

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

**ALISON BARNHILL, KIMBERLEE FERRIS,
JEFFREY GOULD, MELISSA SWARINGEN-
ORTON, MICHELLE RUBIANO, and
COLEMAN STEPHENS, on behalf of
themselves and all others similarly situated,**

Plaintiffs,

v.

MID-AMERICA PET FOOD, L.L.C.

Defendant.

Case No. 5:24-cv-46

JURY TRIAL DEMANDED

PLAINTIFFS' CLASS ACTION COMPLAINT

Plaintiffs Alison Barnhill, Kimberlee Ferris, Jeffrey Gould, Melissa Swaringen-Orton, Michelle Rubiano, and Coleman Stephens (“Plaintiffs”), individually and on behalf of all others similarly situated (the “Class,” as defined below), bring this Class Action Complaint against Mid-America Pet Food, L.L.C. (“Mid America” or “Defendant”). Plaintiffs allege, upon personal knowledge as to their own actions and their counsel’s investigations, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. Mid America manufactured pet foods that were contaminated with Salmonella bacteria. Plaintiffs bring this case on behalf of themselves and all other consumers nationwide who bought Defendant’s pet food products contaminated with Salmonella. Salmonella can make pets sick

and can lead to severe illness in humans who come into contact with contaminated pet food.

2. Defendant manufactures, warrants, advertises, markets, distributes, and sells various pet foods throughout the United States under several brand names, including Victor Super Premium, Wayne Feeds, Eagle Mountain, and Member's Mark.

3. Mid America goes out of its way to make numerous claims about the "guaranteed quality," "extensive testing," and "credible food safety" of its pet foods. For example, on its website, www.mapf.com/about-us, Mid America boasts the following:

GUARANTEED QUALITY

Our products are quality tested in multiple stages of the manufacturing process to confirm the delivery of high nutritional value guaranteed on every bag. Our facility is certified through the SQF Program – a rigorous and credible food safety program that is recognized by retailers and the Global Food Safety Initiative. Food safety is our priority. Our ingredients are tested both internally and externally to ensure they meet our high standards of quality. We also extensively test our finished products to ensure the health and safety of the pets eating our products.

4. Mid America's website also makes claims about the extra steps it purportedly takes to "better control the quality and delivery of the ingredients that go into [its] pet food."¹ Notably, Mid America brags about its control over the ingredients from when they are picked up at farms and other suppliers until they are shipped to store shelves across the country:

¹ www.mapf.com/about-us (last accessed March 14, 2024).

MAPF LOGISTICS

Established in 2018, MAPF Logistics is a fleet of over 20 trucks and trailers driven and managed by our own team. We haul the bulk of our ingredients directly from farms and suppliers to our plant in Mt. Pleasant, Texas. This allows Mid America Pet Food to better control the quality and delivery of the ingredients that go into our pet food. We also haul a portion of our finished products to help our customers receive our products on time.

5. Despite its claims, many of Mid America's products were tainted with Salmonella.
6. On September 3, 2023, Defendant announced a recall (the first of a series of recalls) of one lot of "Victor Super Premium Dog Food, Hi-Pro Plus" produced at its Mount Pleasant, Texas production facility because it was potentially contaminated with Salmonella. According to Defendant, the affected product consisted of 644 cases sold in 5-pound bags with lot code 1000016385 with "Best By Date" April 30, 2024. On approximately September 4, 2023, the Food and Drug Administration ("FDA") published news about Defendant's recall and reported that the recall was issued because a sample of Victor Super Premium Dog Food had tested positive for Salmonella in a random sample test conducted by the South Carolina Department of Agriculture.²
7. In September 2023, one customer of the Pet Food Products in Louisiana, a breeder, noticed that his dogs were unexplainably sick and called Mid America, where he provided an employee named John the lot numbers and expiration dates of the 50 lb bags of High Pro Plus that he exclusively fed his dogs. Mid America then shipped the customer replacement bags of Pet Food Products, but these made his dogs even more sick. The customer alerted Mid America that the replacement bags were also making dogs sick and likely contaminated with Salmonella.

² <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/mid-america-pet-food-issues-voluntary-recall-due-possible-salmonella-health-risk> (last accessed March 14, 2024).

8. On October 30, 2023, Defendant announced that it was issuing a second recall covering three (3) lots of “Victor Super Premium Dog Food, Select Beef Meal & Brown Rice Formula” produced at its Mount Pleasant, Texas production facility with “Best By Dates” of June 14, 2024.³

9. According to the FDA announcement published that same day, the second recall was “initiated after a third-party conducted random sampling and product associated with three lots tested positive for Salmonella.” According to Defendant, this second recall was “separate from and unrelated to the Mid America Pet Food recall for Salmonella on September 3, 2023.”

10. Approximately a week later, on November 9, 2023, Defendant announced that it was expanding its October 30, 2023, recall to include Victor Super Premium Dog Foods, Wayne Feeds Dog Food, Eagle Mountain Pet Food, and some Member’s Mark varieties with Best By Dates before October 31, 2024.⁴ According to Defendant, the recall was expanded because additional product lots subject to random and targeted sampling had tested positive for Salmonella.

11. That same day, the FDA announced that it, in collaboration with the U.S. Centers for Disease Control (“CDC”) and state government partners, was investigating seven human cases of Salmonella infection potentially associated with pet food made by Mid America.⁵ Six of seven cases reported were in children one year of age or younger—vulnerable members of the population who are most susceptible to severe, life threatening complications from Salmonella exposure.

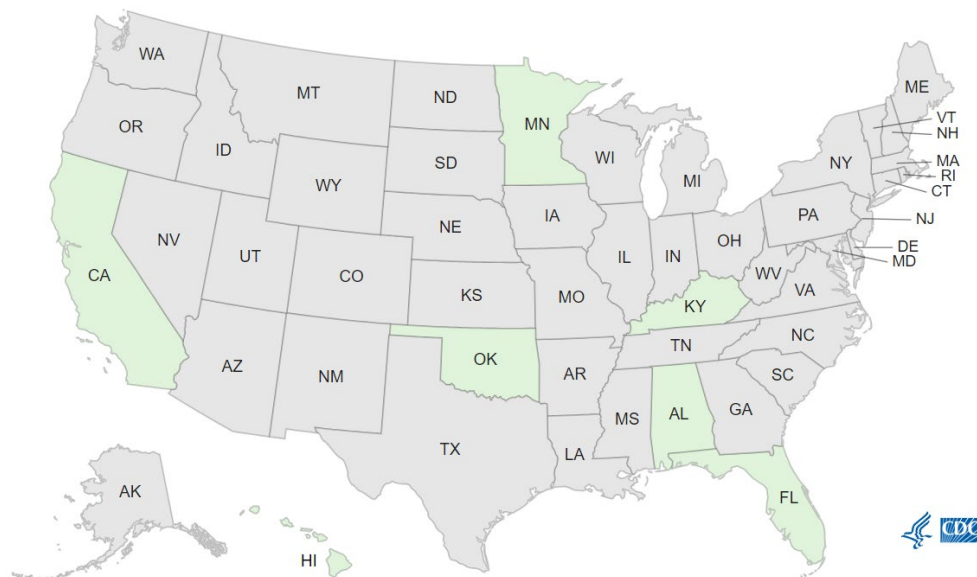
³ <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/mid-america-pet-food-issues-voluntary-recall-victor-beef-meal-rice-dog-food-due-possible-salmonella> (last accessed March 14, 2024).

