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

SARAH HILL and MONICA
O'ROURKE,
on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

CANIDAE CORPORATION,
a California Corporation,

Defendant.

Case No. 5:20-CV-01374-JGB-SP

**SECOND AMENDED CLASS
ACTION COMPLAINT**

Demand for Jury Trial

Plaintiffs Sarah Hill and Monica O'Rourke ("Plaintiffs"), acting on behalf of themselves and all others similarly situated ("Class Members"), brings this action for damages and equitable relief against Canidae Corporation ("Defendant").

NATURE OF THE CASE

1. Pet owners take the health and well-being of their dogs seriously. Accordingly, when purchasing dog foods, an important consideration for many consumers, including Plaintiffs and Class Members, is the quality of the food that they

1 eat. These consumers are willing to pay more for a top-quality dog food that excludes
2 certain ingredients (often used as cheap fillers) that are suspected to cause allergic
3 reactions or that lead to other health problems in dogs. For example, dogs can—and
4 often do—have allergic reactions to certain foods, including those that contain wheat,
5 soy, and chicken. Although not every dog has an allergic reaction to these ingredients,
6 consumers like Plaintiffs and Class Members choose to pay more upfront than run the
7 risk of veterinary bills.

8 2. Plaintiffs and consumers willingly pay a premium for limited ingredient
9 pet foods—like Defendant’s Canidae Grain-Free PURE line of products¹,

10 ¹ Canidae Cat PURE Grain Free Chicken, Canidae Cat PURE Grain Free Tuna,
11 Canidae Cat PURE Grain Free Salmon, Canidae Cat PURE Grain Free Trout, Canidae
12 Cat PURE Ancestral Grain Free Salmon, Canidae Cat PURE Ancestral Grain Free
13 Chicken, Canidae Cat PURE Ancestral Grain Free Multi Protein, Canidae PURE
14 Ancestral Avian, Canidae PURE Ancestral Fish, Canidae PURE Ancestral Puppy,
15 Canidae PURE Ancestral Red Meat, Canidae PURE Puppy Salmon, Canidae PURE
16 Beef & Barley, Canidae PURE Chicken & Oatmeal, Canidae PURE Salmon & Barley,
17 Canidae PURE Petite Chicken, Canidae PURE Petite Lamb, Canidae PURE Petite
18 Salmon, Canidae PURE Petite Beef Cup Wet 3.5 oz, Canidae PURE Petite Duck Cup
19 Wet 3.5 oz, Canidae PURE Petite Lamb Cup Wet 3.5 oz, Canidae PURE Petite Turkey
20 Cup Wet 3.5 oz, Canidae PURE Petite Chicken Cup Wet 3.5 oz, Canidae PURE Petite
21 Salmon Cup Wet 3.5 oz, Canidae PURE Petite Puppy, Canidae PURE Puppy Chicken
22 Wet 13 oz, Canidae PURE Duck & Turkey Wet 13 oz, Canidae PURE Lamb Wet 13
23 oz can, Canidae PURE Lamb, Turkey, Chicken Wet 13 oz can, Canidae PURE Salmon
24 & Mackerel Wet 13 oz, Canidae PURE Salmon Wet 13 oz, Canidae Small Breed Beef
25 5.5 oz, Canidae Small Breed Chicken 5.5 oz, Canidae Small Breed Chicken Veg 5.5
26 oz, Canidae Small Breed Chicken & Beef 5.5 oz, Canidae Small Breed Chicken &
27 Salmon 5.5 oz, Canidae Small Breed Chicken & Tuna 5.5 oz, Canidae Under the Sun
28 Grain Free Chicken, Canidae Under the Sun Grain Free Lamb, Canidae Under the Sun
Grain Free Whitefish, Canidae Under the Sun Grain Free Large Breed, Canidae PURE
Real Salmon & Sweet Potato, Canidae PURE Real Bison, Lentil & Carrot, Canidae
PURE Puppy Real Chicken, Lentil & Whole Egg, Canidae PURE Real Chicken,
Lentil & Pea, Canidae PURE Senior Real Chicken, Sweet Potato & Garbanzo Bean,
Canidae PURE Healthy Weight Real Chicken & Pea, Canidae PURE Small Breed
Real Chicken, Lentil & Whole Egg, Canidae PURE Real Wild Boar & Garbanzo
Bean, Canidae PURE Real Lamb & Pea, Canidae PURE Real Lamb, Goat & Venison
Meal, and Canidae PURE Real Duck & Sweet Potato.

1 (collectively “Canidae Limited Ingredient Diets”) that purport to be—for the health
2 and well-being of their pets.

3 3. Consumers—including Plaintiffs—rely on Defendant’s representations
4 that the Canidae Limited Ingredient Diets: (1) include only limited ingredients; (2) are
5 specifically formulated for the health needs of dogs; (3) meet its own ingredient
6 promises and warranties; and (4) adhere to quality and manufacturing standards.

7 **PARTIES**

8 4. Plaintiff Sarah Hill is a citizen of California residing in San Diego, San
9 Diego County.

10 5. Plaintiff Monica O’Rourke is a citizen of New York residing in
11 Gansevoort, Saratoga County.

12 6. Defendant Canidae Corporation is a corporation organized and existing
13 under the laws of the State of California with its principal place of business located at
14 1975 Tandem Way, Norco, California, 92860. Defendant designs, manufactures,
15 markets, and sells the Canidae Limited Ingredient Diets online and through third-party
16 retailers throughout the United States.

17 **JURISDICTION AND VENUE**

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

23 8. The Court may exercise jurisdiction over Defendant because its principal
24 place of business is located in California and it is registered to conduct business in
25 California.

26 9. The Defendant has sufficient minimum contacts with California to be
27 subject to this Court’s personal jurisdiction. Defendant intentionally avails itself of
28 the markets within California through the promotion, sale, marketing, and distribution

1 of the Canidae Limited Ingredient Diets and numerous other products, which renders
2 this Court’s exercise of jurisdiction necessary and proper.

3 10. Venue is proper in this District under 28 U.S.C. § 1391(b) because
4 Defendant’s principal place of business is in this district.

5 **FACTUAL ALLEGATIONS**

6 **Plaintiff Sarah Hill’s Facts**

7 11. Plaintiff Hill purchased the Canidae Limited Ingredient Diets monthly
8 from approximately the June 2017 to April 2020 to feed to her Pitbull, Buttercup.
9 Specifically, Plaintiff Hill purchased and fed her dog Canidae Grain-Free PURE Real
10 Bison, Lentil, and Carrot Recipe Dry Dog Food and Canidae Grain-Free PURE Real
11 Salmon and Sweet Potato Recipe Dry Dog Food for Buttercup.

