

NICOLE and GUY MAEL, on behalf of  
themselves and all others similarly situated,

V.

Defendants.

## COMPLAINT – CLASS ACTION

## JURY TRIAL DEMANDED

1 Plaintiffs Nicole and Guy Mael (“Plaintiffs”), by and through their  
2 undersigned attorneys, bring this action on behalf of themselves and all others  
3 similarly situated, and the general public, based upon personal knowledge as to  
4 themselves and their activities, and on information and belief as to all other matters,  
5 against Defendants, Evanger’s Dog and Cat Food Co. and Nutripack, LLC  
6 (“Nutripack”) (collectively referred to as “Evanger’s” or “Defendantss”). Evanger’s  
7 produces high-end pet foods that are specifically marketed to label-conscious  
8 consumers but that, contrary to their labels, contain harmful ingredients that caused  
9 several of Plaintiffs’ pets to become sick and caused one to die.

#### 10 **JURISDICTION AND VENUE**

11 1. Diversity subject matter jurisdiction exists over this class action  
12 pursuant to the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4  
13 (2005), amending 28 U.S.C. § 1332, at new subsection (d), conferring federal  
14 jurisdiction over class actions involving: (a) 100 or more members in the proposed  
15 class; (b) where at least some members of the proposed class have different  
16 citizenship from Defendants; and (c) where the claims of the proposed class  
17 members exceed the sum or value of five million dollars (\$5,000,000) in the  
18 aggregate. 28 U.S.C. §§ 1332(d)(2) and (6).

19 2. This District Court also has jurisdiction under 28 U.S. Code § 1331  
20 because the action arises out of a federal law of the United States, 15 U.S.C. § 2301,  
21 *et seq.*

22 3. While the exact number of members in each of the proposed classes is  
23 unknown at this time, Plaintiffs have reason to believe that thousands of consumers  
24 purchased Defendants’ pet food throughout the United States, including in  
25 Washington, during the relevant period. The number of class members could be  
26 discerned from the records maintained by Defendants.

1           4.     While the exact damages to Plaintiffs and the members of the classes  
2 are unknown at this time, Plaintiffs reasonably believe that their claims exceed five  
3 million dollars (\$5,000,000) in the aggregate.

4           5.     Jurisdiction is also proper pursuant to 28 U.S.C. § 1367, which  
5 provides, in relevant part, that: (a) “in any action of which the district courts have  
6 original jurisdiction, the district courts shall have supplemental jurisdiction over all  
7 other claims that are so related to claims in the action within such original  
8 jurisdiction that they form part of the same case or controversy under Article III of  
9 the United States Constitution . . . includ[ing] claims that involve the joinder . . . of  
10 additional parties.”

11          6.     This Court has personal jurisdiction over Defendants because it has  
12 purposefully availed itself of the privilege of conducting business in the State of  
13 Washington by selling its products to persons in Washington online and through  
14 retailers, and a substantial number of the events giving rise to the claims alleged  
15 herein took place in this District.

16          7.     Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because  
17 many of the acts and transactions giving rise to this action occurred in this District  
18 and because Defendants:

- 19               a.     has intentionally availed itself of the laws and markets within this  
20                       District through the promotion, marketing, distribution and sale  
21                       of their products in this District;  
22               b.     does substantial business in this District, including selling its  
23                       products in this District; and  
24               c.     is subject to personal jurisdiction in this District.

25          8.     Venue is proper in this Court as to the Plaintiffs and claims under the  
26 doctrine of pendant venue.

## **NATURE OF THE ACTION**

9. Plaintiffs bring this class action to obtain damages and equitable relief for themselves and all others similarly situated, both in Washington and nationwide, who purchased Defendants' Pet Foods<sup>1</sup>, which were advertised as premium, "100% beef," and "human grade, USDA inspected meat," but instead were composed of low quality, non-human grade ingredients and were produced at an unsanitary, non-USDA facility. Many of the Pet Foods were unsafe, adulterated meats, not from animals that were identified on the labels, and contained *pentobarbital, a barbiturate used in the euthanizing of animals, the execution of humans and in physician-assisted deaths* Plaintiffs' use of these products led to the sickness of several of Plaintiffs' pets, and the death of one.

10. Defendant Evanger's produces dog and cat food products in the United States that it sells online, and through a network of distributors to retailers. Evanger's Pet Foods are aimed specifically at customers, like Plaintiffs, who want premium, safe and healthy meals for their pets, and are willing to pay a hefty price for them compared to other brands.

11. Evanger's touts its "premium," "human grade," "USDA inspected meats" that are "100% natural, raw meats" and do not contain "soy, corn, wheat, artificial ingredients, preservatives, harmful additives or by-products" to customers. It claims to be a "5-star" rated Pet Food.

12. Evanger's has one of the few canneries in the country for pet foods, and produces and packages both its own brand-named products as well as its Against the Grain brand products. Evanger's also produces and packages pet foods for other companies' brands, including Party Animal Pet Foods ("Party Animal").

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<sup>1</sup> As used herein, the term "Pet Foods" refers collectively to Evanger's brand-named products and its Against the Grain brand pet foods.



1           13. Evanger's Against the Grain brand, produced at its manufacturing  
2 facility, also targets customers, like Plaintiffs, who seek to purchase products with  
3 high quality ingredients for their pets and are willing to pay a premium price  
4 compared to other brands. Against the Grain states that it uses "safe," "human  
5 grade," "highest quality," "fresh" ingredients. It also boasts that its products  
6 are gluten-free and grain-free "sourced from human grade facilities" and composed  
7 of 100% specific meat.

8           14. On December 31, 2016, relying on Defendants' representations about the  
9 Pet Foods, Plaintiffs purchased Evanger's Hunk of Beef Au Jus ("Hunk of Beef")  
10 and Against the Grain's Grain Free Pulled Beef with Gravy canned dog food  
11 ("Pulled Beef") for their five dogs. Immediately, after consuming the Hunk of Beef  
12 all of the dogs became ill - acting listless and non-responsive. Plaintiffs rushed them  
13 to an emergency veterinarian. The next day, one of Plaintiffs' dogs, Talula, died after  
14 being poisoned by the Hunk of Beef. As a result of consuming the Pet Foods,  
15 Plaintiffs' four other dogs have had to undergo ongoing veterinarian treatments and  
16 monitoring, including Tito, who is now being treated for seizures.

17           15. After Talula's death, the Federal Food and Drug Administration (the  
18 "FDA"), began working with Plaintiffs and the retailer who had sold the Pet Foods  
19 to Plaintiffs, and arranged for a necropsy and toxicology testing to be performed on  
20 Talula's body and the Pet Foods. The FDA conducted the testing and found a large  
21 amount of pentobarbital in the animal's stomach and in the undigested Pet Food. The  
22 FDA then directed testing of the remaining Hunk of Beef product and the unopened  
23 Hunk of Beef and Pulled Beef products purchased by Plaintiffs. The testing further  
24 confirmed the contamination of pentobarbital in the Pet Foods.

25           16. The FDA determined that Evanger's meat supplier, with which it had a  
26 forty year relationship, had in fact provided a label on its meat informing Evanger's  
27 that the meat was "**Inedible** Hand Deboned Beef" "For Pet Food Use Only. **Not Fit**  
28

1 *for Human Consumption.*” The FDA also found that *none* of Evanger’s beef  
2 suppliers are inspected by the United States Department of Agriculture Food Safety  
3 and Inspection Services (“USDA-FSIS”), and that *none* of its meat was human  
4 grade. The FDA also noted unsanitary conditions at Evanger’s manufacturing  
5 facilities at both its Wheeling, Illinois and Markham, Illinois locations that further  
6 contaminated its Pet Foods. The FDA and Evanger’s own testing also found trace  
7 amounts of pork and horse in its products that were labeled as “100% beef.”

8 17. Under the Federal Food, Drug, and Cosmetic Act (“FDCA”), the FDA is  
9 primarily responsible for making sure that food for both people and animals is safe,  
10 properly manufactured, and properly labeled. The FDCA, 21 U.S.C. § 342(a)(1),  
11 prohibits foods that are adulterated due to poisonous substances; preparation,  
12 packaging or holding under insanitary conditions causing contamination; or products  
13 of a diseased animal or of an animal, which has died otherwise than by slaughter.  
14 The FDA determined that Defendants’ Pet Foods were adulterated.

15 18. Defendants has misrepresented the quality of its Pet Foods’ ingredients  
16 and manufacturing. It falsely stated that the Pet Foods are safe and sourced from  
17 human-grade, USDA inspected meats when in fact they are not. These  
18 misrepresentations and omissions relating to the quality of the meat and health risks  
19 ultimately led to a recall of certain products beginning on February 3, 2017 (for  
20 certain Hunk of Beef lots); on February 13, 2017 (for certain Pulled Beef lots); and  
21 on March 3, 2017 for all lots of Evanger’s Hunk of Beef, Pulled Beef and Braised  
22 Beef products.

23 19. Despite insisting that no other products were impacted by the recalls, on  
24 April 13, 2017, three and a half months after Talula died, another dog became ill  
25 after eating Party Animal pet food - manufactured by Evanger’s. The Party Animal  
26 products also tested positive for pentobarbital, and on April 17, 2017, Party Animal  
27

1 publicly recalled its Cocolicious Beef & Turkey dog food and Cocolicious Chicken  
2 & Beef dog food.

3 20. Following the recall of Party Animal's products, Party Animal sued  
4 Defendants for damages based on the misrepresented meat that Evanger's sold to it.  
5 Party Animal seeks damages relating, but not limited to, retailers that are seeking  
6 refunds for its recalled and non-recalled products and consumers, who are seeking  
7 payment of veterinarian bills for treatment of their pets caused by their consumption  
8 of its products. The lawsuit also alleges that in February 2017, Party Animal began  
9 receiving invoices from Nutripack instead of Evanger's. When it inquired about this,  
10 an owner of Evanger's, Holly Sher, stated that they were afraid of getting sued  
11 because of the recent recalls, and they were taking money out of Evanger's. She also  
12 stated that they did not want to receive any money into Evanger's and would instead  
13 run all operations under Nutripack.

14 21. Plaintiffs and the other members of the proposed classes have purchased  
15 Defendants' Pet Foods, and relied on Defendants' misrepresentations about their  
16 products' high quality, human-grade ingredients and sources of USDA inspected  
17 meat. Defendants also omitted material facts about the quality of the meat in the Pet  
18 Foods and the health risks they carried, including but not limited to the fact that they  
19 may be contain poisonous pentobarbital, were contaminated from the unsanitary  
20 manufacturing facilities and were from animals that did not die from slaughter.

21 22. The Pet Foods were unsafe for animals to consume and should not have  
22 been sold under the law. Had Defendants disclosed the true facts concerning these  
23 products, Plaintiffs would have been aware of them, the potential harm and would  
24 not have purchased Defendants' Pet Foods or not paid as much money for them.  
25 Defendants' false and misleading labels touting the purity and quality of their  
26 products allowed Defendants to charge a higher price than it could have without  
27 these representations.



1 Tank, Pedro, Tinkerbell and Tito, until January 1, 2017, when Talula passed away  
2 after eating Evanger's Hunk of Beef that was contaminated with pentobarbital.

3 27. Members of the putative classes reside in Washington and throughout  
4 other states in the United States.

5 28. During the relevant period, Plaintiffs, while in the state of Washington,  
6 were exposed to and saw Defendants' material, deceptive marketing claims and  
7 packaging that misrepresented the quality and ingredients of their Pet Foods and  
8 omissions that failed to disclose material facts about the meat used and the health  
9 risks it carried to animals that consumed it. Before purchasing Defendants' Pet  
10 Foods, Plaintiffs reviewed the product labels and Defendants' websites and relied  
11 on these in making their decision to purchase the Pet Foods. Plaintiffs, relying on  
12 Defendants' omissions and misleading marketing and labeling of their Pet Foods,  
13 believed that Defendants' Pet Foods were premium, "human grade," "USDA  
14 inspected meats" and did not carry any health risks to their pets. While in the state  
15 of Washington, Plaintiffs purchased Defendants' Pet Foods intermittently at a local  
16 retailer, Healthier Choices, in Washougal, Washington, over a four year period,  
17 including on December 31, 2016, when they purchased five cans of Evanger's Grain  
18 Free Rabbit for dogs and cats at \$1.65 per can, three cans of Hunk of Beef at \$3.20  
19 per can and three cans of Pulled Beef at \$3.60 per can. Exhibit A receipt from  
20 purchase.

21 29. Had Defendants disclosed the truth about their Pet Foods - that the  
22 products were *not* premium, human grade nor sourced from USDA inspected meats,  
23 and their health risks to animals that ate them, as was known to or should have been  
24 known to Defendants - then Plaintiffs would have been aware of the true nature of  
25 these products, and would not have paid the price that they paid for the Pet Foods,  
26 or would not have purchased them at all. In the future, if Defendants were to disclose  
27 that its Pet Foods are not high quality, not human grade and not from USDA  
28

1 inspected meats, Plaintiffs would be in a position to make an informed decision as  
2 to whether to purchase Defendants' products at the prices offered. Thus, as a result  
3 of Defendants' material unfair and deceptive misrepresentations and omissions,  
4 Plaintiffs suffered injury in fact and lost money, and most importantly, lost their  
5 beloved companion animal.

6 ***Defendants***

7 30. Evanger's is incorporated in Illinois, and has its corporate headquarters  
8 at 211 Wheeling Road, Wheeling, Illinois 60090. It was started in 1935 by Fred  
9 Evanger. It is currently owned by Joel, Holly, Chelsea and Brett Sher, who acquired  
10 it in 2002, when they developed the "human-grade" ingredients, and hand-packed  
11 products line, including Hunk of Beef, Braised Beef and Pulled Beef. It has two  
12 facilities, one in Wheeling, Illinois, and one it opened in 2014 in Markham, Illinois.<sup>2</sup>

13 31. Nutripack located in Markham, Illinois, is an Illinois limited liability  
14 company, owned and operated by the Sher family. Nutripack manufactures  
15 Evanger's Pet Foods. According to the lawsuit filed by Party Animal, Evanger's  
16 began invoicing Party Animal through Nutripack in February 2017, following the  
17 recall of the Pet Foods. Holly Sher, an owner of Evanger's and Nutripack, indicated  
18 that it was defunding Evanger's and running its funds through Nutripack to avoid  
19 liability relating to the recalls.

20 32. Evanger's produces many different lines of pet food under its own name  
21 and under the brand name Against the Grain. Evanger's sells its products online and  
22 through retailers across the country. Evanger's also produces other companies'  
23 brands, including but not limited to Party Animal. Evanger's publicly stated on its  
24 website on January 4, 2017, that "Hunk of Beef is our #1 seller. Pets consume over  
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26 <sup>2</sup> Evanger's Fact, Our Story, <http://www.evangersfacts.com/evangers-history/> (last  
27 visited May 15, 2017).

one million cans of Hunk of Beef per year.”<sup>3</sup> Evanger’s, Voluntary Recall, January 4, 2017, <http://evangersdogfood.com/news-events/pug-family-updates/> (last visited February 17, 2017) (since removed).

33. Plaintiffs allege, on information and belief, that at all times relevant herein, Defendants’ agents, employees, representatives, executives, directors, partners, and/or subsidiaries were acting within the course and scope of such agency, employment, and representation, on behalf of Defendants.

### **FACTUAL ALLEGATIONS**

#### **I. BACKGROUND ON REGULATION AND LAWS GOVERNING THE PET FOOD INDUSTRY**

34. The FDA and USDA are tasked with regulating pet foods, labels and manufacturing to keep humans and animals safe. The FDA regulates animal protein ingredient suppliers, which may also be subject to state jurisdiction. The USDA-FSIS regulates the slaughter of animals for human consumption and provides grading and definition of various products including testing for speciation. The USDA- Animal and Plant Health Inspection Service (“APHIS”) provides a voluntary service to inspect and provide certification status to facilities according to standards established by the country where the facilities wish to export their products. APHIS does not have direct regulatory responsibility over pet food.<sup>4</sup>

35. The Association of American Feed Control Officials (“AAFCO”) is a voluntary membership association of local, state and federal agencies charged by

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<sup>3</sup> Evanger’s, Voluntary Recall, January 4, 2017, <http://evangersdogfood.com/news-events/pug-family-updates/> (last visited February 17, 2017) (since removed).

<sup>4</sup> FDA, Questions and Answers: Evanger’s Dog and Cat Food (“FDA Q&A”), <https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm> (last visited April 27, 2017).



1 law to regulate the sale and distribution of animal feeds and animal drug remedies.  
 2 AAFCO has no regulatory authority, but provides a forum for the membership and  
 3 industry representation to create model guidelines for pet food to safeguard the  
 4 health of animals and humans; ensure consumer protection; and provide a level  
 5 playing field of orderly commerce for the animal feed industry.<sup>5</sup>

6 36. Under the FDCA, 21 U.S.C. § 342(a)(1), a “food,” which includes human  
 7 and pet food, is considered adulterated if it contains a poisonous or deleterious  
 8 substance; is contaminated by insanitary conditions; or is sourced from an animal  
 9 that did not die by slaughter. Food may also be deemed adulterated if under § 342(b)  
 10 it is substituted. This law is in place to protect people and their pets from the risk  
 11 from consuming poisonous, contaminated, euthanized, diseased or decomposing  
 12 animal tissues. Specifically, the law states, in pertinent part:

13 A food shall be deemed to be adulterated-

14 (a) Poisonous, insanitary, etc., ingredients

15 (1) If it bears or contains ***any poisonous or deleterious substance*** which  
 16 may render it injurious to health . . . (2)(A) if it bears or contains any  
 17 added poisonous or added deleterious substance . . . that is unsafe within  
 18 the meaning of section 346 of this title . . . (3) if it consists in whole or  
 19 in part of any filthy, putrid, or decomposed substance, or if it is  
 20 otherwise unfit for food; or (4) if it has been ***prepared, packed, or held***  
 21 ***under insanitary conditions whereby it may have become***  
 22 ***contaminated with filth***, or whereby it may have been rendered  
 23 injurious to health; or (5) if it is, in whole or in part, the product of a  
 24 diseased animal or of an ***animal which has died otherwise than by***  
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26 <sup>5</sup> AAFCO, Home and Regulatory, <http://www.aafco.org/> (last visited April 27,  
 27 2017).



1       *slaughter* . . .

2       (b) Absence, substitution, or addition of constituents

3       (1) If any valuable constituent has been in whole or in part omitted or  
 4       abstracted therefrom; or (2) if any substance has been substituted  
 5       wholly or in part therefor; or (3) if damage or inferiority has been  
 6       concealed in any manner; or (4) if any substance has been added thereto  
 7       or mixed or packed therewith so as to increase its bulk or weight, or  
 8       reduce its quality or strength, or make it appear better or of greater value  
 9       than it is.

10      (Emphasis added).

11       37. Under the FDCA, 21 U.S.C. § 343(b), a food is deemed misbranded if it  
 12      is offered for sale under the name of another food.

13       38. Despite laws governing pet foods and providing government oversight,  
 14      the FDA has stated that “[p]et food manufacturers are responsible for taking  
 15      appropriate steps to ensure that the food they produce is safe for consumption and  
 16      properly labeled” including verifying the identity and safety of the ingredients from  
 17      suppliers.<sup>6</sup> Because pet food companies are left to self-regulation, many often do not  
 18      follow laws and rarely face any repercussions until it is too late for some pets, who  
 19      have died or become sick as a result.

20       39. Many states have enacted their own regulations governing pet foods that  
 21      prohibit adulteration and misbranding including in Washington, Illinois and  
 22      Wisconsin.<sup>7</sup> See Wash. Rev. Code § 15.53.902 (adulteration) and §15.53.9022

23      \_\_\_\_\_  
 24      <sup>6</sup> FDA Q&A, <https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm>.

25      <sup>7</sup> See Wash. Rev. Code § 15.53.902 (adulteration) and §15.53.9022 (misbranding);  
 26      505 Ill. Comp. Stat. 30/3(s) (pet food), 30/7 (adulteration) and 30/8 (misbranding);  
 27      WI Stat. § 94.72 (8) (adulteration and misbranding).

1 (misbranding); 505 Ill. Comp. Stat. 30/3(s) (pet food), 30/7 (adulteration) and 30/8  
2 (misbranding); WI Stat. § 94.72 (8) (adulteration and misbranding).

3 40. Pet food manufacturers may fail to comply with state and federal laws  
4 governing adulteration and misbranding in some of the following ways: (1)  
5 producing pet foods that contain poisonous substances like pentobarbital used to  
6 euthanize animals; (2) preparing, packaging and holding pet foods in unsanitary  
7 facilities that contaminate them; (3) using non-slaughtered animals that may be  
8 diseased, decomposed or euthanized; and (4) substituting other ingredients like beef,  
9 horse or pig and selling them under a different name.

10 41. Many manufacturers, including Evanger's, use meat from animals that  
11 are not USDA-inspected, human-grade and have died by means other than slaughter  
12 in their pet foods, including animals that were euthanized using pentobarbital. This  
13 practice has killed and sickened companion animals and put other animals and  
14 humans' health and safety at risk.

15 **II. RECENT PET FOOD SCANDALS HAVE CAUSED CUSTOMERS**  
16 **TO BECOME MORE INFORMED ABOUT THE PRODUCTS THEY**  
17 **PURCHASE**

18 42. The lack of compliance with regulations has caused the industry to come  
19 under fire in recent years following scandals that have had the result of killing and  
20 sickening pets across the country and world.

21 43. In 2002, the FDA reported on its investigation into the presence of  
22 pentobarbital in pet foods following reports from veterinarians that pentobarbital,  
23 used as an anesthetizing agent for dogs and other animals seemed to be losing its  
24 effectiveness in dogs. The FDA stated that because pentobarbital is routinely used  
25 to euthanize animals, the most likely way it could get into dog food would be in  
26 rendered animal products. Rendered products come from a process that converts  
27 animal tissues to feed ingredients, including tissues from animals that have been

1 euthanized, decomposed or were diseased. The FDA found that pentobarbital from  
2 euthanized animals survives the rendering process and could be present in the  
3 rendered feed ingredients used in pet food. The FDA's testing of dry dog food  
4 confirmed some samples contained pentobarbital. The FDA concluded that  
5 pentobarbital was entering pet foods from euthanized, rendered cattle or horses  
6 because of the lack of dog and cat DNA.<sup>8</sup>

7 44. Despite its findings, the FDA has not aggressively taken action under  
8 FDCA, § 342 (a)(1) or (5), against the pet food companies that it found to have used  
9 non-slaughtered animals and contain pentobarbital in their pet foods. Therefore,  
10 manufacturers in the pet food industry, including Defendants, have continued their  
11 illegal practice of using non-slaughtered animals that may contain poisonous  
12 substances, like pentobarbital, in their pet foods.

13 45. In March 2007, another pet food scandal rattled consumers, when pet  
14 food manufacturer Menu Foods alerted the FDA to animal deaths from its routine  
15 taste trials, which was followed by numerous consumer and veterinarian reports of  
16 many more pet deaths and sickness related to Menu Foods. These animals were  
17 reported to have developed kidney failure after eating certain pet food produced at  
18 Menu Foods' facilities.<sup>9</sup>

19 46. FDA laboratories found melamine and melamine-related compounds  
20 labeled as wheat gluten and rice protein concentrate imported from China and used  
21 as ingredients in Menu Food's products. Cornell University scientists also found

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22 <sup>8</sup> FDA, Food and Drug Administration/Center for Veterinary Medicine Report on  
23 the Risk from Pentobarbital in Dog Food, February 28, 2002,  
24 <https://www.fda.gov/aboutfda/centersoffices/officeoffoods/cvm/cvmfoiaelectronicreadingroom/ucm129131.htm> (last visited April 26, 2017).

25 <sup>9</sup> FDA, Melamine Pet Food Recall-Frequently Asked Questions,  
26 <https://www.fda.gov/animalveterinary/safetyhealth/recallswithdrawals/ucm129932.htm> (last visited April 20, 2017).  
27

1 melamine in the urine and kidneys of deceased cats that were part of a taste-testing  
2 study conducted for Menu Foods. The combination of melamine and cyanuric acid  
3 in pet foods form crystals in urine and kidney tissue, which can lead to kidney failure  
4 and cause animal sickness and death. Over 150 brands of pet foods manufactured by  
5 Menu Foods were recalled and numerous lawsuits were filed, including a class  
6 action that settled for tens of millions to compensate pet owners for their veterinarian  
7 costs, pet loss and purchases. *Id.*

8 47. After being indicted on criminal charges for importing the contaminated  
9 pet-food ingredients used by Menu Foods that sickened and killed thousands of  
10 family pets in 2007, the company responsible, ChemNutra, Inc. and its owners pled  
11 guilty and were sentenced to probation and a company fine of \$25,000, after also  
12 agreeing to pay part of the class action settlement.<sup>10</sup>

13 48. Again, beginning in 2007, the FDA began repeatedly issuing alerts to  
14 consumers about reports it had received concerning jerky treats that were made in  
15 China causing illnesses involving 3,600 dogs and 10 cats in the U.S. and resulting  
16 in approximately 580 deaths. However, after conducting more than 1,200 tests,  
17 visiting jerky pet treat manufacturers in China, and collaborating with colleagues in  
18 academia, industry, state labs and foreign governments, the FDA was unable to  
19 determine the cause of the illnesses.<sup>11</sup>

20 49. In 2013, after a New York State lab reported finding evidence of up to  
21 six drugs in certain jerky pet treats made in China, a number of jerky pet treat

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22 <sup>10</sup> The VIN News Service, Sentences Handed Down in Pet Food Poisoning  
23 Criminal Case, Feb. 9, 2010,  
24 <http://news.vin.com/vinnews.aspx?articleId=14984rticleId=14984> (last visited  
25 April 21, 2017).

26 <sup>11</sup> FDA, Why Are Jerky Treats Making Pets Sick?  
27 <https://www.fda.gov/ForConsumers/ConsumerUpdates/ucm371413.htm> (last  
28 visited April 20, 2017).

1 products were removed from the market, and there was a corresponding decrease in  
2 reports of jerky-suspected illnesses. *Id.*

3 50. In 2014, The Blue Buffalo Company Ltd. was sued by Nestle Purina  
4 Petcare Company (“Nestle”) (*Nestle Purina Petcare Company v. The Blue Buffalo*  
5 *Company Ltd.*, 4:14-cv-00859-RWS (E.D. Mo.)), for falsely stating that it did not  
6 have any animal by-products in its pet food. When it was uncovered that Nestle was  
7 correct and a supplier was providing meat by-product used in Blue Buffalo’s pet  
8 food that was falsely labeled as otherwise, customers also sued in a class action, (*In*  
9 *re Blue Buffalo Company, Ltd., Marketing and Sales Practices Litigation*, No. 14-  
10 md-02562-RWS (E.D. Mo. Dec. 21, 2015)), resulting in tens of millions in a  
11 settlement for customers mislead by the false advertising.

12 51. Blue Buffalo’s supplier, Wilbur-Ellis and its employee, now face  
13 criminal charges in federal court and accusations of introducing adulterated food  
14 into interstate commerce, and misbranding its products by using too many lower-  
15 quality ingredients, such as chicken feathers, and not enough real chicken and other  
16 meat.<sup>12</sup>

### 17 **III. EVANGER’S MARKETS ITS PET FOODS TO INGREDIENT-** 18 **CONSCIOUS CUSTOMERS**

19 52. In the wake of uncertainty about the safety and labeling of pet food,  
20 consumers have increasingly become more aware and cautious about the products  
21 they purchase.

22 53. Recognizing the market for informed customers, who want to purchase  
23 products that come from the United States and are safe and contain high quality

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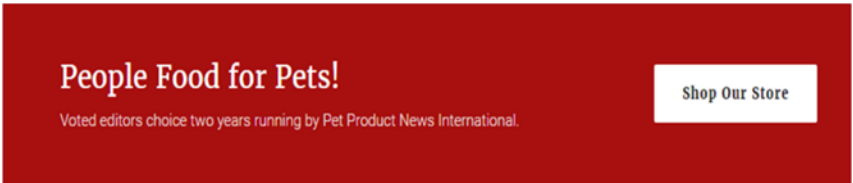
24 <sup>12</sup> St. Louis Post Dispatch, Pet Food Supplier Accused of Too Many Chicken  
25 Feathers, Not Enough Chicken, March 7, 2017,  
26 [http://www.stltoday.com/business/local/pet-food-supplier-accused-of-too-many-](http://www.stltoday.com/business/local/pet-food-supplier-accused-of-too-many-chicken-feathers-not/article_b88af797-c3fe-56d1-a682-2c870a5669fb.html)  
27 [chicken-feathers-not/article\\_b88af797-c3fe-56d1-a682-2c870a5669fb.html](http://www.stltoday.com/business/local/pet-food-supplier-accused-of-too-many-chicken-feathers-not/article_b88af797-c3fe-56d1-a682-2c870a5669fb.html) (last  
visited April 20, 2017).

1 ingredients, Defendants advertises and labels its products in this way in order to  
 2 entice these customers, including Plaintiffs, to purchase its Pet Food for their pets.  
 3 Exhibit B, listing of Defendants's Pet Foods.

4 54. Evanger's has been an independent business for over 80 years, owned by  
 5 the Sher family since 2002, with a self-proclaimed mission to develop "quality"  
 6 products for companion pets. It specifically says that it "sell[s] *our products*  
 7 *exclusively through independent neighborhood pet shops where quality and*  
 8 *customer service are of the utmost importance.*"<sup>13</sup> Plaintiffs purchased  
 9 Defendants's Pet Foods at an independent, local pet store, called Healthier Choices.

10 55. The publicity surrounding Menu Foods and similar scandals allowed  
 11 Defendants to capitalize on the opportunity to promote itself as a producer of  
 12 healthier, safe, alternative pet foods. Some small, independent pet food companies,  
 13 including Party Animal, in the wake of recalls, decided to partner with Evanger's to  
 14 make their organic pet food. Shawna Abrams, one of the co-owners of Party Animal,  
 15 said at the time that "marketing our new food to retailers would have been a tougher  
 16 sell, but *with news of the recall [of Menu Foods' pet food], suddenly everyone*  
 17 *wanted untainted, natural food like ours.*"<sup>14</sup>

18 56. On the home page of its website, as recently as February 17, 2017,  
 19 Evanger's prominently stated that "Healthy Food Makes Happy Pets," "No  
 20 additives, artificial ingredients, or preservative," "The Evanger's Difference" is:

21  People Food for Pets!

Voted editors choice two years running by Pet Product News International.

Shop Our Store

22  
 23  
 24 <sup>13</sup> Evanger's, About Us, <https://evangersdogfood.com/about-us/> (last visited April  
 25 27, 2017).

26 <sup>14</sup> Pet Product News, Business Builder: Private Labels Profit Potential, April 17,  
 27 2015 [http://www.petproductnews.com/April-2015/Business-BUILDER-Private-  
 28 Labels-Profit-Potential/](http://www.petproductnews.com/April-2015/Business-BUILDER-Private-Labels-Profit-Potential/) (last visited April 25, 2017) (emphasis added).

1 Evanger's, Home, <https://evangersdogfood.com/> (last visited February 17, 2017)  
2 (emphasis added). As of the filing of this complaint this language has been removed.

3 57. In describing its products, Evanger's stated as recently as February 17,  
4 2017, that it only uses quality, all-natural, "**human-grade USDA inspected meats**,"  
5 stating, in pertinent part:

6 Evanger's utilizes **human-grade USDA inspected meats** to make  
7 highly palatable and nutritious foods that will satisfy even the most  
8 finicky eater. With no soy, corn, wheat, artificial ingredients, **harmful**  
9 **additives**, preservatives or by-products, Evanger's canned meals make  
10 an excellent mixer to our dry foods. Not only do they offer your pet a  
11 variety in taste, our **gourmet dinners** offer the additional nutritional  
12 benefits your pet needs. Natural Vitamins and minerals are blended  
13 with the all-natural meats for ultimate nutrition that are completely  
14 balanced meals for all life stages, ages, and breeds.

15 Our **Hand Packed Edition is a monumental improvement in canned**  
16 **dog and cat foods**. We have taken our **extraordinary product and made**  
17 **it even better** by filling each can individually with one pair of hands,  
18 instead of machines. The benefit of this process is that you, the  
19 consumer, can actually **see the quality ingredients in its original form;**  
20 **whole, pure meats** and fresh vegetables without any additives or by  
21 products. Your pets will think they are being treated like kings and  
22 queens!

23 Since the 2003 addition of the Hand Packed foods, Evanger's family of  
24 foods has expanded to include the following groups of **exceptional**  
25 **foods and treats** . . .

26 Manufacturing Process

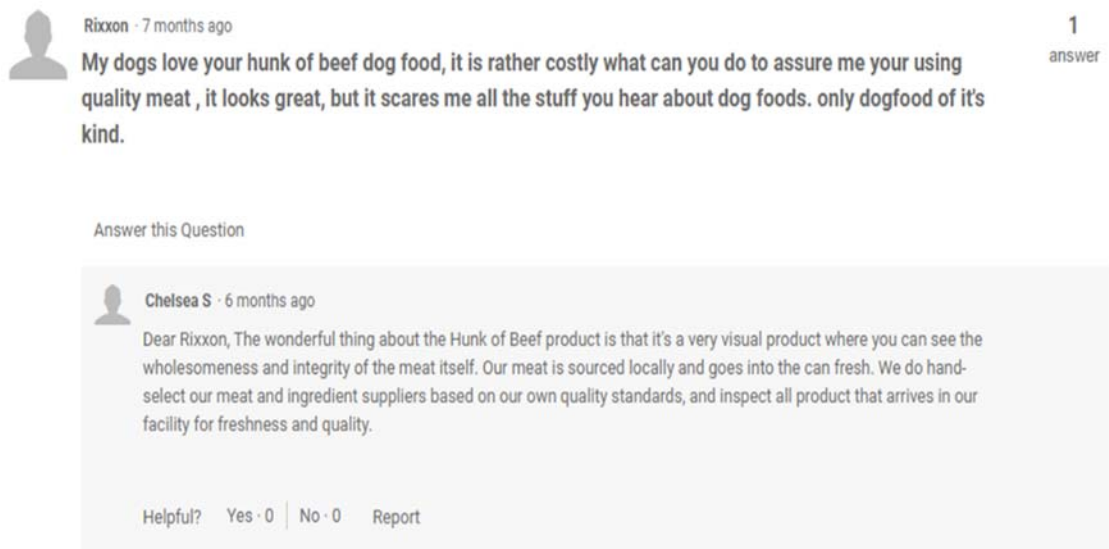
27 Evanger's cans are packed with **natural, raw ingredients in their own**



1 *natural juices*. The ingredients are then cooked entirely inside the  
 2 sealed can to lock in the nutrients and flavor of each variety. This  
 3 process assures both *wholesome nutrition for long life and good*  
 4 *health*, plus the great taste your dog and cat will love. Naturally the  
 5 best!<sup>15</sup>

6 58. In order to attract other companies' brands to its manufacturing,  
 7 Evanger's touts its use of "the highest quality of pet food available," and that "[b]y  
 8 *working closely with local suppliers, we are able to keep raw material prices steady*  
 9 *while delivering top quality products*."<sup>16</sup>

10 59. Evanger's co-owner, Chelsea Sher, responded about six months to a  
 11 customer's question posted on the Hunk of Beef page that Evanger's quality is  
 12 assured by its hand-selection of meats and suppliers and inspections for freshness  
 13 and quality:



23 <sup>15</sup> Evanger's, About Our Products, [https://evangersdogfood.com/about-us/about-](https://evangersdogfood.com/about-us/about-our-products/)  
 24 [our-products/](https://evangersdogfood.com/about-us/about-our-products/) (last visited February 17, 2017) (emphasis added). As of the filing of  
 25 this complaint, the words "human grade" have been removed from this page  
 26 although Evanger's continues to maintain that its products are "*USDA inspected*."

26 <sup>16</sup> Evanger's, Private Label Services, [https://evangersdogfood.com/about-](https://evangersdogfood.com/about-us/private-label-services/)  
 27 [us/private-label-services/](https://evangersdogfood.com/about-us/private-label-services/) (last visited April 27, 2017) (emphasis added).



1 Evanger's, Hunk of Beef, <https://evangersdogfood.com/product/20109/> (last visited  
2 April 27, 2017).

3 60. Evanger's has close, long standing relationships with its suppliers, some  
4 for over forty years, including the supplier of its Hunk of Beef and Pulled Pork.<sup>17</sup>

5 61. As recently as February 9, 2017, Evanger's touted that its "Grain Free  
6 Hand Packed" specialties, including Hunk of Beef and Braised Beef, with "fresh,  
7 natural and superior ingredients (no by-products) ensure *quality on a human-grade*  
8 *level.*" It states that its cooking process softens its recipes with bones making them  
9 "*edible, safe, wholesome* and highly digestible."<sup>18</sup>

10 62. Evanger's touts that Hunk of Beef is its best seller, and that it sells more  
11 than one million cans of a year. It labels Hunk of Beef as "100% beef," "cRc Kosher  
12 for Passover," with a picture of a human steak dinner, and the statement "Foodies  
13 Choice" typically used to describe picky people, who only eat what they consider  
14 the best quality and tasting foods,<sup>19</sup>:

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20 <sup>17</sup> Evanger's, Voluntary Recall, posted February 3, 2017,  
21 <https://evangersdogfood.com/news-events/pug-family-updates/> (last visited  
22 February 17, 2017) (since removed).

23 <sup>18</sup> Evanger's, Dog Food, Grain Free Hand Packed,  
24 <https://evangersdogfood.com/dog-food/grain-free-hand-packed/> (last visited  
25 February 9, 2017) (emphasis added). As of the date of this complaint, the words  
26 "human grade level" have been removed.

27 <sup>19</sup> Evanger's, Voluntary Recall, posted January 4, 2017,  
28 <http://evangersdogfood.com/news-events/pug-family-updates/> (last visited  
February 17, 2017) (since removed).



**HUNK OF BEEF – PACKED BY  
HAND!**



Premium tender 100% beef roast cooked  
in its own juices serves up a meaty  
supplement.

**\$ 36.91**

63. Evanger's also offered its Braised Beef as uncut pieces of meat in gravy,  
with a label that says "100% Beef Meat" and a picture of a human steak meal:



**BRAISED BEEF CHUNKS  
WITH GRAVY PACKED BY  
HAND!**

A hearty dinner of tender chunks of beef  
with market fresh vegetables of peas and  
carrots together with nutritious gravy.

Grain Free!

**\$ 36.91**

64. On its website, Evanger's posted a video of Defendants's co-owner, Chelsea Sher, touting its "people food for pets," in which she eats some Hunk of Beef to show that it is edible by people<sup>20</sup>:



65. In addition to its Hand Packed lines, Evanger's also carries an "***Organic People Food for Pets***" line certified by Oregon Tilth for its "handling" process. Oregon Tilth permits non-organic products on the same line as organic products if there are sufficient measures and procedures in place, including cleaning and sanitation, to protect organic product from contamination or commingling of any non-organic material<sup>21</sup>:

<sup>20</sup> Evanger's, News & Events, Chelsea Sher Eats Evanger's Dog Food, Published on You Tube August 25, 2015, <https://evangersdogfood.com/news-events/recent-press/> and <https://youtu.be/RQekr7QtSiI> (last visited May 15, 2017).

<sup>21</sup> Oregon Tilth, Processing and Handling FAQ, <https://tilth.org/app/uploads/2014/12/BrandsMarketersManufacturersFAQ.pdf> (last visited May 2, 2017).

## Organic People Food for Pets!



### 100% ORGANIC COOKED CHICKEN



A whole dressed organic chicken  
simmered in natural well water is a  
wonderful healthy supplement



### ORGANIC TURKEY WITH POTATO & CARROTS DINNER



Organic turkey with organic market-fresh  
vegetables create a wholesome dinner.

66. Evanger's provides display materials to retailers to place in their stores next to Defendants's products, without specifying the precise products to which they apply, which advertise Evanger's as "Green," "USDA Organic" - subject to the same requirements as human food, "Oregon Tilth" certified, and similar to organic standards, in order to entice customers to purchase them:



67. Evanger's offers other "all-natural, meat-based" pet foods for dogs, cats and ferrets with "no by-products, additives or preservatives." In addition to its Grain Free Hand Packed and Organics lines, Evanger's offers Classic Line, Dry Foods, Grain Free Game Meats, Nothing but Natural – "made of 100% whole muscle meat," Signature Series, Super Premium – that are "completely balanced, highly nutritious, great tasting, innovative meals" and "holistic," Jerky Treats, Freeze Dried Treats and Ferret food.<sup>22</sup>

68. Evanger's states that is "100% committed to the safety of its products."<sup>23</sup>

69. Similar to Evanger's brand name, its Against the Grain brand also touts its "carefully selected," "highest quality," "human grade," "meat-based" Pet Foods: 85% Meat. 0% Grain.

Because dogs and cats are primarily carnivores, we have designed all of our formulations to include at least 85% meat. But not only do we make *meat-dominant foods, but our proteins are all of high quality, and only sourced from human grade facilities*. They never contain growth hormones and are anti-biotic free. To show you how proud we are of *our carefully selected ingredients*, we do not make a traditional, loaf-style food. Instead, we hand fill all of our canned foods so that *you can see the quality of our hand pulled meats* and fresh caught fish right when you open a can of Against the Grain pet foods, *instead of "mystery meat."*

Our Mission.

Our mission is to *improve the health and quality of life of our companion pets* through the development of the *safest*, most nutritious, and palatable pet

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<sup>22</sup> Evanger's, About Us, Product Guide, <https://evangersdogfood.com/about-us/product-guide/> (last visited May 2, 2017).

<sup>23</sup> Evanger's, News, Voluntary Recall, <https://evangersdogfood.com/news-events/updates/> (last visited April 27, 2017).

1 products available. We believe that our *high quality products* should not only  
2 sustain our companion pets, but our emphasis on palatability also increases  
3 their enjoyment of life—like you and I.

4 All That.

5 Instead of conforming to all other pet food companies' traditions of making  
6 foods, who use a top-down approach when creating pet food, Against the  
7 Grain started with a bottom-up approach. We first asked, "What is the best pet  
8 food that can be made, then how do we make it." The end result offers the  
9 smartest choice for a *healthy* and happy pet. All of foods are *minimally*  
10 *processed at our own factories*, and all processing methods are designed to  
11 ensure that the integrity of the proteins, vitamins, and natural enzymes are  
12 maintained.

13 Against the Grain *uses all fresh ingredients*, and has designed all foods to be  
14 grain-free and gluten-free. We NEVER use corn, wheat, or soy. We have  
15 taken steps to use sustainable and green resources; our fresh-caught fish-based  
16 cat canned foods are dolphin-safe and turtle-safe. Our meat products are all  
17 GMO and anti-biotic free. Finally, we use the maximum amount of recyclable  
18 materials in our retail packaging, and use strictly skylights in our  
19 manufacturing plant.<sup>24</sup>

20 70. In describing why it started Against the Grain, Evanger's states that it  
21 wanted to make Pet Foods that were "second to none" with its number one criteria  
22 being "SAFETY." It boasts that unlike other brands, it owns its manufacturing  
23

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24  
25 <sup>24</sup> Against the Grain, About the Food,  
26 <http://www.againstthegrainpetfood.com/about-the-food/> (last visited May 2, 2017)  
27 (emphasis added).



1 facility and produces its own products that gives it accessibility and the ability to  
2 create unique and innovative products.<sup>25</sup>

3 71. Against the Grain brand has three lines of Pet Foods, Super Food, Pulled  
4 Meat Dog Food and Canned Cat Food. It *continues* to state that its Canned Cat Food  
5 is:



6  
7  
8 Against the Grain, Canned Cat Food, [http://www.againstthegrainpet\\_food.com](http://www.againstthegrainpet_food.com/human-quality-cat-food/)  
9 /human-quality-cat-food/ (last visited May 2, 2017).

10 72. As recently as February 17, 2017, Against the Grain stated that its Pulled  
11 Meat Dog Foods, including Pulled Beef, were “*human grade*”:



12  
13  
14  
15  
16  
17 Against the Grain, Pulled Meat Dog Foods,  
18 <http://www.againstthegrainpetfood.com/pulled-meat-dog-food/> (last visited Feb. 17,  
19 2017). As of the filing of this complaint the words “human grade” have been  
20 removed.

21 73. Evanger’s also manufactures pet foods for Party Animal, which makes  
22 similar representations about its organic pet food, including that it uses the “best”  
23 and “healthiest” ingredients in its products.<sup>26</sup>

24  
25 <sup>25</sup> Against the Grain, About Us, <http://www.againstthegrainpetfood.com/about-us/>  
(last May 2, 2017) (capitalization in original).

26 <sup>26</sup> Party Animal, Our Story and FAQ, <http://partyanimalpetfood.com/> (last visited  
27 May 3, 2017).

1           74. On its website, Party Animal details the USDA's National Organic  
2 Program which requires that, in pertinent part:

3           organic ingredients are free of pesticides, synthetic fertilizers, antibiotics,  
4           growth hormones, GMO's (genetically modified organisms), by-products,  
5           artificial colors, flavors and preservatives. Organic livestock may not be given  
6           antibiotics, growth hormones or any animal-byproducts. They can only be fed  
7           organic feed and must have access to the outdoors. All certified USDA  
8           organic pet products must *meet the same USDA requirements as human*  
9           *food*.

10                                   \*                   \*                   \*                   \*

11           A complete breakdown of our formula, including *sources of each ingredient*  
12           is required as part of the organic certifying agency's review and approval  
13           process. This independent third-party review and approval process is unique  
14           in pet food/treats.

15 *Id.* (emphasis added).

16           75. Party Animal also states that some of its products are labeled certified by  
17 Oregon Tilth, which "inspects [its] production facility and reviews each ingredient  
18 used in our organic formulas . . . including sources of each ingredient is required as  
19 part of the agency's review and approval process to certify that the federal organic  
20 standards are met." *Id.*



76. Party Animal's Cocolicious line states that its products are USDA organic certified, including its beef and contain "no junk or weird stuff," including Cocolicious Organic Beef & Turkey dog food and Cocolicious Organic Chicken & Beef:



Party Animal, Cocolicious Organic Beef & Turkey, <http://partyanimalpetfood.com/?portfolio=cocolicious-organic-beef-turkey> (last visited May 3, 2017).



Party Animal, Cocolicious Organic Chicken & Beef, <http://partyanimalpetfood.com/?portfolio=cocolicious-organic-chicken-beef> (last visited May 3, 2017).

### III. EVANGER'S HISTORY WITH REGULATORS AND THE LAW

77. Since 2002, when the Shers purchased Evanger's, the company has been plagued by issues with regulators, law enforcement and lawsuits. After numerous complaints from residents about its putrid odor, in 2006, the Village of Wheeling, Illinois, filed a lawsuit against Evanger's for violation of several ordinances relating

1 to sanitation, rotting meat, sewage and insects. After many years of litigation and  
2 continued problems at Evanger's facility, which even forced the relocation of a  
3 children's summer camp, the state appellate court affirmed a trial court's granting of  
4 summary judgment in favor of the Village of Wheeling, and ordered Evanger's to  
5 pay \$316,500 in restitution. *The Village of Wheeling v. Evanger's Dog and Cat Food*  
6 *Co., Inc.*, No. 06 MC3 013933-01, 2012 IL App (1st) 113100-U (Nov. 28, 2012).

