

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

SHAREL MAWBY, on behalf of herself)
and all others similarly situated,)

Plaintiff,)

v.)

MILO’S KITCHEN, LLC,)
SERVE: Registered Agent)
The Corporation Trust Company)
Corporation Trust Center)
1209 Orange Street)
Wilmington, DE 19801,)

BIG HEART PET BRANDS, and)
SERVE: Registered Agent)
CT Corporation System)
120 South Central Avenue)
Clayton, MO 63105, and)

THE J.M. SMUCKER COMPANY,)
SERVE: Registered Agent)
CT Corporation System)
1300 E. 9th Street)
Cleveland, OH 44114,)

Defendants.)

Case No. 1616-CV03384

Division No. 12

JURY TRIAL DEMANDED

FIRST AMENDED CLASS ACTION PETITION

Plaintiff Sharel Mawby (“Plaintiff”), on behalf of herself and on behalf of all others similarly situated in the State of Missouri, for her First Amended Class Action Petition against Defendants Milo’s Kitchen, LLC (“Milo’s Kitchen”), Big Heart Pet Brands (also known as Big Heart Pet Brands Incorporated) (“Big Heart”), and The J.M. Smucker Company (“J.M. Smucker”) (collectively, “Defendants”), states and alleges as follows:

Nature of the Action

1. This lawsuit asserts that, from March 2011 to January 2013, Milo's Kitchen, Big Heart (formerly known as Del Monte Corporation or Del Monte Foods) and J.M. Smucker, leading producers, marketers, and sellers of dog treats throughout the United States, falsely labeled and marketed their Milo's Kitchen brand Chicken Jerky and Chicken Grillers Home-style Dog Treats (collectively, "Chicken Dog Treats") as "wholesome," "100% real," and "made with the same quality of ingredients and care that you want with your food," among other representations, when the Chicken Dog Treats were in fact made with substandard, non-wholesome ingredients that were contaminated with poisonous antibiotics and other potentially lethal substances.

2. Dogs that are fed Defendants' Chicken Dog Treats may suffer from acute renal failure or other severe illness within hours or days after consuming the product, which in many instances can be fatal. Symptoms include excessive and uncontrollable urination, prolonged vomiting, bloody stools or diarrhea, alterations in mental state or mood, and an abnormal aversion to food by the dog.

3. Defendants deceptively marketed their Chicken Dog Treats to appeal to consumers' preference for premium quality, healthy dog food products. Defendants' deceptive marketing of their Chicken Dog Treats began in March 2011 and continued until at least January 9, 2013, when Defendants announced a recall of their Chicken Dog Treats due to immense pressure from the U.S. Food and Drug Administration ("FDA"), consumer and pet advocacy groups, and state governmental agencies including the New York State Department of Agriculture and Markets ("NYSDAM"). Despite this announcement, Defendants' Chicken Dog Treats continued to be sold in Jackson County, Missouri, after the January 9, 2013 recall.

4. Plaintiff purchased Defendants' Chicken Dog Treats for her dog Honda in 2012. Plaintiff's dog depends on its owner to purchase dog food products that are healthy and nutritious.

5. Due to Plaintiff's beliefs in the premium quality and healthful nature of Defendants' Chicken Dog Treats, Plaintiff not only purchased a dog food product that was hazardous to her dogs' health, but paid a premium price for the product.

6. Plaintiff is similarly situated to thousands of consumers throughout Missouri who paid a premium price for Defendants' Chicken Dog Treats despite the existence of hazardous contaminants and other potentially lethal chemicals that made the product unsuitable for canine consumption and, therefore, worthless.

7. Plaintiff seeks certification of a state-wide class of all consumers who, from March 1, 2011 to January 31, 2013 (the "Class Period"), purchased within the State of Missouri Chicken Dog Treats produced and marketed by Defendants (the "Class").

8. Plaintiff alleges on behalf of herself and members of the Class that Defendants' deceptive advertising, misrepresentations, omissions, concealment, and course of conduct in connection with the sale and marketing of their Chicken Dog Treats violated the Missouri Merchandising Practices Act. MO. REV. STAT. § 407.010 *et seq.*

9. On behalf of herself and members of the Class, Plaintiff seeks actual and statutory damages, pre-judgment and post-judgment interest and reasonable attorneys' fees and litigation costs.

