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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 NICOLE FLICK, *individually and on behalf*)
13 *of all those similarly situated,*)

14 *Plaintiff,*)

No. **'26CV2142 CAB BJW**

15 v.)

CLASS ACTION COMPLAINT

16 MARS PETCARE US, INC. dba Nutro Pet)
17 *Foods, a Delaware corporation,*)

JURY TRIAL DEMANDED

18 *Defendant.*)
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Nicole Flick (“Plaintiff”), individually and on behalf of all others similarly situated in the state of California, by and through undersigned counsel, hereby brings this action against Mars Petcare US, Inc. dba Nutro Pet Foods (“Nutro” or “Defendant”), alleging that its Nutro Natural Choice dog foods (“the Products”), which are manufactured, packaged, labeled, advertised, distributed, and sold by Defendant, are misbranded and falsely advertised because they contain synthetic preservatives, and upon information and belief and investigation of counsel alleges as follows:

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PARTIES

1. Plaintiff Nicole Flick is and at all times relevant was a citizen of the state of California, domiciled in San Diego, California. She purchased the Products on or about March 19, 2024 from Amazon.com (Order No. 114-6285740-4718633).

2. Defendant Mars Petcare US, Inc. dba Nutro Pet Foods is a Delaware corporation with its principal place of business in Franklin, Tennessee. On information and belief all decisions regarding formulation and labeling of the Products are made at this principal place of business.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act, Pub. L. 109-2, 119 Stat. 4 (codified in scattered sections of Title 28 of the United States Code); specifically, under 28 U.S.C. § 1332(d), which provides for the original jurisdiction of the federal district courts over “any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and [that] is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

4. Plaintiff seeks to represent Class members who are citizens of states and countries different from the Defendant.

5. The matter in controversy in this case exceeds \$5,000,000 in the aggregate, exclusive of interests and costs.

6. In addition, “the number of members of all proposed plaintiff classes in the aggregate” is greater than 100. *See* 28 U.S.C. § 1332(d)(5)(B).

7. In the alternative, the Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a). The amount in controversy exceeds \$75,000, exclusive of interest and costs.

8. This Court has personal jurisdiction over Defendant because this action arises out of and relates to Defendant's contacts with this forum.

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9. Those contacts include but are not limited to sales of the Products directly to commercial and individual consumers located in this district, including at least one Plaintiff; shipping the Products to commercial and individual consumers in this district, including at least one Plaintiff; knowingly directing advertising and marketing materials concerning the Products into this district through wires and mails, both directly and through electronic and print publications that are directed to commercial and individual consumers in this district; and operating an e-commerce web site that offers the Products for sale to commercial and individual consumers in this district, as well as offering the Products for sale through third-party e-commerce websites, through both of which commercial and individual consumers residing in this district have purchased the Products.

10. Defendant knowingly directs electronic activity and ships the Products into this district with the intent to engage in business interactions for profit, and it has in fact engaged in such interactions, including the sale of the Products to at least one Plaintiff.

11. Defendant also sells the Products to retailers and wholesalers in this district for the purpose of making the Products available for purchase by individual consumers in this district.

12. Plaintiff's losses and those of other Class members were sustained in this district.

13. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to at least one Plaintiff's claims occurred within this district.

14. Venue is also proper pursuant to 28 U.S.C. § 1391(c)(2) because this Court maintains personal jurisdiction over Defendant.

FACTUAL ALLEGATIONS

15. The Products' labels prominently represent that they contain "No Artificial Flavors, Colors, or Preservatives":



16. This representation is false. Nutro Natural Choice dog foods contain both citric acid and mixed tocopherols. Citric acid and tocopherols are both artificial preservatives:

CALORIE CONTENT (CALCULATED): 3631 KCAL ME/KG, 357 KCAL ME/CUP

Ingredients

Chicken, Chicken Meal, Brown Rice, Barley, Oatmeal, Brewers Rice, Peas, Chicken Fat (preserved with Mixed Tocopherols), Dried Plain Beet Pulp, Natural Flavors, Potassium Chloride, Flaxseed, Salt, Choline Chloride, DL-Methionine, Chia Seed, Dried Coconut, Dried Tomato Pomace, Dried Egg Product, Dried Pumpkin, Dried Kale, Dried Spinach, Citric Acid (preservative), Mixed Tocopherols (preservative), Vitamin E Supplement, L-Ascorbyl-2-Polyphosphate (source of Vitamin C), Ferrous Sulfate, Zinc Oxide, Sodium Selenite, D-Calcium Pantothenate, Manganese Sulfate, Copper Sulfate, Biotin, Thiamine Mononitrate (Vitamin B1), Vitamin B12 Supplement, Vitamin A Supplement, Niacin Supplement, Riboflavin Supplement (Vitamin B2), Pyridoxine Hydrochloride (Vitamin B6), Vitamin D3 Supplement, Potassium Iodide, Manganous Oxide, Folic Acid, Rosemary Extract.

17. Plaintiff prefers to purchase foods free from artificial or synthetic ingredients and reviewed and relied on the label statement described above in making her purchase.

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A. The Citric Acid In the Products Is An Artificial Preservative.

18. While there is a natural form of citric acid extracted from fruit, this is not the form used by Nutro in the Products. This is because “[a]pproximately 99% of the world’s production of [citric acid] is carried out using the fungus *Aspergillus niger* since 1919,”¹ and the use of naturally produced citric acid in commercial foods is prohibitively expensive.

19. Virtually all citric acid used in U.S. commercial food—including that used in the Products—is produced through a multi-step industrial manufacturing process, not by extraction from any natural source.

20. The modern citric-acid process begins with glucose (typically derived from genetically modified corn) which is fermented with the industrial mold *Aspergillus niger* in large-scale bioreactors. The resulting fermentation liquor is then chemically precipitated with calcium hydroxide to form calcium citrate, which is subsequently reacidulated with sulfuric acid and crystallized into refined citric acid. Chemical solvents such as n-octyl alcohol and synthetic isoparaffinic petroleum hydrocarbons are used to extract the citric acid from the *A. niger* fermentation liquor, and frequently survive the reacidulation process in fragmentary form.

21. These steps—microbial fermentation, chemical precipitation, and acid-base reacidulation—are classic hallmarks of synthetic manufacture, not natural derivation. The citric acid in the Products meets this definition precisely: it is not extracted from fruit or any natural material but is manufactured from industrial feedstocks using fermentation and chemical processing.² Reasonable consumers would not understand ingredients derived from these processes as “natural.”

¹ Iliana E. Sweis, *et al.*, *Potential role of the common food additive manufactured citric acid in eliciting significant inflammatory reactions contributing to serious disease states: A series of four case reports*, TOXICOL. REP. 5:808-812 (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6097542/>.

² A. Hesham, Y. Mostafa & L. Al-Sharqi, *Optimization of Citric Acid Production by Immobilized Cells of Novel Yeast Isolates*, 48 MYCOBIOLOGY 122, 123 (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7178817/>.

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22. At 21 C.F.R. § 501.22(a)(5), federal law defines “chemical preservative” as any chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.”

23. Citric acid manufactured using the *A. niger* method described above is not a type of common salt, sugar, vinegar, spice, or oil extracted from spices, nor is it a substance added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties. It is therefore a chemical substance.

24. The synthetic nature of citric acid made using this process has been repeatedly described in FDA Warning Letters and in other U.S. government and industry technical evaluations over the past several decades.

25. Further, as used by Nutro in its Products, these chemicals prevent or retard deterioration of the products. Therefore, citric acid is a “chemical preservative” in as defined in 21 C.F.R. § 101.22(a)(5).

B. The Tocopherols In the Products Are An Artificial Preservative.

26. Tocopherols are fat-soluble compounds that are present in Vitamin E. Tocopherols are naturally present in vegetable oils, nuts and seeds, and leafy green vegetables. They help to protect cells from oxidative stress and damage, i.e., they are “antioxidants.”

27. There are four kinds of tocopherols: alpha, beta, gamma, and delta. Alpha tocopherols are the most biologically active and therefore are the ones primarily used in foods (whether human or animal).

28. There are, in turn, two kinds of alpha tocopherols: “d-alpha” and “dl-alpha” (also called tocopherol acetate).

29. D-alpha tocopherol is a natural tocopherol, typically derived from vegetable oils such as soybean, sunflower, rapeseed, or wheat germ oil.

