

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 07-21221 CIV ALTONAGA/BROWN

RENEE BLASZKOWSKI, *et al.*,
individually and on behalf of
others similarly situated,

Plaintiffs,

vs.

MARS INC., *et al.*,

Defendants.

**DEFENDANT PETSMART, INC.'S ANSWER AND DEFENSES
TO PLAINTIFFS' FOURTH AMENDED CLASS ACTION COMPLAINT**

Defendant PetSmart, Inc. ("PetSmart"), by and through its undersigned counsel, responds to Plaintiffs' unverified Fourth Amended Class Action Complaint ("Complaint") as follows:

INTRODUCTION

1. PetSmart admits that Plaintiffs purport to bring this action as a class action, but denies that this case can be properly certified as a class action, and denies that any class-wide or other relief is appropriate against PetSmart in this action. PetSmart denies for lack of knowledge or information sufficient to form a belief the remaining allegations of Paragraph 1.

2. PetSmart admits that Plaintiffs have brought this action for injunctive relief, restitution and damages but denies that Plaintiffs are entitled to any such relief. PetSmart denies the remaining allegations in Paragraph 2.

PARTIES

Plaintiffs/Class Representatives

3. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 3.

4. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 4.

5. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 5.

6. The allegations in Paragraph 6 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 6.

7. The allegations in Paragraph 7 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 7.

8. The allegations in Paragraph 8 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 8.

9. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 9.

10. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 10.

11. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 11.

12. The allegations in Paragraph 12 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 12.

13. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 13.

14. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 14.

15. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 15.

16. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 16.

17. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 17.

18. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 18.

19. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 19.

20. The allegations in Paragraph 20 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 20.

21. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 21.

22. The allegations in Paragraph 22 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 22.

23. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 23.

24. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 24.

25. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 25.

26. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 26.

27. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 27.

28. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 28.

29. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 29.

30. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 30.

31. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 31.

32. The allegations in Paragraph 32 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 32.

DEFENDANTS

Defendant Manufacturers

33. The allegations in Paragraph 33 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 33. Further, PetSmart states that the exhibits cited in Paragraph 33 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be.

34. The allegations in Paragraph 34 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 34. Further, PetSmart states that the exhibits cited in Paragraph 34 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be.

35. The allegations in Paragraph 35 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 35. Further, PetSmart states that the exhibits cited in Paragraph 35 are the best evidence of their terms to the extent they are what Plaintiffs purport them to be.

36. The allegations in Paragraph 36 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 36.

37. The allegations in Paragraph 37 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 37. Further,

PetSmart states that the exhibits cited in Paragraph 37 are the best evidence of their terms to the extent they are what Plaintiffs purport them to be.

38. The allegations in Paragraph 38 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 38. Further, PetSmart states that the exhibits cited in Paragraph 38 are the best evidence of their terms to the extent they are what Plaintiffs purport them to be.

39. The allegations in Paragraph 39 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 39. Further, PetSmart states that the exhibits cited in Paragraph 39 are the best evidence of their terms to the extent they are what Plaintiffs purport them to be.

40. The allegations in Paragraph 40 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 40. Further, PetSmart states that the exhibits cited in Paragraph 40 are the best evidence of their terms to the extent they are what Plaintiffs purport them to be.

Defendant Co-Packers

41. The allegations in Paragraph 41 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 41.

42. The allegations in Paragraph 42 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 42.

43. The allegations in Paragraph 43 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 43.

44. The allegations in Paragraph 44 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart admits that one or more of the Menu Food Defendants manufactures pet food for PetSmart and denies for lack of knowledge or information sufficient to form a belief the remaining allegations in Paragraph 44.

45. The allegations in Paragraph 45 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 45.

46. The allegations in Paragraph 46 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 46.

Defendant Retailers

47. The allegations in Paragraph 47 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 47.

48. The allegations in Paragraph 48 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 48.

49. The allegations in Paragraph 49 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 49.

50. The allegations in Paragraph 50 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 50.

51. The allegations in Paragraph 51 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 51.

52. The allegations in Paragraph 52 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 52.

Defendant Pet Specialty Retailers

53. PetSmart admits it is a Delaware corporation with its principal place of business in Arizona, that it operates stores in Florida, and that it markets and sells pet food and treats, including its own brands of pet food and treats and those of one or more of the Defendant Manufacturers, on the internet and in its retail stores. PetSmart also admits that it synthesizes information found on the packaging of pet food and treats and information from pet food and treats manufacturers on the internet through its Smart Nutrition Selector™. PetSmart denies the remaining allegations in Paragraph 53.

54. The allegations in Paragraph 54 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 54.

55. The allegations in Paragraph 55 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 55.

56. The allegations in Paragraph 56 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 56.

JURISDICTION AND VENUE

57. Paragraph 57 states legal conclusions to which no response is required.

58. The allegations in Paragraph 58 are not directed to PetSmart and state legal conclusions to which no response is required. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 58.

59. Paragraph 59 states legal conclusions to which no response is required. To the extent a response is required, PetSmart denies that it committed a tortuous act within the State of Florida or caused injury to persons or property within the State of Florida. To the extent the allegations of Paragraph 59 are not directed to PetSmart, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 59.

60. Paragraph 60 states legal conclusions to which no response is required. To the extent a response is required and the allegations are directed to PetSmart, PetSmart admits that it markets and sells pet food in this District, and denies the remaining allegations. To the extent the allegations are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 60.

FACTS GIVING RISE TO THE CLAIMS

61. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 61.

62. The allegations in Paragraph 62 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 62.

63. PetSmart admits that it markets and sells pet food, including its own brands of pet food and brands of one or more of the Defendant Manufacturers, on the internet and in its retail stores. PetSmart also admits that it synthesizes information found on pet food packaging and from pet food manufacturers on the internet through its Smart Nutrition Selector™. To the extent the remaining allegations in Paragraph 63 are directed to PetSmart, PetSmart denies the allegations in Paragraph 63. To the extent the allegations in Paragraph 63 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the remaining allegations in Paragraph 63.

64. To the extent the allegations in Paragraph 64 are directed to PetSmart, PetSmart denies the allegations in Paragraph 64. To the extent the allegations in Paragraph 64 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the remaining allegations in Paragraph 64.

65. The allegations in Paragraph 65 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 65.

66. To the extent the allegations in Paragraph 66 are directed to PetSmart, PetSmart denies the allegations in Paragraph 66. To the extent the allegations in Paragraph 66 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required,

PetSmart denies for lack of knowledge or information sufficient to form a belief the remaining allegations in Paragraph 66.