The Parties

10. Plaintiff is a citizen of the State of Missouri and resides in Independence, Missouri. During the Class Period, Plaintiff purchased Defendants' Chicken Dog Treats from a

Wal-Mart Store in Independence, Missouri for the purpose of feeding them to her dog – a personal, family, or household purpose. Rather than purchasing a “wholesome” product “made with the same quality of ingredients and care that you want with your food,” as marketed by Defendants, in reality, Plaintiff was purchasing a product containing poisonous antibiotics and other potentially lethal substances. Plaintiff unknowingly poisoned her dog when she fed Defendants’ Chicken Dog Treats to her dog.

11. Defendant Milo’s Kitchen is a Delaware limited liability company with its principal place of business at One Maritime Plaza, San Francisco, California, 94111. On information and belief, Defendant Milo’s Kitchen manufactured, marketed, and sold Chicken Dog Treats nationwide. Milo’s Kitchen is a wholly-owned subsidiary of Big Heart.

12. Defendant Big Heart, which formerly did business (including during the Class Period) as Del Monte Corporation or Del Monte Foods (“Del Monte”), is a California corporation with its principal place of business at One Maritime Plaza, San Francisco, California, 94111. On information and belief, Big Heart is the sole member and manager of Milo’s Kitchen. On information and belief, Big Heart, while doing business as Del Monte, affirmatively directed and controlled Milo’s Kitchen’s conduct in deceptively marketing and selling the Chicken Dog Treats, as shown by press releases in which Del Monte described its involvement in the marketing and sale of the Chicken Dog Treats. *See, e.g., Milo’s Kitchen® Voluntarily Recalls Chicken Jerky and Chicken Grillers Home-style Dog Treats* (January 9, 2013), http://www.miloskitchen.com/assets/psds/Milos%20Kitchen_Final.pdf (identifying the Dog Treats as Del Monte products, describing the “high quality standards” Del Monte imposed on Milo’s Kitchen, and revealing Del Monte’s involvement in deciding to recall the Chicken Dog

Treats). A copy of this press release as posted on FDA's web site is attached hereto as Exhibit D.

13. J.M. Smucker is an Ohio corporation with its principal place of business in Orrville, Ohio. In March 2015, J.M. Smucker acquired Big Heart (including Big Heart's subsidiary Milo's Kitchen) in a cash and stock transaction valued at approximately \$6.0 billion. As a result of this acquisition, Milo's Kitchen and Big Heart are now wholly-owned subsidiaries of J.M. Smucker, which has complete control and authority over the conduct of Milo's Kitchen and Big Heart, and therefore is liable for their unlawful conduct. Moreover, by virtue of its acquisition of Big Heart and Milo's Kitchen, J.M. Smucker is liable for the unlawful conduct of Big Heart and Milo's Kitchen under principles of successor liability.

Jurisdiction and Venue

14. At all times relevant hereto, Defendants transacted business within the State of Missouri and purposely availed themselves of the benefits and protections of the State of Missouri. This Court has personal jurisdiction over Defendants pursuant to Missouri Supreme Court Rule 54.06 and MO. REV. STAT. § 506.500.

15. Venue is proper in this Court pursuant to MO. REV. STAT. § 407.025.1 because Plaintiff purchased the Chicken Dog Treats in Jackson County, Missouri. Venue also is proper pursuant to MO. REV. STAT. § 508.010(4) because all Defendants are nonresidents of the State of Missouri. Venue is proper in the Eastern Division of the Jackson County Circuit Court located in Independence, Missouri, pursuant to MO. REV. STAT. § 478.461 because Plaintiff purchased the Chicken Dog Treats in the "eastern" portion of Jackson County, as defined in MO. REV. STAT. § 478.461.1, and because Plaintiff is a resident of the "eastern" portion of Jackson County.

16. The individual claim of Plaintiff involves an amount in controversy that does not exceed \$75,000, exclusive of interests and costs.

17. The aggregate claims of the Plaintiff and all class members involve an amount in controversy that does not exceed \$5,000,000, exclusive of interest and costs.

Factual Allegations

18. Defendants are the manufacturers, importers, marketers, and sellers of Milo's Kitchen brand dog food products, including the Chicken Dog Treats.

