

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION**

*In re: Midwestern Pet Foods Marketing, Sales
Practices and Product Liability Litigation*

Case No. 3:21-CV-00007-RLY-MPB

**CONSOLIDATED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

Plaintiffs Robert Lee, Kelleen Regan, Marcia Berger, Tammy Johnson, Harvey Williams, Jannette Kern, Ashley Lill, Charles Foster, James Buechler, Sue Flynn, Tiffany Carlson, Connor Staponski, Shannon Proulx, Stephanie Romero, Shanda Marshall, Owen Woodall, David Starnes, Chanler Potts, Vollie Griffin, Henry Franco, Jr., and Crystal Fabela (“Plaintiffs”), on behalf of themselves and all others similarly situated, bring this class action suit for damages and equitable relief against Defendants Nunn Milling Co. and Midwestern Pet Foods, Inc. (collectively, “Defendants”). Plaintiffs allege the following based upon personal information as to allegations regarding themselves, on the investigation of their counsel, and on information and belief as to all other allegations:

NATURE OF THE ACTION

1. Plaintiffs bring this case on behalf of themselves and all other consumers nationwide who bought Defendants’ pet food products that contained or may have contained excessive levels of Aflatoxin, a toxin created by the mold *Aspergillus flavus*, and pet food products contaminated with

Salmonella that Defendants failed to properly test their products for to ensure the health of pets that consume it and their owners who handle it. At high levels, Aflatoxin can result in illness and death. *Salmonella* can cause pets to become sick and can result in illness to humans who handle the contaminated pet food.

2. Defendants manufacture, warrant, advertise, market, distribute, and sell various pet foods under several brand names, including Sportmix CanineX, Earthborn Holistic, Pro Pac, Venture, Wholesomes, Sportmix, Sportstrail, Splash, Nunn-Better and Unrefined.

3. On or around December 30, 2020, Defendants announced a recall of three formulas of cat and dog food products, specifically, Sportmix Energy Plus, Sportmix Premium High Energy and Sportmix Original Cat. According to Defendants' news announcement, tests indicated that the recalled products contained "levels of Aflatoxin that exceed acceptable limits." On or around the same day, the Food and Drug Administration ("FDA") published news about Defendants' recall and reported that several dogs had fallen ill or died after consuming Defendants' Sportmix products.

4. On or around January 11, 2021, Defendants announced that they were expanding the list of recalled pet foods.¹ According to Defendants' January 11, 2021 news release, the recalled products were made with corn ingredients and were produced at their Chickasha Operations Facility in Oklahoma. The January 11, 2021 recalled products all expire on or before July 9, 2022, and involve the Pro Pac, Splash Fat Cat, Nunn Better Maintenance, Sportstrail, and Sportmix brands.

5. On or about March 26, 2021, Defendants announced yet another recall of certain dog and cat food formulas because of *Salmonella* contamination. Defendants manufactured, distributed, marketed, and sold these products under their CanineX, Earthborn Holistic, Venture, Unrefined, Pro Pac, Pro Pac Ultimates, Sportstrail, Sportmix, and Meridian brands produced at their Monmouth,

¹ <https://www.fda.gov/animal-veterinary/outbreaks-and-advisories/fda-alert-certain-lots-sportmix-pet-food-recalled-potentially-fatal-levels-aflatoxin>

Illinois Production Facility.

6. All pet food brands included in Defendants' recalls announced on December 30, 2020, January 11, 2021 and March 26, 2021 are hereinafter referred to as "Pet Food Products."

7. Defendants have marketed and advertised the Pet Food Products as being fit or suitable for animals, and/or as providing targeted nutrition, and/or as guaranteed for taste and nutrition. As alleged herein, Defendants' marketing and advertising of the Pet Food Products is false, deceptive, and misleading to reasonable consumers because the Pet Food Products contained or were likely to contain dangerous and toxic levels of Aflatoxin and/or were contaminated with *Salmonella* because they were not properly tested as required to ensure their health and safety, and thus were not as advertised, represented, or guaranteed.

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

9. Accordingly, Plaintiffs bring this action and assert claims on behalf of themselves and all other similarly situated persons (defined below) for negligence, negligent misrepresentation, breach of express and implied warranty, and for violations of relevant state consumer protection statutes, and unjust enrichment.

JURISDICTION AND VENUE

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

11. This Court has personal jurisdiction over Defendants because Defendants are headquartered in the State of Indiana, regularly conduct business in this Judicial District, and have

extensive contacts with this forum.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 as Defendants transact substantial business in this District.

13. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

THE PARTIES

Plaintiffs

14. Plaintiff **Robert Lee** (“Lee”) is a citizen of Alabama, residing in Greensboro, Alabama. Lee relied on the representations on the product’s label and bought and fed Defendants’ Sportmix Premium High Energy to his pet Poodle—Bill—who was a healthy puppy before consuming the Sportmix Premium High Energy. Lee purchased the Sportmix Premium High Energy from Walmart in Demopolis, Alabama in or around May 2020. After consuming the product, Bill’s eyes turned yellow and he experienced lethargy, loss of appetite, and vomiting. Lee made an appointment with a veterinarian, but Bill died the day of the appointment.

15. Before Defendants’ recalls, Lee was not aware nor had any knowledge that Defendants’ recalled Sportmix Premium High Energy might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Lee would not have purchased the Sportmix Premium High Energy or fed it to Bill had he known that the food and its ingredients might contain excess levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Premium High Energy, Lee relied on the representations on the food label.

16. Plaintiff **Kelleen Reagan** (“Reagan”) is a citizen of California, residing in San Jacinto, California. Reagan relied on the representations on the product’s label and bought and fed Defendants’ Sportmix Stamina to her pet Weimaraner, Tipony. Reagan purchased the Sportmix

Stamina from Chewy.com in or around December 2020. After consuming the product, Tipony experienced gastrointestinal issues, jaundice, sluggishness, and loss of appetite. Tipony was treated by a veterinarian and ultimately recovered after she stopped consuming the Sportmix Stamina. Tipony is now on a special diet to mitigate the effects of consuming the Sportmix Stamina. Reagan incurred expenses in connection with veterinary treatment and is continuing to incur additional expenses as a result of her dog consuming Sportmix.

17. Before Defendants' recalls, Reagan was not aware nor had any knowledge that Defendants' recalled Sportmix Stamina might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Reagan would not have purchased the Sportmix Stamina or fed it to Tipony had she known that the food and its ingredients might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Stamina, Reagan relied on the representations on the food label.

18. Plaintiff **Marcia Berger** ("Berger") is a citizen of Florida, residing in Lakeland, Florida. Berger relied on the representations on the product's label and bought and fed Defendants' Sportmix Energy Plus to her pet Golden Retriever—Cooper—who was healthy before consuming the Sportmix Energy Plus. Berger purchased the Sportmix Energy Plus from Tractor Supply Company in Lakeland, Florida and regularly bought a bag a month during the last two years. After consuming the product, Cooper experienced periodic diarrhea, lethargy, and was not active. Cooper ultimately recovered after he stopped consuming the Sportmix Energy Plus.

19. Before Defendants' recalls, Berger was not aware nor had any knowledge that Defendants' recalled Sportmix Energy Plus might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Berger would not have purchased the Sportmix

Energy Plus or fed it to Cooper had she known that the food and its ingredients might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Energy Plus, Berger relied on the representations on the food label.

20. Plaintiff **Tammy Johnson** (“Johnson”) is a citizen of Georgia, residing in Eastman, Georgia. Johnson relied on the representations on the product’s label and bought and fed Defendants’ Sportmix Premium Maintenance to her pet German Shorthair —Sigmund—who was a healthy puppy before consuming the Sportmix Premium Maintenance. Johnson purchased the Sportmix Premium Maintenance from Tractor Supply Company in Eastman, Georgia between September 2020 and December 2020. Within twenty-four hours of consuming the product, Sigmund experienced gastrointestinal issues and lethargy. Sigmund was treated by a veterinarian and ultimately recovered after he stopped consuming the Sportmix Premium Maintenance. Johnson incurred expenses in connection with veterinary treatment.

21. Before Defendants’ recalls, Johnson was not aware nor had any knowledge that Defendants’ recalled Sportmix Premium Maintenance might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Johnson would not have purchased the Sportmix Premium Maintenance or fed it to Sigmund had she known that the food and its ingredients might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Premium Maintenance, Johnson relied on the representations on the food label.

22. Plaintiff **Harvey E. Williams** (“Williams”) is a citizen of Georgia, residing in Baxley, Georgia. Williams relied on the representations on the product’s label and bought and fed Defendants’ Sportmix Premium High Energy to his pet American Pitbull Terriers—Jamaica, Red and Dozer—who were healthy before consuming the Sportmix Premium High Energy. Williams purchased the

Sportmix Premium High Energy from Tractor Supply Company in Baxley, Georgia in or around December 2020. After consuming the product, Jamaica, Red, and Dozer experienced sluggishness and gastrointestinal issues. Jamaica and Red passed away suddenly and unexpectedly. Jamaica had given birth to a litter of eight puppies shortly after Christmas and all the puppies also died suddenly and unexpected. Dozer ultimately recovered after he stopped consuming the Sportmix Premium High Energy.

23. Before Defendants' recalls, Williams was not aware nor had any knowledge that Defendants' recalled Sportmix Premium High Energy might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Williams would not have purchased the Sportmix Premium High Energy or fed it to Jamaica, Red, and Dozer had he known that the food and its ingredients might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Premium High Energy, Williams relied on the representations on the food label.

24. Plaintiff **Jannette Kern** ("Kern") is a citizen of Illinois, residing in Mount Vernon, Illinois. Kern relied on the representations on the product's label and bought and fed Defendants' Pro Pac Adult Mini Chunk, Earthborn Holistic Adult Vantage, and Pro Pac Adult Chunk to her pet Labrador Rottweiler Mix—Tearah—who was healthy before consuming the Pro Pac Adult Mini Chunk, Earthborn Holistic Adult Vantage, and Pro Pac Adult Chunk. Kern purchased the Pro Pac Adult Mini Chunk, Earthborn Holistic Adult Vantage, and Pro Pac Adult Chunk in her hometown between September 2020 and November 2020. After consuming the product, Tearah had jaundice eyes, experienced loss of appetite, diarrhea, and vomiting. Within two weeks of consuming the Earthborn Holistic Adult Vantage, Tearah died in November 2020.

25. Before Defendants' recalls, Kern was not aware nor had any knowledge that Defendants' recalled Pro Pac Adult Mini Chunk, Earthborn Holistic Adult Vantage, and Pro Pac Adult

Chunk might contain excessive levels of Aflatoxin or contain *Salmonella*, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. Defendants did not disclose these material facts on the food label. Kern would not have purchased the Pro Pac Adult Mini Chunk, Earthborn Holistic Adult Vantage, and Pro Pac Adult Chunk or fed the foods to Tearah had she known that the foods and ingredients might contain excessive levels of Aflatoxin or contain *Salmonella*, or that Defendants did not adequately test or inspect the food and its ingredients before selling. In buying the Pro Pac Adult Mini Chunk, Earthborn Holistic Adult Vantage, and Pro Pac Adult Chunk, Tearah relied on the representations on the food label.

26. Plaintiff **Ashley Lill** (“Lill”) is a citizen of Kansas, residing in Wichita, Kansas. Lill relied on the representations on the product’s label and bought and fed Defendants’ Sportmix Premium High Energy to her pet Pit Bull mix rescue, Lulu, and her pet Boston Terrier, Bella. Both dogs were healthy before consuming Sportmix Premium High Energy. Lill purchased the Sportmix Premium High Energy from Chewy.com in or around October and November 2020. After consuming the product, Bella experienced vomiting. Lulu’s eyes turned yellow and she experienced gastrointestinal problems and sluggishness. While Bella ultimately recovered, Lulu died at the time that she was taken for emergency care.

27. Before Defendants’ recalls, Lill was not aware nor had any knowledge that Defendants’ recalled Sportmix Premium High Energy might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Lill would not have purchased the Sportmix Premium High Energy or fed it to Lulu and Bella had she known that the food and its ingredients might contain excess levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Premium High Energy, Lill relied on the representations on the food label.

28. Plaintiff **Charles Foster** (“Foster”) is a citizen of Louisiana, residing in West Monroe,

Louisiana. Before Defendants' Sportmix product killed his four Beagles, Foster bred Beagles for hunting that he owned and sold. Foster relied on the representations on the product's label and frequently bought Defendants' Sportmix Premium High Energy from Animal House in West Monroe, Louisiana. In or around December 2020, Foster fed Defendants' Sportmix Premium High Energy to his four Beagles – Rerun, Bandit, Slim, and Bonnie – who were all healthy. After consuming the product, all four Beagles experienced lethargy, loss of appetite, and gastrointestinal problems. Within a few days all four Beagles died. Due to the speed with which the illness affected his pets, he did not have the opportunity to have the dogs seen by a veterinarian.

29. Before Defendants' recalls, Foster was not aware nor had any knowledge that Defendants' recalled Sportmix Premium High Energy might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Foster would not have purchased the Sportmix Premium High Energy or fed it to his Beagles had he known that the food and its ingredients might contain excess levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Premium High Energy, Foster relied on the representations on the food label.

30. Plaintiff **James Buechler** ("Buechler") is a citizen of Maryland, residing in Sparrows Point, Maryland. Buechler bought and fed Defendants' Sportmix Bite Size to his pet Papillon —Duo—who was healthy before consuming Sportmix Bite Size. Buechler relied on the representations on the product's label and frequently purchased Sportmix with the most recent purchase from Poor Boys Garden Center in Baltimore, Maryland in or around September 2020. After consuming the product, Duo experienced gastrointestinal problems, loss of appetite, loss of balance, shaking, and sluggishness. Duo was treated by a veterinarian but ultimately euthanized in early December 2020. Buechler incurred expenses in connection with veterinary treatment and the cremation of Duo.

31. Before Defendants' recalls, Buechler was not aware nor had any knowledge that

Defendants' recalled Sportmix Bite Size might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Buechler would not have purchased the Sportmix Bite Size or fed it to Duo had he known that the food and its ingredients might contain excess levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Bite Size, Buechler relied on the representations on the food label.

32. Plaintiff **Sue Flynn** ("Flynn") is a citizen of Michigan, residing in Ironwood, Michigan. Flynn relied on the representations on the product's label that it was suitable for her pet and bought and fed Defendants' Sportmix Stamina to her King Charles Cocker Spaniel—Ruby—who was healthy before consuming the Sportmix product. Flynn purchased the Sportmix food from Tractor Supply Company in or around May 2020. After consuming the product, Ruby experienced mild tremors and shivering, which was a sign of seizure activity. Ruby was treated by a veterinarian but later died in November 2020.

33. Before Defendants' recalls, Flynn was not aware nor had any knowledge that Defendants' recalled Sportmix food might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Flynn would not have purchased the Sportmix product or fed it to Ruby had she known that the food and its ingredients might contain excess levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix product, Flynn relied on the representations on the food label that it was suitable for her pet.

34. Plaintiff **Tiffany Carlson** ("Carlson") is a citizen of Michigan, residing in Leonard, Michigan. Carlson relied on the representations on the product's label and bought and fed Defendants' Sportmix Premium High Energy to her two pets – a Great Dane (Harley) and a Labrador

and Beagle (Zoe) mix – who were healthy before consuming Sportmix Premium High Energy. One was a service dog for her son. Carlson frequently purchased the Sportmix Premium High Energy with the most recent purchases from Chewy.com and Tractor Supply Company in or around November 2020 and December 2020. After consuming the product, both dogs experienced gastrointestinal problems and weight loss. Carlson took Zoe to the vet on or around February 17, 2021 for continued gastrointestinal issues, and Zoe died on February 19, 2021. Harley has since recovered with the use of antibiotics and digestive enzymes with probiotics. Furthermore, Carlson’s service dog could no longer accompany her son to school. Carlson incurred expenses in connection with veterinary treatment.

35. Before Defendants’ recalls, Carlson was not aware nor had any knowledge that Defendants’ recalled Sportmix Premium High Energy might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Carlson would not have purchased the Sportmix Premium High Energy or fed it to her dogs had she known that the food and its ingredients might contain excess levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Premium High Energy, Carlson relied on the representations on the food label.

36. Plaintiff **Connor Staponski** (“Staponski”) is a citizen of Missouri and resides in Lone Jack, Missouri. Staponski relied on the representations on the product’s label and bought and fed Defendants’ Sportmix Premium High Energy to her pet Labrador —Dolly—who was healthy before consuming the Sportmix Premium High Energy. Staponski purchased the Sportmix Premium High Energy from Chewy.com. in or around October 4, November 1 and November 28, 2020. After consuming the product, Dolly became lethargic, anorexic, showed signs of yellowing of her skin and had elevated liver levels. Although Staponski took her to a veterinarian several times after exhibiting becoming ill and later while receiving emergency care Dolly died. Staponski incurred expenses in connection with veterinary treatment.

37. Before Defendants' recalls, Staponski was not aware nor had any knowledge that Defendants' recalled Sportmix Premium High Energy might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Staponski would not have purchased the Sportmix Premium High Energy or fed it to Dolly had she known that the food and its ingredients might contain excess levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Premium High Energy, Staponski relied on the representations on the food label.

38. Plaintiff **Shannon Proulx** ("Proulx") is a citizen of New Mexico, residing in Artesia, New Mexico. Proulx relied on the representations on the product's label and bought and fed Defendants' Sportmix Energy Plus to her pet Blue Heeler—June—who, except for treatable urine incontinence, was healthy before consuming the Sportmix Energy Plus. Proulx purchased the Sportmix Energy Plus from Chewy.com and from Tractor Supply Company in or around January 2021 and from Tractor Supply Company in or around December 2020. After consuming the product, June experienced gastrointestinal problems and loss of appetite. June received veterinarian treatment for poisoning and ultimately recovered. Proulx incurred expenses in connection with veterinary treatment and is continuing to incur additional expenses as a result of her dog consuming Sportmix.

39. Before Defendants' recalls, Proulx was not aware nor had any knowledge that Defendants' recalled Sportmix Energy Plus might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Proulx would not have purchased the Sportmix Energy Plus or fed it to June had she known that the food and its ingredients might contain excess levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Energy Plus, Proulx relied on the representations on the food label.

40. Plaintiff **Stephanie Romero** (“Romero”) is a citizen of New Mexico, residing in Las Vegas, New Mexico. Romero relied on the representations on the product’s label and bought and fed Defendants’ Sportmix Premium High Energy to her pet Labrador mix—Olive—and pet Dachshund—Scotty—who were both healthy before consuming the Sportmix Premium High Energy. Romero purchased the Sportmix Premium High Energy from Tractor Supply Company in Las Vegas, New Mexico in or around December 2020 and about every two weeks prior to this date. After consuming the product, both dogs experienced gastrointestinal problems, loss of appetite, and sluggishness. Olive also experienced seizures, confusion, jaundice, and urinated bright orange. Scotty was found with a pool of blood near him. Both dogs were taken to the veterinarian, but Olive and Scotty died. Romero incurred expenses in connection with veterinary treatment.

