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

ALAIN MICHAEL, on behalf of
himself and all others similarly
situated,

Plaintiff,

v.

MARS PETCARE US, INC.

Defendant.

Case No.

CLASS ACTION COMPLAINT

Demand for Jury Trial

Plaintiff Alain Michael (“Plaintiff”), acting on behalf of himself and all others similarly situated (“Class Members”), brings this action for damages and equitable relief against Mars Petcare US, Inc. (“Defendant”).

NATURE OF THE CASE

1. Dogs can—and often do—have allergic reactions to certain foods, including those that contain wheat, soy, and chicken. 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.

1 12. When Plaintiff learned that the Nutro Limited Ingredient Diets
2 mislabeled its products, he stopped purchasing the Nutro Limited Ingredient Diets
3 products.

4 13. Plaintiff Michael did not receive the benefit of his bargain when he
5 purchased the Nutro Limited Ingredient Diets products that included ingredients that
6 did not conform to the packaging representations and warranties made by Defendant.
7 Had he been aware of the misrepresentations, he would have either not purchased the
8 Nutro Limited Ingredient Diets or would have paid less for it.

9 14. If Defendant would conform the Nutro Limited Ingredient Diet to its
10 packaging and ingredient warranties and promises, Plaintiff Michael would be willing
11 and likely to purchase the Nutro Limited Ingredient Diets in the future.

12 **The Nutro Company's Background**

13 15. Nutro Natural Pet Food, founded in 1926, was acquired by Mars in 2007.
14 Nutro natural pet Food has its headquarters in Franklin, Tenn. The company website
15 states that all Nutro foods are manufactured in the United States facilities.¹

16 16. According to the California Secretary of State's website, the Nutro
17 Company was a domestic corporation founded in 1980 until it merged with Mars,
18 Petcare US, Inc. on January 3, 2016.

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

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

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

28 ¹ <https://dogcare.dailypuppy.com> (last visited May 28, 2020)

1 canned food products contained multiple protein types and may have contributed to
2 contamination.²

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

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

20
21 ² 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 ³ See K. Kanakubo, *et al.*, *Determination of mammalian deoxyribonucleic acid (DNA)*
25 *in commercial vegetarian and vegan diets for dogs and cats*, *Journal of Animal*
26 *Physiology & Animal Nutrition*, 2017 Feb; 101 (1): 70–74 (March 3, 2016).

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

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

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

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

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25 ⁵ See Elena Pagani, *et al.*, *Cross-contamination in canine and feline dietetic limited-
26 antigen wet diets*, BMC Vet Res. 2018; 14: 283 (September 12, 2018).

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

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Defendant’s Material Misrepresentations

24. 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.

25. 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.

26. Accordingly, Defendant’s misrepresentations regarding the ingredients in the Nutro Limited Ingredient Diets are material to consumers who purchase this product, passing over products that cost less but do not claim to be made from select, premium ingredients.

27. Inclusion of the phrases “the Nutro Limited Ingredient Diets” and “Limited Ingredient” in the product name for “the Nutro Limited Ingredient Diets 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.

28. Defendant understands the importance of not having ingredients that cause allergic reactions or adverse reactions and states on it’s website “[t]hese recipes avoid ingredients that commonly cause food sensitivities in pets, like chicken, beef, corn, wheat, soy and dairy protein.”⁷

⁷ <https://www.nutro.com/natural-dog-food/nutro/dry/adult-venison-meal-sweet-potato-recipe.aspx> (last visited May 28, 2020)

1 29. The representations are identical across all of the Nutro Limited
2 Ingredient Diets. Each product states on the front of the label “NO CHICKEN” and
3 “No Corn, Wheat, or Soy”. There is no variance in these unequivocal representations
4 across any of the Nutro Limited Ingredient Diets.

5 30. The front and back of the Nutro Limited Ingredient Diets dog food bags
6 include numerous representations of the Defendant that are materially misleading.
7 Images of the front of the bags are reproduced below:

8
9 **I. Nutro Limited Ingredient Diet Adult Large Breed Lamb & Sweet Potato**
10 **Recipe Grain Free Dog Food**⁸



28 ⁸ <https://www.amazon.com/Nutro-Limited-Ingredient-Adult-Potato/dp/B01MZ1EWVE> (last visited May, 28, 2020).

