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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA, OAKLAND DIVISION

RENÉ C. DAVIDSON COURTHOUSE

 18925598

12 JESIKA VADO, Individually and on Behalf of
13 All Others Similarly Situated,

Case No.

CLASS ACTION COMPLAINT FOR:

Plaintiff,

v.

16 CHAMPION PETFOODS USA, INC. and
17 CHAMPION PETFOODS LP, PET FOOD
18 EXPRESS, LTD., and DOES 1 through 100,
19 Inclusive,

Defendants.

- (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) BREACH OF EXPRESS WARRANTY;
- (6) BREACH OF IMPLIED WARRANTY; AND
- (7) QUASI-CONTRACT.

DEMAND FOR JURY TRIAL

1 Plaintiff Jesika Vado ("Plaintiff"), individually and on behalf of all others similarly situated,
2 by and through her undersigned attorneys, as and for their Class Action Complaint against defendants
3 Champion Petfoods USA, Inc., ("Champion USA") and Champion Petfoods LP ("Champion LP") and
4 Pet Food Express, Ltd. (collectively, "Defendants"), alleges the following based upon personal
5 knowledge as to her and her own actions, and, as to all other matters, respectfully alleges, upon
6 information and belief, as follows (Plaintiff believes that substantial evidentiary support will exist for
7 the allegations set forth herein after a reasonable opportunity for discovery.):

8 NATURE OF THE ACTION

9 1. Plaintiff, individually and on behalf of all others similarly situated, by and through her
10 undersigned attorneys, bring this class action against Defendants for the deceptive practice of
11 marketing their high priced Acana and Orijen brand name dog and cat food products (the "Products")
12 as "Biologically Appropriate" and "designed to nourish dogs and cats according to their evolutionary
13 adaptation to a diet rich and diverse in fresh meat and protein[]" that is trusted by pet lovers
14 everywhere, when they contain harmful chemicals, toxins and artificial and/or synthetic ingredients.¹

15 2. Defendants prominently feature on their Product packaging and labels that they are
16 comprised of fresh, quality, and properly sourced ingredients and even declare that their pet food has
17 "ingredients we love." In fact, however, the Products' packaging and labeling fail to disclose that the
18 Products are *contaminated* because they contain heighten levels of arsenic, mercury, lead, cadmium
19 and/or Bisphenol A ("BPA") – each of which are known to pose health risks to humans and animals
20 alike, as detailed below:²

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25 ¹ See The Globe and Mail, "How once-tiny pet-food maker took a bite of the global market," Jan.
26 16, 2018, [https://www.theglobeandmail.com/report-on-business/small-business/canadian-
27 powerhouse-export-your-dog-is-eating-it/article37605774/](https://www.theglobeandmail.com/report-on-business/small-business/canadian-powerhouse-export-your-dog-is-eating-it/article37605774/) (last visited Oct. 7, 2018);
<https://www.orijen.ca/us/>

28 ² Each of the Acana and Orijen branded pet food Products listed below is henceforth referenced to
herein as the "Products."

Product Name	arsenic ug per kg	bpa ug per kg	cadmium ug per kg	mercury ug per kg	lead ug per kg
Acana Regionals Wild Atlantic New England Fish and Fresh Greens Dry Dog Food	3256.40	32.50	113.00	51.20	249.30
Orijen Six Fish With New England Mackerel, Herring, Flounder, Redfish, Monkfish, Silver Hake Dry Dog Food	3169.80	39.50	200.50	54.90	38.70
Orijen Original Chicken, Turkey, Wild-Caught Fish, Eggs Dry Dog Food	907.60	0.00	93.20	10.80	489.80

Product Name	arsenic ug per kg	hpa ug per kg	cadmium ug per kg	mercury ug per kg	lead ug per kg
Onijen Regional Red Angus Beef, Boar, Goat, Lamb, Pork, Mackerel Dry Dog Food	849.40	43.60	123.10	21.40	167.70
Acana Regionals Meadowland with Poultry Freshwater Fish and Eggs Dry Dog Food	846.40	82.70	37.50	8.70	489.00
Acana Regionals Appalachian Ranch with Red Meats and Freshwater Catfish Dry Dog Food	358.20	82.90	32.50	14.90	336.70
Acana Regionals Grasslands with Lamb, Trout, and Game Bird Dry Dog Food	262.80	0.00	30.60	9.60	305.00
Onijen Regional Red Angus Beef, Ranch Raised Lamb, Wild Boar, Pork	1066.50	37.70	62.10	21.70	138.50

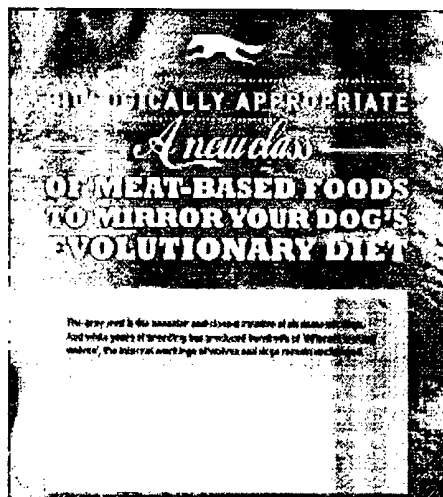
Product Name	arsenic ug per kg	bpa ug per kg	cadmium ug per kg	mercury ug per kg	lead ug per kg
Bison Dry Dog Food					
Acana Singles Duck and Pear Formula Dry Dog Food	523.40	102.70	30.90	15.40	537.40
Acana Singles Lamb and Apple Formula Dry Dog Food	401.20	73.20	35.00	3.20	423.40
Acana Heritage Free-Run Poultry Formula Dry Dog Food	292.90	62.20	27.80	3.30	290.20
Acana Heritage Freshwater Fish Formula Dry Dog Food	977.70	0.00	56.20	27.40	486.80
Orijen Tundra Freeze Dried Venison Elk, Bison, Quail, Steelhead Trout Wet Dog Food	23.13	6.02	27.64	5.35	12.26
Orijen Adult Dog Freeze Dried Chicken, Turkey, Wild-Caught Fish, Eggs	23.21	13.41	7.74	9.45	7.33

Product Name	arsenic ug per kg	bpa ug per kg	cadmium ug per kg	mercury ug per kg	lead ug per kg
Wet Dog Food					
Orijen Regional Red Freeze Dried Angus Beef, Ranch Raised Lamb, Wild Boar, Pork, Bison Wet Dog Food	102.66	0.00	23.40	19.60	16.85
Orijen Six Fish Wild-Caught Regional Saltwater and Freshwater Fish Dry Dog Food	2173.90	39.70	92.20	58.80	55.10
Orijen Tundra Goat, Venison, Mutton, Bison, Arctic Char, Rabbit Dry Dog Food	1628.50	40.30	134.50	43.60	471.80
Orijen Grain Free Puppy Chicken, Turkey, Wild-Caught Fish, Eggs Dry Dog Food	791.20	32.20	87.20	12.20	490.80
Acana Singles Mackerel and Greens	1510.70	40.10	112.20	29.60	251.10
Acana Formula Dry Dog Food	384.80	58.30	24.40	6.40	1731.90
Acana Heritage Meats Formula Dry Dog Food	373.70	57.60	25.60	4.00	329.60
Acana Singles Pork and Squash Formula Dry Dog Food					

3. Defendants manufacture, market, advertise, label, distribute, and sell cat and dog pet food under the brand names Acana and Orijen throughout California, including in Alameda County

1 through online purchases and a slew of pet stores such as the 62-store chain operated by Oakland,
2 California-based Defendant Pet Food Express, Ltd.

3 4. By deceptively marketing, point of sale advertising, distributing and selling the
4 Products as natural with no artificial preservatives, when, in fact, their Acana and Orijen dog and cat
5 food products are full of heavy metals and/or chemicals like BPA and through false and misleading
6 advertisements and labeling claiming that the Products represent an “evolutionary diet” mirroring that
7 consumed by the grey wolfs of old, and free of anything “nature did not intent your dog [or cat] to
8 eat.”



19 5. In fact, Defendants aggressively marketed that their Acana and Orijen brand pet food
20 Products are “Natural And Not Synthetic,” and/or that the primary ingredients are from natural sources
21 to the point that they are “Deemed fit for human consumption.”³
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28 ³ See, e.g., <https://acana.com/wp-content/uploads/2015/10/DS-ARCANA-Dog-Brochure-002.pdf>
; <https://www.orijen.ca/us/foods/dog-food/fry-dog-food/tundra/>.



6. Defendants' advertisement and product labeling is deceptive to consumers under the consumer protection laws of California. Defendants have been unjustly enriched as a result of their conduct. For these reasons, Plaintiff seeks the relief set forth herein below.

7. Plaintiff brings this proposed consumer class action on behalf of themselves and all other citizens of California, who, from the applicable limitations period up to and including the present, purchased for consumption and not resale any of Champion pet food Products directly or indirectly by or through the Defendants named herein.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Article 6, § 10 of the California Constitution, Civil Code § 1780(d), and Code of Civil Procedure §§ 382 and 410.10.

9. This Court has jurisdiction over Defendants because they have conducted and continue to conduct substantial business within California, including, *inter alia*, the promotion, advertising, distribution and sale of the Acana and Orijen pet food Products at issue herein.

10. Venue is proper in this Court pursuant to Code of Civil Procedure § 395 because Plaintiff Vado purchased Defendants' Products in San Francisco and Pacifica, California, within the applicable statute of limitations and the resulting economic harm and damage occurred in both San Francisco and Alameda County. Since Defendant Pet Food Express, Ltd. is a California corporation

1 and headquartered in Oakland, California (and operates its 62-store chain of stores from its Oakland,
2 CA headquarters), venue is proper in Alameda County.

3 11. Having Defendants litigate Plaintiff's claims in California does not offend traditional
4 notions of fair play and substantial justice and is permitted by the United States Constitution. Plaintiff
5 and all Class Members' claims arise in part from conduct Defendants purposefully directed to and
6 occurred in California. On information and belief, Defendants Champion USA and Champion LP's
7 Acana and Orijen Products are sold at hundreds of local and California state-wide retailers in this State,
8 including, but not limited to, Defendant Pet Food Express, Ltd.

9 12. On further information and belief, Plaintiff alleges that Defendants have, and continue
10 to, avail themselves of numerous advertising and promotional materials disseminated throughout
11 California regarding contaminated pet food Products vis-à-vis advertisements and product labeling
12 campaigns specifically intended to reach consumers in California, including but not limited to
13 advertisements on local California television programs, radio broadcasts, product package labeling,
14 advertisements on billboards in California, and advertisements in print and point of sale publications
15 disseminated to consumers in San Francisco and Alameda counties and throughout the State of California.

