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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 THOMAS ROUPE, Individually and
15 on Behalf of All Others Similarly
16 Situated,

17 Plaintiff,

18 v.

19 BIG HEART PET BRANDS, INC., a
20 Delaware corporation,

21 Defendant.

Case No.

CLASS ACTION COMPLAINT FOR:

- (1) NEGLIGENT MISREPRESENTATION;
- (2) VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT;
- (3) VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW;
- (4) VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW;
- (5) NEGLIGENCE;
- (6) BREACH OF EXPRESS WARRANTY, CALIFORNIA COMMERCIAL CODE §2313;
- (7) BREACH OF IMPLIED WARRANTY, CALIFORNIA COMMERCIAL CODE §2314;
- (8) FRAUDULENT CONCEALMENT;
- (9) VIOLATIONS OF GEORGIA UNIFORM DECEPTIVE TRADE PRACTICES ACT; AND
- (10) VIOLATIONS OF GEORGIA FALSE ADVERTISING LAW
- (11) BREACH OF EXPRESS WARRANTY, GA. CODE ANN. §11-2-313
- (12) BREACH OF IMPLIED WARRANTY, GA. CODE ANN. §11-2-314

DEMAND FOR JURY TRIAL

1 1. Plaintiff Thomas Roupe ("Plaintiff"), individually and on behalf of all others
2 similarly situated, by and through his undersigned attorneys, bring this Class Action
3 Complaint against defendant Big Heart Pet Brands, Inc. ("Defendant"), to cause Defendant
4 to disclose that its pet food sold throughout the United States is adulterated and contains
5 pentobarbital and to restore monies to the consumers and businesses who purchased the
6 Contaminated Dog Foods (as defined herein) during the time that Defendant failed to make
7 such disclosures. Plaintiff also seeks to bar Defendant from selling any dog food that
8 contains any levels of pentobarbital. Plaintiff alleges the following based upon personal
9 knowledge as well as investigation by his counsel and as to all other matters, upon
10 information and belief (Plaintiff believes that substantial evidentiary support will exist for
11 the allegations set forth herein after a reasonable opportunity for discovery).

12 **DEFENDANT'S CONTAMINATED DOG FOODS ARE ADULTERATED AS**
13 **THEY CONTAIN PENTOBARBITAL, A SUBSTANCE LARGELY USED TO**
14 **EUTHANIZE ANIMALS**

15 2. Defendant manufactures, markets, advertises, labels, distributes, and sells
16 Gravy Train Chunks in Gravy with Beef Chunks, Gravy Train Chunks in Gravy with T-
17 Bone Flavor Chunks, Gravy Train Chunks in Gravy with Chicken Chunks, Gravy Train
18 Strips in Gravy Beef Strips and Gravy Train with Lamb & Rice Chunks (the "Contaminated
19 Dog Foods").¹ The Contaminated Dog Foods contain pentobarbital, a barbiturate drug used
20 as a sedative and anesthetic for animals, rendering it adulterated under relevant federal and
21 state law. Pentobarbital is now most commonly used to euthanizing animals.

22 3. Pentobarbital is a Class II controlled substance, and there is no safe or set
23 level for pentobarbital in pet food. If it is present, the food is adulterated.² The ingestion of
24 pentobarbital by your pet can lead to adverse health issues, including:

- 25 • Tyalism (salivation)

26

¹ Discovery may reveal additional products that also contain Pentobarbital and Plaintiff
27 reserves the right to include any such products in this action.

28 ²<http://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm>

- 1 • Emesis (vomiting)
- 2 • Stool changes (soft to liquid stools, blood, mucus, urgency, explosive nature, etc.)
- 3 • Hyporexia (decreased appetite)
- 4 • Lethargy/depression
- 5 • Neurologic abnormalities (tremor, seizure, vocalization, unusual eye movements)
- 6 • Ataxia (difficulty walking)
- 7 • Collapse
- 8 • Coma
- 9 • Death³

10 4. Despite laws governing pet foods and providing government oversight,
11 “[p]et food manufacturers are responsible for taking appropriate steps to ensure that the
12 food they produce is safe for consumption and properly labeled including verifying the
13 identity and safety of the ingredients from suppliers.”⁴

14 5. “It is not acceptable to use animals euthanized with a chemical substance in
15 pet or other animal foods...The detection of pentobarbital in pet food renders the product
16 adulterated. It is the responsibly of the manufacturer to take the appropriate steps to ensure
17 that the food they produce is safe for consumption and properly labeled.”⁵

18 6. Pentobarbital residue from euthanized animals will continue to be present in
19 pet food, even if it is rendered or canned at a high temperature or pressure.⁶

20 7. Pentobarbital is routinely used to euthanize animals, and the most likely way
21 it could get into dog food would be in rendered animal products. Rendered products come
22 from a process that converts animal tissues to feed ingredients, including tissues from
23 animals that were euthanized, decomposed or diseased. Pentobarbital from euthanized

24 ³The Honest Kitchen, “Pentobarbital- What Is It, How it Entered the Pet Food Supply
25 Chain, and what You Can Do To Protect Your Canines & Felines,” (Mar. 1, 2017),
26 *available at* <https://www.thehonestkitchen.com/blog/pentobarbital-entered-pet-food-supply-chain-can-protect-pet/>

27 ⁴[https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544](https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm)
28 348.htm (last visited Feb. 5, 2018)

⁵ *Id.*

⁶ *Id.*

1 animals survives the rendering process and could be present in the rendered feed
2 ingredients used in pet food.

3 8. It is not acceptable to use animals euthanized with a chemical substance in
4 pet food, and the detection of pentobarbital in pet food renders the product adulterated.

5 9. Historically, the FDA has not aggressively taken action under the Food, Drug
6 and Cosmetics Act (“FDCA”), § 342 (a)(1) or (5), against the pet food companies that it
7 found to have used non-slaughtered animals and sold pet food containing pentobarbital.
8 Therefore, manufacturers in the pet food industry, including Defendant, have continued
9 their illegal practice of using non-slaughtered animals that may contain poisonous
10 substances, like pentobarbital, in their pet foods.

11 10. It was recently revealed that Defendant was knowingly, recklessly and/or
12 negligently selling Contaminated Dog Food containing pentobarbital, a substance largely
13 used to euthanize animals.

14 11. On February 8, 2018, it was reported on WJLA, an ABC network affiliate in
15 Washington, D.C., that an independent investigation determined that the Contaminated
16 Dog Foods contained pentobarbital. The independent investigation utilized two different
17 labs and both showed that the Contaminated Dog Foods tested positive for pentobarbital.
18 In fact, it was the only brand that tested positive for pentobarbital.⁷

19 12. The report further stated that pentobarbital is not used on farm animals and
20 questioned where the pentobarbital is coming from if it is not from euthanized dogs, cats,
21 or horses. Defendant did not respond to the specific questions raised and instead stated in
22 a press release: “We launched and are conducting a thorough investigation, including
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27 ⁷[http://wjla.com/features/7-on-your-side/fda-to-investigate-after-abc7-exposes-](http://wjla.com/features/7-on-your-side/fda-to-investigate-after-abc7-exposes-euthanasia-drug-in-dog-food)
28 [euthanasia-drug-in-dog-food](http://wjla.com/features/7-on-your-side/fda-to-investigate-after-abc7-exposes-euthanasia-drug-in-dog-food)

1 working closely with our suppliers, to determine the accuracy of these results and the
2 methodology used.”⁸

3 **REACTIONS TO THE NONDISCLOSURE AND MATERIALITY OF THE**
4 **PRESENCE OF PENTOBARBITAL IN THE CONTAMINATED DOG FOODS**

5 13. Shortly after the public exposure of the fact that the Contaminated Dog Foods
6 contained levels of pentobarbital, Defendant issued a statement assuring consumers,
7 including Plaintiff and the proposed Classes, that it was “confident in the safety of our
8 products and do not believe you [a consumer] has to take any action.” Exhibit A.

