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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MACLAIN MULLINS, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. BIG HEART PET BRANDS, INC., a Delaware corporation, Defendant.	Case No. **CLASS ACTION COMPLAINT FOR:** (1) NEGLIGENT MISREPRESENTATION; (2) VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT; (3) VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW; (4) VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW; (5) BREACH OF EXPRESS WARRANTY; AND (6) BREACH OF IMPLIED WARRANTY DEMAND FOR JURY TRIAL

1. Plaintiff Maclain Mullins ("Plaintiff"), individually and on behalf of all others similarly situated, by and through his undersigned attorneys, bring this Class Action Complaint against defendant Big Heart Pet Brands, Inc. ("Defendant"), to cause Defendant to disclose its pet food sold throughout the United States is adulterated and contains pentobarbital and to restore monies to the consumers and businesses who purchased the Contaminated Dog Foods (as defined herein) during the time that Defendant failed to make such disclosures. Plaintiff alleges the following based upon personal knowledge as well as investigation by his counsel and as to all other matters, upon information and belief (Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery).

DEFENDANT'S CONTAMINATED DOG FOOD CONTAINS PENTOBARBITAL, A SUBSTANCE LARGELY USED TO EUTHANIZE ANIMALS

2. Defendant manufactures, markets, advertises, labels, distributes, and sells Gravy Train Chunks in Gravy with Beef Chunks, Gravy Train Chunks in Gravy with T-Bone Flavor Chunks, Gravy Train Chunks in Gravy with Chicken Chunks, Gravy Train Strips in Gravy Beef Strips and Gravy Train With Lamb & Rice Chunks (the "Contaminated Dog Foods").[1] The Contaminated Dog Foods contain pentobarbital, a barbiturate drug used as a sedative and anesthetic for animals. Pentobarbital is now most commonly used to euthanizing dogs and cats.[2]

[1] Discovery may reveal additional products that also contain Pentobarbital and Plaintiff reserves their right to include any such products in this action.

[2] Petplace, "Penobarbital for Dogs and Cats, July 16, 2015, https://www.petplace.com/article/drug-library/drug-library/library/pentobarbital-for-dogs-and-cats/

3. Pentobarbital is a Class II controlled substance and there is no safe or set level for pentobarbital in pet food. If it is present, the food is adulterated.[3] The ingestion of pentobarbital by your pet can lead to adverse health issues, including:

- tyalism (salivation)
- Emesis (vomiting)
- Stool changes (soft to liquid stools, blood, mucus, urgency, explosive nature, etc.)
- Hyporexia (decreased appetite)
- Lethargy/depression
- Neurologic abnormalities (tremor, seizure, vocalization, unusual eye movements)
- Ataxia (difficulty walking)
- Collapse
- Coma
- Death[4]

4. Despite laws governing pet foods and providing government oversight, the FDA has stated that "[p]et food manufacturers are responsible for taking appropriate steps to ensure that the food they produce is safe for consumption and properly labeled including verifying the identity and safety of the ingredients from suppliers.[5] "It is not acceptable to use animals euthanized with a chemical substance in pet or other animal foods…The detection of pentobarbital in pet food renders the product adulterated. It is the responsibly of the manufacturer to take the appropriate steps to ensure that the food they produce is safe for consumption and properly labeled."[6]

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[3]http://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm

[4]The Honest Kitchen, "Pentobarbital- What Is It, How it Entered the Pet Food Supply Chain, and what You Can Do To Protect Your Canines & Felines," March 1, 2017, https://www.thehonestkitchen.com/blog/pentobarbital-entered-pet-food-supply-chain-can-protect-pet/

[5]https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm (last visited Feb. 5, 2018)

[6] *Id.*

5. Pentobarbital residue from euthanized animals will continue to be present in pet food, even if it is rendered or canned at high temperature or pressure.[7]

6. Pentobarbital is routinely used to euthanize animals, and the most likely way it could get into dog food would be in rendered animal products. Rendered products come from a process that converts animal tissues to feed ingredients, including tissues from animals that have been euthanized, decomposed or were diseased. Pentobarbital from euthanized animals survives the rendering process and could be present in the rendered feed ingredients used in pet food. The FDA's testing of dry dog food confirmed some samples contained pentobarbital. The FDA concluded that pentobarbital was entering pet foods from euthanized, rendered cattle or horses because of the lack of dog and cat DNA.

7. Despite its findings, the FDA has not aggressively taken action under FDCA, § 342 (a)(1) or (5), against the pet food companies that it found to have used non-slaughtered animals and contain pentobarbital in their pet foods. Therefore, manufacturers in the pet food industry, including Defendant, have continued their illegal practice of using non-slaughtered animals that may contain poisonous substances, like pentobarbital, in their pet foods.[8]It is not acceptable to use animals euthanized with a chemical substance in pet food, and the detection of pentobarbital in pet food renders the product adulterated.

8. Here, it has been revealed that Defendant is also knowingly, recklessly and/or negligently selling contaminated dog food containing pentobarbital, a substance largely used to euthanize animals.

