

Exhibit B

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SARAH HILL and MONICA
O'ROURKE,
on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

CANIDAE CORPORATION,
a California Corporation,

Defendant.

Case No. 5:20-CV-01374-JGB-SP

**AMENDED CLASS ACTION
COMPLAINT**

Demand for Jury Trial

Plaintiffs Sarah Hill and Monica O'Rourke ("Plaintiffs"), acting on behalf of themselves and all others similarly situated ("Class Members"), brings this action for damages and equitable relief against Canidae Corporation ("Defendant").

NATURE OF THE CASE

1. Pet owners take the health and well-being of their dogs seriously. Accordingly, when purchasing dog foods, an important consideration for many consumers, including Plaintiffs and Class Members, is the quality of the food that

1 they eat. These consumers are willing to pay more for a top-quality dog food that
2 excludes certain ingredients (often used as cheap fillers) that are suspected to cause
3 allergic reactions or that lead to other health problems in dogs. For example, dogs
4 can—and often do—have allergic reactions to certain foods, including those that
5 contain wheat, soy, and chicken. Although not every dog has an allergic reaction to
6 these ingredients, consumers like Plaintiffs and Class Members choose to pay more
7 upfront than run the risk of veterinary bills.

8 2. Plaintiffs and consumers willingly pay a premium for limited ingredient
9 pet foods—like Defendant’s Canidae Grain-Free PURE Real Bison, Lentil, and
10 Carrot Recipe Dry Dog Food and Canidae Grain-Free PURE Real Salmon and
11 Sweet Potato Recipe Dry Dog Food (collectively “Canidae Limited Ingredient
12 Diets”) purport to be—for the health and well-being of their pets.

13 3. Consumers—including Plaintiffs—rely on Defendant’s representations
14 that the Canidae Limited Ingredient Diets: (1) include only limited ingredients; (2)
15 are specifically formulated for the health needs of dogs; (3) meet its own ingredient
16 promises and warranties; and (4) adhere to quality and manufacturing standards.

17 **PARTIES**

18 4. Plaintiff Sarah Hill is a citizen of California residing in San Diego, San
19 Diego County.

20 5. Plaintiff Monica O’Rourke is a citizen of New York residing in
21 Gansevoort, Saratoga County.

22 6. Defendant Canidae Corporation is a corporation organized and existing
23 under the laws of the State of California with its principal place of business located
24 at 1975 Tandem Way, Norco, California, 92860. Defendant designs, manufactures,
25 markets, and sells the Canidae Limited Ingredient Diets online and through third-
26 party retailers throughout the United States.

1 **JURISDICTION AND VENUE**

2 7. This Court has jurisdiction over this action under the Class Action
3 Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). There are at least 100 members in the
4 proposed class, the aggregated claims of the individual class members exceed the
5 sum or value of \$5,000,000.00 exclusive of interest and costs, and some of the
6 members of the proposed class are citizens of states different from each of the
7 Defendant.

8 8. The Court may exercise jurisdiction over Defendant because its
9 principal place of business is located in California and it is registered to conduct
10 business in California.

11 9. The Defendant has sufficient minimum contacts with California to be
12 subject to this Court’s personal jurisdiction. Defendant intentionally avails itself of
13 the markets within California through the promotion, sale, marketing, and
14 distribution of the Canidae Limited Ingredient Diets and numerous other products,
15 which renders this Court’s exercise of jurisdiction necessary and proper.

16 10. Venue is proper in this District under 28 U.S.C. § 1391(b) because
17 Defendant’s principal place of business is in this district.

18 **FACTUAL ALLEGATIONS**

19 **Plaintiff Sarah Hill’s Facts**

20 11. Plaintiff Hill purchased the Canidae Limited Ingredient Diets monthly
21 from approximately the June 2017 to April 2020 to feed to her Pitbull, Buttercup.
22 Specifically, Plaintiff Hill purchased and fed her dog Canidae Grain-Free PURE
23 Real Bison, Lentil, and Carrot Recipe Dry Dog Food and Canidae Grain-Free PURE
24 Real Salmon and Sweet Potato Recipe Dry Dog Food for Buttercup.

25 12. Plaintiff Hill most often purchased the Canidae Limited Ingredient
26 Diets products from Amazon for \$19.99 for each four-pound bag. Although the
27 Canidae Limited Ingredient Diets products were more expensive than other choices
28 she viewed, she chose to pay the premium price based upon the “limited ingredient”

1 promises made by Defendant. In fact, Plaintiff Hill was willing to pay the premium
2 price for the Canidae Limited Ingredient Diets products because Canidae represented
3 that the products only had 8 or 10 “Simple Ingredients” on the front of the label.
4 Nowhere on the label of Canidae Limited Ingredient Diets did Canidae indicate that
5 soy or chicken were included in the products. The omission of listing soy and
6 chicken on the label was a material misrepresentation to Plaintiff Hill.

7 13. At the time of all her purchases, Plaintiff Hill relied on Defendant’s
8 factual representations about the ingredients in the Canidae Limited Ingredient Diets
9 dog food, including those representations on the product label. The representations
10 all indicate that that the Canidae Limited Ingredient Diets are limited ingredient diets
11 that do not contain any soy or chicken.

12 14. When Plaintiff Hill learned that the Canidae Limited Ingredient Diets
13 mislabeled its products, she stopped purchasing the Canidae Limited Ingredient
14 Diets products.

15 15. Plaintiff Hill did not receive the benefit of her bargain when she
16 purchased the Canidae Limited Ingredient Diets products that included ingredients
17 that did not conform to the packaging representations and to the warranties made by
18 Defendant. Had she been aware of the misrepresentations, she would have either not
19 purchased the Canidae Limited Ingredient Diets or would have paid less for it.

20 16. If Defendant would conform the Canidae Limited Ingredient Diet to its
21 packaging and ingredient warranties and promises, Plaintiff Hill would be willing
22 and likely to purchase the Canidae Limited Ingredient Diets in the future.

23 **Plaintiff Monica O’Rourke’s Facts**

24 17. Plaintiff O’Rourke purchased the Canidae Limited Ingredient Diets
25 from approximately December 2016 to July 2019 to feed to her dog. Specifically,
26 Plaintiff O’Rourke purchased and fed her dog the Canidae Grain-Free PURE Real
27 Salmon and Sweet Potato Recipe Dry Dog Food.

1 18. Plaintiff O'Rourke most often purchased the Canidae Limited
2 Ingredient Diets products from a local Petco in which she was an employee and
3 received an employee discount. Although she thinks the price per bag varied over
4 time, one of the times when she purchased the Canidae Limited Ingredient Diets,
5 after deducting her 40% employee discount, she paid \$9.54 for a four-pound bag.
6 Although the Canidae Limited Ingredient Diets products were more expensive than
7 other choices she could have purchased, she chose to pay the premium price based
8 upon the "limited ingredient" promises made by Defendant. In fact, the premium
9 amount Plaintiff O'Rourke paid for her Canidae Limited Ingredient Diets was
10 because Canidae represented the product only had 8 or 10 "Simple Ingredients" on
11 the front of the label. Nowhere on the label of Canidae Limited Ingredient Diets did
12 Canidae indicate that soy or chicken were included in the products. The omission of
13 listing soy and chicken on the label was a material misrepresentation to Plaintiff
14 O'Rourke.