16 **THE PARTIES**

17 13. Plaintiff is, and at all times relevant hereto has been, a resident citizen of the state of
18 California. Plaintiff Jesika Vado ("Vado") purchased the following Acana Regionals Grasslands
19 Formula, Orijen Six Fish, Orijen Puppy, Orijen Puppy Large dog food as the primary food source for
20 her dogs from Pet Food Express in San Francisco and Pacifica on and or about July 25, 2018, August
21 1, 2018, August 15, 2018, August 29, 2018 and September 6, 2018. Plaintiff Vado purchased the
22 Products for her dogs Kali (a Pit/Bulldog mix) and Steel (an Australian Shepard). Prior to
23 purchasing the Products, Plaintiff reviewed the nutritional claims on the packaging which she relied
24 on when deciding to purchase the Products at issue herein. During that time, and based on the false
25 and misleading claims, warranties, representations, store and other media advertisements, and other
26 marketing by Defendants, Plaintiff Vado was unaware that the Products contained any level of heavy
27 metals, chemicals, or toxins and would not have purchased the Product if that was fully disclosed.

1 Plaintiff Vado has suffered injury as a result of Defendants' actions by paying a premium price for
2 the Product that, in reality, had no or *de minimis* value based on the presence of the alleged heavy
3 metals, chemicals, or toxins had they been disclosed.

4 14. As the result of Defendants' deceptive conduct as alleged herein, Plaintiff Vado was
5 injured when they paid the premium purchase price for the Products that did not deliver what was
6 promised. Plaintiff paid these sums on the assumption that this was for natural and non-synthetic pet
7 food free of artificial preservatives and would not have paid this money had they known that they
8 contained artificial preservatives, toxic chemical and unnatural ingredients. Had she been informed
9 of the truth of Defendants' contaminated pet food, Plaintiff Vado would have purchased other
10 products, which were premium, natural, or did not contain artificial preservatives or synthetic or toxic
11 ingredients. Defendants promised Plaintiff Vado and other Class members natural and non-synthetic
12 pet food free of artificial preservatives and toxic chemicals but delivered something else entirely,
13 thereby depriving them of the benefit of their bargain. Damages can be calculated through expert
14 testimony at trial. Further, should Plaintiff Vado encounter the Products in the future, she could not
15 rely on the truthfulness of the packaging, absent corrective changes to the package labeling and
16 advertising of the Products.

17 15. Defendant Champion Petfoods USA, Inc. ("Champion USA") is incorporated in
18 Delaware, and maintains its corporate headquarters and principal place of business at 12871 Bowling
19 Green Road, Auburn, Kentucky 42206. At all times material, all of the Products at issue herein were
20 manufactured, sourced, marketed, advertised and sold through Champion USA, and together with
21 Champion LP was directly responsible for the false and deceptive product labeling alleged herein.

22 16. Defendant Champion Petfoods LP ("Champion LP") is a Canadian limited partnership
23 with its headquarters and principal place of business located at 11403-186 Street N.W. Edmonton,
24 Alberta T5S 2W6. Defendant Champion LP is the sole owner of Champion USA and through that
25 position operates and/or controls all facets of Champion USA's operations. Champion USA and
26 Champion LP are sometimes jointly referred to herein as the "Champion Defendants."

1 17. Defendant Pet Food Express, Ltd. ("PFE") is a California corporation whose corporate
2 headquarters is located at 500 85th Avenue, Oakland, California 94621. Defendant PFE owns and
3 operates at least 62 retail stores in Northern and Central California and also markets/advertises,
4 distributes and sells Acana and Origen Products both from its retail stores and through its corporate
5 internet website operated and supervised from its Oakland, California, corporate headquarters.

6 18. The true names and capacities of defendants sued herein under California Code of Civil
7 Procedure section 474 as DOES 1 through 100, inclusive, are presently unknown to Plaintiff Vado,
8 who therefore sue these defendants by such fictitious names. Plaintiff will seek to amend this
9 Complaint and include these DOE defendants' true names and capacities when they are ascertained.
10 Each fictitiously-named defendant is responsible in some manner for the illegal conduct alleged herein
11 and for the injuries suffered by Plaintiff Vado and the general public as a consequence thereof.

12 19. Defendants and the DOE defendants named herein have approved, ratified, controlled,
13 directed, had knowledge of, and/or otherwise been legally responsible for all aspects of the wrongful
14 acts and practices of certain DOE defendants and about which Plaintiff Vado complains. A unity of
15 interest exists between Defendants and certain DOE defendants such that justice dictates that any
16 liability created by the acts and/or omissions of one be imposed upon the others who should be held
17 legally and financially responsible for all aspects of the wrongful acts and practices about which
18 Plaintiff complains. Defendants are the alter-ego of certain DOE defendants and, accordingly, liability
19 should be imposed upon the others on that basis.

20 20. In accordance with California law, each of the Defendants are liable as a direct
21 participant, aider and abettor, co-conspirator, enabler or is otherwise jointly responsible for the
22 improper, unlawful, deceptive, misleading, unfair, and fraudulent acts and practices that Defendants
23 continue to conduct in this State to the detriment of Plaintiff Vado, Class members and members of
24 the general public of California as well as Defendants' competitors.

25 21. Together, Defendants jointly formulated, developed, manufactured, labeled,
26 distributed, marketed, advertised, and sold the subject Products under the brand names Acana and
27 Orijen throughout California, and in this County, during Class Period (defined below). The
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1 advertising, labeling, and packaging for the Products alleged herein, and relied upon by Plaintiff Vado,
2 was prepared, reviewed, and/or approved by Defendants and their agents, and was disseminated by
3 Defendants and their agents through marketing, advertising, packaging, and labeling that contained
4 the misrepresentations alleged herein. The marketing, advertising, packaging and labeling for the
5 subject Products was designed to encourage consumers to purchase the Products and reasonably
6 misled the reasonable consumer, *i.e.*, Plaintiff and the Classes, into purchasing the subject Products
7 alleged above.

8 **FACTUAL ALLEGATIONS**

9 **A. Defendants Misleadingly Market Their Products as Natural and Free of Artificial** 10 **Preservatives**

11 22. Defendants formulate, develop, manufacture, label, distribute, market, advertise, and
12 sell their exclusive, high priced Acana and Orijen lines of dry and wet pet food Products across the
13 United States and in California through internet and dog and cat pet food retailers, such as Defendant
14 PFE and others, and also including DOE Defendants 1 through 100, inclusive.

15 23. The Products at issue herein are available at other numerous retail and online outlets.

16 24. The Products are widely advertised throughout California to its resident citizens.

17 25. In addition to the “natural,” “non-synthetic,” and “no artificial preservatives” claims
18 on the front of each Product, the official Acana and Orijen websites display the Products’ descriptions
19 and full lists of ingredients for most of the Products.⁴ The Products’ webpages repeatedly make
20 Defendants’ “natural” and “no artificial preservatives” misrepresentations.

21 26. Plaintiff purchased the Products which state on their labeling and/or on Defendants’
22 website that they were “natural,” “non-synthetic,” and contain “no artificial preservatives.”

23 27. By representing that the Products are “natural,” “non-synthetic,” and have “no artificial
24 preservatives,” – and even are “deemed fit for human consumption” – Defendants sought to capitalize
25 on consumers’ preference for less processed products with fewer additives. Consumers, such as
26 Plaintiff Vado, are willing to pay more for pet food products with no artificial or synthetic additives.

27 ⁴ Acana: (<https://acana.com>); Orijen: (<https://orijen.ca>), last visited Oct. 9, 2018.
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1 28. In actuality, Defendants' Acana and Orijen Products are anything but safe and healthy
2 for pets. For example, based on the risks associated with exposure to high levels of arsenic and heavy
3 metals, both the U.S. Environmental Protection Agency ("EPA") and U.S. Food and Drug
4 Administration ("FDA") have set limits concerning the allowable limit of arsenic at 10 parts per billion
5 ("ppb") for human consumption in apple juice (regulated by the FDA) and drinking water (regulating
6 by the EPA). Apples to apples, apple juice is no different (in terms of arsenic levels) than pet food –
7 each are equally deadly when EPA and FDA limits of this dangerous substance is allowed to infiltrate
8 the pet food chain.⁵

9 29. If arsenic was not bad enough, the subject pet food Products also contain lead, which
10 is another carcinogen and developmental toxin known to cause health problems. Exposure to lead in
11 food builds up over time. Can pet food, constructed with the metals and chemical sealants used by
12 Champion USA and Champion LP in the production of the can container unit itself, has been
13 scientifically demonstrated to lead to the development of chronic poisoning, cancer, developmental,
14 and reproductive disorders, as well as serious injuries to the nervous system, and other organs and
15 body systems.

16 30. Further, the Products at issue herein contain mercury, a heavy metal, which can cause
17 damage to a canine's cardiovascular system, nervous system, kidneys, and digestive tract.⁶

18 31. Continued exposure can also injure the inner surfaces of the digestive tract and
19 abdominal cavity, causing lesions and inflammation. There have also been reports of lesions in the
20 central nervous system (spinal cord and brain), kidneys, and renal glands. *Id.*

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23 ⁵ In fact, the FDA has issued warning letters to manufacturers on this issue. *See, e.g.,* Warning
24 Letter from FDA to Valley Processing, Inc. (June 2, 2016),
25 <https://www.fda.gov/iceci/enforcementactions/warningletters/2016/ucm506526.htm>. *See also,* FDA
26 Draft Guidance for Industry: Inorganic Arsenic in Rice Cereals for Infants: Action Level (April 2016)
(FDA consideration of limiting arsenic in rice cereals for infants), publicly viewable at:
<https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/UCM493152.pdf> (last visited Oct. 7, 2018).

