

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

OSCAR SALAZAR, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

HILL'S PET NUTRITION, INC.,

Defendant.

Civil Action No. _____

Jury Trial

CLASS ACTION COMPLAINT

Plaintiff Oscar Salazar ("Plaintiff"), on behalf of himself and all others similarly situated, brings this class action suit for damages and equitable relief against Defendant Hill's Pet Nutrition, Inc. ("Defendant"). Plaintiff alleges the following based upon personal information as to allegations regarding himself, on the investigation of his counsel, and on information and belief as to all other allegations:

NATURE OF THE ACTION

1. Plaintiff brings this case on behalf of himself and other consumers who purchased Defendant's Hill's Prescription Diet and/or Hill's Science Diet canned dog food (hereinafter the "Products") containing excessive levels of vitamin D that causes dogs to experience vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and/or weight loss, including renal failure and/or death.

2. Defendant manufactures, warrants, advertises, and sells a line of canned dog food, dry dog foods, cat foods, and treats, including the Products at issue. Defendant is well known for its condition-specific and life-stage pet food formulas under its Prescription Diet and Science Diet brand names that Defendant claims will, among other things, "help pets live their best lives" and to "improv[e] [their] lives." In fact, the Products under Defendant's Prescription Diet and Science Diet brand names have not helped pets live their best lives, or improve their lives; instead the Products have

caused health issues, such as vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and weight loss, including renal dysfunction, and even death.

3. On or around January 31, 2019, Defendant announced a recall on select Hill's Prescription Diet and Hill's Science Diet canned dog food products. Defendant conceded that its investigation confirmed that the Products contained elevated levels of vitamin D due to a supplier error. Defendant also explained that elevated levels of vitamin D causes vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and weight loss, and can lead to serious health issues in dogs, such as renal dysfunction.¹

4. On or around March 20, 2019, Defendant announced another recall expanding its list of Hill's Prescription Diet and Hill's Science Diet canned dog food products due to elevated levels of vitamin D.² Furthermore, on or around May 15, 2019, Defendant updated its recall list and included another canned dog food product.³

5. Defendant's marketing and advertising of its Hill's Prescription Diet and Hill's Science Diet canned dog food products is false, deceptive, and misleading to reasonable consumers because the Products contained dangerous or toxic levels of vitamin D, and thus do not perform as advertised or in accordance with Defendant's express and implied warranties. In many cases, the Products have caused dogs to exhibit symptoms of vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and/or weight loss. Some dogs have even experienced renal dysfunction, and some dogs have died as a result of eating Defendant's Products.

6. Plaintiff and Class members would not have purchased the Products had they known the Products contained dangerous and toxic levels of vitamin D and/or that Defendant did not adequately test or inspect the Products before selling them.

7. Accordingly, Plaintiff brings this action and asserts claims on behalf of himself all similarly situated persons (defined below) for statutory violations of the Magnuson-Moss Warranty

¹ <https://www.hillspet.com/productlist/jan-31-press-release>.

² <https://www.hillspet.com/productlist#press-release>.

³ <https://www.hillspet.com/productlist#list> ("The item marked with ** is one additional lot code of a recalled product, updated on May 15, 2019.")

Act, 15 U.S.C. § 2301, *et seq.*, (“MMWA” or “Magnuson-Moss”) and the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, and common law claims for breach of contract, breach of express and implied warranties, and unjust enrichment.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because the aggregate amount in controversy exceeds \$5 million, exclusive of interests and costs; the number of members of the proposed Class exceeds 100; and many members of the proposed Class are citizens of different states than the Defendant.

9. This Court has personal jurisdiction over Defendant because Defendant is headquartered in the State of Kansas, regularly conducts business in this Judicial District, and has extensive contacts with this forum.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 as Defendant transacts substantial business in this District.

11. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

THE PARTIES

Plaintiff Oscar Salazar

12. Plaintiff Oscar Salazar is a citizen of California who resides in Rancho Cucamonga. Plaintiff purchased and fed Defendant’s Science Diet Products, including the Science Diet Beef and Barley Entrée, to his dog Rupert for the last several years. In buying the Products, Plaintiff relied on the statements on the Products.

