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Plaintiff's Attorney
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARK SPIVEY, on behalf of
himself and all others similarly
situated,

Plaintiff,
v.

DIAMOND PET FOODS, INC.

Defendant.

Case No.

CLASS ACTION COMPLAINT

Demand for Jury Trial

Plaintiff Mark Spivey (“Plaintiff”), acting on behalf of himself and all others similarly situated (“Class Members”), bring this action for damages and equitable relief against Diamond Pet Foods, Inc (“Defendant”).

NATURE OF THE CASE

1. Defendant designed, manufactured, distributed, marketed, and sold Taste of the Wild High Prairie Canine Recipe with Roasted Bison & Roasted Venison Dry Dog Food (“Taste of the Wild Dog Food”).

2. Many dogs suffer allergic reactions to foods containing grains including corn and/or are on a grain free diet. Therefore, having these ingredients omitted from

1 their pet foods is an important characteristic to consumers, including Plaintiff and
2 Class Members.

3 3. In fact, consumers pay a premium for Taste of the Wild Dog Food
4 because it is specifically represented to be “a grain free diet” formulated for the health
5 or nutritional needs of their dogs, and consistent with certain ingredient, quality, and
6 manufacturing standards.

7 4. However, independent testing of Taste of the Wild Dog Food confirms that
8 these representations are false. Taste of the Wild Dog Food contains significant
9 amounts of grain. These independent testing results are attached hereto as Exhibit A.

10 5. Plaintiff brings this suit on behalf of himself and similarly situated
11 consumers who purchased Taste of the Wild Dog Food. Plaintiff and Class members
12 were damaged because they would not have purchased (or would not have paid a
13 premium) for Defendant’s dog food had they known the true facts regarding the
14 ingredients.

15 **PARTIES**

16 6. Plaintiff Mark Spivey is a citizen of California residing in Mission Viejo.
17 Plaintiff Spivey purchased Taste of the Wild Dog Food on numerous occasions.

18 7. Defendant Diamond Pet Foods, Inc. is a for-profit corporation, organized
19 and existing under the laws of the State of Missouri. Defendant has its principal office
20 in Meta, Missouri. Defendant designs, manufactures, and markets Taste of the Wild
21 Dog Food and sells it through third-party retailers such as Petco, Walmart, and
22 Chewy.com throughout the United States.