27 ⁶ <https://wagwalking.com/condition/mercury-poisoning> (last visited Oct. 8, 2018).
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1 32. Finally, the subject Products contain cadmium, yet another heavy metal, which has
2 been observed to cause anemia, liver disease, and nerve or brain damage in dogs and other animals
3 eating or drinking cadmium. The U.S. Department of Health and Human Services has determined that
4 cadmium and cadmium compounds are known human carcinogens and the EPA has likewise
5 determined that cadmium is a probable human carcinogen and, thus, equally damaging to cats and
6 dogs in their pet foods.⁷

7 33. Indeed, the FDA has acknowledged that "exposure to [lead, arsenic, cadmium, and
8 mercury] metals are likely to have the most significant impact on public health" and has prioritized
9 them in connection with its heavy metals workgroup looking to reduce the risks associated with human
10 consumption of heavy metals.⁸

11 34. Despite the known risks of exposure to these heavy metals, Defendants have
12 negligently, recklessly, and/or knowingly sold their pet food Products without disclosing they
13 contained high levels of arsenic, mercury, cadmium and lead to consumers like Plaintiff. In fact,
14 Defendants have publicly acknowledge that consumers "have deep feelings and a sense of
15 responsibility for the well-being of their dogs and cats."⁹

16 35. Additionally, Defendants knew or should have been aware that a consumer would be
17 feeding the subject pet food Products multiple times each day to his or her cat or dog, making it the
18 main, if not only, source of food for the pet. This leads to repeated exposure of the aforementioned
19 heavy metals to the animal.

20 36. Defendants have wrongfully and misleadingly advertised and sold the pet food
21 Products without any label or warning indicating to consumers that these products contain heavy
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24 ⁷ <https://www.atsdr.cdc.gov/phs/phs.asp?id+46&tid+15>, Sept. 2012 (pdf version), last visited Oct.
25 8, 2018.

26 ⁸ <https://www.fda.gov/Food/FoodborneIllnessContaminants/Metals/default.htm>

27 ⁹ [https://www.theglobeandmail.com/amp/report-on-business/small-business/canadian-
28 powerhouse-export-your-dog-is-eating-it/article37605774/](https://www.theglobeandmail.com/amp/report-on-business/small-business/canadian-powerhouse-export-your-dog-is-eating-it/article37605774/).

1 metals and/or toxins that can, over time, accumulate in the cat and/or dog's body to the point where
2 poisoning, injury, and/or disease can occur.¹⁰

3 37. Defendants' omissions are material, false, misleading, and reasonably likely to deceive
4 the public. This is true especially in light of the long-standing campaign by Defendants to market the
5 subject pet food Products as healthy and safe to induce consumers, such as Plaintiff Vado, to purchase
6 the products. For instance, Defendants market the Products as "Biologically Appropriate," using
7 "Fresh Regional Ingredients" comprised of 100 percent meat, poultry, fish, and/or vegetables, both on
8 the products' packaging and on Defendants' internet websites.

9 38. Moreover, Defendants devote significant web and packaging space to the marketing of
10 their DogStar® Kitchens, which they tell consumers "are the most advanced pet food kitchens on
11 earth, with standards that rival the human food processing industry."

12 39. Defendants state on their website that the Orijen pet foods "feature[] unmatched and
13 unique inclusions of meat, naturally providing everything your dog or cat needs to thrive." Defendants
14 further promise on the products' packaging and on its website that its Orijen and Acana pet foods are
15 "guaranteed" to "keep your dog happy, healthy, and strong."¹¹

16 40. Using such descriptions and promises makes Defendants' advertising campaign
17 deceptive and misleading based on presence of heavy metals in the subject Products. Reasonable
18 consumers, like Plaintiff Vado, would consider the mere inclusion of heavy metals in the Acana and
19 Orijen Products as a material fact in considering what pet food to purchase. Defendants' above-
20 referenced statements, representations, partial disclosures, and omissions are false, misleading, and
21 crafted to deceive the public as they create an image that the Products are healthy, safe, and free of
22 contaminants such as arsenic, cadmium and lead. Moreover, Defendants knew or should have
23 reasonably expected that the presence of heavy metals in its Acana and Orijen pet food Products is
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25 ¹⁰ See, e.g.,
26 <https://www.petfoodexpress.com/products/search/#!/products/results/search&category=&keywords=acana>;
27 <https://www.petfoodexpress.com/products/search/#!/products/results/search&category=&keywords=orijen> (last visited Oct. 18, 2018).

28 ¹¹ See footnote 4, *supra*.

1 something an average consumer would consider in purchasing pet food. Defendants' representations
2 and omissions are false, misleading, and reasonably likely to deceive the public.

3 41. Moreover, a reasonable consumer, such as Plaintiff and other members of the Class (as
4 defined hereinbelow), would have no reason to not believe and/or anticipate that the Acana and Orijen
5 pet food products at issue herein are "Biologically Appropriate" foods that use "Fresh Regional
6 Ingredients" consisting only of meat, poultry, fish, and vegetables. Nondisclosure and/or concealment
7 of the chemicals and toxins in the Products coupled with the misrepresentations alleged herein by
8 Defendants suggesting that the pet food provides complete health and is safe is intended to and does,
9 in fact, cause consumers to purchase a product Plaintiff Vado and members of the classes not have
10 bought if the true quality and ingredients were disclosed. As a result of these false or misleading
11 statements and omissions, Defendants have generated substantial sales of the subject Products.

12 42. The expectations of reasonable consumers and deception of these consumers by
13 Defendants' advertising, misrepresentations, packaging, labeling is further highlighted by the public
14 reaction to this lawsuit as reported by various websites, accessible by the resident citizens of
15 California.

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17 **B. Bisphenol A Is a Highly Dangerous and Toxic Substance That Was
18 Knowingly Concealed By Defendants in Their Pet Food Products**

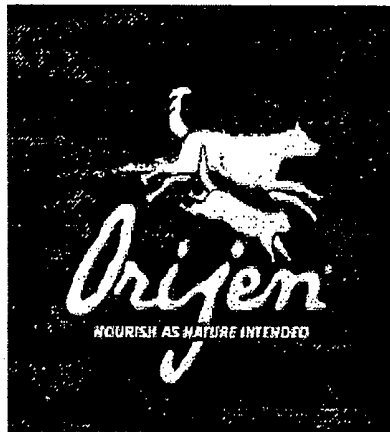
19 43. The dangers of BPA in human food are recognized by the FDA, along with various
20 states, including California. For instance, manufacturers and wholesalers are prohibited from selling
21 any children's products that contain BPA and any infant formula, baby food, or toddler food stored in
22 containers with intentionally added BPA.

23 44. Still, certain pet food Products are sold by Defendants that contain levels of BPA – an
24 industrial chemical that "is an endocrine disruptor. It's an industrial chemical that according to
25 Medical News Today' . . . interferes with the production, secretion, transport, action, function and
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1 elimination of natural hormones.”¹² BPA has been linked to various health issues, including
2 reproductive disorders, heart disease, diabetes, cancer, and neurological problems.¹³

3 45. Despite the presence of this harmful chemical, Defendants prominently warrant, claim,
4 feature, represent, advertise, or otherwise market the subject pet food Products as made from
5 “Biologically Appropriate” and “Fresh Regional Ingredients” consisting entirely of fresh meat,
6 poultry, fish, and vegetables. Indeed, each bag prominently displays the percentage of these
7 ingredients on the front.

8 46. Defendants’ website and packaging also warrants, claims, features, represents,
9 advertises, or otherwise markets that its products are natural. In fact, Orijen’s slogan is “Nourish as
10 Nature Intended.”



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20 47. In promoting their promise, warranty, claim, representation, advertisement, or
21 otherwise marketing that the subject pet food Products are safe and pure, Defendants further assure
22 and warrants to its customers that the Products at issue in this matter are manufactured in such a way

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25 ¹² See Dr. Karen Becker, A Major Heads Up: Don’t Feed This to Your Dog, Healthy Pets (Feb.
26 13, 2017), [https://healthypets.mercola.com/sites/healthypets/archive/2017/02/13/dogs-canned-food-](https://healthypets.mercola.com/sites/healthypets/archive/2017/02/13/dogs-canned-food-dangers.aspx)
27 [dangers.aspx](https://healthypets.mercola.com/sites/healthypets/archive/2017/02/13/dogs-canned-food-dangers.aspx). (last visited Oct. 6, 2018). Dr. Becker’s article cited a recent study conducted by
28 researchers at the University of Missouri which concluded “that even short-term feeding of canned
dog food results in a significant increase of BPA . . . in dogs.” *Id.*

¹³ See Christian Nordquist, *How does bisphenol A affect health?*, Medical News Today (May 24,
2017), <https://www.medicalnewstoday.com/articles/221205.php>. (last updated May 25, 2017).

1 that would prevent BPA and other dangerous chemicals and toxics through a closely monitoring
2 quality control systems:

3
4 **1. BIOLOGICALLY APPROPRIATE**

5 **State-of-the-Art Kitchens and Innovation Centre Advance Our Award-Winning Foods.**

6 Equipped with proprietary state-of-the art fresh meat processing technologies that
7 allow greater meat inclusions than any other dog or cat foods in the world, our
8 award-winning kitchens and research centers are dedicated to advancing ACANA
9 and ORIJEN.

10 Our ongoing commitment to investing in food processing, food science and
11 research capabilities allows us continually advance our Biologically Appropriate
12 capabilities, bringing ORIJEN foods ever closer to the natural diets of dogs and
13 cats, and firmly establishing ourselves as leaders in the global pet food industry.

14
15 **2. FRESH REGIONAL INGREDIENTS**

16 **Fresh Meats Are the Foundation of Our Biologically Appropriate Foods.**

17 Our kitchens house over 50 different fresh regional meat, poultry and fish
18 ingredients, as well as a variety of local produce.

19 Our fresh ingredient handling, cooking and sequential drying technologies are all
20 specifically designed to support the dramatic meat inclusions in ORIJEN foods
21 (all from animals fit for human consumption—a rarity among pet food producers).

22 Put simply, our kitchens and fresh regional ingredient capabilities are unmatched
23 by any other pet food maker anywhere.

24
25 **3. NEVER OUTSOURCED**

26 **We've Been Preparing Award-Winning Dog and Cat Foods in Our Own Kitchens For Over a Quarter Century.**

27 That's why we never outsource — we don't make foods for anyone else and we
28 don't allow anyone else to make our foods either. No other North American pet
food brand can make this commitment.

1 We design, build our own kitchens and we create and produce our own foods, so
2 you can have confidence in knowing where your food comes from.¹⁴

3 48. Thus, Defendants engaged in deceptive advertising and labeling practice by expressly
4 warranting, claiming, stating, featuring, representing, advertising, or otherwise marketing on Acana
5 and Orijen packaging labels and related websites that the subject pet food Products are natural, fit for
6 human consumption, fit for canine consumption, and made from "Biologically Appropriate" and
7 "Fresh Regional Ingredients" consisting entirely of fresh meat, poultry, fish, and vegetables when they
8 contain the non-naturally occurring chemical BPA.

