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

14 NANCY STURM, Individually and on  
15 Behalf of All Others Similarly Situated,

16 Plaintiff,

17 v.

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

20 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;  
) (7) BREACH OF IMPLIED  
) WARRANTY;  
) (8) FRAUDULENT CONCEALMENT;  
) AND  
) (9) VIOLATIONS OF ILLINOIS  
) CONSUMER FRAUD AND DECEPTIVE  
) BUSINESS PRACTICES ACT.  
) **DEMAND FOR JURY TRIAL**

1           1.       Plaintiff Nancy Sturm ("Plaintiff"), individually and on behalf of all others  
 2 similarly situated, by and through her undersigned attorneys, bring this Class Action  
 3 Complaint against defendant Big Heart Pet Brands, Inc. ("Defendant"), to cause Defendant  
 4 to disclose 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 her 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").<sup>1</sup> 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 dogs and cats.<sup>2</sup>

22  
 23  
 24 <sup>1</sup> Discovery may reveal additional products that also contain Pentobarbital and Plaintiff reserves  
 25 the right to include any such products in this action.

26 <sup>2</sup>Petplace, "Pentobarbital for Dogs and Cats, July 16, 2015,  
 27 [https://www.petplace.com/article/drug-library/drug-library/library/pentobarbital-for-dogs-and-](https://www.petplace.com/article/drug-library/drug-library/library/pentobarbital-for-dogs-and-cats/)  
 28 [cats/](https://www.petplace.com/article/drug-library/drug-library/library/pentobarbital-for-dogs-and-cats/)

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

- Tyalism (salivation)
- Emesis (vomiting)
- Stool changes (soft to liquid stools, blood, mucus, urgency, explosive nature, etc.)
- Hyporexia (decreased appetite)
- Lethargy/depression
- Neurologic abnormalities (tremor, seizure, vocalization, unusual eye movements)
- Ataxia (difficulty walking)
- Collapse
- Coma
- Death<sup>4</sup>

4. Despite laws governing pet foods and providing government oversight, “[p]et food manufacturers are responsible for taking appropriate steps to ensure that the food they produce is safe for consumption and properly labeled including verifying the identity and safety of the ingredients from suppliers.”<sup>5</sup>

5. “It is not acceptable to use animals euthanized with a chemical substance in pet or other animal foods...The detection of pentobarbital in pet food renders the product adulterated. It is the responsibly of the manufacturer to take the appropriate steps to ensure that the food they produce is safe for consumption and properly labeled.”<sup>6</sup>

<sup>3</sup><http://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm>

<sup>4</sup>The Honest Kitchen, “Pentobarbital- What Is It, How it Entered the Pet Food Supply Chain, and what You Can Do To Protect Your Canines & Felines,” (Mar. 1, 2017), *available at* <https://www.thehonestkitchen.com/blog/pentobarbital-entered-pet-food-supply-chain-can-protect-pet/>

<sup>5</sup><https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm> (last visited Feb. 5, 2018)

<sup>6</sup> *Id.*

1           6.       Pentobarbital residue from euthanized animals will continue to be present in  
2 pet food, even if it is rendered or canned at a high temperature or pressure.<sup>7</sup>

3           7.       Pentobarbital is routinely used to euthanize animals, and the most likely way  
4 it could get into dog food would be in rendered animal products. Rendered products come  
5 from a process that converts animal tissues to feed ingredients, including tissues from  
6 animals that were euthanized, decomposed or diseased. Pentobarbital from euthanized  
7 animals survives the rendering process and could be present in the rendered feed  
8 ingredients used in pet food.

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

11           9.       Historically, the FDA has not aggressively taken action under the FDCA, §  
12 342 (a)(1) or (5), against the pet food companies that it found to have used non-slaughtered  
13 animals and contain pentobarbital in their pet foods. Therefore, manufacturers in the pet  
14 food industry, including Defendant, have continued their illegal practice of using non-  
15 slaughtered animals that may contain poisonous substances, like pentobarbital, in their pet  
16 foods.

17           10.      It has been recently revealed that Defendant was knowingly, recklessly  
18 and/or negligently selling contaminated dog food containing pentobarbital, a substance  
19 largely used to euthanize animals.

20           11.      On February 8, 2018, it was reported on WJLA, an ABC network affiliate in  
21 Washington, D.C., that an independent investigation determined that the Contaminated  
22 Dog Foods contained pentobarbital. The independent investigation utilized two  
23 independent labs and both showed the inclusion of pentobarbital the Contaminated Dog  
24 Foods.