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II. Nutro Limited Ingredient Diet Small Bites Adult Lamb & Sweet Potato Recipe Grain Free Dog Food⁹



⁹ https://www.chewy.com/nutro-limited-ingredient-diet-grain/dp/136781?utm_source=google-product&utm_medium=cpc&utm_campaign=f&utm_content=Nutro&utm_term=&clid=EAIaIQobChMIv9fUy9jW6QIVjbbICh1ecQFnEAQYASABEgJc6PD_BwE (last visited May, 28, 2020).

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III. Nutro Limited Ingredient Diet Adult Duck & Lentils Recipe Grain Free Dog Food¹⁰



¹⁰ https://www.chewy.com/nutro-limited-ingredient-diet-grain/dp/136794?utm_source=google-product&utm_medium=cpc&utm_campaign=f&utm_content=Nutro&utm_term=&clid=EAIaIQobChMI6ZKIqjW6QIVhIXICh0o8QfREAQYASABEGl_DPD_BwE (last visited May, 28, 2020).

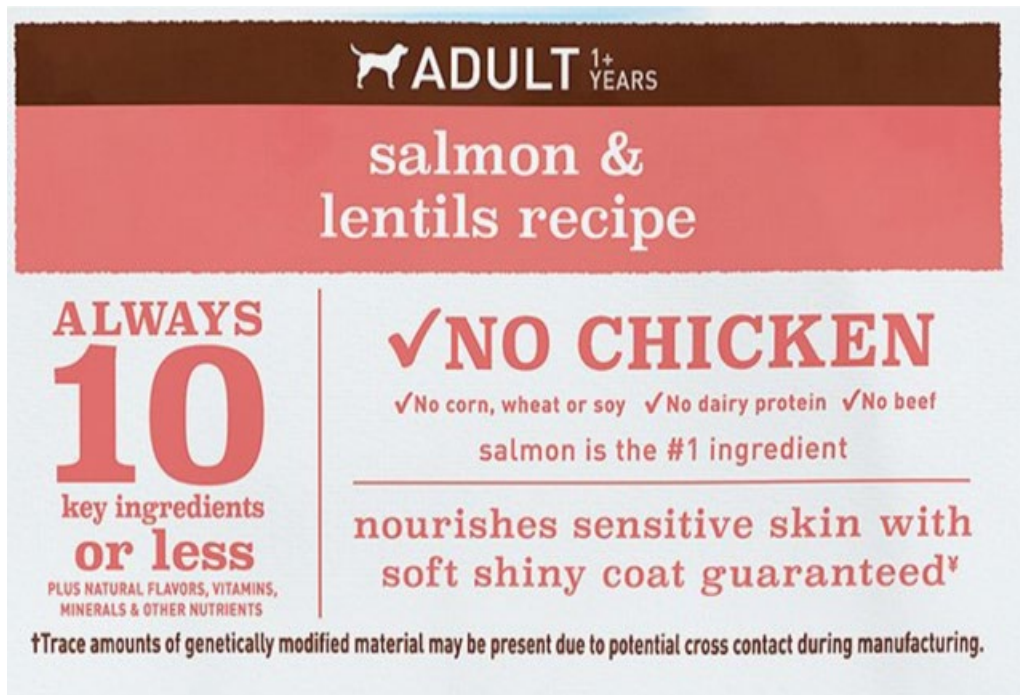
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IV. Nutro Limited Ingredient Diet Salmon & Lentils Recipe Grain Free Dog Food¹¹



¹¹ https://www.chewy.com/nutro-limited-ingredient-diet-grain/dp/136791?utm_source=google-product&utm_medium=cpc&utm_campaign=f&utm_content=Nutro&utm_term=&gclid=EAIaIQobChMIhYLVj9fW6QIVefDACH0F5gkyEAQYASABEGlhjPD_BwE (last visited May, 28, 2020)



V. Nutro Limited Ingredient Diet Adult Venison Meal & Sweet Potato Recipe Grain Free Dog Food¹²



¹² https://www.chewy.com/nutro-limited-ingredient-diet-grain/dp/136788?-utm_source=googleproduct&utm_medium=cpc&utm_campaign=f&utm_content=Nutro&utm_term=&gclid=EAIaIQobChMI6deWy9bW6QIVFbbICh3_7QUZEAQYA_SABEgJVOvD_BwE (last visited May 28, 2020)