15 19. At the time of all her purchases, Plaintiff O'Rourke relied on
16 Defendant's factual representations about the ingredients in the Canidae Limited
17 Ingredient Diets dog food, including those representations on the product label. The
18 representations all indicate that that the Canidae Limited Ingredient Diets is a limited
19 ingredient diet that does not contain any soy or chicken.

20 20. When Plaintiff O'Rourke learned that the Canidae Limited Ingredient
21 Diets mislabeled its products, she stopped purchasing the Canidae Limited
22 Ingredient Diets products.

23 21. Plaintiff O'Rourke did not receive the benefit of her bargain when she
24 purchased the Canidae Limited Ingredient Diets products that included ingredients
25 that did not conform to the packaging representations and warranties made by
26 Defendant. Had she been aware of the misrepresentations, she would have either not
27 purchased the Canidae Limited Ingredient Diets or would have paid less for it.

1 22. If Defendant would conform the Canidae Limited Ingredient Diet to its
2 packaging and ingredient warranties and promises, Plaintiff O'Rourke would be
3 willing and likely to purchase the Canidae Limited Ingredient Diets in the future.

4 **Academic Research Regarding the Pet Food Industry**

5 23. Before December 2014, little or no peer-reviewed academic research
6 was published concerning the accuracy of label claims with respect to ingredients
7 present in canine foods.

8 24. In December 2014, a group of researchers found that only 18% of the
9 pet food samples they tested completely matched the label claims with respect to the
10 content of animal by-products. Thus, 82% of the products analyzed by the
11 researchers contained non-conforming ingredients when compared to their label
12 claims. The December 2014 study hypothesized that raw materials used in the
13 preparation of the canned food products contained multiple protein types and may
14 have contributed to contamination.¹

15 25. In 2016, another study looked into the issue of whether vegan pet food
16 contained non-conforming mammalian ingredients.² Vegan pet foods should contain
17 no mammalian proteins or ingredients. The study found that half of the products
18 tested contained non-conforming mammalian DNA in the products and suggested
19 that manufacturers are ultimately responsible for maintaining adequate end-product
20 quality control to prevent such discrepancies between their ingredients and label
21 claims.

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23 ¹ See Ming-Kun Hsieh, *et al.*, *Detection of undeclared animal by-products in*
24 *commercial canine canned foods: Comparative analyses by ELISA and PCR-RFLP*
25 *coupled with slab gel electrophoresis or capillary gel electrophoresis*, *J Sci Food*
Agric. 2016 Mar 30; 96(5): 1659-65 (completed December 31, 2014).

26 ² See K. Kanakubo, *et al.*, *Determination of mammalian deoxyribonucleic acid*
27 *(DNA) in commercial vegetarian and vegan diets for dogs and cats*, *Journal of*
28 *Animal Physiology & Animal Nutrition*, 2017 Feb; 101 (1): 70–74 (March 3, 2016).

1 26. By 2018, research into pet food products' label claims and the presence
2 of non-conforming ingredients intensified. Out of the 40 products analyzed in one
3 study, the ingredients of only 10 products correctly matched their label.³ Of the
4 remaining 30 products, five did not contain the declared animal species ingredients
5 and 23 others revealed the presence of undeclared animal species. Two of the
6 products' labels were vague and their accuracy was indeterminable. This 2018 study
7 found that mislabeling was an especially widespread problem in pet foods used for
8 "elimination diets" (i.e. used to investigate food allergies). In this 2018 study,
9 researchers suggested that manufacturers should pay particular attention to both the
10 selection of raw material suppliers and the production processes for pet food due to
11 the high risk of contamination.

12 27. A second 2018 study (conducted in Europe) tested 11 canine and feline
13 limited ingredient wet food products and found the presence of non-conforming
14 ingredients in 54% of the products.⁴ This study further suggested other peer-
15 reviewed studies found that 80% of the dry foods analyzed contained non-
16 conforming products. This study suggested that the high rate of cross-contamination
17 in dietic limited-antigen wet canine and feline foods may be due to inadequate
18 quality-control practices in the pet food industry and opined that the pet food
19 industry has a legal obligation to produce safe food for consumers. The researchers
20 hypothesized that pet food contamination occurs at two different points during
21 manufacturing: 1) in the production of the feed materials (sometimes attributable to
22 suppliers), and 2) during the actual production of the pet food via cross-
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24 _____
25 ³ See Rebecca Ricci, *et al.*, *Undeclared animal species in dry and wet novel and*
26 *hydrolyzed protein diets for dogs and cats detected by microarray analysis*, BMC
Veterinary Research Volume 14, Article number: 209 (2018).

27 ⁴ See Elena Pagani, *et al.*, *Cross-contamination in canine and feline dietetic limited-*
28 *antigen wet diets*, BMC Vet Res. 2018; 14: 283 (September 12, 2018).

1 contamination during manufacturing production lines, improper equipment cleaning,
2 or other production deficiencies.

3 28. In 2018, a third study summarized 18 studies, articles, and an abstract
4 published between July 2017 and January 2018 related to pet food ingredient testing.
5 The authors concluded that the mislabeling of pet food appears rather “common” in
6 the limited ingredient diet products that are proposed for elimination diets.⁵ They
7 also found that unexpected added ingredients are more frequently detected than
8 those missing from the label.

9 29. Since 2014, virtually all scholarly researchers have found that pet food
10 sold to consumers frequently contains non-conforming ingredients, and significant
11 discrepancies between pet food products’ labeling and their actual ingredients
12 appears to be commonplace among pet food manufacturers.

13 **Defendant’s Material Misrepresentations**

14 30. Pet foods vary in their quality of ingredients, formula, manufacturing
15 processes, and inspection quality. Pet owners who purchase “grain free” and
16 “limited ingredient” products pay a premium in order to alleviate their pets’ allergies
17 or to provide various health benefits associated with a grain free or limited
18 ingredient diet. Notably, food allergies are more common among certain dog breeds
19 than others. In addition, pet owners are willing to pay a premium for dog food with
20 premium ingredients and expect the products that are advertised in this manner to
21 conform to the ingredients listed on the packaging.

22 31. Accordingly, Defendant’s misrepresentations regarding the ingredients
23 in the Canidae Limited Ingredient Diets are material to consumers who purchase this
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25 _____
26 ⁵ See Thierry Olivry and Ralf S. Mueller, *Critically Appraised topic on adverse*
27 *food reactions of companion animals (5): discrepancies between ingredients and*
28 *labeling in commercial pet foods*, BMC Vet Res. 2018 Jan 22; 14(1):24 (January
22, 2018).

