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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION

10 **JENNIFER REITMAN,**
11 **JENNIFER SONG,** and
12 **RICHARD CLAPP** individually
and on behalf of a class of similarly
situated individuals,

13 **PLAINTIFFS,**

14 V.

15 **CHAMPION PETFOODS USA,**
16 **INC. and CHAMPION**
17 **PETFOODS LP,**

18 **DEFENDANTS.**
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) Case No. 2:18-cv-01736

) **CLASS ACTION COMPLAINT FOR:**

-) (1) VIOLATIONS OF THE CALIFORNIA
) CONSUMER LEGAL REMEDIES ACT;
) (2) VIOLATIONS OF THE CALIFORNIA
) FALSE ADVERTISING LAW;
) (3) VIOLATIONS OF THE CALIFORNIA
) UNFAIR COMPETITION LAW;
) (4) VIOLATION OF THE MINNESOTA
) COMMERCIAL FEED LAW;
) (5) VIOLATION OF MINNESOTA
) PREVENTION OF CONSUMER FRAUD
) ACT;
) (6) VIOLATION OF MINNESOTA
) UNIFORM DECEPTIVE TRADES ACT;
) (7) VIOLATION OF MINNESOTA FALSE
) STATEMENT IN ADVERTISING ACT;
) (8) VIOLATION OF MINNESOTA
) PREVENTION OF CONSUMER FRAUD;
) (9) VIOLATION OF THE FLORIDA
) DECEPTIVE AND UNFAIR TRADE
) PRACTICES ACT
) (5) BREACH OF EXPRESS WARRANTY;
) (6) BREACH OF IMPLIED WARRANTY;
) (7) FRAUDULENT
) MISREPRESENTATION;
) (8) FRAUD BY OMISSION;
) (9) NEGLIGENT MISREPRESENTATION;
) (10) UNJUST ENRICHMENT

28 DEMAND FOR JURY TRIAL

1 1. Plaintiffs Jennifer Reitman, Jennifer Song, and Richard Clapp, individually
2 and on behalf of all others similarly situated, by and through their undersigned attorneys,
3 bring this Class Action Complaint against Defendants Champion Petfoods USA, Inc. and
4 Champion Petfoods LP (“Defendants”), for their negligent, reckless, and/or intentional
5 practice of misrepresenting and failing to fully disclose the presence of heavy metals and
6 toxins in their pet food sold throughout the United States. Plaintiffs seek both injunctive
7 and monetary relief on behalf of the proposed Classes (defined below), including requiring
8 full disclosure of all such substances in its marketing, advertising, and labeling and
9 restoring monies to the members of the proposed Classes. Plaintiffs allege the following
10 based upon personal knowledge as well as investigation by their counsel and as to all other
11 matters, upon information and belief. Plaintiffs believe that substantial evidentiary support
12 will exist for the allegations set forth herein after a reasonable opportunity for discovery.

13 **DEFENDANTS MARKET THEMSELVES AS ONLY SELLING PREMIUM DOG**
14 **FOOD WITH THE SIMPLE MISSION OF “TO BE TRUSTED BY PET**
15 **LOVERS”**

16 2. Defendants manufacture, market, advertise, label, distribute, and sell pet
17 food under the brand names Acana and Orijen throughout the United States, including in
18 this District.

19 3. Defendants have created a niche in the pet food market by “making
20 biologically ‘appropriate’ pet food- as close to what animals would eat in nature as
21 possible- and producing it using fresh, natural ingredients...” They then charge a premium
22 for this purportedly higher-quality food. The founder of the company, Peter Muhlenfeld,
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1 said, “Our core family beliefs are [] entrenched in the company, and that is to make the
2 very best food.”¹

3 4. Defendants tout that “Biologically Appropriate™ ORIEN represents a new
4 class of food, designed to nourish dogs and cats according to their evolutionary adaptation
5 to a diet rich and diverse in fresh meat and protein[.]” and that it is “trusted by pet lovers
6 everywhere.”²

8 5. Defendants’ packaging and labels further emphasize fresh, quality, and
9 properly sourced ingredients and even declares its dog food has “ingredients we love”:



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¹ The Globe and Mail, “How once-tiny pet-food maker took a bite of the global market,” Jan. 16, 2018, <https://www.theglobeandmail.com/report-on-business/small-business/canadian-powerhouse-export-your-dog-is-eating-it/article37605774/> (last visited Feb. 6, 2018).

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² <https://www.orijsen.ca/us/>

6. Yet nowhere in the labeling, advertising, statements, warranties and/or packaging do Defendants disclose that the Contaminated Pet Foods (defined herein) contain levels of arsenic, mercury, lead, cadmium and/or BISPHEENOL A (“BPA”) — all known to pose health risks to humans and animals, including dogs:³

Product Name	arsenic ug per kg	bpa ug per kg	cadmium ug per kg	mercury ug per kg	lead ug per kg
Acana Regionals Wild Atlantic New England Fish and Fresh Greens Dry Dog Food	3256.40	32.50	113.00	51.20	249.30
Orijen Six Fish With New England Mackerel, Herring, Flounder, Redfish, Monkfish, Silver Hake Dry Dog Food	3169.80	39.50	200.50	54.90	38.70
Orijen Original Chicken, Turkey, Wild-Caught Fish, Eggs Dry Dog Food	907.60	0.00	93.20	10.80	489.80
Orijen Regional Red Angus Beef, Boar, Goat, Lamb, Pork, Mackerel Dry Dog Food	849.40	43.60	123.10	21.40	167.70
Acana Regionals Meadowland with Poultry, Freshwater Fish and Eggs Dry Dog Food	846.40	82.70	37.50	8.70	489.00
Acana Regionals Appalachian Ranch with Red Meats and Freshwater Catfish Dry Dog Food	358.20	82.90	32.50	14.90	336.70
Acana Regionals Grasslands with Lamb,	262.80	0.00	30.60	9.60	305.00

³ All the below pet food collectively is referred to as the “Contaminated Dog Foods.”

	arsenic ug per kg	bpa ug per kg	cadmium ug per kg	mercury ug per kg	lead ug per kg
1 2 3 4 5 6 7 8 9 10 11 12 13 14					
Product Name Trout, and Game Bird Dry Dog Food					
Orijen Regional Red Angus Beef, Ranch Raised Lamb, Wild Boar, Pork, Bison Dry Dog Food	1066.50	37.70	62.10	21.70	138.50
Acana Singles Duck and Pear Formula Dry Dog Food	523.40	102.70	30.90	15.40	537.40
Acana Singles Lamb and Apple Formula Dry Dog Food	401.20	73.20	35.00	3.20	423.40
Acana Heritage Free- Run Poultry Formula Dry Dog Food	292.90	62.20	27.80	3.30	290.20
Acana Heritage Freshwater Fish Formula Dry Dog Food	977.70	0.00	56.20	27.40	486.80

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16 7. Defendants warrant, promise, represent, label and/or advertise that the
17 Contaminated Pet Foods are free of any heavy metals and/or chemicals like BPA by
18 assuring the food represents an evolutionary diet that mirrors that of a wolf – free of
19 anything “nature did not intend for your dog to eat.”
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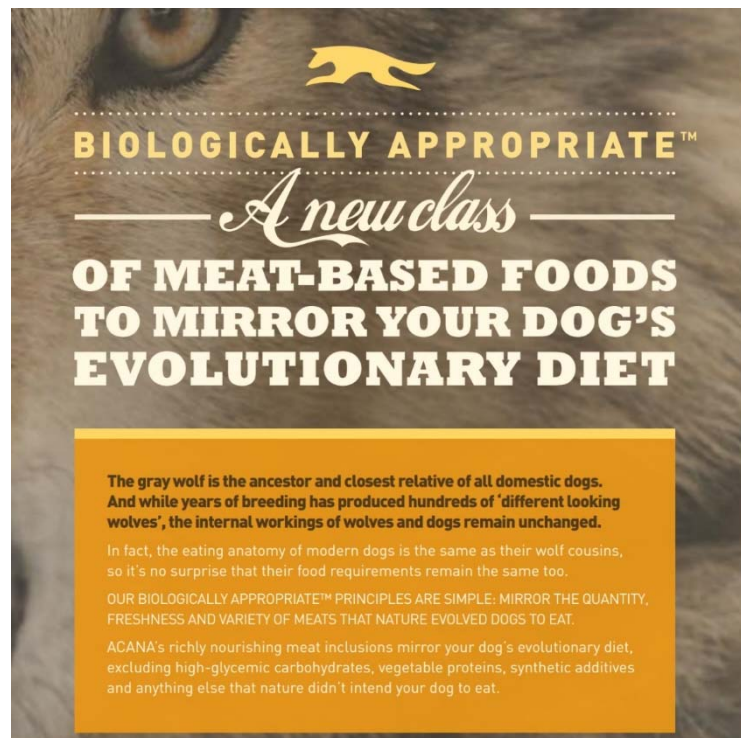
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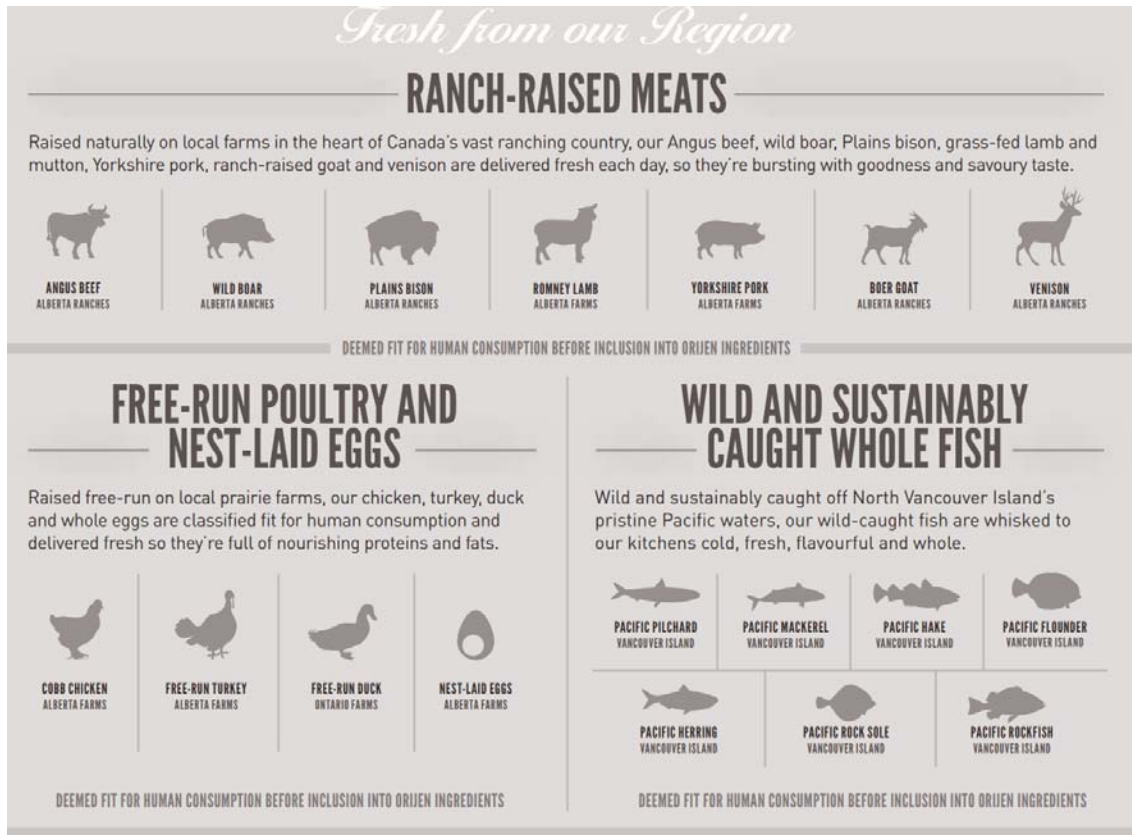
8. Defendants assert that: “Virtually All Of The Nutrients In Acana Are Natural And Not Synthetic.”⁴ Defendants make a similar claim to the Orijen Dog Foods in maintaining that that the main source of any nutrient in Orijen are from a natural source.⁵

9. Defendants further warrant, promise, represent, advertise and declare that the Contaminated Dog Foods are made with protein sources that are “Deemed fit for human consumption:”

⁴ <https://acana.com/wp-content/uploads/2015/10/DS-ACANA-Dog-Brochure-002.pdf>

⁵ <https://www.orijen.ca/us/foods/dog-food/dry-dog-food/tundra/>

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THE INCLUSION OF HEAVY METALS, BPA AND ANY OTHER CHEMICALS AT ANY LEVEL WOULD BE MATERIAL TO A REASONABLE CONSUMER BASED ON THE INHERENT AND KNOWN RISKS OF CONSUMPTION AND/OR EXPOSURE

Heavy Metals

10. Based on the risks associated with exposure to higher levels of arsenic, both the U.S. Environmental Protection Agency (“EPA”) and U.S. Food and Drug Administration (“FDA”) have set limits concerning the allowable limit of arsenic at 10 parts per billion (“ppb”) for human consumption in apple juice (regulated by the FDA) and drinking water (regulating by the EPA).⁶

⁶ The FDA has taken action based on consumer products exceeding this limit, including testing and sending warning letters to the manufacturers. *See, e.g.*, Warning Letter from FDA to Valley

1 11. Moreover, the FDA is considering limiting the action level for arsenic in rice
2 cereals for infants to 100 ppb⁷

3 12. The Contaminated Dog Foods also contain lead, which is another carcinogen
4 and developmental toxin known to cause health problems. Exposure to lead in food builds
5 up over time. Buildup can and has been scientifically demonstrated to lead to the
6 development of chronic poisoning, cancer, developmental, and reproductive disorders, as
7 well as serious injuries to the nervous system, and other organs and body systems.