9 49. Based on these false representations, Defendants charge a premium, knowing that the
10 ~~claimed natural make-up of the~~ subject pet food Products (as well as all of the other alleged false
11 and/or misleading representations discussed herein) is something an average consumer would consider
12 as a reason in picking a more expensive dog food. By negligently and/or deceptively representing,
13 marketing, and advertising the subject pet food Products as natural, fit for human consumption, fit for
14 canine consumption, natural, and made from "Biologically Appropriate" and "Fresh Regional
15 Ingredients" consisting entirely of fresh meat, poultry, fish, and vegetables, Defendants wrongfully
16 capitalized on, and reaped enormous profits from, consumers' strong preference for natural pet food
17 products.

18 **C. Heavy Metals Create Known Risks When Ingested**

19 50. Toxins like arsenic, mercury, cadmium and lead can cause serious illness to humans
20 and animals. A company should be vigilant to take all reasonable steps to avoid causing family pets
21 to ingest these toxins.¹⁵

22 51. Arsenic is a semi-metallic element in the periodic table. It is odorless and tasteless.
23 Arsenic occurs naturally in the environment as an element of the earth's crust; it is found in rocks,
24 soil, water, air, plants, and animals. Arsenic is combined with other elements such as oxygen, chlorine,
25 and sulfur to form inorganic arsenic compounds. Historically, arsenic compounds were used in many
26

27 ¹⁴ See <https://www.orijen.ca/northstar-kitchens/> (last visited Oct. 8, 2018).

28 ¹⁵ See footnotes 5 – 8, *supra*.

1 industries, including: (i) as a preservative in pressure-treated lumber; (ii) as a preservative in animal
2 hides; (iii) as an additive to lead and copper for hardening; (iv) in glass manufacturing; (v) in
3 pesticides; (vi) in animal agriculture; and (vii) as arsine gas to enhance junctions in semiconductors.
4 The United States has canceled the approvals of some of these uses, such as arsenic-based pesticides,
5 for health and safety reasons, but its use still continues to this day in some industries. Some of these
6 cancellations were based on voluntary withdrawals by producers. For example, manufacturers of
7 arsenic-based wood preservatives voluntarily withdrew their products in 2003 due to safety concerns,
8 and the EPA signed the cancellation order. In the Notice of Cancellation Order, the EPA stated that it
9 "believes that reducing the potential residential exposure to a known human carcinogen is desirable."
10 Arsenic is an element that does not degrade or disappear entirely over-time.

11 52. Inorganic arsenic is also a known cause of human cancer. The relationship between
12 inorganic arsenic and cancer is well documented within the federal regulatory and medical community.
13 As early as 1879, high rates of lung cancer in miners from the Kingdom of Saxony were attributed, in
14 part, to inhaled arsenic. By 1992, the combination of evidence from Taiwan and elsewhere was
15 sufficient to conclude that ingested inorganic arsenic, such as is found in contaminated drinking water
16 and food, was likely to increase the incidence of internal cancers. The scientific link to skin and lung
17 cancers is also particularly strong and longstanding, and evidence supports conclusions that arsenic
18 may cause liver, bladder, kidney, and colon cancers as well.

19 53. Lead is a metallic substance formerly used as a pesticide in fruit orchards, but the use
20 of such pesticides is now prohibited in the United States and in the State of California. Lead, unlike
21 many other poisons, builds up in the body over time as the person is exposed to and ingests it, resulting
22 in a cumulative exposure which can, over time, become toxic and seriously injurious to health. Lead
23 poisoning can occur from ingestion of food or water containing lead. Acute or chronic exposure to
24 material amounts of lead can lead to severe brain and kidney damage, among other issues, and
25 ultimately cause death. The FDA has also set standards that regulate the maximum parts per billion
26 of lead permissible in water: bottled water cannot contain more than 5 ppb of total lead or 10 ppb of
27 total arsenic. See 21 C.F.R. §165.110(b)(4)(iii)(A).
28

1 54. Mercury is a known toxin that creates health risks to both humans and animals. The
2 impact of the various ways humans and animals are exposed and ingest mercury has been studied for
3 years. In fact, in as early as 1997, the EPA issued a report to Congress that detailed the health risks to
4 both humans and animals.¹⁶ Based on the toxicity and risks of mercury, regulations have been enacted
5 at both the Federal and California state level.

6 55. Likewise, cadmium is a known toxin that creates risk when ingested by animals or
7 humans. It has been specifically noted that "Kidney and bone effects have [] been observed in
8 laboratory animals ingesting cadmium. Anemia, liver disease, and nerve or brain damage have been
9 observed in animals eating or drinking cadmium."¹⁷

10
11 **D. Defendants Falsely Advertise the Products as Nutritious, Superior Quality,**
12 **Pure, and Healthy While Omitting Any Mention of the Heavy Metals, as Well as**
13 **Claim Their Pet Foods Are Natural, Pure, and Safe Despite the Inclusion of the**
14 **BPA**

15 56. Defendants formulate, develop, manufacture, label, package, distribute, market,
16 advertise, and sell their extensive Acana and Orijen lines of dry and freeze-dried pet food products
17 across the United States, including the Products at issue herein.

18 57. In 2016, Defendants opened DogStar Kitchens, a 371,100 square foot production
19 facility on 85 acres of land outside Bowling Green, KY. This facility has the capacity to produce up
20 to 220 million pounds of Acana and Orijen pet food per year. The CEO of Champion Pet Foods, Frank
21 Burdzy, said, "The US is our fastest growing market."¹⁸ Prior to this facility's construction,
22 Defendants' Acana and Orijen products were exclusively manufactured in Canada. Since that facility
23 began production, all Acana and Orijen foods sold in the United States are manufactured at the
24 DogStar Kitchens' Bowling Green, Kentucky facility.

25
26 ¹⁶ See <https://www3.epa.gov/airtoxics/112nmerc/volume5.pdf> (last visited Oct. 9, 2018).

27 ¹⁷ See <https://www.cdc.gov/ToxProfiles/tp5-c1-b.pdf>, at pg. 5 (last visited Oct. 9, 2018).

28 ¹⁸ See <https://www.foodengineeringmag.com/articles/95994-champion-petfoods-open-dogstar-kitchens> at 2 (last visited Oct. 9, 2018).

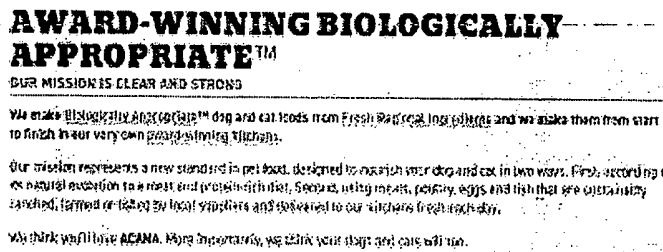
1 58. Defendants have represented that its DogStar Kitchens meet the European Union's
2 standard for pet food ingredients processing. They have also represented a commitment to using fresh
3 and local ingredients, including wild-caught fish.

4 59. Defendants warrant, claim, state, represent, advertise, label, and market their Products
5 as natural, fit for human consumption, fit for canine consumption, and made from "Biologically
6 Appropriate" and "Fresh Regional Ingredients" consisting entirely of fresh meat, poultry, fish, and
7 vegetables; containing "only 1 supplement – zinc;" "provid[ing] a natural source of virtually every
8 nutrient your dog needs to thrive;" and "guaranteed to keep your dog healthy, happy and strong."
9 Defendants therefore had a duty to ensure that these statements were true. As such, Defendants knew
10 or should have known that the pet food Products at issue herein included the presence of heavy metals
11 and/or BPA.

12 60. Likewise, by warranting, claiming, stating, featuring, representing, advertising or
13 otherwise marketing that Orijen and Acana pet foods, including the subject Products, are natural, fit
14 for human consumption, fit for canine consumption, and made from "Biologically Appropriate" and
15 "Fresh Regional Ingredients" consisting entirely of fresh meat, poultry, fish, and vegetables,
16 Defendants had a known duty to ensure that there were no chemicals or toxins included in the Products.
17 In fact, Defendants offered further assurances by representing that the quality control over the
18 manufacturing of the Products as a rigid process free of outsourcing.

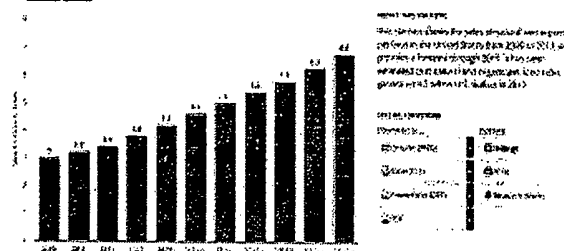
19 61. Defendants specifically promise on their website, "[W]e prepare ACANA ourselves,
20 in our own kitchens, where we oversee every detail of food preparation — from where our ingredients
21 come from, to every cooking, quality and food safety process." Similarly, Defendants promise that
22 their "Dogstar® Kitchens have access to a myriad of specialty family farms, with whom we partner
23 for our supply of trusted ingredients." Finally, Defendants' promise "[s]tandards that rival the human
24 food processing industry for authenticity, nutritional integrity, and food safety." According to the
25 Orijen and Acana websites, Defendants use "feature state-of-the-art fresh food processing
26 technologies." As such, Defendants knew or should have known that higher temperatures coupled with
27 the type of containers used in manufacturing create a real risk of BPA in their products.
28

62. The Products at issue herein are available at numerous retail and online outlets in California and are widely advertised in this State, and Defendants employ a Chief Marketing Officer, a Vice President for Customer Engagement, and a Director of Marketing in both the United States and Canada. The official websites for Acana and Orijen display the subject Products; descriptions and full lists of ingredients for these Products and includes the following promises:



63. Defendants' internet websites repeat the false and misleading claims, warranties, representations, advertisements, and other marketing about the subject pet-food Products benefits, quality, purity, and natural make-up, without any mention of the heavy metals and/or BPA they contain.¹⁹ This is not surprising given that natural pet food sales represent over \$5.5 billion in the United States and have consistently risen over the years. *Id.*

Natural and organic pet food sales in the United States from 2009 to 2019 (in billion U.S. dollars)



¹⁹ See <https://www.ori jen.ca/us/>; <https://acana.com/usa/>

1
2 64. Moreover, the Champion Defendants have expressly acknowledged the importance of
3 quality pet food to the reasonable consumer:

4 "Our No. 1 mandate is BAFRINO – biologically appropriate, fresh regional
5 ingredients, never outsourced," said Frank Burdzy, president and chief executive
6 officer of Champion Petfoods in Canada, in an interview with the Daily News
7 Monday prior to housewarming activities outside and inside the kitchens. "We build
relationships with our suppliers and farms and fisheries. We are trusted by pet
owners," Burdzy said.²⁰

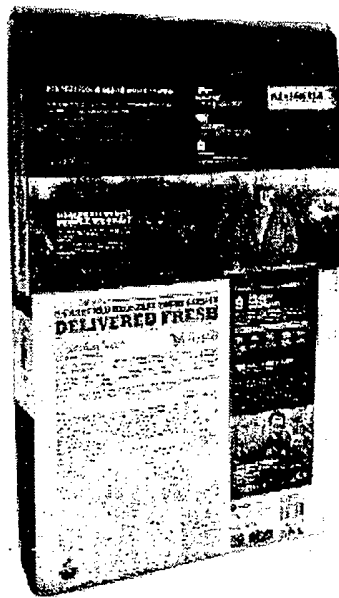
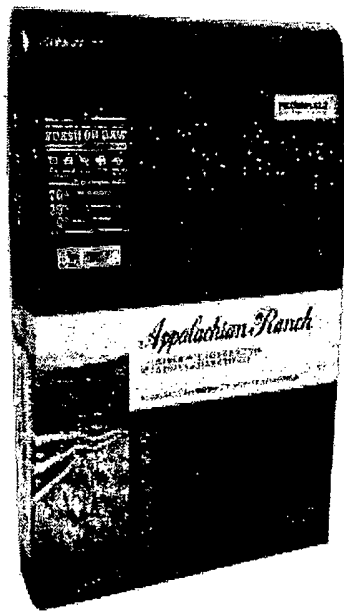
8 65. As a result of Defendants' omissions, a reasonable consumer (such as the Plaintiff)
9 would, and did, have no reason to suspect the presence of heavy metals and/or BPA in the Products at
10 issue herein without conducting their own scientific tests, or reviewing third-party scientific testing of
11 these products.

12 66. However, after conducting third-party scientific testing, it is clear that the Subject pet
13 food Products do, in fact, contain levels of both heavy metals and/or BPA to the detriment of Plaintiff
14 and other members of the Class they seek to represent.

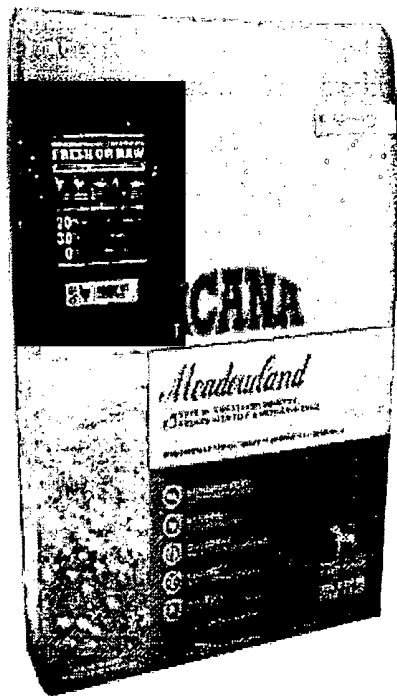
15 67. Plaintiff brings this action individually and on behalf of all other similarly situated
16 resident consumers within who purchased the Acana and/or Orijen branded pet food Products
17 identified in herein, in order to cause the disclosure of the presence of heavy metals and BPA that pose
18 a known risk to both humans and animals in the subject Products, to correct the false and misleading
19 perception Defendants have created in the minds of consumers that the Products are high quality, safe,
20 and healthy and to obtain redress for those who have purchased said Products including the following:

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27 ²⁰ See Charles Mason, *Champion Petfoods DogStar Kitchens holds housewarming*, Bowling Green
28 Daily News (Jan. 5, 2016), http://www.bgdailynews.com/news/champion-petfoods-dogstar-kitchens-holds-housewarming/article_bf34275d-2242-5f3f-a9cc-14174235acc1.html

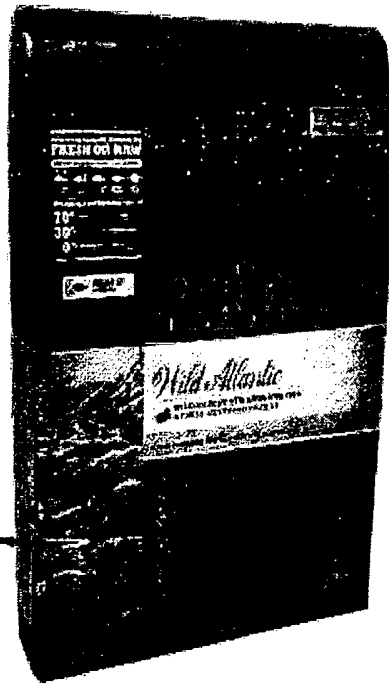
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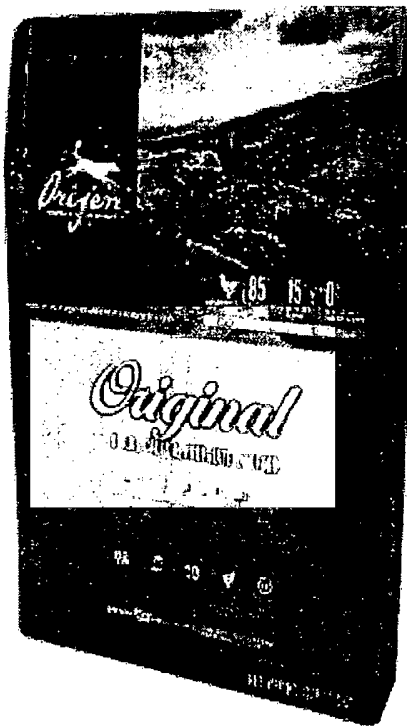




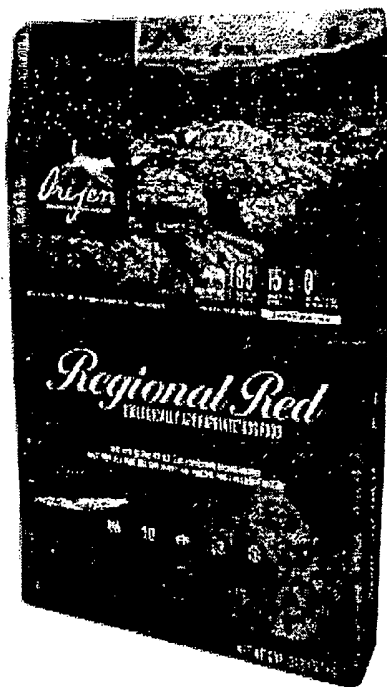


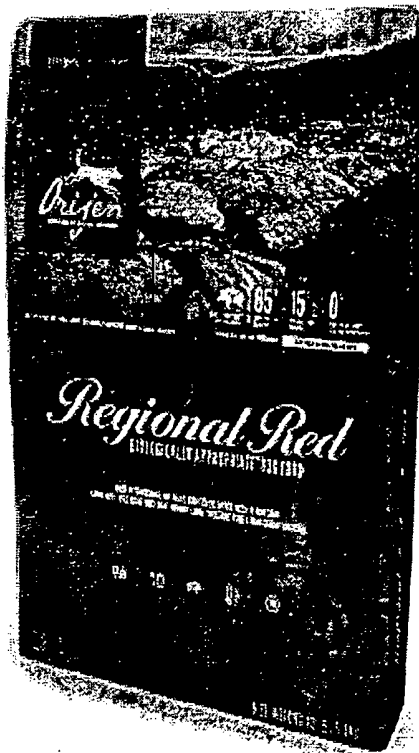
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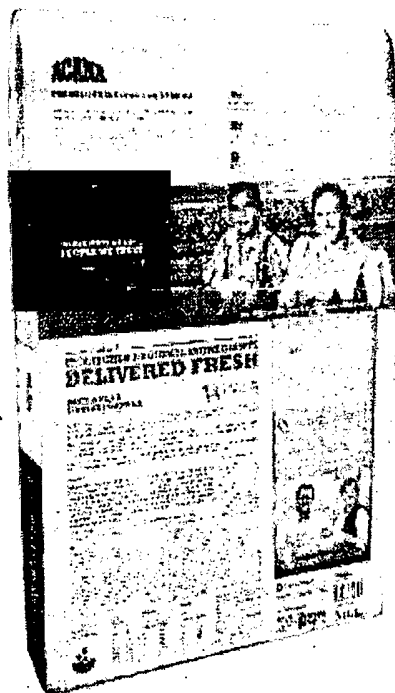
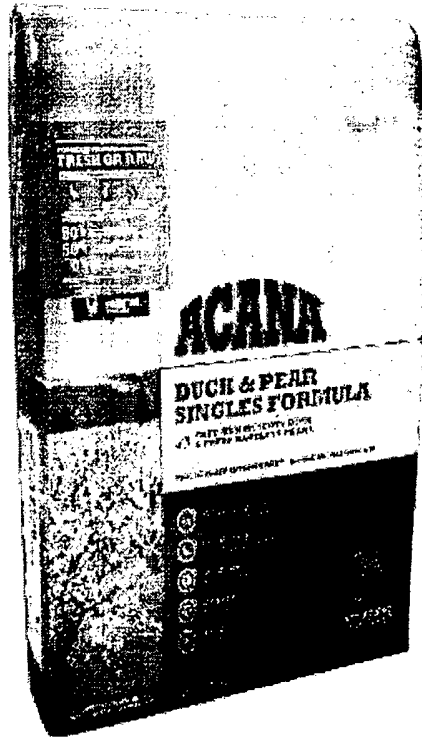
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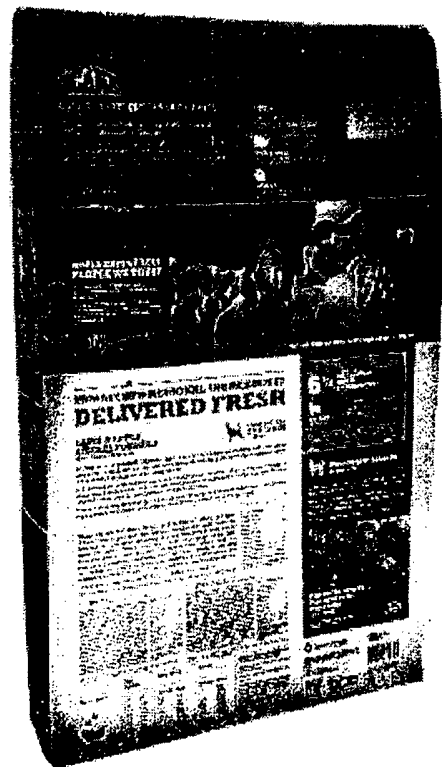