25           12.      This independent seven-month investigation determined that the  
26 Contaminated Dog Foods contained pentobarbital. The independent investigation utilized

27 \_\_\_\_\_  
28 <sup>7</sup> *Id.*

two different labs and both showed that the Contaminated Dog Foods tested positive for pentobarbital. In fact, it was the only brand that tested positive for pentobarbital.<sup>8</sup>

13. The report further stated that pentobarbital is not used on farm animals and questioned where the pentobarbital is coming from if it is not from euthanized dogs, cats, or horses. Defendant did not respond to the specific questions raised and instead stated in a press release: “We launched and are conducting a thorough investigation, including working closely with our suppliers, to determine the accuracy of these results and the methodology used.”<sup>9</sup>

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

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

15. In this same statement, Defendant admitted that pentobarbital is “[ ] not something that is added to the pet food. However, it could unintentionally be in raw materials provided by the 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.” *Id.*

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

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<sup>8</sup><http://wjla.com/features/7-on-your-side/fda-to-investigate-after-abc7-exposes-euthanasia-drug-in-dog-food>

<sup>9</sup> *Id.*

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

4           18. Within days of the public revelation that the Contaminate Dog Foods contain  
5 pentobarbital, Defendant voluntarily withdrew 27 products, including 10 Gravy Train wet  
6 food products.<sup>10</sup> The voluntary withdrawal included the additional brands of Kibble N'  
7 Bits, Skippy and Ol' Roy.

8           19. Defendant has yet to disclose its testing results or the name of the  
9 manufacturing plant and/or supplier that it references as the suspected source of the  
10 contaminated raw materials containing pentobarbital.

11           20. On February 16, 2018, the FDA issued an alert to consumers addressing the  
12 voluntarily withdrawal of the 27 products by Defendant. In this alert, the FDA states: "The  
13 FDA's preliminary evaluation of the testing results of Gravy Train samples indicates  
14 that the low level of pentobarbital present in the withdrawn products is unlikely to  
15 pose a health risk to pets. However, pentobarbital should never be present in pet food  
16 and products containing any amount of pentobarbital are considered to be  
17 adulterated."<sup>11</sup>

18           21. This same alert further states: "Pentobarbital is a barbiturate drug that is  
19 most commonly used in animals as a sedative, anesthetic, or for euthanasia. The  
20 FDA's preliminary evaluation of the testing results of Gravy Train samples indicates  
21 that the low level of pentobarbital present in the withdrawn products is unlikely to  
22 pose a health risk to pets. However, any detection of pentobarbital in pet food is a  
23 violation of the Federal Food, Drug, and Cosmetic Act—simply put, pentobarbital  
24 should not be in pet food. The FDA is investigating to learn the potential source and  
25 route of the contamination."

26 \_\_\_\_\_  
27 <sup>10</sup> <http://www.gravytraindog.com/information>

28 <sup>11</sup> <https://www.fda.gov/animalveterinary/newsevents/ucm597135.htm>

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

**DEFENDANT KNOWINGLY MISLEADS CONSUMERS THROUGH ITS REPRESENTATIONS, PACKAGING, LABELS, STATEMENTS, WARRANTIES AND SELLING THE CONTAMINATED DOG FOODS AS UNADULTERATED**

23. Defendant falsely advertises the Contaminated Dog Foods as complete nutrition, quality and healthy while omitting they are adulterated with Pentobarbital.

24. Defendant formulates, develops, manufactures, labels, distributes, markets, advertises, and sells its extensive Gravy Train lines of dry and wet pet food products in California and across the United States. Indeed, Defendant maintains it keeps rigorous quality and supplier standards from “start to finish” and performs three-tier auditing that includes, third party auditors, to ensure pure ingredients and fair labor are used in its Products, including Contaminated Dog Foods. As such, Defendant knew that the Contaminated Dog Foods were adulterated pet food.<sup>12</sup>

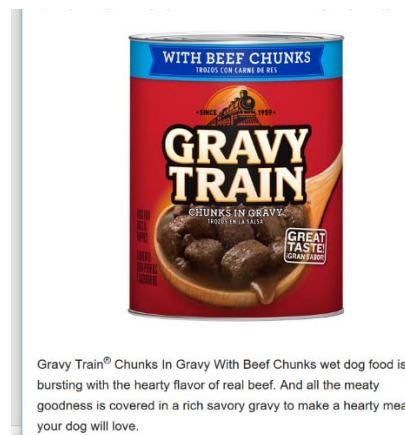
25. Defendant also knew the real risk that pentobarbital may appear in the Contaminated Dog Foods if the manufacturing and sourcing were not properly monitored. Indeed, this is not the first time that the Gravy Train line of food has been determined to include pentobarbital: “Back in 2001, analyses by the FDA found residue of the sedative in popular brands like Nutro, Gravy Train and Kibbles ‘n Bits.”<sup>13</sup>

<sup>12</sup> <http://www.bigheartpet.com/assets/CR-Policy.pdf>

<sup>13</sup> <https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html>

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

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



28. Defendant's claim that the Contaminated Dog Foods are "100 percent complete and balanced nutrition" without any mention that the Contaminated Dog Foods are in fact adulterated and contain Pentobarbital.<sup>14</sup>

#### ABOUT THIS ITEM

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

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

<sup>14</sup>Walmart, Gravy Train T-Bone Flavor Wet Dog Food, <https://www.walmart.com/ip/Gravy-Train-T-Bone-Flavor-Wet-Dog-Food-13-2-Oz/44465093#read-more>