41. Before Defendants’ recalls, Romero was not aware nor had any knowledge that Defendants’ recalled Sportmix Premium High Energy might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Romero would not have purchased the Sportmix Premium High Energy or fed it to Olive and Scotty had she known that the food and its ingredients might contain excess levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Premium High Energy, Romero relied on the representations on the food label.

42. Plaintiff **Shanda Marshall** (“Marshall”) is a citizen of New York, residing in Portageville, New York. Marshall relied on the representations on the product’s label and bought and fed Defendants’ Sportmix Premium Energy Plus and Sportmix Premium High Energy to her pet Bulldogs—Paris, Candy, Opal, and Chanel—and her Chinese Tibetan Mastiff—Nicki—who were all healthy before consuming the Sportmix Premium Energy Plus and Sportmix Premium High Energy. Marshall purchased the Sportmix Premium Energy Plus and Sportmix Premium High Energy from Chewy.com between approximately June 2020 and December 2020. After consuming the product, all

dogs experienced gastrointestinal problems, loss of appetite, and sluggishness. Nicki died suddenly in or about November 2020. Paris and Candy gave birth to litters of puppies in or about December 2020 and in or around October 2020, respectively. The puppies inexplicably died, with Paris's puppies showing bruising on their stomachs. Opal gave birth to a litter in or about December 2020, and each puppy was born with a deformity, including severe cleft palates. Opal died in or about January 2021. In or about February 2021, half of Chanel's puppies were stillborn, and the others died shortly after.

43. Before Defendants' recalls, Marshall was not aware nor had any knowledge that Defendants' recalled Sportmix Premium Energy Plus and Sportmix Premium High Energy might contain excessive levels of Aflatoxin or contain *Salmonella*, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Marshall would not have purchased the Sportmix Premium Energy Plus or Sportmix Premium High Energy or fed it to her dogs had she known that the food and its ingredients might contain excess levels of Aflatoxin or contain *Salmonella*, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Energy Plus and Sportmix Premium High Energy products, Marshall relied on the representations on the food label.

44. Plaintiff **Owen Woodall** ("Woodall") is a citizen of North Carolina, residing in Dallas, North Carolina. Woodall relied on the representations on the product's label and bought and fed Defendants' Sportmix Energy Plus to his pet Treeing Walker—Billy—who was healthy before consuming the Sportmix Energy Plus food. Woodall purchased the Sportmix Energy Plus from Southern States in Dallas, North Carolina in or around November or December 2020. After consuming the product, Billy experienced loss of appetite, weight loss, gastrointestinal issues, and growths on his intestines and anus. Billy was treated by a veterinarian but was ultimately euthanized in early January 2021. Woodall incurred expenses in connection with veterinary treatment.

45. Before Defendants' recalls, Woodall was not aware nor had any knowledge that

Defendants' recalled Sportmix Energy Plus might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Woodall would not have purchased the Sportmix Energy Plus or fed it to Billy had he known that the food and its ingredients might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix High Energy Plus, Woodall relied on the representations on the food label.

46. Plaintiff **David Starnes** ("Starnes") is a citizen of Oklahoma, residing in Fletcher, Oklahoma. Starnes relied on the representations on the product's label and bought and fed Defendants' Sportmix Premium High Energy to his pet Labradors—Avery, Chloe, and Hazel—who were all active and playful before consuming the Sportmix Premium High Energy. Starnes purchased the Sportmix Premium High Energy from Chewy.com in or around November 2020. After consuming the product, Avery experienced jaundice and could barely walk. Hazel experienced liver failure and Chloe lost her appetite. Avery died the morning before her scheduled veterinarian appointment. Chloe and Hazel were treated by a veterinarian who diagnosed them with poisoning, but later both dogs died.

47. Before Defendants' recalls, Starnes was not aware nor had any knowledge that Defendants' recalled Sportmix Premium High Energy might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Starnes would not have purchased the Sportmix Premium High Energy or fed it to Avery, Chloe, or Hazel had he known that the food and its ingredients might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Premium High Energy, Starnes relied on the representations on the food label.

48. Plaintiff **Chanler Potts** ("Potts") is a citizen of Tennessee, residing in Sante Fe, Tennessee. Potts relied on the representations on the product's label and bought and fed Defendants'

Sportmix Premium High Energy to her pet Labrador Retrievers—Camden and Crocket—and her German Short-Haired Pointer—Honey—who were all healthy before consuming the Sportmix Premium High Energy. Potts purchased the Sportmix Premium High Energy from Maury Farmers Co-Op in Columbia, Tennessee for several years until approximately January 2021. After consuming the product, Camden and Cocket experienced seizures. Potts took both dogs to a veterinarian where Camden was paralyzed for nearly 24 hours. After treatment, both dogs recovered. After consuming Sportmix Premium High Energy, Honey became and remains lethargic. Potts incurred expenses in connection with veterinary treatment.

49. Before Defendants’ recalls, Potts was not aware nor had any knowledge that Defendants’ recalled Sportmix Premium High Energy might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Potts would not have purchased the Sportmix Premium High Energy or fed it to Camden, Crocket, and Honey had she known that the food and its ingredients might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Premium High Energy, Potts relied on the representations on the food label.

50. Plaintiff **Vollie Griffin** (“Griffin”) is a citizen of Texas, residing in Cuero, Texas. Griffin relied on the representations on the product’s label and bought and fed Defendants’ Sportmix Energy Plus to her pet Rottweiler—Bishop—who was healthy before consuming the Sportmix Energy Plus. Griffin purchased the Sportmix Energy Plus from Ful-O-Pep in Cuero, Texas in or around December 2020. After consuming the product, Bishop experienced skin issues, gastrointestinal problems, and swelling of his testicles requiring him to be neutered. Bishop was seen by a veterinarian and prescribed medication for diarrhea but continues to suffer symptoms. Griffin incurred expenses in connection with veterinary treatment and incurs periodic expenses as a result of her dog consuming Sportmix.

51. Before Defendants' recalls, Griffin was not aware nor had any knowledge that Defendants' recalled Sportmix Energy Plus might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Griffin would not have purchased the Sportmix Energy Plus or fed it to Bishop had she known that the food and its ingredients might contain excess levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix Energy Plus, Griffin relied on the representations on the food label.

52. Plaintiff **Henry Franco, Jr.** ("Franco") is a citizen of Texas, residing in Big Springs, Texas. Franco relied on the representations on the product's label and bought and fed Defendants' Sportmix High Protein and Sportmix Stamina to his pet American Bully—Luna—who was healthy before consuming the Sportmix High Protein and Sportmix Stamina. Franco purchased the Sportmix products from Tractor Supply Company in Big Spring, Texas in or around November 2020. After consuming the product, Luna experienced shaking, loss of appetite, excessive thirst, loss of balance, and difficulty lifting her head. The day after experiencing these symptoms Luna died before Franco could take her to the veterinarian.

53. Before Defendants' recalls, Franco was not aware nor had any knowledge that Defendants' recalled Sportmix High Protein and Sportmix Stamina might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food labels. Franco would not have purchased the Sportmix products or fed them to Luna had he known that the food and its ingredients might contain excess levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix High Protein and Sportmix Stamina, Franco relied on the representations on the food labels.

54. Plaintiff **Crystal Fabela** ("Fabela") is a citizen of Texas, residing in Amarillo, Texas.

Fabela relied on the representations on the product's label and bought and fed Defendants' Sportmix High Protein to her pets Maltese and Yorkshire Terrier mix—Sky—, her Labrador—Luna—, and her Standard Poodle—Baxter—who were all healthy before consuming the Sportmix High Protein. Fabela purchased the Sportmix High Protein from Rancher's Supply in Amarillo, Texas in or around January 4, 2021. After consuming the product, Fabela's three dogs experienced gastrointestinal problems. After receiving veterinarian care all three dogs recovered but complications remain. Luna and Baxter continue to experience gastrointestinal problems, and Sky has permanent liver damage. Fabela incurred expenses in connection with veterinary treatment and is continuing to incur additional expenses as a result of her dogs consuming Sportmix.

55. Before Defendants' recalls, Fabela was not aware nor had any knowledge that Defendants' recalled Sportmix High Protein might contain excessive levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling it. Defendants did not disclose these material facts on the food label. Fabela would not have purchased the Sportmix High Protein or fed them to Sky, Luna, and Baxter had she known that the food and its ingredients might contain excess levels of Aflatoxin, or that Defendants did not adequately test or inspect the food and its ingredients before selling the product. In buying the Sportmix High Protein, Fabela relied on the representations on the food label.

Defendants

56. Defendant Nunn Milling Co. is the parent company of Midwestern Pet Foods, Inc. Defendant is a domestic for-profit corporation registered in Indiana, and its principal place of business is 9634 Hedden Rd., Evansville, Indiana. Defendant is a "fourth generation" and "family-owned" business operating since 1926. Defendant does business throughout the United States, selling its pet food products at large and small retailers and online retailers, such as Amazon.com. Defendant's products include those shared with co-defendant Midwestern Pet Foods, Inc. (Sportmix, Pro Pac, Sportstrail, Splash, Earthborn Holistic, Venture, Unrefined, and Wholesomes) and Nunn-Better, its

own brand of dog food.

57. Defendant Midwestern Pet Foods, Inc. is a domestic for-profit corporation registered in Indiana, and its principal place of business is also 9634 Hedden Rd., Evansville, Indiana. Defendant is a “fourth generation” and “family-owned” business operating since 1926. Defendant does business throughout the United States, selling its pet food products at large and small retailers and online retailers, such as Amazon.com and Chewy.com. Defendant’s products include Sportmix, Pro Pac, Sportstrail, Splash, Earthborn Holistic, Venture, Unrefined, and Wholesomes. Defendant shares these listed brands with parent company and co-defendant, Nunn Milling Co. Defendants own four facilities that manufacturer their pet foods in Oklahoma, Illinois, New York and Indiana.

FACTUAL ALLEGATIONS

The Pet Food Products

58. Defendants manufacture and sell dog and cat food, including canned and dried foods and treats. Defendants tout themselves as family-owned businesses since 1926. They claim that over the years, they have “learned a lot about family, pet companions and making high-quality pet food and treats.”

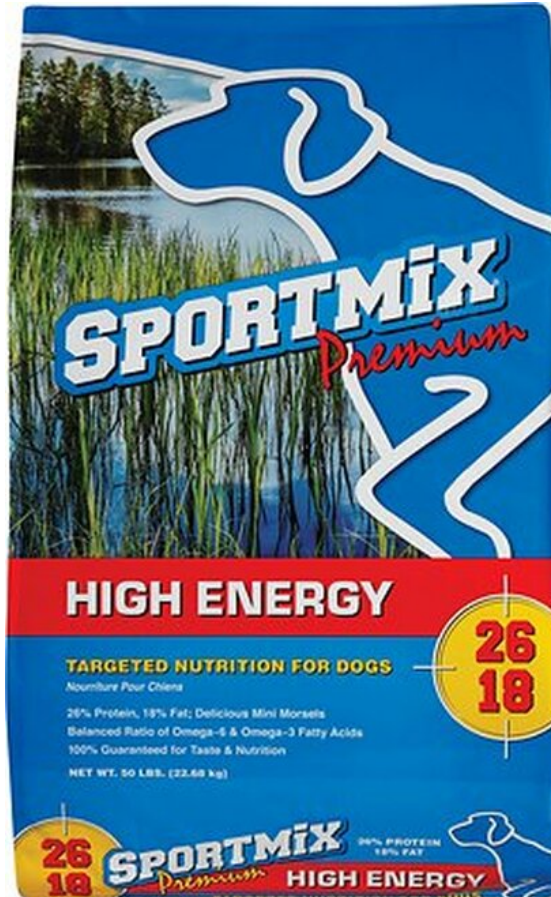
59. Defendants have several brands of pet food, including the following: Sportmix CanineX, Earthborn Holistic, Pro Pac Ultimates, Venture, Wholesomes, Sportmix, Unrefined, Sportstrail, Nunn-Better Hunter’s Select, and Splash Fat Cat.

60. Defendants market, advertise, represent, tout, hold out, and warrant their food products, including the Pet Food Products, as being fit or suitable for pets such as dogs and cats. Many of their dried pet foods are sold in large bags up to 50 lbs.

61. For example, regarding the Sportmix brand, on the front of the food product label Defendants include an illustration of a dog, thereby indicating that the food is fit or suitable for dogs. Defendants also advertise on the front of the Sportmix food label, “TARGETED NUTRITION FOR DOGS,” in bold, conspicuous font. Further, Defendants state on the front of the Sportmix dog food

labels, “100% Guaranteed for Taste & Nutrition.” Image 1 below depicts a sample of the Sportmix dog food label at issue:

Image 1



62. Reasonable consumers such as the Plaintiffs understood (and understand) that nutrition for their pets is about eating a healthy and balanced diet, and as such were under the mistaken belief that Defendants Pet Food Products were nutritious for their pets when in fact it was contaminated.

63. Defendants also reaffirm their claims of healthy and nutritious pet food by touting several claimed benefits of their Sportmix dog food on their website. Sportmix is sold in different formulas, including: Energy Plus, High Energy Adult Chunk, High Energy, Maintenance, Stamina and Puppy Small Bits. Each of these formulas is advertised as being nutritious for specific types of dogs. For example, Energy Plus is “formulated for highly active dogs needing a maximum level of energy,”

such as dogs participating in competitive events or high stress working dogs. All of the Sportmix formulas are advertised on Defendants' website as being "formulated to meet the nutrition levels established by the AAFCO Dog Food Nutrient Profiles" for maintenance, except for the Puppy Small Bites formula, which Defendants says is "formulated to meet the nutritional levels established by the AAFCO Dog Food Nutrient Profiles" for lactation/gestation and growth of dogs.

64. Regarding the Sportmix cat food, on the front of the food product label Defendants include an illustration of a cat, thereby indicating that the food is fit or suitable for cats. Defendants also advertise on the front of the Sportmix cat food label, "TARGETED NUTRITION FOR CATS AND KITTENS," in bold, conspicuous font. Further, Defendants state on the front of the Sportmix cat food labels, "100% Guaranteed for Taste & Nutrition." Image 2 below depicts a sample of the Sportmix cat food label at issue:

Image 2



65. Defendants also reaffirm their claims of healthy and nutritious pet food by touting several claimed benefits of their Sportmix cat food on their website. Sportmix for cats is sold in only one formula: Original Recipe. Specifically, Defendants say the Original Recipe cat food is “formulated to ensure 100% complete and balanced nutrition for your cat, supplying essential nutrients needed to promote strong muscles and bones, a glossy coat and bright eyes.” Further, Defendants claim that Sportmix cat food is “formulated to meet the nutrition levels established by the AAFCO Dog [sic] Food Nutrient Profiles for all life states.”

66. At the time of the recall in January 2021, Defendants also touted their testing of their pet food products. Specifically, the Sportmix website also included representations about the testing performed on the ingredients and products to ensure the safety and health of the animals that consume them²:

² After being alerted to the misrepresentations by Plaintiffs, Midwestern removed its statements regarding testing of its ingredients and products for health and safety. SPORTMiX, FAQ Wayback Machine as of Dec. 31, 2020, <https://web.archive.org/web/20201231160949/https://www.sportmix.com/faq/> (last visited Jan. 17, 2021). The federal Food Safety Modernization Act requires that manufacturers including Defendants create a hazard plan to identify and prevent hazards like aflatoxin and salmonella and other potential toxins in pet food. <https://www.fda.gov/animal-veterinary/animal-food-feeds/food-safety-modernization-act-and-animal-food> (last visited July 20, 2021).

QUALITY AND SAFETY

What safety and quality control measures are used by Midwestern Pet Foods?

Midwestern Pet Foods has quality control personnel and laboratories at each plant to test incoming ingredients and finished products. This ranges from managing guarantees, to testing things like degree of cook and microbial confirmation for release. All of our plants are FSMA-ready and follow the GMP regulations as put out through FSMA and the FDA. Additionally, all of our safety technicians follow all OSHA and state regulations.

Which SPORTMiX foods meet AAFCO requirements?

All SPORTMiX foods are designed to provide complete and balanced nutrition and meet Association of American Feed Control Officials (AAFCO) requirements.

What testing is done beyond AAFCO trials?

Midwestern Pet Foods conducts a variety of comprehensive food safety-related tests and studies, including salmonella, ebac, clostridium, plate count, etc., as well as numerous digestive and stability related studies.

Are animals tested in laboratories?

Midwestern Pet Foods is committed to the humane treatment of all animals and does not test on animals in laboratories. When introducing a new product, Association of American Feed Control Officials (AAFCO) feeding trials are completed at a farm with an in-home atmosphere that is non-invasive, non-lethal and cage-free. All animals are humanely treated.

Are there any current recalls?

No, Midwestern Pet Foods has an unblemished safety record, never having had a product recall.

INGREDIENTS

Are ingredients tested?

With the health and safety of your pet in mind, we choose only ingredient sources we can trust. All ingredients used in our SPORTMiX products are thoroughly tested and undergo many checkpoints to ensure safety and quality standards are met. First, suppliers run a multitude of tests before sending any ingredients to our manufacturing facilities. Next, the ingredients are typically tested as they arrive at our manufacturing plant before they are accepted and unloaded from their shipping containers. Lastly, finished product is tested again. In our long history Midwestern Pet foods has an unblemished safety record, never having had a product recall.

Are there ingredients from China in this food?

Midwestern Pet Foods sources all ingredients from US suppliers whenever possible. Some examples of ingredients that must be sourced outside the US are lamb meal from Australia or New Zealand and flaxseed from Canada. Vitamin premixes are formulated, sourced and blended in the United States by a US company in a human grade facility. All ingredients are thoroughly tested and undergo many quality checks to ensure safety.



67. As to the Nunn-Better dog food, on the front of the food product label Defendants include an illustration of a dog, thereby indicating that the food is fit or suitable for dogs. Defendants also advertise on the front of the Nunn-Better dog food label, “Complete & Balanced Nutrition,” and “100% Guaranteed.” Image 3 below depicts a sample of the Nunn-Better dog food label at issue:

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Image 3



68. Regarding the Pro Pac Dog food, on the front of the food product label Defendants include an illustration of a dog, thereby indicating that the food is fit or suitable for dogs. Defendants also advertise on the front of the Pro Pac Dog food label, “100% Guaranteed Taste & Nutrition.”