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VI. Nutro Limited Ingredient Diet Adult Lamb & Sweet Potato Recipe Grain Free Dog Food¹³



¹³ <https://www.amazon.com/Nutro-Limited-Ingredient-AdultPotato/dp/B01N1TY8K3?th=1> (last visited May 28, 2020)



31. The representations that the Nutro Limited Ingredient Diets contains “no corn, wheat or soy” and “NO CHICKEN” appear prominently, in large type, on the front of every bag. The words “Grain Free” are also very prominently on the front of every Nutro Limited Ingredient Diets’ bag.

32. The back of the bag also includes an ingredient list for the Nutro Limited Ingredient Diets. Wheat, soy, and chicken are not listed as ingredients in this list.

33. All of the Defendant’s representations regarding the ingredients in The Nutro Limited Ingredient Diets, and the safety of The Nutro Limited Ingredient Diets for dogs that may be sensitive or allergic to wheat, soy, or chicken, are false. In fact, The Nutro Limited Ingredient Diets contains significant amounts of each of these ingredients. Plaintiff’s independent analysis of the ingredients of the Nutro Limited Ingredient Diets found that the Nutro Limited Ingredient Diets contain material amounts of chicken, wheat, and soy using the industry standard Q-PCR method of DNA testing.

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

2 34. Although pet foods vary in the quality of ingredients, formula,
3 manufacturing processes, and inspection quality, dog owners often choose to purchase
4 products that are wheat free, soy free, or chicken free because certain dog breeds have
5 allergies associated with dog foods that contain these ingredients or because the
6 owners understand that certain ingredients help—or hamper—their pets’ health,
7 weight, and overall wellbeing.

8 35. When pet owners buy limited ingredient dog food, they usually do so to
9 prevent a health issue or address a nutritional deficiency that their dog may be
10 experiencing. And consumers generally must pay a premium price for specialized pet
11 food formulations.

12 36. Accordingly, Plaintiff and Class Members purchased the Nutro Limited
13 Ingredient Diets instead of cheaper dog food alternatives—some of which are also
14 marketed by Defendant—that were known to contain wheat, soy, and/or chicken.

15 37. Defendant’s misrepresentations about the formulation of the Nutro
16 Limited Ingredient Diets drive consumers’ purchases.

17 **CLASS ACTION ALLEGATIONS**

18 **Class Definitions**

19 38. Plaintiff brings this action on behalf of himself and the members of the
20 following class:

21 All persons residing in California who, during the maximum
22 period of time permitted by law, purchased The Nutro
23 Limited Ingredient Diets primarily for personal, family, or
24 household purposes, and not for resale.

25 39. Specifically excluded from this definition are: (1) Defendant, any entity
26 in which any Defendant has a controlling interest, and its legal representatives,
27 officers, directors, employees, assigns and successors; (2) the Judge to whom this case
28

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

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

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

6 42. Plaintiff seeks only damages and equitable relief on behalf of himself 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 43. 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 44. Typicality: The claims of the representative plaintiff are typical in that
16 Plaintiff, like all Class Members, purchased the Nutro Limited Ingredient Diets that
17 were manufactured and distributed by Defendant. Plaintiff, like all Class Members,
18 have been damaged by Defendant's misconduct in that, *inter alia*, he has incurred or
19 will continue to incur damage due to purchasing a product at a premium price that
20 contained ingredients (wheat, soy, and chicken) that Defendant represented were
21 absent from the Nutro Limited Ingredient Diets. Furthermore, the factual bases of
22 Defendant's misconduct are common to all Class Members and represent a common
23 thread of fraudulent, deliberate, and negligent misconduct resulting in injury to all
24 Class Members.

25 45. Commonality: There are numerous questions of law and fact common to
26 Plaintiff and Class Members that predominate over any individual questions. These
27 common legal and factual issues include the following:
28

- a) Whether the Nutro Limited Ingredient Diets contain wheat, soy, and/or chicken;
- b) Whether Defendant's representations that their products contain no wheat, soy, or chicken are false;
- c) Whether Defendant expressly warranted that the Nutro Limited Ingredient Diets would conform to the representations made on its packaging that the Nutro Limited Ingredient Diets contain no wheat, soy, or chicken;
- d) Whether Defendant impliedly warranted that the Nutro Limited Ingredient Diets 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 Defendant breached their warranties by making the representations above;
- f) Whether Defendant was unjustly enriched by making the representations and omissions above;
- g) Whether Defendant's actions as described above violated the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*;
- h) Whether Defendant's actions as described above violated state consumer protection laws as alleged herein;
- i) Whether Defendant should be required to make restitution, disgorge profits, reimburse losses, pay damages, and pay treble damages as a result of the above described practices.