7 78. Evanger's is also no stranger to the FDA. On April 24, 2008, the FDA  
8 issued an order requiring Evanger's to obtain an emergency permit from the agency  
9 before its canned pet food products could enter interstate commerce, after an  
10 inspection found "significant deviations from prescribed documentation of  
11 processes, equipment, and recordkeeping" in its canned food production. The FDA  
12 indicated that these problems "could result in under-processed pet foods, which can  
13 allow the survival and growth of *Clostridium botulinum* (*C. botulinum*), a bacterium  
14 that causes botulism in some animals as well as in humans."<sup>27</sup>

15 79. The FDA initially approved a temporary emergency permit, based on a  
16 finding that Evanger's had taken corrective actions to address these issues.  
17 However, shortly thereafter, in June 2009, the FDA revoked the permit after FDA  
18 inspections determined that Evanger's was not operating in compliance with the  
19 permit's mandatory requirements and conditions.<sup>28</sup>

20 80. In May 2011, the FDA revisited Evanger's. This time the FDA issued a  
21 warning letter to Evanger's, finding that its Lamb and Rice and Grain Free Duck Pet

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22 <sup>27</sup> FDA, FDA Orders Pet Food Maker to Obtain Emergency Operating Permit,  
23 dated April 24, 2008, [https://wayback.archive-](https://wayback.archive-it.org/7993/20170114031812/http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2008/ucm116886.htm)  
24 [it.org/7993/20170114031812/http://www.fda.gov/NewsEvents/Newsroom/PressAn-](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2008/ucm116886.htm)  
25 [nouncements/2008/ucm116886.htm](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2008/ucm116886.htm) (last visited May 15, 2017).

26 <sup>28</sup> North Carolina Academy of Small Animal Medicine, Recalls, FDA Suspends  
27 Temporary Emergency Permit of Pet Food Maker, dated June 12, 2009,  
<http://www.ncasam.org/educator/article/349/> (last visited May 15, 2017).

1 Foods were adulterated and misbranded in violation of federal law because they did  
2 not contain any lamb or duck, respectively. The FDA also stated that Evanger's  
3 failed to provide processing and production records upon written demand as  
4 required.<sup>29</sup>

5 81. Evanger's problems do not stop with its Pet Food; it has also been  
6 accused of failing to properly pay its employees pursuant to federal law. In January  
7 2009, several employees filed a class action lawsuit against the company, *Barragan*  
8 *et al. v. Evanger's Dog and Cat Food Co., Inc.*, 1:09-cv-00227 (N.D. Ill. Jan. 13,  
9 2009), alleging that they were not paid overtime in violation of the federal Fair Labor  
10 Standards Act. After the court granted certification to the class, the parties agreed to  
11 settle, and the court granted final approval of the settlement in September 15, 2010.  
12 *Barragan*, Docket 87 (entered Sept. 17, 2017).

13 82. Aside from their entanglements with regulators and civil lawsuits,  
14 Evanger's owners, Holly and Joel Sher, have been convicted of criminal activity. In  
15 May 2010, they were arrested and charged with felony theft and money laundering  
16 for stealing almost \$2 million in utilities for Evanger's pet food manufacturing plant.  
17 The prosecutor commented that the Shers showed a callous disregard for their  
18 employees' safety by exposing them to dangerous situations over many years in the  
19 course of orchestrating their utility theft scheme.<sup>30</sup>

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22 <sup>29</sup> FDA, *Evanger's Dog & Cat Food Company, Inc.* 5/5/11, dated May 5, 2011,  
23 [https://wayback.archive-it.org/7993/20170112193647/http://www.fda.gov/ICECI/](https://wayback.archive-it.org/7993/20170112193647/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm255000.htm)  
24 [EnforcementActions/WarningLetters/2011/ucm255000.htm](https://wayback.archive-it.org/7993/20170112193647/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm255000.htm) (last visited May 15,  
25 2017).

26 <sup>30</sup> Chicago Tribune, *Lincolnwood couple charged in utility theft scheme*, March 25,  
27 2010, [http://articles.chicagotribune.com/2010-03-25/news/ct-met-electricity-theft-](http://articles.chicagotribune.com/2010-03-25/news/ct-met-electricity-theft-0325-20100325_1_nicor-gas-gas-meters-joel-sher)  
28 [0325-20100325\\_1\\_nicor-gas-gas-meters-joel-sher](http://articles.chicagotribune.com/2010-03-25/news/ct-met-electricity-theft-0325-20100325_1_nicor-gas-gas-meters-joel-sher) (last visited May 15, 2017).

83. During the utility theft litigation, in 2013, Joel Sher was charged with subornation of perjury, bribery and communicating with a witness when he tried to bribe a witness to change his testimony for \$5,000.<sup>31</sup>

#### **IV. DEFENDANTS'S PET FOOD POISONS PLAINTIFFS' PETS AND ONE PET DIES**

84. Relying on Defendants's marketing and advertising of its products, Plaintiffs purchased Defendants's Pet Foods for four years as a treat for their five dogs. On New Year's Eve, December 31, 2016, Plaintiff Nicole Mael purchased several of Evanger's products at her local pet food store, Healthier Choices, including cans of Hunk of Beef and Pulled Beef.

85. Immediately after her five dogs consumed the Hunk of Beef, they began acting intoxicated and non-responsive - suffering from acute neurological symptoms. Plaintiffs rushed them to an emergency vet. One of their dogs, Talula died from the poisoning from the Hunk of Beef the next day, January 1, 2017. The other four have undergone continued veterinary care, including Tito, who remains on seizure medication.<sup>32</sup>

86. After Talula's death, Plaintiffs, working with the FDA, requested that a necropsy be performed on the animal's body to determine the cause of death. The necropsy was performed at Oregon State University Veterinary Diagnostic

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<sup>31</sup> Chicago Tribune, Man accused of trying to bribe witness, Feb. 9, 2013, [http://articles.chicagotribune.com/2013-02-09/news/chi-man-accused-of-trying-to-bribe-witness-20130209\\_1\\_bribe-witness-power-lines-gas-flow](http://articles.chicagotribune.com/2013-02-09/news/chi-man-accused-of-trying-to-bribe-witness-20130209_1_bribe-witness-power-lines-gas-flow) (last visited May 15, 2017).

<sup>32</sup> FDA, CVM Updates, FDA Cautions Pet Owners and Caretakers Not to Feed Certain Evanger's or Against the Grain Canned Pet Foods Due to Adulteration with Pentobarbital ("FDA Caution"), posted February 17, 2017 <https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm> (last visited May 9, 2017).

1 Laboratory (“OSU”), on January 3, 2017. The necropsy found “partially digested  
2 kibble,” and it could not rule out neurotoxicosis until the stomach contents and  
3 remaining can of Hunk of Beef were tested. Exhibit C, OSU, Case Summary at 1.

4 87. On January 3, 2017, after Talula’s death and neurotoxicosis not being  
5 ruled out in the necropsy, while awaiting further testing results of Talula’s stomach  
6 and the Pet Foods, Plaintiff Nicole Mael emailed Brett Sher at Evanger’s, and  
7 included the FDA in the communication, to provide notice of the issue as follows:

8 I wanted to contact you and let you know my 5 dogs became ill after eating  
9 Evangers hunk of Beef with A Jus. The lot number is 181 6E O6HB 13 exp  
10 June 2020. Please, please recall this food so no other person goes through  
11 what I am going through. Nikki Mael

12 88. The FDA directed that further testing of the animal’s stomach contents  
13 and the remaining un-opened cans of Hunk of Beef be performed at Michigan State  
14 University, Diagnostic Center for Population and Animal Health (“MSU”). On  
15 January 17, 2017, MSU clinical toxicologist John P. Buchweitz performed the  
16 testing, and confirmed that both the Hunk of Beef dog food and Talula’s stomach  
17 contents tested positive for “large quantity chromatographically” of pentobarbital.  
18 On January 23, 2017, Dr. Buchweitz notified OSU and Plaintiffs of the results. He  
19 requested that Plaintiffs send the opened can of the Hunk of Beef for testing. Exhibit  
20 C, MSU, Toxicology at 1-2.

21 89. On January 26, 2017, the FDA notified Plaintiffs that the un-opened  
22 Hunk of Beef dog food also tested positive for an “abundant amount” of  
23 pentobarbital. *See* Exhibit C, OSU, Case Summary at 2 and MSU, Toxicology at 1.

24 90. The FDA testing confirmed that Talula’s stomach contents, an open can  
25 of Hunk of Beef fed to Plaintiffs’ pets, and unopened cans of Against the Grain  
26  
27  
28

1 and Hunk of Beef purchased by Plaintiffs and from the retailer, Healthier Choices,  
2 where Plaintiffs purchased their pet food, *all* contained pentobarbital.<sup>33</sup>

3 91. As of the filing of this complaint, Plaintiffs have expended over  
4 \$6,000.00 on veterinary care relating to their pets eating Hunk of Beef, including but  
5 not limited to emergency hospitalization in attempts to save their pets' lives, ongoing  
6 monitoring and medications.

7 92. In addition to the estimated thousands of dollars that Plaintiffs have spent  
8 purchasing Evanger's Pet Foods over the last four years, Plaintiffs have spent an  
9 average of \$100 a week on making their own food for their pets to ensure that it is  
10 healthy and safe.

11 **V. FDA'S INVESTIGATION CONFIRMS PENTOBARBITAL IN**  
12 **EVANGER'S PET FOODS AND LEADS TO PRODUCT RECALLS**

13 93. In addition to the aforementioned testing involving Talula and Plaintiffs'  
14 can of Hunk of Beef, the FDA performed additional testing of Defendants' Pet Foods  
15 and investigated Defendants' facilities. The testing and investigations further  
16 confirmed the adulteration of Evanger's Pet Foods and misrepresentations to  
17 customers.

18 94. On January 10, 2017, the FDA began inspections of Evanger's  
19 production facilities. During this inspection, it collected and tested two cans of  
20 Against the Grain's Pulled Beef that also tested positive for pentobarbital.<sup>34</sup>  
21

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22 <sup>33</sup> FDA Caution, <https://www.fda.gov/AnimalVeterinary/NewsEvents/CVM>  
23 Updates/ucm542265.htm (last visited April 25, 2017); Exhibit C, OSU report at 2  
24 (Addendum 1/23/17 "Testing of the feed and stomach contents has found  
25 pentobarbital") and MSU report at 1 (feed and stomach contents "positive" for  
26 "pentobarbital (euthanasia agent –large quantity chromatographically) "If this  
sample came directly from a can, this is an urgent matter and needs to be reported  
to the FDA Feed Safety Portal.")

27 <sup>34</sup> FDA Q&A, <https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafety>  
28



1           95. In its review of Defendants’ records, the FDA found the bill of lading of  
2 Evanger’s meat supplier stating it was “Inedible Hand Deboned Beef” “FOR PET  
3 FOOD USE ONLY. NOT FIT FOR HUMAN CONSUMPTION.” The FDA  
4 determined that the supplier “does **not** have a grant of inspection [or inspection  
5 mark] from the United States Department of Agriculture’s Food Safety Inspection  
6 Service” and “would **not** be considered human grade.” The FDA also indicated that  
7 the supplier’s export certification under APHIS was not active or valid. “The FDA’s  
8 preliminary assessment indicates that **none** of [Evanger’s] suppliers are USDA-FSIS  
9 registered facilities.”<sup>35</sup>

10           96. The FDA published its observations in a “Form 483”, which “noted  
11 numerous significant concerns with conditions” from its inspection of Evanger’s  
12 facilities in Wheeling, Illinois, and Nutripack, LLC in Markham, Illinois, where Joel  
13 Sher is listed as the President and Manager, respectively.<sup>36</sup>

14           97. The inspection report for Defendants’ Wheeling facility revealed that  
15 cans of Hunk of Beef and Pulled Beef from that facility tested positive for  
16 pentobarbital. It also noted condensation dripping into its cans of Pet Foods,  
17 including Hunk of Beef. It described pools of water, peeling paint, mold, and live  
18 fly-like insect where Pet Food was exposed. It also noted an open sanitary sewer  
19 within 25 feet of food storage and processing. The FDA noted a lack of refrigerated  
20 storage facilities or other means of controlling the temperature of exposed raw meat  
21 that were instead stored at ambient temperature. The FDA also noted “frozen ice  
22 containing a blood-like substance across the floors of the three trailers, and also on

23 \_\_\_\_\_  
24 Informaton/ucm544348.htm (last visited May 9, 2017).

25 <sup>35</sup> *Id.* (emphasis added).

26 <sup>36</sup> FDA Cautions, [https://www.fda.gov/AnimalVeterinary/NewsEvents/CVM](https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm)  
27 Updates/ucm542265.htm; Exhibit D, Form 483 FDA Inspections of Evanger’s  
28 facilities.

1 the ground immediately outside of two of the trailer doors.” Exhibit D, Wheeling  
2 facility Form 483.

3 98. The inspection report for Evanger’s Markham facility likewise indicated  
4 that Pulled Beef tested positive for pentobarbital. It also stated that this facility’s Pet  
5 Foods are adulterated where they were prepared, packed, or held under insanitary  
6 conditions that may have contaminated them or made them unhealthy. The FDA  
7 noted that, on four different dates, condensation was dripping throughout the  
8 processing and storage facility and into open cans of Pet Food, and that the floor was  
9 damaged in a manner that caused pools of water to form. The report stated that frozen  
10 and raw meats were prepared for processing while having direct contact with  
11 insanitary, bare, paint peeling and unprotected concrete flooring. The report noted  
12 that employees were cutting raw chicken parts on untreated wooden building  
13 construction lumber. The report observed birds feeding on spilled pet food, resting  
14 in rafters and flying throughout the warehouse. Exhibit D, Markham facility Form  
15 483.

16 99. The FDA confirmed at the time that it had received ten complaints, which  
17 it was continuing to follow up on, regarding Evanger’s products, including five  
18 suggesting pentobarbital poisoning involving Hunk of Beef *and Braised Beef*.<sup>37</sup>

19 100. USDA-FSIS also tested Hunk of Beef products, and found the meat was  
20 bovine (beef) with “trace amounts” of pork and equine.<sup>38</sup>

21 101. The FDA encourages facilities to initiate a voluntary recall and to update  
22 the product involved in the recall as more information becomes available. It also  
23 states that “it is *not* acceptable to use animals euthanized with a chemical substance

24 \_\_\_\_\_  
25 <sup>37</sup> FDA Q&A, <https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm>.

26 <sup>38</sup> FDA Caution, <https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm>.  
27



1 in pet or other animal foods” and that there is **no** acceptable level of pentobarbital in  
2 pet food. It also noted that due to the irregular distribution of meat from various  
3 animals in the “chunk of beef” products, that “if even one can tests positive for  
4 pentobarbital, we have to consider the possibility that some, but not necessarily all  
5 other cans in that lot will also test positive.”<sup>39</sup>

6 102. On February 3, 2017, following discussion with the FDA, Evanger’s  
7 initiated a voluntary recall of certain lots of Hunk of Beef: 1816E03HB,  
8 1816E04HB, 1816E06HB, 1816E07HB and 1816E13HB with an expiration date of  
9 June 2020. The lots were distributed to fifteen states, Washington, California,  
10 Minnesota, Illinois, Indiana, Michigan, Wisconsin, Ohio, Pennsylvania, New York,  
11 Massachusetts, Maryland, South Carolina, Georgia and Florida.<sup>40</sup>

12 103. On February 9, 2017, after the FDA’s test of two cans of Against the  
13 Grain’s Pulled Beef were positive for pentobarbital from the same Evanger’s facility,  
14 and after discussions with the FDA, Evanger’s initiated a voluntary recall of Pulled  
15 Beef lot 2415E01ATB12, with an expiration date of December 2019, manufactured  
16 and distributed in December 2015 to Washington and Maryland, which it announced  
17 publicly on February 13, 2017.<sup>41</sup>

18  
19 <sup>39</sup> FDA Q&A, <https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm> (emphasis added).

20 <sup>40</sup> FDA, Recalls, Market Withdrawals, & Safety Alerts, Evanger’s Voluntarily  
21 Recalls Hunk of Beef Because of Pentobarbital Exposure in one Batch of Food,  
22 February 3, 2017 (“Hunk of Beef Recall Feb. 3, 2017”), <https://www.fda.gov/Safety/Recalls/ucm539900.htm> (last visited May 11, 2017); FDA Caution,  
23 <https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm>.

24 <sup>41</sup> FDA Caution, posted February 17, 2017, <https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm>; FDA, Recalls, Market  
25 Withdrawals, & Safety Alerts, Against the Grain Pet Food Voluntarily Recalls One  
26 Lot of Pulled Beef Due to Potential Adulteration with Pentobarbital, February 14,  
27 2017 (“Pulled Beef Recall Feb. 14, 2017”), <https://www.fda.gov/Safety/Recalls/>

1           104. On February 14, 2017, the FDA concluded that it was unable to  
2 determine from Evanger's available records whether any of Evanger's other  
3 products, or any products Evanger's makes for other companies, contained the beef  
4 that went into the recalled products.<sup>42</sup>

5           105. On February 20, 2017, Evanger's notified the FDA that it planned to  
6 recall *all* "chunk of beef" products.

7           106. On February 27, 2017, the FDA became aware that Evanger's was  
8 notifying distributors and retailers of a new recall for its *Braised Beef*, bar code  
9 20107, without explanation, as well as *expanding the prior recall* of Hunk of Beef,  
10 bar code 20109, and Pulled Beef, bar code 80001, manufactured from December  
11 2015 to January 2017, with expiration dates December 2019 to January 2021.<sup>43</sup>

12           107. Upon information and belief, Evanger's has not provided customers who  
13 purchased its Pet Foods with a refund based upon the value of the products purchased  
14 and not returned.

15           108. Upon information and belief, retailers also were not given a refund for  
16 the recalled products that were returned by customers, or for Evanger's other  
17 products that retailers had been unable to sell following the recall.

18           109. On April 17, 2017, *nearly four months* after Plaintiffs' dogs were

19 \_\_\_\_\_  
20 ucm541692.htm (last visited May 11, 2017); Against the Grain, Voluntary Recall,  
21 [http://www.againstthegrainpetfood.com/about\\_us/voluntary-recall/](http://www.againstthegrainpetfood.com/about_us/voluntary-recall/) (last visited  
22 May 11, 2017).

23 <sup>42</sup> FDA Q&A, [https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafety](https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm)  
24 [Information/ucm544348.htm](https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm).

25 <sup>43</sup> FDA Caution, updated March 2, 2017, [https://www.fda.gov/AnimalVeterinary/](https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm)  
26 [NewsEvents/CVM Updates/ucm542265.htm](https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm); FDA, Recalls, Market Withdrawals,  
27 & Safety Alerts, Evanger's Pet Food and Against the Grain Voluntarily Recalls  
28 Additional Products Out of Abundance of Caution due to Potential Adulteration  
with Pentobarbital, March 3, 2017 ("Expanded Recall Mar. 3, 2017"),  
<http://www.fda.gov/Safety/Recalls/ucm544972.htm> (last visited May 11, 2017).

1 poisoned by Evanger's Pet Foods, another company's brand made my Evanger's in  
 2 2015 was recalled. After a dog became sick from eating Party Animal's products,  
 3 and testing from Texas A&M confirmed that Cocolicious Beef & Turkey dog food  
 4 (Lot #0134E15204 04, best by July 2019) and Cocolicious Chicken & Beef dog food  
 5 (Lot #0134E15237 13, best by August 2019) ("Cocolicious Beef Products")  
 6 contained pentobarbital, Party Animal initiated a recall. Party Animal indicated that  
 7 it is working with distributors and retailers to determine if any additional beef-  
 8 flavored products remain on shelves. It also stated that it is having "extensive  
 9 discussions" with Evanger's regarding the cause of the contamination of its pet food  
 10 and re-examining its manufacturing processes.<sup>44</sup>

## 11 **VI. EVANGER'S PET FOODS ARE DECEPTIVELY AND FALSELY** 12 **LABELED**

### 13 **A. Evanger's Denials Further Misrepresent Its Pet Foods**

14 110. On January 4, 2017, while Plaintiffs were working with the FDA to test  
 15 the Pet Foods and Talula's stomach contents, Evanger's posted on its website that  
 16 the lot #1816E06HB13 went to only one distributor in Washington. Even though it  
 17 later recalled all its lots of Hunk of Beef as well as Braised Beef and Pulled Beef,  
 18 Evanger's stated that no other flavors of its Pet Foods were affected, and that all  
 19 other products "are entirely safe to feed your and our own pets." Evanger's also  
 20 maintained that every batch of its Pet Foods "is reviewed by a graduate from the  
 21 FDA Better Processing School" and is cooked in compliance with "Evanger's FDA  
 22 Scheduled File Process." Evanger's was also quick to cast blame on Plaintiffs  
 23 without explanation or evidence stating "we have nothing to show that there is any  
 24 issue with the food such as a veterinary report. We believe that *other factors are*

25 <sup>44</sup> FDA, Recalls, Market Withdrawals, & Safety Alerts, Party Animal Recalls Dog  
 26 Food Due to Potential Presence of Pentobarbital, Posted April 25, 2017 ("Party  
 27 Animal Recall"), <https://www.fda.gov/Safety/Recalls/ucm554771.htm> (last visited  
 28 May 11, 2017).

1 *involved* that we are not aware of at this time, but will come to light when we are  
2 able to have a dialogue with [Plaintiffs]. . . . we anticipate at the conclusion of our  
3 investigation the test results will come back negative for any pathogens or toxins.”<sup>45</sup>

4 111. On January 16, 2017, six days after the FDA began inspecting Evanger’s  
5 facilities and testing unopened cans of Pet Foods that it found adulterated, Evanger’s  
6 posted on its website that its four preliminary tests all came back negative, and it  
7 expected its final results to be the same. Again, without explanation, Evanger’s  
8 pointed fingers at Plaintiffs stating that it has been “unable to find any connection  
9 between the alleged incident and our foods, nor is there any veterinary or medical  
10 evidence to support the claims of responsibility.”<sup>46</sup>

11 112. On January 23, 2017, at the same time that the FDA tests confirmed that  
12 Talula’s stomach contents and Hunk of Beef had tested positive for pentobarbital  
13 (see Exhibit C), Evanger’s again stated that its testing for commercial sterility came  
14 back “sterile,” meaning it contained no pathogens or harmful bacteria. It thanked  
15 “everyone who waited for all the test results before drawing any conclusions.” It  
16 again falsely claimed that it is a “5-star pet food that not only improves your pet’s  
17 health, but overall well-being and longevity through clean, healthy food.”<sup>47</sup>

18 113. On January 30, 2017, despite the FDA’s ongoing testing that confirmed  
19 pentobarbital in its Pet Foods and investigation of Evanger’s facilities at this time,  
20 Evanger’s stated that it will not “respond to any *unverifiable reports or*  
21 *unsubstantiated rumors that are intended to deceive the public*” relating to the FDA  
22 and Evanger’s Pet Foods. It falsely stated that the FDA has not completed any

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23 <sup>45</sup> Evanger’s, News-Events, Voluntary Recall (“Voluntary Recall on Website”),  
24 posted Jan. 4, 2017, [https://evangersdogfood.com/news-events/pug-family-](https://evangersdogfood.com/news-events/pug-family-updates/)  
25 [updates/](https://evangersdogfood.com/news-events/pug-family-updates/) (last visited Feb. 17, 2017) (emphasis added) (since removed).

26 <sup>46</sup> *Id.*, posted Jan. 16, 2017.

27 <sup>47</sup> *Id.*, posted Jan. 23, 2017.

1 additional tests and “as far as Evanger’s is aware and, we believe, the FDA is aware,  
 2 ***none of our foods have been reported to contain pentobarbital*** or any other  
 3 contaminant.”<sup>48</sup>

4 114. In its February 3, 2017 recall notice, a month after Plaintiffs notified it of  
 5 the issue, Evanger’s stated that the recall only affects 5 lots of food, “which [are]  
 6 specifically used for the Hunk of Beef product and ***no other products.***” The recall  
 7 notice also stated, in pertinent part:

8 All Evanger’s suppliers of meat products are ***USDA approved.*** The beef  
 9 supplier provides us with beef chunks from cows that are slaughtered in a  
 10 ***USDA facility.*** . . . Because we source from suppliers of meat products that are  
 11 ***USDA approved,*** and no other products have had any reported problems, we  
 12 are not extending the recall to other supplier lots.<sup>49</sup>

13 115. On February 3, 2017, Evanger’s stated on its website that it had  
 14 terminated its relationship with its meat supplier of over forty years, and that the  
 15 supplier’s meat was ***not used in any other products.*** Evanger’s stated that it did not  
 16 know about pentobarbital in its products, or test for it previously, because Evanger’s  
 17 does not have any rendered materials in its supply chain, which includes products  
 18 from animals that have died by means other than slaughter, and further stated that  
 19 “[a]ll of our raw materials are sourced from ***USDA-inspected facilities,*** and many of  
 20 them are suppliers with whom we have had long-standing relationships.”<sup>50</sup>

21 116. On February 13, 2017, however, Evanger’s recalled yet another product,  
 22 one lot of Against the Grain Pulled Beef. Evanger’s again stated that the recall

23 \_\_\_\_\_  
 24 <sup>48</sup> *Id.*, posted Jan. 30, 2017 (emphasis added).

25 <sup>49</sup> Hunk of Beef Recall Feb. 3, 2017, [https://www.fda/Safety/Recalls/ucm539900.](https://www.fda/Safety/Recalls/ucm539900.htm)  
 26 htm (emphasis added).

27 <sup>50</sup> Voluntary Recall on Website, posted Feb. 3, 2017, [https://evangersdogfood.com/](https://evangersdogfood.com/news-events/pug-family-updates/)  
 28 news-events/pug-family-updates/ (emphasis added).

1 “affects *no other lot numbers*, and no other flavors” and reiterated that it makes  
 2 “products that are of the best quality available for pets.”<sup>51</sup>

3 117. On February 17, 2017, the FDA publicly corrected Evanger’s  
 4 misrepresentations that its beef comes from a “USDA approved” supplier. The FDA  
 5 confirmed that the bill of lading *that the meat supplier provided to Evanger’s*  
 6 indicated that its beef was “*inedible hand deboned beef*” and “*not fit for human*  
 7 *consumption.*” The FDA stated that the supplier does not have a USDA grant of  
 8 inspection nor a USDA inspection mark, and that the meat is not human grade. The  
 9 FDA again stated that only USDA-FSIS regulates the slaughter of animals for human  
 10 consumption, and USDA-FSIS did not inspect Evanger’s meat supplier. It also stated  
 11 that testing by USDA-FSIS found that Evanger’s Hunk of Beef, labeled as “100%  
 12 beef,” contained trace amounts of pork and equine as well as beef.<sup>52</sup>

13 118. The FDA also reiterated in a “Q&A” about Evanger’s that *none* of  
 14 Evanger’s suppliers are USDA-FSIS registered facilities.<sup>53</sup>

15 119. Despite the FDA’s findings and public statements, as of the date of this  
 16 complaint, Evanger’s continues to make false representations on its website  
 17 including, in the first sentence about its Pet Foods, that “Evanger’s utilizes *USDA*  
 18 *inspected meats* to make highly palatable and nutritious foods that will satisfy even  
 19 the most finicky eater.”<sup>54</sup>

20 120. The Against the Grain website also continues to mislead customers that

21 <sup>51</sup> Against the Grain, Voluntary Recall, [http://www.againstthegrainpetfood.com/](http://www.againstthegrainpetfood.com/about_us/voluntary-recall/)  
 22 [about\\_us/voluntary-recall/](http://www.againstthegrainpetfood.com/about_us/voluntary-recall/) (emphasis added).

23 <sup>52</sup> FDA Caution, [https://www.fda.gov/AnimalVeterinary/NewsEvents/CVM](https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm)  
 24 [Updates/ucm542265.htm](https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm).

25 <sup>53</sup> FDA Q&A, [https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafety](https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm)  
 26 [Information/ucm544348.htm](https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm).

27 <sup>54</sup> Evanger’s. About Our Products, [https://evangersdogfood.com/about-us/about-](https://evangersdogfood.com/about-us/about-our-products/)  
 28 [our-products/](https://evangersdogfood.com/about-us/about-our-products/) (emphasis added).



1 its Pet Foods are “only sourced from *human grade facilities*” and that its cat food is  
2 “human quality.”<sup>55</sup>

3 121. On March 3, 2017, after insisting that no other lots or products were  
4 affected by its recalls, and two months after Plaintiffs first notified Evanger’s of the  
5 facts described above, Evanger’s announced that it was expanding its recall to *all*  
6 lots of Hunk of Beef and Pulled Beef, and also including a new recall of all Evanger’s  
7 Braised Beef pet food, without explanation, manufactured between December 2015  
8 and January 2017, with expiration dates of December 2019 through January 2021.  
9 Evanger’s stated that the “recall affects only Hand Packed Beef Products.”<sup>56</sup>

10 122. Even after the expanded recall that Defendants stated did not affect any  
11 other products, on April 17, 2017, another pet food manufactured by Evanger’s,  
12 Party Animal’s Cocolicious Beef Products, sickened a dog and tested positive for  
13 pentobarbital. Party Animal recalled its Cocolicious Beef Products.

14 123. On May 5, 2017, Party Animal sued Evanger’s and Nutripack for  
15 damages relating to the recall of its products. (*Party Animal, Inc. v. Evanger’s Dog*  
16 *and Cat Food Co., Inc., Nutripack, LLC, Does 1-100*, No. 2:17-cv-03422-PSG-FFM  
17 (C.D. Cal.)) (“Party Animal Lawsuit”). In the lawsuit, Party Animal alleges that its  
18 damages include but are not limited to retailers demanding refunds for recalled and  
19 non-recalled products and consumers seeking payment of veterinarian bills for  
20 treatment after their pets ate Party Animal’s products.

21 124. The Party Animal Lawsuit also alleges that, in order to avoid liability  
22 relating to the recalls, Defendants defunded Evanger’s corporation and moved their  
23

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24 <sup>55</sup> Against the Grain, About the Food, <http://www.againstthegrainpetfood.com/about-the-food/> and Cat Food, <http://www.againstthegrainpetfood.com/human-quality-cat-food/> (emphasis added).

26 <sup>56</sup> Expanded Recall Mar. 3, 2017, [https://www.fda.gov/Safety/Recalls/ucm544972](https://www.fda.gov/Safety/Recalls/ucm544972.htm).  
27 htm.



1 assets to Nutripack. Defendants invoiced Party Animal through Nutripack, instead  
2 of Evanger's as they had done for the last decade, beginning in February 2017. In a  
3 phone call between Party Animal and Holly Sher, an owner of Evanger's and  
4 Nutripack, in April 2017, Sher stated that "they were afraid of getting sued because  
5 of the recent recalls, and they were taking money out of Evanger's. She also stated  
6 that they did not want to receive any money into Evanger's and would instead run  
7 all operations under Nutripack."

8 125. Evanger's has not made any public comment about Party Animal, and it  
9 is unknown if other Evanger's and Against the Grain products or other companies'  
10 products that Evanger's makes might also be adulterated, misbranded and unsafe for  
11 pets and customers handling them.

12 **B. Evanger's Admits to Misrepresentations of its Pet Foods in Lawsuit**  
13 **Against Its Meat Supplier**

14  
15 126. Despite its history of run-ins with FDA and other lawsuits, instead of  
16 owning up to its misleading advertising of its Pet Foods that poisoned and put at risk  
17 animals that consumed its products, Evanger's continues to deflect its responsibility  
18 by blaming others for its recalls.

19 127. On April 25, 2017, Evanger's filed a lawsuit seeking multi-millions in  
20 damages against Bailey Farms, LLC ("Bailey"), its hand-selected, meat supplier for  
21 *over 40 years*, located at 549 Karem Drive, Marshall, Wisconsin, in the Circuit Court  
22 of Cook County, Illinois (Case No. 2017-L-004153). Evanger's alleges that Bailey  
23 sold it meat that tested positive for pentobarbital including the shipments that were  
24 used in cans of the Pet Foods that Plaintiffs purchased on December 31, 2016 that  
25 poisoned Plaintiffs' dogs, including Talula, who died as a result.<sup>57</sup>

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26 <sup>57</sup> The lawsuit is referred to herein as the "Bailey Lawsuit" and the paragraphs in  
27 the complaint are cited to herein as "Compl. ¶.".

1           128. In the lawsuit, Evanger's admits that on June 2, 2016, it received 42,340  
2 pounds of "Inedible Hand Deboned Beef" "For Pet Food Use Only. Not Fit for  
3 Human Consumption" from Bailey for an invoice price of \$15,789.30. Evanger's  
4 used this meat that was not certified or inspected for human food by the USDA to  
5 make 50,000 cans of Hunk of Beef, including lot #1816EO6HB13 from which  
6 Plaintiffs purchased three cans that were fed to their dogs and caused the dogs'  
7 illnesses. Exhibit E, Bailey's Bill of Lading and Invoice to Evanger's for meat used  
8 in Hunk of Beef (Compl. ¶¶ 7-12 submitted as Exhibits 1 and 2).

9           129. Evanger's included in its complaint against Bailey the FDA testing  
10 results for Hunk of Beef cans from lot #1816EO6HB13, showing that the products  
11 tested positive for pentobarbital and phenytoin, an anti-seizure medication. Exhibit  
12 F, FDA testing results Hunk of Beef (Compl. ¶ 15, submitted as Exhibit 3).

13           130. Evanger's also admits in the lawsuit that on November 16, 2015, it  
14 received 43,120 pounds of "Inedible Hand Deboned Beef" "For Pet Food Use Only.  
15 Not Fit for Human Consumption" from Bailey for an invoice price of \$15,653.20.  
16 Evanger's used this meat, that was not certified or inspected for human food by the  
17 USDA, to produce cans of Against the Grain Hand Pulled Beef, including lot  
18 #2415E01ATB12 from which Plaintiffs purchased three cans. Exhibit G, Bailey's  
19 Bill of Lading and Invoice to Evanger's for meat used in Pulled Beef (Compl. ¶¶ 43-  
20 45, submitted as Exhibit 5 and 6).

21           131. Evanger's also included in its complaint the FDA testing results for  
22 Pulled Beef cans from lot #2415E01ATB12, showing that these products also tested  
23 positive for pentobarbital and phenytoin. Exhibit H, FDA testing results Pulled Beef  
24 (Compl. ¶ 45, submitted as Exhibit 7).

25           132. Evanger's further states in its complaint that "it would be highly unlikely  
26 that pentobarbital would be administered to a cow; cows are not generally  
27 euthanized." Evanger's also alleges that its own testing found that Hunk of Beef  
28

1 from lot #1816EO6HB13, which it labels “100% beef,” was not entirely beef, and  
2 instead also found the presence of *horse* DNA. Exhibit I, DNA testing of Hunk of  
3 Beef (Compl. ¶ 17, submitted as Exhibit 4).

4 133. In its claims of fraud relating to Bailey’s APHIS certification, Evanger’s  
5 alleges that each bill of lading, invoice and pallet of beef that Bailey shipped to  
6 Evanger’s contained a tag with Bailey’s “APHIS certificate number ‘WI-BLO-  
7 0004’” that had been expired for years. Evanger’s stated that it relied upon these  
8 representations when Evanger’s stated to customers that its products came from  
9 USDA inspected facilities, even though Evanger’s *continues to make these*  
10 *statements on its website now*. Compl. ¶ 58-62, 66-68.

11 134. As the FDA confirmed and stated in its press releases, however, none of  
12 Evanger’s suppliers were inspected by USDA-*FSIS*, which is the only entity that  
13 regulates the slaughter of animals for human consumption and speciation. Only  
14 meat from a USDA-FSIS facility would be appropriate for Evanger’s to represent as  
15 “human grade, USDA inspected” meats, and Evanger’s products were never  
16 certified as such. Further, APHIS only provides a certifications for exporting.<sup>58</sup>

17 135. In addition to Bailey’s pet food company that provides both commercial  
18 and retail pet food,<sup>59</sup> Bailey also operates, at the same location, a stock removal  
19 company that “picks up *fresh, down and dead cows, horses and calves*” for use in  
20 pet food:  
21  
22  
23  
24

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25 <sup>58</sup> FDA, Q&A, (last visited May 2, 2017).

26 <sup>59</sup> Bailey Farms, LLC, <http://www.baileyfarmspets.com/index.php> (last visited  
27 May 2, 2017).



Bailey Farms Stock Removal, <http://baileyfarmsstockremoval.com/> (last visited May 2, 2017).

136. Evanger's misrepresents to customers that its Pet Foods are "premium," "100% beef" from "USDA-inspected, human grade facilities," when in fact they are not. Evanger's even uses terminology reserved for top human cuisine, like "foodie's choice," to describe its Pet Foods and convince customers that their products are top human grade. Customers, including Plaintiffs, relied on these false representations that the Pet Foods were healthy, high quality and safe, when they purchased Evanger's products and paid a price significantly higher than competing products. In reality, Evanger's Pet Foods were not fit for sale and put consumers' pets at risk of being poisoned. The Pet Foods are misbranded and adulterated, in violation of state and federal law, because they are not from USDA-inspected, human-grade facilities; are made up of animals – cows, horses and pigs – that died by means other

1 than slaughter; contain poisonous pentobarbital; and were made at Defendants'  
2 unsanitary facility that further contaminated them.

3 137. Evanger's Pet Foods labeled as "USDA-Organic" and "Oregon Tilth  
4 certified" mislead customers by indicating that the products are made of high quality,  
5 USDA-inspected, human grade ingredients and are made in clean and sanitary  
6 facilities. However, the FDA's inspections confirmed that Defendants' facilities are  
7 unsanitary exposing its Pet Foods to contamination and health risks, and that the Pet  
8 Foods are not sourced from USDA-inspected suppliers and are not human grade.  
9 Evanger's meat supplier uses animals that have died by means other than slaughter,  
10 rendering those products unsafe, unhealthy, adulterated and misbranded in violation  
11 of state and federal law and not compliant with organic or Oregon Tilth standards.

12 138. Evanger's Pet Foods that are labeled as kosher similarly mislead  
13 customers into purchasing these products because customers reasonably believe that  
14 the products do not contain certain ingredients, including non-kosher pork, and are  
15 otherwise not adulterated. Contrary to the representation of being kosher, the FDA  
16 found that Evanger's Pet Foods are made in unsanitary facilities that cause  
17 contamination, are not USDA-inspected nor human grade, and are adulterated with  
18 pentobarbital and made of animals that did not die by slaughter. The USDA-FSIS's  
19 speciation testing also found trace amounts of non-kosher pork and equine, as well  
20 as beef, in its Pet Foods.

21 139. Evanger's has carried out a consistent and widespread campaign of  
22 deceptively promoting its Pet Foods as "100% beef," "human grade," "USDA  
23 inspected," "safe," "premium, high quality" and even consisting of organic and  
24 kosher meat ingredients. Evanger's core marketing statements indicate that its Pet  
25 Foods contain 100% beef, contain quality ingredients, are human grade and USDA  
26 inspected, despite recalls and FDA inspections and public statements that prove  
27

1 otherwise. Because the Pet Foods are illegally misbranded and adulterated, they  
2 were unfit and unsafe for sale.

3 140. Defendants' misrepresentations have occurred in at least three forms, all  
4 of which constitute "advertising." These include: (i) product packaging, (ii)  
5 materials provided to stores that carry Evanger's Pet Foods, and (iii) Evanger's  
6 social media and website, through which it directly sells its Pet Foods to the public.

7 141. Defendants' pervasive advertising message misrepresents the quality of  
8 its Pet Foods and the health risks associated with their consumption. FDA testing  
9 confirms that the Pet Foods were not human quality, USDA inspected meats, or even  
10 beef. Instead, the Pet Foods were manufactured from meat provided by a non-USDA  
11 meat supplier that hauls dead cows, horses and calves that did not die by slaughter;  
12 contained poisonous pentobarbital from euthanized animals; and were produced at  
13 Defendants' unsanitary facilities that contaminated the Pet Foods, making them  
14 adulterated under the law, unfit for sale and unsafe for pets to eat and people to  
15 handle.

16 142. Defendants' pattern of deceptive marketing continues today, including  
17 false, misleading and deceptive statements relating to "human grade" ingredients  
18 from "USDA inspected facilities." Defendants' current advertising conveys the  
19 impression that the products are of high quality and safe for companion animals to  
20 consume when they are not.

### 21 **CLASS ACTION ALLEGATIONS**

22 143. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and  
23 (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure ("Rule") for the purpose  
24 of asserting the claims alleged in this Complaint on a common basis. Plaintiffs bring  
25 this action on behalf of themselves and all members of the following class comprised  
26 of:  
27  
28



1 All persons, exclusive of Defendants and its employees, who purchased  
2 in the United States, one or more of Defendants' Pet Foods from June  
3 16, 2013 to the present (the "Nationwide Class").

4 144. Plaintiffs bring this action on behalf of themselves and all members of  
5 the following subclasses comprised of:

6 All persons, exclusive of Defendants and its employees, who purchased  
7 in the State of Washington one or more of Defendants' Pet Foods from  
8 June 16, 2013 to the present (the "Washington Subclass").

9 145. The Nationwide Class and the Washington Subclass are collectively  
10 referred to herein as the "Classes."

11 146. Plaintiffs reserve the right to modify or amend the definitions of the  
12 Classes after they have had an opportunity to conduct discovery.

13 147. Claims I, VIII-XII are brought by Plaintiffs on behalf of themselves and  
14 the Nationwide Class. Claims II-VII are brought by Plaintiffs on behalf of  
15 themselves and the Washington Subclass.

16 148. **Numerosity. Rule 23(a)(1).** The members of the Classes are so  
17 numerous that their individual joinder is impracticable. Plaintiffs are informed and  
18 believe that the proposed Classes contain at least thousands of purchasers of  
19 Defendants's Pet Foods who have been damaged by Defendants's conduct as alleged  
20 herein. The number of Class members is unknown to Plaintiffs but could be  
21 discerned from the records maintained by Defendants.

22 149. **Existence of Common Questions of Law and Fact. Rule 23(a)(2).**  
23 This action involves common questions of law and fact, which include, but are not  
24 limited to, the following:

- 25 a. Whether the statements made by Defendants as part of its  
26 advertising for its Pet Foods discussed herein are true, or are  
27



1 reasonably likely to deceive, given the misrepresentation of  
2 material fact described above;

3 b. Whether Defendants has violated its implied warranties relating  
4 to the Pet Foods under the Magnuson-Moss Warranty Act, 15  
5 U.S.C. § 2301, *et seq.*;

6 c. Whether Defendants has breached its express warranties to  
7 customers relating to the Pet Foods under Wash. Rev. Code §  
8 62A.2-313;

9 d. Whether Defendants breach its implied warranties of  
10 merchantability regarding the Pet Foods to customers under  
11 Wash. Rev. Code § 62A.2-314;

12 e. Whether Defendants' conduct described herein constitutes an  
13 unfair and/or deceptive act or practice in violation of the  
14 Washington Consumer Protection Act, § 19.86.010, *et seq.*;

15 f. Whether Defendants was negligent in its actions under Wash.  
16 Rev. Code § 7.72.030(1);

17 g. Whether Defendants is subject to strict products liability under  
18 Wash. Rev. Code § 7.727.030(2);

19 h. Whether Defendants was unjustly enriched under Washington  
20 law;

21 i. Whether Defendants' conduct described herein constitutes a  
22 unfair and/or deceptive act or practice in violation of the Illinois  
23 Consumer Fraud and Deceptive Business Practices Act, 815 Ill.  
24 Comp. Stat. 505/1, *et seq.*

25 j. Whether Defendants breached its express warranties relating to  
26 the Pet Foods to customers under Illinois law;

27 k. Whether Defendants was negligent under Illinois law;

- 1 l. Whether Defendants is liable under Illinois product liability;
- 2 m. Whether Defendants was unjustly enriched under Illinois law;
- 3 n. Whether Plaintiffs and the other members of Classes are entitled
- 4 to damages; and
- 5 o. Whether Plaintiffs and the Classes are entitled to injunctive
- 6 relief, restitution or other equitable relief and/or other relief as
- 7 may be proper.

8 150. **Typicality. Rule 23(a)(3).** All members of the Classes have been  
9 subject to and affected by the same conduct and omissions by Defendants. The  
10 claims alleged herein are based on the same violations by Defendants that harmed  
11 Plaintiffs and members of the Classes. By purchasing Evanger's Pet Foods during  
12 the relevant time period, all members of the Classes were subjected to the same  
13 wrongful conduct. Plaintiffs' claims are typical of the Classes' claims and do not  
14 conflict with the interests of any other members of the Classes. Defendants'  
15 unlawful, unfair, deceptive, and/or fraudulent actions concern the same business  
16 practices described herein irrespective of where they occurred or were experienced.

17 151. **Adequacy. Rule 23(a)(4).** Plaintiffs will fairly and adequately protect  
18 the interests of the members of the Classes. Plaintiffs have retained counsel  
19 experienced in complex consumer class action litigation, and Plaintiffs intend to  
20 prosecute this action vigorously. Plaintiffs have no adverse or antagonistic interests  
21 to those of the Classes.

22 152. **Injunctive and Declaratory Relief. Rule 23(b)(2).** Defendants'  
23 actions regarding the deceptions and misrepresentations regarding Evanger's Pet  
24 Foods are uniform as to members of the Classes. Defendants has acted or refused to  
25 act on grounds that apply generally to the Classes, so that final injunctive relief as  
26 requested herein is appropriate respecting the Classes as a whole.

1           153. ***Predominance and Superiority of Class Action. Rule 23(b)(3).***

2 Questions of law or fact common to the Classes predominate over any questions  
3 affecting only individual members, and a class action is superior to other methods  
4 for the fast and efficient adjudication of this controversy, for at least the following  
5 reasons:

- 6           a. Absent a class action, members of the Classes as a practical  
7 matter will be unable to obtain redress, Defendants' violations of  
8 their legal obligations will continue without remedy, additional  
9 consumers will be harmed, and Defendants will continue to  
10 retain its ill-gotten gains;
- 11           b. It would be a substantial hardship for most individual members  
12 of the Classes if they were forced to prosecute individual actions;
- 13           c. When the liability of Defendants has been adjudicated, the Court  
14 will be able to determine the claims of all members of the Class;
- 15           d. A class action will permit an orderly and expeditious  
16 administration of the claims of each member of the Classes and  
17 foster economies of time, effort, and expense;
- 18           e. A class action regarding the issues in this case does not create  
19 any problems of manageability; and
- 20           f. Defendants has acted on grounds generally applicable to the  
21 members of the Classes, making class-wide monetary relief  
22 appropriate.

23           154. Plaintiffs do not contemplate class notice if the Classes are certified  
24 under Rule 23(b)(2), which does not require notice, and notice to the putative Classes  
25 may be accomplished through publication, signs or placards at the point-of-sale, or  
26 other forms of distribution, if necessary; if the Classes are certified under Rule  
27 23(b)(3); or if the Court otherwise determines class notice is required. Plaintiffs

1 will, if notice is so required, confer with Defendants and seek to present the Court  
2 with a stipulation and proposed order on the details of a class notice program.

3  
4 **COUNT I**  
5 **Violation of the Magnuson-Moss Warranty Act,**  
6 **15 U.S.C. § 2301, *et seq.***  
7 **(on behalf of Plaintiffs and the Nationwide Class)**

8 155. Plaintiffs repeat and reallege the allegations contained in the paragraphs  
9 above, as if fully set forth herein.

10 156. Plaintiffs bring this claim on behalf of themselves and the Nationwide  
11 Class.

12 157. At all times relevant hereto, there was in full force and effect the  
13 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* (the “MMWA”).

14 158. Evanger’s Pet Foods are consumer products as defined in 15 U.S.C. §  
15 2301(1).

16 159. Evanger’s is a supplier and a warrantor as defined in 15 U.S.C. §  
17 2301(4) and (5).