⁴ <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/mid-america-pet-food-expands-voluntary-recall-include-additional-dog-and-cat-food-products-due> (last visited March 14, 2024).

⁵ <https://www.fda.gov/animal-veterinary/outbreaks-and-advisories/fda-and-cdc-investigate-cases-salmonella-linked-pet-food-made-mid-america-pet-food-multiple-brands> (last visited March 14, 2024).

12. Five of these cases reported exposure to dogs and three reported feeding Victor pet food to their pets. Illnesses started on dates ranging from January 14, 2023, to August 19, 2023. One person was hospitalized, and thankfully, no human deaths had been reported. The CDC concluded that “people likely got sick by touching this dog food, touching things like dog bowls that contained this dog food, or touching the poop or saliva of dogs that were fed this dog food.” The CDC provided a map of the states where people were known to be infected, and stated that “*the true number of sick people is likely much higher than the number reported.*”⁶

Where Sick People Lived



13. All products included in Defendant’s published September 3rd, October 30th, and November 9th recall announcements are referred to in this Complaint as “Pet Food Products.”⁷

14. Defendant has marketed and advertised the Pet Food Products as being fit or suitable

⁶ <https://www.cdc.gov/salmonella/kiambu-11-23/map.html> (last visited March 14, 2024) (emphasis added).

⁷ A full list of the 34 Pet Food Products can be found at <https://www.fda.gov/media/173750/download?attachment> (last visited March 14, 2024)

for animals, have represented that the Pet Food Products provide targeted nutrition, and/or have guaranteed the Pet Food Products for taste and nutrition.

15. As alleged herein, Defendant's marketing and advertising of the Pet Food Products is false, deceptive, and misleading to reasonable consumers because the Pet Food Products were contaminated with Salmonella, and thus were not as advertised, represented, or guaranteed.

16. Plaintiffs and Class members would not have purchased the Pet Food Products had they known the products contained, or might have contained, dangerous or toxic levels of Salmonella and/or that Defendant did not adequately test, screen, and/or inspect the Pet Food Products before selling them.

17. Accordingly, Plaintiffs bring this action and assert claims on behalf of themselves and a class of other similarly situated persons for negligence, negligent misrepresentation, breach of express and implied warranties, unjust enrichment, and violations of relevant state consumer protection acts.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because the aggregate amount in controversy exceeds \$5 million (exclusive of interests and costs), the number of members of the proposed Class exceeds 100, and many members of the proposed Class are citizens of different states than Defendant.

19. This Court has personal jurisdiction over Defendant because Defendant is a citizen of Texas with its principal place of business in this district and regularly conducts business here.

20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 as this is the Judicial District in which Defendant resides and where a substantial part of the events or omissions giving rise to the claim occurred.

PARTIES

21. Plaintiff Alison Barnhill is a citizen of Delaware and resident of New Castle County, Delaware. She purchased Victor Super Premium Dog Food, Purpose Grain Free Active Dog & Puppy through Amazon on November 1, 2023.

22. Plaintiff Kimberlee Ferris is a citizen of Texas and resident of Bexar County, Texas. She purchased: Member's Mark Beef & Brown Rice Recipe Dog Food, and Member's Mark Salmon & Sweet Potato Recipe Dog Food from Sam's Club located in San Antonio, TX on or around November 2023. Both Kimberlee Ferris' dogs became sick with gastrointestinal distress shortly after. Kimberlee Ferris took one dog to the emergency vet, and the dog passed soon after consuming the Pet Food Products.

23. Plaintiff Jeffrey Gould is a citizen of Montana and resident of Carbon County, Montana. He purchased Victory Super Premium Dog Food, Purpose Performance, from a Tractor Supply Co. located in Laurel, Montana on or around November 16, 2023. Jeffrey Gould and his son handled the dog food and became sick shortly after. Jeffrey Gould's four dogs – Sadie, Gabe, Kolt, and Maxx – became sick after consuming the food.

24. Plaintiff Michelle Swaringen-Orton is a citizen of Texas and resident of Tarrant County, Texas. She purchased Victor Super Premium Dog Food, Classic Hi-Pro Plus approximately 15-18 times per month for approximately 10 years from Tractor Supply stores in Denton, TX, and in Fort Worth, TX. Both Melissa Swaringen-Orton and many of her dogs became ill and face continuing medical complications from handling the Pet Food Products.

25. Plaintiff Michelle Rubiano is a citizen of Pennsylvania and resident of Philadelphia County, Pennsylvania. She purchased Victor Super Premium Cat Food from Monster Pets in Philadelphia, PA on or about November 2023. Her cat ate Victor Premium Pet food, became sick, and passed away on November 11, 2023.

26. Plaintiff Coleman Stephens is a citizen of California and resident of Riverside County, California. He purchased Victor Super Premium Dog Food, Classic Hi-Pro Plus since April 2023 bi-weekly from a local Tractor Supply Co. His last purchase was on August 22, 2023. His two dogs became sick on or around December 2023.

27. Defendant Mid-America Pet Food, L.L.C. is a Limited Liability Company organized under the laws of Texas with its principal place of business located in Mt. Pleasant, Texas.

FACTUAL ALLEGATIONS

Pet foods contaminated with Salmonella pose a well-known, dangerous risk to pets and humans

28. Salmonella represents a group of bacteria capable of causing foodborne illness, known as salmonellosis. These bacteria inhabit the intestinal tract of both humans and animals and are transmitted through the fecal-oral route. The inclusion of animal products in pet foods increases the risk of contamination, as ingredients tainted with Salmonella can transfer to household pets through their food.

29. The FDA regularly emphasizes the significant public health concern associated with pet foods contaminated with Salmonella, as they can impact both human and animal well-being.⁸ In animals, consumption of contaminated food may lead to symptoms such as vomiting, diarrhea, bloody stools, fever, loss of appetite, and lethargy.

30. Humans can contract Salmonella by handling contaminated pet food and inadvertently ingesting the bacteria through contact with their mouth. Additionally, individuals with Salmonella on their bodies or clothing can spread the bacteria to others or surfaces. Symptoms in humans include diarrhea, abdominal pain, fever, and vomiting, with potentially increased severity if

⁸ <https://www.fda.gov/animal-veterinary/outbreaks-and-advisories/fda-cautions-pet-owners-not-feed-performance-dog-raw-pet-food-due-salmonella-listeria-monocytogenes> (last visited December 1, 2023)

the infection extends to the bloodstream and organs.

31. The CDC estimates that each year Salmonella causes around 1.35 million illnesses, 26,500 hospitalizations, and 420 deaths in the United States.⁹

32. Given this long-recognized danger, manufacturers should have in place or implement robust quality and preventive control standards and practices to avoid the inclusion of Salmonella-contaminated ingredients in pet foods.

Plaintiff Barnhill’s Experience with Pet Food Products

33. On or about November 1, 2023, Plaintiff Barnhill made at least one purchase of Pet Food Products from Amazon.com: Victor Super Premium Dog Food, Grain Free Active Dog & Puppy.

34. In deciding to make her purchases of the Pet Food Products, Plaintiff Barnhill relied on the representations on the Pet Food Products’ packaging regarding the Pet Food Products’ ingredients, benefits, and healthfulness:



⁹ <https://www.cdc.gov/salmonella/general/index.html> (last visited December 1, 2023)

35. Nowhere on the Pet Food Product packaging did Defendant disclose that the Pet Food Products contained or may contain Salmonella.

