

JUN 06 2017

Shorri R. Carter, Executive Officer/Clerk  
By: Charlie L. Coleman, Deputy

1 Jane M. Braugh, Bar No. 214425  
2 **SICO, HOELSCHER, HARRIS & BRAUGH LLP**  
3 225 S. Lake Avenue, Suite 300  
4 Pasadena, CA 91101  
5 Phone: (626) 432-5476  
6 Fax: (626) 432-5477

7 Roger S. Braugh, Jr., *Pro Hac Vice Pending*  
8 **SICO, HOELSCHER, HARRIS & BRAUGH LLP**  
9 802 N. Carancahua, Suite 900  
10 Corpus Christi, Texas 78401  
11 Phone: 361-653-3300  
12 Fax: 361-653-3333

13 *Attorneys for Plaintiffs*

14 **IN THE SUPERIOR COURT**

15 **LOS ANGELES COUNTY CALIFORNIA, CENTRAL DISTRICT**

16 **BC 6 6 4 1 3 8**

17 **WENDY BLACK, an individual, on behalf of**  
18 **herself and all others similarly situated;**

19 **Plaintiffs,**

20 **vs.**

21 **PARTY ANIMAL, INC., a California**  
22 **Corporation; EVANGER'S DOG AND CAT**  
23 **FOOD COMPANY, INC., an Illinois**  
24 **Corporation; and DOES 1 THROUGH 500,**  
25 **INCLUSIVE**

26 **Defendants.**

) Case No. \_\_\_\_\_  
)  
) **CLASS ACTION COMPLAINT**  
)  
) **1. BREACH OF IMPLIED**  
) **WARRANTY OF**  
) **MERCHANTIBILITY**  
) **2. BREACH OF EXPRESS**  
) **WARRANTY**  
) **3. NEGLIGENCE**  
) **4. NEGLIGENT**  
) **MISREPRESENTATION/OMISSION**  
) **5. STRICT PRODUCTS LIABILITY**  
) **6. VIOLATION OF THE CONSUMER**  
) **LEGAL REMEDIES ACT (CAL.**  
) **CIVIL CODE §§1750 et seq.)**  
) **7. VIOLATION OF UNFAIR**  
) **COMPETITION LAW (CAL.**  
) **BUSINESS & PROFESSIONAL**  
) **CODE §§17200 et seq.)**  
) **8. VIOLATION OF FALSE**  
) **ADVERTISING LAW/UNFAIR**  
) **COMPETITION LAW (CAL.**  
)

Sico, Hoelscher, Harris & Braugh, L.L.P.  
225 South Lake Avenue, Suite 300  
Pasadena, California 91104  
(626) 432-5476

Sico, Hoelscher, Harris & Braugh, L.L.P.  
228 South Lake Avenue, Suite 300  
Pasadena, California 91104  
(626) 432-5478

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) BUSINESS & PROFESSIONAL  
) CODE §§17500 et seq.)  
) 9. UNJUST ENRICHMENT  
)  
DEMAND FOR JURY TRIAL

Plaintiff Wendy Black, and all others similarly situated, are informed and believe, and on that basis allege as follows:

**I. NATURE OF ACTION**

1.1 The full extent of the facts linking the fictitiously designated Defendants with this cause of action, and/or the true names and/or capacities, whether individual, plural, corporate, partnership, associate, or otherwise, of Defendants DOE 1 through DOE 500, are unknown to Plaintiffs. Therefore, Plaintiffs sue said Defendants by such fictitious names.

1.2 Plaintiffs are informed, believe, and allege that the conduct, acts, or omissions of each of the Defendants designated as a DOE were negligent, wanton, reckless, tortious, and/or strictly liable in such a manner so as to be legally responsible in some manner for the events and happenings herein referred to, and that such conduct, acts, omissions, mislabeled and/or defective product proximately caused the injuries and damages complained of herein. Such Defendants may include, based on discovery of additional facts, for example, suppliers and distributors of falsely-branded and labeled "organic" pet foods. Plaintiffs will seek leave of Court to amend this complaint to show the true names and capacities of such fictitiously named Defendants after the same have been ascertained.

1           1.3    Ms. Black brings this Class Action on behalf of all persons who purchased  
2 Party Animal organic brand dog food (hereinafter "Party Animal") in the four years prior  
3 to the filing of this complaint. Party Animal canned pet food contains substances that are  
4 toxic to animals and that have resulted in the serious illness and deaths of pets around  
5 the United States of America. Party Animal also is mislabeled as "organic" and  
6 mislabeled as to its "healthy" ingredients, such as fruits and vegetables, and simply does  
7 not contain the wholesome substances that it purports to contain.

9   **II. PARTIES**

10           2.1    Defendant Party Animal, Inc. ("Party Animal") manufactures, distributes,  
11 markets, and sells pet foods, including Party Animal Organic brand dog food. It is a  
12 California corporation, with its principal place of business at 8491 W Sunset Blvd. #370  
13 West Hollywood, CA 90069. It does business in California and throughout the United  
14 States of America. Party Animal has sold dog food since 2006. It has spent millions of  
15 dollars promoting trust and confidence among consumers in its pet food products. It  
16 holds itself out to the public as a manufacturer of safe, nutritious, organic and high-  
17 quality grain free pet food containing meat, fruits, vegetables, vitamins and minerals.