Image 4 below depicts a sample of the Pro Pac Dog food label at issue:

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Image 4



69. Defendants' Sportstrail dog food on the front of the food label includes an illustration of hunting dogs, thereby indicating that the food is fit or suitable for dogs. Image 5 below depicts a sample of the Sportstrail dog food label at issue:

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Image 5



70. Defendants' Splash Fat Cat fish food label includes an illustration of a fish with the words "For All Fresh Water Fish," thereby indicating that the food is fit or suitable for all fresh water fish. Image 6 below depicts a sample of the Splash Fat Cat fish food label at issue:

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Image 6



71. Defendants' Earthborn Holistic dog food pictures a large dog and the words "Holistic Food for Adult Dogs" on the front label, thereby indicating that the food is fit or suitable for dogs. Defendants' webpage also touts that the product's formula is made with "the best dog food ingredients" and will "support your dog's everyday health for years to come."³ Image 7 below depicts a sample of the Earthborn Holistic dog food at issue:

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³ <https://www.earthbornholisticpetfood.com/products/dog-food/grain-free/>;
<https://www.earthbornholisticpetfood.com/product/dog-food/adult-vantage/>

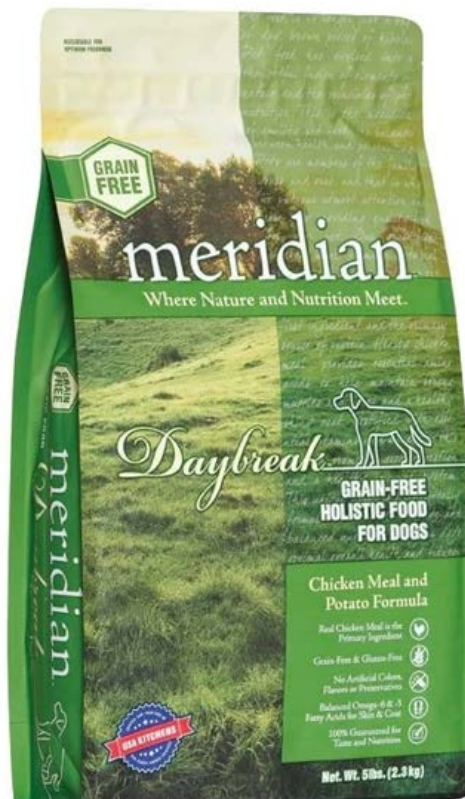
Image 7



72. Regarding Defendants’ Meridian dog food, the product’s front label includes an outline of a dog above the words “Grain-Free Holistic Food for Dogs,” thereby indicating that the food is fit or suitable for dogs. On their webpage, Defendants also claim that Meridian’s recipe uses “our own board-certified Ph.D. nutritionist” to ensure that the dog food “keep[s] your pet healthy...” Image 8 below depicts a sample of the Meridian dog food at issue:

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Image 8



73. Defendants' Unrefined includes the words "Holistic Food for Dogs & Puppies" on the front label, thereby indicating that the product is fit or suitable for dogs. The product label also has a cartoon image of a dog with the word "Love Your Dog. Love Your Planet." Image 9 below depicts a sample of the Unrefined dog food at issue:

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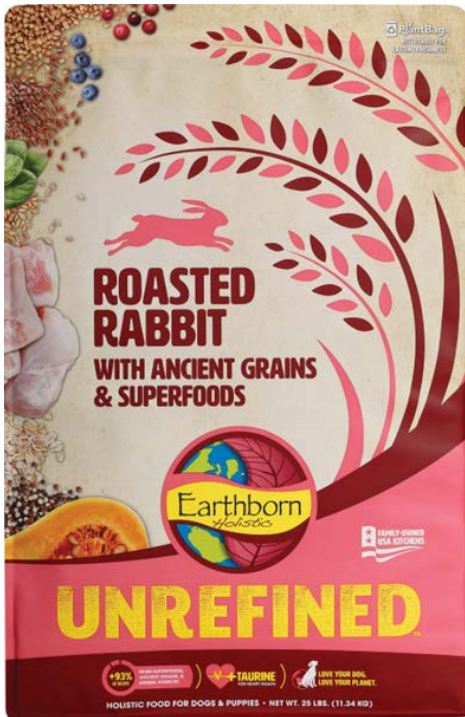
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Image 9



74. As for the Venture dog food, Defendants’ front label reads “Love your dog. Love your planet,” thereby indicating it is fit or suitable for dogs. Defendants’ webpage touts that Venture’s ingredients give dogs “great nutrition.”⁴ Image 10 below depicts a sample of Venture dog food:

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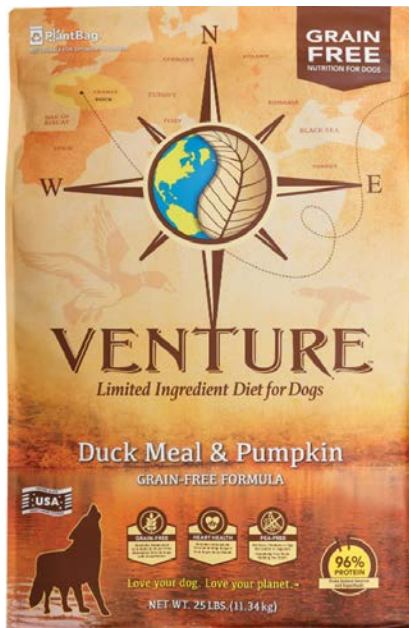
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⁴ <https://www.earthbornholisticpetfood.com/product/dog-food/duck-meal-pumpkin/>

Image 10



75. Finally, Defendants' Wholesomes dog food depicts an illustrated German Shepherd with the words "Food for Dogs" on their front label, thereby indicating that it is fit or suitable for dogs. Defendants claim that the product is a "wholesome alternative to common pet nutrition."⁵ Image 11 below depicts a sample of Wholesomes dog food at issue:

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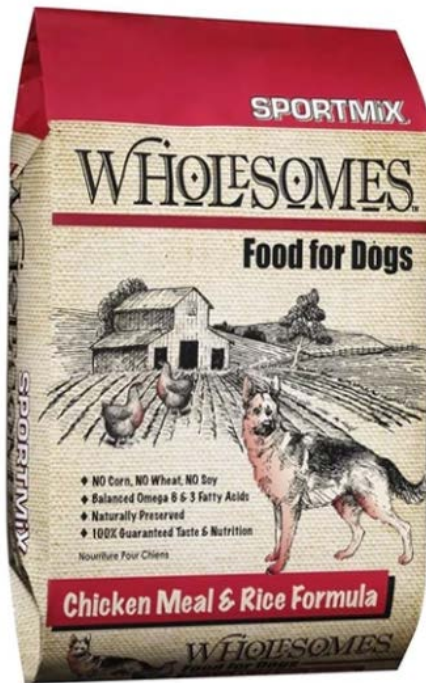
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⁵ <https://www.sportmix.com/dog-food/wholesomes/wholesomes-chicken-meal-rice-formula/>

Image 11



76. Defendants also reaffirmed their claims of healthy and nutritious pet food by representing, or represented, on their website for Sportmix that they have a board-certified nutritionist on staff who creates their pet food recipes.⁶

77. Before the recalls, Defendants also reaffirmed their claims of healthy and nutritious pet food by touting the Pet Food Products' safety by highlighting the testing performed on their ingredients and final products, including on the Pro Pac website below:

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⁶ <https://www.sportmix.com/faq/>

Image 12 & 13

INGREDIENTS

Do these products contain artificial flavors, preservatives, or colors?


No, PRO PAC Ultimates recipes use only the best natural ingredients.

Are ingredients tested?

With the health and safety of your pet in mind, we choose only ingredient sources we can trust. All ingredients used in our PRO PAC Ultimates products are thoroughly tested and undergo many checkpoints to ensure safety and quality standards are met. First, suppliers run a multitude of tests before sending any ingredients to our manufacturing facilities. Next, the ingredients are typically tested as they arrive at our manufacturing plant before they are accepted and unloaded from their shipping containers. Lastly, finished product is tested again. In our long history Midwestern Pet Foods has an unblemished safety record, never having had a product recall.

Are there ingredients from China in this food?

Midwestern Pet Foods sources all ingredients from US suppliers whenever possible. Some examples of ingredients that must be sourced outside the US are lamb meal from Australia or New Zealand, tapioca from Vietnam and Thailand and flaxseed from Canada. Vitamin premixes are formulated, sourced and blended in the United States by a US company in a human grade facility. All ingredients are thoroughly tested and undergo many quality checks to ensure safety.



QUALITY AND SAFETY

What safety and quality control measures are used by Midwestern Pet Foods?

Midwestern Pet Foods has quality control personnel and laboratories at each plant to test incoming ingredients and finished products. This ranges from managing guarantees, to testing things like degree of cook and microbial confirmation for release. All of our plants are FSMA-ready and follow the GMP regulations as put out through FSMA and the FDA. Additionally, all of our safety technicians follow all OSHA and state regulations.

Which PRO PAC Ultimates foods meet AAFCO requirements?

All PRO PAC Ultimates foods are designed to provide complete and balanced nutrition and meet Association of American Feed Control Officials (AAFCO) requirements.

What testing is done beyond AAFCO trials?

Midwestern Pet Foods conducts a variety of comprehensive food safety-related tests and studies, including salmonella, ebac, clostridium, plate count, etc., as well as numerous digestive and stability related studies.

Are animals tested in laboratories?

Midwestern Pet Foods is committed to the humane treatment of all animals and does not test on animals in laboratories. When introducing a new product, Association of American Feed Control Officials (AAFCO) feeding trials are completed at a farm with an in-home atmosphere that is non-invasive, non-lethal and cage-free. All animals are humanely treated.

Are there any current recalls?

No, Midwestern Pet Foods has an unblemished safety record, never having had a product recall.

78. Moreover, in a published interview with Defendants' marketing coordinator, Katie

McNulty, McNulty stated the Defendants' Pet Food Products are manufactured in four "state-of-the-art" kitchens in Indiana, Illinois, Oklahoma, and New York. McNulty also emphasized that Defendants do not co-manufacture foods for other companies. "This gives consumers peace of mind as we can focus on crafting wholesome recipes, choosing trustworthy ingredient sources, and producing safe and nutritious food."

Pet Foods with Aflatoxins are Unsafe and Dangerous

79. Mycotoxins are toxins from molds that can grow on agricultural commodities including grains, seeds, and animal food. Environmental factors, such as temperature, humidity, and rainfall during growing, harvesting, and storage impact the occurrence of these toxins. Mycotoxins remain in food throughout every phase of production and are not usually destroyed by animal food production processes. The potential toxicity of exposure to mycotoxins may be compounded by other factors as well including the interaction or combination with other toxins.

80. When consumed by animals or humans, the results can be detrimental, resulting in illness including neurologic impairment, liver, kidney, or heart failure, or even death.

81. There are several hundreds of different types of mycotoxins, but one of the most dangerous to humans and animals is Aflatoxin. Aflatoxins are produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus*, which grow in grains, soil, and hay. Crops that are often affected by Aflatoxins are cereal (corn, sorghum, wheat, and rice), oilseeds (soybean, sunflower, and cotton seeds), spices (chili peppers, ginger, turmeric, and coriander) and tree nuts (almond, walnut, pistachio, and coconut).

82. Aflatoxin affects the liver of animals (more commonly dogs than cats) and is also known as a cancer-causing agent. Because Aflatoxin affects mainly the liver, gastrointestinal and reproductive issues may arise from consumption of the toxin. Symptoms of high levels of Aflatoxin consumption include jaundice, anemia, fever, lethargy, bloody diarrhea, severe vomiting, and discolored urine. At excessive levels it can be fatal to animals.

83. Aflatoxin ends up in commercial pet food because of the ingredients that are used, such as corn, rice, wheat cereals, or soybeans. Processed pet foods containing corn (such as corn flour, whole grain corn, and corn gluten meal) are likely to become contaminated with Aflatoxin. The toxin often contaminates agricultural crops, like corn, before they are harvested due to certain conditions like high temperatures, excessive drought periods, or pre-harvest contamination by insects. Aflatoxin may also develop if crops are wet for a long time, or they may develop on stored crops where there is moisture resulting in mold development. An absence of visible mold does not guarantee freedom from Mycotoxins, including Aflatoxins.

84. The presence of Aflatoxins in pet foods is well known to manufacturers like Defendants. In 1998, 2005, 2011, and 2013, there were extensive recalls due to the Aflatoxins in dog and cat foods. In 2020, several pet foods were reported as having extensive Aflatoxins. For example, in September 2020, Sunshine Mills, Inc. identified and recalled certain brands of pet food made with corn as containing high levels of Aflatoxin. It later expanded that recall in October 2020 to include 15 brands.

85. Due to this known risk and danger of Aflatoxins in pet foods, manufacturers should have in place or implement quality and preventive control standards and practices to prevent sourcing of and use of ingredients with Aflatoxins in pet foods.

Pet Foods with *Salmonella* are Dangerous to Pets and Humans

86. *Salmonella* is a group of bacteria that can cause foodborne illness or salmonellosis. *Salmonella* bacteria live in the intestinal tract of humans and animals and are transmitted through the fecal-oral route. Because pet foods contain animal products, contaminated ingredients can transfer to household pets through food.

87. The FDA warns that pet foods contaminated with *Salmonella* “are of a particular public

health importance because they affect both human and animal health.”⁷ *Salmonella* can sicken animals that eat contaminated food, potentially causing vomiting, diarrhea, bloody stools, fever, loss of appetite, and lethargy.

88. Humans can become ill with *Salmonella* through contaminated pet food. If a human handles contaminated food and then touches their mouth, they can accidentally ingest the bacteria. Additionally, people with *Salmonella* on their bodies or clothes can then spread the bacteria to other people or surfaces. Symptoms include diarrhea, abdominal pain, fever, and vomiting. Symptoms can become severe when the infection spreads to the bloodstream and organs. The CDC estimates that *Salmonella* causes approximately 1.35 million illnesses, 26,500 hospitalizations, and 420 deaths in the United States each year.⁸

89. Due to this known risk and danger of *Salmonella*, manufacturers should have in place or implement quality and preventive control standards and practices to prevent sourcing of and use of ingredients with *Salmonella* in pet foods.

Defendants Failed to Implement Required Preventative Hazard Controls.

90. Under the Federal Food, Drug, and Cosmetic Act ("FDCA"), the FDA is the government agency primarily responsible for making sure that, among other things, food for both people and animals is safe, properly manufactured, and properly labeled, although manufacturers are left much self-regulation. The FDCA, 21 U.S.C. § 342(a)(1), prohibits foods that are adulterated due to poisonous substances. Similarly, state laws prohibit adulteration of pet foods that contain poisonous substances that may render it injurious to health.

91. The FDA sets action levels and tolerances to limit and prevent potentially harmful substances in animal and human foods. If any product exceeds this amount, the FDA will take legal

⁷ <https://www.fda.gov/animal-veterinary/outbreaks-and-advisories/fda-cautions-pet-owners-not-feed-performance-dog-raw-pet-food-due-salmonella-listeria-monocytogenes>

⁸ <https://www.cdc.gov/salmonella/general/index.html>

action to remove it from the market such as mandating a recall. However, the FDA states that action levels are not permissible levels if a hazard can be prevented.

92. The FDA requires animal food manufacturers to identify potential hazards within the manufacturing process and provide evidence of consistent monitoring and preventive controls for mycotoxins in animal food to prevent them from harming animals.

93. The FDA has set action levels for aflatoxin in pet food at 20 parts per billion (ppb).

94. Fumonisin is another mycotoxin produced by the molds *Fusarium moniliforme* (*F. verticillioides*), *F. proliferatum*, and other *Fusarium* species that grow on agricultural commodities - mainly in corn - in the field or during storage. More than ten types of fumonisins have been identified with the most prevalent being *fumonisin B1* (FB1) - believed to be the most toxic, *fumonisin B2* (FB2), and *fumonisin B3* (FB3). High levels of fumonisins are associated with hot and dry weather, followed by periods of high humidity and in corn damaged by insects. A variety of adverse health effects in animals have been associated with fumonisins including neurological symptoms, cardiopulmonary failures, and kidney failure. The FDA has set the action level for fumonisins in pet food at 10 parts per million (ppm).

95. Vomitoxin or Deoxynivalenol is another mycotoxin produced by mold commonly associated with grains such as wheat, barley, oats and corn. It may cause symptoms such as vomiting, diarrhea, abdominal pain, headaches, dizziness, fever, and it may cause immunological issues. The FDA has set an action level of 5 ppm for ingredients and 2 ppm for total ration for vomitoxin.

96. Zearalenone, another mycotoxin, is produced by the growth of the fungus *Fusarium graminearum* on food commodities. This mold grows on foods during periods of low temperatures coupled with high humidity, although it can grow during other weather conditions. When the toxin is present in food at high levels or when there is long term exposure at low levels, it can cause reproductive disorders. Although the FDA has not established an action level for zearalenone, the Office of Indiana State Chemist ("OISC") has concluded that the critical level, that is the level

considered to be unsatisfactory, is 0.5 ppm under the Indiana Commercial Feed Law (IC15-5-13). Ochratoxin A is another mycotoxin produced by molds in the *Aspergillus* and *Penicillium* families. Ochratoxin A can be produced in peas and cereals grains such as corn, wheat, barley, rice, and sorghum during improper storage. Ochratoxin A is acknowledged as a carcinogen in mice and can cause other toxic effects in animals, namely nephrotoxicity.

97. According to public records, on December 15, 2020, a veterinarian in Washington State made a complaint to the FDA (and to Midwestern) relating to her client, who lost four dogs of different ages and breeds to liver failure and two that became ill after eating Sportmix Premium High Energy pet food. All the dogs reportedly exhibited similar symptoms of liver failure and jaundice at the same time and the pet food was found to contain mycotoxins.

98. An email dated December 28, 2020, produced in public records, from veterinarian toxicologist Tim Evans from the University of Missouri to FDA officials informed them that he was contacted by another veterinarian, Dr. David Sikes, in Missouri, on December 23, 2020, who had a client that lost four to ten dogs that exhibited icterus, bleeding, and elevated liver-specific enzyme activities. Examination of livers from two of the dogs indicated they were grossly abnormal with evidence of severe hepatocellular necrosis. Submitted samples of the dog food, Sportmix Premium High Energy, tested at 500 and 300 ppb for aflatoxin. Dr. Evans' Veterinary Medical Diagnostic Laboratory Report dated January 6, 2021, later confirmed testing of 583 ppb for aflatoxin in Sportmix Original Recipe cat food in an unopened sample. Dr. Evans performed various necropsies and analyses including toxicology testing of Dr. Sikes' clients' pets and other animals that passed away around this time after eating Midwestern's pet foods to determine their cause of death. Many exhibited signs of abnormal livers and liver failure consistent with aflatoxin poisoning.

