

BLAKEMAN LAW 8383 Wilshire Blvd., Ste. 510, Beverly Hills, CA 90211
Telephone: 213-629-9922 | Web: www.lifeinsurance-law.com

1 BLAKEMAN LAW
2 Benjamin Blakeman (SBN: 60596)
3 8383 Wilshire Blvd., Suite 510
4 Beverly Hills, CA 90211
5 Telephone: (213) 629-9922
6 Facsimile: (213) 232-3230
7 Email: ben@lifeinsurance-law.com

8 Attorneys for Plaintiff,
9 DONNA CONNARY

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 DONNA CONNARY, on behalf of
13 herself and all others similarly
14 situated,

15 Plaintiff,

16 v.

17 HILL’S PET NUTRITION, INC. and
18 COLGATE-PALMOLIVE
19 COMPANY.

20 Defendants.

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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23 Donna Connary (“Plaintiff”) brings this action on behalf of herself and all
24 others similarly situated, including a proposed class of nationwide consumers and a
25 subclass of California consumers defined herein, against Hill’s Pet Nutrition, Inc. and
26 Colgate-Palmolive Company (“Defendants”) and hereby alleges the following:
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NATURE OF THE ACTION

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2 1. The products at issue in this Class Action Complaint are various Science
3 Diet and Prescription Diet brands (collectively, the “Products”) that Defendants
4 recalled on January 31, 2019 and further recalled to include additional Products on
5 March 20, 2019.

6 2. The Products were recalled because, contrary to their labeling,
7 advertising, and marketing campaign which represents and warrants to consumers that
8 the Products are safe, healthy, and/or specifically formulated for the unique health
9 needs of canines, Defendants actually formulated, manufactured, distributed, and sold
10 Products that contain an amount of Vitamin D that is extremely dangerous for dogs to
11 consume.

12 3. This amount of Vitamin D poses substantial and unreasonable health
13 risks to dogs after exposure, including symptoms such as vomiting, loss of appetite,
14 increased thirst, increased urination, excessive drooling, and weight loss. Prolonged
15 exposure can lead to serious health issues in dogs including renal dysfunction, which
16 can cause death.

17 4. As a result of Defendants’ false and misleading representations and
18 warranties which conveyed that the Products were safe, many dog owners including
19 Plaintiff and members of the Class and Subclass defined herein, watched as their dogs
20 suffered from Vitamin D poisoning and its related symptoms after consuming the
21 Products. As a result of this Vitamin D poisoning, many dogs have required veterinary
22 treatment, have had to take prescription medications, and many of them have died,
23 resulting in their owners incurring significant monetary losses.

24 5. Defendants’ failed to include all of the dangerous and contaminated
25 Products in the initial January 31, 2019 recall, as shown by its subsequent expansion
26 of the recall on March 20, 2019 to include additional Products despite publishing a
27 video to Hill’s Pet Nutrition, Inc.’s website stating “[...] we isolated and identified the
28 issue. We now have tighter quality controls in place to prevent this from happening

1 again. By feeding your pet Hill's, you've placed your trust in us and we are working
2 hard to ensure that your trust is well placed."¹

3 6. Furthermore, Defendants' recall of the Products was not timely, as
4 Defendants knew or should have known prior to the January 31, 2019 recall that its
5 Products contained dangerous levels of Vitamin D.

6 7. First, Defendants claim to subject their suppliers and raw material
7 ingredient providers with regular quality assurance and safety checks.²

8 8. Second, Defendants were aware prior to January 31, 2019 that Vitamin
9 D toxicity was a well-known risk, as on December 3, 2018 the FDA warned consumers
10 of several other brands of dog food that contained toxic levels of Vitamin D.³

11 9. As such, the Products' hazardous qualities and the risk of exposure was
12 significantly exacerbated by Defendants' unjustified delay in warning consumers that
13 the Products were dangerous for consumption by dogs because they contain dangerous
14 levels of Vitamin D.

