

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LISA LAVALLE, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

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

Defendants.

No.: 1:19-cv-2971

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Lisa LaValle ("Plaintiff"), by her attorneys, brings this action on behalf of herself and all others similarly situated, including proposed classes of nationwide and New York consumers, against Hill's Pet Nutrition, Inc. and Colgate-Palmolive Company ("Defendants") and alleges as follows based on knowledge as to Plaintiff's own acts and on information and belief as to all other matters:

NATURE OF THE ACTION

1. Defendants formulate, manufacture, label, advertise, market, distribute, and sell pet food for dogs under the "Science Diet" and "Prescription Diet" brands.
2. Defendants label, advertise, and market their products toward consumers as being safe for regular consumption by dogs, healthier than other brands of dog food, and/or specifically tailored for unique health needs.
3. The products subject to this action are certain varieties and serving sizes of Science Diet and Prescription Diet brands (collectively, the "Products") that were recalled January 31, 2019, which was later expanded on March 20, 2019 to include additional products.

4. In direct contradiction to their representations and warranties described in greater detail herein, Defendants have formulated, manufactured, labeled, advertised, marketed, distributed and sold Products that contain extremely dangerous levels of Vitamin D, which exposes dogs who consumed their Products to substantial and unreasonable risk of Vitamin D poisoning, which includes symptoms such as vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and weight loss. Prolonged exposure to these amounts of Vitamin D and can eventually lead to serious health issues in dogs such as renal dysfunction, which left untreated can cause death.

5. As a result of Defendants' conduct, dog owners including Plaintiff and Class members, inclusive of Subclasses defined herein, helplessly watched their dogs suffer from the effects of Vitamin D poisoning after consuming the Products. As a result of Vitamin D poisoning, many dogs have required significant veterinary treatment and prescription medications at great cost to their owners.

6. Additionally, many dogs, including Plaintiff's dog Lil' Mama, have died after eating the Products, resulting in Plaintiff and Class members incurring additional losses such as euthanasia costs, burial fees and funeral fees.

7. Defendants knew or should have known that their Products contained dangerously high levels of Vitamin D prior to the January 31, 2019 recall because Defendants tout that they subject their ingredient suppliers and raw material providers to consistent quality assurance and safety checks¹ and, furthermore, because the risk of Vitamin D toxicity was well-known in advance of the January 31, 2019 recall, as on December 3, 2018 several other brands of dog food were recalled as a result of containing dangerous levels of Vitamin D.²

¹ See <https://www.hillspet.com/about-us/quality-and-safety>.

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

8. Therefore, in addition to proliferating hazardous Products, Defendants not only failed to issue a timely recall, they failed to include all of the hazardous Products in the initial January 31, 2019 recall, as shown by the subsequent recall expansion on March 20, 2019.

9. As such, Defendants' unwarranted delay in warning consumers, including Plaintiff and Class members, of the lethal and hazardous nature of the Products, only served to exacerbate the problem and cause Plaintiff and Class members to suffer additional losses.

PARTIES

10. Plaintiff Lisa LaValle, a resident of Yaphank, Suffolk County, New York, regularly purchased the Hill's Prescription Diet k/d Kidney Care in Suffolk County, New York within the past three years, and also between April 2018 and July 2018. Plaintiff purchased the Hill's Prescription Diet k/d Kidney Care because she believed that it was safe for Lil' Mama to eat and contained ingredients that were uniquely tailored to her dog's specific health and dietary needs, specifically her slightly elevated kidney levels. Almost immediately after consuming the Hill's Prescription Diet k/d Kidney Care in April 2018, Lil' Mama became ill with symptoms common to Vitamin D poisoning, which led to veterinary visits, treatments and associated expenses, and ultimately resulting in Lil' Mama's death. Plaintiff was unaware that the Defendants' Products were the cause of Lil' Mama's death until shortly before filing this Complaint.

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

12. Defendant Colgate-Palmolive Company is a Delaware corporation with its principle place of business at 300 Park Avenue, New York, New York 10022.

