiority.** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because individual litigation of each Nationwide Class and Subclass member's claim is impracticable. The damages, harm, and losses suffered by the individual members of the Nationwide Class and Subclass will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Even if each Nationwide Class and Subclass member could afford individual

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litigation, the Court system could not. It would be unduly burdensome if thousands of individual cases proceeded. Individual litigation also presents the potential for inconsistent or contradictory judgments, the prospect of a race to the courthouse, and the risk of an inequitable allocation of recovery among those individuals with equally meritorious claims. Individual litigation would increase the expense and delay to all parties and the Courts because it requires individual resolution of common legal and factual questions. By contrast, the class action device presents far fewer management difficulties and provides the benefit of a single adjudication, economies of scale, and comprehensive supervision by a single court.

235. As a result of the foregoing, class treatment is appropriate.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

*Violations of the California Consumer Legal Remedies Act
 California Civil Code §§ 1750, et seq.,
 Against Defendant on Behalf of Plaintiff Navarrete and O'Neill and the California Subclass*

236. Plaintiff Navarrete and O'Neill, individually and on behalf of the California Subclass, incorporate by reference all of the allegations contained in the preceding paragraphs of this Amended Class Action Complaint as if fully set forth herein.

237. Plaintiff Navarrete and O'Neill bring this claim individually and on behalf of the California Subclass against Defendant.

238. Plaintiff Navarrete and O'Neill and each proposed California Subclass member is a "consumer," as that term is defined in California Civil Code section 1761(d).

239. The Recalled Products are "goods," as that term is defined in California Civil Code section 1761(a).

240. Defendant is a "person" as that term is defined in California Civil Code section 1761(c).

241. Plaintiff Navarrete and O'Neill and each proposed California Subclass member's purchase of Defendant's Recalled Products constituted a "transaction," as that term is defined in California Civil Code section 1761(e).

242. Defendant's conduct alleged herein violates the following provisions of California's Consumer Legal Remedies Act (the "CLRA"):

a) Representing that goods have characteristics, uses, and benefits which they do not have (Cal. Civ. Code § 1770(a)(5));

b) Representing that goods are of a particular standard, quality, or grade, if they are of another (Cal. Civ. Code § 1770(a)(7));

c) Advertising goods with intent not to sell them as advertised (Cal. Civ. Code § 1770(a)(9)); and

d) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not (Cal. Civ. Code § 1770 (a)(16)).

243. In addition, under California law, a duty to disclose arises in four circumstances: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant has exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts.

244. Defendant had a duty to disclose to Plaintiff Navarrete and O'Neill and the California Subclass that the Recalled Products contained excessive and dangerous amounts of vitamin D for the following two independent reasons: (a) Defendant had exclusive knowledge of the information at the time of sale; and (b) Defendant made partial representations to Plaintiff Navarrete and O'Neill and the California Subclass regarding the safety, quality, and nutritional content of the Recalled Products.

245. Defendant's misrepresentations and omissions alleged herein were likely to mislead an ordinary consumer. Plaintiff Navarrete and O'Neill and the California Subclass reasonably understood Defendant's representations and omissions to mean that the Recalled Products were safe, nutritious, and fit for canine consumption.

246. Defendant's misrepresentations and omissions alleged herein were material in that a reasonable person would attach importance to the information and would be induced to act upon the information in making purchase decisions.

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247. Plaintiff Navarrete and O'Neill and members of the California Subclass relied to their detriment on Defendant's misrepresentations and omissions in purchasing the Recalled Products.

248. Plaintiff Navarrete and O'Neill, on behalf of themselves and the California Subclass, demand judgment against Defendant under the CLRA for injunctive relief to Plaintiff Navarrete and O'Neill and the California Subclass.

249. Plaintiff Navarrete and O'Neill, on behalf of themselves and the California Subclass, further intend to seek compensatory damages.

250. Pursuant to Cal. Civ. Code § 1782(a), Plaintiff Navarrete and O'Neill will serve Defendant with notice of its alleged violations of the CLRA by certified mail return receipt requested. If, within thirty days after the date of such notification, Defendant fails to provide appropriate relief for their violations of the CLRA, Plaintiff Navarrete and O'Neill will amend this Amended Class Action Complaint to seek monetary damages under the CLRA.

251. Notwithstanding any other statements in this Amended Class Action Complaint, Plaintiff Navarrete and O'Neill do not seek monetary damages in connection with their CLRA claims – and will not do so – until the applicable thirty-day period has passed.

SECOND CLAIM FOR RELIEF

Violations of California False Advertising Law California Bus. & Prof. Code §§ 17500, et seq., Against Defendant on Behalf of Plaintiff Navarrete and O'Neill and the California Class

252. Plaintiff Navarrete and O'Neill, individually and on behalf of the California Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Amended Class Action Complaint as if fully set forth herein.

253. California's False Advertising Law prohibits any statement in connection with the sale of goods "which is untrue or misleading." Cal. Bus. & Prof. Code §17500.

254. Plaintiff Navarrete and O'Neill, individually and on behalf of the California Class, have standing to pursue this claim because Plaintiff Navarrete and O'Neill suffered injury in fact and has lost money or property as a result of Defendant's actions set forth above.

255. Defendant engaged in advertising and marketing to the public and offered for sale

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1 the Recalled Products in California.

2 256. Defendant engaged in the advertising and marketing alleged herein with the intent
3 to directly or indirectly induce the sale of the Recalled Products to consumers like Plaintiff
4 Navarrete and O'Neill and members of the California Class.

5 257. Defendant's advertising and marketing representations regarding the Recalled
6 Products were false, misleading, and deceptive within the definition, meaning and construction of
7 California Business & Professions Code §§ 17500, *et seq.* (False Advertising Law).

8 258. Defendant's misrepresentations and omissions alleged herein were the type of
9 misrepresentations that are material, *i.e.*, a reasonable person would attach importance to them and
10 would be induced to act on the information in making purchase decisions.

11 259. Defendant's misrepresentations and omissions alleged herein are objectively
12 material to a reasonable consumer, and therefore reliance upon such misrepresentations may be
13 presumed as a matter of law.

14 260. At the time it made the misrepresentations and omissions alleged herein, Defendant
15 knew or should have known that they were untrue or misleading and acted in violation of California
16 Business & Professions Code §§ 17500, *et seq.*

17 261. Unless restrained by this Court, Defendant will continue to engage in untrue and
18 misleading advertising, as alleged above, in violation of California Business & Professions Code
19 §§ 17500, *et seq.*

20 262. As a result of Defendant's conduct and actions, Plaintiff Navarrete and O'Neill and
21 each member of the California Class has been injured, has lost money or property, and is entitled
22 to relief. Plaintiff Navarrete and O'Neill and the California Class seek disgorgement, restitution,
23 injunctive relieve, and all other relief permitted under California Business & Professions Code §§
24 17500, *et seq.*

THIRD CLAIM FOR RELIEF

***Violations of the California Song-Beverly Consumer Warranty Act
California Civil Code §§ 1790, et seq.,
Against Defendant on Behalf of Plaintiff Navarrete and O'Neill and the California Subclass***

263. Plaintiff Navarrete and O'Neill, individually and on behalf of the California Subclass, incorporate by reference all of the allegations contained in the preceding paragraphs of this Amended Class Action Complaint as if fully set forth herein.

264. Plaintiff Navarrete and O'Neill bring this claim individually and on behalf of the California Subclass against Defendant.

265. Plaintiff Navarrete and O'Neill and the California Subclass purchased Recalled Products formulated and manufactured by Defendant that were marketed as nutritious, healthy, safe, and appropriate for canine consumption.

266. Plaintiff Navarrete and O'Neill and the California Subclass purchased the Recalled Products new and in their original packaging and did not alter the Recalled Products.

267. At the time of purchase, Defendant was in the business of manufacturing and marketing pet foods, including the Recalled Products.

268. Defendant's Recalled Products contained excessive and dangerous amounts of vitamin D. These excessive and dangerous amounts of vitamin D were present in the Recalled Products when they left the exclusive control of Defendant and therefore existed during the duration of the warranty period.

269. Defendant's Recalled Products were not of the same quality as those generally acceptable in the trade; were not fit for the ordinary purpose of canine consumption; were not adequately contained, packaged, and labeled; and did not conform to the promises and facts stated on the container and label.

270. Defendant, therefore, breached the implied warranty of merchantability, which by law is provided in every consumer agreement for the sale of goods, including the sale of the Recalled Products.

271. As a direct and proximate cause of Defendant's breach of the implied warranty of merchantability, Plaintiff and the California Subclass have been damaged by receiving an inferior

1 and unsafe product from that which they were promised. Plaintiff Navarrete and O'Neill and the
 2 California Subclass, therefore, have the right to cancel and recover the purchase price of their
 3 Recalled Products.

4 **FOURTH CLAIM FOR RELIEF**

5 ***Violations of the Unfair Competition Law*** 6 ***California Bus. & Prof. Code §§ 17200, et seq.,*** 7 ***Against Defendant on Behalf of Plaintiff Navarrete and O'Neill and the California Class***

8 272. Plaintiff Navarrete and O'Neill, individually and on behalf of the California Class,
 9 incorporate by reference all of the allegations contained in the preceding paragraphs of this
 10 Amended Class Action Complaint as if fully set forth herein.

11 273. California's Unfair Competition Law ("UCL") prohibits unfair competition,
 12 defined as "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue
 13 or misleading advertising and any act prohibited by [California's False Advertising Law, Cal. Bus.
 14 & Prof. Code §§ 17500, *et seq.*]."

15 274. Plaintiff Navarrete and O'Neill and the California Class have standing to pursue
 16 this claim because Plaintiff and members of the California Class have suffered injury in fact and
 17 have lost money or property as a result of Defendant's actions as set forth above.

18 275. Defendant's actions and conduct as alleged in this Amended Class Action
 19 Complaint constitute an "unlawful" practice within the definition, meaning, and construction of
 20 California's UCL because Defendant violated California's False Advertising Law (Bus. & Prof.
 21 Code §§ 17500, *et seq.*), the CLRA (Civ. Code §§ 1750, *et seq.*), and California's Song-Beverly
 22 Consumer Warranty Act (Cal. Civ. Code §§ 1790 *et seq.*).

