

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**ALEXANDRA BOGGIO, on behalf of
herself and all others similarly situated,**

Plaintiff,

v.

**HILL'S PET NUTRITION, INC. and
COLGATE-PALMOLIVE COMPANY.**

Defendants.

CASE NO.:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Alexandra Boggio (“Plaintiff”) brings this action on behalf of herself and all others similarly situated, including a proposed class of nationwide consumers and a proposed subclass of California consumers that are defined herein, against Hill’s Pet Nutrition, Inc. and Colgate-Palmolive Company (“Defendants”) and sets forth the following allegations:

NATURE OF THE ACTION

1. On January 31, 2019, Defendants recalled various varieties of their Hill’s brand Science Diet and Prescription Diet canned dog foods (collectively, the “Products”).
2. Defendants expanded the recall on March 20, 2019 to include additional Products.¹
3. The Products were recalled because Defendants learned that they contained levels of Vitamin D that are poisonous to dogs, rendering the Products extremely dangerous for consumption by canines.

¹ See <https://www.hillspet.com/productlist>.

4. Contrary to the various representations and warranties described herein, Defendants permitted at least 13,500,000 cans of Products that contained toxic amounts of Vitamin D to enter the nationwide stream of commerce.

5. In fact, despite assuring consumers after its first recall on January 31, 2019 that the problem was under control by way of publishing a video to Hill's Pet Nutrition, Inc.'s website which represented and warranted that "[...] we isolated and identified the issue. We now have tighter quality controls in place to prevent this from happening again. By feeding your pet Hill's, you've placed your trust in us and we are working hard to ensure that your trust is well placed,"² Defendants failed to include all of the toxic Products because they expanded the recall on March 20, 2019 to include additional Products.³

6. Even after expanding the recall on March 20, 2019, Defendants announced that an additional lot code was omitted from the recall on May 20, 2019.⁴

7. As such, consumers have no guarantee that Defendants' presently available products are safe for their dogs to consume.

8. Further compounding Defendants' illegal conduct is that they knew or should have known that their Products contained a poisonous amount of Vitamin D prior to January 31, 2019 because they claim to subject their suppliers and raw material ingredient providers to regular quality assurance and safety checks, and claim to inspect their ingredients daily.⁵

² See <https://www.hillspet.com/productlist/jan-31-press-release>.

³ See Footnote 1.

⁴ See <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/hills-pet-nutrition-additionally-expands-voluntary-recall-select-canned-dog-food-elevated-vitamin-d>.

⁵ See <https://www.hillspet.com/about-us/quality-and-safety>.

9. These allegedly strict quality assurance standards would have revealed the presence of toxic levels of Vitamin D far in advance of the initial recall and/or certainly precluded the recall from being expanded to include additional Products as it later was.

10. Defendants were also aware in advance of January 31, 2019 that Vitamin D poisoning was a prevalent risk that required special attention because the FDA issued an advisement on December 3, 2018 that several other brands of dog food contained poisonous levels of Vitamin D.⁶

11. Defendants' recall was therefore untimely and the unreasonable delay in warning consumers that their Products were poisonous to dogs compounded consumers' risk of exposure to Products that were extremely dangerous for their dogs to consume.

12. As shown herein, Defendants formulated, manufactured, distributed, and sold the Products to consumers and promoted sale of the Products through a labeling and advertising campaign that, through various representations and warranties, strongly emphasized that the Products are healthy and safe for dogs to consume, are specially formulated for specific health and dietary requirements, inspected consistently, and are only placed into the stream of commerce after passing stern quality assurance procedures.

13. The Products contain an amount of Vitamin D that presents severe and significant health risks to dogs. These symptoms include vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and weight loss. These symptoms are likely to worsen from immediate to extensive and prolonged exposure, and may result in renal dysfunction.⁷

14. As a result of Defendants' false and misleading labeling, advertising, and warranties which conveyed that the Products were safe and healthy for dogs to consume,

⁶ See <https://www.fda.gov/animalveterinary/newsevents/ucm627485.htm>.

⁷ See <https://www.hillspet.com/productlist/faq>.

consistently inspected, only placed into the stream of commerce after passing Defendants' quality assurance protocols, and/or formulated for specific health and dietary requirements, Plaintiff and members of the proposed nationwide class and California subclass fed their dogs poisonous Products which caused them to suffer from Vitamin D toxicity and its related symptoms.

15. As a direct and proximate result of consuming the poisonous Products, Plaintiff and class members' dogs have required veterinary treatment and prescription medications. Many dogs have unfortunately had to be euthanized, including Plaintiff's French Bulldog Buddha. As such, Plaintiff and class members incurred significant monetary losses and other damages as a result of purchasing the Products.

PARTIES

16. Plaintiff Alexandra Boggio, who is a resident of Tustin Ranch, Orange County, California, purchased certain of Defendants' Products from authorized retailers in Orange County, California within the past four years, and also between late 2018 and February 2019 which, upon information and belief, represents at least a portion of the time period that Defendants' poisonous Products were available to consumers.

