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11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO / OAKLAND DIVISION**

14 ANN BAUER, JILL COLE, FORREST  
15 CLEVELAND, YASSER DAOUDI, KAREN  
16 GUINEN, WENDY HENRY, KIMBERLY  
17 MULL, LORIE PRITCHARD, LYN  
18 SHANLEY, DONNA LEE SOLTIS,  
19 individually and on behalf of all others  
20 similarly situated,

21 Plaintiffs,

22 v.

23 HILL'S PET NUTRITION, INC.

24 Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs Ann Bauer, Jill Cole, Forrest Cleveland, Yasser Daoudi, Karen Guinen, Wendy  
2 Henry, Kimberly Mull, Lorie Pritchard, Lyn Shanley, Donna Lee Soltis (“Plaintiffs”), individually  
3 and on behalf of all others similarly situated, upon personal knowledge, information, and belief allege  
4 as follows:

5 **NATURE OF THE ACTION**

6 1. Defendant Hill’s Pet Nutrition, Inc. (“Defendant”) is a large-scale manufacturer of  
7 pet nutrition products, including dog and cat food. Defendant markets, advertises, and warrants its  
8 dog food as fit for consumption by canines, with the precise balance of nutrients to meet the needs  
9 of pets, and free from defects. As alleged herein, Defendant’s Recalled Products (defined below)  
10 were not fit for their stated and intended purpose.

11 2. On or about January 31, 2019, Defendant recalled select canned dog food products  
12 because the products contained excessive amounts of vitamin D. Canine consumption of excessive  
13 amounts of vitamin D can lead to serious health issues, including vomiting, loss of appetite, increased  
14 thirst, increased urination, excessive drooling, weight loss, and joint issues. Prolonged and high  
15 exposure can lead to calcification of soft tissues such as kidneys, renal dysfunction, and cause death.  
16 Defendant updated its list of recalled products on or about February 8, 2019.

17 3. Plaintiffs purchased Recalled Products for their dogs and fed the Recalled Products  
18 to their dogs, believing that the Recalled Products were nutritious, safe, and fit for canine  
19 consumption, when, in fact, the Recalled Products were not fit for canine consumption.

20 4. This class action lawsuit is brought on behalf of Plaintiffs and other similarly situated  
21 individuals who purchased the Recalled Products. Plaintiffs herein seek relief under the consumer  
22 protection laws of California, Florida, Iowa, Michigan, New York, Ohio, and Pennsylvania.

23 **PARTIES**

24 5. Plaintiff Ann Bauer (“Bauer”) is a citizen of California and resident of Mill Valley,  
25 California. Bauer purchased Recalled Products for her dog. After consuming the Recalled Products,  
26 Bauer’s dog became ill and presented with symptoms consistent with vitamin D poisoning, including  
27 vomiting, diarrhea, increased thirst, increased urination, weight loss, and tremors. Bauer incurred  
28 veterinary bills related to these symptoms of approximately \$1000. At the time Bauer purchased and

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1 fed the Recalled Products to her dog, due to the false and misleading claims, warranties,  
2 representations, advertisements, and other marketing by Defendant, Bauer was unaware that the  
3 Recalled Products contained excessive and dangerous amounts of vitamin D. Bauer would not have  
4 purchased the Recalled Products or fed the Recalled Products to her dog if Defendant had disclosed  
5 that the Recalled Products contained excessive and dangerous amounts of vitamin D.

6         6. Plaintiff Jill Cole (“Cole”) is a citizen of Florida. Cole purchased Recalled Products  
7 “Hill’s Prescription Diet i/d Canine Chicken & Vegetable Stew 12.5oz” and “Hill’s Prescription  
8 Diet i/d Canine Chicken & Vegetable Stew 5.5oz” for her Yorkie, Louie. Cole was not notified of  
9 the recall and did not become aware of the recall until on or about February 15, 2019. Unaware of the  
10 recall, Cole fed the Recalled Products to Louie on February 13, 2019. After consuming the Recalled  
11 Products, Louie became severely ill and presented with symptoms consistent with vitamin D  
12 poisoning, including vomiting. Cole took Louie to the emergency veterinarian, where she was  
13 advised that Louie should be euthanized. Louie was euthanized on February 13, 2019. Cole incurred  
14 veterinary bills related to this incident of approximately \$1500. At the time Cole purchased and fed  
15 the Recalled Products to Louie, due to the false and misleading claims, warranties, representations,  
16 advertisements, and other marketing by Defendant, Cole was unaware that the Recalled Products  
17 contained excessive and dangerous amounts of vitamin D. Cole would not have purchased the  
18 Recalled Products or fed the Recalled Products to Louie if Defendant had disclosed that the Recalled  
19 Products contained excessive and dangerous amounts of vitamin D.

20         7. Plaintiff Forrest Cleveland (“Cleveland”) is a citizen of California. Cleveland  
21 purchased Recalled Product “Hill’s Science Diet Adult 7+ Beef & Barley Entrée Dog Food 13oz”  
22 for his two dogs: Maggie, a Beagle, and Mocha, a Chihuahua. After consuming the Recalled Products,  
23 Maggie became ill on or about October 2018. Maggie presented with symptoms consistent with  
24 vitamin D poisoning, including vomiting, drooling, and tremors. Maggie was taken to an emergency  
25 veterinarian who provided her with fluids for dehydration. Maggie received follow-up veterinary care  
26 with her primary veterinarian, who prescribed medication to address Maggie’s symptoms. Cleveland  
27 incurred veterinary bills related to this illness of approximately \$700. At the time Cleveland  
28 purchased and fed the Recalled Products to Maggie and Mocha, due to the false and misleading

1 claims, warranties, representations, advertisements, and other marketing by Defendant, Cleveland  
 2 was unaware that the Recalled Products contained excessive amounts of vitamin D. Cleveland would  
 3 not have purchased the Recalled Products or fed the Recalled Products to Maggie and Mocha if  
 4 Defendant had disclosed that the Recalled Products contained excessive and dangerous amounts of  
 5 vitamin D. Photos of one of the Recalled Products purchased by Cleveland, as well as a photo of  
 6 Maggie and Mocha, are included below.



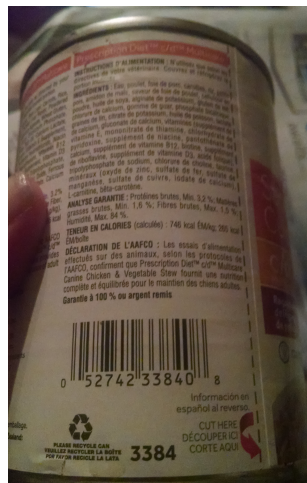
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 15 8. Plaintiff Yasser Daoudi ("Daoudi") is a citizen of Ohio. Daoudi purchased Recalled  
 16 Product "Hill's Science Diet Puppy Chicken & Barley Entrée 13oz" for his Golden Retriever,  
 17 Charlie. After consuming the Recalled Products, Charlie became ill on or about January 24, 2019.  
 18 Charlie presented with symptoms consistent with vitamin D poisoning, including vomiting,  
 19 excessive urination, loss of appetite, increased thirst, lethargy, and difficulty breathing. Charlie's  
 20 symptoms persisted until January 28, 2019, when Charlie died. Between January 25, 2019 and  
 21 January 28, 2019, Daoudi consulted several veterinary specialists, including an emergency  
 22 veterinarian, Charlie's primary veterinarian, and a veterinary cardiologist. Daoudi incurred  
 23 veterinary bills related to these visits of approximately \$2000. At the time Daoudi purchased and fed  
 24 the Recalled Products to Charlie, due to the false and misleading claims, warranties, representations,  
 25 advertisements, and other marketing by Defendant, Daoudi was unaware that the Recalled Products  
 26 contained excessive and dangerous amounts of vitamin D. Daoudi would not have purchased the  
 27 Recalled Products or fed the Recalled Products to Charlie if Defendant had disclosed that the

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1 Recalled Products contained excessive and dangerous amounts of vitamin D. A photo of Charlie is  
 2 included below.



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 8 9. Plaintiff Karen Guinen (“Guinen”) is a citizen of Massachusetts. Guinen purchased  
 9 Recalled Product “Hill’s Prescription Diet c/d Multicare Canine Chicken & Vegetable Stew 12.5oz”  
 10 for her Terrier mix, Bandit. After consuming the Recalled Products, Bandit became ill in or about  
 11 December 2018. Bandit presented with symptoms consistent with vitamin D poisoning, including  
 12 lethargy, excessive thirst, decreased appetite, and muscle tremors. Guinen discontinued feeding  
 13 Bandit the Recalled Products after learning of Defendant’s recall. At the time Guinen purchased and  
 14 fed the Recalled Products to Bandit, due to the false and misleading claims, warranties,  
 15 representations, advertisements, and other marketing by Defendant, Guinen was unaware that the  
 16 Recalled Products contained excessive and dangerous amounts of vitamin D. Guinen would not have  
 17 purchased the Recalled Products or fed the Recalled Products to Bandit if Defendant had disclosed  
 18 that the Recalled Products contained excessive and dangerous amounts of vitamin D. Photos of one  
 19 of the Recalled Products purchased by Guinen, as well as a photo of Bandit, are included below.



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1           10. Plaintiff Wendy Henry (“Henry”) is a citizen of Pennsylvania. Henry purchased  
2 Recalled Products “Hill’s Science Diet Adult 7+ Beef & Barley Entrée Dog Food 13oz” and “Hill’s  
3 Science Diet Adult 7+ Chicken & Barley Entrée Dog Food 13oz” for her Shih Tzu Poodle mix, Loui.  
4 After consuming the Recalled Products, Loui presented with symptoms consistent with vitamin D  
5 poisoning, including increased urination. At the time Henry purchased and fed the Recalled Products  
6 to Loui, due to the false and misleading claims, warranties, representations, advertisements, and  
7 other marketing by Defendant, Henry was unaware that the Recalled Products contained excessive  
8 and dangerous amounts of vitamin D. Henry would not have purchased the Recalled Products or fed  
9 the Recalled Products to Loui if Defendant had disclosed that the Recalled Products contained  
10 excessive and dangerous amounts of vitamin D.

11           11. Plaintiff Kimberly Mull (“Mull”) is a citizen of California. Mull purchased Recalled  
12 Product “Hill’s Prescription Diet w/d Canine Vegetable & Chicken Stew 12.5oz” for her Bichon  
13 mix, Precious. Mull began feeding the Recalled Products to Precious in or about early January 2019.  
14 Approximately three weeks after consuming the Recalled Products, Precious became severely ill and  
15 presented with symptoms consistent with vitamin D poisoning, including kidney failure. Precious  
16 died in late January 2019. At the time Mull purchased and fed the Recalled Products to Precious, due  
17 to the false and misleading claims, warranties, representations, advertisements, and other marketing  
18 by Defendant, Mull was unaware that the Recalled Products contained excessive and dangerous  
19 amounts of vitamin D. Mull would not have purchased the Recalled Products or fed the Recalled  
20 Products to Precious if Defendant had disclosed that the Recalled Products contained excessive and  
21 dangerous amounts of vitamin D.