19           2.2    Defendant, Evanger's Dog and Cat Food Company, Inc., ("Evanger's") is  
20 an Illinois Corporation with its principal place of business at 221 S. Wheeling Rd.,  
21 Wheeling, IL 60090. Evanger's manufactures, distributes, markets, and sells pet foods,  
22 including Party Animal Organic brand dog food. It does business in California throughout  
23 the United States of America and in international markets. Evanger's has sold dog food  
24 since 1935. It has spent millions of dollars promoting trust and confidence among  
25

26

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225 South Lake Avenue, Suite 300  
Pasadena, California 91104  
(826) 432-5478

1 consumers in its pet food products. It holds itself out to the public as a manufacturer of  
2 "the finest natural pet food company in the United States", "wholesome and nutritious"  
3 and "free of harmful additives and preservatives". Evanger's also provides private label  
4 services to companies such as Party Animal in both the domestic (U.S.) market and the  
5 international market. Evanger's did in fact manufacture, can and label Party Animal  
6 branded pet food under a written contract with Party Animal, Inc., which was performable  
7 in whole or part in Los Angeles County, California. Evanger's regularly, systematically  
8 and continuously does business in the state of California.  
9

10 2.3 Plaintiff, Wendy Black is a resident of San Antonio, Texas.

### 11 III. JURISDICTION AND VENUE

12 3.1 This class action is brought pursuant to the California Code of Civil  
13 Procedure section 382. The damages and restitution sought by Plaintiffs exceed the  
14 minimal jurisdiction limit of the Superior Court and will be established according to proof  
15 at trial.  
16

17 3.2 This Court has jurisdiction over this action pursuant to the California  
18 Constitution, Article VI, Section 10, which grants the Superior Court "original jurisdiction  
19 in all causes except those given by statute to other courts." The statutes under which  
20 this action is brought do not specify any other basis for jurisdiction.  
21

22 3.3 At all material times Defendant Party Animal was and is authorized to do  
23 business in the State of California, has continuously and systematically conducted  
24 business on a regular basis in the State of California, has purposefully availed itself of  
25 the privileges and benefits of conducting business in California, and has designated Van  
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225 South Lake Avenue, Suite 300  
Pasadena, California 91104  
(626) 432-5478

1 Gerard Dichoso, 1880 Century Park East #200, Los Angeles, California 90067 as its  
2 registered agent for service of process. Therefore, the Court can exercise personal  
3 jurisdiction over Party Animal.

4 3.4 At all material times, Evanger's Dog and Cat Food Company, Inc., was an  
5 Illinois Corporation having its principle place of business in Illinois. Evanger's provides  
6 private label services to companies such as Party Animal in both the domestic (U.S.)  
7 market and the international market. Evanger's did in fact manufacture, can and label  
8 Party Animal branded pet food under a written contract with Party Animal, Inc., which  
9 was performable in whole or part in Los Angeles County, California. Evanger's regularly,  
10 systematically and continuously does business in the state of California, has  
11 purposefully availed itself of the privileges and benefits of conducting business in  
12 California, and has designated Holly N. Sher as its registered agent for service of  
13 process at 221 S. Wheeling Rd., Wheeling, IL 60090.

14 3.5 Venue is proper in the Superior Court of Los Angeles County, Central  
15 District, under California Code of Civil Procedure §395(a), as the county where at least  
16 one Defendant resides or has its principal executive office.

17 **IV. FACTUAL ALLEGATIONS**

18 4.1 All allegations in this complaint are based on information and belief that  
19 they will have evidentiary support, after a reasonable opportunity for further investigation  
20 or discovery. Whenever allegations in this complaint are contrary or inconsistent, such  
21 allegations shall be deemed to be alleged in the alternative.  
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1           4.2    Plaintiff, Wendy Black, a consumer, is a pet owner who also participates in  
2 pet rescue and fostering animals.

3           4.3    Ms. Black was fostering a stray miniature Schnauzer named Blanca that  
4 had been rescued in December 2016.

5           4.4    In December 2016, Ms. Black took Blanca to the vet, for grooming and  
6 updates on all her healthcare needs. Blanca had medical tests performed indicating,  
7 among other things, that she was not diabetic and had normal blood sugar levels.  
8

9           4.5    In mid January 2017, Ms. Black purchased and began feeding Blanca  
10 Party Animal branded foods. She initially purchased six cans of Party Animal  
11 "Cocolicious", three cans of Party Animal Chicken/Beef and three cans of Party Animal  
12 Beef/Turkey. Ms. Black fed these products to Blanca during January 2017.  
13

14           4.6    On January 31, 2017 Ms. Black bought two cases of Party Animal  
15 Cocolicious, one Chicken/Beef and one Beef/Turkey. She also got two cans of Party  
16 Animal Chillin Chicken and Blazin' Beef.