18 160. Plaintiffs and the Class are “consumers” as defined in 15 U.S.C. §  
19 2301(3). They are consumers because they are persons who bought the Pet Foods  
20 and are entitled under applicable state law to enforce against the warrantor the  
21 obligations of its implied warranty.

22 161. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs and the members of the  
23 Nationwide Class are entitled to bring this class action and are not required to give  
24 Evanger’s notice and an opportunity to cure until such time as the Court determines  
25 the representative capacity of Plaintiffs pursuant to Rule 23 of the Federal Rules of  
26 Civil Procedure. However, Plaintiffs already gave the required notice on behalf of  
27 themselves and the Classes by email dated January 3, 2017.

1           162. In connection with its sale of the Pet Foods, Evanger's gave an implied  
2 warranty as defined in 15 U.S.C. § 2301(7); namely, the implied warranty of  
3 merchantability. As a part of the implied warranty of merchantability, Evanger's  
4 warranted that the Pet Foods: (a) were fit for its ordinary purpose as safe dog food,  
5 (b) would pass without objection in the trade under its contract description as dog  
6 food, (c) were adequately contained, packaged and labeled as the agreements  
7 required, and (d) conformed to the promises and affirmations of fact set forth on its  
8 container and label. Wash. Rev. Code § 62A.2-314.

9           163. Evanger's is liable to Plaintiffs and the Nationwide Class pursuant to  
10 15 U.S.C. § 2310(d)(1), because it breached the implied warranty of merchantability.

11           164. Evanger's initially breached the implied warranty of merchantability as  
12 to Plaintiffs and the members of the Nationwide Class because the Pet Foods were  
13 not fit for the ordinary purposes for which they are used—a safe, healthy, kosher  
14 dog food specifically represented as containing USDA inspected, human grade and  
15 kosher ingredients. Specifically, Evanger's Pet Foods contained non-USDA  
16 inspected and non-human grade ingredients, were adulterated and not 100% beef as  
17 labeled, which made them unfit for their ordinary purpose of providing safe, healthy  
18 dog food. In fact, Evanger's has caused injury and death to animals, who have  
19 consumed the Pet Foods.

20           165. Evanger's further breached its implied warranty of merchantability to  
21 Plaintiffs and members of the Nationwide Class because the Pet Foods were  
22 adulterated in violation of federal and state law, because they contained poisonous  
23 pentobarbital, were made in unsanitary conditions that contaminated them, and  
24 contained animals that did not die by slaughter.

25           166. Evanger's further breached its implied warranty of merchantability to  
26 Plaintiffs and members of the Nationwide Class because the Pet Foods were  
27 misbranded in violations of federal and state law, because instead of containing  
28

1 100% kosher beef and USDA inspected, human grade meat, they contained meat  
2 from horses and pigs that were not USDA inspected, human grade nor kosher.

3 167. Evanger's further breached its implied warranty of merchantability to  
4 Plaintiffs and members of the Nationwide Class because the Pet Foods were not  
5 adequately contained, packaged, and labeled. The directions and labeling that  
6 accompanied the Pet Foods did not warn Plaintiffs and the Nationwide Class of the  
7 dangers of feeding the Pet Foods to their pets, and that the Pet Foods were not  
8 comprised and produced as described.

9 168. Evanger's finally breached its implied warranty of merchantability to  
10 Plaintiffs and members of the Nationwide Class because the Pet Foods did not  
11 conform to the promises and affirmations of fact set forth on its container and label,  
12 as described above. Specifically, the Pet Foods did not constitute safe, healthy food  
13 with 100% beef and USDA inspected, human grade ingredients.

14 169. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiffs and members of the  
15 Nationwide Class are entitled to recover the following damages proximately caused  
16 to them by Evanger's breach of the implied warranty of merchantability: (1) the  
17 difference in value between the Pet Foods as warranted (the full purchase price) and  
18 the Pet Foods as actually delivered (\$0.00) because the Pet Food should not have  
19 been sold since they were adulterated and misbranded, and consumers would not  
20 have purchased them; (2) the veterinarian bills caused by consumption of the Pet  
21 Foods; (3) for those whose pets died from eating the Pet Foods, the market value of  
22 the animals; and (4) for those whose pets died from eating the Pet Foods, the cost of  
23 disposing of the remains.

24 170. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and members  
25 of the Nationwide Class are entitled to recover a sum equal to the aggregate amount  
26 of costs and expenses (including attorneys' fees based on actual time expended)  
27 determined by the Court to have been reasonably incurred by Plaintiffs and the  
28

1 members of the Nationwide Class in connection with the commencement and  
2 prosecution of this action.

3 **COUNT II**  
4 **Breach of Express Warranty**  
5 **Wash. Rev. Code § 62A.2–313**  
6 **(on behalf of Plaintiffs and the Washington Subclass)**

7 171. Plaintiffs repeat and reallege the allegations contained in the paragraphs  
8 above, as if fully set forth herein.

9 172. Plaintiffs bring this claim on behalf of themselves and the Washington  
10 Subclass.

11 173. Evanger’s constitutes both a “merchant” and a “seller,” as those terms  
12 are defined in Wash. Rev. Code §§ 62A.2-104 and 62A.2-103, in connection with  
13 sale of its Pet Foods to Plaintiffs and the Washington Subclass.

14 174. Plaintiffs and the members of the Washington Subclass constitute  
15 “buyers,” as that term is defined in Wash. Rev. Code § 62A.2-103.

16 175. The Pet Foods, themselves, constitute “goods,” as that term is defined  
17 in Wash. Rev. Code § 62A.2-105.

18 176. The statements on Evanger’s advertising of its Pet Foods created  
19 express warranties, including that Evanger’s was 100% kosher beef, USDA  
20 inspected, human grade ingredients, and was healthy and safe for consumption by  
21 pets, under both common law and Wash. Rev. Code § 62A.2–313. Said statements  
22 include, but are not limited to, Pet Foods being “100% beef” “gourmet” labeling;  
23 advertising it as “USDA Inspected” and “human grade” meat.

24 177. The statements regarding Evanger’s described in detail above  
25 constituted descriptions, affirmations of fact and promises relating to the Pet Foods  
26 that became part of the basis for the bargain between customers and Evanger’s for  
27 the purchase of the Pet Foods. They created an express warranties that the Pet Foods  
28 would conform to Evanger’s descriptions, affirmations of fact and promises.





1           182. Plaintiffs bring this claim on behalf of themselves and the Washington  
2 Subclass.

3           183. Evanger's is a "seller" and "merchant" as to the Pet Foods within the  
4 meaning of Wash. Rev. Code §§ 62A.2-103 and 62A.2-104.

5           184. Evanger's designed, manufactured and sold the Pet Foods, which  
6 constitute "goods" within the meaning of Wash. Rev. Code § 62A.2-105.

7           185. Plaintiffs and members of the Washington Subclass constitute "buyers"  
8 within the meaning of Wash. Rev. Code § 62A.2-103.

9           186. Under Wash. Rev. Code § 62A.2-314, Evanger's impliedly warranted  
10 that the Pet Foods were merchantable, including that they: (a) were fit for their  
11 ordinary purposes as "100% kosher beef," "USDA inspected, human grade" meat,  
12 safe and healthy dog food, (b) could pass without objection in the trade under its  
13 contract description as pet food, (c) were adequately contained, packaged, and  
14 labeled as the agreements required, and (d) conformed to the descriptions, promises  
15 and affirmations of fact set forth on its advertising, container and labels.

16           187. The Pet Foods were sold in sealed packaging, and the identified issues  
17 existed when they left Evanger's control, including Evanger's knowledge that the  
18 Pet Foods were not fit for human consumption, were not USDA-FSIS inspected and  
19 were made in an unsanitary facility that contaminated them.

20           188. When Evanger's designed, manufactured, distributed and sold the Pet  
21 Foods, it knew the purpose for which they were intended; i.e., that they would be  
22 consumed by pets.

23           189. Evanger's initially breached the implied warranty of merchantability as  
24 to Plaintiffs and members of the Washington Subclass because the Pet Foods were  
25 not fit for the ordinary purposes for which they were used—a safe, healthy pet food.  
26 Specifically, Evanger's Pet Foods were adulterated because they contained  
27 poisonous pentobarbital, were made in an unsanitary facility that contaminated them,  
28

1 and were made up of animals that did not die by slaughter, all of which are not  
2 approved for use in food and made them unfit for their ordinary purpose of providing  
3 safe, healthy pet food. The Pet Foods were also misbranded, which is prohibited  
4 under the law because instead of being made with 100% kosher beef that is USDA  
5 inspected and human grade as Evanger's advertised, they were made up of non-  
6 USDA, non-human grade, non-kosher meat that was not 100% beef. The Pet Foods  
7 have caused injury and death to animals, who have consumed the Pet Foods.

8         190. Evanger's further breached its implied warranty of merchantability to  
9 Plaintiffs and members of the Washington Subclass because the Pet Foods would  
10 not pass without objection in the trade under its contract description as pet food  
11 because they were adulterated and misbranded, which is prohibited under state and  
12 federal law.

13         191. Evanger's further breached its implied warranty of merchantability to  
14 Plaintiffs and members of the Washington Subclass because the Pet Foods were not  
15 adequately contained, packaged, and labeled. The directions and labeling that  
16 accompanied the Pet Foods did not warn or disclose to Plaintiffs and members of the  
17 Washington Subclass of the dangers of feeding Pet Foods to their pets, and that the  
18 Pet Foods were not as described.

19         192. Evanger's finally breached its implied warranty of merchantability to  
20 Plaintiffs and members of the Washington Subclass because the Pet Foods did not  
21 conform to the descriptions, promises and affirmations of fact set forth on their  
22 container and label, as described above. Specifically, they did not constitute "100%  
23 kosher beef," "USDA-inspected, human grade" ingredients, healthy and safe food  
24 for pets.

25         193. Plaintiffs and members of the Washington Subclass were injured as a  
26 proximate result of Evanger's aforementioned breaches as follows: (a) in the amount  
27 of the difference in value between the value of the Pet Foods as warranted (its full  
28

1 purchase prices) and the Pet Foods as actually delivered (\$0) since they should not  
2 have been sold because of their adulteration and misbranding, and consumers would  
3 not have paid anything for them had they known; (b) the veterinarian bills incurred  
4 as a result of their pets consuming the Pet Foods; (c) for those whose pets died from  
5 consuming the Pet Foods, the market value of those animals; (d) for those whose  
6 animals died from consuming the Pet Foods, the cost of disposing of their remains;  
7 and (e) other economic losses, including the increased risk of health problems in  
8 their pets.

9 194. Within a reasonable time after their discovery of Evanger's breaches,  
10 Plaintiffs gave notice of the breaches of the implied warranty of merchantability on  
11 behalf of themselves and the Washington Subclass. Alternatively, this pleading  
12 constitutes a sufficient notice of Evanger's breaches of the implied warranty of  
13 merchantability. Alternatively, it was not necessary for Plaintiffs to give Evanger's  
14 notice of its breaches of the implied warranty of merchantability as to them and the  
15 Washington Subclass because Evanger's had actual notice of such breaches.

16  
17 **COUNT IV**  
18 **Violation of the Washington Consumer Protection Act**  
19 **Wash. Rev. Code § 19.86.010, et seq.**  
20 **Non-Per Se Unfair Business Practices**  
21 **(on behalf of Plaintiffs and the Washington Subclass)**

22 195. Plaintiffs repeat and reallege the allegations contained in the paragraphs  
23 above, as if fully set forth herein.

24 196. Plaintiffs bring this claim on behalf of themselves and the Washington  
25 Subclass.

26 197. The Washington Consumer Protection Act ("WCPA") declares  
27 unlawful (i) an unfair or deceptive act or practice, (ii) occurring in trade or  
28

1 commerce, (iii) with a public interest impact, and (iv) which causes injury to  
2 Plaintiffs.

3 198. Evanger's is a "person" within the meaning of the WCPA, Wash. Rev.  
4 Code § 19.86.010(1), and conducts "trade" and "commerce" within the meaning of  
5 the Washington Consumer Protection Act, Wash. Rev. Code § 19.86.010(2).

6 199. Plaintiffs and the Washington Subclass members are "persons" within  
7 the meaning of the WCPA, Wash. Rev. Code § 19.86.010(1).

8 200. As the purpose of the WCPA is "to protect the public and foster fair  
9 and honest competition," the act should be "liberally construed" to serve its  
10 beneficial purposes. Wash. Rev. Code § 19.86.920.

11 201. In the context of the WCPA, pleading and proof of an unfair act or  
12 practice under Wash. Rev. Code § 19.86.020 bears little resemblance to pleading and  
13 proof of common law fraud. It can be predicated on an act or practice so designated  
14 by statute; an act or practice that has the capacity to deceive substantial portions of  
15 the public; or an unfair act or practice not regulated by statute but in violation of the  
16 public interest. An act or practice can be unfair without being deceptive and still  
17 violate the WCPA.

18 202. At all relevant times, Evanger's engaged in unfair acts or practices in  
19 the conduct of its business by describing, promising and affirming on its container  
20 and label that its Pet Foods are "100% kosher beef," "USDA inspected, human  
21 grade," healthy and safe when they were not as found and publicly denounced by  
22 the FDA. In fact, they were adulterated and misbranded as prohibited under the law,  
23 and were unsafe for animals to eat because they contained poisonous pentobarbital,  
24 were contaminated by unsanitary facilities and were made up of animals that did not  
25 die from slaughter. Evanger's further engaged in unfair acts or practices in the  
26 conduct of its business when it did not provide a refund to customers, who purchased  
27 the Pet Foods based on Evanger's false representations and did not return them.

1           203. At all relevant times, Evanger's further engaged in unfair acts and  
2 practices when it failed to disclose material information about the Pet Foods  
3 including their quality, related health risks, adulteration and misbranding. Evanger's  
4 has failed to provide adequate warnings or notices of health risks from the Pet Food  
5 and does not disclose that they are unfit to be sold and to be consumed by animals.

6           204. Evanger's admitted in its own lawsuit against its supplier that the bill  
7 of lading on the meat it purchased and received, and used in its Pet Food, stated that  
8 the meat was "inedible" and "not fit for human consumption," and was not USDA-  
9 FSIS inspected. Instead, the Pet Foods were adulterated and misbranded, should  
10 have not been sold, and were unsafe for animals to consume.

11           205. Evanger's stated in its recall in February and March 2017 that no other  
12 pet foods were impacted, however, a month later, another pet food that it  
13 manufacturers for Party Animal also tested positive for pentobarbital and sickened  
14 another animal leading to another recall. Evanger's was also aware that its facilities  
15 were unsanitary and could contaminate its Pet Foods as the FDA found.

16           206. Evanger's concealed and misrepresented this information about its Pet  
17 Foods to Plaintiffs and the Washington Subclass members, which is material in that  
18 a reasonable consumer would not have purchased the Pet Foods and subjected  
19 himself, herself or their pets to injury had he or she known these facts.

20           207. Evanger's conducted its acts and practices described herein in the  
21 course of trade or commerce.

22           208. Defendants' unfair acts and practices impact the public interest.  
23 Defendants committed the acts and practices in the course of its everyday business;  
24 the acts and practices are part of a pattern or generalized course of business;  
25 Defendants committed the acts and practices repeatedly and continually both before  
26 and after Plaintiffs' purchase of the Pet Foods; there is a real and substantial potential  
27

1 for repetition of Defendants' conduct; and many customers are affected or likely to  
2 be affected.

3 209. The acts and practices described above are unfair because these acts or  
4 practices (1) have caused substantial financial injury to Plaintiffs and the  
5 Washington Subclass members; (2) are not outweighed by any countervailing  
6 benefits to consumers or competitors; and (3) are not reasonably avoidable by  
7 consumers.

8 210. Evanger's unfair practices have occurred in its trade or business and  
9 were and are capable of injuring a substantial portion of the public. As such,  
10 Evanger's general course of conduct as alleged herein is injurious to the public  
11 interest, and the acts complained of herein are ongoing and/or have a substantial  
12 likelihood of being repeated.

13 211. As a direct and proximate result of Evanger's unfair acts or practices,  
14 Plaintiffs and the Washington Subclass members suffered injury in fact and lost  
15 money.

16 212. Plaintiffs and the Washington Subclass are therefore entitled to:

17 1) an order enjoining the conduct complained herein;

18 2) actual damages to Plaintiffs and the Washington Subclass equal to: (a) the  
19 amount the Plaintiffs and the Washington Subclass paid for the worthless Pet Foods;  
20 the difference in value between the value of the Pet Foods as represented (the full  
21 purchase prices) and the value of the Pet Foods as actually accepted and delivered  
22 (\$0) since it should not have been sold because of its adulteration and misbranding,  
23 and consumers would not have paid anything for it had they known; (b) their  
24 veterinarian bills incurred as a result of their pets consuming the Pet Foods; (c) for  
25 those whose pets died from eating the Pet Foods, the market value of their animals;  
26 and (d) for those whose animals died from eating the Pet Foods, the cost of disposing  
27 of their remains;





1           220. At all relevant times, Evanger's engaged in deceptive acts or practices  
2 in the conduct of its business by describing, promising and affirming on its container  
3 and label that its Pet Foods are "100% kosher beef," "USDA inspected, human  
4 grade," healthy and safe when they were not. In fact, they were adulterated and  
5 misbranded as prohibited under the law, and were unsafe for animals to eat because  
6 they contained poisonous pentobarbital.

7           221. At all relevant times, Evanger's engaged in deceptive acts or practices  
8 by failing to disclose the quality of its Pet Foods and without providing adequate  
9 warning or notice of their related health risks.

10           222. Evanger's further engaged in deceptive acts or practices in the conduct  
11 of its business when it did not provide a refund to customers, who purchased the Pet  
12 Foods and did not return them based on Evanger's omissions and false  
13 representations.

14           223. Evanger's has also continued to misrepresent that its Pet Foods are from  
15 USDA inspected suppliers and human grade when they are not, as determined and  
16 publicly stated by the FDA.

17           224. At all relevant times, Evanger's engaged in deceptive acts or practices  
18 in the conduct of its business by describing, promising and affirming on its container  
19 and label that the Pet Foods were "100% kosher beef," "USDA inspected, human  
20 grade," healthy and safe for pets to consume, when in fact it knew or had reason to  
21 know that they were not. In fact, Evanger's admitted in its own lawsuit against its  
22 supplier that the bill of lading on the meat it purchased and received, and which  
23 Evanger's used in its Pet Food, stated that the meat was "inedible" and "not fit for  
24 human consumption," and was not USDA-FSIS inspected. Instead, the Pet Foods  
25 were adulterated and misbranded, should have not been sold, and were unsafe for  
26 animals to consume.

1           225. Evanger's further engages in deceptive acts or practices in the conduct  
2 of its business as it continues to misrepresent that its Pet Foods are "100% kosher  
3 beef," "USDA inspected" and "human grade" after the FDA found and publicly  
4 stated that none of its suppliers are USDA inspected and are not human grade and  
5 its Pet Foods are not 100% beef.

6           226. Evanger's stated in its recall in February and March 2017 that no other  
7 pet foods were impacted, however, a month later, another pet food that it  
8 manufacturers for Party Animal also tested positive for pentobarbital and sickened  
9 another animal leading to another recall.

10           227. Evanger's was also aware that its facilities were unsanitary and could  
11 contaminate its Pet Foods as the FDA found.

12           228. Evanger's concealed and misrepresented this information about its Pet  
13 Foods to Plaintiffs and the Washington Subclass members, which is material in that  
14 a reasonable consumer would not have purchased the Pet Foods and subjected  
15 himself or herself to injury had he or she known these facts.

16           229. Evanger's conducted its acts and practices described herein in the  
17 course of trade or commerce.

18           230. Defendants' deceptive acts and practices impact the public interest.  
19 Defendants committed the acts and practices in the course of its everyday business;  
20 the acts and practices are part of a pattern or generalized course of business;  
21 Defendants committed the acts and practices repeatedly and continually both before  
22 and after Plaintiffs' purchase of the Pet Foods; there is a real and substantial potential  
23 for repetition of Defendants' conduct; and many customers are affected or likely to  
24 be affected.

25           231. The acts and practices described above are deceptive because these acts  
26 or practices (1) have caused substantial financial injury to Plaintiffs and the  
27 Washington Subclass members; (2) are not outweighed by any countervailing  
28

1 benefits to consumers or competitors; and (3) are not reasonably avoidable by  
2 consumers.

3 232. Evanger's deceptive practices have occurred in its trade or business and  
4 were and are capable of injuring a substantial portion of the public. As such,  
5 Evanger's general course of conduct as alleged herein is injurious to the public  
6 interest, and the acts complained of herein are ongoing and/or have a substantial  
7 likelihood of being repeated.

8 233. As a direct and proximate result of Evanger's deceptive acts or  
9 practices, Plaintiffs and the Washington Subclass members suffered injury in fact  
10 and lost money.

11 234. Plaintiffs and the Washington Subclass are therefore entitled to:

12 1) an order enjoining the conduct complained herein;

13 2) actual damages to Plaintiffs and the Washington Subclass equal to: (a) the  
14 amount the Plaintiffs and the Washington Subclass paid for the worthless Pet  
15 Foods: the difference in value between the value of the Pet Foods as  
16 represented (the full purchase prices) and the value of the Pet Foods as  
17 actually accepted and delivered (\$0) since it should not have been sold  
18 because of its adulteration and misbranding, and consumers would not have  
19 paid anything for it had they known; (b) their veterinarian bills incurred as a  
20 result of their pets consuming the Pet Foods; (c) for those whose pets died  
21 from eating the Pet Foods, the market value of their animals; and (d) for those  
22 whose animals died from eating the Pet Foods, the cost of disposing of their  
23 remains;

24 3) treble damages pursuant to Wash. Rev. Code § 19.86.090;

25 4) costs of suit, including a reasonable attorney's fee; and

26 such further relief as the Court may deem proper.

27 235. Plaintiffs and the Washington Subclass are also entitled to equitable  
28

1 relief as the Court deems appropriate, including, but not limited to, disgorgement,  
2 for the benefit of the Subclass members, or all or part of the ill-gotten profits  
3 Evanger's received from the sale of its Pet Food.

4 **COUNT VI**  
5 **Negligence - Washington Product Liability Act**  
6 **Wash. Rev. Code § 7.72.030(1)**  
7 **(on behalf of Plaintiffs and the Washington Subclass)**

8 236. Plaintiffs repeat and reallege the allegations contained in the paragraphs  
9 above, as if fully set forth herein.

10 237. Plaintiffs bring this claim on behalf of themselves and the Washington  
11 Subclass.

12 238. Evanger's owed a duty of reasonable care to Plaintiffs and the members  
13 of the Washington Subclass to provide Pet Foods that were safe for consumption by  
14 animals.

15 239. Evanger's breached this duty by selling Pet Foods that were adulterated  
16 because they contained poisonous pentobarbital; were made in an unsanitary facility  
17 that contaminated them; were made up of animals that did not die by slaughter; were  
18 misbranded because they did not contain USDA inspected, human grade meat and  
19 were not 100% kosher beef; and did not adequately warn Plaintiffs and the members  
20 of the Washington Subclass of the Pet Foods' dangers on its packaging.

21 240. Such conduct by Evanger's was negligent because it did not reflect the  
22 level of care that an ordinarily prudent and reasonable person in Evanger's place  
23 would have given under the same or similar circumstances.

24 241. Evanger's should have known that the Pet Foods posed a risk of harm  
25 to dogs; that purchasers of the Pet Foods, including Plaintiffs and the members of  
26 the Washington Subclass, would not recognize the risk and that the risk was  
27 misrepresented to them; and that consumption of the Pet Foods by pets would  
28 foreseeably result in their injury and death. Such injury and death to the animals

1 constituted property damage to Plaintiffs and the members of the Washington  
2 Subclass beyond, and in addition to, their damage from purchasing the worthless Pet  
3 Foods.

4 242. As a proximate result of Evanger's negligent acts alleged herein,  
5 Plaintiffs and the members of the Washington Subclass suffered injury to property,  
6 specifically the illness and deaths of their pets, and the expenses incurred therewith.

7  
8 **COUNT VII**  
9 **Strict Products Liability**  
10 **Wash. Rev. Code § 7.72.030(2)**  
11 **(on behalf of Plaintiffs and the Washington Subclass)**

12 243. Plaintiffs repeat and reallege the allegations contained in the paragraphs  
13 above, as if fully set forth herein.

14 244. Plaintiffs bring this claim on behalf of themselves and the Washington  
15 Subclass.

16 245. Evanger's designed, manufactured, distributed and sold the Pet Foods,  
17 which were adulterated because they contained poisonous pentobarbital, were made  
18 in unsanitary facilities that contaminated them, and were made of animals that did  
19 not die from slaughter. The Pet Foods were misbranded because they were not made  
20 of 100% kosher beef and USDA inspected, human grade meat. The adulterated and  
21 misbranded Pet Foods and their potential health risks, at all times material hereto,  
22 would not reasonably have been expected by consumers, and constituted an  
23 unreasonably dangerous defect and/or condition.

24 246. The Pet Foods were unreasonably dangerous because of defects in  
25 marketing, design and manufacturing, which reasonable consumers would not have  
26 expected.

27 247. There was a defect in the marketing of the Pet Foods, which made the  
28 Pet Foods unreasonably dangerous, because Evanger's failed to warn Plaintiffs and

1 the members of the Washington Subclass, on its advertising, packaging or otherwise,  
2 of the potential harm to their pets from consuming the Pet Foods, which warning  
3 reasonable consumers would have expected.

4       248. The Pet Foods were defectively designed because they were adulterated  
5 and misbranded in a manner that made them unsafe. The Pet Foods contained  
6 substitute ingredients – ingredients other than those that Evanger’s advertised as in  
7 its Pet Foods – and failed to include ingredients that could have been used to meet  
8 the same needs and not be unsafe or unreasonably expensive. Evanger’s had the  
9 ability to eliminate the unsafe character of the Pet Foods without seriously impairing  
10 their usefulness or significantly increasing their costs. It was not anticipated that  
11 purchasers of the Pet Foods would be aware of the dangers inherent in the use of the  
12 products, and the expectation of ordinary consumers was that the Pet Foods  
13 manufactured by Evanger’s would be safe for dogs.

14       249. Alternatively, the Pet Foods were defectively manufactured because  
15 they were adulterated and misbranded in a manner that caused them to be harmful  
16 and deadly to animals, and that deviated in terms of quality from the specifications  
17 in a manner that rendered them unreasonably dangerous and not within the  
18 expectations of reasonable consumers.

19       250. These unreasonably dangerous defects in the marketing, design and  
20 manufacture of the Pet Foods existed at the time the Pet Foods left Evanger’s control.

21       251. The Pet Foods came in sealed packages, and did not change from the  
22 time they left Evanger’s possession, through the time they arrived in stores to be sold  
23 to consumers, and the time when consumers bought and took possession of them.

24       252. The unreasonably dangerous defects and/or conditions of the Pet Foods  
25 proximately caused injury and death to dogs, and related expenses, constituting  
26 property damage to Plaintiffs and the members of the Washington Subclass beyond,  
27 and in addition to, their damages from purchasing the harmful Pet Foods.



1           253. Accordingly, Evanger's is strictly liable for these damages caused to  
2 Plaintiffs and the members of the Washington Subclass by its unreasonably  
3 dangerous product.

4                                   **COUNT VIII**  
5                                   **Washington Unjust Enrichment**  
6                                   **(on behalf of Plaintiffs and the Washington Subclass)**

7           254. Plaintiffs repeat and reallege the allegations contained in the paragraphs  
8 above, as if fully set forth herein.

9           255. Plaintiffs bring this claim on behalf of themselves and the Washington  
10 Subclass.

11           256. Plaintiffs and the members of the Washington Subclass, at their  
12 expense, purchased the Pet Foods, which was defective, not merchantable, and  
13 unreasonably dangerous and therefore had no value to them.

14           257. Plaintiffs and the members of the Washington Subclass purchased the  
15 Pet Foods designed, manufactured and marketed by Evanger's in various retail  
16 stores. Evanger's knowingly received and retained a benefit from Plaintiffs and the  
17 Washington Subclass members, namely the gross revenues resulting from their  
18 purchases. Evanger's is not justified in retaining these revenues because of the  
19 diminished value, inherent defects, adulterated state, misbranded content and general  
20 lack of merchantability of the Pet Foods.

21           258. Principles of fairness and equity demand that Evanger's disgorge the  
22 above-referenced revenues to Plaintiffs and the Washington Subclass members.  
23  
24  
25  
26  
27  
28

**COUNT IX**  
**Violation of the Illinois Consumer Fraud and Deceptive Business**  
**Practices Act**  
**815 Ill. Comp. Stat. 505/1, *et seq.***  
**(on behalf of Plaintiffs and the Nationwide Class)**

259. Plaintiffs repeat and reallege the allegations contained in the paragraphs above, as if fully set forth herein.

260. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class.

261. This cause of action is brought pursuant the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1 *et seq.* (“ICFA”).

262. The acts and omissions, specifically including Evanger’s misrepresentations that the Pet Foods were USDA inspected and of human grade quality including 100% kosher beef, and Evanger’s omitting that the Pet Foods were adulterated and misbranded and contained poisonous pentobarbital and failing to provide adequate warning or notice of their health risks, occurred in the conduct of trade or commerce as that term is used therein.

263. Section 2 of ICFA prohibits unfair or deceptive acts or practices used or employed in the conduct of any trade or commerce, as well as deceptive acts or practices which are committed in the course of trade or commerce and with the intent that others rely upon them. 815 ILCS 505/2.

264. Section 2 of the ICFA provides, in full:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive

1 Trade Practices Act", approved August 5, 1965, in the conduct of any trade or  
2 commerce are hereby declared unlawful whether any person has in fact been  
3 misled, deceived or damaged thereby. In construing this section, consideration  
4 shall be given to the interpretations of the Federal Trade Commission and the  
5 federal courts relating to Section 5(a) of the Federal Trade Commission Act."  
6 815 ILCS 505/2.

7 265. Evanger's acts, misrepresentations and omissions are by their very  
8 nature unfair, deceptive and unlawful within the meaning of the ICFA.

9 266. Evanger's has disseminated, or caused to be disseminated, advertising,  
10 labeling, packaging, marketing, and promotion of the Pet Foods that is deceptive and  
11 otherwise violates the ICFA, because at all times material hereto, the advertising,  
12 labeling, packaging, marketing and promotion of the Pet Foods included false and/or  
13 misleading statements or misrepresentations concerning the quality of the Pet Foods,  
14 including that they were USDA inspected and contained human grade ingredients  
15 including 100% kosher beef, and/or because Evanger's failed to disclose and/or  
16 concealed or omitted material facts, including without limitation, known defects and  
17 risks concerning the quality of the Pet Foods and the healthiness of the Pet Foods,  
18 including that they were adulterated and misbranded and unsafe for pets to consume.

19 267. In making and disseminating the misrepresentations and omissions  
20 alleged herein, Evanger's intended to deceive reasonable consumers, including  
21 Plaintiffs and the Nationwide Class.

22 268. Evanger's made and disseminated the representations and omissions  
23 alleged herein in the course of conduct involving trade and commerce.

24 269. The utility, if any, of Evanger's practices related to the advertising,  
25 labeling, packaging, marketing, promotion and selling of Pet Foods, while making  
26 affirmative misrepresentations and without properly disclosing the Pet Foods' true  
27

1 nature and/or characteristics, is negligible, when weighed against the harm to the  
2 general public, Plaintiffs and the Nationwide Class.

3 270. The harmful impact upon members of the general public targeted by  
4 such practices, including Plaintiffs and the members of the Nationwide Class, who  
5 purchased and used the Pet Foods, outweighs any reasons or justifications by  
6 Evanger's for the unfair and deceptive business practices Evanger's employed to sell  
7 the Pet Foods described herein.

8 271. Evanger's had an improper motive (to place profit ahead of accurate  
9 marketing) in its practices related to the advertising, labeling, packaging, marketing,  
10 promotion and selling of the Pet Foods.

11 272. The use of such unfair and deceptive business acts and practices was  
12 and is under the sole control of Evanger's, and was deceptively hidden from  
13 Plaintiffs and the members of the Nationwide Class, and the general public, in  
14 Evanger's advertising, labeling, packaging, marketing, promotion and selling of the  
15 Pet Foods in a deceptive effort to put profit over accurate marketing. These deceptive  
16 acts and practices had a capacity, tendency, and/or likelihood to deceive or confuse  
17 reasonable consumers into believing that the Pet Foods were USDA inspected,  
18 human grade, 100% kosher beef, healthy, free of harmful toxic substances, and were  
19 otherwise safe.

20 273. As a direct and proximate result of Evanger's deceptive and unfair  
21 conduct and/or violations of the ICFA, Plaintiffs and the members of the Nationwide  
22 Class have suffered and continue to suffer damages, including without limitation the  
23 following:

- 24 a) The difference in value between the full purchase price of the Pet Foods  
25 and the actual value of the Pet Foods (which actual value is \$0 because the  
26 Pet Foods should not have been sold since they were adulterated and  
27 misbranded, and consumers would not have paid anything for them had they

known) - *i.e.*, the full purchase prices of the Pet Foods;

b) All veterinary bills incurred as a result of illness, injury or death caused by consuming the Pet Foods;

c) All bills incurred for the disposition of the remains of dogs killed by the Pet Foods; and

d) The market value of the dogs killed as a result of ingesting the Pet Foods.

274. Illinois also provides protection to purchasers of animal food from unfair and deceptive practices. 505 ILCS 30/7 (Adulteration), 505 ILCS 30/8 (Misbranding), and 505 ILCS 30/11.1 (Prohibited Acts).

275. A commercial feed is adulterated if it “bears or contains any poisonous or deleterious substance which may render it injurious to health;” 505 ILCS 30/7, and a commercial feed is misbranded if its “labeling is false or misleading in any particular.” 505 ILCS 30/8. Illinois law also prohibits the “manufacture or distribution of any commercial feed that is adulterated or misbranded.” 505 ILCS 30/11.1.

276. The Pet Foods are misrepresented to be 100% beef, USDA inspected and human grade meat, which they are not. Instead they contain poisonous pentobarbital, are made in an unsanitary facility that causes contamination, and contain the remains of animals that did not die by slaughter and were not kosher or all beef. Because of this, the Pet Foods injured Plaintiffs’ pets and those of the members of Nationwide Class, and the composition or quality of the Pet Foods falls below what is purported or represented by its label.

277. Plaintiffs and the other members of Nationwide Class further seek to enjoin such unlawful deceptive acts and practices as described above. Each of the Nationwide Class members will be irreparably harmed unless the unlawful actions of Evanger’s are enjoined, in that Evanger’s will continue to falsely and

1 misleadingly market and advertise and represent on its packaging the healthy nature  
2 of the Pet Foods and that they are USDA inspected when they are not.

3 278. Towards that end, Plaintiffs and Nationwide Class request an order  
4 granting them injunctive relief requiring removal of the unsafe products from retail  
5 outlets, prohibiting false statements, requiring corrective disclosures and/or  
6 disclaimers on the labeling and advertising of the Pet Foods, and/or the removal of  
7 the harmful ingredients.

8 279. Absent injunctive relief, Evanger's will continue to manufacture and  
9 sell misrepresented, deceptive and unsafe Pet Foods without disclosing to consumers  
10 their true quality and risk of harmful effects.

11 280. In this regard, Evanger's has violated, and continues to violate, the  
12 Illinois Consumer Fraud and Deceptive Business Practices Act, which makes unfair  
13 or deceptive acts or practices used or employed in the conduct of any trade or  
14 commerce unlawful. As a direct and proximate result of Evanger's violation of the  
15 Illinois Consumer Fraud and Deceptive Business Practices Act as described above,  
16 Plaintiffs and the members of the Nationwide Class have suffered damages, as set  
17 forth above.

18 281. Evanger's affirmative misrepresentations, as well as its wrongful  
19 warranty practices, were disseminated and directed from its headquarters in  
20 Wheeling, Illinois. Evanger's manufactures its Pet Foods at its facilities in Wheeling  
21 and Markham, Illinois. Therefore, based upon the choice-of-law rules applied in this  
22 District, Plaintiffs preliminarily identify the substantive laws of Illinois as the most  
23 likely to apply to Nationwide Class as alleged in this claim.

**COUNT X**  
**Breach of Express Warranty**  
**(on behalf of Plaintiff and the Nationwide Class)**

282. Plaintiffs repeat and reallege the allegations contained in the paragraphs above, as if fully set forth herein.

283. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class.

284. Evanger's constitutes a "merchant" and a "seller" in connection with its sales of the Pet Foods, as those terms are defined in the Illinois Uniform Commercial Code.

285. Plaintiffs and the members of the Nationwide Class constitute "buyers" in connection with their purchases of the Pet Food from Evanger's, as that term is defined in the Illinois Uniform Commercial Code.

286. The Pet Food constitutes "goods," as that term is defined in the Illinois Uniform Commercial Code.

287. By affirmations of fact, promises and descriptions made on the Pet Foods' packaging, Evanger's provided Plaintiffs and the other members of the Nationwide Class with written express warranties before or at the time of purchase, including the following:

- a) The Pet Foods were made of 100% kosher beef;
- b) The Pet Foods were made of USDA-inspected meats;
- c) The Pet Foods were human grade quality meats;
- d) The Pet Foods were safe and healthy for pets to eat.

288. These affirmations of facts and promises made by Evanger's to Plaintiffs and the Nationwide Class related to Pet Foods and became part of the bases of the bargains between them and Evanger's, and thereby created express warranties that the Pet Foods would conform to those affirmations and promises. Furthermore,



1 the aforementioned descriptions of the Pet Foods were part of the bases of the  
2 bargains for the purchases of Pet Foods between Evanger's on the one hand and  
3 Plaintiffs and other Nationwide Class members on the other. The descriptions  
4 created an express warranty that the goods would conform to those descriptions. As  
5 previously noted, Evanger's misrepresented the nature of the Pet Foods, since the  
6 Pet Foods were not 100% kosher beef and were not USDA-inspected, human quality  
7 meats. Instead, the Pet Foods were adulterated because they contained poisonous  
8 pentobarbital, were made in an unsanitary facility that contaminated them, were not  
9 made from animals that died by slaughter, and were misbranded. The Pet Foods did  
10 not conform to the affirmations, promises and descriptions previously mentioned,  
11 resulting in breaches of the Pet Foods' express warranties.

12 289. The Pet Foods were marketed directly to consumers by Evanger's,  
13 came in sealed packages, and did not change from the time they left Evanger's  
14 possession until they were purchased by consumers in stores.

15 290. Plaintiffs have complied with all conditions precedent to filing this  
16 breach of warranty claim, including providing notice of the breach of warranty to  
17 Evanger's on behalf of themselves and the Nationwide Class, prior to filing this  
18 action.

19 291. Alternatively, the filing of this Complaint provides sufficient notice of  
20 breach to Evanger's on behalf of Plaintiffs and the Nationwide Class.

21 292. Alternatively, notice need not have been given to Evanger's because  
22 Evanger's had actual notice of its breaches of warranty as to Plaintiffs and the  
23 Nationwide Class.

24 293. As a proximate result of Evanger's breach of express warranties,  
25 Plaintiffs and the members of the Nationwide Class have suffered actual damages  
26 as follows:

(a) The difference in value between the full purchase price of the Pet Foods and the actual value of the Pet Foods (which actual value is \$0 because the Pet Foods should not have been sold since they were adulterated and misbranded, and consumers would not have paid anything for them had they known) - *i.e.*, the full purchase prices of the Pet Foods;

(b) the veterinarian bills incurred as a result of consumption of the Pet Foods;

(c) the market value of the animals killed by consumption of Pet Foods; and

(d) the cost of disposing of the remains of the animals killed by consumption of Pet Foods.

294. Plaintiffs and members of the Nationwide Class cannot return Pet Foods to Evanger's for repair as the subject defect is irreparable.

295. Evanger's affirmative misrepresentations, as well as its wrongful warranty practices, were disseminated and directed from its headquarters in Wheeling, Illinois. Evanger's manufactures its Pet Foods at its own facilities in Wheeling and Markham, Illinois. Therefore, based upon the choice-of-law rules applied in this District, Plaintiffs preliminarily identify the substantive laws of Illinois as the most likely to apply to Nationwide Class as alleged in this claim.

## **COUNT XI**

### **Illinois Negligence**

#### **(on Behalf of Plaintiffs and the Nationwide Class)**

296. Plaintiffs repeat and reallege the allegations contained in the paragraphs above, as if fully set forth herein.

297. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class.

298. Evanger's owed a duty of care to Plaintiffs and the Nationwide Class to provide pet food that was unadulterated, not misbranded, safe for consumption by dogs, and free from toxins with harmful effects.

1           299. Evanger's breached this duty by selling Pet Foods, which were  
2 misbranded, adulterated, and not safe, because they contained pentobarbital, were  
3 made in an unsanitary facility that contaminated them, and were composed of  
4 animals that did not die from slaughter.

5           300. The Pet Foods were sold without adequate quality control and testing;  
6 without using proper manufacturing and production practices; without properly  
7 investigating reports of pet deaths and illnesses following consumption of the Pet  
8 Foods; and without adequately warning Plaintiffs and the Nationwide Class of the  
9 dangers as part of the Pet Foods's packaging or disclosing that the Pet foods were  
10 not USDA-inspected, were composed of animals that did not die from slaughter, and  
11 were not human quality.

12           301. Such conduct by Evanger's was negligent in that Evanger's failed to  
13 act as an ordinarily prudent and reasonable person would have acted under the same  
14 or similar circumstances.

15           302. Evanger's should have known that Pet Foods posed a risk of harm to  
16 animals; that purchasers of Pet Foods, including Plaintiffs and the Nationwide Class,  
17 would not recognize the risk and were instead purchasing this product based on  
18 Defendants's misrepresentations that the Pet Foods were of a certain quality and  
19 would not carry these risks; and that consumption of Pet Foods by animals would  
20 foreseeably result in injury and death to those dogs, constituting property damage to  
21 Plaintiffs and the Nationwide Class beyond and in addition to the damages from  
22 purchasing the harmful Pet Foods.

23           303. As a proximate result of Evanger's negligent acts alleged herein,  
24 Plaintiffs and the Nationwide Class suffered injury to property, specifically in the  
25 illness and deaths of their animals and the expenses incurred therewith.

26           304. Evanger's affirmative misrepresentations, as well as its wrongful  
27 warranty practices, were disseminated and directed from its headquarters in  
28

1 Wheeling, Illinois. Evanger's manufactures its Pet Foods at its facilities in Wheeling  
2 and Markham, Illinois. Therefore, based upon the choice-of-law rules applied in this  
3 District, Plaintiffs preliminarily identify the substantive laws of Illinois as the most  
4 likely to apply to Nationwide Class as alleged in this claim.

5  
6 **COUNT XII**  
7 **Illinois Products Liability**  
8 **(on Behalf of Plaintiffs and the Nationwide Class)**

9 305. Plaintiffs repeat and reallege the allegations contained in the paragraphs  
10 above, as if fully set forth herein.

11 306. Plaintiffs bring this claim on behalf of themselves and the Nationwide  
12 Class.

13 307. Evanger's designed, manufactured and sold Pet Foods, which were  
14 unsafe because they were misbranded and adulterated, and this misbranding and  
15 adulteration caused the Pet Foods to contain poisonous pentobarbital, to be  
16 contaminated by the unsanitary facility where they were made, and to be  
17 manufactured from animals that did not die from slaughter.

18 308. The adulteration and misbranding that made the consumption of the Pet  
19 Foods risky to the health of animals was, at all times material hereto, an  
20 unreasonably dangerous defect and/or condition. The failure of Evanger's to warn  
21 on its package of the dangerousness of the Pet Foods also constituted an  
22 unreasonably dangerous defect and/or condition.

23 309. These unreasonably dangerous defects and/or conditions existed at the  
24 time the Pet Foods left Evanger's control.

25 310. The Pet Foods came in sealed packages, and they and their packaging  
26 did not change from the time they left Evanger's possession through the time they  
27 arrived in stores to be sold to consumers and consumers purchased and took  
28 possession of them.





- f. Awarding damages for the value of the Pet Foods based on what was paid versus what they are worth, including treble and punitive damages, to prevent and deter Defendants from future unlawful conduct;
- g. Awarding all equitable remedies available and other applicable law;
- h. Awarding attorneys' fees and costs;
- i. Awarding pre-judgment and post-judgment interest at the legal rate; and
- j. Providing such further relief as may be just and proper.

**DEMAND FOR JURY TRIAL**

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

RESPECTFULLY SUBMITTED AND DATED this 16th day of June,  
2017.

TERRELL MARSHALL LAW GROUP PLLC

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*Counsel for Plaintiffs*

**EXHIBIT A**

# Description

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30101 EV DOG/CAT CANNED

6 OZ

RABBIT

5 @ \$1.65

20109 EV CANNED DOG FOO

13 OZ

HUNK OF BEEF

3 @ \$3.20

80001 ATG CANNED DOG FO

12 OZ

PULLED BEEF

## **EXHIBIT B**

SALES@EVANGERSDOGFOOD.COM

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# Classic Line

[Home](#) » [Dog Food](#) » [Classic Line](#)

Evanger's complete dog dinners Chicken & Rice and Lamb & Rice have been approved and recommended by Dr. Elizabeth Cohen for use as an Intestinal Diet. The Intestinal Diet is for dogs with sensitive stomachs leading to diarrhea and vomiting.

## Comments

THE FINEST ALL MEAT DOG FOOD BRANDS - DOGFOOD.CO :  
[...] Evanger's website also states that these all-meat formulas are good for pets with food sensitivities. [...]

November 14, 2016 at 4:06 pm



Comments are closed.



## 100% BEEF



Market fresh beef makes up this Classic. Made with 100% beef.

\$ 22.68

**ADD TO CART**



## COOKED CHICKEN



This Classic Cooked Chicken is delicious and value priced.

**\$ 22.68**

**ADD TO CART**



## **BEEF WITH CHICKEN**



100% Beef & Chicken together for a classic combination.

**\$ 22.68**

**ADD TO CART**







## BEEF & BACON



100% Beef & Bacon are a delicious combination. What dog doesn't love bacon?

\$ 22.68

**ADD TO CART**



## BEEF WITH CHICKEN & LIVER



100% Beef, Whole Dressed Chicken & Liver combine to add more variety.

**\$ 22.68**

**ADD TO CART**



## LIVER SNACKS



Large chunks of pure beef liver for use as treats or training bait in the show ring. A popular product in the 1960s, Evanger's has reintroduced this unique product due to customer requests.

**\$ 30.74**

**ADD TO CART**



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# Dry Food

[Home](#) » [Dog Food](#) » Dry Food

Evanger's dry dog foods are manufactured in the USA, and contain no by-products or harmful additives. Evanger's uses the Alltech Advantage for optimal health. Our semi-moist dehydrated food consists of only rough grinding and mixing. Then, the product is air dried at low temperatures to retain all of the nutrients, enzymes, and flavor. The end result is a healthy, nutrient dense, great tasting food that your dogs and cats will enjoy eating.



## PHEASANT & BROWN RICE DRY DOG FOOD – 4.4 LB.



This chicken-free dinner is a great option for dogs with chicken allergies. This is the perfect compliment to our 100% game meat supplements.

**\$ 9.99**

**ADD TO CART**



## PHEASANT & BROWN RICE DRY DOG FOOD – 16.5 LB.



Made with Evanger's same superior, high quality nutrition, this is the perfect compliment to our canned entrées.

**\$ 38.99**

**ADD TO CART**



## **GRAIN FREE WHITEFISH & SWEET POTATO DRY FOOD – 4.4 LB.**



Whitefish & Sweet Potato is a high-protein, low-fat, grain-free, chicken-free diet. This delectable dinner is served with Venison meal!