8 13. The Contaminated Dog Foods also contain mercury, which can cause
9 damage to the cardiovascular system, nervous system, kidneys, and digestive tract in dogs.
10 Continued exposure can also injure the inner surfaces of the digestive tract and abdominal
11 cavity, causing lesions and inflammation. There have also been reports of lesions in the
12 central nervous system (spinal cord and brain), kidneys, and renal glands.⁸

13 14. Finally, the Contaminated Dog Foods contain cadmium which has been
14 observed to cause anemia, liver disease, and nerve or brain damage in animals eating or
15 drinking cadmium. The U.S. Department of Health and Human Services has determined
16 that cadmium and cadmium compounds are known human carcinogens and the EPA has
17 likewise determined that cadmium is a probable human carcinogen.⁹

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23 _____
24 Processing, Inc. (June 2, 2016), <https://www.fda.gov/iceci/enforcementactions/warningletters/2016/ucm506526.htm>.

25 ⁷ FDA, Draft Guidance for Industry: Inorganic Arsenic in Rice Cereals for Infants: Action Level
26 (Apr. 2016), <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/UCM493152.pdf>.

27 ⁸ <https://wagwalking.com/condition/mercury-poisoning>

28 ⁹ <https://www.atsdr.cdc.gov/phs/phs.asp?id=46&tid=15>

1 15. Despite the known risks of exposure to these heavy metals, Defendants have
2 negligently, recklessly, and/or knowingly sold the Contaminated Dog Foods without
3 disclosing they contain levels of arsenic, mercury, cadmium and lead to consumers like
4 Plaintiffs.

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6 16. Additionally, Defendants knew or should have been aware that a consumer
7 would be feeding the Contaminated Dog Foods multiple times each day to his or her dog,
8 making it the main, if not only, source of food for the dog. This leads to repeated exposure
9 of the heavy metals to the dog.

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11 17. Defendants have wrongfully and misleadingly advertised and sold the
12 Contaminated Dog Foods without any label or warning indicating to consumers that these
13 products contain heavy metals, or that these toxins can over time accumulate in the dog's
14 body to the point where poisoning, injury, and/or disease can occur.

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16 18. Defendants' omissions are material, false, misleading, and reasonably likely
17 to deceive the public. This is true especially in light of the long-standing campaign by
18 Defendants to market the Contaminated Dog Foods as healthy and safe to induce
19 consumers, such as Plaintiffs, to purchase the products. For instance, Defendants market
20 the Contaminated Dog Foods as "Biologically Appropriate," using "Fresh Regional
21 Ingredients" comprised of 100 percent meat, poultry, fish, and/or vegetables, both on the
22 products' packaging and on Defendants' websites.

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24 19. Moreover, Defendants devote significant web and packaging space to the
25 marketing of their DogStar® Kitchens, which they tell consumers "are the most advanced
26 pet food kitchens on earth, with standards that rival the human food processing industry."
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1 20. Defendants state on their website that the Orijen pet foods “feature[]
2 unmatched and unique inclusions of meat, naturally providing everything your dog or cat
3 needs to thrive.” Defendants further promise on the products’ packaging and on its website
4 that its Orijen and Acana foods are “guaranteed” to “keep your dog happy, healthy, and
5 strong.”
6

7 21. Using such descriptions and promises makes Defendants' advertising
8 campaign deceptive based on presence of heavy metals in the Contaminated Dog Foods.
9 Reasonable consumers, like Plaintiffs, would consider the mere inclusion of heavy metals
10 in the Contaminated Dog Foods as a material fact in considering what pet food to purchase.
11 Defendants' above-referenced statements, representations, partial disclosures, and
12 omissions are false, misleading, and crafted to deceive the public as they create an image
13 that the Contaminated Dog Foods are healthy, safe, and free of contaminants such as
14 arsenic and lead. Moreover, Defendants knew or should have reasonably expected that the
15 presence of heavy metals in its Contaminated Dog Foods is something an average
16 consumer would consider in purchasing dog food. Defendants' representations and
17 omissions are false, misleading, and reasonably likely to deceive the public.
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20 22. Moreover, a reasonable consumer, such as Plaintiffs and other members of
21 the Classes (as defined herein), would have no reason to not believe and/or anticipate that
22 the Contaminated Dog Foods are ““Biologically Appropriate” foods that use “Fresh
23 Regional Ingredients” consisting only of meat, poultry, fish, and vegetables. Non-
24 disclosure and/or concealment of the toxins in the Contaminated Dog Foods coupled with
25 the misrepresentations alleged herein by Defendants suggesting that the food provides
26 complete health and is safe is intended to and does, in fact, cause consumers to purchase a
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1 product Plaintiffs and members of the classes not have bought if the true quality and
2 ingredients were disclosed. As a result of these false or misleading statements and
3 omissions, Defendants have generated substantial sales of the Contaminated Dog Foods.

4 23. Plaintiffs bring this action individually and on behalf of all other similarly
5 situated consumers within California, Minnesota and Florida who purchased the
6 Contaminated Dog Foods, in order to cause the disclosure of the presence of heavy metals
7 that pose a known risk to both humans and animals in the Contaminated Dog Foods, to
8 correct the false and misleading perception Defendants have created in the minds of
9 consumers that the Contaminated Dog Foods are high quality, safe, and healthy and to
10 obtain redress for those who have purchased the Contaminated Dog Foods.
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13 **Bisphenol A (“BPA”)**

14 24. The dangers of BPA in human food are recognized by the FDA, along with
15 the California and Minnesota. For instance, manufacturers and wholesalers are prohibited
16 from selling any children’s products that contain BPA and any infant formula, baby food,
17 or toddler food stored in containers with intentionally added BPA
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19 25. Still, certain Contaminated Dog Foods are sold by Defendants that contain
20 levels of BPA—an industrial chemical that “‘is an endocrine disruptor. It’s an industrial
21 chemical that according to Medical News Today’ . . . interferes with the production,
22 secretion, transport, action, function and elimination of natural hormones.’”¹⁰ BPA has
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27 ¹⁰Dr. Karen Beeker, *A Major Heads Up: Don't Feed This to Your Dog*, Healthy Pets (Feb. 13,
28 2017), <https://healthypets.mercola.com/sites/healthypets/archive/2017/02/13/dogs-canned-food-dangers.aspx>.

1 been linked to various health issues, including reproductive disorders, heart disease,
2 diabetes, cancer, and neurological problems.¹¹

3 26. Despite the presence of this harmful chemical, Defendants prominently
4 warrant, claim, feature, represent, advertise, or otherwise market the Contaminated Dog
5 Foods as made from “Biologically Appropriate” and “Fresh Regional Ingredients”
6 consisting entirely of fresh meat, poultry, fish, and vegetables. Indeed, each bag
7 prominently displays the percentage of these ingredients on the front.
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9 27. Defendants’ website and packaging also warrants, claims, features,
10 represents, advertises, or otherwise markets that its products are natural. In fact, Orijen’s
11 slogan is “Nourish as Nature Intended.”
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¹¹ Christian Nordquist, *Bisphenol A: How Does It Affect Our Health?* Medical News Today (May 24, 2017), <https://www.medicalnewstoday.com/articles/221205.php>.

1 28. In promoting their promise, warranty, claim, representation, advertisement,
2 or otherwise marketing that the Contaminated Dog Foods are safe and pure, Defendants
3 further assure its customers:

4 Equipped with state-of-the-art fresh food processing technologies, our
5 DogStar® kitchens feature 25,000 square feet of cooler space, capable of
6 holding over 500,000 pounds of fresh local meats, fish and poultry, plus fresh
7 whole local fruits and vegetables.

8 Unmatched by any pet food maker, our ingredients are deemed fit for human
9 consumption when they arrive at our kitchens fresh, bursting with goodness,
10 and typically within 48 hours from when they were harvested.

11 29. To this end, Defendants' websites further warrants, claims, features,
12 represents, advertises, or otherwise markets that the Contaminated Dog Foods are
13 manufactured in such a way that would prevent BPA forming by closely monitoring
14 temperatures and quality:

15 “[O]ur unique Votator Heat Exchangers bring chilled fresh ingredients to
16 room temperature without introducing water or steam, which enables us
17 to add even more fresh meats into our foods.”

18 “Referred to as ‘the most significant preconditioning development for
19 extrusion cooking in the last 20 years,’ our High Intensity Preconditioners
20 were custom-built for DogStar®, feeding fresh meats from the Votators
21 to Extruders at rates previously unheard of, and without high
22 temperatures.”

23 “At the heart of our kitchens is a twin thermal extruder which is fed fresh
24 ingredients from our High Intensity Preconditioner.

25 The first of its kind in North America, it took 11 months to build, and
26 features custom steam injection to enable very high fresh meat inclusions
27 and a gentle cooking process which helps further reduce the
28 carbohydrates in our foods and preserves their natural goodness.”

29 30. Thus, Defendants engaged in deceptive advertising and labeling practice by
30 expressly warranting, claiming, stating, featuring, representing, advertising, or otherwise
31 marketing on Acana and Orijen labels and related websites that the Contaminated Dog

1 Foods are natural, fit for human consumption, fit for canine consumption, and made from
2 “Biologically Appropriate” and “Fresh Regional Ingredients” consisting entirely of fresh
3 meat, poultry, fish, and vegetables when they contain the non-naturally occurring chemical
4 BPA.

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6 31. Based on these false representations, Defendants charge a premium, knowing
7 that the claimed natural make-up of the Contaminated Dog Foods (as well as all of the
8 other alleged false and/or misleading representations discussed herein) is something an
9 average consumer would consider as a reason in picking a more expensive dog food. By
10 negligently and/or deceptively representing, marketing, and advertising the Contaminated
11 Dog Foods as natural, fit for human consumption, fit for canine consumption, natural, and
12 made from “Biologically Appropriate” and “Fresh Regional Ingredients” consisting
13 entirely of fresh meat, poultry, fish, and vegetables, Defendants wrongfully capitalized on,
14 and reaped enormous profits from, consumers’ strong preference for natural pet food
15 products.
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18 32. Plaintiffs bring this action individually and on behalf of all other similarly
19 situated consumers within California, Minnesota and Florida who purchased the
20 Contaminated Dog Foods, in order to cause the disclosure of the presence of BPA that pose
21 a known risk to both humans and animals in the Contaminated Dog Foods, to correct the
22 false and misleading perception Defendants have created in the minds of consumers that
23 the Contaminated Dog Foods are high quality, safe, and healthy and to obtain redress for
24 those who have purchased the Contaminated Dog Foods.
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JURISDICTION AND VENUE

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33. 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 Classes reside in states other than the states in which Defendants are citizens and in which this case is filed, and therefore any exemptions to jurisdiction under 28 U.S.C. §1332(d) do not apply.

34. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because Plaintiff Reitman resides and suffered injury as a result of Defendants' acts in this district, many of the acts and transactions giving rise to this action occurred in this district, Defendants conduct substantial business in this district, Defendants have intentionally availed themselves of the laws and markets of this district, and Defendants are subject to personal jurisdiction in this district.

PARTIES

35. Plaintiff Jennifer Reitman (“Plaintiff Reitman”) is, and at all times relevant hereto has been, a citizen of the state of California. Plaintiff Reitman purchased the following Contaminated Dog Foods for her two dogs, a German shepherd mix named Goliath and a Husky named Alaska: Orijen Six Fish With New England Mackerel, Herring, Flounder, Redfish, Monkfish, Silver Hake Dry Dog Food, Acana Singles Lamb and Apple Formula Dry Dog Food, Acana Singles Duck and Pear Formula Dry Dog Food and Acana Regionals Grasslands with Lamb, Trout, and Game Bird Dry Dog Food. Plaintiff purchased the largest bag available of the Contaminated Dog Foods once a month on average between

1 January 2012 and approximately July 2016. In 2016, Plaintiff began cooking for her dogs
2 because her dogs were getting sick from the dog food she was feeding them. Since this
3 change, her dogs have not been sick. She would generally buy the dog food at Bruno's in
4 Venice, California. Prior to purchasing the Contaminated Dog Foods, Plaintiff Reitman
5 saw the products the nutritional claims on the packaging, which she relied on in deciding
6 to purchase the Contaminated Dog Foods. During that time, based on the false and
7 misleading claims, warranties, representations, advertisements and other marketing by
8 Defendants, Plaintiff Reitman was unaware that the Contaminated Dog Foods contained
9 any level of heavy metals, chemicals or toxins and would not have purchased the food if
10 that was fully disclosed. Plaintiff Reitman was injured by paying a premium for the
11 Contaminated Dog Foods that have no or *de minimis* value based on the presence of the
12 alleged heavy metals, chemicals and toxins.