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30. By contrast, dl-alpha tocopherol is a synthetic tocopherol derived from petrochemical sources. Its manufacturing process involves the synthesis of trimethylhydroquinone (TMHQ) and isopropyl, which are both sourced from petrochemical feedstocks such as acetone, phenol, and isobutylene.

31. Acids are used to produce condensation reactions in the mixture, and the resulting liquid is purified with chemical solvents such as toluene, acetone, and ethanol.

32. Reasonable consumers would not understand ingredients derived from these processes as “natural.”

33. Dl-alpha tocopherol includes both the “d” isomer of tocopherol, as well as the synthetic “l” isomer, and several other “serioisomers” that are the byproduct of the petrochemical substrates used to create it.

34. Synthetic dl-alpha tocopherol has a longer shelf life than natural d-alpha tocopherol and is more stable in various formulations, which often leads to its use in mass-produced dietary supplements, fortified foods, and cosmetic products, where shelf stability is a major concern.

35. In addition to their antioxidative effects, all tocopherols also work to preserve animal fats from oxidization, *i.e.*, going rancid. It is thus widely used in the pet food industry to preserve shelf-stable pet kibbles and treats that include high levels of animal fats.

36. Because Vitamin E deficiency is rare in domesticated dogs and cats, tocopherols are rarely used in dog and cat foods for vitamin supplement purposes. Its use is primarily to extend shelf life by preventing rancidity in animal fats.

37. There is a substantial cost difference between the two: natural d-alpha tocopherols cost between half again, to twice as much per kilogram as synthetic dl-alpha tocopherols. This price difference reflects differences between the two forms as to ease of manufacture and the price of substrates.

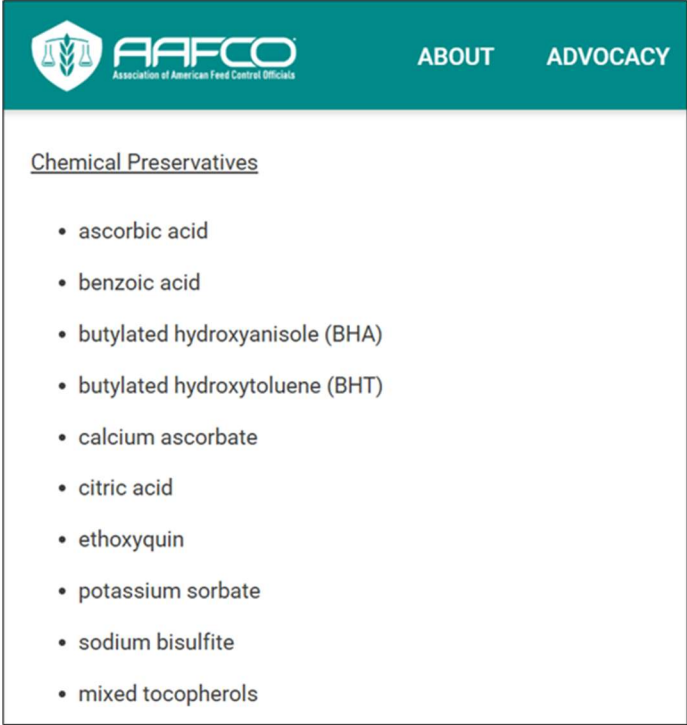
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38. Reflecting this cost difference, virtually none of the tocopherols used as a preservative in pet foods is natural d-alpha tocopherol. Virtually all of these tocopherols are synthetic dl-alpha tocopherols.

39. Tocopherols are also not a type of common salt, sugar, vinegar, spice, or oil extracted from spices, nor are they a substance added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties. They are therefore a chemical substance as defined in 21 C.F.R. § 501.22(a)(5).

40. Federal regulations specifically list tocopherols as “chemical preservatives.” *See* 21 C.F.R. § 182.3890. *See also* 40 C.F.R. §180.910. (describing tocopherol as “a synthetic, inert ingredient”).

41. They are further defined as a chemical preservative by the American Association of Feed Control Officials (“AAFCO”), which has produced private-industry model regulations governing “natural” claims in pet foods.