1 product, passing over products that cost less but do not claim to be made from select,
2 premium ingredients.

3 32. Inclusion of the phrases “the Canidae Limited Ingredient Diets” and
4 “Limited Ingredient” in the product name for the Canidae Limited Ingredient Diets
5 dog food line is intended to appeal specifically to dog owners who would like to
6 reduce the risk of allergic reactions to their pet’s food, or otherwise to protect or
7 improve their pets’ overall health. In addition, “limited ingredient” diets are often
8 recommended by veterinarians to reduce risks of adverse reactions of dogs to certain
9 ingredients that are frequently used as fillers in lower-priced dog foods, including
10 grains, soy, or lower-priced meats.

11 33. Defendant understands the importance of not having ingredients that
12 cause allergic reactions or adverse reactions and of limiting the overall number of
13 ingredients. Defendant unequivocally states on its website “Grain Free For Dogs
14 With Sensitive Stomachs: There’s nothing questionable in a bowl of Canidae Pure.
15 Never any wheat, corn, or soy.”⁶

16 34. Defendant’s representations that each of its “PURE” Canidae Limited
17 Ingredient Diets is limited to *only* the ingredients listed on the label is consistent
18 across products. Each product states on the front of the label “Grain Free” and
19 certain ones, like the Salmon and Sweet Potatoes, claim to include only “8 Simple
20 Ingredients” while others, including the Bison formula, claim to have just “10
21 Simple Ingredients.”

22 35. As Defendant explains on its website:

23
24 CANIDAE® PURE™ premium dry dog food is made with real food
25 ingredients, formulated for all dogs, and those with additional sensitivities.

26 ⁶ [https://www.canidae.com/dog-food/products/canidae-grain-free-pure-real-bison-](https://www.canidae.com/dog-food/products/canidae-grain-free-pure-real-bison-dry-food)
27 [dry-food](https://www.canidae.com/dog-food/products/canidae-grain-free-pure-real-bison-dry-food) (last visited June 22, 2020). *See also* [https://www.canidae.com/dog-](https://www.canidae.com/dog-food/products/canidae-grain-free-real-salmon-sweet-potato-dry-dog)
28 [food/products/canidae-grain-free-real-salmon-sweet-potato-dry-dog](https://www.canidae.com/dog-food/products/canidae-grain-free-real-salmon-sweet-potato-dry-dog) (last visited
June 22, 2020).

1 With 7-10 key ingredients or less, your dog gets a complete, well-rounded
2 meal crafted with their health and well-being at the forefront. CANIDAE
3 PURE recipes always begin with real meat or fish first (Salmon, Lamb,
4 Duck, Boar Bison, or Chicken), paired with whole foods like sweet potatoes,
5 peas, lentils, or chickpeas. And we promise never any fillers – never any
6 corn, wheat or soy. Every recipe includes high-protein ingredients for lean,
7 strong muscles, added probiotics for easy digestion, vitamins/minerals and
8 hard-working antioxidants for overall health and fatty acid blends for
9 healthy skin and coat. Formulated for all life stages and most breed sizes,
10 there is a CANIDAE PURE food that is perfect for your pup.⁷

11 36. The front and back of the Canidae Limited Ingredient Diets dog food
12 bags include numerous representations by Defendant that are materially misleading.
13 Images of the front and back of the bags are reproduced below:

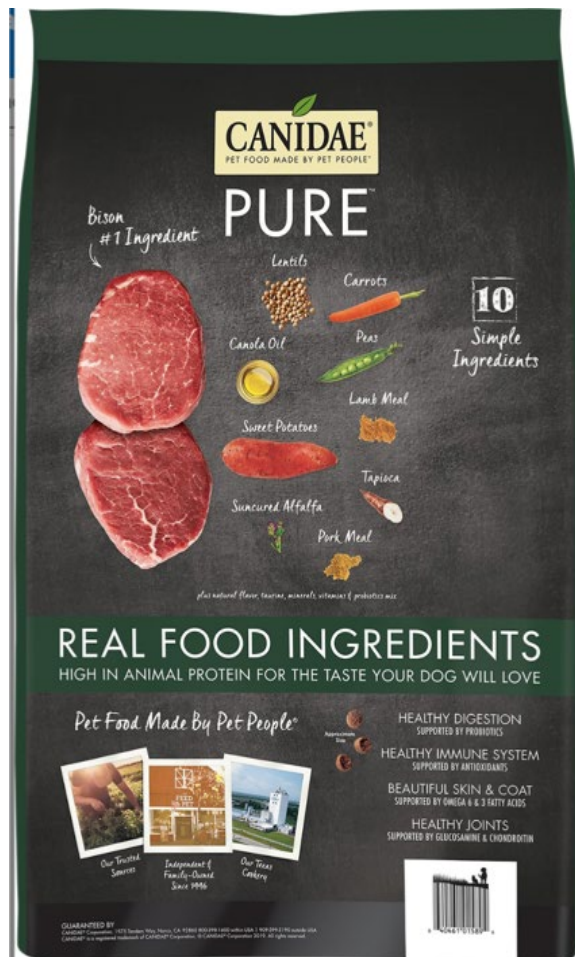
14 **I. Canidae PURE Real Bison, Lentil & Carrot Recipe⁸**

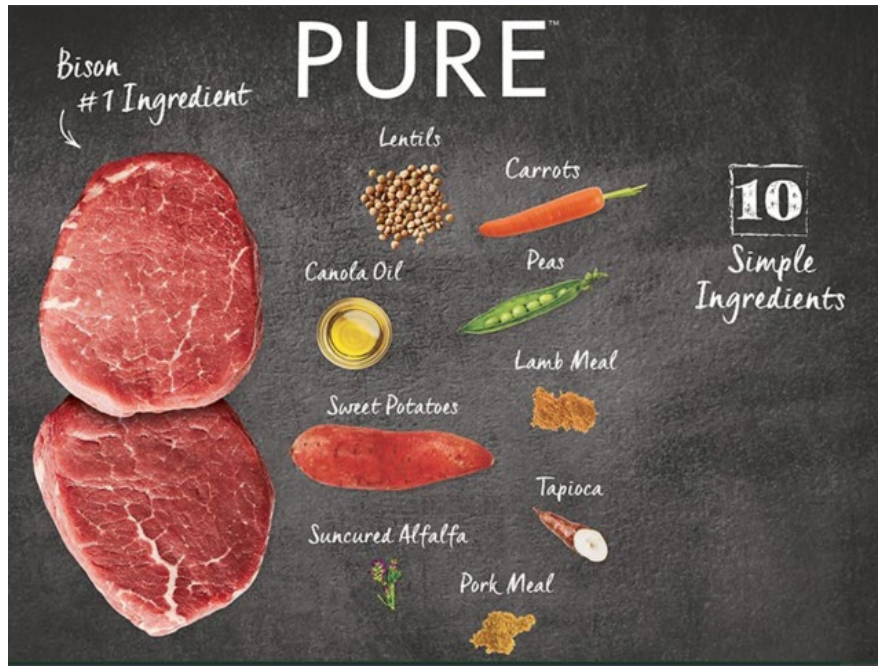


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26 ⁷ <https://www.canidae.com/dog-food/products/canidae-grain-free-real-salmon-sweet-potato-dry-dog> (last visited June 22, 2020).