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16 36. Plaintiff Jennifer Song ("Plaintiff Song") is, and at all times relevant hereto
17 has been, a citizen of the state of Minnesota. Plaintiff Song purchased the following
18 Contaminated Dog Foods and fed the food to her 12-year-old pug, Suzy, and a recently
19 rescued 6-year-old Pomeranian mix, Bee: Orijen Six Fish With New England Mackerel,
20 Herring, Flounder, Redfish, Monkfish, Silver Hake Dry Dog Food; Orijen Regional Red
21 with Angus Beef, Wild Boar, Boer Goat, Romney Lamb, Yorkshire Pork & Wild Mackerel,
22 Orijen Regional Red Angus Beef, Ranch Raised Lamb, Wild Boar, Pork, Bison Dry Dog
23 Food, Acana Regionals Grasslands with Lamb, Trout, and Game Bird Dry Dog Food,
24 Acana Regionals Wild Atlantic New England Fish and Fresh Greens Dry Dog Food, Acana
25 Regionals Meadowland with Poultry, Freshwater Fish and Eggs Dry Dog Food, Acana
26 Regionals Appalachian Ranch with Red Meats and Freshwater Catfish Dry Dog Food and
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1 Orijen Original Chicken, Turkey, Wild-Caught Fish, Eggs Dry Dog Food. Plaintiff Song
2 began purchasing the Contaminated Dog Foods on or around November 6, 2016 and
3 continued to purchase approximately two 4.5-pound bags monthly (priced at around \$22.00
4 per bag) until approximately February 2018 when she discovered that the food was
5 contaminated. Plaintiff purchased the Contaminated Dog Foods from Chuck & Don's in
6 Minnesota. Prior to purchasing the Contaminated Dog Foods, Plaintiff saw the products
7 the nutritional claims on the packaging, which she relied on in deciding to purchase the
8 Contaminated Dog Foods. During that time, based on the false and misleading claims,
9 warranties, representations, advertisements and other marketing by Defendants, Plaintiff
10 was unaware that the Contaminated Dog Foods contained any level of heavy metals,
11 chemicals or toxins and would not have purchased the food if that was fully disclosed.
12 Plaintiff Song was injured by paying a premium for the Contaminated Dog Foods that have
13 no or *de minimis* value based on the presence of the alleged heavy metals, chemicals and
14 toxins.
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18 37. Plaintiff Richard Clapp ("Plaintiff") is a citizen of the state of Florida.
19 Plaintiff Clapp purchased the following Contaminated Dog Foods for his two dogs, a
20 English Cocker Spaniel named Minnie and an English Springer Spaniel named Gertie:
21 Orijen Original Chicken, Turkey, Wild-Caught Fish, Eggs Dry Dog Food, Acana Heritage
22 Free-Run Poultry Formula Dry Dog Food and Acana Heritage Freshwater Fish Formula
23 Dry Dog Food. Plaintiff Clapp purchased the Contaminated Dog Foods approximately
24 every two months starting approximately in January 2010 until February 2018. Plaintiff
25 Clapp would purchase the Contaminated Dog Foods from various stores, including Treat
26 Play Love in North Dakota, Amazon and other local pet stores. Prior to purchasing the
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1 Contaminated Dog Foods, Plaintiff saw the products the nutritional claims on the
2 packaging, which he relied on in deciding to purchase the Contaminated Dog Foods.
3 During that time, based on the false and misleading claims, warranties, representations,
4 advertisements and other marketing by Defendants, Plaintiff was unaware that the
5 Contaminated Dog Foods contained any level of heavy metals, chemicals or toxins and
6 would not have purchased the food if that was fully disclosed. Plaintiff Clapp was injured
7 by paying a premium for the Contaminated Dog Foods that have no or *de minimis* value
8 based on the presence of the alleged heavy metals, chemicals and toxins.
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11 38. As the result of Defendants' negligent, reckless, and/or knowingly deceptive
12 conduct as alleged herein, Plaintiffs were injured when they paid the purchase price or a
13 price premium for the Contaminated Dog Foods that did not deliver what was promised.
14 They paid the premium price on the assumption that the labeling of the Contaminated Dog
15 Foods was accurate and that it was healthy, superior quality, natural, and safe for dogs to
16 ingest. Plaintiffs would not have paid this money had they known that the Contaminated
17 Dog Foods contained any levels of the heavy metals, chemicals and/or toxins. Plaintiffs
18 were further injured because the Contaminated Dog Foods that have no or *de minimis* value
19 based on the presence of the alleged heavy metals, chemicals and toxins. Damages can be
20 calculated through expert testimony at trial. Further, should Plaintiffs encounter the
21 Contaminated Dog Foods in the future, they could not rely on the truthfulness of the
22 packaging, absent corrective changes to the packaging and advertising of the Contaminated
23 Dog Foods.
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27 39. Defendant Champion Petfoods USA Inc. ("Champion USA") is incorporated
28 in Delaware. Its headquarters and principal place of business, as of March 2016, is located

1 at 12871 Bowling Green Road, Auburn, KY 42206. Prior to that, its headquarters and
2 principal place of business were located at 11403-186 St NW, Edmonton, Alberta T5S
3 2W6.

4 40. Defendant Champion Petfoods LP (“Champion Canada”) is a Canadian
5 limited partnership with its headquarters and principal place of business located at 11403-
6 186 St NW, Edmonton, Alberta T5S 2W6. Defendant Champion Canada wholly owns,
7 operates, and/or controls Defendant Champion USA.
8

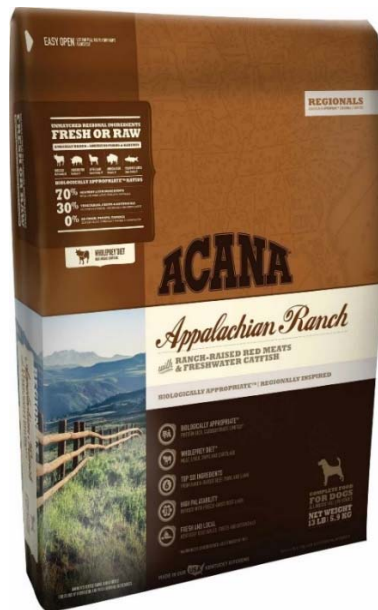
9 41. Defendants formulate, develop, manufacture, label, distribute, market,
10 advertise, and sell the Contaminated Dog Foods under the dog food brand names Orijen
11 and Acana throughout the United States, including in this District, during Class Period
12 (defined below). The advertising, labeling, and packaging for the Contaminated Dog
13 Foods, relied upon by Plaintiffs, was prepared, reviewed, and/or approved by Defendants
14 and their agents, and was disseminated by Defendants and their agents through marketing,
15 advertising, packaging, and labeling that contained the misrepresentations alleged herein.
16 The marketing, advertising, packaging and labeling for the Contaminated Dog Foods was
17 designed to encourage consumers to purchase the Contaminated Dog Foods and reasonably
18 misled the reasonable consumer, *i.e.*, Plaintiffs and the Classes, into purchasing the
19 Contaminated Dog Foods. Defendants own, manufacture, and distribute the Contaminated
20 Dog Foods, and created, allowed, negligently oversaw, and/or authorized the unlawful,
21 fraudulent, unfair, misleading, and/or deceptive labeling and advertising for the
22 Contaminated Dog Foods.
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FACTUAL ALLEGATIONS

The Contaminated Dog Foods

42. The Contaminated Dog Foods include the following:

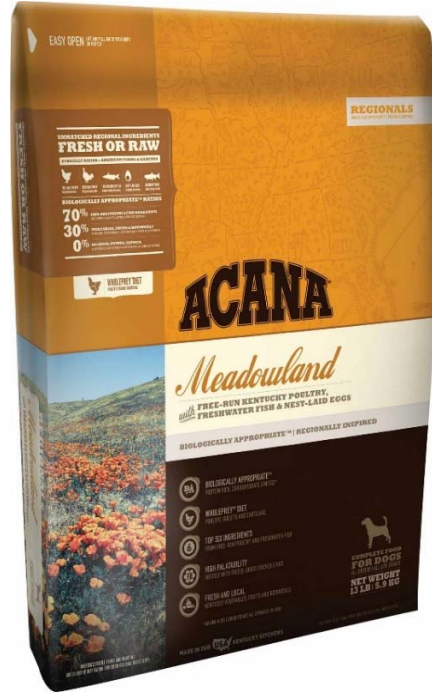
- (a) Acana Regionals Appalachian Ranch with Ranch-Raised Red Meats & Freshwater Catfish



1 (b) Acana Regionals Grasslands with Grass-Fed Kentucky Lamb,
2 Freshwater Trout & Game Bird
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1 (c) Acana Regionals Meadowland with Free-Run Poultry, Freshwater
2 Fish, and Nest-Laid Eggs
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(d) Acana Regionals Wild Atlantic with New Wild New England Fish &
Fresh Kentucky Greens

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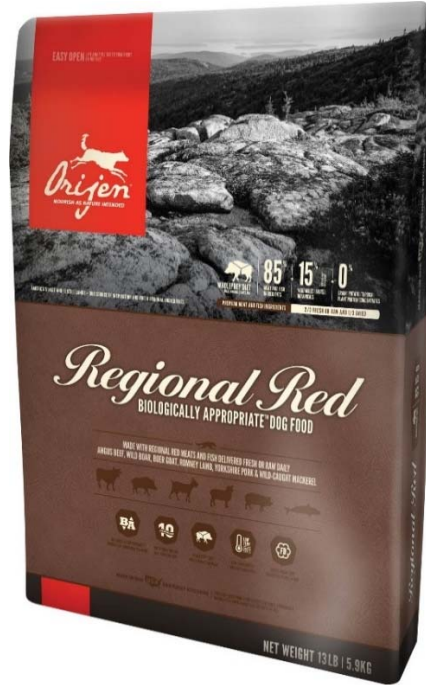


1 (e) Orijen Original with Fresh Free-Run Chicken and Turkey, Wild-
2 Caught Fish and Nest-Laid Eggs
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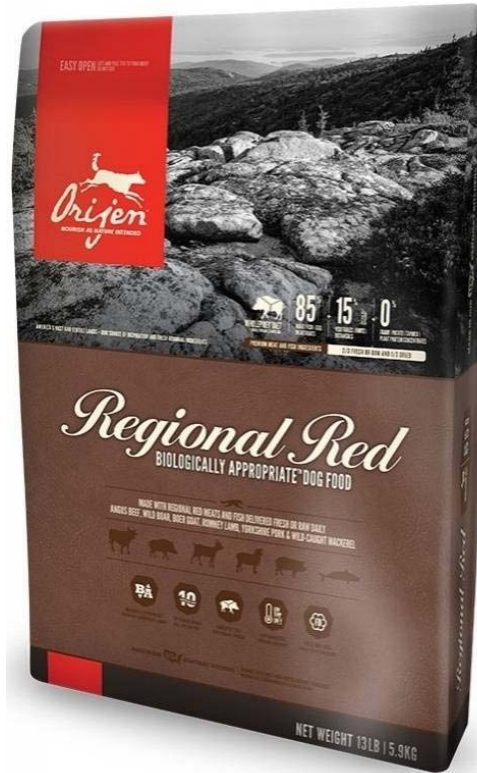


(f) Orijen Regional Red with Angus Beef, Wild Boar, Boer Goat, Romney Lamb, Yorkshire Pork & Wild Mackerel

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1 (g) Orijen Regional Red Angus Beef, Ranch Raised Lamb, Wild Boar,
2 Pork, Bison Dry Dog Food
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1 (h) Orijen Six Fish with New England Mackerel, Herring, Flounder,
2 Redfish, Monkfish and Silver Hake:
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(i) Acana Singles Duck and Pear Formula Dry Dog Food



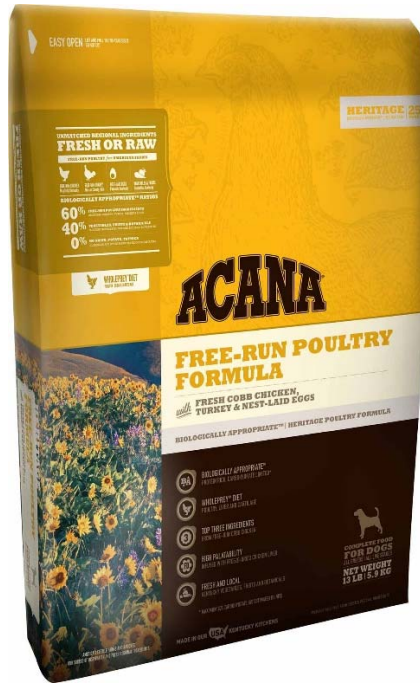
(j) Acana Singles Lamb and Apple Formula Dry Dog Food