46. 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 consumer and product defect class actions, and Plaintiff intends to prosecute this action vigorously.

1 52. Plaintiff and Class members are consumers as defined in 15 U.S.C. §
2 2301(3) and utilized the Nutro Limited Ingredient Diets for personal and household
3 use and not for resale or commercial purposes.

4 53. Plaintiff purchased the Nutro Limited Ingredient Diets costing more than
5 \$5 and his individual claims are greater than \$25 as required by 15 U.S.C. §§ 2302(e)
6 and 2310(d)(3)(A).

7 54. Defendant are suppliers and warrantors as defined in 15 U.S.C. §§
8 2301(4) and (5).

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

12 56. The MMWA provides a cause of action for breach of warranty, including
13 the implied warranty of merchantability, or other violations of the Act. 15 U.S.C. §
14 2310(d)(1).

15 57. The Defendant has breached their implied warranties of merchantability
16 by failing to provide merchantable goods. The Nutro Limited Ingredient Diets dog
17 food at issue is not merchantable or fit for its ordinary purposes because the dog food
18 is purportedly designed and marketed as a wholesome limited ingredient food for pets
19 whose choose to avoid feeding them wheat, soy, or chicken, yet Plaintiff’s and
20 proposed class members’ the Nutro Limited Ingredient Diets products do not function
21 accordingly.

22 58. Defendant breached its implied warranty of merchantability because the
23 Nutro Limited Ingredient Diets did in fact contain wheat, soy, and chicken, and
24 therefore fails to function as a limited ingredient diet.

25 59. In its capacity as warrantor, and by the conduct described herein, any
26 attempt by Defendant to limit the warranties in a manner that it does is not permitted
27 by law.

1 relevant times the bags of the Nutro Limited Ingredient Diets contained these
2 ingredients.

3 69. As a direct and proximate result of Defendant's breaches of its express
4 warranties and their failure to conform to the Nutro Limited Ingredient Diets' express
5 representations, Plaintiff and members of the Class have been damaged. Plaintiff and
6 Class Members have suffered damages in that they did not receive the product they
7 specifically paid for and that Defendant warranted it to be. In addition, Plaintiff and
8 Class Members paid a premium for a product that did not conform to the Defendant's
9 warranties.

10 **COUNT 3**

11 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

12 70. Plaintiff brings this count on behalf of himself and the Class and repeat
13 and re-allege all previous paragraphs, as if fully included herein.

14 71. Defendant marketed, sold, and/or distributed the Nutro Limited
15 Ingredient Diets, and Plaintiff and other Class Members purchased the Nutro Limited
16 Ingredient Diets.

17 72. Plaintiff brings this claim for breach of the Uniform Commercial Code's
18 implied warranty of merchantability on behalf of himself and other consumers who
19 purchased the Nutro Limited Ingredient Diets as a limited ingredient dog food product
20 for their pets.

21 73. The Defendant is a merchant as defined by applicable UCC provisions.

22 74. Privity between Plaintiff and the class and Defendant is not required
23 under California law.

24 75. The Defendant has breached the implied warranties of merchantability
25 that they made to Plaintiff and the prospective class. For example, Defendant
26 impliedly warranted that the Nutro Limited Ingredient Diets products were free from
27 defects, that they were merchantable, and that they were fit for the ordinary purpose
28 for which limited ingredient dog foods are used.

1 81. Plaintiff conferred benefits on Defendant by purchasing the Nutro
2 Limited Ingredient Diets at a premium price.

3 82. Defendant has knowledge of its receipt of such benefits.

4 83. Defendant has been unjustly enriched in retaining the revenues derived
5 from Plaintiff and Class Members' purchases of the Nutro Limited Ingredient Diets.