**\$ 12.75**

**ADD TO CART**



## GRAIN FREE WHITEFISH AND SWEET POTATO – 16.5 LB.



Made with Evanger's superior, high quality nutrition, this is a perfect fish-based chicken-free dinner, and a great compliment to our canned entrees.

**\$ 38.99**

**ADD TO CART**



## CHICKEN WITH BROWN RICE DRY DOG FOOD – 4.4 LB.



Made with Evanger's same superior, high quality nutrition, this is the perfect compliment to our canned entrees. New package and improved formula.

**\$ 9.99**

**ADD TO CART**



## **CHICKEN WITH BROWN RICE DRY DOG FOOD – 16.5 LB.**



Made with Evanger's same superior, high quality nutrition, this is the perfect compliment to our canned entrees.

**\$ 32.99**

**ADD TO CART**





## GRAIN FREE CHICKEN WITH SWEET POTATO & PUMPKIN 4.4#



Fresh de-boned Chicken is the #1 ingredient. This uses nutrient-rich fruits and vegetables instead of grains for optimal canine health, and omegas 3 and 6 for healthy joint, skin, and coat. For all br

**\$ 12.49**

**ADD TO CART**



## GRAIN FREE CHICKEN, SWEET POTATO & PUMPKIN 16.5#

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# Evangers Organics

[Home](#) » [Dog Food](#) » [Evangers Organics](#)

## Organic People Food for Pets!



## 100% ORGANIC COOKED CHICKEN



A whole dressed organic chicken simmered in natural well water is a wonderful healthy supplement.

**\$ 31.08**

**ADD TO CART**



## ORGANIC TURKEY WITH POTATO & CARROTS DINNER



Organic turkey with organic market-fresh vegetables create a wholesome dinner.

**\$ 31.08**

**ADD TO CART**

## QUARTERLY NEWSLETTER

Sign up for our quarterly newsletter to receive coupons and information about our products.

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# Grain Free Game Meats

[Home](#) » [Dog Food](#) » Grain Free Game Meats

Liven up meal time with a unique variety of exotic game meats that are 100% meat. Packed in convenient 6 oz or 13 oz pop-top cans.



## GRAIN FREE CHICKEN FOR DOGS & CATS 13 OZ



A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies.

**\$ 29.88**

**ADD TO CART**



## **WILD SALMON FOR DOGS & CATS 12 OZ.**



A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies. Suitable for both dogs and cats.

**\$ 33.48**

**ADD TO CART**





## GRAIN FREE WILD SALMON FOR DOGS & CATS



A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies. Suitable for both dogs and cats.

**\$ 45.36**

**ADD TO CART**



## GRAIN FREE RABBIT FOR DOGS & CATS







A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies.

**\$ 45.36**

**ADD TO CART**



## GRAIN FREE DUCK FOR DOGS & CATS



A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies.

**\$ 45.36**

**ADD TO CART**





## GRAIN FREE CHICKEN FOR DOGS & CATS 6 OZ



A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies.

**\$ 38.16**

**ADD TO CART**



## GRAIN FREE BUFFALO FOR DOGS & CATS





A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies.

**\$ 45.36**

**ADD TO CART**



## GRAIN FREE BEEF FOR DOGS & CATS



A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies.

**\$ 38.16**

**ADD TO CART**



INTERNET ARCHIVE  
**WayBackMachine**  
7 captures  
25 May 2016 - 23 Feb 2017

https://evangersdogfood.com/dog-food/grain-free-hand-packed/

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About this capture



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# Grain Free Hand Packed

[Home](#) » [Dog Food](#) » Grain Free Hand Packed

Our Hand-Packed Specialties are processed as to maintain the shape and nutrition of each recipes contents whether it is a whole fish dinner or choice chicken parts supplement. \*The cooking process softens those recipes with bones making them edible, safe, wholesome and highly digestible. Our fresh, natural and superior ingredients (no by-products) ensure quality on a human-grade level. Try our Hand-Packed Line and make meal time a palatable pleasure that optimizes your pets health!



**ROASTED CHICKEN DRUMMET DINNER PACKED BY HAND!**



7 captures

25 May 2016 - 23 Feb 2017

https://evangersdogfood.com/dog-food/grain-free-hand-packed/

Go



About this capture

\$ 36.91

ADD TO CART



## BRAISED BEEF CHUNKS WITH GRAVY PACKED BY HAND!

A hearty dinner of tender chunks of beef with market fresh vegetables of peas and carrots together with nutritious gravy.

Grain Free!

\$ 36.91

ADD TO CART



## CATCH OF THE DAY 13OZ

Whole, uncut sardines from head to tail served with tender carrots and green peas, fortified with a vitamin and mineral enriched gravy for this dinner.

\$ 36.91



## HUNK OF BEEF PACKED BY HAND!

Premium tender 100% beef roast cooked in its own juices serves up a meaty supplement.

**\$ 36.91**

**ADD TO CART**



## WHOLE CHICKEN THIGHS PACKED BY HAND!

Twin whole chicken thighs are 100% chicken meat. This innovative supplement is every dog's delight. Beneficial for dogs with Diabetes. (Contains soft bones - not recommended for small dogs.)

**\$ 40.86**

**ADD TO CART**

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# Nothing But Natural

[Home](#) » [Dog Food](#) » [Nothing But Natural](#)

Treat your dog to what is deserved: Nothing But Natural Treats. Evanger's has paired a unique variety of game meats with fruits and vegetables to provide a nutritious, well-loved jerky treat for your favorite pooch. Freeze Dried treats utilize 100% whole muscle meat. That's it. No additives, no preservatives. Treats are great as a snack or reward during training. **For a limited time enjoy free shipping on all of our Jerky treats! Our treat.**





## GRAIN FREE PHEASANT WITH FRUITS & VEGETABLES



Low-calorie treats made of Pheasant, fruits and vegetables team up to help you reward your pet with a terrific, guilt-free treat.

\$ 7.95

**ADD TO CART**



## CAGE-FREE QUAIL WITH FRUITS AND VEGETABLES



A sweet, low-fat, delicate white game meat jerky treat rich in micronutrients and vitamins.

\$ 7.95

ADD TO CART



## GRAIN FREE ORGANIC CHICKEN WITH FRUITS & VEGGIES



Starting with chicken raised exclusively on certified organic feed, we add wholesome ingredients like farm-fresh carrots and peas. This is a low-calorie guilt-free and grain-free treat!

\$ 7.95

ADD TO CART



## GRAIN FREE BUFFALO WITH FRUITS & VEGGIES



Starting with naturally raised buffalo, we add wholesome ingredients like farm-fresh carrots and peas. A low-calorie, guilt-free, grain free, exotic meat treat your dog is sure to enjoy.

**\$ 7.95**

**ADD TO CART**



## GRAIN FREE VENISON WITH FRUITS & VEGGIES



Along with Venison, a unique meat, we add farm-fresh blueberries and cranberries. This is a low-calorie guilt-free and grain-free treat! The easy way to sneak fruits and veggies into your dog's diet!

**\$ 7.95**

**ADD TO CART**



## RAW GENTLY DRIED BEEF LIVER



This single-ingredient product uses whole muscle meat, making it gluten-free, grain-free, and free of any additives or artificial ingredients. Nothing more than pure beef liver. A Canine/Feline Treat

**\$ 8.69**

**ADD TO CART**

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# Signature Series

[Home](#) » [Dog Food](#) » [Signature Series](#)

To commemorate our 75th Anniversary, Evanger's is proud to offer a grain free stew.



## SLOW COOKED CHICKEN STEW – 12 OZ



Real diced chicken with farm fresh vegetables - Naturally the Best!

**\$ 34.99**

**ADD TO CART**



## **SLOW COOKED TURKEY STEW – 12 OZ**



Real diced turkey with farm fresh vegetables - Naturally the Best!

**\$ 34.99**

**ADD TO CART**





## SLOW COOKED BEEF STEW – 12 OZ



Real diced beef with farm fresh vegetables - Naturally the Best!

**\$ 34.99**

**ADD TO CART**



## SLOW COOKED LAMB STEW – 12 OZ



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# Super Premium

[Home](#) » [Dog Food](#) » Super Premium

We have over seventy years experience and knowledge in making extraordinary pet foods. With our dedication to canine and feline health and our desire to make innovative new products, we are proud to offer the following Super Premium products. Completely balanced, highly nutritious, great tasting innovative meals.





## ALL FRESH VEGETARIAN DINNER



A canine and feline dinner of fresh potatoes, carrots, peas, blueberries, and cranberries with brown rice. A healthy choice for pets susceptible to food allergies or need a low-fat diet.

**\$ 27.48**

**ADD TO CART**



## DUCK & SWEET POTATO DINNER





Duck meats and golden sweet potatoes are a gourmet dinner and a wonderful source of fiber.

\$ 27.00

**ADD TO CART**



## BEEF DINNER



Now with Spinach and Kale! This super premium loaf style is a complete and balanced beef dinner with chelated vitamins and minerals.

\$ 27.00

**ADD TO CART**





## CHICKEN DINNER



Chicken Dinner is a complete and balanced grain free and gluten free dinner for all life stages with superfoods Spinach and Kale.

\$ 27.00

**ADD TO CART**



## LAMB & RICE DINNER 12.8 OZ



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# Jerky Treats

[Home](#) » [Treats](#) » Jerky Treats

## CAGE-FREE QUAIL WITH FRUITS AND VEGETABLES

A sweet, low-fat, delicate white game meat jerky treat rich in micronutrients and vitamins.

\$ 7.95

[ADD TO CART](#)



## GRAIN FREE ORGANIC CHICKEN WITH FRUITS & VEGGIES

Starting with chicken raised exclusively on certified organic feed, we add wholesome ingredients like farm-fresh carrots and peas. This is a low-calorie guilt-free and grain-free treat!

**\$ 7.95**

**ADD TO CART**



## GRAIN FREE BUFFALO WITH FRUITS & VEGGIES

Starting with naturally raised buffalo, we add wholesome ingredients like farm-fresh carrots and peas. A low-calorie, guilt-free, grain free, exotic meat treat your dog is sure to enjoy.

**\$ 7.95**

**ADD TO CART**



## GRAIN FREE VENISON WITH FRUITS & VEGGIES

Along with Venison, a unique meat, we add farm-fresh blueberries and cranberries. This is a low-calorie guilt-free and grain-free treat! The easy way to sneak fruits and veggies into your dog's diet!

**\$ 7.95**

**ADD TO CART**

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# Ferret

[Home](#) » [Small Animals](#) » [Ferret](#)

Complete and balanced ferret nutrition with a fresh, single source protein. Contains high-quality ingredients and essential vitamins and minerals. Naturally Grain, Gluten, Filler, and Preservative free.



## MAXIMUM TURKEY FOR FERRETS



An all-natural fresh, single sourced protein. Designed with real egg and high quality meats to deliver maximum levels of protein. No added carbohydrates, corn or meal.

**\$ 28.00**

**ADD TO CART**



## MAXIMUM CHICKEN FOR FERRETS

An all-natural fresh, single sourced protein. Designed with real egg and high quality meats to deliver maximum levels of protein. No added carbohydrates, corn or meal.

**\$ 28.00**

**ADD TO CART**



## MAXIMUM BEEF FOR FERRETS



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# Classic Line

[Home](#) » [Cat Food](#) » [Classic Line](#)

## BEEF IT UP DINNER

Beef and liver. A Classic combo for a classic dinner.

\$ 30.99

[ADD TO CART](#)



## CHICKEN LICKIN' DINNER

Tickle your cat's taste buds with a market fresh chicken dish.

**\$ 30.99**

**ADD TO CART**



## GOIN' FISHIN' DINNER

Our Ocean fish recipe awaits the most discerning cat's appetite.

**\$ 30.99**

**ADD TO CART**



## CHICKEN LICKIN' DINNER – MULTICAT HOMES

Tickle your cat's taste buds with a market fresh chicken dish. 13 oz. can great for multiple-cat households!

**\$ 23.88**

**ADD TO CART**



## BEEF IT UP DINNER – MULTICAT HOMES

Beef and liver. A Classic combo for a classic dinner.

**\$ 23.88**

**ADD TO CART**

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# Dry Food

[Home](#) » [Cat Food](#) » Dry Food

## PHEASANT AND WHITEFISH DRY FOOD – 4.4 LB.

Made with Evanger's same superior, high quality nutrition, this is the perfect compliment to our canned entrees.

Now available in 4.4 lbs. (2 kg) poly metallic resealable bag.

**\$ 13.99**

**ADD TO CART**

## **PHEASANT AND WHITEFISH DRY FOOD – 12 LB.**

Made with Evanger's same superior, high quality nutrition, this is the perfect compliment to our canned entrees.  
Now available in 12 lbs. poly metallic resealable bag.

**\$ 34.99****ADD TO CART**

## **GRAIN-FREE MEAT LOVER'S MEDLEY WITH RABBIT DRY FOOD 4.4 LB.**

Combines three unique meats: Rabbit, Beef, and Pork, for a delicious medley of meats for the obligate carnivore. Uses nutrient-rich fruits and vegetables instead of grains for optimal feline health.

**\$ 13.99**

[ADD TO CART](#)

## GRAIN-FREE MEAT LOVER'S MEDLEY WITH RABBIT DRY FOOD 12 LB.

Combines three unique meats: Rabbit, Beef, and Pork, for a delicious medley of meats for the obligate carnivore. Uses nutrient-rich fruits and vegetables instead of grains for optimal feline health.

**\$ 34.99**

[ADD TO CART](#)

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# Evangers Organics

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## ORGANIC BRAISED CHICKEN DINNER

Made with Evanger's same superior quality, this new product utilizes certified organic ingredients so that your feline can enjoy a long and healthy life.

**\$ 45.11**



[ADD TO CART](#)

## ORGANIC TURKEY & BUTTERNUT SQUASH DINNER

Made with Evanger's same superior quality, this new product utilizes certified organic ingredients so that your feline can enjoy a long and healthy life!

**\$ 45.11**

[ADD TO CART](#)

### QUARTERLY NEWSLETTER

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# Game Meats

[Home](#) » [Cat Food](#) » Game Meats

Liven up meal time with a unique variety of game meats that are 100% meat. Packed in convenient 6 oz or 13 oz pop-top cans in a 24-pack.

## Comments

GAME GRAIN FOODS | MISSYOUZ :

July 18, 2016 at 11:35 am

[...] Game Meats – Evanger's Dog & Cat Food Company, Inc. – Liven up meal time with a unique variety of game meats that are 100% meat. Packed in convenient 6 oz or 13 oz pop-top cans in a 24-pack. [...]

Comments are closed.



## GRAIN FREE CHICKEN FOR DOGS & CATS 12.8 OZ

A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies.

**\$ 29.88**

**ADD TO CART**



## WILD SALMON FOR DOGS & CATS 12 OZ.

A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies. Suitable for both dogs and cats.

**\$ 33.48**

**ADD TO CART**



## GRAIN FREE WILD SALMON FOR DOGS & CATS

A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies. Suitable for both dogs and cats.

**\$ 45.36**

**ADD TO CART**



## GRAIN FREE RABBIT FOR DOGS & CATS

A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies.

**\$ 47.63**

**ADD TO CART**



## GRAIN FREE DUCK FOR DOGS & CATS

A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies.

**\$ 47.63**

**ADD TO CART**



## GRAIN FREE CHICKEN FOR DOGS & CATS 6 OZ

A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies.

**\$ 40.07**

**ADD TO CART**



## GRAIN FREE BUFFALO FOR DOGS & CATS

A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies.

**\$ 47.63**

**ADD TO CART**



## GRAIN FREE BEEF FOR DOGS & CATS

A great mixer with our Dry Foods or Vegetarian formula. This is an excellent choice for pets with other food allergies.

**\$ 39.06**

**ADD TO CART**



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# Nothing But Natural

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## RAW GENTLY DRIED BEEF LIVER

This single-ingredient product uses whole muscle meat, making it gluten-free, grain-free, and free of any additives or artificial ingredients. Nothing more than pure beef liver. A Canine/Feline Treat

**\$ 8.69**

**ADD TO CART**

## RAW GENTLY DRIED BEEF TRIPE

Beef Tripe is a unique single-source protein that is rich in essential fatty acids. Gluten-free and grain-free, we never use additives or artificial ingredients. Can be a great aid for digestion.

**\$ 8.69**

**ADD TO CART**

## RAW GENTLY DRIED WILD SALMON

Wild Salmon is high in protein and low in calories and saturated fat. Excellent for pets with food allergies and finicky eaters. Also available in our canned Hand Packed line. A Canine / Feline Treat

**\$ 8.96**



**ADD TO CART**

## RAW GENTLY DRIED BEEF LUNGS

Beef Lung is a unique single-source protein that is rich in essential fatty acids. Gluten-free, grain-free, and never uses additives or artificial ingredients.

**\$ 8.69**

**ADD TO CART**

## RAW GENTLY DRIED BEEF HEARTS

Freeze-dried beef hearts for use as treats for canines or felines.

**\$ 8.96**



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# Signature Series

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## SLOW COOKED CHICKEN STEW

A grain free stew of diced chicken with blueberries and cranberries simmered in gravy for a delectable dinner.

**\$ 45.11**

**ADD TO CART**



## SLOW COOKED TURKEY STEW

A grain free stew of diced turkey with blueberries and cranberries simmered in gravy for a delectable dinner.

**\$ 45.11**

**ADD TO CART**



## SLOW COOKED BEEF STEW

A grain free stew of diced beef with blueberries and cranberries simmered in gravy for a delectable dinner.

**\$ 45.11**

**ADD TO CART**



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# Super Premium

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## SEAFOOD & CAVIAR DINNER

Salmon, chicken, poultry liver and caviar fresh from the market will make any cat run for this dinner. With its rich deep color bursting with flavor, it'll soon be a favorite!

**\$ 35.76**

[ADD TO CART](#)

## RABBIT AND QUAIL DINNER

Novel meat protein sources, rabbit and quail, are blended for a recipe for cats with common food allergies, and the pet parent looking for something unique.

**\$ 44.99**

[ADD TO CART](#)

## DUCK DINNER

Duck, an exotic poultry source, serves a recipe for cats with common food allergies, and the pet parent looking for something unique.

**\$ 44.99**

[ADD TO CART](#)

## HOLISTIC QUAIL DINNER FOR CATS 5.5 OZ

Novel meat protein, Quail, is formulated with chelated minerals and vitamins for cats with common food allergies, and the cat parent looking for something unique.

**\$ 44.99**


[ADD TO CART](#)



## CATCH OF THE DAY 5.5 OZ

A hand-packed, tasty dinner of whole fresh sardines are edible from head to tail! A cat's dream come true.  
(Contains softened bones.)

**\$ 42.96**









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new generation  
**SUPER FOOD**


**Chicken Mayflower with Turnip Dinner for Cats** Totally Different! White meat Chicken and Turnips are hand packed, and a hand-selected blend of unique protein and superfoods to serve your cat the most healthy and palatable complete and balanced dinner. [> More](#)

[Buy Now!](#)



**Chicken & Polyhauai'i Berry Dinner for Cats** Totally Different! White meat Chicken and Polyhauai'i Berries are hand packed, and a hand-selected blend of unique protein and superfood to serve your cat the most healthy and palatable complete and balanced dinner. [> More](#)

[Buy Now!](#)



**Tuna & Acacia Pennata with Mackerel Dinner for Cats** Totally Different! Acacia Pennata, Wild ocean-caught tuna fish and Mackerel are hand packed with a hand-selected blend of

**Tuna Aubergine with Seabass & Eggplant Dinner for Cats** Totally Different! Eggplant, Wild ocean-caught Seabass and



unique proteins and superfoods to serve your cat the most healthy and palatable complete and balanced dinner. [> More](#)

Buy Now!

**Tuna & Cucurbita with Lamb Dinner for Cats** Totally Different! Lamb, Cucurbita, and Wild ocean-caught tuna fish are hand packed and a hand-selected blend of unique proteins and superfoods to serve your cat the most healthy and palatable complete and balanced dinner. [> More](#)

Buy Now!

**Tuna Toscano with Salmon & Tomato Dinner for Cats** Totally Different! Wild ocean-caught tuna fish, salmon, and human-grade tomatoes are hand packed and a hand-selected blend of unique proteins and superfoods to serve your cat a tasty, Italian-style healthy and palatable complete and balanced dinner. [> More](#)

Buy Now!



Tuna Fish are hand packed and a hand-selected blend of unique proteins and superfoods to serve your cat a Fancy French-style healthy and palatable complete and balanced dinner.

Buy Now!



**Tuna Mango Tango with Duck Dinner for Cats** Totally Different! Duck, Mango, and Wild ocean-caught tuna fish are hand packed and a hand-selected blend of unique proteins and superfoods to serve your cat the most healthy and palatable complete and balanced dinner. [> More](#)


Buy Now!







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Designed By: Jerry R Cole Consulting Group, LLC





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# pulled meat DOG FOODS

### Pulled Chicken with Gravy

Human grade hand pulled chicken with hand cut carrots, apples, sweet potatoes, and peas are slow cooked in gravy for a delicious and nutritionally complete dinner for dogs. [> More](#)


Buy Now!



### Pulled Beef with Gravy

Human grade hand pulled beef with hand cut carrots, apples, sweet potatoes, and peas are slow cooked in gravy for a delicious and nutritionally complete dinner for dogs. [> More](#)


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## human quality CAT FOODS

### Big Kahuna with Crab & Tilapia

Wild ocean-caught crab meat, tilapia, and tuna fish are hand packed, and simmered in scrumptious gravy for a fresh and palatable dinner. [> More](#)


Buy Now!



### Bimini Brunch with Krill & Egg

Wild ocean-caught krill and tuna fish are hand packed with egg, and simmered in scrumptious gravy for a fresh and palatable dinner. [> More](#)


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### Aloha Tuna with Seaweed & Crab

Wild ocean-caught crab meat and tuna fish are hand packed with seaweed, and simmered in scrumptious gravy for a fresh and palatable dinner. [> More](#)


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### Shrimp Daddy with Tuna & Salmon

Wild ocean-caught salmon, shrimp, and tuna fish are hand packed, and simmered in scrumptious gravy for a fresh and palatable dinner. [> More](#)

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### Captain's Catch with Sardine & Mackerel

Wild ocean-caught sardines and mackerel are hand packed, and simmered in scrumptious gravy for a fresh and palatable dinner. [> More](#)

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### Caribbean Club with Chicken & Cheese

Human grade Chicken and pieces of cheese are hand packed, and simmered in scrumptious gravy for a fresh and palatable dinner. [> More](#)

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### Chicken & Pumpkin Samba

Human grade Chicken and pieces of pumpkin are hand packed, and simmered in scrumptious gravy for a fresh and palatable dinner. [> More](#)

Buy Now!



**EXHIBIT C**



134 Magruder Hall  
Corvallis, OR 97331  
Phone(541) 737-3261  
FAX (541) 737-6817

**Preliminary  
Version 3**

*This report supersedes all  
previous reports for this case*

**VDL Accession #:** 17V08024

**Referral #:**

**VTHCase #:**

**Date Collected:**

**Date Received:** 01/03/2017

**Related Acc #:**

**Case Coordinator:** Duncan Russell,  
BVMS(Hons), DACVP

**Preliminary Report Sent By:** Duncan  
Russell, BVMS(Hons), DACVP on  
1/23/2017 10:32:31AM

0084029 **Email To:**  
Mael, Nikki  
[REDACTED]

**Collection Site:**  
Mael, Nikki  
[REDACTED]

**Specimens Received:** 1 Food; 10 Tissue Block; 1 Whole Body;

**Case Contacts**

Bill To	Vet-LIRN P0359A	3012104681	8401 Muirkirk Rd, LAUREL, MD 20708-2482
Report To	Columbia River Vet Specialists	3606943007	6607 NE 84th St Ste 109, VANCOUVER, WA 98665-2019
Report To	Camas Washougal Animal Hospital	3608357240	401 6th St, Washougal, WA 98671
Submitter	Mael, Nikki	3602419541	[REDACTED]

**Specimen Details**

ID	ID Type	Other IDs	Taxonomy	Gender	Age/DOB
Talula	Name		Pug dog	Female	12/3/2004

**Diagnosis**

1. Nodular splenic hyperplasia, multifocal
2. Mild urinary bladder hemorrhage (gross) and leiomyoma
3. Valvular endocardiosis, mitral, mild
4. Adrenal nodular cortical hyperplasia, focal, right
5. Mild pulmonary edema

**Case Summary**

Gross examination finds no lesions that account for clinical signs. Examination of the fresh and fixed brain is also unremarkable. Based on the absence of gross lesions our primary differentials are CNS disease, metabolic disease, electrical cardiac disturbance and unidentified microscopic disease. We see no changes to directly implicate an infectious agent; gross examination of the liver is not typical of aflatoxicosis.

Neurotoxicosis has not been excluded and we have submitted samples to Michigan State for GCMS and tremorigenic neurotoxin screening. Routine bacterial cultures will also be performed in-house. We are in communications with the FDA and will be working with them to ensure an accurate and prompt diagnosis.

Histopathology is pending.

-----  
Addendum 1/10/17

Histopathology fails to demonstrate any significant morphologic lesions. Toxicology and comprehensive interpretation is still pending.

-----  
Addendum 1/23/17

I interpret the liver culture as a contaminant; there is no evidence of Salmonellosis.

Testing of the feed and stomach contents has found pentobarbital. I have discussed this result with Dr. Rob Bildfell (OVDL director) and John Buchweitz (MSU DCPAH). Findings have also been shared with Dr. Jennifer Jones, Veterinary Medical officer at the FDA.

### N e c r o p s y

A reportedly 13 year old, 9.65kg, spayed female pug with overconditioned body score (BCS 7/9) and good post-mortem condition is necropsied.

Mild prognathism is present. There is moderate dental tartar present.

Both laryngeal sacculles are everted. The trachea contains a moderate amount of light brown fluid throughout its entire length; this fluid is also present in the mainstem bronchi. The lungs are partially collapsed, mottled red to pink.

The right ventricle is mildly dilated. There are small (~0.3mm) round, glistening nodules at the free edge of the mitral valve leaflets (myxomatous valvular degeneration).

The liver has a slightly depressed, poorly-demarcated, friable focus near the hilus of the right medial liver lobe.

The stomach contains partially digested kibble along with chunks of carrots and meat mixed with black gritty particulate material. The duodenum contains a scant amount of gelatinous material that becomes mucoid distally. There is a small amount of formed feces in the descending colon.

There are six raised well-demarcated, mottled light pink to red nodules (0.5 - 2.0cm in diameter) throughout the spleen that extend into the splenic parenchyma on sectioning.

There are numerous (~50-100) small red foci (~1-3mm) on the urinary bladder mucosa near the trigone (hemorrhage).

The left adrenal gland has a tan nodule (0.5 cm) on cut surface that compresses the adrenal medulla.

These are preliminary results. Histopathology and/or additional diagnostics are needed to obtain a more definitive diagnosis.

#### NECROPSY - Companion Animal

Animal/Source	Specimen	Specimen Type	Date Resulted	Results
---------------	----------	---------------	---------------	---------



Talula Whole Body 09-Jan-2017 Report Completed

### Histopathology

1. Spleen - There is a well demarcated nodule comprised of dilated sinusoids (telangiectasia) and lymphoid follicles (nodular hyperplasia).  
Liver - There is diffuse moderate congestion causing separation of hepatic cords. There are multifocal aggregates of myeloid and erythroid precursors adjacent to centrilobular veins (extramedullary hematopoiesis).
2. Kidney - Medullary tubules sometimes contain a slightly basophilic, amorphous material (mucoprotein). Rarely tubular epithelial cells are hypereosinophilic.  
Liver - as described previously.
3. Lung - Alveoli are diffusely dilated with eosinophilic amorphous material with increased number of intra-alveolar macrophages (pulmonary edema). Several airways contain fragments of skeletal muscle and brown granules mixed with basophilic bacteria (stomach contents); there is no accompanying inflammation.  
Heart - No significant lesions in sections examined.
4. Thyroid - No significant lesions in sections examined.  
Parathyroid - No significant lesions in sections examined.  
Adrenal - There is a well-demarcated, encapsulated nodule of well-differentiated cortical epithelium (nodular hyperplasia).  
Stomach - Marked autolysis may hinder histologic interpretation. No significant lesions in sections examined.  
Pancreas - Marked autolysis may hinder histologic interpretation. No significant lesions in sections examined.  
Lymph node - There is an aggregate of macrophages containing numerous clear vacuoles (interpreted as lipid) within the medullary sinus.
5. Small intestine - Mild autolysis may hinder histologic interpretation. No significant lesions in sections examined.  
Adrenal gland. No significant lesions.  
Pancreas. Marked autolysis may hinder histologic interpretation. No significant lesions.
6. Lymph node. No significant lesions.  
Urinary bladder - Focally disrupting and compressing the inner circular muscular layer is a well-demarcated encapsulated mass composed of well-differentiated smooth muscles haphazardly arranged in bundles (leiomyoma). Central nuclei exhibit moderate anisokaryosis and contain euchromatin. Occasional binucleation is present. Mitotic activity is not present in this section.  
Large intestine - Moderate autolysis may hinder histologic interpretation. No significant lesions in sections examined.
7. Cerebellum/brainstem - No significant lesions in sections examined.
- 8-9. Cerebrum and mid brain - No significant lesions in sections examined.

#### HISTOPATHOLOGY REPORT

Animal/Source	Specimen	Specimen Type	Date Resulted	Results
Talula		Tissue - Fixed	10-Jan-2017	Report Completed

### Bacteriology

#### BACTERIAL AEROBIC CULTURE

Animal/Source	Specimen	Specimen Type	Date Resulted	Results
Talula		Liver Tissue	12-Jan-2017	4+ Enterococcus sp. -- Two morphologically different colony types.

**SALMONELLA CULTURE - MAMMALIAN**

Animal/Source	Specimen	Specimen Type	Date Resulted	Results
Talula		Liver Tissue	11-Jan-2017	No Salmonella sp. detected

**Administration**

01/17/17 Results from the Diagnostic Center for Population and Animal Health at Michigan State University are attached. MS

## Appendix - Report Related Images

MICHIGAN STATE  
UNIVERSITYDirector: Dr. Rachel Y. Reams  
4125 Beaumont Road  
Lansing, MI 48910-8104  
Phone: 517-353-1683  
Fax: 517-353-5096  
www.animalhealth.msu.edu

## REPORT OF LABORATORY EXAMINATION

Client: Oregon State University (7524)  
Oregon Vet. Diagnostic Lab  
134 Magruder Hall  
Corvallis, OR 97331

Owner: Mael, Nikki

Rcvd Date: 1/11/2017 10:54:00 AM  
Admitted By: Not, Provided  
Ordered By: N/A  
Encounter: 02195065  
CR#: AP

Animal: TALULA  
Species: Canine  
Age: 12 years  
Tag/Reg ID:  
Other ID:

MRN: 17V08024  
Breed: Pug  
Gender: Female

**Toxicology****General Toxicology**

Collected Date/Time (If Provided)	01/03/2017 10:54:00	01/03/2017 10:53:00		
Procedure			Ref Range	Units
GCMS Specimen	Feed	Stomach Contents		
GCMS	Positive	Positive		
GCMS Interpretation	See Below	See Below		

01/03/2017 10:54:00 GCMS Interpretation

The following compounds were identified by mass spectral library match:

1) Pentobarbital (euthanasia agent - large quantity chromatographically)

If this sample came directly from a can, this is an urgent matter and needs to be reported to the FDA Feed Safety Portal.  
Please contact me at (517) 353-4773 to discuss how to do this or to gain my assistance in reporting this.  
Please have the client of record hold onto the original container and any other feed that was purchased on that date.

John P. Buchweitz, Ph.D., DABT  
Clinical Toxicologist  
1/17/2017 9:16 AM

L = Low Result; H = High Result; @ = Critical Result; ^ = Corrected Result; \* = Interpretive Data; # = Result Footnote

Print Date/Time: 1/17/2017 9:23 AM

Page 1 of 1

**Appendix - Report Related Images**

Admitted By: Not, Provided  
Encounter: 02195065

Species: Canine  
Animal: TALULA

MRN: 17V08024  
Owner: Mael, Nikki

***T o x i c o l o g y*****General Toxicology**

01/03/2017 10:53:00 GCMS Interpretation

The following compounds were identified by mass spectral library match:

1) Pentobarbital (euthanasia agent)

This dog was not listed as having been euthanized.  
Please see report on dog food submitted to our lab.

John P. Buchweitz, Ph.D., DABT  
Clinical Toxicologist  
1/17/2017 9:10 AM

L = Low Result; H = High Result; @ = Critical Result; ^ = Corrected Result; \* = Interpretive Data; # = Result Footnote

Print Date/Time: 1/17/2017 9:23 AM

Page 2 of 2

**Laboratory Bulletins**

Test reliability/function is checked on each run date. Accuracy and/or reproducibility are proven by testing known samples, when available. Validation of some tests according to the AAVLD/OIE standards is currently in progress.

**EXHIBIT D**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
FOOD AND DRUG ADMINISTRATION**

## DISTRICT OFFICE ADDRESS AND PHONE NUMBER

550 W. Jackson Blvd, Suite 1500  
Chicago, IL 60661 (312) 353-5863

## DATE(S) OF INSPECTION

01/10-11/2017, 02/01-02/2017, 02/08/2017

## FEI NUMBER

1480280

Industry Information: [www.fda.gov/oc/industry](http://www.fda.gov/oc/industry)

## NAME AND TITLE OF INDIVIDUAL TO WHOM REPORT IS ISSUED

TO: Joel A. Sher, President

## FIRM NAME

Evanger's Dog and Cat Food Company, Inc.

## STREET ADDRESS

221 South Wheeling Road

## CITY, STATE AND ZIP CODE

Wheeling, Illinois 60090

## TYPE OF ESTABLISHMENT INSPECTED

Manufacturer

THIS DOCUMENT LISTS OBSERVATIONS MADE BY THE FDA REPRESENTATIVE(S) DURING THE INSPECTION OF YOUR FACILITY. THEY ARE INSPECTIONAL OBSERVATIONS; AND DO NOT REPRESENT A FINAL AGENCY DETERMINATION REGARDING YOUR COMPLIANCE. IF YOU HAVE AN OBJECTION REGARDING AN OBSERVATION, OR HAVE IMPLEMENTED, OR PLAN TO IMPLEMENT CORRECTIVE ACTION IN RESPONSE TO AN OBSERVATION, YOU MAY DISCUSS THE OBJECTION OR ACTION WITH THE FDA REPRESENTATIVE(S) DURING THE INSPECTION OR SUBMIT THIS INFORMATION TO FDA AT THE ADDRESS ABOVE. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT FDA AT THE PHONE NUMBER AND ADDRESS ABOVE.

DURING AN INSPECTION OF YOUR FIRM (I) (WE) OBSERVED:

The following observations were found to be adulterated under the Federal Food, Drug, and Cosmetic Act:

A food shall be deemed to be adulterated if it bears or contains any added poisonous or added deleterious substance that is unsafe within the meaning of section 402. Specifically,

- 1.) Your low-acid canned dog food product labeled in part "EVANGER'S\*\*\*HAND PACKED HUNK OF BEEF AUS JUS\*\*\*NET WT 12 OZ\*\*\*" and coded "1816E06HB13" was found by chemical analysis to contain the barbiturate drug pentobarbital.
- 2.) Your low-acid canned dog food product labeled in part "AGAINST the Grain\*\*\*GRAIN FREE PULLED BEEF with Gravy\*\*\*DINNER FOR DOGS\*\*\*NET WT 12 OZ\*\*\*" and coded "2415E01ATB12 BEST DEC 2019" was found by chemical analysis to contain the barbiturate drug pentobarbital.
- 3.) On 01/10/2017 and 01/11/2017 condensate dripped throughout your processing facility from the building framing, ceiling, walls, and from tarps suspended above food processing areas, including condensate dripping directly into open cans of the in-process low-acid canned dog food product HUNK OF BEEF, and also into multiple open totes of raw meats including beef intended for your canned dog food product HUNK OF BEEF.
- 4.) The floors throughout your processing facility are pitted, cracked, and otherwise damaged causing pooled water in areas where food is exposed including where open cans of in-process HUNK OF BEEF dog food are staged on a wooden pallet immediately upon the damaged floor.

Add Continuation Page

SEE  
REVERSE  
OF THIS  
PAGE

## EMPLOYEE(S) SIGNATURE

Kevin T. Gerrity - S

Digitally signed by Kevin T. Gerrity - S  
DN: cn=US, o=U.S. Government, ou=HHS, ou=FDA, ou=People,  
c=US, email=kevin.gerrity@hhs.gov, serial=1, c=US, o=U.S. Government,  
ou=HHS, ou=FDA, ou=People, cn=Kevin T. Gerrity - S

## EMPLOYEE(S) NAME AND TITLE (Print or Type)

Kevin Gerrity, Investigator  
Dariusz Galezowski, Investigator  
Lee Terry Moore, Investigator  
Mathew Buenconsejo, Investigator

## DATE ISSUED

02/14/2017



**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
FOOD AND DRUG ADMINISTRATION**

DISTRICT OFFICE ADDRESS AND PHONE NUMBER 550 W. Jackson Blvd, Suite 1500 Chicago, IL 60661 (312) 353-5863	DATE(S) OF INSPECTION 01/10-11/2017, 02/01-02/2017, 02/08/2017
Industry Information: <a href="http://www.fda.gov/oc/industry">www.fda.gov/oc/industry</a>	FEI NUMBER 1480280

NAME AND TITLE OF INDIVIDUAL TO WHOM REPORT IS ISSUED

TO: Joel A. Sher, President

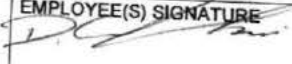
FIRM NAME Evanger's Dog and Cat Food Company, Inc.	STREET ADDRESS 221 South Wheeling Road
CITY, STATE AND ZIP CODE Wheeling, Illinois 60090	TYPE OF ESTABLISHMENT INSPECTED Manufacturer

5.) Additional sanitary conditions observed on 01/10/2017 and 01/11/2017 include peeling paint and mold on walls throughout the processing facility including in areas where food is exposed, a live fly-like insect in the HUNK OF BEEF hand-packing area during processing, and an open sanitary sewer within approximately 25 feet of two food storage trailers and one food processing trailer at the rear exterior of the facility.

6.) You lack operating refrigerated storage facilities or other means of controlling the temperature exposure of raw meats during thawing, storage, and processing.

On 01/10/2017 and 01/11/2017 multiple approximate (b) (4) of raw beef and other raw meats in various stages of thawing were stored at ambient temperature inside your processing facility and also at ambient temperature inside three trailers on the exterior grounds of your facility. The exterior ambient temperatures were below freezing on these two inspection days. There was frozen ice containing a blood-like substance across the floors of the three trailers, and also on the ground immediately outside of two of the trailer doors.

On 01/11/2017 hand packing operations started at approximately (b) (4) for your HUNK OF BEEF canned dog food. Open cans of beef were staged on a pallet at ambient temperature during the hand packing process. At the conclusion of the inspection at approximately 2:00 PM the hand packing operation was still in process, with the first open cans of beef that were packed at approximately (b) (4) still staged at ambient temperature on the bottom layer of the pallet of hand-packed cans.

SEE REVERSE OF THIS PAGE	EMPLOYEE(S) SIGNATURE 	EMPLOYEE(S) NAME AND TITLE (Print or Type) Kevin Gerrity, Investigator Dariusz Galezowski, Investigator Lee Terry Moore, Investigator Mathew Buenconsejo, Investigator	Add Continuation Page
	DATE ISSUED 02/14/2017		



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**FOOD AND DRUG ADMINISTRATION**

DISTRICT OFFICE ADDRESS AND PHONE NUMBER 550 W. Jackson Blvd, Suite 1500 Chicago, IL 60661 (312) 353-5863		DATE(S) OF INSPECTION 01/10-12/2017, 01/31/2017
Industry Information: <a href="http://www.fda.gov/oc/industry">www.fda.gov/oc/industry</a>		FEI NUMBER 3010876031
NAME AND TITLE OF INDIVIDUAL TO WHOM REPORT IS ISSUED <b>TO:</b> Joel A. Sher, Manager		
FIRM NAME Nutripack LLC	STREET ADDRESS 2210 W 162nd St	
CITY, STATE AND ZIP CODE Markham, Illinois 60428	TYPE OF ESTABLISHMENT INSPECTED Manufacturer	

THIS DOCUMENT LISTS OBSERVATIONS MADE BY THE FDA REPRESENTATIVE(S) DURING THE INSPECTION OF YOUR FACILITY. THEY ARE INSPECTIONAL OBSERVATIONS; AND DO NOT REPRESENT A FINAL AGENCY DETERMINATION REGARDING YOUR COMPLIANCE. IF YOU HAVE AN OBJECTION REGARDING AN OBSERVATION, OR HAVE IMPLEMENTED, OR PLAN TO IMPLEMENT CORRECTIVE ACTION IN RESPONSE TO AN OBSERVATION, YOU MAY DISCUSS THE OBJECTION OR ACTION WITH THE FDA REPRESENTATIVE(S) DURING THE INSPECTION OR SUBMIT THIS INFORMATION TO FDA AT THE ADDRESS ABOVE. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT FDA AT THE PHONE NUMBER AND ADDRESS ABOVE.

DURING AN INSPECTION OF YOUR FIRM (I) (WE) OBSERVED:

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Specifically,

1.) Your low-acid canned dog food product labeled in part "AGAINST the Grain\*\*\*GRAIN FREE PULLED BEEF with Gravy\*\*\*DINNER FOR DOGS\*\*\*NET WT 12 OZ\*\*\*" and coded "2415E01ATB12 BEST DEC 2019" was found by chemical analysis to contain the barbiturate drug pentobarbital.

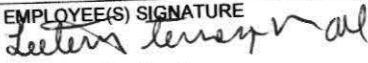


\*\*\*\*\*

A food shall be deemed to be adulterated if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

Specifically,

2.) On 01/10/2017, 01/11/2017, 01/12/2017 and 01/31/2017 condensate dripped throughout your processing and storage facility from the building frame and ceiling.

Add Continuation Page

SEE REVERSE OF THIS PAGE	EMPLOYEE(S) SIGNATURE 	EMPLOYEE(S) NAME AND TITLE (Print or Type) LeeTerry Moore, Investigator	DATE ISSUED 02/14/2017
		Audrey De La Cruz, Investigator	
			

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
FOOD AND DRUG ADMINISTRATION**

## DISTRICT OFFICE ADDRESS AND PHONE NUMBER

550 W. Jackson Blvd, Suite 1500  
Chicago, IL 60661  
(312) 353-5863

Industry Information: [www.fda.gov/oc/industry](http://www.fda.gov/oc/industry)

## DATE(S) OF INSPECTION

01/10-12/2017, 01/31/2017

## FEI NUMBER

3010876031

## NAME AND TITLE OF INDIVIDUAL TO WHOM REPORT IS ISSUED

TO: Joel A. Sher, Manager

## FIRM NAME

Nutripack LLC

## STREET ADDRESS

2210 W 162nd St

## CITY, STATE AND ZIP CODE

Markham, Illinois 60428

## TYPE OF ESTABLISHMENT INSPECTED

Manufacturer

• Condensate dripping directly above open cans of the in-process low-acid canned dog food product COOKED CHICKEN LOAF and HAND PACKED CHICKEN.

• Excessive pooling of condensation on pallets of stored product.

• Excessive pooling of condensation on the floor of the shipping and receiving area.

3.) Frozen raw meats for processing are prepared while having direct contact with the insanitary, bare, paint peeling and unprotected concrete floor of the processing facility.

4.) On 01/31/2017 employees were observed cutting raw chicken parts on untreated wooden building construction lumber.

5.) Your storage facility was observed to have avian activity. Specifically, on dates 01/10/2017, 01/11/2017, 01/12/2017 and 01/31/2017;

• Birds were observed feeding on spilled pet food found in the expansion joints of the concrete floor.

• Resting in rafters.

• Flying through the warehouse.

6.) The floors throughout your processing facility are pitted, cracked, and otherwise damaged causing pooled water in areas where food is exposed including where open cans of in-process COOKED CHICKEN LOAF and HAND PACKED CHICKEN dog food are staged on a wooden pallet immediately upon the damaged floor.

Add Continuation Page

SEE  
REVERSE  
OF THIS  
PAGE

## EMPLOYEE(S) SIGNATURE

*Lee Terry Moore*  
*Audrey De La Cruz*  
*Matthew Buenconsejo*

## EMPLOYEE(S) NAME AND TITLE (Print or Type)

LeeTerry Moore, Investigator  
Audrey De La Cruz, Investigator  
Matthew Buenconsejo, Investigator

## DATE ISSUED

02/14/2017

**EXHIBIT E**

59

**B/L#**

EXHIBIT 1

Bailey Farms LLC  
 349 KAREM DR  
 MARSHALL, WV 2535598815 US  
 800-655-1705  
 millard@baileysfarms.com  
 www.baileyfarmspets.com

ELECTRONICALLY FILED  
 4/25/2017 1:18 PM  
 INVOICE # 004153  
 CALENDAR: S  
 PAGE 1 of 1  
 CIRCUIT COURT OF  
 COOK COUNTY, ILLINOIS  
 LAW DIVISION  
 CLERK DOROTHY BROWN

<b>BILL TO</b>
Evanger Pet Foods 221 Rd. Wheeling, Wheeling, IL 60090

<b>SHIP TO</b>
Evanger Pet Foods Plant Wheeling, IL 60090

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
007/2068	06/03/2016	\$15,789.30	06/03/2016	Due on receipt	

SHIP DATE  
 06/02/2016

ACTIVITY	QTY	RATE	AMOUNT
Frozen Inedible Hand Deboned Beef	42,340	0.37	15,665.80
PHIS # WI.-BLO-0004			
Pallets	19	6.50	123.50
BALANCE DUE			\$15,789.30

DO NOT FEED  
 TO CATTLE OR  
 OTHER RUMINANTS

FSIS  
 CERT

Through  
 June 2020

**EXHIBIT F**

## Food and Drug Administration Office of Regulatory Affairs

## Summary Report

For Sample Number: 975847

TD Sample Number:

Import Sample Number

This is an accurate reproduction of the original electronic record as of 02/06/2017

ELECTRONICALLY FILED  
 4/25/2017 1:18 PM  
 2017-L-004153  
 CALENDAR: S  
 PAGE 1 of 23  
 CIRCUIT COURT OF  
 COOK COUNTY, ILLINOIS  
 LAW DIVISION  
 CLERK DOROTHY BROWN

Sample Class: Normal Everyday Sample      Sample Origin: Domestic      Sample Basis: Surveillance  
 Sample Flag:      Sample Type: Investigational      Collecting District: SLA-DO  
 Home District:      Orig C/R and Records To: CHH-DO      Collection PACs: 71R801

Product Name: Meat (Mammalian Muscle) Prod Pet Dog Food; Metal; Commercially Sterile

Product Description: Chunk of Beef Au Jus dog feed in metal can, labeled with white and gold print.

Collection Reason: Consumer Complaint (L-148114). Analyze for, in order of priority: 1) Staphylococcus aureus (and Clostridium botulinum if sample size permits) 2) pesticides general toxin panel 3) barbiturates (pentobarbital and phenytoin) 4) heavy metals.