67. To the extent the allegations in Paragraph 67 are directed to PetSmart, PetSmart denies the allegations in Paragraph 67. To the extent the allegations in Paragraph 67 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the remaining allegations in Paragraph 67.

68. To the extent the allegations in Paragraph 68 are directed to PetSmart, PetSmart denies the allegations in Paragraph 68. To the extent the allegations in Paragraph 68 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the remaining allegations in Paragraph 68.

69. To the extent the allegations in Paragraph 69 are directed to PetSmart, PetSmart denies the allegations in Paragraph 69. Further, PetSmart states that the exhibits cited in Paragraph 69 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be. To the extent the allegations in Paragraph 69 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the remaining allegations in Paragraph 69.

70. To the extent the allegations in Paragraph 70 are directed to PetSmart, PetSmart denies the allegations in Paragraph 70. To the extent the allegations in Paragraph 70 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required,

PetSmart denies for lack of knowledge or information sufficient to form a belief the remaining allegations in Paragraph 70.

71. To the extent the allegations in Paragraph 71 are directed to PetSmart, PetSmart denies the allegations in Paragraph 71. To the extent the allegations in Paragraph 71 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the remaining allegations in Paragraph 71.

72. The allegations in Paragraph 72 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 72. Further, PetSmart states that the exhibits cited in Paragraph 72 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be.

73. The allegations in Paragraph 73 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 73. Further, PetSmart states that the exhibits cited in Paragraph 73 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be.

74. The allegations in Paragraph 74 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 74. Further, PetSmart states that the exhibits cited in Paragraph 74 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be.

75. The allegations in Paragraph 75 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 75.

76. The allegations in Paragraph 76 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 76. Further, PetSmart states that the exhibits cited in Paragraph 76 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be.

77. The allegations in Paragraph 77 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 77. Further, PetSmart states that the exhibits cited in Paragraph 77 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be.

78. The allegations in Paragraph 78 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 78.

79. The allegations in Paragraph 79 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 79. Further, PetSmart states that the exhibits cited in Paragraph 79 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be.

80. The allegations in Paragraph 80 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of

knowledge or information sufficient to form a belief the allegations in Paragraph 80. Further, PetSmart states that the exhibits cited in Paragraph 80 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be.

81. The allegations in Paragraph 81 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 81. Further, PetSmart states that the exhibits cited in Paragraph 81 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be.

82. The allegations in Paragraph 82 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 82. Further, PetSmart states that the exhibits cited in Paragraph 82 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be.

83. The allegations in Paragraph 83 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 83. Further, PetSmart states that the exhibits cited in Paragraph 83 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be.

84. The allegations in Paragraph 84 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 84. Further, PetSmart states that the exhibits cited in Paragraph 84 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be. .

85. The allegations in Paragraph 85 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 85. Further, PetSmart states that the exhibits cited in Paragraph 85 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be.

86. PetSmart admits that it markets and sells pet products, including its own brand of pet food and those of one or more of the Defendant Manufacturers. PetSmart admits that its stores display marketing material related to cat and dog food. Further, PetSmart states that the exhibits cited in Paragraph 86 are the best evidence of their terms to the extent they are what Plaintiffs purport them to be. The remaining allegations in Paragraph 86 are denied.

87. The allegations in Paragraph 87 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 87.

88. The allegations in Paragraph 88 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 88.

89. To the extent the allegations in Paragraph 89 are directed to PetSmart, PetSmart admits that it markets and sells pet food manufactured by Menu Foods. PetSmart denies for lack of knowledge or information sufficient to form a belief the remaining allegations in Paragraph 89.

90. The allegations in Paragraph 90 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 90.

91. To the extent the allegations in Paragraph 91 are directed to PetSmart, PetSmart denies the allegations in Paragraph 91. To the extent the allegations in Paragraph 91 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief those allegations in Paragraph 91.

92. To the extent the allegations in Paragraph 92 are directed to PetSmart, PetSmart denies the allegations in Paragraph 92. To the extent the allegations in Paragraph 92 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief those allegations in Paragraph 92.

93. The allegations in Paragraph 93 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 93.

94. To the extent the allegations in Paragraph 94 are directed to PetSmart, PetSmart denies the allegations in Paragraph 94. To the extent the allegations in Paragraph 94 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief those allegations in Paragraph 94.

95. To the extent the allegations in Paragraph 95 are directed to PetSmart, PetSmart denies the allegations in Paragraph 95. To the extent the allegations in Paragraph 95 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief those allegations in Paragraph 95.

96. The allegations in Paragraph 96 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 96. Further, PetSmart states that the exhibits cited in Paragraph 96 are the best evidence of their terms to the extent that they are what Plaintiffs purport them to be.

97. The allegations in Paragraph 97 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 97. Further, PetSmart states that the exhibits cited in Paragraph 97 are the best evidence of their terms to the extent they are what Plaintiffs purport them to be.

98. To the extent the allegations in Paragraph 98 are not directed to PetSmart, no response from PetSmart is required. To the extent the allegations in Paragraph 98 are directed to PetSmart and a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief those allegations in Paragraph 98. Further, PetSmart states that the referenced television reports are the best evidence of their terms to the extent they are what Plaintiffs purport them to be.

99. To the extent the allegations in Paragraph 99 are directed to PetSmart and a response is required, PetSmart denies the allegations in Paragraph 99. To the extent the allegations in Paragraph 99 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief those allegations in Paragraph 99.

100. The allegations in Paragraph 100 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart states that the

exhibits cited in Paragraph 100 are the best evidence of their terms to the extent they are what Plaintiffs purport them to be. PetSmart denies for lack of knowledge or information sufficient to form a belief those allegations in Paragraph 100.

101. To the extent the allegations in Paragraph 101 are directed to PetSmart, PetSmart denies the allegations in Paragraph 101. To the extent the allegations in Paragraph 101 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief those allegations in Paragraph 101.

102. To the extent the allegations in Paragraph 102 are not directed to PetSmart, no response from PetSmart is required. To the extent the allegations in Paragraph 102 are directed to PetSmart and a response is required, PetSmart denies for lack of knowledge or information to form a belief those allegations in Paragraph 102. Further, PetSmart states that the exhibits cited in Paragraph 102 are the best evidence of their terms to the extent they are what Plaintiffs purport them to be.

