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

13 JOHN NAVARRETE, individually and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 HILL'S PET NUTRITION, INC.

18 Defendant.

Case No.

CLASS ACTION COMPLAINT FOR:

- (1) Violations of the California Consumer Legal Remedies Act;
- (3) Violations of the California False Advertising Law;
- (3) Violations of Song-Beverly Consumer Warranty Act; and
- (4) Violations of the California Unfair Competition Law;

19 DEMAND FOR JURY TRIAL

1 Plaintiff John Navarrete (“Plaintiff”), individually and on behalf of all others similarly
2 situated, upon personal knowledge, information, and belief alleges as follows:

3 **NATURE OF THE ACTION**

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

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

14 3. On October 1, 2018, Plaintiff purchased Recalled Products for his German Sheppard,
15 Goliath, from a PetSmart store located in Concord, California. Between October 2018 and January
16 2019, Plaintiff purchased additional Recalled Products for Goliath.

17 4. Plaintiff fed the Recalled Products to Goliath daily until approximately January 2019,
18 when Goliath started experiencing serious health issues, including vomiting and lethargy.

19 5. This class action lawsuit is brought on behalf of Plaintiff and other similarly situated
20 individuals who purchased the Recalled Products.

21 **PARTIES**

22 6. Plaintiff John Navarrete is, and at all times relevant hereto has been, a citizen of the
23 state of California. On October 1, 2018, Plaintiff purchased Recalled Products from a PetSmart store
24 in Concord, California. Between October 2018 and January 2019, Plaintiff purchased additional
25 Recalled Products for Goliath. Prior to purchasing the Recalled Products, Plaintiff saw the nutritional
26 claims and labels on the packaging, which he relied on in deciding to purchase the Recalled Products.
27 At the time Plaintiff purchased and fed the Recalled Products to his dog, due to the false and
28 misleading claims, warranties, representations, advertisements, and other marketing by Defendant,

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1 Plaintiff was unaware that the Recalled Products contained excessive amounts of vitamin D. Plaintiff
2 fed the Recalled Products to his dog between approximately October 2018 and January 2019. Plaintiff
3 would not have purchased the Recalled Products or fed the Recalled Products to his dog if Defendant
4 had disclosed that the Recalled Products contained excessive amounts of vitamin D.

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

10 **JURISDICTION AND VENUE**

11 8. This Court has original jurisdiction over this action pursuant to the Class Action
12 Fairness Act, 28 U.S.C. § 1332(d), because at least one class member is a citizen of a state other than
13 that of Defendant, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of
14 interest and costs.

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

20 **INTRADISTRICT ASSIGNMENT**

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

24 **FACTUAL BACKGROUND**

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

26 11. Defendant formulates, manufactures, distributes, labels, markets, and advertises dog
27 food throughout the United States, including California.

28

1 12. Defendant markets its dog food as nutritionally balanced, containing the optimal
2 ingredients for a pet’s health. Indeed, nutritionally balanced pet food is the cornerstone of
3 Defendant’s brand and encapsulated in Defendant’s company vision, as set forth on Defendant’s
4 website:



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9 13. The marketing material on Defendant’s website emphasizes the importance of
10 nutrition to pet health and longevity:



11
12
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14
15
16
17 **Nutrition**
We firmly believe that the right nutrition is vital to pets
living long, healthy lives.

18 14. Defendant further advertises on its website that it “analyz[es] nutrient levels in each
19 of our products.”

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



22
23
24
25
26
27 **Everything they need in every bite**

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

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

4 17. Defendant’s marketing materials, available on its website, represent that its pet food
5 contains the right nutrients *in the right quantities*:

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

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

10 18. In fact, Defendant’s own marketing materials, available on its website, warn of the
11 dangers of excessive nutrient intake:

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

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

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

17 20. According to Defendant’s website, Defendant’s suppliers are subject to stringent
18 quality standards, and each ingredient is examined to ensure safety as well as analyzed to ensure it
19 contains an “ingredient profile for essential nutrients.”