13. After consuming Defendant’s Products, Rupert experienced loss of appetite and lethargy. After learning about the recalls, Mr. Salazar stopped feeding Rupert the Products and Rupert’s conditions improved. Rupert also developed kidney disease, which Plaintiff believes to be tied to Rupert’s consumption of Defendant’s Products. When Rupert’s diet changed and started proper treatment prescribed by Rupert’s veterinarian, his condition improved. Mr. Salazar tried to call the company several times but his calls were never answered.

14. Before Defendant's recalls, Plaintiff was not aware nor had any knowledge that Defendant's recalled Products contained excessive levels of vitamin D, or that Defendant did not adequately test or inspect the Products before selling them. Plaintiff would not have purchased Defendant's Products or fed Defendant's Products to Rupert had he known that they contained excessive levels of vitamin D, or that Defendant did not adequately test or inspect the Products before selling them.

Defendant Hill's Pet Nutrition, Inc.

15. Defendant Hill's Pet Nutrition, Inc. is a Delaware corporation with its principal place of business located at 400 SW, Topeka, Kansas 66603. Defendant does business throughout the United States. The Hill's Prescription Diet and the Hill's Science Diet brands are sold throughout the United States at large and small retailers, such as PetSmart, and Petco; online retailers, such as Amazon and Chewy's; and at veterinary offices.

FACTUAL ALLEGATIONS

Defendant's Prescription Diet and Science Diet Pet Food Brands

16. Defendant manufactures and sells dog and cat food, including canned and dry foods, and treats. Defendant is well known for its condition-specific and life-stage pet food formulas under the brand names Prescription Diet and Science Diet. These brands are specially formulated puppies, adult, and small and toy breed dogs and are specifically tailored to the health needs of each dog, including weight management, digestive case, skin/food sensitivities, urinary care, and kidney care.

17. The Prescription Diet and the Hill's Science Diet brands are sold throughout the United States at large and small retailers, such as PetSmart, and Petco; online retailers, such as Amazon and Chewy's; and at veterinary offices.

18. Defendant markets and advertises the Prescription Diet products as specially formulated "therapeutic pet food." On the very front of the label of all of its Prescription Diet products, Defendant states that the products provide "CLINICAL NUTRITION."

19. With regard to the Science Diet products, Defendant represents that it uses "cutting-edge food science to develop precisely-balanced nutrition for all stages of your pet's life." On the very front of the label of all of its Science Diet products, Defendant states that the products are

“VETERINARIAN RECOMMENDED.”

20. On Defendant’s website, for both brands of its canned dog food, Defendant proclaims that its Products are “[c]linically **proven nutrition** that can transform your pet’s life”⁴ and as providing “[b]alanced nutrition that exceeds AAFCO nutrition standards.”

21. Defendant also warrants to consumers that it has “[a] proven commitment to quality and safety;” “only accept[s] ingredients from suppliers whose facilities meet stringent quality standards and who are approved by Hill’s;” that it examines each ingredient “to ensure its safety;” and that it “analyze[s] each product’s ingredient profile for essential nutrients to ensure [its customers’] pet[s] gets the stringent, precise formulation they need.”

22. Defendant also assures to consumers that it “conduct[s] annual quality systems audits for all manufacturing facilities to ensure [they] meet the high standards your pet deserves,” and “demand[s] 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.”

23. Defendant further promises consumers that it “conduct[s] final safety checks daily on every Hill’s pet food product to help ensure the safety of your pet’s food,” and that “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.” (Emphasis added). Accordingly, Defendant asks its customers to “TRUST THE HILL’S STANDARD.” (Emphasis in original).

Vitamin D Toxicity in Dogs and Defendant’s Marketing of its Products

24. Vitamin D is a crucial nutrient for dogs. Vitamin D helps regulate the body’s absorption of calcium and phosphorus, which aids in healthy bones. Excess levels of vitamin D, however, can cause vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and weight loss. And, depending on the level and length of consumption of the elevated levels of vitamin D, it can also cause kidney failure and death.