23 **JURISDICTION AND VENUE**

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

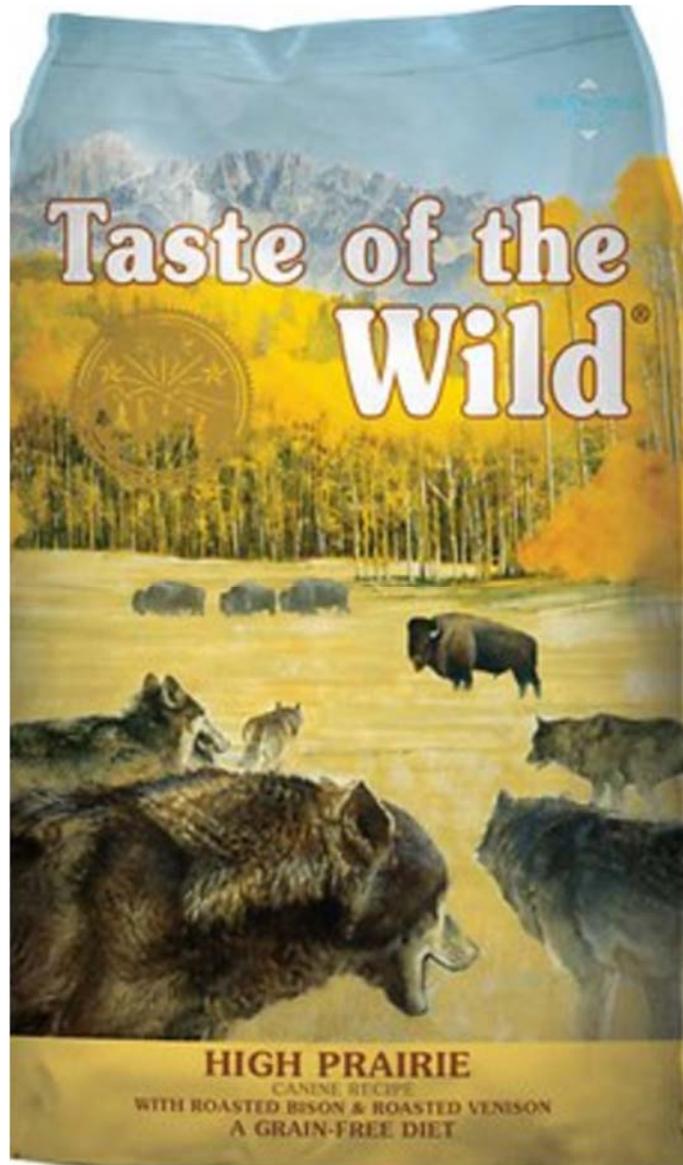


Figure 1

12. Mislabeling in the pet food industry is a well-known and widespread problem.²

13. In the Summer of 2019, Plaintiff's counsel hired an expert to test whether Defendant accurately represented the contents of Taste of the Wild Dog Food.

² See, e.g. *infra* ¶ 32 ("By 2018, research into pet food products' label claims and the presence of non-conforming ingredients intensified. Out of the 40 products analyzed in one study, the ingredients of only 10 products correctly matched their label.")

1 14. The results from this test revealed that the Taste of the Wild Dog Food
2 contained significant amount of grain and that Defendant misleadingly advertised its
3 grain content.

4 15. Shortly thereafter, Plaintiff’s counsel on behalf of consumers including
5 Plaintiff sent Defendant a demand letter outlining Defendant’s misconduct and
6 notifying Defendant that it had misrepresented the grain content. Defendant received
7 this letter on August 19, 2019.

8 16. On August 28, 2019, Plaintiff’s counsel received a response from
9 Defendant’s chief legal counsel stating that Defendant denies that its product
10 “contains meaningful quantities of any of the alleged ingredients” and that Defendant
11 does “not put anything in the food that is not identified on the label.”

12 17. In approximately February of 2020, Defendant modified its Taste of the
13 Wild Dog Food product labels to remove grain-free and grain-free diet representations
14 (the “Initial Label Change”).³ See Figure 2 below.

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³ See *High Prairie Canine Recipe with Roasted Bison & Roasted Venison*, TASTE OF THE WILD, <https://www.tasteofthewildpetfood.com/dog-formulas/high-prairie-canine-formula-with-bison-and-roasted-venison/> (last visited Feb. 6, 2020).