Lab: LCC	Split Number:	Date Received: 01/20/2017	Date Out of Lab: 01/31/2017
District		District Conclusion	District
Conclusion:		Made By:	
Disposition		Disposition	Disposition
Reason:		Authorized By:	Authorized Date:

Performing Org	PAC	LID	PAF	Compliance No	Lab Class-Description	Laboratory Status
LCC-INDORG	71R801		NAR		Adverse Findings	Completed

Lab Conclusion

Sample Summary Report dated January 31, 2017 sent to Lisa Alham, Director of Compliance, Seattle-DO

Lab Conclusion Date      Lab Conclusion Made By

01/31/2017

Gratz, Samuel R

**FCC Section Results Sheet**

Sample No. 975847

**TITLE:** GC-MS Analysis**PURPOSE:** To screen the dog food samples for pentobarbital and phenytoin**RESULTS (SUMMARY)**

Duplicate portions from Sub 1 can of dog food were screened by GC-MS for pentobarbital and phenytoin. One preparation was fortified at a level of 4 ug per gram of sample and both drugs were detected by the method used.

Based on retention time and mass spectral correspondence with a pentobarbital standard, pentobarbital was identified in Sub 1 samples. There was no evidence for the presence of phenytoin in the Sub 1 sample.

ELECTRONICALLY FILED  
4/25/2017 1:18 PM  
2017-L-004153  
PAGE 2 of 23

**Analyst:**

Electronically signed by: David F. Crockett (FCCLABS\dcrocket)  
Date: Monday, January 30, 2017 2:34:53 PM (GMT -05:00)  
Location: FCC  
Reason: 01. Reason given above

Electronically signed by: John P. Roetting II (FCCLABS\jroetting)  
Date: Monday, January 30, 2017 2:35:17 PM (GMT -05:00)  
Location: FCC  
Reason: 01. Reason given above

**Checked by:**

Electronically signed by: Samuel R. Gratz (FCCLABS\mgratz)  
Date: Monday, January 30, 2017 2:43:32 PM (GMT -05:00)  
Location: FCC  
Reason: 01. Reason given above

**Report Author:**

Electronically signed by: John P. Roetting II (FCCLABS\jroetting)  
Date: Tuesday, January 31, 2017 9:42:25 AM (GMT -05:00)  
Location: FCC  
Reason: 01. Reason given above



**FCC Continuation Sheet**

Sample No.

975847

975847

Sample Prep

1-27-17 JPR DFC

There were 2 intact cans of dog food. The analyst assigned sub numbers to one of them.  
Sub 1. Only this sub was analyzed.

Each sub sample consisted of a 12 ounce/340 g can of cooked beef and juice.

The entire contents of the can was ground up in a Magic Bullet type homogenizer.

The resulting ground meat was placed in a new naigene bottle.

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**FCC Continuation Sheet**

Sample No. 975847

Date – 1/27/17

**Sample Prep Sheet**Sample Prep for Screen:

Sample Weight(s) or Volume(s):

Item #	Mass (g)
975847 Sub 1 Prep 1	1.0945
975847 Sub 1 Prep 2	1.0670
975847 Sub 1 Spk	1.0655

Pipette 380

Balance 52

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**FCC Continuation Sheet**

Sample No.

975847

Sample Prep

Weigh about 1 gram of sample into scintillation vials.

1-27-16 JPR

Add 10 mL of Ethyl Acetate w/5% Ethanol.

1-27-16 DFC

Vortex ~ 30 seconds and sonicate for 30 minutes.

Place 5 mL of extract solution (no layers observed) into a test tube

Using TurboVap, evaporate the extract to dryness (water bath at 37 C and 10 psi Nitrogen)

Reconstitute residue by adding 0.5 mL of Ethyl acetate w/5% EtOH and swirl gently.

Transfer ~0.5 mL to autosampler vial. Ready to inject.

Spike Preps

DFC

To 1 gram of sample, add 4 uL of each Stock 1000 ppm std and proceed as above (pipette 404)

Concentration would be  $4\mu\text{g} / 0.5\text{ mL extract} = 8\text{ppm}$  of Pentobarbital and Phenytoin. (Solution conc)

Samples were chilled in freezer ~10 minutes and centrifuged ~2 minutes using Benchtop Clinical centrifuge.

Samples were clear after centrifugation and there was a precipitate on bottom.

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**FCC Continuation Sheet**

Sample No.

975847

**Standard Preparation**

Name of compound *Phenytoin*  
 Formula weight (g/mol)  
 Manufacturer *Cerilliant*  
 Lot # *FN060412-03*  
 FCC Barcode # *16-0053*  
 CAS #

**Preparation of stock standard solution**

Balance # *N/A (1mg/mL ampule)*  
 Mass of standard (mg) *1.000*  
 Solvent *MeOH*  
 Volume of solvent (mL) *1.000*  
 Pipette # *N/A*  
 Balance # for pipette QA *N/A*  
 Concentration of stock (mg/mL) *1.000*  
 Date of stock standard preparation *February 4, 2016*  
 Name of preparer: *John P. Roetting II*  
 Location of stock standard solution: *132*

**Preparation of working standard**

	low	high	
<b>First dilution</b>			* These were mixed stds containing both compounds.
Volume of stock standard (µL)	2.0	4.0	
Volume of solvent (µL)	998	996	
Concentration of working standard 1 (ppm)	2.00	4.0	

**Second dilution (if necessary)**

Volume of working standard 1 (µL)  
 Volume of solvent (µL)  
 Concentration of working standard 2 (ppm) *N/A*

**Third dilution (if necessary)**

Volume of working standard 2 (µL)  
 Volume of solvent (µL)  
 Concentration of working standard 3 (ppm) *N/A*

Pipettes used for dilution(s) *199, 404*  
 Balance for pipette QA (if necessary) *NA*  
 Date of working standard preparation: *January 27, 2017*

*This worksheet was created using Microsoft Office Professional Plus 2010 Excel. All concentration calculations were performed without rounding of decimal places; however, fewer decimal places are shown for clarity, which may not correspond to the correct number of significant figures.*

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<b>FCC Continuation Sheet</b>		Sample No.	975847
<b>Standard Preparation</b>			
Name of compound	<b><i>Pentobarbital</i></b>		
Formula weight (g/mol)			
Manufacturer	<b><i>Cerilliant</i></b>		
Lot #	<b><i>FE06031503</i></b>		
FCC Barcode #	<b><i>16-0044</i></b>		
CAS #			
<b>Preparation of stock standard solution</b>			
Balance #	<b><i>N/A (1mg/mL ampule)</i></b>		
Mass of standard (mg)	<b><i>1.000</i></b>		
Solvent	<b><i>MeOH</i></b>		
Volume of solvent (mL)	<b><i>1.000</i></b>		
Pipette #	<b><i>N/A</i></b>		
Balance # for pipette QA	<b><i>N/A</i></b>		
Concentration of stock (mg/mL)	<b><i>1.000</i></b>		
Date of stock standard preparation	<b><i>February 4, 2016</i></b>		
Name of preparer:	<b><i>John P. Roetting II</i></b>		
Location of stock standard solution:	<b><i>132</i></b>		
<b>Preparation of working standard</b>			
<u><b>First dilution</b></u>	low	high	
Volume of stock standard (μL)	<b><i>2.0</i></b>	<b><i>4.0</i></b>	*These were mixed stds containing both compounds.
Volume of solvent (μL)	<b><i>998</i></b>	<b><i>996</i></b>	
Concentration of working standard 1 (ppm)	<b><i>2.00</i></b>	<b><i>4.0</i></b>	
<u><b>Second dilution (if necessary)</b></u>			
Volume of working standard 1 (μL)			
Volume of solvent (μL)			
Concentration of working standard 2 (ppm)	<b><i>N/A</i></b>		
<u><b>Third dilution (if necessary)</b></u>			
Volume of working standard 2 (μL)			
Volume of solvent (μL)			
Concentration of working standard 3 (ppm)	<b><i>N/A</i></b>		
Pipettes used for dilution(s)	<b><i>199, 404</i></b>		
Balance for pipette QA (if necessary)	<b><i>NA</i></b>		
Date of working standard preparation:	<b><i>January 27, 2017</i></b>		
<p><i>This worksheet was created using Microsoft Office Professional Plus 2010 Excel. All concentration calculations were performed without rounding of decimal places; however, fewer decimal places are shown for clarity, which may not correspond to the correct number of significant figures.</i></p>			

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**FCC Continuation Sheet**

Sample No. 975847

**Method:** Sim/Scan Method for Pentobarbital and Phenytoin**Instrument:** 5975-1-097 Agilent Technologies GC 7890A Series with CTC PAL ALS(Laboratory 97)**Detector:** Agilent Technologies Mass Selective Detector (MSD) model 5975C (Laboratory 97)**Software:** Agilent ChemStation G1701DA version E.02.00,  
Library; NIST08/**Column:** HP-5MS, 5% Phenyl Methyl Silox. Part #19091S-433, Serial # USB446462H  
30 m X 0.25mm x 0.25 um df. Length: 29.93 meters**Chemicals:** Ethyl acetate, HPLC grade , Ethanol

Pento Method Parameters	
<b>Carrier Gas Parameters</b>	Helium, Constant Flow Mode
Initial Flow Rate	0.8 mL/min
<b>Injection Parameters</b>	
Mode	Splitless
Injection Volume	1.0 µL
Injection Temperature	280 °C
<b>GC Parameters</b>	
Initial Temperature	60 °C
Initial Time (Hold)	3.00 min
Ramp Rate	20 °C/min
Final Temperature	300 °C
Final Time (Hold)	2 min
MSD Transfer Line Temperature	280 °C
<b>MS Acquisition Parameters</b>	
Filament (Solvent) Delay	5.0 min
Ionization	El
	Full Scan and SIM
Scan Modes	Pentobarb. -Ions 141, 156, 197 - dwell 100 at 14.5 min Phenytoin - Ions 104, 180, 252- dwell 100
Mass Range	40-650 amu
Run Time	17.0 min
Threshold	150
MS Quad	150 °C
MS Source	230 °C

**Additional Equipment:** sonicating water bathELECTRONICALLY FILED  
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Sequence Name: C:\msdchem\1\sequence\012717dfc.s  
 Comment:  
 Operator: DFC  
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 Data Analysis Pre-Seq Cmd:  
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 Data Analysis Post-Seq Cmd:

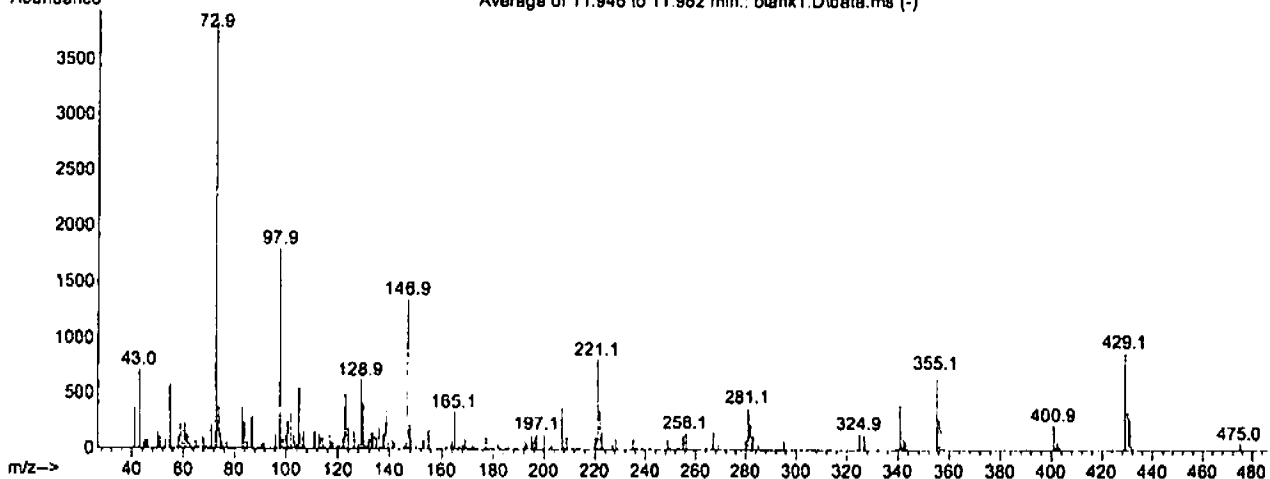
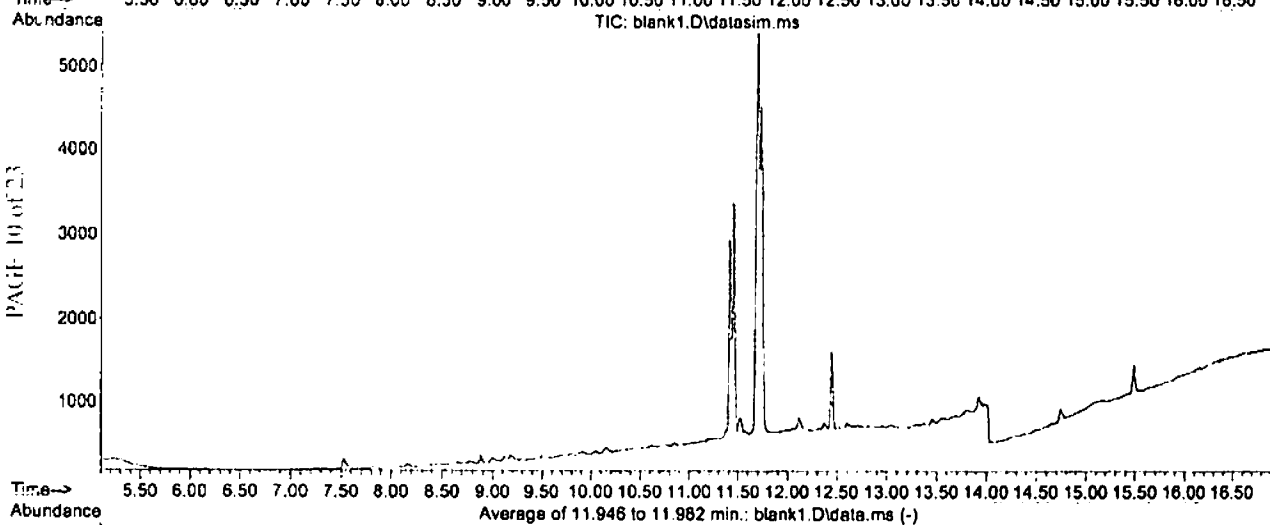
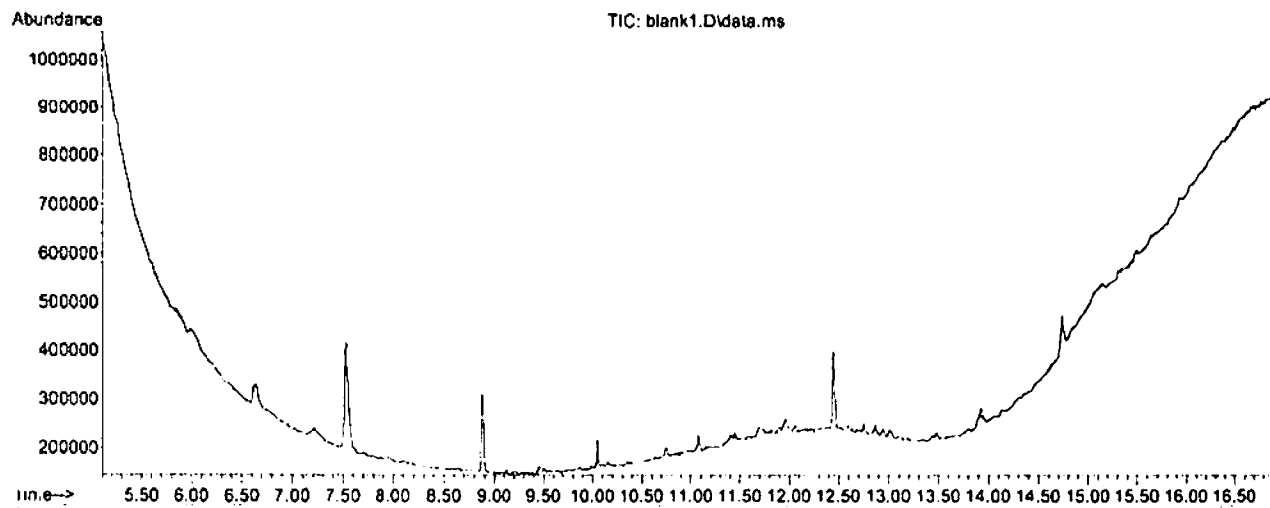
Method Sections To Run      On A Barcode Mismatch  
 (X) Full Method              (X) Inject Anyway  
 ( ) Reprocessing Only        ( ) Don't Inject

Line	Sample Name/Misc Info
1) Sample	1 blank1 PENTO EthylAcetate
2) Sample	2 blank2 PENTO MethBlk
3) Sample	3 <del>993995-1</del> PENTO 995-1
4) Sample	4 <del>993995-2</del> PENTO 995-2
5) Sample	2 blank3 PENTO MethBlk
6) Sample	5 995-2-1 PENTO <del>993995-2-1</del> This pertains to another sample. 1-30-17 DFC
7) Sample	6 995-2-2 PENTO <del>993995-2-2</del>
8) Sample	2 blank4 PENTO MethBlk
9) Sample	7 975847-1 PENTO 847-1
10) Sample	8 975847-2 PENTO 847-2
11) Sample	9 975847-K PENTO 847-spike
12) Sample	2 blank5 PENTO MethBlk
13) Sample	10 2std PENTO LowStd
14) Sample	11 4std PENTO HiStd
15) Sample	1 clean PENTO EthylAcetate

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File :D:\Data\DFC\_2016\012717a\blank1.D  
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Instrument : 5975-097  
Sample Name: EthylAcetate  
Misc Info :  
Vial Number: 1

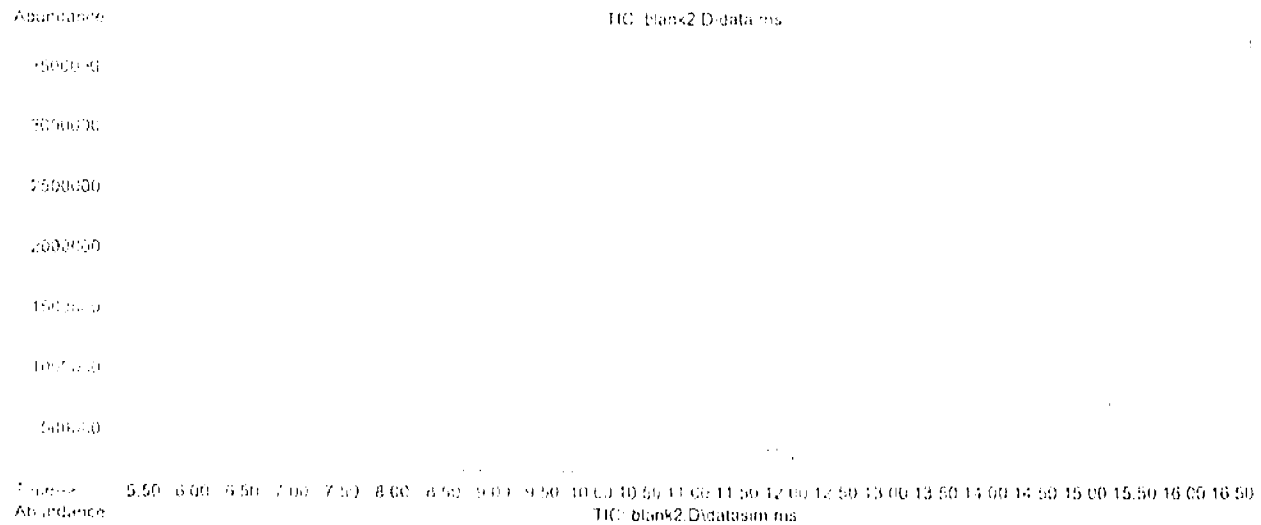


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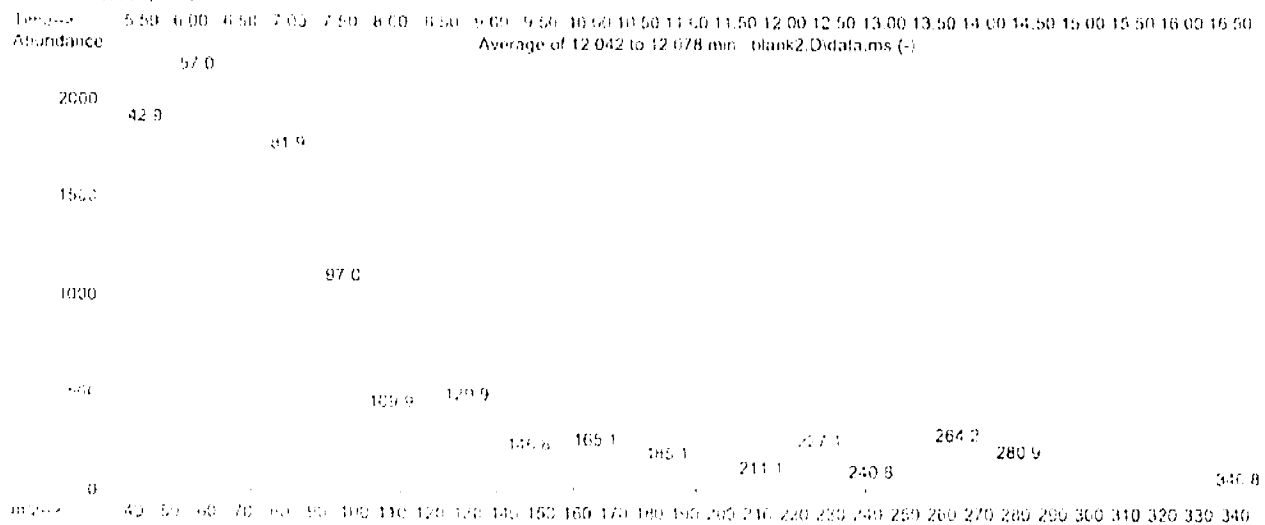


975847

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 Operator : DSV  
 Acquired : 27 Jan 2017 14:54 using AcqMethod: PENTOLM  
 Instrument : 5974-097  
 Sample Name: MethB1a  
 Misc Info :  
 Vial Number: 2



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File :D:\Data\DFC\_2016\012717a\blank4.D  
Operator : DFC  
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Instrument : 5975-097  
Sample Name: MethBlk  
Misc Info :  
Vial Number: 2

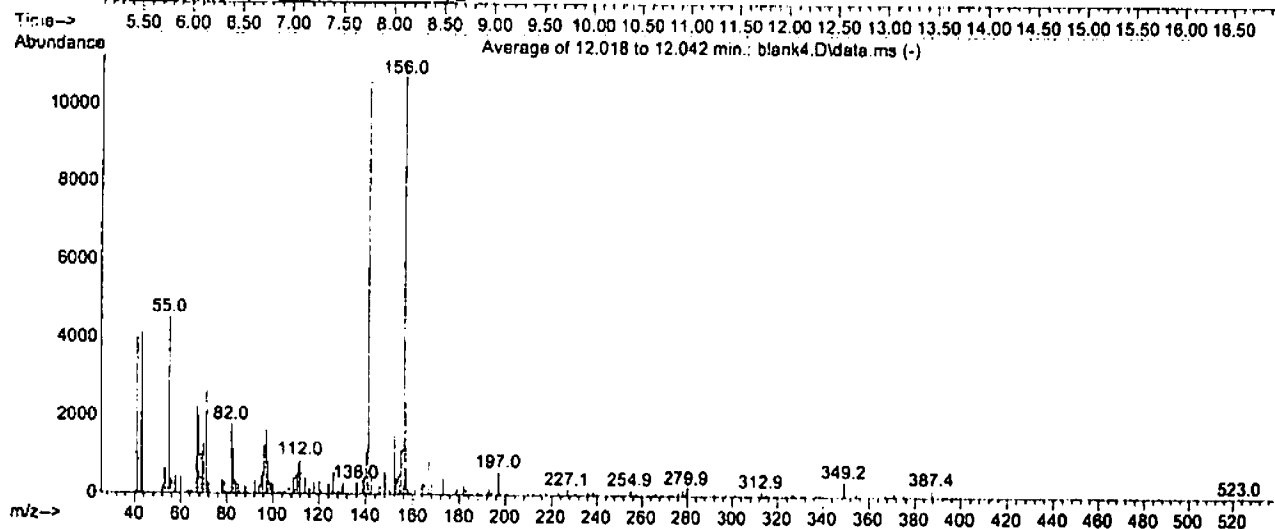
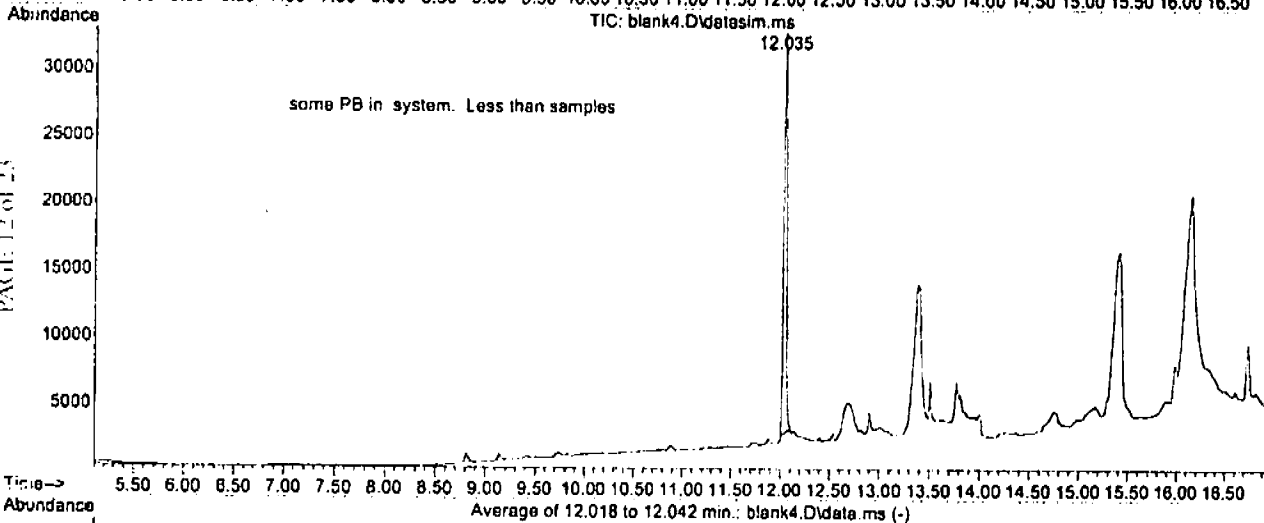
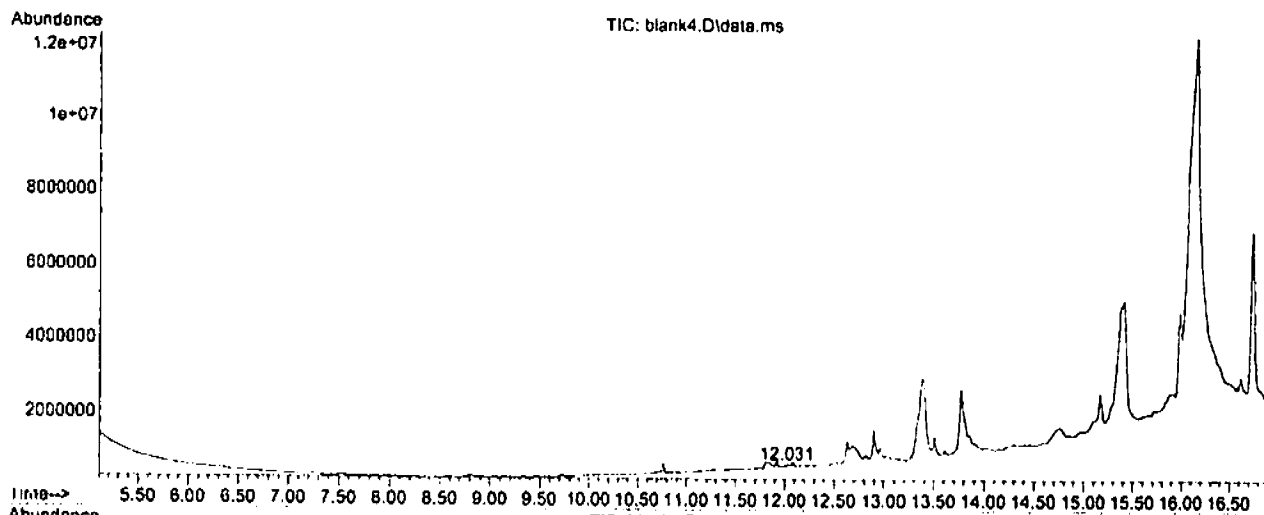
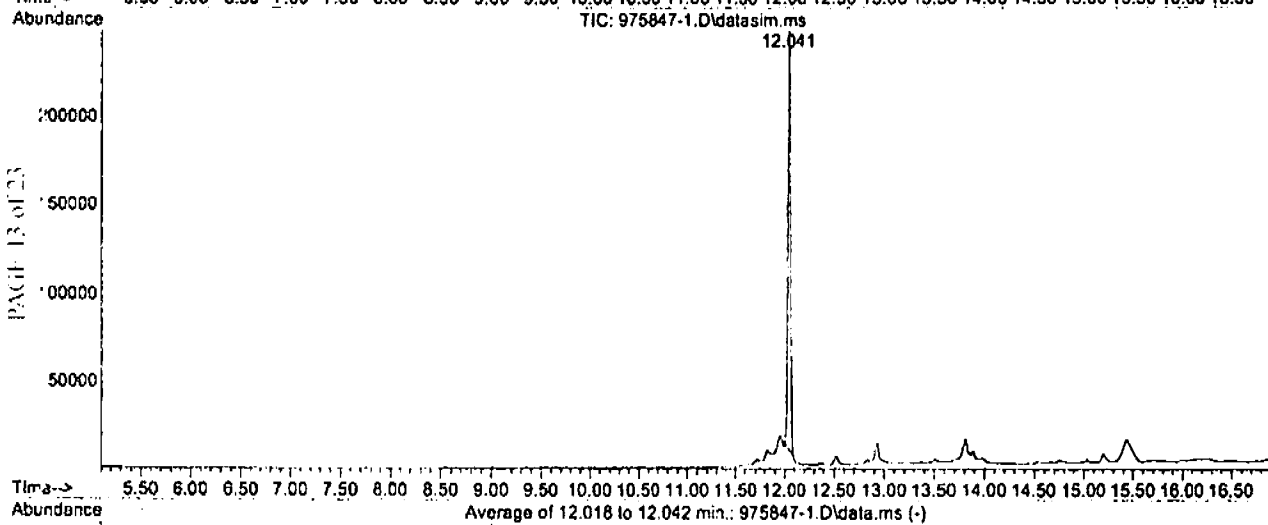
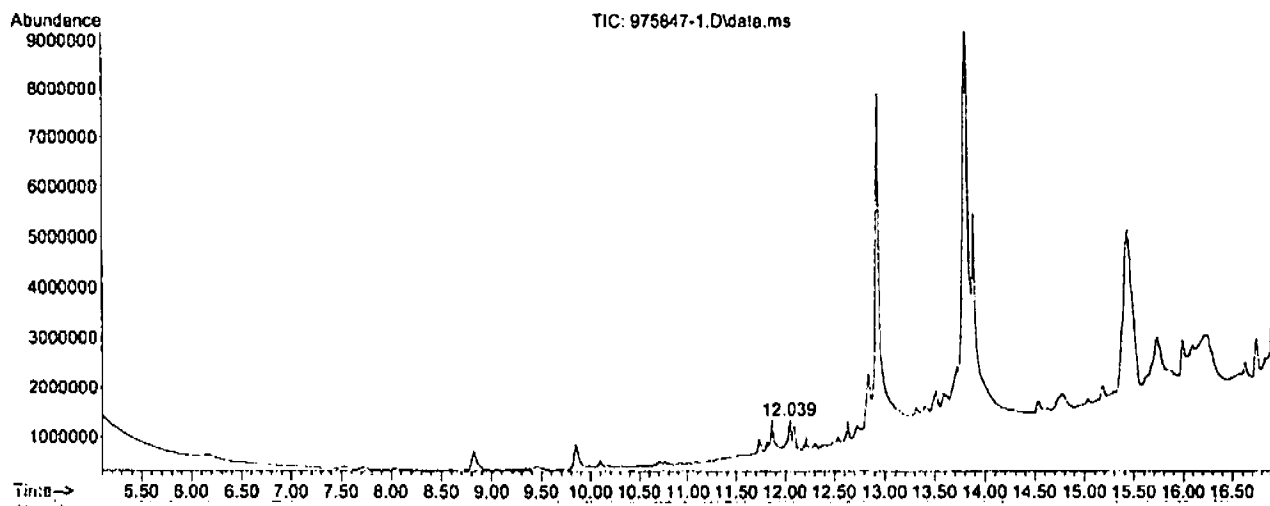


EXHIBIT 3

975847

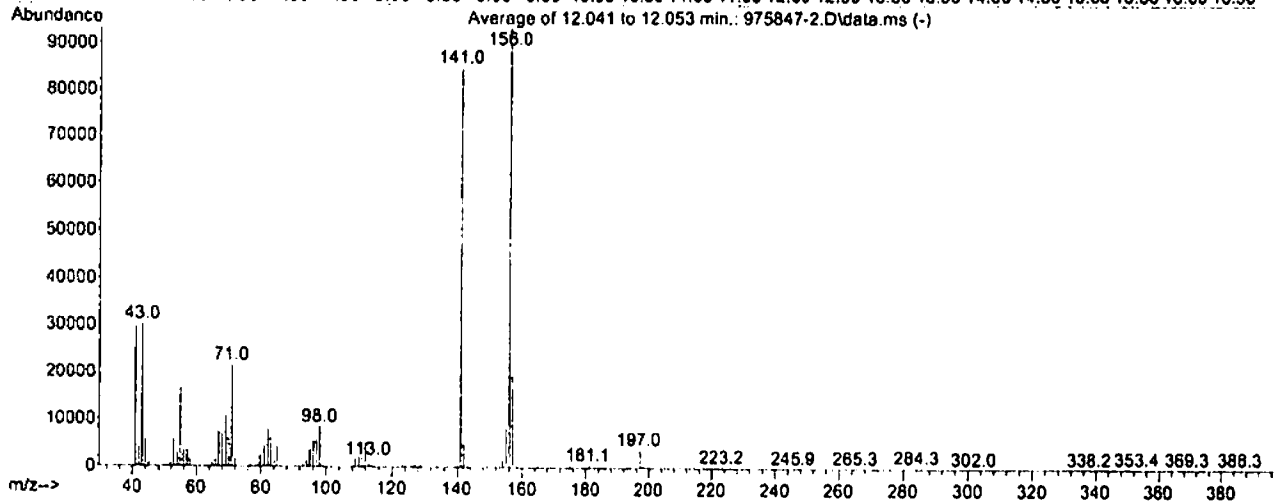
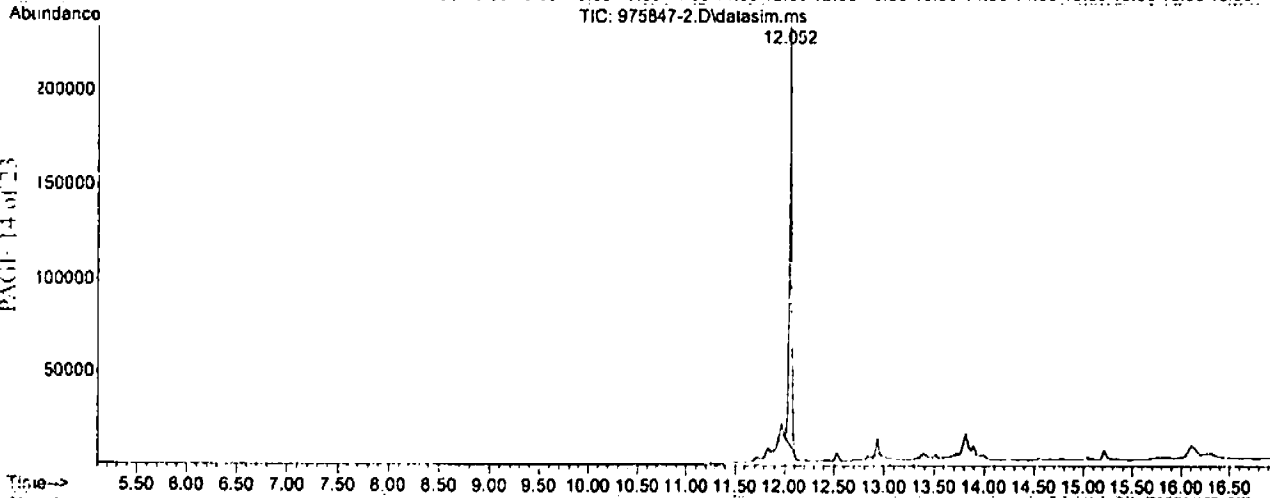
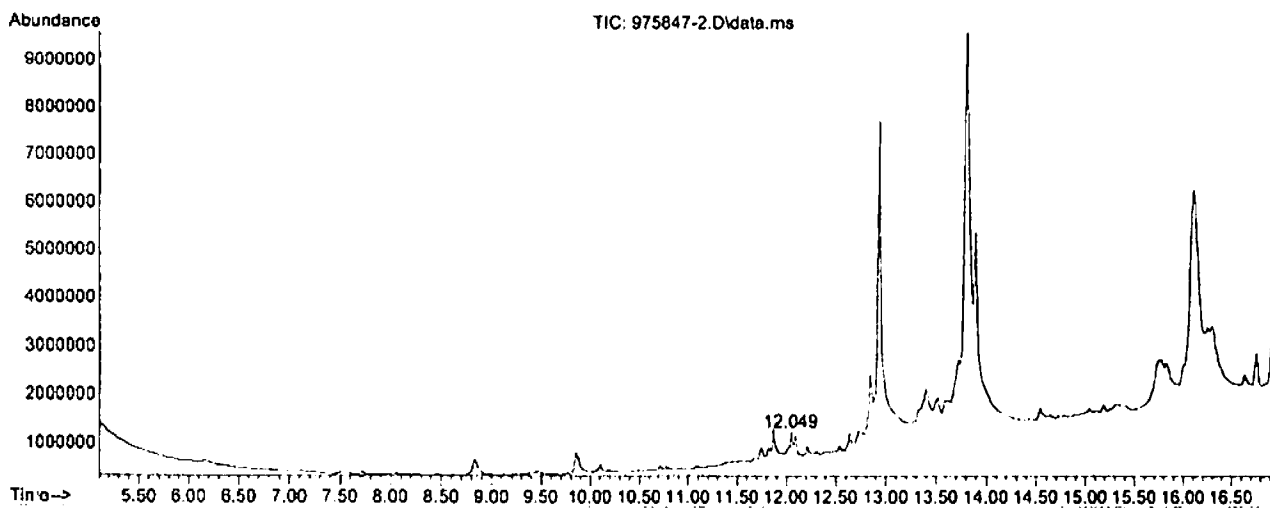
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Instrument : 5975-097  
Sample Name: 847-1  
Misc Info :  
Vial Number: 7



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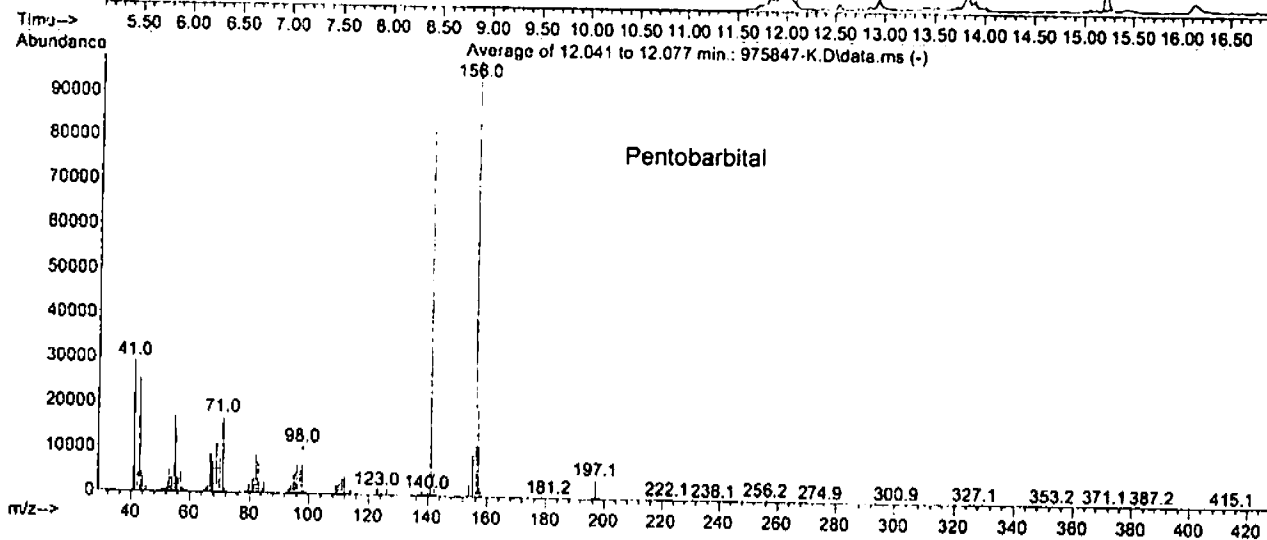
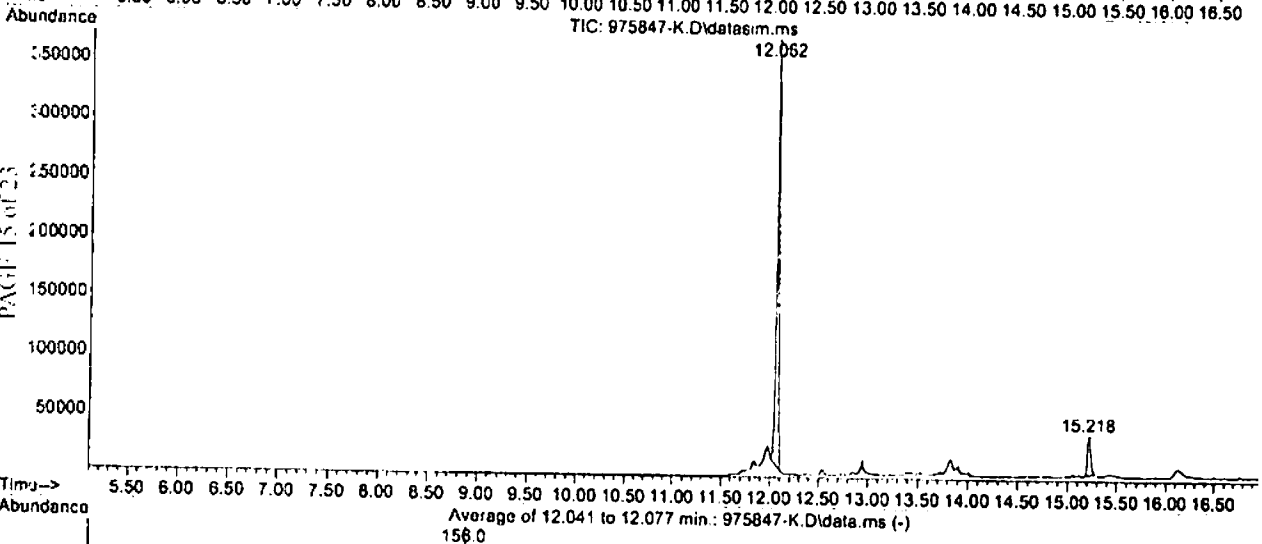
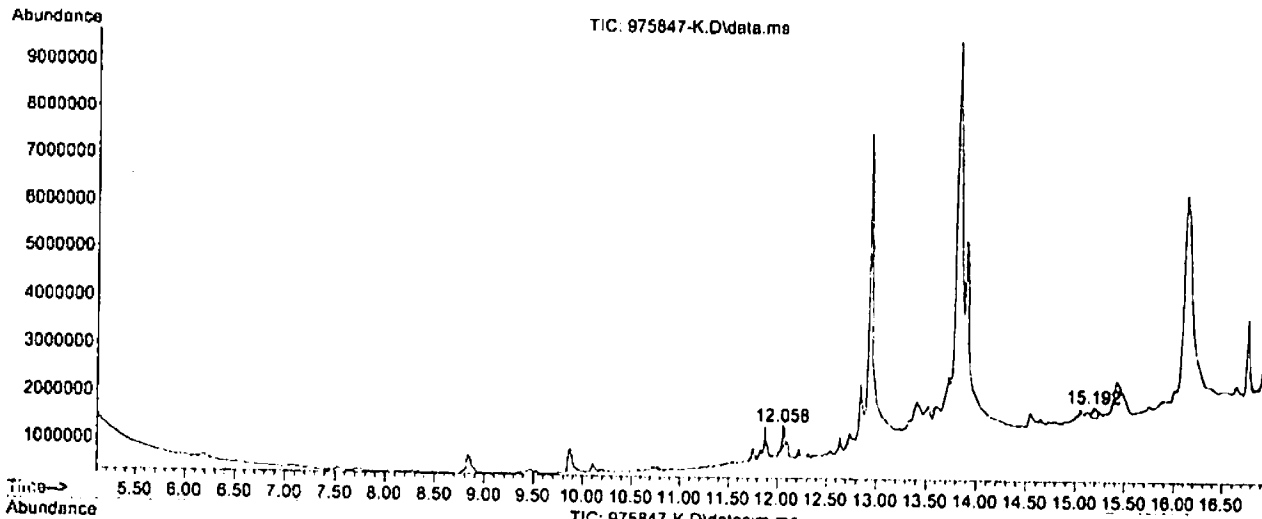
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Instrument : 5975-097  
Sample Name: 847-2  
Misc Info :  
Vial Number: 8