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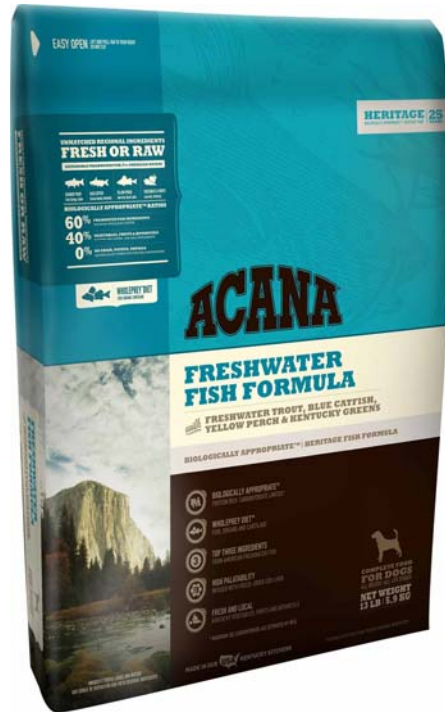
(k) Acana Heritage Free-Run Poultry Formula Dry Dog Food

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(1) Acana Heritage Freshwater Fish Formula Dry Dog Food

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1 **Heavy Metals Create Known Risks When Ingested**

2 43. Toxins like arsenic, mercury, cadmium and lead can cause serious illness to
3 humans and animals. A company should be vigilant to take all reasonable steps to avoid
4 causing family pets to ingest these toxins.
5

6 44. Arsenic is a semi-metal element in the periodic table. It is odorless and
7 tasteless. Arsenic occurs naturally in the environment as an element of the earth's crust; it
8 is found in rocks, soil, water, air, plants, and animals. Arsenic is combined with other
9 elements such as oxygen, chlorine, and sulfur to form inorganic arsenic compounds.
10 Historically, arsenic compounds were used in many industries, including: (i) as a
11 preservative in pressure-treated lumber; (ii) as a preservative in animal hides; (iii) as an
12 additive to lead and copper for hardening; (iv) in glass manufacturing; (v) in pesticides;
13 (vi) in animal agriculture; and (vii) as arsine gas to enhance junctions in semiconductors.
14 The United States has canceled the approvals of some of these uses, such as arsenic-based
15 pesticides, for health and safety reasons. Some of these cancellations were based on
16 voluntary withdrawals by producers. For example, manufacturers of arsenic-based wood
17 preservatives voluntarily withdrew their products in 2003 due to safety concerns, and the
18 EPA signed the cancellation order. In the Notice of Cancellation Order, the EPA stated
19 that it “believes that reducing the potential residential exposure to a known human
20 carcinogen is desirable.” Arsenic is an element—it does not degrade or disappear.
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25 45. Inorganic arsenic is a known cause of human cancer. The association
26 between inorganic arsenic and cancer is well documented. As early as 1879, high rates of
27 lung cancer in miners from the Kingdom of Saxony were attributed, in part, to inhaled
28

1 arsenic. By 1992, the combination of evidence from Taiwan and elsewhere was sufficient
2 to conclude that ingested inorganic arsenic, such as is found in contaminated drinking water
3 and food, was likely to increase the incidence of several internal cancers. The scientific
4 link to skin and lung cancers is particularly strong and longstanding, and evidence supports
5 conclusions that arsenic may cause liver, bladder, kidney, and colon cancers as well.
6

7 46. Lead is a metallic substance formerly used as a pesticide in fruit orchards,
8 but the use of such pesticides is now prohibited in the United States. Lead, unlike many
9 other poisons, builds up in the body over time as the person is exposed to and ingests it,
10 resulting in a cumulative exposure which can, over time, become toxic and seriously
11 injurious to health. Lead poisoning can occur from ingestion of food or water containing
12 lead. Acute or chronic exposure to material amounts of lead can lead to severe brain and
13 kidney damage, among other issues, and ultimately cause death.
14

15 47. In recognition of the dangers of lead, the State of Minnesota has enacted the
16 Lead Poisoning Prevention Act. In 2014, the Minnesota Commissioner of Health defined,
17 under Minnesota Statute 144.9501, an “elevated blood lead level” as “a diagnostic blood
18 lead test with a result that is equal to or greater than five micrograms of lead per deciliter
19 of whole blood in any person.”
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22 48. The State of Minnesota also recognizes the dangers of arsenic and prohibits
23 the sale or use of “any fertilizer containing more than 500 parts per million by weight of
24 arsenic.”
25

26 49. The FDA has set standards that regulate the maximum parts per billion of
27 lead permissible in water: bottled water cannot contain more than 5 ppb of total lead or 10
28 ppb of total arsenic. *See* 21 C.F.R. §165.110(b)(4)(iii)(A).

1 50. Mercury is a known toxin that creates health risks to both humans and
2 animals. The impact of the various ways humans and animals are exposed and ingest
3 mercury has been studied for years. In fact, in as early as 1997, the EPA issued a report to
4 Congress that detailed the health risks to both humans and animals.¹²

5
6 51. Based on the toxicity and risks of Mercury, regulations have been enacted at
7 both the Federal and state level.

8 52. Cadmium is likewise a known toxin that creates risk when ingested by
9 animals or humans. It has been specifically noted that “Kidney and bone effects have []
10 been observed in laboratory animals ingesting cadmium. Anemia, liver disease, and nerve
11 or brain damage have been observed in animals eating or drinking cadmium.”¹³

12
13 **Defendants Falsely Advertise the Contaminated Dog Foods as Nutritious,**
14 **Superior Quality, Pure, and Healthy While Omitting Any Mention of the**
15 **Heavy Metals, as Well as Claim the Foods Are Natural, Pure, and Safe Despite**
16 **the Inclusion of the Industrial Chemical BPA**

17 53. Defendants formulate, develop, manufacture, label, package, distribute,
18 market, advertise, and sell their extensive Acana and Orijen lines of dry and freeze-dried
19 pet food products across the United States, including the Contaminated Dog Foods.

20 54. Defendants warrant, claim, state, represent, advertise, label, and market their
21 Contaminated Dog Foods as natural, fit for human consumption, fit for canine
22 consumption, and made from “Biologically Appropriate” and “Fresh Regional Ingredients”
23 consisting entirely of fresh meat, poultry, fish, and vegetables; containing “only 1
24 supplement – zinc;” “provid[ing] a natural source of virtually every nutrient your dog needs
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26
27 ¹² <https://www3.epa.gov/airtoxics/112nmerc/volume5.pdf>

28 ¹³ <https://www.atsdr.cdc.gov/ToxProfiles/tp5-c1-b.pdf>

1 to thrive;” and “guaranteed to keep your dog healthy, happy and strong.” Defendants
2 therefore had a duty to ensure that these statements were true. As such, Defendants knew
3 or should have known that the Contaminated Dog Foods included the presence of heavy
4 metals and/or BPA.

5
6 55. Likewise, by warranting, claiming, stating, featuring, representing,
7 advertising or otherwise marketing that Orijen and Acana foods, including the
8 Contaminated Dog Foods, are natural, fit for human consumption, fit for canine
9 consumption, and made from “Biologically Appropriate” and “Fresh Regional Ingredients”
10 consisting entirely of fresh meat, poultry, fish, and vegetables, Defendants had a known
11 duty to ensure that there were no chemicals included in the Contaminated Dog Foods. In
12 fact, Defendants offered further assurances by representing that the quality control over the
13 manufacturing of the Contaminated Dog Foods as a rigid process free of outsourcing.
14

15
16 56. Defendants specifically promise on their website, “[W]e prepare ACANA
17 ourselves, in our own kitchens, where we oversee every detail of food preparation — from
18 where our ingredients come from, to every cooking, quality and food safety process.”
19 Similarly, Defendants promise that their “Dogstar® Kitchens have access to a myriad of
20 specialty family farms, with whom we partner for our supply of trusted ingredients.”
21 Finally, Defendants’ promise “[s]tandards that rival the human food processing industry
22 for authenticity, nutritional integrity, and food safety.” According to the Orijen and Acana
23 websites, Defendants use “feature state-of-the-art fresh food processing technologies.” As
24 such, Defendants knew or should have known that higher temperatures coupled with the
25 type of containers used in manufacturing create a real risk of BPA in their products.
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1 57. The Contaminated Dog Foods are available at numerous retail and online
2 outlets in the United States, including California, Minnesota and Florida.

3 58. The Contaminated Dog Foods are widely advertised, and Defendants employ
4 a Chief Marketing Officer, a Vice President for Customer Engagement, and a Director of
5 Marketing in both the United States and Canada.
6

7 59. The official websites for Acana and Orijen display the Contaminated Dog
8 Foods; descriptions and full lists of ingredients for the Contaminated Dog Foods and
9 includes the following promises:
10

11 **AWARD-WINNING FOODS AND TREATS**

12 Biologically Appropriate™ ORIJEN represents a new class of food, designed to nourish dogs and cats according to their evolutionary adaptation to a diet rich and diverse in fresh meat and protein.

13 ORIJEN features unmatched inclusions of fresh free-run poultry, whole nest-laid eggs, whole wild-caught fish and ranch-raised meats – farmed or fished in our region by people we know and trust, and delivered to our kitchens daily so they're brimming with goodness.
14

15 Trusted by pet lovers everywhere, award-winning ORIJEN foods and treats are guaranteed to keep your cherished dogs and cats happy, healthy and strong!

16 **AWARD-WINNING BIOLOGICALLY** 17 **APPROPRIATE™**

18 **OUR MISSION IS CLEAR AND STRONG**

19 We make Biologically Appropriate™ dog and cat foods from Fresh Regional Ingredients and we make them from start to finish in our very own award-winning kitchens.

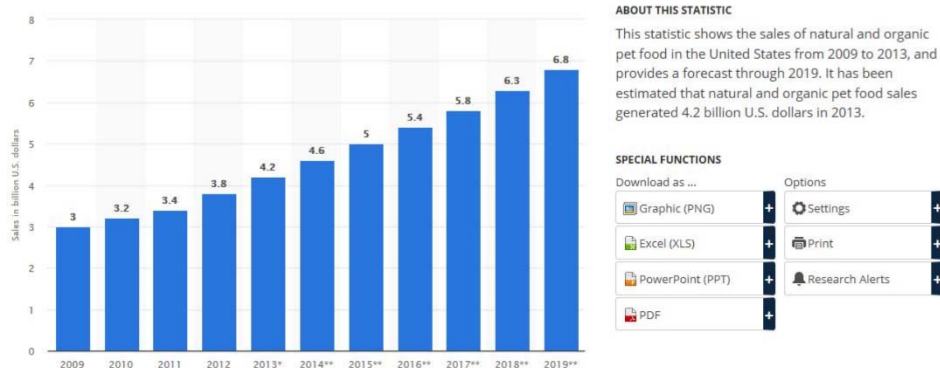
20 Our mission represents a new standard in pet food, designed to nourish your dog and cat in two ways. First, according to its natural evolution to a meat and protein-rich diet. Second, using meats, poultry, eggs and fish that are sustainably
21 ranted, farmed or fished by local suppliers and delivered to our kitchens fresh each day.

22 We think you'll love **ACANA**. More importantly, we think your dogs and cats will too.

23 60. Defendants' websites repeat the false and misleading claims, warranties,
24 representations, advertisements, and other marketing about the Contaminated Dog Foods
25 benefits, quality, purity, and natural make-up, without any mention of the heavy metals
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1 and/or BPA they contain. This is not surprising given that natural pet food sales represent
 2 over \$5.5 billion in the United States and have consistently risen over the years.¹⁴

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 5 **Natural and organic pet food sales in the United States from 2009 to 2019 (in billion U.S. dollars)**



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 12 61. Moreover, Defendants have themselves acknowledged the importance of
 13 quality dog food to the reasonable consumer:

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 15 “Our No. 1 mandate is BAFRINO – biologically appropriate, fresh regional
 16 ingredients, never outsourced,” said Frank Burdzy, president and chief
 17 executive officer of Champion Petfoods in Canada, in an interview with the
 18 Daily News Monday prior to housewarming activities outside and inside the
 19 kitchens.

