

1 Ronald Y. Rothstein (*pro hac vice* forthcoming)

Email: rrothste@winston.com

2 Sean H. Suber (*pro hac vice* forthcoming)

Email: ssuber@winston.com

3 **WINSTON & STRAWN LLP**

35 West Wacker Drive

4 Chicago, IL 60601

Telephone: (312) 558-5600

5 Facsimile: (312) 558-5700

6 Megan L. Whipp (SBN: 319182)

Email: mwhipp@winston.com

7 **WINSTON & STRAWN LLP**

333 S. Grand Avenue

8 Los Angeles, CA 90071-1543

Telephone: (213) 615-1700

9 Facsimile: (213) 615-1750

10 *Attorneys for Defendants*

AINSWORTH PET NUTRITION LLC

11 and THE J.M. SMUCKER COMPANY

12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15

16 LUANNY COHEN, individually and
on behalf of all others similarly
17 situated,

18 Plaintiff,

19 vs.

20 AINSWORTH PET NUTRITION
LLC; and THE J.M. SMUCKER
21 COMPANY,

22 Defendants.
23
24
25
26
27
28

Case No. 20-cv-05289

**DEFENDANTS AINSWORTH PET
NUTRITION LLC AND THE J.M.
SMUCKER COMPANY'S NOTICE OF
REMOVAL**

Complaint Filed: April 29, 2020 in Los
Angeles Superior Court, Case No.
20STCV16789

Complaint Served: May 14, 2020

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

2 **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1441 and 1446,
 3 Defendants AINSWORTH PET NUTRITION LLC and THE J. M. SMUCKER
 4 COMPANY (“Defendants”), without waiving any defenses it may have, hereby
 5 remove this action to this Court from the Superior Court of the State of California for
 6 the County of Los Angeles on the grounds stated below.

7 **I. INTRODUCTION**

8 1. This case is hereby removed from state court to federal court because at
 9 the time the Complaint was filed, and at this time: (1) complete diversity of
 10 citizenship exists between the parties; and (2) as alleged in the Complaint, the claims
 11 of Plaintiff exceed \$5,000,000 exclusive of interest and costs. Therefore, this Court
 12 has original jurisdiction over the action under 28 U.S.C. §§ 1332(a) or (d).

13 **II. THE STATE COURT ACTION**

14 2. On April 29, 2020, Plaintiff LUANNY COHEN (“Plaintiff”) commenced
 15 this putative California class action as Case No. 20-ST-CV-16789 in the Superior
 16 Court of the State of California for the County of Los Angeles by filing a complaint
 17 (the “Complaint”) captioned *Luanny Cohen, individually and on behalf of all others*
 18 *similarly situated vs. Ainsworth Pet Nutrition LLC and The J.M. Smucker Company*.
 19 A true and correct copy of the Summons and Complaint is attached as **Exhibit 1**.

20 3. The Complaint purports to assert four causes of action against
 21 Defendants for violations of the California False Advertising Law, Bus. & Prof. Code
 22 §§ 17500 *et seq.* (“FAL”), the California Consumer Legal Remedies Act, Civ. Code
 23 §§ 1750 *et seq.* (“CLRA”), the California Unfair Competition Law, Bus. & Prof Code
 24 §§ 17200 *et seq.* (“UCL”), and an alleged Breach of Express Warranty. *See* Ex. 1,
 25 Compl. ¶¶ 85-124.

26 4. The Complaint seeks to certify a class consisting of “[a]ll consumers who
 27 purchased Nutrish Zero Grain dog food in California during the Class Period.” Ex. 1,
 28 Compl. ¶ 78.

1 5. Defendants deny that they engaged in any unlawful conduct or are liable
2 to Plaintiff.

3 **III. TIMELINESS OF REMOVAL**

4 6. The Summons and Complaint were served on Defendants' agent for
5 service of process on May 14, 2020. *See* Ex. 1, Summons. This Notice of Removal is
6 filed within thirty (30) days of service and, therefore, removal of the action is timely
7 pursuant to 28 U.S.C. § 1446(b). *See Murphy Bros., Inc. v. Michetti Pipe Stringing,*
8 *Inc.*, 526 U.S. 344, 347–48 (1999).

9 **IV. BASIS FOR FEDERAL JURISDICTION UNDER 28 U.S.C. § 1332**

10 7. This Court has original jurisdiction of this action under the Class Action
11 Fairness Act of 2005, codified in pertinent part at 28 U.S.C. § 1332(d)(2) ("CAFA").
12 Alternatively, the Court has original jurisdiction under 28 U.S.C. § 1332(a) based on
13 diversity jurisdiction. As set forth below, this action is properly removable pursuant to
14 28 U.S.C. § 1441(a), in that this Court has original jurisdiction over the action,
15 because the aggregated amount in controversy exceeds \$5,000,000, exclusive of
16 interest and costs, and the action is a class action in which there is a complete
17 diversity between the parties. 28 U.S.C. § 1332(a); *see also* 28 U.S.C. §§ 1332(d)(2)
18 & (d)(6). Furthermore, the number of putative class members is greater than 100. *See*
19 28 U.S.C. § 1332(d)(5)(B).

20 **Diverse Citizenship of the Parties**

21 8. CAFA requires only minimal diversity for the purpose of establishing
22 federal jurisdiction; that is, at least one purported class member must be a citizen of a
23 state different from any named defendant. 28 U.S.C. § 1332(d)(2)(A). In the instant
24 case, the parties are completely diverse because Plaintiff is a citizen of a state that is
25 different from the state of citizenship the Defendants.

26 9. **Plaintiff's Citizenship.** For purposes of determining diversity, a person
27 is a "citizen" of the state in which he or she is domiciled. *See Kantor v. Wellesley*
28 *Galleries, Inc.*, 704 F.2d 1088, 1090 (9th Cir. 1983) ("To show state citizenship for

1 diversity purposes under federal common law a party must ... be domiciled in the
2 state.”). Residence is prima facie evidence of domicile. *See State Farm Mut. Auto Ins.*
3 *Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994) (“the place of residence is prima facie
4 the domicile”). Citizenship is determined by the individual’s domicile at the time that
5 the lawsuit is filed. *See Armstrong v. Church of Scientology Int’l*, 243 F.3d 546, 546
6 (9th Cir. 2000) (“For purposes of diversity jurisdiction, an individual is a citizen of his
7 or her state of domicile, which is determined at the time the lawsuit is filed”) (citing
8 *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986)). Plaintiff alleges that she resides in
9 the State of California. Ex. 1, Compl. ¶ 15.

10 10. Plaintiff seeks to represent a class consisting of “[a]ll consumers who
11 purchased Nutrish Zero Grain dog food in California during the Class Period.” Ex. 1,
12 Compl. ¶ 78

13 11. **Defendants’ Citizenship.** For diversity purposes, the citizenship of a
14 corporation is “every state and foreign state by which it has been incorporated and of
15 the State or foreign state where it has its principal place of business[.]” 28 U.S.C.
16 § 1332(c)(1). The “principal place of business” means the corporate headquarters
17 where a corporation’s high level officers direct, control and coordinate its activities on
18 a day-to-day basis, also known as the corporation’s “never center.” *Hertz Corp. v.*
19 *Friend*, 559 U.S. 77, 80–81, 92–93 (2010) (rejecting all prior tests in favor of the
20 “nerve center” test).

21 12. Defendant Ainsworth Pet Nutrition LLC is a Delaware corporation with
22 its principal place of business in Meadville, Pennsylvania. Ex. 1, Compl. ¶ 16. It is not
23 now, and was not at the time of the filing of the Complaint, a citizen of the State of
24 California, for purposes of 28 U.S.C. §1332(c)(1).

25 13. Defendant The J. M. Smucker Company is an Ohio corporation with its
26 principal place of business in Orville, Ohio. Ex. 1, Compl. ¶ 17. It is not now, and was
27 not at the time of the filing of the Complaint, a citizen of the State of California, for
28 purposes of 28 U.S.C. §1332(c)(1).

There Are More Than 100 Putative Class Members

14. CAFA requires that the aggregated number of members of all proposed classes in a complaint be at least 100. 28 U.S.C. § 1332(d)(5)(B). “[U]nder CAFA, the jurisdictional allegations in the complaint can be taken as a sufficient basis, on their own, to resolve questions of jurisdiction where no party challenges the allegations.” *Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 886 (9th Cir. 2013). Here, Plaintiff alleges that, upon information and belief, there are “many thousands or millions” of putative class members. Ex. 1, Compl. ¶ 81. Accordingly, the Court may accept as true for the purposes of this motion that the proposed class contains at least 100 members.

The Amount In Controversy Exceeds \$5,000,000

15. CAFA requires that the amount in controversy exceed \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). Under CAFA, the claims of the individual members in a class action are aggregated to determine if the amount in controversy exceeds the sum or value of \$5,000,000. 28 U.S.C. § 1332(d)(6). Thus, the aggregate amount in controversy between the parties well exceeds the minimum sum of \$75,000 forth in 28 U.S.C. § 1332(a), exclusive of interest and costs. In addition, Congress intended for federal jurisdiction to be appropriate under CAFA “if the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (*e.g.*, damages, injunctive relief, or declaratory relief).” Senate Judiciary Committee Report, S. Rep. No. 109-14, at 42 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 40. Moreover, the Senate Judiciary Committee’s Report on the final version of CAFA makes clear that any doubts regarding the maintenance of interstate class actions in state or federal court should be resolved in favor of federal jurisdiction. S. Rep. No. 109-14, at 42-43 (“[I]f a federal court is uncertain about whether ‘all matters in controversy’ in a purported class action do not in the aggregate exceed the sum or value of \$5,000,000, the court should err in favor of exercising jurisdiction over the

1 case[...] Overall, new section 1332(d) is intended to expand substantially federal court
2 jurisdiction over class actions. Its provisions should be read broadly, with a strong
3 preference that interstate class actions should be heard in a federal court if properly
4 removed by any defendant.”).

5 16. It is well-settled that “the court must accept as true plaintiff’s allegations
6 as plead in the Complaint and assume that plaintiff will prove liability and recover the
7 damages alleged.” *Muniz v. Pilot Travel Ctrs. LLC*, 2007 WL 1302504, at *3 (E.D.
8 Cal. May 1, 2007) (citations omitted; emphasis original) (denying motion for remand);
9 *see also Beacon Healthcare Serv. Inc. v. Leavitt* 629 F.3d 981, 984 (9th Cir. 2010)
10 (“The amount in controversy is judged prospectively: that is, we determine our
11 jurisdiction by asking whether, assuming the petitioner or plaintiff has stated a cause
12 of action, he has pled sufficient damages.”).

13 17. Moreover, the United States Supreme Court has held that when a
14 defendant removes an action pursuant to CAFA, the “defendant’s notice of removal
15 need include only a *plausible* allegation that the amount in controversy exceeds the
16 jurisdictional threshold” of \$5 million. *Dart Cherokee Basin Operating Co. v. Owens*,
17 574 U.S. 81, 89 (2014).

18 18. Although Defendants deny *any* liability as to Plaintiff’s claims, it is
19 apparent that the amount in controversy here exceeds \$5,000,000.

20 19. **Plaintiff’s request for restitution and compensatory damages.**
21 Plaintiff seeks, among other things, “actual damages including but not limited to, the
22 price premium associated with and/or the full retail cost of the Nutrish Zero Grain dog
23 food, restitution and disgorgement of all money or property wrongfully obtained by
24 Defendants by means of their herein-alleged unlawful, unfair, and fraudulent business
25 practices....” Ex. 1. Compl., Prayer for Relief ¶ C. These damages alone could exceed
26 \$5,000,000.

27 20. Here, Plaintiff has alleged that she purchased Nutrish Zero Grain dog
28 food from a Rite Aid in Los Angeles, California. Ex. 1, Compl. ¶ 15. Company data

1 reflects that at least \$16.6 Million of the Nutrish Zero Grain dog food was sold by
2 retailers into the California market in the past three years. Declaration of Andrew
3 Hodges, ¶ 7.