17. Plaintiff purchased the Products because she had been a loyal customer of Defendants for many years and believed, based on Defendants' labeling, advertising, and other representations and warranties discussed herein, that their Products were safe for her three dogs to consume.

18. Plaintiff's three dogs were two French Bulldogs named Buddha and Sasha, and an English Bulldog called Maxine.

19. Plaintiff also believed that Defendants' Products were superior to other brands of dog food because their labeling, advertising, and other representations and warranties

communicated that the Products were more nutritious than other dog foods, manufactured using more stringent safety protocols, and were specially formulated to meet her dogs' specific health and dietary needs using ingredients that were consistently inspected to ensure their safety. Defendants' labeling, advertising, and other representations and warranties also caused Plaintiff to pay a premium price for the Products in lieu of paying less money for other brands that were not similarly labeled, advertised, represented, or warranted.

20. In late 2018, Plaintiff noticed that her dogs began to suffer from symptoms of Vitamin D poisoning, most conspicuously excessive vomiting.

21. In February 2019, Buddha exhibited additional symptoms of Vitamin D poisoning such as extreme lethargy and regular incontinence. Plaintiff was forced to euthanize Buddha in February 2019.

22. After Buddha's death in February 2019 and her decision to switch Sasha and Maxine to a different brand of dog food, Sasha and Maxine recovered from their symptoms of Vitamin D poisoning.

23. The Products Plaintiff purchased included at least Hill's Science Diet Adult 7+ Healthy Cuisine Roasted Chicken, Carrots & Spinach Stew, Hill's Science Diet Adult 7+ Beef & Barley Entrée, and Hill's Science Diet Healthy Cuisine Adult 7+ Braised Beef, Carrots & Peas Stew.

24. Plaintiff fed her dogs at least 1-2 cans of the Products per day.

25. As such, Plaintiff purchased a significant amount of the Products for her dogs and paid a premium price for them over other brands. Had Plaintiff known that the Products were poisonous and would cause her dogs to suffer from severe symptoms of Vitamin D poisoning,

ultimately leading to Buddha's death and the sickness of her other dogs, her purchasing decisions would have been affected.

26. Plaintiff was unaware that the Products were the cause of her dogs' health problems until shortly before filing this Complaint.

27. Defendant Colgate-Palmolive Company is a Delaware corporation with its principle place of business at 300 Park Avenue, New York, New York 10022. Colgate-Palmolive Company is the parent company of Hill's Pet Nutrition, Inc. and exercises control over Hill's Pet Nutrition, Inc. and derived profit from the sale of the Products. Specifically, Colgate-Palmolive Company's 2018 10-K filed states "Colgate, through its Hill's Pet Nutrition segment...is a world leader in specialty pet nutrition products for dogs and cats" and states "Pet Nutrition products include specialty pet nutrition products manufactured and marketed by Hill's Pet Nutrition." Furthermore, according to Colgate-Palmolive's 2018 10-K, "[n]et sales for Hill's Pet Nutrition were [\$2.388 billion] in 2018," which includes net sale proceeds from the Products.

28. Defendant Hill's Pet Nutrition, Inc. is a Delaware corporation with its principal place of business at 400 SW 8th Avenue, Topeka, Kansas 66603.

29. Defendants formulated, manufactured, distributed, labeled, advertised, and sold the Products to consumers throughout the United States and California, specifically through an extensive network of brick-and-mortar retailers, veterinary clinics, and also online retailers.

30. As described herein Defendants labeled, advertised, represented and warranted that their Products are superior than other brands of dog food and charged a premium price for them.

JURISDICTION AND VENUE

31. The District of Kansas is a proper venue for this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate amount in controversy

exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one members of the proposed Class and Subclass is a citizen of a state different from Defendants.

32. The Court can exercise supplemental jurisdiction over the various state law claims under 28 U.S.C. § 1367.

33. The Court can exercise personal jurisdiction over Defendants because they have regular and systematic contacts with the state of Kansas, in which they do business and place their Products in the stream of commerce.

34. This Court is a proper venue for this action, pursuant to 28 U.S.C. § 1391(b)(1), because at least Defendant Hill's Pet Nutrition, Inc.'s principle place of business is in this District and it is subject to personal jurisdiction here.

FACTUAL ALLEGATIONS COMMON TO THE CLASSES

The Product Recall

35. Defendants announced in a press release on January 31, 2019 that several of their Products were being recalled due to a "supplier error."⁸ The recall notice indicated that Defendants' Products could be dangerous for canine consumption because they may contain poisonous levels of Vitamin D.⁹ Despite claiming that they "identified and isolated the error [to] prevent this from happening again," requiring "our supplier to implement additional quality testing prior to release of ingredients to Hill's," and "adding our own further testing of incoming ingredients,"¹⁰ Defendants later expanded that recall on March 20, 2019 to include additional Products¹¹ and again on May 20, 2019 to include an additional lot code.¹²

⁸ See <https://www.hillspet.com/productlist/faq>.

⁹ See <https://www.hillspet.com/productlist>.

¹⁰ See Footnote 8.

¹¹ See Footnote 9.

¹² See Footnote 4.