9 14. In this same statement, Defendant admitted that pentobarbital is “[] not
10 something that is added to the pet food. However, it could unintentionally be in raw
11 materials provided by the supplier. We regularly audit our suppliers and have assurances
12 from them about the quality and specifications of the materials they supply us. Raw
13 materials that include pentobarbital do not meet our specifications.” *Id.*

14 15. However, Defendant later officially withdrew certain products from the
15 marketplace and altered this press release by removing the statements. Exhibit B.

16 16. Defendant further altered by the press release by removing its statement that
17 it follows the American Association Feed Official (AAFCO) standards. *Compare* Exhibit
18 A and Exhibit B.

19 17. These changes to the press release suggest that Defendant knew the
20 Contaminated Dog Foods contained pentobarbital.

21 18. Within days of the public revelation that the Contaminated Dog Foods
22 contain pentobarbital, Defendant voluntarily withdrew 27 products, including 10 Gravy
23 Train wet food products.⁹ The voluntary withdrawal included the additional brands of
24 Kibble N’ Bits, Skippy and Ol’ Roy.

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27 _____
⁸ *Id.*

28 ⁹ <http://www.gravytraindog.com/information>

1 19. On February 16, 2018, the FDA issued an alert to consumers addressing the
2 voluntarily withdrawal of certain products by Defendant. In this alert, the FDA states: “The
3 FDA’s preliminary evaluation of the testing results of Gravy Train samples indicates that
4 the low level of pentobarbital present in the withdrawn products is unlikely to pose a health
5 risk to pets. However, pentobarbital should never be present in pet food and products
6 containing any amount of pentobarbital are considered to be adulterated.”¹⁰

7 20. The FDA alert further states: “Pentobarbital is a barbiturate drug that is most
8 commonly used in animals as a sedative, anesthetic, or for euthanasia. The FDA’s
9 preliminary evaluation of the testing results of Gravy Train samples indicates that the low
10 level of pentobarbital present in the withdrawn products is unlikely to pose a health risk to
11 pets. However, any detection of pentobarbital in pet food is a violation of the Federal Food,
12 Drug, and Cosmetic Act—simply put, pentobarbital should not be in pet food. The FDA is
13 investigating to learn the potential source and route of the contamination.”

14 21. Defendant issued a press release on Feb. 23, 2018, stating that it identified
15 the source of the pentobarbital through “[t]esting done by scientists at an independent,
16 third-party microbiology laboratory.” Defendant stated that the testing found “a single,
17 minor ingredient (beef fat), used only in the four wet dog food brands, was the source of
18 the contamination.”¹¹

19 22. Defendant did not identify what exactly was tested – whether it was cans of
20 the food pulled from the shelves; cans shipped directly from the manufacturing plant and/or
21 isolated samples of beef fat from the supplier. Defendant did claim the tested beef fat was
22 sourced from cattle from the United States. However, Defendant has offered no
23 information about how it identified this particular ingredient or whether it tested any other
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27 _____
¹⁰ <https://www.fda.gov/animalveterinary/newsevents/ucm597135.htm>

28 ¹¹ <http://www.jmsmucker.com/company-news/brand-news-releases-article/2334404>

1 ingredients included in the recalled pet foods.¹² Additionally, beef fat is not an ingredient
2 listed on the label of any of the Contaminated Dog Foods.¹³

3 23. Defendant also did not specify what animals they tested the Contaminated
4 Dog Foods for beyond cattle. When doing DNA testing, it must be determined beforehand
5 what species will be looked for (i.e. dog, cat, cattle, horse etc.). Defendant has not disclosed
6 whether its testing looked for dog, cat, or horse DNA.

7 24. In the Feb. 23, 2018, press release, Defendant admits that the “[] presence
8 [of pentobarbital] at any level is not acceptable and is not up to our quality standards.”

9 25. Defendant updated this statement on March 2, 2018, now claiming that the
10 laboratory tests confirm the contaminated animal fat was “from cow, pig and chicken and
11 no other animal of the nine types tested.” Once again, Defendant did not identify what
12 types of animals were included in that testing.¹⁴

13 26. Defendant has yet to disclose the name of the manufacturing plant and/or
14 supplier that it references as the suspected source of the contaminated raw materials
15 containing pentobarbital.

16 27. On March 2, 2018, Defendant further changed its statements regarding the
17 “source of contamination.” The type of animal fats the Defendant now claims are the
18 sources of pentobarbital in the Contaminated Dog Foods was expanded to include pig and
19 chicken fat and “no other animal of the nine types tested.”¹⁵ However, Defendant has still
20 failed to disclose the nine sources tested.

21 28. In addition, Defendant further edited its February 23, 2018, press release by
22 changing from a “voluntary withdrawal” of the specific products to a “class III recall.”¹⁶

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24 _____
25 ¹² *Id.*; <http://www.gravytraindog.com/information>

26 ¹³ <http://wjla.com/features/7-on-your-side/fda-investigation-continues-into-dog-food-contaminated-with-euthanasia-drug>

27 ¹⁴ <http://www.gravytraindog.com/information>

28 ¹⁵ <http://www.gravytraindog.com/information>

¹⁶ *Id.*

1 29. On March 2, 2018, the FDA formally issued a recall for the Contaminated
2 Dog Foods “based... on a test by [Defendant] confirming the presence of pentobarbital in
3 the tallow ingredient used in the affected products.”¹⁷ This recall involves more than 100
4 million cans of pet food.¹⁸ The FDA is continuing to investigate the Contaminated Dog
5 Foods.

6 30. Consumers have also reacted to the news of Defendant allowing its products
7 to be sold with no disclosure of the inclusion of pentobarbital. Indeed, social media
8 comments highlight that a reasonable consumer, like Plaintiff and the Classes, had no idea
9 that they may be feeding their beloved pet adulterated food and it is something they believe
10 should have been disclosed to the public.

11 **DEFENDANT NEGLIGENTLY, RECKLESSLY, AND/OR KNOWINGLY**
12 **MISLEADS CONSUMERS THROUGH ITS REPRESENTATIONS,**
13 **PACKAGING, LABELS, STATEMENTS, WARRANTIES AND SELLING THE**
14 **CONTAMINATED DOG FOODS AS UNADULTERATED**

15 31. Defendant negligently, recklessly, and/or knowingly falsely advertises that
16 the Contaminated Dog Foods are healthy and provide complete nutrition and quality while
17 omitting they are adulterated with pentobarbital.

18 32. Defendant formulates, develops, manufactures, labels, distributes, markets,
19 advertises, and sells its extensive Gravy Train lines of dry and wet pet food products in
20 California and across the United States. Indeed, Defendant maintains that it keeps rigorous
21 quality and supplier standards from “start to finish” and performs three-tier auditing that
22 includes, third party auditors, to ensure pure ingredients and fair labor are used in its
23 Products, including Contaminated Dog Foods. Given this rigorous auditing process,
24 Defendant knew that the Contaminated Dog Foods were adulterated pet food.¹⁹

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26 _____
27 ¹⁷ <https://www.fda.gov/AnimalVeterinary/NewsEvents/ucm597135.htm>

28 ¹⁸ <http://www.foodsafetynews.com/2018/03/smucker-confirms-euthinasia-drug-in-popular-dog-food-brands/#.Wp7OtXmWyUm>

¹⁹ <http://www.bigheartpet.com/assets/CR-Policy.pdf>

1 33. Defendant also knew the real risk that pentobarbital may appear in the
2 Contaminated Dog Foods if the manufacturing and sourcing were not properly monitored.
3 Indeed, this is not the first time that the Gravy Train line of food has been determined to
4 include pentobarbital: “Back in 2001, analyses by the FDA found residue of the sedative
5 in popular brands like Nutro, Gravy Train and Kibbles ‘n Bits.”²⁰

6 34. Despite this, Defendant wrongfully advertised and sold the Contaminated
7 Dog Foods without any label or warning indicating to consumers that these products
8 contained any level of Pentobarbital or that Defendant utilized animals that have been
9 euthanized as a protein or meat by-product source.