4 21. **Plaintiff's request for attorneys' fees.** Plaintiff also seeks an award of
5 attorneys' fees. Ex. 1. Compl., Prayer for Relief ¶ E. A reasonable estimate of fees
6 likely to be recovered may be used in calculating the amount in controversy.
7 *Longmire v. HMS Host USA, Inc.*, 2012 WL 5928485, at *9 (S.D. Cal. Nov. 26, 2012)
8 (“[C]ourts may take into account reasonable estimates of attorneys’ fees likely to be
9 incurred when analyzing disputes over the amount in controversy under CAFA.”)
10 (citing *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1010-11 (N.D. Cal.
11 2002)).

12 22. In the class action context, courts have found that 25 percent of the
13 aggregate amount in controversy is a benchmark for attorneys’ fees award under the
14 “percentage of fund” calculation and courts may depart from this benchmark when
15 warranted. *See Campbell v. Vitran Exp., Inc.*, 471 F. App’x 646, 649 (9th Cir. 2012)
16 (attorneys’ fees are appropriately included in determining amount in controversy
17 under CAFA); *Powers v. Eichen*, 229 F.3d 1249, 1256-57 (9th Cir. 2000); *see also In*
18 *re Quintas Securities Litigation*, 148 F. Supp. 2d 967, 973 (N.D. Cal. 2001) (noting
19 that in the class action settlement context the benchmark for setting attorneys’ fees is
20 25 percent of the common fund). Even under the conservative benchmark of 25
21 percent of the total recovery, attorneys’ fees on a potential damages award in this case
22 could be millions of dollars.

23 23. Because diversity of citizenship exists, the size of the putative class
24 exceeds 100 and the amount in controversy exceeds \$5,000,000, this Court has
25 original jurisdiction of this action pursuant to 28 U.S.C. § 1332(d)(2). Alternatively,
26 the Court has original jurisdiction under 28 U.S.C. § 1332(a) based on complete
27 diversity. This action is, therefore, a proper one for removal to this Court pursuant to
28 28 U.S.C. § 1441(a).

1 **V. VENUE**

2 24. Venue lies in the United States District Court for the Central District of
3 California, pursuant to 28 U.S.C. § 1391(a), 1441, and 84(b). This action originally
4 was brought in Los Angeles Superior Court of the State of California, which is located
5 in the Central District of California. 28 U.S.C. § 84(b). Therefore, venue is proper
6 because it is the “district and division embracing the place where such action is
7 pending.” 28 U.S.C. § 1441(a).

8 **VI. COMPLIANCE WITH STATUTORY REQUIREMENTS**

9 25. This action is a civil action of which this Court has original jurisdiction
10 under 28 U.S.C. § 1332(a) or (d) and is one which may be removed to this Court by
11 Defendants pursuant to the provisions of 28 U.S.C. § 1441(a).

12 26. Pursuant to 28 U.S.C. § 1446(a), Defendants attach hereto as Exhibit 1
13 true and correct copies of the Summons, Complaint and Civil Case Cover Sheet.
14 These are the only process, pleadings, or orders in the State Court’s file that have been
15 served on Defendants up to the date of filing this Notice of Removal.

16 27. This Notice of Removal is filed with this Court within 30 days after
17 personal service of the Summons and Complaint, in accordance with 28 U.S.C. §
18 1446(b).

19 28. As required by 28 U.S.C. § 1446(d), Defendants will provide written
20 notice of the filing of this Notice of Removal to Plaintiff’s attorneys of record, and
21 will promptly file a copy of this Notice of Removal with the Clerk for the Superior
22 Court of the State of California in and for the County of Los Angeles.

23 **VII. CONCLUSION AND PRAYER**

24 For the foregoing reasons, this case is properly and timely removed to this
25 Court pursuant to 28 U.S.C. § 1441(a) and (b), and the parties should litigate this
26 action in this Court.

27 29. By removing this action, Defendants do not waive any defenses that may
28 exist.

1 30. Defendants reserve the right to submit additional evidence in support of,
2 and to amend, this Notice of Removal.

3 31. Pursuant to 28 U.S.C. § 1446(d), Defendants shall provide written notice
4 of the filing of this Notice of Removal to all adverse parties. In addition, a copy of this
5 Notice of Removal is being filed with the clerk of the court in which the Complaint
6 was filed.

7 WHEREFORE, for the reasons stated above, Defendants respectfully request
8 that this Court accept jurisdiction of this action to its conclusion and final judgment to
9 the exclusion of any further proceedings in the courts of the State of California.

10 Dated: June 12, 2020

WINSTON & STRAWN LLP

11 By: /s/ Megan L. Whipp

12 Ronald Y. Rothstein

13 Megan L. Whipp

14 Sean H. Suber

15 *Attorneys for Defendants*

16 AINSWORTH PET NUTRITION LLC and
17 THE J.M. SMUCKER COMPANY
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EXHIBIT 1

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

AINSWORTH PET NUTRITION LLC d/b/a RACHAEL RAY NUTRISH; and THE J.M. SMUCKER COMPANY d/b/a SMUCKER AND SMUCKER'S

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

LUANNY COHEN, individually and on behalf of all others similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

Superior Court of California
County of Los Angeles

APR 29 2020

Sherri R. Carter, Executive Officer/Clerk
By *Steven Drew*, Deputy
Steven Drew

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Los Angeles Superior Court
111 North Hill Street, Los Angeles, CA 90012

CASE NUMBER: (Número del Caso):

20STCV16789

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Caleb Marker, Zimmerman Reed LLP, 2381 Rosecrans Ave, Suite 328, Manhattan Beach, CA 90245, Tel: 877-500-8780

DATE: **APR 29 2020**

(Fecha)

Sherri R. Carter, Clerk

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

Steven Drew
STEVEN DREW



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify)
- ☐ on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- ☐ by personal delivery on (date)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, firm number, and address): Caleb Marker (SBN 269721) Zimmerman Reed LLP 2381 Rosecrans Avenue, Suite 328, Manhattan Beach, CA 90245 TELEPHONE NO. 877-500-8780 FAX NO. (Optional) 877-500-8781 ATTORNEY FOR (Name) Plaintiff Luanny Cohen		FOR COURT USE ONLY <div style="font-size: 1.2em; font-weight: bold;">FILED</div> Superior Court of California County of Los Angeles <div style="font-size: 1.2em;">APR 29 2020</div> Sherri K. ... , Executive Officer/Clerk By Deputy Steven Drew	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles 90012 BRANCH NAME: Stanley Mosk Courthouse			
CASE NAME: Luanny Cohen v. Ainsworth Pet Nutrition LLC d/b/a Rachael Ray Nutrish, et al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)		<input type="checkbox"/> Limited (Amount demanded is \$25,000)	
<input type="checkbox"/> Counter		<input type="checkbox"/> Joinder	
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)			
Complex Case Designation		CASE NUMBER: <div style="font-size: 1.5em; font-weight: bold;">20STCV16789</div>	
JUDGE:		DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

BY FAX

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): four (4)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
- Date: April 29, 2020
- Caleb Marker

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SHORT TITLE: Cohen v. Ainsworth Pet Nutrition LLC d/b/a Rachael Ray Nutrish, et al.

CASE NUMBER

20STCV16789

BY FAX

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

Step 1: After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

Step 2: In Column B, check the box for the type of action that best describes the nature of the case.

Step 3: In Column C, circle the number which explains the reason for the court filing location you have chosen.

Applicable Reasons for Choosing Court Filing Location (Column C)

1. Class actions must be filed in the Stanley Mosk Courthouse, Central District.
2. Permissive filing in central district.
3. Location where cause of action arose.
4. Mandatory personal injury filing in North District.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.
11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury).

Auto
TortOther Personal Injury/Property
Damage/Wrongful Death Tort

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11 1, 11
Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11 1, 4, 11
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11 1, 4, 11 1, 4, 11 1, 4, 11

SHORT TITLE: Cohen v. Ainsworth Pet Nutrition LLC d/b/a Rachael Ray Nutrish, et al.		CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	<input checked="" type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1, 2, 3 10
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11 5, 11 5, 6, 11
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 5 1, 2, 3, 5 1, 2, 3, 8, 9
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels_____	2, 6
	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
Real Property	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
Unlawful Detainer	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11

**CIVIL CASE COVER SHEET ADDENDUM
AND STATEMENT OF LOCATION**

05/04/2020

SHORT TITLE: Cohen v. Ainsworth Pet Nutrition LLC d/b/a Rachael Ray Nutrish, et al.		CASE NUMBER	
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above	
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case 2, 3, 6	
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration 2, 5	
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus 2, 8 <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter 2 <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review 2	
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review 2, 8	
	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation 1, 2, 8	
Provisionally Complex Litigation	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect 1, 2, 3	
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort 1, 2, 8	
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case 1, 2, 8	
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental 1, 2, 3, 8	
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only) 1, 2, 5, 8	
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment 2, 5, 11 <input type="checkbox"/> A6160 Abstract of Judgment 2, 6 <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) 2, 9 <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) 2, 8 <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax 2, 8 <input type="checkbox"/> A6112 Other Enforcement of Judgment Case 2, 8, 9	
	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case 1, 2, 8	
	Miscellaneous Civil Complaints	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only 1, 2, 8 <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) 2, 8 <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) 1, 2, 8 <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex) 1, 2, 8
		Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case 2, 8
		Miscellaneous Civil Petitions	Other Petitions (Not Specified Above) (43)

SHORT TITLE: Cohen v. Ainsworth Pet Nutrition LLC d/b/a Rachael Ray Nutrish, et al.	CASE NUMBER
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Step 4: Statement of Reason and Address: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

REASON: <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.			ADDRESS: 533 Mariposa Avenue
CITY: Los Angeles	STATE: CA	ZIP CODE: 90004	

Step 5: Certification of Assignment: I certify that this case is properly filed in the CENTRAL District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: April 29, 2020


 (SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	<small>Reserved for Clerk's File Stamp</small> FILED Superior Court of California County of Los Angeles 04/29/2020 Sherri R. Carter, Executive Officer / Clerk of Court By: <u>S. Drew</u> , Deputy
COURTHOUSE ADDRESS: Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012	
NOTICE OF CASE ASSIGNMENT UNLIMITED CIVIL CASE	
Your case is assigned for all purposes to the judicial officer indicated below.	CASE NUMBER: 20STCV16789

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

	ASSIGNED JUDGE	DEPT	ROOM		ASSIGNED JUDGE	DEPT	ROOM
✓	Daniel J. Buckley	1					

Given to the Plaintiff/Cross-Complainant/Attorney of Record

Sherri R. Carter, Executive Officer / Clerk of Court

on 05/04/2020

(Date)

By S. Drew, Deputy Clerk

INSTRUCTIONS FOR HANDLING UNLIMITED CIVIL CASES

The following critical provisions of the California Rules of Court, Title 3, Division 7, as applicable in the Superior Court, are summarized for your assistance.

APPLICATION

The Division 7 Rules were effective January 1, 2007. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Division 7 Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure Section 170.6 must be made within **15** days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Independent Calendaring Courts will be subject to processing under the following time standards:

COMPLAINTS

All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days.

CROSS-COMPLAINTS

Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

STATUS CONFERENCE

A status conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties to attend a final status conference not more than 10 days before the scheduled trial date. All parties shall have motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested form jury instructions, special jury instructions, and special jury verdicts timely filed and served prior to the conference. These matters may be heard and resolved at this conference. At least five days before this conference, counsel must also have exchanged lists of exhibits and witnesses, and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Three of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party, or if appropriate, on counsel for a party.

This is not a complete delineation of the Division 7 or Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is imperative.

Class Actions

Pursuant to Local Rule 2.3, all class actions shall be filed at the Stanley Mosk Courthouse and are randomly assigned to a complex judge at the designated complex courthouse. If the case is found not to be a class action it will be returned to an Independent Calendar Courtroom for all purposes.