36. Plaintiff Barnhill runs a dog breeding business. She fed the Pet Food Products to her dogs: Boujee Mae, Bad & Boujee, and Butters. Prior to consuming the Pet Food Product, all dogs were healthy. After consuming the Pet Food Product, all her dogs began experiencing lethargy and gastric distress – symptoms consistent with Salmonella poisoning.

Plaintiff Ferris' Experience with Pet Food Products

37. On or about November 15, 2023, Plaintiff Ferris made at least one purchase of Pet Food Products from Sam's Club in San Antonio, TX: Member's Mark Beef & Brown Rice Dog Food, and Member's Mark Salmon & Sweet Potato Dog Food.

38. In deciding to make her purchases of the Pet Food Products, Plaintiff Ferris relied on the representations on the Pet Food Products' packaging regarding the Pet Food Products' ingredients, benefits, and healthfulness.

39. Nowhere on the Pet Food Product packaging did Defendant disclose that the Pet Food Products contained or may contain Salmonella.

40. Plaintiff Ferris is the owner of multiple dogs. She fed the Pet Food Products to her dogs. Prior to consuming the Pet Food Product, all dogs were healthy. After consuming the Pet Food Product, all her dogs began experiencing lethargy and gastric distress – symptoms consistent with Salmonella poisoning.

41. Notably, both Plaintiff Ferris and her son—the two people who fed the dogs—became ill around the same time that the dogs became ill. Their symptoms included severe intestinal cramping, vomiting, and loss of appetite.

42. On or around November 15, 2023, Plaintiff Ferris took one dog, Tank, to an emergency veterinarian. Unfortunately, Tank passed away from symptoms consistent with Salmonellosis. Tank, an

American Staffordshire Terrier mix, was a beloved pet known for his loving, sweet, and goofy demeanor who was tender and kind to all, including his pet siblings and Plaintiff Ferris' granddaughters. Tank's death devastated his family, and his ashes are home with Plaintiff Ferris.

Plaintiff Gould's Experience with Pet Food Products

43. Between approximately October 2013 and November 16th, 2023, Plaintiff Gould made regular purchases of Pet Food Products from his local Tractor Supply Co. in Laurel, MT. More specifically, Plaintiff Gould purchased three (3) 40lb bags of Victor Super Premium Dog Food per visit – potentially hundreds of bags over the course of the past decade.

44. In deciding to make his purchases of the Pet Food Products, Plaintiff Gould relied on the representations on the Pet Food Products' packaging regarding the Pet Food Products' ingredients, benefits, and healthfulness.

45. Nowhere on the Pet Food Product packaging did Defendant disclose that the Pet Food Products contained or may contain Salmonella.

46. Plaintiff Gould fed the Pet Food Products to his four Rottweilers: Sadie, Gabe, Kolt, and Maxx. His last purchase of the Pet Food Products occurred on or around November 8, 2023. Though his four dogs had eaten this food for nearly a decade, they began to refuse to eat the Pet Food Products. Plaintiff Gould soon became aware of gastric distress in three of the four dogs. Prior to this incident, all four dogs were deemed healthy by their veterinarian.

47. Notably, both Plaintiff Gould and his son—the two people who fed the Rottweilers—became ill around the same time that the Rottweilers became ill. Their symptoms included severe intestinal cramping, vomiting, and loss of appetite.

Plaintiff Swaringen-Orton's Experience with Pet Food Products

48. For approximately 10 years, until on or around July 25, 2023, Plaintiff Melissa Swaringen-Orton purchased 15-18 bags of Victor Super Premium Dog Food, Classic Hi-Pro Plus

from Tractor Supply stores in Denton, TX, and in Fort Worth, TX. Altogether, Plaintiff Swaringen-Orton's purchases easily exceeded hundreds of bags of Pet Food Products.

49. In deciding to make her purchases of the Pet Food Products, Plaintiff Swaringen-Orton relied on the representations on the Pet Food Products' packaging regarding the Pet Food Products' ingredients, benefits, and healthfulness.

50. Nowhere on the Pet Food Product packaging did Defendant disclose that the Pet Food Products contained or may contain Salmonella.

51. Plaintiff Swaringen-Orton is the owner of a dog breeding company and has 35 dogs in her breeding program and 6 additional rescue dogs. She fed the Pet Food Products to her dogs. Prior to consuming the Pet Food Product, all dogs were healthy. After consuming the Pet Food Product, all her dogs began experiencing lethargy and gastric distress – symptoms consistent with Salmonella poisoning. 3 dogs, including 2 puppies, were subsequently taken to an emergency veterinarian, and sadly passed away on or around October 4, 2023. Prior to this incident, all dogs were deemed healthy by their veterinarian.

52. Melissa Swaringen-Orton also became sick due to exposure to Pet Food Products, and visited a hospital who diagnosed her with gastrointestinal distress and complications, including shredded stomach lining. Plaintiff Swaringen-Orton faces continuing complications from the vomiting, including vomiting blood.

Plaintiff Rubiano's Experience with Pet Food Products

53. On or about November 1, 2023, Plaintiff Rubiano made at least one purchase of Pet Food Products from Monster Pets in Philadelphia, PA: Victor Super Premium Cat Food, Grain Free Fit Feline Indoor Cat (15lb bag).

54. In deciding to make her purchases of the Pet Food Products, Plaintiff Rubiano relied on the representations on the Pet Food Products' packaging regarding the Pet Food Products'

ingredients, benefits, and healthfulness:



55. Nowhere on the Pet Food Product packaging did Defendant disclose that the Pet Food Products contained or may contain Salmonella.

56. Plaintiff Rubiano fed the Pet Food Products to her cat. Her last purchase of the Pet Food Products occurred on or around November 2023. Though her cat had regularly eaten this Pet Food Product, it soon began to show signs of lethargy and medical distress. Plaintiff Rubiano took her cat to the veterinarian, where it passed away on November 11, 2023.

Plaintiff Stephens’ Experience with Pet Food Products

57. Between April 2023 and approximately December 5, 2023, Plaintiff Stephens made bi-weekly purchases of Pet Food Products from Tractor Supply Co. in Monero Valley, CA: Victor Super Premium Dog Food, Classic Hi-Pro Plus.

58. In deciding to make his purchases of the Pet Food Products, Plaintiff Stephens relied

on the representations on the Pet Food Products’ packaging regarding the Pet Food Products’ ingredients, benefits, and healthfulness:



59. Nowhere on the Pet Food Product packaging did Defendant disclose that the Pet Food Products contained or may contain Salmonella.

60. Plaintiff Stephens fed the Pet Food Products to his two dogs. His last purchase of the Pet Food Products occurred on or around September 22, 2023. Though his two dogs had regularly eaten this Pet Food Product, they both soon began to show signs of lethargy and gastric distress on or around December 2023. This gastric distress continued for five days, and Plaintiff Stephens was forced to spend two days sanitizing the area surrounding his dogs’ indoor cages.