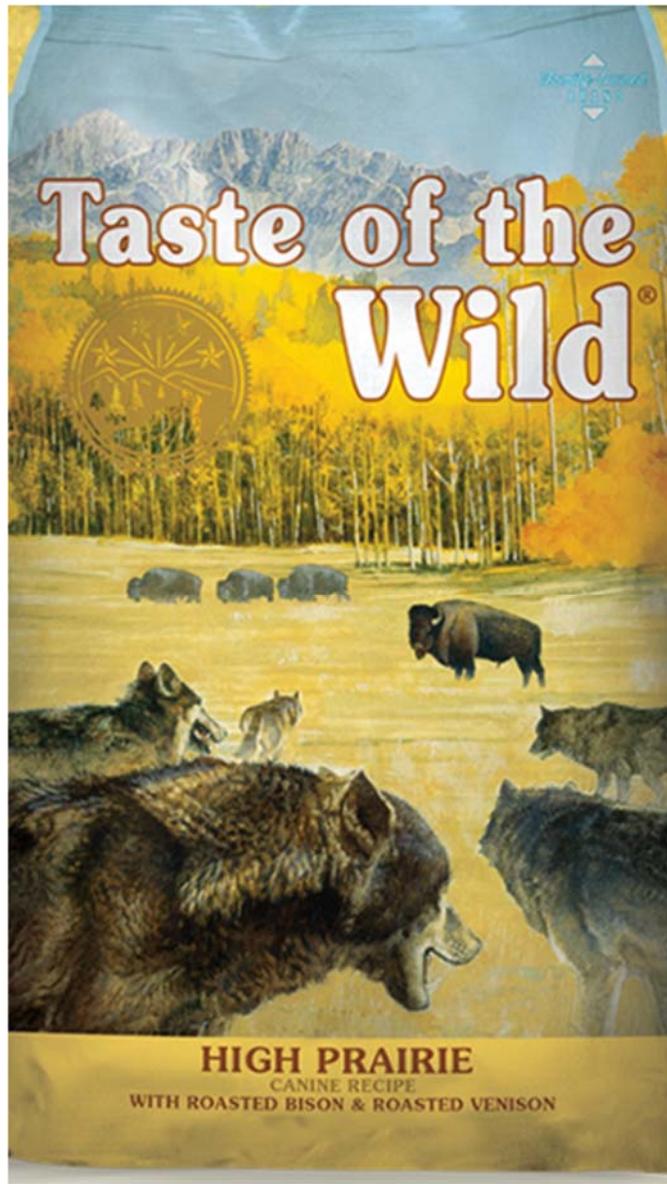


Figure 2

18. Further investigation revealed that Defendant also added a disclaimer on its website stating: “*The facility in which this food is made also makes food that may contain other ingredients, such as grains. Trace amounts of these other ingredients may be present.”⁴

⁴ See Formula Finder, TASTE OF THE WILD, https://www.tasteofthewildpetfood.com/formula-finder/formula-results/?pet_type=Dog&category%5B%5D=Dry+Grain-Free (last visited Feb. 6, 2020).

1 19. While Defendant was changing its labels, Plaintiff’s counsel continued
2 their investigation into Defendant’s products by testing another recipe. These testing
3 results showed that the additional recipe also contained significant amounts of grain.

4 20. Plaintiff’s counsel sent Defendant a second demand letter outlining
5 Defendant’s misconduct and notifying Defendant that it had misrepresented the grain
6 content for both the additional recipe as well as the recipe that is the subject of this
7 complaint. Defendant received this letter on March 2, 2020.

8 21. Later in 2020, Defendant instituted a second label change (the “Second
9 Label Change”).

10 22. Defendant’s newest label returns the prominent grain-free language from
11 the original label but adds the same disclaimer from Defendant’s website: “*The
12 facility in which this food is made also makes food that may contain other ingredients,
13 such as grains. Trace amounts of these other ingredients may be present.”⁵ See Figure
14 3 below.

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⁵ See *High Prairie Canine Recipe with Roasted Bison & Roasted Venison*, TASTE OF THE WILD, <https://www.tasteofthewildpetfood.com/taste-of-the-wild/grain-free/dog-formulas/high-prairie-canine-recipe-with-bison-and-roasted-venison/> (last visited July 14, 2020).