23 276. Defendant's actions and conduct as alleged in this Amended Class Action
 24 Complaint constitute an "unfair" practice within the definition, meaning, and construction of
 25 California's UCL because they offend established public policy and/or are immoral, unethical,
 26 oppressive, unscrupulous, and/or substantially injurious to their customers. The harm caused by
 27 Defendant's wrongful conduct outweighs any utility of such conduct and has caused – will
 28 continue to cause – substantial injury to Plaintiff and the Class. Additionally, Defendant's conduct
 is "unfair" because it violated the legislatively declared policies in California's False Advertising

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1 Law (Bus. & Prof. Code §§ 17500, *et seq.*), the CLRA (Civ. Code §§ 1750, *et seq.*), and
2 California's Song-Beverly Consumer Warranty Act (Cal. Civ. Code §§ 1790 *et seq.*).

3 277. Defendant's actions as alleged in this Amended Class Action Complaint constitute
4 a "fraudulent" practice within the definition, meaning, and construction, of California's UCL
5 because Defendant's statements that the Recalled Products were nutritious, healthy, safe, and
6 appropriate for canine consumption are false and likely to deceive the public.

7 278. As a result of Defendant's "unlawful," "fraudulent," and "unfair" conduct, Plaintiff
8 and members of the Class paid premium prices for the Recalled Products, which were worth
9 substantially less than the products promised by Defendant, and Plaintiff Navarrete and O'Neill
10 and members of the California Class did not obtain the characteristics and specifications of the
11 Recalled Products promised by Defendant. Defendant's conduct directly and proximately caused
12 Plaintiff Navarrete and O'Neill and the California Class actual monetary damages in the form of
13 the price paid for the Recalled Products. The injuries, damages, and harm caused to Plaintiff
14 Navarrete and O'Neill and the California Class by Defendant's unfair conduct are not outweighed
15 by any countervailing benefits to consumers or competition, and the injury is one that consumers
16 themselves could not reasonably have avoided. Defendant knew or had reason to know that
17 Plaintiff Navarrete and O'Neill and the California Class could not have reasonably known or
18 discovered the existence of excessive amounts of vitamin D in the Recalled Products. Had
19 Defendant disclosed the excessive amounts of vitamin D in the Recalled Products, Plaintiff
20 Navarrete and O'Neill and the California Class would not have purchased the Recalled Products.

21 279. Defendant's wrongful business practices alleged herein constitute a continuing
22 course of unfair competition because Defendant markets and sells its products in a manner that
23 offends public policy and/or in a fashion that is immoral, unethical, oppressive, unscrupulous,
24 and/or substantially injurious to its customers. In accordance with California Business &
25 Professions Code § 17203, Plaintiff Navarrete and O'Neill seek an order enjoining Defendant from
26 continuing to conduct business through fraudulent or unlawful acts and practices.

27 280. Plaintiff Navarrete and O'Neill and the California Class also seek an order requiring
28 Defendant to make full restitution of all moneys it has wrongfully obtained from Plaintiff

1 Navarrete and O'Neill and the California Class, along with all other relief permitted under the
2 UCL.

3 **FIFTH CLAIM FOR RELIEF**

4 *Violations of the Arizona Consumer Fraud Act* 5 *Ariz. Rev. Stat. §§ 44-1421, et seq.,* 6 *Against Defendant on Behalf of Plaintiffs Tarrence and Schaefer and the Arizona Class*

7 281. Plaintiffs Tarrence and Schaefer, individually and on behalf of the Arizona Class,
8 incorporate by reference all of the allegations contained in the preceding paragraphs of this
9 Amended Class Action Complaint as if fully set forth herein.

10 282. Defendant, Plaintiffs Tarrence and Schaefer, and members of the Arizona Class are
11 "persons" within the meaning of the Arizona Consumer Fraud Act ("Ariz. CFA"). Ariz. Rev. Stat.
12 § 44-1521(6).

13 283. The Recalled Products are "merchandise" within the meaning of Ariz. Rev. Stat. §
14 44-1521(5).

15 284. The Ariz. CFA prohibits "[t]he act, use or employment by any person of any
16 deception, deceptive act or practice, fraud . . . misrepresentation, or concealment, suppression or
17 omission of any material fact with intent that others rely upon such concealment, suppression or
18 omission, in connection with the sale . . . of any merchandise whether or not any person has in fact
19 been misled, deceived or damaged thereby." Ariz. Rev. Stat. § 44-1522(A).

20 285. Plaintiffs Tarrence and Schaefer and the Class purchased Recalled Products new
21 and in their original packaging and did not alter the Recalled Products.

22 286. In the course of its primary business of manufacturing and marketing pet foods,
23 including the Recalled Products, Defendant concealed the excessive and dangerous amounts of
24 vitamin D in their products and otherwise engaged in activities with a tendency or capacity to
25 deceive. These excessive and dangerous amounts of vitamin D were present in the Recalled
26 Products when they left the exclusive control of Defendant and therefore existed during the
27 duration of the warranty period.

28 287. Defendant also engaged in unlawful trade practices by employing deception,
deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of

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any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Recalled Products, in violation of the Ariz. CFA. Defendant's deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers about the true reliability of their Recalled Products. Plaintiffs Tarrence and Schaefer and the Arizona Class reasonably understood Defendant's representations and omissions to mean that the Recalled Products were safe, nutritious, and fit for canine consumption.

288. Defendant's acts and practices are also unfair because they are contrary to Arizona law and public policy and further constitute immoral, unethical, oppressive, and unscrupulous business practices that caused substantial injury to Plaintiffs Tarrence and Schaefer, as well as to members of the Arizona Class. The harm caused by Defendant's unfair acts and practices outweighs any utility of such conduct.

289. As alleged above, Defendant made material statements about the safety of the Recalled Products that were either false or misleading. Defendant owed Plaintiffs Tarrence and Schaefer and the Arizona Class a duty to disclose the true safety of the Recalled Products, because Defendant: (a) possessed exclusive knowledge about the vitamin D levels in the Recalled Products; (b) intentionally concealed the foregoing from Plaintiffs Tarrence and Schaefer and the Arizona Class; and (c) made incomplete representations about the safety of the Recalled Products, while purposefully withholding material facts from Plaintiffs Tarrence and Schaefer and the Arizona Class that contradicted these representations.

290. Defendant intentionally and knowingly misrepresented material facts regarding the Recalled Products with the intent to mislead Plaintiffs Tarrence and Schaefer and the Arizona Class. Defendant knew or should have known that its conduct violated the Ariz. CFA.

SIXTH CLAIM FOR RELIEF

*Violations of the Connecticut Unfair Trade Practices Act
 Conn. Gen. Stat. §§ 42-110a, et seq.,
 Against Defendant on Behalf of Plaintiff Kaufmann and the Connecticut Class*

291. Plaintiff Kaufmann, individually and on behalf of the Connecticut Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Amended Class Action Complaint as if fully set forth herein.

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1 292. The Connecticut Unfair Trade Practices Act (“CUTPA”) prohibits any person from
2 “engag[ing] in unfair methods of competition and unfair or deceptive acts or practices in the
3 conduct of any trade or commerce.” Conn. Gen. Stat. § 42-110b(a).

4 293. Defendant is a “person” within the meaning of Conn. Gen. Stat. § 42-110a(3).

5 294. Defendant is engaged in “trade” or “commerce” in Connecticut within the meaning
6 of Conn. Gen. Stat. § 42-110a(4).

7 295. Plaintiff Kaufmann and the Connecticut Class purchased Recalled Products new
8 and in their original packaging and did not alter the Recalled Products.

9 296. In the course of its primary business of manufacturing and marketing pet foods,
10 including the Recalled Products, Defendant concealed the excessive and dangerous amounts of
11 vitamin D in their products and otherwise engaged in activities with a tendency or capacity to
12 deceive. These excessive and dangerous amounts of vitamin D were present in the Recalled
13 Products when they left the exclusive control of Defendant and therefore existed during the
14 duration of the warranty period.

15 297. Defendant also engaged in unlawful trade practices by employing deception,
16 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
17 any material fact with intent that others rely upon such concealment, suppression or omission, in
18 connection with the sale of the Recalled Products, in violation of the CUTPA. Defendant’s
19 deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers about the
20 true reliability of their Recalled Products. Plaintiff Kaufmann and the Connecticut Class
21 reasonably understood Defendant’s representations and omissions to mean that the Recalled
22 Products were safe, nutritious, and fit for canine consumption

23 298. Defendant’s acts and practices are also unfair because they are contrary to
24 Connecticut law and public policy and further constitute immoral, unethical, oppressive, and
25 unscrupulous business practices that caused substantial injury to Plaintiff Kaufmann and members
26 of the Connecticut Class. The harm caused by Defendant’s unfair acts and practices outweighs any
27 utility of such conduct.

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299. As alleged above, Defendant made material statements about the safety of the Recalled Products that were either false or misleading. Defendant owed Plaintiff Kaufmann and the Connecticut Class a duty to disclose the true safety of the Recalled Products, because Defendant: (a) possessed exclusive knowledge about the vitamin D levels in the Recalled Products; (b) intentionally concealed the foregoing from Plaintiff Kaufmann and the Connecticut Class; and (c) made incomplete representations about the safety of the Recalled Products, while purposefully withholding material facts from Plaintiff Kaufmann and the Connecticut Class that contradicted these representations.

300. Defendant intentionally and knowingly misrepresented material facts regarding the Recalled Products with the intent to mislead Plaintiff Kaufmann and the Connecticut Class. Defendant knew or should have known that its conduct violated the CUTPA.

301. As a direct and proximate result of Defendant's unfair and deceptive conduct, Plaintiff Kaufmann and the Connecticut Class members have suffered injury, ascertainable losses of money or property, and monetary and nonmonetary damages. Because Defendant fraudulently concealed the dangerously high levels of vitamin D in the Recalled Products, purchasers of the Recalled Products were deprived of the benefit of their bargain since the pet foods they purchased were worth less than they would have been if they were free from the high levels of vitamin D. Furthermore, Plaintiff Kaufmann and members of the Connecticut Class had to spend their time and money to address and resolve the various health issues that plagued their pets. Had purchasers of the Recalled Products been aware of the high levels of vitamin D, they would not have bought the Recalled Products.