99. According to public records, toxicology testing of the pet foods performed by North Dakota State University at Dr. Evans' direction found levels as high as 525 ppb of aflatoxin, 2054 for fumonisin, and 24 ppb for ochratoxin.

100. After these mounting reports of animal deaths and testing confirming exceedingly high levels of aflatoxin and other mycotoxins in Midwestern's pet foods, on December 30, 2020, Midwestern Pet Foods and the FDA announced the first recall of Sportmix pet foods, as described herein. According to the FDA, pets are highly susceptible to aflatoxin poisoning because they consistently eat the same pet food that can lead to the accumulation of aflatoxin in their bodies.

101. Following the initial recall notice, beginning on December 31, 2020, and concluding on February 5, 2021, the FDA inspected Midwestern's Chickasha, Oklahoma facility. Further public records indicate that subsequently the FDA inspected Midwestern's Illinois and Indiana facilities. The FDA Form 483 noted, in pertinent part:

- Missouri Department of Agriculture found levels of aflatoxin ranged from 483 ppb to 558 ppb in eight samples of Sportmix Premium High Energy dog food and Sportmix Original Recipe cat food collected in Missouri from 12/27/20 to 1/6/21;
- Texas State Chemist found levels as high as 395 ppb and 125 ppb in seven samples including Sportmix Premium Energy Plus dog food and Sportmix Original Recipe cat food;
- Midwestern's own testing on Jan. 7, 2021, by a third-party laboratory of samples of its pet foods containing corn, including Sportmix Energy Plus, Sportmix Stamina, Sportmix High Energy and Sportmix Original Recipe cat food, confirmed that they exceeded acceptable levels of aflatoxin, with some as high as 324.10 ppb and 428.04 ppb;
- FDA's testing of samples of Midwestern's pet foods including Sportmix Premium High Energy dog food and Sportmix Original Recipe cat food it procured in Oklahoma exceeded the action level for aflatoxin.

102. During this inspection, the FDA found that Midwestern did not adequately control the

hazard of aflatoxin in finished pet food products because it failed to implement its preventative controls and protocol required to achieve results from the testing equipment it was using - both before August 24, 2020 and after August 25, 2020. Specifically, the FDA noted that samples of corn to be tested were not properly prepared to achieve accurate results. The FDA also stated that Midwestern admitted to failing to conduct a reanalysis of its Food Safety Plan, including of required protocols for sample collection and testing, after replacing its old system and adding new equipment.

103. The FDA's Form 482 (aka "Inspectional Observations Report") to Defendants' Chickasha, Oklahoma Plant Manager, Dylan R. Woods, found that:

- You did not identify and implement preventive controls to ensure that any hazards requiring a preventive control are significantly minimized or prevented.
- Your preventive controls failed to adequately control the hazard of aflatoxin in your firm's finished pet food products . . .[.]
- Your Preventative Control [redaction] at receiving includes on-site sample collection and analysis for aflatoxin in in-coming corn shipments but you did not implement your Preventative Control because you did not follow the protocol required to achieve results from the testing equipment you were using, both before 8/24/20 and after 8/25/20.
- You did not evaluate each known or reasonably foreseeable hazard for each type of animal food you manufacture, process, pack or hold in your facility.
- You did not conduct a reanalysis of your food safety plan as appropriate.
- You have acknowledged that after implementing a different Aflatoxin testing system on 8/25/20, you did not conduct a reanalysis of your Food Safety Plan to reflect the replacement of the old testing system or to reflect the addition of new equipment, or to require the new protocol to be followed for sample collections and

preparation, instructions for conducting new testing, equipment to be used, etc.

104. A copy of the FDA's Inspectional Observations Report is attached to this Complaint as Exhibit A. The FDA inspectors jointly issued these findings after conducting 19 inspections of Defendants' facilities between December 31, 2020 and February 5, 2021.

105. Moreover, before the recall of Midwestern's pet foods for salmonella from its Illinois facility in March 2021, the FDA noted in the Form 483, that - similar to aflatoxin - Midwestern incorrectly identified a program as the control for salmonella resulting in a failure to implement a preventative control to ensure that salmonella was being significantly minimized or prevented so that its pet food was not adulterated.

106. The FDA further noted in Form 483 that Midwestern did not identify all reasonably foreseeable hazards in its raw materials including for other mycotoxins like fumonisin and vomitoxin. The FDA publicly indicated that its investigation was continuing, and it had teamed up with state departments of agriculture from across the country including Missouri, Oklahoma, Arkansas, Kansas, Kentucky, Louisiana, New Mexico, Oregon, Texas, and Washington ("Regulators' Team"). As part of this team effort according to public records, the FDA and these state departments of agriculture worked together to share testing results and developments regarding the recalls.

107. The Regulators' Team received the Missouri Rapid Response Team ("MRRT") report and Incident Reports. These revealed that, as of December 30, 2020, the Missouri Department of Agriculture ("MDA") requested the activation of the MRRT after test results showed very high levels of aflatoxin in dog food as much as 300 to 500 ppb. As of December 29, 2020, 24 kenneled dogs died in Missouri after consuming the contaminated food, and a day later that had risen to 38. The lot in question was found to have been produced in September 2020 by Midwestern and typically the product is sold in bulk so breeders can supply large numbers of dogs. Midwestern indicated that all affected lots were likely sold.

108. The MRRT report indicated that MDA was concerned, as of December 30, 2020, that

the Oklahoma plant may have received local corn, which could be a problem because Oklahoma experienced drought conditions that can lead to growth of the fungus that produce aflatoxins and other mycotoxins. The report also indicated that the FDA found that the Midwestern Oklahoma facility turned away several loads of corn three-to-five days prior to production of the contaminated lot because of aflatoxin. As of January 4, 2021, there were six truckloads of corn used as an ingredient in the identified contaminated pet foods at that time, and Midwestern indicated that a production run at the Oklahoma facility includes multiple lots in each run.

109. Further, according to these reports, as of January 5, 2021, the MDA was investigating complaints relating to at least four different breeding facilities and found an unopened Midwestern Original Recipe cat food sample to contain as much as 583 ppb of aflatoxin. MDA and University of Missouri indicated that levels of aflatoxin at 100-300 ppb will typically kill an animal in a few weeks and only then will they display symptoms. The cases in Missouri were consistent with this - as the animals that died had eaten the contaminated pet food for about a month. At this time, MDA contacted a veterinarian in the area where the complainant breeders were located, and the veterinarian indicated that he was aware of 56 adult dogs and 28 pups that had died. MDA knew of three other breeders with a total of 20 dogs showing signs of deterioration that were eating the particular Midwestern pet food and expected possible deaths as a result. The veterinarian indicated that he expected death loss in the range of 50-60 percent of adult dogs.

110. The reports further revealed that the Texas State Chemist had found three samples of products that exceeded aflatoxin action levels outside of the initial recall that sparked its expansive stop sale of all Midwestern pet food in Texas until the "full scope of the problem is clear." It also revealed that at this time, the FDA found samples of Sportmix Stamina - not included in the initial recall - to contain aflatoxin levels above the FDA action level and shared a report of chickens that died when they were exposed to the remaining pet food (not only the dogs and cats that ate it). The Kansas Department of Agriculture's public records indicate that it tested a sample of Sportstrail pet food from

a Kansas retailer on January 12, 2021. The sample was found to be an “excessive” 83.3 ppb for aflatoxin above the 20 ppb action level finding it adulterated and mandating a stop sale of the product at that time.

111. According to public records from the Washington State Department of Agriculture ("WSDA"), the WSDA tested Midwestern pet foods and found issues beyond aflatoxin. WSDA testing of samples of Midwestern's pet foods revealed that they contained other mycotoxins in addition to aflatoxin - vomitoxin (5 ppm – at the FDA action level for ingredients), fumonisin (50 ppb) and zearalenone (0.5 ppm – at the OISC deemed "critical level"). The WSDA found high levels of heavy metals including copper and zinc.

112. The WSDA found that Defendants listed incorrect nutrition content on the labels of Midwestern's pet foods. Specifically, the WSDA found a sample of Sportmix Premium High Energy contained less fat than the guaranteed analysis on its label of a “minimum amount of 18% fat.” Similarly, it found another sample of Sportmix Premium Energy Plus deficient that listed a guaranteed analysis of a “minimum of 20% fat was considered.”

113. According to public records from the Office of the Texas State Chemist (“OTSC”), it tested Midwestern's pet foods and found additional samples of its pet food, including Sportmix Original Recipe cat food, Sportmix Premium High Energy, and Sportmix Bite Size Targeted Nutrition, contaminated with aflatoxin beyond the initial recalled products as high as 337 ppb. It issued a stop sale order that prevents the sale of the recalled pet foods in Texas, which it renewed several times and remains in place as of the date of this Complaint.

114. OTSC also found labeling issues with Midwestern's products including the failure to identify manufacturing facility on its Sportmix Premium Puppy Small Bites as required under Texas law as recently as September 2020, and failure to properly register its products sold in the states. In Sportmix Premium Puppy Small Bites in October 2020, their testing also found the pet food to contain copper at 22 ppm exceeding 15 ppm allowable limit. Dating back to 2016, OTSC found Sportmix

Premium Puppy Small Bites to contain 3.23% calcium far exceeding 1.3% allowable level that could lead to detrimental health effects in animals that consumed it.

The Recalls

115. On or around December 30, 2020, Defendants announced a recall, in cooperation with the FDA, of five cat and dog food products they had manufactured that were distributed nationally to retail stores and online retailers. Defendants issued the recall based on tests showing that the following Pet Food Products contained unacceptable levels of Aflatoxin:

- 50# Sportmix Energy Plus Lots Exp. 03/02/22/05/L2, 03/02/22/05/L3, 03/03/22/05/L2
- 44# Sportmix Energy Plus Lots 03/02/22/L3
- 50# Sportmix Premium High Energy Lots 03/03/22/05/L3
- 44# Sportmix Premium High Energy Lots 03/03/22/05/L3
- 31# Sportmix Original Cat Lots 03/03/22/05/L3

116. In the news release announcing the recall, Defendants instructed pet owners not to “feed the recalled products to your pets or any other animals. Destroy the products in a way that children, pets, and wildlife cannot access them. Wash and sanitize pet food bowls, cups and storage containers.”

117. On or around January 11, 2021, Defendants expanded the December 30, 2020 recall considerably. Specifically, Defendants expanded the recall to cover all corn-containing products with expiration dates before 07/09/22 that were produced at Defendants’ Chickasha Operations Facility in Oklahoma. As of January 11, 2021, Defendants’ recall covered a total of 20 different cat and dog food products distributed and sold nationally. The products are:

Pro Pac Adult Mini Chunk, 40 lb. bag	Sportmix Energy Plus, 44 lb. bag
Pro Pac Performance Puppy, 40 lb. bag	Sportmix Energy Plus, 50 lb. bag
Splash Fat Cat 32%, 50 lb. bag	Sportmix Stamina, 44 lb. bag
Nunn-Better Maintenance, 50 lb. bag	Sportmix Stamina, 50 lb. bag
Sportstrail, 50 lb. bag	Sportmix Bite Size, 40 lb. bag
Sportmix Original Cat, 15 lb. bag	Sportmix Bite Size, 44 lb. bag
Sportmix Original Cat, 31 lb. bag	Sportmix High Energy, 44 lb. bag
Sportmix Maintenance, 44 lb. bag	Sportmix High Energy, 50 lb. bag
Sportmix Maintenance, 50 lb. bag	Sportmix Premium Puppy, 16.5 lb. bag
Sportmix High Protein, 50 lb. bag	Sportmix Premium Puppy, 33 lb. bag

118. Defendants' expanded recall was issued after more than 70 dogs died and another 80 fell ill, reportedly from consuming certain Pet Food Products. At the time of the first recall in December 2020, the FDA was alerted to reports that about 28 dogs had died and eight others became ill after consuming the Pet Food Products.

119. The FDA warned retailers and distributors to immediately remove recalled lots from shelves and their inventory and warned retailers and distributors against selling or donating them.

120. For pets that have consumed the Pet Food Products, the FDA has identified symptoms of Aflatoxin poisoning as including "sluggishness, loss of appetite, vomiting, jaundice (yellowish tint to the eyes, gums, or skin due to liver damage), and/or diarrhea." The FDA instructed pet owners whose pets have exhibited the foregoing signs to contact their veterinarian immediately.

121. Further, the FDA has instructed pet parents to stop feeding the recalled products to pets and other animals and to destroy the recalled food such that children, pets, and wildlife do not have access. Additionally, the FDA has instructed pet owners to wash and sanitize food bowls, cups, and

storage containers, and to always wash and sanitize hands after touching any of the recalled foods or utensils that may have come into contact with the recall food.

122. After the FDA's recall, media outlets reported on the animal deaths and illnesses attributed to Aflatoxin poisoning. One report stated that veterinarian Dr. David Sikes became aware of Aflatoxin poisoning when a Missouri kennel operator reached out to him after losing at least 18 dogs after feeding them Sportmix pet food.⁹ Dr. Sikes soon also learned that two other kennels in the same region lost multiple dogs.

123. Another report states that Dr. Sikes' laboratory tests found Aflatoxin levels to measure 525 parts per billion (ppb) in one feed bin and 380 (ppb) in the other. The samples were between 19 and 26 times the FDA's threshold limit of 20 ppb.¹⁰

124. One media outlet reported that a rescue organization had 13 dogs die between December 1, 2020 and December 14, 2020, after feeding them Defendants' Pet Food Products.¹¹

125. On or about March 26, 2021, Defendants announced yet another recall of certain dog and cat food manufactured in their Monmouth, Illinois facility. Defendants recalled the following Pet Food Products for potential *Salmonella* contamination:

Earthborn Holistic Adult Vantage, 25 lb. bag	Pro Pac Ultimates Lamb & Rice, 5lb bag
Earthborn Holistic Adult Vantage, 4 lb. bag	Pro Pac Ultimates Lamb & Rice, 28lb bag
Earthborn Holistic Adult Vantage, 12.5 lb. bag	Sportmix 24/20 Energy Plus, 44 lb. bag
Earthborn Holistic Coastal Catch, 4 lb. bag	Sportmix 24/20 Energy Plus, 50 lb. bag
Earthborn Holistic Coastal Catch, 12.5 lb. bag	Sportmix Bite Size, 40 lb. bag

⁹ <https://news.vin.com/default.aspx?pid=210&catId=615&Id=10005010>

¹⁰ <https://thecaninereview.com/2021/01/04/death-toll-from-sportmix-pet-food-recall-said-to-be-rising-i-am-aware-of-approximately-40-deaths-veterinarian-tells-tcr/>

¹¹ <https://thecaninereview.com/2021/01/14/midwestern-values-how-a-pet-food-company-stole-christmas/>

Earthborn Holistic Coastal Catch, 25 lb. bag	Sportmix Gourmet Cat, 15 lb. bag
Earthborn Holistic Great Plains Feast, 25 lb. bag	Sportmix Gourmet Cat, 31 lb. bag
Earthborn Holistic Great Plains Feast, 12.5 lb. bag	Sportmix Canine X Chicken, 40 lb. bag
Earthborn Holistic Great Plains Feast, 4 lb. bag	Sportmix High Protein 27/12, 50 lb. bag
Earthborn Holistic Large Breed, 25 lb. bag	Sportmix High Energy 26/18, 44 lb. bag
Earthborn Holistic Meadow Feast, 12.5 lb. bag	Sportmix High Energy 26/18, 50 lb. bag
Earthborn Holistic Meadow Feast, 14 lb. bag	Sportmix Maintenance 21/12, 44 lb. bag
Earthborn Holistic Meadow Feast, 25 lb. bag	Sportmix Maintenance 21/12, 50 lb. bag
Earthborn Holistic Meadow Feast, 28 lb. bag	Sportmix Original Cat, 15 lb. bag
Earthborn Holistic Ocean Fusion, 4 lb. bag	Sportmix Original Cat, 31 lb. bag
Earthborn Holistic Ocean Fusion, 12.5 lb. bag	Sportmix Stamina 24/18, 44 lb. bag
Earthborn Holistic Ocean Fusion, 25 lb. bag	Sportmix Stamina 24/18, 50 lb. bag
Earthborn Holistic Primitive Feline, 5 lb. bag	Sportmix Wholesomes, 35 lb. bag
Earthborn Holistic Primitive Feline, 14 lb. bag	Sportmix Wholesomes, 30 lb. bag
Earthborn Holistic Primitive Natural, 4 lb. bag	Sportmix Maintenance 21/12, 50 lb. bag
Earthborn Holistic Primitive Natural, 12.5 lb. bag	Sportmix Wholesomes Cat, 15 lb. bag
Earthborn Holistic Primitive Natural, 25 lb. bag	Sportmix Wholesomes Cat, 16.5 lb. bag
Earthborn Holistic Small Breed, 4 lb. bag	Sportmix Wholesomes Chicken & Rice, 40 lb.
Earthborn Holistic Small Breed, 12.5 lb. bag	bag
Earthborn Holistic Weight Control, 4 lb. bag	Sportmix Wholesomes Beef & Rice, 40 lb. bag
Earthborn Holistic Weight Control, 25 lb. bag	Sportmix Wholesomes Fish & Rice, 40 lb. bag
Earthborn Holistic Western Feast, 28 lb. bag	Sportmix Wholesomes Grain Free Beef Meal &
Earthborn Holistic Wild Sea Catch, 5 lb. bag	Chickpeas, 35 lb. bag
Earthborn Holistic Wild Sea Catch, 14 lb. bag	Sportmix Wholesomes Grain Free Chicken Meal
Meridian Daybreak, 5 lb. bag	& Potato, 35 lb. bag

Meridian Daybreak, 14 lb. bag	Sportmix Wholesomes Grain Free Whitefish
Meridian Riverbend 14 lb. bag	Meal & Potato, 35 lb. bag
Meridian Twilight, 5 lb. bag	Sportmix Wholesomes Lamb & Rice, 40 lb. bag
Meridian Twilight, 14 lb. bag	Sportmix Wholesomes Large Breed, 40 lb. bag
Pro Pac Ultimates Large Breed Adult, 28 lb. bag	Sportmix Wholesomes Performance Puppy, 16.5
Pro Pac Ultimates Large Breed Puppy, 28 lb. bag	lb. bag
Pro Pac Ultimates Meadow Prime, 28 lb. bag	Sportmix Wholesomes Sensitive Lamb, 30 lb. bag
Pro Pac Ultimates Overland Red, 28 lb. bag	Sportmix Wholesomes Sensitive Salmon, 30 lb.
Pro Pac Ultimates Puppy, 5 lb. bag	bag
Pro Pac Ultimates Puppy, 28 lb. bag	Sportstrail, 50 lb. bag
Pro Pac Ultimates Savannah Pride, 5 lb. bag	Unrefined Lamb, 4 lb. bag
Pro Pac Ultimates Savannah Pride, 14 lb. bag	Unrefined Lamb, 12.5 lb. bag
Pro Pac Adult Chunk, 40 lb bag	Unrefined Lamb, 25 lb. bag
Pro Pac Adult Mini Chunk, 40 lb bag	Unrefined Rabbit, 4 lb. bag
Pro Pac Mature Adult, 28 lb bag	Unrefined Rabbit, 12.5 lb. bag
Pro Pac Performance Puppy, 40 lb bag	Unrefined Rabbit, 25 lb. bag
Pro Pac Ultimates Bayside Select, 28 lb bag	Unrefined Salmon, 4 lb. bag
Pro Pac Ultimates Bayside Select, 5 lb bag	Unrefined Salmon, 12.5 lb. bag
Pro Pac Ultimates Chicken & Rice, 5lb bag	Unrefined Salmon, 25 lb. bag
Pro Pac Ultimates Chicken & Rice, 28lb bag	Venture Duck Meal & Pumpkin, 4 lb. bag
Pro Pac Ultimates Heartland Choice, 28lb bag	Venture Duck Meal & Pumpkin, 12.5 lb. bag
Venture Duck Meal & Pumpkin, 25 lb. bag	Venture Alaska Pollock Meal & Pumpkin, 12.5
Venture Rabbit Meal & Pumpkin, 4 lb. bag	lb. bag
Venture Rabbit Meal & Pumpkin, 12.5 lb. bag	Venture Alaska Pollock Meal & Pumpkin, 25 lb.
	bag

Venture Rabbit Meal & Pumpkin, 25 lb. bag	Wholesomes Chicken & Rice, 40 lb bag
Venture Alaska Pollock Meal & Pumpkin, 4 lb. bag	Wholesomes Fish & Rice, 40 lb. bag

126. As a result of relying on Defendants’ representations that their pet foods were fit or suitable for pets, including being healthy and nutritious, and buying Defendants’ recalled Pet Food Products, Plaintiffs and all others similarly situated consumers have incurred substantial expenses, including the cost of the Pet Food Products, veterinary bills to address the adverse health issues associated with their pets consuming Defendants’ contaminated Pet Food Products, cremation costs, and other related expenses.