17           4.7    By February 1, 2017 Blanca was lethargic. By February 2, 2017 she was  
18 very lethargic, sleeping all the time and did not want to stand up at all. Early morning  
19 Friday, February 3rd she would not eat, was vomiting, shivering uncontrollably,  
20 sweating/panting, appeared dizzy and weak and could barely walk. She was off balance  
21 and was falling down.  
22

23           4.8    Ms. Black rushed Blanca to vet where she was put on a IV fluids, and it  
24 was thought she was going to die. The vet stabilized her and was able to get her to eat a  
25 tiny bit of canned Royal Canin later that evening.  
26

1           4.9 Ms. Black took Blanca home that evening, because the vet did not want  
2 her unattended overnight. Ms. Black observed her overnight and returned her the next  
3 morning for more IV fluids and injections. Improvement was slow. Blanca ate a tiny bit  
4 more Royal Canin the next day. The Royal Canin was fed after she was released from  
5 the vet the afternoon of Feb. 4, 2017.  
6

7           4.10 The vet X-rayed Blanca's heart to see if there were complications and also  
8 X-rayed her back to see if something was wrong because she was exhibiting pain. The  
9 bill for the visit was \$793.00.

10           4.11 Blanca was up and down over the next two weeks. It was noted that  
11 Blanca would have a few bad days and then a few ok days. Her medical status was like  
12 a roller coaster, which, unknown to Ms. Black at the time, correlated to the cans of food  
13 she was being fed.  
14

15           4.12 By March 1, 2017, Blanca was going downhill, and on March 2, 2017 she  
16 felt horrible all day, and uncontrollably defecated in her crate that night.

17           4.13 On March 3, 2017, Blanca threw up a lot of watery vomit, and it had a foul  
18 odor. The Party Animal Cocolicious Beef and Turkey canned food is the last she had  
19 eaten and it was the last can in the case Ms. Black bought. Ms. Black kept half of the  
20 Cocolicious Beef and Turkey in the freezer, Lot # 0136E15204 04 ("best by July 2019").  
21

22           4.14 Friday evening, March 3, 2017, Ms. Black skipped her regular feeding time  
23 at 5:00 p.m. and at 10:00 p.m. gave Blanca a half of serving of (frozen) raw Small  
24 Batch brand Beef. Blanca has been on that food ever since and is eating normally two  
25 times a day. Blanca was feeling much better than when she was sick. Since  
26

1 discontinuing feeding Cocolicious Beef and Turkey and other products, Blanca had  
2 energy and was like a different dog.

3 4.15 Having previously been cleared of diabetes or blood sugar related illnesses  
4 in December 2016, Blanca's February 3, 2017 blood work showed her sugar was slightly  
5 elevated, and she was diagnosed as diabetic as of April 13, 2017, with a resulting vet bill  
6 of \$839.00. Plaintiff alleges and contends that sub condition is a result of damage to  
7 Blanca's internal organs caused by Party Animal adulterated food.  
8

9 4.16 Ms. Black sent written correspondence to her local pet food store  
10 expressing her concerns on March 4, 2017 and March 6, 2017 respectively.

11 4.17 On March 8, 2017, Ms. Black was then contacted by an unidentified male  
12 caller. He later identified himself as Bret Sher, and claimed he was a customer service  
13 representative of Party Animal. However, it appears that he misrepresented that fact  
14 and that he is in fact affiliated with, or owner or operator of Defendant, Evanger's Dog  
15 and Cat Food Company, Inc., who is the supplier/manufacturer for the Party Animal pet  
16 foods in question.  
17

18 4.18 At all times relevant, Bret Sher insisted that Party Animal's Cocolicious was  
19 Organic and had to go through strenuous protocols to be labeled Organic and that even  
20 though the food was made in a plant that had a prior recall, that there was no possible  
21 way the Party Animal food could be affected because it is packed by hand and the  
22 recalled food was not. Mr. Sher vehemently denied that the Party Animal pet food made  
23 by his company, Evanger's was tainted.  
24

25 4.19 Nonetheless, Mr. Sher requested that Ms. Black put all Party Animal food in  
26



1 her possession outside of her home and stated that FedEx would come pick it up and  
2 that he would replace the food with a different food at no cost. Ms. Black had nine cans  
3 of unopened the Party Animal Chicken/Beef from lot # 0134E1523713 and a 1/2 can of  
4 Beef and Turkey from lot # 0136E1520404 (best by July 2019) which was secured in Ms.  
5 Black's freezer.  
6

7 4.20 FedEx picked up the first box and then Ms. Black found an additional can  
8 and let Bret Sher know. Sher sent FedEx again to retrieve the pet food.

9 4.21 Plaintiff insisted that the subject pet food be tested for contaminants or  
10 toxic agents, but neither Party Animal nor Evanger's would confirm that testing would or  
11 had been conducted or provide Plaintiff any further information. They were, however,  
12 very anxious to relieve Ms. Black of the food samples.  
13

14 4.22 Fortunately, Ms. Black, did not allow Defendants to take away all the  
15 tainted pet food, and thereafter sought professional laboratory testing of the food. After  
16 considerable efforts, a qualified laboratory from Texas A&M University tested an  
17 unopened can of the suspect Party Animal food. The tested food contained the  
18 euthanasia drug, Pentobarbital.