15 PARTIES

16 10. Plaintiff Donna Connary, a resident of Temecula, Riverside County,
17 California, regularly purchased several of the Products from retailers in Riverside
18 County, California within the past three years, and also between October 2018 and
19 February 2019. Plaintiff purchased the Products because she believed that they safe
20 for consumption by her dogs Buschka La Rue and Olive, were more nutritious and
21 superior to other brands of dog food, resulting in Plaintiff paying a premium price for
22 the Products, and contained ingredients or were formulated to satisfy her dogs'
23 specific health and dietary needs. Plaintiff's dogs became ill after consuming the
24 Products in December 2018 and showed signs of Vitamin D poisoning until Plaintiff
25 switched to a different brand of food in February 2019. Plaintiff was unaware that the
26 Products were the cause until shortly before filing this Complaint.

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

² See <https://www.hillspet.com/about-us/quality-and-safety>.

³ See <https://www.fda.gov/animalveterinary/newsevents/ucm627485.htm>.

1 11. Defendant Hill’s Pet Nutrition, Inc. is a Delaware corporation with its
2 principal place of business at 400 SW 8th Avenue, Topeka, Kansas 66603.

3 12. Defendant Colgate-Palmolive Company is a Delaware corporation with
4 its principle place of business at 300 Park Avenue, New York, New York 10022.
5 Colgate-Palmolive Company is the parent company of Hill’s Pet Nutrition, Inc. and
6 exercises control over Hill’s Pet Nutrition, Inc. and derived profit from the sale of the
7 Products. Specifically, Colgate-Palmolive Company’s 2018 10-K filed states
8 “Colgate, through its Hill’s Pet Nutrition segment...is a world leader in specialty pet
9 nutrition products for dogs and cats” and states “Pet Nutrition products include
10 specialty pet nutrition products manufactured and marketed by Hill’s Pet Nutrition.”
11 Furthermore, according to Colgate-Palmolive’s 2018 10-K, “[n]et sales for Hill’s Pet
12 Nutrition were [\$2.388 billion] in 2018,” which includes net sale proceeds from the
13 Products.

14 13. Defendants formulated, designed, manufactured, advertised, marketed,
15 labeled, offered for sale, sold, and distributed pet food products to consumers,
16 including the Products, throughout the United States and California through storefront
17 pet food retailers, veterinarians, and Internet retailers, represented and warranted that
18 their Products are superior than other brands of dog food as described herein, and
19 charged a premium price for them.

20 **JURISDICTION AND VENUE**

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

26 15. The Court has personal jurisdiction over Defendants because they
27 regularly conduct a substantial amount of business in the Central District of California,
28 intentionally and purposefully placed the Products into the stream of commerce within

1 the Central District of California and throughout the United States, and their wrongful
 2 conduct, as alleged herein, was carried out in California, including in this District, and
 3 throughout the United States.

4 16. Venue is proper in the Central District of California pursuant to 28 U.S.C.
 5 § 1391 because a substantial part of the events and/or omissions giving rise to
 6 Plaintiff's claims occurred within this District. Defendants transacted business and
 7 advertised in this District and have received substantial revenue and profits from the
 8 sale of the Products in this District, including from sales to Plaintiff and members of
 9 the Class and Subclass. Plaintiff's dogs also consumed the Products in this District
 10 and got sick in this District.

11 **COMMON FACTUAL ALLEGATIONS**

12 ***Defendant's Recall***

13 17. On January 31, 2019 Defendants announced in a press release that they
 14 were recalling certain of their Products due to a "supplier error," and indicated that
 15 consumption of the Products could be dangerous to dogs due to them containing toxic
 16 levels of Vitamin D, and later expanded that recall on March 20, 2019 to include
 17 additional Products.⁴

18 18. Defendants claimed "While vitamin D is an essential nutrient for dogs,
 19 ingestion of elevated levels can lead to potential health issues depending on the level
 20 of vitamin D and the length of exposure, and dogs may exhibit symptoms such as
 21 vomiting, loss of appetite, increased thirst, increased urination, excessive drooling,
 22 and weight loss. When consumed at very high levels, vitamin D can in rare cases lead
 23 to potentially life threatening health issues in dogs, including renal dysfunction."⁵

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⁴ See <https://www.hillspet.com/productlist>.

⁵ *Id.*

1 ***Defendants’ False and Misleading Misrepresentations and Warranties***

2 19. Defendants formulate, manufacture, label, advertise, market, distribute
3 and sell the Products on a global scale and are one of the largest pet food suppliers in
4 the United States.