13. Colgate-Palmolive Company is the parent company of Hill's Pet Nutrition, Inc. Colgate-Palmolive Company exercises control over these corporations and derived profit from the sale of the Products. Specifically, Colgate-Palmolive Company's 2018 10-K filed states "Colgate, through its Hill's Pet Nutrition segment...is a world leader in specialty pet nutrition products for dogs and cats" and states "Pet Nutrition products include specialty pet nutrition products manufactured and marketed by Hill's Pet Nutrition."³ Furthermore, according to Colgate-Palmolive's 2018 10-K, "[n]et sales for Hill's Pet Nutrition were [\$2.388 billion] in 2018," which includes net sale proceeds from the Products.⁴

14. Defendants formulated, manufactured, labeled, advertised, marketed, distributed, and sold pet food products to consumers, including the Products, throughout the United States and New York using an intricate network of brick-and-mortar retailers, veterinarians, and e-commerce retailers.

15. Defendants' labeling, advertising, and marketing scheme for the Products was designed to communicate to consumers that they are superior than other brands of dog food, and Defendants charged a premium price for them over other dog food brands.

JURISDICTION AND VENUE

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

³ See <https://investor.colgatepalmolive.com/node/35226/html>.

⁴ *Id.*

17. The Court has personal jurisdiction over Defendants because they regularly conduct a significant amount of business in this District and deliberately placed the Products into the stream of commerce within the Eastern District of New York and throughout the United States. Defendants' wrongful conduct, as alleged herein, was carried out in New York and throughout the United States.

18. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants transacted business in this District and have received substantial revenue and profits from the sale of the Products in this District, including from sales to Plaintiff and other Class members, including members of the Subclasses as defined herein. Plaintiff's dog Lil' Mama consumed the Products in this District, received veterinary care in this District, and died in this District. Therefore, a substantial portion of the events and/or omissions giving rise to Plaintiff's claims occurred within this District.

FACTS COMMON TO ALL CLASS MEMBERS

Defendants' False and Misleading Misrepresentations and Warranties

19. Defendants manufacture and sell the Products internationally are collectively one of the largest pet food manufacturers and sellers in the United States.

20. Defendants' Products are labeled, advertised, and marketed as being healthy dog foods and/or formulated and designed to address nutritional deficiencies and other health issues, and Defendants charge a premium price for their Products.

21. Defendants tout the nutritive properties of their Products by claiming to "make nutrition a cornerstone of veterinary medicine"⁵ and sell the Products through an intricate

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

distribution network of brick-and-mortar stores, veterinary clinics, and online retailers nationwide, including but not limited to Petco, PetSmart, Walmart, Amazon.com, and Chewy.com.

22. As part of their ubiquitous labeling, advertising, and marketing campaign, Defendants represent that the Products provide “[n]utrition that can transform the lives of pets and comfort the pet parents and vets who care for them.”⁶

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

24. Defendants then state “We conduct annual quality systems audits for all manufacturing facilities to ensure we meet the high standards your pet deserves. We demand compliance with current Good Manufacturing Practices (cGMP) and Hill's high quality standards, so your pet's food is produced under clean and sanitary conditions.”⁸

25. Defendants then claim that “[w]e conduct final safety checks daily on every Hill's pet food product to help ensure the safety of your pet's food. Additionally, all finished products are physically inspected and tested for key nutrients prior to release to help ensure your pet gets a consistent products bag to bag.”⁹

⁶ See <https://www.hillspet.com/dog-food>.

⁷ <https://www.hillspet.com/about-us/quality-and-safety>.

⁸ *Id.*

⁹ *Id.*

26. Defendants state that their Products contain the “precise balance” of nutrients needed for a healthy dog: “Guided by science, we formulate our food with precise balance so your pet gets all the nutrients they need — and none they don’t.”¹⁰

27. In generally describing their Products, Defendants claim a “commitment to quality” with more than 220 veterinarians, food scientists, technicians, and PhD nutritionists developing their pet foods.¹¹

28. Regarding Defendants’ Prescription Diet Products, they claim that they are made in an alliance with veterinarians which emphasizes a “unique position to find a solution” to dietary and health issues that dogs may face.¹²

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

¹⁰ See <https://www.hillspet.com/about-us/nutritional-philosophy>.

¹¹ *Id.*

¹² See <https://www.hillspet.com/prescription-diet/dog-food>.



30. Regarding Defendants' Science Diet Products, Defendants claim that they will “[f]eed your dog’s best life with biology-based nutrition” and that “we make our foods using only high-quality ingredients.”¹³

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

¹³ See <https://www.hillspet.com/science-diet/dog-food>.