22           12. Plaintiff Lorie Pritchard (“Pritchard”) is a citizen of Iowa. Pritchard purchased  
23 Recalled Products “Hill’s Science Diet Adult Light with Liver Dog Food 13oz” and “Hill’s Science  
24 Diet Adult Chicken & Beef Entrée Dog Food 13oz” for her two Papillons, Joni and Chachi. After  
25 consuming the Recalled Products in or about October 2018, Chachi became severely ill and presented  
26 with symptoms consistent with vitamin D poisoning. He tried vomiting but he was unable to do so,  
27 his breathing sounded like a whistle, he had runny stools, pink saliva, and he fell over seizing. Chachi  
28 died shortly after the symptoms first presented. Joni also became ill after consuming the Recalled

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1 Products. In or around November 2018, Joni presented with symptoms consistent with vitamin D  
2 poisoning, including vomiting, increased thirst, increased urination, and weight loss. In addition,  
3 Joni experienced seizures and could not walk without falling down. Joni was taken to her primary  
4 veterinarian, where she was diagnosed with kidney and liver failure. Pritchard incurred veterinary  
5 bills related to this diagnosis of approximately \$510. At the time Pritchard purchased and fed the  
6 Recalled Products to Joni and Chachi, due to the false and misleading claims, warranties,  
7 representations, advertisements, and other marketing by Defendant, Pritchard was unaware that the  
8 Recalled Products contained excessive and dangerous amounts of vitamin D. Pritchard would not  
9 have purchased the Recalled Products or fed the Recalled Products to Joni and Chachi if Defendant  
10 had disclosed that the Recalled Products contained excessive and dangerous amounts of vitamin D.

11 A photo of Chachi is included below.



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17 13. Plaintiff Lyn Shanley (“Shanley”) is a citizen of New York. Shanley purchased  
18 Recalled Product “Hill’s Prescription Diet w/d Canine 13oz” for her Schnoodle, Derby. After  
19 consuming the Recalled Products, Derby became severely ill and presented with symptoms  
20 consistent with vitamin D poisoning, including vomiting, diarrhea, and loss of appetite. Derby lost  
21 nearly half of her body weight in the last two months of her life. Derby was euthanized in or about  
22 September 2018. Shanley’s veterinary bills for treatment during the last two months of Derby’s life  
23 exceed \$4000. At the time Shanley purchased and fed the Recalled Products to Derby, due to the  
24 false and misleading claims, warranties, representations, advertisements, and other marketing by  
25 Defendant, Shanley was unaware that the Recalled Products contained excessive and dangerous  
26 amounts of vitamin D. Shanley would not have purchased the Recalled Products or fed the Recalled  
27 Products to Derby if Defendant had disclosed that the Recalled Products contained excessive and  
28 dangerous amounts of vitamin D. A photo of Derby is included below.

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14. Plaintiff Donna Lee Soltis (“Soltis”) is a citizen of Michigan. Soltis purchased Recalled Product “Hill’s Science Diet Adult 7+ Beef & Barley Entrée Dog Food 13oz” for her two Yorkshire Terriers. After consuming the Recalled Products, both of Soltis’ dogs became severely ill and presented with symptoms consistent with vitamin D poisoning, including kidney failure. Both of Soltis’ dogs died from kidney failure after consuming the Recalled Products. At the time Soltis purchased and fed the Recalled Products to her dogs, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Soltis was unaware that the Recalled Products contained excessive and dangerous amounts of vitamin D. Soltis would not have purchased the Recalled Products or fed the Recalled Products to her dogs if Defendant had disclosed that the Recalled Products contained excessive and dangerous amounts of vitamin D.

15. Defendant Hill’s Pet Nutrition, Inc. is a Delaware corporation with its headquarters and principal place of business located at 400 SW, Topeka, Kansas 66603. Defendant formulates, manufactures, distributes, labels, markets, and advertises dry and canned food for dogs and cats, as well as “treats.” Defendant does business throughout the United States and the State of California, including this District.

**JURISDICTION AND VENUE**

16. This Court has original jurisdiction over this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because at least one class member is a citizen of a state other than



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1 that of Defendant, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of  
2 interest and costs.

3 17. Venue is proper in this District under 28 U.S.C. § 1391 because Plaintiff Bauer  
4 suffered injury as a result of Defendant’s acts in this District, many of the acts and transactions giving  
5 rise to this action occurred in this District, Defendant conducts substantial business in this District,  
6 Defendant has intentionally availed itself of the laws and markets of this District, and Defendant is  
7 subject to personal jurisdiction in this District.

8 **INTRADISTRICT ASSIGNMENT**

9 18. A substantial part of the acts and events giving rise to the violations of law alleged  
10 herein occurred in the County of Marin, and as such, this action may be properly assigned to the San  
11 Francisco / Oakland division of this Court pursuant to Civil Local Rule 3-2(d).

12 **FACTUAL BACKGROUND**

13 **Defendant’s Marketing of the Recalled Products**

14 19. Defendant formulates, manufactures, distributes, labels, markets, and advertises dog  
15 food throughout the United States, including California.

16 20. Defendant markets its dog food as nutritionally balanced, containing the optimal  
17 ingredients for a pet’s health. Indeed, nutritionally balanced pet food is the cornerstone of  
18 Defendant’s brand and encapsulated in Defendant’s company vision, as set forth on Defendant’s  
19 website:



1           21. The marketing material on Defendant’s website emphasizes the importance of  
2 nutrition to pet health and longevity:



8           **Nutrition**

9           We firmly believe that the right nutrition is vital to pets  
10           living long, healthy lives.

11           22. Defendant further advertises on its website that it “analyz[es] nutrient levels in each  
12 of our products.”

13           23. “Guided by science,” Defendant represents on its website that it formulates its food  
14 with “precise balance so *your pet gets all the nutrients they need – and none they don’t.*”



19           **Everything they need in every bite**

20           Guided by science, we formulate our food  
21 with precise balance so your pet gets all the  
22 nutrients they need – and none they don’t.

23           24. Defendant also touts on its website that it is “the global leader in nutritional health  
24 care for companion animals, allowing us to provide the right formulas for precisely balanced nutrition  
25 that meets the wellness and therapeutic needs of pets worldwide.”

26           25. Defendant’s marketing materials, available on its website, represent that its pet food  
27 contains the right nutrients *in the right quantities*:  
28

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**Precisely Balanced: The Right Nutrients in the Right Quantities**

While Hill's pet foods contain high-quality ingredients, our research proves that it's the proper balance of 50 nutrients supplied by those ingredients that is the key to optimal health for pets. Guided by our evidenced-based research, Hill's formulated its foods with a precise balance of these nutrients to meet the specific needs of pets associated with their lifestage, size or special needs.

26. In fact, Defendant's own marketing materials, available on its website, warn of the dangers of excessive nutrient intake:

**The dangers of excessive or deficient nutrient intake**

Too much or too little of certain nutrients (as shown in the chart below) can impact the health and well-being of pets. In fact, a wide range of common disease conditions can be made worse or even caused by consistently feeding foods with an incorrect balance of nutrients.

27. To ensure this proper nutrient intake, Defendant represents on its website that its pet food is subject to the highest safety standards.

28. According to Defendant's website, Defendant's suppliers are subject to stringent quality standards, and each ingredient is examined to ensure safety as well as analyzed to ensure it contains an "ingredient profile for essential nutrients."

**2 INGREDIENT SUPPLY**

We only accept ingredients from suppliers whose facilities meet stringent quality standards and who are approved by Hill's.

Not only is each ingredient examined to ensure its safety, we also analyze each product's ingredient profile for essential nutrients to ensure your pet gets the stringent, precise formulation they need.



29. Defendant further represents on its website that it conducts quality systems audits for all manufacturing facilities:



**3 PRODUCT MANUFACTURING**

We conduct annual quality systems audits for all manufacturing facilities to ensure we meet the high standards your pet deserves.

We demand compliance with current Good Manufacturing Practices (cGMP) and Hill's high quality standards, so your pet's food is produced under clean and sanitary conditions.

30. Additionally, Defendant warrants on its website that all finished products are “*tested for key nutrients prior to release*” to ensure the safety of its food:



**4 FINISHED PRODUCT**

We conduct final safety checks daily on every Hill's pet food product to help ensure the safety of your pet's food.

Additionally, all finished products are physically inspected and tested for key nutrients prior to release to help ensure your pet gets a consistent product bag to bag.



**The Recalled Products**

31. On January 31, 2019, Defendant announced a recall of certain of its canned dog food products because they contained “potentially elevated levels of vitamin D.” An updated list of recalled products was published on Defendant’s website on February 8, 2019, and includes the following canned dog foods (the “Recalled Products”):

<u>Product Name</u>	<u>SKU Number</u>	<u>Date Code / Lot Code</u>
Hill's® Prescription Diet® c/d® Multicare Canine Chicken & Vegetable Stew 12.5oz	3384	102020T10 102020T25
Hill's® Prescription Diet® i/d® Canine Chicken & Vegetable Stew 12.5oz	3389	102020T04 102020T10 102020T19 102020T20
Hill's® Prescription Diet® i/d® Canine Chicken & Vegetable Stew 5.5oz	3390	102020T11 112020T23 122020T07
Hill's® Prescription Diet® z/d® Canine 5.5oz	5403	102020T17 112020T22
Hill's® Prescription Diet® g/d® Canine 13oz	7006	112020T19 112020T20
Hill's® Prescription Diet® i/d® Canine 13oz	7008	092020T30 102020T07 102020T11 112020T22 112020T23
Hill's® Prescription Diet® j/d® Canine 13oz	7009	112020T20
Hill's® Prescription Diet® k/d® Canine 13oz	7010	102020T10

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1			102020T11
2			092020T30
3	Hill's® Prescription Diet® w/d® Canine 13oz	7017	102020T11 102020T12
4	Hill's® Prescription Diet® z/d® Canine 13oz	7018	102020T04 112020T22
5			
6	Hill's® Prescription Diet® Metabolic + Mobility Canine Vegetable & Tuna Stew 12.5oz	10086	102020T05 102020T26
7	Hill's® Prescription Diet® w/d® Canine Vegetable & Chicken Stew 12.5oz	10129	102020T04 102020T21
8			
9	Hill's® Prescription Diet® i/d® Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz	10423	102020T17 102020T19 112020T04
10			
11	Hill's® Prescription Diet® Derm Defense® Canine Chicken & Vegetable Stew 12.5oz	10509	102020T05
12			
13	Hill's® Science Diet® Adult 7+ Small & Toy Breed Chicken & Barley Entrée Dog Food 5.8oz	4969	102020T18
14	Hill's® Science Diet® Puppy Chicken & Barley Entrée 13oz	7036	102020T12
15			102020T13
16	Hill's® Science Diet® Adult Chicken & Barley Entrée Dog Food 13oz	7037	102020T14 112020T23 112020T24
17			
18	Hill's® Science Diet® Adult Turkey & Barley Dog Food 13oz	7038	102020T06
19	Hill's® Science Diet® Adult Chicken & Beef Entrée Dog Food 13oz	7040	102020T13
20	Hill's® Science Diet® Adult Light with Liver Dog Food 13oz	7048	112020T19
21	Hill's® Science Diet® Adult 7+ Chicken & Barley Entrée Dog Food 13oz	7055	092020T31 102020T13
22			
23	Hill's® Science Diet® Adult 7+ Beef & Barley Entrée Dog Food 13oz	7056	092020T31 112020T20 112020T24
24			
25	Hill's® Science Diet® Adult 7+ Turkey & Barley Entrée 13oz	7057	112020T19
26	Hill's® Science Diet® Adult 7+ Healthy Cuisine Braised Beef, Carrots & Peas Stew dog food 12.5oz	10452	102020T14 102020T21
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1 Hill's® Science Diet® Adult 7+ Youthful Vitality Chicken & Vegetable  
 2 Stew dog food 12.5oz

10763

102020T04  
102020T05  
112020T11

3  
 4 32. Canine consumption of excessive amounts of vitamin D can lead to serious health  
 5 issues, including vomiting, loss of appetite, increased thirst, increased urination, excessive drooling,  
 6 weight loss, and joint issues. Prolonged and high exposure can lead to calcification of soft tissues such  
 7 as kidneys, renal dysfunction, and cause death.