5 20. As part of their pervasive labeling, advertising, and marketing scheme,
6 Defendants claim to “make nutrition a cornerstone of veterinary medicine”⁶ and sell
7 their Products through a nationwide distribution network of retail stores including but
8 not limited to Petco, PetSmart, and Walmart, veterinary clinics, and Internet retailers
9 such as Amazon.com and Chewy.com.

10 21. Defendants’ Products are designed to address nutritional deficiencies
11 and/or other specifically targeted health issues, and Defendants charge a premium
12 price for their Products based on their representations and warranties that they are
13 superior to other brands of dog food.

14 22. The Products encompass those included in Defendants’ January 31, 2019
15 recall and subsequent March 20, 2019 expansion of that recall, which were published
16 on both Hill’s Pet Nutrition, Inc.’s website⁷ and the U.S. Food and Drug
17 Administration’s (“FDA”) website⁸, and include the following:

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28 ⁶ See <https://www.hillspet.com/about-us/our-company>.

⁷ See <https://www.hillspet.com/productlist>.

⁸ 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

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3	Hill's® Prescription Diet® w/d® Canine 13oz	7017	102020T24 102020T25 112020T09 112020T10 092020T30 102020T11 102020T12
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5	Hill's® Prescription Diet® z/d® Canine 13oz	7018	102020T04 112020T22
6	Hill's® Prescription Diet® Metabolic + Mobility Canine Vegetable & Tuna Stew 12.5oz	10086	102020T05 102020T26
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8	Hill's® Prescription Diet® w/d® Canine Vegetable & Chicken Stew 12.5oz	10129	112020T11 112020T05 102020T04 102020T21
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10	Hill's® Prescription Diet® i/d® Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz	10423	092020T27 092020T28 092020T24 102020T17 102020T19 112020T04
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12	Hill's® Prescription Diet® Derm Defense® Canine Chicken & Vegetable Stew 12.5oz	10509	102020T05
13	Hill's® Science Diet® Adult 7+ Small & Toy Breed Chicken & Barley Entrée Dog Food 5.8oz	4969	102020T18
14	Hill's® Science Diet® Puppy Chicken & Barley Entrée 13oz	7036	102020T12
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16	Hill's® Science Diet® Adult Chicken & Barley Entrée Dog Food 13oz	7037	092020T22 102020T13 102020T14 112020T23 112020T24
17	Hill's® Science Diet® Adult Turkey & Barley Dog Food 13oz	7038	102020T06
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19	Hill's® Science Diet® Adult Chicken & Beef Entrée Dog Food 13oz	7040	112020T10 112020T11 102020T13
20	Hill's® Science Diet® Adult Light with Liver Dog Food 13oz	7048	112020T19
21	Hill's® Science Diet® Adult 7+ Chicken & Barley Entrée Dog Food 13oz	7055	092020T31 102020T13
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23	Hill's® Science Diet® Adult 7+ Beef & Barley Entrée Dog Food 13oz	7056	102020T28 092020T31 112020T20 112020T24
24	Hill's® Science Diet® Adult 7+ Turkey & Barley Entrée 13oz	7057	112020T19
25	Hill's® Science Diet® Adult 7+ Healthy Cuisine Braised Beef, Carrots & Peas Stew dog food 12.5oz	10452	102020T28 102020T14 102020T21
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27	Hill's® Science Diet® Adult 7+ Youthful Vitality Chicken & Vegetable Stew dog food 12.5oz	10763	102020T04 102020T05 112020T11
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1 23. As part of their pervasive labeling, advertising, and marketing campaign,
2 Defendants represent that the Products provide “[n]utrition that can transform the lives
3 of pets and comfort the pet parents and vets who care for them.”⁹

4 24. In order to justify charging a price premium for their Products, and to
5 convince consumers into paying these prices, Defendants tout that “[w]e only accept
6 ingredients from suppliers whose facilities meet stringent quality standards and who
7 are approved by Hill's. Not only is each ingredient examined to ensure its safety, we
8 also analyze each product's ingredient profile for essential nutrients to ensure your pet
9 gets the stringent, precise formulation they need.”¹⁰

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

15 26. To further reinforce the idea that the Products are superior to other dog
16 foods and safe for consumption, Defendants claim that “[w]e conduct final safety
17 checks daily on every Hill's pet food product to help ensure the safety of your pet's
18 food. Additionally, all finished products are physically inspected and tested for key
19 nutrients prior to release to help ensure your pet gets a consistent products bag to
20 bag.”¹²

21 27. Defendants then state that their Products contain the “precise balance” of
22 nutrients needed for a healthy dog: “Guided by science, we formulate our food with
23 precise balance so your pet gets all the nutrients they need — and none they don't.”¹³

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26 ⁹ See <https://www.hillspet.com/dog-food>.