9. On February 8, 2018, it was reported on WJLA that an independent investigation determined that the Contaminated Dog Foods contained pentobarbital. The independent investigation utilized two independent labs and both showed the inclusion of pentobarbital the Contaminated Dog Foods.

[7] *Id.*

10. Defendant knew the real risk that pentobarbital may appear in the Contaminated Dog Foods if the manufacturing and sourcing were not properly monitored. Indeed, this is not the first time that the Gravy Train line of food has been determined to include pentobarbital: "Back in 2001, analyses by the FDA found residue of the sedative in popular brands like Nutro, Gravy Train and Kibbles 'n Bits."[9]

11. Consumers have increasingly become more aware and cautious about the products they purchase.

12. Additionally, Defendant knew that a consumer would be feeding the Contaminated Dog Foods multiple times each day to his or her dog. This leads to repeated exposure of the barbiturate to the dog.

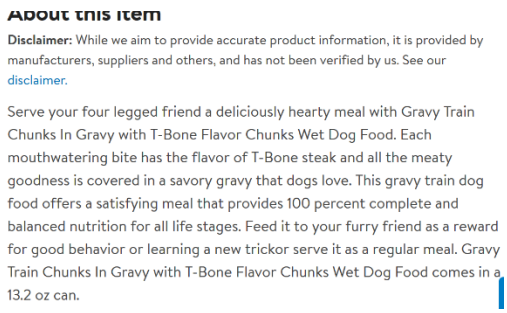
13. Defendant wrongfully advertised and sold the Contaminated Dog Foods without any label or warning indicating to consumers that these products contained any level of Pentobarbital or that Defendant utilized animals that have been euthanized as a protein or meat by-product source.

14. Instead, the advertising and labels intentionally omit any reference to the food being adulterated:

Gravy Train® Chunks In Gravy With Beef Chunks wet dog food is bursting with the hearty flavor of real beef. And all the meaty goodness is covered in a rich savory gravy to make a hearty meal your dog will love.

[9] https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html

15. Defendant's claim that the Contaminated Dog Foods are "100 percent complete and balanced nutrition" without any mention that the Contaminated Dog Foods are in fact adulterated and contain Pentobarbital.[10]



About this item

Disclaimer: While we aim to provide accurate product information, it is provided by manufacturers, suppliers and others, and has not been verified by us. See our disclaimer.

Serve your four legged friend a deliciously hearty meal with Gravy Train Chunks In Gravy with T-Bone Flavor Chunks Wet Dog Food. Each mouthwatering bite has the flavor of T-Bone steak and all the meaty goodness is covered in a savory gravy that dogs love. This gravy train dog food offers a satisfying meal that provides 100 percent complete and balanced nutrition for all life stages. Feed it to your furry friend as a reward for good behavior or learning a new trickor serve it as a regular meal. Gravy Train Chunks In Gravy with T-Bone Flavor Chunks Wet Dog Food comes in a 13.2 oz can.

16. Defendant's' omissions are not only material but also false, misleading, and reasonably likely to deceive the public. This is true especially in light of the long-standing campaign by Defendant to market all its products, including the Contaminated Dog Foods and "providing safe, healthy, and high quality food" with the as healthy and safe with "the purest ingredients"[11]

17. Moreover, Defendant's Corporate Responsibility Policy says the top priority is the "safety and quality" of its products: [12]

> **Pet food safety and quality.** *Big Heart Pet Brands top priority is the safety and quality of our products. Our goal is to produce the finest pet food products available on the market today. All of our products are made under a system of strict food safety and quality controls combined with ongoing inspection and monitoring. All of our programs are designed to exceed the Global Food Safety Initiative standards. Our products are made with nutritious, quality ingredients that meet the applicable standards and specifications of the U.S. Department of Agriculture (USDA), Association of American Feed Control Officials (AAFCO) and the Food & Drug Administration (FDA). Each of our products is processed and packaged following strict food safety and quality control procedures that comply with the Good Manufacturing Practices established by the FDA. These procedures ensure that the resulting food will be pure, wholesome and safe for pets.*

[10]Walmart, Gravy Train T-Bone Flavor Wet Dog Food, https://www.walmart.com/ip/Gravy-Train-T-Bone-Flavor-Wet-Dog-Food-13-2-Oz/44465093#read-more

[11]Big Heart Pet Brands, "Pets," http://www.bigheartpet.com/corporate-responsibility/pets.aspx

[12] Big Heart Pet Brands, Corporate Responsibility Policy," http://www.bigheartpet.com/assets/CR-Policy.pdf

18. In this same document, Defendant claims that it has a "rigorous supplier approval process" and only purchases ingredients from "reputable suppliers." And Defendant goes further to declare, that once a supplier is approved, "a comprehensive testing program is in place to assess the safety and quality of the ingredients upon receipt. This includes a combination of laboratory analysis and physical inspection of the ingredients."[13]

19. Finally, Defendant highlights the strict oversight it supposedly applies across all its brands, include Gravy Train, to ensure high quality products "from start to finish, inside and out:"[14]

> We apply the same expectations of quality that we hold for ourselves to our suppliers. Our supplier management program includes an extensive evaluation of manufacturing locations and a comprehensive testing program that is used to assess the safety and quality of ingredients upon receipt. This program includes a combination of laboratory analysis and physical inspection.
>
> Through rigorous commitment to the quality of our products—from start to finish, inside and out—Big Heart Pet Brands is able to nurture the bond between pets and the people who love them.