302. Defendant's violations caused ascertainable injury to Plaintiff Kaufmann and the Connecticut Class, as well as to the general public. Defendant's unlawful acts and practices alleged herein negatively affect the public interest, and there are no countervailing benefits to consumers that outweigh the harm caused by Defendant's conduct.

303. Pursuant to Conn. Gen. Stat. §§ 42-110g and 42-110o, Plaintiff Kaufmann and the Connecticut Class seek an order enjoining Defendant's unfair and/or deceptive acts or practices and awarding actual damages, punitive damages, attorneys' fees, and any other just and proper

1 relief under the CUTPA the Court deems necessary to protect the public from further violations of
2 the CUTPA.

3 304. A copy of this complaint will be mailed to the Attorney General and the
4 Commissioner of Consumer Protection pursuant to Conn. Gen. § 42-110g(c).

5 SEVENTH CLAIM FOR RELIEF

6 *Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act*
7 *815 Ill. Comp. Stat. ("ILCS") §§ 505/1, et seq.,*
8 *Against Defendant on Behalf of Plaintiff Lerner and the Illinois Class*

9 305. Plaintiff Lerner, individually and on behalf of the Illinois Class, incorporates by
10 reference all of the allegations contained in the preceding paragraphs of this Amended Class Action
11 Complaint as if fully set forth herein.

12 306. Defendant is a "person" within the meaning of 815 ILCS § 505/1(c).

13 307. Plaintiff Lerner and the Illinois class are "consumers" within the meaning of 815
14 ILCS § 505/1(e).

15 308. The Illinois Consumer Fraud and Deceptive Business Practices Act ("Ill. CFDPA")
16 prohibits any person from engaging in "unfair or deceptive acts or practices, including but not
17 limited to the use or employment of any deception, fraud, false pretense, false promise,
18 misrepresentation or the concealment, suppression or omission of any material fact, with intent
19 that others rely upon the concealment, suppression or omission of such material fact . . . in the
20 conduct of trade or commerce . . . whether any person has in fact been misled, deceived or damaged
21 thereby." 815 ILCS § 505/2.

22 309. Plaintiff Lerner and the Illinois Class purchased Recalled Products new and in their
23 original packaging and did not alter the Recalled Products.

24 310. In the course of its primary business of manufacturing and marketing pet foods,
25 including the Recalled Products, Defendant concealed the excessive and dangerous amounts of
26 vitamin D in their products and otherwise engaged in activities with a tendency or capacity to
27 deceive. These excessive and dangerous amounts of vitamin D were present in the Recalled
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1 Products when they left the exclusive control of Defendant and therefore existed during the
2 duration of the warranty period.

3 311. Defendant also engaged in unlawful trade practices by employing deception,
4 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
5 any material fact with intent that others rely upon such concealment, suppression or omission, in
6 connection with the sale of the Recalled Products, in violation of the Ill. CFDA. Defendant's
7 deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers about the
8 true reliability of their Recalled Products. Plaintiff Lerner and the Illinois Class reasonably
9 understood Defendant's representations and omissions to mean that the Recalled Products were
10 safe, nutritious, and fit for canine consumption.

11 312. Defendant's acts and practices are also unfair because they are contrary to Illinois
12 law and public policy and further constitute immoral, unethical, oppressive, and unscrupulous
13 business practices that caused substantial injury to Plaintiff Lerner and members of the Illinois
14 Class. The harm caused by Defendant's unfair acts and practices outweighs any utility of such
15 conduct.

16 313. As alleged above, Defendant made material statements about the safety of the
17 Recalled Products that were either false or misleading. Defendant owed Plaintiff Lerner and the
18 Illinois Class a duty to disclose the true safety of the Recalled Products, because Defendant: (a)
19 possessed exclusive knowledge about the vitamin D levels in the Recalled Products; (b)
20 intentionally concealed the foregoing from Plaintiff Lerner and the Illinois Class; and (c) made
21 incomplete representations about the safety of the Recalled Products, while purposefully
22 withholding material facts from Plaintiff Lerner and the Illinois Class that contradicted these
23 representations.

24 314. Defendant intentionally and knowingly misrepresented material facts regarding the
25 Recalled Products with the intent to mislead Plaintiff Lerner and the Illinois Class. Defendant knew
26 or should have known that its conduct violated the Ill. CFDA.

27 315. As a direct and proximate result of Defendant's unfair and deceptive conduct,
28 Plaintiff Lerner and the Illinois Class members have suffered injury, ascertainable losses of money

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or property, and monetary and nonmonetary damages. Because Defendant fraudulently concealed the dangerously high levels of vitamin D in the Recalled Products, purchasers of the Recalled Products were deprived of the benefit of their bargain since the pet foods they purchased were worth less than they would have been if they were free from the high levels of vitamin D. Furthermore, Plaintiff Lerner and members of the Illinois Class had to spend their time and money to address and resolve the various health issues that plagued their pets. Had purchasers of the Recalled Products been aware of the high levels of vitamin D, they would not have bought the Recalled Products.

316. Defendant's violations caused ascertainable injury to Plaintiff Lerner and the Illinois Class, as well as to the general public. Defendant's unlawful acts and practices alleged herein negatively affect the public interest, and there are no countervailing benefits to consumers that outweigh the harm caused by Defendant's conduct.

317. Pursuant to 815 ILCS §§ 505/7 and 505/10, Plaintiff Lerner and the Illinois Class seek an order enjoining Defendant's unfair and/or deceptive acts or practices and awarding actual damages, punitive damages, attorneys' fees, and any other just and proper relief under the Ill. CFDPA the Court deems necessary to protect the public from further violations of the Ill. CFDPA.

EIGHTH CLAIM FOR RELIEF

***Violations of the Maryland Consumer Protection Act
 Md. Code Com. Law §§ 13-101, et seq.,
 Against Defendant on Behalf of Plaintiffs Yesenko and Wheeler and the Maryland Class***

318. Plaintiffs Yesenko and Wheeler, individually and on behalf of the Maryland Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Amended Class Action Complaint as if fully set forth herein.

319. Defendant, Plaintiffs Yesenko and Wheeler, and members of the Maryland Class are "persons" within the meaning of the Md. Code Com. Law § 13-101(h).

320. The Maryland Consumer Protection Act ("Md. CPA") broadly prohibits "any unfair or deceptive trade practice in the sale of any consumer good." Md. Code Com. Law § 13-303. Defendant participated in misleading, false, or deceptive acts in violation of the Md. CPA.

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1 321. Plaintiffs Yesenko and Wheeler and the Maryland Class purchased Unsafe Products
2 and Recalled Products new and in their original packaging and did not alter the Recalled Products.

3 322. In the course of its primary business of manufacturing and marketing pet foods,
4 including the Unsafe Products and Recalled Products, Defendant concealed the excessive and
5 dangerous amounts of vitamin D in their products and otherwise engaged in activities with a
6 tendency or capacity to deceive. These excessive and dangerous amounts of vitamin D were
7 present in the Unsafe Products and Recalled Products when they left the exclusive control of
8 Defendant and therefore existed during the duration of the warranty period.

9 323. Defendant also engaged in unlawful trade practices by employing deception,
10 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
11 any material fact with intent that others rely upon such concealment, suppression or omission, in
12 connection with the sale of the Unsafe Products and Recalled Products, in violation of the Md.
13 CPA. Defendant's deceptive acts or practices were likely to, and did in fact, deceive reasonable
14 consumers about the true reliability of their products. Plaintiffs Yesenko and Wheeler and the
15 Maryland Class reasonably understood Defendant's representations and omissions to mean that
16 the Unsafe Products and Recalled Products were safe, nutritious, and fit for canine consumption.

17 324. Defendant's acts and practices are also unfair because they are contrary to Maryland
18 law and public policy and further constitute immoral, unethical, oppressive, and unscrupulous
19 business practices that caused substantial injury to Plaintiffs Yesenko and Wheeler and members
20 of the Maryland Illinois Class. The harm caused by Defendant's unfair acts and practices
21 outweighs any utility of such conduct.

22 325. As alleged above, Defendant made material statements about the safety of the
23 Unsafe Products and Recalled Products that were either false or misleading. Defendant owed
24 Plaintiffs Yesenko and Wheeler and the Maryland Class a duty to disclose the true safety of the
25 Unsafe Products and Recalled Products, because Defendant: (a) possessed exclusive knowledge
26 about the vitamin D levels in the Unsafe Products and Recalled Products; (b) intentionally
27 concealed the foregoing from Plaintiffs Yesenko and Wheeler and the Maryland Class; and (c)
28 made incomplete representations about the safety of the Unsafe Products and Recalled Products,

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1 while purposefully withholding material facts from Plaintiffs Yesenko and Wheeler and the
2 Maryland Class that contradicted these representations.

3 326. Defendant intentionally and knowingly misrepresented material facts regarding the
4 Unsafe Products and Recalled Products with the intent to mislead Yesenko and Wheeler and the
5 Maryland Class. Defendant knew or should have known that its conduct violated the Md. CPA.

6 327. As a direct and proximate result of Defendant's unfair and deceptive conduct,
7 Plaintiffs Yesenko and Wheeler and the Maryland Class members have suffered injury,
8 ascertainable losses of money or property, and monetary and nonmonetary damages. Because
9 Defendant fraudulently concealed the dangerously high levels of vitamin D in the Unsafe Products
10 and Recalled Products, purchasers of the products were deprived of the benefit of their bargain
11 since the pet foods they purchased were worth less than they would have been if they were free
12 from the high levels of vitamin D. Furthermore, Plaintiffs Yesenko and Wheeler and members of
13 the Maryland Class had to spend their time and money to address and resolve the various health
14 issues that plagued their pets. Had purchasers of these products been aware of the high levels of
15 vitamin D, they would not have bought the products.

