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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 PAULA RICE-SHERMAN, DEBORAH
14 COLEMAN and JUDITH HOUGH, on
15 behalf of themselves and all others similarly
16 situated,

17 Plaintiffs,

18 v.

19 BIG HEART PET BRANDS, INC.,

20 Defendant.

Case No. 3:19-cv-03613-WHO

SECOND AMENDED
CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Paula Rice-Sherman, Deborah Coleman, and Judith Hough (collectively,
2 “Plaintiffs”),¹ acting on behalf of themselves and all others similarly situated, bring this
3 action² for damages against Defendant Big Heart Pet Brands, Inc. (“Defendant”).

4 NATURE OF THE CASE

5 1. Defendant designed, manufactured, distributed, marketed, and sold Grain
6 Free Easy to Digest Salmon Sweet Potato & Pumpkin Recipe Dog Food (“Nature’s
7 Recipe Food”).

8 2. Many dogs suffer allergic reactions to foods containing grains, such as corn,
9 wheat, or soy protein. Therefore, the omission of these ingredients from their pet foods
10 is an important characteristic to consumers, including the Plaintiffs and Class Members.

11 3. Consumers are willing to pay a premium for the Nature’s Recipe Food
12 because it is specifically represented to be “grain free,” formulated for the particular
13 health needs of their dogs, and consistent with certain ingredient, quality, and
14 manufacturing standards.

15 4. However, independent testing of the Nature’s Recipe Food confirms that
16 these representations are false. Nature’s Recipe Food does, in fact, contain significant
17 amounts of both corn and soy protein.

18 5. Plaintiffs bring this suit on behalf of similar situated consumers who
19 purchased Nature’s Recipe Food.

20 PARTIES

21 6. Plaintiff Paula Rice-Sherman is a citizen of California and resides in Sun
22 Valley. Plaintiff Rice-Sherman purchased Nature’s Recipe Food on numerous occasions,
23 including (without limitation) one bag of the food for \$9.59 on 09/20/2018 at Target, Los
24 Angeles Eagle Rock, and one bag of the food for \$8.83 on 02/24/29 at Walmart Store #
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26 ¹ Pursuant to the Court’s Order, Dkt. 98, Plaintiffs Paula Rice-Sherman and/or Deborah Coleman are
27 expected to be dismissed on or after the discovery deadline of October 16, 2020. On October 16, 2020,
28 Plaintiffs’ counsel will notify the Court of their status.

² A redlined version of this complaint, showing the changes made from Plaintiffs’ First Amended
Complaint, Dkt. 40, and reflecting instructions from the Court’s Order, Dkt. 98, is attached to this
pleading as Exhibit “A.”

1 05686, 1301 N Victory Place, Burbank, CA 91502. After purchasing this dog food on
2 the dates listed above and on other occasions, Plaintiff Rice-Sherman fed it to her dog.
3 After feeding this dog food to her dog, Plaintiff Rice-Sherman discovered that the dog
4 food was not in fact “Grain Free,” as was represented in bold typeface on the front, back,
5 sides, and bottom of the packages that she purchased. Also, Plaintiff Rice-Sherman
6 discovered that the representations on the packages that she purchased of “No Corn” and
7 “No Soy Protein” were false and that the dog food contained both corn and soy protein.
8 Prior to purchasing the Nature’s Recipe Food on the dates listed above and at other times,
9 Plaintiff Rice-Sherman reviewed the product packaging that included the representations
10 “Grain Free,” “Free of Grains,” “No Corn,” and “No Soy Protein,” all of which Plaintiff
11 Rice-Sherman relied upon in deciding to purchase Nature’s Recipe Food. During that
12 time, based on the false and misleading claims, warranties, representations,
13 advertisements, and other marketing by Defendant, Plaintiff Rice-Sherman was unaware
14 that the Nature’s Recipe Food contained any grain, corn, or soy protein. She would not
15 have purchased the food if the actual ingredient list was fully disclosed.

16 7. Plaintiff Deborah Coleman is a citizen of California and resides in Rohnert
17 Park (Sonoma County). Plaintiff Coleman purchased Nature’s Recipe Food on numerous
18 occasions, purchasing a large bag of the food every other month for the last 2 to 3 years
19 at Walmart in Rohnert Park. Plaintiff Coleman Purchased Nature’s Recipe Grain-Free
20 Salmon, Sweet Potato and Pumpkin Recipe, 24 lb. bag for \$24.53, or 12 lb. bag for
21 \$16.59, every month, between the 1st and the 3rd of the month, from 2017 to October
22 2019, at Walmart, 4925 Redwood Dr., Rohnert Park CA 94928, Store #1755. After
23 purchasing this dog food, Plaintiff Coleman fed it to her dog Abigail, a 9-year old pit bull
24 mix and registered service dog. After feeding this dog food to Abigail, Plaintiff Coleman
25 discovered that the dog food was not in fact “Grain Free,” as was represented in bold
26 typeface on the front, back, sides, and bottom of the packages that she purchased. In
27 October 2019, Plaintiff Coleman stopped feeding Abigail the Nature’s Recipe Food when
28 Abigail began showing allergy symptoms. Plaintiff Coleman changed her dog’s food to

1 a different product, and Abigail’s health improved completely within a week. Also,
2 Plaintiff Coleman discovered that the representations on the packages that she purchased
3 of “No Corn” and “No Soy Protein” were false, and that the dog food contained both corn
4 and soy protein. Prior to purchasing the Nature’s Recipe Food between the 1st and 3rd of
5 every month at Walmart in Rohnert Park from 2017 through October 2019. Plaintiff
6 Coleman reviewed the product packaging that included the representations “Grain Free,”
7 “Free of Grains,” “No Corn,” and “No Soy Protein.” Plaintiff Coleman relied upon the
8 “Grain Free” and “No Corn” representations on the packaging in deciding to purchase
9 Nature’s Recipe Food. During that time, based on the false and misleading claims,
10 warranties, representations, advertisements, and other marketing by Defendant, Plaintiff
11 Coleman was unaware that the Nature’s Recipe Food contained any grain, corn, or soy
12 protein. She would not have purchased the food if the actual ingredient list had been fully
13 disclosed.