36. The recall notice stated “While vitamin D is an essential nutrient for dogs, ingestion of elevated levels can lead to potential health issues depending on the level of vitamin D and the length of exposure, and dogs may exhibit symptoms such as vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, and weight loss. When consumed at very high levels, vitamin D can in rare cases lead to potentially life threatening health issues in dogs, including renal dysfunction.”¹³

Defendants’ False and Misleading Warranties and Representations

37. Defendants are one of the largest manufacturers of pet food in the world. They formulated, manufactured, distributed, labeled, advertised, and sold the Products to consumers all over the United States and in California.

38. As part of their labeling and advertising campaign that, through various representations and warranties, strongly emphasizes that the Products are healthy and safe for dogs to consume, are specially formulated for specific health and dietary requirements, inspected consistently, and are only placed into the stream of commerce after clearing severe quality assurance standards, Defendants claim to “make nutrition a cornerstone of veterinary medicine”¹⁴ and sell their Products through a nationwide network of retail stores, veterinary clinics, and online retailers. Some of Defendants’ retailers include, but are not limited to, PetSmart, Petco, Amazon, Chewy, and Walmart.

39. Defendants charge a premium price for their Products based on their labeling, advertising, representations and warranties because these statements communicate to consumers that the Products are superior to other brands of dog food and are formulated and designed to address nutritional deficiencies and/or targeted health issues.

¹³ See Footnote 9.

¹⁴ See <https://www.hillspet.com/about-us/our-company>.

40. The Products at issue in this Class Action Complaint include at least those Products enumerated in Defendants’ January 31, 2019 recall and subsequent March 20, 2019 and May 20, 2019 expansions of that recall, which were published on both Hill’s Pet Nutrition, Inc.’s website¹⁵ and the U.S. Food and Drug Administration’s (“FDA”) website¹⁶:

Product Name	SKU Number	Date Code / Lot Code
Hill's® Prescription Diet® k/d® Kidney Care with Lamb Canned Dog Food, 13oz, 12-pack	2697	102020T25
Hill's® Science Diet® Adult Perfect Weight Chicken & Vegetable Entrée dog food 12 x 12.8oz cans	2975	092020T28
Hill's® Prescription Diet® c/d® Multicare Urinary Care Chicken & Vegetable Stew Canned Dog Food, 5.5oz, 24-pack	3388	102020T18
Hill's® Prescription Diet® i/d® Low Fat Canine Rice, Vegetable & Chicken Stew 24 x 5.5oz cans	3391	092020T27
Hill's® Prescription Diet® r/d® Canine 12 x 12.3oz cans	7014	092020T28 102020T27 102020T28
Hill's® Science Diet® Adult Beef & Barley Entrée Canned Dog Food, 13oz, 12-pack	7039	092020T31 102020T21
Hill's® Science Diet® Adult 7+ Healthy Cuisine Roasted Chicken, Carrots & Spinach Stew dog food 12 x 12.5oz cans	10449	092020T28
Hill's® Science Diet® Healthy Cuisine Adult Braised Beef, Carrots & Peas Stew Canned Dog Food, 12.5oz, 12-pack	10451	102020T28
Hill's® Prescription Diet® c/d® Multicare Canine Chicken & Vegetable Stew 12.5oz	3384	092020T29 102020T10 102020T25
Hill's® Prescription Diet® i/d® Canine Chicken & Vegetable Stew 12.5oz	3389	092020T28 102020T24 102020T25 102020T04 102020T10 102020T19 102020T20
Hill's® Prescription Diet® i/d® Canine Chicken & Vegetable Stew 5.5oz	3390	102020T11 112020T23 122020T07
Hill's® Prescription Diet® z/d® Canine 5.5oz	5403	102020T17 112020T22
Hill's® Prescription Diet® g/d® Canine 13oz	7006	092020T22 112020T19 112020T20
Hill's® Prescription Diet® i/d® Canine 13oz	7008	092020T21 092020T30 102020T07 102020T11 112020T22 112020T23
Hill's® Prescription Diet® j/d® Canine 13oz	7009	112020T20
Hill's® Prescription Diet® k/d® Canine 13oz	7010	102020T10 102020T11

¹⁵ See <https://www.hillspet.com/productlist>.

¹⁶ See <https://www.fda.gov/Safety/Recalls/ucm634087.htm>; see also Footnote 4.

