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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

ERIN KIRCHENBERG, on behalf of  
herself and all others similarly  
situated,

Plaintiff,

v.

AINSWORTH PET NUTRITION,  
INC., AND J.M. SMUCKER CO.

Defendants.

Case No.

**CLASS ACTION COMPLAINT**

**Demand for Jury Trial**

Plaintiff Erin Kirchenberg (“Plaintiff”), acting on behalf of herself and all other similarly situated persons residing in California (“Class Members”), brings this action for damages and equitable relief against Ainsworth Pet Nutrition, Inc., and J.M. Smucker Co. (“Defendants”).

**NATURE OF THE CASE**

1. Dogs can—and often do—have allergic reactions to certain foods, including those that contain corn, wheat, soy, and beef. Accordingly, when purchasing pet foods, an important consideration for consumers, including Plaintiff and Class Members, is that certain ingredients are omitted from their pets’ food.

2. Consumers willingly pay a premium for limited ingredient pet foods—like Defendants’ Just 6 products purport to be—for the health and well-being of their pets.

3. Consumers—including Plaintiff—rely on Defendants’ representations that Just 6 products include only limited ingredients, are specifically formulated for the health needs of dogs, that the Just 6 food meets its own ingredient promises and warranties, and that Just 6 adheres to quality and manufacturing standards.

### **PARTIES**

4. Plaintiff Erin Kirchenberg is a citizen of California residing in Magalia, Butte County.

5. Defendant Ainsworth Pet Nutrition, Inc. (“Ainsworth”) is a Delaware corporation based in Meadville, Pennsylvania (Crawford County). It is the manufacturer and distributor of Just 6.

6. Defendant J.M. Smucker Co. (“Smucker”) is an Ohio corporation based in Orrville, Ohio. Smucker manufactures a wide variety of pet foods, as well as human foods, throughout the United States. On May 14, 2018, Smucker purchased all of Ainsworth’s common stock, and as of that date, Ainsworth became Smucker’s wholly owned subsidiary. Smucker is liable for the actions of Ainsworth prior to the date of the acquisition as its successor-in-interest, and after that date under the principle of *respondeat superior*.

### **JURISDICTION AND VENUE**

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

8. All Defendants have sufficient minimum contacts with California to be subject to this Court’s personal jurisdiction. Defendants intentionally avail

1 themselves of the markets within California through the promotion, sale, marketing,  
2 and distribution of Just 6 and numerous other products, which renders this Court's  
3 exercise of jurisdiction necessary and proper.

4 9. Venue is proper in this District under 28 U.S.C. § 1391 because Plaintiff  
5 resides in and purchased the Just 6 products from this District.

## 6 **FACTUAL ALLEGATIONS**

### 7 **Plaintiff's Facts**

8 10. Plaintiff purchased Just 6 monthly between approximately January 2018  
9 and February 2020 to feed to her own dogs, Molly and Buddy.

10 11. Prior to her purchases of Just 6 products, Plaintiff researched the Just 6  
11 product ingredients. She was interested in sticking to a limited ingredient lamb diet  
12 that only contained rice as a grain and understood that this combination would be  
13 better for the health of her dogs. Based upon her research, Plaintiff selected a Just 6  
14 product for her dogs.

15 12. Plaintiff most often purchased the Just 6 products from local retailers but  
16 also purchased it online from Amazon.com three times. One of the times she  
17 purchased one bag of Just 6, she paid \$25.50. Another time she purchased one bag of  
18 Just 6 and paid \$31.48. Although the Just 6 products were more expensive than other  
19 choices she viewed, she chose to pay the premium price based upon the "limited  
20 ingredient" promises made by Defendants.

21 13. At the time of her purchases, Plaintiff relied on Defendants' factual  
22 representations about the ingredients in the Just 6 dog food, including those  
23 representations on the product label and those in publicly broadcast television  
24 commercials starring Rachael Ray. The representations all indicate that that Just 6 is  
25 a limited ingredient diet that does not contain corn, wheat, soy, or beef.

26 14. When Plaintiff learned that Just 6 mislabeled its products, she stopped  
27 purchasing Just 6 products.

1           15. Plaintiff did not receive the benefit of her bargain when she purchased  
2 Just 6 products that included ingredients that did not conform to the packaging  
3 representations and warranties made by Defendants. Had she been aware of the  
4 misrepresentations, she would have either not purchased Just 6 or would have paid  
5 less for it.

6           16. If Defendants would conform Just 6 to its packaging and ingredient  
7 warranties and promises, Plaintiff would be willing and likely to purchase Just 6 in  
8 the future.

9           **Defendants' Background**

10           17. Defendant Ainsworth has been in the pet food business in Meadville,  
11 Pennsylvania for approximately 80 years. It has been the manufacturer and distributor  
12 of Just 6 at all relevant times. Every bag of Just 6 contains a representation that  
13 Ainsworth is the distributor.

14           18. Defendant Smucker acquired Ainsworth in May 2018 for approximately  
15 \$1.9 billion. According to its official press release, the Rachael Ray Nutrish line of  
16 pet foods ("Nutrish Line") represented more than half of the value of Ainsworth.  
17 Smucker is liable as successor and/or alter ego of Ainsworth for the acts of Ainsworth.  
18 The official marketing website of the Nutrish Line of pet foods states, "The J.M.  
19 Smucker Company manufactures Rachael Ray™ Nutrish®."<sup>1</sup>

20           **Academic Research Regarding the Pet Food Industry**

21           19. Before December 2014, little or no peer-reviewed academic research was  
22 published concerning the accuracy of label claims with respect to ingredients present  
23 in canine foods.

24           20. In December 2014, a group of researchers found that only 18% of the pet  
25 food samples they tested completely matched the label claims with respect to the  
26 content of animal by-products. Thus, 82% of the products analyzed by the researchers  
27 contained non-conforming ingredients when compared to their label claims. The

28           <sup>1</sup> <https://nutrish.com/faq/general/manufacturing-and-safety>.