14 8. Plaintiff Judith Hough is a citizen of California and resides in Seaside
15 (Monterey County). Plaintiff Hough purchased Nature’s Recipe Food on at least one
16 occasion at Ord Community Commissary. Plaintiff Hough began purchasing the
17 Nature’s Recipe product in or about January 2016, and purchased it approximately eight
18 times per year before she quit purchasing the product in October 2018. After purchasing
19 this dog food at Ord Community Commissary, Plaintiff Hough fed it to her dog. After
20 feeding this dog food to her dog, Plaintiff Hough discovered that the dog food was not
21 in fact “Grain Free,” as was represented in bold typeface on the front, back, sides, and
22 bottom packages that she purchased. Also, Plaintiff Hough discovered that the
23 representations on the packages that she purchased of “No Corn” and “No Soy Protein”
24 were false, and that the dog food contained both corn and soy protein. Prior to
25 purchasing the Nature’s Recipe Food, Plaintiff Hough reviewed the product packaging
26 that included the representations “Grain Free,” “No Corn,” and “No Soy Protein,” all of
27 which Plaintiff Hough relied upon in deciding to purchase Nature’s Recipe Food.
28 During that time, based on the false and misleading claims, warranties, representations,

1 advertisements, and other marketing by Defendant, Plaintiff Hough was unaware that
2 the Nature’s Recipe Food contained any grain, corn, or soy protein. She would not have
3 purchased the food if its actual ingredient list had been fully disclosed.

4 9. Defendant Big Heart Pet Brands, Inc. is a for-profit corporation, organized
5 and existing under the laws of the State of Delaware. Defendant currently has its principal
6 office in Orrville, Ohio. Defendant’s principal office was previously located in San
7 Francisco, California. It was located there through mid-2019. Many of the acts and events
8 giving rise to this action, including but not limited to decisions about the ingredients and
9 packaging of the Nature’s Recipe Food, occurred while Defendant had its principal place
10 of business in this judicial district. Defendant designs, manufactures, and markets
11 Nature’s Recipe Food, then sells this product online and through third-party retailers
12 throughout the United States.

13 **JURISDICTION AND VENUE**

14 10. This Court has jurisdiction over this action under the Class Action Fairness
15 Act (“CAFA”), 28 U.S.C. § 1332(d). There are at least 100 members in the proposed
16 class, the aggregated claims of the individual Class Members exceed the sum or value of
17 \$5,000,000.00 exclusive of interest and costs, and members of the Proposed Class are
18 citizens of states different from Defendant.

19 11. Defendant has sufficient minimum contacts in California, as it intentionally
20 avails itself of the markets within California through the promotion, sale, marketing, and
21 distribution of the Nature’s Recipe Food, and it is registered to conduct business in
22 California, thus rendering the exercise of jurisdiction by this Court proper and necessary.

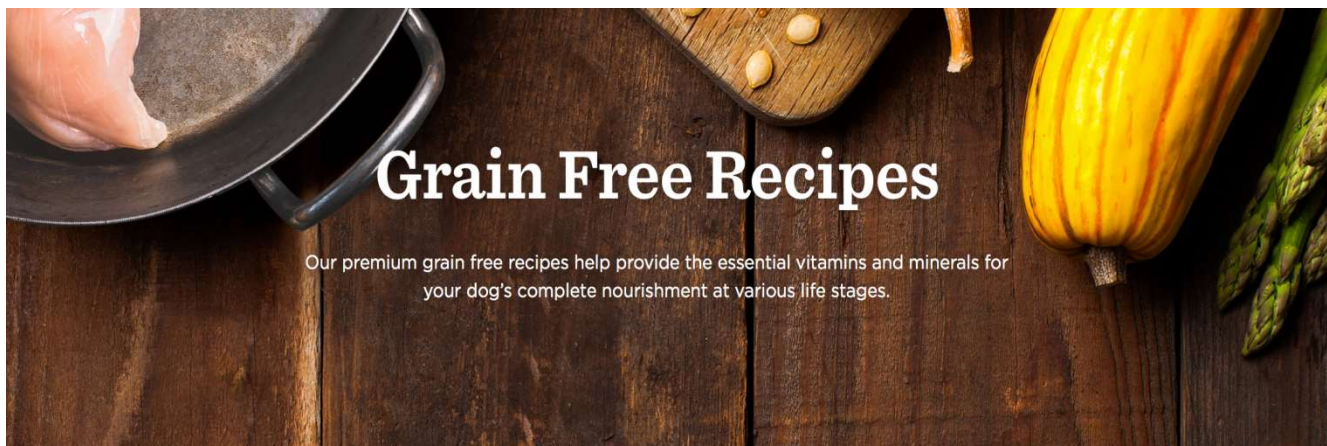
23 12. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial
24 part of the events and omissions giving rise to these claims occurred in this District.

25
26 **FACTUAL ALLEGATIONS**

27 ***Defendant’s “Grain Free” Representations***

1 13. Defendant proudly touts the “Benefits of Grain Free” on its website: “If you
2 notice your dog is sensitive to a diet that contains grains, she may do better on a grain
3 free recipe.”³

4 14. Defendant specifically markets the Nature’s Recipe Food based on the
5 supposed purity and healthfulness of its ingredients: “No corn or wheat. No artificial
6 flavors or preservatives. No poultry by-product meal. Real chicken or salmon as #1
7 ingredient in dry formulas. Natural food with added vitamins, minerals and nutrients.”⁴



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28 ³ <https://www.naturesrecipe.com/dog-recipes/grain-free> (last visited November 5, 2019).

⁴ *See id.*

Benefits of Grain Free

If you notice your dog is sensitive to a diet that contains grains, she may do better on a grain free recipe.



No corn or wheat.



No artificial flavors or preservatives.



No poultry by-product meal.