19. Milo's Kitchen Chicken Jerky product was introduced in the marketplace in March 2011. Milo's Kitchen Chicken Grillers product was introduced in March 2012.

20. According to Deepak Chichili, Finance Director for Del Monte Corporation, retail sales in Missouri for the Chicken Dog Treats from their introduction in the marketplace until January 31, 2013 amounted to approximately \$1,871,000.

21. Plaintiff purchased two bags of Defendants' Chicken Jerky product in 2012 from a Wal-Mart Store in Independence, Missouri, and fed them to her dog, Honda. After consuming the product, he exhibited signs that he had ingested a harmful food product, including lethargy, a swollen belly, diarrhea and excessive consumption of water. As a result, Plaintiff sought and obtained appropriate veterinary care for Honda.

22. There were no material changes to Honda's diet other than consumption of the Chicken Jerky product, and he was not fed an undue number of the Chicken Dog Treats.

23. Defendants marketed the Milo's Kitchen brand dog treats, including the Chicken Dog Treats, as "premium quality" and natural dog food products. Del Monte Corp., Annual Report (Form 10-K), at 28 (June 29, 2012).

22. As shown in Exhibit A, the packages for Milo's Kitchen Chicken Dog Food Treats contain numerous representations as to the premium quality of the product:

- (a) "No artificial flavors or colors";
- (b) "100% Real";
- (c) "Wholesome & Delicious";
- (d) "No Fillers"; and
- (e) "[Y]our dog deserves treats made with the same quality of ingredients and care that you want with your food."

23. Because it is not feasible for a reasonable consumer to test or independently determine the accuracy or quality of a dog food product at the point of sale, consumers must rely on the information and representations on dog food product packaging to determine whether to buy a packaged dog food product.

24. Contrary to Defendants' packaging and marketing of the Chicken Dog Treats as a premium quality, wholesome dog food product, Defendants' Chicken Dog Treats during the Class Period actually contained substandard and non-wholesome ingredients that were imported from China. More egregiously, the Chicken Dog Treats were contaminated with poisonous antibiotics and other potentially lethal chemicals that make the product unsuitable for canine consumption.

A. The FDA's Initial Warnings and Investigations into the Chicken Dog Treats

25. On September 26, 2007, the FDA issued a cautionary warning regarding the quality and known hazards of chicken jerky products such as Defendants' Chicken Dog Treats. The FDA stated that it was "cautioning consumers of a potential association between development of illness in dogs and the consumption of chicken jerky products also described as

chicken tenders, strips or treats.” See FDA, Center for Veterinary Medicine, *FDA Cautions Consumers about Chicken Jerky Products for Dogs* (September 26, 2007). A copy of this warning is attached hereto as Exhibit B.

26. On November 18, 2011, the FDA released another cautionary warning suggesting that chicken dog treats imported from China were causing severe illness in dogs. The FDA release stated, in pertinent part:

In the last 12 months, FDA has seen an increase in the number of complaints it received of dog illnesses associated with consumption of chicken jerky products imported from China. These complaints have been reported to FDA by dog owners and veterinarians.

FDA is advising consumers who choose to feed their dogs chicken jerky products to watch their dogs closely for any or all of the following signs that may occur within hours to days of feeding the products: decreased appetite; decreased activity; vomiting; diarrhea, sometimes with blood; increased water consumption and/or increased urination. . . . Owners should consult their veterinarian if signs are severe or persist for more than 24 hours. Blood tests may indicate kidney failure (increased urea nitrogen and creatinine). Urine tests may indicate Fanconi syndrome (increased glucose). Although most dogs appear to recover, some reports to the FDA have involved dogs that have died.

FDA, Center for Veterinary Medicine, *FDA Continues to Caution Dog Owners about Chicken Jerky Products* (November 18, 2011). A copy of this warning is attached hereto as Exhibit C.

27. From 2010 to December 2012, the FDA received 2,674 reports of dog illnesses and 501 reports of dog deaths by consumers who fed their dogs chicken dog treats imported from China. The reports were identified in a published list of complaints received by the FDA District Consumer Compliance Coordinators. Many such complaints specifically identify Milo’s Kitchen Chicken Dog Treats as the consumed dog treat product. See FDA, Center for Veterinary Medicine, *FDA CVM Update on Jerky Treats* (January 9, 2013), available at <http://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm334944.htm> (follow “Reports” hyperlinks).