27 ¹⁰ <https://www.hillspet.com/about-us/quality-and-safety>.

28 ¹¹ *Id.*

¹² *Id.*

¹³ See <https://www.hillspet.com/about-us/nutritional-philosophy>.

1 28. In generally describing their Products, Defendants make a “commitment
2 to quality” with more than 220 veterinarians, food scientists, technicians, and PhD
3 nutritionists working together to develop products that are safe, nutritious, and
4 superior to other brands.¹⁴

5 29. As shown herein, the Products include those from both Defendants’
6 Science Diet and Prescription Diet brands.

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

10 31. Furthermore, Defendants claim on the Science Diet Products’ labels that
11 the brand is “VETERINARIAN RECOMMENDED.”



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¹⁴ *Id.*

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

1 32. Defendants claim that it manufactures the Prescription Diet Products in
2 an alliance with veterinarians which emphasizes a “unique position to find a solution”
3 to the various and sundry dietary and health issues that are typical to dogs.¹⁶

4 33. To reinforce the notion that the Prescription Diet brand Products are
5 uniquely formulated for targeted health concerns, Defendants claim on Prescription
6 Diet Products’ labels that they provide “CLINICAL NUTRITION” or
7 “THERAPEUTIC DOG NUTRITION” and are designed to address health conditions
8 including but not limited to kidney care, metabolic care, digestive care, skin/food
9 sensitivities, urinary care, joint care, and aging.



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¹⁶ See <https://www.hillspet.com/prescription-diet/dog-food>.

1 34. As demonstrated by the recall of at least 675,000 (13.5 million cans),
2 resulting in Plaintiff and members of the Class and Subclasses' dogs becoming ill
3 and/or dying as a result of Vitamin D toxicity and its related symptoms, Defendants'
4 various above-cited representations and warranties about their Products, the reliability
5 of their ingredients and suppliers, and their quality assurance and safety protocols are
6 false and misleading.

7 ***Defendants' Price Premium***

8 35. Defendants charged a premium for its Products because they knew that
9 the representations and warranties they made to consumers about their various health
10 and nutritional benefits, along with claims regarding their use of well- inspected
11 ingredients, were important to consumers, inclusive of Plaintiff and members of the
12 Class and Subclass, and that such representations and warranties would induce
13 consumers to pay a premium price for the Products over other brands of dog food.

14 36. The health and safety of dogs is extremely important to consumers, and
15 as such they are willing to pay a premium for Defendants' Products because they
16 represent and warrant that the Products are safe, healthy, nutritious, formulated for
17 targeted health needs, and meet certain ingredient supply, quality, testing and
18 oversight, and manufacturing standards.

19 37. Defendants' price premium is shown below¹⁷:
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28 ¹⁷ 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

38. Because the Products contained dangerous levels of Vitamin D which endangered the health of dogs and ultimately led to Plaintiff's and members of the Class and Subclass' dogs to become ill or die, they were diminished in value or worthless as a dog food.

39. As a direct and proximate result of Defendants' false and misleading representations and warranties, negligence in carrying out their duty to provide consumers with safe and healthy dog food as advertised, breach of warranties, unfair practices, and other unlawful conduct detailed herein, Plaintiff and members of the Class and Subclass incurred actual damages and/or other economic losses, including

1 the cost of paying for the Products, veterinary bills, prescription costs and/or funeral
2 and burial costs, among other damages to be proven at trial.

3 **MS. CONNARY'S EXPERIENCE WITH THE RECALLED PRODUCTS**

4 40. Plaintiff is the owner of two dogs, a 9-year old Terrier-Schnauzer mix
5 named Buschka La Rue, and a 3-year old Terrier Chihuahua mix named Olive.

6 41. Plaintiff started feeding her dogs Hill's Science Diet Healthy Cuisine
7 Adult Braised Beef, Carrots & Peas Stew, Hill's Science Diet Adult Chicken & Beef
8 Entrée, and Hill's Science Diet Adult 7+ Small & toy Breed Chicken & Barley Entrée
9 Dog Food in or around October 2018.

