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11 **UNITED STATES DISTRICT COURT**

12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 TODD CARPENTER,
14 Individually, on behalf of himself and
15 others similarly situated,

16 Plaintiff,

17 v.

18 PETSMART, INC.,

19 Defendant.

20 Case No.: '19CV1731 CAB LL

21 **CLASS ACTION COMPLAINT**

22 **JURY TRIAL DEMANDED**

1 Plaintiff Todd Carpenter, individually and on behalf of a class of persons
2 similarly situated, as more fully described herein (the “Class” and “Class
3 Members”), brings this class action against Defendant PetSmart, Inc. (“PetSmart”
4 or “Defendant”). Plaintiff’s allegations herein are based upon personal knowledge
5 as to his own acts and experiences in this matter, the investigation of counsel, and
6 upon information and belief as to all other matters.

7 **NATURE OF THE ACTION**

8 1. This is a class action against Defendant for the design, manufacture
9 and sale of its All Living Things® Tiny Tales™ Small Pet Habitats (hereinafter,
10 “Tiny Tales Homes”), which are artificial habitats or cages for pet hamsters,
11 gerbils, and mice. Despite Defendant’s self-proclaimed expertise concerning pets
12 and pet care, the Tiny Tales Homes contain a critical defect, which renders them
13 unsafe and dangerous to the very animals they are intended to house safely and
14 securely. As a result, the Tiny Tales Homes are worthless.

15 2. Accordingly, Plaintiff brings his claims against Defendant
16 individually and on behalf of the Class for (1) violation of California’s Song-
17 Beverly Consumer Warranty Act, Cal. Civ. Code § 1790 *et seq.* and California
18 Commercial Code § 2314; (2) violation of California’s Unfair Competition Law,
19 Cal. Bus. & Prof. Code §§ 17200-17210; (3) violation of California’s Consumer
20 Legal Remedies Act, Civil Code § 1750, *et. seq.*; (4) fraud by omission; (5) breach
21 of implied warranty; (6) violation of the Magnuson-Moss Warranty Act; and (7)
22 unjust enrichment.

23 **JURISDICTION**

24 3. This Court has original jurisdiction over this action pursuant to the
25 Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed
26 Class consists of 100 or more members; the amount in controversy exceeds
27 \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This
28

1 Court also has supplemental jurisdiction over the state law claims pursuant to 28
2 U.S.C. § 1367.

3 **VENUE**

4 4. Venue is proper in this District under 28 U.S.C. § 1391 because a
5 substantial part of the events or omissions giving rise to Plaintiff’s claims occurred
6 in this District. In addition, Plaintiff purchased the Tiny Tales Homes in this
7 District, and Defendant has marketed, advertised, and sold Tiny Tales Homes
8 within this District.¹

9 **PARTIES**

10 **A. Plaintiff**

11 5. Plaintiff Todd Carpenter is a resident of Encinitas, California. On
12 December 24, 2018, Plaintiff purchased four Tiny Tales Homes (one Rocket Ship,
13 one Castle, and two Clubhouse units) and two pet hamsters (including bedding and
14 food) from Defendant as Christmas presents for his children. Plaintiff purchased
15 these items at a PetSmart store located in Encinitas, California. Plaintiff paid
16 \$111.80 to purchase these items.

17 **B. Defendant**

18 6. Defendant PetSmart, Inc. is a corporation organized under the laws of
19 the State of Delaware, with its principal place of business in Phoenix, Arizona.

20 7. Plaintiff alleges, on information and belief, that at all times herein,
21 Defendant’s agents, employees, representatives, executives, directors, partners,
22 and/or subsidiaries were acting within the course and scope of such agency,
23 employment, and representation, on behalf of Defendant.

24 **FACTUAL ALLEGATIONS**

25 8. Defendant PetSmart, Inc. “is the largest specialty pet retailer of
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27
28 ¹ See also Declaration of Todd Carpenter Regarding Venue Pursuant to Cal. Civ.
Code § 1780(d), appended hereto as Exhibit A.

1 services and solutions for the lifetime needs of pets.”² Defendant employs
2 approximately 56,000 “associates” and operates more than 1,650 pet stores
3 throughout the United States, Canada, and Puerto Rico.

4 9. In addition, “PetSmart provides a broad range of competitively priced
5 pet food and products and offers unique pet services including training, pet
6 grooming, boarding, PetSmart Doggie Day Camp and in-store pet adoptions.”³
7 Many of Defendant’s stores also provide full-service, in-store pet hospitals offering
8 expert veterinarian care.

9 10. Defendant also sells “Live Pets,” including hamsters, gerbils, and
10 mice, in addition to other animals. In fact, on information and belief, Defendant
11 sells tens of thousands—if not more—of hamsters, gerbils and mice (hereinafter,
12 “Rodents”) every year.

13 11. Defendant has sold Rodents for decades.

14 **A. Defendant Touts Its Expertise Concerning Pets and Pet Care**

15 12. Defendant claims to be “an industry leader when it comes to caring
16 for pets. We play a critical role in ensuring top-quality care that the pets in our
17 stores receive, even before they reach our stores. And we continue to help with the
18 care of these pets well after they reach their new home.”⁴

19 13. Similarly, Defendant claims to “provide superior care for the pets in
20 our stores, and always are available to help our pet parents with any concerns about
21 their pet.”⁵ Indeed, Defendant purports to be “a trusted resource for those pet
22 parents who want to purchase a healthy pet.”⁶

25 ² <https://www.petsmartcorporate.com/>.

26 ³ *Id.*

27 ⁴ http://media.corporate-ir.net/media_files/irol/19/196265/Vet_Assured.pdf.

28 ⁵ *Id.*

⁶ *Id.*

1 14. In fact, “[e]ach and every [PetSmart] associate must complete
2 education and training programs, and know how to provide the highest standards of
3 care for pets in our stores, every moment of every day.”⁷

4 15. Further, Defendant claims it is “constantly conducting research,
5 working with experts and listening to feedback from our customers to determine
6 ways in which [it] can improve or change [its] practices, all in the best interest of
7 pets.”⁸

8 **B. Defendant’s Vet Assured Promise**

9 16. With respect to the pets it sells, including Rodents, Defendant
10 provides its “Vet Assured Promise.” “Vet Assured is PetSmart's exclusive program
11 of health care for all of the small pets, birds, reptiles and amphibians available for
12 sale in our stores. Developed in 1997 by our inhouse team of veterinarians and pet
13 experts, it is a comprehensive veterinarian-supervised care program that includes
14 setting standards for and monitoring the breeding, care and transportation practices
15 and policies of PetSmart's pet suppliers, conducting examinations by our trained
16 associates of all pets before they are offered for sale, and providing expert care to
17 the pets while in stores.”⁹

18 17. Moreover, “[i]f a pet should become ill while in PetSmart’s care, all
19 Pet Care Associates are trained to handle the situation, including isolating the pet
20 in a designated area, consulting a veterinarian and providing medication under the
21 direction of a veterinarian. . . . Each PetSmart store has a consulting veterinarian to
22 refer to with pet health concerns. The store utilizes the services of that veterinarian
23 for the care of any pets that become ill or injured in the store, as needed. The Pet
24 Care Manager at the store can also consult with the PetSmart Veterinary staff.”¹⁰

25
26 ⁷ *Id.*

27 ⁸ *Id.*

28 ⁹ *Id.*

¹⁰ *Id.*

1 **C. The Defective Products**

2 18. In addition to selling pets, Defendant sells pet cages or “habitats.”