32. Despite making the aforementioned representations and warranties, the Products were enumerated in Defendants' January 31, 2019 recall and subsequent March 20, 2019 expansion of that recall, which were published on both Hill's Pet Nutrition, Inc.'s website¹⁴ and the U.S. Food and Drug Administration's ("FDA") website¹⁵, and include the following:

¹⁴ See <https://www.hillspet.com/productlist>.

¹⁵ 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 |

| | | |
|--|-------|---|
| Hill's® Prescription Diet® w/d® Canine 13oz | 7017 | 102020T24 102020T25 112020T09 112020T10 092020T30 102020T11 102020T12 |
| Hill's® Prescription Diet® z/d® Canine 13oz | 7018 | 102020T04 112020T22 |
| Hill's® Prescription Diet® Metabolic + Mobility Canine Vegetable & Tuna Stew 12.5oz | 10086 | 102020T05 102020T26 |
| Hill's® Prescription Diet® w/d® Canine Vegetable & Chicken Stew 12.5oz | 10129 | 112020T11 112020T05 102020T04 102020T21 |
| Hill's® Prescription Diet® i/d® Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz | 10423 | 092020T27 092020T28 092020T24 102020T17 102020T19 112020T04 |
| Hill's® Prescription Diet® Derm Defense® Canine Chicken & Vegetable Stew 12.5oz | 10509 | 102020T05 |
| Hill's® Science Diet® Adult 7+ Small & Toy Breed Chicken & Barley Entrée Dog Food 5.8oz | 4969 | 102020T18 |
| Hill's® Science Diet® Puppy Chicken & Barley Entrée 13oz | 7036 | 102020T12 |
| Hill's® Science Diet® Adult Chicken & Barley Entrée Dog Food 13oz | 7037 | 092020T22 102020T13 102020T14 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 |

33. As shown herein and ameliorated by Defendants' recall of at least 675,000 (13.5 million cans) of Products, the consumption of which resulted in Plaintiff and Class members' dogs becoming sick or dying due to Vitamin D poisoning, Defendants' representations and warranties

about the superior quality of their Products, their ingredient suppliers' reliability, and their allegedly strict quality assurance and safety protocols are false and misleading.

Defendants' Price Premium

34. Defendants charged a premium price for their Products because they knew that the aforementioned representations and warranties about the Products' specialized and superior health and nutritional benefits were important to consumers and would induce them to pay a higher price for the Products over other brands of dog food.

35. Consumers, including Plaintiff, are willing to pay a premium price for Defendants' Products because Defendants represent and warrant that they contain superior ingredients, are specifically formulated for the targeted health needs, and meet certain ingredient supply, quality, testing and oversight, and manufacturing standards.

36. Defendants' price premium is demonstrated below:¹⁶

¹⁶ 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 |

The Recall

37. On January 31, 2019 Defendants announced that they were recalling the Products due to a “supplier error,” and informed consumers that consuming the Products could be dangerous to their dogs due to containing dangerous levels of Vitamin D, and later expanded that recall on March 20, 2019 to include additional products.¹⁷

38. Defendants claimed “While vitamin D is an essential nutrient for dogs, ingestion of elevated levels can lead to potential health issues depending on the level of vitamin D and the

¹⁷ See <https://www.hillspet.com/productlist>.

length of exposure, and dogs may exhibit symptoms such as vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and weight loss. When consumed at very high levels, vitamin D can in rare cases lead to potentially life-threatening health issues in dogs, including renal dysfunction.”¹⁸

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

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

PLAINTIFF’S EXPERIENCE

41. Plaintiff was the owner of Lil’ Mama until her death in July 2018.

42. In March 2018, after receiving a prescription from her veterinarian due to noticing slightly elevated kidney levels, Plaintiff was prescribed and purchased at least Defendants’ Hill’s Prescription Diet k/d Kidney Care for Lil’ Mama.

43. Plaintiff paid a premium for Hill’s Prescription Diet k/d Kidney Care because Defendants’ ubiquitous labeling, advertising, and marketing campaign led her to believe that the product was safe for Lil’ Mama to consume and would treat Lil’ Mama’s kidney issues.