103. The allegations in Paragraph 103 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart admits that various pet food products have been the subject of recalls over the years. Further, PetSmart states that the exhibits cited in Paragraph 103 are the best evidence of their terms to the extent they are what Plaintiffs purport them to be. PetSmart denies for lack of knowledge or information sufficient to form a belief the remaining allegations in Paragraph 103.

104. To the extent the allegations in Paragraph 104 are directed to PetSmart, PetSmart denies the allegations in Paragraph 104. To the extent the allegations in Paragraph 104 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required,

PetSmart denies for lack of knowledge or information sufficient to form a belief the remaining allegations in Paragraph 104.

105. To the extent the allegations in Paragraph 105 are directed to PetSmart, PetSmart denies the allegations in Paragraph 105. To the extent the allegations in Paragraph 105 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the remaining allegations in Paragraph 105.

106. The allegations in Paragraph 106 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies the allegations in Paragraph 106.

107. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 107.

108. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 108.

109. To the extent the allegations in Paragraph 109 are directed to PetSmart, PetSmart denies the allegations in Paragraph 109. To the extent the allegations in Paragraph 109 are not directed to PetSmart, PetSmart is not required to provide a response, but if a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the remaining allegations in Paragraph 109.

110. The first and last sentences of Paragraph 110 calls for legal conclusions to which no response is required. To the extent a response is required, and the allegations in Paragraph 110 are directed to PetSmart, PetSmart denies the remaining allegations in Paragraph 110. To the extent the allegations in Paragraph are not directed to PetSmart, PetSmart is not required to

respond, but if a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief those allegations.

CLASS ACTION ALLEGATIONS

Plaintiffs' Purported Class Action

111. PetSmart admits that Plaintiffs purport to bring this action as a class action but denies that this case can be properly certified as a class action and denies that any class-wide or other relief is appropriate against PetSmart in this action. PetSmart denies for lack of knowledge or information sufficient to form a belief the remaining allegations of Paragraph 111.

Alleged Injunctive Relief

112. PetSmart admits that Plaintiffs purport to bring this action as a class action but denies that this action can be properly certified under Rule 23(b)(2). PetSmart denies the remaining allegations of Paragraph 112.

Alleged Numerosity

113. PetSmart is without knowledge or information sufficient to form a belief the allegations in the first three sentences of Paragraph 113. The remaining allegations in Paragraph 113 contains legal conclusions to which no response is required, but to the extent a response is required, PetSmart denies the remaining allegations in Paragraph 113, including that "it would be virtually impossible for individual Class Members to bring suit against the Defendants" and that the "Class thus has no other viable remedy other than class certification."

Alleged Commonality

114. PetSmart denies the allegations in Paragraph 114.

Alleged Typicality

115. PetSmart denies the allegations in Paragraph 115.

Alleged Adequacy

116. PetSmart denies the allegations in Paragraph 116.

Alleged Predominance and Superiority

117. PetSmart denies the allegations in Paragraph 117.

118. PetSmart denies that a class can be appropriately certified in this case or that Plaintiffs are entitled to any legal remedy against PetSmart, and therefore denies the allegations in Paragraph 118.

Alleged Defendant Class

119. PetSmart admits that the Plaintiffs seeks to certify a class of defendants but denies that a defendant class can be appropriately certified. PetSmart denies the remaining allegations of Paragraph 119.

Alleged Numerosity

120. PetSmart denies the allegations in the first sentence of Paragraph 120 and denies for lack knowledge or information sufficient to form a belief the remaining allegations in Paragraph 120.

Alleged Commonality

121. PetSmart denies the allegations in Paragraph 121.

Alleged Typicality

122. PetSmart denies the allegations in Paragraph 122.

Alleged Adequacy

123. PetSmart admits that it is represented by competent and diligent counsel. PetSmart denies the remaining allegations in Paragraph 123.

Alleged Predominance and Superiority

124. PetSmart denies the allegations in Paragraph 124.

125. PetSmart denies that a defendant class can be appropriately certified in this case or that Plaintiffs are entitled to any legal remedy against PetSmart, and therefore denies the allegations in Paragraph 125.

COUNT I

Fraudulent Misrepresentation and Concealment As to All Defendants

126. PetSmart incorporates its responses to Paragraphs 1-125 as if set forth fully herein.

127. PetSmart admits that it markets and sells pet food. To the extent the remaining allegations in Paragraph 127 are directed to PetSmart, PetSmart denies the allegations in Paragraph 127. To the extent the allegations in Paragraph 127 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 127.

128. PetSmart admits that it markets and sells pet food and treats, including its own brands of pet food and treats and brands of one or more of the Defendant Manufacturers. To the extent the remaining allegations in Paragraph 128 are directed to PetSmart, PetSmart denies the allegations in Paragraph 128. To the extent the allegations in Paragraph 128 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 128.

129. To the extent the allegations in Paragraph 129 are directed to PetSmart, PetSmart denies the allegations in Paragraph 129. To the extent the allegations in Paragraph 129 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response

is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 129.

130. To the extent the allegations in Paragraph 130 are directed to PetSmart, PetSmart denies the allegations in Paragraph 130. To the extent the allegations in Paragraph 130 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 130.

131. To the extent the allegations in Paragraph 131 are directed to PetSmart, PetSmart denies the allegations in Paragraph 131. To the extent the allegations in Paragraph 131 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 131.

132. The allegations in Paragraph 132 are not directed to PetSmart and therefore require no response from PetSmart. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 132.

133. To the extent the allegations in Paragraph 133 are directed to PetSmart, PetSmart denies the allegations in Paragraph 133. To the extent the allegations in Paragraph 133 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 133.

134. To the extent the allegations in Paragraph 134 are directed to PetSmart, PetSmart denies the allegations in Paragraph 134. To the extent the allegations in Paragraph 134 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response

is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 134.

COUNT II

Negligent Misrepresentation As to All Defendants

135. PetSmart incorporates its responses to Paragraphs 1-125 as if set forth fully herein.

136. PetSmart admits that it markets and sells pet food. To the extent the remaining allegations in Paragraph 136 are directed to PetSmart, PetSmart denies the allegations in Paragraph 136. To the extent the allegations in Paragraph 136 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 136.

137. PetSmart admits that it markets and sells pet food. To the extent the remaining allegations in Paragraph 137 are directed to PetSmart, PetSmart denies the allegations in Paragraph 137. To the extent the allegations in Paragraph 137 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 137.

138. To the extent the allegations in Paragraph 138 are directed to PetSmart, PetSmart denies the allegations in Paragraph 138. To the extent the allegations in Paragraph 138 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 138.

