

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

LOUISE GOETZ, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

RAY MARKS CO. LLC and AINSWORTH
PET NUTRITION, LLC,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Louise Goetz (“Plaintiff”) brings this action on behalf of herself and all others similarly situated against Defendants Ray Marks Co. LLC (“Ray Marks”) and Ainsworth Pet Nutrition, LLC (“Ainsworth”) (collectively, “Defendants”). Plaintiff makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to the allegations specifically pertaining to the Plaintiff herself, which are based on personal knowledge.

NATURE OF THE ACTION

1. Defendants formulate, manufacture, advertise, and/or sell multiple types of wet and dry pet food throughout the United States, including in New York. Defendants market their Products in a systematically misleading manner by misrepresenting that many of its products are “natural” (the “Products”).

2. Defendants clearly claim the Products are “natural” on the Products’ label, capitalizing on the preference of health-conscious pet owners to purchase pet food that is free from synthetic ingredients. However, Defendants’ Products contain multiple synthetic ingredients.

3. Defendants’ Products that contain these false representations include but are not

limited to the following Products:

- Nutrish Real Chicken & Veggies recipe Dry Dog Food
- Nutrish Real Beef, Pea & Brown Rice Recipe Dry Dog Food
- Nutrish Bright Puppy Real Chicken & Brown Rice Recipe Dry Dog Food
- Nutrish Little Bites Real Chicken & Veggies Recipe Dry Dog Food
- Nutrish Big Life Hearty Beef, Veggies & Brown Rice Recipe Dry Dog Food
- Nutrish Big Life Savory Chicken, Veggies & Barley Recipe Dry Dog Food
- Nutrish Peak Protein Open Prairie Recipe with Beef, Venison & Lamb Dry Dog Food
- Nutrish Real Salmon, Veggies & Brown Rice Recipe Dry Dog Food
- Nutrish Real Turkey, Brown Rice & Venison Recipe Dry Dog Food
- Nutrish Zero Grain Chicken & Sweet Potato Recipe Dry Dog Food
- Nutrish Zero Grain Salmon & Sweet Potato Recipe Dry Dog Food
- Nutrish Limited Ingredient Lamb Meal & Brown Rice Recipe Dry Dog Food
- Nutrish Dish Beef & Brown Rice Recipe with Veggie & Fruit Blend Dry Dog Food
- Nutrish Dish Chicken & Brown Rice Recipe with Veggie & Fruit Blend Dry Dog Food
- Nutrish Real Beef & Pumpkin Recipe Wet Dog Food
- Nutrish Real Chicken & Apple Recipe Wet Dog Food
- Nutrish Gentle Digestion Real Chicken, Pumpkin & Salmon Recipe Wet Dog Food
- Nutrish Weight Management Real Turkey & Pumpkin Recipe Wet Dog Food
- Nutrish Zero Grain Real Chicken & Apple Recipe Wet Dog Food
- Nutrish Premium Paté Variety Pack Wet Dog Food – Real Chicken, Pumpkin & Salmon, Real Chicken & Apple, Real Beef & Pumpkin
- Nutrish Premium Paté Variety Pack Wet Dog Food – Real Chicken & Apple, Real Beef & Pumpkin
- Nutrish Premium Paté Variety Pack Wet Dog Food – Real Chicken & Apple, Weight Management Real Turkey & Pumpkin
- Nutrish Gentle Digestion Variety Pack Wet Dog Food
- Nutrish Chunks In Gravy Real Beef & Veggies Recipe Wet Dog Food
- Nutrish Chunks In Gravy Real Chicken & Veggies Recipe Wet Dog Food
- Nutrish Chunks In Gravy Gentle Digestion Real Lamb, Pumpkin & Chicken Recipe Wet Dog Food
- Nutrish Chunks In Gravy Variety Pack Wet Dog Food
- Nutrish Chunks In Gravy Real Turkey, Brown Rice, Peas & Carrots Recipe Wet Dog Food
- Nutrish Peak Protein Adventure Pack Wet Dog Food
- Nutrish Chicken Paw Pie Wet Dog Food
- Nutrish Beef Stroganwoof Wet Dog Food
- Nutrish Chicken Muttballs Wet Dog Food
- Nutrish Hearty Recipes Variety Pack Wet Dog Food
- Nutrish Hearty Beef Stew Wet Dog Food
- Nutrish Savory Lamb Stew Wet Dog Food
- Nutrish Savory Favorites Variety Pack Wet Dog Food
- Nutrish Indoor Complete Chicken, Lentils & Salmon Recipe Dry Cat Food