8 33. Defendant reportedly learned of the excessive amounts of vitamin D contained in the  
 9 Recalled Products following a complaint in the United States about a dog exhibiting signs of elevated  
 10 vitamin D levels. According to Defendant, “[o]ur investigation confirmed elevated levels of vitamin  
 11 D due to a supplier error.”<sup>1</sup>

12 34. Numerous pet owners have reported that their dogs became seriously ill and/or died  
 13 following consumption of the Recalled Products.<sup>2</sup>

#### 14 **Factual Allegations Related to Plaintiffs**

15 35. Each Plaintiff purchased the Recalled Products and each Plaintiff fed the Recalled  
 16 Products to his or her dog(s).

17 36. Based on Defendant’s false and misleading claims, warranties, representations,  
 18 advertisements, and other marketing, Plaintiffs believed the Recalled Products were nutritionally  
 19 appropriate and contained the proper amounts of vitamins and nutritional content for their dogs.

20 37. At the time Plaintiffs purchased and fed the Recalled Products to their dogs, due to  
 21 the false and misleading claims, warranties, representations, advertisements, and other marketing by  
 22 Defendant, Plaintiffs were unaware that the Recalled Products contained excessive and dangerous  
 23 amounts of vitamin D.

24 38. Plaintiff Bauer purchased Recalled Products for her dog. After consuming the  
 25 Recalled Products, Bauer’s dog became ill and presented with symptoms consistent with vitamin D

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 27  
 28 <sup>1</sup> <https://www.fda.gov/safety/recalls/ucm630232.htm>

<sup>2</sup> See <https://www.usatoday.com/story/money/business/2019/02/05/dog-food-recall-hills-pet-nutrition-vitamin-d-levels-may-toxic/2775371002/>

1 poisoning, including vomiting, diarrhea, increased thirst, increased urination, weight loss, and  
2 tremors. Bauer incurred veterinary bills related to these symptoms of approximately \$1000.

3 39. Plaintiff Cole purchased Recalled Products “Hill’s Prescription Diet i/d Canine  
4 Chicken & Vegetable Stew 12.5oz” and “Hill’s Prescription Diet i/d Canine Chicken & Vegetable  
5 Stew 5.5oz” for her Yorkie, Louie. Cole was not notified of the recall and did not become aware of  
6 the recall until on or about February 15, 2019. Unaware of the recall, Cole fed the Recalled Products  
7 to Louie on February 13, 2019. After consuming the Recalled Products, Louie became severely ill  
8 and presented with symptoms consistent with vitamin D poisoning, including vomiting. Cole took  
9 Louie to the emergency veterinarian, where she was advised that Louie should be euthanized. Louie  
10 was euthanized on February 13, 2019. Cole incurred veterinary bills related to this incident of  
11 approximately \$1500.

12 40. Plaintiff Cleveland purchased Recalled Product “Hill’s Science Diet Adult 7+ Beef  
13 & Barley Entrée Dog Food 13oz” for his two dogs: Maggie, a Beagle, and Mocha, a Chihuahua. After  
14 consuming the Recalled Products, Maggie became ill on or about October 2018. Maggie presented  
15 with symptoms consistent with vitamin D poisoning, including vomiting, drooling, and tremors.  
16 Maggie was taken to an emergency veterinarian who provided her with fluids for dehydration.  
17 Maggie received follow-up veterinary care with her primary veterinarian, who prescribed medication  
18 to address Maggie’s symptoms. Cleveland incurred veterinary bills related to this illness of  
19 approximately \$700.

20 41. Plaintiff Daoudi purchased Recalled Product “Hill’s Science Diet Puppy Chicken &  
21 Barley Entrée 13oz” for his Golden Retriever, Charlie. After consuming the Recalled Products,  
22 Charlie became ill on or about January 24, 2019. Charlie presented with symptoms consistent with  
23 vitamin D poisoning, including vomiting, excessive urination, loss of appetite, increased thirst,  
24 lethargy, and difficulty breathing. Charlie’s symptoms persisted until January 28, 2019, when Charlie  
25 died. Between January 25, 2019 and January 28, 2019, Daoudi consulted several veterinary  
26 specialists, including an emergency veterinarian, Charlie’s primary veterinarian, and a veterinary  
27 cardiologist. Daoudi incurred veterinary bills related to these visits of approximately \$2000.

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1           42. Plaintiff Guinen purchased Recalled Product “Hill’s Prescription Diet c/d Multicare  
2 Canine Chicken & Vegetable Stew 12.5oz” for her Terrier mix, Bandit. After consuming the Recalled  
3 Products, Bandit became ill in or about December 2018. Bandit presented with symptoms consistent  
4 with vitamin D poisoning, including lethargy, excessive thirst, decreased appetite, and muscle  
5 tremors.

6           43. Plaintiff Henry purchased Recalled Products “Hill’s Science Diet Adult 7+ Beef &  
7 Barley Entrée Dog Food 13oz” and “Hill’s Science Diet Adult 7+ Chicken & Barley Entrée Dog  
8 Food 13oz” for her Shih Tzu Poodle mix, Loui. After consuming the Recalled Products, Loui  
9 presented with symptoms consistent with vitamin D poisoning, including increased urination.

10           44. Plaintiff Mull purchased Recalled Product “Hill’s Prescription Diet w/d Canine  
11 Vegetable & Chicken Stew 12.5oz” for her bichon mix, Precious. Mull began feeding the Recalled  
12 Products to Precious in or about early January 2019. Approximately three weeks after consuming the  
13 Recalled Products, Precious became severely ill and presented with symptoms consistent with  
14 vitamin D poisoning, including kidney failure. Precious died in late January 2019.

15           45. Plaintiff Pritchard purchased Recalled Products “Hill’s Science Diet Adult Light  
16 with Liver Dog Food 13oz” and “Hill’s Science Diet Adult Chicken & Beef Entrée Dog Food 13oz”  
17 for her two Papillons, Joni and Chachi. After consuming the Recalled Products in or about October  
18 2018, Chachi became severely ill and presented with symptoms consistent with vitamin D poisoning.  
19 He tried vomiting but he was unable to do so, his breathing sounded like a whistle, he had runny  
20 stools, pink saliva, and he fell over seizing. Chachi died shortly after the symptoms first presented.  
21 Joni also became ill after consuming the Recalled Products. In or around November 2018, Joni  
22 presented with symptoms consistent with vitamin D poisoning, including vomiting, increased thirst,  
23 increased urination, and weight loss. In addition, Joni experienced seizures and could not walk  
24 without falling down. Joni was taken to her primary veterinarian, where she was diagnosed with  
25 kidney and liver failure. Pritchard incurred veterinary bills related to this diagnosis of approximately  
26 \$510.

27           46. Plaintiff Shanley purchased Recalled Product “Hill’s Prescription Diet w/d Canine  
28 13oz” for her Schnoodle, Derby. After consuming the Recalled Products, Derby became severely ill



1 and presented with symptoms consistent with vitamin D poisoning, including vomiting, diarrhea,  
2 and loss of appetite. Derby lost nearly half of her body weight in the last two months of her life. Derby  
3 was euthanized in or about September 2018. Shanley’s veterinary bills for treatment during the last  
4 two months of Derby’s life exceed \$4000.

5 47. Plaintiff Soltis purchased Recalled Product “Hill’s Science Diet Adult 7+ Beef &  
6 Barley Entrée Dog Food 13oz” for her two Yorkshire Terriers. After consuming the Recalled  
7 Products, both of Soltis’ dogs became severely ill and presented with symptoms consistent with  
8 vitamin D poisoning, including kidney failure. Both of Soltis’ dogs died from kidney failure after  
9 consuming the Recalled Products.

10 48. Plaintiffs would not have purchased the Recalled Products or fed the Recalled  
11 Products to their dogs if Defendant had disclosed that the Recalled Products contained excessive and  
12 dangerous amounts of vitamin D.

13 49. Prior to the recall, Defendant never warned Plaintiffs that the Recalled Foods could  
14 cause pets to have severe health problems (and, worse, potentially die).

15 **CLASS ACTION ALLEGATIONS**

16 50. Plaintiff brings this action pursuant to Federal Rule of Civil Procedures 23(b)(2) and  
17 23(b)(3) on behalf of themselves and proposed classes defined as follows:

18 All persons in the United States who purchased the Recalled Products (the  
19 “Nationwide Class”)

20  
21 51. Within the Nationwide Class, there are six Subclasses defined as follows:

22 All persons in the State of California who purchased the Recalled Products (the  
23 “California Class”)

24 All persons in the State of Florida who purchased the Recalled Products (the “Florida  
Class”)

25 All persons in the State of Michigan who purchased the Recalled Products (the  
26 “Michigan Class”)

27 All persons in the State of New York who purchased the Recalled Products (the  
“New York Class”)

28 All persons in the State of Ohio who purchased the Recalled Products (the “Ohio  
Class”)

1 All persons in the State of Pennsylvania who purchased the Recalled Products (the  
2 “Pennsylvania Class”)

3 52. Within the California Class, there is one subclass for purposes of Plaintiff’s claims  
4 under the Song-Beverly Consumer Warranty Act and the Consumer Legal Remedies Act (the  
5 “California Subclass”). The proposed California Subclass is defined as follows:  
6

7 All persons in the State of California who purchased the Recalled Products for  
8 personal, family, or household purposes.

9 53. Excluded from the Nationwide Class and Subclasses are governmental entities,  
10 Defendant, any entity in which Defendant has a controlling interest, and Defendant’s officers,  
11 directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and  
12 assigns. Also excluded from the Nationwide Class and Subclasses are any judges, justices, or judicial  
13 officers presiding over this matter and the members of their immediate families and judicial staff.  
14 This action is brought and may be properly maintained as a class action pursuant to Federal Rule of  
15 Civil Procedures 23(b)(2) and 23(b)(3), and satisfies the numerosity, commonality, typicality,  
16 adequacy, predominance, and superiority requirements of these rules.

17 54. **Numerosity Under Rule 23(a)(1).** The Nationwide Class and Subclasses are so  
18 numerous that the individual joinder of all members is impracticable, and the disposition of the  
19 claims of all Nationwide Class and Subclass members in a single action will provide substantial  
20 benefits to the parties and the Court.