19 4.23 Having confirmed that Party Animal's "organic food" actually contained a  
20 drug that is specifically used to kill animals, Ms. Black set about to determine if the pet  
21 food she purchased contained any of the other promised healthy and fresh ingredients.  
22 Further testing showed that Party Animal "Cocolicious" dog foods did not contain  
23 coconut or coconut compounds as advertised. In summary, it appears that Party Animal  
24 and Evanger are preying on unsuspecting animal lovers by falsely advertising its food as  
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Sico, Hoelscher, Harris & Braugh, LLP,  
225 South Lake Avenue, Suite 300  
Pasadena, California 91104  
(826) 432-5476

1 organic, wholesome, fresh and as containing other healthy and natural ingredients, when  
2 in fact, the only thing different about the food is the label and its marketing scheme.

3 4.24 Plaintiff contends that defendant Evanger's purchases its meat from  
4 various sources, including Bailey Farms Stock Removal, a dead animal processor.  
5 Bailey Farms Stock Removal collects dead livestock from farms including cattle, calves  
6 or horses, including animals that have been euthanized with high doses of kill drugs, and  
7 sells the carcasses to the pet food industry.  
8

9 4.25 On information and belief, Evanger's regularly, systematically and in this  
10 case did purchase rotting animal carcasses for processing into pet foods, including  
11 animals that had been euthanized with pentobarbital. Consequently, pet food made  
12 from "meat" feed stocks are contaminated with chemical agents that not only fail short of  
13 being "organic", fresh or healthy, but that are actually toxic to animals that ingest it.  
14

15 4.26 After further inquiry, it appears that many dogs have been affected and  
16 injured by pentobarbital contamination of Party Animal brand dog foods manufactured  
17 and/or supplied by Evanger's and Does 1-500. In addition, many consumers such as  
18 Ms. Black have purchased the Party Animal brand dog foods manufactured and/or  
19 supplied by Evanger's and Does 1-500, based on the false advertising,  
20 misrepresentations and illegal acts and omissions of Party Animal and Evanger's and  
21 Does 1-500. Such foods were not in fact organic, not healthful and did not contain the  
22 advertised ingredients.  
23

## 24 V. CLASS ALLEGATIONS

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Sico, Hoelscher, Harris & Braugh, LLP.  
225 South Lake Avenue, Suite 300  
Pasadena, California 91104  
(828) 432-5478

1           5.1   Plaintiffs bring this action on their own behalf and on behalf of all persons  
2 similarly situated pursuant to *Code of Civil Procedure* section 382. Plaintiff seeks to  
3 represent the following Classes:

- 4           (a)   **Consumer NPI<sup>1</sup> Class:** All persons residing in the United States who  
5 purchased Party Animal dog food within four years from the date of  
6 the original complaint.
- 7           (b)   **Consumer WPI<sup>2</sup> Class:** All persons residing in the United States who  
8 purchased Party Animal dog food within four years from the date of  
9 the original complaint and who incurred any out of pocket costs due  
10 to illness, injury or death of an animal resulting from the ingestion of  
11 Party Animal brand products.
- 12           (c)   **The California NPI Subclass:** All persons residing in the State of  
13 California who purchased Party Animal dog food for personal or  
14 household use and not for resale within four years from the date of  
15 the original complaint.
- 16           (d)   **The California WPI Subclass:** All persons residing in the State of  
17 California who purchased Party Animal dog food for personal or  
18 household use and not for resale within four years from the date of  
19 the original complaint and who incurred any out of pocket costs due  
20 to illness, injury or death of an animal resulting from the ingestion of  
21 Party Animal brand products.

22           5.2   Upon information and belief, the scope of this Class definition, including its  
23 temporal scope, may be further refined after discovery of Defendants' and/or third party  
24 records.

25           5.3   Excluded from the Class are governmental entities, Defendants, any entity  
26 in which Defendants have a controlling interest, and Defendants' officers, directors,  
affiliates, legal representatives, employees, successors, subsidiaries, and assigns. Also

<sup>1</sup> "NPI" refers to "no pet injury."

<sup>2</sup> "WPI" refers to "with pet injury."

1 excluded from the Class is any judge, justice, or judicial officer presiding over this matter  
2 and the members of their immediate families and judicial staff.