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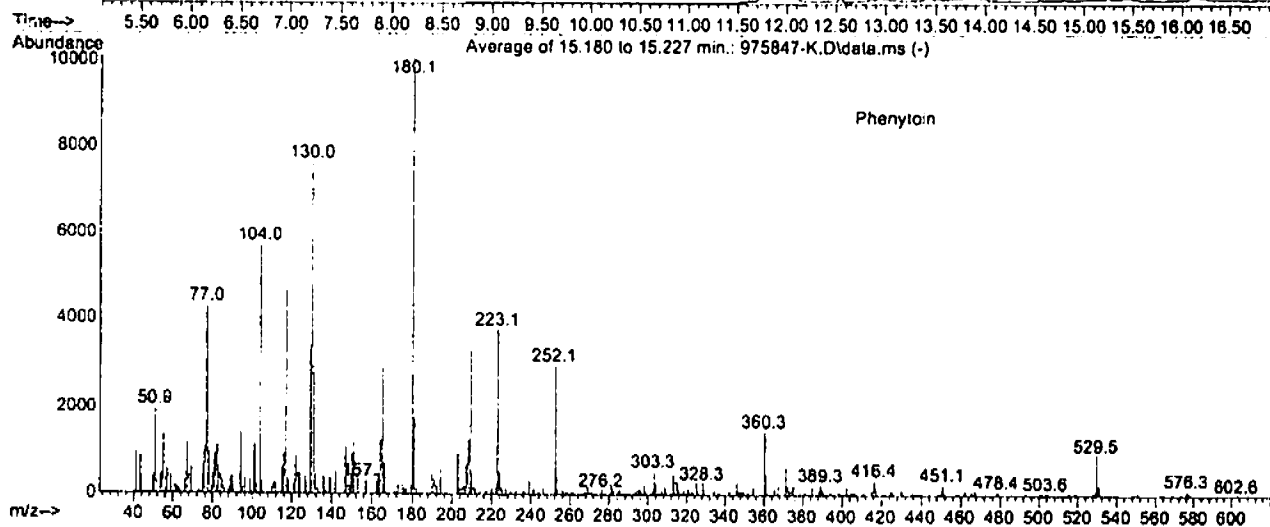
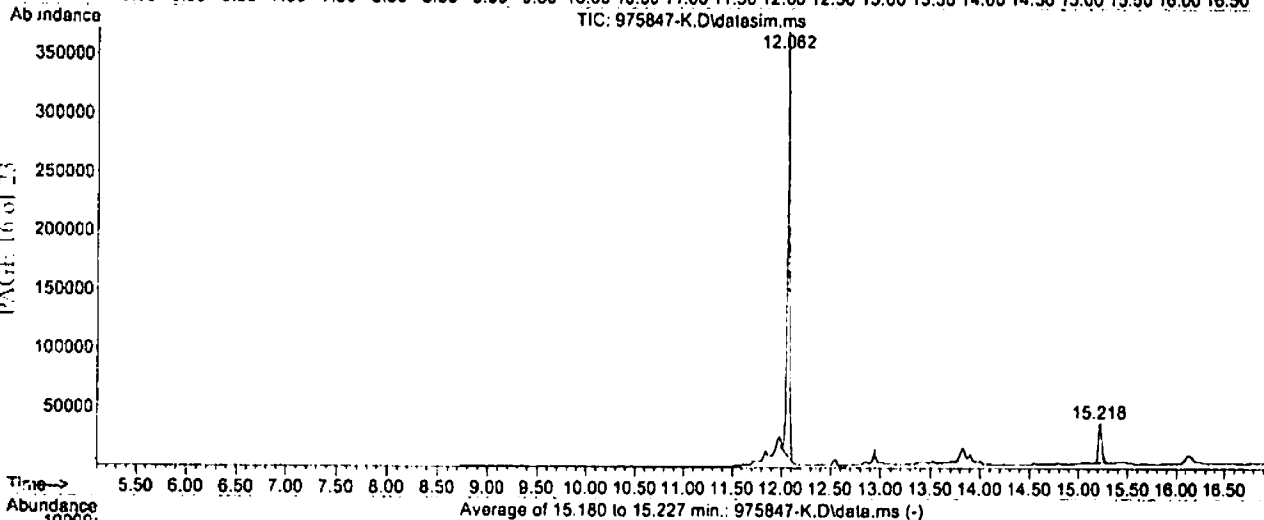
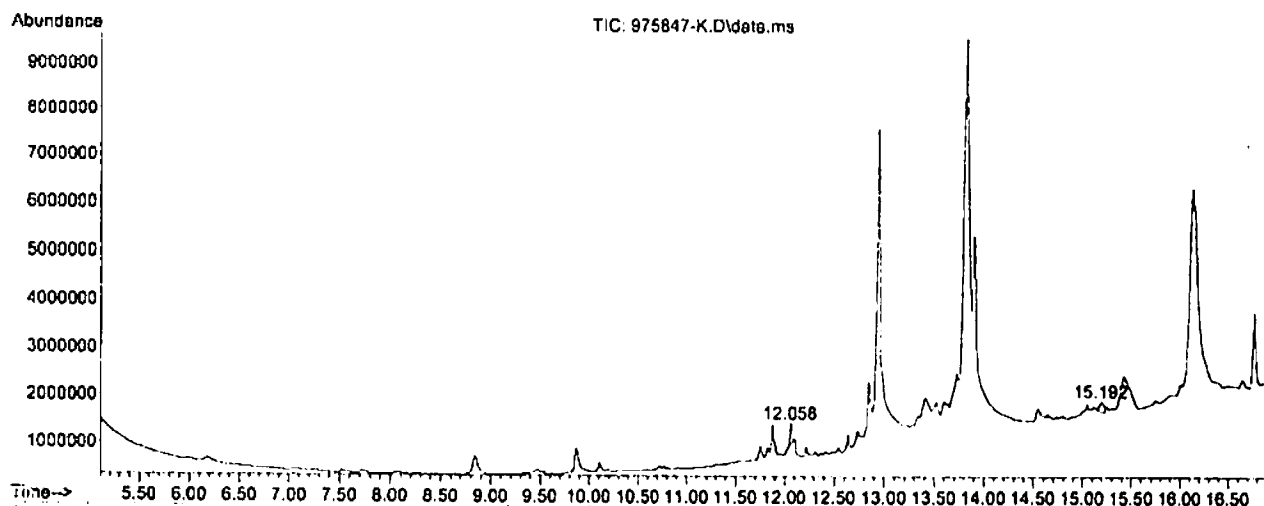
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Sample Name: 847-spike  
Misc Info :  
Vial Number: 9



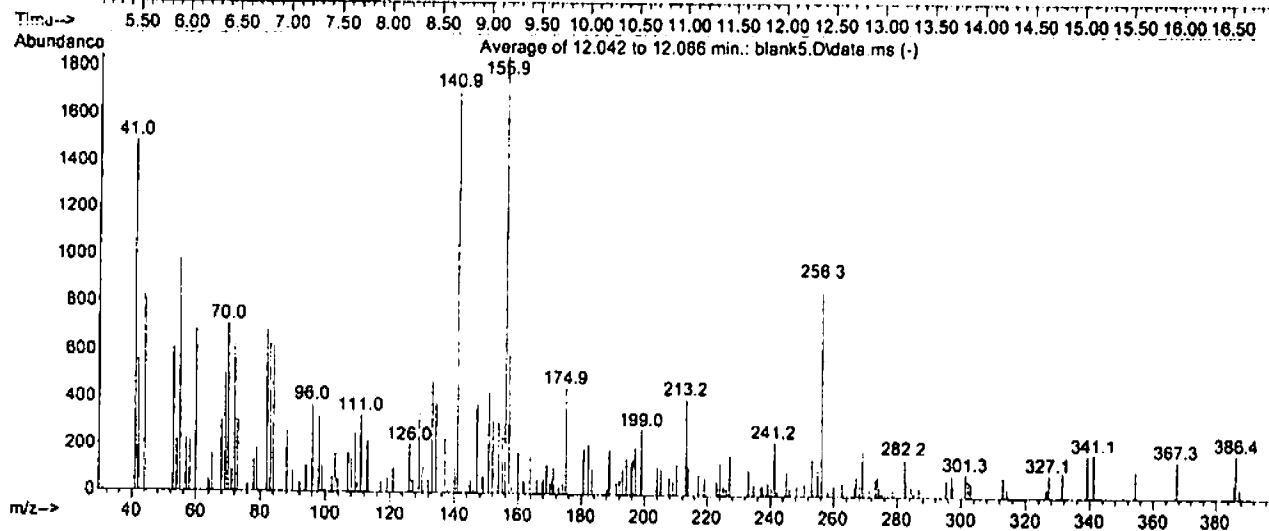
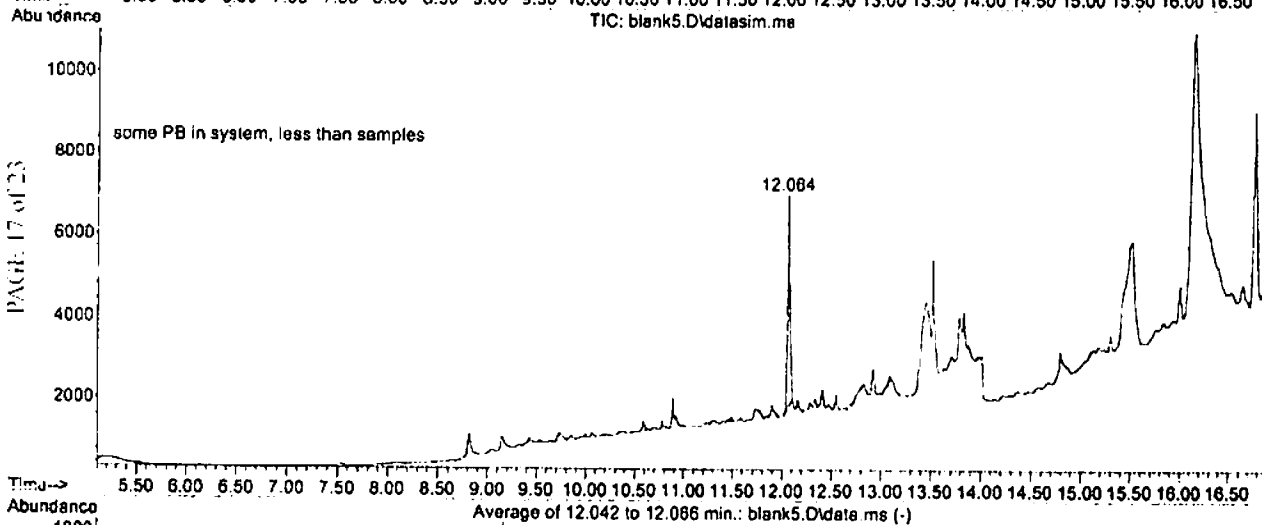
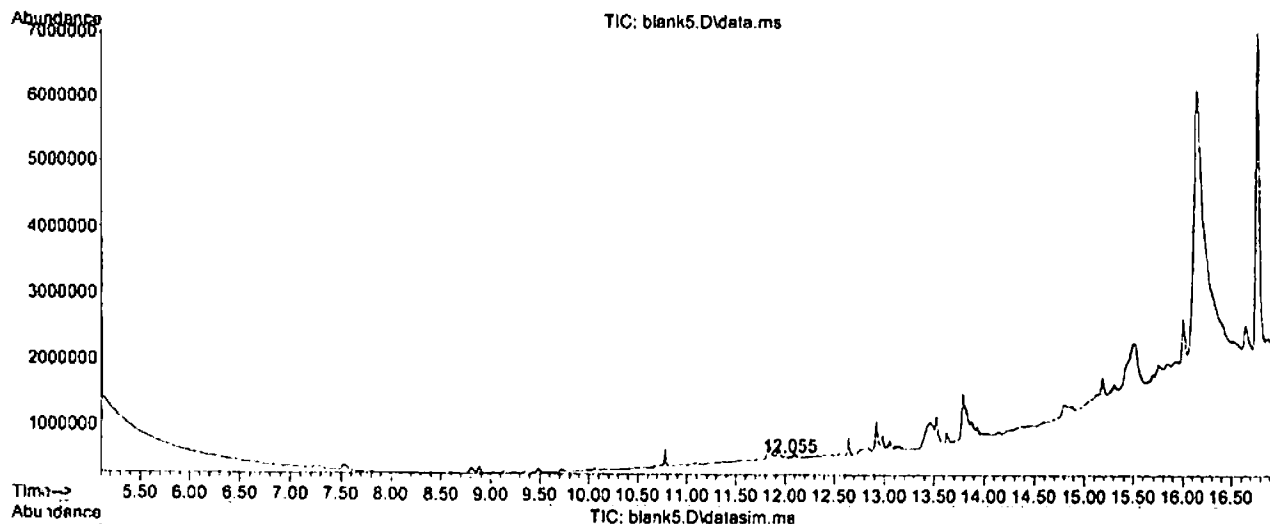
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Sample Name: 847-spike  
Misc Info :  
Vial Number: 9



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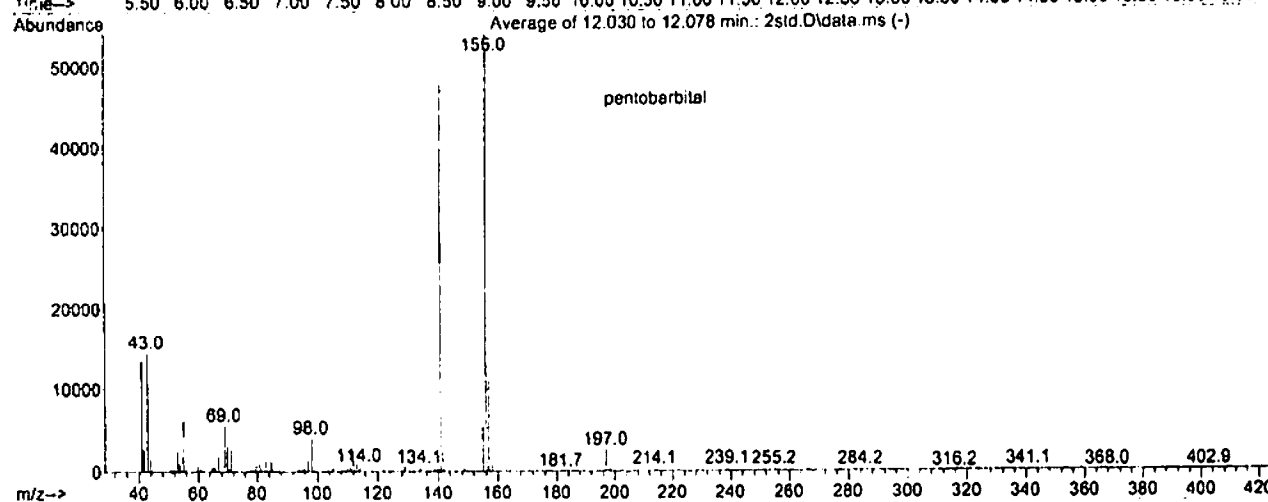
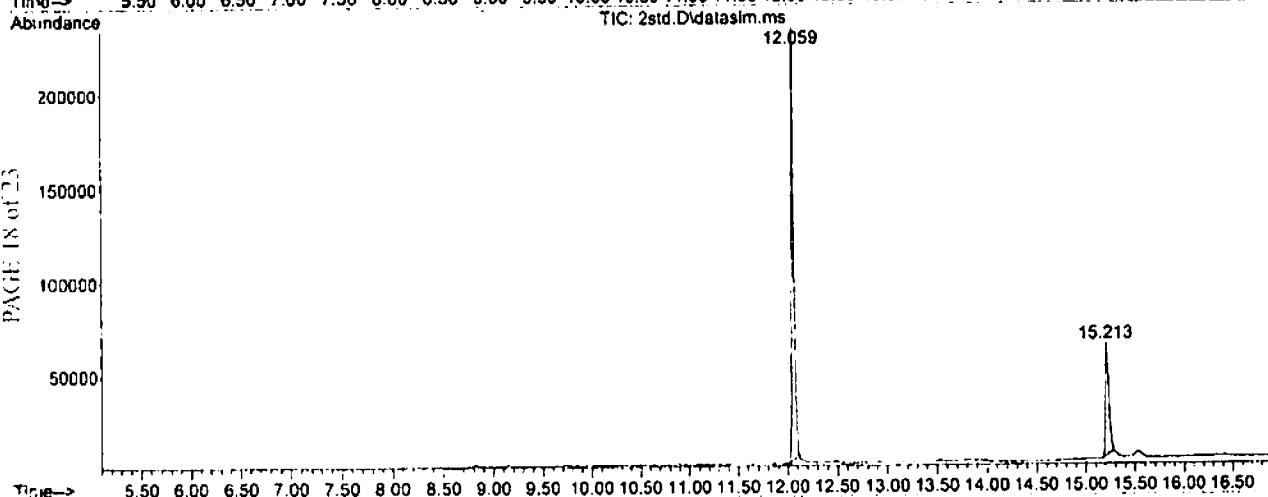
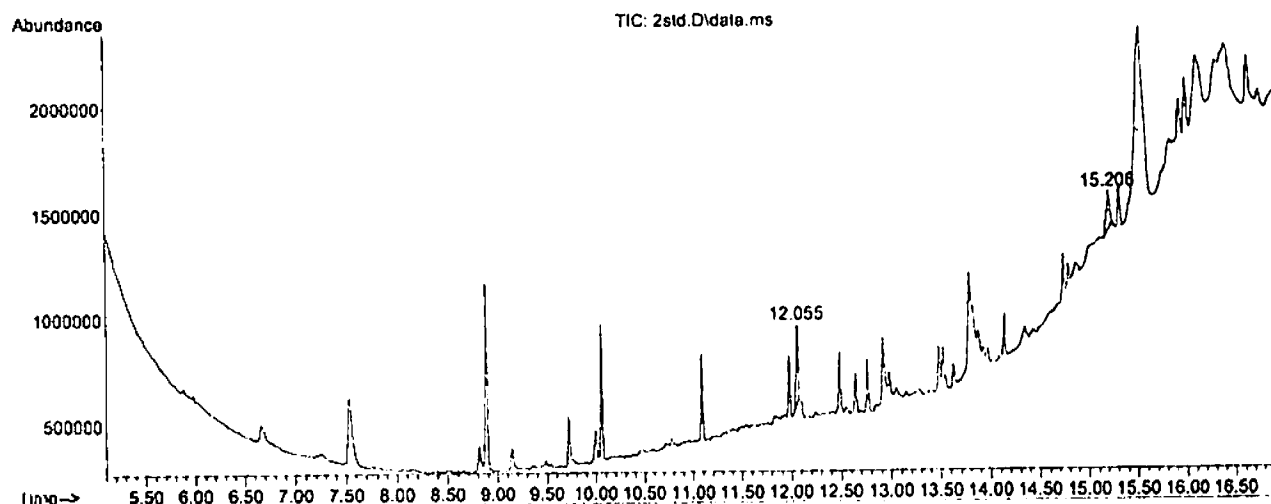
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Instrument : 5975-097  
Sample Name: MethBlk  
Misc Info :  
Vial Number: 2



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File :D:\Data\DFC\_2016\012717a\2std.D  
Operator : DFC  
Acquired : 27 Jan 2017 18:38 using AcqMethod PENTO.M  
Instrument : 5975-097  
Sample Name: LowStd  
Misc Info :  
Vial Number: 10



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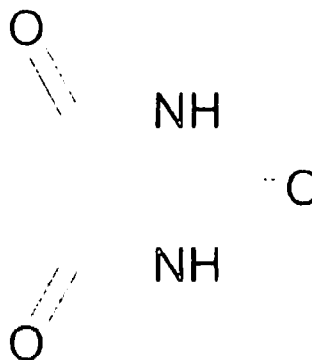
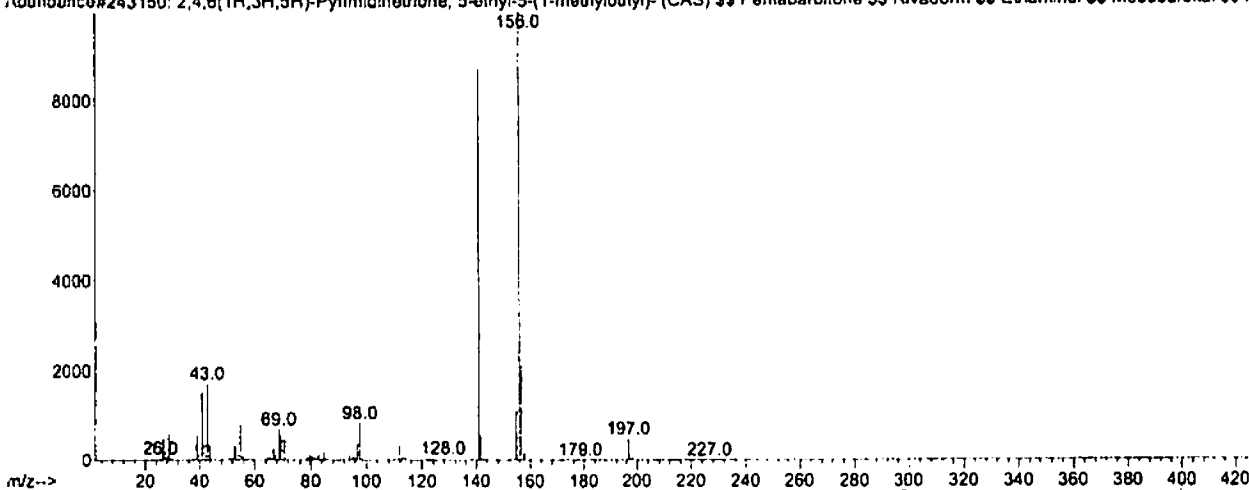
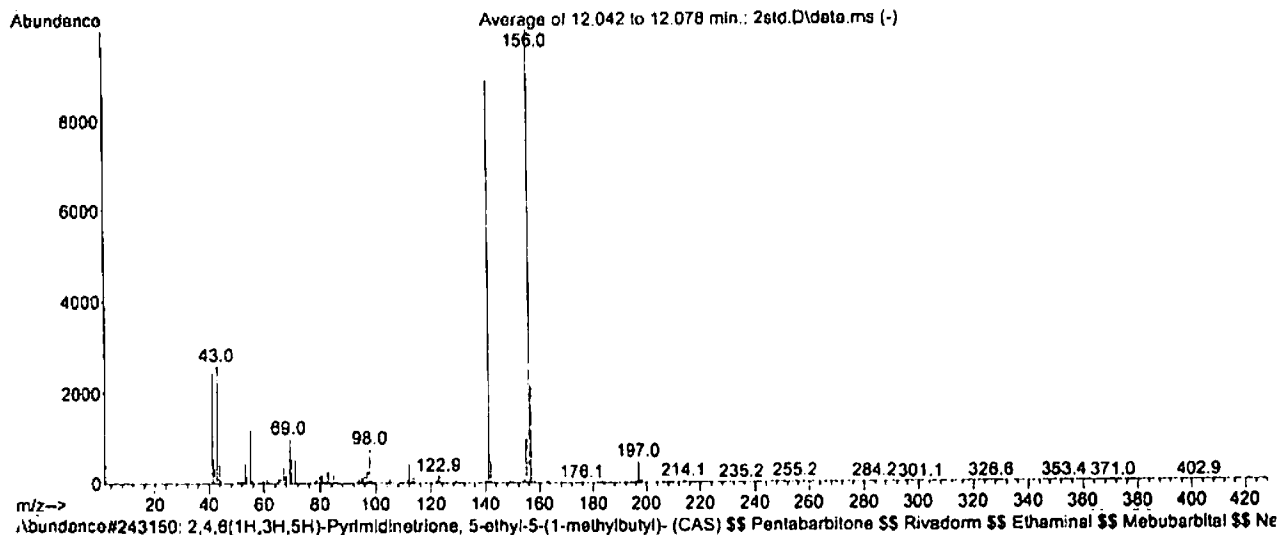


975847

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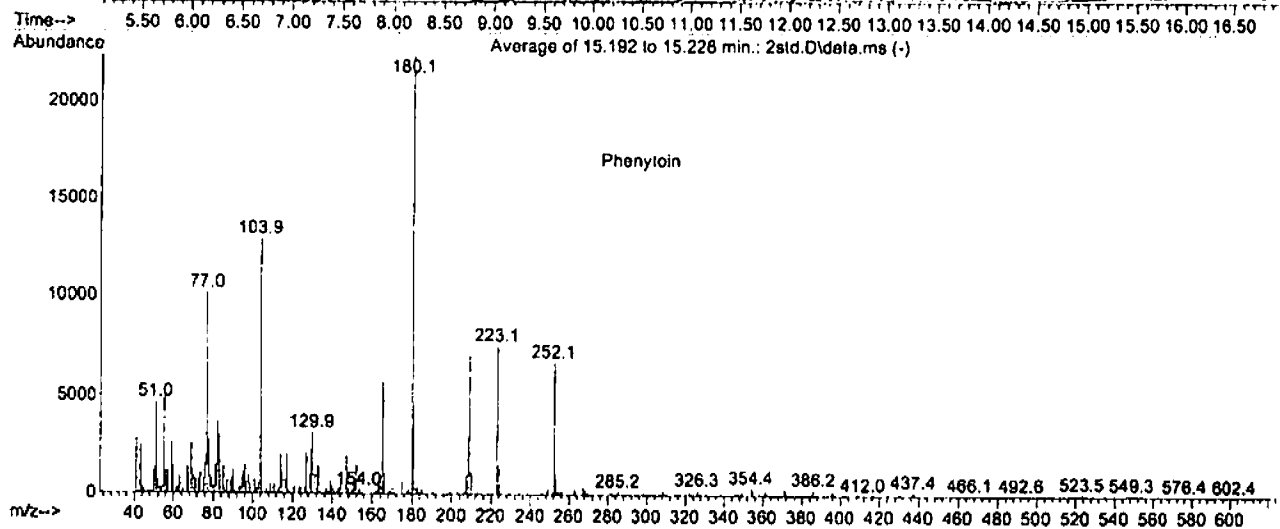
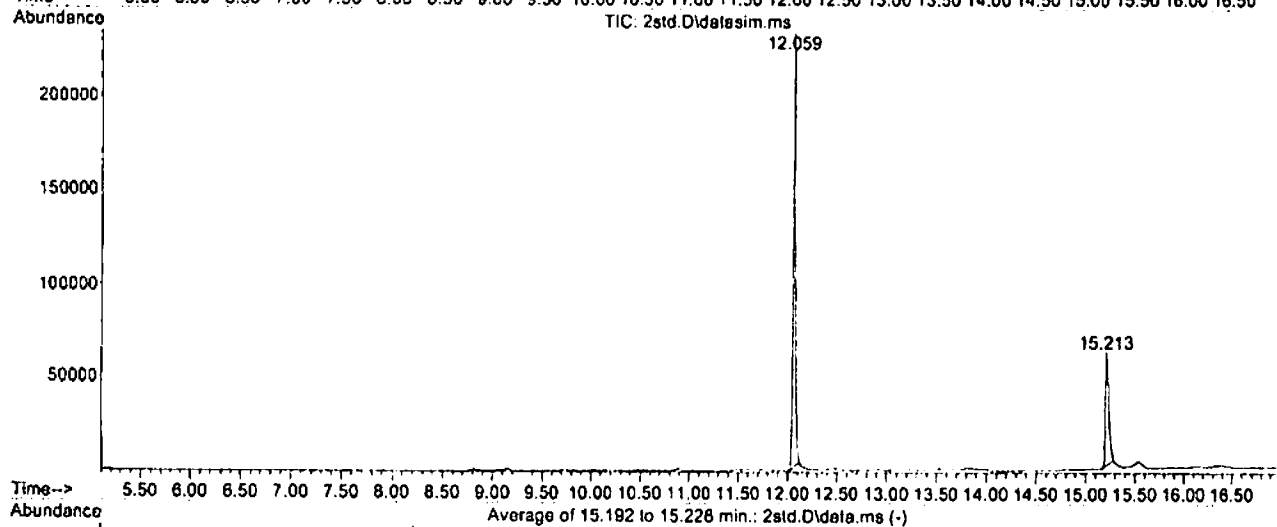
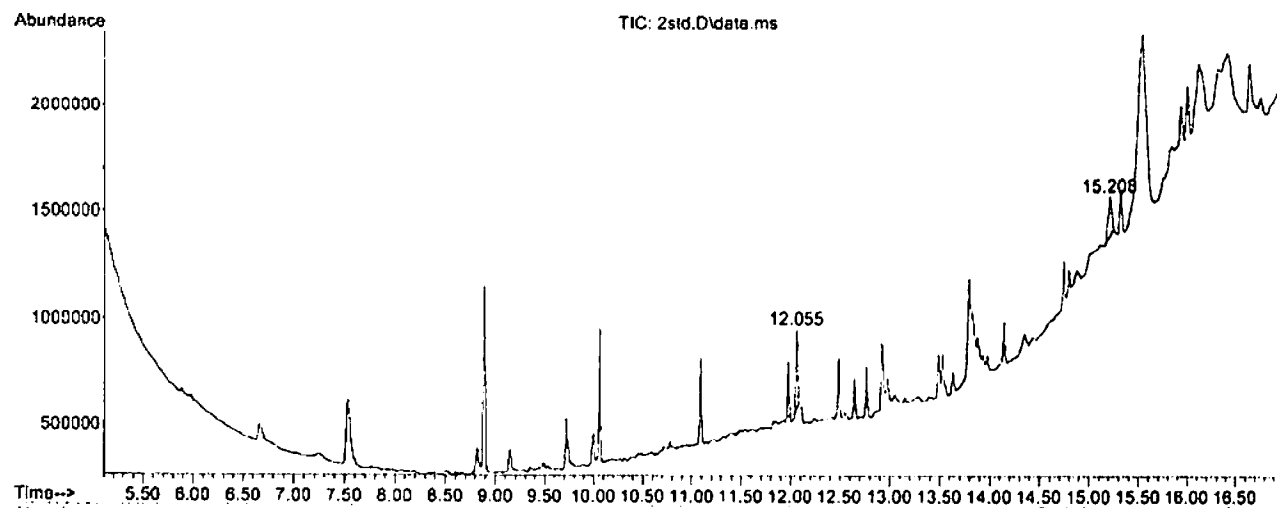
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ew) \$\$ Nembutal \$\$ Pentobarbital \$\$ Pentobarbitone \$\$ Pentobarbituric acid  
\$\$ component of Emesert



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Instrument : 5975-097  
Sample Name: LowStd  
Misc Info :  
Vial Number: 10



Phenytoin

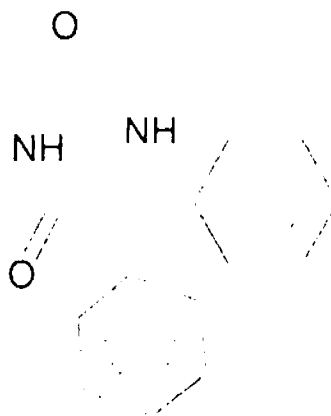
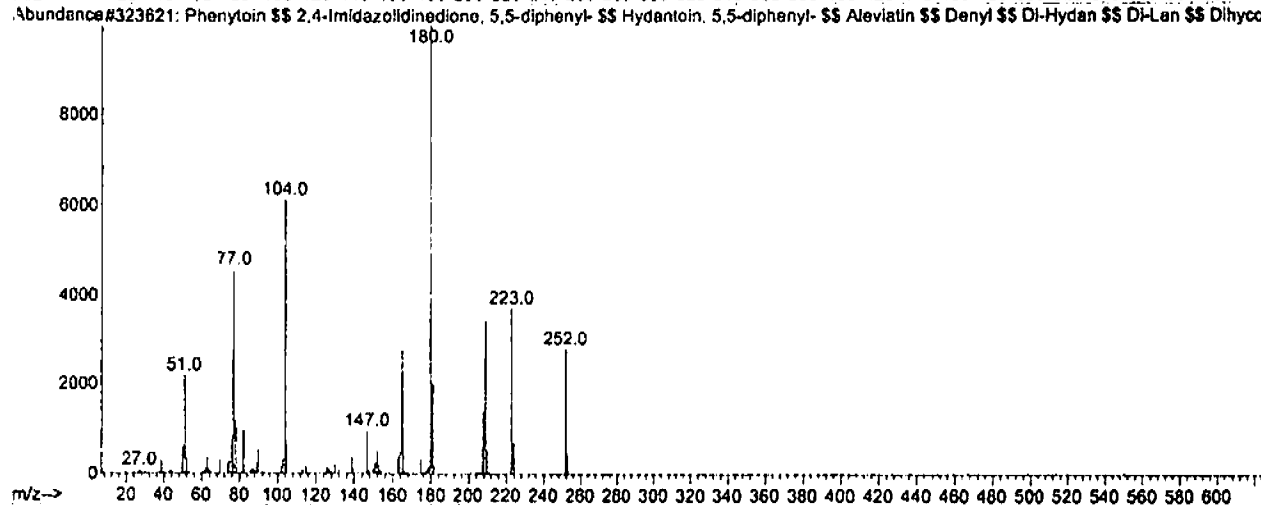
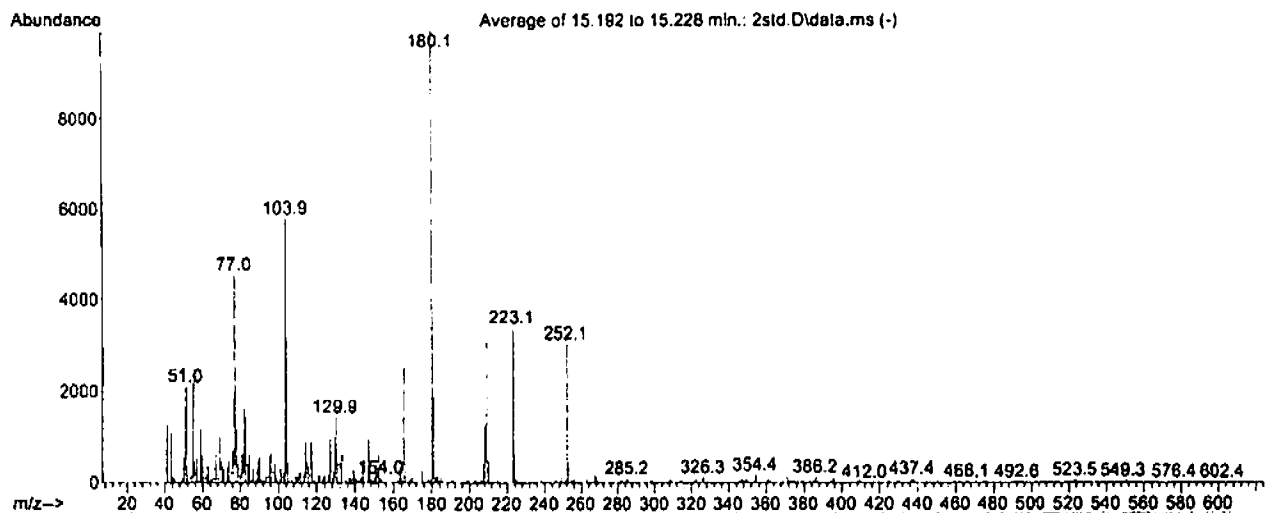
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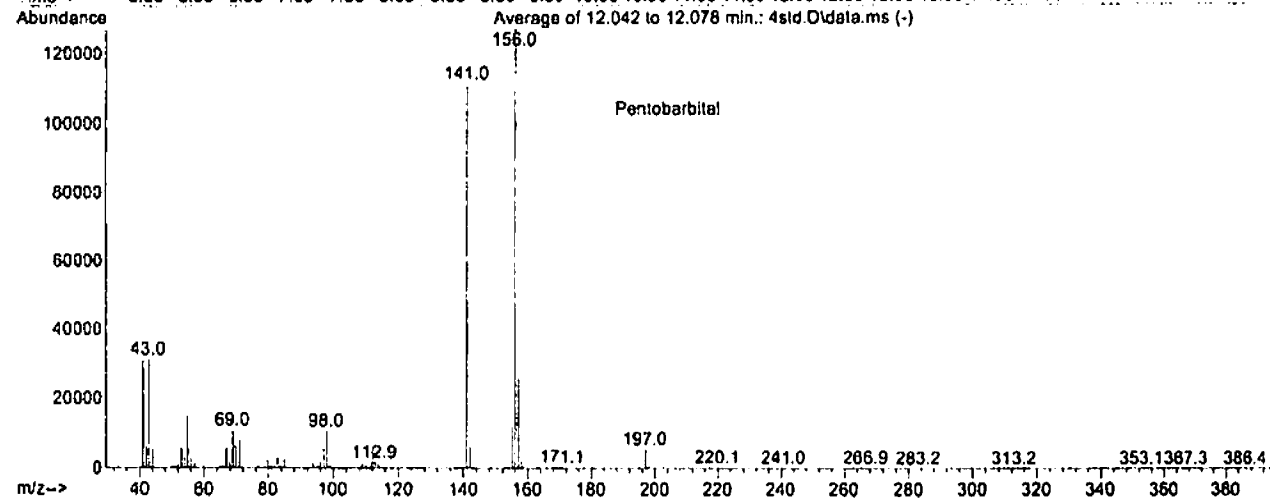
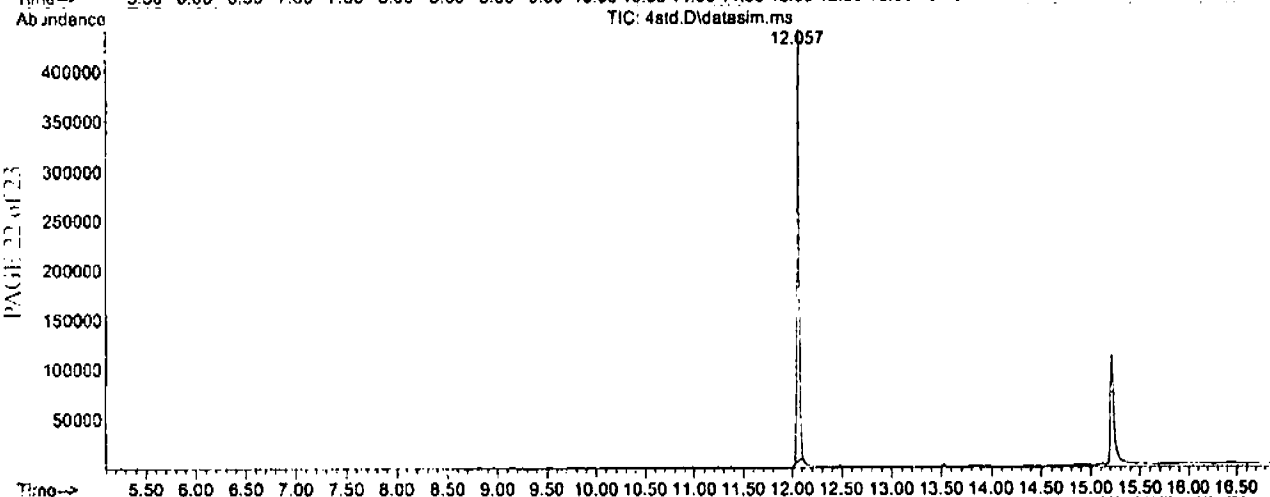
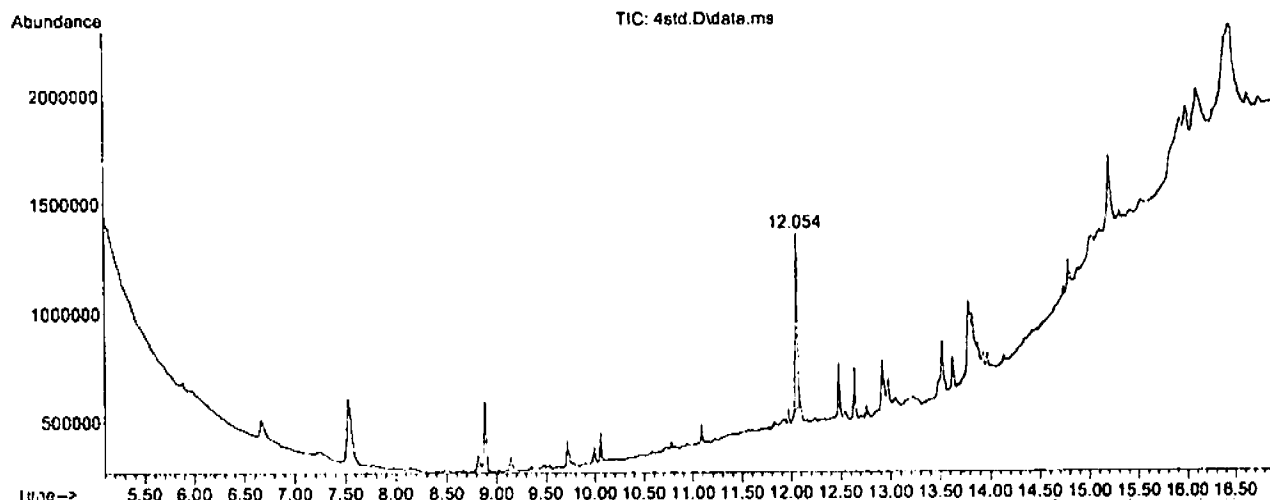
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975847

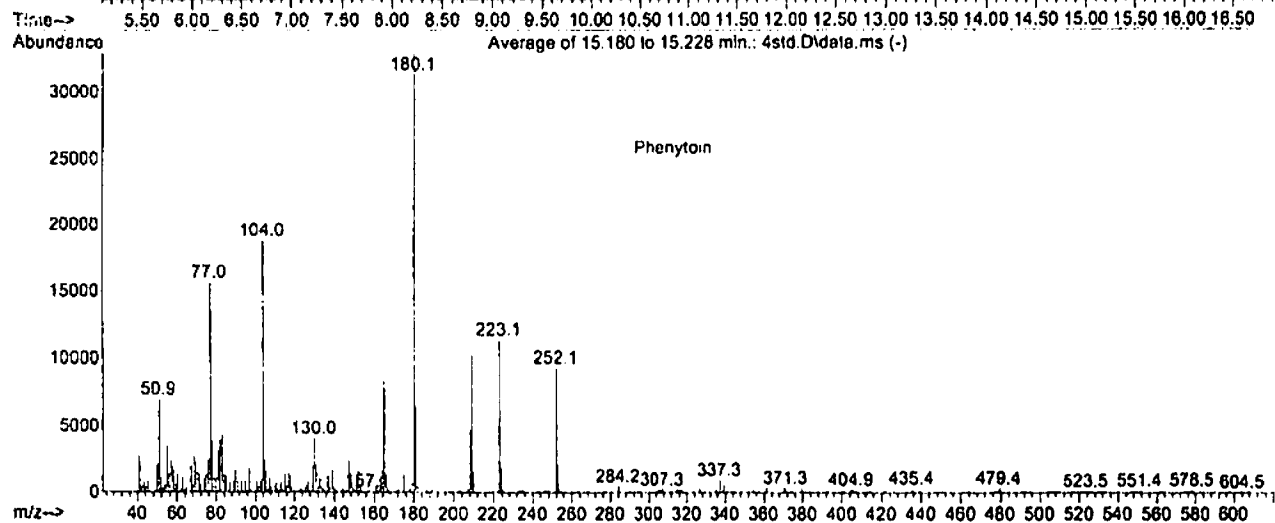
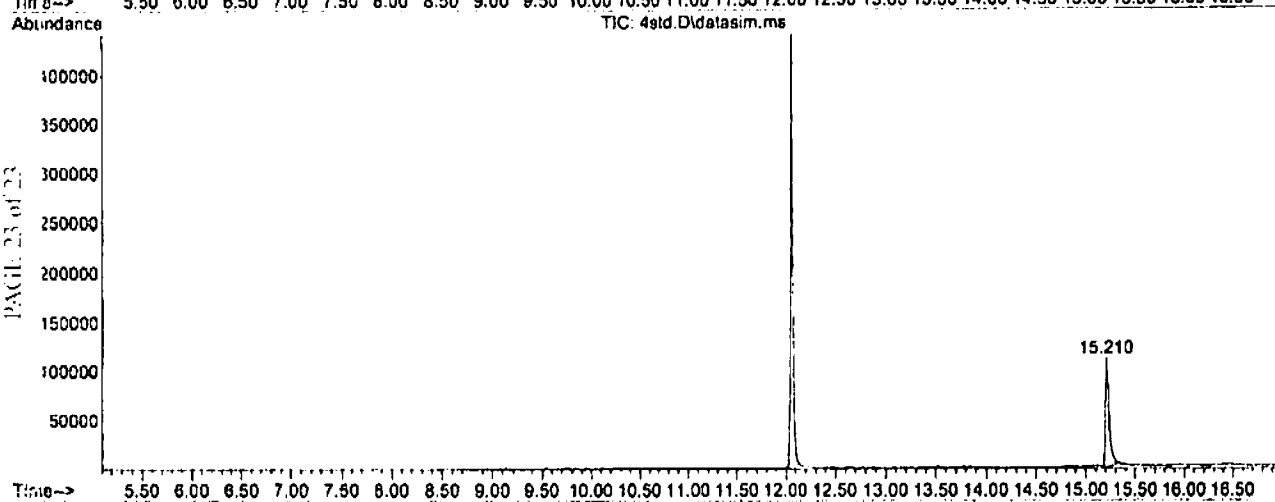
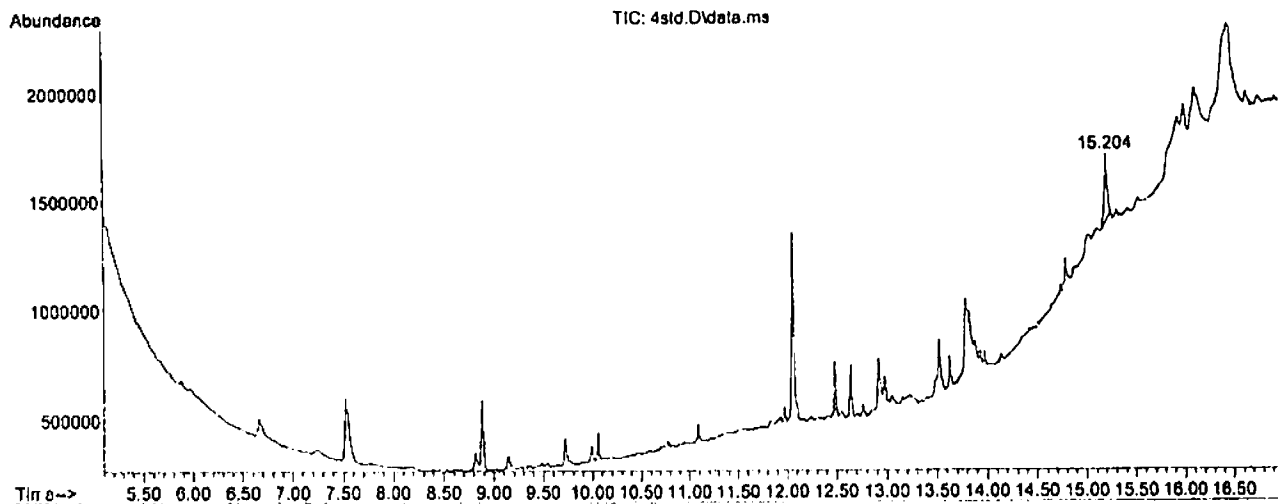
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Instrument : 5975-097  
Sample Name: HiStd  
Misc Info :  
Vial Number: 11



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Operator : DFC  
Acquired : 27 Jan 2017 18:58 using AcqMethod PENTO.M  
Instrument : 5975-097  
Sample Name: HiStd  
Misc Info :  
Vial Number: 11



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**EXHIBIT G**

Date:

## B/L#

1916

MASTER BILL OF LADING

Delivery Date:  
DELIVER BY:

K.O.

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

Shipper's Signature \_\_\_\_\_

RECEIVED, subject individually determined rates or contracts that have been agreed upon in writing and between the carrier and shipper if applicable, otherwise to the rates, classifications and rules that have been established by the carrier and are available to the shipper on request. The property described above, in apparent good order, except as noted (contents and condition of contents of packages unknown) marked, consigned and destined as shown above, which said carrier agrees to carry to destination. If on its route, or other wise deliver to another carrier on the route to destination. Every service to be performed hereunder shall be subject to all bill of lading terms and conditions in the governing classification on the date of the shipment. Shipper hereby certifies that he is hereby familiar with all the bill of lading terms and conditions in the governing classification and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

**Not Approved For Export Out Of The United States.**

11/16/15

# 186205265

11-16-15

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 CALENDAR  
**Invoice**  
 PAGE 1 of 1  
 CIRCUIT COURT OF  
 COOK COUNTY, ILLINOIS  
 LAW DIVISION  
 11/16/2016 07/18/14



**Bailey Farms**  
 549 Karem Dr.  
 Marshall, WI  
 53559

<b>Bill To</b>
Evanger Pet Foods 221 Wheeling Rd. Wheeling, IL 60090

<b>Ship To</b>
Plant Wheeling, IL

1916

Phone #		P.O. No.		Terms	Ship Date	Due Date
800-655-1705				Due on re...	11/16/201	11/16/2015
Item #	Weight	Boxes	Product Description		Price P...	Amount
1919	43,120		Frozen Inedible Hand Deboned Beef APHIS # WI.-BLO-0004		0.36	15523.20
280	20		Pallets		6.50	130.00
DO NOT FEED TO CATTLE OR OTHER RUMINANTS						
FOR PET FOOD ONLY. NOT INTENDED FOR HUMAN CONSUMPTION. DO NOT FEED TO CATTLE OR OTHER					Total	\$15,653.20



**EXHIBIT H**

**Food and Drug Administration Office of Regulatory Affairs****Summary Report****For Sample Number: 993996****TD Sample Number:****Import Sample Number**

This is an accurate reproduction of the original electronic record as of 02/06/2017

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COOK COUNTY, ILLINOIS

LAW DIVISION

CLERK DOROTHY BROWN

**Sample Class:** Normal Everyday Sample**Sample Origin:** Domestic**Sample Basis:** Surveillance**Sample Flag:** Complaint Sample**Sample Type:** Investigational**Collecting District:** SEA-DO**Home District:****Orig C/R and Records To:** CHI-DO**Collection PACs:** 71R800**Product Name:** Meat (Mammalian Muscle) Prod Pet Dog Food; Metal; Commercially Sterile**Product Description:** Dog Food in Metal Cans**Collection Reason:** SEA-DO Consumer Complaint # 148114. Analyze for Staph aureus, and Clostridium Botulinum, pesticides/general toxin panel, barbiturates (pentobarbital and phenytoin) and heavy metals per CVM request.