- Nutrish Real Chicken & Brown Rice Recipe Dry Cat Food
- Nutrish Real Salmon & Brown Rice Recipe Dry Cat Food
- Nutrish Inner Health Turkey, Chickpeas & Salmon Recipe Dry Cat Food
- Nutrish Longevity Chicken, Chickpea & Salmon Recipe Dry Cat Food
- Nutrish Savory Bites Yummy Chicken & Veggies Recipe Dry Cat Food
- Nutrish Savory Bites Tasty Salmon & Veggies Recipe Dry Cat Food
- Nutrish Grain Free Chicken Purrcata Wet Cat Food
- Nutrish Grain Free Chicken & Liver Recipe Wet Cat Food
- Nutrish Grain Free Ocean Fish & Chicken Catch-iatore Wet Cat Food
- Nutrish Grain Free Chicken Lover’s Variety Pack Wet Cat Food
- Nutrish Grain Free Ocean Fish-a-licious Wet Cat Food
- Nutrish Grain Free Chicken & Shrimp Pawttenesca Wet Cat Food
- Nutrish Grain Free Tuna Purrfecation Wet Cat Food
- Nutrish Grain Free Ocean Lover’s Variety Pack Wet Cat Food
- Nutrish Purrfect Entrees Grain Free Sea-Sational Florentine Wet Cat Food
- Nutrish Purrfect Entrees Grain Free Cravin’ Chicken Dinner Wet Cat Food
- Nutrish Purrfect Entrees Grain Free Fin-Tastic Primavera Wet Cat Food
- Nutrish Purrfect Entrées Grain Free Variety Pack Wet Cat Food

4. As a result of its deceptive conduct, Defendants violate state consumer protection statutes and have been unjustly enriched at the expense of consumers.

5. Plaintiff purchased Defendants’ Products and, on behalf of herself and similarly situated purchasers, assert claims for violations of New York General Business Law §§ 349 and 350, and for breach of express warranty.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(d)(2)(a) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00 exclusive of interest and costs, there are over 100 members of the putative class, and at least one class member is a citizen of a state different than Defendant.

7. This Court has personal jurisdiction over Defendants because a substantial portion of the events that gave rise to Plaintiff’s claims occurred in New York.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial portion of the events that gave rise to Plaintiff's claims occurred in this District. Additionally, Defendant Ray Marks Co. LLC maintains its principle place of business in this District and is incorporated in New York.

PARTIES

9. Plaintiff Louise Goetz is a citizen of New York who resides in Greenville, New York. Ms. Goetz has purchased the Products for personal use at various times during the applicable statute of limitations. Most recently, in or around November 2022, Ms. Goetz purchased the Product from Amazon.com, which shipped the Product to her home in Greenville, New York. In purchasing the Product, Ms. Goetz relied on Defendants' false, misleading, and deceptive marketing of the Product as "natural." Ms. Goetz understood that "natural" meant that the Product did not contain any synthetic ingredients, but in fact, the Product she purchased did contain multiple synthetic ingredients, including but not limited to: citric acid, glycerin, zinc sulfate, copper sulfate, pyridoxine hydrochloride, thiamine mononitrate, and menadione sodium bisulfate complex. Had Ms. Goetz known that Defendants' "natural" representation was false and misleading, she would not have purchased the Product or would have only been willing to purchase the Product at a lesser price.