28. A dog food product that requires the consumer to watch his or her dog closely after consumption for signs of vomiting, bloody diarrhea, decreased appetite, and decreased activity is not a “wholesome” product and is not a product “made with the same quality of ingredients and care that you want with your food.”

29. Despite Defendants’ knowledge of the substandard, non-wholesome nature of their Chinese-made Chicken Dog Treats and the clear connection between their products and the illness and death of numerous dogs, Defendants did not warn Plaintiffs or members of the Class of the hazards associated with their product. To the contrary, Defendants promoted their Chicken Dog Treats with patently false representations as to the wholesomeness and premium quality of the product.

B. The NYSDAM’s Discovery of Illegal Contaminants in the Chicken Dog Treats and Subsequent Withdrawal of the Chicken Dog Treats from the Market

30. On January 7, 2013, the NYSDAM informed the FDA that it had detected chemical contaminants in Defendants’ Chicken Dog Treats. The NYSDAM performed a series of liquid chromatography-tandem mass spectrometry (“HPLC-MS”) tests, which revealed four antibiotics not approved for use in United States poultry and one that, while approved for use in the United States, is restricted to nearly undetectable levels in the final product. The five chemical contaminants identified by the HPLC-MS tests in Defendants’ Chicken Dog Treats are sulfaclozine, sulfaquinoxaline, enrofloxacin, tilmicosin, and trimethoprim:

- (a) **Sulfaclozine** is a synthetic sulfonamide antimicrobial substance. Sulfaclozine is known to cause cysalluria, hematuria, and blocking of kidney tubules, as well as inappetence, diarrhea, fever, urticarial, and hypothyroidism in dogs.
- (b) **Sulfaquinoxaline** is an antibacterial sulfonamide. According to data from the FDA’s CVM Cumulative List from 1987 to 2007, sulfaquinoxaline is associated

with “depression/lethargy, respiratory distress, pallor, swelling at multiple sites, [and] death” in dogs. VETERINARY PHARMACOVIGILANCE: ADVERSE REACTIONS TO VETERINARY MEDICINAL PRODUCTS 141 (K.N. Woodward ed., 1st ed. 2009).

- (c) **Enrofloxacin** is a fluoroquinolone antimicrobial compound. Enrofloxacin has been shown to cause chondrotoxicity in juvenile animals, which results in “fluid-filled vesicles that project about the articular surfaces, chondrocytes with shrunken cytoplasm, mitochondrial swelling and enlargement of cytoplasmic vacuoles in immature animals including rats, dogs, horses and poultry.” *Id.* at 728.
- (d) **Tilmicosin** is a macrolide antibiotic agent used to treat bovine respiratory disease. Tilmicosin is associated with “death [and] pain” in dogs. *Id.* at 142. It reportedly caused the death of two farmers in North America who were accidentally exposed to the substance. *Id.* at 5.
- (e) **Trimethoprim** is a sulfonamide antibiotic approved by the FDA for use in horses, a non-food animal. Trimethoprim is associated with “depression/lethargy, anorexia, fever, anaemia, death, [and] vomiting” in dogs. *Id.* at 141.

31. A product that contains illegal antibiotics, such as Defendants’ Chicken Dog Treats, is not a “wholesome” product that is “100% real” or “made with the same quality of ingredients and care that you want with your food.”

32. The existence of even trace amounts of antibiotics, particularly sulfonamides such as sulfaclozine and sulfaquinoxaline, can have a severe adverse effect on dogs, which have a recognized hypersensitivity to antimicrobial agents and sulfonamides. Adverse effects of sulfonamides in dogs are typically associated with idiosyncratic sulfonamide toxicosis resulting

from a T-cell-mediated response to proteins that have been haptenated by oxidative sulfonamide metabolites. Acute renal failure, including interstitial nephritis or tubule-interstitial nephritis, is commonly associated with the nephrotoxic qualities of sulfonamides. Dogs that consume sulfonamides may also suffer from anaphylaxis, a severe, life-threatening allergic reaction.