***Provisionally Complex Cases**

Cases filed as provisionally complex are initially assigned to the Supervising Judge of complex litigation for determination of complex status. If the case is deemed to be complex within the meaning of California Rules of Court 3.400 et seq., it will be randomly assigned to a complex judge at the designated complex courthouse. If the case is found not to be complex, it will be returned to an Independent Calendar Courtroom for all purposes.

ZIMMERMAN REED LLP
 Caleb Marker (SBN 269721)
 E-mail: caleb.marker@zimmreed.com
 Flinn T. Milligan (SBN 323042)
 E-mail: flinn.milligan@zimmreed.com
 2381 Rosecrans Ave., Suite 328
 Manhattan Beach, CA 90245
 (877) 500-8780 Telephone
 (877) 500-8781 Facsimile

Attorneys for Plaintiff
Luanny Cohen

FILED
 Superior Court of California
 County of Los Angeles

APR 29 2020

Sherri R. [Signature], Executive Officer/Clerk
 By [Signature], Deputy
 Steven Drew

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

LUANNY COHEN, individually and on behalf
 of all others similarly situated,

Plaintiff,

vs.

AINSWORTH PET NUTRITION LLC
 d/b/a RACHAEL RAY NUTRISH; and
 THE J.M. SMUCKER COMPANY d/b/a
 SMUCKER AND SMUCKER'S,

Defendants.

CASE NO.: **20STCV16789**

Assigned to the Honorable

CLASS ACTION COMPLAINT

1. Violation of California's False Advertising Law (Cal. Bus. & Prof. Code § 17500, *et seq.*)
2. Violation of California's Consumer Legal Remedies Act (Cal. Civ. Code § 1750, *et seq.*)
3. Violation of California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*)
4. Breach of Express Warranty.

BY FAX

(JURY TRIAL DEMANDED)

Plaintiff, by and through Plaintiff's Counsel, sues, on her own behalf and on behalf of the Class defined below, Defendants AINSWORTH PET NUTRITION LLC d/b/a RACHAEL RAY NUTRISH and THE J.M. SMUCKER COMPANY d/b/a SMUCKER AND SMUCKER'S, and alleges as follows based upon actual knowledge as to her own facts, and upon information and belief and the investigation of counsel as to all other matters:

INTRODUCTION

1. This class action challenges Defendants' deceptive and unlawful scheme to knowingly market and sell their Nutrish Zero Grain dog food as "wholesome," "high-quality," and "safe" dog food at premium prices despite lacking a basic nutrient essential to the heart health of dogs, thereby exposing Class members' dogs to unnecessary health risks.

2. Defendant The J.M. Smucker Company d/b/a Smucker and Smucker's ("Smuckers") sells Nutrish Zero Grain dog food through its subsidiary Defendant Ainsworth Pet Nutrition LLC d/b/a Rachael Ray Nutrish ("Ainsworth") (collectively "Defendants").

3. Defendants market Nutrish Zero Grain as premium health food for dogs,¹ labeling each Nutrish Zero Grain dog food bag with the statement: "We are committed to producing outstanding products every day, and take great pride in ensuring our foods are *wholesome* and, most importantly, *safe*."

4. In recent years, Defendants have also marketed Nutrish Zero Grain dog food bags as "made with the world's best ingredients"; containing "only the best, high-quality, carefully chosen ingredients;" and "*100% complete & balanced* nutrition for dogs." [Emphasis added.]

5. A 28-pound bag of Nutrish Zero Grain dog food retails online for between \$32 and \$50, 1.5 to 2 times the cost of leading brands such as Purina and Pedigree for approximately the same "flavor." The challenged "Nutrish Zero Grain dog food" consists of the following variants:

a. Zero Grain Beef, Potato & Bison Recipe;

¹ See, e.g., *Rachael Ray Nutrish Named Fastest Growing US Pet Food Brand by Euromonitor International Limited*, PR NEWswire (April 25, 2017), <https://www.prnewswire.com/news-releases/rachael-ray-nutrish-named-fastest-growing-us-pet-food-brand-by-euromonitor-international-limited-300445437.html> ("In 2008, Rachael Ray partnered with nutrition experts from Ainsworth Pet Nutrition to develop a line of super premium recipes for pets called Rachael Ray Nutrish.").

- b. Zero Grain Turkey & Potato Recipe;
- c. Zero Grain Salmon & Sweet Potato Recipe; and
- d. Zero Grain Chicken & Sweet Potato Recipe.

6. According to Defendants' Nutrish website, a 28-pound bag of Nutrish Zero Grain dog food contains a minimum of approximately 26 percent crude protein. This analysis does not distinguish between animal-based protein and legume-based protein, despite the fact that legume-based protein – e.g. lentil flour – is not a natural part of a dog's diet and has been associated with the fatal condition Canine Dilated Cardiomyopathy ("DCM") when used in conjunction with grain-free food types such as Defendants'.

7. According to Defendants' guaranteed analysis, Nutrish Zero Grain dog food does not contain any taurine.

8. Defendants sold Nutrish Zero Grain dog food that they knew or should have known was hazardous to dogs' health since at least 2010, when the Pet Food Institute, of which Defendant Ainsworth is a member, acknowledged the need to add taurine to dog food to best maintain dogs' health in a petition to the U.S. Department of Agriculture ("Petition").²

9. Through their collective conduct described herein, Defendants deceived the public into buying expensive Nutrish Zero Grain dog food; failed to disclose the known taurine-deficient nature of the dog food despite the very science championed by the Pet Food Institute in the 2010 Petition; and continued to deceive the public a decade later into buying Nutrish Zero Grain dog food despite a widespread U.S. Food and Drug Administration ("FDA") investigation highlighting the negative health effects of grain-free dog food and naming Nutrish Zero Grain dog food as one of the companies linked to the spike in DCM cases.

10. Notably, one of the U.S. government studies referenced in the Petition opined that "[i]n dogs, adequate levels of taurine *are required to prevent dilated cardiomyopathy*."³ The fact that Nutrish

² *Petition to the U.S. Department of Agriculture National Organic Program to Amend 7 CFR §205.605(b) to Include Taurine as a Synthetic Substance Allowed for Use in Organic Pet Food Production*, PET FOOD INST. (Sept. 2, 2010), available at: <https://www.ams.usda.gov/sites/default/files/media/Taurine.pdf> (hereinafter, the "Pet Food Institute Petition").

³ *Id.*

1 Zero Grain dog food does not include an ingredient that Defendants recognize as “*required* to prevent
2 dilated cardiomyopathy” is material to reasonable consumers, and the failure to disclose this material
3 fact while claiming the food to be “100% complete” and “balanced” and “wholesome” is facially
4 deceptive and misleading. Plaintiff, like others in the Class purchasing Nutrish Zero Grain dog food,
5 reasonably relied on Defendants to disclose such facts and omissions prior to purchase.

6 11. Despite marketing Nutrish Zero Grain dog food as a premium health food for dogs and
7 charging well above market prices for the product, Defendants hid the fact that it was not fortified with
8 taurine, an essential nutrient for dogs’ health. Taurine fortification is particularly important for dogs fed
9 with dog food containing legume-based protein such as Nutrish Zero Grain dog food.

10 12. Reasonably believing Defendants’ representations that the premium dog food brand
11 Nutrish contains all of the essential nutrients required for their dogs’ health, Plaintiff and Class members
12 spent significant sums of money on the expensive dog food, paying up to double what they would have
13 spent were it not for Defendants’ deceptive and misleading marketing.

14 13. Had Defendants not marketed Nutrish Zero Grain dog food as a premium, healthy dog
15 food with statements such as “made with safe, high-quality ingredients” while simultaneously failing to
16 include an ingredient recognized as necessary to maintain dogs’ health and failing to disclose the
17 material fact that a necessary ingredient was lacking, Plaintiff and other reasonable consumers would
18 have made different purchasing decisions either by spending considerably less on Nutrish Zero Grain
19 dog food or purchasing more reasonably priced competing brands such as Purina or Pedigree. Indeed,
20 the irony is that mainstream brands such as Purina and Pedigree are not linked to DCM despite being
21 likewise unfortified with taurine, as it is believed that the additional legume content of grain-free brands
22 is partially responsible for the nutritional imbalance that required taurine fortification. In other words,
23 Plaintiff and the Class were actually paying more for less healthy foods. Defendants’ misrepresentations
24 and omissions resulted in a price premium and overcharge to all Class members.

25 14. Through this action, Plaintiff seeks recovery for economic losses related to her and Class
26 members’ purchases of Nutrish Zero Grain dog food. Plaintiff does not seek additional damages for the
27 injuries resulting from nutritional deficiencies suffered by Plaintiff’s or Class members’ dogs.

1 **PARTIES**

2 15. Plaintiff Luanny Cohen is a resident of Los Angeles, California. Plaintiff bought Nutrish
3 Zero Grain dog food for her beloved dog, Oliver, beginning in 2015, when she adopted him, until 2019,
4 when she became aware of the negative effects of grain-free dog food. During this period Plaintiff
5 purchased Nutrish Zero Grain dog food every three weeks at a Rite Aid in Los Angeles, California. At
6 the point of purchase, Plaintiff saw and relied upon the labeling representations that the Nutrish Zero
7 Grain dog food was “wholesome,” “safe,” and “made with safe, high-quality ingredients.” Plaintiff also
8 relied on Rachael Ray’s persona as a chef who cooks healthy food, which she believed meant that these
9 products provide complete nutrition, a more nutritionally balanced and complete diet for her dog, and
10 dog food that was healthier and superior to competitor brands. Plaintiff paid a premium because she
11 believed Defendants’ marketing, and reasonably believed that this food would be healthier for her dog.
12 Had she known that Defendants were concealing and failing to disclose potentially life-threatening
13 nutritional information, as was known to Defendants and other industry insiders at the time, she would
14 never have bought Nutrish Zero Grain dog food. Indeed, Plaintiff would have acted differently by
15 selecting another dog food or paying less than the \$30 plus she regularly paid for each Nutrish Zero
16 Grain dog food bag.

17 16. Defendant Ainsworth Pet Nutrition LLC (“Ainsworth”), the manufacturer of Nutrish
18 Zero Grain dog food, is a Delaware corporation with its principal place of business in Meadville,
19 Pennsylvania. Ainsworth is a subsidiary of Defendant Smucker’s. Ainsworth markets its products
20 nationwide, in and from its offices and facilities in Pennsylvania.

21 17. Defendant The J.M. Smucker Company d/b/a Smucker and Smucker’s (“Smucker’s”) has owned and operated Defendant Ainsworth since 2018. Defendant Smucker’s is an Ohio corporation
22 with its principal place of business in Orrville, Ohio.

23 18. In 2018, Ainsworth was purchased by Defendant Smucker’s for approximately \$1.9
24 billion. Defendants jointly market Nutrish Zero Grain dog food such that they are jointly and severally
25 liable for the wrongs alleged in this Complaint. For example, Defendants’ website, Nutrish.com, where
26 they promote Nutrish Zero Grain dog food, contains an Ainsworth Pet Nutrition icon on the bottom,
27
28

1 identifying Ainsworth as reserving all rights, whereas the “Company Information” and “Terms and
2 Conditions” buttons link directly to the Smucker’s corporate website.

3 19. Defendant Ainsworth has been commercially producing Rachael Ray Nutrish dog food
4 since 2008.

5 JURISDICTION AND VENUE

6 20. This Court has jurisdiction over all causes of action asserted herein pursuant to the
7 Constitution of the State of California, article VI, § 10, and California Code of Civil Procedure § 395.