Hill's® Prescription Diet® w/d® Canine 13oz	7017	102020T24 102020T25 112020T09 112020T10 092020T30 102020T11 102020T12
Hill's® Prescription Diet® z/d® Canine 13oz	7018	102020T04 112020T22
Hill's® Prescription Diet® Metabolic + Mobility Canine Vegetable & Tuna Stew 12.5oz	10086	102020T05 102020T26
Hill's® Prescription Diet® w/d® Canine Vegetable & Chicken Stew 12.5oz	10129	112020T11 112020T05 102020T04 102020T21
Hill's® Prescription Diet® i/d® Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz	10423	092020T27 092020T28 092020T24 102020T17 102020T19 112020T04
Hill's® Prescription Diet® Derm Defense® Canine Chicken & Vegetable Stew 12.5oz	10509	102020T05
Hill's® Science Diet® Adult 7+ Small & Toy Breed Chicken & Barley Entrée Dog Food 5.8oz	4969	102020T18
Hill's® Science Diet® Puppy Chicken & Barley Entrée 13oz	7036	102020T12
Hill's® Science Diet® Adult Chicken & Barley Entrée Dog Food 13oz	7037	092020T22 102020T13 102020T14 112020T23 112020T24
Hill's® Science Diet® Adult Turkey & Barley Dog Food 13oz	7038	102020T06
Hill's® Science Diet® Adult Chicken & Beef Entrée Dog Food 13oz	7040	112020T10 112020T11 102020T13
Hill's® Science Diet® Adult Light with Liver Dog Food 13oz	7048	112020T19
Hill's® Science Diet® Adult 7+ Chicken & Barley Entrée Dog Food 13oz	7055	092020T31 102020T13
Hill's® Science Diet® Adult 7+ Beef & Barley Entrée Dog Food 13oz	7056	102020T28 092020T31 112020T20 112020T24
Hill's® Science Diet® Adult 7+ Turkey & Barley Entrée 13oz	7057	112020T19
Hill's® Science Diet® Adult 7+ Healthy Cuisine Braised Beef, Carrots & Peas Stew dog food 12.5oz	10452	102020T28 102020T14 102020T21
Hill's® Science Diet® Adult 7+ Youthful Vitality Chicken & Vegetable Stew dog food 12.5oz	10763	102020T04 102020T05 112020T11

41. On information and belief, and because Defendants continue to recall Products despite assuring consumers that the problem has been placed under control, Plaintiff reserves the right to amend this Class Action Complaint to include additional products because Defendants may expand this recall to include contaminated products that have not been discovered and/or disclosed, including but not limited to additional wet dog foods, dry dog foods, and wet and dry cat foods that also contain toxic amounts of Vitamin D and/or other nutrients that, when consumed at high quantities, can lead to illness or death in household pets.

42. The Products include dog foods that are part of Defendants' Science Diet and Prescription Diet brands.

43. Defendants represent and warrant that Science Diet products will “[f]eed your dog’s best life with biology-based nutrition” and that “we make our foods using only high-quality ingredients.”¹⁷

44. Defendants reinforce the notion that the Science Diet Products are superior to other dog foods by claiming on their labels that they are “VETERINARIAN RECOMMENDED” as shown by example below:



¹⁷ See <https://www.hillspet.com/science-diet/dog-food>.

45. With regard to its Prescription Diet Products, Defendants emphasize that they work with veterinarians to develop a “unique position to find a solution” to the various dietary and health issues that dogs commonly encounter.¹⁸

46. To reinforce their representations and warranties that the Prescription Diet Products are formulated for specific canine health concerns, Defendants claim on their labels that they provide “CLINICAL NUTRITION” or “THERAPEUTIC DOG NUTRITION” and are designed to address health conditions including but not limited to kidney care, metabolic care, digestive care, skin/food sensitivities, urinary care, joint care, and aging as shown by example below:



47. As demonstrated by Defendants’ recall of at least 13,500,000 cans of food, which upon being consumed by Plaintiff and class members’ dogs resulted in them becoming sick or

¹⁸ See <https://www.hillspet.com/prescription-diet/dog-food>.

dying due to Vitamin D toxicity and its related symptoms, Defendants' labeling, advertising, and other representations and warranties about the excellence of their Products, including the safety protocols implemented to ensure that ingredients are safely sourced from reliable suppliers and subject to regular quality assurance and safety inspections, are false and misleading.

48. As part of Defendants' labeling and advertising campaign, they represent and warrant that the Products provide "[n]utrition that can transform the lives of pets and comfort the pet parents and vets who care for them."¹⁹

49. In order to charge a premium price for their Products, Defendants tout that "[w]e only accept ingredients from suppliers whose facilities meet stringent quality standards and who are approved by Hill's. Not only is each ingredient examined to ensure its safety, we also analyze each product's ingredient profile for essential nutrients to ensure your pet gets the stringent, precise formulation they need."²⁰

50. To compound the notion that the Products are better than other brands of dog food, are nutritious and safe to consume, Defendants represent and warrant that "[w]e conduct final safety checks daily on every Hill's pet food product to help ensure the safety of your pet's food. Additionally, all finished products are physically inspected and tested for key nutrients prior to release to help ensure your pet gets a consistent products bag to bag."²¹

51. Defendants also represent and warrant that "[w]e conduct annual quality systems audits for all manufacturing facilities to ensure we meet the high standards your pet deserves. We demand compliance with current Good Manufacturing Practices (cGMP) and Hill's high quality standards, so your pet's food is produced under clean and sanitary conditions."²²

¹⁹ See <https://www.hillspet.com/dog-food>.

²⁰ <https://www.hillspet.com/about-us/quality-and-safety>.