<b>Lab:</b> FCC	<b>Split Num:</b> 0	<b>Date Received:</b> 01/20/2017	<b>Date Out of Lab:</b> 02/03/2017
<b>District</b>		<b>District Conclusion</b>	<b>District</b>
<b>Conclusion:</b>		<b>Made By:</b>	
<b>Disposition</b>		<b>Disposition</b>	<b>Disposition</b>
<b>Reason:</b>		<b>Authorized By:</b>	<b>Authorized Date:</b>

<b>Performing Org</b>	<b>PAC</b>	<b>LID</b>	<b>PAF</b>	<b>Compliance No</b>	<b>Lab Class-Description</b>	<b>Laboratory Status</b>
FCC-INORG	71R800		NAR		3 - Adverse Findings	Completed

**Lab Conclusion**

Sample Summary Report dated February 3, 2017 sent to Nicholas Lyons, DCB, Chicago-DO, and David Rotstein, CVM.

**Lab Conclusion Date****Lab Conclusion Made By**

02/03/2017

Gratz, Samuel R

Date: 02/06/2017

Page: 1 of 1

EXHIBIT 7

**FCC Section Results Sheet**

Sample No. 993996

**TITLE:** GC-MS Analysis**PURPOSE:** To screen the dog food samples for pentobarbital and phenytoin**RESULTS (SUMMARY)**

Duplicate portions from Sub 1 can of dog food were screened by GC-MS for pentobarbital and phenytoin. One preparation was fortified at a level of 2 ug per gram of sample and both drugs were detected by the method used.

Based on retention time and mass spectral correspondence with a pentobarbital standard, pentobarbital was identified in Sub 1 samples. There was no evidence for the presence of phenytoin in the Sub 1 sample.

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**Analyst:**

Electronically signed by: David F. Crockett (FCCLABS\dcrockett)  
Date: Thursday, February 02, 2017 9:01:12 AM (GMT -05:00)  
Location: FCC  
Reason: 01. Reason given above

Electronically signed by: John P. Roetting II (FCCLABS\jroetting)  
Date: Thursday, February 02, 2017 9:41:41 AM (GMT -05:00)  
Location: FCC  
Reason: 01. Reason given above

**Checked by:**

Electronically signed by: Samuel R. Gratz (FCCLABS\mgratz)  
Date: Friday, February 03, 2017 10:11:58 AM (GMT -05:00)  
Location: FCC  
Reason: 01. Reason given above

**Report Author:**

Electronically signed by: John P. Roetting II (FCCLABS\jroetting)  
Date: Friday, February 03, 2017 10:31:35 AM (GMT -05:00)  
Location: FCC  
Reason: 01. Reason given above

**FCC Continuation Sheet**

Sample No.

993996

993996

Sample Prep

1-31-17 JPR DFC

There were 2 intact cans of dog food. The analyst assigned sub numbers to one of them.  
Sub 1. Only this sub was analyzed.

Each sub sample consisted of a 12 ounce/340 g can of cooked beef, vegetables and juice.

The entire contents of the can was ground up in a Magic Bullet type homogenizer.

The resulting ground meat was placed in a new nalgene bottle.

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**FCC Continuation Sheet**

Sample No. 993996

Date – 1/31/17

**Sample Prep Sheet**Sample Prep for Screen:

Sample Weight(s) or Volume(s):

Item #	Mass (g)
993996 Sub 1 Prep 1	1.0193
993996 Sub 1 Prep 2	1.0222
993996 Sub 1 Spk	1.0174

Balance: 52

Pipette: 380

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**FCC Continuation Sheet**

Sample No.

993996

Sample Prep

Weigh about 1 gram of sample into scintillation vials.

1-31-17 JPR

Add 10 mL of Ethyl Acetate w/5% Ethanol.

1-31-17 DFC

Vortex ~ 30 seconds and sonicate for 30 minutes.

Place 5 mL of extract solution (no layers observed) into a test tube

Using TurboVap, evaporate the extract to dryness (water bath at 37 C and 10 psi Nitrogen)

Reconstitute residue by adding 0.5 mL of Ethyl acetate w/5% EtOH and swirl gently.

Transfer ~0.5 mL to autosampler vial. Ready to inject.

Spike Preps

DFC

To 1 gram of sample, add 2 uL of each Stock 1000 ppm std and proceed as above (pipette 404)

Concentration would be 2ug/ 0.5 mL extract = 4ppm of Pentobarbital and Phenytoin. (Solution conc)

Samples were chilled in freezer ~10 minutes and centrifuged ~2 minutes using Benchtop Clinical centrifuge.

Samples were clear after centrifugation and there was a precipitate on bottom.

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<b>FCC Continuation Sheet</b>		Sample No. 993996	
<b>Standard Preparation</b>			
Name of compound	<b>Phenytoin</b>		
Formula weight (g/mol)			
Manufacturer	<b>Cerilliant</b>		
Lot #	<b>FN060412-03</b>		
FCC Barcode #	<b>16-0053</b>		
CAS #			
<b>Preparation of stock standard solution</b>			
Balance #	<b>N/A (1mg/mL ampule)</b>		
Mass of standard (mg)	<b>1.000</b>		
Solvent	<b>MeOH</b>		
Volume of solvent (mL)	<b>1.000</b>		
Pipette #	<b>N/A</b>		
Balance # for pipette QA	<b>N/A</b>		
Concentration of stock (mg/mL)	<b>1.000</b>		
Date of stock standard preparation	<b>February 4, 2016</b>		
Name of preparer:	<b>John P. Roetting II</b>		
Location of stock standard solution:	<b>132</b>		
<b>Preparation of working standard</b>			
<u><b>First dilution</b></u>	low	high	* These were mixed stds containing both compounds.
Volume of stock standard (µL)	2.0	4.0	
Volume of solvent (µL)	998	996	
Concentration of working standard 1 (ppm)	2.00	4.0	
<u><b>Second dilution (if necessary)</b></u>			
Volume of working standard 1 (µL)			
Volume of solvent (µL)			
Concentration of working standard 2 (ppm)	<b>N/A</b>		
<u><b>Third dilution (if necessary)</b></u>			
Volume of working standard 2 (µL)			
Volume of solvent (µL)			
Concentration of working standard 3 (ppm)	<b>N/A</b>		
Pipettes used for dilution(s)	<b>199, 404</b>		
Balance for pipette QA (if necessary)	<b>NA</b>		
Date of working standard preparation:	<b>January 27, 2017</b>		
<p><i>This worksheet was created using Microsoft Office Professional Plus 2010 Excel. All concentration calculations were performed without rounding of decimal places; however, fewer decimal places are shown for clarity, which may not correspond to the correct number of significant figures.</i></p>			

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<b>FCC Continuation Sheet</b>		Sample No.	993996
<b>Standard Preparation</b>			
Name of compound	<b><i>Pentobarbital</i></b>		
Formula weight (g/mol)			
Manufacturer	<i>Cerilliant</i>		
Lot #	<i>FE06031503</i>		
FCC Barcode #	<i>16-0044</i>		
CAS #			
<b>Preparation of stock standard solution</b>			
Balance #	<i>N/A (1mg/mL ampule)</i>		
Mass of standard (mg)	<i>1.000</i>		
Solvent	<i>MeOH</i>		
Volume of solvent (mL)	<i>1.000</i>		
Pipette #	<i>N/A</i>		
Balance # for pipette QA	<i>N/A</i>		
Concentration of stock (mg/mL)	<i>1.000</i>		
Date of stock standard preparation	<i>February 4, 2016</i>		
Name of preparer:	<i>John P. Roetting II</i>		
Location of stock standard solution:	<i>132</i>		
<b>Preparation of working standard</b>			
<u><b>First dilution</b></u>	low	high	
Volume of stock standard (µL)	<i>2.0</i>	<i>4.0</i>	
Volume of solvent (µL)	<i>998</i>	<i>996</i>	
Concentration of working standard 1 (ppm)	<i>2.00</i>	<i>4.0</i>	
<u><b>Second dilution (if necessary)</b></u>			
Volume of working standard 1 (µL)			
Volume of solvent (µL)			
Concentration of working standard 2 (ppm)	<i>N/A</i>		
<u><b>Third dilution (if necessary)</b></u>			
Volume of working standard 2 (µL)			
Volume of solvent (µL)			
Concentration of working standard 3 (ppm)	<i>N/A</i>		
Pipettes used for dilution(s)	<i>199, 404</i>		
Balance for pipette QA (if necessary)	<i>NA</i>		
Date of working standard preparation:	<i>January 27, 2017</i>		
<p><i>This worksheet was created using Microsoft Office Professional Plus 2010 Excel. All concentration calculations were performed without rounding of decimal places; however, fewer decimal places are shown for clarity, which may not correspond to the correct number of significant figures.</i></p>			

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**FCC Continuation Sheet**

Sample No. 993996

**Method:** Sim/Scan Method for Pentobarbital and Phenytoin**Instrument:** 5975-1-097 Agilent Technologies GC 7890A Series with CTC PAL ALS(Laboratory 97)**Detector:** Agilent Technologies Mass Selective Detector (MSD) model 5975C (Laboratory 97)**Software:** Agilent ChemStation G1701DA version E.02.00,  
Library: NIST08/**Column:** HP-5MS, 5% Phenyl Methyl Silox. Part #19091S-433, Serial # USB446462H  
30 m X 0.25mm x 0.25 um df. Length: 29.93 meters**Chemicals:** Ethyl acetate, HPLC grade , Ethanol

Pento Method Parameters	
Carrier Gas Parameters	
Helium, Constant Flow Mode	
Initial Flow Rate	0.8 mL/min
Injection Parameters	
Mode	Splitless
Injection Volume	1.0 µL
Injection Temperature	280 °C
GC Parameters	
Initial Temperature	60 °C
Initial Time (Hold)	3.00 min
Ramp Rate	20 °C/min
Final Temperature	300 °C
Final Time (Hold)	2 min
MSD Transfer Line Temperature	280 °C
MS Acquisition Parameters	
Filament (Solvent) Delay	5.0 min
Ionization	EI
	Full Scan and SIM
Scan Modes	Pentobarb. -Ions 141, 156, 197 - dwell 100 at 14.5 min Phenytoin - Ions 104, 180, 252- dwell 100
Mass Range	40-650 amu
Run Time	17.0 min
Threshold	150
MS Quad	150 °C
MS Source	230 °C

**Additional Equipment:** sonicating water bathELECTRONICALLY FILED  
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Sequence Name: C:\msdchem\1\sequence\013117dfc.s

Comment:

Operator: Crockett

Data Path: D:\DATA\DFC 2016\013117\

Instrument Control Pre-Seq Cmd:

Data Analysis Pre-Seq Cmd:

Instrument Control Post-Seq Cmd:

Data Analysis Post-Seq Cmd:

Method Sections To Run On A Barcode Mismatch

(X) Full Method (X) Inject Anyway

( ) Reprocessing Only ( ) Don't Inject

Line	Sample Name/Misc Info
1) Sample	1 blank1 PENTO EthylAcetate
2) Sample	2 blank2 PENTO MethBlk
3) Sample	3 993998-1 PENTO 998-1
4) Sample	4 993998-2 PENTO 998-2
5) Sample	2 blank3 PENTO MethBlk
6) Sample	5 993996-1 PENTO 996-1
7) Sample	6 993996-2 PENTO 996-2
8) Sample	2 blank4 PENTO MethBlk
9) Sample	7 993997-1 PENTO 997-1
10) Sample	8 993997-2 PENTO 997-2
11) Sample	2 blank5 PENTO MethBlk
12) Sample	9 993994-1 PENTO 994-1
13) Sample	10 993994-2 PENTO 994-2
14) Sample	2 blank6 PENTO MethBlk
15) Sample	11 492-2-1
Datafile	977492-2-1
Method	PENTO
16) Sample	12 492-2-2
Datafile	977492-2-2
Method	PENTO
17) Sample	2 blank7 PENTO MethBlk
18) Sample	13 492-6-1
Datafile	977492-6-1
Method	PENTO
19) Sample	14 492-6-2
Datafile	977492-6-2
Method	PENTO
20) Sample	2 blank8 PENTO MethBlk
21) Sample	15 993998-K PENTO 998-K
22) Sample	2 blank9 PENTO MethBlk
23) Sample	16 993996-K PENTO 996-K
24) Sample	2 blank10 PENTO MethBlk
25) Sample	17 993997-K PENTO 997-K
26) Sample	2 blank11 PENTO MethBlk
27) Sample	18 993994-K PENTO 994-K
28) Sample	2 blank12 PENTO MethBlk
29) Sample	19 2std PENTO LowStd
30) Sample	20 4std PENTO HiStd
31) Sample	1 clean PENTO EthylAcetate

runs in boxes included in this section. 2-1-17 DFC

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Last Modified: Tue Jan 31 13:56:50 2017

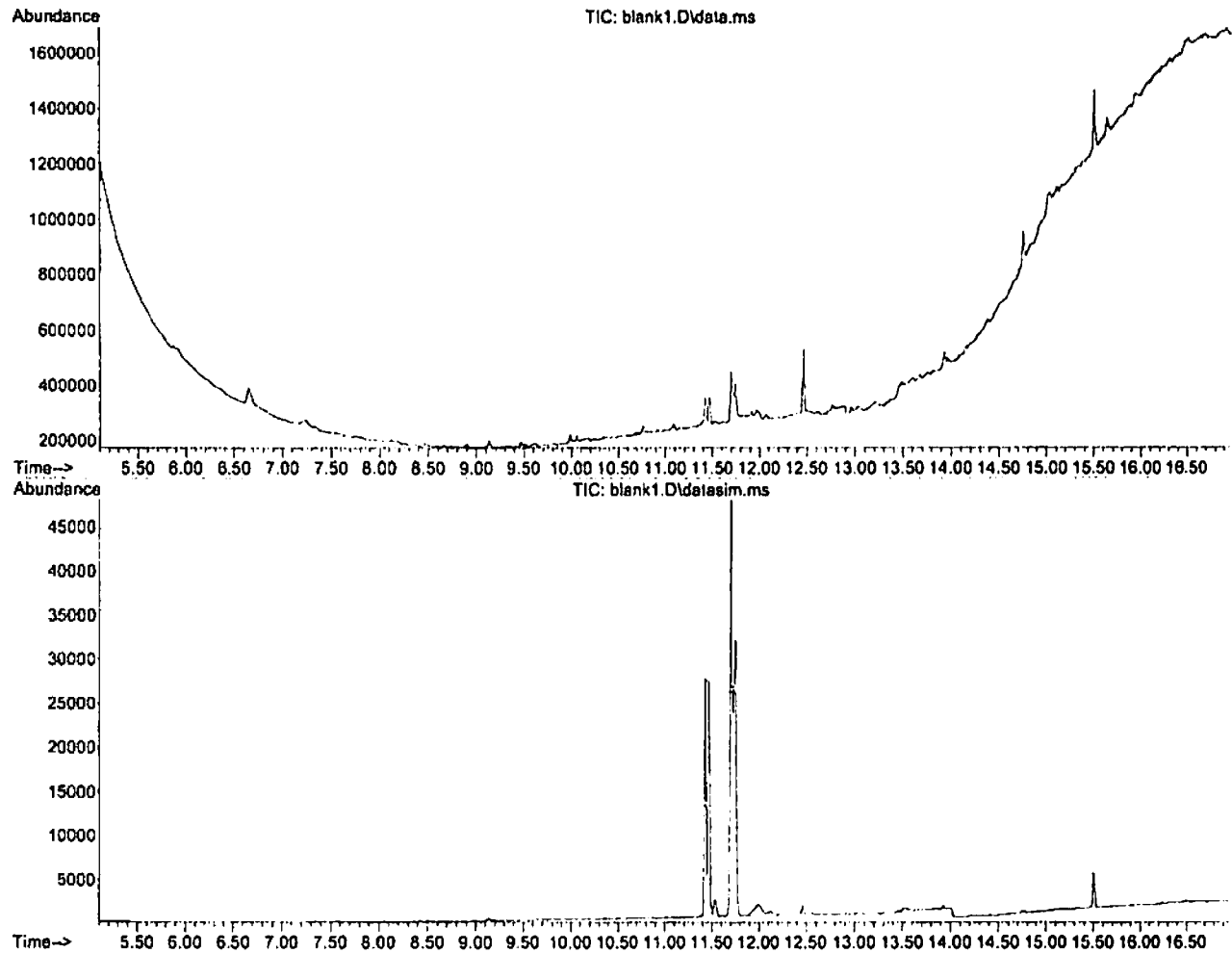
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EXHIBIT 7

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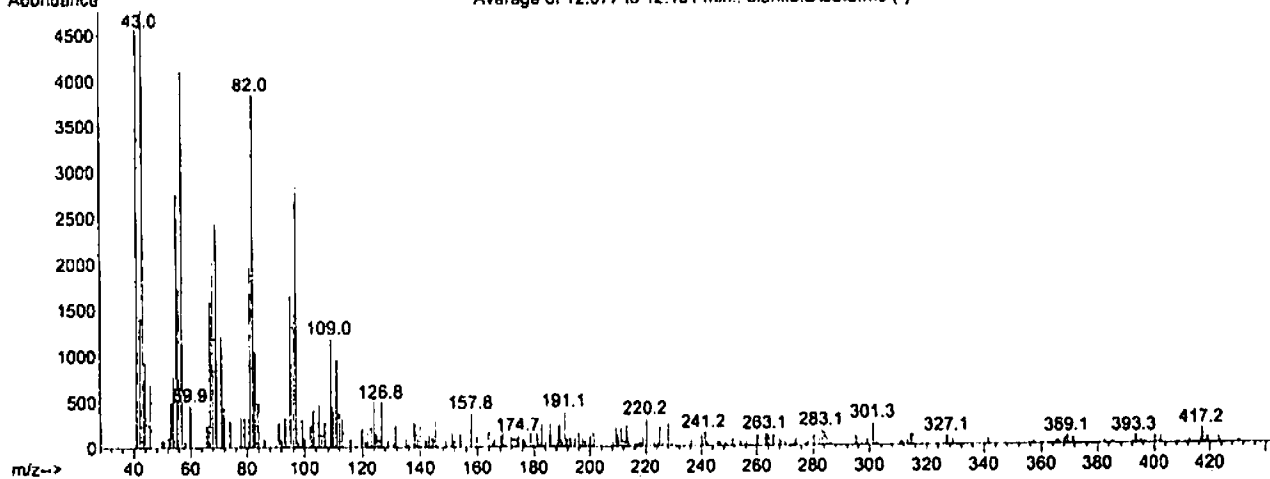
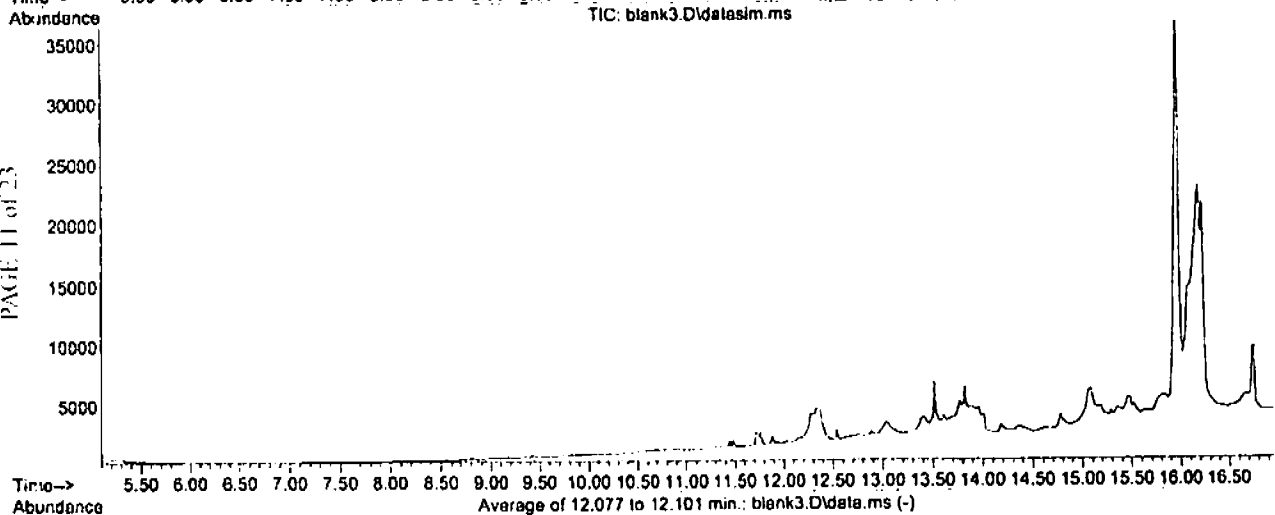
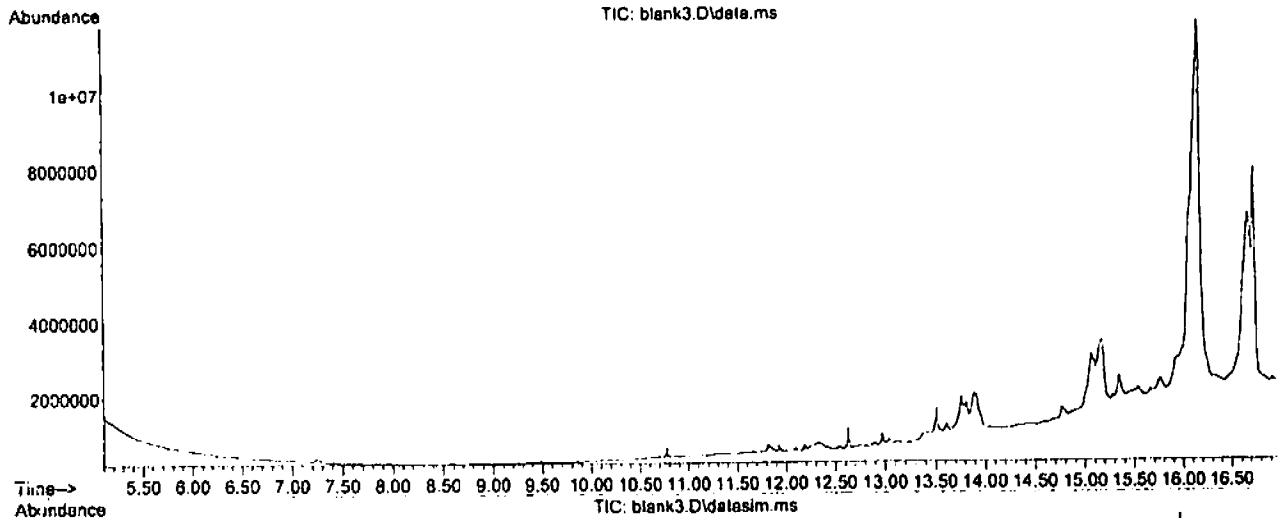
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Sample Name: EthylAcetate  
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Vial Number: 1



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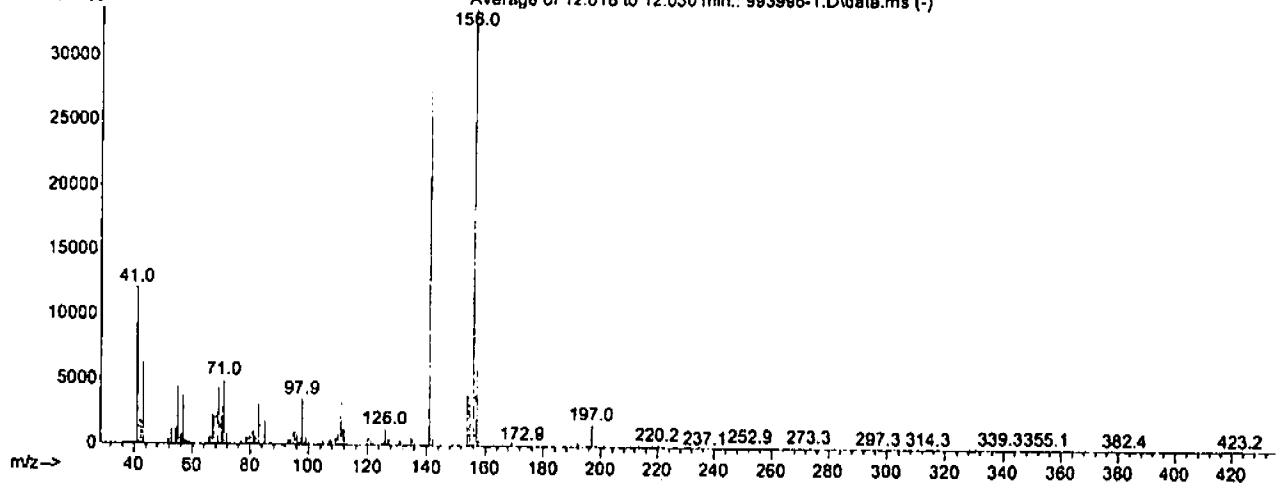
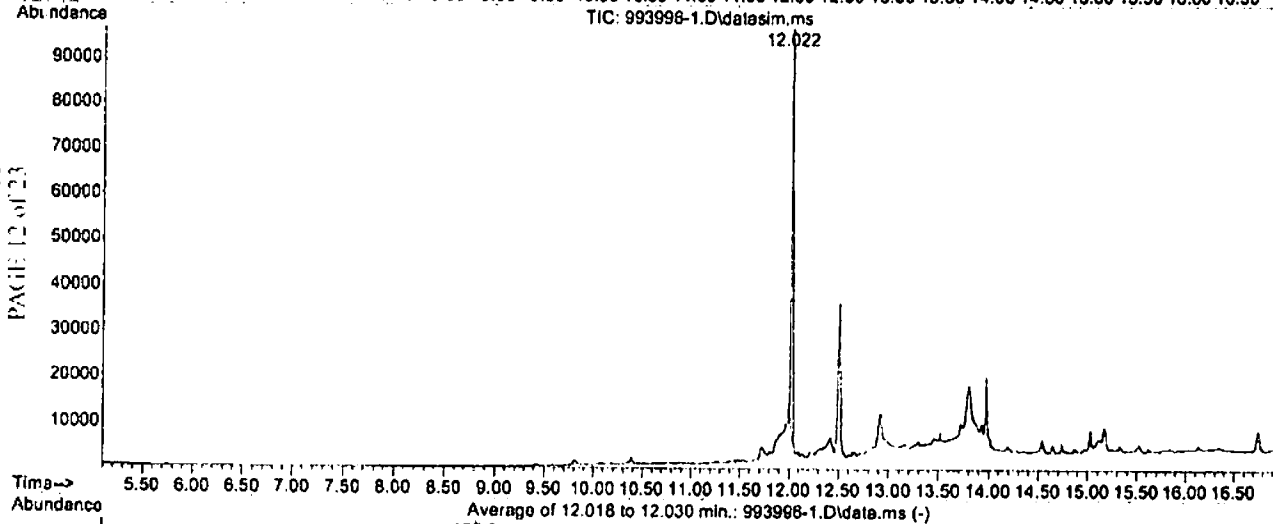
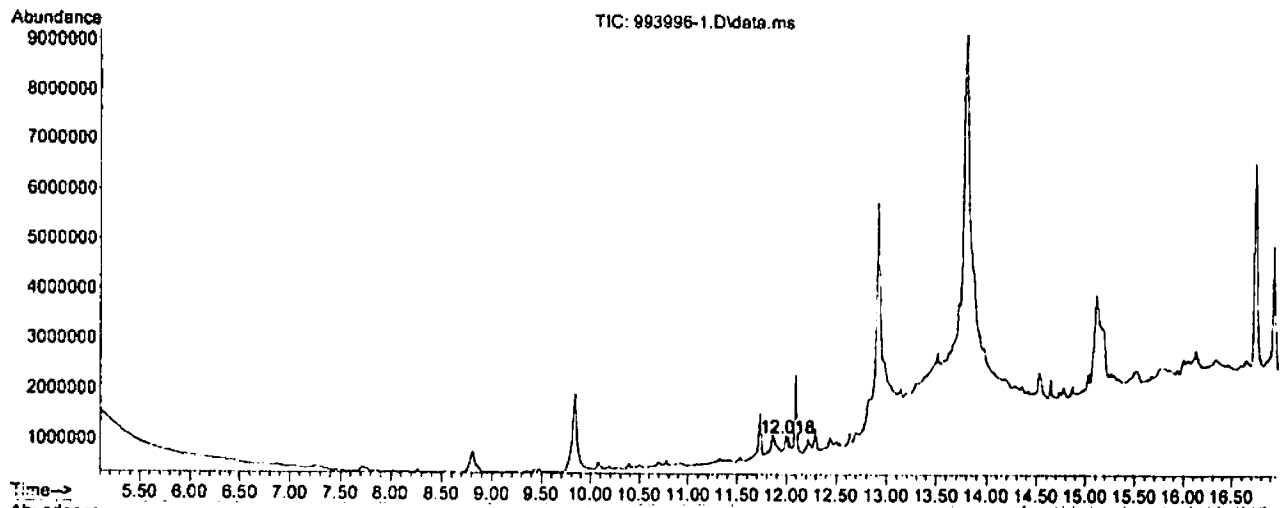
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Sample Name: MethBlk  
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Vial Number: 2



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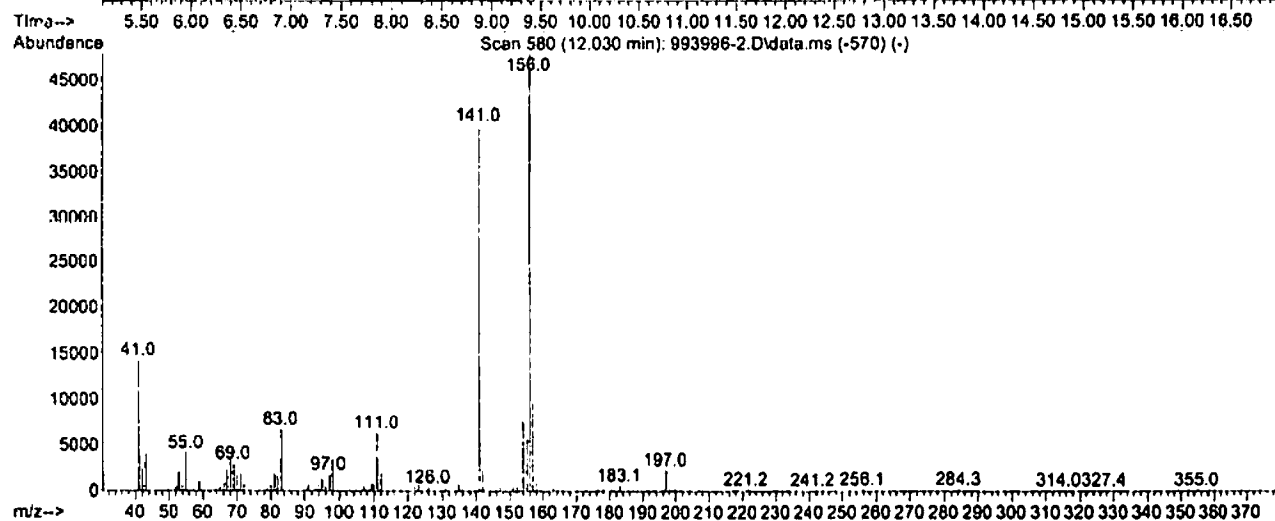
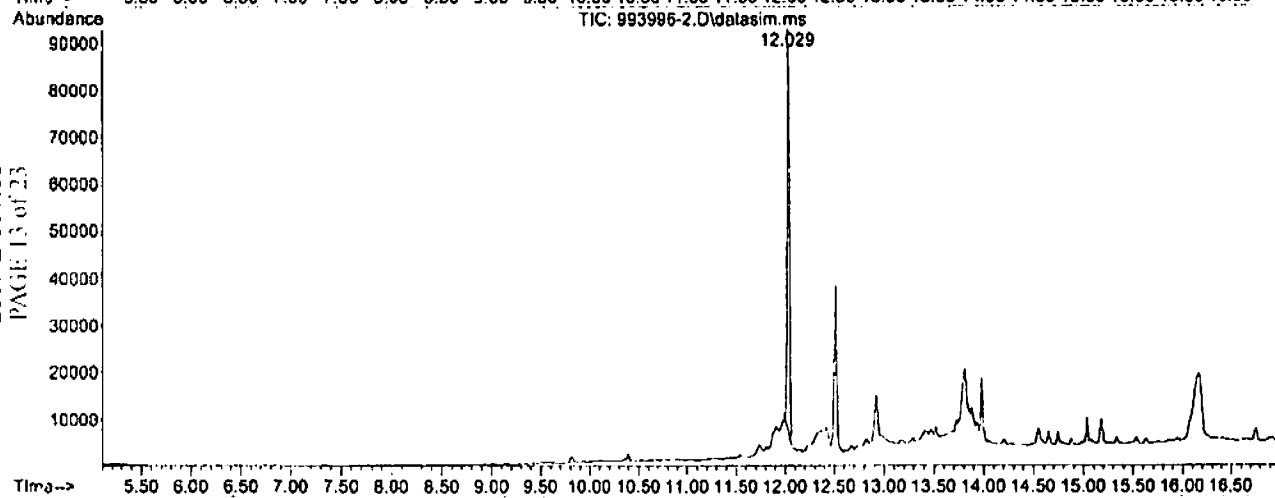
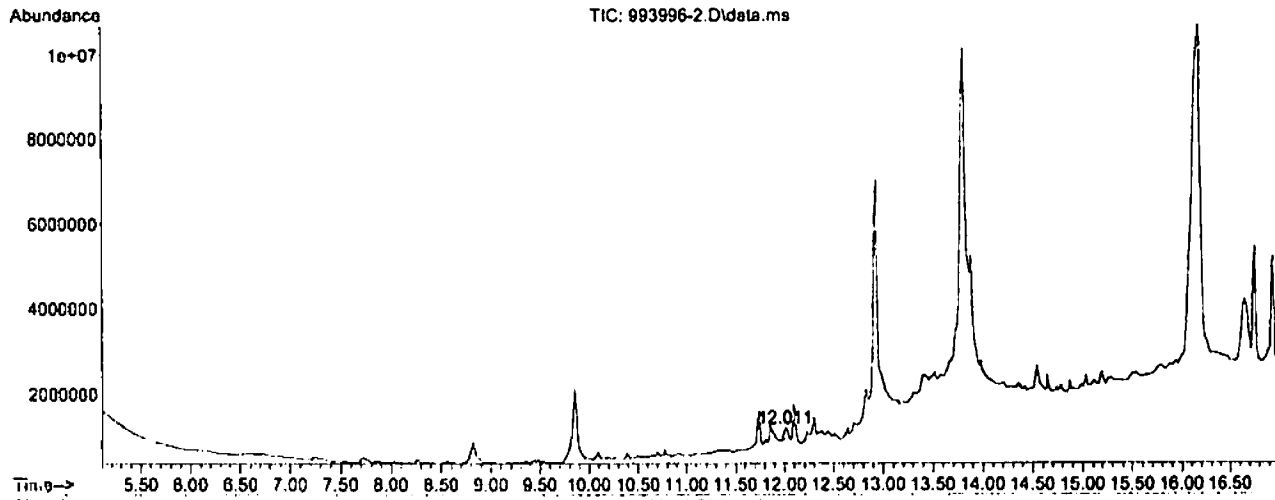
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Instrument : 5975-097  
Sample Name: 996-1  
Misc Info :  
Vial Number: 5



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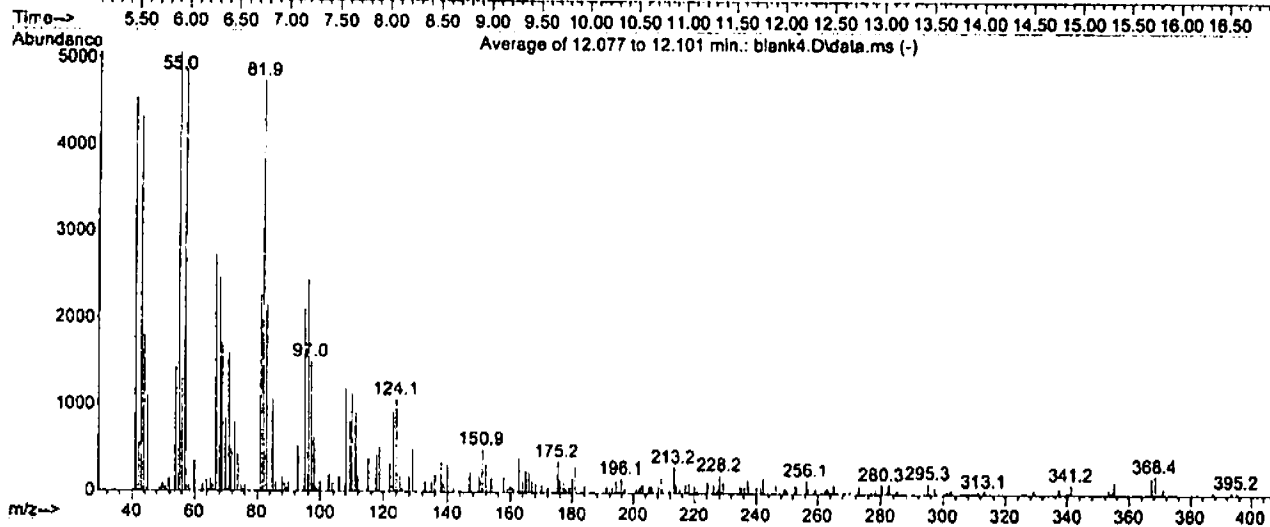
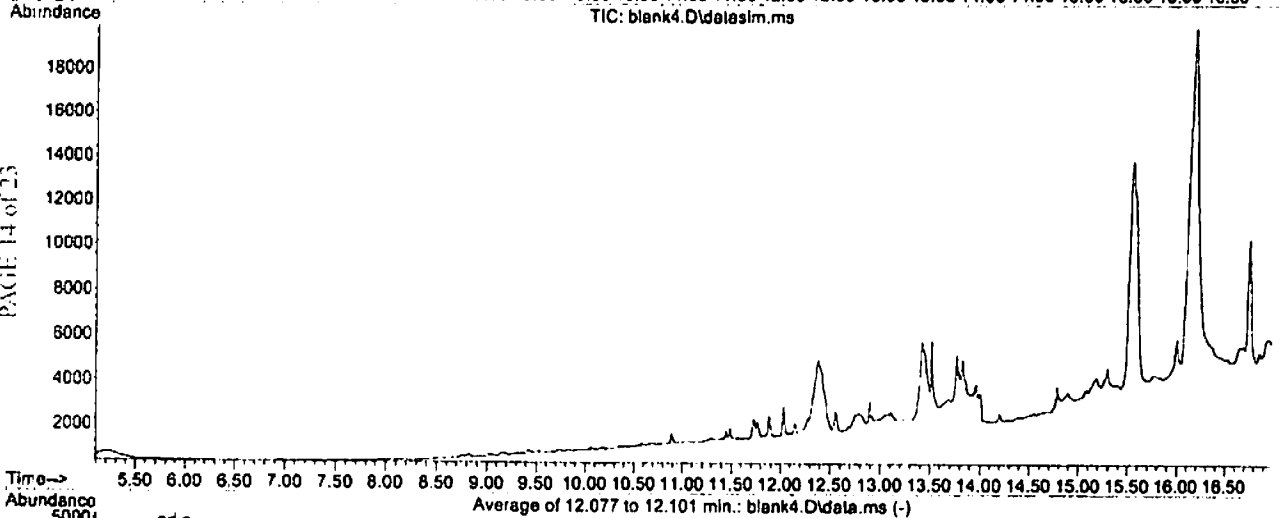
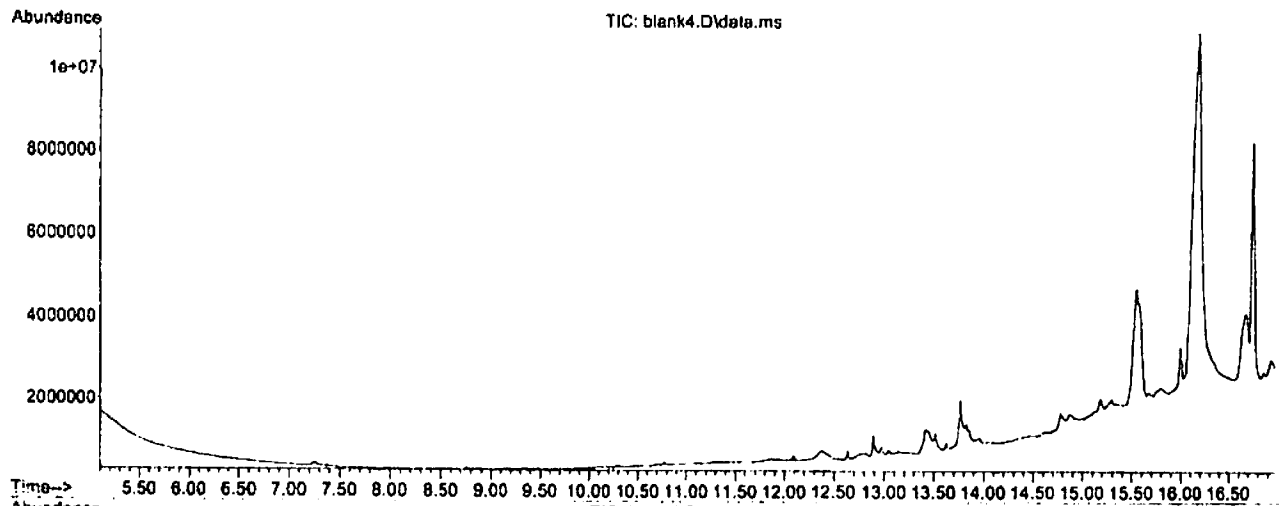
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Instrument : 5975-097  
Sample Name: 996-2  
Misc Info :  
Vial Number: 6



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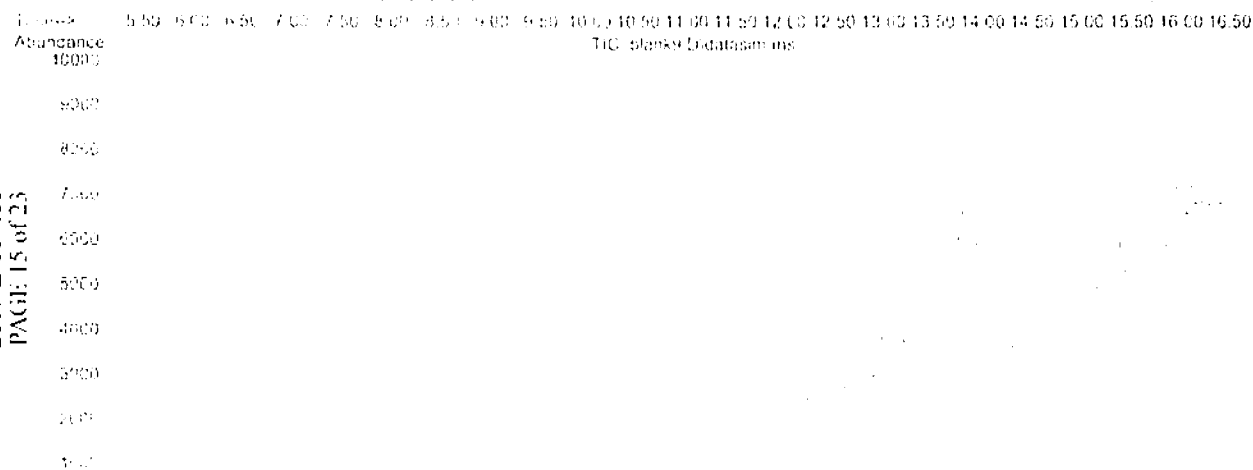
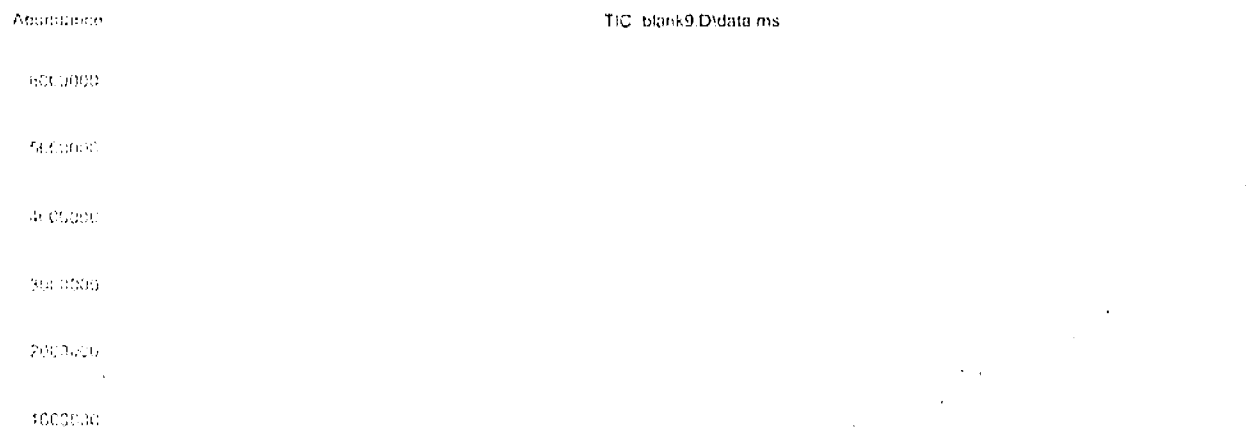
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Sample Name: MethB1k  
Misc Info :  
Vial Number: 2