29. Defendant's omissions are not only material but also false, misleading, and reasonably likely to deceive the public. This is true especially in light of the long-standing campaign by Defendant to market all its products, including the Contaminated Dog Foods and "providing safe, healthy, and high quality food" with the as healthy and safe with "the purest ingredients"<sup>15</sup>

30. Moreover, Defendant's Corporate Responsibility Policy says the top priority is the "safety and quality" of its products: <sup>16</sup>

**Pet food safety and quality.** *Big Heart Pet Brands top priority is the safety and quality of our products. Our goal is to produce the finest pet food products available on the market today. All of our products are made under a system of strict food safety and quality controls combined with ongoing inspection and monitoring. All of our programs are designed to exceed the Global Food Safety Initiative standards. Our products are made 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.*

31. In this same document, Defendant claims that it has a "rigorous supplier approval process" and only purchases ingredients from "reputable suppliers." And Defendant goes further to declare, that once a supplier is approved, "a comprehensive testing program is in place to assess the safety and quality of the ingredients upon receipt. This includes a combination of laboratory analysis and physical inspection of the ingredients."<sup>17</sup>

<sup>15</sup>Big Heart Pet Brands, "Pets," <http://www.bigheartpet.com/corporate-responsibility/pets.aspx>

<sup>16</sup>Big Heart Pet Brands, "Corporate Responsibility Policy," <http://www.bigheartpet.com/assets/CR-Policy.pdf>

<sup>17</sup> *Id.*

32. Finally, Defendant highlights the strict oversight it supposedly applies across all its brands, include Gravy Train, to ensure high quality products “from start to finish, inside and out.”<sup>18</sup>

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

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

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

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

35. In fact, Defendant made affirmative misleading representations that its Products, including the Contaminated Dog Foods, were not adulterated or would contain

<sup>18</sup>Big Heart Pet Brands, “Corporate Responsibility Summary 2014,” <http://www.bigheartpet.com/assets/CorporateResponsibilitySummaryBrochure2014.pdf>

1 any controlled substance, including Pentobarbital. Specifically, Defendant promises to its  
2 consumers that all produces meets USDA, AAFCO and FDA standards.<sup>19</sup>

3 36. This is untrue as the Contaminated Dog Foods are adulterated, which is not  
4 proper under state and federal laws and regulations. Specifically, under the FDCA, a food  
5 is adulterated if it “bears or contains any poisonous or deleterious substance which may  
6 render it injurious to health.” 21 U.S.C. §342. Under California law, pet food is considered  
7 adulterated if “it bears or contains any poisonous or deleterious substance that may render  
8 it injurious to health...” or “if damage or inferiority has been concealed in any manner.”  
9 Cal. Health & Safety Code §113090(a), (h). California’s statute also provides that pet food  
10 ingredients “of animal or poultry origin shall be only from animals or poultry slaughtered  
11 or processed in an approved or licensed establishment... Animal or poultry classified as  
12 ‘deads’ are prohibited.” Cal. Health & Safety Code §113035. Illinois likewise prohibits the  
13 sale of adulterated food such as the Contaminated Dog Foods under 505 Ill. Comp. Stat.  
14 Ann. 30/11.1.

15 37. The Contaminated Dog Foods are widely advertised.

16 38. The Defendant's webpage and adopted corporate policies repeatedly make  
17 the misleading statements about the Contaminated Dog Foods described above, without  
18 any mention of Pentobarbital, a substance largely used to euthanize animals or that  
19 Defendant utilized animals that have been euthanized as a protein or meat by-product  
20 source.

21 39. As a result of Defendant's omissions and misrepresentations, a reasonable  
22 consumer would have no reason to suspect the presence of Pentobarbital without  
23 conducting his or her own scientific tests, or reviewing third-party scientific testing of these  
24 products.

25 40. Consumers have increasingly become more aware and cautious about the  
26 nutritional value and ingredients in the pet food they chose to purchase.

27 \_\_\_\_\_  
28 <sup>19</sup> <http://www.bigheartpet.com/assets/CR-Policy.pdf>

1           41.     Additionally, Defendant knew that a consumer would be feeding the  
2 Contaminated Dog Foods multiple times each day to his or her dog. This leads to repeated  
3 exposure of the barbiturate to the dog(s).

4           42.     A reasonable consumer, such as Plaintiff and other members of the Class (as  
5 defined herein), would have no reason to expect and anticipate that the Contaminated Dog  
6 Foods are made up of anything other than pure ingredients from reputable suppliers and  
7 that quality is the top priority as promised by Defendant. Non-disclosure and concealment  
8 of any level of Pentobarbital or utilization of animals that have been euthanized as a protein  
9 or meat by-product source in the Contaminated Dog Foods coupled with the partial  
10 disclosures and/or misrepresentations that the food is pure, quality, healthy and safe by  
11 Defendant is intended to and does, in fact, cause consumers to purchase a product Plaintiff  
12 and Class members would not have bought the Contaminated Dog Foods at all if the true  
13 quality and ingredients were disclosed, including that the fact the Contaminated Dog Foods  
14 are adulterated. As a result of these false statements, omissions, and concealment,  
15 Defendant has generated substantial sales of the Contaminated Dog Foods.