¹⁸ *Id.*

44. Specifically, Defendants state that “Hill's nutritionists and veterinarians developed Prescription Diet® k/d®, clinical nutrition to support your dog's kidney health. In fact, The nutrition of Prescription Diet® k/d® is clinically proven to improve & lengthen quality of life,” “Protects vital kidney & heart function,” “Boosts vitality and energy,” and contains “**High quality** protein and thoughtfully sourced **ingredients**.”¹⁹

45. In or around April 2018, Plaintiff began feeding the Hill's Prescription Diet k/d Kidney Care to Lil' Mama because she believed the product would help improve and lengthen Lil' Mama's life.

46. Upon feeding Lil' Mama the Hill's Prescription Diet k/d Kidney Care, she began to present symptoms of Vitamin D poisoning, including vomiting, diarrhea, and weight loss.

47. Visits to her veterinarian revealed that Lil' Mama's kidney numbers were irregular and would not go down despite being placed on the Hill's Prescription Diet k/d Kidney Care, which Hill's labeled, advertised, and promoted as being specifically targeted for treating kidney problems in dogs.

48. On or about July 7, 2018, Lil' Mama was admitted to the veterinarian and euthanized.

CLASS ACTION ALLEGATIONS

49. Plaintiff seeks certification of classes under Fed.R.Civ.P. 23 on behalf of herself and on behalf of all other persons who purchased Defendants' Products from retailers nationwide and in the State of New York (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

¹⁹ See <https://www.hillspet.com/dog-food/pd-kd-canine-canned>.

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.

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

- a. Nationwide Class: All persons in the United States who purchased the Products.
- b. New York Subclass: All persons in New York who purchased the Products.

51. **Commonality and Predominance:** Common questions of fact and law exist as to all proposed members of the Classes and predominate over questions affecting only individual members of the Classes. These common questions include, but are not limited to:

- a. Whether the Products contained dangerous levels of Vitamin D;
- b. Whether Defendants' labeling, advertising, and marketing statements are false or misleading;
- c. Whether Defendants charge a premium price for the Products over other brands of dog food;
- d. Whether Defendants breached any express or implied warranties;
- e. Whether the Products were either diminished in value had no value as a dog food;
- f. Whether Defendants owed a duty of care to Plaintiff and Class members;
- g. Whether Defendants breached that duty of care;
- h. Whether Defendants were unjustly enriched as a result Plaintiff and Class members buying the Products;
- i. Whether Plaintiff and Class members have sustained damages as a result of the alleged conduct and, if so, the appropriate measure of such damages;

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

52. **Typicality:** Plaintiff's claims are typical of the claims of the proposed Classes. Plaintiff and the members of the proposed Classes all purchased the Products which gives rise to substantially the same claims.

53. **Numerosity:** Defendants have manufactured and sold the Products to tens of thousands of consumers. As of the date of filing, Defendants have recalled at least 675,000 cases (roughly 13.5 million cans) of Products. Members of the Classes are therefore too numerous to join in a single action. Moreover, members of the Classes may be identified through retailer sales records, veterinary practice sales records and prescription records, and self-identification processes, and may then be notified of the pendency of this action by mail or electronic mail (which can be supplemented by published notice at the discretion of the Court).

54. **Adequacy:** Plaintiff is an adequate representative of the proposed Classes because her interests are not in conflict with the interests of the Classes he seeks to represent. Plaintiff has retained counsel that is competent and highly experienced in complex class action litigation, and will prosecute this action vigorously on behalf of the proposed Classes.

55. **Superiority:** A class action is superior to other available means for the fair and efficient adjudication of this case. The injuries suffered by each member of the Classes, while meaningful on an individual basis, are not great enough to make the prosecution of individual actions economically or judicially feasible. Even if members of the Classes themselves could afford such individualized litigation, the court system could not and would be burdened by it. In

addition to the burden and expense of managing all of the actions arising from these facts, individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation would also increase the delay and expense to all parties and the court system. By contrast, a class action poses fewer management difficulties and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

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

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

COUNT I

Violation of N.Y. General Business Law § 349

58. Plaintiff, individually and on behalf of the New York Subclass, repeats and realleges all previous paragraphs as if fully set forth herein.

59. Plaintiff and members of the New York Subclass are “persons” within the meaning of N.Y. Gen. Bus. § 349(h).

60. Defendants are a “person, firm, corporation or association or agent or employee thereof” within the meaning of N.Y. Gen. Bus. § 349(b).