3 19. Defendant designs, manufactures, markets, advertises, labels, and sells
4 Tiny Tales Homes, including, but not limited to, the following:

- 5 • Comfy House;
- 6 • Country Barn;
- 7 • Barn Silo;
- 8 • Rocket Ship;
- 9 • Amusement Park;
- 10 • Castle;
- 11 • Castle Turret;
- 12 • Race Car;
- 13 • Clubhouse; and
- 14 • Playground

15 See the following images of Tiny Tales Homes:

16 **Image of Comfy House**



1 **Image of Country Barn**



14 **Image of Barn Silo**



1 **Image of Rocket Ship**



15 **Image of Amusement Park**



1 **Image of Castle**



14 **Image of Castle Turret**



Image of Race Car

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Image of Clubhouse



1 **Image of Playground**



16 20. The Tiny Tales Homes are designed, manufactured, marketed,
17 advertised, labeled, and sold as artificial habitats for Rodents.

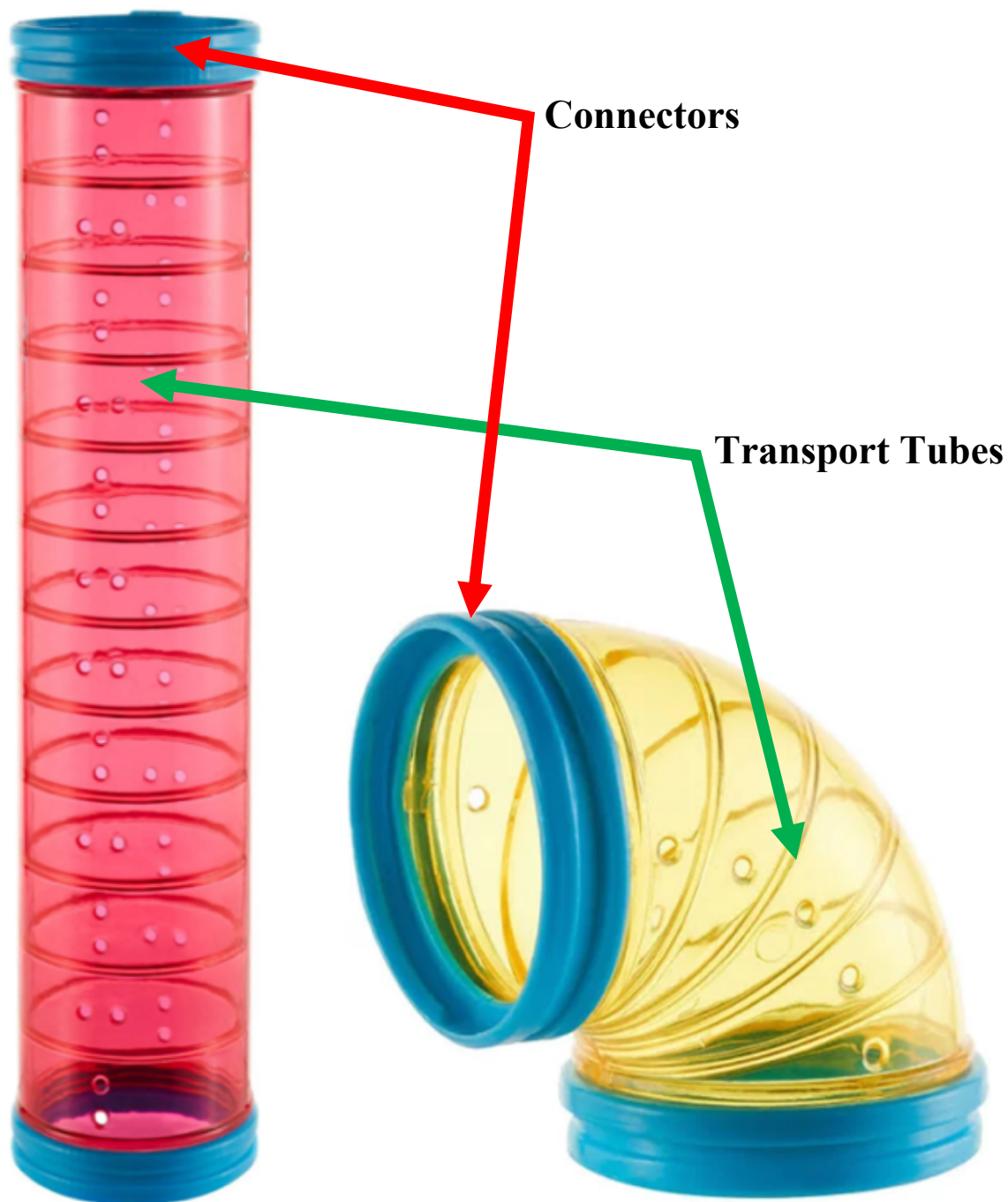
18 21. The Tiny Tales Homes include, in various sizes and colors, cylindrical
19 plastic tubes (hereinafter, “Transport Tubes”) that permit a Rodent to explore the
20 space within a Tiny Tales Home, as well as permit different Tiny Tales Homes to
21 be connected to one another to create a larger habitat.

22 22. In fact, Defendant specifically designed and manufactured Tiny Tales
23 Homes to be connected to one another. On the packaging of each Tiny Tales
24 Home (which Defendant labels as “Connectable Hamster Home[s]”), Defendant
25 encourages consumers to “Collect and connect each Tiny Tales™ home to build an
26 exciting world[,]” as well as to “Collect & Connect Them All!”

27

28

1 23. To facilitate the connections, the Transport Tubes use circular
2 connection pieces made of soft, malleable plastic (hereinafter, "Connectors"). The
3 Connectors attach the Transport Tubes to a Tiny Tales Home.
4



1 **D. Rodents’ Chewing Behavior**

2 24. Rodents must vigorously and frequently chew objects in order to
3 shorten their front four teeth (or incisors), which grow continuously throughout
4 their lives. By failing to do so, a Rodent risks severe injury or death, as its incisors
5 could eventually pierce its skull.

6 25. Rodents also engage in this frequent chewing behavior due to
7 boredom, anxiety, and idleness.

8 26. In fact, the name “rodent” comes from the Latin word “rodere,” which
9 means “to gnaw.”

10 27. Not only do Rodents’ incisors never stop growing, they are also very
11 hard. Indeed, Rodent teeth are harder than lead, aluminum, copper, and iron. As a
12 result, Rodents are able to chew through a variety of materials, including plastic—
13 especially soft plastic.

14 **E. The Defect**

15 28. As described herein, the Transport Tubes use soft, malleable plastic
16 Connectors to attach the Transport Tubes to a Tiny Tales Home.

17 29. As depicted in the images of the different Tiny Tales Homes, *supra*,
18 these Transport Tubes connect to the Tiny Tales Homes in various ways and in
19 various configurations.

20 30. However, when a Transport Tube is connected to a Tiny Tales Home,
21 a portion of the soft, plastic Connector protrudes outward, creating an exposed lip
22 within the Tiny Tales Home.

