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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

16 MACLAIN MULLINS, Individually and  
17 on Behalf of All Others Similarly Situated,

18 Plaintiff,

19 v.

20 BIG HEART PET BRANDS, INC., a  
21 Delaware corporation,

22 Defendant.

) Case No.

) **CLASS ACTION COMPLAINT FOR:**

- ) (1) NEGLIGENCE
- ) MISREPRESENTATION;
- ) (2) VIOLATIONS OF THE
- ) CALIFORNIA CONSUMER LEGAL
- ) REMEDIES ACT;
- ) (3) VIOLATIONS OF THE
- ) CALIFORNIA FALSE ADVERTISING
- ) LAW;
- ) (4) VIOLATIONS OF THE
- ) CALIFORNIA UNFAIR COMPETITION
- ) LAW;
- ) (5) BREACH OF EXPRESS
- ) WARRANTY; AND
- ) (6) BREACH OF IMPLIED WARRANTY

26 DEMAND FOR JURY TRIAL



1           3.       Pentobarbital is a Class II controlled substance and there is no safe or set  
2 level for pentobarbital in pet food. If it is present, the food is adulterated.<sup>3</sup> The ingestion of  
3 pentobarbital by your pet can lead to adverse health issues, including:

- 4           •     tyalism (salivation)
- 5           •     Emesis (vomiting)
- 6           •     Stool changes (soft to liquid stools, blood, mucus, urgency, explosive  
7           nature, etc.)
- 8           •     Hyporexia (decreased appetite)
- 9           •     Lethargy/depression
- 10          •     Neurologic abnormalities (tremor, seizure, vocalization, unusual eye  
11          movements)
- 12          •     Ataxia (difficulty walking)
- 13          •     Collapse
- 14          •     Coma
- 15          •     Death<sup>4</sup>

16           4.       Despite laws governing pet foods and providing government oversight, the  
17 FDA has stated that “[p]et food manufacturers are responsible for taking appropriate  
18 steps to ensure that the food they produce is safe for consumption and properly labeled  
19 including verifying the identity and safety of the ingredients from suppliers.<sup>5</sup> “It is not  
20 acceptable to use animals euthanized with a chemical substance in pet or other animal  
21 foods...The detection of pentobarbital in pet food renders the product adulterated. It is the  
22 responsibly of the manufacturer to take the appropriate steps to ensure that the food they  
23 produce is safe for consumption and properly labeled.”<sup>6</sup>

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24 <sup>3</sup><http://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm>

25 <sup>4</sup>The Honest Kitchen, “Pentobarbital- What Is It, How it Entered the Pet Food Supply Chain, and what You Can Do To Protect Your Canines & Felines,” March 1, 2017, <https://www.thehonestkitchen.com/blog/pentobarbital-entered-pet-food-supply-chain-can-protect-pet/>

26 <sup>5</sup><https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm> (last visited Feb. 5, 2018)

27 <sup>6</sup> *Id.*

1           5.       Pentobarbital residue from euthanized animals will continue to be present in  
2 pet food, even if it is rendered or canned at high temperature or pressure.<sup>7</sup>

3           6.       Pentobarbital is routinely used to euthanize animals, and the most likely way  
4 it could get into dog food would be in rendered animal products. Rendered products come  
5 from a process that converts animal tissues to feed ingredients, including tissues from  
6 animals that have been euthanized, decomposed or were diseased. Pentobarbital from  
7 euthanized animals survives the rendering process and could be present in the rendered  
8 feed ingredients used in pet food. The FDA's testing of dry dog food confirmed some  
9 samples contained pentobarbital. The FDA concluded that pentobarbital was entering pet  
10 foods from euthanized, rendered cattle or horses because of the lack of dog and cat DNA.

11           7.       Despite its findings, the FDA has not aggressively taken action under FDCA,  
12 § 342 (a)(1) or (5), against the pet food companies that it found to have used non-  
13 slaughtered animals and contain pentobarbital in their pet foods. Therefore, manufacturers  
14 in the pet food industry, including Defendant, have continued their illegal practice of using  
15 non-slaughtered animals that may contain poisonous substances, like pentobarbital, in their  
16 pet foods.<sup>8</sup>It is not acceptable to use animals euthanized with a chemical substance in pet  
17 food, and the detection of pentobarbital in pet food renders the product adulterated.

18           8.       Here, it has been revealed that Defendant is also knowingly, recklessly and/or  
19 negligently selling contaminated dog food containing pentobarbital, a substance largely  
20 used to euthanize animals.

21           9.       On February 8, 2018, it was reported on WJLA that an independent  
22 investigation determined that the Contaminated Dog Foods contained pentobarbital. The  
23 independent investigation utilized two independent labs and both showed the inclusion of  
24 pentobarbital the Contaminated Dog Foods.

25  
26 \_\_\_\_\_  
27 <sup>7</sup> *Id.*  
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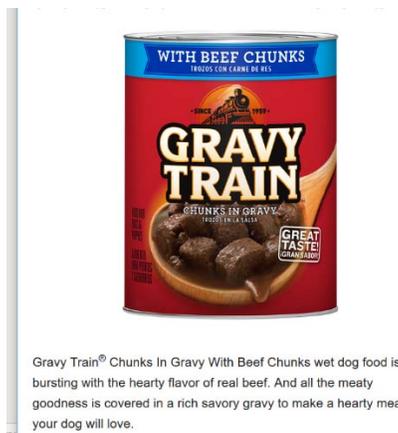
1 10. Defendant knew the real risk that pentobarbital may appear in the  
2 Contaminated Dog Foods if the manufacturing and sourcing were not properly monitored.  
3 Indeed, this is not the first time that the Gravy Train line of food has been determined to  
4 include pentobarbital: “Back in 2001, [analyses by the FDA](#) found residue of the sedative  
5 in popular brands like Nutro, Gravy Train and Kibbles ‘n Bits.”<sup>9</sup>

6 11. Consumers have increasingly become more aware and cautious about the  
7 products they purchase.

8 12. Additionally, Defendant knew that a consumer would be feeding the  
9 Contaminated Dog Foods multiple times each day to his or her dog. This leads to repeated  
10 exposure of the barbiturate to the dog.

11 13. Defendant wrongfully advertised and sold the Contaminated Dog Foods  
12 without any label or warning indicating to consumers that these products contained any  
13 level of Pentobarbital or that Defendant utilized animals that have been euthanized as a  
14 protein or meat by-product source.

15 14. Instead, the advertising and labels intentionally omit any reference to the  
16 food being adulterated:



25 <sup>9</sup> [https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-](https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html)  
26 [recalled-products-to-shelter.html](https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html)

1 15. Defendant’s claim that the Contaminated Dog Foods are “100 percent  
2 complete and balanced nutrition” without any mention that the Contaminated Dog Foods  
3 are in fact adulterated and contain Pentobarbital.<sup>10</sup>

**ABOUT THIS ITEM**

**Disclaimer:** While we aim to provide accurate product information, it is provided by  
manufacturers, suppliers and others, and has not been verified by us. See our  
[disclaimer](#).

Serve your four legged friend a deliciously hearty meal with Gravy Train  
Chunks In Gravy with T-Bone Flavor Chunks Wet Dog Food. Each  
mouthwatering bite has the flavor of T-Bone steak and all the meaty  
goodness is covered in a savory gravy that dogs love. This gravy train dog  
food offers a satisfying meal that provides 100 percent complete and  
balanced nutrition for all life stages. Feed it to your furry friend as a reward  
for good behavior or learning a new trick or serve it as a regular meal. Gravy  
Train Chunks In Gravy with T-Bone Flavor Chunks Wet Dog Food comes in a  
13.2 oz can.

10 16. Defendant’s’ omissions are not only material but also false, misleading, and  
11 reasonably likely to deceive the public. This is true especially in light of the long-standing  
12 campaign by Defendant to market all its products, including the Contaminated Dog Foods  
13 and "providing safe, healthy, and high quality food” with the as healthy and safe with “the  
14 purest ingredients”<sup>11</sup>

15 17. Moreover, Defendant’s Corporate Responsibility Policy says the top priority  
16 is the “safety and quality” of its products: <sup>12</sup>

*Pet food safety and quality. Big Heart Pet Brands top priority is the safety and quality of  
our products. Our goal is to produce the finest pet food products available on the market  
today. All of our products are made under a system of strict food safety and quality  
controls combined with ongoing inspection and monitoring. All of our programs are  
designed to exceed the Global Food Safety Initiative standards. Our products are made  
with nutritious, quality ingredients that meet the applicable standards and specifications of  
the U.S. Department of Agriculture (USDA), Association of American Feed Control  
Officials (AAFCO) and the Food & Drug Administration (FDA). Each of our products is  
processed and packaged following strict food safety and quality control procedures that  
comply with the Good Manufacturing Practices established by the FDA. These procedures  
ensure that the resulting food will be pure, wholesome and safe for pets.*

23 <sup>10</sup>Walmart, Gravy Train T-Bone Flavor Wet Dog Food,  
24 [https://www.walmart.com/ip/Gravy-Train-T-Bone-Flavor-Wet-Dog-Food-13-2-  
Oz/44465093#read-more](https://www.walmart.com/ip/Gravy-Train-T-Bone-Flavor-Wet-Dog-Food-13-2-Oz/44465093#read-more)

25 <sup>11</sup>Big Heart Pet Brands, “Pets,” [http://www.bigheartpet.com/corporate-  
responsibility/pets.aspx](http://www.bigheartpet.com/corporate-responsibility/pets.aspx)

26 <sup>12</sup>  
27 Corporate Responsibility Policy,” [http://www.bigheartpet.com/assets/CR-  
Policy.pdf](http://www.bigheartpet.com/assets/CR-<br/>Policy.pdf)

1 18. In this same document, Defendant claims that it has a “rigorous supplier  
2 approval process” and only purchases ingredients from “reputable suppliers.” And  
3 Defendant goes further to declare, that once a supplier is approved, “a comprehensive  
4 testing program is in place to assess the safety and quality of the ingredients upon receipt.  
5 This includes a combination of laboratory analysis and physical inspection of the  
6 ingredients.”<sup>13</sup>

7 19. Finally, Defendant highlights the strict oversight it supposedly applies across  
8 all its brands, include Gravy Train, to ensure high quality products “from start to finish,  
9 inside and out.”<sup>14</sup>

10  
11 We apply the same expectations of quality that we  
12 hold for ourselves to our suppliers. Our supplier  
13 management program includes an extensive evaluation  
14 of manufacturing locations and a comprehensive testing  
15 program that is used to assess the safety and quality  
16 of ingredients upon receipt. This program includes  
17 a combination of laboratory analysis and physical  
18 inspection.

19  
20 Through rigorous commitment to the quality of our  
21 products—from start to finish, inside and out—Big Heart  
22 Pet Brands is able to nurture the bond between pets and  
23 the people who love them.

24  
25 20. Defendant’s advertising campaign is deceptive by using these descriptions,  
26 promises, and representations because there was no label or warning indicating to  
27 consumers that these products contained any level of Pentobarbital or that Defendant  
28 utilized animals that have been euthanized as a protein or meat by-product source.  
Defendant's statements, partial disclosures, and omissions are false, misleading, and crafted  
to deceive the public as they create an image that the Contaminated Dog Foods are healthy,  
safe, have only pure ingredients and is manufactured under rigorous standards.

25 \_\_\_\_\_  
26 <sup>13</sup> *Id.*

27 <sup>14</sup>Big Heart Pet Brands, “Corporate Responsibility Summary  
28 2014,” <http://www.bigheartpet.com/assets/CorporateResponsibilitySummaryBrochure2014.pdf>



1 transactions giving rise to this action occurred in this district, Defendant conducts  
2 substantial business in this district, Defendant has intentionally availed themselves of the  
3 laws and markets of this district, and Defendant is subject to personal jurisdiction in this  
4 district.

5 **INTRADISTRICT ASSIGNMENT**

6 25. A substantial portion of the transactions and wrongdoings which gave rise to  
7 the claims in this action occurred in the County of Marin, and as such, this action is properly  
8 assigned to the San Francisco division of this Court.

9 **THE PARTIES**

10 26. Plaintiff Maclain Mullins ("Mullins") is, and at all times relevant hereto has  
11 been, a citizen of the state of Kentucky. Plaintiff Mullins purchased certain lines of the  
12 Contaminated Dog Foods (including Gravy Train Chunks in Gravy and Chunks in Gravy  
13 with Beef Chunks) and fed it to his Boxer named Cawood. Plaintiff Mullins started  
14 purchasing the Contaminated Dog Foods in or around January 2009 approximately ten to  
15 twenty times a year and continued to purchase until approximately January 2015. Plaintiff  
16 Mullins also fed Cawood Gravy Train dry food. Plaintiff primarily purchased the  
17 Contaminated Dog Foods from Heartland Kroger in Lexington, Kentucky. During that  
18 time, based on the false and misleading claims, warranties, representations, advertisements  
19 and other marketing by Defendant, Plaintiff was unaware that the Contaminated Dog Foods  
20 contained any level of Pentobarbital, a substance largely used to euthanize animals.

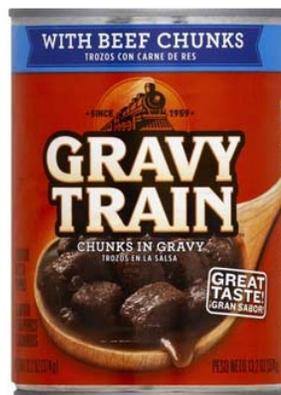
21 27. As the result of Defendant's deceptive and negligent conduct as alleged  
22 herein, Plaintiff was injured when he purchased the Contaminated Dog Foods that did not  
23 deliver what it promised and did business with a Company he would not have if he knew  
24 that the Contaminated Dog Foods contained any level of Pentobarbital or that Defendant  
25 utilized animals that have been euthanized as a protein source. He purchased the  
26 adulterated Contaminated Dog Foods on the assumption that the labeling of the  
27 Contaminated Dog Foods was accurate and that it was unadulterated, pure, high quality,  
28 healthy and safe for dogs to ingest and did not include euthanized animals as a protein

1 source. Further, should Plaintiff encounter the Contaminated Dog Foods in the future, he  
2 could not rely on the truthfulness of the packaging, absent corrective changes to the  
3 packaging and advertising of the Contaminated Dog Foods.

4 28. Defendant Big Heart Pet Brands, Inc, is a subsidiary of J.M. Smucker  
5 Company and its headquarters are located at One Maritime Plaza, San Francisco,  
6 California. Defendant that manufactures, formulates, produces, distributes, labels,  
7 markets, advertises, and sells the Contaminated Dog Foods under the Gravy Train dog food  
8 brand name throughout the United States. The advertising for the Contaminated Dog  
9 Foods, relied upon by Plaintiff, was prepared and/or approved by Defendant and their  
10 agents, and was disseminated by Defendant and its agents through advertising and labeling  
11 that contained the misrepresentations and omissions alleged herein. The advertising and  
12 labeling for the Contaminated Dog Foods was designed to encourage consumers to  
13 purchase the Contaminated Dog Foods and reasonably misled the reasonable consumer,  
14 i.e., Plaintiff and the Class, into purchasing the Contaminated Dog Foods. Defendant owns,  
15 manufactures, and distributes the Contaminated Dog Foods, and created and/or authorized  
16 the unlawful, fraudulent, unfair, misleading, and/or deceptive labeling and advertising for  
17 the Contaminated Dog Foods.

18 29. The Contaminated Dog Foods, at a minimum, include:

19 (a) Gravy Train Chunks in Gravy with Beef Chunks:



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(b) Gravy Train Chunks in Gravy with T-Bone Flavor Chunks:



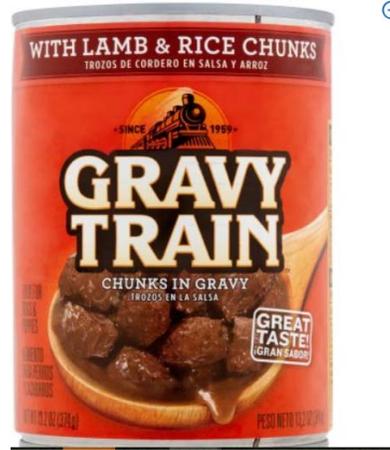
(c) Gravy Train Chunks in Gravy with Chicken Chunks:



(d) Gravy Train Strips in Gravy Beef Strips:



1 (e) Gravy Train Chunks in Gravy with Lamb and Rice Chunks:



10 **FACTUAL ALLEGATIONS**

11 **The Contaminated Dog Foods Are Adulterated**

12 30. An independent seven month investigation determined that the Contaminated  
13 Dog Foods contained pentobarbital. The independent investigation utilized two different  
14 labs and both showed that the Contaminated Dog Foods tested positive for pentobarbital.  
15 In fact, it was the only brand that tested positive for pentobarbital.<sup>15</sup>

16 31. The report further stated that pentobarbital is not used on farm animals so if  
17 it is not from euthanized dogs, cats or horses, where is the pentobarbital coming from.  
18 Defendant has not responded to the specific questions raised and instead stated: “We  
19 launched and are conducting a thorough investigation, including working closely with our  
20 suppliers, to determine the accuracy of these results and the methodology used.”<sup>16</sup>

21 32. The FDA has not responded to the findings as disclosed by WJLA.

22

23

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26 <sup>15</sup><http://wjla.com/features/7-on-your-side/fda-to-investigate-after-abc7-exposes-euthanasia-drug-in-dog-food>

27 <sup>16</sup> *Id.*

28

1 **Defendant Falsely Advertises the Contaminated Dog Foods as Pure, Quality, Healthy**  
2 **While Omitting Any That it is Adulterated with Pentobarbital**

3 33. Defendant formulates, develops, manufactures, labels, distributes, markets,  
4 advertises, and sells its extensive Gravy Train lines of dry and wet pet food products in  
5 California and across the United States. Indeed, Defendant maintains it keeps rigorous  
6 quality and supplier standards from “start to finish” and performs three-tier auditing that  
7 includes, third party auditors, to ensure pure ingredients and fair labor are used in its  
8 Products, including Contaminated Dog Foods. As such, Defendant knew that the  
9 Contaminated Dog Foods were adulterated pet food.<sup>17</sup>

10 34. Defendant chose to advertise, label, and market its Contaminated Dog Foods  
11 with no disclosure that it was adulterated pet food, contained any level of Pentobarbital,  
12 and instead advertised, labeled, and marketed its Products, including the Contaminated  
13 Dog Foods, as pure, high quality, healthy and safe for dogs to ingest and failed to mention  
14 that the Contaminated Dog Foods contain pentobarbital. The Contaminated Dog Foods  
15 are available at numerous retail and online outlets.

16 35. In fact, Defendant made affirmative misleading representations that its  
17 Products, including the Contaminated Dog Foods, were not adulterated or would contain  
18 any controlled substance, including Pentobarbital. Specifically, Defendant promises to its  
19 consumers that all produces meets USDA, AAFCO and FDA standards.<sup>18</sup>

20 36. This is untrue as the Contaminated Dog Foods are adulterated which is not  
21 proper under state and federal laws and regulations. Specifically, under the FDCA, a food  
22 is adulterated if it “bears or contains any poisonous or deleterious substance which may  
23 render it injurious to health.” 21 U.S.C. §342. Under California law, pet food is considered  
24 adulterated if “it bears or contains any poisonous or deleterious substance that may render  
25 it injurious to health...” or “if damage or inferiority has been concealed in any manner.”

26 \_\_\_\_\_  
27 <sup>17</sup> <http://www.bigheartpet.com/assets/CR-Policy.pdf>

28 <sup>18</sup> <http://www.bigheartpet.com/assets/CR-Policy.pdf>

1 Cal. Health & Safety Code §113090(a), (h). California's statute also provides that pet food  
2 ingredients "of animal or poultry origin shall be only from animals or poultry slaughtered  
3 or processed in an approved or licensed establishment... Animal or poultry classified as  
4 'deads' are prohibited." Cal. Health & Safety Code §113035.

5 37. The Contaminated Dog Foods are widely advertised.

6 38. The Defendant's webpage and adopted corporate policies repeatedly make  
7 the misleading statements about the Contaminated Dog Foods described above, without  
8 any mention of Pentobarbital, a substance largely used to euthanize animals or that  
9 Defendant utilized animals that have been euthanized as a protein or meat by-product  
10 source.

11 39. As a result of Defendant's omissions and misrepresentations, a reasonable  
12 consumer would have no reason to suspect the presence of Pentobarbital without  
13 conducting his or her own scientific tests, or reviewing third-party scientific testing of these  
14 products.

15 **DEFENDANT'S STATEMENTS AND**  
16 **OMISSIONS VIOLATE CALIFORNIA LAWS**

17 40. California law is designed to ensure that a company's claims about its  
18 products are truthful and accurate. Defendant violated California law by incorrectly  
19 claiming that the Contaminated Dog Foods are pure, healthy, quality, and safe and offers  
20 100 percent complete and balanced nutrition with the purest ingredients while meeting all  
21 relevant federal regulations when in fact it is adulterated food that contains a controlled  
22 substance that is not healthy, quality or pure and causes the product not to meet the so-  
23 called rigorous supplier standards utilized by Defendant. Indeed, Defendant chose to omit  
24 that that the Contaminated Dog Foods were adulterated, contained Pentobarbital and/or  
25 that Defendant utilized animals that have been euthanized as a protein source in the  
26 Contaminated Dog Foods.

27 41. Defendant's marketing and advertising campaign has been sufficiently  
28 lengthy in duration, and widespread in dissemination.

1 42. Defendant has engaged in this long-term advertising campaign to convince  
2 potential customers that the Contaminated Dog Foods are pure, quality, healthy, and safe  
3 for consumption and offers 100 percent complete and balanced nutrition with the purest  
4 ingredients.

5 **PLAINTIFF'S RELIANCE WAS**  
6 **REASONABLE AND FORESEEN BY DEFENDANT**

7 43. Plaintiff reasonably relied on Defendant's own statements,  
8 misrepresentations, omissions and advertising concerning the particular qualities and  
9 benefits of the Contaminated Dog Foods.

10 44. Plaintiff read and relied upon the labels of the Contaminated Dog Foods in  
11 making his purchasing decisions.

12 45. A reasonable consumer would consider the labeling of a product when  
13 deciding whether to purchase. Here, Plaintiff relied on the specific statements and  
14 misrepresentations by Defendant did not disclose that the Contaminated Dog Foods were  
15 adulterated or contained Pentobarbital, a substance largely used to euthanize animals.

16 **DEFENDANT'S KNOWLEDGE AND NOTICE OF THEIR BREACHES**  
17 **OF ITS EXPRESS AND IMPLIED WARRANTIES**

18 46. Defendant had sufficient notice of its breaches of express and implied  
19 warranties. Defendant have, and had, exclusive knowledge of the physical and chemical  
20 make-up of the Contaminated Dog Foods.

21 47. Defendant also had notice of the real risk that pentobarbital may appear in  
22 the Contaminated Dog Foods if the manufacturing and sourcing were not properly  
23 monitored. Indeed, this is not the first time that the Gravy Train line of food has been  
24 determined to include pentobarbital.<sup>19</sup>

25 <sup>19</sup> [https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-  
26 recalled-products-to-shelter.html](https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html)



1           56. Questions of law and fact common to Plaintiffs and the Class and Class  
2 include, but are not limited to, the following:

- 3                   (a) whether Defendant owed a duty of care to the Class;
- 4                   (b) whether Defendant knew or should have known that the Contaminated  
5 Dog Foods were adulterated or contained Pentobarbital;
- 6                   (c) whether Defendant represented and continue to represent that the  
7 Contaminated Dog Foods are healthy, quality, pure and safe;
- 8                   (d) whether Defendant represented and continue to represent that the  
9 Contaminated Dog Foods are manufactured in compliance with all governing regulations;
- 10                  (e) whether Defendant failed to state that the Contaminated Dog Foods  
11 are in fact adulterated under Federal and California law;
- 12                  (f) whether Defendant's representations and omissions in advertising  
13 and/or labeling are false, deceptive, and misleading;
- 14                  (g) whether those representations and omissions are likely to deceive a  
15 reasonable consumer;
- 16                  (h) whether Defendant had knowledge that those representations and  
17 omissions were false, deceptive, and misleading;
- 18                  (i) whether Defendant continues to disseminate those representations and  
19 omissions despite knowledge that the representations are false, deceptive, and misleading;
- 20                  (j) whether a representation that a product is healthy, pure, quality and  
21 safe for consumption coupled with omissions that the Contaminated Dog Foods were  
22 adulterated or contained Pentobarbital is material to a reasonable consumer;
- 23                  (k) whether Defendant violated California Business & Professions Code  
24 sections 17200, *et seq.*;
- 25                  (l) whether Defendant violated California Business & Professions Code  
26 sections 17500, *et seq.*;
- 27                  (m) whether Defendant violated California Civil Code sections 1750, *et*  
28 *seq.*;

1 (n) whether Plaintiff and the members of the Class are entitled to actual,  
2 statutory, and punitive damages; and

3 (o) whether Plaintiff and members of the Class are entitled to declaratory  
4 and injunctive relief.

5 57. Defendant engaged in a common course of conduct giving rise to the legal  
6 rights sought to be enforced by Plaintiff individually and on behalf of the other members  
7 of the Class. Identical statutory violations and business practices and harms are involved.  
8 Individual questions, if any, are not prevalent in comparison to the numerous common  
9 questions that dominate this action.

10 58. Plaintiff's claims are typical of Class members' claims in that they are based  
11 on the same underlying facts, events, and circumstances relating to Defendant's conduct.

12 59. Plaintiff will fairly and adequately represent and protect the interests of the  
13 Class, have no interests incompatible with the interests of the Class, and have retained  
14 counsel competent and experienced in class action, consumer protection, and false  
15 advertising litigation.

16 60. Class treatment is superior to other options for resolution of the controversy  
17 because the relief sought for each Class member is small such that, absent representative  
18 litigation, it would be infeasible for Class members to redress the wrongs done to them.

19 61. Questions of law and fact common to the Class predominate over any  
20 questions affecting only individual Class members.

21 62. As a result of the foregoing, class treatment is appropriate.

22 **COUNT I**

23 **(Negligent Misrepresentation Against Defendant on Behalf of the Class)**

24 63. Plaintiff incorporates by reference and realleges each and every allegation  
25 contained above, as though fully set forth herein.

26 64. Plaintiff reasonably placed his trust and reliance in Defendant's  
27 representations that the Contaminated Dog Foods are healthy, safe, pure, high quality, and  
28 that it was not adulterated with substances such as Pentobarbital.



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

3           75. Plaintiff and each proposed Class member's purchase of Defendant's  
4 products constituted a "transaction," as that term is defined in California Civil Code section  
5 1761(e).

6           76. Defendant's conduct alleged herein violates the following provisions of  
7 California's Consumer Legal Remedies Act (the "CLRA"):

8           77. California Civil Code section 1770(a)(5), by representing that the  
9 Contaminated Dog Foods are pure, quality, healthy and safe for consumption and by failing  
10 to make any mention that the Contaminated Dog Foods were in fact adulterated by  
11 containing the controlled substance of Pentobarbital

12           78. California Civil Code section 1770(a)(7), by representing that the  
13 Contaminated Dog Foods were of a particular standard, quality, or grade, when they were  
14 in fact adulterated and not fit for consumption;

15           (a) California Civil Code section 1770(a)(9), by advertising the  
16 Contaminated Dog Foods with intent not to sell them as advertised; and

17           (b) California Civil Code section 1770(a)(16), by representing that the  
18 Contaminated Dog Foods have been supplied in accordance with previous representations  
19 when they have not.

20           79. As a direct and proximate result of these violations, Plaintiff and the Class  
21 have been harmed, and that harm will continue unless Defendant is enjoined from using  
22 the misleading marketing described herein in any manner in connection with the  
23 advertising and sale of the Contaminated Dog Foods.

24           80. Plaintiff seeks an award of attorney's fees pursuant to, inter alia, California  
25 Civil Code section 1780(e) and California Code of Civil Procedure section 1021.5.

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**COUNT III**

**(Violations of California False Advertising Law, California Business & Professions Code §§17500, *Et Seq.*, Against Defendant on Behalf of the Class)**

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4 81. Plaintiff incorporates by reference and realleges each and every allegation  
5 contained above, as though fully set forth herein.

6 82. California's False Advertising Law prohibits any statement in connection  
7 with the sale of goods "which is untrue or misleading." Cal. Bus. & Prof. Code §17500.

8 83. As set forth herein, Defendant's claims that the Contaminated Dog Foods are  
9 healthy and safe for consumption are literally false and likely to deceive the public.

10 84. Defendant's claims that the Contaminated Dog Foods are pure, quality,  
11 healthy and safe for consumption are untrue or misleading because these claims fail to  
12 disclose that the Contaminated Dog Foods were in fact adulterated by containing the  
13 controlled substance of Pentobarbital.

14 85. Defendant's claim that the Contaminated Dog Foods are 100 percent  
15 complete and balanced nutrition are untrue or misleading because it fails to disclose that  
16 the Contaminated Dog Foods were in fact adulterated by containing the controlled  
17 substance of Pentobarbital.

18 86. Defendant knew, or reasonably should have known, that the claims were  
19 untrue or misleading.

20 87. Defendant's conduct is ongoing and continuing, such that prospective  
21 injunctive relief is necessary, especially given Plaintiff's desire to purchase these products  
22 in the future if they can be assured that, so long as the Contaminated Dog Foods are, as  
23 properly unadulterated pet food and meets the advertising claims.

24 88. Plaintiff and members of the Class are entitled to injunctive and equitable  
25 relief, and restitution in the amount they spent on the Contaminated Dog Foods.

1 **COUNT IV**

2 **(Violations of the Unfair Competition Law, California Business**  
3 **& Professions Code §§17200, *Et Seq.*, Against Defendant on Behalf of the Class)**

4 89. Plaintiffs incorporates by reference and realleges each and every allegation  
5 contained above, as though fully set forth herein.

6 90. The Unfair Competition Law prohibits any "unlawful, unfair or fraudulent  
7 business act or practice." Cal. Bus. & Prof. Code §17200.

8 **Fraudulent**

9 91. Defendant's statements that the Contaminated Dog Foods are pure, quality  
10 healthy, safe and are 100 percent complete and balance nutrition are literally false and  
11 likely to deceive the public, as is Defendant's failing to make any mention that the  
12 Contaminated Dog Foods are adulterated and contain Pentobarbital.

13 **Unlawful**

14 92. As alleged herein, Defendant has sold advertised the adulterated  
15 Contaminated Dog Foods with false or misleading claims, such that Defendant's actions as  
16 alleged herein violate at least the following laws:

- 17 • The CLRA, California Business & Professions Code sections 1750, *et seq.*;  
18 and  
19 • The False Advertising Law, California Business & Professions Code  
20 sections 17500, *et seq.*

21 **Unfair**

22 93. Defendant's conduct with respect to the labeling, advertising, marketing, and  
23 sale of the Contaminated Dog Foods is unfair because Defendant's conduct was immoral,  
24 unethical, unscrupulous, or substantially injurious to consumers and the utility of its  
25 conduct, if any, does not outweigh the gravity of the harm to its victims.

26 94. Defendant's conduct with respect to the labeling, advertising, marketing, and  
27 sale of the Contaminated Dog Foods is also unfair because it violates public policy as  
28

1 declared by specific constitutional, statutory, or regulatory provisions, including, but not  
2 limited to, the False Advertising Law and the CLRA.

3 95. Defendant's conduct with respect to the labeling, advertising, marketing, and  
4 sale of the Contaminated Dog Foods is also unfair because the consumer injury is  
5 substantial, not outweighed by benefits to consumers or competition, and not one  
6 consumers, themselves, can reasonably avoid.

7 96. In accordance with California Business & Professions Code section 17203,  
8 Plaintiff seeks an order enjoining Defendant from continuing to conduct business through  
9 fraudulent or unlawful acts and practices and to commence a corrective advertising  
10 campaign. Defendant's conduct is ongoing and continuing, such that prospective  
11 injunctive relief is necessary.

12 97. On behalf of himself and the Class, Plaintiff also seeks an order for the  
13 restitution of all monies from the sale the Contaminated Dog Foods, which were unjustly  
14 acquired through acts of fraudulent, unfair, or unlawful competition.

15 **COUNT V**

16 **(Breach of Express Warranty, California Commercial Code §2313,**  
17 **Against Defendant on Behalf of the Class)**

18 98. Plaintiff incorporates by reference and realleges each and every allegation  
19 contained above, as though fully set forth herein.

20 99. As set forth herein, Defendant made express representations to Plaintiff and  
21 the Class that the Contaminated Dog Foods are pure, quality, healthy and safe for  
22 consumption and are 100 percent complete and balanced nutrition.

23 100. Defendant also made express representations to Plaintiff and the Class that  
24 the Contaminated Dog Foods meet all applicable regulations, including that they are not  
25 adulterated dog food by allowing their sale in various stores throughout the United States.

26 101. These promises became part of the basis of the bargain between the parties  
27 and thus constituted express warranties.

28 102. There was a sale of goods from Defendant to Plaintiff and the Class members.



1 “adulterated” because it contains “poisonous or deleterious substance[s]”) and 113095  
2 (prohibiting “false or misleading” labeling) as alleged herein.

3 112. Defendant is a merchant engaging in the sale of goods to Plaintiff and the  
4 Class.

5 113. There was a sale of goods from Defendant to Plaintiff and the Class members.

6 114. Defendant breached the implied warranties by selling the Contaminated Dog  
7 Foods were not fit for their ordinary purpose as adulterated dog food that contains  
8 Pentobarbital.

9 115. Defendant was on notice of this breach as it was aware of the presence of  
10 Pentobarbital and/or the use of euthanized animals as a protein or meat by-product source  
11 in the Contaminated Dog Foods.

12 116. Privity exists because Defendant impliedly warranted to Plaintiff and the  
13 Class that the Contaminated Dog Foods unadulterated and fit for their ordinary purpose

14 117. As a result of Defendant's breach of their implied warranties of  
15 merchantability, Plaintiff and the Class sustained damages as they paid money for the  
16 Contaminated Dog Foods that were not what Defendant represented.

17 118. Plaintiff, on behalf of himself and the Class, seeks actual damages for  
18 Defendant's breach of warranty.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,  
21 pray for judgment against the Defendant as to each and every count, including:

22 A. An order declaring this action to be a proper class action, appointing  
23 Plaintiffs and their counsel to represent the Class, and requiring Defendant to bear the costs  
24 of class notice;

25 B. An order enjoining Defendant from selling the Contaminated Dog Foods  
26 until Pentobarbital is removed;

1 C. An order enjoining Defendant from selling the Contaminated Dog Foods in  
2 any manner suggesting or implying that they are healthy, pure, quality and safe for  
3 consumption;

4 D. An order requiring Defendant to engage in a corrective advertising campaign  
5 and engage in any further necessary affirmative injunctive relief, such as recalling existing  
6 products;

7 E. An order awarding declaratory relief, and any further retrospective or  
8 prospective injunctive relief permitted by law or equity, including enjoining Defendant  
9 from continuing the unlawful practices alleged herein, and injunctive relief to remedy  
10 Defendant's past conduct;

11 F. An order requiring Defendant to pay restitution to restore all funds acquired  
12 by means of any act or practice declared by this Court to be an unlawful, unfair, or  
13 fraudulent business act or practice, untrue or misleading advertising, or a violation of the  
14 Unfair Competition Law, False Advertising Law, or CLRA, plus pre- and post-judgment  
15 interest thereon;

16 G. An order requiring Defendant to disgorge or return all monies, revenues, and  
17 profits obtained by means of any wrongful or unlawful act or practice;

18 H. An order requiring Defendant to pay all actual and statutory damages  
19 permitted under the counts alleged herein;

20 I. An order requiring Defendant to pay punitive damages on any count so  
21 allowable;

22 J. An order awarding attorneys' fees and costs to Plaintiff, the Class, and the  
23 Class; and

24 K. An order providing for all other such equitable relief as may be just and  
25 proper.

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**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: February 9, 2018

LOCKRIDGE GRINDAL NAUEN P.L.L.P.  
ROBERT K. SHELQUIST  
REBECCA A. PETERSON (241858)

*/s Rebecca Peterson*  
REBECCA A. PETERSON

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