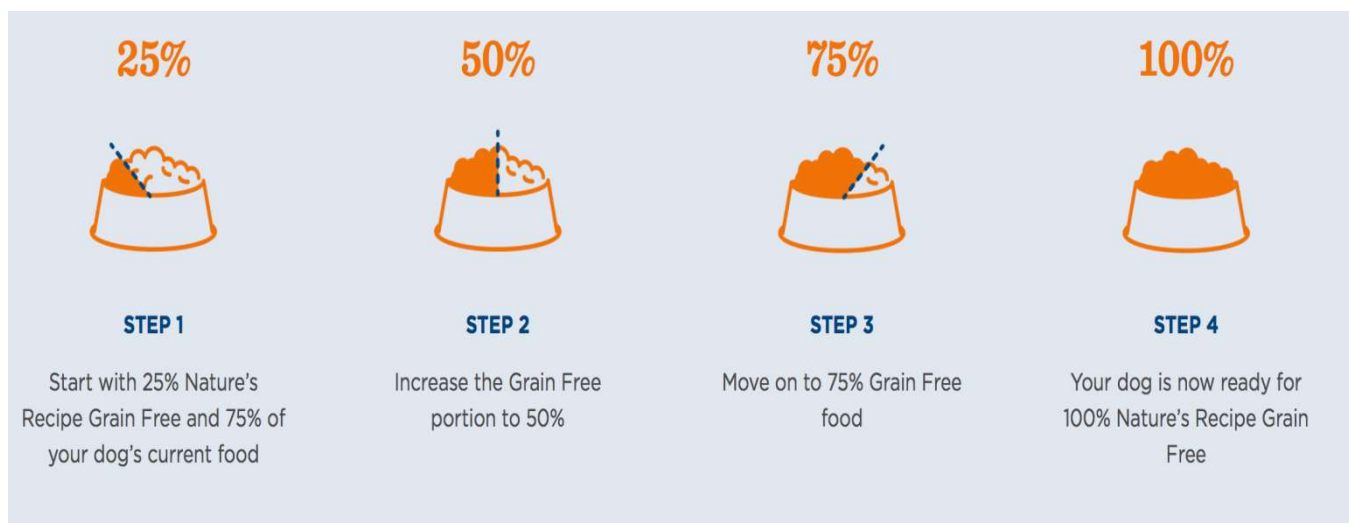
Real chicken or salmon as #1 ingredient in dry formulas.



Natural food with added vitamins, minerals and nutrients.

15. Defendant itself categorizes corn as a grain, and admits that corn is a grain, by including the “No corn or wheat” statement reproduced above under the heading “Benefits of Grain Free” on its website.

16. Defendant’s website also details the process by which the grain free diet is to be introduced:



17. Nature’s Recipe Food is marketed for their healthful, “Grain Free” ingredients.

1 18. For instance, Defendant’s website describes the “Nature’s Recipe Grain
2 Free Easy to Digest Salmon, Sweet Potato and Pumpkin Recipe” as containing “No corn,
3 wheat or soy protein,” “No poultry by-product meal,” and “No artificial flavors, colors
4 or preservatives.”⁵ According to Defendant, it is “formulated to meet the nutritional levels
5 established by the AAFCO Dog Food Nutrient Profiles for All Life Stages including
6 growth of large size dogs (70 lb. or more as an adult).”⁶

7 19. At all times relevant hereto, Defendant’s product packaging for Nature’s
8 Recipe Food prominently and similarly represented that the product was “Grain Free” on
9 the front, back, sides, and bottom of the product package in bold lettering. On the current
10 package format, “Grain Free” appears five times.

11 20. At all times relevant hereto, Defendant’s product packaging for Nature’s
12 Recipe Food represented that the product contained “No Corn” on the front of the bag.⁷
13 On the current package, the representation of “No Corn” is under a prominent circle with
14 the word “NO” inside of it.

15 21. At all times relevant hereto, Defendant’s product packaging for Nature’s
16 Recipe Food represented that the product contained “No Soy Protein, Artificial Flavors
17 or Preservatives” in prominent type-face on the back of the dog food bag.

18 22. At all times relevant hereto, Defendant’s product packaging for Nature’s
19 Recipe Food represented that the product contained “Free of Grains” in prominent type-
20 face on the back of the dog food bag.

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⁵ *Id.*

26 ⁶ <https://www.naturesrecipe.com/dog-recipes/grain-free/salmon-sweet-potato-and-pumpkin-recipe>
27 (last visited November 5, 2019).

28 ⁷ On the prior package for the Nature’s Recipe Food, “No Corn” was part of the phrase “No corn, wheat,
artificial colors or flavors.” The current package contains the phrase “No Corn, Wheat or Poultry By-Product
Meal.” Both package formats (which were the only two used at all times relevant to this Complaint) are the same
in that they represent “No Corn” on the front of the package.

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2 23. However, independent testing of Nature’s Recipe Food has revealed that the
3 product does, in fact, contain significant amounts of both corn and soy.

4 24. Defendant misrepresents the ingredients of Nature’s Recipe Food in order
5 to collect a price premium from unsuspecting consumers.

6 ***Defendant’s Misrepresentations and Omissions are Material to Consumers***

7 25. Pet foods vary in their quality of ingredients, formula, manufacturing
8 processes and inspection quality. Pet owners who purchase “grain free,” products with



22 “no corn,” and products with “no soy protein” pay a premium in order to alleviate their
23 pets’ allergies and provide various health benefits associated with a grain free diet.
24 Notably, grain allergies are more common among certain dog breeds than others.

25 26. Indeed, Defendant actively promotes the nutritional benefits of a “grain
26 free” and “soy protein free” diet. Pet owners specifically buy “grain free” and “soy
27 protein free” dog food to prevent a health issue or nutritional deficiency that their dog
28 may be experiencing – and owners willingly pay a premium price to do so.

1 27. Defendant has wrongfully advertised and sold the Nature’s Recipe Food
2 without any label or warning indicating to consumers that these products contain any
3 quantity of grain, corn, or soy. To the contrary, Defendant’s packaging represents that
4 the product contains no grains, no corn, and no soy protein.

5 28. Defendant’s omissions and representations are not only material but also
6 false, misleading, and reasonably likely to deceive the public. This is true especially in
7 light of the long-standing campaign by Defendant to market Nature’s Recipe Food as
8 healthy and beneficial to dogs who “are sensitive to a diet that contains grains” in order
9 to induce consumers, such as Plaintiffs to purchase the products. For instance, not only
10 did Defendants choose a brand name for their dog food, “Nature’s Recipe Grain Free”
11 that in itself suggests a healthy and grain free product, but they also market the product
12 by promising that “Every Ingredient Counts” on the front of every package.