33. Due to intense pressure from the NYSDAM, the FDA and consumer and pet advocacy groups, Defendants issued a press release announcing a recall of their Chicken Dog Treats on January 9, 2013, almost two years after they began selling their Chinese-made product in the United States in spite of numerous complaints and extensive reports and investigations into dog illness and death caused by Chinese-made chicken dog treats. The recall was specifically prompted by the NYSDAM's discovery of illegal antibiotics in the Chicken Dog Treats and was announced by Rob Leibowitz, the General Manager of the Pet Products Division of Del Monte, who stated that Defendants had "decided to recall both products and asked retailers to remove the products from their shelves" because "the presence of even trace amounts of these antibiotics does not meet our high quality standards." *See* FDA, *Milo's Kitchen® Voluntarily Recalls Chicken Jerky and Chicken Grillers Home-style Dog Treats* (January 9, 2013). A copy of this press release posted on FDA's web site is attached hereto as Exhibit D.

34. Defendants' press release admits that "the antibiotics found in [Defendants' Chicken Dog Treats] were unapproved and should not be present in the final food product." *See* Ex. D. And despite the widely known hypersensitivity of dogs to sulfonamides, the press release also admits that Defendants "did not test for all of the specific antibiotics found by the New York Department of Agriculture." *See id.*

C. The FDA's Intensified Investigation and Implication of the Chicken Dog Treats

35. On October 22, 2013, the FDA released “an update on its investigation into pet illnesses and deaths associated with jerky pet treats from China.” The FDA’s update reported that, “[a]s of September 24, 2013, FDA has received more than 3000 complaints of illness related to consumption of chicken, duck, or sweet potato jerky treats, nearly all of which are imported from China. The reports involve more than 3600 dogs, 10 cats and include more than 580 deaths.” The update also included “a description of the extent of the agency’s testing and current findings, as well as a ‘Dear Veterinarian’ letter and Fact Sheet for pet owners.” The FDA noted that the “rate of complaints associated with jerky pet treats dropped sharply after several well-known brands were removed from the market in January 2013[.]” *See FDA, FDA Releases Progress Report on Jerky Pet Treat Investigation* (Oct. 22, 2013). A copy of this progress report is attached hereto as Exhibit E.

36. In the “Dear Veterinarian” Letter it released on October 22, 2013, the FDA asked veterinarians to submit various samples, urine and tissue tests, and other important information to the FDA for analysis. The Letter also requested that veterinarians warn consumers about the jerky dog treats by “[p]osting, handing out or otherwise making available to your clients the enclosed Fact Sheet on jerky pet treat products.” *See FDA, Jerky Pet Treats – Veterinarians* (October 22, 2013). A copy of this letter is attached hereto as Exhibit F.

37. The FDA’s “Fact Sheet” released on October 22, 2013 recommends that pet owners avoid feeding the jerky treats to their pet(s) and, if the jerky treats are in fact consumed by their pet(s), what symptoms need to be monitored. The FDA’s “Fact Sheet” provides the following warnings to consumers who feed jerky treats to their pets:

Watch your pet closely. Signs that occur within hours to days of feeding the products are decreased appetite, decreased activity, vomiting, diarrhea (sometimes

with blood or mucus), increased water consumption and/or increased urination. Severe cases are diagnosed with pancreatitis, gastrointestinal bleeding, and kidney failure or the resemblance of rare kidney related illness called Fanconi syndrome.

The FDA advised that “[p]et treats are not a necessary part of a fully balanced diet, so eliminating them [from their diet] will not harm pets.” See FDA, *FDA Facts: Jerky Pet Treats* (October 2013). A copy of this document is attached hereto as Exhibit G.

38. The FDA also released other material in conjunction with the update, including an article titled, “Why are Jerky Treats Making Pets Sick?” In the article, the FDA stated that it has “conducted more than 1,200 tests, visited jerky pet treat manufacturers in China and collaborated with colleagues in academia, industry, state labs and foreign governments. Yet the exact cause of the illnesses remains elusive.” The FDA again “urge[d] pet owners to be cautious about providing jerky treats” while it determined the “root cause of this problem[.]” See FDA, *Why Are Jerky Treats Making Pets Sick?* (Oct. 23, 2013). A copy of this document is attached hereto as Exhibit H.

39. The Associate Commissioner for FDA’s Office of Foods and Veterinary Medicine authored a similar article titled “Help Us Find Out Why Jerky Treats Are Making Pets Sick.” See FDA Voice, *Help Us Find Out Why Jerky Treats Are Making Pets Sick* (October 23, 2013). A copy of this document is attached hereto as Exhibit I.