139. To the extent the allegations in Paragraph 139 are directed to PetSmart, PetSmart denies the allegations in Paragraph 139. To the extent the allegations in Paragraph 139 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 139.

140. To the extent the allegations in Paragraph 140 are directed to PetSmart, PetSmart denies the allegations in Paragraph 140. To the extent the allegations in Paragraph 140 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 140.

141. To the extent the allegations in Paragraph 141 are directed to PetSmart, PetSmart denies the allegations in Paragraph 141. To the extent the allegations in Paragraph 141 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 141.

142. To the extent the allegations in Paragraph 142 are directed to PetSmart, PetSmart denies the allegations in Paragraph 142. To the extent the allegations in Paragraph 142 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 142.

143. To the extent the allegations in Paragraph 143 are directed to PetSmart, PetSmart denies the allegations in Paragraph 143. To the extent the allegations in Paragraph 143 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response

is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations Paragraph 143.

COUNT III

Violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), Fla. Stat. § 501.201 As to All Defendants

144. PetSmart incorporates its responses to Paragraphs 1-125 as if set forth fully herein.

145. PetSmart admits that it markets and sells pet food. To the extent the remaining allegations in Paragraph 145 are directed to PetSmart, PetSmart denies the allegations in Paragraph 145. To the extent the allegations in Paragraph 145 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 145.

146. PetSmart admits that it markets and sells pet food. To the extent the remaining allegations in Paragraph 146 are directed to PetSmart, PetSmart denies the allegations in Paragraph 146. To the extent the allegations in Paragraph 146 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 146.

147. Paragraph 147 states a legal conclusion to which no response is required. To the extent a response is required, PetSmart denies the allegations in Paragraph 147, denies that it is liable for any damages, and denies that any relief as requested by Plaintiffs in the Complaint should be granted against PetSmart.

148. To the extent the allegations in Paragraph 148 are directed to PetSmart, PetSmart denies the allegations in Paragraph 148. To the extent the allegations in Paragraph 148 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 148.

149. Paragraph 149 states legal conclusions to which no response is required. To the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 149.

150. Paragraph 150 states a legal conclusion to which no response is required. To the extent a response is required and to the extent the allegations in Paragraph 150 are directed to PetSmart, PetSmart denies the allegations in Paragraph 150. To the extent the allegations in Paragraph 150 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 150.

151. Paragraph 151 states a legal conclusion to which no response is required. To the extent a response is required and to the extent the allegations in Paragraph 151 are directed to PetSmart, PetSmart denies the allegations in Paragraph 151. To the extent the allegations in Paragraph 151 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 151.

152. Paragraph 152 states a legal conclusion to which no response is required. To the extent a response is required and to the extent the allegations in Paragraph 152 are directed to PetSmart, PetSmart denies the allegations in Paragraph 152. To the extent the allegations in

Paragraph 152 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 152.

153. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 153.

154. To the extent the allegations in Paragraph 154 are directed to PetSmart, PetSmart denies the allegations in Paragraph 154. To the extent the allegations in Paragraph 154 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 154.

COUNT IV

Negligence As to Defendant Manufacturers and Co-Packers and PetSmart

155. PetSmart incorporates its responses to Paragraphs 1-125 as if set forth fully herein.

156. PetSmart admits that it markets and sells pet food. To the extent the remaining allegations in Paragraph 156 are directed to PetSmart, PetSmart denies the allegations in Paragraph 156. To the extent the allegations in Paragraph 156 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 156.

157. To the extent the allegations in Paragraph 157 are directed to PetSmart, PetSmart denies the allegations in Paragraph 157. To the extent the allegations in Paragraph 157 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response

is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 157.

158. To the extent the allegations in Paragraph 158 are directed to PetSmart, PetSmart denies the allegations in Paragraph 158. To the extent the allegations in Paragraph 158 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 158.

159. To the extent the allegations in Paragraph 159 are directed to PetSmart, PetSmart denies the allegations in Paragraph 159. To the extent the allegations in Paragraph 159 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 159.

160. To the extent the allegations in Paragraph 160 are directed to PetSmart, PetSmart denies the allegations in Paragraph 160. To the extent the allegations in Paragraph 160 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 160.

161. To the extent the allegations in Paragraph 161 are directed to PetSmart, PetSmart denies the allegations in Paragraph 161. To the extent the allegations in Paragraph 161 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 161.

COUNT V

Strict Liability As to All Defendants

162. PetSmart incorporates its responses to Paragraphs 1-125 as if set forth fully herein.

163. PetSmart is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 163.

164. To the extent the allegations in Paragraph 164 are directed to PetSmart, PetSmart denies the allegations in Paragraph 164. To the extent the allegations in Paragraph 164 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 164.

165. To the extent the allegations in Paragraph 165 are directed to PetSmart, PetSmart denies the allegations in Paragraph 165. To the extent the allegations in Paragraph 165 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 165.

COUNT VI

Breach of Implied Warranty as to Retailers and Pet Specialty Retailers

166. PetSmart incorporates its responses to Paragraphs 1-125 as if set forth fully herein.

167. PetSmart admits that it markets and sells pet food. To the extent the allegations in Paragraph 167 are directed to PetSmart, PetSmart denies the allegations in Paragraph 167. To the extent the allegations in Paragraph 167 are not directed to PetSmart, PetSmart is not required

to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 167.

168. Paragraph 168 states a legal conclusion to which no response is required. To the extent a response is required and the allegations are direct at PetSmart, PetSmart admits that it sold pet food of merchantable quality that was safe and fit for consumption by pets and denies the remaining allegations directed to PetSmart in Paragraph 168. To the extent the allegations in Paragraph 168 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information to form a belief the remaining allegations in Paragraph 168.

169. To the extent the allegations in Paragraph 169 are directed to PetSmart, PetSmart denies the allegations in Paragraph 169. To the extent the allegations in Paragraph 169 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 169.

170. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 170.

171. To the extent the allegations in Paragraph 171 are directed to PetSmart, PetSmart denies the allegations in Paragraph 171. To the extent the allegations in Paragraph 171 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 171.

172. To the extent the allegations in Paragraph 172 are directed to PetSmart, PetSmart denies the allegations in Paragraph 172. To the extent the allegations in Paragraph 172 are not

directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 172.

173. Paragraph 173 states legal conclusions to which no response is required. To the extent a response is required and the allegations are directed to PetSmart, PetSmart denies the allegations in Paragraph 173. To the extent a response is required and the allegations are not directed to PetSmart, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 173.