12 12. Plaintiff Hill most often purchased the Canidae Limited Ingredient Diets
13 products from Amazon for \$19.99 for each four-pound bag. Although the Canidae
14 Limited Ingredient Diets products were more expensive than other choices she
15 viewed, she chose to pay the premium price based upon the “limited ingredient”
16 promises made by Defendant. In fact, Plaintiff Hill was willing to pay the premium
17 price for the Canidae Limited Ingredient Diets products because Canidae represented
18 that the products only had 8 or 10 “Simple Ingredients” on the front of the label.
19 Nowhere on the label of Canidae Limited Ingredient Diets did Canidae indicate that
20 soy or chicken were included in the products. The omission of listing soy and chicken
21 on the label was a material misrepresentation to Plaintiff Hill.

22 13. At the time of all her purchases, Plaintiff Hill relied on Defendant’s
23 factual representations about the ingredients in the Canidae Limited Ingredient Diets
24 dog food, including those representations on the product label. The representations all
25 indicate that that the Canidae Limited Ingredient Diets are limited ingredient diets that
26 do not contain any soy or chicken.

1 14. When Plaintiff Hill learned that the Canidae Limited Ingredient Diets
2 mislabeled its products, she stopped purchasing the Canidae Limited Ingredient Diets
3 products.

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

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

12 **Plaintiff Monica O'Rourke's Facts**

13 17. Plaintiff O'Rourke purchased the Canidae Limited Ingredient Diets from
14 approximately December 2016 to July 2019 to feed to her dog. Specifically, Plaintiff
15 O'Rourke purchased and fed her dog the Canidae Grain-Free PURE Real Salmon and
16 Sweet Potato Recipe Dry Dog Food.

17 18. Plaintiff O'Rourke most often purchased the Canidae Limited Ingredient
18 Diets products from a local Petco in which she was an employee and received an
19 employee discount. Although she thinks the price per bag varied over time, one of the
20 times when she purchased the Canidae Limited Ingredient Diets, after deducting her
21 40% employee discount, she paid \$9.54 for a four-pound bag. Although the Canidae
22 Limited Ingredient Diets products were more expensive than other choices she could
23 have purchased, she chose to pay the premium price based upon the "limited
24 ingredient" promises made by Defendant. In fact, the premium amount Plaintiff
25 O'Rourke paid for her Canidae Limited Ingredient Diets was because Canidae
26 represented the product only had 8 or 10 "Simple Ingredients" on the front of the label.
27 Nowhere on the label of Canidae Limited Ingredient Diets did Canidae indicate that
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1 soy or chicken were included in the products. The omission of listing soy and chicken
2 on the label was a material misrepresentation to Plaintiff O'Rourke.

3 19. At the time of all her purchases, Plaintiff O'Rourke relied on Defendant's
4 factual representations about the ingredients in the Canidae Limited Ingredient Diets
5 dog food, including those representations on the product label. The representations all
6 indicate that that the Canidae Limited Ingredient Diets is a limited ingredient diet that
7 does not contain any soy or chicken.

8 20. When Plaintiff O'Rourke learned that the Canidae Limited Ingredient
9 Diets mislabeled its products, she stopped purchasing the Canidae Limited Ingredient
10 Diets products.

11 21. Plaintiff O'Rourke did not receive the benefit of her bargain when she
12 purchased the Canidae Limited Ingredient Diets products that included ingredients
13 that did not conform to the packaging representations and warranties made by
14 Defendant. Had she been aware of the misrepresentations, she would have either not
15 purchased the Canidae Limited Ingredient Diets or would have paid less for it.

16 22. If Defendant would conform the Canidae Limited Ingredient Diet to its
17 packaging and ingredient warranties and promises, Plaintiff O'Rourke would be
18 willing and likely to purchase the Canidae Limited Ingredient Diets in the future.

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

20 23. 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 24. 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 canned food products contained multiple protein types and may have contributed to
2 contamination.²

3 25. 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
8 quality control to prevent such discrepancies between their ingredients and label
9 claims.

10 26. 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.⁴ Of the
13 remaining 30 products, five did not contain the declared animal species ingredients
14 and 23 others revealed the presence of undeclared animal species. Two of the
15 products' labels were vague and their accuracy was indeterminable. This 2018 study
16 found that mislabeling was an especially widespread problem in pet foods used for
17 "elimination diets" (i.e. used to investigate food allergies). In this 2018 study,
18 researchers suggested that manufacturers should pay particular attention to both the
19

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*
24 *Agric.* 2016 Mar 30; 96(5): 1659-65 (completed December 31, 2014).

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

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

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

3 27. 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.⁵ 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 dietic 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 28. 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.⁶ They also
19 found that unexpected added ingredients are more frequently detected than those
20 missing from the label.

21 29. Since 2014, virtually all scholarly researchers have found that pet food
22 sold to consumers frequently contains non-conforming ingredients, and significant
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24
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).

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

3 **Defendant's Material Misrepresentations**

4 30. Pet foods vary in their quality of ingredients, formula, manufacturing
5 processes, and inspection quality. Pet owners who purchase "grain free" and "limited
6 ingredient" products pay a premium in order to alleviate their pets' allergies or to
7 provide various health benefits associated with a grain free or limited ingredient diet.
8 Notably, food allergies are more common among certain dog breeds than others. In
9 addition, pet owners are willing to pay a premium for dog food with premium
10 ingredients and expect the products that are advertised in this manner to conform to
11 the ingredients listed on the packaging.

12 31. Accordingly, Defendant's misrepresentations regarding the ingredients
13 in the Canidae Limited Ingredient Diets are material to consumers who purchase this
14 product, passing over products that cost less but do not claim to be made from select,
15 premium ingredients.

16 32. Inclusion of the phrases "the Canidae Limited Ingredient Diets" and
17 "Limited Ingredient" in the product name for the Canidae Limited Ingredient Diets
18 dog food line is intended to appeal specifically to dog owners who would like to
19 reduce the risk of allergic reactions to their pet's food, or otherwise to protect or
20 improve their pets' overall health. In addition, "limited ingredient" diets are often
21 recommended by veterinarians to reduce risks of adverse reactions of dogs to certain
22 ingredients that are frequently used as fillers in lower-priced dog foods, including
23 grains, soy, or lower-priced meats.