20. Defendant's advertising campaign is deceptive by using these descriptions, promises, and representations because there was no label or warning indicating to consumers that these products contained any level of Pentobarbital or that Defendant utilized animals that have been euthanized as a protein or meat by-product source. Defendant's statements, partial disclosures, and omissions are false, misleading, and crafted to deceive the public as they create an image that the Contaminated Dog Foods are healthy, safe, have only pure ingredients and is manufactured under rigorous standards.

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[13] *Id.*

[14] Big Heart Pet Brands, "Corporate Responsibility Summary 2014," http://www.bigheartpet.com/assets/CorporateResponsibilitySummaryBrochure2014.pdf

21. Moreover, a reasonable consumer, such as Plaintiff and other members of the Class (as defined herein), would have no reason to expect and anticipate that the Contaminated Dog Foods are made up of anything other than pure ingredients from reputable suppliers and that quality is the top priority as promised by Defendant. Non-disclosure and concealment of any level of Pentobarbital or utilization of animals that have been euthanized as a protein or meat by-product source in the Contaminated Dog Foods coupled with the partial disclosures and/or misrepresentations that the food is pure, quality, healthy and safe by Defendant is intended to and does, in fact, cause consumers to purchase a product Plaintiff and Class members would not have bought if the true quality and ingredients were disclosed, including that the fact the Contaminated Dog Foods are adulterated. As a result of these false statements, omissions, and concealment, Defendant has generated substantial sales of the Contaminated Dog Foods.

22. Plaintiff brings this action individually and on behalf of all other similarly situated consumers within the United States who purchased the Contaminated Dog Foods, in order to cause the disclosure of the inclusion of Pentobarbital and/or the utilization of euthanized animals as a protein or meat by-product source in the Contaminated Dog Foods, to correct the false and misleading perception Defendant has created in the minds of consumers that the Contaminated Dog Foods are high quality, safe, and healthy and to obtain redress for those who have purchased the Contaminated Dog Foods.

JURISDICTION AND VENUE

23. This Court has original jurisdiction over all causes of action asserted herein under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the matter in controversy exceeds the sum or value of $5,000,000 exclusive of interest and costs and more than two-thirds of the Class reside in states other than the states in which Defendant is a citizen and in which this case is filed, and therefore any exemptions to jurisdiction under 28 U.S.C. §1332(d) do not apply.

24. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because Plaintiff suffered injury as a result of Defendant's acts in this district, many of the acts and

transactions giving rise to this action occurred in this district, Defendant conducts substantial business in this district, Defendant has intentionally availed themselves of the laws and markets of this district, and Defendant is subject to personal jurisdiction in this district.

INTRADISTRICT ASSIGNMENT

25. A substantial portion of the transactions and wrongdoings which gave rise to the claims in this action occurred in the County of Marin, and as such, this action is properly assigned to the San Francisco division of this Court.

THE PARTIES

26. Plaintiff Maclain Mullins ("Mullins") is, and at all times relevant hereto has been, a citizen of the state of Kentucky. Plaintiff Mullins purchased certain lines of the Contaminated Dog Foods (including Gravy Train Chunks in Gravy and Chunks in Gravy with Beef Chunks) and fed it to his Boxer named Cawood. Plaintiff Mullins started purchasing the Contaminated Dog Foods in or around January 2009 approximately ten to twenty times a year and continued to purchase until approximately January 2015. Plaintiff Mullins also fed Cawood Gravy Train dry food. Plaintiff primarily purchased the Contaminated Dog Foods from Heartland Kroger in Lexington, Kentucky. During that time, based on the false and misleading claims, warranties, representations, advertisements and other marketing by Defendant, Plaintiff was unaware that the Contaminated Dog Foods contained any level of Pentobarbital, a substance largely used to euthanize animals.

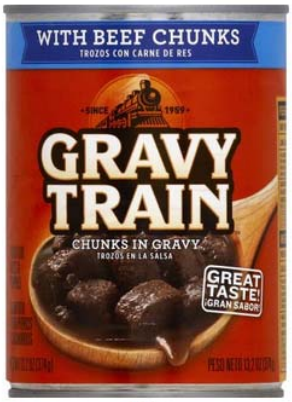
27. As the result of Defendant's deceptive and negligent conduct as alleged herein, Plaintiff was injured when he purchased the Contaminated Dog Foods that did not deliver what it promised and did business with a Company he would not have if he knew that the Contaminated Dog Foods contained any level of Pentobarbital or that Defendant utilized animals that have been euthanized as a protein source. He purchased the adulterated Contaminated Dog Foods on the assumption that the labeling of the Contaminated Dog Foods was accurate and that it was unadulterated, pure, high quality, healthy and safe for dogs to ingest and did not include euthanized animals as a protein

source. Further, should Plaintiff encounter the Contaminated Dog Foods in the future, he could not rely on the truthfulness of the packaging, absent corrective changes to the packaging and advertising of the Contaminated Dog Foods.