10 42. Plaintiff purchased the identified Products from retail locations near her
11 home in Temecula, California up until February 2019 because the labeling,
12 advertising, and marketing for the Products represented to her that they were at all
13 times safe for her dogs to eat.

14 43. Buschka La Rue would typically eat 4-5 cans of either the Hill's Science
15 Diet Healthy Cuisine Adult Braised Beef, Carrots & Peas Stew canned dog food
16 and/or Science Diet Adult Chicken & Beef Entrée Canned Dog Food per day per
17 week. Olive would typically eat 4-5 cans of Hill's Science Diet Adult 7+ Small & toy
18 Breed Chicken & Barley Entrée Dog Food per week.

19 44. Plaintiff paid a premium for these Products because she believed that
20 Defendants' Products would be a healthier alternative for her than other dog foods
21 based on Defendants' labeling, advertising, and marketing representations and
22 warranties described herein.

23 45. Beginning in December, 2018 and up through February, 2019, her dogs
24 suffered from severe health issues consistent with Vitamin D toxicity that included
25 vomiting, diarrhea, excessive drooling, excessive thirst, and weight loss.

26 46. Plaintiff stopped feeding her dogs the Products in February 2019, at
27 which time they immediately recovered from their symptoms of Vitamin D poisoning.
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1 52. ***Commonality and Predominance***: Common questions of law and fact
2 exist as to all proposed members of the Classes and predominate over questions that
3 only affect individual members of the Classes. These common questions of law and
4 fact include, but are not limited to and subject to amendment:

- 5 a. Whether the Products contained toxic levels of Vitamin D;
6 b. Whether Defendants' labeling, advertising, and marketing
7 representations and warranties are false or misleading;
8 c. Whether Defendants breached any express warranties;
9 d. Whether Defendants breached any implied warranties;
10 e. Whether the Products were either diminished in value had no value as a
11 dog food;
12 f. Whether Defendants owed a duty of care to Plaintiff and members of the
13 Classes;
14 g. Whether Defendants breached that duty of care;
15 h. Whether Defendants were unjustly enriched as a result Plaintiff and
16 members of the Classes purchasing the Products;
17 i. Whether Plaintiff and members of the Classes have sustained damages
18 as a result of the conduct alleged herein and, if so, the appropriate
19 measure of such damages;
20 j. Whether Defendants' conduct violated various state consumer protection
21 statutes; and
22 k. Whether Plaintiff and members of the Classes are entitled to punitive
23 damages.

24 53. ***Adequacy***: Plaintiff is an adequate representative of the proposed Classes
25 because her interests do not conflict with the interests of the members of the Classes
26 she seeks to represent. Plaintiff has retained attorneys who are competent and
27 experienced in handling complex and class action litigation, and they will prosecute
28 this case vigorously on behalf of Plaintiff and members of the Classes.

1 54. **Typicality**: Plaintiff's claims are typical of the claims of the proposed
2 Classes. Plaintiff and the members of the proposed Classes all purchased the Products,
3 giving rise to materially similar claims.

4 55. **Superiority**: A class action is superior to other available means for the
5 fair and efficient resolution or adjudication of this matter. The injuries suffered by
6 each member of the Classes, while significant on an individual basis, are not large
7 enough to render the pursuit of individual actions economically or judicially feasible.
8 Even if members of the Classes could afford to undergo individualized litigation, the
9 judicial system could not. In addition to the significant burden and expense of
10 managing numerous actions that arise from materially similar questions of law and
11 fact, individualized litigation risks inconsistent judgments. Individualized litigation
12 will also increase the delay and expense to all parties and the judicial system presented
13 by the legal and factual issues of this matter. However, the class action mechanism
14 risks far fewer management difficulties and provides the benefits of a sole
15 adjudication, economy of scale, and holistic supervision by a single court.

16 56. In the alternative, the proposed Classes may be certified because: (1) The
17 prosecution of separate actions by the individual members of the proposed Classes
18 would create a risk of inconsistent adjudications, which could establish incompatible
19 standards of conduct for Defendants; (2) The prosecution of individual actions could
20 result in adjudications, which, as a practical matter, would be dispositive of the
21 interests of non-party Class members or which would substantially impair their ability
22 to protect their interests; and (3) Defendants have acted or refused to act on grounds
23 generally applicable to the proposed Classes, thereby making appropriate final relief
24 with respect to the members of the proposed Classes as a whole.