COUNT VII

Breach of Express Warranty As to Defendant Retailers and Pet Specialty Retailers

174. PetSmart incorporates its responses to Paragraphs 1-125 as if set forth fully herein.

175. PetSmart admits that it markets and sells pet food. To the extent the remaining allegations in Paragraph 175 are directed to PetSmart, PetSmart denies the allegations in Paragraph 175. To the extent the allegations in Paragraph 175 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 175.

176. Paragraph 176 states legal conclusions to which no response is required. To the extent a response is required and the allegations are directed to PetSmart, PetSmart denies the allegations in Paragraph 176. To the extent a response is required and the allegations are not directed to PetSmart, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 176.

177. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegations in Paragraph 177.

178. Paragraph 178 states legal conclusions to which no response is required. To the extent a response is required and the allegations are directed to PetSmart, PetSmart denies the allegations in Paragraph 178. To the extent a response is required and the allegations are not directed to PetSmart, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 178.

179. To the extent the allegations in Paragraph 179 are directed to PetSmart, PetSmart denies the allegations in Paragraph 179. To the extent the allegations in Paragraph 179 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 179.

COUNT VIII

Unjust Enrichment As to All Defendants

180. PetSmart incorporates its responses to Paragraphs 1-125 as if fully set forth herein.

181. Paragraph 181 states a legal conclusion to which no response is required. Furthermore, because the allegations in Paragraph 181 are not directed to PetSmart, PetSmart is not required to provide a response. To the extent a response is required, denies that Plaintiffs are entitled to any legal remedy against PetSmart, and therefore denies the allegations in Paragraph 181.

182. PetSmart admits that it markets and sells pet food. To the extent the remaining allegations in Paragraph 182 are directed to PetSmart, PetSmart denies the allegations in Paragraph 182. To the extent the allegations in Paragraph 182 are not directed to PetSmart,

PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 182.

183. PetSmart admits that it markets and sells pet food. To the extent the allegations in Paragraph 183 are directed to PetSmart, PetSmart denies the allegations in Paragraph 183. To the extent the allegations in Paragraph 183 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 183.

184. PetSmart denies for lack of knowledge or information sufficient to form a belief the allegation that Plaintiffs purchased the pet food for the reasons alleged in the Complaint. To the extent the remaining allegations in Paragraph 184 are directed to PetSmart, PetSmart denies the remaining allegations in Paragraph 184. To the extent the remaining allegations in Paragraph 184 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 184.

185. To the extent the allegations in Paragraph 185 are directed to PetSmart, PetSmart denies the allegations in Paragraph 185. To the extent the allegations in Paragraph 185 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 185.

186. To the extent the allegations in Paragraph 186 are directed to PetSmart, PetSmart denies the allegations in Paragraph 186. To the extent the allegations in Paragraph 186 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response

is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 186.

187. To the extent the allegations in Paragraph 187 are directed to PetSmart, PetSmart denies the allegations in Paragraph 187. To the extent the allegations in Paragraph 187 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 187.

188. To the extent the allegations in Paragraph 188 are directed to PetSmart, PetSmart denies that Plaintiffs are entitled to any legal remedy against PetSmart, and therefore denies the allegations in Paragraph 188. To the extent the allegations in Paragraph 188 are not directed to PetSmart, PetSmart is not required to provide a response, but to the extent a response is required, PetSmart denies for lack of knowledge or information sufficient to form a belief these allegations in Paragraph 188.

ADDITIONAL DEFENSES

First Defense

1. Plaintiffs' Complaint fails, in whole or in part, to state a claim against PetSmart upon which relief may be granted.

Second Defense

2. Plaintiffs lack standing to assert the claims alleged in the Complaint.

Third Defense

3. This Court lacks subject matter jurisdiction over Plaintiffs' alleged claims.

Fourth Defense

4. Venue for Plaintiffs' claims is improper in this District.

Fifth Defense

5. Plaintiffs' claims are barred, in whole or in part, under the applicable statutes of limitations or repose, or are otherwise untimely.

Sixth Defense

6. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have made statements or taken actions that preclude them from asserting claims or constitute estoppel or waiver of their claims.

Seventh Defense

7. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

Eighth Defense

8. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

Ninth Defense

9. Plaintiffs' claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

Tenth Defense

10. Plaintiffs' claims are barred, in whole or in part, by the doctrine of release.

Eleventh Defense

11. Plaintiffs' claims are barred, in whole or in part, by the doctrines of *res judicata*, collateral estoppel, issue preclusion, and/or claim preclusion.

Twelfth Defense

12. Plaintiffs' claims are barred, in whole or in part, because the claims are not recognized as separate causes of action under applicable law.

Thirteenth Defense

13. Plaintiffs' claims are barred, in whole or in part, by reason of the Plaintiffs' failure to join any and all necessary and/or indispensable parties to this action.

Fourteenth Defense

14. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs and/or Plaintiffs' claims have been improperly joined in this action.

Fifteenth Defense

15. Plaintiffs' claims are barred, in whole or in part, by the economic loss doctrine.

Sixteenth Defense

16. Plaintiffs' claims are preempted in accordance with the Supremacy Clause of the United States Constitution and by federal law.

Seventeenth Defense

17. Plaintiffs' claims are barred, in whole or in part, because the conduct at issue (including any and all alleged advertising, marketing, and labeling) was required or specifically authorized by federal and/or state law, codes, statutes, rules, regulations and/or standards.

Eighteenth Defense

18. Plaintiffs' claims are barred, in whole or in part, because the products at issue (including any and all labels and/or warnings) complied with federal and/or state law, codes, statutes, rules, regulations, and/or standards.

Nineteenth Defense

19. Plaintiffs' claims are barred, in whole or in part, by PetSmart's First Amendment right to commercial speech.

Twentieth Defense

20. Plaintiffs fail to allege fraud with particularity and fail to allege sufficient facts to support any finding that PetSmart, its officers, agents, servants, employees, contractors, or others for whom it was responsible, made any fraudulent misrepresentations or omissions or engaged in any conduct with the requisite scienter or state of mind.

Twenty-First Defense

21. Any alleged representations made by PetSmart forming the basis of Plaintiffs' Complaint were true and honest at the time made. Said representations, if any, were made without knowledge of any falsity, and were not made with the intent to deceive Plaintiffs and therefore Plaintiffs are barred from recovery.