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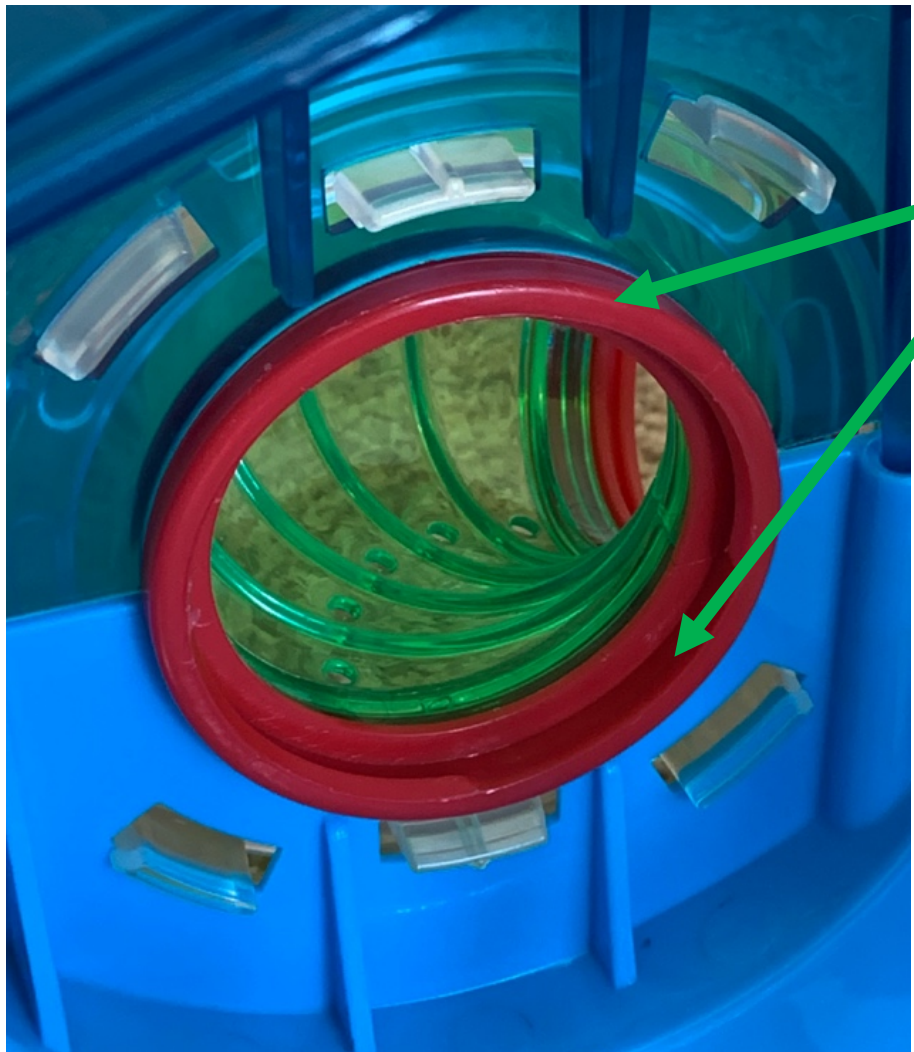
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**Protruding
Connector**

31. That a portion of the soft, malleable plastic Connector protrudes in this way is a critical defect, rendering the Tiny Tales Homes worthless—and dangerous.

32. That is because Rodents are prone to chewing the exposed, protruding portion of a Connector, which Rodents can—and do—easily chew through. In fact, Rodents are prone to chewing the Connector until it no longer functions properly and fails to connect the Transport Tube to the Tiny Tales Home. This, in turn, causes the Transport Tube to become dislodged from the Tiny Tales Home, creating an opening and permitting a Rodent to escape.

1 33. Accordingly, the defect—which can permit a hamster to escape—is an
2 unreasonable safety hazard, as domesticated Rodents, such as those sold by
3 Defendant, are ill-equipped to survive outside of their Tiny Tales Home.

4 34. In addition, were a Rodent to ingest any of the plastic Connector, the
5 Rodent could become sick or injured, or could be killed.

6 **An Example of a Connector Chewed by a Rodent**



19 **F. Plaintiff's Experience with the Defective Products**

20 35. As previously described, Plaintiff Todd Carpenter purchased four
21 Tiny Tales Homes as Christmas presents for his children. Using the defective
22 Connectors and Transport Tubes, Mr. Carpenter connected two of the Tiny Tales
23 Homes together to form a larger habitat. Mr. Carpenter connected the other two
24 Tiny Tales Homes together in the same way.

25 36. Mr. Carpenter then placed one hamster in each of the two sets of
26 connected Tiny Tales Homes.

27 37. To the utter horror of Mr. Carpenter and his children, their pet
28 hamsters—while housed in entirely separate sets of connected Tiny Tales

1 Homes—independently chewed apart numerous defective Connectors, causing the
2 Transport Tubes to fail and become dislodged, thereby permitting the hamsters to
3 escape.

4 38. The hamsters were never found.

5 39. Mr. Carpenter’s children were completely devastated and deeply
6 saddened by these events.

7 **G. Defendant Knew About the Defect**

8 40. As a self-proclaimed expert in the area of pets and pet care, and
9 having sold tens of thousands of Rodents over the years, Defendant knew about the
10 Rodent chewing behavior described herein.

11 41. In fact, on its website, Defendant provides information concerning
12 Rodent care. Defendant states that hamsters, gerbils, and mice “have front teeth
13 that never stop growing -- so they need lots of healthy things to chew on[.]”¹¹

14 42. Similarly, Defendant states that “Hamsters like to chew, gnaw and
15 gnash. Choose a habitat with a solid bottom or go for a glass aquarium tank with a
16 well-ventilated wire mesh top.”¹² And “Rodents love to gnaw.”¹³

17 43. Defendant sold and sells the All Living Things Tiny Tales Wooden
18 Slide Chew, which is a chew toy made of wood and intended for “Small Pets,”
19 including Rodents.¹⁴ In describing the product, Defendant states, “Encourage your
20 pet’s natural desire to chew by adding this All Living Things Tiny Tales Wooden

21 ¹¹[https://www.petsmart.com/small-pet/live-small-pets/hamsters-guinea-pigs-and-](https://www.petsmart.com/small-pet/live-small-pets/hamsters-guinea-pigs-and-more/fancy-mouse-15334.html)
22 [more/fancy-mouse-15334.html; https://www.petsmart.com/small-pet/live](https://www.petsmart.com/small-pet/live-small-pets/hamsters-guinea-pigs-and-more/russian-dwarf-hamster-43112.html)
23 [-small-pets/hamsters-guinea-pigs-and-more/russian-dwarf-hamster-43112.html;](https://www.petsmart.com/small-pet/live-small-pets/hamsters-guinea-pigs-and-more/gerbil-15333.html)
24 [https://www.petsmart.com/small-pet/live-small-pets/hamsters-guinea-pigs-and-](https://www.petsmart.com/small-pet/live-small-pets/hamsters-guinea-pigs-and-more/gerbil-15333.html)

25 ¹²[https://www.petsmart.com/learning-center/small-pet-care/hamster-care-](https://www.petsmart.com/learning-center/small-pet-care/hamster-care-guide/A0092.html)
26 [guide/A0092.html.](https://www.petsmart.com/learning-center/small-pet-care/hamster-care-guide/A0092.html)

27 ¹³[https://www.petsmart.com/learning-center/small-pet-care/feeding-your-small-](https://www.petsmart.com/learning-center/small-pet-care/feeding-your-small-pet/A0024.html)
28 [pet/A0024.html.](https://www.petsmart.com/learning-center/small-pet-care/feeding-your-small-pet/A0024.html)

¹⁴[https://www.petsmart.ca/small-pet/toys-and-habitat-accessories/toys/all-living-](https://www.petsmart.ca/small-pet/toys-and-habitat-accessories/toys/all-living-things-tiny-talesandtrade-slide-small-pet-chew-5282294.html)
[things-tiny-talesandtrade-slide-small-pet-chew-5282294.html.](https://www.petsmart.ca/small-pet/toys-and-habitat-accessories/toys/all-living-things-tiny-talesandtrade-slide-small-pet-chew-5282294.html)

1 Slide Chew to his habitat. This fun chew comes in beautiful blue and is shaped like
2 a fun slide, and is the perfect piece to satisfy your pet's instinctive chewing
3 urges.”¹⁵

4 44. However, in October 2018, Defendant recalled the Tiny Tales
5 Wooden Slide because “[t]he products were constructed using small metal brads
6 which could cause injury if the pet chews through the product and exposes the
7 metal.”¹⁶

8 45. Further—and ironically—Defendant cautions consumers to “[m]ake
9 sure your pet’s habitat is escape proof.”¹⁷ Accordingly and unequivocally,
10 Defendant was and is aware of the Rodent chewing behavior described herein,
11 including prior to Plaintiff’s purchase of the Tiny Tales Homes.