40. Numerous complaints received by the FDA from veterinarians and consumers during the months following the January 2013 recall once again identified Defendants’ Chicken Dog Treats as the dog treat products consumed prior to the illness or death of numerous pets. See FDA, February 2013-September 2013 Jerky Complaints, *available at* <http://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/UCM371578.pdf>.

41. While the FDA has not been able to identify the “exact cause of the illnesses” and the “root cause of this problem,” one thing is clear: consumption of the Chicken Dog Treats has made pets severely ill and may result in death. Furthermore, it is not clear how many other illnesses and deaths have yet to be reported to the FDA. The FDA itself recognizes that, despite the publically announced recall and media announcements, “we know there are still pet owners who are unaware of this issue.” *See Help Us Find Out Why Jerky Treats Are Making Pets Sick*, Ex. I, supra.

42. Indeed, an NBC News Health article, dated November 4, 2013, reported that an additional 1,500 complaints were submitted to the FDA in the week following the FDA’s updates on October 22, 2013 regarding the jerky dog treats. A copy of this article is attached hereto as Exhibit J.

43. A more recent NBC News Health article, dated January 22, 2014, states that “since 2007, nearly 600 pets, mostly dogs, have died and 4,500 have been sickened after eating chicken, duck and sweet potato products made in China,” This article further indicates that “despite repeated FDA warnings that consumers should avoid jerky pet treats,” Defendants intend to “resume selling Milo’s Kitchen Chicken Jerky Strips and Chicken Grillers Recipe treats in March using U.S.-sourced meat.” A copy of this article is attached hereto as Exhibit K.

44. The FDA’s next investigative update, issued May 16, 2014, states that “[a]s of May 1, 2014, FDA has received approximately 4,800 reports of pet illnesses which may be related to consumption of the jerky treats. These include about 1,800 reports received since FDA’s last update in October 2013. The reports involve more than 5,600 dogs, 24 cats, three humans, and include more than 1,000 canine deaths.” The update notes that as of May 1, 2014, the FDA had performed post-mortem examinations of 26 dogs “suspected of having jerky pet

treat-associated illnesses,” and that in 13 cases “jerky pet treats could not be ruled out as contributing to the illness.” Copies of the May 16, 2014 update materials are attached hereto as Exhibit L.

45. The FDA’s May 2014 update also notes that testing has revealed the presence of amantadine in chicken jerky treats imported from China. Amantadine is an antiviral drug used to treat avian flu in humans. As the FDA notes, amantadine has been “prohibited [from] use in poultry [since] 2006” and in the chicken jerky treats it is considered an “adulterant” that “should not be present at all” in the products. FDA, Center for Veterinary Medicine, *FDA Provides Latest Information on Jerky Pet Investigation* (May 16, 2014), included in Exhibit L attached hereto.

46. In its most recent update, issued February 19, 2015, entitled *FDA Progress Report on Ongoing Investigation into Jerky Pet Treats*, the FDA reports that as of September 30, 2014, it had received “approximately 5,000 complaints of illness associated with consumption of chicken, duck, or sweet potato jerky treats, most of which involve products imported from China,” and that the reports involve more than 5,800 dogs and more than 1,000 canine deaths. The FDA also states in this update that it “continues to believe that there is an association between some of the reports and consumption of jerky pet treats.” Copies of FDA, *FDA Progress Report on Ongoing Investigation into Jerky Pet Treats* (updated February 19, 2015), and related materials issued or updated February 19, 2015, are attached hereto as Exhibit M.

D. Peer-Reviewed Materials Also Implicate the Chicken Dog Treats

46. The scientific community also has implicated similar jerky treats imported from China in the illness and death of hundreds of pets. The Australian Veterinary Journal (“AVJ”) recently published a peer-reviewed article in September 2013 titled, “Acquired proximal renal

tubulopathy in dogs exposed to a common dried chicken treat: retrospective study of 108 cases (2007-2009).” In the article, a group of veterinarians and pathologists analyzed 108 cases of dog illness that occurred in Australia after consuming chicken jerky dog treats made in China, branded as KraMar Supa Naturals Chicken Breast Strips. See MF Thompson, LM Fleeman, AE Kessell, LA Steenhard, and SF Foster, *Acquired proximal renal tubulopathy in dogs exposed to a common dried chicken treat: retrospective study of 108 cases (2007-2009)*, 91 *Australian Veterinary J.* 368 (Sept. 2013). A copy of this article is attached hereto as Exhibit N.