20 “We build relationships with our suppliers and farms and fisheries. We are
 21 trusted by pet owners,” Burdzy said.¹⁵

22 62. As a result of Defendants’ She also reflected that she was interested in
 23 recovering money expended on medical bills for Kobe and purchases of the products. and

24 ¹⁴ Statista, *Natural and Organic Pet Food Sales in the U.S. from 2009 to 2019*, The Statistics Portal
 25 (accessed Oct. 25, 2017). <https://www.statista.com/statistics/548957/us-sales-of-natural-and-organic-pet-food/>

26 ¹⁵ Mason, C., *Champion Petfoods DogStar Kitchens holds housewarming*, BOWLING GREEN DAILY
 27 NEWS (Jan. 5, 2016) available at http://www.bgdailynews.com/news/champion-petfoods-dogstar-kitchens-holds-housewarming/article_bf34275d-2242-5f3f-a9cc-14174235acc1.html?utm_medium=social&utm_source=email&utm_campaign=user-share (last
 28 accessed March 1, 2018).

1 omissions, a reasonable consumer would have no reason to suspect the presence of heavy
2 metals and/or BPA in the Contaminated Dog Foods without conducting his or her own
3 scientific tests, or reviewing third-party scientific testing of these products.

4 63. However, after conducting third-party scientific testing, it is clear that the
5 Contaminated Dog Food does in fact contain levels both heavy metals and/or BPA.
6

7 **Defendants' Statements and Omissions Violate California, Minnesota and**
8 **Florida Laws**

9 64. California, Minnesota and Florida laws are designed to ensure that a
10 company's claims about its products are truthful and accurate. Defendants violated these
11 state laws by negligently, recklessly, and/or intentionally incorrectly claiming that the
12 Contaminated Dog Foods are pure, healthy, and safe for consumption and by not accurately
13 detailing that the products contain the toxic heavy metals and/or BPA. Defendants
14 misrepresented that the Contaminated Dog Foods are natural, fit for human consumption,
15 fit for canine consumption, and made from "Biologically Appropriate" and "Fresh
16 Regional Ingredients" consisting entirely of fresh meat, poultry, fish, and vegetables;
17 "feature[] unmatched and unique inclusions of meat, naturally providing everything your
18 dog or cat needs to thrive;" and are "guaranteed" to "keep your dog happy, healthy, and
19 strong."
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21

22 65. Defendants' marketing and advertising campaign has been sufficiently
23 lengthy in duration, and widespread in dissemination, that it would be unrealistic to require
24 Plaintiffs to plead reliance upon each advertised misrepresentation.
25

26 66. Defendants have engaged in this long-term advertising campaign to convince
27 potential customers that the Contaminated Dog Foods were pure, healthy, safe for
28

1 consumption, and did not contain harmful ingredients such as arsenic and lead. Likewise,
2 Defendants have engaged in this long-term advertising campaign to convince potential
3 customers that the Contaminated Dog Foods are natural, pure, and safe despite the presence
4 of BPA in the food.

5
6 **Plaintiffs' Reliance Was Reasonable and Foreseen By Defendants**

7
8 67. Plaintiffs reasonably relied on Defendants' own claims, warranties,
9 representations, advertisements, and other marketing concerning the particular qualities
10 and benefits of the Contaminated Dog Foods.

11
12 68. Plaintiffs relied upon Defendants' false and/or misleading representations
13 alleged herein, including the websites and the Contaminated Dog Foods' labels and
14 packaging in making their purchasing decisions.

15
16 69. Any reasonable consumer would consider the labeling of a product (as well
17 as the other false and/or misleading representations alleged herein) when deciding whether
18 to purchase. Here, Plaintiffs relied on the specific statements and misrepresentations by
19 Defendants that the Contaminated Dog Foods were natural, fit for human consumption, fit
20 for canine consumption, and made from "Biologically Appropriate" and "Fresh Regional
21 Ingredients" consisting entirely of fresh meat, poultry, fish, and vegetables; "feature[ing]
22 unmatched and unique inclusions of meat, naturally providing everything your dog or cat
23 needs to thrive;" and were "guaranteed" to "keep your dog happy, healthy, and strong"
24 with no disclosure of the inclusion of heavy metals, including arsenic or lead, and BPA.
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1 **Defendants’ Knowledge and Notice of Their Breaches of Their Express and**
2 **Implied Warranties**

3 70. Defendants had sufficient notice of their breaches of express and implied
4 warranties. Defendants have, and had, exclusive knowledge of the physical and chemical
5 makeup of the Contaminated Dog Foods.

6 71. Additionally, Defendants received notice of the contaminants in their dog
7 and cat food, including the Contaminated Dog Foods, through the Clean Label Project,
8 which found higher levels of heavy metals in its dog and cat food products. In fact,
9 Defendants actually responded to the Clean Label Project’s findings. Defendants spoke
10 with the Clean Label Project by phone regarding its findings and methodology, which
11 showed that Orijen pet foods have high levels of heavy metals compared to other pet foods.
12 The Clean Label Project informed Defendants that it compared Orijen pet foods to
13 competitors’ products and gave them a one-star rating, meaning they contained higher
14 levels of contaminants than other products on the market.¹⁶ Defendants’ direct contact with
15 the Clean Label Project demonstrates its knowledge about the Contaminated Dog Foods.
16 Indeed, Defendants issued a white paper in defense of the Clean Label Project findings.¹⁷

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20 **Privity Exists with Plaintiffs and the Proposed Classes**

21 72. Defendants knew that consumers such as Plaintiffs and the proposed Classes
22 would be the end purchasers of the Contaminated Dog Foods and the target of their
23 advertising and statements.
24

25
26 ¹⁶ Clean Label Project, “Orijen: Why Aren’t You Listening to Your Customers?”
27 <http://www.cleanlabelproject.org/orijen-customers/> (last visited Feb. 6, 2018).

28 ¹⁷<http://www.championpetfoods.com/wp-content/themes/champion-petfoods/res/research/Champion-Petfoods-White-Paper-Heavy-Metals.pdf>

1 73. Defendants intended that the warranties, advertising, labeling, statements,
2 and representations would be considered by the end purchasers of the Contaminated Dog
3 Foods, including Plaintiffs and the proposed Classes.

4 74. Defendants directly marketed to Plaintiffs and the proposed Classes through
5 statements on their website, labeling, advertising, and packaging.
6

7 75. Plaintiffs and the proposed Class are the intended beneficiaries of the
8 expressed and implied warranties.

9 **CLASS ACTION ALLEGATIONS**

10 76. Plaintiffs bring this action individually and on behalf of the following Classes
11 pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:
12

13 All persons who are citizens of the State of California who, from July 1,
14 2013, to the present, purchased the Contaminated Dog Foods for household
or business use, and not for resale (the “California Class”);

15 All persons who are citizens of the State of Minnesota who, from July 1,
16 2013, to the present, purchased the Contaminated Dog Foods for household
or business use, and not for resale (the “Minnesota Class”); and

17 All persons who are citizens of the State of Florida who, from July 1, 2013,
18 to the present, purchased the Contaminated Dog Foods for household or
19 business use, and not for resale (the “Florida Class”) (collectively “Classes”).

20 77. Excluded from the Classes are the Defendants, any parent companies,
21 subsidiaries, and/or affiliates, officers, directors, legal representatives, employees, co-
22 conspirators, all governmental entities, and any judge, justice, or judicial officer presiding
23 over this matter.
24

25 78. This action is brought and may be properly maintained as a class action.
26 There is a well-defined community of interests in this litigation and the members of the
27 Classes are easily ascertainable.
28

1 79. The members in the proposed Classes are so numerous that individual joinder
2 of all members is impracticable, and the disposition of the claims of the members of all
3 Classes members in a single action will provide substantial benefits to the parties and
4 Court.

5 80. Questions of law and fact common to Plaintiffs and the Classes include, but
6 are not limited to, the following:
7

- 8 (a) whether Defendants owed a duty of care to Plaintiffs and the Classes;
- 9 (b) whether Defendants knew or should have known that the
10 Contaminated Dog Foods contained heavy metals;
- 11 (c) whether Defendants knew or should have known that the
12 Contaminated Dog Foods contained BPA;
- 13 (d) whether Defendants wrongfully represented and continue to represent
14 that the Contaminated Dog Foods are natural, fit for human
15 consumption, fit for canine consumption, and made from
16 “Biologically Appropriate” and “Fresh Regional Ingredients”
17 consisting entirely of fresh meat, poultry, fish, and vegetables;
- 18 (e) whether Defendants wrongfully represented and continue to represent
19 that the Contaminated Dog Foods are healthy, superior quality,
20 nutritious and safe for consumption;
- 21 (f) whether Defendants wrongfully represented and continue to represent
22 that the Contaminated Dog Foods are natural;
- 23 (g) whether Defendants wrongfully represented and continue to represent
24 that the Contaminated Dog Foods are pure and safe;
- 25 (h) whether Defendants wrongfully represented and continue to represent
26 that the manufacturing of the Contaminated Dog Foods is subjected
27 to rigorous standards, including temperature;
- 28 (i) whether Defendants wrongfully failed to state that the Contaminated
Dog Foods contained heavy metals and/or BPA;
- (j) whether Defendants’ representations in advertising, warranties,
packaging, and/or labeling are false, deceptive, and misleading;

- 1 (k) whether those representations are likely to deceive a reasonable
consumer;
- 2 (l) whether a reasonable consumer would consider the presence of heavy
3 metals and/or BPA as a material fact in purchasing pet food;
- 4 (m) whether Defendants had knowledge that those representations were
5 false, deceptive, and misleading;
- 6 (n) whether Defendants continue to disseminate those representations
7 despite knowledge that the representations are false, deceptive, and
misleading;
- 8 (o) whether a representation that a product is healthy, superior quality,
9 nutritious and safe for consumption and does not contain arsenic
and/or lead is material to a reasonable consumer;
- 10 (p) whether Defendants' representations and descriptions on the labeling
11 of the Contaminated Dog Foods are likely to mislead, deceive,
12 confuse, or confound consumers acting reasonably;
- 13 (q) whether Defendants violated California law;
- 14 (r) whether Defendants violated Minnesota law;
- 15 (s) whether Defendants violated Florida law;
- 16 (t) whether Defendants breached their express warranties;
- 17 (u) whether Defendants breached their implied warranties;
- 18 (v) whether Defendants engaged in unfair trade practices;
- 19 (w) whether Defendants engaged in false advertising;
- 20 (x) whether Defendants made negligent and/or fraudulent
21 misrepresentations and/or omissions;
- 22 (y) whether Plaintiffs and the members of the Classes are entitled to
23 actual, statutory, and punitive damages; and
- 24 (z) whether Plaintiffs and members of the Classes are entitled to
25 declaratory and injunctive relief.

26 81. Defendants engaged in a common course of conduct giving rise to the legal
27 rights sought to be enforced by Plaintiffs individually and on behalf of the other members
28

1 of the Classes. Identical statutory violations and business practices and harms are involved.
2 Individual questions, if any, are not prevalent in comparison to the numerous common
3 questions that dominate this action.

4 82. Plaintiffs' claims are typical of those of the members of the Classes in that
5 they are based on the same underlying facts, events, and circumstances relating to
6 Defendants' conduct.

8 83. Plaintiffs will fairly and adequately represent and protect the interests of the
9 Classes, have no interests incompatible with the interests of the Classes, and have retained
10 counsel competent and experienced in class action, consumer protection, and false
11 advertising litigation.

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

18 85. Questions of law and fact common to the Classes predominate over any
19 questions affecting only individual members of the Classes.

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

22 **CLAIMS FOR RELIEF**

23 **COUNT I**

24 **Violations of California's Consumer Legal Remedies Act, California Civil Code**
25 **§§1750, *Et Seq.*, Against Defendants on Behalf of the California Class**

26 87. Plaintiff Reitman incorporates by reference and realleges each and every
27 allegation contained above, as though fully set forth herein.

28

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

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

5 90. Defendants are a "person" as that term is defined in California Civil Code
6 section 1761(c).

7 91. Plaintiff Reitman and each proposed California Class member's purchase of
8 Defendants' products constituted a "transaction," as that term is defined in California Civil
9 Code section 1761(e).
10
11

12 92. Defendants' conduct alleged herein violates the following provisions of
13 California's Consumer Legal Remedies Act (the "CLRA"):

14 (a) California Civil Code section 1770(a)(5), by negligently, recklessly,
15 and/or intentionally representing that the Contaminated Dog Foods are nutritious, superior
16 quality, pure, natural, healthy and safe for consumption and by failing to make any mention
17 of the heavy metals and or BPA in the Contaminated Dog Foods;

18 (b) California Civil Code section 1770(a)(7), by negligently, recklessly,
19 and/or intentionally representing that the Contaminated Dog Foods were of a particular
20 standard, quality, or grade, when they were of another;

21 (c) California Civil Code section 1770(a)(9), by negligently, recklessly,
22 and/or intentionally advertising the Contaminated Dog Foods with intent not to sell them
23 as advertised; and
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1 (d) California Civil Code section 1770(a)(16), by representing that the
2 Contaminated Dog Foods have been supplied in accordance with previous representations
3 when they have not.

4 93. As a direct and proximate result of these violations, Plaintiff Reitman and the
5 California Class have been harmed, and that harm will continue unless Defendants are
6 enjoined from using the misleading marketing described herein in any manner in
7 connection with the advertising and sale of the Contaminated Dog Foods.