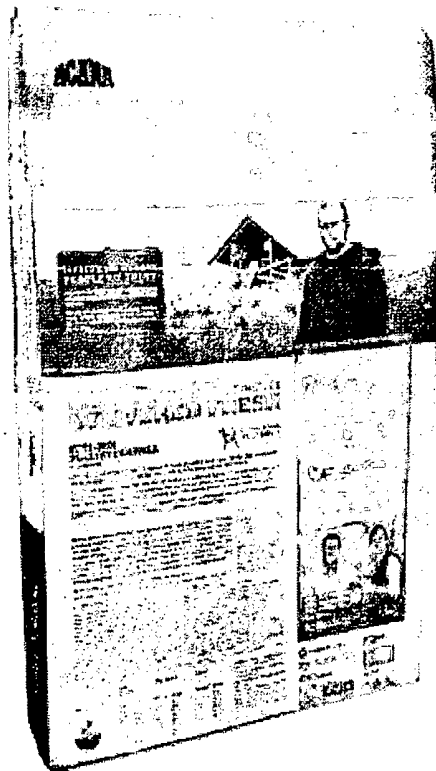
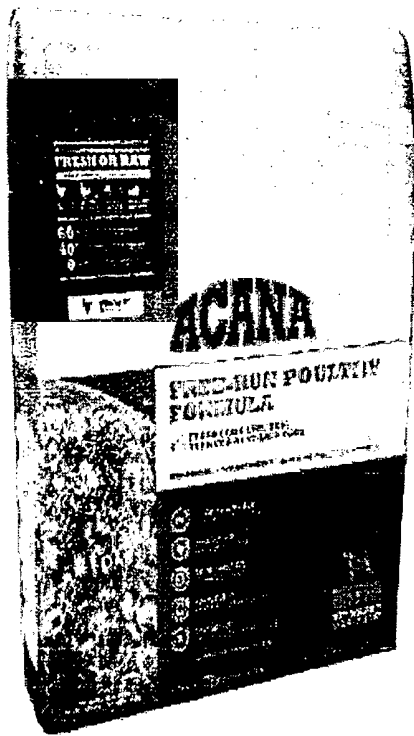


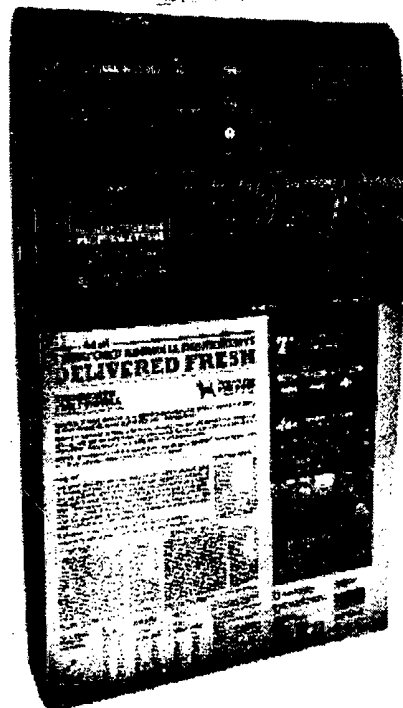
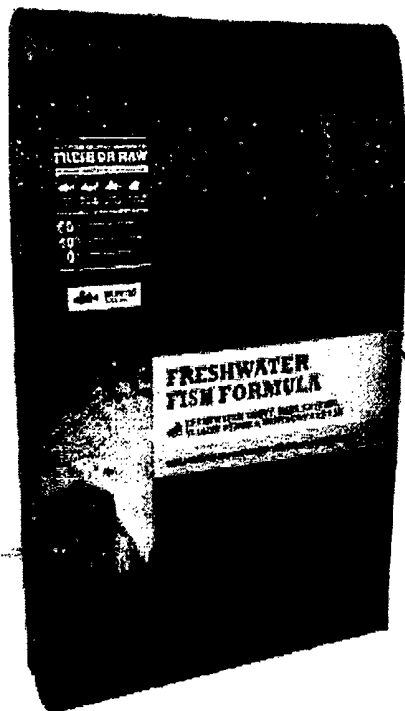
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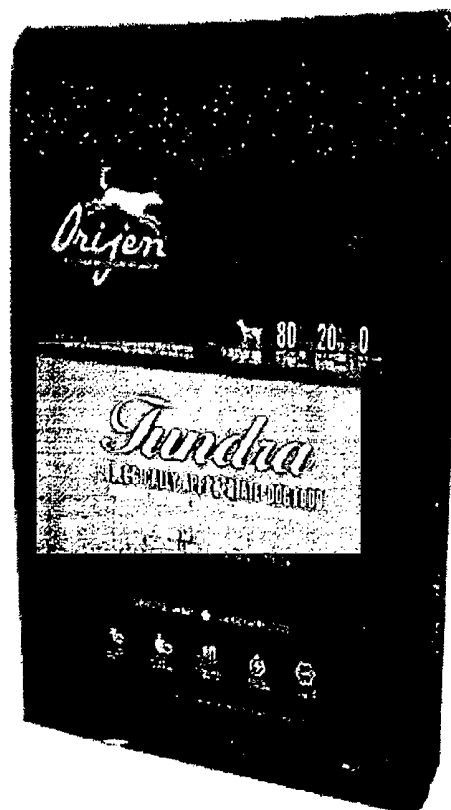
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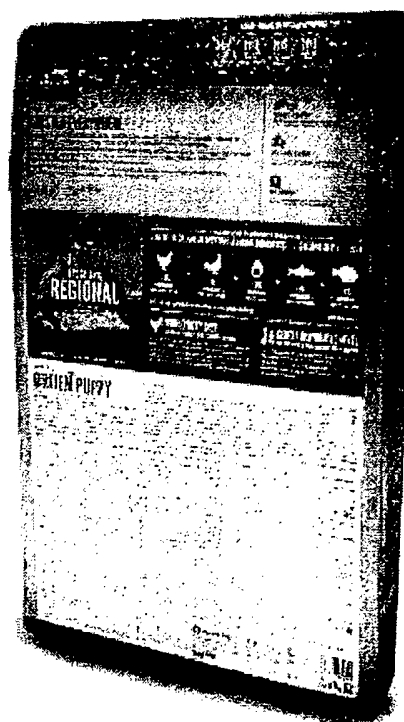
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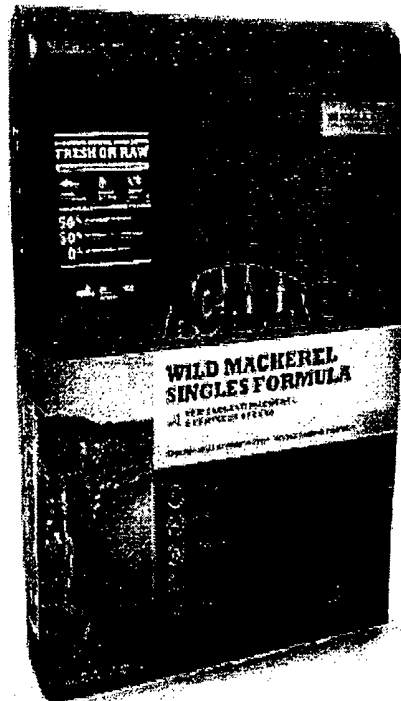
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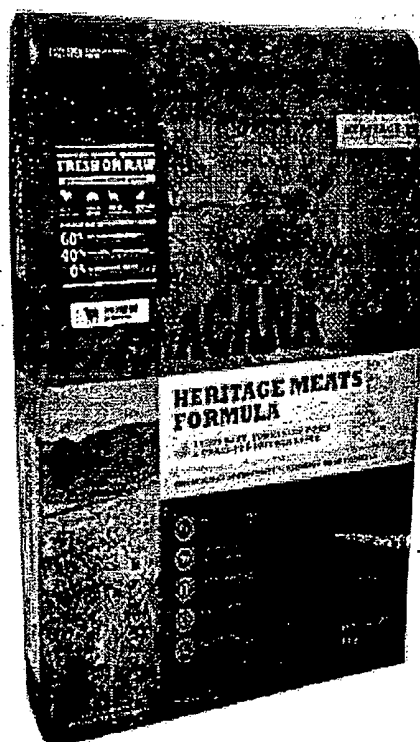
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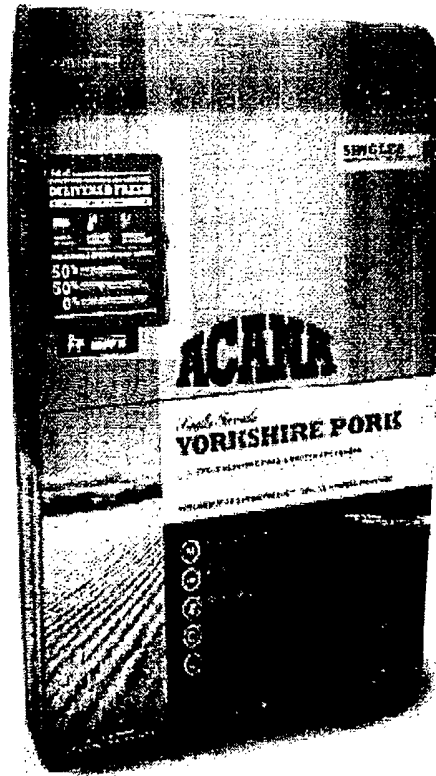
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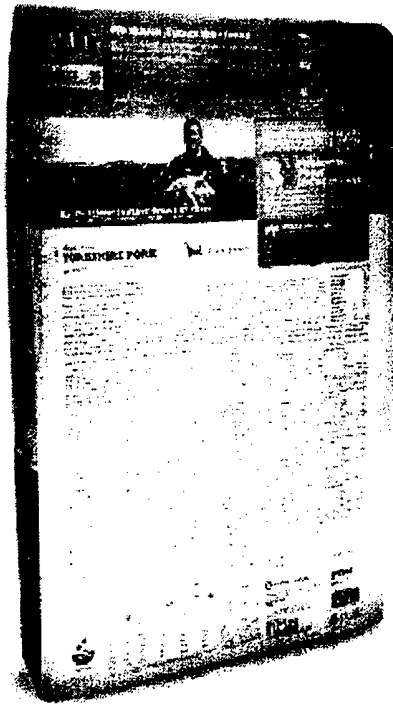


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**DEFENDANTS "NATURAL" AND "NON-SYNTHETIC"
MISREPRESENTATIONS VIOLATE CALIFORNIA LAWS**

68. California law is designed to ensure that a company's claims about its products are truthful and accurate. Defendants violated California law by incorrectly (whether through sheer negligence, inadvertence, recklessness or intentional conduct) claiming that the pet food Products at issue are natural and devoid of synthetic chemicals and/or toxins/chemicals that are fit for canine consumption, made from "Biologically Appropriate" and "Fresh Regional Ingredients" and consisting entirely of fresh meat, poultry, fish, and vegetables that provided all the nutrients necessary for the owner's pet to thrive, and were "guaranteed" to "keep your dog happy, healthy, and strong."