61. Under N.Y. Gen. Bus. § 349, “[d]eceptive acts and practices in the conduct of any business, trade or commerce or in the furnishing of any service” are unlawful. N.Y. Gen. Bus. § 349(a).

62. Defendants engaged in deceptive acts and practices in the conduct of business, trade, and commerce by formulating, manufacturing, labeling, advertising, marketing, distributing, and selling the Products to the Subclass while misrepresenting and concealing material facts about the contents of the Products, including representing that the Products were safe for consumption by dogs, healthier and superior than other brands of dog food, and/or specifically targeted to the unique health needs of Plaintiff’s and the Subclass’ dogs, when in reality they were harmful and toxic to dogs because of their dangerous Vitamin D content.

63. Defendants had exclusive knowledge of the fact that the Products were not fit for their intended purpose and were not safe for consumption by dogs. Defendants failed to disclose these facts despite having a duty to disclose this material information to Plaintiff and the Subclass.

64. Plaintiff and members of the Subclass were unaware, and did not have reasonable means of discovering, the material facts that Defendants both misrepresented and failed to disclose.

65. Defendants’ failure to disclose material facts concerning the contents of the Products was misleading in a material respect because a reasonable consumer acting reasonably under the circumstances would have been misled by Defendants’ conduct.

66. These acts and practices were consumer-oriented because they had a broad impact on consumers at large, affecting all purchasers of the Products.

67. As a direct and proximate result of Defendants’ unlawful methods, acts, and practices, Plaintiff and the Subclass were injured because, among other reasons, they purchased the Products. Had Plaintiff and members of the Subclass known about the defective nature of the

Products, they would not have purchased the Products, they would not have fed their dogs the Products, their dogs would not have suffered the resulting medical conditions or would not have died, and they would have avoided the expensive medical treatment associated therewith.

68. As a direct, foreseeable and proximate result of Defendants' misrepresentations, omissions, deceptive acts, and practices, Plaintiff and members of the Subclass suffered actual damages by paying for the Products and paying for veterinary care and other costs arising from the illness and/or death of their dogs.

69. Defendants' acts were willful and knowing.

70. Plaintiff and members of the Subclass are entitled to injunctive relief, recovery of actual damages or fifty dollars per violation (whichever is greater), treble damages up to one thousand dollars, and their reasonable costs and attorneys' fees. *See*, N.Y. Gen. Bus. § 349(h).

COUNT II

Violation of N.Y. General Business Law § 350

71. Plaintiff individually and on behalf of the New York Subclass, repeats and realleges all previous paragraphs as if fully set forth herein.

72. Plaintiff and members of the Subclass are "persons" within the meaning of N.Y. Gen. Bus. § 350-e.

73. Under New York law, "[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful." N.Y. Gen. Bus. § 350.

74. Defendants engaged in false advertising in the conduct of business, trade, and commerce by formulating, manufacturing, labeling, advertising, marketing, distributing, and selling the Products to the Subclass while misrepresenting and concealing material facts about the

contents of the Products, including representing that the Products were safe for consumption by dogs, healthier and superior than other brands of dog food, and/or specifically targeted to the unique health needs of Plaintiff's and the Subclass' dogs, when in reality they were harmful and toxic to dogs because of their dangerous Vitamin D content.

75. Defendants had exclusive knowledge of the fact that the Products were not fit for their intended purpose and were not safe for consumption. Defendants failed to disclose these facts despite having a duty to disclose this material information to Plaintiff and the Class.

76. Plaintiff and members of the Subclass were unaware, and did not have reasonable means of discovering, the material facts that Defendants both misrepresented and failed to disclose.

77. Defendants' failure to disclose material facts concerning the contents of the Products, and misrepresentations concerning the efficacy and performance properties thereof, were misleading in a material respect because a reasonable consumer acting reasonably under the circumstances would have been misled by Defendants' conduct.

78. These acts and practices were consumer-oriented because they had a broad impact on consumers at large, affecting all purchasers of the Products.

79. As a direct and proximate result of Defendants' unlawful methods, acts, and practices, Plaintiff and members of the Subclass were injured because, among other reasons, they purchased the Products. Had Plaintiff and members of the Subclass known about the defective nature of the Products, they would not have purchased the Products, they would not have fed their dogs the Products, their dogs would not have suffered the resulting medical conditions or would not have died, and they would have avoided the expensive medical treatment associated therewith.