16 328. Defendant's violations caused ascertainable injury to Plaintiffs Yesenko and
17 Wheeler and the Maryland Class, as well as to the general public. Defendant's unlawful acts and
18 practices alleged herein negatively affect the public interest, and there are no countervailing
19 benefits to consumers that outweigh the harm caused by Defendant's conduct.

20 329. Pursuant to Md. Code Com. Law § 13-408, Plaintiffs Yesenko and Wheeler and the
21 Maryland Class seek an order enjoining Defendant's unfair and/or deceptive acts or practices and
22 awarding actual damages, attorneys' fees, and any other just and proper relief under Md. CPA the
23 Court deems necessary to protect the public from further violations of the Md. CPA.

NINTH CLAIM FOR RELIEF

***Violations of the Michigan Consumer Protection Act
Mich. Comp. Laws §§ 445.901, et seq.,
Against Defendant on Behalf of Plaintiff Folbaum and the Michigan Class***

330. Plaintiff Folbaum, individually and on behalf of the Michigan Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Amended Class Action Complaint as if fully set forth herein.

331. Defendant, Plaintiff Folbaum, and members of the Michigan Class are “person[s]” within the meaning of Mich. Comp. Laws § 445.902(1)(d).

332. At all relevant times, Defendant was a “person” engaged in “trade or commerce” within the meaning of Mich. Comp. Laws § 445.902(1)(g).

333. The Michigan Consumer Protection Act (“Mich. CPA”) prohibits “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce.” Mich. Comp. Laws § 445.903(1). In connection with its sale of the Recalled Products to Plaintiff Folbaum and the Michigan Class, Defendant violated the Mich. CPA by:

- a) Misrepresenting to Plaintiff Folbaum and the Michigan Class that the Recalled Products have characteristics that they do not have, in violation of Mich. Comp. Laws § 445.903(1)(c).
- b) Misrepresenting to Plaintiff Folbaum and the Michigan Class that the Recalled Products are of a particular standard when they were of another, in violation of Mich. Comp. Laws § 445.903(1)(e); and
- c) Failing to reveal to Plaintiff Folbaum and the Michigan Class a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer, in violation of Mich. Comp. Laws § 445.903(1)(s).

334. Plaintiff Folbaum and the Michigan Class purchased Recalled Products new and in their original packaging and did not alter the Recalled Products.

335. In the course of its primary business of manufacturing and marketing pet foods, including the Recalled Products, Defendant concealed the excessive and dangerous amounts of vitamin D in their products and otherwise engaged in activities with a tendency or capacity to deceive. These excessive and dangerous amounts of vitamin D were present in the Recalled

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1 Products when they left the exclusive control of Defendant and therefore existed during the
2 duration of the warranty period.

3 336. Defendant also engaged in unlawful trade practices by employing deception,
4 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
5 any material fact with intent that others rely upon such concealment, suppression or omission, in
6 connection with the sale of the Recalled Products, in violation of the Mich. CPA. Defendant's
7 deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers about the
8 true reliability of their Recalled Products. Plaintiff Folbaum and the Michigan Class reasonably
9 understood Defendant's representations and omissions to mean that the Recalled Products were
10 safe, nutritious, and fit for canine consumption.

11 337. Defendant's acts and practices are also unfair because they are contrary to Michigan
12 law and public policy and further constitute immoral, unethical, oppressive, and unscrupulous
13 business practices that caused substantial injury to Plaintiff Folbaum and members of the Michigan
14 Class. The harm caused by Defendant's unfair acts and practices outweighs any utility of such
15 conduct.

16 338. As alleged above, Defendant made material statements about the safety of the
17 Recalled Products that were either false or misleading. Defendant owed Plaintiff Folbaum and the
18 Michigan Class a duty to disclose the true safety of the Recalled Products, because Defendant: (a)
19 possessed exclusive knowledge about the vitamin D levels in the Recalled Products; (b)
20 intentionally concealed the foregoing from Plaintiff Folbaum and the Michigan Class; and (c) made
21 incomplete representations about the safety of the Recalled Products, while purposefully
22 withholding material facts from Plaintiff Folbaum and the Michigan Class that contradicted these
23 representations.

24 339. Defendant intentionally and knowingly misrepresented material facts regarding the
25 Recalled Products with the intent to mislead Plaintiff Folbaum and the Michigan Class. Defendant
26 knew or should have known that its conduct violated the Mich. CPA.

27 340. As a direct and proximate result of Defendant's unfair and deceptive conduct,
28 Plaintiff Folbaum and the Michigan Class members have suffered injury, ascertainable losses of

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1 money or property, and monetary and nonmonetary damages. Because Defendant fraudulently
 2 concealed the dangerously high levels of vitamin D in the Recalled Products, purchasers of the
 3 Recalled Products were deprived of the benefit of their bargain since the pet foods they purchased
 4 were worth less than they would have been if they were free from the high levels of vitamin D.
 5 Furthermore, Plaintiff Folbaum and members of the Michigan Class had to spend their time and
 6 money to address and resolve the various health issues that plagued their pets. Had purchasers of
 7 the Recalled Products been aware of the high levels of vitamin D, they would not have bought the
 8 Recalled Products.

9 341. Defendant's violations caused ascertainable injury to Plaintiff Folbaum and the
 10 Michigan Class, as well as to the general public. Defendant's unlawful acts and practices alleged
 11 herein negatively affect the public interest, and there are no countervailing benefits to consumers
 12 that outweigh the harm caused by Defendant's conduct.

13 342. Plaintiff Folbaum and the Michigan Class seek an order awarding monetary relief
 14 against Defendant, as measured by the greater of (a) actual damages in an amount to be determined,
 15 and (b) statutory damages in the amount of \$250 for Plaintiff Folbaum and the Michigan Class.
 16 Mich. Comp. Laws § 445.911. Plaintiff Folbaum and the Michigan Class further seek an order
 17 enjoining Defendant's unfair and/or deceptive acts or practices, attorneys' fees, and any other just
 18 and proper relief under the Mich. CPA the Court deems necessary to protect the public from further
 19 violations of the Mich. CPA.

20 **TENTH CLAIM FOR RELIEF**

21 ***Violations of the Minnesota Prevention of Consumer Fraud Act*** 22 ***Minn. Stat. § 325f.68, et seq.,*** ***Against Defendant on Behalf of Plaintiff Heck and the Minnesota Class***

23 343. Plaintiff Heck, individually and on behalf of the Minnesota Class, incorporates by
 24 reference all of the allegations contained in the preceding paragraphs of this Amended Class Action
 25 Complaint as if fully set forth herein.

26 344. The Recalled Products are "merchandise" within the meaning of Minn. Stat. §
 27 325F.68(2).
 28

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1 345. The Minnesota Prevention of Consumer Fraud Act (“Minn. CFA”) broadly
2 prohibits “[t]he act, use, or employment by any person of any fraud, false pretense, false promise,
3 misrepresentation, misleading statement or deceptive practice, with the intent that others rely
4 thereon in connection with the sale of any merchandise, whether or not any person has in fact been
5 misled, deceived, or damaged thereby.” Minn. Stat. § 325F.69(1). Defendant participated in
6 misleading, false, or deceptive acts in violation of the Minn. CFA.

7 346. Plaintiff Heck and the Minnesota Class purchased Recalled Products new and in
8 their original packaging and did not alter the Recalled Products.

9 347. In the course of its primary business of manufacturing and marketing pet foods,
10 including the Recalled Products, Defendant concealed the excessive and dangerous amounts of
11 vitamin D in their products and otherwise engaged in activities with a tendency or capacity to
12 deceive. These excessive and dangerous amounts of vitamin D were present in the Recalled
13 Products when they left the exclusive control of Defendant and therefore existed during the
14 duration of the warranty period.

15 348. Defendant also engaged in unlawful trade practices by employing deception,
16 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
17 any material fact with intent that others rely upon such concealment, suppression or omission, in
18 connection with the sale of the Recalled Products, in violation of the Minn. CFA. Defendant’s
19 deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers about the
20 true reliability of their Recalled Products. Plaintiff Heck and the Minnesota Class reasonably
21 understood Defendant’s representations and omissions to mean that the Recalled Products were
22 safe, nutritious, and fit for canine consumption.

23 349. Defendant’s acts and practices are also unfair because they are contrary to
24 Minnesota law and public policy and further constitute immoral, unethical, oppressive, and
25 unscrupulous business practices that caused substantial injury to Plaintiff Heck and members of
26 the Minnesota Class. The harm caused by Defendant’s unfair acts and practices outweighs any
27 utility of such conduct.
28

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1 350. As alleged above, Defendant made material statements about the safety of the
2 Recalled Products that were either false or misleading. Defendant owed Plaintiff Heck and the
3 Minnesota Class a duty to disclose the true safety of the Recalled Products, because Defendant:
4 (a) possessed exclusive knowledge about the vitamin D levels in the Recalled Products; (b)
5 intentionally concealed the foregoing from Plaintiff Heck and the Minnesota Class; and (c) made
6 incomplete representations about the safety of the Recalled Products, while purposefully
7 withholding material facts from Plaintiff Heck and the Minnesota Class that contradicted these
8 representations.

9 351. Defendant intentionally and knowingly misrepresented material facts regarding the
10 Recalled Products with the intent to mislead Plaintiff Heck and the Minnesota Class. Defendant
11 knew or should have known that its conduct violated the Minn. CFA.

12 352. As a direct and proximate result of Defendant's unfair and deceptive conduct,
13 Plaintiff Heck and the Minnesota Class members have suffered injury, ascertainable losses of
14 money or property, and monetary and nonmonetary damages. Because Defendant fraudulently
15 concealed the dangerously high levels of vitamin D in the Recalled Products, purchasers of the
16 Recalled Products were deprived of the benefit of their bargain since the pet foods they purchased
17 were worth less than they would have been if they were free from the high levels of vitamin D.
18 Furthermore, Plaintiff Heck and members of the Minnesota Class had to spend their time and
19 money to address and resolve the various health issues that plagued their pets. Had purchasers of
20 the Recalled Products been aware of the high levels of vitamin D, they would not have bought the
21 Recalled Products.