Twenty-Second Defense

22. The injuries complained of by Plaintiffs and the alleged resulting damages, if any, were caused solely and proximately, in whole or in part, by Plaintiffs' own negligence and fault and thus, under the doctrine of contributory negligence, are not recoverable.

Twenty-Third Defense

23. Plaintiffs' recovery should be diminished by that percentage of fault attributable to Plaintiffs and/or persons or entities other than PetSmart for those injuries sustained by Plaintiffs upon which the damages complained of in this action are based. Thus, PetSmart's liability, if any, is limited to its percentage of responsibility for the injuries of Plaintiffs, if any, regardless of whether or not other persons or entities are named as co-Defendants.

Twenty-Fourth Defense

24. PetSmart is entitled to a set-off from any recovery against it to the extent each item of economic loss alleged in the Complaint was, or with reasonable certainty will be,

replaced or indemnified, in whole or in part, by collateral sources, including any settlements of future settlements between Plaintiffs and any person or entity.

Twenty-Fifth Defense

25. If Plaintiffs sustained injuries or incurred expenses as alleged, these damages and expenses were not caused by PetSmart. To the extent that PetSmart is held liable for any damages to Plaintiffs, it may have statutory or contractual rights to contribution or indemnification.

Twenty-Sixth Defense

26. Plaintiffs' claims are barred by the doctrine of assumption of risk. Upon information and belief, Plaintiffs had full knowledge of the risks and possible adverse effects pertaining to the pet food products their pets allegedly consumed, and all or part of the alleged injuries, damages, and/or losses, if any, sustained by Plaintiffs arose from and were caused by risks of which Plaintiffs were aware, and such risks were accepted and assumed by the Plaintiffs.

Twenty-Seventh Defense

27. Plaintiffs' alleged damages were due to, and proximately caused by, in whole or in part, other events, conditions, instrumentalities, products and/or acts or omissions of an individual or entity over whom or which PetSmart exercised no control.

Twenty-Eighth Defense

28. Plaintiffs' alleged damages were due to, and proximately caused by, in whole or in part, by intervening or superseding causes, included but not limited to: the pets' preexisting and/or unrelated medical, genetic and/or environmental conditions, diseases, or illnesses; subsequent medical conditions; or natural courses of conditions for which PetSmart is not responsible. Plaintiffs' pets' alleged illness or death, if any, was the result of natural health

processes and would have occurred just as they did irrespective of PetSmart's alleged actions or conduct.

Twenty-Ninth Defense

29. To the extent Plaintiffs may have modified, altered or changed the pet food referred to in the Complaint, such changes in any said pet food proximately caused Plaintiffs' injuries, loss and damages, if any.

Thirtieth Defense

30. To the extent Plaintiffs have failed to follow the use instructions on the pet food and/or have combined the pet food with others and/or misused the pet food in ways that were not reasonably foreseeable to PetSmart, it was the failure to follow instructions/product combination and/or other misuse which caused or contributed to Plaintiffs' damages, if any.

Thirty-First Defense

31. Plaintiffs' claims are barred, in whole or in part, by their failure to mitigate damages.

Thirty-Second Defense

32. Plaintiffs' claims are barred, in whole or in part, by the defenses available under the consumer protection, deceptive practices, products liability, strict liability statutes and/or the uniform commercial codes of the several states.

Thirty-Third Defense

33. Plaintiffs' claims for product defect are barred to the extent the pet food was consumed beyond the expiration date.

Thirty-Fourth Defense

34. Plaintiffs' claims are barred, in whole or in part, due to spoliation of evidence.

Thirty-Fifth Defense

35. Plaintiffs' claims are barred, in whole or in part, because PetSmart acquired the pet food in a sealed container and was afforded no reasonable opportunity to inspect the product before it was sold.

Thirty-Sixth Defense

36. Plaintiffs' claims are barred, in whole or in part, because PetSmart is an "innocent" seller of the product and a proper, solvent manufacturer has been named in the lawsuit and jurisdiction has been maintained.

Thirty-Seventh Defense

37. The actions of PetSmart were in compliance with all existing safety standards and precautions then consistent with the state of the art.

Thirty-Eighth Defense

38. The claims asserted in the Complaint are barred because the pet food was designed, tested, manufactured, and labeled in accordance with the state-of-the-art industry standards existing at the time of the sale. PetSmart asserts that as of the relevant times alleged in the Complaint, it did not know and, in light of the then existing reasonable available scientific and technological knowledge, could not have known of: (1) the design characteristics, if any, that allegedly caused the injuries and damages complained of in the Complaint; and/or (2) the alleged danger of any such design characteristics.

Thirty-Ninth Defense

39. Plaintiffs' claims are barred because the products at issue included adequate information with respect to their contents and proper use.

Fortieth Defense

40. Plaintiffs' breach of warranty claims are barred for lack of timely notice of breach, lack of privity, and/or because the alleged warranties were disclaimed.

Forty-First Defense

41. Plaintiffs' breach of warranty claims are barred by the defenses of expiration, limitation, and exclusion.

Forty-Second Defense

42. Plaintiffs' claims are barred, in whole or in part, because any warranties, if made, are excluded through course of dealing, course of performance and/or usage of trade.

Forty-Third Defense

43. Plaintiffs' claims for breach of implied warranties are barred because PetSmart was not made aware of any particular use of the products intended by Plaintiffs.

Forty-Fourth Defense

44. Plaintiffs' claims for express warranties are barred because Plaintiffs failed to identify any express warranties upon which they relied.

Forty-Fifth Defense

45. There is no joint and several liability against PetSmart.

Forty-Sixth Defense

46. PetSmart is not vicariously liable for the acts of others.

Forty-Seventh Defense

47. PetSmart asserts that it is not liable for any alleged wrongful actions taken by PetSmart employees, which may have been taken outside the scope of and course of their duties and which were not authorized, condoned, or ratified by PetSmart.

Forty-Eighth Defense

48. To the extent that Plaintiffs' claims are based on disgorgement of revenue/profits or based on a theory providing for liability without proof of causation, the claims violate PetSmart's rights under the United States Constitution and applicable state constitutions, and Plaintiffs' claims are barred by the due process provision of the Fifth and Fourteenth Amendments to the United States Constitution and sections of the applicable state constitutions on the grounds that PetSmart will not be accorded protection against multiple suits and duplicative liability and to the extent that there has been a denial of equal protection.