24 33. Defendant understands the importance of not having ingredients that
25 cause allergic reactions or adverse reactions and of limiting the overall number of
26 ingredients. Defendant unequivocally states on its website "Grain Free For Dogs With
27
28

1 Sensitive Stomachs: There’s nothing questionable in a bowl of Canidae Pure. Never
2 any wheat, corn, or soy.”⁷

3 34. Defendant’s representations that each of its “PURE” Canidae Limited
4 Ingredient Diets is limited to *only* the ingredients listed on the label is consistent across
5 products. Each product states on the front of the label “Grain Free” and certain ones,
6 like the Salmon and Sweet Potatoes, claim to include only “8 Simple Ingredients”
7 while others, including the Bison formula, claim to have just “10 Simple Ingredients.”

8 35. As Defendant explains on its website:

9
10 CANIDAE® PURE™ premium dry dog food is made with real food
11 ingredients, formulated for all dogs, and those with additional sensitivities.
12 With 7-10 key ingredients or less, your dog gets a complete, well-rounded
13 meal crafted with their health and well-being at the forefront. CANIDAE
14 PURE recipes always begin with real meat or fish first (Salmon, Lamb, Duck,
15 Boar Bison, or Chicken), paired with whole foods like sweet potatoes, peas,
16 lentils, or chickpeas. And we promise never any fillers – never any corn, wheat
17 or soy. Every recipe includes high-protein ingredients for lean, strong
18 muscles, added probiotics for easy digestion, vitamins/minerals and hard-
19 working antioxidants for overall health and fatty acid blends for healthy skin
20 and coat. Formulated for all life stages and most breed sizes, there is a
21 CANIDAE PURE food that is perfect for your pup.⁸

22 36. The front and back of the Canidae Limited Ingredient Diets dog food
23 bags include numerous representations by Defendant that are materially misleading.
24 Images of the front and back of the bags of selected Canidae Limited Ingredient Diets
25 are reproduced below:

26 ⁷ [https://www.canidae.com/dog-food/products/canidae-grain-free-pure-real-bison-](https://www.canidae.com/dog-food/products/canidae-grain-free-pure-real-bison-dry-food)
27 [dry-food](https://www.canidae.com/dog-food/products/canidae-grain-free-pure-real-bison-dry-food) (last visited June 22, 2020). *See also* [https://www.canidae.com/dog-](https://www.canidae.com/dog-food/products/canidae-grain-free-real-salmon-sweet-potato-dry-dog)
28 [food/products/canidae-grain-free-real-salmon-sweet-potato-dry-dog](https://www.canidae.com/dog-food/products/canidae-grain-free-real-salmon-sweet-potato-dry-dog) (last visited
June 22, 2020).

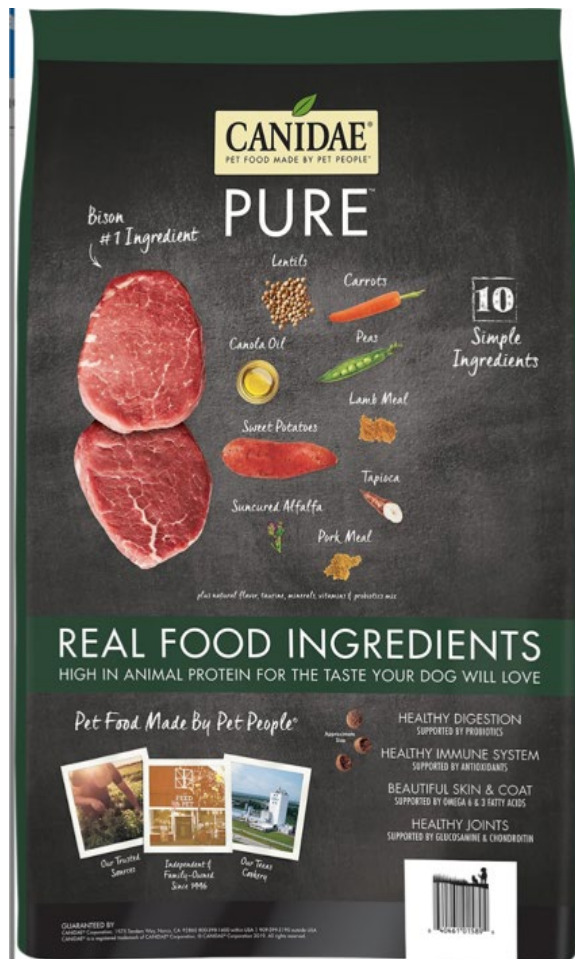
⁸ [https://www.canidae.com/dog-food/products/canidae-grain-free-real-salmon-sweet-](https://www.canidae.com/dog-food/products/canidae-grain-free-real-salmon-sweet-potato-dry-dog)
[potato-dry-dog](https://www.canidae.com/dog-food/products/canidae-grain-free-real-salmon-sweet-potato-dry-dog) (last visited June 22, 2020).

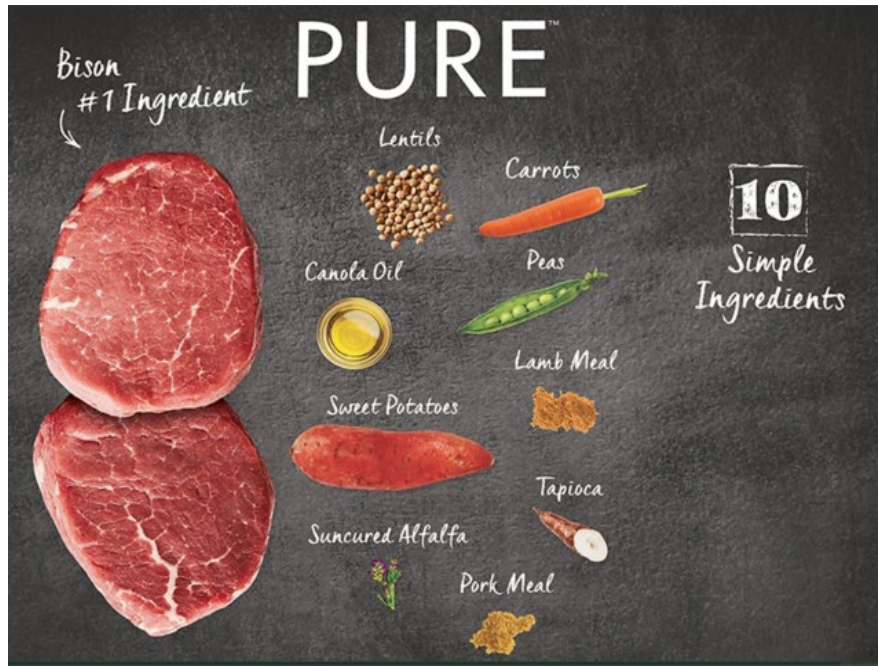
I. Canidae PURE Real Bison, Lentil & Carrot Recipe⁹



⁹<https://www.amazon.com/Canidae-Limited-Ingredient-Adult-Potato/dp/B01MZ1EWVE> (last visited May 28, 2020).