69. Defendants' marketing and advertising campaign has been sufficiently lengthy in duration, and widespread in dissemination, that it would be unrealistic to require Plaintiff Vado to plead relying upon each advertised misrepresentation.

70. Defendants' Product advertising is also designed to persuade and convince the average pet owner consumer that the Acana and Orijen branded Products at issue herein are pure, healthy. Safe for consumption, and did not contain dangerous or harmful or synthetic ingredients, heavy metals and

chemicals, such as arsenic, cadmium, lead, mercury, and BPA, and have engaged in this long-term advertising campaign to convince potential customers that the Products were devoid of unnatural/non-synthetic ingredients, and thus were safe for pets.

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

71. Plaintiff Vado reasonably relied on Defendants' own statements, misrepresentations, and advertising concerning the particular qualities and benefits of the Products.

72. Plaintiff read and relied upon the labels on the Products in making her purchasing decisions, along with viewing the statements, misrepresentations, and advertising on Defendants' product packaging and labeling and internet websites. Any reasonable consumer would consider the labeling of Defendants' Products (as well as the other false and/or misleading representations/advertisements as alleged herein) when deciding whether to purchase these Products. Here, Plaintiff Vado expressly relied on the specific statements and misrepresentations by Defendants that the subject pet food Products were natural, fit for canine consumption, and made from "Biologically Appropriate" and "Fresh Regional Ingredients" consisting entirely of fresh meat, poultry, fish, and vegetables; "feature[ing] unmatched and unique inclusions of meat, naturally providing everything your dog or cat needs to thrive;" and were "guaranteed" to "keep your dog happy, healthy, and strong" with no disclosure of the inclusion of heavy metals, including arsenic, cadmium, or lead, and BPA.

73. A reasonable consumer would consider the advertised labeling of the subject Products when deciding whether to purchase them. Here, Plaintiff Vado has directly relied on the specific statements, marketing and advertising materials and other misrepresentations by Defendants alleged herein that the Products were natural and did not contain toxic chemicals, or artificial preservatives.

**DEFENDANTS' KNOWLEDGE AND NOTICE OF THEIR BREACHES
OF THEIR EXPRESS AND IMPLIED WARRANTIES**

74. Defendants had sufficient notice of their breaches of their express and implied warranties. Defendants had, and have, exclusive knowledge of the physical and chemical make-up of

1 the Products they produce, or in the case of Defendant PFE, market and sell directly to consumers in
2 this County and throughout California.

3
4 **PRIVITY EXISTS WITH PLAINTIFF AND THE PROPOSED CLASS**

5 75. Defendants knew that consumers such as Plaintiff Vado and the proposed Class (as
6 defined herein) would be the end purchasers of the Products and the target of their advertising and
7 statements.

8 76. Defendants intended that their statements and representations would be considered by
9 the end purchasers of the Products, including Plaintiff and the proposed Class.

10 77. Defendants directly marketed to Plaintiff and the proposed Class through statements
11 on their website, labeling, advertising, and packaging.

12 78. Defendants have had sufficient notice of their numerous breaches of express and
13 implied warranties occurring within California and detrimentally affecting this State's resident citizens
14 within the applicable statute of limitations. Defendants have also had exclusive knowledge of the
15 physical and chemical makeup of the Products that are the subject of this action, including the BPA
16 toxin.

17 79. Additionally, Defendants received notice of the contaminants in their pet food,
18 including the subject Products, through their "Clean Label Project," which found higher levels of
19 heavy metals and BPA in the Champion USA/Champion LP pet food Products.²¹ In fact, the Clean
20 Label Project revealed to Defendants the dangerous and toxic nature of their Acana and Orijen
21 branded products and even compared their pet foods Products to those of competitors, and gave
22 Defendants' Products a *one-star rating*, meaning the Defendants' Products contained higher levels of
23 contaminants than other pet food products on the market. *Id.* Defendants' direct involvement and
24 communications by and between the Clean Label Project demonstrates their knowledge about the
25 dangerous and toxic attributes of the subject Products.

26
27 ²¹ See Clean Label Project, "Orijen: Why Aren't You Listening to Your Customers?", at
28 <http://www.cleanlabelproject.org/orijen-customers/> (last visited Oct. 9, 2018).

1 80. Defendants also issued a white paper in defense of the Clean Label Project findings
2 that acknowledges that their products contain heavy metals and BPA.²² In that same White Paper,
3 Defendants state “[w]e systematically test ORIJEN and ACANA products for heavy metals (arsenic,
4 cadmium, lead and mercury) at two third-party laboratories.”

5 81. The White Paper discusses the sources of arsenic, cadmium, lead and mercury, and
6 what Defendants contend to be acceptable levels of those heavy metals in pet food.

7 82. Defendants did not widely disseminate this White Paper or directly communicated its
8 findings and conclusions to their customers, nor did they change their Product packaging or labeling
9 to include a disclaimer that the Products contain any levels of the heavy metals (or include a copy or
10 reference of the White Paper findings on the Products’ packaging or labeling).

11 83. Defendants likewise had knowledge of the potential risk and inclusion of BPA in their
12 Products. Defendants have publicly stated they ask their suppliers if the packaging contains BPA while
13 at the same time admitting that they in fact do not perform any tests to confirm that the Products
14 subject to this action are BPA free.

15 84. Plaintiff Vado and the proposed Class are the intended beneficiaries of the expressed
16 and implied warranties.

17 CLASS ACTION ALLEGATIONS

18 85. Plaintiff brings this action individually and on behalf of the following class pursuant to
19 California Code of Civil Procedure § 378, on behalf of the following class:

20 All California resident citizens who, from July 1, 2013 to the present, purchased one or more
21 of the Champion Petfoods “Acana” and/or “Orijen” brand-named Products at issue herein for
22 household use, and not for resale (the “Class”).

23 86. Excluded from the Class are the Defendants, any of their parent companies,
24 subsidiaries, and/or affiliates, officers, directors, legal representatives, employees, co-conspirators, all
25 governmental entities, and any judge, justice, or judicial officer presiding over this matter.

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27
28 ²²See <http://www.championpetfoods.com/wp-content/themes/champion-petfoods/res/research/Champion-Petfoods-White-Paper-Heavy-Metals.pdf>.

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

4 88. The members in the proposed Class are so numerous that individual joinder of all
5 members is impracticable, and the disposition of the claims of all Class members in a single action
6 will provide substantial benefits to the parties and Court.

7 89. Questions of law and fact common to Plaintiff Vado and the Class include, but are not
8 limited to, the following:

- 9 (a) whether Defendants owed a duty of care to the Class;
- 10 (b) whether Defendants represented and continue to represent that the Products are
11 natural and do not contain toxic chemicals, heavy metals (such as arsenic, cadmium, or lead), synthetic
12 ingredients, or artificial preservatives;
- 13 (c) whether Defendants' representations in advertising and/or labeling are false,
14 deceptive, and misleading;
- 15 (d) whether those representations are likely to deceive a reasonable consumer;
- 16 (e) whether Defendants had knowledge that those representations were false,
17 deceptive, and misleading;
- 18 (f) whether Defendants continue to disseminate those representations despite
19 knowledge that the representations are false, deceptive, and misleading;
- 20 (g) whether a representation that a product is natural and does not contain artificial
21 preservatives is material to a reasonable consumer;
- 22 (h) whether Defendants' representations and claims that the Products are natural
23 and do not contain artificial preservatives are likely to mislead, deceive, confuse, or confound
24 consumers acting reasonably;
- 25 (i) whether Defendants violated California Business & Professions Code sections
26 17200, *et seq.*;
- 27
- 28

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

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

5 (l) whether Defendants were unjustly enriched;

6 (m) whether Plaintiff Vado and the members of the Class are entitled to actual,
7 statutory, and punitive damages; and

8 (n) whether Plaintiff and members of the Class are entitled to declaratory and
9 injunctive relief.

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

14 91. Plaintiff's claims are typical of Class members' claims in that they are based on the
15 same underlying facts, events, and circumstances relating to Defendants' conduct.

16 92. Plaintiff Vado will fairly and adequately represent and protect the interests of the Class,
17 have no interests that are incompatible with the interests of the Class, and have retained counsel
18 competent and experienced in class action, consumer protection, and false advertising litigation.

19 93. Class treatment is superior to other options for resolution of the controversy because
20 the relief sought for each Class member is small such that, absent representative litigation, it would be
21 infeasible for Class members to redress the wrongs done to them.

22 94. Questions of law and fact common to the Class predominate over any questions
23 affecting only individual Class members.

24 95. As a result of the foregoing, Class treatment is appropriate.

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COUNT I

(Negligent Misrepresentation Against All Defendants)

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

97. Plaintiff reasonably placed their trust and reliance in Defendants that the Products marketed and advertised to her and the Class were natural and did not contain artificial preservatives, chemical or toxins, including BPA.

98. Because of the relationship between the parties, the Defendants owed a duty to use reasonable care to impart correct and reliable disclosures concerning the use of unnatural ingredients and artificial preservatives in making the Products or, based upon their superior knowledge, having spoken, to say enough to not be misleading.

99. Defendants breached their duty to Plaintiff and the Class by providing false, misleading, and/or ~~deceptive information~~ regarding the nature of the Products.

100. Plaintiff and the Class reasonably and justifiably relied upon the information supplied to them by the Defendants. As a result, Plaintiff Vado and the Class purchased the Products at a premium.

101. Defendants failed to use reasonable care in their communications and representations to Plaintiff Vado and the Class.

102. By virtue of Defendants' negligent misrepresentations, Plaintiff and the Class have been damaged in an amount to be proven at trial or alternatively, seek rescission and restitutionary disgorgement under this count.

