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7

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10
11 WILLIAM ALBION, on behalf of himself
and all others similarly situated,

12 Plaintiffs,

13 v.

14 HILL'S PET NUTRITION, INC. and
15 COLGATE-PALMOLIVE COMPANY,

16 Defendants.
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Case No.

CLASS ACTION

CLASS ACTION COMPLAINT

1. Violation of the California Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750 *et seq.*
2. Violation of California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500 *et seq.*
3. Violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq.*
4. Breach of Express Warranty
5. Breach of Implied Warranty
6. Negligence
7. Unjust Enrichment

DEMAND FOR JURY TRIAL

1 Plaintiff William Albion (“Plaintiff”), brings this action on behalf of himself and all
2 others similarly situated against Hill’s Pet Nutrition, Inc. and Colgate-Palmolive Company
3 (“Defendants”) and alleges as follows:

4 **NATURE OF THE ACTION**

5 1. Defendants manufacture, sell, and distribute pet food for dogs under the
6 “Science Diet” and “Prescription Diet” brands that they label, advertise, and market toward
7 consumers as being safe and healthy for regular consumption by dogs, and uniquely
8 formulated for specific health needs.

9 2. The products at issue in this action are certain sizes and varieties of Science
10 Diet and Prescription Diet brand wet dog food (collectively, the “Products”) that were
11 subject to a January 31, 2019, recall, later expanded on March 20, 2019.

12 3. Contrary to Defendants’ representations and warranties, they have
13 manufactured, sold, and distributed Products that contain hazardous levels of Vitamin D,
14 which poses a substantially unreasonable risk of injury to dogs, including symptoms such
15 as vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and
16 weight loss, and can lead to serious health issues in dogs including renal dysfunction.

17 4. As a result of Defendants’ conduct described herein, many dog owners
18 including Plaintiff and Class members, inclusive of Subclasses as defined herein, were
19 forced to watch helplessly as their dogs suffered from Vitamin D poisoning and its related
20 symptoms due to consuming the Products. The dogs have required veterinary treatment,
21 prescription medications, and many of them have died, leading to additional damages
22 incurred by their owners.

23 5. In addition to selling hazardous and contaminated Products, Defendants failed
24 to timely issue a recall and failed to include all of the hazardous and contaminated Products
25 in the initial January 31, 2019 recall, as shown by their subsequent expansion of the recall
26 on March 20, 2019 to include additional Products.

27 6. Furthermore, Defendants knew or should have known prior to the January 31,
28 2019 recall that their Products contained hazardous levels of Vitamin D because (1) they

1 claim to subject their suppliers and raw material providers with regular quality assurance
2 and safety checks¹ and (2) Vitamin D toxicity was a well-known risk far earlier than the
3 January 31, 2019 recall, as on December 3, 2018 several other brands of dog food were
4 recalled as a result of containing hazardous levels of Vitamin D.²

5 7. As such, the lethal and hazardous nature of the Products was exacerbated by
6 Defendants' excessive and unsubstantiated delay in warning consumers, including Plaintiff
7 and Class members, that the Products were hazardous for consumption by dogs.

8 **PARTIES**

9 8. Plaintiff William Albion, a resident of Bermuda Dunes, Riverside County,
10 California, regularly purchased several of the Products from retailers in Riverside County,
11 California within the past three years, and also between April 2018 and May 2018. Plaintiff
12 purchased the Products because he believed that they were at all times safe for consumption
13 by his dog Stella and contained ingredients that were tailored to his dog's specific health
14 and dietary needs. Plaintiff's dog became ill after consuming the Products in April 2018
15 and showed signs of Vitamin D poisoning until Plaintiff switched to a different brand of
16 food in May 2018. Plaintiff was unaware that the Products were the cause until shortly
17 before filing this Complaint.

18 9. Defendant Hill's Pet Nutrition, Inc. is a Delaware corporation with its
19 principal place of business at 400 SW 8th Avenue, Topeka, Kansas 66603. Defendant
20 Hill's Pet Nutrition, Inc. manufactured, inspected, marketed and sold the Products.

21 10. Defendant Colgate-Palmolive Company is a Delaware corporation with its
22 principal place of business at 300 Park Avenue, New York, New York 10022.

23 11. Colgate-Palmolive Company is the parent company of Hill's Pet Nutrition,
24 Inc. Colgate-Palmolive Company exercises control over these corporations and derived
25 profit from the sale of the Products. Specifically, Colgate-Palmolive Company's 2018 10-
26 K filed states "Colgate, through its Hill's Pet Nutrition segment...is a world leader in
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28 ¹ See <https://www.hillspet.com/about-us/quality-and-safety>.

² See <https://www.fda.gov/animalveterinary/newsevents/ucm627485.htm>.