8 21. This Court has personal jurisdiction over Defendants because Defendants are registered
9 companies doing business in the State of California, and conduct, and are authorized to conduct,
10 substantial business in this State, generally, and this County, specifically. Defendants sell their products
11 to citizens of California, such as Plaintiff, in large quantities and on information and belief California
12 makes up a greater portion of Defendants’ sales of Rachael Ray Nutrish than any other state. Every
13 purchase of Rachael Ray Nutrish made by Plaintiff was made in Los Angeles, California. Defendants
14 have sufficient contacts with the State of California such that rendering the exercise of jurisdiction over
15 them by the California courts is consistent with the traditional notions of fair play and substantial justice.

16 22. Venue is proper in this County because a substantial part of the events and omissions
17 giving rise to this action occurred in this County. Every purchase of Rachael Ray Nutrish, and every
18 exposure to Defendants’ deceptive marketing, occurred in Los Angeles, California.

19 FACTUAL ALLEGATIONS

20 23. Defendant Smucker’s, by and through its subsidiary Defendant Ainsworth, sells Nutrish
21 Zero Grain dog food, marketed as premium pet food “made with the highest quality ingredients for
22 optimum nutrition.” A 30-pound bag of Nutrish Zero Grain dog food retails online for a premium price
23 of approximately \$40, almost double the cost of the leading brands such as Purina and Pedigree for
24 approximately the same styles, flavors, or variants.

25 24. Despite marketing Nutrish Zero Grain dog food as a premium health food for pets,
26 charging a premium price for the product, and despite having known of the role of dog food in
27 maintaining canine health for many years, Defendants failed to disclose numerous material facts,
28

1 including, but not limited to, the fact that Nutrish Zero Grain dog food is not fortified with taurine.

2 25. Furthermore, Defendants knew or should have known that marketing Nutrish Zero Grain
3 dog food as premium “wholesome,” and “safe” dog food guaranteed to ensure pet health was false and
4 misleading to reasonable consumers as Defendants failed to fortify the food with taurine, thereby putting
5 Plaintiff’s and Class members’ dogs’ health at risk.

6 26. Nutrish Zero Grain dog food was never fortified with the vital ingredient taurine. Despite
7 this failure, every single bag of Nutrish Zero Grain dog food sold was marketed on the bogus nutrition
8 credentials of the product.

9 **A. Defendants Market Nutrish Zero Grain Dog Food as a “Wholesome” and “Safe” Healthy**
10 **Food for Dogs that Guarantees Pet Health**

11 27. With most American households owning a pet, the American pet food market is expected
12 to top \$30 billion by 2022.⁴ Promise of high profitability has spurred an explosion of competition in
13 recent years, with a 71% increase in the number of brands between 2011 and 2019. Unfortunately, this
14 same boom has incentivized some companies to cut corners by misrepresenting the qualities of their
15 product.

16 28. Like all animals, dogs have dietary requirements that can be met to a greater or lesser
17 degree by the food they eat. However, unlike humans, most dogs obtain the vast majority of their dietary
18 needs from a single source – their daily feed – rather than from varied diet or through supplements.
19 Corresponding with a general increase in awareness of nutrition and high-profile diet trends, dog food
20 companies have attempted to cash-in by advertising their products based on their purported nutritional
21 credentials. Due to these trends, and the profits at stake, the nutritional content of dog food has become
22 a critical point of competition. In turn, companies like Defendants began advertising the nutritional
23 benefits of their “wholesome” dog food, such as by specifically advertising that their food is “grain and
24 gluten free,” made with “U.S. farm-raised” products containing no “by-product meal or filler
25
26
27

28 ⁴ *State of the US Pet Food and Treat Industry*, PETFOOD PROCESSING (Dec. 28, 2018),
<https://www.petfoodprocessing.net/articles/12825-state-of-the-us-pet-food-and-treat-industry>.

1 ingredients,” and is enriched with “chelated minerals that your dog needs for a complete and balanced
2 diet.”⁵

3 29. Dog owners today have hundreds of foods to choose from, and there is a very large spread
4 between the cheapest and premium brands.

5 30. Many dog owners, including Plaintiff, who purchase the premium dog food brands do so
6 only because of the marketing promises, deliberately leading them to believe that these products provide
7 more nutritionally balanced and complete diets for their canine companions – in other words, that they
8 are more healthy than other leading or less expensive brands. Over a dog’s lifetime, it can be expected
9 to eat around ten thousand dollars of premium dog food.

10 31. To quote the Pet Food Institute’s referenced study, “[u]nlike humans – who obtain our
11 daily nutritional requirements from a variety of food consumed throughout the day – pets obtain their
12 entire nutritional requirements from that daily bowl of kibble or canned food.”⁶ Dog owners know this,
13 and are therefore drawn to manufacturers who claim to be able to supply the complete (or “100%
14 complete,” to use the Nutrish term) nutrition that their dogs require.

15 32. Plaintiff and Class members reasonably believed Nutrish Zero Grain dog food to be a
16 complete source of nutrition for their pet dogs.

17 33. Everything about Defendants’ marketing and labeling is designed to emphasize positive
18 health impacts and that their products are a source of complete nutrition. Indeed, their brand name –
19 Nutrish – is a neologism deriving from a phonetic contraction of “nutritious,” with an unambiguous
20 intended meaning. The ingredients on much of their packaging are portrayed in the very middle of the
21 bag, with an apparent “stamp” of approval complete with the words “with the world’s best ingredients”
22 inscribed inside. Nutrish Zero Grain dog food packaging also boasts:

23 a. “Made for dogs of all sizes”;

24

25 ⁵ See generally Nutrish product descriptions at Nutrish.com/dog, <https://nutrish.com/dog/zero-grain-dry-food>
26 (last visited Feb. 12, 2020).

27 ⁶ *Petition to the U.S. Department of Agriculture National Organic Program to Amend 7 CFR §205.605(b) to*
28 *Include Taurine as a Synthetic Substance Allowed for Use in Organic Pet Food Production*, PET FOOD INST.
(Sept. 2, 2010), available at: <https://www.ams.usda.gov/sites/default/files/media/Taurine.pdf> (hereinafter, the
“Pet Food Institute Petition”).

- b. “Real recipes. Real ingredients. Real good”;⁷
- c. “Only the best, high-quality, carefully chosen ingredients”;
- d. “Backed by 80+ years of focused excellence in pet nutrition”;
- e. “Made with safe, high-quality ingredients”;
- f. “100% complete & balanced nutrition for dogs”;
- g. “Ingredient Safety: [...] We are committed to producing outstanding products every day, and take great pride in ensuring our foods are wholesome and, most importantly, safe”; and
- h. “Quality Guarantee: We are committed to making great-tasting, nutritious pet foods.”

34. In addition to the explicit verbal misrepresentations and falsehoods above, every bag has graphic design features intended to emphasize the false impression of nutritional completeness. The backdrop of every bag depicts an abstracted impression of wilderness terrain (contrasted with more domestic imagery on Defendants’ non-“Zero Grain” Nutrish-brand dog foods) which, when combined with the type of animal protein – typically classic American wildlife such as salmon, turkey, or beef and bison (the exception is “farm raised” chicken) – create an impression of vitality and wholesomeness which inevitably lead to the viewer’s greater receptivity towards the explicitly false verbal messaging above. Defendants further intentionally and deceptively trade on the modern association between nature and health,⁸ despite the fact that – as is known to Defendants – grain-free dog food requires *artificial* supplementation with taurine precisely because it contains protein sources and filler that are utterly absent from a “natural” canine diet, such as lentils and legumes.

⁷ Note that “Real” is not a regulated term.

⁸ Aside from being common sense, this phenomenon has been established many times by researchers. See e.g. Chambers E, Chambers E, Castro M., *What Is “Natural”? Consumer Responses to Selected Ingredients*, Foods, Apr. 23, 2018 available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5920430/> (last visited Feb. 14, 2020) (finding that “customers who say that ‘fresh’ and ‘natural’ are key considerations may be using those terms at least in part to refer to sensory and health properties”); Siegrist, Sutterlin, *Importance of Perceived Naturalness for Acceptance of Food Additives and Cultured Meat*, Appetite, 2017 June 1, 2017; Binninger, *Perception of Naturalness of Food Packaging and its Role in Consumer Product Evaluation*, Journal of Food Products Marketing, Mar 2015 (finding that product healthiness is considered the key motivation that influences consumers’ preferences towards natural food products).

35. Plaintiff and the Class read and relied upon these claims and impressions on Nutrish Zero Grain dog food packaging (the “Packaging Claims”) because they are prominently displayed to the consumer at the point of sale in every transaction.

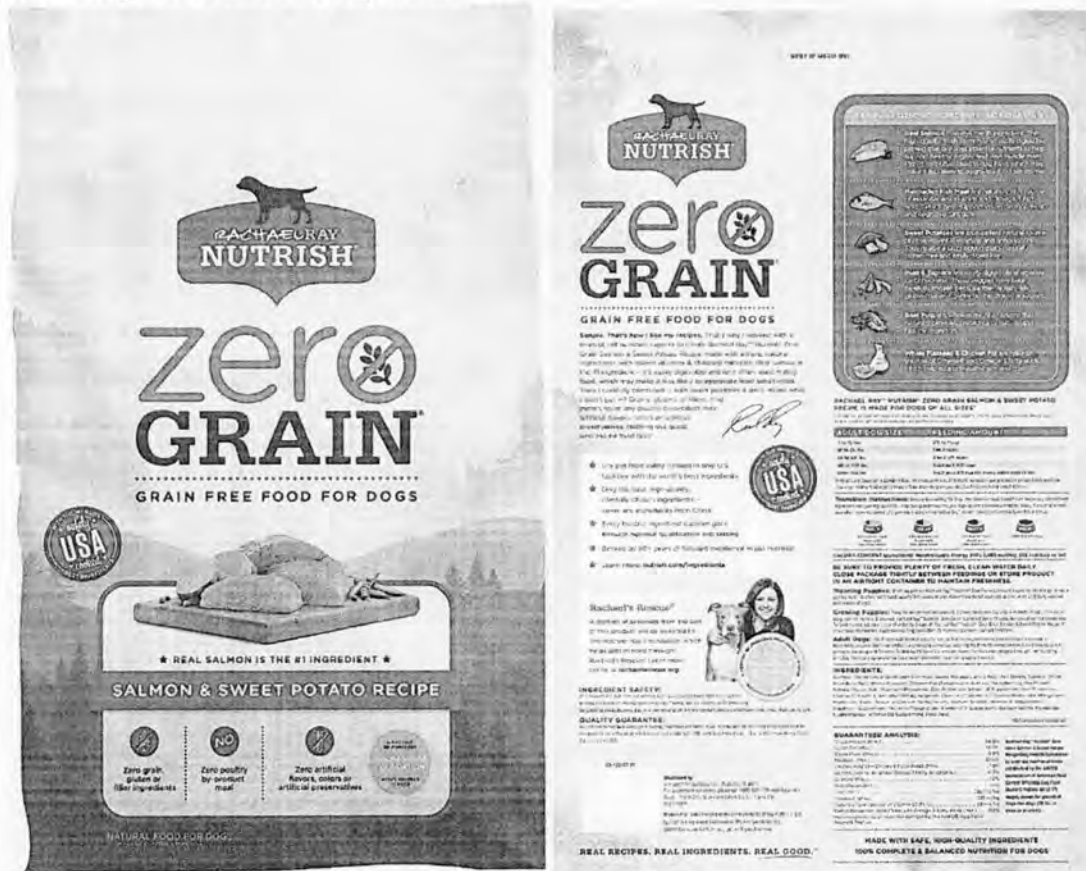


Figure 1. Sample Front and Back Packaging of Rachael Ray Nutrish Zero Grain Salmon & Sweet Potato Recipe.

36. As well as generally hyping the health benefits of their food, Defendants, staking out a position in the market, sought to capitalize on the trend away from grain-containing dog foods by emphasizing that Nutrish Zero Grain dog food is grain-free. In other words, Defendants were more than happy to make space on their packaging for their dubious health credentials, but they intentionally omitted the fact that Nutrish Zero Grain dog food was not fortified with taurine, which they knew to be an essential part of a dog's diet that is lacking in grain-free, legume-rich diets.