Forty-Ninth Defense

49. Plaintiffs' claims for damages are speculative, and, as a result, are barred under applicable state law.

Fifty Defense

50. Plaintiffs are not entitled to recover non-economic damages from PetSmart for any alleged injuries to their pets, or alternatively such a recovery is limited by the statutory caps on non-economic damages that exist under applicable state law.

Fifty-First Defense

51. Plaintiffs' claim for unjust enrichment is barred because Plaintiffs have an adequate remedy at law.

Fifty-Second Defense

52. The allegations of the Complaint directed against PetSmart do not give rise to a claim of punitive damages against PetSmart.

Fifty-Third Defense

53. The imposition of punitive damages is violative of due process and equal protection provided by the Fifth and Fourteenth Amendment of the United States Constitution.

An award of punitive damages based upon vicarious or joint and several judgments, the lack of reasonable limitation, the lack of specific and set standards, public policy, and the potential to exceed the maximum criminal fines for similar conduct are each in violation of the Fifth and Fourteenth Amendments of the United States Constitution. It is denied that any act or omission of PetSmart was such that it constitutes fault meeting the standards required to prove punitive damages.

Fifty-Fourth Defense

54. PetSmart adopts and incorporates by reference any affirmative defense asserted by any other Defendant to this action to the extent such affirmative defenses apply to PetSmart.

Notice of Additional Affirmative Defenses

PetSmart hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery. PetSmart thus expressly reserves the right to amend its Answer by way of amending responses to the allegations in the Complaint, adding affirmative defenses, counterclaims, cross-claims and/or third-party claims, or otherwise, as additional facts are obtained through further investigation and discovery.

WHEREFORE, PetSmart respectfully requests that the Court: (i) enter judgment in favor of PetSmart dismissing the Complaint with prejudice and denying Plaintiffs any fees, expenses or costs; (ii) award to PetSmart all costs incurred by it in connection with this action; and (iii) grant to PetSmart such other and further relief as the Court may deem appropriate in the circumstances.

Dated: May 12, 2008

Respectfully submitted,

/s/ Barbara Bolton Litten

John B.T. Murray, Jr.

Florida Bar Member 962759

jbmurray@ssd.com

Barbara Bolton Litten

Florida Bar Member 91642

blitten@ssd.com

SQUIRE, SANDERS & DEMPSEY, L.L.P.

1900 Phillips Point West

777 South Flagler Drive

West Palm Beach, FL 33401-6198

Tel.: 561.650.7200

Fax: 561.655.1509

Attorneys for PetSmart, Inc.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing to be served upon all counsel on the attached Service List through the Court's Electronic Filing System, or by mailing the same to the offices of said counsel by United States mail, postage prepaid, on this 12th day of May, 2008.

/s/ Barbara Bolton Litten

Barbara Bolton Litten

Florida Bar No. 91642

SERVICE LIST

CASE NO. 07-21221 ALTONAGA/Brown

Catherine J. MacIvor
E-mail: cmacivor@mflegal.com
Jeffrey Eric Foreman
E-mail: jforeman@mflegal.com
Jeffrey Bradford Maltzman
E-mail: jmaltzman@mflegal.com
Darren W. Friedman
E-mail: dfriedman@mflegal.com
Bjorg Eikeland
E-mail: beikeland@mflegal.com
MALTZMAN FOREMAN PA
One Biscayne Tower
2 South Biscayne Boulevard, Suite 2300
Miami, FL 33131-1803
Telephone: (305) 358-6555
Facsimile: (305) 374-9077

Attorneys for Plaintiffs

Rolando Andres Diaz
E-Mail: rd@kubickdraper.com
Maria Kayanan
E-mail: mek@kubickdraper.com
KUBICKI DRAPER
25 W. Flagler Street
Penthouse
Miami, FL 33130-1712
Telephone: (305) 982-6708
Facsimile: (305) 374-7846

Attorneys for Defendant Pet Supermarket, Inc.

John B.T. Murray, Jr.
E-mail: jbmurray@ssd.com
SQUIRE, SANDERS & DEMPSEY L.L.P.
1900 Phillips Point West
777 South Flagler Drive
West Palm Beach, FL 33401-6198
Telephone: (561) 650-7200
Facsimile: (561) 655-1509

Attorneys for Defendants PETCO Animal Supplies Stores, Inc., PetSmart, Inc., Wal-Mart Stores, Inc., Target Corporation

Amy W. Schulman
E-mail: amy.schulman@dlapiper.com
Alexander Shaknes
E-mail: Alex.Shaknes@dlapiper.com
DLA PIPER US LLP
1251 Avenue of the Americas
New York, New York 10020

Attorneys for Defendants Menu Foods, Inc. and Menu Foods Income Fund

Lonnie L. Simpson
E-mail: Lonnie.simpson@dlapiper.com
S. Douglas Knox
E-mail: Douglas.knox@dlapiper.com
DLA PIPER US LLP
101 East Kennedy Boulevard
Suite 2000
Tampa, FL 33602-5149
Telephone: (813) 229-2111
Facsimile: (813) 229-1447

*Attorneys for Defendants Menu Foods, Inc.
and Menu Foods Income Fund*

Omar Ortega
DORTA AND ORTEGA, P.A.
Douglas Entrance
800 S. Douglas Road, Suite 149
Coral Gables, FL 33134
Telephone: (305) 461-5454
Facsimile: (305) 461-5226
E-mail: oortega@dortaandortega.com

*Attorneys for Defendants Mars, Incorporated,
Mars Petcare U.S., Inc. and Nutro Products,
Inc.*

Hugh J. Turner, Jr.
AKERMAN SENTERFITT
350 E. Las Olas Boulevard
Suite 1600
Fort Lauderdale, FL 33301-2229
Telephone: (954) 463-2700
Facsimile: (954) 463-2224
E-mail: hugh.turner@akerman.com

*Attorneys for Defendant Publix Super Markets,
Inc*

Dane H. Butswinkas
E-mail: dbutswinkas@wc.com
Philip A. Sechler
E-mail: psechler@wc.com
Thomas G. Hentoff
E-mail: thentoff@wc.com
Patrick J. Houlihan
E-mail: phoulihan@wc.com
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 200005

*Attorneys for Defendants Mars, Incorporated,
Mars Petcare U.S., Inc. and Nutro Products,
Inc.*

Benjamine Reid
E-mail: breid@carltonfields.com
Olga M. Vieira
E-mail: ovieira@carltonfields.com
Ana M. Craig
E-mail: acraig@carltonfields.com
CARLTON FIELDS, P.A.
100 S.E. Second Street, Suite 4000
Bank of America Tower at International Place
Miami, FL 33131-9101
Telephone: (305) 530-0050
Facsimile: (305) 530-0055

Attorneys for Defendant Hill's Pet Nutrition, Inc.

