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1 36. Adequate notice can be given to Class members directly using
2 information maintained in Defendants' records, or through publication notice.

3 37. Defendants benefited from the sale of its "cuts and gravy" style dog and
4 cat food to Plaintiff and the Class. The benefit to Defendants can be identified from
5 the sale of such pet food to Plaintiff and the Class and that such monies can be
6 restored to Plaintiff and the Class. Such monies are the property of the Plaintiff and
7 the Class. All or a portion of this benefit retained by Defendants is money in which
8 Plaintiff and the Class have an ownership interest. Plaintiff and the Class were
9 injured and lost money as a result of Defendants' unfair, unlawful and fraudulent
10 business practices described herein.

11 **FIRST CLAIM FOR RELIEF**

12 **[Violation of Consumers Legal Remedies Act, Cal. Civ. Code § 1750, et seq.]**

13 38. Plaintiff hereby incorporates by reference each of the preceding
14 allegations as though fully set forth herein. Plaintiff asserts this claim against each
15 and every Defendant on behalf of herself and the Class.

16 39. Defendants are each a "person" as defined by Cal. Civ. Code § 1761(c).

17 40. Plaintiff and the proposed Class members are "consumers" within the
18 meaning of Cal. Civ. Code § 1761(d).

19 41. Plaintiff's purchase of dog and cat food manufactured, distributed,
20 marketed and sold by Defendants constitute "transactions" within the meaning of
21 Civil Code section 1761(e) and 1770.

22 42. Defendants' conduct violated and continues to violate the CLRA in at
23 least the following respects:

24 a. In violation of Section 1770(a)(1) of the CLRA, Defendants
25 misrepresented the source, sponsorship, approval or certification of
26 goods or services; and
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1 b. In violation of Section 1770(a)(5) of the CLRA, Defendants
2 represented that its goods or services sponsorship, approval,
3 characteristics, uses or benefits which they do not have.

4 43. Defendants engaged in these unfair or deceptive acts and practices with
5 the intent that they result, and which did result, in the sale of dog and cat food to
6 Plaintiff and the Class.

7 44. In engaging in unfair or deceptive conduct in violation of the CLRA,
8 Defendants actively concealed and intentionally failed to disclose material facts
9 about the characteristics of their dog and cat food, and further represented that such
10 food was suitable for pet consumption.

11 45. As a result of Defendants' acts and practices as alleged in this
12 Complaint, Plaintiff seeks an Order enjoining Defendants from continuing to
13 engage in unlawful, unfair or fraudulent business practices, and any other act
14 prohibited by law. Plaintiff has contemporaneous with this filing provided notice to
15 Defendants, and will amend to add claims for damages under the CLRA if
16 Defendants do not take appropriate corrective action.

17 **SECOND CLAIM FOR RELIEF**
18 **[Negligence]**

19 46. Plaintiff hereby incorporates by reference each of the preceding
20 allegations as though fully set forth herein. Plaintiff asserts this claim against each
21 and every Defendant on behalf of herself and the Class.

22 47. Defendants owed a duty to Plaintiff and the Class to provide pet food
23 safe and suitable for pet consumption.

24 48. Through their failure to exercise due care, Defendants were negligent in
25 manufacturing, distributing, marketing and selling pet food to Plaintiff and the
26 Class.

27 49. Defendants failed to implement adequate quality control and adequate
28 testing of its pet food that they introduced into the stream of commerce for sale to
Plaintiff and the Class and for consumption by their pets.

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1 50. Defendants knew, or should have known, that their pet food, as
2 described above, presents an unreasonable and unacceptable risk of injury or death
3 to pets, and would result in foreseeable and avoidable damage.

4 51. The losses and damages described herein were foreseeable and
5 avoidable.

6 52. Defendants' negligence proximately caused the losses and damages to
7 Plaintiff and the Class.

8 **THIRD CLAIM FOR RELIEF**
9 **[Violation of the California Unfair Competition Law,**
10 **Business & Professions Code §§ 17200, *et seq.*]**

11 53. Plaintiff hereby incorporates by reference each of the preceding
12 allegations as though fully set forth herein. Plaintiff asserts this claim against each
13 and every Defendant on behalf of herself and the Class.

14 54. Defendants' acts and practices, described herein, constitute unlawful,
15 unfair or fraudulent business practices in violation of the Unfair Competition Law,
16 Business & Professions Code sections 17200 *et seq* ("UCL").

17 55. The utility of Defendants' manufacturing, distribution, marketing and/or
18 sale of contaminated dog and cat food is significantly outweighed by the gravity of
19 the harm they impose on Plaintiff and the Class. Defendants' acts and practices are
20 oppressive, unscrupulous or substantially injurious to consumers.

21 56. The above-described unfair, unlawful and fraudulent business practices
22 conducted by Defendants present a threat and likelihood of harm and deception to
23 members of the Class in that Defendants have systematically perpetrated and
24 continue to perpetrate the unfair, unlawful and fraudulent conduct upon members of
25 the public by engaging in the conduct described herein.

26 57. Plaintiff and the Class have suffered harm as a proximate result of the
27 wrongful conduct of the Defendants alleged herein, and therefore bring this claim
28 for relief for restitution and disgorgement. Plaintiff is a person who has suffered

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1 injury in fact and has lost money and property as a result of such unfair
2 competition.