20 **2 INGREDIENT SUPPLY**

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

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



24
25
26 21. Defendant further represents on its website that it conducts quality systems audits for
27 all manufacturing facilities:
28

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3 PRODUCT MANUFACTURING

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

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

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

4 FINISHED PRODUCT

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

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



The Recalled Products

23. On January 31, 2019, Defendant announced a recall of the following canned dog food products (the “Recalled Products”) because they contained “potentially elevated levels of vitamin D”:

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

1			102020T07
2			102020T11
3			112020T22
4	Hill's® Prescription Diet® j/d® Canine 13oz	7009	112020T20
5	Hill's® Prescription Diet® k/d® Canine 13oz	7010	102020T10 102020T11
6			092020T30
7	Hill's® Prescription Diet® w/d® Canine 13oz	7017	102020T11 102020T12
8			102020T04
9	Hill's® Prescription Diet® z/d® Canine 13oz	7018	112020T22
10	Hill's® Prescription Diet® Metabolic + Mobility Canine Vegetable & Tuna Stew 12.5oz	10086	102020T05 102020T26
11			102020T04
12	Hill's® Prescription Diet® w/d® Canine Vegetable & Chicken Stew 12.5oz	10129	102020T21
13			102020T17
14	Hill's® Prescription Diet® i/d® Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz	10423	102020T19 112020T04
15	Hill's® Prescription Diet® Derm Defense® Canine Chicken & Vegetable Stew 12.5oz	10509	102020T05
16			
17	Hill's® Science Diet® Adult 7+ Small & Toy Breed Chicken & Barley Entrée Dog Food 5.8oz	4969	102020T18
18			
19	Hill's® Science Diet® Puppy Chicken & Barley Entrée 13oz	7036	102020T12
20			102020T13
21	Hill's® Science Diet® Adult Chicken & Barley Entrée Dog Food 13oz	7037	102020T14 112020T23 112020T24
22			
23	Hill's® Science Diet® Adult Turkey & Barley Dog Food 13oz	7038	102020T06
24			
25	Hill's® Science Diet® Adult Chicken & Beef Entrée Dog Food 13oz	7040	102020T13
26			
27	Hill's® Science Diet® Adult Light with Liver Dog Food 13oz	7048	112020T19
28			
	Hill's® Science Diet® Adult 7+ Chicken & Barley Entrée Dog Food 13oz	7055	092020T31 102020T13
	Hill's® Science Diet® Adult 7+ Beef & Barley Entrée Dog Food 13oz	7056	092020T31 112020T20 112020T24

1	Hill's® Science Diet® Adult 7+ Turkey & Barley Entrée 13oz	7057	112020T19
2	Hill's® Science Diet® Adult 7+ Healthy Cuisine Braised Beef, Carrots & Peas Stew dog food 12.5oz	10452	102020T14 102020T21
3			
4	Hill's® Science Diet® Adult 7+ Youthful Vitality Chicken & Vegetable Stew dog food 12.5oz	10763	102020T04 102020T05 112020T11
5			

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

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

14 26. Numerous pet owners have reported that their dogs became seriously ill and/or died
15 following consumption of the Recalled Products.²

16 **Factual Allegations Related to Plaintiff Navarrete**

17 27. On October 1, 2018, Plaintiff John Navarrete purchased twelve cans of Hill’s
18 Prescription Diet Digestive Care i/d Low Fat Rice, Vegetable & Chicken Stew 12.5oz from a
19 PetSmart store located in Concord, California for Goliath, his German Sheppard. From October
20 2018 to approximately January 2019, Navarrete purchased additional cans of Hill’s Prescription Diet
21 Digestive Care i/d Low Fat Rice, Vegetable & Chicken Stew 12.5oz from PetSmart and fed the food
22 to Goliath. The front of the can of Hill’s Prescription Diet Digestive Care i/d Low Fat Rice,
23 Vegetable & Chicken Stew 12.5oz includes the following language regarding the nutrition of the
24 product: “CLINICAL NUTRITION” and “THERAPEUTIC DOG NUTRITION.”