25. Vitamin D is a fat-soluble vitamin. When a dog ingests too much vitamin D, unlike with water soluble vitamins, the excess amount is not rapidly excreted in the dog’s urine. Rather, the

⁴ (Emphasis in original).

excess vitamin D is stored in fat tissue and the liver and can lead to kidney failure and even death.

26. Contrary to Defendant's representations, promises and warranties, the Prescription Diet and Science Diet products were not manufactured with nutrition in mind or veterinarian recommended because they contained excessive levels of vitamin D that caused dogs to: vomit, lose their appetites, have increased thirst, have increased urination, have excessive drooling, and lose weight. Dogs have also experienced kidney failure, and have died, as a result of consuming Defendant's Products that contained excessive levels of vitamin D.

27. Further, as evidenced by consumer complaints, recalls involving other dog food manufacturers, the FDA involvement, and Plaintiff's experience, Defendant failed to engaged in any stringent quality assurance protocols or processes to ensure that its Products did not contain dangerous and toxic levels of vitamin D.

The Recalls

28. Sometime in December 2018, a dog food manufacturer received complaints from pet owners that their dogs experienced vitamin D toxicity and reported to the Federal Drug Administration ("FDA") that it was recalling several product lines due to potentially toxic levels of vitamin D.

29. The FDA then conducted tests and found many dog food brands to contain excessive and potentially toxic amounts of vitamin D. The test results indicated that the dog food products "contained as much as approximately 70 times the intended amount of vitamin D."

30. On December 3, 2018, the FDA issued a press release warning pet owners about potentially toxic levels of vitamin D in several brands of pet food, and noted that it was working with a common contract manufacturer of pet food to provide a comprehensive list of affected brands.

31. According to the FDA, "[e]xcess vitamin D in the diet can cause vomiting, loss of appetite, increased thirst, increased urination, excessive drooling and weight loss. Vitamin D at toxic levels can cause kidney failure and death."

32. Rather than heed the FDA's public warnings and alerts, Defendant continued to manufacture, advertise, warrant, and sell its Products, to Plaintiff and consumers, for almost two months after the FDA publicly announced its warnings.

33. As a result of buying Defendant's contaminated Products, Plaintiff and others similarly situated consumers have incurred substantial expenses, including the cost of the Products, veterinary bills to address the adverse health issues associated with their dogs consuming Defendant's contaminated Products, and other related expenses.

34. On January 31, 2019, Defendant announced its first recall of its Prescription Diet and Science Diet canned dog food products. Defendant issued a press release detailing the risk of excessive vitamin D consumption and identifying the affected products. Defendant included a video message stating that the SKU and lot numbers were "confirmed to be the only affected products in this voluntary canned dog food recall[.]" This first recall consisted of 25 products.

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

36. On March 20, 2019, Defendant announced another expansion as a result of elevated levels of vitamin D. Defendant claims to have conducted a detailed review of all canned dog foods potentially containing excessive levels of vitamin D. According to Defendant, this review included: analyzing consumer complaints; reviewing veterinarian medical consultations; auditing its supplier; and reviewing its own manufacturing and quality procedures. As a result of this subsequent review, Defendant determined that additional products contained excessive levels of vitamin D. This expanded recall included an additional 19 products of Defendant's canned dog food.

37. On May 17, 2019 after Defendant compiled testing data for the FDA, it was discovered there was an additional affected product lot. Defendant then subsequently expanded the recall to include this new lot code. This most recent recall included one additional product.

38. Defendant claims that the May 17, 2019 product was recalled was inadvertently omitted from their recall list. Given that one product was inadvertently omitted, there is the high possibility for another recall expansion if more products are found to contain elevated levels of vitamin D.

39. The FDA is alerting pet owners and veterinary professionals about the expanded recall of 86 total lots of 33 varieties (SKUs) of canned dog foods manufactured by Defendant after receiving complaints that dogs eating the food experienced vitamin D toxicity.