13 29. Moreover, the Nature’s Recipe Food declares itself as “natural recipes” that
14 use “purposeful ingredients” on the back of every product package.

15 30. Using such descriptions and promises makes Defendant’s advertising
16 campaign and product packaging deceptive based on the presence of significant amounts
17 of corn and soy in Nature’s Recipe Food. Defendant’s statements, partial disclosures,
18 and omissions are false, misleading, and crafted to deceive the public as they create an
19 image that the Nature’s Recipe Food is grain free, contains no corn, and contains no soy
20 protein. Moreover, Defendant knew or should have reasonably expected that the presence
21 of corn and soy in its Nature’s Recipe Food is something an average consumer would
22 consider in purchasing dog food that is marketed and sold as “Grain Free,” “Free of
23 Grains,” containing “No Corn” and “No Soy Protein.” Thus, Defendant’s omissions and
24 representations are false, misleading, and reasonably likely to deceive the public.

25 31. Reasonable consumers, such as Plaintiffs and other members of the Class
26 (as defined herein), would have no reason to expect and anticipate that the Nature’s
27 Recipe Food are not made with “natural recipes,” “purposeful ingredients,” and that
28 “Every Ingredient Counts,” as promised by Defendant. Non-disclosure and concealment

1 of the grains, corn, and soy in the Nature’s Recipe Food coupled with the partial
2 disclosures and/or misrepresentations by Defendants that the food is “Grain Free,” “Free
3 of Grains,” contains “No Corn” and “No Soy Protein” is intended to and does, in fact,
4 cause consumers to purchase a product Plaintiffs and Class members would not have
5 bought if the true quality and ingredients were disclosed. As a result of these false
6 statements, omissions, and concealment, Defendant has generated substantial sales of the
7 Nature’s Recipe Food. Accordingly, Defendant’s misrepresentations regarding the
8 ingredients of Nature’s Recipe Food are material to consumers.

9 *Academic Research Confirms*
10 *Pet Food Manufacturers Sell Non-Conforming Products*

11 32. Before December 2014, little or no peer-reviewed academic research was
12 published concerning the accuracy of label claims with respect to ingredients present in
13 canine foods.

14 33. In December 2014, a group of researchers found that only 18% of the pet
15 food samples they tested completely matched the label claims with respect to the content
16 of animal by-products. Thus, 82% of the products analyzed by the researchers contained
17 non-conforming ingredients when compared to their label claims. The December 2014
18 study hypothesized that raw materials used in the preparation of the canned food products
19 contained multiple protein types and may have contributed to contamination.⁸

20 34. In 2016, another study looked into the issue of whether vegan pet food
21 contained non-conforming mammalian ingredients.⁹ Vegan pet foods should contain no
22 mammalian proteins or ingredients. The study found that half of the products tested
23 contained non-conforming mammalian DNA in the products and suggested that
24 manufacturers are ultimately responsible for maintaining adequate end product quality
25 control to prevent such discrepancies between their ingredients and label claims.

26 ⁸ See Detection of undeclared animal by-products in commercial canine canned foods: Comparative
27 analyses by ELISA and PCR-RFLP coupled with slab gel electrophoresis or capillary gel electrophoresis
28 by Ming-Kun Hsieh, Pei-Yin Shih, Chia-Fong Wei, Thomas W Vickroy and Chi-Chung Chou
completed on December 31, 2014.

⁹ See Determination of mammalian deoxyribonucleic acid (DNA) in commercial vegetarian and vegan
diets for dogs and cats by K. Kanakubo, A.J. Fascetti and J.A. Larsen completed on March 3, 2016.

1 35. By 2018, research into pet food products' label claims and the presence of
2 non-conforming ingredients intensified. Out of the 40 products analyzed in one study, the
3 ingredients of only 10 products correctly matched their label.¹⁰ Of the remaining 30
4 products, 5 did not contain the declared animal species ingredients and 23 others revealed
5 the presence of undeclared animal species. Two of the products' labels were vague and
6 their accuracy was indeterminable. This 2018 study found that mislabeling was an
7 especially widespread problem in pet foods used for "elimination diets" (i.e. used to
8 investigate food allergies). In this 2018 study, researchers suggested that manufacturers
9 should pay particular attention to both the selection of raw material suppliers and the
10 production processes for pet food due to the high risk of contamination.

11 36. A second 2018 study (conducted in Europe) tested 11 canine and feline
12 limited ingredient wet food products and found the presence of non-conforming
13 ingredients in 54% of the products.¹¹ This study further suggested other peer-reviewed
14 studies found that 80% of the dry foods analyzed contained non-conforming products.
15 This study suggested that the high rate of cross-contamination in dietary limited-antigen
16 wet canine and feline foods may be due to inadequate quality-control practices in the pet
17 food industry and opined that the pet food industry has a legal obligation to produce safe
18 food for consumers. The researchers hypothesized that pet food contamination occurs at
19 two different points during manufacturing: 1) in the production of the feed materials
20 (sometimes attributable to suppliers), and 2) during the actual production of the pet food
21 via cross-contamination during manufacturing production lines, improper equipment
22 cleaning, or other production deficiencies.

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25 ¹⁰ See Undeclared animal species in dry and wet novel and hydrolyzed protein diets for dogs and cats
26 detected by microarray analysis by Rebecca Ricci, Daniele Conificoni, Giada Morelli, Carmen Losasso,
27 Leonardo Alberghini, Valerio Giaccone, Antonia Ricci, and Iginio Andrighetto completed on June 18,
2018.

28 ¹¹ See Cross-contamination in canine and feline dietetic limited-antigen wet diets by Elena Pagani, Maria
de los Dolores Soto del Rio, Alessandra Dalmasso, Maria Teresa Bottero, Achille Schiavone and Liviana
Prola. Published on September 12, 2018.

1 37. In 2018, a third study summarized 18 studies, articles, and an abstract
2 published between July 2017 and January 2018 related to pet food ingredient testing.¹²
3 The authors concluded that the mislabeling of pet food appears rather “common” in the
4 limited ingredient diet products that are proposed for elimination diets. They also found
5 that unexpected added ingredients are more frequently detected than those missing from
6 the label.