27 ⁸ <https://www.amazon.com/Canidae-Limited-Ingredient-Adult-Potato/dp/B01MZ1EWVE> (last visited May 28, 2020).

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II. Canidae PURE Real Salmon & Sweet Potato Recipe⁹

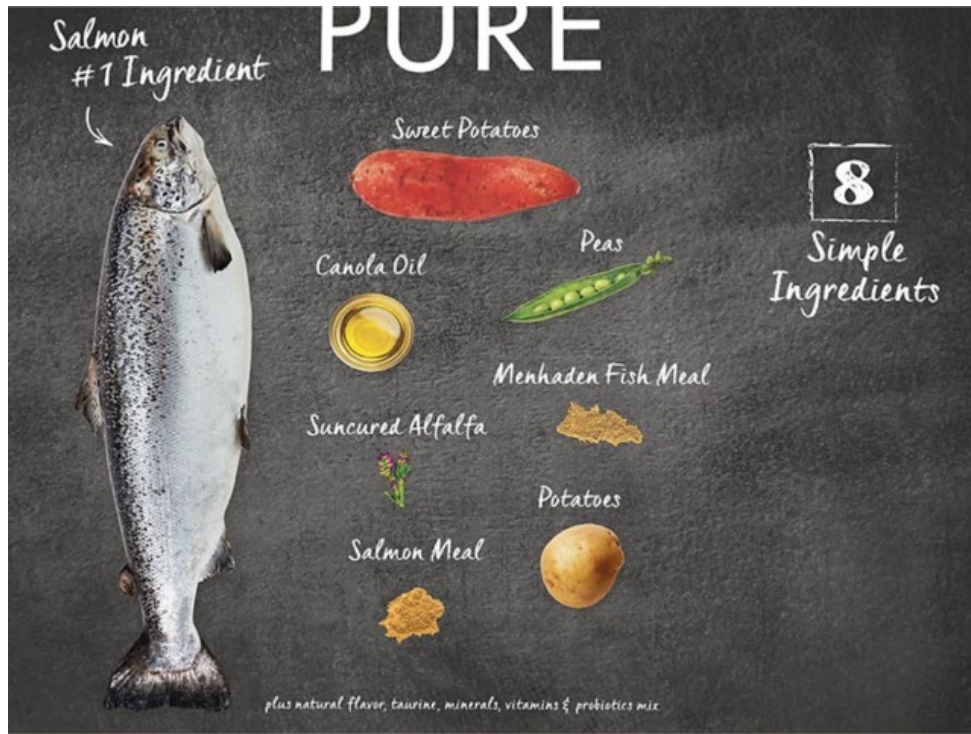


⁹<https://www.chewy.com/canidae-grain-free-pure-real-salmon/dp/28888> (last visited June 22, 2020).

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37. The representations that the Canidae Limited Ingredient Diets only contain either “8 Simple Ingredients” or, alternatively, “10 Simple Ingredients” appears, in large type, on the front and back of every bag. Further, the ingredients are listed on both the front and back of the bag. Canidae takes it a step further by putting large graphics of the ingredients on the back of the bag to illustrate the simplicity of its “Simple Ingredients” representations. The words “Grain Free” are also very prominently on the front of every Canidae Limited Ingredient Diets’ bag. Further, in small print, Canidae lists a few additional ingredients under its 8 or 10 Simple Ingredient representation, however, none of those “additional ingredients” are chicken or soy.

38. The back of each bag also includes an ingredient list for the Canidae Limited Ingredient Diets. Soy and chicken are not listed as ingredients on the Canidae Limited Ingredient Diets’ ingredient lists.

1 39. All of Defendant’s representations regarding the ingredients in the
2 Canidae Limited Ingredient Diets, and the safety of the Canidae Limited Ingredient
3 Diets for dogs that may be sensitive or allergic to soy or chicken, are false.

4 40. In fact, the Canidae Limited Ingredient Diets contain significant
5 amounts soy and chicken (the “defect”). Plaintiffs’ independent analysis of the
6 ingredients of the Canidae Limited Ingredient Diets found that the Canidae Limited
7 Ingredient Diets contain material amounts, meaning amounts above a trace amount
8 by any scientific metric, of chicken and soy using the industry standard Q-PCR
9 method of DNA testing.

10 41. Specifically, Plaintiffs’ testing found amounts of chicken and soy
11 within Canidae Limited Ingredient Diets that is well above amounts that would be
12 considered cross contamination. The non-conforming ingredients found within the
13 Canidae Limited Ingredient Diets are material to Plaintiffs, customers, and potential
14 class members.

15 42. It is undisputed the Q-PCR method of DNA testing is the industry
16 standard method of testing used to determine whether food complies with FDA
17 standards and other quality standards.

18 **Defendant’s Misrepresentations and Omissions are Material to Reasonable**
19 **Consumers**

20 43. Although pet foods vary in the quality of ingredients, formula,
21 manufacturing processes, and inspection quality, dog owners often choose to
22 purchase products that have “limited ingredients”—like soy free or chicken free
23 here—because certain dog breeds have allergies associated with dog foods that
24 contain these ingredients or because the owners understand that certain ingredients
25 help—or hamper—their pets’ health, weight, and overall well-being.

26 44. In addition, it is reasonable for a consumer to assume when a product
27 states a finite number of ingredients are within a product that additional ingredients
28 that are not disclosed on the label are not present. Defendant knows this, and that is

1 why on each Canidae Limited Ingredient Diet it specifically spells out the complete
2 and total number of ingredients per bag. And by listing its ingredients in this
3 manner, Canidae is able to profit off its misrepresentations.

4 45. Despite warranting that its Canidae Limited Ingredient Diets contain
5 either “8 or 10 Simple Ingredients” **and listing them on the front of each of the**
6 **Canidae Limited Ingredient Diets for every consumer to see and rely on,** in
7 reality, the products contain material amounts of additional ingredients that are not
8 listed anywhere on the label. Any reasonable consumer, if told this prior to purchase,
9 would either pay less for the product or chosen not to purchase it. That is indeed the
10 case with Plaintiffs.

11 46. The fact the Canidae Limited Ingredient Diets contain a “plus natural
12 flavor, taurine, minerals, vitamins & probiotic mix” on the labels does not make
13 their misrepresentations any less material to the reasonable consumer. “Natural
14 flavor, taurine, minerals, vitamins & probiotic mix” do not include chicken or soy.
15 Nothing on the Canidae Limited Ingredient Diets’ labels **gives notice to the**
16 **reasonable consumer that the products contain chicken or soy. In fact, the**
17 **labeling leads the reasonable consumer to believe the opposite.**

18 47. When pet owners buy limited ingredient dog food, they usually do so to
19 prevent a health issue or address a nutritional deficiency that their dog may be
20 experiencing. And consumers generally must pay a premium price for these
21 specialized pet food formulations.

