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8  
9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
11 **SACRAMENTO DIVISION**

12  
13 SUSAN FITZPATRICK, on behalf )  
14 of herself and all others )  
15 similarly situated, )  
16 )  
17 Plaintiff, )  
18 )  
19 v. )  
20 )  
21 TYSON FOODS, INC, )  
22 )  
23 Defendant. )

Case No. \_\_\_\_\_  
  
Class Action Complaint  
Amount demanded exceeds

24  
25 **CLASS ACTION COMPLAINT**

26  
27 This is a California statewide class action seeking redress for false, fraudulent,  
28 and misleading advertising of pet food and pet treats. Defendant Tyson Foods Inc.  
29 (“Tyson”), falsely represents that its “Nudges” brand of grain-free dog treat products  
30 are made in America, when in fact certain ingredients are sourced from foreign  
31 countries. This is a violation of the California Unfair Competition Law as well as  
32 the California Consumer Legal Remedies Act. Plaintiff seeks, on her own behalf as  
33 well as on behalf of a statewide class of similarly situated consumers, injunctive

1 relief to stop defendants' false and misleading country-of-origin claims, as well as  
2 restitution under the UCL. Plaintiff also seeks injunctive relief under the CLRA,  
3 and requests that plaintiff be allowed to amend this complaint to seek actual damages  
4 subject to the \$1,000 statutory minimum for class action damages, restitution, and  
5 punitive damages under the CLRA thirty days after the service of this complaint in  
6 compliance with the notice requirements of the CLRA. In support of this complaint,  
7 plaintiff states as follows:

8 **PARTIES, JURISDICTION, AND VENUE**

9 1. Plaintiff Susan Fitzpatrick is an adult citizen of California residing in  
10 Placer County, which is within this district and division. Plaintiff purchased  
11 defendants' products, the marketing of which violates California law, in this district  
12 and division.

13 2. The plaintiff class includes California residents who, in the last four  
14 years, purchased Defendants' pet food products marketed and sold as made in the  
15 U.S.A. which contained ingredients sourced from foreign countries.

16 3. Defendant Tyson Foods is a corporation formed under and existing  
17 pursuant to the laws of the state of Delaware. Defendant's principal place of business  
18 is in Springdale, Arkansas.

19 4. This Court has diversity jurisdiction over this case under 28 U.S.C. §  
20 1332, as modified by the Class Action Fairness Act of 2005, because plaintiff and

1 defendant are citizens of different states, and in this class action the aggregate  
2 amount in controversy is greater than \$5,000,000.00 (five million dollars), exclusive  
3 of interest and costs.

4 5. Venue is proper in this court because the purchases were made by, or  
5 deliveries were made to, the Plaintiff in this district and division.

6 **FACTUAL ALLEGATIONS COMMON TO THE STATEWIDE CLASS**

7 6. Defendant manufactures and sells dog treats in stores all over the  
8 United States, including California. Among other places, it sells its products in large  
9 retail chains including WalMart.

10 7. Defendants represent that its products are “Made in the USA.” The  
11 packaging for Tyson’s Nudges treats displays a prominent American flag and the  
12 words “Made in USA.” The Nudges website also claims that “Nudges Wholesome  
13 dog treats are made from proteins 100% sourced and raised in the USA” and later  
14 that “They don’t contain any artificial flavors or fillers – just the good stuff.”  
15 <http://www.nudgesdogtreats.com/> (last accessed Sept. 30, 2015.) Other websites  
16 such as Walmart.com contain made in the USA representations with respect to this  
17 product.

18 8. The representation that Defendant’s Nudges dog treat products are  
19 made in the United States is false because certain ingredients are sourced from  
20 foreign countries. As one example, these products contain tapioca, a gluten-free

1 starch made from the cassava root. Cassava root is not commercially grown in the  
2 United States because it requires tropical conditions. The largest grower of Cassava  
3 in the world is Nigeria, though Thailand also exports a great deal of tapioca starch.  
4 Tapioca starch is listed as an ingredient on the Nudges website.  
5 <http://www.nudgesdogtreats.com/Products/Grillers/Chicken.aspx> (last accessed  
6 Sept. 30, 2015).

7 9. Defendants market, and continue to market, and represent to the general  
8 public that their pet food products are “Made in the U.S.A” and similar false  
9 descriptions.

10 10. Consumers are particularly vulnerable to these deceptive and fraudulent  
11 practices. Most consumers possess very limited knowledge of the likelihood that pet  
12 food products claiming to be made in the United States are in fact made or sourced  
13 in foreign countries. This is a material factor in many individuals’ purchasing  
14 decisions, as they believe they are supporting American companies and American  
15 jobs.

16 11. Consumer preference for pet foods and treats that are made exclusively  
17 in the United States also stems from the widely-publicized and widespread recall of  
18 pet foods in 2007, when hundreds, and perhaps thousands, of dogs and cats died of  
19 kidney failure after eating pet food that contained a toxic chemical called melamine.  
20 This ingredient was placed in the pet food at manufacturing facilities in China and

1 was mislabeled as “wheat gluten” or “rice protein.” This increased consumer’s  
2 preference for both fully American-made pet food and grain-free pet food.

3 12. For this and other reasons, consumers generally believe that “Made in  
4 the U.S.A.” products are safer to feed their animals than foreign-sourced ingredients.  
5 Due to Defendant’s scheme to defraud the market, members of the general public  
6 were fraudulently induced to purchase Defendant’s products at inflated prices. On  
7 information and belief, and during the entirety of the relevant four-year statutory  
8 time period, Defendant charged excess monies for its products, in comparison to  
9 their competitors, based on the false “Made in the U.S.A.” designation. California  
10 and federal laws are designed to protect consumers from this type of false  
11 representation and predatory conduct. Defendant’s scheme to defraud consumers is  
12 ongoing and will victimize consumers each and every day until altered by judicial  
13 intervention.