1 December 2014 study hypothesized that raw materials used in the preparation of the  
2 canned food products contained multiple protein types and may have contributed to  
3 contamination.<sup>2</sup>

4 21. In 2016, another study looked into the issue of whether vegan pet food  
5 contained non-conforming mammalian ingredients.<sup>3</sup> Vegan pet foods should contain  
6 no mammalian proteins or ingredients. The study found that half of the products tested  
7 contained non-conforming mammalian DNA in the products and suggested that  
8 manufacturers are ultimately responsible for maintaining adequate end product quality  
9 control to prevent such discrepancies between their ingredients and label claims.

10 22. By 2018, research into pet food products' label claims and the presence  
11 of non-conforming ingredients intensified. Out of the 40 products analyzed in one  
12 study, the ingredients of only 10 products correctly matched their label.<sup>4</sup> Of the  
13 remaining 30 products, 5 did not contain the declared animal species ingredients and  
14 23 others revealed the presence of undeclared animal species. Two of the products'  
15 labels were vague and their accuracy was indeterminable. This 2018 study found that  
16 mislabeling was an especially widespread problem in pet foods used for "elimination  
17 diets" (i.e. used to investigate food allergies). In this 2018 study, researchers suggested  
18 that manufacturers should pay particular attention to both the selection of raw material  
19  
20

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21 <sup>2</sup> See Ming-Kun Hsieh, *et al.*, *Detection of undeclared animal by-products in*  
22 *commercial canine canned foods: Comparative analyses by ELISA and PCR-RFLP*  
23 *coupled with slab gel electrophoresis or capillary gel electrophoresis*, J Sci Food  
Agric. 2016 Mar 30; 96(5): 1659-65 (completed December 31, 2014).

24 <sup>3</sup> See K. Kanakubo, *et al.*, *Determination of mammalian deoxyribonucleic acid*  
25 *(DNA) in commercial vegetarian and vegan diets for dogs and cats*, Journal of  
26 *Animal Physiology & Animal Nutrition*, 2017 Feb; 101 (1): 70–74 (March 3, 2016).

27 <sup>4</sup> See Rebecca Ricci, *et al.*, *Undeclared animal species in dry and wet novel*  
28 *and hydrolyzed protein diets for dogs and cats detected by microarray analysis*, BMC  
Veterinary Research Volume 14, Article number: 209 (2018).

1 suppliers and the production processes for pet food due to the high risk of  
2 contamination.

3 23. A second 2018 study (conducted in Europe) tested 11 canine and feline  
4 limited ingredient wet food products and found the presence of non-conforming  
5 ingredients in 54% of the products.<sup>5</sup> This study further suggested other peer-reviewed  
6 studies found that 80% of the dry foods analyzed contained non-conforming products.  
7 This study suggested that the high rate of cross-contamination in dietetic limited-antigen  
8 wet canine and feline foods may be due to inadequate quality-control practices in the  
9 pet food industry and opined that the pet food industry has a legal obligation to  
10 produce safe food for consumers. The researchers hypothesized that pet food  
11 contamination occurs at two different points during manufacturing: 1) in the  
12 production of the feed materials (sometimes attributable to suppliers), and 2) during  
13 the actual production of the pet food via cross-contamination during manufacturing  
14 production lines, improper equipment cleaning, or other production deficiencies.

15 24. In 2018, a third study summarized 18 studies, articles, and an abstract  
16 published between July 2017 and January 2018 related to pet food ingredient testing.  
17 The authors concluded that the mislabeling of pet food appears rather “common” in  
18 the limited ingredient diet products that are proposed for elimination diets.<sup>6</sup> They also  
19 found that unexpected added ingredients are more frequently detected than those  
20 missing from the label.

21  
22  
23 <sup>5</sup> See Elena Pagani, *et al.*, *Cross-contamination in canine and feline dietetic*  
24 *limited-antigen wet diets*, BMC Vet Res. 2018; 14: 283 (September 12, 2018).

25  
26 <sup>6</sup> See Thierry Olivry and Ralf S. Mueller, *Critically Appraised topic on adverse*  
27 *food reactions of companion animals (5): discrepancies between ingredients and*  
28 *labeling in commercial pet foods*, BMC Vet Res. 2018 Jan 22; 14(1):24 (January 22,  
2018).

25. Since 2014, virtually all scholarly researchers have found that pet food sold to consumers frequently contains non-conforming ingredients, and significant discrepancies between pet food products' labeling and their actual ingredients appears to be commonplace among pet food manufacturers.

**Defendants' Material Misrepresentations**

26. Pet foods vary in their quality of ingredients, formula, manufacturing processes, and inspection quality. Pet owners who purchase "grain free" and "limited ingredient" products pay a premium in order to alleviate their pets' allergies or to provide various health benefits associated with a grain free or limited ingredient diet. Notably, food allergies are more common among certain dog breeds than others.

27. In addition, pet owners are willing to pay a premium for dog food with premium ingredients and expect the products that are advertised in this manner to conform to the ingredients listed on the packaging.

28. Accordingly, Defendant's misrepresentations regarding the ingredients in Just 6 are material to consumers who purchase this product because these same consumers pass over other products that cost less but do not claim to be made from select, premium ingredients.

29. Inclusion of the phrases "Just 6" and "Limited Ingredient" in the product name for "[t]he Just 6 Limited Ingredient" dog food line is intended to appeal specifically to dog owners whose pets have exhibited allergic or other adverse reactions to other dog foods. "Limited ingredient" diets are often recommended by veterinarians to reduce risks of adverse reactions of dogs to certain ingredients that may be used as filler in lower-priced dog foods. As explained below, a warranty purportedly signed by Rachael Ray states that "Just 6" signifies that the product contains only six ingredients.