22 353. Defendant's violations caused ascertainable injury to Plaintiff Heck and the
23 Minnesota Class, as well as to the general public. Defendant's unlawful acts and practices alleged
24 herein negatively affect the public interest, and there are no countervailing benefits to consumers
25 that outweigh the harm caused by Defendant's conduct.

26 354. Pursuant to Minn. Stat. § 8.31, Plaintiff Heck and the Minnesota Class seek an order
27 enjoining Defendant's unfair and/or deceptive acts or practices and awarding actual damages,
28 attorneys' fees, and any other just and proper relief under Minn. CFA the Court deems necessary

1 to protect the public from further violations of the Minn. CFA. Plaintiff and the Minnesota Class
 2 also seek punitive damages given the clear and convincing evidence that Defendant's acts evidence
 3 a deliberate disregard for the rights or safety of others. Minn. Stat. § 549.20(1)(a).

4 **ELEVENTH CLAIM FOR RELIEF**

5 *Violations of the Nevada Deceptive Trade Practices Act* 6 *Nev. Rev. Stat. § 598.0903, et seq.,* *Against Defendant on Behalf of Plaintiff Loggins and the Nevada Class*

7 355. Plaintiff Loggins, individually and on behalf of the Nevada Class, incorporates by
 8 reference all of the allegations contained in the preceding paragraphs of this Amended Class Action
 9 Complaint as if fully set forth herein.

10 356. The Nevada Deceptive Trade Practices Act ("Nev. DTPA") broadly prohibits
 11 deceptive trade practices. Nev. Rev. Stat. § 598.0903, *et seq.* In connection with its sale of the
 12 Recalled Products to Plaintiff Loggins and the Nevada Class, Defendant violated the Nev. DTPA
 13 by:

- 14 d) Misrepresenting to Plaintiff Loggins and the Nevada Class that the Recalled
 15 Products have characteristics, ingredients, uses, benefits, or qualities that they do
 not have, in violation of Nev. Rev. Stat. § 598.0915(5);
- 16 e) Misrepresenting to Plaintiff Loggins and the Nevada Class that the Recalled
 17 Products are of a particular standard, quality or grade, when they were of another,
 in violation of Nev. Rev. Stat. § 598.0915(7);
- 18 f) Advertising the Recalled Products to Plaintiff Loggins and the Nevada Class with
 19 intent not to sell them as advertised, in violation of Nev. Rev. Stat. § 598.0915(9);
 and

20 357. Plaintiff Loggins and the Nevada Class purchased Recalled Products new and in
 21 their original packaging and did not alter the Recalled Products.

22 358. In the course of its primary business of manufacturing and marketing pet foods,
 23 including the Recalled Products, Defendant concealed the excessive and dangerous amounts of
 24 vitamin D in their products and otherwise engaged in activities with a tendency or capacity to
 25 deceive. These excessive and dangerous amounts of vitamin D were present in the Recalled
 26 Products when they left the exclusive control of Defendant and therefore existed during the
 27 duration of the warranty period.
 28

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1 359. Defendant also engaged in unlawful trade practices by employing deception,
2 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
3 any material fact with intent that others rely upon such concealment, suppression or omission, in
4 connection with the sale of the Recalled Products, in violation of the Nev. DTPA. Defendant's
5 deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers about the
6 true reliability of their Recalled Products. Plaintiff Loggins and the Nevada Class reasonably
7 understood Defendant's representations and omissions to mean that the Recalled Products were
8 safe, nutritious, and fit for canine consumption.

9 360. Defendant's acts and practices are also unfair because they are contrary to Nevada
10 law and public policy and further constitute immoral, unethical, oppressive, and unscrupulous
11 business practices that caused substantial injury to Plaintiff Loggins and members of the Nevada
12 Class. The harm caused by Defendant's unfair acts and practices outweighs any utility of such
13 conduct.

14 361. As alleged above, Defendant made material statements about the safety of the
15 Recalled Products that were either false or misleading. Defendant owed Plaintiff Loggins and the
16 Nevada Class a duty to disclose the true safety of the Recalled Products, because Defendant: (a)
17 possessed exclusive knowledge about the vitamin D levels in the Recalled Products; (b)
18 intentionally concealed the foregoing from Plaintiff Loggins and the Nevada Class; and (c) made
19 incomplete representations about the safety of the Recalled Products, while purposefully
20 withholding material facts from Plaintiff Loggins and the Nevada Class that contradicted these
21 representations.

22 362. Defendant intentionally and knowingly misrepresented material facts regarding the
23 Recalled Products with the intent to mislead Plaintiff Loggins and the Nevada Class. Defendant
24 knew or should have known that its conduct violated the Nev. DTPA.

25 363. As a direct and proximate result of Defendant's unfair and deceptive conduct,
26 Plaintiff Loggins and the Nevada Class members have suffered injury, ascertainable losses of
27 money or property, and monetary and nonmonetary damages. Because Defendant fraudulently
28 concealed the dangerously high levels of vitamin D in the Recalled Products, purchasers of the

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1 Recalled Products were deprived of the benefit of their bargain since the pet foods they purchased
 2 were worth less than they would have been if they were free from the high levels of vitamin D.
 3 Furthermore, Plaintiff Loggins and members of the Nevada Class had to spend their time and
 4 money to address and resolve the various health issues that plagued their pets. Had purchasers of
 5 the Recalled Products been aware of the high levels of vitamin D, they would not have bought the
 6 Recalled Products.

7 364. Defendant's violations caused ascertainable injury to Plaintiff Loggins and the
 8 Nevada Class, as well as to the general public. Defendant's unlawful acts and practices alleged
 9 herein negatively affect the public interest, and there are no countervailing benefits to consumers
 10 that outweigh the harm caused by Defendant's conduct.

11 365. Pursuant to Nev. Rev. Stat. § 41.600, Plaintiff Loggins and the Nevada Class seek
 12 an order enjoining Defendant's unfair and/or deceptive acts or practices and awarding actual
 13 damages, attorneys' fees, and any other just and proper relief under Nev. DTPA the Court deems
 14 necessary to protect the public from further violations of the Nev. DTPA.

15 **TWELVTH CLAIM FOR RELIEF**

16 *Violations of the New Jersey Consumer Fraud Act* *N.J. Stat. Ann. §§ 56:8-1, et seq.,*

17 *Against Defendant on Behalf of Plaintiff Tarrence and the New Jersey Class*

18 366. Plaintiff Tarrence, individually and on behalf of the New Jersey Class, incorporates
 19 by reference all of the allegations contained in the preceding paragraphs of this Amended Class
 20 Action Complaint as if fully set forth herein.

21 367. Defendant, Plaintiff Tarrence, and members of the New Jersey Class are
 22 "person[s]" within the meaning of the N.J. Stat. An. § 56:8-1(d).

23 368. At all relevant times, Defendant engaged in "sales" of "merchandise" within the
 24 meaning of N.J. Stat. § 56:8-1(c), (e).

25 369. The New Jersey Consumer Fraud Act ("N.J. CFA") broadly prohibits "[t]he act,
 26 use or employment by any person of any unconscionable commercial practice, deception, fraud,
 27 false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or
 28 omission of any material fact with the intent that others rely upon such concealment, suppression

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1 or omission, in connection with the sale or advertisement of any merchandise or real estate, or with
2 the subsequent performance of such person as aforesaid, whether or not any person has in fact been
3 misled, deceived or damaged thereby.” N.J. Stat. Ann. § 56:8-2.

4 370. Plaintiff Tarrence and the New Jersey Class purchased Recalled Products new and
5 in their original packaging and did not alter the Recalled Products.

6 371. In the course of its primary business of manufacturing and marketing pet foods,
7 including the Recalled Products, Defendant concealed the excessive and dangerous amounts of
8 vitamin D in their products and otherwise engaged in activities with a tendency or capacity to
9 deceive. These excessive and dangerous amounts of vitamin D were present in the Recalled
10 Products when they left the exclusive control of Defendant and therefore existed during the
11 duration of the warranty period.

12 372. Defendant also engaged in unlawful trade practices by employing deception,
13 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
14 any material fact with intent that others rely upon such concealment, suppression or omission, in
15 connection with the sale of the Recalled Products, in violation of the N.J. CFA. Defendant’s
16 deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers about the
17 true reliability of their Recalled Products. Plaintiff Tarrence and the New Jersey Class reasonably
18 understood Defendant’s representations and omissions to mean that the Recalled Products were
19 safe, nutritious, and fit for canine consumption.

20 373. Defendant’s acts and practices are also unfair because they are contrary to New
21 Jersey law and public policy and further constitute immoral, unethical, oppressive, and
22 unscrupulous business practices that caused substantial injury to Plaintiff Tarrence and members
23 of the New Jersey Class. The harm caused by Defendant’s unfair acts and practices outweighs any
24 utility of such conduct.

25 374. As alleged above, Defendant made material statements about the safety of the
26 Recalled Products that were either false or misleading. Defendant owed Plaintiff Tarrence and the
27 New Jersey Class a duty to disclose the true safety of the Recalled Products, because Defendant:
28 (a) possessed exclusive knowledge about the vitamin D levels in the Recalled Products; (b)

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1 intentionally concealed the foregoing from Plaintiff Tarrence and the New Jersey Class; and (c)
2 made incomplete representations about the safety of the Recalled Products, while purposefully
3 withholding material facts from Plaintiff Tarrence and the New Jersey Class that contradicted these
4 representations.

5 375. Defendant intentionally and knowingly misrepresented material facts regarding the
6 Recalled Products with the intent to mislead Plaintiff Tarrence and the New Jersey Class.
7 Defendant knew or should have known that its conduct violated the N.J. CFA.

8 376. As a direct and proximate result of Defendant's unfair and deceptive conduct,
9 Plaintiff Tarrence and the New Jersey Class members have suffered injury, ascertainable losses of
10 money or property, and monetary and nonmonetary damages. Because Defendant fraudulently
11 concealed the dangerously high levels of vitamin D in the Recalled Products, purchasers of the
12 Recalled Products were deprived of the benefit of their bargain since the pet foods they purchased
13 were worth less than they would have been if they were free from the high levels of vitamin D.
14 Furthermore, Plaintiff Tarrence and members of the New Jersey Class had to spend their time and
15 money to address and resolve the various health issues that plagued their pets. Had purchasers of
16 the Recalled Products been aware of the high levels of vitamin D, they would not have bought the
17 Recalled Products.