10. Defendant Ainsworth Pet Nutrition, LLC is a Delaware corporation with its principal place of business in Meadville, Pennsylvania.

11. Defendant Ray Marks Co. LLC is a New York Corporation with its headquarters in New York, New York.

12. Defendants advertise, market, manufacture, distribute, and sell the Products throughout the United States, including in the State of New York. Defendants manufactured, marketed, and sold the Products during the Class Period.

GENERAL ALLEGATIONS

13. Defendants' labeling on the Products states that the Products are "natural."



14. The Products are sold in a variety of outlets, including Chewy.com, Amazon.com, Bjs.com, and various other supermarkets and grocery stores.

15. Defendants' labeling and advertising puts forth a straightforward, material message: the Products contain only ingredients that are natural. Reasonable consumers would understand Defendants' labeling to mean that the Products contain only natural ingredients, and not any synthetic substances.

16. Although Defendants include "With Added Vitamins, Minerals & Taurine," to its labeling, an ordinary person would understand Defendants' claim to mean that the added vitamins, minerals and/or taurine are natural as well. Because the labeling claim does not specify that the added vitamins and minerals are synthetic, a reasonable consumer would expect that the added vitamins, minerals and/or taurine are natural as well. Regardless, some of the synthetic ingredients in the Products are not vitamins or minerals (such as glycerin and xanthan gum,) and so this phrase does nothing to detract from the falsity of Defendants' misrepresentations.

17. Defendants make natural claims in an effort to capitalize on the growing market for natural products. Health-conscious pet owners are willing to pay a price premium for products labeled and advertised as natural, believing Defendants' misrepresentations that the Products are natural and, accordingly, better and safer for their pet friends to consume than other non-natural products.

18. But the Products cannot be considered "natural" because they contain synthetic ingredients. Specifically, Defendants' Products contain the following non-exhaustive list of synthetic ingredients:

(a) *Zinc sulfate*. Zinc sulfate, according to the FDA, is a synthetic substance. 7 C.F.R.

§ 205.603(b)(11).

- (b) **Copper sulfate.** Copper sulfate is a toxic, inorganic compound “that has been registered for use in pesticide products in the United States since 1956.” 7 C.F.R. § 205.603(b)(1).¹ The copper sulfate used in Defendants’ Products is not “natural” but instead is manufactured by adding copper to sulfate.
- (c) **D-calcium pantothenate.** D-calcium pantothenate, also known as calcium pantothenate, is a salt derived from the pantothenic acid and “is prepared synthetically from isobutyraldehyde and formaldehyde via 1,1-dimethyl-2-hydroxy-propionaldehyde and pantolactone.” 21 C.F.R. § 184.1212(a).
- (d) **Thiamine mononitrate.** Thiamine mononitrate is a synthetic stable nitrate salt that is chemically and structurally different from natural thiamine, and the changes required to transform thiamine to thiamine mononitrate do not result from a natural process.
- (e) **Pyridoxine hydrochloride.** Pyridoxine hydrochloride is synthetically created by treating pyridoxine with hydrochloride acid to form a salt compound.
- (f) **Citric acid.** Citric acid contained in the Products is commercially manufactured and the result of extensive chemical processing.² More than 90 percent of commercially produced citric acid, including the citric acid contained in the Products is manufactured through a processed derivative of black mold, *Aspergillus niger*.³
- (g) **Glycerin.** Glycerin is an emollient that, according to the FDA, is a synthetic substance. 7 C.F.R. § 205.603(a)(14). The glycerin in Defendants’ Products is not

¹ National Pesticide Information Center <http://npic.orst.edu/factsheets/cuso4gen.html> (last accessed June 13, 2024).

² A. Hesham, Y. Mostafa & L. Al-Sharqi, *Optimization of Citric Acid Production by Immobilized Cells of Novel Yeast isolates*, 48 MYCOBIOLOGY 122, 123 (2020).