16           43.     Plaintiff brings this action individually and on behalf of all other similarly  
17 situated consumers within the United States who purchased the Contaminated Dog Foods,  
18 in order to cause the disclosure of the inclusion of Pentobarbital and/or the utilization of  
19 euthanized animals as a protein or meat by-product source in the Contaminated Dog Foods,  
20 to correct the false and misleading perception Defendant has created in the minds of  
21 consumers that the Contaminated Dog Foods are high quality, safe, and healthy and to  
22 obtain redress for those who have purchased the Contaminated Dog Foods.

23                           **JURISDICTION AND VENUE**

24           44.     This Court has original jurisdiction over all causes of action asserted herein  
25 under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the matter in  
26 controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs and  
27 more than two-thirds of the Class reside in states other than the states in which Defendant  
28

1 is a citizen and in which this case is filed, and therefore any exemptions to jurisdiction  
2 under 28 U.S.C. §1332(d) do not apply.

3 45. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because Plaintiff  
4 suffered injury as a result of Defendant's acts in this district, many of the acts and  
5 transactions giving rise to this action occurred in this district, Defendant conducts  
6 substantial business in this district, Defendant has intentionally availed themselves of the  
7 laws and markets of this district, and Defendant is subject to personal jurisdiction in this  
8 district.

### 9 **INTRADISTRICT ASSIGNMENT**

10 46. A substantial portion of the transactions and wrongdoings which gave rise to  
11 the claims in this action occurred in the County of Marin, and as such, this action is properly  
12 assigned to the San Francisco division of this Court.

### 13 **THE PARTIES**

14 47. Plaintiff Nancy Sturm ("Plaintiff") is, and at all times relevant hereto has  
15 been, a citizen of the State of Illinois. Plaintiff purchased certain lines of the Contaminated  
16 Dog Foods (including Gravy Train Chunks in Gravy with Beef Chunks and Gravy Train  
17 Chunks in Gravy with Lamb and Rice Chunks) and fed the Contaminated Dog Foods to  
18 her six rescue dogs: Angel, a 17 year old boxer/beagle mix; Penny, a 10 year old terrier  
19 mix; Sugar and Boots, who are 6 year old sisters that are black lab and golden retriever  
20 mixes; Dottie, a 4 year old Australian shepherd and bluetick coonhound mix; and Maggie  
21 a 9 month old mix breed puppy. Plaintiff Sturm considers her rescue dogs as part of her  
22 family and trusted in Defendant when purchasing the Contaminated Dog Foods.

23 48. Plaintiff has been purchasing the Contaminated Dog Foods for over five  
24 years and her last purchase was approximately February 1, 2018. Plaintiff no longer  
25 purchases the Contaminated Dog Foods after learning of the inclusion of pentobarbital.  
26 Plaintiff primarily purchased the Contaminated Dog Foods from her local Walmart.  
27 During that time, based on the false and misleading claims, warranties, representations,  
28 advertisements and other marketing by Defendant, Plaintiff was unaware that the

1 Contaminated Dog Foods contained any level of Pentobarbital, a substance largely used to  
2 euthanize animals. Plaintiff was injured by purchasing the Contaminated Dog Foods that  
3 had no value or *de minimis* value as they were adulterated.

4 49. As the result of Defendant's deceptive and negligent conduct alleged herein,  
5 Plaintiff was injured when she purchased the Contaminated Dog Foods, which did not  
6 deliver what Defendant promised and had no value or *de minimis* value as they were  
7 adulterated. Plaintiff was further injured as she did business with a Company she would  
8 not have if she knew that the Contaminated Dog Foods contained any level of pentobarbital  
9 or that Defendant utilized animals that have been euthanized as a protein source. She  
10 purchased the adulterated Contaminated Dog Foods on the assumption that the labeling of  
11 the Contaminated Dog Foods was accurate and that it was unadulterated, pure, high quality,  
12 healthy and safe for dogs to ingest and did not include euthanized animals as a protein  
13 source. Further, should Plaintiff encounter the Contaminated Dog Foods in the future, she  
14 could not rely on the truthfulness of the packaging, absent corrective changes to the  
15 packaging and advertising of the Contaminated Dog Foods.

16 50. Defendant Big Heart Pet Brands, Inc, is a subsidiary of J.M. Smucker  
17 Company and its headquarters are located at One Maritime Plaza, San Francisco,  
18 California. Defendant manufactures, formulates, produces, distributes, labels, markets,  
19 advertises, and sells the Contaminated Dog Foods under the Gravy Train dog food brand  
20 name throughout the United States. The advertising for the Contaminated Dog Foods,  
21 relied upon by Plaintiff, was prepared and/or approved by Defendant and their agents, and  
22 was disseminated by Defendant and its agents through advertising and labeling that  
23 contained the misrepresentations and omissions alleged herein. The advertising and  
24 labeling for the Contaminated Dog Foods was designed to encourage consumers to  
25 purchase the Contaminated Dog Foods and reasonably misled the reasonable consumer,  
26 i.e., Plaintiff and the Class, into purchasing the Contaminated Dog Foods. Defendant owns,  
27 manufactures, and distributes the Contaminated Dog Foods, and created and/or authorized  
28

the unlawful, fraudulent, unfair, misleading, and/or deceptive labeling and advertising for the Contaminated Dog Foods.