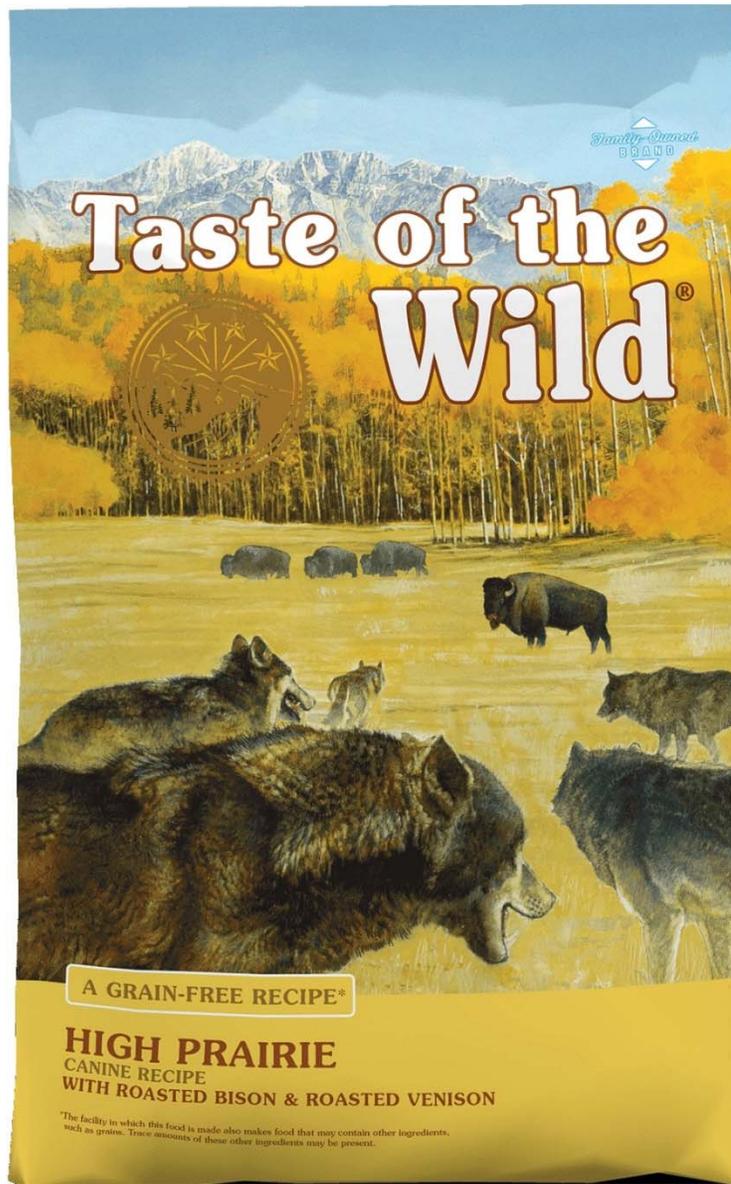


Figure 3

23. Independent testing of Taste of the Wild Dog Food confirms that it contains significant – not *trace* – amounts of grain.

24. This suit seeks to remedy the wrongs for Plaintiff and Class Members who were deceived by Defendant’s material misrepresentations and omissions prior to the Initial Label Change (i.e., before Defendant introduced the disclaimer onto its website and labels).

25. Reasonably relying on Defendant’s material misrepresentations and omissions, Plaintiff and Class Members paid a significant price premium to obtain the

1 benefits of a “grain-free” product: a 28-pound bag of Taste of the Wild Dog Food
2 retails for \$48.99⁶ while a 32-pound bag of Purina “Dog Chow Complete Adult with
3 Real Chicken Dry Dog Food[,]” is only \$33.99.⁷ However, Plaintiff and the Class
4 Members did not receive a “grain-free” product because Defendant misrepresented
5 the ingredients of Taste of the Wild Dog Food to extract a price premium from
6 unsuspecting consumers.

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

8 26. Pet foods vary in their quality of ingredients, formula, manufacturing
9 processes, and inspection quality. Pet owners who purchase “grain-free” products pay
10 a premium in order to alleviate their pets’ allergies and to provide various health and
11 nutritional benefits associated with a grain-free diet. Notably, grain allergies are more
12 common among certain dog breeds than others.

13 27. In addition, pet owners are willing to pay a premium for dog food with
14 premium ingredients and reasonably expect the product to conform to the ingredients
15 as listed by the manufacturer on its packaging.

16 28. Accordingly, Defendant’s misrepresentations and omissions regarding
17 the grain content (i.e. claiming to be “grain-free”) in Taste of the Wild Dog Food are
18 material to consumers.