47. The authors of the AVJ article concluded that, based on the pathology of the illnesses, “[t]he treats likely contained a toxin targeting the proximal renal tubules.” *Id.* at 368. The AVJ article reported that, of the dogs that actually survived the illnesses, “8 showed improvement within 2 weeks or less following cessation of the treats, but others were not considered clinically normal until 6 months later[.]” *Id.* at 370. The authors also offered their insight into a larger issue:

This outbreak highlights a larger issue of widespread intoxication caused by the globalization of food systems. There are economic benefits of outsourcing raw materials, manufacturing and distribution processes, but this is accompanied by increased risk that contaminated raw materials produced in a poorly regulated market may cross national boundaries and be used in manufacturing processes for numerous products. Toxicoses might involve complex interactions or require repeated exposures and are typically identified only when large numbers of people or animals are affected.

Id. at 373 (internal citations omitted).

48. The AVJ article followed a peer-reviewed article published in 2011 by the Journal of the American Animal Hospital Association (“JAAHA”) titled, “Fanconi Syndrome in Four Non-Basenji Dogs Exposed to Chicken Jerky Treats.” See Ashley N. Hooper & Brian K. Roberts, *Fanconi Syndrome in Four Non-Basenji Dogs Exposed to Chicken Jerky Treats*, 47:6 *J. Am. Animal Hosp. Ass’n* 178 (Nov.-Dec. 2011). At the time, the authors concluded that,

“[b]ecause Fanconi syndrome is extremely rare in nonbasenji dogs, the occurrence of several cases in small and toy breeds within a short period prompted suspicion of a possible common etiology. A common factor among the four cases described here was consumption of chicken jerky treats.” *Id.* at 184.

E. Defendants Profited Greatly by Continuing to Sell and Deceptively Market their Chicken Dog Treats to the Detriment of Plaintiffs and Members of the Class

49. Defendants profited greatly from the sale and deceptive marketing of their Chicken Dog Treats. According to Del Monte’s 2012 Annual Report, Del Monte had a 32.3% market share in the dog snack market for 2012 and specifically reported that the Milo’s Kitchen brand “deliver[s] well against the observed consumer need for real ingredient products.” Del Monte Corp., Annual Report (Form 10-K), at 5 (June 29, 2012).

50. Defendants’ Chicken Dog Treats do not, and at all times relevant hereto, did not have a reasonable commercial value because they are a hazardous and potentially lethal dog food product that is unsuitable for canine consumption.

51. As a direct and proximate result of Defendants’ deceptive acts and unfair practices, Plaintiff and members of the Class paid a premium price for Defendants’ Chicken Dog Treats.

52. Had Plaintiff and members of the Class known the true nature of Defendants’ Chicken Dog Treats, they would not have purchased Defendants’ Chicken Dog Treats and certainly would not have paid a premium price for such products.

53. On behalf of herself and members of the Class, Plaintiff seeks actual and statutory damages, pre-judgment and post-judgment interest, reasonable attorneys’ fees and litigation costs.

Class Action Allegations

54. Plaintiff brings this class action pursuant to Rule 52.08 of the Missouri Rules of Civil Procedure and MO. REV. STAT. § 407.025 on behalf of all consumers who, from March 1, 2011 through January 31, 2013 (the “Class Period”), purchased the Chicken Dog Treats in the State of Missouri (the “Class”). Excluded from the Class are (1) Defendants, subsidiaries and affiliates of Defendants, directors and officers of Defendants and members of their immediate families; (2) federal, state, and local governmental entities; any judicial officers presiding over this action, their judicial staff, and members of their immediate families; and (4) any persons who have previously settled and released their claims arising out of the purchase of the Chicken Dog Treats in the State of Missouri.

56. Members of the Class are so numerous that their individual joinder herein is impracticable. On information and belief, thousands of individuals purchased the Chicken Dog Treats throughout the State of Missouri during the Class Period.

57. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to:

- (a) whether Defendants’ Chicken Dog Treats failed to conform to the representations, advertisements, and other marketing published and presented to Plaintiffs and members of the Class;
- (b) whether Defendants knew or became aware that their Chicken Dog Treats were substandard and hazardous, yet nonetheless continued to distribute, market, and sell the Chicken Dog Treats without warning of the hazards or removing the

representations that falsely promote the wholesomeness and premium quality of the product;

- (c) whether Defendants concealed from Plaintiffs and members of the Class that Defendants' Chicken Dog Treats did not conform to their stated representations;
- (d) whether Defendants engaged in a pattern and practice of deceiving and defrauding the class with respect to the substandard and hazardous nature of the Chicken Dog Treats and other unfair or unlawful business practices regarding the sale, marketing, and advertisement of the Chicken Dog Treats;
- (e) whether Defendants' above-described conduct violated the Missouri Merchandising Practices Act;
- (f) whether Plaintiffs and members of the Class are entitled to monetary relief and/or injunctive relief, and, if so, the amount and nature of such relief; and
- (g) whether Plaintiffs and members of the Class are entitled to an award of reasonable attorneys' fees, pre-judgment and post-judgment interest, and costs of suit.

58. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' unlawful conduct. Plaintiffs have no interests that are antagonistic to the interests of the other members of the Class. Plaintiffs and all members of the Class have sustained economic injury arising out of the unlawful conduct for which Defendants are liable.

59. Plaintiffs are fair and adequate representative of the Class because their interests do not conflict with the interests of the Class members they seeks to represent, they have retained counsel competent and experienced in such matters, and they intend to prosecute this action

vigorously. The interests of Class members will be fairly and adequately protected by Plaintiffs and their counsel.

60. The class mechanism is superior to any other available means for the fair and efficient adjudication of the claim asserted by Plaintiffs and members of the Class.

61. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

62. Defendants have acted or refused to act on grounds generally applicable to all members of the Class, thereby making final judgment appropriate with respect to the Class as a whole.

Count I
(Violation of the Missouri Merchandising Practices Act)

63. Plaintiff incorporates by reference the allegations in all paragraphs of this Petition as though fully set forth in this paragraph.

64. Plaintiff brings this claim individually and on behalf of the members of the Class.

65. During the Class Period, Defendants represented that their Chicken Dog Treats were “wholesome & delicious,” “100% Real,” and “made with the same quality of ingredients and care that you want with your food,” among other representations, when the dog food products were in fact Chinese-made products containing substandard, non-wholesome ingredients that are hazardous and not suitable for canine consumption.

66. Defendants’ misrepresentations about the quality of their Chicken Dog Treats constitute “deception, fraud . . . false promise, misrepresentation, unfair practice or the

concealment, suppression, or omission of any material fact,” in violation of the Missouri Merchandising Practices Act. MO. REV. STAT. § 407.020.

67. As a result of the unlawful conduct of Defendants in violation of MO. REV. STAT. § 407.020, Plaintiff and members of the Class suffered an ascertainable loss by paying more for the Chicken Dog Treats than the actual value of the Chicken Dog Treats. Plaintiff and members of the Class who purchased the Chicken Dog Treats failed to receive the qualities and economic value of the Chicken Dog Treats as represented by Defendants.

Prayer for Relief

WHEREFORE, Plaintiffs pray for judgment against Defendants Milo’s Kitchen, LLC and Del Monte Corporation and in favor of Plaintiffs and members of the Class for actual damages, pre-judgment and post-judgment interest, reasonable attorneys’ fees and costs of suit. Plaintiff hereby stipulates that the amount in controversy on her individual claim does not exceed the sum or value of \$75,000, exclusive of interests and costs, as she is not seeking, will not seek, and will not accept damages on her individual claim in excess of \$75,000. Plaintiff stipulates that in no event will she request or accept an award of attorneys’ fees in this case that would cause the amount in controversy to exceed the sum or value of \$75,000 on her individual claim or the aggregate sum or value of \$5,000,000 on the class claims, exclusive of interest and costs. The undersigned counsel hereby stipulates that in no event will his firm request or accept an award of attorneys’ fees that would cause the amount in controversy in this case to exceed the sum or value of \$75,000 on Plaintiff’s individual claim or the aggregate sum or value of \$5,000,000 on the class claims, exclusive of interest and costs.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all claims so triable.

Respectfully submitted,

SHANK & MOORE, LLC

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