See <https://www.aafco.org/consumers/understanding-pet-food/whats-in-the-ingredients-list/>.

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C. Plaintiff Lacks an Adequate Remedy at Law.

42. Plaintiff seeks restitution under the Unfair Competition Law and False Advertising Law in the alternative because she has no adequate remedy at law.

43. A legal remedy is not adequate if it is not as certain as an equitable remedy. To obtain a full refund as damages, Plaintiff must show that the Product she received has essentially no market value. In contrast, Plaintiff can seek restitution without making this showing. This is because Plaintiff purchased products that she would not otherwise have purchased, but for Defendant’s misrepresentations. Obtaining a full refund at law is less certain than obtaining a refund in equity.

44. Also, winning damages under the CLRA requires additional showings not required under equitable causes of action. For example, the CLRA prohibits only particular categories of deceptive conduct. By contrast, equitable causes of action such as unjust enrichment, the UCL, and the FAL broadly prohibit “unfair” conduct.

45. By the same token, Plaintiff’s common law claims require additional showings, compared to the unjust enrichment claim. For example, to prevail on the breach of warranty claim, Plaintiff needs to show that the statements that are challenged constitute a warranty and that the warranty was part of the basis of the bargain. No such showings are required under an unjust enrichment theory. And unjust enrichment exists in part because contractual claims are often more difficult to establish. In this way, Plaintiff’s UCL, FAL, and unjust enrichment claims are more certain than the CLRA claim.

46. Finally, the remedies at law available to Plaintiff are not equally prompt or otherwise efficient. The need to schedule a jury trial may result in delay. And a jury trial will take longer, and be more expensive, than a bench trial.

47. The Products are sold for similar prices, using similar labeling and graphical design, and make similar misrepresentations regardless of flavor or type of Product. Plaintiff is therefore an adequate representative of a putative class despite not having purchased every flavor or variant of the Products.

CLASS ACTION ALLEGATIONS

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2 48. Plaintiff brings this action individually and as representative of all those similarly
3 situated pursuant to Federal Rule of Civil Procedure 23 on behalf of all consumers in the state
4 of California who purchased the Products within four years prior to the filing of this Complaint.

5 49. Excluded from the Class are Defendant and its affiliates, parents, subsidiaries,
6 employees, officers, agents, and directors. Also excluded are any judicial officers presiding over
7 this matter and the members of their immediate families and judicial staff.

8 50. Plaintiff reserves the right to alter the Class definition, and to amend this
9 Complaint to add additional Subclasses, as necessary to the full extent permitted by applicable
10 law.

11 51. Certification of Plaintiff’s claims for class-wide treatment is appropriate because
12 Plaintiff can prove the elements of the claims on a class-wide basis using the same evidence as
13 individual Class members would use to prove those elements in individual actions alleging the
14 same claims.

15 52. **Numerosity – Rule 23(a)(1):** The size of the Class is so large that joinder of all
16 Class members is impracticable. Plaintiff believes and avers there are thousands of Class
17 members geographically dispersed throughout the state of California.

18 53. **Existence and Predominance of Common Questions of Law and Fact – Rule**
19 **23(a)(2), (b)(3):** There are questions of law and fact common to the Class. These questions
20 predominate over any questions that affect only individual Class members. Common legal and
21 factual questions and issues include but are not limited to:

- 22 a. Whether the marketing, advertising, packaging, labeling, and other promotional
23 materials for Defendant’s Products is misleading and deceptive;
24 b. Whether Defendant was unjustly enriched at the expense of the Plaintiff and Class
25 members;
26 c. Whether Defendant breached an express warranty;
27 d. the proper amount of damages;
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- e. the proper scope of injunctive relief; and
- f. the proper amount of attorneys' fees.

54. Defendant engaged in a common course of conduct in contravention of the laws Plaintiff seeks to enforce individually and on behalf of the Class. Similar or identical violations of law, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that predominate this action. The common questions will yield common answers that will substantially advance the resolution of the case.

55. In short, these common questions of fact and law predominate over questions that affect only individual Class members.

56. **Typicality – Rule 23(a)(3):** Plaintiff's claims are typical of the claims of the Class members because they are based on the same underlying facts, events, and circumstances relating to Defendant's conduct.

57. Specifically, all Class members, including Plaintiff, were harmed in the same way due to Defendant's uniform misconduct described herein; all Class members suffered similar economic injury due to Defendant's misrepresentations; and Plaintiff seeks the same relief as the Class members.

58. There are no defenses available to Defendant that are unique to the named Plaintiff.

59. **Adequacy of Representation – Rule 23(a)(4):** Plaintiff is a fair and adequate representative of the Class because Plaintiff's interests do not conflict with the Class members' interests. Plaintiff will prosecute this action vigorously and is highly motivated to seek redress against Defendant.

60. Furthermore, Plaintiff has selected competent counsel who are experienced in class action and other complex litigation. Plaintiff and Plaintiff's counsel are committed to prosecuting this action vigorously on behalf of the Class and have the resources to do so.

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61. **Superiority – Rule 23(b)(3):** The class action mechanism is superior to other available means for the fair and efficient adjudication of this controversy for at least the following reasons:

- a. the damages individual Class members suffered are small compared to the burden and expense of individual prosecution of the complex and extensive litigation needed to address Defendant’s conduct such that it would be virtually impossible for the Class members individually to redress the wrongs done to them. In fact, they would have little incentive to do so given the amount of damage each member has suffered when weighed against the costs and burdens of litigation;
- b. the class procedure presents fewer management difficulties than individual litigation and provides the benefits of single adjudication, economies of scale, and supervision by a single Court;
- c. the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for Defendant; and
- d. the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would be dispositive of the interests of other Class members or would substantively impair or impede their ability to protect their interests.

62. Unless the Class is certified, Defendant will retain monies received as a result of its unlawful and deceptive conduct alleged herein.

63. Unless a class-wide injunction is issued, Defendant will likely continue to advertise, market, promote, and sell its Products in an unlawful and misleading manner, as described throughout this Complaint, and members of the Class will continue to be misled, harmed, and denied their rights under the law. Defendant continues to mislabel the Products in the manner described herein and sell them to the consuming public. Plaintiff would like to purchase the Products and other products sold by Defendant in the future, but cannot currently

1 do so because she cannot rely on the Products’ labelling, given the misrepresentations found on
2 Defendant’s Products. An injunction prohibiting future deceptive labelling is therefore
3 warranted and would provide Plaintiff and the Class relief.

4 64. Furthermore, Plaintiff has not merely alleged an “informational” injury, but has
5 also alleged that Defendant has been enabled to charge a price premium for the Products.
6 Plaintiff has therefore alleged that compliance with federal and state regulations regarding the
7 accurate reporting of the use of artificial preservatives in the Products would cause a decrease
8 in the price of the Products at which Plaintiff and members of the Class would be willing to buy
9 the Products. As a result, Plaintiff has alleged more than simply an interest in Defendant telling
10 the truth on its labels, but an economic injury that further supports prospective injunctive relief.

11 65. **Ascertainability.** To the extent ascertainability is required, the Class members are
12 readily ascertainable from Defendant’s records and/or its agents’ records of retail and online
13 sales, as well as through public notice.

14 66. Defendant has acted on grounds applicable to the Class as a whole, thereby
15 making appropriate final injunctive and declaratory relief concerning the Class as a whole.

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17 **COUNT 1**
18 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT,**
19 **CAL. CIV. CODE § 1750 *et seq.***

20 67. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
21 extent necessary, pleads this cause of action in the alternative.

22 68. Plaintiff is a “consumer” within the meaning of the Consumers Legal Remedies
23 Act (“CLRA”), Cal. Civ. Code § 1761(d).

24 69. The sale of Defendant’s Products to Plaintiff and Class members was a
25 “transaction” within the meaning of the CLRA, Cal. Civ. Code § 1761(e).

26 70. The Products purchased by Plaintiff and Class members are “goods” within the
27 meaning of the CLRA, Cal. Civ. Code § 1761(a).

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71. As alleged herein, Defendant’s business practices are a violation of the CLRA because Defendant deceptively failed to reveal facts that are material in light of the use of artificial preservatives in the Products.

72. Defendant’s ongoing failure to provide material facts about its Products on its labels violates the following subsections of Cal. Civ. Code § 1770(a) in these respects:

- a. Defendant’s acts and practices constitute misrepresentations that its Products have characteristics, benefits, or uses which they do not have;
- b. Defendant misrepresented that its Products are of a particular standard, quality, and/or grade, when they are of another;
- c. Defendant’s acts and practices constitute the advertisement of goods, without the intent to sell them as advertised;
- d. Defendant’s acts and practices fail to represent that transactions involving its Products involve actions that are prohibited by law, particularly the use of misleading nutritional labelling; and
- e. Defendant’s acts and practices constitute representations that its Products have been supplied in accordance with previous representations when they were not.

73. By reason of the foregoing, Plaintiff and the Class have been irreparably harmed, entitling them to injunctive relief.

74. Pursuant to Cal. Civ. Code § 1782, Plaintiff notified Defendant in writing of the particular violations of the CLRA described herein and demanded Defendant rectify the actions described above by providing complete monetary relief, agreeing to be bound by its legal obligations and to give notice to all affected customers of its intent to do so. Plaintiff sent this notice by certified mail to Defendant, at least 30 days before the filing of this Complaint.

75. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff is entitled to enjoin publication of misleading and deceptive nutritional labels on Defendant’s Products and to recover reasonable attorneys’ fees and costs.

COUNT 2
UNJUST ENRICHMENT

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3 76. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
4 extent necessary, pleads this cause of action in the alternative in the event that Plaintiff has an
5 inadequate remedy at law.

6 77. Under California law, a claim for unjust enrichment “describe[s] the theory
7 underlying a claim that a defendant has been unjustly conferred a benefit ‘through mistake,
8 fraud, coercion, or request.’” *Astiana v. Hain Celestial Grp., Inc.* (9th Cir. 2015) 783 F.3d 753,
9 762 (quoting 55 *Cal. Jur.* 3d *Restitution* § 2). Thus, when a plaintiff alleges unjust enrichment,
10 the Court should “construe the cause of action as a quasi-contract claim seeking restitution.”
11 *Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 225. Courts in
12 California have allowed unjust enrichment and CLRA claims to proceed in the alternative. *See*
13 *Scheibe v. Livwell Prods., LLC*, No. 23-cv-216, 2023 WL 4414580, at *8 (S.D. Cal. 2023).

14 78. Defendant, through its marketing and labeling of the Products, misrepresented and
15 deceived consumers by failing to disclose the use of artificial preservatives in the Products.

16 79. Defendant did so for the purpose of enriching itself and it in fact enriched itself
17 by doing so.

18 80. Consumers conferred a benefit on Defendant by purchasing the Products,
19 including an effective premium above their true value. Defendant appreciated, accepted, and
20 retained the benefit to the detriment of consumers.

21 81. Defendant continues to possess monies paid by consumers to which Defendant is
22 not entitled.

23 82. Under the circumstances it would be inequitable for Defendant to retain the benefit
24 conferred upon it and Defendant’s retention of the benefit violates fundamental principles of
25 justice, equity, and good conscience.

26 83. Plaintiff seeks disgorgement of Defendant’s ill-gotten gains and restitution of
27 Defendant’s wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed
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1 appropriate by the Court, and such other relief as the Court deems just and proper to remedy
2 Defendant’s unjust enrichment.

3 84. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
4 a result of Defendant’s actions as set forth above.

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6 **COUNT 3**
BREACH OF EXPRESS WARRANTY

7 85. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
8 extent necessary, pleads this cause of action in the alternative.

9 86. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,
10 impliedly warranted that the Products were free of artificial preservatives.

11 87. Defendant’s express warranties, and its affirmations of fact and promises made to
12 Plaintiff and the Class and regarding the Products, became part of the basis of the bargain
13 between Defendant and Plaintiff and the Class, which creates an express warranty that the
14 Products would conform to those affirmations of fact, representations, promises, and
15 descriptions.

16 88. The Products do not conform to the express warranty that the Products were free
17 of artificial preservatives.