22 48. Accordingly, Plaintiffs and Class Members purchased the Canidae
23 Limited Ingredient Diets, spending additional money for the premium food and its
24 promises, instead of cheaper dog food alternatives that are known to contain soy
25 and/or chicken.

26 49. Defendant’s misrepresentations about the formulation of the Canidae
27 Limited Ingredient Diets drive consumers’ purchases.

CLASS ACTION ALLEGATIONS

Class Definitions

50. Plaintiffs bring this action on behalf of themselves and the members of the following class:

All persons residing in the United States and its territories who, during the maximum period of time permitted by law, purchased the Canidae Limited Ingredient Diets primarily for personal, family, or household purposes, and not for resale.

51. In addition, or alternatively, Plaintiff Sarah Hill brings this action on behalf of herself and the members of the following subclass (“California Subclass”):

All persons residing in California who, during the maximum period of time permitted by law, purchased the Canidae Limited Ingredient Diets primarily for personal, family, or household purposes, and not for resale.

52. In addition, or alternatively, Plaintiff Monica O’Rourke brings this action on behalf of herself and the members of the following subclass (“New York Subclass”):

All persons residing in New York who, during the maximum period of time permitted by law, purchased the Canidae Limited Ingredient Diets primarily for personal, family, or household purposes, and not for resale.

53. Specifically excluded from this definition are: (1) Defendant, any entity in which any Defendant has a controlling interest, and its legal representatives, officers, directors, employees, assigns and successors; (2) the Judge to whom this case is assigned and any member of the Judge’s staff or immediate family; and (3) Class Counsel.

1 54. Plaintiffs reserve the right to amend the Class definition and Subclass
2 definitions as necessary.

3 55. As used herein, “Class Members” shall mean and refer to the members
4 of the Nationwide Class and any of the Subclasses, including Plaintiffs.

5 56. Plaintiffs seek only damages and equitable relief on behalf of
6 themselves and the Class Members. Plaintiffs disclaim any intent or right to seek
7 any recovery in this action for personal injuries, wrongful death, or emotional
8 distress suffered by Plaintiffs and/or the Class Members.

9 57. Numerosity: Although the exact number of Class Members is uncertain
10 and can only be ascertained through appropriate discovery, the number is great
11 enough such that joinder is impracticable. The disposition of the claims of these
12 Class Members in a single action will provide substantial benefits to all parties and
13 to the Court.

14 58. Typicality: The claims of the representative Plaintiffs are typical in that
15 Plaintiffs, like all Class Members, purchased the Canidae Limited Ingredient Diets
16 that were manufactured and distributed by Defendant. Plaintiffs, like all Class
17 Members, have been damaged by Defendant’s misconduct in that, *inter alia*, they
18 have incurred or will continue to incur damage due to purchasing a product at a
19 premium price that contained ingredients (soy and chicken) that Defendant
20 represented were absent from the Canidae Limited Ingredient Diets. Furthermore,
21 the factual bases of Defendant’s misconduct are common to all Class Members and
22 represent a common thread of fraudulent, deliberate, and negligent misconduct
23 resulting in injury to all Class Members.

24 59. Commonality: There are numerous questions of law and fact common
25 to Plaintiffs and Class Members that predominate over any individual questions.
26 These common legal and factual issues include the following:

- 27 a) Whether the Canidae Limited Ingredient Diets contain soy and/or
28 chicken;

- b) Whether Defendant's representations that its products contain no soy or chicken are false;
- c) Whether Defendant expressly warranted that the Canidae Limited Ingredient Diets would conform to the representations made on its packaging that the Canidae Limited Ingredient Diets contain no soy or chicken;
- d) Whether Defendant impliedly warranted that the Canidae Limited Ingredient Diets would conform to the representations that they are limited ingredient products that would pass without objection in the trade under this description and are fit for the ordinary purposes for which such goods are sold;
- e) Whether Defendant breached its warranties by making the representations above;
- f) Whether Defendant was unjustly enriched by making the representations and omissions above;
- g) Whether Defendant's actions as described above violated state consumer protection laws as alleged herein;
- h) Whether Defendant should be required to make restitution, disgorge profits, reimburse losses, pay damages, and pay treble damages as a result of the above described practices.

60. Adequate Representation: Plaintiffs will fairly and adequately protect the interests of Class Members. Plaintiffs have retained attorneys experienced in the prosecution of class actions, including consumer and product defect class actions, and Plaintiffs intend to prosecute this action vigorously.

61. Predominance and Superiority: Plaintiffs and Class Members have all suffered and will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, Class

1 Members would likely find the cost of litigating their claims prohibitively high and
2 would therefore have no effective remedy at law. Because of the relatively small size
3 of Class Members' individual claims, it is likely that few Class Members could
4 afford to seek legal redress for Defendant's misconduct. Absent a class action, Class
5 Members will continue to incur damages, and Defendant's misconduct will continue
6 without remedy. Class treatment of common questions of law and fact would also
7 be a superior method to multiple individual actions or piecemeal litigation in that
8 class treatment will conserve the resources of the courts and the litigants and will
9 promote consistency and efficiency of adjudication.

10 62. Defendant has acted or refused to act on grounds generally applicable
11 to the Class, thereby making appropriate final injunctive relief or corresponding
12 declaratory relief with respect to the Class as a whole.

13
14 **COUNT 1**

15 **BREACH OF EXPRESS WARRANTY**

16 63. Plaintiffs brings this count on behalf of themselves and the Class, and
17 alternatively, the Subclasses, and repeats and re-alleges all previous paragraphs, as if
18 fully included herein.

19 64. Defendant marketed, sold, and/or distributed the Canidae Limited
20 Ingredient Diets, and Plaintiffs and Class Members purchased the Canidae Limited
21 Ingredient Diets.

22 65. Defendant represented in its marketing, advertising, and promotion of
23 the Canidae Limited Ingredient Diets that its product was "Grain Free" and has only
24 "8 Simple Ingredients" or "10 Simple Ingredients." Defendant made these
25 representations to induce Plaintiffs and Class Members to purchase the Canidae
26 Limited Ingredient Diets, which did in fact induce Plaintiffs and other Class
27 Members to purchase this product.
28

1 consumers who purchased the Canidae Limited Ingredient Diets as a limited
2 ingredient dog food product for their pets.

3 73. The Defendant is a merchant as defined by applicable UCC provisions.

4 74. Privity between Plaintiffs and the class and Defendant is not required
5 under California law.