19 ***Academic Research Confirms Pet Food Manufacturers***

20 ***Sell Non-Conforming Products***

21 29. 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 ⁶ See *Taste of the Wild High Prairie Grain-Free Dry Dog Food*, CHEWY,
25 [https://www.chewy.com/taste-wild-high-prairie-grain-free/dp/181320?utm_source=google
26 product&utm_medium=cpc&utm_campaign=f&utm_content=Taste%20of%20the%20Wild&utm_term=&gclid=Cj0KCQjw753rBRCVARIsANe3o44uNcO7_cfxkPcPSMIZpsgBR2kufSZZvOpVT
27 GYLkxR1BR_gSBQ0_ukaAl-7EALw_wcB](https://www.chewy.com/taste-wild-high-prairie-grain-free/dp/181320?utm_source=google_product&utm_medium=cpc&utm_campaign=f&utm_content=Taste%20of%20the%20Wild&utm_term=&gclid=Cj0KCQjw753rBRCVARIsANe3o44uNcO7_cfxkPcPSMIZpsgBR2kufSZZvOpVTGYLkxR1BR_gSBQ0_ukaAl-7EALw_wcB) (last visited Feb. 18, 2020).

28 ⁷ See *Dog Chow Complete Adult with Real Chicken Dry Dog Food*, CHEWY,
<https://www.chewy.com/dog-chow-complete-adult-real-chicken/dp/127736> (last visited Feb. 18,
2020).

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

8 31. In 2016, another study investigated the issue of whether vegan pet food
9 contained non-conforming mammalian ingredients.⁹ Vegan pet foods should contain
10 no mammalian proteins or ingredients. The study found that half of the products tested
11 contained non-conforming mammalian DNA in the products and suggested that
12 manufacturers are ultimately responsible for maintaining adequate end product quality
13 control to prevent such discrepancies between their ingredients and label claims.

14 32. By 2018, research into pet food products' label claims and the presence
15 of non-conforming ingredients intensified. Out of the 40 products analyzed in one
16 study, the ingredients of only 10 products correctly matched their label.¹⁰ Of the
17 remaining 30 products, 5 did not contain the declared animal species ingredients and
18 23 others revealed the presence of undeclared animal species. Two of the products'
19 labels were vague and their accuracy was indeterminable. This 2018 study found that
20 mislabeling was an especially widespread problem in pet foods used for "elimination
21

22 ⁸ See Ming-Kun Hsieh, *et al.*, *Detection of undeclared animal by-products in commercial*
23 *canine canned foods: Comparative analyses by ELISA and PCR-RFLP coupled with slab gel*
24 *electrophoresis or capillary gel electrophoresis*, *J Sci Food Agric.* 2016 Mar 30; 96(5):1659-65
(completed December 31, 2014).

25 ⁹ See K. Kanakubo, *et al.*, *Determination of mammalian deoxyribonucleic acid (DNA) in*
26 *commercial vegetarian and vegan diets for dogs and cats*, *Journal of Animal Physiology & Animal*
Nutrition, 2017 Feb;101 (1):70–74 (March 3, 2016).

27 ¹⁰ See Rebecca Ricci, *et al.*, *Undeclared animal species in dry and wet novel and hydrolyzed*
28 *protein diets for dogs and cats detected by microarray analysis*, *BMC Veterinary Research* volume
14, Article number: 209 (2018).

1 diets” (i.e. used to investigate food allergies). In this 2018 study, researchers suggested
2 that manufacturers should pay particular attention to both the selection of raw material
3 suppliers and the production processes for pet food due to the high risk of
4 contamination.

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

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

23 35. Since 2014, virtually all scholarly researchers have found that pet food
24 sold to consumers frequently contains non-conforming ingredients, and significant
25

26 ¹¹ See Elena Pagani, *et al.*, *Cross-contamination in canine and feline dietetic limited-antigen*
wet diets, BMC Vet Res. 2018; 14: 283 (September 12, 2018).

27 ¹² 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).

1 discrepancies between pet food products' labeling and their actual ingredients appears
2 to be commonplace among pet food manufacturers.