8 94. Plaintiff Reitman seek an award of attorneys' fees pursuant to, inter alia,
9 California Civil Code section 1780(e) and California Code of Civil Procedure section
10 1021.5.
11

12
13 **COUNT II**
14 **Violations of California False Advertising Law, California Business**
15 **& Professions Code §§17500, *Et Seq.*, Against Defendants on Behalf of the**
16 **California Class**

17 95. Plaintiff Reitman incorporates by reference and realleges each and every
18 allegation contained above, as though fully set forth herein.

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

21 97. As set forth herein, Defendants' claims that the Contaminated Dog Foods are
22 nutritious, superior quality, pure, natural, healthy and safe for consumption are literally
23 false and likely to deceive the public.

24 98. Defendants' claims that the Contaminated Dog Foods are nutritious, of
25 superior quality, pure, natural, healthy and safe for consumption are untrue or misleading,
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1 as is failing to make any mention of heavy metals and/or BPA in the Contaminated Dog
2 Foods.

3 99. Defendants knew, or reasonably should have known, that all these claims
4 were untrue or misleading.
5

6 100. Defendants' conduct is ongoing and continuing, such that prospective
7 injunctive relief is necessary, especially given Plaintiffs' desire to purchase these products
8 in the future if they can be assured that, so long as the Contaminated Dog Foods are, as
9 advertised, nutritious, superior quality, pure, natural, healthy and safe for consumption and
10 do not contain the heavy metals and/or BPA
11

12 101. Plaintiffs and members of the California Class are entitled to injunctive and
13 equitable relief, and restitution in the amount they spent on the Contaminated Dog Foods.
14

15 **COUNT III**
16 **Violations of the Unfair Competition Law, California Business**
17 **& Professions Code §§17200, *Et Seq.*, Against Defendants on Behalf of the**
18 **California Class**

19 102. Plaintiff Reitman incorporates by reference and realleges each and every
20 allegation contained above, as though fully set forth herein.

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

23 **Fraudulent**

24 104. Defendants' statements that the Contaminated Dog Foods are nutritious,
25 superior quality, pure, natural, healthy and safe for consumption are literally false and
26 likely to deceive the public, as is Defendants' failing to make any mention of heavy metals
27 and/or BPA in the Contaminated Dog Foods.
28

1 **Unlawful**

2 105. As alleged herein, Defendants have advertised the Contaminated Dog Foods
3 with false or misleading claims, such that Defendants' actions as alleged herein violate at
4 least the following laws:

- 5
- 6 • The CLRA, California Business & Professions Code sections 1750, *et seq.*;
- 7 and
- 8 • The False Advertising Law, California Business & Professions Code
- 9 sections 17500, *et seq.*

10 **Unfair**

11 106. Defendants' conduct with respect to the labeling, packaging, advertising,
12 marketing, and sale of the Contaminated Dog Foods is unfair because Defendants' conduct
13 was immoral, unethical, unscrupulous, or substantially injurious to consumers and the
14 utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

15

16 107. Defendants' conduct with respect to the labeling, packaging, advertising,
17 marketing, and sale of the Contaminated Dog Foods is also unfair because it violates public
18 policy as declared by specific constitutional, statutory, or regulatory provisions, including,
19 but not limited to, the False Advertising Law and the CLRA.

20

21 108. Defendants' conduct with respect to the labeling, packaging, advertising,
22 marketing, and sale of the Contaminated Dog Foods is also unfair because the consumer
23 injury is substantial, not outweighed by benefits to consumers or competition, and not one
24 consumers, themselves, can reasonably avoid.

25

26 109. In accordance with California Business & Professions Code section 17203,
27 Plaintiffs seek an order enjoining Defendants from continuing to conduct business through
28 fraudulent or unlawful acts and practices and to commence a corrective advertising

1 campaign. Defendants' conduct is ongoing and continuing, such that prospective injunctive
2 relief is necessary.

3 110. On behalf of herself and the California Class, Plaintiff also seeks an order for
4 the restitution of all monies from the sale the Contaminated Dog Foods, which were
5 unjustly acquired through acts of fraudulent, unfair, or unlawful competition.
6

7 **COUNT IV**
8 **Violation of the Minnesota Commercial Feed Law Minn. Stat. § 25.31, *et seq.***
9 **Against Defendants on Behalf of the Minnesota Class**

10 111. Plaintiff Song incorporates by reference and realleges each and every
11 allegation contained above, as though fully set forth herein.

12 112. The Contaminated Dog Foods manufactured, distributed, marketed, and sold
13 by Defendants are “commercial feed” within the meaning of the Minnesota Commercial
14 Feed Law (MCFL).

15 113. The Contaminated Dog Foods are “misbranded”, within the meaning of the
16 MCFL, because it is, as described above, false, misleading, and deceptive with respect to
17 the Contaminated Dog Foods’ ingredients, composition, and suitability, they are.
18

19 114. The Contaminated Dogs Foods are “adulterated”, within the meaning of the
20 MCFL, because:
21

22 (a) They contain poisonous and deleterious substances rendering them
23 injurious to the health of pets; and

24 (b) Their composition and quality fall below and differ from that which their
25 labels purport and represent to process.

26 115. Defendants’ manufacture and distribution of these adulterated and
27 misbranded Contaminated Dog Foods are prohibited by and violations of the MCFL.
28

1 116. As a result of Defendants’ conduct, Plaintiff Song and the Minnesota Class
2 have suffered actual damages in that they have purchased Contaminated Dog Food that is
3 worth less than the price they paid and that they would not have purchased at all had they
4 known of the presence of heavy metals and/or BPA. There is an association between
5 Defendants’ acts and omissions as alleged herein and the damages suffered by Plaintiffs
6 and the Minnesota Class.
7

8 117. As a direct and proximate result of Defendants’ violations of the MCFL,
9 Plaintiff Song and the Minnesota Class have been injured, and that harm will continue
10 unless Defendants are enjoined from manufacturing, distributing, marketing and selling the
11 misbranded and adulterated Contaminated Dog Foods described herein.
12

13 118. Pursuant to Minn. Stat. § 8.31, subd. 3a, Plaintiffs and the Minnesota Class
14 seek actual damages, equitable relief, attorneys’ fees, costs, and any other just and proper
15 relief available thereunder for Defendants’ violations of the MCFL.
16

17 **COUNT V**
18 **Violation of Minnesota Unlawful Trade Practices Act Minn. Stat. § 325D.13, *et seq.***
19 **Against Defendants on behalf of the Minnesota Class**

20 119. Plaintiff Song incorporates by reference and realleges each and every
21 allegation contained above, as though fully set forth herein.

22 120. Defendants are “persons” within the meaning of the Minnesota Unlawful
23 Trade Practices Act (MUTPA).

24 121. Defendants violated the MUTPA by knowingly misrepresenting the true
25 quality and ingredients of the Contaminated Dog Foods by falsely claiming, on both the
26 labels and their websites, that their Contaminated Dog Foods are:
27
28

1 (a) natural, fit for human consumption, fit for canine consumption, and made
2 from “Biologically Appropriate” and “Fresh Regional Ingredients”
3 consisting entirely of fresh meat, poultry, fish, and vegetables;

4 (b) contain “only 1 supplement – zinc;”

5 (c) “provid[e] a natural source of virtually every nutrient your dog needs to
6 thrive;” and

7 (d) “guaranteed to keep your dog healthy, happy and strong.”

8 122. Defendants knew or should have known that the Contaminated Dog Foods
9 did not have the quality and ingredients described above because they contain levels of
10 various heavy metals and/or BPA.

11 123. Defendants’ misrepresentations, concealment, omissions, and other
12 deceptive conduct were likely to deceive or cause misunderstanding and did in fact deceive
13 Plaintiff Song and the Minnesota Class with respect to the Contaminated Dog Foods’
14 quality, ingredients, and suitability for consumption by dogs.

15 124. Defendants intended that Plaintiff Song and the Minnesota Class would rely
16 on Defendants’ misrepresentations, concealment, warranties, deceptions, and/or omissions
17 regarding the Contaminated Dog Foods’ quality, ingredients, and suitability for
18 consumption by dogs.

19 125. Defendants’ conduct and omissions described herein occurred repeatedly in
20 Defendants’ trade or business and were capable of deceiving a substantial portion of the
21 consuming public.

22 126. The facts concealed or not disclosed by Defendants were material facts in
23 that Plaintiff and any reasonable consumer would have considered them in deciding
24 whether to purchase the Contaminated Dog Foods. Had Plaintiff Song known the
25
26
27
28

1 Contaminated Dog Foods did not have the quality and ingredients advertised by
2 Defendants, she would not have purchased the Contaminated Dog Food.

3 127. Defendants intended that Plaintiff Song would rely on the deception by
4 purchasing the Contaminated Dog Food, unaware of the undisclosed material facts. This
5 conduct constitutes consumer fraud.
6

7 128. Defendants' unlawful conduct is continuing, with no indication that
8 Defendants intend to cease this fraudulent course of conduct.

9 129. As a result of Defendants' conduct, Plaintiff Song and the Minnesota Class
10 have suffered actual damages in that they have purchased Contaminated Dog Food that is
11 worth less than the price they paid and that they would not have purchased at all had they
12 known of the presence of heavy metals and/or BPA. There is an association between
13 Defendants' acts and omissions as alleged herein and the damages suffered by Plaintiff and
14 the Minnesota Class.
15

16 130. As a direct and proximate result of Defendants' violations of the MUTPA,
17 Plaintiff Song and the Minnesota Class have been injured, and that harm will continue
18 unless Defendants are enjoined from misrepresenting the quality and ingredients of their
19 Contaminated Dog Foods described herein.
20

21 131. Pursuant to Minn. Stat. § 8.31, subd. 3a, and § 325D.15, Plaintiff Song and
22 the Minnesota Class seek actual damages, injunctive and declaratory relief, attorneys' fees,
23 costs, and any other just and proper relief available thereunder for Defendants' violations
24 of the MUTPA.
25
26
27
28

COUNT VI

**Violation of Minnesota Uniform Deceptive Trade Practices Act
Minn. Stat. § 325D.43, *et seq.* Against Defendants on
behalf of the Minnesota Class**

1
2
3
4 132. Plaintiff Song incorporates by reference and realleges each and every
5 allegation contained above, as though fully set forth herein.

6 133. Defendants are “persons” within the meaning of the Minnesota Uniform
7 Deceptive Trade Practices Act (MUDTPA).

8
9 134. Defendants willingly engaged in deceptive trade practices, in violation of the
10 MUDTPA, by:

11 (a) representing that their Contaminated Dog Foods have characteristics,
12 ingredients, uses, and benefits that they do not have;

13 (b) representing that their Contaminated Dog Foods are of a superior
14 standard, quality, and grade when they contain levels of various heavy
15 metals and/or BPA; and

16 (c) representing that their Contaminated Dog Foods are of a natural when
17 they contain BPA.

18 135. Defendants knew or should have known that the Contaminated Dog Foods
19 did not have the ingredients, uses, and benefits described herein because they contain levels
20 of various heavy metals and/or levels of BPA.

21 136. Defendants knew or should have known that the Contaminated Dog Foods
22 were not of a superior standard, quality, or grade because they contain levels of various
23 heavy metals and/or BPA that a reasonable consumer would consider material.

24 137. Defendants knew or should have known that the Contaminated Dog Foods
25 were not natural because they contain material levels of BPA.

26
27 138. Defendants’ misrepresentations, concealment, omissions, and other
28 deceptive conduct were likely to deceive or cause misunderstanding and did in fact deceive

1 Plaintiff Song and the Minnesota Class with respect to the Contaminated Dog Foods'
2 ingredients, uses, benefits, standards, quality, grade, and suitability for consumption by
3 dogs.

4 139. Defendants intended that Plaintiff and the Minnesota Class would rely on
5 Defendants' misrepresentations, concealment, warranties, deceptions, and/or omissions
6 regarding the Contaminated Dog Foods' ingredients, uses, benefits, standards, quality,
7 grade, and suitability for consumption by dogs.

8 140. Defendants' conduct and omissions described herein occurred repeatedly in
9 Defendants' trade or business and were capable of deceiving a substantial portion of the
10 consuming public.

11 141. The facts concealed or not disclosed by Defendants were material facts in
12 that Plaintiffs and any reasonable consumer would have considered them in deciding
13 whether to purchase the Contaminated Dog Foods. Had Plaintiff Song known the
14 Contaminated Dog Foods did not have the quality and ingredients advertised by
15 Defendants, she would not have purchased the Contaminated Dog Food.

16 142. Defendants intended that Plaintiff Song and the Minnesota Class would rely
17 on the deception by purchasing the Contaminated Dog Food, unaware of the undisclosed
18 material facts. This conduct constitutes consumer fraud.