28. Defendant Big Heart Pet Brands, Inc, is a subsidiary of J.M. Smucker Company and its headquarters are located at One Maritime Plaza, San Francisco, California. Defendant that manufactures, formulates, produces, distributes, labels, markets, advertises, and sells the Contaminated Dog Foods under the Gravy Train dog food brand name throughout the United States. The advertising for the Contaminated Dog Foods, relied upon by Plaintiff, was prepared and/or approved by Defendant and their agents, and was disseminated by Defendant and its agents through advertising and labeling that contained the misrepresentations and omissions alleged herein. The advertising and labeling for the Contaminated Dog Foods was designed to encourage consumers to purchase the Contaminated Dog Foods and reasonably misled the reasonable consumer, i.e., Plaintiff and the Class, into purchasing the Contaminated Dog Foods. Defendant owns, manufactures, and distributes the Contaminated Dog Foods, and created and/or authorized the unlawful, fraudulent, unfair, misleading, and/or deceptive labeling and advertising for the Contaminated Dog Foods.

29. The Contaminated Dog Foods, at a minimum, include:

(a) Gravy Train Chunks in Gravy with Beef Chunks:



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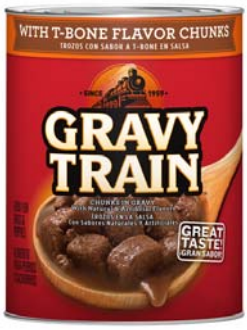
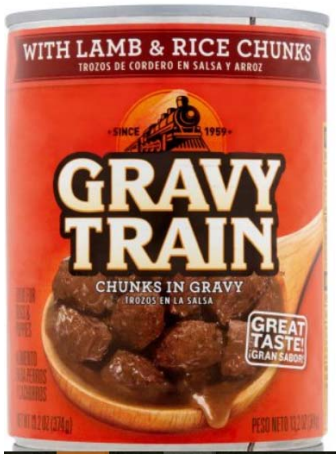
(b) Gravy Train Chunks in Gravy with T-Bone Flavor Chunks:



(c) Gravy Train Chunks in Gravy with Chicken Chunks:

(d) Gravy Train Strips in Gravy Beef Strips:

(e) Gravy Train Chunks in Gravy with Lamb and Rice Chunks:



FACTUAL ALLEGATIONS

The Contaminated Dog Foods Are Adulterated

30. An independent seven month investigation determined that the Contaminated Dog Foods contained pentobarbital. The independent investigation utilized two different labs and both showed that the Contaminated Dog Foods tested positive for pentobarbital. In fact, it was the only brand that tested positive for pentobarbital.[15]

31. The report further stated that pentobarbital is not used on farm animals so if it is not from euthanized dogs, cats or horses, where is the pentobarbital coming from. Defendant has not responded to the specific questions raised and instead stated: "We launched and are conducting a thorough investigation, including working closely with our suppliers, to determine the accuracy of these results and the methodology used."[16]

32. The FDA has not responded to the findings as disclosed by WJLA.

[15] http://wjla.com/features/7-on-your-side/fda-to-investigate-after-abc7-exposes-euthanasia-drug-in-dog-food

[16] *Id.*

Defendant Falsely Advertises the Contaminated Dog Foods as Pure, Quality, Healthy While Omitting Any That it is Adulterated with Pentobarbital

33. Defendant formulates, develops, manufactures, labels, distributes, markets, advertises, and sells its extensive Gravy Train lines of dry and wet pet food products in California and across the United States. Indeed, Defendant maintains it keeps rigorous quality and supplier standards from "start to finish" and performs three-tier auditing that includes, third party auditors, to ensure pure ingredients and fair labor are used in its Products, including Contaminated Dog Foods. As such, Defendant knew that the Contaminated Dog Foods were adulterated pet food.[17]

34. Defendant chose to advertise, label, and market its Contaminated Dog Foods with no disclosure that it was adulterated pet food, contained any level of Pentobarbital, and instead advertised, labeled, and marketed its Products, including the Contaminated Dog Foods, as pure, high quality, healthy and safe for dogs to ingest and failed to mention that the Contaminated Dog Foods contain pentobarbital. The Contaminated Dog Foods are available at numerous retail and online outlets.