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

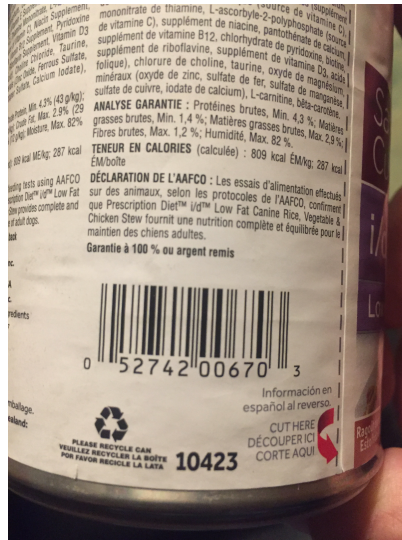
² See <https://www.usatoday.com/story/money/business/2019/02/05/dog-food-recall-hills-pet-nutrition-vitamin-d-levels-may-toxic/2775371002/>

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28. The cans purchased by Navarrete contain SKU Number 10423 and Lot Code/Date Code 102020T19 and are thus included in the Recalled Products.



29. Navarrete purchased the Recalled Products following a consultation with a veterinary professional. The Recalled Products were prescribed for Goliath.

30. Based on Defendant's false and misleading claims, warranties, representations, advertisements, and other marketing, Navarrete believed the Recalled Products were nutritionally appropriate and contained the proper amounts of vitamins and nutritional content for his dog.

31. At the time Navarrete purchased and fed the Recalled Products to his dog, due to the false and misleading claims, warranties, representations, advertisements, and other marketing by Defendant, Navarrete was unaware that the Recalled Products contained excessive amounts of vitamin D.

1 39. Excluded from the Class and Subclass are governmental entities, Defendant, any
2 entity in which Defendant has a controlling interest, and Defendant's officers, directors, affiliates,
3 legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also
4 excluded from the Class and Subclass are any judges, justices, or judicial officers presiding over this
5 matter and the members of their immediate families and judicial staff. This action is brought and may
6 be properly maintained as a class action pursuant to Federal Rule of Civil Procedures 23(b)(2) and
7 23(b)(3), and satisfies the numerosity, commonality, typicality, adequacy, predominance, and
8 superiority requirements of these rules.

9 40. ***Numerosity Under Rule 23(a)(1)***. The Class and Subclass are so numerous that the
10 individual joinder of all members is impracticable, and the disposition of the claims of all Class and
11 Subclass members in a single action will provide substantial benefits to the parties and the Court.

12 41. ***Commonality Under Rule 23(a)(2)***. Common legal and factual questions exist that
13 predominate over any questions affecting only individual Class and Subclass members. These
14 common questions, which do not vary among Class or Subclass members and which may be
15 determined without reference to any Class or Subclass member's individual circumstances, include,
16 but are not limited to:

- 17 a) Whether Defendant owed a duty of care to the Class and Subclass;
- 18 b) Whether Defendant knew or should have known that the Recalled Products
19 contained excessive amounts of vitamin D;
- 20 c) Whether Defendant advertised, represented, or marketed, or continues to
21 advertise, represent, or market, Recalled Products as nutritious, healthy, and safe for canine
22 consumption;
- 23 d) Whether Defendant's representations and omissions in advertising and/or
24 labelling are false, deceptive, and misleading;
- 25 e) Whether Defendant's representations and omissions in advertising and/or
26 labelling are likely to deceive a reasonable consumer;
- 27 f) Whether Defendant had knowledge that its representations and omissions in
28 advertising and/or labelling were false, deceptive, and misleading;

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

4 h) Whether Defendant violated California Business & Professions Code sections
5 17200, *et seq.*;

6 i) Whether Defendant violated California Business & Professions Code sections
7 17500, *et seq.*;

8 j) Whether Defendant violated California Civil Code sections 1750, *et seq.*;

9 k) Whether Plaintiff and the members of the Class are entitled to actual,
10 statutory, and punitive damages; and

11 l) Whether Plaintiff and members of the Class and Subclass are entitled to
12 declaratory and injunctive relief.