37. Defendants corroborate and repeat their “health” claims through additional marketing, including on the Nutrish website, which states:

- a. “Rachael Ray™ Nutrish® Zero Grain Salmon & Sweet Potato Recipe is made with simple, natural ingredients, like real salmon,⁹ which is always the number one ingredient, combined with wholesome vegetables plus vitamins and chelated minerals that your dog needs for a complete and balanced diet. And there are never any grains, glutens or fillers”;
- b. “Real salmon is the #1 ingredient”;
- c. “Zero grain, gluten or fillers”;¹⁰
- d. “Zero poultry by-product meal, artificial flavors, colors or artificial preservatives”;
- e. “Real salmon is a high quality, easily digestible protein that provides essential nutrients, which help maintain healthy organs [...]. Cats and dogs both love our tasty, fresh salmon, which is less likely to aggravate food sensitivities in dogs. It’s also naturally rich in Omega 3 fatty acids, which help support cognitive health”;
- f. “These veggies have been carefully chosen because they’re naturally gluten-free¹¹ and gentle on the digestive system”;
- g. “Beet pulp is a wholesome¹² fiber source that naturally provides prebiotics, which help support healthy digestion”; and
- h. “Learn more about the benefits of the wholesome ingredients in this recipe.”¹³

38. These non-exclusive claims are known hereafter as the “Website Claims.”

39. The Website Claims work to reinforce the Packaging Claims and Defendants’ core marketing message that Nutrish Zero Grain dog food is a premium dog food that provides complete – and superior – nutrition for dogs.

⁹ Neither “simple” nor “natural” nor “real” is a regulated term.

¹⁰ “Filler” is not a regulated term. Indeed, the term is often applied to carbohydrate sources such as grains (not present in Nutrish) and potatoes (one of the main ingredients in Nutrish).

¹¹ All vegetables are gluten free (unless gluten is added to them). *Gluten-Free Foods*, Celiac Disease Foundation available at <https://celiac.org/gluten-free-living/gluten-free-foods/>.

¹² “Wholesome” is not a regulated term.

¹³ See, e.g., *Rachael Ray Nutrish Zero Grain Salmon, Sweet Potato & Pea Recipe*, NUTRISH, <https://nutrish.com/dog/zero-grain-dry-food/zero-grain-salmon-and-sweet-potato> (last visited Feb. 11, 2020).

1 40. The Packaging Claims imply that Nutrish Zero Grain dog food is good for a dog's
2 overall health, including, but not limited to, canine heart health.

3 41. In promoting the health benefits of Nutrish Zero Grain dog food, and offering the
4 Packaging Claims, which are corroborated in the Website Claims, Defendants had an affirmative duty
5 to clearly and conspicuously disclose all material facts to consumers, not just half-truths that are
6 misleading when offered on their own, including that Nutrish failed to include taurine, an essential
7 ingredient for dogs' health. Defendants' failure to do so constitutes a material omission of fact.

8 42. Nutrish Zero Grain dog food consistently retails \$40 for a 30 lb. bag, approximately \$1.33
9 per pound of chow. Its competitors sell competing dog food for \$20 or less for the same quantity. For
10 example, Target.com sells a 42 lb. bag of "Purina Dog Chow" chicken-flavored dog food for \$22.99, or
11 approximately \$0.55 per pound of chow.¹⁴ Compared to Purina Dog Chow, Nutrish Zero Grain dog
12 food's chicken flavor charges a price premium of over 200%.

13 43. Had Defendants not intentionally or misleadingly omitted in their packaging or in their
14 promotional materials that their foods did not contain adequate amounts of taurine, a known essential
15 nutrient, reasonable consumers such as Plaintiff and the Class would have purchased the significantly
16 less expensive leading brands, or would have demanded to pay significantly less than they did for
17 Nutrish Zero Grain dog food. Indeed, most dog owners, including Plaintiff, could not be *paid* to feed
18 their dog food that would risk an early death or months of painful illness.

19 44. Most dog owners are deeply passionate about the wellbeing of their dogs, which allowed
20 Defendants to capitalize on these owners' good intentions by upselling them on a claimed premium and
21 healthy dog food. Defendants made unsupported and intentionally misleading statements such as "100%
22 complete" and "made with safe, high-quality ingredients," while at the same time intentionally omitting
23 areas of nutritional weakness, which combined to give reasonable consumers the false impression that
24 Nutrish Zero Grain dog food is a high-quality, nutritionally complete dog food that is beneficial to dogs'
25 health without the need for supplementation.

26
27 ¹⁴ See, *Purina Dog Chow Complete Adult with Real Beef Dry Dog Food 46lbs*, TARGET,
28 <https://www.target.com/p/purina-dog-chow-complete-adult-with-real-beef-dry-dog-food-46lbs/-/A-53455759?preselect=52316748#lnk=sametab> (last visit Feb. 11, 2020).

B. Defendants Have Long Been Aware of the Importance of Dietary Taurine for Canine Health but Hid this Knowledge from Consumers

45. While taurine is a compound that can be synthesized by dogs from animal protein, it is generally agreed that dogs, *particularly those ingesting legume-based protein*, require additional dietary taurine, such as from fortification or supplements.

46. Taurine deficiency has been well documented as a cause of fatal illness in dogs since at least 2006,¹⁵ with associations having been reported for decades. Specifically, low dietary taurine has been associated for many years with a condition known as Canine Dilated Cardiomyopathy (“DCM”) which can cause fatal cardiac issues in dogs. Conversely, reintroduction of this nutrient – an amino acid – has been shown to resolve many of these issues.¹⁶ A broader link between diet and DCM in dogs and cats has been the subject of investigation since the 1980s.¹⁷

47. These associations are so pronounced that researchers believe there is a direct causal link between taurine deficiency and the development of canine DCM.¹⁸

48. In 2010, the Pet Food Institute (a pet food industry lobbying organization) petitioned the USDA to include taurine as a synthetic substance allowed for use in organic pet food production, stating “taurine is a conditionally essential amino acid that is found in the tissues of most animal species. Low levels of taurine have been associated with retinal degeneration, growth retardation, and cardiomyopathy.”¹⁹ Defendant Ainsworth is a member of the Pet Food Institute.

¹⁵ Sherry L. Sanderson, *Taurine and Carnitine in Canine Cardiomyopathy*, 36 VET. CLIN. SMALL. ANIM. PRACT. 1325–1343 (2006).

¹⁶ Marie C. Bélanger et al., *Taurine-Deficient Dilated Cardiomyopathy in a Family of Golden Retrievers*, 41 J. AM. ANIM. HOSP. ASS’N 284 (2005); Andrea J. Fascetti et al., *Taurine Deficiency in Dogs with Dilated Cardiomyopathy: 12 Cases (1997–2001)*, 223 J. AM. VET. MED. ASS’N 1137 (2003); Mark D. Kittleson et al., *Results of the Multicenter Spaniel Trial (MUST): Taurine- and Carnitine-Responsive Dilated Cardiomyopathy in American Cocker Spaniels with Decreased Plasma Taurine Concentration*, 11 J. VET. INTERN. MED. 204 (1997); Robert C. Backus et al., *Taurine Deficiency in Newfoundlands Fed Commercially Available Complete and Balanced Diets*, 223 J. AM. VET. MED. ASS’N 1130 (2003).

¹⁷ See, e.g., Paul D. Pion et al., *Myocardial Failure in Cats Associated with Low Plasma Taurine: A Reversible Cardiomyopathy*, 237 SCIENCE 764 (1987).

¹⁸ Joanna L. Kaplan et al., *Taurine Deficiency and Dilated Cardiomyopathy in Golden Retrievers Fed Commercial Diets*, 13 PLOS ONE 1 (2018).

¹⁹ See generally, Pet Food Institute Petition, *supra*, n.3.

49. While Defendants have long been aware of the importance of taurine to dog health, as well as the lack of association of *high*-taurine diets with negative health outcomes, they inexplicably failed to disclose to consumers that their ultra-expensive Nutrish Zero Grain dog food – supposedly guaranteed to promote good pet health – was not fortified with this important nutrient despite containing large proportions of legume-based program such as peas.

C. The 2010 Pet Food Institute Petition

50. Nearly a decade ago, on September 2, 2010, the Pet Food Institute, a trade association and lobby group comprised of pet product manufacturers and distributors in the United States, petitioned the USDA “to request the amendment of the National Organic Standards to include taurine as a synthetic substance allowed for use in organic pet food production.”²⁰

51. This 60-page document on the importance of taurine for dog and cat diets included the following claims:

- a. **“Inclusion of taurine in complete and balanced formulas is vital for pets** because those formulas serve as the sole source of nutrition for the pets. Unlike humans—who obtain our daily nutritional requirements from a variety of food consumed throughout the day—pets obtain their entire nutritional requirements from that daily bowl of kibble or canned food”;²¹
- b. “Historically, a need for dietary taurine is not generally recognized in dogs. This is because dogs are known, like many species, to have the metabolic capacity to synthesize taurine from the dietary sulfur amino acids, cysteine and methionine. **Recently, however, nutritional paradigms have been recognized to result in taurine deficiency in dogs.** In many cases, taurine deficiency was also associated with dilated cardiomyopathy. **Diet-induced (taurine deficiency) dilated cardiomyopathy is reported more in large than small dogs possibly because taurine biosynthesis rate (TBR) is lower in large than small dogs”;**²²

²⁰ Pet Food Institute Petition, *supra*, n.3.

²¹ *Id.* at p. 5.

²² *Id.* at p. 23 (internal citation omitted).

- 1 c. "Dilated cardiomyopathy is defined as any disease involving primarily and
2 predominantly the heart muscle. The cardiomyopathies of animals are idiopathic
3 diseases that are not the result of any systemic or primary cardiac disease. In
4 animals (primarily dogs and cats), they have been classified as dilated
5 cardiomyopathy, hypertrophic cardiomyopathy, and restrictive or unclassified
6 cardiomyopathy. If a disease process has been identified as the cause of
7 myocardial dysfunction, these are more correctly identified as secondary
8 myocardial diseases or a descriptive term precedes the term cardiomyopathy
9 (e.g., taurine responsive cardiomyopathy)";²³
- 10 d. **"Because dogs and cats rely on commercially prepared foods as their sole**
11 **source of nutrition, it is vital that those commercial food products contain**
12 **all of the nutrients required for healthy growth and adult maintenance.**
13 Accordingly, the American Association of Feed Control Officials (AAFCO) have
14 developed model regulations, based upon the National Research council's
15 Nutrient Requirements of Dogs and Cats, regarding the level of nutrients for a
16 commercially produced pet food to be labeled as complete and balanced. The
17 term complete and balanced means that the formula supplies a nutritionally
18 adequate diet when fed according to label instructions. Under the AAFCO model
19 regulations, canned cat food products must contain a minimum of 0.10 percent
20 taurine for both growth and reproduction, and for adult maintenance to be labeled
21 as complete and balanced";²⁴
- 22 e. "Although taurine is not classified as essential in complete and balanced dog food
23 formulas, **scientific evidence exists that taurine deficiency in diets can be**
24 **detrimental to certain breeds of dogs.** Although AAFCO has no regulatory

25
26
27
28 ²³ *Id.* pp. 23-24 (internal citation omitted).