³ *Id.*

“natural” but instead, is manufactured through saponification, whereby fat molecules in vegetable oil are chemically altered using sodium hydroxide, a highly toxic chemical.

- (h) ***Dicalcium phosphate.*** Dicalcium phosphate, also known as dibasic calcium phosphate, is a synthetic substance according to FDA regulations. 7 C.F.R. § 205.605(b)(9). As a synthetic source of calcium and phosphorus, dicalcium phosphate is commonly obtained by “processing rock phosphates into phosphoric acid, which is then reacted with calcium carbonate.”⁴
- (i) ***Tricalcium phosphate.*** Tricalcium phosphate, also known as tribasic calcium phosphate, is a synthetic substance according to FDA regulations. 7 C.F.R. § 205.605(b)(9). It is commonly known as calcium phosphate and is also used as an anti-caking agent.
- (j) ***Xanthan Gum.*** Xanthan gum is a thickening agent that, according to FDA regulations, is a synthetic substance. 7 C.F.R. § 205.605(b)(37). Xanthan gum is not “natural” but instead manufactured through fermentation of carbohydrates and subsequent treatment of the byproduct with isopropyl alcohol.
- (k) ***Menadione sodium bisulfate complex.*** This is also known as vitamin K3, the synthetic analogue of vitamin K.

19. No product labeled “natural” should contain any of these ingredients. And yet, the Products contain most, if not all of them:

⁴ Dep’t of Animal & Food Sciences, UNIV. OF KENTUCKY, <https://afs.ca.uky.edu/livestock/feedstuff-equipment/feedstuffs/dicalcium-phosphate> (last accessed June 17, 2024).

Product Name	Ingredients
Nutrish Real Chicken & Veggies Recipe Dry Dog Food	Dicalcium Phosphate Thiamine Mononitrate D-Calcium Pantothenate Pyridoxine Hydrochloride Zinc Sulfate Copper Sulfate Citric Acid
Nutrish Real Beef, Pea & Brown Rice Recipe Dry Dog Food	Thiamine Mononitrate D-Calcium Pantothenate Pyridoxine Hydrochloride Zinc Sulfate Copper Sulfate Citric Acid
Nutrish Bright Puppy Real Chicken & Brown Rice Recipe Dry Dog Food	Dicalcium Phosphate Thiamine Mononitrate D-Calcium Pantothenate Pyridoxine Hydrochloride Zinc Sulfate Copper Sulfate Citric Acid
Nutrish Little Bites Real Chicken & Veggies Recipe Dry Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium Phosphate Citric Acid
Nutrish Big Life Hearty Beef, Veggies & Brown Rice Recipe Dry Dog Food	Zinc Sulfate Copper Sulfate Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium Phosphate Glycerin D-Calcium Pantothenate Citric Acid
Nutrish Big Life Savory Chicken, Veggies & Barley Recipe Dry Dog Food	Zinc Sulfate Copper Sulfate Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium Phosphate Glycerin D-Calcium Pantothenate Citric Acid

Nutrish Peak Protein Open Prairie Recipe With Beef, Venison & Lamb Dry Dog Food	Zinc Sulfate Copper Sulfate Thiamine Mononitrate Pyridoxine Hydrochloride D-Calcium Pantothenate Citric Acid
Nutrish Real Salmon, Veggies & Brown Rice Recipe Dry Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium phosphate Citric Acid
Nutrish Real Turkey, Brown Rice & Venison Recipe Dry Dog Food	Zinc Sulfate Copper Sulfate D-calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium phosphate Citric Acid
Nutrish Zero Grain Chicken & Sweet Potato Recipe Dry Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Citric Acid
Nutrish Zero Grain Salmon & Sweet Potato Recipe Dry Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Citric Acid
Nutrish Limited Ingredient Lamb Meal & Brown Rice Recipe Dry Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Citric Acid