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II. Canidae PURE Real Salmon & Sweet Potato Recipe¹⁰

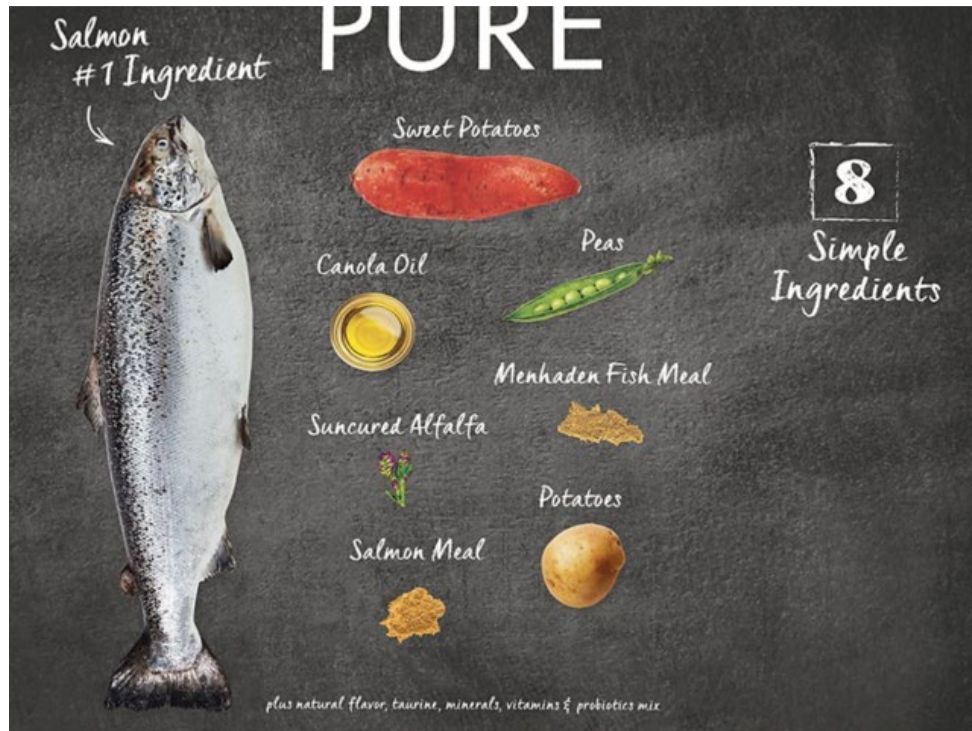


¹⁰<https://www.chewy.com/canidae-grain-free-pure-real-salmon/dp/28888> (last visited June 22, 2020).

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37. The representations that the Canidae Limited Ingredient Diets only contain either “8 Simple Ingredients” or, alternatively, “10 Simple Ingredients” appears, in large type, on the front and back of every bag. Further, the ingredients are listed on both the front and back of the bag. Canidae takes it a step further by putting large graphics of the ingredients on the back of the bag to illustrate the simplicity of its “Simple Ingredients” representations. The words “Grain Free” are also very prominently on the front of every Canidae Limited Ingredient Diets’ bag. Further, in small print, Canidae lists a few additional ingredients under its 8 or 10 Simple Ingredient representation, however, none of those “additional ingredients” are chicken or soy.

38. The back of each bag also includes an ingredient list for the Canidae Limited Ingredient Diets. Soy and chicken are not listed as ingredients on the Canidae Limited Ingredient Diets’ ingredient lists.

1 39. All of Defendant’s representations regarding the ingredients in the
2 Canidae Limited Ingredient Diets, and the safety of the Canidae Limited Ingredient
3 Diets for dogs that may be sensitive or allergic to soy or chicken, are false.

4 40. In fact, the Canidae Limited Ingredient Diets contain significant amounts
5 soy and chicken (the “defect”). Plaintiffs’ independent analysis of the ingredients of
6 the Canidae Limited Ingredient Diets found that the Canidae Limited Ingredient Diets
7 contain material amounts, meaning amounts above a trace amount by any scientific
8 metric, of chicken and soy using the industry standard Q-PCR method of DNA testing.

9 41. Specifically, Plaintiffs’ testing found amounts of chicken and soy within
10 Canidae Limited Ingredient Diets that is well above amounts that would be considered
11 cross contamination. The non-conforming ingredients found within the Canidae
12 Limited Ingredient Diets are material to Plaintiffs, customers, and potential class
13 members.

14 42. It is undisputed the Q-PCR method of DNA testing is the industry
15 standard method of testing used to determine whether food complies with FDA
16 standards and other quality standards.

17 **Defendant’s Misrepresentations and Omissions are Material to Reasonable**
18 **Consumers**

19 43. Although pet foods vary in the quality of ingredients, formula,
20 manufacturing processes, and inspection quality, dog owners often choose to purchase
21 products that have “limited ingredients”—like soy free or chicken free here—because
22 certain dog breeds have allergies associated with dog foods that contain these
23 ingredients or because the owners understand that certain ingredients help—or
24 hamper—their pets’ health, weight, and overall well-being.

25 44. In addition, it is reasonable for a consumer to assume when a product
26 states a finite number of ingredients are within a product that additional ingredients
27 that are not disclosed on the label are not present. Defendant knows this, and that is
28 why on each Canidae Limited Ingredient Diet it specifically spells out the complete

1 and total number of ingredients per bag. And by listing its ingredients in this manner,
2 Canidae is able to profit off its misrepresentations.

3 45. Despite warranting that its Canidae Limited Ingredient Diets contain
4 either “8 or 10 Simple Ingredients” **and listing them on the front of each of the**
5 **Canidae Limited Ingredient Diets for every consumer to see and rely on,** in
6 reality, the products contain material amounts of additional ingredients that are not
7 listed anywhere on the label. Any reasonable consumer, if told this prior to purchase,
8 would either pay less for the product or chosen not to purchase it. That is indeed the
9 case with Plaintiffs.