10 35. Defendant also wrongfully advertised and sold the Contaminated Dog Foods
11 as complete nutrition, quality and healthy despite the presence of pentobarbital.

12 36. Instead, the advertising and labels intentionally omit any reference to the
13 food being adulterated:



20 Gravy Train® Chunks In Gravy With Beef Chunks wet dog food is
21 bursting with the hearty flavor of real beef. And all the meaty
22 goodness is covered in a rich savory gravy to make a hearty meal
23 your dog will love.

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25
26 ²⁰[https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-](https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html)
27 [products-to-shelter.html](https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html)

1 37. Defendant’s claim that the Contaminated Dog Foods are “100 percent
2 complete and balanced nutrition” without any mention that the Contaminated Dog Foods
3 are in fact adulterated and contain Pentobarbital.²¹

4 **ABOUT THIS ITEM**

5 **Disclaimer:** While we aim to provide accurate product information, it is provided by
6 manufacturers, suppliers and others, and has not been verified by us. See our
7 [disclaimer](#).

8 Serve your four legged friend a deliciously hearty meal with Gravy Train
9 Chunks In Gravy with T-Bone Flavor Chunks Wet Dog Food. Each
10 mouthwatering bite has the flavor of T-Bone steak and all the meaty
11 goodness is covered in a savory gravy that dogs love. This gravy train dog
12 food offers a satisfying meal that provides 100 percent complete and
13 balanced nutrition for all life stages. Feed it to your furry friend as a reward
14 for good behavior or learning a new trick or serve it as a regular meal. Gravy
15 Train Chunks In Gravy with T-Bone Flavor Chunks Wet Dog Food comes in a
16 13.2 oz can.

17 38. Defendant’s omissions are material, false, misleading, and reasonably likely
18 to deceive the public. This is especially true in light of the long-standing campaign by
19 Defendant to market all its products, including the Contaminated Dog Foods as "providing
20 safe, healthy, and high-quality food” with “the purest ingredients”²²

21 39. Moreover, Defendant’s Corporate Responsibility Policy says the top priority
22 is the “safety and quality” of its products: ²³

23 **Pet food safety and quality.** *Big Heart Pet Brands top priority is the safety and quality of
24 our products. Our goal is to produce the finest pet food products available on the market
25 today. All of our products are made under a system of strict food safety and quality
26 controls combined with ongoing inspection and monitoring. All of our programs are
27 designed to exceed the Global Food Safety Initiative standards. Our products are made
28 with nutritious, quality ingredients that meet the applicable standards and specifications of
the U.S. Department of Agriculture (USDA), Association of American Feed Control
Officials (AAFCO) and the Food & Drug Administration (FDA). Each of our products is
processed and packaged following strict food safety and quality control procedures that
comply with the Good Manufacturing Practices established by the FDA. These procedures
ensure that the resulting food will be pure, wholesome and safe for pets.*

24 ²¹Walmart, Gravy Train T-Bone Flavor Wet Dog Food,
25 [https://www.walmart.com/ip/Gravy-Train-T-Bone-Flavor-Wet-Dog-Food-13-2-
26 Oz/44465093#read-more](https://www.walmart.com/ip/Gravy-Train-T-Bone-Flavor-Wet-Dog-Food-13-2-Oz/44465093#read-more)

27 ²²Big Heart Pet Brands, “Pets,” [http://www.bigheartpet.com/corporate-
28 responsibility/pets.aspx](http://www.bigheartpet.com/corporate-responsibility/pets.aspx)

29 ²³ Big Heart Pet Brands,
30 Corporate Responsibility Policy,” <http://www.bigheartpet.com/assets/CR-Policy.pdf>

1 40. In this same document, Defendant claims that it has a “rigorous supplier
2 approval process” and only purchases ingredients from “reputable suppliers.” And
3 Defendant goes further to declare, that once a supplier is approved, “a comprehensive
4 testing program is in place to assess the safety and quality of the ingredients upon receipt.
5 This includes a combination of laboratory analysis and physical inspection of the
6 ingredients.”²⁴

7 41. Finally, Defendant highlights the strict oversight it supposedly applies across
8 all its brands, include Gravy Train, to ensure high quality products “from start to finish,
9 inside and out.”²⁵ +

10
11 We apply the same expectations of quality that we
12 hold for ourselves to our suppliers. Our supplier
13 management program includes an extensive evaluation
14 of manufacturing locations and a comprehensive testing
15 program that is used to assess the safety and quality
16 of ingredients upon receipt. This program includes
17 a combination of laboratory analysis and physical
18 inspection.

19 Through rigorous commitment to the quality of our
20 products—from start to finish, inside and out—Big Heart
21 Pet Brands is able to nurture the bond between pets and
22 the people who love them.

23 42. Following the discovery of pentobarbital in the Contaminated Dog Foods,
24 Defendant’s own actions show the misleading representations concerning its supposed
25 rigorous and strict quality control. Specifically, Defendant only recently started testing “all
26 of our products for the presence of pentobarbital as a new quality assurance protocol.”
27 Defendant further acknowledged the lack of proper quality control and oversight by stating:
28 “In addition, we are enhancing our sourcing and supplier oversight procedures to ensure
this does not occur again.”²⁶

24 *Id.*

25 ²⁵Big Heart Pet Brands, “Corporate Responsibility Summary
26 2014,”<http://www.bigheartpet.com/assets/CorporateResponsibilitySummaryBrochure2014.pdf>

27 ²⁶ <http://www.gravytraindog.com/information>

1 43. Defendant’s advertising campaign is false, misleading, and/or deceptive by
2 using these descriptions, promises, and representations because there was no label or
3 warning indicating to consumers that these products contained any level of pentobarbital
4 or that Defendant utilized euthanized animals as a protein or meat by-product source.
5 Defendant's statements, partial disclosures, and omissions are false, misleading, and crafted
6 to deceive the public as they create an image that the Contaminated Dog Foods are healthy,
7 safe, have only pure ingredients and are manufactured under rigorous standards.

8 44. Defendant chose to advertise, label, and market its Contaminated Dog Foods
9 with no disclosure that it was adulterated pet food, contained any level of pentobarbital,
10 and defendant instead advertised, labeled, and marketed its Products, including the
11 Contaminated Dog Foods, as pure, high quality, healthy and safe for dogs to ingest and
12 failed to mention that the Contaminated Dog Foods contain pentobarbital. The
13 Contaminated Dog Foods are available at numerous retail and online outlets.

14 45. In fact, Defendant made affirmative misleading representations that its
15 Products, including the Contaminated Dog Foods, were not adulterated or would contain
16 any controlled substance, including Pentobarbital. Specifically, Defendant promises to its
17 consumers that all produces meets USDA, AAFCO and FDA standards.²⁷

18 46. This is untrue because the Contaminated Dog Foods are adulterated, which
19 is not proper under state and federal laws and regulations. Specifically, under the FDCA, a
20 food is adulterated if it “bears or contains any poisonous or deleterious substance which
21 may render it injurious to health.” 21 U.S.C. §342. Under California law, pet food is
22 considered adulterated if “it bears or contains any poisonous or deleterious substance that
23 may render it injurious to health...” or “if damage or inferiority has been concealed in any
24 manner.” Cal. Health & Safety Code §113090(a), (h). California’s statute also provides
25 that pet food ingredients “of animal or poultry origin shall be only from animals or poultry
26 slaughtered or processed in an approved or licensed establishment... Animal or poultry

27 _____
28 ²⁷ <http://www.bigheartpet.com/assets/CR-Policy.pdf>

1 classified as ‘deads’ are prohibited.” Cal. Health & Safety Code §113035. Georgia likewise
2 prohibits the sale of adulterated food such as the Contaminated Dog Foods under Ga. Code
3 Ann. §2-13-11.

4 47. The Contaminated Dog Foods are widely advertised.

5 48. Defendant's webpage and adopted corporate policies repeatedly make the
6 false, misleading, and/or deceptive statements, described above, about the Contaminated
7 Dog Foods without any mention of pentobarbital, or that Defendant utilized euthanized
8 animals as a protein or meat by-product source.