²¹ *Id.*

²² *Id.*

52. In generally describing their Products, Defendants make a “commitment to quality” with more than 220 veterinarians, food scientists, technicians, and PhD nutritionists working together to develop products that are safe, nutritious, and superior to other brands.²³

53. Defendants further represent and warrant that their Products contain the “precise balance” of nutrients needed for a healthy dog: “Guided by science, we formulate our food with precise balance so your pet gets all the nutrients they need — and none they don’t.”²⁴

Price Premium for the Products

54. Defendants charged a price premium for their Products because Defendants knew or should have known that such statements would cause consumers to pay more for the Products because health and safety is of utmost importance when choosing a brand of dog food.

55. Health and safety play a major, if not dispositive, role in consumers’ purchasing decisions. Because health and safety are so important to consumers, they are willing to pay a premium price for Defendants’ Products based on their aforementioned labeling, advertising, representations and warranties which communicated that the Products are safe for consumption, healthy, formulated for targeted health and nutritional needs, adhere to certain ingredient supply quality, testing and oversight, and manufacturing standards, and are generally superior to other brands of dog food.

56. Defendants’ price premium is shown below²⁵:

²³ See <https://www.hillspet.com/about-us/nutritional-philosophy>.

²⁴ *Id.*

²⁵ Pricing information obtained from <https://www.chewy.com>.

Brand	Quantity	Price	Unit Price
Hill's Pres. Diet i/d Canine Chicken & Vegetable Stew 12.5 oz.	12 cans	\$39.99	\$3.33 per can \$0.27 per ounce
Hill's Pres. Diet w/d Canine Vegetable & Chicken Stew 12.5 oz.	12 cans	\$38.99	\$3.25 per can \$0.26 per ounce
Hill's Science Diet Adult Chicken & Barley Entrée Dog Food 13 oz.	12 cans	\$22.20	\$1.85 per can \$0.14 per ounce
Hill's Science Diet Adult 7+ Beef & Barley Entrée Dog Food 13 oz.	12 cans	\$22.20	\$1.85 per can \$0.14 per ounce
Purina ONE SmartBlend Classic Ground Beef and Brown Rice Adult 13 oz.	12 cans	\$12.67	\$1.06 per can \$0.08 per ounce
Iams ProActive Health Adult Chicken and Whole Grain Rice Pate 13 oz.	12 cans	\$16.80	\$1.40 per can \$0.11 per ounce
Nature's Recipe Easy-to-Digest Chicken, Rice & Barley Recipe Cuts in Gravy Stew 13.2 oz.	12 cans	\$13.99	\$1.17 per can \$0.09 per ounce
Purina Dog Chow High Protein Chicken Classic Ground Canned Dog Food 13 oz.	12 cans	\$12.60	\$1.05 per can \$0.08 per ounce

57. Because the Products contain poisonous levels of Vitamin D and endangered the health and safety of dogs, which caused Plaintiff's and members of the Class and Subclass' dogs to become ill or die, Defendants' Products are substantially diminished in value at the point of sale or earlier and/or are worthless for their intended purpose as a dog food.

58. As a direct and proximate result of Defendants' false and misleading labeling, advertising, warranties and representations, negligence in effectuating their duty to provide Plaintiff and members of the Class and Subclass with safe and healthy dog food as they expressly and/or implicitly promised, breach of warranties, unfair practices, and other unlawful conduct detailed herein, Plaintiff and members of the Class and Subclass incurred actual damages and other

economic losses, including but not limited to the monies lost as a result of paying for the Products, veterinary expenses, prescription expenses, and any other damages to be proven at trial.

CLASS ACTION ALLEGATIONS

59. Pursuant to Fed. R. Civ. P. 23, Plaintiff, on behalf of herself and all other persons who purchased Defendants' Products nationwide and in the State of California, hereby seeks certification of a proposed nationwide class of consumers and a subclass of California consumers (the "Classes").

60. Excluded from the proposed Classes are Defendants, any entity in which Defendants have a controlling interest including any upstream or downstream affiliates, Defendants' legal counsel, officers, directors, employees, assigns and successors; any persons and entities that purchased the Products at resale; the Judge(s) to whom this matter is assigned and any member(s) of the Judge's staff or immediate family; and Class Counsel.

61. Plaintiff brings this action on behalf of the following proposed Classes:

- a. Nationwide Class: All persons in the United States who purchased the Products.
- b. California Subclass: All persons in California who purchased the Products.

62. **Numerosity:** Defendants distributed the Products to retailers throughout the United States and also sold them directly to consumers through brick-and-mortar and online retailers. Defendants have recalled at least 13,500,000 cans of Products. Therefore, it is impracticable to join all members of the Classes in a single action. Members of the Classes may be identified through sales records from authorized retailers, veterinary prescription and sales records, and self-identification processes. Notification of the proposed Classes can be effectuated by mail or E-mail, and/or by publication in print and/or online.