CLASS ACTION ALLEGATIONS

61. **Class Definitions:**¹⁰ Plaintiffs bring this action pursuant to Rule 23(a)(1-4), Rule 23(b)(1), (2), or (3), and/or Rule 23(c)(4) of the Federal Rules of Civil Procedure on behalf of the following proposed class: **All persons residing in the United States who purchased one or more Pet Food Products subject to the September 3, October 30, or November 9 2023 recalls (“Nationwide Class”).**

62. Plaintiff Barnhill also brings this action on behalf of herself and a state class defined as follows: **All persons residing in Delaware who purchased one or more Pet Food Product subject to the September 3, October 30, or November 9, 2023 recalls (“Delaware State Class”).**

63. Plaintiffs Ferris and Swaringen-Orton also bring this action on behalf of themselves and a state class defined as follows: **All persons residing in Texas who purchased one or more Pet Food Product subject to the September 3, October 30, or November 9, 2023 recalls (“Texas State Class”).**

64. Plaintiff Gould also brings this action on behalf of himself and a state class defined as follows: **All persons residing in Montana who purchased one or more Pet Food Product subject to the September 3, October 30, or November 9, 2023 recalls (“Montana State Class”).**

65. Plaintiff Rubiano also brings this action on behalf of herself and a state class defined as follows: **All persons residing in Pennsylvania who purchased one or more Pet Food Product subject to the September 3, October 30, or November 9, 2023 recalls (“Pennsylvania State Class”).**

66. Plaintiff Stephens also brings this action on behalf of himself and a state class defined as follows: **All persons residing in California who purchased one or more Pet Food**

¹⁰ Plaintiffs reserve the right to amend all class definitions as this litigation progresses.

Product subject to the September 3, October 30, or November 9, 2023 recalls (“California State Class”).

67. Excluded from the Classes are Defendant, its parents, subsidiaries, affiliates, officers, and directors, any entity in which Defendant has a controlling interest, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

68. This action is brought and may properly be maintained as a class action under Rule 23(a)(1-4), Rule 23(b)(1), (2), or (3), and/or Rule 23(c)(4) of the Federal Rules of Civil Procedure.

69. **Numerosity** (Rule 23(a)(1)): The members of the Classes are so numerous that their individual joinder would be impracticable. The Classes each comprise at least thousands of consumers. The precise number of Class members, and their addresses, are unknown to Plaintiffs at this time, but can be ascertained from Defendant’s records and/or retailer records. The members of the Classes may be notified of the pendency of this action by mail or email, supplemented (if deemed necessary or appropriate by the Court) by published notice.

70. **Predominance** (Rule 23(a)(2); 23(b)(3)): Common questions of law and fact exist as to all members of the Classes. These questions predominate over the questions affecting only individual members of the Classes. The common legal and factual questions include, without limitation:

a. Whether Defendant knew or should have known that the Pet Food Products were contaminated with Salmonella that rendered the Pet Food Products unsafe and unsuitable for consumption and human handling;

b. Whether Defendant failed to employ quality control measures and failed to properly manufacture, test and/or inspect its Pet Food Products before distribution and sale;

c. The date on which Defendant learned or should have learned of Salmonella

contamination in its Pet Food Products;

d. Whether Defendant made affirmative misrepresentations and/or false and misleading statements regarding the Pet Food Products;

e. Whether Defendant failed to disclose material facts regarding the Pet Food Products;

f. Whether Defendant was negligent in producing the Pet Food Products;

g. Whether Defendant made negligent misrepresentations in connection with the distribution and sale of the Pet Food Products;

h. Whether Defendant breached express warranties in connection with the distribution and sale of the Pet Food Products;

i. Whether Defendant breached the implied warranty of merchantability in connection with the distribution and sale of the Pet Food Products;

j. Whether Defendant violated the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* in connection with the distribution and sale of the Pet Food Products;

k. Whether Defendant violated the state consumer protection statutes alleged herein;

l. Whether Defendant was unjustly enriched;

m. The nature of the relief, including damages and equitable relief, to which Plaintiffs and the members of the Classes are entitled; and

n. Whether Defendant is liable for attorneys' fees and costs.

71. **Typicality** (Rule 23(a)(3)): Plaintiffs' claims are typical of the claims of the Classes because Plaintiffs, like all other Class members, purchased Defendant's Pet Food Products, suffered damages as a result of those purchases, and seeks the same relief as the proposed Class members.

72. **Adequacy of Representation** (Rule 23(a)(4)): Plaintiffs are adequate representatives of the Classes because their interests do not conflict with the interests of the members

of the Classes and have retained counsel competent and experienced in complex class action, including consumer litigation.

73. Plaintiffs and their counsel will fairly and adequately protect the interests of the members of the Classes.

74. **Superiority** (Rule 23(b)(3)): A class action is superior to other available means for the fair and efficient adjudication of the claims of Plaintiffs and members of the Classes. There is no special interest in Class members individually controlling the prosecution of separate actions. The damages suffered by individual members of the Classes, while significant, are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. Further, it would be virtually impossible for the members of the Classes individually to redress effectively the wrongs done to them. And, even if members of the Classes themselves could afford such individual litigation; the court system could not, given the thousands of cases that would need to be filed. Individualized litigation would also present a potential for inconsistent or contradictory judgments. Individualized litigation would increase the delay and expense to all parties and the court system, given the complex legal and factual issues involved. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

75. **Risk of Inconsistent or Dispositive Adjudications and the Appropriateness of Final Injunctive or Declaratory Relief** (Rule 23(b)(1) and (2)): In the alternative, this action may properly be maintained as a class action, because:

a. the prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudication with respect to individual Class members, which would establish incompatible standards of conduct for Defendant; or

b. the prosecution of separate actions by individual Class members would create a risk

of adjudications with respect to individual members of the Classes which would, as a practical matter, be dispositive of the interests of other members of the Classes not parties to the adjudications, or substantially impair or impede their ability to protect their interests; or

c. Defendant has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Classes as a whole.

76. **Issue Certification** Fed. R. Civ. P. 23(c)(4): In the alternative, the common questions of fact and law, set forth in Paragraph 70, are appropriate for issue certification on behalf of the proposed Classes.

COUNT ONE
Negligence
(On Behalf of All Classes)

77. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them as if fully set forth herein.

78. Defendant owed a duty of care to Plaintiffs and the Class members. Defendant breached that duty.

79. Defendant is the manufacturer of the Pet Food Products purchased by Plaintiffs and Class members.

80. Defendant had a duty to take reasonable care in the manufacture, formulation, sourcing, testing, inspection, marketing, distribution, and the sale of its Pet Food Products, including identifying all affected Pet Food Products and/or to promptly recall and remove all of the affected Pet Food Products from the marketplace, including taking all appropriate remedial action.

81. By the actions and omissions alleged herein, Defendant breached its duty. Among other things, Defendant manufactured products contaminated with Salmonella that rendered its Pet Food Products unsafe and unsuitable for consumption and human handling.

82. As a result of Defendant's breaches and violations, Plaintiffs and Class members suffered harm.

83. Defendant's negligence was a substantial factor in the harm caused to Plaintiffs and Class members.

84. At all relevant times, Plaintiffs and members of the Classes acted lawfully and with due care and did not contribute to the injuries suffered by their pets.

85. Accordingly, Plaintiffs and members of the Classes are entitled to damages and other appropriate relief, as prayed for hereunder.

COUNT TWO
Negligent Misrepresentation
(On Behalf of All Classes)

86. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them as if fully set forth herein.