Nutrish Dish Beef & Brown Rice Recipe With Veggie & Fruit Blend Dry Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium Phosphate Glycerin Citric Acid
Nutrish Dish Chicken & Brown Rice Recipe With Veggie & Fruit Blend Dry Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium phosphate Glycerin Citric Acid
Nutrish Real Beef & Pumpkin Recipe Wet Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride
Nutrish Real Chicken & Apple Recipe Wet Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride
Nutrish Gentle Digestion Real Chicken, Pumpkin & Salmon Recipe Wet Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride
Nutrish Weight Management Real Turkey & Pumpkin Recipe Wet Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride
Nutrish Zero Grain Real Chicken & Apple Recipe Wet Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride
Nutrish Premium Paté Variety Pack Wet Dog Food – Real Chicken, Pumpkin & Salmon, Real Chicken & Apple, Real Beef & Pumpkin	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride

Nutrish Premium Paté Variety Pack Wet Dog Food – Real Chicken & Apple, Real Beef & Pumpkin	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride
Nutrish Premium Paté Variety Pack Wet Dog Food – Real Chicken & Apple, Weight Management Real Turkey & Pumpkin	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride
Nutrish Gentle Digestion Variety Pack Wet Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride
Nutrish Chunks In Gravy Real Beef & Veggies Recipe Wet Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride
Nutrish Chunks In Gravy Real Chicken & Veggies Recipe Wet Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride
Nutrish Chunks In Gravy Gentle Digestion Real Lamb, Pumpkin & Chicken Recipe Wet Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride
Nutrish Chunks In Gravy Variety Pack Wet Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride
Nutrish Chunks In Gravy Real Turkey, Brown Rice, Peas & Carrots Recipe Wet Dog Food	Zinc Sulfate Copper Sulfate D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride
Nutrish Peak Protein Adventure Pack Wet Dog Food	Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium Phosphate Menadione Sodium Bisulfite Complex

Nutrish Chicken Paw Pie Wet Dog Food	Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium Phosphate Menadione Sodium Bisulfite Complex
Nutrish Beef Stroganwoof Wet Dog Food	Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium Phosphate Menadione Sodium Bisulfite Complex
Nutrish Chicken Muttballs Wet Dog Food	Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium Phosphate Menadione Sodium Bisulfite Complex
Nutrish Hearty Recipes Variety Pack Wet Dog Food	Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium Phosphate Menadione Sodium Bisulfite Complex
Nutrish Hearty Beef Stew Wet Dog Food	Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium Phosphate Menadione Sodium Bisulfite Complex
Nutrish Savory Lamb Stew Wet Dog Food	Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium Phosphate Menadione Sodium Bisulfite Complex
Nutrish Savory Favorites Variety Pack Wet Dog Food	Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium Phosphate Menadione Sodium Bisulfite Complex
Nutrish Indoor Complete Chicken, Lentils & Salmon Recipe Dry Cat Food	D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium Phosphate Zinc Sulfate Copper Sulfate Citric Acid

Nutrish Real Chicken & Brown Rice Recipe Dry Cat Food	D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium phosphate Copper Sulfate Zinc Sulfate Citric Acid
Nutrish Real Salmon & Brown Rice Recipe Dry Cat Food	D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Zinc Sulfate Copper Sulfate Citric Acid Menadione Sodium Bisulfite Complex
Nutrish Inner Health Turkey, Chickpeas & Salmon Recipe Dry Cat Food	D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium Phosphate Zinc Sulfate Copper Sulfate Citric Acid
Nutrish Longevity Chicken, Chickpea & Salmon Recipe Dry Cat Food	D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Dicalcium Phosphate Zinc Sulfate Copper Sulfate Citric Acid
Nutrish Savory Bites Yummy Chicken & Veggies Recipe Dry Cat Food	D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Zinc Sulfate Copper Sulfate
Nutrish Savory Bites Tasty Salmon & Veggies Recipe Dry Cat Food	D-Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Zinc Sulfate Copper Sulfate Menadione Sodium Bisulfite Complex
Nutrish Grain Free Chicken Purrcata Wet Cat Food	Xanthan Gum Thiamine Mononitrate Pyridoxine Hydrochloride Tricalcium Phosphate Menadione Sodium Bisulfite Complex