6 84. Defendant's retaining these moneys under these circumstances is unjust
7 and inequitable because Defendant falsely and misleadingly represented that Nutro
8 Limited Ingredient Diets contained no wheat, soy or chicken when, in fact, the Nutro
9 Limited Ingredient Diets did contain these non-conforming ingredients.

10 85. Defendant's misrepresentations have injured Plaintiff and Class
11 Members because they would not have purchased (or paid a price premium) for the
12 Nutro Limited Ingredient Diets had they known the true facts regarding the Nutro
13 Limited Ingredient Diets' ingredients.

14 86. Because it is unjust and inequitable for Defendant to retain such non-
15 gratuitous benefits conferred on it by Plaintiff and Class Members, Defendant must
16 pay restitution to Plaintiff and Class Members, as ordered by the Court.

17 **COUNT 5**

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

19 **(Civil Code §§ 1750, *et seq.*)**

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

22 88. The CLRA prohibits deceptive practices by any business that provides
23 goods, property, or services primarily for personal, family, or household purposes.

24 89. Plaintiff and the Class members are "consumers" as defined in California
25 Civil Code § 1761(d).

26 90. The Nutro Limited Ingredient Diets Products are "goods" as defined in
27 California Civil Code § 1761(a).

28 91. Defendant is a "person" as defined in California Civil Code § 1761(c).

1 92. Plaintiff's and the Class members' purchases of the Nutro Limited
2 Ingredient Diets are "transactions" as defined in California Civil Code § 1761(e).

3 93. Defendant's representations and omissions concerning the quality,
4 benefits and effectiveness of the Nutro Limited Ingredient were false and/or
5 misleading as alleged herein.

6 94. Defendant's false or misleading representations and omissions were such
7 that a reasonable consumer would attach importance to them in determining his or her
8 purchasing decision.

9 95. Defendant's false and misleading representations and omissions were
10 made to the entire Class as they were prominently displayed on the packaging of every
11 bag of the Nutro Limited Ingredient Diets dog food.

12 96. Defendant knew or should have known their representations and
13 omissions were material and were likely to mislead consumers, including Plaintiff and
14 the Class.

15 97. Defendant's practices, acts, and course of conduct in marketing and
16 selling the Nutro Limited Ingredient Diets Products were and are likely to mislead a
17 reasonable consumer acting reasonably under the circumstances to his or her
18 detriment.

19 98. Defendant's false and misleading representations and omissions were
20 designed to, and did, induce the purchase and use of the Nutro Limited Ingredient
21 Diets Products for personal, family, or household purposes by Plaintiff and Class
22 members, and violated and continue to violate the following sections of the CLRA:

- 23 a. § 1770(a)(5): representing that goods have characteristics, uses, or
24 benefits which they do not have;
- 25 b. § 1770(a)(7): representing that goods are of a particular standard, quality,
26 or grade if they are of another;
- 27 c. § 1770(a)(9): advertising goods with intent not to sell them as advertised;
28 and

1 d. § 1770(a)(16): representing the subject of a transaction has been supplied
2 in accordance with a previous representation when it was not.

3 99. Defendant profited from the sale of the falsely, deceptively, and
4 unlawfully advertised Products to unwary consumers.

5 100. Defendant's wrongful business practices constituted, and constitute, a
6 continuing course of conduct in violation of the CLRA.

7 101. Defendant's wrongful business practices were a direct and proximate
8 cause of actual harm to Plaintiff and to each Class member.

9 102. On May 29, 2020, Plaintiff provided written notice to Defendant via
10 FedEx demanding corrective actions pursuant to the Consumers Legal Remedies Act
11 ("CLRA"), California Civil Code § 1770, *et seq.* Plaintiff will amend her complaint
12 to add claims for monetary damages if Defendant fails to take the corrective actions.

13 103. Plaintiff's declaration stating facts showing that venue in this District is
14 proper pursuant to Cal. Civ. Code § 1780(c) is attached hereto as **Exhibit A**.

15 104. Pursuant to California Civil Code § 1780, Plaintiff seeks injunctive relief,
16 their reasonable attorneys' fees and costs, and any other relief that the Court deems
17 proper.