87. Defendant's actions and omissions alleged herein constitute negligent misrepresentation.

88. Defendant misrepresented material facts concerning the safety, suitability, and quality of its Pet Food Products, including that the Pet Food Products were nutritious, healthful, and suitable for pets.

89. Defendant has no reasonable grounds for believing that its misrepresentations were true. Among other things, Defendant represented that the Pet Food Products were of high quality, healthy, safe, and suitable for pet consumption. Defendant knew or should have known but failed to disclose that, contrary to its representations, the Pet Food Products were contaminated with Salmonella that could cause injury to pets and humans, such as vomiting, diarrhea, fever, loss of appetite, lethargy, or can lead to serious health issues including death.

90. Defendant made such misrepresentations with the intent to induce Plaintiffs and Class members to rely on its misrepresentations and purchase Pet Food Products containing dangerous levels of Salmonella.

91. Plaintiffs and Class members had no knowledge of the falsity of Defendant's representations and reasonably believed them to be true. In justified reliance on Defendant's misrepresentations, Plaintiffs and Class members purchased and fed their pets the Pet Food Products containing dangerous levels of Salmonella.

92. As a direct and proximate consequence, Plaintiffs and Class members suffered harm. Among other things, they would not have purchased Defendant's Pet Food Products, or would have paid less had they known of the presence, or the potential presence, of dangerous levels of salmonella.

93. Plaintiffs and Class members are therefore entitled to damages and relief, as prayed for hereunder.

COUNT THREE
Breach of Express Warranty
(On Behalf of All Classes)

94. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them as if fully set forth herein.

95. Plaintiffs bring this claim individually and on behalf of the members of the proposed Classes against Defendant for breach of express warranty.

96. Defendant marketed and sold the Pet Food Products into the stream of commerce with the intent that the Pet Food Products would be purchased by Plaintiffs and members of the Classes.

97. Defendant expressly warranted, advertised, and represented to Plaintiffs and members of the Classes that the Pet Food Products were and are high quality, healthy, safe, and suitable for pet consumption.

98. Defendant made these express warranties regarding the Pet Food Products' quality, ingredients, and suitability for pet consumption in writing through its website, advertisements, and marketing materials and on the Pet Food Products' packaging and labels. These express warranties became part of the basis of the bargain that Plaintiffs and members of the Classes entered into upon purchasing the Pet Food Products.

99. Defendant's warranties, advertisements, and representations were made in connection with the sale of the Pet Food Products to Plaintiffs and members of the Classes. Plaintiffs and members of the Classes relied on Defendant's warranties, advertisements, and representations regarding the Pet Food Products in deciding whether or not to purchase Defendant's Pet Food Products.

100. Defendant's Pet Food Products do not conform to Defendant's warranties, advertisements, and representations in that they are not safe or appropriate for pet consumption, as they are contaminated with Salmonella.

101. Defendant was on notice of this breach, as Defendant was aware of the dangerous Salmonella contamination in the Pet Food Products due to its own testing and expertise, and/or based on testing conducted by various third parties as alleged herein that revealed the Pet Food Products as contaminated with Salmonella.

102. Defendant also received notice concerning Defendant's wrongful conduct alleged herein via the Louisiana customer's telephone calls, as alleged in Paragraph 7.

103. Affording Defendant a reasonable opportunity to cure its breach of implied warranties would be unnecessary and futile here because Defendant had known of and concealed the safety of its Pet Food Products.

104. Privity exists because Defendant expressly warranted to Plaintiffs and members of the Classes through the warranting, website, packaging, advertising, marketing, and labeling that the

Pet Food Products were high quality, healthy, safe, and suitable for pet consumption, and by failing to make any mention of dangerous levels of Salmonella contamination.

105. As a direct and proximate result of Defendant's conduct, Plaintiff and members of the Classes have suffered actual damages in that they purchased Pet Food Products that were worth less than the price they paid, and they would not have purchased had they known of the risk and/or presence of dangerous levels of Salmonella contamination that do not conform to the Pet Food Products' marketing and advertisements.

106. Plaintiffs and members of the Classes seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the law.

COUNT FOUR
Breach of Implied Warranty of Merchantability
(On Behalf of All Classes)

107. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them as if fully set forth herein.

108. Plaintiffs bring this claim individually and on behalf of the members of the proposed Classes against Defendant.

109. At all relevant times, Defendant was the merchant, manufacturer, marketer, warrantor, and/or seller of the Pet Food Products. Defendant knew or had reason to know of the specific use for which the Pet Food Products were purchased.

110. Plaintiffs purchased the Pet Food Products manufactured and marketed by Defendant at retailers and online retailers for retail sale to consumers throughout the United States.

111. Pet Food Products are and were at all relevant times goods within the meaning of various state statutes set forth herein.

112. An implied warranty that the Pet Food Products were merchantable arose by

operation of law as part of the sale of the Pet Food Products.

113. Defendant impliedly warranted to Plaintiffs and the Classes that the Pet Food Products were of merchantable quality, fit for their ordinary use, and conformed to the messaging, characterizations, promises, and affirmations of fact made on the Pet Food Products' packaging, labels and/or advertisements, including that the food was high quality, healthy, safe, and suitable for pet consumption. The Pet Food Products when sold at all times were not in merchantable condition and were and are not fit for the ordinary purpose of providing safe and nutritious food for pets. The Pet Food Products were and are not safe for pets because they contain dangerous levels of Salmonella.

114. Plaintiffs and members of the Classes relied on such messaging, characterizations, promises, and affirmations of fact when they purchased the Pet Food Products. Contrary to Defendant's representations and warranties, the Pet Food Products were not fit for their ordinary use, consumption by pets, and did not conform to Defendant's affirmations of fact and promises as they contained, or were at risk of containing, dangerous levels of Salmonella contamination that do not conform to the packaging.

115. As a consequence, Defendant breached its implied warranties upon selling such Pet Food Products, as each product contaminated with Salmonella.

116. Defendant cannot disclaim its implied warranty as it knowingly sold unsafe and hazardous Pet Food Products.

117. Defendant was on notice of this breach, as Defendant was aware of the Salmonella contamination in the Pet Food Products due to its own testing and expertise, and/or based on testing conducted by various third parties as alleged herein that revealed the Pet Food Products as contaminated with Salmonella.

118. Defendant also received notice concerning Defendant's wrongful conduct alleged herein via the Louisiana customer's telephone calls, as alleged in Paragraph 7.

119. As a direct and proximate result of Defendant's breach of the implied warranty of merchantability, Plaintiffs and members of the Classes have been damaged in an amount to be proven at trial.

120. Plaintiffs and members of the Classes have been excused from performance of any warranty obligations as a result of Defendant's conduct described herein.

121. Privity exists because Defendant impliedly warranted to Plaintiff and members of the Classes through the warranting, website, packaging, advertising, marketing, and labeling that the Pet Food Products were high quality, healthy, safe, and suitable for pet consumption, and by failing to make any mention of Salmonella contamination.

122. Nonetheless, privity is not required here because Plaintiffs and each Class member are intended third-party beneficiaries of contracts between Defendant and its distributors and buyers, and of their implied warranties. The distributors and buyers were not intended to be the ultimate consumers of the Pet Food Products and have no rights under the warranties of the Pet Food Products; the warranties were designed for and intended to benefit consumers only.