7 38. Since 2014, virtually all studies of limited ingredient diets have found that
8 pet food sold to consumers frequently contains non-conforming ingredients and that
9 significant discrepancies between pet food products’ labeling and their actual ingredients
10 appears to be commonplace among pet food manufacturers.

11 ***Plaintiffs’ Experiences with the Nature’s Recipe Food***

12 39. Plaintiff Paula Rice-Sherman is a citizen of California who purchased
13 Nature’s Recipe Food on numerous occasions prior to the filing of this Complaint
14 including (without limitation) one bag of the food for \$9.59 on 09/20/2018 at Target, Los
15 Angeles Eagle Rock, and one bag of the food for \$8.83 on 02/24/29 at Walmart Store #
16 05686, 1301 N Victory Place, Burbank, CA 91502. Prior to purchasing Nature’s Recipe
17 Food, Plaintiff Rice-Sherman read Defendant’s representations that Nature’s Recipe
18 Food was “Grain Free,” was “Free of Grains,” contained “No Corn, and contained “No
19 Soy Protein” on the product packaging and specifically relied on those representations in
20 deciding to purchase the product.

21 40. Plaintiff Deborah Coleman is a citizen of California who purchased Nature’s
22 Recipe Grain-Free Salmon, Sweet Potato and Pumpkin Recipe, 24 lb. bag for \$24.53, or
23 12 lb. bag for \$16.59, every month between the 1st and the 3rd of the month, from 2017
24 through October 2019, at Walmart, 4925 Redwood Dr., Rohnert Park CA 94928, Store
25 #1755. Plaintiff Coleman stopped purchasing Nature’s Recipe Grain-Free Salmon, Sweet
26 Potato and Pumpkin Recipe in October of 2019 because her dog was showing allergy

27 _____
28 ¹² See Critically Appraised topic on adverse food reactions of companion animals (5): discrepancies
between ingredients and labeling in commercial pet foods by Thierry Olivry and Ralf S. Mueller.
Published on January 22, 2018.

1 symptoms. Prior to purchasing the Nature's Recipe Food, Plaintiff Coleman read
2 Defendant's representations that Nature's Recipe Food was "Grain Free," was "Free of
3 Grains," contained "No Corn, and contained "No Soy Protein" on the product packaging
4 and specifically relied on the "Grain Free" and "No Corn" representations on the product
5 packaging in deciding to purchase the product. Plaintiff Coleman reports that: "If the bag
6 says grain free it gets my attention. Before I buy it, you always read the ingredients and
7 details on the back. When you turn it over and read the label on the back, it says grain
8 free as well and I make sure there's no corn in the ingredients." Plaintiff Coleman
9 assumed that "Grain Free" meant 100% free of grain, and especially 100% free of corn
10 "since corn products are not listed ingredients." After feeding the Nature's Recipe Food
11 to her dog Abigail, Abigail developed allergy symptoms that included red skin and rash,
12 itchy paws, fever, and yeast infection in her ear. Plaintiff Coleman incurred \$800-\$900
13 in vet bills to treat these allergy related conditions. Plaintiff Coleman assumed that
14 Abigail's allergies were due to breed (pitbull) sensitivity to corn and wheat, but upon
15 discovering that the Nature's Recipe Food was not in fact grain free and actually did
16 contain corn and soy, she discontinued the use of this product. Abigail's allergy
17 symptoms cleared up.

18 41. Plaintiff Judith Hough is a citizen of California who purchased Nature's
19 Recipe Food on numerous occasions, most recently from Ord Community Commissary
20 prior to the filing of this Complaint. Prior to purchasing Nature's Recipe Food at Ord
21 Community Commissary, Plaintiff Hough read Defendant's representations that Nature's
22 Recipe Food was "Grain Free," was "Free of Grains," contained "No Corn," and
23 contained "No Soy Protein" on the product packaging and specifically relied on those
24 representations in deciding to purchase the product.

25 CHOICE OF LAW ALLEGATIONS

26 42. This Complaint is brought in California, so California's choice of law
27 regime governs the state law allegations in this Complaint. Under California's choice of
28

1 law rules, California law applies to the claims of all class members, as all class
2 members are residents of California.

3 43. Because Defendant was headquartered — and made all decisions relevant to
4 the claims made herein — in California until mid-2019, California has a substantial
5 connection to, and materially greater interest in, the rights, interests, and policies involved
6 in this action than any other state. Application of California law to Defendant and the
7 claims of all class members, therefore, is not arbitrary or unfair.

8 **CLASS ACTION ALLEGATIONS**

9 44. Plaintiffs bring this action on behalf of themselves and a class (“California
10 Class” or “Class”) defined as follows:

11 All persons residing in the State of California who, during the maximum
12 period of time permitted by law, purchased Nature’s Recipe Food primarily
13 for personal, family or household purposes, and not for resale.¹³

14 45. Specifically excluded from these definitions are (1) Defendant, any entity in
15 which Defendant has a controlling interest, and its legal representatives, officers,
16 directors, employees, assigns and successors; (2) the Judge to whom this case is assigned
17 and any member of the Judge’s staff or immediate family; and (3) Class Counsel.

18 46. As used herein, “Class Members” shall mean and refer to the members of
19 the California Class, including Plaintiffs.

20 47. Plaintiffs seek only damages on behalf of themselves and the Class
21 Members. Plaintiffs disclaim any intent or right to seek any recovery in this action for
22 personal injuries, wrongful death, or emotional distress suffered by Plaintiffs and/or the
23 Class Members

24 48. Numerosity: Although the exact number of Class Members is uncertain and
25 can only be ascertained through appropriate discovery, the number is great enough such
26 that joinder is impracticable. The disposition of the claims of these Class Members in a
27 single action will provide substantial benefits to all parties and to the Court.

28 _____
¹³ Plaintiffs reserve the right to amend this definition as necessary.

1 49. Typicality: The claims of the representative Plaintiffs are typical in that
2 Plaintiffs, like all Class Members, purchased Nature’s Recipe Food that was
3 manufactured and distributed by Defendant. Plaintiffs, like all Class Members, have been
4 damaged by Defendant’s misconduct in that, *inter alia*, they have incurred or will
5 continue to incur damage because they purchased a product that contained ingredients
6 that were advertised as being absent from the product. Furthermore, the factual bases of
7 Defendant’s misconduct are common to all Class Members and represent a common
8 thread of fraudulent, deliberate, and negligent misconduct resulting in injury to Plaintiffs
9 and all Class Members.