3           5.4 All members of the Class, and any subclass that may be certified, were  
4 and are similarly affected by Defendants' conduct or omission regarding the non-  
5 disclosure of the toxic substances in the product, the false advertising and mislabeling of  
6 the product, and the relief sought herein is for the benefit of Plaintiffs and members of  
7 the Class and any subclass.  
8

9           5.5 Plaintiff's claims are typical of the claims of the Class. Plaintiff is a member  
10 of the Class she seeks to represent. Plaintiff is a member of a Class of consumers, and  
11 the members of this Class of consumers were similarly situated and similarly affected by  
12 the conduct alleged of Defendants and incurred similar damage, as alleged in this  
13 complaint, as a result of Defendants' conduct. Members of the Class are ascertainable  
14 from Plaintiff's description of the Class and/or Defendants' records and/or records of  
15 third parties accessible through discovery.  
16

17           5.6 The representative Plaintiff will fairly and adequately represent the  
18 members of the Class and has no interests that are antagonistic to the claims of the  
19 Class. Plaintiff's interests in this action are antagonistic to the interests of Defendants,  
20 and they will vigorously pursue the claims of the Class.  
21

22           5.7 The representative Plaintiff has retained counsel who are competent and  
23 experienced in consumer class action litigation, and have successfully represented  
24 consumers in complex class actions.  
25  
26

1           5.8    Common questions of law or fact impact the rights of each member of the  
2 Class and a common remedy by way of permissible damages, restitutionary  
3 disgorgement and/or injunctive relief is sought for the Class.

4           5.9    There are numerous and substantial questions of law or fact common to all  
5 members of the Class that will predominate over any individual issues, including but not  
6 limited to:

- 7
- 8           (a)    whether Defendants' pet foods contain the euthanasia drug pentobarbital;
  - 9           (b)    whether Defendants were required to disclose to the Class that their pet  
10           foods contain dead animal products which may contain the euthanasia  
11           drug pentobarbital;
  - 12           (c)    whether the Defendants impermissibly and falsely labeled the products and  
13           advertised that their pet foods contained various healthful and organic  
14           products, and/or other ingredients;
  - 15           (d)    whether the Class has been damaged as a result of Defendants' conduct;
  - 16           (e)    whether the Defendants have been unjustly enriched by their conduct;
  - 17           (f)    whether Defendants' conduct violated California law or other governing  
18           laws;
  - 19           (g)    whether the Class members are the beneficiaries of a warranty and if that  
20           warranty has been breached.
- 21

22

23           5.10 A class action provides a fair and efficient method, if not the only method,  
24 for adjudicating this controversy. The substantive claims of the representative Plaintiff

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26

1 and the Class are nearly identical and will require evidentiary proof of the same kind and  
2 application of the same law.

3 5.11 A class action is superior to other available methods for the fair and  
4 efficient adjudication of this controversy because the number of Class members is  
5 believed to be at least in the thousands and individual joinder is impracticable. The  
6 expense and burden of individual litigation would make it impracticable or impossible for  
7 proposed Class members to prosecute their claims individually. Trial of Plaintiff's and the  
8 Class members' claims are manageable. Unless a Class is certified, Defendants will be  
9 unjustly enriched at the expense of Class members.  
10

11 5.12 There is no plain, speedy, or adequate remedy other than by maintenance  
12 of this class action because Plaintiff is informed and believes that damage to each  
13 member of the Class is relatively small, making it economically unfeasible to pursue  
14 remedies other than by way of a class action.  
15

16 5.13 The persons in the Class are so numerous that the joinder of all such  
17 persons individually in this case is impracticable, and the disposition of their claims in  
18 this case and as part of a single class action lawsuit, rather than thousands of individual  
19 lawsuits, will benefit the parties and greatly reduce the aggregate judicial resources that  
20 would be spent if this matter were handled as thousands of separate lawsuits.  
21

22 5.14 Plaintiff knows of no difficulty that will be encountered in the management  
23 of this litigation, which would preclude its maintenance of a class action.

24 5.15 Defendants have acted on grounds generally applicable to the entire  
25 Class, thereby making final injunctive relief or corresponding declaratory relief  
26

1 appropriate with respect to the Class as a whole. Prosecution of separate actions by  
2 individual members of the Class would create the risk of inconsistent or varying  
3 adjudications with respect to individual members of the Class that would establish  
4 incompatible standards of conduct for the Defendants.

5  
6 5.16 Without a class action, Defendants will likely retain the benefit of their  
7 wrongdoing and will continue a course of action that will result in further damages to  
8 Plaintiffs and the Class. Plaintiffs envision no difficulty in the management of this action  
9 as a class action.

10 5.17 On the basis of all of the facts alleged hereinabove, Defendants' conduct  
11 and actions were despicable, and were done maliciously, oppressively and fraudulently,  
12 with a willful and conscious disregard of Plaintiffs' rights, thereby subjecting Plaintiffs to  
13 unjust hardship and distress, entitling Plaintiffs to punitive damages under *California Civil*  
14 *Code* section 3294. Defendants' officers, directors and managing agents were  
15 personally informed and involved in the decision making process with respect to the  
16 misconduct alleged herein and to be proven at trial.

## 18 **VI. FIRST CAUSE OF ACTION**

### 19 **Breach of Implied Warranty** 20 **On Behalf of the Class Against All Defendants and Does 1-500**

21 6.1 Ms. Black and Class members reallege all prior allegations as though fully  
22 set forth herein.

23 6.2 Ms. Black and Class members purchased pet food produced by the  
24 Defendants and Does 1-500 based on the implied understanding that Party Animal  
25 brands were safe for their pets to consume.  
26

1           6.3 Party Animal was and is not safe for pets to consume and has caused pets  
2 to become ill and/or die after consumption.