51. The Contaminated Dog Foods, at a minimum, include:

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



1 / 2

(b) Gravy Train with Beef Chunks:





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



(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:



(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:



**DEFENDANT'S STATEMENTS AND  
OMISSIONS VIOLATE CALIFORNIA AND ILLINOIS LAWS**

52. California and Illinois laws are designed to ensure that a company's claims about its products are truthful and accurate. Defendant violated California and Illinois laws by incorrectly claiming that the Contaminated Dog Foods are nourishing, pure, healthy, quality, and safe and offers 100 percent complete and balanced nutrition with the purest ingredients while meeting all relevant federal regulations when in fact the Contaminated Dog Foods are adulterated and contain a controlled substance that is not nourishing, healthy, quality or pure and causes the product not to meet the so-called rigorous supplier standards utilized by Defendant. Indeed, Defendant chose to omit that the Contaminated Dog Foods were adulterated, contained Pentobarbital and/or that Defendant utilized animals that have been euthanized as a protein source in the Contaminated Dog Foods.

53. Defendant's marketing and advertising campaign has been sufficiently lengthy in duration, and widespread in dissemination.

54. Defendant has engaged in this long-term advertising campaign to convince potential customers that the Contaminated Dog Foods are pure, quality, healthy, and safe for consumption and offer 100 percent complete and balanced nutrition with the purest ingredients.

**PLAINTIFF'S RELIANCE WAS  
REASONABLE AND FORESEEN BY DEFENDANT**

55. Plaintiff reasonably relied on Defendant's own statements, misrepresentations, omissions and advertising concerning the particular qualities and benefits of the Contaminated Dog Foods.

56. Plaintiff read and relied upon the labels of the Contaminated Dog Foods in making her purchasing decisions.

57. A reasonable consumer would consider the labeling of a product when deciding whether to purchase. Here, Plaintiff relied on the specific statements and misrepresentations by Defendant, who did not disclose that the Contaminated Dog Foods were adulterated or contained Pentobarbital, a substance largely used to euthanize animals.

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

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

59. Defendant also had notice of the real risk that pentobarbital may appear in the Contaminated Dog Foods if the manufacturing and sourcing were not properly monitored. Indeed, this is not the first time that the Gravy Train line of food has been determined to include pentobarbital.<sup>20</sup>

**PRIVITY EXISTS WITH PLAINTIFFS AND THE PROPOSED CLASS**

60. Defendant knew that consumers such as Plaintiff and the proposed Class would be the end purchasers of the Contaminated Dog Foods and the targets of its advertising and statements.

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<sup>20</sup> <https://www.care2.com/causes/fda-says-pet-food-company-cannot-donate-recalled-products-to-shelter.html>

61. Defendant intended that the advertising, labeling, statements, and representations would be considered by the end purchasers of the Contaminated Dog Foods, including Plaintiff and the proposed Class.

62. Defendant directly marketed to Plaintiff and the proposed Class through statements on its website, labeling, advertising, and packaging.

63. Plaintiff and the proposed Class are the intended beneficiaries of the expressed and implied warranties.

### **CLASS ACTION ALLEGATIONS**

64. Plaintiff brings this action individually and on behalf of the following Class pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:

All persons who are citizens of the United States who, from February 1, 2008 to the present, purchased the Contaminated Dog Foods for household or business use, and not for resale (the "Class").

65. Plaintiff also brings this action individually and on behalf of the following Subclass pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:

All persons who are citizens of the Illinois who, from February 1, 2008 to the present, purchased the Contaminated Dog Foods for household or business use, and not for resale (the "Subclass").

66. Excluded from the Class and Subclass (collectively "Classes") are the Defendant, any parent companies, subsidiaries, and/or affiliates, officers, directors, legal representatives, employees, co-conspirators, all governmental entities, and any judge, justice, or judicial officer presiding over this matter.

67. This action is brought and may be properly maintained as a class action. There is a well-defined community of interests in this litigation and the members of the Classes are easily ascertainable.

1           68.     The members in the proposed Classes are so numerous that individual joinder  
2 of all members is impracticable, and the disposition of the claims of all Class members in  
3 a single action will provide substantial benefits to the parties and Court.

4           69.     Questions of law and fact common to Plaintiffs and the Classes include, but  
5 are not limited to, the following:

6                   (a)     whether Defendant owed a duty of care to the Classes;

7                   (b)     whether Defendant knew or should have known that the Contaminated  
8 Dog Foods were adulterated or contained Pentobarbital;

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

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

13                   (e)     whether Defendant failed to state that the Contaminated Dog Foods  
14 are in fact adulterated under Federal and California law;

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

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

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

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

23                   (j)     whether a representation that a product is healthy, pure, quality and  
24 nutritious coupled with omissions that the Contaminated Dog Foods were adulterated or  
25 contained Pentobarbital is material to a reasonable consumer;

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

28

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

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

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

7 (o) whether Defendant violated Illinois Consumer Fraud and Deceptive  
8 Business Practices Act;

9 (p) whether Defendant's conduct was negligent per se under applicable  
10 law;

11 (q) whether Plaintiff and the members of the Classes are entitled to actual,  
12 statutory, and punitive damages; and

13 (r) whether Plaintiff and members of the Classes are entitled to  
14 declaratory and injunctive relief.