COUNT II

(Violations of California's Consumer Legal Remedies Act, California Civil Code §§1750, *Et Seq.*, Against All Defendants)

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

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

1 105. The Products are "goods," as that term is defined in California Civil Code section
2 1761(a).

3 106. Each Defendant is a "person" as that term is defined in California Civil Code section
4 1761(c).

5 107. Plaintiff and each Class member's purchase of Defendants' Products constituted a
6 "transaction," as that term is defined in California Civil Code section 1761(e).

7 108. Defendants' conduct alleged herein violates the following provisions of California's
8 Consumer Legal Remedies Act (the "CLRA"):

9 (a) California Civil Code section 1770(a)(5), by representing that the Products are
10 natural and contain no synthetic ingredients or artificial preservatives;

11 (b) California Civil Code section 1770(a)(7), by representing that the Products
12 were of a particular standard, quality, or grade, when they were of another;

13 (c) California Civil Code section 1770(a)(9), by advertising the Products with
14 intent not to sell them as advertised; and

15 (d) California Civil Code section 1770(a)(16), by representing that the Products
16 have been supplied in accordance with previous representations when they have not.

17 109. As a direct and proximate result of these violations, Plaintiff and the Class have been
18 harmed, and that harm will continue unless Defendants are enjoined from using the misleading
19 marketing described herein in any manner in connection with the advertising and sale of the Products.

20 110. Pursuant to § 1782(a) of the CLRA, and concurrent with the filing of this complaint,
21 Plaintiff separately notified each of the Defendants through their registered agent for service of process
22 in accordance with § 1770(a)(1) of the particular violations of § 1770 and demanded that Defendants
23 correct, remedy or otherwise rectify the actions described above and give notice to all similarly
24 affected California consumer Class members of their intention to do so.

25 111. In the event Defendants fail to respond to Plaintiff's demand within 30 days of service
26 of such notice and demand for relief, pursuant to § 1782(d) of the CLRA Plaintiff will file an
27 amendment to this complaint to seek both injunctive relief and actual damages, plus punitive damages,
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1 interest and attorneys' fees jointly against Defendants. Additionally, Plaintiff also seek to recover up
2 to \$5,000 for each eligible senior citizen and disabled Class member who purchased Champion USA
3 or Champion LP cat or dog pet food Products for their pets as provided for under § 1780(b) of the
4 CLRA.

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6 **COUNT III**

7 **(Violations of California False Advertising Law, California Business &
8 Professions Code §§17500, *Et Seq.*, Against All Defendants)**

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

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

13 114. As set forth herein, Defendants' claims that the Products are natural and do not contain
14 artificial preservatives are ~~literally~~ false and likely to deceive the public.

15 115. Defendants' claims that the Products are natural and do not contain artificial
16 preservatives are untrue or misleading.

17 116. Defendants knew, or reasonably should have known, that the claims were untrue or
18 misleading.

19 117. Defendants' conduct is ongoing and continuing, such that prospective injunctive relief
20 is necessary, especially given Plaintiff's desire to purchase these Products in the future if they can be
21 assured that, so long as the Products are advertised as natural and without artificial preservatives, or
22 toxic chemicals or heavy metals, truly are "natural" and do not contain any artificial preservatives.

23 118. Plaintiff and members of the Class are entitled to injunctive and equitable relief, and
24 restitution in the amount they spent on the Products.

25 **COUNT IV**

26 **(Violations of the Unfair Competition Law, California Business &
27 Professions Code §§17200, *Et Seq.*, Against All Defendants)**

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

1 120. The Unfair Competition Law prohibits any “unlawful, unfair or fraudulent business act
2 or practice.” Cal. Bus. & Prof. Code §17200.

3 **Fraudulent**

4 121. Defendants’ statements that the Products are natural and do not contain artificial
5 preservatives are literally false and likely to deceive the public.

6 **Unlawful**

7 122. As alleged herein, Defendants have advertised the Products with false or misleading
8 claims, such that Defendants’ actions as alleged herein violate at least the following laws:

9 • The CLRA, California Business & Professions Code sections 1750, *et*

10 *seq.*; and

11 • The False Advertising Law, California Business & Professions Code sections

12 17500, *et seq.*

13 **Unfair**

14 123. Defendants’ conduct with respect to the labeling, advertising, marketing, and sale of
15 the Products is unfair because Defendants’ conduct was immoral, unethical, unscrupulous, or
16 substantially injurious to consumers and the utility of their conduct, if any, does not outweigh the
17 gravity of the harm to their victims.

18 124. Defendants’ conduct with respect to the labeling, advertising, marketing, and sale of
19 the Products is also unfair because it violates public policy as declared by specific constitutional,
20 statutory, or regulatory provisions, including, but not limited to, the False Advertising Law and the
21 CLRA.

22 125. Defendants’ conduct with respect to the labeling, advertising, marketing, and sale of
23 the Products is also unfair because the consumer injury is substantial, not outweighed by benefits to
24 consumers or competition, and not one consumers’, themselves, can reasonably avoid.

25 126. In accordance with California Business & Professions Code section 17203, Plaintiff
26 Vado seeks an order enjoining Defendants from continuing to conduct business through fraudulent or
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1 unlawful acts and practices and to commence a corrective advertising campaign. Defendants' conduct
2 is ongoing and continuing, such that prospective injunctive relief is necessary.

3 127. On behalf of herself and the Class, Plaintiff also seeks an order for the restitution of all
4 monies from the sale the Products, which were unjustly acquired through acts of fraudulent, unfair, or
5 unlawful competition.

6 **COUNT V**

7 **(Breach of Express Warranty,**

8 **California Commercial Code §2313, Against The Champion Defendants)**

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

11 129. As set forth herein, Defendants made express representations to Plaintiff and the Class
12 that the Products were natural and did not contain artificial preservatives.

13 130. These promises became part of the basis of the bargain between the parties and thus
14 constituted express warranties.

15 131. There was a sale of goods from Defendants to Plaintiff Vado and other Class members.

16 132. On the basis of these express warranties, Defendants sold to Plaintiff Vado and the
17 Class the Products.

18 133. Defendants knowingly breached the express warranties by including one or more
19 unnatural and/or synthetic and artificial ingredients in the Products.

20 134. Defendants knowingly breached the express warranties by including one or more
21 artificial preservatives in the Products.

22 135. Defendants were on notice of this breach as they were aware of the included unnatural
23 Ingredients and artificial preservatives in the Products.

24 136. Privity exists because Defendants expressly warranted to Plaintiff Vado and the Class
25 that the Products did not contain preservatives through the marketing and labeling.

26 137. Plaintiff and the Class reasonably relied on the express warranties by Defendants.

27 138. As a result of Defendants' breaches of their express warranties, Plaintiff and the Class
28 sustained damages as they paid money for the Products that were not what Defendants represented.

139. Plaintiff Vado, on behalf of herself and the Class, seeks actual damages for Defendants' breach of warranty.

COUNT VI
**(Breach of Implied Warranty, California Commercial Code §2314,
Against The Champion Defendants)**

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

141. As set forth herein, Defendants made affirmations of fact on the Products' labels to Plaintiff Vado and the Class that the Products were natural and free of artificial preservatives.

142. The Products did not conform to these affirmations and promises as they contained unnatural ingredients and artificial preservatives.

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

144. - Defendants are merchants engaging in the sale of goods to Plaintiff and the Class.

145. -- There was a sale of goods from Defendants to Plaintiff and the Class members.

146. Defendants breached the implied warranties by selling the Products that failed to conform to the promises or affirmations of fact made on the container or label as each Product contained one or more artificial preservatives.

147. Defendants were on notice of this breach as they were aware of the unnatural ingredients included in the Products (including the existence of heavy metals and BPA).

148. Defendants were on notice of this breach as they were aware of the artificial preservatives, toxins and harmful heavy metals contained in the Products.

149. Privity exists because Defendants expressly warranted to Plaintiff and the Class that the Products were natural and did not contain artificial preservatives, heavy metals or toxins through the advertising, marketing, and labeling.

150. As a result of Defendants' breaches of their implied warranties of merchantability, Plaintiff and the Class sustained damages as they paid money for the Products that were not what Defendants represented.

1 151. Plaintiff, on behalf of herself and the Class, seek actual damages for Defendants' breach
2 of warranty.

3 **COUNT VII**
4 **(Quasi-Contract Against All Defendants)**

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

7 153. Defendants unjustly retained a benefit at the expense of Plaintiff Vado and the members
8 of the Class in the form of substantial revenues and payments from Plaintiff and the members of the
9 Class for the Products and from Defendants' conduct in misrepresenting the Products in labels and
10 advertisements, including in store advertisements posted by Defendant PFE and DOES 1 through 100.

11 154. Based on the mistake, Plaintiff and the members of the Class paid for the Products for
12 a price materially higher than that which would have received had the true facts been disclosed to
13 Plaintiff and other members of the Class.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff Vado, on behalf of herself and all others similarly situated, prays for
16 judgment against the Defendants as to each and every count, including:

17 A. An order declaring this action to be a proper class action, appointing Plaintiff Vado and
18 her counsel to represent the Class, and requiring Defendants to bear the costs of class notice;

19 B. An order enjoining Defendants from selling the Products in any manner suggesting or
20 implying that they are natural and free of artificial preservatives, heavy metals, toxins and dangerous
21 chemicals;

22 C. An order requiring Defendants to engage in a corrective advertising campaign and
23 engage in any further necessary affirmative injunctive relief, such as recalling existing products;

24 D. An order awarding declaratory relief, and any further retrospective or prospective
25 injunctive relief permitted by law or equity, including enjoining Defendants from continuing the
26 unlawful practices alleged herein, and injunctive relief to remedy Defendants' past misconduct;

27 E. An order requiring Defendants to pay restitution to restore all funds acquired by means
28 of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or

1 practice, untrue or misleading advertising, or a violation of the Unfair Competition Law, False
2 Advertising Law, or CLRA, plus pre- and post-judgment interest thereon;

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

5 G. An order requiring Defendants to pay all actual and statutory damages permitted under
6 the causes of action alleged herein;

7 H. An order requiring Defendants to pay punitive damages on any cause of action so
8 allowable;

9 I. An order awarding attorneys' fees and costs to Plaintiff and the Class; and

10 J. An order providing for all other such equitable relief as may be just and proper.
11

12 **JURY DEMAND**

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

14 DATED: October 22, 2018

Respectfully submitted,

15 FINKELSTEIN & KRINSK LLP

16 By: 

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