3           6.4 Party Animal constitutes a "good" within the meaning of Uniform  
4 Commercial Code Article 2.

5           6.5 Defendants' and Does 1-500 conduct as described herein constitutes a  
6 breach of the implied warranty of merchantability and the implied warranty of fitness for a  
7 particular purpose in that Party Animal is dangerous and not fit for its purpose as a dog  
8 food.  
9

10           6.6 As a proximate result of the aforementioned wrongful conduct and breach,  
11 Ms. Black and Class members have suffered damage in an amount to be proven at trial.  
12 Defendants and Does 1-500 had actual or constructive notice of such damages, and  
13 such damages may fairly and reasonably be considered as arising naturally from the  
14 breach or may reasonably be supposed to have been in the contemplation of the parties  
15 at the time they made warranties as to Party Animal, and the probable result of the  
16 breach of such warranties.  
17

18                                   **VII. SECOND CAUSE OF ACTION**

19   **Breach of Express Warranty**

20   **On Behalf of the Class Against All Defendants and Does 1-500**

21           7.1 Ms. Black and Class members reallege all prior allegations as though fully  
22 set forth herein.

23           7.2 The representations on Defendant's and Does 1-500 packaging created an  
24 express warranty that the contents shall conform to the representations of the package,  
25 including that Party Animal is fit for consumption by pets, under both common law and  
26



1 section 2-313 of the Uniform Commercial Code. Said representations include, but are  
2 not limited to, Party Animal being "made with organic [meat] fruits, vegetables + vitamins  
3 and minerals". The Cocolicious Party Animal brands purchased by Ms. Black and the  
4 Class also represented that they were "made with coconut oil", when in fact, they were  
5 not.  
6

7 7.3 Ms. Black and the Class reasonably and foreseeably relied on this  
8 warranty in the contract for purchase of Party Animal pet foods for the purpose of  
9 feeding their pets, such that the warranty became a basis of the bargain by which Ms.  
10 Black and the Class chose to purchase Party Animal.

11 7.4 Party Animal was not safe for pets to consume and caused pets to become  
12 ill and/or die. The unsafe nature of the pet food constituted a breach of the express  
13 warranty.  
14

15 7.5 As a proximate result of the aforementioned wrongful conduct and breach,  
16 Ms. Black and Class members have suffered damage in an amount to be proven at trial.  
17 Defendants and Does 1-500 has actual or constructive notice of such damages, and  
18 such damages may fairly and reasonably be considered as arising naturally from the  
19 breach or may reasonably be supposed to have been in the contemplation of the parties  
20 at the time they made warranties as to Party Animal, and the probable result of the  
21 breach of such warranties.  
22

### 23 **VIII. THIRD CAUSE OF ACTION**

#### 24 **Negligence** 25 **On Behalf of the Class Against All Defendants and Does 1-500**

1           8.1    Ms. Black and Class members reallege all prior allegations as though fully  
2 set forth herein.

3           8.2    Defendants and Does 1-500 owed a duty of care to Ms. Black and the  
4 Class to offer pet food free from deleterious and harmful effects and suitable for  
5 consumption by dogs.

6           8.3    Defendants and Does 1-500 breached this duty by selling Party Animal,  
7 which is harmful and deleterious, without adequate quality control and testing, without  
8 using proper manufacturing and production practices, without properly investigating  
9 reports of pet deaths and illnesses following consumption of Party Animal food, and  
10 without adequately warning Ms. Black and the Class of the dangers of the product. Such  
11 conduct by Defendants and Does 1-500 was negligent and/or reckless.

12           8.4    Defendants and Does 1-500 knew or should have known that Party Animal  
13 food posed a risk of harm to pets, that purchasers of Party Animal, including Ms. Black  
14 and the Class, would not recognize the risk, and that consumption of Party Animal by  
15 pets would foreseeably result in injury and death to pets, constituting property damage to  
16 Ms. Black and the Class.

17           8.5    As a proximate cause of Defendant's and Does 1-500 negligent acts  
18 alleged herein, Ms. Black and the Class members suffered injury to property, specifically  
19 in the illness and deaths of their pets and associated expenses, in an amount to be  
20 proven at trial.

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23                                   **IX. FOURTH CAUSE OF ACTION**

24                                   **Neglligent Misrepresentation**  
25                                   **On Behalf of the Class Against All Defendants and Does 1-500**

Sico, Hoelscher, Harris & Braugh, LLP.  
225 South Lake Avenue, Suite 300  
Pasadena, California 91104  
(626) 432-5478

1  
2 9.1 Ms. Black and Class members reallege all prior allegations as though fully  
3 set forth herein. Defendants and Does 1-500 owed Ms. Black and the Class a duty to  
4 exercise reasonable care in representing the safety of Party Animal.

5 9.2 Defendants and Does 1-500 falsely represented that Party Animal was  
6 safe for consumption by dogs.

7 9.3 In reality, Party Animal caused dogs to become ill and, in some cases, to  
8 die.