30. The front and back of the Just 6 dog food bags include numerous representations of the Defendants that are materially misleading. Images of the bags are reproduced below:









**just6**  
with added vitamins & chelated minerals

**LIMITED INGREDIENT RECIPE**

Simple. That's how I like my recipes. That's why I worked with a team of pet nutrition experts to create Rachael Ray™ Nutrish® Just 6® — a pet food made with just six simple, natural ingredients with added vitamins & chelated minerals. Lamb meal is the #1 ingredient, followed by five other wholesome ingredients. Of course, Just 6® doesn't contain any corn, wheat, soy or gluten. And there's never any poultry by-product meal, artificial flavors, colors or artificial preservatives. Nothing but good, wholesome food here!

*Rachael Ray*

- ★ Dry pet food safely cooked in only U.S. facilities with the world's best ingredients
- ★ Only the best, high-quality, carefully chosen ingredients — never any ingredients from China
- ★ Every trusted ingredient supplier goes through rigorous qualification and testing
- ★ Backed by 80+ years of focused excellence in pet nutrition
- ★ Learn more: [nutrish.com/ingredients](http://nutrish.com/ingredients)

**Rachael's Rescue®**

A portion of proceeds from the sale of this product will be donated to The Rachael Ray Foundation, which helps pets in need through Rachael's Rescue®. Learn more online at [rachaelrescue.org](http://rachaelrescue.org)

**INGREDIENT SAFETY:**

At Ainsworth Pet Nutrition, we demand high-quality ingredients from our suppliers and require thorough testing to ensure product safety. We are committed to producing outstanding products every day, and take great pride in ensuring our foods are wholesome and, most importantly, safe.

**QUALITY GUARANTEE:**

We are committed to making great-tasting, nutritious pet foods. If you or your pet are not completely satisfied with this product, we will provide a full refund. Call 1-800-323-7738 weekdays from 9 a.m. – 9 p.m. EST, or weekends from 9 a.m. – 5 p.m. EST.

**REAL RECIPES. REAL INGREDIENTS. REAL GOOD.™**

**Distributed by:**  
Ainsworth Pet Nutrition, LLC, Meadville, PA 16335  
For questions or comments, please call 1-800-323-7738 weekdays from 9 a.m. – 9 p.m. EST, or weekends from 9 a.m. – 5 p.m. EST.  
[nutrish.com](http://nutrish.com)

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"Nutrish" is a registered trademark of DPC Pet Specialties, LLC.  
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**CAREFULLY SELECTED INGREDIENTS - NO EXTRA STUFF:**

- Lamb Meal**, the first ingredient, is sourced from the U.S., New Zealand and Australia. It's easily digestible and provides essential amino acids and vitamins to help support lean muscle and healthy organs. Lamb Meal is also a natural source of glucosamine and chondroitin for healthy joints.
- Brown Rice** is an excellent carbohydrate source for essential vitamins and wholesome fiber.
- Ground Rice** naturally delivers highly digestible carbohydrates for quick energy.
- Beet Pulp** is a wholesome fiber source that naturally provides prebiotics to help support healthy digestion.
- Chicken Fat** is a rich source of natural Omega 6 and Omega 3 fatty acids, which help to support healthy skin and coat.
- Natural Pork Flavor** completes the recipe to enhance the naturally tasty Just 6® kibble.

**RACHAEL RAY™ NUTRISH® JUST 6® LAMB MEAL & BROWN RICE RECIPE IS MADE FOR ADULT DOGS OF ALL SIZES.**

Talk to your veterinarian about your dog's ideal weight and adjust your amounts accordingly.

ADULT DOG SIZE	FEEDING AMOUNT*
5 to 10 lbs.	3/4 to 1 cup
10 to 20 lbs.	1 to 1-3/4 cups
20 to 40 lbs.	1-3/4 to 3 cups
40 to 60 lbs.	3 to 4 cups
60 to 80 lbs.	4 to 5 cups
80 to 100 lbs.	5 to 6 cups
Over 100 lbs.	6 plus 1/2 cup for every additional 12 lbs.

\*Amounts are based on a standard 8-oz. dry measuring cup. This chart represents average recommended daily portions. You may need to feed slightly more or less, depending on your dog's activity level and overall fitness.

**Transition instructions:** Because Rachael Ray™ Nutrish® Just 6® Lamb Meal & Brown Rice Recipe may offer different ingredients than your dog is used to, it may take up to ten days for your dog's system to become accustomed. Slowly mix with other food over a five- to ten-day period until your dog is solely eating Rachael Ray™ Nutrish® Just 6® Lamb Meal & Brown Rice Recipe.

Days 1-3	Days 4-6	Days 7-9	Days 10+
25% Nutrish Food Mixed with 75% Other Food	50% Nutrish Food Mixed with 50% Other Food	75% Nutrish Food Mixed with 25% Other Food	100% Nutrish Food

**BE SURE TO PROVIDE PLENTY OF FRESH, CLEAN WATER DAILY. CLOSE PACKAGE TIGHTLY BETWEEN FEEDINGS OR STORE PRODUCT IN AN AIRTIGHT CONTAINER TO MAINTAIN FRESHNESS.**

**Adult Dogs:** Adult dogs with normal activity may be fed the recommended amount in two meals daily.

**INGREDIENTS:**  
Lamb Meal, Brown Rice, Ground Rice, Dried Plain Beet Pulp, Chicken Fat (preserved with Mixed Tocopherols), Natural Pork Flavor, Sodium Chloride, Potassium Chloride, Zinc Proteinate, Vitamin E Supplement, Iron Proteinate, L-Ascorbyl-2-Polyphosphate (Source of Vitamin C), Choline Chloride, Copper Proteinate, Manganese Proteinate, Biotin, Niacin, d-Calcium Pantothenate, Sodium Selenite, Vitamin A Supplement, Riboflavin Supplement, Thiamine Mononitrate, Vitamin B12 Supplement, Calcium Iodate, Pyridoxine Hydrochloride (Source of Vitamin B6), Vitamin D3 Supplement, Folic Acid.