9 49. As a result of Defendant's omissions and misrepresentations, a reasonable
10 consumer would have no reason to suspect the presence of pentobarbital without
11 conducting his or her own scientific tests, or reviewing third-party scientific testing of these
12 products.

13 50. Consumers have increasingly become more aware and cautious about the
14 nutritional value and ingredients in the pet food they chose to purchase.

15 51. Additionally, Defendant knew that a consumer would be feeding the
16 Contaminated Dog Foods multiple times each day to his or her dog, leading to repeated
17 exposure of the barbiturate to the dog(s).

18 52. A reasonable consumer, such as Plaintiff and other members of the Classes
19 (as defined herein), would have no reason to expect and anticipate that the Contaminated
20 Dog Foods are made up of anything other than pure ingredients from reputable suppliers
21 or that quality and safety is not the top priority as promised by Defendant. Defendant’s
22 non-disclosure and concealment of any level of pentobarbital or utilization of euthanized
23 animals as a protein or meat by-product source in the Contaminated Dog Foods coupled
24 with partial disclosures and/or misrepresentations that the food is pure, quality, healthy and
25 safe by Defendant is intended to and does, in fact, cause consumers to purchase a product
26 they would not have bought at all if the true quality and ingredients were disclosed. As a
27 result of these false statements, omissions, and concealment, Defendant has generated
28 substantial sales of the Contaminated Dog Foods.

1 53. Plaintiff brings this action individually and on behalf of all other similarly
2 situated consumers within the United States who purchased the Contaminated Dog Foods,
3 in order to cause the disclosure of the inclusion of pentobarbital and/or the utilization of
4 euthanized animals as a protein or meat by-product source in the Contaminated Dog Foods,
5 to correct the false and misleading perception Defendant has created in the minds of
6 consumers that the Contaminated Dog Foods are high quality, safe, and healthy and to
7 obtain redress for those who have purchased the Contaminated Dog Foods.

8 **JURISDICTION AND VENUE**

9 54. This Court has original jurisdiction over all causes of action asserted herein
10 under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the matter in
11 controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs and
12 more than two-thirds of the Class reside in states other than the states in which Defendant
13 is a citizen and in which this case is filed, and none of the exemptions to jurisdiction under
14 28 U.S.C. §1332(d) do not apply.

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

20 **INTRADISTRICT ASSIGNMENT**

21 56. A substantial portion of the transactions and wrongdoings which gave rise to
22 the claims in this action occurred in the County of Marin, and as such, this action is properly
23 assigned to the San Francisco division of this Court.

24 **THE PARTIES**

25 57. Plaintiff Thomas Roupe ("Plaintiff") is, and at all times relevant hereto has
26 been, a citizen of the State of Georgia. Plaintiff purchased certain lines of the
27 Contaminated Dog Foods (including Gravy Train Chunks in Gravy with Beef Chunks and
28 Gravy Train Chunks in Gravy with Turkey Chunks) and fed the Contaminated Dog Foods

1 to his two-year old dog, Prince. Plaintiff Roupe believed the Gravy Train foods he fed his
2 dog were safe and healthy, and trusted in Defendant's representations about the safety of
3 its products when purchasing the Contaminated Dog Foods.

4 58. Plaintiff has been purchasing the Contaminated Dog since approximately
5 March 2016, and his last purchase was on approximately February 16, 2018. Plaintiff no
6 longer purchases the Contaminated Dog Foods after learning of the presence of
7 pentobarbital. Plaintiff primarily purchased the Contaminated Dog Foods from his local
8 Walmart and Piggly Wiggly. During that time, based on the false and misleading claims,
9 warranties, representations, advertisements and other marketing by Defendant, Plaintiff
10 was unaware that the Contaminated Dog Foods contained any level of pentobarbital, a
11 substance largely used to euthanize animals. Plaintiff was injured by purchasing the
12 Contaminated Dog Foods that had no value or *de minimis* value as they were adulterated.

13 59. As the result of Defendant's deceptive and negligent conduct alleged herein,
14 Plaintiff was injured when he purchased the Contaminated Dog Foods, which did not
15 deliver what Defendant promised and had no value or *de minimis* value as they were
16 adulterated. Plaintiff was further injured as he did business with a company he would not
17 have if he knew that the Contaminated Dog Foods contained any level of pentobarbital or
18 that Defendant utilized euthanized animals as a protein source. He purchased the
19 adulterated Contaminated Dog Foods on the assumption that the labeling of the
20 Contaminated Dog Foods was accurate and that it was unadulterated, pure, high quality,
21 healthy and safe for dogs to ingest and did not include euthanized animals as a protein
22 source. Further, should Plaintiff encounter the Contaminated Dog Foods in the future, he
23 could not rely on the truthfulness of the packaging, absent corrective changes to the
24 packaging and advertising of the Contaminated Dog Foods.

25 60. Defendant Big Heart Pet Brands, Inc, is a subsidiary of J.M. Smucker
26 Company and its headquarters are located at One Maritime Plaza, San Francisco,
27 California. Defendant manufactures, formulates, produces, distributes, labels, markets,
28 advertises, and sells the Contaminated Dog Foods under the Gravy Train dog food brand

1 name throughout the United States. The advertising for the Contaminated Dog Foods,
2 relied upon by Plaintiff, was prepared and/or approved by Defendant and their agents in
3 the State of California, and was disseminated by Defendant and its agents from the State
4 of California and throughout the United States, through advertising and labeling that
5 contained the misrepresentations and omissions alleged herein. The advertising and
6 labeling for the Contaminated Dog Foods was designed to encourage consumers to
7 purchase the Contaminated Dog Foods and reasonably misled the reasonable consumer,
8 i.e., Plaintiff and the Classes, into purchasing the Contaminated Dog Foods. Defendant
9 owns, manufactures, and distributes the Contaminated Dog Foods, and created and/or
10 authorized the unlawful, fraudulent, unfair, misleading, and/or deceptive labeling and
11 advertising for the Contaminated Dog Foods in the State of California.

12 61. The Contaminated Dog Foods, at a minimum, include:

13 (a) Gravy Train Chunks in Gravy with Beef Chunks:



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(b) Gravy Train with Beef Chunks:



(c) Gravy Train with T-Bone Flavor Chunks:



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(d) Gravy Train Chunks in Gravy with T-Bone Flavor Chunks:



(e) Gravy Train With Chicken Chunks:



(f) Gravy Train Strips in Gravy With Beef Strips:



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(g) Gravy Train Chunks in Gravy with Lamb and Rice Chunks:



(h) Gravy Train Chicken, Beef & Liver Medley:



(i) Gravy Train Chunks in Gravy Stew:



1 statements and misrepresentations by Defendant, who did not disclose that the
2 Contaminated Dog Foods were adulterated or contained pentobarbital, a substance largely
3 used to euthanize animals.

4 **DEFENDANT'S KNOWLEDGE AND NOTICE OF BREACHES**
5 **OF ITS EXPRESS AND IMPLIED WARRANTIES**

6 68. Defendant has received sufficient notice of its breaches of express and
7 implied warranties. Defendant has, and had, exclusive knowledge of the physical and
8 chemical make-up of the Contaminated Dog Foods.

9 69. Defendant also had notice of the real risk that pentobarbital may appear in
10 the Contaminated Dog Foods if the manufacturing and sourcing were not properly
11 monitored. Indeed, this is not the first time that Defendant's Gravy Train line of food has
12 been found to contain pentobarbital.²⁸

13 **PRIVITY EXISTS WITH PLAINTIFFS AND THE PROPOSED CLASSES**

14 70. Defendant knew that consumers such as Plaintiff and the proposed Classes
15 would be the end purchasers of the Contaminated Dog Foods and the targets of its
16 advertising and statements.

17 71. Defendant intended that the advertising, labeling, statements, and
18 representations would be considered throughout the United States by end purchasers of the
19 Contaminated Dog Foods, including Plaintiff and the proposed Classes.