1 specialty pet nutrition products for dogs and cats” and states “Pet Nutrition products
2 include specialty pet nutrition products manufactured and marketed by Hill’s Pet
3 Nutrition.”³ Furthermore, according to Colgate-Palmolive’s 2018 10-K, “[n]et sales for
4 Hill’s Pet Nutrition were [\$2.388 billion] in 2018,” which includes net sale proceeds from
5 the Products.⁴

6 12. Defendants manufactured, advertised, marketed, labeled, offered for sale,
7 sold, and distributed pet food products to consumers, including Products, throughout the
8 United States and California using through thousands of pet supply retailers, veterinarians,
9 and e-commerce retailers, claimed their Products are superior than other brands of dog
10 food, and charged a premium price for them over other dog food brands.

11 JURISDICTION AND VENUE

12 13. This Court has jurisdiction over this action pursuant to pursuant to the Class
13 Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because there are 100 or more class
14 members, the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest,
15 fees, and costs, and there is minimal diversity because Plaintiff and Defendants are citizens
16 of different states.

17 14. The Court has personal jurisdiction over Defendants because they regularly
18 conduct a substantial amount of business in this District, and intentionally and purposefully
19 placed the Products into the stream of commerce within the Central District of California
20 and throughout the United States. Defendants’ wrongful conduct, as alleged herein, was
21 carried out in California and elsewhere throughout the United States.

22 15. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
23 Defendants transacted business and advertised in this District and have received substantial
24 revenue and profits from the sale of the Products in this District, including from sales to
25 Plaintiff and other Class members. Plaintiff’s dog also consumed the Products in this
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27
28 ³ See <https://investor.colgatepalmolive.com/node/35226/html>.

⁴ *Id.*

1 District. Therefore, a substantial part of the events and/or omissions giving rise to
2 Plaintiff’s claims occurred within this District.

3 **COMMON FACTUAL ALLEGATIONS**

4 16. Defendants manufacture and sell pet food, including the Products and are one
5 of the largest pet food suppliers in the United States and globally.

6 17. Defendants claim to “make nutrition a cornerstone of veterinary medicine”⁵
7 and sell their Products through a global distribution network of brick and mortar retailers,
8 veterinary clinics, and online retailers, including but not limited to Petco, PetSmart,
9 Walmart, Amazon.com, and Chewy.com.

10 18. Defendants’ Products are designed to address nutritional deficiencies and
11 other health issues, and/or generally portrayed as being healthy, safe and nutritious for
12 dogs, and Defendants charge a premium price for their Products.

13 19. The Products at issue herein include those included in Defendants’ January
14 31, 2019 recall and subsequent March 20, 2019 expansion of that recall, which were
15 published on both Hill’s Pet Nutrition, Inc.’s website⁶ and the U.S. Food and Drug
16 Administration’s (“FDA”) website⁷, and include the following:

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27 ⁵ See <https://www.hillspet.com/about-us/our-company>.

28 ⁶ See <https://www.hillspet.com/productlist>.

⁷ See <https://www.fda.gov/Safety/Recalls/ucm634087.htm>.

Product Name	SKU Number	Date Code / Lot Code
Hill's® Prescription Diet® k/d® Kidney Care with Lamb Canned Dog Food, 13oz, 12-pack	2697	102020T25
Hill's® Science Diet® Adult Perfect Weight Chicken & Vegetable Entrée dog food 12 x 12.8oz cans	2975	092020T28
Hill's® Prescription Diet® c/d® Multicare Urinary Care Chicken & Vegetable Stew Canned Dog Food, 5.5oz, 24-pack	3388	102020T18
Hill's® Prescription Diet® i/d® Low Fat Canine Rice, Vegetable & Chicken Stew 24 x 5.5oz cans	3391	092020T27
Hill's® Prescription Diet® r/d® Canine 12 x 12.3oz cans	7014	092020T28 102020T27 102020T28
Hill's® Science Diet® Adult Beef & Barley Entrée Canned Dog Food, 13oz, 12-pack	7039	092020T31 102020T21
Hill's® Science Diet® Adult 7+ Healthy Cuisine Roasted Chicken, Carrots & Spinach Stew dog food 12 x 12.5oz cans	10449	092020T28
Hill's® Science Diet® Healthy Cuisine Adult Braised Beef, Carrots & Peas Stew Canned Dog Food, 12.5oz, 12-pack	10451	102020T28
Hill's® Prescription Diet® c/d® Multicare Canine Chicken & Vegetable Stew 12.5oz	3384	092020T29 102020T10 102020T25
Hill's® Prescription Diet® i/d® Canine Chicken & Vegetable Stew 12.5oz	3389	092020T28 102020T24 102020T25 102020T04 102020T10 102020T19 102020T20
Hill's® Prescription Diet® i/d® Canine Chicken & Vegetable Stew 5.5oz	3390	102020T11 112020T23 122020T07
Hill's® Prescription Diet® z/d® Canine 5.5oz	5403	102020T17 112020T22
Hill's® Prescription Diet® g/d® Canine 13oz	7006	092020T22 112020T19 112020T20
Hill's® Prescription Diet® i/d® Canine 13oz	7008	092020T21 092020T30 102020T07 102020T11 112020T22 112020T23
Hill's® Prescription Diet® j/d® Canine 13oz	7009	112020T20
Hill's® Prescription Diet® k/d® Canine 13oz	7010	102020T10 102020T11