Nutrish Grain Free Chicken & Liver Recipe Wet Cat Food	Xanthan Gum Thiamine Mononitrate Pyridoxine Hydrochloride Tricalcium Phosphate Menadione Sodium Bisulfite Complex
Nutrish Grain Free Ocean Fish & Chicken Catch-iatore Wet Cat Food	Xanthan Gum Thiamine Mononitrate Pyridoxine Hydrochloride Tricalcium Phosphate Menadione Sodium Bisulfite Complex
Nutrish Grain Free Chicken Lover's Variety Pack Wet Cat Food	Xanthan Gum Thiamine Mononitrate Pyridoxine Hydrochloride Tricalcium Phosphate Menadione Sodium Bisulfite Complex
Nutrish Grain Free Ocean Fish-a-licious Wet Cat Food	Xanthan Gum Thiamine Mononitrate Pyridoxine Hydrochloride Tricalcium Phosphate Menadione Sodium Bisulfite Complex
Nutrish Grain Free Chicken & Shrimp Pawttenesca Wet Cat Food	Xanthan Gum Thiamine Mononitrate Pyridoxine Hydrochloride Tricalcium Phosphate Menadione Sodium Bisulfite Complex
Nutrish Grain Free Tuna Purrfection Wet Cat Food	Xanthan Gum Thiamine Mononitrate Pyridoxine Hydrochloride Tricalcium Phosphate Menadione Sodium Bisulfite Complex
Nutrish Grain Free Ocean Lover's Variety Pack Wet Cat Food	Xanthan Gum Thiamine Mononitrate Pyridoxine Hydrochloride Tricalcium Phosphate Menadione Sodium Bisulfite Complex
Nutrish Purrfect Entrees Grain Free Sea-Sational Florentine Wet Cat Food	Dicalcium Phosphate Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Xanthan Gum Menadione Sodium Bisulfite Complex

Nutrish Purrfect Entrees Grain Free Cravin' Chicken Dinner Wet Cat Food	Dicalcium Phosphate Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Xanthan Gum Menadione Sodium Bisulfite Complex
Nutrish Purrfect Entrees Grain Free Fin-Tastic Primavera Wet Cat Food	Dicalcium Phosphate Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Xanthan Gum Menadione Sodium Bisulfite Complex
Nutrish Purrfect Entrées Grain Free Variety Pack Wet Cat Food	Dicalcium Phosphate Calcium Pantothenate Thiamine Mononitrate Pyridoxine Hydrochloride Xanthan Gum Menadione Sodium Bisulfite Complex

20. Defendants have profited enormously from their false and misleading representation that their Products contain only natural products. The purpose of this action is to require Defendants to change their labeling claims and to provide consumers with monetary relief for their deceptive and misleading product claims.

CLASS ACTION ALLEGATIONS

21. Plaintiff seeks to represent a class defined as all persons in the United States who, during the maximum period of time permitted by law, purchased Defendants' Products for personal, family or household consumption, and not for resale (the "Nationwide Class").

22. Plaintiff also seeks to represent a subclass defined as all Class members who purchased the Products in New York (the "New York Subclass") (collectively with the Nationwide Class, the "Classes").

23. **Numerosity Fed. R. Civ. P. 23(a)(1).** Members of the Classes are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class number in the millions. The precise number of Class members and their identities are

unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendants and third-party retailers and vendors.