12 46. In addition, and in light of the following (also described *supra*),
13 Defendant knew—including prior to Plaintiff’s purchase of the Tiny Tales
14 Homes—that Rodents can chew through soft plastic—and are prone to doing so:

- 15 a. Defendant is “an industry leader when it comes to caring for pets”;
- 16 b. Defendant is “a trusted resource for those pet parents who want to purchase
17 a healthy pet”;
- 18 c. Defendant has “in-store pet hospitals offering expert veterinarian care”;
- 19 d. Defendant sells tens of thousands—if not more—of Rodents every year¹⁸;
- 20 e. Defendant has sold Rodents for decades;

22 ¹⁵ *Id.*

23 ¹⁶[https://www.petsmartcorporate.com/blank-1/2018/10/31/Voluntary-Product-
24 Withdrawal-%E2%80%93-Tiny-Tales-Small-Animal-Chews](https://www.petsmartcorporate.com/blank-1/2018/10/31/Voluntary-Product-Withdrawal-%E2%80%93-Tiny-Tales-Small-Animal-Chews).

25 ¹⁷[https://www.petsmart.com/learning-center/small-pet-care/what-kind-of-small-
26 pet-should-i-get/A0047.html](https://www.petsmart.com/learning-center/small-pet-care/what-kind-of-small-pet-should-i-get/A0047.html).

27 ¹⁸ The Rodents Defendant sells are housed and maintained in Defendant’s stores by
28 Defendant’s employees. Having housed and maintained Rodents for decades,
Defendant was aware of Rodents’ chewing behavior, including their ability and
propensity to chew through soft plastic material.

- 1 f. “Each and every [PetSmart] associate must complete education and training
2 programs, and know how to provide the highest standards of care for pets in
3 our stores, every moment of every day”;
- 4 g. Defendant has an “inhouse team of veterinarians and pet experts”¹⁹;
- 5 h. “Each PetSmart store has a consulting veterinarian to refer to with pet health
6 concerns. The store utilizes the services of that veterinarian for the care of
7 any pets that become ill or injured in the store, as needed. The Pet Care
8 Manager at the store can also consult with the PetSmart Veterinary staff”;
- 9 i. Defendant’s “comprehensive veterinarian-supervised care program that
10 includes setting standards for and monitoring the breeding, care and
11 transportation practices and policies [and] providing expert care to the
12 pets while in stores”; and
- 13 j. Defendant is “constantly conducting research, working with experts and
14 listening to feedback from our customers to determine ways in which [it] can
15 improve or change [its] practices, all in the best interest of pets.”

16 47. In addition, as the designer and manufacturer of Tiny Tales Homes,
17 Defendant knew or should have known that if a Rodent chewed through the soft
18 plastic Connectors, the Transport Tubes would fail and become dislodged,
19 permitting the Rodent to escape.

20 48. Defendant had exclusive, non-public knowledge of the defect
21 contained in the Tiny Tales Homes. As the designer, manufacturer, marketer and
22 seller of the Tiny Tales Homes, Defendant alone possessed specialized knowledge
23 about the design and manufacturing process and was in a superior position to know
24 and learn of the Defect.

25
26 ¹⁹ Rodents’ chewing behavior, including their ability and propensity to chew
27 through soft plastic material, was known to Defendant’s inhouse team of
28 veterinarians and pet experts, including prior to Plaintiff’s purchase of the Tiny
Tales Homes.

1 49. On information and belief, Defendant also knew or should have
2 known about the defect through sources not available to consumers including, but
3 not limited to, product specifications, design drawings, return-rate data, testing
4 data, manufacturer inspection, oversight of the manufacturing process, early
5 consumer complaints about the defect to Defendant, and Defendant’s testing or
6 investigation conducted in response to those early complaints, return and exchange
7 data from customer service, among other internal sources of aggregate information
8 about the problem.

9 50. Defendant also knew that were a Rodent to ingest any of the plastic
10 Connector, the Rodent could become sick or injured, or could be killed.

11 51. In fact, Defendant was clearly cognizant of the harm caused to pets
12 that ingest plastic. For example, on its website, Defendant recommends that dog
13 owners “[a]void toys made of material that’s easily chewed apart and swallowed,
14 such as hard plastic or rubber.”²⁰ Similarly, “Cellophane, plastic & paper sticks
15 can cause gastrointestinal upset or bowel obstruction.”²¹

16 52. Surprisingly, Defendant designed and manufactured the Connectors to
17 be made of soft plastic despite leading animal organizations warning against the
18 danger that soft plastic poses to Rodents.²²

19 53. For example, the Animal Humane Society (“AHS”) is one of the
20 nation’s leading animal welfare organizations, with the mission of advancing
21 animal welfare and creating a more humane world for animals. The AHS provides
22 recommendations concerning pet care, including caring for hamsters, gerbils, and
23 mice. The AHS instructs that hamsters, gerbils, and mice “need to chew to keep

24 _____
25 ²⁰<https://www.petsmart.com/learning-center/dog-care/is-my-pet-stressed/A0227.html>.

26 ²¹<https://www.petsmart.com/learning-center/dog-care/halloween-food-and-decoration-safety-guide-for-pets/A0254.html>.

27 ²² In fact, Defendant regularly donates money to and partners with the ASPCA and
28 HSUS in connection with various charitable-related causes.

1 their teeth from overgrowing[,]” but a pet owner should “[a]void anything made of
2 soft plastic.”

3 54. The American Society for the Prevention of Cruelty to Animals
4 (“ASPCA”) is the oldest humane society in North American and is currently one of
5 the largest in the world. The ASPCA also provides recommendations concerning
6 pet care, including caring for gerbils. The ASPCA cautions that, while gerbils love
7 toys, “avoid anything made of soft plastic—it will almost certainly be chewed to
8 bits!”

9 55. The Humane Society of the United States (“HSUS”) is a nonprofit
10 animal welfare and animal rights advocacy group, and is one of the largest such
11 organizations in the world, with more than 10 million members. Noting that
12 hamsters are “[n]otorious nibblers,” the HSUS warns that “hamsters may harm
13 their internal systems if they ingest soft plastics[.]”

14 56. Even more, consumers of the Tiny Tales Homes have complained
15 directly to Defendant about the defect. For example, through its website,
16 Defendant not only sells the Tiny Tales Homes, but permits consumers to leave a
17 review of the Tiny Tales Homes.

18 57. On information and belief, Defendant actively monitors these reviews.

19 58. The following are consumer reviews of various Tiny Tales Homes on
20 Defendant’s website:²³

21 a. From Lucasless13:

22 “I got this for my sons hamster about a week ago. It’s waaaayyyy too small
23 for any hamster....***The tubing is made of plastic and it connects to the cage***
24 ***with plastic ends. They are already chewed through....***”

25 b. From Hamsterlovespie:

26
27
28 ²³ Regarding the listed reviews: grammatically unchanged; emphasis added.