3 ***Plaintiff's Experiences with Taste of the Wild Dog Food***

4 36. Plaintiff Mark Spivey is a resident and citizen of Mission Viejo,
5 California who purchased Taste of the Wild Dog Food on a monthly basis starting in
6 2014 and fed it to his dog Bodie. Plaintiff has records of purchasing a 30 lb. bag of
7 Taste of the Wild Dog Food from Chewy.com on March 9, 2019 for \$52.49. Plaintiff
8 has records of purchasing a 28 lb. bag of Taste of the Wild Dog Food from Chewy.com
9 on April 4, 2019 and March 20, 2019 for \$48.99.

10 37. Prior to purchasing Taste of the Wild Dog Food, Plaintiff read
11 Defendant's representation that the product was "Grain-Free" on the product's
12 packaging and website and specifically relied on this representation in deciding to
13 purchase Taste of the Wild Dog Food. Plaintiff's dog, Bodie, has allergies that the
14 veterinarian could not precisely diagnose.

15 38. Plaintiff researched the benefits of a grain-free diet and learned that
16 eliminating grains could help Bodie's allergy symptoms. In order to figure out what
17 Bodie was allergic to, Plaintiff wanted to try eliminating grains from Bodie's diet.
18 Plaintiff Spivey spent a premium price to purchase Taste of the Wild Dog Food due
19 to its grain-free claims, but stopped purchasing Taste of the Wild Dog Food in May
20 2019 because Bodie's allergy symptoms did not improve.

21 39. Plaintiff would not have purchased the Taste of the Wild Dog Food if he
22 had been aware that its "grain free" representations were not true, or alternatively, he
23 would have paid less for this dog food. If the Taste of the Wild Dog Food were actually
24 grain free, he would consider buying it in the future.

25 **CLASS ACTION ALLEGATIONS**

26 40. Plaintiff brings this action on behalf of himself and a class ("Nationwide
27 Class" or "Class") defined as follows:
28

1 All persons residing in the United States who, during the
2 maximum period of time permitted by law, purchased Taste
3 of the Wild Dog Food prior to the Initial Label Change
4 primarily for personal, family or household purposes, and
not for resale.

5 41. Plaintiff Mark Spivey further brings this action on behalf of himself and
6 the members of the following subclass (“California Subclass”):

7 All persons residing in California who, during the maximum
8 period of time permitted by law, purchased Taste of the
9 Wild Dog Food prior to the Initial Label Change primarily
10 for personal, family or household purposes, and not for
11 resale.

12 42. Plaintiff reserves the right to amend the Class definition or Subclass
13 definitions at a later date as necessary to conform with facts learned through
14 discovery.

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

20 44. As used herein, “Class Members” shall mean and refer to the members
21 of the Nationwide Class and all Subclasses, including each named Plaintiff.

22 45. Plaintiff seeks only damages and equitable relief on behalf of himself and
23 the Class Members. Plaintiff disclaims any intent or right to seek any recovery in this
24 action for personal injuries, wrongful death, or emotional distress suffered by himself
25 and/or the Class Members.

26 46. Numerosity: Although the exact number of Class Members is uncertain
27 and can only be ascertained through appropriate discovery, the number is great enough
28 such that joinder is impracticable. The disposition of the claims of these Class

1 Members in a single action will provide substantial benefits to all parties and to the
2 Court.

3 47. Typicality: The claims of the representative Plaintiff is typical in that
4 Plaintiff, like all Class Members, purchased Taste of the Wild Dog Food that was
5 manufactured and distributed by Defendant. Plaintiff, like all Class Members, has
6 been damaged by Defendant's misconduct in that, *inter alia*, he purchased a product
7 that contained grain that was marketed and advertised not to contain grain.
8 Furthermore, the factual bases of Defendant's misconduct are common to all Class
9 Members and represent a common thread of fraudulent, deliberate, and negligent
10 misconduct resulting in injury to Plaintiff and all Class Members.