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**GUARANTEED ANALYSIS:**

Crude Protein (Min.)	20.0%	Rachael Ray™ Nutrish® Just 6® Lamb Meal & Brown Rice Recipe is formulated to meet the nutritional levels established by the AAFCO (Association of American Feed Control Officials) Dog Food Nutrient Profiles for adult maintenance.
Crude Fat (Min.)	13.0%	
Crude Fiber (Max.)	4.0%	
Moisture (Max.)	10.0%	
Linoleic Acid (An Omega 6 Fatty Acid) (Min.)	1.5%	
Alpha-Linolenic Acid (An Omega 3 Fatty Acid) (Min.)	0.1%	
Calcium (Min.)	1.2%	
Phosphorus (Min.)	1.0%	
Zinc (Min.)	250 mg/kg	
Vitamin E (Min.)	225 IU/kg	
*Ascorbic Acid (Source of Vitamin C) (Min.)	35 mg/kg	
*Glucosamine (Min.)	400 mg/kg	
*Chondroitin Sulfate (Min.)	200 mg/kg	
*Not recognized as an essential nutrient by the AAFCO Dog Food Nutrient Profiles.		

**MADE WITH SAFE, HIGH-QUALITY INGREDIENTS**

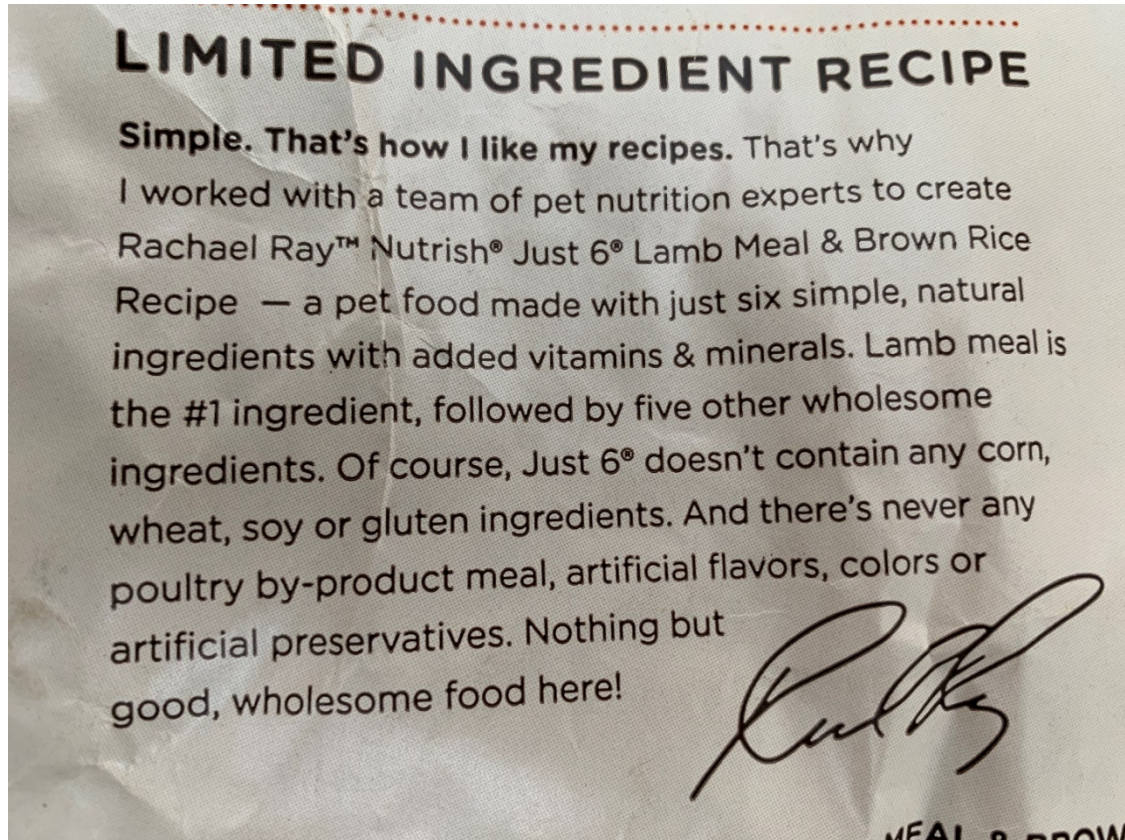
**100% COMPLETE & BALANCED NUTRITION FOR ADULT DOGS**

**BEST IF USED BY:**

31. The representations that Just 6 contains “no corn, wheat, soy or gluten ingredients” and “no . . . beef” appear prominently, in large type, on the front of every bag.

32. An express warranty, purported signed by Rachael Ray, a well-known and respected celebrity chef, appears on the back of every bag of Just 6:

[Rachael Ray Nutrish Just 6 is] a pet food made with just six simple, natural ingredients with added vitamins & minerals. Lamb meal is the #1 ingredient, followed by five other wholesome ingredients. Of course, Just 6<sup>®</sup> doesn’t contain any corn, wheat, soy or gluten ingredients. . . .



33. The back of the bag also includes an ingredient list for Just 6. Corn, wheat, soy, and beef are not listed as ingredients in this list.



34. Defendants' nutrish.com website similarly contains the representation, "Just 6 limited ingredient recipe is made with natural ingredients – plus vitamins & minerals – with no corn, wheat, soy or gluten."<sup>7</sup>

35. The website also represents:

Rachael Ray<sup>TM</sup> Nutrish<sup>®</sup> demands the utmost in food safety and quality from our suppliers. We maintain rigorous testing to ensure ingredient and product safety. We continue our commitment to food safety and quality assurance by actively participating in a Pet Food Industry (PFI) work group to establish and implement "Best Practices" consistent with evolving regulations under the Food Safety Modernization Act. In addition to continually challenging our food safety programs, Rachael Ray<sup>TM</sup> Nutrish<sup>®</sup> employs independent third parties to assess and audit our food safety programs at each manufacturing facility.