21 55. **Commonality Under Rule 23(a)(2).** Common legal and factual questions exist that  
22 predominate over any questions affecting only individual Nationwide Class and Subclass members.  
23 These common questions, which do not vary among Nationwide Class or Subclass members and  
24 which may be determined without reference to any Nationwide Class or Subclass member’s  
25 individual circumstances, include, but are not limited to:

26 a) Whether Defendant owed a duty of care to the Nationwide Class and  
27 Subclass;  
28

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1           b)     Whether Defendant knew or should have known that the Recalled Products  
2 contained excessive amounts of vitamin D;

3           c)     Whether Defendant advertised, represented, or marketed, or continues to  
4 advertise, represent, or market, Recalled Products as nutritious, healthy, and safe for canine  
5 consumption;

6           d)     Whether Defendant’s representations and omissions in advertising and/or  
7 labelling are false, deceptive, and misleading;

8           e)     Whether Defendant’s representations and omissions in advertising and/or  
9 labelling are likely to deceive a reasonable consumer;

10          f)     Whether Defendant had knowledge that its representations and omissions in  
11 advertising and/or labelling were false, deceptive, and misleading;

12          g)     Whether a representation that a product is nutritious, healthy, and safe for  
13 consumption coupled with omissions that the Recalled Products contained excessive amounts of  
14 vitamin D is material to a reasonable consumer;

15          h)     Whether Defendant engaged in unlawful, fraudulent, or unfair business  
16 practices;

17          i)     Whether Plaintiffs and the members of the Nationwide Class or Subclasses  
18 have been damaged by the wrongs alleged are entitled to actual, statutory, and punitive damages; and

19          j)     Whether Plaintiffs and members of the Nationwide Class and Subclasses are  
20 entitled to declaratory and injunctive relief.

21          56.     ***Typicality Under Rule 23(a)(3).*** Plaintiffs’ claims are typical of the Nationwide Class  
22 and Subclass members’ claims. Defendant’s course of conduct caused Plaintiffs and the Nationwide  
23 Class and Subclass members the same harm, damages, and losses as a result of Defendant’s  
24 uniformly unlawful conduct. Likewise, Plaintiffs and other Nationwide Class and Subclass members  
25 must prove the same facts in order to establish the same claims.

26          57.     ***Adequacy of Representation Under Rule 23(a)(4).*** Plaintiffs are adequate  
27 Nationwide Class and Subclass representatives because they are Nationwide Class and Subclass  
28 members, and their interests do not conflict with the interests of the Nationwide Class or Subclass.

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1 Plaintiffs have retained counsel competent and experienced in complex litigation and consumer  
 2 protection class action matters such as this action, and Plaintiffs and their counsel intend to  
 3 vigorously prosecute this action for the Nationwide Class and Subclasses' benefit and have the  
 4 resources to do so. Plaintiffs and their counsel have no interests adverse to those of the other  
 5 members of the Nationwide Class or Subclasses.

6 58. **Superiority.** A class action is superior to all other available methods for the fair and  
 7 efficient adjudication of this controversy because individual litigation of each Nationwide Class and  
 8 Subclass member's claim is impracticable. The damages, harm, and losses suffered by the individual  
 9 members of the Nationwide Class and Subclasses will likely be small relative to the burden and  
 10 expense of individual prosecution of the complex litigation necessitated by Defendant's wrongful  
 11 conduct. Even if each Nationwide Class and Subclass member could afford individual litigation, the  
 12 Court system could not. It would be unduly burdensome if thousands of individual cases proceeded.  
 13 Individual litigation also presents the potential for inconsistent or contradictory judgments, the  
 14 prospect of a race to the courthouse, and the risk of an inequitable allocation of recovery among those  
 15 individuals with equally meritorious claims. Individual litigation would increase the expense and  
 16 delay to all parties and the Courts because it requires individual resolution of common legal and  
 17 factual questions. By contrast, the class action device presents far fewer management difficulties and  
 18 provides the benefit of a single adjudication, economies of scale, and comprehensive supervision by  
 19 a single court.

20 59. As a result of the foregoing, class treatment is appropriate.

21 **FIRST CLAIM FOR RELIEF**  
 22 **Violations of California's Consumer Legal Remedies Act, California Civil Code §§1750, et**  
 23 **seq., Against Defendant on Behalf of Plaintiffs Bauer, Cleveland, and Mull**  
 24 **and the California Subclass**

25 60. Plaintiffs Bauer, Cleveland, and Mull, individually and on behalf of the California  
 26 Subclass, incorporate by reference all of the allegations contained in the preceding paragraphs of this  
 27 Class Action Complaint as if fully set forth herein.

28 61. Plaintiffs Bauer, Cleveland, and Mull bring this claim individually and on behalf of  
 the California Subclass against Defendant.

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1           62.     Plaintiffs Bauer, Cleveland, and Mull and each proposed California Subclass member  
2 is a “consumer,” as that term is defined in California Civil Code section 1761(d).

3           63.     The Recalled Products are “goods,” as that term is defined in California Civil Code  
4 section 1761(a).

5           64.     Defendant is a “person” as that term is defined in California Civil Code section  
6 1761(c).

7           65.     Plaintiffs Bauer, Cleveland, and Mull and each proposed California Subclass  
8 member’s purchase of Defendant’s Recalled Products constituted a “transaction,” as that term is  
9 defined in California Civil Code section 1761(e).

10          66.     Defendant’s conduct alleged herein violates the following provisions of California’s  
11 Consumer Legal Remedies Act (the “CLRA”):

12           a)     Representing that goods have characteristics, uses, and benefits which they  
13 do not have (Cal. Civ. Code § 1770(a)(5));

14           b)     Representing that goods are of a particular standard, quality, or grade, if they  
15 are of another (Cal. Civ. Code § 1770(a)(7));

16           c)     Advertising goods with intent not to sell them as advertised (Cal. Civ. Code  
17 § 1770(a)(9)); and

18           d)     Representing that the subject of a transaction has been supplied in accordance  
19 with a previous representation when it has not (Cal. Civ. Code § 1770 (a)(16)).

20          67.     In addition, under California law, a duty to disclose arises in four circumstances: (1)  
21 when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant has  
22 exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively  
23 conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations  
24 but also suppresses some material facts.

25          68.     Defendant had a duty to disclose to Plaintiffs Bauer, Cleveland, and Mull and the  
26 California Subclass that the Recalled Products contained excessive and dangerous amounts of  
27 vitamin D for the following two independent reasons: (a) Defendant had exclusive knowledge of the  
28 information at the time of sale; and (b) Defendant made partial representations to Plaintiffs Bauer,

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1 Cleveland, and Mull and the California Subclass regarding the safety, quality, and nutritional  
2 content of the Recalled Products.

3 69. Defendant’s misrepresentations and omissions alleged herein were likely to mislead  
4 an ordinary consumer. Plaintiffs Bauer, Cleveland, and Mull and the California Subclass reasonably  
5 understood Defendant’s representations and omissions to mean that the Recalled Products were  
6 safe, nutritious, and fit for canine consumption.

7 70. Defendant’s misrepresentations and omissions alleged herein were material in that a  
8 reasonable person would attach importance to the information and would be induced to act upon  
9 the information in making purchase decisions.

10 71. Plaintiffs Bauer, Cleveland, and Mull and members of the California Subclass relied  
11 to their detriment on Defendant’s misrepresentations and omissions in purchasing the Recalled  
12 Products.

13 72. Plaintiffs Bauer, Cleveland, and Mull, on behalf of themselves and the California  
14 Subclass, demand judgment against Defendant under the CLRA for injunctive relief to Plaintiffs  
15 Bauer, Cleveland, and Mull and the California Subclass.

16 73. Plaintiffs Bauer, Cleveland, and Mull, on behalf of themselves and the California  
17 Subclass, further intend to seek compensatory damages.

18 74. Pursuant to Cal. Civ. Code § 1782(a), Plaintiffs Bauer, Cleveland, and Mull will serve  
19 Defendant with notice of its alleged violations of the CLRA by certified mail return receipt  
20 requested. If, within thirty days after the date of such notification, Defendant fails to provide  
21 appropriate relief for their violations of the CLRA, Plaintiffs Bauer, Cleveland, and Mull will amend  
22 this Class Action Complaint to seek monetary damages under the CLRA.

23 75. Notwithstanding any other statements in this Class Action Complaint, Plaintiffs  
24 Bauer, Cleveland, and Mull do not seek monetary damages in connection with their CLRA claims –  
25 and will not do so – until the applicable thirty-day period has passed.

26 **SECOND CLAIM FOR RELIEF**  
27 **Violations of California False Advertising Law, California Business & Professions Code**  
28 **§§17500, *et seq.*, Against Defendant on Behalf Plaintiffs Bauer, Cleveland, and Mull**  
**And the California Class**

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1           76.     Plaintiffs Bauer, Cleveland, and Mull, individually and on behalf of the California  
2 Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this  
3 Class Action Complaint as if fully set forth herein.

4           77.     California’s False Advertising Law prohibits any statement in connection with the  
5 sale of goods “which is untrue or misleading.” Cal. Bus. & Prof. Code §17500.

6           78.     Plaintiffs Bauer, Cleveland, and Mull, individually and on behalf of the California  
7 Class, have standing to pursue this claim because Plaintiffs Bauer, Cleveland, and Mull suffered  
8 injury in fact and have lost money or property as a result of Defendant’s actions set forth above.

9           79.     Defendant engaged in advertising and marketing to the public and offered for sale the  
10 Recalled Products in California.

11           80.     Defendant engaged in the advertising and marketing alleged herein with the intent to  
12 directly or indirectly induce the sale of the Recalled Products to consumers like Plaintiffs Bauer,  
13 Cleveland, and Mull and members of the California Class.

14           81.     Defendant’s advertising and marketing representations regarding the Recalled  
15 Products were false, misleading, and deceptive within the definition, meaning and construction of  
16 California Business & Professions Code §§ 17500, *et seq.* (False Advertising Law).

17           82.     Defendant’s misrepresentations and omissions alleged herein were the type of  
18 misrepresentations that are material, *i.e.*, a reasonable person would attach importance to them and  
19 would be induced to act on the information in making purchase decisions.

20           83.     Defendant’s misrepresentations and omissions alleged herein are objectively  
21 material to a reasonable consumer, and therefore reliance upon such misrepresentations may be  
22 presumed as a matter of law.

23           84.     At the time it made the misrepresentations and omissions alleged herein, Defendant  
24 knew or should have known that they were untrue or misleading and acted in violation of California  
25 Business & Professions Code §§ 17500, *et seq.*

26           85.     Unless restrained by this Court, Defendant will continue to engage in untrue and  
27 misleading advertising, as alleged above, in violation of California Business & Professions Code §§  
28 17500, *et seq.*

1 86. As a result of Defendant's conduct and actions, Plaintiffs Bauer, Cleveland, and Mull  
2 and each member of the California Class have been injured, has lost money or property, and is  
3 entitled to relief. Plaintiffs Bauer, Cleveland, and Mull and the California Class seek disgorgement,  
4 restitution, injunctive relieve, and all other relief permitted under California Business & Professions  
5 Code §§ 17500, *et seq.*

6 **THIRD CLAIM FOR RELIEF**  
7 **Violations of California Song-Beverly Consumer Warranty Act, California Civil Code**  
8 **§§ 1790, *et seq.*, Against Defendant on Behalf of Plaintiffs Bauer, Cleveland, and Mull**  
9 **and the California Subclass**

10 87. Plaintiffs Bauer, Cleveland, and Mull, individually and on behalf of the California  
11 Subclass, incorporate by reference all of the allegations contained in the preceding paragraphs of this  
12 Class Action Complaint as if fully set forth herein.