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

20 71. Plaintiff's claims are typical of Class and Subclass members' claims in that  
21 they are based on the same underlying facts, events, and circumstances relating to  
22 Defendant's conduct.

23 72. Plaintiff will fairly and adequately represent and protect the interests of the  
24 Classes, have no interests incompatible with the interests of the Classes, and have retained  
25 counsel competent and experienced in class action, consumer protection, and false  
26 advertising litigation.

27 73. Class treatment is superior to other options for resolution of the controversy  
28 because the relief sought for each Class and Subclass member is small such that, absent

1 representative litigation, it would be infeasible for Class and Subclass members to redress  
2 the wrongs done to them.

3 74. Questions of law and fact common to the Classes predominate over any  
4 questions affecting only individual Class and Subclass members.

5 75. As a result of the foregoing, class treatment is appropriate.

6 **COUNT I**

7 **(Negligent Misrepresentation Against Defendant on Behalf of the Class)**

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

10 77. Plaintiff reasonably placed her trust and reliance in Defendant's  
11 representations that the Contaminated Dog Foods are healthy, safe, pure, high quality, and  
12 that it was not adulterated with substances such as Pentobarbital.

13 78. Plaintiff reasonably placed her trust and reliance in Defendant to disclose if  
14 the Contaminated Dog Foods were adulterated, contained Pentobarbital or utilized  
15 euthanized animals as a protein or meat by-product source.

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

20 80. Defendant breached its duty to Plaintiff and the Class by providing false,  
21 misleading, partial disclosures and/or deceptive information regarding the true nature,  
22 quality and ingredients of the Contaminated Dog Foods.

23 81. Plaintiff and the Class reasonably and justifiably relied upon the information  
24 supplied to them by the Defendant. As a result, Plaintiff and the Class purchased the  
25 Contaminated Dog Foods that should not have been sold at all as it was adulterated.

26 82. Defendant failed to use reasonable care in its communications and  
27 representations to Plaintiff and Class.

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

**COUNT II**

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

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

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

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

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

88. 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).

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

90. 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 make any mention that the Contaminated Dog Foods were in fact adulterated by containing the controlled substance of Pentobarbital

91. 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 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.

92. As a direct and proximate result of these violations, Plaintiff and the Class have been harmed, and that harm will continue unless Defendant is enjoined from using the misleading marketing described herein in any manner in connection with the advertising and sale of the Contaminated Dog Foods.

93. Plaintiff seeks an award of attorney's fees pursuant to, inter alia, California Civil Code section 1780(e) and California Code of Civil Procedure section 1021.5.

### **COUNT III**

#### **(Violations of California False Advertising Law, California Business & Professions Code §§17500, *Et Seq.*, Against Defendant on Behalf of the Class)**

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

95. California's False Advertising Law prohibits any statement in connection with the sale of goods "which is untrue or misleading." Cal. Bus. & Prof. Code §17500.

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

97. Defendant's claims that the Contaminated Dog Foods are pure, quality, healthy and safe for consumption are untrue or misleading because these claims fail to disclose that the Contaminated Dog Foods were in fact adulterated by containing the controlled substance of Pentobarbital.

98. Defendant's claim that the Contaminated Dog Foods are 100 percent complete and balanced nutrition are untrue or misleading because it fails to disclose that the Contaminated Dog Foods were in fact adulterated by containing the controlled substance of Pentobarbital.

99. Defendant knew, or reasonably should have known, that the claims were untrue or misleading.

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

101. Plaintiff and members of the Class are entitled to injunctive and equitable relief, and restitution in the amount they spent on the Contaminated Dog Foods.

#### **COUNT IV**

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

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

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

#### **Fraudulent**

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

#### **Unlawful**

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

- The CLRA, California Business & Professions Code sections 1750, *et seq.*;
- and

1 • The False Advertising Law, California Business & Professions Code  
2 sections 17500, *et seq.*

3 **Unfair**

4 106. Defendant's conduct with respect to the labeling, advertising, marketing, and  
5 sale of the Contaminated Dog Foods is unfair because Defendant's conduct was immoral,  
6 unethical, unscrupulous, or substantially injurious to consumers and the utility of its  
7 conduct, if any, does not outweigh the gravity of the harm to its victims.

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

12 108. Defendant's conduct with respect to the labeling, advertising, marketing, and  
13 sale of the Contaminated Dog Foods is also unfair because the consumer injury is  
14 substantial, not outweighed by benefits to consumers or competition, and not one  
15 consumers, themselves, can reasonably avoid.