10 50. Commonality: There are numerous questions of law and fact common to
11 Plaintiffs and Class Members that predominate over any individual questions. These
12 common legal and factual issues include the following:

- 13 a) Whether Nature’s Recipe Food contains corn, soy protein, or grain;
- 14 b) Whether Defendant’s “grain free,” “free of grains,” “no corn” and “no
15 soy protein” advertisements and packaging are false;
- 16 c) Whether Defendant’s “grain free,” “free of grains,” “no corn” and “no
17 soy protein” advertisements are misleading;
- 18 d) Whether Defendant expressly warranted that the Nature’s Recipe Food
19 would conform to its “Grain Free,” “Free of Grains,” “No Corn,” and
20 “No Soy Protein” advertisements and packaging;
- 21 e) Whether Defendant impliedly warranted that the Nature Recipe product
22 would conform to its “Grain Free,” “Free of Grains,” “No Corn,” and
23 “No Soy Protein” advertisements and packaging;
- 24 f) Whether Defendant breached its warranties by making the
25 representations above;
- 26 g) Whether Defendant was unjustly enriched by making the representations
27 and omissions above;

1 h) Whether Defendant’s actions as described above violated the Magnuson-
2 Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*;

3 i) Whether Defendant should be required to make restitution, disgorge
4 profits, reimburse losses, pay damages, and pay treble damages as a
5 result of the above described practices.

6 51. Adequate Representation: Plaintiffs will fairly and adequately protect the
7 interests of Class Members. Plaintiffs have retained attorneys experienced in the
8 prosecution of class actions, including consumer and product defect class actions, and
9 Plaintiffs intend to prosecute this action vigorously.

10 52. Predominance and Superiority: Plaintiffs and Class Members have all
11 suffered and will continue to suffer harm and damages as a result of Defendant’s unlawful
12 and wrongful conduct. A class action is superior to other available methods for the fair
13 and efficient adjudication of the controversy. Absent a class action, Class Members
14 would likely find the cost of litigating their claims prohibitively high and would therefore
15 have no effective remedy at law. Because of the relatively small size of Class Members’
16 individual claims, it is likely that few Class Members could afford to seek legal redress
17 for Defendant’s misconduct. Absent a class action, Class Members will continue to incur
18 damages, and Defendant’s misconduct will continue without remedy. Class treatment of
19 common questions of law and fact would also be a superior method to multiple individual
20 actions or piecemeal litigation in that class treatment will conserve the resources of the
21 courts and the litigants and will promote consistency and efficiency of adjudication.

22 53. Defendant has acted or refused to act on grounds generally applicable to the
23 Class, thereby making declaratory relief with respect to the Class as a whole.

24 **CAUSES OF ACTION**

25 **COUNT I**

26 **VIOLATION OF MAGNUSON-MOSS WARRANTY ACT**

27 **15 U.S.C. § 2301, *et seq.***

28 **(On Behalf of The Class)**

1 54. Plaintiffs bring this count on behalf of themselves and the Class and repeat
2 and re-allege Paragraphs 1 through 53 as if fully included herein.

3 55. As alleged above, this Court has original jurisdiction over this matter based
4 upon the requirements of CAFA.

5 56. Nature's Recipe Foods are consumer products as defined in 15 U.S.C.
6 § 2301(1).

7 57. Plaintiffs and Class members are consumers as defined in 15 U.S.C.
8 § 2301(3).

9 58. Plaintiffs purchased Nature's Recipe Food costing more than \$5, and their
10 individual claims are greater than \$25 as required by 15 U.S.C. § 2302(e) and 15 U.S.C.
11 § 2310(d)(3)(A).

12 59. Defendant is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and
13 (5).

14 60. In connection with the sale of the Nature's Recipe Food, Defendant issued
15 written warranties as defined in 15 U.S.C. § 2301(6), which warranted that the Nature's
16 Recipe Food conformed to its representations that the product did not contain corn, grain,
17 or soy protein.

18 61. Defendant breached these written warranties because the Nature's Recipe
19 Food did in fact contain corn, grain, and/or soy protein.

20 62. By reason of Defendant's breach of the written warranties stating that the
21 Nature's Recipe Food did not contain corn, grain, or soy protein, Defendant violated the
22 statutory rights of Plaintiffs and Class members pursuant to the Magnuson-Moss
23 Warranty Act, 15 U.S.C. § 2301 *et seq.*, thereby damaging Plaintiffs and Class members.

24 63. Plaintiffs sent a demand letter on May 13, 2019 to Defendant, which was
25 within a reasonable time after Plaintiffs knew or should have known of such failure to
26 conform. This letter outlined how Defendant's conduct in misrepresenting the contents
27 of the Nature's Recipe Food in terms of its "grain free," "corn free," and "soy free"
28 representations when in fact Nature's Recipe Food did contain soy and corn constituted

1 a breach of Magnusson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq*, in addition to a
2 litany of other consumer protection statutes. Plaintiffs never received a response to their
3 letter.

4 **COUNT II**
5 **BREACH OF EXPRESS WARRANTY**
6 **(On Behalf of The Class)**

7 64. Plaintiffs bring this count on behalf of themselves and the Class and repeat
8 and re-allege Paragraphs 1 through 53, as if fully included herein.

9 65. Defendant sold and Plaintiffs purchased the Nature’s Recipe Food.

10 66. Defendant represented in its marketing, advertising, and promotion of the
11 Nature’s Recipe Food that the product was “grain free” and “soy protein free” and did
12 not contain corn, grain, or soy.

13 67. Defendant represented on the packaging and labels of the Nature’s Recipe
14 Food that the product was “grain free” and “free of grains” and did not contain corn,
15 grain, or soy protein.

16 68. Defendant made these representations to induce Plaintiffs to purchase
17 Nature’s Recipe Food.

18 69. Plaintiffs relied upon Defendant’s representations, as set out above.