CLASS ACTION ALLEGATIONS

127. Plaintiffs bring this action on behalf of themselves and on behalf of the following proposed Class initially defined as follows: **All persons residing in the United States who purchased one or more of Defendants’ Pet Food Products (“Nationwide Class”).**

128. Plaintiff Robert Lee also brings this action on behalf of himself and a state class defined as follows: **All persons residing in Alabama who purchased one or more of Defendants’ Pet Food Products (“Alabama State Class”).**

129. Plaintiff Kelleen Reagan also brings this action on behalf of herself and a state class defined as follows: **All persons residing in California who purchased one or more of Defendants’ Pet Food Products (“California State Class”).**

130. Plaintiff Marcia Berger also brings this action on behalf of herself and a state class defined as follows: **All persons residing in Florida who purchased one or more of Defendants’ Pet Food Products (“Florida State Class”).**

131. Plaintiffs Tammy Johnson and Harvey Williams also bring this action on behalf of

themselves and a state class defined as follows: **All persons residing in Georgia who purchased one or more of Defendants' Pet Food Products ("Georgia State Class").**

132. Plaintiff Jannette Kern also brings this action on behalf of herself and a state class defined as follows: **All persons residing in Illinois who purchased one or more of Defendants' Pet Food Products ("Illinois State Class").**

133. Plaintiff Ashley Lill also brings this action on behalf of herself and a state class defined as follows: **All persons residing in Kansas who purchased one or more of Defendants' Pet Food Products ("Kansas State Class").**

134. Plaintiff Charles Foster also brings this action on behalf of himself and a state class defined as follows: **All persons residing in Louisiana who purchased one or more of Defendants' Pet Food Products ("Louisiana State Class").**

135. Plaintiff James Buechler also brings this action on behalf of himself and a state class defined as follows: **All persons residing in Maryland who purchased one or more of Defendants' Pet Food Products ("Maryland State Class").**

136. Plaintiff Sue Flynn and Tiffany Carlson also bring this action on behalf of themselves and a state class defined as follows: **All persons residing in Michigan who purchased one or more of Defendants' Pet Food Products ("Michigan State Class").**

137. Plaintiff Connor Staponski also brings this action on behalf of herself and a state class defined as follows: **All persons residing in Missouri who purchased one or more of Defendants' Pet Food Products ("Missouri State Class").**

138. Plaintiff Shannon Proulx and Stephanie Romero also bring this action on behalf of themselves and a state class defined as follows: **All persons residing in New Mexico who purchased one or more of Defendants' Pet Food Products ("New Mexico State Class").**

139. Plaintiffs Shanda Marshall also brings this action on behalf of herself and a state class defined as follows: **All persons residing in New York who purchased one or more of Defendants'**

Pet Food Products (“New York State Class”).

140. Plaintiff Owen Woodall also brings this action on behalf of himself and a state class defined as follows: **All persons residing in North Carolina who purchased one or more of**

Defendants’ Pet Food Products (“North Carolina State Class”).

141. Plaintiff David Starnes also brings this action on behalf of himself and a state class defined as follows: **All persons residing in Oklahoma who purchased one or more of Defendants’**

Pet Food Products (“Oklahoma State Class”).

142. Plaintiff Chanler Potts also bring this action on behalf of herself and a state class defined as follows: **All persons residing in Tennessee who purchased one or more of Defendants’**

Pet Food Products (“Tennessee State Class”).

143. Plaintiffs Vollie Griffin and Henry Franco, Jr. also bring this action on behalf of themselves and a state class defined as follows: **All persons residing in Texas who purchased one or more of Defendants’ Pet Food Products (“Texas State Class”).**

144. Excluded from the proposed Nationwide, Alabama, California, Florida, Georgia, Illinois, Kansas, Louisiana, Maryland, Michigan, Missouri, New Mexico, New York, North Carolina, Oklahoma, Tennessee, and Texas Classes are Defendants, their parents, subsidiaries, affiliates, officers, and directors, any entity in which Defendants have a controlling interest, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

145. Plaintiffs reserve the right to re-define any of the Class definitions prior to class certification and after having the opportunity to conduct discovery.

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

Numerosity of the Proposed Classes

(Fed. R. Civ. P. 23(a)(1))

147. The members of the Classes are so numerous that their individual joinder would be impracticable. The Classes each comprise at least hundreds of consumers. The precise number of Class members, and their addresses, are unknown to Plaintiffs at this time, but can be ascertained from Defendants' records and/or retailer records. The members of the Classes may be notified of the pendency of this action by mail or email, supplemented (if deemed necessary or appropriate by the Court) by published notice.

Predominance of Common Questions of Fact and Law

(Fed. R. Civ. P. 23(a)(2); 23(b)(3))

148. Common questions of law and fact exist as to all members of the Classes. These questions predominate over the questions affecting only individual members of the Classes. The common legal and factual questions include, without limitation:

(a) Whether Defendants knew or should have known that the Pet Food Products contained or could have contained unacceptable levels of Aflatoxin that rendered the Pet Food Products unsafe and unsuitable for consumption;

(b) Whether Defendants knew or should have known that the Pet Food Products were contaminated or could have been contaminated with *Salmonella* that rendered their Pet Food Products unsafe and unsuitable for consumption and human handling;

(c) Whether Defendants failed to employ quality control measures and failed to properly test and/or inspect their Pet Food Products before distribution and sale;

(d) The date on which Defendants learned or should have learned of the potentially unacceptable levels of Aflatoxin in their Pet Food Products;

(e) The date on which Defendants learned or should have learned of the potential *Salmonella* contamination in their Pet Food Products;

- (f) Whether Defendants made affirmative misrepresentations and/or false and misleading statements regarding the Pet Food Products;
- (g) Whether Defendants failed to disclose material facts regarding the Pet Food Products;
- (h) Whether Defendants were negligent in producing the Pet Food Products;
- (i) Whether Defendants made negligent misrepresentations in connection with the distribution and sale of the Pet Food Products;
- (j) Whether Defendants breached express warranties in connection with the distribution and sale of the Pet Food Products;
- (k) Whether Defendants breached the implied warranty of merchantability in connection with the distribution and sale of the Pet Food Products;
- (l) Whether Defendants violated the state consumer protection statutes alleged herein;
- (m) Whether Defendants were unjustly enriched; and
- (n) The nature of the relief, including damages and equitable relief, to which Plaintiffs and the members of the Classes are entitled.

Typicality of Claims

(Fed. R. Civ. P. 23(a)(3))

149. Plaintiffs' claims are typical of the claims of the Classes because Plaintiffs, like all other Class members, purchased Defendants' Pet Food Products, suffered damages as a result of those purchases, and seek the same relief as the proposed Class members.

Adequacy of Representation

(Fed. R. Civ. P. 23(a)(4))

150. Plaintiffs are adequate representatives of the Classes because their interests do not conflict with the interests of the members of the Classes and they have retained counsel competent and experienced in complex class action and consumer litigation.

151. Plaintiffs and their counsel will fairly and adequately protect the interest of the

members of the Classes.

Superiority of a Class Action

(Fed. R. Civ. P. 23(b)(3))

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

Risk of Inconsistent or Dispositive Adjudications and the Appropriateness of Final Injunctive or Declaratory Relief

(Fed. R. Civ. P. 23(b)(1) and (2))

153. In the alternative, this action may properly be maintained as a class action, because:

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

(b) the prosecution of separate actions by individual Class members would create a

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

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

Issue Certification

(Fed. R. Civ. P. 23(c)(4))

154. In the alternative, the common questions of fact and law, set forth in Paragraph 148, are appropriate for issue certification on behalf of the proposed Classes.

FIRST CAUSE OF ACTION

**Negligence
(On Behalf of All Classes)**

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

156. Defendants owed a duty of care to Plaintiffs and the Class members. Defendants breached that duty.

157. Defendants are manufacturers of the Pet Food Products purchased by Plaintiffs and Class members.

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

159. By the actions and omissions alleged herein, Defendants breached their duty. Among other things, Defendants manufactured Pet Food Products containing unacceptable levels of Aflatoxin that rendered the Pet Food Products unsafe and unsuitable for dog consumption. Defendants also

manufactured products contaminated with *Salmonella* that rendered the Pet Food Products unsafe and unsuitable for consumption and human handling.

160. As a result of Defendants' breaches and violations, Plaintiffs and Class members suffered harm.

161. Defendants' negligence was a substantial factor in the harm caused to Plaintiffs and Class members.

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

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

SECOND CAUSE OF ACTION
Negligent Misrepresentation
(On Behalf of All Classes)

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

165. Defendants' actions and omissions alleged herein constitute negligent misrepresentation.

166. Defendants misrepresented material facts concerning the safety, suitability, and quality of their Pet Food Products, including that the Pet Food Products were suitable for pets, that they provided targeted nutrition, and that they were 100% guaranteed for taste and nutrition.

167. Defendants have no reasonable grounds for believing that their misrepresentations were true. Among other things, Defendants represented that the Pet Food Products were of high quality, healthy, safe, and suitable for pet consumption. Defendants knew or should have known, but failed to disclose that, contrary to their representations, the Pet Food Products contained dangerous levels of Aflatoxin that would cause injury to pets, such as vomiting, loss of appetite, sluggishness, jaundice (yellowish tint to the eyes, gums, or skin due to liver damage), diarrhea, or could lead to serious health

issues including death. Defendants knew or should have known but failed to disclose that contrary to their representations, the Pet Food Products were contaminated with *Salmonella* that could cause injury to pets and humans, such as vomiting, diarrhea, fever, loss of appetite, lethargy, or could lead to serious health issues including death.

168. Defendants made such misrepresentations with the intent to induce Plaintiffs and members of the Classes to rely on their misrepresentations and purchase their Pet Food Products containing dangerous levels of Aflatoxin or *Salmonella*.

169. Plaintiffs and members of the Classes had no knowledge of the falsity of Defendants' representations and reasonably believed them to be true. In justified reliance on Defendants' misrepresentations, Plaintiffs and members of the Classes purchased and fed their pets the Pet Food Products containing dangerous levels of Aflatoxin and *Salmonella*.

170. As a direct and proximate consequence, Plaintiffs and members of the Classes suffered harm. Among other things, they would not have purchased Defendants' Pet Food Products, or would have paid less had they known of the presence, or the potential presence, of dangerous levels of Aflatoxin.

171. Plaintiffs and members of the Classes are therefore entitled to damages and relief, as prayed for hereunder.

THIRD CAUSE OF ACTION
Intentional Misrepresentation
(On Behalf of All Classes)

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

173. Plaintiffs bring this claim individually and on behalf of the members of the proposed Classes against Defendants for intentional misrepresentation.

174. Defendants marketed the Pet Food Products in a manner indicating that the Pet Food Products were and are high quality, healthy, safe, and suitable for pet consumption. However, the Pet

Food Products contained, or were at risk of containing, dangerous levels of Aflatoxin and/or contaminated with *Salmonella* that do not conform to the packaging. Therefore, Defendants have made misrepresentations about the Pet Food Products.

175. Defendants' misrepresentations regarding the Pet Food Products are material to a reasonable consumer because they relate to the safety of the product the consumer is receiving and paying for. A reasonable consumer would attach importance to such representations and would be induced to act thereon in deciding whether or not to purchase the Pet Food Products.

176. At all relevant times when such misrepresentations were made, Defendants knew that the representations were misleading, or acted recklessly in making the representations, without regard to the truth.

177. Defendants intended that Plaintiffs, members of the Classes, and other consumers rely on these representations, as evidenced by the intentional and conspicuous placement of the misleading representations on the Pet Food Products' packaging by Defendants, as well as its advertising, marketing, and portrayals and characterizations of the Pet Food Products as high quality, healthy, safe, and suitable for pet consumption.

178. Plaintiffs and members of the Classes have reasonably and justifiably relied on Defendants' intentional misrepresentations when purchasing the Pet Food Products, and had the correct facts been known, would not have purchased them at all.

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

180. Plaintiffs and members of the Classes seek actual damages, injunctive and declaratory

relief, attorneys' fees, costs, and any other just and proper relief available under the law.

FOURTH CAUSE OF ACTION

**Violations of the Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1, *et seq.*
(On Behalf of Plaintiff Robert Lee and the Alabama Class)**

181. Plaintiff Robert Lee (for purposes of this cause of action, "Plaintiff") hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

182. Plaintiff brings this claim on behalf of himself and the Alabama State Class against Defendants.

183. Plaintiff and Alabama State Class members are "consumers" within the meaning of Ala. Code § 8-19-3(2).

184. Plaintiff and Alabama State Class members and Defendants are "persons" within the meaning of Ala. Code § 8-19-3(5).

185. The Pet Food Products are "goods" within the meaning of Ala. Code § 8-19-3(3).

186. Defendants were and are engaged in "trade or commerce" within the meaning of Ala. Code § 8-19-3(8).

187. The Alabama Deceptive Trade Practices Act ("Alabama DTPA") declares several specific actions to be unlawful, including: "(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have," "(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another," and "(27) Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce." Ala. Code § 8-19-5.

188. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted

nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiff had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test for toxins and contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

189. Plaintiff and Alabama State Class members had no way of discerning that Defendants' representations were false and misleading because Plaintiff and Alabama State Class members did not have access to Defendants' internal testing, internal testing equipment(s), internal policies or procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

190. Defendants thus violated the Alabama DTPA by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products or their ingredients for toxins and contaminants.

191. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiff and the Alabama State Class.

192. Defendants knew or should have known that their conduct violated the Alabama DTPA.

193. Defendants owed Plaintiff and the Alabama State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

194. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiff and the Alabama State Class.

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

196. Plaintiff and the Alabama State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

197. Defendants received notice pursuant to Ala. Code § 8-19-10(e) concerning Defendants' wrongful conduct as alleged herein via the class action complaints filed and through demand letters. On January 12, 2021 Plaintiff Stephanie Romero sent a letter to Defendant Midwestern Pet Foods, Inc. demanding relief, on January 15, 2021 Plaintiff Crystal Fabela sent a letter sent to Defendant Midwestern Pet Foods, Inc. demanding relief, and on January 29, 2021 Plaintiffs Harvey Williams, Owen Woodall, and Vollie Griffin sent a letter sent to Defendant Midwestern Pet Foods, Inc. demanding relief on behalf of themselves and consumers nationwide. On February 11, 2021, Defendant Midwestern Pet Foods, Inc. responded to Plaintiff Romero's letter disputing Plaintiff Romero's claims and rejected her demand for relief. Therefore, sending pre-suit notice pursuant to Ala. Code § 8-19-10(e), is an exercise of futility for Plaintiff Robert Lee and the Alabama State Class because Defendants have not cured their unfair, abusive, and deceptive acts and practices, or their violations of Alabama DTPA were incurable, and Defendants have disputed Plaintiff Romero's claims and rejected her demand for relief. Plaintiff and the Alabama State Class seek all damages and relief to which they are entitled.

198. In addition, Defendants have already been informed of the allegedly unfair and

deceptive conduct as described herein by the numerous consumer class action complaints filed against them.

FIFTH CAUSE OF ACTION

**Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
(On Behalf of Plaintiff Kelleen Reagan and the California Class)**

199. Plaintiff Kelleen Reagan (for purposes of this cause of action, “Plaintiff”) hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

200. Defendants’ business practices as complained of herein violate the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”).

201. Defendants’ practices constitute “unlawful” business practices in violation of the UCL because, among other things, they violate warranty laws.

202. Defendants’ actions and practices constitute “unfair” business practices in violation of the UCL, because, among other things, they are immoral, unethical, oppressive, unconscionable, unscrupulous, substantially injurious to consumers, and/or any utility of such practices is outweighed by the harm caused by consumers.

203. Defendants’ actions and practices constitute “fraudulent” business practices in violation of the UCL because, among other things, Defendants’ misrepresentations were likely to deceive reasonable consumers. Among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet

Food Products. If Plaintiff had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test the Pet Food Products or the ingredients for toxins and contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

204. As a result of Defendants' wrongful business practices, Plaintiff and the California State Class lost money and have suffered injury-in-fact.