20 72. Defendant directed the advertising, labeling, statements, representations, and
21 warranties of the Contaminated Dog Foods from the State of California to end purchasers
22 throughout the United States, including Plaintiff and the proposed Classes.

23 73. Defendant directly marketed, from the State of California, to Plaintiff and the
24 proposed Classes through statements on its website, labeling, advertising, and packaging.

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26 _____
27 ²⁸ [https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-
28 products-to-shelter.html](https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html)

1 (b) whether Defendant knew or should have known that the Contaminated
2 Dog Foods were adulterated or contained pentobarbital;

3 (c) whether Defendant wrongfully represented and continues to represent
4 that the Contaminated Dog Foods are healthy, quality, pure and safe;

5 (d) whether Defendant wrongfully represented and continues to represent
6 that the Contaminated Dog Foods are manufactured in compliance with all governing
7 regulations;

8 (e) whether Defendant wrongfully failed to state that the Contaminated
9 Dog Foods are in fact adulterated under Federal, California, and Georgia law;

10 (f) whether Defendant's representations and omissions in advertising
11 and/or labeling are false, deceptive, and misleading;

12 (g) whether those representations and omissions are likely to deceive a
13 reasonable consumer;

14 (h) whether Defendant had knowledge that those representations and
15 omissions were false, deceptive, and misleading;

16 (i) whether Defendant continues to disseminate those representations and
17 omissions despite knowledge that the representations are false, deceptive, and misleading;

18 (j) whether a representation that a product is healthy, pure, quality and
19 nutritious coupled with omissions that the Contaminated Dog Foods were adulterated or
20 contained pentobarbital is material to a reasonable consumer;

21 (k) whether Defendant violated California Business & Professions Code
22 sections 17200, *et seq.*;

23 (l) whether Defendant violated California Business & Professions Code
24 sections 17500, *et seq.*;

25 (m) whether Defendant violated California Civil Code sections 1750, *et*
26 *seq.*;

27 (n) whether Defendant's fraudulently concealed from the Classes that the
28 Contaminated Dog Foods were adulterated;

1 (o) whether Defendant violated Georgia's Uniform Deceptive Trade
2 Practices Act;

3 (p) whether Defendant violated Georgia's false advertising laws;

4 (q) whether Defendant breached its express and implied warranties;

5 (r) whether Defendant's conduct was negligent per se under applicable
6 law;

7 (s) whether Plaintiff and the members of the Classes are entitled to actual,
8 statutory, and punitive damages; and

9 (t) whether Plaintiff and members of the Classes are entitled to
10 declaratory and injunctive relief.

11 81. Defendant engaged in a common course of conduct giving rise to the legal
12 rights sought to be enforced by Plaintiff individually and on behalf of the other members
13 of the Classes. Identical statutory violations and business practices and harms are involved.
14 Individual questions, if any, are not prevalent in comparison to the numerous common
15 questions that dominate this action.

16 82. Plaintiff's claims are typical of Class and SubClass members' claims in that
17 they are based on the same underlying facts, events, and circumstances relating to
18 Defendant's conduct.

19 83. Plaintiff will fairly and adequately represent and protect the interests of the
20 Classes, has no interests incompatible with the interests of the Classes, and has retained
21 counsel competent and experienced in Class action, consumer protection, and false
22 advertising litigation.

23 84. Class treatment is superior to other options for resolution of the controversy
24 because the relief sought for each Class and SubClass member is small such that, absent
25 representative litigation, it would be infeasible for Class and SubClass members to redress
26 the wrongs done to them.

27 85. Questions of law and fact common to the Classes predominate over any
28 questions affecting only individual Class and SubClass members.

1 86. As a result of the foregoing, Class treatment is appropriate.

2 **COUNT I**

3 **(Negligent Misrepresentation Against Defendant on Behalf of the Classes)**

4 87. Plaintiff incorporates by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

6 88. Plaintiff reasonably placed his trust and reliance in Defendant's
7 representations that the Contaminated Dog Foods are healthy, safe, pure, high quality, and
8 not adulterated with substances such as pentobarbital.

9 89. Plaintiff reasonably placed his trust and reliance in Defendant to disclose if
10 the Contaminated Dog Foods were adulterated, contained pentobarbital or utilized
11 euthanized animals as a protein or meat by-product source.

12 90. Because of the relationship between the parties, Defendant owed a duty to
13 use reasonable care to impart correct and reliable disclosures concerning the true nature,
14 quality and ingredients of the Contaminated Dog Foods or, based upon its superior
15 knowledge, having spoken, to say enough to not be misleading.

16 91. Defendant breached its duty to Plaintiff and the Classes by providing false,
17 misleading, partial disclosures and/or deceptive information regarding the true nature,
18 quality and ingredients of the Contaminated Dog Foods.

19 92. Plaintiff and the Classes reasonably and justifiably relied upon the
20 information supplied to them by the Defendant. As a result, Plaintiff and the Classes
21 purchased the Contaminated Dog Foods that, being adulterated, should not have been sold
22 at all.

23 93. Defendant failed to use reasonable care in its communications and
24 representations to Plaintiff and Classes.

25 94. By virtue of Defendant's negligent misrepresentations, Plaintiff and the
26 Classes have been damaged in an amount to be proven at trial or alternatively, seek
27 rescission and disgorgement under this Count.

28

COUNT II

(Violations of California's Consumer Legal Remedies Act, California Civil Code §§1750, *Et Seq.*, Against Defendant on Behalf of the Classes)

95. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

96. Plaintiff and each proposed Class member is a "consumer," as that term is defined in California Civil Code section 1761(d).

97. The Contaminated Dog Foods are "goods," as that term is defined in California Civil Code section 1761(a).

98. Defendant is a "person" as that term is defined in California Civil Code section 1761(c).

99. Plaintiff and each proposed Class member's purchase of Defendant's products constituted a "transaction," as that term is defined in California Civil Code section 1761(e).

100. Defendant's conduct alleged herein violates the following provisions of California's Consumer Legal Remedies Act (the "CLRA"):

101. California Civil Code section 1770(a)(5), by representing that the Contaminated Dog Foods are pure, quality, healthy and safe for consumption and by failing to disclose that the Contaminated Dog Foods were in fact adulterated with pentobarbital

102. California Civil Code section 1770(a)(7), by representing that the Contaminated Dog Foods were of a particular standard, quality, or grade, when they were in fact adulterated and not fit for consumption;

(a) California Civil Code section 1770(a)(9), by advertising the Contaminated Dog Foods with the intent not to sell them as advertised; and

(b) California Civil Code section 1770(a)(16), by representing that the Contaminated Dog Foods have been supplied in accordance with previous representations when they have not.

1 in the future if they can be assured that the Contaminated Dog Foods are properly
2 unadulterated pet food and meets the advertising claims.

3 112. Plaintiff and members of the Classes are entitled to injunctive and equitable
4 relief, and restitution in the amount they spent on the Contaminated Dog Foods.

5 **COUNT IV**

6 **(Violations of the Unfair Competition Law, California Business**
7 **& Professions Code §§17200, *Et Seq.*, Against Defendant on Behalf of the Classes)**

8 113. Plaintiffs incorporates by reference and realleges each and every allegation
9 contained above, as though fully set forth herein.

10 114. The Unfair Competition Law prohibits any "unlawful, unfair or fraudulent
11 business act or practice." Cal. Bus. & Prof. Code §17200.

12 **Fraudulent**

13 115. Defendant's statements that the Contaminated Dog Foods are pure, quality
14 healthy, and safe and provide 100 percent complete and balance nutrition are literally false
15 and likely to deceive the public, as is Defendant's failing to make any mention that the
16 Contaminated Dog Foods are adulterated and contain pentobarbital.

17 **Unlawful**

18 116. As alleged herein, Defendant has sold advertised the adulterated
19 Contaminated Dog Foods with false or misleading claims, such that Defendant's actions as
20 alleged herein violate at least the following laws:

- 21 • The CLRA, California Business & Professions Code sections 1750, *et seq.*;
- 22 and
- 23 • The False Advertising Law, California Business & Professions Code
24 sections 17500, *et seq.*

25 **Unfair**

26 117. Defendant's conduct with respect to the labeling, advertising, marketing, and
27 sale of the Contaminated Dog Foods is unfair because Defendant's conduct was immoral,
28

1 unethical, unscrupulous, or substantially injurious to consumers and the utility of its
2 conduct, if any, does not outweigh the gravity of the harm to its victims.