1			102020T24
2			102020T25
3	Hill's® Prescription Diet® w/d® Canine 13oz	7017	112020T09
4			112020T10
5			092020T30
6			102020T11
7			102020T12
8	Hill's® Prescription Diet® z/d® Canine 13oz	7018	102020T04
9			112020T22
10	Hill's® Prescription Diet® Metabolic + Mobility Canine Vegetable & Tuna Stew 12.5oz	10086	102020T05
11			102020T26
12	Hill's® Prescription Diet® w/d® Canine Vegetable & Chicken Stew 12.5oz	10129	112020T11
13			112020T05
14			102020T04
15			102020T21
16	Hill's® Prescription Diet® i/d® Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz	10423	092020T27
17			092020T28
18			092020T24
19			102020T17
20			102020T19
21			112020T04
22	Hill's® Prescription Diet® Derm Defense® Canine Chicken & Vegetable Stew 12.5oz	10509	102020T05
23	Hill's® Science Diet® Adult 7+ Small & Toy Breed Chicken & Barley Entrée Dog Food 5.8oz	4969	102020T18
24	Hill's® Science Diet® Puppy Chicken & Barley Entrée 13oz	7036	102020T12
25	Hill's® Science Diet® Adult Chicken & Barley Entrée Dog Food 13oz	7037	092020T22
26			102020T13
27			102020T14
28			112020T23
			112020T24
	Hill's® Science Diet® Adult Turkey & Barley Dog Food 13oz	7038	102020T06
	Hill's® Science Diet® Adult Chicken & Beef Entrée Dog Food 13oz	7040	112020T10
			112020T11
			102020T13
	Hill's® Science Diet® Adult Light with Liver Dog Food 13oz	7048	112020T19
	Hill's® Science Diet® Adult 7+ Chicken & Barley Entrée Dog Food 13oz	7055	092020T31
			102020T13
	Hill's® Science Diet® Adult 7+ Beef & Barley Entrée Dog Food 13oz	7056	102020T28
			092020T31
			112020T20
			112020T24
	Hill's® Science Diet® Adult 7+ Turkey & Barley Entrée 13oz	7057	112020T19
	Hill's® Science Diet® Adult 7+ Healthy Cuisine Braised Beef, Carrots & Peas Stew dog food 12.5oz	10452	102020T28
			102020T14
			102020T21
	Hill's® Science Diet® Adult 7+ Youthful Vitality Chicken & Vegetable Stew dog food 12.5oz	10763	102020T04
			102020T05
			112020T11

1 20. As part of their pervasive labeling, advertising, and marketing campaign,
2 Defendants represent that the Products provide “[n]utrition that can transform the lives of
3 pets and comfort the pet parents and vets who care for them.”⁸

4 21. To justify pricing their Products at a premium, and to entice consumers into
5 paying such prices, Defendants tout that “[w]e only accept ingredients from suppliers
6 whose facilities meet stringent quality standards and who are approved by Hill's. Not only
7 is each ingredient examined to ensure its safety, we also analyze each product's ingredient
8 profile for essential nutrients to ensure your pet gets the stringent, precise formulation they
9 need.”⁹

10 22. Defendants claim that “[w]e conduct final safety checks daily on every Hill's
11 pet food product to help ensure the safety of your pet's food. Additionally, all finished
12 products are physically inspected and tested for key nutrients prior to release to help ensure
13 your pet gets a consistent products bag to bag.”¹⁰

14 23. Defendants state “We conduct annual quality systems audits for all
15 manufacturing facilities to ensure we meet the high standards your pet deserves. We
16 demand compliance with current Good Manufacturing Practices (cGMP) and Hill's high
17 quality standards, so your pet's food is produced under clean and sanitary conditions.”¹¹

18 24. Defendants state that their Products contain the “precise balance” of nutrients
19 needed for a healthy dog: “Guided by science, we formulate our food with precise balance
20 so your pet gets all the nutrients they need — and none they don't.”¹²

21 25. In generally describing their Products, Defendants claim a “commitment to
22 quality” with more than 220 veterinarians, food scientists, technicians, and PhD
23 nutritionists developing their pet foods.¹³

24
25 ⁸ See <https://www.hillspet.com/dog-food>.

26 ⁹ <https://www.hillspet.com/about-us/quality-and-safety>.

27 ¹⁰ *Id.*

¹¹ *Id.*

28 ¹² See <https://www.hillspet.com/about-us/nutritional-philosophy>.