123. As a direct and proximate result of Defendant's conduct, Plaintiffs and members of the Classes have suffered actual damages in that they have purchased Pet Food Products that are worth less than the price they paid and that they would not have purchased at all had they known the presence or risk of Salmonella contamination.

124. Plaintiffs and members of the Classes seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the law.

COUNT FIVE
Fraudulent Concealment - Fraud by Omission
(On Behalf of All Classes)

125. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them as if fully set forth herein.

126. Plaintiffs bring this claim individually and on behalf of the members of the proposed Classes against Defendant for fraud by omission.

127. Defendant concealed from and failed to disclose to Plaintiffs and members of the Classes that the Pet Food Products were contaminated with Salmonella and do not conform to the Pet Food Products' labels, packaging, advertising, and statements, including, but not limited to, representations that they were high quality, healthy, safe, and suitable for pet consumption.

128. Defendant was under a duty to disclose to Plaintiffs and members of the Classes the true quality, characteristics, ingredients and suitability of the Pet Food Products because: (1) Defendant was in a superior position to know the true state of facts about its products; (2) Defendant was in a superior position to know the actual ingredients, characteristics, and suitability of the Products for consumption by pets; (3) Defendant had exclusive knowledge of its own test results showing dangerous levels of Salmonella contamination in its Pet Food Products; and/or (4) Defendant knew that Plaintiffs and members of the Classes could not reasonably have been expected to learn or discover that the Pet Food Products were misrepresented in the packaging, labels, advertising, and websites prior to purchasing the Pet Food Products.

129. The facts concealed or not disclosed by Defendant to Plaintiffs and members of the Classes are material in that a reasonable consumer would have considered them important when deciding whether to purchase the Pet Food Products. No reasonable consumer would have purchased the Pet Food Products had Defendant adequately and fully disclosed the truth.

130. Defendant knew that this omission was material information that Plaintiffs and

members of the Classes required, and Defendant intentionally omitted and failed to disclose this information to induce the Plaintiffs and members of the Classes to purchase its Pet Food Products.

131. Plaintiffs and members of the Classes did not know or suspect that Defendant's Pet Food Products were unsafe or contained unhealthy ingredients.

132. Plaintiffs and members of the Classes justifiably relied on Defendant's omissions to their detriment. The detriment is evident from the true quality, characteristics, and ingredients of the Pet Food Products, which are inferior when compared to how the Products are advertised and represented by Defendant.

133. As a direct and proximate result of Defendant's conduct, Plaintiffs and members of the Classes have suffered actual damages in that they purchased the Pet Food Products that were worth less than the price they paid and that they would not have purchased at all had they known of the risk and/or presence of dangerous levels of Salmonella contamination that do not conform to the products' labels, packaging, advertising, and statements.

134. Plaintiffs and members of the Classes seek actual and punitive damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the law.

COUNT SIX
Unjust Enrichment
(On Behalf of All Classes)

135. Plaintiffs hereby incorporate all other paragraphs of this Complaint and restate them as if fully set forth herein.

136. Plaintiffs and members of the Classes conferred a benefit upon Defendant. Plaintiffs and members of the Classes paid money for Defendant's Pet Food Products that were not as represented; they were not suitable for pets, they did not provide targeted nutrition for pets, and/or

they did not meet Defendant's guarantees promising taste and nutrition. Defendant has unjustly retained the benefits conferred upon it by Plaintiffs and Class members.

137. Defendant retained that benefit under circumstances that make it inequitable for it to retain such benefit. Specifically, Defendant retained that benefit even though its Pet Food Products contain or may contain Salmonella that renders the Pet Food Products unsafe and unsuitable for pet consumption and human handling. If Plaintiffs and Class members had known the true nature of the Pet Food Products, they would not have paid money for them or would have paid less.

138. Plaintiffs and Class members are therefore entitled to disgorgement and/or restitution as prayed for hereunder.

COUNT SEVEN
Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection
Law, 73 P.S. § 201-1 et seq.
(On Behalf of the Pennsylvania State Class)

139. Plaintiff Rubiano ("Plaintiff" for purposes of this Count) incorporates by reference each and every allegation set forth above as if fully written herein.

140. Plaintiff brings this claim on behalf of the Pennsylvania State Class (the "Class" for purposes of this Count).

141. The Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq. (the "PA UTPCPA"), makes unlawful any "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce" in Pennsylvania.

142. Defendant is a manufacturer, marketer, seller and/or distributor of the Pet Food Products.

143. Plaintiff purchased the Pet Food Products for personal, household or family use.

144. In the course of its business, Defendant made affirmative misrepresentations regarding the Pet Food Products that were deceptive and/or unconscionable. Specifically, Defendant

represented that the Pet Food Products were suitable for animals and provided targeted nutrition. Defendant, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Salmonella resulting in injury to pets and humans; and (2) Defendant failed to properly source, inspect, manufacture, and test Pet Food Products and ingredients for contaminants. Defendant had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendant made affirmative representations about the Pet Food Products.

145. Defendant's actions in connection with the manufacture and distribution of the Pet Food Products, as set forth herein, evidence a lack of good faith, honesty in fact, and observance of fair dealing so as to constitute unconscionable commercial practices, in violation of the PA UTPCPL.

146. Defendant acted willfully, knowingly, intentionally, unconscionably, and with reckless indifference when it committed these acts of consumer fraud.

147. Defendant intended that Plaintiff and Class members rely on the acts of concealment, omissions, and misrepresentations regarding the nature of the Pet Food Products, and the scope of its warranties so that Plaintiff and Class members would purchase the Pet Food Products.

148. Plaintiff and Class members relied on the acts of concealment, omissions, and misrepresentations regarding the nature of the Pet Food Products, and scope of the warranties.

149. Plaintiff would not have purchased the Pet Food Products (or paid a premium for them) had she known the truth concerning the Pet Food Products' defects. If Plaintiff had known that the Pet Food Products contained Salmonella contaminants, or that Defendant failed to inspect and test the Pet Food Products and ingredients for contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

150. Plaintiff and Class members had no way of discerning that Defendant's representations were false and misleading because Plaintiff and Class members did not have access to Defendant's internal testing, internal testing equipment, internal policies or procedures, or any

internal documents regarding Salmonella contaminants.

151. Defendant thus violated the PA UTPCPL by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals and for human handling.

152. In violation of the PA UTPCPL, Defendant also omitted and/or concealed material facts from Plaintiff regarding the quality, characteristics, benefits and/or uses of the Pet Food Products. For example, Defendant failed to disclose and warn (1) that the Pet Food Products were unsafe and unsuitable for animals; (2) that the Pet Food Products contained, or might contain, Salmonella resulting in injury to pets and humans; and (3) that Defendant failed to properly inspect and test the Pet Food Products for toxins and contaminants.

153. Defendant owed Plaintiff and the Class a duty to disclose the true and unsafe nature of the Pet Food Products.

154. Defendant intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiff and the Class.

155. Defendant's concealment of the true characteristics of the Pet Food Products was material to Plaintiff and the Class.

156. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff and the Class, about the true nature of the Pet Food Products.

157. The conduct described herein took place throughout the country, including within the Commonwealth of Pennsylvania, and constitutes unfair methods of competition or unfair or deceptive acts or practices under §201-2(4)(v), (vii), (xiv) and (xxi) of the PA UTPCPL.