63. ***Commonality and Predominance:*** Common questions of law and fact exist as to all proposed members of the Classes and predominate over questions that only affect individual members of the Classes. These common questions of law and fact include, but are not limited to and subject to amendment:

- a. Whether the Products contained poisonous levels of Vitamin D;
- b. Whether Defendants' labeling, advertising, warranties and representations are false or misleading;
- c. Whether Defendants breached any express warranties;
- d. Whether Defendants breached any implied warranties, including but not limited to the implied warranty of merchantability;
- e. Whether the Products were either diminished in value or had no value as a dog food as a result of containing poisonous levels of Vitamin D;
- f. Whether Defendants owed a duty of care to Plaintiff and members of the Classes;
- g. Whether Defendants breached that duty of care;
- h. Whether Defendants were unjustly enriched as a result Plaintiff and members of the Classes purchasing the Products;
- i. Whether Plaintiff and members of the Classes have sustained damages as a result of the conduct alleged herein and the appropriate measure of such damages;
- j. Whether Defendants' conduct violated the consumer protection statutes of various states; and,
- k. Whether Plaintiff and members of the Classes are entitled to punitive damages and/or other damages that the Court deems cognizable.

64. **Adequacy:** Plaintiff is an adequate representative of the proposed Classes because her interests do not conflict with the interests of any of the class members that she seeks to represent. Plaintiff has retained attorneys who are knowledgeable and experienced in handling complex and class action litigation who will pursue this case vigorously on behalf of Plaintiff and members of the Classes.

65. **Superiority:**

- a. A class action is superior to other available means for the fair and efficient resolution or adjudication of this matter. Each member of the Classes' injuries, while individually significant, are not large enough to economically or judicially justify the pursuit of individual actions in a manner that is at all feasible. Even if members of the Classes could afford to undergo individualized litigation, the judicial system could not afford such piecemeal litigation.
- b. In addition to the burdens and expenses incident to the management of numerous actions that, as here, arise from materially similar legal and factual questions, individualized litigation may and will likely result in inconsistent judgments. Individualized litigation will also increase the delay and expense to all parties and the judicial system, while the class action mechanism risks far fewer management difficulties and provides the benefits of a single adjudication, economy of scale, and supervision by a single court.

66. **Typicality:** Plaintiff's claims are typical of the claims of the proposed Classes. Plaintiff and the members of the proposed Classes all purchased the Products, giving rise to materially similar claims.

67. In the alternative, the proposed Classes may be certified because:

- a. The prosecution of separate actions by the individual members of the proposed Classes would create a risk of inconsistent adjudications, which could establish incompatible standards of conduct for Defendants;
- b. The prosecution of individual actions could result in adjudications, which, as a practical matter, would be dispositive of the interests of non-party Class members or which would substantially impair their ability to protect their interests; and
- c. Defendants have acted or refused to act on grounds generally applicable to the proposed Classes, thereby making appropriate final relief with respect to the members of the proposed Classes as a whole.

68. Defendants benefitted from the sale of the Products to Plaintiff and members of the Classes in a determinable amount.

COUNT I

Violation of California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750 *et seq.*

69. Plaintiff, individually and on behalf of the Classes, incorporates and restates the previous paragraphs as if fully set forth herein.

70. Plaintiff and each member of the California Subclass are “consumers” as defined in CLRA § 1761(d).

71. The Products are “goods” as defined in CLRA § 1761(a).

72. Defendants are “person[s]” as defined in CLRA § 1761(c).

73. Plaintiff and each of the members of the California Subclass’ purchases of the Products were “transactions” as defined in CLRA § 1761(e).

74. Defendants’ conduct violates the following provisions of the CLRA: (1) representing that goods have characteristics, uses, and benefits which they do not have (CLRA §

1770(a)(5)); (2) representing that goods are of a particular standard, quality, or grade, if they are not (CLRA § 1770(a)(7)); and (3) advertising goods with the intent not to sell them as advertised (CLRA § 1770(a)(9)).

75. Defendants' conduct, acts, and omissions described throughout were intended to induce consumers to purchase the Products.

76. Defendants made material misrepresentations and omissions regarding the Products that they knew or in the exercise of reasonable care should have known were deceptive and likely to cause consumers to purchase the Products in reliance on those misrepresentations and omissions.

77. Defendants' conduct was done with conscious disregard of Plaintiff's rights and the rights of the members of the California Subclass.

78. Plaintiff and members of the California Subclass have been directly and proximately damaged by Defendants' conduct.

79. Pursuant to CLRA § 1780(a), Plaintiff seeks injunctive relief in the form of an order enjoining Defendants' conduct, including but not limited to the further proliferation of poisonous products as described throughout, and Plaintiff and members of the California Subclass will be irreparably harmed if such an order is not granted.

80. On July 1, 2019, Plaintiff mailed Defendants notice of their violations of the CLRA in accordance with CLRA § 1782. If Defendants fail to rectify their conduct within thirty (30) days of receipt of this notice, Plaintiff will seek leave to amend this Class Action Complaint to claim damages under the CLRA.

81. Plaintiff also seeks the recovery of court costs and reasonable attorneys' fees pursuant to CLRA § 1780(e).

COUNT II

**Violation of California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500
*et seq.***

82. Plaintiff, individually and on behalf of the Classes, incorporates and restates the previous paragraphs as if fully set forth herein.

83. California’s FAL states that “[i]t is unlawful for any [...] corporation [...] to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated [...] any statement [...] which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading [...]” FAL § 17500.

84. Defendants’ material misrepresentations and omissions described throughout violate FAL § 17500.

85. Defendants knew or in the exercise of reasonable care should have known that their conduct, including but not limited to their labeling, advertising, representations and warranty statements described throughout, was false, deceptive, and misleading.