¹³ *Id.*

1 26. Regarding the Prescription Diet brand, Defendants claim that it is made in an
2 alliance with veterinarians which emphasizes a “unique position to find a solution” to
3 dietary and health issues that dogs may face.¹⁴

4 27. Defendants also claim on their labels that the Prescription Diet brand provides
5 “CLINICAL NUTRITION” or “THERAPEUTIC DOG NUTRITION” and is designed to
6 address specific health conditions, including but not limited to kidney care, metabolic care,
7 digestive care, skin/food sensitivities, urinary care, joint care, and aging.

8 28. Regarding the Science Diet brand, Defendants claim it will “[f]eed your dog’s
9 best life with biology-based nutrition” and that “we make our foods using only high-quality
10 ingredients.”¹⁵

11 29. Furthermore, Defendants claim on their labels that the Science Diet brand is
12 “VETERINARIAN RECOMMENDED.”

13 30. As shown herein and demonstrated by the recall of at least 675,000 (at least
14 13.5 million cans) of Products, resulting in Plaintiff and Class members’ dogs becoming
15 sick or dying due to Vitamin D poisoning, Defendants’ aforementioned representations and
16 warranties about the quality of their Products, the reliability of their ingredients and
17 suppliers, and their allegedly stringent quality assurance and safety protocols are false and
18 misleading.

19 31. On January 31, 2019 Defendants announced via press release that they were
20 recalling certain Hill’s Science Diet and Hill’s Prescription Diet brand products due to a
21 “supplier error,” and indicated that consumption of the products could be hazardous to
22 canines as a result of elevated Vitamin D levels, and later expanded that recall on March
23 20, 2019 to include additional products.¹⁶

24 32. Defendants claimed “While vitamin D is an essential nutrient for dogs,
25 ingestion of elevated levels can lead to potential health issues depending on the level of
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¹⁴ See <https://www.hillspet.com/prescription-diet/dog-food>.

¹⁵ See <https://www.hillspet.com/science-diet/dog-food>.

¹⁶ See <https://www.hillspet.com/productlist>.

1 vitamin D and the length of exposure, and dogs may exhibit symptoms such as vomiting,
2 loss of appetite, increased thirst, increased urination, excessive drooling, and weight loss.
3 When consumed at very high levels, vitamin D can in rare cases lead to potentially life
4 threatening health issues in dogs, including renal dysfunction.”¹⁷

5 33. Defendants charged a premium for their Products because they knew that the
6 representations and warranties they made to consumers about the specialized health and
7 nutritional benefits of the Products were important to consumers, and that such
8 representations and warranties would induce consumers to pay a higher price for the
9 Products over other dog food brands.

10 34. Consumers are willing to pay a premium for Defendants’ Products because
11 Defendants represent and warrant that they are specifically formulated for the particular
12 health needs of dogs and meet certain ingredient supply, quality, testing and oversight, and
13 manufacturing standards.

14 35. Defendants’ price premium is demonstrated below¹⁸:

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28 ¹⁷ *Id.*

¹⁸ Pricing information obtained from <https://www.chewy.com>.

Brand	Quantity	Price	Unit Price
Hill's Pres. Diet i/d Canine Chicken & Vegetable Stew 12.5 oz.	12 cans	\$39.99	\$3.33 per can \$0.27 per ounce
Hill's Pres. Diet w/d Canine Vegetable & Chicken Stew 12.5 oz.	12 cans	\$38.99	\$3.25 per can \$0.26 per ounce
Hill's Science Diet Adult Chicken & Barley Entrée Dog Food 13 oz.	12 cans	\$22.20	\$1.85 per can \$0.14 per ounce
Hill's Science Diet Adult 7+ Beef & Barley Entrée Dog Food 13 oz.	12 cans	\$22.20	\$1.85 per can \$0.14 per ounce
Purina ONE SmartBlend Classic Ground Beef and Brown Rice Adult 13 oz.	12 cans	\$12.67	\$1.06 per can \$0.08 per ounce
Iams ProActive Health Adult Chicken and Whole Grain Rice Pate 13 oz.	12 cans	\$16.80	\$1.40 per can \$0.11 per ounce
Nature's Recipe Easy-to-Digest Chicken, Rice & Barley Recipe Cuts in Gravy Stew 13.2 oz.	12 cans	\$13.99	\$1.17 per can \$0.09 per ounce
Purina Dog Chow High Protein Chicken Classic Ground Canned Dog Food 13 oz.	12 cans	\$12.60	\$1.05 per can \$0.08 per ounce

36. The fact that the Products contained hazardous levels of Vitamin D which endangered the health of dogs and ultimately led to Plaintiff's and Class members' dogs becoming sick or deceased shows that the Products were either diminished in value or had no value for their intended purpose as a dog food.

37. As a direct and proximate result of Defendants' deceptive conduct, derogation from their duty to provide safe and healthy dog food to their customers, breach of warranties, unfair practices, and other conduct described herein, Plaintiff and Class members suffered actual damages and/or economic losses, including the cost of the Products, incursion of veterinary bills, prescription costs and, for those whose dogs died, disposal expenses and/or funeral and burial costs.