205. Defendants' wrongful business practices present an ongoing and continuing threat and should be enjoined.

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

207. Accordingly, Plaintiff and members of the California State Class are entitled to judgment and equitable relief.

SIXTH CAUSE OF ACTION

Violations of the Florida Unfair & Deceptive Trade Practices Act, Fla. Stat. § 501.201, *et seq.* (On Behalf of Plaintiff Marcia Berger and the Florida Class)

208. Plaintiff Marcia Berger (for purposes of this cause of action, "Plaintiff") hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

209. Plaintiff brings this claim on behalf of herself and the Florida State Class against Defendants.

210. Plaintiff and members of the Florida State Class are "consumers" within the meaning of the Florida Unfair and Deceptive Trade Practices Act ("FUDTPA"), Fla. Stat. § 501.203(7).

211. Defendants engaged in "trade or commerce" within the meaning of Fla. Stat. § 501.203(8).

212. FUDTPA prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce . . .” Fla. Stat. § 501.204(1). Defendants participated in unfair and deceptive trade practices that violated the FUDTPA as described herein.

213. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products or ingredients for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiff had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test the Pet Food Products or ingredients for toxins and contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

214. Plaintiff and Florida State Class members had no way of discerning that Defendants’ representations were false and misleading because Plaintiff and Florida State Class members did not have access to Defendants’ internal testing, internal testing equipment(s), internal policies or procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

215. Defendants thus violated the FUDTPA by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products

were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products or ingredients for toxins and contaminants.

216. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiff and the Florida State Class.

217. Defendants knew or should have known that their conduct violated the FUDTPA.

218. Defendants owed Plaintiff and the Florida State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

219. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiff and the Florida State Class.

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

221. Defendants' violations present a continuing risk to Plaintiff, the Florida State Class, and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

222. Plaintiff and the Florida State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

223. As a direct and proximate result of Defendants' violations of the FUDTPA, Plaintiffs and the Florida State Class has suffered injury-in-fact and/or actual damage.

224. Plaintiffs and the Florida State Class are entitled to recover their actual damages under Fla. Stat. § 501.211(2) and attorneys' fees under Fla. Stat. § 501.2105(1).

225. Plaintiffs and the Florida State Class also seek an order enjoining Defendants' unfair,

unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the FUDTPA.

SEVENTH CAUSE OF ACTION

**Violations of Georgia's Fair Business Practices Act, Ga. Code Ann. § 10-1-390 *et seq.*
(On Behalf of Plaintiffs Tammy Johnson and Harvey Williams and the Georgia State Class)**

226. Plaintiffs Tammy Johnson and Harvey Williams (for purposes of this cause of action, "Plaintiffs") hereby incorporate all other paragraphs of this Complaint and restate them as if fully set forth herein.

227. Plaintiffs bring this claim on behalf of themselves and the Georgia State Class against Defendants.

228. The Georgia Fair Business Practices Act ("Georgia FBPA") declares "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce" to be unlawful, Ga. Code Ann. § 10-1-393(a), including but not limited to "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," "[r]epresenting that goods or services are of a particular standard, quality, or grade ... if they are of another," and "[a]dvertising goods or services with intent not to sell them as advertised," Ga. Code Ann. § 10-1-393(b).

229. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products and ingredients for toxins and contaminants. Defendants had a duty to disclose

these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiffs had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test the Pet Food Products and ingredients for toxins and contaminants adequately, Plaintiffs would not have purchased the Pet Food Products.

230. Plaintiffs and Georgia State Class members had no way of discerning that Defendants' representations were false and misleading because Plaintiffs and Georgia State Class members did not have access to Defendants' internal testing, internal testing equipment(s), internal policies or procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

231. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiffs and the Georgia State Class.

232. Defendants knew or should have known that their conduct violated the Georgia FBPA.

233. Defendants owed Plaintiffs and the Georgia State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

234. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiffs and the Georgia State Class.

235. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and the Georgia State Class, about the true nature of the Pet Food Products.

236. Defendants' violations present a continuing risk to Plaintiffs, the Georgia State Class, and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

237. Plaintiffs and the Georgia State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to

disclose material information.

238. As a direct and proximate result of Defendants' violations of the Georgia FBPA, Plaintiffs and the Georgia State Class has suffered injury-in-fact and/or actual damage.

239. Plaintiffs and the Georgia State Class are entitled to recover damages and exemplary damages (for intentional violations) per Ga. Code Ann. § 10-1-399(a).

240. Plaintiffs and the Georgia State Class also seek an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Georgia FBPA per Ga. Code Ann. § 10-1-399.

241. Defendants received notice pursuant to Ga. Code Ann. § 10-1-399 concerning Defendants' wrongful conduct as alleged herein via the class action complaints filed and through demand letters. On January 12, 2021 Plaintiff Stephanie Romero sent a letter to Defendant Midwestern Pet Foods, Inc. demanding relief, on January 15, 2021 Plaintiff Crystal Fabela sent a letter sent to Defendant Midwestern Pet Foods, Inc. demanding relief, and on January 29, 2021 Plaintiffs Harvey Williams, Owen Woodall, and Vollie Griffin sent a letter sent to Defendant Midwestern Pet Foods, Inc. demanding relief on behalf of themselves and consumers nationwide. On February 11, 2021, Defendant Midwestern Pet Foods, Inc. responded to Plaintiff Romero's letter disputing Plaintiff Romero's claims and rejected her demand for relief. Therefore, sending pre-suit notice pursuant to Ga. Code Ann. § 10-1-399, is an exercise of futility for Plaintiff Tammy Johnson and the Georgia State Class because Defendants have not cured their unfair, abusive, and deceptive acts and practices, or their violations of Georgia FBPA were incurable, and Defendant have disputed Plaintiff Romero's claims and rejected her demand for relief. Plaintiffs and the Georgia State Class seek all damages and relief to which they are entitled.

242. In addition, Defendants have already been informed of the allegedly unfair and deceptive conduct as described herein by the numerous consumer class action complaints filed against them.

EIGHTH CAUSE OF ACTION

**Violations of Georgia’s Uniform Deceptive Trade Practices Act, Ga. Code Ann. § 10-1-370 *et seq.*
(On Behalf of Plaintiffs Tammy Johnson and Harvey Williams and the Georgia State Class)**

243. Plaintiffs Tammy Johnson and Harvey Williams (for purposes of this cause of action, “Plaintiffs”) hereby incorporate all other paragraphs of this Complaint and restate them as if fully set forth herein.

244. Plaintiffs bring this claim on behalf of themselves and the Georgia State Class against Defendants.

245. Defendants, Plaintiffs, and members of the Georgia State Class are “persons” within the meaning of Georgia Uniform Deceptive Trade Practices Act (“Georgia UDTPA”), Ga. Code Ann. § 10-1-371(5).

246. The Georgia UDPTA prohibits “deceptive trade practices,” which include the “misrepresentation of standard or quality of goods or services,” and “engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.” Ga. Code Ann. § 10-1-372(a).

247. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products and ingredients for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made

affirmative representations about the Pet Food Products. If Plaintiffs had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test for toxins and contaminants adequately, Plaintiffs would not have purchased the Pet Food Products.

248. Plaintiffs and Georgia State Class members had no way of discerning that Defendants' representations were false and misleading because Plaintiffs and Georgia State Class members did not have access to Defendants' internal testing, internal testing equipment(s), internal policies or procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

249. Defendants thus violated the Georgia UDTPA by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products for toxins and contaminants.

250. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiffs and the Georgia State Class.

251. Defendants knew or should have known that their conduct violated the Georgia UDTPA.

252. Defendants owed Plaintiffs and the Georgia State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

253. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiffs and the Georgia State Class.

254. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive

reasonable consumers, including Plaintiffs and the Georgia State Class, about the true nature of the Pet Food Products.

255. Defendants' violations present a continuing risk to Plaintiffs, the Georgia State Class, and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

256. Plaintiffs and the Georgia State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

257. As a direct and proximate result of Defendants' violations of the Georgia UDTPA, Plaintiffs and the Georgia State Class has suffered injury-in-fact and/or actual damage.

258. Plaintiffs and the Georgia State Class seek an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Georgia UDTPA per Ga. Code Ann. § 10-1-373.

NINTH CAUSE OF ACTION

Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.* and 720 ILCS 295/1a (On Behalf of Plaintiff Jannette Kern and the Illinois State Class)

259. Plaintiff Jannette Kern (for purposes of this cause of action, "Plaintiff") hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

260. Plaintiff brings this claim on behalf of herself and the Illinois State Class against Defendants.

261. Defendants are "person[s]" as that term is defined in 815 ILCS 505/1(c).

262. Members of the Illinois State Class are "consumers" as that term is defined in 815 ILCS 505/1(e).

263. The Illinois Consumer Fraud and Deceptive Business Practices Act ("Illinois CFA") prohibits "unfair or deceptive acts or practices, including but not limited to the use or employment of

any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of trade or commerce . . . whether any person has in fact been misled, deceived or damaged thereby.” 815 ILCS 505/2.

264. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products and ingredients for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiff had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test the Pet Food Products and ingredients for toxins and contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

265. Plaintiff and Illinois State Class members had no way of discerning that Defendants’ representations were false and misleading because Plaintiff and Illinois State Class members did not have access to Defendants’ internal testing, internal testing equipment(s), internal policies or procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

266. Defendants thus violated the Illinois CFA by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products

were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products for toxins and contaminants.

267. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiff and the Illinois State Class.

268. Defendants knew or should have known that their conduct violated the Illinois CFA.

269. Defendants owed Plaintiff and the Illinois State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

270. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiff and the Illinois State Class.

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

272. Defendants' violations present a continuing risk to Plaintiff, the Illinois State Class, and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

273. Plaintiff and the Illinois State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

274. As a direct and proximate result of Defendants' violations of the Illinois CFA, Plaintiff and the Illinois State Class have suffered injury-in-fact and/or actual damage.

275. Pursuant to 815 ILCS 505/10a(a), Plaintiff and the Illinois State Class seek monetary relief against Defendants in the amount of actual damages, as well as punitive damages because Defendants acted with fraud and/or malice and/or was grossly negligent.

276. Plaintiff and the Illinois State Class also seek an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, punitive damages, and attorneys' fees, and any other just and proper relief available under 815 ILCS § 505/1 *et seq.*

TENTH CAUSE OF ACTION

**Violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3
(On Behalf of the Nationwide Class)**

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

278. This cause of action is brought on behalf of the Nationwide Class against Defendants.

279. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products and ingredients for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiffs had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test for toxins and contaminants adequately, Plaintiffs would not have purchased the Pet Food Products.

280. Plaintiffs and the Nationwide Class had no way of discerning that Defendants' representations were false and misleading because Plaintiffs and the Nationwide Class members did not have access to Defendants' internal testing, internal testing equipment(s), internal policies or

procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

281. Defendants thus violated the Indiana DCSA by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products for toxins and contaminants.

282. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiffs and the Nationwide Class members.

283. Defendants knew or should have known that their conduct violated the Indiana DCSA.

284. Defendants owed Plaintiffs and the Nationwide Class members a duty to disclose the true and unsafe nature of the Pet Food Products.

285. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiffs and the Nationwide Class.

286. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and the Nationwide Class, about the true nature of the Pet Food Products.

287. Defendants' violations present a continuing risk to Plaintiffs and the Nationwide Class, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

288. Plaintiffs and the Nationwide Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

289. As a direct and proximate result of Defendants' violations of the Indiana DCSA, Plaintiffs and the Nationwide Class have suffered injury-in-fact and/or actual damage.

290. Pursuant to Ind. Code § 24-5-0.5-4, Plaintiffs and the Nationwide Class seek monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$500 for each Class member, including treble damages up to \$1,000 for Defendants' willfully deceptive acts.

291. Plaintiffs and the Nationwide Class also seek punitive damages based on the outrageousness and recklessness of the Defendants' conduct and Defendants' high net worth.

292. Defendants received notice pursuant to Ind. Code § 24-5-0.5-5(a) concerning Defendants' wrongful conduct as alleged herein via the class action complaints filed and through demand letters. On January 12, 2021 Plaintiff Stephanie Romero sent a letter to Defendant Midwestern Pet Foods, Inc. demanding relief, on January 15, 2021 Plaintiff Crystal Fabela sent a letter sent to Defendant Midwestern Pet Foods, Inc. demanding relief, and on January 29, 2021 Plaintiffs Harvey Williams, Owen Woodall, and Vollie Griffin sent a letter sent to Defendant Midwestern Pet Foods, Inc. demanding relief on behalf of themselves and consumers nationwide. On February 11, 2021, Defendant Midwestern Pet Foods, Inc. responded to Plaintiff Romero's letter disputing Plaintiff Romero's claims and rejected her demand for relief. Therefore, sending pre-suit notice pursuant to Ind. Code § 24-5-0.5-5(a), is an exercise of futility for Plaintiffs Robert Lee, Kelleen Reagan, Tammy Johnson, Ashley Lill, Charles Foster, James Buechler, Sue Flynn, Tiffany Carlson, Connor Staponski, Shannon Proulx, Shanda Marshall, David Starnes, Chanler Potts, Henry Franco, Jr., because Defendants have not cured their unfair, abusive, and deceptive acts and practices, or their violations of Indiana DCSA were incurable, and Defendants have disputed Plaintiff Romero's claims and rejected her demand for relief. Plaintiffs and the Nationwide Class seek all damages and relief to which they are entitled.

293. In addition, Defendants have already been informed of the allegedly unfair and

deceptive conduct as described herein by the numerous consumer class action complaints filed against them.

ELEVENTH CAUSE OF ACTION

**Violations of the Kansas Consumer Protection Act, Kan. Stat. Ann. § 50-623 *et seq.*
(On Behalf of Plaintiff Ashley Lill and the Kansas State Class)**

294. Plaintiff Ashley Lill (for purposes of this cause of action, “Plaintiff”) hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

295. Plaintiff brings this claim on behalf of herself and the Kansas State Class against Defendants.

296. Each Defendant is a “supplier” under the Kansas Consumer Protection Act (“Kansas CPA”), Kan. Stat. Ann. § 50-624(l).

297. Plaintiff and Kansas State Class members are “consumers,” within the meaning of Kan. Stat. Ann. § 50-624(b), who purchased the Pet Food Products.

298. The sale of the Pet Food Products to Plaintiff and to the Kansas State Class members was a “consumer transaction” within the meaning of Kan. Stat. Ann. § 50-624(c)

299. The Kansas CPA states “[n]o supplier shall engage in any deceptive act or practice in connection with a consumer transaction,” Kan. Stat. Ann. § 50-626(a), and that deceptive acts or practices include: (1) knowingly making representations or with reason to know that “(A) Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;” and “(D) property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation;” “(2) the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact;” and “(3) the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact.” The Kansas CPA also provides that “[n]o supplier shall engage in any unconscionable act or practice in connection with a consumer transaction.” Kan. Stat.

Ann. § 50-627(a).

300. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products and ingredients for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiff had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test for toxins and contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

301. Plaintiff and the Kansas State Class had no way of discerning that Defendants' representations were false and misleading because Plaintiff and the Kansas State Class did not have access to Defendants' internal testing, internal testing equipment(s), internal policies or procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

302. Defendants thus violated the Kansas CPA by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products for toxins and contaminants.

303. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiff and the Kansas State Class.

304. Defendants knew or should have known that their conduct violated the Kansas CPA.

305. Defendants owed Plaintiff and the Kansas State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

306. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiff and the Kansas State Class.

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

308. Defendants' violations present a continuing risk to Plaintiff, the Kansas State Class, and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

309. Plaintiff and the Kansas State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

310. As a direct and proximate result of Defendants' violations of the Kansas CPA, Plaintiff and the Kansas State Class have suffered injury-in-fact and/or actual damage.

311. Pursuant to Kan. Stat. Ann. Code § 50-634, Plaintiff and the Kansas State Class seek monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$10,000 for each Kansas State Class member.

312. Plaintiff and the Kansas State Class also seek an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under Kan. Stat. Ann § 50-623, *et seq.*

TWELFTH CAUSE OF ACTION

**Violations of the Louisiana Unfair Trade Practices and Consumer Protection Law,
La. Stat. Ann. § 51:1401 *et seq.***

(On Behalf of Plaintiff Charles Foster and the Louisiana State Class)

313. Plaintiff Charles Foster (for purposes of this cause of action, “Plaintiff”) hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

314. Plaintiff brings this claim on behalf of himself and the Louisiana State Class against Defendants.

315. Defendants, Plaintiff, and the Louisiana State Class are “persons” within the meaning of the La. Rev. Stat. § 51:1402(8).

316. Plaintiff and Louisiana State Class members are “consumers” within the meaning of La. Rev. Stat. § 51:1402(1).

317. Defendants engaged in “trade” or “commerce” within the meaning of La. Rev. Stat. § 51:1402(10).

318. The Louisiana Unfair Trade Practices and Consumer Protection Law (“Louisiana CPL”) makes unlawful “deceptive acts or practices in the conduct of any trade or commerce.” La. Rev. Stat. § 51:1405(A). Defendants participated in misleading, false, or deceptive acts that violated the Louisiana CPL.

319. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test

Pet Food Products and ingredients for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiff had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test for toxins and contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

320. Plaintiff and the Louisiana State Class had no way of discerning that Defendants' representations were false and misleading because Plaintiff and the Louisiana State Class did not have access to Defendants' internal testing, internal testing equipment(s), internal policies or procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

321. Defendants thus violated the Louisiana CPL by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products for toxins and contaminants.

322. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiff and the Louisiana State Class.

323. Defendants knew or should have known that their conduct violated the Louisiana CPL.

324. Defendants owed Plaintiff and the Louisiana State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

325. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiff and the Louisiana State Class.

326. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive

reasonable consumers, including Plaintiff and the Louisiana State Class, about the true nature of the Pet Food Products.

327. Defendants' violations present a continuing risk to Plaintiff, the Louisiana State Class, and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

328. Plaintiff and the Louisiana State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

329. As a direct and proximate result of Defendants' violations of the Louisiana CPL, Plaintiff and the Louisiana State Class have suffered injury-in-fact and/or actual damage.

330. Pursuant to La. Rev. Stat. § 51:1409, Plaintiff and the Louisiana State Class seek to recover actual damages in an amount to be determined at trial; treble damages for Defendants' knowing violations of the Louisiana CPL; and order enjoining Defendants' unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available under La. Rev. Stat. § 51:1409.

THIRTEENTH CAUSE OF ACTION

Violations of the Maryland Consumer Protection Act, Md. Code Com. Law § 13-101 *et seq.* (On Behalf of Plaintiff James Buechler and the Maryland State Class)

331. Plaintiff James Buechler (for purposes of this cause of action, "Plaintiff") hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

332. Plaintiff brings this claim on behalf of himself and the Maryland State Class against Defendants.

333. Defendants, Plaintiff, and the Maryland State Class are "persons" within the meaning of Md. Code Com. Law § 13-101(h).