18 **COUNT 6**

19 **CALIFORNIA FALSE ADVERTISING LAW ("FAL")**

20 **(Business and Professions Code §§ 17500, *et seq.*)**

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

23 106. The FAL provides that "[i]t is unlawful for any person, firm, corporation
24 or association, or any employee thereof with intent directly or indirectly to dispose of
25 real or personal property or to perform services" to disseminate any statement "which
26 is untrue or misleading, and which is known, or which by the exercise of reasonable
27 care should be known, to be untrue or misleading." Cal. Bus. & Prof. Code § 17500.
28

1 107. It also is unlawful under the FAL to make or disseminate any
2 advertisement that is “untrue or misleading, and which is known, or which by the
3 exercise of reasonable care should be known, to be untrue or misleading.” *Id.*

4 108. As alleged herein, the advertisements, labeling, website, policies, acts,
5 and practices of Defendant relating to the Nutro Limited Ingredient Diets Products
6 were and are deceptive and misleading.

7 109. As alleged herein, the advertisements, labeling, website, policies, acts,
8 and practices of Defendant misled consumers acting reasonably as to Defendant’s
9 representations about quality, benefits, and ingredients of the Nutro Limited
10 Ingredient Diets.

11 110. Plaintiff suffered injury-in-fact as a result of Defendant’s actions as set
12 forth herein because, as a reasonable consumer, he purchased the Products in reliance
13 on Defendant’s false and misleading labeling claims concerning the Nutro Limited
14 Ingredient Diets’ qualities, benefits, and ingredients.

15 111. Defendant’s business practices as alleged herein constitute deceptive,
16 untrue, and misleading advertising pursuant to the FAL because Defendant has
17 advertised the Nutro Limited Ingredient Diets in a manner that is untrue and
18 misleading, which Defendant knew or reasonably should have known was untrue, and
19 because Defendant omitted material information from their advertising.

20 112. Defendant profited from sale of the falsely and deceptively advertised
21 Products to reasonable but unwary consumers including Plaintiff and the Class, and
22 Defendant has thereby been unjustly enriched.

23 113. As a result, Plaintiff, the Class, and the general public are entitled to
24 injunctive and equitable relief, restitution, and an order for the disgorgement of the
25 funds by which Defendant was unjustly enriched.

26 114. Because Plaintiff owns pets to whom he would like to feed a limited
27 ingredient dog food, he suffers threat of future harm because he is unable to rely on
28 Defendant’s representations regarding the ingredients of The Nutro Limited

1 Ingredient Diets. Likewise, because Defendant has made such representations with
2 impunity thus far, Plaintiff's ability to discern truthful from untruthful claims made
3 with respect to Defendant's and other competitors' dog food ingredients is impaired.
4 Injunctive relief requiring Defendant to make only truthful statements in their
5 advertising would remedy these harms.

6 115. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff, on behalf of
7 himself and the Class, seeks an order enjoining Defendant from continuing to engage
8 in deceptive business practices, false advertising, and any other act prohibited by law,
9 including those set forth in this Complaint.

10 **COUNT 7**

11 **CALIFORNIA UNFAIR COMPETITION LAW ("UCL")**

12 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

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

15 117. The UCL prohibits any "unlawful, unfair or fraudulent business act or
16 practice." Cal. Bus. & Prof. Code § 17200. Defendant's acts, omissions,
17 misrepresentations, practices, and non-disclosures as alleged herein constitute
18 business acts and practices.

19 118. Defendant's acts, omissions, misrepresentations, practices and non-
20 disclosures as alleged herein constitute unlawful, unfair, and fraudulent business
21 practices in that they have the capacity to deceive reasonable consumers, including
22 Plaintiff and the Class, as to the benefits and ingredients of the Nutro Limited
23 Ingredient Diets Products.

24 119. Unlawful: The acts alleged herein are "unlawful" under the UCL in that
25 they violate at least: (a) the False Advertising Law, Cal. Bus. & Prof. Code § 17500,
26 *et seq.*; (b) the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*; and
27 (c) California's Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code
28 § 109875, *et seq.*

1 120. Unfair: Defendant’s conduct with respect to the labeling, advertising, and
2 sale of The Nutro Limited Ingredient Diets was “unfair” because Defendant’s conduct
3 was immoral, unethical, unscrupulous, or substantially injurious to consumers and the
4 utility of their conduct, if any, does not outweigh the gravity of the harm to their
5 victims, including Plaintiff and the Class.