9  
10 9.4 Ms. Black and the Class reasonably relied on the information provided by  
11 Defendants and Does 1-500 regarding the safety of Animal Party.

12 9.5 As a proximate cause of Defendants' and Does 1-500 false  
13 representations, Ms. Black and the Class members suffered injury to property,  
14 specifically in the illness and deaths of their pets and associated expenses, in an amount  
15 to be proven at trial.

16  
17 **X. FIFTH CAUSE OF ACTION**

18 **Strict Products Liability**  
19 **On Behalf of the Class Against All Defendants and Does 1-500**

20 10.1 Ms. Black and Class members reallege all prior allegations as though fully  
21 set forth herein.

22 10.2 Defendants and Does 1-500, as set forth above, are the manufacturers,  
23 distributors and marketers of Party Animal pet food.

24 10.3 Party Animal in all its forms is defective in design and/or manufacture in  
25 that it contains an ingredient or ingredients that are harmful to animals upon  
26

1 consumption. Party Animal was further defective due to inadequate testing. Defendants  
2 and Does 1-500 knew that Party Animal would be purchased and used without  
3 inspection, or testing for defects and harmful substances by the purchaser.

4 10.4 Further, Party Animal was under the exclusive control of Defendants and  
5 Does 1-500, and was sold without warning as to its health risks. Defendants and Does 1-  
6 500 had a duty to warn purchasers of the health risks posed by Party Animal in an  
7 effective manner. Such warnings should have been placed on the packaging at point-of-  
8 sale or in another manner reasonably calculated to fairly warn purchasers of the danger.

9 10.5 The kinds of harm which befell Ms. Black, the Class and their pets were  
10 foreseeable results of the defects in Party Animal. Neither Ms. Black nor any member of  
11 the Class had any reason to know, prior to or at the time of purchase, or any time prior to  
12 the injuries to their pets, that Party Animal was defective and harmful.

13  
14  
15 **XI. SIXTH CAUSE OF ACTION**

16 **Violation of the Consumers Legal Remedies Act (Cal. Civ. Code §1750 et seq.)**  
17 **On Behalf of the California Subclass Against All Defendants and Does 1-500**

18 11.1 Ms. Black and Class members reallege all prior allegations as though fully  
19 set forth herein.

20 11.2 Defendants' and Does 1-500 sale of dangerous and defective pet food  
21 constitutes an unlawful, deceptive and unfair business act within the meaning of the  
22 Consumers Legal Remedies Act, *California Civil Code* section 1750 et seq.

23 11.3 Defendants and Does 1-500 are a "person" as defined under *California*  
24 *Civil Code* section 1761(c).  
25  
26

1           11.4 Defendants and Does 1-500 violated Civil Code sections 1770(a)(5) and  
2 (a)(7) when it failed to disclose that Party Animal is inherently defective and dangerous  
3 and not fit for its intended purpose. Defendants' and Does 1-500 sale of hazardous pet  
4 food has the capacity to deceive a substantial portion of the public and to affect the  
5 public interest.

6  
7           11.5 As a result of the practices described herein, Defendants and Does 1-500  
8 have committed the following violations of section 1770:

9           (a) Defendants and Does 1-500 have represented that Party Animal has  
10 characteristics or benefits that it does not have including, that it is "healthy"  
11 and offers "great nutrition" (section 1770(a)(5)); and

12           (b) Defendants and Does 1-500 have falsely represented that Party Animal is  
13 of a particular standard, quality, or grade (section 1770(a)(7)).  
14

15           11.6 Defendants and Does 1-500 undertook their deceptive practices with the  
16 design and purpose of inducing Ms. Black and the California Subclass to purchase Party  
17 Animal, which they did.

18           11.7 Defendants and Does 1-500 engaged in marketing efforts to reach the  
19 California Subclass and persuade members to purchase Party Animal, which was  
20 defective, leading to the injuries to their pets and other damages.  
21

22           11.8 As a result of Defendants' and Does 1-500 unfair and deceptive acts and  
23 practices, Ms. Black and the California Subclass have suffered damages in an amount to  
24 be proven at trial.  
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11.9 Ms. Black and the California Subclass are providing Defendants and Does 1-500 with the notice required by the Consumers Legal Remedies Act by giving notice of Defendants and Does 1-500 violation of the Act by certified mail. Ms. Black and the California Subclass at this time request only injunctive relief, until the expiration of the thirty-day period in which Defendants and Does 1-500 may respond to the notice. Such injunctive relief may include recall, among other things. Ms. Black and the California Subclass will amend the Complaint to add claims for damages in the event Defendants and Does 1-500 do not respond to the notice in the specified time. As such, Ms. Black has complied with *California Civil Code* section 1782(a).

**XII. SEVENTH CAUSE OF ACTION**

**Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code §17200 et seq.)  
On Behalf of the California Subclass Against All Defendants and Does 1-500**

12.1 Ms. Black realleges all prior allegations as though fully set forth herein.

12.2 Defendants' and Does 1-500 practices as alleged in this Complaint constitute unlawful, unfair and fraudulent business acts and practices under the UCL, *Bus. & Prof. Code* §§ 17200, et seq. 67. The UCL prohibits acts of "unfair competition," including any unlawful, unfair, or fraudulent business act or practice.