35. In fact, Defendant made affirmative misleading representations that its Products, including the Contaminated Dog Foods, were not adulterated or would contain any controlled substance, including Pentobarbital. Specifically, Defendant promises to its consumers that all produces meets USDA, AAFCO and FDA standards. [18]

36. This is untrue as the Contaminated Dog Foods are adulterated which is not proper under state and federal laws and regulations. Specifically, under the FDCA, a food is adulterated if it "bears or contains any poisonous or deleterious substance which may render it injurious to health." 21 U.S.C. §342. Under California law, pet food is considered adulterated if "it bears or contains any poisonous or deleterious substance that may render it injurious to health…" or "if damage or inferiority has been concealed in any manner."

[17] http://www.bigheartpet.com/assets/CR-Policy.pdf

[18] http://www.bigheartpet.com/assets/CR-Policy.pdf

Cal. Health & Safety Code §113090(a), (h). California's statute also provides that pet food ingredients "of animal or poultry origin shall be only from animals or poultry slaughtered or processed in an approved or licensed establishment… Animal or poultry classified as 'deads' are prohibited." Cal. Health & Safety Code §113035.

37. The Contaminated Dog Foods are widely advertised.

38. The Defendant's webpage and adopted corporate policies repeatedly make the misleading statements about the Contaminated Dog Foods described above, without any mention of Pentobarbital, a substance largely used to euthanize animals or that Defendant utilized animals that have been euthanized as a protein or meat by-product source.

39. As a result of Defendant's omissions and misrepresentations, a reasonable consumer would have no reason to suspect the presence of Pentobarbital without conducting his or her own scientific tests, or reviewing third-party scientific testing of these products.

DEFENDANT'S STATEMENTS AND OMISSIONS VIOLATE CALIFORNIA LAWS

40. California law is designed to ensure that a company's claims about its products are truthful and accurate. Defendant violated California law by incorrectly claiming that the Contaminated Dog Foods are pure, healthy, quality, and safe and offers 100 percent complete and balanced nutrition with the purest ingredients while meeting all relevant federal regulations when in fact it is adulterated food that contains a controlled substance that is not healthy, quality or pure and causes the product not to meet the so-called rigorous supplier standards utilized by Defendant. Indeed, Defendant chose to omit that that the Contaminated Dog Foods were adulterated, contained Pentobarbital and/or that Defendant utilized animals that have been euthanized as a protein source in the Contaminated Dog Foods.

41. Defendant's marketing and advertising campaign has been sufficiently lengthy in duration, and widespread in dissemination.

42. Defendant has engaged in this long-term advertising campaign to convince potential customers that the Contaminated Dog Foods are pure, quality, healthy, and safe for consumption and offers 100 percent complete and balanced nutrition with the purest ingredients.

PLAINTIFF'S RELIANCE WAS REASONABLE AND FORESEEN BY DEFENDANT

43. Plaintiff reasonably relied on Defendant's own statements, misrepresentations, omissions and advertising concerning the particular qualities and benefits of the Contaminated Dog Foods.

44. Plaintiff read and relied upon the labels of the Contaminated Dog Foods in making his purchasing decisions.

45. A reasonable consumer would consider the labeling of a product when deciding whether to purchase. Here, Plaintiff relied on the specific statements and misrepresentations by Defendant did not disclose that the Contaminated Dog Foods were adulterated or contained Pentobarbital, a substance largely used to euthanize animals.

DEFENDANT'S KNOWLEDGE AND NOTICE OF THEIR BREACHES OF ITS EXPRESS AND IMPLIED WARRANTIES

46. Defendant had sufficient notice of its breaches of express and implied warranties. Defendant have, and had, exclusive knowledge of the physical and chemical make-up of the Contaminated Dog Foods.

47. Defendant also had notice of the real risk that pentobarbital may appear in the Contaminated Dog Foods if the manufacturing and sourcing were not properly monitored. Indeed, this is not the first time that the Gravy Train line of food has been determined to include pentobarbital.[19]

[19] https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html

PRIVITY EXISTS WITH PLAINTIFFS AND THE PROPOSED CLASS

48. Defendant knew that consumers such as Plaintiff and the proposed Class would be the end purchasers of the Contaminated Dog Foods and the target of its advertising and statements.

49. Defendant intended that the advertising, labeling, statements, and representations would be considered by the end purchasers of the Contaminated Dog Foods, including Plaintiff and the proposed Class.

50. Defendant directly marketed to Plaintiff and the proposed Class through statements on its website, labeling, advertising, and packaging.

51. Plaintiff and the proposed Class are the intended beneficiaries of the expressed and implied warranties.

CLASS ACTION ALLEGATIONS

52. Plaintiffs bring this action individually and on behalf of the following Class pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:

> All persons who are citizens of the United States who, from February 1, 2008 to the present, purchased the Contaminated Dog Foods for household or business use, and not for resale (the "Class").

53. Excluded from the Class are the Defendant, any parent companies, subsidiaries, and/or affiliates, officers, directors, legal representatives, employees, co-conspirators, all governmental entities, and any judge, justice, or judicial officer presiding over this matter.