13 42. **Typicality Under Rule 23(a)(3).** Plaintiff's claims are typical of the Class and
14 Subclass members' claims. Defendant's course of conduct caused Plaintiff and the Class and
15 Subclass members the same harm, damages, and losses as a result of Defendant's uniformly unlawful
16 conduct. Likewise, Plaintiff and other Class and Subclass members must prove the same facts in
17 order to establish the same claims.

18 43. **Adequacy of Representation Under Rule 23(a)(4).** Plaintiff is an adequate
19 representative of the Class and Subclass because he is a member of the Class and Subclass and his
20 interests do not conflict with the interests of the Class or Subclass. Plaintiff has retained counsel
21 competent and experienced in complex litigation and consumer protection class action matters such
22 as this action, and Plaintiff and his counsel intend to vigorously prosecute this action for the Class's
23 and Subclass's benefit and have the resources to do so. Plaintiff and his counsel have no interests
24 adverse to those of the other members of the Class or Subclass.

25 44. **Superiority.** A class action is superior to all other available methods for the fair and
26 efficient adjudication of this controversy because individual litigation of each Class and Subclass
27 member's claim is impracticable. The damages, harm, and losses suffered by the individual members
28 of the Class and Subclass will likely be small relative to the burden and expense of individual

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1 prosecution of the complex litigation necessitated by Defendant’s wrongful conduct. Even if each
2 Class and Subclass member could afford individual litigation, the Court system could not. It would
3 be unduly burdensome if thousands of individual cases proceeded. Individual litigation also presents
4 the potential for inconsistent or contradictory judgments, the prospect of a race to the courthouse,
5 and the risk of an inequitable allocation of recovery among those individuals with equally meritorious
6 claims. Individual litigation would increase the expense and delay to all parties and the Courts
7 because it requires individual resolution of common legal and factual questions. By contrast, the
8 class action device presents far fewer management difficulties and provides the benefit of a single
9 adjudication, economies of scale, and comprehensive supervision by a single court.

10 45. As a result of the foregoing, class treatment is appropriate.

11 **FIRST CLAIM FOR RELIEF**
12 **Violations of California’s Consumer Legal Remedies Act, California Civil Code §§1750, *et***
13 ***seq.*, Against Defendant on Behalf of the Subclass**

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

17 47. Plaintiff brings this claim individually and on behalf of the Subclass against
18 Defendant.

19 48. Plaintiff and each proposed Subclass member is a “consumer,” as that term is
20 defined in California Civil Code section 1761(d).

21 49. The Recalled Products are “goods,” as that term is defined in California Civil Code
22 section 1761(a).

23 50. Defendant is a “person” as that term is defined in California Civil Code section
24 1761(c).

25 51. Plaintiff and each proposed Subclass member’s purchase of Defendant’s Recalled
26 Products constituted a “transaction,” as that term is defined in California Civil Code section
27 1761(e).

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1 52. Defendant’s conduct alleged herein violates the following provisions of California’s
2 Consumer Legal Remedies Act (the “CLRA”):

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

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

7 c) Advertising goods with intent not to sell them as advertised (Cal. Civ. Code
8 § 1770(a)(9)); and

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

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

16 54. Defendant had a duty to disclose to Plaintiff and the Subclass that the Recalled
17 Products contained excessive and dangerous amounts of vitamin D for the following two
18 independent reasons: (a) Defendant had exclusive knowledge of the information at the time of sale;
19 and (b) Defendant made partial representations to Plaintiff and the Subclass regarding the safety,
20 quality, and nutritional content of the Recalled Products.

21 55. Defendant’s misrepresentations and omissions alleged herein were likely to mislead
22 an ordinary consumer. Plaintiff and the Subclass reasonably understood Defendant’s
23 representations and omissions to mean that the Recalled Products were safe, nutritious, and fit for
24 canine consumption.