6 75. The Defendant has breached the implied warranties of merchantability
7 that it made to Plaintiffs and the prospective class. For example, Defendant
8 impliedly warranted that the Canidae Limited Ingredient Diets products were free
9 from defects, that they were merchantable, and that they were fit for the ordinary
10 purpose for which limited ingredient dog foods are used.

11 76. When sold by Defendant, the Canidae Limited Ingredient Diets were
12 not merchantable, did not pass without objection in the trade as a limited ingredient
13 diet for dogs, was not of adequate quality within that description, was not fit for the
14 ordinary purposes for which such goods are used, and did not conform to the
15 promises or affirmations of fact made on the container or label.

16 77. On June 24, 2020, Plaintiffs gave notice to Defendant that the product
17 was not fit for such purpose and/or was not otherwise merchantable as set forth
18 above. Plaintiffs will seek to amend their complaint after notice and Defendant's
19 response to amend this allegation.

20 78. As a direct result of the Canidae Limited Ingredient Diets being unfit
21 for its intended purpose as a limited ingredient food product and/or otherwise not
22 merchantable, Plaintiffs and class members were damaged and are entitled to
23 remedies provided under Article 2 of the U.C.C., including under California law
24 specifically, monetary damages. *See, e.g.*, Cal. Com. Code § 2714.

25 79. Because of the defects in the Canidae Limited Ingredient Diets product
26 as described herein, the value of the Canidae Limited Ingredient Diets products as
27 warranted is greater than actual value of the Canidae Limited Ingredient Diets.
28 Plaintiff and California Subclass would not have purchased the Canidae Limited

1 Ingredient Diets on the same terms, had they known that the Canidae Limited
2 Ingredient Diets in fact contained soy and/or chicken. Plaintiff and California
3 Subclass paid a price premium for the Canidae Limited Ingredient Diets based on
4 Defendant's misrepresentations. Damages, which may be measured pursuant to the
5 damage provisions of Article 2 of the UCC, are warranted to plaintiffs and members
6 of the proposed class. *See, e.g.,* Cal. Com. Code § 2714(2).

7 80. As a direct and proximate result of Defendant's breach of the
8 warranties of merchantability, Plaintiffs and the other class members have been
9 damaged in an amount to be proven at trial.

10 **COUNT 3**

11 **UNJUST ENRICHMENT**

12 81. Plaintiffs bring this count on behalf of themselves and the Class, and
13 alternatively, the Subclasses, and repeats and re-alleges all previous paragraphs, as if
14 fully included herein.

15 82. Plaintiffs conferred benefits on Defendant by purchasing the Canidae
16 Limited Ingredient Diets at a premium price.

17 83. Defendant has knowledge of its receipt of such benefits.

18 84. Defendant has been unjustly enriched in retaining the revenues derived
19 from Plaintiffs and Class Members' purchases of the Canidae Limited Ingredient
20 Diets.

21 85. Defendant's retaining of these moneys under these circumstances is
22 unjust and inequitable because Defendant falsely and misleadingly represented that
23 Canidae Limited Ingredient Diets contained no soy or chicken when, in fact, the
24 Canidae Limited Ingredient Diets did contain these non-conforming ingredients.

25 86. Defendant's misrepresentations have injured Plaintiffs and Class
26 Members because they would not have purchased (or would not have paid a price
27 premium) for the Canidae Limited Ingredient Diets had they known the true facts
28 regarding the Canidae Limited Ingredient Diets' ingredients.

1 97. Defendant knew or should have known their representations and
2 omissions were material and were likely to mislead consumers, including Plaintiff
3 Hill and the Class.

4 98. Defendant's practices, acts, and course of conduct in marketing and
5 selling the Canidae Limited Ingredient Diets Products were and are likely to mislead
6 a reasonable consumer acting reasonably under the circumstances to his or her
7 detriment.

8 99. Defendant's false and misleading representations and omissions were
9 designed to, and did, induce the purchase and use of the Canidae Limited Ingredient
10 Diets Products for personal, family, or household purposes by Plaintiff Hill and
11 California Subclass members, and violated and continue to violate the following
12 sections of the CLRA:

- 13 a. § 1770(a)(5): representing that goods have characteristics, uses, or
14 benefits which they do not have;
- 15 b. § 1770(a)(7): representing that goods are of a particular standard,
16 quality, or grade if they are of another;
- 17 c. § 1770(a)(9): advertising goods with intent not to sell them as
18 advertised; and
- 19 d. § 1770(a)(16): representing the subject of a transaction has been
20 supplied in accordance with a previous representation when it was not.

21 100. Defendant profited from the sale of the falsely, deceptively, and
22 unlawfully advertised the Canidae Limited Ingredient Diets to unwary consumers.

23 101. Defendant's wrongful business practices constituted, and constitute, a
24 continuing course of conduct in violation of the CLRA.

25 102. Defendant's wrongful business practices were a direct and proximate
26 cause of actual harm to Plaintiff Hill and to each California Subclass member.

27 103. Pursuant to the provisions of Cal. Civ. Code § 1782(a), on June 24,
28 2020, Plaintiff Hill sent the required notice to Defendant regarding its unlawful

1 conduct and violation of the CLRA. If after 30 days no satisfactory response has
2 been received, Plaintiff Hill will seek leave to amend this allegation to request
3 restitution and actual damages.

4 104. Pursuant to California Civil Code § 1780, Plaintiff Hill seeks injunctive
5 relief, reasonable attorneys' fees and costs, and any other relief that the Court deems
6 proper on behalf of the California Subclass.

7 **COUNT 5**

8 **CALIFORNIA FALSE ADVERTISING LAW ("FAL")**

9 105. Plaintiff Hill brings this count on behalf of herself and the California
10 Subclass and repeats and re-alleges all previous paragraphs, as if fully included
11 herein.

12 106. The FAL provides that "[i]t is unlawful for any person, firm,
13 corporation or association, or any employee thereof with intent directly or indirectly
14 to dispose of real or personal property or to perform services" to disseminate any
15 statement "which is untrue or misleading, and which is known, or which by the
16 exercise of reasonable care should be known, to be untrue or misleading." Cal. Bus.
17 & Prof. Code § 17500.

18 107. It also is unlawful under the FAL to make or disseminate any
19 advertisement that is "untrue or misleading, and which is known, or which by the
20 exercise of reasonable care should be known, to be untrue or misleading." *Id.*

21 108. As alleged herein, the advertisements, labeling, website, policies, acts,
22 and practices of Defendant relating to the Canidae Limited Ingredient Diets Products
23 were and are deceptive and misleading.

24 109. As alleged herein, the advertisements, labeling, website, policies, acts,
25 and practices of Defendant misled consumers acting reasonably as to Defendant's
26 representations about quality, benefits, and ingredients of the Canidae Limited
27 Ingredient Diets.
28

1 110. Plaintiff Hill suffered injury-in-fact as a result of Defendant's actions as
2 set forth herein because, as a reasonable consumer, she purchased the Products in
3 reliance on Defendant's false and misleading labeling claims concerning the Canidae
4 Limited Ingredient Diets' qualities, benefits, and ingredients.

