

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

SHARON RIDER and PATRICIA MAXWELL,
on behalf of themselves and all others similarly
situated,

Plaintiff,

v.

HILL'S PET NUTRITION, INC.

Defendant.

Case No. 2:19-cv-2206

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Sharon Rider and Patricia Maxwell ("Plaintiffs"), individually and on behalf of all others similarly situated allege the following against Hill's Pet Nutrition, Inc. ("Hill's" or "Defendant"):

NATURE OF THE ACTION

1. Dogs are considered and treated as beloved family members for many pet owners. Recently, an unfortunate number of these cherished pets became violently ill and some perished after eating tainted dog food manufactured by Hill's.

2. Hill's is one of the best known manufacturers of premium pet food in the United States and markets its products as a superior option for pet owners looking to provide their pets with the best, most nutritious pet food available. Hill's Pet Nutrition ranks in the top 5 pet food companies with reported revenues over \$2 billion annually from products marketed under its brand names Hill's Science Diet and Hill's Prescription Diet.¹

¹ See <https://www.petfoodindustry.com/directories/211-top-pet-food-companies> (last visited 4/5/2019).

3. Hill's website states that its mission as a company is "[t]o help enrich and lengthen the special relationships between people and their pets"² and specifically targets its pet foods at pet owners who are conscious about providing their pets with food made from quality ingredients.

4. Hill's website marketing for the Science Diet dog food is as follows: "Feed your dog's best life with biology-based nutrition."³ Hill's also claims that Science Diet is "Veterinarian Recommended."⁴

5. Hill's website marketing for its Prescription Diet dog food states: "Life is just more fun when your dog is healthy. That's why we work with your veterinarian to deliver the best nutrition-based solutions that help you recapture a normal, vibrant life together."⁵

6. Hill's marketing is designed to assure the consumer that purchasing Hill's products is a wise decision endorsed by veterinarians.

7. Hill's website proudly declares that it only uses ingredients sourced "from suppliers whose facilities meet stringent quality standards" and "[n]ot 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."⁶

8. Hill's long practice of marketing and advertising its premium pet food products induced Plaintiffs to become a long-time, devoted customers of Hill's pet foods.

² <https://www.hillspet.com/about-us/our-company> (last visited 4/5/2019).

³ <https://www.hillspet.com/science-diet/dog-food> (last visited 4/5/2019).

⁴ *Id.*

⁵ <https://www.hillspet.com/prescription-diet/dog-food> (last visited 4/5/2019).

⁶ <https://www.hillspet.com/about-us/quality-and-safety> (last visited 4/7/2019).

9. Over the years, Plaintiff Rider (“Rider”) has been known to take in older dogs who needed homes due to neglect or abuse. Rider is a former employee of a veterinary clinic and provides her dogs with a nutritious, balanced diet and regular veterinary care and checkups.



10. Hemi was the first dog in several years that Rider raised from a puppy, so he was the first dog to come into her home without pre-existing health issues. From the time Hemi first came to live with her, Rider exclusively fed Hemi Science Diet dog foods. When Hemi turned 7 years old, Rider started feeding Hemi Hill’s® Science Diet® Adult 7+ canned dog food. Rider was a devotee of the Hill’s brand name and trusted the Hill’s pet food brand to be top quality dog food with superior nutritional qualities. Rider paid premium prices for Hill’s dog foods and believed that she was doing the best for Hemi by feeding him Hill’s Science Diet dog food.

11. Unbeknownst to Rider, Defendant’s premium dog food, which Rider diligently and consistently fed to Hemi, turned out to have elevated, toxic levels of vitamin D.

12. In appropriate levels, “[v]itamin D is an essential nutrient that helps dogs regulate the balance and retention of calcium and phosphorus.”⁷ However, dogs who ingest elevated levels of vitamin D “may exhibit symptoms such as vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and weight loss.”⁸ “Excessive vitamin D can lead to kidney failure and even death.”⁹

13. Rider purchased cans of Hill’s dog food, which were later recalled, and ultimately caused Hemi’s health to deteriorate to the point that Hemi had to be put down.

14. Rider did not learn about Hill’s dog food recall until March 16, 2019 when she went to PetSmart to return Defendant’s canned food because Hemi kept vomiting it up. At that time, Rider learned that some of the cans of Science Diet dog food she had purchased had been recalled on January 31, 2019.

15. Several of the cans of Science Diet that Rider purchased on January 15, 2019 were not added to Hill’s product recall until March 20, 2019. Rider had no way of knowing that she was feeding Hemi toxic dog food.

16. Hill’s could have prevented this vitamin D contamination. However, Hill’s did not have the proper quality controls in place to identify and stop the vitamin D contamination. Even after Hill’s issued a product recall on January 31, 2019, Hill’s took until March 20, 2019 to test its products and expand the recall. Hill’s negligence and lack of quality controls ultimately led to Hemi’s demise.

⁷ <https://www.fda.gov/AnimalVeterinary/ResourcesforYou/AnimalHealthLiteracy/ucm631370.htm> (last visited 4/8/2019).

⁸ <https://www.fda.gov/Safety/Recalls/ucm630232.htm> (last visited 4/8/2019).

⁹ <https://www.fda.gov/AnimalVeterinary/ResourcesforYou/AnimalHealthLiteracy/ucm631370.htm> (last visited 4/8/2019).

17. Plaintiff Maxwell (“Maxwell”) likewise suffered as she watched, Dindi, her beloved Bischon Frise’s health rapidly decline. In late August 2018, Maxwell noticed that Dindi was losing weight and her appetite was not what it used to be. Over a short period of time, Dindi started showing other symptoms such as drooling, increased thirst, and incontinence. These symptoms quickly became more severe. Maxwell repeatedly took Dindi to the veterinarian who diagnosed and started treating Dindi for kidney issues.

18. Maxwell was broken hearted as she watched her beloved Dindi’s weight drop from 14 pounds down to 5 pounds. Finally in November 2018, after it became apparent that Dindi was too weak to continue dialysis treatments, Maxwell made the tough decision to end Dindi’s suffering.

19. Before Dindi started having problems in late August 2018, Maxwell exclusively fed Hill’s Science Diet dog foods to Dindi. It wasn’t until months later that Maxwell learned that Dindi was suffering from symptoms of vitamin D toxicity and that her suffering could have been prevented.

20. As a result of Hill’s negligence and lack of quality controls, Plaintiffs and class members have incurred substantial veterinarian bills and paid a premium price for dog food that was not only worthless, but also dangerous to their pets. They have also suffered significant emotional anguish.