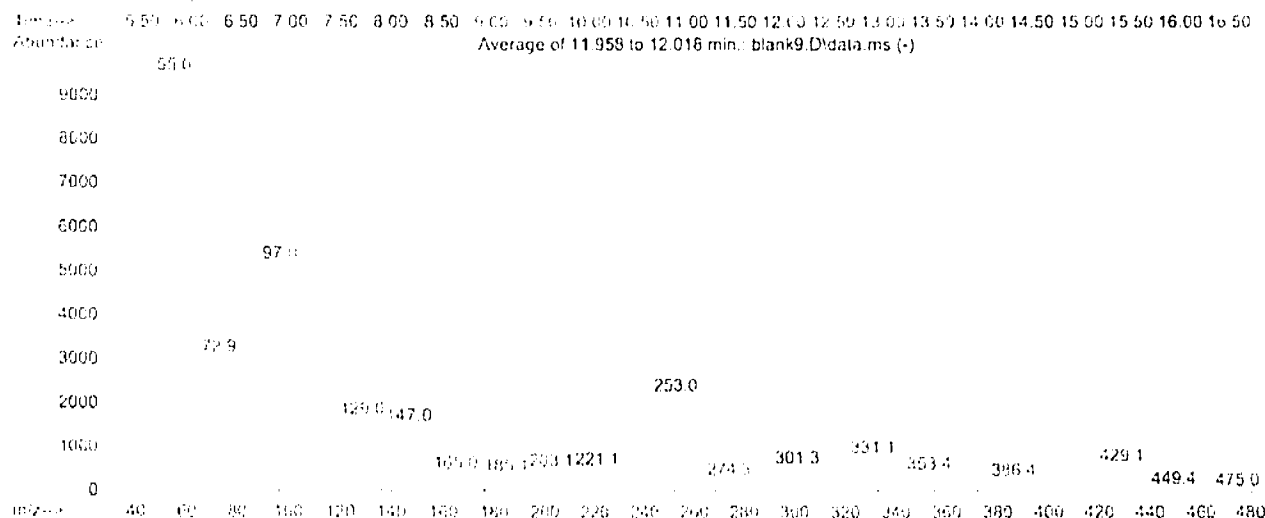
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 Acquired: 31 Jan 2017 21:32:00 (UTC) Acquired by: JENNIFER  
 Instrument: 5890-8000  
 Sample Name: Methanol  
 Data Index: 1  
 View Number: 2



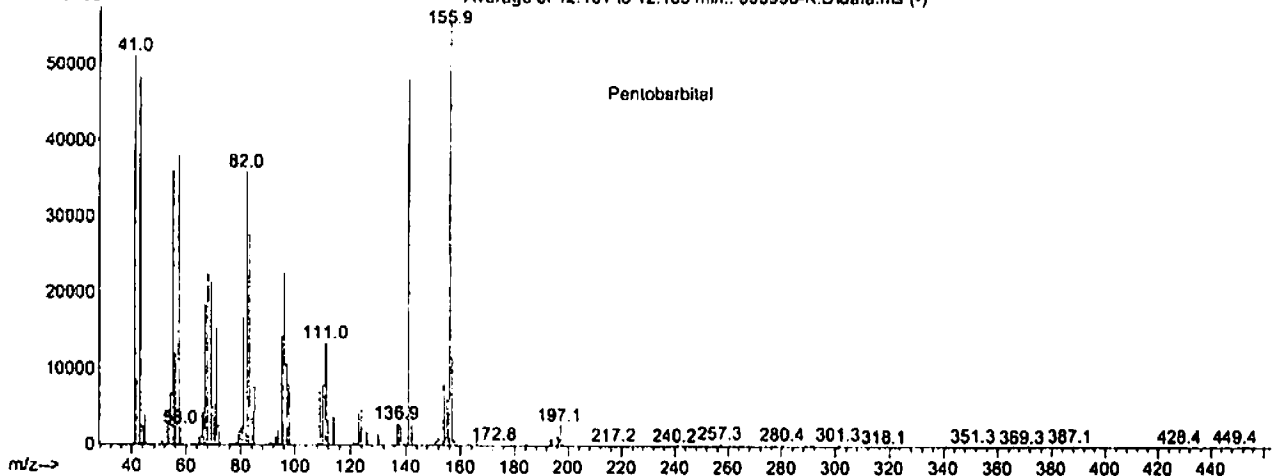
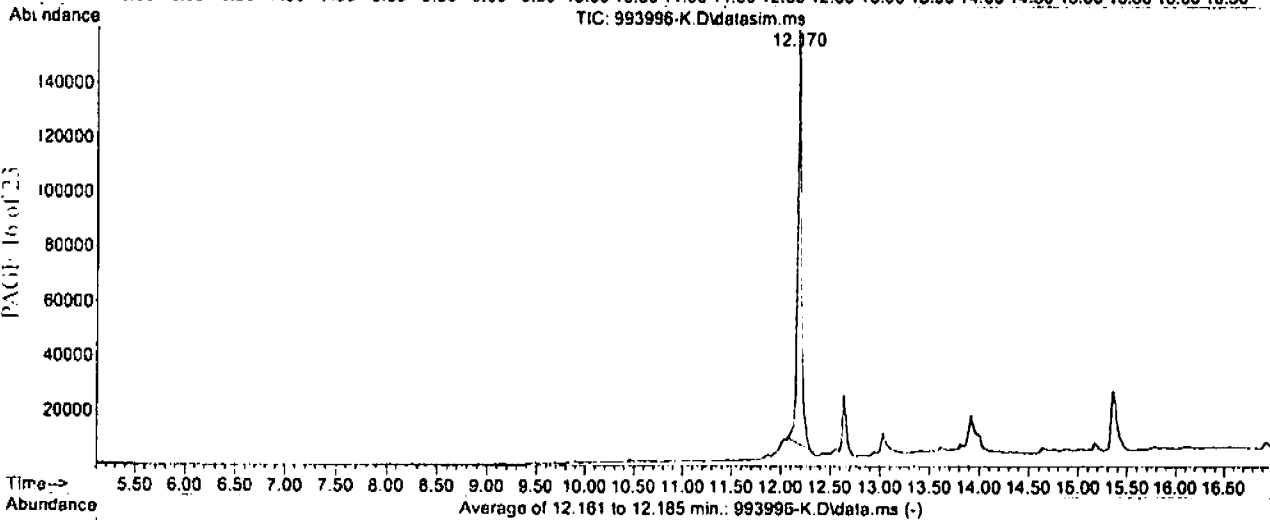
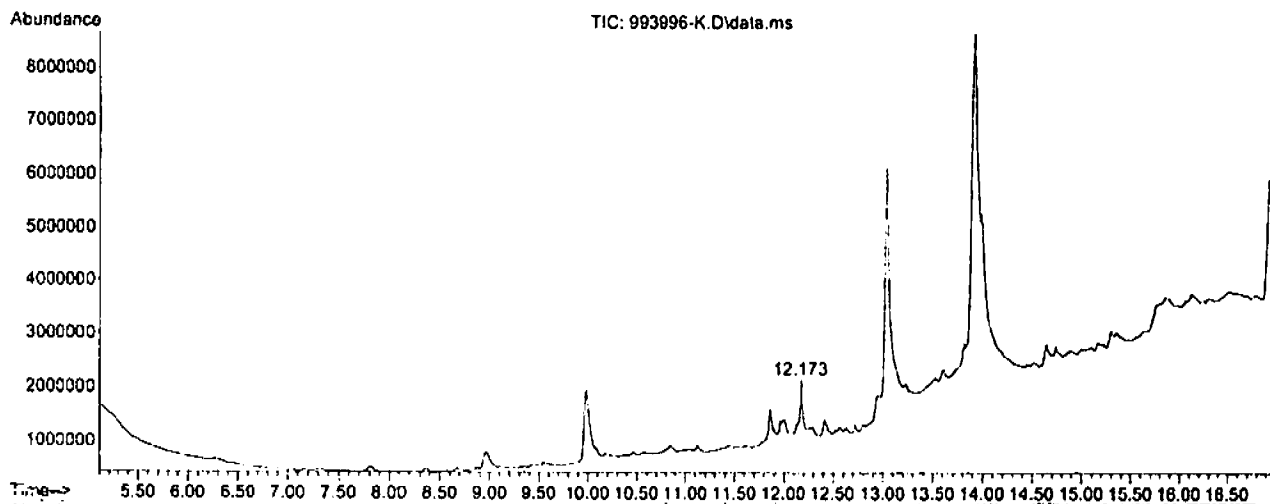
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Sample Name : 996-K  
Misc Info :  
Vial Number: 16

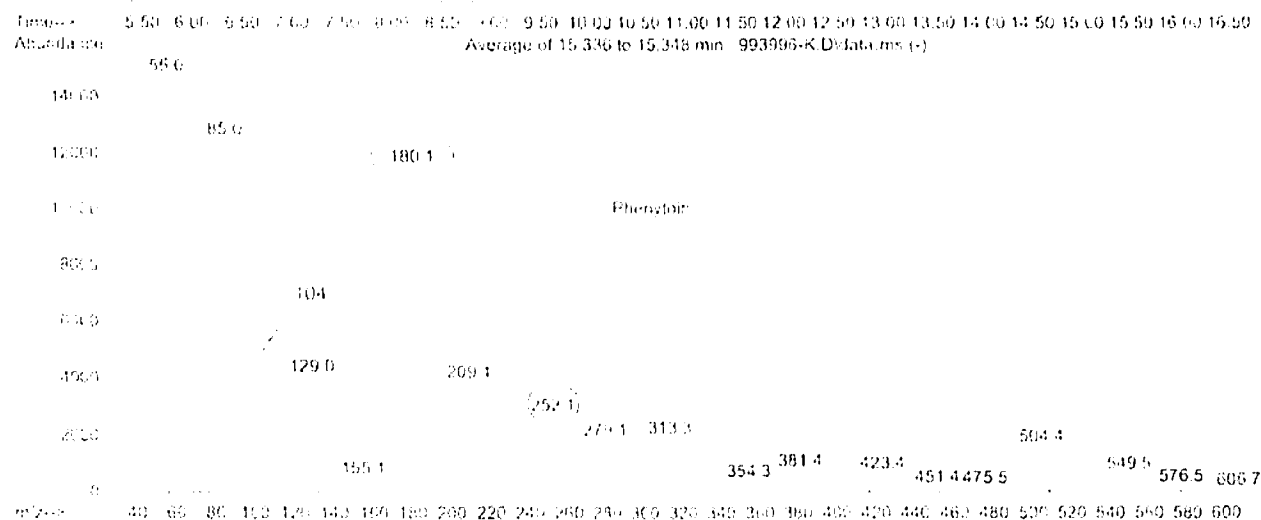
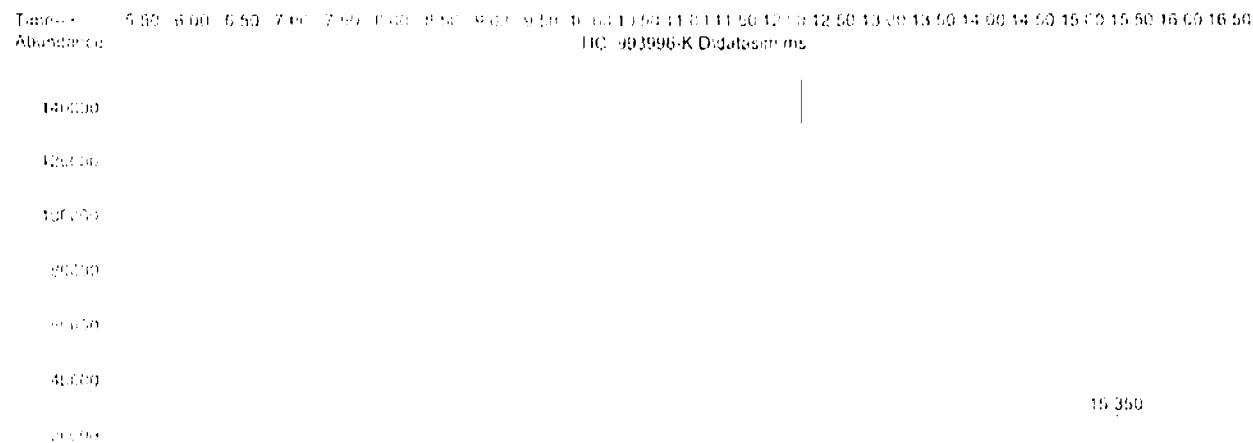
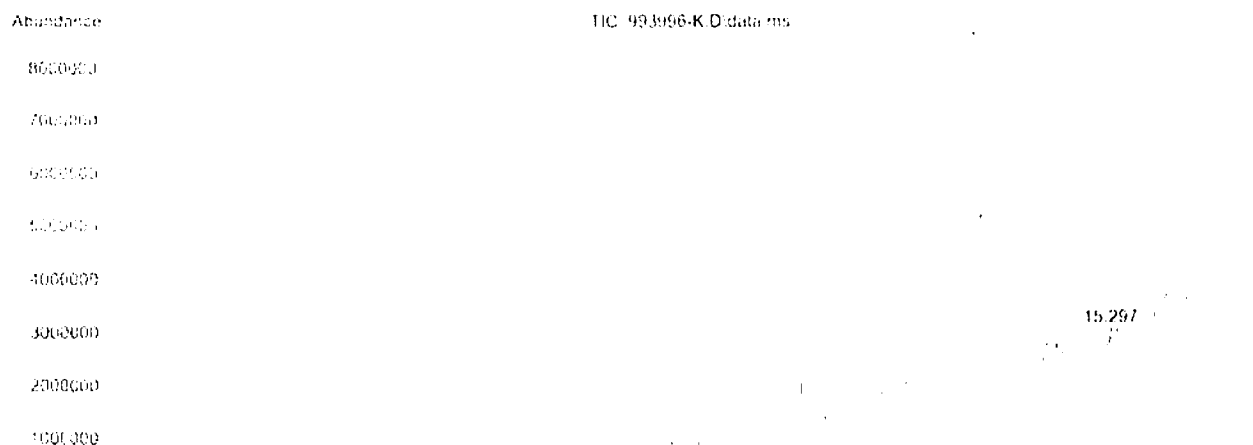


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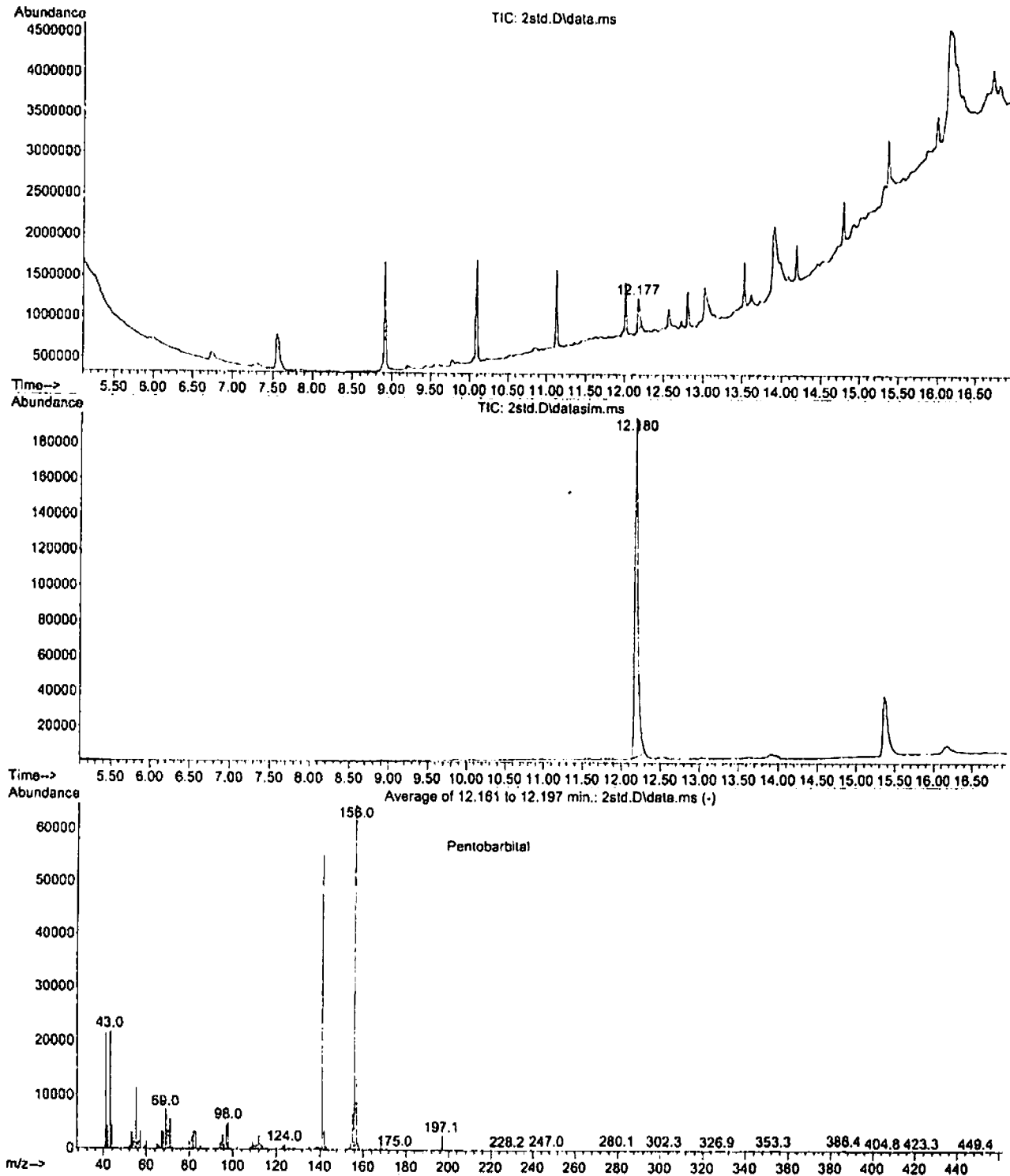
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 Sample Name: 497-E  
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 Vial Number: 16



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Misc Info :  
Vial Number: 19



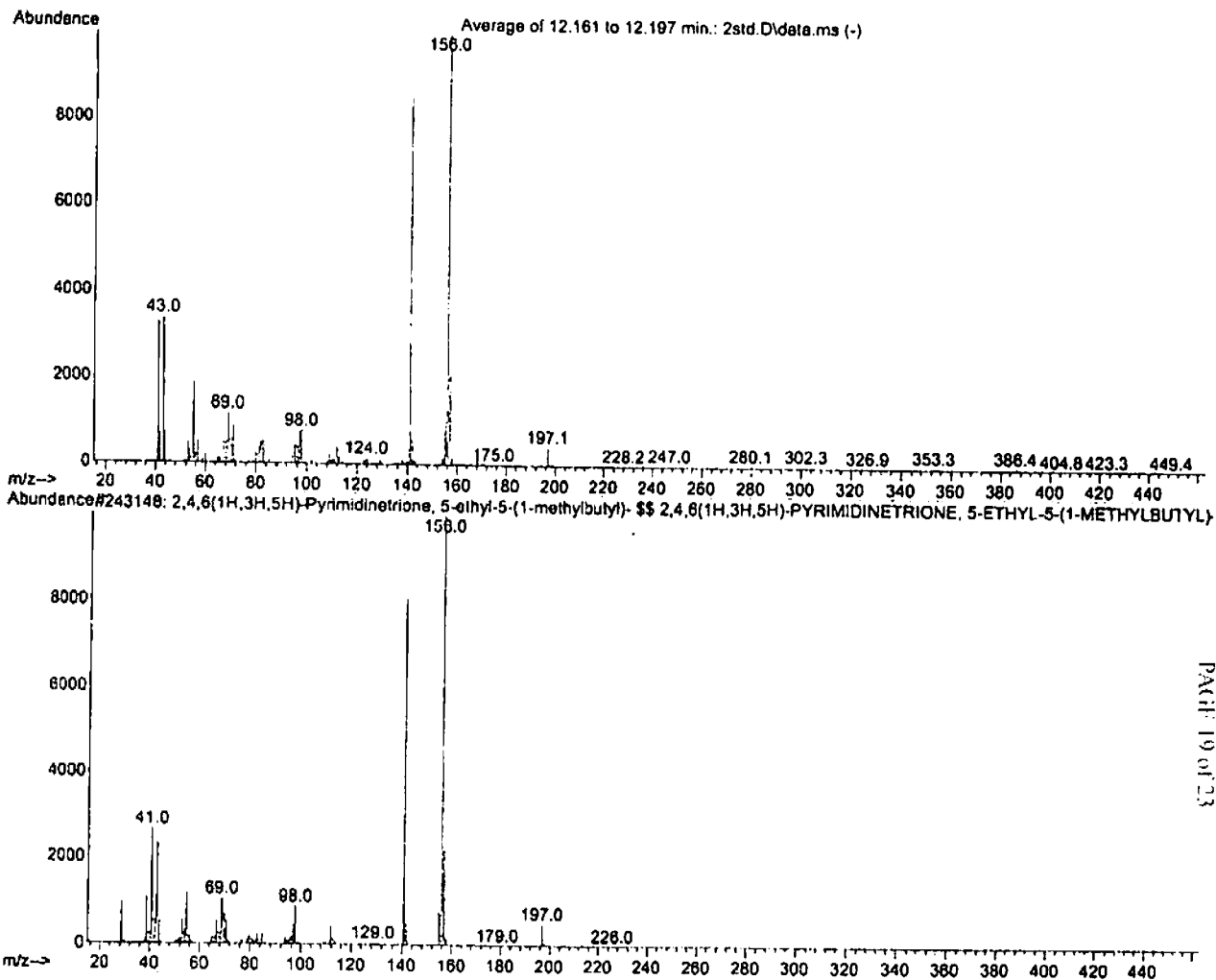
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993996

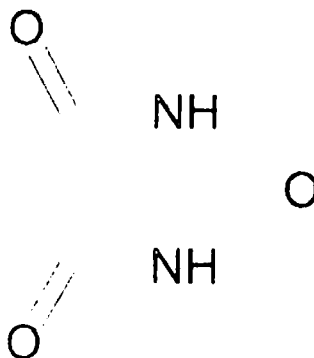
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Quality : 97

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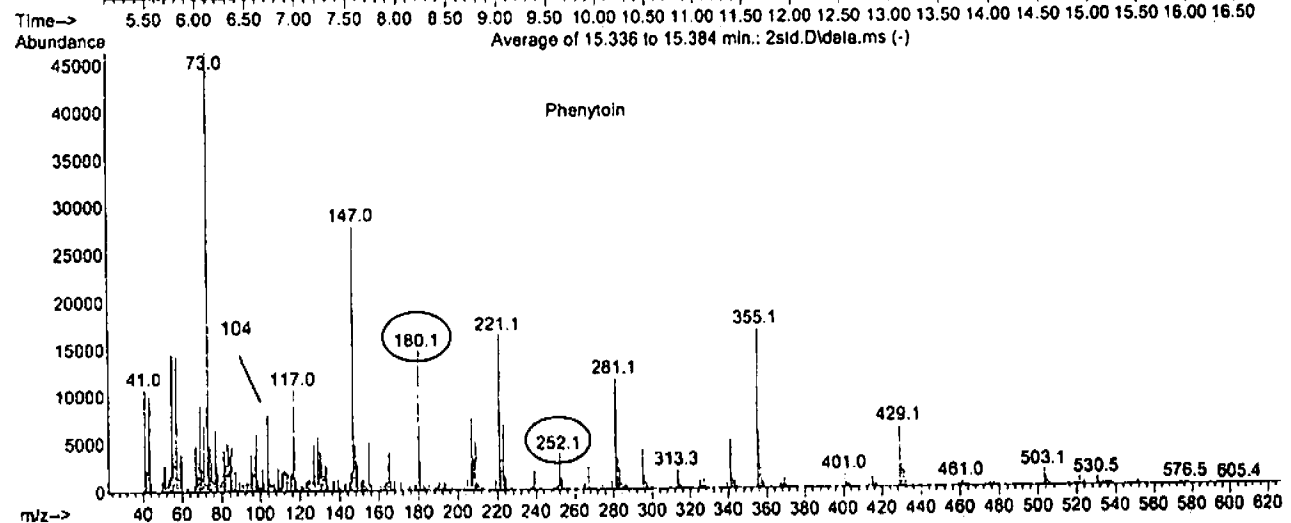
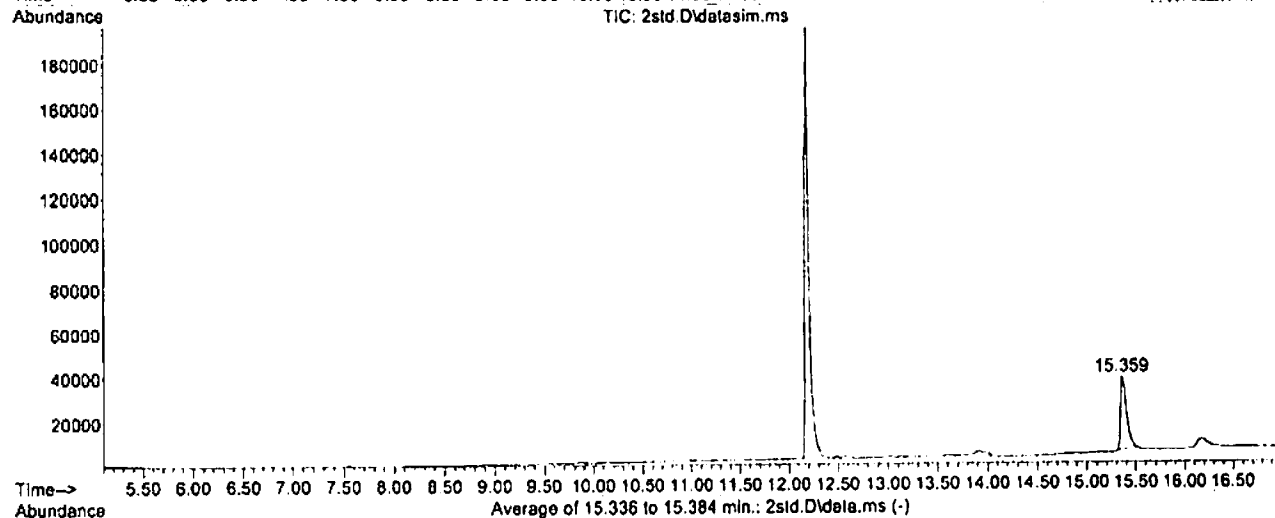
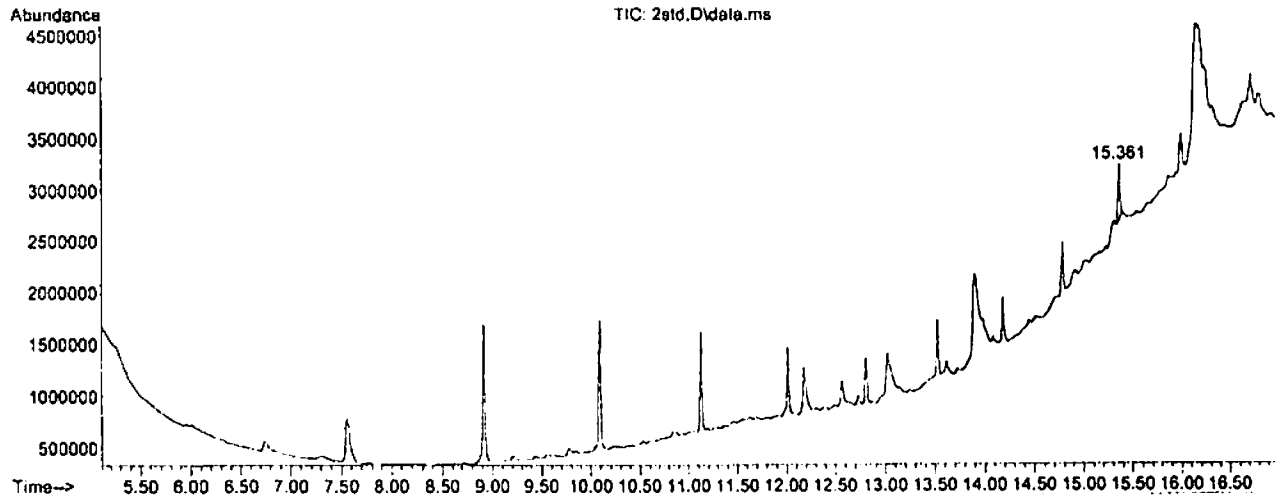


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2017-L-004153  
PAGE 19 of 23



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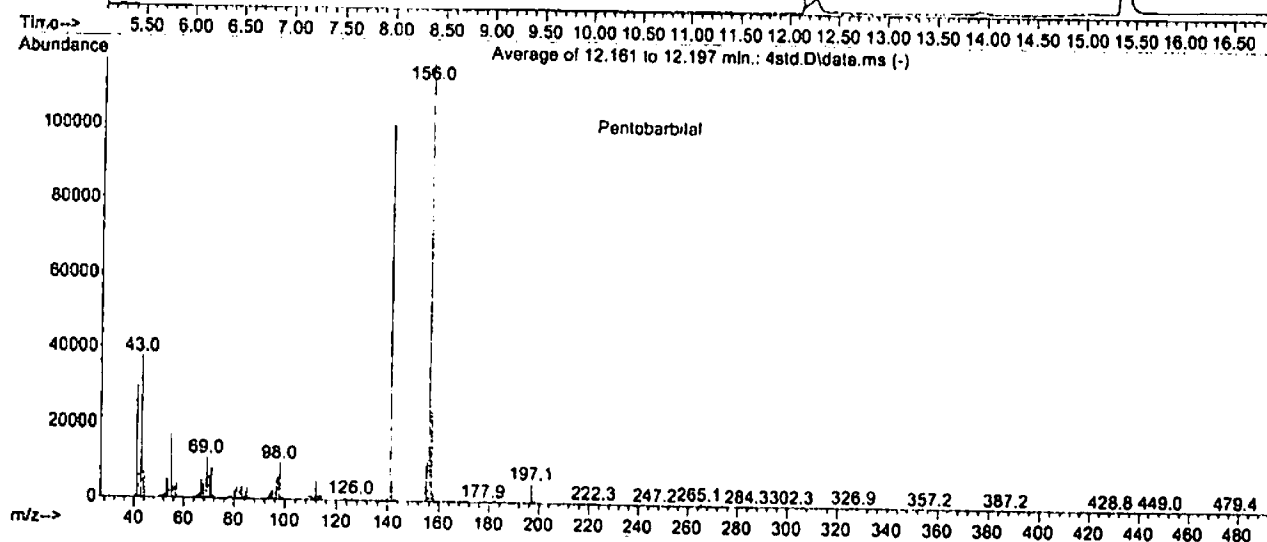
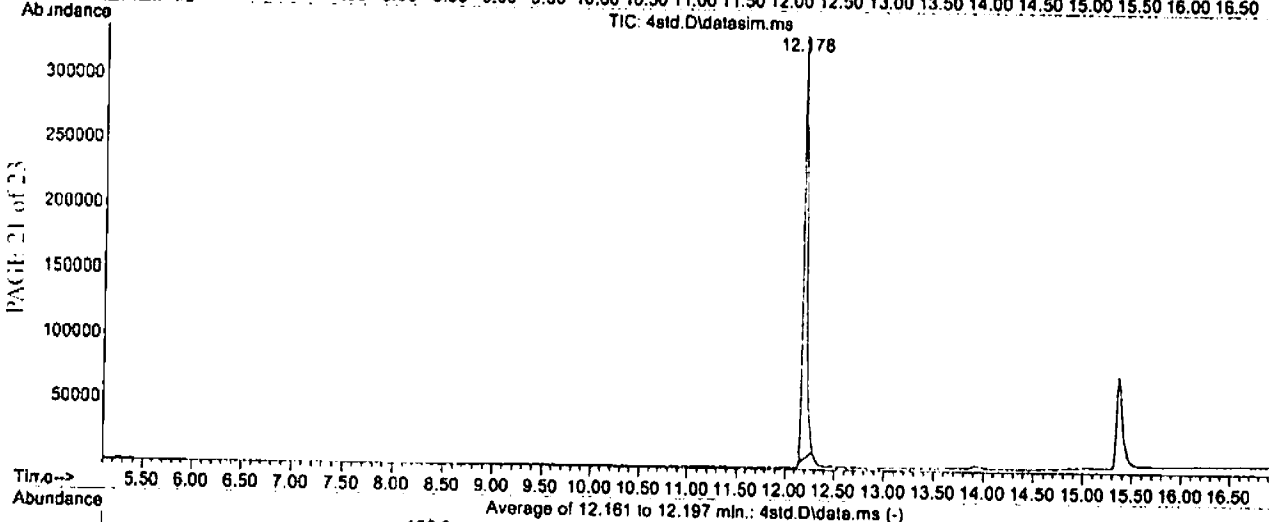
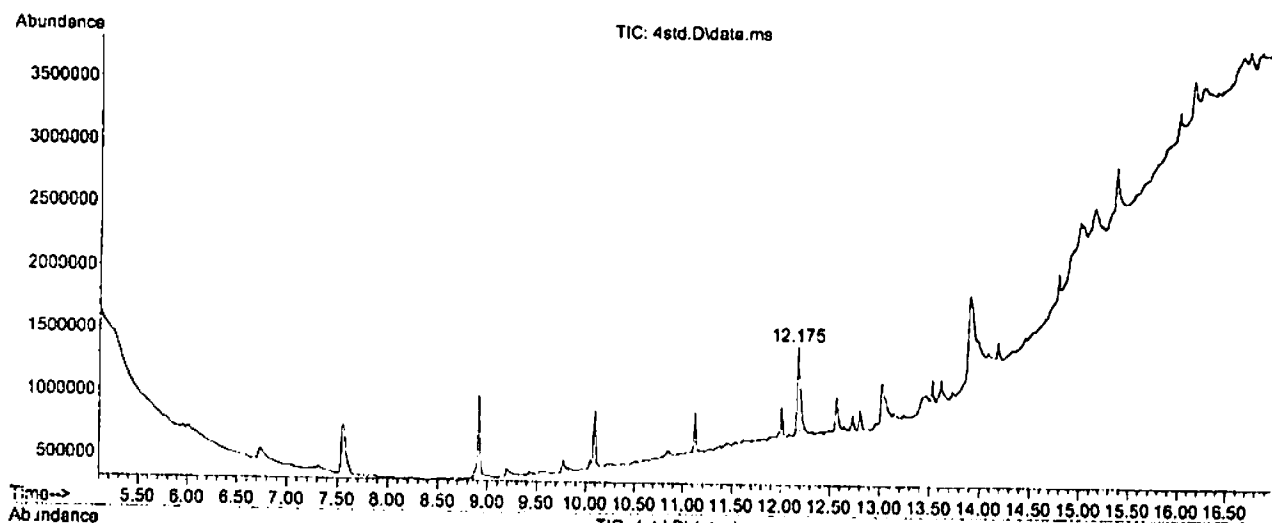
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Acquired : 1 Feb 2017 1:37 using AcqMethod PENTO.M  
Instrument : 5975-097  
Sample Name: LowStd  
Misc Info :  
Vial Number: 19



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2017-L-004153  
PAGE 20 of 23

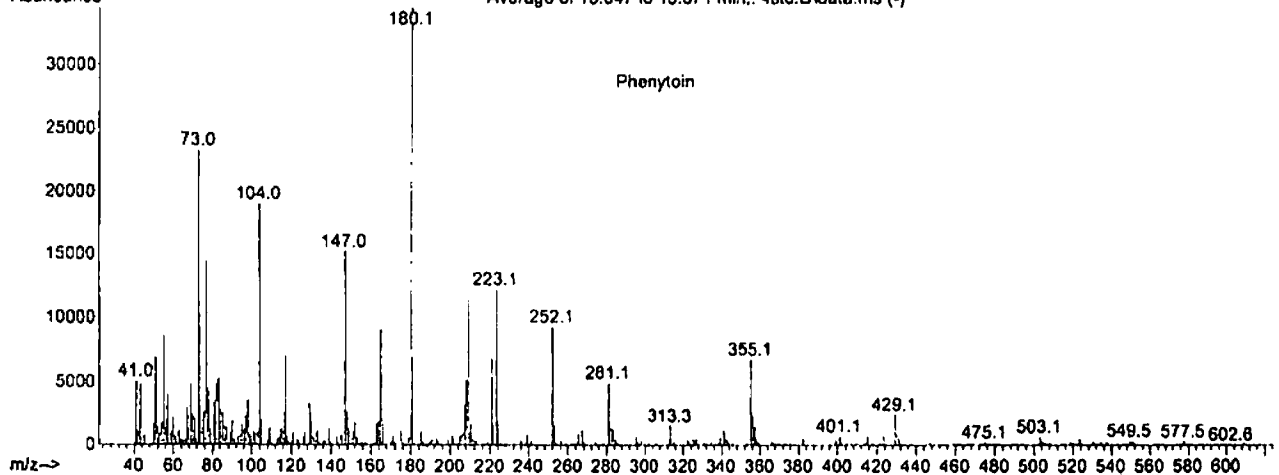
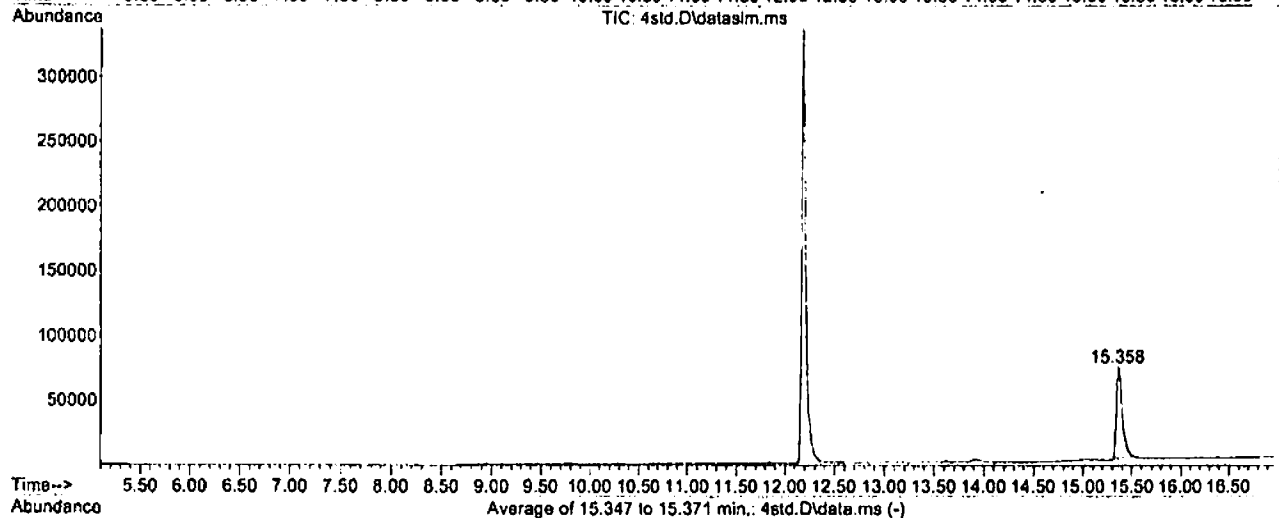
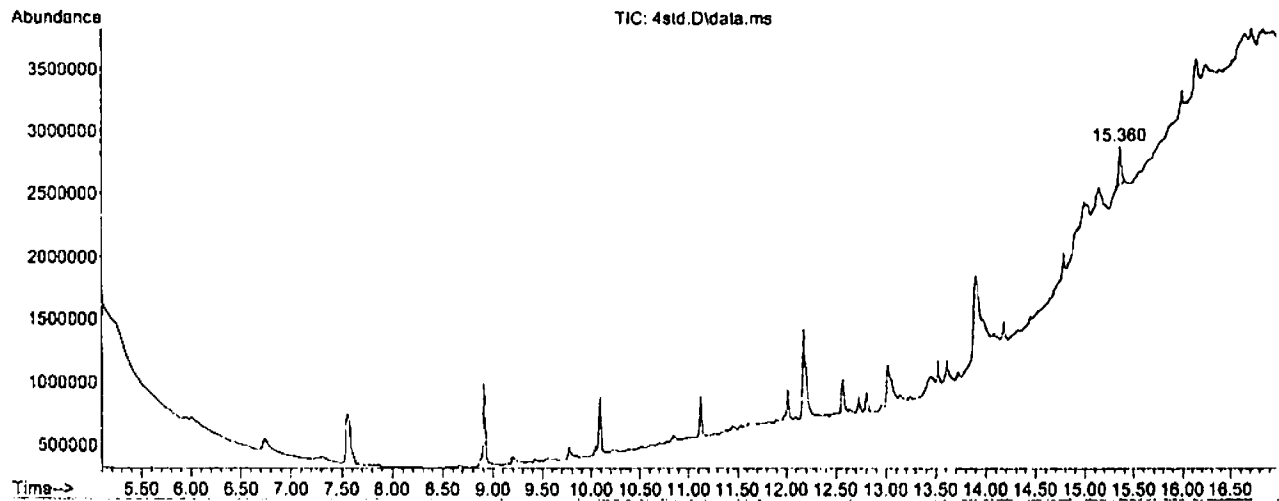
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Instrument : 5975-097  
Sample Name: HiStd  
Misc Info :  
Vial Number: 20



993996

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Operator : Crockett  
Acquired : 1 Feb 2017 1:57 using AcqMethod PENTO.M  
Instrument : 5975-097  
Sample Name: HiStd  
Misc Info :  
Vial Number: 20

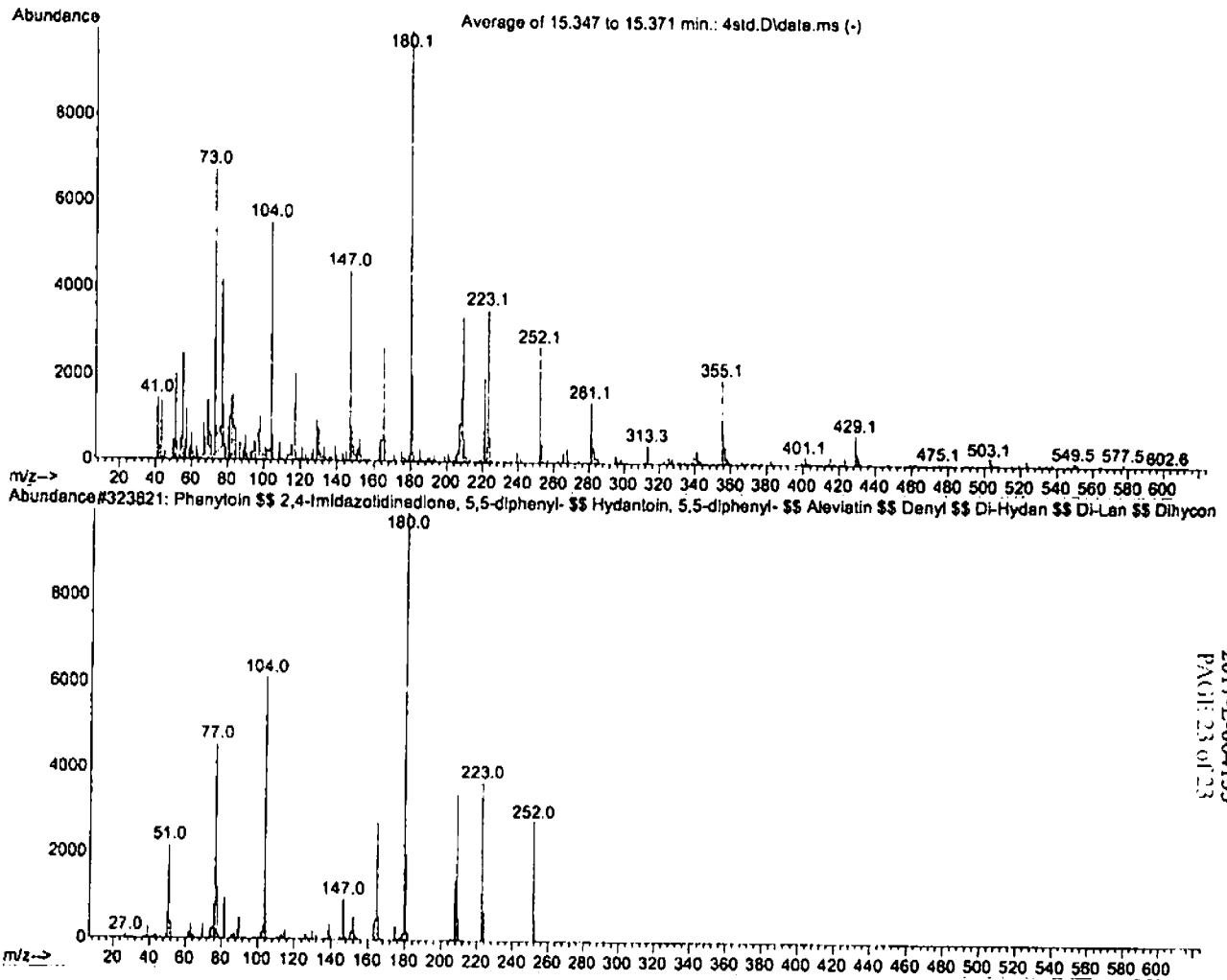


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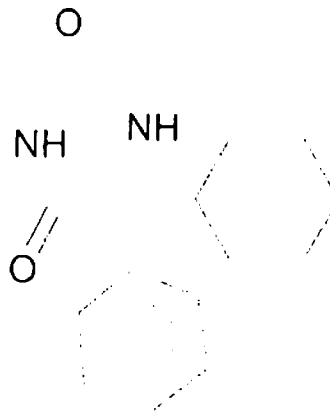
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 Aleviatin \$\$ Denyl \$\$ Di-Hydan \$\$ Di-Lan \$\$ Dihycon \$\$ Dilabid \$\$ Di-  
 ntoina \$\$ Diphantoin \$\$ Diphedan \$\$ Diphenine \$\$ Diphenylhydantoin \$\$ DPH \$  
 Lepitoin \$\$ Phenytoine



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**EXHIBIT I**

# Cover Notes to Analysis Reports

Order Number: 33-83371

Issued: 2/15/2017

ELECTRONICALLY FILED  
4/25/2017 11:11 AM  
2017-L-004153  
CALENDAR'S  
Genetic ID NA, Inc. PAGE 1 of 1  
504 N. 4th St., Suite 100, Fairfield, IL 62556 USA  
Phone +1 641 472 8978  
info@genetic-id.com www.genetic-id.com  
CLERK DOROTHY BROWN

Genetic ID, Inc. is pleased to provide you with this Official Analysis Report.

Analysis Performed For: **Evanger's Dog & Cat Food Company, Inc.**

Attention: Brett Sher, Chelsea Sher

Sent To Email/Fax: BrettS@evangersdogfood.com; ChelseaS@evangersdogfood.com; JoelS@evangersdogfood.com;  
cynthia@evangersdogfood.com

Customer Sample ID	GID Sample Code Test Package Test Component(s)	Result(s) [Result Comment(s)]
1816E03HB17 Best by June 2020	170207 E001 Animal DNA Qualitative [QL] PCR Analysis	
	Horse DNA [QL]	Detected
1816E03HB17 Best by June 2020	170208 E001a Animal DNA Qualitative [QL] PCR Analysis	
	Bovine DNA [QL]	Detected

Genetic ID optimizes the DNA extraction process for each sample matrix, achieving maximum sensitivity and reliability.

## CIVIL COVER SHEET

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

**I. (a) PLAINTIFFS**

NICOLE and GUY MAEL

(b) County of Residence of First Listed Plaintiff Clark County, Washington  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Beth E. Terrell, WSBA #26759, Terrell Marshall Law Group PLLC,  
936 North 34th Street, Suite 300, Seattle, Washington, 98103-8869;  
telephone: (206) 816-6603; facsimile: (206) 319-5450

**DEFENDANTS**

EVANGER'S DOG AND CAT FOOD CO., INC., and NUTRIPACK, LLC

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

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

Attorneys (If Known)

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

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

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

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

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

**VI. CAUSE OF ACTION**

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

28 U.S.C. § 1332

Brief description of cause:

Washington Consumer Protection Act violations, breach of warranty, product defect, negligence, unjust enrichment

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes    ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/16/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Beth E. Terrell, WSBA #26759

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Print

Save As...

Reset

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

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

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

**Date and Attorney Signature.** Date and sign the civil cover sheet.

## Western District of Washington

Civil Action No.

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**

## Western District of Washington

Civil Action No.

# SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* NUTRIPACK, LLC  
c/o Brett Sher  
2210 West 162nd Street  
Markham, Illinois 60428

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Beth E. Terrell, WSBA #26759  
Terrell Marshall Law Group PLLC  
936 North 34th Street, Suite 300  
Seattle, Washington 98103-8869  
Telephone: (206) 816-6603

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**