334. The Maryland Consumer Protection Act ("Maryland CPA") provides that a person may

not engage in any unfair or deceptive trade practice in the sale of any consumer good. Md. Code Com. Law § 13-303. Defendants participated in misleading, false, or deceptive acts that violated the Maryland CPA.

335. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products and ingredients for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiff had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test for toxins and contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

336. Plaintiff and the Maryland State Class had no way of discerning that Defendants' representations were false and misleading because Plaintiff and the Maryland State Class did not have access to Defendants' internal testing, internal testing equipment(s), internal policies or procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

337. Defendants thus violated the Maryland CPA by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained,

or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products for toxins and contaminants.

338. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiff and the Maryland State Class.

339. Defendants knew or should have known that their conduct violated the Maryland CPA.

340. Defendants owed Plaintiff and the Maryland State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

341. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiff and the Maryland State Class.

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

343. Defendants' violations present a continuing risk to Plaintiff, the Maryland State Class, and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

344. Plaintiff and the Maryland State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

345. As a direct and proximate result of Defendants' violations of the Maryland CPA, Plaintiff and the Maryland State Class have suffered injury-in-fact and/or actual damage.

346. Pursuant to Md. Code Com. Law § 13-408, Plaintiff and the Maryland State Class seek actual damages, attorneys' fees, and any other just and proper relief available under the Maryland CPA.

FOURTEENTH CAUSE OF ACTION

**Violations of the Michigan Consumer Protection Act, Mich. Comp. Laws § 445.903 *et seq.*
(On Behalf of Plaintiffs Sue Flynn and Tiffany Carlson and the Michigan State Class)**

347. Plaintiffs Sue Flynn and Tiffany Carlson (for purposes of this cause of action, “Plaintiffs”) hereby incorporate all other paragraphs of this Complaint and restate them as if fully set forth herein.

348. Plaintiffs bring this claim on behalf of themselves and the Michigan State Class against Defendants.

349. Michigan State Class members are “person[s]” within the meaning of the Mich. Comp. Laws § 445.902(1)(d).

350. Defendants are “person[s]” engaged in “trade or commerce” within the meaning of the Mich. Comp. Laws § 445.902(1)(d) and (g).

351. The Michigan Consumer Protection Act (“Michigan CPA”) prohibits “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce” Mich. Comp. Laws § 445.903(1). Defendants engaged in unfair, unconscionable, or deceptive methods, acts or practices prohibited by the Michigan CPA, including: “(c) Representing that goods or services have . . . characteristics . . . that they do not have. . . .;” “(e) Representing that goods or services are of a particular standard . . . if they are of another;” “(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;” “(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is;” and “(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.” Mich. Comp. Laws § 445.903(1).

352. In the course of their business, among other things, Defendants made affirmative

misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products and ingredients for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiffs had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test for toxins and contaminants adequately, Plaintiffs would not have purchased the Pet Food Products.

353. Plaintiffs and the Michigan State Class had no way of discerning that Defendants' representations were false and misleading because Plaintiffs and the Michigan State Class did not have access to Defendants' internal testing, internal testing equipment(s), internal policies or procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

354. Defendants thus violated the Michigan CPA by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products and ingredients for toxins and contaminants.

355. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiffs and the Michigan State Class.

356. Defendants knew or should have known that their conduct violated the Michigan CPA.

357. Defendants owed Plaintiffs and the Michigan State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

358. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiffs and the Michigan State Class.

359. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and the Michigan State Class, about the true nature of the Pet Food Products.

360. Defendants' violations present a continuing risk to Plaintiffs, the Michigan State Class, and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

361. Plaintiffs and the Michigan State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

362. As a direct and proximate result of Defendants' violations of the Michigan CPA, Plaintiffs and the Michigan State Class have suffered injury-in-fact and/or actual damage.

363. Plaintiffs and the Michigan State Class seek injunctive relief to enjoin Defendants from continuing its unfair and deceptive acts; monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$250 for each Michigan State Class member; reasonable attorneys' fees; and any other just and proper relief available under Mich. Comp. Laws § 445.911.

364. Plaintiffs and the Michigan State Class also seek punitive damages against Defendants because Defendants carried out despicable conduct with willful and conscious disregard of the rights of others. Defendants intentionally and willfully misrepresented the Pet Food Products and concealed material facts that only they knew. Defendants' unlawful conduct constitutes oppression and fraud

warranting punitive damages.

FIFTEENTH CAUSE OF ACTION

**Violations of the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *et seq.*
(On Behalf of Plaintiff Connor Staponski and the Missouri State Class)**

365. Plaintiff Connor Staponski (for purposes of this cause of action, “Plaintiff”) hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

366. Plaintiff brings this claim on behalf of herself and the Missouri State Class against Defendants.

367. Defendants, Plaintiff, and the Missouri State Class are “persons” within the meaning of Mo. Rev. Stat. § 407.010(5).

368. Defendants engaged in “trade” or “commerce” in the State of Missouri within the meaning of Mo. Rev. Stat. § 407.010(7).

369. The Missouri Merchandising Practices Act (“Missouri MPA”) makes unlawful the “act, use or employment by any person of any deception, fraud, false pretense, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise Mo. Rev. Stat. § 407.020.

370. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products and ingredients for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made

affirmative representations about the Pet Food Products. If Plaintiff had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test for toxins and contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

371. Plaintiff and the Missouri State Class had no way of discerning that Defendants' representations were false and misleading because Plaintiff and the Missouri State Class did not have access to Defendants' internal testing, internal testing equipment(s), internal policies or procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

372. Defendants thus violated the Missouri MPA by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products for toxins and contaminants.

373. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiff and the Missouri State Class.

374. Defendants knew or should have known that their conduct violated the Missouri MPA.

375. Defendants owed Plaintiff and the Missouri State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

376. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiff and the Missouri State Class.

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

378. Defendants' violations present a continuing risk to Plaintiff, the Missouri State Class, and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

379. Plaintiff and the Missouri State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

380. As a direct and proximate result of Defendants' violations of the Missouri MPA, Plaintiff and the Missouri State Class have suffered injury-in-fact and/or actual damage.

381. Defendants are liable to Plaintiff and the Missouri State Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and punitive damages, as well as injunctive relief enjoining Defendants' unfair and deceptive practices, and any other just and proper relief under Mo. Rev. Stat. § 407.025.

SIXTEENTH CAUSE OF ACTION

**Violations of the New Mexico Unfair Trade Practices Act, N.M. Stat. Ann. § 57-12-1 *et seq.*
(On Behalf of Plaintiffs Shannon Proulx and Stephanie Romero
and the New Mexico State Class)**

382. Plaintiffs Shannon Proulx and Stephanie Romero (for purposes of this cause of action, "Plaintiffs") hereby incorporate all other paragraphs of this Complaint and restate them as if fully set forth herein.

383. Plaintiffs bring this claim on behalf of themselves and the New Mexico State Class against Defendants.

384. Defendants, Plaintiffs, and New Mexico State Class members are "person[s]" under the New Mexico Unfair Trade Practices Act ("New Mexico UTPA"), N.M. Stat. Ann. § 57-12-2.

385. Defendants' actions as set forth herein occurred in the conduct of trade or commerce as defined under N.M. Stat. Ann. § 57-12-2.

386. The New Mexico UTPA makes unlawful "a false or misleading oral or written

statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services . . . by a person in the regular course of the person's trade or commerce, that may, tends to or does deceive or mislead any person," including but not limited to "failing to state a material fact if doing so deceives or tends to deceive." N.M. Stat. Ann. § 57-12-2(D). Defendants' acts and omissions described herein constitute unfair or deceptive acts or practices under N.M. Stat. Ann. § 57-12-2(D). In addition, Defendants' actions constitute unconscionable actions under N.M. Stat. Ann. § 57-12-2(E), since they took advantage of the lack of knowledge, ability, experience, and capacity of New Mexico State Class members to a grossly unfair degree.

387. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products and ingredients for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiffs had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test for toxins and contaminants adequately, Plaintiffs would not have purchased the Pet Food Products.

388. Plaintiffs and the New Mexico State Class had no way of discerning that Defendants' representations were false and misleading because Plaintiffs and the New Mexico State Class did not have access to Defendants' internal testing, internal testing equipment(s), internal policies or

procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

389. Defendants thus violated the New Mexico UTPA by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products for toxins and contaminants.

390. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiffs and the New Mexico State Class.

391. Defendants knew or should have known that their conduct violated the New Mexico UTPA.

392. Defendants owed Plaintiffs and the New Mexico State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

393. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiffs and the New Mexico State Class.

394. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and the New Mexico State Class, about the true nature of the Pet Food Products.

395. Defendants' violations present a continuing risk to Plaintiffs, the New Mexico State Class, and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

396. Plaintiffs and the New Mexico State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and

failure to disclose material information.

397. As a direct and proximate result of Defendants' violations of the New Mexico UTPA, Plaintiffs and New Mexico State Class members have suffered injury-in-fact and/or actual damage.

398. Because Defendants' unconscionable, willful conduct caused actual harm to Plaintiffs and New Mexico State Class members, Plaintiffs and the New Mexico State Class seek recovery of actual damages or \$100, whichever is greater, discretionary treble damages, punitive damages, and reasonable attorneys' fees and costs, as well as all other proper and just relief available under N.M. Stat. Ann. § 57-12-10.

399. Plaintiffs and New Mexico State Class members also seek punitive damages against Defendants because Defendants' conduct was malicious, willful, reckless, wanton, fraudulent, and in bad faith.

SEVENTEENTH CAUSE OF ACTION

Violations of the New York General Business Law § 349, N.Y. Gen. Bus. Law § 349 (On Behalf of Plaintiff Shanda Marshall and the New York State Class)

400. Plaintiff Shanda Marshall (for purposes of this cause of action, "Plaintiff") hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

401. Plaintiff brings this claim on behalf of herself and the New York State Class against Defendants.

402. Plaintiff, the New York State Class members, and Defendants are "persons" under N.Y. Gen. Bus. Law § 349(h), the New York Deceptive Trade Practices Act ("NY DTPA").

403. Defendants' actions as set forth herein occurred in the conduct of trade or commerce under the NY DTPA.

404. The NY DTPA makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce." N.Y. Gen. Bus. Law § 349. Defendants' conduct, as set forth herein, constitutes deceptive acts or practices under this section.

405. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiff had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test for toxins and contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

406. Plaintiff and the New York State Class had no way of discerning that Defendants' representations were false and misleading because Plaintiff and the New York State Class did not have access to Defendants' internal testing, internal testing equipment(s), internal policies or procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

407. Defendants thus violated the NY DTPA by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products and ingredients for toxins and contaminants.

408. Defendants intentionally and knowingly misrepresented material facts regarding the Pet

Food Products with intent to mislead Plaintiff and the New York State Class.

409. Defendants knew or should have known that their conduct violated the NY DTPA.

410. Defendants owed Plaintiff and the New York State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

411. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiff and the New York State Class.

412. Defendants' unfair or deceptive trade practices were likely to and did in fact deceive reasonable consumers, including Plaintiff and the New York State Class, about the true nature of the Pet Food Products.

413. Defendants' violations present a continuing risk to Plaintiff, the New York State Class, and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

414. Plaintiff and the New York State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

415. As a direct and proximate result of Defendants' violations of the NY DTPA, Plaintiff and New York State Class members have suffered injury-in-fact and/or actual damage.

416. As a result of the foregoing willful, knowing, and wrongful conduct of Defendants, Plaintiff and New York State Class members have been damaged in an amount to be proven at trial, and seek all just and proper remedies, including but not limited to actual damages or \$50, whichever is greater, treble damages up to \$1,000, punitive damages to the extent available under the law, reasonable attorneys' fees and costs, an order enjoining Defendants' deceptive and unfair conduct, and all other just and appropriate relief available under the NY DTPA.

EIGHTEENTH CAUSE OF ACTION

**Violations of the New York General Business Law § 350, N.Y. Gen. Bus. Law § 350
(On Behalf of Plaintiff Shanda Marshall and the New York State Class)**

417. Plaintiff Shanda Marshall (for purposes of this cause of action, “Plaintiff”) hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

418. Plaintiff brings this claim on behalf of herself and the New York State Class against Defendants.

419. Defendants were engaged in the “conduct of business, trade or commerce,” within the meaning of N.Y. Gen. Bus. Law § 350, the New York False Advertising Act (“NY FAA”).

420. The NY FAA makes unlawful “[f]alse advertising in the conduct of any business, trade or commerce.” N.Y. Gen. Bus. Law § 350. False advertising includes “advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect,” taking into account “the extent to which the advertising fails to reveal facts material in light of . . . representations [made] with respect to the commodity” N.Y. Gen. Bus. Law § 350-a.

421. Defendants caused to be made or disseminated through New York, through advertising, marketing, and other publications, statements and omissions that were untrue or misleading, and that were known by Defendants, or that through the exercise of reasonable care should have been known by Defendants, to be untrue and misleading to the Plaintiff and the New York State Class.

422. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain,

Salmonella resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products and ingredients for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiff had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test for toxins and contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

423. The misrepresentations and omissions regarding the Pet Food Products set forth above were material and likely to deceive a reasonable consumer.

424. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead the Plaintiff and the New York State Class.

425. Defendants' false advertising was likely to and did in fact deceive reasonable consumers, including Plaintiff and the New York State Class, about the true nature of the Pet Food Products.

426. Defendants' violations of the NY FAA present a continuing risk to Plaintiff and New York State Class members and to the general public. Defendants' deceptive acts and practices affect the public interest.

427. Plaintiff and New York State Class members have suffered injury-in-fact and/or actual damages and ascertainable loss as a direct and proximate result of the Defendant's false advertising in violation of the NY FAA.

428. Plaintiff and the New York State Class seek monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial, and (b) statutory damages in the amount of \$500 for each New York State Class members. Because Defendants' conduct was committed willingly and knowingly, Plaintiff and New York State Class members are entitled to recover three times actual damages, up to \$10,000.

429. Plaintiff and the New York State Class also seek an order enjoining Defendants' false advertising, attorneys' fees, and any other just and proper relief under N.Y. Gen. Bus. Law § 350.

NINETEENTH CAUSE OF ACTION
Violations of the North Carolina Unfair and Deceptive Acts and Practices Act,
N.C. Gen. Stat. § 75-1.1 *et seq.*
(On Behalf of Plaintiff Owen Woodall and the North Carolina State Class)

430. Plaintiff Owen Woodall (for purposes of this cause of action, "Plaintiff") hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

431. Plaintiff brings this claim on behalf of himself and the North Carolina State Class against Defendants.

432. Plaintiff and North Carolina State Class members are persons under the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.* ("NCUDTPA").

433. Defendants' acts and practices complained of herein were performed in the course of Defendants' trade or business and thus occurred in or affected "commerce," as defined in N.C. Gen. Stat. § 75-1.1(b).

434. The NCUDTPA makes unlawful "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce[.]" The NCUDTPA provides a private right of action for any person injured "by reason of any act or thing done by any other person, firm or corporation in violation of" the NCUDTPA. N.C. Gen. Stat. § 75-16.

435. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test

Pet Food Products and ingredients for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiff had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test for toxins and contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

436. Plaintiff and the North Carolina State Class had no way of discerning that Defendants' representations were false and misleading because Plaintiff and the North Carolina State Class did not have access to Defendants' internal testing, internal testing equipment(s), internal policies or procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

437. Defendants thus violated the NCUDTPA by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products for toxins and contaminants.

438. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiff and the North Carolina State Class.

439. Defendants knew or should have known that their conduct violated the NCUDTPA.

440. Defendants owed Plaintiff and the North Carolina State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

441. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiff and the North Carolina State Class.

442. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff and the North Carolina State Class, about the true nature of the Pet Food Products.

443. Defendants' violations present a continuing risk to Plaintiff, the North Carolina State Class, and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

444. Plaintiff and the North Carolina State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

445. As a result of the foregoing wrongful conduct of Defendants, Plaintiff and the North Carolina State Class has been damaged in an amount to be proven at trial, and seek all just and proper remedies, including but not limited to treble damages, an order enjoining Defendants' deceptive and unfair conduct, court costs and reasonable attorneys' fees, and any other just and proper relief available under N.C. Gen. Stat. § 75-16.

TWENTIETH CAUSE OF ACTION

Violations of the Oklahoma Consumer Protection Act, Okla. Stat. Tit. 15 § 751 *et seq.* (On Behalf of Plaintiff David Starnes and the Oklahoma State Class)

446. Plaintiff David Starnes (for purposes of this cause of action, "Plaintiff") hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

447. Plaintiff brings this claim on behalf of himself and the Oklahoma State Class against Defendants.

448. Defendants, Plaintiff, and the Oklahoma State Class are "persons" within the meaning of Okla. Stat. Tit. 15 § 752.1.

449. Defendants engaged in "the course of [its] business" within the meaning of Okla. Stat. Tit. 15 § 752.3 with respect to the acts alleged herein.

450. The Oklahoma Consumer Protection Act (“Oklahoma CPA”) prohibits, in the course of business: “mak[ing] a false or misleading representation, knowingly or with reason to know, as to the characteristics . . . , uses, [or] benefits, of the subject of a consumer transaction,” or making a false representation, “knowingly or with reason to know, that the subject of a consumer transaction is of a particular standard, style or model, if it is of another or “[a]dvertis[ing], knowingly or with reason to know, the subject of a consumer transaction with intent not to sell it as advertised;” and otherwise committing “an unfair or deceptive trade practice.” Okla. Stat. Tit. 753.

451. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiff had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test for toxins and contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

452. Plaintiff and the Oklahoma State Class had no way of discerning that Defendants’ representations were false and misleading because Plaintiff and the Oklahoma State Class did not have access to Defendants’ internal testing, internal testing equipment(s), internal policies or procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

453. Defendants thus violated the Oklahoma CPA by making statements, when considered

as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products and ingredients for toxins and contaminants.

454. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiff and the Oklahoma State Class.

455. Defendants knew or should have known that their conduct violated the Oklahoma CPA.

456. Defendants owed Plaintiff and the Oklahoma State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

457. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiff and the Oklahoma State Class.

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

459. Defendants' violations present a continuing risk to Plaintiff, the Oklahoma State Class, and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

460. Plaintiff and the Oklahoma State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

461. Pursuant to Okla. Stat. Tit. 15 § 761.1, Plaintiff and the Oklahoma State Class seek an order enjoining Defendants' unfair and/or deceptive acts or practices, damages, punitive damages, and attorneys' fees, costs, and any other just and proper relief available under the Oklahoma CPA.

TWENTY-FIRST CAUSE OF ACTION

**Violations of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*
(On Behalf of Plaintiff Chanler Potts and the Tennessee State Class)**

462. Plaintiff Chanler Potts (for purposes of this cause of action, “Plaintiff”) hereby incorporates all other paragraphs of this Complaint and restates them as if fully set forth herein.