158. Defendant knew or should have known that its conduct violated the PA UTPCPL.

159. Defendant deceived and continues to deceive consumers. This conduct constitutes

unfair or deceptive acts or practices within the meaning of the PA UTPCPL. This illegal conduct by Defendant is continuing, with no indication that it will cease.

160. Defendant's violations present a continuing risk to Plaintiff, the Class, and the general public. Defendant's unlawful acts and practices complained of herein affect the public interest.

161. Plaintiff and the Class suffered ascertainable loss of money or property and actual damages as a direct and proximate result of Defendant's misrepresentations and concealment of and failure to disclose material information.

162. As a direct and proximate result of Defendant's violations of the PA UTPCPL, Plaintiff and the Class have suffered injury-in-fact and/or actual damage.

163. Pursuant to the PA UTPCPL, § 201-9.2, Plaintiff and Class Members seek monetary relief against Defendant measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$100 for Plaintiff and each Class Member, up to three times the actual damages sustained, but not less than \$100 for Plaintiff and each Class Member, costs of suit and reasonable attorneys' fees, and any other just and proper relief available under the PA UTPCPL.

164. Plaintiff and the Class also seek an order enjoining Defendant's' unfair, unlawful, and/or deceptive practices, punitive damages, and attorneys' fees, and any other just and proper relief available.

COUNT EIGHT
Violation of the Delaware Consumer Fraud Act,
Del. Code Ann. Tit. 6 §§ 2511, et seq.
(On Behalf of Delaware State Class)

165. Plaintiff Barnhill ("Plaintiff" for purposes of this Count) incorporates by reference each and every allegation set forth above as if fully written herein.

166. Plaintiff brings this claim on behalf of the Delaware State Class (the “Class” for purposes of this Count).

167. The express purpose of the Delaware Consumer Fraud Act, Del. Code Ann. Tit. 6 §§ 2511, et seq. (the “DCFA”), is to “protect consumers and legitimate business enterprises from unfair or deceptive merchandising practices” and it is the “intent of the General Assembly that such practices be swiftly stopped and that this subchapter shall be liberally construed and applied to promote its underlying purposes and policies.” 6 Del. C. § 2512.

168. The DCFA declares unlawful “the act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale, lease, receipt, or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged.” 6 Del. C. § 2513.

169. Both Plaintiff and Defendant are a “person” as defined by the DCFA. 6 Del. C. § 2511(7).

170. Defendant’s Products are “merchandise” within the meaning of the DCFA. 6 Del. C. § 2511(6).

171. The DCFA declares certain actions as unlawful “unfair practices.” 6 Del. C. § 2511(9). Defendant’s unfair or deceptive trade practice in violation of the DCFA includes “any act or practice that causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves.” 6 Del. C. § 2511(9).

172. In the course of its business, Defendant made affirmative misrepresentations regarding the Pet Food Products that were deceptive and/or unconscionable. Specifically, Defendant represented that the Pet Food Products were suitable for animals and provided targeted nutrition.

Defendant, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Salmonella resulting in injury to pets and humans; and (2) Defendant failed to properly source, inspect, manufacture, and test Pet Food Products and ingredients for contaminants. Defendant had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendant made affirmative representations about the Pet Food Products.

173. Defendant's actions in connection with the manufacture and distribution of the Pet Food Products, as set forth herein, evidence a lack of good faith, honesty in fact, and observance of fair dealing so as to constitute unconscionable commercial practices, in violation of the DCFA.

174. Defendant acted willfully, knowingly, intentionally, unconscionably, and with reckless indifference when it committed these acts of consumer fraud.

175. Defendant intended that Plaintiff and Class members rely on the acts of concealment, omissions, and misrepresentations regarding the nature of the Pet Food Products, and the scope of its warranties so that Plaintiff and Class members would purchase the Pet Food Products.

176. Plaintiff and Class members relied on the acts of concealment, omissions, and misrepresentations regarding the nature of the Pet Food Products, and scope of the warranties.

177. Plaintiff would not have purchased the Pet Food Products (or paid a premium for them) had she known the truth concerning the Pet Food Products' defects. If Plaintiff had known that the Pet Food Products contained Salmonella contaminants, or that Defendant failed to inspect and test the Pet Food Products and ingredients for contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

178. Plaintiff and Class members had no way of discerning that Defendant's representations were false and misleading because Plaintiff and Class members did not have access to Defendant's internal testing, internal testing equipment, internal policies or procedures, or any internal documents regarding Salmonella contaminants.

179. Defendant thus violated the DCFA by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals and for human handling.

180. In violation of the DCFA, Defendant also omitted and/or concealed material facts from Plaintiff regarding the quality, characteristics, benefits and/or uses of the Pet Food Products. For example, Defendant failed to disclose and warn (1) that the Pet Food Products were unsafe and unsuitable for animals; (2) that the Pet Food Products contained, or might contain, Salmonella resulting in injury to pets and humans; and (3) that Defendant failed to properly inspect and test the Pet Food Products for toxins and contaminants.

181. Defendant owed Plaintiff and the Class a duty to disclose the true and unsafe nature of the Pet Food Products.

182. Defendant intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiff and the Class.

183. Defendant's concealment of the true characteristics of the Pet Food Products was material to Plaintiff and the Class.

184. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff and the Class, about the true nature of the Pet Food Products.

185. Defendant knew or should have known that its conduct violated the DCFA.

186. Defendant deceived and continues to deceive consumers. This conduct constitutes unfair or deceptive acts or practices within the meaning of the DCFA. This illegal conduct by Defendant is continuing, with no indication that it will cease.

187. Defendant's violations present a continuing risk to Plaintiff, the Class, and the general public. Defendant's unlawful acts and practices complained of herein affect the public

interest.

188. Plaintiff and the Class suffered ascertainable loss of money or property and actual damages as a direct and proximate result of Defendant's misrepresentations and concealment of and failure to disclose material information.

189. As a direct and proximate result of Defendant's violations of the DCFA, Plaintiff and the Class have suffered injury-in-fact and/or actual damage; did not obtain the value of the products for which they paid; were induced to make purchases that they otherwise would not have made; and lost their ability to make informed and reasoned purchasing decisions.

190. Pursuant to the DCFA, Plaintiff and the Class make claims for actual damages, punitive damages, attorney's fees and costs.

COUNT NINE
Violation of California Unfair Competition Law
Cal. Bus. & Prof. Code §§ 17200, et seq.
(On Behalf of California State Class)

191. Plaintiff Stephens ("Plaintiff" for purposes of this Count) incorporates by reference each and every allegation set forth above as if fully written herein.

192. Plaintiff brings this claim on behalf of the California State Class (the "Class" for purposes of this Count).

193. Defendant's business practices as complained of herein violate the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. ("UCL").

194. Defendant's practices constitute "unlawful" business practices in violation of the UCL because, among other things, they violate warranty laws.

195. Defendant's actions and practices constitute "unfair" business practices in violation of the UCL, because, among other things, they are immoral, unethical, oppressive, unconscionable, unscrupulous or substantially injurious to consumers, and/or any utility of such practices is

outweighed by the harm caused by consumers.

196. Defendant's actions and practices constitute "fraudulent" business practices in violation of the UCL because, among other things, Defendant's misrepresentations were likely to deceive reasonable consumers. Among other things, Defendant made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendant represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendant, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Salmonella resulting in injury to pets and humans; and (2) Defendant failed to properly inspect and test Pet Food Products for toxins and contaminants. Defendant had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendant made affirmative representations about the Pet Food Products. If Plaintiff had known that the Pet Food Products either (1) contained Salmonella contaminants, or (2) that Defendant failed to inspect and test for toxins and contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

197. As a result of Defendant's wrongful business practices, Plaintiff and the Class lost money and have suffered injury-in-fact.