86. Defendants’ misrepresentations and omissions are materially important to Plaintiff and members of the California Subclass and, therefore, reliance may be presumed.

87. Plaintiff and members of the California Subclass lost money as a result of Defendants’ conduct.

88. Pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17500, Plaintiff and members of the California Subclass seek an order requiring Defendants identify all Products that contain poisonous amounts of Vitamin D through strict testing procedures and, pending results of these tests, ensure all contaminated Products are removed from the stream of commerce as soon as feasibly possible.

89. Unless such an order is granted, Defendants will continue to engage in conduct as alleged herein in violation of California's FAL.

90. Plaintiff and members of the California Subclass request an order awarding restitution of any monies wrongfully acquired by Defendants as a result of the various misrepresentations and omissions described throughout.

91. Plaintiff and the members of the California Subclass seek an order requiring Defendants to pay actual damages, statutory treble damages, attorneys' fees, and any other relief available.

COUNT III

Violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq.*

92. Plaintiff, individually and on behalf of the Classes, incorporates and restates the previous paragraphs as if fully set forth herein.

93. California's UCL prohibits unfair competition, defined as "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising prohibited by [California's FAL]."

94. Plaintiff and members of the California Subclass lost money as a result of Defendants' conduct.

95. Defendants' conduct constitutes "unlawful" practices within the definition set forth in the UCL because Defendants violated the FAL and the CLRA.

96. Defendants' conduct constitutes "unfair" practices because they offend established public policy, are immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to consumers including Plaintiff and members of the California Subclass.

97. The harm caused by Defendants' conduct outweighs any utility of such conduct and has and will continue to cause substantial injuries and losses to Plaintiff and members of the California Subclass unless restrained by this Court.

98. Defendants' conduct is additionally "unfair" within the definition set forth in the UCL because Defendants violated the FAL and the CLRA.

99. Defendants' conduct constitutes "fraudulent" practices within the definition set forth in the UCL because Defendant's labeling, advertising, misrepresentations and omissions described herein are false and likely to deceive the public, including Plaintiff and members of the California Subclass.

100. As a result of Defendants' "unlawful," "unfair," and "fraudulent" conduct, Plaintiff and members of the California Subclass paid premium prices for the Products, which were worth substantially less than Defendants' labeling, advertising, representations and warranties promised, or were entirely worthless for their intended purpose as a dog food, and Plaintiff and members of the California Subclass did not obtain Products with the various qualities promised by Defendants.

101. Plaintiff and members of the California Subclass lost money as a result of Defendants' conduct.

102. Any injuries, damages, and/or losses suffered by Plaintiff and members of the California Subclass are not outweighed by any benefits to consumers, and the injuries, damages, and/or losses are those that consumers could not reasonably have avoided.

103. Defendants knew or in the exercise of reasonable care should have known that Plaintiff and members of the California Subclass could not have reasonably known or discovered that the Products contained poisonous levels of Vitamin D and were unsafe for consumption by dogs.

104. Had Plaintiff and members of the California Subclass known that the Products contained dangerous levels of Vitamin D, they would not have purchased them.

105. Defendants' wrongful business practices constitute a continuous course of unfair competition because Defendants label, advertise, and sell their Products in a manner which offends public policy, is done in a manner that is immoral, unethical, oppressive, unscrupulous, and/or injurious to consumers, including Plaintiff and members of the California Subclass. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff requests an order requiring Defendants to identify all Products that contain poisonous levels of Vitamin D through strict testing procedures and, pending results of these tests, ensure all contaminated Products are removed from the stream of commerce as soon as feasibly possible.

106. Plaintiff and members of the California Subclass request an order awarding restitution of any monies wrongfully acquired by Defendants as a result of their above-described misrepresentations and omissions, along with any other such relief permitted under the UCL.

COUNT IV

Breach of Express Warranty

107. Plaintiff, individually and on behalf of the Classes, incorporates and restates the previous paragraphs as if fully set forth herein.

108. Defendants sold and Plaintiff and members of the Classes purchased Defendants' Products, which they represented and warranted in their labeling, advertising, and other forms of promotion to consumers nationwide that they were healthy, safe for consumption by dogs, and subjected to regular and rigorous inspections and quality assurance protocols.

109. Defendants' Products did not conform to the above-delineated representations and warranties because they contained poisonous levels of Vitamin D which is dangerous for

consumption by dogs and ultimately led to Plaintiff's and members of the Classes' dogs suffering from severe health conditions and, in some cases including Plaintiff's dog Buddha, death.

110. As a direct and proximate result of Defendants' breaches of the express warranties described throughout and the Products' failure to conform to these warranties, Plaintiff and members of the Classes have been damaged in that they did not receive the Products as expressly warranted and/or paid a premium price for Products when their value was diminished, they had no value for their intended purpose as a dog food, and incurred veterinary costs, prescription costs, and other related damages.

COUNT V

Breach of Implied Warranty

111. Plaintiff, individually and on behalf of the Classes, incorporates and restates the previous paragraphs as if fully set forth herein.