PLAINTIFF’S EXPERIENCE

38. Plaintiff is the owner of a Sheepadoodle named Stella.

39. Plaintiff purchased at least Defendants’ Hill's Science Diet Adult Perfect Weight Chicken & Vegetable Entrée Dog Food, Hill's Science Diet Adult Beef & Barley Entrée Canned Dog Food, Hill's Science Diet Adult 7+ Healthy Cuisine Roasted Chicken, Carrots & Spinach Stew dog food, Hill's Science Diet Adult Chicken & Barley Entrée Canned Dog Food, Hill's Science Diet Adult Chicken & Beef Entrée Canned Dog Food, Hill's Science Diet Adult 7+ Beef & Barley Entrée Canned Dog Food, and Hill's Science Diet Adult 7+ Chicken & Barley Entrée Dog Food.

40. Plaintiff paid a premium for these Products because he believed that Defendants’ Products would be a healthier alternative for Stella than other dog foods based on Defendants’ labeling, advertising, and marketing representations and warranties described herein.

41. In or around early April 2018, Plaintiff began feeding the Products to Stella.

42. Shortly thereafter and up until the end of May 2018 when he stopped using the Products, Stella began to present symptoms of Vitamin D poisoning, including vomiting, nausea, and lethargy.

43. Plaintiff stopped feeding Stella the Products at the end of May 2018, at which time Stella immediately recovered from her symptoms of Vitamin D poisoning.

CLASS ACTION ALLEGATIONS

44. Plaintiff seeks certification of classes under Fed.R.Civ.P. 23 on behalf of himself and on behalf of all other persons who purchased from retailers nationwide and in the State of California Defendant’s Products (herein throughout, the “Classes”). Excluded from the Classes are Defendants, any entity in which Defendants have a controlling interest, and their legal representatives, officers, directors, employees, assigns and successors; persons and entities that purchased the Products at resale; the Judge(s) to whom this case is assigned and any member(s) of the Judge’s staff or immediate family; and Class Counsel.

1 45. Plaintiff brings this action on behalf of the following proposed Classes:

- 2 a. Nationwide Class: All persons in the United States who purchased the
3 Products.
4 b. California Subclass: All persons in California who purchased the
5 Products.

6 46. **Numerosity:** Defendants have manufactured and sold the Products to tens of
7 thousands of consumers. As of the date of filing, Defendants have recalled at least 675,000
8 cases—or 13.5 million cans—of Products. Members of the Classes are thus too numerous
9 to join in a single action. Moreover, members of the Classes may be identified through
10 retailer sales records, veterinary practice sales records, and self-identification processes,
11 and may then be notified of the pendency of this action by mail or electronic mail (which
12 can be supplemented by published notice if deemed necessary or appropriate by the Court).

13 47. **Commonality and Predominance:** Common questions of law and fact exist
14 as to all proposed members of the Class and predominate over questions affecting only
15 individual members of the Class. These common questions include:

- 16 a. Whether Defendants' labeling, advertising, and marketing statements are false
17 or misleading;
18 b. Whether the Products contained hazardous levels of Vitamin D;
19 c. Whether Defendants breached any express and/or implied warranties;
20 d. Whether the Products were either diminished in value and/or had no value as
21 a dog food;
22 e. Whether Defendants owed a duty of care to Plaintiff and Class members;
23 f. Whether Defendants breached their duty of care;
24 g. Whether Defendants were unjustly enriched as a result Plaintiff and Class
25 members purchasing the Products;
26 h. Whether Plaintiff and Class members have sustained damages as a result of
27 the conduct alleged herein and, if so, the appropriate measure of such
28 damages;

- 1 i. Whether Defendants' conduct violated various state consumer protection
2 statutes; and
- 3 j. Whether Plaintiff and Class members are entitled to punitive damages and, if
4 so, in what amount.

5 48. **Typicality:** Plaintiff's claims are typical of the claims of the proposed
6 Classes. Plaintiff and the members of the proposed Classes all purchased the Products,
7 giving rise to essentially the same claims.

8 49. **Adequacy:** Plaintiff is an adequate representative of the proposed Classes
9 because his interests do not conflict with the interests of the members of the Classes he
10 seeks to represent. Plaintiff has retained counsel competent and experienced in complex
11 class action litigation, and will prosecute this action vigorously on class members' behalf.

12 50. **Superiority:** A class action is superior to other available means for the fair
13 and efficient adjudication of this dispute. The injury suffered by each Class member, while
14 meaningful on an individual basis, is not great enough to make the prosecution of
15 individual actions economically feasible. Even if members themselves could afford such
16 individualized litigation, the court system could not. In addition to the burden and expense
17 of managing many actions arising from this issue, individualized litigation presents a
18 potential for inconsistent or contradictory judgments. Individualized litigation increases
19 the delay and expense to all parties and the court system presented by the legal and factual
20 issues of the case. By contrast, a class action presents far fewer management difficulties
21 and provides the benefits of a single adjudication, economies of scale, and comprehensive
22 supervision by a single court.