13 88. Plaintiffs Bauer, Cleveland, and Mull bring this claim individually and on behalf of  
14 the California Subclass against Defendant.

15 89. Plaintiffs Bauer, Cleveland, and Mull and the California Subclass purchased Recalled  
16 Products formulated and manufactured by Defendant that were marketed as nutritious, healthy,  
17 safe, and appropriate for canine consumption.

18 90. Plaintiffs Bauer, Cleveland, and Mull and the California Subclass purchased the  
19 Recalled Products new and in their original packaging and did not alter the Recalled Products.

20 91. At the time of purchase, Defendant was in the business of manufacturing and  
21 marketing pet foods, including the Recalled Products.

22 92. Defendant's Recalled Products contained excessive and dangerous amounts of  
23 vitamin D. These excessive and dangerous amounts of vitamin D were present in the Recalled  
24 Products when they left the exclusive control of Defendant and therefore existed during the duration  
25 of the warranty period.

26 93. Defendant's Recalled Products were not of the same quality as those generally  
27 acceptable in the trade; were not fit for the ordinary purpose of canine consumption; were not  
28

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1 adequately contained, packaged, and labeled; and did not conform to the promises and facts stated  
2 on the container and label.

3 94. Defendant, therefore, breached the implied warranty of merchantability, which by  
4 law is provided in every consumer agreement for the sale of goods, including the sale of the Recalled  
5 Products.

6 95. As a direct and proximate cause of Defendant's breach of the implied warranty of  
7 merchantability, Plaintiffs Bauer, Cleveland, and Mull and the California Subclass have been  
8 damaged by receiving an inferior and unsafe product from that which they were promised. Plaintiffs  
9 Bauer, Cleveland, and Mull and the California Subclass, therefore, have the right to cancel and  
10 recover the purchase price of their Recalled Products.

11 **FOURTH CLAIM FOR RELIEF**  
12 **Violations of the Unfair Competition Law, California Business & Professions Code §§**  
13 **17200, *et seq.*, Against Defendant on Behalf of Plaintiffs Bauer, Cleveland, and Mull**  
14 **and the California Class**

15 96. Plaintiffs Bauer, Cleveland, and Mull, individually and on behalf of the California  
16 Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this  
17 Class Action Complaint as if fully set forth herein.

18 97. California's Unfair Competition Law ("UCL") prohibits unfair competition,  
19 defined as "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue  
20 or misleading advertising and any act prohibited by [California's False Advertising Law, Cal. Bus.  
21 & Prof. Code §§ 17500, *et seq.*]."

22 98. Plaintiffs Bauer, Cleveland, and Mull and the California Class have standing to  
23 pursue this claim because Plaintiffs Bauer, Cleveland, and Mull and members of the California Class  
24 have suffered injury in fact and have lost money or property as a result of Defendant's actions as set  
25 forth above.

26 99. Defendant's actions and conduct as alleged in this Class Action Complaint constitute  
27 an "unlawful" practice within the definition, meaning, and construction of California's UCL  
28 because Defendant violated California's False Advertising Law (Bus. & Prof. Code §§ 17500, *et*

1 *seq.*), the CLRA (Civ. Code §§ 1750, *et seq.*), and California’s Song-Beverly Consumer Warranty  
2 Act (Cal. Civ. Code §§ 1790 *et seq.*).

3 100. Defendant’s actions and conduct as alleged in this Class Action Complaint constitute  
4 an “unfair” practice within the definition, meaning, and construction of California’s UCL because  
5 they offend established public policy and/or are immoral, unethical, oppressive, unscrupulous,  
6 and/or substantially injurious to their customers. The harm caused by Defendant’s wrongful  
7 conduct outweighs any utility of such conduct and has caused – will continue to cause – substantial  
8 injury to Plaintiffs Bauer, Cleveland, and Mull and the California Class. Additionally, Defendant’s  
9 conduct is “unfair” because it violated the legislatively declared policies in California’s False  
10 Advertising Law (Bus. & Prof. Code §§ 17500, *et seq.*), the CLRA (Civ. Code §§ 1750, *et seq.*), and  
11 California’s Song-Beverly Consumer Warranty Act (Cal. Civ. Code §§ 1790 *et seq.*).

12 101. Defendant’s actions as alleged in this Class Action Complaint constitute a  
13 “fraudulent” practice within the definition, meaning, and construction, of California’s UCL  
14 because Defendant’s statements that the Recalled Products were nutritious, healthy, safe, and  
15 appropriate for canine consumption are false and likely to deceive the public.

16 102. As a result of Defendant’s “unlawful,” “fraudulent,” and “unfair” conduct,  
17 Plaintiffs Bauer, Cleveland, and Mull and members of the California Class paid premium prices for  
18 the Recalled Products, which were worth substantially less than the products promised by  
19 Defendant, and Plaintiffs Bauer, Cleveland, and Mull and members of the California Class did not  
20 obtain the characteristics and specifications of the Recalled Products promised by Defendant.  
21 Defendant’s conduct directly and proximately caused Plaintiffs Bauer, Cleveland, and Mull and the  
22 California Class actual monetary damages in the form of the price paid for the Recalled Products.  
23 The injuries, damages, and harm caused to Plaintiffs Bauer, Cleveland, and Mull and the California  
24 Class by Defendant’s unfair conduct are not outweighed by any countervailing benefits to  
25 consumers or competition, and the injury is one that consumers themselves could not reasonably  
26 have avoided. Defendant knew or had reason to know that Plaintiffs Bauer, Cleveland, and Mull  
27 and the California Class could not have reasonably known or discovered the existence of excessive  
28 amounts of vitamin D in the Recalled Products. Had Defendant disclosed the excessive amounts of

1 vitamin D in the Recalled Products, Plaintiffs Bauer, Cleveland, and Mull and the California Class  
2 would not have purchased the Recalled Products.

3 103. Defendant's wrongful business practices alleged herein constitute a continuing  
4 course of unfair competition because Defendant markets and sells its products in a manner that  
5 offends public policy and/or in a fashion that is immoral, unethical, oppressive, unscrupulous,  
6 and/or substantially injurious to its customers. In accordance with California Business & Professions  
7 Code § 17203, Plaintiffs Bauer, Cleveland, and Mull seek an order enjoining Defendant from  
8 continuing to conduct business through fraudulent or unlawful acts and practices.

9 104. Plaintiffs Bauer, Cleveland, and Mull and the California Class also seek an order  
10 requiring Defendant to make full restitution of all moneys it has wrongfully obtained from Plaintiffs  
11 Bauer, Cleveland, and Mull and the California Class, along with all other relief permitted under the  
12 UCL.

13 **FIFTH CLAIM FOR RELIEF**  
14 **Violations of Fla. Stat. §§ 501.201, *et seq.* (Florida Deceptive and Unfair Trade Practices Act), Against Defendant on Behalf of Plaintiff Cole and the Florida Class**

15 105. Plaintiff Cole, individually and on behalf of the Florida Class, incorporates by  
16 reference all of the allegations contained in the preceding paragraphs of this Class Action  
17 Complaint as if fully set forth herein.

18 106. The stated purpose of the Florida Deceptive and Unfair Trade Practices Act  
19 ("FDUTPA") is "[t]o protect the consuming public...from those who engage in unfair methods of  
20 competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade  
21 or commerce." Fla. Stat. § 501.202(2).

22 107. Plaintiff Cole and members of the Florida Class are "consumers" within the  
23 definition, meaning, and construction of Fla. Stat. § 501.203(7).

24 108. Defendant solicited, advertised, offered, provided, and distributed goods (including  
25 the Recalled Products) in Florida and thus engaged in "trade or commerce" within the definition,  
26 meaning, and construction of Fla. Stat. § 501.203(8).

27 109. Plaintiff Cole and the Florida Class have standing to pursue this claim because  
28 Plaintiff Cole and members of the Florida Class have suffered injury in fact and have lost

1 ascertainable money or property as a result of Defendant's actions set forth above which occurred  
2 within, and emanated from, Florida.

3 110. The FDUTPA broadly prohibits "[u]nfair methods of competition, unconscionable  
4 acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or  
5 commerce." Fla. Stat. § 501.204(1).

6 111. Defendant's actions and conduct as alleged in this Class Action Complaint  
7 constitute an "unfair or deceptive act" within the definition, meaning, and construction of the  
8 FDUTPA because Defendant violated FDCA sections 301, 402, and 403 (21 U.S.C. §§ 331, 342,  
9 343), the FFSA (Fla. Stat. §§ 500.04, 500.10, 500.11, 500.115), and Florida's misleading  
10 advertising statute (Fla. Stat. § 817.41).

11 112. Defendant's actions and conduct as alleged herein constitute an "unfair" act or  
12 practice within the definition, meaning, and construction of the FDUTPA because they offend  
13 established public policy and/or are immoral, unethical, oppressive, unscrupulous, and/or  
14 substantially injurious to its customers. Defendant's unfair and deceptive practices regarding the  
15 marketing, advertising, packaging, labeling, and sale of its Recalled Products are likely to mislead –  
16 and have misled – consumers acting reasonably under the circumstances. The harm caused by  
17 Defendant's wrongful conduct outweighs any utility of such conduct and has caused – and will  
18 continue to cause – substantial injury to Plaintiff Cole and the Florida Class. Defendant could and  
19 should have chosen one of many reasonably available alternatives, such as: (i) not including  
20 excessive quantities of vitamin D in the Recalled Products; (ii) altering the marketing, packaging  
21 and labeling of the Recalled Products to accurately disclose the nutritional content and quantity of  
22 vitamin D contained therein; or (iii) not selling its Recalled Products altogether.

23 113. Defendant's actions and conduct as alleged herein constitute a "deceptive" act or  
24 practice within the definition, meaning, and construction of the FDUTPA because Defendant: (i)  
25 knowingly and willfully failed to disclose all material information to purchasers of the Recalled  
26 Products; (ii) knowingly made false representations of fact in connection with the Recalled  
27 Products; (iii) affirmatively concealed and omitted that the Recalled Products included excessive  
28 and dangerous amounts of vitamin D to induce reliance by Plaintiff Cole and the Florida Class; and

1 (iv) charged premium prices for such products. Defendant's conduct was likely to deceive  
2 consumers. Plaintiff Cole and the Florida Class relied on Defendant's representations and  
3 omissions. Defendant's failure to disclose this pertinent information regarding the true nature,  
4 specifications, and characteristics of the Recalled Products constitutes a material omission, in  
5 violation of the FDUTPA.

6 114. As a result of Defendant's "unfair" or "deceptive" conduct Plaintiff Cole and the  
7 Florida Class were induced to pay premium prices for the Recalled Products, which were worth  
8 substantially less than the products promised by Defendant, and Plaintiff Cole and members of the  
9 Florida Class did not obtain the nutritious, safe, and healthy dog food promised by Defendant.  
10 Defendant's conduct directly and proximately caused Plaintiff Cole and the Florida Class actual  
11 monetary damages in the form of the price paid for the Recalled Products. The injuries, damages,  
12 and harm caused to Plaintiff Cole and the Florida Class by Defendant's unfair conduct are not  
13 outweighed by any countervailing benefits to consumers. Had Defendant disclosed that the  
14 Recalled Products contained excessive and dangerous amounts of vitamin D, Plaintiff Cole and  
15 members of the Florida Class would not have purchased the Recalled products.