21. Plaintiffs bring this action on behalf of themselves and all others similarly situated for equitable relief and to recover restitution and damages for: (i) breach of express warranty; (ii) breach of implied warranty of merchantability; (iii) fraud; (iv) fraudulent omission; (v) negligence; (vi) strict products liability; (vii) unjust enrichment; (viii) violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.; (ix) violations of Kansas Consumer Protection

Act, Kan. Stat. Ann. §§ 50-623, et seq.; and (x) violations of Missouri Merchandise Practices Act § 407.020 *et. seq.*

PARTIES

22. Plaintiff Sharon Rider is, and was at all times mentioned herein, a resident of Independence, Missouri, and a citizen of the State of Missouri. Her dog, Hemi, was a miniature poodle. Rider regularly fed Hemi Hill's Science Diet dog food from the time she adopted Hemi as a puppy.

23. For the last few years of Hemi's life, Hemi specifically ate Hill's Science Diet Adult 7+ canned dog food in either Chicken & Barley or Beef & Barley. Most notably, in the last few months of Hemi's life, Rider purchased cans of Hill's Science Diet Adult 7+ Beef & Barley dog food labelled with SKU number 7056 and Lot Code number 102020T28, which Defendant later recalled on March 20, 2019.

24. As a direct and proximate result of consuming Hill's Science Diet dog food, Hemi became very ill in late December 2018, exhibiting symptoms which Rider knows, in hindsight, are signs of vitamin D poisoning: loss of appetite, weight loss, increased thirst, and increased urination. As Hemi's condition worsened, Rider repeatedly took Hemi to the veterinarian. By late March 2019, Hemi's condition became so unbearable that Rider had to euthanize Hemi to end her dog's pain and suffering.

25. Rider incurred medical expenses from her numerous veterinary visits and treatments as a result of Hemi's consumption of Hill's Science Diet dog food.

26. Rider had long relied on Defendant's representations that the food provided safe and balanced nutrition for her dog. Rider understood Defendant's warranties and representations

to mean Defendant's dog food was properly manufactured to meet the nutritional needs of her dog, and was generally free from defects.

27. Defendant's representations and warranties were material to Rider in deciding to purchase the specified Science Diet dog food from Defendant.

28. Rider would not have purchased the specified Science Diet dog food had she known that the food did not provide balanced nutrition and that it was, in fact, not properly manufactured under strict controls and free from defects.

29. Furthermore, Rider understood each purchase of Science Diet dog food involved a direct transaction between herself and Hill's because the Science Diet dog food came with labelling prepared by Hill's, including the representations and warranties that the specified Science Diet dog food was nutritious, and was properly manufactured free from defects.

30. Plaintiff Patricia Maxwell is, and was at all times mentioned herein, a resident of Kansas City, Missouri, and a citizen of the State of Missouri.

31. Maxwell purchased Hill's Science Diet and Hill's Prescription Diet Kidney care for her dog, Dindi, in Kansas.

32. Maxwell repeatedly sought veterinary care for Dindi in Kansas. Dindi, was a Bischon Frise. Maxwell regularly fed Dindi Hill's Science Diet dog food from the time she was a puppy. In the last few weeks of Dindi's life, Maxwell purchased and provided her dog with Hill's Prescription Diet Kidney Care dog food, as directed by her veterinarian.

33. As a direct and proximate result of consuming Hill's Science Diet and Hill's Prescription Diet Kidney Care dog food, Dindi became very ill in late August 2018, exhibiting symptoms of vitamin D poisoning: loss of appetite, weight loss, increased thirst, and increased urination.

34. As Dindi's health declined, Maxwell repeatedly took Dindi to the veterinarian. By November 2018, Dindi grew too weak to continue dialysis treatments for her kidneys and her condition became so unbearable that Maxwell had to euthanize Dindi to end her dog's pain and suffering.

35. Maxwell incurred excessive medical expenses from her numerous veterinary visits and treatments as a result of Dindi's consumption of Hill's Science Diet and Hill's Prescription Diet dog food.

36. Maxwell had long relied on Defendant's representations that the food provided safe and balanced nutrition for her dog.

37. Maxwell understood Defendant's warranties and representations to mean Defendant's dog food was properly manufactured to meet the nutritional needs of her dog, and was generally free from defects.

38. Defendant's representations and warranties were material to Maxwell in deciding to purchase the specified Science Diet dog food from Defendant.

39. Maxwell would not have purchased the specified Science Diet dog food had she known that the food did not provide balanced nutrition and that it was, in fact, not properly manufactured under strict controls and free from defects.

40. Furthermore, Maxwell understood each purchase of Science Diet and Prescription Diet dog food involved a direct transaction between herself and Hill's because the Science Diet dog food came with labelling prepared by Hill's, including the representations and warranties that the specified Science Diet and Prescription Diet dog food was nutritious, and was properly manufactured free from defects.

41. Defendant Hill's Pet Nutrition, Inc. is a Delaware Corporation. Its headquarters and principal place of business is located in Kansas, at 400 SW 8th Avenue, Topeka, Kansas 66603. Defendant manufactures, markets, distributes, and sells pet food under the brand names Hill's Science Diet and Hill's Prescription Diet throughout the United States. Defendant is a subsidiary of Colgate-Palmolive Company.

JURISDICTION AND VENUE

42. Jurisdiction is proper in this Court pursuant to the Class Action Fairness Act of 2005, Pub. L. No. 109-2 Stat. 4 ("CAFA"), which, *inter alia*, amends 28 U.S.C. § 1332, at new subsection (d), conferring federal jurisdiction over class actions where, as here: (a) there are 100 or more members in the proposed class; (b) some members of the proposed class have a different citizenship from Defendant; and (c) the claims of the proposed class members exceed the sum or value of five million dollars (\$5,000,000) in aggregate. *See* 28 U.S.C. § 1332(d)(2) and (6).

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

44. This Court can exercise personal jurisdiction over Defendant because it has regular and systematic contacts with the state of Kansas, in which it is headquartered, does business, and places its products into the stream of commerce.

45. Venue is proper in this Court under 28 U.S.C. § 1391 because Defendant's headquarters and principal place of business is in this District.

FACTS COMMON TO ALL CAUSES OF ACTION

A. Defendant's Pet Food Products

46. Defendant manufactures, markets, advertises, packages, labels, distributes, and sells premium pet foods under the brand names Hill's Science Diet and Hill's Prescription Diet

dog foods throughout the United States. Defendants' products are all labeled and packaged the same regardless of where they are purchased.