1 “My hamster hated it. He had to stay in there for a while we buy a new cage
2 but he escaped. . . . ***But all he did was chew a little on the tubes then he***
3 ***popped them out of his cage and escaped.*** I would never recommend
4 EVER.”

5 c. From Astrothebunny:

6 “DO NOT BUY THIS! This cage and all cages from this brand are wayyy
7 too small for hamsters, mice, and gerbils! ***It is also made of a soft plastic***
8 ***material which they can easily chew through and escape....***”

9 d. From Prima_Sirius_Pax:

10 ***“I agree with wowgirl, gerbils will in fact chew on plastic, and this can be***
11 ***unhealthy. Not only that, but your gerbils could get out and be lost in your***
12 ***home.”***

13 e. From FischerNordica:

14 “The plastic is cheap and breaks easily. A hamster or gerbil can easily
15 escape. Plus this is way too small for rodents in general.”

16 59. Further, that Defendant knew about the defect was confirmed by
17 Plaintiff after his hamsters chewed through the Connectors and escaped. Plaintiff
18 spoke with two different PetSmart employees at two different PetSmart stores.
19 Each employee confirmed that it is a known, common issue that Rodents chew
20 through the Connectors in the Tiny Tales Homes.

21 **H. As a Result of the Defect, Plaintiff and Class Members Were**
22 **Damaged and Suffered an Ascertainable Loss**

23 60. Despite its knowledge, Defendant failed to warn, or otherwise
24 disclose to, consumers that the Tiny Tales Homes are defective.

25 61. Defendant also fraudulently concealed and intentionally failed to
26 disclose the defective nature of the Tiny Tales Homes.

27 62. Nor has Defendant issued a recall of the Tiny Tales Homes due to the
28 defect.

1 63. The defect in the Tiny Tales Homes would not be discoverable by a
2 reasonable consumer prior to sale. The Rodent chewing behavior described herein,
3 the soft plastic material of which a Connector is made, and that a portion of a
4 Connector protrudes in the way described herein—and that they constitute a
5 material defect—are not facts a reasonable consumer would know (or reasonably
6 be expected to know) prior to purchasing the Tiny Tales Homes.

7 64. Moreover, Plaintiff and Class Members would not expect Defendant
8 to design, manufacture, and sell a product that contains a material defect.

9 65. That a Tiny Tales Home securely and safely houses a Rodent is the
10 central function of the Tiny Tales Homes, as well as a material factor to Class
11 Members, including Plaintiff, in purchasing a Tiny Tales Home.

12 66. The defect, which Defendant fails to disclose and actively conceals
13 from consumers, directly undermines and impairs a Tiny Tales Home’s ability to
14 securely and safely house a Rodent.

15 67. In light of the defect, the Tiny Tales Homes are unfit to be sold or
16 used to house Rodents. These products are, therefore, completely worthless.

17 68. Defendant had a duty to disclose the existence of this defect to
18 Plaintiff and Class Members but failed to do so. This is especially true where, as
19 here, Defendant had exclusive knowledge of the defect and was in a superior
20 position to know the truth about the quality and nature of the Tiny Tales Homes.

21 69. Had Class Members, including Plaintiff, known about the defect, they
22 would not have purchased the Tiny Tales Homes, or would have paid less for
23 them. As such, the defect, which Defendant has failed to disclose, constitutes
24 information that Plaintiff and Class Members would have deemed important in
25 determining whether to purchase the Tiny Tales Homes.

26 70. Having purchased the Tiny Tales Homes at one of Defendant’s stores,
27 Plaintiff would have had an opportunity to receive information about the defect,
28 had Defendant disclosed it.

1 77. This action is properly maintainable as a class action pursuant to
2 Federal Rule of Civil Procedure 23 for the reasons set forth below.

3 78. **Numerosity:** Members of the Class are so numerous that joinder of
4 all members is impracticable. Upon information and belief, the Nationwide Class
5 consists of tens of thousands of purchasers dispersed throughout the United States,
6 and the California Subclass likewise consists of thousands of purchasers
7 throughout the State of California. Accordingly, it would be impracticable to join
8 all members of the Class before the Court.

9 79. **Common Questions Predominate:** There are numerous and
10 substantial questions of law or fact common to all members of the Class that
11 predominate over any individual issues. Included within the common questions of
12 law or fact are:

- 13 a. Whether Defendant engaged in unlawful, unfair or deceptive business
14 practices by advertising and selling its Tiny Tales Homes;
- 15 b. Whether Defendant violated California Bus. & Prof. Code § 17200, *et*
16 *seq.*; Cal. Bus. & Prof. Code § 17500, *et seq.*; and the Consumers Legal
17 Remedies Act, Cal. Civ. Code § 1750, *et seq.*;
- 18 c. Whether Defendant's conduct constitutes breach of the implied warranty
19 of merchantability;
- 20 d. Whether the Tiny Tales Homes are defective in manufacturing and/or
21 design;
- 22 e. Whether Plaintiff and the Class are entitled to equitable and/or injunctive
23 relief;
- 24 f. Whether Plaintiff and the Class have sustained damages as a result of
25 Defendant's unlawful conduct;
- 26 g. The proper measure of damages sustained by Plaintiff and Class
27 Members; and
- 28 h. Whether Defendant was unjustly enriched by its unlawful conduct.

1 80. **Typicality:** Plaintiff’s claims are typical of the claims of the Class
2 Members he seeks to represent because Plaintiff, like the Class Members,
3 purchased Defendant’s defective Tiny Tales Homes. Defendant’s unlawful, unfair
4 and/or fraudulent actions concern the same business practices described herein
5 irrespective of where they occurred or were experienced. The defect inherent to
6 the Tiny Tales Homes Plaintiff purchased is identical to those Tiny Tales Homes
7 purchased by Class Members. Plaintiff and the Class sustained similar injuries
8 arising out of Defendant’s conduct. Plaintiff’s and Class Members’ claims arise
9 from the same practices and course of conduct and are based on the same legal
10 theories.

11 81. **Adequacy:** Plaintiff is an adequate representative of the Class he
12 seeks to represent because his interests do not conflict with the interests of the
13 Class Members Plaintiff seeks to represent. Plaintiff will fairly and adequately
14 protect Class Members’ interests and has retained counsel experienced and
15 competent in the prosecution of complex class actions, including complex
16 questions that arise in consumer protection litigation.

17 82. **Superiority and Substantial Benefit:** A class action is superior to
18 other methods for the fair and efficient adjudication of this controversy, since
19 individual joinder of all members of the Class is impracticable and no other group
20 method of adjudication of all claims asserted herein is more efficient and
21 manageable for at least the following reasons:

- 22
- 23 a. The claims presented in this case predominate over any questions of law
24 or fact, if any exists at all, affecting any individual member of the Class;
 - 25 b. Absent a Class, the members of the Class will continue to suffer damage
26 and Defendant’s unlawful conduct will continue without remedy while
27 Defendant profits from and enjoys its ill-gotten gains;
 - 28 c. Given the size of individual Class Members’ claims, few, if any, Class
 Members could afford to or would seek legal redress individually for the
 wrongs Defendant committed against them, and absent Class Members

1 have no substantial interest in individually controlling the prosecution of
individual actions;

2
3 d. When the liability of Defendant has been adjudicated, claims of all
members of the Class can be administered efficiently and/or determined
uniformly by the Court; and

4
5 e. This action presents no difficulty that would impede its management by
6 the Court as a class action, which is the best available means by which
Plaintiff and Class Members can seek redress for the harm caused to
7 them by Defendant.