3 118. Defendant's conduct with respect to the labeling, advertising, marketing, and
4 sale of the Contaminated Dog Foods is also unfair because it violates public policy as
5 declared by specific constitutional, statutory, or regulatory provisions, including, but not
6 limited to, the False Advertising Law and the CLRA.

7 119. Defendant's conduct with respect to the labeling, advertising, marketing, and
8 sale of the Contaminated Dog Foods is also unfair because the consumer injury is
9 substantial, not outweighed by benefits to consumers or competition, and not one
10 consumers, themselves, can reasonably avoid.

11 120. In accordance with California Business & Professions Code section 17203,
12 Plaintiff seeks an order enjoining Defendant from continuing to conduct business through
13 fraudulent or unlawful acts and practices and to commence a corrective advertising
14 campaign. Defendant's conduct is ongoing and continuing, such that prospective
15 injunctive relief is necessary.

16 121. On behalf of himself and the Classes, Plaintiff also seeks an order for the
17 restitution of all monies from the sale the Contaminated Dog Foods, which were unjustly
18 acquired through acts of fraudulent, unfair, or unlawful competition.

19 **COUNT V**

20 **(Negligence, Against Defendant on Behalf of the Classes)**

21 122. Plaintiff incorporates by reference and realleges each and every allegation
22 contained above, as though fully set forth herein.

23 123. Defendant's conduct is negligent per se under California and Georgia law.

24 124. As set forth above and below, Defendant violated its statutory duties under
25 California's CLRA and FLA, the Georgia Uniform Deceptive Trade Practices Act, and
26 Georgia's false advertising laws by falsely representing that the Contaminated Dog Foods
27 are pure, quality, healthy, nutritious and safe for consumption while at the same time failing
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1 to disclose that the Contaminated Dog Foods contained the controlled substance of
2 pentobarbital.

3 125. As set forth above, Defendant also violated its statutory duties under Federal,
4 California and Georgia law by selling adulterated pet food to Plaintiff and members of the
5 Classes.

6 126. Defendant failed to exercise due care when it sold the Contaminated Dog
7 Foods to Plaintiff and the Class Members based on: (1) its exclusive knowledge of the
8 ingredients, content and sourcing materials of the Contaminated Dog Foods; (2) failing to
9 properly audit and monitor any third-party suppliers as publicly represented to Plaintiffs
10 and the Classes; and (3) allowing the inclusion of a controlled substance in the
11 Contaminated Dog Foods when it had previously tested positive for this exact same drug-
12 pentobarbital.

13 127. Defendant's violations of these statutes were a substantial factor in the harm
14 suffered by Plaintiff and the Classes, including purchasing a product with *de minimis* value.

15 128. By virtue of Defendant's negligence, Plaintiff and the Classes have been
16 damaged in an amount to be proven at trial or alternatively, seek rescission and
17 disgorgement under this Count.

18 **COUNT VI**

19 **(Breach of Express Warranty, California Commercial Code §2313,**
20 **Against Defendant on Behalf of the Classes)**

21 129. Plaintiff incorporates by reference and realleges each and every allegation
22 contained above, as though fully set forth herein.

23 130. As set forth herein, Defendant made express representations to Plaintiff and
24 the Classes that the Contaminated Dog Foods are pure, quality, healthy and safe for
25 consumption and provide 100 percent complete and balanced nutrition.

26 131. Defendant also made express representations to Plaintiff and the Classes that
27 the Contaminated Dog Foods comply with all applicable regulations, including that they
28 are not adulterated by allowing their sale in various stores throughout the United States.

1 Safety Code §§ 113075 and 113090 (prohibiting “manufacture” of pet food that is
2 “adulterated” because it contains “poisonous or deleterious substance[s]”) and 113095
3 (prohibiting “false or misleading” labeling) as alleged herein.

4 143. Defendant is a merchant engaging in the sale of goods to Plaintiff and the
5 Classes.

6 144. There was a sale of goods from Defendant to Plaintiff and the Classes
7 members.

8 145. Defendant breached the implied warranties by selling the Contaminated Dog
9 Foods that were not fit for their ordinary purpose as adulterated dog food containing
10 pentobarbital.

11 146. Defendant was on notice of this breach as it was aware of the presence of
12 pentobarbital and/or the use of euthanized animals as a protein or meat by-product source
13 in the Contaminated Dog Foods.

14 147. Privity exists because Defendant impliedly warranted to Plaintiff and the
15 Classes that the Contaminated Dog Foods were unadulterated and fit for their ordinary
16 purpose

17 148. As a result of Defendant's breach of its implied warranties of merchantability,
18 Plaintiff and the Classes sustained damages as they paid money for the Contaminated Dog
19 Foods that were not what Defendant represented.

20 149. Plaintiff, on behalf of himself and the Classes, seeks actual damages for
21 Defendant's breach of warranty.

22 **COUNT VIII**

23 **(Fraudulent Concealment Against Defendant on Behalf of the Classes)**

24 150. Plaintiff incorporates by reference and realleges each and every allegation
25 contained above, as though fully set forth herein.

26 151. As alleged more fully herein, at the time Defendant sold the Contaminated
27 Dog Foods to Plaintiff and Class Members, it knew it was adulterated with pentobarbital.
28

1 152. At all times relevant herein, Defendant made misrepresentations of material
2 fact to Plaintiff and the other Class Members as a means of concealing the true nature and
3 quality of the Contaminated Dog Foods, claiming it was pure, nutritious, healthy, and pure
4 quality with no disclosure that the Contaminated Dog Foods were adulterated and
5 pentobarbital.

6 153. Defendant has concealed material facts from Plaintiff and the other Class
7 Members, including but not limited to:

- 8 (a) the true nature and quality of the Contaminated Dog Foods;
- 9 (b) the inclusion of pentobarbital in the Contaminated Dog Foods;
- 10 and
- 11 (c) that the Contaminated Dog Foods were not lawfully sold as
12 labelled and packaged as they were adulterated.

13 154. Defendant had a duty to disclose these facts, regardless of the existence of
14 privity, by virtue of (a) Defendant's exclusive knowledge as to the true nature and
15 ingredients of the Contaminated Dog Foods; (b) Defendant's awareness that Plaintiff and
16 members of the proposed Classes were not reasonably likely to discover these facts; (c)
17 Defendant's active concealment of those facts from Plaintiff and the proposed Classes (by,
18 among other things, making the false representations described above); and (d)
19 Defendant's statutory and common-law obligations to disclose material information to the
20 consumers as alleged herein.

21 155. Plaintiff and members of the Classes would have acted differently had
22 Defendant disclosed this information to them and allowed them to make a fully-informed
23 decision before they purchased the Contaminated Dog Foods.

24 156. The facts Defendant concealed from Plaintiff and the Classes are material
25 and uniform in nature.

26 157. Defendant made misrepresentations of material fact in an effort to conceal
27 the actual nutritional value, true nature and ingredients of the Contaminated Dog Foods
28 and to prevent Class Members from becoming aware of the nutritional value, true nature

1 and ingredients of the Contaminated Dog Foods. Plaintiff and the Classes would have
2 relied on the disclosure of inclusion of pentobarbital in the Contaminated Dog Foods

3 158. As a proximate result of Defendant's concealment and suppression of
4 material facts, Plaintiff and the Classes have sustained damage by, among other things,
5 paying for Contaminated Dog Foods that were adulterated and unlawfully sold to
6 consumers, rendering the Contaminated Dog Foods of zero or *de minimis* value.

7 159. Plaintiff, on behalf of himself and the Classes, seeks actual damages for
8 Defendant's fraudulent concealment.