25 57. Defendants benefitted from the sale of the Products to Plaintiff and
26 members of the Classes in a determinable amount.

BLAKEMAN LAW 8383 Wilshire Blvd., Ste. 510, Beverly Hills, CA 90211
Telephone: 213-629-9922 | Web: www.lifeinsurance-law.com

COUNT I

Breach of Express Warranty

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

5 59. Defendants sold and Plaintiff and members of the Classes purchased
6 Defendants’ Products, which they represented and warranted in their labeling,
7 marketing, advertising, and promotion that they were safe and healthy for
8 consumption by dogs and/or were subject to regular and rigorous quality assurance
9 and safety inspections.

10 60. Defendants’ Products did not conform to the above-delineated
11 representations and warranties because they contained toxic levels of Vitamin D
12 which is dangerous for consumption by dogs and ultimately led to Plaintiff’s and
13 members of the Classes’ dogs suffering from severe health conditions and, in some
14 cases, death.

15 61. As a direct and proximate result of Defendants’ breaches the described
16 herein express warranties and the Products’ failure to conform to these warranties,
17 Plaintiff and members of the Classes have been damaged in that they did not receive
18 the Products as expressly warranted and/or paid a premium price for Products when
19 their value was diminished, they had no value for their intended purpose as a dog food,
20 and incurred veterinary costs, prescription costs, and other related damages.

COUNT II

Breach of Implied Warranty

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23 62. Plaintiff, individually and on behalf of the Classes, repeats and realleges
24 all previous paragraphs as if fully set forth herein.

25 63. Defendants sold and Plaintiff and members of the Classes purchased
26 Defendants’ Products.

27 64. At the time Defendants formulated, manufactured, advertised, marketed,
28 sold, and distributed the Products, Defendants impliedly warranted that the Products

1 were of merchantable quality and safe and fit for the purpose of use as a dog food
2 Plaintiff and members of the Classes.

3 65. Plaintiff and members of the Classes believed that the Products were of
4 merchantable quality and fit for their intended use as a dog food.

5 66. Plaintiff and members of the Classes could not have known about the
6 risks associated with the Products until after their dogs exhibited symptoms of
7 Vitamin D poisoning.

8 67. Neither Plaintiff nor members of the Classes altered the Defendants'
9 Products after purchasing them and used them as instructed.

10 68. Defendants' Products were not merchantable quality, did not pass
11 without objection in the trade under the label description, were not of fair average
12 quality within that description, were not fit for the ordinary and intended purpose as a
13 dog food, and did not conform to the promises or affirmations of fact made on the
14 label, advertising, marketing, and other representations and warranties because they
15 contained dangerous levels of Vitamin D.

16 69. As a direct and proximate result of Defendants' breaches of their implied
17 warranties and the Products' failure to conform to such warranties, Plaintiff and
18 members of the Classes have been damaged in that they did not receive the Products
19 that were of merchantable quality and/or paid a premium price for Products when their
20 value was diminished, they had no value for their intended purpose, and incurred
21 veterinary costs, prescription costs, and other related damages.

22 **COUNT III**

23 **Negligence**

24 70. Plaintiff, individually and on behalf of the Classes, repeats and realleges
25 all previous paragraphs as if fully set forth herein.

26 71. Defendants claim to utilize regular quality assurance and safety protocols
27 intended to ensure that their Products are safe for dogs to consume and contain safe
28 ingredients.

1 72. Defendants owed a duty to Plaintiff and members of the Classes to
2 formulate, inspect, label, advertise, market, manufacture, distribute, and sell products
3 that are safe and fit for dogs to consume.

4 73. Defendants failed to exercise due care, and were negligent in the
5 formulation, inspection, manufacture, distribution, labeling, advertising, marketing,
6 warranting, and sale of the Products to Plaintiff and members of the Classes.

7 74. Defendants failed to implement adequate safety inspection procedures to
8 test the Products for toxic levels of Vitamin D, resulting in such Products entering the
9 stream of commerce for sale to Plaintiff and members of the Classes and for
10 consumption by their dogs.