19 143. Defendants' unlawful conduct is continuing, with no indication that
20 Defendants intend to cease this fraudulent course of conduct.

21 144. As a result of Defendants' conduct, Plaintiff Song and the Minnesota Class
22 have suffered actual damages in that they have purchased Contaminated Dog Food that is
23 worth less than the price they paid and that they would not have purchased at all had they

1 known of levels of heavy metals and BPA. There is an association between Defendants'
2 acts and omissions as alleged herein and the damages suffered by Plaintiffs.

3 145. As a direct and proximate result of Defendants' violations of the MUDTPA,
4 Plaintiff and the Minnesota Class have been injured, and that harm is likely to continue
5 unless Defendants are enjoined from misrepresenting the ingredients, uses, benefits,
6 standards, quality, grade, and suitability for consumption by dogs of their Contaminated
7 Dog Foods described herein.
8

9 146. Pursuant to Minn. Stat. § 8.31, subd. 3a, and § 325D.45, Plaintiffs and the
10 Class seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any
11 other just and proper relief available thereunder for Defendants' violations of the
12 MUDTPA.
13

14 **COUNT VII**
15 **Violation of Minnesota False Statement in Advertising Act**
16 **Minn. Stat. § 325F.67, *et seq.* Against Defendants on**
17 **Behalf of the Minnesota Class**

18 147. Plaintiff Song incorporates by reference and realleges each and every
19 allegation contained above, as though fully set forth herein.

20 148. Plaintiff Song purchased "goods", specifically the Contaminated Dog Food
21 discussed herein, is a "person" within the meaning of the False Statement in Advertising
22 Act (FSAA).

23 149. Plaintiff Song purchased the Contaminated Dog Food through advertising
24 that contained numerous material assertions representations, and statements of fact made,
25 published, disseminated, circulated, and placed before the public by Defendants that were
26 untrue, deceptive, and misleading.
27
28

1 150. By engaging in the conduct herein, Defendants violated and continue to
2 violate Minn. Stat. § 325F.67.

3 151. Defendants' misrepresentations, knowing omissions, and use of other sharp
4 business practices include, by way of example, representations that the Contaminated Dog
5 Foods are:

6
7 (a) natural, fit for human consumption, fit for canine consumption, and made
8 from "Biologically Appropriate" and "Fresh Regional Ingredients"
9 consisting entirely of fresh meat, poultry, fish, and vegetables;

10 (b) contain "only 1 supplement – zinc;"

11 (c) "provid[e] a natural source of virtually every nutrient your dog needs to
12 thrive;" and

13 (d) "guaranteed to keep your dog healthy, happy and strong."

14 152. Defendants, including its agents and distributors, also made untrue,
15 deceptive, and misleading assertions and representations about the Contaminated Dog
16 Foods by making and repeating the various statements about the alleged quality,
17 characteristics, and capabilities of the Contaminated Dog Foods referenced herein.
18

19 153. As a result of Defendants' conduct, Plaintiff and the Minnesota Class have
20 suffered actual damages in that they have purchased Contaminated Dog Food that is worth
21 less than the price they paid and that they would not have purchased at all had they known
22 of the presence of heavy metals and/or BPA. There is an association between Defendants'
23 acts and omissions as alleged herein and the damages suffered by Plaintiffs.
24

25 154. As a direct and proximate result of Defendants' violations of the FSAA,
26 Plaintiff Song and the Minnesota Class have been injured, and that harm is likely to
27 continue unless Defendants are enjoined from misrepresenting the ingredients, uses,
28

1 benefits, standards, quality, grade, and suitability for consumption by dogs of their
2 Contaminated Dog Foods described herein.

3 155. Pursuant to Minn. Stat. § 8.31, subd. 3a, and § 325F.67, Plaintiff Song and
4 the Minnesota Class seek actual damages, injunctive and declaratory relief, attorneys' fees,
5 costs, and any other just and proper relief available thereunder for Defendants' violations
6 of the FSAA.
7

8 **COUNT VIII**

9 **Violation of Minnesota Prevention of Consumer Fraud**
10 **Act Minn. Stat. § 325F.68, *et seq.* Against Defendants on**
11 **Behalf of the Minnesota Class**

12 156. Plaintiff Song incorporates by reference and realleges each and every
13 allegation contained above, as though fully set forth herein.

14 157. Plaintiff Song is a resident of the State of Minnesota.

15 158. Defendants are "persons" within the meaning of the Minnesota Prevention
16 of Consumer Fraud Act (MPCFA).

17 159. Defendants' advertisements and representations with respect to the
18 Contaminated Dog Foods were made in connection with the sale of the Contaminated Dog
19 Foods to Plaintiff Song and the Minnesota Class.
20

21 160. Defendants knowingly acted, used, and employed fraud, false pretenses, false
22 promises, misrepresentations, misleading statements, and deceptive practices in connection
23 with the sale of their Contaminated Dog Foods. Specifically, Defendants falsely
24 represented that its Contaminated Dog Foods are:
25

26 (a) natural, fit for human consumption, fit for canine consumption, and made
27 from "Biologically Appropriate" and "Fresh Regional Ingredients"
28 consisting entirely of fresh meat, poultry, fish, and vegetables;

(b) contain "only 1 supplement – zinc;"

1 (c) “provid[e] a natural source of virtually every nutrient your dog needs to
2 thrive;” and

3 (d) “guaranteed to keep your dog healthy, happy and strong.”

4 161. Defendants intended for Plaintiff Song and the Minnesota Class to rely on
5 and accept as true these advertisements and representations in deciding whether to purchase
6 the Contaminated Dog Foods.
7

8 162. Defendants’ unfair or deceptive acts or practices were likely to deceive
9 reasonable consumers about the Contaminated Dog Foods’ quality, ingredients, fitness for
10 consumption and, by extension, the true value of the Contaminated Dog Foods. Plaintiff
11 Song and the Minnesota Class relied on, and were in fact deceived by, Defendants’
12 advertisements and representations with respect to the Contaminated Dog Foods’ quality,
13 ingredients, and fitness for consumption in deciding to purchase them over competitors’
14 dog foods.
15

16 163. As a result of Defendants’ conduct, Plaintiff Song and the Minnesota Class
17 have suffered actual damages in that they have purchased Contaminated Dog Food that is
18 worth less than the price they paid and that they would not have purchased at all had they
19 known of the levels of heavy metals and/or BPA. There is an association between
20 Defendants’ acts and omissions as alleged herein and the damages suffered by Plaintiff
21 Song.
22

23 164. As a direct and proximate result of Defendants’ violations of the MPCFA,
24 Plaintiff Song and the Minnesota Class have been injured, and that harm is likely to
25 continue unless Defendants are enjoined from misrepresenting the quality, ingredients, and
26 fitness for consumption of their Contaminated Dog Foods described herein.
27
28

1 165. Pursuant to Minn. Stat. § 8.31, subd. 3a, and § 325F.67, Plaintiff Song and
2 the Minnesota Class seek actual damages, injunctive and declaratory relief, attorneys’ fees,
3 costs, and any other just and proper relief available thereunder for Defendants’ violations
4 of the MPCFA.

5
6 **COUNT IX**
7 **Breach of Express Warranty Against Defendants on Behalf of the Classes**

8 166. Plaintiffs incorporate by reference and reallege each and every allegation
9 contained above, as though fully set forth herein.

10 167. Defendants marketed and sold their Contaminated Dog Foods into the stream
11 of commerce with the intent that the Contaminated Dog Foods would be purchased by
12 Plaintiffs and the Classes.

13
14 168. Defendants expressly warranted, advertised, and represented to Plaintiffs and
15 the Class that their Contaminated Dog Foods are:

- 16 (a) natural, fit for human consumption, fit for canine consumption, and made
17 from “Biologically Appropriate” and “Fresh Regional Ingredients”
18 consisting entirely of fresh meat, poultry, fish, and vegetables;
19 (b) contain “only 1 supplement – zinc;”
20 (c) nutritious, superior quality, pure, natural, healthy and safe for
21 consumption;
22 (d) “provid[e] a natural source of virtually every nutrient your dog needs to
23 thrive;” and
24 (e) “guaranteed to keep your dog healthy, happy and strong.”

25 169. Defendants made these express warranties regarding the Contaminated Dog
26 Foods’ quality, ingredients, and fitness for consumption in writing through their website,
27 advertisements, and marketing materials and on the Contaminated Dog Foods’ packaging
28

1 and labels. These express warranties became part of the basis of the bargain Plaintiffs and
2 the Classes entered into upon purchasing the Contaminated Dog Foods.

3 170. Defendants' advertisements, warranties, and representations were made in
4 connection with the sale of the Contaminated Dog Foods to Plaintiffs and the Classes.
5 Plaintiffs and the Classes relied on Defendants' advertisements, warranties, and
6 representations regarding the Contaminated Dog Foods in decided whether to purchase
7 Defendants' products.
8

9 171. Defendants' Contaminated Dog Foods do not conform to Defendants'
10 advertisements, warranties and representations in that they:
11

12 (a) are not natural or suitable for consumption by humans or canines;

13 (b) contain levels of various heavy metals; and
14

15 (c) contain levels of BPA.
16

17 172. Defendants were on notice of this breach as they were aware of the included
18 heavy metals and/or BPA in the Contaminated Dog Foods and based on the public
19 investigation by the Clean Label Product that showed their dog food products as unhealthy.
20

21 173. Privity exists because Defendants expressly warranted to Plaintiffs and the
22 Classes that the Contaminated Dog Foods were natural, suitable for consumption, and
23 contained only meat, poultry, fish, and/or vegetables, and guaranteed to keep dogs healthy,
24 happy, and strong.

25 174. As a direct and proximate result of Defendants' conduct, Plaintiffs and the
26 Classes have suffered actual damages in that they have purchased Contaminated Dog Food
27
28

1 that is worth less than the price they paid and that they would not have purchased at all had
2 they known of the presence of heavy metals, and/or BPA.

3 175. Plaintiffs and the Classes seek actual damages, injunctive and declaratory
4 relief, attorneys' fees, costs, and any other just and proper relief available thereunder for
5 Defendants' failure to deliver goods conforming to their express warranties and resulting
6 breach.
7

8 **COUNT X**

9 **Violation Of The Florida Deceptive And Unfair Trade Practices Fl. Stat. 501.201-
10 501.213, Against Defendants On Behalf Of The Florida Class**

11 176. Plaintiff Clapp incorporates by reference each preceding and succeeding
12 paragraph as though fully set forth at length herein.

13 177. This is an action for relief under Section 501.201, et seq., Florida Statutes
14 (The Florida Deceptive and Unfair Trade Practices Act).
15

16 178. The purpose of the Florida Deceptive and Unfair Trade Practices Act
17 ("FDUTPA") is "to protect the consuming public and legitimate business enterprises from
18 those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair
19 acts or practices in the conduct of any trade or commerce." FLA. STAT. § 501.202 (2).
20

21 179. Section 501.203(7), Florida Statutes defines "Consumer" as "an individual;
22 child, by and through its parent or legal guardian; firm; association; joint venture;
23 partnership; estate; trust; business trust; syndicate; fiduciary; corporation; or any other
24 group or combination." Plaintiff Clapp and the Florida Class are "Consumers" within the
25 meaning of § 501.203(7), Florida Statutes.
26

27 180. Section 501.203(8), Florida Statutes defines "Trade or Commerce" as "[T]he
28 advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or

1 otherwise, of any good or service, or any property, whether tangible or intangible, or any
2 other article, commodity, or thing of value, wherever situated.” “Trade or Commerce”
3 includes “the conduct of any trade or commerce, however denominated, including any
4 nonprofit or not-for-profit person or activity.” The advertising, soliciting, providing,
5 offering, or distribution of the Contaminated Dog Foods to Plaintiffs and the Florida Class
6 is “Trade or Commerce” within the meaning of section 501.203(8), Florida Statutes.
7

8 181. Section 501.204(1) provides that “unfair methods of competition,
9 unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of
10 any trade or commerce are hereby declared unlawful.”
11

12 182. Defendants have engaged in unfair competition and unfair, unlawful or
13 fraudulent business practices by the practices described above, and by knowingly,
14 intentionally and/or negligently concealing from Plaintiff Clapp and the Florida Class the
15 fact that the Contaminate Dog Foods contained heavy metals and/or BPA, which was not
16 readily discoverable. Defendants should have disclosed this information because it was in
17 a superior position to know the true facts related true make-up and ingredients of the
18 Contaminated Dog Foods, and Plaintiff Clapp and the Florida Class could not reasonably
19 be expected to learn or discover the true facts related to nutritional make-up, ingredients
20 and/or quality of the Contaminated Dog Foods.
21

22 183. The unconscionable, illegal, unfair and deceptive acts and practices of
23 Defendants violate the provisions of Florida’s Deceptive and Unfair Trade Practices Act.
24

25 184. As a direct and proximate result of Defendant’s acts and omissions, Plaintiff
26 Clapp and the Florida Class have suffered or will suffer damages for which they are entitled
27 to relief pursuant to section 501.211(2), Florida Statutes, and which include, without
28

1 limitation, a full refund for the Contaminated Dog Foods they have purchased, all of which
2 constitute cognizable damages under the Florida Deceptive and Unfair Trade Practices Act
3 501.201, et seq.