10 46. The fact the Canidae Limited Ingredient Diets contain a “plus natural
11 flavor, taurine, minerals, vitamins & probiotic mix” on the labels does not make their
12 misrepresentations any less material to the reasonable consumer. “Natural flavor,
13 taurine, minerals, vitamins & probiotic mix” do not include chicken or soy. Nothing
14 on the Canidae Limited Ingredient Diets’ labels **gives notice to the reasonable**
15 **consumer that the products contain chicken or soy. In fact, the labeling leads the**
16 **reasonable consumer to believe the opposite.**

17 47. When pet owners buy limited ingredient dog food, they usually do so to
18 prevent a health issue or address a nutritional deficiency that their dog may be
19 experiencing. And consumers generally must pay a premium price for these
20 specialized pet food formulations.

21 48. Accordingly, Plaintiffs and Class Members purchased the Canidae
22 Limited Ingredient Diets, spending additional money for the premium food and its
23 promises, instead of cheaper dog food alternatives that are known to contain soy
24 and/or chicken.

25 49. Defendant’s misrepresentations about the formulation of the Canidae
26 Limited Ingredient Diets drive consumers’ purchases.

CLASS ACTION ALLEGATIONS

Class Definitions

50. Plaintiffs bring this action on behalf of themselves and the members of the following class:

All persons residing in the United States and its territories who, during the maximum period of time permitted by law, purchased the Canidae Limited Ingredient Diets primarily for personal, family, or household purposes, and not for resale.

51. In addition, or alternatively, Plaintiff Sarah Hill brings this action on behalf of herself and the members of the following subclass (“California Subclass”):

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

52. In addition, or alternatively, Plaintiff Monica O’Rourke brings this action on behalf of herself and the members of the following subclass (“New York Subclass”):

All persons residing in New York who, during the maximum period of time permitted by law, purchased the Canidae Limited Ingredient Diets primarily for personal, family, or household purposes, and not for resale.

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

1 54. Plaintiffs reserve the right to amend the Class definition and Subclass
2 definitions as necessary.

3 55. As used herein, “Class Members” shall mean and refer to the members
4 of the Nationwide Class and any of the Subclasses, including Plaintiffs.

5 56. Plaintiffs seek only damages and equitable relief on behalf of themselves
6 and the Class Members. Plaintiffs disclaim any intent or right to seek any recovery in
7 this action for personal injuries, wrongful death, or emotional distress suffered by
8 Plaintiffs and/or the Class Members.

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

14 58. Typicality: The claims of the representative Plaintiffs are typical in that
15 Plaintiffs, like all Class Members, purchased the Canidae Limited Ingredient Diets
16 that were manufactured and distributed by Defendant. Plaintiffs, like all Class
17 Members, have been damaged by Defendant’s misconduct in that, *inter alia*, they have
18 incurred or will continue to incur damage due to purchasing a product at a premium
19 price that contained ingredients (soy and chicken) that Defendant represented were
20 absent from the Canidae Limited Ingredient Diets. Furthermore, the factual bases of
21 Defendant’s misconduct are common to all Class Members and represent a common
22 thread of fraudulent, deliberate, and negligent misconduct resulting in injury to all
23 Class Members.

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

- 27 a) Whether the Canidae Limited Ingredient Diets contain soy and/or
28 chicken;

- b) Whether Defendant's representations that its products contain no soy or chicken are false;
- c) Whether Defendant expressly warranted that the Canidae Limited Ingredient Diets would conform to the representations made on its packaging that the Canidae Limited Ingredient Diets contain no soy or chicken;
- d) Whether Defendant impliedly warranted that the Canidae Limited Ingredient Diets would conform to the representations that they are limited ingredient products that would pass without objection in the trade under this description and are fit for the ordinary purposes for which such goods are sold;
- e) Whether Defendant breached its 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 state consumer protection laws as alleged herein;
- h) 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.

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

61. Predominance and Superiority: Plaintiffs and Class Members have all suffered and will continue to suffer harm and damages as a result of Defendant's 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

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

10 62. Defendant has acted or refused to act on grounds generally applicable to
11 the Class, thereby making appropriate final injunctive relief or corresponding
12 declaratory relief with respect to the Class as a whole.

13
14 **COUNT 1**

15 **BREACH OF EXPRESS WARRANTY**

16 63. Plaintiffs brings this count on behalf of themselves and the Class, and
17 alternatively, the Subclasses, and repeats and re-alleges all previous paragraphs, as if
18 fully included herein.

19 64. Defendant marketed, sold, and/or distributed the Canidae Limited
20 Ingredient Diets, and Plaintiffs and Class Members purchased the Canidae Limited
21 Ingredient Diets.

22 65. Defendant represented in its marketing, advertising, and promotion of the
23 Canidae Limited Ingredient Diets that its product was "Grain Free" and has only "8
24 Simple Ingredients" or "10 Simple Ingredients." Defendant made these
25 representations to induce Plaintiffs and Class Members to purchase the Canidae
26 Limited Ingredient Diets, which did in fact induce Plaintiffs and other Class Members
27 to purchase this product.
28

1 66. Accordingly, Defendant’s representations that the Canidae Limited
 2 Ingredient Diets contained no soy or chicken became part of the basis of the bargain
 3 between Defendant and Plaintiffs and other Class Members.

4 67. The Canidae Limited Ingredient Diets did not conform to Defendant’s
 5 representations and warranties regarding soy and chicken because at all relevant times
 6 the bags of the Canidae Limited Ingredient Diets contained these ingredients.

7 68. As a direct and proximate result of Defendant’s breaches of its express
 8 warranties and their failure to conform to the Canidae Limited Ingredient Diets’
 9 express representations, Plaintiffs and members of the Class have been damaged.
 10 Plaintiffs and Class Members have suffered damages in that they did not receive the
 11 product they specifically paid for and that Defendant warranted it to be. In addition,
 12 Plaintiffs and Class Members paid a premium for a product that did not conform to
 13 the Defendant’s warranties.

14 69. As of the date of this filing, Plaintiffs mailed a letter to Defendant
 15 outlining Defendant’s conduct that is a breach of the express warranty of the Canidae
 16 Limited Ingredient Diets as described throughout this complaint.

17
 18 **COUNT 2**

19 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

20 70. Plaintiffs bring this count on behalf of themselves and the Class, and
 21 alternatively, the Subclasses, and repeat and re-allege all previous paragraphs, as if
 22 fully included herein.

23 71. Defendant marketed, sold, and/or distributed the Canidae Limited
 24 Ingredient Diets, and Plaintiffs and other Class Members purchased the Canidae
 25 Limited Ingredient Diets.