54. This action is brought and may be properly maintained as a class action. There is a well-defined community of interests in this litigation and the members of the Class are easily ascertainable.

55. The members in the proposed Class are so numerous that individual joinder of all members is impracticable, and the disposition of the claims of all Class members in a single action will provide substantial benefits to the parties and Court.

56. Questions of law and fact common to Plaintiffs and the Class and Class include, but are not limited to, the following:

(a) whether Defendant owed a duty of care to the Class;

(b) whether Defendant knew or should have known that the Contaminated Dog Foods were adulterated or contained Pentobarbital;

(c) whether Defendant represented and continue to represent that the Contaminated Dog Foods are healthy, quality, pure and safe;

(d) whether Defendant represented and continue to represent that the Contaminated Dog Foods are manufactured in compliance with all governing regulations;

(e) whether Defendant failed to state that the Contaminated Dog Foods are in fact adulterated under Federal and California law;

(f) whether Defendant's representations and omissions in advertising and/or labeling are false, deceptive, and misleading;

(g) whether those representations and omissions are likely to deceive a reasonable consumer;

(h) whether Defendant had knowledge that those representations and omissions were false, deceptive, and misleading;

(i) whether Defendant continues to disseminate those representations and omissions despite knowledge that the representations are false, deceptive, and misleading;

(j) whether a representation that a product is healthy, pure, quality and safe for consumption coupled with omissions that the Contaminated Dog Foods were adulterated or contained Pentobarbital is material to a reasonable consumer;

(k) whether Defendant violated California Business & Professions Code sections 17200, *et seq.*;

(l) whether Defendant violated California Business & Professions Code sections 17500, *et seq.*;

(m) whether Defendant violated California Civil Code sections 1750, *et seq.*;

(n) whether Plaintiff and the members of the Class are entitled to actual, statutory, and punitive damages; and

(o) whether Plaintiff and members of the Class are entitled to declaratory and injunctive relief.

57. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff individually and on behalf of the other members of the Class. Identical statutory violations and business practices and harms are involved. Individual questions, if any, are not prevalent in comparison to the numerous common questions that dominate this action.

58. Plaintiff's claims are typical of Class members' claims in that they are based on the same underlying facts, events, and circumstances relating to Defendant's conduct.

59. Plaintiff will fairly and adequately represent and protect the interests of the Class, have no interests incompatible with the interests of the Class, and have retained counsel competent and experienced in class action, consumer protection, and false advertising litigation.

60. Class treatment is superior to other options for resolution of the controversy because the relief sought for each Class member is small such that, absent representative litigation, it would be infeasible for Class members to redress the wrongs done to them.

61. Questions of law and fact common to the Class predominate over any questions affecting only individual Class members.

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

COUNT I

(Negligent Misrepresentation Against Defendant on Behalf of the Class)

63. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

64. Plaintiff reasonably placed his trust and reliance in Defendant's representations that the Contaminated Dog Foods are healthy, safe, pure, high quality, and that it was not adulterated with substances such as Pentobarbital.

65. Plaintiff reasonably placed his trust and reliance in Defendant to disclose if the Contaminated Dog Foods were adulterated, contained Pentobarbital or utilized euthanized animals as a protein or meat by-product source.

66. Because of the relationship between the parties, Defendant owed a duty to use reasonable care to impart correct and reliable disclosures concerning the true nature, quality and ingredients of the Contaminated Dog Foods or, based upon its superior knowledge, having spoken, to say enough to not be misleading.

67. Defendant breached its duty to Plaintiff and the Class by providing false, misleading, partial disclosures and/or deceptive information regarding the true nature, quality and ingredients of the Contaminated Dog Foods.

68. Plaintiff and the Class reasonably and justifiably relied upon the information supplied to them by the Defendant. As a result, Plaintiff and the Class purchased the Contaminated Dog Foods that should not have been sold at all as it was adulterated.

69. Defendant failed to use reasonable care in its communications and representations to Plaintiff and Class.

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

COUNT II

(Violations of California's Consumer Legal Remedies Act, California Civil Code §§1750, *Et Seq.*, Against Defendant on Behalf of the Class)

71. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

72. Plaintiff and each proposed Class member is a "consumer," as that term is defined in California Civil Code section 1761(d).

73. The Contaminated Dog Foods are "goods," as that term is defined in California Civil Code section 1761(a).

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

75. Plaintiff and each proposed Class member's purchase of Defendant's products constituted a "transaction," as that term is defined in California Civil Code section 1761(e).

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

77. California Civil Code section 1770(a)(5), by representing that the Contaminated Dog Foods are pure, quality, healthy and safe for consumption and by failing to make any mention that the Contaminated Dog Foods were in fact adulterated by containing the controlled substance of Pentobarbital

78. California Civil Code section 1770(a)(7), by representing that the Contaminated Dog Foods were of a particular standard, quality, or grade, when they were in fact adulterated and not fit for consumption;

(a) California Civil Code section 1770(a)(9), by advertising the Contaminated Dog Foods with intent not to sell them as advertised; and

(b) California Civil Code section 1770(a)(16), by representing that the Contaminated Dog Foods have been supplied in accordance with previous representations when they have not.