3 58. Pursuant to Business and Professions Code sections 17200 and 17203,
4 Plaintiff, on behalf of herself and the Class, seeks an order of this Court: enjoining
5 Defendants from continued manufacture, distribution, marketing and sale of "cuts
6 and gravy" style dog and cat food in an unfair, unlawful and fraudulent manner, and
7 an order enjoining Defendants from collecting money from the Class from the sale
8 of pet food. Plaintiff further requests an order awarding Plaintiff and the Class
9 restitution and disgorgement of profits acquired by Defendants by means of such
10 unlawful acts and practices, so as to deter Defendants and to rectify Defendants'
11 unfair and unlawful practices and to restore any and all monies to Plaintiff and the
12 Class, which are still retained by Defendants, plus interest and attorneys' fees and
13 costs pursuant to, *inter alia*, Code of Civil Procedure section 1021.5.

14 **FOURTH CLAIM FOR RELIEF**
15 **[For Unjust Enrichment]**

16 59. Plaintiff hereby realleges and incorporates by reference all paragraphs
17 previously alleged herein. Plaintiff asserts this claim against each and every
18 Defendant on behalf of herself and the Class.

19 60. Defendants have received, and continue to receive, a benefit at the
20 expense of Plaintiff and members of the Class. Defendants have knowledge of this
21 benefit.

22 61. Defendants have charged and collected from consumers, including
23 Plaintiff and members of the Class, money for dog and cat food that endangers the
24 lives of their pets. Defendants thus have received benefits that they have unjustly
25 retained at the expense of Plaintiff and members of the Class.

26 62. As a direct and proximate result of Defendants' unlawful acts and
27 conduct, Plaintiff and members of the Class were deprived of the use of their
28 monies that was unlawfully charged and collected by Defendants, and are therefore

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1 entitled to restoration of their monies.

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FIFTH CLAIM FOR RELIEF
[Breach Of Express Warranty]

63. Plaintiff hereby realleges and incorporates by reference all paragraphs previously alleged herein. Plaintiff asserts this claim against each and every Defendant on behalf of herself and the Class.

64. Defendants expressly warranted that their "cuts and gravy" style pet food was suitable and safe for pet consumption.

65. Defendants also expressly warranted that "it manufacturer[s] the private-label wet pet-food industry's most comprehensive product program with the highest standards of quality."

66. Plaintiff and the Class were induced by Defendants' marketing, advertising, promotion and labeling of the pet food as suitable "food" to rely upon such express warranty, and, in fact, relied upon the untrue warranty in purchasing the recalled pet food and feeding it to their pets.

67. Plaintiff and the Class were damaged as a proximate result of Defendants' breach of their express warranty.

SIXTH CLAIM FOR RELIEF
[Breach Of Implied Warranty]

68. Plaintiff hereby realleges and incorporates by reference all paragraphs previously alleged herein. Plaintiff asserts this claim against each and every Defendant on behalf of herself and the Class.

69. Defendants are merchants under section 2-104 and 2-314 of the Uniform Commercial Code.

70. Through their marketing, advertising, promotion and labeling of their "cuts and gravy" style pet food, Defendants impliedly warranted that such pet food was fit for the ordinary purpose for which it was intended, including to safely nourish pets with risk of illness or death, pursuant to section 2-314 of the Uniform

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1 Commercial Code.

2 71. Through their marketing, advertising, promotion and labeling,
3 Defendants knew that Plaintiff and the Class would purchase their pet food for the
4 ordinary purpose of providing nourishment to their pets.

5 72. Defendants manufactured, distributed, marketed, advertised, promoted
6 and sole their pet food for the ordinary purpose for which it was purchased by
7 Plaintiff and the Class.

8 73. Plaintiff and the Class relied upon Defendants' representations and
9 warranties, and purchased and used Defendants' pet food for the ordinary purpose
10 for which it was sold.

11 74. Defendants' pet food purchased by Plaintiff and the Class were unfit for
12 their ordinary purpose when sold. Such food was sold while presenting a risk of
13 risk of illness or death to pets. Defendants have accordingly breached the implied
14 warranty of merchantability by selling such unfit pet food.

15 75. Plaintiff and the Class were damaged as a proximate result of
16 Defendants' breach of warranty.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff, on behalf of herself and all others similarly
19 situated, prays for judgment against Defendants as follows:

- 20 1. For an order certifying the Class under Rule 23 of the Federal Rules of
- 21 Civil Procedure and appointing Plaintiff and her counsel of record to
- 22 represent the Class;
- 23 2. For restitution, disgorgement and/or other equitable relief as the Court
- 24 deems proper;
- 25 3. That pursuant to sections 17203 and 17204 of the Business and
- 26 Professions Code, Defendants be permanently enjoined from
- 27 performing or proposing to perform any of the aforementioned acts of
- 28 unfair, unlawful and fraudulent business practices;

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- 4. For compensatory damages sustained by Plaintiff and all others similarly situated as a result of Defendants' unlawful acts and conduct;
- 5. For punitive damages pursuant to Civil Code § 1780(a)(4);
- 7. For a permanent injunction prohibiting Defendants from engaging in the conduct and practices complained of herein;
- 8. For pre-judgment and post-judgment interest;
- 9. For reasonable attorneys' fees and costs of suit, including expert witness fees; and
- 10. For such other and further relief as this Court may deem just and proper.

JURY DEMAND

To the full extent available, Plaintiff demands a trial by jury.

Dated: March 26, 2007

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