1. Defendant's Science Diet Dog Food

47. Defendant produces different varieties of Science Diet dog food for different aged dogs, including puppy (less than one year old), ages one to six years, and adult dogs ages seven and older. Representative images of Hill's Science Diet canned dog food include the following:



48. Defendant prominently states, beneath the logo on each can of Science Diet dog food, that it is “veterinarian recommended”. The label also claims that the Science Diet dog food “is formulated to meet the nutritional levels established by the AAFCO Dog Food Nutrient Profiles”.

49. Defendant further alleges on the Science Diet dog food page that it “understands what dogs need to live a long and healthy life,” and that it developed the Science Diet dog food “with the combined expertise of 220+ vets, scientists and pet nutritionists.”¹⁰

50. Defendant’s claims are not true, however, as Science Diet dog food contained elevated levels of vitamin D, which is harmful to dogs. Rather than being able to enjoy a “long and healthy life” with their dogs, Class members who fed their dogs Science Diet dog food saw their beloved dogs become sick, and even die in some cases, as a result of eating Defendant’s dog food.

2. Defendant’s Prescription Diet Dog Food

51. Defendant makes a number of varieties of Prescription Diet dog food, each purportedly targeted to address specific health conditions. These formulations address conditions such as, but not limited to, digestive care, kidney care, weight management (metabolic), urinary care, skin/food sensitivities, joint care, and aging. Each can of Prescription Diet promises “clinical nutrition.” Representative images of Hill’s Prescription Diet canned dog food include the following:

¹⁰ <https://www.hillspet.com/science-diet/dog-food> (last visited 4/8/2019).



52. Defendant’s website for its Prescription Diet dog food promises a “commitment to quality” and promises “only the best ingredients from the most trusted sources are the foundation for all Prescription Diet® foods.”¹¹ Furthermore, Defendant represents that it “conduct[s] 5 million quality and safety checks per year at the facility as well as voluntary third-party inspections nearly every month to ensure that we are maintaining the highest standards.”¹² However, Defendant did not have effective quality and safety controls in place to identify and stop the vitamin D contamination in its dog food products from reaching consumers.

53. Defendant’s failure to ensure the safety and quality of its Prescription Diet dog food formulations ultimately led to consumers purchasing dog food with elevated, toxic levels of vitamin D, which caused dogs to become sick, and in some cases, die.

B. Defendant’s Quality and Safety Representations

¹¹ <https://www.hillspet.com/prescription-diet/dog-food> (last visited 4/8/2019).

¹² *Id.*

54. Defendant has created a specialty market within the pet food industry by marketing foods they claim will “help enrich and lengthen the special relationships between people and their pets.” Defendant’s website states, “Guided by science, we formulate our food with precise balance so your pet gets all the nutrients they need—and none they don’t.”¹³

55. Defendant engaged in a long-running, extensive nationwide marketing and advertising campaign touting its nutritional qualities and high industry standards for manufacturing. These representations about Defendant’s purported quality and safety standards are applicable to all of Defendant’s products.

56. Defendant’s website proudly displays numerous representations about its high standards for safety. Defendant’s website has a page devoted to its “Quality & Safety”, whereby Defendant claims it has a “proven commitment to quality and safety,” and asks consumers to “trust the Hill’s standard.”¹⁴

57. In sourcing their ingredients, Defendant states: “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.”¹⁵

58. In describing its safety standards, Defendant’s website boasts “Our quality and safety standards are so rigorous, they’re modeled after human food manufacturers — so your pet gets a food made with their best interest in mind.”¹⁶

59. Despite Defendant’s numerous representations about its quality and safety standards, Defendant failed to detect and stop Science Diet and Prescription Diet dog foods with

¹³ <https://www.hillspet.com/about-us/nutritional-philosophy> (last visited 4/8/2019).

¹⁴ <https://www.hillspet.com/about-us/quality-and-safety> (last visited 4/8/2019).

¹⁵ <https://www.hillspet.com/about-us/quality-and-safety> (last visited 4/8/2019).

¹⁶ <https://www.hillspet.com/about-us/nutritional-philosophy> (last visited 4/8/2019).

elevated and toxic levels of vitamin D from reaching the market, ultimately harming Plaintiff's and other Class members' dogs.

C. Plaintiff's Reasonable and Foreseeable Reliance on Defendant's Representations

60. Plaintiffs and other Class members relied on Defendant's false and misleading claims, warranties, representations, advertisements, website, and other marketing with regard to the safety and quality of Defendant's Science Diet and Prescription Diet dog foods.

61. Defendant's representations and warranties were material in Plaintiffs' decisions to purchase Defendant's products.

62. It is reasonable for any consumer to consider the representations made in the marketing and labeling of a product when deciding whether to make a purchase. Here, Plaintiffs relied on Defendant's representations that its dog food was safe for consumption by dogs, nutritious, and subject to strict quality control.

D. Defendant's Knowledge of the Vitamin D Toxicity

63. Defendant's recall of some of its Science Diet and Prescription Diet dog foods came approximately three months after eight other dog food brands issued recalls of their products containing excess levels of vitamin D.¹⁷

64. In updating its recall, Defendant acknowledged the dangers of excess vitamin D consumption for dogs¹⁸:

While vitamin D is an essential nutrient for dogs, ingestion of elevated levels can lead to potential health issues depending on the level of vitamin D and the length of exposure, and dogs may exhibit symptoms such as vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and weight loss. When consumed at very high levels, vitamin D can in rare cases lead to potentially life threatening health issues in dogs, including renal dysfunction.

¹⁷ <https://www.fda.gov/animalveterinary/newsevents/ucm627485.htm>.

¹⁸ <https://www.hillspet.com/productlist#press-release> (last visited 4/22/2019).

65. Despite sharing the same contract manufacturer as the eight other dog food manufacturers¹⁹, Defendant did not immediately investigate and issue a recall for its own dog food products. Instead, Defendant waited months to issue a recall.

66. In a press release on the FDA website, Defendant claims it “learned of the potential for elevated vitamin D levels in some of its canned dog foods after receiving a complaint in the United States about a dog exhibiting signs of elevated vitamin D levels.”²⁰ Defendant does not state when it received this complaint.

E. The Product Recall

67. On January 31, 2019, Defendant announced an initial recall of canned Science Diet and Prescription Diet products. Defendant issued a press release identifying affected products and detailing the risk of excess vitamin D consumption by dogs.²¹

68. A video message included with the January 31, 2019 recall represented that the SKU and lot numbers identified in the January 31, 2019 recall were “confirmed to be the only affected products in this voluntary canned dog food recall[.]”