25 56. Defendant’s misrepresentations and omissions alleged herein were material in that a
26 reasonable person would attach importance to the information and would be induced to act upon
27 the information in making purchase decisions.

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1 57. Plaintiff and members of the Subclass relied to their detriment on Defendant’s
2 misrepresentations and omissions in purchasing the Recalled Products.

3 58. Plaintiff, on behalf of himself and the Subclass, demands judgment against Defendant
4 under the CLRA for injunctive relief to Plaintiff and the Subclass.

5 59. Plaintiff, on behalf of himself and the Subclass, further intends to seek compensatory
6 damages.

7 60. Pursuant to Cal. Civ. Code § 1782(a), Plaintiff will serve Defendant with notice of its
8 alleged violations of the CLRA by certified mail return receipt requested. If, within thirty days after
9 the date of such notification, Defendant fails to provide appropriate relief for their violations of the
10 CLRA, Plaintiff will amend this Class Action Complaint to seek monetary damages under the
11 CLRA.

12 61. Notwithstanding any other statements in this Class Action Complaint, Plaintiff does
13 not seek monetary damages in connection with his CLRA claims – and will not do so – until the
14 applicable thirty-day period has passed.

15 **SECOND CLAIM FOR RELIEF**
16 **Violations of California False Advertising Law, California Business & Professions Code**
17 **§§17500, *et seq.*, Against Defendant on Behalf of the Class**

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

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

23 64. Plaintiff, individually and on behalf of the Class, has standing to pursue this claim
24 because Plaintiff suffered injury in fact and has lost money or property as a result of Defendant’s
25 actions set forth above.

26 65. Defendant engaged in advertising and marketing to the public and offered for sale the
27 Recalled Products in California.

28 66. Defendant engaged in the advertising and marketing alleged herein with the intent to

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1 directly or indirectly induce the sale of the Recalled Products to consumers like Plaintiff and
2 members of the Class.

3 67. Defendant's advertising and marketing representations regarding the Recalled
4 Products were false, misleading, and deceptive within the definition, meaning and construction of
5 California Business & Professions Code §§ 17500, *et seq.* (False Advertising Law).

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

9 69. Defendant's misrepresentations and omissions alleged herein are objectively
10 material to a reasonable consumer, and therefore reliance upon such misrepresentations may be
11 presumed as a matter of law.

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

15 71. Unless restrained by this Court, Defendant will continue to engage in untrue and
16 misleading advertising, as alleged above, in violation of California Business & Professions Code §§
17 17500, *et seq.*

18 72. As a result of Defendant's conduct and actions, Plaintiff and each member of the
19 Class has been injured, has lost money or property, and is entitled to relief. Plaintiff and the Class
20 seek disgorgement, restitution, injunctive relieve, and all other relief permitted under California
21 Business & Professions Code §§ 17500, *et seq.*

22 **THIRD CLAIM FOR RELIEF**
23 **Violations of California Song-Beverly Consumer Warranty Act, California Civil Code**
24 **§§ 1790, *et seq.*, Against Defendant on Behalf of the Subclass**

25 73. Plaintiff, individually and on behalf of the Subclass, incorporates by reference all of
26 the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set
27 forth herein.

28 74. Plaintiff brings this claim individually and on behalf of the Subclass against

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1 Defendant.

2 75. Plaintiff and the Subclass purchased Recalled Products formulated and
3 manufactured by Defendant that were marketed as nutritious, healthy, safe, and appropriate for
4 canine consumption.

5 76. Plaintiff and the Subclass purchased the Recalled Products new and in their original
6 packaging and did not alter the Recalled Products.

7 77. At the time of purchase, Defendant was in the business of manufacturing and
8 marketing pet foods, including the Recalled Products.

9 78. Defendant's Recalled Products contained excessive and dangerous amounts of
10 vitamin D. These excessive and dangerous amounts of vitamin D were present in the Recalled
11 Products when they left the exclusive control of Defendant and therefore existed during the duration
12 of the warranty period.