26 72. Plaintiffs bring this claim for breach of the Uniform Commercial Code’s
 27 implied warranty of merchantability on behalf of themselves and other consumers
 28

1 who purchased the Canidae Limited Ingredient Diets as a limited ingredient dog food
2 product for their pets.

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

4 74. Privity between Plaintiffs and the class and Defendant is not required
5 under California law.

6 75. The Defendant has breached the implied warranties of merchantability
7 that it made to Plaintiffs and the prospective class. For example, Defendant impliedly
8 warranted that the Canidae Limited Ingredient Diets products were free from defects,
9 that they were merchantable, and that they were fit for the ordinary purpose for which
10 limited ingredient dog foods are used.

11 76. When sold by Defendant, the Canidae Limited Ingredient Diets were not
12 merchantable, did not pass without objection in the trade as a limited ingredient diet
13 for dogs, was not of adequate quality within that description, was not fit for the
14 ordinary purposes for which such goods are used, and did not conform to the promises
15 or affirmations of fact made on the container or label.

16 77. On June 24, 2020, Plaintiffs gave notice to Defendant that the product
17 was not fit for such purpose and/or was not otherwise merchantable as set forth above.
18 Within 30 days of receiving notice, Defendant did not take the necessary steps
19 outlined Plaintiffs' notice letter to remedy their breach of the implied warranty for the
20 Canidae Limited Ingredient Diets.

21 78. As a direct result of the Canidae Limited Ingredient Diets being unfit for
22 its intended purpose as a limited ingredient food product and/or otherwise not
23 merchantable, Plaintiffs and class members were damaged and are entitled to remedies
24 provided under Article 2 of the U.C.C., including under California law specifically,
25 monetary damages. *See, e.g.*, Cal. Com. Code § 2714.

26 79. Because of the defects in the Canidae Limited Ingredient Diets product
27 as described herein, the value of the Canidae Limited Ingredient Diets products as
28 warranted is greater than actual value of the Canidae Limited Ingredient Diets.

1 Plaintiff and California Subclass would not have purchased the Canidae Limited
2 Ingredient Diets on the same terms, had they known that the Canidae Limited
3 Ingredient Diets in fact contained soy and/or chicken. Plaintiff and California
4 Subclass paid a price premium for the Canidae Limited Ingredient Diets based on
5 Defendant's misrepresentations. Damages, which may be measured pursuant to the
6 damage provisions of Article 2 of the UCC, are warranted to plaintiffs and members
7 of the proposed class. *See, e.g.,* Cal. Com. Code § 2714(2).

8 80. As a direct and proximate result of Defendant's breach of the warranties
9 of merchantability, Plaintiffs and the other class members have been damaged in an
10 amount to be proven at trial.

11 **COUNT 3**

12 **UNJUST ENRICHMENT**

13 81. Plaintiffs bring this count on behalf of themselves and the Class, and
14 alternatively, the Subclasses, and repeats and re-alleges all previous paragraphs, as if
15 fully included herein.

16 82. Plaintiffs conferred benefits on Defendant by purchasing the Canidae
17 Limited Ingredient Diets at a premium price.

18 83. Defendant has knowledge of its receipt of such benefits.

19 84. Defendant has been unjustly enriched in retaining the revenues derived
20 from Plaintiffs and Class Members' purchases of the Canidae Limited Ingredient
21 Diets.

22 85. Defendant's retaining of these moneys under these circumstances is
23 unjust and inequitable because Defendant falsely and misleadingly represented that
24 Canidae Limited Ingredient Diets contained no soy or chicken when, in fact, the
25 Canidae Limited Ingredient Diets did contain these non-conforming ingredients.

26 86. Defendant's misrepresentations have injured Plaintiffs and Class
27 Members because they would not have purchased (or would not have paid a price
28

1 premium) for the Canidae Limited Ingredient Diets had they known the true facts
2 regarding the Canidae Limited Ingredient Diets' ingredients.

3 87. Because it is unjust and inequitable for Defendant to retain such non-
4 gratuitous benefits conferred on it by Plaintiff and Class Members, Defendant must
5 pay restitution to Plaintiffs and Class Members, as ordered by the Court.

6 **COUNT 4**

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

8 88. Plaintiff Sarah Hill brings this count on behalf of herself and the
9 California Subclass and repeats and re-alleges all previous paragraphs, as if fully
10 included herein.

11 89. The CLRA prohibits deceptive practices by any business that provides
12 goods, property, or services primarily for personal, family, or household purposes.

13 90. Plaintiff Hill and the California Subclass members are "consumers" as
14 defined in California Civil Code § 1761(d).

15 91. The Canidae Limited Ingredient Diets Products are "goods" as defined
16 in California Civil Code § 1761(a).

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

18 93. Plaintiff Hill and the Class members' purchases of the Canidae Limited
19 Ingredient Diets are "transactions" as defined in California Civil Code § 1761(e).

20 94. Defendant's representations and omissions concerning the quality,
21 benefits and effectiveness of the Canidae Limited Ingredient were false and/or
22 misleading as alleged herein.

23 95. Defendant's false or misleading representations and omissions were such
24 that a reasonable consumer would attach importance to them in determining his or her
25 purchasing decision.

26 96. Defendant's false and misleading representations and omissions were
27 made to the entire California Subclass as they were prominently displayed on the
28 packaging of every bag of the Canidae Limited Ingredient Diets dog food.

1 97. Defendant knew or should have known their representations and
2 omissions were material and were likely to mislead consumers, including Plaintiff Hill
3 and the Class.

4 98. Defendant's practices, acts, and course of conduct in marketing and
5 selling the Canidae Limited Ingredient Diets Products were and are likely to mislead
6 a reasonable consumer acting reasonably under the circumstances to his or her
7 detriment.

8 99. Defendant's false and misleading representations and omissions were
9 designed to, and did, induce the purchase and use of the Canidae Limited Ingredient
10 Diets Products for personal, family, or household purposes by Plaintiff Hill and
11 California Subclass members, and violated and continue to violate the following
12 sections of the CLRA:

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

21 100. Defendant profited from the sale of the falsely, deceptively, and
22 unlawfully advertised the Canidae Limited Ingredient Diets to unwary consumers.

23 101. Defendant's wrongful business practices constituted, and constitute, a
24 continuing course of conduct in violation of the CLRA.

25 102. Defendant's wrongful business practices were a direct and proximate
26 cause of actual harm to Plaintiff Hill and to each California Subclass member.