16 109. In accordance with California Business & Professions Code section 17203,  
17 Plaintiff seeks an order enjoining Defendant from continuing to conduct business through  
18 fraudulent or unlawful acts and practices and to commence a corrective advertising  
19 campaign. Defendant's conduct is ongoing and continuing, such that prospective  
20 injunctive relief is necessary.

21 110. On behalf of herself and the Class, Plaintiff also seeks an order for the  
22 restitution of all monies from the sale the Contaminated Dog Foods, which were unjustly  
23 acquired through acts of fraudulent, unfair, or unlawful competition.

24 **COUNT V**

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

26 111. Plaintiff incorporates by reference and realleges each and every allegation  
27 contained above, as though fully set forth herein.  
28

112. Defendant's conduct is negligent per se under California and Illinois law.

113. As set forth above, Defendant violated its statutory duties under California's CLRA and FLA and the Illinois Consumer Fraud and Deceptive Business Practices Act by falsely representing that the Contaminated Dog Foods are pure, quality, healthy, nutritious and safe for consumption while at the same time failing to disclose that the Contaminated Dog Foods contained the controlled substance of pentobarbital.

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

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

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

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

#### **COUNT VI**

#### **(Breach of Express Warranty, California Commercial Code §2313, Against Defendant on Behalf of the Class)**

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

119. As set forth herein, Defendant made express representations to Plaintiff and the Class that the Contaminated Dog Foods are pure, quality, healthy and safe for consumption and are 100 percent complete and balanced nutrition.

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

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

6           122. There was a sale of goods from Defendant to Plaintiff and the Class members.

7           123. On the basis of these express warranties, Defendant sold to Plaintiff and the  
8 Class the Contaminated Dog Foods.

9           124. Defendant knowingly breached the express warranties by selling the  
10 Contaminated Dog Foods which are adulterated and contain Pentobarbital.

11           125. 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           126. Privity exists because Defendant expressly warranted to Plaintiff and the  
15 Class that the Contaminated Dog Foods were pure, quality, healthy and safe for  
16 consumption and provided 100 percent complete and balanced nutrition and unadulterated.

17           127. Plaintiff and the Class reasonably relied on the express warranties by  
18 Defendant.

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

23           129. Plaintiff on behalf of herself and the Class, seeks actual damages for  
24 Defendant's breach of warranty.

**COUNT VII**

**(Breach of Implied Warranty, California Commercial Code  
§2314, Against Defendant on Behalf of the Class)**

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

131. As set forth herein, the Contaminated Dog Foods are not fit for the ordinary purposes as they were adulterated or similarly contaminated under California Health & Safety Code §§ 113075 and 113090 (prohibiting “manufacture” of pet food that is “adulterated” because it contains “poisonous or deleterious substance[s]”) and 113095 (prohibiting “false or misleading” labeling) as alleged herein.

132. Defendant is a merchant engaging in the sale of goods to Plaintiff and the Class.

133. There was a sale of goods from Defendant to Plaintiff and the Class members.

134. 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.

135. 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.

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

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

138. Plaintiff, on behalf of herself and the Class, seeks actual damages for Defendant's breach of warranty.

**COUNT VIII**

**(Fraudulent Concealment Against Defendant on Behalf of the Class)**

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

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

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

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

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

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





1           152. Defendant engaged in unfair or deceptive practices in violation of Illinois’  
2 Consumer Fraud and Deceptive Business Practices Act 815 Ill. Comp. Stat. 505/1 *et seq.*  
3 (2008) (hereinafter, “ICFA”) when it claimed that the Contaminated Dog Foods were pure,  
4 quality, healthy and safe for consumption. These claims are untrue or misleading because  
5 they fail to disclose that the Contaminated Dog Foods were in fact adulterated by the  
6 controlled substance of pentobarbital and instead claimed that the Contaminated Dog  
7 Foods provide 100 percent complete and balanced nutrition..

8           153. Defendant either knew or should have known its Contaminated Dog Foods  
9 were adulterated and were not as warranted and represented on the labeling, packaging,  
10 advertising, statements and public sales of the Contaminated Dog Foods.

11           154. Defendant’s conduct and omissions described herein repeatedly occurred in  
12 Defendant’s trade or business and were capable of deceiving a substantial portion of the  
13 consuming public.

14           155. The facts concealed or not disclosed by Defendant are material facts in that  
15 Plaintiff and any reasonable consumer would have considered those facts important in  
16 deciding whether to purchase the Contaminated Dog Foods. Had Plaintiff and the Subclass  
17 known that the Contaminated Dog Foods were in fact adulterated by containing the  
18 controlled substance of pentobarbital they would not have purchased the Contaminated  
19 Dog Foods.

20           156. Defendant intended that Plaintiffs and the Subclass would rely on the  
21 deception in purchasing the Contaminated Dog Foods, unaware of the undisclosed material  
22 facts. Defendant knew that Plaintiffs and the Subclass would rely on its packaging, labels,  
23 advertisements, statements and other public sales of the Contaminated Dog Foods as an  
24 unadulterated. This conduct constitutes consumer fraud within the meaning of the various  
25 consumer protection statutes.

26           157. Defendant’s unlawful conduct is continuing.