Nutrish uses only the best, high quality carefully chosen ingredients. Every trusted ingredient supplier goes through rigorous qualification and testing. Rest assured that every product is backed by over 80 years of focused excellence in pet nutrition.<sup>8</sup>

36. All of the Defendants' representations regarding the ingredients in Just 6, and the safety of Just 6 for dogs that may be sensitive or allergic to corn, wheat, soy, or beef, are false. In fact, Just 6 contains significant amounts of each of these ingredients. Plaintiff's independent analysis of the ingredients of Just 6 is attached as Exhibit A.

### **Defendants' Misrepresentations and Omissions are Material to Consumers**

37. Although pet foods vary in the quality of ingredients, formula, manufacturing processes, and inspection quality, dog owners often choose to purchase products that have no corn, wheat, soy, or beef because certain dog breeds have

<sup>7</sup> <https://nutrish.com/dog/just-6-dry-food/just-6-lamb-and-brown-rice>.

<sup>8</sup> <https://Nutrish.com/faq/general/manufacturing-and-safety>

1 allergies associated with dog foods that contain these ingredients or because the  
2 owners understand that certain ingredients help—or hamper—their pets’ health,  
3 weight, and overall wellbeing.

4 38. When pet owners buy limited ingredient dog food, they usually do so to  
5 prevent a health issue or address a nutritional deficiency that their dog may be  
6 experiencing. And consumers generally must pay a premium price for specialized pet  
7 food formulations. Representations by Defendants on their [nutrish.com](https://nutrish.com) website  
8 demonstrates that Defendants are aware of the reasons that dog owners choose food  
9 products labeled “limited ingredient.” “Just 6<sup>®</sup> is a limited ingredient recipe which  
10 means *it may help dogs with food sensitivities*.”<sup>9</sup>

11 39. Accordingly, Plaintiff and Class Members purchased Just 6 instead of  
12 cheaper dog food alternatives—some of which are also marketed by Defendants—that  
13 were known to contain corn, wheat, soy, and/or beef.

14 40. Defendants’ misrepresentations about the formulation of Just 6 drive  
15 consumers’ purchases.

## 16 **CLASS ACTION ALLEGATIONS**

### 17 **Class Definitions**

18 41. Plaintiff brings this action on behalf of herself and the members of the  
19 following class (the “Class”):

20  
21 All persons residing in California who, during the maximum  
22 period of time permitted by law, purchased Just 6 primarily  
23 for personal, family, or household purposes, and not for  
resale.

24 42. Specifically excluded from this definition are: (1) Defendants, any entity  
25 in which any Defendant has a controlling interest, and its legal representatives,  
26 officers, directors, employees, assigns and successors; (2) the Judge to whom this case

27  
28 <sup>9</sup> <https://nutrish.com/faq/dog/dry-dog-food#7> (emphasis added).

1 is assigned and any member of the Judge's staff or immediate family; and (3) Class  
2 Counsel.

3 43. Plaintiff reserves the right to amend the Class definition as necessary.

4 44. As used herein, "Class Members" shall mean and refer to the members  
5 of the Class, including Plaintiff.

6 45. Plaintiff seeks only damages and equitable relief on behalf of herself and  
7 the Class Members. Plaintiff disclaims any intent or right to seek any recovery in this  
8 action for personal injuries, wrongful death, or emotional distress suffered by Plaintiff  
9 and/or the Class Members.

10 46. Numerosity: Although the exact number of Class Members is uncertain  
11 and can only be ascertained through appropriate discovery, the number is great enough  
12 such that joinder is impracticable. The disposition of the claims of these Class  
13 Members in a single action will provide substantial benefits to all parties and to the  
14 Court.

15 47. Typicality: The claims of the representative plaintiff are typical in that  
16 Plaintiff, like all Class Members, purchased Just 6 that was manufactured and  
17 distributed by Defendants. Plaintiff, like all Class Members, has been damaged by  
18 Defendants' misconduct in that, *inter alia*, she has incurred or will continue to incur  
19 damage due to purchasing a product at a premium price that contained ingredients  
20 (corn, wheat, soy, and beef) that Defendants represented were absent from Just 6.  
21 Furthermore, the factual bases of Defendants' misconduct are common to all Class  
22 Members and represent a common thread of fraudulent, deliberate, and negligent  
23 misconduct resulting in injury to all Class Members.

24 48. Commonality: There are numerous questions of law and fact common to  
25 Plaintiff and Class Members that predominate over any individual questions. These  
26 common legal and factual issues include the following:

27 a) Whether Just 6 contains corn, wheat, soy, and/or beef;

- b) Whether Defendants' representations that their products contain no corn, wheat, soy, or beef are false;
- c) Whether Defendants expressly warranted that Just 6 would conform to the representations made on its packaging that Just 6 contains no corn, wheat, soy, or beef;
- d) Whether Defendants impliedly warranted that Just 6 would conform to the representations that it is a limited ingredient product that would pass without objection in the trade under this description and is fit for the ordinary purposes for which such goods are sold;
- e) Whether Defendants breached their warranties by making the representations above;
- f) Whether Defendants were unjustly enriched by making the representations and omissions above;
- g) Whether Defendants' actions as described above violated the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*;
- h) Whether Defendants' actions as described above violated state consumer protection laws as alleged herein;
- i) Whether Defendants should be required to make restitution, disgorge profits, reimburse losses, pay damages, and pay treble damages as a result of the above described practices.

49. Adequate Representation: Plaintiff will fairly and adequately protect the interests of Class Members. Plaintiff has retained attorneys experienced in the prosecution of class actions, including dog food ingredient and consumer and product defect class actions, and Plaintiff intends to prosecute this action vigorously.

50. Predominance and Superiority: Plaintiff and Class Members have all suffered and will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, Class



Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of Class Members' individual claims, it is likely that few Class Members could afford to seek legal redress for Defendants' misconduct. Absent a class action, Class Members will continue to incur damages, and Defendants' misconduct will continue without remedy. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants and will promote consistency and efficiency of adjudication.

51. Further, Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

#### COUNT 1

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

**(15 U.S.C. § 2301, *et seq.*)**

52. Plaintiff brings this count on behalf of herself and the Class and repeats and re-alleges all previous paragraphs, as if fully included herein, as well as the allegations as to the breach of implied warranty of merchantability as set forth in Count 3 below.