5 111. Defendant's business practices as alleged herein constitute deceptive,
6 untrue, and misleading advertising pursuant to the FAL because Defendant has
7 advertised the Canidae Limited Ingredient Diets in a manner that is untrue and
8 misleading, which Defendant knew or reasonably should have known was untrue,
9 and because Defendant omitted material information from its advertising.

10 112. Defendant profited from sale of the falsely and deceptively advertised
11 Products to reasonable but unwary consumers including Plaintiff and the California
12 Subclass, and Defendant has thereby been unjustly enriched.

13 113. As a result, Plaintiff Hill, the California Subclass, and the general
14 public are entitled to injunctive and equitable relief, restitution, and an order for the
15 disgorgement of the funds by which Defendant was unjustly enriched.

16 114. Because Plaintiff Hill owns a pet to whom she would like to feed a
17 limited ingredient dog food, she suffers threat of future harm because she is unable
18 to rely on Defendant's representations regarding the ingredients of the Canidae
19 Limited Ingredient Diets. Likewise, because Defendant has made such
20 representations with impunity thus far, Plaintiff Hill's ability to discern truthful from
21 untruthful claims made with respect to Defendant's and other competitors' dog food
22 ingredients is impaired. Injunctive relief requiring Defendant to make only truthful
23 statements in its advertising would remedy these harms.

24 115. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff Hill, on behalf of
25 herself and the California Subclass, seeks an order enjoining Defendant from
26 continuing to engage in deceptive business practices, false advertising, and any other
27 act prohibited by law, including those set forth in this Complaint.

COUNT 6

CALIFORNIA UNFAIR COMPETITION LAW (“UCL”)

116. Plaintiff Hill brings this count on behalf of herself and the California Subclass and repeats and re-alleges all previous paragraphs, as if fully included herein.

117. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200. Defendant’s acts, omissions, misrepresentations, practices, and non-disclosures as alleged herein constitute business acts and practices.

118. Defendant’s acts, omissions, misrepresentations, practices and non-disclosures as alleged herein constitute unlawful, unfair, and fraudulent business practices in that they have the capacity to deceive reasonable consumers, including Plaintiff Hill and the Class, as to the benefits and ingredients of the Canidae Limited Ingredient Diets Products.

119. Unlawful: The acts alleged herein are “unlawful” under the UCL in that they violate at least: (a) the False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*; and (b) the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*

120. Unfair: Defendant’s conduct with respect to the labeling, advertising, and sale of the Canidae Limited Ingredient Diets was “unfair” because Defendant’s conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of their conduct, if any, does not outweigh the gravity of the harm to its victims, including Plaintiff Hill and the California Subclass.

- a. Defendant’s conduct with respect to the labeling, advertising, and sale of the Canidae Limited Ingredient Diets was and is unfair because it violates public policy as declared by specific constitutional, statutory or regulatory provisions, including but not limited to the applicable sections of the False Advertising Law and Consumers Legal Remedies Act.

1 b. Defendant’s conduct with respect to the labeling, advertising, and sale
2 of the Products was and is unfair because the consumer injury was
3 substantial, not outweighed by benefits to consumers or competition,
4 and not one consumer themselves could reasonably have avoided.

5 c. Reasonable consumers, including Plaintiff Hill and the California
6 Subclass, purchased the Canidae Limited Ingredient Diets believing
7 the products’ ingredients were limited and did not include chicken and
8 soy as represented by Defendant when in fact they were not—a fact of
9 which consumers could not reasonably have become aware.

10 121. Fraudulent: A statement or practice is “fraudulent” under the UCL if it
11 is likely to mislead or deceive the public, applying an objective reasonable consumer
12 test.

13 a. As set forth herein, Defendant’s representations and omissions about
14 the quality, benefits, and effectiveness of the Canidae Limited
15 Ingredient Diets were and are false and likely to mislead or deceive
16 the public because a significant portion of the general consuming
17 public, acting reasonably in the circumstances, could be misled by
18 Defendant’s representations and omissions.

19 122. Defendant profited from its sale of the falsely, deceptively, and
20 unlawfully advertised and packaged the Canidae Limited Ingredient Diets to unwary
21 consumers.

22 123. Defendant’s conduct directly and proximately caused and continues to
23 cause substantial injury to Plaintiff Hill and the other California Subclass members.
24 Plaintiff Hill and the California Subclass have suffered injury-in-fact as a result of
25 Defendant’s unlawful conduct including but not limited to the damages as described
26 above.

27 124. Plaintiff Hill and the California Subclass are likely to continue to be
28 damaged by Defendant’s deceptive trade practices, because Defendant continues to

1 disseminate misleading information on the Canidae Limited Ingredient Diets’
2 packaging and through the marketing and advertising of the Products. Thus,
3 injunctive relief enjoining Defendant’s deceptive practices is proper.

4 125. Because Plaintiff Hill owns a pet to whom she chooses to feed limited
5 ingredient dog food, she suffers threat of future harm by the Defendant because she
6 is unable to rely on Defendant’s representations regarding the qualities and
7 ingredients of its products in deciding whether to purchase the Canidae Limited
8 Ingredient Diets in the future. Likewise, because Defendant have made such
9 representations with impunity thus far, Plaintiff Hill’s ability to discern truthful from
10 untruthful claims made with respect to competitors’ dog food products is impaired.
11 Injunctive relief requiring Defendant to make only truthful statements in its
12 advertising would remedy these harms.

13 126. In accordance with Bus. & Prof. Code § 17203, Plaintiff Hill seeks an
14 order enjoining Defendant from continuing to conduct business through unlawful,
15 unfair, and/or fraudulent acts and practices, and to commence a corrective
16 advertising campaign.

17 127. Plaintiff Hill and the California Subclass also seek an order for and
18 restitution of all monies from the sale of the Products, which were unjustly acquired
19 through acts of unlawful competition.

20
21 **COUNT 7**
22 **VIOLATION OF THE NEW YORK DECEPTIVE TRADE**
23 **PRACTICES ACT (“GBL”)**

24 128. Plaintiff O’Rourke asserts this Count on behalf of herself and the New
25 York Subclass and repeats and re-alleges all previous paragraphs, as if fully included
26 herein.

27 129. By the acts and conduct alleged herein, Defendant committed unfair or
28 deceptive acts and practices by misrepresenting that the Canidae Limited Ingredient

1 Diets did not contain chicken or soy when, in fact, the Canidae Limited Ingredient
2 Diets contained soy and chicken.

3 130. Defendant's business practice of marketing, advertising, and promoting
4 its Canidae Limited Ingredient Diets in a misleading, inaccurate, and deceptive
5 manner constitutes unconscionable commercial practice, deception, and
6 misrepresentation and, accordingly, constitutes multiple, separate violations of
7 Section 349 of the New York General Business Law.