27 103. Pursuant to the provisions of Cal. Civ. Code § 1782(a), on June 24, 2020,
28 Plaintiff Hill sent the required notice to Defendant regarding its unlawful conduct and

1 violation of the CLRA. After receiving notice regarding its unlawful conduct and
2 violation of the CLRA, Defendant did not meet the demands enumerated in Plaintiff
3 Hill’s notice letter within 30 days. Hence, Plaintiff is permitted to seek actual damages
4 from Defendant pursuant to the CLRA.

5 104. Pursuant to California Civil Code § 1780, Plaintiff Hill seeks injunctive
6 relief, reasonable attorneys’ fees and costs, and any other relief that the Court deems
7 proper on behalf of the California Subclass.

8 **COUNT 5**

9 **CALIFORNIA FALSE ADVERTISING LAW (“FAL”)**

10 105. Plaintiff Hill brings this count on behalf of herself and the California
11 Subclass and repeats and re-alleges all previous paragraphs, as if fully included herein.

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

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

20 108. As alleged herein, the advertisements, labeling, website, policies, acts,
21 and practices of Defendant relating to the Canidae Limited Ingredient Diets Products
22 were and are deceptive and misleading.

23 109. As alleged herein, the advertisements, labeling, website, policies, acts,
24 and practices of Defendant misled consumers acting reasonably as to Defendant’s
25 representations about quality, benefits, and ingredients of the Canidae Limited
26 Ingredient Diets.

27 110. Plaintiff Hill suffered injury-in-fact as a result of Defendant’s actions as
28 set forth herein because, as a reasonable consumer, she purchased the Products in

1 reliance on Defendant's false and misleading labeling claims concerning the Canidae
2 Limited Ingredient Diets' qualities, benefits, and ingredients.

3 111. Defendant's business practices as alleged herein constitute deceptive,
4 untrue, and misleading advertising pursuant to the FAL because Defendant has
5 advertised the Canidae Limited Ingredient Diets in a manner that is untrue and
6 misleading, which Defendant knew or reasonably should have known was untrue, and
7 because Defendant omitted material information from its advertising.

8 112. Defendant profited from sale of the falsely and deceptively advertised
9 Products to reasonable but unwary consumers including Plaintiff and the California
10 Subclass, and Defendant has thereby been unjustly enriched.

11 113. As a result, Plaintiff Hill, the California Subclass, and the general public
12 are entitled to injunctive and equitable relief, restitution, and an order for the
13 disgorgement of the funds by which Defendant was unjustly enriched.

14 114. Because Plaintiff Hill owns a pet to whom she would like to feed a
15 limited ingredient dog food, she suffers threat of future harm because she is unable to
16 rely on Defendant's representations regarding the ingredients of the Canidae Limited
17 Ingredient Diets. Likewise, because Defendant has made such representations with
18 impunity thus far, Plaintiff Hill's ability to discern truthful from untruthful claims
19 made with respect to Defendant's and other competitors' dog food ingredients is
20 impaired. Injunctive relief requiring Defendant to make only truthful statements in its
21 advertising would remedy these harms.

22 115. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff Hill, on behalf of
23 herself and the California Subclass, seeks an order enjoining Defendant from
24 continuing to engage in deceptive business practices, false advertising, and any other
25 act prohibited by law, including those set forth in this Complaint.

COUNT 6

CALIFORNIA UNFAIR COMPETITION LAW (“UCL”)

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

117. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200. Defendant’s acts, omissions, misrepresentations, practices, and non-disclosures as alleged herein constitute business acts and practices.

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

119. Unlawful: The acts alleged herein are “unlawful” under the UCL in that they violate at least: (a) the False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*; and (b) the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*

120. Unfair: Defendant’s conduct with respect to the labeling, advertising, and sale of the Canidae Limited Ingredient Diets was “unfair” because Defendant’s conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of their conduct, if any, does not outweigh the gravity of the harm to its victims, including Plaintiff Hill and the California Subclass.

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

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

5 c. Reasonable consumers, including Plaintiff Hill and the California
6 Subclass, purchased the Canidae Limited Ingredient Diets believing the
7 products’ ingredients were limited and did not include chicken and soy
8 as represented by Defendant when in fact they were not—a fact of
9 which consumers could not reasonably have become aware.

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

13 a. As set forth herein, Defendant’s representations and omissions about
14 the quality, benefits, and effectiveness of the Canidae Limited
15 Ingredient Diets were and are false and likely to mislead or deceive the
16 public because a significant portion of the general consuming public,
17 acting reasonably in the circumstances, could be misled by Defendant’s
18 representations and omissions.

19 122. Defendant profited from its sale of the falsely, deceptively, and
20 unlawfully advertised and packaged the Canidae Limited Ingredient Diets to unwary
21 consumers.

22 123. Defendant’s conduct directly and proximately caused and continues to
23 cause substantial injury to Plaintiff Hill and the other California Subclass members.
24 Plaintiff Hill and the California Subclass have suffered injury-in-fact as a result of
25 Defendant’s unlawful conduct including but not limited to the damages as described
26 above.

27 124. Plaintiff Hill and the California Subclass are likely to continue to be
28 damaged by Defendant’s deceptive trade practices, because Defendant continues to

1 disseminate misleading information on the Canidae Limited Ingredient Diets’
2 packaging and through the marketing and advertising of the Products. Thus, injunctive
3 relief enjoining Defendant’s deceptive practices is proper.

4 125. Because Plaintiff Hill owns a pet to whom she chooses to feed limited
5 ingredient dog food, she suffers threat of future harm by the Defendant because she is
6 unable to rely on Defendant’s representations regarding the qualities and ingredients
7 of its products in deciding whether to purchase the Canidae Limited Ingredient Diets
8 in the future. Likewise, because Defendant have made such representations with
9 impunity thus far, Plaintiff Hill’s ability to discern truthful from untruthful claims
10 made with respect to competitors’ dog food products is impaired. Injunctive relief
11 requiring Defendant to make only truthful statements in its advertising would remedy
12 these harms.

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

17 127. Plaintiff Hill and the California Subclass also seek an order for and
18 restitution of all monies from the sale of the Products, which were unjustly acquired
19 through acts of unlawful competition.

20
21 **COUNT 7**
22 **VIOLATION OF THE NEW YORK DECEPTIVE**
23 **TRADE PRACTICES ACT (“GBL”)**

24 128. Plaintiff O’Rourke asserts this Count on behalf of herself and the New
25 York Subclass and repeats and re-alleges all previous paragraphs, as if fully included
26 herein.