53. As previously alleged, this Court has original jurisdiction over this matter based upon the requirements of CAFA; therefore, the Court has alternate jurisdiction over Plaintiff's Magnuson-Moss claim.

54. Just 6 is a consumer product as defined in 15 U.S.C. § 2301(1).

55. Plaintiff and Class Members are consumers as defined in 15 U.S.C. § 2301(3) and utilized Just 6 for personal and household use and not for resale or commercial purposes.

56. Plaintiff purchased Just 6 costing more than \$5 and her individual claims are greater than \$25 as required by 15 U.S.C. §§ 2302(e) and 2310(d)(3)(A).

1           57. Defendants are suppliers and warrantors as defined in 15 U.S.C. §§  
2 2301(4) and (5).

3           58. The federal Magnuson-Moss Warranty Act (“MMWA” or “Act”), 15  
4 U.S.C. §§ 2301-2312, is a consumer protection regime designed to supplement state  
5 warranty law.

6           59. The MMWA provides a cause of action for breach of warranty, including  
7 the implied warranty of merchantability, or other violations of the Act. 15 U.S.C. §  
8 2310(d)(1).

9           60. The Defendants have breached their implied warranties of  
10 merchantability by failing to provide merchantable goods. The Just 6 dog food at issue  
11 is not merchantable or fit for its ordinary purposes because the dog food is purportedly  
12 designed and marketed as a wholesome limited ingredient food for pet owners who  
13 choose to avoid feeding their dogs corn, wheat, soy, or beef, yet Plaintiff’s and  
14 proposed Class Members’ Just 6 products do not function accordingly.

15           61. Defendants breached its implied warranty of merchantability because  
16 Just 6 did in fact contain corn, wheat, soy, and beef, and therefore fails to function as  
17 a limited ingredient diet.

18           62. In its capacity as warrantor, and by the conduct described herein, any  
19 attempt by Defendants to limit the warranties in a manner that it does is not permitted  
20 by law.

21           63. By Defendants’ conduct as described herein, Defendant has failed to  
22 comply with its obligations under its implied promises, warranties, and  
23 representations.

24           64. Plaintiff and the Class Members fulfilled their obligations under the  
25 implied warranties.

26           65. As a result of Defendants’ breach of warranties, Plaintiff and the Class  
27 Members are entitled to revoke their acceptance of Just 6, obtain damages, punitive  
28 damages, equitable relief, and attorneys’ fees and costs pursuant to 15 U.S.C. § 2301.



1           75. As a direct and proximate result of Defendants' breaches of its express  
2 warranties and their failure to conform to Just 6's express representations, Plaintiff  
3 and members of the Class have been damaged. Plaintiff and Class Members have  
4 suffered damages in that they did not receive the product they specifically paid for  
5 and that Defendants warranted it to be. In addition, Plaintiff and Class Members paid  
6 a premium for a product that did not conform to the Defendants' warranties.

7                                   **COUNT 3**

8                           **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

9           76. Plaintiff brings this count on behalf of herself and the Class and repeats  
10 and re-alleges all previous paragraphs, as if fully included herein.

11           77. Defendants marketed, sold, and/or distributed Just 6, and Plaintiff and  
12 other Class Members purchased Just 6.

13           78. Plaintiff brings this claim for breach of the Uniform Commercial Code's  
14 implied warranty of merchantability on behalf of herself and other consumers who  
15 purchased Just 6 as a limited ingredient dog food product for their pets.

16           79. The Defendants are merchants as defined by applicable UCC provisions.

17           80. Privity between Plaintiff and the Class and Defendants is not required  
18 under California law.

19           81. The Defendants have breached their implied warranties of  
20 merchantability that they made to Plaintiff and the prospective class. For example,  
21 Defendants impliedly warranted that the Just 6 products were free from defects, that  
22 they were merchantable, and that they were fit for the ordinary purpose for which  
23 limited ingredient dog foods are used.

24           82. When sold by Defendants, Just 6 was not merchantable, did not pass  
25 without objection in the trade as a limited ingredient diet for dogs, was not of adequate  
26 quality within that description, was not fit for the ordinary purposes for which such  
27 goods are used, and did not conform to the promises or affirmations of fact made on  
28 the container or label.

83. Within a reasonable time after Plaintiff knew or should have known that the product was not fit for such purpose and/or was not otherwise merchantable as set forth above, Plaintiff gave Defendant notice thereof.

84. As a direct result of Just 6 being unfit for its intended purpose as a limited ingredient food product and/or otherwise not merchantable, Plaintiff and Class Members were damaged and are entitled to remedies provided under Article 2 of the U.C.C., including under California law specifically, monetary damages. *See, e.g.,* Cal. Com. Code § 2714. Because of the defects in the Just 6 product as described herein, there was no value to the goods as accepted. The value of the Just 6 products had they been as warranted may be measured by their purchase prices; accordingly, damages in the sums of their purchase prices, or as otherwise measured pursuant to the damages provisions of Article 2 of the UCC, are warranted to Plaintiff and Class Members. *See, e.g.,* Cal. Com. Code § 2714(2).

85. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiff and Class Members have been damaged in an amount to be proven at trial.

#### **COUNT 4**

#### **UNJUST ENRICHMENT**

86. Plaintiff brings this count on behalf of herself and the Class and repeats and re-alleges all previous paragraphs, as if fully included herein.

87. Plaintiff conferred benefits on Defendants by purchasing Just 6 at a premium price.

88. Defendants have knowledge of its receipt of such benefits.

89. Defendants have been unjustly enriched in retaining the revenues derived from Plaintiff and Class Members' purchases of Just 6.

90. Defendants' retaining these moneys under these circumstances is unjust and inequitable because Defendants falsely and misleadingly represented that Just 6

1 contained no corn, wheat, soy or beef when, in fact, Just 6 did contain these non-  
2 conforming ingredients.