16 115. Defendant's "unfair" or "deceptive" business practices alleged herein constitute  
17 an ongoing course of wrongful conduct prohibited by the FDUTPA because Defendant markets  
18 and sell the Recalled Products in a manner that offends public policy and/or in a fashion that is  
19 immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to its customers.  
20 Plaintiff Cole and the Florida Class therefore seek equitable and declaratory relief to remedy  
21 Defendant's deceptive advertising, packaging, and labeling of the Recalled Products under the  
22 FDUTPA, Fla. Stat. § 501.211(1).

23 116. Plaintiff Cole and the Florida Class also seek an order requiring Defendant to make  
24 full restitution of all monies it has wrongfully obtained from Plaintiff Cole and the Florida Class  
25 and to pay damages, along with all other relief permitted under the FDUTPA, Fla. Stat. §§  
26 501.211(2), 501.2105.

**SIXTH CLAIM FOR RELIEF**

**Violations of Fla. Stat. § 817.41 (Florida Misleading Advertising Statute) Against Defendant on Behalf of Plaintiff Cole and the Florida Class**

117. Plaintiff Cole, individually and on behalf of the Florida Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

118. Florida’s misleading advertising statute, Fla. Stat. § 817.41(1), prohibits “any person to make or disseminate or cause to be made or disseminated before the general public of the state, or any portion thereof, any misleading advertisement. Such making or dissemination of misleading advertising shall constitute and is hereby declared to be fraudulent and unlawful, designed and intended for obtaining money or property under false pretenses.”

119. Fla. Stat. § 817.40(5) broadly defines “misleading advertising” to include “any statements made, or disseminated, in oral, written, electronic, or printed form or otherwise, to or before the public, or any portion thereof, which are known, or through the exercise of reasonable care or investigation could or might have been ascertained, to be untrue or misleading, and which are or were so made or disseminated with the intent or purpose, either directly or indirectly, of selling or disposing of real or personal property, services of any nature whatever, professional or otherwise, or to induce the public to enter into any obligation relating to such property or services.”

120. Defendant represented (and continues to represent) that its Recalled Products were safe, healthy, and fit for canine consumption. Defendant represented that the Recalled Products contained “the right nutrients in the right quantities” and that “[g]uided by science, we formulate our food with precise balance so your pet gets all the nutrients they need – and none they don’t.” Defendant represented that “[n]ot only is each ingredient examined to ensure its safety, we also analyze each product’s ingredient profile for essential nutrients to ensure your pet gets the stringent, precise formulation they need.” Additionally, Defendant represented that “[w]e conduct final safety checks daily on every Hill’s pet food product to help ensure the safety of your pet’s food.” However, in truth the Recalled Products contained excessive and dangerous amounts of vitamin D.

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1           21.     At the time Defendant made these representations regarding the safety, quality, and  
2 nutrition of the Recalled Products, Defendant knew that these representations were false.

3           22.     Defendant’s representations regarding the safety, quality, and nutrition of the  
4 Recalled Products, and its omission that they contained excessive and dangerous amounts of  
5 vitamin D, are material facts to Plaintiff Cole and members of the Florida class. Defendant knows  
6 that such representations and omissions are material to reasonable consumers and intends that  
7 consumers rely upon these representation and omissions when choosing to purchase the Recalled  
8 Products.

9           23.     Defendant knew that its misrepresentations and omissions regarding the Recalled  
10 Products would materially affect Plaintiff and the Class members’ decisions to purchase the  
11 Recalled Products.

12           24.     Acting as reasonable consumers, Plaintiff Cole and members of the Florida Class  
13 were unaware of Defendant’s affirmative misrepresentations and active concealment of material  
14 facts regarding the Recalled Products. Rather, they believed that Defendant’s Recalled Products  
15 were safe, nutritious, and fit for canine consumption, as advertised. Plaintiff Cole and members of  
16 the Florida Class reasonably relied on Defendant’s misrepresentations and omissions regarding  
17 the Recalled Products in connection with their decisions to purchase the Recalled Products.

18           25.     As a direct and proximate result of Defendant’s misrepresentations regarding the  
19 Recalled Products, Plaintiff Cole and members of the Florida Class were deceived.

20           26.     If the true facts had been known, Plaintiff Cole and members of the Florida Class  
21 would not have purchased the Recalled Products.

22           27.     Defendant has thus engaged in the dissemination of misleading advertising, in  
23 violation of Fla. Stat. § 817.41(1). The actions of Defendant caused damage to Plaintiff Cole and  
24 members of the Florida Class, who are therefore entitled to damages in an amount to be proven at  
25 trial and equitable relief as a result.

26           28.     Defendant’s conduct further constitutes fraud, actual malice, or deliberate  
27 oppression. Defendant acted with actual knowledge of the wrongfulness of its actions and the high  
28 probability that damage to Plaintiff Cole and the Florida Class would result and, despite that

1 knowledge, intentionally pursued the course of conduct described herein, resulting in damage. At a  
2 minimum, Defendant’s conduct was so reckless or wanting in care that it constituted a conscious  
3 disregard or indifference to the rights and interests of Plaintiff Cole and the Florida Class, who  
4 were exposed thereto.

5 **SEVENTH CLAIM FOR RELIEF**  
6 **Violations of Iowa Code § 714H.1, et seq. (Iowa Private Right of Action for Consumer Frauds**  
7 **Act) Against Defendant on Behalf of Plaintiff Lorie Pritchard**

8 129. Plaintiff Pritchard incorporates by reference all of the allegations contained in the  
9 preceding paragraphs of this Class Action Complaint as if fully set forth herein.

10 130. Plaintiff Pritchard purchased the Recalled Products manufactured by Defendant  
11 that were marketed as safe, nutritious, and fit for canine consumption.

12 131. Plaintiff Pritchard and Defendant are “persons” within the meaning of Iowa Code  
13 § 714H.2(7).

14 132. Plaintiff Pritchard is a “consumer” within the meaning of Iowa Code § 714H.2(3),  
15 who purchased the Recalled Products.

16 133. Defendant’s conduct described here in related to the “sale” or “advertisement” of  
17 “merchandise” as within the meaning of Iowa Code §§ 714H.2(2), (6), and (8).

18 134. The Iowa Private Right of Action for Consumer Frauds Act (“Iowa CFA”)  
19 prohibits a person from engaging in a “practice or act the person knows or reasonably should know  
20 is an unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation,  
21 concealment, suppression, or omission of a material fact, with the intent that others rely upon the  
22 unfair practice, deception, fraud false pretense, false promise, misrepresentation, concealment,  
23 suppression, or omission in connection with the advertisement, sale or lease of consumer  
24 merchandise.” Iowa Code § 714H.3.

25 135. In the course of its business, Defendant engaged in activities with a tendency or  
26 capacity to deceive. Defendant also engaged in unlawful trade practices by employing deception,  
27 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of  
28

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1 any material fact with intent that others rely upon such concealment, suppression or omission, in  
2 connection with the sale of the Recalled Products.

3 136. By failing to disclose and by actively concealing the vitamin D content of the  
4 Recalled Products, which it marketed as safe and nutritious, Defendant engaged in unfair and  
5 deceptive business practices in violation of the Iowa CFA Act. Defendant's unfair or deceptive  
6 acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff  
7 Shanley, about the true safety and quality of the Recalled Products.

8 137. Defendant intentionally and knowingly misrepresented material facts regarding the  
9 Recalled Products with the intent to mislead Plaintiff Pritchard. Defendant knew or should have  
10 known that its conduct violated the Iowa CFA.

11 138. As alleged above, Defendant made material statements about the safety and quality  
12 of the Recalled Products that were either false or misleading. Defendant owed Plaintiff Pritchard a  
13 duty to disclose the true safety and quality of the Recalled Products, because Defendant: (a)  
14 possessed exclusive knowledge about the nutritional content of the Recalled Products; (b)  
15 intentionally concealed the foregoing from Plaintiff Pritchard; and (c) made incomplete  
16 representations about the safety and quality of the Recalled Products, while purposefully  
17 withholding material facts from Plaintiff Pritchard that contradicted these representations.

18 139. As a direct and proximate result of Defendant's unfair, deceptive, and  
19 unconscionable conduct, Plaintiff Pritchard has suffered and will continue to suffer injury,  
20 ascertainable losses of money or property, and monetary and nonmonetary damages. Because  
21 Defendant fraudulently concealed the excessive and dangerous amount of vitamin D in the  
22 Recalled Products, purchasers of the Recalled Products were deprived of the benefit of their  
23 bargain. Furthermore, Plaintiff Pritchard incurred substantial veterinary bills as a result of the  
24 unsafe levels of vitamin D in the Recalled Products. Had Plaintiff Pritchard been aware of the  
25 excessive amounts of vitamin D in the Recalled Products, she would not have purchased the  
26 Recalled Products.

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1 140. Defendant’s violations present a continuing risk to Plaintiff Pritchard, as well as to  
2 the general public. Defendant’s unlawful acts and practices complained of herein affect the public  
3 interest.

4 141. After filing this Class Action Complaint, Plaintiff Pritchard will seek approval from  
5 the Iowa Attorney General to file a class action claim under the Iowa CFA. If such approval is  
6 granted, Plaintiff will amend this Class Action Complaint to seek relief under the Iowa CFA on  
7 behalf of all persons in the State of Iowa who purchased the Recalled Products.

8 142. Pursuant to Iowa Code § 714H.5, Plaintiff Pritchard seeks an order enjoining  
9 Defendant’s unfair and/or deceptive acts or practices, and awarding actual damages, treble or  
10 punitive damages, attorneys’ fees, and any other just and proper relief under the Iowa CFA the  
11 Court deems necessary to protect the public from further violations of the Iowa CFA.

12 **EIGHTH CLAIM FOR RELIEF**  
13 **Violations of Mich. Comp. Laws Ann. §§ 445.903, *et seq.* (Michigan Consumer Protection**  
14 **Act) Against Defendant on Behalf of Plaintiff Soltis and the Michigan Class**

15 143. Plaintiff Soltis, individually and on behalf of the Michigan Class, incorporates by  
16 reference all of the allegations contained in the preceding paragraphs of this Class Action  
17 Complaint as if fully set forth herein.

18 144. Defendant and the Michigan Class are “persons” as defined by Mich. Comp. Laws  
19 Ann. § 445.903(d).

20 145. Defendant advertised, offered, or sold goods or services in Michigan and engaged in  
21 trade or commerce directly or indirectly affecting the people of Michigan, as defined by Mich.  
22 Comp. Laws Ann. § 445.903(g).