11 75. Defendants knew or in the exercise of reasonable care should have
12 known that their Products posed an unreasonable and unacceptable risk of injury or
13 death to Plaintiff's and members of the Classes' dogs, and that their actions and/or
14 omissions would foreseeably result in damages that could have been avoided.

15 76. As a direct and proximate result of Defendants' breaches of their duty of
16 care, Plaintiff and members of the Classes have been damaged and suffered
17 ascertainable losses including payment for dangerous and defective Products,
18 payment of veterinary costs, prescription costs, and other related damages.

19 COUNT IV

20 **Unjust Enrichment**

21 77. Plaintiff, individually and on behalf of the Classes, repeats and realleges
22 all previous paragraphs as if fully set forth herein.

23 78. Plaintiff conferred benefits on Defendants by purchasing the Products at
24 a premium price.

25 79. Defendants had knowledge of and enjoyed such benefits.

26 80. Defendants have been unjustly enriched in retaining monies derived from
27 Plaintiff's and members of the Classes' purchases of the Products. It would be unjust
28 and inequitable for Defendants to retain those monies under these circumstances as a

1 result of Defendants’ false and misleading representations and warranties described
 2 herein because the Products contained unreasonably high levels of Vitamin D that are
 3 harmful to dogs, which caused Plaintiff and members of the Classes to suffer injuries
 4 and losses because they would not have purchased the Products otherwise.

5 81. Defendants should be required to return to Plaintiff and members of the
 6 Classes the amount they paid to purchase the Products or else be unjustly enriched.

7 **COUNT V**

8 **Violation of California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ.**
 9 **Code §§ 1750 *et seq.***

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

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

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

15 85. Defendants are “person[s]” as defined in CLRA § 1761(c).

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

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

23 88. Defendants’ conduct described herein was intended to induce consumers
 24 to purchase the Products.

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

1 90. Defendants' conduct was done with conscious disregard of Plaintiff's
2 rights and the rights of the members of the California Subclass.

3 91. Plaintiff and members of the California Subclass have been directly and
4 proximately damaged by Defendants' conduct.

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

8 93. On May 14, 2019, Plaintiff mailed Defendants notice of their violations
9 of the CLRA in accordance with CLRA § 1782. If Defendants fail to rectify their
10 conduct within 30 days of receipt of this notice, Plaintiff will seek leave to amend this
11 Class Action Complaint to claim damages under the CLRA.

12 94. Plaintiff also seeks the recovery of court costs and reasonable attorneys'
13 fees pursuant to CLRA § 1780(e).

14 COUNT VI

15 **Violation of California's False Advertising Law ("FAL"), Cal. Bus. & Prof.**

16 **Code §§ 17500 *et seq.***

17 95. Plaintiff individually and on behalf of the California Subclass, repeats
18 and realleges all previous paragraphs as if fully set forth herein.

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

24 97. Defendants' material misrepresentations and omissions described herein
25 violate FAL § 17500.

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

1 99. Defendants’ misrepresentations and omissions are materially important
2 to Plaintiff and members of the California Subclass and, therefore, reliance may be
3 presumed.

4 100. Plaintiff and members of the California Subclass lost money as a result
5 of Defendants’ conduct.

6 101. Pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17500, Plaintiff and
7 members of the California Subclass seek an order requiring Defendants identify all
8 Products that contain dangerous levels of Vitamin D through stringent testing and,
9 pending such results, ensure all affected Products are removed from the stream of
10 commerce.

11 102. Unless such an order is granted, Defendants will continue to engage in
12 conduct as alleged herein in violation of California’s FAL.

13 103. Plaintiff and members of the California Subclass request an order
14 awarding restitution of any monies wrongfully acquired by Defendants as a result of
15 its above-described misrepresentations and omissions.

16 104. Plaintiff and the members of the California Subclass seek an order
17 requiring Defendants to pay actual damages, statutory treble damages, attorneys’ fees,
18 and any other relief available.

19 **COUNT VII**

20 **Violation of California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof.**
21 **Code §§ 17200 *et seq.***

22 105. Plaintiff, individually and on behalf of the Classes, repeats and realleges
23 all previous paragraphs as if fully set forth herein.

24 106. California’s UCL prohibits unfair competition, defined as “any unlawful,
25 unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading
26 advertising prohibited by [California’s FAL].”