9 160. Because Defendant engaged in the conduct alleged herein deliberately and
10 with intent, Plaintiff and the Classes are entitled to an award of punitive damages, the total
11 amount of which shall be proven at trial.

12 **COUNT IX**

13 **(Violations of Georgia Uniform Deceptive Trade Practices Act- Ga. Code Ann. §10-**
14 **1-370 *et seq.*, Against Defendant on Behalf of the SubClass)**

15 161. Plaintiff incorporates by reference and realleges each and every allegation
16 contained above, as though fully set forth herein.

17 162. The conduct described in this Complaint constitutes a violation of the
18 Georgia Uniform Deceptive Trade Practices Act, Ga. Code ann. §10-1-370 *et seq.*
19 (hereinafter "UDTPA").

20 163. Defendant engaged in deceptive trade practices in violation of the UDTPA
21 when it claimed that the Contaminated Dog Foods were pure, quality, healthy and safe for
22 consumption. These claims are untrue or misleading because they fail to disclose that the
23 Contaminated Dog Foods were in fact adulterated with pentobarbital and instead claimed
24 that the Contaminated Dog Foods provide 100 percent complete and balanced nutrition.

25 164. Defendant either knew or should have known its Contaminated Dog Foods
26 were adulterated and were not as warranted and represented the same on the labeling,
27 packaging, advertising, statements and public sales of the Contaminated Dog Foods.

28

1 172. Georgia’s False Advertising Law also prohibits advertising that is “untrue or
2 fraudulent and which is known or which by the exercise or reasonable case should be
3 known to be untrue or fraudulent.” Ga. Code Ann. §10-1-421(a).

4 173. As set forth herein, Defendant's claims that the Contaminated Dog Foods are
5 healthy and safe for consumption are literally false and likely to deceive the public.

6 174. Defendant’s claims that the Contaminated Dog Foods are pure, quality,
7 healthy and safe for consumption are untrue or misleading because these claims fail to
8 disclose that the Contaminated Dog Foods were in fact adulterated with pentobarbital.

9 175. Defendant’s claim that the Contaminated Dog Foods are 100 percent
10 complete and balanced nutrition are untrue or misleading because it fails to disclose that
11 the Contaminated Dog Foods were in fact adulterated with pentobarbital.

12 176. Defendant knew, or reasonably should have known, that the claims were
13 untrue or misleading.

14 177. Defendant's conduct is ongoing and continuing, such that prospective
15 injunctive relief is necessary, especially given Plaintiff's desire to purchase these products
16 in the future if they can be assured that the Contaminated Dog Foods are, as properly
17 unadulterated pet food and meets the advertising claims.

18 178. Plaintiff and members of the SubClass are entitled to injunctive and equitable
19 relief pursuant to Ga. Code Ann. §10-1-423.

20 **COUNT XI**

21 **(Breach of Express Warranty, Ga. Code Ann. §11-2-313,**
22 **Against Defendant on Behalf of the SubClass)**

23 179. Plaintiff incorporates by reference and realleges each and every allegation
24 contained above, as though fully set forth herein.

25 180. As set forth herein, Defendant made express representations to Plaintiff and
26 the SubClass that the Contaminated Dog Foods are pure, quality, healthy and safe for
27 consumption and provide 100 percent complete and balanced nutrition.

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1 181. Defendant also made express representations to Plaintiff and the SubClass
2 that the Contaminated Dog Foods meet all applicable regulations, including that they are
3 not adulterated dog food by allowing their sale in various stores throughout the United
4 States.

5 182. These promises became part of the basis of the bargain between the parties
6 and thus constituted express warranties.

7 183. There was a sale of goods from Defendant to Plaintiff and the SubClass
8 members.

9 184. On the basis of these express warranties, Defendant sold to Plaintiff and the
10 SubClass the Contaminated Dog Foods.

11 185. Defendant knowingly breached the express warranties by selling the
12 Contaminated Dog Foods which are adulterated and contain pentobarbital.

13 186. Defendant was on notice of this breach as it was aware of the presence of
14 pentobarbital and/or the use of euthanized animals as protein or meat by-product source in
15 the Contaminated Dog Foods.

16 187. Privity exists because Defendant expressly warranted to Plaintiff and the
17 SubClass that the Contaminated Dog Foods were pure, quality, healthy and safe for
18 consumption and provided 100 percent complete and balanced nutrition and unadulterated.

19 188. Plaintiff and the SubClass reasonably relied on the express warranties by
20 Defendant.

21 189. As a result of Defendant's breaches of its express warranties, Plaintiff and the
22 SubClass sustained damages as they paid money for Contaminated Dog Foods that were
23 not what Defendant represented and in fact were not properly sold under applicable
24 regulations and law

25 190. Plaintiff on behalf of himself and the SubClass, seeks actual damages for
26 Defendant's breach of warranty.

27

28

COUNT XII

(Breach of Implied Warranty, Ga. Code Ann. §11-2-314, Against Defendant on Behalf of the SubClass)

191. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

192. As set forth herein, the Contaminated Dog Foods are not fit for the ordinary purposes for which they are used.

193. The Contaminated Dog Foods also do not conform to the promises or affirmations of fact made on the packaging or labels.

194. Defendant is a merchant engaging in the sale of goods to Plaintiff and the SubClass.

195. There was a sale of goods from Defendant to Plaintiff and the SubClass members.

196. Defendant breached the implied warranties by selling the Contaminated Dog Foods were not fit for their ordinary purpose as adulterated dog food that contains pentobarbital.

197. Defendant was on notice of this breach as it was aware of the presence of pentobarbital and/or the use of euthanized animals as a protein or meat by-product source in the Contaminated Dog Foods.

198. Privity exists because Defendant impliedly warranted to Plaintiff and the SubClass that the Contaminated Dog Foods unadulterated and fit for their ordinary purpose

199. As a result of Defendant's breach of its implied warranties of merchantability, Plaintiff and the SubClass sustained damages as they paid money for the Contaminated Dog Foods that were not what Defendant represented.

200. Plaintiff, on behalf of himself and the SubClass, seeks actual damages for Defendant's breach of warranty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, pray for judgment against the Defendant as to each and every count, including:

A. An order declaring this action to be a proper Class action, appointing Plaintiffs and their counsel to represent the Classes, and requiring Defendant to bear the costs of Class notice;

B. An order enjoining Defendant from selling the Contaminated Dog Foods until Pentobarbital is removed;

C. An order enjoining Defendant from selling the Contaminated Dog Foods in any manner;

D. An order requiring Defendant to engage in a corrective advertising campaign and engage in any further necessary affirmative corrective action, such as recalling existing products;

E. An order awarding declaratory relief, and any further retrospective or prospective injunctive relief permitted by law or equity, including enjoining Defendant from continuing the unlawful practices alleged herein, and injunctive relief to remedy Defendant's past conduct;

F. An order requiring Defendant to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, or a violation of California's Unfair Competition Law, False Advertising Law, or CLRA, Georgia's UDTPA and False Advertising Law, plus pre- and post-judgment interest thereon;

G. An order requiring Defendant to disgorge or return all monies, revenues, and profits obtained by means of any wrongful or unlawful act or practice;

H. An order requiring Defendant to pay all actual and statutory damages permitted under the counts alleged herein;

I. An order requiring Defendant to pay punitive damages on any count so allowable;

1 J. An order awarding attorneys' fees and costs to Plaintiff, the Class, and the
2 SubClass; and

3 K. An order providing for all other such equitable relief as may be just and
4 proper.

5
6 **JURY DEMAND**

7 Plaintiff hereby demands a trial by jury on all issues so triable.

8 Dated: March 7, 2018

9 LOCKRIDGE GRINDAL NAUEN P.L.L.P.
10 ROBERT K. SHELQUIST
11 REBECCA A. PETERSON (241858)

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Attorneys for Plaintiff

EXHIBIT A

GRAVY TRAIN[®] WET DOG FOOD NEWS COVERAGE

You may have seen claims questioning the safety of *Gravy Train*[®] wet dog food in recent news coverage. Please know these claims are related to nine cans of *Gravy Train*[®] wet dog food that were tested as part of a local Washington, DC news outlet investigation.