23 51. In the alternative, the proposed Classes may be certified because: (1) The
24 prosecution of separate actions by the individual members of the proposed Classes would
25 create a risk of inconsistent adjudications, which could establish incompatible standards of
26 conduct for Defendants; (2) The prosecution of individual actions could result in
27 adjudications, which, as a practical matter, would be dispositive of the interests of non-
28 party Class members or which would substantially impair their ability to protect their

1 interests; and (3) Defendants have acted or refused to act on grounds generally applicable
2 to the proposed Classes, thereby making appropriate final relief with respect to the
3 members of the proposed Classes as a whole.

4 52. Defendants benefitted from the sale of the Products to Plaintiff and Class
5 members in a determinable amount.

6 **COUNT I**

7 **Violation of California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code**

8 **§§ 1750 *et seq.***

9 53. Plaintiff, individually and on behalf of the California Subclass, repeats and
10 realleges all previous paragraphs as if fully set forth herein.

11 54. Plaintiff and each member of the California Subclass are “consumers” as
12 defined in CLRA § 1761(d).

13 55. The Products are “goods” as defined in CLRA § 1761(a).

14 56. Defendant is a “person” as defined in CLRA § 1761(c).

15 57. Plaintiff and each of the California Subclass members’ purchases of the
16 Products were “transactions” as defined in CLRA § 1761(e).

17 58. Defendants’ conduct violates the following provisions of the CLRA: (1)
18 representing that goods have characteristics, uses, and benefits which they do not have
19 (CLRA § 1770(a)(5)); (2) representing that goods are of a particular standard, quality, or
20 grade, if they are not (CLRA § 1770(a)(7)); and (3) advertising goods with the intent not
21 to sell them as advertised (CLRA § 1770(a)(9)).

22 59. Defendants’ conduct described herein was intended to induce consumers to
23 purchase the Products.

24 60. Defendants made material misrepresentations and omissions regarding the
25 Products that they knew or should have known were deceptive and likely to cause
26 consumers to purchase the Products in reliance on those misrepresentations and omissions.

27 61. Defendants’ conduct was done with conscious disregard of Plaintiff’s rights
28 and the rights of the California Subclass members.

1 62. Plaintiff and California Subclass members have been directly and proximately
2 damaged by Defendants’ conduct.

3 63. Pursuant to CLRA § 1780(a), Plaintiff seeks injunctive relief in the form of
4 an order enjoining Defendants’ conduct, and Plaintiff and California Subclass members
5 will be irreparably harmed if such an order is not granted.

6 64. On DATE, Plaintiff mailed Defendants notice of their violations of the CLRA
7 in accordance with CLRA § 1782. If Defendants fails to rectify their conduct within # days
8 of receipt of this notice, Plaintiff will seek leave to amend this Class Action Complaint to
9 claim damages under the CLRA.

10 65. Plaintiff also seeks the recovery of court costs and reasonable attorneys’ fees
11 pursuant to CLRA § 1780(e).

12 **COUNT II**

13 **Violation of California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§** 14 **17500 *et seq.***

15 66. Plaintiff individually and on behalf of the California Subclass, repeats and
16 realleges all previous paragraphs as if fully set forth herein.

17 67. California’s FAL states that “[i]t is unlawful for any [...] corporation [...] to
18 induce the public to enter into any obligation relating thereto, to make or disseminate or
19 cause to be made or disseminated [...] any statement [...] which is untrue or misleading
20 and which is known, or which by the exercise of reasonable care should be known, to be
21 untrue or misleading [...]” FAL § 17500.

22 68. Defendants’ material misrepresentations and omissions described herein
23 violate FAL § 17500.

24 69. Defendants knew or in the exercise of reasonable care should have known that
25 their conduct was false, deceptive, and misleading, including but not limited to their
26 labeling, advertising, and marketing statements described herein.

27 70. Defendants’ misrepresentations and omissions are materially important to
28 Plaintiff and California Subclass members and, therefore, reliance may be presumed.

1 71. Plaintiff and California Subclass members lost money as a result of
2 Defendants' conduct.

3 72. Pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17500, Plaintiff and
4 California Subclass members seek an order requiring Defendants to (1) identify all
5 Products that contain hazardous levels of Vitamin D through stringent testing; (2) ensure
6 all Products are removed from the stream of commerce.

7 73. Unless such an order is granted, Defendants will continue to engage in
8 conduct as alleged herein in violation of California's FAL.

9 74. Plaintiff and California Subclass members request an order awarding
10 restitution of any monies wrongfully acquired by Defendants a result of its above-described
11 misrepresentations and omissions.