²⁴ *Id.* at p. 25

authority, the model regulations serve as the basis for enforcement by most state feed control officials”;²⁵ and finally

f. “In dogs, adequate levels of taurine are required to prevent dilated cardiomyopathy. Some dogs with low plasma taurine also have bilaterally symmetrical hyper reflective retinal lesions, which is similar to classic feline central retinal degeneration.”²⁶

52. Following this petition, based on a 2012 technical report and investigation concluding that “taurine is particularly degraded in the [kibble] production process,” the USDA’s National Organic Standards Board (“NOSB”) in its February 5, 2015 recommendation concluded that “taurine for cats was deemed necessary as a synthetic additive to meet nutritional requirements and thus should be allowed in organic pet food” and “based on public comment, the NOSB determined that taurine can also be required for dogs during different life stages and, therefore, decided to allow its use in pet food generally.”²⁷

53. In the same recommendation the NOSB noted the following:

Therefore, the Pet Food Institute has petitioned the NOSB to place the 13 essential synthetic amino acids for dogs and cats on the National List. Sourcing organic ingredients to meet the amino acid needs of pets and achieve “organic” or “made with organic” status is challenging in terms of seasonal and geographic constraints on availability of feedstuffs. Dogs, cats, and specialty pets that live in tanks or cages, have dietary demands that must be met with a sole source feed formulation specific to their species and stage of life.²⁸

D. The FDA Investigation

54. In July 2018, the FDA announced that it had begun investigating reports of DCM in dogs eating certain pet foods, specifically those, such as Nutrish Zero Grain dog food, labeled “grain-free.”²⁹

²⁵ *Id.*

²⁶ *Id.* at p. 25 (internal citation omitted).

²⁷ *Formal Recommendation: Petition to Add Required Synthetic Amino Acids for Pet Food*, NATIONAL ORGANIC STANDARDS BOARD (Apr. 11, 2013), available at <https://www.ams.usda.gov/sites/default/files/media/Amino%20Acid%20Pet%20Food%20Formal%20Rec.pdf>.

²⁸ *Id.*

²⁹ *FDA Investigation into Potential Link Between Certain Diets and Canine Dilated Cardiomyopathy*, FOOD AND DRUG ADMINISTRATION (June 27, 2019), <https://www.fda.gov/animal-veterinary/news-events/fda-investigation-potential-link-between-certain-diets-and-canine-dilated-cardiomyopathy>.

55. Responding to an apparent spike in reported cases of DCM including many dogs *without* a known genetic predisposition to the disease, the FDA partnered with the Veterinary Laboratory Investigation and Response Network ("Vet-LIRN") – a collaboration of government and veterinary diagnostic laboratories – to investigate the issue.

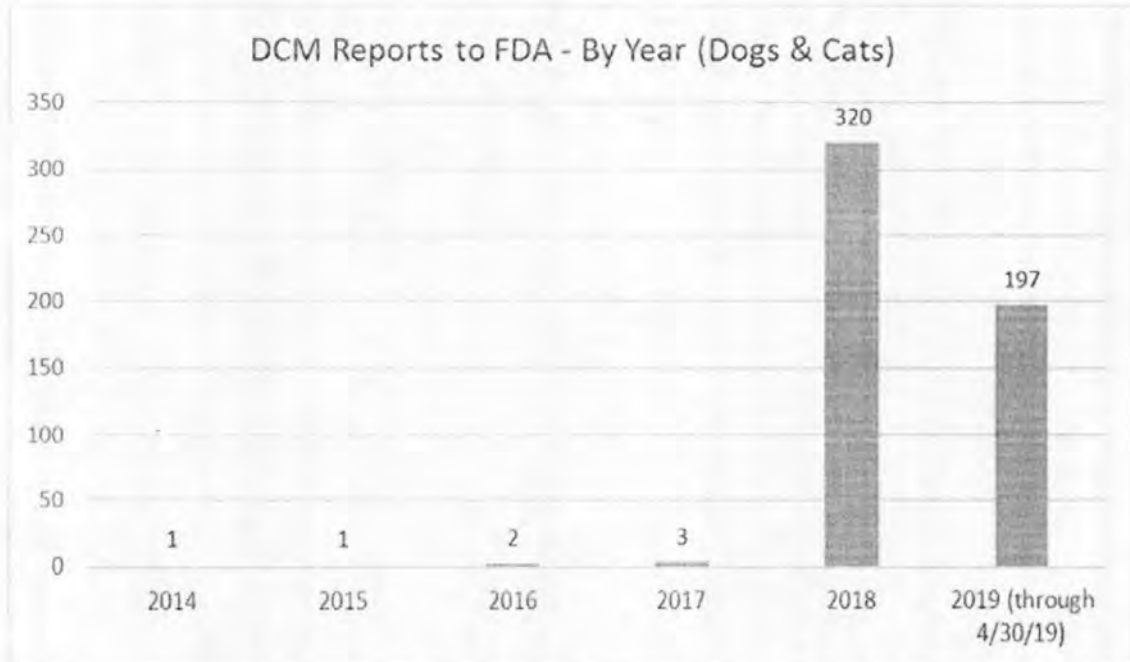


Figure 2. DCM Reports to FDA – By Year (Dogs & Cats)³⁰

56. Whereas most previous reports of DCM in dogs occurred in large or giant breeds such as the Irish Wolfhound or Great Dane, reports to the FDA included large numbers of dogs *without* a known genetic disposition to DCM or with a significantly smaller incidence of the disease, including Cocker Spaniels and Shih-Tzus, breeds like Plaintiff's dog, Oliver.³¹

³⁰ *Id.*

³¹ Despite these shocking numbers, the FDA believes that cases are *underreported*. *Id.*

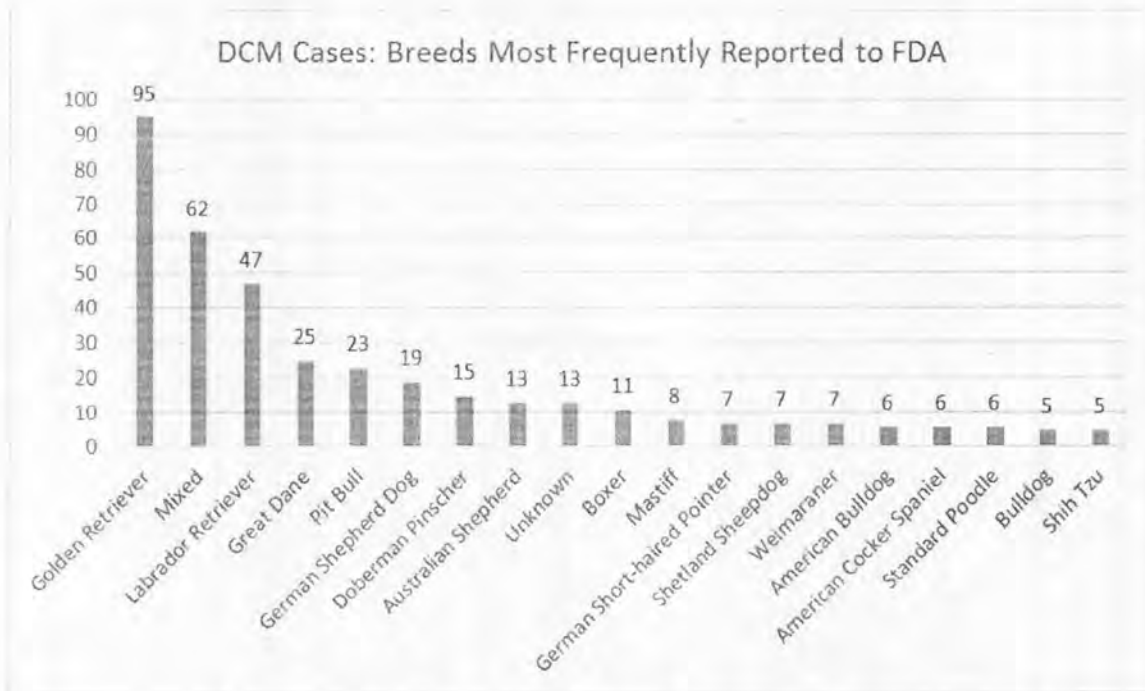


Figure 3. DCM Cases: Breed Most Frequently Reported to FDA³²

57. While the FDA investigation is ongoing, several other prominent organizations have also responded to this spike and have drawn conclusions that build on the existing research to specifically link grain-free foods like Nutrish Zero Grain dog food to taurine-deficient DCM.³³

E. In the Wake of the FDA Investigation and Growing Public Concern, Defendants Continued their Misleading Conduct

58. Knowing that disclosing the fact that their foods were not fortified with taurine would undercut their health-based marketing, Defendants intentionally and systematically omitted any warnings as to this fact. Defendants were given many opportunities to correct their misleading marketing and advertising campaign, but instead at every turn doubled down on their “message” of “wholesome,” healthy, and “safe” grain-free dog food.

59. Other than potential costs savings, it is unknown why Defendants failed to include a critical ingredient such as taurine during the time Plaintiff and other Class members purchased Nutrish Zero Grain dog food.

³² *Id.*

³³ Kaplan et al., *supra* n. 10.

60. Defendants' "message" about the nature and quality of Nutrish Zero Grain dog food further conceals and suppresses the truth. In the face of the scientific research previously cited and relied on by Defendants' trade association, the Pet Food Institute, Defendants' statements contain both affirmative misrepresentations and material omissions.

61. Defendants' Nutrish website does not contain any information on taurine or DCM. Nor does the website address the highly publicized FDA study, or any of the scientific studies relied upon by Defendants' trade association, the Pet Food Industry.

62. Defendants' Nutrish website also references the fact that their pet foods comply with the guidelines of the American Association of Feed Control Officers (the "AAFCO").³⁴ However, the AAFCO does not "regulate, test, approve or certify pet foods in any way,"³⁵ and the "AAFCO has no steps for a company to receive approval to make claims or statements on a feed or pet food label."³⁶ Further, the 2014 *AAFCO Methods for Substantiating Nutritional Adequacy of Dog and Cat Foods* does not discuss taurine in the context of dog food whatsoever.³⁷ Indeed, Defendants' very own study by the Pet Food Institute stated "[a]lthough taurine is not classified as essential nutrient in complete and balanced dog foods by AAFCO (2006), scientific evidence exists that insufficient dietary taurine or its precursors in the diet can result in deficiencies with certain breeds, such as American Cocker Spaniels and Newfoundlands." In other words, Defendants' acknowledge AAFCO's lack of regulatory or certification authority yet happily market their deficient and potentially dangerous product with the AAFCO's stamp of approval.

63. At any time, Defendants could have disclosed the lack of taurine supplementation in their dog foods. They could have done so decades ago, when the association of higher taurine levels and good health were revealed. They could have done so over a year ago, when the FDA began releasing public statements on potential links. And they could do so now, instead of wholly omitting mention of the issue

³⁴ NUTRISH, available at: <https://nutrish.com/faq/dog/dry-dog-food> (last visited Feb. 11, 2020).

³⁵ *Nutritional Labeling*, AAFCO (Jul. 29, 2019 1:44PM), <https://petfood.aaftco.org/Nutritional-Labeling>.

³⁶ *Marketing & "Romance" Claims*, AAFCO (Jul. 29, 2019, 1:43PM), <https://petfood.aaftco.org/Marketing-Romance-Claims>.

³⁷ *AAFCO Methods for Substantiating Nutritional Adequacy of Dog and Cat Foods*, AAFCO (2014), available at: https://www.aaftco.org/Portals/0/SiteContent/Regulatory/Committees/Pet-Food/Reports/Pet_Food_Report_2013_Midyear-Proposed_Revisions_to_AAFCO_Nutrient_Profiles.pdf.

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1 and asserting misleading claims as to the wholesomeness, completeness, and safety of their grain-free
2 dog food.

3 64. Accordingly, injunctive relief in the form of corrective advertising is necessary to inform
4 Class members and the general public that Nutrish Zero Grain dog food does not contain sufficient levels
5 of dietary taurine. In addition to learning that their pets that consumed the grain-free dog food are at
6 heightened risk of DCM, corrective advertising will inform consumers of Defendants' malfeasance
7 which will prevent Defendants from unjustly benefiting from the brand strength and "halo effect"
8 created from their false advertising and other unfair and deceptive business practices.

9 **F. Plaintiff's Allegations**

10 65. For approximately four years, Plaintiff owns a Cocker Spaniel-Shih Tzu mixed-breed
11 dog named Oliver.