40. To date, Defendant continues to identify the cause of vitamin D toxicity as “a supplier error.”

41. Defendant has done nothing to alleviate the concerns and fears that Plaintiff and others similarly situated consumers have about their dog’s health after learning of the recall. Although Defendant encourages its consumers to contact its customer service representatives for further information, questions, or concerns regarding its recalls, many consumers have been unable to reach Defendant’s customer services representatives. Some consumers, (like Plaintiff), who were able to reach a customer service representative, have been offered only a coupon redeemable for future dog food purchases.

42. There are also many dogs that have eaten Defendant’s canned dog food and dry dog food that are not yet part of Defendant’s recalls that have exhibited symptoms of vitamin D toxicity. Those consumers, out of fear for their dogs’ health and lives, have stopped feeding their dogs any of Defendant’s products, canned dog food and/or dry dog food. Accordingly, there potentially could be other affected products manufactured and sold by Defendant that simply have not been recalled.

CLASS ACTION ALLEGATIONS

43. Plaintiff brings this action on behalf of himself and on behalf of the following proposed Classes initially defined as follows:

a) **Nationwide Class:** All persons residing in the United States who purchased for personal, family, or household use, Hill’s Pet Nutrition canned dog food products containing elevated levels of vitamin D.

b) **California Class:** All persons residing in California who purchased for personal, family, or household use, Hill’s Pet Nutrition canned dog food products containing elevated levels of vitamin D.

44. Excluded from the proposed Classes are Defendant, their parents, subsidiaries, affiliates, officers, and directors, any entity in which Defendant has a controlling interest, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

45. Plaintiff reserves the right to re-define any of the Class definitions prior to class certification and after having the opportunity to conduct discovery. Unless otherwise noted, the

proposed Classes will be collectively referred to herein as the “Class.”

46. This action has been properly brought and may properly be maintained as a class action under Rule 23(a)(1-4), Rule 23(b)(1), (2), or (3), and/or Rule 23(c)(4) of the Federal Rules of Civil Procedure.

Numerosity of the Proposed Class

(Fed. R. Civ. P. 23(a)(1))

47. The members of the Class are so numerous that their individual joinder would be impracticable. The Class comprises at least hundreds of thousands of consumers. The precise number of Class members, and their addresses, are unknown to Plaintiff at this time, but can be ascertained from Defendant’s records. The members of the Class may be notified of the pendency of this action by mail or email, supplemented (if deemed necessary or appropriate by the Court) by published notice.

Predominance of Common Questions of Fact and Law

(Fed. R. Civ. P. 23(a)(2); 23(b)(3))

48. Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting only individual members of the Class. The common legal and factual questions include, without limitation:

- (a) Whether Defendant knew or should have known that the Products contained elevated levels of vitamin D that rendered its Products unsafe and unsuitable for dog consumption;
- (b) Whether Defendant failed to employ quality control measures and failed to properly test and/or inspect its Products before placing them into the stream of commerce;
- (c) The date Defendant learned or should have learned of the elevated levels of vitamin D in its Products;
- (d) Whether Defendant ignored consumer complaints that the Products were causing their dogs to develop symptoms consistent with vitamin D poisoning;
- (e) Whether Defendant should have notified consumers when it learned that its Products contained elevated levels of vitamin D;
- (f) Whether Defendant was negligent in producing its Products;

- (g) Whether Defendant made negligent misrepresentations;
- (h) Whether Defendant breached express warranties;
- (i) Whether Defendant breached the implied warranty of merchantability;
- (j) Whether Defendant violated the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*;
- (k) Whether Defendant engaged in unfair trade practices in violation of California Business and Professions Code section 17200 *et seq.*;
- (l) Whether Defendant was unjustly enriched;
- (m) The nature of the relief, including damages and equitable relief, to which Plaintiff and the members of the Class are entitled; and
- (n) Whether Defendant is liable for attorneys' fees and costs.