12 75. Plaintiff and the California Subclass members seek an order requiring
13 Defendants to pay actual damages, statutory treble damages, attorneys' fees, and any other
14 relief available.

15 **COUNT III**

16 **Violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code**
17 **§§ 17200 *et seq.***

18 76. Plaintiff, individually and on behalf of the Classes, repeats and realleges all
19 previous paragraphs as if fully set forth herein.

20 77. California's UCL prohibits unfair competition, defined as "any unlawful,
21 unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading
22 advertising prohibited by [California's FAL]."

23 78. Plaintiff and California Subclass members lost money as a result of
24 Defendants' conduct.

25 79. Defendants' conduct constitutes "unlawful" practices within the definition set
26 forth in the UCL because Defendants violated the FAL and the CLRA.

1 80. Defendants' conduct constitutes "unfair" practices because they offend
2 established public policy, are immoral, unethical, oppressive, unscrupulous, and/or
3 substantially injurious to consumers including Plaintiff and California Subclass members.

4 81. The harm caused by Defendants' conduct outweighs any utility of such
5 conduct and has and will continue to cause substantial injuries and losses to Plaintiff and
6 California Subclass members unless restrained by this Court.

7 82. Defendants' conduct is additionally "unfair" within the definition set forth in
8 the UCL because Defendants violated the FAL and the CLRA.

9 83. Defendants' conduct constitutes "fraudulent" practices within the definition
10 set forth in the UCL because Defendants' labeling, advertising, and marketing
11 misrepresentations and omissions described herein are false and likely to deceive the
12 public, including Plaintiff and California Subclass members.

13 84. As a result of Defendants' "unlawful," "unfair," and "fraudulent" conduct,
14 Plaintiff and California Subclass members paid premium prices for the Products, which
15 were worth substantially less than Defendants' labeling, marketing, and advertising would
16 promise, or were entirely worthless as a dog food, and Plaintiff and California Subclass
17 members did not obtain Products with the various qualities promised by Defendants.

18 85. Plaintiff and California Subclass members lost money as a result of
19 Defendants' conduct.

20 86. Any injuries, damages, and/or losses suffered by Plaintiff and California
21 Subclass members are not outweighed by any benefits to consumers, and the injuries,
22 damages, and/or losses are those that consumers could not reasonably have avoided.

23 87. Defendants knew or in the exercise of reasonable care should have known that
24 Plaintiff and California Subclass members could not have reasonably known or discovered
25 that the Products contained hazardous levels of Vitamin D and were unsafe for
26 consumption by dogs.

27 88. Had Plaintiff and California Subclass members known that the Products
28 contained hazardous levels of Vitamin D, they would not have purchased them.

1 89. Defendants’ wrongful business practices constitute a continuous course of
2 unfair competition because Defendants label, advertise, market, and sell their Products in
3 a manner which offends public policy, is done in a manner that is immoral, unethical,
4 oppressive, unscrupulous, and/or injurious to consumers, including Plaintiff and California
5 Subclass members. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff requests an order
6 requiring Defendants to (1) identify all Products that contain hazardous levels of Vitamin
7 D through stringent testing; (2) ensure all Products are removed from the stream of
8 commerce.

9 90. Plaintiff and California Subclass members request an order awarding
10 restitution of any monies wrongfully acquired by Defendants as a result of its above-
11 described misrepresentations and omissions, along with any other such relief permitted
12 under the UCL.

13 **COUNT IV**

14 **Breach of Express Warranty**

15 91. Plaintiff, individually and on behalf of the Classes, repeats and realleges all
16 previous paragraphs as if fully set forth herein.

17 92. Defendants sold and Plaintiff and Class members purchased Defendants’
18 Products.

19 93. Defendants represented and warranted in their labeling, marketing,
20 advertising, and promotion of the Products that they were safe and healthy for consumption
21 by dogs and were subject to regular quality assurance and safety reviews.

22 94. Defendants’ Products did not conform to their representations and warranties
23 because they contained hazardous levels of Vitamin D which is harmful to dogs and led to
24 severe health symptoms and, in some cases, death.

25 95. As a direct and proximate result of Defendants’ breaches of their express
26 warranties and the Products’ failure to conform to such warranties, Plaintiff and Class
27 members have been damaged in that they did not receive the Products as specifically
28 warranted and/or paid a premium price for Products when their value was diminished, they

1 had no value for their intended purpose, and incurred veterinary costs, prescription costs,
2 and other related expenses.

3 **COUNT V**

4 **Breach of Implied Warranty**

5 96. Plaintiff, individually and on behalf of the Classes, repeats and realleges all
6 previous paragraphs as if fully set forth herein.

7 97. Defendants sold and Plaintiff and Class members purchased Defendants'
8 Products.

9 98. At the time Defendants manufactured, advertised, marketed, sold, and
10 distributed the Products, Defendants impliedly warranted that the Products were of
11 merchantable quality and safe and fit for Plaintiff and Class members to use as a dog food.