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

- 14
- 15 a. Whether Taste of the Wild Dog Food contains grain;
 - 16 b. Whether Defendant's "A Grain Free Diet" representation is false
17 and/or misleading;
 - 18 c. Whether Defendant knowingly or negligently omitted that the products
19 contained grain and were not suitable for a grain free diet;
 - 20 d. Whether Defendant expressly warranted that the Taste of the Wild Dog
21 Food would conform to its limited ingredient representations including
22 that the products were grain free and suitable for "A Grain Free Diet";
 - 23 e. Whether Defendant impliedly warranted that the Taste of the Wild
24 Dog Food would conform to its limited ingredient representations
25 including that the products were grain free and suitable for "A Grain
26 Free Diet";
 - 27 f. Whether Defendant breached its express and implied warranties by
28 making the representation above when the products contained grain;

- 1 g. Whether Defendant was unjustly enriched by consumers paying a
2 price premium for grain free products which were not grain free;
- 3 h. Whether Defendant's actions as described above violated the various
4 state consumer protection laws as alleged herein;
- 5 i. Whether Defendant should be required to make restitution, disgorge
6 profits, reimburse losses, pay damages, and pay treble damages as a
7 result of the above described practices.

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

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

25 **CAUSES OF ACTION**

26 **COUNT I**

27 **BREACH OF EXPRESS WARRANTY**

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

1 **(Plaintiff individually and on Behalf of the Nationwide Class)**

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

4 60. Defendant sold and Plaintiff and Class members purchased Taste of the
5 Wild Dog Food.

6 61. When sold by Defendant, Taste of the Wild Dog Food was not
7 merchantable, did not pass without objection in the trade under the label description,
8 was not of adequate quality within that description, was not fit for the ordinary
9 purposes for which such goods are used, and did not conform to the promises or
10 affirmations of fact made on its container or label.

11 62. Within a reasonable time after Plaintiff and other similarly situated
12 consumers knew or should have known of such failure to conform, Plaintiff's counsel
13 sent two demand letters to Defendant, which were received by Defendant on August
14 19, 2019 and March 2, 2020 respectively (as described above in Paragraphs 15 and
15 20). The demand letters outlined Defendant's misconduct, including that Defendant
16 misrepresented the contents of Taste of the Wild Dog Food regarding its grain
17 composition. Such conduct constitutes a breach of Defendant's implied warranty.

18 63. Because the products contain grain, they were neither grain-free nor fit
19 for "A Grain-Free Diet."

20 64. As a direct result of the Taste of the Wild Dog Food being unfit for its
21 intended purpose and/or otherwise not merchantable, Plaintiff and Class members
22 were damaged because they would not have purchased (or paid a premium) for
23 Defendant's dog food had they known the true facts regarding the ingredients.

24 **COUNT III**

25 **UNJUST ENRICHMENT¹³**

26 **(Plaintiff individually, and on Behalf of the Nationwide Class)**

27
28

¹³ Plaintiff brings this claim in the alternative to the breach of contract claims.

1 competition shall mean and include unlawful, unfair or fraudulent business practices
2 and unfair, deceptive, untrue or misleading advertising”

3 72. Defendant violated the “unlawful” prong of the UCL by violating
4 California’s False Advertising Law (“FAL”) as described in Count V, below.

5 73. Defendant violated the “unlawful” prong of the UCL by violating
6 California’s Consumers Legal Remedies Act (“CLRA”) as described in Count VI,
7 below.

8 74. Defendant’s conduct, described herein, violated the “unfair” prong of the
9 UCL because Defendant’s conduct was immoral, unethical, unscrupulous, or
10 substantially injurious to consumers and the utility of their conduct, if any, does not
11 outweigh the gravity of the harm to their victims.

12 75. Defendant’s conduct with respect to the labeling, advertising, and sale of
13 the Product was unfair because it violates public policy as declared by specific
14 constitutional, statutory or regulatory provisions, including but not limited to the
15 applicable sections of: the CLRA, the FAL, the Federal Food, Drug, and Cosmetic
16 Act, and the California Sherman Food, Drug, and Cosmetic Law.