Typicality of Claims

(Fed. R. Civ. P. 23(a)(3))

49. Plaintiff's claims are typical of the claims of the Class because Plaintiff, like all other Class members, purchased Defendant's Products, suffered damages as a result of that purchase, and seeks the same relief as the proposed Class members.

Adequacy of Representation

(Fed. R. Civ. P. 23(a)(4))

50. Plaintiff is an adequate representative of the Class, because his interests do not conflict with the interests of the members of the Class and he has retained counsel competent and experienced in complex class action and consumer litigation.

51. Plaintiff and his counsel will fairly and adequately protect the interest of the members of the Class.

Superiority of a Class Action

(Fed. R. Civ. P. 23(b)(3))

52. A class action is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and members of the Class. There is no special interest in Class members individually controlling the prosecution of separate actions. The damages suffered by individual

members of the Class, while significant, are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. Further, it would be virtually impossible for the members of the Class individually to redress effectively the wrongs done to them. And, even if members of the Class themselves could afford such individual litigation; the court system could not, given the thousands or even millions of cases that would need to be filed. Individualized litigation would also present a potential for inconsistent or contradictory judgments. Individualized litigation would increase the delay and expense to all parties and the court system, given the complex legal and factual issues involved. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

**Risk of Inconsistent or Dispositive Adjudications and the Appropriateness
Of Final Injunctive or Declaratory Relief**

(Fed. R. Civ. P. 23(b)(1) and (2))

53. In the alternative, this action may properly be maintained as a class action, because:

(a) the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual Class members, which would establish incompatible standards of conduct for Defendant; or

(b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members of the Class not parties to the adjudications, or substantially impair or impede their ability to protect their interests; or

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

Issue Certification

(Fed. R. Civ. P. 23(c)(4))

54. In the alternative, the common questions of fact and law, set forth in Paragraph 48, are appropriate for issue certification on behalf of the proposed Class.

FIRST CAUSE OF ACTION
Negligence
(On Behalf of Plaintiff and the Class)

55. Plaintiff hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

56. Defendant owed a duty of care to Plaintiff and the Class members. Defendant breached that duty.

57. Defendant is a manufacturer of the Products purchased by Plaintiff and Class members.

58. Defendant had a duty to take reasonable care in the manufacture, formulation, testing, inspection, marketing, distribution, and the sale of its Products, including identifying all affected Products and/or to promptly recall and remove all of the affected Products from the marketplace, including taking all appropriate remedial action.

59. By the actions and omissions alleged herein, Defendant breached its duty. Among other things, Defendant manufactured Products containing elevated levels of vitamin D that rendered its Products unsafe and unsuitable for dog consumption.

60. As a result of Defendant's breaches and violations, Plaintiff and Class members suffered harm.

61. Defendant's negligence was a substantial factor in the harm caused to Plaintiff and Class members.

62. At all relevant times, Plaintiff and members of the Class acted lawfully and with due care and did not contribute to the injuries suffered by its pets.

63. Accordingly, Plaintiff and members of the Class are entitled to damages and other appropriate relief, as prayed for hereunder.

SECOND CAUSE OF ACTION
Negligent Misrepresentation
(On Behalf of Plaintiff and the Class)

64. Plaintiff hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

65. Defendant's actions and omissions alleged herein constitute negligent misrepresentation.

66. Defendant misrepresented material facts concerning the safety, suitability, and quality of its Products that it was free from dangerous levels of vitamin D.

67. Defendant had no reasonable grounds for believing that its misrepresentations were true.

68. Among other things, Defendant represented that its Products were of high quality, healthy, safe, and suitable for dog consumption. Defendant knew or should have known but failed to disclose that, contrary to its representations, its Products contained dangerous levels of vitamin D that would cause injury to dogs, such as vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and weight loss, or can lead to serious health issues including renal dysfunction.

69. Defendant made such misrepresentations with the intent to induce Plaintiff and Class members to rely on its misrepresentations and purchase its Products containing dangerous levels of vitamin D.

70. Plaintiff and Class members had no knowledge of the falsity of Defendant's representations and reasonably believe them to be true. In justified reliance on Defendant's misrepresentations, Plaintiff and Class members purchased and fed their dogs the Products containing dangerous levels of vitamin D.