24. Commonality and Predominance (Fed. R. Civ. P. 23(a)(2) and 23(b)(3)).

There is a well-defined community of interest in the questions of law and fact involved in this case. Common questions of law and fact that exist as to all Class members and predominate over questions affecting only individual Class members include, but are not limited to:

- (a) the true nature and presence of synthetic ingredients in the Products;
- (b) whether Defendants' marketing, advertising, packaging, labeling, and other promotional materials for the Products are deceptive and misleading;
- (c) whether the Plaintiff and members of the Classes have suffered damages as a result of Defendants' actions, and the amount thereof;
- (d) whether Defendants have been unjustly enriched as a result of the unlawful, fraudulent, and unfair conduct alleged in this Complaint such that it would be inequitable for Defendants to retain the benefits conferred upon Ray Marks and Ainsworth by Plaintiff and the Classes; and
- (e) whether Plaintiff and members of the Classes are entitled to attorneys' fees and costs.

25. Typicality (Fed. R. Civ. P. 23(a)(3)). The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff was exposed to Defendants' false and misleading marketing, purchased Defendants' Products, and suffered a loss as a result of those purchases.

26. Adequacy (Fed. R. Civ. P. 23(a)(4)). Plaintiff is an adequate representative of the Classes because her interests do not conflict with the interests of the Class members she seeks to represent, she has retained competent counsel experienced in prosecuting class actions, and she intends to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and her counsel.

27. **Superiority (Fed. R. Civ. P. 23(b)(3)).** The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class members. Even if every member of the Classes could afford to pursue individual litigation, the court system could not. Individualized litigation would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also increase the delay and expense to all parties and would present the potential for varying, inconsistent, or contradictory judgments—magnifying the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. In contrast, the maintenance of this action as a class action, with respect to some or all of the issues presented herein, presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants’ liability. Class treatment of the liability issues would ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues. Plaintiff anticipates no difficulty in the management of this action as a class action.

CAUSES OF ACTION
COUNT I

Violation of the New York General Business Law § 349
(On behalf of the New York Subclass)

28. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

29. Plaintiff brings this cause of action on behalf of herself and members of the New York Subclass against Defendants.

30. Plaintiff and New York Subclass members are “persons” within the meaning of the GBL § 349(h).

31. Defendants are a “person, firm, corporation or association or agent or employee

thereof” within the meaning of GBL § 349(b).

32. Under GBL § 349, “[d]eceptive acts or practices in the conduct of any business, trade or commerce are unlawful.”

33. Defendants made false and misleading statements by marketing the Products as “natural” when the Products in fact contained synthetic ingredients.

34. In doing so, Defendants engaged in deceptive acts or practices in violation of GBL § 349.

35. Defendants’ deceptive acts or practices were materially misleading. Defendants’ conduct was likely to and did deceive reasonable consumers, including Plaintiff, about the quality of its Products, as discussed throughout.

36. Plaintiff and New York Subclass members were unaware of, and lacked a reasonable means of discovering, the material facts that Defendants withheld.

37. Defendants’ actions set forth above occurred in the conduct of trade or commerce.

38. The foregoing deceptive acts and practices were directed at consumers.

39. Defendants’ misleading conduct concerns widely purchased consumer products and affects the public interest. Defendants’ conduct includes unfair and misleading acts or practices that have the capacity to deceive consumers and are harmful to the public at large. Defendants’ conduct is misleading in a material way because they fundamentally misrepresent the production and quality of the Products.

40. Plaintiff and New York Subclass members suffered ascertainable loss as a direct and proximate result of Defendants’ GBL violations in that: (i) they would not have purchased the Products had they known the truth; and (ii) they overpaid for the Products on account of the misrepresentations and omissions, as described herein. As a result, Plaintiff and New York

Subclass members have been damaged either in the full amount of the purchase price of the Products or in the difference in value between the Products as warranted (completely “natural”) and the Products as actually sold (containing one or more synthetic ingredients).

41. On behalf of herself and other members of the New York Subclass, Plaintiff seeks to enjoin Defendants’ unlawful acts and practices described herein, to recover actual damages or \$50, whichever is greater, reasonable attorney’s fees and costs, and any other just and proper relief available under GBL § 349.