79. As a direct and proximate result of these violations, Plaintiff and the Class have been harmed, and that harm will continue unless Defendant is enjoined from using the misleading marketing described herein in any manner in connection with the advertising and sale of the Contaminated Dog Foods.

80. Plaintiff seeks an award of attorney's fees pursuant to, inter alia, California Civil Code section 1780(e) and California Code of Civil Procedure section 1021.5.

COUNT III

(Violations of California False Advertising Law, California Business & Professions Code §§17500, *Et Seq.*, Against Defendant on Behalf of the Class)

81. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

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

83. As set forth herein, Defendant's claims that the Contaminated Dog Foods are healthy and safe for consumption are literally false and likely to deceive the public.

84. Defendant's claims that the Contaminated Dog Foods are pure, quality, healthy and safe for consumption are untrue or misleading because these claims fail to disclose that the Contaminated Dog Foods were in fact adulterated by containing the controlled substance of Pentobarbital.

85. Defendant's claim that the Contaminated Dog Foods are 100 percent complete and balanced nutrition are untrue or misleading because it fails to disclose that the Contaminated Dog Foods were in fact adulterated by containing the controlled substance of Pentobarbital.

86. Defendant knew, or reasonably should have known, that the claims were untrue or misleading.

87. Defendant's conduct is ongoing and continuing, such that prospective injunctive relief is necessary, especially given Plaintiff's desire to purchase these products in the future if they can be assured that, so long as the Contaminated Dog Foods are, as properly unadulterated pet food and meets the advertising claims.

88. Plaintiff and members of the Class are entitled to injunctive and equitable relief, and restitution in the amount they spent on the Contaminated Dog Foods.

COUNT IV

(Violations of the Unfair Competition Law, California Business & Professions Code §§17200, *Et Seq.*, Against Defendant on Behalf of the Class)

89. Plaintiffs incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

90. The Unfair Competition Law prohibits any "unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code §17200.

Fraudulent

91. Defendant's statements that the Contaminated Dog Foods are pure, quality healthy, safe and are 100 percent complete and balance nutrition are literally false and likely to deceive the public, as is Defendant's failing to make any mention that the Contaminated Dog Foods are adulterated and contain Pentobarbital.

Unlawful

92. As alleged herein, Defendant has sold advertised the adulterated Contaminated Dog Foods with false or misleading claims, such that Defendant's actions as alleged herein violate at least the following laws:

- The CLRA, California Business & Professions Code sections 1750, *et seq*.; and
- The False Advertising Law, California Business & Professions Code sections 17500, *et seq.*

Unfair

93. Defendant's conduct with respect to the labeling, advertising, marketing, and sale of the Contaminated Dog Foods is unfair because Defendant's conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

94. Defendant's conduct with respect to the labeling, advertising, marketing, and sale of the Contaminated Dog Foods is also unfair because it violates public policy as

declared by specific constitutional, statutory, or regulatory provisions, including, but not limited to, the False Advertising Law and the CLRA.

95. Defendant's conduct with respect to the labeling, advertising, marketing, and sale of the Contaminated Dog Foods is also unfair because the consumer injury is substantial, not outweighed by benefits to consumers or competition, and not one consumers, themselves, can reasonably avoid.

96. In accordance with California Business & Professions Code section 17203, Plaintiff seeks an order enjoining Defendant from continuing to conduct business through fraudulent or unlawful acts and practices and to commence a corrective advertising campaign. Defendant's conduct is ongoing and continuing, such that prospective injunctive relief is necessary.

97. On behalf of himself and the Class, Plaintiff also seeks an order for the restitution of all monies from the sale the Contaminated Dog Foods, which were unjustly acquired through acts of fraudulent, unfair, or unlawful competition.

COUNT V

(Breach of Express Warranty, California Commercial Code §2313, Against Defendant on Behalf of the Class)

98. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

99. As set forth herein, Defendant made express representations to Plaintiff and the Class that the Contaminated Dog Foods are pure, quality, healthy and safe for consumption and are 100 percent complete and balanced nutrition.

100. Defendant also made express representations to Plaintiff and the Class that the Contaminated Dog Foods meet all applicable regulations, including that they are not adulterated dog food by allowing their sale in various stores throughout the United States.

101. These promises became part of the basis of the bargain between the parties and thus constituted express warranties.

102. There was a sale of goods from Defendant to Plaintiff and the Class members.

103. On the basis of these express warranties, Defendant sold to Plaintiff and the Class the Contaminated Dog Foods.

104. Defendant knowingly breached the express warranties by selling the Contaminated Dog Foods which are adulterated and contain Pentobarbital.

105. Defendant was on notice of this breach as it was aware of Pentobarbital and/or the use of euthanized animals as a protein or meat by-product source in the Contaminated Dog Foods.