Kara L. McCall
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, Illinois 60603
Telephone: (312) 853-2666
E-mail: kmccall@Sidley.com

Attorneys for Defendant Hill's Pet Nutrition, Inc.

Richard Fama
E-mail: rfama@cozen.com
John J. McDonough
E-mail: jmcdonough@cozen.com
COZEN O'CONNOR
45 Broadway
New York, New York 10006
Telephone: (212) 509-9400
Facsimile: (212) 509-9492

Attorneys for Defendant Del Monte Foods

John J. Kuster
E-mail: jkuster@sidley.com
James D. Arden
E-mail: jarden@sidley.com
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
Telephone: (212) 839-5300
Facsimile: (212) 839-5599

Attorneys for Defendant Hill's Pet Nutrition, Inc.

Sherril M. Colombo
COZEN O'CONNOR
Wachovia Center, Suite 4410
200 South Biscayne Boulevard
Miami, FL 33131
Telephone: (305) 704-5945
Facsimile: (305) 704-5955
E-mail: scolombo@cozen.com

Attorneys for Defendant Del Monte Foods, Co.

John F. Mullen
E-mail: jmullen@cozen.com
Julie Negovan
E-mail: jnegovan@cozen.com
COZEN O'CONNOR
1900 Market Street
Philadelphia, PA 19103
Telephone: (215) 665-2000
Facsimile: (215) 665-2013

Attorneys for Defendant Del Monte Foods, Co.

Carol A. Licko
HOGAN & HARTSON L.L.P.
Mellon Financial Center
1111 Brickell Avenue, Suite 1900
Miami, FL 33131
Telephone: (305) 459-6500
Facsimile: (305) 459-6550
E-mail: calicko@hhlaw.com

Attorneys for Defendant Nestlé Purina Petcare Co.

Robert C. Troyer
HOGAN & HARTSON L.L.P.
1200 17th Street
One Tabor Center, suite 1500
Denver, Colorado 80202
Telephone: (303) 899-7300
Facsimile: (303) 899-7333
E-mail: rtroyer@hhlaw.com

Attorneys for Defendant Nestlé Purina Petcare Co.

Craig A. Hoover
E-mail: cahoover@hhlaw.com
Miranda L. Berge
E-mail: mlberge@hhlaw.com
HOGAN & HARTSON L.L.P.
555 13TH Street, NW
Washington, D.C. 20004
Telephone: (202) 637-5600
Facsimile: (202) 637-5910

Attorneys for Defendant Nestlé Purina Petcare Co.

James K. Reuss
LANE ALTON & HORST, LLC
Two Miranova Place
Suite 500
Columbus, Ohio 43215
Telephone: (614) 233-4719
E-mail: JReuss@lanealton.com

Attorneys for Defendant The Kroger Co. of Ohio

Alan G. Greer
RICHMAN GREER, P.A.
Miami Center – Suite 1000
201 South Biscayne Boulevard
Miami, FL 33131
Telephone: (305) 373-4000
Facsimile: (305) 373-4099
E-mail: agreer@richmangreer.com

Attorneys for Defendant The Iams Co.

D. Jeffrey Ireland
E-mail: djireland@ficlaw.com
Brian D. Wright
E-mail: Bwright@ficlaw.com
Laura A. Sanom
E-mail: lsanom@ficlaw.com
FARUKI IRELAND & COX P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, Ohio 45402

Attorneys for Defendant The Iams Co.

Robin L. Hanger
SQUIRE, SANDERS & DEMPSEY L.L.P.
200 S. Biscayne Boulevard
40th Floor
Miami, FL 33131-2398
Telephone: (305) 577-7040
Facsimile: (305) 577-7001
E-mail: rlhanger@ssd.com

*Attorneys for Defendants PETCO Animal
Supplies Stores, Inc.*

Ralph G. Patino
E-mail: rpatino@patinolaw.com
Dominick V. Tamarazzo
E-mail: dtamarazzo@patinolaw.com
Carlos B. Salup
E-mail: csalup@patinolaw.com
PATINO & ASSOCIATES, P.A.
225 Alcazar Avenue
Coral Gables, FL 33134
Telephone: (305) 443-6163
Facsimile: (305) 443-5635

*Attorneys for Defendants Pet Supplies "Plus"
and Pet Supplies Plus/USA, Inc.*

C. Richard Fulmer, Jr.
**FULMER, LeROY, ALBEE, BAUMANN &
GLASS, PLC**
2866 East Oakland Park Boulevard
Fort Lauderdale, FL 33306
Telephone: (954) 707-4430
Facsimile: (954) 707-4431
E-mail: rfulmer@Fulmer.LeRoy.com

*Attorneys for Defendant The Kroger Co. of
Ohio*

Craig P. Kalil
E-mail: ckalil@aballi.com
Joshua D. Poyer
E-mail: jpyoyer@abaili.com
**ABALLI, MILNE, KALIL & ESCAGEDO,
P.A.**
2250 Sun Trust International Center
One Southeast Third Avenue
Miami, FL 33131
Telephone: (305) 373-6600
Facsimile: (305) 373-7929

*Attorneys for Defendant New Albertson's Inc.
and Albertson's LLC*

W. Randolph Teslik, P.C.
E-mail: rteslik@akingump.com
Andrew Dober
E-mail: adober@akingump.com
**AKIN GUMP STRAUSS HAUER & FELD
LLP**
1333 New Hampshire Avenue, NW
Washington, D.C. 20036
Telephone: (202) 887-4000
Facsimile: (202) 887-4288

*Attorneys for Defendants New Albertson's Inc.
and Albertson's LLC*

Jeffrey S. York
E-mail: jyork@mcguirewoods.com
Michael M. Giel
E-mail: mgiel@mcguirewoods.com
McGUIRE WOODS LLP
50 N. Laura Street, Suite 3300
Jacksonville, FL 32202
Telephone: (904) 798-2680
Facsimile: (904) 360-6330

*Attorneys for Defendant Natura Pet Products,
Inc.*

Kristen E. Caverly

E-mail: kcaverly@hcesq.com

HENDERSON & CAVERLY LLP

P.O. Box 9144

16236 San Dieguito Road, Suite 4-13

Rancho Santa Fe, California 92067-9144

*Attorneys for Defendant Natura Pet Products,
Inc.*

LOSANGELES/264706.1