18 377. Defendant's violations caused ascertainable injury to Plaintiff Tarrence and the
19 New Jersey Class, as well as to the general public. Defendant's unlawful acts and practices alleged
20 herein negatively affect the public interest, and there are no countervailing benefits to consumers
21 that outweigh the harm caused by Defendant's conduct.

22 378. Pursuant to N.J. Stat. Ann. § 56:8-19, Plaintiff Tarrence and the New Jersey Class
23 seek an order enjoining Defendant's unfair and/or deceptive acts or practices and awarding actual
24 damages, attorneys' fees, treble damages, and any other just and proper relief under N.J. CFA the
25 Court deems necessary to protect the public from further violations of the N.J. CFA.

THIRTEENTH CLAIM FOR RELIEF

***Violations of the New York General Business Law
N.Y. Gen. Bus. Law §§ 349, et seq.,
Against Defendant on Behalf of Plaintiff Gorham and the New York Class***

379. Plaintiff Gorham, individually and on behalf of the New York Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Amended Class Action Complaint as if fully set forth herein.

380. Defendant, Plaintiff Gorham, and members of the New York Class are “person[s]” within the meaning of the N.Y. Gen. Bus. Law § 349(h), the New York Deceptive Acts and Practices Act (“N.Y. DAPA”).

381. At all relevant times, Defendant engaged in trade or commerce within the meaning of the N.Y. DAPA.

382. The N.Y. DAPA broadly prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce.” N.Y. Gen. Bus. Law § 349. Defendant engaged in unlawful, deceptive acts or practices in connection with its sale of the Recalled Products.

383. Plaintiff Gorham and the New York Class purchased Recalled Products new and in their original packaging and did not alter the Recalled Products.

384. In the course of its primary business of manufacturing and marketing pet foods, including the Recalled Products, Defendant concealed the excessive and dangerous amounts of vitamin D in their products and otherwise engaged in activities with a tendency or capacity to deceive. These excessive and dangerous amounts of vitamin D were present in the Recalled Products when they left the exclusive control of Defendant and therefore existed during the duration of the warranty period.

385. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Recalled Products, in violation of the N.Y. DAPA. Defendant’s deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers about the true reliability of their Recalled Products. Plaintiff Gorham and the New York Class reasonably

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1 understood Defendant's representations and omissions to mean that the Recalled Products were
2 safe, nutritious, and fit for canine consumption.

3 386. Defendant's acts and practices are also unfair because they are contrary to New
4 York law and public policy and further constitute immoral, unethical, oppressive, and
5 unscrupulous business practices that caused substantial injury to Plaintiff Gorham and members of
6 the New York Class. The harm caused by Defendant's unfair acts and practices outweighs any
7 utility of such conduct.

8 387. As alleged above, Defendant made material statements about the safety of the
9 Recalled Products that were either false or misleading. Defendant owed Plaintiff Gorham and the
10 New York Class a duty to disclose the true safety of the Recalled Products, because Defendant: (a)
11 possessed exclusive knowledge about the vitamin D levels in the Recalled Products; (b)
12 intentionally concealed the foregoing from Plaintiff Gorham and the New York Class; and (c)
13 made incomplete representations about the safety of the Recalled Products, while purposefully
14 withholding material facts from Plaintiff Gorham and the New York Class that contradicted these
15 representations.

16 388. Defendant intentionally and knowingly misrepresented material facts regarding the
17 Recalled Products with the intent to mislead Plaintiff Gorham and the New York Class. Defendant
18 knew or should have known that its conduct violated the N.Y. DAPA.

19 389. As a direct and proximate result of Defendant's unfair and deceptive conduct,
20 Plaintiff Gorham and the New York Class members have suffered injury, ascertainable losses of
21 money or property, and monetary and nonmonetary damages. Because Defendant fraudulently
22 concealed the dangerously high levels of vitamin D in the Recalled Products, purchasers of the
23 Recalled Products were deprived of the benefit of their bargain since the pet foods they purchased
24 were worth less than they would have been if they were free from the high levels of vitamin D.
25 Furthermore, Plaintiff Gorham and members of the New York Class had to spend their time and
26 money to address and resolve the various health issues that plagued their pets. Had purchasers of
27 the Recalled Products been aware of the high levels of vitamin D, they would not have bought the
28 Recalled Products.

390. Defendant's violations caused ascertainable injury to Plaintiff Gorham and the New York Class, as well as to the general public. Defendant's unlawful acts and practices alleged herein negatively affect the public interest, and there are no countervailing benefits to consumers that outweigh the harm caused by Defendant's conduct.

391. Pursuant to the N.Y. DAPA, Plaintiff Gorham and the New York Class seek and order enjoining Defendant's unfair and/or deceptive acts or practices and awarding actual damages, attorneys' fees, treble damages, and any other just and proper relief under the N.Y. DAPA the Court deems necessary to protect the public from further violations of the N.Y. DAPA.

FOURTEENTH CLAIM FOR RELIEF

*Violations of the North Carolina Unfair and Deceptive Trade Practices Act
N.C. Gen. Stat. §§ 75-1.1, et seq.,
Against Defendant on Behalf of Plaintiff Cole and the North Carolina Class*

392. Plaintiff Cole, individually and on behalf of the North Carolina Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Amended Class Action Complaint as if fully set forth herein.

393. Plaintiff Cole and members of the North Carolina Class are "person[s]" within the meaning of the N.C. Gen. Stat. §§ 75-1.1, *et seq.*

394. At all relevant times, Defendant's sale of the Recalled Products was performed in the course of Defendant's trade or business and thus occurred in or affected "commerce" within the meaning of N.C. Gen. Stat. § 75-1.1(b).

395. The North Carolina Unfair and Deceptive Trade Practices Act ("N.C. UDTPA") broadly prohibits "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce." N.C. Gen. Stat. § 75-16. The N.C. UDTPA also provides a private right of action for any person injured "by reason of any act or thing done by any other person, firm or corporation in violation of" the N.C. UDTPA. *Id.*

396. Plaintiff Cole and the North Carolina Class purchased Recalled Products new and in their original packaging and did not alter the Recalled Products.

397. In the course of its primary business of manufacturing and marketing pet foods, including the Recalled Products, Defendant concealed the excessive and dangerous amounts of

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1 vitamin D in their products and otherwise engaged in activities with a tendency or capacity to
2 deceive. These excessive and dangerous amounts of vitamin D were present in the Recalled
3 Products when they left the exclusive control of Defendant and therefore existed during the
4 duration of the warranty period.

5 398. Defendant also engaged in unlawful trade practices by employing deception,
6 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
7 any material fact with intent that others rely upon such concealment, suppression or omission, in
8 connection with the sale of the Recalled Products, in violation of the N.C. UDTPA. Defendant's
9 deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers about the
10 true reliability of their Recalled Products. Plaintiff Cole and the North Carolina Class reasonably
11 understood Defendant's representations and omissions to mean that the Recalled Products were
12 safe, nutritious, and fit for canine consumption.

13 399. Defendant's acts and practices are also unfair because they are contrary to North
14 Carolina law and public policy and further constitute immoral, unethical, oppressive, and
15 unscrupulous business practices that caused substantial injury to Plaintiff Cole and members of the
16 North Carolina Class. The harm caused by Defendant's unfair acts and practices outweighs any
17 utility of such conduct.

18 400. As alleged above, Defendant made material statements about the safety of the
19 Recalled Products that were either false or misleading. Defendant owed Plaintiff Cole and the
20 North Carolina Class a duty to disclose the true safety of the Recalled Products, because Defendant:
21 (a) possessed exclusive knowledge about the vitamin D levels in the Recalled Products; (b)
22 intentionally concealed the foregoing from Plaintiff Cole and the North Carolina Class; and (c)
23 made incomplete representations about the safety of the Recalled Products, while purposefully
24 withholding material facts from Plaintiff Cole and the North Carolina Class that contradicted these
25 representations.

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401. Defendant intentionally and knowingly misrepresented material facts regarding the Recalled Products with the intent to mislead Plaintiff Cole and the North Carolina Class. Defendant knew or should have known that its conduct violated the N.C. UDTPA.

402. As a direct and proximate result of Defendant's unfair and deceptive conduct, Plaintiff Cole and the North Carolina Class members have suffered injury, ascertainable losses of money or property, and monetary and nonmonetary damages. Because Defendant fraudulently concealed the dangerously high levels of vitamin D in the Recalled Products, purchasers of the Recalled Products were deprived of the benefit of their bargain since the pet foods they purchased were worth less than they would have been if they were free from the high levels of vitamin D. Furthermore, Plaintiff Cole and members of the North Carolina Class had to spend their time and money to address and resolve the various health issues that plagued their pets. Had purchasers of the Recalled Products been aware of the high levels of vitamin D, they would not have bought the Recalled Products.

403. Defendant's violations caused ascertainable injury to Plaintiff Cole and the North Carolina Class, as well as to the general public. Defendant's unlawful acts and practices alleged herein negatively affect the public interest, and there are no countervailing benefits to consumers that outweigh the harm caused by Defendant's conduct.

404. Pursuant to N.C. Gen. Stat §§ 75-14 – 75-16, Plaintiff Cole and the North Carolina Class seek and order enjoining Defendant's unfair and/or deceptive acts or practices and awarding actual damages, attorneys' fees, treble damages, and any other just and proper relief under N.C. UDTPA the Court deems necessary to protect the public from further violations of the N.C. UDTPA.

FIFTEENTH CLAIM FOR RELIEF

***Violations of the Ohio Consumer Sales Practices Act
 Ohio Rev. Code. §§ 1345.01, et seq.,
 Against Defendant on Behalf of Plaintiffs Tyson, Sizemore, Turner, and the Ohio Class***

405. Plaintiffs Tyson, Sizemore, and Turner, individually and on behalf of the Ohio Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Amended Class Action Complaint as if fully set forth herein.