3 91. Defendants' misrepresentations have injured Plaintiff and Class  
4 Members because they would not have purchased (or paid a price premium) for Just  
5 6 had they known the true facts regarding Just 6's ingredients.

6 92. Because it is unjust and inequitable for Defendant to retain such non-  
7 gratuitous benefits conferred on it by Plaintiff and Class Members, Defendants must  
8 pay restitution to Plaintiff and Class Members, as ordered by the Court.

9 **COUNT 5**

10 **CALIFORNIA CONSUMERS LEGAL REMEDIES ACT ("CLRA")**

11 93. Plaintiff brings this count on behalf of herself and the Class and repeats  
12 and re-alleges all previous paragraphs, as if fully included herein.

13 94. The CLRA prohibits deceptive practices by any business that provides  
14 goods, property, or services primarily for personal, family, or household purposes.

15 95. Plaintiff and the Class members are "consumers" as defined in California  
16 Civil Code § 1761(d).

17 96. The Just 6 Products are "goods" as defined in California Civil Code §  
18 1761(a).

19 97. Defendants are "persons" as defined in California Civil Code § 1761(c).

20 98. Plaintiff's and the Class Members' purchases of the Products are  
21 "transactions" as defined in California Civil Code § 1761(e).

22 99. Defendants' representations and omissions concerning the quality,  
23 benefits and effectiveness of the Products were false and/or misleading as alleged  
24 herein.

25 100. Defendants' false or misleading representations and omissions were such  
26 that a reasonable consumer would attach importance to them in determining his or her  
27 purchasing decision.  
28



1           101. Defendants' false and misleading representations and omissions were  
2 made to the entire Class as they were prominently displayed on the packaging of every  
3 bag of Just 6 dog food.

4           102. Defendants knew or should have known their representations and  
5 omissions were material and were likely to mislead consumers, including Plaintiff and  
6 the Class.

7           103. Defendants' practices, acts, and course of conduct in marketing and  
8 selling the Just 6 Products were and are likely to mislead a reasonable consumer acting  
9 reasonably under the circumstances to his or her detriment.

10           104. Defendants' false and misleading representations and omissions were  
11 designed to, and did, induce the purchase and use of the Just 6 Products for personal,  
12 family, or household purposes by Plaintiff and Class members, and violated and  
13 continue to violate the following sections of the CLRA:

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

22           105. Defendants profited from the sale of the falsely, deceptively, and  
23 unlawfully advertised Products to unwary consumers.

24           106. Defendants' wrongful business practices constituted, and constitute, a  
25 continuing course of conduct in violation of the CLRA.

26           107. Defendants' wrongful business practices were a direct and proximate  
27 cause of actual harm to Plaintiff and to each Class member.  
28

1           108. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff provided  
2 notice to Defendants of their alleged violations of the CLRA, demanding that  
3 Defendants correct such violations, and providing them with the opportunity to correct  
4 their business practices. Notice was sent via certified mail, return receipt requested on  
5 March 26, 2020. As of the date of filing this complaint, Defendants have not  
6 responded. Accordingly, if after 30 days no satisfactory response to resolve this  
7 litigation on a class-wide basis has been received, Plaintiff will seek leave to amend  
8 this request to seek restitution and actual damages as provided by the CLRA.

9           109. Pursuant to California Civil Code § 1780, Plaintiff seeks injunctive relief,  
10 their reasonable attorneys' fees and costs, and any other relief that the Court deems  
11 proper.

## 12                                   COUNT 6

### 13                                   CALIFORNIA FALSE ADVERTISING LAW ("FAL")

14           110. Plaintiff brings this count on behalf of herself and the Class and repeats  
15 and re-alleges all previous paragraphs, as if fully included herein.

16           111. The FAL provides that "[i]t is unlawful for any person, firm, corporation  
17 or association, or any employee thereof with intent directly or indirectly to dispose of  
18 real or personal property or to perform services" to disseminate any statement "which  
19 is untrue or misleading, and which is known, or which by the exercise of reasonable  
20 care should be known, to be untrue or misleading." Cal. Bus. & Prof. Code § 17500.

21           112. It also is unlawful under the FAL to make or disseminate any  
22 advertisement that is "untrue or misleading, and which is known, or which by the  
23 exercise of reasonable care should be known, to be untrue or misleading." *Id.*

24           113. As alleged herein, the advertisements, labeling, website, policies, acts,  
25 and practices of Defendants relating to the Just 6 Products were and are deceptive and  
26 misleading.

1           114. As alleged herein, the advertisements, labeling, website, policies, acts,  
2 and practices of Defendants misled consumers acting reasonably as to Defendants'  
3 representations about quality, benefits, and ingredients of Just 6.

4           115. Plaintiff suffered injury-in-fact as a result of Defendants' actions as set  
5 forth herein because, as a reasonable consumer, she purchased the Products in reliance  
6 on Defendants' false and misleading labeling claims concerning Just 6's qualities,  
7 benefits, and ingredients.

8           116. Defendants' business practices as alleged herein constitute deceptive,  
9 untrue, and misleading advertising pursuant to the FAL because Defendants have  
10 advertised Just 6 in a manner that is untrue and misleading, which Defendants knew  
11 or reasonably should have known was untrue, and because Defendants omitted  
12 material information from their advertising.

13           117. Defendants profited from sale of the falsely and deceptively advertised  
14 Products to reasonable but unwary consumers including Plaintiff and the Class, and  
15 Defendants have thereby been unjustly enriched.

16           118. As a result, Plaintiff, the Class, and the general public are entitled to  
17 injunctive and equitable relief, restitution, and an order for the disgorgement of the  
18 funds by which Defendants were unjustly enriched.

19           119. Because Plaintiff owns pets to whom she would like to feed a limited  
20 ingredient dog food, she suffers threat of future harm because she is unable to rely on  
21 Defendants' representations regarding the ingredients of Just 6. Likewise, because  
22 Defendants have made such representations with impunity thus far, Plaintiff's ability  
23 to discern truthful from untruthful claims made with respect to Defendants' and other  
24 competitors' dog food ingredients is impaired. Injunctive relief requiring Defendants  
25 to make only truthful statements in their advertising would remedy these harms.