198. Defendant's wrongful business practices present an ongoing and continuing threat and should be enjoined.

199. Plaintiff and the Class seek an order enjoining Defendant's unfair or deceptive acts or practices, equitable relief, and any other just and proper relief available. The claims for equitable relief are brought in the alternative should Plaintiffs not have an adequate remedy at law.

200. Accordingly, Plaintiff and members of the Class are entitled to judgment and equitable relief.

COUNT TEN
Violation of California False Advertising Law
Cal. Bus. & Prof. Code § 17500 (“FAL”)
(On Behalf of California State Class)

201. Plaintiff Stephens (“Plaintiff” for purposes of this Count) incorporates by reference each and every allegation set forth above as if fully written herein.

202. Plaintiff brings this claim on behalf of the California State Class (the “Class” for purposes of this Count).

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

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

205. As alleged herein, the advertisements, labeling, acts, and practices of Defendant relating to the safety, ingredients, and oversight of Pet Food Products misled consumers acting reasonably, as stated above.

206. Plaintiff and Class members suffered injuries in fact as a result of Defendant’s actions as set forth herein because they purchased the Defendant’s Pet Food Products in reliance on Defendant’s false and misleading labeling claims concerning, among other things, the Pet Food Products’ safety, quality, ingredients, and manufacturing oversight.

207. Defendant’s business practices as alleged herein constitute deceptive, untrue, and misleading advertising pursuant to the FAL because Defendant has advertised and labelled the

Products in a manner that is untrue and misleading, which Defendant knew or reasonably should have known, and omitted material information from its advertising and product labels.

208. Defendant profited from its sale of the falsely and deceptively advertised and labeled Pet Food Products.

209. As a result, Plaintiff and the Class are entitled to equitable relief, restitution, and an order for the disgorgement of the funds by which Defendant was unjustly enriched.

210. Plaintiff and the Class were damaged because they would not have purchased Defendant's Pet Food Products had they known the true facts regarding its safety and ingredients.

COUNT ELEVEN¹¹
Violation of California Consumer Legal Remedies Act
Cal. Civ. Code § 1750, et seq ("CLRA")
(On Behalf of California State Class)

211. Plaintiff Stephens ("Plaintiff" for purposes of this Count) incorporates by reference each and every allegation set forth above as if fully written herein.

212. Plaintiff brings this claim on behalf of the California State Class (the "Class" for purposes of this Count).

213. The contaminated Pet Food Products are "goods," as that term is defined in California Civil Code section 1761(a).

214. Defendant is a "person" as that term is defined in California Civil Code section 1761(c).

215. Plaintiff and the Class's purchase of Defendant's products constituted a "transaction," as the term is defined in California Civil Code section 1761(e).

216. Defendant's conduct alleged herein violates the following provisions of

¹¹ Plaintiff will amend this Complaint to seek all available relief under the CLRA once the statutory notice requirements are perfected.

California's Consumer Legal Remedies Act (the "CLRA"):

- a. California Civil Code section 1770(a)(5), by negligently, recklessly, and/or intentionally representing that the contaminated Pet Foods Products are healthy and safe for consumption and by failing to make any mention of the Salmonella contaminates in their Pet Food Products which resulted in injury to pets and humans.
- b. California Civil Code section 1770(a)(5), by negligently, recklessly, and/or intentionally representing that the contaminated Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition.
- c. California Civil Code section 1770(a)(7), by negligently, recklessly, and/or intentionally representing that the contaminated Pet Food Products were of a particular standard, quality, or grade, when they were of another;
- d. California Civil Code Section 1770(a)(9), by negligently, recklessly, and/or intentionally advertising the contaminated Pet Food Products with intent not to sell them as advertised; and
- e. California Civil Code section 1770(a)(16), by representing that the contaminated Pet Food Products have been supplied in accordance with previous representations when they have not.

217. As a direct and proximate result of these violations Plaintiff and the Class have been harmed, and that harm will continue unless Defendant is enjoined from using the misleading marketing described herein in any manner in connection with the advertising and the sale of the contaminated Pet Food Products.

218. Contemporaneous with filing this Complaint, counsel for Plaintiff and the Class has sent Defendant written notice (via U.S. certified mail, return service requested) that its conduct

is in violation of the CLRA concerning the salmonella contaminants. If Defendant fails to provide appropriate relief for its violations of CLRA sections 1770(a)(5), (7), (9), and (16) within thirty days of Plaintiff's notification, according with CLRA section 1782(b), Plaintiff and the Class will, under CLRA section 1780, seek to recover and obtain the following relief for Defendant's violations of CLRA sections 1770(a)(5), (7), (9) and (16):

- a. Actual damages under CLRA section 1780(a)(1);
- b. Restitution of property under CLRA section 1780(a)(3);
- c. Punitive damages under CLRA section 1780(a)(4) and because Defendant has engaged in fraud, malice, or oppression; and
- d. Any other relief the Court deems proper under CLRA sections 1780(a)(5).

219. Plaintiff and the Class seeks an award of attorneys' fees pursuant to, inter alia, California Civil Code section 1780(e)

220. In accordance with Cal. Civ. Code § 1780(d), Plaintiff's CLRA venue declaration is filed concurrently with this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Classes, pray for relief and judgment against Defendant as follows:

- A. Certifying the Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure, appointing Plaintiffs as a representative of the Classes, and designating Plaintiffs' counsel as Class Counsel;
- B. Awarding Plaintiffs and the Classes compensatory damages, in an amount exceeding \$5,000,000, to be determined by proof;
- C. Awarding Plaintiffs and the Classes appropriate relief, including actual damages;
- D. For declaratory and equitable relief, including restitution and disgorgement;

E. For an order enjoining Defendant from continuing to engage in the wrongful acts and practices alleged herein;

F. Awarding Plaintiffs and the Classes the costs of prosecuting this action, including expert witness fees;

G. Awarding Plaintiffs and the Classes reasonable attorneys' fees and costs as allowable by law;

H. Awarding pre-judgment and post-judgment interest; and

I. Granting any other relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: April 2, 2024

Respectfully submitted,

/s/ Brandon M. Wise by permission Andrea L.
Fair

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**Pro Hac Vice To Be Sought*

*Attorneys for Plaintiffs and the Proposed
Classes*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Alison Barnhill, Kimberlee Ferris, Jeffrey Gould, Melissa Swaringen-Orton, Michelle Rubiano, Coleman Stephens

(b) County of Residence of First Listed Plaintiff New Castle, DE (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Andrea L. Fair, Ward, Smith & Hill, 1507 Bill Owens Pkwy, Longview, TX 75604, Ph: 903-757-6400

DEFENDANTS

Mid-America Pet Food, L.L.C.

County of Residence of First Listed Defendant Titus, TX (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Contract, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332(d)
Brief description of cause: Consumer class action related to the sale of contaminated dog food

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Robert W. Schroeder, III DOCKET NUMBER 5:23-CV-00140

DATE 4/2/2024 SIGNATURE OF ATTORNEY OF RECORD /s/ Andrea L. Fair

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE