

1 1. Plaintiffs Daniel Zeiger and Danz Doggie Daytrips ("Plaintiffs"), individually and
2 on behalf of all others similarly situated, by and through their undersigned attorneys, as and for
3 this Second Amended Class Action Complaint against defendant WellPet LLC ("Defendant"), for
4 its negligent, reckless, and/or intentional practice misrepresenting and failing to fully disclose the
5 presence of dangerous substances and chemicals in its pet food sold throughout the United States.
6 Plaintiffs seek both injunctive and monetary relief on behalf of the proposed Class (as defined
7 herein), including requiring full disclosure of all such substances in its marketing, advertising, and
8 labeling and restoring monies to the members of the proposed Class. Plaintiffs allege the following
9 based upon personal knowledge as well as investigation by their counsel, including independent
10 testing of the products, and as to all other matters, upon information and belief (Plaintiffs believe
11 that substantial evidentiary support will exist for the allegations set forth herein after a reasonable
12 opportunity for discovery).

13 **THE DANGEROUS MAKE-UP OF DEFENDANT'S DOG FOOD**

14 2. Defendant manufactures, markets, advertises, labels, distributes, and sells
15 Wellness® CORE® Adult Dry Ocean Whitefish, Herring Meal and Salmon Meal ("CORE
16 Ocean"); Wellness® Complete Health Adult Dry Whitefish and Sweet Potato ("Complete Health
17 Whitefish and Sweet Potato"); and Wellness® Complete Health Adult Grain Free Whitefish and
18 Menhaden Fish Meal ("Complete Health Whitefish and Menhaden"), (collectively the
19 "Contaminated Dog Foods").¹ The Contaminated Dog Foods contain material and significant
20 levels of arsenic and lead—both known dangerous toxins for both humans and animals, including
21 dogs. Some foods, like rice and sweet potato, have been determined to absorb arsenic in water
22 during cooking and therefore increase exposure.

23 3. Inorganic arsenic is a *known human carcinogen*. It can contribute to cancers, heart
24 disease, diabetes, declines in intellectual function, and can decrease a body's ability to respond to

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27 ¹ Discovery may reveal additional products that also contain unsafe levels of heavy metals and/or
28 BPA and Plaintiffs reserve their right to include any such products in this action.

1 viruses. The organic form of arsenic—the form found in arsenic-containing compounds—has been
2 shown in recent studies to easily convert to inorganic arsenic.

3 4. Based on the risks associated with exposure to high levels of arsenic, both the U.S.
4 Environmental Protection Agency ("EPA") and U.S. Food and Drug Administration ("FDA") have
5 set limits concerning the allowable limit of arsenic at 10 parts per billion ("ppb"). For the FDA,
6 the 10 ppb level regulates apple juice and for the EPA it governs drinking water.²

7 5. Moreover, the FDA is considering limiting the action level for arsenic in rice to 100
8 ppb:

9 The action level for inorganic arsenic in infant rice cereals that FDA considers
10 achievable with the use of such practices is 100 μ g/kg or 100 ppb (see Ref. 14)...
11 The proposed action level for inorganic arsenic in infant rice cereals is intended to
12 reduce the possible risk for infants fed rice cereal by reducing exposure to inorganic
13 arsenic that may be found in rice cereal for infants. FDA considers this reduction
14 in exposure to infants fed rice cereal will lead to a quantifiable reduction in the
15 lifetime risk of certain cancers associated with exposure to inorganic arsenic, as
16 well as an unquantifiable reduction in the risk of certain non-cancer adverse health
17 outcomes reviewed in the risk assessment, including neurodevelopmental effects in
18 infants.³

16 6. The Contaminated Dog Foods also contain material and significant levels of lead,
17 which is another carcinogen and developmental toxin known to cause health problems to
18 consumers. Exposure to lead in food builds up over time. Buildup can and has been scientifically
19 demonstrated to lead to the development of chronic poisoning, cancer, developmental, and
20 reproductive disorders, as well as serious injuries to the nervous system, and other organs and body
21 systems.

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24 ² The FDA has taken action based on consumer products exceeding this limit, including testing
25 and sending warning letters to the manufacturers. *See, e.g.*, Warning Letter from FDA to Valley
26 Processing, Inc. (June 2, 2016), <https://www.fda.gov/iceci/enforcementactions/warningletters/2016/ucm506526.htm>.

27 ³ FDA, Draft Guidance for Industry: Inorganic Arsenic in Rice Cereals for Infants: Action Level
28 (Apr. 2016), <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocuments/RegulatoryInformation/UCM493152.pdf>.

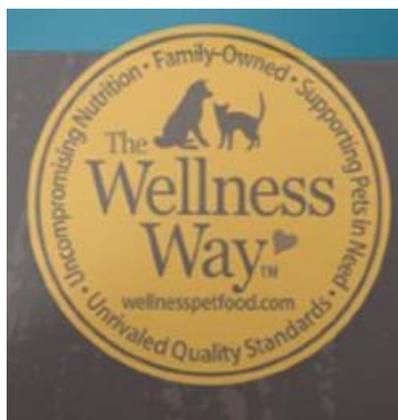
1 7. Despite the known risks of arsenic and lead exposure, Defendant has negligently,
2 recklessly, and/or knowingly sold the Contaminated Dog Foods despite containing alarming levels
3 of arsenic and lead. Plaintiffs' testing of the Contaminated Dog Foods showed that CORE Ocean
4 consistently contained over 1,000 ppb of arsenic and close to 200 ppb of lead; Complete Health
5 Whitefish and Sweet Potato consistently contained over 1,000 ppb of arsenic and over 200 ppb of
6 lead; and Complete Health Whitefish and Menhaden also contained more than 1,400 ppb of arsenic
7 and approximately 200 ppb of lead.

8 8. Additionally, Defendant knew or should have been aware that a consumer would
9 be feeding the Contaminated Dog Foods multiple times each day to his or her dog being the main,
10 if not only, source of food for the dog. This leads to repeated exposure of the toxins to the dog.

11 9. Defendant has wrongfully advertised and sold the Contaminated Dog Foods
12 without any label or warning indicating to consumers that these products contain arsenic or lead,
13 or that these toxins can over time accumulate in the dog's body to the point where poisoning, injury,
14 and/or disease can occur.

15 10. Defendant's omissions are not only material but also false, misleading, and
16 reasonably likely to deceive the public. This is true especially in light of the long-standing
17 campaign by Defendant to market the Contaminated Dog Foods as healthy and safe to induce
18 consumers, such as Plaintiffs, to purchase the products. For instance, not only did Defendant
19 choose a brand name for its dog food, "Wellness," that in itself suggests a healthy product, it
20 markets the Contaminated Dog Foods by promising "Uncompromising Nutrition" and "Unrivaled
21 Quality Standards":
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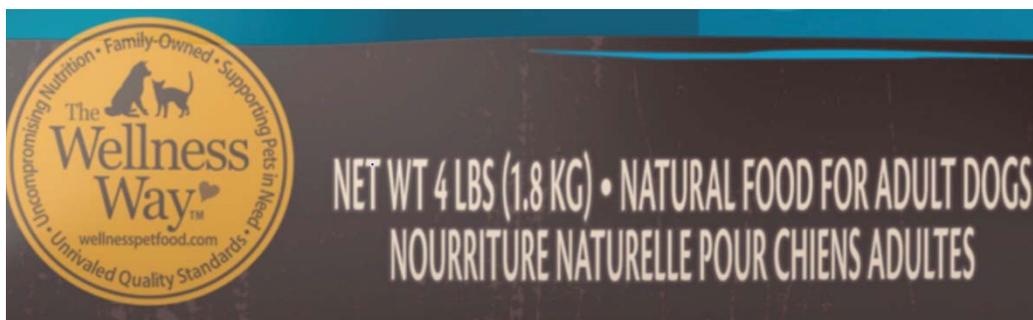


11. Moreover, the Contaminated Dog Foods declare themselves as offering complete health and nothing in excess:



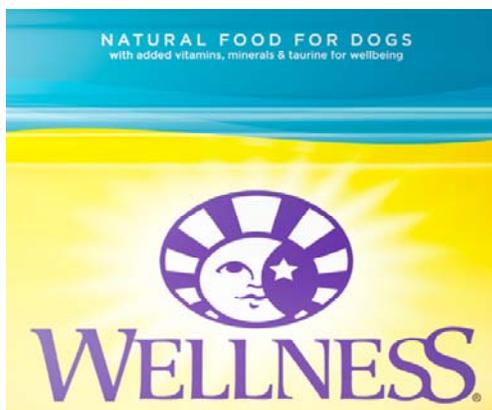
1 production, secretion, transport, action, function and elimination of natural hormones.”⁴ BPA has
2 been linked to various health issues, including reproductive disorders, heart disease, diabetes,
3 cancer, and neurological problems.⁵

4 16. Despite the presence of this harmful chemical, Defendant prominently warranted,
5 claimed, featured, represented, advertised, or otherwise marketed that CORE Ocean and Complete
6 Health Whitefish and Sweet Potato "natural." Indeed, each bag states on the front in two different
7 places that they are “natural food”:



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25 ⁴Dr. Karen Beeker, *A Major Heads Up: Don't Feed This to Your Dog*, Healthy Pets (Feb. 13,
26 2017), <https://healthypets.mercola.com/sites/healthypets/archive/2017/02/13/dogs-canned-food-dangers.aspx>.

27 ⁵ Christian Nordquist, *Bisphenol A: How Does It Affect Our Health?* Medical News Today (May
28 24, 2017), <https://www.medicalnewstoday.com/articles/221205.php>.



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17. Defendant's website also warrants, claims, features, represents, advertises, or otherwise markets that its products, including CORE Ocean and Complete Health Whitefish and Sweet Potato, are natural. In fact, WellPet's motto according to the website is "WellPet – The Healthiest Natural Products For Pets:"

WellPet - The Healthiest Natural Products for Pets

www.wellpet.com/ ▼

Check out WellPet in magazines, newspapers and more! We're a diverse group, but it's a shared love of pets & natural food that brings us all together! more.

OUR PHILOSOPHY

WellPet is home to the family of premium pet food brands including Wellness[®], Old Mother Hubbard[®], Eagle Pack[®], Holistic Select[®] and Sojo's[®]. We have a long history of delivering on the promise of making the healthiest natural products for pets.

Our Standards. Our Promise.

At Wellness, your pet's health is at the core of all we do. That's why we have developed an extensive quality assurance program, guaranteeing that all of our products are safe, pure and balanced.

18. In promoting its promise, warranty, claim, representation, advertisement, or otherwise marketing that CORE Ocean and Complete Health Whitefish and Sweet Potato are safe and pure, Defendant further assures that:

1 Our mission is to provide you with *wholesome, natural pet food that is the best it can be.*
2 Nothing is overlooked in our quest for excellence. We require all suppliers to meet stringent
3 requirements and adhere to the highest standards, *exceeding even the strictest*
4 *requirements from the FDA.* We are determined to go further, to do better and to take as
5 many precautions with our pet food, as is taken with food for humans. *Because at*
6 *Wellness, we are passionate about providing your pet with safe, uncompromising*
7 *nutrition.*⁶

8 19. To this end, Defendant's website further warrants, claims, features, represents,
9 advertises, or otherwise markets that its products, including CORE Ocean and Complete Health
10 Whitefish and Sweet Potato, are manufactured in such a way that would prevent BPA forming by
11 closely monitoring temperatures and quality:⁷

12 Unsurpassed Food Safety Programs

13 During production, rigorous standards and practices are put in place to protect the nutritional integrity of our food. Our
14 processing plant is meticulously sanitized in order to control bacterial growth or pest infestation. In our zeal to provide you
15 with only the highest-quality pet food, we take extra precautions to make sure ingredients are stored properly, temperatures
16 are monitored and products are routinely tested. We believe these measures are absolutely essential to producing the finest
17 pet food that can nourish and energize your pet to the core. Our food is carefully handled, carefully prepared and
undoubtedly safe.

18 20. Thus, Defendant engaged in deceptive advertising and labeling practice by
19 expressly warranting, claiming, stating, featuring, representing, advertising, or otherwise
20 marketing on the Contaminated Dog Foods' labels and related websites that the Contaminated
21 Dog Foods are "natural, safe and pure" when both CORE Ocean and Complete Health Whitefish
22 and Sweet Potato contain significant levels of BPA. Indeed, recent testing has confirmed each
23 contained over 130 ppb of BPA.

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26 ⁶ <https://www.wellnesspetfood.com/our-philosophy/our-standards-our-promise> (emphasis added),
27 visited Oct. 25, 2017.

28 ⁷ *Id.*

1 21. Besides prominently warranting, claiming, stating featuring, representing,
2 advertising, or otherwise marketing that CORE Ocean and Complete Health Whitefish and Sweet
3 Potato are "natural, safe and pure," Defendant charges a premium, knowing that the claimed
4 natural make-up of CORE Ocean and Complete Health Whitefish and Sweet Potato is something
5 an average consumer would consider as a reason in picking a more expensive dog food. By
6 negligently and/or deceptively representing, marketing, and advertising CORE Ocean and
7 Complete Health Whitefish and Sweet Potato as "natural, safe and pure" Defendant wrongfully
8 capitalized on, and reaped enormous profits from, consumers' strong preference for natural food
9 product.

10 **JURISDICTION AND VENUE**

11 22. This Court has original jurisdiction over all causes of action asserted herein under
12 the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the matter in controversy exceeds
13 the sum or value of \$5,000,000 exclusive of interest and costs and more than two-thirds of the
14 Class reside in states other than the states in which Defendant is a citizen and in which this case is
15 filed, and therefore any exemptions to jurisdiction under 28 U.S.C. §1332(d) do not apply.

16 23. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because Plaintiffs reside
17 and suffered injury as a result of Defendant's acts in this district, many of the acts and transactions
18 giving rise to this action occurred in this district, Defendant conducts substantial business in this
19 district, Defendant has intentionally availed themselves of the laws and markets of this district,
20 and Defendant is subject to personal jurisdiction in this district.

21 **INTRADISTRICT ASSIGNMENT**

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

25 **THE PARTIES**

26 25. Plaintiff Daniel Zeiger ("Zeiger") is, and at all times relevant hereto has been, a
27 citizen of the state of California. Plaintiff Zeiger purchased the Contaminated Dog Foods and fed
28 it to his three-year-old American Bulldog named Mack. Plaintiff Zeiger started purchasing the

1 Contaminated Dog Foods in or around October 2014 and continued to purchase approximately one
2 small bag monthly (priced at around \$15.00 per bag) until approximately July 2017 when he
3 discovered that the food was contaminated. Plaintiff purchased the Contaminated Dog Foods from
4 the following places: (1) Pet Club in Corte Madera, CA; (2) Woodlands Pet Food & Treats in
5 Greenbrae, CA; (3) Woodlands Pet Food & Treats in Mill Valley, CA. Prior to purchasing the
6 Contaminated Dog Foods, Plaintiff Zeiger saw the products at the Bay Area Pet Fair and the
7 Golden Gate Kennel Club Dog Show at Cow Palace in San Francisco. During the fair and dog
8 show he received samples of the products and saw the nutritional claims, which he relied on in
9 deciding to purchase the Contaminated Dog Foods. During that time, based on the false and
10 misleading claims, warranties, representations, advertisements and other marketing by Defendant,
11 Plaintiff was unaware that the Contaminated Dog Foods contained any level of lead, arsenic, or
12 BPA and would not have purchased the food if that was fully disclosed.

13 26. Plaintiff Danz Doggie Daytrips ("Danz Doggie"), is, and at all times relevant hereto
14 has been, a citizen of the state of California. Plaintiff Danz Doggie is a dog sitting business that
15 used the Contaminated Dog Foods as one of the primary foods fed to its clients' dogs. Plaintiff
16 Danz Doggie started purchasing the Contaminated Dog Foods in or around October 2014 and
17 continued to purchase approximately one small bag monthly (priced at around \$15.00 per bag) and
18 ceased purchasing in approximately July 2017 upon discovery that the food was contaminated.
19 Plaintiff purchased the Contaminated Dog Foods from the following places: (1) Pet Club in Corte
20 Madera, CA; (2) Woodlands Pet Food & Treats in Greenbrae, CA; (3) Woodlands Pet Food &
21 Treats in Mill Valley, CA. Prior to purchasing the Contaminated Dog Foods, Plaintiff saw the
22 products at the Bay Area Pet Fair and the Golden Gate Kennel Club Dog Show at Cow Palace in
23 San Francisco. During that time, based on the false and misleading claims, warranties,
24 representations, advertisements, and otherwise marketing by Defendant, Plaintiff was unaware
25 that the Contaminated Dog Foods contained any level of lead, arsenic, or BPA and would not have
26 purchased the food if that was fully disclosed.

27 27. As the result of Defendant's negligent, reckless, and/or knowingly deceptive
28 conduct as alleged herein, Plaintiffs were injured when they paid the purchase price or a price

1 premium for the Contaminated Dog Foods that did not deliver what it promised. They paid the
2 above sum on the assumption that the labeling of the Contaminated Dog Foods was accurate and
3 that it was healthy, clean, and safe for dogs to ingest, as well as natural and pure. Plaintiffs would
4 not have paid this money had they known that the Contaminated Dog Foods contained an excessive
5 degree of arsenic, lead, and/or BPA. Damages can be calculated through expert testimony at trial.
6 Further, should Plaintiffs encounter the Contaminated Dog Foods in the future, they could not rely
7 on the truthfulness of the packaging, absent corrective changes to the packaging and advertising
8 of the Contaminated Dog Foods.

9 28. Defendant WellPet LLC is incorporated in Delaware with its headquarters located
10 at 200 Ames Pond Drive, Tewksbury, Massachusetts. Defendant WellPet LLC is a subsidiary of
11 Berwind Corporation. Defendant formulates, develops, manufactures, labels, distributes, markets,
12 advertises, and sells the Contaminated Dog Foods under the Wellness dog food brand name
13 throughout the United States. The advertising, labeling, and packaging for the Contaminated Dog
14 Foods, relied upon by Plaintiffs, was prepared, reviewed, and/or approved by Defendant and its
15 agents, and was disseminated by Defendant and its agents through marketing, advertising,
16 packaging, and labeling that contained the misrepresentations alleged herein. The marketing,
17 advertising, packaging and labeling for the Contaminated Dog Foods was designed to encourage
18 consumers to purchase the Contaminated Dog Foods and reasonably misled the reasonable
19 consumer, i.e., Plaintiffs and the Class, into purchasing the Contaminated Dog Foods. Defendant
20 owns, manufactures, and distributes the Contaminated Dog Foods, and created, allowed,
21 negligently oversaw, and/or authorized the unlawful, fraudulent, unfair, misleading, and/or
22 deceptive labeling and advertising for the Contaminated Dog Foods.

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

2 (a) Wellness CORE Adult Dry Ocean Whitefish, Herring Meal and Salmon

3 Meal:



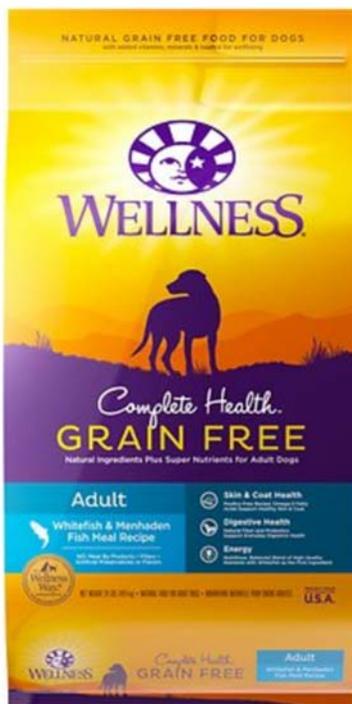
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16 (b) Wellness Complete Health Adult Dry Whitefish and Sweet Potato:



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(c) Wellness Complete Health Adult Grain Free Whitefish and Menhaden Fish

Meal:



FACTUAL ALLEGATIONS

Both Arsenic and Lead Are Exceptionally Dangerous When Ingested

30. Toxins like arsenic and lead can cause serious illness to humans and animals. A company should be vigilant to take all reasonable steps to avoid causing family pets to ingest these toxins.

31. Arsenic is a semi-metal element in the periodic table. It is odorless and tasteless. Arsenic occurs naturally in the environment as an element of the earth's crust; it is found in rocks, soil, water, air, plants, and animals. Elemental arsenic is combined with other elements such as oxygen, chlorine, and sulfur to form inorganic arsenic compounds. Historically, arsenic compounds were used in many industries, including: (i) as a preservative in pressure-treated lumber; (ii) as a preservative in animal hides; (iii) as an additive to lead and copper for hardening; (iv) in glass manufacturing; (v) in pesticides; (vi) in animal agriculture; and (vii) as arsine gas to

1 enhance junctions in semiconductors. The United States has canceled the approvals of some of
2 these uses, such as arsenic-based pesticides, for health and safety reasons. Some of these
3 cancellations were based on voluntary withdrawals by producers. For example, manufacturers of
4 arsenic-based wood preservatives voluntarily withdrew their products in 2003 due to safety
5 concerns, and the EPA signed the cancellation order. In the Notice of Cancellation Order, the EPA
6 stated that it "believes that reducing the potential residential exposure to a known human
7 carcinogen is desirable." Arsenic is an element—it does not degrade or disappear.

8 32. Inorganic arsenic is a known cause of human cancer. The association between
9 inorganic arsenic and cancer is well documented. As early as 1879, high rates of lung cancer in
10 miners from the Kingdom of Saxony were attributed, in part, to inhaled arsenic. There is evidence
11 from countries where groundwater is contaminated with arsenic that shows ingested inorganic
12 arsenic, such as that found in contaminated drinking water and food was likely to increase the
13 incidence of several internal cancers.⁸ The scientific link to skin and lung cancers is particularly
14 strong and longstanding, and evidence supports conclusions that arsenic may cause liver, bladder,
15 kidney, and colon cancers as well.

16 33. Lead is a metallic substance formerly used as a pesticide in fruit orchards, but the
17 use of such pesticides is now prohibited in the United States. Lead, unlike many other poisons,
18 builds up in the body over time as the person is exposed to and ingests it, resulting in a cumulative
19 exposure which can, over time, become toxic and seriously injurious to health. Lead poisoning
20 can occur from ingestion of food or water containing lead. Acute or chronic exposure to material
21 amounts of lead can lead to severe brain and kidney damage, among other issues, and ultimately
22 cause death.

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26 ⁸ For example, because the groundwater in Taiwan is contaminated with arsenic, extensive long-
27 term studies have been conducted on the effects of chronic exposure to arsenic. Other countries
28 where cancer and other adverse health effects have been linked to chronic arsenic exposure include
Bangladesh, India, Chile, and China.

1 34. The State of California has included arsenic and lead as a known carcinogen and
2 developmental toxin on the Proposition 65 list, pursuant to the Safe Drinking Water and Toxic
3 Enforcement Act of 1986.

4 35. The FDA has set standards that regulate the maximum parts per billion of lead
5 permissible in water: bottled water cannot contain more than 5 ppb of total lead or 10 ppb of total
6 arsenic. *See* 21 C.F.R. §165.110(b)(4)(iii)(A).

7 **Defendant Falsely Advertise the Contaminated Dog Foods as Healthy While Omitting Any**
8 **Mention of Arsenic or Lead, as Well as Claim CORE Ocean and Complete Health Whitefish**
9 **and Sweet Potato are Natural, Pure and Safe Despite the Inclusion of the Industrial Chemical**
10 **BPA**

11 36. Defendant formulates, develops, manufactures, labels, packages, distributes,
12 markets, advertises, and sells its extensive Wellness lines of dry and wet pet food products in
13 California and across the United States.

14 37. Based on Defendant's decision to warrant, claim, state, represent, advertise, label,
15 and market its Contaminated Dog Foods as made up of "Uncompromising Nutrition" and
16 "Unrivaled Quality Standards" that have nothing in excess and offer complete health, it had a duty
17 to ensure these statements were true. As such, Defendant knew or should have known that the
18 Contaminated Dog Foods included concerning and higher levels of arsenic and lead.

19 38. Likewise, by warranting, claiming, stating featuring, representing, advertising or
20 otherwise marketing that the Contaminated Dog Foods are natural, safe, and pure, Defendant had
21 a known duty to ensure that there were no chemicals included in the Contaminated Dog Foods. In
22 fact, Defendant offered further assurances by representing that the quality control over the
23 manufacturing of its Wellness dog food products was a rigid process that monitored temperature.
24 As such, Defendant knew or should have known that higher temperatures coupled with the type of
25 containers used in manufacturing create a real risk of significant levels of BPA in its products.

26 39. The Contaminated Dog Foods are available at numerous retail and online outlets.

27 40. The Contaminated Dog Foods are widely advertised and WellPet LLC includes a
28 Vice President of Marketing as part of its advertised leadership team.

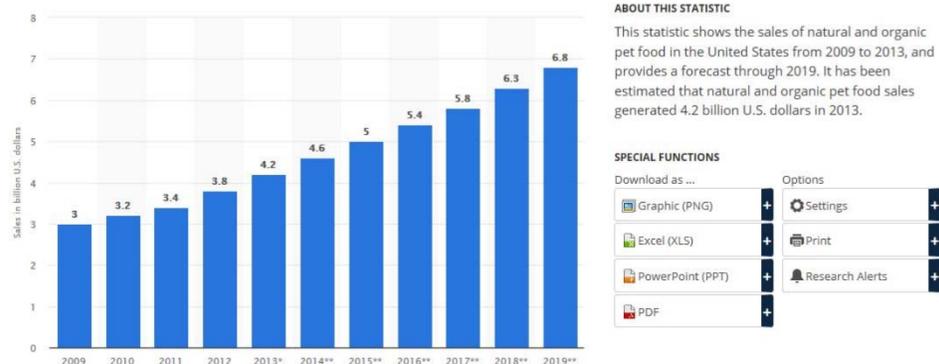
1 41. The official Wellness Pet Food website displays the Contaminated Dog Foods'
 2 descriptions and full lists of ingredients for the Contaminated Dog Foods and includes the
 3 following promise:

4 Our Standards. Our Promise.

5 At Wellness, your pet's health is at the core of all we do. That's why we have
 6 developed an extensive quality assurance program, guaranteeing that all of our
 7 products are safe, pure and balanced.

8 42. The Defendant's webpages again and again repeat the false and misleading claims,
 9 warranties, representations, advertisements, and other marketing about the Contaminated Dog
 10 Foods benefits, quality, purity, and natural make-up, without any mention of the arsenic, lead, or
 11 BPA they contain. This is not surprising given that natural pet food sales represent over \$5.5
 12 billion in the United States and have consistently risen over the years.⁹

13 **Natural and organic pet food sales in the United States from 2009 to 2019 (in billion
 14 U.S. dollars)**



21 43. Moreover, WellPet LLC has itself acknowledged the importance to quality dog
 22 food to the reasonable consumer: "People are increasingly concerned with what they eat and where
 23 their food comes from, and this concern has influenced the pet food space as well," agrees Carly
 24 White, digital marketing specialist at WellPet LLC, makers of Wellness pet foods. "More and
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 27 ⁹ Statista, *Natural and Organic Pet Food Sales in the U.S. from 2009 to 2019*, The Statistics Portal
 28 (accessed Oct. 25, 2017). <https://www.statista.com/statistics/548957/us-sales-of-natural-and-organic-pet-food/>

1 more, pet parents are taking an active role in their pet's nutrition, with a focus on quality ingredients
2 that are [conscientiously] sourced."¹⁰

3 44. As a result of Defendant's omissions, a reasonable consumer would have no reason
4 to suspect the presence of arsenic and lead or BPA in the Contaminated Dog Foods without
5 conducting his or her own scientific tests, or reviewing third-party scientific testing of these
6 products.

7 45. That is exactly what Plaintiffs did here. Plaintiffs' testing of the Contaminated Dog
8 Foods showed that CORE Ocean consistently contained over 1,000 ppb of arsenic and close to 200
9 ppb of lead and that Complete Health Whitefish and Sweet Potato consistently contained over
10 1,000 ppb of arsenic and over 200 ppb of lead. Additionally, the testing revealed that the CORE
11 Ocean and Complete Health Whitefish and Sweet Potato each contained over 130 ppb of BPA.
12 Moreover, recently a public news report showed that Complete Health Whitefish and Menhaden
13 consistently contained more than 1,400 ppb of arsenic and 200 ppb of lead.¹¹

14 **DEFENDANT'S STATEMENTS AND OMISSIONS VIOLATE CALIFORNIA LAWS**

15 46. California law is designed to ensure that a company's claims about its products are
16 truthful and accurate. Defendant violated California law by negligently, recklessly, and/or
17 intentionally incorrectly claiming that the Contaminated Dog Foods are pure, healthy, and safe for
18 consumption and by not accurately detailing that the products contain the toxins arsenic and lead.
19 Instead, Defendant represented that the Contaminated Dog Foods are made up of
20 "Uncompromising Nutrition" and "Unrivalled Quality Standards" that have nothing in excess and
21 offer complete health Defendant further violated California law by negligently, recklessly, and/or
22 intentionally incorrectly claiming that CORE Ocean and Complete Health Whitefish and Sweet
23 Potato are natural, pure, and safe when they contain BPA.

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26 ¹⁰ Melissa Breau, *Pet Food Evolution*, Pet Business (Oct. 16, 2015), (alteration in original)
27 <http://www.petbusiness.com/Pet-Food-Evolution/>

28 ¹¹ <http://wjla.com/features/7-on-your-side/pet-food-heavy-metals>.

1 47. Defendant's marketing and advertising campaign has been sufficiently lengthy in
2 duration, and widespread in dissemination, that it would be unrealistic to require Plaintiffs to plead
3 relying upon each advertised misrepresentation.

4 48. Defendant has engaged in this long-term advertising campaign to convince
5 potential customers that the Contaminated Dog Foods were pure, healthy, safe for consumption,
6 and did not contain harmful ingredients, such as arsenic and lead. Likewise, Defendant has
7 engaged in this long-term advertising campaign to convince potential customers that CORE Ocean
8 and Complete Health Whitefish and Sweet Potato are natural, pure, and safe despite the presence
9 of BPA in the food.

10 **PLAINTIFFS' RELIANCE WAS REASONABLE AND FORESEEN BY DEFENDANT**

11 49. Plaintiffs reasonably relied on Defendant's own claims, warranties, representations,
12 advertisements, and other marketing concerning the particular qualities and benefits of the
13 Contaminated Dog Foods.

14 50. Plaintiffs read and relied upon the labels and packaging of the Contaminated Dog
15 Foods in making their purchasing decisions.

16 51. A reasonable consumer would consider the labeling of a product when deciding
17 whether to purchase. Here, Plaintiffs relied on the specific statements and misrepresentations by
18 Defendant that the Contaminated Dog Foods were healthy and made up of "Uncompromising
19 Nutrition" and "Unrivaled Quality Standards" that have nothing in excess and offer complete
20 health with no disclosure of the inclusion of arsenic or lead.

21 **DEFENDANT'S KNOWLEDGE AND NOTICE OF ITS BREACHES**
22 **OF ITS EXPRESS AND IMPLIED WARRANTIES**

23 52. Defendant had sufficient notice of its breaches of express and implied warranties.
24 Defendant has, and had, exclusive knowledge of the physical and chemical make-up of the
25 Contaminated Dog Foods. Moreover, Defendant was put on notice by the Clean Label Project on
26 the inclusion of heavy metals in its dog food products.

1 **PRIVITY EXISTS WITH PLAINTIFFS AND THE PROPOSED CLASS**

2 53. Defendant knew that consumers such as Plaintiffs and the proposed Class would be
3 the end purchasers of the Contaminated Dog Foods and the target of its advertising and statements.

4 54. Defendant intended that the warranties, advertising, labeling, statements, and
5 representations would be considered by the end purchasers of the Contaminated Dog Foods,
6 including Plaintiffs and the proposed Class.

7 55. Defendant directly marketed to Plaintiffs and the proposed Class through
8 statements on its website, labeling, advertising, and packaging.

9 56. Plaintiffs and the proposed Class are the intended beneficiaries of the expressed
10 and implied warranties.

11 **CLASS ACTION ALLEGATIONS**

12 57. Plaintiffs bring this action individually and on behalf of the following Class
13 pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:

14 All persons in California who, from July 1, 2013, to the present, purchased the
15 Contaminated Dog Foods for household or business use, and not for resale (the
"Class").

16 58. Plaintiffs also bring this action individually and on behalf of the following Class
17 pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure.

18 All persons in California who are citizens of the United States who, from July 1,
19 2013 to the present, purchased CORE Ocean CORE Ocean and Complete Health
20 Whitefish and Sweet Potato for household or business use, and not for resale (the
"Natural Claims Class").¹²

21 59. Excluded from the Classes are the Defendant, any parent companies, subsidiaries,
22 and/or affiliates, officers, directors, legal representatives, employees, co-conspirators, all
23 governmental entities, and any judge, justice, or judicial officer presiding over this matter.

24 60. This action is brought and may be properly maintained as a class action. There is
25 a well-defined community of interests in this litigation and the members of the Classes are easily
26 ascertainable.

27 _____
28 ¹² All classes collectively are referred to as the "Classes."

1 61. The members in the proposed Classes are so numerous that individual joinder of all
2 members is impracticable, and the disposition of the claims of the members of all Classes members
3 in a single action will provide substantial benefits to the parties and Court.

4 62. Questions of law and fact common to Plaintiffs and the Classes include, but are not
5 limited to, the following:

6 (a) whether Defendant owed a duty of care;

7 (b) whether Defendant knew or should have known that the Contaminated Dog
8 Foods contained higher levels of arsenic and/or lead;

9 (c) whether Defendant knew or should have known that CORE Ocean and
10 Complete Health Whitefish and Sweet Potato CORE Ocean contained BPA;

11 (d) whether Defendant represented and continue to represent that the
12 Contaminated Dog Foods are made up of "Uncompromising Nutrition" and "Unrivaled Quality
13 Standards" that have nothing in excess and offer complete health;

14 (e) whether Defendant represented and continue to represent that the
15 Contaminated Dog Foods are pure, healthy, and safe for consumption;

16 (f) whether Defendant represented and continue to represent that the CORE
17 Ocean and Complete Health Whitefish and Sweet Potato are natural dog foods;

18 (g) whether Defendants represented and continue to represent that the
19 Contaminated Dog Foods are pure ;

20 (h) whether Defendant represented and continue to represent that the
21 manufacturing of its Wellness dog food products is subjected to rigorous standards, including those
22 standards related to temperature;

23 (i) whether Defendant failed to disclose that the Contaminated Dog Foods
24 contained arsenic, lead, and/or BPA;

25 (j) whether Defendant's representations in advertising, warranties, packaging,
26 and/or labeling are false, deceptive, and misleading;

27 (k) whether those representations are likely to deceive a reasonable consumer;

28

1 (l) whether Defendant had knowledge that those representations were false,
2 deceptive, and misleading;

3 (m) whether Defendant continues to disseminate those representations despite
4 knowledge that the representations are false, deceptive, and misleading;

5 (n) whether a representation that a product is healthy and safe for consumption
6 and does not contain arsenic and/or lead is material to a reasonable consumer;

7 (o) whether Defendant's representations and descriptions on the labeling of the
8 Contaminated Dog Foods are likely to mislead, deceive, confuse, or confound consumers acting
9 reasonably;

10 (p) whether Defendant violated California Business & Professions Code
11 sections 17200, *et seq.*;

12 (q) whether Defendant violated California Business & Professions Code
13 sections 17500, *et seq.*;

14 (r) whether Defendant violated California Civil Code sections 1750, *et seq.*;

15 (s) whether Plaintiffs and the members of the Classes are entitled to actual,
16 statutory, and punitive damages;

17 (t) whether Plaintiffs and the members of the Classes are entitled to declaratory
18 and injunctive relief.

19 63. Defendant engaged in a common course of conduct giving rise to the legal rights
20 sought to be enforced by Plaintiffs individually and on behalf of the other members of the Class.
21 Identical statutory violations and business practices and harms are involved. Individual questions,
22 if any, are not prevalent in comparison to the numerous common questions that dominate this
23 action.

24 64. Plaintiffs' claims are typical of those of the members of the Classes in that they are
25 based on the same underlying facts, events, and circumstances relating to Defendant's conduct.

26 65. Plaintiffs will fairly and adequately represent and protect the interests of the
27 Classes, have no interests incompatible with the interests of the Classes, and have retained counsel
28 competent and experienced in class action, consumer protection, and false advertising litigation.

1 warranties, statements, representations, advertising, packaging, labeling, and other marketing as
2 to the quality, make-up, and included ingredients of the Contaminated Dog Foods. Defendant
3 themselves admitted that consumers now "focus on quality ingredients..." when purchasing dog
4 food.¹³

5 76. As a result of these misrepresentations, Plaintiffs and the Classes purchased the
6 Contaminated Dog Foods at a premium.

7 77. Defendant failed to use reasonable care in its communications and representations
8 to Plaintiffs and the Classes, especially in light of its knowledge of the risks and importance of
9 considering ingredients to consumers when purchasing the Contaminated Dog Foods.

10 78. By virtue of Defendant's negligent misrepresentations, Plaintiffs and the Classes
11 have been damaged in an amount to be proven at trial or alternatively, seek rescission and
12 disgorgement under this Count.

13 **COUNT II**

14 **(Violations of California's Consumer Legal Remedies Act, California Civil Code §§1750, *Et***
15 ***Seq.*, Against Defendant on Behalf of the Classes)**

16 79. Plaintiffs incorporate by reference and reallege each and every allegation contained
17 above, as though fully set forth herein.

18 80. Plaintiffs and each proposed Classes member is a "consumer," as that term is
19 defined in California Civil Code section 1761(d).

20 81. The Contaminated Dog Foods are "goods," as that term is defined in California
21 Civil Code section 1761(a).

22 82. Defendant is a "person" as that term is defined in California Civil Code section
23 1761(c).

24 83. Plaintiffs and each proposed Classes member's purchase of Defendant's products
25 constituted a "transaction" as that term is defined in California Civil Code section 1761(e).

26
27 ¹³ Melissa Breau, *Pet Food Evolution*, Pet Business (Oct. 16, 2015), (alteration in original)
28 <http://www.petbusiness.com/Pet-Food-Evolution/>

1 84. Defendant's conduct alleged herein violates the following provisions of California's
2 Consumer Legal Remedies Act (the "CLRA"):

3 (a) California Civil Code section 1770(a)(5), by negligently, recklessly, and/or
4 intentionally representing that the Contaminated Dog Foods are healthy and safe for consumption
5 and by failing to make any mention of arsenic and lead in the Contaminated Dog Foods;

6 (b) California Civil Code section 1770(a)(5), by negligently, recklessly, and/or
7 intentionally representing that the Contaminated Dog Foods are natural, pure and safe and by
8 failing to make any mention of BPA in CORE Ocean or Complete Health Whitefish and Sweet
9 Potato;

10 (c) California Civil Code section 1770(a)(7), by negligently, recklessly, and/or
11 intentionally representing that the Contaminated Dog Foods were of a particular standard, quality,
12 or grade, when they were of another;

13 (d) California Civil Code section 1770(a)(9), by negligently, recklessly, and/or
14 intentionally advertising the Contaminated Dog Foods with intent not to sell them as advertised;
15 and

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

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

23 86. On July 19, 2017, counsel for Plaintiffs and the Classes sent Defendant written
24 notice (via U.S. certified mail, return receipt requested) that its conduct is in violation of the CLRA
25 concerning the arsenic and lead omissions.

26 87. On November 13, 2017, counsel for Plaintiffs and the Classes sent Defendant
27 written notice (via U.S. certified mail, return receipt requested) that its conduct is in violation of
28 the CLRA concerning the inclusion of BPA in the Contaminated Dog Foods.

1 88. Defendant failed to provide appropriate relief for its violations of CLRA sections
2 1770(a)(5), (7), (9), and (16) within thirty days of receipt of Plaintiffs' July 19, 2017, or November
3 13, 2017, notifications. In accordance with CLRA section 1782(b), Plaintiffs and the Classes are
4 entitled, under CLRA section 1780, to recover and obtain the following relief for Defendant's
5 violations of CLRA sections 1770(a)(5),(7), (9) and (16):

- 6 (a) actual damages under CLRA section 1780(a)(1);
- 7 (b) restitution of property under CLRA section 1780(a)(3);
- 8 (c) punitive damages under CLRA section 1780(a)(4) and because Defendant
9 has engaged in fraud, malice, or oppression; and
- 10 (d) any other relief the Court deems proper under CLRA section 1780(a)(5).

11 89. Plaintiffs seek an award of attorneys' fees pursuant to, inter alia, California Civil
12 Code section 1780(e) and California Code of Civil Procedure section 1021.5.

13 **COUNT III**

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

17 90. Plaintiffs incorporate by reference and reallege each and every allegation contained
18 above, as though fully set forth herein.

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

21 92. As set forth herein, Defendant's claims that the Contaminated Dog Foods are
22 healthy and safe for consumption are literally false and likely to deceive the public. Likewise,
23 Defendant's statements that CORE Ocean and Complete Health Whitefish and Sweet Potato are
24 natural, pure, and safe are false and likely to deceive the public.

25 93. Defendant's claims that the Contaminated Dog Foods are healthy and safe for
26 consumption are untrue or misleading, as is failing to make any mention of arsenic and lead in the
27 Contaminated Dog Foods. Likewise, Defendant's statements that CORE Ocean and Complete
28 Health Whitefish and Sweet Potato are natural, pure, and safe are untrue or misleading, as failing
to disclose the presence of BPA in the dog food.

1 120. As set forth herein, Defendant made affirmations of fact on the Contaminated Dog
2 Foods' labels to Plaintiffs and the Classes that the Contaminated Dog Foods are made up of
3 "Uncompromising Nutrition" and "Unrivaed Quality Standards" that have nothing in excess and
4 offer complete health.

5 121. Defendant also made affirmations of fact on the Contaminated Dog Foods' labels
6 to Plaintiffs and the Class that the Contaminated Dog Foods were pure, healthy, and safe for
7 consumption and did not contain arsenic or lead.

8 122. The Contaminated Dog Foods did not conform to these affirmations and promises
9 as they contained arsenic and lead at alarming and unsafe levels.

10 123. Defendant also made affirmations of fact on the CORE Ocean's and Complete
11 Health Whitefish and Sweet Potato's labels to Plaintiff and the Natural Claims Class that CORE
12 Ocean and Complete Health Whitefish and Sweet Potato were natural dog food and did not contain
13 the chemical BPA.

14 124. CORE Ocean and Complete Health Whitefish and Sweet Potato did not conform to
15 these affirmations and promises as they contain the industrial chemical BPA.

16 125. These promises became part of the basis of the bargain between the parties and thus
17 constituted implied warranties.

18 126. Defendant is a merchant engaging in the sale of goods to Plaintiffs and the members
19 of the Classes

20 127. There was a sale of goods from Defendant to Plaintiffs and the members of the
21 Classes.

22 128. Defendant breached the implied warranties by selling the Contaminated Dog Foods
23 that failed to conform to the promises or affirmations of fact made on the container or label as each
24 product contained arsenic, lead, and/or BPA.

25 129. Defendant was on notice of this breach as it was aware of the arsenic, lead, and
26 BPA included in the Contaminated Dog Foods, and based on the public investigation by the Clean
27 Label Product that showed its dog food products as unhealthy.

28

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

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

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

6 J. An order awarding attorneys' fees and costs to Plaintiffs, the Classes and

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

8 **JURY DEMAND**

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

10 Dated: July 2, 2018

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