#### 14 **CLASS ACTION REQUIREMENTS**

15 13. Plaintiff brings this case on his own behalf, and on behalf of all others  
16 similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The  
17 class consists of all residents of the state of California who, within the applicable  
18 statute of limitations period, bought cat food products from defendants that contain  
19 ingredients sourced from other countries and that were marketed and sold as “Made

1 in the U.S.A.” or “Made in America.” Excluded from the class are plaintiff’s counsel  
2 and any employee of the court.

3 14. Pursuant to Rule 23(a)(1), numerosity is satisfied because the members  
4 of the Class are so numerous and geographically dispersed that joinder of all Class  
5 members is impracticable. Plaintiff currently believes that there are hundreds of  
6 thousands of members of the Class located in the State of California.

7 15. Common questions of fact and law exist here, satisfying the  
8 requirement of Rule 23(a)(2), including but not limited to:

9 a. whether Defendant participated in or committed the wrongful conduct  
10 alleged herein;

11 b. whether Defendant’s acts, transactions, or course of conduct constitute the  
12 violations of law alleged herein;

13 c. whether the members of the Class sustained and/or continue to sustain  
14 damages by reason of Defendant’s conduct, and, if so, the proper measure and  
15 appropriate formula to be applied in determining such damages; and

16 d. whether the members of the Class are entitled to injunctive or other  
17 equitable relief.

18 16. Plaintiff’s claims are typical of the claims of all other members of the  
19 Class and involve the same violations of law by Defendant as other Class members’  
20 claims. Plaintiffs and members of the Class also sustained damages arising out of

1 Defendant's common course of conduct complained of herein. Accordingly,  
2 Plaintiff satisfies the "typicality" requirements of Fed. R. Civ. P. 23(a)(3) with  
3 respect to the Class.

4 17. Plaintiff will fairly and adequately protect the interests of the other  
5 members of the Class, and have no interests that are antagonistic to those of the  
6 Class, pursuant to Rule 23(a)(4). Plaintiff is interested in vigorously prosecuting  
7 claims on behalf of the Class, and Plaintiff has retained experienced and competent  
8 class action counsel to represent them and the Class.

9 18. Plaintiff seeks to certify a statewide class pursuant to Rule 23(b)(2) and  
10 23(b)(3).

11 19. Pursuant to Rule 23(b)(2), Defendant has "acted or refused to act on  
12 grounds that apply generally to the class, so that final injunctive relief or  
13 corresponding declaratory relief is appropriate respecting the class as a whole."

14 20. Pursuant to Rule 23(b)(3), questions of law or fact common to class  
15 members predominate over any questions affecting only individual members, and a  
16 class action is superior to other available methods for fairly and efficiently  
17 adjudicating the controversy. Given the relatively small amount of damages suffered  
18 by each class member, it is unlikely that any of the class members are interested in  
19 individually controlling the prosecution or defense of separate actions. Plaintiff is  
20 not aware of any other litigation against defendant asserting these claims, and doubts

1 any other litigation outside of the class action device will be initiated against  
2 Defendant. It is desirable to hear all of these claims in one forum so that the class  
3 members can receive a full recovery, which they would not outside of a class action  
4 because of the relatively small amount of damages suffered by each class member,  
5 such that it would make no economic sense for individual class members to pursue  
6 individual claims in different forums. Plaintiff does not anticipate that there will be  
7 significant difficulties in managing this class action that are any more serious than  
8 other consumer class actions.

9 **FACTS RELATING TO THE SPECIFIC PLAINTIFF**

10 21. Plaintiff Susan Fitzpatrick cares very much about feeding her dogs the  
11 safest and best food available.

12 22. Plaintiff believes that pet food made and sourced in the United States is  
13 generally safer than pet food made with imported ingredients. Plaintiff also believes  
14 in supporting American companies and jobs by purchasing American-made  
15 products.

16 23. On multiple occasions, Plaintiff purchased Defendants' Grain-Free dog  
17 treats, with the belief that it was made in the United States from American  
18 ingredients.

19 **CLAIMS FOR RELIEF**

20 **COUNT ONE – CALIFORNIA UNFAIR COMPETITION LAW**

1 24. All preceding paragraphs are incorporated by reference.

2 25. The foregoing fraudulent and unfair conduct violates the California  
3 Unfair Competition Law, codified at Business and Professions Code §§ 17200, et  
4 seq. (“UCL”).

5 26. Among other provisions, the foregoing conduct violates Business &  
6 Professions Code § 17533.7 dealing with “Made in the U.S.A.” product labeling.

7 27. The named Plaintiff suffered actual damages as a result of Defendants’  
8 violation of the law because he expended money in buying products based on  
9 Defendants’ misleading and fraudulent representation of national origin.

10 28. As a result, Plaintiff is entitled to an injunction against continuing  
11 violations of the UCL and restitution of monies obtained through those violations,  
12 on a class-wide basis.

13 **COUNT TWO – CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

14 29. All preceding paragraphs are incorporated by reference.

15 30. The foregoing conduct by defendant violates the Consumers Legal  
16 Remedies Act, codified at California Civil Code §§ 1750, et seq.

17 31. Defendant’s pet food and treats are “goods” as defined in Civil Code  
18 Section 1761(a).

19 32. Plaintiff, and each of the Class members, is a “Consumer” as defined  
20 in Civil Code Section 1761(d).



- 1 E. An award of costs, including reasonable attorneys' fees; and  
2 F. Such further or different relief as the Court may deem appropriate.

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4 Respectfully submitted,

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/s/ Benjamin P. Tryk \_\_\_\_\_

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Benjamin P. Trick  
Attorney for Claimant

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