112. Defendants sold and Plaintiff and members of the Classes purchased Defendants' Products.

113. At the time Defendants formulated, manufactured, advertised, sold, and distributed the Products, Defendants impliedly warranted to Plaintiff and members of the Classes that the Products were of merchantable quality and safe and fit for their purpose as a dog food.

114. Plaintiff and members of the Classes believed that the Products were of merchantable quality and fit for their intended use as a dog food.

115. Neither Plaintiff nor members of the Classes altered the Defendants' Products after purchasing them and used them as instructed.

116. Plaintiff and members of the Classes could not have known about the risks associated with the Products until after their dogs exhibited symptoms of Vitamin D poisoning.

117. Defendants' Products were not merchantable quality, did not pass without objection in the trade under the label description, were not of fair average quality within that description, were not fit for the ordinary and intended purpose as a dog food, and did not conform to the promises or affirmations of fact Defendants made on their labels, advertising, marketing, and other representations and warranties because they contained toxic levels of Vitamin D.

118. As a direct and proximate result of Defendants' breaches of their implied warranties and the Products' failure to conform to such warranties, Plaintiff and members of the Classes have been damaged in that they did not receive the Products that were of merchantable quality and/or paid a premium price for Products when their value was diminished, they had no value for their intended purpose, and incurred veterinary costs, prescription costs, and other related damages.

COUNT VI

Negligence

119. Plaintiff, individually and on behalf of the Classes, incorporates and restates the previous paragraphs as if fully set forth herein.

120. As described throughout, Defendants claim to regularly inspect their Products and ingredients and also claim to have implemented regular quality assurance and safety protocols intended to ensure that their Products are safe for dogs to consume and contain ingredients that are safe and will not harm dogs.

121. Defendants owed a duty to Plaintiff and members of the Classes to formulate, inspect, label, advertise, market, manufacture, distribute, and sell products that are safe and fit for dogs to consume.

122. Defendants failed to exercise due care, and were negligent in the formulation, inspection, manufacture, distribution, labeling, advertising, marketing, warranting, and sale of the Products to Plaintiff and members of the Classes.

123. Defendants failed to implement adequate safety inspection procedures to test the Products for toxic levels of Vitamin D, resulting in such Products entering the stream of commerce for sale to Plaintiff and members of the Classes and for consumption by their dogs.

124. Defendants failed to implement adequate safety inspection procedures to test the Products for toxic levels of Vitamin D even after assuring consumers that they had done so, resulting in the recall to be expanded to include additional products.

125. Defendants knew or in the exercise of reasonable care should have known that their Products posed an unreasonable and unacceptable risk of injury or death to Plaintiff's and members of the Classes' dogs, and that their actions and/or omissions would foreseeably result in damages that could have been avoided.

126. As a direct and proximate result of Defendants' breaches of their duty of care, Plaintiff and members of the Classes have been damaged and suffered ascertainable losses including payment for dangerous and defective Products, payment of veterinary costs, prescription costs, and other related damages.

COUNT VII

Unjust Enrichment

127. Plaintiff, individually and on behalf of the Classes, incorporates and restates the previous paragraphs as if fully set forth herein.

128. Plaintiff conferred benefits on Defendants by purchasing the Products at a premium price and Defendants had knowledge of and enjoyed such benefits.

129. Defendants have been unjustly enriched in retaining monies derived from Plaintiff's and members of the Classes' purchases of the Products. It would be unjust and inequitable for Defendants to retain those monies under these circumstances as a result of Defendants' false and misleading labeling, advertising, representations and warranties described throughout because the Products contained unreasonably high levels of Vitamin D that are harmful to dogs, which caused Plaintiff and members of the Classes to suffer injuries and losses because they would not have purchased the Products otherwise.

130. Defendants should be required to return to Plaintiff and members of the Classes the amount they paid to purchase the Products or else be unjustly enriched.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of herself and the proposed Classes, seeks the following relief:

A. An order certifying the Nationwide Class and California Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Nationwide Class and California Subclass and Plaintiff's attorneys as Class Counsel;

B. For an order of restitution and all other forms of equitable monetary relief;

C. For an order awarding Plaintiff and the Classes' reasonable attorneys' fees, expenses, and costs of suit;

D. For an order requiring Defendants to identify all Products that contain poisonous levels of Vitamin D through strict testing procedures and, pending results of these tests, ensure all contaminated Products are removed from the stream of commerce as soon as feasibly possible.

E. For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;

- F. For prejudgment and postjudgment interest on all awarded amounts;
- G. For a declaration that Defendants' conduct is in violation of the statutes forming the basis of statutory violations described herein;
- H. For any further relief the Court may deem appropriate or necessary.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims that are triable.

DATED: July 2, 2019

JONES, MCCOY & LINCOLN, P.A.

By: /s/ Brant A. McCoy
Brant A. McCoy, KS # 24303
9401 Indian Creek Pkwy, Ste. 600
Overland Park, KS 66210
T: 913.322.72000
F: 913.322.9275
brant@jmlkc.com
COUNSEL FOR PLAINTIFF
ALEXANDRA BOGGIO