23 146. Defendant engaged in unfair, unconscionable, and deceptive practices in the  
24 conduct of trade and commerce, in violation of n violation of Mich. Comp. Laws Ann. §  
25 445.903(1), including:

26 a) Representing that its goods and services have characteristics, ingredients,  
27 uses, benefits, and quantities that they do not have in violation of Mich. Comp. Laws Ann. §  
28 445.903(1)(c);

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1           b)     Representing that its goods and services are of a particular standard or  
2 quality if they are of another in violation of Mich. Comp. Laws Ann. § 445.903(1)(e);

3           c)     Failing to reveal a material fact, the omission of which tends to mislead or  
4 deceive the consumer, and which fact could not reasonably be known by the consumer in violation  
5 of Mich. Comp. Laws Ann. § 445.903(1)(s);

6           d)     Making a representation or statement of fact material to the transaction  
7 such that a person reasonably believes the represented or suggested state of affairs to be other than  
8 it actually is, in violation of Mich. Comp. Laws Ann. § 445.903(1)(bb); and

9           e)     Failing to reveal facts that are material to the transaction in light of  
10 representations of fact made in a positive manner, in violation of Mich. Comp. Laws. Ann. §  
11 445.903(1)(cc).

12           147.    Defendant’s representations and omissions were material because they were likely  
13 to deceive reasonable consumers.

14           148.    Defendant acted intentionally, knowingly, and maliciously to violate Michigan’s  
15 Consumer protection Act, and recklessly disregard Plaintiff Soltis and Michigan Class members’  
16 rights. Defendant’s knowledge that the Recalled Products contained excessive and dangerous  
17 amounts of vitamin D, put it on notice that the Recalled Products were not as it advertised.

18           149.    As a direct and proximate result of Defendant’s unfair, unconscionable, and  
19 deceptive practices, Plaintiff Soltis and the Michigan Class have suffered and will continue to  
20 suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages,  
21 including from not receiving the benefit of their bargain in purchasing the Recalled Products, and  
22 veterinary costs incurred as a result of purchasing and feeding the Recalled Products to their dogs.

23           150.    Plaintiff Soltis and the Michigan Class members seek all monetary and non-  
24 monetary relief allowed by law, including actual damages, and any other relief that is just and  
25 proper.

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**NINTH CLAIM FOR RELIEF**

**Violations of New York General Business Law § 349 (the New York False Advertising Act)  
Against Defendant on Behalf of Plaintiff Shanley and the New York Class**

151. Plaintiff Shanley, individually and on behalf of the New York Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

152. Defendant was 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 (“New York FAA”).

153. The New York 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.

154. Defendant 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 Defendant, or that through the exercise of reasonable care should have been known by Defendant, to be untrue and misleading to Plaintiff Shanley and the New York Class.

155. Defendant’s advertising and marketing of the Recalled Products as safe, nutritious, and fit for canine consumption, as set forth in detail above, were false, misleading and deceptive because the Recalled Products contained excessive and dangerous amounts of vitamin D.

156. Defendant’s misrepresentations and omissions alleged herein deceive or have the tendency to deceive the general public regarding the safety and quality of the Recalled Products for canine consumption.

157. Defendant’s misrepresentations and omissions alleged herein were the type of misrepresentations that are material, i.e., a reasonable person would attach importance to them and would be induced to act on the information in making purchase decisions.

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1 158. Defendant’s misrepresentations and omissions alleged herein are objectively  
2 material to a reasonable consumer, and therefore reliance upon such misrepresentations may be  
3 presumed as a matter of law.

4 159. At the time Defendant made the misrepresentations and omissions alleged herein,  
5 Defendant knew or should have known that they were untrue or misleading and acted in violation  
6 of N.Y. GEN. BUS. LAW § 350.

7 160. Unless restrained by this Court, Defendant will continue to engage in untrue and  
8 misleading advertising in violation N.Y. GEN. BUS. LAW § 350.

9 161. As a result, Plaintiff Shanley and each member of the New York Class have been  
10 injured, have lost money or property, and are entitled to relief. Plaintiff Shanley and the New York  
11 Class seek monetary relief against Defendant measured as the greater of (a) actual damages in an  
12 amount to be determined at trial, and (b) statutory damages in the amount of \$500 each for New  
13 York class members. Because Defendant’s conduct was committed willingly and knowingly, New  
14 York class members are entitled to recover three times actual damages, up to \$10,000.

15 162. Plaintiff Shanley and the New York Class also seek an order enjoining Defendant’s  
16 false advertising, attorneys’ fees, and any other just and proper relief under N.Y. GEN. BUS.  
17 LAW § 350.

18 **TENTH CLAIM FOR RELIEF**  
19 **Violation of the Ohio Rev. Code Ann. § 1345.01 et seq. (Ohio Consumer Sales Practice Act)**  
20 **Against Defendant on Behalf of Plaintiff Daoudi and the Ohio Class**

21 163. Plaintiff Daoudi, individually and on behalf of the Ohio Class, incorporates by  
22 reference all of the allegations contained in the preceding paragraphs of this Class Action  
23 Complaint as if fully set forth herein.

24 164. Plaintiff Daoudi and the Ohio Class members purchased the Recalled Products  
25 manufactured by Defendant and marketed by Defendant as safe, nutritious and fit for canine  
26 consumption.

27 165. Defendant is a “supplier” as that term is defined in OHIO REV. CODE ANN. §  
28 1345.01(C). Plaintiff Daoudi and the Ohio Class are “consumers” as that term is defined in OHIO

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1 REV. CODE ANN. § 1345.01(D), and their purchases of the Recalled Products are “consumer  
2 transactions” within the meaning of OHIO REV. CODE ANN. § 1345.01(A).

3 166. The Ohio Consumer Sales Practices Act (“Ohio CSPA”), OHIO REV. CODE  
4 ANN. §1345.02, prohibits unfair or deceptive acts or practices in connection with a consumer  
5 transaction. Specifically, and without limitation, the Ohio CSPA prohibits suppliers from  
6 representing (a) that goods have characteristics or uses or benefits which they do not have; (b) that  
7 their goods are of a particular quality or grade they are not; and (c) the subject of a consumer  
8 transaction has been supplied in accordance with a previous representation, if it has not.

9 167. Defendant’s conduct as alleged above constitutes unfair and/or deceptive  
10 consumer sales practices in violation of OHIO REV. CODE ANN. § 1345.02.

11 168. By concealing the true nutritional content and safety of the Recalled Products,  
12 Defendant engaged in deceptive business practices prohibited by the Ohio CSPA, including:  
13 representing that the Recalled Products have characteristics, uses, benefits, and qualities which  
14 they do not have; representing that the Recalled Products are of a particular standard, quality, and  
15 grade when they are not; representing that the subject of a transaction involving Recalled Products  
16 has been supplied in accordance with a previous representation when it has not; and engaging in  
17 other unfair or deceptive acts or practices. The suppressed or omitted information would be  
18 material to a reasonable consumer.

19 169. Defendant’s actions occurred in the conduct of trade or commerce. In the course of  
20 its business, Defendant concealed the defects in the Recalled Products and otherwise engaged in  
21 activities with a tendency or capacity to deceive. Defendant engaged in unlawful trade practices by  
22 employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment,  
23 suppression or omission of a material fact with intent that others rely upon such concealment,  
24 suppression or omission, in connection with the sale of the Recalled Products.

25 170. By failing to disclose and by actively concealing the true nutritional content and  
26 safety of the Recalled Products, which it marketed as safe, nutritious, and fit for canine  
27 consumption, Defendant engaged in unfair and deceptive business practices in violation of the  
28 Ohio CSPA.

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1            171. Defendant’s unfair or deceptive acts or practices were likely to and did in fact  
2 deceive reasonable consumers, including Plaintiff Daoudi and the Ohio Class, about the true safety  
3 and quality of the Recalled Products. Defendant intentionally and knowingly misrepresented  
4 material facts regarding the Recalled Products with the intent to mislead Plaintiff Daoudi and the  
5 Ohio Class.

6            172. Defendant knew or should have known that its conduct violated the Ohio CSPA.

7            173. As alleged above, Defendant made material misstatements about the quality and  
8 safety of the Recalled Products that were either false or misleading. Defendant owed Plaintiff  
9 Daoudi and the Ohio Class a duty to disclose the true safety and quality of the Recalled Products,  
10 because Defendant: (a) possessed exclusive knowledge about the nutritional content of the  
11 Recalled Products; (b) intentionally concealed the foregoing from Plaintiff Daoudi and the Ohio  
12 Class; and (c) made incomplete representations about the nutritional content of the Recalled  
13 Products, while purposely withholding material facts from Plaintiff Daoudi and Ohio Class that  
14 contradicted those representations.

15            174. Because Defendant concealed the nutritional content of the Recalled Products,  
16 purchasers of the Recalled Products were deprived of the benefit of their bargain since the  
17 Recalled Products were unsafe and unfit for canine consumption. Further Plaintiff Daoudi and the  
18 Ohio Class incurred substantial veterinary bills as a result of feeding their dogs the Recalled  
19 Products. Had purchasers of the Recalled Products been aware of the excessive and dangerous  
20 amounts of vitamin D in the Recalled Products, they would not have purchased the Recalled  
21 Products

22            175. As a direct and proximate result of Defendant’s violations of the Ohio CSPA,  
23 Plaintiff Daoudi and the Ohio Class have suffered injury-in-fact and/or actual damage, as alleged  
24 above. As a result of the foregoing wrongful conduct of Defendant, Plaintiff Daoudi and the Ohio  
25 Class have been damaged in an amount to be proven at trial, and seek all just and proper remedies,  
26 including, but not limited to, actual and statutory damages, an order enjoining Defendant’s  
27 deceptive and unfair conduct, treble damages, court costs and reasonable attorneys’ fees, pursuant  
28 to OHIO REV. CODE ANN. § 1345.09, et seq.

**ELEVENTH CLAIM FOR RELIEF**

**Violation of 73 P.S. § 201-1 et seq. (Pennsylvania Unfair Trade Practices and Consumer Protection Law) Against Defendant on Behalf of Plaintiff Henry and the Pennsylvania Class**

176. Plaintiff Henry, individually and on behalf of the Pennsylvania Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

177. Plaintiff Henry and Pennsylvania Class members purchased the Recalled Products manufactured by Defendant and marketed by Defendant as safe, nutritious and fit for canine consumption.

178. Defendant, Plaintiff Henry, and the Pennsylvania Class are “persons” within the meaning of 73 P.S. § 201-2(2).

179. Defendant is engaged in “trade” or “commerce” within the meaning of 73 P.S. § 201- 2(3).

180. The Pennsylvania Unfair Trade Practices Act (“Pennsylvania UTPA”) prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce ....” 73 P.S. § 201-3.

181. In the course of its business, Defendant concealed the nutritional content and safety of the Recalled Products and otherwise engaged in activities with a tendency or capacity to deceive. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Recalled Products.

182. Defendant thus violated the provisions of the Pennsylvania UTPA, at a minimum by: (1) representing that the Recalled Products have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Recalled Products are of a particular standard, quality, and grade when they are not; (3) advertising the Recalled Products with the intent not to sell them as advertised; (4) failing to disclose information concerning the Recalled Products with the intent to induce consumers to purchase the Recalled Products.

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1 183. Defendant's unfair or deceptive acts or practices were likely to and did in fact  
2 deceive reasonable consumers, including Plaintiff Henry and the Pennsylvania Class, about the  
3 true nutritional content, quality and safety of the Recalled Products.

4 184. Defendant intentionally and knowingly misrepresented material facts regarding the  
5 Recalled Products with the intent to mislead Plaintiff Henry and the Pennsylvania Class.