8 131. In marketing, advertising, and promoting the Canidae Limited
9 Ingredient Diets to consumers, including Plaintiff O'Rourke and members of the
10 New York Subclass, Defendant materially misrepresented and omitted key aspects
11 regarding the Canidae Limited Ingredient Diets throughout the United States,
12 including the State of New York.

13 132. The foregoing deceptive acts and practices were directed at consumers.

14 133. The foregoing deceptive acts and practices are misleading in a material
15 way because they fundamentally misrepresent the characteristics, ingredients,
16 benefits, quality, and nature of the Canidae Limited Ingredient Diets to induce
17 consumers to purchase the same, and/or to pay a premium for the product.

18 134. Defendant's unconscionable commercial practices, false promises,
19 misrepresentations, and omissions set forth in this Complaint are material in that
20 they relate to matters which reasonable persons, including Plaintiff O'Rourke and
21 members of the New York Subclass, would attach importance to in making their
22 purchasing decisions or conducting themselves regarding the purchase of the
23 Canidae Limited Ingredient Diets.

24 135. Plaintiff O'Rourke and members of the New York Subclass were
25 injured because: (a) they would not have purchased the Canidae Limited Ingredient
26 Diets, or would not have purchased the Canidae Limited Ingredient Diets on the
27 same terms, had they known that the Canidae Limited Ingredient Diets in fact
28 contained soy and/or chicken; (b) they paid a price premium for the Canidae Limited

1 Ingredient Diets based on Defendant’s false and misleading statements; and (c) the
2 Canidae Limited Ingredient Diets did not have the characteristics and benefits
3 promised because it contained soy and chicken. As a result, Plaintiff O’Rourke and
4 the New York Subclass have been damaged in an amount to be proven at trial, but
5 not less than either the purchase price of the Canidae Limited Ingredient Diets or,
6 alternatively, the difference in value between the Canidae Limited Ingredient Diets
7 as advertised and the Canidae Limited Ingredient Diets as actually sold.

8 136. On behalf of herself and other members of the New York Subclass,
9 Plaintiff O’Rourke seeks to enjoin the unlawful acts and practices described herein,
10 to recover her actual damages or fifty dollars, whichever is greater, three times
11 actual damages, and reasonable attorneys’ fees.

12 **COUNT 8**
13 **VIOLATION OF NEW YORK GEN. BUS. LAW § 350**

14 137. Plaintiff O’Rourke brings this Count individually and on behalf of the
15 members of the New York Subclass against Defendant and repeats and re-alleges all
16 previous paragraphs, as if fully included herein.

17 138. Based on the foregoing, Defendant has engaged in consumer-oriented
18 conduct that is deceptive or misleading in a material way and which constitutes false
19 advertising in violation of Section 350 of the New York General Business Law.

20 139. Defendant’s false, misleading, and deceptive statements and
21 representations of fact include, but are not limited to, the representations that the
22 Canidae Limited Ingredient Diets were “Grain Free” and had only “8 Simple
23 Ingredients” or alternatively, had only “10 Simple Ingredients.” Defendant also
24 directed these representations to consumers.

25 140. Defendant’s false, misleading, and deceptive statements and
26 representations of fact, including but not limited to the representations the Canidae
27 Limited Ingredient Diets included no chicken or soy, were “Grain Free,” and had
28 only “8 Simple Ingredients” or alternatively, had only “10 Simple Ingredients,” were

1 and are likely to mislead a reasonable consumer acting reasonably under the
2 circumstances.

3 141. Defendant’s false, misleading, and deceptive statements and
4 representations of fact, including but not limited to the representations that the
5 Canidae Limited Ingredient Diets includes no chicken or soy, were “Grain Free” and
6 had only “8 Simple Ingredients” or alternatively, had only “10 Simple Ingredients,”
7 have resulted in consumer injury or harm to the public interest.

8 142. Plaintiff O’Rourke and members of the New York Subclass were
9 injured because: (a) they would not have purchased the Canidae Limited Ingredient
10 Diets, or would not have purchased the Canidae Limited Ingredient Diets on the
11 same terms, had they known that the Canidae Limited Ingredient Diets in fact
12 contained soy and/or chicken; (b) they paid a price premium for the Canidae Limited
13 Ingredient Diets based on Defendant’s false and misleading statements; and (c) the
14 Canidae Limited Ingredient Diets did not have the characteristics and benefits
15 promised because it contained soy and chicken.

16 143. As a result, Plaintiff O’Rourke and the New York Subclass have been
17 damaged in an amount to be proven at trial, but not less than either the purchase
18 price of the Canidae Limited Ingredient Diets or, alternatively, the difference in
19 value between the Canidae Limited Ingredient Diets as advertised and the Canidae
20 Limited Ingredient Diets as actually sold.

21 144. As a result of Defendant’s false, misleading, and deceptive statements
22 and representations of fact, including but not limited to the representations that the
23 Canidae Limited Ingredient Diets were “Grain Free” and had only “8 Simple
24 Ingredients” or alternatively, had only “10 Simple Ingredients,” Plaintiff O’Rourke
25 and members of the New York Subclass have suffered and continue to suffer
26 economic injury.

27 145. Plaintiff O’Rourke and members of the New York Subclass suffered an
28 ascertainable loss caused by Defendant’s misrepresentations because they paid more

1 for the Canidae Limited Ingredient Diets than they would have had they known the
2 truth about the product.

3 146. On behalf of herself and other members of the New York Subclass,
4 Plaintiff O'Rourke seeks to enjoin Defendant's unlawful acts and practices described
5 herein, to recover their actual damages or five hundred dollars, whichever is greater,
6 three times actual damages, and reasonable attorneys' fees.

7
8 **RELIEF DEMANDED**

9 WHEREFORE, Plaintiffs, individually and on behalf of a class and subclasses
10 of all others similarly situated, seek a judgment against Defendant, as follows:

- 11 a. For an order certifying the Class under Rule 23 of the Federal Rules of
12 Civil Procedure and naming Plaintiffs as Class and Subclass
13 representatives and Plaintiffs' attorneys as Class Counsel;
- 14 b. For an order declaring that Defendant's conduct violates the statutes
15 referenced herein;
- 16 c. For an order finding in favor of Plaintiffs and the Class and Subclasses
17 on all counts asserted herein;
- 18 d. For compensatory, statutory, and punitive damages, as applicable, in
19 amounts to be determined by the Court and/or jury;
- 20 e. For prejudgment interest on all amounts awarded;
- 21 f. For an order of restitution and all other forms of equitable monetary
22 relief;
- 23 g. For injunctive relief as pleaded or as the Court may deem proper; and
- 24 h. For an order awarding Plaintiffs reasonable attorneys' fees, expenses and
25 costs incurred in bringing this lawsuit.

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27 **JURY TRIAL DEMANDED**

28 Plaintiffs demand a trial by jury on all claims so triable.

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Dated: October 26, 2020.

Respectfully submitted,

/s/ Lisa A. White

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