69. Despite Defendant’s numerous assertions and representations about its stringent quality controls, Defendant stated in its announcement that it “*now* ha[s] tighter quality controls in place to prevent this from happening again.”²²

70. Despite these supposed tighter quality controls, Defendant continued to distribute and sell contaminated dog food, expanding its recall on both February 8, 2019 and March 20, 2019.

¹⁹ <https://www.cbsnews.com/news/hills-dog-food-recal-pet-owners-report-dog-deaths-from-recalled-food-with-vitamin-d-dangers-on-social-media/> (last visited 4/8/2019).

²⁰ <https://www.fda.gov/Safety/Recalls/ucm630232.htm> (last visited 4/8/2019).

²¹ <https://www.hillspet.com/productlist#press-release> (last visited 4/8/2019).

²² <https://www.hillspet.com/productlist#press-release>.

71. Defendant's recall was inadequately carried out in that Science Diet and Prescription Diet dog food products that should have been tested and recalled were still being sold for several weeks after Defendant issued its January 31, 2019 product recall.

F. Defendant Admitted its Vitamin Premix Had Excessive Levels of Vitamin D

72. According to a statement by Dr. Karen Shenoy, associate director for veterinary affairs at Hill's, "the company began investigating its products in early December after being contacted by a veterinarian."²³ The veterinarian filed a complaint after a client's dog shows symptoms of vitamin D toxicity after eating Defendant's dog food.²⁴

73. Defendant's employees confirmed that its vitamin mix had high levels of vitamin D on January 28, 2019.²⁵

74. This confirmation was repeated in a video statement Defendant released on Facebook from Hill's veterinarian, Bret Deardorff, DVM, which stated that Defendant "isolated and identified the issue" to be excessive levels of vitamin D contained in the vitamin premix.²⁶

75. The preventable nature of this defect is further indicated in Dr. Deardorff's statement that Defendant now has "tighter quality controls in place to prevent this from happening again."²⁷

CLASS ACTION ALLEGATIONS

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

²³ See <https://www.avma.org/News/JAVMANews/Pages/190315d.aspx> (last visited 4/8/2019).

²⁴ *Id.*

²⁵ *Id.*

²⁶ <https://www.facebook.com/HillsPet/videos/a-message-to-pet-parents/965222620533640> (last visited 4/8/2019).

²⁷ *Id.*

77. **Nationwide Class.** Plaintiffs propose the following Class definition (the “Nationwide Class”):

All persons in the United States who purchased Hill’s Science Diet or Prescription Diet dog food with elevated levels of vitamin D.

78. **Kansas Subclass.** Plaintiff Maxwell also seeks certification of the following state subclass:

All persons who purchased Hill’s Science Diet or Prescription Diet dog food with elevated levels of vitamin D in the State of Kansas.

79. **Missouri Subclass.** Plaintiffs Rider and Maxwell (“Missouri Plaintiffs”) also seek certification of the of the following state subclass (“Missouri Subclass”):

All persons residing in Missouri who purchased Hill’s Science Diet or Prescription Diet dog food with elevated levels of vitamin D.

80. Plaintiffs represent they are a members of these proposed Classes. Excluded from these Classes are the Defendant and any entity in which Defendant has a controlling interest or which have a controlling interest in Defendant , as well as any Judge and/or Magistrate Judge to whom this action is assigned and any member of such Judges’ staffs and immediate families.

81. **Numerosity.** Upon information and belief, Plaintiffs reasonably estimate that Defendant has manufactured and sold its dog food to hundreds of thousands of consumers within the United States. The members of these Classes are geographically dispersed throughout the United States and are so numerous that individual joinder is impracticable. Plaintiffs do not know the exact number of members in the proposed Classes, but reasonably believe, based on the scale of Defendant’s business and the number of recalled cases of canned dog food, that the members of the Classes are so numerous that individual joinder would be impracticable.

82. Moreover, the disposition of the claims in a class action will provide substantial benefit to the parties and the Court in avoiding a multiplicity of identical suits. Members of the proposed Classes can be identified easily through retailer sales records, veterinary practice sales records, and self-identification processes. Thus, Class members may be identified and notified of the pendency of this action by U.S. Mail, electronic mail, and/or published notice, as is customarily done in consumer class actions.

83. **Existence and predominance of common questions of law and fact.** Common questions of law and fact exist as to all members of the Classes and predominate over questions solely affecting individual members of the Classes. Those common question of law and fact include, but are not limited to, the following:

- a. Whether Defendant owed a duty of care to Plaintiff and the Class members;
- b. Whether Defendant's products contain elevated, toxic levels of vitamin D that render Defendant's products hazardous and unfit for their intended purpose;
- c. Whether Defendant knew or should have known that the Science Diet and Prescription Diet dog foods contained excessive levels of vitamin D and other ingredients that do not conform to the products' labels, packaging, and advertising, and Defendant's statements about the products' quality and safety;
- d. Whether Defendant recklessly, intentionally, and/or fraudulently failed to test for the presence of excessive vitamin D or other ingredients that do not conform to the products' labels, packaging, and advertising, and Defendant's representations about the products' quality and safety;
- e. Whether the recall is adequate and properly notifies potentially affected consumers;

- f. Whether Defendant wrongfully represented and continues to represent that Science Diet and Prescription Diet dog foods are suitable for consumption by dogs, and subject to strict quality control measures;
- g. Whether Defendant made false, deceptive, or misleading representations in advertising, statements, marketing, packaging and/or labeling;
- h. Whether Defendant's has been unjustly enriched as a result of the conduct alleged;
- i. Whether Defendant violated an implied or express warranty to Plaintiffs and the Class members;
- j. Whether Defendant had knowledge that its representations were false, deceptive, and misleading;
- k. Whether a representation that a product is suitable for consumption by dogs, healthy, subject to strict quality control measures, and/or unadulterated is material to a reasonable consumer;
- l. Whether Defendant's representations and descriptions on the labeling of the Prescription Diet and Science Diet dog foods are likely to mislead, deceive, confuse, or confound consumers acting reasonably;
- m. Whether Defendant's conduct was negligent;
- n. Whether Defendant's conduct was fraudulent;
- o. Whether Defendant made negligent and/or fraudulent misrepresentations and/or omissions;
- p. Whether Plaintiff and the Class members have sustained damages as a result of Defendant's alleged conduct, and if so, the appropriate measure of damages; and

- q. Whether Defendant should be enjoined from engaging in such conduct in the future.