6 185. Defendant knew or should have known that its conduct violated the Pennsylvania  
7 UTPA.

8 186. As alleged above, Defendant made material statements about the safety, quality,  
9 and nutritional content of the Recalled Products that were either false or misleading. Defendant  
10 owed Plaintiff Henry and the Pennsylvania Class a duty to disclose the true content and quality of  
11 the Recalled Products because Defendant: (a) possessed exclusive knowledge about the nutritional  
12 content of the Recalled Products; (b) intentionally concealed the foregoing from Plaintiff Henry  
13 and the Pennsylvania Class; and (c) made incomplete representations about the quality, safety, and  
14 nutritional content of the Recalled Products, while purposefully withholding material facts from  
15 Plaintiff Henry and the Pennsylvania Class that contradicted these representations.

16 187. Because Defendant concealed the nutritional content of the Recalled Products,  
17 purchasers of the Recalled Products were deprived of the benefit of their bargain since Recalled  
18 Products were unsafe and unfit for canine consumption. Had purchasers of the Recalled Products  
19 been aware of that they contained excessive and dangerous amounts of vitamin D, they would not  
20 have purchased the Recalled Products.

21 188. Defendant's violations present a continuing risk to Plaintiff Henry and the  
22 Pennsylvania Class, as well as to the general public. Defendant's unlawful acts and practices  
23 complained of herein affect the public interest.

24 189. As a direct and proximate result of Defendant's violations of the Pennsylvania  
25 UTPA, Plaintiff Henry and the Pennsylvania Class have suffered injury-in-fact and/or actual  
26 damage. Pursuant to 73 P.S. § 201-9.2(a), Plaintiff Henry and the Pennsylvania Class seek an order  
27 enjoining Defendant's unfair and/or deceptive acts or practices, damages, punitive damages, and  
28 attorneys' fees, costs, and any other just and proper relief available under the Pennsylvania UTPA.

**TWELFTH CLAIM FOR RELIEF**

**Negligent Misrepresentation Against Defendant on Behalf of Plaintiffs and the Nationwide Class**

190. Plaintiffs, individually and on behalf of the Nationwide Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

191. Plaintiffs and members of the Nationwide Class reasonably placed their trust and reliance in Defendant's representations that the Recalled Products were nutritionally balanced, healthy, safe, and appropriate for canine consumption.

192. Plaintiffs and members of the Nationwide Class reasonably placed their trust and reliance in Defendant to disclose if the Recalled Products contained excessive amounts of vitamin D.

193. Because of the relationship between the parties, Defendant owed a duty to use reasonable care to impart correct and reliable disclosures concerning the true nature, quality, and ingredients of the Recalled Products or, based upon its superior knowledge, having spoken, to say enough not to be misleading.

194. Defendant breached its duty to Plaintiffs and the Nationwide Class by providing false, misleading, partial disclosures and/or deceptive information regarding the true nature, safety, and ingredients of the Recalled Products.

195. Plaintiffs and the Nationwide Class reasonably and justifiably relied upon the information supplied to them by Defendant. As a result, Plaintiffs and the Nationwide Class purchased the Recalled Products that should not have been sold at all because they contained excessive amounts of vitamin D.

196. Defendant failed to use reasonable care in its communications and representations to Plaintiff and the Nationwide Class.

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

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1  
2 **THIRTEENTH CLAIM FOR RELIEF**  
3 **Negligent Omission Against Defendant on Behalf of Plaintiffs and the Nationwide Class**

4 198. Plaintiffs, individually and on behalf of the Nationwide Class, incorporate by  
5 reference all of the allegations contained in the preceding paragraphs of this Class Action  
6 Complaint as if fully set forth herein.

7 199. As described herein, Defendant has negligently concealed, suppressed, or omitted a  
8 material fact concerning the Recalled Products, namely that the Recalled Products contain excessive  
9 and dangerous amounts of Vitamin D.

10 200. Defendant was under a duty to Plaintiffs and the Nationwide Class to disclose that  
11 the Recalled Products contained excessive amounts of Vitamin D because:

12 a) Defendant was in a superior position to know that the Recalled Products  
13 contained excessive amounts of Vitamin D;

14 b) Plaintiffs and the Nationwide Class could not reasonably have been  
15 expected to learn or discover that the Recalled Products contained excessive amounts of Vitamin  
16 D;

17 c) Defendant should have known that Plaintiffs and members of the  
18 Nationwide Class could not reasonably have been expected to learn or discover that the Recalled  
19 Products contained excessive amounts of Vitamin D; and

20 d) Defendant should have known that Plaintiffs and members of the  
21 Nationwide Class would not have purchased the Recalled Products if Defendant had disclosed the  
22 excessive amounts of Vitamin D.

23 201. Plaintiffs and members of the Nationwide Class did not know that the Recalled  
24 Products contained excessive amounts of Vitamin D. Had they known, Plaintiffs and members of  
25 the Nationwide Class would not have purchased the Recalled Products. Consequently,  
26 Defendant's conduct directly and proximately caused Plaintiffs and the Nationwide Class actual  
27 monetary damages in the form of the price paid for the Recalled Products.  
28



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- 1 H. a declaration finding that Defendant engaged in the illegal conduct alleged herein in
- 2 violation of 73 P.S. § 201-1 *et seq.* (Pennsylvania Unfair Trade Practices and
- 3 Consumer Protection Law);
- 4 I. a declaration finding that Defendant engaged in conduct constituting negligent
- 5 misrepresentation and negligent omission;
- 6 J. an Order that Defendant be permanently enjoined from its improper activities and
- 7 conduct described herein;
- 8 K. a Judgment awarding Plaintiffs and the Nationwide Class restitution and
- 9 disgorgement of all compensation obtained by Defendant from its wrongful conduct;
- 10 L. a Judgment awarding Plaintiffs and the Nationwide Class compensatory damages
- 11 pursuant to Cal. Civ. Code Cal. §§ 1790, *et seq.*, in an amount to be proven at trial;
- 12 M. Prejudgment and post-judgment interest at the maximum allowable rate;
- 13 N. an Order awarding Plaintiff and the Nationwide Class their reasonable litigation
- 14 expenses, costs, and attorneys' fees;
- 15 O. an Order awarding such other injunctive and declaratory relief as is necessary to
- 16 protect the interests of Plaintiff and the Nationwide Class; and
- 17 P. an Order awarding such other and further relief as the Court deems necessary, just,
- 18 and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury for all claims and issues so triable.

22 Dated: February 20, 2019

SCHUBERT JONCKHEER & KOLBE LLP

/s/ Kathryn Y. Schubert  
KATHRYN SCHUBERT

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Soltis and the Putative Michigan Class*

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9 *Attorneys for Plaintiffs and the Putative Classes*

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO / OAKLAND DIVISION

13 ANN BAUER, JILL COLE, FORREST  
14 CLEVELAND, YASSER DAOUDI, KAREN  
15 GUINEN, WENDY HENRY, KIMBERLY  
16 MULL, LORIE PRITCHARD, LYN  
17 SHANLEY, DONNA LEE SOLTIS,  
18 individually and on behalf of all others  
19 similarly situated,

20 Plaintiffs,

21 v.

22 HILL'S PET NUTRITION, INC.

23 Defendant.

Case No.

DECLARATION OF KATHRYN  
SCHUBERT IN SUPPORT OF CLASS  
ACTION COMPLAINT FOR VIOLATION  
OF CAL. CIV. CODE § 1750, ET SEQ.

CLASS ACTION

24 I, KATHRYN SCHUBERT, hereby declare:

25 1. I am one of the attorneys for the Plaintiffs in the above-entitled action.

26 2. Pursuant to Cal. Civ. Code § 1780(d), this Court is the proper venue for  
27 commencement and trial of this action because (a) Defendant Hill's Pet Nutrition, Inc.  
28 ("Defendant") does business in this district, and (b) a substantial part of the events or omissions  
giving rise to Plaintiff Ann Bauer's claims occurred in Marin County, within this district. Defendant  
engaged in the promotion, marketing, and sales of the recalled dog food at issue in this district, and  
Plaintiff Ann Bauer is a resident of this district and purchased the products at issue in this district.

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct.

3 Executed this 20th day of February 2019 in San Francisco, CA.  
4

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6   
7 Kathryn Schubert  
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JS-CAND 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

**I. (a) PLAINTIFFS**

ANN BAUER, JILL COLE, FORREST CLEVELAND, YASSER DAOUDI, KAREN GUINEN, WENDY HENRY, KIMBERLY MULL, LORIE PRITCHARD, LYN SHANLEY, DONNA LEE SOLTIS, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Schubert Jonckheer & Kolbe LLP (415) 788-4220  
3 Embarcadero Center, Suite 1650  
San Francisco, CA 94111

**DEFENDANTS**

**HILL'S PET NUTRITION, INC.**, a Delaware corporation.

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

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

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	<b>PERSONAL INJURY</b>	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	<b>LABOR</b>	<b>PROPERTY RIGHTS</b>	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits	330 Federal Employers' Liability	720 Labor/Management Relations	830 Patent	430 Banks and Banking
151 Medicare Act	340 Marine	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	751 Family and Medical Leave Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	790 Other Labor Litigation	<b>SOCIAL SECURITY</b>	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit
190 Other Contract	360 Other Personal Injury	<b>IMMIGRATION</b>	862 Black Lung (923)	490 Cable/Sat TV
<input checked="" type="checkbox"/> 195 Contract Product Liability	362 Personal Injury—Medical Malpractice	462 Naturalization Application	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange
196 Franchise	<b>CIVIL RIGHTS</b>	465 Other Immigration Actions	864 SSID Title XVI	890 Other Statutory Actions
<b>REAL PROPERTY</b>	440 Other Civil Rights		865 RSI (405(g))	891 Agricultural Acts
210 Land Condemnation	441 Voting	<b>PRISONER PETITIONS</b>	<b>FEDERAL TAX SUITS</b>	893 Environmental Matters
220 Foreclosure	442 Employment	<b>HABEAS CORPUS</b>	870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
230 Rent Lease & Ejectment	443 Housing/Accommodations	463 Alien Detainee	871 IRS—Third Party 26 USC § 7609	896 Arbitration
240 Torts to Land	445 Amer. w/Disabilities—Employment	510 Motions to Vacate Sentence		899 Administrative Procedure Act/Review or Appeal of Agency Decision
245 Tort Product Liability	446 Amer. w/Disabilities—Other	530 General		950 Constitutionality of State Statutes
290 All Other Real Property	448 Education	535 Death Penalty		
		<b>OTHER</b>		
		540 Mandamus & Other		
		550 Civil Rights		
		555 Prison Condition		
		560 Civil Detainee—Conditions of Confinement		

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation—Transfer
- 8 Multidistrict Litigation—Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

USC 1332

Brief description of cause:

Diversity suit under CAFA for violation of state warranty and consumer protection laws.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S), IF ANY** (See instructions):

JUDGE **William H. Alsup**

DOCKET NUMBER **4:19-cv-767-WHA**

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**

(Place an "X" in One Box Only)  SAN FRANCISCO/OAKLAND  SAN JOSE  EUREKA-MCKINLEYVILLE

DATE **02/20/2019**

SIGNATURE OF ATTORNEY OF RECORD

/s/Kathryn Y. Schubert