19 70. The representations that the Nature’s Recipe Food was “grain free” and “soy
20 protein free” was part of the basis of the bargain between Defendant and Plaintiffs.

21 71. The Nature’s Recipe Food did not conform to Defendant’s representations
22 and warranties in that they contained corn, grain, and soy.

23 72. Plaintiffs sent a demand letter on May 13, 2019 to Defendant, which was
24 within a reasonable time after Plaintiffs knew or should have known of such failure to
25 conform. This letter, which outlined how Defendant’s conduct in misrepresenting the
26 contents of the Nature’s Recipe Food in terms of its “grain free,” “corn free,” and “soy
27 free” representations when in fact Nature’s Recipe Food did contain soy and corn
28 constituted a breach of the express and implied warranties Nature’s Recipe Food made to

1 purchasers, in addition to violating a litany of other consumer protection statutes.
2 Plaintiffs never received a response to their letter.

3 73. As a direct and proximate result of Defendant's breaches of its express
4 warranty and failure of the Nature's Recipe Food to conform to Defendant's
5 representations as warranted, Plaintiffs and members of the Class have been damaged in
6 that they did not receive the product as specifically warranted and/or paid a premium for
7 the product that did not conform to the Defendant's warranties.

8
9 **COUNT III**
10 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
11 **(On Behalf of The Class)**

12 74. Plaintiffs bring this count on behalf of themselves and the Class and repeat
13 and re-allege Paragraphs 1 through 53, as if fully included herein.

14 75. Defendant sold and Plaintiffs purchased Nature's Recipe Food.

15 76. When sold by Defendant, the Nature's Recipe Food was not merchantable,
16 did not pass without objection in the trade under the label description, was not of adequate
17 quality within that description, was not fit for the ordinary purposes for which such goods
18 are used, and did not conform to the promises or affirmations of fact made on the
19 container or label.

20 77. Nature's Recipe Food was unfit for consumption by dogs with allergies or
21 other medical conditions that made it necessary or advisable for the dogs to consume
22 grain free dog food, in that Nature's Recipe Food that was promoted as "Grain Free"
23 contained grain (corn).

24 78. Plaintiffs sent a demand letter on May 13, 2019 to Defendant which was
25 within a reasonable time after Plaintiffs knew or should have known of such failure to
26 conform. This letter outlined how Defendant's conduct in misrepresenting the contents
27 of the Nature's Recipe Food in terms of its "grain free," "corn free," and "soy free"
28 representations when in fact Nature's Recipe Food did contain soy and corn constituted

1 a breach of its express and implied warranties made to Nature’s Recipe Food purchasers,
2 in addition to violating a litany of other consumer protection statutes. Plaintiffs never
3 received a response to their letter.

4 As a direct result of the Nature’s Recipe Food being unfit for such purpose and/or
5 otherwise not merchantable, Plaintiffs were damaged.

6 **COUNT IV**
7 **UNJUST ENRICHMENT**
8 **(On Behalf of The Class)**

9 79. Plaintiffs bring this count on behalf of themselves and the Class and repeat
10 and re-allege Paragraphs 1 through 53, as if fully included herein.

11 80. Plaintiffs conferred benefits on Defendant by purchasing Nature’s Recipe
12 Food at a premium price.

13 81. Defendant has knowledge of such benefits.

14 82. Defendant has been unjustly enriched in retaining the revenues derived from
15 Plaintiffs and Class Members’ purchases of the Nature’s Recipe Food. Retention of those
16 monies under these circumstances is unjust because Defendant falsely and misleadingly
17 represented that its Nature’s Recipe Food contained no corn, grain, or soy protein, when,
18 in fact, the Nature’s Recipe Food contained corn, grain, and/or soy, which caused injuries
19 to Plaintiffs and members of the Class because they would not have purchased (or paid a
20 price premium) for the Nature’s Recipe Food had the true facts of the Product’s
21 ingredients been known.

22 83. Because Defendant’s retention of the non-gratuitous benefits conferred on
23 it by Plaintiffs and members of the Class is unjust, Defendant must pay restitution to
24 Plaintiffs and members of the Class for its unjust enrichment, as ordered by the Court.

25 **COUNT V**
26 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**
27 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***
28 **(On Behalf of The Class)**

1 84. Plaintiffs repeat and re-allege Paragraphs 1 through 53, as if fully included
2 herein.

3 85. Defendant is subject to the Unfair Competition Law (“UCL”), Business &
4 Professions Code §§ 17200, *et seq.* The UCL provides, in pertinent part: “Unfair
5 competition shall mean and include unlawful, unfair or fraudulent business practices and
6 unfair, deceptive, untrue or misleading advertising”

7 86. Defendant violated the “unlawful” prong of the UCL by violating
8 California’s Consumers Legal Remedies Act (“CLRA”) as described in Count VII,
9 below.

10 87. Defendant also violated the “unlawful” prong of the UCL by violating
11 California’s False Advertising Law (“FAL”) as described in Count VI, below.

12 88. Defendant’s conduct, described herein, violated the “unfair” prong of the
13 UCL because Defendant’s conduct was immoral, unethical, unscrupulous, or
14 substantially injurious to consumers and the utility of their conduct, if any, does not
15 outweigh the gravity of the harm to their victims.

16 89. Defendant’s conduct with respect to the labeling, advertising, and sale of the
17 Products was and is also unfair because it violates public policy as declared by specific
18 constitutional, statutory or regulatory provisions, including but not limited to the
19 applicable sections of: the Consumers Legal Remedies Act, the False Advertising Law,
20 the Federal Food, Drug, and Cosmetic Act, and the California Sherman Food, Drug, and
21 Cosmetic Law.

22 90. Defendant’s conduct with respect to the labeling, advertising, and sale of the
23 Products was and is unfair because the consumer injury was substantial, not outweighed
24 by benefits to consumers or competition, and not one consumer themselves could
25 reasonably have avoided.

26 91. Defendant’s conduct, described herein, violated the “fraudulent” prong of
27 the UCL.

28

1 92. A statement or practice is “fraudulent” under the UCL if it is likely to
2 mislead or deceive the public, applying an objective reasonable consumer test. As set
3 forth herein, Defendant’s claims relating the ingredients stated on the Products’ labeling
4 and moreover Defendant’s representations about quality, ingredient supply, and product
5 manufacturing and oversight, as stated above, are false and likely to mislead or deceive
6 the public.