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1 406. Defendant, Plaintiffs Tyson, Sizemore, and Turner, and members of the Ohio Class
2 are “person[s]” within the meaning of the Ohio Rev. Code § 1345.01(C).

3 407. Plaintiffs Tyson, Sizemore, and Turner, and members of the Ohio Class are
4 “consumers” within the meaning of Ohio Rev. Code § 1345.01(D), and their purchases of the
5 Recalled Products constitute “consumer transactions” within the meaning of Ohio Rev. Code §
6 1345.01(A).

7 408. The Ohio Consumer Sales Practices Act (“Ohio CSPA”) broadly prohibits unfair
8 or deceptive acts or practices in connection with a consumer transaction. The Ohio CSPA prohibits
9 a supplier from (i) representing that goods have characteristics, uses or benefits which the goods
10 do not have; (ii) representing that their goods are of a particular quality or grade that the product
11 is not; and (iii) representing that the subject of a consumer transaction has been supplied in
12 accordance with a previous representation, if it has not. Ohio Rev. Code § 1345.02.

13 409. Plaintiffs Tyson, Sizemore, Turner, and the Ohio Class purchased Recalled
14 Products new and in their original packaging and did not alter the Recalled Products.

15 410. In the course of its primary business of manufacturing and marketing pet foods,
16 including the Recalled Products, Defendant concealed the excessive and dangerous amounts of
17 vitamin D in their products and otherwise engaged in activities with a tendency or capacity to
18 deceive. These excessive and dangerous amounts of vitamin D were present in the Recalled
19 Products when they left the exclusive control of Defendant and therefore existed during the
20 duration of the warranty period.

21 411. Defendant also engaged in unlawful trade practices by employing deception,
22 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
23 any material fact with intent that others rely upon such concealment, suppression or omission, in
24 connection with the sale of the Recalled Products, in violation of the Ohio CSPA. Defendant’s
25 deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers about the
26 true reliability of their Recalled Products. Plaintiffs Tyson, Sizemore, Turner, and the Ohio Class
27 reasonably understood Defendant’s representations and omissions to mean that the Recalled
28 Products were safe, nutritious, and fit for canine consumption.

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1 412. Defendant's acts and practices are also unfair because they are contrary to Ohio law
2 and public policy and further constitute immoral, unethical, oppressive, and unscrupulous business
3 practices that caused substantial injury to Plaintiffs Tyson, Sizemore, Turner, and the Ohio Class.
4 The harm caused by Defendant's unfair acts and practices outweighs any utility of such conduct.

5 413. As alleged above, Defendant made material statements about the safety of the
6 Recalled Products that were either false or misleading. Defendant owed Plaintiffs Tyson,
7 Sizemore, Turner, and the Ohio Class a duty to disclose the true safety of the Recalled Products,
8 because Defendant: (a) possessed exclusive knowledge about the vitamin D levels in the Recalled
9 Products; (b) intentionally concealed the foregoing from Plaintiffs Tyson, Sizemore, Turner, and
10 the Ohio; and (c) made incomplete representations about the safety of the Recalled Products, while
11 purposefully withholding material facts from Plaintiffs Tyson, Sizemore, Turner, and the Ohio
12 Class that contradicted these representations.

13 414. Defendant intentionally and knowingly misrepresented material facts regarding the
14 Recalled Products with the intent to mislead Plaintiffs Tyson, Sizemore, Turner, and the Ohio
15 Class. Defendant knew or should have known that its conduct violated the Ohio CSPA. The Ohio
16 Attorney General has made available for public inspection numerous cases that have held that
17 similar acts and omissions constitute deceptive sales practices in violation of the Ohio CSPA.

18 415. As a direct and proximate result of Defendant's unfair and deceptive conduct,
19 Plaintiffs Tyson, Sizemore, Turner, and the Ohio Class members have suffered injury,
20 ascertainable losses of money or property, and monetary and nonmonetary damages. Because
21 Defendant fraudulently concealed the dangerously high levels of vitamin D in the Recalled
22 Products, purchasers of the Recalled Products were deprived of the benefit of their bargain since
23 the pet foods they purchased were worth less than they would have been if they were free from the
24 high levels of vitamin D. Furthermore, Plaintiffs Tyson, Sizemore, Turner, and members of the
25 Ohio Class had to spend their time and money to address and resolve the various health issues that
26 plagued their pets. Had purchasers of the Recalled Products been aware of the high levels of
27 vitamin D, they would not have bought the Recalled Products.

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416. Defendant's violations caused ascertainable injury to Plaintiffs Tyson, Sizemore, Turner, and the Ohio Class, as well as to the general public. Defendant's unlawful acts and practices alleged herein negatively affect the public interest, and there are no countervailing benefits to consumers that outweigh the harm caused by Defendant's conduct.

417. Pursuant to Ohio Rev. Code § 1345.09, Plaintiffs Tyson, Sizemore, Turner, and the Ohio Class seek and order enjoining Defendant's unfair and/or deceptive acts or practices and awarding actual damages, attorneys' fees, treble damages, and any other just and proper relief under Ohio CSPA the Court deems necessary to protect the public from further violations of the Ohio CSPA.

SIXTEENTH CLAIM FOR RELIEF

*Violations of the Oregon Unlawful Trade Practices Law
 Or. Rev. Stat. § 646-605, et seq.,
 Against Defendant on Behalf of Plaintiff Markham and the Oregon Class*

418. Plaintiff Markham, individually and on behalf of the Oregon Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Amended Class Action Complaint as if fully set forth herein.

419. Defendant, Plaintiff Markham, and members of the Oregon Class are "person[s]" within the meaning of Or. Rev. Stat. § 646.605(4).

420. At all relevant times, Defendant was engaged in "trade" or "commerce" within the meaning of Or. Rev. Stat. § 646.605(8).

421. The Oregon Unfair Trade Practices Act ("Or. UTPA") broadly prohibits "unfair or deceptive conduct in trade or commerce." Or. Rev. Stat. § 646.608(1).

422. Plaintiff Markham and the Oregon Class purchased Recalled Products new and in their original packaging and did not alter the Recalled Products.

423. In the course of its primary business of manufacturing and marketing pet foods, including the Recalled Products, Defendant concealed the excessive and dangerous amounts of vitamin D in their products and otherwise engaged in activities with a tendency or capacity to deceive. These excessive and dangerous amounts of vitamin D were present in the Recalled

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1 Products when they left the exclusive control of Defendant and therefore existed during the
2 duration of the warranty period.

3 424. Defendant also engaged in unlawful trade practices by employing deception,
4 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
5 any material fact with intent that others rely upon such concealment, suppression or omission, in
6 connection with the sale of the Recalled Products, in violation of the Or. UTPA. Defendant's
7 deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers about the
8 true reliability of their Recalled Products. Plaintiff Markham and the Oregon Class reasonably
9 understood Defendant's representations and omissions to mean that the Recalled Products were
10 safe, nutritious, and fit for canine consumption.

11 425. Defendant's acts and practices are also unfair because they are contrary to Oregon
12 law and public policy and further constitute immoral, unethical, oppressive, and unscrupulous
13 business practices that caused substantial injury to Plaintiff Markham and members of the Oregon
14 Class. The harm caused by Defendant's unfair acts and practices outweighs any utility of such
15 conduct.

16 426. As alleged above, Defendant made material statements about the safety of the
17 Recalled Products that were either false or misleading. Defendant owed Plaintiff Markham and the
18 Oregon Class a duty to disclose the true safety of the Recalled Products, because Defendant: (a)
19 possessed exclusive knowledge about the vitamin D levels in the Recalled Products; (b)
20 intentionally concealed the foregoing from Plaintiff Markham and the Oregon Class; and (c) made
21 incomplete representations about the safety of the Recalled Products, while purposefully
22 withholding material facts from Plaintiff Markham and the Oregon Class that contradicted these
23 representations.

24 427. Defendant intentionally and knowingly misrepresented material facts regarding the
25 Recalled Products with the intent to mislead Plaintiff Markham and the Oregon Class. Defendant
26 knew or should have known that its conduct violated the Or. UTPA.

27 428. As a direct and proximate result of Defendant's unfair and deceptive conduct,
28 Plaintiff Markham and the Oregon Class members have suffered injury, ascertainable losses of

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1 money or property, and monetary and nonmonetary damages. Because Defendant fraudulently
 2 concealed the dangerously high levels of vitamin D in the Recalled Products, purchasers of the
 3 Recalled Products were deprived of the benefit of their bargain since the pet foods they purchased
 4 were worth less than they would have been if they were free from the high levels of vitamin D.
 5 Furthermore, Plaintiff Markham and members of the Oregon Class had to spend their time and
 6 money to address and resolve the various health issues that plagued their pets. Had purchasers of
 7 the Recalled Products been aware of the high levels of vitamin D, they would not have bought the
 8 Recalled Products.

9 429. Defendant's violations caused ascertainable injury to Plaintiff Markham and the
 10 Oregon Class, as well as to the general public. Defendant's unlawful acts and practices alleged
 11 herein negatively affect the public interest, and there are no countervailing benefits to consumers
 12 that outweigh the harm caused by Defendant's conduct.

13 430. Pursuant to Or. Rev. Stat. § 646.638, Plaintiff Markham and the Oregon Class seek
 14 and order enjoining Defendant's unfair and/or deceptive acts or practices and awarding actual
 15 damages, attorneys' fees, punitive damages, and any other just and proper relief under Or. UTPA
 16 the Court deems necessary to protect the public from further violations of the Or. UTPA.

17 SEVENTEENTH CLAIM FOR RELIEF

18 *Violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law*
 19 *73 P.S. § 201-1, et seq.,*
Against Defendant on Behalf of Plaintiffs Jespersen, Barton, Foster and the Pennsylvania
 20 *Class*

21 431. Plaintiffs Jespersen, Barton, and Foster Markham, individually and on behalf of the
 22 Pennsylvania Class, incorporate by reference all of the allegations contained in the preceding
 23 paragraphs of this Amended Class Action Complaint as if fully set forth herein.