12.3 A violation of another law is treated as "unlawful competition" that is independently actionable. A business practice is "unfair" if: a) the utility of Defendant's conduct is substantially outweighed by the gravity of the harm to the alleged victim; b) Defendant's practice violates public policy as declared by specific constitutional, statutory, or regulatory provisions or is immoral, unethical, oppressive, unscrupulous, or

1 substantially injurious to consumers; or c) Defendant's practice would deceive a  
2 reasonable consumer.

3 12.4 Defendants and Does 1-500 committed unlawful practices because it  
4 violated the CLRA.

5 12.5 Defendants and Does 1-500 committed unfair practices because it  
6 manufactured and distributed Party Animal, which is harmful to dogs, despite knowledge  
7 of the defect, and in a manner that would deceive a reasonable consumer.  
8

9 12.6 Defendants and Does 1-500 engaged in unfair, deceptive, untrue or  
10 misleading advertising by representing that Party Animal was safe for consumption, was  
11 organic, wholesome, healthy and/or natural and contained the advertised ingredients,  
12 despite the fact that Party Animal was not safe for consumption, was not organic,  
13 wholesome, healthy or natural and did not contain the advertised ingredients.  
14

15 12.7 Defendants and Does 1-500 committed unfair, unlawful or fraudulent  
16 practices by: (a) representing that Party Animal was safe for dogs to consume when it  
17 was not; (b) continuing to represent the health benefits of Party Animal despite being  
18 aware of numerous complaints from users of Party Animal that their dogs had become ill  
19 or died after consuming it; and (c) by falsely representing the ingredients of the food.

20 12.8 Ms. Black and the California Subclass members relied on such statements  
21 and omissions. Had Ms. Black and the California Subclass members known that Party  
22 Animal presented a health hazard to their dogs, they never would have purchased it.  
23  
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1           12.9 Accordingly, Plaintiff and the Class seek an injunction requiring Defendants  
2 and Does 1-500 to cease selling Party Animal pet foods and to recall any of the product  
3 currently in distribution, restitution, and all other relief this Court deems appropriate.  
4

5                                   **XIII. EIGHTH CAUSE OF ACTION**

6           **Violation of the False Advertising Law (Cal. Bus. & Prof. Code §17500 et seq.)**  
7           **On Behalf of the California Subclass Against All Defendants and Does 1-500**

8           13.1 Ms. Black and Class members reallege all prior allegations as though fully  
9 set forth herein.

10           13.2 Defendants and Does 1-500 disseminated advertising within California and  
11 throughout the United States. Defendants and Does 1-500 disseminated or caused to be  
12 disseminated the materially untrue and misleading advertising described in this  
13 Complaint with the intent to directly or indirectly induce Ms. Black and the California  
14 Subclass to purchase Animal Party.

15           13.3 The advertising misrepresenting the Party Animal's health benefits, or  
16 omitting to state that Party Animal posed a health risk to dogs, were untrue, misleading,  
17 and deceptive as set forth in this Complaint.

18           13.4 When Defendants and Does 1-500 disseminated the advertising described  
19 here, it knew, or by the exercise of reasonable care should have known, that the  
20 statements concerning Party Animal's were untrue or misleading, or omitted to state the  
21 truth about the Party Animal, in violation of the False Advertising Law, *Cal. Bus. & Prof.*  
22 *Code §17500, et seq.*  
23  
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Sico, Hoelscher, Harris & Braugh, L.L.P.  
226 South Lake Avenue, Suite 300  
Pasadena, California 91104  
(626) 438-5478

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8. For an order requiring Defendants to test and certify their pet food as containing the advertised ingredients;

9. For an order awarding, as appropriate, compensatory damages and restitutionary disgorgement to Plaintiff and the Class;

10. For an order enjoining Defendants and Does 1-500 from continuing to market, advertise, distribute, and sell these products in the unlawful manner described herein, and ordering Defendants to engage in corrective action;

- 11. For all remedies available pursuant to the *Civil Code*;
- 12. For an order awarding attorneys' fees and costs;
- 13. For an order awarding punitive damages;
- 14. For an order awarding pre- and post-judgment interest; and
- 15. For an order providing such further relief as this Court deems proper.

DATE: June 6, 2017

SICO HOELSCHER HARRIS & BRAUGH LLP

BY:   
Jane M. Braugh, Esq.  
Attorneys for Plaintiffs


**JURY DEMAND**

Plaintiffs hereby demand a jury trial on all causes of action.

DATE: June 6, 2017

SICO HOELSCHER HARRIS & BRAUGH LLP

BY: \_\_\_\_\_

  
Jane M. Braugh, Esq.  
Attorney for Plaintiffs

Sico, Hoelscher, Harris & Braugh, L.L.P.  
225 South Lake Avenue, Suite 300  
Pasadena, California 91104  
(626) 432-5475

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