7 93. Defendant profited from its sale of the falsely, deceptively, and unlawfully
8 advertised and packaged Nature’s Recipe Food to unwary consumers.

9 94. Plaintiffs and Class Members are likely to continue to be damaged by
10 Defendant’s false, deceptive and unlawful trade practices, because Defendant continues
11 to disseminate misleading information on its products’ packaging.

12 95. Defendant’s conduct caused and continues to cause substantial injury to
13 Plaintiff and the other Class Members. Plaintiffs have suffered injury in fact as a result
14 of Defendant’s unlawful conduct.

15 96. In accordance with Bus. & Prof. Code § 17203, Plaintiffs seek an order
16 enjoining Defendant from continuing to conduct business through unlawful, unfair,
17 and/or fraudulent acts and practices, and to commence a corrective advertising campaign.

18 97. Plaintiffs also seek an order for and restitution of all monies from the sale of
19 the Products, which were unjustly acquired through acts of unlawful competition.

20 **COUNT VI**
21 **VIOLATIONS OF CALIFORNIA FALSE ADVERTISING LAW**
22 **Cal. Bus. & Prof. Code § 17500 (“FAL”)**
23 **(On Behalf of The Class)**

24 98. Plaintiff s repeat and re-allege Paragraphs 1 through 53, as if fully included
25 herein

26 99. The FAL provides that “[i]t is unlawful for any person, firm, corporation or
27 association, or any employee thereof with intent directly or indirectly to dispose of real
28 or personal property or to perform services” to disseminate any statement “which is

1 untrue or misleading, and which is known, or which by the exercise of reasonable care
2 should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

3 100. It is also unlawful under the FAL to disseminate statements concerning
4 property or services that are “untrue or misleading, and which is known, or which by the
5 exercise of reasonable care should be known, to be untrue or misleading.” *Id.*

6 101. As alleged herein, the advertisements, labeling, policies, acts, and practices
7 of Defendant relating to the Nature’s Recipe Food misled consumers acting reasonably
8 as to Defendant’s representations about quality, ingredient supply, and product
9 manufacturing and oversight, as stated above.

10 102. Plaintiffs suffered injury in fact as a result of Defendant’s actions as set forth
11 herein because they purchased the Nature’s Recipe Food in reliance on Defendant’s false
12 and misleading labeling claims concerning, among other things, the products’ quality,
13 ingredient supply, and product manufacturing and oversight, as stated above.

14 103. Defendant’s business practices as alleged herein constitute deceptive,
15 untrue, and misleading advertising pursuant to the FAL because Defendant has advertised
16 the Products in a manner that is untrue and misleading, which Defendant knew or
17 reasonably should have known, and has omitted material information from its advertising.

18 104. Defendant profited from its sale of the falsely and deceptively advertised
19 Nature’s Recipe Food to unwary consumers.

20 105. As a result, Plaintiffs are entitled to an order for the disgorgement of the
21 funds by which Defendant was unjustly enriched.

22 106. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiffs and the Class seek an
23 order enjoining Defendant from continuing to engage in deceptive business practices,
24 false advertising, and any other act prohibited by law, including those set forth in this
25 Complaint.

1
2
3 **COUNT VII**
4 **VIOLATIONS OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT**
5 **Cal. Civ. Code § 1750, *et seq.* (“CLRA”)**
6 **(On Behalf of The Class)**

7 107. Plaintiffs repeat and re-allege Paragraphs 1 through 53, as if fully included
8 herein.

9 108. The CLRA prohibits deceptive practices in connection with the conduct of
10 a business that provides goods, property, or services primarily for personal, family, or
11 household purposes.

12 109. Defendant’s false and misleading labeling and other policies, acts, and
13 practices were designed to, and did, induce the purchase and use of the Nature’s Recipe
14 Food for personal, family, or household purposes by Plaintiffs and Class Members, and
15 violated and continues to violate the following sections of the CLRA:

- 16 a. § 1770(a)(5): representing that goods have characteristics, uses, or
17 benefits which they do not have;
18 b. § 1770(a)(7): representing that goods are of a particular standard,
19 quality, or grade if they are of another;
20 c. § 1770(a)(9): advertising goods with intent not to sell them as
21 advertised; and
22 d. § 1770(a)(16): representing that the subject of a transaction has been
23 supplied in accordance with a previous representation when it has not.

24 110. Defendant profited from the sale of the falsely, deceptively, and unlawfully
25 advertised Products to unwary consumers.

26 111. Defendant’s wrongful business practices constituted, and constitute, a
27 continuing course of conduct in violation of the CLRA.

28 112. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiffs provided
a letter to Defendant on May 15, 2019 with notice of its alleged violations of the CLRA,

1 demanding that Defendant correct such violations, and providing it with the opportunity
2 to correct its business practices. Plaintiffs received no response to their letter.

3 113. Pursuant to California Civil Code § 1780, Plaintiffs seek monetary relief,
4 including restitution and actual damages, their reasonable attorney fees and costs, and
5 any other relief that the Court deems proper.

6 **PRAYER FOR RELIEF**

7
8 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly
9 situated, seek a judgment against Defendant, as follows:

- 10 a. For an order certifying the Class under Rule 23 of the Federal Rules of Civil
11 Procedure and naming Plaintiffs as representatives of the Class and
12 Plaintiffs' attorneys as Class Counsel to represent the Class members;
- 13 b. For an order declaring that Defendant's conduct violates the statutes
14 referenced herein;
- 15 c. For an order finding in favor of Plaintiffs and the Class on all counts
16 asserted herein;
- 17 d. For compensatory, and statutory damages in amounts to be determined by
18 the Court and/or jury;
- 19 e. For prejudgment interest on all amounts awarded; and
- 20 f. For an order awarding Plaintiffs and the Class their reasonable attorneys'
21 fees and expenses and costs of suit.

22 **JURY TRIAL DEMANDED**

23 Plaintiffs demand a trial by jury on all claims so triable.
24
25
26
27
28

1 Dated: October 12, 2020

Respectfully submitted,

2
3 /s/ Jonathan Shub

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