12 66. Encouraged by the health claims made by Defendants and by the persona of brand
13 representative and healthy cooking advocate Rachael Ray, Plaintiff fed Oliver Nutrish Zero Grain dog
14 food between 2015 and 2019, when Plaintiff became aware of the FDA study linking grain-free dog
15 food and Nutrish Zero Grain dog food with DCM and was advised by veterinary staff to stop feeding
16 Oliver grain-free dog food.

17 67. Plaintiff purchased a 12 lb. bag of Nutrish Zero Grain dog food every three weeks,
18 spending approximately \$22 each time. Over four years, Plaintiff spent over \$1,500 on harmful Nutrish
19 Zero Grain dog food.

20 68. In 2018, Oliver suffered a seizure after a period of declining health. Unaware that
21 Nutrish Zero Grain dog food did not include taurine, essential to heart health, and in reliance on
22 Defendants' representations and omissions, Plaintiff did not change her dog food purchasing habits and
23 continued to feed Oliver Nutrish Zero Grain dog food.

24 69. On October 15th, 2018, Plaintiff took Oliver to a veterinarian for a cardiac consultation.
25 The veterinarian prescribed Oliver with Enalapril Maleate and Vetmedin, both medications prescribed
26
27
28

1 for heart failure. The veterinarian noted that Oliver had severe cardiomegaly, consistent with DCM,³⁸
 2 and advised Plaintiff about Oliver's heart condition. Oliver is on heart medication for the rest of his life.

3 70. Around July 2019, Plaintiff became aware through watching CBS news and reading
 4 reports on the internet that the FDA was investigating several grain-free dog food brands, including
 5 Nutrish, which were linked to a spike in reported cases of DCM in dogs.

6 71. After reading about the FDA investigation, Plaintiff contacted her veterinarian's office
 7 and was advised to stop feeding Oliver Nutrish Zero Grain dog food. Plaintiff heeded this advice and
 8 stopped feeding Oliver Nutrish Zero Grain dog food immediately.

9 72. Through this action, Plaintiff is not seeking damages relating to Oliver's injury. Rather,
 10 Plaintiff is seeking damages and restitution relating to her years-long purchase of Defendants' Nutrish
 11 Zero Grain dog food.

12 73. Every time Plaintiff purchased Nutrish Zero Grain dog food, she was exposed to, read,
 13 and relied upon Defendants' Packaging Claims, which portray Nutrish Zero Grain dog food as a
 14 balanced, safe, healthy, and nutritionally complete diet for dogs. Those verifiably false Packaging
 15 Claims were material to Plaintiff's purchasing decisions.

16 **G. Affirmative Misrepresentations and Material Omissions Relating to Nutrish Zero Grain**
 17 **dog food**

18 74. Defendants made numerous affirmative misrepresentations in the marketing,
 19 advertising, distributing, and selling of Nutrish Zero Grain dog food, including, but not limited to the
 20 Packaging Claims described above.

21 75. Defendants also failed to disclose a number of material facts in the marketing,
 22 advertising, distributing, and selling of Nutrish Zero Grain dog food, including, but not limited to the
 23 following:

- 24 a. Failing to disclose that Nutrish Zero Grain dog food was not fortified with taurine;

25 ³⁸ Cardiomegaly, or enlarged heart, is a symptom consistent with DCM. Indeed, the FDA defines DCM as a
 26 "disease of a dog's heart muscle and *results in an enlarged heart.*" *Questions & Answers: FDA Center for*
 27 *Veterinary Medicine's Investigation into a Possible Connection Between Diet and Canine Heart Disease*, U.S.
 28 FOOD & DRUG ADMINISTRATION (June 27, 2019), <https://www.fda.gov/animal-veterinary/animal-health-literacy/questions-answers-fda-center-veterinary-medicines-investigation-possible-connection-between-diet-and>
 (emphasis added).

- b. Failing to disclose that Nutrish Zero Grain dog food does not contain adequate levels of taurine;
- c. Failing to disclose that inclusion of taurine in complete and balanced formulas is vital for pets because those formulas serve as the sole source of nutrition for the pets;
- d. Failing to disclose that Nutrish Zero Grain dog food is not an adequate sole source of nutrition for dogs;
- e. Failing to disclose that Nutrish Zero Grain dog food does not constitute a complete and nutritionally balanced diet for dogs;
- f. Failing to disclose that Nutrish Zero Grain dog food cannot meet a dog's entire nutritional requirements;
- g. Failing to disclose that Nutrish Zero Grain dog food is not made with the highest quality ingredients for complete nutrition;
- h. Failing to disclose that Nutrish Zero Grain dog food did not contain all of the nutrients required for healthy growth and adult maintenance;
- i. Failing to disclose that nutritional paradigms such as Nutrish Zero Grain dog food have been recognized to result in taurine deficiency in dogs;
- j. Failing to disclose that taurine deficiency is associated with dilated cardiomyopathy in dogs;
- k. Failing to disclose that Defendants and their trade association, the Pet Food Institute, have long been aware of the critical importance of taurine in dogs' health and the deadly effects of taurine-deficient diets;
- l. Failing to disclose that Nutrish Zero Grain dog food is not "100% complete & balanced nutrition for dogs";
- m. Failing to disclose that Nutrish Zero Grain dog food is not appropriate for dogs of all sizes;

- n. Failing to disclose that legume-rich diets such as Nutrish Zero Grain dog food are particularly linked to taurine-deficiency and DCM;
- o. Failing to disclose that the AAFCO model regulations and guidelines do not address taurine;
- p. Failing to disclose that Nutrish Zero Grain dog food is not certified by AAFCO; and
- q. Failing to disclose that consumption of Nutrish Zero Grain dog food unreasonably puts canine health at risk.

76. Had Plaintiff or the Class been aware of these material omissions or the falsity of the affirmative misrepresentations, they never would have purchased this “premium” dog food, nor would they have paid a price premium to purchase it.

77. Only after Plaintiff’s dog’s severe health problems did Plaintiff learn that grain-free food like Nutrish Zero Grain dog food was not fortified with taurine and was associated with DCM in dogs.

CLASS ACTION ALLEGATIONS

78. Plaintiff seeks relief in her individual capacity and seeks to represent a class consisting of all others who are similarly situated. Pursuant to California Code of Civil Procedure Section 382, Plaintiff seeks certification of a statewide California class initially defined as follows:

All consumers who purchased Nutrish Zero Grain dog food in California during the Class Period.

79. The “Class Period” for the Class and any subclasses dates back four years (or the length of the longest applicable statute of limitations for any claim asserted).

80. Excluded from the Class are Defendants and their subsidiaries and affiliates; Defendants’ executives, board members, and legal counsel; the judges and all other court personnel to whom this case is assigned, as well as their immediate families; and those who purchased Nutrish Zero Grain dog food for the purpose of resale.

1 81. Numerosity: The Class is so numerous that joinder of all members is unfeasible and not
2 practicable. While the precise number of Class members has not been determined at this time, Plaintiff
3 is informed and believes that many thousands or millions of consumers have purchased Nutrish Zero
4 Grain dog food.

5 82. Commonality: There are questions of law and fact common to the Class, which
6 predominate over any questions affecting only individual Class members. These common questions of
7 law and fact include, without limitation:

- 8 a. Whether Defendants engaged in the conduct alleged herein;
- 9 b. Whether Defendants' practices were deceptive, unfair, improper and/or
10 misleading;
- 11 c. Whether Defendants made misrepresentations;
- 12 d. Whether Defendants made material omissions;
- 13 e. Whether Defendants uniformly conveyed to the class that Nutrish Zero Grain dog
14 food was "100% complete & balanced nutrition for dogs";
- 15 f. Whether Defendants' claim that Nutrish Zero Grain dog food is "100% complete
16 & balanced nutrition for dogs" is false or likely to deceive or mislead a reasonable
17 consumer;
- 18 g. Whether Defendants uniformly conveyed to the Class the Packaging Claims;
- 19 h. Whether the Packaging Claims constitute express warranties;
- 20 i. Whether the Packaging Claims are material to a reasonable consumer;
- 21 j. Whether Defendants' Packaging Claims are false or likely to deceive or mislead
22 a reasonable consumer;
- 23 k. Whether the affirmative misrepresentations and material omissions identified
24 herein were true or false or likely to deceive a reasonable consumer;
- 25 l. Whether Defendants violated California Civil Code §§ 1750, *et seq.*;
- 26 m. Whether Defendants violated California Business and Professions Code
27 §§ 17200, *et seq.*;
- 28

n. Whether Defendants violated California Business and Professions Code §§ 17500, *et seq.*; and

o. The nature of the relief, including equitable relief, to which Plaintiff and the Class members are entitled.

83. Typicality: Plaintiff's claims are typical of those of the Class. Plaintiff, like other Class members, purchased Nutrish Zero Grain dog food after having been exposed to the Packaging Claims because she believed those statements and the claims that Nutrish Zero Grain dog food was a nutritious and balanced diet for dogs. Plaintiff, like the Class, was injured by relying on Defendants' false and misleading statements and material omissions including those identified herein as she would not have purchased Nutrish Zero Grain dog food had she known the truth. Had Plaintiff and the Class been aware, as Defendants were, that Nutrish Zero Grain dog food was not fortified with taurine, and that dietary taurine was essential for dog health, they would not have purchased Nutrish Zero Grain dog food, nor would they have paid a premium price for it. Plaintiff and the Class have suffered the same or similar injury and were exposed to the same campaign of disinformation by Defendants during both the initial marketing and the response to the FDA investigation.

84. Adequacy of Representation: Plaintiff is committed to pursuing this action and has retained counsel competent and experienced in prosecuting and resolving consumer class actions. Plaintiff will fairly and adequately represent the interests of the Class and does not have any interests adverse to those of the Class, and therefore class treatment is appropriate.

CAUSES OF ACTION

COUNT I

Violation of California's False Advertising Law,

Cal. Bus. & Prof. Code § 17500, *et seq.*

85. Plaintiff realleges the foregoing paragraphs as if fully set forth herein.

86. Plaintiff brings this claim individually and on behalf of the Class.

87. Defendants, through the Packaging Claims, affirmative misrepresentations and material omissions identified herein, and otherwise, publicly disseminated untrue or misleading advertising or

1 intended not to sell the Nutrish Zero Grain dog food as advertised in violation of California's False
2 Advertising Law ("FAL"), California Business & Professions Code § 17500.

3 88. Defendants committed such violations of the FAL with actual knowledge (or in the
4 exercise of reasonable care they should have known) that these advertisements were untrue or
5 misleading.

6 89. Plaintiff and the Class reasonably relied on Defendants' representations and/or omissions
7 identified herein, made in violation of California Business & Professions Code § 17500, *et seq.*

8 90. As a direct and proximate result of Defendants' violations, Plaintiff and the Class
9 suffered injury in fact and lost money.

10 91. No "safe harbor" exists for any of Defendants' conduct because none of the acts or
11 conduct described herein were expressly authorized or permitted by any state or federal law.

12 92. Plaintiff, on behalf of herself and the Class, seeks: (a) injunctive relief in the form of an
13 order requiring Defendants to cease the acts of unfair competition alleged herein and to correct its
14 advertising, promotion, and marketing campaigns; (b) interest at the highest rate allowable by law; and
15 (c) the payment of Plaintiff's attorneys' fees and costs pursuant to California Code of Civil Procedure §
16 1021.5, *inter alia*.

17 **COUNT II**

18 **Violation of California's Consumer Legal Remedies Act,**

19 **Cal. Civ. Code § 1750 *et seq.***

20 93. Plaintiff realleges the foregoing paragraphs as if fully set forth herein.

21 94. Plaintiff brings this claim individually and on behalf of the Class.

22 95. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
23 California Civil Code § 1750, *et seq.* (the "CLRA"), because Defendants' actions and conduct described
24 herein constitute transactions that have resulted in the sale or lease of goods or services to consumers.