106. Privity exists because Defendant expressly warranted to Plaintiff and the Class that the Contaminated Dog Foods were pure, quality, healthy and safe for consumption and are 100 percent complete and balanced nutrition and also that it is unadulterated.

107. Plaintiff and the Class reasonably relied on the express warranties by Defendant.

108. As a result of Defendant's breaches of their express warranties, Plaintiff and the Class sustained damages as they paid money for the Contaminated Dog Foods that were not what Defendant represented and in fact not properly sold under applicable regulations and law

109. Plaintiff on behalf of himself and the Class, seeks actual damages for Defendant's breach of warranty.

COUNT VI

(Breach of Implied Warranty, California Commercial Code §2314, Against Defendant on Behalf of the Class)

110. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

111. As set forth herein, the Contaminated Dog Foods are not fit for the ordinary purposes as they were adulterated or similarly contaminated under California Health & Safety Code §§ 113075 and 113090 (prohibiting "manufacture" of pet food that is

"adulterated" because it contains "poisonous or deleterious substance[s]") and 113095 (prohibiting "false or misleading" labeling) as alleged herein.

112. Defendant is a merchant engaging in the sale of goods to Plaintiff and the Class.

113. There was a sale of goods from Defendant to Plaintiff and the Class members.

114. Defendant breached the implied warranties by selling the Contaminated Dog Foods were not fit for their ordinary purpose as adulterated dog food that contains Pentobarbital.

115. Defendant was on notice of this breach as it was aware of the presence of Pentobarbital and/or the use of euthanized animals as a protein or meat by-product source in the Contaminated Dog Foods.

116. Privity exists because Defendant impliedly warranted to Plaintiff and the Class that the Contaminated Dog Foods unadulterated and fit for their ordinary purpose

117. As a result of Defendant's breach of their implied warranties of merchantability, Plaintiff and the Class sustained damages as they paid money for the Contaminated Dog Foods that were not what Defendant represented.

118. Plaintiff, on behalf of himself and the Class, seeks actual damages for Defendant's breach of warranty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, pray for judgment against the Defendant as to each and every count, including:

A. An order declaring this action to be a proper class action, appointing Plaintiffs and their counsel to represent the Class, and requiring Defendant to bear the costs of class notice;

B. An order enjoining Defendant from selling the Contaminated Dog Foods until Pentobarbital is removed;

C. An order enjoining Defendant from selling the Contaminated Dog Foods in any manner suggesting or implying that they are healthy, pure, quality and safe for consumption;

D. An order requiring Defendant to engage in a corrective advertising campaign and engage in any further necessary affirmative injunctive relief, such as recalling existing products;

E. An order awarding declaratory relief, and any further retrospective or prospective injunctive relief permitted by law or equity, including enjoining Defendant from continuing the unlawful practices alleged herein, and injunctive relief to remedy Defendant's past conduct;

F. An order requiring Defendant to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, or a violation of the Unfair Competition Law, False Advertising Law, or CLRA, plus pre- and post-judgment interest thereon;

G. An order requiring Defendant to disgorge or return all monies, revenues, and profits obtained by means of any wrongful or unlawful act or practice;

H. An order requiring Defendant to pay all actual and statutory damages permitted under the counts alleged herein;

I. An order requiring Defendant to pay punitive damages on any count so allowable;

J. An order awarding attorneys' fees and costs to Plaintiff, the Class, and the Class; and

K. An order providing for all other such equitable relief as may be just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: February 9, 2018

LOCKRIDGE GRINDAL NAUEN P.L.L.P.
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REBECCA A. PETERSON (241858)

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Attorneys for Plaintiff

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

MACLAIN MULLINS, Individually and on Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff Madison Co., KY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Rebecca A. Peterson, Lockridge Grindal Nauen P.L.L.P., 100 Washington Ave. S., #2200, Minneapolis, MN 55401 (612-339-6900)

DEFENDANTS

BIG HEART PET BRANDS, INC., a Delaware corporation

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☒ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment Of Veteran's Benefits
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury -Medical Malpractice

PERSONAL INJURY
- ☒ 365 Personal Injury – Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities–Employment
- ☐ 446 Amer. w/Disabilities–Other
- ☐ 448 Education

PRISONER PETITIONS

HABEAS CORPUS
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

OTHER
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee–Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC § 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC § 158
- ☐ 423 Withdrawal 28 USC § 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent–Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS–Third Party 26 USC § 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC § 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced & Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation–Transfer ☐ 8 Multidistrict Litigation–Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. §1332(d)(2)

Brief description of cause:
Contaminated dog food containing pentobarbital

VII. REQUESTED IN COMPLAINT:

✔ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, Fed. R. Civ. P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY *(See instructions):*

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) ☒ **SAN FRANCISCO/OAKLAND** ☐ **SAN JOSE** ☐ **EUREKA-MCKINLEYVILLE**

DATE 02/08/2018 **SIGNATURE OF ATTORNEY OF RECORD** s/ Rebecca A. Peterson