8 83. Because Plaintiff seeks relief for all members of the Class, the
9 prosecution of separate actions by individual members would create a risk of
10 inconsistent or varying adjudications with respect to individual members of the
11 Class, which would establish incompatible standards of conduct for Defendant.

12 84. The prerequisites to maintaining a class action for injunctive or
13 equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted
14 or refused to act on grounds generally applicable to the Class, thereby making
15 appropriate final injunctive or equitable relief with respect to the Class as a whole.

16 85. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are
17 likely to be encountered in the management of this action that would preclude its
18 maintenance as a class action.

19
20 **COUNT I**

21 **Breach of Implied Warranty Under the Song-Beverly Consumer Warranty**
22 **Act, Cal. Civ. Code § 1790, et seq. and California Commercial Code § 2314**
23 **(On Behalf of the California Subclass)**

24 86. Plaintiff repeats and re-alleges the allegations of the preceding
25 paragraphs as if fully set forth herein.

26 87. Plaintiff brings this claim individually and on behalf of the California
27 Subclass.

1 88. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §
2 1790, *et seq.*, and California Commercial Code § 2314, every sale of consumer
3 goods in this State is accompanied by both a manufacturer’s and retail seller’s
4 implied warranty that the goods are merchantable, as defined in that Act. In
5 addition, every sale of consumer goods in this State is accompanied by both a
6 manufacturer’s and retail seller’s implied warranty of fitness when the
7 manufacturer or retailer has reason to know that the goods as represented have a
8 particular purpose (here, to house Rodents) and that the buyer is relying on the
9 manufacturer’s or retailer’s skill or judgment to furnish suitable goods consistent
10 with that represented purpose.

11 89. The Tiny Tales Homes at issue here are “consumer goods” within the
12 meaning of Cal. Civ. Code § 1791(a).

13 90. Plaintiff and California Subclass Members who purchased one or
14 more of the Tiny Tales Homes are “retail buyers” within the meaning of Cal. Civ.
15 Code § 1791.

16 91. Defendant is in the business of manufacturing, assembling, producing
17 and/or selling the Tiny Tales Homes to retail buyers, and therefore is a
18 “manufacturer” and “seller” within the meaning of Cal. Civ. Code § 1791.

19 92. Defendant impliedly warranted to retail buyers that the Tiny Tales
20 Homes were merchantable in that they would: (a) pass without objection in the
21 trade or industry under the contract description, and (b) were fit for the ordinary
22 purposes for which the Tiny Tales Homes are used. In order for a consumer good
23 to be “merchantable” under the Act, it must satisfy both of these elements.
24 Defendant breached these implied warranties because the Tiny Tales Homes were
25 unsafe and defective. Therefore, the Tiny Tales Homes would not pass without
26 objection in the trade or industry and were not fit for the ordinary purpose for
27 which they are used.

28

1 93. Defendant was in vertical privity with Plaintiff and California
2 Subclass Members because it sells its products directly to consumers in its
3 PetSmart stores and on the PetSmart website.

4 94. Plaintiff and California Subclass Members purchased the Tiny Tales
5 Homes in reliance upon Defendant's skill and judgment to furnish suitable goods.

6 95. The Tiny Tales Homes were not altered by Plaintiff or California
7 Subclass Members.

8 96. The Tiny Tales Homes were defective at the time of sale when they
9 left the exclusive control of Defendant. The defect described in this Complaint was
10 latent in the product and not discoverable at the time of sale.

11 97. Defendant knew that the Tiny Tales Homes would be purchased and
12 used without additional testing by Plaintiff and California Subclass Members.

13 98. As a direct and proximate cause of Defendant's breach of the implied
14 warranty, Plaintiff and California Subclass Members have been injured and harmed
15 because they would not have purchased the Tiny Tales Homes if they knew the
16 truth about the products, namely, that they were unfit to house Rodents.

17 99. Plaintiff seeks the civil penalties described in Civil Code §1794(c),
18 including a penalty up to two times the amount of Plaintiff's actual damages.

19
20 **COUNT II**

21 **California's Unfair Competition Law ("UCL")**
22 **(Cal. Bus. & Prof. Code § 17200, et seq.)**
23 **(On Behalf of the California Subclass)**

24 100. Plaintiff repeats and re-alleges the allegations of the preceding
25 paragraphs as if fully set forth herein.

26 101. Plaintiff brings this claim individually and on behalf of the California
27 Subclass.

1 102. The UCL prohibits any “unlawful,” “unfair,” or “fraudulent” business
2 act or practice and any false or misleading advertising.

3 103. In the course of conducting business, Defendant committed
4 “unlawful” business practices by, *inter alia*, omitting material facts, as set forth
5 more fully herein, and violating state, federal, and common law.

6 104. Plaintiff, individually and on behalf of other members of the
7 California Subclass, reserves the right to allege other violations of law which
8 constitute other unlawful business acts or practices. Such conduct is ongoing and
9 continues to this date.

10 105. Defendant’s actions constitute “unfair” business acts or practices
11 because, as alleged above, *inter alia*, Defendant omitted material facts regarding
12 the Tiny Tales Homes, and thereby offends an established public policy, and
13 engages in immoral, unethical, oppressive, and unscrupulous activities that are
14 substantially injurious to consumers. This conduct constitutes violations of the
15 unfair prong of the UCL.

16 106. In addition, Defendant’s conduct constitutes a knowing failure to
17 adopt policies in accordance with and/or adherence to applicable laws, as set forth
18 herein, all of which are binding upon and burdensome to its competitors. This
19 conduct engenders an unfair competitive advantage for Defendant, thereby
20 constituting an unfair business practice under California Business & Professions
21 Code §§ 17200-17208.

22 107. In addition, Defendant’s conduct was, and continues to be, unfair, in
23 that its injury to countless purchasers of the Tiny Tales Homes is substantial, and is
24 not outweighed by any countervailing benefits to consumers or to competitors.

25 108. Moreover, Plaintiff and members of the California Subclass could not
26 have reasonably avoided such injury. Defendant’s uniform, material omissions
27 regarding the Tiny Tales Homes were likely to deceive.

28 109. The UCL also prohibits any “fraudulent business act or practice.”

1 110. Defendant’s actions and nondisclosures, as alleged in this Complaint,
2 also constitute “fraudulent” business practices in violation of the UCL because,
3 among other things, they omit material facts regarding the Tiny Tales Homes.

4 111. There were reasonably available alternatives to further Defendant’s
5 legitimate business interests, other than the conduct described herein.

6 112. As a result of Defendant’s omissions as detailed in this Complaint,
7 Plaintiff and other members of the California Subclass have in fact been harmed as
8 described above. If Defendant had disclosed the information discussed above
9 about the Tiny Tales Homes, Plaintiff would not have purchased the Tiny Tales
10 Homes.

11 113. Defendant was also able to charge more than what the Tiny Tales
12 Homes would have been worth had Defendant disclosed the truth about them.

13 114. As a result of Defendant’s unlawful, unfair, and fraudulent practices,
14 Plaintiff and the other members of the California Subclass have suffered injury in
15 fact and lost money.

16 115. Defendant has also been able to reap unjust revenue and profit in
17 violation of the UCL.

18 116. Unless restrained and enjoined, Defendant will continue to engage in
19 the above-described conduct. Accordingly, injunctive relief is appropriate for
20 Plaintiff and the members of the California Subclass.