COUNT II

Violation of the New York General Business Law § 350 (On behalf of the New York Subclass)

42. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

43. Plaintiff brings this cause of action on behalf of herself and members of the New York Subclass against Defendants.

44. GBL § 350 provides that “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.”

45. Defendants’ labeling and advertisement of the Products was false and misleading in a material way. Specifically, Defendants advertised the Products as “natural” when in fact the Products contain synthetic ingredients.

46. Plaintiff understood Defendants’ misrepresentations to mean that the Products in fact were “natural” and contained no synthetic ingredients as reasonable consumers understand the term.

47. This misrepresentation was consumer-oriented and was likely to mislead a reasonable consumer acting reasonably under the circumstances.

48. This misrepresentation has resulted in consumer injury or harm to the public interest.

49. As a result of this misrepresentation, Plaintiff and New York Subclass members have suffered economic injury because: (i) they would not have purchased the Product had they known the truth; and (ii) they overpaid for the Products on account of the misrepresentations and omissions, as described herein. As a result, Plaintiff and New York Subclass members have been damaged either in the full amount of the purchase price of the Products or in the difference in value between the Products as warranted (completely “natural”) and the Products as actually sold (containing one or more synthetic ingredients).

50. By reason of the foregoing and as a result of Defendants’ conduct, Plaintiff and New York Subclass members seek to enjoin the unlawful acts and practices described herein, to recover their actual damages or five hundred dollars, whichever is greater, three times actual damages, reasonable attorneys’ fees and costs, and any other just and proper relief available under GBL § 350.

COUNT III

Breach of Express Warranty (On behalf of the Nationwide Class and the New York Subclass)

51. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

52. Plaintiff brings this claim individually and on behalf of the members of the Classes against Defendants.

53. Defendants, as the producers, marketers, distributors, and/or sellers, expressly warranted that the Products have only “natural” ingredients.

54. Defendants’ representations and warranties were part of the description of the

goods and the bargain upon which the Products were offered for sale and purchased by Plaintiff and members of the Classes.

55. However, the Products do not conform to Defendants' representations and warranties because the Products contain multiple synthetic ingredients. By falsely representing the Products in this way, Defendants breached express warranties.

56. As a direct and proximate cause of Defendants' breach of express warranty, Plaintiff and members of the Classes have been injured and harmed in an amount to be proven at trial. Had Plaintiff and members of the Classes known the Products were not in fact "natural," they would not have purchased the Products, or would have paid substantially less for them.

57. Prior to filing this action, Defendants were served via certified mail with a pre-suit notice letter on behalf of the Plaintiff that complied in all respects with U.C.C. §§ 2-313 and 2-607.

PRAYER FOR RELIEF

WHEREFORE Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendants, as follows:

- (a) For an order certifying the Nationwide Class and the New York Subclass under Rule 23 of the Federal Rules of Civil Procedure, naming Plaintiff as representative of the Nationwide Class and the New York Subclass, and naming Plaintiff's attorneys as Class Counsel to represent the Nationwide Class and New York Subclass;
- (b) For an order finding in favor of Plaintiff and the Classes on all counts asserted herein;
- (c) For an order finding in favor of Plaintiff, the Nationwide Class, and the New York Subclass on all counts asserted herein;
- (d) For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;
- (e) For prejudgment interest on all amounts awarded;

- (f) For an order of restitution and all other forms of equitable monetary relief;
- (g) For an order enjoining Defendants from continuing the illegal practices detailed herein and compelling Defendants to undertake a corrective advertising campaign; and
- (h) For an order awarding Plaintiff and the Classes their reasonable attorneys' fees and expenses and costs of suit.

DEMAND FOR TRIAL BY JURY

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any and all issues in this action so triable as of right.

Dated: June 24, 2024

BURSOR & FISHER, P.A.

By: /s/ Joshua D. Arisohn
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