12 99. Plaintiff and Class members believed that the Products were of merchantable
13 quality and safe and fit for their intended use as a dog food.

14 100. Plaintiff and Class members could not have known about the risks associated
15 with the Products until after their dogs exhibited symptoms of Vitamin D poisoning.

16 101. Neither Plaintiff nor Class members altered the Defendants' Products after
17 purchasing them and used them as instructed.

18 102. Defendants' Products were not merchantable, did not pass without objection
19 in the trade under the label description, were not of fair average quality within that
20 description, were not fit for the ordinary and intended purpose for which such goods are
21 used (as a dog food), and did not conform to the promises or affirmations of fact made on
22 the label, advertising, marketing, and other representations and warranties because they
23 contained hazardous levels of Vitamin D.

24 103. As a direct and proximate result of Defendants' breaches of their implied
25 warranties and the Products' failure to conform to such warranties, Plaintiff and Class
26 members have been damaged in that they did not receive the Products as warranted and/or
27 paid a premium price for Products when their value was diminished, they had no value for
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1 their intended purpose, and incurred veterinary costs, prescription costs, and other related
2 expenses.

3 **COUNT VI**

4 **Negligence**

5 104. Plaintiff, individually and on behalf of the Classes, repeats and realleges all
6 previous paragraphs as if fully set forth herein.

7 105. Defendants claims they implemented regular quality assurance and safety
8 protocols to with the purpose of making sure that their Products are safe for dogs to
9 consume.

10 106. Defendants owed a duty to Plaintiff and Class members to label, advertise,
11 market, manufacture, distribute, and sell products that are safe and fit dogs to consume.

12 107. Defendants failed to exercise due care, and were negligent in the formulation,
13 manufacture, distribution, inspecting, labeling, advertising, marketing, warranting, and
14 sale of the Products to Plaintiff and Class members.

15 108. Defendants failed to implement adequate quality assurance and safety
16 inspection procedures to test the Products for hazardous levels of Vitamin D, resulting in
17 such Products entering the stream of commerce for sale to Plaintiff and Class members and
18 for consumption by their dogs.

19 109. Defendants knew or should have known that their Products posed an
20 unreasonable and unacceptable risk of injury or death to Plaintiff's and Class members'
21 dogs, and that their actions or omissions would result in damages that were both foreseeable
22 and could have been avoided.

23 110. As a direct and proximate result of Defendants' breaches of their duties,
24 Plaintiff and Class members have been damaged and suffered ascertainable losses
25 including payment for unreasonably hazardous Products, payment of veterinary costs,
26 prescription costs, and other related expenses and losses.

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1 **COUNT VII**

2 **Unjust Enrichment**

3 111. Plaintiff, individually and on behalf of the Classes, repeats and realleges all
4 previous paragraphs as if fully set forth herein.

5 112. Plaintiff conferred benefits on Defendants by purchasing the Products at a
6 premium price.

7 113. Defendants had knowledge of and enjoyed such benefits.

8 114. Defendants have been unjustly enriched in retaining the revenues derived
9 from Plaintiff's and Class members' purchases of the Products. Retention of those monies
10 under these circumstances is unjust and inequitable as a result of Defendants' false and
11 misleading representations and warranties described herein because the Products contained
12 hazardous levels of Vitamin D that are harmful to dogs, which caused Plaintiff and Class
13 members to suffer injuries and losses because they would not have purchased the Products
14 otherwise.

15 115. Defendants should be required to return to Plaintiff and Class members the
16 amount they paid to purchase the Products or else be unjustly enriched.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,
19 seeks the following relief:

20 A. An order certifying the Nationwide Class and California Subclass under Rule
21 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the
22 Class and Subclass and Plaintiff's attorneys as Class Counsel to represent the Class and
23 Subclass members;

24 B. For compensatory, statutory, and punitive damages in amounts to be
25 determined by the Court and/or jury;

26 C. For an order of restitution and all other forms of equitable monetary relief;

27 D. For prejudgment and postjudgment interest on all amounts awarded;
28

1 E. For a declaration that Defendant’s conduct violates the statutes referenced
2 herein;

3 F. For an order awarding Plaintiff and the Classes their reasonable attorneys’
4 fees and expenses and costs of suit;

5 G. For an order requiring Defendants to (1) identify all Products that have
6 hazardous levels of Vitamin D through stringent testing; (2) to ensure that all Products are
7 removed from the stream of commerce.

8 H. For any further relief the Court may deem necessary or appropriate.

9
10 Dated: May 20, 2019

Respectfully submitted,

11 **GILBERT & SACKMAN**
12 A Law Corporation

13 By: /s/ Joshua F. Young
14 Joshua F. Young
15 Attorneys for Plaintiffs
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

Dated: May 20, 2019

Respectfully submitted,

GILBERT & SACKMAN
A Law Corporation

By: /s/ Joshua F. Young
Joshua F. Young
Attorneys for Plaintiffs

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