21 117. As a result of Defendant’s conduct in violation of the UCL, Plaintiff
22 and members of the California Subclass have been injured as alleged herein in
23 amounts to be proven at trial because they purchased the Tiny Tales Homes
24 without full disclosure of the material facts discussed above.

25 118. In addition, Plaintiff, individually and on behalf of the California
26 Subclass, and the general public, seeks restitution and disgorgement of all money
27 obtained from Plaintiff and the members of the California Subclass collected by
28 Defendant as a result of its unlawful, unfair, and/or fraudulent conduct, and seeks

1 injunctive relief and restitution, and all other relief this Court deems appropriate,
2 consistent with Business & Professions Code § 17203.

3 119. Pursuant to Civil Code § 3287(a), Plaintiff and the California Subclass
4 are further entitled to pre-judgment interest as a direct and proximate result of
5 Defendant's unfair and fraudulent business conduct. The amount on which interest
6 is to be calculated is a sum certain and capable of calculation, and Plaintiff and the
7 California Subclass are entitled to interest in an amount according to proof.

8
9 **COUNT III**

10 **California Legal Remedies Act ("CLRA")**
11 **(Cal. Civil Code § 1750, *et seq.*)**
12 **(On Behalf of the California Subclass)**

13 120. Plaintiff repeats and re-alleges the allegations of the preceding
14 paragraphs as if fully set forth herein.

15 121. Plaintiff brings this claim individually and on behalf of the California
16 Subclass.

17 122. Plaintiff brings this action pursuant to California's Consumer Legal
18 Remedies Act, Cal. Civ. Code § 1750, *et seq.*

19 123. The CLRA provides that "unfair methods of competition and unfair or
20 deceptive acts or practices undertaken by any person in a transaction intended to
21 result or which results in the sale or lease of goods or services to any consumer are
22 unlawful."

23 124. The Tiny Tales Homes are "goods," as defined by the CLRA in
24 California Civil Code §1761(a).

25 125. Defendant is a "person," as defined by the CLRA in California Civil
26 Code §1761(c).

27 126. Plaintiff and members of the California Subclass are "consumers," as
28 defined by the CLRA in California Civil Code §1761(d).

1 127. Purchase of the Tiny Tales Homes by Plaintiff and members of the
2 California Subclass are “transactions,” as defined by the CLRA in California Civil
3 Code §1761(e).

4 128. Defendant violated sections 1770(a)(5), 1770(a)(7), and 1770(a)(9) by
5 failing to disclose material facts to Plaintiff and members of the California
6 Subclass, including that the Tiny Tales Homes were defective.

7 129. Defendant’s uniform, material omissions regarding the Tiny Tales
8 Homes were likely to deceive, and Defendant knew or should have known that its
9 omissions were deceptive.

10 130. Plaintiff and members of the California Subclass could not have
11 reasonably avoided such injury. Plaintiff and members of the California Subclass
12 were unaware of the existence of facts that Defendant suppressed and failed to
13 disclose; and, Plaintiff and members of the California Subclass would not have
14 purchased the Tiny Tales Homes and/or would have purchased them on different
15 terms had they known the truth.

16 131. Plaintiff and members of the California Subclass have been directly
17 and proximately injured by Defendant’s conduct. Such injury includes, but is not
18 limited to, the purchase price of the Tiny Tales Homes and/or the price of the
19 Tiny Tales Homes at the prices at which they were offered.

20 132. Given that Defendant’s conduct violated § 1770(a)(5), Plaintiff and
21 members of the California Subclass are entitled to seek and do seek injunctive
22 relief to put an end to Defendant’s violations of the CLRA.

23 133. Moreover, Defendant’s conduct is malicious, fraudulent, and
24 wanton in that Defendant intentionally withheld material information from
25 consumers to increase the sale of the Tiny Tales Homes.

26 134. Pursuant to California Civil Code § 1782(a), Plaintiff on his own
27 behalf, and on behalf of members of the California Subclass, notified Defendant of
28 the alleged violations of the Consumer Legal Remedies Act. Despite giving

1 Defendant well over 30-days from the date of the notification letter to provide
2 appropriate relief for violations of the CLRA, Defendant has failed to provide any
3 such relief. As such, Plaintiff also seeks compensatory, monetary and punitive
4 damages, in addition to equitable and injunctive relief, and requests that this Court
5 enter such orders or judgments as may be necessary to restore to any person in
6 interest any money that may have been acquired by means of such unfair business
7 practices, and for such other relief as is provided in California Civil Code § 1780
8 and in the Prayer for Relief.

9 135. Plaintiff further requests that the Court enjoin Defendant from
10 continuing to employ the unlawful methods, acts, and practices alleged herein
11 pursuant to § 1780(a)(2).

12 **COUNT IV**

13 **Fraud by Omission**
14 **(On Behalf of the Nationwide Class and California Subclass)**

15
16 136. Plaintiff repeats and re-alleges the allegations of the preceding
17 paragraphs as if fully set forth herein.

18 137. Plaintiff brings this claim individually and on behalf of the
19 Nationwide Class and California Subclass.

20 138. This claim is based on fraudulent omissions concerning the Tiny Tales
21 Homes.

22 139. As discussed herein, Defendant failed to disclose that the Tiny Tales
23 Homes had a material defect that directly undermined and impaired the Tiny Tales
24 Homes' ability to safely and securely house Rodents.

25 140. The false and misleading omissions were made with knowledge of
26 their falsehood.

27 141. Defendant knew of the Tiny Tales Homes' defective nature.
28

1 142. Nonetheless, Defendant continued to sell its worthless Tiny Tales
2 Homes to unsuspecting consumers.

3 143. The false and misleading omissions were made by Defendant, upon
4 which Plaintiff and Class Members reasonably and justifiably relied, and were
5 intended to induce and actually induced Plaintiff and Class Members to purchase
6 the Tiny Tales Homes.

7 144. The fraudulent actions of Defendant caused damage to Plaintiff and
8 Class Members, who are entitled to damages.

9 **COUNT V**

10 **Breach of Implied Warranty**
11 **(On Behalf of the Nationwide Class and California Subclass)**

12
13 145. Plaintiff repeats and re-alleges the allegations of the preceding
14 paragraphs as if fully set forth herein.

15 146. Plaintiff brings this claim individually and on behalf of the
16 Nationwide Class and California Subclass.

17 147. Plaintiff purchased the Tiny Tales Homes from Defendant's store,
18 located in the United States.

19 148. At the time of sale, and currently, Defendant is in the business of
20 manufacturing, distributing and selling the Tiny Tales Homes.

21 149. Defendant impliedly warranted that the Tiny Tales Homes were of
22 good and merchantable quality – fit for their ordinary intended use.

23 150. Defendant knowingly and/or recklessly sold a defective product
24 without conspicuously informing consumers about the defect contained in the Tiny
25 Tales Homes manufactured, distributed and/or sold by Defendant throughout the
26 United States. Defendant possessed actual, superior knowledge of the defect in the
27 Tiny Tales Homes, as described herein.

28

1 151. Plaintiff and Class Members' Tiny Tales Homes became unfit for
2 their ordinary purpose of housing Rodents within the implied warranty period.

3 152. The defect contained in the Tiny Tales Homes existed when the Tiny
4 Tales Homes left Defendant's possession, and the defect renders the Tiny Tales
5 Homes unfit for their intended use and purpose.