26           120. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff, on behalf of herself  
27 and the Class, seeks an order enjoining Defendants from continuing to engage in  
28

1 deceptive business practices, false advertising, and any other act prohibited by law,  
2 including those set forth in this Complaint.

3 **COUNT 7**

4 **CALIFORNIA UNFAIR COMPETITION LAW (“UCL”)**

5 121. Plaintiff brings this count on behalf of herself and the Class and repeats  
6 and re-alleges all previous paragraphs, as if fully included herein.

7 122. The UCL prohibits any “unlawful, unfair or fraudulent business act or  
8 practice.” Cal. Bus. & Prof. Code § 17200. Defendants’ acts, omissions,  
9 misrepresentations, practices, and non-disclosures as alleged herein constitute  
10 business acts and practices.

11 123. Defendants’ acts, omissions, misrepresentations, practices and non-  
12 disclosures as alleged herein constitute unlawful, unfair, and fraudulent business  
13 practices in that they have the capacity to deceive reasonable consumers, including  
14 Plaintiff and the Class, as to the benefits and ingredients of the Just 6 Products.

15 124. Unlawful: The acts alleged herein are “unlawful” under the UCL in that  
16 they violate at least: (a) the False Advertising Law, Cal. Bus. & Prof. Code § 17500,  
17 *et seq.*; (b) the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*; and  
18 (c) California’s Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code  
19 § 109875, *et seq.*

20 125. Unfair: Defendants’ conduct with respect to the labeling, advertising, and  
21 sale of Just 6 was “unfair” because Defendants’ conduct was immoral, unethical,  
22 unscrupulous, or substantially injurious to consumers and the utility of their conduct,  
23 if any, does not outweigh the gravity of the harm to their victims, including Plaintiff  
24 and the Class.

- 25 a. Defendants’ conduct with respect to the labeling, advertising, and sale  
26 of Just 6 was and is unfair because it violates public policy as declared  
27 by specific constitutional, statutory or regulatory provisions, including  
28

1 but not limited to the applicable sections of the False Advertising Law  
2 and Consumers Legal Remedies Act.

3 b. Defendants' conduct with respect to the labeling, advertising, and sale  
4 of the Products was and is unfair because the consumer injury was  
5 substantial, not outweighed by benefits to consumers or competition,  
6 and not one consumer themselves could reasonably have avoided.

7 c. Reasonable consumers, including Plaintiff and the Class, purchased the  
8 Products believing they were beneficial and effective as claimed by  
9 Defendants when in fact they were not—a fact of which consumers  
10 could not reasonably have become aware.

11 126. Fraudulent: A statement or practice is “fraudulent” under the UCL if it is  
12 likely to mislead or deceive the public, applying an objective reasonable consumer  
13 test.

14 a. As set forth herein, Defendants' representations and omissions about  
15 the quality, benefits, and effectiveness of the Products were and are  
16 false and likely to mislead or deceive the public because a significant  
17 portion of the general consuming public, acting reasonably in the  
18 circumstances, could be misled by Defendants' representations and  
19 omissions.

20 127. Defendants profited from their sale of the falsely, deceptively, and  
21 unlawfully advertised and packaged Products to unwary consumers.

22 128. Defendants' conduct directly and proximately caused and continues to  
23 cause substantial injury to Plaintiff and the other Class members. Plaintiff and the  
24 Class have suffered injury-in-fact as a result of Defendants' unlawful conduct  
25 including but not limited to the damages as described above.

26 129. Plaintiff and the Class are likely to continue to be damaged by  
27 Defendants' deceptive trade practices, because Defendants continue to disseminate  
28 misleading information on the Products' packaging and through the marketing and

1 advertising of the Products. Thus, injunctive relief enjoining Defendants' deceptive  
2 practices is proper.

3 130. Because Plaintiff owns pets to whom she would like to feed limited  
4 ingredient dog food, she suffers threat of future harm by the Defendants because she  
5 is unable to rely on Defendants' representations regarding the qualities and ingredients  
6 of their products in deciding whether to purchase Just 6 in the future. Likewise,  
7 because Defendants have made such representations with impunity thus far, Plaintiff's  
8 ability to discern truthful from untruthful claims made with respect to competitors'  
9 dog food products is impaired. Injunctive relief requiring Defendants to make only  
10 truthful statements in their advertising would remedy these harms.

11 131. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order  
12 enjoining Defendants from continuing to conduct business through unlawful, unfair,  
13 and/or fraudulent acts and practices, and to commence a corrective advertising  
14 campaign.

15 132. Plaintiff and the Class also seek an order for and restitution of all monies  
16 from the sale of the Products, which were unjustly acquired through acts of unlawful  
17 competition.

### 18 **RELIEF DEMANDED**

19 WHEREFORE, Plaintiff, individually and on behalf of the Class of all others  
20 similarly situated, seeks a judgment against Defendants, as follows:

- 21 a. For an order certifying the Class under Rule 23 of the Federal Rules of  
22 Civil Procedure and naming Plaintiff as Class representative and Plaintiff's  
23 attorneys as Class Counsel;
- 24 b. For an order declaring that Defendants' conduct violates the statutes  
25 referenced herein;
- 26 c. For an order finding in favor of Plaintiff and the Class on all counts  
27 asserted herein;
- 28 d. For compensatory, statutory, and punitive damages, as applicable, in



- amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
  - f. For an order of restitution and all other forms of equitable monetary relief;
  - g. For injunctive relief as pleaded or as the Court may deem proper; and
  - h. For an order awarding Plaintiff and the Class their reasonable attorneys' fees, expenses and costs incurred in bringing and prosecuting this lawsuit.

### **JURY TRIAL DEMANDED**

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

Dated: April 3, 2020.

Respectfully submitted,

/s/ Alex R. Straus

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*\*Applications for pro hac vice to follow*