27           158. As a direct and proximate result of the deceptive, misleading, unfair and  
28 unconscionable practices of the Defendant set forth above, Plaintiff and Subclass Members

1 are entitled to actual damages, compensatory damages, penalties, attorney's fees and costs  
2 as set forth in Section 10a of the ICFA.

3 159. Defendant's deceptive, misleading, unfair and unconscionable practices set  
4 forth above were done willfully, wantonly and maliciously entitling Plaintiff and Subclass  
5 members to an award of punitive damages.

6 **PRAYER FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

7 J. An order awarding attorneys' fees and costs to Plaintiff, the Class, and the  
8 Class; and

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

11  
12 **JURY DEMAND**

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

14 Dated: February 21, 2018

LOCKRIDGE GRINDAL NAUEN P.L.L.P.  
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Attorneys for Plaintiff

# EXHIBIT A

## GRAVY TRAIN<sup>®</sup> WET DOG FOOD NEWS COVERAGE

You may have seen claims questioning the safety of *Gravy Train*<sup>®</sup> wet dog food in recent news coverage. Please know these claims are related to nine cans of *Gravy Train*<sup>®</sup> 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*<sup>®</sup> 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.

[Privacy Policy](#)

[Terms of Use](#)

[Contact Us](#)

©/TM/® Big Heart Pet, Inc.



# EXHIBIT B

## GRAVY TRAIN<sup>®</sup> 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*<sup>®</sup> 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****UPC 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

NANCY STURM, Individually and on Behalf of All Others Similarly Situated

**(b) County of Residence of First Listed Plaintiff**     Richland Co., IL  
(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  
(For Diversity Cases Only) and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	1	1	Incorporated <i>or</i> Principal Place of Business In This State	4	4
Citizen of Another State	✗ 2	2	Incorporated <i>and</i> Principal Place of Business In Another State	5	✗ 5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

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

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	<b>PERSONAL INJURY</b> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice	<b>PERSONAL INJURY</b> ✕ 365 Personal Injury – Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act	
120 Marine			690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))	
130 Miller Act			<b>LABOR</b>	<b>PROPERTY RIGHTS</b>	400 State Reapportionment	
140 Negotiable Instrument			710 Fair Labor Standards Act	820 Copyrights	410 Antitrust	
150 Recovery of Overpayment Of Veteran's Benefits			720 Labor/Management Relations	830 Patent	430 Banks and Banking	
151 Medicare Act			740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce	
152 Recovery of Defaulted Student Loans (Excludes Veterans)			751 Family and Medical Leave Act	840 Trademark	460 Deportation	
153 Recovery of Overpayment of Veteran's Benefits			790 Other Labor Litigation	<b>SOCIAL SECURITY</b>	470 Racketeer Influenced & Corrupt Organizations	
160 Stockholders' Suits			791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit	
190 Other Contract			<b>IMMIGRATION</b>	862 Black Lung (923)	490 Cable/Sat TV	
195 Contract Product Liability	462 Naturalization Application	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange			
196 Franchise	465 Other Immigration Actions	864 SSID Title XVI	890 Other Statutory Actions			
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	865 RSI (405(g))	891 Agricultural Acts		
210 Land Condemnation	440 Other Civil Rights	<b>HABEAS CORPUS</b>	<b>FEDERAL TAX SUITS</b>	893 Environmental Matters		
220 Foreclosure	441 Voting	463 Alien Detainee	870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act		
230 Rent Lease & Ejectment	442 Employment	510 Motions to Vacate Sentence	871 IRS—Third Party 26 USC § 7609	896 Arbitration		
240 Torts to Land	443 Housing/ Accommodations	530 General		899 Administrative Procedure Act/Review or Appeal of Agency Decision		
245 Tort Product Liability	445 Amer. w/Disabilities—Employment	535 Death Penalty		950 Constitutionality of State Statutes		
290 All Other Real Property	446 Amer. w/Disabilities—Other	<b>OTHER</b>				
	448 Education	540 Mandamus & Other				
		550 Civil Rights				
		555 Prison Condition				
		560 Civil Detainee—Conditions of Confinement				

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

<input checked="" type="checkbox"/> 1	Original Proceeding	<input type="checkbox"/> 2	Removed from State Court	<input type="checkbox"/> 3	Remanded from Appellate Court	<input type="checkbox"/> 4	Reinstated or Reopened	<input type="checkbox"/> 5	Transferred from Another District ( <i>specify</i> )	<input type="checkbox"/> 6	Multidistrict Litigation—Transfer	<input type="checkbox"/> 8	Multidistrict Litigation—Direct File
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## 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 DEMAND \$  
UNDER RULE 23, Fed. R. Civ. P.

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**      ☒ Yes      ☐ No

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

JUDGE Hon. Laurel Beeler

DOCKET NUMBER 3:18-cv-00861

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

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

DATE 02/20/2018

**SIGNATURE OF ATTORNEY OF RECORD**

s/ Rebecca A. Peterson

Print

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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: [Class Action Lawsuit Claims Euthanasia Drug Found in Big Heart Pet Brands Dog Foods](#)

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