463. Plaintiff brings this claim on behalf of herself and the Tennessee State Class against Defendants.

464. Plaintiff and Tennessee State Class members are “natural persons” and “consumers” within the meaning of Tenn. Code § 47-18-103(2). Defendants are “person[s]” within the meaning of Tenn. Code § 47-18-103(9).

465. Defendants are engaged in “trade” or “commerce” or “consumer transactions” within the meaning Tenn. Code § 47-18-103(9).

466. The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits “unfair or deceptive acts or practices affecting the conduct of any trade or commerce.” Tenn. Code § 47-18-104.

467. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products and ingredients for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiff had known that the Pet Food

Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test for toxins and contaminants adequately, Plaintiff would not have purchased the Pet Food Products.

468. Plaintiff and the Tennessee State Class had no way of discerning that Defendants' representations were false and misleading because Plaintiff and the Tennessee State Class did not have access to Defendants' internal testing, internal testing equipment(s), internal policies or procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

469. Defendants thus violated the Tennessee CPA by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products for toxins and contaminants.

470. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiff and the Tennessee State Class.

471. Defendants knew or should have known that their conduct violated the Tennessee CPA.

472. Defendants owed Plaintiff and the Tennessee State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

473. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiff and the Tennessee State Class.

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

475. Defendants' violations present a continuing risk to Plaintiff, the Tennessee State Class,

and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

476. Plaintiff and the Tennessee State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

477. Pursuant to Tenn. Code § 47-18-109, Plaintiff and the Tennessee State Class seek an order enjoining Defendants' unfair and/or deceptive acts or practices, damages, treble damages for willful and knowing violations, pursuant to § 47-18-109(a)(3), punitive damages, and attorneys' fees, costs, and any other just and proper relief to the extent available under the Tennessee CPA.

TWENTY-SECOND CAUSE OF ACTION

**Violations of the Deceptive Trade Practices Act, Tex. Bus. & Com. Code § 17.41 *et seq.*
(On Behalf of Vollie Griffin, Henry Franco, Jr., and Crystal Fabela and the Texas State Class)**

478. Plaintiffs Vollie Griffin, Henry Franco, Jr., and Crystal Fabela (for purposes of this cause of action, "Plaintiffs") hereby incorporate all other paragraphs of this Complaint and restate them as if fully set forth herein.

479. Plaintiffs bring this claim on behalf of themselves and the Texas State Class against Defendants.

480. Plaintiffs and the Texas State Class are individuals, partnerships or corporations with assets of less than \$25 million (or are controlled by corporations or entities with less than \$25 million in assets), see Tex. Bus. & Com. Code § 17.41, and are therefore "consumers" pursuant to Tex. Bus. & Com. Code § 17.45(4). Defendants are "person[s]" within the meaning of Tex. Bus. & Com. Code § 17.45(3).

481. Defendants engaged in "trade" or "commerce" or "consumer transactions" within the meaning Tex. Bus. & Com. Code § 17.46(a).

482. The Texas Deceptive Trade Practices – Consumer Protection Act ("Texas DTPA")

prohibits “false, misleading, or deceptive acts or practices in the conduct of any trade or commerce,” Tex. Bus. & Com. Code § 17.46(a), and an “unconscionable action or course of action,” which means “an act or practice which, to a consumer’s detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.” Tex. Bus. & Com. Code §§ 17.45(5) and 17.50(a)(3).

483. In the course of their business, among other things, Defendants made affirmative misrepresentations regarding the Pet Food Products. Specifically, Defendants represented that the Pet Food Products were suitable for animals, represented that the Pet Food Products provided targeted nutrition, and guaranteed the products for taste and nutrition. Defendants, however, failed to disclose material facts, namely, that (1) the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; (2) the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; or (3) Defendants failed to properly inspect and test Pet Food Products and ingredients for toxins and contaminants. Defendants had a duty to disclose these material facts because the Pet Food Products were unsafe and because Defendants made affirmative representations about the Pet Food Products. If Plaintiffs had known that the Pet Food Products either (1) contained excessive levels of Aflatoxins, (2) *Salmonella* contaminants, or (3) that Defendants failed to inspect and test for toxins and contaminants adequately, Plaintiffs would not have purchased the Pet Food Products.

484. Plaintiffs and the Texas State Class had no way of discerning that Defendants’ representations were false and misleading because Plaintiffs and the Texas State Class did not have access to Defendants’ internal testing, internal testing equipment(s), internal policies or procedures, or any internal documents regarding excessive levels of Aflatoxins or *Salmonella* contaminants.

485. Defendants thus violated the Texas DTPA by making statements, when considered as a whole from the perspective of the reasonable consumer, that conveyed that the Pet Food Products were safe and suitable for animals. Defendants also failed to disclose and warn that the Pet Food Products

were unsafe and unsuitable for animals; that the Pet Food Products contained, or might contain, Aflatoxins in excessive levels resulting in injury to pets; that the Pet Food Products contained, or might contain, *Salmonella* resulting in injury to pets and humans; and that Defendants failed to properly inspect and test the Pet Food Products for toxins and contaminants.

486. Defendants intentionally and knowingly misrepresented material facts regarding the Pet Food Products with intent to mislead Plaintiffs and the Texas State Class.

487. Defendants knew or should have known that their conduct violated the Texas DTPA.

488. Defendants owed Plaintiffs and the Texas State Class a duty to disclose the true and unsafe nature of the Pet Food Products.

489. Defendants' concealment of the true characteristics of the Pet Food Products was material to Plaintiffs and the Texas State Class.

490. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and the Texas State Class, about the true nature of the Pet Food Products.

491. Defendants' violations present a continuing risk to Plaintiffs, the Texas State Class, and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

492. Plaintiffs and the Texas State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

493. Pursuant to Tex. Bus. & Com. Code § 17.50, Plaintiffs and the Texas State Class seek an order enjoining Defendants' unfair and/or deceptive acts or practices, damages, multiple damages for knowing and intentional violations, pursuant to § 17.50(b)(1), punitive damages, and attorneys' fees, costs, and any other just and proper relief available under the Texas DTPA.

494. Defendants received notice pursuant to Tex. Bus. & Com. Code Ann. § 17.505

concerning Defendants' wrongful conduct as alleged herein via the class action complaints filed and through demand letters. On January 12, 2021 Plaintiff Stephanie Romero sent a letter to Defendant Midwestern Pet Foods, Inc. demanding relief, on January 15, 2021 Plaintiff Crystal Fabela sent a letter sent to Defendant Midwestern Pet Foods, Inc. demanding relief, and on January 29, 2021 Plaintiffs Harvey Williams, Owen Woodall, and Vollie Griffin sent a letter sent to Defendant Midwestern Pet Foods, Inc. demanding relief on behalf of themselves and consumers nationwide. On February 11, 2021, Defendant Midwestern Pet Foods, Inc. responded to Plaintiff Romero's letter disputing Plaintiff Romero's claims and rejected her demand for relief. Therefore, sending pre-suit notice pursuant to Tex. Bus. & Com. Code Ann. § 17.505, is an exercise of futility for Plaintiff Henry Franco, Jr. because Defendants have not cured their unfair, abusive, and deceptive acts and practices, or their violations of Texas DTPA were incurable, and Defendants have disputed Plaintiff Romero's claims and rejected her demand for relief. Plaintiffs and the Texas State Class seek all damages and relief to which they are entitled.

495. In addition, Defendants have already been informed of the allegedly unfair and deceptive conduct as described herein by the numerous consumer class action complaints filed against them.

TWENTY-THIRD CAUSE OF ACTION
Breach of Express Warranty
(On Behalf of All Classes)

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

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

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

499. Defendants expressly warranted, advertised, and represented to Plaintiffs and members

of the Classes that the Pet Food Products were and are high quality, healthy, safe, and suitable for pet consumption.

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

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

502. Defendants' Pet Food Products do not conform to Defendants' warranties, advertisements, and representations in that they are not safe or appropriate for pet consumption, as they contain, or may contain dangerous levels of Aflatoxin and/or contaminated with *Salmonella*.

503. Defendants were on notice of this breach, as Defendants were aware of the dangerous levels of Aflatoxin and/or *Salmonella* contamination in the Pet Food Products due to its own testing and expertise, and/or based on the investigations noted in the FDA Inspectional Observations Report and testing conducting by various third-parties as alleged herein that revealed the Pet Food Products as containing dangerous levels of Aflatoxin and/or contaminated with *Salmonella*.

504. Defendants also received notice concerning Defendants' wrongful conduct as alleged herein via the class action complaints filed and through demand letters. On January 12, 2021 Plaintiff Stephanie Romero sent a letter to Defendant Midwestern Pet Foods, Inc. demanding relief, on January 15, 2021 Plaintiff Crystal Fabela sent a letter sent to Defendant Midwestern Pet Foods, Inc. demanding relief, and on January 29, 2021 Plaintiffs Harvey Williams, Owen Woodall, and Vollie Griffin sent a

letter sent to Defendant Midwestern Pet Foods, Inc. demanding relief on behalf of themselves and consumers nationwide. On February 11, 2021, Defendant Midwestern Pet Foods, Inc. responded to Plaintiff Romero's letter disputing Plaintiff Romero's claims and rejected her demand for relief. Affording Defendants a reasonable opportunity to cure its breach of implied warranties would be unnecessary and futile here because Defendants had known of and concealed the safety of its Pet Food Products, and have disputed Plaintiff Romero's claims and rejected her demand for relief.

505. In addition, Defendants have already been informed of the allegedly unfair and deceptive conduct as described herein by the numerous consumer class action complaints filed against them.

506. Privity exists because Defendants expressly warranted to Plaintiffs and members of the Classes through the warranting, website, packaging, advertising, marketing, and labeling that the Pet Food Products were high quality, healthy, safe, and suitable for pet consumption, and by failing to make any mention of dangerous levels of Aflatoxin and/or *Salmonella* contamination.

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

508. Defendants' breach of its express warranties constitutes a violation of Article 2, Section 2-313 of the Uniform Commercial Code, which Article has been adopted by every State other than Louisiana.

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

TWENTY-FOURTH CAUSE OF ACTION
Breach of Common Law Implied Warranty of Merchantability
(On Behalf of All Classes)

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

511. Plaintiffs bring this claim individually and on behalf of the members of the proposed Classes against Defendants.

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

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

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

515. An implied warranty that the Pet Food Products were merchantable arose by operation of law as part of the sale of the Pet Food Products.

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

517. Plaintiffs and members of the Classes relied on such messaging, characterizations,

promises, and affirmations of fact when they purchased the Pet Food Products. Contrary to Defendants' representations and warranties, the Pet Food Products were not fit for their ordinary use, consumption by pets, and did not conform to Defendants' affirmations of fact and promises as they contained, or were at risk of containing, dangerous levels of Aflatoxin and/or *Salmonella* contamination that do not conform to the packaging.

518. As a consequence, Defendants breached its implied warranties upon selling such Pet Food Products, as each product contained dangerous levels of Aflatoxin and/or contaminated with *Salmonella*.

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

520. Defendants were on notice of this breach, as Defendants were aware of the dangerous levels of Aflatoxin and/or *Salmonella* contamination in the Pet Food Products due to its own testing and expertise, and/or based on the investigations noted in the FDA Inspectional Observations Report and testing conducting by various third-parties as alleged herein that revealed the Pet Food Products as containing dangerous levels of Aflatoxin and/or contaminated with *Salmonella*.

521. Defendants also received notice concerning Defendants' wrongful conduct as alleged herein via the class action complaints filed and through demand letters. On January 12, 2021 Plaintiff Stephanie Romero sent a letter to Defendant Midwestern Pet Foods, Inc. demanding relief, on January 15, 2021 Plaintiff Crystal Fabela sent a letter sent to Defendant Midwestern Pet Foods, Inc. demanding relief, and on January 29, 2021 Plaintiffs Harvey Williams, Owen Woodall, and Vollie Griffin sent a letter sent to Defendant Midwestern Pet Foods, Inc. demanding relief on behalf of themselves and consumers nationwide. On February 11, 2021, Defendant Midwestern Pet Foods, Inc. responded to Plaintiff Romero's letter disputing Plaintiff Romero's claims and rejected her demand for relief. Affording Defendants a reasonable opportunity to cure its breach of implied warranties would be unnecessary and futile here because Defendants had known of and concealed the safety of its Pet Food

Products, and have disputed Plaintiff Romero's claims and rejected her demand for relief.

522. In addition, Defendants have already been informed of the allegedly unfair and deceptive conduct as described herein by the numerous consumer class action complaints filed against them.

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

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

525. Privity exists because Defendants impliedly warranted to Plaintiffs and members of the Classes through the warranting, website, packaging, advertising, marketing, and labeling that the Pet Food Products were high quality, healthy, safe, and suitable for pet consumption, and by failing to make any mention of dangerous levels of Aflatoxin and/or *Salmonella* contamination.

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

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

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

TWENTY- FIFTH CAUSE OF ACTION
Breach of Statutory Warranty of Merchantability
(On Behalf of Classes in States Enumerated Below)

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

530. Plaintiffs bring this claim individually and on behalf of the members of the proposed Classes against Defendants.

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

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

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

534. An implied warranty that the Pet Food Products were merchantable arose by operation of law as part of the sale of the Pet Food Products.

535. The following state statutes recognize an implied warranty of merchantability under their version of Section 2-314 of the Uniform Commercial Code:

- Ala. Code § 7-2-314;
- Cal. Comm. Code § 2314;
- Fla. Stat § 672.314;
- Ga. Code Ann. §11-2-314;
- 810 I.L.C.S. 5/2-314;
- Kan. Stat. §§ 84-2-314;
- La. Civ Code Art. 2520, 2524;

- Md. Code Com. Law § 2-314;
- Mich. Comp. Laws § 440.2314;
- Mo. Stat. § 400.2-314;
- N.M. Stat. § 55-2-314;
- N.Y. U.C.C. § 2-314;
- N.C. Gen. Stat. § 25-2-314;
- Okla. Stat. Tit. 12A § 2-314;
- Tenn. Code. §§ 47-2-314; and
- Tex. Bus. & Com. Code Ann. § 2.314

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

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

538. As a consequence, Defendants breached its implied warranties upon selling such Pet

Food Products, as each product contained dangerous levels of Aflatoxin and/or contaminated with *Salmonella*.

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

540. Defendants were on notice of this breach, as Defendants were aware of the dangerous levels of Aflatoxin and/or *Salmonella* contamination in the Pet Food Products due to its own testing and expertise, and/or based on the investigations noted in the FDA Inspectional Observations Report and testing conducting by various third-parties as alleged herein that revealed the Pet Food Products as containing dangerous levels of Aflatoxin and/or contaminated with *Salmonella*.

541. Defendants also received notice concerning Defendants' wrongful conduct as alleged herein via the class action complaints filed and through demand letters. On January 12, 2021 Plaintiff Stephanie Romero sent a letter to Defendant Midwestern Pet Foods, Inc. demanding relief, on January 15, 2021 Plaintiff Crystal Fabela sent a letter sent to Defendant Midwestern Pet Foods, Inc. demanding relief, and on January 29, 2021 Plaintiffs Harvey Williams, Owen Woodall, and Vollie Griffin sent a letter sent to Defendant Midwestern Pet Foods, Inc. demanding relief on behalf of themselves and consumers nationwide. On February 11, 2021, Defendant Midwestern Pet Foods, Inc. responded to Plaintiff Romero's letter disputing Plaintiff Romero's claims and rejected her demand for relief. Affording Defendants a reasonable opportunity to cure its breach of implied warranties would be unnecessary and futile here because Defendants had known of and concealed the safety of its Pet Food Products, and have disputed Plaintiff Romero's claims and rejected her demand for relief.

542. In addition, Defendants have already been informed of the allegedly unfair and deceptive conduct as described herein by the numerous consumer class action complaints filed against them.

543. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and members of the Classes have been damaged in an amount to be proven

at trial.

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

545. Privity exists because Defendants impliedly warranted to Plaintiffs and members of the Classes through the warranting, website, packaging, advertising, marketing, and labeling that the Pet Food Products were high quality, healthy, safe, and suitable for pet consumption, and by failing to make any mention of dangerous levels of Aflatoxin and/or *Salmonella* contamination.

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

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

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

TWENTY- SIXTH CAUSE OF ACTION
Fraudulent Concealment – Fraud by Omission
(On Behalf of All Classes)

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

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

551. Defendants concealed from and failed to disclose to Plaintiffs and members of the

Classes that the Pet Food Products contained, or were at risk of containing, dangerous levels of Aflatoxin and/or contaminated with *Salmonella* that do not conform to the Pet Food Products' labels, packaging, advertising, and statements, including, but not limited to, representations that its Products were high quality, healthy, safe, and suitable for pet consumption.

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

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

554. Defendants knew that this omission was material information that Plaintiffs and members of the Classes required, and Defendants intentionally omitted and failed to disclose this information to induce the Plaintiffs and members of the Classes to purchase their Pet Food Products.

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

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

represented by Defendants.

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

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

TWENTY- SEVENTH CAUSE OF ACTION
Unjust Enrichment
(On Behalf of All Classes)

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

560. Plaintiffs and members of the Nationwide Class conferred a benefit upon Defendants. Plaintiffs and members of the Nationwide Class paid money for Defendants' Pet Food Products that were not as represented; they were not suitable for pets, they did not provided targeted nutrition for pets, and/or they did not meet Defendants' guarantees promising taste and nutrition. Defendants have unjustly retained the benefits conferred upon them by Plaintiffs and Class members.

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

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

PRAYER FOR RELIEF

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

- A. Certifying the Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure, appointing Plaintiffs as a representative of the Class, and designating Plaintiffs' counsel as Class Counsel;
- B. Awarding Plaintiffs and the Classes compensatory damages, in an amount exceeding \$5,000,000, to be determined by proof;
- C. Awarding Plaintiffs and the Classes appropriate relief, including actual damages;
- D. For declaratory and equitable relief, including restitution and disgorgement;
- E. For an order enjoining Defendants from continuing to engage in the wrongful acts and practices alleged herein;
- F. Awarding Plaintiffs and the Classes the costs of prosecuting this action, including expert witness fees;
- G. Awarding Plaintiffs and the Classes reasonable attorneys' fees and costs as allowable by law;
- H. Awarding pre-judgment and post-judgment interest; and
- I. Granting any other relief as this Court may deem just and proper

JURY TRIAL DEMANDED

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

Dated: July 26, 2021

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Interim Executive Committee

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2021, a copy of the foregoing **CONSOLIDATED CLASS ACTION COMPLAINT** was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the court's electronic filing system. Parties may access this filing through the court's system.

/s/ Lynn A. Toops