84. **Typicality.** Plaintiffs assert claims that are typical of the claims of the proposed Classes because Plaintiffs and the proposed Classes all purchased at least one can of either Hill's Science Diet or Prescription Diet dog food without knowledge that the dog food contained elevated levels of vitamin D, and whose dogs were harmed by consuming elevated, toxic levels of vitamin D. Plaintiffs will fairly and adequately represent and protect the interests of the proposed Classes, and have no interests which conflict with any member of the proposed Classes.

85. **Adequacy of Representation.** Plaintiffs are adequate representatives of the proposed Classes and will fairly and adequately protect the interests of the Classes. Plaintiffs have retained counsel experienced in handling complex consumer class action litigation, and Plaintiffs intend to vigorously prosecute this action on behalf of the Classes. Further, Plaintiffs have no interests that are which conflict with the interests of the proposed Classes.

86. **Superiority.** A class action is superior to other available means for the fair and efficient adjudication of this dispute. Class-wide relief is essential to compel Defendant to comply with industry quality control and safety standards and deter such a tragedy from happening again. The interest of the members of the proposed Classes in individually controlling the prosecution of separate claims against Defendant is small because the damages in an individual action are relatively small. Management of these claims is likely to present significantly fewer difficulties than are presented in many class-action claims because each consumer was harmed in an identical manner. It would, thus, be virtually impossible for the Class members, on an individual basis, to obtain effective redress for the wrongs committed

against them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class-action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances.

87. In the alternative, the Classes may also be certified because:

(a) The prosecution of separate actions by individual Class members would create a risk of inconsistent adjudications with respect to individual Class members that could establish incompatible standards of conduct for the Defendant;

(b) The prosecution of individual actions could result in adjudications, which, as a practical matter, would be dispositive of the interests of other non-party Class members or which could substantially impair or impede their ability to protect their interests; and/or

(c) Defendant has acted or refused to act on grounds generally applicable to the proposed Class as a whole, thereby making appropriate final declaratory and/or injunctive relief with respect to the members of the Class as a whole.

COUNT I **BREACH OF EXPRESS WARRANTY**

88. Plaintiffs repeat and incorporate by reference each allegation set forth above in this Complaint as if fully alleged herein.

89. Defendant marketed and sold Science Diet and Prescription Diet dog food to Plaintiffs and members of the Class during the relevant time period.

90. Defendant expressly warranted, advertised, and represented that its Science Diet and Prescription Diet dog foods are:

- a. Safe for consumption by dogs;
- b. Made with the highest quality control and safety standards;
- c. Made with ingredients sourced “from suppliers whose facilities meet stringent quality standards” and that “each ingredient [is] examined to ensure its safety”;
- d. Recommended by or developed in cooperation with veterinarians and other medical professionals; and
- e. Will assist with a variety of medical conditions in dogs, or generally help dogs “live a long and healthy life.”

91. Defendant made these representations and express warranties regarding its Science Diet and Prescription Diet dog foods in writing through its website, advertisements, marketing materials, and on the Science Diet and Prescription Diet packaging and labels in connection with the sale of Defendant’s dog foods to Plaintiffs and the Nationwide Class.

92. Plaintiffs and the Nationwide Class were induced by Defendants marketing, advertising, and promotion and relied on Defendant’s representations and warranties in deciding whether to purchase Defendant’s Science Diet and Prescription Diet products. Defendant’s representations became a part of the basis of the bargain that Plaintiffs and the Nationwide Class entered into in purchasing Defendant’s Science Diet and Prescription Diet dog foods.

93. Defendant’s products did not conform to Defendant’s representations and warranties in that they contained excessive and toxic levels of vitamin D which is harmful to dogs’ health.

94. As a direct and proximate result of Defendant's breach of express warranties, Plaintiffs and the Nationwide Class suffered actual damages in that they purchased dog foods that were worthless and unfit for consumption. Plaintiffs and the Nationwide Class have been further damaged in that Plaintiffs and the Nationwide Class incurred veterinary and funeral expenses for the treatment of pets who were injured by Defendant's breaches. Plaintiffs and the Nationwide Class would not have purchased Defendant's products had they known that the products were hazardous for consumption by Plaintiffs' and the Class's pets.

95. As a result of Defendant's breach of its express warranties, Plaintiffs and the Nationwide Class are entitled to actual damages for the expense of purchasing Science Diet and Prescription Diet dog food as well as medical expenses for related treatments of their dogs.

96. In addition to actual damages, Plaintiffs and the Nationwide Class are also entitled to and seek injunctive relief ensuring Defendant complies with all proper quality and safety standards moving forward.

97. Plaintiffs and the Nationwide Class also are entitled to an award of attorneys' fees and costs.

COUNT II
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

98. Plaintiffs repeat and incorporate by reference each allegation set forth above in this Complaint as if fully alleged herein.

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

100. Defendant sold its products to Plaintiffs and the Nationwide Class. Plaintiffs and the Nationwide Class purchased Defendant's products.

101. Through Defendant's marketing, advertising, promotion, packaging and labeling of its Science Diet and Prescription Diet dog food, Defendant impliedly warranted that the dog foods were fit for the ordinary purpose for which they were intended, which was to safely nourish dogs and to address the specific needs of Plaintiffs and the Nationwide Class's dogs including, but not limited to, age-specific dietary needs, digestive issues, joint issues, or kidney issues, pursuant to section 2-314 of the Uniform Commercial Code.

102. Defendant knew that Plaintiffs and the Nationwide Class would purchase its Science Diet and Prescription Diet dog foods for the ordinary purpose of providing nourishment to their dogs.

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

104. Defendants Science Diet and Prescription Diet dog foods were sold in sealed packaging and the defects alleged were present in the products when they left Defendant's exclusive control.

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

106. Plaintiffs and the Nationwide Class purchased Defendant's Science Diet and Prescription Diet dog foods which were unfit for their ordinary purpose when sold because they presented an unreasonable risk of illness or death to dogs. Defendant accordingly breached the implied warranty of merchantability by selling dog food that was unfit for consumption.

107. As a direct and proximate result of Defendant's conduct, Plaintiffs and the Nationwide Class were injured because they purchased a product that was unfit for its stated purpose and/or otherwise not merchantable.

108. Plaintiffs and the Nationwide Class are also entitled to, and do seek injunctive relief ensuring Defendant complies with all proper quality and safety standards going forward.

109. Plaintiffs and the Nationwide Class are entitled to an award of attorneys' fees and costs.

COUNT III
FRAUD

110. Plaintiffs repeat and incorporate by reference each allegation set forth above in this Complaint as if fully alleged herein.

111. Defendant falsely represented to Plaintiffs and the Nationwide Class that Defendant's Science Diet and Prescription Diet dog foods:

- a. Are suitable for consumption by dogs;
- b. Made with the highest quality control and safety standards;
- c. Made with ingredients that are "examined to ensure [their] safety . . . [and] ensure your pet gets the stringent, precise formulation they need";
- d. Are routinely subjected to numerous quality and safety inspections and audits throughout the manufacturing process;
- e. Contain "only the best ingredients from the most trusted sources";
- f. Will "help enrich and lengthen the special relationships between people and their pets"; and
- g. Are unadulterated as they are available to purchase for the consumption of pets.

112. Defendant knowingly and intentionally made these misrepresentations to induce the Plaintiffs and the Nationwide Class to purchase Defendant's dog foods.

113. Defendant knew that their representations about its dog foods were false in that the Science Diet and Prescription Diet dog foods contain excessive vitamin D levels or other ingredients that do not conform to the products' labels, packaging, advertising, and statements. Defendant allowed its packaging, labels, advertisements, promotional materials and websites to intentionally mislead consumers, such as Plaintiffs and the Nationwide Class.

114. Plaintiffs and the Nationwide Class members relied on these representations when purchasing the Prescription Diet and Science Diet dog foods.

115. As a direct and proximate result of Defendant's fraudulent misrepresentations, Plaintiffs and members of the classes suffered economic injury including veterinary bills, burial costs, and overpaying for premium dog food.

116. Plaintiffs and the Nationwide Class are entitled to, and do seek injunctive relief ensuring Defendant complies with all proper quality and safety standards going forward.

117. Plaintiffs and the Nationwide Class are also entitled to an award of attorneys' fees and costs.

COUNT IV
FRAUDULENT OMISSION

118. Plaintiffs repeat and incorporate by reference each allegation set forth above in this Complaint as if fully alleged herein.

119. Defendant concealed from and failed to disclose to Plaintiffs and the Nationwide Class that Defendant's Science Diet and Prescription Diet dog foods contained hazardous levels of vitamin D or other ingredients that do not conform to the products' packaging, labels, advertising, and other statements and representations.

120. Defendants had a duty to disclose to the true characteristics, quality, ingredients and suitability of Defendant's dog foods to Plaintiffs and the Nationwide Class because: (1) Defendant was in a superior position to know the true nature of its products; (2) Defendant was in a superior position to know the actual quality of the ingredients, characteristics and suitability of its products; and (3) Defendant knew that Plaintiffs and the Nationwide Class could not have reasonably been expected to learn or discover that the Science Diet and Prescription Diet dog foods were misrepresented in the packaging, labels, advertising, and websites prior to purchasing the Science Diet and Prescription Diet dog foods.

121. The facts that Defendant concealed or did not disclose to Plaintiffs and the Nationwide Class were material in that a reasonable consumer would have considered them important when deciding to purchase Defendant's Science Diet and Prescription Diet dog foods.

122. Plaintiffs and the Nationwide Class reasonably and justifiably relied on Defendant's omissions given Defendant's representations, warranties, labeling, advertising, and marketing of Defendant's Science Diet and Prescription Diet dog foods.

123. Plaintiffs and the Nationwide Class did not know that Defendant was omitting or otherwise concealing material facts about its Science Diet and Prescription Diet dog foods.

124. As a direct and proximate result of Defendant's omissions, Plaintiffs and the Nationwide Class have suffered actual damages in that they purchased Science Diet and Prescription Diet dog foods that were worthless. Plaintiffs and the Nationwide Class would not have purchased Defendant's Science Diet and Prescription Diet dog foods had they known of the risk and/or presence of excessive levels of vitamin D that made the Science Diet and Prescription Diet dog foods hazardous to their pets.

125. As a result of Defendant's fraudulent omissions, Plaintiffs and the Nationwide Class are entitled to actual damages for the price of Science Diet and Prescription Diet dog food they purchased and expenses related to medical treatment for their dogs. As a result of Defendant's willful and malicious conduct, punitive damages are warranted.

126. Plaintiffs and the Nationwide Class are entitled to, and do seek injunctive relief ensuring Defendant complies with all proper quality and safety standards going forward.

127. Plaintiffs and the Nationwide Class are also entitled to an award of attorneys' fees and costs.

COUNT V
NEGLIGENCE

128. Plaintiffs repeat and incorporate by reference each allegation set forth above in this Complaint as if fully alleged herein.

129. Defendant owed a duty to Plaintiffs and the Nationwide Class to exercise reasonable care in the formulating, manufacturing, testing, distributing, marketing, and selling of Science Diet and Prescription Diet dog foods.

130. Defendant further owed a duty to Plaintiffs and the Nationwide Class to conduct a robust recall, to test and ensure the safety of all its Science Diet and Prescription Diet dog food products that were in the stream of commerce at the time Defendant issued a recall.

131. Defendant breached its duty to Plaintiffs and the Nationwide Class by failing to exercise reasonable care in the formulating, manufacturing, testing, distributing, marketing, and selling its Science Diet and Prescription Diet dog food with dangerous elevated levels of vitamin D and failing to recall its tainted Science Diet and Prescription Diet dog food in a timely manner.

132. Defendant also breached its duty to perform a robust recall by failing to test and recall lots of its Science Diet and Prescription Diet dog foods, allowing defective product to remain in the stream of commerce for months after Defendant issued its initial product recall.

133. Defendant knew or should have known that its Science Diet and Prescription Diet dog foods contained hazardous levels of vitamin D based on Defendants exclusive knowledge of the ingredients, content, and suppliers of source materials used in the manufacture of its Science Diet and Prescription Diet dog foods.

134. As a direct and proximate result of Defendant's conduct, Plaintiffs and the Nationwide Class have suffered actual damages in that they purchased Science Diet and Prescription Diet dog foods that were worthless. Plaintiffs and the Nationwide Class would not have purchased Defendant's Science Diet and Prescription Diet dog foods had they known of the risk and/or presence of excessive levels of vitamin D that made the Science Diet and Prescription Diet dog foods hazardous to their pets.

135. As a result of Defendant's negligence, Plaintiffs and the Nationwide Class are entitled to actual damages for the price of Science Diet and Prescription Diet dog food they purchased and expenses related to medical treatments for their dogs.

136. Plaintiffs and the Nationwide Class are entitled to, and do seek injunctive relief ensuring Defendant complies with all proper quality and safety standards going forward.

137. Plaintiffs and the Nationwide Class are also entitled to an award of attorneys' fees and costs.

COUNT VI
STRICT PRODUCTS LIABILITY – MANUFACTURING DEFECTS

138. Plaintiffs repeat and incorporate by reference each allegation set forth above in this Complaint as if fully alleged herein.

139. Defendant's Science Diet and Prescription Diet dog foods were defectively manufactured, leading to elevated, toxic levels of vitamin D in Defendant's Science Diet and Prescription Diet dog foods, which ultimately caused harm to Plaintiffs' and the Class members' dogs.

140. The elevated, toxic levels of vitamin D present in Defendant's Science Diet and Prescription Diet dog food made the product unsafe as marketed because the dog food was toxic for dogs to consume, caused significant injury, and even death. Defendant recalled certain lots of its Science Diet and Prescription Diet dog foods, thus supporting that the defective product was both unsafe and unusable.

141. Defendants Science Diet and Prescription Diet dog foods were sold in sealed packaging and the defects alleged were present in the products when they left Defendant's exclusive control.

142. Plaintiffs and the Nationwide Class used the product for its stated and intended purpose without altering the product in any way.

143. Plaintiffs and the Nationwide Class could not have discovered the defect through the exercise of reasonable care, and therefore the injury could not have been avoided by exercising ordinary care.

144. Plaintiffs and the Nationwide Class suffered damages as a result of purchasing Science Diet and Prescription Diet dog foods that contained elevated, toxic levels of vitamin D. These damages include the cost of the dog foods, medical care for their pets, funeral arrangements, and emotional distress.

145. Because the manufacturing defect in the Prescription Diet and Science Diet formulas caused harm to Plaintiffs and Class members, Defendant is strictly liable for the same.

146. Plaintiffs and the Nationwide Class are entitled to recover actual damages for the price of Science Diet and Prescription Diet dog food cans they purchased.

147. Plaintiffs and the Nationwide Class are also entitled to an award of attorneys' fees and costs.

COUNT VII
UNJUST ENRICHMENT

148. Plaintiffs repeat and incorporate by reference each allegation set forth above in this Complaint as if fully alleged herein.

149. Plaintiff conferred substantial benefits on Defendant by purchasing Defendant's Science Diet and Prescription Diet dog foods.

150. Defendant knowingly and willingly accepted these substantial benefits by retaining revenues from the sale of Science Diet and Prescription Diet dog foods to Plaintiffs and the Nationwide Class.

151. Defendant's retention of revenues under these circumstances is unjust and inequitable in that Defendant knew or should have known that Plaintiffs and the Nationwide Class conferred these benefits with the expectation that the Science Diet and Prescription Diet dog foods were manufactured under high quality and safety standards and were suitable for consumption as represented and warranted by Defendant.

152. Defendant's Science Diet and Prescription Diet dog foods were not manufactured under high quality and safety standards and were not suitable for consumption as represented and warranted by Defendant.

153. Under the circumstances alleged, Defendant has been unjustly enriched and it would be inequitable for Defendant to retain the benefits conferred by Plaintiffs and the Nationwide Class.

154. Plaintiffs and the Nationwide Class are entitled to recover restitution from Defendant and disgorgement of the premium prices received by Defendant for selling the tainted food to Plaintiffs and other class members.

155. Plaintiffs and the Nationwide Class are also entitled to an award of attorneys' fees and costs.

COUNT VIII
VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT
(15 U.S.C. § 2301, et seq.)

156. Plaintiffs repeat and incorporate by reference each allegation set forth above in this Complaint as if fully alleged herein.

157. Defendant's Science Diet and Prescription Diet dog foods are consumer products as defined in 15 U.S.C. § 2301(1).

158. Plaintiffs and the Nationwide Class are consumers as defined in 15 U.S.C. § 2301(3).

159. Plaintiffs purchased Defendant's Science Diet and Prescription Diet dog foods costing more than \$5 and their individual claims are greater than \$25 as required by 15 U.S.C. § 2302(e) and 15 U.S.C. § 2310(d)(3)(A).

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

161. In connection with the sale of Defendant's Science Diet and Prescription Diet dog foods, Defendant issued written warranties as defined in 15 U.S.C. § 2301(6) by representing that the dog foods were:

- a. Safe for consumption by dogs;

- b. Made with the highest quality control and safety standards;
- c. Made with ingredients sourced “from suppliers whose facilities meet stringent quality standards” and that “each ingredient [is] examined to ensure its safety”;
- d. Recommended by or developed in cooperation with veterinarians and other medical professionals; and
- e. Will assist with a variety of medical conditions in dogs, or generally help dogs “live a long and healthy life.”

162. Defendant made these express warranties regarding its Science Diet and Prescription Diet dog foods in writing through its website, advertisements, marketing materials, and on the Science Diet and Prescription Diet packaging and labels in connection with the sale of Defendant’s dog foods to Plaintiffs and the Nationwide Class.

163. Defendant breached these written warranties in that Defendant’s Science Diet and Prescription Diet dog foods contained elevated, toxic levels of vitamin D hazardous to pet health.

164. Defendant knew its Science Diet and Prescription Diet dog foods did not conform to its warranties when the products left Defendant’s control, however, Defendant failed to remedy the defects.

165. Plaintiffs gave Defendant notice of this failure of Defendant’s products to conform to its warranties within a reasonable time after Plaintiffs knew or should have known of this failure.

166. Relief Defendant offered through a product recall is inadequate to resolve the breach because Plaintiffs and the Nationwide Class have already purchased Defendant’s defective Science Diet and Prescription Diet dog food, and Class members’ dogs have already been harmed by consuming Defendant’s defective dog food.

167. Plaintiffs and the Nationwide Class suffered damages as a direct and proximate result of Defendant's conduct by purchasing Science Diet and Prescription Diet dog foods that contained elevated, toxic levels of vitamin D. These damages include the cost of the dog foods, medical care for their pets, funeral arrangements, and emotional distress.

168. As a result of Defendant's breach of the written warranties alleged herein, Defendant violated Plaintiffs and the Nationwide Class's statutory rights under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* Plaintiffs and the Nationwide Class are entitled to recover actual damages for the price of Science Diet and Prescription Diet dog food cans they purchased, as well as expenses related to medical treatment for their dogs.

169. Plaintiffs and the Nationwide Class are also entitled to an award of attorneys' fees and costs.

COUNT IX
VIOLATIONS OF KANSAS CONSUMER PROTECTION ACT,
Kan. Stat. Ann. §§ 50-623, et seq.

170. Plaintiff Maxwell identified above, individually and on behalf of the Kansas Subclass, repeat and incorporate by reference each allegation set forth above in this Complaint as if fully alleged herein.