6 153. As a direct and proximate result of Defendant's breach of its implied
7 warranty, Plaintiff and the Class have sustained damages and other losses in an
8 amount to be determined at trial. Plaintiff and Class Members are entitled to
9 recover legal and equitable relief against Defendant, including damages, civil
10 penalties, attorneys' fees, litigation costs and other relief provided by law and that
11 the Court deems proper.

12 **COUNT VI**

13 **Breach of Implied Warranty - Magnuson-Moss Warranty Act**
14 **(On Behalf of the Nationwide Class and California Subclass)**
15

16 154. Plaintiff repeats and re-alleges the allegations of the preceding
17 paragraphs as if fully set forth herein.

18 155. Plaintiff brings this claim individually and on behalf of the
19 Nationwide Class and California Subclass.

20 156. The Tiny Tales Homes are "consumer products" within the meaning
21 of 15 U.S.C. § 2301.

22 157. Plaintiff and members of the Class are "consumers" within the
23 meaning of 15 U.S.C. § 2301 because they are persons entitled under applicable
24 state law to enforce against the warrantor the obligations of its implied warranties.

25 158. Defendant is a "supplier" of consumer products to consumers and a
26 "warrantor" within the meaning of 15 U.S.C. § 2301.

27 159. 15 U.S.C. § 2310(d)(1)(A) and/or § 2310(d)(3)(C) is satisfied because
28 Plaintiff properly invokes jurisdiction under the Class Action Fairness Act.

1 160. Section 2310(d)(1) of Chapter 15 of the United States Code provides a
2 cause of action for any consumer who is damaged by the failure of a warrantor to
3 comply with a written or implied warranty.

4 161. Defendant made implied warranties regarding the Tiny Tales Homes
5 to Plaintiff and Class Members within the meaning of 15 U.S.C. § 2301.
6 Defendant provided Plaintiff and other Class Members with an implied warranty of
7 merchantability within the meaning of the Magnuson-Moss Warranty Act, 15
8 U.S.C. § 2301(7).

9 162. Defendant breached the implied warranty of merchantability because
10 the Tiny Tales Homes were not fit for the ordinary purpose in which such goods
11 are used. Specifically, the Tiny Tale Homes contained one or more defects as
12 described herein, rendering the Tiny Tales Homes unusable for their ordinary
13 purpose.

14 163. Pursuant to 15 U.S.C. § 2310(e), Plaintiff is entitled to bring this class
15 action and is not required to give Defendant notice and an opportunity to cure until
16 such time as the Court determines the representative capacity of Plaintiff pursuant
17 to Rule 23 of the Federal Rules of Civil Procedure.

18 164. The amount in controversy of Plaintiff's and Class Members'
19 individual claims meet or exceed the sum or value of \$25; a Tiny Tales Home costs
20 more than \$5; and the amount in controversy meets or exceeds the sum of \$50,000
21 (exclusive of interest and costs) computed on the basis of all claims to be
22 determined by this suit.

23 165. Plaintiff, individually and on behalf of the other Class Members, seeks
24 all damages permitted by law, including diminution in value of their Tiny Tales
25 Homes in an amount to be proven at trial.

26 166. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiff and the other
27 Class Members are entitled to recover a sum equal to the aggregate amount of
28 costs and expenses (including attorneys' fees based on actual time expended)

1 determined by the Court to have reasonably been incurred by Plaintiff and the
2 other Class Members in connection with the commencement and prosecution of
3 this action.

4 167. Further, Plaintiff and the Class are also entitled to equitable relief
5 under 15 U.S.C. § 2310(d)(1) and damages as a result of Defendant's violation of
6 its implied warranties.

7 **COUNT VII**

8 **Unjust Enrichment**
9 **(On Behalf of the Nationwide Class and California Subclass)**
10

11 168. Plaintiff repeats and re-alleges the allegations of the preceding
12 paragraphs as if fully set forth herein.

13 169. Plaintiff brings this claim individually and on behalf of the
14 Nationwide Class and California Subclass.

15 170. By purchasing the Tiny Tales Homes, Plaintiff and members of the
16 Class conferred a benefit on Defendant in the form of the purchase price of the
17 Tiny Tales Homes.

18 171. Defendant had knowledge of such benefits.

19 172. Defendant appreciated the benefit because, were consumers not to
20 purchase the Tiny Tales Homes, Defendant would not generate revenue from their
21 sales.

22 173. Defendant's acceptance and retention of the benefit is inequitable and
23 unjust because the benefit was obtained by Defendant's fraudulent conduct.

24 174. Equity cannot in good conscience permit Defendant to be
25 economically enriched for such actions at the expense of Plaintiff and members of
26 the Class, and therefore restitution and/or disgorgement of such economic
27 enrichment is required.
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all causes of action.

Dated: September 10, 2019

Respectfully submitted,

MOON LAW APC



By: _____

CHRISTOPHER D. MOON
KEVIN O. MOON
Attorneys for Plaintiff

EXHIBIT A

1 Christopher D. Moon (State Bar No. 246622)

2 *chris@moonlawapc.com*

3 Kevin O. Moon (State Bar No. 246792)

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10 *Attorneys for Plaintiff*

11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 TODD CARPENTER,
15 Individually, on behalf of himself and
16 others similarly situated,

17 Plaintiff,

18 v.

19 PETSMART, INC.,

20 Defendant.

) Case No.:

) **DECLARATION OF PLAINTIFF**
) **TODD CARPENTER**
) **REGARDING VENUE**
) **PURSUANT TO CALIFORNIA**
) **CIVIL CODE § 1780(d)**

1 I, Todd Carpenter, hereby declare:

- 2 1. I am the named-plaintiff and a prospective class member in the above-
- 3 entitled action.
- 4 2. I am an adult, over 18 years old. I have personal knowledge of the facts
- 5 stated herein and could competently testify thereto if called upon to do so.
- 6 3. I am currently a resident of San Diego County, California.
- 7 4. California Civil Code § 1780(d) provides that a plaintiff seeking to bring a
- 8 claim under section 1780(a) of the California Consumer Legal Remedies Act
- 9 may commence that action “in the county in which the person against whom
- 10 it is brought resides, has his or her principal place of business, or is doing
- 11 business, or in the county where the transaction or any substantial portion
- 12 thereof occurred.”
- 13 5. I purchased the Tiny Tales Homes at issue in Encinitas, California.
- 14 6. Accordingly, the Complaint filed in the above-entitled action, is filed in the
- 15 proper venue pursuant to California Civil Code § 1780(d).

16
17 I declare under penalty of perjury under the laws of the United States that
18 the foregoing is true and correct.

19
20 Executed on September 9, 2019, in San Diego, California.

21
22 
23 TODD CARPENTER

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS TODD CARPENTER, Individually, on behalf of himself and others similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff <u>San Diego County</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Christopher D. Moon / Kevin O. Moon MOON LAW APC 600 West Broadway, Suite 700 San Diego, California 92101 -- 619-915-9432</p>	<p>DEFENDANTS PETSMART, INC.</p> <p>County of Residence of First Listed Defendant <u>Maricopa County, Arizona</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) '19CV1731 CAB LL</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </tbody> </table>		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
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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) Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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):
28 U.S.C. Section 1332

Brief description of cause:
Consumer Class Action

VII. REQUESTED IN COMPLAINT:
 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$
 CHECK YES only if demanded in complaint: **JURY DEMAND:**
 Yes
 No

VIII. RELATED CASE(S) IF ANY (See instructions):
 JUDGE
 DOCKET NUMBER

DATE: September 10, 2019

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Rodents Housed in 'Defective' PetSmart Tiny Tales Habitats Can Chew Through Plastic, Escape](#)