71. As a direct and proximate consequence, Plaintiff and Class members suffered harm. Among other things, they would not have purchased Defendant's Products had they known of the presence of dangerous levels of vitamin D.

72. Plaintiff and Class members are therefore entitled to damages and relief, as prayed for hereunder.

THIRD CAUSE OF ACTION
Breach of Express Warranty
(On Behalf of Plaintiff and the Class)

73. Plaintiff hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

74. Defendant breached express warranties made to Plaintiff and members of the Class.

75. Defendant made express warranties and/or approved the use of the expressed warranties to Plaintiff and members of the Class that the Products they purchased were safe and suitable for dog consumption.

76. These express warranties made to Plaintiff and members of the California Class regarding its Products' quality, ingredients, and fitness for dog consumption were in writing on its Products' packaging and labels, advertisements, marketing materials, and on its website, which Plaintiff and members of the Class relied on in making their purchases. These promises regarding the nature of the Products marketed by Defendant specifically related to the goods being purchased and became the basis of the bargain.

77. Plaintiff and members of the Class purchased Defendant's Products based on the belief that it conformed to the express warranties that were made in the Products' specifications, packaging, and labeling. If Plaintiff and members of the Class had known of the true nature of the product, they would not have purchased the Products for the price paid or would not have purchased them at all.

78. Defendant breached the express warranties made to Plaintiff and members of the Class by failing to supply goods that conformed to the warranties made. As a result, Plaintiff and members of the Class suffered injury.

79. Plaintiff and members of the Class are entitled to damages and other relief as set forth hereunder.

FOURTH CAUSE OF ACTION
Breach of Implied Warranty of Merchantability
(On Behalf of Plaintiff and the Class)

80. Plaintiff hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

81. By the conduct alleged herein, Defendant breached the implied warranty of merchantability.

82. The Products are "consumer goods."

83. Defendant is a "manufacturer."

84. Defendant impliedly warranted to Plaintiff and members of the Class that the Products were “merchantable.”

85. Plaintiff and members of the California Class purchased the Products containing elevated levels of vitamin D that rendered the Products unsafe and unsuitable for dog consumption manufactured by Defendant.

86. As the Products contained elevated levels of vitamin D that rendered the Products unsafe and unsuitable for dog consumption, they could not pass without objection in the pet food market.

87. As the Products contained elevated levels of vitamin D that rendered the Products unsafe and unsuitable for dog consumption, they are not fit for the ordinary purposes for which such goods are used.

88. Defendant’s conduct caused the Products to be worth less than what Plaintiff and members of the Class paid and deprived Plaintiff and members of the Class the benefit of their bargain.

89. As a direct and proximate result of Defendant’s breach of the implied warranty of merchantability, Plaintiff and members of the Class have been damaged by receiving goods in a condition that was unsafe and unsuitable.

90. Plaintiff and members of the Class have met all of their obligations under the warranty, or otherwise have been excused from performance of such obligations as a result of Defendant’s conduct.

91. Plaintiff and Class members are third party beneficiaries under the contracts between Defendant and merchants who sell the Products to consumers.

92. Plaintiff and members of the Class are entitled to damages and other legal and equitable relief, and are also entitled to their attorneys’ fees and costs, as prayed for hereunder.

FIFTH CAUSE OF ACTION

**Violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*
(On Behalf of Plaintiff and the Class)**

93. Plaintiff hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

94. By its actions alleged herein, Defendant has breached written and implied warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* (“MMWA” or “Magnuson-Moss”).

95. The MMWA, 15 U.S.C. § 2310(d)(1), provides a private right of action for purchasers of consumer products against manufacturers or retailers who fail to comply with the terms of a written or implied warranty.

96. Plaintiff and the Class are “consumers,” Defendant is a “supplier” and “warrantor,” and the Products are “consumer products,” as defined by the Magnuson-Moss, 15 U.S.C. § 2301.