18 89. As a direct and proximate cause of Defendant’s breach of express warranty,
19 Plaintiff and Class members have been injured and harmed because: (a) they would not have
20 purchased the Products on the same terms if they knew the truth about the Products’ use of
21 artificial preservatives; (b) they paid a price premium based on Defendant’s express warranty;
22 and (c) the Products do not have the characteristics, uses, or benefits that were promised.

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24 **COUNT 4**
VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE
25 **SECTION 17200 et seq. — “UNFAIR” CONDUCT**

26 90. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
27 extent necessary, pleads this cause of action in the alternative.

1 107. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
2 a result of Defendant’s actions as set forth above.

3 108. Defendant’s actions as alleged in this Complaint constitute “unlawful” conduct
4 within the meaning of California Business and Professions Code Section 17200, *et seq.*

5 109. Defendant’s business practices, as alleged herein, are “unlawful” because it fails
6 disclose that the Products use artificial preservatives.

7 110. As a result of this “unlawful” conduct, Plaintiff expended money and engaged in
8 activities he would not otherwise have spent or conducted.

9 111. Defendant’s business practices alleged herein constituted, and continue to
10 constitute, a continuing course of unfair competition since it continues to market and sell its
11 products in a manner that offends public policy and/or in a fashion that is immoral, unethical,
12 oppressive, unscrupulous and/or substantially injurious to its customers.

13 112. Defendant publicly disseminated untrue or misleading representations regarding
14 the use of artificial preservatives in its Products, which it knew, or in the exercise of reasonable
15 care should have known, were untrue or misleading.

16 113. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order
17 of this court enjoining Defendant from continuing to engage in “unlawful” business practices
18 and any other act prohibited by law, including those acts set forth in this Complaint, and further
19 seeks all other relief allowable under Business and Professions Code Section 17200, *et seq.*

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23 **COUNT 7**
24 **VIOLATION OF CALIFORNIA BUSINESS &**
25 **PROFESSIONS CODE SECTION 17500 *et seq.***

26 114. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the
27 extent necessary, pleads this cause of action in the alternative.

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1 115. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
2 a result of Defendant's actions as set forth above.

3 116. Defendant engaged in advertising and marketing to the public and offered for sale
4 advertising services on a nationwide basis, including in California.

5 117. Defendant engaged in the advertising and marketing alleged herein with the intent
6 to directly or indirectly induce the sale of the Products to consumers.

7 118. Defendant's advertisements and marketing representations regarding the
8 characteristics of the Products were false, misleading, and deceptive as set forth above.

9 119. At the time it made and disseminated the statements alleged herein, Defendant
10 knew or should have known that the statements were untrue or misleading, and acted in violation
11 of Business and Professions Code Section 17500, *et seq.*

12 120. Plaintiff seeks injunctive relief and all other relief allowable under Business and
13 Professions Code Section 17500, *et seq.*

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16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff respectfully requests the Court grant the following relief
18 against Defendant:

- 19 a. Certifying the Class;
20 b. Declaring that Defendant violated the statutes described herein and/or was unjustly
21 enriched and/or breached an express warranty;
22 c. Ordering an award of actual, general, or compensatory damages, as permitted by law,
23 in an amount to be proven at trial;
24 d. Ordering an awarding of injunctive relief as permitted by law, including enjoining
25 Defendant from continuing the unlawful practices as set forth herein, and ordering
26 Defendant to engage in a corrective advertising campaign;
27 e. Ordering Defendant to pay reasonable attorneys' fees and litigation costs to Plaintiff;
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- f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and
- g. Such other relief as the Court may deem just and proper.

TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.

Respectfully submitted,

/s/ Charles C. Weller
Charles C. Weller (Cal. SBN: 207034)
Attorney for Plaintiff

April 6, 2026

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

NICOLE FLICK, individually and on behalf of all those similarly situated

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Charles C. Weller, CHARLES C. WELLER, APC 11412 Corley Court, San Diego, CA 92126 Tel: 858.414.7465

DEFENDANTS

MARS PETCARE US, INC. dba Nutro Pet Foods, a Delaware corporation

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

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

Attorneys (If Known)

'26CV2142 CAB BJW

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes options for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

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. section 1332

Brief description of cause: Consumer protection action for mislabeled consumer product

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 4/6/2026 SIGNATURE OF ATTORNEY OF RECORD /s/ Charles C. Weller

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.