4 185. Plaintiff Clapp and Florida are entitled to recover their reasonable attorneys'
5 fees pursuant to section 501.2105, Florida Statutes upon prevailing in this matter.
6

7 **COUNT XI**
8 **Breach of Implied Warranty of Merchantability Against**
9 **Defendants on Behalf of the Classes**

10 186. Plaintiffs incorporate by reference and reallege each and every allegation
11 contained above, as though fully set forth herein.

12 187. Defendants are merchants engaging in the sale of goods to Plaintiffs and the
13 Class.

14 188. There was a sale of goods from Defendants to Plaintiffs and the members of
15 the Classes.
16

17 189. At all times mentioned herein, Defendants manufactured or supplied the
18 Contaminated Dog Foods, and prior to the time the Contaminated Dog Foods were
19 purchased by Plaintiffs and the Classes, Defendants impliedly warranted to them that the
20 Contaminated Dog Foods were of merchantable quality, fit for their ordinary use
21 (consumption by dogs), and conformed to the promises and affirmations of fact made on
22 the Contaminated Dog Foods' containers and labels, including that the food was:
23

24 (a) natural, fit for human consumption, fit for canine consumption, and
25 made from "Biologically Appropriate" and "Fresh Regional
26 Ingredients" consisting entirely of fresh meat, poultry, fish, and
vegetables;

27 (b) contain "only 1 supplement – zinc;"
28

1 (c) nutritious, superior quality, pure, natural, healthy and safe for
consumption;

2 (d) “provid[e] a natural source of virtually every nutrient your dog needs
3 to thrive;” and

4 (e) “guaranteed to keep your dog healthy, happy and strong.”

5 190. Plaintiffs and the Classes relied on Defendants’ promises and affirmations of
6 fact when they purchased the Contaminated Dog Foods.

7
8 191. The Contaminated Dog Foods were not fit for their ordinary use,
9 consumption by dogs, and did not conform to Defendants’ affirmations of fact and
10 promises as they contained heavy metals and/or BPA at material levels to a reasonable
11 consumer.

12
13 192. The Contaminated Dog Foods that Defendants delivered to Plaintiffs and the
14 Class also did not conform to affirmations of fact that they were natural because they
15 contained the industrial chemical BPA.

16
17 193. Defendants breached the implied warranties by selling the Contaminated
18 Dog Foods that failed to conform to the promises or affirmations of fact made on the
19 container or label as each product contained heavy metals and/or BPA.

20
21 194. Defendants were on notice of this breach as they were aware of the heavy
22 metals and/or BPA included in the Contaminated Dog Foods and CORE Ocean, and based
23 on the public investigation by the Clean Label Product that showed their dog food products
24 as unhealthy.

25
26 195. Privity exists because Defendants impliedly warranted to Plaintiffs and the
27 Classes through the warranting, packaging, advertising, marketing, and labeling that the

1 Contaminated Dog Foods healthy, natural, and suitable for consumption and by failing to
2 make any mention of heavy metals or BPA.

3 196. As a direct and proximate result of Defendants' conduct, Plaintiffs and the
4 Class have suffered actual damages in that they have purchased Contaminated Dog Food
5 that is worth less than the price they paid and that they would have not have purchased at
6 all had they known of the presence of heavy metals and/or BPA.
7

8 197. Plaintiffs and the Classes seek actual damages, injunctive and declaratory
9 relief, attorneys' fees, costs, and any other just and proper relief available thereunder for
10 Defendants' failure to deliver goods conforming to their implied warranties and resulting
11 breach.
12

13 **COUNT XII**
14 **Fraudulent Misrepresentation Against Defendants on**
15 **Behalf of the Classes**

16 198. Plaintiffs incorporate by reference and reallege each and every allegation
17 contained above, as though fully set forth herein.

18 199. Defendants falsely represented to Plaintiffs and the Classes that their
19 Contaminated Dog Foods are:

20 (a) natural, fit for human consumption, fit for canine consumption, and
21 made from "Biologically Appropriate" and "Fresh Regional
22 Ingredients" consisting entirely of fresh meat, poultry, fish, and
23 vegetables;

24 (b) contain "only 1 supplement – zinc;"

25 (c) nutritious, superior quality, pure, natural, healthy and safe for
26 consumption;

27 (d) "provid[e] a natural source of virtually every nutrient your dog needs
28 to thrive;" and

(e) "guaranteed to keep your dog healthy, happy and strong."

1 200. Defendants intentionally and knowingly made these misrepresentations to
2 induce Plaintiffs and the Classes to purchase their Contaminated Dog Foods.

3 201. Defendants knew that their representations about the Contaminated Dog
4 Foods were false in that the Contaminated Dog Foods contain levels of heavy metals and/or
5 BPA as well as chemical ingredients. Defendants allowed their packaging, labels,
6 advertisements, promotional materials, and website to intentionally mislead consumers,
7 such as Plaintiffs and the Classes.
8

9 202. Plaintiffs and the Classes did in fact rely on these misrepresentations and
10 purchased the Contaminated Dog Foods to their detriment. Given the deceptive manner in
11 which Defendants advertised, represented and otherwise promoted the Contaminated Dog
12 Foods, Plaintiffs and the Classes' reliance on Defendants' misrepresentations was
13 justifiable.
14

15 203. As a direct and proximate result of Defendants' conduct, Plaintiffs and the
16 Classes have suffered actual damages in that they have purchased Contaminated Dog Food
17 that is worth less than the price they paid and that they would not have purchased at all had
18 they known of the presence of heavy metals and/or BPA.
19

20 204. Plaintiffs and the Classes seek actual damages, injunctive and declaratory
21 relief, attorneys' fees, costs, and any other just and proper relief available under the laws.
22

23 **COUNT XIII**
24 **Fraud by Omission Against Defendants on Behalf of the**
25 **Classes**

26 205. Plaintiffs incorporate by reference and reallege each and every allegation
27 contained above, as though fully set forth herein.
28

1 206. Defendants concealed from and failed to disclose to Plaintiffs and the Classes
2 that their Contaminated Dog Foods contained heavy metals and/or BPA.

3 207. Defendants further concealed from and failed to disclose to Plaintiffs and the
4 Classes that their Contaminated Dog Foods contained chemical ingredients.

5 208. Defendants were under a duty to disclose to Plaintiffs and members of the
6 Classes the true quality, characteristics, ingredients and suitability of the Contaminated
7 Dog Foods because: (1) Defendants were in a superior position to know the true state of
8 facts about their product; (2) Defendants were in a superior position to know the actual
9 ingredients, characteristics, and suitability of the Contaminated Dog Foods; and (3)
10 Defendants knew that Plaintiffs and the Classes could not reasonably have been expected
11 to learn or discover that the Contaminated Dog Foods were misrepresented in the
12 packaging, labels, advertising, and website prior to purchasing the Contaminated Dog
13 Foods.
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17 209. The facts concealed or not disclosed by Defendants to Plaintiffs and the
18 Classes are material in that a reasonable consumer would have considered them to be
19 important in deciding whether to purchase the Contaminated Dog Foods.
20

21 210. Plaintiffs and the Classes justifiably relied on the omissions of Defendants to
22 their detriment. The detriment is evident from the true quality, characteristics, and
23 ingredients of the Contaminated Dog Foods, which is inferior than advertised and
24 represented by Defendants.
25

26 211. As a direct and proximate result of Defendants' conduct, Plaintiffs and the
27 Classes have suffered actual damages in that they have purchased Contaminated Dog Food
28

1 that is worth less than the price they paid and that they would not have purchased at all had
2 they known of the presence of heavy metals and/or BPA.

3 212. Plaintiffs and the Classes seek actual damages, injunctive and declaratory
4 relief, attorneys' fees, costs, and any other just and proper relief available under the laws.
5

6 **COUNT XIV**
7 **Negligent Misrepresentation Against Defendants on**
8 **Behalf of the Classes**

9 213. Plaintiffs incorporate by reference and reallege each and every allegation
10 contained above, as though fully set forth herein.

11 214. Defendants had a duty to Plaintiffs and the Classes to exercise reasonable
12 and ordinary care in the formulation, testing, formulation, manufacture, marketing,
13 distribution, and sale of the Contaminated Dog Foods.

14 215. Defendants breached their duty to Plaintiffs and the Classes by formulating,
15 testing, manufacturing, advertising, marketing, distributing, and selling a product to
16 Plaintiffs that is does not have the ingredients, qualities, characteristics, and suitability for
17 consumption that Defendants' advertised and by failing to promptly remove the
18 Contaminated Dog Foods from the marketplace or to take other appropriate remedial
19 action.
20

21
22 216. Defendants knew or should have known that the ingredients, qualities, and
23 characteristics of the Contaminated Dog Foods were not as advertised or suitable for their
24 intended use, consumption by dogs, and was otherwise not as warranted and represented
25 by Defendants. Specifically, Defendants knew or should have known that: (1) the certain
26 of the Contaminated Dog Foods were not natural because they contained levels of the
27 chemical BPA; (2) the Contaminated Dog Foods were not nutritious, superior quality, pure,
28

1 natural, healthy and safe for consumption because they contained high levels of heavy
2 metals; and (3) and the Contaminated Dog Foods were otherwise not as warranted and
3 represented by Defendants.

4 217. As a direct and proximate result of Defendants' conduct, Plaintiffs and the
5 Classes have suffered actual damages in that they have purchased Contaminated Dog Food
6 that is worth less than the price they paid and that they would not have purchased at all had
7 they known they contained heavy metals and/or BPA.

8
9 218. Plaintiffs and the Classes seek actual damages, injunctive and declaratory
10 relief, attorneys' fees, costs, and any other just and proper relief available.

11
12 **COUNT XV**
13 **Unjust Enrichment Against Defendants on Behalf of the**
14 **Classes**

15 219. Plaintiffs incorporate by reference and reallege each and every allegation
16 contained above, as though fully set forth herein.

17 220. Substantial benefits have been conferred on Defendants by Plaintiffs and the
18 Classes through the purchase of the Contaminated Dog Foods. Defendants knowingly and
19 willingly accepted and enjoyed these benefits.

20 221. Defendants either knew or should have known that the payments rendered
21 by Plaintiffs were given and received with the expectation that the Contaminated Dog
22 Foods would have the qualities, characteristics, ingredients, and suitability for
23 consumption represented and warranted by Defendants. As such, it would be inequitable
24 for Defendants to retain the benefit of the payments under these circumstances.
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1 222. Defendants' acceptance and retention of these benefits under the
2 circumstances alleged herein make it inequitable for Defendants to retain the benefits
3 without payment of the value to Plaintiffs and the Classes.

4 223. Plaintiffs and the Classes are entitled to recover from Defendants all amounts
5 wrongfully collected and improperly retained by Defendants, plus interest thereon.
6

7 224. Plaintiffs and the Classes seek actual damages, injunctive and declaratory
8 relief, attorneys' fees, costs, and any other just and proper relief available under the laws.
9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated,
12 pray for judgment against the Defendants as to each and every count, including:

13 A. An order declaring this action to be a proper class action, appointing
14 Plaintiffs and their counsel to represent the Classes, and requiring Defendants to bear the
15 costs of class notice;
16

17 B. An order enjoining Defendants from selling the Contaminated Dog Foods
18 until the levels of heavy metals and/or BPA are removed or full disclosure of the presence
19 of such appear on all labels, packaging and advertising;
20

21 C. An order enjoining Defendants from selling the Contaminated Dog Foods in
22 any manner suggesting or implying that they are healthy, natural, and safe for consumption;

23 D. An order requiring Defendants to engage in a corrective advertising
24 campaign and engage in any further necessary affirmative injunctive relief, such as
25 recalling existing products;
26

27 E. An order awarding declaratory relief, and any further retrospective or
28 prospective injunctive relief permitted by law or equity, including enjoining Defendants

1 from continuing the unlawful practices alleged herein, and injunctive relief to remedy
2 Defendants' past conduct;

3 F. An order requiring Defendants to pay restitution to restore all funds acquired
4 by means of any act or practice declared by this Court to be an unlawful, unfair, or
5 fraudulent business act or practice, untrue or misleading advertising, or a violation of
6 California, Minnesota and Florida law, plus pre- and post-judgment interest thereon;

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

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

13 I. An order requiring Defendants to pay punitive damages on any count so
14 allowable;

16 J. An order awarding attorneys' fees and costs, including the costs of pre-suit
17 investigation, to Plaintiffs and the Classes; and

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

21 **JURY DEMAND**

22 Plaintiffs hereby demand a trial by jury on all issues so triable.
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Dated: March 1, 2018

LOCKRIDGE GRINDAL NAUEN P.L.L.P.
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