97. Defendant’s written affirmations of fact, promises, and/or descriptions relating to its Products are a “written warranty” as defined in the Magnuson-Moss, 15 U.S.C. § 2301.

98. Under the Magnuson-Moss, an “implied warranty” is one that “arise[s] under State law...in connection with the sale by a supplier of a consumer product.” 15 U.S.C. § 2301.

99. As alleged herein, Defendant breached express and implied warranties with respect to the Products that Defendant supplied and that were purchased by Plaintiff and Class members.

100. As a direct and proximate result of the breaches of Defendant, Plaintiff and the Class have suffered injury, and pursuant to the Magnuson-Moss are entitled to damages and other relief as set forth hereunder.

SIXTH CAUSE OF ACTION

**Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
(On Behalf of Plaintiff and the California Class)**

101. Plaintiff hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

102. Defendant’s business practices as complained of herein violate the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”).

103. Defendant's practices constitute "unlawful" business practices in violation of the UCL because, among other things, they violate the common law and the Magnusson-Moss Warranty Act.

104. Defendant's actions and practices constitute "unfair" business practices in violation of the UCL, because, among other things, they are immoral, unethical, oppressive, unconscionable, unscrupulous or substantially injurious to consumers, and/or any utility of such practices is outweighed by the harm caused by consumers.

105. Defendant's actions and practices constitute "fraudulent" business practices in violation of the UCL because, among other things, Defendant's misrepresentations were likely to deceive reasonable consumers. Among other things, Defendant failed to disclose material facts, namely, that the Products contained excessive levels of vitamin D that was toxic to dogs. Defendant had a duty to disclose these material facts because the Products were unsafe and due to Defendant's affirmative representations about the Products. If Plaintiff had known that the Products contained excessive levels of vitamin D that was toxic to dogs, Plaintiff would not have purchased the Products.

106. As a result of Defendant's wrongful business practices, Plaintiff lost money and has suffered injury-in-fact.

107. Defendant's wrongful business practices present an ongoing and continuing threat and should be enjoined.

108. Accordingly, Plaintiff and members of the California Class are entitled to judgment and equitable relief.

SEVENTH CAUSE OF ACTION
Unjust Enrichment
(On Behalf of Plaintiff and the Class)

109. Plaintiff hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

110. Plaintiff and members of the Class conferred a benefit upon Defendant. Plaintiff and members of the Class paid money for Defendant's Products that contained elevated levels of vitamin D, which caused harm to Plaintiff's and Class members' pets. Defendant retained that benefit.

111. Defendant retained that benefit under circumstances that make it inequitable for it to

retain such benefit. Specifically, Defendant retained that benefit despite the fact that its Products contained elevated levels of vitamin D that rendered its Products unsafe and unsuitable for dog consumption. If Plaintiff and Class members had known the true nature of the Products, they would not have paid money for them.

112. Plaintiff and Class members are therefore entitled to disgorgement and/or restitution as prayed for hereunder.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the proposed Class, prays for relief and judgment against Defendant as follows:

- A. Certifying the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, appointing Plaintiff as a representative of the Class, and designating Plaintiff's counsel as Class Counsel;
- B. Awarding Plaintiff and the Class compensatory damages, in an amount exceeding \$5,000,000, to be determined by proof;
- C. Awarding Plaintiff and the Class appropriate relief, including actual damages;
- D. For declaratory and equitable relief, including restitution and disgorgement;
- E. For an order enjoining Defendant from continuing to engage in the wrongful acts and practices alleged herein;
- F. Awarding Plaintiff and the Class the costs of prosecuting this action, including expert witness fees;
- G. Awarding Plaintiff and the Class reasonable attorneys' fees and costs as allowable by law;
- H. Awarding pre-judgment and post-judgment interest; and
- I. Granting any other relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury on all issues so triable (and also files herewith plaintiff's separate Jury Demand pleading)..

Kenner Nygaard DeMarea Kendall, LLC

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*Lead Counsel for Plaintiff and the Proposed Classes,
[Pro Hac Vice Motions will be filed]*