27 129. By the acts and conduct alleged herein, Defendant committed unfair or
28 deceptive acts and practices by misrepresenting that the Canidae Limited Ingredient

1 Diets did not contain chicken or soy when, in fact, the Canidae Limited Ingredient
2 Diets contained soy and chicken.

3 130. Defendant's business practice of marketing, advertising, and promoting
4 its Canidae Limited Ingredient Diets in a misleading, inaccurate, and deceptive
5 manner constitutes unconscionable commercial practice, deception, and
6 misrepresentation and, accordingly, constitutes multiple, separate violations of
7 Section 349 of the New York General Business Law.

8 131. In marketing, advertising, and promoting the Canidae Limited Ingredient
9 Diets to consumers, including Plaintiff O'Rourke and members of the New York
10 Subclass, Defendant materially misrepresented and omitted key aspects regarding the
11 Canidae Limited Ingredient Diets throughout the United States, including the State of
12 New York.

13 132. The foregoing deceptive acts and practices were directed at consumers.

14 133. The foregoing deceptive acts and practices are misleading in a material
15 way because they fundamentally misrepresent the characteristics, ingredients,
16 benefits, quality, and nature of the Canidae Limited Ingredient Diets to induce
17 consumers to purchase the same, and/or to pay a premium for the product.

18 134. Defendant's unconscionable commercial practices, false promises,
19 misrepresentations, and omissions set forth in this Complaint are material in that they
20 relate to matters which reasonable persons, including Plaintiff O'Rourke and members
21 of the New York Subclass, would attach importance to in making their purchasing
22 decisions or conducting themselves regarding the purchase of the Canidae Limited
23 Ingredient Diets.

24 135. Plaintiff O'Rourke and members of the New York Subclass were injured
25 because: (a) they would not have purchased the Canidae Limited Ingredient Diets, or
26 would not have purchased the Canidae Limited Ingredient Diets on the same terms,
27 had they known that the Canidae Limited Ingredient Diets in fact contained soy and/or
28 chicken; (b) they paid a price premium for the Canidae Limited Ingredient Diets based

1 on Defendant's false and misleading statements; and (c) the Canidae Limited
2 Ingredient Diets did not have the characteristics and benefits promised because it
3 contained soy and chicken. As a result, Plaintiff O'Rourke and the New York Subclass
4 have been damaged in an amount to be proven at trial, but not less than either the
5 purchase price of the Canidae Limited Ingredient Diets or, alternatively, the difference
6 in value between the Canidae Limited Ingredient Diets as advertised and the Canidae
7 Limited Ingredient Diets as actually sold.

8 136. On behalf of herself and other members of the New York Subclass,
9 Plaintiff O'Rourke seeks to enjoin the unlawful acts and practices described herein, to
10 recover her actual damages or fifty dollars, whichever is greater, three times actual
11 damages, and reasonable attorneys' fees.

12 **COUNT 8**
13 **VIOLATION OF NEW YORK GEN. BUS. LAW § 350**

14 137. Plaintiff O'Rourke brings this Count individually and on behalf of the
15 members of the New York Subclass against Defendant and repeats and re-alleges all
16 previous paragraphs, as if fully included herein.

17 138. Based on the foregoing, Defendant has engaged in consumer-oriented
18 conduct that is deceptive or misleading in a material way and which constitutes false
19 advertising in violation of Section 350 of the New York General Business Law.

20 139. Defendant's false, misleading, and deceptive statements and
21 representations of fact include, but are not limited to, the representations that the
22 Canidae Limited Ingredient Diets were "Grain Free" and had only "8 Simple
23 Ingredients" or alternatively, had only "10 Simple Ingredients." Defendant also
24 directed these representations to consumers.

25 140. Defendant's false, misleading, and deceptive statements and
26 representations of fact, including but not limited to the representations the Canidae
27 Limited Ingredient Diets included no chicken or soy, were "Grain Free," and had only
28 "8 Simple Ingredients" or alternatively, had only "10 Simple Ingredients," were and

1 are likely to mislead a reasonable consumer acting reasonably under the
2 circumstances.

3 141. Defendant's false, misleading, and deceptive statements and
4 representations of fact, including but not limited to the representations that the
5 Canidae Limited Ingredient Diets includes no chicken or soy, were "Grain Free" and
6 had only "8 Simple Ingredients" or alternatively, had only "10 Simple Ingredients,"
7 have resulted in consumer injury or harm to the public interest.

8 142. Plaintiff O'Rourke and members of the New York Subclass were injured
9 because: (a) they would not have purchased the Canidae Limited Ingredient Diets, or
10 would not have purchased the Canidae Limited Ingredient Diets on the same terms,
11 had they known that the Canidae Limited Ingredient Diets in fact contained soy and/or
12 chicken; (b) they paid a price premium for the Canidae Limited Ingredient Diets based
13 on Defendant's false and misleading statements; and (c) the Canidae Limited
14 Ingredient Diets did not have the characteristics and benefits promised because it
15 contained soy and chicken.

16 143. As a result, Plaintiff O'Rourke and the New York Subclass have been
17 damaged in an amount to be proven at trial, but not less than either the purchase price
18 of the Canidae Limited Ingredient Diets or, alternatively, the difference in value
19 between the Canidae Limited Ingredient Diets as advertised and the Canidae Limited
20 Ingredient Diets as actually sold.

21 144. As a result of Defendant's false, misleading, and deceptive statements
22 and representations of fact, including but not limited to the representations that the
23 Canidae Limited Ingredient Diets were "Grain Free" and had only "8 Simple
24 Ingredients" or alternatively, had only "10 Simple Ingredients," Plaintiff O'Rourke
25 and members of the New York Subclass have suffered and continue to suffer
26 economic injury.

27 145. Plaintiff O'Rourke and members of the New York Subclass suffered an
28 ascertainable loss caused by Defendant's misrepresentations because they paid more

1 for the Canidae Limited Ingredient Diets than they would have had they known the
2 truth about the product.

3 146. On behalf of herself and other members of the New York Subclass,
4 Plaintiff O'Rourke seeks to enjoin Defendant's unlawful acts and practices described
5 herein, to recover their actual damages or five hundred dollars, whichever is greater,
6 three times actual damages, and reasonable attorneys' fees.

7
8 **RELIEF DEMANDED**

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

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

25
26 **JURY TRIAL DEMANDED**

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

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Dated: March 2, 2021.

Respectfully submitted,

/s/ Alex R. Straus

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