27 107. Plaintiff and members of the California Subclass lost money as a result
28 of Defendants’ conduct.

1 108. Defendants’ conduct constitutes “unlawful” practices within the
2 definition set forth in the UCL because Defendants violated the FAL and the CLRA.

3 109. Defendants’ conduct constitutes “unfair” practices because they offend
4 established public policy, are immoral, unethical, oppressive, unscrupulous, and/or
5 substantially injurious to consumers including Plaintiff and members of the California
6 Subclass.

7 110. The harm caused by Defendants’ conduct outweighs any utility of such
8 conduct and has and will continue to cause substantial injuries and losses to Plaintiff
9 and members of the California Subclass unless restrained by this Court.

10 111. Defendants’ conduct is additionally “unfair” within the definition set
11 forth in the UCL because Defendants violated the FAL and the CLRA.

12 112. Defendants’ conduct constitutes “fraudulent” practices within the
13 definition set forth in the UCL because Defendant’s labeling, advertising, and
14 marketing misrepresentations and omissions described herein are false and likely to
15 deceive the public, including Plaintiff and members of the California Subclass.

16 113. As a result of Defendants’ “unlawful,” “unfair,” and “fraudulent”
17 conduct, Plaintiff and members of the California Subclass paid premium prices for the
18 Products, which were worth substantially less than Defendants’ labeling, marketing,
19 and advertising would promise, or were entirely worthless as a dog food, and Plaintiff
20 and members of the California Subclass did not obtain Products with the various
21 qualities promised by Defendants.

22 114. Plaintiff and members of the California Subclass lost money as a result
23 of Defendants’ conduct.

24 115. Any injuries, damages, and/or losses suffered by Plaintiff and members
25 of the California Subclass are not outweighed by any benefits to consumers, and the
26 injuries, damages, and/or losses are those that consumers could not reasonably have
27 avoided.
28

1 116. Defendants knew or in the exercise of reasonable care should have
2 known that Plaintiff and members of the California Subclass could not have
3 reasonably known or discovered that the Products contained dangerous levels of
4 Vitamin D and were unsafe for consumption by dogs.

5 117. Had Plaintiff and members of the California Subclass known that the
6 Products contained dangerous levels of Vitamin D, they would not have purchased
7 them.

8 118. Defendants' wrongful business practices constitute a continuous course
9 of unfair competition because Defendants label, advertise, market, and sell their
10 Products in a manner which offends public policy, is done in a manner that is immoral,
11 unethical, oppressive, unscrupulous, and/or injurious to consumers, including Plaintiff
12 and members of the California Subclass. Pursuant to Cal. Bus. & Prof. Code § 17203,
13 Plaintiff requests an order requiring Defendants to identify all Products that contain
14 dangerous levels of Vitamin D through stringent testing and, pending such results,
15 ensure all affected Products are removed from the stream of commerce.

16 119. Plaintiff and members of the California Subclass request an order
17 awarding restitution of any monies wrongfully acquired by Defendants as a result of
18 their above-described misrepresentations and omissions, along with any other such
19 relied permitted under the UCL.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, individually and on behalf of herself and the proposed
22 Nationwide Class and California Subclass, seeks the following relief:

23 A. An order certifying the Nationwide Class and California Subclass under
24 Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative
25 of the Nationwide Class and California Subclass and Plaintiff's attorneys as Class
26 Counsel;

27 B. For an order of restitution and all other forms of equitable monetary
28 relief;

1 C. For compensatory, statutory, and punitive damages in amounts to be
2 determined by the Court and/or jury;

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

5 E. For prejudgment and postjudgment interest on all awarded amounts;

6 F. For an order requiring Defendant to identify all Products that contain
7 toxic levels of Vitamin D through rigorous testing and to ensure that any affected
8 Products are removed from the stream of commerce.

9 G. For a declaration that Defendants’ conduct is in violation of the statutes
10 forming the basis of statutory violations described herein;

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

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff demands a trial by jury on all claims that are triable.

14
15
16
17 DATED May 14, 2019.

/s/ Benjamin Blakeman
Attorney for Plaintiff and the Proposed Class and
Subclass

BLAKEMAN LAW 8383 Wilshire Blvd., Ste. 510, Beverly Hills, CA 90211
Telephone: 213-629-9922 | Web: www.lifeinsurance-law.com

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