13 79. Defendant's Recalled Products were not of the same quality as those generally
14 acceptable in the trade; were not fit for the ordinary purpose of canine consumption; were not
15 adequately contained, packaged, and labeled; and did not conform to the promises and facts stated
16 on the container and label.

17 80. Defendant, therefore, breached the implied warranty of merchantability, which by
18 law is provided in every consumer agreement for the sale of goods, including the sale of the Recalled
19 Products.

20 81. As a direct and proximate cause of Defendant's breach of the implied warranty of
21 merchantability, Plaintiff and the Subclass have been damaged by receiving an inferior and unsafe
22 product from that which they were promised. Plaintiff and the Subclass, therefore, have the right to
23 cancel and recover the purchase price of their Recalled Products.

24 **FOURTH CLAIM FOR RELIEF**
25 **Violations of the Unfair Competition Law, California Business & Professions Code §§**
26 **17200, *et seq.*, Against Defendant on Behalf of the Class**

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

4 83. California’s Unfair Competition Law (“UCL”) prohibits unfair competition,
5 defined as “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue
6 or misleading advertising and any act prohibited by [California’s False Advertising Law, Cal. Bus.
7 & Prof. Code §§ 17500, *et seq.*].”

8 84. Plaintiff and the Class have standing to pursue this claim because Plaintiff and
9 members of the Class have suffered injury in fact and have lost money or property as a result of
10 Defendant’s actions as set forth above.

11 85. Defendant’s actions and conduct as alleged in this Class Action Complaint constitute
12 an “unlawful” practice within the definition, meaning, and construction of California’s UCL
13 because Defendant violated California’s False Advertising Law (Bus. & Prof. Code §§ 17500, *et*
14 *seq.*), the CLRA (Civ. Code §§ 1750, *et seq.*), and California’s Song-Beverly Consumer Warranty
15 Act (Cal. Civ. Code §§ 1790 *et seq.*).

16 86. Defendant’s actions and conduct as alleged in this Class Action Complaint constitute
17 an “unfair” practice within the definition, meaning, and construction of California’s UCL because
18 they offend established public policy and/or are immoral, unethical, oppressive, unscrupulous,
19 and/or substantially injurious to their customers. The harm caused by Defendant’s wrongful
20 conduct outweighs any utility of such conduct and has caused – will continue to cause – substantial
21 injury to Plaintiff and the Class. Additionally, Defendant’s conduct is “unfair” because it violated
22 the legislatively declared policies in California’s False Advertising Law (Bus. & Prof. Code §§
23 17500, *et seq.*), the CLRA (Civ. Code §§ 1750, *et seq.*), and California’s Song-Beverly Consumer
24 Warranty Act (Cal. Civ. Code §§ 1790 *et seq.*).

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

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1 88. As a result of Defendant’s “unlawful,” “fraudulent,” and “unfair” conduct,
 2 Plaintiff and members of the Class paid premium prices for the Recalled Products, which were worth
 3 substantially less than the products promised by Defendant, and Plaintiff and members of the Class
 4 did not obtain the characteristics and specifications of the Recalled Products promised by
 5 Defendant. Defendant’s conduct directly and proximately caused Plaintiff and the Class actual
 6 monetary damages in the form of the price paid for the Recalled Products. The injuries, damages,
 7 and harm caused to Plaintiff and the Class by Defendant’s unfair conduct are not outweighed by any
 8 countervailing benefits to consumers or competition, and the injury is one that consumers
 9 themselves could not reasonably have avoided. Defendant knew or had reason to know that Plaintiff
 10 and the Class could not have reasonably known or discovered the existence of excessive amounts of
 11 vitamin D in the Recalled Products. Had Defendant disclosed the excessive amounts of vitamin D
 12 in the Recalled Products, Plaintiff and the Class would not have purchased the Recalled Products.