17 76. Defendant’s conduct with respect to the labeling, advertising, and sale of
18 the Product was unfair because the consumer injury was substantial, not outweighed
19 by benefits to consumers or competition, and not one consumers themselves could
20 reasonably have avoided.

21 77. Defendant’s conduct, described herein, violated the “fraudulent” prong
22 of the UCL.

23 78. A statement or practice is “fraudulent” under the UCL if it is likely to
24 mislead or deceive the public, applying an objective reasonable consumer test. As set
25 forth herein, Defendant’s claims relating grain content stated on the Products’ labeling
26 were false and likely to mislead or deceive the public.

1 86. As alleged herein, the advertisements, labeling, policies, acts, and
2 practices of Defendant relating to the ingredient supply, product manufacturing, and
3 oversight of its dog food misled consumers acting reasonably, as stated above.

4 87. Plaintiff and California Subclass Members suffered injuries in fact as a
5 result of Defendant's actions as set forth herein because they purchased the
6 Defendant's food in reliance on Defendant's false and misleading labeling claims
7 concerning, among other things, the products' quality, ingredient supply, and product
8 manufacturing and oversight, as stated above.

9 88. Defendant's business practices as alleged herein constitute deceptive,
10 untrue, and misleading advertising pursuant to the FAL because Defendant has
11 advertised the Products in a manner that is untrue and misleading, which Defendant
12 knew or reasonably should have known, and omitted material information from its
13 advertising.

14 89. Defendant profited from its sale of the falsely and deceptively advertised
15 dog food to unwary consumers.

16 90. As a result, Plaintiff and the California Subclass are entitled to equitable
17 relief, restitution, and an order for the disgorgement of the funds by which Defendant
18 was unjustly enriched.

19 91. Plaintiff and the California Subclass were damaged because they would
20 not have purchased (or paid a premium) for Defendant's dog food had they known the
21 true facts regarding the ingredients.

22 **COUNT VI**

23 **CALIFORNIA CONSUMER LEGAL REMEDIES ACT**

24 **Cal. Civ. Code § 1750, *et seq.* ("CLRA")**

25 **(Plaintiff individually, and on behalf of the California Subclass)**

26 92. Plaintiff Spivey brings this Count on behalf of himself and the California
27 Subclass against Defendant and repeats and re-alleges all previous paragraphs, as if
28 fully included herein.

1 93. Defendant's false and misleading labeling and other policies, acts, and
2 practices were designed to, and did, induce the purchase and use of Taste of the Wild
3 Dog Food for personal, family, or household purposes by Plaintiff and California
4 Subclass Members, and violated the following sections of the CLRA:

- 5 a. § 1770(a)(5): representing that goods have characteristics, uses, or
6 benefits which they do not have;
- 7 b. § 1770(a)(7): representing that goods are of a particular standard,
8 quality, or grade if they are of another;
- 9 c. § 1770(a)(9): advertising goods with intent not to sell them as
10 advertised;
- 11 d. § 1770(a)(14): Representing that a transaction confers or involves
12 rights, remedies, or obligations that it does not have or involve, or that
13 are prohibited by law; and
- 14 e. § 1770(a)(16): representing the subject of a transaction has been
15 supplied in accordance with a previous representation when it has not.

16 94. Defendant profited from the sale of the falsely, deceptively, and
17 unlawfully advertised Products to unwary consumers.

18 95. Defendant's wrongful business practices constituted a course of conduct
19 in violation of the CLRA.

20 96. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff sent
21 letters to Defendant (as described above) providing notice to Defendant of the alleged
22 violations of the CLRA and demanding that Defendant correct such violations,
23 thereby providing Defendant an opportunity to correct its business practices.

24 97. Plaintiff and the California Subclass were damaged because they would
25 not have purchased (or paid a premium) for Defendant's dog food had they known the
26 true facts regarding the ingredients.

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