Since learning of this information, we have launched and are conducting a thorough investigation, including working closely with our suppliers and veterinarians, to determine the accuracy of the claims included in this news outlet's investigation and the testing methodology used.

We are confident in the safety of our products. Should additional actions be required, we will communicate that quickly to consumers and to our retail partners.

We will continue to do whatever it takes to ensure the safety of your pets in the same way we would our own. Above all, we are a company that loves pets and understands the responsibility we have in providing high quality food for the pets you love.

If you have questions, please call us at 800-828-9980 or email us [here](#).

ADDITIONAL INFORMATION

What should I do with the *Gravy Train*[®] wet dog food I have at home now?

We are confident in the safety of our products and do not believe you need to take any action at this time. Based on the information available to us, our veterinarians and animal nutrition specialists do not believe this is a pet safety issue. If you have concerns about your pet's health, we recommend you consult your veterinarian.

Have people's dogs been getting sick or dying from this issue?

We have not received any consumer complaints associated with these claims.

What do I do if I suspect my pet has become ill because of this issue?

Based on the information available to us, our veterinarians and animal nutrition specialists do not believe this is a pet safety issue. If your pet is ill, we recommend you consult your veterinarian.

additional actions be required, we will communicate that quickly to consumers and to our retail partners. We are confident in the safety of our products. We will continue to do whatever it takes to ensure the safety of your pets in the same way we would our own.

How could this get into my pet's food?

It is not something that is added to pet food. However, it could unintentionally be in raw materials provided by a supplier. We regularly audit our suppliers and have assurances from them about the quality and specifications of the materials they supply us. Raw materials that include pentobarbital do not meet our specifications.

Does this mean you use 3D or 4D meat / by-products (euthanized animals/pets) in your pet food?

No. We follow the Association of American Feed Control Officials' (AAFCO) standards, which strictly prohibit the use of 3D or 4D meat such as dead, dying, disabled, or diseased animals.

Are you associated with the Evanger's® brand?

No, we are not associated with that brand.

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EXHIBIT B

GRAVY TRAIN[®] CANNED/WET DOG FOOD UPDATE

Above all, we are a company that loves pets and understands the responsibility we have in providing high quality food for the pets our consumers love.

Veterinarians and animal nutrition specialists, as well as the FDA, have confirmed that extremely low levels of pentobarbital, like the levels referenced in this report, do not pose a threat to pet safety. However, the presence of this substance at any level is not acceptable to us and not up to our quality standards. We sincerely apologize for the concern this has caused.

Out of an abundance of caution we initiated a voluntary withdrawal on specific shipments of *Gravy Train*[®] canned/wet dog food because they do not meet our quality specifications.

Please know our internal investigation into this situation is ongoing. We take this very seriously and are extremely disappointed that pentobarbital was introduced to our supply chain. We have narrowed the focus of our investigation to a single supplier and a single, minor ingredient, used at one manufacturing facility. We will take the appropriate steps to ensure this does not occur again.

We will continue to work closely with our suppliers and veterinarians to ensure the ingredients used in our products meet or exceed all regulatory safety standards and our high-quality standards. We are committed to ensuring pet owners can continue to feel confident that they are making the best decision for their pets when they choose our brand.

If you have questions, please call us at 800-828-9980 or email us [here](#).

ADDITIONAL INFORMATION

What products are impacted?

Item Name	UPC Item Code(s)
Gravy Train 13.2 oz. with T-Bone Flavor Chunks	7910052541
Gravy Train 13.2 oz. with Beef Strips	7910052542

Gravy Train 22 oz. with Chicken Chunks	7910051645
Gravy Train 22 oz. with Beef Chunks	7910051647
Gravy Train 13.2 oz. with Beef Chunks	7910034417
Gravy Train 13.2 oz. with Chicken Chunks	7910034418
Gravy Train 13.2 oz. Chunks in Gravy Stew	7910051933
Gravy Train 13.2 oz. Chicken, Beef & Liver Medley	7910051934
Gravy Train 13.2 oz. Chunks in Gravy with Beef Chunks	7910034417

What should I do with the *Gravy Train*[®] wet dog food I have at home now?

Although veterinarians and animal nutrition specialists, as well as the FDA, have confirmed that extremely low levels of pentobarbital do not pose a threat to pet safety, we understand you may have concerns. Please contact us 800-828-9980 or via email [here](#).

Are you removing this product from stores?

Out of an abundance of caution we initiated a voluntary withdrawal on specific shipments of *Gravy Train*[®] canned/wet dog food from the warehouses of our retail partners because they do not meet our quality specifications.

What do I do if I suspect my pet has become ill because of this issue?

If your pet is ill or if you have concerns about your pet's health for any reason, we recommend you consult your veterinarian. Veterinarians and animal nutrition specialists, as well as the FDA, have confirmed that extremely low levels of the substance in question do not pose a threat to pet safety.

Do you use 3D or 4D meat (euthanized animals/pets) in your pet food?

No. We do not use 3D or 4D meat such as dead, dying, disabled, or diseased animals.

Item Name	UFC Item Code(s)
Kibbles 'N Bits 13.2 oz. Burger Bacon Cheese and Turkey Bacon Vegetable Variety 12-Pack	7910010377 7910010378
Kibbles 'N Bits 13.2 oz. Beef, Chicken, Vegetable, Meatball Pasta and Turkey Bacon Vegetable Var. Pack	7910010382 7910048367 7910010378
Kibbles 'N Bits 13.2 oz. Beef, Chicken, Vegetable, Burger Bacon Cheese and Beef Vegetable Variety Pack	7910010380 7910010377 7910010375
Kibbles 'N Bits 13.2 oz. Wet Variety Pack	7910010375 7910048367
Kibbles 'N Bits 13.2 oz. Chef's Choice Bistro Tender Cuts with Real Beef & Vegetable in Gravy	7910010375 7910048367
Kibbles 'N Bits Chef's Choice Homestyle Tender Slices with Real Beef, Chicken & Vegetables in Gravy	7910010380
Kibbles 'N Bits Chef's Choice Bistro Tender Cuts with Real Turkey, Bacon & Vegetable in Gravy	7910010378
Skippy 13.2 oz. Premium Select Cuts in Gravy with Beef & Bone Marrow	7910071860
Skippy 13.2 oz. Premium Select Cuts with Burgers & Cheese Bits	7910050243
Skippy 13.2 oz. Premium Chunks in Gravy with Smoky Turkey & Bacon	7910050246
Skippy 13.2 oz. Premium Chunks in Gravy with Beef & Chicken	7910050247
Skippy 13.2 oz. Premium Chunks in Gravy 3 in 1 Chicken, Beef & Liver	7910050248

Skippy 13.2 oz. Premium Chunks in Gravy with Chicken	7910050244
Skippy 13.2 oz, Premium Chunks in Gravy with Beef	7910050250
Skippy 13.2 oz. Premium Strips in Gravy with Beef	7910050245
Ol' Roy 13.2 oz Turkey Bacon Strips	8113117570

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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

THOMAS ROUPE, Individually and on Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff Putnam Co., GA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Rebecca A. Peterson, Lockridge Grindal Nauen P.L.L.P., 100 Washington Ave. S., #2200, Minneapolis, MN 55401 (612-339-6900)

DEFENDANTS

BIG HEART PET BRANDS, 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 X 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- X 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(d)(2)

Brief description of cause: Contaminated dog food containing pentobarbital

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ JURY DEMAND: X Yes No

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

JUDGE Hon. Jeffrey S. White DOCKET NUMBER 18-cv-00861-JSW

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 03/07/2018

SIGNATURE OF ATTORNEY OF RECORD

s/ Rebecca A. Peterson

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 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 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. 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 Federal Rule of Civil Procedure 8(a), 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.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 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.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 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-CAND 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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no 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 Federal Rule of Civil Procedure 23. 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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Big Heart Pet Brands Facing More Litigation Over Dog Food Allegedly Contaminated with Pentobarbital](#)