13 89. Defendant’s wrongful business practices alleged herein constitute a continuing
 14 course of unfair competition because Defendant markets and sells its products in a manner that
 15 offends public policy and/or in a fashion that is immoral, unethical, oppressive, unscrupulous,
 16 and/or substantially injurious to its customers. In accordance with California Business & Professions
 17 Code § 17203, Plaintiff seeks an order enjoining Defendant from continuing to conduct business
 18 through fraudulent or unlawful acts and practices.

19 90. Plaintiff and the Class also seek an order requiring Defendant to make full restitution
 20 of all moneys it has wrongfully obtained from Plaintiff and the Class, along with all other relief
 21 permitted under the UCL.

PRAYER FOR RELIEF

22 WHEREFORE, Plaintiff, on behalf of himself and the Class and the Subclass, requests that
 23 the Court order the following relief and enter judgment against Defendant as follows:

- 24 A. an Order certifying the proposed Class and Subclass under Fed. R. Civ. Proc. 23 and
 25 appointing Plaintiff and his counsel to represent the Class;
 26 B. a declaration that Defendant engaged in the illegal conduct alleged herein in violation
 27 of Cal. Civ. Code §§ 1750, *et seq.* (Consumer Legal Remedies Act), Cal. Bus. & Prof.
 28

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- 1 Code §§ 17500, *et seq.* (False Advertising Law), Cal. Civ. Code Cal. §§ 1790, *et seq.*
- 2 (Song-Beverly Consumer Warranty Act), and Bus. & Prof. Code §§ 17200, *et seq.*
- 3 (Unfair Competition Law);
- 4 C. an Order that Defendant be permanently enjoined from its improper activities and
- 5 conduct described herein;
- 6 D. a Judgment awarding Plaintiff and the Class restitution and disgorgement of all
- 7 compensation obtained by Defendant from its wrongful conduct;
- 8 E. a Judgment awarding Plaintiff and the Subclass compensatory damages pursuant to
- 9 Cal. Civ. Code Cal. §§ 1790, *et seq.*, in an amount to be proven at trial;
- 10 F. Prejudgment and post-judgment interest at the maximum allowable rate;
- 11 G. an Order awarding Plaintiff and the Class their reasonable litigation expenses, costs,
- 12 and attorneys' fees;
- 13 H. an Order awarding such other injunctive and declaratory relief as is necessary to
- 14 protect the interests of Plaintiff and the Class; and
- 15 I. an Order awarding such other and further relief as the Court deems necessary, just,
- 16 and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for all claims and issues so triable.

Dated: February 12, 2019

SCHUBERT JONCKHEER & KOLBE LLP

/s/ Kathryn Y. Schubert
KATHRYN SCHUBERT

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JS-CAND 44 (Rev. 06/17)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
 JOHN NAVARRETE, individually and on behalf of all others similarly situated,
 (b) County of Residence of First Listed Plaintiff Contra Costa
 (EXCEPT IN U.S. PLAINTIFF CASES)
 (c) Attorneys (Firm Name, Address, and Telephone Number)
 Schubert Jonckheer & Kolbe LLP (415) 788-4220
 3 Embarcadero Center, Suite 1650
 San Francisco, CA 94111

DEFENDANTS
 HILL'S PET NUTRITION, INC., a Delaware corporation.
 County of Residence of First Listed Defendant
 (IN U.S. PLAINTIFF CASES ONLY)
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
 Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<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 Of Veteran's Benefits <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 checked="" type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <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	PERSONAL INJURY <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 CIVIL RIGHTS <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	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <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 PRISONER PETITIONS HABEAS CORPUS <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 OTHER <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	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC § 881 <input type="checkbox"/> 690 Other LABOR <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 IMMIGRATION <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 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent-Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCLAL SECURITY <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)) FEDERAL TAX SUITS <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 & 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

V. ORIGIN (Place an "X" in One Box Only)
 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 USC 1332
 Brief description of cause:
 Diversity suit under CAFA for violation of California warranty and unfair competition laws.

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

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

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
 (Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 02/12/2019 SIGNATURE OF ATTORNEY OF RECORD /s/Willem F. Jonckheer