25 96. Plaintiff and all Class members are consumers as defined by California Civil Code
26 § 1761(d). Defendants intended to sell the Nutrish Zero Grain dog food.

1 97. Purchases of Nutrish Zero Grain dog food are purchases of “goods” within the meaning
2 of Civil Code §1761(a).

3 98. Through the Packaging Claims and otherwise, Defendants violated the CLRA in at least
4 the following respects:

- 5 a. In violation of § 1770(a)(2), Defendants misrepresented Nutrish Zero Grain dog
6 food as “made with safe, high-quality ingredients,” when it was not;
- 7 b. In violation of § 1770(a)(2), Defendants misrepresented Nutrish Zero Grain dog
8 food was certified as “with the world’s best ingredients,” when it was not;
- 9 c. In violation of § 1770(a)(3), Defendants falsely implied that Nutrish Zero Grain
10 dog food was certified by AAFCO, when it was not;
- 11 d. In violation of § 1770(a)(5), Defendants represented that Nutrish Zero Grain dog
12 food has characteristics, ingredients, and benefits (“100% complete & balanced
13 nutrition for dogs”) which they do not have (because they were not fortified with
14 taurine);
- 15 e. In violation of § 1770(a)(5), Defendants violated the CLRA by representing
16 Nutrish Zero Grain dog food as “100% complete & balanced nutrition for dogs,”
17 when it was not nutritionally balanced or sufficient. Defendants knew, or should
18 have known, that the representations and advertisements were false and
19 misleading;
- 20 f. In violation of § 1770(a)(7), Defendants represented that Nutrish Zero Grain dog
21 food is of a particular standard, quality or grade (“100% complete & balanced
22 nutrition for dogs,” and “made for dogs of all sizes”) when it is of another
23 (missing essential nutritional content due to failure to fortify with taurine);
- 24 g. In violation of § 1770(a)(9), Defendants have advertised Nutrish Zero Grain dog
25 food (as “100% complete & balanced nutrition for dogs”) with intent not to sell
26 it as advertised (missing essential taurine fortification); and
27
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05/04/2020

1 h. In violation of § 1770(a)(16), Defendants represented that Nutrish Zero Grain dog
2 food has been supplied in accordance with previous representations (as “100%
3 complete & balanced nutrition for dogs”), when it was not (because it was not
4 fortified with taurine).

5 99. Defendants’ acts and omissions constitute unfair, deceptive, and misleading business
6 practices in violation of California Civil Code § 1770(a).

7 100. Plaintiff and the Class reasonably relied on Defendants’ representations and/or omissions
8 identified herein, made in violation of the CLRA.

9 101. Plaintiff has complied with California Civil Code § 1782(a) by notifying Defendants in
10 writing, by certified mail, of the violations alleged herein and demanded that Defendants remedy those
11 violations. Defendants received Plaintiff’s notice on or around February 18, 2020, and they have not
12 made a satisfactory offer to remedy their misconduct.

13 102. Defendants’ conduct is malicious, fraudulent, and wanton in that Defendants
14 intentionally and knowingly provided misleading information to the public.

15 103. No “safe harbor” exists for any of Defendants’ conduct because none of the acts or
16 conduct described herein were expressly authorized or permitted by any state or federal law.

17 104. Since Defendants have failed to remedy the violations alleged herein within 30 days of
18 receipt of Plaintiff’s notice, Plaintiff now seeks actual, punitive, and statutory damages pursuant to the
19 CLRA.

20 105. Plaintiff, on behalf of herself and the Class, seeks: (a) injunctive relief in the form of an
21 order requiring Defendants to cease the acts of unfair competition alleged herein and to correct their
22 advertising, promotion, and marketing campaigns; (b) nominal, actual, and statutory damages as
23 permitted by law; (c) interest at the highest rate allowable by law; and (d) the payment of Plaintiff’s
24 attorneys’ fees and costs pursuant to California Code of Civil Procedure § 1021.5, *inter alia*.

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COUNT III

Violation of California Unfair Competition Law,

Cal. Bus. & Prof. Code § 17200, *et seq.*

106. Plaintiff realleges the foregoing paragraphs as if fully set forth herein.

107. Plaintiff brings this claim individually and on behalf of the Class.

108. Defendants engaged in unlawful, unfair, and/or fraudulent conduct under California's Unfair Competition Law ("UCL"), California Business & Professions Code § 17200, *et seq.*, by making the Packaging Claims and otherwise representing that the Nutrish Zero Grain dog food is "made with the highest quality ingredients for optimum nutrition," when it is not.

109. Plaintiff and the Class reasonably relied on Defendants' representations and/or omissions identified herein, made in violation of the UCL.

110. Defendants' conduct is unlawful in that it violates the CLRA and FAL.

111. Defendants' conduct is unfair in that it offends established public policy and/or is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to Plaintiff and Class members. The harm to Plaintiff and Class members arising from Defendants' conduct outweighs any legitimate benefit Defendants derived from the conduct. Defendants' conduct undermines and violates the stated spirit and policies underlying the CLRA and the FAL.

112. Defendants' actions and practices constitute "fraudulent" business practices in violation of the UCL because, among other things, Defendants' representations and/or omissions identified herein are likely to deceive reasonable consumers.

113. As a direct and proximate result of Defendants' violations, Plaintiff and Class members suffered injury in fact and lost money because they purchased Nutrish Zero Grain dog food at the price they paid believing it to be "100% complete & balanced nutrition for dogs," when it was not.

114. No "safe harbor" exists for any of Defendants' conduct because none of the acts or conduct described herein were expressly authorized or permitted by any state or federal law.

115. Plaintiff, on behalf of herself and the Class, seeks: (a) injunctive relief in the form of an order requiring Defendants to cease the acts of unfair competition alleged herein and to correct their

1 advertising, promotion, and marketing campaigns; (b) full restitution of all monies paid by Plaintiff and
2 all Class members because of Defendants' deceptive practices including, but not limited to,
3 disgorgement of all revenues derived from the sale of Nutrish Zero Grain dog food; (c) interest at the
4 highest rate allowable by law; and (d) the payment of Plaintiff's attorneys' fees and costs pursuant to
5 California Code of Civil Procedure § 1021.5, *inter alia*.

6 **COUNT IV**

7 **Breach of Express Warranty**

8 116. Plaintiff realleges the foregoing paragraphs as if fully set forth herein.

9 117. Plaintiff brings this claim individually and on behalf of the Class.

10 118. Plaintiff and the Class members formed a contract with Defendants at the time they
11 purchased the Nutrish Zero Grain dog food. As part of that contract, Defendants represent that the
12 Nutrish Zero Grain dog food is "wholesome," "high-quality," and "safe" dog food that provides "100%
13 complete & balanced nutrition for dogs," as described above. These representations constitute express
14 warranties and became part of the basis of the bargain between Plaintiff and Class members, on the one
15 hand, and Defendants, on the other.

16 119. Defendants made the above-described representations to induce Plaintiff and the Class
17 members to purchase Nutrish Zero Grain dog food.

18 120. Plaintiff and Class members relied on Defendants' above-described representations in
19 purchasing Nutrish Zero Grain dog food.

20 121. All conditions precedent to Defendants' liability under the above-referenced contract
21 have been performed by Plaintiff and the other Class members.

22 122. Defendants breached their express warranties about Nutrish Zero Grain dog food because
23 the dog food is not "wholesome," "high-quality," "safe," or capable of providing "100% complete and
24 balanced nutrition" because it is a grain-free, legume-rich dog food lacking an essential element
25 necessary for the health of dogs (taurine). Defendants breached California's warranty law, California
26 Commercial Code § 2313.

1 123. As a result of Defendants' breaches of express warranty, Plaintiff and the other Class
2 members were damaged in an amount of the premium price they paid for Nutrish Zero Grain dog food,
3 in an amount to be proven at trial.

4 124. Plaintiff notified Defendants in writing, by certified mail, of the breaches of express
5 warranty alleged herein and demanded that Defendants remedy those violations. Defendants received
6 Plaintiff's notice on or around March 26, 2020, and they have not made a satisfactory offer to remedy
7 their misconduct.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, individually and on behalf of the other members of the Class proposed
10 in this Complaint, respectfully requests that the Court enter judgment in her favor and against
11 Defendants, as follows:

- 12 A. Declaring that this action is a proper class action, certifying the Class as requested herein,
13 designating Plaintiff as Class Representative, and appointing the undersigned counsel as
14 Class Counsel;
- 15 B. For an accounting by Defendants for any and all profits derived by Defendants from their
16 herein-alleged unlawful, unfair, and/or fraudulent conduct and/or business practices;
- 17 C. Ordering Defendants to pay actual damages including, but not limited to, the price
18 premium associated with and/or the full retail cost of the Nutrish Zero Grain dog food,
19 restitution, and disgorgement of all money or property wrongfully obtained by
20 Defendants by means of their herein-alleged unlawful, unfair, and fraudulent business
21 practices, and equitable monetary relief to Plaintiff and the other members of the Class;
- 22 D. Awarding injunctive relief as permitted by law or equity, including enjoining Defendants
23 from continuing the unlawful practices as set forth herein, and ordering Defendants to
24 engage in a corrective advertising campaign to correct the false knowledge they spread
25 through the Packaging and Website Claims and other representations;
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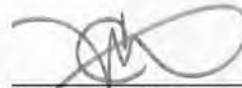
- 1 E. Ordering Defendants to pay reasonable attorneys' fees and litigation costs to Plaintiff
2 and the other members of the Class pursuant to Cal. Code of Civil Procedure § 1021.5,
3 Cal. Civil Code § 1780(e), and the common law private attorney general doctrine;
4 I. Ordering Defendants to pay both pre- and post-judgment interest on any amounts
5 awarded; and
6 J. Ordering such other and further relief as may be just and proper.

7 **JURY DEMAND**

8 Plaintiff demands a trial by jury of all claims in this Complaint so triable.

9 Respectfully submitted,

10 ZIMMERMAN REED LLP

11 

12 Dated: April 29, 2020

13 By:

14 Caleb Marker
15 Flinn T. Milligan
2381 Rosecrans Avenue, Suite 328
Manhattan Beach, CA 90245
Telephone: (877) 500-8780
Facsimile: (877) 500-8781
caleb.marker@zimmreed.com
flinn.milligan@zimmreed.com

17 Hart L. Robinovitch (MN Lic. #240515)
18 **ZIMMERMAN REED LLP**
14646 N. Kierland Blvd., Suite 145
Scottsdale, AZ 85254
Telephone: (480) 348-6415
Facsimile: (480) 348-6415
hart.robinovitch@zimmreed.com

21 Alyssa J. Leary (MN Lic. #397552)
22 **ZIMMERMAN REED LLP**
1100 IDS Center, 80 S. 8th St.
Minneapolis, MN 55402
Telephone: (612) 341-0400
Facsimile: (612) 341-0844
alyssa.leary@zimmreed.com

25 Melissa S. Weiner, (MN Lic. #0387900)
26 Joseph C. Bourne (CA Lic. #308196)
27 **PEARSON, SIMON & WARSHAW, LLP**
800 LaSalle Avenue, Suite 2150
Minneapolis, MN 55402
Telephone: (612) 389-0600
Facsimile: (612) 389-0610

05/04/2020

mweiner@pswlaw.com
jbourne@pswlaw.com

Attorneys for Plaintiff

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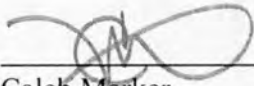
AFFIDAVIT REGARDING VENUE

I, Caleb Marker, declare as follows:

1. I represent the Plaintiff in this action. I am admitted to practice law in California and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Based on my research and personal knowledge, Defendants do business, market, and sell Nutrish Zero Grain dog food throughout the State of California and Los Angeles County as alleged in this Complaint.

3. I declare under penalty of perjury on this 29th day of April, 2020 in Los Angeles, California that the foregoing is true and correct.


Caleb Marker