6 a. Defendant’s conduct with respect to the labeling, advertising, and sale
7 of the Nutro Limited Ingredient Diets was and is unfair because it
8 violates public policy as declared by specific constitutional, statutory
9 or regulatory provisions, including but not limited to the applicable
10 sections of the False Advertising Law and Consumers Legal Remedies
11 Act.

12 b. Defendant’s conduct with respect to the labeling, advertising, and sale
13 of the Products was and is unfair because the consumer injury was
14 substantial, not outweighed by benefits to consumers or competition,
15 and not one consumer themselves could reasonably have avoided.

16 c. Reasonable consumers, including Plaintiff and the Class, purchased the
17 Products believing they were beneficial and effective as claimed by
18 Defendant when in fact they were not—a fact of which consumers
19 could not reasonably have become aware.

20 121. Fraudulent: A statement or practice is “fraudulent” under the UCL if it is
21 likely to mislead or deceive the public, applying an objective reasonable consumer
22 test.

23 a. As set forth herein, Defendant’s representations and omissions about
24 the quality, benefits, and effectiveness of the Nutro Limited Ingredient
25 Diets were and are false and likely to mislead or deceive the public
26 because a significant portion of the general consuming public, acting
27 reasonably in the circumstances, could be misled by Defendant’s
28 representations and omissions.

1 122. Defendant profited from their sale of the falsely, deceptively, and
2 unlawfully advertised and packaged the Nutro Limited Ingredient Diets to unwary
3 consumers.

4 123. Defendant's conduct directly and proximately caused and continues to
5 cause substantial injury to Plaintiff and the other Class members. Plaintiff and the
6 Class have suffered injury-in-fact as a result of Defendant's unlawful conduct
7 including but not limited to the damages as described above.

8 124. Plaintiff and the Class are likely to continue to be damaged by
9 Defendant's deceptive trade practices, because Defendant continues to disseminate
10 misleading information on the Nutro Limited Ingredient Diets' packaging and through
11 the marketing and advertising of the Products. Thus, injunctive relief enjoining
12 Defendant's deceptive practices is proper.

13 125. Because Plaintiff owns pets to whom he would like to feed limited
14 ingredient dog food, he suffers threat of future harm by the Defendant because he is
15 unable to rely on Defendant's representations regarding the qualities and ingredients
16 of their products in deciding whether to purchase the Nutro Limited Ingredient Diets
17 in the future. Likewise, because Defendant have made such representations with
18 impunity thus far, Plaintiff's ability to discern truthful from untruthful claims made
19 with respect to competitors' dog food products is impaired. Injunctive relief requiring
20 Defendant to make only truthful statements in their advertising would remedy these
21 harms.

22 126. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order
23 enjoining Defendant from continuing to conduct business through unlawful, unfair,
24 and/or fraudulent acts and practices, and to commence a corrective advertising
25 campaign.

26 127. Plaintiff and the Class also seek an order for and restitution of all monies
27 from the sale of the Products, which were unjustly acquired through acts of unlawful
28 competition.

1 **RELIEF DEMANDED**

2 WHEREFORE, Plaintiff, individually and on behalf of a class of all others
3 similarly situated, seeks a judgment against Defendant, as follows:

- 4 a. For an order certifying the Class under Rule 23 of the Federal Rules of
5 Civil Procedure and naming Plaintiff as Class representative and Plaintiff's
6 attorneys as Class Counsel;
- 7 b. For an order declaring that Defendant's conduct violates the statutes
8 referenced herein;
- 9 c. For an order finding in favor of Plaintiff and the Class on all counts
10 asserted herein;
- 11 d. For compensatory, statutory, and punitive damages, as applicable, in
12 amounts to be determined by the Court and/or jury;
- 13 e. For prejudgment interest on all amounts awarded;
- 14 f. For an order of restitution and all other forms of equitable monetary relief;
- 15 g. For injunctive relief as pleaded or as the Court may deem proper; and
- 16 h. For an order awarding Plaintiff and the Class their reasonable attorneys'
17 fees, expenses and costs incurred in bringing this lawsuit.

18 **JURY TRIAL DEMANDED**

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

20 Dated: May 29, 2020.

21 Respectfully submitted,

22 /s/ Alex Straus

23 Alex Straus (SBN 321366)
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**Applications for pro hac vice to follow*