24 432. Defendant, Plaintiffs Jespersen, Barton, and Foster, and members of the
 25 Pennsylvania Class are "person[s]" within the meaning of 73 P.S. § 201-2(2).

26 433. At all relevant times, Defendant was engaged in "trade" or "commerce" within the
 27 meaning of 73 P.S. § 202-2(3).
 28

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1 434. The Pennsylvania Unfair Trade Practices and Consumer Protection Law (“Penn.
2 UTPA”) broadly prohibits “unfair or deceptive acts or practices in the conduct of any trade or
3 commerce.” 73 P.S. § 201-3.

4 435. Plaintiffs Jespersen, Barton, and Foster and the Pennsylvania Class purchased
5 Unsafe Products and Recalled Products new and in their original packaging and did not alter these
6 products.

7 436. In the course of its primary business of manufacturing and marketing pet foods,
8 including the Unsafe Products and Recalled Products, Defendant concealed the excessive and
9 dangerous amounts of vitamin D in their products and otherwise engaged in activities with a
10 tendency or capacity to deceive. These excessive and dangerous amounts of vitamin D were
11 present in these products when they left the exclusive control of Defendant and therefore existed
12 during the duration of the warranty period.

13 437. Defendant also engaged in unlawful trade practices by employing deception,
14 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
15 any material fact with intent that others rely upon such concealment, suppression or omission, in
16 connection with the sale of the Unsafe Products and Recalled Products, in violation of the Penn.
17 UTPA. Defendant’s deceptive acts or practices were likely to, and did in fact, deceive reasonable
18 consumers about the true reliability of their Unsafe Products and Recalled Products. Plaintiffs
19 Jespersen, Barton, and Foster and the Pennsylvania Class reasonably understood Defendant’s
20 representations and omissions to mean that the Recalled Products were safe, nutritious, and fit for
21 canine consumption.

22 438. Defendant’s acts and practices are also unfair because they are contrary to
23 Pennsylvania law and public policy and further constitute immoral, unethical, oppressive, and
24 unscrupulous business practices that caused substantial injury to Plaintiffs Jespersen, Barton, and
25 Foster and members of the Pennsylvania Class. The harm caused by Defendant’s unfair acts and
26 practices outweighs any utility of such conduct.

27 439. As alleged above, Defendant made material statements about the safety of the
28 Unsafe Products and Recalled Products that were either false or misleading. Defendant owed

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1 Plaintiffs Jespersen, Barton, and Foster and the Pennsylvania Class a duty to disclose the true safety
2 of these products, because Defendant: (a) possessed exclusive knowledge about the vitamin D
3 levels in the products; (b) intentionally concealed the foregoing from Plaintiffs Jespersen, Barton,
4 and Foster and the Pennsylvania Class; and (c) made incomplete representations about the safety
5 of the products, while purposefully withholding material facts from Plaintiffs Jespersen, Barton,
6 and Foster and the Pennsylvania Class that contradicted these representations.

7 440. Defendant intentionally and knowingly misrepresented material facts regarding the
8 Unsafe Products and Recalled Products with the intent to mislead Plaintiffs Jespersen, Barton, and
9 Foster and the Pennsylvania Class. Defendant knew or should have known that its conduct violated
10 the Penn. UTPA.

11 441. As a direct and proximate result of Defendant's unfair and deceptive conduct,
12 Plaintiffs Jespersen, Barton, and Foster and the Pennsylvania Class members have suffered injury,
13 ascertainable losses of money or property, and monetary and nonmonetary damages. Because
14 Defendant fraudulently concealed the dangerously high levels of vitamin D in the Unsafe Products
15 and Recalled Products, purchasers of these products were deprived of the benefit of their bargain
16 since the pet foods they purchased were worth less than they would have been if they were free
17 from the high levels of vitamin D. Furthermore, Plaintiffs Jespersen, Barton, and Foster and
18 members of the Pennsylvania Class had to spend their time and money to address and resolve the
19 various health issues that plagued their pets. Had purchasers of the Unsafe Products and Recalled
20 Products been aware of the high levels of vitamin D, they would not have bought these products.

21 442. Defendant's violations caused ascertainable injury to Plaintiffs Jespersen, Barton,
22 and Foster and the Pennsylvania Class, as well as to the general public. Defendant's unlawful acts
23 and practices alleged herein negatively affect the public interest, and there are no countervailing
24 benefits to consumers that outweigh the harm caused by Defendant's conduct.

25 443. Pursuant to 73 P.S. § 201-9.2(a), Plaintiffs Jespersen, Barton, and Foster and the
26 Pennsylvania Class seek and order enjoining Defendant's unfair and/or deceptive acts or practices
27 and awarding actual damages, attorneys' fees, punitive damages, and any other just and proper
28

1 relief under Penn. UTPA the Court deems necessary to protect the public from further violations
2 of the Penn. UTPA.

3 **EIGHTEENTH CLAIM FOR RELIEF**

4 ***Negligent Misrepresentation***
5 ***Against Defendant on Behalf of the Plaintiffs and the Nationwide Class***

6 444. Plaintiffs, individually and on behalf of the Nationwide Class, incorporate by
7 reference all of the allegations contained in the preceding paragraphs of this Amended Class Action
8 Complaint as if fully set forth herein.

9 445. Plaintiffs and members of the Nationwide Class reasonably placed their trust and
10 reliance in Defendant's representations that the Unsafe Products and Recalled Products were
11 nutritionally balanced, healthy, safe, and appropriate for canine consumption.

12 446. Plaintiffs and members of the Nationwide Class reasonably placed their trust and
13 reliance in Defendant to disclose if the Unsafe Products and Recalled Products contained excessive
14 amounts of vitamin D.

15 447. Because of the relationship between the parties, Defendant owed a duty to use
16 reasonable care to impart correct and reliable disclosures concerning the true nature, quality, and
17 ingredients of the Unsafe Products and Recalled Products or, based upon its superior knowledge,
18 having spoken, to say enough not to be misleading.

19 448. Defendant breached its duty to Plaintiffs and the Nationwide Class by providing
20 false, misleading, partial disclosures and/or deceptive information regarding the true nature, safety,
21 and ingredients of its products.

22 449. Plaintiffs and the Nationwide Class reasonably and justifiably relied upon the
23 information supplied to them by Defendant. As a result, Plaintiffs and the Nationwide Class
24 purchased the Unsafe Products and Recalled Products that should not have been sold at all because
25 they contained excessive amounts of vitamin D.

26 450. Defendant failed to use reasonable care in its communications and representations
27 to Plaintiffs and the Nationwide Class.
28

451. By virtue of Defendant's negligent misrepresentations, Plaintiffs and the Nationwide Class have been damaged in an amount to be proven at trial or alternatively, seek rescission and disgorgement under this Count.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Classes and the Subclasses, request that the Court order the following relief and enter judgment against Defendant as follows:

- A. an Order certifying the proposed Classes and Subclasses under Fed. R. Civ. Proc. 23 and appointing Plaintiffs and their counsel to represent the Class;
- B. a declaration that Defendant engaged in the illegal conduct alleged herein in violation of Cal. Civ. Code §§ 1750, *et seq.* (Consumer Legal Remedies Act), Cal. Bus. & Prof. Code §§ 17500, *et seq.* (False Advertising Law), Cal. Civ. Code Cal. §§ 1790, *et seq.* (Song-Beverly Consumer Warranty Act), Bus. & Prof. Code §§ 17200, *et seq.* (Unfair Competition Law); Ariz. Rev. Stat. § 44-1421, *et seq.* (Arizona Consumer Fraud Act); Conn. Gen. Stat. §§ 42-110a, *et seq.* (Connecticut Unfair Trade Practices Act); 815 Ill. Comp. Stat. (“ILCS”) §§ 505/1, *et seq.* (Illinois Consumer Fraud and Deceptive Business Practices Act); Md. Code Com. Law §§ 13-101, *et seq.* (Maryland Consumer Protection Act); Mich. Comp. Laws §§ 445.901, *et seq.* (Michigan Consumer Protection Act); Minn. Stat. § 325f.68, *et seq.* (Minnesota Prevention of Consumer Fraud Act); Nev. Rev. Stat. § 598.0903, *et seq.* (Nevada Deceptive Trade Practices Act); N.J. Stat. Ann. §§ 56:8-1, *et seq.* (New Jersey Consumer Fraud Act); N.Y. Gen. Bus. Law §§ 349, *et seq.* (New York General Business Law); N.C. Gen. Stat. §§ 75-1.1, *et seq.* (North Carolina Unfair and Deceptive Trade Practices Act); Ohio Rev. Code. §§ 1345.01, *et seq.* (Ohio Consumer Sales Practices Act); Or. Rev. Stat. § 646-605, *et seq.* (Oregon Unlawful Trade Practices Law); 73 P.S. § 201-1, *et seq.* (Pennsylvania Unfair Trade Practices and Consumer Protection Law);
- C. an Order that Defendant be permanently enjoined from its improper activities and conduct described herein;
- D. an Order that Defendant be enjoined from further sale of all other its products containing elevated levels of vitamin D;

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- 1 E. a Judgment awarding Plaintiffs and the Classes restitution and disgorgement of all
- 2 compensation obtained by Defendant from its wrongful conduct;
- 3 F. a Judgment awarding Plaintiffs and the Subclasses compensatory damages pursuant
- 4 to Cal. Civ. Code Cal. §§ 1790, *et seq.* and other state laws as alleged, in an amount
- 5 to be proven at trial;
- 6 G. Prejudgment and post-judgment interest at the maximum allowable rate;
- 7 H. an Order awarding Plaintiffs and the Classes their reasonable litigation expenses,
- 8 costs, and attorneys' fees;
- 9 I. an Order awarding such other injunctive and declaratory relief as is necessary to
- 10 protect the interests of Plaintiffs and the Classes; and
- 11 J. an Order awarding such other and further relief as the Court deems necessary,
- 12 just, and proper.

13 DEMAND FOR JURY TRIAL

14 Plaintiff demands a trial by jury for all claims and issues so triable.

15 Dated: March 21, 2019

SCHUBERT JONCKHEER & KOLBE LLP

17 /s/ Dustin L. Schubert

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