80. As a result of Defendants' misrepresentations, omissions, deceptive acts, and unfair practices, Plaintiff and the members of the Subclass suffered actual damages by paying for the

Products and paying for veterinary care and other costs arising from the illness and/or death of their dogs.

81. Defendants' acts were willful and knowing.

82. Plaintiff and members of the Subclass are entitled to injunctive relief, recovery of actual damages or five hundred dollars per violation (whichever is greater), treble damages up to ten thousand dollars, and their reasonable costs and attorneys' fees. *See*, N.Y. Gen. Bus. § 350-e(3).

COUNT III

Breach of Express Warranty

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

84. Defendants sold and Plaintiff and members of the Classes purchased Defendants' Products.

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

86. Defendants' Products did not conform to their representations and warranties because they contained dangerous levels of Vitamin D which is harmful to dogs and led to severe health symptoms and, in some cases, death.

87. As a direct and proximate result of Defendants' breaches of their express warranties and the Products' failure to conform to such warranties, Plaintiff and members of the Classes have been damaged in that they did not receive the Products as specifically warranted and/or paid a

premium price for Products when their value was diminished, they had no value for their intended purpose, and incurred veterinary costs, prescription costs, and other related expenses.

COUNT IV

Breach of Implied Warranty

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

89. Defendants sold and Plaintiff and members of the Classes purchased Defendants' Products.

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

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

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

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

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

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

COUNT V

Negligence

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

97. Defendants claim they implement regular quality assurance and safety protocols with the purpose of making sure that its Products are safe for dogs to consume.

98. Defendants owed a duty to Plaintiff and members of the Classes to label, advertise, market, manufacture, distribute, and sell products that are safe and fit dogs to consume.

99. Defendants failed to exercise due care, and were negligent in the formulation, manufacture, distribution, inspecting, labeling, advertising, marketing, warranting, and sale of the Products to Plaintiff and members of the Classes.

100. Defendants failed to implement adequate quality assurance and safety inspection procedures to test the Products for dangerous levels of Vitamin D, resulting in such Products entering the stream of commerce for sale to Plaintiff and members of the Classes and for consumption by their dogs.

101. Defendants knew or should have known that their Products posed an unreasonable and unacceptable risk of injury or death to Plaintiff's and members of the Classes' dogs, and that

their actions or omissions would result in damages that were both foreseeable and could have been avoided.

102. As a direct and proximate result of Defendants' breaches of their duties, Plaintiff and members of the Classes have been damaged and suffered ascertainable losses including payment for unreasonably dangerous Products, payment of veterinary costs, prescription costs, and other related expenses and losses.

COUNT VI

Unjust Enrichment

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

104. Plaintiff conferred benefits on Defendants by purchasing the Products at a premium price.

105. Defendants had knowledge of and enjoyed such benefits.

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

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

PRAYER FOR RELIEF

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

A. An order certifying the Nationwide Class and New York Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and Subclass and Plaintiff’s attorneys as Class Counsel to represent the members of the Class and Subclass;

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

C. For prejudgment and post-judgment interest on all amounts awarded;

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

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

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

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all triable claims.

Dated: May 20, 2019

GARDY & NOTIS, LLP

By: s/ James S. Notis
James S. Notis
Jennifer Sarnelli
126 East 56th Street, 8th Floor
New York, NY 10022-3613
Telephone: (212) 905-0509
Email: jnotis@gardylaw.com
jsarnelli@gardylaw.com

Counsel for Plaintiff and the Proposed Classes

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
 LISA LAVALLE, on behalf of herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Suffolk County
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 James S. Notis, Gardy & Notis, LLP, 126 East 56th Street, 8th Floor,
 New York, NY 10022; 212-905-0509; jnotis@gardylaw.com

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

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

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

Attorneys (If Known)

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

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

| | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|---|--|--|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | LABOR | SOCIAL SECURITY | |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act | <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) | |
| | | | IMMIGRATION | FEDERAL TAX SUITS | |
| | | | <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | |

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

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

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

Brief description of cause:
Consumer Class Action

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 05/20/2019 SIGNATURE OF ATTORNEY OF RECORD s/James S. Notis

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, James S. Notis, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

None

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: 