171. Kan. Stat. Ann. §§ 50-623, et seq. is to be construed liberally so as to protect consumers from suppliers who commit deceptive and unconscionable practices.

172. Plaintiff Maxwell and the Kansas Subclass are consumers as defined by Kan. Stat. Ann. § 50-624(b).

173. Defendant is a supplier as defined by Kan. Stat. Ann. § 50-624(l).

174. The acts and practices described within this Complaint are consumer transactions as defined by Kan. Stat. Ann. § 50-624(c).

175. Defendant marketed, advertised, offered, or sold goods or services in Kansas and engaged in trade or commerce directly or indirectly affecting the people of Kansas.

176. Defendant's misrepresentations and omissions regarding its Science Diet and Prescription Diet dog foods were material because they were likely to deceive reasonable consumers.

177. Defendant engaged in deceptive practices when it marketed and advertised its Science Diet and Prescription Diet dog foods as being one quality and the products turned out to be of another. *See* Kan. Stat. Ann. § 50-624(b)(1)(D). Furthermore, Defendant engaged in engaged in unconscionable acts and practices in connection with its consumer transactions, in violation of Kan. Stat. Ann. § 50-627 by making false statements and misrepresentations about the quality and safety standards employed in the manufacturing of the Science Diet and Prescription Diet dog foods, knowingly taking advantage of Plaintiff and the Kansas Subclass who were unable to protect their interests due to their lack of knowledge (*see* Kan. Stat. Ann. § 50-624(b)(1)). Defendant's deceptive practices lured Plaintiff and the Kansas Subclass to enter into consumer transactions on terms that Defendant knew substantially favored Defendant (*see* Kan. Stat. Ann. § 50-624(b)(5)).

178. Defendant's misrepresentations and omissions put Plaintiff Maxwell and the Kansas Subclass in a position of unequal bargaining power with respect to their purchases and/or uses of Defendant's Science Diet and Prescription Diet dog foods.

179. Defendant's unfair and deceptive practices caused substantial injury to Plaintiff and the Kansas Subclass that they could not reasonably avoid; this substantial injury far outweighed any benefits to consumers or to competition.

180. As a direct and proximate result of Defendant's deceptive practices, Plaintiff Maxwell and the Kansas Subclass have suffered substantial injury in the form of ascertainable losses of money from the purchases of Science Diet and Prescription Diet dog foods, injuries and related medical expenses for their dogs, funeral expenses. Plaintiff Maxwell and the Kansas Subclass did not receive the benefit of the bargain in their purchases of Defendant's Science Diet and Prescription Diet dog foods.

181. Plaintiff Maxwell and the Kansas Subclass seek all monetary and non-monetary relief allowed by law, including civil penalties or actual damages (whichever is greater), under Kan. Stat. Ann. §§ 50-634 and 50-636.

182. Plaintiff Maxwell and the Kansas Subclass also seek injunctive relief ensuring Defendant complies with all proper quality and safety standards going forward.

183. Plaintiff Maxwell and the Kansas Subclass are also entitled to an award of attorneys' fees and costs.

COUNT X
VIOLATIONS OF MISSOURI MERCHANDISE PRACTICES ACT;
Mo. Rev. Stat §§ 407.010, et seq.

184. The Missouri Plaintiffs identified above, individually and on behalf of the Missouri Subclass repeat and incorporate by reference each allegation set forth above in this Complaint as if fully alleged herein.

185. Defendant is a person as defined by Mo. Rev. Stat. § 407.010(5).

186. Defendant marketed, advertised, offered, or sold goods or services in Missouri and engaged in trade or commerce directly or indirectly affecting the people of Missouri, as defined by Mo. Rev. Stat. § 407.010(4), (6), and (7).

187. Plaintiffs and the Missouri Subclass purchased or leased goods or services primarily for personal, family, or household purposes.

188. Defendant engaged in unlawful, unfair, and deceptive acts and practices in connection with the sale or advertisement of merchandise in trade or commerce, in violation of Mo. Rev. Stat. § 407.010(1), as described herein.

189. Defendant's misrepresentations and omissions regarding its Science Diet and Prescription Diet dog foods were material because they were likely to deceive reasonable consumers.

190. As a direct and proximate result of Defendant's deceptive practices, Plaintiffs and the Missouri Subclass have suffered substantial injury in the form of ascertainable losses of money from the purchases of Science Diet and Prescription Diet dog foods, injuries and related medical expenses for their dogs, funeral expenses. Plaintiffs and the Missouri Subclass did not receive the benefit of the bargain in their purchases of Defendant's Science Diet and Prescription Diet dog foods.

191. Plaintiffs and the Missouri Subclass seek all monetary and non-monetary relief allowed by law, including actual damages and punitive damages.

192. Plaintiffs and the Missouri Subclass also seek injunctive relief ensuring Defendant complies with all proper quality and safety standards going forward.

193. Plaintiffs and the Missouri Subclass are also entitled to an award of attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all members of the proposed Classes, respectfully request the following relief against Defendant:

- a. An order certifying the Classes under Rule 23 of the Federal Rules of Civil Procedure, naming Plaintiffs as representatives of the Class and Plaintiffs' attorneys as Class Counsel to represent the Class members.
- b. Injunctive relief requiring Defendant to fully comply with proper quality and safety standards in its manufacturing processes for its dog food before resuming sales of its Science Diet and Prescription Diet dog foods;
- c. An award of damages to Plaintiffs and all members of the Classes to reimburse them for the worthless and dangerous cans of Science Diet and Prescription Diet dog food they purchased, and/or any statutory damages available;
- d. An award of damages to Plaintiffs and all members of the Classes to reimburse them for veterinary and other economic expenses caused by Defendant's dangerous dog food;
- e. An award of damages to Plaintiffs and all members of the Classes to compensate them for other compensable economic and non-economic damages, whether direct, consequential, or incidental, as allowed by law;
- f. An award of punitive damages to Plaintiffs and all members of the Classes;
- g. An award of attorneys' fees and costs to counsel for Plaintiff and the Class;
- h. An order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing appropriate class, finding that Plaintiffs are proper representatives of the class, and appointing the lawyers and law firm representing Plaintiffs as counsel for the class;
- i. An order providing for all other such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs hereby demand a trial by jury of any and all issues in this action so triable.

DESIGNATION OF PLACE OF TRIAL

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

Dated: April 29, 2019

Respectfully submitted,

By: /s/ Sarah S. Ruane

Thomas P. Cartmell (KS #17020)

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